

Roehampton
University 



UNIVERSITY OF
GOTHENBURG



**MILITARY CHILD DETENTION IN THE WEST BANK:
An Israeli politics-driven policy aimed at destroying the will of a
generation**

By

Laura Carlotta Cimmino BA

SOA- 3902

A dissertation submitted in partial fulfilment for the degree:

Master in Human Rights Policy and Practice

School of Global Studies, University of Gothenburg

School of Business and Social Sciences, Roehampton University

Department of Archaeology and Social Anthropology, University of Tromsø

Autumn 2015

The work I have submitted is my own effort. I certify that all the material in the Dissertation which is not my own work, has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.

Signed: Laura Carlotta Cimmino

Date: 1 November 2015

Table of contents

Acknowledgements	5
Abstract	6
CHAPTER ONE: background and methodology	7
1.1. Context and background.....	7
1.1.1. Conflict and occupation.....	7
1.1.2. Child population and prisoner population.....	9
1.2. Research Hypothesis.....	10
1.2.1. Scope of the research.....	10
1.2.2. Literature review.....	11
1.3. Research methods.....	13
1.3.1. Interviews.....	14
1.3.2. Why interviews?.....	14
1.3.3. Semi-structured interviews.....	15
1.3.4. Challenges of the interview methods.....	16
1.3.5. Ethical issues.....	16
1.3.6. The interview guide.....	17
CHAPTER TWO: legal analysis	18
2.1. Introduction.....	18
2.2.1. International human rights law (IHRL): relevant provisions.....	19
2.2.2. Convention on the Rights of the Child (CRC).....	19
2.2.3. The prohibition of torture and degrading treatment.....	21
2.3. IHL: the law of non-belligerent occupation (LNBO).....	22
2.4. On the application of IHL and IHRL.....	24
2.5. Palestinian children in conflict with the Israeli military system.....	26
2.5.1. Arrest and transfer.....	26
2.5.2. The right to liberty and security of the person.....	27

2.5.3. Settler terrorism and military violence.....	28
2.5.4. Interrogation.....	29
2.5.6. Degrading treatment common to arrest, transfer and interrogation.....	30
2.5.7. Trial and detention.....	30
2.5.8. The right to health and the right to education.....	32
2.5.9. Self-determination and stone throwing as “soft” armed struggle.....	33
CHAPTER THREE: Interviews.....	37
3.1. Introduction.....	37
3.2. Stone throwing and national security: a disproportionate response.....	37
3.4. The Israeli military court system: a punitive system.....	39
3.4.1. Use of evidence.....	40
3.5. Discrimination.....	42
3.6. Intimidation and degrading treatment.....	43
3.7. IHL and IHRL.....	44
3.8. The right to self-determination.....	45
3.9. International pressure.....	46
3.10. Child detention and long-term repercussions on the conflict.....	47
Conclusions.....	49
Policy recommendations.....	53
Practice recommendations.....	53
References.....	54
APPENDIX A: Interview Guide.....	63

Acknowledgements

I would like to thank my supervisors Jennifer Hays and Vito De Lucia for their professionalism and patience. I would like to thank my family for their unconditional support throughout my studies. I am also very grateful to all my HRPP colleagues for their help and appreciation.

“Ex injuria jus non oritur”

Law does not arise from injustice

Abstract

My research introduces the issue of the Israeli military detention policies towards Palestinian children in the West Bank (WB) and illustrates how these violate international humanitarian law (IHL) and international human rights law (IHRL), despite their legally binding nature and despite Israel’s obligation to protect Palestinian civilians as protected persons under occupation. My research shows that Israel fails to uphold the best interest of the child resorting to the detention of Palestinian minors in an “intentional, widespread and systematic manner” (UNICEF, 2013:13) and not as a measure of last resort. My research also shows that intentionally targeting Palestinian children is one of several tools Israel adopts to enforce the occupation in the WB. Ultimately, Israeli detention policies are a form of persecution and deny children their right to self-determination.

My research is geographically delimited to the WB and therefore it does not touch upon the situation of military child detention in the Gaza Strip (GS) where it has a far lower incidence (DCI, 2013) and in East Jerusalem where the legal regime in force is different from the one in the WB and the one in Gaza. The WB, East Jerusalem and the Gaza Strip make up the Occupied Palestinian Territory (OPT).

My research applies two methods: legal analysis and interviews. Chapter two discusses Israel’s obligations under IHRL with special reference to the Convention on the Rights of the Child of 1989 (CRC), the International Covenant on Civil and Political Rights of 1966 (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (CAT) and under IHL with special reference to the Hague Regulations of 1907 and the Fourth Geneva Convention of 1948 (IV GC). The legal analysis focuses mainly on IHRL and only partially draws on IHL. Finally, chapter three presents the findings from interviews to a number of human rights advocates from Palestinian and international NGOs. The interviews, conducted between March 18th and May 28th, 2015, corroborate the legal arguments.

CHAPTER ONE: background and methodology

1.1. Context and background

1.1.1. Conflict and occupation

In order to situate the issue of Israel's child detention policies in the WB, a few words must be mentioned on the nature of the Israel-Palestine conflict. The Global Conflict Tracker (Global Conflict Tracker, 2015) lists it as one of the fifty-three ongoing conflicts today. However, the term "conflict" is misleading as it suggests a confrontation between two equal parties. The next paragraphs will provide elements that show the power asymmetry between the two parties.

At the local level, the military occupation of the WB represents the fundamental characteristic of this conflict. The Israeli occupation, through the Israeli Defence Force (IDF) or Israeli Occupation Force (IOF), extends to 72% of the WB. This is divided into area A, which is about 18% of the territory, and it is under the Palestinian Authority (PA) civil administration and security control. This area only includes some Palestinian cities amongst which Hebron, Nablus, Ramallah and Bethlehem (Zahriyeh, 2014). Area B is about 22% of the WB and it is under Palestinian civil administration but under exclusive Israeli security control. Finally, area C is about 60% of the WB and it is under full Israeli civil administration and security control. The phrase Israeli civil administration is also misleading since Israel administers the territory and maintains security through its military apparatus represented by the IOF. The Palestinian Authority does not have an army and its police forces operating in the WB cooperate with the IOF.

Furthermore, 550.000 Israeli settlers live in the Israeli colonies - also known as settlements - established in the WB over the last thirty years. These are deemed illegal under international law (Cassese et al., 2008:262). Settlers allegedly need protection from attacks by Palestinians and the IOF provides it with a ration of five

soldiers to one settler. Settlers often attack Palestinians and their property under the blind eye of the IOF grating settlers total impunity (Council for European Palestinian Relations, 2014). Settler activity also includes the exploitation of natural resources of the WB, land and water primarily. Unlawful Israeli economic activities are the target of the global boycott campaign known as BDS (Boycott, Divest, Sanctions) since its inception in 2005.

At the international level, all Israeli administrations, since the establishment of the state in 1948, have received unconditional support from all US administrations both in material and in political terms (IOP Harvard, 2014:5-7). Israel, with a population of eight million people (CIA World Factbook, July 2014), has received more US foreign aid than Africa, Latin America and the Caribbean with a combined population of 1.715 billion (World Bank, 2014). Israel receives one-third of total US foreign aid; US aid to Israel has been steady over the last twenty-five years and amounts to approximately three billion dollars per year (Washington Report on Middle East Affairs, 2014). Most of US foreign aid is in the form of military grants (Washington Report on Middle East Affairs, 1999). On the other hand, the European Union is the largest donor to the PA with 168 million Euros in direct financial aid to support salaries and pensions of the PA and provide assistance to vulnerable Palestinian families (European Commission, 2014).

US support to Israel is not only economic but also political. In fact, US support for Israel at the UN through the exercise of its veto power that has blocked a number of UN resolutions aimed at holding Israel accountable for its violations of IHL and IHRL have further enhanced the uneven power dynamics between Israel and the PA (Sarsar, 2004).

The power asymmetry is particularly reflected in public discourse. Since the establishment of the state of Israel, mainstream media and all Israeli administrations have justified their policies in the WB through the security discourse. According to this, Israel military detention policies in the WB are a measure to guarantee Israel's security against Palestinians' terrorist attacks (Wenden, 2005 and, Zaher, 2009). Palestinian children throwing stones are considered a threat to national security and stone throwing is deemed a security offence under Israeli military law. This is the

context in which Palestinian children come into conflict with the Israeli military occupation.

1.1.2. Child population and prisoner population

There are 2.79 million Palestinians living in the West Bank. 37.6% is aged between 0 and 14 and 30.1% is aged between 15 and 29 (Palestinian Central Bureau of Statistics, 2014). Persons aged 0-29 make up almost 70% of population of the West Bank. For the purposes of my research, only children below the age of 18 will be considered. These make up more than 50% of the WB population and are protected persons under international law.

The UN Office for the Coordination of Humanitarian Affairs – Occupied Palestinian Territory reports a staggering figure issued by the Palestinian ministry for detainees and ex-detainees affairs according to which 800.000 Palestinians, including children, have been arrested since the occupation of the West Bank in 1967 with peaks during the first and second Intifada (OCHAOPT, 2012). Almost every Palestinian family has a member who has been arrested and, especially during the first and second intifada, the number of prisoners per capita held by the Israeli Prison Service has been among the highest in the world (Cook et al., 2004:7).

Military detention of Palestinian minors in particular is a growing concern. According to Defence for Children International - Palestine Section (DCI), 500 to 700 Palestinian children between the age of 12 and 17 are arrested and prosecuted in the Israeli military court system each year. In 2014, the average number of children held in Israeli military detention stood at 197 per month. The same source estimates that detention has affected about 8.000 children since the year 2000 (DCI, 2013). Boys make up the great majority of child detainees. In 2014, only twelve Palestinian girls were held in military detention (DCI, 2014c). The majority of them are charged with throwing stones, an offence deemed punishable under Israeli military law.

In the year 2014, in 75 % of documented cases there was some form of physical violence in varying degrees during the arrest, transfer and interrogation phases. This includes hooding, beating and kicking, sensorial deprivation, sexual assault and solitary confinement. In the overwhelming majority of cases children are denied fair trial rights; these include the right to access legal assistance, the right to

trial without undue delay, the right to a presumption of innocence and the right to examine witnesses. Judicial proceedings are often hasty and the threshold of evidence is alarmingly low. Child detention also results in the violation of the right to education (DCI, 2014f).

1.2. Research Hypothesis

The hypothesis of my research is that the Occupying Power, Israel, arbitrarily resorts to child detention in order to deprive Palestinian children of a set of human rights enshrined in IHRL and IHL. These include the right to liberty and security of the person, the right to education, health, freedom from torture and degrading treatment, the right to a fair trial and ultimately the right to self-determination. The prosecution and detention of children under the Israeli military system are an Israeli politics-driven policy whose aim is to annihilate the will of Palestinian children in order to prevent these from both participating freely as active citizens and resisting the occupation. Therefore, military child detention is not limited to the legal procedure ignited in response to the event of a child entering in conflict with military law for allegedly committing the offence of throwing stones.

1.2.1. Scope of the research

My research shows, through legal analysis and interviews,

- That Israel's military child detention policies cause gross human rights violations.
- That Israel's practice of military child detention is institutionalised, widespread and systematic.
- That the reasons justifying Israel's military child detention policies go beyond the need to maintain Israel's national security.

Furthermore, I argue that military child detention is an Israeli politics-driven policy aimed at

- Deterring child participation and voice to the struggle against occupation and limiting the development of Palestinian civil society.
- Denying Palestinian children their human rights in order to enforce the regime of occupation.
- Denying Palestinians their right to self-determination.

1.2.2. Literature review

My research considers several issues regarding child detention in the WB that cause Palestinian child detainees to be neglected by the international community and fall out of the protection afforded by international law.

Firstly, scholarly research on children and armed conflict mainly focuses on child soldiers (Rosen, 2012 and, Drumbl, 2012) and children who are victims of sexual violence (Leatherman, 2013 and, Nilsson, 2013). There is a lack of research on children who are victims of military justice in a context of military occupation. In the case of the Israel-Palestine conflict, research is needed because the issue of military child detention in the WB is routinely taken out of the context of the occupation/conflict and reduced to a mere matter of criminal justice in the eyes of mainstream media and the international public opinion (Cook et al., 2004). My research shows that Palestinian children prosecuted under military law have their human rights violated; hence they are victims of the conflict and not simply criminals.

