



Defence for Children International – Palestine Section

**Alternative Report for Consideration Regarding Israel's Third
Periodic Report to the UN Human Rights Committee**

**International Covenant on Civil and Political Rights (1966)
(ICCPR)**

Submitted 29 July 2009

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This report is submitted on behalf of Defence for Children International–Palestine Section (DCI-Palestine), a national section of the international non-governmental child rights organisation and movement, Defence for Children International, established in 1979, with consultative status with ECOSOC.

DCI-Palestine is a non-governmental, non-profit, independent Palestinian organisation established in 1992. Its vision is “A Palestinian community fit for all children” – a community that is free and independent, where justice, equality and respect for human dignity prevail; and where children can enjoy and exercise their human rights without any kind of discrimination.

DCI-Palestine’s mission is to promote and protect the rights of Palestinian children in accordance with the UN Convention on the Rights of the Child and other international, regional and local standards. DCI-Palestine implements five thematic programmes, which are interrelated and all together contribute to the creation of a comprehensive protective environment for children in the Occupied Palestinian Territory:

- *Protection of Children Victims of Community/Domestic Violence;*
- *Protection of Children in Conflict with the Law;*
- *Protection of Child Political Detainees;*
- *Child Participation and Community Mobilisation; and*
- *Accountability.*

On the Palestinian Authority (PA) level, DCI-Palestine lobbies for better child protection legislation and implementation of the rule of law. In addition, DCI-Palestine focuses on strengthening the commitment and capacity of key stakeholders, such as policymakers, civil society and the media, to support child rights. DCI-Palestine works to improve the accountability of the main duty-bearers of Palestinian children’s rights, namely Israel and the PA, through the collection of evidence, research, general advocacy and lobbying work. Finally, DCI-Palestine provides free legal assistance to children prosecuted in Israeli military courts.

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1. Introduction

- 1.1 As a leading child rights organisation based in the Occupied Palestinian Territory, DCI-Palestine wishes to bring to the attention of the Human Rights Committee (the Committee) certain specific issues relating to the treatment of Palestinian children in the Occupied Palestinian Territory. This report does not intend to comprehensively cover all relevant issues under the International Covenant on Civil and Political Rights (1966) (ICCPR) (the Covenant), but will focus instead on some of the issues DCI-Palestine considers to be the most serious in relation to Palestinian children living under military occupation.
- 1.2 This report will specifically focus on the following articles of the Covenant:
- Article 2 - (application of the Covenant to the Palestinian Territory)
 - Article 4 - (public emergency and derogation from the Covenant)
 - Article 6 - (right to life)
 - Article 7 - (torture and ill-treatment)
 - Article 9 - (arbitrary detention)
 - Article 10 - (persons deprived of their liberty)
 - Article 14 - (fair trial rights)
 - Article 15 - (criminal penalties)
 - Article 24 - (protection of minors without discrimination)
- 1.3 For the purposes of this report, DCI-Palestine's work can be divided into two broad categories, namely, fatalities and injuries (right to life) and detention related issues (ill-treatment and fair trial rights).
- 1.4 Before embarking upon an article by article analysis of the State party's compliance with the Covenant to persons within its territory and subject to its jurisdiction, the authors of this report consider it useful to provide the Committee with a brief overview of the Israeli military court apparatus, including the process of arrest, transfer, interrogation, prosecution and detention of Palestinian children.
- 1.5 This report focuses exclusively on issues affecting Palestinian children in the Occupied Palestinian Territory and those detained in prisons inside Israel. The report does not otherwise deal with issues inside Israel or contraventions of the Covenant by the Palestinian National Authority.
- 1.6 This report covers the period 1 January 2004 to 30 June 2009 (the reporting period).

2. Overview¹

- 2.1 Since the State party's occupation of Palestinian territory in 1967,² Palestinians have been charged with offences under Israeli military law and tried in military courts.
- 2.2 It is estimated that during the last 42 years of occupation, approximately 700,000 Palestinian men, women and children have been detained under military orders in the Occupied Palestinian Territory.³ According to a recent report, between 1990 and 2006, more than 150,000 Palestinians were brought before these military courts. This averages out at well over 9,000 Palestinians per year, including 700 children.⁴
- 2.3 The State party's military court system has operated in the Occupied Palestinian Territory for 42 years in a manner almost completely devoid of international scrutiny. Whilst Israel, as an Occupying Power, has the right under international humanitarian law to establish military courts in the Territory, applicable international human rights and humanitarian law restricts the jurisdiction of such courts, and guarantees certain fundamental fair trial rights.

Process of arrest, transfer and interrogation

- 2.4 Palestinian children are routinely arrested at checkpoints, off the street and, most commonly, from their homes in the early hours of the morning. In the case of arrest from the family home, units from the Israeli army will typically surround the house between midnight and 4:00am and force family members onto the street in their nightclothes, regardless of weather conditions.
- 2.5 The arrest process is often accompanied by yelling, violence and property damage, ending with the child being blindfolded and having his or her hands tied tightly behind their back with plastic ties that have a tendency to cut the flesh.⁵ Mass arrests from homes

¹ See also: Defence for Children International-Palestine, *Palestinian Child Prisoners – The systematic and institutionalised ill-treatment and torture of Palestinian children by Israeli authorities*, June 2009 – <http://www.dci-pal.org/english/publ/display.cfm?DocId=1166&CategoryId=8>

² This report is based on the following assumptions: the Gaza Strip and the West Bank, including East Jerusalem, comprise the Occupied Palestinian Territory, a territory Israel has held in belligerent occupation since 1967; the occupation takes place within the context of an ongoing international armed conflict; and among the applicable legal regimes are the Third and Fourth Geneva Conventions of 1949, customary international humanitarian law and the international human rights treaties to which Israel is a State party.

³ UN Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967, Professor John Dugard, *Human Rights Situation in Palestine and Other Occupied Arab Territories*, 21 January 2008, A/HRC/7/17, paragraph 45.

⁴ Yesh Din, Volunteers for Human Rights, *Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Palestinian Territories*, December 2007, page 25: <http://www.yesh-din.org/site/index.php?page=militarycourts@lang=en>; Defence for Children International – Palestine.

⁵ See two reports by the Public Committee Against Torture in Israel:

in entire neighbourhoods continue to take place in the Occupied Palestinian Territory during military incursions.⁶

2.6 Once bound and blindfolded, the child is usually placed on the floor of a military jeep, sometimes face down, for transfer to an interrogation and detention centre. Children from the West Bank are usually taken to one of eight interrogation and detention centres or police stations after arrest:

- Huwwara (near Nablus, West Bank)
- Etzion (near Bethlehem, West Bank)
- Salem (near Jenin, West Bank)
- Ofer (near Ramallah, West Bank)
- Ma'ale Adumim (near Jerusalem, West Bank)
- Kiryat Arba (near Hebron, West Bank)
- Al Mascobiyya (Jerusalem)
- Al Jalame (near Haifa, Israel)

Palestinians from East Jerusalem are usually taken to Al Mascobiyya or to one of the West Bank detention centres, depending on where the alleged offence took place.

2.7 It is rare for a child, or his or her family, to be told why he or she is being detained, or where he or she is being taken. These journeys can last anywhere between 20 minutes up to several hours during which time abuse is common.⁷

2.8 On arrival at an interrogation and detention centre, the child is either placed in a cell or taken straight for interrogation after a brief medical check. The child is invariably denied access to a lawyer, for days or weeks, until the end of the interrogation process, and once a confession has been obtained.⁸ Organisations working on the ground, including DCI-

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- *Shackling as a Form of Torture and Abuse*, June 2009 - http://www.stoptorture.org.il/files/eng_report.pdf; and
 - *No Defense: Soldier Violence against Palestinian Detainees*, June 2008, page 3 - <http://www.stoptorture.org.il/en/node/1136>, 'In 30 of the 90 cases of ill treatment we examined, the detainees testified that they were subjected to painful shackling. The soldiers often leave the detainee shackled for a protracted period – frequently for many hours, which is painful and liable to cause permanent injury.'

⁶ On 20 January 2009, units of the Israeli army entered the village of Tura al Gharbiya, near Jenin in the early hours of the morning and rounded up a number of children, detaining at least seven and accused them of throwing stones. On 26 March 2009, up to 90 children were detained from the village of Haris, near Salfit in the West Bank. Israeli soldiers entered the village around midnight and placed it under curfew; they then proceeded to remove children from their homes and detained them in the village secondary school for almost a day, according to information obtained from the school headmaster. According to the mayor of the village, the Israeli army's stated reason for the incursion was that stones had been thrown at military vehicles using Route 505, a bypass road for Israeli settlers and military vehicles. Four children were ultimately arrested.

⁷ United Against Torture, *Torture and Ill-Treatment in Israel & the occupied Palestinian territory* (2008), pages 9 to 17, and *supra* note 1.

⁸ *Ibid.* page 12.

Palestine, receive numerous reports of abusive and threatening techniques being employed against Palestinians during interrogation.⁹

- 2.9 Of particular concern is the continued practice involving Palestinian children being made to sign confessions written in Hebrew, a language few children comprehend. Once obtained, these confessions then constitute the primary evidence against Palestinian children in the military courts.

The military court apparatus

- 2.10 Once the interrogation phase is completed, Palestinian detainees from the West Bank are processed for trial, sentencing and imprisonment in one of two Israeli military courts currently in operation in the Occupied Palestinian Territory:

- Salem Military Court, situated near the city of Jenin, in the north of the West Bank;¹⁰ and
- Ofer Military Court, situated near the city of Ramallah, in the central region of the West Bank.¹¹

- 2.11 Both military courts are situated adjacent to Israeli military bases inside the Occupied Palestinian Territory and access is strictly limited. Appeals from the military courts are heard by the Military Court of Appeals which is situated in two locations, one inside Ofer military base and the other inside Ketziot Prison, inside Israel. Similarly, the Administrative Detention Court and the Administrative Detention Court of Appeal are located at Ofer and Ketziot.

