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JUVENILE JUSTICE IN THE WEST BANK

Analysis and Recommendations for Reform

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Analysis and Recommendations for Reform

The International Legal Foundation in consultation
with the United Nations Development Programme

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The analysis and recommendations of this report do not necessarily reflect the views of the United Nations Development Programme. The report is an independent publication commissioned by UNDP.

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The ILF bears sole responsibility for any errors or omissions in this report.

ABOUT THE INTERNATIONAL LEGAL FOUNDATION

Created in 2001, the ILF, www.theilf.org, is the leading global advocate for the right of the indigent accused to legal representation. Driven by the belief that every person accused of a crime deserves to be represented by a well-trained lawyer, no matter their ability to pay, the ILF assists countries emerging from conflict or in transition to establish criminal legal aid systems that provide effective, quality criminal defense services to the poor.

In countries emerging from conflict or in transition, quality criminal defense services for the poor tend to be limited in scope or non-existent. Without access to effective legal representation, the poor and marginalized are vulnerable to arbitrary and extended pre-trial detention, torture, coerced confessions, wrongful convictions, and other abuses. The ILF's approach to this problem is uniquely effective because it focuses on increasing the knowledge and skill of local defense lawyers through intensive mentoring while simultaneously working to build criminal legal aid systems. To date, the ILF has created public defender programs in Afghanistan, Nepal and the West Bank that have provided defense services to over 30,000 indigent men, women and children. The ILF's impact on their clients' lives and the justice systems of these countries has been profound; clients who had languished in detention for years have been released, incidents of torture have been reduced, and many innocent people have been acquitted.

In 2010, the ILF opened the first public defender office in Ramallah with one lawyer. By the end of 2013, ILF-West Bank had eight lawyers staffing three offices (in Ramallah, Jenin and Al-Khalil) and had represented almost 500 indigent persons accused of crimes, including 180 juveniles.

ABOUT THE UNITED NATIONS DEVELOPMENT PROGRAMME

UNDP partners with people at all levels of society to help build nations that can withstand crisis, and drive and sustain the kind of growth that improves the quality of life for everyone. On the ground in more than 170 countries and territories, UNDP offers global perspective and local insight to help empower lives and build resilient nations.

The Rule of Law & Access to Justice Programme is an integral part of UNDP/PAPP's (Programme of Assistance to the Palestinian People) democratic governance interventions in the State of Palestine. The Programme works to strengthen the functioning of the justice system as the Palestinian people prepare for statehood through developing the capacity of rule of law institutions to work efficiently, accountably, and responsively to community needs and to improve legal and policy frameworks, while also enhancing access to justice through community legal empowerment approaches, including provision of legal aid services targeting women, children and other vulnerable groups.

UNDP/PAPP has expanded Palestinian children's access to justice through contributing to amending the Child Law and a draft Juvenile Protection Law, supporting development of child-friendly policy frameworks and referral networks, and successfully targeting and tailoring legal aid services for children. Through its civil society partners and support to in-house legal aid services provided through the Ministry of Social Affairs, the Programme has provided 2,634 children with legal representation or advice, and nearly as many again with training on child rights or tailored legal information. In addition, the Programme supports the Palestinian Maintenance Fund to provide reliable child support payments to around 350 of the most vulnerable children per month and has provided more than 450 lawyers with specialized training on juvenile justice related topics.

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I. EXECUTIVE SUMMARY

Juvenile Justice in the West Bank: Analysis and Recommendations for Reform examines the challenges facing juveniles in the criminal justice system of the West Bank and provides recommendations to remedy systemic problems, in order to ensure that the rights of juveniles are protected. More specifically, the report 1) documents the current state of juvenile justice reform in the West Bank, the experiences of the International Legal Foundation's (ILF) juvenile clients and other juveniles within the Palestinian justice system, and the effect that their involvement in the criminal justice system has on their daily lives; and 2) based on this information, analyzes the extent to which laws protecting the rights of accused juveniles are being implemented in practice.

Under the Palestinian criminal justice system, a juvenile is defined as a person younger than 18 years old.¹ In 2011, 1,702 juveniles were accused of a criminal offense in the West Bank,² with many of the alleged crimes carrying sentences of less than three years and therefore falling under the jurisdiction of the conciliation courts.³ Approximately 75-80 percent of juvenile cases are eventually dismissed, after repeated adjournments.⁴ In the meantime, children are held in detention in at least 25% of cases⁵ and, because there is only one juvenile detention center in the West Bank, they are often detained in the same facility as adults, though in a separate holding area. For the ILF-West Bank, the average time between arrest and judgment in juvenile cases is 284 days,⁶ with delays primarily due to the non-attendance at court of witnesses.

While the State of Palestine has made significant strides in enacting laws that are intended to protect the rights of juveniles in the criminal justice system, this study shows that poor implementation and lack of oversight undercut these laws. Juveniles have long been recognized as a protected class under Palestinian law, and the State of Palestine has begun to develop a separate juvenile justice system with the creation of a specialist juvenile police unit, judges who take exclusive responsibility for juveniles' cases, and lawyers from the Ministry of Social Affairs providing criminal defense services to indigent juveniles. The justice sector has also focused on legislative reform to address gaps and oversights in the juvenile justice system; for instance, the Draft Law on Juvenile Protection has been fully developed and is awaiting presidential approval. The juvenile justice reform movement began prior to the start of this study and continues today. However, certain deficiencies in the law do exist which have yet to be remedied by any of the proposed reforms, most notably the need for clear provisions regarding the appointment of counsel at the earliest possible time after arrest. Additionally, at the time each juvenile involved in this study was arrested, there were existing laws that, if implemented correctly, could have protected them against the violations set out below.

Since opening its first public defender office in the West Bank in late 2010 through the end of 2013, the ILF and its 11 Palestinian lawyers⁷ have represented almost 500 indigent persons accused of crimes, including 180 juveniles. The information gathered during the course of its day-to-day representation of juveniles in the court system, combined with the data gathered through its case tracking system and in-depth interviews with 46 of its young clients,⁸ has led the ILF to identify five specific areas of the criminal justice system where the rights of juveniles are too often ignored:

1. Juveniles are rarely informed of their right to counsel in a timely manner, and delay in obtaining counsel is systemic. Only 16% of juveniles interviewed were informed of their right to counsel by the prosecutor at the time of investigation. Of the 46 interviewees, only two were informed of their right to counsel by the court.
2. Unlawful police practices at the time of a juvenile's arrest and during the early stages of the police investigation of the case are widespread. Only 9% of interviewees had a parent present during the investigation. Only 43% were told about the reason for their arrest.
3. Maltreatment of juveniles in police custody is extremely common; 74% of interviewees reported suffering some form of abuse, whether physical, psychological, or both.

4. Prolonged pre-trial detention is the norm rather than the exception. There is only one juvenile detention center in the West Bank, Dar Al-Amal in Ramallah; 87% of male juveniles from across the West Bank are detained at Dar Al-Amal pre-trial. This adds to court delays because juveniles are often not produced in courts outside Ramallah on their scheduled court dates. On a positive note, interviewees reported being well-treated at Dar Al-Amal.
5. Speedy trial violations are common, and particularly egregious because most cases end in acquittals or dismissals. The average time between arrest and judgment was 284 days in the 88 ILF-West Bank cases that reached a final verdict as of the end of 2013.

To address these problems, this report recommends the following:

1. All juveniles should have prompt access to qualified defense lawyers at all stages of the criminal process, including during any interview by judicial officers and/or public prosecutors.
2. Whenever possible, the use of pre-trial detention for juveniles should be avoided by imposing alternative measures, such as release on bail or close supervision.
3. Police should be further trained in how to handle juvenile cases, and should be subject to independent oversight; juveniles should be encouraged to make complaints, and courts should monitor and remedy rights violations.
4. Juvenile cases should be tried without undue delay. Especially in cases in which juveniles are held in pre-trial detention, trial delays should be strictly limited.
5. Whenever possible, juveniles should be diverted away from judicial proceedings into community programs and provided available treatment and support services.

II. INTRODUCTION

The goal of this paper is to provide a comprehensive overview of the treatment of juveniles in the Palestinian criminal justice system, based on direct research and analysis of existing and proposed legal frameworks. It is divided into three parts. Part One reviews the international and domestic legal framework governing the rights of juveniles in the criminal justice system in the West Bank. Part Two begins with a review of the complex set of legal provisions governing the rights of juveniles, and then describes the actual practices in the criminal courts of the West Bank. Part Three provides recommendations to address gaps and meet critical needs in the juvenile justice system.

Despite the adoption of the Palestinian Child Law in 2004 and subsequent amendments in early 2013, and other reforms implemented in recent years to better protect the rights of children, juveniles in the criminal justice system are still not consistently afforded the rights and protections they are entitled to under Palestinian and international law. The State of Palestine has a young and rapidly growing population, with nearly half of its citizens under 18 years old⁹ and one of the highest birth rates in the world,¹⁰ and so it is critical that it fully address the rights of juveniles in the criminal justice system. There is no separate juvenile justice system in the West Bank; juveniles are tried in the same courts and before the same judges as adults, and in many instances are treated the same as adult offenders, despite biological, psychological, and social differences.¹¹ The most common challenges faced by juveniles in the criminal justice system include excessive pre-trial detention and unnecessary delays, difficulty accessing counsel, and a lack of diversion programs.

The Palestinian Civilian Police established a juvenile police force in 2012. The juvenile police force is intended to handle juvenile cases from arrest and initial investigation through the interrogation stage.¹² However, the ILF found that none of its juvenile clients (who come from three districts in the West Bank region of the State of Palestine—Ramallah, Al-Khalil [Hebron], and Jenin) reported being dealt with by the specially trained juvenile police. Instead, they were routinely arrested and questioned by the police without regard for their status as a protected class or for the age-based limits to their level of comprehension; without a parent or guardian present; without being informed of their right to counsel; and without instructions on how to contact a lawyer. These are violations of their basic rights as Palestinian citizens and as juveniles,¹³ and result in a denial of the right to access to counsel at the critical early stages of the criminal justice process. Without early access to counsel, juveniles risk being unlawfully denied bail at the first remand hearing and subsequent pre-trial detention hearings, and may unnecessarily and unlawfully languish in jail awaiting trial. Aside from the trauma of being separated from their family and community, pre-trial detention puts juveniles at increased risk of abuse and violence and can negatively impact their chances of rehabilitation.¹⁴

In providing legal representation to indigent defendants, the ILF's experience is that, because cases are not scheduled a date certain for trial and because the prosecution is not strictly held to its burden to present evidence in a timely manner, in accordance with the defendants' right to a fair and speedy trial, cases before the regular courts in the West Bank are plagued by endless adjournments. It is not uncommon for conciliation courts to adjourn hearings six or more times, delaying trials for more than two years. At times, lengthy proceedings create undue burdens on defendants and result in defendants failing to attend court hearings, causing further delay. Since its inception in late 2010 through 2013, the ILF's public defender program in the West Bank, ILF-West Bank has represented 180 juvenile cases.¹⁵ Of those cases, approximately 30 were adjourned for more than a year, three were adjourned more than two years, and of those, some are still ongoing.¹⁶ Many of these cases involve minor offenses such as theft or simple assault and are often adjourned for reasons that provide little justification, including failure of the court to subpoena police, failure of prosecution witnesses to respond to notification and subpoena, the court's refusal to proceed when a client cannot attend or is not produced from detention, and the court's refusal to dismiss cases where police or other witnesses repeatedly fail to appear. In all instances, cases heard years after the juvenile's arrest lead to the presentation of unreliable evidence, resulting in violations of the right to fair trial.

Through day-to-day representation of indigent persons accused of crimes in the West Bank, ILF-West Bank has found that many juvenile cases involve petty theft charges or minor assault charges.¹⁷ Once these juveniles are arrested on minor offenses, they are thrown into the justice system with no real opportunity for diversion to an ancillary system that

focuses on the underlying problems that cause criminal behavior or programs that work to reduce recidivism. The criminal justice system also often impedes opportunities for the rehabilitation of juveniles.¹⁸ As cases are delayed, juveniles miss school, exams, and work. In some cases, juveniles are made to repeat a grade because the criminal case prevented them from completing requirements. This can lead them to drop out of school due to the familial or social pressures involved in repeating one or more years of school. Often times, the social stigma of being behind in school and labeled a “criminal” is something that is difficult, if not impossible, to shed. This can directly affect the juvenile’s ability to fully integrate into society, particularly in small villages.

III. PROJECT DESIGN AND METHODOLOGY

The objective of this research project is to develop deeper understanding of the experience of juveniles in the Palestinian criminal justice system and of how this experience affects them. The data collected, along with additional comparative research, will ultimately be used to inform recommendations for juvenile justice reform.

A. INDICATORS AND QUESTIONNAIRES

The indicators and questionnaires used in this study are based on best practices in juvenile justice and drawn from a review of the relevant literature, consultations with juvenile justice experts, and ILF-West Bank's experience representing juveniles in the Palestinian criminal justice system. Indicators were chosen with consideration for the range of information available and designed to be quantifiable and substantive. The indicators fall into several categories: demographic information that includes social and geographic factors such as family background, education, employment status, and birthplace; temporal information, including age at the date of the incident, date of arrest and time spent in detention; objective information such as charge, court of adjudication, arrest jurisdiction, and amount of bail (if bailed); and finally, the subjective experiences of the juvenile while in the justice system and

after the resolution of the case. Copies of the questionnaires are annexed in Appendices A and B of this report.

B. SOURCES AND METHODS OF INFORMATION GATHERING

Two primary sources were used for this study. The first was ILF-West Bank's case tracking database, which supplied quantitative information such as the dates of, and the length of time between, each stage of the justice process. The second was information gathered from direct interviews of juveniles who have had contact with the criminal justice system, conducted between March and May of 2013. At the core of this research were interviews conducted with forty-six male juveniles of varying age, criminal charges, and location, who provided ILF-West Bank with direct input on their experiences in the justice system. Interviews were also conducted with ILF-West Bank lawyers during this time period.

