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# ISRAEL CHILDREN'S RIGHTS MONITOR

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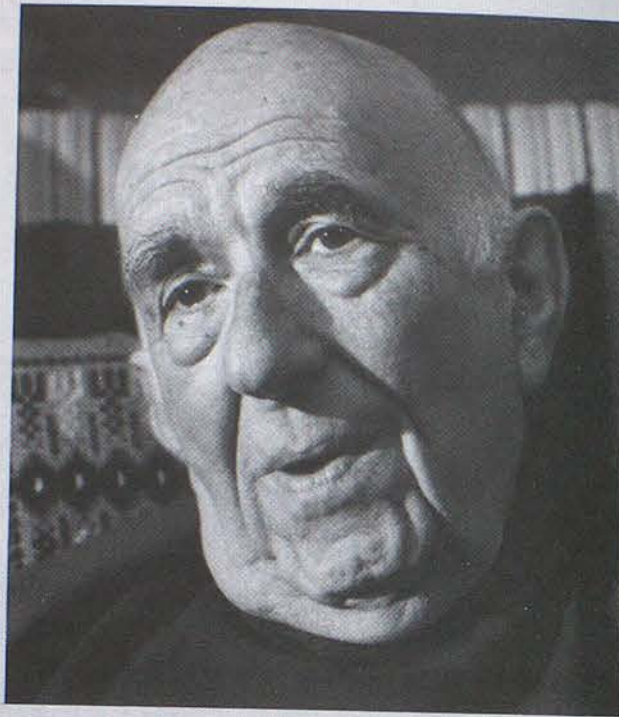
DCI  
Israel-Section

אבי - האגודה הבינלאומית לזכויות הילד - ישראל  
DEFENCE FOR CHILDREN INTERNATIONAL  
الحركة العالمية للدفاع عن الاولاد - فرع اسرائيل





**LETTER FROM JUSTICE DR. HAIM COHN**  
(Former Deputy President, Supreme Court of Israel)



Dear Friends,

*I have been following your wide-ranging activity for some time now, and I would like to extend warmest thanks to all members of DCI-Israel, professional and non-professional alike, for their loyal devotion to this noble enterprise.*

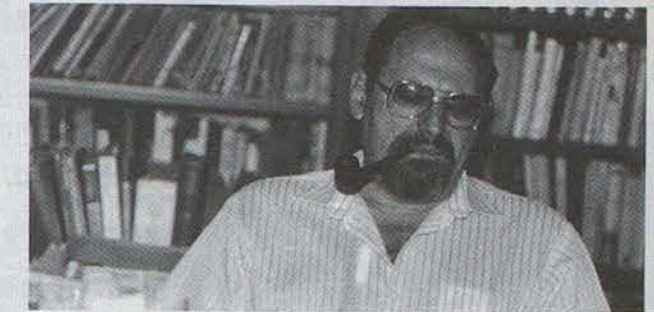
*Your achievements are many, especially your success in defending the legal rights of children within the Israeli judicial system and in military courts. In comparison with the attention given to human rights, the importance of children's rights has been overlooked in legal and practical terms.*

*I hope you will be able to expand the membership and increase the number of supporters of DCI-Israel.*

Gratefully,

Dr. Haim Cohn  
Chairman, Advisory Board  
Israel Section, Defence for Children International

**MESSAGE FROM THE NEW CHAIRMAN**



*On May 3, 1994 the annual meeting of DCI-Israel members was held in Jerusalem at the Van Leer Institute, chaired by Judge Avraham Ben Hador (Juvenile Court judge, ret.). At the end of the evening I was chosen as the chairperson of the DCI-Israel Section. I am happy that the former chairperson, advocate George Samaan, will serve as vice-chairperson since we are all very grateful for the way he has led DCI-Israel through the rough times into a period of growth and expansion of its activities.*

*The hard work of 1993 gave us all the feeling of participating in the building of an important and viable human rights organization for children. With the growth of any organization there is inevitably a shift in the roles of its staff and volunteers. Our rapid growth demanded hard work of all of us. DCI-Israel can consider itself very fortunate to have the expertise of the coordinator, (who founded the organization in November 1987 and who ran it single-handedly for many years), and his new staff at the Jerusalem office who run all the DCI-Israel projects. With the growth of the organization, our Board of Directors also had to adapt to the new circumstances. The Board had to create an executive committee which would meet more regularly with the director than other Board members. The Board is helped in their decision-making process by an Advisory Board, chaired by the former Deputy President of the Supreme Court, Justice Dr. Haim Cohn. Each of the existing and proposed projects of DCI-Israel are strengthened by advisory committees whose volunteer members and representatives of community organizations guide project activities, and help the Board to set the policy.*

*DCI-Israel is making a great impact on many areas of children's lives. We hope that all friends of DCI-Israel will continue to support us — now that we have expanded our activities, we need you more than ever to keep us going.*

Advocate Dov Israeli  
Chairman  
DCI-Israel Section

The staff of DCI-Israel congratulates Advocate Dov Israeli upon having completed his doctoral dissertation in International Law for Columbia Pacific University. Advocate Israeli devoted years to researching his dissertation, entitled: *Child Abduction in Israeli and Private International Law*.



From the Coordinator of DCI-Israel

## INTRODUCTION TO THE BIENNIAL REPORT

Since our last *Israel Children's Rights Monitor* was published in November 1992, DCI-Israel has greatly expanded its activities, especially through the development of projects that provide advocacy for children and youth in the field, and projects which document the extensive needs of underserved populations.

DCI-Israel's voice has now been frequently heard in Knesset committees and in the Committee for Legislation Relating to Children headed by the Deputy Attorney General, Mrs. Jehudith Carp. Several legislative proposals have been presented by DCI-Israel. Most important was DCI-Israel's success in persuading the Association for Civil Rights in Israel (ACRI) and the National Council for the Child to come forward (alongside DCI-Israel) with a joint proposal to make the U.N. Convention on the Rights of the Child law of the land. A consensus was reached in August 1994 and the law proposal was presented to Mrs. Jehudith Carp of the Ministry of Justice. In this issue of the *Israel Children's Rights Monitor* we explain why the U.N. Convention on the Rights of the Child is so important, and why its legal implementation by the Knesset is crucial.

In 1993, DCI-Israel remained the only group giving free legal representation for minors in criminal cases in the juvenile and district courts.<sup>1</sup>



Benny Temkim, MK, (Chair of the Knesset Subcommittee, Children in Distress) offers his congratulations upon the opening of DCI-Israel's new offices in Jerusalem.



DCI-Israel presents law proposal for a public defender for children at the Knesset Law Committee Chairman, Dedi Zucker, MK.

The Juvenile Probation Service is the main referral agency to DCI-Israel lawyers. DCI-Israel took an important initiative in using lawyers particularly adept at working in the special environment of the juvenile court, who have now become major participants in juvenile court proceedings. DCI-Israel now has a lawyer in Tel Aviv, in the country's central region (Lod, Ramle, Rehovot, Petah Tikva, Kfar Saba), as well as in Haifa, Netanya, and East and West Jerusalem. We have recently begun work in the south of the country (Kiryat Gat and Beersheva). We now represent in court each year almost 400 adolescents whose parents cannot afford legal counsel. In addition, DCI-Israel's legal coordinator, advocate Yair Ronen, provides consultation hours at various probation offices. Children, parents, and probation officers can consult with the DCI-Israel lawyer there. A team, headed by methodologist Dr. Samuel Shye, is presently evaluating the work of the lawyers. The aim of the evaluation project is to see what impact our lawyers have on the cases in question. The lawyers must fill in a questionnaire after every case is finished, which means extra work in an already busy schedule. Thanks to the legal aid project, resistance to legal presentation of minors in juvenile courts is slowly diminishing. In Israel the law states that the judge must appoint a lawyer for the minor only in cases where the prosecution is calling for ten years imprisonment or more. In all other cases, the matter of legal counsel is left to the discretion of the juvenile court judges (who, in the past, have rarely appointed lawyers for children). Indeed, a lawyer who does not know much about the juvenile court and the *Youth Law*, can do more harm than



good. But DCI-Israel is trying to prove that children's lawyers (who have learned how to communicate with child-clients) can play a very constructive role in the legal process.

In this issue of the *Israel Children's Rights Monitor* the reader finds a short description of the legal aid project, a brief article by legal coordinator Yair Ronen on how our lawyers try to facilitate the child's active participation in juvenile court, and an article on Arab children in the court by our lawyer in East Jerusalem, Dr. Awni Habash. Also included is a discussion of the ideas behind the recently-begun evaluation of the legal aid project.

Complementary to the legal aid activity pursued by DCI-Israel is the **detention-monitoring** project. DCI-Israel's standing committee (headed by our vice-chairman, Judge Eli Nathan) visits the youth wings of jails, prisons, and military detention centers. In this issue of *Israel Children's Rights Monitor*, we publish a recent report of our visit to the Abu Kabir jail in Tel Aviv-Yafo, which gives the reader a good idea of the importance of this kind of involvement by independent human rights groups such as DCI-Israel.

We have learned practical lessons on the reality of the plight of children in the juvenile justice system, i.e. in contradiction to international and domestic legal standards, written police regulations and stated policies. We have seen 13-year old children — who clearly presented no danger to anyone — handcuffed and paraded through Israeli cities although they were still presumed innocent under the law! We have initiated correspondence with all

concerned and, following our interventions, expect new measures to be taken by the police in the near future. We have also been approached with regard to the issue of criminal punishment of runaway children. DCI-Israel has more than once expressed its clear position in favor of the decriminalization of status offenses and the illegitimacy of prosecuting a child for an offense which can only be defined as such because s/he is a child. Children who run away now get a criminal record only for running away from an institution in which they were placed only for their own protection.

**The legal aid project for minors in the military courts (a joint project of our section and the new DCI-Palestinian section)** has, for the second year, continued representing minors in a situation which is fraught with difficulties. In light of current developments on the Middle East political scene, it is remarkable that despite all obstacles, a DCI-Israeli and Palestinian Section has for more than two years, continued to manage a joint office for this legal aid project on the West Bank. The project employs a full-time lawyer, who until recently was assisted by an office manager who handled referrals and had begun case-management activities. DCI-Israel has constantly challenged military authorities and argued that minors should not be tried in the same way as adults. As long as children are tried in these military courts, DCI-Israel has an important role in representing minors, who would otherwise not have been represented because their parents could not afford a lawyer. At present we are even expanding this work in the West Bank to include the Tulkarm area, and

are planning to hire a project-director. Since this project was described at some length in the last issue of *Israel Children's Rights Monitor*, this issue will contain only a short description. Readers interested in this project can obtain further documentation from our Jerusalem office.

In December 1993 we inaugurated a new approach to children's rights in Israel with the opening of our **Children's Rights Information Center** in Haifa. Haifa children and adolescents now have the possibility of walking into our office and seeking the advice of our enthusiastic lawyer and project coordinator, assisted by volunteers. The center's services have been advertised using posters on bus stops throughout Haifa. The center is promoting a children's rights philosophy in Israel, which stresses that children have the right not only to be protected, but also to be empowered to solve their own problems. A weekly consultation is provided by our legal coordinator to the staff of the Haifa Center. In this issue of the *Israel Children's Rights Monitor*, the reader will find a description of the project and an article on the new philosophy of empowerment, the new approach to children's rights of the Haifa Center.

The same new approach has been adopted by DCI-Israel's **Ombudsman for Immigrant Children**. Our ombudsman for immigrant children, who is at present focusing his energies on Ethiopian children and youth, is an Ethiopian-Jewish social worker. He travels extensively in the field, visiting caravan-parks, absorption centers, schools and residential boarding schools. Since Ethiopian children are

reluctant to complain, the ombudsman's task is to be a role model for Ethiopian children, youth, and parents with regard to ways of advocating their rights. In this issue of the *Israel Children's Rights Monitor* we describe an important case taken up by this ombudsman (the case of the Yad Ora residential school), and explain more about the cultural difficulties experienced by Ethiopian children in standing up for their rights.

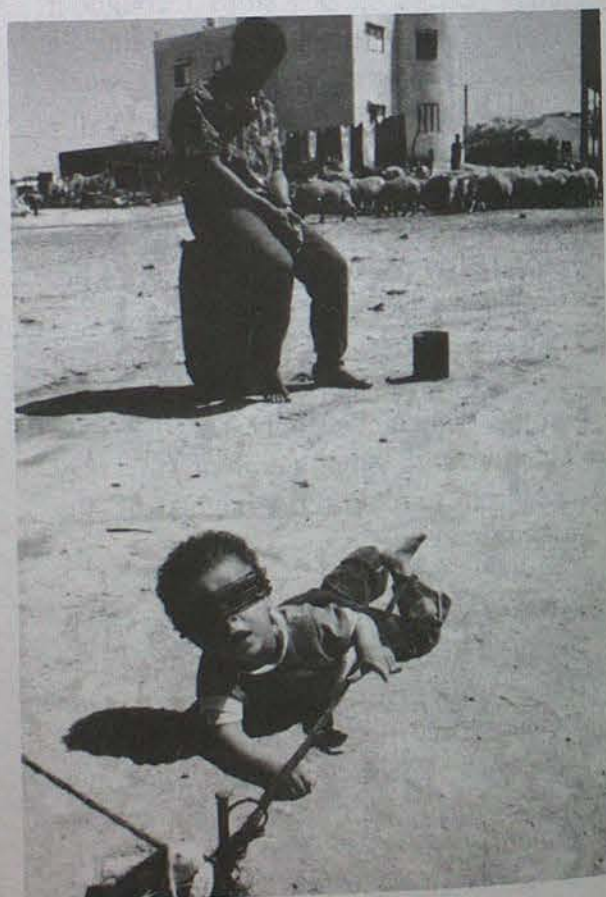
Over 5500 Ethiopian adolescents are in boarding schools in Israel. A special conference on the rights of Ethiopian children in institutions was organized by the DCI-Israel Section and held at the Beit Belgia Faculty Club of the Hebrew University of Jerusalem on February 8, 1993. Special guest, Ms. Gwen James, director of "Voice of the Child in Care" in England, talked about complaint procedures and how to use them effectively in boarding schools. A report of the conference is published in this issue.

DCI-Israel has also been securing funding to start an **action-research project to study the prevalence of mental retardation among Bedouin children in the Negev**. In many Bedouin tribes, intermarriage between close family relations results in a high incidence of mentally retarded children. The Negev population is generally underserved, and there are also few facilities for retarded children. But the Israeli government has a special duty to provide services for this group of children since it was the government who urged settlement in the "planned" towns, arguing that this was the only way the government would be able to provide services. The Bedouin did settle in many towns, but the services did not



follow. Since the number of retarded Bedouin children has not been documented it is hard to plan what needs to be done. DCI-Israel has decided to obtain the necessary data and ascertain the needs of the children. We have put together an excellent team, comprised of a doctor, a psychologist, a (Bedouin) child psychologist, and an epidemiologist. In this issue of the *Israel Children's Rights Monitor* we describe the plight of the Bedouin children and how this project is trying to help solve the problems. We are also starting up a project to provide help of an unusual nature to a Bedouin tribe with many deaf-mute children. You can read more about it in this issue.

**Child labor** is of course still on our agenda. We did some walk-through surveys of markets in the Tel Aviv area and found many young Russian immigrant child laborers. The worst case we encountered was that of very young children outside the village of Jabet (just over 'the border' in the West Bank) who keep constant fires burning to make charcoal. A short report on this visit is included in this issue of the *Israel Children's Rights Monitor*. The major contribution we can make in the area of child labor in general is to help start coordination between the relevant government offices and other social aid agencies. Many divisions within the Ministry of Labor and Social Affairs, the Ministry of Health, the Ministry of Agriculture, the Ministry of Education, 'Noar Oved ve Lomed' of the Histadrut Trade Union Federation, Schools of Public Health, etc., need to be brought together to begin tackling the problem. DCI-Israel, with its perspective on the U.N. and I.L.O. conventions can make an important contribution in this area.



DCI-Israel started advocacy for retarded Bedouin children

In fact we convened a first coordinating meeting at the DCI-Israel office in Jerusalem in July 1993.

A joint project of the DCI-Israel Section and the Union of Palestinian Medical Relief Committees has just been completed. This unique project advocated better access to health services for Palestinian children. Many health services have not been developed in the last twenty-seven years in the West Bank and Gaza. For instance, children in dire need of neurosurgery or oncological treatment cannot be treated there. The project studied access to health care for Palestinian children, since many still need surgery or treatment in Israel. This issue of the *Israel Children's Rights Monitor* reports on the joint conference in November 1993, where forty Israeli and forty Palestinian doctors discussed the problem of patient referrals. The conference was a great success. In August 1993, DCI-Israel released a report on *Access to Health Care for Palestinian Children*, of which the main recommendations are included in this issue. The report was presented at a press conference in the presence of Dr. Ragda Shawa, director of the Nasser children's hospital in Gaza. The Planning and Research Center, a group which made a national health plan for the Palestinians, the Palestinian Public Health Association and DCI-Israel have made new plans for a new joint-project.

Two years ago a DCI-Israel delegation made several visits to the Gaza community mental health program, and heard about the problems of children in Gaza. Following our investigation we wrote a report entitled *Situation Analysis of Palestinian Children in*

*Gaza* (this report is now out of print). The situation in Gaza has changed quite a bit since the Israel-PLO agreement. In the wake of this agreement DCI-Israel has started a cooperative training project with Palestinian Lawyers for Human Rights in Khan Younis (Gaza Strip). The project, *From Military Justice to Juvenile Justice*, provides intensive training to twenty lawyers in Gaza who need help to build up their new juvenile justice system in Gaza. A report on this new project can be found in this issue.

We have organized two international conferences for March 1995 on the legal representation of minors, one co-sponsored by the Tauberschlag Institute of Criminal Law at Tel Aviv University, and the other co-sponsored by Palestinian Lawyers for Human Rights (Khan Younis, Gaza). The second conference will focus on new laws for new societies.

The activities of DCI-Israel have expanded, and this has been made possible by the hard work of the dedicated board members, advisory board members, committee members, supporting foundations, private donors, DCI-Israel staff and volunteers who have helped to build an effective human rights organization for children. The organization SHATIL (which provides advice to non-profit groups in Israel) has assisted us in this growing process. The *Israel Children's Rights Monitor* has reprinted last year's auditor's report by Braude & Co. Those friends who have kept the last issue can see the growth of earmarked donations.

Our activities and income have increased; however, it is still very difficult to obtain general funding to



cover research and development of new projects, or the ongoing work of our main office in Jerusalem.

We are grateful for the contribution to our work to our work by Ilana Abraham (who was our Office Manager and is now living in Los Angeles), and Ellen Hoffenberg-Serphati, who was our Development Officer until November. We would also like to thank Netta Amar, law student at the Hebrew University, who helped us with collecting material for this issue of the *Israel Children's Rights Monitor*.

We hope that all our friends will find this issue interesting and will better understand the work of DCI-Israel.

Please continue supporting our work.

Dr. Philip E. Veerman  
Coordinator-Executive Director  
Defence for Children International-  
Israel

Note from page 7

<sup>1</sup> In September 1994, the Jerusalem Council for Children and Youth, a local Jerusalem organization, started work again after an interval of two years. They will represent eight cases a month in West Jerusalem. DCI-Israel (which represents children in West and East Jerusalem and give consultations at the Juvenile Probation Service) and the Jerusalem Council for Children and Youth have established a coordination-committee on legal representation of children in the holy city.

#### The Projects of the DCI-Israel Section DCI-Israel's criteria for projects

DCI-Israel Section's criteria for selection of projects assures that its activities will not duplicate services provided by other agencies. Therefore, when members, staff or others present the Board with a request to adopt a project, the following shall be addressed:

(1) Whether the problem presented involves an articulated right or need of children under the U.N. Convention of the Rights of the Child or another international instrument that addresses the rights and needs of children.

(2) Whether the child's right or need is unrecognized or underrecognized in Israel and/or in areas under its control, and whether the problem presented has a substantial impact on an identifiable class of children and youth, especially on the rights and needs of disadvantaged youth.

(3) Whether there is a gap in existing services dealing with the rights and needs in question, either because those services do not exist in Israel or areas under its control, or because they are available on a grossly inadequate level, or because they are inaccessible to the disadvantaged group of children and youth in question.

(4) The Board is convinced that DCI-Israel can attract financial resources to develop the project to meet the needs in question within a reasonable period of time, and that those services can, in all likelihood, be maintained on behalf of the youth population in question, either by DCI-Israel, or by cooperative efforts between DCI-Israel and other agencies, or by the pertinent government authorities, given that they recognize their duty to provide the service and are prepared to do so.

#### DCI-ISRAEL POSTER

"If you've gotten yourself into trouble, you should know you have the right to a lawyer. Ask the juvenile probation officer or DCI-Israel"





## INTERNATIONAL STANDARDS

### ISRAEL AND THE IMPLEMENTATION OF THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD

On November 20, 1989 the General Assembly of the United Nations unanimously adopted the United Nations Convention on the Rights of the Child. The Convention represents a landmark in international legislation concerning children's rights which, prior to the adoption of the Convention, had taken the form of a mere Declaration. That Declaration (The U.N. Declaration of the Rights of the Child), which had been adopted on November 20, 1959, was not binding, nor did it include a comprehensive itemization of all provisions relating to children's rights.

During its early years, DCI-Israel made its overriding goal the signing and ratification of the Convention on the Rights of the Child by the Israeli Government. After two years of efforts aimed at informing and influencing government decision-makers, the Convention was ratified. The remaining step is its incorporation in Israeli law.

#### Children's Rights Guaranteed Under the Convention

The Convention addresses all areas of life in which the child's interests are involved and specifies the wide range of obligations of the State. For example:

- The State is obliged to protect children from any form of discrimination, to provide adequate care when parents or those responsible fail to do so, and to ensure the child's survival and development.
- The child has the right to the

highest possible level of health care. The child must also be protected by the State from dangers such as torture, exploitation, slavery, trafficking, and abduction.

- The Convention also ensures basic human rights such as the child's right to life, right to a name and a nationality, right to an identity, and right to privacy.
- The Convention protects handicapped and refugee children as well.
- Article 12, one of the most important articles in the Convention, grants the child "who is capable of forming his or her own views the right to express those views freely in all matters affecting the child," and this shall be provided in particular for the child in any judicial and administrative proceedings.

#### Implementing the Convention

Article 4 requires any state party to the Convention to "take all appropriate legislative, administrative, and other measures for the implementation of the rights recognized" in the Convention. "All appropriate ... measures" should be interpreted in accordance with the tradition and constitutional provisions of the country in question. Israel has no constitution, and treaties become law through the adoption of appropriate national legislation. Under Israeli law, the Convention — even when ratified — does not have the force of law until it successfully passes through the Knesset.



DCI-Israel continues to be at the forefront of the struggle to ensure that the ideas proclaimed in the Convention are effectively advanced by passage of the law in the Knesset. DCI-Israel has made a serious effort to explain to the Ministry of Justice the advantages of a law of implementation. The lobby for passage of the law has been successful in winning the support of several Knesset members from different parties, such as Benny Temkin (Meretz) the Chairman of the Sub-Committee on Children in Distress, Dr. Naomi Chazan (Meretz), Yossi Katz (Labor), Tamar Grozansky (Hadash) and Naomi Blumenthal (Likud). In their efforts to lobby for incorporating the Convention in Israeli law, DCI-Israel also maintains contact with the Head of the Law Committee, Dedi Zucker. The most important step forward came when DCI-Israel wrote to the Minister of Justice Prof. David Libai about a law of ratification, and an invitation followed to meet with Yehudit Carp, the Deputy Attorney General in the Ministry of Justice. Not only DCI-Israel was invited to this meeting; it also included organizations such as the Association for Civil Rights in Israel and the National Council for the Child.

#### Israel's Report to the UN Committee

Although Israel's state report to the U.N. Committee on the Rights of the Child in Geneva on the implementation of the Convention in Israel will soon be submitted, it is nearly a year late! DCI-Israel has written several times to the Director-General of the Ministry of Justice, Mr. Haim Klugman, urging the swift completion and a high quality report. Such a report should deal with all aspects relating to children's rights,

including health services, education, out-of-home placement of children, and civil rights. Given the complexity of the state report's treatment of the issues raised by the provisions of the Convention, DCI-Israel has also proposed that the Ministry of Justice bring in experts from other ministries and statisticians to assist the private international law expert who must write the document.

#### A proposed law of implementation

The basic question which was addressed in DCI-Israel's discussions with the Ministry of Justice was: Is there a need for a law of implementation, in addition to general existing laws, which would define human rights specifically as they pertain to children? The answer provided by DCI-Israel was that general instructions concerning the rights and freedoms of the individual cannot guarantee their proper implementation where children are involved, especially in the absence of judicial decisions by the courts enforcing compliance. A law of implementation gives the Israeli Supreme Court the possibility to interpret the convention, and human rights groups like DCI-Israel to bring cases to the court.

#### How Should the Convention Be Interpreted?

Articles 3 (best interest of the child); 5 (evolving capacities), and 12 (the child's opinion) outline the critical considerations for the State's interpretation of the Convention. There are many opinions regarding the notion of "the best interests of the child," mentioned in Article 3. The most disputed is the so-called "radical approach" which argues that the child

must be given exactly the same rights as an adult and that any discrimination based on age is wrong and should be abolished. A careful perusal of the Articles of the Convention, however, indicates that rights should be considered "in accordance with the age and maturity of the child" (Article 12). The Convention does not regard the radical approach as the dominant interpretation regarding children's rights.

The idea that rights are relative is also indicated in Article 5 which assures that the State will fulfill its responsibilities "in a manner consistent with the evolving capacities of the child." The two Articles mentioned serve as the guidelines for any decisions made by the state, and as the reference points for interpretation of all other Articles.

The Convention confronts the ideological tension between those who see a more passive role in children's decision-making as the essence of the child's best interests, and those who champion the children's right to active self-determination. In its call for making a law of implementation for the Convention, DCI-Israel emphasizes that the Convention is a balanced document which combines the two ideas in the best way possible.

It is neither appropriate nor desirable to overlook the outstanding and careful work which was invested in the drafting of the Convention in the past decade by a special working group at the U.N. and by non-governmental organizations, who together set a valuable process in motion. Formulating several specific laws to implement only several aspects of the Convention rather than

implementing the carefully balanced text of the Convention as a whole may, according to DCI-Israel, result in many generations of children being denied protection of their basic rights.

#### Making progress

In July, DCI-Israel, the National Council for the Child, and the Association for Civil Rights in Israel (ACRI) reached a consensus about a law proposal that would implement the Convention. This was jointly presented to Mrs. Yehudit Carp of the Ministry of Justice. The prospects are good that the Minister of Justice will bring it as a law proposal by the government to the Knesset.

This would be an innovative proposal, since in other countries having a common law tradition similar to Israel's, the Convention has only been ratified but not made the law of the land.

An article appearing in Part II of the *Israel Children's Rights Monitor* discusses this in greater detail.



### THE BASIC PRINCIPLES OF THE CONVENTION ON THE RIGHTS OF THE CHILD

The Articles of the Convention cover a great range of issues affecting children, but put simply, the Convention is about *Participation, Provision, and Protection*. The three project books also follow these groupings.

#### *Participation*

An exciting new aspect of the Convention is the way it encourages the participation of all children in decisions affecting them (Article 12), particularly in judicial and administrative proceedings affecting their future. Children are no longer perceived as the passive recipients of adult care or neglect but as individuals with their own rights.

#### *Provision*

The Convention lays down the basic needs that must be met for a child's survival, growth and development, e.g. the right to health care, shelter, nutritious food, and clean water. The Convention is clear that the family is the ideal place for a child and that the State is obligated to support and, if necessary, assist parents (Article 18).

#### *Protection*

It is a sad fact that for many children life is no better than it would have been a hundred years ago. The Convention obligates States to protect children from exploitative labor, physical and sexual abuse, the effects of war, neglect, and discrimination of any kind. States are charged to provide rehabilitative care for children who have suffered from maltreatment, neglect, torture or exploitation (Article 39).

### HOW TO TEACH THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: A NEW DCI- ISRAEL PROJECT FOR TEACHERS' TRAINING

DCI-Israel has commissioned a study by Rina Yitzhaki, a teacher at the State Teachers College, Seminar HaKibbutzim, which would help in the development of a curriculum for teaching the U.N. Convention on the Rights of the Child. The result of the study will be a book for teachers. This book is part of a new program by DCI-Israel designed to inform teachers about the Convention, to heighten their awareness and sensitivity regarding the abuse of children's rights, to encourage them to teach children how to protect their rights, and to give greater weight to the pupils' opinions (as Article 12 prescribes)..

Motivation for the project was sparked by several important events. The first was the ratification of the Convention by Israel in 1991. The second impetus behind the project was the recognition that "educational fashions" such as permissiveness and false presumptions — for example, concerning the certainty of "motherly love" — often cause teachers to be oblivious to the possibility that there may be children who are being abused by their families or by others in the community. Last but not least, is the lack of an educational material especially in Hebrew and Arabic regarding this subject.

The new project is based on two primary assumptions. Children's rights are at the heart of education. Thus, all facets of this issue should be addressed by educators and their institutions. This

leads logically to the second assumption, namely, that educators are the most appropriate vehicle for transmitting important information concerning children's rights. Since educators spend considerable time with children and their influence in guiding them is second only to that of parents, educators are expected to protect and nurture children's rights. The advantage of using teachers is that their emotional detachment and relative impartiality allow them to serve as "mediators" between life as it is and life as it should be, and to impart to children the concepts of right and wrong.

Awareness, knowledge and understanding of children's rights are essential to the learning process. Teachers must, therefore, be fully immersed in the subject, not only studying but also gaining first-hand experience of the different aspects of being a child, the environments in which a child grows, the child's rights as a member of a family, as a student, as a friend, and later on as a citizen. The teacher's role is two-fold: to build an educational milieu that respects children's rights in all education facilities, and to act as an "agent of change" that will transfer the basic ideas of children's rights to both the children and their parents.

The teaching of the Convention to the Israeli population, both children and adults alike, will have significant long-term effects. DCI-Israel hopes to continue developing different programs that will help influence the public's attitude and behavior toward children.