⁹ *Ibid.* pages 13 to 14. Techniques commonly encountered include: excessive use of blindfolds and handcuffs; slapping and kicking; sleep deprivation; solitary confinement; denial of food and water for extended periods of time; denial of access to toilets; denial of access to showers or change of clothes for days or weeks; exposure to extreme cold or heat; position abuse; yelling and exposure to loud noises; insults and cursing; arresting family members or alleging that family members have been arrested; and occasionally, sexual abuse. Common threats encountered include: being beaten or having family members harmed; being imprisoned for an indefinite period of time or having family members imprisoned; having work or study permits revoked; being sexually abused; being attacked by a dog; being subjected to some form of physical abuse; and having the family home demolished.

¹⁰ Known by Israeli authorities as the Military Court of Samaria.

¹¹ Known by Israeli authorities as the Military Court of Judea.



ISRAELI MILITARY DETENTION OF CHILDREN

Military Courts

- A** Ofer Military Court
- B** Salem Military Court

Interrogation and Detention Centres

1. Ofer
2. Salem
3. Al Jalame (Israel)
4. Huwwara
5. Ma'ale Adumim (police station)
6. Etzion
7. Kiryat Arba (police station)
8. Al Mascobiyya (Jerusalem)

Prisons

1. Ofer
9. Telmond Compound (Israel)¹
10. Megiddo (Israel)
11. Ketziot (Israel)
12. Damoun (Israel)

Hospitals

13. Ramle Prison Hospital
14. Hadasa Ein Karem Hospital

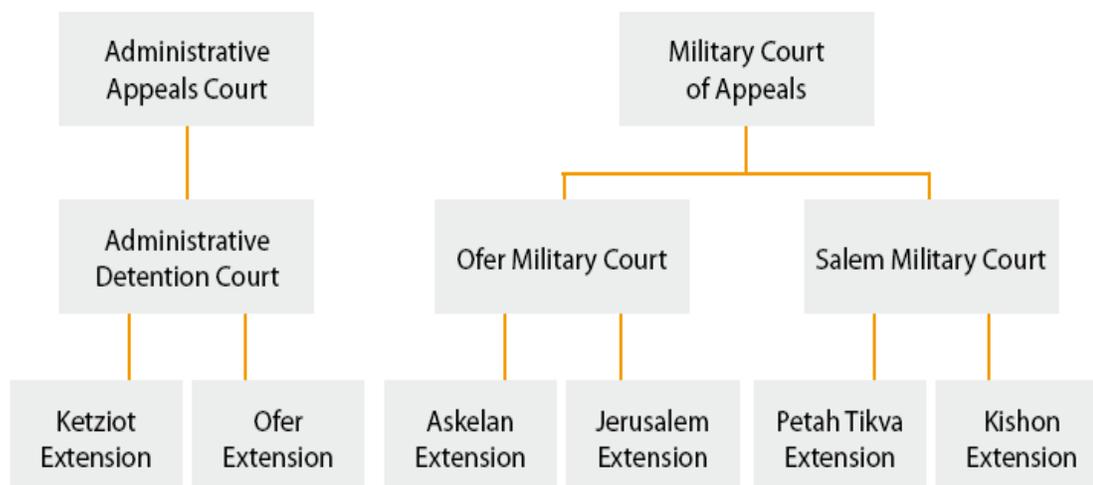


¹ Telmond Compound includes Hasharon and Ofek Prisons.

March 2009

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2.12 The structure of the State party's military court system in the Occupied Palestinian Territory is illustrated in the following chart.¹²



The two Military Courts and the Administrative Detention Court in the Occupied Palestinian Territory have additional court facilities inside Israel (see bottom row of the chart) which predominantly deal with extension of detention hearings whereby the court can order that detainees be held beyond the initial eight day detention period. Under international law these courts should be situated in the Occupied Palestinian Territory and not inside Israel.¹³

2.13 The military courts are presided over by judges¹⁴ who are military officers in regular or reserve service. The prosecutors are also in regular or reserve army service, and some of them are not yet certified by the Israeli Bar Association. The defence lawyers consist of a few dozen Israelis and Palestinians, some of who are in private practice and some working for non-governmental organisations.¹⁵

2.14 Since 1989 it has been possible to appeal a decision of the military courts to the Military Court of Appeals, which consists of a single judge for less serious cases, and a panel of three judges in any case where the punishment exceeds five years. A judge of the Military Court of Appeals must hold the rank of Lieutenant Colonel and have at least seven years 'legal experience.'

¹² See *supra* note 4, page 40.

¹³ This violates Article 66 of the Fourth Geneva Convention that requires the courts to be within occupied territory.

¹⁴ According to information obtained by Yesh Din, at the end of 2006 there were 14 regular army judges and about 140 reservist judges in the military courts in the Occupied Palestinian Territory.

¹⁵ NGOs such as DCI-Palestine, Addameer Prisoners Support and Human Rights Association and Nadi Al-Asir (Palestinian Prisoners Club).

- 2.15 In rare cases, a petition to the Israeli High Court of Justice can be filed regarding a decision of the military courts on questions of jurisdiction and reasonableness.¹⁶

Proceedings in the military courts

- 2.16 Palestinian children as young as 12 years who are arrested by the Israeli military continue to be prosecuted in the same military court jurisdiction as adults.¹⁷ Further, the military courts continue to treat a Palestinian child as an adult as soon as he or she turns 16,¹⁸ in contrast to the situation inside Israel where majority is not attained until the age of 18.
- 2.17 The arbitrary nature of the military justice system is perhaps best exemplified by the fact that a Palestinian child's sentence continues to be determined on the basis of the child's age at the time of sentencing and not at the time when the alleged offence occurred.¹⁹ In this system a child who is accused of committing an offence when he or she is 15, is punished as an adult if he or she has a birthday whilst awaiting sentencing.

Table 1 – Sentences for children under Military Order 132

Age	Maximum sentence	Notes
12 - 13	Six months	-
14 - 15	12 months (For offences that carry a maximum penalty of less than five years.)	For more serious offences, the maximum sentence is the same as adults. Note that under Military Order 378, the maximum sentence for throwing stones at a moving vehicle is 20 years.
16	Adult	-

Statistical information

- 2.18 Each year, approximately 700 Palestinian children are arrested and prosecuted through the Israeli military court system. This means that between 2004 and June 2009, approximately 3,850 Palestinian children have been detained. Of these, DCI-Palestine currently represents between 30 and 40 percent.

¹⁶ See *supra* note 4, page 26.

¹⁷ Article 40(3) of the CRC provides that '*States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law ...*'

¹⁸ Israeli Military Order 132.

¹⁹ *Ibid.*

Table 2 - Number of Palestinian children detained by Israel at the end of each month – 2008-2009²⁰

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2008	327	307	325	327	337	323	324	293	304	297	327	342
2009	389	423	420	391	346	355	-	-	-	-	-	-

Table 3 - Number of Palestinian girls detained by Israel at the end of each month – 2008-2009

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2008	2	3	3	4	3	6	6	5	6	6	5	7
2009	5	7	6	6	6	5	-	-	-	-	-	-

Table 4 - Trends for 2004 –2008

Gender	2004	2005	2006	2007	2008
Boys	-	-	-	98.9%	96%
Girls	-	-	-	1.1%	4%
Age group²¹	2004	2005	2006	2007	2008
12-13 years	-	-	-	-	1.4%
14-15 years	-	-	-	-	21.9%
16-17 years	-	-	-	-	76.7%
Sentence	2004	2005	2006	2007	2008
Under 6 months	42%	34.8%	28.2%	37%	41.4%
6-12 months	9.8%	13.9%	16.4%	12.3%	30.3%
1–3 years	28.5%	36.4%	47.9%	35.8%	13.7%
Over 3 years	19.7%	14.9%	7.5%	14.9%	14.6%
Charge	2004	2005	2006	2007	2008

²⁰ The figures in these tables are obtained through the Israeli Prison Service and visits by DCI-Palestine lawyers to interrogation centres and prisons. The figures represent a snapshot picture of the number of children (under 18) in detention on the last day of each month. The figures are not cumulative and do not include persons who turned 18 while in detention.

²¹ Data from previous years was based on different categories of age groups (12-14/15-16). In 2008 DCI-Palestine changed the way it categorised the age groups to bring it in to conformity with the categories applicable in the military orders. Accordingly, it is not possible to accurately compare data from the previous years for age groups. For previous comparisons, please see DCI-Palestine, *Palestinian Child Prisoners (2007)*, page 26 – <http://www.dci-pal.org/english/publ/research/2008/PCPReport.pdf>

Stone throwing	31%	22.2%	63.8%	25.7%	26.7%
Possession of and/or throwing a Molotov cocktail	14.2%	14.3%	6.6%	10.1%	14.5%
Membership in a banned organisation	15.3%	9.7%	18.8%	6.2%	8.2%
Conspiracy and attempting to kill	18.3%	21.3%	3.8% ²²	30.1%	24.4%
Possession of explosives	7.3%	12.2%	3.2%	10.6%	9.9%
Possession of weapons	13.9%	14.5%	3.8%	11.2%	6.4%
Other	-	5.8%	-	3.6%	2.9%
Region	2004	2005	2006	2007	2008
North West Bank (Jenin/Nablus)	-	-	-	59%	65%
Central West Bank (Ramallah)	-	-	-	14.9%	13.2%
South West Bank (Hebron/Bethlehem)	-	-	-	26.1%	21.8%

3. Articles of the Covenant

3.1 This report will now consider the State party's compliance with the Covenant with regard to particular articles.

ARTICLE 2

4. Application of the Covenant

Recommendation:

- *The State party should reconsider its position that the Covenant does not apply to Palestinians in the Occupied Palestinian Territory and provide all relevant information regarding the application of the Covenant in the Territory from its activities therein.*

4.1 The Human Rights Committee (the Committee) and other UN and international institutions have on a number of occasions expressed the view that the Covenant applies

²² This figure only represents the charge of "attempting to kill an Israeli" not "conspiracy".

in the West Bank, East Jerusalem and Gaza Strip, regardless of any state of armed conflict in these areas.²³

ARTICLE 4

5. Public emergency and derogation from the Covenant

5.1 When the Committee last reviewed the State party in 2003, it stated in its Concluding Observations that:

'While welcoming the State party's decision to review the need to maintain the declared state of emergency and to prolong it on a yearly rather than an indefinite basis, the Committee remains concerned about the sweeping nature of measures during the state of emergency, that appear to derogate from Covenant provisions ... the Committee is concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territories, entailing restrictions on access to counsel and to the disclose of full reasons of the detention [sic]. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively than what in the Committee's view is permissible pursuant to article 4.'
24

The declared state of emergency that has existed in Israel since 1948 continues to be renewed yearly, thus undermining many of the protections provided for in the Covenant and referred to in the Committee's previous Concluding Observations.