Some of the information that ILF-West Bank maintains about its clients is privileged and confidential; for this study, the data was aggregated and stripped of personally identifiable information before it was used. Individual interviews were conducted on a strictly voluntary basis, and only after the subject understood that the conversation would not be covered by attorney-client confidentiality. To avoid confusion, interviews were conducted by an independent researcher and not ILF-West Bank lawyers. The researcher met with juveniles in parks, coffee shops, Dar Al-Amal, the Freedom Theatre, and ILF-West Bank offices.

In some cases, there were discrepancies between the information given by juveniles during interviews and that recorded in the ILF-West Bank's case database about their cases as copied from court files. For example, on occasion, the time between arrest and prosecutor interrogation as recorded in the database differed substantially from the amount of time reported by the juvenile. There are many possible explanations for these discrepancies. It is possible that the juvenile did not accurately recall how long they were in police custody; that the court file was incorrect, either through data entry errors or intentional misstatement of the date of arrest (to make it appear to conform to legal requirements); and that some combination of all of the above occurred. In cases where the juveniles' statements were contradictory or implausible, they were not relied upon in the analysis. Where possible, efforts were made to identify patterns in the accounts of different juveniles. Consistent accounts given by multiple juveniles in separate cases were treated as more credible and therefore given greater weight.¹⁹

C. SURVEY GROUP

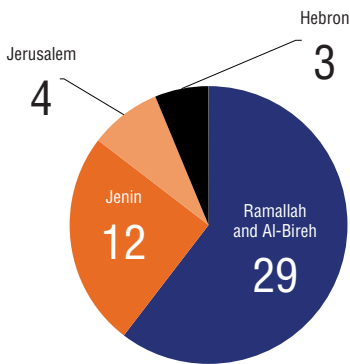
Survey participants were drawn from ILF-West Bank's juvenile clients.²⁰ The juveniles interviewed in this study represented a diverse population of accused juveniles- they came from different locations, faced different charges, and were of different ages and backgrounds. Subjects who are currently adults but were juveniles at the time of the alleged offense are included. The subjects were all arrested and charged with committing misdemeanor and/or felony crimes when ILF-West Bank lawyers were appointed to represent them.

Thirty-six interviews were conducted with current or former ILF-West Bank clients, along with four co-defendants who were not represented by ILF-West Bank. Collectively, these interviewees discussed 43 separate cases.²¹ An additional six juveniles not represented by ILF-West Bank were interviewed at the juvenile detention center for boys in Ramallah, Dar Al-Amal. In total, 46 juveniles were interviewed about 49 cases.

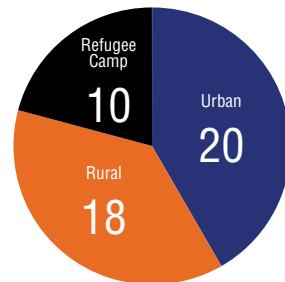
At the time of this study, ILF-West Bank had been operating in Ramallah for almost three years,²² in Jenin for approximately a year,²³ and in Al-Khalil (Hebron) for a few months.²⁴ Thus, juveniles from the central and northern areas of the West Bank constituted the majority of the sample set. The observations are more focused on the central area of the West Bank, but include the experiences of juveniles from the northern and southern areas as well. The sample set includes juveniles from a variety of hometown environments (urban, rural and refugee camps), allowing for some inferences to be made about the effects of contact with the criminal justice system on juveniles from different environments.

Cases in ILF-West Bank's database include juveniles who were arrested between August 2010 and March 2013. The majority of cases in the database involve juveniles who

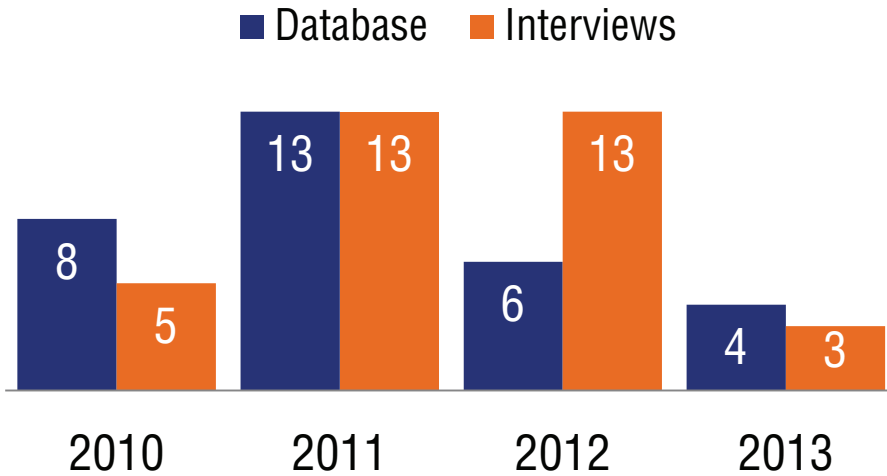
Place of Residence of Juveniles Interviewed by Governorate



Place of Residence of Juveniles Interviewed by Type



Year of Arrest in Juvenile Cases



were arrested in 2011; however, the interviews included more juveniles who had been arrested in later years, as we had more accurate contact information for them.²⁵

At the time of the study, ILF-West Bank had only represented one female juvenile client and thus lacked sufficient cases to include in the study.²⁶ However, since the majority of juveniles accused of crimes in the West Bank are male, critical gaps in the current system have a proportionally higher effect on male juveniles. Despite the high rate of violence against women in Palestinian society, the percentage of crimes committed by females remains notably low.²⁷ Girls in conflict with the law in the West Bank rarely find their way into the formal justice system; instead, the prevailing patriarchal culture means that they are largely dealt with as a 'social problem,' with issues being resolved through informal justice mechanisms. The other side of this coin is the fact that female victims of crime may actually be sent to jail for 'security purposes' (i.e. purportedly for their own protection), meaning that "women and girls are thus subjected to a dual violence: first by their relatives and second by official bodies when they are held in prisons."²⁸ These are vitally important issues, but beyond the scope of this report.

D. PEER GROUP MEETING AND STAKEHOLDER REVIEW

Input from experts and stakeholders was sought both during the development stage of the study and after the initial analysis had been completed. The ILF presented a preliminary draft of this report to relevant stakeholders for comments at a roundtable discussion in Ra-

mallah on 21 August 2013, co-hosted by UNDP. Participants included the Ministry of Justice, the Attorney General's Office, the High Judicial Council, the Ministry of Social Affairs (MOSA), Defense for Children International-Palestine (DCI), the European Union Coordinating Office for Palestinian Police Support (EUPOL COPPS), the United Nations Children's Fund (UNICEF), Human Dynamics, and the Child Rights Information Network for countries in the Middle East and North Africa (CRIN MENA). Following the roundtable discussion, the ILF held individual meetings with local justice officials, civil society groups, and international experts working on issues of children in conflict with the law in the State of Palestine to solicit additional feedback and suggestions. Participant comments and feedback were incorporated into the final draft.

IV. LAW AND PRINCIPLES

A. CURRENT LAW

There are many existing laws that protect and govern cases of juveniles accused of crimes in the West Bank. Articles 12 and 14 of the Basic Law protect their right to counsel, the Code of Penal Procedure (CPP) protects their right to be represented and informed of their rights before prosecution and the court, and the Juvenile Reform Law²⁹ and the Palestinian Child Law stipulate the care which the police, prosecution and court must take with juveniles as they move through the criminal justice system. For instance, Article 12 of the Basic Law explains that everyone must be allowed the opportunity to contact a lawyer, and Article 29(3) requires that juveniles must be protected from harmful and cruel treatment. Use of restraints upon children is governed by Article 5 of the Juvenile Reform Law, which states “It shall not be permissible to bind the juvenile except in the circumstances when he is rebellious and violent.” The Palestinian Child Law Article 4(1) states, “Considerations shall be given to the best interests of the child in all actions, whether undertaken by legislatures, courts of law, administrative authorities and/or public or private social welfare institutions.”

Palestinian laws are also generally consistent with international laws and standards on the rights and treatment of juveniles in conflict with the law.³⁰ The International Covenant on Civil and Political Rights (ICCPR)³¹ and the United Nations Convention of the Rights of the Child (CRC)³² both recognize juveniles as a vulnerable class in need of special protections, particularly when involved in the criminal justice system.

B. LEGISLATIVE AND POLICY INITIATIVES

The justice sector in the West Bank has in recent years taken great strides towards creating a juvenile system that fully respects the rights of children. In 2010, the National Committee for Juvenile Social Justice (The Committee) was formed under the chairmanship of the Ministry of Social Affairs (MOSA). The Committee is made up of representatives from MOSA, the Palestinian Civil Police Force, the Ministry of Justice, the Ministry of Women's Affairs, the Ministry of Labor, the Ministry of Education and Higher Education, the Ministry of Planning and Administrative Development, the Attorney-General's Office, the High Judicial Council, the Bar Association, Defence for Children International-Palestine, Palestinian universities, and the Independent Commission for Human Rights.

The Committee is vested with a number of tasks and responsibilities, including formulating a national strategic plan to protect juveniles; preparing the Palestinian juvenile draft law; overseeing the implementation of the national plan for protecting juveniles; presenting periodic reports about the work and performance of institutions regarding juvenile care and justice; and monitoring the performance of government and non-governmental institutions relating to juveniles.³³ In 2013, the Committee presented its National Strategic Plan for Protecting Juveniles in Palestine, designating authority for implementation to a sub steering committee.³⁴ Firmly rooted in the concept of social protection, the Strategic Plan will deal with juvenile issues “in a way that protects juveniles against delinquency, rehabilitates them, and integrates them again in the society, by creating an environment of care and protection and a supportive legal environment; and will build and develop the capabilities of those working in this sector, in addition to raising community awareness to protect against delinquency.”³⁵

Within this strategic plan, The Committee recognized several strengths and weaknesses pertaining to the treatment of juveniles in the justice system. The relevant strengths identified included swift police response to cases involving juveniles and the existence of civil society organizations, while relevant weaknesses include the lack of specialized judges and prosecutors qualified to deal with juvenile cases, long trial proceedings in juvenile cases, the lack of specialized police for juvenile justice, and the lack of obligatory legal representation of the juvenile during investigation. The plan goes on to set out a broad framework for reform.

Through this strategic plan, and in anticipation of the ‘Law on Juvenile Protection’ coming into force, the State of Palestine has begun developing and implementing a number of initiatives to better protect the rights of juveniles in the justice system.

First, the Palestinian Civil Police Force have created a specialized juvenile unit, now operating in every district, whose officers are trained on the specific rights and considerations involved in arresting, interrogating, and detaining juveniles. In certain places, such as Al-

Khalil (Hebron), juvenile police have already been given sole responsibility for arresting juveniles. On the limited occasions in which circumstances require that regular officers conduct such an arrest, the juvenile is to be transferred to the juvenile police within a short space of time. However, based on the experience of ILF-West Bank's clients and lawyers, this system does not yet appear to operate.

Second, the judiciary has designated judges throughout the West Bank who will be exclusively responsible for hearing juvenile cases. ILF-West Bank lawyers have met several other judges who recognize juveniles as a special class and will choose rehabilitation over detention in sentencing. In Ramallah, a specialized juvenile court will sit approximately once every two weeks in order to focus on the particular needs of juveniles and to speed up the trial process.

Third, with UNDP support,³⁶ MOSA has established a legal aid service for juveniles³⁷ and has shown openness to working with civil society organizations with the goal of providing juveniles early access to quality criminal defense services. This move is necessary because, other than the ILF, only DCI and UN Women³⁸ also provide criminal defense services to young people in the West Bank. There are relatively few lawyers who specialize in juvenile defense.

Fourth, a specialized juvenile justice court is in the process of being piloted at Dar Al-Amal juvenile detention center.³⁹ Although this court would clearly be unable to hear all juvenile cases in the West Bank within a reasonable time, the foundations are being laid for a completely separate juvenile justice system, with specialized justice actors, a fairer trial process, and better options for diversion for young people.

These initiatives are important, as the judiciary has a significant role to play in encouraging juvenile cases to be resolved through reconciliation and outside of the formal justice system. This would free up limited resources for other cases which cannot be resolved in this manner. It appears that 75-80 percent of juvenile cases are dismissed following the withdrawal of the complainant's personal right and the absence of any public right to continue the case, which usually indicates reconciliation between the complainant and accused.⁴⁰

1. DRAFT LAW ON JUVENILE PROTECTION

As discussed above, an important part of the ongoing juvenile justice reform movement has been the enacted amendments to the Child Law and, more significantly, the Draft Law on Juvenile Protection (DLJP), which among other things focuses on diverting juveniles away from the justice system,⁴¹ protecting juveniles from physical and mental abuse,⁴² creating a separate justice system for juveniles,⁴³ avoiding pre-trial detention,⁴⁴ and protecting the speedy trial rights of the juvenile.⁴⁵ Once the DLJP is passed and adopted, the Juvenile Reform Law of 1954 will be repealed. The new law will support and provide guidance for re-

maintaining laws aimed at protecting the juvenile's right to counsel, right to be free from torture and punishment, and right to a speedy trial.

With a proper focus on implementation, this law has the potential to transform the concept of juvenile justice in the West Bank, and certainly brings the West Bank a step closer to satisfying international standards on the treatment of juveniles in the justice system.⁴⁶ However, there are some notable gaps in both the law and its implementation. For instance, Articles 11 and 19 of the DLJP discuss legal assistance and procedures that must be taken upon arrest. Nowhere in either article does the law indicate that the police are required to contact a lawyer for the juvenile before the prosecutor is involved, a period which, according to the DLJP, could be as long as 24 hours.⁴⁷ Instead, the law explains that juveniles must have a lawyer starting at the "preliminary investigation stage" (or prosecution stage, i.e. when the prosecutor is contacted),⁴⁸ and even then, the timing of appointment is undefined and the appointment itself is dependent on a set of unidentified circumstances.⁴⁹ Additionally, upon arrest the law only requires police "to immediately inform the guardian of the child and the Child Protection Counselor."⁵⁰ Although these articles help to define access to counsel for juveniles, they leave a gap in the implementation of the juvenile's basic right to counsel during the police stage, and raise an implementation issue around the criteria and timing of appointment during the preliminary investigation stage, which begins at the prosecution office (or at the police if the prosecution provides a mandate to the police).

