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مركز المعلومات الإسرائيلي لحقوق الإنسان في الأراضي المحتلة-بتسيلم

B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

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## **Caution: Children Ahead**

### **The Illegal Behavior of the Police toward Minors in Silwan Suspected of Stone Throwing**

**December 2010**

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Cover Photo: Palestinian youths throw stones towards Israeli border police after visit of parliament members in East Jerusalem, October 12, 2010. Photographed by Ammar Awad, Reuters.

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## Summary

An investigation conducted by B'Tselem shows that, during the past year (November 2009 to October 2010), at least 81 minors from Silwan have been arrested or detained for questioning, the vast majority on suspicion of stone throwing. The arrests and detentions followed confrontations between Palestinians and settlers in the neighborhood, where there is great tension resulting from the taking of control of houses and archeological sites by settlers. These confrontations intensified following the killing of Samer Sarhan, 32, a resident of Silwan, on 22 September 2010. Sarhan was shot to death by a security guard for the settlement, who contended he faced a life-threatening situation. From then until 31 October, at least 32 minors in Silwan were arrested.

Since Israel has imposed its law on East Jerusalem, the police are required to carry out their functions there in accordance with Israeli law. However, B'Tselem's investigation indicates that the Jerusalem police repeatedly breached the law, and particularly the Youth Law, which grants minors extra rights in a criminal proceeding:

- Many arrests were made at night, by taking the minors from their beds and rushing them to interrogation at the Russian Compound, in most cases in order to obtain information on incidents that occurred a few days earlier.
- Often, the interrogators prevented the parents from being present during the interrogation, although their right to be present is enshrined in law.
- Many minors complained they were treated violently when they were taken from their home at night, and all the youths who were interviewed by B'Tselem on their arrest by special forces reported severe violence at the time of arrest. Also, a few minors complained of violence and degradation while waiting to be interrogated at the Russian Compound. Their complaints of violence were disregarded or treated with scorn, and in the isolated cases in which the Department for the Investigation of Police opened an investigation, it was closed without any proceedings being taken against the persons responsible. B'Tselem knows of one case in which the investigation was carried out negligently, took a long time to complete, and did not include questioning of principal witnesses.
- The police detained for questioning four minors under age 12, which is the age of criminal responsibility, meaning they are not subject to criminal proceedings. In one of

the cases B'Tselem documented, an eight-year-old child was taken from his bed in the middle of the night only because his name was identical to that of another child who was suspected of throwing stones.

The throwing of stones by Palestinian minors in East Jerusalem has been widespread and has intensified over the past year, with an especially sharp rise occurring in October 2010. Silwan, which lies at the foot of the Temple Mount, is a major focus of the confrontations between Palestinians and settlers, with both sides – Palestinians primarily – throwing stones.

The police are required to deal with the confrontations in the neighborhood, but this obligation does not justify systematic breach of the law. The police's conduct toward Palestinian minors in Silwan reflects flagrant contempt for the special protections given them as minors.

B'Tselem urges the Jerusalem Police to observe the letter and spirit of the Youth Law while coping with stone-throwing incidents in East Jerusalem. The police must immediately end the arrest of minors at night and the use of violence by special forces during arrests. The police must also ensure that minors are interrogated only in the presence of their parents, and must emphasize options for the rehabilitation of the minors and for preventing injury to them.

The settlements Israel has built in East Jerusalem constitute a violation of international law. The settlement clusters in the heart of the Palestinian population in Silwan and other neighborhoods create tension and lead to a reality of constant confrontation between the two populations. These settlements should be removed immediately.

## Introduction

The Silwan neighborhood lies just outside Jerusalem's Old City walls, south of the Temple Mount/al-Aqsa Mosque. Some 16,500 persons live in the central section of Silwan.<sup>1</sup> Together with Ras al-'Amud, which has geographical and family ties with Silwan, the total number of residents is 32,000.<sup>2</sup> After the occupation of the West Bank in 1967, Israel annexed Silwan, together with the rest of East Jerusalem and adjacent areas. Israel law was applied in full to the annexed area. The residents were given the status of Jerusalem residents and Israeli identity cards, but not citizenship, and Israel law was applied to them in full. According to international law, East Jerusalem is an integral part of the West Bank, and Israel's annexation thereof is illegal. The international community does not recognize the annexation, and the status of East Jerusalem under international law is identical to that of the remainder of the West Bank.

Since the early 1990s, rightist Israeli organizations have taken control of houses in Silwan, on various legal pretexts; Peace Now estimates that 350 Israelis settlers now live in eighteen buildings in Silwan.

At the entrance to Silwan lies the City of David National Park, an archeological site of the Nature and Parks Authority. The archeological digs in the national park are of great importance to Jerusalem's long history. The management of the site has been given to the Elad association, which is also the main organization promoting Jewish settlement in the neighborhood. Thus the site is closely tied to the settlement enterprise in the neighborhood. The Elad-operated site has been turned into a major tourist site, which hosted 380,000 visitors in 2008 and 270,000 in 2009.<sup>3</sup>

There is a high level of tension between the residents of Silwan and the settlers, since the settlers have taken control of houses and of areas in which the archeological digs are conducted, causing ongoing friction between the two populations. The settlement's private security guards, funded by the Housing and Construction Ministry, are a major source of this tension. According to the

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<sup>1</sup> The area is comprised of the neighborhoods Wadi Hilwa, Batten al-Hawa (al-Yaman), Bir Ayub, al-Bustan, Wasat al-Balad, and 'Ein a-Luzeh.

<sup>2</sup> The figures are estimates for 2008 taken from the *Jerusalem Statistical Yearbook for 2009* (Jerusalem: Jerusalem Institute for Israel Studies), Table C/8, available at <http://jiis.org.il/upload/as%20C08090.pdf>.

