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## Human Rights Council

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Agenda item 7

**Human rights situation in Palestine and other  
occupied Arab territories**

**Joint written statement\* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), Association Ma'onah for Human Rights and Immigration, Indian Movement "Tupaj Amaru", International-Lawyers.Org, United Towns Agency for North-South Cooperation, Union of Arab Jurists, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 August 2019]

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\* Issued as received, in the language(s) of submission only.



## **The Human Rights of Children in the Occupied Palestinian Territories (OPT)**

### **Introduction**

According to the 1989 Convention on the Rights of the Child (the Convention) article 1, “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

Every child, as such, is entitled to special care. This principle, proclaimed in the Universal Declaration of Human Rights, is recalled in the Convention’s preamble. The preamble further recognises the exceptionally difficult conditions faced by children in armed conflict and that they need “special consideration”. The protection of children is enshrined in international law, international human rights law and in international humanitarian law.

The Convention states in article 3 that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

We would like to recall that both the State of Palestine and Israel have ratified the Convention on the Rights of the Child. We regret that despite these ratifications, many violations of children’s rights in Palestine have been reported throughout the years. We would like to focus on the following issue: the children’s right to not be subjected to arbitrary arrests, extrajudicial killings and violence.

### **International legal protection of children against acts of torture and arbitrary detention**

Many international legal instruments provide for the absolute prohibition of the use of torture, cruel and inhuman treatments. These instruments aim to protect all people from such barbaric practices. They prohibit arbitrary and unlawful arrest and detention and further provide that lawful arrest and detention must be a measure of last resort.<sup>1</sup>

Moreover, we recall that article 40 of the Convention states that a minimal age for responsibility must be established by States parties. Below this age, children are not considered able to understand the law and therefore to break it.

In the West Bank, Israeli military law is applied to the whole Palestinian population and Israeli settlers are subject to the Israeli civilian and criminal legal system.<sup>2</sup> This is a case of discrimination, but for the issue at stake both legal systems provide that no child under the age of 12 can be held responsible.<sup>3</sup> Nevertheless, neither of these provisions are respected by Israel, as several cases show the summoning and interrogation of children as young as four years old. By doing so, Israel is violating both its international and national legal duties.

Even more worrying is the fact that Israel passed a law in 2016 allowing the State “to imprison a minor convicted of serious crimes such as murder, attempted murder or

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<sup>1</sup> Convention on the Rights of the Child, art. 37.

<sup>2</sup> “Military detention”, Defense for Children International – Palestine. [https://www.dci-palestine.org/issues\\_military\\_detention](https://www.dci-palestine.org/issues_military_detention).

<sup>3</sup> Penal Law of Israel-626/1996, Section 34F: No person can be held criminally responsible for an act committed while under the age of 12. Military Order 1651, Section 191: Under Israeli military law applied in the West Bank, no person under the age of 12 can be arrested or prosecuted in a military court. It is the same under Palestinian law – Palestinian Child Law, Article 67 as amended: Children under Palestinian criminal law can be held criminally responsible from the age of 12. Child Rights International Network. <https://archive.crin.org/en/home/ages/asia.html>.

manslaughter even if he or she is under the age of 14,”<sup>4</sup> which means, if the other laws are respected, that children between 12 and 14 years old may be sentenced to jail – but the sentence would only be served when the child reaches the age of 14.

Moreover, under Israel Military Order #1591 of 2007, Israeli forces have the right to detain Palestinian children that are 12 or more years old for up to six months if they have “reasonable grounds to presume that the security of the area or public security require the detention.”<sup>5</sup> We deplore that the lack of definition of the Order’s terms leads to an increased possibility to arrest and detain children.

### **Illegal summoning of children below the age of 12 and constant resort to detention**

In late July and early August 2019, Israeli forces summoned a four-year-old boy for alleged stone throwing and an eight-year-old girl for allegedly harassing the military-backed Israeli settlers.

