

JUVENILE JUSTICE SYSTEM IN PALESTINE: CURRENT SITUATION AND REFORM PROSPECTS

MUTAZ M. QAFISHEH*

*Professor of International Law at the Department of Law and Jurisprudence, Hebron University, Palestine, and the Human Rights Division, Al-Quds-Bard Honors College, Al-Quds University, Jerusalem, Ph.D. in International Law, Graduate Institute of International Studies, Geneva

ABSTRACT

The Palestinian Authority is under obligation to observe international human rights standards relating to children in conflict with the law. However, the authority has done little to improve the juvenile justice system. Children are treated in accordance with rules that have been drafted to suit past generations. The system lacks resources, trained police, prosecutors, judges, and probation officers. Yet the environment to reform the system is enabling. There are foundations to set up modern alternatives to imprisonment, including community service, alternative families, and restorative justice. The main problem in Palestine is not the law, though important, but rather the allocation of resources and adoption of reform policies. Nothing in the law precludes the Ministry of Social Affairs opening new juvenile rehabilitation centres or to give more powers to probation officers. Nothing prevents the High Judicial Council setting up a specialised juvenile judiciary. The Attorney General can establish juvenile prosecution. The police could open specialised juvenile units. Civil society organisations are able to provide legal aid and conduct training courses on restorative justice and on socio-psychological issues. Most reform steps can be taken on a functional basis through executive instructions from relevant official bodies.

INTRODUCTION

The number of children in conflict with the law is on the rise worldwide (Sanger, 2006: 29), with >1 million detained juveniles (United Nations Children's Fund, 2006: 1). Palestine is no exception.¹ While 171 children were charged as being in conflict with the law in the West Bank in 2002, the number increased to 637 in 2005² and reached 1,488 and 1,940 in 2009.³ Yet, so far, no serious effort has been undertaken to systematically resolve the issue of such children – despite the progress on juvenile justice at the global level, in certain States in the Middle East,⁴ and

the significant developments of the Palestinian legal system since the establishment of the Palestinian Authority in 1994.⁵ Jordan, for instance, has amended its Juvenile Rehabilitation Law of 1954,⁶ which has been applicable in the West Bank since the fifties of the past century, 1 year after its withdrawal from the West Bank during its war with Israel in 1967 (Fadoul, 2007; Jordanian Ministry of Social Development, 2008; Tarawneh, 2007). Over half a century later, the 1954 Law is still enforced in the West Bank and the law in Gaza dates back to 1937. The foregoing shows, from the outset, the necessity of reforming the Palestinian juvenile justice system in light of international human rights standards and juvenile justice developments.

This article has been written after extensive fieldwork that took place in 2010 in the West Bank. The author interviewed stakeholders relevant to the juvenile justice system and programmes: police officers, prison administration, prosecutors, judges, probation officers, and representatives of the Ministry of Social Affairs. He visited the social rehabilitation institution allocated for male juveniles in the city of Ramallah, the girls' juvenile care institution in Bethlehem, the central prison in the city of Tulkarm, and the Dura police station and juvenile detention centre in Hebron. In all these locations, the writer met children accused of being in conflict with the law. He similarly interviewed a number of international and Palestinian non-governmental organisations, human rights activists, lawyers, and United Nations agencies working in Palestine.

The purpose of this article is to clarify the legal basis and practical situation relating to children in conflict with the law in Palestine with a view to providing a perspective for potential reform. The study is based on a comparative approach between the existing system in Palestine, on one hand, and international standards and the experiences in other countries, on the other. It starts by describing the legal framework that governs the juvenile justice system in Palestine. It then explores the formal policy at the level of the Palestinian Ministry of Social Affairs and its attempts to reform the existing system. The study explores the formal justice cycle: the police, prosecutors, judges, probation officers, and child rehabilitation institutions. It concludes by highlighting the alternatives to incarceration that are in place or can be adopted.

1. THE LEGAL FRAMEWORK

As a result of the different political regimes that ruled the country since its separation from the Ottoman Empire in December 1917, the applicable law in 'Palestine' (now 'the West Bank and Gaza Strip') is a mixture of various legal systems. While the Ottoman legislation was based on Islamic Law and Continental Law, legislation enacted by Britain in Palestine until May 1948 was a reflection of the Common

Law system that was spread all over the British Empire-controlled territories. From 1948 to 1967, the West Bank and Gaza were once again subjected to the continental-like legal system. When the West Bank was annexed by Jordan, the law of the Hashemite Kingdom, which is largely taken from the Latin/French legal school, was extended to the West Bank. Egypt administered Gaza without imposing its law therein, retaining the British-enacted legislation, but issuing certain legislation that was influenced by Egyptian/French law. After its occupation of the West Bank and Gaza in June 1967, Israel did not extend its law to the occupied territory, with the exception of East Jerusalem.⁷ It ruled the territory largely by the pre-1967 law, proclaiming a series of military orders that amended or replaced existing legislation, mainly in the field of security. The Palestinian Authority, upon its establishment in 1994, retained the previous law, including juvenile justice, and simultaneously started a process of unifying the legislation of the West Bank with that of the Gaza Strip.

Several reasons can explain the general incompatibility of the Palestinian juvenile system with international standards. Firstly, the core Palestinian legislation was adopted before the enforcement of the first binding international human rights instruments, the 1966 International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. When these two covenants came into force in 1977, the West Bank and Gaza were under the occupation of Israel to which the enactment of legislation complaisant with human rights was not a priority – due to its very nature as a military Occupying Power.⁸ Despite the Palestinian Authority's attempt to harmonise its newly drafted legislation with international standards in its legislative process, human rights treaties remained non-binding *per se* to the Palestinians.

Juvenile justice in Palestine is regulated by three key instruments. In the West Bank, the applicable legislation is the aforementioned Jordanian Juvenile Rehabilitation Law No. 16 of 29 April 1954. There are two applicable British-enacted legislative pieces in the Gaza Strip: Juvenile Offenders Ordinance No. 2 of 18 February 1937⁹ and Juvenile Offenders Rules of 19 September 1938.¹⁰ These legislative pieces have been revised in the light of three United Nations instruments: (i) the 1985 Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as 'Beijing Rules';¹¹ (ii) the 1990 Guidelines for the Prevention of Juvenile Delinquency or 'Riyadh Guidelines';¹² and (iii) the 1990 Rules for the Protection of Juveniles Deprived of their Liberty.¹³ The international Convention on the Right of the Child of 20 November 1989, and other standards, will be referred to as appropriate.

Three principle points should be mentioned from the outset. The fact that international human rights instruments had been developed

well after the adoption of juvenile legislation in Palestine explains some of the gaps between the Palestinian and international standards.¹⁴ Although international standards are United Nations recommendations, or 'soft law', some of their content is of customary nature, eg the prohibition of torture (Liang, 1948; Sloan, 1948). They could as such be extended to Palestine as in the case of independent States, particularly since the question of juvenile justice is primarily under the Palestinian Authority proper.¹⁵ Regarding the titles, using the term 'rehabilitation' or 'reform',¹⁶ in the law of the West Bank is more human rights-friendly than the term 'offenders'¹⁷ in the Gaza legislation.

Positive points can be found in the Palestinian juvenile justice system. Examples include, *inter alia*, providing a basis for setting up special reform or rehabilitation institutions, instead of regular detention centres or prisons;¹⁸ assigning the jurisdiction over child offences to juvenile courts;¹⁹ the obligation to separate accused minors from adults during trial;²⁰ non-public juvenile trials of juveniles;²¹ the non-applicability of death penalty, life imprisonment, or hard labour to children under 18 years of age;²² offering alternative penalties in lieu of custody, such as fines on the child's guardians, release on bail, probation,²³ or placing him or her in social care institutions;²⁴ and that the conviction of a child for an offence would not be considered as a criminal precedent.²⁵ These alternatives will be discussed in some detail below. A number of juvenile justice issues in Palestine are matter of concern, however.

According to international standards, a juvenile is 'every person under the age of 18'. The 'age limit below which it should be permitted to deprive a child of his or her liberty should be determined by law'.²⁶ The age of criminal responsibility for juveniles 'shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity'.²⁷ It can be said that, regardless of the term used,²⁸ the Palestinian juvenile legislation is in line with these standards. That legislation, first, provided detailed provisions for persons <18 years old. The law of the West Bank fixed the age under which the person would have no responsibility whatsoever at nine.²⁹ Criminal responsibility in Gaza is determined by Article 9 of the 1936 Criminal Ordinance: 'A person under the age of nine years is not criminally responsible for any act or omission. A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission'.³⁰ Fixing the age of criminal responsibility at 9 years has become definite after the adoption of the Palestinian Child Law No. 7 of 15 August 2004,³¹ Article 67.

The age of imprisonment is defined differently in the West Bank than in the Gaza. In the former, no person under 12 may be deprived of liberty.³² In Gaza, deprivation of liberty may not be imposed on

persons under 14.³³ Although none of the legislation is in conflict with international standards on the minimum age of deprivation of liberty, the Gaza law on the age of criminal responsibility and the minimum age of the deprivation of liberty is more child-friendly than that of the West Bank. This situation should be corrected; a single provision on criminal responsibility and minimum age for deprivation from liberty should be adopted in both areas. The provision of the 1937 Ordinance on imprisonment age, fixing it at 14, ought to be adopted. The Palestinian draft *Juveniles in Conflict with the Law* fixed the age of criminal responsibility at 12 years;³⁴ apparently including the deprivation of liberty.

The Palestinian legislation provides for the separation of juveniles and adults during court hearings, detention, or imprisonment. However, there is no strict ban against mixing minors with adults. Article 3(3), of the 1937 Ordinance, stipulates: 'Provision shall *whenever possible* be made for preventing persons apparently under the age of sixteen years whilst being conveyed to or from court or whilst waiting before or after their attendance in court from association with adults'.³⁵ The same language is used in Article 6 of the 1937 Ordinance: 'It shall be the duty . . . to make arrangements for preventing, *so far as practicable*, a child or young person while being detained in a place of detention . . . from associating with an adult'. Article 12(3), of the 1937 Ordinance, which relates to imprisonment, used the clause 'so far as is practicable', concerning the separation between juveniles and adults. Similar wording can be found in the West Bank.³⁶

It might be said, however, that Article 24 of the Correction and Rehabilitation Centers ('Prisons') Law No. 6 of 28 May 1998,³⁷ which states that 'juveniles are placed in special centres', can be considered as a general rule that replaced the juvenile legislation rules. The issue of a definitive obligation to separate juveniles from adults will continue to be a matter of interpretation until such a time when the juvenile legislation is replaced with a modern law that plainly prohibits holding juveniles with adults. The Palestinian juvenile law may adopt Rule 29 of the 1990 United Nations Juvenile Rules that states 'In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned'.³⁸ The scope of 'controlled conditions' and the 'special programme' should be determined according to criteria which can be set out by law or by the regulations of the places in which the juveniles are held. Such provision is not included in the Palestinian draft juvenile law. The draft, in Article 11(1), merely prohibited the placement of juveniles with adults during pre-trial detention.³⁹