<sup>3</sup> *Report of the Nature and Parks Authority for 2009*, 79.

residents, the security guards act like the settlers' private police force, controlling and limiting Palestinian movement.<sup>4</sup> Minors reported they were harassed by security guards, whom they claim prevent them from playing in the streets. In addition, the law-enforcement authorities stationed in Silwan clearly side with the settlers. An illustration of this is the tour of the area made by top officials from the Ministry of Justice in August, in which meetings were held only with settlers, totally ignoring the Palestinian residents.<sup>5</sup> In the past year, Jerusalem's mayor, Nir Barkat, has been promoting the "Gan Hamelech" (King's Garden) plan, that would demolish twenty-two houses in the al-Bustan neighborhood of Silwan and turn half of al-Bustan into a tourist park.<sup>6</sup> The increasing tension in the neighborhood is reflected in the phenomenon of stone throwing by Palestinian minors, and to a lesser extent by Israeli minors as well.

Between November 2009 and January 2010, B'Tselem collected information on an increased number of detentions and arrests of Palestinian minors in Silwan. The information concerned at least thirteen minors from Silwan who were arrested or detained in the middle of the night (between midnight to 6:00 A.M.) and three other minors to whose homes the police and/or the Israel Security Agency came to demand that they appear for questioning in the morning.

The night-time arrest and detention of these minors, who are residents of Israel, violates Israeli law. In February 2010, B'Tselem sent a letter, based on the information it had collected, to the Israel Police regarding the night arrest of minors in Silwan.<sup>7</sup> In response to a question from the *Haaretz* newspaper, the police contended that the arrests were made lawfully, and that it intended to continue its practice "until the phenomenon is eliminated."<sup>8</sup> Indeed, since then,

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<sup>4</sup> Ir Amim, *Shady Dealings in Silwan* (2009).

<sup>5</sup> Nir Hasson, "Rage at Top Officials from Justice Ministry on Their Visit to Silwan," *Ha'aretz*, 22 August 2010.

<sup>6</sup> Nir Hasson, "Jerusalem's Mayor, Nir Barkat: Silwan Plan – Good News Rather than Demolition Orders," *Ha'aretz*, 2 March 2010.

<sup>7</sup> Letter of 15 February 2010 from Attorney Yael Stein, of B'Tselem, to the Jerusalem District Commander and to the Director of the Department for the Investigation of Police.

<sup>8</sup> Response of the police to *Ha'aretz*. See Nir Hasson, "Border Police Have No Mercy on Children of Silwan: Twelve Year Olds are Arrested in their Beds on Suspicion of Throwing Stones," *Ha'aretz*, 9 March 2010.

B'Tselem has obtained information indicating that the situation has not changed, and that security forces continue to breach the law in the course of arresting minors.

On 22 September 2010, a resident of al-Bustan, Samer Sarhan, was killed by one of the private security guards at the Jewish settlement in the neighborhood. Sarhan, 32, was married and had five children. The security guard claimed that he had been pelted with stones and felt his life was in danger. Footage from the security cameras of the Wadi Hilwa-Silwan Information Center casts doubt on his claim: the guard claimed that the road was blocked, but the film shows him driving away from the site immediately after the shooting, and another vehicle can also be seen driving along the road.<sup>9</sup>

Since the killing of Sarhan, the situation in the neighborhood has deteriorated even further. Palestinian children throw stones on a daily basis, and the intensity of the incidents increases alongside the increase in confrontations with the settlers and state authorities. The police act forcefully toward the minors: According to B'Tselem figures, between 22 September and 31 October 2010 alone, at least 32 minors were arrested or detained. Some of those arrested were younger than twelve, the age of criminal responsibility.<sup>10</sup>

This report reviews the arrests and detention of minors in Silwan over the past year (1 November 2009 to 31 October 2010) and examines the extent to which the authorities' handling of the cases conforms with Israel's Youth Law.

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<sup>9</sup> See the letter of Moshe Nussbaum, "Security Cameras Contradict Testimony of Security Guard who Shot Person to Death in Silwan," Channel 2 News, 26 September 2010, available at <http://www.mako.co.il/news-military/security/Article-01d5a446f6f4b21004.htm> (in Hebrew). The Center has a website ([www.silwanic.net](http://www.silwanic.net)) containing much information on events in the village.

<sup>10</sup> B'Tselem thanks DCI-Palestine for its assistance in collecting data on the arrests made in October 2010. A similar figure to the B'Tselem figure was published by the Wadi Hilwa-Silwan Information Center. See <http://silwanic.net/?p=7974>.



## **Rights of minors in a criminal proceeding – international law**

International humanitarian law, in the Fourth Geneva Convention, grants special protections to minors.<sup>11</sup> The status of children as persons holding special rights is also a fundamental part of human rights law. The main document establishing the rights of children is the Convention on the Rights of the Child, adopted by the UN in November 1989. Israel signed the Convention in July 1990 and ratified it in August 1991.<sup>12</sup> The Convention contains comprehensive provisions on all aspects of the lives of children. It recognizes the substantial difference between children and adults and therefore the need to protect children, in part by ensuring the rights of children who are accused of offenses. The Convention defines a minor as any “*human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.*”<sup>13</sup>

The Convention provides general guidelines for the handling of children who have violated the law but does not specify the system of law needed to meet these guidelines.<sup>14</sup> The preamble to the Convention mentions the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), of 1985.<sup>15</sup> Although these rules are not binding, they have been adopted at least in part by many states, including Australia, The Netherlands, Great Britain, Norway, Finland and Sweden, as guidelines for administering the juvenile justice system. In December 1990, the UN General Assembly adopted rules, based on the Beijing Rules, for protecting minors who have been denied their liberty, and called on all countries to adopt these rules in their juvenile justice system.<sup>16</sup>

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<sup>11</sup> In articles 14, 23, 24, and 50. Article 38 emphasizes that these protections are granted equally to aliens. Articles 89, 94, and 132 emphasize the rights of children who are internees.

<sup>12</sup> The Convention is available at [www2.ohchr.org/English/lw/crc.htm](http://www2.ohchr.org/English/lw/crc.htm).

<sup>13</sup> Article 1 of the Convention. The emphasis is added.

<sup>14</sup> Article 37 of the Convention.

<sup>15</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“The Beijing Rules”), Resolution 40/33, 29 November 1985, available at [www2.ohchr.org/english/law/pdf/beijingrules.pdf](http://www2.ohchr.org/english/law/pdf/beijingrules.pdf).

