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Committee on Social Affairs, Health and Sustainable Development

Detention of Palestinian minors in Israeli prisons

Rapporteur: Ms Liliane Maury Pasquier (Switzerland, SOC)

Introductory memorandum

1. Introduction

1. On 5 February 2016, Ms Annette Groth (Germany, UEL) and 19 other Assembly members tabled a motion for a resolution on “Detention of Palestinian minors in Israeli prisons”.² According to the motion, “a sharp increase in the number of Palestinian children in Israel prisons has been noted by several human rights organisations”. The motion refers to investigations by the NGO *Human Rights Watch*, which “indicate that existing laws are insufficient to safeguard the rights of Palestinian children in the custody of the Israeli police and the IDF, and that officials often adhere to legal requirements and procedures in a manner that undermines the protections they aimed to guarantee.” The motion calls for an investigation on “how Israel – and other countries as well – could better safeguard the rights of children in custody and thereby would be able to fully abide the UN children’s rights conventions”, proposing a possible co-operation between the Israeli government and the Council of Europe Committee on the prevention of torture and inhuman or degrading treatment or punishment (CPT).

2. This motion was referred to our Committee for report on 22 April 2016, and I was appointed Rapporteur on 2 June 2016.

2. Aim and scope of the report

3. The Parliamentary Assembly of the Council of Europe does not work in a vacuum. On the contrary, it builds on internationally recognised human rights standards, developed by the Council of Europe, the United Nations and its agencies, the Interparliamentary Union (IPU), as well as other regional organisations and assemblies (as appropriate). Regarding its own work on the treatment of children in conflict with the law, the Assembly adopted Resolution 2010 (2014) on “Child-friendly juvenile justice: from rhetoric to reality” three years ago, on the basis of a report by Mr Stefan Schennach (Austria, SOC).³

4. As a parliamentary body, the Parliamentary Assembly of the Council of Europe does not work in a political vacuum, either, of course. The Assembly comprises parliamentary delegations from both the Israeli parliament (the Knesset), which holds observer status with the Assembly, and the Palestinian parliament

¹ Document declassifié par le Comité des affaires sociales, de la santé et du développement durable à sa réunion du 25 janvier 2017 à Strasbourg.

² Doc. 13979.

³ Doc. 13511. The Committee has not yet worked on the situation of children in conflict with the law in the Middle East, but in paragraph 13.1.2. of its Resolution 1940 (2013) thereon, the Assembly recommended to the Israeli authorities to: “put an end to arbitrary arrests and administrative detentions of Palestinians (**including of scores of children**), unfair trials and acts of violence against detainees, as well as to stop transferring Palestinian detainees to Israeli prisons in violation of international humanitarian law” [emphasis added].

(the Palestinian Legislative Council), which holds partner for democracy status.⁴ The Assembly thus is one of the rare fora which combines expertise on children's rights and the Middle East with wide parliamentary representation.

5. I am personally not convinced that the title of the motion – which has automatically become the title of this report – is well chosen, and would thus like to reserve the right to change it. I am also not convinced that the main solution proposed in the motion – for the Israeli government and the Council of Europe CPT to co-operate – is practicable, and would thus prefer to further look into the problem at hand, rather than propose ready-made solutions.

2.1. *International law and standards*

6. The Conventions which are central to the topic at hand are the United Nations Convention on the Rights of the Child (UNCRC), the International Covenant on Civil and Political Rights (ICCPR), and the Fourth Geneva Convention.⁵ All have been ratified by Israel. However, Israel argues that it is not bound to apply them to the Palestinians living under Israeli occupation, a position which is not in line with the opinion of the International Court of Justice⁶ and several UN human rights treaty bodies. The Parliamentary Assembly is on record as promoting the equal enjoyment of human rights, democracy and the rule of law for all people, whether in territories under Israeli or Palestinian control, Arabs and Jews, Israeli and Palestinian citizens.⁷

7. I believe that there is one provision in the UNCRC which we should all be able to agree to apply, regardless of our position on which Conventions formally apply in which circumstances: Article 3 on the best interests of the child. Children are, first and foremost, children, and should be treated as such, i.e. afforded special protection. In accordance with Article 3 of the UNCRC, the best interests of children must be the primary concern in making decisions that may affect them: all adults should do what is best for children, and this includes children who are in conflict with the law.

