

A response to the "Betzelem" Report relating to Military Jurisdiction, dated July 2011.

The responses have been reviewed by elements at the Ministry of Justice.

The Principal Claims

1. Israeli Military Jurisdiction is the product of internationally recognized Laws of War. Similar jurisdictions elsewhere do not make separate allowances for the judgment of Minors, yet nevertheless, during the past year, a separate court was established for the handling of juveniles bringing about an improvement in the defense of Minors' rights. The assigned court enables the appearance of minors without the presence of majors, allowing for total freedom of expression, and is prepared to consider the role and responsibility of parents as a disciplinary alternative to punishment.
2. Despite repeated requests to deal with Minors' Jurisdiction in a fully encompassing manner, including the use of juveniles by the various terror organizations for the purpose of executing terror acts that have led to injury and death on all sides (Betzelem were provided with 160 severe cases implicating Minors, Stone and rock throwing as well as bomb throwing that have caused death), Betzelem have chosen not to deal with Minors' Jurisdiction in an even-handed manner, nor have they addressed the use of Minors by Terror groups, which strictly contradicts Human Rights as well as International Law.
3. Despite numerous attempts at creating Review Tests for Minors, the Military Courts face a perpetual lack of response from Palestinian Authorities, Parents and the Accused themselves, who inadvertently see their offensive acts as ideological ones. This is best expressed in Betzelem's Report under Chapter D – "The Trial" – sub section under the headline of "Plea Bargains", where it is openly admitted that there are real difficulties in ascertaining a rehabilitation course for the Minors involved.
4. Anonymous Surveys cannot serve as reliable sources when wanting to monitor the level of violence towards Minors during arrest procedures. Transparency is imperative to publicize claims and accusations, especially when dealing with Betzelem who are known for lodging numerous complaints with the Investigating Military Police. In the only published and named incident at Beth Omer, a Palestinian Minor was indeed arrested for Stone and Rock Throwing, and, in view of his young age, he was handed to the care of his parents. The forces involved acted civilly without extraordinary incident. Subsequently no complaint was lodged by coordinating bodies.
5. Betzelem's Report relates to expressions of concern and care for Minors' Rights by Judges in the courts. This is a clear indication of the initiative of Military Courts to protect these rights. Furthermore, Judges have been known to release prisoners where these basic Minors' Rights were not observed. Such judgments have brought about changes in the work of the Police as well as an improvement in protecting Minors' Human Rights. The involvement of Judges and the creation of a juvenile court show a clear expression of sensitivity to Youth, a point not adequately addressed in the Report's conclusions.

6. Advocates representing Minors seem to give clear advantage to sealing Plea Bargains rather than revealing the force of evidence, a clear indication that the use of Plea Bargains is advantageous for the purpose of protecting Minors' Rights. Led by the High Court of Justice, courts have generally encouraged Plea Bargains. The choice to lodge a Plea Bargain is entirely in the hands of the accused and finally in the hands of his Advocate. We wish to stress that contrary to the norm in Israeli civil courts, almost ALL accused in Military Courts *are* represented.

The Response from the Military Courts

Much thought is being invested by the Military Courts, bringing about changes in court customs throughout the court system in Judea and Samaria. This has led to corrections in the legal code as well as the *unprecedented creation of a Military Juvenile Court*.

All these actions have brought about vast improvements in the handling of Minors whilst maintaining a balance between the Public Interest and the Rights of the Individual Minor.

THIS IS UNPRECEDENTED IN ZONES OF CONFLICT nor in any legal system operating under Laws of War.

Further comments as follows:

Among the vast and varied number of cases handled by the military court system in Judea and Samaria, the banner to maintain Justice at all costs, is best shown in the handling of cases involving Minors.

The Youth appearing in the court system are accused with a variety of Acts of Violence, starting with causing death with intent and its derivatives (parallel to first degree murder in an Israeli civil court), through to Stone Throwing. The Report clearly states that " Stone Throwing , normally executed by youth, is a violent act that can risk injury and even death". It is in the public interest to struggle against this phenomenon because of the admitted inherent dangers to security forces and civilian by-standers, expressed in assigning legal proceedings when dealing with such offenses on all it entails in investigating suspects, trying them and often having to keep them under arrest until the end of proceedings.

