

**A report to**

**Mr Fredrik Reinfeldt, Chairman  
of the EU Parliament**

**on**

**Palestinian Child Prisoners in the  
light of EU-Israel Association  
Agreement**

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**Varberg, Sweden, 1<sup>st</sup> of July 2009**

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## **A SUMMARY**

We have been appointed as trial observers in Israeli Military Courts on the West Bank. After information from both Palestinian and Israeli lawyers we clearly understand that Palestinian children face ill-treatment and torture under investigations and in prisons by Israeli authorities and also that the Palestinian children do not get a “fair trial”. This system operates within a general culture of brutality and impunity.

Israel do not follow the Agreement with EU and specially not the extract below.

**“CONSIDERING the importance which the Parties attach to the principle of economic freedom and to the principles of the United Nations Charter, particularly the observance of human rights and democracy, which form the very basis of the Association”**

We urge the chairman Mr Fredrik Reinfeldt to demand Israel to act in accordance with what is said in the Agreement with EU.

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## **INTRODUCTION**

At the request of the children rights' organization Defence for Children International, Palestine Section (DCI-PS), we were appointed as trial observers to the West Bank to be present at trials in Israeli Military Courts regarding cases where Palestinian children were detained mostly for throwing stones against the wall and on Israeli military vehicles.

The visit began with a meeting with lawyers at DCI-PS in order to prepare us for the hearings.

The aim of this report is:

- to briefly describe the situation for Palestinian children under arrest, interrogation and during trial in relation to international law with special focus on the Fourth Geneva Convention and the UN Convention on the Rights of the Child.

## **DCI- DEFENCE FOR CHILDREN INTERNATIONAL**

Defence for Children International, Palestine Section is an independent, Palestinian, non-governmental organization, established in 1992 to promote and protect the rights of Palestinian children as stated in the UN Convention on the Rights of the Child and other international instruments. ([www-dci-pal.org](http://www-dci-pal.org))

## **BACKGROUND**

Two of us have been appointed as trial observers in Israeli Military Courts several times on behalf of International Commission of Jurists, Swedish section and once for the Palestine Solidarity Movement in Stockholm. This time we were independent observers and without any sponsorship.

Many reports have been published about the situation for Palestinian child prisoners both from Palestinians and from Israelis non-governmental organisations. The situation today concerning the procedure in Israeli Military Courts, the system with "plea bargain", family visits, how the children face harassment and torture during investigations are the same procedures as before if not even harder.

This time we were trial observers in June 2009, both in Ofer Military Court, situated outside Ramallah in the West Bank and in Salem Military Court near Jenin, in the north of the West Bank, on the border to Israel.

Israel imposed military law on the West Bank following its occupation of the Territory in 1967. Military Orders govern the life of Palestinians in the West Bank. There are about 1500 Military Orders which are enforced in the two Israeli Military Courts operated in the West Bank. The Israeli Military Courts do not implement juvenile related legislation as they do for Israeli children who are in conflict with the law.

Palestinian children who are arrested by the Israeli military are prosecuted in the same jurisdiction as adults. There is no special branch of the Israeli Military Courts for dealing with children.

### **ISRAELI MILITARY ORDER # 132**

The Israeli Military Order # 132 is contravening the internationally accepted definition of a child as anyone below the age of 18. The Israeli domestic law defines a child as anyone under 18, which is in accordance with the international standard. The Israeli Military order #132 is a discrimination against Palestinian children. This Military order # 132 defines a Palestinian child as follows.

A child is a person under 12 years

A teenager is a person above 12 years and under 14 years

An adolescent is a person above 14 years and under 16 years

An adult is a person 16 years and above

In contrast to Israeli children who are tried in Juvenile Courts, Palestinian children are tried in the same Israeli Military Courts that try adults. The Military Orders applying to them are much harsher than the Israeli law applying to Israeli children. Palestinian Authority has a juvenile justice system that can deal with children in conflict with the law.

### **PLEA BARGAIN**

Most of the cases in the Military Courts are based on a so called plea bargain which is an agreement in which a prosecutor and a defendant arrange to settle the case against the defendant. The defendant agrees to plead guilty or not contest, in exchange for some concession from the prosecutor. This concession can include reducing the original charge or charges, dismissing some of the charges against the defendant or limiting the punishment a court can impose on the defendant.