ARTICLE 6

6. Right to life

Recommendations:

- ***The State party should fully cooperate with all independent and UN approved inquiries into the conduct of the offensive in Gaza during December 2008 and January 2009.***

²³ See the Concluding Observations of the Human Rights Committee in 1998 (CCPR/C/79/Add/93 of 18 August 1998, paragraph 10) and 2003 (CCPR/CO/78/ISR of 21 August 2003, paragraph 11); the Concluding Observations of the UN Committee Against Torture in 2009 (CAT/C/ISR/CO/4 of 14 May 2009, paragraph 11); and the International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004, paragraphs 109, 112 and 113.

²⁴ Human Rights Committee, *Concluding Observations of the Human Rights Committee; Israel*, 21 August 2003, CCPR/CO/78/ISR, paragraph 12.

- *The State party should refrain from using weapons that cause indiscriminate harm to civilians in built-up areas.*
- *The State party should refrain from launching military attacks on targets adjacent to civilian shelters and protected sites, such as UN facilities and schools.*
- *The State party should immediately cease the practice of using Palestinians as human shields and promptly and impartially investigate all allegations of the use of human shields and prosecute those responsible.*
- *As a signatory to the Rome Statute of the International Criminal Court (1998), the State party should give effect to its provisions by ratifying the treaty.*

6.1 During the reporting period, DCI-Palesinte documented the killing of 851 children as a result of the conflict. The majority of these fatalities have occurred in the Gaza Strip.

Table 5 – Conflict related Palestinian child fatalities 2004 - 2009

Year	Total conflict related Palestinian child fatalities 2004/09
2004	162
2005	52
2006	124
2007	55
2008	134
2009 ²⁵	324
Total	851

6.2 It is not possible or necessary to give a detailed account of all fatalities that have occurred during the reporting period. However, it is perhaps useful to review some of the major military offensives against the Gaza Strip during the reporting period and to focus on a number of specific cases from the most recent offensive for illustrative purposes.

Recent military attacks on the Gaza Strip – 2005 to 2009

6.3 During the reporting period there have been numerous attacks on the Gaza Strip, including four major military offensives which have killed at least 528 Palestinian children.

²⁵ As of 30 June 2009.

Table 6 - Palestinian children killed in four Israeli military operations

Operation	Date	Children killed
Summer Rains	June to September 2006	58
Autumn Clouds	November 2006	85
Warm Winter	February to March 2008	33
Cast Lead	December to January 2009	352
Total		528

Operation Summer Rains (2006)

- 6.4 Operation Summer Rains commenced on 28 June 2006, two days after the capture of Corporal Gilad Shalit. The stated aim of the operation was to suppress Palestinian rocket-fire into Israel and to rescue Corporal Shalit. On the first day of the attack, Israel bombed and destroyed Gaza's only power station and closed the Nahal Oz fuel pipeline, threatening the integrity of back-up power systems as well as water supplies and sanitation networks.
- 6.5 At the end of the operation in September 2006, 256 Palestinians were dead and a further 848 injured. DCI-Palestine can confirm the deaths of 58 children who were killed as a direct result of the attack.

Operation Autumn Clouds (2006)

- 6.6 Operation Autumn Clouds commenced on 1 November 2006 with stated aims similar to Operation Summer Rains. In the early hours of 8 November 2006, 12 artillery shells were fired into the neighbourhood of Beit Hanoun, killing 19 adults and 12 children, most of them from a single family.
- 6.7 At the end of the operation on 26 November 2006, 400 Palestinians were dead. DCI-Palestine can confirm the deaths of 85 children who were killed as a direct result of the attack.

Operation Warm Winter (2008)

- 6.8 Operation Warm Winter commenced on 27 February 2008 with the stated aim of halting rocket attacks on southern Israel. DCI-Palestine confirmed that during the operation 33 children were killed and 60 injured as a direct result of Israeli air and ground attacks.

Operation Cast Lead (2008-2009)

- 6.9 Operation Cast Lead commenced on 27 December 2008 with an aerial bombardment of the Gaza Strip. Israeli ground forces invaded one week later, on 3 January 2009, as the aerial and naval bombardment continued. On 18 January, 22 days after it began, Operation Cast Lead came to an end with Israel's announcement of a unilateral ceasefire.
- 6.10 It is estimated that over 1,300 Palestinians were killed and 5,300 injured.²⁶ As of 25 June 2009, DCI-Palestine can confirm the deaths of 352 children killed as a direct result of the offensive. Almost 29 percent of these children were eight years old or under, while the average age of children killed was 11.3 years. Fifteen Israelis, including four civilians, were also killed during the offensive, including four by 'friendly fire.'²⁷

Table 7 - Children killed during Operation Cast Lead - Age

Age	Number	Percentage %
0 to 8 years	101	28.7%
9 to 12 years	65	18.5%
13 to 15 years	92	26.1%
16 to 17 years	94	26.7%
Total	352	100%

Table 8 - Children killed during Operation Cast Lead - Gender

Gender	Number	Percentage %
Male	247	70%
Female	105	30%
Total	352	100%

- 6.11 During Operation Cast Lead, 28 children were killed in or near two UNRWA schools acting as civilian shelters and one governmental school. Attacks on schools are prohibited under international law unless they are being used for military purposes.²⁸ No credible evidence has emerged that the schools were being used for military purposes, a statement which is supported by the findings of the UN Board of Inquiry established to ascertain the circumstances surrounding the attacks.²⁹

²⁶ UN Office for the Coordination of Humanitarian Affairs, press release dated 21 January 2009, citing the Palestinian Ministry of Health - http://www.un.org/unrwa/news/releases/pr-2009/UN_HumanitarianChiefVisitsGaza_21jan09.pdf

²⁷ Amnesty International USA, *Israel/Gaza: Operation 'Cast Lead' - 22 Days of Death and Destruction Facts and Figures* - <http://www.amnestyusa.org/document.php?id=ENGMDE150212009>

²⁸ First Additional Protocol to the Fourth Geneva Convention, Art. 52 (8 Jun. 1977), considered to be customary law. See [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0860/\\$File/ICRC_002_0860.PDF!Open](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0860/$File/ICRC_002_0860.PDF!Open)

²⁹ *Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009*, paragraph 22 (15 May 2009) A/63/855-S/2009/250: <http://www.innercitypress.com/banrep1gaza.pdf> [hereinafter *Board of Inquiry Summary*].,

Balqis Al-Yaman School, Gaza City

- 6.12 At 11:30am on 27 December 2008, Israeli F16 aircraft bombed the preventive security building in Tal al-Hawa, Gaza City. The time of the strike corresponded with the mid-day change in school-shifts and many children from the nearby Balqis al-Yaman school were on the street at the time. At least 12 children were killed in the attack, and many others were maimed or wounded.
- 6.13 DCI-Palestine can confirm the deaths of the following children:

Table 9 – Children killed in the Balqis al-Yaman School incident

No.	Name	Age	Submitted evidence
1	Ahmad al-Senwar	3	-
2	Tamer al-Akhras	5	-
3	Odai Mansi	6	-
4	Yahia al-Haiek	11	-
5	Kamelia al-Bardini	13	-
6	Khaled al-Astal	14	-
7	Abed al-Sawi	14	-
8	Hanin Dhaban	15	Annexure A – Case 1
9	Yasmin Dhaban	16	Annexure A – Case 1
10	Mustafa Abu Ghanima	16	Annexure A – Case 2
11	Ahmad Abu Jazar	16	-
12	Mohammad Hweij	17	-

Al-Fakhoura Elementary School, Jabalia (UNRWA)

- 6.14 Al-Fakhoura School is one of 37 schools operated by UNRWA in the Jabalia refugee camp. During Israel's offensive, the school was used to shelter displaced civilians who were trying to escape the fighting in northern Gaza. UNRWA had provided the Israeli army with exact GPS coordinates of Al-Fakhoura.³⁰ The school was also included on a list of 91 provisional shelters that was communicated to the Israeli military before the start of the offensive. On 5 January 2009, just one day prior to the attack, the school had been opened as a shelter for civilians.³¹
- 6.15 The next day, 6 January 2009 (ten days into the offensive), Israeli tanks shelled the perimeter of al-Fakhoura school at around 3:45pm. The shells landed on the road just

³⁰ *Board of Inquiry Summary*, paragraph 19.

³¹ *Ibid.*

outside the school, and one shell struck the house of the Deeb family nearby. There were no fatalities inside the school, but, according to DCI-Palestine’s documentation, 44 people, including 14 children, were killed in the immediate vicinity of the school. Among the dead were 11 members of the Deeb family – five of them children.

6.16 The Israeli military alleged that militants had been firing mortars from the school and that the school was booby-trapped. The Board of Inquiry found that “*there was no firing from within the school and no explosives within the school*”.³² The Board of Inquiry could not establish whether there had been any firing from the vicinity of the school, but all four witness statements collected by DCI-Palestine indicate that the area was quiet, and that adults and children were going about their daily business at the time of the attack.