Serious concern arises from the law's permission to utilise corporal punishment against juveniles. Article 12 of the 1937 Ordinance explicitly allows the punishment of juveniles through 'corporal punishment', among other means, as alternatives to imprisonment. Article 18(f) of the said Ordinance gave the court the power to deal with juvenile cases 'by ordering the offender to be whipped'. On 30 September 1941, the British-appointed Chief Justice in Palestine enacted the Juvenile Offenders Rules,⁴⁰ which provided, in its Article 2, a description of the way by which juveniles should be whipped; namely, '[w]hipping shall be inflicted with a birch or pliable'. While recognising the severity of the consequences that might result from such a punishment, the law simultaneously provides that '[a] medical officer shall be present on any occasion when as many as twelve stokes are given'. Happily, there are no similar rules in the law of the West Bank.⁴¹

These provisions are still applicable in the Gaza Strip, despite being manifestly in violation of international human rights law. They contradict, first, Article 16 of the international Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 that prohibits acts of 'cruel, inhuman or degrading treatment or punishment which do not amount to torture . . . when such acts are committed by . . . a public official'. Secondly, they run contrary to Article 37(a) of the Convention on the Rights of the Child that prohibits 'cruel, inhuman or degrading treatment or punishment'. Finally, they are in direct conflict with Rule 17.3 of the Beijing Rules, which holds that 'Juveniles shall not be subject to corporal punishment'.⁴²

It is unfortunate that the 2004 Palestinian Child Law did not explicitly abolish the abovementioned provisions of the 1937 Ordinance and the 1941 Rules. Although the Law has referred in its preamble to the 1937 Ordinance and provided in its Article 68 that 'no child shall be subject to physical or moral torture or to other forms of cruel, inhuman or degrading punishment or treatment', it did not specifically repeal the 1937 Ordinance. It confined the repeal to a general provision that states, 'any provision that contradicts this Law is hereby repealed' (Article 74). Nor does the Child Law provide any remedy to children who might be treated or punished through corporal means. One could of course interpret the Law by concluding that the said Article 68 repeals the corporal and degrading punishments of the 1937 Ordinance, but these punishments ought to be explicitly named and abolished. Until this task is achieved by further legislation, courts and law enforcement officials should refrain from invoking the corporal punishment provisions of the 1937 Ordinance because of the overriding provisions of the 2004 Child Law and the general and customary prohibition of that punishment in international human rights law.⁴³

Taking the international standards together, a number of more specific gaps can be identified in the Palestinian system. The gaps are of three categories: one relates to the administration of the juvenile justice system, the second concerns the prevention of juvenile delinquency, and the third pertains to juveniles deprived of their liberty.

Regarding the first category of rules, the Palestinian system should be designed with the overall objective of safeguarding the well-being of children. The law should ensure that any treatment of juveniles is always considerate of the personal circumstances of the child and the gravity of the offence. While the margin of discretion in dealing with juveniles should be based on personal characteristics, Palestinian legislation should secure transparent mechanisms for monitoring the use of such discretion in order to prevent discrimination. Those who exercise discretion should be trained officials. In the new Palestinian law, the rights of juveniles should be set out. It should provide a basis for the creation of a specialised police, prosecution, and judiciary. A large variety of disposition measures should be made available. While placing juveniles in a reformatory institution should be a last resort, it should be channelled to provide protection and education, while ensuring the right of access to parents or guardians. Conditional release from these institutions should be used to the greatest extent. Finally, Palestinian law should set up a body, built into the system of the juvenile justice administration, which could be part of the Ministry of Social Affairs, to conduct research, collect data, set plans, and formulate policies for on-going reform. The adoption of preventive measures for juvenile delinquency should be formulated, as set out through minimum standards in the Riyadh Guidelines. These measures should be included at the levels of formal procedures and institutions, socialisation processes, family, education, the media, practical, and academic research (see [Defence for Children International, 2003](#); English, 1964; [Glueck, 1952](#)).

In relation to juveniles deprived of their liberty, a number of gaps, in the light of the 1990 United Nations Juvenile Rules, are listed here by way of example.⁴⁴ Juveniles should have the right of legal counsel and free legal aid, in case they cannot afford hiring a lawyer, and to communicate regularly with their legal representative in confidentiality. An independent inspection mechanism, other than the administration of the detaining authority, should monitor the places in which juveniles are held. Juveniles should have the choice to pursue remunerated work and to continue education. Children in conflict with the law should receive materials for their leisure and recreation. The management of juvenile facilities should be organised to include the following: records on inmates; classification; physical environment and accommodation; education, vocational training and work; recreation; medical care; contacts with the wider community; limitation of physical restraints,

use of force or inhuman disciplinary measures; arrangements for the juvenile's return to their communities; and recruitment of qualified and sufficient personnel to work in juvenile facilities and ensure their integrity and on-going training (Hilo and Abuein, 2007). Some of these points will be a subject of a greater focus when we come to the practical aspects below.

Since 1999, there have been attempts to develop a new Palestinian juvenile justice law to meet the needs of the Palestinian society and to be in line with international standards.⁴⁵ The process has been led by civil society organisations,⁴⁶ some Palestine-based United Nations agencies, mainly the United Nations Children's Fund,⁴⁷ and the Office of the High Commissioner for Human Rights.⁴⁸ It was thought to include juvenile justice within the child law, as the case of Egypt and Tunisia.⁴⁹ However, the drafting process yielded the Palestinian Child Law in 2004, which excluded children in conflict with the law in order to have separate legislation on that subject.

The process of developing a new juvenile justice law continued and produced a draft in 2006. The draft, which was initiated by the Ministry of Justice, is far from being consistent with international standards. This led to the slow process in revising the draft by various actors, which took some time without leading to an agreed bill. This continued until June 2007, when Hamas took over the Gaza Strip. The Palestinian Territory was broken into two parts, one in the West Bank led by Fatah based in Ramallah and another led by Hamas in Gaza. Since then, the Palestinian Legislative Council has not been functioning. No law has been passed.

In 2010, efforts to have new Palestinian juvenile justice law were revived. The Ministry of Social Affairs in Ramallah has formed a National Steering Committee to work on a comprehensive policy to reform juvenile justice (see below). The Steering Committee was divided into two task forces, one charged with developing a national plan on juvenile justice reform and the other was mandated to draft a juvenile justice law, taking into consideration existing draft bills. Prospects for the Parliament to reconvene in the near future are minimal. It is, therefore, envisaged that the new draft law would be introduced and submitted to the Palestinian President to enact as Decree-Law, using the President's legislative power vested in him during the absence of the Parliament under the 2003 Amended Palestinian Basic Law,⁵⁰ Article 43.

Nonetheless, the main problem in Palestine is not the law, though important, but rather the allocation of resources and the adoption of reform measures. For example, nothing in the law prevents the Ministry of Social Affairs from opening new juvenile rehabilitation centres in the north or the south of the West Bank, having a system for alternative families, introducing restorative justice, or giving more powers to

probation officers. Nothing prevents the High Judicial Council from setting up a juvenile judiciary. The Attorney General can introduce juvenile prosecution. The police could open specialised juvenile units. Civil society organisations are able to provide legal aid and conduct training courses on restorative justice and on socio-psychological or legal issues relating to juvenile justice. Most of juvenile justice reform steps can be taken on functional basis through executive instructions from relevant parties, such as the Minister of Social Affairs, Chief Justice, Attorney General, and Police Commanders.

2. THE POLICY: MINISTRY OF SOCIAL AFFAIRS

Unlike in certain countries in the Middle East, such as Egypt where the juvenile justice system is scattered among four ministries, Palestinian juvenile justice is primarily assigned to the Ministry of Social Affairs according to the 1954 Juvenile Rehabilitation Law. This can be considered as a positive sign as it implies that the issue of juvenile delinquency is a matter of social concern rather than an issue of security and formal punishment. However, the Ministry of Justice and Ministry of Interior have limited responsibilities on aspects of juvenile justice as part of their general mandate. While the former is in charge of drafting legislation and supervising prosecutors, the latter directs the police and manages detention centres and prisons. Besides, the High Judicial Council plays a role with regard to juvenile justice as it is responsible for the courts. The Parliament has a role relating to enactment of the law as part of the legislative process. In this study, the role of these bodies is addressed under respective sections relating to the police, prosecutors, legislative reform (above), and the specialised courts.⁵¹ The focus in this section is on the Ministry of Social Affairs and its policies to reform the juvenile justice system in Palestine.

The said Ministry deals with children issues through its General Administration of Social Care and Rehabilitation. This Administration is composed of four departments: (i) combating drugs, (ii) social institutions for children who drop out of school, (iii) orphans, and (iv) social defence. The body that had the mandate with regard to children in conflict with the law is the Social Defence Department. This Department is in charge of the Ministry's policies relating to juvenile justice. It acts as the central administration for probation officers and manages the two juvenile care institutions, Dar Al-Amal for boys in Ramallah and Girls Care House in Bethlehem. The Department coordinates with the police, prosecution, courts and prisons, relevant ministries, and civil society organisations on juvenile cases ([Ministry of Social Affairs, 2010a](#)). This Department took its roots from the Jordanian juvenile system that was applicable in the West Bank between 1948 until 1967. While the Department has been significantly developed

in Jordan after the enactment of the a new Juvenile Justice Law in Jordan in 1968 until the present time, the Palestinian Social Defence Department remained intact under the Israeli occupation since 1967. Due to the lack of resources and the weak staff technical capacity, the Department has been unable to improve the Ministry's policies or services since it took more control over juvenile justice in 1994.

The Ministry of Social Affairs is in the process of undertaking comprehensive reform of the juvenile system ([Ministry of Social Affairs, 2010b](#)). To achieve this goal, as mentioned above, the Ministry has recently formed a National Steering Committee on Juvenile Justice, involving stakeholders from relevant governmental bodies, civil society, and international institutions. The Committee has been divided into two task forces, one to draft a new juvenile justice law and the second to develop a national plan of action on the matter.⁵² So far, the Steering Committee has produced no results.

3. CHILDREN AT POLICE STATIONS

'It is the police officer who has first contact with the majority of delinquent boys' ([Yanagimoto, 1973](#)). Such contact starts with the arrest, continues during the investigation period, and lasts throughout the detention awaiting trial. Both arrest and pre-trial detention are dealt within Palestine according to the Criminal Procedures Law No. 3 of 12 May 2001,⁵³ similar to the treatment of adults. There are, however, a few exceptions by which children are treated in a different way than adults. The exceptions, which are provided by the 1954 Juvenile Rehabilitation Law and by the 1998 Reform and Rehabilitation Centers ('Prisons') Law, are the separation of minors from adults and the possibility of providing children with socio-psychological support by a probation officer.⁵⁴

There are currently no Palestinian specialised juvenile police units. But there is an attempt to create such units. There are, with the exception of the Dura Police Station in Hebron District and Dar Al-Amal in Ramallah, no detention facilities for juveniles. Thus, children are held in special rooms in ordinary prisons in most districts.⁵⁵ Children are arrested according to the Criminal Procedures Law of 2001. No particular procedures regarding children are provided in this Law. With only one provision (Article 5) that bans tying children except when the juvenile resists the arrest, the 1954 Law provides no procedures for the arrest of children. It would be useful to develop specific procedures for the arrest of children within the new juvenile justice law. These procedures might regulate arrest, detention, investigation, and trial. Transitionally, the current law gives the Minister of Social Affairs the power to enact procedures in the form of regulations or instructions to implement the existing juvenile law by virtue of

Article 25(4) of the 1954 Juvenile Rehabilitation Law as mentioned above. These procedures need to comprise, *inter alia*, the arrest of children by non-violent means by special police without uniforms and with the presence of a social worker or a psychologist, use of civilian cars, prohibition of arrest at night or weekends, and making the arrest subject to judicial decision with minimal exceptions.

