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Alternative Report to the State of Palestine's Initial State Report to the UN Committee against Torture

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

EXECUTIVE SUMMARY	1
INTRODUCTION.....	1
DEFINITION, ABSOLUTE PROHIBITION AND CRIMINALISATION OF TORTURE	2
NO INCLUSIVE DEFINITION OF TORTURE.....	2
NO ABSOLUTE PROHIBITION OR CRIMINALIZATION OF TORTURE CONCERNING CHILDREN	2
<i>Recommendations</i>	3
2003 AMENDED BASIC LAW	4
PENAL CODES	4
LAW OF PENAL PROCEDURE	5
PREVENTION OF CRIME LAW NO. 7 OF 1954.....	6
THE PALESTINIAN CHILD LAW	6
DECREE-LAW NO. 4 OF 2016 CONCERNING THE PROTECTION OF JUVENILES.....	6
NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE.....	6
<i>Recommendations</i>	7
VIOLATION OF LEGAL SAFEGUARDS RELATED TO DEPRIVATION OF LIBERTY.....	7
LEGAL SAFEGUARDS RELATED TO DEPRIVATION OF LIBERTY.....	7
ACCOUNTABILITY FOR CRIMES OF TORTURE AND ILL-TREATMENT	7
<i>Recommendations</i>	8
SITUATION OF CHILDREN IN THE PALESTINIAN LEGAL SYSTEM.....	9
CHILDREN IGNORED IN STATE OF PALESTINE REPORT.....	9
ARREST, TRANSFER AND INTERROGATION OF CHILDREN.....	ERROR! BOOKMARK NOT DEFINED.
EXCESSIVE USE OF FORCE AND RESTRAINTS	9
TRANSFER.....	10
QUESTIONING AND INTERROGATION.....	10
POLICE INTERROGATION AND COLLECTION OF EVIDENCE	11
INTERROGATION BY THE PROSECUTION	12
<i>Recommendations</i>	12
CONDITIONS OF DETENTION	13
<i>Recommendations</i>	15
DETENTION WITH ADULTS	15
ACCOMMODATION	16
<i>Recommendations</i>	16
FAMILY VISITS AND CONTACTS	17
MONITORING VISITS TO DETENTION CENTERS	17
RIGHT TO BE INFORMED OF ARREST/ILL-TREATMENT.....	17
RESTORATIVE JUSTICE.....	18
LEGAL ASSISTANCE.....	18

Executive Summary

1. This report has been prepared by Defense for Children International - Palestine (DCIP) to assist the Committee against Torture in making concrete and effective recommendations to the State of Palestine when considering its initial report in July 2022. It provides an analysis and evaluation of the current situation of children in conflict with the law in Palestine. Methods of analysis included research and reviewing international and national laws and legal instruments, affidavits collected by DCIP, available data, statistics, and emblematic cases.

2. The report finds that while State of Palestine duty-bearers made some efforts to improve the situation of children in conflict with the law in Palestine, there are still various challenges and obstacles in promoting, fulfilling, and protecting children's rights. The report highlights that these obstacles are generally related to: the failure of implementing newly enacted laws, mainly the Juvenile Protection Decree-Law No. 4 of 2016; the political division between the West Bank and Gaza Strip; lack of adequate budget allocations specifically focused on child protection; and malpractice or failure by different duty-bearers that are not equipped with the knowledge and skills to deal with and implement international juvenile standards.

3. Our findings and recommendations aim to provide a clear pathway for the Committee against Torture to consider and assess the State of Palestine's implementation of the Convention against Torture and Other Cruel, Degrading or Inhuman Treatment or Punishment since its ratification in 2014. The information provided in this report is a call for action for policy makers and duty-bearers to address these factors and ensure an environment where the rights of children in conflict with the law are respected, protected, and fully realized.

Introduction

4. Defense for Children International – Palestine (DCIP) welcomes this opportunity to submit information to the UN Committee against Torture ("the Committee") in advance of its 74th Session in July 2022 and the consideration of the State of Palestine's Initial State Report ("State of Palestine report").

5. The State of Palestine ratified the Convention against Torture and Other Cruel, Degrading or Inhuman Treatment or Punishment ("the Convention") in April 2014 without any reservations. Pursuant to its obligations under Article 19 of the Convention, the State of Palestine submitted to "the Committee" an Initial Report in June 2019.

6. This report represents a summary of issues DCIP wishes to bring to the attention of the Committee concerning the State of Palestine's compliance with the Convention as well as suggested recommendations for the State Party. This report demonstrates the State of Palestine's actual implementation of the Convention concerning Palestinian children, by providing relevant evidence and information on the existing gaps between the Initial Report submitted by the State of Palestine and the reality on ground. Hence, this report highlights issues of concern regarding the prevention of torture and other cruel, degrading or inhuman treatment or punishment by State of Palestine duty-bearers in Palestine.

7. This report seeks to highlight some of the most important issues affecting Palestinian children in conflict with the law. The vast majority of the information it contains comes directly from the work DCIP is engaged in, including from client affidavits, information introduced in litigation, and decades of experience working in the field. With the focus being on Palestinian children, this report covers various issues such as: the Palestinian legislative framework on torture and other cruel, degrading or inhuman treatment, the status of Palestinian children in conflict with the law, the procedures taken

by the juvenile police, the conditions of juvenile centers in Palestine, and the provided legal safeguards granting the protection of juveniles from any ill-treatment.

8. This report is confined to issues relating to the treatment by State of Palestine duty-bearers against Palestinian children. This report does not include information related to Israeli violations against Palestinian children relevant to the Convention, since the Committee's scope of review is limited to the State of Palestine for the upcoming July 2022 session. DCIP strives to submit a comprehensive report to the Committee on Israeli violations against Palestinian children arrested by the occupying authority during the next periodic review of the Government of Israel by the Committee.

9. The fact that Israeli violations are not discussed in this report does not in any way diminish Israel's obligations under the Convention, or more broadly international law, concerning Palestinian children living in the Occupied Palestinian Territory or its obligations as the Occupying Power under international humanitarian law to respect, protect and fulfil the rights of Palestinian children living in occupied territory.

10. This report is intended to assist the Committee in its consideration of the State of Palestine's report and to assist in developing concluding observations.