6.17 DCI-Palestine can confirm the deaths of the following children:

Table 10 – Children killed in the Al-Fakhoura Elementary School incident

No.	Name	Age	Submitted evidence
1	Nour Deeb	3	-
2	Mohammad Shaqoura	8	-
3	Asil Deeb	9	-
4	Lina Hasan	10	-
5	Abdulla Abdulla	11	-
6	Esam Deeb	13	-
7	Mostafa Deeb	13	-
8	Bashar Naji	13	-
9	‘Ahed Qaddas	14	-
10	Imad Askar	14	-
11	Ibrahim Ma’rouf	15	Annexure A – Case 3
12	Ismail Hawila	16	Annexure A – Case 4
13	Mohammad Deeb	16	-
14	Bilal Obaid	17	-

Mashrou Boys School, Beit Lahiya (UNRWA)

6.18 Three weeks into Operation Cast Lead, on 17 January 2009, at around 6:00am, the Israeli military started firing artillery shells of white phosphorous over the Mashrou Boys School, in Beit Lahiya city, north of Jabalia (near Beit Hanoun). Approximately 1,900 displaced people were taking refuge in the school, including 265 children under the age of three.³³ The school had been opened as a shelter the day before.³⁴

³² Ibid, paragraph 22.

³³ *Board of Inquiry Summary*, paragraph 58.

- 6.19 According to the Board of Inquiry summary, some shells exploded above the school, dispersing white phosphorous-impregnated felt wedges into the school. A shell casing crashed through the roof and another one hit an open-air corridor; shrapnel and debris caused by these shells killed two brothers aged 3 and 5, and maimed their mother. The children killed were:

Table 11 – Children killed in the Mashrou Boys School incident

No.	Name	Age	Submitted evidence
1	Mohammad al-Ashkar	3	Annexure A – Case 5
2	Bilal al-Ashkar	5	Annexure A – Case 5

- 6.20 The Board of Inquiry summary found the undisputed cause of the deaths of these two children and injuries to 13 others to be from artillery fired by the Israeli army.³⁵ The white phosphorous wedges released dangerous fumes and set a classroom on fire, and many children were injured through contact with burning shells or fume inhalation.
- 6.21 Again, the GPS coordinates of the Beit Lahiya School had been communicated to the Israeli army and the school was included on a list of 91 provisional shelters that was also communicated to the Israeli military before the military operation began.³⁶
- 6.22 In consequence, the Board of Inquiry qualified the attack as “*highly negligent*” and amounting to “*a reckless disregard for the lives and safety of those sheltering in the school*”.³⁷ It found that the Israeli army did not take sufficient or adequate precautions to fulfill its duty to protect civilians and UN property, especially when using such dangerous weapons.³⁸ The Board concluded that “*the Government of Israel is therefore responsible for the deaths and injuries caused to members of families sheltering in the school and for damage to UNRWA premises and property*”.³⁹

Human shields

- 6.23 The practice of using human shields involves forcing civilians to directly assist in military operations or using them to shield an area or troops from attack. Both of these circumstances expose civilians to mortal danger. Civilians are usually threatened and/or physically coerced into performing these tasks, most of the time at gunpoint.

³⁴ Ibid.

³⁵ Ibid – paragraphs 62 and 63.

³⁶ Ibid – paragraph 57.

³⁷ Ibid.

³⁸ Ibid – paragraphs 66 and 67.

³⁹ Ibid – paragraph 65.

- 6.24 The prohibition against the use of human shields can be found in Article 28 of the Fourth Geneva Convention which states that “*The presence of a protected person may not be used to render certain points or areas immune from military operations*”. Furthermore, Article 51 of the Convention prohibits the occupying power from compelling civilians “*to undertake any work which would involve them in the obligation of taking part in military operations*”.⁴⁰ The prohibition is further entrenched in Article 51(7) of the First Additional Protocol to the Fourth Geneva Convention which states that: “*Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.*” This position reflects customary international law.⁴¹
- 6.25 In October 2005, the Israeli High Court of Justice (HCJ) itself ruled that the practice of using civilians as human shields runs counter to the principles contained in the Fourth Geneva Convention.⁴²
- 6.26 During the reporting period, DCI-Palestine documented seven cases, involving 11 children used as human shields by the Israeli army. Evidence collected by DCI-Palestine, Adalah,⁴³ and B’Tselem⁴⁴ includes the following:

Table 12 – Children used as human shields

No.	Name	Nature of event	Submitted evidence
1	Mohammad B. (13)	Tied to the bonnet of a jeep for four hours	-
2	Ameed E. (15)	Forced at gunpoint to walk in front of soldiers	Annexure A – Case 6
3	Jihan D. (11)	Forced at gunpoint to walk in front of soldiers and enter an abandoned house in search of combatants	Annexure A – Case 7
4	Ismail M. (14)	Forced to sit for 15 minutes on the bonnet of a jeep	-
5	Oday G. (15)	Forced to sit for 10 minutes on the	-

⁴⁰ Article 147 of the Fourth Geneva Convention, defines “*compelling a protected person to serve in the forces of a hostile Power*” as a “*grave breach*” of the Convention, thus entailing individual criminal responsibility.

⁴¹ The use of children as human shields also contravenes Article 38(2) of the *UN Convention on the Rights of the Child* (CRC) – ratified by Israel in 1991 – which imposes a duty on States parties to ensure that “*persons who have not attained the age of fifteen years do not take a direct part in hostilities.*” Most importantly, it breaches Article 2 of the Optional Protocol – ratified by Israel in 2005 – which prohibits States Parties from compelling any under-18 to serve in their armies: “*States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.*”

⁴² *Adalah v Military Commander of the West Bank* HCJ 3799/02: <http://www.adalah.org/features/humshields/decision061005.pdf>

⁴³ Adalah, The Legal Center for Arab Minority Rights in Israel.

⁴⁴ B’Tselem, The Israeli Information Center for Human Rights in the Occupied Territories.

		bonnet of a jeep	
6	Rana N. (14) ⁴⁵	Wounded whilst being forced to evacuate a house	Annexure A – Case 8
7	‘Ala A. (15) Ali A. (16) Nafiz A. (17) Khalil A. (15) Hussein (12)	Detained close to military operations for four days	Annexure A – Case 9
8	Ameen S. (14) ⁴⁶	Detained for 10 days and forced to search houses	-
9	Majid R. (9)	Forced at gunpoint to search bags	Annexure A – Case 10

ARTICLE 7

7. Torture or cruel, inhuman or degrading treatment or punishment⁴⁷

Recommendations:

- *The State party should ensure that all interrogations of children⁴⁸ in Israel and the Occupied Palestinian Territory are conducted in the presence of a lawyer and parent of the child.*
- *The State party should ensure that all interrogations of children in Israel and the Occupied Palestinian Territory are audio-visually recorded.*
- *The State party should ensure that detention and interrogation methods contrary to the Covenant are not utilised under any circumstances, including the use of:*
 - *Painful shackling and blindfolding;*
 - *Beating and kicking;*
 - *Position abuse, including shackling children to chairs for many hours;*
 - *Verbal abuse and humiliation;*
 - *Solitary confinement;⁴⁹*
 - *Sleep deprivation;*

⁴⁵ Affidavit collected by B'Tselem.

⁴⁶ Affidavit collected by Adalah.

⁴⁷ See also Defence for Children International-Palestine, *Palestinian Child Prisoners: The systematic and institutionalised ill-treatment and torture of Palestinian children by Israeli authorities*, June 2009 - <http://www.dci-pal.org/english/publ/display.cfm?DocId=1166&CategoryId=8>

⁴⁸ All references in this report to 'child' or 'children' mean persons under the age of 18.

⁴⁹ The Committee has previously noted that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 – See: UN Human Rights Committee, CCPR General Comment No. 20 – 10 March 1992, paragraph 6.

- *Threats, including threats of violence, sexual abuse and heavy punishment;*
 - *Subterfuge to trick children into signing confessions; and*
 - *Denial of family visitation rights.*
- *The State party should prohibit by law the use of any statement which is established to have been made as a result of torture as evidence in any proceedings against the victim, and ensure that military court judges receive adequate and regular training regarding the identification and exclusion of all such evidence.*
 - *The State party should ensure that cases involving children in the military courts are not decided solely on the basis of confessions.*
 - *The State party should thoroughly, impartially and independently investigate all allegations of torture and ill-treatment of Palestinian detainees and bring those found responsible for such abuse to justice.*
 - *The State party should ensure that any allegation of ill-treatment by Israeli settlers, like others under the State party's jurisdiction, should be promptly and impartially investigated, that those responsible be prosecuted and, if found guilty, appropriately punished.*
 - *The State party should take pro-active steps to identify and eliminate the use of ill-treatment and torture by members of the army, police force and security agencies and provide adequate training, discipline and supervision over these organs of the State to prevent these activities from occurring.*
 - *The State party should ensure that all doctors working in the military are given adequate training and instructions to identify and report any evidence of torture or ill-treatment to the appropriate authorities.*
 - *The State party should establish a fund and workable mechanism to compensate residents of the Occupied Palestinian Territory who can reasonably establish that they have suffered ill-treatment and torture whilst detained by the State party.*

7.1 The prohibition against torture or to cruel, inhuman or degrading treatment or punishment (torture and ill-treatment) is universal and absolute.⁵⁰ The Committee has commented in

⁵⁰ The prohibition can be found in a number of treaties including the ICCPR (Article 7); the Geneva Conventions (1949) (Common Article 3); the UN Convention on the Rights of the Child (1989) (CRC) (Article 37(a)); and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (CAT). Further, the prohibition against torture is universally recognised as a peremptory norm or *jus cogens* under

the past that it is not sufficient for the implementation of Article 7 to prohibit such treatment or punishment or to make it a crime. There is an active obligation on a State party to not only take legislative steps, but also administrative, judicial and other measures to prevent and punish acts of torture and ill-treatment in territory under its jurisdiction.⁵¹