Seminar HaKibbutzim was selected by DCI-Israel because Mrs. Yitzhaki has started monitoring institutions and



individuals involved with the educational system, such as the Education Committee, the Education for Democracy Unit of the Ministry of Education, school principals, and supervisors. In addition, the Seminar has organized study days and conferences on children's rights.

Recently, the head of the Education Department of the Jerusalem Municipality agreed that DCI-Israel could teach in schools about the rights of the child and the UN Convention on the Rights of the Child. In Haifa, we are developing a plan with the Social Development Committee to teach adolescents in Haifa's Arab community about their rights. We are currently looking for more funding in order to move further into the education sector. We hope to report in our next issue of the *Israel Children's Rights Monitor* about the development of these activities.

On November 8 the Minister of Education, Professor Amnon Rubinstein will receive a DCI-Israel delegation to discuss how children in school can learn about the Convention on the Rights of the Child.

*The Jerusalem Post*, Monday,  
October 7, 1991

#### A TOOL FOR TEACHING HUMAN RIGHTS

by Irwin Cotler and Philip Veerman

For many people, human rights is a vague concept and almost the exclusive domain of the legal profession. Others may understand that they have rights, but feel powerless to assert them. The UN Convention On the Rights of the Child is a beautiful tool to teach human rights at an early age.

Indeed, the UN Convention on the Rights of the Child mandates a particular educational role for human rights, as states ratifying it are required to make the principles and provisions of the convention known to adults and children alike.

Furthermore, at a time when we are witnessing the "internationalizing" of human rights and "humanizing" of international law, ratification of these human rights treaties can be regarded not only as an entry into that process, but as holding out the possibility of making a contribution to it.

*Irwin Cotler, an international human rights lawyer, is professor of law at McGill University in Montreal; Philip Veerman is coordinator of the Israel Section of Defense for Children International.*

#### JUVENILE JUSTICE



## DCI-ISRAEL'S LEGAL AID PROJECTS

During the past year, DCI-Israel expanded legal representation to juvenile offenders in Haifa and the central region (Lod, Ramle, Rehovot, Petah Tikvah, Kfar Saba), and on a modest scale in West Jerusalem. This is in addition to projects already established in Tel Aviv and East Jerusalem. These legal aid programs implement Articles 12 and 40 of the United Nations Convention on the Rights of the Child. Article 12 requires Israel to ensure that children who are capable of forming their own views will have the right to express those views freely in all matters of importance to them, particularly in judicial and administrative proceedings that affect them. Article 40, concerning the administration of juvenile justice, provides that children charged with a criminal offence shall be treated with respect and dignity, and will be guaranteed certain minimal protection. These include:

- presumption of innocence
- the right to be informed of charges against them
- appropriate assistance in the preparation of their defense
- expeditious handling of the case
- the right to choose whether to testify or confess guilt
- the right of cross-examination
- the right to an interpreter
- the right to have their privacy respected during all stages of the proceedings.

The main idea is to ensure that children are not deprived of the fundamental rights granted to all human beings simply because they are children.

The goal of DCI-Israel's legal aid project is to improve the administration of Israel's juvenile justice system by ensuring the protection of the rights of young people charged with criminal offenses while obtaining the maximum rehabilitative benefits for youth under the jurisdiction of the court. At present, DCI-Israel is the only local organization that provides comprehensive legal defense for minors charged with criminal offenses. By providing qualified lawyers for children unable to afford legal counsel, DCI-Israel is providing invaluable assistance to youth embroiled in difficult legal situations.

### Juvenile Probation Service

Tel Aviv District

27 October 1993

Re: Legal Aid — Tel Aviv District

I would like to convey my gratitude and appreciation to DCI-Israel, which has enabled us to provide legal aid to minors who have broken the law and are facing prosecution.

The provision of legal aid has enabled us to maintain equal rights for a minor whose parents cannot afford a lawyer, so that s/he can also receive legal aid. It has allowed us to help youth in distress who need legal aid immediately, when arrested, and in order to prevent unnecessary arrest.

I have the impression that our provision of legal aid has led to a change in attitude on the part of the courts, and that they are now more inclined to appoint a lawyer for children. This is a very positive trend, and we are looking forward to further cooperation on this issue.

Sincerely yours,

Hanna Weinstock  
District Probation Officer

Young people charged with criminal offenses generally lack any basic understanding of legal proceedings. The project's highly-skilled lawyers advocate the most suitable rehabilitation programs for them, and are provided by DCI-Israel legal coordinator with the latest information on juvenile delinquency case law.

In mid-1993 DCI-Israel decided to provide monthly legal counselling sessions for young people involved in criminal cases, their families, and probation officers in the probation services of East and West Jerusalem, Haifa, and central and southern Israel. This initiative addresses the need to provide limited advice to young people who may not require full representation. Many children use this service, some expressing their apprehensions or preconceptions concerning the judicial system. Thus, young people often feel that confessing their guilt can benefit them at the sentencing stage of proceedings; they are usually apprised of the fact that any admission may be used against them in the trial. They are also informed of their legal status, options for their defense, the type and weight of evidence pertaining to the case, and the likelihood of conviction or acquittal. Adolescents are encouraged to ask questions and assist in preparation of their own defense. In addition to the monthly counselling sessions, DCI has recently started to provide weekly consultation on children's rights in its Jerusalem office.

In order to document its case-load throughout Israel and to determine the impact of services provided by its lawyers, DCI has started a case-management and evaluation system for

### Juvenile Probation Service

Beersheva

31 October 1993

Re: Legal aid for minors in the Southern District

I am writing to request that you examine the possibility of including the Southern District in DCI's Legal Aid Project for Minors.

We have received a token amount of legal aid from your project. The reactions of probation officers and of minors who have received legal aid indicate how essential and efficacious this service is.

Your attorney has done marvelous work in every case in which we have sought his assistance, and has proved how important it is for minors to have legal representation. As a result of our brief experience, the district's probation officers have appealed to me to obtain continuous and regular legal aid, as has been done in other districts.

We know you have limited resources, but we would be most grateful if you could expand your services.

Sincerely yours,

Rachel Sharvit  
Regional Juvenile Probation Officer,  
Southern District



**Juvenile Probation Service**Central District  
Petah-Tikva

July 25, 1994

Re: The Adolescent "M" from Our  
District - Exceptional Cases Committee

I am pleased to inform you that, following the appeal to the Exceptional Cases Committee and the ongoing and helpful involvement of your Advocate Yair Ronen, there have been some developments in the case of the above minor on two levels:

1. On the personal level, the boy's behavior has become more moderate and his functioning has improved; both he and his parents see an improvement in his self-image. The tension in the house has also lessened.
2. After your intervention services in the (extended) community have "opened up" and expressed their willingness to help the boy. The main achievement is the positive findings from the Institute headed by psychologist Prof. Reuven Feuerstein, which was consulted following your suggestion. As you suspected, the more positive diagnosis, has opened a window of hope for his rehabilitation and indicate a positive prognosis in contrast to those made in the past.

There is no doubt that these achievements are thanks to your lawyer, who spared no effort and worked tirelessly to promote M.'s interests. For this, we are deeply grateful.

To sum up: On July 5, 1994, in a court hearing on changing treatment methods, the remand order was rescinded to probation for five months.

Sincerely yours,  
Tamar Grady  
District Probation Officer

its legal aid projects, supervised by project coordinator Dr. Shmuel Shye and funded by the New Israel Fund.

**Judicial policy and legislation**

DCI-Israel has determined, as a result of its experience in representing and advising children and youth, that it is necessary to effect change in the juvenile justice system as a whole. It is therefore conducting seminars and study days for judges, jurists, lawyers, social workers, and mental health professionals, in addition to providing information to government authorities and decision-makers about children's rights.

**Law proposals**

DCI-Israel initiated two proposals to change existing juvenile law during the course of 1993. The first deals with interrogation and representation, and seeks to establish the rights of the child to fair interrogation procedures and suitable legal representation. Children should have the right to have their parents present during interrogation, a procedure currently regulated by the Ministry of Police; legislation would make compliance with the requirement more likely. Moreover, children should have the right to be represented by defense counsel in complicated situations, for example: one of the accomplices is represented by a lawyer; the minor is tried in a court other than juvenile court; the probation officer requests it.

The second proposal concerns the criminal records of minors. At present, the court has the power to dismiss the minor's case without recording its adjudication. It is therefore highly improper and unfair to disclose

information concerning the offense to future employers. DCI-Israel further proposes the shortening of the period after which criminal records should be expunged as a means to enable the minor to overcome the traumatic experience of conviction as quickly as possible and to return to a normal life, free from the onus of being labelled a juvenile offender.

**Seminars and study days**

DCI-Israel is preparing a conference entitled "The Child's Best Interests: The Dialogue in Court." In addition, the Israeli Bar Association and DCI are organizing a joint study day, with the assistance of the Medicine and Law Association, on the issue of representation of minors. A lecture for Bedouin youth took place in Tel Sheva, and summarized the rights of juveniles in delinquency procedures. The lecture was given at the request of the Probation Service in the Southern District.

**"Children in Law" quarterly**

DCI-Israel is in the process of producing the first issue of a quarterly journal on juvenile justice and children's rights targeted at lawyers, judges, social workers, mental health professionals, and others who work with children within the judicial system.

**Detention monitoring**

Visits to detention centers complement the legal aid projects. DCI-Israel has been monitoring facilities where youth are held both before trial and after sentencing. The Police Inspector-General agreed to its request to be able to visit all youth facilities. It currently monitors youth wings in detention facilities and jails in Jerusalem,

Ashkelon, Beersheva, and Hod Hasharon. Army facilities in Megiddo and Farrah were also visited.

DCI uses the following international instruments as its guidelines for monitoring facilities: United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules adopted in 1990); and the United Nations Convention on the Rights of the Child. Article 37 of the convention requires that the state should:

*Ensure that no child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment; that the arrest, detention, or imprisonment of a child shall only be used as a measure of last resort and for the shortest appropriate period of time; that due consideration shall be made of the needs of the child based upon his or her age, and that particularly, every child shall be separated from adults unless it is not considered in the best interest of the child to do so.*

Past monitoring visits took place in the Sharon Prison (Tel Mond), Matsar Darom (the Southern District jail), the Russian Compound jail (Jerusalem), Damoun and Abu Kabir. DCI-Israel is able to make an impact on poor conditions by discussing violations with prison authorities and publishing their findings. Its independent monitoring status provides sufficient incentive for authorities to take corrective action.

Separate interviews with guards and young detainees were held in Beersheva. The guards spoke candidly about their difficulties, which include complying with legal restraints on chaining minors, protecting young



detainees from violent cell-mates, and separating them from adult detainees. The lack of Arab guards or counselors for Arab youth creates additional difficulties.

In 1993 DCI-Israel therefore developed a proposal to use professional staff to coordinate monitoring visits by volunteer professionals, and to provide regular follow-up reports to prison and government authorities. We also have proposed to the director of the Sharon Prison that the Haifa Children's Rights Center will do some outreach in the Prison's youth wing. We believe that young people should be made aware of their rights (under Art. 42 of the UN Convention on the Rights of the Child). We hope that we will soon receive funding to enable us to expand this work.



#### Juvenile Probation Service

October 31, 1993

Re: Legal Aid in Jerusalem — East and West

Now that we are reaching the end of another year's work, I would like to note the importance of the legal aid given to minors who have broken the law and cannot afford a lawyer or legal advice.

Even minors who come under the provisions of the *Youth Law*, a law that calls for treatment, sometimes need legal aid during arrest, clarification of the accusation, plea-bargaining and appeal. The results of a trial can have a decisive effect on the minor, both in the way in which he is treated, and the future implications of a criminal record. The dialogue between one of our probation officers and a lawyer ensures maximal protection of the minor's rights and welfare, as specified by the above law.

I would like to thank you for the excellent assistance provided in East Jerusalem by Attorney Dr. Awni Habash, which has allowed young people in need to obtain trustworthy and devoted protection at a high professional level, given the special conditions in the eastern part of the city over the last few years.

This year we have also benefitted in West Jerusalem from the help of your Attorney Yair Ronnen, both directly for minors and their families, and advice for probation officers, as well as in dealing with issues of principle linked to the protection of minors and the interpretation of the law.

Attorney Yair Ronnen has expert knowledge of the legal field covered by the *Youth Law*, and his devotion to the rights of minors is truly remarkable.

We look forward to the continuation of this fruitful association,  
Sincerely yours,

Nava Kedar  
District Juvenile Probation Officer

#### Juvenile Probation Service - Haifa District

28 October 1993

Re: Legal Aid for Minors Project in the Haifa District

I feel I must pass on some comments to you regarding the Legal Aid for Minors project, which began operating in Haifa in November 1992.

The project has ensured protection of the rights of minors in the Haifa District who are accused of criminal offenses and lack financial resources; without it, these rights might well have been violated. Besides protecting legal rights, the intervention of the project has had other positive effects, such as the following:

Four very young minors, all new immigrants from the C.I.S., were accused of serious crimes. The boys and their families, who had not yet undergone full absorption in Israel, felt completely powerless in the face of the police and legal system. The intervention of your Attorney Joseph Rotman on behalf of the project helped protect their legal rights, and also made the families feel that there was someone to look after them and make sure they were not at the mercy of the system.

Another example: A minor's non-criminal file was transferred to the criminal category, and he was indicted two years after the crime was committed. This was after he had undergone a successful process of treatment and rehabilitation, which could have been completely destroyed after such a long trial period. The very fact that he had a lawyer strengthened his self-confidence before and during the trial, as well as the lawyer's ability to defend him in a proper and fair way.

Besides referring minors to the legal aid project, we have appealed to your Attorney Rotman on several occasions for informal advice, which has helped us to protect the rights of the minors in our care. I would like to point out that all our appeals to Attorney Rotman were answered immediately and efficiently, and with a pleasant and helpful attitude to the young people and their families.

We regard the continuation of the project as essential, and are convinced that after our preliminary positive experience this year, it will be used increasingly in the future.

Sincerely yours,

Tamar Knispel  
District Juvenile Probation Officer



## EVALUATING THE DCI-ISRAEL LEGAL AID PROJECTS

### Theoretical considerations

DCI-Israel is evaluating its legal aid project. All lawyers working for DCI-Israel have been completing questionnaires for the evaluating team, headed by Dr. Samuel Shye.

The evaluation of the project focuses on the measurement of the extent to which the performance of the lawyers meets with the expectations of DCI-Israel. Theoretical models of evaluation, however, suggest important additional aspects of assessment. A comprehensive evaluation of DCI's legal aid project would also pose questions regarding the extent to which DCI's expectations are in agreement with the lawyer's expectations of their own performance. This kind of assessment could shed light on any discrepancies between DCI's expectations and the lawyers' performance.

An evaluation project tries also to assess causal relations between two events related to the lawyers' performance — for example, the relationship between the actions undertaken by the lawyers and the results of those actions. More generally, evaluation of a legal aid program attempts to examine the extent to which two events pertaining to the legal process are related to, or in agreement with, each other. The events that are considered by the evaluating teams can be defined multidimensionally, in terms of the following classifications:

1. **Modality.** Whether they refer to an existing situation or a desired situation.
2. **Source of information.**

Whether they are assessed by the lawyers themselves or by DCI.

3. **Stage.** Whether they characterize the background of the minor or the nature of the minor's offense, or whether they occur before, during, or after the trial.
4. **Agent.** Whether they concern the minor, the minor's family, the lawyer, the probation officer, the prosecutor, etc.

The evaluation itself consists of establishing the level of agreement between any two events, each of which can be classified according to the above criteria. The agreement between two events can be assessed by two different methods.

5. **Method of assessment.** Direct assessment (allowing the lawyers themselves to compare the two events) or indirect assessment (in which the researcher compares responses involving the two events).

Therefore, we propose that the data for the evaluation of the legal aid program be based on a series of different types of responses by persons involved in different aspects of the program (including both the lawyers and DCI). The key figures involved in the legal process will assess events occurring at different stages and involving different agents. Examples of each of these sources of data will follow.

The first classification involves the type of responses, or **modality**, to be examined. Our theoretical model

suggests four modalities that should be considered by the evaluator: intents, observations, standards and judgements. Thus, we should try to record at each stage, those that actually occurred (observations), those that one feels should occur (standards), and judgements about what actually did occur.

There are important similarities and differences among these four modalities; a brief explanation will illustrate their utility. Both intents and standard deal with desired conditions; while intents are descriptions of what one intends to do in a given situation, standards are valuations of what one feels should happen in a given situation. Conversely, observations and judgements deal with existing conditions; while observations are descriptive statements about actual events, judgements are valuational statements about whether those events are good or bad.

Here is a concrete example of these modalities as they appear on the questionnaire. We posed several questions about the lawyer's contact with different **agents**: the probation officer, the police, the prosecutor, the witnesses, the minor, the minor's parents, and the minor's school (items 103-117). Items 103-107 of the questionnaire ask for an observation, which is a value-free description of what actually took place: "To what extent were you in contact with each of the following agents (the probation officer, the minor's parents, etc.)?" Items 108-112 ask for an intent. Intents are descriptive in nature and have to do with what one actually intends to do in a given situation: "To what extent did you make an effort to be in contact with

each of the following agents?" Finally, items 113-117 ask for a standard. Standards are normative in character, dealing with what should happen in general and containing a value component: "To what extent was it essential that you be in contact with each of the following agents?" We could also choose to ask for a judgement in this particular context, in which case we would want a valuation of the extent to which the lawyer was actually in contact with each of the agents: "To what extent does the level of actual contact meet with your satisfaction?" Responses to questions regarding these four modalities will allow us to make informative **comparisons** between what the lawyers actually did and what they intended to do or feel should happen in general. Comparisons such as these will form the basis for evaluation.

A second classification include the person (or **source of information**) whose responses are elicited. We regard the responses obtained from any one source of information as contributing to the overall evaluation rather than as definitive in and of themselves. Hence, in a comprehensive evaluation, we would try to collect information from as many different sources as possible. The responses elicited from these various sources would complement each other in forming a more thorough and reliable evaluation of the legal aid project. While in the present project there are two sources of information — DCI and the lawyers themselves — in the future (assuming we will again obtain a budget to continue our research) these sources of information could include probation officers, parents, social workers, teachers, and possibly even the minors



themselves.

A further classification involves the **method of assessment** — that is, whether the comparisons between the different modalities at the different stages of the legal process are made directly (by the respondent) or indirectly (by the researcher). For example, in the series of questions illustrated above (items 103-117 in DCI's questionnaire), we ask the lawyers for their descriptions of existing conditions (observations), descriptions of desired conditions (intents), and valuations of desired conditions (standards). We could also ask for similar information from DCI regarding observations, intents, standards and judgements. This additional information would allow us to compare, for instance, *indirectly* (through statistical analysis), the lawyer's expectations and valuations with those of DCI. Consistencies and discrepancies will be important components of evaluation.

In another question (item 131) we ask the lawyers to make *direct* comparisons between existing and desired conditions. Specifically, we ask whether a confession was obtained unlawfully in the case under examination. If it was, we ask whether the lawyers feel the confession could have been prevented if the minors had legal representation at the time, or conversely, we ask whether legal representation did not prevent the confession from occurring if in fact they were representing the child when it occurred. If the confession did not occur, we ask whether legal representation contributed to its nonoccurrence. By asking the lawyers to directly assess the causal relationship between certain events and legal

representation, we can get a better idea of how effective such representation was or could be at each stage of the legal process.

We have defined four general stages about which assessment should take place. The *background* of the minor, the minor's family, and the nature of the minor's offense constitute the first stage of assessment. The *antecedent* stage of the legal proceedings constitutes the second stage, and involves assessment of all the conditions prevailing before the trial takes place (e.g., requests for delay of proceedings, complaints of police brutality, visitation of the minor in detention, etc.). The *transaction* stage involves all legal activities that occur during the trial (e.g., plea bargaining, presentation of evidence, requests for type of punishment or rehabilitation, etc.). The fourth and final stage is that of the *outcome*, including the decision of the court, the length of sentence, placement of the minor in a detention or rehabilitation center, etc.

Another component of the evaluation project involves analysis of the relationship between the conditions prevailing at earlier stages of the proceedings and those occurring at later stages. For example, is visitation of the minor in detention related to the lawyer's ability to gather evidence for the minor's defense or to the involvement of the minor in the decision-making process? To what extent was the lawyer's contact with the probation officer, the police, the prosecutor, witnesses, and the minor's parents or school related to the presentation of evidence or the decision of the court?

In summary, through our multidimensional approach to the evaluation of DCI-Israel's legal aid project, we hope to make direct and indirect comparisons between events characterized by different modalities, sources of information, stages of the legal process, and agents of assessment so as to obtain a comprehensive, balanced evaluation. Preliminary results can be expected in about six months' time.

## WEST BANK LEGAL AID PROJECT

The West Bank Legal Aid Program was developed in 1992 as a joint venture between DCI-Israel and the newly-formed Palestinian section of DCI. Its aim is to protect the rights of youth appearing before the military courts, and it is the only program so to do. The project operates out of an office in Bethlehem.

DCI's dual aim is to provide representation for these youth and, through publication of information about the injustices that occur, to press for changes. During 1993, Arabic-language brochures describing the rights of arrested youths were developed in order to offer information to arrested youngsters and their families about their rights.

There is no separate juvenile justice system within the West Bank, nor are there juvenile judges or probation officers to report to the courts on the minors' social and psychological background. It is difficult for families and lawyers to gain access to youth during their period of interrogation, during which "moderate physical pressure" is sometimes employed.

The military courts fail to handle the cases of minors differently from those of adults. DCI-Israel's Detention Monitoring Project, which undertakes visits to detention facilities, has raised issues with the military authorities such as provision of educational and social work.

Many West Bank lawyers have been educated outside Israel and often have



difficulty with Hebrew, the language of the military courts. They may have minimal training on criminal evidentiary issues, criminal procedure, and substantive law. These problems are exacerbated by their young clients' lack of Hebrew and the lack of adequate provision for interpreters.

The program's lawyer also handles cases where youth are injured during confrontations with settlers or the IDF.

While the DCI Palestinian section provided input from the field, DCI-Israel tried to improve the human rights situation in the West Bank by meetings with military authorities in the military judge advocate general's office regarding criticisms of the system and its negative impact upon the young. The head of the international department of the military judge advocate general's office recently showed willingness to accept the idea that special military judges be appointed to try juveniles, and that such judges be trained by Israeli juvenile judges.

DCI-Israel also requested that soldiers not be sent to break up peaceful demonstrations of minors or instances involving waving of the Palestinian flag (an act forbidden until after the signing of the Israel-PLO Declaration of Principles).

DCI-Israel introduced consistent documentation of the program's cases in preparation for the establishing of a case-management system (as used in DCI-Israel's legal aid projects) and in order to facilitate an evaluation of the impact of legal representation. Since the DCI-Palestine section has grown during the past two years, it can now take a

more active role in the management of the project. In August 1994 a joint steering committee, responsible for all project decisions, was developed. In addition to this, a project director will start working in November 1994 and another office will be opened in the north (Tulkarim area) to provide more legal services to youngsters.

The joint project's lawyer, Subgi A'Jabari visits his clients in Megiddo and Farrah military detention centers as often as possible. He is assisted by an office manager in the Bethlehem office. The project manager maintains regular contact with other relevant organizations such as Al Haq, the Association for Civil Rights in Israel (ACRI), B'tselem, the International Committee of the Red Cross, HaMoked, the Center for the Rights of the Individual, Mandela Institute, Palestinian Human Rights Information Center (PHRIC), the Quakers, East Jerusalem Legal Aid Center, and UNICEF, (West Bank office).

Although the government of Israel and the PLO signed an agreement, the human rights situation in the West Bank has not yet improved. As long as minors continue to appear in the military courts and an example of good lawyering for children is needed, the project will continue its important task. The majority of minors in 1993/4 came for the Hebron area, some from the Bethlehem area, and a few from the north (Tulkarim).

Last but not least, one must acknowledge the success the project has helped foster in maintaining cooperation, under difficult circumstances, between Israeli and Palestinian colleagues motivated by a mutual interest in children's- and human rights.

*Brochure of the joint project for minors in the West Bank informing them of their rights when arrested.*



## JAIL WATCH: VISIT TO THE ABU KABIR JAIL

Members of the Team for Inspecting Conditions of Imprisonment and Detention:

**Judge Eli Nathan**, Chairman of the Team for Inspecting Conditions of Imprisonment and Detention - DCI-Israel

**Dr. Philip Veerman**, DCI-Israel Coordinator.

**Adv. Yair Ronen**, DCI-Israel Legal Coordinator.

**Ze'ev Zamir**, DCI-Israel Office Manager.

**Adv. Omi Morgenstern**, Activities Coordinator of Team for Inspecting Conditions of Imprisonment and Detention - DCI-Israel

Representatives of the Juvenile Probation Service participating in inspection:

**Eti Barkai**, District Probation Officer, Tel-Aviv

**Ari Kordonski**, Juvenile Probation Officer in charge of liaison with minors in detention. (hereinafter: the probation officer).

### Hosts

**Captain Shimon Berkovitz**, the commander of the jail, about to terminate his duties (hereinafter: the commander).

**Major Raphael Gedda**, commander-designate.

### Summary of Report's Conclusions

The Inspection Team fears that the current conditions allow the potential recurrence of serious acts of sadistic behavior, violence and degradation, of the kind described in this report, and calls for immediate policy changes in relation to the detention of minors, in



order to ensure a reasonable existence for detainees.

#### General Information

The jail in Abu Kabir is the largest in the country, with a population of 600 persons from all over the country, amongst them women and juveniles. (It should be noted that about 60% of the detainees are persons under sentences of imprisonment, who are not supposed to be there). The jail is divided between the Adults section, the Women's Section, and the Juvenile Section. Our visit was limited to the Juvenile section, populated exclusively by young boys.

#### The Juvenile Section:

The number of detainees:

The official absorption capacity of the Section is for forty detainees, but in reality there are usually a great many more. A number of factors have contributed to this situation. First of all, despite the initial intention that it serve as a detention center for the Dan Region, the place has actually become a detention center for a large number of juveniles from the Central Region (occasionally between 40%-50%). In addition, quite often prisoners are incarcerated there for extended periods, though they are supposed to be subject to the Prison Authority. (On the day of our visit, we saw one youth who had been there for a period of one year). In answer to our question the probation officer informed us that recently the space allotted for detained minors had been reduced, but that even so there was still no absolute separation between adults in need of protection and minors. Proof of this was provided in the case of a minor being burnt with boiling water by one of the adult detainees in need of protection.

The number of juvenile detainees is particularly large, occasionally reaching 30 above the permitted quota. When asked at what stage he would refuse to accept additional detainees, the commander of the jail replied *"When it becomes impossible to move inside the cells."* In our opinion *the absorption of people above and beyond the number of beds as a matter of course reflects a policy of dehumanization* of the detainees, and creates fertile ground for incidents of violence and injuries amongst the detainees.

#### The Division of the Detainees

The chronic shortage of space further impedes the necessary separation of the detainees from each other. The commander explained that according to the Police Ordinance, the juveniles are to be divided wherever possible according to principles of age and criminal past. In reality, the detainees' cells do not allow compliance with the provisions of the Ordinance, and the only separation efficiently maintained is the separation of Jews from Arabs, generally residents of the Occupied Territories, and that of security prisoners from regular criminal prisoners.

As a result, there is no equality in the actual internal division within the cells themselves. For example, a section is comprised of ten cells with four beds in each one. On the day of our visit there were 42 juveniles imprisoned. Even so, while in one cell there was only one prisoner, regarding whom the Commander explained that his cell mates had requested to be separated from him due to tensions between them, in another cell containing four beds, there were eleven juveniles (these were

youths from the Gaza and Judea and Samaria Zones who had been arrested for illegal presence within the State). Each of those who were questioned separately reported that ten youths had slept there during the night, even though it should be mentioned that they were only staying there in transit, and were not kept there for longer than 48 hours.

The probation officer also mentioned the continued joint accommodation of the juvenile and adult detainees. The commander of the jail responded to this by saying that the jail authorities were doing their utmost to prevent this "as far as possible." Even so, we were also informed of an event in which one of the detained youths had been injured; this was the same youth who had complained to us that boiling water had been spilt over him by an adult detainee. Verbal communication is also maintained between the youths and the adults. All this indicates that the policy practiced in the jail is in clear contravention of the legal provisions mandating strict separation between youths and adults. The youths spoke to us in hushed and hesitant tones and our impression was, that in the absence of appropriate separation, the weaker detainees had become easy prey for acts of violence perpetrated by the stronger ones.

#### The Detention Cells

**General:** The rooms are small, dark and without any clean airflow. The detainees are allowed to go into the courtyard three times a day. The food is cooked on the spot and given to the detainees in their cells and the leftovers normally remain in the cells for extended periods of time. Separation is

maintained between detainees for interrogative purposes and other detainees; the right to make telephone calls, to buy products in the canteen, to bring in reading materials, radios, walkmans (without recording) and television (if they are able and wish to do so) is denied to detainees prior to their trial. According to the jail commander these rights cannot be organized for detainees until the termination of the legal proceedings. We see this distinction as an improper form of pressure and a limitation of freedom that is not warranted by the aims of the detention. According to the commander there is no possibility of organizing any occupation for detainees until the termination of legal proceedings, including those in detention for extended periods of time. The detainees who have not yet been tried are not allowed to be visited by members of their families, and detainees being interrogated are prevented from having any kind of connection with their families. This particular policy is not consistent with the purposes of the detention. Although the detainees are allowed to meet their legal counsel, the fact that they are prevented from personally notifying their families that they desire such representation indirectly prejudices their right to appropriate legal representation. In this context we were informed that the detainees are permitted to meet advocates, and that the confidentiality of their conversations was also ensured, even though "not in ideal conditions."

With regard to the bathing facilities, recent renovations allow the flow of hot water into the shower cubicle in each cell. There is no separation between the living quarters and the shower



cubicles or the toilets. In some of the cells the showers are not in working order, and in the toilets we visited there was a stench which pervaded the entire room. This verifies the detainees' complaints about continual blockages. The youths told us that upon discovering such a blockage they are normally provided with a "pompa" (rubber suction pump), which only serves to increase the smell, since it causes the excrement to come up. During our visit too, after we pointed out the fact that there were stinking overflows in some of the cells, in the presence of the commander and his designated successor the policeman said that he would give the youths a "pompa," in order to clear the blockage. This indicates that the jail authorities have resigned themselves to the situation and see no need to improve it.

