



Arab American University
Faculty of Graduate Studies

**The Detention of Palestinian Children: Israel's Dual System of Law,
Discrimination on an Ethnic-National Basis and Child Rights Violations
- East Jerusalem as a Case Study**

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This thesis is submitted in partial fulfillment of the requirements
for the degree of Masters – Conflict Resolution and Development.
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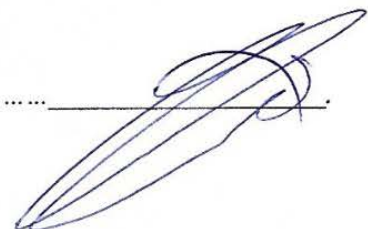
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بسم الله الرحمن الرحيم

"مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ
النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ
بَعَدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ"

– آية 32، سورة المائدة، القرآن الكريم

*Dedicated to the memory of my father,
Mohammad AbdulHafeez Abu-Shilbayih;
You are gone but your belief in me has made this journey possible.*

“No one truly knows a nation
until one has been inside its jails.”

– Nelson Mandela, 1994

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A doctor of philosophy, known as PhD, comes from Latin and it means 'to teach', in Greek it means 'love of wisdom'; Dr. Dalal, you master the art of expanding your students' knowledge and you do that elegantly, professionally and passion-fully.

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I am beyond thankful to my family, Inas, Hanaly and Mounis .. I am blessed to have you!

My Mother, the queen of my heart, the one perfect lady who combines a legendary powerful blend of willful steel determination and unconditional love force, it wouldn't be possible without your prayers and unceasing support.

My Husband, my loyal best friend. Sari, you are one wise man who taught me that nothing is impossible, and lead me towards achieving my goals. You taught me that obstacles are nothing but blessings in disguise.

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Even though you are very young at the time being, yet you have proved how reliable and trustworthy young fine men you are. Thank you for the funny remarks and sweet wise advises throughout this journey in particular.

My honest gratitude also goes to the young fine men of Jerusalem, the heroic ex-detainees children and their mothers whom I interviewed. Those who endured the unendurable and are still standing tall, full of innocence, ambitions and determination. For they truly deserve better.

I really hope, that eventually every Palestinian Child is safe, secure and happy.

Abstract

Part and parcel of the protracted conflict in Palestine, is the unresolved situation of East Jerusalem. The rights of Palestinians are violated; the coping mechanisms of families are weakened by the closure regime, the ethnic identification system, and the daily deprivation of basic human rights and needs.

Palestinian children in East Jerusalem are subject to conflict-related violence, as they encounter the Israeli Forces and are taken into Israeli military detention.

Palestinians residing in East Jerusalem, like other Palestinians in the occupied Palestinian territory, are protected as defined in the Fourth Geneva Convention of 1949, a major cornerstone of international humanitarian law and primary legal reference for Israeli occupation; specifically articles 4 and 27¹. These stipulate that Palestinians in East Jerusalem are entitled, in all circumstances, to respect of their human dignity and must at all times be humanly treated and protected especially against acts of violence or threats thereof.

¹ GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR OF 12 AUGUST 1949; PART I, General Provisions, Article 4 reads: "Persons protected by the Convention are those who at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of persons a Party to the conflict or Occupying Power of which they are not nationals. Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are. The provisions of Part II are, however, wider in application, as defined in Article 13. Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, shall not be considered as protected persons within the meaning of the present Convention."

PART III STATUS AND TREATMENT OF PROTECTED PERSONS, SECTION I PROVISIONS COMMON TO THE TERRITORIES OF THE PARTIES TO THE CONFLICT AND TO OCCUPIED TERRITORIES; Article 27 reads: "Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war."

They are also entitled to protection of their rights under international human rights law, including the special protections afforded to children. Israel is the primary duty bearer responsible for providing this protection and for generally ensuring the welfare of the Palestinian residents of East Jerusalem.

The objective of the study is to show the impact of the protracted Israeli occupation in East Jerusalem on Palestinian children living in the city.

The study will shed light on the Israeli military detention of Palestinian children, analyze the circumstances of arrest and detention, highlight the effects of detention on children's development and well-being; and investigate how the issue is reflected at higher state levels or parties involved for resolution.

Table of Contents

CHAPTER ONE

INTRODUCTION AND METHODOLOGY

1.1 A BACKGROUND AND THE RESEARCH PROBLEM	2
1.2 LITERATURE REVIEW.....	7
1.3 RESEARCH QUESTIONS, HYPOTHESIS AND GOALS.....	9
1.4 METHODOLOGY.....	11
1.5 OBSTACLES TO THE STUDY.....	13

CHAPTER TWO

THEORETICAL AND CONCEPTUAL FRAMEWORK

2.1 INTRODUCTION.....	15
2.2 HUMAN NEEDS THEORY.....	17
2.3 THE TRANSCEND METHOD OF GALTUNG.....	18
2.3.1 The Transcend Method Epistemology	
2.3.2 Galtung's Major Concepts	
2.4 PROTECTION OF CHILDREN UNDER INTERNATIONAL HUMANITERIAN LAW.....	22
2.5 NECROPOLISES – <i>the right to expose other people to death</i>	25

CHAPTER THREE

MINORS IN JEOPARDY

3.1 INTRODUCTION.....	29
3.2 A DISCRIMINATORY LEGAL SYSTEM WITH A STATE BACKED INSTITUTIONALIZED VIOLENCE.....	30
3.3 CHILD PRISONERS IN ISRAELI OCCUPATION JAILS.....	35
3.4 VIOLATIONS OF INTERNATIONAL LAWS, CONVENTIONS AND AGREEMENTS.....	36
3.5 BLATANT ISRAELI VIOLATIONS AGAINST THE PALESTINIAN CHILDREN.....	39
3.6 THE SHIFT IN TREATMENT OF CHILD PRISONERS.....	42
3.6.1 Military Orders	
3.6.2 'Throwing Stones'	
3.7 THE STRUGGLE FOR FREEDOM UNDER THE OSLO ACCORDS.....	47

CHAPTER FOUR

LIVE TESTIMONIES

4.1 IN THEIR OWN WORDS	
– CHILD PRISONERS TALK ABOUT THEIR EXPERIENCE.....	52
4.1.1 HORRIBLE EXPERIENCE	
– <i>Child Prisoner Rasmi Al Rishiq 14 years old</i>	
4.1.2 HORRIBLE EXPERIENCE	
– <i>Child Prisoner Tareq Abu Khdeir 15 years old</i>	
4.1.3 HORRIBLE EXPERIENCE	
– <i>Child Prisoner Sami Marwan Hajajrah 15 years old</i>	
4.1.4 HORRIBLE EXPERIENCE	
– <i>Child Prisoner Mohammad Thawabteh 16 years old</i>	
4.1.5 HORRIBLE EXPERIENCE	
– <i>Live Testimonies of Child Prisoner's Mothers</i>	
4.1.5 (i) Lawahith Shyoukhi	
4.1.5 (ii) Khuloud Al Awwar	
4.1.5 (iii) Ferihan Daraghme	
4.1.5 (iv) Hanadi Saed Serhan – <i>Maher, Mohammad and Sultan</i>	
4.2 THE MOST PROMINENT ISRAELI VIOLATIONS	
AGAINST PALESTINIAN CHILD PRISONERS.....	63
4.3 TORTURE FORMS PRACTICED BY ISRAELI OCCUPATION AUTHORITIES	
AGAINST PALESTINIAN CHILD PRISONERS.....	64

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS.....67

REFERENCES.....82

ملخص الرسالة.....91

APPENDIX..... ~
(i-xii)

Abbreviations and Acronyms

DCI-P	Defence for Children International, Palestine Section
Shabak	Israeli Secret Service
PCBS	The Palestinian Central Bureau of Statistics
IHL	International Humanitarian Law
UNCRC / CRC	The United Nations Convention on the Rights of the Child Treaty
ICC	International Criminal Court
ICRC	The International Committee of the Red Cross
PLO	Palestinian Liberation Organization
IPS	Israeli Prison Service

CHAPTER ONE
INTRODUCTION AND METHODOLOGY

1.1 A BACKGROUND AND THE RESEARCH PROBLEM	2
1.2 LITERATURE REVIEW.....	7
1.3 RESEARCH QUESTIONS, HYPOTHESIS AND GOALS.....	9
1.4 METHODOLOGY.....	11
1.5 OBSTACLES TO THE STUDY.....	13

CHAPTER ONE

INTRODUCTION AND METHODOLOGY

1.1 A BACKGROUND AND THE RESEARCH PROBLEM

Palestinian children in East Jerusalem face social and economic disadvantages. They tend to live in poor households with high unemployment rates and cramped living. Restricted land zoned by the Israeli Municipality for Palestinian construction, and lower expenditure¹ by the Israeli government on public services, has resulted in limited opportunities for development.^{2 3}

Palestinian children have frequent, and often violent, encounters with Israeli Forces. This includes across checkpoints on access roads and during raids and arrests. Palestinian children also face on-going intimidation and violence from Jewish settlers. Politically related violence and clashes between Palestinians and the Israeli Forces in East Jerusalem tend to occur in waves, and is related to the political atmosphere at the time being. Children are frequently involved in these clashes, placing them at high risk of arrest.

According to reports provided by OCHA, DCIP, Hamoked, Addameer Prisoners Support and Human Rights Association and The Israeli Information Centre for Human Rights in the Occupied Territories - B'Tselem; most children who are in conflict with the law for security related offences are boys. That is 97% in 2015 and 2016. Over half of children arrested during the period between January 2015 and May 2016 are in the 14 – 17 age group. Just over one in ten children detained in 2015 and 2016 were under-12, a practice that is in direct breach of the Israeli Youth Law. Whereas stone throwing is the main reason for arrests and detention of children in East Jerusalem.

Regardless of the fact that the Israeli Youth Law stipulates that arrests of “child suspects” should be a last resort. In practice, most children who are arrested and detained for security-related offences are released without charge. That is 72% in 2013 and 76% in 2014. This could illustrate that the Israeli security Forces are in fact detaining children as a first option. Or in a better scenario, that they prefer not to subject those children to prolonged detention even when there is ‘prima

¹ Notice figure (3), infographic – Jerusalem’s city budget

² Notice figure (1), infographic – facts and figures

³ Notice figure (2), infographic – JERUSALEM A CITY FOR ALL?

facie'⁴ indication that they committed an offence. Either way children are subjected to temporary detention which is on the whole a frightening experience for children that they should not be made to endure except as a last resort.

There is limited information on the number of children under house arrest. The Committee for Prisoners Families data shows that 66 children have been under house arrest in 2016.

An accurate official source of information on children convicted and sentenced seems to be absent. Thus no official information center is present documenting, addressing violations and/or building awareness among local or international community, nor engaging in advocacy efforts.

⁴ Prima facie: sufficient to establish a fact or raise a presumption unless disproved or rebutted, that is a fact presumed to be true unless it is disproved.

East Jerusalem 2015

Facts and Figures

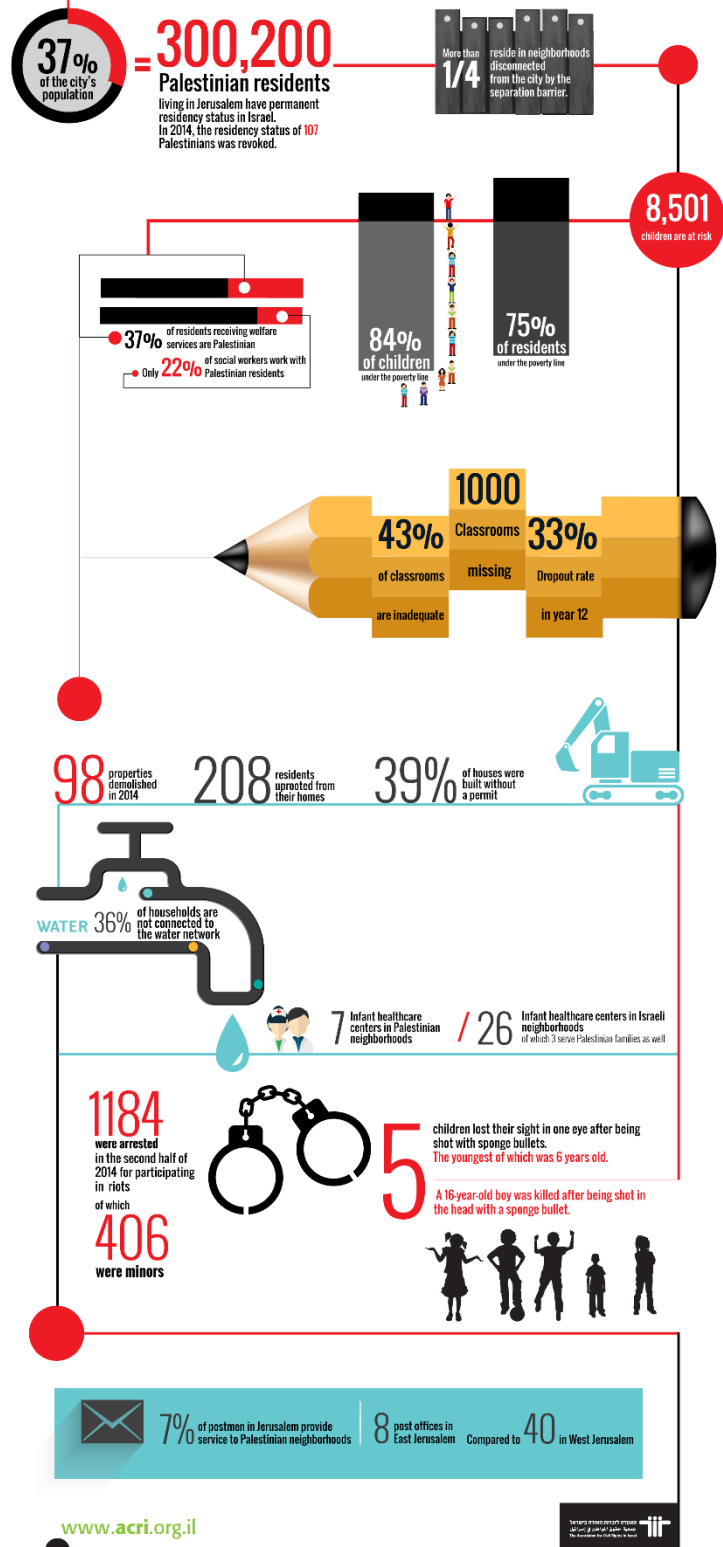


Figure (1)
East Jerusalem 2015,
The Association for Civil Rights in Israel
(ACRI – 2015)

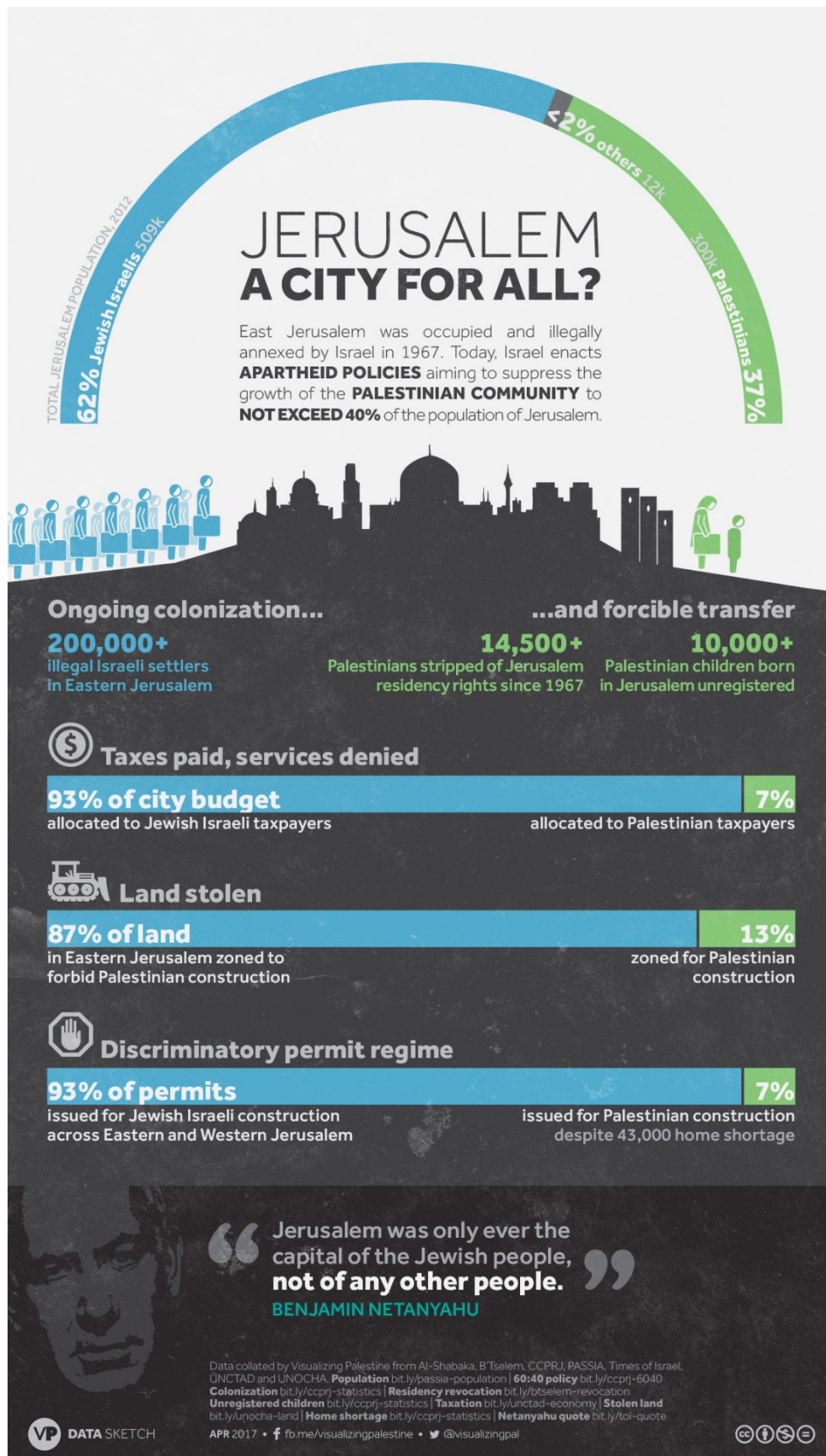


Figure (2)
 JERUSALEM A CITY FOR ALL?, *Visualizing Palestine*, (April 2017)

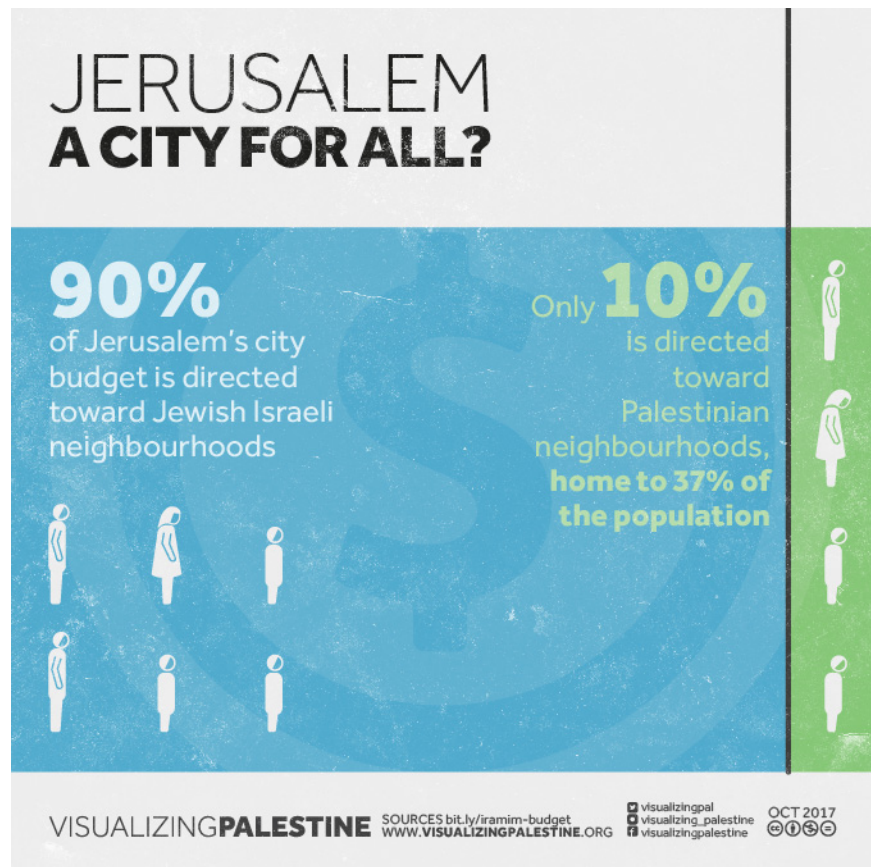


Figure (3)
JERUSALEM'S CITY BUDGET,
Visualizing Palestine, (October 2017)

1.2 LITERATURE REVIEW

مش متذكر!

