

**PETITION TO  
UNITED NATIONS  
WORKING GROUP ON ARBITRARY DETENTION**

Mr. José Guevara (Mexico), Chairperson-Rapporteur:  
Ms. Leigh Toomey (Australia), Vice-Chair on follow-up  
Ms. Elina Steinerte (Latvia), Vice-Chair on communications  
Mr. Sètonджи Adjovi (Benin)  
Mr. Seong-Phil Hong (Republic of Korea)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the matter of

Laith [REDACTED] (a minor<sup>1</sup>),  
Citizen of State of Palestine

v.

Government of Israel

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**URGENT ACTION REQUESTED**

Petition for Relief Pursuant to Commission on Human Rights Resolutions 1997/50, 2000/36,  
2003/31, and Human Rights Council Resolutions 6/4 and 15/1

Submitted by:

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<sup>1</sup> This petition concerns a minor and his full name is confidentially shared with the Working Group.

## BASIS FOR “URGENT ACTION” REQUEST

The Government of Israel is arbitrarily depriving 17-year-old Laith K. of his liberty through the use of administrative detention<sup>2</sup> amounting to an arbitrary detention.

K. is a Palestinian minor from the village of Kafr Ein, located northwest of Ramallah in the occupied West Bank. Israeli forces detained K. from his home around 2 a.m. on September 20, 2017, and he was then bound, blindfolded, and physically assaulted by Israeli forces. He was not informed of the reason for his detention or presented with a warrant.

K. was transferred to multiple locations by Israeli forces, including a military checkpoint near the West Bank village of Nabi Saleh and then to Binyamin police station, before arriving in an interrogation room at Israel’s Ofer military compound around 9:45 a.m. on September 20, 2017. During interrogation, K. was questioned about throwing stones, a “security offense” under Israeli military law. He denied the allegations. The interrogator printed out a statement in both Arabic and Hebrew and made him sign it.

He first appeared in Israel’s Ofer military court before a military court judge on the afternoon of September 20, 2017 after his interrogation.<sup>3</sup> At this hearing, his detention was extended for 72 hours to allow for an administrative detention order to be issued. This was the first time K. learned that an administrative detention order would be issued against him. He was not provided with any information on the allegations that formed the basis for the impending administrative detention order.

K.’s detention between September 26, 2017 and January 19, 2018 was based on a four-month administrative detention order issued by Israeli military authorities on September 26, 2017. He is currently detained in Israel’s Ofer prison through May 18, 2018 following a second four-month administrative detention order issued on January 19, 2018. Neither he nor his lawyer has been provided with access to any evidence against him. K.’s detention is based on “secret information” that has not been provided to him or his lawyer.

Because children deprived of their liberty are at heightened risk of violence and custodial detention may negatively impact children’s health and development, international juvenile justice norms are built around two fundamental principles: (1) the best interests of the child must be a primary concern in making decisions that affect them, and (2) children must only be deprived of their liberty as a last resort, for the shortest appropriate period of time.<sup>4</sup> The UN Convention on the Rights of the Child expressly states detention “shall be used only as a measure of last resort and for the shortest appropriate period of time.”<sup>5</sup>

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<sup>2</sup> Administrative detention is the imprisonment of individuals by the state for prolonged periods without charge or trial, often based on secret evidence.

<sup>3</sup> Defense for Children International – Palestine provides direct legal aid to children detained and prosecuted in the Israeli military detention system. Laith K. was and continues to be represented by a DCIP lawyer.

<sup>4</sup> UN Convention on the Rights of the Child, Arts. 3 & 37, U.N. Doc. A/RES/44/25 (Nov. 20, 1989), <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>.

<sup>5</sup> UN Convention on the Rights of the Child, Art. 3, U.N. Doc. A/RES/44/25 (Nov. 20, 1989), <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>.

Furthermore, in situations of international armed conflict, administrative detention is permitted in strictly limited circumstances in only the most exceptional cases for “imperative reasons of security” when there is no other alternative.<sup>6</sup> The practice should never be used as an alternative to filing charges or for the sole purpose of interrogation or as a general deterrent for future activity.<sup>7</sup>

The potential risk of harm and the specific context of K.’s detention establishes circumstances that warrant this request for urgent action by the Working Group on his case. Due to his status as a minor, the Government of Israel’s continued detention of Laith K. presents a serious threat to his health, including his physical and psychological integrity. K.’s continued detention is compounded by the fact that the detaining entity is the Government of Israel, the Occupying Power under international humanitarian law in an over 50-year military occupation of Palestinians living in the West Bank, including East Jerusalem, and the Gaza Strip.

For the reasons stated herein, K.’s arrest and detention violate the fundamental guarantees enshrined in international law and constitute Category II, Category III, and Category V arbitrary detention as defined by the Working Group on Arbitrary Detention. He should be immediately released from detention.

Accordingly, it is hereby requested that the Working Group consider this Petition pursuant to its Urgent Action Procedure.<sup>8</sup> Additionally, it is requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reiterated by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, and 24/7.

## **QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION**

### **I. IDENTITY**

- 1. Family name:** K.
- 2. First name:** Laith Imad Taha
- 3. Sex:** Male
- 4. Birth date or age (at time of detention):** 17 August 2000 / 17 years
- 5. Nationality/Nationalities:** Palestinian

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<sup>6</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Art. 78, (Aug. 12, 1949), [http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33\\_GC-IV-EN.pdf](http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf).

<sup>7</sup> See UN Working Group on Arbitrary Detention, *Opinion No. 24/2016 concerning a minor (whose name is known by the Working Group) (Israel)*, U.N. Doc. A/HRC/WGAD/2016/24 (Oct. 20, 2016), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/234/98/PDF/G1623498.pdf>.

<sup>8</sup> Report of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/16/47, Annex ¶ 7(b) (“Revised Methods of Work”), ¶¶ 22–24 (Jan. 19, 2011), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-47.pdf>.

6. (a) **Identity document (if any):** Palestinian ID
  - (b) **Issued by:** Palestinian Authority
  - (c) **On (date):**
  - (d) **No.:** [REDACTED]
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):** Laith K. was a student in his final year of secondary school at the time of his detention on 20 September 2017.
8. **Address of usual residence:** Kafr Ein Village, Ramallah, occupied West Bank, State of Palestine

## II. ARREST

1. **Date of arrest:** 20 September 2017
2. **Place of arrest (as detailed as possible):** Laith K. was detained around 2 a.m. from his family home in the West Bank village of Kafr Ein. An Israeli soldier shouted and woke him as he slept. K. woke, was ordered out of his bed and was taken out of the house.
3. **Forces who carried out the arrest or are believed to have carried it out:** Israel military forces
4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** None.
6. **Reasons for the arrest imputed by the authorities:** No reason for his detention was provided at the time K. was detained.
7. **Legal basis for the arrest including relevant legislation applied (if known):** While no reason was provided at the time K. was detained, during interrogation he was generally questioned on whether he had thrown stones, a specific “security offense” under Israeli military law.<sup>9</sup> He denied the allegations.