#### Policemen in the Juvenile Section

There are two policemen in the Juvenile Section. This number is particularly low and prevents the requisite attention being given to a section designed for 40 youths, some of them violent. These policemen have not undergone any special training for working with juveniles. According to the commander of the jail "they know the law and have been working for years with juveniles." There are no criteria for the disqualification of policemen by reason of their lack of suitability for the job.

In answer to our question, the probation officer informed us of the extensive degree of violence prevalent in the jail and of the high turnover of police staff responsible for the Juvenile Section.

Some of the youths also gave members

of the inspecting team reports of cases of police brutality towards them, including beating with a stick; they were however afraid to give their names. The commander told us that in the event of a policeman being suspected of violent behavior, immediate measures were taken against him, including suspension from his job until the termination of the clarification or the trial.

Our impression was that the lenient attitude adopted with respect to the perpetrators of violent acts amounts to stripping the isolated detainee of any mechanism for his defense.

#### Physical and Mental Treatment

According to the paramedic in the jail, there is a doctor on duty in the jail yards for six days a week, and on the seventh day he can be reached by means of a beeper. The infirmary itself is divided into two sections, one for the minors and the other for the adults. In addition there are also two paramedics on duty 24 hours a day. The paramedics refer the detainees to the doctors at their own discretion. On an average day between 150-200 detainees are treated by the medical staff; the detainees are permitted to go to the infirmary during meal times and during the exercise times in the yard.

In answer to our question regarding the procedure in the case of attempted suicide, the paramedic told us that he could reach the site of the attempt very quickly, and that in the majority of cases a doctor was also called in. He added that "Only when we have no choice, if it becomes clear that the detainee is about to injure himself, are we forced to tie him up."

According to the reports of several youths, one of them had injured himself while attempting suicide. His friends found him and attempted to call for help. Some time later the paramedic arrived and his first and last action was to dress the youth's wounds and chain him to his bed until the morning. No doctor was called to the place, nor did the youth ever actually see a doctor. According to the paramedic the doctor is informed in all cases of attempted suicide. With respect to attempted suicides, no psychiatric diagnosis is made unless the person is suspected of being mentally ill and in a psychotic state. This means that if a minor attempts to commit suicide there is no automatic report to the probation officer or to any other remedial person. Generally speaking this information is not voluntarily supplied by the representatives of the State to the judge. The result is that the Court is liable to take no account of this fact when deciding whether to extend the imprisonment.

As stated above, a social worker representing the probation officer works in the jail. Unfortunately this service is not guaranteed even the most minimal conditions for its effective functioning: there is no separate and private room, which is essential for an effective and efficient meeting with the youth and which can allow the disclosure of unpleasant and embarrassing details of an attack or maltreatment. After speaking to us, the commander promised that he would do his best to ensure the introduction of such conditions.

An examination of the jail's policy indicates that the police personnel see

themselves as authorized and qualified to fill the role of a psychologist or a psychiatrist, while the detainee is damaged, without receiving the mental treatment which his attempted suicide shows he so desperately needs. In our opinion, the determination of whether an attempted suicide is demonstrative, and the determination of the method of treatment are all within the psychiatrist's field of expertise, and the failure to administer treatment is both damaging and dangerous. Each and every suicide attempt should be regarded as a cry of distress, necessitating a psychiatric diagnosis.

#### Chaining Up of Youths

When we arrived at the jail, we witnessed the entry of a youth into the jail. The youth was particularly young and skinny and it became clear that he was 14 years old. He had handcuffs on and his legs were chained together. It should be noted the members of the inspecting team received many reports of a general policy of chaining every detained youth.

We raised the subject with the commander; his attitude was that the policy of chaining each and every juvenile detainee was inevitable, given the damaging consequences of an escape, both to the image of the police and to the public at large, although he was aware of the Police Ordinances. It became clear that in contravention of the Police Ordinances and the Law, the policy was to chain every minor when he was taken out of and brought back into the jail, and that no attempt has been made to find a balance between the protection of public welfare, and the protection of the detainee's freedom and his basic human dignity.



### **Reference to a Specific Case** **Severe maltreatment by juvenile detainees of their cellmate.**

Two days prior to our scheduled visit to the jail, DCI received a report of a case of severe maltreatment by youths of their cellmate.

A copy of the indictment is attached herewith, which speaks for itself. According to the indictment the acts were perpetrated on a youth suspected of property offenses, for whom this was his first detention. The youth quite innocently related that he had given the police information regarding the involvement of his partner in the crime. Within a short period of time the other cellmates had been informed that the youth had given information regarding his partner, and this served as an excuse for his protracted maltreatment at the hands of the other four inmates in the cell. The police first became aware of the case during another youth's interrogation. According to the youth being interrogated, the boy with him in the cell had been screaming for an extended period of time during which he had suffered maltreatment day and night, and had not been protected in any way by those in charge of order in the jail. It was blatantly clear that the perpetrators would not have felt free to act as they pleased, unless they had assumed that there was no control of their behavior. According to the information in our hands, those suspected of inflicting the injuries have no previous record of similar crimes of violence. This was clearly a case of a cruel and sick situation that arose in the pressure-cooker conditions of the jail. According to the minor who had been injured, when he was sent for interrogation he reported the brutality

toward him. It was thus clear that had the youth been given the appropriate protection by means of proper supervision of the cell, it would have been possible to prevent, or at least substantially limit the severe mental and physical damage done to him.

We have a few comments to make here. Firstly, the jail authorities should have known that this was a case of partners in crime, one of whom had given information regarding the other, and they should have given the appropriate attention to their placement in the same cell. The commander explained that they had been unable to surmise that a youth would have told his cellmates about having given information about his partner in crime. We find this explanation unsatisfactory. The conditions of the jail must also protect the more naive detainees with no criminal experience. It is inconceivable that the assignation of the detainees to separate cells be done without knowledge of such a pertinent fact and without consideration being taken thereof.

Secondly, the supervisory measures did not prove to be effective. According to the commander, during the night a policeman is supposed to do rounds of the cells every hour, and every quarter of an hour in cases where there is a chance of a minor being in danger. These rounds did not take place at all, given the fact that the horrendous act continued for several hours, as well as the fact that the victim's screams were not heard.

Even were there strict compliance with the procedures, there is no certainty that the detainees would not silence their

victims in some cases. The fact that a detainee cannot meet a social worker under conditions that guarantee the confidentiality of the conversation effectively prevents many reports of injuries to minors, especially in cases of sexual maltreatment. Given these circumstances we consider that the current situation is one which will allow such disasters to reoccur repeatedly in the future.

### **Conclusions**

According to the claims of the youths, it would appear that the jail authorities have demonstrated indifference to the detainees; their attitude towards the conditions prevailing in the cells, which are below the appropriate level, is that this is the inevitable reality. With this as the background, our impression is that the current conditions create fertile ground for the eruption of violence and the occurrence of disasters, in the absence of any protective mechanisms.

The denial of the right to receive reading material, a radio, etc. in the cases of detention prior to trial, in addition to the absence of appropriate arrangements for the provision of minimal occupation for the detained juveniles for an extended period, creates frustrations which are liable to lead to criminal acts. Chronic boredom and tension-packed living conditions, which are both difficult and demeaning, all invite situations of violence, injuries and maltreatment amongst the detainees.

Ensuring a minimal standard of living conditions will, in the final analysis, be of benefit not only to the detainees themselves, but also to those responsible for them; on the other hand, repeated occurrences of horrendous and

despicable acts within the precincts of the jail are liable to endanger public security, for it may be assumed that judges will hesitate to send a minor for detention under conditions that seriously endanger his physical and mental welfare. In addition to the moral and legal responsibility of preserving the human dignity of the detainee, there is also a special obligation here, in as much as our concern is with minors, and occasionally literally children, whom society is duty-bound to protect and rehabilitate. Even the briefest stay within the walls of the jail is liable to leave indelible and destructive scars that will impede the mental development of the youth and influence his behavior for the rest of his life, unless the necessary conditions for a reasonable existence are ensured.

The State of Israel is obligated, as a State committed to the upholding of the dignity of persons and their basic rights, to ensure that minors are not detained under inhuman conditions, or under conditions allowing maltreatment or the performance of other crimes.

It should be noted that the jail authorities gave the necessary attention to the proper maintenance of the buildings of the section.

### **Recommendations**

1. The prosecution must inform the Court that the jail has reached its full occupancy capacity - i.e. that there are no free beds for the youth whose case is under deliberation, as part of the motion for detention, and it must ask to receive appropriate instructions.
2. The sewage system must be



aired immediately, and its continued proper functioning be ensured. No cell in which the sewage has overflowed is to be used to house detainees.

3. There must be strict maintenance and cleanliness in the cells and must be taken away at a reasonable period.

4. No minor is to be chained by reason of his being detained, and there must be compliance with the standing Police Ordinances and legal provisions requiring a balance between the protection of the freedom and dignity of the minor and the protection of public welfare.

5. The cells must be organized in a manner that allows an efficient, private and secret meeting with a social worker. As long as the current conditions prevail, there is always a serious threat that only some of the cases of maltreatment have been disclosed. The probation officer is to be notified of every case in which there is a suspicion of injury being done to a minor.

6. The juvenile under detention must be allowed to exercise his right to personally notify his family of the fact of his detention.

7. Every juvenile who attempts to commit suicide must be immediately diagnosed by a psychiatrist, and must be given the required treatment as determined by the psychiatrist, not only those cases deemed as "psychotic." The prosecution must inform the Court of the

attempted suicides as part of their motion for detention.

8. Strict supervision of the detainees must be maintained during the night, being based on all such information as is liable to indicate danger for any of the detainees, such information being at the disposal of the Police.

9. It must be ensured that the policemen charged with guarding the cells be free of any tendency to violence and of any past record of significant convictions of offenses involving violence. The suspension of all policemen under reasonable suspicion of violent behavior towards detainees must be ensured.

10. Every minor must be ensured free access to a doctor.

11. Every detained minor, including minors detained prior to their trial, must be allowed to bring reading materials into his cell, as well as a radio, a walkman (with no recording), or a television, and must be allowed to buy items in the canteen.

12. There must be absolute separation between minor and adult detainees, as mandated by Law, and conversation between them is accordingly to be prevented.

13. Minors being detained for the first time must be separated from those detained in the past.

14. There must be an examination as to whether the appointees of the jail were negligent in the discharge of their duty to take appropriate steps to ensure the

personal safety of the juvenile who was injured by the maltreatment of his cellmates, as well as that of the juvenile who was burnt by boiling water on different parts of his body at the hands of an adult detainee.

#### STATE OF ISRAEL

Juvenile Court of Tel Aviv —  
Jaffa

October 13, 1994

To: Defence for Children  
International — Israel  
Jerusalem

Dear Sir/Madam:

I acknowledge, with thanks, receipt of your letter dated September 23, 1994, enclosed with the report of a visit to the Abu Kabir jail.

Juvenile judges have also visited the jail and saw first-hand the difficult conditions there. Special note was taken of your recommendations at the time.

Your activities are praiseworthy and your recommendations should be implemented immediately. I am aware of some that have already been implemented.

Sincerely yours,

Eli Sharon

Vice President of the Juvenile Courts

#### ANNOUNCEMENT

#### TWO INTERNATIONAL CONFERENCES ON JUVENILE JUSTICE

Defence for Children International, Israel-Section (DCI-Israel) is organizing two international conferences to advance theory, policy, practice and research on the legal representation of juvenile offenders worldwide. One conference is organized in cooperation with: Tel Aviv University, The Buchman Faculty of Law, The Prof. Dr. Raphaël Taubenschlag Institute of Criminal Law. The other conference is organized in conjunction with Palestinian Lawyers for Human Rights, Khan Younis (Gaza).

The first conference on the representation of juvenile offenders will be held on March 27 and March 28, 1995 in Tel Aviv, and the other on March 30 and March 31, in East Jerusalem.

The American Bar Association — ABA Juvenile Justice Center in Washington, D.C. is co-sponsor of the conferences.

Both conferences are organized in cooperation with the Criminal Justice Branch of the United Nations.

#### THEMES

DCI-Israel requests submissions of papers, for both conferences, on the following topics:

- (A) Analysis of the universal right to legal representation for juveniles with reference to international instruments, including the UN



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- (A) Analysis of the universal right to legal representation for juveniles with reference to international instruments, including the UN



Standard Minimal Rules on the Administration of Juvenile Justice (Beijing Rules) and The UN Convention on the Rights of the Child.

- (B) Innovative legal representation programs and practices which can serve as models for other countries.
- (C) Analysis of philosophy and policy relating to children's rights.
- D) Representation of minors in difficult situations.
- E) New laws for new societies.

Please send requests to participate to:

Defence for Children International-Israel  
43, Emek Refaim St., P.O. Box 8028  
Jerusalem, Israel 98010  
Fax: 972-2-631241  
Attention: Debra Fattel, J.D.

- A) *Analysis of the universal right to legal representation for juveniles with reference to international instruments.*

The first conference will appoint a committee to analyze the implementation of the right to legal representation including the following questions:

- Do the current international instruments sufficiently guarantee the right to legal representation?
- Is legal representation always in the best interests of the child?
- Can and should legal representation of juveniles be secured through international documents? How?

- What are the primary criticisms of international documents re: the legal representation of juveniles?
- B) *Innovative legal representation programs and practices which can serve as models for other countries.*
- How can free legal representation be implemented in light of budgetary and political constraints?
- How can the introduction of juvenile justice administration improve system functioning?
- How do models of alternative systems (Scottish hearing system, Swedish model with no juvenile courts, New Zealand family conference model) relate to Article 40 Section 3 (b) of the UN Convention on the Rights of the Child?
- What are models of effective alternative dispositional programs?
- Programs which increase juveniles' understanding of their rights.
- The juvenile's view of the system: concerns, criticisms and suggestions.
- Multidisciplinary approaches to juvenile justice.

**WORKSHOPS:** The conference will also provide the opportunity for the exchange of information on technical issues of representing juvenile offenders including:

- Relating to parents and guardians of the child.
- Skills needed to interview children effectively, explain their rights, the legal system, prepare them for trial, etc.

- Child development issues.
- C) *Policy and philosophy of children's rights and legal representation.*
- Feminist perspectives on juvenile justice.
- What are the emerging views of children's rights that are replacing *parens patriae*? (e.g. one more firmly rooted in empowering children and removing child incapacity issues).
- What is the role of the attorney re: empowering children vs. protecting children's best interests?
- How can children benefit from legal representation? How can it potentially be harmful?
- How do cultural and technological development relate to juvenile justice philosophy and policy?
- What are the roles of parents and guardians in consent and waiver issues at various stages of jurisdiction?
- Is waiver of counsel appropriate for the juvenile justice system?
- Would children's rights be better served by dismantling the juvenile justice system and giving children equal rights in adult court?
- The challenge of integrating juvenile justice concepts in emerging political systems (Gaza-Jericho, Eastern Europe).
- What are the main critiques of the predominant juvenile justice systems in the world?
- Determining and justifying minimal age of responsibility.

- D) *Representation of minors in difficult circumstances.*

The conference will serve as a forum for representatives of different cultures to raise awareness of emerging issues of juvenile justice such as: street children, security offenses, child prostitutes, death penalty, children with emotional and mental disabilities, and children used for criminal activities. Topics which may be addressed include:

- What emerging issues are endangering the lives of children?
- How to discern the special needs of children in difficult circumstances and how to protect those rights and needs.
- How to secure the rights of children with certain disabilities such as emotional, linguistic, and learning impediments.
- Juveniles in adult prisons.
- Juveniles accused of political crimes.
- Torture of juveniles during interrogation.

At the conference in East Jerusalem with Palestinian Lawyers for Human Rights, PLHR will present a first draft of a law proposal which aims at giving the Palestinians the best juvenile justice possible. Representatives from systems in the making, such as South Africa, will present the progress they have made to date.

There will also be reports from former communist states as to how they have reorganized their juvenile justice systems.



*Yediot Aharonot*  
July 24, 1994

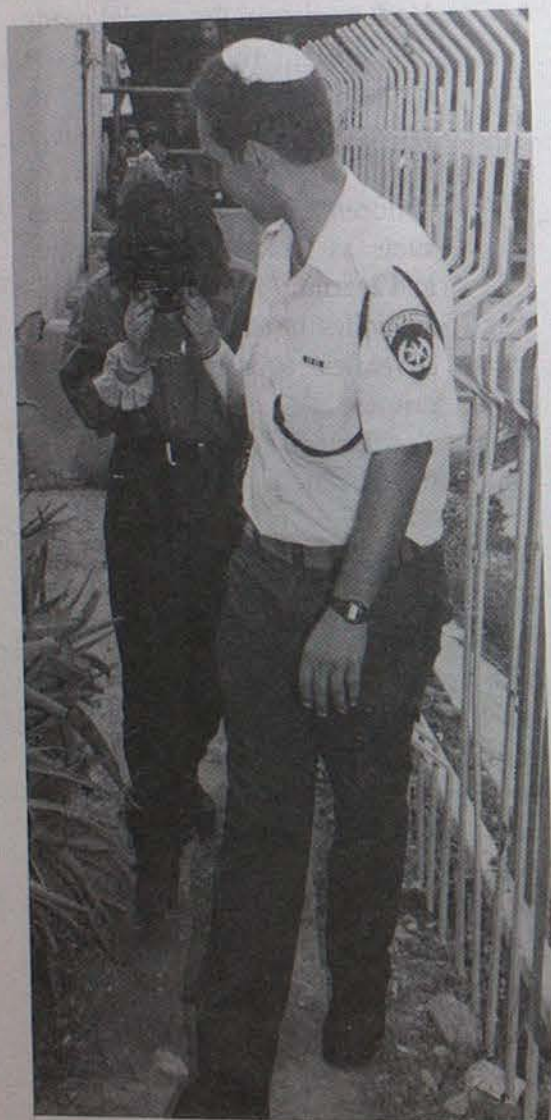
### Police Disregard the Law: Children are Placed in Handcuffs

"The police are disregarding the law and are placing children and youths in handcuffs when they are brought from prison to court and back," claims DCI-Israel.

DCI's Advocate Yair Ronen has requested from the Inspector General of Police that this "forbidden practice cease." Ronen said that accompanying police officers were ordered to handcuff the children, which is completely against the law.

"This is both a punishment and humiliation," said Ronen, and explained that in one case the accompanying officer explained to him that it was decided to handcuff the boy because he was homeless. "If he escapes, it will be difficult for the police to find him."

In response, the police admitted that minors should not be handcuffed except in special circumstances, and that in such exceptional cases, DCI should refer their specific complaints, which will be investigated.



## EMPOWERING CHILDREN



## DCI-ISRAEL'S HAIFA CHILDREN'S RIGHTS INFORMATION CENTER

On December 1, 1993, DCI-Israel opened the Haifa Children's Rights Information Center. Based on a very successful European model, the center has already proven to be a unique and necessary service. Its main purpose is to promote the implementation of Article 13 of the United Nations Convention on the Rights of the Child (which addresses the issue of freedom of expression and asserts the child's right to seek, receive, and impart information and ideas), as well as to the evolving capacity of the child to express his or her opinion (Art.12).

The goal of the center is to enable young people to make decisions regarding their legal problems by providing them with an accessible advice center and legal services. The center was opened by the Deputy Minister of Education, Mr. Micha Goldman, in the presence of the Mayor of Haifa, Mr. Amram Mitzna. In its first few months of operation, it has provided services to over thirty children from age four to eighteen, and has handled twice as many inquiries relating to a broad range of children's issues: their rights in family conflicts, including their right to be heard in determination of custody and physical and sexual abuse cases; their rights in the work place; difficulties they may encounter in school; questions about adoption and how to obtain information about the identity of birth parents; and their rights as citizens.



Deputy Minister of Education, Culture and Sport Micha Goldman, MK, opens the DCI Children's Rights Information Center in Haifa.

The center reaches its target audience of young people through posters, brochures, meetings in schools and community centers, and through interviews for radio, television, and the press. In addition, it gives lectures for school principals and community organizations.

The center's professional staff, Advocate Pamela Butter and Coordinator Yogev and trained volunteers answer questions on children's legal problems during crisis, walk-in, and other consultations while seeking, as far as it is possible, to involve the young people in solving their own problems. The children are advised of their rights and the options available to them, supported during the decision-making process, and, if necessary, accompanied to meeting with authorities or court hearings.

The center is currently developing its volunteer training to cover crisis intervention, community support, and interviewing/listening skills. Its staff work in cooperation with social welfare, school, and other community services in order to achieve long-term solutions to children's problems. Many children use the center's services since they find it a less intimidating environment than that they face at government and other service agencies: if the child complains about services provided by another agency, the center informs the responsible authority and attempts to mediate a solution to the problem. As a new service, the center is trying to expand its range of contacts with other agencies in order to improve the overall quality of services provided to children within Haifa.

During the next year, DCI-Israel hopes to raise sufficient funds to employ, in

addition to the present staff, an outreach worker, as well as to finance advertisements publicizing its services for Arab youth and Russian and Ethiopian olim in Haifa and the north. At present, DCI-Israel's ombudsman for immigrant children receives referrals at the center once a week. Given adequate resources, the center will be able to distribute information on children's rights and on how to access its services in Hebrew, Arabic, Russian, and Amharic.

During its brief existence the center has outgrown its one-room office on the Hadar and is in the process of moving to more spacious premises at 5 Nordau Street in Haifa (Hadar). Children are likely to respond even more favorably to the privacy offered in this new facility.



## DCI ISRAEL'S OMBUDSMAN FOR IMMIGRANT CHILDREN

DCI-Israel established the Ombudsman For Immigrant Children project in October 1993. Mulatu Dessie, a skilled Ethiopian Israeli social worker, was appointed as DCI's Ombudsman.

He started work by introducing himself to Ethiopian children, teenagers and their families throughout Israel, in trailer parks for new immigrants, absorption centers, and residential schools, and by contacting the different agencies serving this population.

Because of their cultural background, Ethiopian children and parents are unfamiliar with the process of translating certain problems into the language of rights and then taking steps to do something about them, such as complaining or writing a letter.

The primary goal is to empower Ethiopian children, their parents and their community to access equal opportunities and services. Strategies are now being developed to facilitate this empowerment. The Ombudsman is working to gain trust and acceptance, so he can go on to become a role-model to teach parents and youngsters how to claim their legal, educational and health-care rights. He is also documenting problems in accessing necessary services, and conducting conferences and study groups to increase public awareness and develop strategies to solve problems such as the lack of informed choice in selecting residential schools (e.g., between secular or religious boarding schools). Further, he is publicizing his work both among the Ethiopian Jewish community and countrywide, and with DCI-Israel's legal coordinator he can take legal action, when necessary. In his dealings with the myriad of competitive turf-guarding Ethiopian community organizations that have mushroomed around the newcomers, the Ombudsman strives for impartiality. The community is also split by a number of political and social divisions.<sup>1</sup> DCI-Israel's

ombudsman tries to cooperate with all immigrant organizations.

The Ombudsman project is supervised by an advisory committee of several DCI-Israel board members and representatives from: "open line," (the Ombudsman of the Ministry of Education); the Absorption Ministry; the Joint; and HELA, the Association for the Advancement of Ethiopian Families (in Beersheva); the United Ethiopian Jewry Organization; the Israeli-(formerly American) Association for Ethiopian Jews; the Ethiopian Education Committee; "Shachar," the Movement for Equality and Civil Rights, and the Association for the Advancement of Education in Israel.

The Ombudsman sits one day a week in DCI's Children's Rights Information Center in Haifa, but can also be reached by beeper. Posters carrying the phone and beeper number are distributed in many places where immigrant children come. However, the main strategy is outreach, which is required since Ethiopian children are hesitant to approach an ombudsman themselves.

DCI-Israel has recently introduced case management to pinpoint the most effective way of guiding these youngsters. During his first six months in the job, our Ombudsman opened thirty files and undertook investigations of educational rights, both of violations of rights and deprivations of services. From these investigations, major problems were seen to be discrimination, unlawful disciplinary measures, failure to integrate, failure to provide equal services, expulsions without notifying the child's family, striking of children by adults (school staff, parents) on the school premises, and failure to provide special services.

<sup>1</sup>M. Ashkenazi, "Political Organization and Resources Among the Ethiopian Immigrants," *Social Science Information*, 1988, 27 (3), pp. 371-390.

As regards health-care, it was found that general medical services are sometimes denied to children in emergencies; and the mother of a disabled child was unable to secure due benefits.

The Ombudsman's busiest area, in cooperation with DCI-Israel's legal coordinator, is dealing with the Interior Ministry over family reunification claims. DCI-Israel's petition to the Supreme Court resulted in the reunion of a 12-year-old with health problems with her family. Other cases, concerning Christian fathers of Jewish children denied entry to Israel, are still awaiting rulings (see the report on reunification of families in this issue of the *Israel Children's Rights Monitor*).

DCI-Israel's plans for the future include:

- Establishing parents' groups to work intensively with families on claiming their educational and other rights.
- Facilitating and coordinating the work of the many organizations working for Ethiopian children.
- Convening a study group of experts in discrimination / integration to design strategies for effectively integrating Ethiopian youngsters into community facilities.
- Disseminating Amharic-language information, telling youngsters and their parents of their rights in choosing residential schools, educational programming, discipline in schools and how to access services.
- A conference on the learning potential of Ethiopian immigrant children, in association with Professor Reuven Feuerstein's International Institute for the Advancement of the Learner's Potential. This type of conference can have a significant influence, as we saw this year.

In 1995, a yearbook will document the work of the Ombudsman.



Minister of Absorption, Yair Tsaban, MK, receives a poster about DCI-Israel's Ombudsman from Mulatu Dessie.



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DCI-Israel has recently introduced case management to pinpoint the most effective way of guiding these youngsters. During his first six months in the job, our Ombudsman opened thirty files and undertook investigations of educational rights, both of violations of rights and deprivations of services. From these investigations, major problems were seen to be discrimination, unlawful disciplinary measures, failure to integrate, failure to provide equal services, expulsions without notifying the child's family, striking of children by adults (school staff, parents) on the school premises, and failure to provide special services.

<sup>1</sup>M. Ashkenazi, "Political Organization and Resources Among the Ethiopian Immigrants," *Social Science Information*, 1988, 27 (3), pp. 371-390.

As regards health-care, it was found that general medical services are sometimes denied to children in emergencies; and the mother of a disabled child was unable to secure due benefits.

The Ombudsman's busiest area, in cooperation with DCI-Israel's legal coordinator, is dealing with the Interior Ministry over family reunification claims. DCI-Israel's petition to the Supreme Court resulted in the reunion of a 12-year-old with health problems with her family. Other cases, concerning Christian fathers of Jewish children denied entry to Israel, are still awaiting rulings (see the report on reunification of families in this issue of the *Israel Children's Rights Monitor*).

DCI-Israel's plans for the future include:

- Establishing parents' groups to work intensively with families on claiming their educational and other rights.
- Facilitating and coordinating the work of the many organizations working for Ethiopian children.
- Convening a study group of experts in discrimination / integration to design strategies for effectively integrating Ethiopian youngsters into community facilities.
- Disseminating Amharic-language information, telling youngsters and their parents of their rights in choosing residential schools, educational programming, discipline in schools and how to access services.
- A conference on the learning potential of Ethiopian immigrant children, in association with Professor Reuven Feuerstein's International Institute for the Advancement of the Learner's Potential. This type of conference can have a significant influence, as we saw this year.

In 1995, a yearbook will document the work of the Ombudsman.



Minister of Absorption, Yair Tsaban, MK, receives a poster about DCI-Israel's Ombudsman from Mulatu Dessie.



On February 2, 1994, DCI-Israel organized a conference on Ethiopian children in residential schools, the majority of them placed in Youth Aliyah facilities. The purpose of the conference was to analyze how it is that Ethiopian children are placed in residential schools without an understanding of the options, whether by their parents or themselves. The conference further sought to stimulate the authorities to take children's opinions into account more.

At the outset of the Ethiopian immigration, the government's professed policy was that all Ethiopian children be sent to religious schools on arrival in Israel, regardless of what they or their parents wanted. This policy has led to an intolerable situation. Although now officially abandoned, it led to some bizarre placement policies, as the case of Yad Ora showed. This particular case was taken up by DCI-Israel's Ombudsman for Immigrant Children, at the request of some of Yad Ora's unhappy pupils (see box).

An issue raised at the conference and taken up by the Ombudsman was that school authorities often automatically assume that Ethiopian youngsters are fit only for vocational training, and deny them access to academic preparatory courses.

The opinion of the child must be heard and taken into greater account, says Mr. Dessie, DCI Ombudsman for Immigrant Children. The Education and Absorption ministries must also involve parents to a greater extent in the process of choosing and directing the education of their children, he went on to say, although a lot of educational work needs to be done with parents in order to achieve this.

## REUNIFICATION OF FAMILIES

The United Nations Convention on the Rights of the Child requires that national governments ensure each child's right to live with BOTH parents. The only exceptions are when this is deemed incompatible with either the child's best interests or the nation's duty, in which case official action is taken to separate child from his/her parents.

Article 9 of the Convention states (emphasis added): "Applications by a child or parent to enter or leave a national entity for purposes of family reunification shall be dealt with by the authorities in a positive, humane, and expeditious manner."

## REUNITING ETHIOPIAN FAMILIES

The problem of divided families among new immigrants from Ethiopia in Israel arises from their religious identity. Among them are large numbers of Falash Mura, Ethiopian Jews who have converted to Christianity. Israel's Law of Return gives the non-Jewish spouse or children (among other family members) of a Jew the same rights as Jews to settle in Israel and become citizens. The Interior Ministry has, however, issued conflicting regulations which prohibit entry to Israel to Falash Mura, effectively leaving them trapped in hunger- and disease-ridden Ethiopia.

DCI-Israel has taken up several cases in which Falash Mura have been denied entry to Israel. Three of them have reached Israel's Supreme Court. In one instance, the Absorption Ministry negotiated a settlement, under which the appeal was withdrawn, the Christian husband permitted to enter Israel, and the Ministry admitted to an error in their registration process. (A common

Ministry tactic is to register Ethiopian mothers as divorced, despite clear evidence of intact marital status.)