“I don’t remember, not one thing. For God’s sake .. believe me”. – Ahmad Manasrah, 2015

UNICEF confirmed in their 2013 report⁵ that

“the ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalized”.

Correspondingly, Ahmad Manasra’s interrogation video went viral; Manasra was 13 years old at the time, the 10-minutes video reflects the psychological stress that child detainees find themselves under as Ahmad constantly pleads, “I don’t remember, not one thing. For God’s sake believe me”.

Manasra became a symbol of how Palestinian children’s basic rights continue to deteriorate, in addition to the psychological consequences for the child detainee on an emotional, psychological and social levels.

Moreover, from an Israeli legal perspective, throwing stones is usually associated with the conviction of “violating police in aggravating circumstances” and therefore defined as a “security” offense. This allows the Israeli courts not to adhere to its own laws concerning youth “lawbreakers”. Not to mention the ‘non-binding mood’⁶ regarding the international conventions on youth that are ratified by Israel.

Since the first Intifada, the Palestinian children’s rights of survival, protection, education, proper health and development have been dramatically violated by Israel. Palestinian children in

⁵ The UNICEF 2013 report, entitled: ‘CHILDREN IN ISRAELI MILITARY DETENTION Observations and Recommendations’ could be accessed online and is available in PDF file format at: https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf

As well as being available in hard copy form at the UNICEF offices located in East Jerusalem.

⁶ International law is the set of rules generally regarded and accepted as binding in relations between states and between nations. Therefore, a non-binding instrument may carry significant moral or political weight.

East Jerusalem and all over the occupied Palestinian territories stand defenseless against Israeli policies. Those policies that target them as potential “terrorists” and smartly and wickedly continue to legitimize and justify a system in which child incarceration and persecution is enforced under the umbrella of defeating “terrorism” and protecting state “security”.

One of the most common accusations that lead to the detention of the Palestinian children in East Jerusalem, is throwing stones. Thus Israel considers throwing stones a very serious security offence. Children are being incarcerated in Ofer, Hasharon, Megiddo⁷ and other prisons according to DCI (Defense for Children International/Palestine), the Commission of Prisoners and Released Prisoners and Addameer. Palestinian prisoners’ supporters and human rights associations confirm that the overall circumstances at those prisons are dreadful. The prisons are poorly facilitated, overcrowded, with no sufficient food, covers or hot water.

The Israeli Juvenile Law of 1971 applies to the Palestinian children arrested in East Jerusalem. Yet the Israeli courts introduced a substantive alteration in its policies that deal with detained Jerusalemite children. Those changes took place after protests that followed the brutal kidnapping and burning of child Mohammad Abu Khdeir by Israeli settlers⁸.

⁷ The Israel Prison Service in Hebrew: שירות בתי הסוהר, *Sherut Batei HaSohar*, commonly known in Israel by its acronym Shabas (שבס) or IPS in English, is the state agency responsible for overseeing prisons in Israel. It is under the jurisdiction of the Ministry of Public Security. 1. Ashmoret Prison - HaSharon Junction. 2. Ayalon Prison - Ramla. 3. Giv'on Prison - Ramla. 4. HaSharon Prison - Hadarim Interchange. 5. Maasiyahu Prison - Ramla. 6. Nitzan-Magen Prison - Ramla. 7. Neve Tirtza Women's Prison - Ramla. 8. Ofek Juvenile Prison - Even Yehuda. 9. Ofer Prison - West Bank, between Ramallah/Beituniya and Giv'at Ze'ev. 10. Rimonim Prison - Even Yehuda. Are all located in the Central District.

⁸ 16 years old Mohammad Abu Khdeir was kidnaped by Israeli settlers on 2 July 2014, from his neighborhood Shuafat in occupied east Jerusalem. (Reuters) According to the Palestinian Attorney General, Dr. Muhammed Abed al-Ghani al-Aweiri, an autopsy conducted at the Abu Kabir Forensic Institute in Tel Aviv, revealed that the child had soot in his lungs, indicating that he was alive and breathing when he was torched. The little boy had been forced to swallow petrol beforehand. The burns affected 90% of his body and it appeared he had sustained head injuries from a beating and was repeatedly hit in the head with a sharp object. According to the International Middle East Media Center and The Times of Israel dated 14th of July 2014. Secretary-General Ban Ki-moon, said the attack was a “despicable act” and demanded the perpetrators be brought to justice. The incident ignited a wave of reactions across the city. At Mohammad’s funeral day, several hundreds of Israeli settlers chanting “Death to Arabs”, blocked the main entrance to Jerusalem while extremist mobs attacked Palestinians. The marches counted with the presence of noticeable right-wing figures such as Michael Ben-Ari, and Jewish Agency officials. Referring to “the enemy” that is the Palestinians, Ben-Ari called on Israelis to “make Ramadan into a month of darkness for them”. Protests erupted in Shuafat. Palestinians in East Jerusalem were frustrated. The Israeli Police handled the demonstrations and protests violently. And the detention of Jerusalemite children participating in those protests and clashes was not a last resort

The court started to convict children and incarcerate them for a period of 2 months to 3 months and a half. When till the first half of 2014, the Israeli court ceased to adopt Article 10(a) of the Law:

"No decision shall be made to arrest a minor if it is possible to achieve the goal of arrest through means that are less damaging to his liberty; and any such arrest will be for the shortest possible period of time required to achieve that goal; in any decision to arrest a minor, the suspect's age and the impact of the arrest on his physical and mental well-being and development must be taken into account."

"A stone thrower is a terrorist and only fitting punishment can serve as a deterrent and just punishment." – AYELET SHAKED, Israel's Justice Minister in 2015

Palestinian Children in east Jerusalem are subject to threats of sexual violence, actual psychological, physical and verbal abuse, and are totally deprived from the minimum default rights during arrest and throughout the whole journey of horror. Yet they are to cope and handle alone, the bizarre experience throughout their lifetimes.

1.3 RESEARCH QUESTIONS, HYPOTHESIS AND GOALS

To rationally ascertain the Israeli continuous attitude of detaining the Palestinian Children and minors in East Jerusalem, it is crucial to meet with the directly affected children in person, as well

for the policemen. According to Haaretz, Knesset parliamentarian, Ahmad Tibi, speaking at the boy's funeral, said, "We don't demand revenge - we demand freedom." Sunjeev Bery, an advocacy director for Amnesty International later stated, in reference to the incident, that "non-violent protest in Palestine is, in fact, illegal under military law 101". The law, in effect since 1967, states that gatherings of 10 or more people are forbidden unless expressly permitted by the IDF.

as other people involved in the matter. Such as the children themselves, their parents, lawyers defending them and Israeli prosecutors.

To further facilitate fruitful analysis behind the fact that the Israeli violations are not coming to an end nor entering an ‘easy mood’ as well as finding answers to questions as such:

- Who is it to blame for the ill-treatment of Palestinian children living in Jerusalem incarcerated by the Israeli Occupation?
- Is ‘Atfal Al-Hijara’ / ‘Children of the Stones’⁹, really, an ideology of incitement?
- Have the efforts of the human rights, international and law organizations, been fruitful?
- Are the Palestinian children in East Jerusalem protected from the Israeli institutionalized violence?
- How is the issue of the Palestinian children in Israeli military detention dealt with in the Oslo accords?
- Is the military detention system in conformity with the 1989 convention on the Rights of the Child, knowing the fact that it was ratified by Israel in August 1991?
- What are the future plans or strategies of the Palestinian Authority in regards to the protection of Palestinian children in East Jerusalem, and providing them a venue for their voices to be heard?

The goal of this study is to try figure out and further illustrate any possibilities to ease the burden and effectively de-escalate the oppression of the occupation that affects one of the most vulnerable segments of the Palestinian society; namely the children.

This study suggests to involve digital diplomatic and technical tools, to enforce the weak spheres regarding the simultaneous violations of the rights of Palestinian children in East Jerusalem.

Furthermore, the study argues that Israel’s ill-treatment of Palestinian children in East Jerusalem, forms a major pillar of the colonial occupation policy. That is institutionalized violence

⁹ A symbolic phrase which is used to describe the Palestinian Children who confronted Israeli soldiers with stones only, despite the imbalance of power.

and discriminatory legal (dual) system, overarching system of control and incarceration policies are all designed to convey the message that even pacific resistance is fruitless.

Every Palestinian is a target to incarceration. It is a state torture method, collective punishments, home demolishing, closure and incarceration all are tools designed smartly to undermine the identity and self-actualization of the Palestinian children and hence the Palestinian community. By distorting the fabric of national identity, the Palestinian essential concept of ‘sumud’ ‘steadfastness’ in the holy city is becoming more and more fragile.

This study, also sketches how the Israeli justifications of these practices and violations are to be part of the ideological edifice maintaining the occupation.

1.4 METHODOLOGY

The study will go through the process of textual analysis, where it is seen appropriate serving the objectives tackled, investigating secondary data and collecting primary data. Ontological and epistemological methods in the study deal with deep rooted causes and nature of the current situation associated with the Palestinian children detention in East Jerusalem. Since epistemology simply put, is the theory of knowledge, it guides the flow of research to clarify the connection between the Occupation power over East Jerusalem and the detention of Palestinian children there. Where on the ontological level the study is firmly positioned on the fact that East Jerusalem is occupied and that Palestinian children in East Jerusalem are protected as defined in the Fourth Geneva Convention of 1949, a major cornerstone of international humanitarian law and primary legal reference for Israeli occupation. And that Palestinians in East Jerusalem are entitled, in all circumstances, to human dignity and must at all times be humanly treated and protected especially against acts of violence or threats thereof. , including more specifically the protection of their rights under international human rights law, including the special protections afforded to children.

The object of qualitative data in the study, is to provide insight into the Palestinian children in East Jerusalem as a specific sub-group of the population. Such data is subjective and is collected via direct encounters with those children, either one of their parents and / or persons in direct and constant contact with them. Such as former prosecutors from the Israeli side and lawyers from the Palestinian side.

On the other hand, numbers and statistics construct an important numerical part of the study. This numerical data is gained from published official statistics and survey results of Palestinian, Israeli and international governmental and human rights groups and associations, and prisoner support organizations.

The pivotal primary data in this study is conducted through my field observation, collecting first-hand information directly from the children and persons in direct contact with them. Bringing together first-hand data is the principal benefit of the primary data.

Since the primary data to this study also comes from lawyers, practitioners, specialists, books, documents, various reports and academic conferences on the matter, it is worth mentioning that access to particular books was limited, but has been successfully accessed via the Hebrew University Mt. Scopus library.

Finally, the digital technologies have added greatly to the study's resources base.

The study hereby, follows a triangulated approach that includes mainly:

- 1) A desk review and close observation of existing literature and secondary data; (international conventions, previous studies, theoretical backgrounds and official humanitarian reports, press releases and media coverages)
- 2) Interviews -as primary data- with directly affected children and their families (mothers in specific), lawyers and practitioners and specialists (Israeli and Palestinian);
- 3) Focus group discussions in selected effected families (held mainly in Silwan neighborhood).

1.5 OBSTACLES TO THE STUDY

Obstacles to this study are seen narrow till the moment. Yet could possibly be comprehended in three major points:

- Lack of centralized official data.
- Interviewee being afraid of disclosure regarding the incarceration experience.
- Pursuit of the researcher by the Israeli security authorities for not understanding the objective (that is to conduct this study) for the information gathering

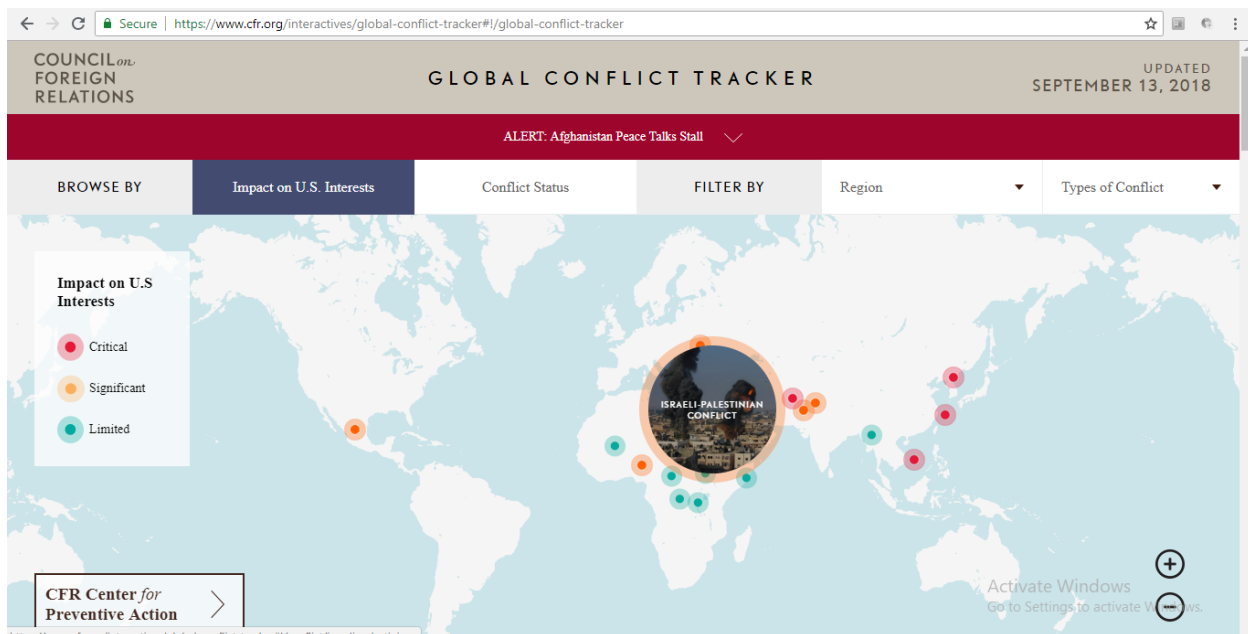
CHAPTER TWO
THEORETICAL AND CONCEPTUAL FRAMEWORK

2.1 INTRODUCTION.....	15
2.2 HUMAN NEEDS THEORY.....	17
2.3 THE TRANSCEND METHOD OF GALTUNG.....	18
2.3.1 The Transcend Method Epistemology	
2.3.2 Galtung's Major Concepts	
2.4 PROTECTION OF CHILDREN UNDER INTERNATIONAL HUMANITERIAN LAW.....	22
2.5 NECROPOLISES – <i>the right to expose other people to death</i>	25

CHAPTER TWO

THEORETICAL AND CONCEPTUAL FRAMEWORK**2.1 INTRODUCTION**

In order to situate the issue of Israel's child detention and incarceration behavior towards the Palestinian children in East Jerusalem, policies and aftermath, it is worth mentioning that the Israeli/Palestinian conflict is being listed on the GLOBAL CONFLICT TRACKER website being labeled as 'significant' regarding its impact on U.S interests. With an 'unchanging' status and is categorized in conflict types as 'territorial conflict'.¹⁰



Screenshot of the GLOBAL CONFLICT TRACKER website, showing the situation of the Israeli/Palestinian conflict | screenshot taken on the 13th of September 2018.

This is quite inaccurate and misleading, hence the term 'conflict' suggests a confrontation between two equal parties plus the actual presence of significant balance of power. The situation is hereby categorized as the Israeli prolonged belligerent occupation on the Palestinian Territory. Where the belligerent or military occupation is actually a part of Humanitarian Law and is the situation where the forces of one state are in effective control over a territory of another state

¹⁰ (RELATIONS n.d.)

without the consent of the latter. This definition is consistent with Article 42 of the 1907 Regulations concerning the Laws and Customs of War on Land.¹¹

*"Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."*¹²

Yet, the situation in Occupied Palestine is widely referred to as 'the Israeli/Palestinian conflict', and will be referred to in this study as 'the protracted conflict in Palestine'.

This theoretical and conceptual framework explored in this chapter illustrates the complex nature of the thesis that follows. Palestinian children in East Jerusalem are denied to their basic human needs, materialistic and non-materialistic. Burton's Human needs theory sheds light to the size of deprivation those children face.

The incarceration of those children was (and still) never perceived as a serious issue to be dealt with neither resolved. Taking into consideration the enormous knowhow and the advancing nature of the 'conflict work' field. The Transcend method by Galtung explained in this chapter is believed not to carry the cure but to ease the misery those children continue to live in.

Palestinian children in East Jerusalem are subject to various colors of conflict related violence, namely, direct, structural and cultural violence. They are subject to state racism, exclusion and ethnic based discrimination.

Moreover, Palestinian children and minors in East Jerusalem are entitled, in all circumstances, to respect of their human dignity and must at all times be humanly treated and protected especially against acts of violence or threats thereof.

They are also entitled to protection of their rights under international human rights law, including the special protections afforded to children. Israel is the primary duty bearer responsible for providing this protection and for generally ensuring the welfare of the Palestinian residents of East Jerusalem.

¹¹ (Salmoudi 2017)

¹² (Schwenk 1944)

2.2 HUMAN NEEDS THEORY

Burton elaborates that conflict stems from unsatisfied human needs. In conflict, people represent their interests, but not their underlying needs. However, they will use power and coercion to try meet those needs.¹³

This figure (Figure (4)) illustrates the levels and sources of conflict in relation to the ability to negotiate plus the shape of manifestation:

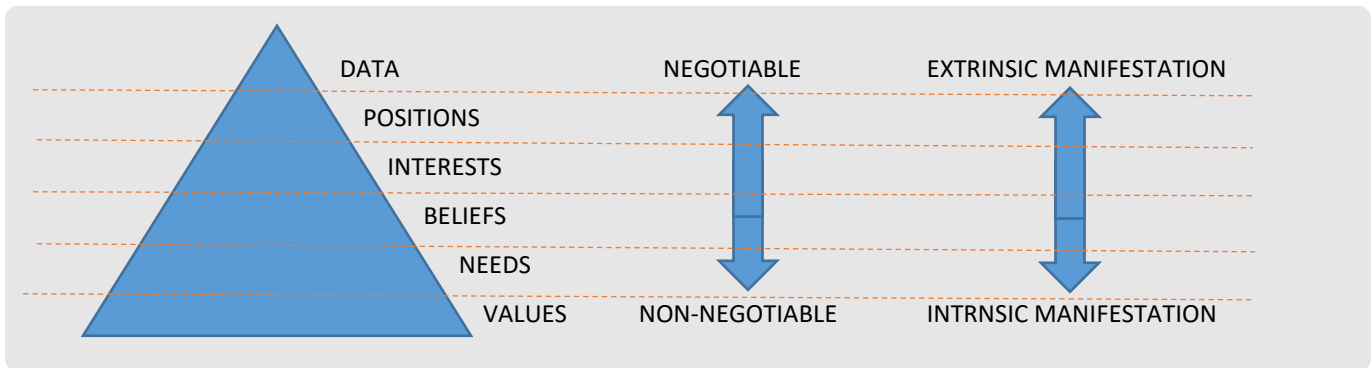


Figure (4)

Burton's developed 'Human Needs Theory' has challenged the realist perception regarding human beings. He disagreed that humans are aggressive and self-centered. Yet on the contrary; he suggests that humans are good in nature and relations among them is based on needs rather than interests.

Furthermore, Burton challenged the state centric approach by coining a new term that is; 'word society'.¹⁴ He elaborates that the human behavior is directly driven by needs rather than interests. Where needs are categorized into two types; resources hereby, along with daily life needs are considered materialistic and physical needs, where self-esteem, self- actualization, love and belonging, safety and physiological wellbeing are considered non-materialistic needs.¹⁵

Burton debated human beings at state level as citizens, because the state's main concern is territory, geography, national security and economic development. Yet from a citizen in the state

¹³ (John Burton 1990)

¹⁴ ibid

¹⁵ In reference to Maslow's hierarchy of needs which is a theory in psychology proposed by Abraham Maslow in his 1943 paper "A Theory of Human Motivation" in Psychological Review. Maslow subsequently extended the idea to include his observations of humans' innate curiosity.

perspective, Burton explains that identity, participation, human security, freedom and values such as equality are crucial and vital to be recognized by the state.¹⁶

It is important to emphasize here, that conflicts rises not because of the nature of humans as the realist school of thought claims, but rather because of the well expressed and still not met human needs. Burton advocates the concept of ‘provision’, for he believes that violence will permanently irrupt if the human needs remain unmet.