Secondly, my research considers that children constitute a vulnerable category on which trauma has a far grater impact than adults. Nevertheless, it also considers that there is a need to view children differently, not only as victims but also as active members of society. In the spirit of the CRC,

While acknowledging that the child is a vulnerable human being that requires the protection and assistance from the family, the society and the State, the child is envisaged as a subject of rights, who is able to form and express opinions, to participate in decision-making processes

and influence solutions, to intervene as a partner in the process of social change and in the building up of democracy. (Santos Pais, 1999:93)

Children's participation to political and military action in conflict situations is often thought to be the result of compulsion, coercion and brainwashing. This understanding is limited because children often become engaged out of their free will and in order to voice their social and political concerns and cope with the situation of conflict (Hart and Tyrer, 2006:9-10). My research sheds a different light on Palestinian child detainees showing that throwing stones is a willing act of participation, resistance and a way to claim their human rights.

Thirdly, the UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict fails to give ample recognition to the human rights violations related to Palestinian child detainees in the WB dedicating to the issue only three short paragraphs in its Report of the Secretary - General to the Security Council (A/69/926-S/2015/409) issued on 5 June 2015 (UN Secretary-General, 2015). In fact, the UN Office lists, as primary victims of the conflict, Palestinian children who are killed or wounded as a consequence of military operations in Gaza, settlers or IOF violence in the West Bank or even drone strikes and not Palestinian child detainees. My research draws attention to the problem of Palestinian child detainees and the human rights violations involved in order to, once gain, portray Palestinian child detainees as victims rather than criminals.

Fourthly, Israel routinely fails to provide information on the human rights situation in the WB, including the issue of military child detention. The Universal Periodic Review points out Israel's lack of cooperation with human rights mechanisms, amongst which the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. According to the UPR, Israel fails to provide explanations for the violations of several human rights obligations in the WB, including breaches of the prohibition of torture and degrading treatment, the right to equality and non-discrimination, right to life, liberty and security of the person, fair trial rights, rights to family life and right to education (Universal Periodic Review, 2013 :13-28). My research provides information from various sources on the types of

human rights violations that affect Palestinian child detainees in order to contribute to the visibility of the issue.

Finally, chapter two presents the legal analysis. This focuses mainly on relevant human rights instruments and it identifies a number of violations that affect children in military detention. However, the analysis also refers to IHL and builds on the existing literature concerned with the law of occupation. This is a specific branch of IHL and it is a fast-arising systematisation of the practices and legal implications of military occupation, a peculiar type of conflict that is gaining a great deal of attention especially in the case of the Palestinian-Israeli conflict (Dinstein, 2009: 2-3). The law of occupation is considered because it prescribes that not only IHL but also IHRL applies to conflict situations (Ben-Naftali, 2006). This is because IHL alone does not provide a strong enough protection for the human rights of civilians under occupation (Dinstein, 2009 and, Benvenisti, 1992). My research uses the legal framework of the law of occupation to show how Israel is responsible for the human rights of Palestinians living under occupation.

1.3. Research methods

The two methods adopted, legal analysis and interviews, stem from very different epistemological and theoretical assumptions. Within the field of human rights, legal analysis is generally considered to be the primary research method (Coomans et al., 2010:108) and the dominant type of discourse (Evans, 2005:1054). Legal research is predominantly positivist, a detached and logical observation of the cause-effect relationship that determines a phenomenon (Neuman, 2014:102). Legal analysis identifies the legal provisions applicable, the right-bearer, the duty-holder and possible enforcement mechanisms. However, considering the hypothesis of my research and the interdisciplinary character of the human rights field, legal analysis is not always sufficient. In fact, as Evans points out, “international law obfuscates the distinction between legal rules and normal social practice” and it “has little to say about power and interests associated with the dominant conception of HR” (Evans, 2005:1067).

Therefore, my research integrates legal analysis with an interpretive perspective - that of the interviewees - in order to achieve a deeper understanding of

the power dynamics and the way legal, social and political expertise combine within the framework of human rights protection and affect their actual implementation. Nevertheless, legal analysis remains fundamental, as it constitutes the framework of regulations on which interaction between the parties ought to be based.

1.3.1. Interviews

Between March 18th and May 28th, 2015, I interviewed nine staff members from five Ramallah-based Palestinian human rights organisations and from the Palestinian Ministry for Detainees and Ex-Detainees Affairs. Interviews took place at the organisations' offices in Ramallah, this required a presence on the field.

The organizations are:

- Addameer, Prisoner Support and Human Rights Association
- Defence for Children International – Palestine Section (DCI)
- Al-Haq, Centre for Applied International Law
- Treatment and Rehabilitation Centre for Victims of Torture (TRC)
- Palestinian Centre for Peace and Democracy (PCPD)
- Palestinian Ministry for Detainees and Ex-Detainees Affairs

1.3.2. Why interviews?

My research demonstrates that Israeli military child detention policies are based on disregard for international law driven by the political will to implement the occupation. Interviews are meant to complement legal arguments and investigate the power politics dimension that law neglects.

Given the power imbalance between the Palestinian side and the Israeli side - discussed in the context and background section - and the prevalence of Israeli security rhetoric - not only in Israel but also in the US, Israel's main ally – my research provides a different understanding that is not built along the lines of the human rights abuse/security dichotomy. The framing of military child detention is currently dominated by the security discourse endorsed by Israel and its allies. Within this dynamic, power belongs to those actors who retain the monopoly of knowledge

(Gaventa and Cornwall, 2006:122) and therefore the ability to influence media and international institutions such as the UN. My research, which is also based on interviews with human rights advocates, challenges this status quo.

Interviewees are Palestinians and international human rights advocates living in the WB, some of them were child detainees. The involvement of individuals who used to be victims and are now human rights advocates and active members of Palestinian society is a key element of my research that responds to the idea that “those who are directly affected by the research problem at hand must participate in the research process” (Gaventa and Cornwall, 2006:124).

Moreover, the contribution of human rights advocates through interviews is fundamental also because they provide a useful link between human rights practice and human rights scholarship. This is often far from the local context and fails to fully understand the issue at hand. Human rights advocates are “people in the middle: those who translate the discourses and practices from the arena of international law and legal institutions to specific situations of suffering and violation” (Merry, 2006:39).

1.3.3. Semi-structured interviews

The interview is semi-structured because of the complex and multidisciplinary research subject. Therefore, questions were not asked in a strict order. Depending on the “atmosphere” of the interview, not all questions were asked. I conducted interviews personally and this gave me the opportunity to “chat” with the interviewee and skip or diverge from the scheduled questions. This allowed the interviewee’s experience and perception to emerge. Interviews were about an hour long.

In the case of the public officer from the Palestinian Ministry for Detainees and Ex-Detainees Affairs, an interpreter from the Arabic language was needed. Due to financial constraints, it was not possible to hire a professional interpreter. A staff member from Al-Haq organisation volunteered as a non-professional interpreter and was involved in the research and informed of its aims and objectives. Nevertheless, the volunteer interpreter was asked to translate verbatim and to refrain from including his own opinion in the translation.

1.3.4. Challenges of the interview method

The interview method did pose some challenges; the main one was to decide the size of the sample. I decided that the sample had to include interviewees from different departments within the organization in order to collect a more varied knowledge. I thoroughly researched the profiles of staff members and selected those who had the highest level of expertise on child detention. At the end of the ninth interview, I found that I had sufficient evidence to support my hypothesis.

Contacting potential interviewees also required a long preparatory work based on e-mail or phone exchanges in which I explained the purpose of the study, provided information on the type of interview and explained how confidentiality would be managed. In some cases, I provided the interviewees with the questions prior to the interview. I also contacted a number of Israeli human rights organisations. However, I did not manage to interview any of their staff due to logistics and time constraints. Due to financial constraints, I could not hire a professional interpreter.

1.3.5. Ethical issues

The interviewees are all adults above the age of thirty-five and, even though some of them were victims of military child detention, there were no major concerns regarding potential psychological effects that could negatively affect interviewees. This is because they deal with the issue of military child detention as part of their job and are interested in divulgation.

Regarding issues of anonymity, three interviewees required that their name did not appear in the final thesis. Some interviewees required certain statements made during the interview to be stricken off the record. In this regard, it is necessary to point out that interviews were never fully transcribed. Informed consent was obtained before beginning the interview as well as permission to record with an audio device.

1.3.6. The interview guide

Interviewees were asked a set of questions regarding legal, social and historical aspects of child detention as well as their perception of the reasons behind its widespread use. The interview guide, in Appendix A, has an exploratory purpose which means that “the interviewer introduces an issue, an area to be charted or a problem complex to be uncovered, follows up on the subject’s answers, and seeks new information about and new angles on the topic” (Kvale, 2007:38). The interview guide is structured so that it can yield the maximum explanatory potential. After introducing the context, the scope and merits of my research and the research methods, next chapter elaborates on legal analysis.

CHAPTER TWO: legal analysis

2.1. Introduction

The present chapter attempts to provide all the necessary elements to prove that Israel's policy of child detention is institutionalized, systematic and discriminatory. The chapter attempts to show that the human rights violations involved in the practice of child detention are a sign that the Israeli military system's primary aim is not to serve and administer justice but rather to enforce the regime of occupation and oppression of Palestinian people. The main source of data regarding child detention in the West Bank is the organization Defence for Children International – Palestine Section (DCI). However, the research also refers to the work of other organizations such as Addameer, Military Court Watch, UNICEF etc.

Section one of this chapter deals with international law. It focuses first on IHRL and presents two relevant human right conventions: the Convention on the Rights of the Child (CRC) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). It only focuses on specific articles and concepts that arise from these conventions and that are relevant to my research. Section one then moves on to IHL and illustrates the reasons why the law of non-belligerent occupation is the correct legal framework to apply to the OPT. This is important to clarify because the long-standing occupation where the Occupying Power exercises effective control over the OPT and has increased its powers has consequences on military child detention. Finally, and after presenting all the relevant IHRL and IHL arguments, section one briefly illustrates the debate on application of the two legal regimes and elaborates on their interaction.

This is relevant for two reasons. Firstly, Israel argues against the application of IHRL in the OPT. This has important consequences on human rights implementation in the OPT. Secondly, identifying the applicable legal regimes defines who is responsible for human rights violations and therefore how to proceed to improve and guarantee their implementation. Section two, the final section of this chapter, illustrates the dynamics of child arrest, transfer, interrogation, trial and

detention. It describes the violations and identifies the relevant human rights provisions. Section two focuses on specific rights that are relevant to military child detention: the right to liberty and security of the person, the right to health and education and finally the right to self-determination.

2.2.1. International human rights law (IHRL): relevant provisions

As endorsed by the ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, IHRL applies to the OPT. Specifically, the protection afforded by human rights conventions does not cease in case of armed conflict (ICJ, 2004a:46) and, due to the existence of a military occupation, it complements the application of IHL (Al Haq, 2011:23). This suggests that Palestinians enjoy the rights enshrined in a series of conventions to which Israel is a state party as well as the protection afforded under IHL as protected persons.

The ICJ Advisory Opinion on the Wall (par. 101-106 and 126-130) mentioned above will be referred to throughout the chapter. Although it has no binding force, the ICJ Opinion carries significant legal weight and moral authority. The decision to refer to it is based on the fact that it represents a useful reference point insofar as it provides legal guidance to my research on military child detention. The reference to the ICJ Opinion is also based on the assumption that its non-implementation is based on the lack of political will and not on the merit of its legal arguments (Akram et al., 2010).

2.2.2. Convention on the Rights of the Child (CRC)

The following paragraph introduces the CRC, presenting the relevant provisions and commentary by international bodies. Special attention is dedicated to Article 37 and Article 40 of the CRC. This section also illustrates Israel's attitudes towards the application of the CRC to the OPT and introduces two principles, the best interest of the child and the principle of non-discrimination.

The adoption of the Convention for the Rights of the Child (CRC) in 1990 marked a considerable advancement of the international legal framework for the

protection of the rights of the child. Both Israel and the PA have ratified the Convention, without reservations, in 1991 and in 2014 respectively. However, Israel argues that it only applies to its territory. In its Reply to the List of Issues on the Convention on the Rights of the Child (June 2013), Israel stated that HRL and IHL are two separate systems of law, hence they apply in different circumstances. In the same document, Israel affirmed it

has never made a specific declaration in which it reserved the right to extend the applicability of the Convention with respect to the West Bank. Clearly, in line with basic principles of interpretation of treaty law, and in the absence of such a voluntarily-made declaration, the Convention, which is a territorially bound Convention, does not apply, nor was it intended to apply, to areas outside its national territory (Committee on the Rights of the Child, 2013b:7).

