

Reflections on the Ill-Treatment of Juveniles

Gerard Horton

International Advocacy Officer – Lawyer with Defence for Children International – Palestine Section

I would like to take this opportunity to share some of my reflections on children in the Israeli military court system. Some of what I would like to share is based on over 300 affidavits collected by Defence for Children International – Palestine Section's (DCI) lawyers and fieldworkers in the last few years, and numerous interviews with children.

I would like to address the following three issues:

- First, I will give a very brief overview of the Israeli military court system and its application to children;
- Secondly, I would like to consider what may be the purpose behind this system;
- Finally, I will look at just some of the options available to those trying to provide a defense to children within the system.

As many of you will know, each year, approximately 700 Palestinian children as young as 12 years of age are arrested, interrogated and prosecuted in the Israeli military court system. This averages out at nearly two children each and every day.

Many of you will also be familiar with the scenario. Heavily armed soldiers arrive in the dead of night with a list of children they want to take away. Families are abruptly woken up and often forced outside in their nightclothes at gunpoint. ID's are checked, and once a listed child is identified, his hands will be tied behind his back with plastic ties and he will be blindfolded. In spite of the excellent work by PCATI to challenge the practice of using single plastic ties that cause injury to the hands, the practice continues to this day.

I think it is profoundly disturbing that the parents of these children are almost never told why their children are being arrested, or where they are being taken to in the middle of the night.

Once bound and blindfolded, the child is placed in the back of a military vehicle for transfer to an interrogation center. In many of the cases the children are placed on the floor of the vehicle, and are subjected to both physical and verbal abuse by the soldiers sitting alongside them, which typically consists of kicking and slapping the bound and blindfolded child.

Most of the children are currently being interrogated by Israeli policemen in the settlement blocks of Gush Etzion and Ariel. The policemen don't generally work in the middle of the night, and so the arresting soldiers will take the child to one of the smaller settlements in the West Bank, and wait there until the interrogation centers are open for business.

There is enough evidence to support the perhaps unsurprising conclusion that the purpose of the system is not to impartially determine whether an offence was committed or not, but to intimidate, deter, suppress and instill fear.

In a report submitted by DCI to a number of UN special rapporteurs in January of this year, 47% of the children reported suffering some form of abuse at the hands of soldiers and police inside a settlement – illustrating perhaps the central role the settlements play within this abusive system.

On arrival at Gush Etzion or Ariel settlements, the child is typically taken straight in for interrogation, having now remained painfully tied and blindfolded for many hours. The child enters the interrogation room alone and, not surprisingly, scared – he will not be accompanied by a parent, a right most Israeli children are entitled to – indeed, in all likelihood his parents won't even know where he is.

The ensuing interrogation will almost certainly be abusive, both physically and verbally. There will be no lawyer present or any independent oversight of what takes place inside the interrogation room. After removing the child's blindfold, but leaving him tied by the hands, the interrogator will typically shout and threaten the child with violence or prolonged detention if he does not confess, and will frequently push, slap, punch or kick the child, and sometimes worse. In some of the cases documented by DCI, the treatment clearly amounts to torture, such as reports that hand held electric shock devices were used on three boys during interrogation by a policeman in Ariel settlement late last year. The accusation against these boys was that they threw stones at a road used by settlers. In other cases, there is a strong argument to be made that the cumulative effect of the treatment of these children, over many hours and sometimes days, also amounts to torture, although ill-treatment falling short of torture is still expressly prohibited by law.

According to the findings of a report submitted by DCI to the UN in January of this year:

- 70% of the children reported being beaten or kicked;
- 60% of the children reported some form of position abuse, including being painfully tied to a chair during interrogation;
- 55% of the children reported being threatened or offered inducements, such as a shorter sentence if they confess.

In an analysis of 100 affidavits collected by DCI in 2009, 81% of the children provided a confession following a coercive interrogation.

Within eight days of their arrest, the children are brought before one of two Israeli military courts that have now been operating in the West Bank since June 1967, and which, according to the UN, have now prosecuted well over 700,000 Palestinian men, women and children. It is inside these prefabricated and crowded courtrooms that the child will usually meet with his lawyer for the first time, who will, in all probability, advise the child to plead guilty, as this is the quickest way out of a system that denies bail to Palestinian children in 87% of cases.