Other incidents have involved, for example, a young girl denied entry to Israel because immigration authorities refused to believe she was her mother's daughter. The Ministry once again negotiated with DCI-Israel. The result was a correction in registration and admission of the girl (see box). Other cases like these are awaiting Ministry authorization. It appears, however, that the Ministry responds only when threatened with judicial intervention.

DCI-Israel has participated with other human rights organizations in furthering family reunification in the occupied territories, both by petitioning the High Court (in cooperation with other organizations, such as HaMoked, the Center for the Defense of the Individual), and joining in a proposal submitted to Israel's Ministry of Foreign Affairs concerning criteria for family reunification.



DCI-Israel and Ethiopian Jews in action for family reunification.



*The Jerusalem Post*  
April 11, 1994

## ETHIOPIAN GIRL, 12, TO BE REUNITED TODAY WITH HER FAMILY

Sasha Sadan

A twelve-year-old girl who hasn't seen her mother and sisters since Operation Solomon in 1991 is due to arrive here today, after the intervention of Defense for Children International which first heard about her case three months ago.

DCI-Israel took her case and that of two other families to the High Court of Justice for a ruling on family unification after written appeals to the Interior Ministry proved fruitless. The other two cases are still pending.

The girl, Tergest, whose late father was Christian, was not registered as Jewish in Ethiopia.

She was with her uncle when her mother was rushed to the Israeli Embassy to leave as part of Operation Solomon. The mother told a worker at the embassy that she had a daughter who was not with her, and the worker promised to find out about her daughter and help bring her to Israel later.

The girl was left behind with her uncle. Mulatu Dessie, Ethiopian ombudsman of the Israel section of DCI, said yesterday that Tergest had asked to stay with her uncle after her father's death because her uncle, who resembled her father, was a comfort.

Last July, Dessie said, the girl's grandfather traveled to Gondar to bring his granddaughter here, but was told that he had to bring authorization that she would be permitted to enter Israel, which he lacked.

The case came to the attention of DCI through its Children's Information Center which opened in Haifa last December. A social worker who knew of the case applied to the center.

Dessie said yesterday that the two other cases before the High Court involve mothers and children, all Jewish, are here but the non-Jewish fathers of the families have not been given permission to enter Israel.

DCI's legal coordinator, Attorney Yair Ronnen, said yesterday that it was a regrettable situation that forced a 12-year-old girl to be left alone in Ethiopia. "The Ministry of Interior made many problems," he said. "Why in a case like this do you need [the intervention of] a children's rights organization to enter?"

Local DCI Director Philip Veerman said last night it was a pity that Tergest was permitted to enter the country only after the organization threatened to go to the High Court.

The Interior Ministry spokeswoman could not be reached for comment last night.

*The Jerusalem Post*

## DCI-ISRAEL DEMANDS CLOSURE OF YAD ORA SCHOOL

In 1992 Voika, a 19-year-old student from Ethiopia became the focus of DCI-Israel's Ombudsman project. Voika came to Israel in 1992 with her mother and younger sister. Upon her arrival she was placed in Yad Ora, a boarding school outside Afula.

Yad Ora is an all-girls boarding school, under the jurisdiction of the religious school system. It is subsidized by Youth Aliya and the government and its enrollment is ninety percent Ethiopian. Students learn in overcrowded classrooms, due to the lack of integration and wide cultural gaps, many students study under teachers who are unable to interpret their needs. Without the sensitivity needed to recognize the students' strengths, teachers often underestimate their potential. As a result children like Voika find themselves in stifling environments that offer them little challenge or opportunity to achieve their goals.

Voika first arrived at Yad Ora in 1990. Since that time she has remained in the same level, despite receiving consistently good reports. In frustration, Voika and a younger peer, Tadhiah, aged 13, turned to the principal with a request that they be transferred to a new school which prepares students for the matriculation examinations and offers channels for professional training. The principal's response was discouraging. After diffusing the girl's discontent with empty promises, he informed her in the end that "there was no other place to go."

Voika and Tadhiah felt abandoned with no where to turn for guidance. The social worker who had been hired to address their needs was unwilling to take responsibility for the situation and was forced to resign. The two girls turned their efforts to Mulatu Dessie, DCI's ombudsman, who encouraged them to write letters to DCI-Israel. "I do not want to stay here anymore so they can promise me good things. I don't believe it anymore. All I am learning here is how to sweep a floor. I hope you will succeed in finding me a new place and will help the other seven girls I have mentioned."

In response to the girls' letters, DCI brought journalists to Yad Ora in April, exposing the problems and raising public awareness of the poor conditions of its students. In spite of a demonstration of children, which was attended by journalists, the principal denied the allegations and insisted on going ahead with the school's plan for integration. He reacted by expelling several of the students including Tadhiah, Voika, and Voika's younger sister.

While many students have been released from Yad Ora, many still remain in an environment which stifles their learning. The students who have left still face the challenge of finding their way in a system that is insensitive to their needs. Many Ethiopians still remain abandoned by the system. Their potential is thwarted by educators who confuse being different with being disabled.

DCI-Israel intervened by writing letters to the Ministry of Absorption, describing the terrible conditions at Yad Ora, and asking that the difficulties suffered by Voika and the other students be dealt with. In May, Yair Ronnen, DCI-Israel's legal representative, and Mulatu Dessie wrote a letter to the Ministry of Absorption, pressuring the minister in charge to address the problems at Yad Ora, as well as the general problems faced by Ethiopian students.

Yad Ora is subsidized by Youth Aliyah and the government. Despite receiving an annual sum of NIS 156,896, the school has done little to improve its unsuitable conditions. Of the 170 girls at the school - all of whom are Ethiopian - many feel they are being kept in the school against their will. Rooms are shared by 11 or 12 girls and there are few sources of recreation.



## CLOSURE OF YAD-ORA (continued)

The one social worker assigned to the 170 girls said she was relieved that she had resigned because she felt that she could no longer take responsibility. It is hard to believe that such a situation could exist in the year 1994.

DCI-Israel's efforts to raise awareness and support for the rights of Ethiopian students have prompted the Ministry of Absorption to investigate the situation at Yad Ora. Students who do not wish to remain have now been granted freedom to leave, and efforts are being made to integrate the school. DCI-Israel will continue to monitor the situation to ensure that the needed reforms are implemented. The challenge now is to work with a more accurate barometer in order to properly assess student ability, using methods that are sensitive to cultural difference without underestimating learning potential. Failure to recognize the individual potential of these students has stifled their progress and undermined their talents.

Yad Ora is an example of a school which blatantly disregards individual potential and denies the Ethiopian students the right to be educated. Through the intervention of Mulugeta Dessie and DCI-Israel, changes are now taking place to prevent the situation from deteriorating and to bring about radical improvements. The publicity they helped to engender has motivated change and instilled new hope for students in similar situations elsewhere.

Voika now resides in a caravan site outside of Netivot. She and her younger sister live there with their uncles. Her mother, a widow, resides in an absorption center in Ashkelon where she is visited regularly by Voika.

"There is nothing for me," says Voika, I would like to study and pursue a career, but I don't have anyone to help me because I am in a difficult situation at home. I live at my uncle's and I don't have any help. I manage alone, but I want to study and take the bagrut (matriculation) and make progress in life.

Voika and other Ethiopian students have become orphans of the educational system, a system which was not designed to meet their needs. As a consequence of their social background they have been placed in schools which stifle their potential. Through the intervention of DCI-Israel, changes are now taking place which will help ensure their freedom of choice.

While we do not oppose religious education, we oppose any system which denies the student his or her freedom to choose for it.

DCI-Israel believes schools like Yad Ora should be closed. Schools which deter the students from actively determining the course of their own education in effect destroy the student's potential, rather than nurturing it. The main objective of any public school system should be to educate and to offer all its students a high quality of education.

## HEALTH AND WELFARE



## CLOSURE OF YAD-ORA (continued)

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## HEALTH AND WELFARE



## CHILD-LABOR: DCI-ISRAEL'S EFFORTS TO RAISE AWARENESS

In Israel illegal child labor is an issue which is given only infrequent coverage by the media. Newspaper reports which might shock the public into demanding that the authorities take action to remedy the situation, are few and far between. There is also an alarming lack of information on the issue.

Until recently, hospital registration reports did not show the cause of accidents in children, and so there was no way of knowing which injuries were attributable to working conditions. The preliminary results of a research project prepared by Dr. Ellen Feingold, a pediatrician who examined a number of children's medical records from emergency rooms showed that minors who are brought into the hospital very seldom are the victims of a serious work accident, or since child labor is illegal, they find medical help elsewhere. (Since child labor is illegal, statistics start from the age that work is legal.)

DCI-Israel has an important role to play in the battle to abolish child labor. It can push for government compliance with the standards set by the United Nations Convention on the Rights of the Child, and with some of the ILO Conventions that have been ratified by Israel. DCI-Israel volunteers have already conducted a number of walk-through surveys in areas notorious for child labor, such as markets. They have interviewed children about their working conditions, social situation, and the state of their health. The majority of children encountered by DCI-Israel on these visits, were Arabs, or newly arrived Russian immigrants (chiefly from Asiatic Russia). The lack of

available, reliable data, however, makes it difficult to make informative generalizations about the prevalence of the problem.

DCI-Israel's first goal is to raise public awareness of the problem, as a first step towards its eradication. There are two main methods of gathering this information. One was used in Birmingham in Britain<sup>1</sup>, where questionnaires were given to 2,000 teenagers in schools, aged 12-14, asking whether they worked and under what conditions. A major drawback to this method is that respondents often fear that, despite promises of confidentiality, this information will reach the police.

DCI has learned from its walk-through interviews that working youngsters are well-briefed on how to respond to questions about age, employers etc. Should finding for this become available, DCI-Israel is interested in undertaking such a research project.

A second way of gathering information which would be particularly relevant to our local situation, is to assemble experts and give them the task of devising innovative ways of obtaining reliable data. Based on their recommendations, a questionnaire could be designed for use in interviewing a cross-section of working children. Respondents would be drawn from different cities, villages, and other settings, thus representing as wide a social spectrum as possible. It is only when reliable data becomes available that appropriate action can be taken.

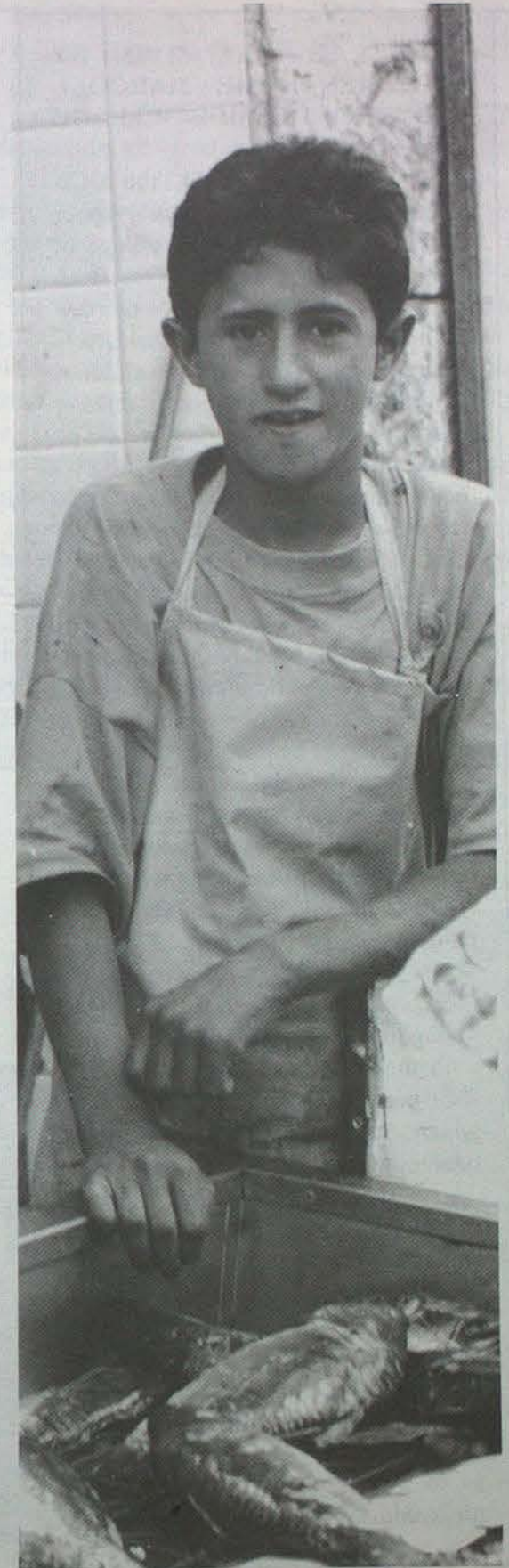
The main contribution of DCI-Israel has been to stimulate coordination of available resources and agencies. Within the Ministry of Labor and Social Affairs there are various departments (which

deal for example, with the inspection of labor law implementation or industrial hygiene etc.), but there is not a great deal of communication between the different divisions within the ministry concerning specific problems such as child labor.

DCI-Israel convened a meeting at its Jerusalem office this summer, aimed at improving coordination of efforts within the Ministry. Representatives from two divisions of the Ministry of Labor, the Noar Oved VeLomed movement (of the Histadrut Labor Federation) and the Department of Occupational and Environmental Medicine of the Hadassah Medical School in Jerusalem attended the meeting, and further meetings are planned for this fall with representatives of the Ministry of Education, Ministry of Agriculture and others.

### Reference

- 1) Chris Pond and Ann Searle, *The Hidden Army: Children at Work in the 1990s*, London, 1994, Low Pay Unit Pamphlet no. 55.





### DCI-ISRAEL AMAZED BY CHILDREN IN THE CHARCOAL INDUSTRY OUTSIDE VILLAGE OF YA'ABED

In January 1994, the DCI-Israel Coordinator and photographer Nitzan Shorer visited the village of Ya'abed, located in the West Bank near Baka el-Gharbia, a few kilometers from the "Green Line". There they found many children working around the clock, making charcoal out of smoldering logs. The village of Ya'abed has about 20,000 inhabitants and no water supply. In response to DCI-Israel's concerns, the Civil Administration replied that they are unable to intervene. According to them, Jordanian law (which applies in the West Bank in addition to military orders) allows children to work in the family business without any supervision by a government authority. The children in Ya'abed work in family charcoal businesses. The Civil Administration also pointed out that the lack of running water is a result of the village's inability to pay its debts.

DCI-Israel was appalled by the conditions. We saw children as young as four years old working there with the rest of the family. Back in their homes, they have no water with which to wash themselves - an unacceptable situation.

The charcoal is purchased by a merchant from the nearby Dotan settlement for 80 agorot per kilo. In the supermarket, it is sold for NIS 6 per kilo.

All this hard and dirty labor does not bring the village any wealth. The situation is reminiscent of the old story of exploitation of children, just as in the mines of England in the nineteenth century.



### WORKING CHILDREN AT THE HATIKVA MARKET IN TEL AVIV

DCI-Israel has made several so-called walk-throughs in the HaTikvah Market in Tel Aviv. Whenever possible, we tried to talk with working children and asked them about their health and working conditions.

One of these working children was an 8-year old immigrant boy from Kazakhstan, who was selling cans of soft drinks. We saw many more new immigrant children, mostly from the Asiatic areas of the former Soviet Union. Most of them bring their earnings home, because their parents are unemployed. They work long hours in the market, and at times are doing jobs that entail the use of knives - cleaning fish or chicken, for example.

The Arab children who work in the market generally carry goods for the merchants, and they told us about the long hours they are required to work. They leave home very early in the morning and travel with several Arab adults by car to the market.

The authorities' approach to child labor has mainly been via legal remedies. Israel's child labor legislation is quite progressive; enforcement, however, is the real problem. The children working in the market - where child labor is not at all concealed in Israel - say they never saw inspectors, but often relate that they have talked with journalists. The Russian youths in particular mention that they have been written up in the newspapers. And their employers say that "the papers already talked with him."

Yet over the past six months, hardly any articles about child labor have appeared. As journalists move on to other issues, it appears that child labor has become a phenomenon accepted by Israeli society.





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**FROM THE DCI-ISRAEL REPORT:  
IMPROVING HEALTH CARE  
ACCESS FOR PALESTINIAN  
CHILDREN - VISIONS FOR THE  
FUTURE**

(July 1994)

*Principal Recommendations Concerning  
Child Health Care in Gaza, Jericho,  
and the Remaining Regions of the West  
Bank under Israeli Authority*

*A. Recommendations for Palestinian  
Authorities (Gaza and Jericho):*

1. Develop appropriate medical criteria for referrals to Israeli health care facilities.
2. Document all decisions regarding allocation of medical resources within the Palestinian autonomous regions as well as referrals to Israel in order to demonstrate to the foreign donor community that the Palestinian Authority is dependent upon foreign aid for financial assistance. The future Palestinian Parliament should be able to make an informed choice on the basis of what has been documented.
3. The Israel Ministry of Health and the Palestinian Authority should adopt standard medical record-keeping and reporting procedures for the referral of pediatric patients to Israel and other foreign health care providers.
4. Define criteria for contracting with Israeli or other foreign health care providers to ensure proper treatment for sick children.
5. Establish a coordinated

emergency telecommunication-unit and centralize ambulance services.

6. Appoint an ombudsman to help children and families deal with the complicated bureaucratic problems related to referrals.

*B. General Recommendations*

1. Encourage communication and cooperation between Israeli and Palestinian physicians working with children, based on partnership, equality and cooperation.
2. Identify Israeli providers of specialized health care for children and include them in a consultation guide for specialized treatment.
3. Children's rights organizations should help to develop a fund for the training of pediatric subspecialists in Israeli medical institutions. These physicians would then work independently, thereby strengthening Palestinian health care facilities.
4. Decisions regarding referrals must be made on a medical basis only

*C. Recommendations for the Israeli  
Authorities:*

1. In light of the underdeveloped state of certain child health services, and in view of Israel's obligations as a state to the Convention on the Rights of the Child, Israel has to continue to bear responsibility for ensuring that governmental health services, and medical referrals in particular, receive adequate funding during the interim period.

2. All information pertaining to the referral policy in force under the Civil Administration, as well as all past financial data concerning Palestinian health care, should be handed over in a prompt and orderly manner to the Palestinian health authority.
3. Medical referrals for treatment in Israel should be subsidized in the coming fiscal years.
4. Entry permit requirements should be abolished for Palestinian children needing medical care in Israel, and for their parents, as well as for doctors and nurses working in East Jerusalem.
5. Criteria for referring patients from the West Bank to Israel must be clearly and publicly specified.
6. Provision should be made for Palestinians working in Israel to have the same access to health care as Israeli workers.
7. Palestinian ambulance services must be allowed to develop emergency telecommunication units.



*Palestinian child in Hadassah Hospital in  
Jerusalem*



August 11, 1994

Ha'Aretz

The Israel Section of Defence for Children International:

# "ISRAEL SHOULD CONTINUE TO SUBSIDIZE MEDICAL TREATMENT FOR PALESTINIAN CHILDREN IN ISRAELI HOSPITALS"

By Edna Aridor

Ha'Aretz health correspondent

The Israeli government should continue to provide financial and technical assistance to the Palestinian Authority in the autonomous areas, and should continue to subsidize treatment for Palestinian children in Israeli hospitals, in order to ensure that the children's medical needs will not be neglected due to a lack of funding. This was the appeal issued yesterday by the heads of the Israel Section of Defence for Children International.

The organization also declared that Israel, together with other countries, should help the Palestinians to develop an independent health system, which will be able in the long term to deal with most children's diseases.

This appeal comes in response to the fact that the agreement signed with the Palestinians on May 4 in Cairo does not include any commitment by Israel to continue to provide medical assistance. The agreement, as it appears in the appendix to DCI-Israel's report, includes the provision that the Palestinian Authority shall implement existing standards for immunization, and improve these standards in accordance with accepted norms. It is also stated that Israel and the Palestinian Authority shall reach agreement concerning arrangements for the treatment and hospitalization of Palestinians in Israeli hospitals.

It is further agreed that Israel and the Palestinian Authority will exchange information relating to epidemics and infectious diseases, and will develop mechanisms for the exchange of medical files and documents.

At a press conference held yesterday in Tel Aviv, Dr. Rahada Shawa, director of the children's hospital in Gaza, noted that the authorities currently have an agreement under which they can send children to Israeli hospitals for treatment, including Beilinson Children's Hospital in Petah Tikva, Assuta in Tel Aviv, Soroka in Beersheva and Sheba at Tel Hashomer. "We have managed to reach agreements with most of the hospitals, with the exception of Sheba, and to set a reasonable price. Children are sent to these hospitals with a payment voucher. Since the prices we have been asked to pay at Sheba are higher, we are only sending children with leukemia there. The agreement with the Israeli hospitals was made for a period of three months, and will expire at the end of August. We do not have the amount of money which we will be required to pay. Since the beginning of the autonomy, referrals to Israel have been authorized for about 400 children. We also send children for treatment in Ramallah, Amman, France and the United States, but the process of transferring children to their destination must be simplified."

Moreover, Dr. Shawa emphasized that "the Palestinian Authority can allocate only 10% of its budget for medical treatment of children in Israel or elsewhere, since it must also improve the infrastructure and expand preventive medical services. The health budget of the Civil Administration in 1992-1993 was NIS 60 million, of which NIS 16 million were allocated for referrals to Israeli hospitals."

In the first two years of the autonomy in Gaza, the health system will probably be financed from transfers of Civil Administration budgets and from international donations. Another potential source is the government health insurance plan.

## "ISRAEL SHOULD CONTINUE TO SUBSIDIZE MEDICAL TREATMENT FOR PALESTINIAN CHILDREN IN ISRAELI HOSPITALS (continued)"

Nevertheless, it is still unclear how the health system as a whole, and the referrals to Israel in particular, will be financed. Dr. Shawa also stressed that "money is not enough. The process of crossing from the autonomous areas to the Israeli hospitals must be simplified."

Shawa emphasized that in addition to making arrangements for children who require treatment to be sent to Israel, it is also important to encourage cooperation between Israeli and Palestinian physicians who work with children, and to enable the Palestinians to gain experience in Israel. So far, training periods have been short due to the lack of funds, language difficulties and the fact that the doctors could not obtain work permits.

A recent survey by the Ramallah-based Health Development Information project revealed that the rate of registration for Israel's health insurance plan is 18% in the West Bank and 30% in the Gaza Strip. This means that the large majority of families in the territories do not have medical insurance. As far as children are concerned, Dr. Shawa notes that other countries in the region, where the government covers 80% of children's health needs, should serve as an example.

The Palestinian Health Authority will undertake a systematic examination of the efficacy of current medical criteria. Decisions must also be documented, in order to prove to foreign donors that the Palestinians are financially dependent on outside aid. Medical staff positions and lists should be determined by the Israel Ministry of Health and the Palestinian Health Authority. A joint emergency communications center should also be established and ambulance services coordinated.

Dr. Michael Karplus, Director of Pediatrics at the Soroka Medical Center, explained that Gaza has well-established services for mothers and their children, and that there is no need to transfer premature babies to Israel. However, some children have begun treatment in Israel, and this must be continued.

Dr. Philip Veerman, Coordinator of the association in Israel, stated that after the occupation of the West Bank and Gaza Strip in 1967, the Israeli government, through the Civil Administration and the Ministry of Health, assumed responsibility for government health services from Jordan and Egypt. While the Israeli authorities achieved some significant improvements, such as the immunization of babies against measles, control of polio and the reduction of deaths of mothers in childbirth, the 27-year occupation of the West Bank and Gaza Strip led to the economic and medical dependency of the territories on Israel.



Dr. Karplus, Dr. Shawa and Dr. Veerman at DCI's press conference in Beit Sokolov journalist' house in Tel Aviv.



## DCI-ISRAEL PETITION REGARDING THE HEATING SYSTEM IN HAIFA SCHOOLS

Together with several parents of youngsters in Haifa, DCI-Israel has petitioned the Supreme Court about the heating in schools within the jurisdiction of the city of Haifa. The petitioners found that most schools had no heating system at all, and many of those that had, had inadequate and sometimes hazardous systems. During winter 1993/94, temperatures fell as low as 7°C inside many classrooms, and children were often unable to continue studying because of the cold.

DCI-Israel and Haifa advocate Pinhas Narkis (assisted by enthusiastic law student Yossi Miller) requested, in its petition to the Supreme Court, that Israel's Education Ministry and the city of Haifa give funding to equip all Haifa schools with appropriate heating systems, and remove all gas heaters. The Supreme Court ruled, however, that no order was necessary because of preliminary action taken by the Ministry and the city to improve the situation. Nevertheless, it adjudged the city responsible for existing heating systems in Haifa schools, and said hazardous gas heaters must be removed and replaced.

## TAKING ON KUPAT HOLIM

An eight-year-old Ethiopian boy has been suffering from Gaucher's disease, a rare genetic disorder, for over four years. This condition causes grave injury to the spleen and liver, bone damage, and bleeding, and impairs natural growth, causing deformities. The boy endures excruciating pain.

The legal battle against the Kupat Holim sick fund of the Histadrut began after the child was denied the latest drug therapy treatment and was instead recommended for surgery, which involves removing the Gaucher cells in damaged organs, is widely considered anachronistic, and has no long-term rehabilitative effects. The district committee of Kupat Holim took this decision, despite the relative ease of administering the new medication by intravenous injection three times a week, solely on the basis of the high cost of the still experimental new drug, which runs to several thousand shekels per month.

Concerned citizens of Carmiel, the town where the boy lives, the American Association for Ethiopian Jews (AAEJ), and lawyer Nissim Sarusi formed a public commission that succeeded in raising sufficient money to purchase a few months' worth of medication. Meanwhile, DCI-Israel, represented by lawyer Nissim Sarusi and DCI-Israel lawyer Yosef Rothman, appealed to the Haifa district court - an unusual step because patients have to appeal first to the Histadrut legal system. Only then did the Kupat Holim national committee meet to approve supplying the drug for six months, with the option of an extension to cover a further six months, which extension was subsequently granted.

## WAR AND PEACE



# DCI-ISRAEL SENDS ISRAELI AND PALESTINIAN REPRESENTATIVES TO THE INTERNATIONAL PEACE FESTIVAL FOR CHILDREN IN NORWAY

During the week of September 25 to October 4, 1993, children and adults from thirty-seven different countries braved the chill of a Norwegian autumn to meet, share experiences, hold discussions, have fun, and make friends. The International Peace Festival for Children, which took place in Lillehammer, was organized by the Norwegian Committee for UNESCO, the Voice of the Children campaign, and other Norwegian organizations.

Part of the cultural program leading up to the Olympic Games in Lillehammer in 1994, the festival had a twofold purpose: first, to focus on the Olympic ideal of contact and friendship across borders as a contribution to world peace; and, secondly, to give children the opportunity to exercise their democratic right to express their views, their visions, and their problems to political leaders and the public.

DCI-Israel requested that two children from this region — an Israeli and a Palestinian — be given the opportunity to participate in the festival. The proposal was accepted. Eventually, two fifteen-year-old girls, Yifat Novidomsky from Acco and Riam Kafri from Ramallah, were chosen.

In Norway, these youngsters participated in daily workshops and excursions during the course of the festival. Each had to focus on one of the main workshops: Peace, the Environment, and Human Rights.

Throughout the festival, the emphasis was on giving the eleven-to-fifteen-year-old participants the opportunity to present their ideas and problems creatively through art, music, storytelling, and dance.

The week-long experience culminated in creative presentations wherein participants from every country had the chance to express themselves and to challenge and question the decision-makers and politicians whom the organizers had invited. The youngsters also produced the *Appeal to World Leaders*, which, in their own words, "may not be able to change the world, but it shows" their feelings and wishes.

The Voice of the Children campaign has already begun preparations for the next international project, a children's book on human rights that will place special emphasis upon the rights of children. The book will be the children's contribution to the United Nations' fiftieth anniversary celebrations in 1995.

DCI-Israel was attracted to the idea of sending representatives to the festival because of the idea that the voice of the children must be heard. Empowering children means enabling them to participate in the democratic process by presenting their concerns to adult decision-makers.



Yifat and Riam with the Norwegian Ambassador in Tel Aviv

## A LETTER FROM YIFAT (15-YEARS OLD) FROM ACCO

*I have enjoyed my stay in Norway. I made new friends, such as Riam from Ramallah, and learned more about their culture and about other conflicts in different parts of the world which we were not aware of before. We produced a document which included our suggestions to the peace problem, the global environment problem, and children's rights, hoping to be answered by concerned decision-makers. It was an honor for me to represent DCI-Israel and I was especially motivated to this because of my volunteer work in the Israeli organization Shajar and in Acco's youth council. I hope our messages will be noticed and implemented.*

## A LETTER FROM RIAM (15-YEARS OLD) FROM RAMALLAH

*This festival was a great experience for all of us, and it is an important experience that children should go through, because it made me understand other cultures, such as the one in which Yifat lives. This will help create more understanding between people and reduce the danger of wars. Conflicts can be reduced, and it is possible that everybody will live in peace and happiness. If these festivals were done more often, especially in our region, the future of us children and the world would be a peaceful, colorful, brighter future. So, I do hope more festivals will be held.*



## FROM MILITARY JUSTICE TO JUVENILE JUSTICE: COOPERATION PROJECT WITH LAWYERS IN GAZA

In April 1994, twenty Palestinian lawyers, social workers and educators arrived from Gaza to the hospice of St. George's Cathedral in East Jerusalem for the first session of a projected 18-month joint juvenile justice training program organized by DCI-Israel and Palestinian Lawyers for Human Rights, Khan Younis, Gaza.

DCI-Israel has had years of experience representing children in Israel and the occupied territories in Israeli juvenile courts as well as the military courts where Palestinian children accused of security offenses are required to appear. DCI-Israel has therefore been able to assess the systematic deficiencies in the legal representation of children and has always strictly opposed any treatment of minors in the military courts that does not take the age of the child into account.

The breakthroughs in the peace negotiations provided the opportunity for Palestinians to reform their legal system. Regarding children, the Gazan legal system returned, with the implementation of the agreement, to the laws from the period of the British Mandate. Although there are certain provisions for children, there is no comprehensive special court system which recognizes the need for special courts for children, staffed with social workers, lawyers, juvenile court judge, nor are there special treatment programs for juveniles. Comparatively, although Israel has codified laws for children and has a juvenile probation service and other services to promote rehabilitation, numerous problems still exist in the handling of youth offenders. The right to counsel is still limited to more serious crimes, and in most cases is left to the discretion of the court with the result that only 10% of the children have legal representation in court proceedings. DCI-Israel and PLHR therefore embarked on this ambitious cooperative training project, *From Military Justice to Juvenile Justice*, to bring local and international expertise to the region to assist the establishment of the new juvenile justice system in Gaza, improve existing systems in Israel and foster durable colleague relationships between Israeli and Palestinian participants.



