

All Guilty!

Observations in the Military Juvenile Court

April 2010-march 2011

Writing, Collection and Organization of Data
Volunteers of “No Legal Frontier”

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Printed July 2011
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We wish to express our thanks and deep appreciation to **Adv. Gabi Laski, Neri Laufer** and **Lymor Goldstein** for sharing with us their vast knowledge and experience and helping us with the observation, collection and organization of the data used in this report

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Summary

On October 1, 2009, Amendment No. 109 of the Security Provisions Order went into effect, establishing a military juvenile court, as part of the military courts where Palestinian residents of the West Bank are prosecuted. The establishment of the military juvenile court was presented as a revolution as far as the prosecution of minors is concerned, and as a significant and material improvement in protecting their rights.

Volunteers for “No Legal Frontiers” observed the trials of Palestinian minors in the military juvenile court in Ofer Camp between April 2010 and March 2011. During the observation the organization’s volunteers monitored the trials of hundreds of minors, but collected systematic and organized information after every stage of the trial in the cases of 71 minor defendants whose trial had completed.

Following are the main findings of the report:

The age of the defendants: the boys judged in the military juvenile court during our observations were 13-18 years old at the time the alleged offenses were committed. The biggest group of minors was 15 but the court also tried boys as young as 13-14 and as old as 17-18, even though the law that applies to the territories defines minors only as youngsters up to the age of 16. It appears that the military juvenile court is inclined towards “leniency” in this matter and also tries boys ages 16-18, albeit not systematically.

The most common offenses were throwing objects: stones and Molotov Cocktails. In most cases the objects were not actually thrown, or did not hit their target and did not cause any damage. In no case did they cause severe harm.

Detention and release on bail: detention does not serve as a last resort for the shortest time possible, but is used in most cases. Only about 6% of the defendants were released on bail whereas the rest were detained until the end of the proceedings against them. Punishments in many cases coincide with the days served in detention, and the frequent use of detention undermines the presumption of innocence.

The length of the legal proceedings: indictments were served promptly. In 79% of the cases an indictment was served within a week or two of the detention. Nor are the legal proceedings relatively long. In 47% of the cases the legal proceedings were concluded within three months and in another 35% they were concluded within six months. However, one must remember the relatively light and simple charges and the fact that the absolute majority of cases end with plea bargains without hearing witnesses.

Representation by a lawyer: all the boys were represented by lawyers. In two cases, when the boys came to court unrepresented, the court appointed lawyers to represent them.

Participation of parents in the proceedings: was observed in only a few cases. The court does not inform the parents of their right to participate in the proceedings as it should do.

Welfare officer reports: in only 4% of cases were welfare officer reports used, and then only in particularly grave cases.

Confessions and incriminations: the vast majority of files were based on the defendants’ confessions, given during police interrogations, and on incrimination by boys of similar ages given in the same circumstances. In no case was there a trial within a trial on the admissibility

of the confessions, even though in some of the cases serious and similar allegations were raised about the interrogation: night arrests and night interrogations, beatings, threats and extreme violations of the suspects' right to consult lawyers and to remain silent. In no case did the court take any measures concerning such allegations brought before it.

Convictions and plea bargains: 100% of the cases ended in convictions. The vast majority of the legal proceedings (98%) ended with plea bargains between the prosecution and the boys' defense lawyers. Except two cases, no testimony by witnesses was heard at all. The court accepted the plea bargains in 100% of cases and issued sentences based on the agreement between the prosecution and the defense. In half the cases there was a substantial reduction of the charges, in the vast majority without hearing witnesses. Such a vast reduction of charges without any change in the evidential material, raises questions as to the military prosecution's discretion in serving the indictment. This practice raises the possibility that charges are included in the indictment *a priori* as bargaining chips.

Since the vast majority of legal proceedings end with plea bargains that the court respects, and all end in prison sentences, it seems that the role of the military juvenile court in sentencing boys who are arrested and tried is rather negligible.

Punishment: in 98% of the cases a prison sentence is imposed, and in 100% of the cases a suspended prison sentence is imposed. In 96% of the cases a fine is imposed in addition to a prison term, and the court sentences the defendant to additional days in prison if the fine is not paid.

Imprisonment is a default punishment imposed as a first rather than a last resort. Despite the criticism of the judge in Ofer Military Juvenile Court, Maj. Rivlin-Achai, of the absence of alternatives to imprisonment, she did not choose to refrain from prison sentence but in a single case when the defendant was already released. She paid lip service to the need to change the legislation. However, there is no rule requiring the court to impose prison terms and there was cause in many cases not to impose prison terms. In such cases, suspended prison terms or fines, with an emphasis on deterrence for the future, would have sufficed.

Fines were imposed almost always in addition to the prison punishment. It is not at all clear what justification there is to impose a fine in addition to prison, as well as sentencing days in prison in exchange, even though payment depends only on the parents' economic ability.

In many cases there was no appropriate proportionality between the severity of the offense and the punishment, and long prison terms were imposed. Non proportionality stems also from the extensive use of fines and imprisonment in exchange.

The findings show that the establishment of the military juvenile court brought about only a marginal change in the legal proceedings against Palestinian minors in the West Bank. The amendment of military law that led to the establishment of the military juvenile court had no effect at all on the interrogation and arrest procedures, which are the *de facto* critical stages that dictate the outcome of the whole legal process. The widespread use of detention undermines the presumption of innocence and, in the vast majority of cases, dictates conviction and punishment by imprisonment. The role of the court begins only after those stages and is in fact almost negligible considering the common practice of plea bargains, their acceptance by the court and the automatic sentencing of long prison terms.

The Military Juvenile Court

Introduction

Amendment No. 109 of the Order Regarding Security Provisions came into effect on 1 October 2009 (**Appendix A**). This amendment to the primary criminal law used by the IDF in the West Bank, ordered the establishment of a military juvenile court within the military courts in which West Bank Palestinians are prosecuted.¹ The establishment of a military juvenile court was presented as a revolution in adjudication of minors, and a significant, substantial improvement in maintaining their rights. A press release issued by the IDF Spokesman, quoted the president of the Military Court of Appeals, at the court's inauguration ceremony: "The creation of a military juvenile court is the beginning of a new era regarding the responsibility of minors. It is a real revolution that, for the first time, allows us to obtain help from social work professionals to take steps for rehabilitating young offenders and reintegrating them in society."²

Volunteers from "No Legal Frontiers", observed the legal proceedings at the Military Juvenile Court in Ofer Military Base, to examine whether establishment of the Military Juvenile Court had an effect on the trial of Palestinian minors and in maintaining their rights.

From April 2010 to March 2011, the volunteers observed the proceedings heard before Military Judge Major Sharon Rivlin-Ahai, who was trained as a juvenile court judge. The volunteers kept track of the proceedings, discussions between the judge, prosecutor, and defence attorney, whether parents or other family members attended the hearings and if they succeeded in making contact with their children standing trial.

The volunteers observed hundreds of legal proceedings of minors, but documented and gathered material in a systematic and orderly fashion through all stages for 71 cases: 70 were completed during the period of observations, while one is still suspending. The indictments, transcripts, and court decisions were collected from all the entire proceeding. Other material recorded during the observation of the trials was added to the official material, including additional clarifications received from defendants' relatives and lawyers.

Since the observations and material gathering took place in the Military Juvenile Court, the focus was on the trial itself, starting from submission of the indictment until the trial verdict. The materiel does not relate to initial detention, interrogation, remand or appeal proceedings. Data pertaining to detention conditions, the juveniles' connection with their families outside the court, and other matters connected to detention and arrest, were also not collected. However, as can be seen from the observers' reports, the detention and interrogation stages are mentioned in the Military Juvenile Court during the trial and when the verdict is given. These stages are also described in the words of the juveniles' families, and selected segments of these comments appear in **Appendix B** to this report.

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1 Order regarding security regulations (Emergency Provisions) ((Amendment No. 109)

2 See: Military Juvenile Court established, IDF Spokesman's announcement : http://dover.idf.il/IDF/News_Channels/today/09/11/0202.htm

This report examines to what extent the main provisions relating to the Military Juvenile Court have actually been applied. Moreover, it specifies the standards set by international law regarding management of criminal proceedings of minors. Most of these standards are applied in the juvenile courts within Israel, according to the Israeli Youth Law³ that determines how criminal proceedings for juveniles should be conducted. We will use these same criteria to examine criminal proceedings for Palestinian minors in the military courts.

Military Courts

Israel operates a military court system in the West Bank that is responsible for judging both adult and minor Palestinians detained by the Israeli Army and prosecuted by the military prosecution. The military courts in the West Bank were established just a few days after Israel took over the territory from Jordan in 1967. They serve today as one of Israel's main mechanisms in controlling the Palestinian population. Since 1967 between 650,000 and 700,000 Palestinians were detained by the Israeli Army in the West Bank.⁴ Some 700 minors, under the age of 18, are detained and brought before these courts every year.⁵

Today, the military court system includes two military courts of first instance: the Judea Military Court at Ofer Military Base near Jerusalem and Ramallah, and the Samaria Military Court in the Salem Military Base near Salem checkpoint and the city of Jenin. The Military Court of Appeals, which hears appeals from the two lower courts, is also located at Ofer. Hearings on remand and regarding administrative detention are also heard at detention facilities in Israel: Kishon facility near Haifa, Petach Tikvah, the Russian Compound in Jerusalem, Shikmah Prison in Ashkelon, and Ketziot Prison.

The courts operate based on military proclamations and orders, which have the status of laws in the occupied territories (hereinafter: Military Legislation), and define the legal foundation of the military regime. Military legislation has determined that the Commanding Officer (O.C. Central Command) is commander of the West Bank (called "the Region") who holds all governmental authorities, including the right to promulgate legislation. The Military Legislation defines which acts are considered offences against security, and designates the military courts to enforce this legislation.⁶

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3 Youth Law (Adjudication, Punishment and Modes of Treatment), 1971

4 700,000 according to: UN Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967, Professor John Dugard, Human Rights Situation in Palestine and Other Occupied Arab Territories (21 January 2008), A/HRC/7/17, paragraph 45:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/402/29/PDF/G0840229.pdf?OpenElement>

650,000 according an estimation of the Palestinian Ministry of Prisoners, quoted in:

Maya Rosenfeld, *The Centrality of the Prisoners' Movement to the Palestinian Struggle Against the Israeli Occupation: A Historical Perspective*, in Baker and Matar, eds, *Threat: Palestinian Political Prisoners in Israel* (Pluto Press, 2011).

5 Defence for Children International-Palestine, *Palestinian Child Prisoners: The systematic and institutionalised ill-treatment and torture of Palestinian children by Israeli authorities*, (June 2009)

6 Proclamation No. 2, Proclamation No.3

The military courts system has been the subject of fierce criticism for its violation of fair trial rights.⁷ Many changes were introduced due to this criticism and ongoing monitoring and observations by human rights NGOs, including the establishment of the Military Juvenile Court. It is important to note that observing and maintaining fair trial rights in the military courts alone would not render the proceedings in front of them legitimate. Even though the existence of the military courts is legal according to International Humanitarian Law, from other legal aspects, long term military occupation of another people violates their right to self determination; the military regime is not democratic and its subject can't take any part in making the laws by which they are judged by electing its representatives; no separation of powers exist within the military regime and thus the army is at the same time the legislature, the judiciary and the executive. These fundamental flaws are irreparable as long as the occupation persists. Nonetheless it remains highly important to maintain the rights available to people under occupation to the maximum extent possible.

The Order Regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No.1651) – 2009 is the main military order serving as the criminal law of the military legal system. It defines offences and penalties, and the rules of Criminal Procedure and Evidence. Since the Order's original enactment in 1970⁸, it was amended more than 120 times, and put into effect in its current version in 2010, incorporating the previous amendments, and 20 other orders dealing with criminal offences.

The Order Regarding Adjudication of Juveniles (Judea and Samaria) (No. 132), was also enacted in 1967. This order included special provisions regarding adjudication of juveniles. Minors were tried together with adult detainees and defendants. Minors were divided into three categories: Children – younger than 12 years old; Youths - older than 12 but not yet 14; Young Adults - over 14 but not yet 16 years old. Anyone over 16 years old was no longer considered a minor, and was judged as an adult in every respect.

The order determined that Children will not be prosecuted at all, and Youths and Young Adults shall be detained apart from adult detainees, unless the Military Commander orders otherwise in a specific case or type of cases. In addition, according to the Order Youths at the time of sentencing may not be sentenced to more than six months in prison. Young Adults may not be sentenced to more than one year in prison, except for offences that warrant a sentence of over five years, in which case the maximum sentence may be imposed without any limitations. The sentence may impose on the minor's parents a fine, or payment of a guarantee not to commit additional offences, as well as imprisonment in the event of nonpayment.

Central provisions of the Order Regarding Judgment of Juvenile Offenders were dramatically different from Israeli law pertaining to minors. Some main differences are that the Israeli legal system considers young people as minors until the age of 18. By contrast,

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7 For criticism of the activity of military courts in recent years see "Backyard Proceedings," a report by the "Yesh Din" organization 2007. Sharon Weill, 'The Judicial Arm of the Occupation: The Israeli Military Courts in the Occupied Territories' (2007), International Review of the Red Cross, vol. 89 395

8 The Order was enacted in 1970 as the order Regarding Security Provisions (Judea and Samaria) (No. 378) - 1970. Between 1967 to 1970 there was a Security Provisions Order issued as an appendix to Proclamation No. 3, in June 1967.

according to the Order, Palestinian youths reach their majority at the age of 16; there was no difference between trying adults and minors, and no provisions were made for a Juvenile Court. The Order did not provide any alternatives to actual imprisonment, and no social services accompanied the legal proceedings. There were certain restrictions on sentencing, but these were quite limited since for most offences in the Security Provisions Order the sentence is predetermined to be five years or longer. In these instances, it is also possible to sentence minors to the maximum penalty, including life imprisonment and death sentences.

The military courts and the military prosecution followed this Order until 1 October 2009, when Amendment 109 took effect. The amendment ordered establishment of a Military Juvenile Court,⁹ and contained a number of innovations, including:

- a. Establishment of a Military Juvenile Court in which judges who have received special training will try cases of minors under 16. Detention and release proceedings of minors will still be heard in regular military courts and not in Military Juvenile Court.
- b. As a rule, a minor shall not stand trial together with an adult, except by approval of the military Judge Advocate General or someone authorized by him.
- c. The Military Juvenile Court will make every effort to hold its hearings in a different place or at a different time from trials of adults. As far as possible, minors shall not be brought into court or held there together with adults.
- d. A person should not be tried for an offence committed as a minor if two years have passed since the time of the offence, unless the Chief Military Prosecutor or person authorized by him, so approves.
- e. An indictment against a minor shall state his date of birth inasmuch as this may be verified.
- f. The Military Juvenile Court may appoint a defence attorney for the minor.
- g. The minor's parents will have legal status in the court and will be entitled to make requests, examine witnesses, plead and make claims on his behalf.
- h. For the purpose of determining the sentence, the court may order a report from the social welfare staff officer in the Civil Administration that will detail the personal circumstances of the minor and his family and offer recommendations regarding the prospects of the minor mending his ways.
- i. Detained minors must be held in a special detention facility for minors or in a separate section of a general detention facility.

The establishment of the Military Juvenile Court and amendment of the Order Regarding Security Provisions improved the military legislation regarding court proceedings of minors. The separation of minors' trials from adults; granting parents legal status in proceedings against their children; the court's authority to appoint a defence attorney;

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9 Order Regarding Security Provisions (Interim Provisions) (Amendment No. 109). The provisions were incorporated into the Security Provisions Order, See Appendix A below.

and a mechanism to obtain a report from the social welfare staff officer in the Civil Administration giving the court social information about the minor, are all substantial improvements. Nevertheless, as we shall demonstrate, key parts of the law violating minors' rights, remained in place, and the most essential rights of minors are still being violated.

Rights of juveniles in Criminal Proceedings

The guiding principle in relation to any legal action regarding minors should be the child's best interest. International law as well as Israeli law recognizes that children and teens differ from adults in their physical and psychological maturity and in their emotional and educational needs. They are regarded as less responsible for their actions than adults because their judgment is not as well formed and is more influenced by environmental factors. In addition, since their behavior patterns are still in process of consolidation, it is easier to influence their development and rehabilitate them, as well as easier to cause them severe damage and harm their development. These, and other differences between children and adults, justify the existence of a separate juvenile judicial system.¹⁰

The main goal of judicial proceedings for minors is perceived to be rehabilitation. Prevention and deterrence carry less weight. Therefore, an attempt should be made to formulate alternatives to punishment, for rehabilitation and education in place of imprisonment, and to minimize the use of a prison sentence to the last resort. The Convention on the Rights of the Child, which Israel joined in 1990, establishes several guidelines for minors charged with or suspected of having broken the law, even beyond the fair trial rights that apply to adults.¹¹ The main ones are:

- a. Age of majority is 18 years, depending on local law.¹²
- b. The best interest of the child will be the main consideration in any proceeding relating to minors.¹³
- c. Minors under 18 should not be sentenced to life imprisonment or to the death penalty.¹⁴
- d. Detention or imprisonment of a minor should be used as a last resort and for the shortest time possible.¹⁵
- e. Minors shall be detained separately from adults and should be allowed to maintain contact with their family through correspondence and visits.¹⁶

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10 See the preamble to the Convention on the Rights of the Child (1989); the explanations to Amendment No. 14 of the Youth Law (Adjudication, Punishment and Modes of Treatment), and the report of the Public Committee on Children and the Law (Rotlevi Committee).

11 Convention on the Rights of the Child (1989). Hereinafter: the convention or: CRC.

12 Section 1 of the Convention, CRC Committee, General Comment No. 10: <http://www2.ohchr.org/english/bodies/crc/comments.htm>. This General Comment is also relevant to all the rights below.

13 Section 3 of the Convention

14 Section 37(A) of the Convention

15 Section 37(B) of the Convention

16 Section 37(C) of the Convention

- f. Minors should be allowed access to legal assistance as soon as possible and they should be allowed to contact the Judicial Authority regarding their arrest. Decisions about their detention should be given as quickly as possible.¹⁷
- g. Treatment of minors accused in criminal proceedings will be adjusted to their age and their needs and advance their rehabilitation and integration into society as far as possible. Countries shall develop special procedures as alternatives to legal proceedings for minors. Educational and therapeutic programs will be adapted for the benefit of minors and to their circumstances.¹⁸
- h. The minor's parents or other assistance should be included in the procedure if required.¹⁹

In addition, minors as well as adults have, inter alia, the right to be considered innocent until proven guilty, not to be obliged to confess to a crime or admit their guilt (the right against self-incrimination), to exclude any confession given under torture or ill treatment, and to have their trial concluded as quickly as possible.²⁰

In many respects, rights granted to minors under Israeli law are preferable as compared to those granted minors in the Military Juvenile Court. In Israeli law, anyone under the age of 18 is a minor. Juvenile courts in Israel were first established in 1971, when the Youth Law (Adjudication, Punishment and Modes of Treatment)–1971 was enacted. The Juvenile Courts in Israel are assisted by a comprehensive system of diagnostic, rehabilitation and social services, including probation officers for juveniles, welfare and social workers, open and closed residences that serve as an alternative to actual prison sentences. In the past few years, a number of programs have also been designed to promote diversion of juvenile cases away from the courts to mediation and rehabilitation procedures. The Youth Law in Israel also contains very significant differences from the laws pertaining to adults, in terms of detention and trial. Some of the main differences are:

- A. The Youth law determines that: "Exercise of the rights of a minor, exercise of powers and initiation of proceedings against him shall be conducted while maintaining the dignity of the minor, and giving due weight to considerations of rehabilitation, treatment, social reintegration and Rehabilitation of Offenders, and taking into account his age and level of maturity."²¹ "Where according to the provisions of the law, a person should be given the opportunity to express his opinion or his consent is required to the decision being rendered in his case, a minor is entitled to have the opportunity to express his opinion, his wishes and his feelings on his own, in a way appropriate to his age, degree of maturity and needs...; the minor's position, his wishes and feelings, should be given due weight when making a decision about him, while considering his age and degree of maturity."²²

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17 Section 37(D) of the Convention

18 Section 40 of the Convention

19 Section 40 (2) of the Convention

20 Section 40 of the Convention; Section 14 of the Covenant On Civil and Political rights, Section 15 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

21 Section 1A (A) of the Youth Law (Judging, Punishment and Modes of Treatment) - 1971

22 Section 1B of the Youth Law Section 9D of the Youth Law. There are exceptions to this rule for special cases, subject to the authorization of a Police Officer.

- B. Minors may not be interrogated at night: minors under the age of 14 may not be interrogated between 20:00 and 07:00, minors over 14 may not be interrogated between 22:00 and 07:00.
- C. Minors have the right to consult with their parents or another relative before the interrogation. If the minor is not under arrest, the parent or other relative may be present during the interrogation.
- D. The minor's defence attorney or the Public Defender must be notified before the interrogation begins.²³
- E. The interrogation must be conducted in the minor's language and must be documented from start to finish using audiovisual methods, except in the case of security offences.²⁴
- F. Only youth judges will extend the detention of minors and hear their case.²⁵
- G. A minor under the age 14 must be brought before a judge within 12 hours. In special cases, a Senior Police Officer may extend this time limit to 24 hours.²⁶ Like adults, minors over the age of 14 must be brought before a judge within 24 hours.
- H. In the case of security offences, an officer so appointed may decide to delay up to 48 hours before bringing a detainee to a judge. More senior officials may delay by 96 hours (4 days). In view of the provisions in the Youth Law, it is not clear whether these provisions also apply to minors.²⁷
- I. "A minor should not be detained if the purpose of detention may be achieved in some other way less offensive to his freedom. In any case, detention should be for the shortest period possible required to achieve the aforesaid purpose. A decision to detain a minor should consider the minor's age, the detention's influence on his physical and mental well-being and his development."²⁸
- J. A minor under 14 should not be detained until completion of proceedings.²⁹
- K. In any case where a request is made to detain a minor until completion of the proceeding, the Probation Service must submit a detention report that examines the detention's influence on the minor and suggests alternatives to detention.³⁰

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23 Section 9I (B) of the Youth Law.

