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NO WAY TO REPRESENT A CHILD:

DEFENSE FOR CHILDREN INTERNATIONAL PALESTINE'S
DISTORTIONS OF THE ISRAELI JUSTICE SYSTEM

NGOMONITOR



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Defense for Children International Palestine's Distortions

of the Israeli Justice System

September 2017

NGO Monitor's mission is to provide information and analysis, promote accountability, and support discussion on the reports and activities of NGOs claiming to advance human rights and humanitarian agendas.

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KEY FINDINGS

- In April 2016, the Palestinian non-governmental organization (NGO) [Defense for Children International – Palestine](#) (DCI-P) launched its [No Way to Treat a Child](#) campaign, which aims to lobby governments to “use all available means to pressure the Israeli government to end the detention and abuse of Palestinian children.” In this campaign, DCI-P makes numerous false and misleading claims about the IDF and Israeli Military Courts.
- NGO Monitor’s analysis shows that the main allegations made by DCI-P, are not credible.¹ In addition, research shows that the group has alleged links to the Popular Front for the Liberation of Palestine (PFLP) terrorist organization.
- Significant funding for DCI-P and its campaigns is provided by European governments.
- Many of the claims made in DCI-P’s “No Way to Treat a Child” report are self-incriminating. For example:
 - States that innocent Palestinian minors accused of involvement in violent crimes accept plea bargains, even if they are innocent. This occurs when DCI-P staff lawyers ostensibly represent these minors in court. **If true, this would be an ethical violation, if not malpractice.**
 - Claims that Palestinian minors’ confessions were acquired through violence and torture. If true, DCI-P had a duty to report this to the proper authorities and raise it before the court to achieve a dismissal. Again, failure to do so would be an ethical violation, if not malpractice.
 - In 2013, the IDF Military Prosecution suggested, *inter alia*, to DCI-P lawyers be included on a list of attorneys with whom Palestinian minor suspects could consult. DCI-P refused to be part of this initiative.
- The analysis shows that DCI-P misstates international and domestic law, particularly jurisdictional concepts, criminal adjudication, and juvenile justice standards. This suggests that perhaps DCI-P is deliberately presenting a highly selective, biased and/or false interpretation of the law. For example:
 - Falsely claims that minors are placed in solitary confinement. In reality, international and domestic law forbids minors from being held with the adult population. Therefore, if a sole minor is arrested, they must be held separately.
 - Condemns Israel’s use of military courts. Yet under the legal paradigm used by DCI-P (concerning occupation under international humanitarian law), Israel is required to use such courts exclusively.
- DCI-P’s research methodology is inherently flawed, and many of the statistics provided are either meaningless, without context, or irrelevant.
- DCI-P claims to be a human rights group. Yet, it minimizes the consequences and criminal nature of acts such as throwing rocks at cars moving at high speeds on highways.

INTRODUCTION

In April 2016, the Palestinian non-governmental organization (NGO) [Defense for Children International – Palestine](#) (DCI-P) launched its [No Way to Treat a Child](#) campaign, which aims to lobby gov-

¹ NGO Monitor has prepared this analysis with the help of NGO Monitor’s Senior Military Consultant Lt. Col (Res.) Maurice Hirsch. Hirsch was the Chief IDF Prosecutor for Judea and Samaria from 2013-2017. As seen in the various methodological flaws, misrepresentation of sources, false claims regarding military courts, and misrepresentation of the “Convention on the Rights of the Child,” DCI-P lacks the expertise and knowledge that Hirsch possesses.

ernments to “use all available means to pressure the Israeli government to end the detention and abuse of Palestinian children.” In this campaign, DCI-P makes numerous false and misleading claims about the IDF and Israeli Military Courts. The following report systemically analyzes and refutes, with legal evidence, the claims made by DCI-P in this campaign.

BACKGROUND

DCI-P frequently publishes false and unverifiable information and accusations alleging “child abuse” by Israeli security forces. The NGO supports [BDS](#) (boycott, divestment, and sanctions) and lawfare campaigns against Israel.

DCI-P also has alleged [ties to the Popular Front for the Liberation of Palestine](#) (PFLP) terrorist organization, designated as such by the governments of the [US](#), [EU](#), [Canada](#), and [Israel](#). For example, Hashem Abu Maria, [a DCI-P employee](#), was hailed by the PFLP as a “[commander](#)” after his death in 2014, and board member [Mahmoud Jiddah](#), reportedly a “PFLP member,” was [imprisoned by Israel for 17 years](#) for carrying out “grenade attacks” against Israeli civilians in Jerusalem in 1968 (see NGO Monitor’s report “[The European-Funded NGO PFLP Network](#)” for more examples).