Definition, absolute prohibition and criminalization of torture

No inclusive definition of torture

11. As of 25 May 2022, there was no inclusive definition of torture in the legal system in force in the State of Palestine that complied with the definition of torture in Article 1 of the Convention. In May 2022, Decree Law No. 25 of 2022 was issued regarding the establishment of the National Preventive Mechanism against Torture and Ill-treatment. Article 1 of the Law include a definition of torture and ill-treatment, which is consistent with the definition of torture in the Convention. However, this Decree Law has not been accepted by civil society organizations, because concerns regarding the mechanism's independence, its members and its financial independence.

12. No practical steps have been taken to explicitly prohibit torture, nor have the necessary measures been taken to eliminate torture, in accordance with the principles and standards that form the core of the Convention and its protocols. Until the preparation of this report, the Legislation Harmonization Committee, which was formed by a ministerial decision in 2017,¹ has not yet addressed the issue of aligning legislation on torture with the Convention and its protocols.

13. Article 208 of the Jordanian Penal Code No. 16 of 1960, which is in force in the West Bank, addresses the punishment for the use and severity of violence. However, the punishments included in the Article are not in line with Articles 1 and 4 of the Convention.

No absolute prohibition or criminalization of torture concerning children

14. Although being a party to a number of treaties prohibiting torture and ill-treatment, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and the Convention against Torture (CAT), the State of Palestine is still required to

¹ Cabinet Resolution No. 59/142/17 of 2017 regarding the formation of a committee to harmonize legislation with international conventions.

implement effective domestic legislation on the prohibition and punishment of practices of torture and ill-treatment.

15. Following the accession to the Convention in 2014, the State of Palestine issued Decree Law No. 4 of 2016 regarding the protection of juveniles. This law contains many safeguards for children in conflict with the law, guaranteeing them special protection as victims and not as criminals. However, this law failed to provide a definition or criminalization of torture.

16. In practice, the gap is still wide between the safeguards stated in the law regarding the protection of juveniles in conflict with the law and practice on the ground.

17. Despite the State of Palestine's commitment to implement the Convention once it acceded to it, the implementation of the Convention in the Palestinian legal system reveals loopholes. Article 10 of the Basic Law stresses the necessity for the Palestinian National Authority to become a party to international conventions. However, there is no mention in the legal system of how the agreements are to be enforced in the local system.² Furthermore, the State of Palestine has not yet published the Convention in the Official Gazette.

18. The Juvenile Protection Law stipulates that juveniles should be placed in social care homes under the supervision of the Child Protection Counsellor, or in a juvenile detention center if there are no social care homes. However, most juveniles are detained in cells within police stations due to the lack of government efforts to build specialized care homes or cells for juveniles. Nearly three quarters of children are placed in rooms allocated to them within adult detention centers, but such rooms do not meet the basic requirements.

19. There is no clear mechanism to retain staff from within the Palestinian police and juvenile judges who have been trained on the Juvenile Protection Law and its implementation, as they are transferred to other departments. This calls for resources in order to sustain training other staff members, and depletes the efforts of staff training and rehabilitation. In addition, the limited number of staff that specialize in working with children in the Ministry of Social Development, the police and courts, genuinely impedes the implementation of government strategies to protect the rights of children in conflict with the law.

Recommendations

The State of Palestine must ensure that:

1. All competent authorities respect and implement the provisions of the Juvenile Protection Law with regard to places of detention for juveniles and to take all necessary measures to do so.
2. No child should be detained in any police station or other custodial detention facility where the infrastructure and conditions fail to meet basic international juvenile justice standards and socio-educational norms.
3. All state actors and personnel are trained on children's rights, and prioritize mediation and child-friendly interventions based on respect and promotion of human rights.

² 2003 Amended Basic Law, published in the Official Gazette on 19 March 2003. Available at: <https://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

Legal framework

20. The Palestinian legal system applies to Palestinians living in the West Bank and Gaza Strip. Although East Jerusalem is an integral part of the Occupied Palestinian Territory under international law, Israel applies its own civil justice system in Jerusalem after it unilaterally annexed the area in the aftermath of the 1967 war; a move not recognized by the international community. Accordingly, Palestinian children in conflict with the law from East Jerusalem are not addressed in this report, as they are dealt with according to the Israeli legal system.

21. The legal system in force in Palestine is not strict in addressing the crime of torture. The issue of torture is referred to as one of the illegal procedures that a person is subjected to. The Basic Law stipulates that no one may be subjected to coercion or torture and nullifies confessions extracted under torture. The two penal codes in force in Palestine, the Jordanian Penal Code No. 16 of 1960 in the West Bank and the Palestinian Penal Code No. 74 of 1936 in the Gaza Strip, eased the punishment of the crime of torture and consider it a misdemeanor offense. The 1998 Correction and Rehabilitation Centers Law also refers to the prohibition of detention centers practicing acts of torture or the use of force against inmates. The Law of Penal Procedure stipulates that confession must be legal and be given voluntarily and willingly without pressure or coercion,³ however, it does not provide clear monitoring and detention mechanisms, or how to file complaints in cases of torture and ill-treatment.

2003 Amended Basic Law

22. The Palestinian Basic Law is considered a constitution, and it is at the top of the Palestinian legislative hierarchy. Its texts include many principles related to rights and freedoms, including the right to bodily integrity. Concerning torture, Article 13 of the Law states that (1) No person shall be subject to any duress or torture, and indicted persons and all persons deprived of liberty shall receive proper treatment, and (2) all statements or confessions obtained through a violation of the provisions contained in paragraph 1 of this article shall be considered null and void. Moreover, Article 32 stipulates that 'any violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage.'⁴

23. The Palestinian Basic Law provided a good theoretical framework for protection from torture, by prohibiting any attack on any of the rights, including the right to bodily integrity, and more importantly making any form of such violation a crime with no statute of limitations, giving the victim the right to file a lawsuit in any period and receive compensation.

24. However, constitutional texts do not carry in their content executive tools. Rather, it is the responsibility of ordinary laws to put constitutional principles into practice by regulating and incorporating these principles into their texts.