DCI-PLHR meeting

The initial activities of the project, the training of the Palestinian lawyers, has covered a great amount of material in the considerably vast subject area of juvenile justice and attracted several international and local professionals to share their expertise in children's rights advocacy including: **Dr. Cairo Arafat**, of UNICEF-West Bank and Gaza office, who led a debate on the psycho-social effects of the Intifada on Palestinian youth and models of rehabilitation; **Eliyahu Avram**, Advocate for Association of Civil Rights in Israel (ACRI) and DCI-Israel board member, led an in-depth analysis of the UN Convention on the Rights of the Child; **Lea Dasberg**, Professor Emerita in the Theory and History of Education, University of Amsterdam explained how society has perceived and treated children over history; **Professor Charles Greenbaum**, Professor of Psychology at Hebrew University examined the main tenets of child psychology and their relevance for laws and special legal systems for children and adolescents; **Dr. Awni Habash**, Advocate who represents Arab children in East Jerusalem for DCI-Israel and lectures in sociology at Bethlehem University shared his expertise as an advocate and explored the cultural contexts of juvenile justice; **Professor Leslie Sebba**, Criminologist, Hebrew University led a study on the UN Standard Minimal Rules of Juvenile Justice (the Beijing Rules); and **Professor Leon Sheleff**, Criminologist, Hebrew University and Tel Aviv University led a discussion on the theoretical underpinnings for special laws and treatment for juveniles.

Training sessions also included several interesting on-site visits to facilities for juveniles. Because a juvenile justice system is more than just laws set in

writing, it was essential that training include examples of facilities for juveniles from which the Palestinians may choose to model their future systems. Participants toured the new juvenile court house in Tel Aviv and were warmly greeted by **Judge Eli Sharon**, Deputy President of the

Juvenile Courts who explained the development of the modern Israeli juvenile court system. In addition to the extremely informative lecture of Judge Sharon (which he was able to deliver in Arabic), participants found it highly helpful to see the actual structure of a special court house for children, where for instance there is a special entrance and waiting area for the juveniles who are brought to court, in order to protect their privacy. The group also visited two residential treatment centers, *The B'nai B'rith Residential Treatment Center* for Israeli boys as well as *Hostel Shofat*, residential center for 20 Arab girls. These visits provided the participants to see the actual facilities, meet with the directors and staff members, and meet with the children. The participants also visited the Jewish-Arabic cultural center in Yaffo on several occasions. There, they met with social workers from the juvenile probation service as well as local leaders who have developed community centers for youth which serve as models as prevention programs as well as alternative placement centers. The social program included cultural events including "A Song for Peace" a Jewish-Arabic cultural festival in Yaffo.

A unique and meaningful aspect of the cooperative endeavor has been the excellent professional and personal relationships created between those actively involved in the project. The



project has brought together children's rights advocates from Gaza and Israel who have harmonized cultural and language differences to create solid professional relationships and work together to improve the lives of children in Gaza and Israel. The excellent rapport created reflects the efforts of all those who have participated in the project. The Israeli and Palestinian project coordinators, sensitive to cultural issues, planned training which presented a variety of views on children's rights issues, related them to local situation in Gaza and carefully maintained a balance of English, Arabic and Hebrew speakers. DCI-Israel was able (through the French consulate general in Jerusalem) to invite a juvenile judge so that it be clear that the aim of the project is not to "sell" Israeli solutions. Which juvenile justice system Palestinians choose (be like the Israeli one, the German one, the Scottish hearing system, or the family hearing system prevailing in New Zealand) is not a DCI-Israel concern. Its only aim is to give its Palestinian colleagues the information to enable them to make an informed choice. Palestinian participants welcomed training leaders from different backgrounds and chose to come to Jerusalem, Tel Aviv and Yaffo for training. Similarly, on several occasions, the Palestinians hosted their Israeli colleagues in Gaza. DCI-Israel staff met under difficult conditions in Erez (the border between Gaza and Israel), Khan Younis, and DCI-Israel staff were the guests of advocate Samir Daher at his home in Khan Younis.

The optimism and enthusiasm of the participants to seize the long awaited opportunity to ameliorate the life of children in Gaza, has given the project a deeply meaningful dynamic. Despite language barriers, there is an understanding that we are living through

a period of history where we are the actors in change, that we are going towards better times, where our children will have easier lives. And as a microcosm of the larger picture, we see from our experiences that people with different pasts can create a future of peace. Children's rights can indeed serve as a bridge to peace.

The first part of the project is now coming to an end. In the presence of Mr. Freih Abu Midein, the Minister of Justice and Attorney General of the Palestinian National Authority, the first certificates will be presented to the Palestinian lawyers from Gaza who participated in the basic course.

The next phases will aim to ensure that the Palestinians will get the best possible juvenile justice legislation. In this regard, we held several inspiring meetings with a staff member of the Institute of Criminology of the University of Cape Town, and lawyers for human rights in South Africa.

At a meeting of the International Association of Juvenile and Family Court Magistrates in Bremen (Germany), we consulted many judges about the project, and had the opportunity to meet a senior officer of the Crime Prevention and Criminal Justice Branch of the United Nations in Vienna.

With the drafting of a law proposal, the project is moving into an even more exciting phase.

Debra Fattel, J.D., Project Coordinator

## PART II

### ARTICLES



## ISRAEL AND THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: "RATIFICATION IS NOT ENOUGH"<sup>1</sup>

by: Dr. Philip Veerman and Robin Lessing

The United Nations Convention on the Rights of the Child is a remarkable document. Ten years in the making, this human rights convention has been ratified by more countries than any other human rights document. Like its predecessors<sup>2</sup>, the Convention recognizes that children have certain inalienable rights and freedoms, and are a group in need of special protection and assistance. However, the most revolutionary concept emerging out of the Convention is the recognition that children are entitled to **participate** in the decision-making process on all matters that affect them, according to their evolving capabilities.

The Convention is seen as a minimum standard for State Parties to use as a starting point while legislating, recognizing, and ensuring the rights of children within their jurisdiction without discrimination of any kind. The rights of the child, as formulated in the convention, are consistent with the roles and responsibilities of parents and the family, and should be seen, not as a threat to the family, but as a challenge to all.<sup>3</sup>

Israel should use this document as an agenda for change, change that will enhance the position of the child within Israeli society. This document could easily become a checklist of issues that Israel needs to address. Using this

Convention, the state should identify priorities and recognize the needs of children while making the principles of the Convention a reality on the grassroots level. If used properly, the Convention can be a guideline as we move towards the harmonization of Israeli law with the provisions of the Convention. It has to be used as a minimal standard for developing governmental administrative policies, objectives, and initiatives, which would meet the needs of children in Israeli society.

The Convention could also be used in places such as schools and community centers to teach the concept of human rights to children. In DCI-Israel's opinion, the state is obliged to stimulate initiatives that conform with article 42 of the convention, "...making the principles and provisions of the Convention widely known...to adults and children alike."<sup>4</sup>

The Israeli government submitted the instrument for ratification of this Convention on October 3, 1991. Now, three years later, DCI-Israel is working towards ensuring that the minimum standards set forth in the Convention are guaranteed for all children, both those in Israel proper and those in the occupied territories. The only way of giving the Convention the force of statute law is by having the Israeli Knesset enact legislation that would grant it this status.

Legislation incorporating the Convention into Israeli law is necessary because in Israel, which follows common-law tradition (as do the United Kingdom, New Zealand and Australia) conventions have no binding legal force

in domestic courts<sup>5</sup>, since governments sign or ratify conventions without the advice and consent of the legislative branch. Consequently, for the UN Convention on the Rights of the Child to be enforced, the legislative branch (in this case the Knesset) must legislate a law of implementation in order for the treaty to become the law of the land.

The common-law system differs from the monist system of government, in which ratification of a treaty either automatically incorporates the treaty into law (i.e. Germany, France, Spain, Italy, Luxembourg, Romania, Switzerland) or allows the provisions of the treaty to be invoked in the courts (i.e. Norway).<sup>6</sup>

Some claim that a law of implementation is not necessary because Israeli law already incorporates many of the discussed provisions of the Convention. The key word here is "many." Provisions such as *the right of the child to be heard in legal proceedings* and *the periodic review of a child in placement* are not yet rights guaranteed to children in Israeli law. A law of implementation will ensure that rights guaranteed by the convention that are not yet incorporated into Israeli law will be ensured to the child.

In addition, an implementation law would enable the Israeli Supreme Court to interpret Israeli law and review government actions in light of the Convention, and would also allow children's rights groups like DCI-Israel to improve the position of children through court action, by going to the Supreme Court. At present it is very difficult to take legal action to enforce the Convention since it has not been

incorporated into Israeli domestic law. (Now, the court can say that part of the Convention is not customary law.) However, after an implementation law were passed, the Israeli Supreme Court could base its action on the corresponding national legislation.

A law of implementation would provide the Knesset with an opportunity to make a strong statement that the balanced document of the Convention (negotiated in the UN for ten years) *as a whole* should be used for establishing Israel's public agenda insofar as it is focused on the child.

Since the signing and ratification of the Convention, DCI-Israel has worked hard towards seeing the Convention implemented in law. It is presently engaged in dialogue with Knesset members and the Ministry of Justice about the ramifications of a law of implementation. Additionally, in April 1994, DCI-Israel submitted a draft implementation proposal to Mrs. Yehudith Carp, Deputy Attorney-General at the Ministry of Justice. Several serious discussions have taken place at the Ministry of Justice on the basis of this proposal, and DCI-Israel tried to achieve support for the proposal from the Association for Civil Rights in Israel (ACRI) and the National Council for the Child. A redrafted proposal (now a joint proposal of DCI-Israel, ACRI and NCC) was sent to Mrs. Carp at the Justice Ministry at the beginning of August 1994.

When Israel ratified the Convention, it took a major step forward in joining an international community which is dedicated to the plight of children. But, as Article 4 of the convention states:



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"State Parties shall undertake *all appropriate legislative, administrative, and other measures* for the implementation of the rights recognized in the present Convention."<sup>7</sup> In our view, because of the Israeli legal system and the status of its children, "all appropriate measures" must include support for a law of implementation by the Minister of Justice and the Knesset.

Unfortunately, Israel did not submit its first report — concerning the progress of implementation of the Convention — to the United Nations Committee on the Rights of the Child, which was due in November 1993. This report was to have provided the framework to measure subsequent progress in implementing the Convention. Recognizing the importance of this report, DCI-Israel has written two letters to the Director-General of the Ministry of Justice (to which the government has relegated the responsibility for submission of the report) to inquire about the status of the report and DCI-Israel has requested a more serious approach to Israel's reporting.<sup>8</sup> However, we do not foresee the report being submitted anytime before November 1994, a full year after its due date.

DCI-Israel will continue to monitor the reporting process and will continue advocating optimal implementation of the Convention, which it sees as being in the best interests of all children.

#### Notes:

1. Taken From: *Love is Not Enough*, Bruno Bettelheim, New York, New York, 1950, The Free Press.
2. United Nations Declaration on the Rights of the Child, New York, 1959; 'Declaration of Geneva', League of Nations, 1924.
3. Nigel Cantwell of DCI-International Secretariat at the World NGO Forum (in Malta) Launching the International Year of the Family 1994. Workshop 06. Family and Children's Rights.
4. U.N. Convention on the Rights of the Child. Article 42.
5. Benvenisti, Eyal. *The Influence of International Human Rights on the Israeli Legal System: Present and Future*. 1994. Unpublished article. See also: Benvenisti, Eyal, "Ratification: What it Implies for Human Rights in Israel," in *Israel Children's Rights Monitor*, vol. 3, no. 3, Nov. 1992, pp.24-26.
6. Ibid.
7. U.N. Convention on the Rights of the Child. Article 3.
8. DCI-Israel asked to delegate the writing of the report to a multidisciplinary team.

#### THE CHILD ADVOCATE AS A FACILITATOR OF THE CHILD'S PARTICIPATION IN THE JUVENILE COURT

By Advocate Yair Ronen

Like all of us, juvenile offenders have a personal sense of justice. The child's de jure incapacitation does not "deprive" him of either the legal responsibility for his acts nor of a feeling of injustice when he is powerless and helpless in a situation aimed at finding legal truth and determining his own culpability.

Therefore, besides a formal framework of justice, children also need access in the justice system (Krisberg & Austin, 1993).<sup>1</sup>

Justice must not only be done, but also seen by the adolescent standing trial. Proceedings with the best rehabilitative intent which are not comprehended by the adolescent are liable to be useless or even damaging.

The most important and well-intentioned of judicial proceedings are technical; few adults without legal training can understand them; certainly children cannot. Decisions unexplained to a minor appear too official to be challenged.

Although some Israeli juvenile court judges try to facilitate children's active participation in the proceedings through very patient explanations and delicate attempts to aid the child in his defense without causing damage, prima facie it would be unrealistic and undesirable to expect a judge to fulfill an advocate's role. One can expect a judge to be compassionate and open-minded, but by definition a judge who must adjudicate cannot loyally advocate for the child's perspective since he must ultimately choose between alternative descriptions of factual and legal reality.

A child who initially feels that his

defense was justified may often be able to accept the legal consequences of his actions when he is able to engage in a dialogue with the court explaining his behavior.

Once he has had his day in court with the help of an attorney-at-law who acts as a professional mouthpiece, the child (if guilty) may be able to direct his energies to the treatment process.

In the words of the famous *In re Gault* decision:<sup>2</sup> "Recognition of the right to counsel involves no necessary interference with the special purposes of juvenile court procedures; indeed, it seems that counsel can play an important role in the process of rehabilitation."

However, such an approach by the child advocate is not guaranteed: it is an issue of the advocate's professional philosophy. DCI-Israel's philosophy in the legal aid project explicitly includes representation of the child's opinion as part of the definition of the advocate's function. In Israel, ambiguity exists as to what is the meaning of loyalty to the client's interests mandated by law. DCI-Israel's legal aid project makes a contribution to helping children be heard as well as represented.

#### Notes:

1. B. Krisberg & J.F. Austin, *REINVENTING JUVENILE JUSTICE*, Newbury Park: 1993.
2. *IN Re GAULT*, 378, U.S. 1



## REPORT OF A DCI-ISRAEL CONFERENCE DO CHILDREN NEED LAWYERS?

On April 1, 1993 DCI-Israel held its annual members' meeting at the Jerusalem Van Leer Institute. The meeting was followed by a conference, a report of which appears below. DCI-Israel lawyer Joseph Rotman chaired the meeting.

### District Court Judge Miriam Naor:

The theme of this conference is whether minors need legal aid, and my answer is in the affirmative: there can be no doubt that minors need a counsel for their defense, as does every adult defendant. The right to appoint the counsel of one's choice in accordance with one's financial capacity applies to every accused person, albeit there are certain exceptions that I shall not discuss here. Should the accused fail to appoint a defense counsel, there are cases when such an appointment is mandatory and others where the question of whether or not to appoint a defense counsel is left to the discretion of the court. Under certain conditions, the court even has the discretion to appoint a counsel in the early stages after arrest.

Let me quote what our law says: Section 18(a) of the *Youth (Trial, Punishment, and Modes of Treatment) Law*, adds the provision that the court is permitted to appoint a defense counsel if the welfare of the minor so requires; the discretion here is wide, being in addition to the powers of the court under the *Criminal Procedure Law*. Section 18(c) also deals with the assistance offered by court. There is no parallel provision pertaining to adults, but there is a provision that the court

must assist the accused in coping with his situation. The decision of the accused not to be represented by a counsel does not exempt the court from its obligation to guide and aid him.

The *Criminal Procedure Law* contains different provisions, under which the court is to guide the accused by reading him the indictment, with regards to his alibi claims, and other issues. Furthermore, section 145 of the law compels the court to explain the accused his rights during the course of the trial, and the need for such guidance is obviously greater in the absence of a defending counsel.

The general procedural rules are both good and efficient. However, the manner of their implementation will change depending on whether or not there is a defending counsel. On the face of it, it would seem that the court must assist the unrepresented accused. But, from my experience at the bench in the Israeli magistrates court, in which 70 percent of the accused are not represented, it would seem that the assistance provided by the court is not of tremendous benefit to the accused. The fruits of the explanations to the accused are particularly meager. There are accused persons who are sharp and knowledgeable, and who know how to conduct an efficient cross-examination. These, however, are the minority, especially among minors. We are constantly witness to pathetic efforts at cross-examination by accused persons; indeed, most non-represented defendants are not only unsuccessful but further complicate matters for themselves by asking questions that a competent defending counsel would not dare ask. Only a few of them actually photostat

the evidence, and few know which defense witnesses to summon to the trial. In respect of all the above the court is unable to help. The court does not have the evidence available to the prosecution, and the prosecutor himself will not necessarily be of sufficient integrity to assist. In connection with the summons of defense witnesses, I will relate one of my own experiences. A person was accused of attacking his brother-in-law in the presence of his wife. He claimed that he had acted in self-defense. I asked him why he hadn't summoned his wife and he motioned for a deferral in order to summon his wife as a witness. It turned out that there had been a fight and no attack and self-defense. The accused was convicted. I had a suspicion that were it not for the testimony of the woman, the accused would have been acquitted on the basis of a doubt. Since then I have made an effort to make my explanations to accused persons more sophisticated, but the untrained defendant still may not know what to do with the knowledge.

And an example regarding a minor. A minor who was represented was brought for an extension of his arrest. The sides presented their arguments and I left the room in order to write my decision. It was then that I realized that a year had passed since the offence had been committed. I called in the sides and asked them whether the Attorney General had given his permission for the extension of the arrest, as required by law. Since the answer was that such permission had not been given, the indictment was cancelled; and this was a case in which there was a defending lawyer (although not appointed by DCI-Israel)!

However, until now my remarks pertaining to minors have been predicated on my basic approach to the general issue of representation. In practice, the heavy budgetary burden of the state presents a complicated problem. I have already had occasion to express my opinion that the red line with respect to representation should be drawn to include any case in which there is a possibility of *sentencing to actual imprisonment*. I will therefore change the question, and will pose the question as to whether the problem of the lack of representation is more acute when it relates to minors. My answer here is in the negative.

In Cr. App. 134/89 44 P.D (4) 203 a defendant's request for representation was refused. The defense he conducted was inefficient, and he was convicted. In his appeal he was represented and the court ruled that greater use should be made of judicial discretion, especially in cases in which the accused actually expresses his wish to be represented. The same applies to Juvenile Court judges. While in that specific case the judges called for legislative action, in my opinion the amendment should be all-embracing and not restricted to minors. Until such time, the Juvenile Court judges should use the powers that they already have.

With respect to the raising of arguments for the defense: there was recently a case in which a minor appeared before me on the charge of having attacked policemen who came to assist in the collection of taxes. He confessed and was convicted. It was only after reading the probation officer's report that I realized that there was a good argument for the defense, given that the police



had been acting illegally. The minor subsequently retracted his confession.

#### Judge Saviona Rotlevy

I agree with Judge Naor, and as a juvenile court judge\*, I would like to add some comments on aspects that are characteristic of work with young people.

According to the *Law on Legal Fitness and Guardianship* and the *Law on Equal Rights for Women*, both parents of a minor are his/her guardians, and are responsible for his/her civil legal acts. While children need their parents' agreement in trivial matters, the child's assent is needed for important decisions, such as a change in religion, his/her adoption, giving up a child for adoption, etc.

As for the representation of minors, the legislator expressed his opinion that a minor can represent himself, either he or his parents. If we interpret the *Youth Law* specifically as a law of criminal procedure, as do most juvenile judges, there is, however, no obligation to appoint defense counsel, even for serious offenses. A juvenile court has the same authority as a district court from the practical point of view; in other words the position of a minor in the juvenile court is worse, as the courts do not recognize the obligation of representation.

A minor was recently brought to the juvenile court on a charge of arson, and no defense counsel was appointed for

\* Judge Saviona Rotlevy is no longer a juvenile court judge, having recently been appointed as a district court judge in Tel Aviv.

him. At the appeal, the district court was surprised by this.

The Youth Law lays down that the court shall appoint a lawyer if the minor's welfare necessitates this, but it is left to the discretion of the judges.

Defense counsel is appointed based on considerations of the minor's welfare, and not on economic considerations, which puts children from poor families at a disadvantage because rich parents can pay for a lawyer. This concept is subject to the interpretation of the judge. There is no normative interpretation of this term, and there is no obligation to justify the failure to appoint defense counsel. There has never been an appeal about the appointment of counsel. Many judges think that it is beneficial to the child's welfare that s/he not be represented. In their opinion, the regular appointment of defense counsel would totally alter the nature of the juvenile court as it is today. They point to the situation in America today, which began in 1966, when the courts determined that "children are also people," and had a right to representation. My colleagues often fear that the trial will turn into a superficial phase in the minor's rehabilitation if there is a lawyer present, and that the intimacy and direct relationship between the juvenile judge and the minor will be lost.

Parents have no expertise in interrogation, and this right is not usually exercised. Prosecution summaries frequently refer to the fact that the minor abstained from cross-examining a witness — how should we evaluate this abstention?

In other words, there is no balance between the sides from the start. I doubt whether any minors — or adults — know about the right to abstain from self-incrimination or the right to be warned. Most minors just understand that if they talk, they will go home. Nor do parents know about the rights of the minor. They do not usually observe their children during identification lineups.

There is a report that shows that in the case of traffic violations, which carry light punishments, lawyers do appear for minors, because the parents of these children can pay for them. This is absurd. In 1992, 1,300 cases came up for trial in the juvenile court. Of these, 628 were traffic violations. A lawyer appeared for the minor in 89 of these cases, in one case by appointment by the court. In the criminal cases, 77 minors had legal counsel, of which 24 were court-appointed lawyers — 18 of them by the same judge.

The present situation is intolerable. But is the appointment of defense counsel for a minor desirable in general? At this stage of life, the child's personality is still in the process of formation, and educational elements are important. There is thus a problem with representation, beyond the question of what it is that the lawyer wants — personal justice for the child, or legal justice? For example, there was an unrepresented case in which I was listening to the prosecution plea. While I was writing a plea of no case for the minor, the defendant said that after having heard the witnesses he wanted to confess to the offense. If he had been represented by a lawyer, this would not have happened. If the child had not

confessed, he might have continued to live afterwards with guilt feelings. With a lawyer, the concept of truth can become relative (for instance by not confessing) — is this how we want to educate our children?

Some people think that representation prolongs the trial, and that the goal of the juvenile court is to shorten the process as much as possible, in order to hasten the rehabilitative stage. There is a conflict here between the minor's interest in correct procedure and his or her interest in efficient rehabilitation. Where is the balance? If juvenile crime is the symptom of a need for help, then prolonging the trial by employing a lawyer will delay the response until it loses its efficacy.

Another problem occurs when lawyers with insufficient experience in juvenile courts appear and cause harm to the minor. For instance, they may request a sentence of "only" suspended imprisonment, when no one was requesting conviction! It is therefore very important that any suggestion for change in the legislation includes provisions regarding the training of lawyers to appear in the juvenile court. This mainly concerns the punishment plea. There should be defense counsel who appear regularly in the juvenile court here, who would receive special training.

The first Israeli juvenile judge, Judge Rayfen, suggested in one of his publications that defense counsel should be appointed in every case in which a minor denies guilt, or in which several minors are involved and only some of them are represented. I agree with this. It must be remembered that a criminal



record, even if there is no conviction, has far-reaching implications later in life.

As to rehabilitation — today there is an extensive welfare system, which does not confer any stigma. It would be preferable for the State to invest more in this system. Paternalism cannot serve as a mask to hide damages to rights. The UN Convention on the Rights of the Child ratified in 1991 establishes in Article 40 that legal aid should be given as often as possible, and in Article 37, that every minor deprived of his liberty can appeal against this in court and receive aid for this purpose. We have an obligation to carry out these provisions.

I am also in favor of a change in the legislation, since in practice the relevant considerations, as rightly suggested by Judge Naor, are not being used. This new basic legislation must deal with the minor's rights to legal representation.

DCI-Israel Lawyer Joseph Rotman:  
Justice Haim Cohn, also chairman of DCI-Israel's advisory board, was unable to come, but he wrote us a very nice letter (reads the letter). He thought we have raised an important point. The issue raised here is the issue of representation for minors. I would like to open the floor for the discussion.

Deputy Attorney-General Judith Carp:  
Isn't the problem here really the deeper problem of the attitude of the Juvenile Court. We have attempted to reap the benefits of a system that can be either legal or therapeutic. Legally speaking, if the child has rights, they are not complete; for example, if he is not represented. Therapeutically speaking,

the problem of the lack of representation may be less acute. There is a possibility of distinguishing between the legal procedure and the therapeutic procedure. In the legal procedure there is room for representation as in any other case.

DCI-Israel Lawyer Daniel Malka:  
There is another factor to be considered in the non-appointment of a defending counsel; when an indictment is filed against a minor, quite naturally the judge has a certain preconceived notion that the indictment would not have been filed unless there was prima facie evidence. The minor starts off in an inferior position. This is another reason for the claim that the involvement of the judge only begins at the moment that the indictment is filed and that therefore he is basically unable to stop the process. I have never succeeded in convincing the prosecution to retract their indictment.

DCI-Israel Advocate Dr. Awni Habash:  
I would like to make a distinction between Jewish youth and Arab youth. The system of the investigating judge will not be effective with Arab youth. The juvenile court trial takes place in camera. The youth feels isolated and the investigation by the judge is difficult. In the court in East Jerusalem where I represent minors there is sometimes no interpreter. There was even one case in which the youth complained of having been beaten by his interrogator, who was none other than the interpreter in the same trial! I assume that when the youth are Jewish, the conditions are different. The Jewish youth is familiar with both the language and the society. For most of the Arab youth coming to

the court, it is their first contact with the Israeli authorities.

I would also like to make mention of another phenomenon that has yet to be properly discussed in the court — the statements given in Police Headquarters are taken in Hebrew. Though it is invariably written that the statement was translated into Arabic, I have heard of many cases in which this was not done. When I raised the claim in court, it was ignored.

DCI-Israel Advocate Yair Ronen:  
I would like to relate to the right not to incriminate oneself. Neither the Rules of Ethics, nor the Advocate's Chamber Law provide clear direction as to how one ought to behave. The accused is entitled to be made aware of the fact that he is under no obligation to incriminate himself, but he also has additional rights. It is the advocate's role to ensure that an accused who is weak does not admit to something that he did not do, but also to give him the strength not to have an unreasonable fear of admitting to the crimes that he did in fact commit. Minors often have an unrealistic perception of the procedures in the Juvenile Court and of the punishments waiting for them, a factor which magnifies the role of the defending counsel. Thus it is not the representation itself which is important, but the **type** of representation given. The accused's retreat into the shell of his own silence, doing nothing during the trial, is one way of coping with the proceedings in the Juvenile Court and the regular court, albeit an undesirable way.

Levi Eden, Director of the Juvenile Probation Service:

A week ago six new immigrants were arrested, among them girls and boys between the ages of thirteen and seventeen, who had been soliciting sex in order to finance drug use. Two of them were represented by an advocate; were it not for DCI-Israel's legal aid project, the representation of the remaining four would have been dependent on the discretion of the court. It is clear that this kind of aid is not equivalent to the type of ongoing aid from the commencement of trial that would be provided by a permanent advocate. In fact, at the outset we at the probation service were extremely skeptical regarding the benefits of legal aid. The emphasis in the authority was on the personal relations between the social worker and his client. But those conducting the DCI-Israel legal aid project also made the distinction between the legal, as opposed to the therapeutic, aspects of the case, and when it was suggested that the project be expanded, the probation officers were enthusiastic. The result of having a defense counsel was the achievement of equality between those represented and those who lacked the means to finance a defense counsel. Many problems arise in relation to the rights of minors. There is the unconscionable practice of holding the minors in detention in order to keep them away from dangers, and there is almost no judicial review of the power to arrest; indictments are filed **after** the statutory period with the approval of the Attorney General, and the main victims of this practice are minors. We proposed that the approval of the Attorney General be made contingent upon prior consultation with the probation officer, but our proposal was rejected.



DCI-Israel Adv. Yair Ronen:

The defense is conducted by attorneys. Even with the advent of the Juvenile Courts, great importance still attaches to the distinction between a legal defense and treatment. The legal and correct viewpoint is that the probation officer is in charge of the rehabilitation of the minor, and not of other public interests, and he is not in charge of the legal defense of the minor. For this reason, it is important to point out that there is no competition between the lawyers and social workers, with one of them defending the minor, the other treating him.

With regard to the conflict between parents and children — there is increasing awareness of the fact that the one in need of representation is **the child**. Given this assumption, the question is to what extent a defense conducted by parents can fulfil this role. There is a potential conflict of interests in cases when the parents may find it more convenient for the youth to leave home, whereas the youth wants to find justifications for his behavior and to attempt to prove his innocence and present all of his particular personal circumstances from his perspective. It is in these kind of cases that particular importance attaches to legal representation.

Navah Kedar: Head, Juvenile Probation Service, Jerusalem District:

One of the reasons necessitating a defense counsel is the *Criminal Offenses Registry Law*, which is a particularly severe law in as much as it makes no distinction between a court's decision to send a child to a facility for punishment or treatment. I would therefore suggest DCI-Israel also act with respect to this law.

Yossi Miller, Presenter of DCI-Israel's Law Proposal:

DCI-Israel's law proposal is based on existing Israeli law. The first source for alterations is the experience accumulated as a result of the legal aid project. Furthermore, we have also conducted comparative research with respect to the rights of minors to legal aid in other countries. We have also taken academics' opinions into account, and have relied upon the provisions of international law with regard to the rights of minors to legal aid, especially the United Nations Convention On the Rights of the Child.

DCI-Israel's proposal is to amend the *Youth (Trial, Punishment, and Modes of Treatment) Law, 5731-1971*, by the addition of Chapter D1, entitled "Consultation and Legal Representation." Since the law contains provisions pertaining primarily to the trial of minors, it is only natural that it should also include provisions relating to the rights of the minor to legal aid. A synthesis of these provisions with the existing law symbolizes the principle of removing obstacles while preserving the advantages of the existing law.