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<sup>9</sup> Palestinian children are overwhelmingly charged with throwing stones in the Israeli military court system. Under Israeli military law, the primary military order relevant to the arrest and detention of Palestinian children is Military Order 1651 or “Order regarding Security Provisions.” Military Order 1651 addresses a range of issues, including the authority to arrest and imprison Palestinians for “security offenses,” such as causing death, assault, personal injury or property damage, kidnapping, and harming a soldier. Throwing stones is included as a specific offense under Military Order 1651 and is included at Chapter G section 212. Throwing an object, including a stone, at a person or property, with the intent to harm the person or property, carries a maximum penalty of 10 years in prison, and throwing an object, including a stone, at a moving vehicle, with the intent to harm it or the person traveling in it, carries a maximum penalty of 20 years in prison. *See* Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009, § 212(1)-(3) (Nov. 1, 2009), available at <http://nolegalfrontiers.org/military-orders/mil01?lang=en> [hereinafter Military Order 1651].

### III. DETENTION

1. **Date of detention:** 20 September 2017
2. **Duration of detention (if not know, probable duration):** As of March 26, 2018, K. has spent 187 days (6 months and 6 days) in Israeli military detention. He was detained between September 26, 2017 and January 19, 2018 based on a four-month administrative detention order issued on September 26, 2017. His administrative detention was renewed on January 19, 2018 for another four-month period ending on May 18, 2018, with the possibility of renewal.
3. **Forces holding the detainee under custody:** Israeli military forces and/or Israel Prison Service
4. **Places of detention (indicate any transfer and present place of detention):** K. was briefly detained at a military checkpoint near the West Bank village of Nabi Saleh and Binyamin police station following his detention on September 20, 2017, before being transferred to Ofer prison at Israel's Ofer military compound in the occupied West Bank. He remains detained in the juvenile section at Ofer prison.
5. **Authorities that ordered the detention:** Israeli military authorities, Israeli Chief Military Prosecutor, Israeli military court judges
6. **Reasons for the detention imputed by the authorities:** Following his appearance in an Israeli military court on September 20, 2017, where his detention was extended for a 72-hour period, K. learned that an administrative detention order would be issued against him. The first administrative detention order against K. was issued on September 26, 2017, and was based on "secret information" not shared with K.'s legal counsel. During a subsequent hearing concerning his second administrative detention order on January 22, 2018, K.'s legal counsel demanded details on the "secret information" against him. Israeli military authorities failed to provide any detailed information and stated that the "secret information" against K. alleged that he: (1) planned to carry out a military attack against Israel; (2) had a connection to weapons; and (3) used his Facebook social media account to support "terrorists." At the January 22, 2018 hearing in Ofer military court on the second administrative detention order, the military court judge asked K. if he planned for an "attack" and he denied the accusation. The military court judge then went on to approve the second four-month administrative detention order against K.. On February 13, 2018, a military court judge rejected K.'s appeal.
7. **Legal basis for the detention including relevant legislation applied (if known):** Israeli Military Order 1651 permits administrative detention for a period of up to six months, subject to indefinite renewals.<sup>10</sup>

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<sup>10</sup> Military Order 1651, § 273(A) (as amended by Military Order 1571) provides:

(A) If the commander of the Area has reasonable grounds to believe that reasons of regional security or public security require that a certain person be held in detention, he is empowered, by an order signed by him, to order the detention of a person for a period to be noted in the order not to exceed six months.

## IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST

### A. Background on Palestinian children in the Israeli military detention system

Palestinian children<sup>11</sup> in the occupied West Bank, like adults, face arrest, prosecution, and imprisonment under an Israeli military detention system that denies them basic rights.

Military law has applied to Palestinians in the West Bank since 1967, when Israel occupied the territory following the Six Day War.<sup>12</sup> While Israeli military law gives military courts the authority to try any person located inside the occupied territory as long as they are 12 years or older; Jewish settlers who reside within the bounds of the West Bank, in violation of international law, are subject to the Israeli civilian legal framework. Accordingly, Israel operates two separate and unequal legal systems in the same territory.

Under international humanitarian law, Israel as the “Occupying Power” has clear obligations to protect the Palestinian civilian population under its control and has the authority to establish military courts in the territory it has occupied since 1967.<sup>13</sup> However, international human rights and humanitarian law, which apply to the Occupied Palestinian Territory,<sup>14</sup> restrict the jurisdiction of the Israeli military courts and guarantees basic safeguards for a fair trial. Accordingly, individuals should be presumed innocent, they should not be compelled to testify

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(B) If the commander of the Area has a reasonable grounds to believe, prior to the expiration of the order in accordance with Subsection (A) (hereinafter in this section- the original detention order), that reasons of regional security or public security still require the retention of the detainee in detention, he is empowered, through an order signed by him, to order from time to time the extension of the original detention order for a period not to exceed six months, and the same provisions as apply to the original detention order shall apply to the extension order.

(C) If a military commander has reasonable grounds to believe that the conditions stipulated in Subsection (A), whereby the commander of the Area may order the detention of a person, apply, he is empowered, through an order signed by him, to order the detention of that person, for a period not to exceed 96 hours and not extendible through order of the military commander.

(D) An order in accordance with this section may be issued in absence of the person whose detention it involves.

<sup>11</sup> “Child” refers to any person below 18 years of age in accordance with international norms.

<sup>12</sup> Territory is deemed “occupied” when it, either wholly or in part, is placed under the authority of the hostile army. See Hague Convention (IV): Laws and Customs of War on Land, art. 42, (Oct. 18, 1907), <https://www.icrc.org/applic/ihl/ihl.nsf/xsp/.ibmmodres/domino/OpenAttachment/applic/ihl/ihl.nsf/4D47F92DF3966A7EC12563CD002D6788/FULLTEXT/IHL-19-EN.pdf>. Also, in 1967, the U.N. Security Council recognized that Israeli forces had occupied the West Bank, including East Jerusalem, and the Gaza Strip. See S.C. Res. 242, U.N. Doc S/RES/242 (Nov. 22, 1967), <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IP%20S%20RES%20242.pdf>.