“The framework helps to explain why the international system based on nation-states is in decline; why former colonial boundaries cannot be maintained; why minority ethnic communities are demanding increasing degrees of autonomy; and why there is widespread and protracted violence wherever nation-state authorities seek to suppress secessionist movements.”¹⁷

2.3 THE TRANSCEND METHOD OF GALTUNG

2.3.1 The TRANSCEND Method Epistemology

The Transcend Method¹⁸, developed by the father of peace studies Johan Galtung¹⁹, is based on the central thesis that relies on transformation of the conflict as a foundation to prevent violence and develop the creative potential of a conflict. At the root of the method is the understanding of conflict as incompatible goals of the conflicting parties, which is a problem to be solved. For Galtung, transforming a conflict requires transcending the goals of the conflicting parties, defining other goals, disintegrating the conflict from its original circumstances and embedding it in a more promising area. This is achieved through dialogue based on empathy, non-

¹⁶ (John Burton 1990)

¹⁷ (Burton n.d.)

¹⁸ (Galtung, Transcend and transform: An introduction to conflict work 2004)

¹⁹ Johan Vincent Galtung, (Born on the 24th of October 1930), is a Norwegian sociologist, mathematician, and the principal founder of the discipline of peace and conflict studies. He was the main founder of the Peace Research Institute Oslo (PRIO) in 1959 and served as its first director until 1970. He also established the *Journal of Peace Research* in 1964. In 1969 he was appointed to the world's first chair in peace and conflict studies, at the University of Oslo.

violence and joint creativity. According to Galtung, failure to transform conflicts leads to violence.²⁰

A conflict usually has its own life cycle. Normal conflicts are complex and involve many actors, goals and issues. Incompatible goals can breed contradictions, which combined with attitudes of hatred and violent behavior generate conflict. Violent cultures that legitimize violence, violent structures that exploit and alienate and violent actors can combine to produce basic conflicts. Which if unattended, can spiral into meta-conflicts.²¹ The task is to transform conflicts, through a focus on cultures, structures and actors, by finding positive goals for all parties and creative ways of combining them.

Galtung's Transcend Method has six basic premises, drawn from Hindu, Buddhist, Christian, Daoist, Islamic and Judaic thought respectively. These premises include: consideration of conflict as a source of both violence; mutual causation and shared responsibility and the importance of dialogue.²² In this regard, Galtung believes that the Transcend Method aims to help bring parties together in a self-sustaining process.

Transcendence means redefining the situation so that what seemed to be a deadlock is unlocked, revealing a new landscape of the conflict. Creativity, and its application to contradictions, is believed to be the key.

On the other hand, it is important to map out the conflict formation and to include all parties, goals and issues, remembering to bring in forgotten and unrevealed stakeholders.

Galtung elaborates further on the technical steps to performing the Transcend method explaining how initial dialogue should be conducted with each party individually to identify valid goals, provoking creative approaches from all parties to find ways of transcending the incompatibilities.²³ Specific goals should be identified in a manner that is acceptable to each party

²⁰ (Galtung, Conflict transformation by peaceful means: The Transcend method 2000)

²¹ *ibid*

²² *ibid*

²³ (Galtung, Conflict transformation by peaceful means: The Transcend method 2000)

individually in order to arrive at overarching goals that are acceptable to all the conflicting parties collectively. The key tool here; is empathetic, respectful dialogue that explores the conflict.

In parallel, some crucial considerations are included in the code for conflict or peace workers designed by Galtung applying the Transcend Method. Such considerations advice to boldly identify positive elements in the parties and the conflict itself so as to create the positive potential for further development. Plus emphasizing shared roots and responsibilities, rather than distributing blame and guilt.

Being creative is a must. Suggesting alternative courses of action. Cooperatively finding a short, memorable outcome formula, for example ‘sustainable development’ in some cases, may not be the cure nor would provide justice to all complexities, but may be a huge facilitator for fruitful communication.²⁴

A successful knowhow in the field of mediation and pacific conflict settlement assure not demanding consensus from the conflicting parties, neither commitment nor co-operation from parties who are not yet ready. Equally, assuring not to deform the conflict via pushing agendas too far away from the parties’ immediate concerns.²⁵

*“Do not manipulate. Be open and honest with yourself and others about aims and feelings, remembering that the conflict worker’s task is to empower. Do not judge. Retain confidentiality and do not seek publicity or gratitude”.*²⁶

In is vital to highlight that conflict work is the art of the impossible. This area of expertise requires good faith, optimism, idealism of the heart and realism of the brain.

²⁴ ibid

²⁵ (Galtung, Transcend and transform: An introduction to conflict work 2004)

²⁶ ibid

2.3.2 Galtung's Major Concepts

Johan Galtung is widely famous for constructing crucial concepts in the conflict work area. Structural violence is one example of concepts associated with Galtung. Structural violence according to Galtung is defined as the systematic ways in which a regime prevents individuals from achieving their full potential. Institutionalized racism and sexism are examples of this particular concept.

Furthermore, for Galtung, there are different conceptions of peace. Galtung illustrates clearly that peace may be more than just the absence of explicit violent conflict (negative peace), and will likely include a range of relationships up to state's level where nations or any conflicting groupings might have collaborative and supportive relationships (positive peace). These terms were, in fact, previously defined and discussed in 1907 by Jane Addams²⁷ and in the 16th of April 1963 by Martin Luther King.²⁸

In parallel, the Galtung's negative and positive peace dichotomy states that negative peace as the absence of violence, absence of actual war where as positive peace is the integration of human society.²⁹

In relation to that, he also introduced typologies of violence. Namely, 'direct, structural and cultural violence'. As since then, Galtung himself and many other writers and institutions have used these typologies of peace to evaluate peace at societal, national and international levels.

Structural violence, in the Galtugian manner, is built in to the very nature of social, cultural and economic institutions, has an effect of denying peoples important rights, such as economic wellbeing, social, political and sexual equality, a sense of personal fulfillment and self-worth and is expressed with the existence of hunger, political repression, and psychological alienation. Where in contrast, direct violence generally works much faster and is more visible and dramatic. According to Galtung, behind structural violence there lays cultural violence which legitimizes it through. Hence, Galtung associated positive peace with the existence of ten values of positive

²⁷ (Addams 2007)

²⁸ (King Jr 1992)

²⁹ (Galtung, A structural theory of aggression 1964)

relations at both national and international levels. Those values include: Presence of cooperation, freedom from fear, freedom from want, economic growth and development, Absence of exploitation, manipulations and different colors of abuse, equality, justice, freedom of action, pluralism and dynamism.³⁰

According to Galtung, these values can be discussed at the intra-national level of individuals, as well as at the international level of nations.

Hence on the Palestine/Israel solution of the conflict according to Galtung, there can be no bilateral solution. *“There is too little land, too many people and too much talk about ‘choseness’. Moving millions of Palestinians across the Jordan that is the approach propagated by Jewish ultra-nationalists, the ‘transfer solution’ is not reasonable according to Galtung. Nor is a barricaded Israeli state behind walls and barbed wire”*.³¹ For Galtung, there is one way out: a multilateral solution.

2.4 PROTECTION OF CHILDREN UNDER INTERNATIONAL HUMANITARIAN LAW

The legal protection of children was introduced into international humanitarian law after the Second World War. Experience during WWII had pointed to the vital need to design and conduct an instrument of public international law for protecting civilian population in wartime. Efforts put from the International Committee of the Red Cross (ICRC) for instance, led to the adoption of the 1949 Fourth Geneva Convention relative to the protection of civilian persons in time of war. Since then, children, as members of the civilian population were entitled to benefit from the application of that Convention. Furthermore, the first international humanitarian law regulations concerning armed conflicts not of an international character, contained in article 3, common to the four 1949 Geneva Conventions, were drawn up at the 1949 Diplomatic Conference. Here again, children were protected, in the same way as all *“persons taking no active part in the hostilities”*.³²

³⁰ (Galtung, Twenty-five years of peace research: Ten challenges and some responses 1985)

³¹ (Galtung, Cultural violence 1990)

³² (Pictet 1960)

GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR OF 12 AUGUST 1949; PART I, General Provisions, Article 4 reads: *“Persons protected by the Convention are those who at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of persons a Party to the conflict or Occupying Power of which they are not nationals. Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are. The provisions of Part II are, however, wider in application, as defined in Article 13. Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, shall not be considered as protected persons within the meaning of the present Convention.”*

PART III STATUS AND TREATMENT OF PROTECTED PERSONS, SECTION I PROVISIONS COMMON TO THE TERRITORIES OF THE PARTIES TO THE CONFLICT AND TO OCCUPIED TERRITORIES; Article 27 reads: *“Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.”*³³

³³ The Full document text is available at URL:” http://www.un.org/egenocidepreventionn//documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf”

On the other hand, the protection of children is supposed to be guaranteed via adhering to the United Nations Convention on the Rights of the Child (UNCRC or CRC). The UNCRC is a human rights treaty that sets out the civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under national legislation.

Nations that ratify this convention are bound to it by international law. Compliance is monitored by the UN Committee on the Rights of the Child. This committee is composed of members from countries around the world. The Committee submits an annual report to the Third Committee of the United Nations General Assembly, which also hears a statement from the CRC Chair, and the Assembly adopts a Resolution on the Rights of the Child.³⁴

Governments of countries that have ratified the Convention are required to report to, and appear before, the United Nations Committee on the Rights of the Child periodically so as to be examined on their progress regarding their adherence and the advancement of the implementation of the Convention and the status of child rights in their country.

On the 20th of November 1989, the UN General Assembly adopted the Convention and opened it for signature. It came into force on the 2nd of September 1990, after being ratified by the required number of nations.

As the Convention for the Rights of the Child (CRC) is evident to include relevant provisions and commentary by international bodies. Special attention should be dedicated to Article 37 and Article 40 of the CRC. Those Articles in particular are believed to be of vital importance regarding Israel's attitude towards their application. Those two principles of the best interest of the child and the principle of non-discrimination. In 1990 the CRC was remarkably adopted and was considered a valuable advancement of the international legal framework for the protection mechanism of the right of the child.

It is vital to mention that both Israel and the Palestinian Authority have actually ratified the convention without reservations in the years 1991 and 2014 respectively. Israel hereby argues that

³⁴ (Detrick 1999)

this is only applicable to its territory. On the other hand, the committee on the Rights of the Child in its concluding observations on the second to fourth periodic reports of Israel, condemns Israel to the unwillingness to provide information and data on the Palestinian (Arab) children living in the OPT including East Jerusalem³⁵ and the Occupied Golan Heights. Quoting the committee:

*“.. greatly affects the adequacy of the reporting process and the state’s accountability for the implementation of the Convention”.*³⁶

2.5 NECROPOLISES³⁷ (*the right to expose other people to death*)

Michel Foucault³⁸ argues that when people’s lives turn to be a part in the mechanisms of state power, politics become biopolitics. This changes the vintage explanation of the territorial state, to become a state of population and hence the nation’s biological life becomes situated in the front line to become the sovereign power problem, Foucault terms this as ‘biopower’.

³⁵ Israel annexed East Jerusalem after occupying it in the year 1967, and then applied its sovereignty to it. This act of annexation contravenes international law. And therefor East Jerusalem is still considered to be an occupied territory under the international law and is perceived as such by its Palestinian residents and by most of the world’s countries. Moreover and as a result of this particular annexation and the application of Israeli law to East Jerusalem, its residents are not subject to military rule yet they are subjects to different sets of laws than the ones applied to the Israelis in the city. And are evidently reported to be subjects to Israeli violations of the human rights, ethnic based discrimination and structural institutional violence.

³⁶ The full version of the original document is reachable online via the URL:
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsv1txuQys3LgW60cwoE2%2BBVbWayRn7lstRQMsl07IkA%2Bj8M11XqULQ1v73knmXrks29yHCH3forzCeDQXkQCGOQp77xIMo8ssYBfGT5Rb9W>

³⁷ Necropolitics is the use of social and political power to dictate how some people may live and how some must die. Achille Mbembe, author of *On the Postcolony*, was the first scholar to explore the term in depth in his article of the same name. Necropolitics is often discussed with biopower, the Foucauldian term for the use of social and political power to control people's lives. Mbembe was clear that necropolitics is more than a right to kill (Foucault's *droit de glaive*), but also the right to expose other people (including a country's own citizens) to death. His view of necropolitics also included the right to impose social or civil death, the right to enslave others, and other forms of political violence. Necropolitics is a theory of the walking dead, namely a way of analysing how "contemporary forms of subjugation of life to the power of death" forces some bodies to remain in different states of being located between life and death. Mbembe uses the examples of slavery, apartheid and the colonisation of Palestine.

³⁸ (Foucault, *The History of Sexuality: The Will to Knowledge* 1990)

Docile and obedient bodies are hereby created by biopower via a series of governmental technologies, that are meant to steer, control, manipulate and beyond, the lives of the population, their wellbeing, welfare, longevity and health. Making the ultimate object of government.

Foucault in his 1975 – 6 *College de France Lecture Series*, illustrates the birth of state racism³⁹. Charting the shift from the power of sovereignty toward killing unwanted people within the supervisory of modern state. That is, expending the state's biopower against its living beings and population. In other words; Foucault theorizes a transition from the old territorial state and the notion of sovereign power associated with it, towards modern biopower. That is from 'to make die and let live' to 'to make live and let die'.⁴⁰ The break between what must live and what must die, according to Foucault; means that the state can hardly fulfill its role without racism.⁴¹

Building on this, racism involves two major roles: the first is to split and sunder the groups existing within a population. The second is making it possible to establish a correlation connecting someone's (one group) life with the death of another (another group). Of course, in a manner that is absolutely different than warlike or militant manner, but a pure biological manner correlation. In the same understanding, the biological (and psychological by default) death of one group within the population makes the 'other' group the stronger within the very same population. This is 'state racism' in Foucauldian explanation.

While some sub-populations are being suffocated with economic ties and social coercion, Foucault believes that racism is an ongoing social war that is nurtured by biopolitical technologies of the state.

This is rational when investigating the Zionist's ongoing plans, designed before the establishment of the state of Israel. Such plans, include the transfer and exile of Palestinians (occupied other) outside their homeland Palestine, in the favor of the Israeli Zionists (occupier other).

³⁹ (Foucault, *Society Must be Defended: Lectures at the College de France 1975-76* 2003)

⁴⁰ *ibid*

⁴¹ *ibid*

On the other hand, Goldberg⁴² in his book *'The Racial State'*, argues the theorization of all modern nation states as being racial states, the state is a state of power that adopts the exclusion behavior so as to build homogeneity. Aiming to produce a coherent picture of its population; modern states tend to utilize governmental technologies, such as constitutions, border controls, the law, policies, census of the population, its invented histories and traditions, and cultural visualization; commissioning those tools to either exclude or include (in racially ordered terms) its sub-populations. So this coherent picture exported, is being conducted by nothing but keeping racialized others out and legislating against the unwanted, evil 'other'. That is; throughout creating homogeneities not only the state is denying its internal heterogeneities but is also normalizing biopower state.⁴³

Acquiescent with Goldberg's theorization of all modern nation states being racial states and with Foucault's perspective of racism, Israel's utilization of biopolitical technologies ranging from social exclusion to mass murder against the 'occupied other' implicates Israel as a racial state

*"In Israel there is a constant state of emergency. The state inherited the British Mandate's 'Emergency Regulations', under which it continued the anomalous suspension of law, within the law. We must remember that this system enables: one rule (life) for the majority of the state's citizens, and another (death, threat of death, threat of expulsion) for the state's subjects, whose lives have been rendered 'bare'".*⁴⁴

⁴² David Theo Goldberg (born on the 8th of January 1952) is a South African professor working in the United States, known for his work in critical race theory, and in more recent years, the digital humanities.

⁴³ (David Theo Goldberg, John Solomos 2002)

⁴⁴ (Shenhav 2006) -- Yehouda Shenhav is an Israeli sociologist and critical theorist. He is known for his contributions in the fields of bureaucracy, management and capitalism, as well as for his research on ethnicity in Israeli society and its relationship with the Israeli-Palestinian conflict.

CHAPTER THREE
MINORS IN JEOPARDY

3.1 INTRODUCTION.....	29
3.2 A DISCRIMINATORY LEGAL SYSTEM WITH A STATE BACKED INSTITUTIONALIZED VIOLENCE.....	30
3.3 CHILD PRISONERS IN ISRAELI OCCUPATION JAILS.....	35
3.4 VIOLATIONS OF INTERNATIONAL LAWS, CONVENTIONS AND AGREEMENTS.....	36
3.5 BLATANT ISRAELI VIOLATIONS AGAINST THE PALESTINIAN CHILDREN.....	39
3.6 THE SHIFT IN TREATMENT OF CHILD PRISONERS.....	42
3.6.1 Military Orders	
3.6.2 ‘Throwing Stones’	
3.7 THE STRUGGLE FOR FREEDOM UNDER THE OSLO ACCORDS.....	47

CHAPTER THREE

MINORS IN JEOPARDY

3.1 INTRODUCTION

A central feature of Palestinian life is: PRISON.

Since 1967 over 600K Palestinians have spent time in prison. Narratives and numbers are even present in the Arabic curriculum (2018) of the seventh grade. At various times the number of Palestinian political prisoners per capita held by Israel has been among the highest in the world. Almost every family has a member who has been arrested at some point.

Israel from its side, employs two distinct bodies of law, one for the Palestinian children from East Jerusalem, the West Bank and Gaza Strip, and another for Israeli children. Israeli children are hereby afforded a much greater degree of rights that goes hand in hand with international law. Discrimination is an entrenched part of the Israeli legal system.

After sentencing, the Israeli authorities incarcerate most Palestinian children in prisons located inside Israel itself. Children are sent to two types of prisons. According to data provided in various publications of Defence for Children International – Palestine Section, along with data provided on their online site; male children under sixteen years old plus all girls, are sent to prisons which are under the jurisdiction of the Ministry of Public Security and are administrated by the Israel Prison Service. In parallel, males aged sixteen and seventeen are sent to prisons that are run by the Ministry of Defence. This distinction is pursuant to Israeli Military Order⁴⁵ number 132; which treats Palestinian children aged sixteen and seventeen as adults.

⁴⁵ Palestinian children are affected by four military orders: **1. Military Order 132** defines a Palestinian “child” as an individual under the age of 16, whereas the Israeli Penal Code defines the Israeli child as an individual under the age of 18. That same Order allows 12-year-old children to be tried in military courts and specifies maximum penalties; **2. Military Order 378** serves as the basis of the procedural and criminal codes in force in the military courts, including for the following offences: • Destruction of Israeli Army property, which carries a maximum sentence of life imprisonment; • Membership of a group, one of whose members has intentionally caused death, which carries a maximum sentence of life imprisonment; • Insulting a soldier or attacking his honour and status as a soldier, which carries a maximum sentence of 10 years; • Throwing any object, including a stone, at a person or property, which carries a maximum sentence of 10 years; • Throwing a stone at a moving car with a view to damaging it or harming its passengers, which carries a maximum sentence of 20 years; • The most widespread charge against children in military courts in 2009 was the throwing of stones. **3. Military Order 1591** allows the administrative detention of individuals, including children, without charge or trial, for a renewable period of six months; **4. Military Order 1644** establishing a military juvenile court on 1 October 2009.

It is vital to mention that this military order along with all other military orders, is applied solely to the Palestinian residents of East Jerusalem, the West Bank and Gaza Strip. Not to Israeli settlers living in these areas.

The Israel Prison Service has reinstated in the year 2000 a policy of incarcerating some Palestinian children with Israeli juvenile prisoners. This particular practice is responsible of exposing Palestinian children in detention and incarceration to danger at the hands of Israeli prisoners, while the authorities of the prison refuse to intervene.

In the same context, Palestinian child detainees have described many serious violations ranging from attempted rape to physical abuse and theft of personal possessions by Israeli prisoners. Plus the fact that Palestinian child detainees are regularly denied visits from lawyers and family members.

When a Palestinian child is imprisoned their entire social sphere is affected. The families sense that their life is torn apart. Psychologically, physically and financially, all aspects of life become a heavy burden that needs enormous amounts of tolerance and wisdom to deal with. Lives hereby revolve around court appearances and attempts to secure family visits.

3.2 A DISCRIMINATORY LEGAL SYSTEM WITH A STATE-BACKED INSTITUTIONALIZED VIOLENCE

The Israeli incarceration policies shows that the Israeli occupation is further more than the thin interface of the Israeli army and its practices. The overarching argument is that this occupation is a system of control that is literally invading every aspect of Palestinian life. It is a system backed by legal, political, economic, cultural and psychological structures, and designed to keep the Palestinian people under submission. What lies beneath this thin interface goes far beyond Israeli young men and women whose guns appear at the public face of occupation.

Prison is a critical part of the Israeli occupation system of control. It is a state-backed institutionalized violence surrounding and is adjacent to all stages of the incarceration process. It

is a conscious policy, a policy carefully designed and integrated aiming at demoralizing and defeating the Palestinian population under occupation.