24 The Law of Criminal Procedure (Interrogating Suspects) - 2002

25 Sections 2, 3 of the Youth Law.

26 Sections 10C., 10Dz of the Youth Law

27 Criminal Procedures law (Detainee suspected of a security offence) (Emergency Provision) – 2006. Despite misgivings as to whether the law applies to minors, we have chosen to present this fact in the report, since most offences brought before military courts are defined as security offences. Therefore, it might be claimed that they should be compared to the law in Israel that applies to security offences. Even by this comparison, the military law in the territories determines a period of 8 days before the suspected offender must be brought before a judge. This is double the maximum time in Israel.

28 Section 10A of the Youth Law.

29 Section 10J (1) of the Youth Law.

30 Section 10G of the Youth Law.

- L. The court may conclude that the minor has committed an offence, but not convict him to avoid a criminal record and its accompanying stigma.³¹
- M. In the event that a minor is convicted or a determination is made that he committed an offence, a report must be submitted by a juvenile probation officer, prior to sentencing.³²
- N. The court is authorized to order a variety of means of non-prison treatment, including monitoring by a probation officer, an undertaking by the minor or his parents that he will refrain from committing offences or assignment to an open or closed residence.
- O. A prison sentence shall not be imposed on a minor under 14. It is not mandatory to impose mandatory sentences on minors, who have committed offences that carry mandatory life imprisonment, mandatory imprisonment or a minimum penalty. Minors may not be sentenced to death.³³

As previously stated, according to both international and Israeli law with respect to the rights of adolescents, many previous characteristics of the justice system in The West Bank that are detrimental to Palestinian minors have remained in place:

- a. Majority age has remained 16.
- b. Detention hearings for minors continue to be held in regular military courts, according to the same provisions of the law by which adults are detained. They are not brought before a juvenile judge, and there is no separation between the detention hearings of the minors and those of the adults. Thus, minors may also be held in detention for 8 days before making their first appearance before a judge.
- c. Arrests and fines are still the only means of punishment. No alternatives to sentences of imprisonment have been added, and no new provisions have been determined regarding the use of actual prison sentences.
- d. No new limitations have been put in place in terms of sentencing minors, so that for sentences of over 5 years it is still possible to sentence any minor over the age of 14 to the maximum penalty in force for adults, including life imprisonment and the death penalty. Minors can still expect to be sentenced to long prison sentences.
- e. No provisions relating to the interrogation of minors have been made. The Order only relates to court procedures, e.g., nothing has been added about nighttime interrogation of minors, presence of the parents or an attorney at the interrogation, or consultation with them before and during the interrogation. Nothing has been added regarding documenting the interrogation in the adolescent's language or using audio-visual documentation.

It is therefore clear then, that military law is far from defending the rights of Palestinian

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31 Sections 21,24 of the Youth Law

32 Section 22 of the Youth Law

33 Section 25 to the Youth Law

minors as required by international law and the Israeli legislation protecting the rights of minors. The large difference between the two legal systems indicates both a double standard and violation of the rights of Palestinian minors. It particularly evidences systematic discrimination, since Israeli law was applied to all Israeli citizens living in the Occupied Territories, i.e., the settlers. Consequently, an Israeli boy from a settlement and a Palestinian boy from the adjacent village would be treated totally differently for the very same offence: in the same territory and addressed by the same authorities, they will follow completely different enforcement routes, determined by their national identity.

This gap has, of course, not escaped the eyes of the military court judges. The President of the Military Court of Appeals stated, with respect to a minor released from detention:

“Notwithstanding that the provisions of Amendment 14 of the Youth Law do not apply in the Region, we cannot ignore their spirit and the principles that are fundamental about protecting the rights of a minor, even if he is suspected of committing crimes, and giving a heavy weight to the dominant principle of the best interest of the child, as stated in the bill. Ultimately, **a minor is a minor is a minor**, whether he lives in a place where Israeli law applies to him in full, or whether he lives somewhere else where, although Israeli law does not apply to him fully, he is still subject to the effective influence of the Israeli legal system.

“Thus, the interrogation of minors requires special care, even if there are no specific legislative provisions on this matter, and this is even more the case after Amendment 14 of the Youth Law in Israel went into effect. This law provides a legislative foundation for the previously mentioned rules and limitations on the interrogation of minors.”³⁴

The analysis presented so far refers to the law, not to the situation in fact. Our observations in the Military Juvenile Court and the monitoring of juvenile case records attest to the real world; showing how the actual procedure functions in relation to Palestinian minors. Despite the above statement by the President of the military legal system, the tracking results presented below show that the interrogations and the judicial proceedings in Military Juvenile Court do not reflect the spirit of the Youth Law in Israel: in many cases, they stand in clear contrast to it.

The findings of the observations at the Military Juvenile Court are presented in a manner that provides the general characteristics of the procedures and of the accused, and then follows important stages in the criminal proceeding. The execution of the military law with respect to adjudication of Palestinian minors, realization of their rights in criminal proceedings and the unique characteristics of the Military Juvenile Court, will be examined throughout the report.

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34 Detention Appeal Judea & Samaria 2912/09, The Military Prosecutor v. Nasmi Abu Rahma, delivered 31/8/09, posted on Nevo website: www.nevo.co.il

A personal perspective of the military juvenile court

Approaching the Ofer Military Court from Highway 443, we are welcomed by thistles and piles of garbage, iron and barbed wire fences, naked concrete walls and iron gates. We are here on one side of the fence and right next to us on its other side are the Palestinians who have also come to the court. It has no glory or splendor, only squalor through and through. Orders of "irja la-wara" (go back) and "ta'al" (come) issue from a jarring microphone ordering the crowd to move closer or farther from the entry gate - one of the three that have to be crossed, with metal detectors in between. It is directly followed by a black glass window where you are seen but cannot see who is talking to you.

After you hand over your identity card and all of the papers permitting your entry are recognized, the first electric turnstile is released and you are standing in front of a blue iron door with a jail window that opens and closes. Very quickly you understand that if you annoy the guards, your entrance will be delayed or prevented and you try to minimize your presence as much as possible. The door opens and we enter one by one, wahad wahad, just like the Palestinians, for another metal detector inspection, to screen those few objects we were allowed to bring in (shoes, a notebook and a pen) through a second electric turnstile. After a reunion with our shoes, a thorough body search with a handheld metal detector as well as manual palpitation, sometimes of private body parts if the need arises. What do the Palestinian women coming to court go through, we wonder? Are their searches stricter and their feelings of helplessness and humiliation deeper? And what does any of this have to do with the court and the pursuit of justice?

Harder than the feeling of smallness during the wait is the look. It says it all, the look of the Palestinians waiting longer than us. Suspense, sadness, despair and complete helplessness. At Ofer Camp nobody smiles. The Palestinians who enter its gates, some of them to be judged by judges on behalf of the sovereign, most to catch a glimpse of their relatives jailed in Israeli prisons, sometimes after long and difficult periods in which they did not know what became of them, obliterated entities of no account. Despite their legal rights, few will have a say in court. The vast majority will accept the situation with resignation and fatalism, just hoping it all ends as soon as possible.

All of the buildings serving the court are caravans standing in air on blocks. For 44 years Israel has been judging in military courts people who are not its citizens and minors who are not its children, and to the outside observer it all looks temporary and hovering in a world of its own, two hours and it will all disappear into oblivion.

And in the military juvenile courtroom the relatives' gaze turns into tears. In many cases the tears are held back so as not to discourage the child. In others they rush forth in a torrent of words of encouragement and longing. In the legal process the end is foretold. There are no expectations and no hope of anything else. As if by conveyor belt, the minors, ages 13, 14, 15 and 16, are brought in groups of three or four, handcuffed to each other with their feet bound together. The handcuffs are taken off during the trial to be re-fastened at its conclusion.

In Courtroom Number 2 of the Honorable Juvenile Judge, Major. Sharon Rivlin-Achai, everything goes peacefully. The atmosphere is calm and relaxed and sometimes even humorous. The judge is pleasant and very patient with the dramatic situations unfolding in her court. Friendly back slaps between the military prosecutors, who are very harsh with the defendants, and the Palestinian lawyers. For a moment you could think you have come to a bastion of enlightenment.

But soon enough the observer is confronted with a harsh and cruel reality. The presence of parents may be needed to meet the requirements of the law, but the strict Prison Service guards send them as far as possible from their children, to sit with their backs to the wall, sometimes treating them sharply and rudely. There will be no hugs or kisses or even handshakes. "It is not a visit" they will explain, while the judge suggests we write a letter of complaint to the Prison Service.

Only two family members are allowed to be present in the courtroom: if a brother comes, the father will forfeit his entrance. Few parents will ask to speak up in the hope of somewhat mitigating the sentence. Thus, while the trial is conducted, the families will use the brief and precious moments to have some words with their son, to ask if he is cold or hot, if he is receiving medical care and food.

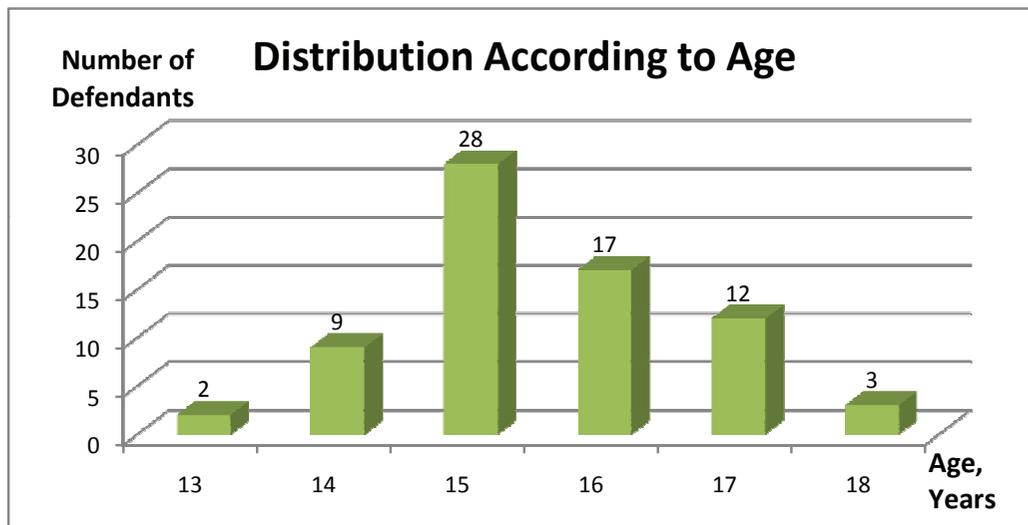
In this bizarre place you understand very quickly that it is not the wheels of justice that are turning but the plea bargain. By cut and paste, the minors come in and out already knowing, and if they don't know they will learn very quickly, that to get a ticket out of jail and go back to their previous lives they must confess, as part of a plea bargain, to some sort of amended indictment, even if they claim not to have committed any crime and their only fault is that they were incriminated by others. They will have to serve the punishment actually decided by the military prosecution, never having been heard by the court themselves. The judge will accept the plea bargain even though she will take the trouble of dictating to the stenographer every time anew that she is not obligated to do so. But the plea bargain corresponds with the severity of the actions - as opposed to the defendant's clean record and young age...

The report's findings

1. Distribution of the defendants' ages at the time of committing an offence

According to the law, the age of the minors who are supposed to be brought before the Military Juvenile Court should be between 12-15 at the time of committing the offence. Of the 71 defendants whose data was collected, the biggest group (28) was 15 at the time of the alleged offence and a considerable number of boys were younger: nine were 14 and two were 13. There was only one girl among the defendants and the rest were boys.

As the data illustrates, boys aged 16 and over were also brought to the Military Juvenile Court, even though according to military law they are not considered minors. The explanation is in an independent policy of the military courts, not enshrined in legislation, to prosecute boys up to the age of 18 in the military juvenile courts.³⁵ The decline in the number of boys aged 16-17 compared to 15-year-olds might indicate that not all boys that age are prosecuted in the court, as has also been found in random observations in regular military courts. Since we did not monitor hearings in other general military courts systematically, we cannot state this with certainty, but it does not seem reasonable for the number of older boys brought to the court to drop so significantly. No doubt this is a welcome policy of the military courts, which ought to consistently apply to all boys under the age of 18. However, as long as the age of majority has not been raised in the military legislation, it is still an act of benevolence rather than a legal obligation and therefore it might stop at any moment.



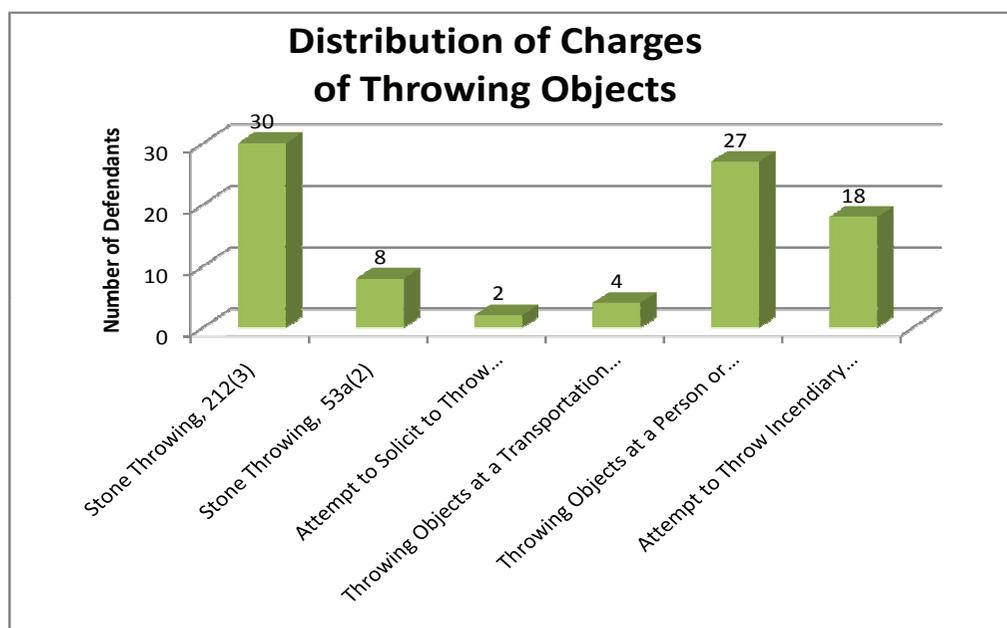
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35 See comments by president of the Military Court of Appeals A. Mishnayot in the verdict in AA (Judea and Samaria) 2912/09 Military Prosecutor v Abu Rahmah (published on the Nevo website) from August 31, 2009: "... the military courts, which began about a year ago, voluntarily, to separate the judging of minors from the judging of adults, pioneered by the Samaria Military Court, quickly followed by the Judea Military Court. The courts voluntarily adopted the age of minority in Israel concerning the separation of the trials of minors and adults."

2. The common charges in the indictments

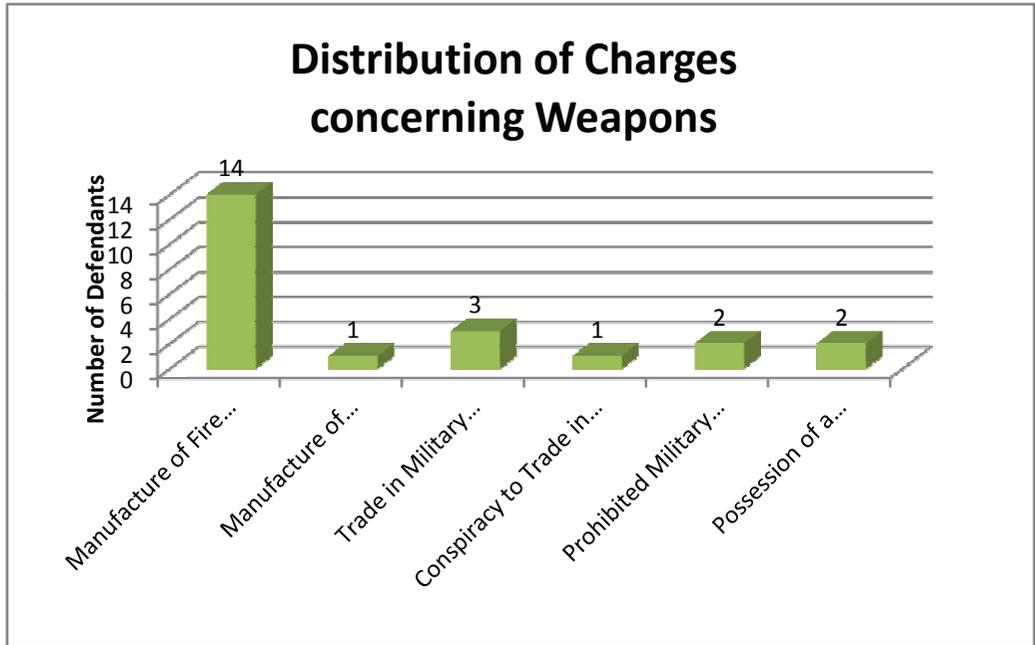
The most common charges in the Military Juvenile Court concern throwing objects: throwing stones at a moving vehicle, throwing stones at a transportation route and throwing objects (paint bottles, “incendiary objects” – fire bottles (Molotov Cocktails) at a person or property. In many cases stones and fire bottles were thrown at security forces during patrols or demonstrations where the boys live. In some cases, the thrown objects were aimed at vehicles traveling on roads. Even someone who served as a lookout, for example, or whose presence at the site was passive, is charged with committing the full offence. In many cases the boys did not ultimately carry out the act, changed their minds or were caught before throwing an incendiary object, and were subsequently charged with attempt. Many boys were also accused of manufacturing Molotov Cocktails. In some cases boys were charged with burning tires and explosives in order to create smoke and draw the security forces to their area in order to later pelt them with stones or other objects.

Of all the 89 acts of stone and object throwing in the 71 cases we checked, physical injury was caused in one case to a passenger in a vehicle at which stones had been thrown. Actual damage to a vehicle (smashed windshield) was caused in only three cases. In one case a 15-year-old boy was accused of attempting to solicit a friend to kidnap a Jewish merchant, but the plan did not materialize because the friend did not cooperate. One of the most serious cases was of a 15-year-old boy accused of planning a suicide operation, and participating in the preparation of an explosive belt.

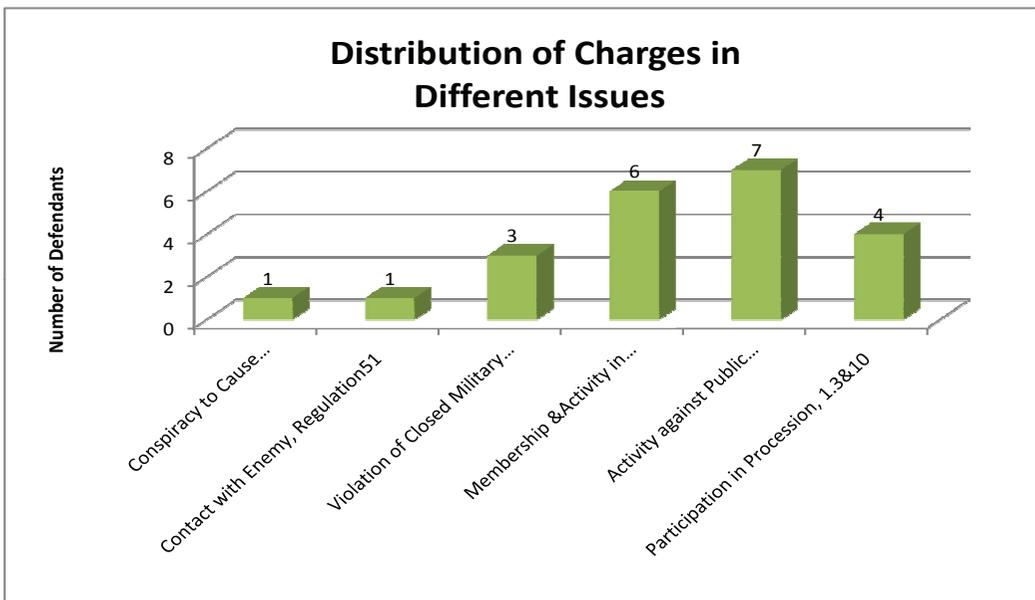
Stone Throwing 212(3)	Stone Throwing 53a(2)	Attempt to Solicit to Throw Stones 51a(3)&21	Throwing Objects at a Transportation Route 212(1)	Throwing Objects at a Person or Property 212(2)	Attempt to Throw Incendiary Object 58b&206
30	8	2	4	27	18



Mnufacture of Fire Bottles 230(b)	Manufacture of Incendiary Object 2+59(3)	Trade in Military Equipment 233(b)&254(a)	Conspiracy to Trade in Military Equipment 233(b)&254(a)	Prohibited Military Training 62	Possession of a Knife 248 (c)
14	1	3	1	2	2



Conspiracy to Cause Death Regulation 51&22	Contact with Enemy Regulation 51	Violation of Closed Military Zone Order 90+92	Membership &Activity in Unrecognized Association 84&85(1)(a)	Activity against Public Order 247, 233, 88&92	Participation in Procession 1.3&10
1	1	3	6	7	4



To summarize this subject, without undermining the potential danger posed by throwing stones and Molotov Cocktails, which can cause serious harm to human life and property, the harm actually caused in these offences is in fact very minor and in a small number of cases. The more serious cases were mainly attempts that were not completed. This picture is consistent with the boys' young age. Since the severity of these offences lies in their potential to cause harm, it seems that the main purpose of punishment should be deterrence rather than retribution. We should keep this in mind later on when we consider the punishments imposed on the boys.

