



**Al Mezan Center for Human Rights**



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## **Fact Sheet**

### **Juvenile Justice in the Gaza Strip**

2012 to 2016

2016

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## **Introduction**

It goes without saying that present-day youth are the adults of the future. It follows that, if a minor who comes into contact with the law is not effectively rehabilitated, he or she is faced with the prospect of an adulthood of crime. From this rationale develops the understanding that establishing a holistic, comprehensive juvenile justice system is a fundamental safeguard in the respect, protection, and promotion of human rights, and is a critical factor in building a crime-free society.

International legal protections for children related to juvenile justice are contained primarily in the UN Convention on the Rights of the Child (CRC). The CRC outlines minimum protections and guarantees for children and articulates international human rights norms and principles that specifically apply to children. The juvenile justice “Beijing Rules” contain the UN’s standard minimum rules for the administration of juvenile justice. Together, the child’s best interests principle and imprisonment only as a last resort and for the shortest appropriate period of time form the basis of obligations for duty bearers concerned with juvenile justice. It follows that all minors are entitled to a fair and public hearing by a competent, independent, and impartial tribunal. Also, that torture and ill-treatment are absolutely prohibited without exception.

These obligations grant juvenile offenders rights that are vital for their legal protection,<sup>1</sup> rehabilitation, and reintegration into society, by detailing procedures that must be followed for the care and trial of juvenile offenders. These obligations must be reflected in domestic legislation, which is the first stop for the protection of the child.

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<sup>1</sup> Article 29, Amended Palestinian Basic Law of 2005 “Maternal and childhood welfare are national duties. Children shall have the right to ... To be segregated – in cases where they are sentenced to a penalty that deprives them of their freedom – from adults, and be treated in a manner that is appropriate to their age and aims at their rehabilitation.”

Palestinian law defines a minor as a person who is under 18 years of age<sup>2</sup> in line with the CRC,<sup>3</sup> and divides minors into three age groups: ages 13 and under, ages 14 and 15, and ages 16 and 17.<sup>4</sup> This fact sheet reflects this definition and these categorizations of a minor, who, once having come into contact with the law is considered herein a juvenile offender.

## **Methodology**

This fact sheet provides an overview of the juvenile justice practices in the Gaza Strip from early 2012 until mid-2016, and evaluates the level of adherence to domestic law and, albeit briefly, to international standards in relation to juvenile justice. This fact sheet also delves into the main challenges currently preventing the establishment of a holistic, comprehensive juvenile justice system, and sets forth recommendations for practical solutions.

The facts and figures in this fact sheet are based on rigorous monitoring and documentation by Al Mezan Center for Human Rights (Al Mezan) and in-depth interviews. In the course of this work, Al Mezan staff have carried out numerous visits to detention centers in order to document firsthand the conditions and practices of the centers and to collect information from juvenile offenders and minors detained in Gaza through the use of specifically-designed questionnaires that reflected the Juvenile Delinquents Act No. 2 of 1937, the Criminal Procedures Act No. 3 of 2001, and the Reform and Rehabilitation Centers 'Prisons' Act No. 6 of 1998, under Palestinian domestic law.

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<sup>2</sup> Article 1, Palestinian Child Law No. 7 of 2004

<sup>3</sup> Article 1, UN Convention on the Rights of the Child,  
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>4</sup> Article 2, Juvenile Delinquents Act No. 2 of 1937

Al Mezan's staff first conducted a specialized workshop for the minors' parents to explain our work, and obtained permission to interview their children who were/are being held at Al Rabee Social Welfare Institution (Al Rabee). The staff then conducted a lengthy meeting with the Director of Al Rabee, to layout the aim of our study. Finally, Al Mezan staff interviewed 31 minors in one-hour long meetings at Al Rabee.

This fact sheet is, however, limited in scope due to restrictions on accessing material concerning confidential processes within trials and due to limited capacity of Al Mezan's staff who chose to carry out in-depth, individual interviews with 31 minors, rather than brief interviews with a larger interview-body. The latter decision was made in order to conduct a qualitative study, which required unprompted statements from the minors. There are also privacy concerns for minors that are Al Mezan's first priority in this project which aims to protect the human rights of juvenile offenders.