Penal Codes

25. Penal laws are the laws that include text on crimes and penalties, in accordance with the basic principle that states that only the law can define a crime and prescribe a penalty (the principle of

³ The Independent Commission for Human Rights, Legal Review of Torture Provisions in the Palestinian Legal System, 2009.

⁴ 2003 Amended Basic Law

legality). Two penal laws apply in the State of Palestine; the Jordanian Penal Code No. 16 of 1960 in the West Bank, and the Palestinian Penal Code No. 74 of 1936 in the Gaza Strip.

26. Article 108 of the Penal Code No. 74 of 1936 states that 'any person employed in the public service who subjects or orders the subjection of any person to force or violence for the purpose of extorting from him or from any member of his family confession of an offence or any information relating to an offence, is guilty of a misdemeanor.'⁵

27. Article 208 of the Jordanian Penal Code No. 16 of 1960 states that 'whoever inflicted any form of violence and force, not allowable by law, in order to obtain a confession for committing a crime or information regarding such a crime, he or she shall be punished by imprisonment from three months to three years.'⁶

28. Neither of the two penal codes in force in the State of Palestine include a definition of the crime of torture as an independent crime, nor do they single out specific provisions for it. The two penal codes address the crime of torture as a misdemeanor that does not rise to the level of a felony, which also results in the non-punishment of attempting it. Hence, classifying such crime as a misdemeanor protects perpetrators from punishment for attempting it, according to Article 71 of the Penal Code. These legal texts also do not specifically address the issue of those who advocate or encourage torture. There is no provision in the Penal Code or the Procedure Code that excludes those convicted in torture cases from general or special pardon, referring this matter to the provisions of incitement contained in the Penal Code in general, as well as the matter with regard to the provisions of participation and intervention.

29. The perpetrator of the crime of torture can also benefit from all the legally approved mitigating circumstances and reasons, and there is also nothing to prevent him or her from benefiting from the provisions of the general or special pardon.⁷

Law of Penal Procedure

30. Law of Penal Procedure governs the conduct of criminal cases from a procedural point of view. It contains many provisions on fair trial guarantees, as well as a reference to torture in Article 29, which stipulates that 'no person may be arrested or imprisoned except by order of the competent authority as set forth in the law. He or she must be treated in a manner that preserves his or her dignity and may not be physically or morally harmed.'⁸

31. The Law also includes the right of detainees in reform and rehabilitation centers to submit complaints to the public prosecutors through these centers on any violation or denial of their rights.

32. The Law also stipulates that periodic visits should be organized by the public prosecutors and the heads of the courts of first instance and appeals to detention centers and reform and rehabilitation centers to ensure the legality of detaining all those deprived of liberty and that they are not subjected to torture or any other ill-treatment. However, such visits are not conducted regularly and do not contribute to the eradication of torture because these visits are superficial and reports about these

⁵ Palestinian Penal Code No. 74 of 1936 and its amendments in force in the Gaza Strip

⁶ Jordanian Penal Code No. 16 of 1960 and its amendments in force in the West Bank

⁷ See Articles 61, 68, 69, 71, 80, 81, 88 and 90 of the Jordanian Penal Code No. 16 of 1960

⁸ Law of Penal Procedure No. 3 of 2001

visits are not prepared. In addition, these visits are limited to state officials and are not available to civil society institutions except with prior arrangements.⁹

Prevention of Crime Law No. 7 of 1954

33. This Law gives broad powers to governors to deprive persons of their freedom without resorting to their natural judge. Under this Law, many children are arrested annually on the pretext of preserving civil peace. In 2016, DCIP documented the arrest of 30 children within the jurisdiction of governors without any judicial decision, despite the enactment of the Juvenile Protection Law limiting the powers of arrest and summons in children's cases to a specialized police unit: the juvenile police unit.

The Palestinian Child Law

34. Article 42 of the Palestinian Child Law stipulates that 'a child has the right to protection from all forms of violence, physical, moral, or sexual abuse, neglect, negligence, homelessness, or other forms of abuse or exploitation.' Article 68 also stipulates that 'no child shall be subjected to any form of torture, or to any form of cruel, degrading or inhumane treatment or punishment'.¹⁰

35. The safeguards provided for the child by this Law are similar to provisions in other laws, as they generally address the right to physical integrity without providing any clear definition or criminalization of torture.

Decree-Law No. 4 of 2016 Concerning the Protection of Juveniles

36. In 2016, the Juvenile Protection Law was passed to include many protective guarantees and safeguards for children in conflict with the law, including allocating certain places for their placement if necessary (social care homes or specialized cells within police stations), and recognizing many rights related to education, play and visits in accordance with their best interest. With regard to torture, Article 7 of this Law stipulates that 'every juvenile has the right to treatment that is appropriate to his or her age, protects his or her honor and dignity, and facilitates his or her integration into society. It is prohibited to subject the juvenile to physical or mental torture, or any cruel, degrading or inhumane treatment or punishment.' The law also prohibits the use of restraints with juveniles, except in cases in which rebellion or ferocity necessitates that, and only to the extent necessary.¹¹

37. The Law provides special protection for children in conflict with the law, as it treats them as victims and not as criminals. It is implicitly and explicitly understood from the provisions of this Law that it prohibits torture and ill-treatment of children, including depriving them of any right granted to them by law. However, the Law has no clear, explicit definition or criminalization of torture, and does not establish specialized courts to handle cases of child torture.

National Mechanism for the Prevention of Torture

38. The State of Palestine acceded to the Optional Protocol to the Convention against Torture in 2017. Under this protocol, the State of Palestine bears the responsibility to establish a national mechanism for the prevention of torture to conduct and report periodic and unannounced visits to any place where persons are deprived of liberty and to document violations. There is deliberation

⁹ Maen Dais, *Legal Review of Torture Provisions in the Palestinian Legal System*, The Independent Commission for Human Rights, Periodic Reports (69), p. 35. July 2009, Ramallah.

¹⁰ The Palestinian Child Law No. 7 of 2004

¹¹ Decree-Law No. 4 of 2016 Concerning the Protection of Juveniles

regarding the establishment of this mechanism and the enactment of a special law for such a mechanism. It is the responsibility of the Ministry of Interior to engage with civil society organizations to discuss the establishment of this mechanism and to formulate a draft law in this regard.

