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THE TORTURE AND ABUSE OF CHILDREN FLEEING GAZA'S HUMANITARIAN CATASTROPHE



مركز الميزان لحقوق الإنسان

Al Mezan Center for Human Rights





Al Mezan Center for Human Rights

Al Mezan Center for Human Rights is an independent, non-partisan, non-governmental human rights organization in the Gaza Strip, that holds Special Consultative status with the UN Economic and Social Council. Since its establishment in 1999, Al Mezan has dedicated itself to protecting and advancing the respect for human rights, and enhancing democracy and community and citizen participation in the oPt, particularly in the Gaza Strip.

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“Children experience pain and suffering differently to adults owing to their physical and emotional development and their specific needs. In children, ill-treatment may cause even greater or irreversible damage than for adults. [...] Detention has a profound and negative impact on child health and development.”¹

- UN Special Rapporteur on
Torture, Juan E. Méndez

INTRODUCTION

The deterioration of the socioeconomic conditions in the Gaza Strip due to Israel’s unilateral imposition of 13 years of closure and blockade has led an alarming number of child residents to undertake dangerous emigration routes out of the Strip in search of better living conditions and the chance at a dignified life. Al Mezan’s reporting shows that a sense of desperation is leading children to risk their lives by attempting to cross the Israeli-implemented and enforced buffer zone. This report focuses on the arrest and abuse of those children, in particular 91 child victims who tried to cross the perimeter fence into Israel between 2015-2019.

The accounts of the 91 children indicate the systematic use of prohibited ill-treatment and abuse by every authority with whom the children came into contact. The Palestinian minors who sought to leave Gaza out of economic distress were left traumatized and with long-term injuries.

The documentation conducted by Al Mezan covering 2015-2019 shows that nearly one hundred children were arrested by the Israeli military while attempting to cross the Gaza-Israel perimeter fence. Ninety-one of these children told Al Mezan about their experiences: every child reported some form of torture, ill-treatment or abuse, including discrimination or neglect, by the Israeli and, to a lesser extent, Palestinian authorities with whom they came into contact. Al Mezan’s reporting shows that this conduct started during their arrest by Israeli forces in Gaza’s buffer zone (or

¹ UN Special Rapporteur on Torture, Juan E. Méndez, A/HRC/28/68, para. 33

“access-restricted area”), took place during their detention and interrogation in Israel, and continued after their re-arrest by the Palestinian authorities in Gaza.

When asked about their motives for attempting a demonstrably dangerous exit from the Gaza Strip, nearly 70 percent of the 91 children said that they sought to leave out of economic distress, while many children pointed to specific socioeconomic indicators such as lack of adequate shelter, and others noted depression as their reason for trying to flee.

Prior to conducting this research, Al Mezan’s monitoring and documentation work had brought to light individual instances of torture and cruel, inhuman and degrading treatment or punishment (CIDTP) that was meted out by Israeli forces against the, mostly, young men who were arrested in the buffer zone.² But the scope of this practice was not recorded in its entirety until Al Mezan’s research unit undertook this report and unearthed the alarmingly systematic nature of the torture and ill-treatment of the children in Gaza who are trying to flee its catastrophic conditions.

This report is supported by statistics and analysis of the 91 children’s living conditions and other variables, including family size, level of education, and rates of violence in the home, which speak to the motives behind the children’s decisions to leave Gaza. This report also presents the spread of violations perpetrated by both the Israeli and Palestinian authorities against the 91 children.

This report’s methodology focuses on a questionnaire that was designed by the Center’s researchers to collect the testimonies of the statistical population. To this end, Al Mezan conducted a comprehensive survey of 91 children living throughout the Gaza Strip who attempted to cross the perimeter fence and were arrested by the Israeli military.

Please note that another four cases of children being arrested while attempting to leave Gaza via the buffer zone were recorded by Al Mezan’s

² See the case of Yousef al-Tarabin as an example: <http://www.mezan.org/en/post/21033>

fieldworkers in 2020. However, these individuals were not included in the survey and are therefore not represented in the figures below.

SOCIOECONOMIC CONDITIONS

Over the course of two decades, Israel's punitive, illegal closure and blockade has severely repressed Gaza's economy and resulted in a man-made humanitarian catastrophe in the Gaza Strip. Rooted in sweeping restrictions on the movement of people and goods, the closure policy prevents Gaza's population from accessing workplaces in Israel and the West Bank, importing materials and supplies for businesses in Gaza, and exporting goods, including agriculture products produced by Gaza's farmers.



© Anne Paq

The collapse of Gaza's economy is one of the foundational challenges that Gaza's children face.³ Poverty affects 53 percent of the population in the Gaza Strip.⁴ Unemployment is now at 45 percent,⁵ with the number of unemployed youth (15 and older) exceeding 217,100 persons. Over 68 percent of Palestinian families in the Gaza Strip are considered food insecure, struggling to obtain food on a daily basis and being forced to reduce the quality and quantity of the food they consume due to insufficient income.⁶ The United Nations predicted the current humanitarian crisis and warned that the Gaza Strip would become uninhabitable by 2020 if the closure and blockade policy was not reversed.⁷ In reality, all aspects of life in the Gaza Strip were undermined by Israel's prolonged closure long before 2020, making the area long-unsuitable for human life.