## **Statistics on Juvenile delinquency in the Gaza Strip<sup>5</sup>**

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<sup>5</sup> Al Rabee.

The following statistics on juvenile delinquency rates, care, and processing in the Gaza Strip indicate that the creation of a juvenile justice system standardized to international law is a matter of urgency. Overall, the message taken from the statistics is that the levels of crime and subsequent detention and trial of minors is linear, devoid of improvement in four years.

## **I. Number of Juvenile offenders in the last four years:**

	<b>Age groups</b>		
	12-13 years old	14-15 years old	16-17 years old
<b>2012</b>	39	490	290
<b>2013</b>	54	513	302
<b>2014</b>	41	610	215
<b>2015</b>	24	555	310

## **II. Number of minors in detention distributed by the type of charge<sup>6</sup>:**

Figures outlined in the table below cover the period between 2012 and 2015:

<b>Type of charge</b>	<b>No. of detained minors</b>
Attempted murder	3
Murder	49
“Moral cases” <sup>7</sup>	437
Burglary (breaking and entering)	405
Theft (street crime)	1,253
Assault	688
Traffic violation	19

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<sup>6</sup> Al Rabee.

<sup>7</sup> An act that is inconsistent with public opinion of morality, including for example, sexual offences and assaults, extra-marital relations, etc.

Insulting religious sentiments	18
Drug trafficking	191
Attempted escape from detention	4
Other charges <sup>8</sup>	89

The number of minors detained pending investigation is 287.

### **III. Adherence to detention procedures:<sup>9</sup>**

The statistics in this section are based on seven visits conducted by an Al Mezan researcher to Al Rabee in early 2016. The visits were conducted to verify whether officials entrusted with law enforcement and care of minors were acting in compliance with relevant procedures.<sup>10</sup>

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<sup>8</sup> Involvement in fights, carrying of weapons without permits, etc.

<sup>9</sup> Amended Palestinian Basic Law of 2005:

Article 11: "Paragraph (1) Personal freedom is a natural right, shall be guaranteed and may not be violated. Paragraph (2) It is unlawful to arrest, search, imprison, restrict the freedom, or prevent the movement of any person, except by judicial order in accordance with the provisions of the law. The law shall specify the period of pre-arrest detention. Imprisonment or detention shall only be permitted in places that are subject to laws related to the organization of prisons."

Article 13: "Paragraph (1) No person shall be subject to any duress or torture. Indictes and all persons deprived of their freedom shall receive proper treatment. Paragraph (2) All statements or confessions obtained through violation of the provisions contained in paragraph 1 of this article shall be considered null and void."

<sup>10</sup> Palestinian Criminal Procedures Act No. 3 of 2001:

Article 29: "No person may be arrested or imprisoned except by order of the competent authority as designated by law. He must be treated in a manner that will preserve his dignity and may not be physically or morally harmed."

Article 34: "The judicial officer is held to hear the statement of the person arrested immediately and, if such person fails to come forward with justification for his release, to send him within twenty-four hours to the competent deputy prosecutor."

Article 39: "Entering and searching homes is an act of investigation which may not be conducted except pursuant to a search warrant from the Public Prosecution or in its presence, either on the basis of an



The majority of the complaints listed below are individually reflective of unlawful acts under Palestinian domestic law and amount to violations of international legal standards and norms concerning minors. The relevant articles—with a focus on domestic legal provisions—are footnoted, per section, for review with the stated complaint of the minor.

In the interests of brevity in a fact sheet that focuses on domestic law, Al Mezan does not include the full text of international legal provisions, yet stresses that some of the complaints cited below are clear-cut examples of violations of international law. Some examples include the reported torture and ill-treatment; arbitrary arrest and detention; the prevention of minors from having access to legal counsel during questioning; denial of prompt appearance before judge or independent and impartial authority in a fair hearing; and forcing children to live in undignified conditions.