Palestinian lawyers have told us that the main reasons for a plea bargain are that the child will remain longer in detention if he/she call for a full evidentiary hearing and that the military judge will always believe the military or police interrogators word over the word of a Palestinian child. The prosecutors generally have wide discretion regarding the charges they may bring, and therefore tend to charge the defendant with the most extreme charges that are applicable to the situation at hand. Thus in a plea bargain, the defendant is left to choose between the certainty of accepting sentencing for a much less serious charge, or the uncertainty of a jury trial in which the defendant might be found not guilty, but which also carries the risk of being found guilty of the original, more serious charges.

The plea bargain system puts strong pressure on defendants to plead to crimes that they know that they did not commit, and the outcome of a plea bargain may depend strongly on the negotiating skills and personal demeanor of the defense lawyer, which puts persons who can afford good lawyers at an advantage. Furthermore, the system encourages prosecutors to

overcharge at the start of a case which leads to caseload pressures or unusually severe penalties.

One important question is if a plea bargain deal should be permitted on the whole in hearings concerning children. The reality is that many children confess under torture and other inhuman treatment despite they are innocent.

## **ILL-TREATMENT AND TORTURE**

Palestinian child detainees are subjected to different forms of torture, cruel and inhuman treatment including beatings, sleep and food deprivation, position abuse, isolation-while undergoing interrogation. During the investigation the child is not permitted to contact a lawyer or a relative. Lawyers are denied access during this period and it is very difficult to find out where a child is being held.

To this report we attached two affidavits from newly detained Palestinian children. These two affidavits show that the Palestinian children are exposed to ill-treatment during arrest and during interrogation. The names of the children are not mentioned in the attached affidavits in order to not cause them more problems.

## **FAIR TRIAL**

The trials took place in Israeli military barracks surrounded by electrified fence and barbed wire with watch towers and many armed soldiers. The detainees, both children and adults, were handcuffed and foot chained when they entered the court room. There were eight detainees in the court room at the same time. It was very noisy due to the number of the detainees, their lawyers and soldiers who were present at the same time. Both the prosecutor and the judge belong to the Israeli military. It is common that they also are settlers on the West Bank. The Hebrew-Arabic interpreter did not interpret everything what the judge, prosecutor and lawyers said. The Palestinian children rarely speak Hebrew.

The lawyers told us that they are not allowed to meet their client until after the interrogation and in most cases after the child has sign a written confession in Hebrew which is a language they do not read and write. The lawyer does not get interrogation notes and he/she has difficulties to meet the client in detention. The right to a presumption of innocence does not apply in Military Courts. The right to examine witnesses exists but if the child claims for this he/she risks a much harder sentence. A Palestinian child can be detained up to 180 days before indictment (charge) and up to 8 days until he/she is brought before a judge. In the vast majority of cases, Palestinian children are denied bail and remain in detention until the conclusion of proceedings.

All but one of the prisons where Israel detains Palestinian children are located inside Israel. The practical consequence of this violation is that many prisoners do not receive any family visits as their relatives are denied permit to enter Israel.

## FACTS

Since the beginning of the second Intifada, Israeli authorities have been arrested more than 4.000 children. As of June 2009, approximately 391 Palestinian children are still in Israeli prisons and detention facilities. Most of them are held within Israel and far from their place of residency. 975 children have been killed and thousands have been injured since September 2000.

## INTERNATIONAL LAW

Israel does not follow the below named UN Conventions.

# Article 2.1, CAT states ... “Each state ...prevent acts of torture in any territory under its jurisdiction”...

# Article 2.2, CAT states “No exceptional circumstances whatsoever, whether a state of war, internal political stability or any other public emergency, may be invoked as a justification of torture.”

# Article 3, The Universal Declaration of Human Rights (UDHR) states “Everyone has the right to life, liberty and the security of person”.

# Article 5, UDHR states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

# Article 7, United Nation International Covenant on Civil and Political Rights (ICCPR) states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...”

# Article 27, The Fourth Geneva Convention “Protected persons are entitled in all circumstances, to respect for their persons.....they shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity”.