The level of danger incurred in Stone Throwing which warrants arrest till end of proceedings has been addressed in the High Court of Justice during a series of judgments. For example, **Judge Heshin** notes in the case of Hamed *“The throwing of stones at policemen and passing vehicles has become a daily norm in our lives, the danger involved being evident to the naked eye. The throwing of a stone at the head of a man could kill him or at least incapacitate him and turn him invalid for the rest of his life, and we should by no means overlook this danger. Even the young age of the accused is no deterrent as it has been proven beyond doubt that the throwing of a stone by the hand of a 15 year old is no less fatal than that thrown by an adult”*.

Similar words, though sharper, were expressed by **Judge Joubran** in the case of Awiss'at :- *“He who intently throws a stone at a passing vehicle thereby endangering traffic, he who throws rocks at police who are there to establish order, be his motives and national identity, whatever they may be, be his age whatever it may be, He must be aware that he IS dangerous, and as such, if caught, his chances of being released from arrest are remote, and any alternative to arrest is no guarantee that he will not find himself performing the same offence once again”....*

Nevertheless, the Report clearly states that despite the above-said, Military Courts maintain strict monitoring of Minors' Rights regardless of the severity of the offences judged.

It is worth mentioning that even though specific legislation with regard to Minors is sparse, this has not prevented Military Courts from giving appropriate importance to age during the various phases of the legal process, especially at conviction. Already in 2000 the **Military Court of Appeals** noted:- *“when dealing with a Minor , especially one who has entered the age of criminal responsibility, bereft of previous offences, and has not caused apparent damage to property or people, allows for the consideration not to apply severe punishment, and leave the Minor the hope and opening to correct his ways, whilst remaining in his natural family and home surroundings.”*

A number of footnotes in the Report (#144, 150, 185 and 187) clearly stipulate that the age of an accused is taken into consideration to release from arrest, norms that the Military Courts have adopted from the Israeli procedure of handing down justice. Furthermore, courts have been known to release accused parties when one of their basic rights has been infringed, even when addressing a right not necessarily protected by law.

A number of prominent examples of these norms adopted by the military Courts: The courts have been known to accept that Night Interrogation, contrary to legislation covering youth in Israel, often leads to release even though the legislation does not necessarily apply in the Administered Areas. Similarly, the same could apply in cases where the interrogator is not an appointed Youth Interrogator. Furthermore, due attention has been granted to the right of representation when addressing the extension of arrest procedures of Minors. This goes as far as releasing a suspect Minor when not duly represented, due to the absence of his attorney as a result of delays at Road Blocks. In fact, delays in legal proceedings are a

cause for release, when the courts are conscious of the need to expedite proceedings. Minors whose cases have not been heard within reasonable time are often released as well. The same applies to a Minor who has been hurt whilst under arrest.

Age is a consideration also when establishing punishment. This applies to all offences, especially in the case of stone throwing, which despite the severity of the offense, punishment is not severe. After verification, it would seem that the level of punishment in the Administered Areas is no different from that adopted in Israel. The Report clearly states that the level of punishment is relatively low especially to Minors under the age of 14 (the most severe case judged to a Minor in that age group during 2009-2010, being 9 days of incarceration, being the number of days he had already been under arrest.)

Indeed, as quoted in the Report's Footnote #175, ideological motives mixed with the lack of cooperation of the accused as well as Palestinian Authorities, in establishing rehabilitation programs, limit the means of rehabilitation despite the clear advantage in such programs over standard punitive procedures. Despite this, Military Courts will pursue the keeping of Rights of Minors without relating to the type of offense and will do everything in their power to bring about creative rehabilitation.