According to the law, once police officers arrest children and before referring them to the court, children should be held in 'detention or arrest places that are prepared to achieve the objectives of the law'.⁵⁶ There is no specific definition or numerated locations of such detention places. The law gives courts the option to transfer children awaiting trial either to detention centres or to prisons.⁵⁷ Courts have the discretion to transfer children in 'dangerous' cases to prisons. In such instances, children should be kept 'in places designated to prisoners of similar cases'.⁵⁸ In all cases, as described above, minors must be separated from adults.⁵⁹

In practice, children accused of being in conflict with the law are detained in various locations in various Palestinian districts. In the centre of the West Bank, namely Ramallah and Jerusalem Districts, children are detained in Dar Al-Amal for Social Supervision and Care.⁶⁰ In the south of the West Bank, mainly Hebron District and, to a lesser extent, Bethlehem District, the Palestinian police have established a juvenile detention centre located within the building of one major police station in the town of Dura.⁶¹ In the north of the West Bank (the Districts of Nablus, Tulkarm, Jenin, Qalquliya, Salfit, and Tubas) because of the absence of juvenile care institutions or special police detention centres, children are detained in ordinary prisons.⁶² In most of these three locations, children are held in separate places from those of adults. There are, however, reports of holding children with adults in some places.⁶³

There are two major reasons for the aforementioned varying treatment of juveniles in pre-trial detention. One is that juvenile law does not provide fixed places in which juveniles can be detained (Walker and Glasner, 1965). The second reason is practical: the absence of unified institutions in which juveniles can be hosted. The way to solve the first problem is to amend the Juvenile Rehabilitation Law and oblige the police and courts, in the absence of any of the non-custodial measures, to keep children awaiting trial in juvenile rehabilitation institutions. For this to be realised and this is the solution of the second cause, the Palestinian Authority needs to establish more juvenile care institutions.⁶⁴

The Palestinian Civil Police, in coordination with the European Union Coordinating Office for the Palestinian Police Support (a West Bank European police force that provides technical and logistical assistance to the Palestinian police), is in the process of establishing

specialised juvenile police. This specialised police would be composed of the Juvenile Police Department at the Police Headquarters in Ramallah and juvenile police units at major selected police stations among the 78 stations currently in the West Bank. The decision to establish juvenile police units was taken by the Head of the Palestinian Civil Police on 1 July 2010.⁶⁵ This decision is in the process of being implemented. It is envisaged that each juvenile police unit will be composed of about three staff members, including at least one female officer. They will work with civilian-like uniforms, use civilian cars, and receive special training on the treatment of children.

The specialised juvenile police needs to be institutionalised. Institutionalisation could be achieved by providing a legal basis, eg by incorporating provisions on the specialised police in the new juvenile justice law, creating mechanisms covering the relationships between the units, social workers, and probation officers by agreement between the police and Ministry of Social Affairs, and providing on-going training by supporting the police in using a computerised case-management system, data storing programmes, and by introducing aspects of good practice from other countries (Landau, 1981). In 2008, Jordan, with the support of United Nations, set up juvenile police offices in a number of police stations in the capital Amman (Terre des hommes-Lausanne, 2010a). This experience can benefit the newly established Palestinian juvenile police.

4. CHILDREN AND PROSECUTORS

The Palestinian law makes no distinction between children and adults regarding investigation and questioning by prosecutors.⁶⁶ In both cases, the applicable legislation is the Criminal Procedures Law of 2001. It should be noted that, after arrest by the police, the detained person should be transferred to a prosecutor within 24 hr.⁶⁷ This means that accused persons, including children, might spend 48 hr between the police station and the prosecutor's office before the legal determination whether to keep them in detention or release them is made. After the investigation, the prosecutor might extend the detention for extra 48 hr.⁶⁸ All decisions to extend the pre-trial detention after the 48-hr periods, which might last up to 6 months, must be issued by the competent court.⁶⁹

It has been reported by some police officers that there is a lack of coordination between prosecutors and police on juvenile cases. Police reported that prosecutors transfer children to specific prisons instead of indicating that children should be transferred to either a social institution or to a 'place similar to persons of his case'. Thus, the police have no choice but to hold children in detention centres.⁷⁰ One chief prosecutor, on the other hand, reported that prosecutors never order

the detention of children in prison.⁷¹ A memorandum of understanding between the police and the Attorney General does not include any specific reference to children; hence, the need to have a specific memorandum on children. Yet nothing in the applicable law prevents the Attorney General from establishing a specialised juvenile prosecution service. It was reported that the Attorney General was determined to open such a service in 2010 (*Said-Foqahha, 2010: 30*), but this had not been achieved as at the beginning of 2011. As the 1954 Law considered the court that hears cases of children as a juvenile court, it can be concluded, by analogy, that prosecutors dealing children are juvenile specialists.

5. JUVENILE COURTS

The basis for a specialised juvenile judiciary rests in the 1954 Juvenile Rehabilitation Law. Yet there are no full-time judges assigned to juvenile courts in Palestine as in other countries. The Law considers any court that hears cases involving an accused child as a juvenile court. Judges in such courts, the magistrates' (or conciliation) court and the court of first instance,⁷² are, however, not working on juvenile justice on a full-time basis. They are judges with general jurisdiction in all civil and criminal matters. They can be considered as juvenile judges for the purpose of the application of the 1954 Law. Due to the lack of specialisation and awareness, a number of the specific procedures relating to juvenile trials are not followed by, and even not known to, judges in practice.⁷³ Statistics on juvenile cases in courts are currently absent.

Palestinian courts have no specialisation and juvenile justice is no exception. Courts are organised on the basis of the 2002 Judicial Authority Law and the Formation of Regular Courts Law No. 5 of 2001.⁷⁴ For certain serious crimes, including homicide and rape, the mandate would be assigned to the Court of Criminal Assize according to Decree-Law No. 7 of 2006 concerning this Court.⁷⁵ Yet nothing in the existing legislation in Palestine would prevent the High Judicial Council, which is in charge of all regular courts system, from assigning certain persons to function as specialised judges on juvenile matters. The 1954 Law furnishes a sound basis for such courts.

What makes the juvenile court different from other courts, according to Article 7 of the 1954 Law, are the requirements that such a court should follow while dealing with children in conflict with the law. Judges hearing children cases should convene in a different location and time or even outside the court itself. The Juvenile court is obliged to obtain a report from a juvenile probation officer. In court, children should be separated from adults. No one is allowed to attend a juvenile court's session except the probation officer, the child's parents or guardian, the court staff, and persons directly related to the case.

Courts sessions are confidential (see [Van Nijnatten, 1989](#)). The Juvenile court should follow different procedures than those relating to adults and impose different penalties, including a number of non-custodial measures.⁷⁶ Yet the situation of children before courts is alarming.⁷⁷ There is no separation between children and adults. Children are often handcuffed. Many children have no lawyer. They wait for long periods, up to 1 or 2 years, before receiving final trial, mostly in detention centres or prisons. Judges treat children as criminals, with disrespect, rather than taking their point of view as the main reason of having child courts (see [Scott, 1959](#)). Courts are overcrowded. Children are victimised within the slow process.

The foregoing shows that the basis for a specialised juvenile judiciary is present in the law. It is now necessary to create it. There is a certain level of awareness of this in the High Judicial Council. Currently, there are a number of judges trained on juvenile issues.⁷⁸ What is needed now is a decision, as part of the administrative power assigned to the Judicial Council, to establish specialised courts with an exclusive mandate over children in conflict with law. At least one judge should be assigned as a full-time juvenile judge in each district. Special education and training, on national and international juvenile justice law and procedure, should be provided. Manuals and guidelines should be designed for judges' use. There is unconfirmed news on the Judicial Council's plan to set up specialised juvenile judiciary composed of nine judges.⁷⁹

6. THE ROLE OF PROBATION OFFICERS

The probation officer, in Arabic *murakib sulouk*, in Palestine is a staff member of the Ministry of Social Affairs. This person is called a social worker or psychologist in other countries ([Dunant, 2002](#); [Robitscher, 1966](#); [Wollan, 1941](#)). According to the Juvenile Rehabilitation Law of 1954, the probation officer has a role to play at all stages of the justice procedure: arrest and detention by police, investigation, questioning and indictment by prosecutors, trial by court, rehabilitation in a social care institution or prison, and aftercare by a follow-up programme (see [Braithwaite and Mugford, 1994](#)). Probation could also mean placing a child who is in conflict with the law, or suspected to become such, under the supervision of the probation officer as an alternative to incarceration.

There are currently 12 probation officers in the West Bank. They work under the formal supervision of the Social Defence Department, headed by the supervisor of probation officers at the headquarters of the Ministry of Social Affairs in Ramallah.⁸⁰ Probation officers work at the district level under the daily administrative management of the head of Social Directorate of the Ministry of Social Affairs within

each district. As in other countries, the work of probation officers is quite informal as they are not supposed to be technically juvenile lawyers (see [Dootjes et al, 1972](#); [Isaacs, 1968](#); [Johnston, 1970](#); [Stubbs, 1975](#)). They assist courts and law enforcement officials in determining the personal and social context of the child who violates the law on a case-by-case basis.

The law is clear with regard to the role of probation officers in the pre-trial period. Once the child confesses the offence, the court is obliged under Article 11 (4) of the 1954 Law to obtain a report from a probation officer on the child's personal and social status. The report⁸¹ might include 'general information about the child, his environment, performance in school, and his health state'.⁸² The Ministry of Social Affairs has developed a form that is filled in by probation officers to be used before courts in offences in which a child is accused.⁸³ Probation officers fill in the required information by the court after interviewing the juvenile and members of his or her family. To complete the report, some probation officers visit the child at home, police station, or in detention centres.⁸⁴ Despite the efforts that probation officers take in preparing the report, judges often ignore their report and include it in the file merely as part of a routine procedure.⁸⁵ Most judges do not even bother reading the probation officer's report. According to four judges, the reason of the judge's disrespect for the probation officer's report is that these officers are not qualified and almost all their reports are copied from one another.⁸⁶

After placing the child in a juvenile care institution, detention centre, or prison, probation officers still have a role. A few visit care institutions or detention centres, mainly on their personal initiative.⁸⁷ Probation officers also have the power, upon the approval of the Minister of Social Affairs, to bring a child to the court before ending his or her imprisonment term to request an extension to his incarceration. This can be exercised in two cases.⁸⁸ The first is when one of the child's parents is a well-known criminal or alcoholic. The second is when the juvenile is still under 19 years of age and has not yet completed the training programme he started in the juvenile rehabilitation institution.