In July 2013, the Committee on the Rights of the Child in its concluding observations on the second to fourth periodic reports of Israel, condemns the latter's unwillingness to provide information and data on children living in the OPT, including East Jerusalem, and the Occupied Syrian Golan Heights. According to the committee, this "greatly affects the adequacy of the reporting process and the State's accountability for the implementation of the Convention" (Committee on the Rights of the Child, 2013a:1).

In Article 38 and Article 39, the CRC reiterates the obligations under IHL and the ICJ, in its Advisory Opinion on the Wall, also recognizes that IHL as *lex specialis* is not sufficient. This suggests that IHL and IHRL are interdependent and complementary and therefore cannot be considered separately. Article 38 is to be "considered as the lowest common denominator" (Krill, 1992:355), a general provision granting basic protection to be, in fact, combined with other human rights law provisions. Despite Israel's obligations, reality suggests that "protection of Palestinian children is approached by the Israeli government through political discretion and military judgment rather than a set of binding legal obligations" (Sait, 2004:220).

My research follows the ICJ Opinion on the Wall according to which Israel has the obligation to apply IHRL to the OPT, hence the CRC. As mentioned above, the CRC is particularly relevant for two principles: non-discrimination and "the best

interest of the child”. The former appears in Article 2 and establishes that the convention applies, without discrimination, to all children within the jurisdiction of a State. The latter is present throughout the whole CRC however its mention in Article 40 (iii) is particularly relevant to our subject matter. Article 40 deals with children in conflict with the law and not only guarantees fair trial rights but also prescribes the duty to treat children

in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society

and to consider the situation of the child in an effort to promote their best interest while adjudicating the case.

The principle of the best interest of the child generally refers to the “all-round development of the child according to its abilities as a human person within a sound human environment” (Wolf, 1992:126). Its weak legal definition, however, allows for a highly politicized interpretation and implementation or lack thereof. The political dimension of the principle is particularly relevant to my research. The Israeli occupation of the OPT, which impacts Palestinian children negatively, is politically implemented and consensus around it is created within the political arena. As a consequence, the assumption that “states should be prohibited from making political decisions which will be to the detriment of the legal and social position of the child” is compromised (Wolf, 1992:127). I have now introduced the CRC and the principles of non-discrimination and the best interest of the child. Section two of this chapter as well as chapter three will clarify the application of these to the specific topic of my research by presenting the actual dynamics of military child detention.

2.2.3. The prohibition of torture and degrading treatment

The following paragraph introduces the issue of torture and degrading treatment presenting the relevant legal instruments and commentary by international bodies. The prohibition of torture and degrading treatment is stated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 37(a) of the CRC, according to which “No child shall be subjected to

torture or other cruel, inhuman or degrading treatment or punishment...”, reiterates the prohibition. Article 2 of CAT establishes that “no exceptional circumstances” allow derogation to the prohibition, even in times of war and instability. It is also a rule of customary international law, which means that it is binding even on those states that have not joined the CAT. Israel ratified the CAT in 1991.

The CAT, the main yet not the only legal reference for the understanding of torture, provides an agreed upon definition of torture present in Article 1 of the Convention. On the other hand, international law does not provide a general definition of other cruel, inhuman or degrading treatment or punishment. However, jurisprudence has established that

torture does not only include physical assault. It may also include the infliction of psychological or emotional trauma, including through the manipulation of a person’s environment.” and “torture does not only depend on the severity of the pain or suffering imposed. Other circumstances, such as the perpetrator’s intention and the relative position of weakness of the victim, maybe relevant...(Otto QC, 2013:2).

Moreover, according to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Juan Méndez, “the threshold at which treatment or punishment may be classified as torture or degrading treatment is therefore lower in the case of children, and in particular in the case of children deprived of their liberty” (UN General Assembly, 2015:7). The Special Rapporteur also explains, that “pain and suffering have damaging long-term effects on learning, behaviour and health...detention can undermine the child’s psychological and physical wellbeing and compromise cognitive development”. As in the case of the CRC, the application of the issue of torture and degrading treatment to military child detention will be clarified in section two of this chapter and in chapter three. After introducing relevant arguments regarding IHRL, I will now move onto IHL.

2.3. IHL: the law of non-belligerent occupation (LNBO)

LNBO is a branch of the *jus in bello*, also known as Law of International Armed Conflict or International Humanitarian Law and it consists of a combination of customary law and treaty law (Dinstein, 2009). It includes the Hague Regulations of 1907, which are binding even for non-contracting parties and the Fourth Geneva

Convention Relative to the Protection of Civilian Persons in Time of War of 1949 (IV GC), which applies to all States and protects the occupied population.

The law of non-belligerent occupation is relevant to my research as it provides a legal framework suitable to the exceptional characteristics of the Israeli occupation of the OPT and it supports the application of IHL and IHRL. These characteristics are: an effective Israeli control on the WB that extends as far as tax administration and a long-standing occupation. According to Benvenisti, non-belligerent occupation means “effective control of a power...over a territory to which that power has no sovereign title, without the volition of the sovereign of that territory” and without the conduct of hostilities (Benvenisti, 1992:4).

Moreover, LNBO prescribes that, in case of prolonged occupation, the Occupying Power is not entitled to assume increased powers in the administration of the occupied land and it encourages the participation of the indigenous community in the administration of their own territory (Benvenisti, 1992:147). However, reality suggests that, despite the establishment of the PA following the Oslo Accords, Israel still exercises full control over the OPT through the military system (and its military orders), military and settler violence and settler economic activities. Section two will explain how all these elements play a crucial role in the issue of military child detention.

On the one hand, Israel argues against the integral application of the IV GC on the grounds of its Article 2, supporting only the application of its humanitarian provisions without specifying them (Baker, 2012:1516). Nevertheless, the Israeli High Court of Justice has accepted the application of the Hague regulations to the OPT. The Regulations constitute customary law and Article 42 according to which a “Territory is considered occupied when it is actually placed under the authority of the hostile army” is relevant to my research. The diverging attitudes of the Israeli political and judicial realms prompt discrepancies between Israeli policies and legal frameworks.

On the other hand, international consensus legitimises the application of LNBO to the WB (Jabarin, 2014:417). Therefore, Palestinians are protected persons

under the 1907 Hague Regulations, the Fourth Geneva Convention (IV GC) and customary IHL (Maurer, 2012:1506). Moreover, also the ICJ Advisory Opinion on the Wall (2004) suggests the applicability of the Fourth Geneva Convention to the territories occupied by Israel since 1967. These includes the West Bank and East Jerusalem (ICJ, 2004a:45). I have now introduced relevant elements of IHRL and IHL. The next paragraph deals with their co-application and interaction.

2.4. On the application of IHL and IHRL

The debate on the application of IHL and IHRL evolves around the issue of which body of law is applicable to the situation in the OPT; whether only IHL, both or IHRL as the primary legal framework. According to the ICRC, the two bodies of law share the same aim and the application of IHL rather than IHRL depends on the presence of hostilities.

Humanitarian law aims to protect people who do not or are no longer taking part in hostilities. The rules embodied in IHL impose duties on all parties to a conflict. Human rights, being tailored primarily for peacetime, apply to everyone. Their principal goal is to protect individuals from arbitrary behaviour by their own governments. Human rights law does not deal with the conduct of hostilities (ICRC, 2004).

It has already been mentioned that the ICJ Advisory Opinion on the Wall states that an Occupying Power ought to apply IHRL in the territory it occupies, along with IHL as *lex specialis*. This is due to the consideration that some rights are within the scope of IHL, some fall under the scope of IHRL and some others are matters of both (ICJ, 2004b:9).

In addition to this, according to general comments 29 and 31 of the Human Rights Committee, the applicability of IHL in armed conflicts does not exclude the application of IHRL. These two branches of international law are substantially close; they both contain peremptory norms and are protective of human dignity. As a consequence, their scopes are often complementary and overlap. This suggests the need for a systemic integration of international law where IHRL and IHL are seen as directly influencing and strengthening each other (Cassimatis, 2007:623-634). However, human rights obligations are not always mirrored in IHL (Lubell, 2012:319) and IHRL provides mechanisms to seek legal redress allowing for

implementation of the law; these mechanisms are not provided for in IHL (Roberts, 2006:600).

Moreover, the ICJ Advisory Opinion on the Wall considers an Occupying Power bound to respect the obligations contained in the International Covenant for Civil and Political Rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC). These instruments set positive obligations for the state and therefore provide more safeguards for all rights set forth, including those that are relevant to the issue of child detention such as the right to education while in detention, the right to family visits, fair trial rights, freedom of expression and assembly, the prohibition of transfer of population outside the occupied territory.

IHL, in fact, does not cover the dynamics of the daily interaction between the Occupying Power and the occupied population (Dinstein, 2009:4-5) and it is not particularly prescriptive in regard to the protection of the life and liberty of civilians (Dinstein, 2009:6). These limitations ought to be taken into consideration given the topic of my research and prompt the necessity, once again, to recur to IHRL as a complement of IHL.

According to Orna Ben-Naftali, the application of IHRL extends to situations of armed conflict and situations of occupation in particular, without excluding the application of IHL as *lex specialis*. In this case, Israel is responsible for the human rights of the inhabitants of the OPT under both IHL and IHRL which complements IHL, in case of effective control (Ben-Naftali et al., 2005). This is particularly true for a long-term occupation as IHL is inadequate for such circumstances. Also, according to Ben-Naftali, the principle of universality of IHRL informs the principle of jurisdiction and therefore closes the circle (Ben-Naftali, 2006:90-93).

According to Roberts, the case for the application of IHRL may be debatable in case of armed conflict but it becomes pertinent in case of military occupation, especially if non-belligerent and prolonged in time. The necessity to distinguish between armed conflict and occupation, especially if prolonged, is further corroborated by the failure to uphold human rights in several occupied countries

throughout history (Roberts, 2006:590). In fact, according to Dinstein (Dinstein, 2009) and Benvenisti (Benvenisti, 1992:214), the welfare of the occupied population is usually not the first concern of the Occupying Power.

Greenblatt extends the argument for the application of IHRL even further and argues that, since the Israel-Palestine conflict is unique in its duration, impossibility to reach a peace agreement and absence of open hostilities, IHRL ought to be considered as the primary legal framework in the administration of the OPT and IHL secondary. This will reduce human rights violations and “effectively catalyse a lasting solution that will end the occupation” (Greenblatt, 2014:180). Greenblatt further corroborates this point explaining that there is no clear understanding on the co-application of IHL and IHRL; regardless of the chosen approach whether IHRL complements IHL or the two system harmoniously coexist (Greenblatt, 2014:157). Section one has introduces IHRL, IHL and relative issues of applicability and interaction. Next section, section two, will apply the law to the actual dynamics of military child detention.

2.5. Palestinian children in conflict with the Israeli military system

2.5.1. Arrest and transfer

According to DCI advocacy officer and attorney Brad Parker (2014) there exists a specific geography of arrests. Children are usually apprehended in proximity of friction points: i.e. villages close to the Apartheid Wall or East Jerusalem, near settlements or by-pass roads used by Israeli army and settlers, close to important and populated Palestinian cities such as Nablus, Jenin and Tulkarem in the northern West Bank.

By reviewing prisoners’ profiles provided by Addameer, the same pattern is detected. Many children are arrested in occupied East Jerusalem in villages such as Abu Dis or Silwan, in villages where protests against the Apartheid Wall occur regularly: e.g. Bi’lin and Ni’lin, Qalqilya etc., in proximity of check points such as

Qalandya, in areas of friction such as Al-Khalil (Hebron), close to settlements e.g. Kyriat Arba or refugee camps such as Balata in Nablus or Deheisheh near Bethlehem (Addameer, 2015). The list is not at all exhaustive.