Nevertheless we wish to point out some discrepancies from the Report:-

- a. Chapter 3 under the heading " The violation of Minors' Rights suspected of Stone Throwing", the first clause reads : "the rights of Palestinian Minors are blatantly violated during the entire process against them from the arrest, through the investigation, the legal process and the trial.", the responsible parties being the bodies handling the Youth through to the Courts. With all due respect, it is preposterous to accuse the Courts of such especially having quoted previous comments from the Report, which clearly show the consistent effort to protect the rights of Minors handled by the courts. The inconsistencies in the Report are such that one inflammatory comment is immediately followed by comments on how the Military Courts are leaders and initiators in bringing about change and protection of Minors' rights. Then, actual cases are quoted.
- b. The chapter dealing with Arrest until End of Proceedings, it is said that the presence of parents is not needed at these sessions. This is incorrect. Though the corrections to the law that grants statutory status to the parents during the trial, do not actually apply to the arrest period, the Military Courts insist strictly on the publicity and openness of the trials to enable the presence of families particularly in the cases of Minors. In some instances, suspects have actually been released from arrest when their families were unable to attend.
- c. The chapter dealing with Plea Bargains it is correctly stated that " the Juvenile Military Court attempts at expediting procedures" however it is incorrect to state that " Military Judges see in the extension of legal proceedings a legitimate phenomenon". Whilst the Juvenile Military Courts make every effort to expedite proceedings, the procrastination of proceedings lies squarely with the Defense who often demand delays and postponements to the displeasure of

the Courts. The court will not hesitate in demanding release due to procrastination as stated in Footnote #9. A case is mentioned in this chapter relating to a suspect whose attorney recommends he remain under arrest for 8 MONTHS, the time needed to bring relevant witnesses! This seems an unreasonable and refuted claim as it is clear that in the cases of Minors, the courts will allow for delays of this nature not to go beyond several days only.

- d. In the chapter dealing with Reviews, it is correctly said that “the lack of rehabilitation facilities acceptable to the courts and the Palestinian officials, alongside internal Palestinian political interests, prevent the availability of alternative arrest facilities for Minors”. It is also said that as a principle, Palestinian society does not see the need to rehabilitate a stone throwing youth, and the fact is quoted, that largely, suspects do not cooperate with the Palestinian Authority (PA). Nevertheless original solutions are constantly being sought. For example in Case 1192/10(Judea), a female suspect, subject to possible domestic violence, was transferred to an institution for girls of the PA in accordance with a Social Welfare Officer.
- e. The chapter dealing with conclusions, once again, the Military Courts are classified as those who harm Minors’ Civil Rights. This is inconsistent with all that has been said above and material that appears throughout the Report. The claim that the Legislative Process imposes Plea Bargains instead of proper legal proceedings, is totally refuted and has no basis in the facts reviewed above.

In conclusion, one can establish beyond doubt that the Military Courts have initiated and led for changes in the behavioral norms of the enforcement officials in all that concerns the rights of Minors. This will be part and parcel of the future as well. Decisions of the Military Courts bear immediate operative implications as well as influence, both on investigative and incarcerating elements, as well as on the promotion of legislation that covers Minors’ Rights in the region. Sitting Military Judges will continue to pass judgment according to their conscience and discretion, and will continue in the ever so difficult tasks to seek the balance between maintaining Civil Rights generally and Minors’ Rights in particular, on the one hand, and the protection of the public peace and national security, on the other hand.

The Response from the Military Prosecutor's Office

We shall first relate to Stone Throwing in general and then to Stone Throwing by Minors in particular; then we shall relate to the Military Prosecutor's approach to youth and Minors. We shall then relate to the various claims laid down in the Report that require response, taking into account the limited material provided that identifies various cases and instances.