The arrangement will apply to all minors (those under the age of eighteen) being tried in Israel. We did not make any distinction between those above the age of sixteen and others, for it seems to us that it is precisely the older ones who most frequently require legal aid, for they are usually being tried for the more serious offenses. The arrangement will apply to all courts, both juvenile and others. The investigating judge cannot fully replace the counsel for the defense, and the rights of the minor are therefore prejudiced. The arrangement will apply to all stages of the proceedings, from the initial

interrogation until the appeal, with the provisions being adjusted to the special needs of the minor and the limitations of the system at each stage. The arrangement will also apply to non-Israeli minors, provided that they are being tried in Israel. This means that it will apply equally to Palestinian minors being tried in the military court in Lod. The application of the provisions in the occupied territories requires legislation by the military commander. DCI-Israel intends to present a parallel bill to the military authorities concerning the military courts in the occupied territories.

The right of consultation and representation at the stages of interrogation and arrest:

Today the obligation to appoint a counsel for the defense exists only in instances when the proceedings are for detention until the termination of proceedings. The extension of the mandatory appointment of counsel for defense answers a variety of needs.

A. It ensures the integrity of the evidence gathered against the suspect at this early stage; The conduct of the interrogation per se, and especially the arrest itself, creates tremendous pressure on the minor; both the pressure applied by the interrogators and the physical and psychological pressures combine together with the minor's sensitivity and vulnerability, which are particularly high. The involvement of the counsel for the defense has the effect of both balancing and decreasing the pressure. The minor who knows that he has a counsel for his defense becomes stronger and feels encouraged. The counsel for the defense can demand more effectively that the interrogators improve the conditions of the detention,

and the interrogators knowledge that the minor is being represented deters them from utilizing illegal means of interrogation. As well as ensuring that the rights of the minor are respected, defense counsel can explain these rights to the minor himself.

B. Preservation of the Freedom of the Minor:

The defense against the illegal limitation of freedom; the counsel for the defense can persuade the appointed officer not to keep the minor for the entire forty-eight hour period permitted by law. He can also file motions for changes in decisions and for release on bail, as well as objecting to the lengthening of the time in jail.

C. The location of evidence supporting the case of the minor.

D. The conduct of negotiations with the prosecution. Counsel for the defense can engage in negotiations with the prosecution toward a plea bargain, his bargaining position being equal to that of the prosecution.

It is also clear that in addition to all this there is the public interest in the trying and punishing of criminals and crime prevention. This interest requires that both the interrogation and period of detention be as short as possible.

DCI-Israel's proposal to appoint a defense counsel will also apply in the appeal stage. While this requirement is currently included in the *Criminal Procedure Law*, there are many cases in which the counsel for the defense specifically requests that his appointment be restricted and the court is entitled to grant the request. Furthermore, if for any reason the attorney ceases representing the minor, then the minor himself or his parents have to organize the appointment of



another lawyer.

Appointment of Counsel for the Defense at the Request of the Probation Officer: Today there is no specific provision in this regard. In practice, the court uses its authority to appoint a counsel for the defense in rare and isolated cases. Section 23(g) is based on the fact that the courts will appreciate receiving the probation officer's recommendations in all matters pertaining to modes of rehabilitation and treatment. There is no reason for not relying upon the professionalism and objectivity of the probation officers in this matter too. However, in DCI-Israel's view, the district probation officer should approve the recommendation of the probation officer.

Dr. Philip Veerman  
Coordinator, DCI-Israel:

Whether or not DCI-Israel's proposal is accepted by the Knesset, we have with our proposal now stimulated the discussion. DCI-Israel hopes that a public defender will be established soon in Israel, and hopes to work for such a body by representing minors charged with criminal offenses, since the knowledge that it has required in this field makes it particularly able in representing minors in the juvenile court. If such a public defender will be established, DCI-Israel, with its experience in representing minors in criminal cases, will offer the office of the public defender its services to represent minors on their behalf. We hope the Minister of Justice will soon introduce such changes.

We thank you all for coming to our conference.

## THE ARAB MINOR BEFORE A JEWISH JUDGE

Attorney Dr. Awni Habash\*

By their very nature, matters involving minors arouse feelings of concern, pity, and a desire to help. One reason for this is that we see children as persons who are growing and open to influence by adults and other minors. Every society has established an age of criminal responsibility below which a child cannot be considered responsible for his or her actions and is therefore not liable for punishment. The help offered to minors who commit a criminal offense and are considered responsible for their actions by society is, in many societies, designed both to protect minors and to ensure that they will successfully undergo a process of socialization and become integrated into the social framework.

This social interest is also reflected in society's attitude toward minors who commit criminal offenses. Worldwide, legislators have established special norms for dealing with minors who disobey the law. The goal is to temper the encounter with the law enforcement system — an often traumatic experience (1) — and to facilitate the minor's return to society as a contributing member.

As an attorney for DCI-Israel, I have seen developments in this field in Jerusalem since the beginning of the Intifada exposed the legal system's inability to meet the full range of its

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tasks. As we shall discuss below, this is due to the system's concentration on punishment and deterrence, with all the accompanying ramifications.

In order to fully understand how Palestinian children in Jerusalem are treated in the legal system, one must distinguish between two periods: first, prior to the Intifada, which broke out in December 1987, and second, from that date until September 1993, when the Declaration of Principles was signed between the Israeli government and the PLO.

The division into these two periods is important for our purposes for two reasons: the nature and motives of the offense, and the social identity of the offender.

In the pre-Intifada period, minors were brought to trial for "ordinary" criminal offenses such as theft, assault, drugs, and the like. These offenses were committed against the background of the minor's particular socio-economic circumstances, and the motives were mainly associated with what is often considered as "delinquent" (2). These offenses were directed mainly against the offending minor's environment, such as the neighborhood in East Jerusalem.

In terms of identity and social and class affiliation, these minors belonged mainly to the poorer and weaker strata of the population. The characteristics of children who committed offenses in Arab society was by no means different from those in any other society in terms of parental, economic, and social background.

Following the outbreak of the Intifada in December 1987, the situation changed beyond all recognition and in all aspects. Large numbers of minors from all strata of Palestinian society, and from all sectors and faiths, began appearing in court on charges of committing offenses against the (mainly) Jewish authorities or Jewish citizens of Jerusalem. Based on my personal acquaintance with a substantial number of court rulings and direct contact with minor offenders for DCI-Israel, I would summarize the situation as follows:

1. The accused minors did not acquire "delinquent norms." The vast majority of these minors had no prior criminal records and this was their first encounter with the legal and judicial establishment.
2. The offenses committed were directed against the State of Israel, be it the police, border police, Jewish citizens, or Arabs linked to the Israeli establishment. A tiny proportion of the offenses were actually directed against Arab society in the city, with the aim of imposing discipline on those who ignored instructions concerning strike days.
3. Although a large proportion of the minors brought to trial still came from the economically weaker sections of society, "good kids" also represented a significant percentage among this group.
4. A very high percentage of the accused minors regularly attended school up to the time they appeared in court. During a certain period, school served



as a kind of social pressure cooker for many minors; even a small group throwing stones at a Border Guard vehicle passing by created strong social pressure on other peers to do so as well, although these other minors would not otherwise have taken part in such activities (3).

5. I have identified two types of motives:

**The nationalist motive.** The youngster feels a kind of "mission" to support the Palestinian national cause, and is thus obliged to act to liberate his society from the Israeli occupation. I came into contact with emotionally mature adolescents, capable of a high level of abstract thinking and not significantly influenced by social pressures, who came to such conclusions.

**The social motive.** For many youngsters who sought to achieve social recognition and to reach positions of power in their environment, activities in the Intifada served as a social impetus (4). These youngsters saw their anti-establishment actions, their arrest and their imprisonment as tools for achieving social recognition (5), insofar as taking part in such actions raised their social status. The potential for social recognition, whether inside the prison or on the street, was in proportion to the extent of their involvement in Intifada activities. Here children with low self-esteem and difficult family circumstances could be more easily influenced by peer

pressure, although all supported the same political ideals.

The Intifada proved that the established legal system is incapable of dealing with the phenomenon of civil rebellion in general. This is all the more so when the rebelling population are overwhelmingly minors.

It should be emphasized that these comments relate to the Israeli legal system, which was perceived by Arab minors, especially during the Intifada, as a system designed to protect the occupier and aid it in realizing its anti-Palestinian policies. From the viewpoint of Arab society, this system has undergone a drastic change in status. Before the Intifada, the Arab public even felt a measure of respect for the Israeli legal system, praising its high degree of impartiality and the equality of all before the law. Arabs were even inclined to use the system, instead of the Shari'a Muslim courts or traditional means of conflict settlement that had been customary for a long time and had gained official status under Jordanian rule. There was similar respect for the police when dealing with minors.

After the outbreak of the Intifada, we observed a significant decline in the status of the Israeli legal system, which was now more than ever perceived as the agent of the establishment. This was regarded as normal treatment by the Israeli authorities, just as the lower per capita funding and level of services accorded to Arab neighborhoods in Jerusalem compared to Jewish ones came to be regarded as the norm. Many families expressed their feelings through an Arab proverb: "If the judge is your enemy (the other party to the

disagreement or dispute), to whom can you complain?"

When an Arab minor stands before a Jewish judge, his expectations are clear. The alienation between the two sides is reflected not only in their different mother tongue (6), but also in ethnic, political and social affiliations (7). The minor sees the judge's ruling as an act of revenge by Israeli society against him and against Palestinian national aspirations.

It should be noted that some judges actually helped minors to adopt this attitude and believe in its veracity. The vast majority of judges in the Israeli legal system have no experience in judging minors, and therefore do not fully appreciate their special status. The age factor has become a mere technicality, which in many cases was not even reflected in sentencing (8). Often, it was enough for the prosecution to claim that the offenses were a reflection of a "national plague," and to present to the court statistical tables showing annual or monthly events, in order for the minor to be sentenced to many months' imprisonment (9). Such a policy was aimed at deterring other Palestinian youngsters from engaging in such actions; the best interests of the minor were not a consideration. It has been proven, for instance, that in many cases the courts did not relate seriously to probation officers' surveys. The probation officer's report was regarded as a mere formality required by the court for the purpose of meeting legal requirements. There are a far greater number of probation officers available for Jewish children than for Palestinian ones, and as a result Palestinian probation officers face an unreasonably

heavy caseload. The number of Palestinian youngsters escaping conviction on the basis of probation officers' recommendations was almost nil (10). A well-known fact that exacerbated the problem was that many minors confessed to committing the offenses with which they were charged under interrogation, following the use of improper methods such as beatings or other forms of intimidation (11). While the law allows the accused to initiate a trial within a trial on the acceptability of the minor's statements, the youngster usually asks the rhetorical question "Who will the judge believe: the interrogator or me?" These depressing circumstances have proven to minors and their families that the court's role is purely punitive, motivated by revenge, and an instrument to suppress nationalistic expression (such as the waving of Palestinian flags, which was illegal before the agreement with the PLO). The eschewing of procedural norms was also seen as the adoption of an anti-Palestinian stance (12).

One question that attorneys involved in these cases are usually asked is: "How many months will I get?" In other words, the offending minors do not expect anything other than imprisonment from the judge. This reflects their perception that the role of the judge is to serve as the representative of a state out for revenge rather than as an authority who takes the age of the offender into account (13). These minors often received the same prison terms as adult offenders. With these punishments of minors, the courts only stoked the flames of hatred in a city holy to Jews, Muslims, and Christians. While a fairer approach to



the treatment of minors would be welcome, the ultimate solution to this problem lies with politicians, not the courts: until an acceptable political agreement is achieved, Palestinian minors will continue to be brought before the judicial authorities.

#### Notes:

1. An example of consideration for the emotional state of the minor is in clause 17 of the Juvenile (Judgment, Punishment and Methods of Care) Law, which empowers the court to exempt the minor from the duty to be present in court during all stages of the discussions. According to Justice Agranat of the Israeli supreme court, the main goal of this provision is to prevent mental damage which may be caused to the minor (A. Melamed, "Youth in Distress," 1983, p. ?).
- (2) P. Krisberg & J.F. Austin: "Inventing Juvenile Justice," pp. 129-130, and Agranat, pp. 504-505.
- (3) Justice Agranat categorizes this type of accused minor under the class of casual offenders, who generally act without premeditation and without any special reason, usually due to temporary weakness. He notes that only those who require a tangible warning should be prosecuted. See note 1, p. 504.
- (4) Agranat notes that most violent offenses originate in the emulation of the behavior of older persons; the minor is motivated by the desire to stand out and attract attention. Note 1, p. 502.
- (5) Concerning ideological offenses, Justice Agranat notes that while some offenders may be deterred by real punishment, this will have no meaning for others. It may even turn them into heroes in their own eyes or in the eyes of those who identify with and share their principles. He also claims that the minority of these offenders who act out of motives relating to mental disturbances require individual therapy and rehabilitation. See note 1, p.

503.

- (6) In Krisberg and Austin's book, the language problem and lack of communication between judge and defendant is raised as a significant reason for the claim that minorities in American society are judged more severely, and, often, disproportionately to their relative numbers in society. See note 1, p. 130.
- (7) Lack of ethnic balance and Anglo-American dominance of high-level positions in the juvenile justice system contribute to the over-representation of certain minority groups in secure juvenile justice facilities. The assumption is that by increasing the numbers of minority staff at executive levels, law enforcement and the juvenile justice system would become more attuned to the special needs and problems of lower class ethnic youth and their communities.
- (8) The importance of the training received by judges in the juvenile justice system is evident in a number of areas. First of all, judges must take the young age of the accused into account, paying special attention to what he or she says and trying to instill a sense of security. The message must be that the court is not there to make things worse, but to offer a solution to the problems these youngsters face. Second, the judge must weigh very carefully the evidence presented by the various bodies involved. The third aspect is judicial experience in this type of case concerning the choice of treatment method most likely to produce correction and rehabilitation; see Agranat (above), n. 1, p. 20, in the Introduction. Section 6.3 of the Beijing Rules and Section 22.1, if used to guarantee that the judge's decision will be based solely on his/her professional training.
- (9) Justice Agranat warns against this sort of generalized approach to punishment: "In the case of minors, it may seem at first glance as though public safety were being served by punishing these minors for their crime(s).... in the long run, it is rehabilitation that is in the public interest." See n. 1 on p. 428. The Beijing Rules

(Section 30) mention that research into the present state of youth is necessary as a basis for planning, policy-making and assessment.

(10) "Probation findings are the principal guide used in juvenile court... to determine whether or not the accused should be convicted and punished or whether he/she should be referred for treatment, as prescribed by the law." In this statement, Justice Agranat indicates that the best method at present is to rely on the experience of probation officers and a professional assessment of the social problems of minors in order to acquire sufficient, accurate information about the accused (n. 1, p. 426).

(11) And also Section 10.3 of the Beijing Rules.

(12) Justice Agranat warns against the phenomenon whereby the procedural rights of minors are ignored; this phenomenon was widespread in American juvenile courts, where the judge conducts the discussion and runs the entire case according to his own judgment. It is important that the judge assist the minor during the presentation of evidence. See n. 7, p. 22.

(13) As Agranat writes: "There is no doubt that legislation concerning minors on trial for criminal offenses must be based on a rehabilitative approach, even if this does not apply in every case" (n. 1, p. 413).

*The Jerusalem Post*  
March 9, 1993

#### 'UNACCEPTABLE' POLICE INTERROGATION PROCEDURE NULLIFIES GIRL'S CONFESSION

Bill Hutman

Arab suspects interrogated by Jerusalem police are sometimes held in half a square meter space at the Russian Compound, a senior officer recently told Jerusalem District Court.

Deputy Commander Amram Fahima, head of the minorities division of the Jerusalem police, was testifying last week at the preliminary hearing for a 14-year-old girl suspected of throwing a bottle at an Israeli bus.

The girl's confession was invalidated by Judge Musya Arad, after Fahima told the court about the conditions in which suspects are sometimes kept.

"Suspects are sometimes confined to the space between two closets, with the door of one opened up to close off the space, to separate suspects waiting to be interrogated," Fahima said.

The girl, from Ras el-Amud, said she was kept in this space for five hours, several times being taken out and questioned about the bottle-throwing incident.

The interrogators hit her once, and screamed and spat at her, according to her testimony. Police denied this.

The girl, represented by a lawyer with Defense for Children International, Israel, said that in the end she agreed to sign a confession dictated to her by an interrogator. Judge Arad threw out the confession on grounds that keeping the girl in the small space was unacceptable.



## 'UNACCEPTABLE POLICE INTERROGATION' (continued)

"I don't think separating suspects requires imprisoning them in a half square meter space... especially when the person being interrogated is a 14-year-old girl suspected of throwing a bottle at a bus. Such a suspect is likely to become frightened, lose confidence, and be caused serious discomfort and, in extreme cases, physical torment."

Arad, however, apparently left open the possibility that some suspects could be kept in such a small space. Whether a method of interrogation is acceptable, she wrote in her decision, depends upon on whom it is being used. The court hearing is to reopen next week, with the police now forced to find witnesses to back up their charges. Attorney Awni Habash (Defense for Children International-Israel), said police in both juvenile and adult cases, often rely on confessions, particularly in cases involving nationalist violence. "This was an important decision for us," said Habash, who charged police often used harsh means to coerce confessions from suspects, including juveniles.

## EMPOWERING CHILDREN AND DCI-ISRAEL'S HAIFA CHILDREN'S RIGHTS INFORMATION CENTER

By Netta Amar

The new Children's Rights Information Center in Haifa, opened by the Deputy Minister of Education, embraces the modern concept of empowerment while encouraging children to think about their own situation and making sure that children's opinions be taken into account.

Article 12 of the UN Convention on the Rights of the Child proclaims that:

*State parties shall assure the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child... being given due weight in accordance with the age and maturity of the child.*

Children have a right to express their opinions, difficulties, desires, and hopes for the future in all matters affecting them. What, however, are the limits of the notion "affecting"? To what extent and on which issues should children be given the right to express themselves? Children take part in almost every aspect of social and economic life: in the educational system, through school attendance and in the economic system, through consumption of children's products, for instance. However, authorities rarely consult children regarding their desires and opinions. In his publication, *Children's Participation: From Tokenism to Citizenship* (UNICEF, International Child Development Center, Florence,

Italy, 1992), Roger Hart offers a blueprint for children's involvement in the adult world, including suggestions for their participation in the planning process of urban features such as community centers, parks, and playgrounds. Currently, however, children lack the information even to take advantage of the existing opportunities for involvement already available to them.

Articles 13 and 14 of the convention (freedom of information and freedom of expression) may offer a solution: it asserts children's right to obtain and disseminate information, and to express their own views, as long as this does not violate the rights of others. At the moment, many children are not even aware of their right to express themselves freely: thus, they are even less likely to effect situations and solve problems. With proper encouragement, they might be helped to use the considerable resources at their disposal.

What is the meaning of the term "due weight" in Article 12? The Convention specifically limits children's rights "in accordance with the age and maturity of the child." However, it does not specify how the child's voice could be considered in administrative and legal procedures.

Hart succeeds in demonstrating that adult views on the status of children are reflected in the manner in which they succeed in denying them full social and political involvement while simultaneously exploiting them. Adults usually regard children as passive participants who articulate their desires through behavior; such a view belittles children's capacity to verbalize such

desires accurately. DCI-Israel is pioneering with this new approach of taking children very seriously.

Children seeking advice from the Haifa Children's Rights Information Center receive information about their legal problems as well as legal representation when necessary. Such advice is given in a supportive and encouraging atmosphere, by a lawyer or social assistant who, after listening to the child, analyzes the problem and identifies the available options. Once such information has been given, the final decision on what action is to be taken is, however, the child's own.

Children are encouraged by DCI-Israel to voice their opinions and wishes within the existing legal framework, albeit this offers limited scope for them at present. Thus, they are prompted to write letters or speak to the parties involved in their controversy, be these a teacher who humiliated them or a judge who will decide which parent will receive custody of them in a divorce case. An adolescent girl molested by her father was encouraged to articulate her demand that he be removed from the home to the family therapist, social worker, and the presiding judge. Empowering children significantly increases their self-confidence.

In September, the center is moving from the shop on Rehov Herzl that it now occupies to larger premises on Nordau Street, in an effort to accommodate the increasing demand that it faces. Many children and adolescents come to or call the center, revealing a real need for its services in the north of the country.



DCI-Israel's ombudsman for immigrant children is receiving children there one day a week. Now, the center wants to engage in more outreach work, including sending speakers to schools and, most importantly, starting outreach work among Arab schools in Haifa. A local advisory committee is advising DCI-Israel and the center's staff. The committee-members include representatives of the Haifa Youth Council, the juvenile probation service, the Haifa University Faculty of Law, and professionals who know the community well (such as Advocate Adam Fisch).



The Dean of the Faculty of Law at Haifa University, Prof. Baruch Brocha, at the opening of the Children's Rights Information Center.

From left to right: Prof. Miek de Langen (founder, Children's Law Shop in Amsterdam, The Netherlands), the Mayor of Haifa, the Deputy Minister of Education, the Dean of the Faculty of Law and the DCI-Israel Coordinator.

## TAKING THE CHILD'S OPINION INTO ACCOUNT: A DCI-ISRAEL CONFERENCE

**Dov Israeli — DCI-Israel Chairman:** The Convention on the Rights of the Child has now been ratified, but is not yet the law of the land. One of our Association's goals is for the Ministry of Justice to present the Convention to the Knesset to be incorporated into the law of the State of Israel, as was the Hague Convention relative to the civil aspects of child abduction. I hope we will reach this stage; we are currently working on this. Our conference today\* in the Jerusalem Van Leer Institute will focus on Article 12 of the Convention:

*"State Parties shall assure the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, and will give the child's opinions due weight in accordance with the age and maturity of the child. For this purpose, the child will be given an opportunity to be heard at every judicial or administrative process, by means of an appropriate body in a manner appropriate to the legal arrangements embodied in national law."*

When parents quarrel, they do so at the expense of the child. Each parent knows "better" what is best for his or her child, and inevitably what they think is the opposite of what the other parent feels; the child is the one who must pay the price.

When children come to talk with their

\*The Conference was held on June 7, 1994

parents accompanying them, or at their parents' request, they usually say what the parent has told them to say, out of fear. The concept of the child's right to be heard, as I see it, means that the child has a right to express what he or she feels, knowing that he/she is speaking to a neutral person who can be of help. In this way, the child is not subject to pressure.

We shall begin by looking at a case which will be presented by Mulattu Dessie, our fieldworker who deals with Ethiopian children.

**Mulatu Dessie — DCI-Israel Ombudsman:** Most of my work is in the field. Most of my work consists of visiting schools and boarding schools, and caravan sites.

I want to give you an example that shows that even in very difficult cases we have to listen to the child. An Ethiopian boy committed several crimes, mostly theft. Attorney Yair Ronen took steps to ensure that the child was sent to a hostel and not a closed institution. There, they claimed that he attacked the hostel staff; we managed to talk to the child and hear what his problems were. We sat with him with his family, we talked, and the child told us what he wanted, which framework he wanted to be in. We managed to talk to his family, who, like him, wanted him to go to a school of a particular kind. In the hostel, they had suggested that he should go to a closed institution. The child asked us to help him. We spoke to the probation officer and the judge. The child was given the chance to express himself in court too. He said that he wanted to be at home with his family, and he went home. He is now doing well.



Dan Sharon - Chairman of the Israeli Association of Psychotherapists: When we discuss the child's right to be heard, Article 12, we will make no headway if we look at this issue only from the legal, clinical or therapeutic aspects. Article 12 is a manifesto. What is appropriate in one context may not be suitable in another.

In order to understand the child's right to be heard, to express him/herself, to participate though not to take responsibility, I will make use of two main concepts as a theoretical basis: *It is the child's right to be heard, especially in those situations in which the family, the entity which is most important to him or her, is out of control.* Whether we are talking about the Youth Law, treatment and supervision, or abused children, brutality, children whose parents are getting divorced — in all these cases we are dealing with a situation in which the family is out of control. In order to defend Article 12, we can look at it from a slightly different angle too, linked to the concept of the locus of control. We must ask why we are seeing more and more examples of an intergenerational cycle with children from broken homes or abused children. There are many explanations for this. One explanation is that we do not grasp the importance of these matters at a critical stage of the child's life. The parents take a child and tell him or her that they are getting divorced, and now the child has to be subject to some sort of arrangement. In every case we're talking about profit and loss. We're talking about choosing the lesser of two evils, the lower level of the child's welfare. The child has to conform to what society has determined is in

his/her best interests. The child feels that he/she has lost control. S/he regains control by assigning guilt. For instance, in divorce cases the child reorders the world, often dividing his or her parents into the good parent and bad parent. I claim that in no event should the child be told that he or she is responsible for the breakup. It is very important that the child's opinion is heard, and that he/she should be given the feeling that his/her opinion has been taken into account when some professional body is making the ultimate decision, and the child must know that he/she is involved.

The second concept: the principle of the weight given to different considerations. We must not cause harm greater than that which we are trying to prevent. So there are situations in which the child's views must be heard, and there are situations in which his or her opinion is not heard. We have no court that has developed a clear doctrine on the matter. For instance: I had a case of a child 9½ years old, the age when you can begin to listen to the child. As a result of a series of provocations in the course of a very painful divorce, the father had abandoned him between the ages of 3 to 5. When he was 5, the father decided to renew contact. All attempts to make the child meet his father failed. I told the child that today he refuses to see his father for his own reasons, but that in his own interests, there would come a day that this separation would influence him when he came to set up his own family. One day he would claim that his father had abandoned him. Knowing about the painful conflict of loyalties, I suggested that he should appear before the judge in court and tell him that he refused to meet his father. I asked the judge to

make the child sign a document to the effect that he refused, and that this wish would be respected. The judge's reaction was that such a signature would be meaningless. However, a court can give a certain degree of protection, and after pressure on my part the judge agreed. The judge asked me to compose the document. He then asked the child whether he clearly understood what he was signing. The child took the pen, bent over the paper, and began to cry. He said, "Your Honor, I don't know what to do and they're putting pressure on me. I want contact with my father but I think then I'll lose my mother."

Every child has the right to family life, to a link with both his or her parents. Legal decisions made by Supreme Court Judges Cohn and Bernstein state that the court cannot force a child to see his father. If the legal system were more attentive to the needs of children, if the court would use its powers more, and explain in greater detail to the parents, perhaps things would change.

The child's right to private time. In divorce proceedings, I see in particular that the child's social needs, such as the child's right to private time, are not recognized. This is an aspect which we are seeing more of today.

I think that the concept of the child's right to be heard embodied in Article 12 includes a hitherto overlooked element. It says, "and will take the child's opinion into account." But there are cases in which the child's views are central, and there are cases in which the child's opinion should be given a very relative weight. There are also situations in which the child can simply be released from the obligation to

express his or her views.

Dr. Natan Gover — Lecturer at the School of Education, Hebrew University:

Education is often seen as something that somebody does to somebody else. The view which has been dominant historically and which is still generally held is that educators know what the child needs to receive, and should know how to educate him or her.

Our Israeli education system is very hierarchical; it works from top to bottom, with the child at the bottom of the ladder. Most of the issues or significant decisions about what a child will learn come from above. The child is the absorbing object. No one sees any problem in the fact that matters concerning the child are determined at the highest levels. The child's right to be heard is not even discussed today at these higher levels.

The person who knows or who is completely educated is seen as having the right to decide for someone who does not know. In the present education system, children learn that others make decisions for them. Many issues are decided for them, and they pass through the educational system as objects rather than as subjects. This tends to create a situation in which a person adapts him/herself to decisions which others have made.

In my opinion, children should be able to express themselves in the educational process so that they become more accustomed to autonomy. A well-known pedagogical method, developed by a Brazilian educator, Paulo Freire, consists of a system of



recommendations that may be followed, and which would remedy the situation in which everything is decided for the child. The unique quality of this method is that it posits that the educational and study process does not have to be so planned, but rather can leave something open to enable a dialogue between students and teacher; this dialogue is genuine in the sense that it is the beginning of the educational process; choosing the content. This is not open education. There is a pedagogic system in which teachers do not determine one hundred percent of the children's activities, or what they have to know — there are question marks. This is a position based on a principle, of looking at reality. The teacher does not predetermine the goal of the process. This approach contradicts the educational situation in which the child is almost never asked about what subjects interest him or her.

In this type of education, we cannot speak of a subject if the person concerned does not recognize the subjectivity of other people.

PANEL: Attorney Pamela Butter, Director of DCI-Israel's Information Center in Haifa; Rina Yitzhaki, Lecturer at the Seminar Ha-Kibbutzim teachers' college; a representative of the Haifa Youth Council: Joe, high school student in Haifa, member of the Haifa Youth Council; a representative from SHAGAR: Miri, a high school student in the Haifa region.

Adv. Butter: At the Information Center, we try to create the right atmosphere, to provide a place free of judgmental attitudes, a place where a child can say what he or she wants to. Young people

sit with me at the center and share their feelings with me. They also come with concrete questions; after all, we are an information center, not a social work organization.

Some children come from a background of severe crisis, and it takes a while until they can gather enough courage to talk. Some come from very violent or sexually abusive backgrounds. They know that there is a place in Haifa where they can talk and ask their questions. The children read about us in the newspapers, and see our posters. Some school counsellors refer pupils to us; sometimes even parents send their children.

The first case I will mention is a girl who is a victim of sexual abuse, and whose father lives at home. Before the child walked into our center, no one thought this should be reported to the police so that the father would be removed from the house. The girl came with the question: Does Israeli law allow a court to tell a father not to come to the home any more? We decided to turn to the welfare officer, and make sure that the girl's views were heard. Many of the parties concerned were angry that we became involved in the matter. The girl was pleased, because now all the parties were aware of the situation, and the father was indeed removed from the house by the court. It was not enough that a child came and talked to us, we also had to do something tangible. The stage of action is very important here, and we approached the court.

Joe: I would like to comment on what Dr. Gover said. First of all, pupils do not always know what is best for them

in the education system. Only when they are older do they begin to choose the subjects of study. As for what happens in schools, many teachers relate very well to the children. But when there is a complaint about a teacher, there needs to be someone you can turn to who promises to take care of the problem. I have seen that the issue can just stay unresolved, or that a school counsellor violates the right to privacy and discusses the case in school, and no complaint is made after all. A Student Council has too little power.