DCI-P is funded by the [Human Rights and International Humanitarian Law Secretariat](#) (\$738,000 from 2014-2016) – a joint NGO-funding mechanism of the governments of [Denmark](#), [Sweden](#), [Switzerland](#), and the [Netherlands](#). DCI-P’s 2014 Annual Report also lists funding from France (Consulate), [ICCO](#) and Kerk in Actie ([Netherlands](#)), [Bread for the World](#) ([Germany](#)), [Broederlijk Delen](#) ([Belgium](#)), Swiss Interchurch Aid- [HEKS](#), Stichting Kinderpostzegels Nederlands ([Netherlands](#)), ARCI Cultura e Sviluppo ([Italy](#)), Mundubat ([Spain](#)), [Save the Children International](#), [World Vision](#), UNDP, UNICEF, The United Methodist Church, The United Church of Canada, Evangelical Lutheran Church in America, [Open Society Institute](#), and others (donation amounts are not provided, reflecting a lack of transparency and accountability).

ANALYSIS OF DCI-P’S “NO WAY TO TREAT A CHILD” REPORT

DCI-P Claims

Ramallah, April 14, 2016 - Today, Defense for Children International - Palestine published a new report, [No Way to Treat a Child](#), detailing the widespread and systematic ill-treatment of Palestinian children in the Israeli military detention system. From meals prepared in a makeshift kitchen to adult prisoner “caregivers,” the report also gives a rare glimpse into Palestinian children’s daily living conditions in Israeli prisons.

DCIP based the report on the testimonies of 429 children detained by the Israeli military or police in the occupied West Bank between January 2012 and December 2015.

NGO Monitor Analysis

DCI-P manipulatively and deliberately creates a false narrative regarding Palestinian children committing criminal offenses. Close inspection of their claims, material omissions, and distorted statistics demonstrates that this NGO disseminates propaganda, and not credible human rights research.

DCI-P Claims

“International law is clear: children should only be detained as a last resort, for the shortest appropriate period of time, and under absolutely no circumstances should they be subjected to torture or ill-treatment,” said Khaled Quzmar, DCIP general director. “And yet, year after year, we see Palestinian children experiencing widespread ill-treatment and the systematic denial of their due process rights by Israeli forces and the military law framework.”

NGO Monitor Analysis

Israel does not question that children should only be detained as a last resort and, like adults, should never be the subject of torture or ill treatment. At the same time, individuals committing violent crimes, including assault and murder, are not immune from accountability simply because they are minors.

In order to ensure that fundamental rights are granted to all suspects, including Palestinian minors, Israel operates multi-faceted law enforcement systems both within its recognized boundaries and in the areas controlled by the Israeli Military pursuant to the mutually agreed to and internationally guaranteed Oslo Accords. These systems provide comprehensive rights for all those who violate the law.

DCI-P Claims

Amid heightened violence in the fall of 2015, the number of Palestinian children in Israeli prisons skyrocketed to the highest it has been since February 2009. By the end of December, 422 Palestinian children were in the Israeli prison system. Among them were 116 between the ages of 12 and 15, the highest known total since January 2008 when the Israel Prison Service (IPS) began sharing data.

NGO Monitor Analysis

DCI-P highlights a rise in the number of Palestinian minors held in Israeli prisons, falsely implying that Israel is deliberately targeting children and arresting them without cause. DCI-P obscures an intense campaign of incitement to violence by Palestinian officials, which began in Fall 2015, inducing hundreds of Palestinian teenagers to carry out acts of terrorism including stabbings, shootings, car ramming, and armed confrontations with the police and army. As a result, hundreds of civilians have been murdered or suffered injury. The murderers, including Palestinian minors, [were then hailed as “heroes” and a “crown on the head of every Palestinian” and were encouraged by senior Palestinian Authority figures to commit additional attacks.](#)

Despite claiming to advocate for child rights, DCI-P has not done any campaigning in protest to the Palestinian policy of exploiting children to carry out attacks on both civilians and security personnel – both of which are serious violations of international law.

DCI-P Claims

Israel has the dubious distinction of being the only country in the world that systematically prosecutes between 500 and 700 children in military courts each year. Since 2012, Israel has held an average of 204 Palestinian children in custody each month, according to data provided by the IPS.

NGO Monitor Analysis

According to international law and the occupation paradigm that DCI-P applies to the West Bank, Israel is required to “restore, and ensure, as far as possible, public order” and safety. This same law, again the law that DCI-P claims is binding, requires Israel to create Military Courts (Fourth Geneva Convention, Art. 66). As a result, Palestinian minors residing in the West Bank can **only** be prosecuted by these courts and according to the jurisdictional parameters agreed to in the Oslo Accords. That other countries do not adhere to the applicable international law in other conflict zones is a reflection on those countries, not Israel, as claimed by DCI-P.

In addition, the recitation of the average number of prisoners held each month is a meaningless statistic.

Without any information relating to the involvement of Palestinian minors in criminal and terrorist activity, no informed conclusion can be made based on such an “average.” Clearly, if there is an increase of minors committing violent crimes, there will be a corresponding increase in the number of minors held in custody. As shown in the data, the number of detained minors spiked during Fall 2015, precisely due to the Palestinian incitement campaign and increase in the commission of violent crimes and terror acts by Palestinian minors.