<sup>13</sup> See Hague Convention (IV): Laws and Customs of War on Land, art. 43 (Oct 18, 1907); and Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), arts. 64 & 66, (Aug. 12, 1949), [http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33\\_GC-IV-EN.pdf](http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf).

<sup>14</sup> The Occupied Palestinian Territory consists of the West Bank, including East Jerusalem, and the Gaza Strip. See International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136, ¶¶ 101, 109-113 (Jul. 9, 2004), <http://www.icj-cij.org/docket/files/131/1671.pdf>.

against themselves or confess guilt, and they should be informed promptly and in detail of the charges against them in a language that they understand.<sup>15</sup>

Despite the fact that Israel has ratified many of the core international human rights treaties, and, as a result, has bound itself to act in accordance with those treaties,<sup>16</sup> Israeli authorities persistently disregard and fail to comply with international law. Trying civilians in military courts should be exceptional, yet Israeli authorities automatically and systematically prosecute Palestinian children arrested by Israeli military and police in the occupied West Bank in the military court system.

### **1. Ill-treatment of child detainees is widespread, systematic and institutionalized**

Israel has the dubious distinction of being the only country in the world that automatically and systematically prosecutes children in military courts that lack fundamental fair trial rights and protections.<sup>17</sup> Israel prosecutes an estimated 500 to 700 Palestinian children in military courts each year.

Defense for Children International - Palestine (DCIP) collected affidavits from 727 West Bank children detained and prosecuted under the jurisdiction of Israeli military courts between 2012 and 2017. The data shows that more than 72 percent of children endured some form of physical violence following arrest and 65 percent faced verbal abuse, humiliation, and/or intimidation.

In 334 out of the 727 cases (46 percent), the Israeli military arrested children from their homes in the middle of the night. In 627 out of the 727 cases (86 percent), Israeli forces arrested children without notifying parents of the reason for arrest.

Of the 727 documented cases, 700 children had no parent present during the interrogation. Israeli police also did not properly inform children of their rights in 79 percent of the cases.

Israeli military law provides no right to legal counsel during interrogation. Children in some cases are allowed to speak briefly with an attorney prior to interrogation by phone. However, these consultations are limited in their utility because they do not facilitate meaningful access to counsel and fail to adequately equip children with specific knowledge of any rights they may have under Israeli military law.

Interrogators used physical violence, position abuse, threats, and isolation to coerce confessions from some of these children. Of the 727 children, 117 spent an average of 13 days in solitary

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<sup>15</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 14, U.N. Doc. A/6316 (1966), <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>; UN Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, ¶ 22, UN Doc. CCPR/C/GC/32 (Aug. 23, 2007), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=CCPR/C/GC/32](http://www.un.org/en/ga/search/view_doc.asp?symbol=CCPR/C/GC/32).

<sup>16</sup> Israel ratified the International Covenant on the Elimination of All Forms of Racial Discrimination (CERD) in 1979; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) all in 1991; and the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) in 1992.

<sup>17</sup> UNICEF, CHILDREN IN ISRAELI MILITARY DETENTION: OBSERVATIONS AND RECOMMENDATIONS, 1, (2013), [https://www.unicef.org/oPt/UNICEF\\_oPt\\_Children\\_in\\_Israeli\\_Military\\_Detention\\_Observations\\_and\\_Recommendations\\_-\\_6\\_March\\_2013.pdf](https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf).

confinement for interrogation purposes. In 2017, Israeli authorities held a 16-year-old in isolation for 23 days.

In 300 out of 727 cases (41 percent), children signed confessions, statements or other documents drafted in Hebrew, a language that most Palestinian children do not understand.

Children most commonly face the charge of throwing stones, which carries maximum sentences of 10 or 20 years, depending on the circumstances.<sup>18</sup>

Many children maintain their innocence, but plead guilty, as it is the fastest way to get out of the system. Most receive plea deals of less than 12 months. Trials, on the other hand, can last a year, possibly longer. Military judges rarely grant bail, which leaves most children behind bars as they await trial.

Since 2000, an estimated 10,000 Palestinian children have been detained by Israeli forces from the occupied West Bank and held in the Israeli military detention system.

In 1991, Israel ratified the United Nations Convention on the Rights of the Child, which requires that children should only be deprived of their liberty as a measure of last resort, must not be unlawfully or arbitrarily detained, and must not be subjected to torture and other cruel, inhuman or degrading treatment or punishment.<sup>19</sup>

Despite sustained engagement by UNICEF and repeated calls to end night arrests and ill treatment and torture of Palestinian children in Israeli military detention, Israeli authorities have persistently failed to implement practical changes to stop violence against child detainees.

While Israeli authorities have made slight changes to the military law applicable to Palestinian children since 2013, these changes undoubtedly fail to address the systematic and widespread ill-treatment that Palestinian children experience at the hands of Israeli forces following arrest.<sup>20</sup>

Recent amendments to Israeli military law concerning children have had little to no impact on their treatment during the first 24 to 48 hours after an arrest, when most of the ill-treatment occurs at the hands of Israeli soldiers, police, and the security service.

## **2. Administrative detention of Palestinian minors by Israeli authorities**

In October 2015, Israel renewed the practice of administrative detention against Palestinian children in the West Bank for the first time in four years. Since then, a total of 26 Palestinian

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<sup>18</sup> See Military Order 1651, § 212.

<sup>19</sup> UN Convention on the Rights of the Child, U.N. Doc. A/RES/44/25 (Nov. 20, 1989), <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

<sup>20</sup> See DCIP, NO WAY TO TREAT A CHILD: PALESTINIAN CHILDREN IN THE ISRAELI MILITARY DETENTION SYSTEM, (2016), [https://d3n8a8pro7vhm.cloudfront.net/dcipaestine/pages/1527/attachments/original/1460665378/DCIP\\_NWTTAC\\_Report\\_Final\\_April\\_2016.pdf](https://d3n8a8pro7vhm.cloudfront.net/dcipaestine/pages/1527/attachments/original/1460665378/DCIP_NWTTAC_Report_Final_April_2016.pdf).

minors have been detained pursuant to administrative detention orders, including six children in 2015, 14 in 2016, five in 2017, and one in 2018.<sup>21</sup> All 26 were male.

Under international humanitarian law, in situations of international armed conflict administrative detention<sup>22</sup> is permitted in strictly limited circumstances in only the most exceptional cases for “imperative reasons of security” when there is no other alternative.<sup>23</sup> Further, under the Convention on the Rights of the Child, “no child should be deprived of his or her liberty arbitrarily and detention should only be used as a measure of last resort for the shortest appropriate period of time.”<sup>24</sup> Administrative detention should never be used as a substitute for criminal prosecution where there is insufficient evidence to obtain a conviction.