Miri: Our organization, Shagar, works for children's rights in the field, especially for students from neighborhoods in development towns who are at risk. The level of education in these areas is often lower. Shagar works towards achieving equality in education and giving students the strength to make themselves heard. Shagar comes to the community centers, and offers a course that meets twice a week to promote the right to equal education, so that students will know more than what their "official" rights are. Mostly, they talk about what to do when there's a problem. They teach us to identify the problem, how to react, who to go to. Shagar is one of the bodies that students can turn to, and it works in cooperation with DCI-Israel. Shagar has a youth council, it's the place where young people can speak, give their point of view, express themselves. Usually, people only give minimal attention to what children say. In Shagar, they really let us take our own decisions.

Rina Yitzhaki: This illustrates the importance of informing students about

their right to be heard and where to go with complaints or questions. We are not sufficiently prepared for this. Not every child can withstand the unspoken threat that they should not complain, and there are risks. At our Teachers' College, I try to present these issues to student teachers so that they will display greater openness in their work later on.

The question is, does the student learn from the education system to deal with questions such as: what can children decide in school and what are they barred from deciding, can children interfere in school decisions, and should the child's views be taken into account in the decision-making process within the school and the family?

The truth is that most teachers just laugh at these questions. This subject must be introduced into the teacher training system and into the schools, because it strengthens the democratic system: democracy starts at home and in the school. We have to introduce issues such as empowerment in schools, of preparing people for participation in a democracy.

Miri: If they would only let students join the committees that make decisions. We have to show students how to take responsibility for their affairs. This is the way to help develop a generation of adults who will allow their children to grow into a more democratic generation.

Adv. Dov Israeli: If students wait for the Ministry of Education to reorganize the system, if they expect things to move along, it can only be accomplished with their help. You students are aware of your needs; what



## ETHIOPIAN CHILDREN IN BOARDING SCHOOLS

Prof. Yohanan Wozner — Tel Aviv University School of Social Work

In 1952 I became a young counselor with Youth Aliya, full of the energy and knowledge required to make me a splendid adviser. However, I found that I couldn't tell the difference between children from Persia, Morocco, Yemen, and Egypt. [The idea was] that we and they were all Jews, and that we had to teach them to be Israelis. I began to understand that it isn't enough to come and say, "Everybody come to Israel and we'll be brothers!" — you have to look at the differences between people. Israeli society is paying a heavy price for starting to understand this so late. Now we're aware that there are differences between different cultures, and this is a step forward. DCI—Israel's ombudsman for immigrant children uses a sensitivity to children's specific cultural backgrounds to help understand their special needs and to be able to help them.

Three to four years of accelerated education have not always made up for the absence of twelve years of previous study. This has raised doubts among teachers and academics as to the possibility of closing this gap. Youth Aliya, as an optimistic educational movement which believes in the child's ability to change, does not accept these pessimistic views. Psychologist and educator Professor Reuven Feuerstein has studied the issue and found that the potential and ability to study of these young immigrants is similar to that of the rest of the Israeli population: the difficulties experienced are the result of cultural differences.

The pressing need to place children from Operation Solomon in boarding schools reflects failings in the community education system. It should be remembered that taking the children away from their families in such a manner effectively constitutes telling parents that they cannot cope with the children, and tells children themselves that their parents cannot look after them properly. The image of father, mother, and family is damaged. In order to reduce the number of pupils actually living within boarding schools, the

send Ethiopian children exclusively to religious institutions for the first years of their education in Israel, coupled with the refusal of ultra-Orthodox religious institutions to take in Ethiopian children, led to the concentration of thousands of children at a few institutions, which thereby became almost exclusively Ethiopian. The percentage of Ethiopian children at these institutions is close to 90 percent, despite the Ministry of Education's directive that, in order to permit successful integration, Ethiopian children should not total more than 30 percent at any given institution.

The 1,600 children who dropped out of studies at schools in the community and came to Youth Aliya boarding schools can serve as a warning to us all against creating a new generation of children in distress. Youth Aliya will continue to do all it can, but it expects the local authorities, too, to do something, and to allow these children to grow and develop close to their families.

We of the Youth Aliya leadership deplore the fact that most Ethiopian immigrants have to be sent to a very small number of institutions. A situation has been created in which 80-100 percent of the children at an institution



may be of Ethiopian origin. It is obvious that this can't be regarded as integration, yet this is the reality with which we are now faced and are challenged to change.

The system of open boarding schools that take in children who live near the institution might be a step in the right direction. The project has succeeded beyond all expectations wherever there is a population of Ethiopian immigrants near one of these excellent institutions.

**The relationship between the institution and the family concerned:**

The best people to mediate between families and Youth Aliya are, of course, people who themselves immigrated from Ethiopia. Youth Aliya has taken on such people as employees in order to strengthen the link between us and the families.

Irit Fogel — A worker at the Ministry of Education's "Open Line"

I am happy that DCI-Israel is introducing complaint procedures. Children can also voice their problems and grievances on our "Open Line." When we receive a call from a child or parent presenting a problem and expressing a feeling of deprivation, we listen to them, and ask them to give us all the relevant material in the form of documents and faxes. We establish contact with all the bodies involved — welfare officers, social workers, etc., and try to understand the problem fully. We often find that the real problem and its origin are hidden elsewhere. We learn about where the things have got bogged down and we have learned how they can be moved forward. When it's necessary we are prepared to travel, assemble the various parties who have

been dealing with the problem, and try to reach a solution. Sometimes we will invite all the relevant bodies to our office in the Ministry of Education in order to try to solve the problem.

Our final role is to act as a receptive ear. Many schools have neither a counselor nor a psychological service, so we provide someone to turn to; children often prefer to call us. However, hardly any Ethiopian children have done so to date.

Mulatu Dessie — DCI-Israel Ombudsman for immigrant children

As a representative of the immigrants, I help them to obtain their rights. I translate from Amharic to Hebrew, even their pain. Unfortunately, I am only an ombudsman, and while I hope I have some moral authority, I have no legal authority. Any appeal to us means that others have to exercise their authority. For instance, if we have a problem with integration, we turn to the Ministry of Education; when there are problems with children at risk, we turn to welfare workers. We work with many different bodies. For example, at the absorption center in Mishmoret there are six children who have had no framework for studies since the beginning of the school year. The problems immigrants face with language, communications, and culture make it difficult for the children to express their feelings and pain, never mind the natural difficulty and lack of confidence felt by children trying to express themselves in the adult world. I don't work on my own. DCI-Israel opened a children's rights information center in Haifa, where I sit once a week; for the rest of the time I'm moving around, talking to the children.

The problem of the lack of real integration worries me very much. In reality, there is no integration. In most boarding schools, the children from Ethiopia study separately.

I want to ask Youth Aliya to put more emphasis on the problem of lack of integration. Ethiopian children who study on their own don't know what's going on in Israeli society. If we have integration, we will succeed.

Shmuel Yalma — Youth Aliya graduate

I am a Youth Aliya graduate (1987). I can say that Youth Aliya provided me with a warm home, but it was no substitute for my real home. I missed my family. I'm not a good example, because my school was near my parents' house, so that I often managed to get home. But there were other kids who couldn't do that.

My family had no place in my education, and this created a gap between us. Parents of a big family in which all the children are at boarding school feel lonely during the festivals. Sometimes contact with the children is so weak they don't know what's going on.

Today there are about five thousand youngsters in Youth Aliya under the same conditions that I experienced. A huge number of kids, who graduate and return home or to the city — how can they say that they belong to a particular city when they don't even know it?

The basic assumption of Youth Aliya is often that if children don't complain, then they don't have any complaints. This is baseless.

Tikva Levi — HELA, Association for the Advancement of Ethiopian Families

From meetings with Ethiopian parents and young people, it emerges that the main complaint is that parents do not participate in choosing where and how their children will be schooled. In Nazareth Illit, there was a father who asked why there were no parents' committees at the school. He was amazed that no one had taken the trouble to tell him about them. He told us that in Ethiopia he was a member of a parents' committee. The feeling now is that the door is locked. A mother described how her son, who is completely normal, is studying with lightly retarded children at a school for slow learners in Tiberias. She didn't know where to turn. We did a survey of Ethiopian children, and it turns out that all of them are in the lowest-grade frameworks, which are not geared to obtaining a matriculation certificate.

Daniel Siyum — Chairman, Association for the Advancement of Education of Ethiopian Immigrants

We have to help the child know his family, because he has to go back to them and to the community. When the child returns home, he will need to adapt to his family and will have to find his place within it. If he doesn't, he will start wandering around.

Ya'akov Malkamo — Youth Aliya sociologist

Lack of communication in the family leads to the loss of parental authority. Boarding school graduates are used to explaining everything to their parents because of their ability to speak Hebrew. The parent becomes dependent on the child: the child takes him everywhere. The father has the right to



you lack are the tools to carry things out. DCI-Israel has the tools, the lawyers, the contacts in the Ministry of Education, the ability to appeal to the members of the education committee of the Knesset, and to the media. If you have problems, come to DCI-Israel's Haifa information center.

# **ETHIOPIAN CHILDREN IN BOARDING SCHOOLS — EXCERPTS FROM DCI-ISRAEL'S CONFERENCE**

February 8, 1994

## Attorney Yair Ronen — DCI-Israel

We want to see if boarding school frameworks will provide an educational system which respects family structure and, above all, the opinions of the pupils. Paragraph 12 of the UN Convention on the Rights of the Child prescribes that the child's opinions be taken into account. We are using this principle as a guideline for the conference's examination of boarding schools.

## Prof. Yohanan Wozner — Tel Aviv University School of Social Work

In 1952 I became a young counselor with Youth Aliya, full of the energy and knowledge required to make me a splendid adviser. However, I found that I couldn't tell the difference between children from Persia, Morocco, Yemen, and Egypt. [The idea was] that we and they were all Jews, and that we had to teach them to be Israelis. I began to understand that it isn't enough to come and say, "Everybody come to Israel and we'll be brothers" — you have to look at the differences between people. Israeli society is paying a heavy price for starting to understand this so late. Now we're aware that there are differences between different cultures, and this is a step forward. DCI-Israel's ombudsman for immigrant children uses a sensitivity to children's specific cultural backgrounds to help understand their special needs and to be able to help them.

## Eli Ofir — Deputy Director, Youth Aliya

About ten thousand Ethiopian children have been educated in Youth Aliya institutions since Operation Moses. When they first arrived, teachers and students alike were caught up in a spirit of euphoria, and it seemed that the success of their studies was assured. However, 75 percent of the children had never been to any sort of school in Ethiopia and were illiterate, which made study here very difficult for them.

Three to four years of accelerated education have not always made up for the absence of twelve years of previous study. This has raised doubts among teachers and academics as to the possibility of closing this gap. Youth Aliya, as an optimistic educational movement which believes in the child's ability to change, does not accept these pessimistic views. Psychologist and educator Professor Reuven Feuerstein has studied the issue and found that the potential and ability to study of these young immigrants is similar to that of the rest of the Israeli population: the difficulties experienced are the result of cultural differences.

The pressing need to place children from Operation Solomon in boarding schools reflects failings in the community education system. It should be remembered that taking the children away from their families in such a manner effectively constitutes telling parents that they cannot cope with the children, and tells children themselves that their parents cannot look after them properly. The image of father, mother, and family is damaged. In order to reduce the number of pupils actually living within boarding schools, the

boarding school has opened its doors for pupils from the community, and this group of children returns to their family from the boarding school after a long school day. This approach has proved that, given the necessary resources, the children can make progress without being taken away from home; moreover, it costs half the money needed to run boarding schools.

The decision to send Ethiopian immigrant children exclusively to religious institutions for the first years of their education in Israel, coupled with the refusal of ultra-Orthodox religious institutions to take in Ethiopian children, led to the concentration of thousands of children at a few institutions, which thereby became almost exclusively Ethiopian. The percentage of Ethiopian children at these institutions is close to 90 percent, despite the Ministry of Education's directive that, in order to permit successful integration, Ethiopian children should not total more than 30 percent at any given institution.

The 1,600 children who dropped out of studies at schools in the community and came to Youth Aliya boarding schools can serve as a warning to us all against creating a new generation of children in distress. Youth Aliya will continue to do all it can, but it expects the local authorities, too, to do something, and to allow these children to grow and develop close to their families.

We of the Youth Aliya leadership deplore the fact that most Ethiopian immigrants have to be sent to a very small number of institutions. A situation has been created in which 80-100 percent of the children at an institution



may be of Ethiopian origin. It is obvious that this can't be regarded as integration, yet this is the reality with which we are now faced and are challenged to change.

The system of open boarding schools that take in children who live near the institution might be a step in the right direction. The project has succeeded beyond all expectations wherever there is a population of Ethiopian immigrants near one of these excellent institutions.

#### **The relationship between the institution and the family concerned:**

The best people to mediate between families and Youth Aliya are, of course, people who themselves immigrated from Ethiopia. Youth Aliya has taken on such people as employees in order to strengthen the link between us and the families.

#### Irit Fogel — A worker at the Ministry of Education's "Open Line"

I am happy that DCI-Israel is introducing complaint procedures. Children can also voice their problems and grievances on our "Open Line." When we receive a call from a child or parent presenting a problem and expressing a feeling of deprivation, we listen to them, and ask them to give us all the relevant material in the form of documents and faxes. We establish contact with all the bodies involved — welfare officers, social workers, etc., and try to understand the problem fully. We often find that the real problem and its origin are hidden elsewhere. We learn about where the things have got bogged down and we have learned how they can be moved forward. When it's necessary we are prepared to travel, assemble the various parties who have

been dealing with the problem, and try to reach a solution. Sometimes we will invite all the relevant bodies to our office in the Ministry of Education in order to try to solve the problem.

Our final role is to act as a receptive ear. Many schools have neither a counselor nor a psychological service, so we provide someone to turn to; children often prefer to call us. However, hardly any Ethiopian children have done so to date.

#### Mulatu Dessie — DCI-Israel Ombudsman for immigrant children

As a representative of the immigrants, I help them to obtain their rights. I translate from Amharic to Hebrew, even their pain. Unfortunately, I am only an ombudsman, and while I hope I have some moral authority, I have no legal authority. Any appeal to us means that others have to exercise their authority. For instance, if we have a problem with integration, we turn to the Ministry of Education; when there are problems with children at risk, we turn to welfare workers. We work with many different bodies. For example, at the absorption center in Mishmoret there are six children who have had no framework for studies since the beginning of the school year. The problems immigrants face with language, communications, and culture make it difficult for the children to express their feelings and pain, never mind the natural difficulty and lack of confidence felt by children trying to express themselves in the adult world. I don't work on my own. DCI-Israel opened a children's rights information center in Haifa, where I sit once a week; for the rest of the time I'm moving around, talking to the children.

The problem of the lack of real integration worries me very much. In reality, there is no integration. In most boarding schools, the children from Ethiopia study separately.

I want to ask Youth Aliya to put more emphasis on the problem of lack of integration. Ethiopian children who study on their own don't know what's going on in Israeli society. If we have integration, we will succeed.

#### Shmuel Yalma — Youth Aliya graduate

I am a Youth Aliya graduate (1987). I can say that Youth Aliya provided me with a warm home, but it was no substitute for my real home. I missed my family. I'm not a good example, because my school was near my parents' house, so that I often managed to get home. But there were other kids who couldn't do that.

My family had no place in my education, and this created a gap between us. Parents of a big family in which all the children are at boarding school feel lonely during the festivals. Sometimes contact with the children is so weak they don't know what's going on.

Today there are about five thousand youngsters in Youth Aliya under the same conditions that I experienced. A huge number of kids, who graduate and return home or to the city — how can they say that they belong to a particular city when they don't even know it?

The basic assumption of Youth Aliya is often that if children don't complain, then they don't have any complaints. This is baseless.

Tikva Levi — HELA, Association for the Advancement of Ethiopian Families  
From meetings with Ethiopian parents and young people, it emerges that the main complaint is that parents do not participate in choosing where and how their children will be schooled. In Nazareth Illit, there was a father who asked why there were no parents' committees at the school. He was amazed that no one had taken the trouble to tell him about them. He told us that in Ethiopia he was a member of a parents' committee. The feeling now is that the door is locked. A mother described how her son, who is completely normal, is studying with lightly retarded children at a school for slow learners in Tiberias. She didn't know where to turn. We did a survey of Ethiopian children, and it turns out that all of them are in the lowest-grade frameworks, which are not geared to obtaining a matriculation certificate.

#### Daniel Siyum — Chairman, Association for the Advancement of Education of Ethiopian Immigrants

We have to help the child know his family, because he has to go back to them and to the community. When the child returns home, he will need to adapt to his family and will have to find his place within it. If he doesn't, he will start wandering around.

#### Ya'akov Malkamo — Youth Aliya sociologist

Lack of communication in the family leads to the loss of parental authority. Boarding school graduates are used to explaining everything to their parents because of their ability to speak Hebrew. The parent becomes dependent on the child: the child takes him everywhere. The father has the right to



set limits for his child; we have to explain that this has not changed.

The children become ashamed of their parents because of their dress and traditions. Education has to extend itself, therefore, to the whole family. We think that the Ethiopian community and the young people who have made progress have to let their parents explain to them their views about life.

Micha Odenheimer — Chairman, Israeli (formerly American) Association for Ethiopian Jews

We have to make a conceptual change, to think anew. In the Youth Aliya institutions, the overwhelming majority of the Ethiopian population is enrolled in vocational education. A senior official of Youth Aliya told me that they know that most of the vocational training that they provide is out of date. In today's world, the technological world has developed so much that high school students have to be given the modern, technological educational tools that will enable them to manage later on.

The second problem is the relationship to the Israeli community. We need to fit in Ethiopian personnel not just as workers, but as decision-makers. They have many talents which could be used, especially in the educational process.

David Maharat — Senior Coordinator, Keren Karev C.R.B. Fund (Charles Bronfman Foundation)

I would like to describe how the Ethiopian parent is viewed in Ethiopian families and in Ethiopia. The parent is seen as the primary educator, provider, guide, and authority within the family. This is actually how children see the

parents, and how the parent sees him/herself. There were all sorts of educational methods that were suitable there, but many parents who used physical punishment in this way do not know how to find a substitute for this. What can they do instead of the things that they did in Ethiopia? They need a lot of help and advice to find a new balance.

Let's take a child whose father represents his highest authority. During the week the child is at boarding school, on the weekends he comes home. His parents miss him, try to envelop him in warmth and treat him as a guest, as one of the most important and privileged people in the house. The child drinks in the warmth eagerly. They are lenient with him because he was away from home all week. In contrast, the young children at home continue to receive strict discipline. And then you have inequalities at home. Then the father imposes the usual demands on the other children, while the boarding school child is allowed to act impudently and goes unpunished. There is an unpleasant feeling in the house. The child goes off to the boarding school, and when he returns for a couple of weeks' holiday, they stop spoiling him after a few days. The parents try to revert to their original role, and the child complains. As a result, a conflict is created between the child learning at boarding school, the children at home, and the parents. The boarding school supplies almost all the children's needs when they are there. It doesn't only educate them in the way it perceives as correct, but provides pocket money and other items that undermine the parents' position in the children's eyes.

Adoniya Tarkan — HELA, the Association for the Advancement of Ethiopian Families

Why do all the Ethiopians have to go to boarding school? When an Ethiopian child has a stable family, he or she should continue to live at home, in the family framework.

Amram Alkom — Educational Program Center for the Integration of Child and Family in the Ethiopian Community

Youth Aliya, in spite of its tremendous accomplishments in absorption of new immigrants, is a system that has made many mistakes, particularly by cutting family ties. The boarding school framework solves an economic problem but leads to other problems that divide the family; these become very clear when you look at Ethiopian families. The Youth Aliya system cannot (with few exceptions) accompany the child throughout life, and the boarding school cannot provide the tools his family is meant to supply. Existing boarding schools must be improved.

Gwen James — Director of "A Voice for the Child in Care," London, England

The traditional way to deal with complaints is for the person who is being complained about to be asked to explain the situation. This causes a defensive response, which rarely results in a solution to the problem.

The English Children's Act of 1989, which came into operation of 1991, makes provision for a *complaints procedure* that is proving effective. The key to its effectiveness is that each authority must appoint a designated *Complaints Officer*, who is responsible for setting up the procedure and for its

effective operation. There are three stages in the procedure: the informal stage, in which the problem can be resolved by negotiations and discussions with the people responsible. If this does not work, the complainant can make a formal complaint. If this happens, the Complaints Officer must appoint someone who has not been involved in the problem before to investigate the complaint, as well as an independent person to take part in the investigation. My organization runs an Independent Person Service which serves half the London boroughs, Birmingham, and six other authorities. The investigation is meant to be carried out in twenty-eight days, but this is far too short — most cases take at least three months. If the complainant is still not satisfied, s/he can ask for a review panel — three people, including an independent person, who will investigate whether the procedure has been carried out properly, and in some cases will review the decision.

Our experience might be very useful for you in Israel. All residential facilities might start by introducing complaint procedures, and I am grateful to DCI-Israel for enabling me to introduce this concept here.



## INTERPRETING RIGHTS IN THE ETHIOPIAN COMMUNITY

Advocating for children's rights in the Ethiopian community has proven to be a challenge due to the tremendous differences between Ethiopian and Israeli cultures.

Since Ethiopian culture valued "controlling your tongue and waiting for permission to speak," teaching Ethiopians about their rights and how to assert themselves in Israeli society are challenges that are almost antithetical to the norms of Ethiopian culture.

In Ethiopia, assertiveness was a quality reserved for the warrior. Educating in the home was done by parents under "the guidance of the father" and stressed self-control and cultivating "patience." The objective was to transmit moral values and "good behavior."

In Israeli society, a great deal of educating is done outside the home in a competitive environment. Teachers do not discipline by force and abilities are measured by "objective" tests designed to evaluate literary skills. Tests are often not culturally sensitive to the needs and experience of the Ethiopian student.

The Ethiopian tradition of educating emphasized memorization as the primary method of learning. Teaching practices were based on internalizing information and discouraged the active participation of students, including the asking of questions regarding a teacher's explanation.

Since the Ethiopian student is

accustomed to viewing his teacher as a moral example, an imparter of moral knowledge, the pupil's tendency to question or challenge the teacher's role or assert himself in any way was limited.

Curiosity, which is valued in Israel, was not rewarded in Ethiopia, and the Ethiopian student was not taught to ask questions, to express his sense of confusion. Instead, he would sit and wait to be asked whether or not he understood something.

The differing concepts of education between the Israeli and Ethiopian cultures contribute to the many problems Ethiopian pupils have in adjusting to the norms of Israeli society.

These differences have been accentuated by the lack of integration with Israelis in schools. The absence of interaction has hindered the ability of Ethiopian students to learn from their peers. Since the primary means of learning Israeli behavior comes from observing and interacting with other Israeli children and adolescents, the lack of opportunity for this in school has shifted the site of this learning to the streets. The behavior which Ethiopian children learn on the streets is often met with disapproval by their parents, who interpret their aggressive behavior as disrespectful.

As a result, the gap between child and parents has grown, further alienating the Ethiopian child from his roots. The emphasis on obedience and reverence towards one's elders in Ethiopian culture has discouraged the Ethiopian student from actively pursuing his interests in school.

"Being courteous can often take precedence over the expression of real interests and needs or can be used as a way of hiding the truth. An Ethiopian is prone to do the right thing, saying what he imagines the other person wants to hear, especially a teacher...rather than saying what might sound wrong."

The high regard given to value education has made many Ethiopians hesitant to pursue their rights in an educational forum. DCI-Israel has recognized this reluctance, noting that many Ethiopian students do not utilize the resources designed to defend and address their needs.

By giving priority to obedience and respect, Ethiopian culture has inhibited many Ethiopian children from pursuing their rights. There is an inherent risk associated for the Ethiopian child in challenging the status quo or authority figures.

It is therefore not surprising that hardly any Ethiopian children called Dr. Bilha Noi's Open Line, the Ombudsman at the Ministry of Education. Consequently, DCI-Israel's Ombudsman for immigrant children is not sitting in his office waiting for the calls to come in: he is on the road and is reaching out. The DCI Ombudsman, himself Ethiopian, understands well the cultural background and what constitutes the ideal model of a free man. "The free condition is defined by being well-behaved, well-mannered and soft-spoken, graced with courtesy and refinement."

The hesitance of Ethiopian pupils from actively demanding their rights has

compelled DCI-Israel to intervene in cases where a student is unable to contact the appropriate agencies. Also, the Ombudsman tries to be a role model.

One example of a typical case is the one of 11 boys who left school without the knowledge of their parents. Mr. Mulatu Dessie, DCI-Israel's Ombudsman, intervened successfully. After studying for a year in a boarding school where they were not learning, they left rather than approach the teachers with their problems. Instead of confronting their parents, they went to Eilat. Mr. Dessie met with the children, who explained that in the face of their lack of integration and the disinterest of their teachers, they had become angry and left the school. Rather than disobey their parents or express their frustrations, they simply left. Mulatu suggested that they contact Youth Aliya and DCI followed it up. As a result of DCI's intervention, the boys were given a new, and satisfactory placement at another school.

Ombudsman Mulatu Dessie regularly visits boarding schools and caravan sites in Afula, Haifa and Acre, giving workshops and lectures to students and parents. The purpose of these workshops is to educate the Ethiopian community as to their rights and give Ethiopian adolescents the tools to advocate on their own behalf. Mulatu discusses with them the changing expectations and demands of Israeli society in order to prepare them for the pressures they will inevitably face. Through cases and workshops, Mr. Dessie and DCI-Israel are attempting to instill in Ethiopian children and adolescents a sense of entitlement and



empowerment. DCI-Israel believes that giving students informed choices about their education is an effective means of motivating and empowering them to direct the course of their own futures.

*DCI-Israel thanks anthropologist Dr. Shalva Weill of the Hebrew University and Mr. Uzi Gedar of the Ministry of Absorption for their valuable comments and information.*

### ADVOCACY PROJECT FOR RETARDED BEDOUIN CHILDREN

Two years ago, an Israeli photographer, Nitzan Shorer, brought an urgent issue to the attention of DCI-Israel. On a photographic journey through the Negev, the photographer found an alarming number of mentally retarded Bedouin children literally tied up and placed in cages. The pictures called for immediate action.

Throughout the Negev there are hundreds, if not thousands, of Bedouin children with special needs being denied the services they so desperately need. With few available services for their children, despairing parents see no alternative but to tie up their mentally retarded children when they go to work. The entire population of the Negev is in dire need of accessible services, particularly for its Bedouin population. DCI-Israel has taken on the cause of Bedouin children with special needs, emphasizing those who are mentally retarded. The following are some of DCI-Israel's findings:

There are about 90,000 Bedouins in the Negev desert. Although almost half of the Bedouin population has modernized to the extent of living in organized cities and towns, the other 50% continues to live the traditional semi-nomadic life it has been living for centuries. In the many non-recognized villages where Bedouins are not allowed to build permanent structures, their homes are built of tin and mud. These villages are scattered throughout the Negev, which makes access to services (primarily found in towns) almost impossible. The tradition of intermarriage among family members is

also an important aspect of life for traditional Bedouin. Approximately 75% of Bedouin marriages take place between first cousins. This practice has been proven genetically dysfunctional.

Many healthy people are carriers of single genes of inherited diseases and congenital malformations. It is only when someone has two of these genes that the disease or malformation is manifested. Therefore, when two people from the same family marry, the risk of producing a child with a double gene increases considerably. Once the gene has been passed down, it continues to be passed down for generations. When the second and third generations continue to intermarry, the risk is further increased. As a result, one sees high numbers of Bedouin children born with some sort of handicap in various villages throughout Israel. The estimated number of moderate and severely mentally retarded Bedouin children in the Negev alone is alarming. Progressive sensorineural deafness is another inherited disorder found in many Bedouin children in villages in the Negev. Additional diseases and disabilities, such as deafness, greatly complicate the provision of appropriate services for the mentally retarded. Among the Bedouin, there is an excess of diseases and disabilities, but their rates, and the rate of mental retardation, have never been systematically documented in this population.

Consanguineous marriages are such an intrinsic part of Bedouin culture that attempting to stop them is not altogether feasible. Prof. Rivka Carmi, director of the Institute for Medical Genetics at Beersheva's Soroka Hospital, sees the effort to end intermarriage, the initial

logical solution to the problem, as potentially harmful. While the men can leave their village to find their wives with relative ease, the women, who are kept in the home according to Bedouin tradition, would have no one to marry and will have a very difficult life in the tribe. Since most marriages are "created" by matchmakers in Bedouin society, and with the advances of modern science, Prof. Carmi proposes instead, that genetic counselling should be attuned to all tribe members.

Until now, very little has been done for Bedouin children with special needs. The reasons for this are many. Firstly, the Bedouins living in traditional villages are highly inaccessible. Every Bedouin tribe in the Negev is relatively isolated from modern Israeli towns where the majority of services exist. Next, many cultural, language, social, and economic barriers limit the Bedouin community from using the few existing services that are available to them in the Negev. The Bedouin population of the Negev is allocated far less financial resources than the Jewish Negev population, limiting the feasibility of the communities' creating their own services. Finally, even if the Bedouin villages did have the financial resources they needed, having their own services would still be a long way off. The lack of education among the Bedouins, especially among the largely illiterate female sector, makes it unlikely that trained professionals from the community could be used to provide culturally appropriate services.

To date, there are only two known programs specifically for mentally retarded children in the Negev, located at the Bedouin city of Rahat and the





*Photographs make clear why we are advocating for retarded Bedouin children.*

#### DEAF CHILDREN IN A BEDOUIN TRIBE IN THE NEGEV

On July 22, 1994 a meeting was held to begin to explore educational programs for deaf Bedouin children living in the Negev. The meeting was held at the Desert Inn in Beersheva, and included an excursion into the Negev to visit a Bedouin tribe. Many members of the Bedouin family which was visited were genetically deaf. The family was comprised of a husband, his wife and children, and a married son and his wife and children, who were living in several huts of corrugated iron and wood. Of the fifteen children, seven were deaf and had communication disorders.