The regular military bombardments that have been a prominent feature of life in Gaza over the past 12 years have led to the vast destruction of industrial and commercial facilities, including small business and factories, agricultural machinery and premises, and livestock farms. The most destructive assault to date, codenamed operation "Protective Edge", was launched on 8 July 2014. During this full-scale military bombardment, the Israeli occupation forces, including warplanes, ground and naval forces, targeted civilians *en masse*, and carried out the widespread destruction of civilian and public properties and infrastructure.

³ See Al Mezan's fact sheet on the economic sectors in the Gaza Strip in light of the blockade and the Reconstruction Mechanism. Available at: <http://www.mezan.org/post/23190> (Arabic only)

⁴ Palestinian Central Bureau of Statistics, Multi-Dimensional Poverty Profile in Palestine, 2017. Link: <http://www.pcbs.gov.ps/Downloads/book2524.pdf>

⁵ Palestinian Central Bureau of Statistics, Labor Force Survey (July-September 2019) results of the Labor Force Survey. It should be noted that the PCBS has recently amended the unemployment rate calculation method in line with the International Labor Organization standards which narrows the definition to only those who did not work during the reference period provided that they seriously searched for a job opportunity and were ready and able to work. Therefore, jobless people who did not search for work are excluded under the newly adopted criteria. Link: <http://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3595>

⁶ Palestinian Central Bureau of Statistics, Socio-Economic Food Security Survey 2018 Preliminary Results, 10 December 2018.

⁷ United Nations Country Team in the occupied Palestinian territory, August 2012. Available at: <https://www.unrwa.org/userfiles/file/publications/gaza/Gaza%20in%202020.pdf>

The Gaza Reconstruction Mechanism, which was introduced following the bombardment and backed by the United Nations, failed to rebuild Gaza's damaged and destroyed infrastructure or revive the building and construction sectors, which were on the precipice of economic collapse.⁸ In the context of Israel's continuous, strict regulation of construction materials entering Gaza and the limited geographical area, Gaza's housing crisis continued to grow, notably in relation to the perpetual increase in the population, which surpassed two million at the end of 2019.⁹

Israel's daily use of military force in the Gaza Strip, largely in the access-restricted area, leads to loss of life, injury—including permanent disability—detention and abuse, loss of education, food insecurity, trauma, and ultimately, the loss of childhoods. The Israeli military killed 23 children in 2019, injured 2,130 and detained 35 others.¹⁰ Most of Israel's unlawful use of force in 2019 was in the context of the largely peaceful 'Great March of Return' protests, which were attended by thousands of Gaza's youth demanding an end to Israel's illegal closure and blockade and the right of return of Palestinian refugees as enshrined in international law.

Within 2019 alone, the Israeli military attacked farmers and their lands 334 times, endangering Gaza's sources of food for the child inhabitants. Within the same year, the Israeli navy attacked Palestinian fishermen 351 times, arresting 35 fishers and undercutting a once-viable sector in the economy, further impoverishing the entire fishing community. Israel targeted and damaged 32 schools, thereby severely impacting the right to education of children in the vicinity. The 10,477 children who have at least one form of disability are vulnerable to additional barriers in access to an adequate standard of living and their options for a productive future are further limited by the failure of duty-bearers to uphold their rights.¹¹

⁸ See Al Mezan's fact sheet on the economic sectors in the Gaza Strip in light of the blockade and the Reconstruction Mechanism: <http://www.mezan.org/post/23190> (Arabic only)

⁹ The population reached 2.019 million people by the end of 2019 according to the Palestinian Central Bureau of Statistics. For more information, see: <http://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3642>

¹⁰ See Al Mezan's report on the targeting of children for more: <http://www.mezan.org/en/post/23683>

¹¹ Palestinian Central Bureau of Statistics, Conditions of Palestinian Children on the Eve of Palestinian Child Day. Available at: http://www.pcbs.gov.ps/portals/pcbs/PressRelease/Press_En_4-4-2019-child-en.pdf

In 2018, the number of young offenders who were admitted to Gaza's juvenile rehabilitation institution, called Al-Rabee', reached 650, a nearly 31 percent increase from 2017. The types of charges against the children varied: around 50 percent were there for burglary, theft, or fraud, while those charged with assault stood at 25 percent, and others had drug-related and other charges. It must be noted that these children suffer from a lack of adequate healthcare within Al-Rabee'. Rehabilitation within these circumstances remains a challenge.¹²

In short, Israel's comprehensive policy vis-à-vis Gaza has resulted in crumbling economic infrastructure, rampant poverty and the denial of a productive and meaningful life to Gaza's inhabitants, particularly its children.¹³ As a result of the cumulative conditions facing Gaza's population, providing a safe environment where children can develop and pursue a decent life is nearly impossible.