In 2009, the UN Committee against Torture expressed that Israel’s extensive use of administrative detention on Palestinians frequently amounts to cruel, inhuman, or degrading treatment or punishment and deprives detainees of basic safeguards, including the right to challenge the evidence; and found the procedure was being used for “inordinately lengthy periods.”<sup>25</sup>

In 2016, the Committee against Torture reiterated its concern regarding Israel’s practice of administrative detention against Palestinians and noted grave concern over the increased use of the practice following escalations in violence post-September 2015.<sup>26</sup>

In 2010, the UN Human Rights Committee also expressed concern at the “frequent and extensive” use of administrative detention and recommended that Israel refrain from using the procedure, in particular, against children.<sup>27</sup>

## **B. The administrative detention of minor Laith K.**

Laith K., a 17-year-old Palestinian boy, was in his final year of secondary school when Israeli forces detained him on September 20, 2017 from his home in the village of Kafr Ein, located northwest of Ramallah in the occupied West Bank.

K. has been detained at Israel’s Ofer military prison based on subsequent four-month administrative detention orders issued and confirmed by Israeli military authorities. The most

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<sup>21</sup> The total for 2018 is current as of March 11, 2018.

<sup>22</sup> Administrative detention is a procedure whereby a person is detained without charge or trial, by order of a military commander or other government official, often renewable indefinitely.

<sup>23</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Art. 78, (Aug. 12, 1949), [http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33\\_GC-IV-EN.pdf](http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf).

<sup>24</sup> UN Convention on the Rights of the Child, art. 37(b), U.N. Doc. A/RES/44/25 (Nov. 20, 1989), <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>; see also International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 9, U.N. Doc. A/6316 (1966), <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.

<sup>25</sup> UN Committee against Torture, *Concluding Observations: Israel*, ¶ 17, U.N. Doc. CAT/C/ISR/CO4 (May 14, 2009).

<sup>26</sup> UN Committee against Torture, *Concluding Observations: Israel*, ¶ 22, U.N. Doc. CAT/C/ISR/CO5 (Jun. 3, 2016).

<sup>27</sup> UN Human Rights Committee, *Concluding Observations: Israel*, ¶ 7, U.N. Doc. CCPR/C/ISR/CO/3 (Jul. 29, 2010).

recent administrative detention order was issued on January 19, 2018 and expires on May 18, 2018. K. continues to be detained on the basis of “secret information” without charge at Ofer prison in the juvenile section.

### **1. Israeli forces arrest Laith K. from his bed**

Around 2 a.m. on September 20, 2017, Israeli forces woke K. while he was in his bed. An Israeli soldier shouted at him and ordered him out of bed. An intelligence officer asked for his identification card to confirm his name and details, and K. was then ordered to put his shoes on because he would be arrested. He put on his shoes and was taken out of the house.

No warrant or other decision by a public authority was shown or provided to K. or his parents and Israeli authorities provided no reason for his detention at the time he was detained.

Once outside, K. was forced to walk alongside the soldiers for about two minutes to an Israeli military vehicle. He was blindfolded, his hands were bound with a single plastic cord, and he was pushed inside the military vehicle. K. was forced to sit on the metal floor while he was transferred to the nearby Nabi Saleh military checkpoint, a drive that lasted around 10 minutes. K. reports that he was slapped repeatedly on his face and the back of his neck for the duration of the drive.

When the vehicle arrived at the checkpoint, the officer took him out of the vehicle and removed the blindfold. Another soldier then asked K. general questions about his health and checked his pulse. He was then re-blindfolded and returned to the vehicle, sitting on the bench seat.

K. spent about two hours in the vehicle as they traveled to Israel’s Binyamin police station, located north of Jerusalem in the occupied West Bank. Upon arrival, K. was detained bound, blindfolded, and alone inside a 3 x 4 meter (10 x 13 feet) container until morning. Soldiers would open the door occasionally to check on him, but he was not provided with any food or water and his requests to use a toilet were denied.

### **2. K. is questioned during interrogation about stone throwing**

Around sunrise, he was removed from the container, placed in a private car and a soldier removed his blindfold. He was then transferred to Ofer prison where he was strip searched upon arrival and brought to an interrogation room.

Before the interrogation began, K. was allowed to speak briefly with a lawyer by phone. However, the interrogator did not inform K. of his rights, such as his right to remain silent, and did not provide any documentation stating his rights.

The interrogator generally questioned K. about whether he had ever thrown stones, and he denied having thrown stones. K. also was asked if he had seen other individuals throwing stones, which K. said no. He was questioned again on whether he went out at night to throw stones at Israeli soldiers and he again said that he had not.

K. remained bound for the duration of the interrogation, which lasted around 30 minutes. The interrogation was not audio visually recorded. The interrogator typed on a computer as he

questioned K.. At the end of the interrogation, the interrogator printed out a statement in both Hebrew and Arabic and made K. sign it. He was fingerprinted and photographed and taken to the same private car that he arrived in.

### **3. K. appears before a military court judge at Ofer military court**

He was driven the short distance to Ofer military court where he appeared before a military court judge for the first time. At this initial hearing, K.'s detention was extended for a 72-hour period to allow an administrative detention order to be issued. This was the first time he had any knowledge of an impending administrative detention order against him. Following the hearing, he was sent back to Ofer prison.

He arrived back at Ofer prison around 4 p.m. K. was strip searched, given brown prison clothes to wear, and was detained in the juvenile section. He had not been provided with any food or water for around a 14-hour period between the moment of arrest and his arrival at the juvenile section at Ofer prison.

K. continues to be detained on the basis of "secret information" without charge at Ofer prison in the juvenile section.

### **4. Administrative detention based on unknown "secret information"**

K.'s first administrative detention order was issued on September 26, 2017 for a four-month period expiring on January 19, 2018. He appeared in Ofer military court on October 2, 2017 for a hearing on this first administrative detention order, which resulted in a decision confirming the order on October 8, 2017. The decision was appealed and a hearing was held in Ofer military court on October 26, 2017, where the appeal was denied in a decision released the same day.

Israeli military authorities issued a second administrative detention order on January 19, 2018, the day the prior order was set to expire. K. appeared in Ofer military court on January 22, 2018, where the military court judge confirmed the order in a decision issued the same day. The decision was appealed and a hearing was held in Ofer military court on February 13, 2018, where the appeal was denied.