In 2011, the Ministry of Justice drafted a legal aid law which, when adopted, will establish the Palestinian Legal Aid Fund, an independent body that will "seek to safeguard the rights of beneficiary groups to access justice by providing the service of legal aid free of charge, promoting the principle of social solidarity, raising awareness and promoting the right to access justice, embodying equality between Palestinians before the law and judiciary, and coordinating and consolidating national efforts on the level of legal aid services."⁵¹

The draft law focuses generally on the operation of, and membership within, the Palestinian Legal Aid Fund. Although the draft law does provide that "particular account" should be given to women and children,⁵² the law provides no specific protections to juveniles, nor does it account for any gaps left or created by the DLJP. In fact, services from the Fund will only be applicable to people charged with misdemeanors where the penalty "exceeds one year,"⁵³ which would exclude from eligibility those children facing common charges such as resisting public officials, certain indecent acts, simple assaults, threats, certain thefts, buying and selling stolen property, and throwing stones. In addition, under the current draft of the law, legal aid coverage commences only "immediately following the investigation stage."⁵⁴ Ironically, it is before and throughout the investigation stage that the most serious abuses can occur, which are largely incurable at later stages. Thus it is before and during the investigation stage when access to counsel is most needed.

V. RESEARCH FINDINGS

A. ACCESS TO COUNSEL

1. OVERVIEW

The first minutes, hours, and days of police custody or detention are the most crucial for those who have been arrested or detained. It is during this period that there is the greatest risk of torture and other forms of ill-treatment, ranging from neglect to coerced confessions and unlawful detention. Decisions made and actions taken or not taken in these early stages will determine the ability of the arrestee to conduct their defense, the length of their detention, when they appear before a court, and whether appropriate decisions are made about prosecution or diversion from the criminal justice system.⁵⁵

Ensuring that all juveniles have access to counsel at or near the time of arrest is both consistent with local and international law and also safeguards the rights of juveniles. It prevents forced confessions and arbitrary detention and promotes the right to a fair and speedy trial. Access to counsel is one of the most fundamental principles underpinning a fair and legitimate criminal justice system. A lawyer not only provides critical legal advice and a measure of comfort in a uniquely stressful situation, but also acts as a guardian of the accused's basic rights to a fair trial. It is vitally important that such protection is available at the earliest possible opportunity. The interview stage is among the highest-pressure stages of justice proceedings, with the potential to determine how the case is ultimately resolved.

This is of particular importance to juveniles, who may not be able to understand how their actions at the time of arrest and interrogation can affect the outcome of their case. Many of the juveniles surveyed gave conflicting responses to interview questions regarding confessions given to police- they frequently claimed not to have confessed when records indicate that they did, indicating a degree of confusion about what happened. This highlights the critical importance of the juvenile's right to counsel during the earliest stage of the criminal process.

2. RELEVANT LAW AND PROCEDURE

Article 12 of the Basic Law states that following arrest, "efforts shall be made to give [the arrested person] the opportunity to contact a lawyer." Further, Article 14 provides that "any person accused in a felony shall be represented by a lawyer."

Legal counsel needs to be present as soon as the juvenile is in police custody to guarantee conformity to existing law and to guard against false or inaccurate statements. The Code of Penal Procedure (CPP) also contains numerous provisions that emphasize the importance of counsel during the prosecutor's interrogation. Article 96 of the CPP stipulates that before interview, the accused must be advised by the prosecutor of the right to assistance of counsel; Article 97 allows an accused to postpone the interview until the arrival of his lawyer; and Article 102 reiterates the right to the assistance of counsel during the investigation.

Unfortunately, because the police engage in extra-legal interrogation of juveniles, these legal protections are not observed. By law, police may not interrogate an accused person without a mandate from the public prosecutor (which can only be delegated to police in misdemeanor cases).⁵⁶ However, police routinely interrogate suspects without a mandate, and without informing them of their right to counsel. Therefore, even though the accused is entitled to the protection of counsel during interrogation by the prosecution, this safeguard is rendered ineffective when the same protection is not provided if police conduct the interview, either under a formal delegation from the prosecutor or, more commonly, not.

By law, any person arrested must be brought before a deputy prosecutor within 24 hours of arrest.⁵⁷ The deputy prosecutor must interrogate the accused in felony cases, though this is optional in misdemeanor cases.⁵⁸ Regardless of whether the prosecutor elects to conduct an interrogation, they must either release the accused or produce the accused in court within the 24-hour time period to request extension of detention beyond 24 hours.⁵⁹

What happens at this stage is critical to protecting the rights of a person who has been arrested, and there are special considerations for juveniles. First, the prosecutor has an obligation to inform those interrogated of their right to remain silent and to be represented by a lawyer.⁶⁰ Second, the prosecutor is responsible for conducting a physical examination of the accused and establishing the cause of any visible injuries.⁶¹ Finally, it is at this stage that

determinations about charges and initial pre-trial detention are made. The longer a juvenile is held in pre-trial detention, the greater their risk of not returning to school or losing their job.

The right to access to counsel is also firmly established in international law. Article 14(3) of the International Covenant on Civil and Political Right (ICCPR) provides that in criminal cases, everyone shall be entitled to the following minimum guarantees:

(b) to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing; ...
and (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

The importance of the right to access to counsel at the earliest stage of the criminal process has recently been underlined by the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.⁶² In particular, Principle 3 states that:

20. States should ensure that anyone who is arrested, detained, suspected of or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at *all stages* of the criminal justice process.

...

23. It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.

This is reinforced by Principle 8 (Article 29), which provides that ‘States should ensure that, prior to any questioning and at the time of deprivation of liberty, persons are informed of their right to legal aid and other procedural safeguards’ as well as Guideline 3 (Article 43), which requires States to ensure that persons meet with a lawyer or legal aid provider promptly after arrest. Guideline 10 (Article 53(b)) is even more clear about the responsibility of States to ensure juveniles have access to counsel at the time of arrest, “enabling children who are detained, arrested, suspected or accused of, or charged with a criminal offence to contact their parents or guardians at once and prohibiting any interviewing of a child in the absence of his or her lawyer or other legal aid provider, and parent or guardian when available, in the best interests of the child.”

3. OBSERVATIONS

The presence of counsel protects arrested persons against violations of their basic legal rights, as well as direct physical or mental abuse. Of the juvenile interviewees who responded when asked whether they were able to contact counsel at the police station, not one said that they had access to counsel at the police station. There is an alarming disconnect between a juvenile's legal rights at the time of arrest and what actually occurs when a juvenile is arrested. The net result is that all of these juvenile respondents were interviewed by police without legal representation, some over the course of many days. This is a violation of Article 12 of the Palestinian Basic Law, and Article (14)(3)(d) of the ICCPR.

The juveniles reported meeting the prosecutor in 30 cases and reported that they did not in 19 of the total 49 cases surveyed. Of the 30 cases where they met the prosecutor, they met the prosecutor in the courthouse in nine cases and at the prosecutor's office in 21 cases.⁶³ In only six cases did the juveniles interviewed report being informed at the prosecutor's office of their right to be represented by a lawyer (one said that he did not recall). Of the six juveniles who were informed of their right at the prosecutor's office, one was simply told by a guard that he "better get a good lawyer" because of the serious nature of the charges he faced. Two additional juveniles reported being informed in court that they could have a lawyer. The fact that only 16% of juveniles interviewed reported being notified of their right to counsel at the initial stage of the case suggests that current procedures are failing to meaningfully inform juveniles about their basic rights in a way that they can understand. Only 29% of those who reported meeting the prosecutor at the prosecutor's office reported being informed of their right to counsel, indicating that the protections provided under CPP 96 are not effective when juvenile suspects are interviewed. Only one of the juveniles interviewed requested that a lawyer be appointed for him after being informed of this right at the prosecutor's office; however, this resulted in a delay of 24 hours, during which time no lawyer ever attended and after which he was interrogated without counsel present, rendering this right illusory.

As discussed above, juveniles are an inherently vulnerable population and often lack the knowledge, insight, and maturity to understand the complexities of the criminal justice system, particularly in the moments and days immediately after arrest. Only five of the 21 juveniles interviewed who reported meeting the prosecutor at the prosecution office also reported giving a confession. It is highly doubtful that only such a small percentage gave incriminating statements. Some of this may be attributed to the juveniles' reluctance to admit to having made a confession; however, many of the other 16 juveniles described giving incriminating statements, or signing incriminatory statements, without realizing that these were confessions. The requirement of CPP 96 that the prosecutor "warn [the accused] that

all he says may be used as evidence against him in the trial” is meaningless if juveniles do not understand this admonishment or do not understand the implications of their statements.

The longer an accused person is denied the ability to exercise their right to access to a lawyer, the greater the risk of further violations of their rights and the more these violations impact the proceedings against the individual. This risk is even more acute for juveniles. Juveniles are less experienced than adults, more susceptible to influence by authority, and have a lower level of understanding of basic rules and procedure. They therefore require a greater level of protection. The sooner a lawyer is engaged, the sooner any subsequent issues and abuses can be avoided, mitigated, or remedied.

The juvenile interviewees provided information that highlighted a spectrum of issues, from a lack of understanding of basic rights to complete violations of basic rights. Whatever the issue, the solution remains that same: providing juveniles with early access to counsel both ensures they are advised of their rights, and that their rights are protected.

B. JUVENILE RIGHTS DURING ARREST AND INTERROGATION

“People should follow the law, especially the judicial police officers.”

- 14 year old arrested in Jenin in 2010 [August]

1. OVERVIEW

The treatment of a person during arrest and detention sets the tone for the rest of their journey through the criminal justice system. It also has far-reaching implications for the administration of justice and the legal system as a whole. Indeed, there is a significant and growing body of evidence that an accused person’s sense of the fairness of their treatment directly impacts their likelihood of future compliance with authority and committing further offences.⁶⁴ Studies show that “when defendants perceive their treatment to be fair, they are more likely to accept the decisions of the court, comply with court-imposed sanctions, and obey the law in the future.”⁶⁵ Fairness may have a wider impact upon public confidence and law-abiding behavior in general, as, according to theories of procedural justice, defendants who feel they are treated unfairly will feed this back to their communities, and thus diminish the legitimacy of courts and public trust in justice.

Law enforcement is at the front-end of this process and has a substantial influence on an accused’s perception of fairness. Vested with the power of arrest, essentially the ability to infringe upon an individual’s right to liberty, police carry the responsibility to ensure that

this is done compassionately and in observance of certain rights. This is particularly important in the case of juveniles, as is acknowledged by both Palestinian and international law.⁶⁶ As the Committee on the Rights of the Child has noted, “If the key actors in juvenile justice, such as police officers, prosecutors, judges, and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?”⁶⁷

2. RELEVANT LAW AND PROCEDURE

One of the most fundamental rights of an arrested person is the right to be told the reason for their arrest. This ensures that they understand why they are being deprived of their liberty, puts them on notice as to exactly what is being alleged, and acts as an important protection against the misuse of the power of arrest. This is enshrined in Article 12 of the Basic Law, which declares that:

“Every arrested person shall be informed of the reasons for his arrest or detention. He shall be promptly informed, in a language he understands, of the nature of the charges brought against him.”⁶⁸

Along with Article 11 of the Basic Law, which protects the right to personal freedom and prohibits any arrest which is not carried out in accordance with the law, it is clear that failing to properly inform a person of the reason for their arrest is inherently unlawful.

These dual requirements of ‘promptness’ and ‘comprehension’ are also found in international law. Article 14(3)(a) of the International Covenant on Civil and Political Rights (ICCPR) provides that an accused has the right “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.” Similarly, the United Nations Convention on the Rights of the Child (CRC) requires that:

“Every child alleged as or accused of having infringed the penal law has at least the following guarantee....to be informed *promptly* and *directly* of the charges against him or her, and, if appropriate, *through his or her parents or legal guardians*, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense.”⁶⁹

As highlighted, the CRC also alludes to the right of juveniles to have parents available to consult with. Further, the Beijing Rules repeatedly emphasize the importance of parental involvement in cases involving young people:

“§7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, *the right to the presence of a parent or guardian*, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

“§ 10.1 Upon the apprehension of a juvenile, *her or his parents or guardian shall be immediately notified of such apprehension*, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

“§ 15.2 *The parents or the guardian shall be entitled to participate in the proceedings* and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.”

Further, Guideline 10 (Article 53) of The UN Principles and Guidelines on Access to Legal Aid demands that States put special measures in place to prevent adversely affecting children in the criminal justice system, including:

“Enabling children who are arrested, detained, suspected of or charged with a crime to contact their parents or guardians at once and prohibiting any interviewing of a child in the absence of his or her lawyer or other legal aid provider, and parent or guardian when available and in the best interests of the child;

“Ensuring the right of the child to have the matter determined in the presence of the child’s parents or legal guardian, unless it is not considered to be in the best interests of the child;

“Ensuring that children may consult freely and in full confidentiality with parents and/or guardians and legal representatives.”

Although there are no specific provisions in Palestinian law requiring the presence of a parent during a juvenile's interview,⁷⁰ Article 5 of the Child Law of 2004 imposes a general duty upon parents to care for and guide their children and for the state to affirm the responsibility of parents. Furthermore, Article 21 emphasizes the right of 'separated' children to maintain personal relationships and direct contact with their parents.

In addition, the Juvenile Reform Law recognizes the importance of parental presence, albeit later in proceedings. Article 8 states that "if a juvenile is accused of committing a crime, the court shall ask his father, or guardian to appear before it and to order whatever it deems necessary to ensure his appearance."

Lastly, § 22.1 of the Beijing Rules stipulates that those dealing with juvenile offenders should have specialist training:

"Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases."

3. OBSERVATIONS

A. RIGHT TO BE INFORMED OF REASONS FOR ARREST

As set out in Article 12 of the Basic Law and Article 14(3) of the ICCPR, it is essential not only that reasons for arrest are provided in a timely manner, but that these reasons are *actually comprehended* by the person involved. Given the lesser ability of juveniles to process information, especially in the frightening and stressful situation of an arrest, it is vitally important that the reasons for arrest are explained to them in clear and simple language.