¹² Ministry of Social Development, unpublished data obtained by the Al Mezan

¹³ See article on Operation Protective Edge for more details: <http://www.mezan.org/en/post/21255>

YOUTH ATTEMPT TO FLEE GAZA: THE RISKS

Al Mezan’s research indicates that Gaza’s inability to provide a future for its people has prompted despair and anxiety among the population. The humanitarian crisis and the deteriorating economic situation in the Gaza Strip have created a complex reality from which the phenomenon of youth emigration has emerged. In the past few years, the youth have responded to Gaza’s conditions by attempting to cross through the access-restricted area into Israel – an alarming sign of the worsening quality of life in the Gaza Strip. Despite being an immediate threat to the lives of those undertaking this practice—eight children were shot and killed trying to cross the fence in the reporting period—this phenomenon has persisted. The documentation conducted by Al Mezan over the past several months shows that at least 259 Gaza residents were arrested by the Israeli military while attempting to cross the Gaza-Israel perimeter fence between 2015-2019, including 96 children.

Israel enforces a maritime and land “buffer zone,” also referred to as an “access-restricted area,” where the Israeli military enforces its unilaterally imposed movement restrictions within the Palestinian coastal waters and the Gaza side of the perimeter fence. In 2007, the Israeli occupation forces established additional measures and procedures along the fence, reinforcing its presence and surveillance ability. The military constructed observation towers, doubled both its ground and air surveillance systems and carried out ambushes in the woodlands adjacent to the Strip, as observed by Al Mezan’s monitoring unit. The unprecedented scale of the Israeli military’s security measures in the buffer zone suggests that Israel had long foreseen the aftermath of its closure and collective punishment policy on the people in Gaza. What Israel considers the phenomenon of “infiltration”—but what Al Mezan frames as child victims attempting to flee an unlivable situation—is but one of these results.

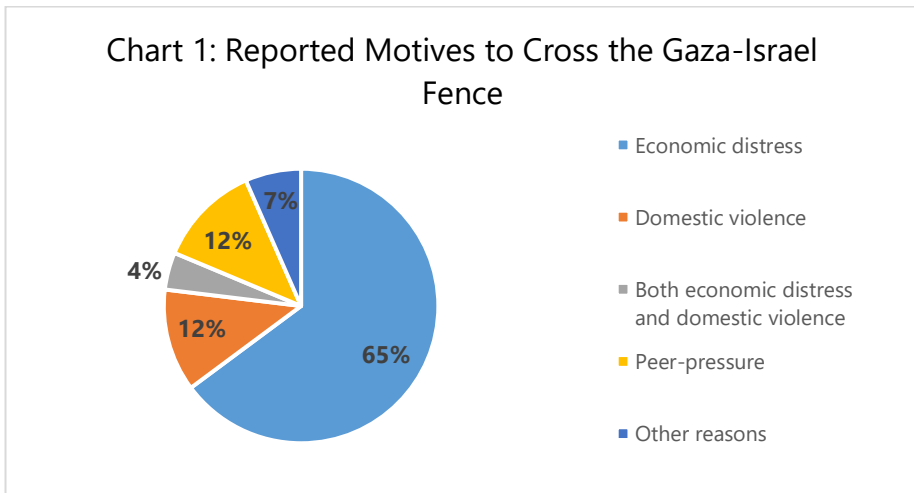
Israel’s maintenance of the access-restricted area in the Gaza Strip is enforced through its vast military infrastructure and presence. The Israeli forces have the full capacity to ascertain whether a child present in the area constitutes a threat, and to turn them back. Instead, the military uses excessive and harmful means—that include lethal force, injury and arrest—which have a direct and lasting impact on the lives of the children.

Table 1: Fatalities, injuries, and arrests among Gazans crossing the fence

Year	Fatalities		Injuries		Arrests	
	Total	Children	Total	Children	Total	Children
2015	0	0	0	0	80	27
2016	0	0	0	0	26	12
2017	1	1	2	1	18	10
2018	17	6	6	4	49	16
2019	6	1	5	1	86	31
Total	24	8	13	6	259	96

MOTIVES: A CHILD’S PERSPECTIVE

The 91 children told Al Mezan about their motives behind the decision to leave Gaza via Israel’s perimeter fence. The deteriorating financial situation of their families is at the top of the list, with 59 children indicating that they sought to leave Gaza out of economic distress. Violence in the home was the reason that eleven children put forward, and an additional four children said they were driven by both factors. Various other reasons were cited by 17 of the children, eleven of whom pointed to peer pressure as the main factor, and six of whom cited a lack of adequate shelter, depression, and other (undisclosed) personal reasons.



In this context, it is worth noting that the poor living conditions in Gaza are thought to increase the rates of psychological distress, and from there, violence in the home. A 2019 survey on violence in the home in Gaza showed that at least 71 percent of children ages 12 to 17 had been exposed to psychological violence and at least 35 percent had been exposed to physical violence carried out by one of their parents.¹⁴ Some children reported a combination of psychological and physical abuse by one or both parents.

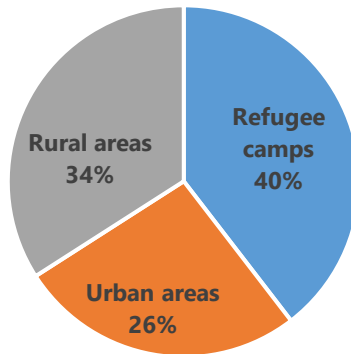
¹⁴ Palestinian Central Bureau of Statistics, preliminary results of the Violence Survey in the Palestinian Society 2019. Available at: <http://pcbs.gov.ps/Downloads/book2480.pdf>

SOCIOECONOMIC BACKGROUND

Type of residential area

The largest group, constituting around 40 percent of the 91 children, live in refugee camps, in likely the most dire humanitarian conditions in Gaza. A further 34 percent live in rural areas, where poverty and unemployment are high due to Israel's practices that restrain the agricultural sector. The fact that most of the victims are residents of refugee camps and rural districts points to heightened, ongoing economic suffering in these areas.