3. Detention and Release on Bail

The observations summarized in this report did not include monitoring of detention files, because these are not heard by the Military Juvenile Court. However, decisions to detain or release were reflected in the court hearings that we observed and have a far-reaching impact on the trial stage.

The stage definable as the most critical in the trial occurs in the general military court, according to provisions that apply to adults, without special treatment for youth, before judges who are not juvenile judges and in hearings that are held along with adults. According to the Security Provisions Order, there are no special provisions concerning the detention of minors, nor is there a general provision establishing the use of detention as a last resort. As the observations showed, detention is used almost as a default option. Of the 71 cases we observed, only five boys were released from detention on bail until the end of proceedings with the help of their lawyers, and were not held in detention during their trials. We found no correlation at all between the age of the defendants and their release from detention. The 13 and 14-year-olds were all detained until the completion of the legal proceedings despite their young age. All those released were 15 years old.

M., 15 at the time of his arrest, a resident of Bil'in, going into the 10th grade (file 3346/10), was arrested on August 2, 2010

M. was accused along with others of throwing stones towards the Separation Wall, from May 2010 until his arrest, on three separate occasions, with the intent of hurting a person or causing damage to property. He was arrested with two friends who incriminated him in the statements they gave to the police. He was released from detention a few days later on NIS 1500 bail.

In the trial M. pled guilty as part of a plea bargain and it was agreed that he would be sentenced to a suspended prison term and a fine. The defence attorney noted in his arguments for punishment that according to the indictment, the stones were thrown at the border fence and did not hit their target. The judge wrote in her sentence that as part of the decision to release the defendant from detention, she noted that there were problems



with the evidence and doubt as to the fairness of the interrogation and protection of the detainee's basic rights. She sentenced the defendant to:

Three months suspended imprisonment, conditional on his refraining for two years from committing the offence of which he was convicted, or any offence of hurling objects.

A NIS 1000 fine.

M. was the only one of the 71 defendants who was not sentenced to an actual prison term.

B., 15 at the time of the alleged offence and 18 at the time of the trial, resident of Jaba (file 3521/10) was arrested on August 9, 2010.

B. was accused of throwing stones and Molotov Cocktails at moving vehicles on a number of occasions during 2008-2009. He was released on bail after being detained for 17 days.

His defence lawyer said the release on bail was due to an evidential problem in the file that made it difficult for the prosecution to prove his guilt. The defendant denied guilt when he was investigated by the police. Of the two other boys arrested with him only one testified that he committed the alleged offences, whereas the other supported his version. Even the incriminating testimony was problematic. The other boys were meanwhile released. After the release the sides reached a plea bargain, B. retracted his not guilty plea and pled guilty to an amended indictment. The judge sentenced him to the following:



The **17 days** served would be considered actual prison time.

Three-month suspended prison term conditional on not committing the offence of which he was charged for two years.

A NIS 1500 fine.

B., 15 at the time of the alleged offence, resident of Qalandia (file 2728/10) was arrested on June 12, 2010.

M., 15 at the time of the alleged offence, resident of Anata (file 2731/10) was also arrested on June 12, 2010.

The two boys were released on bail because it turned out that they had both come to the checkpoint with the goal of getting arrested carrying Molotov Cocktails, of which the prosecutor said: "The nature of the fire bottle in the possession of the defendant is unknown." That is to say, the bottle may not have been real.

B. was detained for 10 days, after which he was released on bail.

M. was detained for 18 days and released on bail.

The two boys were charged with two counts:

1. Manufacture of two Molotov Cocktails without a permit from a military commander.
2. Possession of the aforesaid two fire bottles.

In a plea bargain between the military prosecutor and the defence attorney, the second charge was dropped and the defendants were convicted, each separately in identical indictments, on their admission of the charge of “manufacture of fire bottles.”

As part of the plea bargain, B. was sentenced to the following:

The **10 days** of time served would be considered active prison time.

Six months suspended prison term, on condition that for three years he would not commit the crime of which he was convicted or any other offence concerning weapons.

A NIS 1500 fine.



M. was sentenced to the following:

18 days of time served would be considered active prison time.

Six months suspended prison term, conditional on not committing the crime of which he was convicted or any other offence concerning weapons for three years.

A NIS 1000 fine.



Even though these two defendants were accomplices in the same offence, convicted of identical indictments and without different profiles, they received different sentences according to the number of days in detention, so their sentence would coincide the detention period.

N., 15 at the time of the alleged offence, resident of Hebron (file 4103/10) was arrested on October 4, 2010

N. was not released because of his inability to pay the charged bail. He was accused, together with a friend, of throwing a single stone at a moving Israeli vehicle with the intention of hitting it or a person traveling in it. The stone hit the right side of the windshield of a passing car. Following an appeal against his detention to the Military Court of Appeals, the court decided to release the boy from detention. In its decision the appeals court ruled that it was an exceptional case in which no harm was done, and the boy's claim to have acted in response to a provocation by settlers could not be ruled out.

However, the appeals court decided that the boy had to deposit monetary bail. Since his family could not deposit the amount, N. ultimately remained



in detention for 15 days until a hearing of his case at the Military Juvenile Court, where, as part of a plea bargain, he was sentenced to 15 days' imprisonment, the number of days already served. Considering the recurring coincidence between the length of the detention prior to sentencing and the sentence ultimately handed down, it seems likely that had N. been released, his sentence would have been shorter.

The boy was also sentenced to a **NIS 2000 fine** or two months imprisonment in exchange if the fine were not paid.



A.S., 14 at the time of the alleged offence, (file 1367/11) is not one of the 71 files we examined, but still deserves attention because he too failed to realize the decision to release him.

A.S. is a fourteen-and-a-half-year-old minor, arrested on January 23, 2011, charged with a number of counts of stone throwing in the village of Nebi Saleh. In the detention hearing four days after his arrest, it was decided to release him on bail because of *prima facie* flaws in his interrogation. His family thought it could present a guarantor who would see to it that the accused would temporarily reside in Ramallah far from the village, but eventually failed to find such a guarantor. The court decided that there was no room for any other alternative and therefore he remained in detention.

A.S. was released later, after some witnesses in his trial testified, in a motion for review only on March 22, 2011, after two months of detention (see further account of this case in the chapter about confessions and incriminations, and in **Appendix D**).

W.A. (file no. 3964/10), also not one of the 71 files that were checked, raises an interesting question about the boy's arrest. W.A. was charged with stealing from the pharmacy checkpoint in Hebron, entering the position, attacking soldiers and stealing five grenades. It was his second offense to which he confessed as part of a plea bargain even though his lawyer said in court (see below) that it did not happen. The background for his actions was that his father beat him. He was in detention for almost six months, after which the sides reached a plea bargain including imprisonment and a fine, but the judge (the deputy presiding judge, in the absence of Judge Rivlin-Achai) refused to sentence the defendant at the same hearing and thought that imprisonment was not a solution in this boy's case. He asked for a report by a welfare staff officer, and until the report was submitted he ordered the boy's release on bail (the following segment is from an observation in court and is not a quote from the court records):

Judge: There was a promise to enroll the boy in some kind of rehabilitation process. The father admitted he beats him. Last time, without treatment, he went back to breaking in again within a week.

Lawyer: The family is in bad shape. I ask for his release this very day.

Judge: The fine is for his father and because of it he will beat him. So what should we do?

Lawyer: There is a certain problem. We don't have rehabilitation institutions and bodies here.

Judge: What's the point of the fine? Either he will rob to pay or his father will pay.

Lawyer: I hope prison taught him a lesson. No other way will help. If we had state institutions we would talk differently. Leaving him in prison is not a solution.

Military prosecutor: There is cause to give him another chance. His young age was taken into consideration.

Judge: Leaving him in prison is not a solution.

Lawyer: What it says in the indictment didn't even happen. Because of privacy I do not want to go into the boy's condition. I ask for a one-week continuance so that his imprisonment reaches six months and the fine is reduced. The suspended term is also too long. For theft he got one year suspended which the prosecution wants to activate. The bargain today is appropriate...

Father: I ask the court for leniency on the suspended term. We are in Israeli territory and he can be reached and arrested. I am afraid he will fall victim to the actions of others and the suspended term will be activated against him. We are not happy with these actions and we will prevent him from committing them.

Judge: How will you prevent him?

Father: We will talk to him, a few talks...

Judge: Who are you getting help from?

Father: The whole family, mother, father, brothers and sisters.

Judge: In previous minutes you said the same things. It turns out it didn't work. You need to try something different and not the same way you know, but to go to professionals to give you tools to deal with your son. Sometimes the parents are not enough.

Father: The family has a business. My eldest son works there. He will be under his supervision and get himself a profession.

Judge: That is not enough. Do you know the welfare staff officer? Go talk to her and she will explain you what you can do with your son. Come back to me and tell me what your intention is. I will release him today but I will not sentence him until the next hearing.

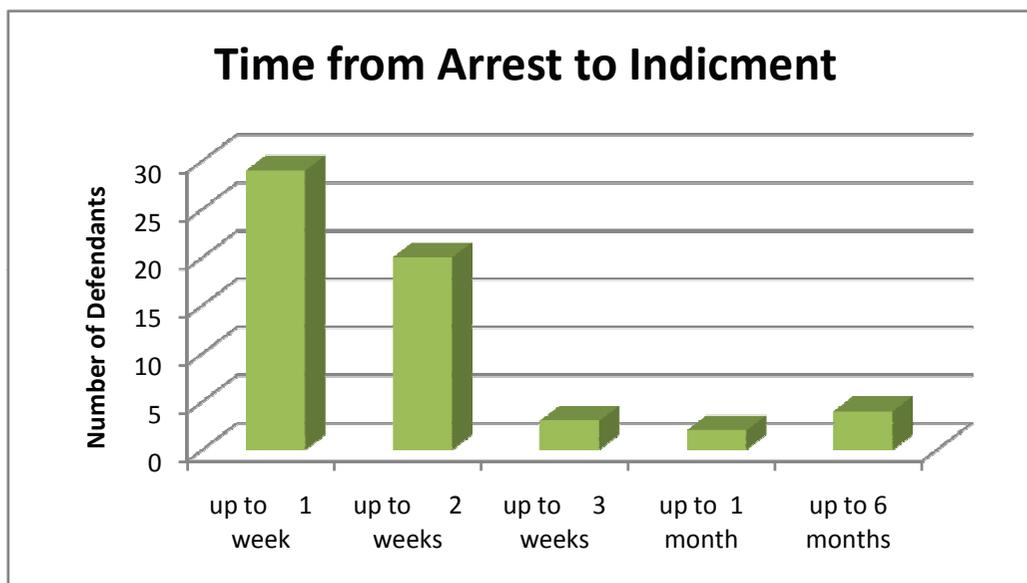
The boy was released after almost six months in prison and considering the facts of the case, it looks like the court should have ordered his release and therapeutic intervention at an earlier stage. There certainly is cause to question the prosecution's discretion in demanding prison and a fine for a boy in such a condition.

To summarize this issue, it is clear from the data that detention does not serve as a last resort and is not used for the shortest time possible, as it ought to be for minors. Detention serves as the default option and is exercised in 94% of the cases.

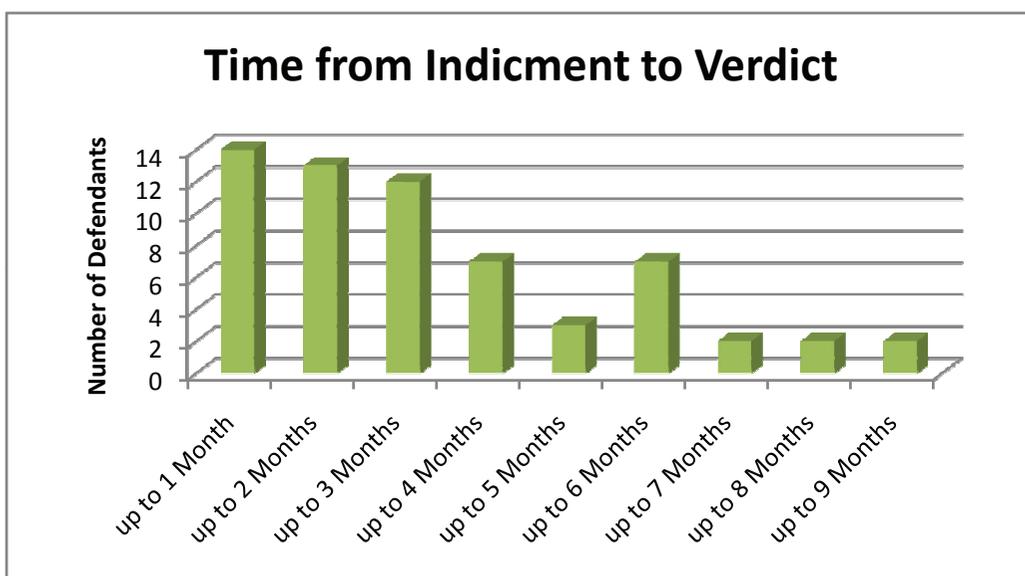
In all cases where defendants were released, their sentence coincided their time served in detention, even when this resulted in different sentences to the same offence.

4. The length of legal proceedings

On this matter we have figures for 62 of the 71 files. As the following graph illustrates, an indictment was served in most cases within one to two weeks of arrest (49 of the 62 files). In four exceptional cases - a month and a half, two months, three months and six months had passed before an indictment was served. These cases probably involved more complex investigations and more serious charges.



In 47% of the cases the trial was completed within three months (29 out of 62 files). In these cases the prison time to which the defendants were sentenced did not substantially exceed the time of the legal process. In cases when a long prison term was ultimately given, the procedures also lasted longer, mainly because of numerous delays of court hearings until a plea bargain was reached and ended the case. Only in two cases, witness' testimonies heard. In one case, the trial of a boy arrested on April 20, 2009 had not ended by June 2011, which means that it lasted more than 26 months.



On this subject, the data shows reasonable lengths of time until an indictment was served and the process concluded, in most cases. The military prosecution does not take advantage of all the days at its disposal under the laws of detention. In 79% of cases, the indictment was served within one to two weeks from arrest, in about 47% of cases the proceeding was concluded within three months, and another 35% were concluded within 6 months. However, one must keep in mind the relatively light and minor nature of the charges, and the fact that most of the files end in plea bargains without hearing witnesses, as will be detailed below. Yet, more than a month before serving an indictment and more than six months until delivering a verdict concerning boys, is a very long and exceptional time, and occurred in four of the cases that were checked.

5. Reliance on confessions and incrimination

In the vast majority of cases, the indictments submitted were based on the defendants' confessions of guilt during the interrogation stage, immediately after arrest and before meeting a lawyer. The indictments were also based on incrimination by other boys who were arrested and interrogated just like their accused friends. In 65 of the 70 files, the testimonies of other witnesses, usually boys, served as evidence of guilt. The fact that in so many cases defendants admitted guilt even before the legal procedure began, indicates the minor importance of this procedure compared to the interrogation, where the suspect's fate is determined in most cases.

Even though the observations did not include the period of detention and interrogation, the testimonies heard in the few cases in which admissibility of the defendants' admissions or weight of the witnesses' testimonies were challenged, provide us with a glimpse into what goes on in the interrogation rooms and into how testimonies and confessions are collected from witnesses and defendants.

Confessions given in police interrogations outside court are considered particularly problematic evidence.³⁶ According to the rules of evidence in Israel, which are valid in the military courts as well, the confession of a defendant given to the police is not admissible as evidence if not given freely and willingly.³⁷ Furthermore, violation of a defendant's rights in the interrogation stage can also lead to disqualification of a confession so extracted as inadmissible.³⁸ The testimony of a witness not given of their free will, or given under duress or involved denial of rights, may be rejected by the court or may receive only minor weight.³⁹ If the defendant claims his confession was not given of his free will, and should be deemed inadmissible, he must conduct a "trial, within a trial" in which the prosecution has to present the testimonies of the interrogators in order to persuade the court that the confession was given out of free will.

The impression that emerged from observing the hearings is that in a great many cases the boys' rights in the interrogation were not respected. However, only in a few cases did the question of admissibility of confessions come up, at the initiative of the defendants' lawyers, and a "trial within a trial" ensued. As we shall see henceforth, plea bargains are the preferred practice. In many cases, even though the defendants do not conduct trial within a trial, their claims of pressure exerted on them during the interrogation and violation of their rights come up as arguments for release from detention or to the punishment, in order to explain the plea bargain. In other words, these arguments come up in court not as part of a trial within a trial. Of the 71 cases checked, there was not a single trial within a trial. In one case the defence lawyer argued against admissibility of the confessions, but before the trial within a trial began the sides reached a plea bargain.

M., 16 at the time of the alleged offence, resident of Nahalin (file 1189/11) was arrested on January 9, 2011.

He was charged with two counts of stone throwing: at a moving bus, with the intention of hitting it or a person traveling in it, and at settlers traveling on the road near his home with the intention of hitting them. In one case the stone hit the car's wheel. His partner was arrested and incriminated him in his testimony.

In the court hearing on February 14, 2011, M. denied the charges. His lawyer asked to conduct a trial within a trial, claiming that the defendant's admission had been extracted from him after he was beaten by his interrogators. M.

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36 See report of the committee to examine convictions based solely on an admission and grounds for retrial ("the Goldberg Committee"), 1994.

37 Section 12 of the Evidence Order [New Version] 1971, Section 86 of the Security Provisions Order provides that the military courts will follow the rules of evidence that apply in Israel.

38 CA 5121/98 Issac harov v Chief Military Prosecutor et al, published on Nevo site: www.nevo.co.il.

39 J. Kedmi, Of Evidence, volume 4, p. 1823.

was interrogated twice on the day of his arrest, January 9, 2011: at 06:44 by the interrogator E. A., at which time he did not admit guilt, and at 14:00 by the interrogator E. Z., at which time he did admit guilt.

The lawyer claimed that, before extracting the confession, M. was beaten by E. Z., who put him in the bathroom, handcuffed him and beat him hard all over his body, with the policeman's foot placed between the defendant's cuffed hands. M. told the court that he understood the charges against him and denied them, and in response to the court's question he confirmed his lawyer's statement.



On March 7, 2011 the military prosecutor announced that the sides had reached a plea bargain. M. was convicted on the basis of his confession of two counts of throwing stones at a moving vehicle, and sentenced to five months in prison.

M.A., 15 at the time of the alleged offence (file 3906/10) refused in the beginning to plead guilty to throwing Molotov Cocktails, and even claimed "I don't know fire bottles and don't know what that is." He even changed the lawyer who represented him, with his father's help, because he did not want to accept the plea bargain offered by the first lawyer. After seven months of detention and a number of delays in obtaining documents about his medical condition, the sides presented a plea bargain in which the defendant ultimately admitted guilt to an amended indictment. The claims against his interrogation came up as part of the arguments for the punishment:

The defendant in his last statement: "When I was arrested I was hit in the testicles, thrown on the floor, beaten on my head and had headaches. They did not let me do anything at the military base and sprayed water on me until my right eye began to hurt. They took me to the bathroom and started to photograph me with a cell phone in the bathroom and started to laugh at me. Your Honor, when I was arrested, when they brought me to Ofer, I asked them to release me from my handcuffs because my eye hurt and they did not listen to me and pushed me." (To the court's question), "it was at Beit Horon." (To another question by the court), "it was the IDF, not the Border Police. I went to the doctor and he didn't do anything, he just looked at me." (To the court's question), "the doctor was from Ofer and he was a warden."

The sentence: "The defendant was convicted on his plea of guilt of throwing Molotov Cocktails on two different occasions at Israeli vehicles on Highway 443. The sides presented me with a plea bargain and argued for it on the grounds of the defendant's clean record, his plea of guilty and saving of the court's time. It should also be noted that the defendant is a minor, born in 1994, and the offences were committed in July 2009 and September 2010.



“The defendant added arguments relating to his medical condition and the beating he allegedly got during his arrest. The defendant’s description was detailed and merits further inquiry. The offences the defendant committed are serious and normally he ought to be given a heavier sentence, but the court agrees with the sides on the special circumstances: his young age, his evident medical problems and the level of punishments apparently set in this case. Under the circumstances of this matter I decided to respect the plea bargain and I sentence the defendant to the following:

7 months imprisonment to be served from the day of arrest

6 months suspended imprisonment for three years

A NIS 4000 fine or four months prison in exchange.

A.S., 16 at the time of the alleged offence, resident Abu Dis, (file 4701/10) was arrested on October 27, 2010.

A selection from this case trial protocol is included in **Appendix C** to the report.

In this case the defence lawyer challenged the veracity of the witnesses’ statements given to the police and conducted a trial about the way the witnesses were interrogated. A.S. was charged with 12 counts including: participation in a procession without a license (a demonstration in the village of Abu Dis), throwing stones at a moving military jeep, throwing paint bottles at a military jeep, throwing Molotov Cocktails at military vehicles, all with the intent to cause death or damage to the military vehicles or the soldiers therein. The witnesses for the prosecution were two boys the defendant’s age who were on trial for the very same offences, Y.A. and M.A. Their testimony in court completely contradicted the testimony collected from them by the police in which they incriminated the defendant of the offences. As a result they were declared hostile witnesses.

The policemen’s testimonies indicate no dispute that the minors were interrogated in the middle of the night, including by interrogators who were not juvenile interrogators. In some cases there was audiovisual documentation of the interrogation, with which the defence lawyer could demonstrate that the boy was not given notice of his right to remain silent, even though the interrogators testified that they did give him warning. In the second case the documentation of the interrogation was lost. The confession was written in the Hebrew language, which they did not understand, and the boys were asked to sign it. They were told they had the right to consult a lawyer but, considering the hour when the interrogation took place, that right could not and was not realized. The interrogation took place without the presence of a family member. The interrogators admit that the interrogation was conducted differently than it would have been conducted in Israel, and that the boy was in distress. The boys themselves described their distress and

fear, their helplessness, and describe beatings even before the interrogation and threats during the interrogation.