This is to include a series of structures ranging from a discriminatory legal system to psychological strategies aiming at indoctrinating fear. The goal here is not only to punish but also to intimidate. Conveying the message that resistance and steadfastness are unsuccessful, vain and fruitless.

State torture; applied by the devastating Israeli control structures that include: the Israeli army, secret service (Shabak) and police. Reaches out and target anyone; including most importantly the weakest and most vulnerable sectors of the Palestinian society; that is the Palestinian Children.

Incarceration, detention and all the torture that accompanies is believed to be a state tool to facilitate the notion and plan of undermining the identity and self-confidence of the Palestinian Child as an individual, and hence as a community. That is breaking down the Palestinian minors' personalities.⁴⁶

Israel from its side; uses to justify its repressive policies and its discriminatory legal system is that those measures are crucial and undoubtedly essential because of what Israel claims the special threat of Palestinian terrorism, plus for security reasons.⁴⁷

'Stone-throwing' herby is nothing but a smoke screen to uncertain the deliberate policies of the Israeli occupation Authority.

Furthermore, according to DCI – P documents cases in particular, report that Israel has arrested 17 years old Murad Rashad Abu- Judeh and charged him with 'throwing stones' at an Israeli military jeep. He was sentenced to ten months in Megiddo military prison. Plus a one year suspended sentence that is in case he further commits any offence within the next five years (2000-2005) along with a 3000 New Israeli Shekils fine.

⁴⁶ (Catherine Cook 2004)

⁴⁷ (Atzmon 2018)

Where on the other hand, on September 1998, Moche Levinger⁴⁸, an Orthodox Jewish Rabbi deliberately opened fire of live ammunition in the centre of Hebron. This horrific act resulted in the killing of one Palestinian and wounded another. Hereby, the Israeli court accused him with charges of: *“manslaughter, causing serious bodily injury in aggravated circumstances, and causing malicious damage”*.⁴⁹

The next year, after Levinger’s lawyer and the Jerusalem District Attorney’s office bargain, the Rabbi was convicted of “causing death by negligence, wounding in aggravated circumstances and causing malicious damage”.⁵⁰ Levinger hence served three out of the five months sentence.⁵¹

Another example shows the discrimination in sentencing is comprehended again via a stone throwing case versus the case of Ishaq Rabin assassination plot.

The 14 years old Sami Issa Qandeel was arrested in thear 2000, accused of throwing stones. He was handcuffed and blindfolded and sent to the Giv’at Ze’eiv settlement. Where he was interrogated and severely beaten particularly in the face until a confession was forcefully extracted from him. Afterward, the boy was transferred to Beit Eil detention center. He was held there for

⁴⁸ Moshe Levinger; 1935 – May 16, 2015 was an Israeli Religious Zionist activist and an Orthodox Rabbi who since 1967, had been a leading figure in the movement to settle Jews in the territories occupied by Israel during the 1967 Six-Day War. He is especially known for leading Jewish settlement in Hebron in 1968, and for being one of the principals of the now defunct settler movement Gush Emunim, founded in 1974, among whose ranks he assumed legendary status. Levinger was reportedly involved in violent acts against Palestinians. In 1988, Levinger was indicted on two separate criminal charges involving events in Hebron. On September 30, 1988, Levinger reached an Israeli checkpoint, pulled out his pistol, turned round, and went back down the streets shooting at shop windows, killing Palestinian store owner Hassan Abdul Azis Salah. A customer was also wounded. Levinger claimed he had been surrounded by Palestinians who threatened his life, and only to have shot into the air to defend himself against stone throwers. In a press conference following the shooting, Levinger said, "Regarding the actual deed, I will respond when the time comes. I have already said that as far as the substance of the case goes, the State Attorney's Office knows that I am innocent, and that I did not have the privilege of killing that Arab. Not that I may not have wanted to kill him or that he did not deserve to die, but I did not have the privilege of killing that Arab." He was charged with "manslaughter, causing bodily harm in aggravated circumstances, and intentionally damaging property". During one court appearance, Levinger approached the court waving his gun over his head and saying he had been "privileged" to have shot an Arab. After he was sentenced, he was carried off to jail on the shoulders of a cheering throng. His trial began in August 1989, despite protests by 13 right-wing Knesset members and hundreds of supporters. Levinger pleaded not guilty to the charges, but accepted a plea-bargain to the lesser charge of negligent homicide. He was sentenced to 5 months imprisonment and 7 months suspended, of which he served 92 days. During his imprisonment, he was given leave to attend a public event in Hebron. On his release in August 1990, he told Israel Radio, "If I'm in a situation of danger again, I'll again open fire. I hope that next time, I will be more careful, and I won't miss the target.

⁴⁹ (Eitan Felner, Roly Rozen 1994)

⁵⁰ ibid

⁵¹ ibid

three days. Then to Etzion detention center and kept there for 14 days. Qandeel then was moved to Telmond and was incarcerated with the Israeli juvenile criminal prisoners. His clothes were stolen the very first day he arrived there. The military court sentenced Qandeel a six actual months, and a ten months suspended sentence. He spent two of the total months deprived from sleeping for he was too scared to sleep due to the fear of being attacked.⁵²

On the other hand, in the year 1998, Margalit Har-Shefi, the former girlfriend of the assassin Yigal Amir was convicted in failing to report the assassination plot. Rabin was assassinated in 1995; and Har-Shefi was hence sentenced to an actual nine months. She began to serve those nine months in March 2001, were in July 2001 Moshe Katsav, the Israeli president altered her sentence to six months. Claiming that Har-Shefi “Has paid her debt to society, has been punished, and is pained by the horrible assassination and has denounced it”.⁵³

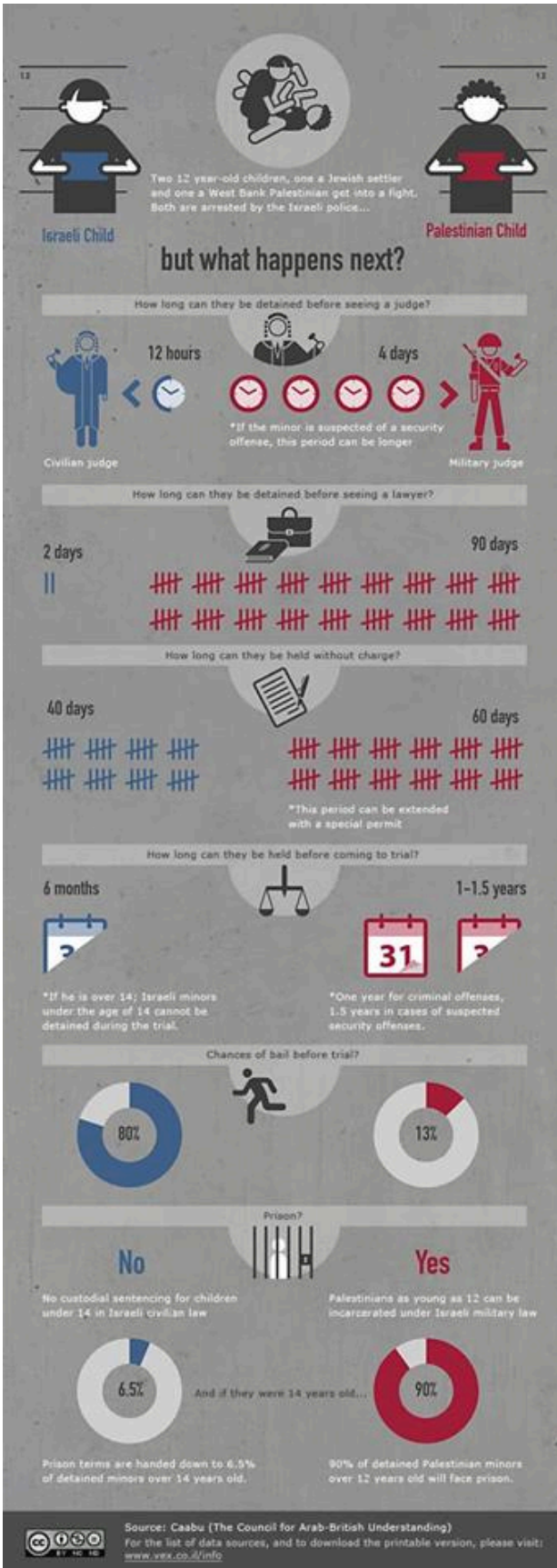
The screenshot shows the BBC News homepage with the headline "Rabin murder plot woman pardoned". The article text states: "A woman involved in the 1995 assassination of former Israeli Prime Minister Yitzhak Rabin has been pardoned by the Israeli President, Moshe Katsav. Margalit Har-Shefi was convicted in 1998 of not preventing Rabin's murder although the assassin, Yigal Amir, had told her of his plans. She will be released from prison on 10 August, after serving more than half of her nine-month sentence." A photo of Margalit Har-Shefi is shown. The page also features a sidebar with navigation links and a "See also" section with related articles.

This screenshot shows the right side of the article, including a photo of Moshe Katsav and the text: "Mr Katsav said he was convinced that Har-Shefi, 25, 'has paid her debt to society, has been punished, and is pained by the horrible assassination and has denounced it'." It also includes a section titled "Opposition outcry" which mentions Yossi Sarid and Knesset Member Eitan Cabel. The page footer contains links to more Middle East stories.

Screenshots of the BBC website, showing the exact article concerning the Har-Shefi case| screenshots taken on the 13th of September 2018.

⁵² (Catherine Cook 2004)

⁵³ (Corporation 2001)



VISUALIZING OCCUPATION: Children under Israel's Legal Regime. The different legal systems under which Israelis and Palestinians are tried apply to children as well. According to +972 documents, Palestinian children arrested by the army are treated by the military court system as "potential terrorists." This visual demonstrates what would happen if two 12-year-old boys, one Israeli and one Palestinian, get arrested for fighting. One would swiftly be brought before a judge, given access to a lawyer, tried and spared jail time. The other could face two years in jail without trial.

This illustration is the eighth in a series of infographics on Palestinian civilian life under occupation. By Michal Vexler, with the cooperation of Caabu – The Council for Arab-British Understanding. And could possibly be reached online via:

<https://972mag.com/visualizing-occupation-children-under-israels-legal-regime/58973/>

3.3 CHILD PRISONERS IN ISRAELI OCCUPATION JAILS (*FACTS & FINDINGS*)

Since the occupation of the Palestinian territories in 1967 and the exercise of full control thereof, the Israeli occupation resorted to a policy of collective arrests of Palestinian citizens. These arrests affected all age groups and did not distinguish between children or women, old people or youth.

Reports indicate that since 1967, more than one million Palestinians were arrested by the Israeli occupation forces or have been arrested throughout the occupied Palestinian territories. According to a report by the Palestinian Central Bureau of Statistics (PCBS), among those detained since 1967, there are more than 12,000 women and tens of thousands of children.⁵⁴

The arrests were extended even to dead Palestinians⁵⁵ as the Israeli occupation authorities continue to detain the bodies of the Palestinian martyrs, men and women, who were killed during Al Aqsa Uprising as well as hundreds of bodies of martyrs killed in the years before that. According to PCBS, since the start of Al Aqsa Uprising on 28 September, 2000 more than 70,000 cases of arrests were recorded including approximately 8000 children, scores of Palestinian Legislative Council Members and former ministers, more than 20,000 Palestinians in administrative detention, new arrests or renewal of detention periods, as well as 850 Palestinian women including four who gave birth inside their jails during Al Aqsa Uprising, who have since been released from prison.⁵⁶

From 1967 to mid-2018 217 prisoners died in Israeli jails as a result of torture, medical neglect, assassination immediately upon their arrest, or as a result of direct shooting at them by soldiers or prison guards inside jails. Among them, 75 detainees died of torture, 53 of medical

⁵⁴ (Statistics, The Palestinian Central Bureau of Statistics "PCBS" and Ministry of Detainees and Ex-detainees issue a press release on the occasion of the 17th of April. 2013)

⁵⁵ (Statistics, Press Release by the Palestinian Central Bureau of Statistics (PCBS) on the eve of the Forty Two annual commemoration of Land Day 2018)

⁵⁶ (Statistics, The Palestinian Central Bureau of Statistics "PCBS" and Ministry of Detainees and Ex-detainees issue a press release on the occasion of the 17th of April. 2013)

neglect, 74 as a result of deliberate killing and liquidation directly upon their arrest, and 7 who died following direct shooting at them by soldiers and guards while inside the jails.⁵⁷

Addressing the issue of child prisoners in Israeli occupation jails and the Israeli violation of international laws, conventions, and agreements. And focusing on the arbitrary measures and forms of torture that these child prisoners are subjected to during their arrest and interrogation. This chapter will present testimonies of torture as well as the post-arrest psychological and social impact on these prisoners.

Despite Israel's' continued crimes against the Palestinian people, yet this did not deter Palestinians who continued to resist and demonstrate amazing steadfastness. The battles that Palestinian prisoners carry on at each stage constitute new chapters of heroism that light the path for freedom. Therefore, the issue of prisoners and their suffering will continue to be an unsettled conflict and an unbearable wound that can only be dealt with via ending the Israeli occupation in all the Palestinian territories plus providing international protection to save and maybe restore the belligerent damages of the Israeli occupation.

3.4 VIOLATION OF INTERNATIONAL LAWS, CONVENTIONS AND AGREEMENTS *(FACTS & FINDINGS)*

Israel as an occupying authority, relied on legal adaptation and interpretation to serve its political and security interests. To this end, Israel issued military orders to impose control over the lives of Palestinian residents who are under occupation, without complying with the International Humanitarian Law (IHL), which should have otherwise constituted the main legal framework for regulation the behavior of the occupying authority towards the Palestinian residents and their lives under occupation. Israeli military courts had hence imposed their control over all life aspects of Palestinians since September 1967.

⁵⁷ *ibid*

The occupation authorities started to enforce provisions of the British Emergency law of 1945⁵⁸ and apply them to Palestinian prisoners in addition to a series of military orders specifically crafted and constructed to serve Israel's occupation policies. This was also manifested in the 'TAMIR' law⁵⁹ that allows administrative detention without pressing any charges, and finally the law on 'ILLEGAL COMBATANTS'⁶⁰ that was applied to some of the prisoners, some of who

⁵⁸ The **Defence Emergency Regulations** are an expansive set of regulations first promulgated by the British authorities in Mandatory Palestine in 1945. Along with the entire body of Mandate legislation, they were incorporated into Israel's domestic legislation after the state's establishment in 1948, except for provisions explicitly annulled. They remain in force today with many amendments. The regulations as amended form an important part of the legal system in the West Bank. They permit the establishment of military tribunals to try civilians, prohibitions on the publication of books and newspapers, house demolitions, indefinite administrative detention, extensive powers of search and seizure, the sealing off of territories and the imposition of curfews.

⁵⁹ In 1979, following an initiative of then-**Minister of Justice Shmuel Tamir**, the laws in force in Israel were amended and the Mandatory administrative detention regulation was replaced by a new law - the Law Authorizing (Emergency) Detention 1979 - which imposed a further limitation, so that only the Minister of Defence, and not any military commander, as was previously the case, was authorized to issue an administrative detention order. The 1979 law limited the maximum period of detention to six months. It also stipulated that detainees must be brought before the president of an Israeli district court (48 hours after arrest and subsequently once every three months at least), whose decision could be appealed in the Israeli Supreme Court. This law applies only the State of Israel.

⁶⁰ According to B'Tselem's report "Position Paper on the Proposed Law: Imprisonment of **Illegal Combatants**"; "In April 2000, the Supreme Court ruled that the law pursuant to which these civilians were being held does not allow the administrative detention of persons who do not endanger state security. Since the Lebanese civilians were being held as bargaining chips, and the state never claimed that the individuals themselves endanger security in any way, the court ordered their release. Following the judgment, Israel released 13 of the Lebanese civilians. Israel refused to release the remaining two, Mustafa Dirani and Sheikh 'Abd al-Karim 'Obeid. To enable the state to continue to hold them as bargaining chips, the government drafted a proposed law allowing such detention and side-step the Supreme Court's decision. In the meantime, to legitimize the detention of Dirani and 'Obeid, the state changed its argument and contended that they endanger state security, thus allowing their administrative detention under existing law. The Tel-Aviv District Court has repeatedly accepted the state's argument and approves Dirani and 'Obeid's detention once every several months on those grounds. Despite this, the government has not withdrawn the proposed law. The Proposed Law underwent several changes. The first draft was blatantly "tailored" to Dirani and 'Obeid and was clearly intended to enable the state to continue to hold them as bargaining chips for the release of Israelis held captive or missing. The Proposed Law, with slight alterations, passed its first reading in the Knesset and was forwarded to the Foreign Affairs and Defense Committee for deliberation. During the deliberations, jurists, the Knesset's legal advisor, the Committee's legal advisor, the Israel Bar Association, and human rights organizations vehemently opposed the Proposed Law, leading to further changes. However, these changes were cosmetic, and the essence of the proposed law remained the same: allowing administrative detention of persons who do not endanger state security. In the meantime, the Knesset Foreign Affairs and Defense Committee approved the Law for second and third readings in the Knesset plenum. Principle elements of the law: The Proposed Law defines "illegal combatant" as a "person who takes part in hostile activity against Israel, directly or indirectly, or belongs to a force engaged in hostile activity against the State of Israel" who is not entitled to the status of prisoner of war under international humanitarian law. Pursuant to the proposed law, when the Chief of Staff thinks that a person being held by Israel is an "illegal combatant" and that his release is liable to endanger state security, he may issue an order for the administrative detention of the individual. The order may be given in the detainee's absence, but the detainee must be informed of the order at the earliest possible time and

have finished their prison sentence in Israeli jails but were not released under the pretext of being subject to this specific new law.

At the onset of occupation in 1967, the occupation authorities declared that they will apply the ‘Geneva Conventions’ to the Palestinian situation and that the occupation was temporary and driven by legitimate self-defense objectives to protect their security. However, in that same year, the occupation authority renounced these statements and declared that the ‘Geneva Conventions’ do not apply to the Palestinian territories and embarked on enforcing the British Emergency Law of 1945. Later, it started to issue military orders without restrictions or compliance with international criteria.

On the other hand, it is not possible to highlight one reason for detention and apply it to all arrests carried out by the occupation authorities. Few prisoners were captured during resistance operations and therefore are subject to the Third Geneva Convention on Prisoners of 1949. Many prisoners were arrested on the basis of their affiliation with resistance factions but not while carrying out resistance operations. These prisoners are subject to the Fourth Geneva Convention related to the protection of civilians during armed conflicts or occupation. Some of the prisoners were kidnapped and charged, others were taken as hostages as is the case for ministers and parliamentarians who are considered as victims of a war crime according to the Rome Statute of the International Criminal Court.⁶¹

Some of the prisoners were not accused of any specific charges, and others are held captive under the category of illegal combatant.

These two latter types of prisoners are victims of war crimes committed by the Israeli occupation.

A review of the conditions and provisions related to prisoners under Article four of the Third Geneva Convention⁶², shows that these conditions do not apply to Palestinian prisoners. Therefore, the Fourth Geneva Convention is the one that applies to the majority of prisoners in

given an opportunity to argue against the order before an officer holding the rank of Lieutenant Colonel. The arguments are forwarded to the Chief of Staff.”

⁶¹ The Rome Statute established four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.

⁶² The full text of Article (4) of the Third Geneva Convention is available at: <https://ihl-databases.icrc.org>

Israel jails rather than the Third Geneva Convention. Hence, it is rational to say that there is one description that applies to all Palestinian prisoners and detainees in Israeli jails, namely that they are victims of a war crime.

This is due to the fact that the Israeli occupation authorities are violating the rules of the International Humanitarian Law as represented in the Geneva Conventions according to Article 8 (2) of the Rome Statute of the ICC. The article stipulates that:

*“For the purpose of this Statute, ‘war crimes’ means : (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention...”*⁶³ .. etc.