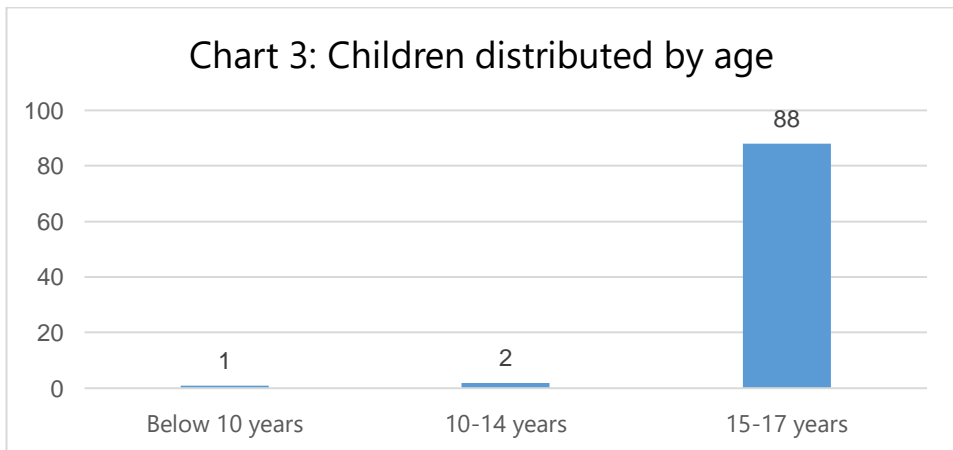
Chart 2: Children by type of residential area



Age

Of the 91 children, 88 were ages 15 to 17 on the day of arrest. Commenting on the specificity of this age group, Dr. Sami Eweida, a psychiatrist at the Gaza Community Mental Health Programme, stressed the specific behavioral and cognitive characteristics of youth of that age. He said:

“Children of this age group tend to be more independent and rebellious, especially if they’re not satisfied by their living conditions and their families fail to meet their needs. They are also curious and keen on exploration, with little regard for the consequences. Therefore, once these variables are aggravated by severe socioeconomic conditions or domestic violence, children are more likely to undertake careless decisions, leading them to the unknown.”¹⁵



¹⁵ Interview with Sami Eweida, psychiatrist at the Gaza Community Mental Health Program, interviewed by Basem Abu Jari, 6 January, 2020

Family size

In over 71 percent of the cases, the child comes from a big family where the average number of members exceeds seven. In this regard, it must be noted that poverty is directly related to large families, according to statistics. For instance, the Palestinian Central Bureau of Statistics reports that the poverty rate in Palestinian families more than doubles for larger families: it stands at 6 percent in families with three members or less; at 14 percent for families with four to six members, and at 35 percent for families with seven or more members.¹⁶

Income and social protection benefits

The monthly income of the 91 children's families was reported as follows: 78 percent of the families depend on a monthly income not exceeding 1,000 ILS (USD 292); the income of 12 percent of the families ranged from 1,000 to 2,000 ILS (USD 585), and the remaining 10 percent of families earned more than 2,000 ILS monthly (USD 584).¹⁷

Table 2: Children distributed by monthly family income

Income	No. of Families	Percentage
Below 1,000 NIS	71	78%
1,001 – 1,500 NIS	6	6.6%
1,501 – 2,000 NIS	5	5.5%
Over 2,000 NIS	9	9.9%

The government's social protection programs play a vital role in ameliorating living conditions for families in the Gaza Strip. Forty-six of the surveyed children's families were reported to have benefited from such

¹⁶ Palestinian Central Bureau of Statistics, Multi-Dimensional Poverty Profile in Palestine, 2017. Link: <http://www.pcbs.gov.ps/Downloads/book2524.pdf>

¹⁷ It should be emphasized that the assistance that the victims' families receive, especially from the social protection program, was factored in when determining the monthly income level of the families.

programs. However, 45 of the families did not receive social assistance from the government and were likely in need. Eighty families received relief aid (mostly in-kind) from UNRWA and international organizations.

These figures indicate that Gaza's local service institutions are not adequately addressing the desperate conditions of families in the Strip and should increase their efforts, even in the context of the closure and blockade.