<sup>16</sup> *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Resolution 45/113, 14 December 1990, available at [www.un.org/documents/ga/res/45/a45r113.htm](http://www.un.org/documents/ga/res/45/a45r113.htm).

These two bodies of rules prescribe that the Member-States shall seek to further the well-being of the juvenile, taking into account the circumstances of the offense and the offender, and to maintain a proportional relationship between the severity of the offense and the severity of the punishment under the circumstances.<sup>17</sup> According to the UN Rules of 1990, incarceration of minors should be a last resort and for the minimum period possible.<sup>18</sup> The authorities should refrain from detaining juveniles while under trial, and ensure the rights of juveniles in cases in which they are subject to such detention.<sup>19</sup> Both sets of rules require the institution of a special system for juveniles in terms of legislation, training the personnel engaged in the handling of juveniles, and adapting detention facilities for the holding of juveniles.<sup>20</sup>

### **Rights of minors in a criminal proceeding – Israeli law**

The rules relating to rights of minors in criminal proceedings in Israel are enshrined in Amendment 14 to the Youth (Trial, Punishment and Modes of Treatment) Law, 5731 – 1971 (hereafter: the Youth Law), which was enacted on 30 July 2008 and took effect one year later. The amendment is intended to incorporate in Israeli legislation the rules of international law concerning the treatment of juveniles in criminal matters and the obligations derived from these rules. This amendment emphasizes options for the rehabilitation of juveniles, their rights as human beings, and the rights of witnesses who are minors. The amendment emphasizes alternatives to arrest, which is viewed as a means of last resort to be taken only in the absence of any alternative course of action.

The Youth Law grants special treatment to minors under age fourteen, and sets an especially short period for them to be brought before a judge – twelve hours (rather than twenty-four hours for minors over age fourteen and for adults) – and prohibits remanding them until the end of the

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<sup>17</sup> Beijing Rules, sections 1.1 and 5.1.

<sup>18</sup> *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, sections 1, 2.

<sup>19</sup> *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Annex, sections 17-18.

<sup>20</sup> Beijing Rules, sections 6.1, 6.3, 12.1; 1.1 and 5.1; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, section 2, and its Annex, sections 12-16, 19-87.

proceedings. Also, the statute requires consultation with a probation officer prior to trying a child under age thirteen. The statute delineates the following fundamental principles:

- Arrest is the last resort and should be for the shortest required period of time.
- Interrogation of a minor may be conducted only by an interrogator who is trained as a youth interrogator.
- Presence of a parent during interrogation: A parent is allowed to be present at all times, but may not intervene in the interrogation process. An exception to this rule is permitted upon written authorization of an authorized officer, in which case the interrogation may begin without a parent present, and in cases in which the well-being of the child requires that the parent not be present. Minors have the right to consult with the parent before the interrogation, with certain exceptions.<sup>21</sup> However, the Police regulations for interrogation of minors have not yet been updated according to the Youth Law, and therefore only require the presence of a parent for minors under the age of 14.<sup>22</sup> This constitutes a violation of the Youth Law.
- Interrogation of minors at night
  - When the minor is a witness: Questioning is prohibited, unless the minor comes on his own initiative or if the questioning takes place shortly after the incident occurred. In any case, a juvenile witness is not to be questioned after midnight, even if he agrees.
  - When the minor is a suspect: Only shortly after he is detained, if the sentence for commission of the offense exceeds three years' imprisonment, or the suspect and his parent consent, and only if the questioning is required for the purposes of the investigation.

It is permitted to interrogate juveniles at night if they are suspected of committing an offense carrying a penalty greater than three years' imprisonment (the maximum penalty for the offense

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<sup>21</sup> It should be noted that the right to have a parent present at all stages of arrest, interrogation, and trial is incorporated in the Beijing Rules, section 7.1

<sup>22</sup> Israel Police,

of throwing stones is from three to twenty years' imprisonment, depending on the circumstances<sup>23</sup>). However, night-time interrogation of minors is only allowed if the authorized officer is convinced that the lack of such an interrogation will harm the minor, the investigation, the discovery of evidence, or the thwarting additional offenses, or will prevent the release of the juvenile or of other suspects.<sup>24</sup>

- Detention report: A detention report can be made at the initiative of a probation officer. A report must be made before detention is imposed. The report, prepared by an authorized social worker, examines the environment in which the youth lives, the likelihood of rehabilitation, and the anticipated effect of detention on the youth.
  - Meeting with welfare officials: A juvenile who is in detention must meet with a social worker within twenty-four hours of arrest, and if the arrest is made at the end of the week or on a holiday, immediately after the Sabbath or holiday.
  - Supervision and rehabilitation: The statute requires the establishment of a network of residential facilities and probation officers.
- (a) Detaining a minor for interrogation is to be carried out in accordance with the rules prescribed in the Criminal Procedure (Enforcement Powers – Detentions) Law, 5756 – 1996 (hereafter: The Detentions Law). The main differences between detention and arrest concern limitations on the length of the detention and the grounds required for its execution. The Detentions Law specifies the instances in which it is permitted to detain persons suspected of offenses or persons regarding whom there is reasonable basis to believe that their detention will prevent the commission of an offense, and persons who have valuable information about an offense committed. The officer may detain the persons immediately or summon them to the police station.<sup>25</sup>

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<sup>23</sup> Penal Law, 5737 – 1977, articles 332-335.

<sup>24</sup> Youth Law, articles 9J, 9H(c).

<sup>25</sup> Detentions Law, articles 66-68.

In most cases, the minors and parents whom B'Tselem interviewed for the purpose of this report did not distinguish between arrest and detention, and accordingly we shall relate to these two means together throughout this report.

## **Statistics**

According to Israel Police figures, from 1 November 2009 to 26 October 2010, the Jerusalem District opened 1,267 criminal files against Palestinian minors living in East Jerusalem who were accused of stone throwing. Of these, 143 cases involved incidents that occurred from 22 September 2010 to 26 October 2010.<sup>26</sup> This figure includes all the neighborhoods in East Jerusalem, and not just Silwan. B'Tselem also requested statistics detailing the number of minors who were detained for questioning without opening a criminal file against them, but the police claimed that it cannot provide this figure.