At the end of the hearing, the military prosecutor asked to summon two other police interrogators to testify. The defence lawyer announced that if the prosecution did not bring the juvenile officer to testify he would consider summoning him as a defence witness. Ultimately no additional police officers were summoned to testify.

These testimonies did lead to a substantial reduction in the number of charges in the plea bargain, but did not lead to any comment by the court as to appropriate norms of interrogation. The prosecution and the defence reached a plea bargain in which the defendant admitted to an amended indictment in which, instead of the 12 charges, only two remained:

1. Throwing objects at a moving vehicle, in violation of Section 212(3) of the Security Provisions Order
2. Throwing an incendiary object, in violation of Regulation 58b of the Defence Regulations

Among the arguments for a plea bargain presented by the military prosecution were “**evidential difficulties that arose in the course of the trial, concerning the defendant’s interrogation, relevant not only to the defendant but also to his accomplices. The difficulties led to the amendment of the indictment.**” The defence lawyer wished to stress that the difficulties that arose during the testimonies concerned the credibility of the interrogators and their functioning during the interrogations, and that these were matters of great concern. In her sentence, the judge repeated the prosecution’s arguments for the plea bargain but ignored the serious matters arising from the testimonies concerning the minors’ interrogation. The defendant was sentenced (on March 7, 2011, more than four months after his arrest) to:



14 months imprisonment to be served actively from the day of his arrest

10 month suspended imprisonment on condition that for four years after his release he would not commit the offence of which he was convicted or any other offence risking human life.

A NIS 2000 fine or two months prison in exchange.

The manner in which Palestinian minors are interrogated also emerges from the following case, which is not one of the 71 cases fully checked, but parts of which we nonetheless chose to present, because it is the only case in which there was an actual trial within a trial as to admissibility of confessions given to the police. We stress that the interrogation as conducted in this case was exceptional only in the opinion of the minor’s lawyers. As far as the police were concerned the interrogation was completely routine, and was even characterized by a good, positive and warm atmosphere.

A.S., 14 at the time of the alleged offence, from the village of Nebi Salah (file 1367/11), was accused of throwing stones and participating in demonstrations in the village.

A selection from this case trial protocol is included in **Appendix D** to the report.

Because of the flaws in his interrogation, at first it was decided to release A.S. from detention, but since no suitable guarantor was found, he remained in detention (see details in section about detention and release). In his interrogation he admitted the charges against him but his lawyers challenged the admissibility of his confession, on the grounds that it was not “free and voluntary” as the law requires, but given under pressure and in violation of his rights. Later in the trial, the policemen involved in his interrogation were questioned.

In this case too the boy was arrested in the middle of the night and the interrogators testified that is a normal and common practice. Interrogation without the presence of parents is also the norm. In this case too the boy was not warned that he may remain silent, and that fact emerged only from the audiovisual documentation. The police testified that they warned the boy, and only the recording proved otherwise. On the contrary, the boy was told that he had to speak in the interrogation. The boy was interrogated by a number of interrogators simultaneously, some of whom were not juvenile interrogators. His interrogation began in the morning after many hours without sleep and the interrogators admitted that the boy was very tired during the interrogation but they did not see fit to stop it. They also confirmed that he cried during the interrogation but they gave the crying an explanation that was allegedly unrelated to the pressure of the interrogation. They claimed that the interrogation took place in a good and supportive atmosphere. Meanwhile, the boy’s lawyer described him as exhausted and upset, after he burst out crying as soon as he met him. Since the interrogation began in the morning, the boy’s lawyer tried to meet him before the interrogation or at its start, but that meeting was intentionally thwarted, when the interrogators issued an order prohibiting the boy to meet a lawyer, after the lawyer had already arrived at the interrogation facility.

To conclude this subject, the vast majority of cases were based on confessions and statements of boys, given to the police during interrogation. In none of the 71 cases examined, was a trial within a trial conducted as to the admissibility of confessions, although serious allegations came up as to night arrests and interrogations, as well as beating, threats, and violation of the suspects’ rights to silence and to meet counsel.

The police interrogators think there was nothing wrong with the two interrogations described here (See more on **Appendix C, D**). Indeed that is the picture that emerges from the families’ descriptions of arrests of children in the middle of the night and their complaints of beatings and threats (see **Appendix B** of the report), from decisions made during the stages of arrest as to “evidential problems concerning violation of the defendant’s rights,” as described in the **section about detention and release**, and from arguments made to justify plea bargains. We can therefore assume that many interrogations are conducted in a similar manner.

6. Appointment of defence lawyers and the parents' role

One of the innovations of amendment no. 109 is the authorizing of the court to appoint a defence attorney for a minor. In most cases the court did not use that power because the minors come to court already represented. The Palestinian community has a number of organizations that provide legal representation free of charge to all defendants in military courts, and therefore most of the defendants are represented by lawyers from those organizations.

In two cases the defendants were not represented in court and said they did not have defence lawyers. In both cases the judge appointed lawyers who were present in the courtroom and volunteered to represent the minors. In one additional case the same defence attorney represented four minors who gave incriminating testimonies against each other, and the judge demanded that their representation be separate to prevent a conflict of interests. The judge did not appoint other defence lawyers but rather the representing lawyer said he would take care of it. It can be assumed that in that case the organization where the lawyer works took care of appointing other lawyers.

The impression created by the fact that the defence lawyers appointed by the court were lawyers who happened to be in court at the time of the hearing is that there is no established mechanism for appointing defence lawyers, but it is done rather arbitrarily. It is not clear whether the defence lawyers appointed by the court were going to be paid by the court or the state, as they should be when court appointed, or whether they were going to represent their clients as part of their work for the organization that employs them.

Parents participated in the proceedings in only a few cases. The arrangement that allows parental participation is new, and since the normal instructions in the courtroom are that parents are not allowed to talk to their children in court, it might create the impression that they are not allowed to speak at all. The court does not inform the parents of their right to participate in the proceedings and therefore parents do not know they have such a right. This may also be attributed to the fact that all of the minors are represented by lawyers. In only one case did the parents refuse to accept the plea bargain offered to their son by the defence attorney and asked to replace the lawyer. We observed no cases of the court preventing parents from interfering, and in all cases the court accepted the parents' participation willingly. In order to realize parental participation in the procedure, the court ought to inform them, in one way or another, of their right to participate.

7. Welfare Officer Reports

The possibility of receiving a report from a staff officer, who is a welfare professional supposed to give the court a social and therapeutic assessment of the child and make therapeutic recommendations, was one of the main innovations of the amendment by which the military juvenile court was established. Nonetheless it is used infrequently. In only three of the 71 cases checked were reports submitted to the court by the welfare staff officers. In one case the defence asked for a welfare report but the prosecution objected because the minor was over 16 at the time of the alleged request, even though at the time of the alleged offence he was under 16.

F.A., 15 years old, born 1994 (file 4706/10) was arrested on September 28, 2010 and charged with throwing Molotov Cocktails. He was arrested about a month before he turned 16. The prosecutor informed the court that the parties reached a plea bargain in which the indictment would be amended so that the defendant would be charged with complicity in throwing Molotov Cocktails, the defendant would plead guilty and the sides would argue for punishment at the following hearing. The defendant was convicted on his admission of complicity in throwing an incendiary object, The punishment set forth in the Defence (Emergency) Regulations for these offences is death penalty or life imprisonment, or a lesser punishment to be determined by the court.⁴⁰

Defence lawyer: “I request to send the defendant for a welfare report before the arguments for punishment. The defendant is a minor and the court must be allowed to receive the full picture of his personal circumstances.”

Military prosecutor: “He is not a minor. The defendant has passed the age of 16 and therefore the court is not authorized to send him. However, considering his age at the time of the alleged offence I will ask for a two-day stay to consult my supervisor before we give our position.”

At the rescheduled hearing the prosecution reiterated its objection:

Military prosecutor: “I repeat the prosecution’s position submitted in writing that this case is not suitable for a welfare report.”

Defence lawyer: “I ask the court to exercise its power under section 136 and 148(a) according to which it is allowed to send the defendant to receive a welfare report and to order submission of a report.”

The court’s decision: “Pursuant to my decision in file 4704/10 in the matter of M.A. and for the same reasons I order a welfare staff officer’s report to be submitted in the matter of the defendant.”

In the matter of M.A. (file 4704/10) cited by the judge in her decision (but not part of our review files) the military prosecution objected to giving a welfare report even though the minor in that case was 15 years old, because of the severity of the charges against him which he admitted: throwing Molotov Cocktails on five occasions. The judge ordered the report to be submitted despite the prosecution’s objection, noting that in Israel a welfare report is given for every minor put on trial.

The arguments for punishment in F.A.’s case were heard on March 28, 2011, six months after the minor was arrested:

.....

40 Regulation 58b of the Defence (Emergency) Regulations - 1945.

Military prosecutor: “The defendant was convicted after admitting he was an accomplice in throwing Molotov Cocktails at military vehicles, on three occasions from mid-August 2010 until the day of his arrest... I would like to note at this point that despite the argument that could be raised by the defence as to the defendant’s young age at the time of committing the offences, it should be noted on this matter that the defendant was very close to 16, which is the age of minority according to the order. The level of punishment for this kind of offence ranges from 22 months to 24... in file 3838/08 this level of punishment was established. It should also be noted that even though the defendant was convicted of complicity in throwing the fire bottles, the prosecution opines that no leniency towards the defendant should be deduced from it because we all know that the punishment of an accomplice should be identical to the other accomplices in the offence out of the principle of uniformity of punishment... considering the aforesaid I would ask to sentence the defendant to a deterrent and appropriate prison term, a suspended prison term and a monetary fine.”

Defence lawyer: “The defendant was not even 16 at the time of the alleged offence. The Youth Law may not apply to this area but it is an established ruling that the court should act in the spirit of the Youth Law. Furthermore, in section 10a of the new Youth Law the court is required to examine the minor’s circumstances and the influence of the detention on the minor, both emotionally and physically. The same section says that detention is the last resort. According to the Israeli Youth Law the defendant is a minor and not close to the age of majority. The defendant in question has no criminal record at all, and has been in detention since September 28, 2010. A welfare report of him has been submitted detailing his personal circumstances and noting that the time of his detention with an appropriate monetary fine could suffice, and that he belongs to a normative family that is willing to supervise him and return him to his routine. The defendant in question did not plan the offences but it is a case of complicity that can be explained by the defendant... in conclusion I ask the court to be considerate of the defendant’s circumstances, to be considerate of the circumstances of the offence. He was not accused of throwing but of complicity.”

The defendant’s last statement: “I beg forgiveness, I made a mistake and I will not repeat it. I go to school, I was arrested in the ninth grade. We don’t study in jail. I am at Ofer Prison.”

The defendant’s uncle: “I tell you he is a child and he made a mistake. We will take responsibility for him and return him to school and send him to a boarding school.”

The sentence has been scheduled for a subsequent hearing and we were not able to collect it before the completion of the report.

One of the reports was given in the matter of the only girl included in the files that were checked.

H.T., 15 years old at the time of her arrest (file 4953/10), was arrested on charges of possessing a knife, after arriving at an IDF checkpoint with a knife in her possession. A year and a half earlier, when she was only 14, she was arrested for the first time on suspicion of the very same offence. The background for both actions was family problems and her wish to run away from home. The first time she was sentenced to one year suspended imprisonment, but the court noted that it was illegal because at the age of 14 only half a year of prison sentence may be ruled. The welfare staff officer who met the girl twice recommended her being moved to a shelter for girls at risk and, with the defendant's agreement, it was decided she would be. She was sentenced to 60 days imprisonment that overlapped her served detention time, so that she would be released on the day of her sentence, and ten months suspended imprisonment for five years.

In file of M.M. from Beit Ummar, 15 at the time of arrest, (file 4571/10) a welfare report was submitted after the defendant entered a guilty plea in the first hearing without a plea bargain (see details in section about plea-bargain). The welfare officer recommended releasing the boy to his home and the judge sentenced him to a prison term overlapping with the dates of his detention so that he was released following the sentence.

It is regrettable that welfare reports are only used so rarely and in such extreme cases, even though the court is aware and noted in one of its rulings that in Israel a welfare report is received for every minor who stands trial.

8. Convictions and plea bargains

Of the 71 cases observed, there was not a single acquittal. All cases ended in convictions. 100% of defendants plead guilty in court and were convicted accordingly. Four defendants, who initially plead innocent, retracted and plead guilty after a plea bargain was concluded.

The vast majority of files ended in plea bargains: 69 of the 70 trials that were concluded. In 100% of the cases the judge respected the plea bargains and did not interfere with

them. In most cases no testimonies were heard at all. In only two cases out of the 71 were plea bargains reached after some of the witnesses had testified. No testimonies at all were heard in any of the other cases.

In all of the plea bargains the same reasons were repeated: “The defendant’s clean record, his guilty plea, the saving of judicial time, his young age”. Sometimes there was emphasis on saving judicial time thanks to confession of guilt in an early stage of the interrogation. In some cases additional mitigating circumstances were noted, such as the large distance from the target at which the stones were thrown and the fact that no actual damage was done.

In every legal procedure that ended with a plea bargain the juvenile judge noted that: “the court clarified to the parties that it is not bound by the plea bargain reached between them.” But that statement did not prevent sentencing to an active prison sentence in even one single case we observed, even in cases when the judge harshly criticized the system’s treatment of Palestinian minors in general and the absence of alternatives to prison sentences. Despite the court’s criticism. its indecision whether to accept the plea bargain or not focused on the question of whether to hand down a longer prison sentence, since the agreed upon prison term was relatively short compared to the accepted standard of punishment. Imposing active prison sentences in each and every case was not the subject of any real doubt.

N., 15 at the time of the alleged offence, resident of Hebron (file 4103/10) was arrested on October 4, 2010

N. was accused, together with a friend, of throwing a single stone at a moving Israeli vehicle with the intention of hitting it or a person traveling in it. According to the charge, the stone hit the right side of the windshield of the car traveling on the road. Despite the decision to release him, he remained in detention for 15 days until the hearing in which his sentence was given by plea bargain, because his family could not raise the money for bail. The military prosecution’s reasons for the plea bargain were his clean record, his (ultimate) plead of guilt, saving the court’s precious time and his young age. In addition, “it is an exceptional case in which we cannot rule out the defendant’s claim that the car’s driver provoked him, as well as the fact that only a single stone was thrown.” The boy himself was not consistent in admitting the charge but the court ignored that.

After the main points of the indictment were read out, the defendant said: “The court read to me what I am accused of in the indictment. I understood. I do not plead guilty, I **did not throw a stone**, I was made to sign something I did not understand.” The court explained to the defendant that there is also a recording of his interrogation. The defendant retracted and said: “After the court and my lawyer explained to me again the plea bargain and the charges against me, it is true and I did throw one stone.” In his last words before sentencing the defendant said: “I only threw gravel.”

In this case, the boy's father intervened in the preceding and said: "What you are convicting him of is too much for a minor. He is civilized, well-bred and has no intention to harm. He was sitting with his friend and the Jewish lady that was there cursed them and his friend who was with him stood up for him and enticed him to throw a little piece of gravel, it was unplanned, there was no intention to throw anything at a soldier or at any other Jew. And I also want to say that we live in a place that is surrounded by Jews, we have had problems with them and they beat up our children and I go to them and file complaints and I noticed that nobody does anything about it and nobody gets punished. Innocence becomes guilt and vice versa."

The judge sentenced the defendant to the following:

The 15 days served in detention would be considered active prison time.

Six-months suspended imprisonment on condition that for three years he would not commit the offence of which he was convicted or any other offence aimed at bodily harm.

A NIS 2000 fine or alternatively two months in prison.

A.H., 13 at the time of the alleged offence, from Beit Ur-A-Tahta (file 3994/10) was arrested on 18.9.10, sentenced on November 3, 2010:

"It is clear that the level of punishment that the sides are pursuing is very far from the appropriate and accepted level of punishment concerning such serious and dangerous offences as those of which the defendant was convicted (throwing stones and Molotov Cocktails at the road). It is also clear that when it comes to a boy as young as the defendant (15), the considerations of deterrence and appropriateness give way to considerations of rehabilitation, because it is clear that the public interest will benefit by the boy rehabilitating his life and returning to normative life with his family. It should also be noted that the legislator limited the punishment that can be imposed on boys under the age of 14 and this should be taken into consideration especially concerning boys who committed the offences on the border of criminal responsibility."

The judge decided to respect the plea bargain and sentence the defendant to the following:

45 days imprisonment to be served actively from the day of his arrest.

4 months suspended imprisonment on condition that for three years from his release the defendant would not commit the offence of which he was convicted or any other offence aimed at bodily harm.

A NIS 1500 fine or alternatively a month and a half in prison.

M.A., 15 years old at the time of the alleged offence, from Beit-Omar (file 4571/10) was sentenced on December 5, 2010, without a plea bargain:

“Much has been written about the offence of stone throwing. There is no doubt that it is a serious offence that poses a threat to life and property. Nor is there any dispute that this offence is usually committed by young people.... in the last years the courts have put a greater emphasis on the aspects of rehabilitation and personal circumstances when it comes to minors, on the assumption that a minor’s return to the bosom of his family and the supervision of his family serve the public interest sometimes better than long imprisonment in the company of criminals. This case concerns a minor aged 15, who immediately after committing the crime was **punished severely by his father**. When he was interrogated a few days later **he immediately admitted his actions**, expressed his regret and at the first arraignment session immediately plead guilty to the indictment as is without being promised a particular punishment. All of those circumstances should be taken into consideration. It should be noted that the defendant admitted to **throwing one stone**, albeit on two different occasions. But the circumstances of the incident did not suggest a special severity such as hitting vehicles or a person or their proximity.

“Under these circumstances, I rule that an emphasis can be put on the considerations of rehabilitation, an emphasis can be put on a severe suspended punishment and a significant fine, and the defendant should be allowed to put the events for which he paid the price behind him, and to return to his studies and normative life in the bosom of his family.”

The judge sentenced the defendant to:



61 days imprisonment to be served actively from the day of his arrest

12 months suspended imprisonment term on condition that for four years from the day of his release the defendant did not commit the offence of which he was convicted.

A NIS 3000 fine or three months prison in exchange.

As mentioned, 100% of cases end with convictions. 98% of cases were concluded with a plea bargain without any testimonies being heard. The court respected all plea bargains and sentenced the defendants to the previously agreed sentence. Since most of the legal hearings end with plea bargains, which are respected by the court, and they all end with active prison sentences, this raises the question of what the role of the juvenile military court is in determining the fate of the boys who were arrested and prosecuted.

Dropping charges in plea bargains

In half of the trials we observed, the defendants were convicted at the end of the procedure of the same charges that appeared in the indictment. In those cases the number of charges was usually two or three and most concerned repeated offences of throwing objects at moving vehicles or at a person or property.

In the other half, substantial amendments were made to the writ of indictment to achieve a plea bargain and the number of charges was reduced. Of the 35 files in question, proof hearings were held and witnesses testified only in two. In the other files no testimonies were given that could have changed the prosecution's impression from the written testimonies. In other words, agreement to drop charges was reached on the basis of the same material that was available to the prosecution when it submitted the indictment.

M.A., 16 at the time of the alleged offence, from Abu Dis (file 2450/10) was arrested on May 6, 2010

Nine charges were specified in the indictment against him: throwing stones, manufacture of an incendiary object, teaching others to manufacture incendiary objects, throwing Molotov Cocktails on many occasions at military vehicles and at a military camp with the intent of causing death or damage to a person or damage to property, serving as a lookout when his friends threw Molotov Cocktails. The detailed indictment relied on four incriminating witnesses for the prosecution from among the defendant's friends.

On December 13, 2010, eight months after his arrest and after the court read him the indictment, the defendant said: "I understand the amended indictment and deny it."

On February 28, 2011 the military prosecutor presented a plea bargain in court, in which an amended indictment was submitted with only one charge: three offences of throwing an incendiary object. The judge allowed the prosecution to submit an amended indictment and the defendant to retract his denial, and the sides argued for the punishment. Here too the arguments for the plea bargain were the defendant's clean record, his plea of guilty, saving judicial time and the defendant's being a minor under the age of 16 at the time of the alleged offence.

On the basis of the guilty plea, the judge convicted the defendant of the three counts of throwing an incendiary object, for serving as a lookout when his friends threw Molotov Cocktails. The judge sentenced the defendant to the following:



24 months imprisonment to be served actively from the day of his arrest.

12 months suspended imprisonment on condition that for four years after his release he would not commit the offence of which he was convicted or other offences concerning throwing objects or weapons offences.

A NIS 2000 fine or two months prison in exchange.

A. 15 at the time of the alleged offence, resident of Umm al-Sharayet (file 2847/10) was arrested on June 10, 2010

A. was charged with 12 charges: membership and activity in an unlawful association; throwing objects at a person or property on a large number of occasions; manufacture of an explosive object (two Molotov Cocktails); throwing an incendiary object at a military tank and 15 military jeeps; manufacturing a bomb - purchasing raw materials to manufacture bombs and, with the members of the cell, manufacturing eight bombs; attempting to throw an incendiary object - coming with his friends to the separation fence with four Molotov Cocktails they planned to throw at IDF soldiers and start a fire; throwing an incendiary object - four Molotov Cocktails and stones on additional occasions at IDF forces with the intention of causing death or damage to a person or property; manufacture of an explosive object - Molotov Cocktails; throwing incendiary object - throwing same Molotov Cocktails at a military watchtower; manufacturing an explosive object - three Molotov Cocktails; throwing an incendiary object - throwing the three Molotov Cocktails; conspiracy to trade in military equipment - a plan to buy an improvised rifle that did not materialize.

The witnesses for the prosecution, were the interrogator who collected and translated the defendant's statement, and other five members of the cell of which he was an alleged member. A. denied all the charges. During the trial, the prosecution wanted to add a witness detailing a number of additional occasions in which the defendant committed crimes. On November 17, 2010, after five delays of the judicial hearing and eight months in detention, without any testimony being heard, the military prosecution and the defence reached a plea bargain.

