



**State of Israel
Ministry of Justice**

Date: 12 Sivan, 5781

May 23, 2021

Re: Palestinian Minors in Military Juvenile Justice System – May 2021

Background

1. Following joint staff work, held together with senior officials from the Ministry of Justice, the Military Advocate General's Office, the Military Courts, the Israel Police, the Ministry of Public Security and the Israel Security Agency, several measures were taken aimed at strengthening and promoting the protection granted to minors in the military justice system in the West Bank, while simultaneously taking into consideration the unique circumstances and the security situation in the West Bank. Many of these amendments were anchored in a military temporary order that came into effect in 2009, anchored permanently in 2013. Further amendments are anchored in additional orders, as detailed below.

The Key Amendments

2. Following are details of the relevant key amendments, as well as some general notions.
3. Age of minority and legal responsibility - The age of minority was raised from 16 to 18, and the age of criminal liability set at 12, corresponding with Israeli law.
4. Informing the minor of his/her rights during questioning - It is obligatory to inform the minor, prior to his/her questioning, of his/her right to consult with a lawyer in private. Note that the presence of a lawyer in an interrogation is not part of the Israeli legal system in general, and this applies in Israel and in the West Bank concurrently. Such notification is to be given in a language understood by him/her, taking into consideration his/her age and maturity. The Order also states that the interrogator must inform the defense attorney, whose details were provided by the minor, of his/her questioning.
5. Detention and incarceration centers for minors - A minor may not be detained or

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incarcerated unless it is in a separate facility or wing for minors. It was further determined that a minor may be held in a police station, provided that he/she is held separately and that there will be no contact between him/her and suspects or detainees who are not minors. Additionally, an obligation to respect the detainee's dignity during every stage of the investigation and judicial process, including by providing him/her with adequate conditions, food, water and access to a bathroom as well as clothing if necessary, has been specifically included. Note that, with the raising of the age of minority to the age of 18, an additional instruction was added to allow the Israeli Prisons Service the holding of those who are not minors in the wing designated for minors, for the benefit of the minors, provided that the sleeping quarters are separate).

6. Temporary order concerning the language of questioning of minors and documentation of their questioning - The long-term practice of questioning minors who are suspected of committing an offense by a police officer in his/her language or in a language that the suspect understands, was anchored in a temporary provision added to the Order in September 2014. The temporary order stipulates that in cases where the questioning cannot be documented in the language in which it was conducted, or the minor being questioned is illiterate, it must be audio or visually recorded; and any questioning conducted outside of the police station must be documented in the language it was conducted in. If it cannot be documented in his/her language, the documentation must be translated in his/her presence. The temporary order further anchors, similar to the law applicable in Israel, the obligation to visually document certain questioning of minors, such as questioning in an offense that is not a security offense, and for which the maximum penalty prescribed is imprisonment for ten years or more. The temporary order has been extended annually, and is currently in force until August 1, 2021.
7. The establishment of a Military Juvenile Court and judges' training - The trial of a minor is held before a Military Juvenile Court, presided by a single juvenile judge or by a panel in which the presiding judge is a juvenile judge. These juvenile judges receive appropriate training, similar to the training offered to justices of the Youth Courts in Israel, in addition to additional regular designated training.
8. Procedures before the Military Courts - The Military Courts operate as a separate

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and distinct unit within the Israeli Defense Forces (IDF) and are fully independent, subject only to the rule of law. Pursuant to the 2019 amendment, Military Juvenile Court proceedings are conducted *in camera*, according to the *Security Provisions Order [Consolidated Version] (Judea and Samaria) (No. 1651) 5770-2009* (hereinafter: "Military Order") (Section 138(a'1)), with certain exceptions, enabling the Court to allow others to be present. The proceedings are fully translated into Arabic by specially-designated translators. During the outbreak of COVID-19, a special temporary order was enacted allowing the proceedings to be held through VC due to the extenuating circumstances, this Order is in effect until June 9, 2021 and will be further extended pending the circumstances.

9. Legal jurisdiction and rules of procedure - Proceedings are held in a Military Court, pursuant to the relevant provisions of the international law authorizing the Military Commander jurisdiction. Additionally, Military Courts are bound by Israeli evidence law in criminal proceedings (Section 86 to the Military Order).
10. Separation between the judicial process of adults and the judicial process of minors - Generally, minor-related proceedings are held separately, and a minor may not be prosecuted together with an adult, except with the consent of the Chief Military Prosecutor of the Military Advocate General or a person so authorized by him/her (similar to the provision in the *Youth (Trial, Punishment and Modes of Treatment) Law 5731-1971*, requiring the Attorney General's consent). In addition, to the extent possible, the Court will hold its hearings at a place or at a time other than where other trials are being conducted, and minor defendants will not be brought with defendants who are not minors to or from the court and proceedings will not be held therein together.
11. Special statute of limitation - This amendment provides that a person who commits an offense as a minor, shall not be prosecuted if one year has elapsed from the date of the offense, except with the approval of the Chief Military Prosecutor or a person so authorized by him/her. In security offenses, this period stands at two years.
12. Translation of indictments - Indictments are translated into Arabic and the defendant may respond only following the receipt of the translated indictment,

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unless he/she or his/her lawyer waives this right, according to the Military Order.

13. Legal representation and the appointment of a defense attorney - The right to counsel and the right to avoid self-incrimination are substantive requirements under the existing law in force in the West Bank, and in practice, Palestinian minors are fully represented in their proceedings before the Military Courts. The Military Order authorizes the Military Court to appoint a defense attorney for a minor defendant (if not represented), so long as the minor's best interests justify doing so.
14. Status of the minor's parents - The minor's parent or another adult relative of the minor must be notified of the minor's questioning or detention, provided that the minor has made available that person's contact details and subject to a number of exceptions set out in the Order (similar to the exceptions in Israeli law). Furthermore, during the trial, the Court may order that the minor's parents be present in every hearing in his/her case, may submit in his/her place any motion that a defendant may submit to the Court, and may question witnesses and make arguments in place of the minor or together with him/her.
15. Probation Officer's Reports - The Order provides that the Military Court in the West Bank may be assisted by a report prepared by the Welfare Staff Officer in the Civil Administration regarding both the detention (Section 136E), and the sentencing (Section 148). The Courts may also request a report in appeal proceedings on the decision to detain until the conclusion of the proceedings. According to Section 136E(b)), the report must include alternatives to detention as well as recommendations regarding special conditions for release. These reports, conducted on a regular basis, are highly regarded by the Courts. They include information regarding the minor's personal, familial and health status as well as any extraordinary circumstances. Note that this practice follows a petition filed to the High Court of Justice (*H.C.J. 1845/17 A.T. v. The Military Commander in the West Bank et.al.*).
16. Shortening detention periods - Following extensive staff work, and the Supreme Court ruling in H.C.J. 3368/10 and 4057/10, several significant changes were made, affixing shortening the initial periods of detention, before arraignment, prior

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and following the submission of an indictment and until the conclusion of the procedures, adapted to the various minors' age groups.