Moreover, and in contrast to DCI-P’s claims, IDF statistics show that, since 2013, between 800-1,000 Palestinian minors are arrested annually in areas under Israeli control. Of those arrested, only 450-505 Palestinian minors are prosecuted. In other words, on average, out of a population of one million minors (according to the Palestinian Central Bureau of Statistics), **less than 85 Palestinian minors are arrested each month, and less than half of them are actually prosecuted.** In comparison, nearly 90,000 minors aged 10-17 were arrested in [England and Wales](#) between April 2015-March 2016, an average of approximately 7,500 each month. Adjusted for population, the rate of arrests of minors in England and Wales is [5.5 times higher than the West Bank](#),² even though it is not in an armed conflict situation.

Therefore, DCI-P’s claims, even taken as true or relevant, prove the very opposite of what DCI-P alleges.

Again, DCI-P appears to be arguing that Palestinian minors who commit murder and other violent crimes should be exempt from accountability. It is odd that an organization receiving millions in funding from European governments, international institutions, and churches to promote “human rights” is instead advocating for impunity for Palestinians who commit murder, violent assault, and other crimes.

DCI-P Claims

Military law has applied to Palestinians in the West Bank since 1967, when Israel occupied the territory following the Six Day War. Jewish settlers, however, who illegally reside within the bounds of the West Bank, are subject to the Israeli civilian legal framework. Accordingly, Israel operates two separate legal systems in the same territory.

NGO Monitor Analysis

This DCI-P statement intentionally attempts to mislead the uninformed reader, by inferring discrimination based on ethnicity. In reality, Israel’s policy is guided by citizenship/residency status

² The population of England and Wales is approximately 56 million, while the West Bank Palestinian population is around 3.3 million according to Palestinian Central Bureau of Statistics.

and the requirements of international law. The occupation paradigm that DCI-P applies to the West Bank would require the same framework. Ethnicity is irrelevant.

It is also ironic that DCI-P decries Israel for not applying Israeli domestic law to West Bank Palestinians. If Israel were to apply its domestic laws to Palestinian residents in the West Bank, DCI-P would accuse Israel of illegally annexing the territory.

DCI-P Claims

Ill-treatment in the Israeli military detention system remains "widespread, systemic, and institutionalized throughout the process," according to the UN Children's Fund (UNICEF) [report](#) Children in Israeli Military Detention Observations and Recommendations.

NGO Monitor Analysis

DCI-P fails to inform the reader that UNICEF's highly criticized 2013 report was largely a copy-and-paste of previous DCI-P reports. In other words, DCI-P is simply citing itself rather than any independent conclusions.

In turn, the UNICEF and DCI-P reports were based on anonymous complainants who inexplicably never submitted formal complaints. The UNICEF report also included numerous factual and fundamental legal mistakes that would never have been made by actual professionals or experts addressing law enforcement, juvenile justice, and detention issues.

See NGO Monitor's forthcoming report about UNICEF for more information on this issue.

DCI-P Claims

Out of 429 West Bank children detained between 2012 and 2015, three-quarters endured some form of physical violence following arrest.

NGO Monitor Analysis

While DCI-P constantly makes claims of this nature, it should be stressed that very few actual complaints are either submitted to the appropriate Israeli civilian or military authorities or raised in court, and even fewer are found to be justified. In practice, the claims are made based on anonymous complainants "interviewed" by DCI-P staffers.

At a face-to-face meeting in Geneva in June 2017, NGO Monitor asked a DCI-P researcher for non-confidential information on these cases in order to investigate the NGO's claims. The researcher was given NGO Monitor's contact details and represented that he would provide such information, but he never did. He also refused to provide his own contact details. This was the second occasion in which this researcher failed to provide NGO Monitor with requested information after stating he would do so. In a previous case, DCI-P claimed it was working with a military expert to write its reports on the 2014 Gaza war. DCI-P refused to identify its supposed expert after NGO Monitor requested the information.

DCI-P Claims

In 179 out of 429 cases (41.7 percent), the Israeli military arrested children from their homes in the middle of the night.

NGO Monitor Analysis

There is no internationally recognized standard that prohibits nighttime arrests, even of minors.

Israel carries out nighttime arrests for predominantly operational reasons, as daytime arrests often result in wide scale disturbances of the peace, including gun battles.

IDF statistics show that the percentage of nighttime arrests is much lower than what DCI-P represents. For example, in 2013 less than 17% of the Palestinian minors arrested that year were arrested in nighttime arrests.

DCI-P Claims

In 378 out of 429 cases (88.1 percent), Israeli forces arrested children without notifying parents of the reason for arrest or the location of detention.

NGO Monitor Analysis

This statement lacks any factual credibility for multiple reasons:

Despite the lack of international standards on the issue of notification, IDF operational orders require that the parents of a minor arrested at home are given a form that includes the nature of the suspicion for which the minor is being arrested, the intended place of interrogation, and contact numbers.