The indictment was amended, the defendant retracted his not guilty plea and admitted five charges:

1. Membership and activity in an unauthorized association.
2. Throwing objects at a person or property.
3. Three counts of throwing an incendiary object.

The arguments for the plea bargain according to the military prosecutor were (from the court record): "The arguments for the bargain are the defendant's clean record, his plea of guilty and the saving of judicial time. Likewise, the

defendant already admitted the charges in his interrogation and combined with his confession it constitutes an assumption of responsibility and that is a central consideration. The defendant committed the offences when he was 15. He joined the cell when he was 14. It was also taken into account that the fire bottles were thrown at a watchtower and this reduces their danger...”

The judge sentenced him to the following:

20 months imprisonment to be served actively from the day of his arrest

12 months suspended imprisonment for four years

A NIS 2000 fine or two months prison in exchange

Y.F., 17 at the time of arrest, from Beit Ummar (file 1352/11) was charged with three counts of stone throwing.

A plea bargain was presented in which two charges were dropped so that one charge of throwing two stones remained, and the sides agreed on a punishment of 45 days in prison and a NIS 1500 fine or one and a half months in prison in exchange. After the defendant’s mother claimed she could not pay the fine, the judge intervened and pressured the prosecutor to reduce the fine. In response the prosecutor said: “Considering the defendant’s mother’s statement, I am willing to be lenient towards the defendant and amend the indictment again so that he is charged with one count of stone throwing on January 19, 2011. I am willing to reduce the fine to NIS 1000.”

The change of the indictment and dropping of one offence in order to reduce the fine, creates the impression that there is a fixed rate that requires prosecutors to impose a fine according to the number of incidents. The ease of dropping the charge further suggests that the prosecution’s position is not objective and is not based on the evidence in the case but on ulterior motives.

Such a substantial reduction in charges in such a large number of files, with no change in the evidential material, raises a serious question as to the military prosecution’s discretion when it submits indictments. If there is not sufficient evidence for all of the charges, then they should not have been included in the indictment in the first place. The dropping of charges is a key achievement a defendant can gain as part of plea bargaining, and the common practice of a significant reduction in indictments raises the possibility that the charges are included in the indictment in advance only as bargaining chips for anticipated plea bargains.

9. Sentences

a. Imprisonment terms

In 70 of the 71 cases in which a sentence was handed down, the defendants were sentenced to active imprisonment terms. In all cases a suspended prison term was imposed, and fines were imposed in all but four cases. The only case in which no prison term was imposed was of a defendant who was released on bail very soon after his arrest. In all cases in which defendants were released on bail during their trials (see details in section about release from detention) the sentence ultimately given overlapped the days served. In these cases, at least, the detention dictated the punishment. In all other cases the defendants were still in detention when sentenced. Despite the judge criticizing the absence of alternatives to imprisonment, the court never refrained from imposing an active prison term when the defendant was in detention.

The court's statement about imposing imprisonment - from the sentence in file 3905/10 on the matter of M. A., 14 years old:

"The sides argued for the plea bargain on the grounds of the defendant's clean record, his plea of guilty and the saving of judicial time. I was also told that his confession during police interrogation was taken into account, his very young age, 14 at the time of the alleged offence, and the distance from which the offences were committed (of stone throwing) - a large distance from the road.

"The defence lawyer added that he does not wholeheartedly support the plea bargain because he feels it doubtful that the public interest supports keeping young children in jail for a long time: they should be handled in different ways than by serving active prison time. I have frequently faced the difficulty of sentencing children who committed serious and life-threatening crimes. There is no doubt that the suggested punishment is much lower than the customary level of punishment for crimes such as this. On the other hand, there is also no doubt that the considerations in punishing minors, especially when it comes to very young ages, are different. The Supreme Court has recently ruled that when punishing minors the following factors should be taken into consideration: **the lesser responsibility that should be attributed to a minor whose personality is not yet fully formed, the damage caused to the minor by actual imprisonment, damage that is ultimately against the public interest, and on the other hand the severity of the crime.**

"The situation in the Region is even worse than in Israel in such cases, because the juvenile court does not have any rehabilitation instruments such as: ordered stays in locked facilities, parole officers and so on. The military courts have often opined that every effort should be made, subject

to the special circumstances in the Region, to equalize as much as possible the situation concerning minors in the Region with the situation in Israel. It is clear that creating rehabilitation instruments in the Region is not easy, especially when the crimes in question are often committed for ideological reasons and supported by the community surrounding the minor. In any case, I believe that the legislator in the Region cannot avoid addressing this issue and finding creative ways to allow minors to be treated outside of the framework of actual prison.

“Furthermore, the Supreme Court has often expressed its discontent over the fact that security offenders in general and minors in particular do not receive rehabilitation treatment during incarceration, and I can only add my humble voice to call for change in that situation.”

Despite her criticism, the judge decided to respect the plea bargain and sentenced the defendant to:



8 months imprisonment to be served actively from the day of his arrest

12 months suspended imprisonment on condition that for four years from the day of his release the defendant does not commit the offence of which he was convicted

A NIS 2000 fine or two months prison in exchange.

Actual imprisonment is therefore the default sentence and is imposed as a first rather than last resort. Despite the judge’s criticism over the lack of alternatives to imprisonment, and her statements that it goes against the public interest and the child’s best interest, not even in a single case where the defendant was detained, did she refrain from such punishment. She paid lip service to the need to change the legislation and establish alternatives to prison and left it at that. But no rule requires the court to impose prison terms, and in many cases it ought to be satisfied with suspended prison terms or fines, which put the emphasis on future deterrence. Again, it seems that the detention dictates the punishment which is imposed so that the detention can be retroactively justified as prison term to which the defendant was sentenced. The abundance of detention in fact violates the presumption of innocence and frequently it dictates conviction and imprisonment.

“Detention is not an advance payment on the punishment”, so it has been ruled in Israel, though in the military juvenile court it appears to be just that.

b. Fines

In 68 of the 71 cases observed, a fine was imposed in addition to the active and suspended prison terms. In one case where no fine was imposed (file 1947/10), the boy's father argued in court that he was the only breadwinner for a family of 14. In another case (file for 4103/10), a 15-year-old defendant worked to support his family of eight, and to help his elder sister go to university, because his father could not work. The boy was sentenced for a single case of stone throwing to four months in prison. The judge ruled that the family's economic situation was very bad and therefore she did not impose a fine.

In the third case, a girl was arrested at Hebron Checkpoint while in possession of a knife (file 4953/10). She had been charged with a similar offence a year and a half earlier, and had been sentenced to suspended imprisonment. The incidents derived from the girl's desire to run away from home. She was sentenced to 60 days imprisonment, which she already served, one year suspended imprisonment, and no fine was imposed. and sent to a rehabilitation institute (see also under **chapter 7, Welfare Officer Reports**).

In all the other cases fines ranging from NIS 500 to NIS 6000 were imposed. A fine was imposed even for a boy who was not released from detention and stayed detained for 10 days (until sentenced and freed) because his family could not afford bail money.

When a fine is imposed, additional days of prison are also sentenced to be served if the fine is not paid, even though payment of the fine is not dependent on the children at all but on their parents' financial ability. In several cases observers of the organization heard children comforting their parents, still in the courtroom, that they would serve the extra time if the parents did not have money for the fine.

We have no way to know whether the boys did indeed serve extra detention time, but they may have. The court has decided so.

Y.F., 17 at the time of the alleged offence, resident of Beit Ummar (file 1352/11) was charged with three counts of stone throwing. A plea bargain was presented in which some charges were dropped and a punishment of 45 days imprisonment and a NIS 1500 fine, or a month and a half of jail in exchange, was agreed. The defendant's mother said in court: "As for the fine, I cannot pay the fine because my husband is sick." The judge intervened and persuaded the prosecutor to reduce the fine, and in response the prosecutor amended the indictment again so that he is charged with a single incident of stone throwing and reduce the fine to NIS 1000.



Even in this case a NIS 1000 fine was ultimately imposed.

There was no visible correlation between economic damage caused by the offence and the fine. After all, in most offences no damage was done. It is not at all clear why, if active prison time is always imposed, there is justification for a fine in addition and what the justification is to impose alternative number of prison days in exchange for the fine in every case.

10. Proportionality between the offence and the punishment

M., 16 at the time of the alleged offence, from Nahalin (file 1189/11) was arrested on January 9, 2011.

M. was charged with two counts of stone throwing. His lawyers stated he would conduct a trial within a trial since his client was beaten during interrogation (see more in the chapter about confessions). The sides had reached a plea bargain and M. was convicted on the basis of his plea of guilty of two counts of throwing stones at a moving vehicle.

The arguments for the plea bargain included the defendant's clean record, his plea of guilty and the saving of judicial time as well as his young age. In his last statement the defendant said he would not repeat his mistake and would devote all of his time to school.

In her sentence the judge stressed the severity of the offences of which the defendant was convicted and that "hopefully the trial and the punishment will induce the defendant to go back to school and avoid repeating similar offences. Even though the punishment is light relative to the risk that was created and the severity of the act I decided to honor the agreement."

The judge sentenced him to the following:

Five months imprisonment be served actively

Six months suspended imprisonment for three years

A NIS 1000 fine or one month imprisonment in exchange.



Therefore, the 16-year-old defendant, who claimed to have been beaten by the police, was sentenced to five months for two cases of stone throwing.

A., 17 at the time of the alleged offence, from Khirbet Musbah (file 2958/10) was arrested on June 17, 2010.

A. was charged with five counts of stone throwing at military vehicles with the intention of hitting them and/or passengers in them or causing damage to a person or property; throwing stones at a gas station and hitting a car standing in it; throwing stones at Israeli vehicles traveling on Highway 443 with the intent of hitting them/and or the passengers in them or causing damage to property; manufacturing Molotov Cocktails and throwing them at Highway 443 with the intent of causing death or damage to a person or damage to property

On November 1, 2010, five months after his arrest, the sides reached a plea bargain in which the defendant pled guilty to an amended indictment and was convicted of two charges:

1. Throwing objects at a person or property.
2. Attempt to throw an incendiary object.

The prosecution argued for the plea bargain on the grounds of the defendant's clean record, his guilty plea and the saving of judicial time. "The defendant began the fire bottle incident as a lookout but left the site before it was thrown and there is no indication that the fire bottles were in fact thrown. Ultimately, we took into account the defendant's minor role in the incident. Furthermore, the location of the stone throwing was relatively far and therefore the effectiveness of the stone throwing was correspondingly low."

Despite the relatively minor nature and few charges of which he was ultimately convicted, the judge sentenced the defendant to the following:

12 months prison to be served actively from the day of his arrest

10 months suspended imprisonment for four years

A NIS 5000 fine or five months prison in exchange.



So, the defendant in this case, 17 years old, was sentenced to an entire year in prison and a NIS 5000 fine because of two incidents. In one, stones were thrown at the road from a far distance, and in the other the defendant served as a lookout for an event that was supposed to happen after he left the site.

S., 15 at the time of the alleged offence, from Hebron, (file 4016/10), arrested on September 27, 2010.

S. was charged with throwing a stone at an IDF soldier on the day he was arrested, along with many others who also threw stones at IDF soldiers. His arrest was based on his identification by an incriminating witness. The prosecution and defence reached a plea bargain without hearing evidence, and S. pled guilty. The prosecutor noted in her arguments **that there is**



an evidential difficulty surrounding the defendant's identification by the witness. The judge respected the plea bargain and sentenced the defendant to:

45 days imprisonment to be served from the day of his arrest

6 months suspended imprisonment for four years

A NIS 2000 fine or two months prison in exchange.

The 15-year-old defendant was therefore sentenced to a month and a half in prison and a NIS 2000 fine for throwing a single stone, even though problems with the evidence in this case would have made it difficult to prove even that charge.



K., 16 at the time of the alleged offence, from Abu Dis (file 4574/09) was arrested on October 7, 2009.

He was charged with two counts:

1. Throwing a fire bottle at security forces on three different occasions.
2. Throwing stones at a person or property with the intent of hitting the person or property in one case during a demonstration.

In a plea bargain the indictment was amended and he admitted to throwing an incendiary object (a Molotov Cocktail) and throwing one stone. The sentence was given on December 6, 2010, 10 months after his arrest. The punishment given by the judge:

18 months imprisonment to be served from the day of his arrest.

12 months suspended imprisonment for four years

A NIS 3000 fine or three months imprisonment in exchange.

The prosecutor noted in her arguments that his accomplices were convicted and received similar punishments (one witness whose actions were lesser was given 16 months in prison. A witness whose actions were graver was given 20 months in prison). Since he served as a lookout, the punishment he received was between the other two.

The 16-year-old defendant was sentenced for throwing a Molotov cocktail and a stone to a year and a half in prison. He would be released after he turns seventeen and a half. The punishment is heavy in absolute terms. In addition, Other defendants in similar circumstances were given much shorter prison terms. In all cases the punishment is not proportional because of the double use of imprisonment, fines and additional imprisonment in exchange for the fine.

Conclusions

We shall summarize the findings presented in this report in the light of two main questions we posed at its outset:

1. To what extent are the rights of minors protected in the military juvenile court?
2. To what extent does the military juvenile court contribute to promoting the best interest of minors standing trial?

The functioning of the court and the military prosecution were found to be satisfactory only in regard to a small number of the subjects examined: the separation of the trials of minors up to 16 years of age from trials of adults; the prosecution of children over the age of 16 in the military juvenile court in some cases and the prompt serving of indictments. We also found that all the minors were represented in court by lawyers.

However, we found that the military juvenile justice system does not meet most accepted standards for a juvenile justice system in essential and important respects. Furthermore, there are essential differences between the provisions of the Youth Law in Israel and the provisions of the Security Provisions Order that applies to the Occupied Territories. These differences are reflected in the interrogation and prosecution of minors, as follows:

- a. The age of majority under military legislation is 16 instead of 18.
- b. The detention of minors is not under the jurisdiction of a juvenile court and the legal provisions that apply to their detention are the same that apply to adults.
- c. The detention of minors is not used as a last resort and for the shortest time possible. On the contrary, it is the rule rather than the exception, and refraining from it is very rare.
- d. The widespread use of detention undermines the presumption of innocence and in many cases dictates conviction and punishment by imprisonment.
- e. The main evidence is confessions given by the minors during their police interrogations, very often conducted in the middle of the night, violating their rights to avoid self-incrimination and to consult a lawyer. Minors sometimes claim that other pressures are exerted on them as well. Despite all these defects, the military prosecution bases the indictments on the confessions obtained by police interrogation and the court bases convictions on them without conducting an in-depth examination of the admissibility of the confessions.
- f. This common practice also violates the minors' rights as part of the legal process not to be forced to plead guilty. Furthermore, some of the minors are pressured to plead guilty and agree to plea bargains.
- g. The child's best interest is not the main consideration in the legal process and in fact receives little attention. This can be learned from the small number of cases in which a welfare staff officer's report is submitted and in which the parents' position is heard at the trial.

- h. The criminal procedure does not promote the minors' rehabilitation and integration in society and no alternatives to the legal procedures or educational or therapeutic programs are offered.
- i. The imprisonment of minors is not pursued as a last resort but is the rule. Punishments are severe and disproportionate because in nearly all cases they include active imprisonment plus a suspended prison term and a fine, with days of imprisonment in exchange.

In conclusion, we can state that the establishment of the military juvenile court merely led to a marginal change in the legal process against minors. The Youth Law passed in Israel does not apply to the territories and this is reflected in all stages, from arrest through interrogation all the way to the conclusion of the legal process. The interrogation and detention, which are the critical stages that actually determine outcome of the entire legal process, are executed with no differential treatment of minors. The establishment of the juvenile court had no effect on them at all. The role of the court begins only after those stages, and its impact on the legal process is actually almost negligible. In light of the interrogators' success in obtaining confessions at the preliminary stages, the trials are actually decided by plea bargains following negotiations between the prosecution and the defence, while the court plays almost no role. Nor does the juvenile court use the discretion vested in it, in relation to the plea bargains. In every legal procedure that ended with a plea bargain, the juvenile judge at the military court in the Ofer Camp, Major Sharon Rivlin-Achai, states: "The court clarifies to the sides that it is not bound by the plea bargain reached between them." But in none of the cases we observed did that statement prevent the court from respecting the plea bargain and imposing punishments that are severe and unacceptable for minors, consisting of imprisonment, suspended prison sentences and fines in nearly every single case. These severe punishments were imposed even in cases when the judge voiced harsh criticism of the system's treatment of Palestinian minors in general, and sending them to prison in particular, and despite her statement that imprisonment causes grave harm to the minors themselves and ultimately to the public interest.

Thus, in the military juvenile court neither evidence nor the court's own discretion carry much weight. The departure point in plea bargains is the presumption of guilt, and all that remains to be decided is the appropriate punishment.

The observations in the military juvenile court present a harsh and complex picture. Young boys ages 13-18 are sent wholesale, after summary trials - concluded without hearing witnesses in most cases - to serve long months in prison for acts whose severity does not necessarily justify that. On the other hand - the punishment is agreed upon. The boys plead guilty, represented by a lawyer giving them legal aid, and accept the punishment agreed between the prosecution and the defence. The court hardly intervenes in the process at all.

We must not forget for a minute that the system in question is a military justice system that is not judging its own citizens and by definition is based on inequality between the military prosecution on the one hand and the boys and their lawyers on the other hand. Detention is the rule and the way out of it necessarily involves accepting a plea bargain. Under these circumstances, the minors standing trial are being pressed to accept plea bargains and sometimes even admit to acts they did not commit, because the plea bargain is their best chance of getting out of jail as soon as possible.

In the margins: Thoughts about the situation – why do they throw stones?

Every week for a year we met dozens of Palestinian boys aged 13-18, youngsters just like any other children their age. Yet their hands and feet are cuffed, they are accused of throwing stones and Molotov Cocktails and even graver charges, and one after another they are sentenced to many months in jail.

We often wondered what brings ordinary boys to depart from their routine, confront armed and threatening soldiers and risk their own and their families' future.

Surely they were not born violent, even though some did throw stones and confront the security forces. The only conceivable explanation is the reality of the Palestinian children's lives. They have never experienced life without occupation. From their earliest childhood they have experienced passing through checkpoints, their parents' humiliation, the takeover of their land, soldiers' invasion of their houses in the middle of the night and the arrest of their relatives. They meet soldiers at the entrance to their schools, next to the mosque and in their yards.

The fear and humiliation and maybe even the desire to protect their parents, who appear to accept the situation, lead to the desire to be a "man," to be a "brave fighter" and to pay the price.

Appendix A

Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009

Article G – Adjudicating Juveniles (Temporary Order)

Commencement and effect

135. (A) This article shall enter into effect on 29.09.2009 and shall remain in effect for one year from the day of its commencement.

(B) The provisions of this article shall not apply to a proceeding in which an indictment was filed prior to the commencement of this article.

Definitions

136. In this article –

“Military juvenile court” – a military court of the first instance, with a single judge presiding who is a juvenile judge, or a panel in which the presiding judge is a juvenile judge.

“Minor” – a person under the age of 16; and in regard to a suspect and a defendant, this includes a person who is under the age of 16 on the day the indictment is filed against him.

Appointment of juvenile judge

137. The president of the Military court of appeals shall assign judges – from among the military court judges of the first instance who have received appropriate training to serve as juvenile judges, in a format to be approved by the president of the Military court of appeals – to serve as juvenile judges for a period to be determined.

Judging a minor

138. (A) Notwithstanding the provisions of any law and security legislation, an offense in which a minor is charged shall be adjudicated before a military juvenile court.

(B) The provisions of this subsection shall not apply to proceedings of arrest and release under Article C of Chapter C of this order.

Adjudicating a minor and an adult together

139. (A) A minor may not be tried together with a person who is not a minor, except with the consent of the chief military prosecutor in the Military Prosecution or of someone duly empowered by him.
- (B) If a minor is charged together with a person who is not a minor before a military court that is not a military juvenile court, the court is empowered, after hearing the parties, to adjudicate the case; if the military court so decides, it shall treat the minor as if it were a military juvenile court and it shall have the powers of a military juvenile court provided under this article; if the military court decides not to adjudicate the case, it shall order a separate trial for the minor and transfer him to a military juvenile court.

Minor who is brought to a court that is not a juvenile court.

140. (A) If a military court that is not a military juvenile court finds, at any stage prior to the verdict, that the defendant is a minor, it shall transfer the case to a military juvenile court, and the latter shall adjudicate the case as if it had been brought before it from the outset, and it is empowered to hear the case from the stage it had reached in the previous court.
- (B) If the military court sees special circumstances that justify not transferring the case to a military juvenile court as stipulated in Subsection (A), it is empowered to continue to adjudicate it, provided that from this point onward it shall act as if it were a military juvenile court, and it shall have all of the powers of a military court provided under this article.
- (C) If a military court, which is not a military juvenile court, finds after the verdict that the defendant is a minor, it shall continue to adjudicate the case as if it were a military juvenile court, and it shall have all of the powers of a military court provided under this article.

Adult who is brought before military juvenile court

141. If a military juvenile court finds during the course of the trial that the defendant is not a minor, it is empowered to continue to adjudicate the case as if it were not a military juvenile court or to transfer it to a military court, and the latter shall adjudicate it as if it had been brought before it from the outset, and it is empowered to adjudicate it from the stage it had reached in the military juvenile court.

Maintaining validity

142. A decision or ruling of a court shall not be deemed invalid solely because the defendant, due to his age, should have been tried

before a different court; however, if a grave miscarriage of justice resulted from trying a defendant before a court that is not appropriate for his age, the president of the Military court of appeals is empowered to order that a court he so assigns shall conduct a retrial of the case. And the provisions of sections 157 through 162 shall apply, with the necessary changes according to the case.