B'Tselem is aware of at least 81 minors who were arrested or detained for questioning over the past year on suspicion of stone throwing. Over the past year, B'Tselem has interviewed over 30 minors, parents, and other witnesses relating to the tension in Silwan; the vast majority of these interviews relate to the detention of minors. According to B'Tselem's figures, at least 32 minors were arrested or detained for questioning in Silwan in October 2010 alone. We have documented some cases in which minors were arrested several times over the course of the year. The vast majority of the minors were suspected of stone throwing, though a few were arrested on suspicion of committing other offenses.

### **Means taken against stone throwers**

B'Tselem's research indicates that most of the minors on trial for stone throwing were held under house arrest for periods ranging from a few days to several months. After the verdict, the judges sentenced those convicted to a fine and/or public service.

Most minors who were arrested in October said that their parents signed an unpaid bond in the sum of NIS 5,000 (some US\$1,300). The implication of the unpaid bond is that if the youths are

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<sup>26</sup> Letter of 15 November 2010 from Avishag Zaken-Weisenberg, on behalf of the official in charge of freedom of information in the Public Complaints Unit of the Israel Police.

convicted in the legal proceedings against them, or if they are found to have committed the same offense again, their parents will be required to pay the stated sum. The broad use of what is an especially high fine conforms with the police's new policy, as published in *Ma'ariv* on 2 November 2010. According to this report, in an attempt to combat stone throwing in East Jerusalem, particularly high fines would be imposed on the parents of stone throwers there.<sup>27</sup> The idea is not new: during the first intifada, the IDF imposed, as a deterrent means, high fines on parents of minor *under the age of criminal responsibility* who were caught throwing stones.<sup>28</sup>

## Contravention of the Youth Law in arrests of minors in Silwan

### The time and place of arrest

The overwhelming majority of cases monitored by B'Tselem in which minors were arrested or held for interrogation from November 2009 to January 2010 (inclusive) were carried out at night. In addition, three minors were summoned at night to appear for questioning in the morning, and only one was arrested during a stone-throwing incident. B'Tselem is aware of at least sixteen minors who were arrested at night in the period examined in this report. In at least three cases, the parents requested that their child be brought for questioning in the morning, but this request was denied. Some of the minors were questioned in the course of the night and others the next morning.

Night arrests, in which police or Border Police officers, and also Israel Security Agency agents, come to the home of the minors is a traumatic experience for them. Nabil, 12 ½, describes his father waking him when a contingent of police officers came to arrest him.

On Sunday, 17 October 2010, around 5:30 A.M., while I was sleeping at home, my father came and woke me. He said the army was at the door. He asked me not to be afraid. I lifted my head and saw three men in civilian clothes standing next to my father. When I got up, I saw four Border Police officers at the entrance to the house next to the kitchen.

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<sup>27</sup> Yossi Eli, "New Technique for Combating Stone Throwing: Fines," *Ma'ariv*, 2 November 2010.

<sup>28</sup> The practice was approved by the High Court of Justice in HCJ 591/88, *Taha, a Minor, et al. v. Minister of Defense et al.*

My mother gave me a shirt, which I put on under my track suit, and shoes. I went with "Captain Itzik," who said he was the captain in charge of the area. He said, "Come with us." He was behind me, and a border policeman walked in front of me. One of the soldiers grabbed me by the arm and put me into a white jeep.<sup>29</sup>

Even in cases in which the minors are summoned at night and appear in the morning, they also suffer a terrifying night-time disturbance. Yazan, 14, describes being summoned in the middle of the night to appear in the morning.

On 27 January 2010, at three o'clock in the morning, two ISA agents, accompanied by Border Police officers, came to our house in the al-Yaman section of Silwan. They banged on the door and I woke up. It was scary. They asked about my younger brother, 'Imad, who is ten years old, and they wrote a summons for him to appear for interrogation. Then they told my father that they had made a mistake, that they actually wanted me. They tore up the first summons, relating to 'Imad, and wrote a new one with my name on it. It said I had to appear for interrogation at the Russian Compound in the morning.<sup>30</sup>

The Youth Law does not address when a minor can be *detained*, but only when a minor can be *interrogated*. The law prohibits the *interrogation* of a minor at night, except in the case when the questioning is conducted at the time the minor is detained, or in a case in which the minor and his parent consent, or in a case involving a serious offense.<sup>31</sup> Under the spirit of the statute, these same criteria should also limit night-time detention of a minor.

In those exceptional cases in which the statute allows interrogation at night, the authorized officer must be convinced that failure to interrogate at night will cause harm to the child, to the interrogation, to disclosure of evidence, or to thwarting additional offenses or will prevent the release of the minor or other suspects.<sup>32</sup> Formally, the statute might be interpreted to permit, in certain cases, night interrogations of minors, where the stone throwing is considered a serious

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<sup>29</sup> The interview was given to 'Amer 'Aruri on 18 October 2010.

<sup>30</sup> The interview was given to 'Amer 'Aruri on 17 February 2010.

<sup>31</sup> Article 9J(2) of the Youth Law states that a minor suspected of committing a felony, which is an offense the penalty for which is three years' imprisonment or more, may be interrogated at night.

<sup>32</sup> Youth Law, article 9J(c), 9H (c), see above p. X

offense. However, in the cases B'Tselem examined, and in which the interrogation took place a few days after the incident, there were no casualties and the minors reported that they were questioned about past events. Therefore, the above interpretation of the statute in stone-throwing cases is improper and is contrary to the spirit of the statute and to its general principles.

Regarding the severity of the offense, which might justify a night interrogation, the offense of stone throwing is indeed considered a serious offense, the penalty for which is a relatively long prison sentence. But here, too, discretion is warranted with respect to the need to detain a minor at night for questioning, and it is necessary to take into account the age of the person involved, the penalties actually imposed in these cases, which are much less than the maximum penalty prescribed in the statute, and the fact that the offense took place some time earlier, and it is therefore unlikely that the investigation would be harmed if the questioning were delayed for a few more hours.