2.2. *The work of international organisations and of NGOs*

8. There are a number of reports, many of them quite recent and well-documented, from both UN agencies such as UNICEF,⁸ and NGOs such as *Human Rights Watch*⁹ and *Defence for Children –*

⁴ The delegations are of the same size (3 representatives, 3 substitutes), and have the same rights in the Assembly.

⁵ A good summary of the rights concerned is included on page 7-8 of the NGO DCIP report "No way to treat a child – Palestinian Children in the Israeli Military Detention System", April 2016, http://www.dci-palestine.org/palestinian_children_in_the_israeli_military_detention_system.

⁶ See International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004, paragraph 101: "In view of the foregoing, the Court considers that the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties. Israel and Jordan were parties to that Convention when the 1967 armed conflict broke out. The Court accordingly finds that that Convention is applicable in the Palestinian territories which before the conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel, there being no need for any enquiry into the precise prior status of those territories.", paragraph 111: "In conclusion, the Court considers that the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory.", and paragraph 113: "As regards the Convention on the Rights of the Child of 20 November 1989, that instrument contains an Article 2 according to which 'States Parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction...'. That Convention is therefore applicable within the Occupied Palestinian Territory." <http://www.icj-cij.org/docket/files/131/1671.pdf>.

⁷ See Resolution 1940 (2013) on "The situation in the Middle East", paragraph 11: "The Assembly notes that, alongside status issues, matters regarding standards should also be addressed so that, whether in territories under Israeli or Palestinian control, all people, Arabs and Jews, Israeli and Palestinian citizens, will equally enjoy respect for human rights, democracy and the rule of law."

⁸ UNICEF: "Children in Israeli military detention, observations and recommendations", February 2013: https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf, with two bulletins dated October 2013 and February 2015 updating on its engagement with the Israeli authorities and reporting on actions taken.

Palestine (DCIP),¹⁰ to name but a few, on the issue of Palestinian children in the Israeli military detention system. The most recent update by UNICEF (of February 2015) includes a review of the 38 recommendations UNICEF had addressed to the Israeli authorities in 2013, of which it classified 4 “in progress”, 15 “partially addressed”, 14 “under discussion”, 4 “closed” and 1 “rejected”.¹¹ While the Israeli authorities have stressed that, “for various reasons, both factual and legal, the Israeli authorities did not, and do not accept the findings of the report put out by UNICEF in March 2013”,¹² it is encouraging that dialogue seems to be on-going and that certain progress seems to have been made (even if more progress would be desirable in the eyes of UNICEF and the above-mentioned NGOs).

2.3. *The PACE perspective*

9. The perspective of the Parliamentary Assembly is certainly influenced by the fact that it is one of the two organs of the Council of Europe, which is tasked to uphold human rights, democracy and the rule of law across the continent. Council of Europe standards are, in fact, often higher than those of the UN when it comes to the protection of both children’s rights and of detainees’ rights.¹³

10. Thus, for example, according to the Council of Europe child-friendly justice guidelines: “A child who has been taken into custody should not be questioned in respect of criminal behaviour, or asked to make or sign a statement concerning such involvement, except in the presence of a lawyer or one of the child’s parents or, if no parent is available, another person whom the child trusts.”¹⁴ The Israeli authorities do not seem to dispute that, while Palestinian children in military detention have the right to consult with a lawyer, neither the lawyer nor the parents of the child have the right to be present during the interrogation.¹⁵

11. Taken together with the fact that, on average, 25% of Palestinian children are arrested in night-time arrest operations¹⁶ (usually in raids on their homes), one does not need to believe the assessments of UNICEF and NGOs that ill-treatment is “widespread, systematic and institutionalised throughout the process, from the moment of arrest until the child’s prosecution and eventual conviction and sentencing”¹⁷ to understand that the chances of getting a truthful confession from a terrified, overtired child separated from its parents (with no lawyer in the interrogation room) are slim. This means that, not only are such rules as denying children the presence of a lawyer or one of their parents during interrogations, and such

⁹ Human Rights Watch: “Extreme Measures: Abuses against Children Detained as National Security Threats”, 28 July 2016, <https://www.hrw.org/report/2016/07/28/extreme-measures/abuses-against-children-detained-national-security-threats>, “Israel: Security Forces Abuse Palestinian Children”, 19 July 2015, <https://www.hrw.org/news/2015/07/19/israel-security-forces-abuse-palestinian-children>.