39. During the period covered in this Report, a law was issued that regulates the establishment of the National Preventive Mechanism against Torture and Ill-treatment. However, there is concern among civil society organizations regarding the independence and impartiality of the national mechanism and its members. The national mechanism will be formed in accordance with a law issued by the executive authority.

Recommendations

The State of Palestine must:

1. Repeal and nullify any provision in the Crime Prevention Law that allows a non-judicial body to authorize arrest or detention without a judicial decision because such provisions violate the Basic Law and international standards.
2. Enact an executive regulation for the Juvenile Protection Law, in order to overcome any obstacles in practice and fully implement the rights and protections provided for by the Law.
3. Ensure the operational independence of the national preventive mechanism and impartiality of its members as well as provide it with the necessary financial and human resources for the successful performance of its work.

Violation of legal safeguards related to deprivation of liberty

Legal safeguards related to deprivation of liberty

40. The Palestinian legal system includes some legislation that allows in one way or another the violation of human rights in general, including children. The Prevention of Crime Law No. 7 of 1954 in force in the West Bank empowers governors to detain any person without being brought before a judge for a week, thus depriving them of their full legally recognized rights and exposing them to various forms of ill-treatment and torture such as being arrested by non-competent bodies and detained in non-specialized places, constituting a grave violation of human rights. Such arrests deprive children of their legally recognized rights, particularly their right to fair trial and detention in social care homes and/or places of detention for juveniles.

41. DCIP documented the cases of 30 children who were arrested by governors in 2016 and five other cases in 2017. No arrests were made between 2018 and 2021. However, this law, which authorizes this practice, is still valid and in force.

42. In addition, DCIP documented the detention of 157 children between 2014 and 2021 by security services that are not authorized to handle juveniles, and such children were not transferred to the Juvenile Protection Police or the Juvenile Prosecution to look into their cases in accordance with the rules and law. Between 2018 and 2021, DCIP also documented the cases of 222 children arrested and had evidence gathered against them by non-competent police. These children, who were arrested by security forces, told DCIP that they were subjected to one or more forms of ill-treatment and torture.

Accountability for crimes of torture and ill-treatment

43. There are no provisions in the Palestinian legal system to hold law enforcement officials accountable if they practice torture or ill-treatment, and in particular against detainees. Rather, they are often questioned and disciplined in accordance with the general provisions of the law. The Judicial Authority Law stipulates that a member of the Public Prosecution shall be given a warning of any act that may constitute a violation of the requirements of the office. If the violation is repeated or continues after the warning is confirmed, a disciplinary action shall be filed.¹²

44. With regard to law enforcement officials who are not members of the Public Prosecution Office, the General-Attorney, in his capacity as the supervisor of the judicial officers, may ask the competent authorities to take disciplinary measures against any person for a breach or dereliction of duty.¹³

45. Law of Service in the Palestinian Security Forces No. 8 of 2005 also stipulates that any non-commissioned officer or member of personnel deviating from the requirements of the duty of his function, or behaving or appearing in a manner that may infringe the dignity of the function shall be punished in a disciplinary manner, without prejudice to further civil or criminal action. This provision, in particular, is directed at those in charge of detention and prisons.¹⁴

46. In practice, and despite the availability of some provisions that prohibit torture crimes, the following constitute an incubator for facilitating crimes of torture and ill-treatment: absence of disciplinary and criminal accountability for perpetrators of torture and ill-treatment cases, the lack of clear tools for accountability, and the failure to facilitate child access to individual and collective complaints to the relevant authorities. Between 2014 and the first quarter of 2022, DCIP submitted 73 individual complaints to the Palestinian Police General Administration, the Ministry of Interior, security services departments and the Attorney-General's Office about children being beaten, ill-treatment by the non-competent police, detention with adults, or subjected to illegal detention by the governors. The responses to the complaints included releasing those illegally detained or improving the conditions of the place of detention. With the exception of one case in 2022, the police have not sent any responses that included taking legal disciplinary action against a police officer or holding one of the personnel responsible. In the 'exceptional case' however the type of the disciplinary action was not specified. There are three cases currently under consideration before the Military Prosecution and the Military Judiciary, which is the judicial body responsible for trying military officers if they commit a crime against civilians or other military personnel. However, these cases have not yet been decided upon.

47. No criminal case has been brought by the Attorney-General against any of the persons accused of torture or ill-treatment. In addition, there is a lack of clear accountability tools within the justice system and in places of detention that help citizens and children file complaints and obtain clear results within a time frame.

Recommendations

The State of Palestine must:

1. Enact and codify constitutional principles in legislation that guarantee protection against torture so the absolute prohibition is implemented in practice;

¹² See Articles 47-59 and Article 72 of the Judicial Authority Law No. 1 of 2002

¹³ See Articles 19-21 of the Law of Penal Procedure No. 3 of 2001

¹⁴ See Articles 173, 194, 198 and 202 of the Law of Service in the Palestinian Security Forces No. 8 of 2005

2. Ensure that acts of torture, and complicity and involvement in acts of torture, are criminal offense;
3. Take action to strengthen penalties imposed by law for the crime of torture, so they are proportional to the gravity of offense and becomes a felony rather than a misdemeanor.
4. Abolish legal texts and legislation that would provide a ground for torture without accountability, namely the Prevention of Crime Law, and some provisions of the Jordanian Penal Code No. 16 in 1960 in force in the West Bank and the Palestinian Penal Code No. 74 of 1936 in force in the Gaza Strip;
5. Maximize penalties on perpetrators of torture if the victim is a child; and
6. Establish accountability mechanisms that facilitate the access of children and others to submit complaints on violations against children, and establish complaints systems within child detention places, care homes and protection centers.
7. Immediately stop the practice of detaining and interrogating children by unspecialized police units or security agencies.

Situation of children in the Palestinian legal system

Children ignored in State of Palestine report

48. The State of Palestine official report did not cover the situation of Palestinian children in conflict with the law. The omission of covering issues related to the situation of children in the Palestinian justice system could be attributed to the lack of information system or a national system on children's justice systems in Palestine. Since there is no unified database that monitors the numbers of children victims of violence and abuse and children in conflict with the law, a national database should be established to monitor the status of children's rights in the State of Palestine. This reflects the discrepancy in figures issued by the Palestinian Police, which have a database that is not linked to the database of the Public Prosecution and the Judiciary System (Mizan 2).¹⁵ The Ministry of Social Development also does not have a database for children in conflict with the law.