Regarding the reasons why children are apprehended, DCI states that the charge affecting the majority of Palestinian child detainees is throwing stones (DCI, 2012a). Stone throwing is a security offence under Israeli Military Order 1651. This is due to the fact that, since 1945 during the British Mandate, Israel is still in a declared state of emergency. This has prompted the establishment of a system of military courts and the understanding that certain criminal offences are a threat to the security of Israel. Following the Israel's cabinet approval in November 2014 of a law that allows a jail sentence of up to twenty years for stone throwing (equal to the penalty for manslaughter), a particularly striking question of proportionality of the penalty to the offence arises (Shuttleworth, 2014). Other reasons for arrest are: conspiracy and attempt to kill, membership in a banned organization, deterrence from taking part in demonstrations against the occupation.

The practice of night-time arrest deserves a special mention. According to DCI, such practice amounts to degrading treatment and has traumatizing and destabilizing effects both on the child and the family. Families are rarely given notice of criminal charges in violation of Article 40 (b, ii) of the CRC according to which a child and his/her family should be promptly informed of charges. Families are also not informed on the whereabouts of the interrogation/detention facility where the child is taken (DCI, 2012b:24).

2.5.2. The right to liberty and security of the person

Children are often arrested because they throw stones during demonstrations against the occupation. Arrests often take place *en mass* without a clear personal responsibility. Article 9 (1) of the ICCPR, protects from arbitrary arrest or detention and establishes that “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. Children and families are often not informed of the reason of arrest (violation of Article 9 (2) of the ICCPR), children are also not promptly brought before a judge and spend long time in

custody (violation of Article 9 (3) of the ICCPR), children are also denied fair trial rights (violation of Article 9 (4) of the ICCPR).

Additionally, Article 10 (1) of the ICCPR establishes the obligation for Israeli authorities to treat all persons deprived of their liberty with humanity and respect for their inherent dignity. The practice of night-time arrests, mentioned above, provokes unnecessary psychological stress and therefore violates both articles. Furthermore, during the interrogation process, children are often asked to disclose information on the political activism of other members of society or are coerced into becoming collaborators. This impacts negatively on their reintegration into society (Save the Children, 2012 :47-55).

2.5.3. Settler terrorism and military violence

Children are also arrested because they throw stones in response to settler and military violence. According to the Israeli human rights organization B'Tselem, there are 125 Jewish-only settlements (or colonies) in the West Bank. These host more than 550,000 Israelis (B'Tselem, 2015). These settlements are illegal under international law (Cassese et al., 2008:262) and are growing rapidly (DCI, 2014b:9-11). According to DCI, since 2006, 2,100 settler attacks have taken place, several of these targeted children. Settler violence includes stone-throwing, vandalizing property, beating and shooting often resulting in murder (DCI, 2014b:16-26).

Another grave concern is Israeli military violence against children. According to Amnesty International, human rights violations by the IOF in the OPT include, among others, “punitive arrests, unfair trials, ill-treatment and torture of detainees and the use of excessive or lethal force to subdue nonviolent demonstrations” (Amnesty International, 2014). Besides torture and degrading treatment during the phases of arrest, transfer and interrogation, children are often injured by weapons other than live ammunition, this has affected 1,522 children since 2000 (DCI, 2014b:18). Furthermore, the IOF and settlers have killed 1,401 children since 2000 (DCI, 2014b:27). Violence also includes dehumanisation of Palestinian children on social media (DCI, 2015).

Violence is rendered possible by a climate of impunity; this is perpetrated in two ways. Firstly, the majority of complaints filed by Palestinians against Israeli settlers, following acts of violence, are closed without indictments despite the fact that perpetrators are known to Israeli authorities. Equally, the number of investigations into Israeli military violence that lead to indictments is close to zero (DCI, 2014b:28). Secondly, the existence of two separate legal systems (Israeli settlers are subject to Israeli civilian law and Palestinians are subject to military law) institutionalises impunity. Impunity of settlers and military violence establishes “a reality of domination of one racial group over another, in violation of the international prohibition against apartheid” (Azarov, 2013:30).

Impunity is also a grave breach of Article 43 of the Hague Regulations and Article 27 of the IV GC. Both articles establish Israel’s obligation, as the Occupying Power, to guarantee the safety and wellbeing of the Palestinian people. Particularly, Article 27 of the IV GC enshrines Israel’s obligation to respect persons, their honour, freedom from physical or moral coercion and freedom from collective punishment; Israel is duty-bound to accord human treatment and to take all measures to avoid infringements of these fundamental rights (Al Haq, 2011:24).

2.5.4. Interrogation

Article 37 (d) of CRC guarantees prompt access to legal assistance. However, according to DCI, children are denied the right to be accompanied by a parent and do not have access to legal council during interrogation (DCI, 2009:7). Furthermore, DCI states that children are usually not informed of their rights, particularly the right to silence (DCI, 2009:17). The majority of children are coerced to confess through degrading treatment in violation of Article 40 (d) of the CRC. The signing of a confession written in Hebrew (a language most Palestinian children do not understand) is a further violation of the previously mentioned article and, in 2013, it occurred in more than 25% of cases. The signed confession often constitutes primary evidence (DCI, 2014d).

2.5.6. Degrading treatment common to arrest, transfer and interrogation

According to Military Court Watch, in two-thirds of cases children suffer from some form of degrading treatment, intimidation or even torture during arrest, transfer and interrogation. Degrading treatment includes, *inter alia*, restraining in painful conditions, blindfolding, threats of violence or death, violent shaking, kicking and beating, sleep deprivation, solitary confinement, sexual assault etc. (Military Court Watch, 2014 :18). More specifically, the UNICEF Working Group on Grave Violations against Children (2013) collected 208 affidavits throughout 2013 and 2014. The findings showed that blindfolding, painful hand-tying, verbal abuse and intimidation, beating and violent shaking, transfer placed on the floor of the military vehicle are common to all testimonies. According to the same source, “the ill treatment of Palestinian children within the Israeli military detention system is widespread, systematic and institutionalized” (UNICEF, 2013:13).

2.5.7. Trial and detention

Palestinian children are prosecuted in Israeli military courts “a maze of bureaucratic procedures that serves as enforcer of the Israeli occupation” (Hanieh et al., 2003:27). Law is administered through the execution of military orders that are not consistent with international standards of juvenile justice. Following the 1967 occupation of the West Bank, the Israeli military administration established military courts in charge of adjudicating security violations meaning acts against the Occupying Power. Military legislation was amended in 1988 when a provision was added according to which the military judicial body is only meant to apply local and security laws. This provision practically impeded the application of international law to assess the legality of military acts (Benvenisti, 1992:116-117).

Military courts are located in the West Bank but also in Israel in violation of Article 76 of the Fourth Geneva Convention according to which “protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein...”. Despite the establishment of an Israeli Juvenile Military Courte in 2009 - military order 1644 -, facilities and court staff for adults are also used to prosecute children in violation of Article 37 (c) of the CRC as minors

should be separated from adults and court staff should be properly trained to judge juvenile cases (DCI, 2012a:18). Moreover, the Juvenile Military Court does not operate according to Israeli Youth Law. According to B'Tselem (2011:9-11), this is a discrimination, which results in serious violations of child detainees' rights.

Another grave violation regards the time lapse between when a child is arrested and when they are brought in front of a judge. Article 40 (b) of the CRC guarantees the right to trial without undue delay. In this regard, Military Order 1711 (April 2014) shortened the maximum time Palestinian children can be detained before appearing in front of a military court. However, this period is never below 24 hours and, according to DCI, degrading treatment occurs mainly during the first 48 hours after arrest. Therefore the introduction of Military Order 1711 only minimally reduces the chances for degrading treatment and intimidation (DCI, 2013).

Regarding evidence, in most cases, the child's own confession represents the only evidence. As mentioned above, this is often obtained under unlawful circumstances, in violation of article 40 (b) of the CRC and Article 1 of the CAT. When evidence is accepted, the threshold is very low and it is usually based on a confession given by another child detainee or a soldier's testimony (UNICEF, 2013:13).

Furthermore, Article 40 (b) of the CRC also guarantees the right to examine witnesses. However, according to Yesh Din, an Israeli human rights organization,

Attorneys representing suspects and defendants in the military courts believe that conducting a full evidentiary trial, including summoning witnesses and presenting testimony, generally results in a far harsher sentence, as a 'punishment' the court imposes on the defence attorney for not securing a plea bargain (Yesh Din, 2007:136).

In fact, according to B'Tselem nearly 100% of cases end in a plea bargain. This leads to a high conviction rate (B'Tselem, 2011:52). DCI states that 71.7% of children receive sentences of up to 12 months and 14.6% more than three years (DCI, 2009:101) suggesting that detention is not regarded as a measure of last resort in violation of Article 37 (b) of the CRC. On a personal visit to the military court in Ofer Prison - Ramallah - on March 18th 2015, in four out of five trials attended, the defence

attorney requested that witnesses be summoned following the wish of the child's parents. Nevertheless, the reluctance of the judge resulted in the defence attorney acceptance of a plea bargain. Ofer Prison is located in Beytunia, a district of Ramallah. It is a prison for Palestinian political prisoners, however, Palestinian children are also held there in violation of Article 37 (c) of the CRC (Addameer, 2010:71).

2.5.8. The right to health and the right to education

Military detention often infringes upon the right to health and the right to education of children. Denial of medical care while in detention is a violation of Article 24 of the CRC as well as Article 2 of ICESCR and Article 5 of the Convention for the Elimination of all forms of Racial Discrimination (CERD). The last two articles also contain an anti-discrimination clause. This is, once again, particularly relevant to my research. Furthermore, Article 39 of the CRC prescribes Israel's obligation, as the Occupying Power, to "promote physical and psychological recovery and social reintegration" of children victims of torture or any other form of cruel, inhuman or degrading treatment or punishment.

The right to education is enshrined in Article 13 of the ICESCR and Article 28 of the CRC. The Convention against Discrimination in Education is also relevant. Israel ratified it in 1961 and therefore is duty-bound to guarantee access to education to any person or group of persons (Article 1). Guaranteeing continuous education whilst in detention would reduce the negative impact of child detention.

Regarding IHL, Article 94 of the Fourth Geneva Convention is also relevant to my research. This states that "education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside". The denial of education and the use of solitary confinement violate the above provisions. According to Addameer, the Israeli Prison Service (IPS) regulations do not contain any provisions that guarantee compulsory education thus child detainees are denied education for the whole period of detention with detrimental consequences for their development and for Palestinian society at large (Addameer, 2010:57). According to the same source, children are often arrested on the day of their

“*tawjihi*” - final high school exam - and are prevented from sitting the exam; in 2009 the IPS forbade all students from taking the “*tawjihi*” as a form of collective punishment (Addameer, 2010:60-61).

Solitary confinement is also a particularly grave concern and poses serious threats to the child’s physical and mental health. According to DCI, in 21.4 of the cases recorded in 2013, children had to endure solitary confinement as part of the interrogation process (DCI, 2014e). According to the UN Committee for the Rights of the Child, solitary confinement of minors is in no circumstances allowed and it amounts to torture (UNICEF, 2013:12).

2.5.9. Self-determination and stone throwing as “soft” armed struggle

According to the DCI Case Summaries 2013-2014, the main reason why children throw stones is to protest against the occupation and the regime of apartheid that Israel enforces in the OPT (DCI, 2014a). Palestinian children and youths are increasingly an active and meaningful component of the Palestinian national struggle for liberation. Throwing stones is seen as a form of resistance and “soft” armed struggle, a way to exercise the right to self-determination.

Self-determination is primarily considered as the right of a people to determine its own political status. The latter is a prerequisite to determining the economic, social and cultural dimensions of the life of a people (Gayim, 1990:60). The right to self-determination is established in common Article 1 of the 1966 twin Conventions (International Covenant on Civil and Political Rights, ICCPR and the International Covenant on Economic, Social and Cultural Rights, ICESCR). Israel ratified the twin Conventions in 1991. The right to self-determination is an essential principle of public international law. However, the debate on whether or not it is to be considered a norm of *jus cogens*¹ for all peoples is yet to be settled (Saul, 2011 and, Thiele, 2012).

¹ The 1969 Vienna Convention on the Law of Treaties (VCLT) establishes the concept of *jus cogens* norms or peremptory norms. According to article 53 of the VCLT “a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a

Despite an unsettled international debate on the scope and content of the right to self-determination, several UN Resolutions acknowledge the right of Palestinians to resist occupation by all means. General Assembly Resolution A/RES/3246 (XXIX) of 29 November 1974 “reaffirms the legitimacy of the peoples’ struggle for liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle...” and specifically mentions the Palestinian people as a case in point. Despite the fact that UN Resolutions are not legally binding, they reflect the opinion of the majority of sovereign states and contribute, over time, to the formation of international customary law (Berg, 2005).