However, the data collected shows a worrying disregard for basic rules and procedure governing the arrest of juveniles. Of the 49 juvenile cases discussed by the 46 interviewees, only in 20 cases were the juveniles promptly informed of the reason for their arrest. This means that many young people were detained without knowing why they had been arrested. It is a frightening enough proposition for a mature adult to languish in a cell without knowing the reason for their detention, let alone a juvenile who has far less developed coping mechanisms. This fear and bewilderment jeopardizes their short term emotional well-being, and risks longer term psychological or psychosocial damage. It is also a major factor contributing to coerced and/or false confessions.⁷¹ In either case, such treatment is clearly not in the child's best interests and thus contravenes the guiding principle of the Child Law and the CRC.

There appears to be no obvious pattern or correlation between which juveniles were told the reasons for their arrest, what they were charged with, and the location of the police

station that detained them. Further, there was no single police station at which every juvenile was told why they were arrested. The arbitrariness with which this right is enforced suggests that further training is required across the board, along with the institution of effective disciplinary measures in cases where police breach their duty.

B. PRESENCE OF PARENT/GUARDIAN

“When my father got there, nobody touched me, nobody hit me.”

- 14 year old juvenile detained at Beitunia Police Station in 2010 [August]

Young people benefit from parental support in many aspects of their life. Parents fulfill the role of caregiver, advisor, protector, and comforter. At the interview stage, which is a particularly traumatic experience, the presence of a parent or guardian may help to safeguard a juvenile’s rights, ensure that the juvenile understands precisely what is happening, and provide protection for their wellbeing.

Of the juveniles interviewed, only four of them (9%) stated that a parent was present during at least part of their interview. The presence of parents seems to be subject to the whim of the police/prosecutor involved and does not appear to bear any relation to the offense concerned. Often parents were not even informed of their child’s whereabouts.

“In those 10 days, my parents did not know where I was.”

- 17 year old client detained by ‘intelligence services’⁷² in Ramallah in 2013

Even when parents were present, this did not necessarily prevent abuse or coercion by the police. This suggests that the presence of parents alone may not provide a sufficient safeguard. One client reported that the police interrogating him told him that his father had signed a paper authorizing them to hit him, and another reported that his father also hit him during the interrogation. The presence of a parent or guardian is important, but it is not a substitute for the right to counsel. The responses also illustrate both the crucial need for mechanisms to ensure early access to counsel and the need for education of families and communities on the rights of children.

“There were 3 officers there. They started beating me as soon as I got to the door. I was scared at the police investigation. At the investigation, they had other statements there. They asked

me ‘what happened?’ and when I told them, they say ‘liar!’ and wrote. My father was with me, but he didn’t know what to do. When he believed what the police were saying, he hit me too.”

-14 year old detained at Ramallah Police Station arrested in 2010 [August]

C. USE OF JUVENILE POLICE

None of the juveniles interviewed indicated they had been arrested by the specialist juvenile police,⁷³ and none of the ILF-West Bank lawyers reported ever interacting with the juvenile police in any juvenile cases. Six of the 48 juveniles in the study gave a detailed description of the person involved in the arrest. Four identified the type of officer, including Intelligence Police, Traffic Police, Special Forces; two juveniles identified the complainant as the authority that arrested them. The remaining 44 juveniles stated simply that the “police” arrested them. Some of the juveniles described the police officer’s uniforms (“one star,” “two stars,” or “plain clothes”); however, not one single interviewee mentioned or described a special juvenile police officer being involved in their arrest, interrogation, or detention at the police station. This suggests either that juvenile police were not involved in the cases of any of the juveniles interviewed, or that they did not identify themselves as such and their behavior was indistinguishable, from the juvenile’s perspective, from the behavior of “regular” police officers. While some of the juveniles were arrested before the establishment of the juvenile police units, many were arrested after those units came into operation. Given that the treatment of juveniles by the police does not appear to have changed after these juvenile police units were established, it is clear that implementation is a significant hurdle to safeguarding the legal rights of juveniles.

C. TREATMENT OF JUVENILES IN POLICE CUSTODY

1. OVERVIEW

Physical or psychological abuse of any person is immoral, often illegal, and a gross violation of human rights. It is even more shocking when that harm is inflicted by authority figures against persons in their care or custody, and especially when those persons are children.

In the case of juveniles, abuse can have particularly damaging effects because they are still maturing, have a lower threshold for pain, and are more susceptible to trauma than adults. Consequently, abuse of juveniles has the very real potential to damage both their relationships and their long-term development.⁷⁴ John G Allen, in his book *Coping with Trauma*,

explains that “psychologically, the bottom line of trauma is overwhelming emotion and a feeling of utter helplessness. Bodily injury may or may not be evident, but psychological trauma is coupled with physiological upheaval that plays a leading role in the long range effects.”⁷⁵

2. RELEVANT LAW AND PROCEDURE

Article 13 of the Basic Law requires: “No person shall be subject to any duress or torture. All persons deprived of their freedom shall receive proper treatment.” Article 29 of the CPP places a positive duty on authorities to treat an arrested person “in a manner that will preserve his dignity” and prohibits them from being “physically or morally harmed.” Depending on the circumstances of the case, such treatment may well amount to torture, defined by Article 1.1 of the Convention Against Torture (CAT) as:

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

There are further provisions that add extra protection for young people. Article 68 of the Child Law forbids torture and any form of mistreatment against juveniles, explaining “that no child shall be subjected to physical or moral torture, or any pattern of punishment or [treatment] that is cruel, humiliating or degrading to humanity.” In addition, Article 29 of the Child Law provides that the rights of children include “comprehensive protection and welfare” as well as “protection from harmful and cruel treatment.”

To safeguard these rights, Article 99 of the Criminal Procedure Code requires prosecutors to conduct a physical examination of any person they interrogate and determine the cause of any visible injuries. Furthermore, Article 55 of the CPP provides that police may only interrogate a suspect with a mandate from the public prosecutor, and Article 19 of the CPP makes it clear that the prosecutor is responsible for supervising all officers invested with a judicial mandate. Thus it appears that the public prosecutor has an obligation to monitor the treatment of children by the police, and therefore has a duty to implement Article 68 of the Child Law.

3. OBSERVATIONS

A. PHYSICAL OR PSYCHOLOGICAL ABUSE DURING DETENTION

“The police came, put me on the floor, handcuffed me, then took me to the police station and started beating the shit out of us.”

-16 years old detained at Ramallah Police Station arrested in 2012 [July]

A significant number of the juveniles interviewed reported suffering abuse in one form or another. Overall, in an alarming 74 percent of cases (36 out of 49), the juvenile suffered some form of physical or psychological abuse while in detention.

‘General’ abuse by police (i.e. not specifically targeted at eliciting a confession) was reported by 26 of the juveniles interviewed (53%). This ranged from hitting, punching, and slaps to more serious cases where blows from nightsticks, threatened electrocution, or strikes with the butt of a gun and other methods of torture were used.

“After questioning us, they took us out, to a room used to torture people. They tied our hands to the ceiling in iron cuffs. There were iron cuffs hanging all over the room, from the ceiling. Whenever someone came into the room, they would start beating us, and asking questions, and then they would leave. Another person would come and do the same thing...”

- 17 years old, detained by intelligence services in Ramallah in 2013

Abuse of this sort can lead to all manner of long-term physical and psychological problems including post-traumatic stress disorder, isolation, insomnia, anxiety, emotional and mental scars, and anti-social behavior.⁷⁶

“I used to be big, tough, but now look at me. After that, I’m scrawny, and I’m having issues now – asthma attacks, and sometimes I just start shaking for no reason. I just want to go

back and support my family – I have little brothers and sisters and they have nothing to eat.”

- 17 year old arrested in Ramallah in 2013

There appears to be preponderance of abuse committed at the Ramallah Police Station. Of those interviewed, eight out of the nine juveniles who were detained at the Ramallah Police Station reported suffering some kind of physical abuse from the police. The one juvenile who reported that he was not physically abused by police at the Ramallah Police Station explained that he had cousins who were police officers in Ramallah. This abuse tended to follow a pattern of random, repeated violence:

“Every time an officer passed by, they would question me, beat me, then leave.”

- 16 years old detained at Ramallah Police Station in 2013

“They beat and questioned him for 3 days straight, without any break. It was all the officers – whoever was coming by would hit him, question him.”

- 16 years detained at Ramallah Police Station in 2010 [September]

“When he was in the office in the police station, officers would just come in, hit him, accuse him, make fun of him or ask him questions, and then leave.”

- 14 years old detained at Ramallah Police Station in 2010 [August]

“They say ‘you did this or that, you must say what you did.’ Then the police came in one by one, each one beating me then leaving, then another came in. They never brought food or drink.”

- 14 years old detained at Ramallah Police Station in 2011 [May]

Of further concern, but outside the scope of this report, is the fact that police abuse appears to be so embedded in the system that it caused one juvenile to remark in his interview: “*I thought the police weren’t allowed to hit you until you’re 18.*”

B. COERCED CONFESSIONS

There were also an alarming number of cases in which juveniles indicated that they had been physically or psychologically coerced by police to confess. Aside from the fact that police should not be interviewing an accused without a mandate from the prosecutor,⁷⁷ forcing confessions from accused persons clearly leads to a significant risk of wrongful convictions. Forty-five of the juveniles interviewed responded to questions regarding whether they gave a confession to police and whether they were physically or psychologically coerced by the police to confess. Of those who answered both of these questions, 15 provided conflicting answers, meaning that they reported being forced to confess to the police and also denied providing a confession to police. The most likely reason for this discrepancy is the juvenile's lack of understanding of what constitutes a confession, such as associating confessions with oral admissions rather than written statements. In some cases, juveniles described the police trying but failing to get a confession, but in general the understanding of what "confession" meant was not clear to them.

Of the juveniles interviewed, 18 interviewees (37%) reported that they had been *physically* coerced to confess by police, while 23 juveniles (47%) said that they had been subject to *psychological* coercion. Although Palestinian judges have the power to strike out unlawfully obtained confessions at trial,⁷⁸ it is often difficult for the defense to show evidence of unlawful action if the juvenile did not have access to legal representation during the investigation stage.

"[The police officer] comes to me, he says, 'confess and I will let you go home, confess like your friends.' I said I did nothing and they said, 'You liar!' every time, I swear. He slapped me in the face and neck. He said, 'You stole, confess!' He turned the lights off and turned on a lamp and hit me with his hands. Then he pushed me towards the wall and I bled from my mouth, I told him let me wash my mouth, but he didn't let me. He smoked a cigarette and told me, 'You have until I finish my cigarette to confess.' I said I did nothing. He brings electricity. He scared me with it, but it was not turned on. He put wires on my neck and said he would turn it on. Then I said I stole. He said, 'I didn't want to hit you,' but two police officers hit me. One slapped me three times, and the other one who stayed with me and did all this, I can't remember how long it took but

it was long. It was cold and there was no food, no drink. He told me, ‘you won’t sleep tonight.’ I stayed in the police station from 11 p.m. till 5 a.m. After I gave a statement and confessed and signed, my dad came in and he also signed.”⁷⁹

- 14 years old detained at Ramallah Police Station in 2013

“Because of the beating, 3 days of it, we had to falsely confess. We told them ‘Write whatever you want. If you say we stole, we stole.’”

- 15 year old detained at Ramallah Police Station in 2010 [August]

Although juveniles reported instances where coercion by police did not lead to confession, this data must be approached with some caution, as it relies on juveniles’ perceptions of whether or not they actually confessed in the specific, legal sense of the term. Perhaps a more telling statistic is that, of the 14 juveniles interviewed who confessed either to the police or prosecution, only one of these did not report being coerced to do so through psychological or physical abuse by the police.⁸⁰

C. INVESTIGATION OF POLICE ABUSE

While many juveniles reported being physically assaulted by police, none reported the prosecutor examining any injuries, which they are legally required to do under Article 99 of the CPC. Some did report going to a physical exam in the course of transfer from the police to the prosecution office, but none described being asked about police abuse at that stage either. Indeed, there is no indication in the interviews conducted by the ILF that the public prosecutor or any police officer took an interest in how juveniles were treated by the police officers conducting interrogations. Three juveniles reported that they were held by police for several additional days after a violent interrogation. One of them claimed that the police delayed taking him to the prosecutor in order to allow visible injuries to heal. A fourth juvenile who was interviewed claimed to have been tortured for three days at the police station, and said that when he was taken to the prosecutor’s office the police told the prosecutor that his injuries were self-inflicted. A fifth juvenile alleged that he was held for three days at the police station and beaten. He said that he showed the cuts and bruises he received to the judge, who was angry with the police and asked the juvenile if he knew the names of any officers who struck him, but he did not know their names. This juvenile claimed that after he was released, he recognized the officer that had beat him most severely on the street, and punched him before running away.

The evidence from the interviews and from ILF-West Bank's database makes it clear that detainees, including juveniles, are frequently held by the police far longer than 24 hours after arrest. There are also numerous reports of police abusing juveniles in custody. The PNA's 2010 Report on the Implementation of the Convention on the Rights of the Child noted:

The Ministry of Social Affairs' annual reports indicate that between 2006-2009, 461 (2006), 606 (2007), 1107 (2008), and 1307 (2009) children in conflict with the law reported allegations that they had been exposed to ill treatment and/or beaten during interrogation. These figures represent over half of children who have come into contact with the police or security officers during their arrest, interrogation, or within the holding room, rehabilitation center, or prison. These allegations should be taken seriously and the public prosecution should examine the veracity of these statements and take appropriate legal action.⁸¹

Based on the ILF's research, it does not seem that the public prosecutors, due to their close ties with police and role in the criminal trial process, are in the best position to identify police misconduct. It is also apparent that that police may be able to easily avoid scrutiny by the public prosecutor. In general, juveniles who had been subject to abuse while in custody were angry about their treatment and were frustrated that there was nothing they could do about it. One juvenile mentioned that he had twice considered reporting abuse by police and staff at a drug rehabilitation center to the social guide, but decided not to. The first time he believed they would not do anything about it, and the second time he was afraid of reprisal. Another juvenile who had been threatened with electrocution reported that the social guide had helped him return to school and that they had a good relationship, but did not mention if he reported the abuse.