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accusation charging a person living in the house required to be searched of committing or participating in the commission of a felony or misdemeanor, or on the basis of strong evidence that he is in possession of items related to the crime.”

Article 99: “Before interrogating an accused, the deputy prosecutor must subject him to a physical examination and establish the visible injuries he sees and the reasons for their occurrence.”

Article 107: “Paragraph (1) The warden of the house of detention must deliver the accused within twenty-four hours to the Public Prosecution for the investigation.”

Article 108: “The deputy prosecutor may, after interrogating the accused, detain him for a period of forty-eight hours. The period is extended by the court in accordance with law.”

Article 120: “Paragraph (4) The period of detention referred to in the three preceding paragraphs may under no circumstances exceed six months, otherwise the accused shall be released immediately, unless he is referred to the court that is competent to try him.”

Juvenile delinquents Act No. 2 of 1937

Article 6: “Police and Prisons Inspector-General shall take necessary procedure, to the best of his ability, to separate children /juveniles held in detention from indicted adults.”

In other cases, the circumstances in which the act was carried out lead us to conclude that international standards are not being adhered to. For example, the extensive use of handcuffs is considered incompatible with international legal standards, as restraint or force can be used only when the child poses an imminent threat of injury to himself or herself or others, and only when all other means of control have been exhausted. The extensive denial of family visitation and correspondence, as well as detention of children and adults together when it isn't in the child's best interest also reflect the departure from the legal obligation to promote the well-being of the minor.

The below policies and practices generally fail to take into consideration the particular vulnerabilities of minors, one of the founding principles of child protection under international law.

The researcher met with 31 minors in custody, 10 of whom had been sentenced prior to the visit. The questions covered the period of 2012 to 2015:

- **8** minors (i.e. 25.8%) stated that they were arrested arbitrarily. E.g., A.S., 13, said he had been arbitrarily arrested by the municipal police of the Gaza City district.
- **13** minors (i.e. 41.9%) stated that the prosecutor did not check their bodies for signs of injuries before their questioning.
- **15** minors (i.e. 48.4%) said that they were detained for 24 hours before being transferred to Al Rabee.
- **6** minors (i.e. 19.4%) claimed that their statements were not taken at the time of arrest, and **11** (i.e. 35.5%) said that (where the officer had no probable cause for their arrest) an arrest warrant was not presented at the time of arrest.
- **11** minors (i.e. 35.5%) claimed that they were searched arbitrarily, and **15** (i.e. 48.4%) said that their houses were searched without a warrant from the public prosecution.

- **3** minors (i.e. 9.7%) stated that the duration of their detention exceeds the legal duration of six months, and **27** (i.e. 87.1%) said that they were not presented before a judge within 72 hours.
- **8** minors (i.e. 25.8%) stated that they were held at police stations for more than 72 hours and not in Al Rabee.

#### **IV. Torture and ill-treatment during questioning:<sup>11</sup>**

- **20** (i.e. 64.5%) minors stated that they were subjected to coercion during questioning.

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<sup>11</sup> Amended Palestinian Basic Law of 2005:

Article 13: “Paragraph (1) No person shall be subject to any duress or torture. Indictes and all persons deprived of their freedom shall receive proper treatment. Paragraph (2) All statements or confessions obtained through violation of the provisions contained in paragraph 1 of this article shall be considered null and void.”

Palestinian Criminal Procedures Act No. 3 of 2001

Article 29: “No person may be arrested or imprisoned except by order of the competent authority as designated by law. He must be treated in a manner that will preserve his dignity and may not be physically or morally harmed.”

Article 96: “Paragraph (1) At the first appearance of the accused at the interrogation, the deputy prosecutor is held to establish his identity, name, address and occupation, question him on the charge imputed to him, demand that he respond to same, advise him of his right to the assistance of counsel and warn him that all he says may be used as evidence against him in the trial. Paragraph (2) The statements of the accused must be established in the minutes of the interrogation.”