Arrest, transfer and interrogation

7.2 During the reporting period, DCI-Palestine received numerous reports of Palestinian children as young as 12 being arrested by Israeli soldiers and policemen from their homes, villages and at checkpoints.⁵² These arrests were often accompanied by ill-treatment, and in some cases torture. Once arrested, these children are typically taken to interrogation and detention centres where the ill-treatment, and in some cases torture, continues. Some examples of the ill-treatment occurring during the arrest, transfer and interrogation process and documented by DCI-Palestine during the reporting period, include:

Table 13 – Children exposed to ill-treatment and torture

No	Name	Age	Description	Submitted evidence
1	Ibrahim S.	15	Threatened with sexual assault during interrogation.	Annexure A – Case 11
2	Mahmoud D.	17	Shackled to a small chair – interrogated around the clock for five days – held in solitary confinement for nine days.	Annexure A – Case 12
3	Abed S.	16	Hands and feet tied in the shape of a cross during interrogation.	Annexure A – Case 13
4	Mohammad A.	16	Held in solitary confinement for five days – interrogated – handcuffed to a small chair – position abuse – confessed when interrogator threatened to arrest his mother and siblings.	Annexure A – Case 14
5	Fadi D.	14	Beaten on broken hand – pushed and kicked during arrest and transfer – shouted at and threatened with	Annexure A – Case 15

customary international law, and thus ranks above ordinary principles of customary international law and cannot be derogated from under any circumstances.

⁵¹ UN Human Rights Committee, CCPR General Comment No. 20 – 10 March 1992, paragraph 8.

⁵² DCI received one case of a boy of 10 years being detained for two hours and seriously mistreated by Israeli soldiers – see Annexure A – Case 19.

			imprisonment – refused to sign document in Hebrew.	
6	Imad T.	15	Shot while driving away from a settlement – soldiers applied pressure to wounds – stripped naked and tied to a stretcher – humiliated – signed paper in Hebrew to authorise operation – actually signed a confession – traumatised and continues to wet the bed.	Annexure A – Case 16
7	Jameel K.	14	Slapped and beaten – rope placed around his neck during interrogation – confessed.	Annexure A – Case 17
8	Abdulla O.	16	Slapped during interrogation – blade placed to neck – confessed.	Annexure A – Case 18
9	Ezzat's case	10	Slapped and beaten – gun placed to head and threatened with being shot.	Annexure A – Case 19
10	Abdullah A.	16	Held in solitary confinement for two days – held in 'Cell No. 36' – interrogated – tied to a small chair – threat to deny medical aid to injured hand – confessed.	Annexure A – Case 20
11	Hamdi A.	17	Shot whilst buying bread – beaten whilst wounded – stripped to underwear whilst soldiers took photos – verbally abused by soldiers and patients in hospital.	Annexure A – Case 21
12	Mahmoud N.	17	Shot near settlement – stripped naked – humiliated in front of two female soldiers – left naked in hospital.	Annexure A – Case 22
13	Samah S.	14	Girl took knife through checkpoint in order to be arrested – family wanted her to marry a 35-year-old – explained situation to interrogator – shouted at and accused of wanting to stab a soldier – confessed to wanting to stab a soldier to stop the shouting.	Annexure A – Case 23
14	Islam M.	12	Arrested whilst catching birds – accused of throwing stones – threatened to have hot water poured on face – pushed into bushes – left	Annexure A – Case 24

			<p>tied up and blindfolded in interrogation room for five hours – slapped by soldier.</p>	
15	Husam H.	15	<p>Hands tied very tight – sack placed over head – struck with helmet – stepped on – hair pulled – left outside for three hours in the cold – shouted at during interrogation – no family visits.</p>	Annexure A – Case 25
16	Osaid Q.	12	<p>Mass detention in the village of Tural Gharbiya – taken to village youth centre – threatened with beating – confessed.</p>	Annexure A – Case 26
17	Bashir Q.	12	<p>Mass detention in the village of Tural Gharbiya – taken to village youth centre – scared by soldiers – confessed to throwing stones.</p>	Annexure A – Case 27
18	Mohammad N.	16	<p>Accused of possessing a gun – accusation denied – threatened with stabbing and shooting – slapped, beaten and kicked – gun pointed at his head – no gun found.</p>	Annexure A – Case 28
19	Ismail Z.	16	<p>Interrogated – slapped – threatened with sexual assault – verbally abused – pressure to existing injury – signed confession in Hebrew.</p>	Annexure A – Case 29
20	Mustafa D.	15	<p>Hands tied – face sprayed with gas – slapped and beaten – deprived of food for two days – soldier rubbed his weapon against boy’s genitals in a painful manner – stripped and kept naked for five minutes.</p>	Annexure A – Case 30

Incommunicado detention

7.3 In 2008, DCI-Palestine lawyers represented 265 children in the Israeli military courts. In no case was a child permitted to see a lawyer or family member during their interrogation. In the overwhelming majority of these cases the children had provided a confession after a coercive interrogation before being permitted to see a lawyer.

Admissibility of evidence

7.4 Israeli courts have a discretion over whether or not to admit illegally obtained evidence based on whether the admission would substantially violate the right of the accused to a fair trial. Factors the court will take into consideration in exercising its discretion are:⁵³

- The character and seriousness of the illegality that was involved in obtaining the evidence;
- The seriousness of the offence;
- The degree to which the improper investigation method affected the evidence that was obtained; and
- The social damage and social benefit involved in excluding the evidence.

7.5 The wide discretion given to judges to exclude illegally obtained evidence does not ensure that evidence obtained as a result of torture is rendered inadmissible in all proceedings. This concern would appear justified given the high rate of convictions secured in the military courts based on confessions.⁵⁴

Compensation

7.6 DCI-Palestine currently represents approximately 30 to 40 percent of the 700 children who are prosecuted in the Israeli military courts each year. DCI-Palestine has no record of any child ever receiving compensation for ill-treatment during their detention. Further, few parents authorise DCI-Palestine to pursue claims on behalf of their children through existing domestic complaint mechanisms for fear of retaliation and a sense that the process would be futile.

*Settler violence*⁵⁵

7.7 The West Bank, East Jerusalem and the Gaza Strip have been militarily occupied by the State party since 1967. Under international law, occupations are intended to be temporary in nature and as such, the Occupying Power is prohibited from transferring its civilians

⁵³ *Prv. Yisascharov v The Chief Military Prosecutor et al* (2006) (C.A. 5121/98), page 84.

⁵⁴ DCI lawyers estimate that around 95% of all convictions obtained in the military courts rely on confessional evidence.

⁵⁵ Article 7 is not limited to acts committed by persons in an official capacity, but as noted by the Committee, also includes prohibited acts committed by persons in their private capacity – see: UN Human Rights Committee, CCPR General Comment No. 20 – 10 March 1992, paragraph 2.

into the territory it occupies.⁵⁶ This prohibition on the transfer of civilians is meant to prevent the Occupying Power from colonising the territory under its occupation.⁵⁷

- 7.8 Since 1967, successive Israeli governments have supported a policy of settlement building in the Occupied Territory in violation of international law. By September 2007, more than 462,000 settlers were living in the West Bank and East Jerusalem.⁵⁸ In 2008, the population of Israel increased at a rate of 1.8 percent. However, in the same year, the population of the settlements increased by 5.6 percent, of which 40 percent was attributable to immigration, from Israel and abroad.⁵⁹
- 7.9 The expansion of settlements and growth of the settler population has brought a concurrent increase in settler violence against surrounding Palestinian communities. In 2007, the UN Office for the Coordination of Humanitarian Affairs (OCHA) documented 76 cases of settler violence. In the first five months of 2008 alone, OCHA had already documented 42 cases. Since 2007 DCI has documented 27 separate incidents of settler attacks against children in which 34 children were injured. These cases include the following:

Table 14 – Children exposed to settler attacks

No.	Name	Age	Date	Nature of incident	Submitted evidence
1	Mahmoud S.	15	24 Apr 09	Shooting	Annexure A – Case 31
2	Ali H.	15	9 Feb 09	Shooting	Annexure A – Case 32
3	Mu'atez H.	13	2 Oct 08	Beating	Annexure A – Case 33
4	Hamzi H.	15	2 Aug 08	Beating	Annexure A – Case 34
5	Mohammad S.	17	3 Mar 08	Shooting fatality	Annexure A – Case 35

- 7.10 Settler violence is widespread in the Occupied Palestinian Territory and takes on several different forms. It includes acts of verbal harassment, abuse and intimidation as well as more serious physical assaults, and in some cases killings. Settler violence also

⁵⁶ Article 49 of the Fourth Geneva Convention (1949) provides that: *'The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.'*

⁵⁷ Jean S. Pictet (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), page 283.

⁵⁸ B'Tselem, *Land Expropriation and Settlements – Statistics 2007*. Figures based on Israel's Central Bureau of Statistics as of September 2007. See <http://www.btselem.org/english/Settlements/Statistics.asp> - Today, estimates place the settler population in the West Bank and East Jerusalem between 480,000 and 550,000.

⁵⁹ Source: B'Tselem.

encompasses the destruction of Palestinian property, including homes and agricultural land. Reported incidents of settler violence are highly concentrated in Hebron and the outskirts of Nablus where settlers adhere to extremist and violent ideologies that fuel tensions between settlements and surrounding Palestinian communities.