Israel also argues against the application of the ICCPR in the OPT defining its scope as limited to the State of Israel. Nevertheless, the ICJ suggests that the 1966 Convention is applicable “where the State exercises its jurisdiction on foreign territory ” (ICJ, 2004a:47). The ICCPR applies “in respect of acts done by a state in the exercise of its jurisdiction outside its own territory” (ICJ, 2004a:48). In fact, following the scope of application of the ICCPR, expressed in Article 2 (1), the principles of effective jurisdiction and non-discrimination are decisive; therefore human right instruments are applicable outside national territory. Besides granting the right to self-determination, the ICCPR is relevant to my research as it enshrines a series of provisions that protect from discrimination, torture and guarantee fair trial rights.

The applicability of the ICCPR is further corroborated by the temporal element. The long-standing character of the occupation inherently affects the Palestinians’ possibility to exercise their rights; therefore Palestinians are entitled to enjoy both the protection of IHL and IHRL (ICJ, 2004a:47-48). The specialty of the circumstances linked to the prolonged occupation is also recognized by the Supreme Court of Israel, although in relation to their legislative competence in the OPT (Kretzmer, 2012:219-220). However, in no way the prolonged character of the occupation can be used as a justification to maintain a state of emergency (Koutroulis, 2012:200-204) that justifies the existence of the Israeli military system under which

subsequent norm of general international law having the same character”.

Palestinian civilians are tried and are not allowed to exercise their right to self-determination.

Furthermore, since Israel is reluctant to apply IHRL, one may refer to IHL for issues regarding jurisdiction over the occupied people. Safeguarding the welfare of the local Palestinian population, as protected people in a conflict situation, is the Occupying Power's duty enshrined in Article 43 of the Hague Regulations according to which

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Finally, the Supreme court of Israel, in its rulings, has conferred a wide meaning to the expression "public order ad safety" to include issue of economic and material interests (security, health, education, quality of life etc..). However, the general attitude of the court is to ignore issue related to the political interests of Palestinians (Kretzmer, 2012:218-219) one of them being the exercise of self-determination.

Chapter two discussed two legal regimes, IHRL and IHL and the application of certain conventions and provisions that are relevant to my research. It also argued that, given the peculiar characteristics of the Israel-Palestine conflict, human rights implementation would be favoured if IHRL was regarded as the primary legal regime.

Chapter two also two attempted to show how military child detention in the WB is an institutionalized, systematic and discriminatory practice that causes a number of human rights violations. Institutionalised because it is embedded in the law represented, in this case, by military orders issued by the Israeli military authorities. Systematic because it involves a high and constant number of children and it has a higher occurrence in areas that are crucial to the conflict. Discriminatory because it does not affect Israeli settlers – Israeli citizens - who also live in the WB. Chapter two also showed how military child detention causes a number of human rights violations therefore depriving Palestinian children who enter in conflict with Israeli military law

of a set of human rights appears to be an institutionalized, systematic and discriminatory practice.

Next chapter is the final one and it is based on the findings from the interviews to human rights advocates. It presents their opinions and contribution to the issue of child detention. Interview findings introduce the social and political dimensions of military child detention with the aim of complementing legal arguments.

CHAPTER THREE: Interviews

3.1. Introduction

This chapter presents the findings from the interviews. Interviewees discuss the meaning of stone throwing as a security offence and what this means for the wellbeing of children. Interviewees also present arguments that shed light on the Israeli military system - the use of evidence in particular - as a punitive, discriminatory and violent system rather than a judicial body dedicated to serving justice. Interviewees also share their opinions regarding the relation between child detention and international law with particular emphasis on the right to self-determination. Finally, interviewees voice their opinions regarding the role of the international community and the long-term repercussions of military child detention on the Israel-Palestine conflict.

3.2. Stone throwing and national security: a disproportionate response

According to all interviewees, children throwing stones are unlikely to represent a threat to the security of the state of Israel and the punishment they receive is disproportionate to the act committed. Some interviewees provided specific insights on the issue of national security.

According to an international advocacy office at Addameer (interview 29.03.15), who wishes to remain anonymous, child detention goes beyond Israel's need to assure national security. This is suggested by three indicators: the constant number of monthly arrests², the severity of the sentence prescribed by military law and the fact that the number of arrests spikes during times of political turmoil such as during the second intifada in 2000 or during the recent attack on Gaza in 2014. The main purpose of child detention is not to serve justice but to deter and repress political activity and to remind Palestinians of the presence of the occupier.

² According to DCI (2014), the number of Palestinian children aged 12-17 in military detention is steady since 2011 and it is at 200 per month on average. Source: Defense for Children International – Palestine Section, Statistics on military detention http://www.dcpalestine.org/children_in_israeli_detention, accessed 27 October 2015.

Addameer advocacy officer adds that the idea of children as security prisoners is difficult to believe; yet child detention is the rule and not the exception. It is not considered a measure of last resort, no alternatives to detention are provided and there is a clear intention to keep children in jail since bail is rarely allowed on the basis that stone throwing is a security threat so the child cannot be released because he or she might represent a threat to the security of the area. The deprivation of liberty is in itself traumatising and the denial of family visits and legal council, the torture and degrading treatment, the long hours of interrogation, food, water and sleep deprivation, the life threats to family members are hardly practises carried out for security reasons.

Khaled Kuzmar (interview 24.03.15), general director of Defence for Children International – Palestine Section also explains that,

When the political situation is heated the number of arrests is very high. However, when the situation is calm the number of children arrested and convicted is constant and still strikingly high, around 200 children are arrested each month. This suggests that children are not arrested only when national security is in danger. That stone throwing is a security threat is hard to believe. How can a 14 years-old child who throws a stone at a military armoured vehicle, endanger the security of the state of Israel?

Sahar Francis (interview 01.04.15), general director of Addameer, finds that the response of the Israeli military system is disproportionate to the act of throwing stones. A child can be convicted to up to ten years when the stone is thrown against a still object. If the object is moving, the punishment is even harsher and it can be up to twenty years. Francis explains that the reason for a harsher punishment in case of a moving object is because the court assumes that the child had an intention to harm. Francis also explains that the military court usually denies bail and if bail is allowed it implies a very high fine and, quite often, the child is banned from living with his or her own family and is ordered to live in another city or village, perhaps with relatives.

According to a policy and advocacy officer at DCI (interview 18.03.15), who wishes to remain anonymous, Israel allows the use of excessive force against children. Soldiers often use live ammunition in response to children throwing stones. DCI advocacy officer explains that according to Israeli military law, live ammunition can only be used when there is a clear threat to the life of a soldier. Throwing stones

might be a bit dangerous but it never poses a threat to the life of a soldier therefore it is a disproportionate response. DCI advocacy officer points out that Israel considers stone throwing as an act of terrorism therefore a threat to the security and existence of the state; this is why stone throwing falls under military law.

All interviewees explain that when a Palestinian child enters in conflict with Israeli military law, he or she is put through a system of military justice. The next paragraph presents the interviewees' opinions on this system.

3.4. The Israeli military court system: a punitive system

All interviewees explain that civilians and particularly protected persons under the IV GC should not be tried in military courts and security concerns cannot justify such practice.

Kuzmar explains that the Israeli military commander issues military orders and these, through military courts, are used to enforce military law in the whole WB. Military orders have jurisdiction not only on security matters but also on ordinary criminal and civil matters. Kuzmar also explains that, nowadays, 1700 military orders control the lives of Palestinians in the WB and each order is amended six times on average.

According to Wesam Ahmad, head of the advocacy department at Al Haq (interview 26.03.15), military orders are intended to protect the occupation and punish whoever tries to challenge it. The military system is designed to persecute whoever tries to resist the occupation by any means, including stones. According to Ahmad, Israel is not preserving its national security, it is rather trying to maintain its control and secure its occupation which is aimed at insuring control, implementing illegal policies including apartheid, colonialism and exploitation of natural resources.

According to Addameer advocacy officer, the lack of due legal process undermines military court proceedings. This is a sign that the system's aim is not to administer justice but to punish and this happens whether or not children are guilty of throwing stones. Addameer advocacy officer believes that Israeli military justice is an

instrument of oppression and it only provides a legal guise to a system that is in breach of international law. DCI advocacy officer adds that the Israeli military system is not properly equipped to judge juvenile cases despite the establishment of a juvenile military system in 2009. DCI has not recorded any changes that point at more juvenile-oriented military courts. DCI advocacy officer explains that this is a further sign that Israel is not interested in properly administering juvenile justice.

According to DCI advocacy officer and attorney, Brad Parker, “the core question is whether the Israeli military court system is even capable of or interested in administering justice” (DCI, 2015). The geography of arrests and the *modus operandi* of the military system (including Israeli Police, the Israel Security Agency (ISA) and the Israel Prison Service IPS) have a solely punitive aim. Parker adds that the overwhelmingly high rate of conviction and the lack of alternatives to imprisonment also point towards a punitive system.

Kuzmar takes the argument further and explains that the overwhelmingly high rate of military child detention, the use of torture and degrading treatment, particularly during arrest, transfer and interrogation, the deprivation of liberty, the violation of the right to education, health and family, cultural and social life are a form of collective punishment.

3.4.1. Use of evidence

Military proceedings are often found to deny Palestinian children fair trial rights such as access to legal council, right to be promptly informed of the charges, right to be brought in front of a judge without undue delay, the right to interpretation and others. However, interviewees seem to identify a particularly critical area: the use of evidence.

An attorney from the Palestinian ministry of detainees and ex-detainees affairs who wishes to remain anonymous (interview 28.05.15), explains that the Shabak, the Israeli Security Agency (ISA) that administers Israel’s internal security, plays a major role in the prosecution process in the WB. The Shabak provides the judges with secret files containing evidence and a list of witnesses (pictures, the testimony of an IOF

soldier or the confession of another child). The attorney explains that not only defense lawyers do not have access to the secret files but the commander of a Shabak unit can also issue an order that prevents the lawyer from meeting with the client during interrogation for security and public order reasons. The attorney explains that this is often the case with minors.

Francis explains that requesting a full evidentiary trial lengthens proceedings. These can last up to eight months, a period during which the child remains in jail. Requesting a full evidentiary trial is often met with retaliation by the judges who tend to give a harsher sentence than average for stone throwing. In this case the child serves a longer sentence, which includes the time of the proceedings and the actual sentence. Defence lawyers find that the quickest way out of the system is to plea-bargain and accept the minimum sentence, even if the child is innocent.

Kuzmar believes that the crime of stone throwing, the main reason why children are arrested, is an “impossible crime”. He explains that, in most cases, children are accused of throwing stones with intention to harm and are also often arrested a long time, even two years, after the alleged act of stone throwing. Kuzmar also explains that court proceedings are based on flimsy and unverified evidence and criminal files contain little or no detail about the time and place of the alleged act of stone throwing. In most cases, the whole trial is only based on the child’s own confession extracted with intimidation and degrading treatment. Kuzmar believes that

In these circumstances it is almost impossible to defend the child according to acceptable legal standards. For example, if a child throws a stone at a soldier from a distance of 200 meters, it is highly unlikely that the stone could kill the soldier and a child cannot throw a stone further than 20 meters. Despite all this, children are convicted to three, five sometimes ten months.

Kuzmar also explains that, in several cases, children arrested confess against ten or twenty other children and a child collaborator’s testimony is never crosschecked. According to Kuzmar, confessions are often not realistic; a child can confess to having thrown two hundred stones in a month. This suggests that, under intimidation and degrading treatment, a child would confess to anything. Nevertheless, Kuzmar explains that the child’s confession is used as evidence in court in violation of 40 of the CRC.

The punitive character of the Israeli military court system and the lack of due legal process also suggest that child detention stretches beyond the mere need to guarantee national security and extends to the conflict itself. The discriminatory character of the military system further corroborates the statements above.

3.5. Discrimination

As explained in chapter two, the Israeli military system is discriminatory. The discrimination is based on nationality and takes place through the application of two different legal systems. In the West Bank, Israeli settlers are subject to Israeli civilian law whereas Palestinians are subject to less favourable military law. DCI advocacy officer explains that Palestine is the only place in the world where there are legal systems based solely on ethnicity. Ethnicity determines the legal system a person falls under.