Currently, around 62% of the cases handled by DCI in the military court system involve charges of stone throwing. The range of sentences for stone throwing for children at the moment is in the order of two weeks to ten months, although Military Order 1651 – Section 212 does make provision for a maximum penalty of 20 years. Once the child pleads guilty, which the overwhelming majority do, the sentence will, in over half of the cases, be served in a prison located inside Israel, in violation of Article 76 of the Fourth Geneva Convention. In practical terms, this means family visits are difficult, and in some cases, impossible.

I would now like to briefly reflect on what I think is the purpose behind this system. I think a good place to start is to mention that in the last six months of 2010, Palestinian children signed confessions written in Hebrew in 27% of the cases documented by DCI. It is also relevant to note that this extraordinary state of affairs goes unquestioned by the juvenile military court judges who preside over this institution.

In my view, there is enough evidence to support the perhaps unsurprising conclusion that the purpose of the system is not to impartially determine whether an offence was committed or not, but to intimidate, deter, suppress and instill fear, as part of a system which has now maintained control over 2.5 million people for over 43 years. Based on hundreds of testimonies and numerous interviews with children who have been detained, it seems to me that the system is a critical and effective element in this matrix of control.

This point now leads me onto the final part of what I wanted to say today. Faced with a system such as this, what role can a lawyer play, and what defenses, if any, are available to these children?

First, in theory, proceedings in the military courts can be defended. However, challenging this system is risky. As mentioned above, few children are released on bail, and if the case is defended, the Israeli military judge, some of who live in the settlements, will ultimately need to answer a very simple question: 'Do I believe the interrogator – an Israeli – or do I believe the child – a Palestinian?' You can probably guess who usually comes second in that contest, and the result will be a far harsher sentence than if the child had pleaded guilty in the first place. This is the simple reason why almost all of the children eventually plead guilty, even if they insist that they did not do that for which they stand accused before a foreign military court.

Secondly, there is also a complaints procedure. The system does allow for complaints to be filed against the army and police in the case of any wrongdoing. But according to one recent report produced by B'Tselem and Hamoked, between 2001 and 2010, out of 645 complaints filed on behalf of Palestinians against Israeli security interrogators alleging mistreatment, there was not a single criminal investigation. Cases are typically closed, and I quote, 'for a lack of evidence.'

Thirdly, you can think about petitioning the High Court. Occasionally, petitioning the High Court produces a favorable result, but there is frequently little or no follow up enforcement action. Take, for example, PCATI's petition to the High Court in early 2010, regarding the use of painful hand ties. Before judgment was delivered, the state indicated that new procedures had been implemented involving the use of three hand ties instead of one, and yet the painful practice of using one hand tie continues to this day.

Fourthly, there is the UN. The UN has two procedures that DCI uses for limited and specific purposes. We took the view back in 2008, that we will never be able to eliminate the abuse of children within the system whilst there remains a military occupation. However, there are two practical steps, which, if implemented, we believe could make a difference: First, no child should be interrogated in the absence of a parent; and second, all interrogations of children must be audio-visually recorded.

Accordingly, we made these two recommendations the cornerstone of our submissions to the UN Committee Against Torture in 2009, and the UN Human Rights Committee in 2010, both of which were adopted by the Committees in their Concluding Observations. Additionally, every six months we now submit a report to a number of relevant UN Special Rapporteurs in which we review the 50 or so cases we have documented in the past six months. I think these are useful procedures, but remember there are no enforcement powers, and they can provide no immediate protection.



And so now I come to the final option that I want to mention, which I will call 'mobilising for equality'. As a lawyer, I have come to the conclusion that the most effective defense for these children probably does not rest in a court room. I believe that the story of these children is a compelling one and the call for justice and equality must be heard, but for it to be heard we need loud voices. That is why we are now focusing much of our attention on mobilising people to start asking a few simple questions, such as:

- Why is the age of majority for an Israeli child 18, whereas it is 16 for a Palestinian child? ¹
- Why can't a Palestinian child have his mother or father present during questioning, just like an Israeli child?
- Why are only 12% of Palestinian children released on bail, whereas 80% of Israeli children are released pending their trial?
- Why do 83% of Palestinian children convicted of an offence go to prison, whereas only 6% of Israeli children receive custodial sentences?
- Why have so many credible reports of ill-treatment and torture been coming out of this system for so long, and yet nobody is ever held accountable and the abuse continues?

¹ On 27 September 2011, Military Order 1676 was issued raising the age of majority in the military courts from 16 to 18 years. The new military order also makes provision for the notification of a child's parents that the child has been arrested and for informing the child that he/she has the right to consult with a lawyer, but without stating precisely when this consultation should occur.