- 7.11 International law provides that the State party, as Occupying Power, is responsible for maintaining law and order in the Occupied Palestinian Territory and ensuring the protection of civilians under its control.⁶⁰ The obligations imposed on the State party are not limited to the duty to avoid harming the protected population, but includes the duty to ensure its well-being, including protection from violence at the hands of nationals of the Occupying Power. However, the State party has consistently failed to prevent settler attacks against Palestinians and to take adequate law enforcement measures against settlers who commit these crimes. Palestinians who fall victim to settler attacks are hesitant to file complaints because they lack confidence in the law enforcement system that affords little protection and allows settlers to act with impunity. Victims fear further harassment or reprisal attacks from settlers if they file complaints against them. They also fear exposing themselves to harassment and threats from the Israeli police when filing complaints.
- 7.12 According to the Israeli human rights organisation, Yesh Din, in 2006 and 2007, assault was the primary offence perpetrated by settlers against Palestinians, comprising 40 percent and 34 percent of all cases respectively.⁶¹ Updated figures for 2007 indicate that 85 percent of assault cases were closed without indictments being filed.⁶²

Impunity

- 7.13 Between January 2001 and December 2008, over 600 complaints were filed against Israeli Security Agency (ISA) interrogators for alleged ill-treatment and torture. The Police Investigation Department of the Ministry of Justice, the relevant authority charged with investigating these complaints, did not conduct a single criminal investigation.⁶³
- 7.14 These statistics accord with the experience of DCI-Palestine lawyers, as lawyer Khaled Quzmar explains: *'In my experience, complaints that are lodged with the Israeli authorities result in the file being closed for 'insufficient evidence' and I have had a number of cases in which the Israelis did retaliate against the complainant. For example,*

⁶⁰ See Articles 43 and 46 of the Hague Regulations (1907) and Article 27 of the Fourth Geneva Convention (1949).

⁶¹ Yesh Din, *Law Enforcement upon Israeli Civilians in the OPT: Monitoring Data Sheet*, July 2008. Includes a total of 587 case files opened in 2006 and 551 case files in 2007.

⁶² Ibid.

⁶³ B'Tselem and HaMoked, *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, May 2007, page 79. See also the joint report by Hamoked and B'Tselem, *Supplemental Information for the Consideration of Israel submitted to the UN Committee Against Torture*, dated April 2009, pages 3 to 4.

in November 2008, I travelled on behalf of DCI-Palestine to Holland with an ex-child detainee for the purposes of speaking to Dutch school children. The child, Mohammad E. had been arrested and ill-treated by the Israeli army earlier in the year and lodged a complaint through the Israeli organisation, Yesh Din. Mohammad was informed that he would only be granted a travel permit if he withdrew his complaint. Accordingly, he withdrew his complaint and was granted a travel permit. In the overwhelming majority of cases, Palestinians do not lodge complaints with the Israeli military or civil administration for fear of retaliation and the knowledge that the process is totally futile.'

ARTICLE 9

8. Prohibition against arbitrary detention

Recommendation:

- *The State party should end the practice of detaining persons under the age of 18 in administrative detention and promptly charge all child detainees with a recognisable offence or immediately release them.*
- *The State party should amend Military Order 1591 to exclude the detaining of persons under the age of 18 in administrative detention.*

Administrative detention

- 8.1 Military Order 1591⁶⁴ empowers Israeli military commanders to detain Palestinians, including children as young as 12, without charge or trial, for up to six months if they have '*reasonable grounds to presume that the security of the area or public security require the detention.*' No definition of '*security of the area or public security*' is given and the initial six-month period can be extended by additional six-month periods indefinitely.
- 8.2 Administrative detention orders are issued either at the time of arrest or at some later date and are often based on '*secret evidence*' collected by the Israeli Security Agency (ISA).⁶⁵ Neither the detainee, nor the detainee's lawyer is given access to the '*secret evidence.*'
- 8.3 Palestinians, including children, who are issued with administrative detention orders have the right to have the decision reviewed within eight days by the Administrative Detention Court. A single military judge can uphold, shorten or cancel the order. The decision of the Court can also be appealed to the Administrative Appeals Court. However, in both

⁶⁴ Formerly known as Military Order 1226.

⁶⁵ Formerly known as the General Security Service (GSS).

review processes, the evidence against the detainee is usually contained in a ‘*secret file*’ which neither the detainee, nor his or her lawyer are allowed to access, making the right of review illusory.

Table 15 – Administrative detention periods – Israeli domestic law and military orders

Administrative Detention	Brought before a judge	Duration of order
Military Order 1591	8 days	6 months
Israeli Domestic Law ⁶⁶	48 hours	3 months

8.4 In practice, Palestinians can be detained for months, if not years, under administrative detention orders, without ever being informed about the reasons or length of their detention, whilst detainees are routinely informed of the extension of their detention on the very day that the former order expires. In reality, Palestinians have no effective means to challenge administrative detention.

8.5 There are currently at least 428 Palestinians being detained in administrative detention, of which 3 are women and one is a child.⁶⁷ It should be noted that as of June 2009, there are five adults who are being held in administrative detention who were under 18 when they received their orders.

Table 16 – Number of Palestinian children in administrative detention

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2008	18	3	13	12	10	13	13	13	11	8	5	6
2009	5	6	2	2	1	1	-	-	-	-	-	-

8.6 There are currently six Palestinians in Israeli administrative detention who are either under 18, or were under 18 when they received their order:

Table 17 – Children currently held in administrative detention

No.	Name	Age at arrest	Date	Submitted evidence
1	Hamdi al-Tamari	16	18 Dec 08	Annexure A – Case 36
2	Mohammad Baran	17	1 Mar 08	Annexure A – Case 37
3	Wa’ad al-Hidmy	16	28 April 08	Annexure A – Case 38
4	Entima al-Lahham	17	13 Jul 08	Annexure A – Case 39
5	Mohammad Balbol	17	25 Jul 08	Annexure A – Case 40
6	Rami Shelbayh	17	15 Dec 08	-

⁶⁶ *Emergency Powers Law (Detention) (1979)*

⁶⁷ Israeli Prison Service (IPS) figures as at 30 June 2009.

ARTICLE 10

9. Persons deprived of their liberty shall be treated with humanity

Recommendations:

- *The State party should ensure that an appropriate assessment based on the best interests of the child is undertaken (in consultation with relevant Palestinian authorities) on a case by case basis to determine whether Palestinian child detainees should be kept separately from adults.*
- *The State party should ensure that all Palestinian child detainees (male and female) receive a comprehensive education whilst in detention comparable to that received by Israeli child detainees, but in accordance with the Palestinian curriculum.*
- *The State party should ensure that all Palestinian child detainees in its custody receive the same family visitation rights as Israeli child detainees.*
- *The State party should cease the practice of detaining Palestinians inside Israel in breach of the Fourth Geneva Convention.*

9.1 DCI-Palestine lawyers conduct regular prison visits to Israeli interrogation and detention centres and prisons.⁶⁸ Common complaints regarding the conditions of detention include overcrowding, poor ventilation and access to natural light, poor quality and inadequate amounts of food, harsh treatment by prison officials and boredom.⁶⁹

Juveniles shall be detained separately from adults

9.2 Palestinian child detainees are routinely detained with adults in interrogation and detention centres, and in only two out of the five prisons where Palestinian children are detained by the State party, are they kept separately from adults.⁷⁰ Female Palestinian child detainees are invariably detained with adults in Telmond Compound, inside Israel. No appropriate assessment appears to be made, in consultation with relevant Palestinian authorities, as to whether this is in the best interests of the child.

⁶⁸ In 2008, lawyers for DCI-Palestine conducted 75 visits and met with 169 children in detention.

⁶⁹ For further details see DCI-Palestine, *Palestinian Child Prisoners Report (2007)*, pages 29 to 31 – <http://www.dci-pal.org/english/publ/research/2008/PCPReport.pdf>

⁷⁰ The two prisons where Palestinian boys are kept separately from adults are Telmond Compound (Israel) and Megiddo Prison (Israel).

Education in detention

- 9.3 The right of a child to receive education whilst in detention is guaranteed by the Fourth Geneva Convention.⁷¹ Palestinian children held in detention by the State party were being denied this right and so in 1997, a petition was filed in the District Court at Tel Aviv on behalf of a number of Palestinian child detainees seeking an order that they be given the same rights to education as Israeli child prisoners.⁷²
- 9.4 The Court ruled that Palestinian child detainees were entitled to the same education rights as Israeli child detainees, which included an education programme based on the Palestinian curriculum, but that this right was '*subject to the security situation.*' The Israeli Prison Service (IPS) has interpreted '*subject to the security situation*' broadly to permit only limited teaching of a handful of subjects, such as Arabic, Hebrew, English and Mathematics.
- 9.5 Further, the limited education that is available is only provided in two out of the five prisons where the State party detains Palestinian children,⁷³ and in none of the interrogation and detention centres where children are sometimes held for up to three months or more. In the two prisons where education is provided, it is limited to a few hours per week. Palestinian female child detainees are not provided with any formal education in the State party's detention facilities.

Detention inside Israel and prison visits⁷⁴

- 9.6 All but one Israeli prison⁷⁵ where Palestinian men, women and children are detained, are inside Israel in contravention of Article 76 of the Fourth Geneva Convention, which provides that an occupying power must detain residents of an occupied territory inside that territory. The practical consequence of this violation is that many prisoners do not receive any family visits as their relatives are denied permits to enter Israel.

⁷¹ Article 94 of the Fourth Geneva Convention provides that: '*The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside.*' Rule 38 of the UN Rules for the Protection of Juveniles Deprived of their Liberty provides that: '*Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided ... by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty.*'

⁷² *Mohammad Frehat and ors. v Israeli Prison Service* (1997) 400/97.

⁷³ The two Israeli prisons where male Palestinian children receive limited education are Telmond Compound and Damoun Prison.

⁷⁴ In its Concluding Observations to Israel's Fourth Periodic Report dated 14 May 2009, the UN Committee Against Torture recommended that '*every effort should be made to facilitate family visits to juvenile detainees, including by expanding the right to freedom of movement of relatives.*' UN Committee Against Torture, Concluding Observations, CAT/C/ISR/CO/4, 14 May 2009, paragraph 28.