We are concerned that young children under the age of 12 are summoned for alleged crimes that often did not represent a threat to Israeli forces or other persons. The summoning and interrogation of children has terrible effects on their mental health as interrogation might be frightening, especially for children.

We are further concerned that in 2018, 203 young Palestinians were detained by Israeli forces over security offences, including 114 still awaiting trial and 87 who have been convicted and imprisoned. Many of these children complained of “ill treatment”.<sup>6</sup> Whereas detention must be a measure of last resort according to international law, it is widely used by Israeli forces, including administrative detention, which should stay an exceptional procedure for preventive action.

Moreover, the transfer of child prisoners from the OPT to Israeli prisons violates articles 49 and 76 of the fourth Geneva Convention, which respectively prohibits “the individual or collective transfer of protected persons from occupied territory” and provides that “protected persons convicted of offences shall be detained and serve their sentences within the occupied territory.”

### **Disproportionate use of force against children**

Since March 2018, 44 Palestinian children have been killed in Gaza, and 7000 have been injured during the demonstrations.<sup>7</sup> According to the 2018 report of the Special Representative of the Secretary-General for children and armed conflict, the UN verified the highest number of Palestinian children killed and injured since 2014.<sup>8</sup> We regret that despite this fact, Israel has not been included in the list of States abusing the rights of children in armed conflicts.

<sup>4</sup> “New Israeli law allows children as young as 12 to be jailed”, Defense for children International – Palestine, 11 August 2016.

[http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/dpal/dv/4d\\_dci-p\\_new\\_israeli/4d\\_dci-p\\_new\\_israelien.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/dpal/dv/4d_dci-p_new_israeli/4d_dci-p_new_israelien.pdf).

<sup>5</sup> Working paper n3 “Children and Justice During and in the Aftermath of Armed Conflict”, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, September 2011. [https://childrenandarmedconflict.un.org/publications/WorkingPaper-3\\_Children-and-Justice.pdf](https://childrenandarmedconflict.un.org/publications/WorkingPaper-3_Children-and-Justice.pdf).

<sup>6</sup> Report of the Secretary-General on children and armed conflict S/2019/509, para. 86.

<sup>7</sup> “Humanitarian snapshot: casualties in the context of demonstrations and hostilities in Gaza”, OCHA, 30 March 2018 – 31 May 2019.

[https://www.ochaopt.org/sites/default/files/gaza\\_snapshot\\_17\\_06\\_2019.pdf](https://www.ochaopt.org/sites/default/files/gaza_snapshot_17_06_2019.pdf).

<sup>8</sup> Report of the Secretary-General on children and armed conflict S/2019/509.

As of 2 August 2019, 477 children have been injured in Palestine in 2019.<sup>9</sup> One of many examples is the case of Abdul Rahman, a 9-year-old Palestinian child, who was shot in the head by Israeli Security forces near a protest in the village of Kafr Qaddum, even though several testimonies show that he did not participate actively in the protest.

We are extremely concerned by the excessive use of force against children, often followed by a lack of access to health facilities and medication, leading to aggravated injuries and traumas.

### **Recommendations**

- -We call on the Human Rights Council and the Committee on the Rights of the Child to ensure that Israel respects the minimal age of criminal responsibility, uses detention of children as a measure of last resort, and stops transferring child prisoners from the OPT to Israel.
- -We further call on the international community to continue pressuring Israel into respecting UN resolutions and its international obligations, including the Convention on the Rights of the Child.
- -Lastly, we call on the Special Representative of the Secretary General to add Israel to the “list of shame” of the Annual Report of the Secretary-General on Children and Armed Conflict.

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Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussels Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, NGO(s) without consultative status, also share the views expressed in this statement.

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<sup>9</sup> UNICEF Executive Director Henrietta Fore, “July ends with brutal acts of violence perpetrated against children across the Middle East and North Africa”, UNICEF, 2 August 2019. <https://www.unicef.org/press-releases/july-ends-brutal-acts-violence-perpetrated-against-children-across-middle-east-and>.