1. Stone Throwing at traffic ways, man or property, all the more at passing vehicles, is considered a severe offense. The mere act exposes the victim to extreme danger and is a blatant challenge to the law. The offense is simple to perform and hard to detect, to investigate and to prevent. More often than none, the act of stone throwing is considered by the Terror Organizations as an "Admission ticket" to the organization by the culprit, who if successful, can be "promoted" to more serious terror activity. In Judea and Samaria, Stone Throwing is rampant on roadways against passing civilian and security vehicles, and in built up areas it is directed towards the security personnel.
2. The phenomenon of Stone Throwing is spreading widely. The commonality of the offense has reached thousands of instances every year. The increase in instances is evident in the Report. This intensity requires severe enforcement with a view to reduce instances, deter offenders and offer security to the wider public. This requires adequate punitive measures, as well as appropriate detaining of offenders until end of proceedings.
3. It should be stressed that the State Prosecutor who controls the prosecuting bodies in Israel, instructs for the immediate arrest of a stone Thrower, and demand punitive arrest with an assessment of the likely further danger this offender poses. This will be amplified as instances of Stone Throwing increase, both on ideological basis or as part of general unrest. All these considerations apply also to the areas of Judea & Samaria.
4. Stone Throwing is indeed not a new phenomenon, and most of the offenders are young adults and minors. The courts have dictated: "this hard reality requires harsh response, both to punish the offenders adequately and deter the wider public from performing such offenses." In view of the above-said, the High Court has handed 7 months imprisonment to a minor found guilty of throwing stones at passing vehicles.
5. It should be further noted that the State Prosecutor relates to a typical case of a 16 year old with no previous record, member of a gang, performing a single act of Stone Throwing at a passing vehicle without causing any damage, is subject to 3-4 months incarceration without labor.
6. In summation, the policy of the Military Prosecutor with regard to offenses related to stone throwing, is to demand detaining until end of proceedings with mandatory Imprisonment thereafter, maintaining a coordinated policy with that of the High Court of Justice.
7. As reported, security regulations underwent adjustments some 2 years ago, with the establishment of a juvenile court to handle offenses by Minors up to the age of 18 (even though the maximum age to be officially handled by that court should be 16), thus providing a protective net means to guarantee the Minors' Human Rights.

8. We wish to stress that the setting up of a juvenile court is only the start of reforms, part of an overall process which generally seeks to address the rights of Minors being tried and investigated in the region. The past year has seen an inter organizational research being done with the purpose to further protect the rights of Minors undergoing an investigative or judicial process. This is the direct result of numerous protests and approaches to the military judicial authorities. The results of this research will be made available within months.
9. Regardless, in practice, the military prosecuting authorities conduct very close supervision with regard to arrests of Minors up to the age of 16, over and above the required supervision by law. As such, the arrest of a Minor requires the authorization of a senior judicial official who is not part of the investigative body. The decision to place under arrest and bring a Minor in front of a military judge, is taken by that same unaffiliated official after having studied the case brought against the Minor, evidence available, investigative procedure and the age of the suspect.
10. Under the headline “time lapse before handing an indictment”, the report relates to arrest periods and their length prior to indictment. These periods are up for review and considerable shortening both vis a vis young adults as well as Minors. The various officials in the region have been advised of this imminent adjustment.
11. We now relate to the chapter headed “ Data relating to punitive actions against stone throwing minors”. The way this chapter is being presented is steering well away from the truth. No reference is made to the complexity of considerations with regard to Palestinian Minors accused of stone throwing. Periods of detention cannot be critically analyzed without relating to the many factors involved such as the number of previous offenses, the target at which stones were thrown, the measure of damage caused to humans, if any, the level of spontaneity of a given event, the age of the offender, his criminal past (if any), the time lapse since the last offense, the measure of admission and regret, special personal predicaments, to name some.
12. As a rule, the punitive means include actual incarceration, probation or even a financial fine or a period of incarceration in exchange. More often than none, punishment is a balance of all three elements. For example, where actual incarceration is limited to a short period, the relative weight of probation and fine is larger so as to create an all-round punitive measure.
13. The Report relates to the case of a Minor sentenced to 20 months jail. It must be noted that the culprit was a member of a cell that had thrown previously Molotovs, stones as well as improvised explosive devices. The court took into consideration the fact that no apparent damage had been caused from the youth’s action, his young age, and thus respected the request for plea bargain. The accused was 15 years old at the time of sentencing. Regardless and with due consideration, this is no “normal” stone throwing event, but a far more severe crime that needs to be kept in proportion when demanding punitive measures.
14. Similarly, in the said case involving the punishment of young adults for stone throwing, the Report fails to state that the appeal of the defense was accepted, and that the Military Court of

Appeals reinstated the plea bargain in agreement with the prosecution, such that had been agreed on previously. The court of appeals furthermore agreed that the evident erosion in punitive actions must be halted with regards to stone throwing offenders.