The Youth Law takes into account the age of juvenile offenders, and the arrest of minors in the middle of the night, in their bed, is inconsistent with the spirit of the statute. It seems that the discretion applied in the cases examined for the purpose of this report was mistaken, given the age of the suspects, the nature of the offense allegedly committed, and its circumstances.

By interrogating minors at night, the police flouted the provisions of the statute allowing night interrogations solely in exceptional cases. For example, in the form regarding interrogation of a juvenile suspect on the night of 10 January 2010, which is signed by the head of the investigations office in the Special Operations Department of the Central Unit of the Jerusalem Police, an officer holding the rank of superintendent recorded six names of minors, even though the form is drafted to deal with one individual, and the identity numbers were not written on the form. All six juveniles were arrested the same night on suspicion of stone throwing five days earlier.

Approval for the interrogation in the middle of the night was justified on the grounds that delay in the interrogation might "thwart or impair the investigation or the interrogation or arrest of additional suspects regarding the incident for which the minor is being questioned."<sup>33</sup> The use of a collective form, without full mention of the particulars of the minors being questioned, and the general and vague pretext justifying the interrogation, shows contempt for the prohibition on

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<sup>33</sup> From the investigation material in File 156/2010 of the Department for the Investigation of Police, which was forwarded to B'Tselem.



interrogation of minors at night, and the easy manner in which exceptions are approved, rather than only in truly exceptional cases.

In October 2010, there was a change in the police's pattern of operation: along with night arrests, there was an increase in the use of special forces – undercover units and SWAT teams – in an attempt to arrest minors close to the time of the stone throwing. Special forces of the Israel Police were involved in more than half of the cases of minors who were interviewed by B'Tselem on being arrested or detained in October.

### **Cuffing**

Article 10B of the Youth Law severely limits the cases in which a minor may be cuffed.

10B. In article 9A of the Detentions Law, with respect to a minor, its contents shall be marked "(a)" and shall be followed by:

"(b) Without derogating from the provisions of subsection (a), a decision shall not be made to bind a minor who has been arrested if it is possible to achieve the purpose of binding in a way that harms the minor to a lesser extent, and he shall be bound for the shortest time necessary to achieve the aforesaid purpose; in making the decision to bind a minor, his age and the affect of binding on his physical and mental well-being shall be taken into account.

(c) Prior to binding a minor under the provisions of subsection (a), the police officer shall inform him that he is about to be bound, unless the police officer believes that giving such notice will thwart the objective of the binding.

Despite this clear provision, fourteen of the twenty-two juveniles who were interviewed by B'Tselem reported they had been cuffed. Eleven of them reported being cuffed at the time of arrest: one at the time he was held alone at the Russian Compound while awaiting interrogation – where there surely was no need to cuff him since he was isolated from other persons; and two after their interrogation, when they were placed under arrest after having been detained for questioning. The extensive use of cuffing, which is intended for use as a last resort, to bring minors to interrogation contravenes the Youth Law.

Cuffing can also be a means for causing physical pain. Yazan, 14, describes how the cuffing affected him.

At some point, the interrogator noticed that the cuffs on my hands were not tight, and he tightened them with force. During the interrogation, he did not let me go to the bathroom or have something to drink. I couldn't bear the beatings and the pressure and confessed that I had thrown stones at Beit Yehonatan.<sup>34</sup>

**Detention and arrest of minors under the age of criminal responsibility**

Under Israeli law, the welfare services are responsible for dealing with minors under the age of twelve who commit offenses; the law does not allow their detention. Yet, since the beginning of 2010, B'Tselem has documented the detention for interrogation of four minors younger than age

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<sup>34</sup> The interview was given to 'Amer 'Aruri on 17 February 2010.

<sup>36</sup> Criminal Procedure (Enforcement Powers – Detentions) Law, 5756 – 1996, article 73b.

12. Ashraf was arrested on 10 January 2010, the day after his twelfth birthday, and interrogated regarding an incident that occurred five days earlier – i.e. an incident he was suspected of committing while below the age of criminal responsibility. Ashraf complained to the Department for Investigation of Police that he was subjected to violence during his interrogation, in which no adult on his behalf was present, but the investigation into the matter was closed.

Iyad, who is under 6 years old, was summoned for investigation at night and came in the morning together with his father. He was summoned together with another minor with the same family name, probably due to mistaken identity. The police forces should have been able to discern immediately that summoning a child of this age to interrogation is completely unreasonable.

In the case of Rabi', 10 years old, an attempt was made to interrogate him even before his father arrived at the police station, but he refused. The interrogation began five hours after he had been detained by undercover police officers, and an hour and a half after his father arrived at the police station.<sup>35</sup> It should be noted that detention without arrest, until the beginning of the interrogation, is limited to three hours.<sup>36</sup> Waiting until the minor's father arrives was justified, and possibly also the additional delay, because the interrogation began when the minor's lawyer arrived, however, there is no justification for the fact that a boy, under the age of criminal responsibility, waited alone, without his father present.

Nabil, 8 years old, was taken to interrogation at 5:00 A.M. and held at the police station for three hours, which is the maximum time permitted by the statute, before being interrogated. He was allowed to go home around 9:00 A.M.<sup>37</sup>

### **Presence of parent during the interrogation**

Israeli law entitles parents to be present during interrogations, except in special cases.<sup>38</sup>

Interviews with minors from Silwan above the age of criminal responsibility indicate that they

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<sup>37</sup> The testimonies were given to 'Amer 'Aruri on 21 October 2010

<sup>37</sup> The testimonies were given to 'Amer 'Aruri on 25 October 2010.

<sup>38</sup> Youth Law, articles 9H, 10, and 19.

were taken alone, and simultaneously their parents were summoned to the police station. In the case of minors under the age of criminal responsibility, when they were taken from their home, the parents were allowed to accompany them from the moment they left the house.