Separating minors

143. (A) The military juvenile court shall conduct its hearings, as far as possible, in a place where other trials are not being conducted, or in the same place but not at the same time.
- (B) As far as possible, minor defendants shall not be brought to or from the court together with non-minor defendants, and shall not be held together there.

Time for indicting a minor

144. A person shall not be indicted for an offense which he committed as a minor if two years have passed since [the offense] was committed, except with the consent of the chief military prosecutor in the Military Prosecution or someone duly empowered by him.

Indicating age of the minor

145. The indictment against a minor shall indicate, if possible to ascertain, the minor's date of birth.

Defense

146. (A) The military juvenile court is empowered to appoint a defense attorney for the minor if it believes this would be in the minor's best interest.
- (B) Subject to the provision in Subsection (A), the provisions of Article B of Chapter D shall apply to the appointment of a defense attorney under this section.
- (C) If the minor does not have a defense attorney, the military juvenile court shall help him to examine the witnesses.

Parent's status

147. (A) A military juvenile court is empowered to order, at any time, that the minor's parent be present in the court.
- (B) Any request the defendant is entitled to submit to the military juvenile court may also be submitted on his behalf by the minor's parent or by a person the court has approved for

this, and they are entitled to examine witnesses and present arguments in the minor's stead or together with him.

Report

(A) If a minor is convicted, the military juvenile court is empowered, if it deems it necessary for the purpose of sentencing the minor, to demand a report in writing from an officer of the Social Welfare Affairs staff at the Civil Administration or from a person appointed by him for this purpose, regarding all of the following, to the extent that it is possible to determine:

- (1) the minor's past;
- (2) the minor's family situation, with complete details, as far as possible, about his parents, spouse, children, brothers and sisters;
- (3) the minor's economic situation;
- (4) the health situation of the minor and of the members of his family;
- (5) special personal circumstances – if such exist – that led him to commit the offense.

(B) In the report stipulated in Subsection (A), the person who prepares the report is empowered to advise the court regarding the chances of rehabilitating the minor.

(C) A copy of the report in accordance with this subsection shall not be provided to the parties in the case or to their representatives unless the court instructs otherwise. However, the prosecutor and the minor's defense attorney are entitled to examine these documents in the court file.

Detention centers for minors

149. (A) A minor shall not be held in detention or imprisonment except in a separate prison or jail facility for minors, or in a wing of a general prison or jail facility provided that the wing is completely separate, designated for minors only and without any access between it and the other wings of the prison or jail facility or their inhabitants.

(B) Notwithstanding the provisions of Subsection (A), it is permissible to hold a minor at a police station, provided that he is held separately and there is no contact between him and non-minor suspects or prisoners.

Appendix B

The Palestinian families speak out

"...Within a month, between 30-35 children from Abu Dis were arrested on charges of throwing stones and Molotov Cocktails. If each child threw an average of two Molotov Cocktails then between 60-70 were thrown, besides stones, and to this day I have heard of no soldier or vehicle harmed by it. It doesn't make sense."

Arrest and interrogation

"At 2 a whole battalion of soldiers arrived, knocked at the neighbors and then our door barbarically, broke windows, did not identify themselves and said they were taking the child to Ma'ale Adumim... I think the Army wants to mess up our children's lives and instigate conflicts between the clans in Abu Dis, because they make our children incriminate each other and distract us from the main issue, which is the occupation and resisting it... We are always crying, I cannot concentrate at work, it is as if life stopped there... He is missing a year of school, he is only in the 10th grade."

"He was arrested at 2 am. Soldiers came in without knocking, I woke to the sound of the soldiers and they asked me to wake up all my children. A soldier looked at all of them and asked their names. I indicated each one and said his name and then he said: 'I want M.' I asked why and he said he threw stones with other children. The commander explained they were taking him for interrogation, he did not say where, he did not identify himself. The next day I found out he was detained in Ofer... I was not present at the investigation, I don't know if it was by the law... He missed a year of school and in jail he does nothing but eat and sleep... When he calls we are afraid to ask questions in case they are listening so they won't harass him."

"We heard from journalists he was tortured. We have no idea who interrogated him, we were not present at the interrogation and nobody invited us to be there. His trial has been postponed for three months..."

"At 11 pm seven jeeps came, soldiers knocked on the door wildly, we opened it for them and they started taking the kids out of the house in the middle of the night and arrested M. who was asleep in his bed. They didn't say where they were taking him and they didn't let us out of the house. For three days we didn't know where he was. We found out through the 'Prisoners Club.' Even the lawyer was not at the interrogation. He doesn't know what happened, who interrogated him and how."

"The boy, 14, confessed in the interrogation. We don't know whether under pressure, I imagine trauma. A 14-year-old boy taken at night, interrogated when he was tired and scared, out of fear and threats and stories that other children incriminated them and they confess. I know for sure he did not

throw stones. My son goes to the school where I teach and he is always under my supervision.”

“The boy was arrested at the funeral of a boy from the village who was run over by a settler. After the funeral they threw stones at a military base. His brother went to the police (after he was arrested) but they didn’t let him be present at the interrogation...”

“... We don’t know what really happened in the interrogation or who interrogated him or how. We still haven’t visited him and we could not have a decent conversation with him. The last court hearing was 21 days ago and since then we know nothing about him.”

Loss of parental authority

“...I really want to know how he was interrogated and what they did to him. I know that now I have to do a lot to restore his life and set him back on track. I don’t know how the detention is going to affect him emotionally. It scares me that he will come out full of hatred and anger at the other people...”

“I think my boy goes after the other boys his age and they play heroism games, who can throw stones at soldiers, who has the nerve to go up to the fence... M., 16, was not allowed to go up to the fence. He was arrested there with three other children. We have land near the fence and it is natural for the boy to be there...”

“We feel emptiness and loss... Our biggest fear is how he is going to behave after he gets out. He feels he grew up and can decide for himself what he wants to do.”

“I have been very irritable since his arrest... I think he went up to the fence so he would not go to school, he wants to work because a lot of children his age from the village work already and help their families... But we want him to go to school, thank God, we manage.”

“Our children don’t come back to us children but men, who do not accept what we say and think they know everything.”

After the arrest

“... I have five daughters and five sons. They cannot get over this. We think about him every day. They want to make a criminal out of my son and accuse him of something he didn’t do. My kids barely manage to study...”

“... his arrest traumatized his siblings. The two-year-old talks about how they arrested him and to this day he cannot forget even the smallest detail, and

they are all in constant fear of any knock on the door, which makes them jump and think they are coming to arrest another one..."

"... I support my son and I think he didn't do it. They are accusing him of making a Molotov Cocktail, I don't know how to do that. We are very worried about him... We think about him all the time, when we eat, day and night. My mother couldn't come today because she can't stand it, to see him in jail..."

"His arrest affected the whole family. He had a special connection with his brothers, his little brother keeps pointing at his picture and misses him. We are in very bad shape. How do you think a mother feels when her son is behind bars? I don't know if he ate, if he is sick, if he isn't cold."

"They took him at night. We haven't visited him yet and I only see him at the trial. My son denied the charges and now they are bringing witnesses, three children, his friends. We only talk to him in court."

"... the cruel way he was arrested made our six-year-old daughter jump every time there's a knock on the door because they came twice. The first time they didn't arrest him because they said they were looking for M.M., but my boy is M.K. They came back a week later and insisted on arresting him. I think they didn't manage to find M.M. We have three boys and two girls. Every time we do something as a family we think of him and cry... Life does not go on naturally..."

"This child in particular left a void at home. Every night we remember him and talk about him. Every moment we remember, at every meal, everything we do together at home, the emotional impact is very deep and traumatic... We heard the lawyer's version, to this day we have not visited him and have not heard him tell his version..."

"The village has no therapeutic frameworks for these children. The older boy who is at home now is scared. Another one is in school. There is nowhere for me to go to get help for the children."

"He has another brother and two sisters at home. His brother is one year younger than him. We have a feeling of emptiness, that there is a void at home, a feeling of loss. His brother refuses to sleep in their room alone and does not let anybody in the house touch his brother's things. His uncles also feel his absence deeply. He was the family dynamo and his absence is felt..."

Appendix C

Synopsis of testimonies given in the trial of A.S. From Abu Dis, aged 16 at the time the alleged offenses were committed, (Case 4701/10)

Primary examination of witness for the prosecution, Y.A., by military prosecutor Capt. Shahar Erez.

Q: What were you arrested for?

Witness: I swear I don't know.

Q: During your questioning at the police did they tell you what the suspicions against you were?

Witness: Yes. They told me about it was about a fire bottle but it's not true.

Q: Before the questioning began, who was with you in the interrogation room?

Witness: When do you mean? Nobody was there.

Q: When you were questioned there were other people with you in the interrogation room. Who were they?

Witness: Nobody. Just the interrogator.

Q: Was your father in the interrogation room?

Witness: For two minutes and he left before the interrogations began.

Q: Do you remember what you and the interrogator and your father talked about?

Witness: He did not interrogate me and he did not interrogate my father.

Q: Did your father talk to anyone? Did he talk in the interrogation room before he left?

Witness: Yes. He told me "don't admit to things you didn't do."

Q: Did your father talk to the interrogator?

Witness: He told him "don't hit him."

Q: Did the interrogator say anything to your father?

Witness: He said "get out."

Q: And before that?

Witness: That's what happened. My father said to the interrogator "don't hit" and the interrogator said "get out."

Q: Can you state your full name?

Witness: The witness states his full name.

Q: Do you have a nickname?

Witness: No.

Q: What did you say in your interrogation about the suspicion of a fire bottle?

Witness: He started to pressure me. He threatened that if not he would hit me. So I had to tell him I did throw it. But that is not true.

Q: When did he threaten you?

Witness: From the beginning when we started the interrogation.

Q: What did you tell the interrogator you did?

Witness: The interrogator started to ask me if I want to say I'm sorry and that I was scared at the time, so I said I was sorry.

Q: What did you tell the interrogator you did?

Witness: He asked me and I answered yes to everything.

Q: Do remember what he asked you?

Witness: At first he asked me if I throw fire bottles and I answered him no. He started with the threats and then I said yes.

Q: I would like to refresh the witness's memory about his statement on November 4, 2010 (the translator reads to the defendant).

Witness: Wait, wait, that's not true. The interrogator showed me that page and told me to sign it and the page is in Hebrew and I cannot read Hebrew.

Q: What language was the interrogation?

Witness: Arabic. But what I signed was in the Hebrew language.

Q: The parts the translator read to you are not what you said?

Witness: No.

Military

prosecutor: I move to declare the witness a hostile witness in light of the fact that on the witness stand he contradicted the version he gave at the police.

Defense

lawyer: I leave it to the court's discretion.

Decision: The witness is declared a hostile witness.

Q: In your investigation you said at the very beginning "I want to tell the truth." Is that true or not?

Witness: Not. They started to threaten me that if I did not tell what he wants he would hit me.

Q: In lines 2-3 of the statement it says (quotes). Is what it says true or no?

Witness: No.

Q: Later on you also said that there were a few other people with you at the site. Is that true or not?

Witness: Yes. But he is the one who asked me about the people. I told you that he threatened and hit.

Q: Did he put the names into the interrogation, did he say the people's names?

Witness: Yes.

Q: What names did he say?

Witness: I don't remember.

Cross-examination by the defense attorney, Akram Samara

Q: What do you do in life?

Witness: I go to school. I go to the café, smoke, play pool.

Q: What grade are you in?

Witness: Ninth.

Q: Tell us about your arrest.

Witness: They came and picked me up from my house, put me in a jeep and started hitting me. Then they took me to Ma'ale Adumim and then I was questioned.

Q: What time were you picked up from your home?

Witness: 3 AM.

Q: And you were taken straight to Ma'ale Adumim?

Witness: yes.

Q: And in Ma'ale Adumim they took you into Meni's room?

Witness: Yes.

Q: In that room was Meni alone or with others?

Witness: Just him.

Q: What did he say to you and what did you say to him?

Witness: He started to question me, he started to tease me.

Q: Like what?

Witness: To curse. "Are you going to deal with me like a person or like an ass." Meni said "anik rabbak" [fuck your God].

Q: Did he yell at you?

Witness: Yes.

Q: Did he hit you during the investigation?

Witness: He made me a sign with his hands that he is about to hit me and I said to him "yes, yes, I did it."

Q: When you were arrested were you sleeping?

Witness: Yes.

Q: About how long were you in Meni's room?

Witness: About an hour.

Q: Did Meni talk to you the whole time?

Witness: Yes.

Q: When did your father get to Ma'ale Adumim?

Witness: When they took me to the other investigator my father came.

Q: I saw the video recording with the other investigator. Would you agree with me that the investigator did not inform you of your right to consult a lawyer? Is that true?

Witness: Yes.

Q: And he didn't tell you you had the right to remain silent either. Right?

Witness: He didn't tell me.

Q: And he didn't tell you the suspicions against you either?

Witness: The second interrogator didn't.

Q: Would you agree with me that at the end of collecting your testimony he did not read it to you again and did not translate it for you into Arabic and asked you to sign?

Witness: Yes.

Q: At the end of taking your testimony two people came in, two plainclothes policemen. Do you know them from before?

Witness: No.

Q: Do you remember it well?

Witness: No.

Q: You see two people going into the interrogation room, bringing a detainee in for interrogation. They bring him into the same room. Do you remember those two people?

Witness: No.

Q: Would you agree with me that during your interrogation you were handcuffed for the whole interrogation?

Witness: Yes.

Q: Were you handcuffed during Meni's interrogation too?

Witness: Yes.

Q: Do you know how to make a fire bottle?

Witness: No.

Q: In your interrogation you claimed that the defendant is the one who made the fire bottle. But M.A. says you are the one who made it.

Witness: Meni may have asked me at the beginning but I don't know M.A.

Q: Did you see the defendant make a fire bottle?

Witness: No.

Q: Did you see him throw it?

Witness: No. I never saw him in my life.

Q: In your two interrogations at the Ma'ale Adumim police station, what time were they? According to the minutes it was between 3 AM and 4 AM. Is that true?

Witness: Between 4 AM and 5 AM.

Q: In the interrogation you could see that you were tired and wanted to sleep. Is that true?

Witness: Yes,

Lawyer: No further questions.

Re-examination by the military prosecutor

Q: When you were arrested, when were you beaten?

Witness: In the jeep.

Q: When you were taken to the jeep did anybody go with you?

Witness: No.

Q.: Not even your father?

Witness: No. The officer didn't let him.

Q.: Just up to the jeep, not inside?

Witness: No.

Q.: Did they talk to you before they arrested you?

Witness: Yes.

Q: Do you remember what they said?

Witness: No.

Q. You said during the defense attorney's question that Meni started to curse you and yell at you while he was talking to you. Why, when you were telling me at your own initiative to my questions about Meni, didn't you say he did those things to you?

Witness: Because you didn't give me a chance. Because you were talking.

Q.: No further questions.

The Court

asks: What happened inside with Meni?

Witness: When I went in he started saying he had two methods. The first is the people method and the second is the ass method. He asked me the first time and I answered that I don't know. He asked me about the people and I said I don't know them. He started cursing and he said "go straight with me." He made signs with his hand that he wants to hit me so I said yes, I know them. After he finished the questions he told me you are going to the second interrogator and you are going to say the same thing and if you do not say the same thing something bad is going to happen to you. Then he took me to the second interrogator, but I want to add that when I was at Meni's he told me a lot of things and showed me things I had to sign, he had a pen and he was writing. He asked me about a lot of people, he said that I know them and told me that I throw fire bottles. After he finished the questioning and got what he wanted to get from me I signed a paper he prepared in front of me and he took me to the other interrogator.

Prosecution witness no. 4 on the witness list (M.A.)

Military prosecutor: I declare that everything the witness says will not be used against him in his own trial and that no benefit was promised him in exchange for his testimony.

Witness: I want to say something before testifying. They took me for interrogation at 8 AM. My father was not present during my

interrogation. It was early in the morning and I was really tired. I was scared and then the interrogator told me that A.B. told him this and that about me. I started to tell the interrogator that I don't know him and he started to threaten me, he used foul language, he chained me next to the window, there was a dog there and he said he was going to release the dog if I didn't testify and I started crying and then I started to say all kinds of things about A. and it was out of fear. The interrogator started to threaten me. He said he wanted to hit me and that he was going to take me to jail and release the dog. There was nobody with me, neither my father nor my lawyer and I was scared and started crying, that is the whole truth.

Primary examination by military prosecutor Maj. Shahar Erez

Q: What were you arrested for?

Witness: They took me from my house and said that I threw stones and fire bottles.

Q: Who is B.?

Witness: My brother.

Q: Was he present at the beginning of the interrogation?

Witness: He had just come into the investigation room when they told him to get out.

Q: Did the interrogator talk to him?

Witness: I asked because I was scared to sit with my brother in the interrogation and then he told me you can't and they took him out of the interrogation room.

Q: Did you talk to your brother before the interrogation began?

Witness: No, I didn't. They did not let me talk to him.

Q: Did the interrogator talk to him?

Witness: No. My brother started to ask what do you want from my brother, they said they wanted to ask me questions and then they took him out of the room.

Q: You said before there was an interrogator who threatened you. Who is that interrogator?

Witness: His name was Meni. There were two interrogators. One was good and the other wasn't good. The first one who was not good kept threatening me. He scared me and threatened me. And then he said come with me and he took me to the good interrogator.

Q: Do you want to say anything else?

Witness: I didn't do anything.

The military prosecutor moves to declare the witness a hostile witness. The witness contradicts his statements to the police materially, says he did not do anything and in his statement he admits to committing the crime.

Defense

lawyer: Objection. I did not see anywhere that the witness contradicted his statement to the police.

Court: The witness denies his police statement and therefore is declared a hostile witness.

Q: I present you with a statement taken at the police on November 4, 2011 with your personal information appearing at the top and I ask you is this your signature?

Witness: Yes. That is my signature.

Q: At the very outset of the interrogation it says that you consulted with your brother before the interrogation began. What do you have to say about that?

Witness: No, the interrogator did not let me consult with my brother. He just gave my brother a glass of water to give me. And then when he saw I was crying he gave me juice.

Q: In the very first lines of the interrogation you said that you threw stones at military vehicles. Is that true?

Witness: Yes. And I want to tell the truth now to Your Honor. Now I am going to tell only the truth. I signed that signature after the interrogator said to me: "Your parents are waiting downstairs. They're waiting for you in a taxi. Sign and I will release you." I was so happy because I wanted to be released so badly so I signed. After I signed he told me I was not getting released and I was going to Ofer.

In response to the Court's question: That was the good investigator. Yes, I threw stones.

Q: Where did you throw stones?

Witness: I told you, it was in the valley where they caught me, it was just one time.

Q: Do you know the defendant's name?

Witness: Who is the defendant? No, I don't know him. The interrogator just told me his name and the interrogator told me that this defendant incriminated me.

Q: You do know his name?

Witness: The interrogator told me.

Q: What did he tell you?

Witness: The interrogator came in and told me his name is A.B. and he incriminated me.

Q: How do you know that A.B. is the defendant?

Witness: I saw him in jail.

.....

Q: So if you are so scared then why during your interrogation did you answer after they told you that you were incriminated that you were not there and they are lying and that you were going to tell the truth in court, doesn't that contradict what you have said so far? How does that square with what you said about being afraid of the interrogator?

Witness: I said that the whole time I was scared and that the whole time they were threatening me, the whole time I told the interrogator that I do not know them and he told me it is cold outside and that I should tell the truth and he would release me, and that if I didn't tell the truth he was going to put me in isolation and I would get beaten up there, he kept mentioning the names to me and he said they incriminated you.

Q: Later the interrogator also asked you whether you were in a conflict with any of the people who incriminated you and you said: "No, I am their friend and they decided to incriminate me." What do you say about that?

Witness: Which interrogator did I say that to?

Q: As far as I know the second interrogator.

Witness: I told you. The first interrogator was so tough with me and then when I went to the second interrogator he treated me nicely.

Q: So I don't understand. Who wrote down what you signed? The first interrogator or the second one?

Witness: The first interrogator. They took me to the second interrogator so that I would sign and get released. I remember that it was next to the stairs and there I saw my brother and the interrogator told my brother to wait a few minutes because I was about to be released with my brother. And the interrogator said that if I wanted to get

released with my brother I had to sign. After I signed they told me I was not going home but to Ofer.

Q: So the second interrogator did not ask any question but just gave you the paper to sign?

Witness: Yes.

Q: All the statements you gave, you incriminate a lot of people, including yourself. Did you not say these things to the interrogator?

Witness: No.

Q: So you are actually saying that the interrogator is guilty without you telling him?{??}

Witness: Half of the things that were there were ready, he had them with him.

Q: How do you know which things he had?

Witness: No, I don't know how to read Hebrew. He was typing on the computer and he kept on saying I was going to be released and he said "come on, don't you want to confess so that you can go home?"

Q: So how do you know it was all written down already if you don't know how to read Hebrew?

Witness: Because these were things I did not say.

.....

Cross-examination by defense attorney

Q: Do you remember your date of birth:

Witness: May 31, 1996.

Q: What time were you arrested from your home?

Witness: 3 AM.

Q: Where did they take you?

Witness: Ma'ale Adumim.

Q: What did you do on the evening of your arrest?

Witness: I slept at my grandmother's.

Q: How did you know you were at the Ma'ale Adumim station?

Witness: I live in Azariya and it is near Ma'ale Adumim.

Q: Who arrested you?

Witness: I don't know, it was an officer with 40 soldiers.

Q: Was it the army or the border police?
Witness: The army.

Q: Was there police?
Witness: No.

Q: Were there people with them in civilian clothes?
Witness: No, they were all army with green uniforms.

Q: How old is your brother B.?
Witness: 21.

Q: When did he come to the police station?
Witness: I don't know.

Q: Do you have any idea who asked him to come?
Witness: No, I only found my brother. The officer who arrested me at home asked someone from my family to come and my brother came.