After DCI-P's false claim was parroted by UNICEF, the IDF Military Prosecution required the operational forces and the Israeli police to include a copy of this form in the investigative files. The existence in the files of these forms, signed by the parents of the arrested minors, unequivocally proves that this claim lacks any credibility.

In addition, the applicable law [requires that parents be notified when](#) an investigator questions a minor (Paragraph 136A(a)). These conversations are documented at the start of the investigation. Moreover, the law requires that [notification of every arrest](#) (Paragraph 53) be provided to the family of the detainee. These notifications are documented.

DCI-P Claims

In 416 out of 429 cases (97 percent), children had no parent present during the interrogation or access to legal counsel.

NGO Monitor Analysis

This statement lacks factual basis and is intentionally misleading.

There is no internationally recognized standard that requires parents to be present during the interrogation of minors. In Israel, [minors who are interrogated under arrest are not entitled to have their parents present](#) (para 9H). The same rules applied by the Israeli authorities to its own citizens are also applied to Palestinian minors.

Similarly, Israeli law does not permit lawyers to be physically present during interrogations. Having said that, the law provides that every [suspect has the right to consult with counsel before being interrogated](#) (Paragraph 56). Alongside the general provision, the law applied in the West Bank places a specific and additional onus on the interrogator of a minor to ensure that the nature of the [right has been explained in language that takes into account the age and maturity of the suspect](#) (Paragraph 136C(a)).

[Precedent set down by the Israeli Supreme Court](#) provides that statements taken from a suspect in breach of this right can be quashed.

Furthermore, in 2013, the IDF Military Prosecution suggested, *inter alia*, that DCI-P be included on a list of attorneys with whom Palestinian minor suspects could consult. While DCI-P is the recipient of donor money from, amongst others, UNICEF and Save the Children, given to facilitate the representation of Palestinian minors, DCI-P refused to provide any details to the Prosecution.

DCI-P Claims

Israeli police also did not properly inform children of their rights in 84 percent of the cases.

NGO Monitor Analysis

It is entirely unclear to what this statement refers. Inasmuch as it refers to the right to consult with counsel, see the previous answer.

Additionally, it is important to stress that a [suspect has the right to avoid self-incrimination](#) (Paragraph 70(e)).

The text, in Arabic, that explains these rights is a standard text approved by the Israeli Ministry of Justice for use throughout Israel and the West Bank.

DCI-P Claims

Interrogators used position abuse, threats, and isolation to coerce confessions from some of these children.

NGO Monitor Analysis

The rules of evidence applied by the Military Courts are the [same rules of evidence applied in the Israeli civilian courts](#) (Paragraph 86). The Israeli rules of evidence provide that statements, including confessions, of defendants are only admissible in court if they were [given freely and willingly](#) (para, 12).

Accordingly, if the abusive acts attributed to the interrogators were indeed common, two consequences would result:

First, one would expect a large volume of complaints submitted to the relevant authorities. It is important to note that the interrogations of Palestinian minors are carried out by the Israeli police. Complaints against the conduct of these interrogators can be submitted to the Police Investigations Department of the Israeli Ministry of Justice. Statistics provided by the Ministry demonstrate that there is no evidence that supports widespread complaints.

Second, the claims would be raised in court because, if proven, the confession would be inadmissible as evidence. In reality, though, claims of this nature are uncommon in court, including from defendants represented by DCI-P lawyers.

DCI-P Claims

DCIP documented 66 children held in solitary confinement, for an average period of 13 days, during the reporting period. In 2015, Israeli authorities held [name of suspect]³, 17, in isolation for 45 days. More than 90 percent of children held in solitary confinement provided a confession.

NGO Monitor Analysis

Israel does not hold suspects in solitary confinement, [defined as physical isolation in a cell for 22 to 24 hours per day](#) (para. 77). Suspects under interrogation cannot be held in solitary confinement for a number of reasons:

First, Israeli police stations do not have the physical capabilities to hold suspects in solitary confinement.

Second, holding a suspect in solitary confinement impedes the investigation and could result in the release of the suspect.

Third, minor suspects aged 12-13 who are under arrest for interrogation must be brought before a court within a [maximum of 24 hours of their arrest](#) (para. 31B(1)). Minor [suspects aged 14-15](#) who are under arrest for interrogation for all offences (para. 31B(2)) and minor [suspects aged 16-17](#) who are suspected of committing non-security offences must be brought before a court within a maximum of 48 hours of their arrest (para. 31 (c1)). Minor [suspects aged 16-17](#) who are under arrest for interrogation, on suspicion of committing security offences must be brought before a court within a maximum of 96 hours of their arrest (para. 31(c)). While the court hearings of minors are held in camera, to protect their identity, the suspect has a [right to have his family present](#) (para. 147). He also has the [right to be represented by lawyer](#) (para. 146(a)). The court can only order that the initial period of arrest be extended for a [maximum of 15 days](#) (para. 37(b)). Thereafter, the court can only order additional periods of arrest for [10 days at a time](#) (para. 37(b)). In these hearings, the police must show that they have evidence that corroborates the suspicion against the minor and specific cause. The police must also show that the investigation is progressing and that the time the suspect has been held under arrest has been effectively used.