Kuzmar explains, for example, that settlers who throw stones against Palestinian cars are usually released on bail whereas Palestinian children are sent to jail for at least three months. Kuzmar adds that the practice of night-time arrests is never used with Israeli citizens. According to Kuzmar, separated legal systems are a characteristic of Apartheid.

According to Francis, the existence of a less favourable legal system for the Palestinians, the military one and a more favourable legal system for Israeli settlers, Israeli civil law point the finger to a system that is conceived so as to exercise the maximum level of pressure on Palestinians. Francis also agrees that the existence of two different legal systems is an element of Apartheid. Francis goes on to explain that child detention is part of a policy aimed at urbanizing Palestinians. A policy that is compelling Palestinians to relocate in the few Palestinian cities of Area A and away from most settlements and the Jordan Valley or Area C. Francis adds that child detention is, in fact, one of several tools Israel has adopted in order to concentrate, better control and eventually get rid of the Palestinian population and expand settlements activity and land grabbing creating facts on the ground. Other tools are land confiscation, house demolition, forced displacement, restriction on freedom of movement with a system of permits, family separation policies etc.

Ahmad also explains that the occupation of the WB is a colonial policy of Apartheid and child detention is one of the means under which this policy is implemented. The geography of arrests is explanatory of how Israel implements such policy in areas where the impact is most significant. These are East Jerusalem, areas around illegal settlements or colonies and areas along the Separation Wall.

All interviewees also pointed at another issue that affects children from the moment of arrest to the moment of release: the use of intimidation and degrading treatment.

3.6. Intimidation and degrading treatment

According to all interviewees, children are routinely subjected to degrading treatment. This includes night-time arrests, beating, hooding, deprivation of food and water, sexual and verbal abuse, exposure to bad weather during transfer or the use degrading treatment and intimidation to extract confessions.

According to Shawan Jabarin (interview 18.05.15), general director of Al Haq, the violence that affects children in detention is unnecessary and gratuitous. Jabarin also believes “Israel is aware that children are a vulnerable category and degrading treatment and intimidation have far graver consequences on children than on adults. This is an aggravating factor that suggest that Israel is intentionally targeting a weaker part of society”

According to Khader Rasras (interview 30.03.15), clinical psychologist and co-founder of TRC, children experience post-traumatic stress disorder as a result of intimidation and degrading treatment. Children often suffer from insomnia, nightmares, bed-wetting, feelings of hopelessness, frustration; sometimes children even become violent and experience suicidal tendencies. Rasras adds that post-traumatic stress disorder has long-term repercussions that mar children’s development and affect families and society at large.

According to Naseef Muallem (interview 20.03.15), general director of PCPD, intimidation and degrading treatment are used not only to inflict pain but also to

terrorise children and deter them from taking action against the occupation. Muallem believes that Israeli state violence, expressed through the military system, is a form of domination and control designed to undermine the strength and resistance of the Palestinians.

From the interviews, so far, it emerges that stone throwing can hardly be considered a security offence. Nevertheless, it appears to be sanctioned disproportionately in a system that is perceived to be discriminatory, violent and a tool of Apartheid. Interview findings turn now to the international dimension of military child detention.

3.7. IHL and IHRL

Francis explains that in 1967 the Israeli military governor did not consider itself bound to the IV GC nonetheless it established a military court system as prescribed in articles 64 and 66 of the IV GC. Francis explains that these articles allow prosecuting protected persons for very serious crimes that threaten the security of the Occupying Power and not for political demonstrations and activism, humanitarian and community service activities. Francis further explains that,

Throughout time, Israel has shown the tendency to outlaw political, humanitarian and community activities on the grounds that they might constitute a threat to national security. Therefore, throwing stones as a security offence comes as no surprise. In this way, military courts increased their powers in breach of humanitarian law and came to have jurisdiction on a wide variety of activities, even traffic violations. Israel has banned most activities such as youth political activism, charity and humanitarian activities on the grounds that political parties that are considered terrorist organisations fund these activities. We must not forget that Israel has outlawed most Palestinian political parties on the grounds of terrorist activity.

Kuzmar explains that civilians should not be tried under military law. If this happens, civilians should, at least, have their human rights safeguarded. However, in his experience, this does not happen. In Israeli military courts, defence lawyers are not allowed to appeal to IHL and IHRL. Judges dismiss international law as inapplicable without apparent justification. Defence lawyers cannot even appeal to Israeli criminal law. Kuzmar says

Even if I considered the Israeli military court system a lawful system and court proceedings legal, the judge should limit himself to depriving the child

of his right to liberty only and not also of his right to education, right to health, right to family life. Child arrest and detention involve the breach of all the rights of the child.

According to all interviewees, child detention is mostly a question of human rights protection despite the context of occupation and therefore the need to refer to the laws of war. It emerges that all interviewees agree on the fact that children throwing stones are expressing their stand against the occupation and practicing their right to self-determination. Next paragraph reports some of the most significant opinions.

3.8. The right to self-determination

According to DCI advocacy officer, the act of throwing stones, despite its inherent violence, is always carried out either in response to settler and military violence or as a form of protest during demonstrations against the elements of apartheid: the check points, the Apartheid Wall, the illegal settlements - or colonies -, the segregated road system, the ongoing annexation of East Jerusalem etc.

According to Muallem, Palestinian children are witnesses and victims of violence. Working with children and youth on politics-related topics, Muallem noticed that they are more and more aware of the occupation; its causes and effects on the ground. Muallem says that nowadays, Palestinian children and youth have a more participative approach compared to the past and wish to express their stand against the occupation. They understand that they have the right to fight against it, also by stones. According to the children and youth Muallem works with in Ramallah, sanctioning the practice of child detention is an issue of self-determination and they believe they have the right to go to the street and respond to oppression. Muallem adds that another reason why children are arrested is because of membership in banned political organisations and this also mars political development and therefore undermines the right to self-determination.

Kuzmar also believes that taking part in demonstrations and opposing the occupation is a way to practice the right to self-determination as enshrines in the UN Charter, the Twin Conventions and other international law instruments. All

interviewees agree that Israel's violations of IHL and IHRL and particularly the denial of the right to self-determination require the intervention of the international community. Interviewees also agree that, so far, the international community has failed to hold Israel accountable for its violations.

3.9. International pressure

Kuzmar explains that there is a need to distinguish between United Nations and European agencies on one hand and international NGO's on the other. Kuzmar mentions a 2013 UNICEF report titled "Children in Israeli military detention: observations and recommendations". He explains that this is one of the most detailed reports on military child detention ever published in recent times and the international community received the report with grave concern. However, it had no tangible consequences on the ground. He also adds that the work of NGO's usually yields a greater support for the Palestinian cause than the work of the UN or the EU.

According to Francis, over the last ten years, in an attempt to show compliance with human rights standards and avoid international criticism, Israel has been amending military orders and issuing new ones as a measure of blue-washing. Improvements are only cosmetic and still far from the standards Israeli law and the CRC prescribe³. Francis says that, ultimately, the problem is not the functioning of military courts rather the occupation itself.

Ahmad explains that on one hand, Palestinians are invoking the human rights engrained in international law and, on the other hand, Israel is trying to secure its illegal policies. The role of the international community is to implement international

³ In 2011, Israel increased the age of majority from 16 to 18. However, this change does not apply to sentencing provision therefore children are subject to the same sentences as adults. Furthermore, if a child is arrested as a minor and turns 18 while awaiting court proceedings, the minor will be judged as an adult. In 2013, Military Order 1711 came into effect. The order reduces the maximum time Palestinian children can be detained by Israeli authorities before appearing in front of a military court. This time was shortened from four days to maximum 48 hours, however intimidation and degrading treatment occur within the first 48 hours after arrest. In 2014, Military Order 1745, established specific rules for audio-video recording interrogations and the use of Arabic language used during interrogations of Palestinian children. Nevertheless, this order does not apply to security offences such as stone throwing. Source: Defense for Children International – Palestine Section, Military detention resources, http://www.dci-palestine.org/loophole_in_new_interrogation_rules_leaves_most_west_bank_kids_unprotected accessed 19 October 2015.

law and to hold violators accountable. As long as there is a lack of political will to hold Israel accountable for its violations of international law, Israel can continue to act with impunity. Ahmad further explains that the asymmetrical power balance requires the international community to stand on the side of the oppressed and to enact punitive measures against Israel for its illegal policies, as an incentive to end violations.

3.10. Child detention and long-term repercussions on the conflict

Finally, all interviewees agree that putting an end to the practice of military child detention is of utmost importance also because of its negative repercussions on the conflict. Addameer advocacy officer explains that, since 1967, about 20% of the Palestinian population has been arrested. Detention attacks the very fabric of Palestinian life because children live in constant fear of being arrested, especially if a family member has been arrested before. Israel's aim is to instil fear in the population, to remind it that they are still living under occupation and military orders. Addameer advocacy officer further explains that even a short sentence of a few months, will have grave long-term consequences on the life of the child and his/her family. Detention impacts school career, family life, social relations, and cognitive development. According to Addameer advocacy officer, the devastating effects of detention need addressing especially considering that around 99,7% of trials end with a conviction.

According to Rasras, Israel intentionally targets children for two reasons. Firstly, because they represent a numerically relevant part of the Palestinian population and harm to them means harm to their families and society at large. Secondly, children are particularly vulnerable. The consequences of detention affect children's psychology and create fear and anxiety in order to produce a sick generation that cannot handle social, political and economic responsibilities. Early trauma shapes children's personalities in less favourable ways for themselves and for their society.

According to Jabarin, if Israel's real concern was the security of the state, Israel would not pursue such policies because they cause young victims that will react and the reaction might be violent and revengeful, especially if children were subjected to torture or degrading treatment. According to Jabarin, this suggests that the Israeli occupation is a comprehensive and sophisticated policy of subjugation whose ultimate aim is to break the will of the Palestinian people. The IOF is not there to maintain security and take into account the interests of the protected persons but to punish, annihilate and control. Ultimately, Israel's colonial policy causes Palestinian's violent reactions. Kuzmar adds that "By targeting children, Israel is targeting the future of Palestine".

Conclusions

My research investigated the issue of military child detention in the West Bank. It argued that the Israeli military system of occupation intentionally targets Palestinian children and resorts to military child detention in an institutionalized, widespread and systematic manner and not as a measure of last resort. It showed that this practice causes a number of human rights violations that negatively affect the lives of Palestinian children. My research also showed that military child detention is not separated from the regime of military occupation. It does not simply arise from the need to prosecute minors who have allegedly committed the offence of throwing stones and it does not only respond to Israel's need to pursue its security and maintain public order.

My research contributed to expanding knowledge on the criticalities of the event of a child entering in conflict with military law in a context of conflict and occupation where the risk for human rights violations is high and implementation and accountability present great challenges. My research contributed to increasing visibility of the issue of military child detention in the WB by showing that Palestinian children are freedom fighters and active participants to the struggle against the occupation rather than passive victims of the conflict or even criminals.

In chapter one, I introduced the context of the occupation and situated the issue of military child detention within the Israel-Palestine conflict. The context showed power asymmetry between the parties at the local and international level and it provided useful information on the demographics of the Palestinian population and the prisoner population.

In chapter two, I identified the relevant human rights provisions and I argued that children are arbitrarily deprived of their liberty and they are victims of torture and degrading treatment. When in conflict with the law, children are discriminated against on the basis of their nationality. Children are also denied fair trial rights amongst which the right to be promptly informed of charges, the right to legal council, the right to be accompanied by a parent, the right to be promptly brought before a judge, the right to interpretation and the right to be tried and detained within a system

equipped to judge juvenile cases. While in detention, children are often denied medical care and education. Moreover, international humanitarian law - in particular the law of non-belligerent occupation (LNBO) - is relevant. In chapter two, I showed that this legal framework is applicable because it describes situations of military occupation where the Occupying Power has effective control over the territory and there are no open hostilities. As explained in the context, Israel retains control over most of the WB through the IOF, settlements and economic activities. I argued that Israel exercises effective control and implements the occupation also through the practice of military child detention.

In chapter two, I also described Israel's reluctance to apply both IHRL and IHL and I introduced the debate on the interaction and co-application of the two legal regimes. Given the nature of the human rights violations, given the inadequacy of IHL to protect Palestinian minors from the risk of human rights violations connected to military detention and given the fact that this is a "cold conflict", I conclude that IHRL, better than IHL, identifies the violations children are subjected to and therefore its implementation would be more functional to reducing violations and increasing protection rather than a focus on IHL.