# Article 31, The Fourth Geneva Convention “No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties”.

# Article 32, The Fourth Geneva Convention “The High Contracting parties specifically agree that each of them is prohibited from talking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation .....”

# Article 76, Fourth Geneva Convention “...Proper regard shall be paid to the special treatment due to minors“.

# Article 2.1, United Nation Convention on the Rights of the Child (CRC) says “ States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, ...”

# Article 37, CRC says “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”.

# Article 38, CRC states “State Parties undertake to respect and to ensure respect for rules of international humanitarian law...”

# Article 40, CRC, states “..the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth...”

# Article 67, United Nation Rules for the Protection of Juveniles Deprived of their Liberty says “All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal

punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned”.

# United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 45/113, says “Imprisonment should be used as a last resort.....”

# Principle 1 in “Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988)” says “All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person”.

# Standard Minimum rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First UN Congress on the Prevention of Crime and the Treatment of Offenders

# United Nations Standard Minimum rules for the Administration of Juvenile Justice (“The Beijing Rules”), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

# Article 89, Fourth Geneva Convention states “.....Daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health....”

# Article 26, CRC says “.....”for every child the right to benefit from social security....”

# International Court of Justice (ICJ) has condemned the construction of the Wall in the Occupied Palestinian Territory by saying “The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law”.

# International law prohibits acquisition of territory by force. Both the confiscation and destruction of land and the building of the Wall violate the Palestinian people’s Right to Property, Right to Work, Right to Adequate Standard of Living and Right to Freedom of Movement, as guaranteed by international law.

# Rome Statute of the International Criminal Court, 1998, article 7.1, Crimes against humanity states: For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

(iv) Extensive destruction and appropriation of property, not justified by

## **OUR COMMENTS**

Israel does not respect the EU-Israel Association Agreement.

Israel does not respect the Fourth Geneva Convention in the Occupied Territories. According to decision in United Nation the Palestinian people are protected under the Fourth Geneva Convention.

Israel signed the Convention on the Rights of the Child on 3 July 1990. The Convention entered into force for Israel on 2 November 1991.

Our opinion is that the occupation and the Wall cause huge problems for Palestinian families and in particularly the children. Thousands of Palestinians do not have access to their lands, businesses, schools, clinics and hospitals. Many children are involved in throwing stones on the wall and on Israeli military vehicles to protest against the occupation.

Israeli military commanders and soldiers arrest and detain Palestinian children without any respect of the Convention on the Rights of a Child.

Every Palestinian child detainee is immediately in need of an International Child Protector from the very first day of arrest, during the interrogation and in prison because of the infringements of international law. The Palestinian children suffer a lot from being denied human rights.

## AFFIDAVITS

### Case 1

**Name of victim:** A  
**Date of birth:** 22 January 1994  
**Date of arrest:** 30 May 2009  
**Age at arrest:** 15 years  
**Place of residence:** Al Jalazun camp, Ramallah  
**Accusation:** Throwing stones and Molotov cocktails  
**Affidavit taken on:** 16 June 2009  
**Affidavit taken by:** Lawyer Iyad Mesk

*After having been warned to tell the truth and nothing but the truth or else I shall be subjected to penal action, I the undersigned, A, a resident of Al Jalazun camp, Ramallah, would like to declare the following:*

1. I was born on 22 January 1994. I am from Al Jalazun camp. I work in an aluminium shop. My family consists of seven members including my father and mother. The economic situation of the family is not so good.
2. At around 3:00am on 30 May 2009, I was sleeping in my house. I woke up to the sound of banging on the front door of the house. I became extremely scared. I instantly jumped off the bed and exited the room. The banging on the door had awakened my father as well.
3. It was Israeli soldiers who were banging on the door. My father opened the door and the soldiers rushed into the house. They did not conduct any search. Around seven soldiers entered the house; some of them had painted their faces in green and black. I became very scared upon seeing such scene.
4. *"Where is A?"* one of the soldiers asked in Arabic. *"This is A,"* my father said as he pointed at me. I was sitting next to my father. *"I'm A,"* I replied as well. *"We came to arrest A. We'll interrogate him and bring him back in a short while,"* the same soldier said to my father. Immediately, other soldiers grabbed my hands and tied them with plastic cords behind my back. One of them had a piece of cloth. He approached me to put it around my eyes, but I moved backward. He tried again and I moved backward once more. Then, he brought out a spray can and sprayed in my eyes. I felt my eyes were burning. Only at that point he managed to place the piece of cloth around my eyes. He violently pushed me towards the jeep. As a result, my body slammed against the back of the jeep. After that, I was placed in the back of the jeep. The jeep then travelled for about half an hour.