It should be noted, that DCI-P claims that minors are held in solitary confinement **even when they are the only minors held in the detention facility**. In these cases, the separation of the minor from the other adult detainees is not the result of “solitary confinement” but rather adherence to [domestic](#) (para. 149(a)) and international norms that require that [minors under arrest be held separately from the adults](#) (Article 37(c) – Convention on the Rights of a Child).

DCI-P also claims that minors are held in solitary confinement if they are held separately from other interrogees. Separation of interrogees, particularly interrogees who are being questioned in connection to the same offence, is a common law enforcement practice and is not considered, in and of itself, to be solitary confinement.

Solitary confinement is only possible in Israel as a result of disciplinary actions taken by [prison authorities in extremely prescribed circumstances](#) (para. 58).

Finally, it should be noted, that when DCI-P named the suspect ostensibly held in solitary confinement for 45 days, they appear to have broken not only the law, but also a common provision of juvenile justice. As noted above, in order to protect the identities of the minors, the courts conduct their hearings in camera. The law [prohibits publicizing any detail of a proceeding held in camera without the approval of the court](#) (para 89(e)). Similarly, [the law prohibits publicizing the name of a minor](#) who is a defendant, a witness or a complainant, without the permission of the court (para.

³ NGO Monitor has redacted the name of the suspect included in the DCI-P report to avoid further dissemination of his name.

93).

Furthermore, the above provisions of the law demonstrate just how unfounded DCI-P's claims are. Given his age, and on the assumption that he was suspected of security offences, in the course of his alleged 45 days of "solitary confinement" the suspect named would have been brought before a judge on **at least five occasions - once within the initial 96 hours** of his arrest; **once again no more than 15 days after the initial hearing** (assuming the infrequent decision of a the judge to order the suspects continued arrest for the full period of time provided by the law); **once again no later than day 29 of his arrest** (assuming again the infrequent decision of a the judge to order the suspects continued arrest for the full period of time provided by the law); **once again no later than day 39 of his arrest** (assuming again the infrequent decision of a the judge to order the suspects continued arrest for the full period of time provided by the law); and **once again no later than day 44 of his arrest** (para. 38), the suspect would have been brought to an additional remand hearing, this time, automatically, before the Military Court of Appeals. The additional assumption that has to be made is that the suspect, his family, and his defense counsel positively chose not to appeal any of the decisions of the judges of first instance to the Military Courts of Appeals. In all five instances, the hearing would have taken place in the presence of his lawyer, and his parents would have had the right to be present.

DCI-P Claims

Israeli military court judges seldom exclude confessions obtained by coercion or torture, even those drafted in Hebrew – 144 out of 429 cases (33.6 percent) – a language that most Palestinian children do not understand. In fact, military prosecutors rely on these confessions to obtain a conviction.

NGO Monitor Analysis

The fact that military and civilian judges seldom exclude confessions of defendants is not the product of bias, as alleged by DCI-P, but rather because claims of "coercion or torture" are rarely raised by the defendants in court.

As regards confessions drafted in Hebrew, DCI-P is again intentionally misleading readers and donors:

First, interrogations are conducted in Arabic.

Second, when the statement of the suspect is documented in Hebrew, the interrogation must be audio or audio-visually recorded in order for an indictment to be submitted to the court.

Since DCI-P receives funding for, and purports to represent many of the Palestinian minors it alleges suffered ill treatment, the question begs, **why did its lawyers did not raise these issues in court where they could have had an impact on the outcome of the case if proven true?** If DCI-P lawyers failed to raise such claims in court, it would suggest extremely poor lawyering by DCI-P on behalf of their clients.

DCI-P Claims

Children most commonly face the charge of throwing stones, which carries maximum sentences of 10 or 20 years, depending on the circumstances. In 235 out of 297 cases closed by DCIP attorneys between 2012 and 2015 involved at least one count of the offense.

NGO Monitor Analysis

DCI-P is again deliberately misleading its readers when it notes the maximum sentences provided by the law for the offence of stone throwing.

DCI-P fails to inform that while the law always provides a maximum sentence for any given crime, judges have complete discretion regarding the actual sentence. In sentencing the judges take in to [account the nature of the offence, its circumstances](#) (para. 129(c)), [the age of the offender](#) and all other relevant considerations (para. 168).

As a result of the judicial discretion, the actual sentences handed down are far below the maximum provided by the law. As DCI-P itself admits *“Most receive plea deals of less than 12 months.”*

In addition, as is the practice internationally, indictments generally include all of the possible charges with which a suspect can be charged. The range in severity allows for suspects to be tried on lesser charges if the case warrants. Many of the cases in which stone throwing was on the indictment also included murder and attempted murder.