Arrest, transfer and interrogation of children

49. Decree Law No. 4 of 2016 provides special and modern provisions with regard to children who violate the law, by considering this group as victims and regarding their best interest as a primary consideration. In this context, the Law established a police unit specialized in juvenile cases to handle all violations, misdemeanors and felonies committed by children, and designated specific places for child placement (social care homes and/or specialized police cells) consistent with the rights established by law. Such measures make child arrests that may be carried out by other security services invalid because in may conduce to ill-treatment and torture, especially as they deprive children of many of the safeguards provided by law.

Excessive use of force and restraints

50. In the West Bank and Gaza, the law states that a judicial officer has the right to resort to 'all means as may reasonably be required' to arrest any person attempting to evade arrest or escape.¹⁶

¹⁵ See https://www.courts.gov.ps/details_ar.aspx?id=FGvLEba79947252aFGvLEb

¹⁶ Article 35 of the Law of Penal Procedure No. 3 of 2001

However, all persons, including children, have the right to be protected from harmful, cruel or degrading treatment during arrest, and to be treated in a manner that respects their dignity.¹⁷ In the West Bank, the law also states that children may not be restrained except in exceptional circumstances, for example, if they are violent. The Juvenile Protection Law of 2016 emphasizes the prohibition of the use of restraints with juveniles except in cases where rebellion or ferocity necessitates it, and only to the extent necessary.¹⁸

51. In practice, DCIP data indicate that 293 children (65%) out of 461 children arrested in the West Bank between 2018 and 2021 were subjected to ill-treatment during arrest, interrogation and transfer, all of whom were arrested and handled by non-competent authorities. Among the 293 children, 149 children (51%) were exposed to excessive use of force. In addition, between 2019 and 2021 DCIP documented the cases of 153 children who were handcuffed and 19 children who were blindfolded.

52. On the other hand, significant progress has been made in the West Bank in recent years with regard to the excessive use of force during arrest by the competent police. This is due to the adoption of the Juvenile Protection Law (2016), specialized police training programs and raising awareness of children's rights. However, there is still a large gap between what is stipulated in the Juvenile Protection Law and the practice, mostly with regard to the non-competent police and security services that arrest and interrogate children in violation of the law.

Transfer

53. In the West Bank and Gaza Strip, the law states that a detained person should not be transferred in poor conditions or by any means that would expose that person to unnecessary physical hardship. Moreover, detainees should not be unnecessarily exposed to the public eye.¹⁹

54. There are currently no personnel in the West Bank or Gaza Strip specially trained to transfer children, nor are there vehicles designated for this purpose. Furthermore, children in conflict with the law are usually transferred from places of detention to other places or to the court by police cars, with adults, and with their hands handcuffed, despite a decision issued by the Director General of the Palestinian Police to the head of police guards not to transfer children with restraints. However, this decision is not adhered to in practice according to affidavits collected by DCIP and the observations of lawyers in courts; nearly 70% of the arrested children are transferred while being handcuffed.

Questioning and interrogation

55. Under international law and relevant customs, every child has the right to remain silent on the principle that no one is compelled to incriminate himself or herself.²⁰ This right applies to all stages of the proceedings, including the interrogation and trial stages. Under international law, there is a

¹⁷ Articles 13(1) and 29(3) of the Basic Law, Article 29 of the Code of Criminal Procedure and Article 68 of the Child Law.

¹⁸ Article 7(3) of the Juvenile Protection Law

¹⁹ Law No. 6 of 1998 Concerning Correction and Rehabilitation Centers (Prisons)

²⁰ Article 40(2)(b) of the Convention on the Rights of the Child, paragraphs 56-58 of the General Comment of the Committee on the Rights of the Child No. (10), Article 15 of the Convention against Torture and Article (14)(3) of the International Covenant on Civil and Political Rights.

complete prohibition of the use of torture or other cruel, inhuman or degrading treatment or punishment (torture and ill-treatment.)²¹

56. This prohibition is closely related to the principle that all evidence obtained through torture or ill-treatment should not be used in court. This principle aims to eliminate any motive used by interrogators to engage in torture or ill-treatment in order to obtain a conviction. Additional safeguards against inappropriate behavior during interrogation include allowing the child to be accompanied by a parent and a lawyer.

57. DCIP data indicate that non-competent police or security services continue to use violence against children during interrogation. Approximately two thirds of children are subjected to abuse during arrest and interrogation by non-competent police and security services.

Police interrogation and collection of evidence

58. Under the law applicable in both the West Bank and the Gaza Strip, police officers are responsible for investigating crimes and gathering the evidence necessary for the prosecution.²² These responsibilities include conducting examinations and searches to obtain all necessary clarifications to facilitate the investigation.²³ When the suspect is arrested, the police officer must 'hear the statement of' the arrested person. If such person fails to provide a justification for his release, the officer should send him to the deputy prosecutor for questioning within 24 hours.²⁴ There is no explicit provision in Palestinian law that grants a suspect the right to remain silent during an initial police interrogation. Furthermore, the police are not legally obligated to allow the child's parents or lawyer to be present at this stage of the proceedings.

59. Although the juvenile police are the competent authority to gather evidence in cases of juveniles in accordance with Article 15 of the Juvenile Protection Law, the arrest of juveniles by non-competent parties is a common practice. Between 2018 and 2021, DCIP documented 222 child cases with evidence being gathered by non-competent police, including the General Investigations, Drug Control, and police sub-stations. Violations against children during evidence collection by the General Investigations is the most common. According to reports from children to DCIP lawyers while being representing in Palestinian courts, confessions by non-competent police are usually extracted by the use of force and then the children are referred to the competent police unit to record the final statement.

60. Evidence indicates that most children arrested by non-competent police or other security agencies, and not by the Juvenile Protection Police according to the law, are in fact subjected to coercive interrogation methods.