In practice, probation officers are overwhelmed with work. One probation officer from the southern district of Hebron explained that there is one probation officer for the whole district of about 170,000 inhabitants. The probation officer is also in charge of all social care issues in the Social Affairs Directorate, including cases of orphans, children at risk, school drop-outs, street children, child beggars, child drug dealers, and victims, in addition to children in conflict with law. With ~10 to 30 cases a month of children who violate the law, coupled with the lack of transportation to police stations, courts or rehabilitation institutions, 'it is next to impossible for probation officers to do a good

job in studying all cases of children in conflict with the law. The time of probation officers is barely enough to prepare the report of the court of juvenile cases in order for the court to use it as a basis for its judgment'.⁸⁹

In order to advance the efficiency of probation officers, it is estimated that each district would need at least three probation officers. One probation officer should work on full-time basis on juvenile justice issues.⁹⁰ The Ministry of Social Affairs should make transportation available for probation officers to visit juveniles at home, school, at police stations, detentions, courts, and rehabilitation institutions. Aware of the above situation, the Ministry of Social Affairs has developed a plan to assist the work of probation officers.⁹¹ It includes sections on improving the capacity of probation officers through 1-year training series on legal, social, and psychological aspects of juvenile justice; on communication skills; and on the preparation of juvenile socio-psychological reports.

7. CHILDREN IN REHABILITATION INSTITUTIONS

Juvenile care institutions, known as reformatories or *islahiya* in Arabic, are facilities whereby juveniles spend pre-trial detention or imprisonment terms. Their basis is found in Article 4 of the 1954 Juvenile Rehabilitation Law. It was not surprising that the first reformatory in the West Bank, Dar Al-Amal, was established in 1954 as well. What is surprising, however, is that there is only one boys' institution in entire West Bank. The said Article 4 is not precise in terms of the type of the institution in which juveniles are held. The article just refers to institutions prepared for detention or imprisonment. Another problem is that the law allows for the imprisonment of juveniles aged between 13 and 17 years (Article 6). Article 18 assigns the responsibility over these institutions to the Ministry of Social Affairs.

There are three social care institutions in the West Bank and Gaza, hosting children in conflict with the law. The first, for boys, is Dar Al-Amal in Ramallah for Supervision and Social Care. The second, for girls, is the Girls Care House, Bethlehem. In Gaza, there is Dar Al-Rabi for juvenile boys. In the remaining districts, children in trouble with the law end up in police detention centres or in prisons, as no social care institutions are available. This poses serious concerns on the equality of treatment of children committing similar offences, besides the rights, rehabilitation and future of juveniles in other districts.

As Dar Al-Amal is in Ramallah in the centre of the West Bank,⁹² it could not logistically absorb children from other districts for three reasons. One is that Dar Al-Amal, which can host a maximum of 40 children, cannot accommodate the growing number of juveniles. Secondly, moving children from other districts to Ramallah is difficult,

if not impossible, due to the Israeli military checkpoints across the districts that have not been allowing Palestinian police to transfer prisoners or detainees freely since the beginning of the second uprising (*intifada*) in 2000. The third reason is that detained children, who are the majority among juveniles, need to attend court hearings from time to time and it is not possible to bring detainees from central Ramallah to courts in the north or the south every session. The alternative for the police is to keep children in jails.⁹³ Hence, the key solution for resolving children's imprisonment is to open social care institutions in other districts.

Dar Al-Amal (House of Hope) was established shortly after the enactment of the 1954 Law. It functioned until 1967. Under the occupation, it was closed as Israel kept Palestinian prisoners, including children, in its prisons. *Dar Al-Amal* was reopened after the creation of the Palestinian Authority in 1994. Children hosted in it are 12–17 years old. In 2009, 316 children entered this House. Most of them, 291 children, were from Ramallah and Jerusalem districts.⁹⁴ The 2008–2009 statistics reveal that the overwhelming majority of juveniles are detainees. Only 5 of 287 in 2008 and 10 of 316 in 2009 had been convicted. Between 1997 and 2010, a total of 2,035 children entered *Dar Al-Amal*. Most charges were of petty crimes. In 2008–2009, only two children were accused or convicted of murder. The rest were mostly accused theft and youth assaults.

Dar Al-Amal has 15 staff members. Children cannot leave and cannot attend school. Professional training programmes are poor. There are only sewing and coiffure programmes, which are not attractive to children. Living conditions are not suitable in terms of furniture, humidity, and hygiene. Children spend much of their time watching television. The institution is open for visitors almost without limitation. It is to be noted, however, despite the generally poor conditions in it, that the conditions are much better than in detention centres or in prisons by every standard.

The Girls Care House in Bethlehem, established in 1958 in the context of the 1954 Juvenile Rehabilitation Law, has the mandate to host girls who might come in conflict with the law.⁹⁵ It is the only institution designed for this purpose in Palestine.⁹⁶ Before 1994, the House was called the Juvenile Girls Reform Center and was exclusively in charge of hosting female children who were in conflict with the law. After changing its name upon the creation of the Palestinian Authority, the House started receiving minor females who might need protection other than those who violate the law, such as girls under threat of attack by their family members on 'honour' grounds or those who suffer from domestic violence. The number of girls who violate the law in Palestine is low.⁹⁷ Most female cases are resolvable through restorative or conciliation means within families. The House is an open facility. Girls

can attend school. A number of educational and training programmes exist: hairdressing, computers, and sewing.

In the Girls House, the 11 staff members are teachers, social workers, and psychologists, all supervised by the Ministry of Social Affairs. The House is well equipped, including with computers and the Internet, and well furnished and organised. With the ability of hosting 22 girls, the House accommodated 8 girls in August 2010.⁹⁸ Statistics of previous years range between 49 girls in 2000 and 26 in 2009. None of the inmates broke the law. Yet the House is ready to receive girls with criminal charges in pre-trial detention or after conviction. The House conditions are much better than in the Dar Al-Amal institution for boys. Staff members, however, lack experience in dealing with female children in conflict with the law.

As part of its attempt to reform the juvenile justice system, the Ministry of Social Affairs is looking towards juvenile rehabilitation institutions. It plans to open two additional institutions for boys, one in Nablus for the north of the West Bank and one in Hebron in the south. But such proposals are still at the discussion stage.⁹⁹ Furthermore, the Ministry is planning to improve the conditions, infrastructure, furniture, training, educational, and rehabilitation programmes of Dar Al-Amal (Ministry of Social Affairs, 2010c).

8. ALTERNATIVES TO IMPRISONMENT AND REFERRAL MECHANISMS

A number of referral, or diversion, mechanisms available in various countries (see in general, Berlin and Allard, 1980; Kumar, 1964: 491–507; Reker et al, 1980; Wilson, 1976) exist in the Palestinian system. Others can be adopted either by inclusion in the new draft law or by regulations that can be issued by the Minister of Social Affairs or by directions of the High Judicial Council or other relevant juvenile justice stakeholders. Some of the measures within the Palestinian legislation can be improved or reinterpreted to cover certain global developments. The central point here is that children should be pushed out the formal system as much as possible. Incarceration should be the last resort. And, when exercised, it should be for the shortest possible period with the possibility to release the child anytime.

A. Signing Commitment by the Family

The law in Palestine allows the court, after the child's confession that he or she violated the law, to request his father or guardian to sign a paper comprising a commitment that he will make every possible effort to look after the child and to prevent him from violating the law.¹⁰⁰ The court can also order the father or the guardian to pay a sum of money or make a commitment to pay such an amount, as a guarantee that the child will

be of a good conduct and will not commit further offences.¹⁰¹ If the father or guardian fails to prevent the child getting into further trouble with the law, the court has the power to force the father or guardian to pay or detain the child again. This would be an effective tool when the child commits offences as a result of his parent's negligence. It should be used in such cases (see [Prichard, 2007](#); [Voelcker, 1961](#)).

B. Alternative Family or Guardian

If the parents are unable to take care of their child or if they are the reason for his delinquency, Article 23, paragraph 2(C), of the 1954 Law, allows the child to be referred to an alternative family. Referral in this case, which includes only children <15 years of age, is subject to decision by a court or the Minister of Social Affairs and the approval of the head of the alternative family. In 1963, regulations were enacted to organise the alternative family system. This includes the Ministry of Social Affairs' supervision of the alternative families, the family's characteristics, and financial compensation for the family, payable by the juvenile's family or by the Ministry.¹⁰² The alternative family option is included in the draft law of juvenile justice.¹⁰³ However, with its clear legal basis, the Ministry can take steps, before the adoption of the new law, to introduce the alternative family option, which is not currently operating in Palestine.

C. Conditional Release after Conviction

Conditional release of children with imprisonment terms could be exercised by the court upon the request of the Minister of Social Affairs.¹⁰⁴ With the exception of children convicted of murder, any juvenile who spent over 1 year in prison or a reformatory could be released. This option is subject to the good conduct of the child while deprived of liberty and to the condition that release would not have a negative impact on the child. The child can be returned to complete his term if the court considers that the release has not achieved its objectives.

This alternative is not included in the draft juvenile law. Instead, the bill gave the court the power to release the child after serving one-third of his imprisonment term.¹⁰⁵ The new law should consider the following: (i) keep the option of conditional release as stipulated in the 1954 Law; (ii) reduce the imprisonment period for <1 year before the exercise of the conditional release option; or (iii) retain the provision that provides for the release after serving one-third of the term if the one-third of the term would be <1 year; this would be in the case when the original decision of the deprivation of liability is <3 years. The conditional release period can be viewed as an opportunity for restorative justice (see below).

D. Probation

The 1954 Juvenile Rehabilitation Law attached much significance to probation as an alternative to incarceration. This option can be exercised in parallel with the role of probation officers in the judicial proceedings, as detailed above. The court might order placing the child under the supervision of a probation officer for a term ranging from 1 to 3 years. The order can stop anytime during this period upon the request of probation officer, the juvenile himself or his guardian, and after reviewing the probation officer's report on the progress that has been achieved.¹⁰⁶ If the child fails to follow the probation's term, the court might consider other options, including deprivation of liberty.¹⁰⁷ If the juvenile commits another offence during the probation period, the probation would come to an end and the child might be retried on the original offence, besides the new one.¹⁰⁸

The draft law did not include probation as an alternative to imprisonment. It merely makes the role of probation officers relevant to the judicial proceeding. This is a backward step that should be corrected by giving more attention to probation as a referral mechanism. Or, at least, the new law should retain the provisions of the 1954 Law regarding probation without changes. The Ministry of Social Affairs, by administrative decisions and capacity building programmes, and courts, through their judgements, should give a greater attention to probation as a referral alternative by strengthening the system of probation officers explained above.¹⁰⁹ The probation period provides another opportunity for the child to undergo a restorative justice programme (Wright, 1998).

E. Referral to Social Care Institutions

The existing law provides a basis for referring juveniles to social care institutions, besides the institutions in which children are punished or deprived from liberty. This can be concluded from Article 12(3) of the 1954 Juvenile Rehabilitation Law. After stating that the court can order the detention of the child in a juvenile reformatory institution, the said provision added a proviso: 'or in any other institution designated for this purpose by the Minister of Social Affairs'.¹¹⁰ The Ministry of Social Affairs is managing a number of institutions that provide social care for children. Juveniles can, therefore, be referred to such institutions rather than the places prepared for children who break the law, subject to certain criteria. In addition, nothing in the law prevents the Ministry from designating selected civil society educational associations to host juveniles, where children in conflict with the law can stay with other children who have social or economic needs, such as orphan schools. Experience proves that the care, services, rehabilitation, and educational programmes of such civil society non-profit institutions are often more

efficient than the official bodies (Chiste, 2008; Foster, 1970; Gandy et al, 1975). In such institutions, children can stay all weekdays and nights inside the institution where they can study, sleep, and play. There are a number of such charitable schools in Palestine. At such institutions, juveniles might need at the same time to follow a restorative justice or treatment programme.