⁷⁵ The one Israeli prison that is situated in the West Bank is Ofer Prison, near the Palestinian city of Ramallah.

- 9.7 In DCI-Palestine's experience, children who are detained for less than five months typically will not receive any family visits due to the length of time it takes to process the applications for a permit to visit the prison.

ARTICLE 14

10 Fair trial rights

Recommendations:

- *The State party should ensure that a list of charges written in Arabic be given promptly to all Palestinians accused of offences in the military courts.*
- *The State party should ensure that all Palestinian detainees be brought before a judge within 48 hours of their detention, in line with the State party's domestic legislation.*
- *The State party should ensure that Palestinian children are detained as a matter of last resort and adopt a presumption in favour of granting bail.*
- *The State party should ensure that Palestinian lawyers have regular and reasonably unimpeded access to their clients in detention in Israel and the Occupied Palestinian Territory.*
- *The State party should ensure that suitable facilities are made available in detention centres, prisons and the military courts inside Israel and the Occupied Palestinian Territory for lawyers to take confidential instructions from their clients.*
- *The State party should ensure that all relevant prosecutorial and court documents are promptly provided to the defence in Arabic.*
- *The State party should ensure that free legal assistance is provided to all persons of insufficient means prosecuted in the military courts, at the State party's expense.*
- *The State party should ensure that all persons prosecuted in the military courts are brought promptly to trial, and in any event, no later than nine months after being charged, in line with the State party's domestic legislation.*
- *The State party should ensure that professionally qualified interpreters are present in all proceedings in the military courts.*

- *The State party should establish a youth court with appropriately trained staff for Palestinian children charged with offences under the military orders as a matter of priority.*
- *The State party should consider ceasing the practice of prosecuting civilians in military courts.*

Table 18 - Comparative table for detention periods under Israeli domestic law and military orders

Event	Israeli Domestic Law	Military Orders
Maximum period of detention before being brought before a judge	48 hours ⁷⁶	8 days ⁷⁷
Maximum period of detention without access to a lawyer	48 hours ⁷⁸	90 days ⁷⁹
Maximum period of detention without charge	30 days ⁸⁰	188 days ⁸¹
Maximum period of detention between being charged and brought to trial	9 months ⁸²	2 years ⁸³

To be promptly informed of charges in a language he or she understands

10.1 Under Military Order 378, the ‘*substance of the charge*’ must be given to the accused before his trial. There is no requirement that the charge be given ‘*promptly*’ or be written in Arabic, both of which are required under international law. In practice, indictments written in Hebrew containing the charges are given to the defendant’s lawyer on the day of the hearing to determine whether the accused remains in detention until the end of proceedings.⁸⁴

⁷⁶ Section 30 of the *Criminal Procedure (Powers of Enforcement-Arrests) Law – 1996*.

⁷⁷ Military Order 378, Chapter D, Article 78 (e1)(2).

⁷⁸ Section 34 of the *Criminal Procedures (Powers of Enforcement-Arrests) Law - 1996*

⁷⁹ Military Order 378, Chapter D, Articles 78c (c)(1) and (2) and 78d (b)(3) and (4).

⁸⁰ Section 17(b) of the *Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996 – And up to 75 days on the authority of the Attorney General*

⁸¹ Military Order 378, Article 78(e1)(2), (f)(1) and (f)(2).

⁸² Section 61(a) of the *Criminal Procedure (Powers of Enforcement – Arrest) Law – 1996*.

⁸³ Military Order 378, Article 78(D).

⁸⁴ Yesh Din, Volunteers for Human Rights, *Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories*, December 2007, page 25: <http://www.yesh-din.org/site/index.php?page=militarycourts&lang=en>

To be promptly brought before a judge

10.2 Under Military Order 378, a Palestinian detainee, including children as young as 12, can be detained for up to eight days before being brought before a military judge. In contrast, Israeli citizens must be brought before a judge within 48 hours.

To be granted bail

10.3 In 2008, lawyers for DCI-Palestine represented 265 children in the Israeli military courts. Bail was granted in just 24 cases (9 percent), or to put it another way, in 91 percent of cases before the Israeli military courts, the child was kept in pre-trial detention. This would appear to be contrary to well established and legally binding principles of juvenile justice whereby incarceration should be a measure of last resort.⁸⁵

To be given adequate time and facilities for the preparation of a defence and counsel of choice

10.4 There is no general statement of law guaranteeing an accused in the military court system the right to adequately prepare his defence. On the contrary, the applicable law and practice provides for:

- Incommunicado detention, preventing attorney/client meetings;
- Lawyers regularly meet with their clients for the first time in court where they take hurried instructions;
- Exemptions from video recording of interrogations;
- So-called ‘privileged evidence’ that will neither be disclosed to the court nor the defence;
- Withholding ISA interrogation memoranda relating to the accused unless specifically requested by the defence; and
- The possibility of withholding ISA interrogation memoranda relating to prosecution witnesses from the defence.

Further, the applicable law does not provide guaranteed access to court materials (transcripts, precedents etc) or require translation of evidentiary materials or court materials (transcript, precedents etc).

10.5 Regular complaints from lawyers appearing in the military courts include: difficulties in meeting with their clients in detention;⁸⁶ the lack of adequate facilities to take confidential instructions; court documents written in Hebrew; and the provision of

⁸⁵ See Article 37(b) of the Convention on the Rights of the Child (1989) (ratified by the State party in 1991).

⁸⁶ Only lawyers with Israeli citizenship or residence in East Jerusalem can visit prison facilities inside Israel.

incomplete prosecution material.⁸⁷ In practice, lawyers commonly take instructions from their clients minutes before the hearing in the military court and plea bargains are entered into to avoid harsher sentences.

To be granted legal assistance and legal aid⁸⁸

- 10.6 The applicable law provides for the right to defend oneself in person or through legal counsel.⁸⁹ The applicable law does not provide for notification of these rights, the right to choose counsel or the right to be tried in one's presence. Further, while the law provides for the appointment of free legal assistance, this only applies where a person is accused of an offence carrying a sentence of ten years or more.
- 10.7 In practice, lawyers are often assigned to unrepresented defendants once the accused is brought into the courtroom.⁹⁰ It is a common occurrence that the cost of providing free legal assistance is borne by Palestinian non-governmental organisations, such as DCI-Palestine.⁹¹

To be promptly brought to trial

- 10.8 Under Israeli military orders, once a Palestinian has been held in detention for two years without a military court trial reaching a verdict, the matter shall be brought before the Military Court of Appeals, which can approve a further period in detention. By way of contrast, under Israeli domestic legislation the corresponding time limitation is nine months.

To be granted a trial before a competent, independent and impartial tribunal

- 10.9 It is questionable whether the use of military courts to try civilians can ever satisfy the requirements under international human rights law to a trial before an independent and impartial tribunal, as the judges are all serving officers subject to military discipline and dependent on superiors for promotion.⁹²

⁸⁷ See *supra* note 4, pages 100 to 125.

⁸⁸ Under the Covenant, an accused person is entitled to have legal assistance assigned to him or her where the interests of justice so require, and have legal aid where he/she has insufficient means to pay for it - Article 14 (3)(d) of the ICCPR.

⁸⁹ Military Order 378.

⁹⁰ See *supra* note 4, pages 101 to 107.

⁹¹ Other organisations providing this service include Addameer Prisoner Support and Human Rights Association and Nadi al-Asir (Palestinian Prisoners Club).

⁹² See UN Human Rights Committee, General Comment No. 32 – Article 14: *Right to equality before courts and tribunals and to a fair trial*, UN Doc: CCPR/C/GC/32, 23 August 2007, page 6, paragraph 22. See also Sharon Weill, 'The judicial arm of the occupation: the Israeli military courts in the occupied territories,' International Review of the Red Cross, Volume 89, Number 866, June 2007, pages 399 to 400.

To be presumed innocent

10.10 According to Military Order 378,⁹³ the Israeli Evidence Ordinance⁹⁴ applies to proceedings in the military courts and provides for the presumption of innocence. However, according to Yesh Din, in 2006 full acquittals were obtained in just 0.29 percent of cases in the military courts, suggesting a presumption of guilt.

To be granted the assistance of an interpreter

10.11 Proceedings to try Palestinians in the State party's military courts are conducted in Hebrew. Usually there will be a soldier present in court providing translation into Arabic, but few if any of these soldiers possess professional translating qualifications.⁹⁵ In a 2007 report prepared by the Israeli organisation, Yesh Din, court observers who sat in on hundreds of court sessions, estimated that in 35 percent of cases the translation appeared '*partial or sloppy*' and in 5 percent of cases there was no interpretation at all.⁹⁶

10.12 DCI-Palestine has evidence from a 15-year-old boy whose detention was extended by the military court in circumstances where the boy was not legally represented and the proceedings were not translated into Arabic for him. The case is documented at:

Table 19 – Evidence of denial of fair trial rights

No.	Name	Age	Date	Submitted evidence
1	Imad T.	15	March 2008	Annexure A – Case 16

To examine and cross-examine witnesses

10.13 The military orders⁹⁷ provide for the right to examine witnesses for the prosecution. However, a decision of the Israeli Military Court of Appeal provides that as a standard procedure, investigators for the ISA will give testimony in camera. Further, the right of the defence to summon witnesses is not provided for in the applicable law.

10.14 In practice, very few full evidentiary hearings are heard by the military courts. According to the Israeli human rights organisation, Yesh Din, of the 9,123 cases concluded in the courts in 2006, full evidentiary trials were conducted in only 130 cases (1.42 percent).⁹⁸ The reason: '*Attorneys representing suspects and defendants in the military courts*

⁹³ *Military Order 378*, Chapter B, Section B – Adjudication Procedures, Article 9.

⁹⁴ *Evidence Ordinance (New Version)*, 5731 – 1971.