Article 5, the Universal Declaration of Human Rights

Article 7, the International Covenant on Civil and Political Rights

Article 2, The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984

Articles 2 and 3, Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1975

- **21** minors (i.e. 67.7%) said that they were tortured, **3** (i.e. 9.7%) of whom claimed that they were beaten and threatened with bodily harm.
- **21** (i.e. 67.7%) minors stated that they were subjected to verbal abuse.
- **27** minors (i.e. 87.1%) said that they were handcuffed for extended periods of time and during transfer and questioning.<sup>12</sup>
- **1** minor (i.e. 3.2%) said that the prosecutor did not record his complaint of being beaten.
- **5** minors (i.e. 16.1%) stated that their statements were not taken during questioning.

#### **V. Torture and ill-treatment within Al Rabee:**

- **14** minors (i.e. 45.1%) stated that they were beaten within Al Rabee.
- **6** minors (i.e. 19.4%) stated that they were subjected to ill-treatment.
- **25** minors (i.e. 80.6%) stated that they were spoken to in a degrading manner.<sup>13</sup>

#### **VI. Compliance with the right to legal representation:<sup>14</sup>**

- **11** minors (i.e. 35.5%) said that they were not allowed the presence of a lawyer during questioning.

#### **VII. Lack of sensitivity to minor status:<sup>15</sup>**

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<sup>12</sup> Law enforced in the Gaza Strip does not prohibit handcuffing of minors; however, its counterpart the (Jordanian) Juvenile Reform Act No. 16 of 1954, which is enforced in the West Bank, does.

<sup>13</sup> A Newly appointed administration of Al Rabee promptly addressed such issues and formed committees to investigate.

<sup>14</sup> Palestinian Criminal Procedures Act No. 3 of 2001, Article 102: "Each of the parties is entitled to the assistance of counsel during the investigation."

- **28** minors (i.e. 90.3%) stated that they were not tried by juvenile-specialized courts or specialized authorities.
- **15** minors (i.e. 48.4%) stated that they were held in cells with adults at their local police stations while waiting to appear before the public prosecution.
- **27** minors (i.e. 87.1%) stated that they were transported to court with adult suspects.
- **11** minors (i.e. 35.5%) stated that they were not allowed to attend their trials.
- **28** minors (i.e. 90.3%) said that the courtroom was open to the public and had an audience.

## VIII. Conditions at Al Rabee:<sup>16</sup>

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<sup>15</sup> Juvenile Delinquents Act No. 2 of 1937, Article 3: "Paragraph (1) Juvenile court shall convene, wherever possible, in building/room other than room/building where regular courts proceedings are held. Paragraph (2) juvenile court shall be held on days/times other than the days/times at which regular courts sessions are held. Paragraph (3) necessary arrangements shall be taken, whenever possible, to ensure separating minors appearing to be below 16 years of age from adults indicted or convicted of crimes unrelated to the minor's crime in question while being transported to/from court rooms and while awaiting to stand before a judge or afterward. Paragraph (4) No person shall be allowed inside juvenile court room when in session except for court officials, litigants, and persons in direct relation to the case."

Article 8: "Paragraph (3) - the court shall explain to the minor and his/her parents or guardians the implication of standing on trial and specify the place where the court litigation will be held. Paragraph (4) - After explaining the charges to the minor in question, the court shall ask whether he/she pleads guilty. Paragraph (6) – if the court finds legal ground for the presented case, it shall hear the defense testimony, including the minor's testimony.

<sup>16</sup> Reform and Rehabilitation Centers 'Prisons' Act No. 6 of 1998, section 5 (healthcare), section 6 (notifying detainees about relevant judicial papers), section 8 (education of juvenile detainees), and section 10 (detainees' rights)

- **1** minor (i.e. 3.2%) said that the artificial lighting is insufficient.
- **14** minors (i.e. 45.2%) stated that meals are insufficient in quantity and in quality.
- **15** minors (i.e. 48.4%) stated that medical and psychological care is inadequate. They also stressed the absence of a psychologist in Al Rabee.
- **4** minors (i.e. 12.9%) said that the number of lavatories is insufficient.
- **1** minor (i.e. 3.2%) said that beds and blankets are limited in numbers.
- **6** minors (i.e. 19.4%) complained about the lack of a clean environment.
- **1** minor (i.e. 3.2%) stated that he was not able to communicate with his parents and lawyer.
- **1** minor (i.e. 3.2%) stated that his parents could not visit him regularly.
- **6** minors (i.e. 19.4%) said that they could not meet their lawyers at any time.
- **2** minors (i.e. 6.5%) said that they were not interviewed by a social worker.