F. Vocational Training

For many Palestinians, formal vocational training, which is run by the Ministry of Labor, is for children who are in trouble with the law. The Ministry established some institutions to provide vocational training for adolescents with special social needs. The Ministry of Social Affairs does refer children in conflict with the law, especially those who drop out of schools, to such training facilities, which exist in most districts.¹¹¹ This is consistent with various provisions of the law that make it possible to move children to any institution that can rehabilitate children. As noted above, vocational training can also be provided in juvenile care institutions where juveniles spend detention or imprisonment terms.¹¹²

G. Community Service

Community service (Walgrave and Geudens, 1996), as an alternative to incarceration for both adults and children, is yet to be used in Palestine. It has never been tested. It is not provided by the law and not included in the juvenile draft law. It is, however, worth incorporating community service in the law in flexible wording to allow courts to select various public locations for juveniles to spend some time doing work for the community. Such wording could adopt the principle in the law. The Ministry of Social Affairs can be given the option to select a number of locations and institutions for the community service. The service should not be designed to be a punishment but rather to help the child to develop a sense of responsibility towards his or her community.

Community service should meet a number of conditions, including not being humiliating, dangerous, tiring, or harmful to the health or education of the child. It should also be in line with local and international labour standards.¹¹³ Such services, which should be based on the child's age and abilities, might be required for a couple of hours a week.¹¹⁴ It could include watering plants in certain public gardens, cleaning classrooms, working in the library or a public cafeteria, helping disabled people to cross the street, and so on.

Stay of execution of imprisonment order. According to the Criminal Procedures Law of 2001, a court deciding to detain or imprison any person can order a stay of the execution of the imprisonment if it is for less than a 1-year term. There is, however, no provision relating to the stay

of execution of the imprisonment in the 1954 Juvenile Rehabilitation Law. Yet the conditional release, as described above, could be compared with a stay of execution of imprisonment as the consequence in both cases would be the same: the child will be free.

The juvenile draft law considers the granting of a stay of execution. However, it lacks clarity as it makes that option subject to the Criminal Procedures Law.¹¹⁵ Does that mean that it applies only to the suspension of the penalty as stipulated in the Criminal Procedure Law? Or can the judge rule what would be appropriate to the case of the child at hand? The answer is not clear. However, it is clear that a stay of execution of the penalty would require the judge to opt for another alternative along with the stay of the imprisonment, such as probation, submission of the child to his or her family, or vocational training. It is recommended that this provision of the draft should be retained with the removal of the condition 'without prejudice with Criminal Procedures Law' because it derogates from the first part of the provision. The new law should allow a stay of execution of imprisonment subject to the judge's discretion based on the child's characteristics as included in the Criminal Procedures Law with the removal of the 1-year time limit. A restorative justice programme can be an option in this case.

H. Compensation or Fine

Compensation, or restitution when possible, to the victim or his or her family should be considered as an alternative. A fine is another arrangement that the courts might consider. Compensation and fining, which are not considered widely in the 1954 Law¹¹⁶ or in the draft juvenile law, might be used in parallel with a restorative justice programme that the child might undergo.

I. Restorative Justice

Restorative justice can be viewed both as a referral alternative in itself or used along with, and as substitute to, other alternatives. (see Doolin, 2007; Braithwaite, 2000a,b; Consedine, 1999; Damren, 2002; Fields, 2007; Hill, 2008; Hudson, 2007; Meier, 1998; Mousourakis, 2004; Roach, 2000; Sarre, 1999; Schmid, 2003). Unlike the classical view that crimes are against the state and society, the key point of restorative justice is that the crime is personal and is a result of social marginalisation. It follows that offences can be resolved by bringing together the victim, the offender, their social networks, judicial bodies, and the community. In the systems where restorative justice is working for juveniles, it is considered as one alternative to formal justice but not the only alternative (Crawford, 2007; Mackay, 2003). It could apply for certain offences, not all. It could work for certain people, not for everyone (United Nations Office for Drugs and Crime, 2006). Hence, depending

on the offence and the parties involved, juvenile cases might be referred to restorative justice programmes at any stage of the proceedings. Restorative processes should be used with the free consent of the parties. Conciliation agreements should be arrived at voluntarily by the parties. They should contain reasonable and proportionate obligations with a view to reintegrate offenders and victims into society.¹¹⁷

The seeds of the restorative justice principles are embedded in some Middle Eastern cultures and in Islamic traditions (Rahami, 2007). Informal justice is widely practised as a means to resolve conflicts, particularly in criminal cases, across the Arab region. It is used even more in the West Bank and Gaza Strip because of the historically weak rule of the law and the absence of strong state systems for generations (Shalhoub and Abdelbaqi, 2003). Most cases in which children come in conflict with the law in Palestine are resolved by traditional means. In Islamic tradition and jurisprudence, the idea of restorative justice, including pardon by the victim or his/her family, and the *diya* or blood compensation, are well-established concepts and used in some predominantly Muslim societies, including Palestine (Traki et al, 2006). In Islamic jurisprudence, pardon and conciliation are advisable, but not mandatory, in criminal cases (Ouda, nd).

The law in Palestine provides no explicit basis for restorative justice. Yet one can deduct from the existing legislation that nothing prevents the utilisation of restorative justice for the sake of conciliation, closing the files within police and prosecution offices before reaching the court or during the rehabilitation process. Although the 2001 Criminal Procedures Law does not allow conciliation in serious crimes, it is possible to reach an agreement between the offender and the victim in certain crimes (Art. 16). These provisions are applicable to all cases involving adults or children. Alternatives to imprisonment within the 1954 Juvenile Law offer grounds to restorative justice-like measures. These include conditional release after spending over 1 year in prison, placing the child under probation, referral to social or educational institutions, assigning the child under the supervision of appropriate person, or providing an alternative family (see above). Thus, restorative justice programmes can be developed around these alternatives.

The ideal basis for restorative justice is to include such justice within the new Palestinian juvenile law. But it is relevant to know that restorative justice programmes can work before the adoption of the new law or even if the new law does not address the issue of restorative justice. Restorative justice, as a flexible and a rather informal process, can be adapted and designed under any alternatives to imprisonment as long as it proved to be in the best interest of the child. Initiating restorative programmes before having the law might be useful in creating awareness about it among juvenile stakeholders and, through practising it, providing training on it. It could work in Palestine if it is designed by

building on experiences of other countries while taking local needs into consideration (Terre des hommes-Lausanne, 2009, 2010b).

The work on restorative justice should focus on two aspects. The first is advocating for the insertion of restorative justice within the upcoming new juvenile justice law, or, alternatively, by developing rules or regulations to be adopted by the Minister of Social Affairs according to the powers provided in Article 25(4) of the 1954 Law to 'enact regulations to implement the purposes of the this law'. The Minister has expressed a noticeable interest to the idea of restorative justice.¹¹⁸ The second aspect is to provide training on restorative justice for all relevant juvenile justice stakeholders to sensitise them to the concept. There might be some reluctance towards the idea at first, as it has no straightforward local legal basis and restorative justice has never been utilised, in its modern form, in Palestine. But previous trainings in similar topics, such as human rights or prisoners rights, were initially resisted by local officials across the Middle East in the past, but now many of those hesitating trainees have become trainers and advocates on the issues that they had initially resisted. The process will take some time, but its results would most likely, past experience tells, prove it worth starting.

CONCLUSIONS

Owing to the different regimes that ruled the country since its separation from the Ottoman Empire in 1917, the law in the West Bank is different from that of the Gaza Strip. While Gaza applies a British-mandate enacted juvenile law that was enforced in Palestine in 1937, the West Bank applies a Jordanian juvenile law of 1954. As both enactments long preceded recent developments on human and child rights, they contradict a number of international standards. They also lack modern mechanisms and concepts related to juvenile justice, such as a specialised judiciary, police and prosecution, referral systems, and restorative justice.

After 1994, the Palestinian Authority, represented by the Ministry of Social Affairs, did not do much to reform the system relating to children in conflict with the law. The process of drafting a new juvenile law that started in 1999 has not produced a new law. Most of the draft juvenile bills are below international standards and, in a number of instances, even less child-friendly than the existing legislation. The Ministry lacks capacity. It needs international support and expertise.

The Ministry runs the work of probation officers and juvenile care institutions. The present probation officers are unable to discharge their functions. They have many tasks besides the increasing cases of juvenile delinquency. There is an urgent need to establish two new

juvenile care institutions, one in the north and one in the south of the West Bank, to avoid transferring children to detention centres and prisons. The current institutions require reform.

The Palestinian juvenile justice system needs specialisation at the court, prosecution, and police levels. There are some recent proposals to establish specialised courts and prosecution, but they would take some time to be established. The attempt to set up specialised juvenile police units are more likely to be implemented in the near future. All actors within the juvenile justice chain need training on legal, social, and psychological aspects relating to children in conflict with the law. Manuals and guidelines, adapting international standards to the local context, are necessary.

Alternatives to imprisonment and referral systems should be adopted or reactivated. Some referral mechanisms exist within the current law but are not utilised in practice, such as using an alternative family, placing under probation and conditional release. They can be revived by executive instructions from the Minister of Social Affairs or other actors. Other alternatives, including community service, vocational training, compensation, staying of execution, and restorative justice, need to be initiated. Much needs to be reformed in juvenile justice in Palestine. It is time to start working.

ACKNOWLEDGEMENTS

Views expressed in this article are those of the author. All translations from Arabic and French into English are done by the writer, unless otherwise indicated.

NOTES

¹This article is relevant to juvenile justice in the Palestinian Authority-controlled territory. It does not cover the violations of children's rights by Israel. Nor does it cover Palestinian children in East Jerusalem. See *Defence for Children International* (2008) and Abdallah (2010).

²On juvenile crime statistics, it was long ago noted that, indeed, the figures 'by no means show the real amount of crime committed by the young. Those who have paid any attention to the subject know that . . . the detection and punishment of criminals bear but a small proportion to the amount of crime committed'. 'Juvenile Offenders: Preventive and Reformatory Schools', 15 *Law Review and Quarterly Journal of British and Foreign Jurisprudence* 344 (1851–1852) – no author name is inserted for this article. The quoted statement holds even truer in Palestine; see *infra* note 3.

³These numbers are mainly taken from Ministry of Social Affairs in 2010. The numbers should be considered as just one indicator to the actual situation, keeping in mind that such numbers do not necessarily represent the reality. There is no systematic method by which one can get accurate statistics because nowhere across the Palestinian justice chain can one find reliable data. Many children, probably with the exception of civilian prisons, are not counted – their files, mostly hand-written paperwork, are not recorded systematically. Moreover, substantial numbers of children are arrested and detained by security forces other than the police, such as the Intelligence agency and Preventive Security force, whose data are confidential. Also, as will be detailed later in

this study, there is no central body that can gather all children-related data. Children in the centre of the West Bank are held in a juvenile rehabilitation institution (Dar Al-Amal), which has systematic numbers on its inmates. In the south of the West Bank, juveniles are held in a detention facility at a police station. And in the north of the West Bank, children are placed in prisons. Lastly, and most importantly, the vast majority of cases of children in conflict with the law are solved by tribal and traditional means before reaching the police or any other formal justice institution. In such circumstances, statistics on juvenile justice must be treated with caution.