3.5 BLATANT ISRAELI VIOLATIONS AGAINST THE PALESTINIAN CHILDREN (FACTS & FINDINGS)

Child prisoners detained by the Israeli occupation authorities are deprived of their basic rights granted by international conventions; basic rights that they deserve regardless of their religion, nationality, gender, or conviction, and include: the right to not be subject to random arrest, the right to know the reason for arrest, the right to legal representation, the right of the family to know the reason behind the child’s arrest, the right to appear before a judge, the right to object or appeal the charges, the right to contact the outside world, the right to humane treatment that preserves the dignity of the arrested child.⁶⁴

Article 77 of the First Protocol additional to the Geneva Conventions adopted in June 1977 regarding the protection of victims of international armed conflicts, reiterated the following in terms of protection of children:

⁶³ The full text of the Rome Statute of the International Criminal Court is available at: www.icc-cpi.int

⁶⁴ (UNICEF 2013)

*“(1) Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.”*⁶⁵

*“(4) If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.”*⁶⁶

Where Article 75 entitled “Fundamental guarantees”, and paragraph 5 states that:

*“Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men’s quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.”*⁶⁷

Article 37 of the ‘Convention on the Rights of Child’ endorsed by UN General Assembly on 20 November 1989 and was ratified by Israel in 1991, stipulates the following:

“(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the

⁶⁵ (CONVENTIONS 2010) -- PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF INTERNATIONAL ARMED CONFLICTS (PROTOCOL I) OF 8 JUNE 1977 full text is available online at: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf

⁶⁶ *ibid*

⁶⁷ *ibid*

*deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”*⁶⁸

Article 16 of the same convention stipulates that:

“1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

*2. The child has the right to the protection of the law against such interference or attacks.”*⁶⁹

However, still the Israeli occupation authorities do not comply with these international laws.

Since 1967, the Palestinian prisoners and detainees haven't been subject to the Third Geneva Convention, despite Israel's ratification thereof. This established a situation whereby Palestinian prisoners and detainees are under the mercy of military orders that abide by no restrictions or international criteria.

Israeli occupation forces' arrest of Palestinian children constitutes a blatant violation of international laws, conventions, and agreements related to the protection of the rights of children, particularly Article (16) of the Convention on the Rights of the Child.

The occupation authorities continue to arrest Palestinian children and make them suffer in detention from extremely harsh conditions. The Palestinian Children are frequently reported that they are severely beaten and threatened in order to force them to sign confession papers. The Israeli forces is also accused of using excessive force against those children while arresting, including live ammunition. Furthermore, what is worse is the fact that the Israeli occupation is the only entity in the world that bluntly exposes Palestinian children for trials in military courts despite the fact that the international convention on human rights, particularly the CRC, have all repeated the need to provide protection for children, their lives, and their opportunities and potentials to grow and develop.

⁶⁸ (Assembly n.d.) – The full text of the Convention on the Rights of Child is available online at: www.ohchr.org/en

⁶⁹ *ibid*

These conventions restricted deprivation of children's liberty and made it a '*last resort and for the shortest period possible*.' But the Israeli occupation authorities makes the killing and detention of Palestinian children their first-most resort.

3.6 THE SHIFT IN TREATMENT OF CHILD PRISONERS (*FACTS & FINDINGS*)

The Commission for Prisoners and Ex-Prisoners' Affairs stated that since the year 2000 and up until the last quarter of 2015, Israeli occupation forces arrested more than 8500 Palestinian children. These children appeared before military courts and the majority of them were charged with throwing stones.⁷⁰

Sentences against these children ranged from life sentence and heavy fines, to varied prison sentences. These sentences are accompanied by cruel treatment of children inside the Israeli jails in terms of beating, torture, insults, deprivation of education or medical treatment.

They grow in harsh and inhumane atmosphere of prisons including being forced to stay in quarters with Jewish criminals. Isolating those children from the external, healthy or normal environment. Namely proper education and family components that are crucial for their wellbeing at their age. Thus violating the various international agreements that stress the need to provide children with protection.

Furthermore, the occupation authorities act with disregard to those rights and treat Palestinian children as potential 'terrorists'. From the Israeli perspective, the Palestinian Children are not perceived as children in the first place. According to Advocate Colonel Maurice Hirsch⁷¹; the comparison between Israelis and Palestinians in terms of 'children' is falsely to start with.

⁷⁰ (Affairs 2017)

⁷¹ Advocate **Maurice Hirsch**, rank: Colonel, is the Former Chief Military Prosecutor for Judea and Samaria, Israel Defense Forces ; Palestinian Media Watch

There is an Israeli child or minor who would commit some sort of crime and hence be dealt with according to the Israeli domestic law, taking into consideration any rehabilitation procedure and all sorts of protecting measurements.⁷²

Hirsch further elaborates; that on the other hand, the term Palestinian Child barely exists. Palestinian minors are criminals who compose a serious threat to Israel's security. They are murderers. They are being fed with all sorts of incitement. Colonel Hirsch even showed pictures that he claims it to be of the 7th grade curriculum of the Palestinian Authority, and explained how it is believed to be provoking unlawful behavior and how it urges the Palestinian Children to commit criminal acts against Israelis.⁷³

While the international law sets the age of childhood as being anyone under the age of 18, yet the Israeli law considers a Palestinian child who is 14 years old as an adult. More un-shamefully as 'a criminal'.

Israeli occupation authorities do not hesitate to brutally arrest children from 12 to 18 years old, detaining them, and putting them to trial.

3.6.1 Military Orders

Countries around the world have specifically granted children comprehensive care and sought to raise them properly by providing them with free non-discriminatory basic services according to Article (2) of the CRC.

“(1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

(2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities,

⁷² (University 2018)

⁷³ (Hirsch 2018)

*expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”*⁷⁴

Some of the countries went even further in protecting children by enacting laws that consider a crime penalized by law any act by the family to prevent their children from benefitting from these services.

Israeli occupation authorities violate all these laws. In dealing with the issue of Palestinian child prisoners, Israeli authorities rely on a series of military orders, the most important of which are the following four orders:

1. Military Order # 132 issued on 24 September, 1967; that defines a Palestinian ‘child’ as a person under the age of 16, in contradiction with Article (1) of the CRC; that defines a child as ‘*any human who is under the age of 18*’⁷⁵. And the Israeli penal law that defines the Israeli ‘child’ as anyone under the age of 18. This military order enables Israeli occupation authorities to arrest and administratively detain children at the age of 12 for six months without specific charges.
2. Military Order # 378; that includes primarily the penal and procedural law that is effective in military courts. This incorporates the following crimes: destruction of an Israeli army facility or possession of firearms or explosives- with a maximum penalty of a life sentence; membership in a group where one of the members caused deliberate death- with a maximum penalty of a life sentence; throwing objects, including stones, on individuals or properties- a maximum penalty of ten years in prison.

The most common charge against Palestinian children in Israeli military courts in 2009 was stone-throwing.

⁷⁴ (Assembly n.d.)

⁷⁵ *ibid*

According to this particular military order, Palestinians including children, can be detained for up to eight days before appearing in front of a military judge whereas Israeli ‘citizens’ should appear before a judge within 24 hours.

3. Military Order #1591; that allows the administrative detention of individuals, including children, without charges or trial.
4. Military Order # 1644; according to which a military juvenile court was established on October 1, 2009.

3.6.2 ‘Throwing Stones’: the most common charge

As for Palestinian children from Jerusalem who are arrested, Israel applies to them the Israeli Juvenile Law of 1971. The law requires the court to take all means and measures to avoid detention of children or excessive resort to detention. Israeli occupation courts introduced a substantial shift in their policies in terms of treatment of child prisoners from Jerusalem following the protests and clashes that broke out in the occupied city’s neighborhoods following the kidnapping and burning of the child Mohammad Abu Khdeir.

In the first half of 2014, the court would order the release of children who were arrested on claims of throwing stones and participation in clashes without having to wait for the parole officer’s report in this regard. This was carried out in accordance to Article 10 (a) of the Israeli Juvenile Law of 1971 that is applicable to minors from Jerusalem.⁷⁶

However, in the second half of the same year already, this practice was not anymore applicable to Palestinian minors from Jerusalem.⁷⁷

This was not the only change. In the past, rulings against minors who were charged of throwing stones without causing injuries varied between non-conviction or a suspended sentence with a fine and the minor is then released. After June 12, the courts started to convict children and sentence them to 2-3.5 months.

⁷⁶ (Palestine 2016)

⁷⁷ *ibid*

These Israeli practices clearly violate the international conventions for human rights, particularly the CRC; that stresses the need to provide protection for children, their lives, and their opportunities for growth and development.

These conventions imposed restrictions on depriving children of their freedom and made it the 'last resort and for the shortest period possible.' Nevertheless, Israeli occupation authorities made killing and detaining Palestinian children its first resort thus undermining all the safeguards and guarantees offered by international agreements and conventions and hence refusing the protection that is stipulated by more than 27 international agreements on children.

The Israeli occupation authorities deal with children as 'potential terrorists'⁷⁸ and make them experience all forms of torture, cruel and degrading treatment such as beating, deprivation of sleep and food, threats and cursing, deprivation of visit rights in addition to the worst psychological and physical methods to extract confessions by force, which adversely affect their aspirations, ambitions, and hopes.

Children come out of jail feeling a lot of anger, hatred, and the desire of revenge against the occupation.

Child prisoners are subject to all forms of torture and abuses that violate the most basic human laws, since the moment of their arrest, until they reach detention or interrogation centres. Among these violations are the following:

Smashing doors during raids. The use of dogs for searching thus terrorizing the children. Keeping children out in the cold weather during winter while soldiers conduct a search of the house, taking a very long time. Handcuffing children in front of their parents, beating them immediately upon their arrest as well as during their transfer to the interrogation centres.

⁷⁸ (University 2018)

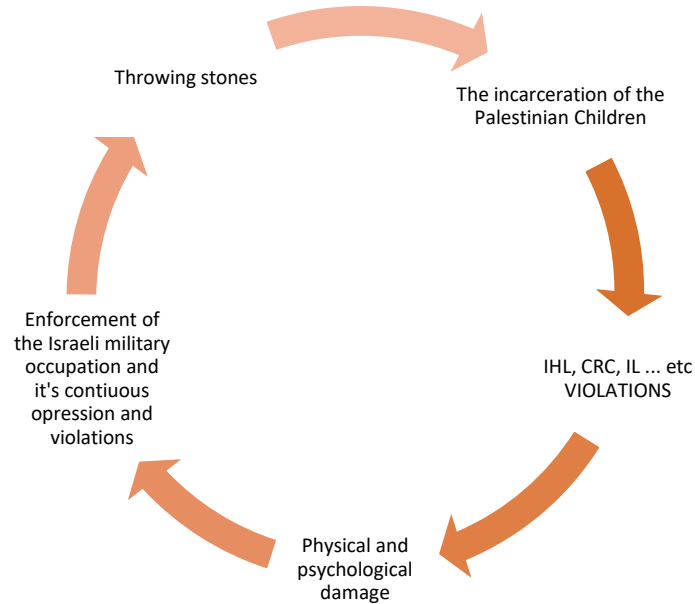


Figure (5)⁷⁹

3.7 THE STRUGGLE FOR FREEDOM UNDER THE OSLO ACCORDS

The Palestinians in Jerusalem are denied both; the Israeli citizenship and the Palestinian identity card. This means that the political and legal rights of the Jerusalemites is in the disposition of the Israeli Authorities. Between the Occupied and the Occupier, this of course is the major foundation of the dissimilar disadvantages for the Palestinian Jerusalemite political prisoners.

The Palestinians in East Jerusalem feel they are isolated, in particular the prisoners among them. This isolation roots from the belief that they had been let out of nearly all negotiated prisoners release deals. More specifically, since the Oslo Peace Process.

During the initial Oslo years, an Israeli strategy was in process. This strategy goals to fragment any possible Palestinian Prisoner's Movement unity in any shape. Plus the strategy aims at segregating the Palestinians demographically.

⁷⁹ Figure (5) illustrates the endless loop of the act of the Israeli occupation exercises and violations that results in oppression and hence throwing stones, as a form of showing the amount of frustration among the Palestinian children, refusing the circumstances they are forced to endure, adapt to and live under.

The IPS hereby transferred a large majority of the Palestinian prisoners of Jerusalem to Gilboa prison, located in the 1948 territories (Northern District) in the beginning of the year 2008.⁸⁰

According to statistics provided by Addameer, until 2018 (November) there are 27 Palestinian prisoners detained from the time pre-Oslo 1993. And, approximately 370 Jerusalemite prisoners.⁸¹ Most of them were arrested and detained during the Second Intifada.

Over the years the Israeli authorities have been reported to impose blatantly harsh judicial sentences over those particular prisoners.

Even though it was a crucial focal point for the PLO to stress on the demand of the release of the Palestinian political prisoners during the years 1993 till 2000, the Palestinians failed to particularly mention the child prisoners' issue in the Oslo accords, taken by good faith abiding international law. Yet the Israelis failed to release those prisoners from the areas they have started to withdraw from in 1995. This means that they have failed and miscarried the handover of the prisoners to the new Palestinian Authorities. This in itself is a clear violation of Article 77 of the Fourth Geneva Convention of 1949; that reads:

“Protected persons who have been accused of offences or convicted by the courts in occupied territory, shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territory.”⁸²

In the very same context; all the Palestinian prisoners including the children among them were transferred to prisons inside the 1948 territories. This is also a violation of Article 49 and Article 76 of the Fourth Geneva Convention of 1949.

Article 49 reads:

“Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the

⁸⁰ (ADDAMEER 2017)

⁸¹ Statistics are systematically updated, and are reachable online via: www.addameer.org/ar/statistics/20181129

⁸² The full text of the Fourth Geneva Convention of 1949 is available at the online database of the ICRC

occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”⁸³

Article 76 reads:

“Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country. They shall receive the medical attention required by their state of health. They shall also have the right to receive any spiritual assistance which they may require. Women shall be confined in separate quarters and shall be under the direct supervision of women. Proper regard shall be paid to the special treatment due to minors. Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143. Such persons shall have the right to receive at least one relief parcel monthly.”⁸⁴

So entirely excluded now, the Palestinian prisoners from the 1948 territories and East Jerusalem do not have any position in any negotiated prisoners’ releases during the Oslo process and beyond.

It is vital to highlight that those particular prisoners from the Israeli perspective are *“prisoners under the authority of the state of Israel and they are not political prisoners of the Israeli-Palestinian conflict”*.⁸⁵

Israel on almost all levels, practitioners, academics and decision makers continues to classify the Palestinian prisoners from East Jerusalem as “criminals” or “security prisoners under the Israeli authority.” Specifically the child prisoners that are constantly labeled as “potential criminals”.⁸⁶

⁸³ ibid

⁸⁴ ibid

⁸⁵ (University 2018)

⁸⁶ (Hirsch 2018)

So rather than recognizing the status of those prisoners and detainees as protected persons under IHL, Israel has a stubborn position of categorizing them as either security or criminal offenders, where throwing stones is the most common crime.

CHAPTER FOUR

LIVE TESTIMONIES

4.1 IN THEIR OWN WORDS	
– CHILD PRISONERS TALK ABOUT THEIR EXPERIENCE.....	52
4.1.1 HORRIBLE EXPERIENCE	
– <i>Child Prisoner Rasmi Al Rishiq 14 years old</i>	
4.1.2 HORRIBLE EXPERIENCE	
– <i>Child Prisoner Tareq Abu Khdeir 15 years old</i>	
4.1.3 HORRIBLE EXPERIENCE	
– <i>Child Prisoner Sami Marwan Hajajrah 15 years old</i>	
4.1.4 HORRIBLE EXPERIENCE	
– <i>Child Prisoner Mohammad Thawabteh 16 years old</i>	
4.1.5 HORRIBLE EXPERIENCE	
– <i>Live Testimonies of Child Prisoner's Mothers</i>	
4.1.5 (i) Lawahith Shyoukhi	
4.1.5 (ii) Khuloud Al Awwar	
4.1.5 (iii) Ferihan Daraghme	
4.1.5 (iv) Hanadi Saed Serhan – <i>Maher, Mohammad and Sultan</i>	
4.2 THE MOST PROMINENT ISRAELI VIOLATIONS	
AGAINST PALESTINIAN CHILD PRISONERS.....	63
4.3 TORTURE FORMS PRACTICED BY ISRAELI OCCUPATION AUTHORITIES	
AGAINST PALESTINIAN CHILD PRISONERS.....	64

CHAPTER FOUR

LIVE TESTIMONIES**4.1 IN THEIR OWN WORDS***(CHILD PRISONERS TALK ABOUT THEIR EXPERIENCE)*

Both the interviewed Palestinian Children and their mothers, particularly from the Jerusalem neighbourhood Silwan, Ras Al Amoud, Wadi Hilwi, Ein Louzi, Shufaat, Eisawiyyi and the Old City of Jerusalem plus documented information confirm that all prisoners, particularly children, have been subjected to one or more forms of physical or psychological torture, or physical harm. As well as insults and degradation in public and/or in front of family members, in grave violation of the rules of IHL and International Human Rights Law.

Numbers show (as illustrated in figures (6) and (7)), that the violations in the child rights context is stable and stubborn. There is no significant decrease in the numbers of children incarcerated by Israel whatsoever. This indicates that there is no serious attempts from the Israeli side to ease those violations or settle the issue of detaining children as young as 12, in a lawful manner.

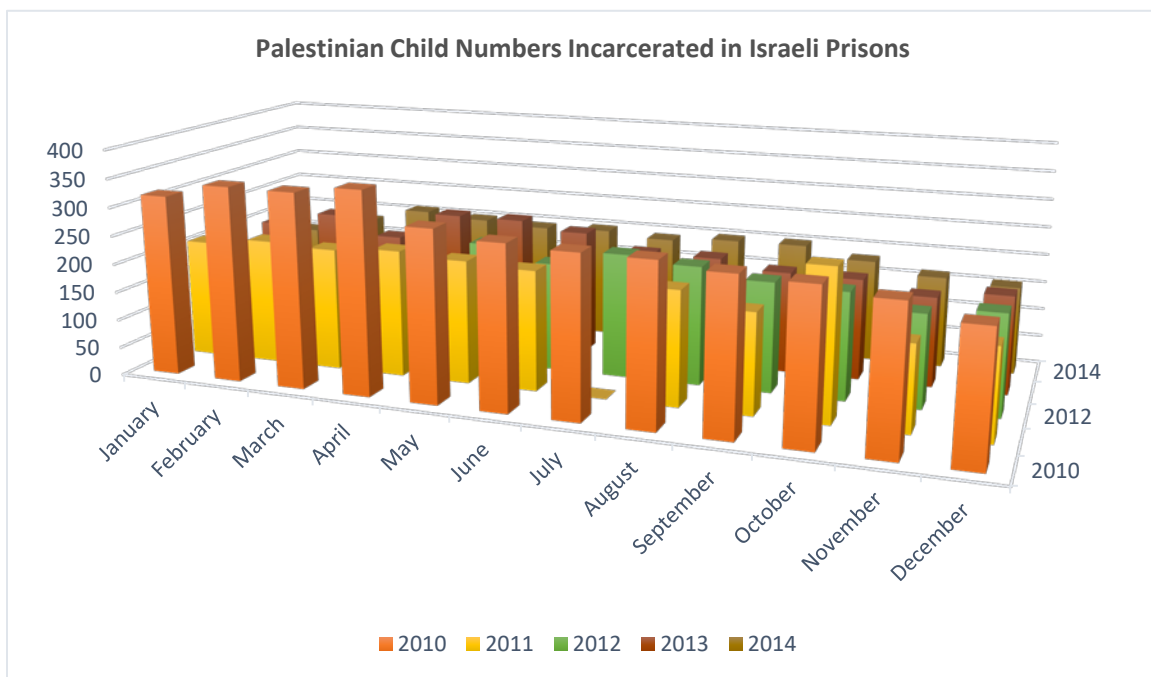


Figure (6)

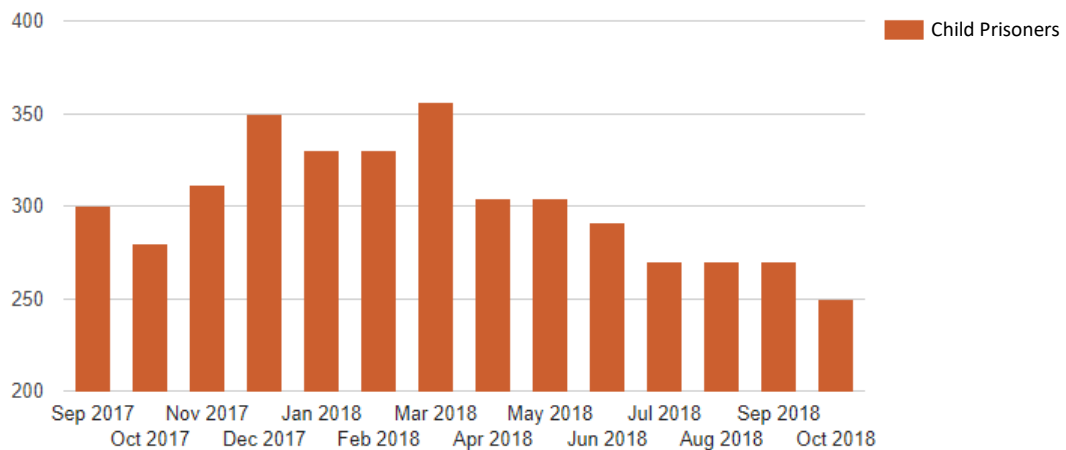


Figure (7)

Numbers in charts are derived from the latest DCI-P and Addameer – Prisoner Support and Human Rights Association reports accessed on December 2018

According to the ICRC, it makes no difference the kind of detention facility it is and how well it separates adults from children. Once a child is arrested, detained, sentenced or not and incarcerated; there is an assured risk to their health, well-being and security. Not only at the time of incarceration but also in the upcoming life time that they will have to deal with the horrible aftermath. Children in Palestine face a tough struggle to become well-adjusted adults if they grow up in detention. They are at increased risk of violence and exploitation which indeed will set a platform for further hardships.