61. An analysis of 217 closed legal cases of children in conflict with the law between 1 January 2020 and 30 March 2022 revealed that 121 children (56%) were not informed of their right to silence; 118 children (54%) were not informed of the charges against them in a language that is simple and understood; and 155 children (71%) were not informed of their right to file a complaint if they were abused.

²¹ Article 37(a) of the Convention on the Rights of the Child, Article 2 of the Convention against Torture and Article 7 of the International Covenant on Civil and Political Rights.

²² Article 19(2) of the Law of Penal Procedure No. 3 of 2001

²³ Article 22(2) of the Law of Penal Procedure No. 3 of 2001

²⁴ Article 34 of the Law of Penal Procedure No. 3 of 2001

Interrogation by the prosecution

62. Under the law applicable in both the West Bank and the Gaza Strip, the police are required to send the suspect to prosecutors for questioning within 24 hours of arrest to conduct a more thorough examination of the case, including gathering evidence from witnesses under oath, and to further question of the accused. The prosecution also makes use of any evidence already collected by the police during the first 24 hours, including any evidence obtained through a confession.²⁵

63. At this stage of the interrogation, the law specifically provides for the right of the accused to remain silent and not to respond to questions put to him. Moreover, statements extracted under torture, coercion or inappropriate treatment should be disregarded and unreliable.²⁶ In general, the suspect has the right to have his lawyer present during interrogation by the prosecution, except in cases of a flagrant crime, necessity, urgency or fear that evidence may be lost.²⁷ In the case of children in conflict with the law, however, the Juvenile Protection Law requires that juveniles accused of felonies and misdemeanors have a lawyer to defend them, whether during preliminary investigation or trial, provided that such a lawyer will be appointed by the prosecution or the court at the expense of the state.²⁸

Recommendations

The State of Palestine must:

1. Establish a central detention database under the overall responsibility of a single executive agency or authority, which contains, as a bare minimum, comprehensive statistics on the total number of children in detention, broken down by age, location of detention and whether the detention is pre-trial or custodial.
2. Establish a central judicial database under the overall responsibility of a single authority, which contains, as a bare minimum, comprehensive statistics on the total number of children brought before the courts, a breakdown of the charges, the number of children without legal representation, the number of children released on bail, the duration of court process and information on sentencing.
3. Take effective measures to ensure that all interrogations and interrogation techniques comply with the Convention.
4. Take effective measures to ensure that the use of restraints for children are prohibited, with the only exception as a measure of last resort when other alternatives fail and for the shortest possible time.
5. Amend the text of Articles 17 and 18 of the Palestinian Juvenile Protection Law, to obligate the presence of a Child Protection Counsellor with the child while collecting evidence by the judicial officers.

²⁵ Articles 22 and 34 of the Law of Penal Procedure No. 3 of 2001

²⁶ Articles 97(1) of the Law of Penal Procedure No. 3 of 2001

²⁷ Article 30 of the Basic Law of 2003 and Article 273(2) of the Law of Penal Procedure No. 3 of 2001

²⁸ Articles 97 and 98 of the Law of Penal Procedure No. 3 of 2001

6. Take effective measures to ensure compliance with the provisions of the CAT regarding the State's obligation to impartially and promptly investigate allegations of torture or other forms of ill-treatment against children.
7. Ensure all children are clearly informed of the right to silence prior to questioning by the police and prosecution, including by amending the Penal Procedures Law (2001) and the Palestinian Juvenile Protection Law (2016) to expressly reflect this obligation, in particular *vis-à-vis* the police.

Conditions of detention

64. Under international law and relevant customs, conditions of child detention must be humane, consider the child's age and needs, and promote the child's reintegration into society. Conditions of detention should provide children with an environment that gives due consideration to their privacy needs, sensory stimuli, and opportunities to communicate with peers and engage in games and leisure activities.²⁹ A child should be held separately from adults unless it is considered in the child's best interests not to do so.³⁰ To maintain the well-being of a detained child, it is essential that he have regular contact with his family members, which preferably includes a weekly visit.³¹ Detained children are also entitled to the highest attainable standard of health.³² In order to ensure that appropriate standards are met in relation to children in detention, it is essential that monitoring visits be conducted regularly.³³

65. The State of Palestine's Report has not addressed the centers in which juveniles are placed and their conditions, despite the importance of these centers in the rehabilitation and training of juveniles. Article 24 of the Palestinian Correction and Rehabilitation Centers Law stipulates that 'juveniles shall be placed in centers dedicated for them.'

66. There is only one care home for boys in conflict with the law in the West Bank, and one in the Gaza Strip. There is only one care home in the West Bank that houses girls in conflict with the law, victims of violence, and those at risk of delinquency.

67. In addition, there are only two specialized juvenile detention cells in the West Bank, whereas the rest of juveniles are imprisoned in cells not dedicated to juveniles or in correction and rehabilitation centers.

68. Approximately 170 children out of 926 children arrested in 2016 were placed in Dar Al-Amal in the West Bank, suggesting that more than 80% of children were held in police stations or adult correction and rehabilitation centers - and were supervised by non-competent parties. In 2017, 202 out of 391 children arrested were held in Dar Al-Amal, indicating that almost half of the children were held in correction and rehabilitation centers. In 2018, 235 out of 359 children arrested were held in Dar Al-Amal, indicating that almost 35% of the children were held in correction and rehabilitation centers. In 2019, 235 out of 281 children arrested were held in Dar Al-Amal, indicating that 16% of the

²⁹ Article 37(c) of the Convention on the Rights of the Child, and Paragraph 89 of the General Comment No. (10) of the Committee on the Rights of the Child

³⁰ Article 37(c) of the Convention on the Rights of the Child, and Paragraph 85 of the General Comment No. (10) of the Committee on the Rights of the Child

³¹ Article 37(c) of the Convention on the Rights of the Child, and Paragraph 87 of the General Comment No. (10) of the Committee on the Rights of the Child

³² Article 24(1) of the Convention on the Rights of the Child, and Rules 49-55 of the Havana Rules

³³ Paragraph 89 of the General Comment No. (10) of the Committee on the Rights of the Child, and Rules 72-74 of the Havana Rules

children were held in correction and rehabilitation centers. In 2020, 166 out of 171 children arrested were held in Dar Al-Amal, indicating that 3% of the children were held in correction and rehabilitation centers, this could be attributed to the emergency decisions that have been taken as a result of the spread of COVID19. In 2021, 146 out of 207 children arrested were held in Dar Al-Amal, indicating that 29% of the children were held in correction and rehabilitation centers.