Educational status

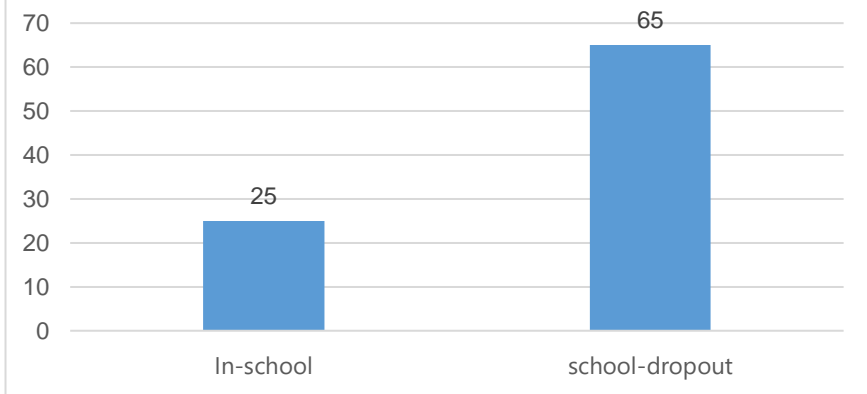
The survey further highlights the high dropout rates among the child victims: 65 of the 91 children had dropped out of school.

The United Nations Children's Fund's (UNICEF)¹⁸ report on out-of-school children (OOSC) in Palestine provides analysis of children who are both out of school and who are in school but are at risk of dropping out. The report indicates that the barriers in access to quality education in the occupied Palestinian territory relate to high rates of poverty and unstable households:

“Household vulnerability, as experienced in the form of deep poverty and unstable household composition, emerges as a constant factor [of exclusion from education]. Children growing up in vulnerable households attend preprimary education at lower rates, some drop out in the early grades of primary education, and they are more likely to face academic challenges, repeat grades and drop out at higher rates during lower secondary education. [...] The ultimate exclusion of a child from basic education often comes as a result of the interaction of various barriers related to the school, the child, the family, and the wider economic, political and security environment.”

¹⁸ UNICEF, Country Report on Out-of-School Children, July 2018. Available at: <https://www.unicef.org/mena/reports/state-palestine-out-school-children>

Chart 4: Educational status of the children



TORTURE, ILL-TREATMENT AND ABUSE DURING ARREST AND IN CUSTODY

Issue summary

The most alarming area of documentation by Al Mezan’s field team shows that the children were reportedly exposed to multiple forms of ill-treatment and possibly torture during their arrest and detention. The 91 children reported the use of gunfire and attack dogs, physical or verbal abuse, the use of stress positions and sleep deprivation, psychological interrogation techniques, and discrimination or neglect. Fifteen of the children stated that their experience has had a lasting psychological or physical impact on them.

In Israeli custody

During arrest & transfer

Shooting, attack dogs, physical violence, and verbal abuse

Sixty-six of the 91 children reported that the Israeli military used live ammunition during their arrest and 27 referenced the use of police dogs. Thirty-three of the children said the Israeli forces beat them with weapons or fists; 85 children said they were blindfolded during arrest, and a third of the children reported being verbally abused. Further, 16 children stated that they were coerced to maintain stress positions. Four children stated that they were injured during arrest.

The Israeli forces detained 65 percent of the children in military installations, in contrast to 18.7 percent in prisons. And 15.4 percent of the children were transferred multiple times between military installations and the hospital and were eventually held in prison.

During interrogation & detention

Prolonged blindfolding, sleep deprivation, physical violence, verbal abuse, and attempted recruitment

Under the pretext of security, the Israeli authorities issued security, instead of criminal charges, against the children, which allowed for interrogators from Israel’s secret service (or Shabak)—who are well known

for their use of torture and ill-treatment¹⁹—to question the children, instead of the police.²⁰ Subsequently, the children reported being exposed to an array of questioning methods that are considered coercive and intimidating, and which appear to constitute prohibited ill-treatment and even torture.

The conduct by interrogators was reported as follows: 15 children said they were deprived of sleep for a prolonged period of time; 23 children reported that they were severely beaten; 25 children reported that they were insulted or humiliated; 29 children reported that interrogators made them remove their clothing, and 51 children reported that they were blindfolded for a prolonged period of time.

Two children reported attempts by Israeli agents to coerce them into becoming informants for the Israeli security services.

Denial of Basic Necessities

Four children reported that interrogators deprived them of food and water, and two children reported being denied access to a toilet during their detention and/or interrogation.

Denied access to an attorney and family visits

One third of the children reported that they were unable to meet with a lawyer during the entire period of their detention, including during their interrogation. Seventy-one children reported that they were denied their right to family visitation. Further, 31 of the surveyed children reported that they were not allowed to receive visitors or to communicate with their families by phone, leaving them with no contact with their families.

More than a third of the children reported that they were not seen by a medical doctor following their arrest.

¹⁹ Al Mezan et al., “On Torture”, June 2012. Available at: <http://mezan.org/en/uploads/files/14486.pdf>

²⁰ For more information, review the Prevention of Infiltration Law (Violations and Provisions) 1954, at the following link: https://www.nevo.co.il/law_html/law01/247_001.htm

The 91 children spent different stretches of time in Israeli detention; 45 percent of the children were released within 48 hours of their arrest, whereas others were held for an average of five months before being released back into the Gaza Strip.



Photo: Anne Paq

In Palestinian custody

Al Mezan's monitoring and documentation suggests that when the children were released back into Gaza, many of them continued to endure acts that would amount torture and ill-treatment, in this case by Gaza's security services. Likely driven by the fear that, under coercion, the children had agreed to collaborate with the Israeli intelligence agency, the Palestinian authorities at the crossing point arrested, detained, and questioned the majority of the 91 children. This rendered the children highly vulnerable to added abuse.