5. The jeep stopped and one of soldiers pulled me out to a police station, which I learned later it was Binyamin police station. The soldier forced me to sit on a bench. From under the blindfold I was able to see a little. I saw myself sitting in a corridor. In the morning, I was taken to one of the rooms. A person in the police blue uniform was sitting in the room. One of the soldiers untied me and removed the blindfold. Then, he shackled my hands in front of me and forced me to sit on a chair placed in front of the policeman, who began interrogating me. He accused me of several accusations including throwing stones and Molotov cocktails with other persons. *“They confessed on you of doing so,”* he said. Interrogation lasted about an hour. Then, I signed a paper written in Arabic that contained my sayings and confessions. I confessed to the interrogator of throwing stones and Molotov cocktails on the area of Bit El.
6. After that, I was removed out of the room by a person in civilian clothes. I was forced to sit in the corridor once again. A person in green uniform came to me and asked *‘are you Abu Ali?’* Then, he slapped me twice across the face, and hit me several times with his hands on my hands. After that, he left me and went away. Another person in civilian clothes blindfolded me and kept me sitting in the same place.
7. I kept sitting on the bench in the corridor for one and a half days, during which no food was offered to me. Whenever I asked for some water, they would bring me some. They also responded to my request to use the bathroom. A policeman would take me to the bathroom; remove the blindfold, untie me, and wait at the door until I was done.
8. I kept sitting and sleeping on the same bench at Binyamin police station for about two days. After that, other detainees and I were put inside a military vehicle to be transferred to another place. B, C, and D were with me in the same jeep. I was blindfolded but managed to see a little from under the blindfold. *“Humus Fool, I love mishmar gvoul: humus beans, I love police border,”* a soldier in green uniform ordered me to sing. I did not sing. As a result, he placed his rifle assault under my gentiles from behind me and began sliding it right and left. The rifle assault was near my gentiles. I was very scared and felt pain. He kept doing the same thing for about two minutes, and stopped. I was still sitting. After that, the jeep stopped. One of the soldiers got out of the jeep and went to a supermarket and bought bottles of beer. He came back to the jeep and began drinking. A female soldier was sitting next to him. He began kissing and hugging her. We were looking at them from under the blindfolds. He kept kissing and hugging her all the way to Salem detention centre.
9. When we reached Salem detention centre, I was pulled out of the jeep and taken inside. After that, I was untied and the blindfold was removed. I was ordered to strip out all my clothes. I did so. My clothes were thoroughly searched. Someone’s clothes were given to me. I was kept naked for about five minutes. After that, I was allowed to

dress. I was extremely ashamed and confused because it was the first time I was naked in front of someone else.

10. After that, we were taken to the detention rooms and provided with some food; a can of tomato paste and few loaves of bread. I felt I did not eat at all because I was starving. This was the first meal I was offered since I had been arrested two days earlier.
11. I was kept in Salem detention centre for one day. After that, I was transferred to Hasharon prison, where I am held at the moment.
12. On 2 June 2009, I was taken to the court and the session was adjourned to 9 June 2009 so that a list of charges would be made against me, according to what the lawyer had told me. On 9 June 2009, the session was adjourned. In the third session, my detention was extended until the completion of legal proceedings. The next session will take place on 20 July 2009.