At the January 22, 2018 hearing, K.'s legal counsel, Adv. Farah Bayadsi, a lawyer from DCIP, demanded details on the "secret information" against him. Israeli military authorities failed to provide any detailed information and stated generally that the "secret information" against K. alleged he: (1) planned to carry out a military attack against Israel; (2) had a connection to weapons; and (3) used his Facebook social media account to support "terrorists."

During the hearing, Colonel Eli Wolf, the presiding military court judge, asked K. if he planned for an "attack" in response to the killing of his adult cousin in July 2017,<sup>28</sup> specifically referencing a picture K. posted on Facebook of his cousin. K. denied that he had planned or was

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<sup>28</sup> Israeli forces killed Ammar Ahmad Khalil Tirawi, 34, during an arrest raid on July 16, 2017. Tirawi was a cousin from K.'s mother's side of the family. Israeli forces had accused Tirawi of carrying out two shooting incidents a day earlier. *See Funerals held for Palestinians slain in July, after bodies returned to families*, MA'AN NEWS AGENCY, (Aug. 5, 2017), <http://www.maannews.com/Content.aspx?id=778538>.

planning an attack. He stated that he only posted his cousin's picture on Facebook because they are relatives, not because he was planning for an attack.

At the same hearing, attempting to challenge the grounds of the administrative detention order without having access to or any details of the secret information against K., Adv. Bayadsi raised that the Palestinian Authority detained K. briefly in August 2017, interrogating him concerning alleged weapons possession and planning an attack after his cousin was killed by Israeli forces. K. was released and not charged with any criminal offense.

Adv. Bayadsi highlighted that K. alleges he was subjected to physical violence amounting to torture during his time in Palestinian Authority detention and argued that any statements made were due to force or coercion.

Without disclosing any details about the "secret information" used against K., Colonel Wolf responded that after reviewing the secret information he found there was information outside of any statements made to the Palestinian Authority officials that the military prosecution relies on to justify the administrative detention order.

The military court of appeals then approved the second four-month administrative detention order against K.. On February 13, 2018, K.'s appeal was denied.

## **V. INDICATE THE REASONS WHY YOU CONSIDER THE ARREST AND/OR DETENTION TO BE ARBITRARY**

### **A. International law concerning rights of the child and juvenile justice**

Regardless of guilt or innocence, children in conflict with the law are entitled to special protections and all due process rights under international human rights law. International juvenile justice norms are built on two fundamental principles: the best interests of the child must be a primary concern in making decisions that affect them and children must only be deprived of their liberty as a last resort, for the shortest appropriate period of time.<sup>29</sup>

International human rights law affirms that juvenile justice systems must be child-sensitive, non-violent, and avoid criminalization and punishment of children. Specifically, international human rights law obligates states to create a distinct juvenile justice system that recognizes the special status of children, protects them from violence, and focuses on rehabilitation and reintegration.<sup>30</sup>

International legal protections for children related to juvenile justice are contained primarily in the United Nations Convention on the Rights of the Child (CRC), which is the most widely ratified international human rights treaty in history. The CRC outlines minimum protections and guarantees for children and articulates international human rights norms and principles that specifically apply to children.

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<sup>29</sup> UN Convention on the Rights of the Child, U.N. Doc. A/RES/44/25 (Nov. 20, 1989), <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>.

<sup>30</sup> See International NGO Council on Violence against Children, Creating a Non-Violent Juvenile Justice System (2013), [http://www.childhelplineinternational.org/media/80443/inco\\_-\\_juvenile\\_justice.pdf](http://www.childhelplineinternational.org/media/80443/inco_-_juvenile_justice.pdf).

Specifically, Article 37(b) of the CRC provides, “[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily” and “[t]he arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”<sup>31</sup>

## **B. Status of international human rights law in the Occupied Palestinian Territory**

International human rights law applies in the Occupied Palestinian Territory, including the CRC, the Convention against Torture (CAT), and the International Covenant on Civil and Political Rights (ICCPR).<sup>32</sup>

These human rights treaties generally provide that in all actions involving or impacting children, their best interests shall be a primary consideration, and they should only be detained as a measure of last resort and for the shortest appropriate period of time. All persons shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal and torture and ill-treatment are absolutely prohibited without exception. International law non-discrimination and equality protections and guarantees prohibit states from discriminating on the basis of race or nationality in the exercise and implementation of penal jurisdiction.

Despite the fact that Israel has ratified most of the core international human rights treaties, and, as a result, has bound itself to act in accordance with those treaties; Israeli authorities persistently disregard and fail to comply with international law.

Israel ratified the CRC in 1991, obligating itself to implement the full range of rights and protections included in the convention. During its initial review in 2002, the Committee on the Rights of the Child, the UN body that monitors implementation of the CRC, expressed serious concern regarding “allegations and complaints of inhuman or degrading practices and of torture and ill-treatment of Palestinian children” during arrest, interrogation, and detention.<sup>33</sup>

In July 2013, over a decade later, the Committee on the Rights of the Child again reviewed Israel’s compliance with the CRC and found the situation was even worse. The committee found that Palestinian children arrested by Israeli forces were “systematically subject to degrading

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<sup>31</sup> UN Convention on the Rights of the Child, Art. 37(b), U.N. Doc. A/RES/44/25 (Nov. 20, 1989), <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>.

<sup>32</sup> See International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶¶ 101, 109-113 (Jul. 9, 2004), <http://www.icj-cij.org/docket/files/131/1671.pdf>. Israel ratified the International Covenant on the Elimination of All Forms of Racial Discrimination (CERD) in 1979; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) all in 1991; and the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) in 1992.

<sup>33</sup> UN Committee on the Rights of the Child, *Concluding Observations: Israel*, U.N. Doc. CRC/C/15/Add.195, ¶ 36 (Oct. 9, 2002), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/453/97/PDF/G0245397.pdf>.

treatment, and often to acts of torture” and that Israel had “fully disregarded” previous recommendations to comply with international law.<sup>34</sup>

### **C. Israeli authorities non-observance of international norms relating to the right to a fair trial in the detention of Laith K. amounts to an arbitrary detention under Category III**

A deprivation of liberty is considered arbitrary under Category III “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”<sup>35</sup>

In depriving Laith K. of his liberty, Israeli authorities have violated basic and fundamental due process rights and protections relating to the right to a fair trial that amounts to an arbitrary detention.

#### **1. Detained without a warrant and not informed of reason for arrest**

Children deprived of their liberty have the right to be informed of the reason for arrest. Articles 9(2) and 14(3)(a) of the ICCPR and Article 40(2)(b)(ii) of the CRC expressly guarantee that children deprived of their liberty be informed of the reasons of their arrest and promptly informed of the charges against them.