Furthermore, stone throwing is indeed the most prevalent offense committed by Palestinian minors. Often, gangs of Palestinian teenagers stand at the side of roads and pound the passing cars that they identify as “Israeli cars” with stones. Stone throwing at on-coming vehicles travelling at high speed tremendously increases the kinetic force of the chosen weapon and poses a real and severe danger to drivers. The minors often cause considerable physical damage and in many instances severe injury. Stone throwing has also [resulted in the death of the victims](#).

It is bizarre that a human rights group, as DCI-P claims to be, would minimize the act of throwing rocks at cars on a highway. It is also immoral that European governments, international institutions, and churches would fund an organization that argues such.

DCI-P Claims

Many children maintain their innocence, but plead guilty as it is the fastest way to get out of the system. Most receive plea deals of less than 12 months. Trials, on the other hand, can last a year, possibly longer.

NGO Monitor Analysis

Considering the extent of international aid that DCI-P receives, and the number of Palestinian minors ostensibly represented by DCI-P, the first part of **this claim is nothing short of criminal. Taken at face value, DCI-P is actually acknowledging that its lawyers knowingly and willingly allow innocent Palestinian minors to confess to crimes that they did not commit.** If a defendant genuinely maintains his innocence, and his lawyer, funded by international aid, believes in his innocence, he has an ethical requirement to ensure that he exhausts all legal avenues available. Plea bargains cannot be forced on a defendant by the prosecution or by the courts. In the course of a plea bargain, the defendant himself admits guilt for a crime for which he was indicted. If a defendant’s lawyer knows that the defendant is perjuring himself by accepting a plea, he has an ethical duty to make this known to the court.

It would appear that minors represented by DCI-P lawyers, based on DCI-P’s own claims, would have a strong case for malpractice.

The reality, grossly twisted by DCI-P, is that juvenile judges are exceptionally sensitive to the cases of minors, and do their utmost in order to expedite their trials. According to the law, once indictments are submitted to court, [the prosecution is obligated to allow the defense to copy all of the evidence](#) (para. 74). At this point, the prosecution is required to be immediately ready for trial. Thereafter, in most instances, the **delays in the trials are the consequence of requests by the defense.**

Notwithstanding the requests of the defense lawyers, the trial dates of minors are typically set within short periods, taking into account the nature of the offense or offenses for which the minor has been indicted and his age.

DCI-P Claims

Bail is rarely granted and most children remain behind bars as they await trial. Of 297 cases closed by DCIP attorneys between 2012 and 2015, Israeli military court judges released children on bail in only 40 cases (13.5 percent).

NGO Monitor Analysis

As a result of the Oslo Accords, most crimes committed by Palestinian minors are under the jurisdiction of the Palestinian Authority. The military courts only have jurisdiction over security offences and limited criminal offences, carried out in Area C, when the victim was an Israeli.⁴ Consequently, the military courts deal mainly with violent security offenses, including murder and attempted murder – offenses where bail would be highly inappropriate.

When deciding whether to order that any suspect be held under remand pending trial, the court evaluates the evidence that has been gathered, the nature of the offence that has been committed, the age of the defendant, and the existence of alternatives to incarceration.

The general rule, given sufficient *prima facie* evidence is that defendants indicted with severe, violent crimes are held on remand pending trial. Exceptions to the rule are available when other effective means, such as closed hostels or house arrest, can be employed to prevent the defendant from further endangering the public. Since many of the defendants live in areas that are controlled by the Palestinian Authority, and since the Palestinian Authority refuses to cooperate with the Israeli authorities on these issues, real and effective alternatives to remand are rare.

DCI-P Claims

Out of 295 cases that resulted in convictions, 151 children (51.2 percent) received a custodial sentence between three and 12 months. All 295 also received suspended sentences. Israeli military court judges also imposed fines in 261 out of 295 cases (88.5 percent).

NGO Monitor Analysis

In the absence of a detailed breakdown of the indicted offenses, these statistics again lack any real value. According to IDF statistics for 2013-mid-2016, between 30%-40% of the Palestinian minors who stood trial before the Military Courts were indicted for serious crimes, including murder, attempted murder, shooting at persons, illegal possession of weapons, and making and/or throwing explosive devices. Considering the severity of these crimes, it should not be surprising that many of them were sentenced to prison terms in excess of one year.

Furthermore, suspended sentences are commonly viewed as an effective deterrent and are common place in most criminal systems. Suspended sentences provide the defendant with the opportunity to reform and avoid involvement in future criminal activity. As such, suspended sentences are usually only problematic for repeat offenders.

⁴ These additional criminal offenses include burglary (i.e. breaking into homes), car theft, rape, forgery, and some drug offenses. Other crimes committed in Area C are prosecuted by the Palestinian Authority.

The imposition of fines on Palestinian minors is indeed common practice and is rooted in prevailing theories of criminal justice. A general theory of juvenile criminology is that juvenile criminal activity is often a consequence of a lack of parental supervision or even parental neglect. When fines are imposed on minors, the general assumption is that these fines will be paid by the parents of the minor and will result in greater involvement of the parent to prevent future criminal activity. The imposition of fines as a form of restitution is common place in criminal justice systems worldwide.