**Signed by:** A                      16 June 2009

## Case 2

**Name of victim:** B  
**Date of birth:** 1 July 1995  
**Date of arrest:** 31 May 2009  
**Age at arrest:** 13 years  
**Place of residence:** Al Jalazun camp, Ramallah  
**Accusation:** Throwing stones and Molotov cocktails  
**Affidavit taken on:** 9 June 2009  
**Affidavit taken by:** Lawyer Iyad Mesk

*After having been warned to tell the truth and nothing but the truth or else I shall be subjected to penal action, I the undersigned, B, a resident of Al Jalazun camp, Ramallah, would like to declare the following:*

1. I was born on 1 July 1995. I am in the eighth grade. My father does not work. My mother does not work either. My family consists of eight members. The economic situation of the family is very bad because my father could not work recently. We live on aid because of his illness.
2. At around 6:00pm on 31 May 2009, I headed towards Qalandiya checkpoint. I had a knife and 18 bullets. My aim was to get arrested and detained. I wanted to prove to my friend who was arrested days earlier that I too could be arrested and transferred to prison, just like him.

3. I reached Qalandiya checkpoint and tried to pass through the electronic gate when it buzzed, indicating that I was carrying metal objects on me. A soldier, sitting in a room near the electronic gate and examining our IDs, ordered me to pass through the gate again. I passed through the gate and it buzzed again.
4. The soldier pointed his assault rifle to my face and ordered me to enter the room. Another soldier and two female soldiers were inside the room. The soldier ordered me to lower my trousers. I lowered my trousers to my knees. I did not take them. Then, he searched me using a metal detector he had with him. After that, he ordered me to lift my trousers, and I did so.
5. Half an hour later, my hands were tied with plastic cords behind my back. My eyes were not blindfolded and my feet were not shackled. Then, I was transferred in a military vehicle to Binyamin police station that is near Qalandiya checkpoint. A number of soldiers were inside the vehicle. When we reached the police station, my feet were shackled and my eyes were blindfolded. The plastic cords around my hands were tightened. I told the soldier who tightened them that my hands hurt. He punched me in the abdomen to silence me. He did not untie the cords.
6. After that, I was taken to a room where a policeman was inside. He interrogated me after the blindfold and shackles were removed. He asked me about the reason I went to the checkpoint with a knife and bullets on me. I told him because I wanted to be arrested and imprisoned. He asked me whether I threw stones or not, but I denied that. I confessed of only watching my friends throwing Molotov cocktails a year ago.
7. During interrogation, the interrogator was writing my statement in Hebrew. He ordered me to sign in and I signed it without being translated. Interrogation was conducted in Arabic and also recorded on a tape recorder. Interrogation lasted for about half an hour.
8. I was removed out of the room and shortly after that, I was taken back to the room and interrogated again on the same accusations; observing friends throwing Molotov cocktails. A different interrogator interrogated me this time. He was typing my sayings in the computer. Then, he ordered me to sign the paper he printed out without translating its content. He interrogated me in Arabic and recorded my sayings on a tape recorder.
9. After interrogation, I was taken to another room that had chairs and two tables. I was kept in this room alone and the door was locked on me. I asked them several times to use the bathroom and they agreed. They however did not provide me with any food

during the two days they kept me in Binyamin police station. I was provided only with water.

10. While being held in the room, I had to sleep on a chair. I did not have any mattress or blanket to sleep on. I felt exhausted. I felt pain in my back because I did not sleep comfortably.
11. In the morning of the third day of my arrest, I was transferred in a military vehicle to Ofer prison, where I was given brown uniform. A doctor quickly examined me as well. After that, I was taken to a room to be held with adult detainees, not children. I was provided with food for the first time. I was starving because I did not eat since the first moment I had been arrested; two days ago.
12. On 4 June I was taken to the courthouse where I saw the lawyer for the first time. I did not see my family. My detention was extended until 9 June 2009. I was taken back to the courthouse on 9 June 2009 and saw my family for the first time in 10 days. I saw the lawyer after five days of my arrest.
13. In this session, the lawyer made his argument and the judge sentenced me to be released on a 4.000 NIS bail. The sentence stated also that a third person should sign a bail of 10.000 NIS as a guarantee.
14. The sentence was suspended to give the prosecutor the time to decide whether he wanted to file an appeal or not. The prosecutor did not file an appeal. Yet, the child is still detained because his family could not pay the 4.000 NIS bail due to their harsh economic situation.
15. The next session will be convened on 14 June 2009 to discuss the family's failure to pay the bail and possibilities to reduce the bail. Another session will take place on 16 June 2009 to read the list of charges.

**Signed by: B,**

9 June 2009