The results of the comprehensive survey show that 70 of the 91 children were arrested by the Palestinian security services. Twenty-two children stated that, in the context of their detention, they were beaten and insulted. Forty-four children were detained for one to six days, and 16 children were detained for one week or more.

The Gaza authorities based the children’s arrest on their supposed breach of Article 209 of the PLO Revolutionary Penal Code of 1979, which stipulates that “perpetrators of acts that undermine order”, among other acts, can be punished with a prison sentence and a fine. The Palestinian authorities in Gaza are thereby criminalizing the children for attempting to flee Gaza, instead of treating the children as victims. Al Mezan suggests that the reason for the arrests and subsequent reported ill-treatment and possible torture that was reported by the children was for the purposes of information gathering.

The Palestinian authorities in Gaza reported that the detained children were indeed questioned about the circumstances that led to their arrest by the Israeli forces and about the nature of the questioning within their interrogation in Israel. The children were released after signing a pledge, in the presence of a guardian, to refrain from attempting to cross the perimeter fence again.²¹

PROTECTION OF CHILDREN AND THEIR RIGHTS

Israel’s illegal closure of the Gaza Strip has rendered the territory unfit for human habitation, violates the full spectrum of human needs and human rights of the Palestinian people in the Strip, in particular Gaza’s children, and renders Israel in flagrant breach of the norms and legal obligations of an Occupying Power. The State’s discriminatory policies and practices that collectively make up the closure regime amount to unlawful collective punishment and evidence an institutionalized, continuous perpetration of the crime against humanity of persecution.²²

²¹ Phone interview with the Head of the Military Prosecution in Gaza on 17 September 2020, interviewed by Mervat Al-Nahal.

²² See Al Mezan et al., Palestinian Human Rights Organizations & Victims’ Communication to the International Criminal Court Pursuant to Article 15 of the Rome Statute Requesting Investigation and Prosecution of The Illegal Closure of the Gaza Strip: Persecution and Other Inhumane Acts Perpetrated against the Civilian Population as Crimes against Humanity (November 2016). Available at: <http://mezan.org/en/post/21630>

Referring to the 13-year closure as a prohibited collective punishment under international law, the Special Rapporteur on the situation of human rights in the occupied Palestinian territory reported in July 2020 that “Israel continues to rely upon collective punishment as a prominent instrument in its coercive toolbox of population control.”²³ In November 2019, a group of Palestinian, regional and international civil society organizations submitted a comprehensive joint parallel report to the UN Committee on the Elimination of Racial Discrimination (CERD) arguing that Israel’s discriminatory policies and practices in Gaza that control the lives of the two million inhabitants and transform the territory into an open-air prison, are committed with the intention of maintaining its institutionalized regime of systematic racial domination, oppression and apartheid over the Palestinian people.²⁴

The closure policy and its related enforcement practices violate an immense number of conventions to which Israel is bound, notably the Fourth Geneva Convention, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT), and the Convention on the Rights of the Child (UN CRC), amongst other international treaties applicable in the occupied Palestinian territory.

Following Israel’s 2019 review by the Committee on Economic Social and Cultural Rights, the Committee concluded that “[t]he state of poverty and food insecurity in Gaza...is largely attributable to [Israel’s] closure/blockade [and its] restrictions imposed on the access of Palestinians to their agricultural land...and marine sources.”²⁵ The Committee called for the immediate cessation of the closure regime.²⁶

²³ A/HRC/44/60, July 2020, para. 18

²⁴ See Al Mezan’s joint submission on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination, 12 November 2019. Available at: <http://mezan.org/en/uploads/files/1573555716491.pdf>

²⁵ Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel (E/C.12/ISR/CO/4) 18 October 2019, para. 44

²⁶ Ibid, para. 11(a)

Israel's response to attempts to breach its illegal closure and blockade of Gaza, whether by the children represented in this report or the eight others who were shot and killed attempting to leave Gaza in the same period, appear to have been met with excessive force. Article 2 of the Code of Conduct for Law Enforcement Officials states that "in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons." The Code of Conduct continues that law enforcement officials may use force only when strictly necessary, proportionally, and only to serve a legitimate law enforcement purpose. Force is to be used only as a last resort and when other, less forceful measures have been exhausted.²⁷

The obligation to respect life and the integrity of the person is paramount in international law and notably holds heavier weight in relation to the lives of children. The international community has maintained that children are entitled to special care and assistance by enshrining this universal principle in the provisions of international human rights and humanitarian law. The Israeli military's lethal response to the children attempting to cross the perimeter fence, who were neither participating in hostilities nor posing an imminent threat to Israeli soldiers, would constitute a grave violation of international human rights law, notably the right to life, with serious legal consequences in international humanitarian and criminal law.