¹⁰ DCIP: “No way to treat a child – Palestinian Children in the Israeli Military Detention System”, April 2016, and “Bound, Blindfolded, and Convicted: Children Held in Military Detention”, April 2012, http://www.dci-palestine.org/bound_blindfolded_and_convicted.

¹¹ See page 7 of Bulletin No. 2: “During the dialogue with the Israeli authorities, the 38 recommendations were reviewed. In this outline, they are assigned primary responsibility for implementation and are measured individually in terms of actions taken by the relevant Israeli authorities. In the matrix below, for the purpose of measuring implementation:

- “in progress” means steps are being undertaken, but the outcome is yet to be determined;
- “partial” signifies that a standing operating procedure, policy or legislation is in place, but in totality the recommendation has not been realised and/or rights violations continue to be reported;
- “under discussion” means the dialogue is ongoing;
- “closed” refers to the recommendation no longer being relevant or there are no reports of ill-treatment relating to this recommendation to warrant further action. If reports occur following “closure” of the recommendation, the status will revert to one requiring action.
- “No agreement on recommendation” refers to those recommendations where the Government of Israel has stated that it will not take any action.” https://www.unicef.org/oPt/Children_in_Israeli_Military_Detention_-_Observations_and_Recommendations_-_Bulletin_No._2_-_February_2015.pdf.

¹² Response Letter to Human Rights Watch from the Israeli Military Regarding Military Arrests of Palestinian Children in the West Bank, 13 July 2015, page 2, <https://www.hrw.org/news/2015/07/13/response-letter-israeli-military-regarding-military-arrests-palestinian-children>.

¹³ See, for example, the work of the CPT, or the Council of Europe guidelines on child-friendly justice (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804b2cf3>).

¹⁴ Guideline C 30, *ibid*.

¹⁵ See page 8-10 of UNICEF Bulletin No. 2.

¹⁶ *Ibid*, page 8-9.

¹⁷ UNICEF Bulletin No. 2 and DCIP report “No way to treat a child”.

practices as night-time arrests of children, clearly not in the best interests of the child, but also not in the best interests of the Israeli authorities, who seek to find the culprits of crimes, not to terrify and wrongly accuse and convict innocent children and their families.

3. Working methods and planning

12. There is ample documentation of the view of NGOs and international bodies on the subject at hand, but very little documentation of the point of view of the Israeli authorities. I would thus like to request authorisation to undertake a fact-finding visit to Israel to meet with the competent Israeli authorities, including my colleagues in the Knesset.

13. At the request of the Israeli delegation, the consideration of a first introductory memorandum in the Committee was postponed from the October 2016 part-session to the January 2017 part-session. In any case, I intend – as far as possible – to hold discussions on the different stages of the report during Committee meetings in part-sessions only, to ensure that both the Israeli observer delegation and the Palestinian partnership for democracy delegation can take part more easily (see table below). However, I do not intend to make the participation of either or both delegations even a *de facto* precondition for discussion in the Committee.

14. In order to facilitate my work, in particular the preparation of my fact-finding visit, I would like to suggest that this introductory memorandum be declassified after its consideration in Committee on 26 January 2017.

Date	Action
<i>Committee meeting January 2017 part-session</i>	Consideration of an introductory memorandum and request for authorisation of a fact-finding visit
<i>Spring 2017</i>	Fact-finding visit (<i>subject to Bureau authorisation</i>)
<i>Committee meeting June 2017 part-session</i>	Report back from fact-finding visit/ Consideration of a preliminary draft report
<i>Committee meeting October 2017 part-session</i>	Consideration of a draft report
<i>Committee meeting January 2018 part-session</i>	Consideration of a draft report and adoption of a draft resolution

The formal deadline for the adoption of this report in Committee is 22 April 2018; the date of debate in the Assembly is yet to be decided.