⁴Buomidra and Assaf (2007); Aouin (2009).

⁵There are, however, some initiatives on juvenile justice by United Nations agencies, non-governmental organisations, universities, and the Palestinian Authority. But none of these initiatives has been comprehensive. See Hasanein (2003); Dirawi and Shomali (2004); Shami (2007).

⁶*Jordanian Official Gazette*, No. 1182, 16 May 1954, 396.

⁷On juvenile justice in Israel, which is quite similar to the existing system in the Gaza Strip (at least in theory) because of the identical legislation applicable both Israel and Gaza as they are the product of the British mandate in Palestine, see Reifen (1963) and Sebba (1981).

⁸It is beyond the scope of this article to address Israel's human rights obligations in the Occupied Palestinian Territory. See, however, International Court of Justice, *Reports of Judgements, Advisory Opinions and Orders* (2004), 136 – 'Legal Consequences of a Wall in the Occupied Palestinian Territory', Advisory Opinion of 9 July 2004, paragraph 137. See also, *Concluding Observations of the Human Rights Committee: Israel*, UN Doc. CCPR/CO/78/ISR, 21 August 2003, paragraph 11; and UN Doc. E/C.12/1/Add.90, 23 May 2003, paragraph 15. It should be noted, based on the established principle of 'effective control' in international law, that Israel's human rights obligations in the occupied territory do not preclude the Palestinian Authority's obligations therein.

⁹*Palestine Gazette*, No. 667, Supplement 1, 18 February 1937, 187. Before this legislation, juvenile justice in Palestine, as in the rest of the Ottoman Empire, was regulated in accordance with the Ottoman Penal Code of 12 July 1858, see Ramadan (1928).

¹⁰*Palestine Gazette*, No. 817, Supplement 2, 22 September 1938, p. 1513.

¹¹Adopted by General Assembly Resolution 40/33, 29 November 1985.

¹²Proclaimed by General Assembly Resolution 45/112, 14 December 1990.

¹³Adopted by General Assembly Resolution 45/11, 14 December 1990.

¹⁴Jordan abolished the 1954 Law within months (on 25 March 1968) after the occupation of the West Bank by Israel in 1967; the Law remained applicable in the West Bank but not in Jordan. Jordan has amended the 1968 Law a number of times through 2007. Jordan is in the process to further reforming its juvenile justice system. See Fadoul (2007).

¹⁵With the exception of Palestinian children in Israeli prisons. Here, the Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, plus the Convention on the Rights of the Child, would apply. On the applicability to Israel of international humanitarian law, including the said Geneva Convention, in the occupied territory, see Advisory Opinion of 9 July 2004, *supra* note 8, paragraphs 89–101. On the applicability of the Convention of the Rights of the Child to Israel, see, for instance, *ibid.*, paragraph 113. See, more widely, Imseis (2003).

¹⁶The 1954 Law's title used the Arabic term *islah*, which could mean 'rehabilitation' or 'reform'.

¹⁷The title of the 1937 Ordinance and 1938 Rules used the Arabic term *mujrimeen*, which means 'criminals', rather than 'offenders'. The latter, however, is the official English term used in the Ordinance. Yet Arabic was also an official language under Britain's rule in Palestine. It is the language for those Palestinians who currently deal with juveniles. Thus, terminology is relevant. The term 'offender' is taken from the British tradition.

¹⁸See the 1954 Law, Article 4; the 1937 Ordinance, Article 3. In cases of 'dangerous' juveniles, the court could decide to transfer them to prisons – but, in such a case, juveniles are to be placed in special locations designed for them (the 1954 Law, Article 6; the 1937 Ordinance, Article 7).

¹⁹Article 7(1) and Article 9 of the 1954 Law; Article 3(1) of the 1937 Ordinance. But these provisions did not establish separate courts for juveniles. They rather provided that courts that review cases involving juveniles would deal with such cases in their capacity as juvenile courts.

²⁰Article 7(3) of the 1954 Law; Article 6 of the 1937 Ordinance.

²¹Article 7(4–5) of the 1954 Law; Article 3(4–5) of the 1937 Ordinance.

²²Article 12(2) of the 1954 Law; Article 13 of the 1937 Ordinance.

²³The functions of probation officers and procedures that they follow in exercising such functions had been detailed in the aforementioned 1938 Juvenile Offenders Rules.

²⁴Article 13 of the 1954 Law; Article 12(1–2) and Article 18 of the 1937 Ordinance.

²⁵Article 15 of the 1954 Law; no similar provision exists in the 1937 Ordinance.

²⁶ Rule 11(a) of the 1990 United Nations Juvenile Rules.

²⁷ Rule 4.1 of the Beijing Rules.

²⁸ Article 2 of the 1954 Law used the term 'juvenile' (*hadath*) to refer to any person who is under 18. It then used three categories of juveniles: 'boy' (*walad*) refers to child between 9 and 13, 'teen' (*murahik*) is child aged between 13 and 15, and 'young person' (*fata*) means child above 15 and below 18. Article 2 of the 1937 Ordinance used other terms: 'child' means a person who is under 14, 'young person' means a person between 14 and 16, and 'juvenile adult' means a person who is above 16 and under 18.

²⁹ Article 2 of the 1954 Juvenile Law and Article 94 of the 1960 Penal Code as amended by Article 2 of Law No. 39 of 25 November 1963 (Jordanian Official Gazette, No. 1727, 16 December 1963, 1683). The Jordanian Penal Code No. 16 of 10 April 1960, which is applicable in the West Bank, was published in the Jordanian Official Gazette, No. 1487, 1 May 1960, 374. It was amended seven times, the last of which was Law No. 7 of 1966 enacted on 31 January 1966 (Jordanian Official Gazette, No. 1902, 20 February 1966, 193). For a comprehensive commentary on the 1960 Code, see *Said (2009)*; *Majali (2010)*.

³⁰ Putting the provisions of the 1936 Criminal Ordinance (*Palestine Gazette*, No. 652, Supplement 1, 14 December 1936, p. 399) together with the 1937 Juvenile Offenders Ordinance leads to the understanding that the definition of 'child' means any person who is above 12 and <14. On the origin of the 1936 Ordinance, see *Bentwich (1938)*.

³¹ *Palestine Gazette*, No. 52, 18 January 2005, 13.

³² Article 12(1) of the 1954 Law.

³³ Article 12(1) of the 1937 Ordinance.

³⁴ Article 3. This draft bill has been drafted by the Legislative Office (*Diwan Al-Fatwa wa Al-Tashrie*) of the Ministry of Justice (Gaza, 2006), but it has not been adopted by the Palestinian Parliament yet.

³⁵ Similar to Article 7(3) of the 1954 Law.

³⁶ Article 12(4) of the 1954 Law.

³⁷ *Palestine Gazette*, No. 24, 1 July 1998, 87.

³⁸ See also Rule 26.3 of the Beijing Rules.

³⁹ It seems that the draft law has supposed, as juveniles will be always placed in juvenile care institutions, that there will be no imprisonment in jails for children at all; see Article 9(1).

⁴⁰ *Palestine Gazette*, No. 1134, Supplement 2, 9 October 1941, p. 1859. This legislation was approved by the British-appointed High Commissioner for Palestine on 2 October 1941.

⁴¹ It might be relevant to note that Article 62(2/a) of the 1960 Penal Code permits violence against children by their parents, 'if it is used in a way that is permissible according to the general custom'.

⁴² See also Article 7 of the International Covenant on Civil and Political Rights.

⁴³ See, in general, *Abdelbaqi (2004)*; *Jabareen (1998)*; *Shami (2007)*.

⁴⁴ For a conceptual framework, see *Campbell (1992)*.

⁴⁵ See the draft Palestinian Juveniles Law, 2006. While significant improvements can be attributed to this draft law, such as using alternative penalties as well as establishing special juvenile judiciary and prosecution, many international standards enumerated above are still absent from this draft.

⁴⁶ The following institutions were involved in the drafting process of the child law and currently in the drafting on juvenile justice law whom the writer met in Ramallah in August 2010: Defence for Children International, the Independent Commission for Human Rights, and Al-Haq.

⁴⁷ Meeting with United Nations Children's Fund Child Protection Specialist, Ramallah, 20 August 2010.

⁴⁸ The present writer himself took part in this process through his previous capacity as Human Rights Officer, Office of the High Commissioner for Human Rights, between 2001 and 2003.

⁴⁹ The Egyptian Child Law No. 12 of 1996 (comprehensively amended in 2008), in *Buomidra and Assaf (2007)* 655; and Tunisia Law No. 92 of 1995 on Child Protection, in *ibid.*, p. 534.

⁵⁰ *Palestine Gazette*, Special Edition, 19 March 2003, 5.

⁵¹ Information here is based on a series of meetings that the writer held with representatives from the Ministry of Social Affairs in August 2010, including a meeting with the Minister of Social Affairs, Ms. Maha Masri, on 15 August 2010, and meetings with United Nations Children's Fund and United Nations Development Programme and other civil society organisations.

⁵² The Committee is seeking to obtain a decision from the Palestinian Council of Ministers to formalise its mandate. There is a proposal for further formalising the Committee and to turn it into a permanent national Juvenile Justice Commission by enacting a decision to this effect by the Palestinian Cabinet.

⁵³ *Palestine Gazette* No. 38, 5 September 2001, 94.

⁵⁴ In this article, the focus is on the civil police. It does not address the issue of children detained by other Palestinian security forces, such as the General Inelegance, the Preventive Security, or the Military Court. The arrest by these forces is motivated by political considerations and does not fit under the ordinary criminal system. Detained children in such cases are usually released after short time.

⁵⁵ The information in this section is drawn from interviews with officers in charge of juvenile justice: Head of the to be established Juvenile Police Offices Department at the Police Headquarters, Head of Family Protection Department of the Police, Director of Reform and Rehabilitation Centers ('Prisons'), Director of Tulkarm Reform and Rehabilitation Center, Director of the Juvenile Detention Center at the Dura Police Station, and the European Union Coordinating Office for the Palestinian Police Support.

⁵⁶ The 1954 Juvenile Rehabilitation Law, Article 4. However, paragraph 3 of the same article gives the court the discretion to transfer children to prison if it finds that 'necessary'.

⁵⁷ The 1954 Juvenile Rehabilitation Law, Article 6. But, according to the same article, children between 9 and 13 years old should be held in special detention centres, not in prisons.

⁵⁸ The 1954 Juvenile Rehabilitation Law, Article 6(2).

⁵⁹ Correction and Rehabilitation Centers ('Prisons') Law of 1998, Article 24.

⁶⁰ Meeting with Deputy Director, Dar Al-Amal, Ramallah, 10 August 2010. In cases of children accused of certain serious offences, however, such children can be detained in prisons.

⁶¹ Field visit by the writer to the Dura police station and juvenile detention centre on 25 August 2010.

⁶² Field visit by the writer to the Tulkarm Central Prison on 10 August 2010.