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The United Nations Standard Minimum Rules for the Treatment of Prisoners.  
United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

## **Conclusion and recommendations**

The statistics and information presented in this fact sheet indicate that the juvenile justice system in the Gaza Strip is in many ways in violation of domestic and international law, including the jus cogens norms on torture and ill-treatment; it fails to adhere to due process standards during arrest and detention and to maintain safeguards during trial. It is evident that law enforcement officers and authorities charged with the care and processing of the minors did not act on the best interests of the child.

Pursuant to Al Mezan's mandate of protecting and promoting human rights, especially rights of the child, we stress the need for concrete steps to be taken on all levels—legislative, judicial, and executive—to build a holistic and comprehensive juvenile justice system, which prioritizes addressing the root causes of the rise of juvenile delinquency and adopts alternative forms of punishments, whereby imprisonment is a last resort. The system should be based on the child's best interests principle.

Al Mezan calls for the cooperative implementation, by the community and government, of restorative justice principles in view of repairing harm caused by crime and reducing future harm through crime prevention. Al Mezan re-asserts that security and maintenance of the rule of law is a direct reflection of socioeconomic conditions, not relative to punishment laws. Incarcerating juveniles serves to reduce their educational attainment and increase the probability of incarceration as an adult. In accordance with international and domestic legal standards, juvenile offenders must be rehabilitated and aided in conducting productive lives within the humanitarian catastrophe in the Gaza Strip. Steps must be taken to immensely ameliorate the socioeconomic conditions in the Gaza Strip, first and foremost by lifting the nearly ten-year illegal closure and blockade imposed by Israel, which is the catalyst of rampant unemployment and poverty in Gaza.

Accordingly, Al Mezan calls for the implementation the following steps:

- 1.** Amend the Juvenile Delinquents Act No. 2 of 1937 to conform with international standards and conventions pertaining to juvenile justice.
- 2.** Amend the Criminal Procedures Law No. 3 of 2001 to include special procedures for juveniles.
- 3.** Unify existing laws concerning juvenile justice in the West Bank and Gaza taking into account the child's best interest.
- 4.** Law enforcement authorities must uphold the rule of law during arrest and detention, and setup up proper detention conditions that take into account the necessary protection of the minors as a vulnerable population.
- 5.** Establish special police units, courts, and social welfare institutions specialized in the rights of the child.
- 6.** The Palestinian Legislative Council should allocate a budget to reform the social welfare institutions.
- 7.** Urge the prosecution and the courts to monitor and supervise the conditions of minors held at social welfare institutions.
- 8.** Establish comprehensive plans and strategies to rehabilitate and reintegrate juvenile offenders into society.
- 9.** Set up a system to record all movement and transfer of minors upon their arrival.
- 10.** The Ministry of Social Affairs must uphold its responsibilities towards minors, especially social rehabilitation and reintegration of juvenile offenders.
- 11.** The Ministry of Education should set up educational and cultural programs to safeguard juvenile offenders' right to education.
- 12.** The Ministry of Health should provide a medical clinic with specialized medical staff to meet minors' needs.
- 13.** Provide nutritious meals to minors held at Al Rabee suitable to their needs.
- 14.** Separate minors by age and severity of the crime.
- 15.** Establish sports programs for juvenile offenders.
- 16.** Establish vocational training programs for juvenile offenders.



- 17.** Increase the number of visits allocated for juvenile offenders' family members.
- 18.** Hold periodic meetings that bring together all stakeholders, including competent authorities, to discuss the recommendation of this fact sheet and present binding resolutions.

**The End**