In most of the cases, the parents were allowed to be present at the interrogation. They were forbidden to intervene during the questioning. Parents who asked to speak with their children prior to the start of the interrogation were not allowed to do so. Some of the parents related that they had been warned not to exchange even one word with their children, and two said that they were required to sign a commitment not to speak with their son. In some instances, the interrogators ordered the parent to sit behind the child, preventing eye contact between parent and child. The statute does prescribe that parents are not allowed to interfere in the interrogation, and even allows the interrogator to remove the parent from the room if the interference disturbs the interrogation. The reasons for removing the parent must be set forth in writing.<sup>39</sup> However, the statute entitles a minor to consult with his parents before the interrogation and in certain cases also during it.<sup>40</sup> Therefore, the instruction not permitting the parent to speak with the child even before the interrogation is inconsistent with the spirit of the Youth Law, which attaches great importance to the right of a minor under police interrogation to consult with his or her parent.

In several cases, the entire interrogation, or part of it, was conducted without the parents being present, generally on the claim that the minors were worried about their well-being due to the parents' reaction to the arrest. In at least five cases B'Tselem documented, the parents were allowed to be present only during the latter part of the interrogation, most of which was conducted in their absence.

Zuheir, 13 ½, was arrested on 10 January 2010. His family informed the police that Zuheir's father was having trouble getting to the police station and that another member of the family would take his place. Thirty-five minutes later, the interrogation began, without waiting for the family's representative. Article 9H(c)1 of the Youth Law allows an interrogation *to start* without a parent being present "if the parent or other relative did not arrive for the interrogation within a

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<sup>39</sup> Youth Law, article 9H(g).

<sup>40</sup> Article 9H.

reasonable time, under the circumstances, after the invitation was made.” The limited time given in this case is inconsistent with the statute. Furthermore, Zuheir was questioned for an offense that was committed five days earlier, so there presumably was no special urgency for the interrogation justifying infringement of the right of an adult to be present on his behalf, which the police said he expressly requested.<sup>41</sup>

Wadi'a, 12 ½, was questioned at the police station on 10 January 2010, without his parents being present, after written, signed authorization was given stating there was fear for the minor's well-being if the parent were to be present at the interrogation.<sup>42</sup> The form did not have a date, and Wadi'a's attorney claims that the youth and his parents were not properly notified of their rights.<sup>43</sup> Wadi'a confessed to throwing one stone, five days earlier, under different circumstances than those for which he was incriminated and summoned to interrogation, and his parents were ordered to post a bond in the sum of NIS 4,000.

In the case of the interrogation of Wisam, 13 ½, who was arrested on 18 October 2010, the father noticed, while present at the interrogation, that his son's eye was swollen. When, at the beginning of the interrogation, the father tried to ask his son whether he had been beaten, he was immediately removed from the interrogation.<sup>44</sup> The presence of a parent during the interrogation of a minor is intended to protect the child's rights, and the attempt to determine, before the interrogation itself began, whether the child has been treated violently clearly helps safeguard his rights. The removal of the father from the interrogation because he worried about his son's well-being constitutes a double infringement of the rights of the minor, whose father suspected he had been the victim of violence.

The interrogation of Nabil, 12 ½, who was arrested on 17 October 2010, involved another disturbing phenomenon: the discrimination between his parents based on their legal status in

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<sup>41</sup> Memorandum – Investigative Report by the Internal Affairs Department, [??]Israel Police, 10 January 2010.

<sup>42</sup> The form was signed by the head of the head of the Interrogations Office, [??], Central Unit Jerusalem, an officer holding the rank of superintendent.

<sup>43</sup> Letter of 2 February 2010 from Attorney Shlomo Lecker to Dalit Ben Yaakov, secretary of the Department for the Investigation of Police.

<sup>44</sup> The testimonies were given to 'Amer 'Aruri on 26 October 2010.

Israel. His mother is a resident of East Jerusalem, while his father is a resident of the Occupied Territories. Throughout Nabil's detention, his family was told that, since his father was not a resident of Jerusalem, only his mother would be allowed to maintain contact with the police and be present during interrogation. It should be emphasized that the Youth Law grants *the minor* the right to have a parent or other relative present during the interrogation, and there is no restriction in the statute dealing with the legal status of his relative.

### **Taking measures against the parents**

Nabil, 12 ½, was arrested in the early hours of 17 October 2010 and released the same day to house arrest for two weeks. His mother informed B'Tselem that, on 21 October, she was summoned to the offices of the Ministry of Welfare and Social Services in the center of the Jerusalem, to determine whether she was neglecting her son, since he spent time on the street, was involved in stone throwing, and was injured during this activity. The ostensible concern of the child-welfare authorities is surprising, given that these authorities themselves routinely and clearly breach the provisions of Amendment 14 to the Youth Law with respect to the arrest of minors from Silwan, harming their well-being. The absurdity in initiating these proceedings against the parents of the minor is especially grave in light of the continuing neglect in providing welfare services to East Jerusalem, Silwan in particular.<sup>45</sup> The minors who were interviewed by B'Tselem described their feelings of severe deprivation due to the lack of proper places to play in the neighborhood. Khaled, 14, related that:

The problem is that we have no place to play. I come home from school, eat lunch, do my homework, and then I go play in front of our house with kids from the neighborhood. The settlers don't like this, especially the guards who are there. . .

They don't want to see us playing there. . . There are lots of children who are afraid to play in the area, mostly because their families always warn them to keep away from the settlers and their houses.

B'Tselem is unaware of other cases in which parents of minors from Silwan were summoned for

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<sup>45</sup> See Association for Civil Rights in Israel, *Human Rights in East Jerusalem: Fact and Figures* (May 2010), 16, available [www.acri.org.il/pdf/eastjer2010.pdf](http://www.acri.org.il/pdf/eastjer2010.pdf).

similar discussions.

## **Violence**

A few of the minors who were detained or arrested at night reported that they were treated violently, mainly during the course of the detention/arrest and on the way to the central Jerusalem police station in the Russian Compound. As was pointed out above, at this stage, the minors are generally not accompanied by an adult member of their family, so it was impossible to obtain supporting testimony. All the minors arrested by special forces reported severe violence during the arrest and on the way to the Russian Compound. For example, Nasser, 13, who was arrested near the Beer Ayub Mosque on 11 October, related that:

I saw a masked man dressed in black. He grabbed me by the neck and hit me in the chest. He laid me down on the ground and hit me in the face. My lip started to bleed.