⁶³ When the writer visited Tulkarm Central Prison on 10 August 2010, there was one man in his fifties in the same small room, sized about 12 m², with five children. The reason that was given by the Prison's Director is that there was no space to keep the older man, who suffers breathing problems, with adults in crowded rooms in the hot weather of August. So he is hosted with children.

⁶⁴ Until the opening of childcare institutions in various Palestinian districts, children in detention centres and prisons should not be left alone. Better places for children should be found, for instance by renting locations to host children on temporary basis. The current places in which children are held awaiting trial should be improved. The following was observed during a visit by the author to Dura Police Station on 25 August 2010 (described to be the only and the best place for children's detention). Twenty-three children, aged between 13 and 17 years, were held in two rooms. One room, about 20 m², hosted 12 children. The two rooms were dark with one small window in the top of one side of a wall. Children sit on the floor. There was no furniture. The temperature was hot, with no air-conditioning, in the hot August. The area where children take a break from detention, which is about 25 m² roofless room, is open for the 23 children together only 2 hr a day. There was no separation of categories (type of offences, age, trial) of the inmates. There were no rehabilitation, educational or entertainment programmes, or equipments – with the exception of a television, which is located outside children's rooms and can be watched through a small window within the door of one room, 1 hr a day. There are no trained police officers to deal with juveniles as police officers are frequently changed; 'no police officer likes to serve in dark prisons'. The director of the station and detention centre said the situation was much worse than 3 months ago. He added that this is the best that can be offered, given the available resources.

⁶⁵ According to Dr. Khalid Sabatin, Legal Advisor, Police Headquarters, interview on 15 August 2010.

⁶⁶ Information in this section is mainly drawn from interviews that the writer had with prosecutors, police officers, and experts, including a meeting with Chief Prosecutor in charge of juvenile justice profile at the Palestinian Attorney General office, 10 August 2010, Ramallah.

⁶⁷ *Ibid.*, Article 107.

⁶⁸ *Ibid.*, Article 109.

⁶⁹ *Ibid.*, Article 120.

⁷⁰ Meeting with Director of Reform and Rehabilitation Centers ('Prisons'), *supra* note 75.

⁷¹ Meeting with Chief Prosecutor, *supra* note 55.

⁷² According to Article 9 of the 1954 Juvenile Rehabilitation Law.

⁷³ Meetings with the following judges in Ramallah on 16 August 2010: Mr. Dawoud Dirawi, Representative of the High Judicial Council at the National Steering Committee on Juvenile Justice (see above), Mr. Fadil Najajreh, Mr. Maher Zahaykah, and Mr. Hisham Shahin.

⁷⁴ *Palestine Gazette*, No. 38, 12 May 2001, 279.

⁷⁵ *Palestine Gazette*, No. 64, 31 May 2006, 29.

⁷⁶ Articles 10–23 of the 1954 Juvenile Rehabilitation Law.

⁷⁷ On the general appraisal of the Palestinian judiciary, see, [Palestinian National Authority, Judicial Authority \(2009\)](#); [Independent Commission for Human Rights \(2010: 113–132\)](#); [Jubieh \(2010\)](#).

⁷⁸ Twelve judges, including the Chief Justice, Head of the High Judicial Council, Mr. Farid Jallad, participated in a study visit on juvenile justice in Calgary, Canada, in early August 2010.

⁷⁹ High Judicial Council, Press Release, Ramallah, 14 February 2010.

⁸⁰ Article 24 of the 1954 Juvenile Rehabilitation Law.

⁸¹ Letter dated 3 March 2010 from a judge in one West Bank magistrate court to one probation officer requesting information about the social and economic situation of one child in conflict with the law who is facing a trial on 20 April 2010. The letter is in file with the writer.

⁸² Article 11(4). See, generally, [Awad and Chamberlain \(1978\)](#).

⁸³ A copy of this form in Arabic was handed to the writer by Ms. Khadra Hour, Probation Officer and Director of Social Care, Social Directorate, Atta Town, Hebron district, 18 August 2010, Hebron.

⁸⁴ Meeting with Ms. Khadra Hour, *ibid*.

⁸⁵ This is not surprising as courts in other countries often disregard the work of probation officers, social workers, or the psychiatrist. This problem has been characterised by [Robitscher \(1966: 147\)](#) as follows: 'Psychiatrists have a right to complain that courts do not pay enough attention to their evaluation of the accused. Psychiatric testimony is sometimes ignored by the courts, and sometimes it is opposed by other psychiatric testimony so that the testimony of both sides is nullified'.

⁸⁶ Dawoud Dirawi and three other judges, *supra* note 73.

⁸⁷ Second meeting with Ms. Khadra Hour (see *supra* note 83), 25 August 2010, Hebron.

⁸⁸ Article 14(1).

⁸⁹ Ms. Khadra Hour, *supra* note 83.

⁹⁰ Article 23(1), provides a clear basis for probation officers work exclusively juvenile justice.

⁹¹ A copy of the plan was handed to the writer on 20 August 2010 by Mr. Salim Kwarik, Head of the Social Defence Department, Ministry of Social Affairs, Ramallah.

⁹² Much of the information here is from an interview with Mr. Ahmad Barghouthi, Deputy Director of Dar Al-Amal, as well as Mr. Mohammad Jamil, Vocational Training Supervisor, on 10 August 2010, Ramallah, and from the field visit by the writer to Dar Al-Amal on the same day.

⁹³ But a limited number of children who entered Dar Al-Amal came from other West Bank districts. In 2009, eg out of the 316 children who entered the institution, there were only 11 from other districts. The rest were from the centre, 275 from Ramallah, and 16 from Jerusalem district, which is geographically connected with Ramallah. Dar Al-Amal, *Records of 2009* (Ramallah, 2009).

⁹⁴ Until 10 August 2010, 245 children entered Dar Al-Amal. *Ibid*.

⁹⁵ Much of the information here is from an interview held by the writer on 11 August 2010 in Bethlehem with Ms. Amal Ayesh, Director of the Girls Care House; Mr. Breigiet Breigiet, Director of Child Protection Center in Beitounia (an institution affiliated by Ministry of Social Affairs institution), Ramallah; and Ms. Huda Mahboub, Social Specialist, Girls Care Center, Bethlehem.

⁹⁶ This institution used to host girls from both the West Bank and Gaza Strip before the closure of the Strip by Israel in 2000 upon the breakout of the *intifada*. Now all inmate girls are from the West Bank.

⁹⁷ No statistics are available on girls in conflict with the law in Palestine. See [Riege \(1972\)](#); [Dowd \(2009\)](#).

⁹⁸ So far, the centre received 17 girls in 2010 (until 11 August).

⁹⁹ The Director of Social Defence Department, Mr. Salim Kwarik, handed on 20 August 2010 to the writer a project proposal on the establishment of a model juvenile care institution in the north of the West Bank. Indeed, it is more urgent to start by establishing a juvenile institution in the north. Children are held in prisons there. In the north, cases are rather solved by formal means in comparison with the informal means in the south. Statistics reveal that there were ~1,000 cases of children in conflict with the law a year the Northern districts: Nablus, Jenin, Tulkarm, Qalqiliya, Tubas, and Salfit.

¹⁰⁰ The 1954 Juvenile Rehabilitation Law, Article 13(1).

¹⁰¹ Article 13(4).

¹⁰² Substitute Families Regulations No. 70, 1963 (*Jordanian Official Gazette*, No. 1704, 15 August 1963, 1053).

¹⁰³ Article 17.

¹⁰⁴The 1954 Law, Article 14 (2).

¹⁰⁵Article 27 (4).

¹⁰⁶Article 13 (5).

¹⁰⁷Article 21.

¹⁰⁸Article 22.

¹⁰⁹Probation is also used as a preventive measure for children at risk of delinquency: street children, when the father is frequent criminal or drug dealer and fail to look after his child, and if the child is found wandering with a thief or accompanying a well-known prostitute; Article 23 of the 1954 Law. See [Babe and Fernandes \(1979\)](#).

¹¹⁰The same provision can be found in Article 13(7).

¹¹¹These institutions train children from 12 to 16 years of age according to Mr. Salim Abu-Kawarik, meeting on 30 August 2010, Ramallah. The Ministry of Labor is also managing a number of vocational training centres for children aged 16–18 years. These centres are not designed specifically to children in conflict with the law but mainly for children with social problems 'who are not good in schools' and 'nothing would prevent juveniles to be referred to such training programmes that normally take 10-month period'. Meeting with Mr. Shihdeh Zaro, Trainer, Ministry of Labor, Hebron, 30 August 2010.

¹¹²Vocational training is included in the juvenile draft law, Article 15(3).

¹¹³According to Articles 93–99 of the Palestinian Labor Law No. 7 of 30 April 2000 (Palestine Gazette, No. 39, 25 November 2001, p. 7), children should not work when they are under 15 years of age, they should not be employed in dangerous jobs, or work overnight or in remote areas. See also International Labor Organization, Convention No. 182 on the Worst Forms of Child Labor (1999), and Convention No. 138 on the Minimum Age for the Admission to Employment or Work (1973).

¹¹⁴The provisions on community service in the Lebanese law might be good model for the Palestinian legislator. See Articles 5(5) and Article 11 of the Lebanese Law relative to Juveniles in Conflict with the Law or those at Risk No. 422, of 2 June 2002. See [Buomidra and Assaf \(2007: 607\)](#).

¹¹⁵Article 27(4).

¹¹⁶In this Law, compensation is mainly required as reparation for damages that might affect the court for the extra expenses that it may spend; Article 13(3).

¹¹⁷*Basic principles on the use of restorative justice programmes in criminal matters*, U.N. Doc. E/2000/INF/2/Add.2 at 35 (2000).

¹¹⁸Meeting with the Minister of Social Affairs, *supra* note 51.

REFERENCES

- Abdallah, R. (2010) *Rights of Jerusalem Children*, Ramallah: Defence Children International.
- Abdelbaqi, M. (2004) *Criminal Juvenile Justice: Current Situation and Future Prospects*, Ramallah: The Palestinian Independent Commission for Citizens' Rights.
- Aouin, Z. (2009) *Juvenile Justice: Comparative Study*, Amman: Dar Althaqafa.
- Awad, G. and Chamberlain, C. (1978) 'The process of psychiatric work with the juvenile courts', *Canadian Journal of Family Law* 1, 363.
- Babe, J. E. and Fernandes, R. M. (1979) 'Juvenile probation in metropolitan Toronto: an empirical study', *Canadian Journal of Family Law* 2, 161.
- Bentwich, N. (1938) 'The new criminal code for Palestine', *Journal of Comparative Legislation and International Law* 20, 71.
- Berlin, M. L. and Allard, H. A. (1980) 'Diversion of children from the juvenile courts', *Canadian Journal of Family Law* 3, 439.
- Braithwaite, J. (2000a) 'Restorative justice and social justice', *Saskatchewan Law Review* 63, 185.
- Braithwaite, J. (2000b) 'Setting standards for restorative justice', *The British Journal of Criminology* 42, 563.
- Braithwaite, J. and Mugford, S. (1994) 'Conditions of successful reintegration ceremonies: dealing with juvenile offenders', *British Journal of Criminology* 34, 139.
- Buomidra, T. and Assaf, N. (ed) (2007) *Arab Experience on Juvenile Justice*, Amman: Penal Reform International and Amman Center for Human Rights.
- Campbell, T. D. (1992) 'The rights of the minor: as person, as child, as juvenile, as future adult', *International Journal of Law and the Family* 6, 1.