Q: Where did they put you after your arrest? Describe the way from home to the detention center.
Witness: I usually sleep at my grandmother's. She lives alone and I sleep over. They came and started knocking on the door. My grandmother is old and couldn't hear them and then they broke the door. They brought my brother with them and then the officer woke me up and then the officer told me "M., we're going to take you for five minutes to Ma'ale Adumim and then we are going to bring you back." Then they took me to Ma'ale Adumim and then they brought me into the police who were in uniform like the wardens and then they brought me the interrogator and took me into an investigation cell and there he started asking me questions and scaring me.

Q: How did they take you there?
Witness: In jeeps.

Q: Did they threaten you during the ride?
Witness: While I was in the jeep they started to hit me. They kept telling me to say that I threw stones. They kept hitting me and I started to cry there until I got to the investigation. There I was scared and they started asking me about the names and I started to tell.

Q: Who do you mean hit you?
Witness: I don't know their names.

Q: When they arrested you did they blindfold you?

Witness: Yes.

Q: When was that? At what stage?

Witness: The moment they put me in the jeep.

Q: When did they take off the blindfold?

Witness: During the interrogation.

Q: Did Meni question you alone or were there other people with him?

Witness: He was alone.

Q: Did he question you in Arabic?

Witness: He doesn't speak Arabic fluently, he spoke very slowly.

Q: Did Meni question you in Arabic?

Witness: No, they all questioned me in Hebrew, he only spoke a little Arabic.

Q: Did you have a chance to talk to your brother B.?

Witness: I asked my brother to come sit with me because I was scared and then the other interrogator asked him to look at me but said he was not allowed to talk to me.

Q: So you and your brother didn't talk?

Witness: No.

Q: Did the other investigator tell you you had the right to remain silent?

Witness: No, he didn't say anything to me. He asked me to answer all the questions they were going to ask me. That was the first interrogator and then they took me to the second interrogator. He let me sit down in a chair and told me don't cry and don't be afraid, now you are going to see your brother. Then he opened the door and said here is your brother. I asked my brother to sit with me because I was scared and then the interrogator said he was not allowed to sit and that when we finished the interrogation I would go free.

Investigation of witness First Sgt. Binyamin Baruchi (no. 1 on the witness list)

Primary examination by military prosecutor Capt. Ella Sirotinsky

Q: Tell the court what your job is.

Witness: I am a youth interrogator at the Ma'ale Adumim station.

Q: How good is your command of the Arabic language?

Witness: I understand it and speak it.

Q: I present you with the statement of A.B. from October 27, 2010. Who collected this statement?

Witness: I did.

Q: Please tell us about the circumstances of collecting the statement.

Witness: As far as I remember and going by the hour it was a night shift that I did and he was brought to me for interrogation after being arrested.

Q: What language was the interrogation conducted in?

Witness: I think in the Arabic language but there is a disk of the interrogation and it can be checked.

Q: Were there any exceptional circumstances during the interrogation?

Witness: Not that I can remember. To the Court's question, I remember the interrogation only vaguely. If there were anything exceptional I would have probably written it down.

Q: I present you with a disk of the interrogation of A.B. Please tell us who recorded this disk.

Witness: I recorded the interrogation. The details of the place and the suspect are here.

Q: I present you with a memo from October 27, 2010. Who wrote the memo?

Witness: I wrote the memo on the night of the interrogation.

Military

prosecutor: No further questions. I would like to submit the material of which the policeman testified.

Cross-examination by defense attorney

Q: How long have you been an interrogator?

Witness: About eight years.

Q: How long have you been in Ma'ale Adumim?

Witness: 7-8 years.

Q: Do you have detention cells in the Ma'ale Adumim station?

Witness: Yes.

Q: When you interrogate minors which law do you go by?

Witness: There is a new Youth Law, everybody knows that. There are directives of the Judea and Samaria legal advisor for Palestinian minors and that is what we go by.

Q: So that you work according to two laws, one law for Palestinian minors and another law for Israeli minors? Is that true?

Witness: You're not asking the right person those questions. There is an Israeli law that applies to minors in general and in the territories there are directives of the legal advisor about interrogating minors in the territories because of the complexity.

Q: If I understood you correctly, you are saying that according to the legal advisor's directives you are allowed to interrogate a minor at 2:30 AM?

Witness: That is what I understand.

Q: Do you have the directives in writing?

Witness: It is given to us in general, I don't have it in writing.

Q: Let's say the interrogee were Israeli. Would you be interrogating him at 2:30 AM?

Witness: If necessary then yes.

Q: According to the law in Israel are you allowed to interrogate a minor at 2:30 AM?

Witness: Under certain circumstances yes.

Q: What do you mean by certain circumstances?

Witness: It depends on the age, for example.

Q: An Israeli boy of, say 15, would you interrogate him at 2:30 AM?

Witness: yes.

Q: But the law forbids you to interrogate an Israeli boy of 15 at 2:30 AM.

Witness: Apparently we interpret the law differently. I have interrogated Israeli boys at those hours too.

Q: According to what law do you work in Israel when you interrogate youth?

Witness: The new Youth Law.

Q: The new Youth Law forbids the interrogation of minors after 10 PM.

Witness: No it doesn't, there are circumstances when you can.

Q: In our case, what circumstances?

Witness: a. You inform the investigations officer and ask for his permission. b. You to try to summon the parents. c. You give the suspect the opportunity to consult with his parents and with a lawyer.

Q: Did you consult your officer who approved this investigation?

Witness: Of course.

Q: Did he give you the approval before the detainee was arrested or the next day?

Witness: I got the approval by phone before the interrogation.

Q: Do you mean around 2 AM?

Witness: I don't remember.

Q: In the interrogation room were you alone or were there others with you?

Witness: In the interrogation it doesn't say anything else but it is all recorded.

Q: In the interrogation it says you used an interpreter and did not interrogate him in Arabic.

Witness: I told you I don't remember and that's what the recording is for.

Q: Do you remember who helped you interpret?

Witness: Not at all.

Q: Could intelligence officer Meni have helped you interpret?

Witness: Possibly.

Q: What do you mean by an ass investigation over in Ma'ale Adumim?

Witness: I am not familiar with the phrase.

Q: Are you familiar with a people's investigation

Witness: These questions do not make any sense. What are you aiming at?

Q: Did you warn the defendant during the interrogation?

Witness: Apparently.

Q: What's apparently?

Witness: We do it automatically.

Q: How did you warn him, in Arabic?

Witness: I can't.

Q: Then how did you warn the defendant?

Witness: Look at the disk. That's what the disk is for.

Q: In the recording I did not hear a single word of warning. What do you say?

Witness: I think you are wrong.

Q: I want you now, since you said you know Arabic, to translate the warning for us from Hebrew into Arabic.

Witness: I told you I don't know how to translate the warning.

Q: But don't you see you are contradicting yourself? On the one hand you say you gave the warning and on the other hand you say you don't know how to say the warning?

Witness: Then there really must have been somebody with me.

Q: Did you tell him he had the right to consult a lawyer?

Witness: Definitely.

Q: Were you aware of the fact that at 2:30 AM it is very hard to find a lawyer to consult with?

Witness: What's the question?

Q: How could you tell him at 2 AM you have the right to consult a lawyer?

Witness: I tell him and he has the right to consult.

Q: At the end of the interrogation did you read him the testimony?

Witness: No, I read him while I wrote down the testimony. Everything I write down I read.

Q: Can you translate to us how you say fire bottle in Arabic?

Witness: A fire bottle is Molotov.

Q: Do you know any other word for that?

Witness: No.

Defense lawyer: No further questions.

**Primary examination by military prosecutor of Witness for the prosecution
First Sgt. Avi Tivoni (no. 4)**

Q: Tell the court what your job is.

Witness: I have been an Israel Police investigator for about 12 years. I've been with the police for a total of 16 years. I serve at the Ma'ale Adumim station.

Q: Tell us about your command of the Arabic language.

Witness: I speak Arabic, I understand Arabic and I use the language as part of my job as an investigator for the Israel Police.

Q: I present you with the statement of interrogee M.A. from November 4, 2010. Please tell us who collected this statement.

Witness: It is a statement that I collected at 4:31 AM. It is the interrogation of M.A.

Q: What language did the interrogation take place in?

Witness: The interrogation took place in the Arabic language and was typed in the Hebrew language. To the Court's question, I more or less remember the interrogation.

Q: M.A. testified on the witness stand that during the interrogation you threatened him, you used inappropriate phrases, what do you have to say to that?

Witness: There was no such thing. It was a frontal interrogation. Questions and answers, no threats and no use of foul language.

Q: M. also claims that he was chained to the window and there was a dog there and you threatened him you would release the dog on him if he didn't confess. And then he started to tell things out of fear.

Witness: There was no such thing. There are no dogs at police stations, it is not allowed. I did not chain him to the window and that is not the way I work. Even though he is an interrogee he has honor and he has rights and is first of all a human being.

Q: The interrogee claims that his brother was not allowed into the interrogation room to talk to him. What do you have to say about that?

Witness: Before the beginning of the interrogation it was stressed to me by the investigations officer, Cmdr. Shai Dacosta, the youth officer at the station, an emphasis on a meeting between the interrogator and a family member so that he could consult them before the interrogation and that is what we did. He met his brother B., I let him sit down, talk to him, consult, I explained him his rights, so that allegation is false, his brother can also testify about it.

- Q: The interrogee also claims that you told him that his parents were waiting for him downstairs and that all he needed to do was to sign and then you would free him.
- Witness: There was no such thing, that is not the way I work. As I said, it was a frontal interrogation with a minor with an emphasis on minor. I did not speak in that way and I did not say any such thing, to the contrary. Fair treatment, a question and answer investigation.
- Q: The interrogee claims that you told him the names of the people who incriminated him and then you scared him and threatened to hit him.
- Witness: There was no such thing. That is not the way I investigate, I do not threaten. Everything he said I wrote in the testimony the way he said it, without threats and without intimidation. That does no good.
- Q: The interrogee claims that you threatened to put him in a cell with soldiers and tell them to hit him.
- Witness: There was no such thing.
- Q: He claims that you asked him to incriminate his friends and then he could go free.
- Witness: There was no such thing. It was a frontal investigation, questions and answers.
- Q: Did he complain to you of any violence against him during his arrest or in general? Violence or threats?
- Witness: That is the kind of thing an interrogee usually brings up, from my experience. I am very strict and careful to write everything in the investigation report. If such things happen I make sure to separate the material for the Police Investigation Unit or the Military Police Criminal Investigation Division, the body that handles soldiers or anyone who behaves unethically, if he had said any such thing it would have been written in the testimony and been passed on to those parties.
- Q: The interrogee claimed here throughout his testimony that you did not actually ask him any question but just gave him the form to sign.

Witness: There was no such thing. As I said, the investigation process began with him consulting his brother B. and after his brother was exposed to the suspicions against him he advised him what to do. They had the possibility of consulting a lawyer despite the inconvenient hour. The interrogation was frontal, and since it was recorded in the Hebrew language it was also documented visually. At the end of the interrogation I brought him the document to sign. He could have said if he had any reservations about the interrogation.

Q: Do you know why the interrogation took place at night?

Witness: Usually, arrests of fire bottle and stone throwers or perpetrators of security offenses are planned for the night hours to prevent unrest, gatherings and confrontations with the public in the Arab villages in our sector. I assume that for the same reasons he was arrested at night and I interrogated him after his arrest.

Q: The interrogee claims that you did not inform him of his right to remain silent. Is that true?

Witness: At the beginning of the interrogation in the presence of his brother I explained him his rights to consult his brother or a lawyer as well as the right to remain silent, which could be used against him to support the evidence against him. He could have remained silent and the proof is that he spoke, he was asked, he answered and his testimony was recorded and he signed it.

Q: I present you with the statement of interrogee Y.A. from November 4, 2010. Tell me about the circumstances of collecting this statement.

Witness: It is an interrogation of a suspect also of throwing fire bottles at military vehicles and soldiers in Azariya, an interrogation that took place at 3:17 AM on that date. The interrogation took place in the Arabic language and was documented in the Hebrew language. A frontal interrogation at the end of which the suspect signed it. I should add that this suspect was given the opportunity to consult his father before the interrogation and his rights were explained to him before the interrogation began.

Q: How was the interrogation documented?

Witness: Since it was documented in the Hebrew language and conducted in the Arabic language, we made a visual recording to the best of my memory.

Q: I present you with the disk, please tell me who made this disk?

Witness: It is a recording of the interrogation, a system of visual documentation that can be burned right after the interrogation, and this is the disk.

Q: The interrogee claimed on the witness stand that during the interrogation you pressured him and threatened to hit him and then he was forced to confess.

Witness: In this case as well there was a frontal interrogation in the Arabic language, documented in the Hebrew language, as far as I remember photographed visually. I did not threaten, I did not intimidate, that is the way I work. An interrogation is not a pleasant experience but I do not intimidate and I do not threaten.

Q: The interrogee says that he signed a paper which he did not know what it said. What do you have to say about that?

Witness: As I said, the interrogation was recorded visually and documented in the Hebrew language. I assume that if he does not know how to read Hebrew than he does not really understand what it says on the page but he was a witness to the interrogation, he was present in it and he signed his testimony at the end of the interrogation.

Q: The interrogee claimed that you are the one who added names of other people into his statement and he did not say them.

Witness: The interrogee gave his statement and it was documented, he is the one who gave their names, he is the one who gave the details, and I documented them in the body of the investigation.

Q: The interrogee claims that he signed because you intimidated him and wanted to hit him.

Witness: There was no such thing. The suspect was interrogated, he gave information and signed without being threatened or intimidated.

Military

prosecutor: No further questions. I would like to submit the statements and the disk.

Cross-examination by the defense

Q: Are you authorized to investigate youth?

Witness: I am a police investigator and when necessary also a youth investigator.

Q: Do you have any training to investigate youth? Yes or no?

Witness: I am an investigator at the station and when necessary I also interrogate youth according to the instructions of the head of the investigation office or the youth investigation officer at the station. I am not an authorized youth investigator.

Q: At the Ma'ale Adumim station which law do you go by to investigate youth?

Witness: Like in all of the Israel Police, the Youth Law.

Q: Are you aware that there is a Youth Investigation Law in Israel?

Witness: Yes, I am aware.

Q: According to that law, until what time are you allowed to investigate youth?

Witness: If you are referring to the time the boys were interrogated, their interrogation was approved by the station's youth investigation officer and under his direction.

Q: But according to the law, until what time are you allowed to interrogate youth? Do you as an investigator know until what time?

Witness: I know a lot of things, I know about the Youth Law and the Drug Order Law and there are a lot of laws I understand.

Q: According to the Youth Law, until what time are you allowed to interrogate?

Witness: Until the age of 14, 8 PM, until the age of 16, 10 PM, and age 18 I think all night, I am not sure. But with the approval of the investigations officer you are allowed to investigate all night as needed.

Q: According to the Youth Law, until what time were you allowed to investigate them?

Witness: If you're referring to the interrogation of these boys, it was done under the direction of the investigations officer who directed me to interrogate them at the time that we interrogated them.

.....

Q: You did not warn him or even tell him what he was accused of and that emerges from the documentation.

Witness: Maybe there is a technical defect but I told him his rights for sure.

Q: The whole interrogation is documented. You can see it from beginning to end. You did not warn him, plain and simple.

Witness: The suspect was warned and told his rights. To the contrary, his father was present and I filmed it and even his father understood the option of consulting a lawyer, which was actually stressed to the father. The warning in the investigation is standard procedure.

Q: And I'm telling you, I watched this disk and I did not hear any warning. You just sat him right down and started to question him.

Witness: It could be that the matter of the warning was not documented.

Q: Do you think it is not important?

Witness: I stressed to you that consulting is the interrogatee's right and it is my duty to stress it to him and it is important.

Q: What if I tell you that the consultation with the interrogatee's father is also recorded and you did not allow it, right away. You told the defendant's father that he was ruining the interrogation and you kicked him out of the room. Do you remember that?

Witness: The consultation of the minor with his father was done the way I am required to do it. The way I was instructed to do it, the way it needs to be done and that is the minor's right. However, it is a consultation and there are cases when minors' parents, instead of consulting disrupt the interrogation and in those cases we see no point in the consultation so we ask the parents to get out of the interrogation room so that they don't disrupt our interrogation. I do not remember kicking the minor's father out of the investigation room but if it appears then maybe he acted not in the way I explained to him and that is why maybe he went out, if it is documented as you say.

Q: According to the law is it consultation with parents or the presence of parents?

Witness: The youth officer who instructed me how to investigate instructed me to allow consultation without presence [of parents] in the investigation and that is what I did.

Q: Is that permissible by law? Do you work by the law or by the instructions of the officers?

Witness: I work both by the law and by the instructions of the officers who are my commanders.

.....

Q: Let's go back to M.A. Where is his visual documentation?

Witness: Like in the case of Y.A., M.A.'s interrogation was also documented. The interrogation was burned on a disk, we are human beings, I don't know what the source of the mishap is, I understand the disk does not exist. The interrogation is saved for only 30 hours so we could not reconstruct it.

Q: According to the clocks here I see that as soon as you finished with Y. you began with M.A. Right?

Witness: I finished at 4:00 and started at 4:30.

.....

Q: Did you warn M.A. before his testimony?

Witness: Yes.

Q: Did you warn him in the Arabic language?

Witness: In his language, in the Arabic language when his brother was present in the investigation room and it happened before the beginning of the interrogation. And he was given the possibility to consult with his brother and the right to a defense lawyer was explained to his brother.

Q: Could you repeat the warning in the Arabic language to the court?

Witness: Yes.

Q: I want to hear how you say it in Arabic.

Witness: the policeman says in Arabic: "The suspicion against you is such and such, everything you say will be written in your investigation file. You may consult a lawyer and you may also remain silent and not speak, Everything you say may be used against you in court."

Q: Were you present at the meeting between M.A. and his brother B.?

Witness: As far as I can remember, yes.

Q: Do you remember what they talked about?

Witness: No. I don't interfere in consultations.

Q: M.A. said here in court "I cried, I was scared, I asked them to let me talk to my brother and they didn't let me." Is he lying?

Witness: Yes. To the Court's question, I don't remember him crying but it was clear that he was upset, it is no fun to be arrested at night, soldiers come and it is no fun. He was upset. If there is a problem in certain cases, if I see an emotional suspect, I offer him a glass of water, a hot drink, if he's hungry or thirsty. Even though he's an

interrogee he is still a human being. I don't remember him crying, I am very careful with children, a police interrogation is a trauma for life.

Q: Why do you think it was necessary to interrogate a child at 4:30 AM?

Witness: As I said, the method of arresting suspects, including minors, in the Arab villages, is done at night for security considerations, to avoid clashes. If it were in Israel the conditions would have been different and I suppose the investigation would be in the morning.

Q: I meant the interrogation, not the arrest.

Witness: As soon as the detainee arrived he was interrogated. There is no point to deny his freedom and to violate his freedom.

Appendix D

Synopsis of testimonies given in the trial of A.C. From Nebbi Salah, aged 16 at the time the alleged offenses were committed, (Case

1367/10)

(our emphasis)

Primary examination of witness' Moshe Madiuni, police investigator, by military prosecutor Adv. Capt. Michael Avitan

Witness: I worked as an investigator at the SJ district central unit. Altogether I have been police investigator for 26 years. I have all the training. I have also been trained as a youth investigator even though I do not do that every day.

On January 23, 2011 the suspect was brought to us by the army after he had been arrested by the army at around 9 AM. Right after his arrival we began the interrogation. Of course we read the suspect the suspicions against him, we explained to him what the suspicions are, **we told him he did not have to say anything if he did not want to**, that everything he said could be used as evidence against him and that if he did not answer questions it could strengthen the evidence against him **and that he had the right to consult a lawyer**. As far as I understand the suspect understood what we explained to him and said everything he had to say. Everything was said from his own free and good will. The interrogation was documented visually from beginning to end continuously, as we do in many investigations. During the interrogation other people went in and out of the interrogation room, that is normal for us and we even brought in a native speaker to read him the confession word by word, her name is Nihi (witness for the prosecution no. 4), so there would be no doubts about what the confession said. I want to point out that the suspect signed that he understood the warning and as for the testimony itself he did not sign it, that was after his meeting with the lawyer....

... the investigation was in the Arabic language, I speak spoken Arabic, I understood the suspect well and the suspect understood me and it is documented.

Q: We are now in the stage of the mini-trial arguments and there were allegations about the management of the interrogation, the way the defendant was treated, was there anything exceptional? Describe the atmosphere.

Witness: **There was a good atmosphere**, the interrogee spoke out of his free will, he cooperated fully and he gave us details that surprised us and we didn't even know... **there was a relaxed atmosphere** and I don't remember anything exceptional... we do not use violence, of course since we are talking about a pretty young boy we treated him accordingly, extremely gently. We even offered him to eat and drink.

Q: **During the investigation it says the suspect cried.** He answered that he was afraid to fail his tests in school. Tell us about that specific point.

Witness: I remember he said he had tests. He wanted to know what was going to happen to him at the end of the interrogation. I told him that when the interrogation ended whoever had to decide about him would make the decision. We really didn't know what was going to happen to him in the stage after the interrogation.

Q: What was your impression, how did the defendant look?

Witness: **He looked fine, I don't remember anything exceptional...** being arrested isn't easy. Besides that I didn't see anything special.

Q: Did he complain before the interrogation about anything that happened in the earlier stage? Did he say what happened to him earlier?

Witness: No.

Q: It said in some of the arguments that the lawyer was in constant contact with the interrogators at the beginning of the interrogation and informed them of his intention to meet the defendant. The interrogators began to interrogate the defendant without consulting a lawyer. What do you have to say about that allegation?