Then the undercover policeman put me into the back of a white Toyota. The child Hassan was there. They threw me on him, and the two of us were on the floor of the vehicle. Two masked men sat with us in the back. Two policemen were in the front. Inside the vehicle, the two masked men hit us, and we started to cry. I was so frightened that I peed in my pants.<sup>46</sup>

Since these are comments made by children, often with no other material to corroborate them, we relate to them cautiously. However, some of the parents reported that they saw bruises on the body of their children and some of the children were examined by a physician. The case of Wisam's father, who was removed from the interrogation when he tried to learn why his son's eye was swollen, illustrates the disregard of interrogators to the possibility that the minors indeed may have suffered from violence at the hands of the persons who arrested them.

B'Tselem wrote to the Department for the Investigation of Police, demanding that it open an investigation into the violence apparently used against five minors, two of whom were arrested in November 2009, two in January 2010, and one in October 2010. B'Tselem also knows of another case in which there is a suspicion that violence was used against a minor who was arrested in January, and has also filed a complaint on this sixth case with the Department for the

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<sup>46</sup> The interview was given to 'Amer 'Aruri on 12 October 2010.

Investigation of Police (DIP). In three of the cases, the Department opened an investigation. All were closed without taking any measures against any of the persons involved. In one case, the Department did not open an investigation, and in another case, the parents did not file a complaint. The case from October 2010 has not yet been investigated. It is important to note that in fourteen cases from October 2010, the families refused to file a complaint, despite B'Tselem's recommendation, due to their lack of trust in the Israeli law enforcement system.

One of the cases that the Department investigated was that of Wadi'a, 12 ½, who was arrested on the night of 10 January 2010.<sup>47</sup> Wadi'a stated to B'Tselem and to DIP's investigator that he had been hit in the back of the neck. His head was slammed into a wall, causing his nose to bleed, and he was exposed to a lot of cigarette smoke in a closed space. Wadi'a identified, in pictures from a security camera at his house that documented his arrest, the policeman who assaulted him, and described in detail the acts of other policemen who were with him at the time of the detention, and stated that at least one of them was present during part of the violent actions.

Wadi'a and his parents filed a complaint with DIP the same day. The next day, Wadi'a went to the emergency room at Shaare Zedek Hospital, complaining of eye pains, which resulted, he believed, from the cigarette smoke to which he was exposed, and was told to follow a medication regimen and released. When he returned to the hospital for another visit to the ophthalmologist, on 14 January, it was determined that he had an eye infection.

In its investigation, DIP did not question the other policemen who likely were witnesses. The testimony of the policeman Wadi'a identified as the one who hit him was taken four months after the incident. The policeman denied the suspicions outright.<sup>48</sup> DIP's investigator apparently accepted his version. Prior to this, three months after the incident, the police interrogator who questioned Wadi'a after his arrest was questioned. Wadi'a stated that he had mentioned, during his interrogation, the violence he suffered. The questions that DIP's investigator asked the interrogator focused on the attempt to understand why Wadi'a's complaint of violence was not

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<sup>47</sup> The description of the case is based on B'Tselem's investigation and on material from the Department's investigation file 156/2010 that was provided to B'Tselem.

<sup>48</sup> Statement of the policeman suspected of violence, given to the Department for the Investigation of Police on 4 May 2010.



recorded in the child's confession, and why there were technical problems in playing the tape of Wadi'a's confession.<sup>49</sup> The policeman who, according to Wadi'a, was present during part of the events was not questioned.

Six months after the incident, on 15 July, B'Tselem was informed that the file had been closed on grounds of lack of evidence, in that "to prosecute and achieve a conviction of a person in a case of this kind requires a high degree of certainty. . . There is not a reasonable likelihood that a conviction can be obtained in the file."<sup>50</sup> Accepting the testimony of the suspect and ignoring potential witnesses clearly mentioned by the minor indicates that no real and effective attempt was made to attain the truth. The Association for Civil Rights in Israel recently appealed the closing of this file.

#### **Incrimination by others – grounds for arrest**

One method the police use to identify juvenile stone throwers is incrimination: the police arrest one or more youths, they are required to give names of other youths whom they saw throwing stones, and these youths are then arrested and required to provide the names of others, and so on. The names collected in this chain are based entirely on testimonies of minors in a stressful situation, questioned by persons they deem hostile, often after they have been taken from their homes in a frightening manner in the middle of the night, in some instances without a parent being present, and under the threat of arrest and prolonged disruption of their lives. If indeed violence also used against some of the minors on their way to interrogation, this undoubtedly increased the likelihood that names of other minors were provided under the pressure of the interrogation, such that some of them might not have been involved in stone throwing at all. Reliance on testimonies obtained in such circumstances for the purpose of conducting further arrests expands the circle of injustice of interrogation of minors in ways contrary to the Youth Law.

An example of the use of incrimination can be found in the arrests made in early January 2010, following an incident in which stones were thrown at a Border Police jeep on the morning of 5

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<sup>49</sup> Statement of the interrogator, given to the Department for the Investigation of Police on 18 April 2010.

<sup>50</sup> Letter of 15 July 2010 from Ayala Plotnick, of the Department for the Investigation of Police.