⁹⁵ See *supra* note 4, pages 20 to 21.

⁹⁶ *Ibid* at page 21.

⁹⁷ *Military Order 378*, Article 18.

⁹⁸ See *supra* note 4, page 136.

*believe that conducting a full evidentiary trial, including summoning witnesses and presenting testimony, generally results in a far harsher sentence, as a 'punishment' the court imposes on the defense attorney for not securing a plea bargain.*⁹⁹

- 10.15 This belief is shared by DCI-Palestine lawyers who are reluctant to run full evidentiary hearings for fear that the child will remain longer in detention, as is explained by DCI-Palestine lawyer, Khaled Quzmar: *'There are a number of reasons why we rarely challenge the cases. First, if we challenge the case and argue that the confession before the court was obtained through ill-treatment or torture, the interrogator will come and give evidence and deny any wrongdoing. In over 15 years of experience practising in the Israeli military court system, I can say that the military judge will always believe the military or police interrogator's word over the word of a Palestinian child. Secondly, a child who pleads guilty will normally be sentenced within one month of arrest. A child who challenges the case, won't be sentenced for between five to 12 months, during which time they will normally be kept in detention. Finally, a child who does challenge the case and is found guilty, will typically receive a sentence that is double or even triple what he or she would have received had they pleaded guilty. This is why few cases are challenged in the military courts, it simply makes matters worse for the child.'*

Juvenile justice considerations

- 10.16 Palestinian children who are arrested by the Israeli military are prosecuted in the same jurisdiction as adults in one of the two military courts in operation in the Occupied Palestinian Territory.¹⁰⁰ In contravention of international law there is no specialist branch of the Israeli military courts for dealing with children.¹⁰¹ In a recent development, two judges have been appointed to hear cases involving children in one of the military courts but it is unclear as yet what impact this will have.

Discrimination before the courts

- 10.17 Military Order 378 provides that the State party's military courts have the jurisdiction to try, *inter alia*, *'anyone accused of committing an act outside the occupied territory which would have been considered an offense had it been committed within the occupied territory, provided that the action 'harmed, or was intended to harm, security in the Area or public order'*. This provision grants the military courts extra-territorial jurisdiction that enables them to try any person, resident or non-resident of the Occupied Palestinian

⁹⁹ Ibid page 140.

¹⁰⁰ The two Israeli military courts are situated in military bases at Ofer (near Ramallah) and Salem (near Jenin).

¹⁰¹ Article 40 (3) of the UNCRC provides that *"States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law"*

Territory, for any offence, whether committed in the Occupied Palestinian Territory or not.

- 10.18 Accordingly, Israeli nationals residing in illegal settlements in the Occupied Palestinian Territory are under the jurisdiction of the military courts, however, they are tried in Israel under the Israeli domestic legal system, with all the substantive and procedural safeguards that those courts provide, whilst Palestinians are prosecuted in the military courts with limited safeguards.

ARTICLE 15

11. Penalty applicable at the time when the offence was committed

Recommendation:

- *The State party should amend Military Order 132 to ensure that children are only sentenced on the basis of their age at the date of the alleged offence.*

- 11.1 Under Military Order 132, Palestinian children continue to be sentenced based on the child's age at the date of sentencing and not at the date when the alleged offence took place. Accordingly, in the military court system, a child who is accused of committing an offence when he or she is 15, is punished as an adult if he or she has a birthday whilst awaiting sentence.

ARTICLE 24

12. Protection of minors without discrimination

Recommendation:

- *The State party should amend Military Order 132 to ensure that the definition of a Palestinian minor is set at 18, in line with the State party's domestic legislation and international standards.*

- 12.1 Under Israeli Military Order 132, the military courts can prosecute children as young as 12 years. Once a Palestinian child turns 16 years, they are treated as adults by the military courts. This is in contrast to the situation inside Israel where majority is not attained until the age of 18.

13. Concluding remarks

- 13.1 After 42 years, it is reasonable to conclude that military occupation of the Palestinian Territory is incompatible with both humanitarian and human rights law. Until the occupation ends, this situation is unlikely to change.
- 13.2 A central tenet in drawing the occupation to a close is legal accountability on both sides. Those responsible for planning, ordering or participating in serious breaches of international law, must be held accountable for their actions, whoever they may be.

14. Recommendations

Article 2

- 14.1 The State party should reconsider its position that the Covenant does not apply to Palestinians in the Occupied Palestinian Territory and provide all relevant information regarding the application of the Covenant in the Territory from its activities therein.

Article 6

- 14.2 The State party should fully cooperate with all independent and UN approved enquiries into the conduct of the war in Gaza during December 2008 and January 2009.
- 14.3 The State party should refrain from using weapons that cause indiscriminate harm to civilians in built-up areas.
- 14.4 The State party should refrain from launching military attacks on targets adjacent to civilian shelters and protected sites, such as UN facilities and schools.
- 14.5 The State party should immediately cease the practice of using Palestinians as human shields and promptly and impartially investigate all allegations of the use of human shields and prosecute those responsible.
- 14.6 As a signatory to the Rome Statute of the International Criminal Court (1998), the State party should give effect to its provisions by ratifying the treaty.

Article 7

- 14.7 The State party should ensure that all interrogations of children in Israel and the Occupied Palestinian Territory are conducted in the presence of a lawyer and parent of the child.

- 14.8 The State party should ensure that all interrogations of children in Israel and the Occupied Palestinian Territory are audio-visually recorded.
- 14.9 The State party should ensure that detention and interrogation methods contrary to the Covenant are not utilised under any circumstances, including the use of:
- (i) Painful shackling and blindfolding;
 - (ii) Beating and kicking, including beating with implements;
 - (iii) Position abuse, including shackling children to chairs for many hours;
 - (iv) Verbal abuse and humiliation;
 - (v) Solitary confinement;
 - (vi) Sleep deprivation;
 - (vii) Threats, including threats of violence, sexual abuse, threats to family and heavy punishment;
 - (viii) Subterfuge to trick children into signing confessions; and
 - (ix) Denial of family visitation rights.
- 14.10 The State party should prohibit by law the use of any statement which is established to have been made as a result of torture as evidence in any proceedings against the victim, and ensure that military court judges receive adequate and regular training regarding the identification and exclusion of all such evidence.
- 14.11 The State party should ensure that cases involving children in the military courts are not decided solely on the basis of confessions.
- 14.12 The State party should thoroughly, impartially and independently investigate all allegations of torture and abuse of Palestinian detainees and bring those found responsible for such abuse to justice.
- 14.13 The State party should ensure that any allegation of ill-treatment by Israeli settlers, like others under the State party's jurisdiction, should be promptly and impartially investigated, that those responsible be prosecuted and, if found guilty, appropriately punished.
- 14.14 The State party should take pro-active steps to identify and eliminate the use of ill-treatment and torture by members of the army, police force and security agencies and provide adequate training, discipline and supervision over these organs of the State to prevent these activities from occurring.

- 14.15 The State party should ensure that all doctors working in the military are given adequate training and instructions to identify and report any evidence of torture or ill-treatment to the appropriate authorities.
- 14.16 The State party should establish a fund and workable mechanism to compensate residents of the Occupied Palestinian Territory who can reasonably establish that they have suffered ill-treatment and torture whilst detained by the State party.

Article 9

- 14.17 The State party should end the practice of detaining persons under the age of 18 in administrative detention and promptly charge all child detainees with a recognisable offence or immediately release them.
- 14.18 The State party should amend Military Order 1591 to exclude the detaining of persons under the age of 18 in administrative detention.

Article 10

- 14.19 The State party should ensure that an appropriate assessment based on the best interests of the child is undertaken (in consultation with relevant Palestinian authorities) on a case by case basis to determine whether Palestinian child detainees should be kept separately from adults.
- 14.20 The State party should ensure that all Palestinian child detainees (male and female) receive a comprehensive education whilst in detention comparable to that received by Israeli child detainees, but in accordance with the Palestinian curriculum.
- 14.21 The State party should ensure that all Palestinian child detainees in its custody receive the same family visitation rights as Israeli child detainees.
- 14.22 The State party should cease the practice of detaining Palestinians inside Israel in breach of the Fourth Geneva Convention.

Article 14

- 14.23 The State party should ensure that a list of charges written in Arabic be given promptly to all Palestinians accused of offences in the military courts.
- 14.24 The State party should ensure that all Palestinian detainees be brought before a judge within 48 hours of their detention, in line with the State party's domestic legislation.

- 14.25 The State party should ensure that Palestinian children are detained as a matter of last resort and adopt a presumption in favour of granting bail.
- 14.26 The State party should ensure that Palestinian lawyers have regular and reasonably unimpeded access to their clients in detention in Israel and the Occupied Palestinian Territory.
- 14.27 The State party should ensure that suitable facilities are made available in detention centres, prisons and the military courts inside Israel and the Occupied Palestinian Territory for lawyers to take confidential instructions from their clients.
- 14.28 The State party should ensure that all relevant prosecutorial and court documents are promptly provided to the defence in Arabic.
- 14.29 The State party should ensure that free legal assistance is provided to all persons of insufficient means prosecuted in the military courts, at the State party's expense.
- 14.30 The State party should ensure that all persons prosecuted in the military courts are brought promptly to trial, and in any event, no later than nine months after being charged, in line with the State party's domestic legislation.
- 14.31 The State party should ensure that professionally qualified interpreters are present in all proceedings in the military courts.
- 14.32 The State party should establish a youth court with appropriately trained staff for Palestinian children charged with offences under military orders as a matter of priority.
- 14.33 The State party should consider ceasing the practice of prosecuting civilians in military courts.

Article 15

- 14.34 The State party should amend Military Order 132 to ensure that children are only sentenced on the basis of their age at the date of the alleged offence.

Article 24

- 14.35 The State party should amend Military Order 132 to ensure that the definition of a Palestinian minor is set at 18, in line with the State party's domestic legislation and international standards.