My interview findings confirmed that military child detention is an institutionalized, systematic and discriminatory practice that causes gross human rights violations. As outline in chapter three, my findings suggested that the Israel military system of occupation adopts this practice not to pursue its national security but to enforce an unlawful occupation and oppress Palestinian people.

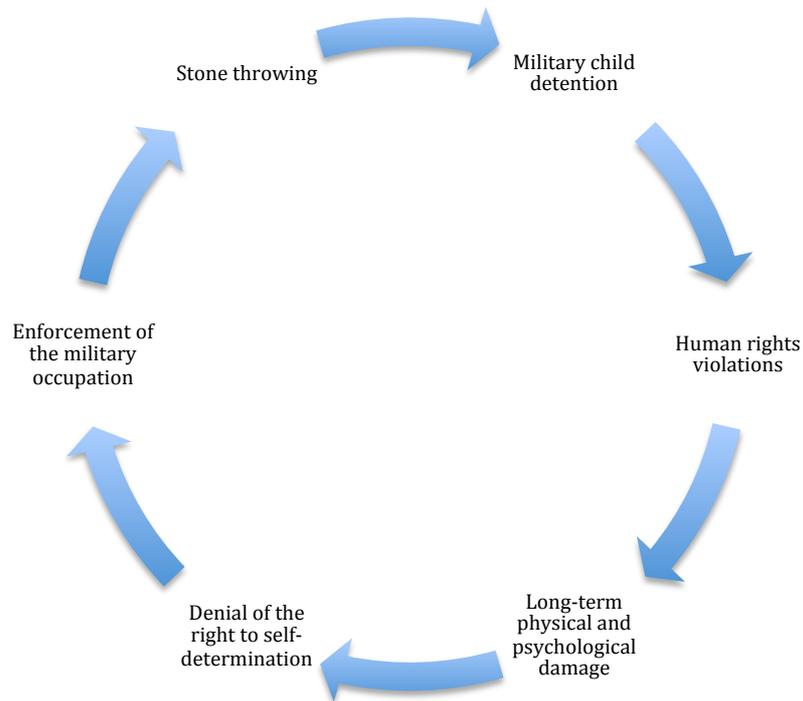
My findings also showed that the Israeli military system has a punitive character that goes beyond its task to serve justice. It is a system that does not provide alternative to detention and negatively impacts the development of the child and his or her reintroduction into society. My findings showed that a child who goes through this system has a high chance to have his or her human rights violated. The denial of fair trial rights emerged and in particular the unlawful use of evidence or lack thereof. My findings showed that a child's confession is often the only evidence and it is unlawfully extorted following intimidation and degrading treatment or it is based on the biased and unverified testimony of an IOF soldier. My findings also showed that

the military system is discriminatory, as it only applies to Palestinian civilians and not to Israeli settlers, and violent.

According to my findings, Palestinian children consider stone throwing as an act of resistance and a way to exercise their right to self-determination. Throwing stones is an act of participation that has paramount political importance. It is a sign of the disparity of forces on the ground and a sign of the will of Palestinian people to emancipate from a condition of oppression. My findings also showed that the international community does not implement international law allowing for a climate of impunity where Israel is not held accountable for its human rights violations. Finally, my findings showed that military child detention has negative repercussions on the conflict. The traumatizing effect of this practice might lead to Foucault's idea of "the violence of the king and the violence of the people" where people soon learn that the violence of the king "could be revenged only with blood" (Foucault and Sheridan, 1977:73) further lengthening a conflict that is already decades-long.

In conclusion, my research showed that the act of throwing stones is increasingly viewed as a way to protest against the occupation. Two characters stand on the field. On the one side, a Palestinian child only armed with stones and, on the other side, a heavily armed IOF soldier. The disparity is evident and the confrontation does not stem from Israel's need to maintain security and public order rather from the Palestinians' will to claim their civil and political rights and ultimately claim their right to self-determination and the end of the military occupation.

The high number of children affected, the geography of arrests and the type of human rights violations ranging from the denial of food and water to the denial of the prohibition of torture show that children are excessively punished. As illustrated in the graph below, the experience of military detention has long-term physical and psychological consequences that are felt also within the families and society at large. These affect children's possibility to be active members of society and exercise their right to resist the occupation and demand an end to it by all means.



Ultimately, this compromises the ability of the Palestinians to claim their right to self-determination and allows the Israeli occupation to be perpetuated with impunity and disregard for international law. As a consequence, military child detention appears to be a tool to enforce the occupation by causing children serious and/or permanent damage that breaks their will to resist it. This creates a vicious cycle that can only be broken by an effective human rights implementation and increased accountability for Israel's human rights violations in the WB.

Policy recommendations

- Israel should recognise the application of IHRL to the OPT in order to allow for implementation and reduce human rights violations. This is in Israel's own interest since a culture of violence breeds further violence and does not serve Israel's interest to reduce security risks for its own people.
- The PA has recently accessed the CRC without reservations. The implementation of the Convention should be monitored closely, especially in respect to the manners in which child participation and voice can and ought to be improved.
- International institutions such as the UN and the EU ought to take a firmer stand against the practice of military child detention and acknowledge the fact that it is being used as a tool to enforce an unlawful occupation.

Practice recommendations

- Palestinian human rights organisations should improve networking with other international human rights NGOs in order to increase visibility of military child detention, raise awareness and change its framing from a matter of mere criminal justice to a tool to enforce the occupation. This is especially advisable for small-scale organisations such as TRC or PCPD.
- Organisations such as the ones whose members I interviewed could organize voluntary programmes built around the need to help children overcome the traumatic experience of military detention. This would further involve civil society, create stronger bonds of solidarity and contribute to a culture of voluntarism.
- Have a celebrity from the artistic world endorse the issue of military child detention in order to increase visibility and raise awareness.

Word count: 15433

References

- ADDAMEER. 2010. *The Right of Child Prisoners to Education* [Online]. Ramallah, Occupied Palestine Addameer Prisoners Support and Human Rights Association. Available:
<http://www.addameer.org/files/Reports/addameer-report-the-right-of-child-prisoners-to-education-october-2010-en.pdf> [Accessed 12 May 2015].
- ADDAMEER. 2015. *Palestinian Children and the Israeli Military Detention System* [Online]. Ramallah, Occupied Palestine: ADDAMEER, Prisoner Support and Human Rights Association. Available:
<http://www.addameer.org/etemplate.php?id=296> [Accessed 20 March 2015].
- AKRAM, S. M., DUMPER, M., LYNK, M. & SCOBIE, I. 2010. *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace*, Taylor & Francis.
- AL HAQ. 2011. *Collective Punishment in 'Awarta Israel's Response to the Killing in Itamar Settlement* [Online]. Ramallah, Occupied Palestine Al Haq Law in the Service of Men Available:
<file:///Users/carlottacimmino/Downloads/Collective%20Punishment%20in%20Awarta.pdf> [Accessed 20 August 2015].
- AMNESTY INTERNATIONAL. 2014. *Israel/Occupied Palestinian Territories Human Rights Concerns* [Online]. Amnesty International USA Available:
<http://www.amnestyusa.org/our-work/countries/middle-east-and-north-africa/israel-and-occupied-palestinian-territories> [Accessed 20 October 2015].
- AZAROV, V. 2013. *Institutionalised Impunity Israel's Failure to Combat Settler Violence in the Occupied Palestinian Territory* [Online]. Ramallah, Occupied Palestine Al Haq Law in the Service of Men Available:
<http://www.alhaq.org/publications/institutionalised-impunity.pdf> [Accessed 21 August 2015].
- B'TSELEM. 2011. *NO MINOR MATTER Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone Throwing* [Online].

- Jerusalem: B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories. Available:
http://www.btselem.org/sites/default/files2/201107_no_minor_matter_eng.pdf. [Accessed 18 October 2015].
- B'TSELEM. 2015 *Settlements* [Online]. Jerusalem B'Tselem, The Israeli Information Center for Human Rights in the Occupied Territories. Available:
<http://www.btselem.org/settlements/statistics> [Accessed 20 July 2015].
- BAKER, A. 2012. International humanitarian law, ICRC and Israel's status in the Territories. 94, 1511-1521.
- BEN-NAFTALI, O. 2006. The Extraterritorial Application of Human Rights to Occupied Territories. *Proceedings of the Annual Meeting (American Society of International Law)*, 100, 90-95.
- BEN-NAFTALI, O., GROSS, A. M. & MICHAELI, K. 2005. Illegal Occupation: Framing the Occupied Palestinian Territory. *Berkeley Journal of International Law*, 23, 551.
- BENVENISTI, E. 1992. *The international law of occupation*, Princeton, N.J, Princeton University Press.
- BERG, M. D. 2005. The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ. *European Journal of International Law*, 16, 879-906.
- CASSESE, A., GAETA, P. & ZAPPALÀ, S. 2008. *The human dimension of international law : selected papers*, Oxford, Oxford University Press.
- CASSIMATIS, A. E. 2007. International humanitarian law, international human rights law, and fragmentation of international law. *International and Comparative Law Quarterly*, 56, 623-639.
- CIA WORLD FACTBOOK. July 2014 *Country Report Israel* [Online]. Central Intelligence Agency Available:
<https://www.cia.gov/library/publications/the-world-factbook/geos/is.html> [Accessed 17 July 2015].
- COMMITTEE ON THE RIGHTS OF THE CHILD. 2013a. *Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session (27 May –14 June 2013)* [Online]. New York: UN Committee on the Rights of the Child. Available:

<http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ISR-CO-2-4.pdf> [Accessed 12 July 2015].

COMMITTEE ON THE RIGHTS OF THE CHILD. 2013b. *Implementation of the Convention on the Rights of the Child, List of issues to be taken up in connection with the consideration of the combined second, third and fourth periodic reports of Israel (CRC/C/ISR/2-4). Addendum. Written replies of Israel** [Online]. New York: Committee on the Rights of the Child Sixty-third session 27 May – 14 June 2013. Available:

<http://unispal.un.org/UNISPAL.NSF/361eea1cc08301c485256cf600606959/abeb678de515c5b885257b81005fbfb4?OpenDocument> [Accessed 20 August 2015].

COOK, C., HANIEH, A. & KAY, A. 2004. Stolen youth : the politics of Israel's detention of Palestinian children. London: Pluto Press, in association with DCI, Defence for Children International, Palestine Section.

COOMANS, F., GRÜNFELD, F. & KAMMINGA, M. T. 2010. Methods of human rights research: A primer. *Human Rights Quarterly*, 32, 179-186.

COUNCIL FOR EUROPEAN PALESTINIAN RELATIONS. 2014. *Illegal Israeli Settlements* [Online]. Council for European Palestinian Relations Available: http://thecepr.org/index.php?option=com_content&view=article&id=115:illegal-israeli-settlements&catid=6:memos&Itemid=34 [Accessed 12 September 2015].

DCI 2009. Palestinian child prisoners: The systematic and institutionalised ill-treatment and torture of Palestinian children by Israeli authorities. Ramallah, Occupied Palestine

DCI 2012a. Bound, Blindfolded and Convicted: Children Held in Military Detention Ramallah, Occupied Palestine.

DCI 2012b. Recruitment and Use of Palestinian Children in Armed Conflict. Ramallah, Occupied Palestine

DCI. 2013. *New Israeli military order ineffectual in safeguarding child detainees* [Online]. Ramallah, Occupied Palestine Defense for Children International - Palestine Section Available: http://www.dci-palestine.org/new_israeli_military_order_ineffectual_in_safeguarding_child_detainees [Accessed 17 October 2015].