4.1.1 Horrible Experience **Child RASMI AL RISHEQ – 14 years old**

The Palestinian child prisoner Rasheed Rasmi Al Risheq (14 years old), from the Old City of occupied Jerusalem, was arrested on February 10, 2014 and served a 15 months sentence at ‘Sharon’ prison, talks about his experience.

Rasheed says that three soldiers brutally arrested him from his family's house and put him in a military vehicle. Once in the vehicle, the soldiers started to beat him in the face and the stomach and took him to an area close to Jaffa gate in Jerusalem. There they forced him to go in a room filled with engines, machines, and electric generators. Then an officer and two soldiers entered the room and started to punch him on the face ordering him to confess. One of them pushed Rasheed to the floor and stepped on his back.

Then Rasheed was taken to the 'Russian Compound' where interrogation continued over a period of 30 days.

In one occasion, they left him naked until the morning and he was harassed by the prison guards and was subjected to a prolonged painful seating position on a chair. As well as insults and obscene language. The interrogators would make strong, strange, and disturbing noises that deprived him from sleeping and caused him headaches.

The representative of young prisoners at Ofer military prison, prisoner Abdel Fattah Doleh, said in a press report that was distributed by the Commission of Prisoners' Affairs on 5/11/2015, that 130 minors were put in prison during the month of October 2015.⁸⁷

Among them, 49 minors were subjected to brutal attacks and beating by the Israeli soldiers and interrogators, and that five cases arrived with diseases and six cases injured by live ammunition.

This particular report along with most reports released from the Commission of Prisoners' Affairs in relation to the issue of child prisoners, indicated that these prisoners were subjected to severe beating upon their arrest. Causing some of them to suffer from wounds and bruises. The soldiers beat them with guns, feet, and sticks.⁸⁸

Furthermore, the report also states that 71 of these minors were arrested from their home and in the late hours of night. And that their ages ranged between 12 and 17 years.

⁸⁷ (2018- 2015 والمحريين) Reports are available online at: www.cda.gov.ps in both Arabic and English.

⁸⁸ ibid

Names of some of the Jerusalemite Children arrested and detained⁸⁹:

Maher Samer Serhan, 17 years old, Wadi Hilwe, Silwan
 Mohammad Samer Serhan, 15 years old, Wadi Hilwi, Silwan – *arrested 17 times*
 Sultan Samer Serhan, 12 years old, Wadi Hilwi, Silwan – *arrested 9 times*
 Mohammad Ghassan Jaradat, 15 years old, Esawiyyi
 Musleh Shihada, 16 years old, Ras al Amoud, Silwan
 Mohammad Zaghal, 17 years old, Silwan
 Mohammad Nidal Salah, 10 years old, Damascus Gate
 Khadeir Nader Shweiki, 12 years old, Damascus Gate
 Yousef Nader Shweiki, 11 years old, Damascus Gate
 Shafiq Nader Shweiki, 10 years old, Damascus Gate
 Shadi Farrah, 15 years old, Jerusalem
 Ahmad Zaatari 15 years old, Jerusalem
 Ahmad Zeidani, 15 years, Hai Al Bustan, Silwan
 Ibraheem Gheith, 15 years, Hai Al Bustan, Silwan – *arrested 4 times*
 Mohammad Rajabi, 14 years, Hai Al Bustan, Silwan – *arrested 14 times*
 Ahman Rajabi, 13 years, Hai Al Bustan, Silwan – *arrested 5 times*
 Adnan Rajabi, 16 years, Hai Al Bustan, Silwan – *arrested 8 times*
 Harbi Rajabi, 15 years, Hai Al Bustan, Silwan – *arrested 5 times (diabetic child)*
 Khader Odeh, 13 years, Hai Al Bustan, Silwan
 Omran Zeitoun, 16 years, Hai Al Bustan, Silwan – *arrested 9 times*

Not only from the neighbourhoods of East Jerusalem, but rather from all areas of the occupied West Bank, children are being arrested and tortured. The Commission of Prisoners' Affairs published some of child prisoners' names of whom were subjected to severe beating during their arrest:

Ahmad Nadi Mohammad Gharbiyyeh from Kufr Ni'meh
 Qais Majdi Mohammad Al Hayek from Jericho

⁸⁹ (Center 2018)

Ayham Marwan Na'im Syouri from Hebron
 Hassan Daoud Al Rajabi from Hebron
 Rami Said As'ad Munshar from Hebron
 Fadi Mohammad Ali from Ramallah
 Mohammad Mahmoud Omar Ishtayyeh from Kufr Ni'meh
 Anas Jamal Ahmad Abu Sharar from Doura
 Mahmoud Khalil Ahmad Abu Mufarreh from Taq'ou
 Ali Diab Ali Sabah from Taq'ou
 Ahmad Khaled Ahmad Awwad from Al Bireh
 Mahmoud Ali Abed Sabah from Taq'ou
 Mohammad Ziab Ali Sabah from Taq'ou
 Salam Adel Ahmad Qura'an from Al Bireh

In the same context, and according to the representative of the captives in detention centre Megiddo, Dargham al-Araj; there are 67 minors in Section 4 of the Megiddo prison, including 60 prisoners from Jerusalem and its neighbourhoods.⁹⁰

Araj explains further that many of the children captives are subjected to ill-treatment, beatings and humiliation, by members of the 'Nachshon'⁹¹ in the Jerusalem courts. Where many

⁹⁰ (2015-2018 والمحررين)

⁹¹ The Commission of Detainees and ex-detainees affairs issued a report on the 'Nachshon' forces of the prison administration that committed premeditated murder of the martyr Ra'id al-Jabari on 9/9/2014, during his transfer from Ofer Military Prison to Ishael Prison in Beer Sheva. Where he sustained a fatal shot in the head. Thus hence Al-Jabari died immediately due to severe brain hemorrhage. The report on the other hand explains that the word 'Nachshon' according to the Hebrew dictionary means strength, hardness and cruelty, a force that has been formed to suppress the detainees, and its members are equipped with the latest weapons and tools of oppression. The 'Nachshon' unit is one of the strongest and largest Israeli military units, and has been formed specifically to tighten the control of prisons by fighting the so-called "riots" inside. These special units wear a distinctive uniform with the label "prison security" on it. Combatants in 'Nachshon' unit have previously served in various military units in the IDF. Their members possess technical combat skills, including the use of various weapons and equipment, as well as the physical combat capabilities necessary direct confrontation. Its members receive special training to quell any "rebellion" of prisoners and face all emergencies in prisons and detention centers, including hostage-taking. In each prison and detention center, a special unit of these units is established and operates 24 hours a day without interruption. This division is authorized with no limits to break into the rooms and suppress prisoners at night or day and control the prison. This unit is accused of designing and yet integrating deliberate and programmed escalation towards prisoners.

of the Jerusalemite prisoners returned from the courts to the section with many bruises on their bodies and the signs of assault on them are very obvious and clear.

Complaints were filed against the 'Nahshon' thus the administration of the prison Majidu held an investigative meeting between the administration of Section 4 and the intelligence officer of the Nahshon and the commander of the Nahshon in the north district. A hearing of the complaints was done, where the resentment of the inhumane actions against the prisoners was fully expressed. Promises were made to address the subject and punish any 'Nachshon' member if proved guilty in subjecting prisoners to harm. The Megiddo prison management was also asked to photograph any prisoner arriving from the court to the prison in an act of check, and if beaten or injured then to file a formal complaint directly.

Yet on the other hand, human rights organizations indicate that the campaign of arrests against Palestinian children takes on a racist nature which is evident in the way they are treated at courts, whether civil or military ones, compared to treatment of children from Jewish origin. Certainly, Jerusalem children are subjected to arbitrary policies by interrogators especially at the Russian Compound prison.⁹²

4.1.2 Horrible Experience **Child TAREQ ABU KHDEIR – 15 years old**

Human rights organizations also documented the testimony of Tareq Abu Khdeir (15 years old). Who was attacked by a special unit of the Israeli police and was subjected to severe beating during his arrest on 3 July, 2014 while he was in front of his house in Shu'fat neighbourhood during the protests and clashes that took place in Jerusalem following the killing of his cousin Mohammad Abu Khdeir, a child himself.

Recorded tapes from nearby CCTV cameras showed how members of the special unit brutally attacked Abu Khdeir. The beating focused on the face, chest, and the back which led to deformations and bruises in the face, head, and chest. Tareq lost consciousness as a result of the severe beating and was transferred to hospital for treatment for several

⁹² (2015) الاحتلال يصعد سياسات انتهاك حقوق الأطفال خاصة المقدسيين, الإنسان)

hours. Despite his serious health condition, Tareq was transferred to an interrogation centre based on the decision of the Israeli intelligence services.

Mohammad Mahmoud, lawyer at Addameer human rights organization, considered that the beating that Tareq Abu Khdeir was subjected to, almost got him killed and that the beating was with the purpose of killing.⁹³

4.1.3 Horrible Experience

Child SAMI MARWAN HAJAJRAH – 15 years old

Child prisoner Sami Marwan Hajajrah (15 years old) from Hebron stated that he was arrested on 10/6/2016 while near Al Ibrahimi mosque. Israeli soldiers attacked him and beat him on his back until he fell on the ground. One of the soldiers started beating his with a wireless device on his face. Then all soldiers present at the time started to kick him on his side and kidney with their shoes and hands and started to swear at him. Sami added that one soldier came and made him stand up and then beat him on his head. Another soldier came and hit him so he fell again to the ground.

Another soldier followed them and started to kick him all over his body and Sami was fasting. He added that when the time came for breaking the fast, the soldiers refused to give him water to drink. Sami was too thirsty because of fasting, the heat, and the beating. The soldiers did not allow him to go to the bathroom. He was then transferred to Ofer prison feeling exhausted and sick and left without providing him with any care.

If this is to indicate something it is that there is no difference in the Israeli forces attitude in the context of dealing with a Palestinian child, whether a Jerusalemite or from the Occupied West Bank. The geographical location differs but the violations and the suffering does not.

⁹³ (2015) اعتقال الأطفال تدمير ممنهج للطفولة الفلسطينية, الإنسان)

4.1.4 Horrible Experience

Child MOHAMMAD MANSOUR THAWABTEH – 16 years old

Mohammad Mansour Thawabteh (16 years) from Beit Fajjar near Bethlehem, said he was arrested on 28/5/2016 after his family house was raided at dawn. He was subject to beating from the first moments of his arrest.

He was specifically beaten on his knee that was hurting him as he was supposed to undergo a surgery for it. He told the soldier that, which made them focus their beating on that knee causing him unbearable pain. He told them he had hernia, yet they continued to beat him. Mohammad said he was forced to confess that he threw stones at army patrols due to the beating and terrorizing that he was subjected to during the interrogation. He filed a complaint against the soldiers who attacked him.

4.1.5 Horrible Experience

LIVE TESTIMONIES OF CHILD PRISONER'S MOTHERS

4.1.5 (i) Lawahith Shyoukhi⁹⁴

From Silwan, a mother of six prisoners; her four sons and two daughters. While her elder daughter is held in administrative detention. Explains in details her prison visits difficulties. She says she is distracted between three different detention centers. She is the only parent to visit three children at once at the 'Rimon'⁹⁵ prison, she adds in a bitter smile.

Night raids are the worst, Shyoukhi describes. Adding to the whole classical list of violations and terror that accompanies the detention phase, there is the mocking and

⁹⁴ (Jerusalem 2017)

⁹⁵ Rimonim Prison is one of the ten prisons located in the central district. It operated under the Israel Prison Service; in Hebrew: שירות בתי הסוהר, *Sherut Batei HaSohar*, commonly known in Israel by its acronym Shabas (שבס) or IPS in English, is the state agency responsible for overseeing prisons in Israel. It is under the jurisdiction of the Ministry of Public Security.

sarcastic acts of the soldiers who carried her son (12 years old) and made him stand on a table in the house and poured him with hysterical terrifying gestures.⁹⁶

During the detention of her younger sons who were at the time 12 and 14 years old the soldiers used ammunition, and fired gas bombs inside her house.⁹⁷

4.1.5 (ii) Khuloud Al Awwar⁹⁸

From Silwan, plus being a mother of a prisoner sentenced for four years, she is a sister of a prisoners and a sister of a martyr. Al Awwar articulates that the struggle expands much further than the actual four years her son was sentenced to. In a metaphoric mode she describes how both her son and herself feel that she is the actual prison guard of her son. The son was first arrested when he was only 12 years old. Then served a sentence of two actual years incarceration then a period of four months in house arrest and relegation to the Ramallah – the occupied West Bank. She believes that the war against the Palestinian children in Jerusalem is nothing but a war on their self-esteem and pride. The suffocating arrest circumstances and prison visits are nothing compared to the time she went to the prison visit bringing her son his 18th birthday gift to find him toothless. She adds in tears.

“My son is a handsome gentleman, they broke his front teeth. I was dying from inside but I smiled to him, and told him it’s going to be alright. He refused to let me take a photo with him, he refused to even smile back at me. I repeated to him that when he is released I will make sure to have his teeth repaired even if it will cost me a fortune.”⁹⁹

Said the mother. The severe beating during the interrogation resulted in breaking her son’s teeth and thus caused him distortion in the face.

⁹⁶ (القدس 2018)

⁹⁷ ibid

⁹⁸ (Jerusalem 2017)

⁹⁹ (القدس 2018)

4.1.5 (iii) Ferihan Daraghmeh¹⁰⁰

The mother of child ex-prisoner Shadi Farrah. Known as the youngest Palestinian child prisoner. Shadi was arrested on December 30, 2015. He was just 12 years old at the time. His whole family was in a state of shock hearing on the news that their little boy was arrested. This caused them massive stress and they suffered sleep deprivation not knowing the destiny of their child. *“When I closed my eyes, all I could see was my little boy, scared and alone, in a freezing cold prison cell. I later learned that the Israeli forces forced him to stand in there naked, in a freezer cell.”* Daraghmeh adds.

Shadi had been waiting at the bus station in Jerusalem when Israeli police arrested him and took him to the main police station, the Russian Compound.

The family was informed later about the details of their son’s situation and location. Daraghmeh further explains. Shadi had been accused of planning to commit a crime with a knife, despite no knife being found in his possession.

During the interrogation the boy was asked “whether he would have stabbed an Israeli, if he had had a knife.” Daraghmeh says. Where Shadi responded that he would never have been able to stab any human being.

Shadi was held for four days before being moved to a ‘reformatory’ that is a detention center for those over the age of 15.

After 20 court sessions during a period of one year, the final verdict was issued. Shadi who turned 13 at the time, will spend an additional two years in prison. *“For Israeli children, the laws are different. Now all we can do is visit Shadi as often as we can. Technically, we are allowed to see him once a week, but even with saving every penny we have, we can only afford to travel to the prison once every two weeks or sometimes once a month”*, the mother adds.

Daraghmeh describes that theirs lives have been turned upside down. *“It feels like a living hell.”* Her youngest, Rayan, who was 3 years old and very close to his older brother Shadi had lost the sense of safety.

¹⁰⁰ ibid

Class rooms are the normal place where Shadi and all the other Palestinian children should be, the mother believed.¹⁰¹

4.1.5 (iv) Hanadi Saed Serhan¹⁰²

Hanadi is the wife of the Martyr Samer Serhan, killed with impunity by the Israeli settler's private security guards in Silwan, 2011. Hanadi is a mother of two daughters and three sons, Maher, Mohammad and Sultan. Her three sons are repeatedly detained and arrested, convicted and sentenced. Like all the other mothers who have their children sentenced in house arrest, she feels that she becomes the cruel cold hearted prison guard and that her home changes to a cold prison cell rather than being the source of familial warmth, security and safety.

Her younger son Sultan was arrested from inside his school's playground in Silwan by the Mista'arvim¹⁰³, he was 10 years old at the time.

Serhan and her three sons describe the night raids brutality, particularly when it occurs in winter. They further highlight the beating, shacking, insults and the blackmailing from the side of interrogators. Interrogation sessions take from four to five continuous hours. This is exhausting and the plastic handcuffs or as the children call them the zip stripes, restrict blood flow to the hands causing pain and injury. Whereas the metal chains on the feet are as equal as painful.

Mohammad, has been arrested 17 times, and is only 15 years old.

¹⁰¹ (Jerusalem 2017)

¹⁰² (Serhan 2018)

¹⁰³ Mista'arvim are units of the Israel Defense Forces, Israel Border Police, and Israel Police who operate undercover. Such units are specifically trained to assimilate among the local Arab population. The first مستعربين Mista'arvim unit, known as the "Arab Department" (*Ha-Machlaka Ha-Aravit*), was established in 1942 as a unit of the Palmach. One of the Mista'arvim known and famous units is: Sayeret Duvdevan or 'Unit 217', established in the West Bank in the 1980s and is still operating as of 2018.

4.2 THE MOST PROMINENT ISRAELI VIOLATIONS AGAINST PALESTINIAN CHILD PRISONERS

Analyzing previous data illustrating every single aspect those Palestinian children has been facing, and observing the details in its original narrative, a list of the most prominent violations performed by the Israeli authorities could possibly be:

- Israeli forces deliberately storm houses after midnight and in the early hours of the morning.
- Parents are not allowed to attend the interrogations in cases of children's arrests.
- Detainees are not allowed to consult with a lawyer.
- Detainees, particularly children, are forced to sign written statements in Hebrew which Palestinian children do not understand. The statements are signed without any certainty regarding their content.
- Blackmailing children: Israeli intelligence and police officers trick the children by telling them they would be released if they admitted to the charges pressed against them. They tell them that if they refused to condemn themselves, they would detain their parents.
- Beating children during their arrest and their interrogation.
- Using plastic handcuffs on children.
- Swearing, cursing, and insulting the children.
- Death and sexual violence threats.¹⁰⁴

¹⁰⁴ All testimonies in this research report, contain and conclude those violations and torture forms.

4.3 TORTURE FORMS PRACTICED BY ISRAELI OCCUPATION AUTHORITIES AGAINST PALESTINIAN CHILD PRISONERS

Furthermore on analyzing previous primary data illustrating every single aspect those Palestinian children has been facing, and observing the details in its original narrative, it is comprehended that among the forms of torture practiced by Israeli occupation authorities against child prisoners during interrogation are the following:

Families are not being properly contacted to inform them where their children are being detained, or transferred to. Children are not being allowed to contact a lawyer. Children are not given an appropriate meal. Children have no access to hygiene or allowed to changing their underwear. The Palestinian children are subjects to severe beating, an ongoing practice from the moment of arrest until the child is in prison. Most of the time, the beating affects all of the body particularly upper body parts, particularly the head. Children are being burnt with cigarette butts.

Violent shaking. A child is carried and repeatedly shaken causing loss of consciousness in some cases. Children are constantly being threatened to expel their families and demolish their homes.

Handcuffing, feet chaining, and blind-folding are stable and constant. Pouring cold water on the prisoners including the child prisoners, during winter and hot water during summer.

Sending prisoners to rooms of shame (rooms of collaborators) as a mean to extract confessions through dubious methods. Plus locking child prisoners with Israeli criminals and drug abusers.

Exercising pressure on child prisoners and blackmailing them so as to force them to collaborate with the occupation.

Sleep deprivation is a viral trend, and is considered one form of pressuring the child prisoners and break their moralities.

Child prisoners are being placed in dark cold prison cells and rooms that are not human fit that lack the minimum basic health conditions.

Medical neglect of sick prisoners is extremely common. Child prisoners are blatantly deprived from education and family and lawyer visits.

The Palestinian child prisoners are subjects to solitary confinement and psychological pressures.

Those children are being incarcerated in large numbers gathered together in small suffocating rooms, where there is no enough space, sufficient covers and sheets or mattresses.

Swearing and use of obscene language against children while being transferred or when they go out for their daily walk in prison is a not ending protocol.

Insults and degradation are constant, plus children are being forced to use profane language, or curse relatives like fathers and mothers, or to spit at other prisoners.

Incarceration in dark cells all day long without lighting which affects the children's eyesight.