- Chiste, K. B. (2008) 'Faith-based organizations and the pursuit of restorative justice', *Manitoba Law Journal* **32**, 27.
- Consedine, J. (1999) 'The third millenium: restorative justice or more crime and prisons', *Sri Lanka Journal of International Law* **11**, 1.
- Crawford, A. (2007) 'Situating restorative youth justice in crime control and prevention', *Acta Juridica* 1–21.
- Damren, S. C. (2002) 'Restorative justice: prison and the native sense of justice', *Journal of Legal Pluralism and Unofficial Law* **47**, 83.
- Defence for Children International (2003) *Kids Behind Bars: A study on Children in Conflict with the Law: Towards Investing in Prevention, Stopping Incarceration and Meeting International Standards*, Amsterdam: DCI.
- Defence for Children International (2008) *Palestinian Child Prisoners*, Ramallah: DCI.
- Dirawi, D. and Shomali, J. (2004) *Juvenile Justice between Practice and Legislation: Comparative Study on Juvenile-Related Legislation in the West Bank and its Practical Application*, Ramallah: Defence Children International.
- Doolin, K. (2007) 'But what does it mean? Seeking definitional clarity in restorative justice', *Journal of Criminal Law* **71**, 427.
- Dootjes, I., Erickson, P. and Fox, R. G. (1972) , 'Defence counsel in juvenile court: a variety of roles', *Canadian Journal of Criminology and Corrections* **14**, 132.
- Dowd, N. E. (2009) 'Boys, masculinities and juvenile justice', *Journal of Korean Law* **8**, 115.
- Dunant, A. (2002) *Juveniles in Conflict with the Law: The Social Worker at All Stages of the Procedures*, Geneva: Terre des hommes-Lausanne.
- English, H. (1964) 'Prevention of juvenile crime', *British Journal of Criminology* **4**, 68.
- Fadoul, C. (2007) 'Juvenile justice reform project in Jordan: achievements and challenges' in Buomidra, T. and Assaf, N. (eds), *Arab Experience on Juvenile Justice*, Amman Penal Reform International and Amman Center for Human Rights, 38–51.
- Fields, S. (2007) 'Private crimes and public forgiveness: towards a refined restorative justice amnesty regime', *International Journal of Civil Society Law* **5**, 7.
- Foster, J. D. (1970) 'Juvenile court referrals to voluntary agencies', *Canadian Journal of Corrections* **12**, 129.
- Gandy, J. M., Pitman, R., Strecker, M. and Yip, C. (1975) 'Parents' perception of the effect of volunteer probation officers on juvenile probationers' (1975), *Canadian Journal of Criminology and Corrections* **17**, 5.
- Glueck, E. T. (1952) 'Predicting juvenile delinquency', *British Journal of Delinquency* **2**, 275.
- Hasanein, S. (2003) *Juvenile Justice in the West Bank and the Gaza Strip, Descriptive Analytical Study*, Birzeit: Institute of Law.
- Hill, F. D. (2008) 'Restorative justice: sketching a new legal discourse', *International Journal of Punishment and Sentencing* **4**, 51.
- Hilo, N. and Abuein, A. (2007) 'The integration and rehabilitation of juveniles in the Palestinian society' in Buomidra, T. and Assaf, N. (eds), *Arab Experience on Juvenile Justice*, Amman Penal Reform International and Amman Center for Human Rights, 74–125.
- Hudson, B. (2007) 'Institutionalisation of restorative justice: justice and the ethics of discourse', *Acta Juridica* 56–72.
- Imseis, A. (2003) 'On the fourth Geneva convention and the occupied Palestinian territory', *Harvard International Law Journal* **44**, 67.
- Independent Commission for Human Rights (2010) *Status of Human Rights in the Territories of the Palestinian National Authority from 1 January 2009 to 31 December 2009: Fifteenth Annual Report*, Ramallah: ICHR.
- Isaacs, J. L. (1968) 'The lawyer in the juvenile court', *Criminal Law Quarterly* **10**, 222.
- Jabareen, Q. (1998) *Report on Juvenile Delinquency in Palestinian Legislation*, Ramallah: The Palestinian Independent Commission for Citizens' Rights.
- Johnston, G. (1970) 'The function of counsel in juvenile court', *Osgoode Hall Law Journal* **7**, 199.
- Jordanian Ministry of Social Development (2008) *Juvenile Law No. 24 of 1968 and its Amendments until 2007*, Amman.
- Jubieh, M. (ed) (2010) *The First Monitor on the Judicial Situation in Palestine*, Ramallah: Musawa.
- Kumar, V. (1964) 'The treatment of juvenile offenders in England', *Criminal Law Quarterly* **6**, 488.
- Landau, S. F. (1981) 'Juveniles and the police – who is charged immediately and who is referred to the juvenile bureau', *British Journal of Criminology* **21**, 27.
- Liang, Y. (1948) 'The general assembly and the progressive development and codification of international law', *The American Journal of International Law* **42**, 66.

- Mackay, R. E. (2003) 'Restorative justice and children's hearings: a proposal', *European Journal of Crime, Criminal Law and Criminal Justice* **11**, 1–17.
- Majali, N. (2010) *Interpretation of the Penal Code: General Section*, Amman: Dar Althaqafa.
- Meier, B.-D. (1998) 'Restorative justice: a new paradigm in criminal law', *European Journal of Crime, Criminal Law and Criminal Justice* **6**, 125.
- Ministry of Social Affairs (2010a) *Procedures of the Social Defence Department*, Ramallah.
- Ministry of Social Affairs (2010b) *Proposal to Reform Juvenile Justice System in Palestine*, Ramallah.
- Ministry of Social Affairs (2010c) *A Proposal of Professional Programs at Dar Al-Amal*, Ramallah.
- Mousourakis, G. (2004) 'Understanding and implementing restorative justice', *Tilburg Foreign Law Review* **11**, 626.
- Ouda, A. (nd) *Islamic Criminal Legislation Compared with Positive Law*, Cairo: Dar Al-Turath, two volumes.
- Palestinian National Authority, Judicial Authority (2009) *Perception of the Palestinian Authority Judiciary: A Survey of Judges, Lawyers, Court Users Court Staff, and the Public*, Ramallah: PNA.
- Pritchard, J. (2007) 'Parents of young offenders: remodelling restorative justice', *University of Tasmania Law Review* **26**, 101.
- Rahami, M. (2007) 'Islamic restorative traditions and their reflections in the post revolutionary criminal justice system of Iran', *European Journal of Crime, Criminal Law and Criminal Justice* **15**, 227.
- Ramadan, A. (ed) (1928) *Completion of Laws: Ottoman Laws Valid in Arab States Detached from the Ottoman Government*, Beirut: Science Press, **I**, 2.
- Reker, G. T., Cote, J. E. and Peacock, J. E. (1980) 'Juvenile diversion: conceptual issues and program effectiveness', *Canadian Journal of Criminology* **22**, 36.
- Reifen, D. (1963) 'The implications of laws and procedures in the juvenile court in Israel', *British Journal of Criminology* **3**, 130.
- Riege, M. G. (1972) 'Parental affection and juvenile delinquency in girls', *British Journal of Criminology* **12**, 55.
- Roach, K. (2000) 'Changing punishment at the turn of the century: restorative justice on the rise', *Canadian Journal of Criminology* **42**, 249.
- Robitscher, J. B. (1966) 'The psychiatrist and the juvenile court', *Women Lawyer Journal* **52**, 147.
- Said, K. (2009) *Interpretation of the Penal Code*, Amman: Dar Althaqafa.—three volumes.
- Said-Foqahha, N. (2010) *A Study of Juvenile Justice in the Occupied Palestinian Territory*, Ramallah: European Union.
- Sanger, J. (2006) 'Electronic curfew orders and juvenile offenders', 79 *Police Journal* 29–41.
- Sarre, R. (1999) 'Restorative justice: translating the theory into practice', *University of Notre Dame Australia Law Review* **1**, 11.
- Schmid, D. J. (2003) 'Restorative justice: a new paradigm for criminal justice policy', *Victoria University of Wellington Law Review* **34**, 91.
- Scott, P. D. (1959) 'Juvenile courts: the juvenile's point of view', *British Journal Delinquency* **9**, 200.
- Sebba, L. (1981) 'Legalism versus welfarism in Israeli's juvenile justice system', *Israel Law Review* **16**, 461.
- Shalhoub, N. and Abdelbaqi, M. (2003) *Tribal Justice and its Effect on Formal Justice in Palestine*, Birzeit: Institute of Law.
- Shami, A. (2007) 'The criminal juvenile justice in Palestine', in Buomidra, T. and Assaf, N. (above) 52–73.
- Sloan, F. B. (1948) 'The Binding Force of a "Recommendation" of the General Assembly of the United Nations', *The British Year Book of International Law* **24**, 1–33.
- Stubbs, R. S. G. (1975) 'The role of the lawyer in juvenile court', *Manitoba Law Journal* **6**, 65.
- Tarawneh, M. (2007) 'Jordanian experience on juvenile justice' in Buomidra, T. and Assaf, N. (above) 31–7.
- Terre des homes-Lausanne (2009) *Lima Declaration of Restorative Juvenile Justice*, Lausanne.
- Terre des homes-Lausanne (2010a) *Assessment of the Juvenile Justice System in Jordan*, Lausanne.
- Terre des homes-Lausanne (2010b) *Thematic Policy on Juvenile Justice*, Lausanne.
- Traki, L. (2006) *Informal Justice System: The Rule of Law and Dispute Settlement in Palestine: The National Report on the Results of the Field Research*, Birzeit: Institute of Law.
- United Nations Children's Fund (2006) *Child Protection Information Sheet: Children in Conflict with the Law*, New York: UNICEF.
- United Nations Office for Drugs and Crime (2006) *Handbook on Restorative Justice Programmes*, New York: United Nations.

- Van Nijnatten, C. (1989) 'Behind closed doors: juvenile hearings in the Netherlands', *International Journal of Law and the Family* **3**, 177.
- Voelcker, P. M. W. (1961) 'Juvenile courts: the parents' point of view', *British Journal of Criminology* **1**, 154.
- Walgrave, L. and Geudens, H. (1996) 'Restorative proportionality of community service for juveniles', *European Journal of Crime, Criminal and Law and Criminal Justice* **4**, 361.
- Walker, J. and Glasner, A. (1965) 'The process of juvenile detention: the Training School Act, the Child Welfare Act', *Osgoode Hall Law Journal* **3**, 343.
- Wilson, L. C. (1976) 'Diversion: the impact of juvenile justice', *Canadian Journal of Criminology and Corrections* **18**, 161.
- Wollan, K. I. (1941) 'Treatment of juvenile delinquents', *Police Journal* **14**, 305.
- Wright, M. (1998) 'Restorative justice: from punishment to reconciliation: the role of social workers', *European Journal of Crime, Criminal Law and Criminal Justice* **6**, 267.
- Yanagimoto, M. (1973) 'The juvenile delinquent in Japan', *British Journal of Criminology* **13**, 170.