- DCI. 2013 *Child Detention* [Online]. Ramallah, Occupied Palestine: Defence for Children International - Palestine Section Available: <http://www.dci-palestine.org/content/child-detention> [Accessed 01 March 2015].
- DCI. 2014a. *Detention* [Online]. Ramallah, Occupied Palestine Defense for Children International - Palestine Section Available: http://www.dci-palestine.org/case_summaries [Accessed 18 July 2015].
- DCI 2014b. Growing up between Israeli settlements and soldiers. Ramallah, Occupied Palestine
- DCI. 2014c. *Number of Palestinian Girls in Israeli Military Detention* [Online]. Ramallah, Occupied Palestine Defense for Children International - Palestine Section Available: http://www.dci-palestine.org/palestinian_girls_in_israeli_detention [Accessed 17 October 2015].
- DCI. 2014d. *Palestinian Children in Israeli Military Custody Face Physical Violence* [Online]. Ramallah, Occupied Palestine Defense for Children International - Palestine Section Available: http://www.dci-palestine.org/palestinian_children_in_israeli_military_custody_face_physical_violence [Accessed 20 August 2015].
- DCI. 2014e. *Rising numbers of Palestinian children subjected to solitary confinement* [Online]. Ramallah, Occupied Palestine Defense for Children International - Palestine Section Available: http://www.dci-palestine.org/rising_numbers_of_palestinian_children_subjected_to_solitary_confinement [Accessed 20 August 2015].
- DCI. 2014f. *Rising physical violence against Palestinian child detainees* [Online]. Ramallah, Occupied Palestine Defense for Children International - Palestine Section Available: http://www.dci-palestine.org/rising_physical_violence_against_palestinian_child_detainees [Accessed 20 September 2015].
- DCI. 2015. *Palestinian schoolchildren terrorized by settler vigilantes, soldiers* [Online]. Ramallah, Occupied Palestine: Defense for Children International - Palestine Section Available: http://www.dci-palestine.org/palestinian_schoolchildren_terrorized_by_settler_vigilantes_soldiers [Accessed 19 September 2015].

- DINSTEN, Y. 2009. *The international law of belligerent occupation*, Cambridge, Cambridge University Press.
- DRUMBL, M. A. 2012. *Reimagining Child Soldiers in International Law and Policy*, OUP Oxford.
- EUROPEAN COMMISSION. 2014. *Palestine Projects* [Online]. Available: <http://ec.europa.eu/europeaid/node/452> [Accessed 16 July 2015].
- EVANS, T. 2005. International human rights law as power/knowledge. *Hum. Rights Q.*, 27, 1046-1068.
- FOUCAULT, M. & SHERIDAN, A. 1977. *Discipline and punish : the birth of the prison*, London, Penguin Books.
- GAVENTA, J. & CORNWALL, A. 2006. Challenging the boundaries of the possible: Participation, knowledge and power. *IDS Bull.-Inst. Dev. Stud.*, 37, 122-+.
- GAYIM, E. 1990. The principle of self-determination : a study of its historical and contemporary legal evolution. Oslo: Norwegian Institute of Human Rights.
- GLOBAL CONFLICT TRACKER. 2015. *Center for Preventive Action* [Online]. US Council on Foreign Relations Available: <http://www.cfr.org/global/global-conflict-tracker/p32137-!/> [Accessed 15 August 2015].
- GREENBLATT, K. 2014. "Gate of the Sun": applying human rights law in the Occupied Palestinian Territories in light of non-violence resistance and normalization. *Northwestern University Journal of International Human Rights*, 12, 152-190.
- HAJJAR, L. 2005. *Courting conflict : the Israeli military court system in the West Bank and Gaza*. Berkeley: University of California Press.
- HANIEH, A., KAY, A. & COOK, C. 2003. Paying the Price of Injustice: Palestinian Child Prisoners and the UN Human Rights System. *Middle East Report*, 26-31.
- HART, J. & TYRER, B. 2006. *Research with Children Living in Situations of Armed Conflict: Concepts, Ethics and Methods* [Online]. Oxford, UK University of Oxford Refugee Studies Centre [Accessed 17 October 2015].
- ICJ. 2004a. *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* [Online]. International Court of Justice (ICJ), 9 July 2004. Available:

- <http://www.refworld.org/docid/414ad9a719.html> [Accessed 10 June 2015].
- ICJ. 2004b. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for advisory opinion). Summary of the Advisory Opinion of 9 July 2004. Available: <http://www.icj-cij.org/docket/files/131/1677.pdf> [Accessed 18 September 2015].
- ICRC. 2004. *What is the difference between humanitarian law and human rights law?* [Online]. International Committee of the Red Cross. Available: <https://www.icrc.org/eng/resources/documents/misc/5kzmuy.htm> [Accessed 23 September 2015].
- IOP HARVARD 2014. Buying Enemies Why Foreign Assistance Endangers US Security Interests and Directions for Reform. *Harvard University The Institute of Politics The Policy Group for National Security*.
- JABARIN, S. 2014. The Occupied Palestinian Territory and international humanitarian law: a response to Peter Maurer. 95, 415-428.
- KOUTROULIS, V. 2012. The application of international humanitarian law and international human rights law in situation of prolonged occupation: only a matter of time? 94, 165-205.
- KRETZMER, D. 2012. The law of belligerent occupation in the Supreme Court of Israel. 94, 207-236.
- KRILL, F. O. 1992. The protection of children in armed conflicts. In: FREEMAN, M. & VEERMAN, P. (eds.) *The Ideologies of children's rights* Boston, USA Kluwer Academic Publishers.
- KUZMAR, K. 2015. Military child detention in the West Bank In: CIMMINO, L. C. (ed.).
- KVALE, S. 2007. *Doing interviews*, London, SAGE.
- LEATHERMAN, J. L. 2013. *Sexual Violence and Armed Conflict*, Wiley.
- LUBELL, N. 2012. Human rights obligations in military occupation. 94, 317-337.
- MAURER, P. 2012. Challenges to international humanitarian law: Israel's occupation policy. 94, 1503-1510.
- MERRY, S. E. 2006. Transnational Human Rights and Local Activism: Mapping the Middle. *American Anthropologist*, 108, 38-51.

- MILITARY COURT WATCH 2014 Children and Armed Conflict - Report of the Secretary General
- NEUMAN, W. L. 2014. *Social research methods: qualitative and quantitative approaches*, Harlow, Pearson.
- NILSSON, A. C. 2013. *Children and Youth in Armed Conflict*, Brill.
- OCHAOPT. 2012. Arrests and detentions in the West Bank. *Occupied Palestinian Territory* [Online]. Available: <http://www.ochaopt.org/annual/c1/7.html> [Accessed 16 August 2015].
- OTTO QC, T. J., TRISTAN SIBBEL, SHANE 2013. Freedom from Torture The Meaning of Torture Advice *Blackstone Chambers*
- PALESTINIAN CENTRAL BUREAU OF STATISTICS. 2014. *Palestinian National Authority* [Online]. Palestinian Central Bureau of Statistics Available: http://www.pcbs.gov.ps/Portals/_Rainbow/StatInd/StatisticalMainIndicators E.htm [Accessed 12 October 2015 2015].
- ROBERTS, A. 2006. Transformative Military Occupation: Applying the Laws of War and Human Rights. *The American Journal of International Law*, 100, 580-622.
- ROSEN, D. M. 2012. *Child Soldiers: A Reference Handbook*, ABC-CLIO.
- SAIT, M. S. 2004. Have Palestinian Children Forfeited Their Rights? *Journal of Comparative Family Studies*, 35, 211-228.
- SANTOS PAIS, M. 1999. *Child Participation* [Online]. New York, USA UNICEF United Nations International Children's Emergency Fund. Available: <http://www.gddc.pt/atividade-editorial/pdfs-publicacoes/8182MartaPais.pdf> [Accessed 20 August 2015].
- SARSAR, S. 2004. The Question of Palestine and United States Behavior at the United Nations. *International Journal of Politics, Culture, and Society*, 17, 457.
- SAUL, M. 2011. The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right? *Human Rights Law Review*, 11, 609-644.
- SAVE THE CHILDREN. 2012 *The Impact of Child Detention: Occupied Palestinian Territory* [Online]. Save the Children - Sweden [Accessed 1 October 2015].

- SHUTTLEWORTH, K. 2014. Palestinian stone throwers could face 20 years in jail.
The Guardian World News, 4 November 2014
- THIELE, C. 2012. *The Right to Self-determination and Protection of Minorities*.
Frankfurt (Oder), Germany: Europa-Universität Viadrina
- TILLEY, V. 2012. *Beyond occupation : apartheid, colonialism and international law in the occupied Palestinian territories*. London: Pluto Press.
- UN GENERAL ASSEMBLY. 2015. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez.
Human Rights Twenty-eighth session Council Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development [Online].
- UN SECRETARY-GENERAL. 2015. Israel and State of Palestine *Office of the Special Representative of the Secretary-General for Children and Armed Conflict* [Online]. Available:
<https://childrenandarmedconflict.un.org/countries/occupied-palestinian-territory-and-israel/> [Accessed 5 July 2015].
- UNICEF. 2013. *Children in Israeli Military Detention. Observations and Recommendations* [Online]. Available:
http://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf.
- UNIVERSAL PERIODIC REVIEW. 2013 Universal Periodic Review Second Cycle - Israel Available:
<http://www.ohchr.org/EN/HRBodies/UPR/Pages/ILSession15.aspx>
[Accessed 15 August 2015].
- WASHINGTON REPORT ON MIDDLE EAST AFFAIRS. 1999. *U.S. Aid to Israel Now Exceeds \$90 Billion By Richard H. Curtiss* [Online]. American Educational Trust Available: [http://www.wrmea.org/1999-september/the-cost-of-israel-to-u.s.-taxpayers-u.s.-aid-to-israel-now-exceeds-\\$90-billion.html](http://www.wrmea.org/1999-september/the-cost-of-israel-to-u.s.-taxpayers-u.s.-aid-to-israel-now-exceeds-$90-billion.html) [Accessed 19 June 2015].
- WASHINGTON REPORT ON MIDDLE EAST AFFAIRS. 2014. *US Aid: The Lifeblood of Occupation by Matt Bowles* [Online]. American Educational Trust Available: <http://www.wrmea.org/congress-u.s.-aid-to-israel/us-aid-the-lifeblood-of-occupation.html> [Accessed 18 June 2015].

- WENDEN, A. 2005. The Politics of Representation: A Critical Discourse Analysis of an Aljazeera Special Report. *International Journal of Peace Studies*, 10, 89-112.
- WOLF, J. 1992. The concept of the 'best interest' in terms of the UN Convention on the rights of the child. In: MICHAEL, F. & PHILIP, V. (eds.) *The Ideologies of children's rights*. Boston, USA: Kluwer Academic Publishers.
- WORLD BANK. 2014. *Indicators Population* [Online]. The World Bank IBRD IDA Available: <http://data.worldbank.org/region/LAC> [Accessed 16 June 2015].
- YESH DIN. 2007. *Backyard Proceedings The Implementation of Due Process Rights in the Military Courts in the Occupied Territories* [Online]. Yesh Din. Available: <http://www.yesh-din.org/userfiles/file/Reports-English/BackyardProceedingsfullreportEng.pdf>. [Accessed 5 January 2015].
- YOU TUBE. 2014. *Briefing by Brad Parker of Defence for Children International Palestine* [Online]. You Tube Available: <https://www.youtube.com/watch?v=5yTkaGpgkEU> [Accessed 16 March 2015].
- ZAHER, A. 2009. A Critical Discourse Analysis of News Reports on the Israeli/Palestinian Conflict in Selected Arab and Western Newspapers. *Nottingham Trent University*.
- ZAHRIYEH, E. 2014. *Maps: The occupation of the West Bank, Varying layers of Israeli control show stark reality of Palestinian life under occupation* [Online]. Available: <http://america.aljazeera.com/multimedia/2014/7/west-bank-security.html> [Accessed 17 August 2015].

APPENDIX A: Interview Guide

Name of the interviewee:

Educational and professional background:

Name of the organisation:

Position in the organization:

Years of professional experience in the field:

1. Are child arrest/detention and the means used to pursue it exclusively a response to the threat represented by children throwing stones?

2. Is the reaction of the IOF (Israeli Occupation Forces) and other Israeli authorities proportionate to the event of children throwing stones?

3. Is Israeli legislation discriminatory and how?

4. What are the main arguments Israel uses to justify the widespread use of child detention and are these arguments well-founded in relation to Israel's need for security and in relation to a culture of legality (IHL/IHRL)?

5. Is child detention related to the system of apartheid enforced in the West Bank? If so, how?

6. What are the long-term repercussions of child detention on the conflict? Are there any grounds to assume that the practice of child detention amounts to collective punishment?

7. Have there been any changes in child detention (e.g. decreasing number of arrests, etc.) following international pressure (UN, UNICEF, INGO etc.)? Has anything changed during your years of practice?

8. What are the consequences on child psychological and physical wellbeing?

9. How does child detention impact Palestinian society at large?

10. What are the historical development and trends of child detention in the West Bank?