D. PRE-TRIAL DETENTION

1. OVERVIEW

Far too often, juveniles accused of crimes in the West Bank are detained for months or even years before their trials. The deprivation of someone's liberty is never something to be taken lightly, and should be an exception for juveniles accused of a crime. Detention can be a truly terrifying and traumatic experience, especially for a juvenile who is less mature, less experienced, and has less advanced coping mechanisms than an adult. As research into brain

development has shown, growth takes place in stages and is not fully complete in adolescence. The frontal lobe, tasked with decision making, planning, judgment, expression of emotions, and impulse control, may not in fact be completely mature until the mid-20s.⁸² As recognized by the Committee on the Rights of the Child:

“Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children.”⁸³

The impact of prolonged detention on juveniles can therefore be severe, potentially hindering their development. The psychological trauma of being separated from family and friends is compounded by an incomplete understanding of what is happening. Theories of child psychology suggest that children must have their basic needs met (such as water, food, sleep, and security) in order to move onto higher levels of development. Their development can be impeded if these lower-level needs are not met. Under stressful conditions, such as detention, there is even the danger of juveniles regressing to a lower need level.⁸⁴

2. RELEVANT LAW AND PROCEDURE

The International Covenant on Civil and Political Rights (ICCPR) articulates the principle that liberty is a fundamental right that cannot be deprived except in certain exceptional cases:

“It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial...” (9[3])

With regard to children in conflict with the law, international standards apply an even stricter limitation on the use of pre-trial detention.⁸⁵ The Convention on the Rights of the Child (CRC) states that detention of children “shall be used only as a measure of last resort and for the shortest appropriate period of time,” and that “every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on

any such action (Art 37).”⁸⁶ Furthermore, because every person accused of a crime is considered innocent until proven guilty, pre-trial detention cannot be used as a punitive measure.⁸⁷

In the State of Palestine, Article 11 of the Basic Law emphasizes the fundamental right of personal freedom and the limited circumstances in which it may be legitimately curtailed:

“Personal freedom is a natural right, and shall be guaranteed and protected. It is unlawful to arrest, search, imprison, restrict the freedom, or prevent the movement of, any person, except by judicial order in accordance with the provisions of law. The law shall specify the period of pre-arrest detention. Imprisonment or detention shall only be permitted in places that are subject to laws related to the organization of prisons.”

In relation to the period of pre-arrest detention, Article 34 of the CPP provides that police must present an arrested person to the deputy prosecutor no later than 24 hours after arrest.

Article 105 of the CPP goes on to state that interrogation “must be conducted within twenty-four hours from the date the accused is sent to the deputy prosecutor, who shall order his detention or release. At a maximum, the arrested person should be brought before the conciliation judge within 48 hours of arrest.”

Specifically in relation to juveniles, Article 69 of the Child Law 2004 establishes that children in conflict with the law are entitled to the following basic rights:

1. Every accused child has the right to treatment commensurate with his or her age, in a way that protects honor and dignity, facilitates reintegration, and ensures a constructive role within society.
2. The State shall make all necessary rules and procedures to secure this right.
3. Priority is given to preventative and educational means and avoiding as much as possible to resort to pre-trial detention and deprivation of liberty.

Lastly, Article 21 of the Palestinian Child Act recognizes the importance of maintaining family ties for children and their parents:

“While primary consideration is given to the best interests of the child, the separated child from his parents, or from any of them, shall have the right to maintain personal relationships, and direct contacts with both of them, and on regular basis.”

These provisions mirror Article 37(b) of CRC, which provides that children should not be detained arbitrarily or for extended periods of time:

“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

In relation to release, The Criminal Procedure Code (95) requires that the prosecutor decide within 24 hours of receiving the case whether to release the accused or request additional detention. The law seems to grant prosecutors a great degree of discretion to release a suspect at this stage, even if they intend to press charges. However, juveniles in general appear to be at a disadvantage in securing release at this stage, as they are less able to provide assurances that they will return to court. If a juvenile is represented by counsel at this stage, his or her lawyer can facilitate a prompt release by informing the prosecutor about the client’s family situation and obtaining assurances from the child’s parents.

Article 3(1) of the Juvenile Reform Law states that there should be a presumption in favor of releasing a child promptly after arrest, either to his father or guardian, or on his own recognizance if 15 or older. However, Article 3(2)(B) says that “There shall be no release with or without bail ... [i]f his interest necessitates that he should not mix with any person.” This is sometimes interpreted to mean that it is in the child’s best interests to remain in detention until his or her family reaches a reconciliation agreement with the family of the victim, in order to prevent an escalation of retribution. This practice not only excessively prolongs the period of pre-trial detention for juveniles, it also violates the presumption of innocence by placing the burden of satisfying the victim on the accused in order to gain release on bail.

3. OBSERVATIONS

A. CONDITIONS OF DETENTION

Conditions of detention for juveniles vary greatly in the West Bank. There is one juvenile detention facility for boys, Dar Al-Amal, which is located in Ramallah. Of the 42 juveniles interviewed who were remanded to pre-trial detention, 29 (69%) were detained at Dar Al-Amal in Ramallah. According to the Palestinian Central Bureau of Statistics, of the

390 male juvenile offenders who entered correctional institutions in 2011, 340 (87%) were held in the Ramallah and Al-Bireh governorate. In the same year, however, only 324 (19%) of the 1,702 juveniles accused of crimes were charged within the Ramallah and Al-Bireh governorate. That shows that a large percentage of juveniles accused of crimes outside of the Ramallah and Al-Bireh area are being processed through the Dar Al-Amal juvenile center in Ramallah.

Juveniles held outside Ramallah are placed in regular prisons, though they are typically segregated from the adult population except during mealtimes and transport to and from court. Nine (21%) of those interviewed were remanded to Jenin Prison, three (7%) were remanded to Beitunia Prison and one (2%) was held at Dura Prison. There is a general prohibition in both local and international law against holding juveniles and adults together. This principle does not seem to be applied to detention in police stations, but is usually applied in the prisons. Beitunia Prison is one of the exceptions; all three informants stated that they were held in the same cells as adult detainees. One of these three may have been 18 at the time, but the other two were apparently sent there because they were recidivists or had previously run away from Dar Al-Amal. This is consistent with the findings of the Independent Commission on Human Rights, which in 2012 received 103 reports from children of “violations of the right to categorize inmates and transfer them to care homes accordingly.”⁸⁸

The majority of juveniles interviewed reported a relatively positive experience at the juvenile detention facility Dar Al-Amal, though some reported issues with individual staff members. Several of those interviewed spoke of a hierarchy where those who were older or had been there the longest were treated more leniently and had more privileges. Those who benefited felt that they had earned it, while others resented it and reported that older children would take advantage of their privileges by threatening the younger children. One juvenile reported sexual abuse of juveniles by other juveniles, but said that this had been reported to the police when it was discovered by the staff. The outcome of this complaint, if any, is not known. Some limited educational and recreational opportunities were offered at Dar Al-Amal, though the only regular activities many juveniles recalled were watching television, playing football and occasional sewing lessons. In the PNA’s 2010 Report on the Implementation of the Convention on the Rights of the Child, it is noted:

“Children in conflict with the law and deprived of liberty do not fully enjoy the right to education. Only girls who are housed at the Dar Al-Fatayat rehabilitation center are allowed to attend school off premises. The boys in the reform institutions are not allowed to attend school, and they receive basic literacy education for approximately three hours per day within the center. There is no cooperation with the MOEHE on these matters, and the curriculum is designed and implemented by the literacy trainers.”⁸⁹

Those held in prisons had very different experiences. These children were more likely to report that they had been disciplined by corporal punishment, and did not have access to the educational and recreational activities offered to those at Dar Al-Amal.

One juvenile interviewee who had been held at Dura Prison was later transferred to Dar Al-Amal. He reported that at Dura Prison he was once beaten by a guard until he vomited blood, and that an 18 year old detainee was not prevented from attacking him on a regular basis. While he found the conditions at Dar Al-Amal much better, he was desperate to be transferred because it was too difficult for his family to travel from Yatta⁹⁰ to Ramallah to visit him. This example highlights one of the problems with the excessive use of pre-trial detention for juveniles. Placing juveniles in prisons and thereby isolating them from their family and community is harmful, and a violation of Article 21 of the Child Law. Further, straining these bonds does not help children reintegrate with their community and adhere to socially appropriate conduct once released. This is of particular concern because there is a tendency in traditional Palestinian culture, as in many cultures, to stigmatize and marginalize children in conflict with the law.⁹¹ Unless overriding concerns for the best interests of the child require separating him or her from the family, the goal of juvenile justice should be to enable children to reintegrate into their communities.

B. PRE-TRIAL RELEASE

Based on interviews with ILF-West Bank's lawyers and analysis of case records in the database, courts do not appear to make any distinction between juveniles and adults when setting bail, nor does there appear to be a significant difference between the amounts of time juveniles spend in pre-trial detention compared to adults. Courts should make a distinction between juvenile and adult cases when considering pre-trial release, as juveniles are dependent on their families to provide the guarantee. Several of ILF-West Bank's lawyers noted cases where the child's family was unwilling to provide bail because of conflicts within the family. In these situations, the court should consider releasing the juvenile on his own recognizance.

Of the 49 cases where interviews were conducted, only seven juveniles (14%) reported being released from detention within one week of arrest. This is roughly consistent with the cases in ILF-West Bank's database where arrest date and date of pre-trial release were available. According to the database, only 20 percent of juveniles were released within one week of arrest.⁹² Among all clients, adult and juvenile, in ILF-West Bank's database, 21 percent were released within a week of arrest. There was some variation in how long juvenile clients remained in pre-trial detention based on the offense they were charged with, but the variation did not seem to be related to the severity of the charge.⁹³ Nearly half of those re-

leased within one week of arrest were charged with assault, while more than half of those held in pre-trial detention longer than one week were charged with theft.⁹⁴

E. SPEEDY TRIAL VIOLATIONS

1. OVERVIEW

Cases in the West Bank take an extraordinarily long time to complete – sometimes as long as three or four years. ILF-West Bank lawyers argue in court that juvenile cases should be expedited, but report that this is not the common practice. In one recent example, an ILF-West Bank lawyer representing a juvenile client argued that the case should be dismissed because her client’s right to a speedy trial under Basic Law Article 30 had been violated. The case had been adjourned repeatedly for over two years because the prosecution’s witness consistently failed to appear. The judge rejected her arguments, declaring that “there is no rule that limits the time that the prosecution has to bring their witnesses.” In situations like this, the court will typically call the juvenile back to court on a regular basis over the course of another year before the prosecution rests without examining the witness. The juvenile will most likely be found not guilty, but their life will have already been significantly and irreparably affected by living for years under the cloud of ongoing criminal prosecution. Unfortunately, this situation is quite common.

2. RELEVANT LAW AND PROCEDURE

The right to a speedy trial is a fundamental right recognized in both Palestinian and international law. Basic Law Article 12 requires that “Every arrested or detained person [...] shall have the right to contact a lawyer and to be tried before a court without delay.” Article 30(1) adds that “Litigation procedures shall be organized by law to guarantee prompt settlement of cases.” Similarly, Article 14(3)(c) of the ICCPR states that “In the determination of any criminal charge against him, everyone shall be entitled ... to be tried without undue delay.” Referring specifically to juveniles in conflict with the law, §20.1 of the Beijing Rules dictates: “Each case shall from the outset be handled expeditiously, without any unnecessary delay.”

3. OBSERVATIONS

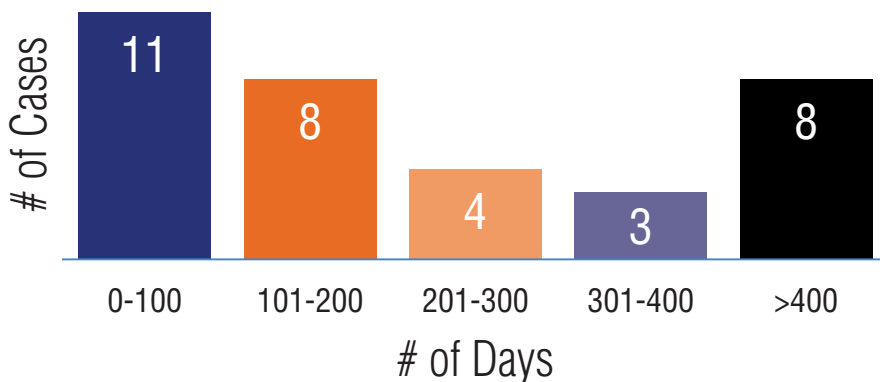
For those cases that reach a final judgment from a court, the resolution is most often that the charges are dropped or the juvenile is acquitted. Even those who are convicted are

typically given a nominal fine or credit for time already served in pre-trial detention. Therefore, from the perspective of most children in conflict with the law, the true penalty comes in the form of the legal process itself: the arrest, pre-trial detention, and the obligation to return to court over and over, only to hear the case be repeatedly adjourned. As the commentary to §20.1 of the Beijing Rules notes, “As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and the disposition to the offense, both intellectually and psychologically.”

Several of the juveniles interviewed who had open cases believed that the case was concluded, and many found it a serious burden to appear at court dates that would inevitably be adjourned. None of the juveniles interviewed took note of the substance of the court proceedings, suggesting that they were not engaged in the process. The only comments about the trial or the experience in court mentioned were that when the juveniles were in detention and taken to court, they had to spend all day in the courthouse holding cell with adults. After being released on bail, several reported that having to return to court repeatedly was interfering with school or work.