An additional factor is relevant for the case of Palestinian minors. [The Palestinian Authority uses an average of 7% of its entire annual budget to pay salaries to prisoners. Prisoners held for up to three years will receive a salary of NIS 1,400 or approximately \\$380 per month from the day of their arrest.](#) Minors are also entitled to this salary. The payment of this salary to families of the minors means that there is a clear financial incentive to commit crimes corresponding with longer prison sentences.

DCI-P Claims

Israeli authorities transfer nearly 60 percent of Palestinian child detainees from occupied territory to prisons inside Israel in violation of the Fourth Geneva Convention, according to IPS data. Many parents struggle to obtain entry permits to Israel, and children have limited family visits.

NGO Monitor Analysis

Despite DCI-P's claim, holding Palestinian prisoners in prisons in Israel is not a breach of international law. This claim, first raised in the late 1980s, was [rejected in a detailed decision of Israel's Supreme Court](#), analyzing the relevant provisions of both international and domestic law.

Palestinian minors are entitled to family visits, organized by the International Committee of the Red Cross, with the same frequency as Israeli minors. Noting the organized framework within which these visits are conducted, only parents who pose a considerable danger to Israel's security are refused permits to visit their children. Decisions of this nature are also made regarding Palestinians, including minors, who are held in the one Israeli prison in the West Bank.

It should also be noted that the Palestinian minors are held in only one prison in Israel that specifically holds minor prisoners and can provide the necessary services required for them.

DCI-P Claims

"In no circumstance should children face detention and prosecution under the jurisdiction of military courts."

NGO Monitor Analysis

As explained above, this statement has no legal or factual basis. **Given the requirements of international law, what, short of impunity, does DCI-P propose Israel do with Palestinian minors who have committed violent offences, including murder?** According to DCI-P's argument, Palestinian minors such as H.A., who was convicted of massacring a family of five Israelis asleep in their home, including 2 small children and a baby; H.J. who was convicted of slitting the throat of an Israeli and then stabbing him 17 additional times; M.D. - who was convicted of repeatedly stabbing a nurse to death with such force that the knife became lodged in her skull – should have gone unprosecuted.

Raising this argument and expecting a moral person to accept it, says much more about DCI-P and the European governments, international institutions, and churches that fund DCI-P than the Israeli military justice system.

DCI-P Claims

“However, as a minimum safeguard, Israeli authorities have an obligation to ensure all procedures from the moment of arrest conform to international juvenile justice standards.”

NGO Monitor Analysis

Once again, DCI-P is misleading its readers by suggesting that the Israeli military justice system does not conform to international juvenile justice standards. By doing so, DCI-P intentionally ignores the many provisions of the law that ensure that the Israel military justice system not only adheres to the minimum standards, but in many cases, exceeds them.

The relevant provisions, that should be compared to the standards set out in the Convention on the Rights of the Child, particularly article 37 thereof, that DCI-P chooses to ignore, include the following:

1. A person can only be [arrested given a specific suspicion](#) of committing an offence (para. 31).
2. The parents of a minor must be [informed of his arrest](#) (para. 53).
3. A suspect has the [right to consult with counsel](#) before being interrogated (para. 56). This right must be explained to the minor in language that he understands taking in to [account his age and maturity](#) (para. 136C(a)).
4. Before interrogating a minor, a police officer must [notify the suspect’s parents of the intention to interrogate him](#) (para. 136A).
5. A suspect has the [right to avoid self-incrimination](#) (para. 70(e)).
6. In order to **submit an indictment, a prosecutor must be convinced that the evidence gathered provides a “reasonable chance of conviction.”** In practice, the Military Prosecution applies a higher standard.
7. **The rules of evidence** applied by the military courts [are exactly the same as the rules of evidence applied in the Israeli domestic criminal justice system](#) (para. 86).
8. **The rules of procedure** applied by the military courts are almost [exactly the same as the rules of procedure applied in the Israeli domestic criminal justice system](#) (para. 82).
9. Having submitted an indictment, the **Military Prosecution is required, subject to the provisions of the law, to provide the defendant and his counsel with the evidence gathered in the course of the investigation** (para. 74).
10. The defendant has the [right to be represented by counsel of his choice \(para. 76\)](#). If the defendant did not appoint his own counsel, the [court can appoint one for him \(para. 77\)](#). In practice, all Palestinian defendants are represented by either lawyers of their choice, lawyers provided by the Palestinian Authority, or lawyers funded by the terrorist organizations to which they belong.
11. **The standard of proof** required for a conviction in the military courts is exactly the same as the Israeli domestic criminal justice system, and many other jurisdictions. The guilt of the defendant must be proved [beyond reasonable doubt \(para. 207\(B\)\)](#).