69. The five correction and rehabilitation centers in which juveniles are placed are affiliated with the Palestinian Civil Police, and are supervised by the General Administration of Prisons, not the Juvenile Police as a competent authority according to the law. Children detained in these centers are deprived of their right to education, and are held in poor conditions due to the lack of resources tailored to the needs of children. Moreover, a number of juveniles are held with adults in police detention cells or secondary detention centers.

70. Monitoring visits conducted by DCIP lawyers revealed that children were detained in poor conditions in the centers affiliated with the Palestinian police. Between 2014 and 2021, DCIP organized 303 monitoring visits to child detention centers. 750 children were interviewed, including nearly 500 children in police detention centers and correction and rehabilitation centers, and 250 children in care homes affiliated with the Ministry of Social Development.

71. Police detention centers suffer from insufficient ventilation, lack of hygiene, and most of the centers have issues related to humidity. In May 2014, DCIP published a report on places of detention for children in the West Bank and their challenges. Since then, there has not been any significant development in terms of the services provided. Also, children detained in the northern and southern West Bank are exposed to a range of violations such as being deprived of their right to education, rehabilitation and reintegration. Those detained for long periods, for example, those who are accused of murder, are especially affected. As for children detained for long periods from the central West Bank, they are held in the Ministry of Social Development's Dar al-Amal, where they receive education and training services that are seemingly better than those held in police stations. In addition, children in some centers suffer from lack of availability of basic medical, educational and ventilation services.

72. With regard to care homes, progress has been made in services provided by Dar al-Amal for male juveniles located in Ramallah city in the West Bank, in part due to the approach that the institution has started to relax its incarceration regulations and the implementation of initiatives to rehabilitate and integrate juveniles. However, the Ministry of Social Development still fails to manage the file of the Girls' Care Home located in Bethlehem, which is the place designated to house girls in conflict with the law, at risk and victims of violence. The identity of the home is not defined in terms of whether it is for girls in conflict with the law, girl victims of violence, or girls at risk, even though the Juvenile Protection Law calls for the separation of juveniles based on the charges, and not to mix children victims of violence with those in conflict with the law as they require different intervention plans.

73. Monitoring visits carried out by DCIP lawyers since 2016 indicated that the girls' care home lacks rehabilitation and reintegration plans; psychological intervention plans provided for girls are limited; and services are limited to activities provided by civil society organizations without clear intervention plans.

74. Since 2020, clear problems have emerged in the Ministry of Social Development's management of the Girls' Care Home in Bethlehem demonstrated by the frequent failure of the management of the center to monitor girl children, cases of abuse and ill-treatment, and the detention of girls for long periods without judicial action.

75. In October 2020, the center was set on fire by female inmates, which resulted in the death of one of the girls. According to the findings of an investigation committee formed by the Attorney-General's Office, approximately 35 legal violations were detected related to safety procedures, approaches to girls' placement, abuse and lack of safety procedures such as emergency exits. Although the recommendations of the investigation committee were submitted to the Minister of Social Development, no measures were taken to rectify the conditions within the center.

76. DCIP submitted a number of complaints to the Minister of Social Development on the mechanism for managing this center, but there has been no tangible progress in terms of following up on the recommendations presented by the investigation committee, and no administrative or penal measures have been taken against the center's administration and staff. The Ministry of Social Development has not rehabilitated the center after two years of closure due to the fire, which led to the placement of some girl victims in police stations without legal justification.

77. This case indicates State of Palestine's weak procedures to address cases of torture and ill-treatment in terms of creating clear monitoring mechanisms within these institutions, and the lack of procedures by the regulatory authorities authorized by law to monitor these places, such as judges, chief prosecutors and the Minister of Justice. In addition, it highlights the lack of compensation claims in cases of ill-treatment due to the lack of an adequate complaint mechanism; fear of filing complaints against state employees; and the lack of criminal accountability mechanisms on which compensation files in torture cases are built.

Recommendations

The State of Palestine must:

1. Ensure all children held in detention are housed in a juvenile center, or a place of detention meeting equivalent standards, and that children in detention are held in facilities close to their homes,
2. Ensure that multiple juvenile centers exist in the north and south of the West Bank, constructing new centers as necessary.
3. Comply with Convention against Torture provisions regarding the State's obligation to guarantee children victims of torture reparation and the right to fair compensation.
4. Create child-friendly, safe and independent complaints mechanisms to denounce and hold staff accountable for mistreating children deprived of their liberty.
5. Ensure all children in detention receive a comprehensive standard of academic education and/or vocational training, depending on the needs of the child.

Detention with adults

78. Under applicable law in the West Bank and Gaza Strip, children must be separated from adults in specialized centers, as specified by law.³⁴ There is also an explicit provision and obligation in the Juvenile Protection Law applicable in the West Bank to separate adults and children during transfers and court waiting periods, but this obligation is not enforced in practice.³⁵

³⁴ Article 24 of the Correction and Rehabilitation Centers Law of 1998

³⁵ Article 21(3) of the Juvenile Protection Law of 2016

79. There has been some positive progress in the decrease in the number of children arrested, reflecting positively on reducing overcrowding in places of detention. However, according to monitoring visits conducted by DCIP lawyers to places of detention and the information that children provided to lawyers during legal representation, children continue to be detained with adults. According to evidence obtained from cases of juveniles represented by DCIP lawyers in courts between 2018 and 2021, 111 children were detained with adults after being arrested. Children were generally held with adults during transfers and in waiting rooms in court prior to hearings.

Accommodation

80. Under applicable law, there are few provisions that specifically address the physical environment and accommodation in which children may be detained. There are no laws that address detained children's need for privacy, sensory stimuli, opportunities to communicate with peers, or to participate in sports, physical exercise, arts, or leisure activities.

81. Children detained in social care homes supervised by the Ministry of Social Development have access to acceptable conditions of detention, whereby they are free to move around and mingle and play with each other.