Of the 47 ILF-West Bank cases involving juveniles where a final determination was made by a court, it took an average of 248 days from arrest until a final judgment was made.⁹⁵ Including all 88 ILF-West Bank cases that have reached a final verdict, the average number of days between arrest and a final verdict is 284.⁹⁶ The average delay for juvenile cases is slightly less than that for adults, but it is still an unacceptable amount of time to be regularly calling juveniles back to court. While the longest running ILF-West Bank juvenile case to reach a conclusion was a homicide case, the 12 other cases that took more than one year to complete were not particularly complicated. Seven juveniles were charged with theft; two were charged with destruction of property; two were charged with assault; and one was

Time from Arrest to Resolution of ILF-West Bank Juvenile Cases



charged with escape.⁹⁷ Eight of the 12 cases that took more than a year to complete resulted in acquittals or all charges being dropped.⁹⁸

Even more alarming is that at the time of this review ILF-West Bank had 35 open juvenile cases that had not reached a final verdict and had been pending in court for more than 200 days since the juvenile's arrest.⁹⁹ Of these cases, nine had been in court for over a year, 18 had been in court for more than two years, and two were still ongoing after more than three years.¹⁰⁰

When judges adjourn cases time and again, the juvenile's life is put on hold until the case is finally decided. These lengthy delays result in juveniles missing school, missing work, failing exams, and even having to repeat a school year. The reason for the adjournment is often the failure of the complainant to appear as a witness. In some cases, delays beget further delays, as complainants become increasingly reluctant to appear to in court to testify about matters that they consider long behind them, resulting in further adjournments.

In many cases, the police officer is the only witness, and without the police officer's testimony there is no case against the defendant. ILF-West Bank's lawyers routinely request that the court issue a subpoena for the police officer pursuant to Article 231 of the Code of Penal Procedure. The witness notification procedures in the CPP do not differentiate between civilians and police officers, and a police officer who fails to appear after being issued a notice should be subpoenaed in order to ensure the officer's appearance in court and avoid unnecessary delay. However, the courts are under the mistaken impression that they do not have the power to subpoena police officers. This causes crippling delays in the Palestinian criminal justice system. That the authorities bringing the charges are themselves causing such delays in juvenile cases makes it all the more unacceptable.

VI. EFFECTS ON EDUCATION, EMPLOYMENT, AND COMMUNITY RELATIONS

A. OVERVIEW

As noted earlier, the experience of being arrested, interrogated and charged with a crime is disruptive and traumatic for juveniles. Missing work or school due to prolonged pre-trial detention can have long-term consequences. Students with too many absences can be expelled from school or forced to repeat a year. Juveniles may also feel that they have fallen too far behind, or feel stigmatized as a result of their detention, causing them to drop out of school.

B. RELEVANT LAW AND PROCEDURE

Article 69 of the Palestinian Child Law states that: “every child who has been charged with an offense shall have the right to treatment in a manner consistent with his or her age, which is protective of his honor and dignity, and facilitates a constructive reintegration back into society.”¹⁰¹ The same law states that authorities must take the best interests of the child into account in all actions, including those undertaken by a court of law.¹⁰² The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression and retribution, must give way to rehabilitation and restorative

objectives in dealing with child offenders.¹⁰³ Particularly, “the state must take all appropriate arrangements and measures to prohibit the early drop-out of children from school,”¹⁰⁴ and “the State shall provide all suitable circumstances to secure the right of children to obtain the best standard of health and social services attainable, and their right to a good education, as well as the participation of children, in all aspects of community life.”¹⁰⁵ Additionally, the State must aim to eliminate all forms of discrimination in access to the right to education.¹⁰⁶

C. OBSERVATIONS

1. EFFECT ON SCHOOL AND WORK

Of the 35 children who responded to questions regarding missing school and work, and the effect, if any, that such absences had on their lives, seven children (20%) reported that they were unable to return to school after being released and an additional eight children (23%) reported losing their jobs and having trouble finding work¹⁰⁷ as a result of being detained.

“I was prevented from going back to school – I tried to go back, but couldn’t because of this case. The Ministry of Education put me on a blacklist. Because I stayed in jail for 6 months, the principal of my school put me on a blacklist and he had the Ministry of Education put me on their list as well. This blacklist applies to all the schools, so there’s nowhere I can go to now. Some people with connections wouldn’t have problems like this, but anyone who misses 6 months, almost a full year of schooling, would end up on a list like this. ... There’s nothing you can do about it once you’re on that list.”¹⁰⁸

- 15-year old juvenile from Beitunia

“Because of the time I missed, I would have had to redo the whole year. ... I just didn’t want to redo the whole year again.”

- 16-year old from Ramallah arrested in 2010 [September]
who dropped out of school because of his case

2. EFFECT OF ARREST ON FAMILIAL AND COMMUNITY RELATIONSHIPS

Forty-one juveniles responded to the question of whether their arrest affected their relationship with family, friends, and other people in their lives in the following way:

Relationships Affected			
	Family (41)	Friends (41)	Other (40)
Unaffected	22	23	22
Slightly	8	3	0
Moderately	2	3	7
Severely	8	6	7
Don't Know	1	6	4
No Answer [out of 49]	8	8	9

The majority of juveniles who responded to the question reported being unaffected, or slightly affected, by the arrest. For juveniles who reported being moderately affected, many reported having a lingering “bad reputation” within the family as a result of the case. Juveniles who reported the case as having a severe effect on their relationships provide more concrete examples of repercussions. One juvenile’s reputation in his community made it so difficult for him to find work that he now risks being detained and arrested in Israel as he travels to Tel Aviv for work. Some juveniles were hesitant to discuss this aspect of their post-release experience, but just as many were highly candid.

VII. EFFECTIVE ASSISTANCE OF COUNSEL

A. OVERVIEW

Effective assistance of counsel provides a practical meaning to the right to counsel guaranteed in articles 12 and 14 of the Basic Law. The “right to counsel” does not mean the right to have a lawyer simply stand next to an accused in court; it means the right to have a lawyer provide an effective and meaningful defense against the allegations of the government. During the earliest stages of the process it means having access to a lawyer who is engaged in the arrest, investigation and interrogation process with the goal of providing advice and protecting and asserting the accused’s rights.

For indigent accused and other vulnerable groups, legal aid providers are often the only line of defense against violations of their rights at the police station, at prosecution offices, and before the court. They have a responsibility to investigate and gather evidence of allegations of abuse, coercion, the denial of basic rights and violations of procedures, and to present those issues before the court. In the State of Palestine, defense lawyers have the ability to request that the court nullify the product (statements and/or physical evidence) of violations that occur in the early stages of the process. Through consistent and constant litigation of these issues, lawyers can cause a systematic shift in the treatment of accused at all

stages of the criminal process. It is important that defense lawyers work together with human rights organizations in the State of Palestine to highlight patterns of rights violations and impact reform.

Since its opening, ILF-West Bank has trained 11 lawyers to provide meaningful representation to hundreds of poor Palestinians charged with crimes in civilian courts. The overwhelming majority of these lawyers were young and inexperienced and had poor to non-existent analytical and writing skills when they joined ILF-West Bank. They were most comfortable if a question could be answered by reading the plain language of a statute, and struggled to find answers when the code did not seem to explicitly address the issue. In the absence of training, this leads to poor strategic choices and ineffective examinations and cross-examinations, since everything remains at a theoretical level. The key to ensuring effective assistance of counsel is the development of a system of training in which defense lawyers (specifically criminal legal aid providers) undergo intensive training, engage in mentoring, and are obligated to satisfy continuing legal education requirements.

2. RELEVANT LAW AND PROCEDURE

Article 26 sections (2)(3) and (4) of the Palestinian Bar Association Lawyer Rules set out the basic responsibilities lawyers have to their clients, explaining that lawyers must adhere to the principles of honor and integrity, defend their clients in all honesty and sincerity, and be governed by the rules of procedure.

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems addresses the State's responsibility to ensure that lawyers have the skills necessary to provide effective assistance to their clients.

Principle 13. Competence and accountability of legal aid providers

Article 37. States should put in place mechanisms to ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work, including the gravity of the offences dealt with, and the rights and needs of women, children and groups with special needs.

In addition, Article 22.1 of the Beijing Rules underscores the need for professional training to ensure professional competence.

Section 22.1- Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

3. DISCUSSION

At the ILF-West Bank, particular focus is placed on effective representation in the early stages of the criminal process. Lawyers are trained to raise the issue of nullification¹⁰⁹ when they discover that there has been a potential violation of their client's rights by police, prosecution and/or the court and when it is in the client's best interest strategically. The goal of nullification is to remedy the product of illegal procedures conducted during the early stages of the process. As a part of their training, ILF-West Bank lawyers also learn to assert their clients' bail rights and to provide quality representation throughout the entire trial and appellate process.

According to case file examinations, 32 of the 36 ILF-West Bank clients interviewed for the study were asked during their initial interview with ILF-West Bank lawyers whether they suffered abuse or violations by the police and/or prosecution.¹¹⁰ Nineteen of the 36 clients reported abuse by the police. Ten reported physical and/or psychological abuse, and nine reported a lack of access to counsel at the police station. In response, ILF-West Bank lawyers filed nullification motions with the court, challenging violations of procedure and rights in four of the cases. Nine of the cases are ongoing (as of the time of this report) and have yet to reach the pleading stage, which occurs as the end of the case, where the lawyers would make such arguments. Two clients failed to appear at the final hearing, and as a result the court barred the lawyer from making any arguments or representations to the court, even those regarding abuse while in police custody. In two cases the lawyers decided, either for strategic reasons or because there was not enough evidence to support the allegations of abuse, not to file nullification motions. In two cases the court heard the case in the absence of the ILF-West Bank lawyer, in violation of the juvenile's right to counsel, and as a result the lawyer was not given the opportunity to make nullification arguments.¹¹¹ The reports of abuse by police in the initial ILF-West Bank interviews were consistent with the interviews conducted during the research in 20 cases and inconsistent in 11 cases, with psychological abuse being the main form of abuse that was underreported.¹¹²

Criminal defense lawyers have a responsibility to provide effective assistance of counsel and to ensure their client is involved in decisions regarding his or her case, even when that client is a juvenile. While nullification motions are an option available to remedy police, prosecution, and court violations, they are generally raised at the end of trial, which,

as explained above, can often take months if not years to occur. For this, and many other reasons, filing nullification motions is not always the best trial strategy, and clients may not wish to pursue this strategy.

In addition to conducting interviews and raising rights violations and issues of abuse, asserting the clients' bail rights is integral to providing effective representation, particularly during the early stages of the case. Since 2010, ILF-West Bank has represented 180 juvenile cases.¹¹³ In 139 juvenile cases, the juvenile client was detained when representation began.¹¹⁴ Of those 139 cases, ILF-West Bank lawyers filed bail motions in 121 cases.¹¹⁵

Finally, it is ILF-West Bank's policy that lawyers are trained to represent the accused up to and including appeal. Continuous representation is particularly important in cases involving people from vulnerable groups such as juveniles, because they often lack the financial means to secure an attorney for the duration of the trial. Of the 180 juveniles that ILF-West Bank has represented, ILF-West Bank has provided continuous representation in 175 of them, many of whose cases are still ongoing.¹¹⁶ Of the 82 juvenile cases that ILF-West Bank has closed, ILF-West Bank provided continuous and consistent representation in 77¹¹⁷ of them.¹¹⁸

The findings support the importance of training defense lawyers, as well as the need for continuous legal education training to maintain and build upon basic skills, such as interviewing. The findings also highlight the need for a reporting mechanism for allegations of abuse that can be used by the police, defense attorneys, prosecutors, and other justice sector actors to ensure that accusations of abuse are investigated and addressed by the appropriate authority or organization as early as possible after the incidents occur.

VIII. RECOMMENDATIONS

Despite some positive changes since the events described by some interviewees, this research remains relevant, as many of the violations described were already prohibited by law when they took place. Through discussion with numerous juvenile justice stakeholders it is clear that, despite the very good work that has taken place over the past three years, significant gaps still exist in both the law and in its implementation. For example, most of the justice system actors the ILF spoke to conceded that juvenile police are “not always” involved in juvenile cases. As of December 31, 2013, ILF-West Bank lawyers represented over 140 juvenile clients, yet did not come across a single case where any officer identified themselves as belonging to the juvenile police unit. There also appears to be an overreliance on the chronically overworked and underfunded MOSA Social Guides to enforce the legal rights of juveniles, such as their right to counsel. A civil society organization in Al-Khalil explained that at times, the social guide makes the determination as to whether a juvenile needs a lawyer and then is responsible for contacting a legal aid provider for the juvenile.¹¹⁹ Furthermore, oversight and accountability in the protection of juveniles is lacking, and consequences for officials who violate the rights of juveniles are unclear.

The recommendations set out below are intended to assist the State of Palestine, justice sector actors, and civil society organizations in their efforts to reform the juvenile justice system in the West Bank. The majority of recommendations focus on the need to better implement existing rights, rather than drafting new legislation. Ultimately, it is hoped that lessons learned from the past can help achieve meaningful reform of the juvenile justice system.

A. INCREASE ACCESS TO QUALIFIED JUVENILE DEFENDERS

Ensure that all juveniles have prompt access to qualified defense lawyers at all stages of the criminal process, and that their lawyer is present during any questioning or interrogation.

1. Government authorities should implement an early access system that requires police stations to house a duty desk for juvenile defense lawyers, or that requires them to call on duty lawyers once a juvenile is arrested, so that every juvenile has prompt access to counsel.
2. The Palestinian Bar Association should establish a roster of lawyers that are available to represent juveniles at police stations at the time of their arrest.
3. Police, prosecutors and courts should inform juveniles of their right to a lawyer. Information should be provided in a manner appropriate to the juveniles' age and maturity. This process should be documented.
4. The police and prosecution should ensure that all juveniles questioned by them are represented by a lawyer and that the lawyer is present during any questioning.
5. The draft legal aid law and juvenile justice laws should be harmonized and amended to clarify that all juveniles are eligible to be appointed a lawyer from the moment of arrest in both misdemeanors and felonies.
6. Government authorities should establish effective remedies and safeguards that apply if access to a lawyer is undermined, delayed, or denied to juveniles.
7. Governmental authorities, with support from the Palestinian Bar Association, should take measures to ensure that lawyers representing juveniles are trained in and knowledgeable about juvenile rights and related issues, receive ongoing training, and are capable of communicating effectively with juveniles at their level of understanding.