15. In response to the chapter dealing with arrest (as well as the detaining of juveniles under the age of criminal responsibility), we note that suspects are generally arrested either very close to the time of the alleged offense, to the extent that security considerations allow for this ; or at night, when initiating arrests. Initiated arrests take place under cover of darkness, normally as a result of due consideration of the arresting force to maintain its own safety and the general surrounding security.
16. In response to the chapter dealing with investigations, we note that all interrogations take place in Arabic (though written reports are drawn in Hebrew), and furthermore they are recorded on audio tape, and very often video-taped, so that fair judgment can be assessed from the nature of the interrogation and the way admissions are being drawn. In practice, the interrogation of juveniles in the region complies with all the dictates & reservations that exist on this subject, within Israel.
17. In response to the chapter dealing with the right to legal counsel, we wish to note that the prevention of such a meeting does not imply it does not materialize. One should differentiate between factual and legal predicaments. Every suspect is advised in his language that he has right to legal counsel, before commencement of interrogation. He, the suspect, is the one to decide if he wishes to exercise this right. There exist conditions that a suspect may be forbidden legal counsel, by law.
18. The Report relates to a case where a suspect, awaiting trial, legally prevented to legal counsel. Then the case of two Minors, on whom evidence has been relayed to the investigating police, which refrains us from relating to these particular
19. In relation to the chapter dealing with the time of interrogation, we wish to state that the time of interrogation is a factor determined by the time of arrest. Accordingly, if a suspect is arrested at night during initiated arrests, then it is reasonable to assume that interrogation will take place close to the time of arrest.
20. We stress that laws pertaining to Juveniles, in Israel, allow for interrogation to take place at night, particularly if the suspected offense took place shortly before arrest, and if the suspected offense is of a criminal nature (Stone Throwing is considered a criminal offense), with few exceptions. It is worth noting that the Report relates to 3 out of 30 cases of Minors spoken to by the Organization, who were arrested and/or interrogated at night.
21. When addressing the case of A.D.A. (suspect name), whose case is presently suspended, concerning the fact that he was interrogated during daytime after having been deprived of sleep the previous night, we justify the complaint. BUT, for accuracy's sake, one should add that the

Military prosecution appealed against the release from arrest. The appeal was rejected, but the court did state that it is unclear as to how the hour of interrogation directly affected the fact that the suspect admitted to all charges, even after having consulted with his lawyer.

Accordingly, the court stated that the appeal claims were no justification for release, even though he was released soon after for claiming undue procrastination of proceedings.