Around 2 a.m. on September 20, 2017, Israeli forces woke K. while he was in his bed. An Israeli soldier shouted at him and ordered him out of bed. An intelligence officer asked for his identification card to confirm his name and details, and K. was then ordered to put his shoes on because he would be arrested. He put on his shoes and was taken out of the house. No warrant or other decision by a public authority was shown or provided to K. or his parents, and Israeli authorities provided no reason for his detention at the time he was detained.

Since his arrest on September 20, 2017, Israeli authorities have not charged K. with a crime and have not informed him, in detail sufficient to challenge his detention, of the nature and cause for his detention, which is a violation of his right to be informed of the reason for arrest.

#### **2. Denied right to be tried without undue delay or challenge legality of continued deprivation of liberty**

Children deprived of their liberty have the right to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to

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<sup>34</sup> UN Committee on the Rights of the Child, Concluding Observations on the Second to Fourth Periodic Reports of Israel, U.N. Doc. CRC/C/ISR/CO/2-4, ¶ 73 (Jul. 4, 2013), <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ISR-CO-2-4.pdf>.

<sup>35</sup> UN Working Group on Arbitrary Detention, *Revised methods of work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/36/38, ¶ 8 (Jul. 13, 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/190/80/PDF/G1719080.pdf>.

law,<sup>36</sup> which protects a child's right to effectively challenge the legality of any continued deprivation of liberty.

Where administrative detention is used in situations not in contemplation of prosecution on a criminal charge, the practice "presents severe risks of arbitrary deprivation of liberty."<sup>37</sup> Thus, administrative detention must not last longer than absolutely necessary.<sup>38</sup> The detention must end as soon as an individual alleged to have posed a real threat to state security stops posing a real threat. The longer administrative detention lasts "the greater the onus on the detaining authority to prove the reasons for the interment remain valid."<sup>39</sup> There must also be prompt and regular review by an impartial and independent court or tribunal.<sup>40</sup>

Additionally, this Working Group has stressed that administrative detention may not be used to circumvent the procedural rights of a person suspected of committing a criminal offense and that a person suspected of a criminal offense has a "right to be tried by a regularly constituted, independent, impartial court."<sup>41</sup>

Israeli military authorities have not filed formal charges against K. and he has spent over six months in detention without charge or trial. K. and his attorney are unable to effectively challenge the legality of his detention because Israeli military authorities have denied them access to the "secret information" relied on by the Israeli military court judges to issue and confirm the two administrative detention orders against him to date.

The longer Israeli authorities detain K., the greater the onus on them to establish that the reasons for the internment remain valid and that K. remains a "present, direct and imperative threat."<sup>42</sup>

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<sup>36</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), arts. 9(3) and 9(4), U.N. Doc. A/6316 (1966), <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>; and UN Convention on the Rights of the Child, art. 40(2)(b)(iii), U.N. Doc. A/RES/44/25 (Nov. 20, 1989), <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>.

<sup>37</sup> UN Human Rights Committee, *General Comment 35: Article 9 (Liberty and security of person)*, U.N. Doc. CCPR/C/GC/35, ¶ 15 (Dec. 16, 2014), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=CCPR/C/GC/35](http://www.un.org/en/ga/search/view_doc.asp?symbol=CCPR/C/GC/35).

<sup>38</sup> *Id.*

<sup>39</sup> INTERNATIONAL COMMITTEE OF THE RED CROSS, *INTERMENT IN ARMED CONFLICT: BASIC RULES AND CHALLENGES*, p. 9 (2014) <https://www.icrc.org/en/document/internment-armed-conflict-basic-rules-and-challenges>; UN Working Group on Arbitrary Detention, *Opinion No. 24/2016 concerning a minor (whose name is known by the Working Group) (Israel)*, U.N. Doc. A/HRC/WGAD/2016/24, ¶ 17 (Oct. 20, 2016), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/234/98/PDF/G1623498.pdf>; UN Human Rights Committee, *General Comment 35: Article 9 (Liberty and security of person)*, U.N. Doc. CCPR/C/GC/35, ¶ 15 (Dec. 16, 2014), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=CCPR/C/GC/35](http://www.un.org/en/ga/search/view_doc.asp?symbol=CCPR/C/GC/35).

<sup>40</sup> UN Human Rights Committee, *General Comment 35: Article 9 (Liberty and security of person)*, U.N. Doc. CCPR/C/GC/35, ¶ 15 (Dec. 16, 2014), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=CCPR/C/GC/35](http://www.un.org/en/ga/search/view_doc.asp?symbol=CCPR/C/GC/35).

<sup>41</sup> UN Working Group on Arbitrary Detention, *Opinion No. 24/2016 concerning a minor (whose name is known by the Working Group) (Israel)*, U.N. Doc. A/HRC/WGAD/2016/24, ¶ 17 (Oct. 20, 2016), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/234/98/PDF/G1623498.pdf>.

<sup>42</sup> INTERNATIONAL COMMITTEE OF THE RED CROSS, *INTERMENT IN ARMED CONFLICT: BASIC RULES AND CHALLENGES*, p. 9 (2014) <https://www.icrc.org/en/document/internment-armed-conflict-basic-rules-and-challenges>; UN Working Group on Arbitrary Detention, *Opinion No. 24/2016 concerning a minor (whose name is known by the Working Group) (Israel)*, U.N. Doc. A/HRC/WGAD/2016/24, ¶ 18 (Oct. 20, 2016), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/234/98/PDF/G1623498.pdf>; see also UN Human Rights Committee, *General Comment 35: Article 9 (Liberty and security of person)*, U.N. Doc. CCPR/C/GC/35, ¶ 15 (Dec. 16, 2014), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=CCPR/C/GC/35](http://www.un.org/en/ga/search/view_doc.asp?symbol=CCPR/C/GC/35).

However, despite Israel's burden to demonstrate that K. posed and continues to pose a threat in order to justify his detention without charge, Israeli military authorities have not provided sufficient detailed evidence establishing K. either previously or currently continues to pose a real and imperative threat to state security.

Failure to provide access to detailed "secret information" relied on by the state to justify the deprivation of liberty prevents any effective challenge concerning the legality of K.'s continued detention and results in a violation of K.'s right to have the matter determined without delay.