12. The trials of minors are conducted before [specially trained and certified Juvenile Judges](#) (para. 138).
13. The trials of minors are [conducted separately from the trials of adults](#) (para. 139).
14. [Special statutes of limitations](#) that apply only to the prosecution of minors (para. 144).
15. The [parents of minors have special standing](#) before the court (para. 147).
16. While it is questionable whether the relevant rationales apply, the military courts conduct the hearings of minors in camera.
17. Before sentencing a minor, the court can order the [preparation of a social workers report](#) (para. 148).
18. Before handing down a sentence the [court must take into account, inter alia, the age of the minor](#) (para. 168(a)).
19. [Special limitations on sentencing exist](#) (paras. 168(b) and 168(c)).
20. The [law prohibits publicizing the name of a minor defendant](#), unless authorized by the court (para. 93).
21. Minors are held in prison [separately from adults](#) (para. 149).
22. While international law does not require the creation of an appeals court, such a court has existed in the West Bank since 1989. Decisions of the Court of First Instance are appealable by right ([para. 45\(a\) as regards decisions relating to detention and 152 regarding convictions and sentencing](#)).

Claims Comparing Treatment in East Jerusalem and the West Bank

DCI-P Claims

Palestinian children living in the West Bank might sometimes envy their East Jerusalem peers for their relatively higher levels of freedom of movement and enshrined legal rights. The latter of these is particularly salient as Palestinian children living in Jerusalem are generally entitled to trials in Israeli civilian courts.

NGO Monitor Analysis

Notwithstanding DCI-P's claim, in practice, there are few substantial differences between the rights afforded by Israeli courts and those by military courts in the West Bank.

DCI-P Claims

The legal distinctions between East Jerusalem and the West Bank trace back to 1967, when Israel captured that part of the city and declared all of Jerusalem its "indivisible" capital. Since then, Palestinian children who happen to live in Jerusalem fall under Israeli civilian law.

NGO Monitor Analysis

Whether or not recognized by foreign entities, Israel formally applied its domestic law to all of

Jerusalem. All persons suspected of committing a crime enjoy the same rights, irrespective of sex, color, religion, ethnic origin, or gender.

DCI-P Claims

The legal gap between Palestinian children in the West Bank and Jerusalem expanded further—at least, in theory—when Israel amended the 1971 Youth Law (Adjudication, Punishment and Methods of Treatment) in 2008. The amendments promised new protections for children, including East Jerusalemites, in conflict with the law during the entire process— arrest, transfer, interrogation, and trial. These safeguards included the use of arrest as a last resort, advance notice before questioning takes place, minimal use of restraints, and the presence of a legal guardian or adult family member during questioning.

NGO Monitor Analysis

As noted above, in practice there are very few differences between the rights afforded by Israeli civilian and military courts. Accordingly, when DCI-P claims that the “legal gap... expanded,” it is simply misleading its readers.

DCI-P Claims

Given the prescribed differences in these two legal systems, one would logically expect fairly different rights outcomes for Palestinian children in conflict with the law based on whether they live in Jerusalem or the West Bank. At least on paper, Palestinian Jerusalemite children are entitled to more protections than West Bank youth.

NGO Monitor Analysis

Since DCI-P’s initial, basic assumption is lacking any veracity, it is not surprising that the consequent findings also lack any real content.

DCI-P States

However, data compiled by DCIP found that, in practice, Palestinian children in Jerusalem are not enjoying their enshrined rights. Out of 65 cases documented by DCIP in 2015, more than a third of Jerusalem youth were arrested at night (38.5 percent), the vast majority (87.7 percent) were restrained during arrest and only a slim minority of children (10.8 percent) had a parent or lawyer present during interrogation. In fact, in the last year, East Jerusalem children suspected of committing criminal offenses saw rights violations in several categories at comparable rates to West Bank children. For example, cases documented by DCIP showed 69.2 percent of detained Jerusalem children suffered some form of physical violence at the hands of Israeli forces compared to 74.5 percent of West Bank children. For night arrest cases, there was nearly no difference between the two groups. Although they had better outcomes than their West Bank peers along a few axes, such as rights notifications and access to a toilet between arrest and interrogation, they also suffered much higher rates of position abuse during interrogation. As a whole, it is apparent that Israeli civilian laws, when applied to Palestinian children from Jerusalem do not approach “guarantee” rates.

NGO Monitor Analysis

Once again, the absence of any control group or comparative statistics renders the numbers provided by DCI-P irrelevant. For example, are other Israelis suspected of committing similar offences not arrested at night? Are other Israelis suspected of committing similar offences not restrained? Are other Israelis under arrest permitted to have a parent or lawyer resent during their interrogation? Do human rights groups that represent other Israelis report lower levels of “physical violence” at the hands of the Israeli authorities?

DCI-P Claims

DCIP analysis found that this is because Israel over-applies the exception clause of its Youth Law to Palestinian children—meaning that for East Jerusalem children, the exception is the rule.

NGO Monitor Analysis

The accumulative result is that DCI-P manipulatively provides half-truths, based on systematically biased collection of information and distorted or worthless statistics, and then adds questionable analysis that leads the uninformed reader to reach outrageous and unfounded conclusions. It is therefore, not surprising that DCI-P concludes that all law enforcement regarding Palestinians is the exception to the rule.