82. However, the majority of detained children from the West Bank are not detained in care homes, due to the fact that there are only two social care homes; Dar al-Amal for boys in Ramallah and the girls' care home in Bethlehem. The police prefer to detain children close to their place of residence and the court due to the difficulty of transferring children between governorates, especially if detention periods are short.

83. The monitoring visits organized by DCIP indicate that the conditions of police arrest and detention differ from one center to another, where children are either detained in a special room inside prisons or police stations, or in juvenile cells. In both cases DCIP monitored many cases in which children were deprived of their rights under the Juvenile Protection Law, most importantly their right to visitation by social workers or educational counsellors and to education in accordance with the Juvenile Protection Law.³⁶

84. Conditions of detention in prisons and in juvenile rooms within police stations involve a greater denial of rights, both in terms of overcrowding, mixing children with adults and a healthy living environment such as ventilation, beds and hygiene.

Recommendations

The State of Palestine must:

1. Separate children in conflict with the law based on charges, age, and detainees from individuals serving sentences, thus facilitating the implementation of clear intervention plans for them.
2. Implement socio-educational measures for juveniles in detention, including educational, recreational, cultural and social activities, and on the inclusion and connection of the adolescent with their environment.

³⁶ Articles 13(1) and 17 of the Juvenile Protection Law

3. Ensure adequate conditions of detention, especially in police stations and correction and rehabilitation centers that takes into consideration the best interests of the child, children deprived of liberty should access fundamental rights.
4. Ensure that all children are detained separately from adults at every stage of detention, including in police stations and whilst waiting for court hearings. Children must only be detained with adults when it is in their best interests and after an independent assessment has been made.

Family visits and contacts

85. Palestinian law regulates the right of detainees and convicts to communicate with their families, whereas the Juvenile Protection Law includes a set of guarantees that facilitate children's communication with their families while in detention. Article 20 of the Juvenile Protection Law grants a child arrested by a court decision the right to have a leave on certain occasions. In practice, care homes allow more consistent communication between children and their families via phone and visitation than police detention centers, which allow one visit per week and phone calls twice a day while denying children access to leaves on certain occasions.

86. However, in 2020 and due to COVID-19, many children were denied their right to family visitations. Families were not allowed to visit children in places of detention for more than a year, and no other alternatives were found that would allow children to communicate with their families.

Monitoring visits to detention centers

87. Under the Juvenile Protection Law in force in the West Bank, juvenile judges and juvenile prosecutors undertake inspection tasks at social welfare centers at least every three months.³⁷

88. While the Correction and Rehabilitation Centers Law gives power to the heads of courts, public prosecutors, governors and representatives of the Minister of Justice to monitor these places,³⁸ there are no internal standards or mechanisms to monitor places of detention for children - whether in police cells, rehabilitation centers or care homes. Commissioners, including judicial and executive bodies, visit these places regularly or periodically in accordance with the law, but such visits are formalities, as no reports are issued to follow up on any violations. In addition, there are no clear complaint systems known to children to lodge complaints within places of detention in case of any violations. Visits by civil society organizations to detention, correction, and rehabilitation centers must also be arranged in advance.

89. As a result, the observations noted in this regard are: the irregularity of visits from one region to another; failure to take measures against violations detected during monitoring visits or report such violations to the competent authorities to take appropriate measures; the lack of monitoring bodies within the police or the Ministry of Social Development to conduct internal monitoring tours to check the services provided, living conditions or the violations committed within these places; and the lack of monitoring departments within the structure of the police or the Ministry of Social Development.

Right to be informed of arrest/ill-treatment

³⁷ Article 47(3) of the Juvenile Protection Law

³⁸ Articles 10 and 11 of the Correction and Rehabilitation Centers Law of 1998

90. Out of 171 children represented by DCIP lawyers in 2018, 137 children were not informed of the reason(s) of their arrest; in other words, 80% of the children arrested were deprived of this important safeguard.

Restorative Justice

91. The Juvenile Protection Law calls for detention to be a last resort and for the shortest possible period. An analysis to the files of legal support provided to children in conflict with the law revealed that the first step taken by police was detention in felony cases, as well as in misdemeanors if the parties to the case failed to reconcile. As for the pre-trial investigation stage, activating Article 23 of the Juvenile Protection Law related to the application of criminal mediation in juvenile cases was a positive step taken to prevent large numbers of children from being detained

92. Mediation often spares children from being detained and closes their files with the Public Prosecution in minor cases such as offenses and misdemeanors.

93. The following table shows the cases of children in conflict with the law, as well as the cases of mediation, detention, and conditional release by the Public Prosecution.

Year	Conflict with the law	Mediation	%	Custodial sentence	%	Release on bail	%
2016	2,105	171	8%	926	44%	1008	48%
2017	2,026	502	25%	391	19%	1133	56%
2018	2,086	841	40%	359	17%	886	43%
2019	2,129	1143	54%	281	13%	705	33%
2020	1,356	726	53%	171	13%	459	34%
2021	1,623	834	51%	207	13%	582	36%

94. It is clear from the above table that there is a positive progress with regard to the detention of children in conflict with the law over the years, as the percentage of children detained in 2016 decreased from 44 percent to 13—19 percent in 2017 to 2021.

Legal Assistance

95. Article 10 of the Juvenile Protection Law stipulates the right of children to legal representation – legal assistance – which starts in the interrogation stage and continues in all stages at the expense of the state, through the prosecution or the court, if a lawyer is not assigned by the child's family. In practice, however, there is a lack of legal support services provided by the Palestinian government, and the institutionalization of legal assistance is blocked by juvenile justice actors. Services provided through projects funded by donors are provided by civil society institutions and international institutions operating in oPt, and there are no legal aid funds or government budgets for such services.

Recommendations

The State of Palestine must:

1. Ensure that detention and deprivation of liberty is a measure of last resort and only used for the shortest period possible, and develop and implement alternative measures to deprivation of liberty for children in conflict with the law.
2. Allocate sufficient funds for legal support services for children in conflict with the law.
3. Establish internal standards or mechanisms to monitor places of detention for children—whether in police cells, rehabilitation centers or care homes—and guarantee a regular periodic public report focused on the outcome of these visits and taking remedial actions to rectify the situation.