### **3. Israeli military courts are not independent and impartial tribunals**

Aside from the denial of fundamental due process rights, it is doubtful whether the use of military courts to try civilians—particularly minors—can ever satisfy the requirements of international human rights law to a fair trial before an independent and impartial tribunal. Article 14(1) of the ICCPR and Articles 37(d) and 40 of the CRC, as well as international humanitarian law guarantee a person deprived of their liberty the right to both challenge their detention and to be tried by a competent, independent and impartial tribunal.

This Working Group has found in previous cases concerning the Government of Israel that military tribunals are not independent or impartial because they consist of military personnel that are subject to military discipline and dependent on superiors for promotion.<sup>43</sup>

Furthermore, the Committee on the Rights of the Child has declared, "the conduct of criminal proceedings against children within the military justice system should be avoided."<sup>44</sup>

As in the other cases considered by the Working Group, K.'s administrative detention orders have been approved by Israeli military court judges that are active duty or reserve officers in the Israeli military, and subject to military discipline and dependent on superiors for promotion.

Israel's non-observance of international norms relating to the right to a fair trial and the documented bias of its military court system demonstrate that K.'s detention amounts to arbitrary detention in accordance with Category III.

#### **D. Israeli authorities are depriving Laith K. of his liberty, in part, based on his exercise of his right to freedom of expression and opinion amounting to arbitrary detention under Category II.**

Detention is arbitrary under Category II when it results from the exercise of the right to freedom of expression or another guaranteed right or freedom.<sup>45</sup> States must ensure the right to freedom of expression by allowing individuals "to hold opinions without interference and to seek, receive

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<sup>43</sup> See UN Working Group on Arbitrary Detention opinions No. 24/2016, No. 58/2012 and No. 3/2012.

<sup>44</sup> UN Committee on the Rights of the Child, *Concluding Observations: United States of America*, U.N. Doc. CRC/C/OPAC/USA/CO/1, ¶ 30(g) (Jun. 25, 2008), <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.USA.CO.1.pdf>.

<sup>45</sup> UN Working Group on Arbitrary Detention, *Revised methods of work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/36/38, ¶ 8 (Jul. 13, 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/190/80/PDF/G1719080.pdf>.

and impart information and ideas through any media and regardless of frontiers.”<sup>46</sup> Derogation of the right to freedom of expression is only permissible in rare instances where a limitation on the right is provided by clear and accessible law.<sup>47</sup> Additionally, the purpose of the limitation must serve “to protect the rights or reputations of others, or to protect national security or of public order, or of public health or morals.”<sup>48</sup> Finally, the limitation must be necessary and be proven to be the least restrictive means required to accomplish its purpose.<sup>49</sup>

Conclusory allusions related to counter-terrorism and national security measures as justification for detention do not sufficiently establish a legitimate purpose to deprive an individual of their right to freedom of expression.<sup>50</sup> The right to freedom of expression should not be restricted in the name of national security except “in the most serious cases of a direct political or military threat to the entire nation.”<sup>51</sup> Even if an individual is explicitly critical of the government, states must provide thorough explanation and documentation of alleged national security threats to justify deprivation of liberty based on the exercise of freedom of expression.

The general summary of “secret information” against K. alleges that he used his Facebook account to support “terrorists.” When questioned during review of his detention order on January 22, 2018, K. explained that he shared a picture of his adult cousin who had been killed by Israeli forces. However, he explicitly denied that he was planning an attack and stated that he had no intention to plan or carry out an attack in response to his cousin’s killing.

The detention of K. by Israeli authorities under the conclusory pretext that he poses a threat to security based on his conduct of sharing an image of his cousin on Facebook is improper. Sharing an image on Facebook or other social media platforms falls within K.’s internationally recognized right to freedom of expression. Israeli authorities have so far failed to share details regarding what specific conduct or activity by K. is sufficiently egregious to meet the high threshold to justify his internment under an administrative detention order. Further, Israeli authorities have not provided detailed information in support of the allegation that K. used his Facebook account to support “terrorists.” Sharing an image on Facebook or other social media

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<sup>46</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, art. 19 (1948), [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf).

<sup>47</sup> See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, U.N. Doc. A/HRC/17/27 (May 16, 2011), [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf).

<sup>48</sup> *Id.* at ¶ 24.

<sup>49</sup> *Id.*

<sup>50</sup> See Report of the Working Group on Arbitrary Detention, U.N. Doc. E/CN.4/2006/7, ¶ 73 (Dec. 12, 2005), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=E/CN.4/2006/7](http://www.un.org/en/ga/search/view_doc.asp?symbol=E/CN.4/2006/7) (explaining that “[a] vague and general reference to the interests of national security or public order, without being properly explained and documented, is not enough to convince the Working Group that the restrictions on the freedom of expression by way of deprivation of liberty was necessary. More generally, the Working Group cannot accept the interference of the public authorities with the individual’s privacy - including the freedom to communicate among themselves via the Internet - under the unsubstantiated pretext that the intrusion was necessary to protect public order or the community.”). See also U.N. Doc. A/HRC/14/23/Add.2 (Mar. 25 2010), <http://undocs.org/A/HRC/14/23/Add.2> (explaining that “[t]he notion of national security has historically been abused to impose unduly broad limitations on freedom of expression, and this has become a particular problem in the aftermath of the attacks of September 2001, and renewed efforts to combat terrorism.”).

<sup>51</sup> Report of the Working Group on Arbitrary Detention, U.N. Doc. E/CN.4/1995/32 (Dec. 14 1994).

platforms, absent additional evidence, must not be considered a serious direct political or military threat to the entire nation of Israel.

The deprivation of liberty of Laith K. is in breach of Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights and amounts to arbitrary detention under Category II.

**E. Israeli military forces target Palestinian children in the occupied West Bank like Laith K. for detention and arrest and systematically prosecute them in a discriminatory Israeli military court system amounting to arbitrary detention under Category V**

Arbitrary detention under Category V occurs when the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.<sup>52</sup> The Human Rights Committee specifies that non-discrimination norms be understood “together with equality before the law and equal protection of the law.”<sup>53</sup>

While Israeli military law gives military courts the authority to try any person located inside the occupied territory as long as they are 12 years or older, Jewish settlers who reside within the bounds of the West Bank in violation of international law are subject to the Israeli civilian legal framework. Accordingly, Israel operates two separate and unequal legal systems in the same territory. No Israeli child comes into contact with the Israeli military court system.