B. AVOID USE OF PRE-TRIAL DETENTION FOR JUVENILES

Whenever possible, the use of pre-trial detention for juveniles should be avoided by imposing alternative measures, such as release on bail or close supervision.

1. Courts should strictly use detention as a last resort and adhere to bail requirements.
2. Courts should appoint lawyers to represent juveniles at bail hearings.
3. If the use of pre-trial detention for juveniles cannot be avoided, they should receive care, protection and all the necessary assistance they may require in view of their age, including access to quality educational opportunities.
4. Juveniles should be detained separately from adults in facilities that are in close proximity or within a reasonable distance to the court that has jurisdiction over the case.
5. Juvenile detention facilities should be regularly inspected for quality and safety and reports shared with juvenile justice stakeholders.

C. IMPLEMENT MECHANISMS TO ELIMINATE ABUSE OF ACCUSED JUVENILES

Police should be trained to handle juvenile cases, and should be subject to independent oversight; prosecutors should be monitored and required to actively perform their role in relation to ensuring the wellbeing and proper treatment of children while they are in police custody; and lawyers representing juveniles should proactively solicit information from all juvenile clients regarding their treatment throughout the process. They should also carefully document any violations, encourage their clients to lodge complaints, and support their clients in pursuing complaints. Courts should monitor and provide effective remedies when rights are violated.

1. The Palestinian Civil Police should ensure that juvenile access to specialized police officers from the juvenile police unit is consistent throughout all districts in the West Bank and that juveniles are always handled by specialist juvenile police or, at the very least, transferred to the juvenile police as quickly as possible.
2. The Palestinian Civil Police should provide continued training for juvenile police, and make the standards under which they provide protection transparent and widely available. They should be identifiable by uniform or insignia, so that it is readily apparent when and how juvenile police have been involved.
3. Government authorities should develop an independent and transparent system of juvenile police oversight. This should involve careful investigation of all complaints, and complainants should be regularly kept informed of the progress and outcomes of investigations, including any disciplinary action or prosecution of violators. There should also be clear levels of punishment and due process for occurrences of physical and mental abuse of juveniles, as well as for violations of juvenile police and police codes of conduct.
4. Government authorities should provide oversight to police by inspecting juveniles for injuries, and by requiring and reviewing police logs that document the treatment of juveniles while in police custody.
5. Government authorities should develop transparent systems of internal and peer oversight at all stages, for all actors within the criminal justice system, and publish these standards as well as the procedures for violations.
6. Government authorities should develop a clear channel for police officers, prosecutors, defense attorneys, courts, families, social guides, and other interested parties to report instances of physical and mental abuse, either observed or communicated by the juvenile, that occur within the justice system.

D. REDUCE DELAYS IN ADJUSTING JUVENILE CASES

Juvenile cases should be tried without undue delay; in particular, in cases in which juveniles are in pre-trial detention trial delays should be strictly limited.

1. Courts should develop policies and rules that uphold the speedy trial standards in the Basic Law and in the forthcoming Law on the Protection of Juveniles, and train trial courts to enforce these policies, including limits on the number of adjournments that both the prosecution and the defense may request and on the time between adjournments.
2. Courts should implement a case management system to monitor and control delays at all stages of the trial process.
3. Courts should reconsider releasing juveniles and/or dismissing the charges against them whenever there are unnecessary delays in bringing them to trial.
4. The juvenile case referral system should be reviewed and enhanced to ensure expeditious handling of all juvenile cases and maximum coordination with government and non-government actors who are providing legal aid and support to juvenile accused.

E. EMPHASIZE DIVERSION AND REHABILITATION, RATHER THAN INCARCERATION

Juveniles should be diverted away from criminal justice proceedings whenever possible and diverted to community programs or other available support services.

1. Develop a diversion system at the police station with representatives from police, prosecution, and defense counsel that would address bail options and provide alternatives to entry into the justice system, such as community service requirements, participation in mentoring and literacy programs, and probationary periods.

2. Develop a diversion system that enables juveniles arrested for minor offenses to avoid entry into the criminal justice system.
3. Focus sentencing and other decisions on juveniles' actual risk factors for criminal behavior and their needs, rather than focusing solely on the crime committed.
4. Provide juveniles suffering from mental health or substance abuse problems with access to age-appropriate treatment, as well as access to appropriate public education.
5. Support better and more effective family involvement by keeping incarcerated juveniles as close to their homes as practicable.
6. Develop a Memorandum of Understanding with the Ministry of Education and ensure that, in practice as well as on paper, no child is denied re-entry to a public school on grounds they have been absent due to their placement in a detention facility.

APPENDIX A: JUVENILE CLIENT QUESTIONNAIRE

BIOGRAPHICAL INFORMATION

1. Name?
2. Age?
3. Hometown?
4. Mother and Father
 - a. Do you live with them?
 - i. If no, where do they live? How often do you see them?
 - b. What do they do for work?
5. Brothers and sisters?
 - a. How many?
 - b. Do you live with them?
 - i. If no, where do they live?
6. How old were you when arrested?
7. Were you in school at the time?
8. Were you employed in any way at the time?

ARREST

1. Describe your arrest
 - a. Who was involved?
 - b. What was explained to you at the time?

PRE-TRIAL DETENTION

1. (If detained pre-trial) Describe what happened after your arrest and before entering detention?
 - a. Who was involved?
 - b. About how long did it take?
 - c. What was explained to you?
 - d. How long were you at:
 - i. The police station,
 - ii. The prosecutor's office,
 - iii. Other places you were detained or in police custody?
2. Describe entering detention.
 - a. Who was involved?
 - b. About how long did it take?
 - c. What was explained to you?
3. How many days total were you detained before trial?

While detained, how were you treated?

 - a. By the police at the police station?
 - b. By others at the police station?
 - c. By workers at the juvenile detention center?
 - d. By other juveniles at the detention center?
 - e. By anyone else you interacted with either at the police station, or at the juvenile detention center?
 - i. (Who were they, what was their role?)
 - ii. (if at juvenile center, what activities were provided for?
Were there educational programs of any sort? If so, what?)
4. If/When you were released, at what stage was your case?
5. Can you describe the process of being released?
 - a. (process, procedure, authorities involved, was it a hassle?)
 - b. (How were you treated by those involved?)
 - c. (Where did you go afterward?)

WHETHER THERE WAS AN INTERROGATION

1. Did the police ask you questions at the police station?
 - a. If so, can you describe that?
 - b. Was anyone else present?
2. Did they ask you questions at some other time? (If they mention multiple questioning sessions, make sure to ask about each)
 - a. Please describe it.
 - b. Who was involved?
 - c. What sort of things did they say or ask?
 - d. What sort of things did they do?
 - e. Was a parent/guardian/lawyer was present
 - i. Was a lawyer present for any of the interrogation sessions?

DATE THE COUNSEL WAS ASSIGNED

1. After the arrest, did anyone inform you about your right to a lawyer?
 - a. If so, who? When?
 - b. If not, did you know about this right?
 - i. If so, did you ask for a lawyer?
 - ii. If you didn't ask for a lawyer, were you aware of that right?
What was your reason for not asking?
2. (if not answered already) When did you meet your lawyer?

CLIENT-LAWYER RELATIONSHIP/RAPPORT

1. How many times did you meet with your lawyer?
2. Can you please describe those meetings?
3. How did you and the lawyer got along.
 - a. (any contact problems?, timing/scheduling problems?, communication problems?)

NUMBER OF SCHOOL DAYS MISSED

1. Did you miss school because of the case?
 - a. How many days total?
 - b. What effect did this have? (missed tests, held back, lower grades, etc.)
2. Did you miss work because of the case?
 - a. How many days total?

- b. What effect did this have?
3. What other effects did the case have on your life?
 - a. Family? Friends? Other social relations?
 - b. School or Work consequences not related to days-missed?
 - c. Anything else that you feel is different because of your criminal case?
4. Describe what you're doing these days.
 - a. (Still in school? Working? Not working? If in jail, how much time left in sentence?)

CATCH-ALLS

1. Is there anything else you'd like to add about your case?
2. Is there anything else you'd like to add about your experiences after the case finished?
3. Is there anything else in general that you'd like to add, or any questions you have for us?

APPENDIX B: ILF-WEST BANK LAWYER QUESTIONNAIRE

INTRO

1. Name, Age, Hometown?
2. Years of experience as a lawyer?
3. Approx. how many juvenile cases have you handled?
4. And total cases?

EXPERIENCE OF JUVENILE REPRESENTATION

1. What is the age range of your juvenile clients?
2. What is the most frequent age of your juvenile clients?
3. What crimes do you most often see juveniles accused of?
4. How do the police treat your juvenile clients?
5. How do prosecutors treat your juvenile clients?
 - i. How does that compare to their treatment of adult clients?
 1. Why?
 - ii. How were your juvenile clients treated at different stages of the case?

- iii. What sort of laws do the prosecutors apply? Are they aware of and utilizing the Child Law and its amendments, or still relying solely on the Jordanian Penal Code with juveniles?
- 6. How do judges treat your juvenile clients?
 - i. How does that compare to their treatment of adult clients?
 - 1. Why?
 - ii. How did the judges treat your juvenile clients at different stage(s) in the case?
 - iii. What sort of law do the judges apply?
 - 1. Are they using the Child Law and its recent amendments or still insisting upon using the old Jordanian law and ignoring the Child Law?
- 7. What procedural violations, if any, did you see with juvenile clients?
 - i. (Issues of questioning; coercion; etc.)
 - ii. How does that compare to adult clients?
 - iii. (If applicable) why do you think procedural violations were more/less common?
 - iv. Who was responsible for the procedural violations you observed? (phrasing ; conclusion not question)
- 8. What are the challenges of representing juveniles?
- 9. What are the biggest differences when representing juveniles, compared to your adult clients?
 - i. From a legal standpoint,
 - 1. Do you use any different laws in your defense statement, compared to with your adult clients?
 - a. (follow up if mention int'l stds or Basic Law)
 - 2. Is the Child Law or its amendments helpful in representing juveniles?
 - ii. and from a client-interaction standpoint
 - iii. (any challenges, anything easier, etc.)
- 10. Describe your interaction with the client's parents, if any?
 - i. Did you contact the parents or did the parents contact you?
 - ii. If so, what were your impressions of how the parent(s) viewed the situation?
 - 1. (Were they cooperative/uncooperative, supportive/unsupportive, etc?)
 - iii. If no parent-contact, do you know why? Is the client an orphan, were their parents unable to travel (if so, do you know why?), did the parents choose not to visit their child?
- 11. Do you know if the client was in school at the time?
 - i. (consequences of case at time)

PERCEPTIONS OF THE JUVENILE CLIENT

1. During your representation of ____ client, did you talk to any friends or family members of the client?
 - i. If so, what was their reaction to the situation?
 - ii. Do you have any impressions of their opinions about the client?
 1. Or about how their opinion of the client changed upon hearing they had been charged with a crime?
2. How well do you think the juvenile client understood the process during different stages of the case?
 - i. (Specific followup for each case-stage if needed)
3. What sort of contact, if any, did you have with your juvenile clients after the case was over?
 - i. What form of contact was it (phone, in person, email, telegram, they were re-arrested)
 - ii. How long after the case ended? How long ago was that?
 - iii. If so, do you have any impressions of how they were affected by the experience?
 1. Were they personally changed?
 2. Did their experience with friends, family, teachers, etc. change?
 3. What were other consequences of the case?
 - a. School
 - b. Family
 - c. Social
 - d. Employment
 - iv. How were they doing when you last spoke with them?
 1. If not well, how much do you think that had to do with their experience in the criminal justice system?

OPEN END

1. Is there anything else you'd like to add about the clients you talked about?
2. Is there anything else you'd like to add about your experiences representing juveniles?
3. Is there anything else you'd like to add that we didn't ask about?

APPENDIX C: ENDNOTES

1. During the period covered by this report the age of criminal responsibility was nine years old in accordance with Article 2 of the Juvenile Reform Law 1954. However, Article 67 of the amended Child Law, which recently came into force, increased this to 12 years old (although this has not necessarily been recognized by the judiciary, as DCI is currently appealing a case on this point). Furthermore, the new Draft Law on Juvenile Protection also raises the age of responsibility to 12.
2. 'Accused Juvenile Offenders in the West Bank by Type of Criminal Offense and Governorate 2011', Palestinian Bureau of Statistics, (http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/JUV.htm)
3. Ibid
4. Meetings with Judge Ahmad Ashkar, Ramallah, 23rd and 30th September 2013.
5. 'Juvenile Offenders Who Entered Correctional Institutions in the West Bank by Governorate and Sex 2011', Palestinian Bureau of Statistics, http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/Crv5.htm (Note: there is some ambiguity in this data, and not all terms are clearly defined.)
6. In the ILF's 88 juvenile cases which reached a final verdict as of December 31, 2013.
7. As of December 31, 2013, ILF-West Bank contracts with 8 lawyers/consultants.
8. Nine of the 46 interviews were with non ILF-West Bank clients.