22. When addressing the chapter on “methodological incriminations”, we wish to stress that the claims therein are generalized and not based on any substantial evidence and/or judicial decisions which confirm the claims. We stress that the arrest of Minors, as well as the question of putting them on trial, is studied on a case by case basis paying close attention to available evidence whether these are by admission or provided from others’ witness.
23. We point out that in the case of A”Z , the arrest mentioned in the Report, was approved by the Military Court of Appeals. Furthermore, the suspect himself admitted having made it a habit to throw stones and rocks along a particular route, having hit a number of Military Jeeps.
24. The case of N.A. as well mentioned in the Report, ended with his admission in court to the two offenses of stone throwing he was charged with. The suspect admitted to aiming specifically at an Army patrol in one of the two incidences.
25. When addressing the claims on arrest until the end of proceedings, we re-iterate that the cases of stone throwing Youth being charged with Stone and Rock Throwing addressing youngsters under the age of 14 is almost non- existent. We further repeat that the initial period of arrest for those under the age of 16, is decided on by a senior legal official who is not connected with the inquest (a senior advocate or his deputy), And as such, a minor is brought before a judge within the specified initial arrest period. As the Interrogation ends, the file is handed to Military Prosecution, who needs to confirm the evidence of a crime to the suspect well within the initial arrest period, and strive at terminating the initial handling of the file within this arrest period. Charges need to be placed with the initial arrest period.
26. In the case of ZZ in the Report, we point out that the suspect admitted to all charges of Stone Throwing placed against him, including one against military targets specifically, and was charged with imprisonment and a fine, by means of a Plea Bargain.
27. Then there is the chapter dealing with the actual trial ; it is incorrect to claim that military law does not make mention of alternative punitive measures to being incarcerated. Clause 180 of the Military legal code relating to security instructions enables the court which has indicted a person, to accept a commitment not to be involved in further transgressions, in addition or instead of other punitive measures.
28. The chapter criticizing the use of Plea Bargains, does not necessarily address the practice in Military Courts, but seems to be rather a general criticism of the use of Plea Bargains, even though the latter has received due encouragement from all the court systems, headed by the High Court of Justice. In any case, it MUST be noted that the final decision to place a Plea Bargain is in the hands of the accused, represented by an advocate, (a point to be stressed being that almost ALL suspects ARE represented by counsel contrary to the state of affairs in Israel).
29. There seems to be equally unfounded reason to the claims that trials are unduly protracted so as to lead to Plea Bargains. In any case, when a suspect admits in court, it is evident he does so of his

own free will, as any other assumption would lead to the undermining of legal proceedings as well as the basic values of the criminal process.

30. In the case of a 16 year old who was released by the Military Court of Appeals, despite the relatively long duration of arrest, we wish to elaborate. The suspect, operating in full coordination with his older brother, threw stones at a passing Israeli Bus with the intent to cause harm to the passengers therein. The suspect and his accomplice did succeed in their purpose, and one of the stones penetrated the bus, breaking a window and causing injury to both a 9 year old female passenger as well as the driver who was slightly injured. This is considered a most serious offense which stresses the inherent dangers of stone throwing. The suspect and his accomplice chose to conduct a trial, at the end of which both were charged. After conviction they reached a Plea Bargain, in which both were sentenced to imprisonment of 20 months each, an additional probation period as well as a fine and financial compensation to the injured passenger. It is understandable that the Military Court of Appeals did not see in the preliminary arrest period as extraordinary, since the accused chose to go to trial.
31. In connection with the specific case of the dropping of charges against 8 suspects by the Military Prosecution, we did respond to this case last August 2010. For good order, we do stress that, during the latter part of the trial, additional evidence was provided by the defense which was not seen previously by the prosecution. After further study of the evidence, the conclusion was drawn that there were insoluble evidential difficulties and the prosecution reached the decision to drop charges.
32. With regard to Reviews, and from data in our hands, over 20 cases exist in which the Military Courts requested a Review after conviction, mostly relating to Minors. The decision to accept a Review on a convicted suspect is in the hands of the Court, and is normally raised by his advocate.
33. We shall stress that in the few instances whereby a Review was approved, it is reasonable to conclude that the introduction of Rehabilitation programs has been a failure, to say the least. Reasons for this are – a lack of cooperation from the accused, a lack of cooperation on behalf of the Palestinian welfare organizations who fail to recognize the authority of the Israeli Military Courts, the lack of professional infrastructures to conduct these Reviews, and more.
34. We further wish to point out that the said criminal activity of Stone and Rock Throwing is not condemned in those areas in which there is a military presence outside of Israel proper. This is an important fact to consider when addressing the drawing of a Review on a suspect, in an area and community which undermines from the onset the legitimacy of the Military Courts on the one hand, and will be incapable of offering the support mechanisms to the suspect necessary to steer him away from ideologically criminal activity, on the other.
35. In relation to the routines of imprisonment and release from arrest or imprisonment, we note that the possibility to imprison Palestinians in Israeli jails has been approved more than once by the High Court of Justice.