The Working Group has noted a pattern in cases involving Israeli authorities and their use of administrative detention against Palestinians.<sup>54</sup> Because of the “pattern of cases involving the arrest and detention of Palestinians under administrative detention orders on the basis of their nationality,” the Working Group has begun to refer administrative detention cases involving Palestinians to the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.<sup>55</sup>

Treaty bodies have expressed concern about the discriminatory arrests and detention of Palestinian children. The Committee on the Elimination of All Forms of Racial Discrimination urged Israel in 2012 “to end its current practice of administrative detention, which is

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<sup>52</sup> UN Working Group on Arbitrary Detention, *Revised methods of work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/36/38, ¶ 8 (Jul. 13, 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/190/80/PDF/G1719080.pdf>.

<sup>53</sup> UN Human Rights Committee, *General Comment No. 18: Non-discrimination*, ¶ 1 (Nov. 10, 1989), available at: <http://www.refworld.org/docid/453883fa8.html> (accessed Mar. 27, 2018).

<sup>54</sup> UN Working Group on Arbitrary Detention, *Opinion No. 86/2017 concerning Salem Badi Dardasawi (Israel)*, U.N. Doc. A/HRC/WGAD/2017/86, ¶ 43 (Dec. 18, 2017) (noting, “In the absence of any explanation from the Government, the Working Group takes note of the pattern that has emerged through the number of cases with similar facts that have been brought before it in the past. The Working Group further notes the general manner in which such administrative detention orders were used against Palestinians in particular, as highlighted by the Human Rights Committee. The Working Group therefore concludes that the present arrest and detention of Mr. Dardasawi, who is a Palestinian, is arbitrary and also falls under category V.”).

<sup>55</sup> *Id.* at ¶ 44.

discriminatory and constitutes arbitrary detention.”<sup>56</sup> Additionally, the concluding observations of the Human Rights Committee and the Committee Against Torture regarding recent reviews of Israel express particular concern about the continued practice of using administrative detention against Palestinians on the basis of secret information.<sup>57</sup>

The Working Group has previously echoed concerns of UNICEF and the Committee for the Rights of the Child with the widespread detention of Palestinian children and the practice of prosecuting them in an Israeli military court system.<sup>58</sup>

The detention of K. fits a pattern and practice by Israeli authorities of using administrative detention against Palestinian children on the basis of their Palestinian identity to punish rather than prevent an imminent threat where there is not enough evidence to charge and prosecute the child in the Israeli military courts.

Thus, K.’s detention by Israeli authorities amounts to an arbitrary detention under Category V because his deprivation of liberty constitutes a violation of international law for reasons of discrimination based on national, ethnic and social origin.

## VI. INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES

K. appealed both administrative detention orders issued against him in the Israeli military courts. Both appeals were denied. Given the lack of access to an independent and impartial tribunal, no additional domestic measures have been taken by K. or his legal counsel.

## VII. CONCLUSION

The arrest and detention of Laith K. pursuant to an administrative detention order issued by Israeli military authorities is an egregious violation of his fundamental rights. The Government of Israel has violated the following international law rights and protections by continuing to arbitrarily detain Laith K.:

- The right to liberty and security, including the right to be free from arbitrary detention;
- The right to be free from torture or other cruel, inhuman or degrading treatment or punishment;

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<sup>56</sup> UN Committee on the Elimination of All Forms of Racial Discrimination, *Concluding observations: Israel*, U.N. Doc. CERD/C/ISR/CO/14-16, ¶ 27 (Apr. 3, 2012).

<sup>57</sup> UN Human Rights Committee, *Concluding Observations: Israel*, U.N. Doc. CCPR/C/ISR/CO/4, ¶ 10 (Nov. 21, 2014) <http://undocs.org/CCPR/C/ISR/CO/4> (stating “The Committee also remains concerned at the continuing practice of administrative detention of Palestinians, at the fact that in many cases the detention order is based on secret evidence and at the denial of access to counsel, independent doctors and family contacts (arts. 4, 9, and 14).”); and UN Committee against Torture, *Concluding Observations: Israel*, U.N. CAT/C/ISR/CO/5, ¶ 28 (Jun. 3, 2016) <http://undocs.org/CAT/C/ISR/CO/5> (“The Committee is further concerned that at the time of the dialogue there were 12 minors in administrative detention and 207 Palestinian minors residents of the West Bank in detention for security-related offences (arts. 2, 11, 12, 13, 14, 15, and 16)”).

<sup>58</sup> UN Working Group on Arbitrary Detention, *Opinion No. 24/2016 concerning a minor (whose name is known by the Working Group) (Israel)*, U.N. Doc. A/HRC/WGAD/2016/24, ¶¶ 23–24 (Oct. 20, 2016), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/234/98/PDF/G1623498.pdf>.

- The right to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age;
- The right to freedom of expression and opinion;
- The right to non-discrimination and equality under the law; and
- The right to fair trial and due process, including the right to be presumed innocent until proven guilty according to law; the right to be informed promptly and directly of the charges against him; the right to examine any witnesses against him; and the right to challenge the legality of the deprivation of his liberty before a court or other competent, independent and impartial authority.

We hereby request that the United Nations Working Group on Arbitrary Detention:

- (1) Issue an opinion finding Laith K.'s ongoing detention pursuant to an administrative detention order to be in violation of Israel's obligations under international law;
- (2) Call for Laith K.'s immediate release;
- (3) Request that the Government of Israel investigate and hold accountable all persons responsible for the unlawful detention and mistreatment of Laith K.;
- (4) Request the Government of Israel to award Laith K. compensation for the violations he endured as a result of his unlawful detention and mistreatment while in state custody.

#### **VIII. FULL NAME AND ADDRESSES OF THE PERSON(S) SUBMITTING THE INFORMATION**

This petition is submitted on Laith K.'s behalf by Defense for Children International – Palestine (DCIP) and the Human Rights and Gender Justice Law Clinic at the City University of New York School of Law.

DCIP provides direct legal aid to children detained and prosecuted in the Israeli military detention system. Laith K.'s legal counsel is Adv. Farah Bayadsi, a DCIP attorney practicing in the Israeli military court system.

DCIP is an independent, local Palestinian child rights organization based in Ramallah dedicated to defending and promoting the rights of children living in the West Bank, including East Jerusalem, and the Gaza Strip. For over 25 years, DCIP has investigated, documented and pursued accountability for grave human rights violations against children; held Israeli and Palestinian authorities accountable to universal human rights principles; and advocated at the international and national levels to advance access to justice and protection for children.

The Human Rights and Gender Justice Clinic at CUNY School of Law, widely recognized for its expertise and contributions to gender jurisprudence and human rights practice, advocates before international and regional human rights bodies and national and local courts and legal institutions on issues involving gender-based violence, reproductive rights, sexual orientation and gender identity, economic and social rights, children's rights and anti-trafficking.

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