Not allowing children to use the bathroom except after very long hours.¹⁰⁵

¹⁰⁵ All testimonies in this research report, contain and conclude those violations and torture forms.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS.....	67
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CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

An average of 310 Palestinian children were in the Israeli prison system each month for ‘security offences’, according to Israel Prison Service data.

Israel has the dubious distinction of being the only country in the world that systematically prosecutes an estimated 500 – 700 children each year in military courts lacking fundamental fair trial rights. Children commonly report physical and verbal abuse from the moment of their arrest, and coercion and threats during interrogations, according to DCI-P.

Benjamin Netanyahu, the man with ongoing corruption cases, some of which are obscured by the media, who ensured the passage of the legislation of the "National Law", which includes the definition of Israel as a Jewish state in the first place, and preference for the democratic system, as a "Jewish and democratic state"; this law stipulates that self-determination in historic Palestine is the right of Jews only.

This is the legitimization of the past, the present and the future. This is the interpretation of occupation. Racism and colonialism at its best. Ranging from the ground practices towards legitimizing the exercises of occupation to understandable international language. Which, of course, contravenes international law.

It should be noted here that from an international point of view, this basic law, which Netanyahu prefers, is in stark contrast to the principles of UN General Assembly Resolution 181 of November 29, 1947, on the partition of Mandatory Palestine into two states. It calls upon each State to adopt a "democratic constitution" that guarantees "no distinction between the population in any way because of origin, religion, language or sex", as well as "all persons under the jurisdiction of the State have the right to equal legal protection".

In practice, the basic principles at the heart of the draft Basic Law clearly contradict all the principles of the United Nations Partition Resolution, a resolution that has long since been sung by Israel as a historical basis for its recognition.

The National Law is not only illogical or imbalanced, it is clearly undemocratic, as it violates fundamental principles of international law, in particular the right to equal protection before the law, and the explicit prohibition against discrimination on grounds of national belonging, religion, language or culture. Which are fundamental principles that have been documented in the international treaties signed by Israel, including the 1965 International Declaration on the Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, (The State of Israel has ratified all three in 1991).

Israel here creates a surpassing model of discrimination, racism and occupation and legitimization of the violation of international law practiced applied by the law of nationalism in the first place.

Jerusalem, being announced December 2017 by Donald Trump, that the United States recognizes the city as Israel's capital, and hence moved the embassy from Tel Aviv to Jerusalem. Australia's move on Jerusalem comes hand in hand December 2018 with the Trumps declaration, adds nothing but more intangibility, complicity and oppression on the Palestinians in East Jerusalem.

So part and parcel of the protracted conflict in Palestine, is the unresolved situation of East Jerusalem. The rights of Palestinians are violated; the coping mechanisms of families are weakened by the closure regime, the ethnic identification system, and the daily deprivation of basic human rights and needs.

This research concludes that Palestinian children in East Jerusalem are subject to conflict-related violence, as they encounter the Israeli Forces and are taken into Israeli military detention.

Palestinians residing in East Jerusalem, like other Palestinians in the occupied Palestinian territory, are protected as defined in the Fourth Geneva Convention of 1949, a major cornerstone of international humanitarian law and primary legal reference for Israeli occupation; specifically articles 4 and 27. These stipulate that Palestinians in East Jerusalem are entitled, in all circumstances, to respect of their human dignity and must at all times be humanly treated and protected especially against acts of violence or threats thereof.

Yet as a matter of fact, based on the practices on the ground, the research findings shows that they are not.

They are also entitled to protection of their rights under international human rights law, including the special protections afforded to children. The research illustrates that Israel is the primary duty bearer responsible for providing this protection and for generally ensuring the welfare of the Palestinian residents of East Jerusalem. And they are not!

The research shows the impact of the protracted Israeli occupation in East Jerusalem on Palestinian children living in the city. Palestinian children in East Jerusalem face social and economic disadvantages. They tend to live in poor households with high unemployment rates and cramped living. Restricted land zoned by the Israeli Municipality for Palestinian construction, and lower expenditure by the Israeli government on public services, has resulted in limited opportunities for development.

The research sheds light on the Israeli military detention of Palestinian children, analyzes the circumstances of arrest and detention, highlights the effects of detention on children's development and well-being; and investigates how the issue is reflected at higher state levels or parties involved for resolution.

The study found out how Palestinian children have frequent, and often violent, encounters with Israeli Forces. This includes across checkpoints on access roads and during raids and arrests. Palestinian children also **face on-going intimidation and violence from Jewish settlers**. The research proves that Palestinian children in Jerusalem are at high risk of arrest.

The study goals to figure out paths and further illustrate possibilities to ease the burden and effectively deescalate the occupation oppression over one of the most vulnerable segments of the Palestinian society; the children. This study suggests to involve digital diplomatic and technical tools, to enforce the weak spheres regarding the simultaneous violations of the Palestinian children's rights in East Jerusalem.

Furthermore, the study argues that Israel's ill-treatment of Palestinian children in East Jerusalem, forms a major pillar of the colonial occupation policy. And concludes that it is institutionalized violence and discriminatory legal (dual) system, an overarching system of control

and incarceration policies that are all designed to convey the message that even pacific resistance is fruitless.

The research demonstrates that every Palestinian is a target to incarceration. It is a state torture method, collective punishments, home demolishing, closure and incarceration all are tools designed and are being legitimized by the internal Israeli law to undermine the identity and self-actualization of the Palestinian children and hence the Palestinian community.

The research shows that this particular act of incarcerating children in East Jerusalem aims to distort the fabric of national identity, the Palestinian essential concept of ‘sumud’; steadfastness in the Jerusalem, where facts on the ground show that it is becoming more and more fragile.

This study, also sketches how the Israeli justifications of these practices and violations are to be part of the ideological structure maintaining the occupation.

The methodology adopted in this study involves going through the process of textual analysis, where it is seen appropriate serving the objectives tackled. The research investigates secondary data and collects primary data. Ontological and epistemological methods in the study deal with deep rooted causes and nature of the current situation associated with the Palestinian children detention in East Jerusalem. Since epistemology simply put, is the theory of knowledge, it guides the flow of research to clarify the connection between the Occupation power over East Jerusalem and the detention of Palestinian children there. At the ontological level the study is firmly positioned on the fact that East Jerusalem is occupied and that Palestinian children in East Jerusalem should be protected as defined in the Fourth Geneva Convention of 1949, a major cornerstone of international humanitarian law and primary legal reference for Israeli occupation. And that Palestinians in East Jerusalem are entitled, in all circumstances, to human dignity and must at all times be humanly treated and protected especially against acts of violence or threats thereof. , including more specifically the protection of their rights under international human rights law, including the special protections afforded to children.

The object of qualitative data in the study, provides insight into the Palestinian children in East Jerusalem as a specific sub-group of the population. Such data is subjective and is collected via direct encounters with those children, either one of their parents and / or persons in direct and

constant contact with them. Such as former prosecutors from the Israeli side and lawyers from the Palestinian side.

On the other hand, numbers and statistics construct an important quantitative part of the study. This quantitative data is gained from published official statistics and survey results of Palestinian, Israeli and international governmental and human rights groups and associations, and prisoner support organizations.

The pivotal primary data in this study is conducted through field observation, collecting first-hand information directly from the children and persons in direct contact with them. Bringing together first-hand data is the principal benefit of the primary data.

Since the primary data to this study also comes from lawyers, practitioners, specialists, books, documents, various reports and academic conferences on the matter, it is worth mentioning that access to particular books was limited, but has been successfully accessed via the Hebrew University Mt. Scopus library.

Finally, the digital technologies have added greatly to the study's resources base.

The study follows a triangulated approach that includes:

- 1) A desk review and close observation of existing literature and secondary data; (international conventions, previous studies, theoretical backgrounds and official humanitarian reports, press releases and media coverages)
- 2) Interviews -as primary data- with directly affected children and their families (mothers in specific), lawyers and practitioners and specialists (Israeli and Palestinian);
- 3) Focus group discussions in selected effected families (held mainly in Silwan neighborhood).

The research provides illustrations of ontological, epistemological, qualitative, quantitative and pivotal primary data being investigated throughout the study.

Methodology Illustrated

The Detention of Palestinian Children:
Israel's Dual System of Law,
Discrimination on an Ethnic-National Basis
and Child Rights Violations - East Jerusalem as a Case Study

Hala Mohammad Abu-Shilbayh
2018©

Epistemology *the connection between*



Ontology

'Rise and Kill First'

'Security reasons'

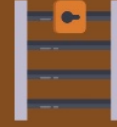
The 1980 Basic Law:
Jerusalem,
Capital of Israel

*"The integrity and unity
of greater Jerusalem
shall not be violated"*

'Sumoud'

Stone-throwing
is resistance

Life under
belligerent
occupation



Epistemology simply put, is the theory of knowledge, it guides the flow of research to clarify the connection between the Occupation power over East Jerusalem and the detention of Palestinian children there.

On the **ontological level** the study is firmly positioned on the fact that East Jerusalem is occupied and that Palestinian children in East Jerusalem are protected as defined in the Fourth Geneva Convention of 1949, a major cornerstone of international humanitarian law and primary legal reference for Israeli occupation.

And that Palestinians in East Jerusalem are entitled, in all circumstances, to human dignity and must at all times be humanly treated and protected especially against acts of violence or threats thereof.

More specifically the protection of their rights under international human rights law, including the special protections afforded to children.



These illustrations are made and submitted by Hala M. Abu-Shilbayh,
in partial fulfillment of the requirements for the degree of Masters
- Conflict Resolution and Development, at the Arab American University, Palestine.

The study revolves around four major theoretical and conceptual frameworks.

- i. Human Needs Theory
- ii. The Transcend Method of Galtung
- iii. Protection of Children under International Humanitarian Law
- iv. Necropolises

The research evaluates that the term ‘Israel/Palestinian’ conflict is to be inaccurate and misleading, hence the term ‘conflict’ suggests a confrontation between two equal parties plus the actual presence of significant balance of power. The situation is hereby categorized as the Israeli protracted belligerent occupation on the Palestinian Territory. Where the belligerent or military occupation is actually a part of Humanitarian Law and is the situation where the forces of one state are in effective control over a territory of another state without the consent of the latter. This definition is consistent with Article 42 of the 1907 Regulations concerning the Laws and Customs of War on Land.

- i. The research sheds light on the **Burton’s Human Needs Theory**. Where in conflicts people tend to represent their interests, but not their underlying needs. However, according to Burton, they will use power and coercion to try meet those needs. The study clarifies Burton’s elaboration on that the human behavior is directly driven by needs rather than interests. Where needs are categorized into two types; resources hereby, along with daily life needs are considered materialistic and physical needs, where self-esteem, self-actualization, love and belonging, safety and physiological wellbeing are considered non-materialistic needs.

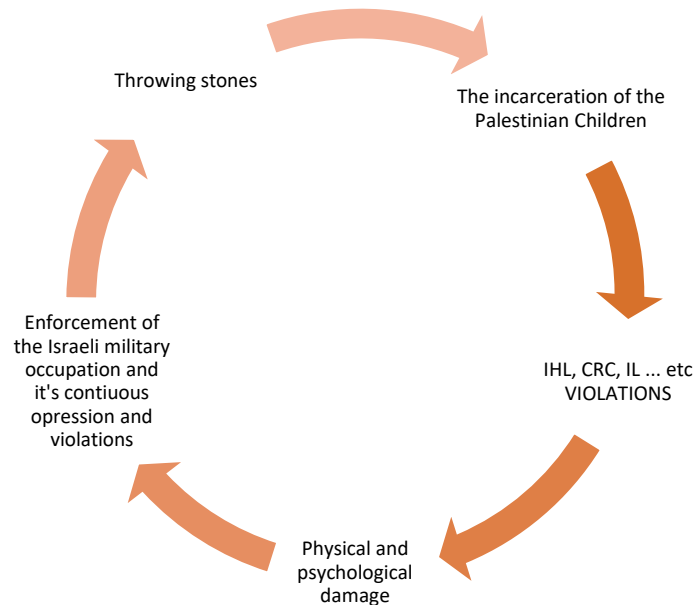
The study simplifies Burton’s debate that human beings at state level are citizens, when the state’s main concern is territory, geography, national security and economic development. Yet from a citizen in the state perspective, Burton explains that **identity, participation, human security, freedom and values such as equality are crucial and vital to be recognized by the state.**

The study emphasizes that conflicts rises not because of the nature of humans as the realist school of thought claims, but rather because of the well expressed and still not met human needs.

- ii. The research provides explanations on **The Transcend Method**, developed by the father of peace studies **Johan Galtung** that is based on the central thesis which relies on transformation

of the conflict as a foundation to prevent violence and develop the creative potential of a conflict. At the root of the method is the understanding of conflict as incompatible goals of the conflicting parties, which is a problem to be solved. The research simplifies the Galtungian definition for transforming a conflict explaining that it requires transcending the goals of the conflicting parties, defining other goals, disintegrating the conflict from its original circumstances and embedding it in a more promising area. This is achieved through dialogue based on empathy, non-violence and joint creativity. According to Galtung, failure to transform conflicts leads to violence.

The research provides an illustration of the core study's conflict where any conflict usually has its own life cycle.



Galtung's Transcend Method has six basic premises, as elaborated in the research, drawn from Hindu, Buddhist, Christian, Daoist, Islamic and Judaic thought respectively. These grounds include: consideration of conflict as a source of both violence; mutual causation and shared responsibility and the importance of dialogue.

The research illuminates the Transcendence connotation building on Galtung's definition; that is redefining the situation so that what seemed to be a deadlock is unlocked, revealing a new landscape of the conflict. Creativity, and its application to contradictions, is believed to be the key.

The research continues that Galtung elaborates further on the technical steps to performing the Transcend method explaining how initial dialogue should be conducted with each party individually to identify valid goals, provoking creative approaches from all parties to find ways of transcending the incompatibilities. Specific goals should be identified in a manner that is acceptable to each party individually in order to arrive at overarching goals that are acceptable to all the conflicting parties collectively. The key tool here; is empathetic, respectful dialogue that explores the conflict.

The study stresses on the concept that conflict work is the art of the impossible. This area of expertise requires good faith, optimism, idealism of the heart and realism of the brain.

Furthermore, the study shows that for Galtung, there are different conceptions of peace. Galtung illustrates clearly that peace may be more than just the absence of explicit violent conflict (negative peace), and will likely include a range of relationships up to state's level where nations or any conflicting groupings might have collaborative and supportive relationships (positive peace). These terms were, in fact, previously defined and discussed in 1907 by Jane Addams and in the 16th of April 1963 by Martin Luther King.

In relation to that, he also introduced typologies of violence. Namely, 'direct, structural and cultural violence'.

The study explains structural violence, in the Galtugian manner, that it is built in to the very nature of social, cultural and economic institutions, has an effect of denying peoples important rights, such as economic wellbeing, social, political and sexual equality, a sense of personal fulfillment and self-worth and is expressed with the existence of hunger, political repression, and psychological alienation. Where in contrast, direct violence generally works much faster and is more visible and dramatic. According to Galtung, behind structural violence there lays cultural violence which legitimizes it through. Hence, Galtung associated positive peace with the existence of ten values of positive relations at both national and international levels. Those values include: Presence of cooperation, freedom from fear, freedom from want, economic growth and development, Absence of exploitation, manipulations and different colors of abuse, equality, justice, freedom of action, pluralism and dynamism.

The research sheds light on the on the Palestine/Israel solution of the conflict according to Galtung, where Galtung explains that there can be no bilateral solution. *"There is too little land,*

too many people and too much talk about ‘choseness’. Moving millions of Palestinians across the Jordan that is the approach propagated by Jewish ultra-nationalists, the ‘transfer solution’ is not reasonable according to Galtung. Nor is a barricaded Israeli state behind walls and barbed wire”. For Galtung, **there is one way out: a multilateral solution.**

iii. The study lists the legal background regarding the incarceration of the Palestinian children and explains that **The legal protection of children** was introduced into international humanitarian law after the Second World War, where the experience during WWII had pointed to the vital need to design and conduct an instrument of public international law for protecting civilian population in wartime. Efforts put forth from the International Committee of the Red Cross (ICRC) for instance, led to the adoption of the 1949 Fourth Geneva Convention relative to the protection of civilian persons in time of war. Since then, children, as members of the civilian population were entitled to benefit from the application of that Convention. Furthermore, the first international humanitarian law regulations concerning armed conflicts not of an international character, contained in article 3, common to the four 1949 Geneva Conventions, were drawn up at the 1949 Diplomatic Conference. Here again, children were protected, in the same way as all “*persons taking no active part in the hostilities*”.

The research assures that the protection of children is supposed to be guaranteed via adhering to the United Nations Convention on the Rights of the Child (UNCRC or CRC). The UNCRC is a human rights treaty that sets out the civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under national legislation. The study elaborates that the Nations that ratify this convention are bound to it by international law. Compliance is monitored by the UN Committee on the Rights of the Child.

The study realizes that Governments of countries that have ratified the Convention are required to report to, and appear before, the United Nations Committee on the Rights of the Child periodically so as to be examined on their progress regarding their adherence and the advancement of the implementation of the Convention and the status of child rights in their country.

As the Convention for the Rights of the Child (CRC) is evident to include relevant provisions and commentary by international bodies. Special attention should be dedicated to

Article 37 and Article 40 of the CRC. The study comprehends that those Articles in particular are to be of vital importance regarding Israel's attitude towards their application. Those two principles of the best interest of the child and the principle of non-discrimination. In 1990 the CRC was remarkably adopted and was considered a valuable advancement of the international legal framework for the protection mechanism of the right of the child.

The study mentions that both Israel and the Palestinian Authority have actually ratified the convention without reservations in the years 1991 and 2014 respectively. Israel hereby argues that this is only applicable to its territory. On the other hand, the committee on the Rights of the Child in its concluding observations on the second to fourth periodic reports of Israel, condemns Israel to the unwillingness to provide information and data on the Palestinian (Arab) children living in the OPT including East Jerusalem and the Occupied Golan Heights. Quoting the committee:

".. greatly affects the adequacy of the reporting process and the state's accountability for the implementation of the Convention".

v. The study explores the conceptual framework *'the right to expose other people to death'*. Necropolises is a vital theoretical and conceptual framework to the research.

The study explains that Michel Foucault argues that when people's lives turn to be a part in the mechanisms of state power, politics become biopolitics. This changes the vintage explanation of the territorial state, to become a state of population and hence the nation's biological life becomes situated in the front line to become the sovereign power problem, Foucault terms this as 'biopower'.

The research comprehends how docile, quiet and obedient bodies are hereby created by biopower via a series of governmental technologies, that are meant to steer, control, manipulate and beyond, the lives of the population, their wellbeing, welfare, endurance and health. Making the ultimate object of government.

The research touches on the birth of state racism and state's biopower, explaining that Foucault in his 1975 – 6 *College de France Lecture Series*, illustrates the birth of state racism. Charting the shift from the power of sovereignty toward killing unwanted people within the supervisory of modern state. That is, expending the state's biopower against its living beings and

population. In other words; Foucault theorizes a **transition from the old territorial state and the notion of sovereign power associated with it, towards modern biopower**. That is from ‘to make die and let live’ to ‘to make live and let die’. The break between what must live and what must die, according to Foucault; means that the state can hardly fulfill its role without racism.

The research builds on this, racism involves two major roles: the first is to split and break the groups existing within a population. The second is making it possible to establish a correlation connecting someone’s (one group) life with the death of another (another group). Of course, in a manner that is absolutely different than warlike or militant manner, but a pure biological manner correlation. In the same understanding, the biological (and psychological by default) death of one group within the population makes the ‘other’ group the stronger within the very same population. This is ‘state racism’ in Foucauldian explanation.

The study perceives that while some sub-populations are being suffocated with economic ties and social coercion, racism as Foucault argues is an ongoing social war that is nurtured by biopolitical technologies of the state.

The research proves the assumption rational when investigating the Zionist’s ongoing plans, designed before the establishment of the state of Israel. Such plans, include the transfer and exile of Palestinians (occupied other) outside their homeland Palestine, in the favor of the Israeli Zionists (occupier other).

The study elaborates how modern states tend to utilize governmental technologies, such as constitutions, border controls, the law, policies, census of the population, its invented histories and traditions, and cultural visualization; **commissioning those tools to either exclude or include** (in racially ordered terms) its sub-populations. So a coherent picture is hence exported, and is being conducted by nothing but keeping racialized others out and legislating against the unwanted, evil ‘other’. That is; throughout creating homogeneities not only the state is denying its internal heterogeneities but is also normalizing biopower state.