9. PCBS Child Report 2012.
10. Save The Children Sweden, 2012. *The Impact of Child Detention: Occupied Palestinian Territory*. pp. 29-31. Retrieved August 2013. From <http://mena.savethechildren.se/PageFiles/3731/Impact%20Report%20March%202012%20EN.pdf>.
11. United Nations General Assembly. A/RES/40/33. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*. New York: United Nations, 1985. <http://www.un.org/documents/ga/res/40/a40r033.htm>. The Beijing Rules stress the importance of nations establishing a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed to meet the varying needs of juvenile offenders, while protecting their basic rights.
12. A portion of the juveniles interviewed for this study were arrested prior to the development of the juvenile police force.
13. Palestinian Basic Law Article 12.
14. Martin Schönsteich, *The Scale and Consequences of Pre-trial Detention around the World*, in *Justice Initiatives: Pre-trial Detention* (New York: Open Society Institute, 2008), 32, citing, Barry Holman and Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (Washington, D.C.: Justice Policy Institute, 2006), 3.
15. As of October 2013
16. As of October 2013
17. In many of these cases, the charges are so minor that, if held in detention, the juvenile will serve more time waiting for trial than they would if convicted and sentenced to jail time.
18. CRC Article 40.1 "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of other 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". The purpose of the juvenile justice system, unlike the criminal justice system, is not punishment but rehabilitation. Defence for Children International explains, "juvenile justice can be thought of more broadly to include efforts to address the root causes which bring children in conflict with the law, develop methods for prevention, and explore strategies for rehabilitation and reinsertion", found at <http://www.defenceforchildren.org/juvenile-justice.html>
19. ILF-West Bank devotes considerable effort to ensuring that its case tracking database is as reliable as possible. Still, the information in the database may not necessarily be complete or accurate, despite the ILF-West Bank's best efforts. Some of the information comes from police and court records that cannot be independently verified. The database is frequently audited to prevent and correct data-entry errors, so while some errors or omissions may exist, they are extremely unlikely to affect the results of this analysis.

20. This sample is not necessarily representative, in the statistical sense, of all juveniles in conflict with the law in the West Bank. However, the depth of information available from this sample set makes it possible to identify issues in a more nuanced manner. Although it is not possible to estimate the overall prevalence of these issues from ILF-West Bank's data alone, the sample was used because sufficient information was available about this group to make meaningful observations.
21. The ILF does not typically represent multiple co-defendants in a criminal case because this can cause a conflict of interest. One ILF-West Bank client was interviewed with three co-defendants and another client was interviewed with one co-defendant. One client discussed three cases, two of which were represented by ILF-West Bank; and one client discussed two cases, one of which was represented by ILF-West Bank.
22. ILF-West Bank's Ramallah office opened in September 2010.
23. ILF-West Bank's Jenin office opened in March 2012 and was fully staffed in September 2012.
24. ILF-West Bank began accepting cases in Al-Khalil in March 2013, and opened a full time office in May 2013.
25. Many earlier clients' contact information included out-of-date phone numbers, incorrect addresses, contact info for relatives who were no longer reachable, and similar issues that precluded contact.
26. Utilizing data from other studies is impractical, as at this point no unified statistics exist. (see: Defence for Children International – Palestine, at <http://www.dci-palestine.org/content/child-protection>).
27. 'Guarantees for Women in Conflict with the Law in Palestine,' 2011 ICHR and UN Women Report, Advocate GhandiRaba'i, at p.21
28. Ibid at p.15
29. Law No. 16 of 1954
30. UN Principles and Guidelines on Access to Legal Aid in the Criminal Justice System, Principle 11, Guideline 10.
31. ICCPR Article 9,10 and 14(4)
32. CRC Article 3, 4, 7(2), 9(1), 37, 40,43
33. Pursuant to council of ministers' resolution number (02/69/13) for 2010 issued on 18 October 2010.
34. Discussed at meeting with MOSA on 28th August 2013. The precise powers and make-up of this sub-committee is, however, unclear.
35. Strategic Plan p7

36. UNDP funds several civil society organizations aside from MOSA that provide legal aid services, including DCI, the Jerusalem Legal Aid and Human Rights Center, and Save the Children, among others who provide legal representation and consultation to juveniles in criminal, civil, and social matters.
37. One based in Ramallah, one in Jenin, and one in Al-Khalil.
38. UN Women provides legal aid services to women and girls detained or imprisoned in West Bank prisons.
39. Meeting with Human Dynamics 28th August 2013.
40. Meetings with Judge Ahmad Ashkar, Ramallah, 23rd and 30th September 2013.
41. Draft Law of Juvenile Protection (DLJP) Article 25 “Children Police, independently and before referring the case to the public prosecutor, may do mediation between the victim and the juvenile with the approval of the juvenile or the guardian and the victim if the police sees that this action would repair the damage, or end the turmoil wrought by the crime, or contribute to the rehabilitation of the juvenile.”
42. DLJP Article 8(1) “Each juvenile has the right to a treatment that is suitable for his/her age and which protects his/her honor and dignity and facilitates his/her integration into society, and it is prohibited to subject the juvenile to physical or mental torture, punishment or cruel, humiliating, or degrading treatment.”
43. DLJP Article 27(1) “Children’s court comprised of three judges, where one woman, at least, is among the three judges. A single judge will consider delinquency or danger or risk of delinquency.”
44. DLJP Article 21(1) – “It is inadmissible to arrest the juvenile pre-trial, unless the circumstances of the case requires custody (2) the child may be handed over to one parent or to the child’s guardian on the condition that he is present when requested. And Article 9, “Under all circumstance, the precautionary-detained juvenile should be released during any investigation or trial phases, provided it does not endanger him/her and does not harm the course of justice.”
45. DLJP Article 9 “Juveniles are considered urgent cases.”
46. UN Principles and Guidelines on Access to Legal Aid in the Criminal Justice System, Principle 11, Guideline 10.
47. DLJP Article 19(3) “The arrested child has to be introduced to the children prosecutor within 24 hours from the moment of arrest.”
48. DLJP Article 11 “The juvenile facing felony and misdemeanor charges must have a lawyer to defend him/her both at the preliminary investigation stage and/or trial phase, and if his/her guardian did not appoint a lawyer, the AGO or the court, depending on the situation, will appoint one at its expense...”

49. Id “[i]f his/her guardian did not appoint a lawyer, the AGO or the court, depending on the situation, will appoint one at its expense...”
50. DLJP Article 19 (2) states “As soon as the child is arrested; the Children police have to immediately, inform the guardian of the child and the Child Protection Counselor...”
51. Draft Law on the Legal Aid Fund Article 4.
52. Id. Art. 6
53. Id. Art. 15(1)
54. Id. Art. 5
55. United Nations Office on Drugs and Crime and United Nations Development Programme, Early access to legal aid in criminal justice processes: a handbook for policymakers and practitioners, February 2014, available at: <http://www.unodc.org/unodc/en/justice-and-prison-reform/tools.html?ref=menuaside>.
56. CPP Art. 55(2)
57. CPP Art. 24
58. CPP Art. 95
59. CPP Art. 105
60. CPP Art. 69
61. CPP Art. 99
62. Adopted by the UN General Assembly on 20 December 2012. A/RES/67/187.
63. There is some discrepancy between the reports of the juveniles during interviews and ILF-West Bank’s database regarding when and whether they met a prosecutor. This may either reflect inaccuracies in the case files or (more likely) that the juveniles did not realize that they had met the prosecutor. Several interviewees stated that they did not know what a prosecutor was, and some seemed to be confused in these initial stages about who were the judge, the prosecutor, the social guardian, and their lawyer.
64. See the following: See Tony, M., (Ed.), ‘Crime and justice--A review of research’, (volume 30; pp. 431-505), University of Chicago Press; Tyler, T. R. & Huo, Y. J., ‘Trust in the law: Encouraging public cooperation with the police and courts’, Russell Sage Foundation, 2002, Tyler, T. R. ‘Procedural justice, legitimacy, and the effective rule of law’, Russell Sage Foundation, 2003, Tyler, T. R. ‘Legitimacy and Criminal Justice’, Russell Sage Foundation, 2007. See also Hough, M., Jackson, J. and Bradford, B. ‘The Governance of Criminal Justice, Legitimacy and Trust’, in ‘The Routledge Handbook of European Criminology’, Routledge, 2013; European Social Survey ‘Policing by

Consent: Understanding the Dynamics of Police Power and Legitimacy', ESS Country Specific Topline Results Series Issue 1, 2012.

65. 'The Impact of the Community Court Model on Defendant Perceptions of Fairness', Center For Court Innovation, September 2006. http://www.courtinnovation.org/sites/default/files/Procedural_Fairness.pdf
66. From Commentary on §10 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Adopted by the United Nations in 1985. "Involvement in juvenile justice processes in itself can be 'harmful' to juveniles; the term 'avoid harm' should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations."
67. CRC General Comment 10 para 13
68. Palestinian Basic Law Art. 12
69. Article 40(2)(B)(ii)
70. See *generally* CRC Art. 40 § 2(b)ii; The Beijing Rules § 7.1 and § 15.2; In re Gault 387 U.S. 1.
71. J.A. Butts, Adele Harrell, "Delinquents or Criminals: Policy Options for Young Offenders," Urban Institute Crime Policy Report, June 1998. See also: J.A. Butts, Daniel Mears, "Reviving Juvenile Justice in a Get-Tough Era," Youth Society 2001 33:169 (available at: <http://yas.sagepub.com/content/33/2/169>)
72. Juveniles referring to 'intelligence services' may mean the investigation center at the police station.
73. No juveniles mentioned being arrest by police in civilian clothes or identifying themselves as juvenile police. Some did say that after arrest they were beaten by plainclothes policemen.
74. Youths who are victims of emotional or physical trauma may suffer from a delay in brain maturation because of the disruption in brain development (Rebecca L. McNamee, "An Overview of the Science of Brain Development," slide presentation, May 5, 2006, www.juvjustice.org/media/resources/public/resource_108.pdf)
75. Allen, J.G. (2005) Coping with Trauma: Hope though Understanding. Arlington: American Psychiatric Publishing Inc. 22
76. 'Complex Trauma and Aggression in Secure Juvenile Justice Settings,' Criminal Justice and Behavior 2012 39:694 Julian D. Ford, John Chapman, Daniel F. Connor and Keith R. Cruise Comp, <http://cjb.sagepub.com/content/39/6/694.full.pdf+html>
77. CPP Article 55(2)

78. Article 214 of the CPP and Articles 11 & 13 of the Basic Law
79. In a separate interview with an ILF-West Bank lawyer, the lawyer noted that a client had told him that the police had threatened to electrocute him by putting wires on his head. The lawyer did not give the name of the client, but they were referring to this same incident.
80. Leo, Richard A. and Drizin, Steven A. and Neufeld, Peter J. and Hall, Bradley R. and Vatner, Amy, *Bringing Reliability Back in: False Confessions and Legal Safeguards in the Twenty-First Century*, Wisconsin Law Review, 2006; Univ. of San Francisco Law Research Paper No. 2009-04. Available at: <http://ssrn.com/abstract=1134948>
81. The PNA's 2010 Report on the Implementation of the CRC, pg 68.
82. Using Adolescent Brain Research to Inform Policy,' National Juvenile Justice Network, September 2012, http://www.njjn.org/uploads/digital-library/Brain-Development-Policy-Paper_Updated_FINAL-9-27-12.pdf
83. General Comments no.10 (2007) at para 10
84. Abraham H Maslow, A.H. (1954), *Motivation and Personality*. New York, Harper and Rowe, 15-31 and Save the Children report, p11
85. See CRC GC 10 ¶51, "Internationally there is a consensus that for children in conflict with the law the time between the commission of an offense and the final response to this act should be as short as possible. The term 'prompt' [in art. 37 referring to decisions on challenges to the detention of children] is even stronger – and justifiably so given the seriousness of deprivation of liberty – than the term 'without delay' (art. 40(2)(b)(iii) of CRC) [referring to rendering a final disposition in juvenile cases], which is stronger than the term 'without undue delay' of article 14(3)(c) of ICCPR [referring to the general right to a speedy trial]."
86. See also, Beijing Rules § 13.1, "Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time."
87. ICCPR Articles 9, 10, and 14(2); CRC Article 37 and 40(b)(2); Beijing Rules Sec 13; and CRC General Comment #10 pars 28 and 42
88. ICHR 2012 Annual Report, <http://www.ichr.ps/en/2/6/1041/ICHR-18th-Annual-Report.htm?d=2013>
89. Pg 63
90. A town in the south, near Hebron/Al-Khalil
91. "Child Rights Situation Analysis; occupied Palestinian territories", Save the Children Sweden, 2011, pg 46.
92. As reported in October 2013

93. Excluding murder cases, where pre-trial release is prohibited by Article 3(2)(C) of the Juvenile Reform Law.
94. As reported in October 2013
95. As of June 2013
96. As of June 2013
97. As of June 2013
98. As of June 2013
99. As of June 2013
100. As of June 2013
101. Palestinian Child Law, Article 69
102. Palestinian Child Law, Article 4 states, "Considerations shall be given to the (1) Best interests of the child in all actions, whether undertaken by legislatures, courts of law, administrative authorities, public or private social welfare institutions. See *also* UN Principles and Guidelines on Access to Legal Aid in Criminal Justice System, Principle 11 (In all legal aid decisions affecting children, the best interests of the child should be the primary consideration); CRC, Article 3.
103. Convention on the Right of the Child, General Comment No. 10 (2007), pg 5.
104. Palestinian Child Law, Art. 37
105. Palestinian Child Law, Art. 6.
106. *Id* at Art. 38.
107. 16 year old juvenile from Jalazone Camp, "It would be hard now to work with someone in my camp because of the reputation I have there now."
108. It is unclear whether such a blacklist literally exists; however, this juvenile's experience of trying to gain entrance to several schools, only to be denied enrollment and to be made to feel as though his arrest had barred him from getting an education, is a reflection of the impact detention can have on juveniles.
109. Nullification refers to the process by which lawyers request that the court nullify illegal procedure that were done in violation of the clients rights causing the resulting evidence gleaned from the procedure, i.e. statements confessions and physical evidence to be void and/or invalid.
110. Four clients were interviewed before ILF-West Bank adopted standard interview procedures and their files do not reflect whether or not they were asked about abuse; however, it is ILF policy to ask this question of every client.

111. In these two cases, ILF-West Bank lawyers advised the juvenile clients of the right to appeal based on the right to counsel violations and both of the clients chose not to appeal.
112. Five ILF-West Bank case files could not be cross-referenced.
113. As of December 31, 2013
114. As of December 31, 2013
115. As of December 31, 2013. In some instances, the juvenile client's family filed bail motions prior to contacting with ILF West Bank
116. As of December 31, 2013
117. Except in conflict cases or when the client hires private counsel.
118. As of December 31, 2013
119. Meeting with civil society organization in support of juveniles, Al-Khalil, August 2013



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