January 2010. The police contingent that arrived at the scene caught red-handed the youth Khalil, 15. In his testimony, Khalil confessed to throwing stones at the jeep and at the jeep of the private-security company working for the Elad organization a week earlier. He also apparently provided the names of six other minors whom he said took part in the stone throwing, among them Wadi'a, who was mentioned above. All six youths, along with a number of other youths, were arrested on the night of 10 January. In order to allow an exception to the prohibition on night-time interrogation, the interrogators recorded all the information on one form for approval of the interrogation at night of six of the youths, although the form is intended for a single individual.<sup>51</sup> Wadi'a was taken from his home on the night of 10 January by Border policemen and ISA agents in civilian dress and was rushed outside the house and handcuffed. As mentioned above, he claimed he was treated violently during the arrest and while waiting for the interrogation to begin.<sup>52</sup> Under questioning, Wadi'a gave the names of three minors whom he stated threw stones in the incident for which he was arrested. None of the children Wadi'a mentioned appeared among the names given by Khalil, which led to his own arrest. When the interrogator asked him about one of the youths who had been arrested with him, and who admitted, according to the interrogator, that he saw Wadi'a throw stones, Wadi'a related that that child was not with him at the time of the incident. Wadi'a admitted that late in the morning of the preceding Tuesday (apparently 5 January), he threw stones at settlers' security guards. This testimony contradicts the testimony of Khalil, which led to Wadi'a's arrest, whereby they threw stones at the same time, more or less, with other youths, at a Border Police jeep.

**False arrest due to mistaken names**

Rafiq, 14, and Rafiq, 19, are cousins and have the same name. The two were arrested on the night of 7 October 2010 and questioned on suspicion of stone throwing. The younger of the two reported that, during his interrogation, he was shown a video of minors who had attacked vehicles and was asked if he appears in the video. He says that he denied being in the film. He was released on unpaid bond. He was arrested again on 1 November, and this time, too, another boy, also fourteen years old, with the same name was arrested as well. The arrests of two persons

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<sup>51</sup> See above, . . .

<sup>52</sup> See above, . . .

having the same name on the same night raises the suspicion that the interrogators acted on the basis of general information that might have originated from the confession of another minor, without being certain of the minor's identity. Night arrest of a minor not based on certain information regarding his involvement in the commission of an offense is unacceptable.

Nabil, 8, and Nabil, 12 ½, both from Silwan, have the same name but are not related. The two do not even know each other. On 12 October 2010, police forces arrested the eight-year-old child at 5:00 A.M., and after the interrogator was convinced that the child had not thrown stones, focused the questioning on clarifying his relationship with the other boy named Nabil. A few days later, in the early hours of 17 October, Border policemen and ISA agents, relying on film showing the 12 ½-year-old Nabil throwing stones, arrested the youth. He was placed under house arrest for two weeks until his trial. It should be noted that, following the incident for which the older Nabil was suspected of throwing stones, he was hospitalized, and the police could have verified his precise particulars. Despite this, the security forces arrested a very young boy, under the age of criminal responsibility, in the middle of the night, only because his name was the same as that of the youth who was suspected of the offense. The fact that the police waited a few days from the time of the arrest of the eight-year-old child before arresting the older boy raises doubt about the urgency of the arrest and the necessity of conducting it at night. The security forces' handling of these cases was carried out with disgraceful disregard for the rights of the children.

## **Conclusion**

The Israel Police relate very seriously to stone throwing by Palestinian youths in Silwan. This attitude is reflected in the large number of arrests of youths, a substantial portion of them being made in the middle of the night, and in the high fines imposed on the parents in the attempt to eliminate the stone throwing.

It is certainly true that stone throwing can cause severe bodily injury as well as property damage. Stone throwing by minors, some of them under the age of criminal responsibility, poses a difficult challenge to the police. However, law enforcement must be carried out without discrimination and in accordance with the law. The cases described above illustrate how the police, when they arrest juveniles in Silwan, consistently breach the Law. The breach of the statute is especially

grave given that the statute grants minors special protections and requires special consideration of their age and circumstances of the offense.

The tension in Silwan is connected to Israel's continuing discriminatory policy in East Jerusalem and to the lengthy political processes taking place in this area, including the Gan Hamelech project being promoted by Jerusalem's mayor and the control of houses in the neighborhood by settler non-profit associations.

The minors' acts are not the sole factor for the enflamed sentiments in Silwan. Recently, cases of violence, including stone throwing, by settlers in the village against the Palestinian residents have been documented. Stone throwing by settler adults and minors is much less prevalent than by Palestinians, but we see that the authorities treat the two phenomena in a completely different manner. On 15 October 2010, for example, the Wadi Hilwa-Silwan Information Center documented adult and minor settlers throwing stones at Palestinians from the yard of one of the houses whose possession had been transferred to settlers. Border Police present at the site to protect the settlers did nothing to stop the stone throwing, and certainly did not arrest any of the persons involved, adults or minors.

On 17 October 2010, the Wadi Hilwa-Silwan Information Center filmed border policemen joining settlers in stone throwing.<sup>53</sup> The Jerusalem police stated that the matter would be investigated and handled in a *disciplinary* proceeding.<sup>54</sup> Settling for disciplinary handling of an offense of this kind endangers the residents and also places the policing forces clearly on the one side of the conflict.

The severe measures, in contravention of the law, that the police take against Palestinian minors in Silwan are especially grave given the authorities' lenient treatment regarding violent offenses committed by settlers, minors and adults, which have been documented on various occasions,

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<sup>53</sup> The photos were broadcast on the news of three TV stations. See, for example, Channel 1's report, at <http://news.walla.co.il/?w=%2F1%2F1745109>.

<sup>54</sup> Moshe Nussbaum, "The Stones War," Channel 2 News, 18 October 2010. See <http://reshet.ynet.co.il/%D7%97%D7%93%D7%A9%D7%95%D7%AA/News/Politics/Security/Article,53836.aspx>.

and by border policemen in Silwan. The law provides government authorities with various alternatives for coping with the stone throwing, such as requesting the parents to bring their children in for questioning.

B'Tselem urges the Jerusalem Police to observe the letter and spirit of the Youth Law while coping with stone-throwing incidents in East Jerusalem. The police must immediately end the arrest of minors at night and the use of violence by special forces during arrests. The police must also ensure that minors are interrogated only in the presence of their parents, and must emphasize options for the rehabilitation of the minors and for preventing injury to them.

The settlements Israel has built in East Jerusalem constitute a violation of international law. The settlement clusters in the heart of the Palestinian population in Silwan and other neighborhoods create tension and lead to a reality of constant confrontation between the two populations. These settlements should be removed immediately.