The research accepts Goldberg’s theorization of all modern nation states being racial states and Foucault’s perspective of racism, Israel’s utilization of biopolitical technologies ranging from social exclusion to mass murder against the ‘occupied other’ implicates Israel as a racial state

“In Israel there is a constant state of emergency. The state inherited the British Mandate’s ‘Emergency Regulations’, under which it continued the anomalous suspension of law, within the law. We must remember that this system enables: one rule (life) for the majority of the state’s citizens, and another (death, threat of death, threat of expulsion) for the state’s subjects, whose lives have been rendered ‘bare’”. (Yehouda Shenhav)

Recommendations

- The research concludes that Israel should realize the fact that it is the primary duty bearer responsible for providing protection and ensuring the welfare of the Palestinian residents of East Jerusalem. And in parallel, Israel must integrate the elimination of racism and violence and seriously start to implement and apply IHRL to the Palestinians in East Jerusalem.
- Israel must be held responsible under international law and international protection must be set up for the Palestinians in Jerusalem.
- Palestinians on all levels, must consider ending divisions and fragmentation between the factions and give space and effort to restore their steadfastness mechanisms. Hence bring the Jerusalem File on the table.
- The research recommends that international institutions such as UN, are ought to continue taking stands, and yet stronger and more frequent positions against the practice of incarcerating Palestinian Children, namely in East Jerusalem.
- The study suggests that the Palestinian Authority ought to reassure their internal policies to be in harmony regarding the implementation of the CRC.
- The Palestinian Authority is to urgently establish a centralized data hub regarding statistics, details, proceedings and facts related with all detainees and incarcerated Palestinians in the Israeli prisons.
- It is necessary that this centralized data hub provides info graphs, illustrations and charts and is vibrant, frequent and viral.
- It is crucial for this hub to be the accurate tool for the Palestinian Digital Diplomacy mechanism. Where it is seen that the PIPD should adopt more creative, high-tech and trendy means to deliver the message.
- The Palestinian Authority ought to work hand in hand with all other specialized institutions and facilities to provide the child detainees and prisoners residing in East Jerusalem with all sorts of rehabilitation, education and care means.
- The Palestinian Authority ought to provide higher number of lawyers to the field.
- The Palestinian Children in East Jerusalem should be aware of their rights before, during and after arrests, instructions on how to deal or what to do during the act of arrest should be fully understood.

- The Palestinian Children in East Jerusalem should be busy and engaged in cultural, educational and sport activities that are provided and supervised by the PA via local committees.
- The Palestinian media ought to stop tackling the children in detention issue as statistical figures, but it should conduct further investigative journalism efforts and to cease relying on the Israeli media sources delivering the news.
- A build up of children's literature tackling the issue of incarceration is to be considered by academics, authors and writers.
- Further students and researchers are to be encouraged to conduct more research in the field, for the lack of previous literature is obvious.

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THE JEWISH NATION-STATE LAW

1. *The State of Israel*

- a) Israel is the historic homeland of the Jewish people in which the State of Israel was established.
- b) The state of Israel is the nation-state of the Jewish people, in which it fulfills its natural, religious, and historic right to self-determination.
- c) The fulfillment of the right of national self-determination in the State of Israel is unique to the Jewish people.

2. *National symbols of the State of Israel*

- a) The name of the state is Israel.
- b) The flag of the state is white, two blue stripes near the edges, and a blue Star of David in the center.
- c) The symbol of the state is the Menorah with seven branches, olive leaves on each side, and the word Israel at the bottom.
- d) The national anthem of the state is "Hatikvah"
- e) [Further] details concerning the issue of state symbols will be determined by law.

3. *[The] unified and complete [city of] Jerusalem is the capital of Israel.*

4. *The Language of the State of Israel*

- a) Hebrew is the language of the state.
- b) The Arabic language has a special status in the state; the regulation of the Arab language in state institutions or when facing them will be regulated by law.
- c) This clause does not change the status given to the Arabic language before the basic law was created.

5. *The state will be open to Jewish immigration and to the gathering of the exiled.*

6. *The Diaspora*

- a) The state will labor to ensure the safety of sons of the Jewish people and its citizens who are in trouble and captivity due to their Jewishness or their citizenship.
- b) The state will act to preserve the cultural, historical and religious legacy of the Jewish people among the Jewish diaspora.

7. *The state views Jewish settlement as a national value and will labor to encourage and promote its establishment and development.*

8. The Hebrew calendar is the official calendar of the state and alongside it the secular calendar will serve as an official calendar. The usage of the Hebrew calendar and of the secular calendar will be determined by law.

9. National Holidays

- a) Independence Day is the official holiday of the state.
- b) The Memorial Day for those who fell in the wars of Israel and the Memorial Day for the Holocaust and heroism are official memorial days of the state.

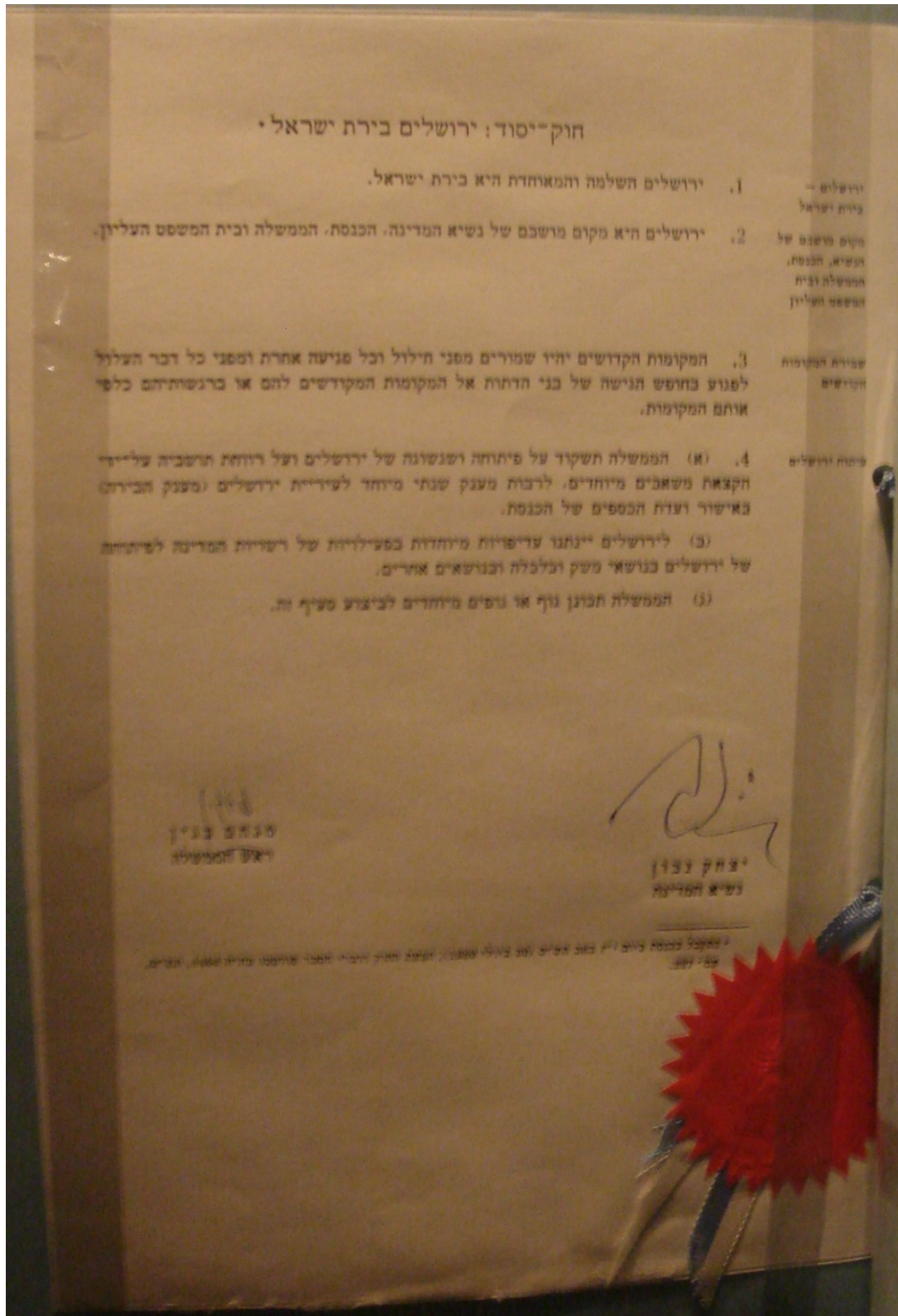
10. Saturday and the Jewish Holidays are the official days of rest in the state. Those who are not Jewish have the right to honor their days of rest and their holidays. Details concerning these matters will be determined by law.

11. This Basic Law may not be altered except by a Basic Law that gained the approval of the majority of the Knesset members.

Basic Law: Jerusalem, Capital of Israel

https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm

<i>Jerusalem, Capital of Israel</i>	1. Jerusalem, complete and united, is the capital of Israel.
<i>Seat of the President, the Knesset, the Government and the Supreme Court</i>	2. Jerusalem is the seat of the President of the State, the Knesset, the Government and the Supreme Court.
<i>Protection of Holy Places</i>	3. The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings towards those places.
<i>Development of Jerusalem</i>	4. (a) The Government shall provide for the development and prosperity of Jerusalem and the well-being of its inhabitants by allocating special funds, including a special annual grant to the Municipality of Jerusalem (Capital City Grant) with the approval of the Finance Committee of the Knesset. (b) Jerusalem shall be given special priority in the activities of the authorities of the State so as to further its development in economic and other matters. (c) The Government shall set up a special body or special bodies for the implementation of this section.
<i>Area of the jurisdiction of Jerusalem (Amendment no. 1)</i>	5. The jurisdiction of Jerusalem includes, as pertaining to this basic law, among others, all of the area that is described in the appendix of the proclamation expanding the borders of municipal Jerusalem beginning the 20th of Sivan 5727 (June 28, 1967), as was given according to the Cities' Ordinance.
<i>Prohibition of the transfer of authority (Amendment no. 1)</i>	6. No authority that is stipulated in the law of the State of Israel or of the Jerusalem Municipality may be transferred either permanently or for an allotted period of time to a foreign body, whether political, governmental or to any other similar type of foreign body.
<i>Entrenchment (Amendment no. 1)</i>	7. Clauses 5 and 6 shall not be modified except by a Basic Law passed by a majority of the members of the Knesset.



The **Jerusalem Law** (Hebrew: חוק יסוד: ירושלים בירת ישראל, Arabic: قانون القدس) is a common name of *Basic Law: Jerusalem, Capital of Israel* passed by the Knesset on 30 July 1980 (17th Av, 5740).



Maher, Mohammad and Sultan Samer Serhan, among their fellow children from Silwan, Jerusalem being detained for the first time at the ages of 10 and 11 years old.





בית משפט השלום בירושלים
1497121
מספר תיק: 1497121

לפני כב' השופטת:
אילנה שטרן
5649712/1497121

צו מעצר
אמר, כן קודם:

בית דין לצדדים: אילנה שטרן

שם מרשי	שם משפחה	ת.ז.	שם האב	שם האם	מין
אילנה שטרן	אילנה שטרן	215645111	אילנה שטרן	אילנה שטרן	נ
מבט משפחה	מבט משפחה	מבט משפחה	מבט משפחה	מבט משפחה	מבט משפחה
מבט משפחה	מבט משפחה	מבט משפחה	מבט משפחה	מבט משפחה	מבט משפחה

מסר המשפחה במילים:
תאריך: 24.12.2017

צו זה יבוצע על ידי משטרת ישראל, ומחזר לצדדים בכל מקום הכולל את:
האזור, וכל אזור נוסף, וימשיך ויחזק את (א) מכלל וכלל.

הצו יבוצע על ידי בית המשפט בתקופת האסדרה מ-24 שעות מיום מעצרו.
הצו יבוצע על ידי בית המשפט בתקופת האסדרה מ-24 שעות מיום מעצרו.

56

תאריך: 24.12.2017
איתן כהן, שופט

בית משפט השלום בירושלים

תיק: _____
חומר: _____

לפני כב' השופטת:

צו מעצר
אמר, כן קודם:

בית דין לצדדים: אילנה שטרן

שם מרשי	שם משפחה	ת.ז.	שם האב	שם האם	מין
אילנה שטרן	אילנה שטרן	206630362	אילנה שטרן	אילנה שטרן	נ
מבט משפחה	מבט משפחה	מבט משפחה	מבט משפחה	מבט משפחה	מבט משפחה
מבט משפחה	מבט משפחה	מבט משפחה	מבט משפחה	מבט משפחה	מבט משפחה

מסר המשפחה במילים:
תאריך: 24.12.2017

צו זה יבוצע על ידי משטרת ישראל, ומחזר לצדדים בכל מקום הכולל את:
האזור, וכל אזור נוסף, וימשיך ויחזק את (א) מכלל וכלל.

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הצו יבוצע על ידי בית המשפט בתקופת האסדרה מ-24 שעות מיום מעצרו.

21

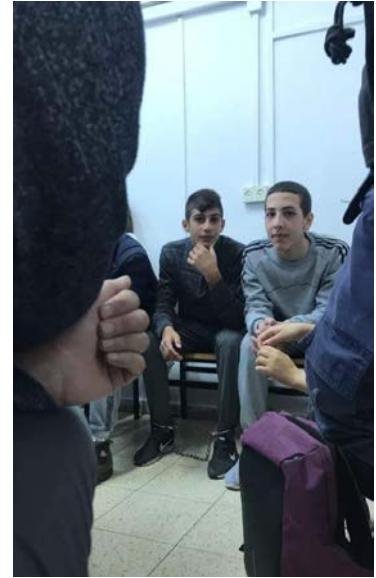
תאריך: 24.12.2017
איתן כהן, שופט

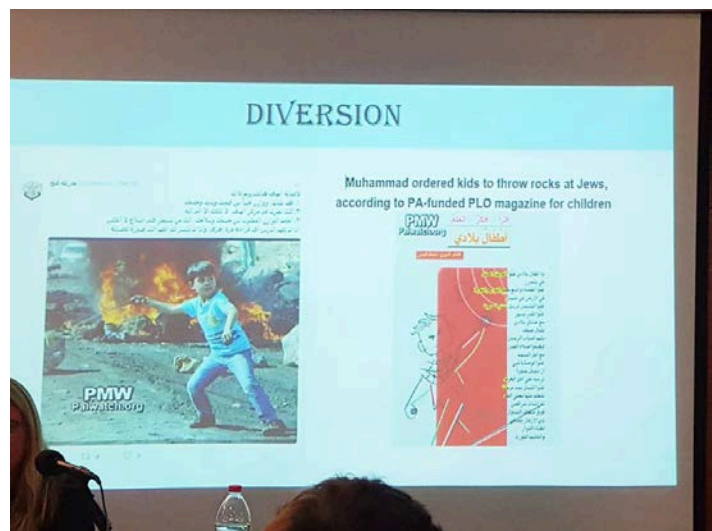
Detention Orders showing the birthdates of the children.

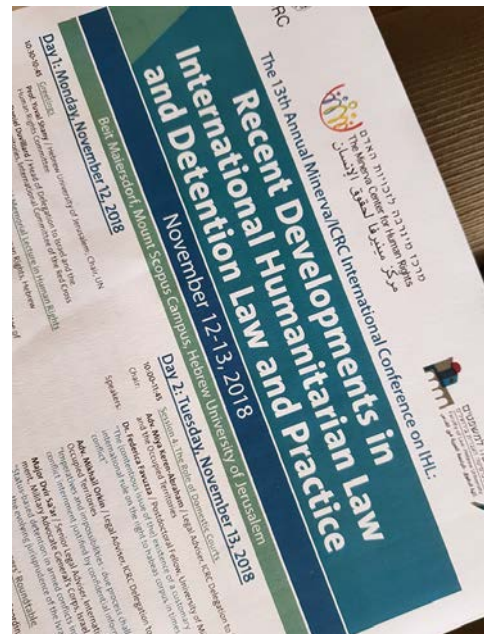


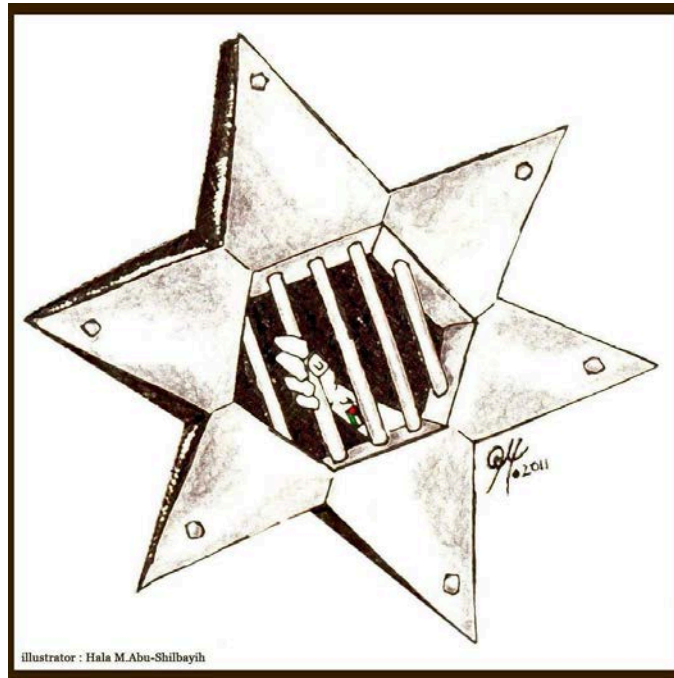
Mohammad Serhan's father (Samer) was shot dead by the settlers' security guard in Silwan who never been held accountable; for the law system believes he was doing his job and is being under impunity.











Illustrations and artwork by: Hala M. Abu-Shilbayih 2011-2018©





المُلخَص

إنَّ جزءاً لا يتجزأ من الصراع في فلسطين؛ القدس. إذ أنَّ جانباً حاسماً من الموضوع قد ترك عن قصد أو بغير قصد في اتفاق أوصلو. فإلى جانب الأمور المهمّة، هناك تفاصيل كثيرة شائكة تحتاج في واقع الأمر الى دراسة جادّة وجدّيّة، ومراجعات موضوعيّة، لعلّنا نصل حينها الى الخلاص.

بينما تنتهك حقوق الفلسطينيين في المدينة المقدسة، ويتم إضعاف آليات التأقلم والصمود المتوارثة في العائلات المقدسيّة عبر مختلف التكتيكات من نظام الهوية المبني على القومية وصولاً لسياسات العزل والإغلاقات، يحرم المقدسي من أبسط حقوقه واحتياجاته يومياً.

تتخذ هذه الدّراسة الأطفال الفلسطينيين في القدس محوراً رئيساً. يخضع الأطفال الفلسطينيون للعنف الناتج من الصراع، حيث يتم اعتقالهم وجزّهم إلى التوقيف العسكري الإسرائيلي متعدّد الأشكال.

الفلسطينيون المقدسيون كما هو حال جميع الفلسطينيين في الأراضي المحتلة محصّنون كما يرد في معاهدة جنيف الرابعة لعام 1949. والتي هي بطبيعة الحال حجر أساس في القانون الإنساني الدولي. وهي المرجع الأساس للإحتلال الإسرائيلي. خاصّة المادتين الرابعة والسابعة والعشرين. اللتان تنصّان على أنّ كرامة الفلسطينيين في شرق القدس في كل الأوقات وتحت كل الظروف محميّة ومصانة ضدّ أعمال التهديد والعنف. كما تتعهد الوثيقة بالمعاملة الإنسانيّة وحفظ الحقوق تحت غطاء القانون الإنسان الدولي. وبالتحديد تلك الحقوق الخاصة التي تُمنح للأطفال. حيث أن إسرائيل هي الجهة الأولى المسؤولة لتوفير هذه الحماية للفلسطينيين في شرقي القدس.

تهدف هذه الدراسة الى إظهار مدى وشكل تأثير الاحتلال الإسرائيلي طويل الأمد في القدس الشرقية على الأطفال الفلسطينيين الذين يعيشون في المدينة.

ستسلط هذه الدراسة الضوء على حقيقة الاعتقال والاحتجاز العسكري الإسرائيلي للأطفال الفلسطينيين، كما وتركّز على تحليل ظروف الاعتقال والاحتجاز والتوقيف، وتبرز آثار هذا الانتهاك على نمو الأطفال وصالحهم؛ وبحث كيفية انعكاس هذه الجزئية من الصراع على مستويات الدولة العليا أو الأطراف المعنية لحلها.



الجامعة العربية الأمريكية
كلية الدراسات العليا

إعتقال الأطفال الفلسطينيين:
القانون الإسرائيلي المزدوج، التمييز بحسب القومية، وانتهاك حقوق الطفل
- شرقي القدس كحالة دراسية

إعداد
هلا محمد أبو شلباية / سعادة

إشراف
د. دلال صائب عريقات

تم تقديم هذه الرسالة استكمالاً لمتطلبات
درجة الماجستير في تخصص حل الصراع والتنمية
فبراير 2019