The right to life, survival and development of children is enshrined in Article 6 of the UN CRC. This provision is closely related to other rights of the child set forth in the UN CRC, such as the right to the enjoyment of the highest attainable standard of health, to health services, and to an adequate standard of living as prescribed at Articles 24 and 27. In its Concluding Observations on the second to fourth periodic reports of Israel, the Committee on the Rights of the Child shared deep concerns over the devastating impact on the right to life, survival and development of children due to the closure and blockade of Gaza.²⁸

²⁷ Code of Conduct for Law Enforcement Officials (1979)

²⁸ Committee on the Rights of the Child, Concluding observations on the second to fourth periodic reports of Israel, CRC/C/ISR/CO/2-4, 4 July 2013, paras. 25-6

In its 2010 Concluding Observations under the Optional Protocol on the Involvement of Children in Armed Conflict, the Committee on the Rights of the Child underlined the serious violations suffered by children in Gaza. In particular, the Committee expressed grave concern for the hundreds of Palestinian children that have been killed and thousands injured as a result of the Israeli military operations conducted in violation of the principles of proportionality and distinction enshrined in international humanitarian law.²⁹

The children who attempted to flee the closure and were taken into Israeli and then Palestinian custody became the subject of systematic breaches of both States' erga omnes obligations under international law. The prohibition of torture and ill-treatment is absolute. The use of torture and ill-treatment is considered to be one of the most flagrant violations of human rights and international humanitarian law, and one that threatens life and human dignity. Both the Universal Declaration of Human Rights and the ICCPR state that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".³⁰ Additionally, the UN CAT does not allow for the use of torture or CIDTP under any circumstances, explicitly stating that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture".³¹ This includes situations of conflict and occupation. Article 1 of UN CAT provides the internationally agreed legal definition of torture and further details of how and when certain practices may constitute torture.

The 1949 Geneva Conventions and Additional Protocols of 1977 contain a number of provisions that absolutely prohibit torture and other cruel or inhuman treatment and outrages upon individual dignity. In particular, Article 32 of the Fourth Geneva Convention prohibits torture, while Article 147 designates the use of torture as a grave breach of international

²⁹ Committee on the Rights of the Child, Concluding observations under the Optional Protocol on the involvement of children in armed conflict, CRC/C/OPAC/ISR/CO/1, 4 March 2010, para. 10

³⁰ Universal Declaration of Human Rights, Article 5 and International Covenant on Civil and Political Rights, Article 7

³¹ Convention against Torture, Article 2(2)

humanitarian law. The Rome Statute of the International Criminal Court lists torture and inhuman treatment as a war crime (Article 8) and, further, considers torture as a crime against humanity (Article 7) when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

The prohibition on torture under international law is one of the clearest examples of customary international law and is considered to be a jus cogens norm. Moreover, the prohibition of torture is complemented by the obligation to prevent torture, which is applicable to all States regardless of where the torture is carried out or whether the State in question is a Party to the relevant international treaties and conventions.

The UN CRC provides that children must not be subjected to torture or CIDTP, should only be deprived of their liberty as a measure of last resort and must not be unlawfully or arbitrarily detained.³² Article 37 of the CRC requires that “Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into account the needs of persons his or her age.”³³ Juvenile persons coming into contact with the justice system should also be separated from adults, allowed contact and visitation with family, afforded prompt access to a lawyer, and should only be questioned in the presence of a lawyer or family member. Children in custody should be accorded treatment appropriate to their age and that promotes their rehabilitation.³⁴ Palestinian children in the Israeli justice system should enjoy these rights without discrimination.

Furthermore, “restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted.”³⁵ In cases of excessive force used by law enforcement or military personnel, the Committee against

³² The United Nations Convention on the Rights of the Child (1990)

³³ UN CRC, Article 37

³⁴ Ibid.

³⁵ Committee on the Rights of the Child, General Comment 10: Children’s rights in juvenile justice, 89, U.N. Doc. CRC/C/GC/10 (Apr. 25, 2007), <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

Torture has concluded that this may amount to torture and ill-treatment.³⁶ This is particularly the case regarding younger children.

In 2015, the UN Special Rapporteur on Torture, Juan E. Méndez, concluded that:

“In determining the seriousness of acts that may constitute ill-treatment or torture, due consideration must be given to physical and mental effects and the age of the victim. In the case of children, higher standards must be applied to classify treatment and punishment as cruel, inhuman or degrading. In addition, the particular vulnerability of children imposes a heightened obligation of due diligence on States to take additional measures to ensure their human rights to life, health, dignity and physical and mental integrity.”³⁷

Serious allegations of international humanitarian and human rights law committed by state agents must be investigated in prompt and impartial investigations, according to Article 12 of CAT. The universal principles that define the core criteria for a genuine investigation further outline the four requirements of: independence, thoroughness, effectiveness and transparency. International human rights law sets out the obligation to ensure that individuals have accessible and effective remedies for gross violations of international human rights law and international humanitarian law, including access to justice and reparation for harm suffered. Article 39 of the CRC also refers to the State’s obligation to provide recovery and reintegration of child victims of any form of torture or neglect, exploitation, abuse or any other forms of CIDTP.