Witness: The lawyer called Arnon and asked whether the suspect had arrived to us, apparently he knew following the arrest, at that stage I think the suspect had not arrived to the interrogations yet but after that his treatment moved to the investigation officer. **In any case, when we began the interrogation the lawyer was not present. But we told him he had the right to meet a lawyer.** At a later stage I understood that the officer postponed the meeting for later.

Q: At what stage did he actually meet his lawyer?

Witness: The meeting actually occurred, if I am not mistaken, towards the end after they began reading him the testimony. One of the officers came and said that the lawyer arrived.

Q: Another allegation that was raised is that during the defendant's interrogation no parent or relative was present. Why?

Witness: I don't remember any investigation of a boy, resident of the Palestinian Authority, interrogated in the presence of parents. It is an arrest in the middle of the night, they never bring the parents, I can't remember any such thing. I don't make the rules. I have never seen an investigation in which the parents were present. That is the way it is done. And in most of the investigations I did with kids they never wanted to sit with their parents in the interrogation, it is very rare but they are given the right.

Q: It was also alleged that the defendant was not warned and was not told that he had the right to remain silent.

Witness: I said it was explained to him, we did it with extra emphasis because it was a young boy.

Q: It was also alleged that the interrogation was done by three and sometimes even four interrogators. The interrogators threw questions at him alternately and even simultaneously, and there were accusations and shouting and leading questions were asked. What is your response to that?

Witness: The interrogation was conducted in a good atmosphere, it was not an atmosphere of stress, the suspect cooperated and there was no need to exert any pressure. As I said, the interrogation is documented.

Q: So there were three interrogators?

Witness: Alternately, there may have been three at one point. It was not to exert pressure. To the Court's question, usually two people interrogate and sometimes the officer wants to join, another one joined towards the end who read him the testimony, she didn't participate in the actual interrogation... I don't remember shouting in the room, even if there was a shout or something like that it wasn't to exert pressure, there was no goal of extracting information from the suspect by pressure.

Cross-examination by the defense attorney, Gabi Laski

Q: Could you say in general that the suspicions are that the boy threw stones?

Witness: The boy participated in disturbances every Friday, I know that stones are thrown there.

Q: Did you know what time he was arrested?

Witness: I think it was in the middle of the night. Early morning.

Q: Do you know where he was until he came to you?

Witness: As far as I know they take them to a medical examination and by the time he comes to us it takes a while.

Q: So that means that it can be assumed that when he came to you he had been awake early in the morning?

...

Witness: I don't know whether he slept.

Q: Did you ask whether he slept?

Witness: I may have asked him how he felt, I assume I asked him. Maybe even on the way to bringing him into the room. I might have, but I don't remember, he looked fine to me and awake enough for an investigation, I was not impressed by anything unusual.

Q: Were you in the room as a youth investigator?

Witness: I am authorized to be a youth investigator. Did I put on my youth investigator hat? I suppose so.

Q: As a trained youth investigator, were you also trained about amendment 14 of the Youth Law?

Witness: No, I don't think so, my training was a long time ago.

Q: What kind of behavior did you use as a youth investigator in this investigation? How were you different?

Witness: A kind, fair and very gentle attitude.

...

Q: Who specifically warned the defendant?

Witness: I think I warned him, I explained to him what he was suspected of, what his rights are... I think I warned him well and he understood. During the interrogation he was also briefed that we talked to the lawyer. He did not ask at any stage to talk to the lawyer.

...

Q: Did you tell him, you are allowed not to speak in the investigation?

Witness: I told him he did not have to say anything.

...

Witness: Let's see the recording and I will tell you exactly what happened.

Q: If I tell you that you warned him twice and twice you did not tell him he was allowed to remain silent. In no word and in no way.

Witness: I am willing to see.

The court and the sides watch the tape. The interrogator explains to the defendant that he has the right to consult a lawyer and that everything he says may be used against him. He explain it a number of times and explains the suspicions against him **and then he tells the interrogee that he better tell the truth.** The interrogee asks whether if he tells the truth he will go home and the interrogator says we shall see, and that will be decided by the officers. Furthermore, **the interrogator tells the interrogee that if he made a mistake he must tell the truth, "everything you had (in Arabic: "lazem") to say."** He offered him tea and he said he already had some. He types out the formula of the warning, reads out the interrogee's personal information, explains the names of the interrogators and the suspicions. Everything you say we are going to write down and if you do not answer it could strengthen the evidence. We ask him to write his name and the suspect writes. He asks where he lives.

Q: So you never told him he was allowed to remain silent?

Witness: **He understood very well.** There was nothing deliberate here and it looks authentic that I explain the suspect his rights and it seems to me he understood very well. Nothing was done deliberately. What was said is what was said, I think he understood he had the right to remain silent...

Q: Did Arnon and you know there was a lawyer?

Witness: In the background we knew there was a lawyer that was supposed to come.

Q: Why didn't you wait with the interrogation?

Witness: I told you, **the suspect was brought for interrogation, he is a**

young boy, it is reasonable that he should be interrogated as soon as possible and I also understood that the lawyer wasn't going to come so fast and besides I was instructed to begin the interrogation I think by Jalal and that is what we did.

Q: When the lawyer arrived and you were in the interrogation who decided not to stop the interrogation and let the lawyer meet the interrogee?

Witness: I think it was the Chief Superintendent who is authorized. He was probably aware of what was going on in the interrogation... I said there were usually two of us interrogators and in this interrogation if I'm not mistaken there were three of us or maybe even four... if you do the statistics, I think most of the time there were two of us. I don't see anything wrong with 10 people being in the room if no pressure is exerted... each one asked when he thought he should ask. That is the dynamic of the interrogation.

Q: A 14-year-old boy throwing stones, three interrogators, five hours? Was there an interrogative necessity?

Witness: Apparently he gave important details.

Q: Including the prevention of the meeting with the lawyer?

Witness: That is not in my authority.

Q: When the defendant burst out crying during the interrogation, do you remember what set that off?

Witness: I think the business about the tests, he was worried about his tests. He was afraid to miss them.

Q: Why did he think about that in the middle of his interrogation?

Witness: It did not come up only once. **I don't remember why the crying began.**

Q: Is it possible that at different stages of the interrogation he looked very tired and rested his head on the table?

Witness: Possibly towards the end.

Q: Did you as a youth investigator ever think maybe we better stop?

Witness: **That is why it is important to begin the investigation fast.**

Q: Is it possible maybe to let him sleep first?

Witness: **We don't have the conditions of a detention center.** And it wasn't clear either what would happen to him at the end of the interrogation and I mean this completely seriously.

Primary examination of witness, Warrant Officer Arnon Yahav, police investigator, by military prosecutor Adv. Capt. Michael Avitan

Witness: I have been an investigator in the SJ district central unit investigation department for five and half years, as an investigator for five and half years and in the police for 10 years... I recognize my signature on the investigation from January 23, 2011.

... the investigation took place in a very positive atmosphere. The suspect cooperated fully... **there was nothing exceptional.**

Q: There was an allegation during the mini-trial allegation stage that the defendant did not receive notice that his lawyer was on the way and you began the interrogation without allowing him the right to consult a lawyer. What do you have to say about that?

Witness: His lawyer contacted me and told me he was on the way. He asked me whether the suspect, whose name I did not know yet, had arrived yet and I said that he had not arrived yet and that the moment he arrived to us for investigation we would make contact with him... and that is exactly what happened. The defendant came for investigation, I contacted the investigation officer and said to him "please contact the lawyer and inform him" and that is what happened. To the Court's question, I mean the investigations officer Jalal.

...

Q: It was alleged that the defendant's meeting with the lawyer was prevented by the interrogators and actually when he met his lawyer the interrogation was already over. What is your response to that?

Witness: **I received instructions to begin the interrogation and that is what I did.**

Q: It was alleged that the defendant was not lawfully warned. What is your response to that?

Witness: **He was lawfully warned, it was explained to him, he was asked whether he understood and he answered that he did.**

Q: **Do you remember that it was explained to him that he had the right to remain silent in the interrogation?**

Witness: **Yes.**

Q: Likewise it was alleged that during the interrogation there were between three and four interrogators. What is your response to that?

Witness: I was with interrogator Moshe Madiuni. Jalal occasionally entered the interrogation and another interrogation officer but most of the interrogation was conducted by Moshe and me.

Q: Were there accusations or shouting at the interrogee?

Witness: No. I want to add that there were **parts when we joked with him and laughed with him and it was all done freely.**

Q: Was the manner of the interrogation aggressive and humiliating?

Witness: No.

Q: It was alleged that psychological pressure was exerted by the interrogators during the interrogation. What is your response to that?

Witness: There was no psychological pressure. The interrogation was very pleasant and the evidence is that at the end of his interrogation he came over to me and hugged me, and I am not used to that, and I hugged him back.

Q: When he came to the interrogation, what was your impression of his physical and emotional state?

Witness: From the first moment I tried to allay his fears. Not just me, so did the investigator Moshe. We spoke to him respectfully, pleasantly. **We explained his rights to him.**

Q: It was alleged that before he was brought by the army he was beaten. Did you see any physical signs of that? Did he tell you anything? What was your impression of him when he arrived?

Witness: For his entire interrogation he did not claim that he had been beaten nor did I see any signs on him.

Q: **You wrote an investigator's note that the suspect cried, that happened two hours and 45 minutes after the beginning of the interrogation. Tell us why he cried.**

Witness: I saw him crying, I asked him why he was crying, I thought maybe it had something to do with our interrogation. Maybe. **He told me he was crying because he was afraid he would miss a test.** I assume we reassured him about that and that's all.

Q: Did he receive anything during the interrogation? Did he ask for certain things during the interrogation?

Witness: No. He did not ask. We offered him the usual things - food, drink, we kept offering him - and if we ate we shared with him. That's all...

Cross-examination

Q: So you speak fluent Arabic? How would you define your level?

Witness: I speak Arabic well.

Q: Were you trained as a youth investigator?

Witness: No. I was trained as an investigator.

Q: Why were you at the interrogation?

Witness: Because I was instructed to be at the interrogation.

...

Q: Are you aware that a minor is supposed to be interrogated, according to the document, by a youth interrogator?

Witness: Yes, that is what happened.

Q: So you did not interrogate him?

Witness: I interrogated him too.

Q: So how does that square? The order says "shall be interrogated by a youth interrogator too" but "by youth interrogators." How does that square?

Witness: It squares because there was a youth interrogator interrogating him and I was with him.

Q: You just said that you too interrogated him.

Witness: Exactly what I said.

Q: And as far as you're concerned that squares with the order just great.

Witness: It squares with the directive I received, to interrogate him.

...

Q: How do you say in Arabic "you do not have to say anything"?

Witness: "mish lazem tihki ishi."

Q: And "you have the right to remain silent"?

Witness: What is this, a test in Arabic?... "mrak al-haq tuskut ma tihkish ishi" as long as he understands me.

Q: **You wrote in the investigation, it says here that you inform him "you do not have to say anything."**

Witness: **Yes.**

Q: **In the video it is not said.**

Witness: Can I see that page? So I tell you, it is built-in, in the testimony itself, inside the testimony, in the body of the testimony.

Q: So could you have not warned him?

Witness: As far as I can remember and understand he was warned and it was completely clear to him what he was being interrogated about and it was all done pleasantly.

Q: So I ask you: the warning has a few rights, right? One of them, maybe the main one, is the right to remain silent. I say that you did not tell him that.

Witness: As far as I can remember, the interrogator Moshe warned him and explained it to him. **If you are telling me we did not say it than we did not say it.**

Q: Is it true that lawyer Goldstein called you?

Witness: Yes.

Q: In the morning, and said he wanted to meet the defendant before the interrogation?

Witness: That is not what he said.

Q: You spoke to him once?

Witness: As far as I can remember he called me in the morning and asked whether the suspect had arrived, I don't remember the name he said, I didn't even know the name of the suspect who was supposed to be interrogated and I told him that he had not arrived yet and that when he arrived I would let him know.

Q: So you are saying you spoke to him once?

Witness: As far as I can remember yes... on the office phone... I don't remember what time.

Q: We extracted a printout of lawyer Goldstein's cell phone calls, and he spoke to you on the 23rd at 8 AM and at 9:19. It said in the printout that it was 40 seconds long.

Witness: Maybe he did not talk to me, I remember one conversation.

Q: And you're sure that he did not ask you to wait with the interrogation until he arrived?

Witness: I don't remember. And I am not the authority who decides on that.

...

Witness: I am not authorized to interrogate a minor unless I am instructed to do so by an investigation officer.

...

Q: **Did you notice at any stage that the defendant was tired, yawning, rested his head on the table?**

Witness: Yes.

Q: **What did you do about it?**

Witness: **Maybe I asked him to pick up his head,** I don't remember exactly.

Q: Did you ask him why he was tired?

Witness: I don't remember, I suppose so.

Q: If you saw he was tired why didn't you take a break? Why didn't you say let's not even start interrogating him? Let's let him rest for a few hours and then we will continue to interrogate him?

...

Q: **Do you remember at what point the defendant began to cry? Why he burst out crying?**

Witness: Burst out crying is a little bit of a... he just cried and then I tried to understand whether it had anything to do with the interrogation and when I realized that it did not have anything to do with the interrogation we tried to calm him down.

Q: The reason he told you he was crying is that he was missing tests. He knew throughout the whole interrogation that he was missing tests. What was the situation in which he suddenly started crying because supposedly he was missing a test?

Witness: I don't remember.

...

Primary examination of witness, Inspector Jalal Awayda, in charge of the interrogation, by military prosecutor Adv. Capt. Michael Avitan

Witness: I am an investigation officer at the SJ district central unit, with the police for three and a half years. Before I was also an investigator in the terrorism unit... I don't remember by heart the interrogation of the defendant before us, I want to see what it says... I see this is about the interrogation of A.S. who was interrogated about disturbing public order and throwing stones. I see he was warned and read his rights lawfully and in the body of the testimony I see that just like in any other interrogation he is asked questions and answers them... in the testimony I see there is a comment by the interrogator says that the lawyer...

from the comment I remember a few things, the investigator Arnon Yahav informed me that the lawyer Limor called and asked whether a boy named A. had arrived in the unit and I told him he had not arrived yet and that when he arrived we would inform him. And indeed, the moment the detainee arrived, that is something I did at the time, I called the lawyer Limor and told him "the suspect you asked about has arrived at our unit." Lawyer Limor, as I remember, I can still hear it in my head, I remember we argued and he told me he wanted to petition the HCJ first and that is why I remember it well. **I called lawyer Limor and told him the suspect had arrived at the unit and he said to me okay, I am coming from Tel Aviv by taxi. I ordered the interrogation to start**, there was an instruction to begin the interrogation and the interrogation began... in the suspect's native language... the atmosphere was relaxed, the atmosphere was, I would even say **they treated him as if he were their own son**, they gave him attention, they were concerned about his needs all the time, they kept offering him drink and food and chocolate, I saw that during the investigation.

...

Q: The defense alleges the defendant's right to consult a lawyer was denied. What is your reaction?

Witness: No such right was denied as the defense alleges. The suspect chose to speak in the interrogation, had he asked to consult a lawyer we would have allowed it immediately and without delay as we do in all the other interrogation and as for the lawyer Limor, there was an instruction not to wait because I also told my superiors that lawyer Limor was coming from Tel Aviv by taxi, which would clearly have taken some time to arrive at the unit, and it would not be a reasonable length of time of 20 minutes, half an hour, and therefore there was an instruction to begin the interrogation and that is how it was done. So that all in all, if you look at it carefully, this claim should be rejected for the simple reason that throughout the entire interrogation and the procedures that occurred there, there is no indication that the suspect elementary's right to consult a lawyer was denied.

Q: The defense also alleges that the defendant's meeting with the lawyer was prevented and only after the interrogation had actually ended did the interrogators let the suspect meet his lawyer.

Witness:... there was a directive to begin the interrogation and when it began **and when the interrogation was underway as far as I remember that is when a lawyer representing the suspect arrived, namely the lawyer Limor, and at that time when he wanted to meet the suspect a document was issued ordering the postponement of the meeting of the lawyer with the client, a document issued lawfully because an officer at the level of chief superintendent and up can issue such a document, namely postponing a meeting with a lawyer by hours and in certain circumstances by days.**

Cross-examination

Q: You said that parental presence is not viable in this kind of interrogation. As an investigation officer in charge of this interrogation did you make every effort to find out whether the minor's parents could be present in this interrogation?

Witness: To remove any doubt, **that law does not exist in the territories.** In this specific case I did not attempt to summon the parents...

Q: According to the Youth Law is it permissible to interrogate minors in the middle of the night?

Witness: If I remember correctly, there are defined hours to interrogate minors, and if I remember correctly they can be interrogated between 7 PM and 10 PM but there are also exceptions that don't fall into that category, when you can interrogate at night. For example, if the offense was committed close to the time of arrest then it is allowed.

Q: The arrest of this minor was a planned arrest that occurred at 2 AM. Do you know exactly what happened with that minor whom you interrogated at 2 AM until he arrived in the investigation room?

Witness: I cannot testify about something at which I was not present.

...

Q: During the five hours of the tape, you see that the suspect who is a minor keeps on yawning, rests his head on the table and almost falls asleep and nobody asks him if he is tired, if he wants to sleep... how does that square with what you said, that you asked him if he is tired?

Witness: I did not watch the whole recording but I can testify that the boy, this suspect, knows very well what he wants and if he had felt the need to stop the interrogation in order to eat, even though they kept offering him food, and I even witnessed them giving him

water and bringing him food and chocolate, and the interrogators for sure were not impressed that he could not continue the interrogation. And this is the place to say that we do not need to be naïve, the suspect at the end of his interrogation, you say that in the middle he was yawning and tired, he was alert enough to say there that the Arabic language is my native language and he said about four sentences there in the literary language, which I think a boy that age has to have a very high IQ to say. So it turns out that this guy does know what he wants and does know what he doesn't want and I even remember from that part of the recording that I saw, if I remember correctly, that when somebody came whose native language is Arabic and started translating the testimony into Arabic for him so he would approve it, he knew to correct her with literary words and to point out the differences between the things that she said and did things that he said.

Q: Are you saying that a smart boy can not be tired?

Witness: A smart boy can be tired and a tired boy can be smart.

...

Q: According to the phone printout, he called you from the gate at 10:49, that is one hour and three minutes later, we see you answering the phone and telling lawyer Goldstein that he could not come in with his car but he is about to send people to come pick him up. He does not say he cannot meet A. and then you go out to the department head and only at 11:10, about 20 minutes after the lawyer got to the station, the department head issued the prevention of meeting [order] and you say that you went out and you told him that the lawyer is at the gate.

Do you agree with me that the order [prevention of meeting] was issued 20 minutes after the lawyer was at the gate?

Witness: Assuming the facts are correct as my colleague presents them, I will say this: on this matter he didn't say that he arrived and I didn't tell him that he would or would not meet, after all I just did something that is appropriate to the status of the lawyer, I wanted to bring him from outside into the department, without referring to whether he would or would not meet. As for the second part, if it is as you say and as it is recorded in the memo, I may have informed the department head that the lawyer arrived and an hour and a half later as you say, he saw what was coming up in the interrogation and thought it would be advised to prevent it.

...

Q: You said there was nothing exceptional in this interrogation. **For a long time the child cried during the interrogation. Is that not exceptional to you?**

Witness: To say whether it is exceptional or not we would have to check the circumstances that caused him to cry.

Q: Did you find out the circumstances of his crying?

Witness: **I assume he was crying because of the things he said because he was sorry.** That is based on the credibility of what my colleague says she watched.

Q: You as an interrogator, and with a youth interrogator supposedly in the room, how are you supposed to treat the crying of a minor?

Witness: It depends what made him cry. Let him let it out, externalize his feelings, offer him water to drink, let him calm down, give him some time for himself. Not when he's crying, I don't know which section you are talking about, we do not urge him to talk while he is crying.

The testimony of Lawyer Limor Goldstein:

From the primary investigation:

Q: What did you do from the moment you found out the defendant was arrested?

Witness: "From the moment I found out the defendant was arrested I tried first of all to find him. For that purpose I made many phone calls, the first one at 8:23 AM to the SJ district central unit. I believe I spoke to the investigator Arnon, I was told the defendant had not arrived at the station yet. [In his testimony he provides details of all of the phone call to all of the military, prison service and police parties]. At 9:19 I called the SJ district central unit again, I got the same answer again, that the defendant had not arrived at the station. At about 9:49 I got a call from the terror investigator Jalal informing me that the defendant had arrived at the SJ district central unit. I told him I was leaving right away, that I was taking a taxi, and I really was near a taxi, I got there in exactly one hour. At 10:49 I called the investigator Jalal and told him I arrived. He said he would send someone to bring me in. A few minutes went by, I found out the defendant had already gone into the interrogation but he would still let me meet him. **And 10 minutes later I was told that there was a meeting prevention [order] until 14:30 and they would not let me meet him earlier.** I would like to explain that I made all of these calls waiting outside of the station, they



did not let me in as if it were some kind of secret facility. At 13:58 I called Jalal and asked him if I could come in, he said he would come and bring me in. At 14:30 I really was at the station, Jalal came to pick me up, on the way there I tried to understand from him why he didn't tell me in advance that he wasn't waiting for me even though it was clear I was coming to meet him before the interrogation. He did not have an answer. He sat me in the corridor of the department where I waited even more even though the time of the prevention had passed. Only about 15-20 minutes after the time of the prevention was I allowed to meet the defendant. He was taken out of the department into a small room, I saw a little boy who when he saw me burst out crying, he looked exhausted, I introduced myself, I asked him about the interrogation, he told me that he said in the interrogation that he had thrown only one stone, I asked him about his arrest and the time until he got to the police. He said the soldiers had threatened and hit him and at that moment I thought I would write it down and take a deposition from him. I understood that the defendant was upset and in a bad state so I decided to let it go. Before we parted the defendant asked me not to leave him alone. I explained to him that that was not possible, that he would be okay, he repeated the request a few times.