According to empirical evidence, including Al Mezan’s many years of experience engaging with Israeli domestic judicial mechanisms, the status quo in Israel vis-à-vis Gaza residents is a complete absence of accountability and reparations.³⁸ This prompted the UN Independent International

³⁶ Manfred Nowak & Elizabeth McArthur, *The United Nations Convention Against Torture: A Commentary*, pp. 62, 66, 542, 551, 559, & 556-568 (2008)

³⁷ UN Special Rapporteur on Torture, Juan E. Méndez, *A/HRC/28/68*, para. 70

³⁸ See, for example: Al Mezan et al., “Chronic Impunity: Gaza’s Health Sector Under Repeated Attack” March 2020. Available at: <http://mezan.org/en/uploads/files/chronic-impunity-gazas-health-sector-under-repeated-attack.pdf>

Commission of Inquiry on the 2014 Gaza Conflict to state that: “Israel must break with its recent lamentable track record in holding wrong-doers accountable, not only as a means to secure justice for victims but also to ensure the necessary guarantees for non-repetition.”³⁹

Further failing to confirm with Article 2 of UN CAT, no specific crime of torture exists in Israel’s penal code, and despite the State’s clear obligations under international law, according to the UN Children’s Fund (UNICEF), the ill-treatment of Palestinian children who are placed in the Israeli military detention system remains “widespread, systematic, and institutionalized throughout the process.”⁴⁰ The Palestinian penal code that is applicable in the Gaza Strip criminalizes only some forms of torture, and the practice is still considered routine across the occupied Palestinian territory.⁴¹

³⁹ A/HRC/29/52, 24 June 2015, para. 76

⁴⁰ UNICEF, Children in Israeli Military Detention Observations and Recommendations, February 2013. Available at:

https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf

⁴¹ Human Rights Watch, “Two Authorities, One Way, Zero Dissent”, 23 October 2018. Available at: <https://www.hrw.org/report/2018/10/23/two-authorities-one-way-zero-dissent/arbitrary-arrest-and-torture-under>

Conclusion

The above international legal provisions and principles are the standards against which Al Mezan evaluated the experiences of the 91 children, who reported conditions and treatment in immediate conflict with international law and principles for the treatment of children.

The children reported the use of attack dogs, physical violence, and verbal abuse during their arrest and transfer. They reported prolonged blindfolding, sleep deprivation, physical violence, verbal abuse, and attempted recruitment during their interrogation and detention. The children also reported being denied adequate food and access to a toilet. They said they were denied access to an attorney and family visits or phone calls. The children also reported that they were interrogated without a lawyer or family member present.

Most of this treatment, especially when combined and notably as used on children, amounts at least to prohibited ill-treatment, and in some cases would amount to torture. Analysis of the children's accounts leads to the conclusion that a spectrum of prohibited torture, CIDTP and abuse was used against them in a widespread, systematic and institutionalized manner.

The acts may amount to war crimes and, where committed in the context of a widespread or systematic attack directed against a civilian population pursuant to or in furtherance of a State or organizational policy, may also constitute crimes against humanity.

The results of Al Mezan's comprehensive survey of the child victims strongly indicates that the legal safeguards and minimum standards of treatment set out in international law were not adhered to in particular in Israel, raising further question as to their discriminatory application by the Israeli authorities in regard to the Palestinian children.

The facts described in this report illustrate a pattern of widespread and systematic violation of Palestinian children's rights by primarily Israeli duty-

bearers operating on Palestinian and Israeli territory, and secondarily, the Palestinian de facto authority operating in the Gaza Strip.

RECOMMENDATIONS

The international community:

- Must take urgent and effective action to put an end to Israel's closure and blockade of the Gaza Strip, which is the catalyst for the rampant unemployment and poverty in Gaza and the complex reality prompting children to flee.
- Must call on the Israeli authorities to put an end to any torture or CIDTP of children.
- Must ensure prompt, thorough and impartial investigations according to international standards, and bring perpetrators of violations against children promptly to justice. The devastating cycle of impunity that exists for Palestinian victims must be broken in order to deter the commission of future crimes. In urgently pursuing justice, accountability and reparations for the victims, the international community should activate universal jurisdiction and support the International Criminal Court in opening a full investigation into the situation in Palestine.
- Must push for effective legislation to be implemented that fully criminalizes torture in line with UN CAT in Israel and Palestine.
- Must publicly condemn the conduct of the Israeli occupying power as constituting the violation of children's rights, of international humanitarian law, and of international criminal law.
- Finally, recalling Israel's obligations under international law and the duty to protect Palestinian children in occupied territory, the international community must take prompt and effective action to ensure the respect of international law, to provide effective protection for children, and to put a stop to the Israeli military's use of excessive force.

Gaza's authorities

- Must end all forms of torture and CIDTP against children.

- Must stop criminalizing the children who attempted to flee and must instead treat them as victims, including those who are suspected as having been coerced into becoming informants for the Israeli security services.
- Must provide assistance and rehabilitation to the children and look into providing social protection services for their families. Notably, the Palestinian Ministry of Social Affairs should uphold its responsibility to provide social and financial assistance to the children in economic distress.
- Must provide the necessary support to eliminate and address violence against children in the home.
- Must, through the Ministry of Education and service institutions in the Gaza Strip, set up educational and cultural programs to safeguard out-of-school children's right to education and address the causes of school dropout.
- Must take all measures possible, within the context of Israel's occupation and closure, to implement decent living standards, including by providing healthcare, food, and educational services to the population, as a means of dissuading children from undertaking dangerous routes out of Gaza.

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