The meeting was arranged by the Coordinator of Defence for Children International-Israel. Israeli professionals who participated included Ms. Atara Fridyung, Communication Pathologist; Ms. Mazal Zohar, Principal of Niv School for the Deaf in Beersheva; Ms. Yehudith Muiz, Principal-elect of the Niv School for the Deaf; Prof. Michael Karplus, Head of the Neonatology Department at Soroka Medical Center, Beersheva and DCI-Israel Board member; Prof. Rivka Carmi, Head of Clinical Genetics at Soroka Medical Center, Beersheva; Ms. Lynn Friedman, Head of the Speech and Hearing Clinic at Soroka Medical Center, Beersheva; and Dr. Aref Abu Rabia, Medical Anthropologist, Department of Behavioral Sciences, Ben Gurion University, and Inspector of Bedouin education at the Ministry of Education, Culture and Sport.

Also participating was a group representing the Society for the Care of the Handicapped in the Gaza Strip (SCH). SCH, with the help of Lamar University, Beaumont, Texas, is currently training professionals to work with children who have communication disorders. From SCH: Dr. Hatem Abu Ghazaleh, SCH Chairman; Mrs. Aida Abu Ghazaleh, Principal of the Sun Day Care Center in Gaza; Mr. Arslan El Agha, Director General of SCH; Dr. Robert Moulton, Assoc. V.P. for Research, Dean of Graduate Studies, and Regents' Professor of Deaf Education at Lamar University and Co-Director with Dr. Hatem Abu Ghazaleh of the SCH/Lamar program to train audiologists, educators of the deaf, and speech pathologists in Gaza; Dr. Frank Silverman, Prof. of Communication Disorders at Marquette University, Milwaukee, Wisconsin; Ms. Cathleen Chinn, long-term deaf education consultant for SCH; Mr. Greg Haretos, doctoral student in deaf education at Lamar University; Mr. Andy Stuart in audiology at Dalhousie University, Halifax, Nova Scotia, Canada; Mr. Mike Pachulo, doctoral student in audiology at Purdue University, Lafayette, Indiana; and Ms. Penny Schieffer, long-term speech pathology consultant for SCH.

#### Background

Prof. Rivka Carmi first explained to the participants about the Bedouin tribe which was the subject of the meeting (the name of the tribe is being withheld here for reasons of privacy). The tribe's founder came from Saudi Arabia, and his six sons all married women from outside their clan. From that point on, all marriages took place within the clan.

DCI-Israel initiated the meeting to discuss concerns relating to the educational needs of deaf Bedouin children. Central to these concerns is the issue of the language systems used in the schools. That is, there is an apparent mismatch between the language systems used in the school and the systems used in the homes of these children.

Evidently, spoken/written Hebrew and a form or forms of sign language based on Hebrew signs are used in the school system even though spoken and written Arabic, presumably of a Bedouin dialect, and/or sign language based on Arabic sign systems are used in the homes of deaf children.



## DEAF CHILDREN IN A BEDOUIN TRIBE (continued)

The central question asked by DCI-Israel was whether or not the educational system can better meet the needs of deaf Bedouin children by making increased use of spoken/written Arabic and the sign language system used in the children's homes and community. A secondary question relates to how the school system can increase attendance of Bedouin deaf children.

Choice of Language Systems

It can be argued that signed Hebrew or Hebrew Sign Language along with written/spoken Hebrew should be the languages of instruction for deaf Bedouin children. This is easily justified because Hebrew-based systems better prepare the child for employment and participation in the majority culture.

An equally compelling case can be made for using an Arabic/Bedouin base for spoken, written and signed communication with deaf Bedouin children. This would better enable the children to interact with their families and with the Bedouin community. In addition, the use of Arabic/Bedouin communication forms in the school would facilitate communication between the school, Bedouin parents, and the Bedouin community.

It was reported that the school attendance rate for Bedouin deaf children is relatively poor, particularly for females. This is due to factors such as distance/transportation, economics, and culture.

Ski \* Hi Program

DCI-Israel found especially interesting how the SCH could share an Arabized version of the Ski \* Hi parent education curriculum. This program, developed at Utah State University by Dr. Tom Clark and supported in Gaza by a significant grant from the U.S. Department of Education, is a home training system which prepares parents to better provide linguistic and educational support for their hearing-impaired children. It orients parents to deafness and its causes, hearing aids, auditory training, and language development.

The Ski \* Hi model has been extensively field tested and is used throughout the U.S. and internationally, especially in Gaza. Supported by a grant from U.S.A.I.D., SCH has translated and Arabized the Ski \* Hi model and field tested it in Gaza. Though logistics and funding need to be developed, Dr. Abu Ghazaleh expressed a willingness to train trainers of the Ski \* Hi model and initiated the program within the Bedouin communities of the Negev.

Tentative Position Statements and Recommendations

Much information needs to be gathered, however. Prof. Robert Moulton from Lamar University in Texas suggested that there need not be an either/or choice concerning language systems. There is a place for Hebrew-based spoken, written and signed communication in the schools. There is also a need for Arab/Bedouin-based communication systems within the educational setting. Both should be equally valued and taught. Given that Hebrew-based systems are now being used, his recommendation was to add Arab/Bedouin communication systems to the schools. He referred to a multi-lingual educational similar to that used in the Rio Grande Valley of Texas. There, Mexican-American deaf children come from homes where English is not spoken and where Mexican sign language and Spanish are the primary modes of communication.

## DEAF CHILDREN IN A BEDOUIN TRIBE (continued)

In deference to the majority culture, spoken/written English along with American sign systems are taught in the schools, but so are spoken/written Spanish and Mexican signs.

His suggestions also related to the addition of Arab/Bedouin communication systems in programs for the deaf. For example, he proposes employing Bedouin teachers, and if none are available in the short-term, scholarships should be provided for Bedouin college students willing to become teachers of the deaf. He also suggests employing Bedouin deaf adults as teachers' aides.

There are probably multiple reasons why Bedouin deaf children do not attend school. For instance, they may need to walk unreasonable distances to transportation, they may not have appropriate clothing, or their families may not be supportive. The mismatch between the language systems of the home/community and the school may be another reason.

In order to assist in providing improved educational programs for Bedouin deaf children, DCI-Israel will make efforts to ensure that the following types of information are made available:

- Incidence data, population survey.
- Documentation of Arab/Bedouin sign language. To what extent is the home sign language of this particular Bedouin tribe shared by the larger Bedouin deaf community? To what extent is this Bedouin sign language similar to Arab Sign Language and to Hebrew Sign Language? To what extent do hearing members of the Bedouin community understand and use sign language?
- Information relating to available schools for the deaf: Numbers of hearing vs. number of deaf teachers. Sign language skills of teachers and staff in both Hebrew-based and Arab/Bedouin-based sign systems. Distance from Bedouin communities and transportation accessibility. Relative numbers of Israeli-Arab teachers. Numbers of teachers who can speak, read and write Arabic. Education and certification of teachers.
- Available educational resources relating to Bedouin/Arab language and culture (texts, readers, teaching aids, etc.).

It was suggested by DCI-Israel that it may be possible for SCH/Lamar students currently training in Gaza to become teachers of the deaf, audiologists and speech pathologists, to provide services to Bedouin deaf children living in the Negev. Such services could be part of the SCH/Lamar students' practical training. These students are fluent in Arabic and are being trained in Arabic Sign Language. They could be involved in educational practicum in the schools attended by Bedouin deaf children or, if possible, in satellite programs to be set up closer to the Bedouin communities themselves.

A second meeting was held in Beersheva on August 12, 1994. It concentrated on the Ski \* Hi program of the SCH. The dialogue with the Gaza Society for the Care of the Handicapped and their affiliated speech pathology experts and audiologists seems very fruitful. DCI-Israel will facilitate and organize such meetings on a regular basis. The Faculty of Health Sciences of the Ben Gurion University will take over the professional aspects of the project. DCI-Israel's role is simply to encourage the communication and begin the dialogue.

As a result of the project, a wealth of expertise has been brought to the Bedouin community, and particularly to this tribe living between Arad and Beersheva with its high number of deaf and communication-impaired children. It will serve to stimulate and introduce home training systems by which parents can provide linguistic and educational support for their hearing-impaired children. The miracle of the peace process has enabled these ideas to come from Gaza, where they have had considerable experience with such models.



## IMPROVING ACCESS TO HEALTH CARE FOR PALESTINIAN CHILDREN:

### A REPORT ON THE DCI-ISRAEL AND UPMRC CONFERENCE

On November 10, 1993, the Israel Section of Defence for Children International and the Union of Palestinian Relief Committees jointly organized a conference to discuss Palestinian children's access to medical and rehabilitative care. Approximately forty Israeli and forty Palestinian physicians attended, as did ten representatives of international organizations and UN organizations. The participants agreed that while health care resources in Gaza and the West Bank must first of all develop, referrals of children in these areas to specialized Israeli physicians or to other countries (Jordan, Egypt) will probably continue. Palestinian participants stressed that referrals are still necessary because in the 27 years of occupation, they could not develop their services well and they maintained that their entire development was obstructed. The Israeli physicians mainly stressed the importance of good will and discussed their experiences of treating Palestinian children.

Specific conference goals were:

1. To map the areas of specialized care and services unavailable in the West Bank and Gaza Strip.
2. To suggest ways to improve the referral system between Israel and the West Bank and Gaza Strip, until such services are developed in the West Bank and Gaza.
3. To identify budgetary constraints on the health insurance system.
4. To discuss ways of increasing

and improving cooperation between Israeli and Palestinian physicians.

Inaccessibility to Israeli health care providers has been a long term problem. During the Intifada, funding for referrals was even more limited. The most outstanding and frequently reported problem has been the Civil Administration's lack of sufficient funds to reimburse all pediatric patients needing referral. It was recommended that a study be undertaken to document the problem further, in a more systematic way.

Certain areas of medical expertise were identified as either absent or significantly limited in the Gaza Strip and the West Bank. For instance:

- 1) Burn treatment centers do not exist in the West Bank or Gaza Strip
- 2) Oncology and chemotherapy treatment for pediatric patients is limited.
- 3) Neonatal cardiac surgery for pediatric congenital birth defects are limited.

1. It was recommended that the referral system be improved by instituting:
  - a. Written medical/consultation reports in English (not in Hebrew, since many Palestinian doctors are unable to read it).
  - b. Consultation reports which enable Palestinian physicians to initiate treatment if admission to the Israeli facility can be avoided.
  - c. Follow-up treatment plans which will enable Palestinian physicians to carry out the

2. follow-up. Organize referrals on a regional level. Palestinians should establish a medical committee in every region to see patients who need Israeli care.
3. Link medical services in the West Bank and Gaza Strip with medical services in regions of Israel (Hebron-Beersheva, etc.) in order to increase cooperation.
4. Establish clear guidelines for medical referral.

The participants discussed the financial barriers which currently make Israeli health care inaccessible as well as problems which were anticipated as a result of autonomy.

Specific problems which were mentioned were:

- \* Approval for medical referral by the Civil Administration was arbitrary and unreliable.
- \* Exhaustion of budgeted funds before the end of the fiscal year has meant that children have gone without medical care.
- \* Palestinian families have had to use personal influence or "protektzia" to cover the cost of medical care in Israel.

The participants recognized a need to clarify and define how insurance coverage would function during the interim period. Concerns were raised including:

- \* Responsibility for provision of continuous insurance coverage during the interim period
- \* Budgeting for referrals
- \* Reimbursement of Israeli facilities for care provided to Palestinians

- \* Responsibility for issuing referrals
- \* Criteria for approval or denial of requested referrals
- \* Alternatives to the government health insurance

It was recommended that the Israeli government should insure that referrals to Israel are continued during the interim period, and that Palestinian patients with urgent or semi-urgent needs will not be refused care on financial grounds.

Relating to health care planning and development of services for Palestinian children, it was noted that many problems in the West Bank and Gaza are related to underdevelopment of health care services and poor investment in municipal services and infrastructure during the years of Israeli rule.

#### Recommendations:

- \* Train pediatricians for prevention, early detection and intervention of gastroenteritis, pneumonia and other causes of infant and childhood morbidity and mortality.
- \* Train, examine, certify and license medical specialists, nurses, and allied health professionals (especially in fields where there is now a lack of specialists).
- \* Use available high quality training from Israeli and Western resources until resources are available in the Palestinian community.



## Conclusions:

1. During the interim period, the Israeli government must continue to allocate adequate funds for diagnosis, treatment and follow-up care of children who are beneficiaries of the Government Health Insurance Program, but also reserve funds to make the referrals financially possible.
2. Israeli physicians can and should act as an advocacy group for Palestinian children's access to health care in Israel, as long as services are not developed, and pressure for the development of such services is needed in the West Bank and Gaza Strip as well.
3. Palestinian health professionals and administrators of the health care services in the West Bank and Gaza Strip will need to develop formal referral criteria and arrangements for specialized care.
4. Israeli health care could well be too expensive for the Palestinians, and Egyptian and Jordanian health care providers might be cheaper.
5. Israeli responsibility (under the UN Convention on the Rights of the Child) for adequate health care of Palestinian children does not end with the start of autonomy. Palestinians expressed the need for compensation for underdevelopment of services in the years of Israeli rule and want to see this reflected at least in the subsidy of referrals to Israeli hospitals in the interim period.



Photo from Conference

## EXCERPTS FROM THE JOINT DCI-ISRAEL — UPMRC CONFERENCE: ACCESS TO HEALTH CARE FOR PALESTINIAN CHILDREN - NOVEMBER 1993

"If facilities for treatment of illness and rehabilitation [for children] are not available in the West Bank and Gaza, the Israeli government should in the interim period, dismantle financial barriers for the children to receive care in Israeli institutions..."

*Dr. Philip Veerman, Director, Defence for Children International - Israel Section*

"The Palestinians, Israelis and the international community are facing three main challenges at the moment. The first is how to complete the peace process and achieve a situation of really durable and comprehensive peace. The second is how to be able to build a sustainable economy. The third is how to build democracy and health care for everyone..."

"We still face problems in getting practical and particular information from the Israeli government about the size of referrals, about the magnitude of the problem so that we can plan and prepare to face it. This is a challenge, and we hope that through the cooperation between Israel and Palestinian professionals, we can arrive at a clearer picture, and perhaps we can help each other in planning for the future and become more independent."

*Dr. Mustapha Barghouti, Director, Union of Palestinian Medical Relief Committees*

"...During the Intifada...the referral problem worsened and it seemed as if funding had been reduced drastically for referrals. As a result, the Civil Administration began admitting that there was a quota of referrals and that there were a growing number of requests for special medical treatment which they seemed unable to fulfill. In 1991, the results of this were clearly visible to physicians working in the Jerusalem area...Children requiring treatment and hospitalization in hospitals in Israel were turned away by the Civil Administration which refused to issue their parents the referral forms, without which they have no chance of being admitted to hospitals in Israel."

*Linda Bevis, Al Haq, Ramallah*

"From our experience...almost all of the problems of referrals have to do with administration...The major reason for this is the matter of financing. It is the end of the fiscal year now. Every year around this time, we receive more complaints concerning access to health care facilities in Israel."

*Niv Gordon, Israeli-Palestinian Physicians for Human Rights*

"...Whenever there is not enough money, it is not the gentleman of fifty who has the power and the money who will not be treated, it is the little child, the infant that will not be treated. Children are not receiving the care that they should receive whenever there is a crisis, and therefore, it is important that we fight for Palestinian children no matter what the future will bring."

*Professor Schiller, Department of Pediatric Surgery, Hadassah Hospital - Ein Karem, Jerusalem*

"...We are starting afresh. We're moving ahead and to hear of more cases, the terrible things which may have occurred or which we may think did not occur, is absolutely irrelevant. The point now is what happens from now on and how are we going to play our part, all of us, to help insure the health of Palestinian children who cannot be treated in the West Bank and Gaza."

*Prof. Simon Gotfried, Department of Lung Diseases, Hadassah Hospital, Jerusalem*



## EXCERPTS FROM THE JOINT DCI-ISRAEL — UPMRC CONFERENCE (continued)

"I would like to add some points about cooperation because all of us are here now. For the last few years, I have noted that we sometimes have good or even excellent cooperation with some of our colleagues on the other side, and that we have also had some problems or less than positive experiences with others. For example, when we refer patients, we write our referral in English, not in Arabic. We receive reports in Hebrew from most of the Israeli doctors. Since we do not read Hebrew, we must find someone to translate the report for us, which takes time and is not in the best interests of the patient.

We also, as you know, are having financial difficulties. Sometimes we only need to perform a test or consultation. We receive no money from UNRWA or from the Civil Administration. What we want to do is save children. If we send a child to Hadassah Hospital, for example, then we receive a note that s/he must be admitted for three days. We can perform most of the procedures, obtain the necessary medication, and manage the case ourselves. Often, we only need a consultation, a second opinion, or have a test done. So, please help us do the test or give us your advice, rather than admitting the child and charging thousands of shekels which the parents do not have. After testing and diagnosing, if you can write a clear treatment plan for us, we can probably do the job ourselves."

*Dr. Juabeh, Augusta Victoria Hospital, East Jerusalem*

"The Palestinians are building their own health authority. There have been policies in support of this authority taking over the services in the West Bank and Gaza Strip. I don't know if it will be better for the Palestinians to buy their services in Jordan or in Israel. As was said earlier here, services are very expensive in Israel. Perhaps the gap between the Palestinian and Israel economic situations is too great. In the future, if Palestinians will have an opportunity to purchase services in Jordan, they will do so because it will be less expensive."

*Dr. Mario Ferraro, Representative of the World Health Organization (WHO)*

"I would like to stress two points. Approximately 5,000 Palestinian children die each year in the West Bank and Gaza Strip from causes that could be prevented, namely through primary health care and preventive interventions. I think everyone here agrees that the priority for allocating Palestinian resources should go into strengthening that system.

The subject of today's conference is referrals. It seems to me that the financing issue is critical. We should remember that the gross national product per capita in the West Bank and Gaza Strip is on average \$1,500 per year. The World Bank estimates that, at the moment, approximately \$250 million annually is being spent on health care, about half of which comes from international financing. If, over the next five or ten years international financing is withdrawn from the territories, the sums that are likely to be available for health care will be reduced. At the same time it is extremely unlikely that substantial resources can be generated from the Palestinian economy to pay for expensive referrals. Thus, unless some action is taken, Palestinian children will surely not receive tertiary care in Israeli hospitals — there will be no funds available to finance it. It will not be a priority on the Palestinian side to allocate resources for this, and the result will be that children will continue to be in Caritas Children's Hospital in Bethlehem, on the other side of the Green Line, needing services and not receiving them. The only way that this could be changed is if other sources of funding can be made available.

*Chris Smith, Director, UNICEF office in the West Bank and Gaza Strip*

## INVOLUNTARY PSYCHIATRIC HOSPITALIZATION OF CHILDREN: IS THERE ANY ALTERNATIVE?

**Yair Ronen\***

The Knesset Welfare Committee, and in particular its children in distress subcommittee (chaired by Dr. Benny Temkin, MK) is currently discussing a proposed legal framework for the provision of psychiatric care for minors; a bill on the subject is being prepared and will soon be brought before the Knesset for its second reading.

DCI-Israel is regularly invited by the children in distress subcommittee to give its opinions. This time, DCI-Israel expressed its opinion and was critical of other parties for not taking sufficient account of the opinions of minors themselves. The chairman of the subcommittee found that the viewpoints that had been expressed by DCI-Israel were worthy of serious discussion, and we have therefore presented them in the form of a *law proposal*.

DCI-Israel's objective is to create a legal framework that will ensure both children's right to a hearing and ongoing treatment for them and their families, thus reducing to the absolute minimum the need for their psychiatric hospitalization.

Legal reforms were also the main topic of discussion at a study day on the issue of the psychiatric hospitalization of children held at the Jerusalem Van Leer

\* The author is the Legal Coordinator of DCI-Israel.

Institute under the joint auspices of DCI-Israel, the Faculty of Law, and Paul Baerwald School of Social Work of the Hebrew University. Participants included experts in the field in Israel, including: Dr. Joel Elitzur, who co-authored Institutionalization of Madness with Salvador Menuchin; Professor Uri Aviram, Dean of the School of Social Work; representatives of the National Council for the Child; District Court Judge Yaacov Bazak, Professor Tiano, director of the Geha psychiatric hospital, Professor Dan Schnit of the Tel Aviv University School of Social Work; chief welfare officer Miriam Faber; Dr. Tami Moses of the Ministry of Health; Nili Maimon, legal adviser to the Ministry of Labor and Social Affairs; and clinical psychologist Mrs. Komem (Jerusalem Child Guidance Clinic).

DCI-Israel called for the whole approach to this subject to be completely revised. Both the existing law and the preliminary proposals brought before the Knesset before DCI-Israel issued its proposal grant extremely broad powers to parents, juvenile courts, and welfare officers in ordering the hospitalization of minors. Minors' own perception of what is best for them is clearly subordinated to the views of adults who claim to act in their best interests.

The fact is that the vast majority of involuntary hospitalizations of minors in Israel are not defined as such: thus, even the language we use serves as a tool to silence children's voices. If parents wish to hospitalize children and the hospital is willing to accept them, the children have no opportunity to protest. Minors do not have the right to



be informed in advance of the intention to hospitalize them, have no right to demand release before the age of eighteen, no right to argue against hospitalization, and no right to submit an appeal.

There are those who argue that psychiatric hospitalization should be seen as just another part of medical treatment, and ask why a minor should be protected against treatment which has been recommended by a psychiatrist. After all, we do not protect minors against treatment by surgeons once the parents have given their consent to surgery.

Our answer to this argument relates to the unique nature of involuntary psychiatric hospitalization as a treatment that deprives people of their freedom. Psychiatric hospitalization often leads to a stigma. **By treating children as patients who must be hospitalized, even against their own wishes, we deny them the human dignity and rights that we grant to others who are not hospitalized.**

The present law does not stipulate that the minor must be **examined** by the expert who recommends hospitalization; there is no requirement for an inspection system involving community treatment experts that might examine whether there is any alternative to hospitalization; and there is no requirement for a treatment plan to be developed as soon as the minor is hospitalized. The whole issue of psychiatric hospitalization became public after the media exposed the fact that several children were hospitalized not merely because they were sick but because there were no placement

alternatives.

The only limitation on parental discretion in the present law is the requirement of consent of the admitting doctor to hospitalization. This professional, who may be at the very beginning of his/her psychiatry internship, is not required to examine whether the minor could be treated without hospitalization. The law states laconically that it is sufficient that the child has been examined and that "the need for hospitalization has been determined."

How is such a need to be determined? The law offers no explanation. Experience in Israel and around the world has shown that the professional opinion of the hospitalizing psychiatrist does not serve as an effective or an independent control measure over the discretion of parents who came to him/her desiring that the child be hospitalized. Apart from extreme cases, when the parents are blatantly mistaken, experience shows that psychiatrists tend to adopt the parents' opinion.

Parents in Israel are entitled to hospitalize their **seventeen year-old** child "voluntarily," even if the youngster is vehemently opposed to hospitalization. Interestingly, when released from the hospital, that youngster — although approaching legal majority — cannot receive psychotherapeutic treatment, even if s/he undertakes to completely pay for it, unless the parents give their consent, despite the fact that such treatment might prevent a situation where the parents ask for their child to be hospitalized again!

Evidence suggests that even the feelings of very young children can make an extremely important contribution to decisions concerning hospitalization. The legal demand that the child be heard and his/her opinion be given due weight is an important safeguard. It does not, of course, assume that the minor is fully competent to make decisions, nor that the hospitalizing psychiatrist is acting against the child's best interests, but rather aims to limit the risk that children and youngsters will perceive themselves as helpless victims in an adult world.

While it is difficult to establish set rules stating the weight that should be attached to the opinions of children of different ages, especially in such difficult circumstances when a child's opinion might be colored by the psychiatric illness, evidence suggests that **from age fourteen, most children have sufficient understanding to merit granting them the right to turn to the courts if their parents are seeking to hospitalize them against their wishes.**

In theory, an attorney representing the child should be able to speak on his/her behalf and ensure that his/her position is heard. Currently, however, an independent attorney defending a child against hospitalization is "an actor without a stage." Except in criminal hearings, children cannot appoint their own attorney; it has even been claimed that the juvenile court judges are not empowered to appoint an attorney to represent the minor in civil hospitalization proceedings. It does not take too much imagination to assume that an attorney appointed by the parents will represent their opinion when this clashes with that of their

child.

Since hospitalization by parents is not yet subject to any legal scrutiny, even if the minor manages to complain to an attorney about such hospitalization, all that the attorney can do is to attempt to negotiate with the hospital management.

However, even if attorneys could represent such cases, the danger that they themselves would have an old-fashioned, paternalistic attitude would persist. An attorney ignoring the minor's own preferences and feelings and right to due process of law may actually do more harm than good. The legal profession in general lacks experience in representing minors; attorneys must learn to be considerate of the wishes and feelings of children who suffer from emotional and behavioral problems, and to engage in an ongoing dialogue with them concerning their legal situation and possible courses of action.

In discussions on this subject in the Knesset subcommittee, some speakers asked what the difference is between discussion of hospitalization of minors and discussion of their placement in closed institutions or in prison; after all, all these frameworks include stigmatic deprivation of liberty. Why does the decision concerning psychiatric hospitalization merit special attention? There are two main answers to this question. First, all young prisoners, and the majority of minors in secure units, are in these institutions because they have committed criminal offenses. The decision about their placement includes a punitive dimension, even if this is not always the sole or the dominant consideration. The analogy between



offenders and psychiatric patients is not justified: the justification for limitation of liberty of an offender is that he wronged society; a psychiatric patient has not. Minors whose mental state has declined have wronged no one in crime or offense. Second, the decision about hospitalization more than other decisions is a combination of many variables such as the illness itself and its symptoms, available alternatives to hospitalization, and the **nature, experience, and professional attitudes of the person making this decision.** DCI-Israel has pleaded for a dialogue between different approaches and professional experiences, which is virtually nonexistent today.

Legislators and their legal consultants are accustomed to look at children and adolescents as autonomous, "atomistic" units rather than as members of a wider familial or social grouping. The conclusions and recommendations of several government-appointed committees — the Shaynbom, Melamed and Karp Committees — into the establishment of family courts in Israel and the policy of juvenile courts express recognition of the relationship between the behavior and distress of different family members. However, this recognition has not been integrated into the legal framework of minors' psychiatric hospitalization.

It is all too easy to attack those who want safeguards in order to prevent unnecessary involuntary hospitalization of minors by claiming that parents who hospitalize their children do not usually do so in order to seek revenge or out of hatred for their offspring. This is quite true. However, the criticism leveled here is not intended to place the parents

in the dock. The relevant question is, does the parents' intimacy with their children or the fact that they are the first to notice behavioral changes transform them into objective experts on the question of whether their children need to be hospitalized!?

The danger in relying on parental consent to psychiatric hospitalization of the minor is blatantly obvious when we examine the socio-economic state of the family. A deprived family facing an acute problem lacks the opportunity to acquire knowledge concerning alternatives to hospitalization or their rights to treatment, and still less to obtain legal representation. The family has no chance of financing a community mental health program, a supervised apprenticeship, or a vacation for the minor far away from the family home. Can anyone imagine that such a family will be as effective in preventing unnecessary hospitalization as a well-off family? The realities of everyday life and simple common sense support a negative response to this question.

We must recognize that the parental decision to opt for hospitalization is sometimes the result of tense and highly unpleasant home situations, which are sometimes so severe that parents feel desperate, **although the parents' loss of hope is a subjective matter, and is only one of the factors impacting indirectly on the need for hospitalization.**

The American psychologist Gerald Koocher (in his article "A Bill of Rights for Children in Psychotherapy") wrote that "it is easy to be so caught up in the rush to be of help, in the desperation of concerned parents... that the child

becomes lost in the process."

**When parents separate and, as in most cases, both partners wish to continue to have custody over the child, the law dictates that the child's wishes must be taken into account. Yet, in our case, when the parents seek to separate the child from the family against his/her will, a situation in which the child is often portrayed as the identified "patient," which supposedly justifies removing him/her from the family — in these cases, the minor's wishes have no weight.** In our opinion, the inhumanity of this legal situation requires no further comment.

In recent decades, the social sciences and the helping professions have gained considerable expertise in understanding the family and psycho-social context of individual problems, and in understanding the mental problems caused by psychiatric hospitalization. **Yet at present this knowledge is scarcely reflected in policy relating to the hospitalization of minors in Israel.**

Involving clinical psychologists, social workers, and psychiatrists with experience in treating deep disturbances in the community in the decision-making process concerning hospitalization could help correct the present situation. Currently, the focus is not on prevention, and the development of family and community therapy in Israel is being stifled due to the absolute preference given to a medical model which separates the "sick" from the "healthy" and isolates them in stigmatizing institutions.

The present Israeli legal framework is quite paternalistic, but imposing

sweeping restrictions on the authority of courts and welfare officers to order hospitalization even in the absence of any real alternative is not a solution, either. A narrow legal interpretation of mental illness would lead to a situation where those who are not considered "sick enough" according to a narrow legal interpretation of mental illness would be thrown onto the street. We are happy that the Knesset does not seem inclined to adopt this alternative, which had serious consequences in the United States.

**If we accept the argument that there is no benefit in a monitoring system that advocates hospitalization in the absence of any better alternative, then we will never see the emergence of community alternatives of adequate scale and quality.**

**When courts repeatedly hear expert opinions stressing the need to rehabilitate minors in the community, and when hospitalization is suggested as a last resort, a dynamic will need to be created that will lead to the allocation of adequate resources to community treatment.**

DCI-Israel acknowledges that psychiatric hospitalization is sometimes unavoidable. In that case, the UN Convention on the Rights of the Child calls for *periodic review of placement.*

In conclusion, it is clear that Israel urgently needs to create more community frameworks as an alternative to hospitalization. **The current situation can no longer be excused by the absence of alternative frameworks, and legal provisions must be amended.** The Knesset is



empowered to determine from what age a person enjoys particular rights, including the right to express an opinion on his/her own hospitalization and the right to legal representation. Due to the restrictions to their legal status and the fact that they are not yet fully emotionally developed or capable of high-order abstract thinking, children are often considered not to be capable of providing fully-informed consent to various types of social intervention, not just hospitalization. Only the Knesset can require that a treatment plan be developed - jointly with the minor and the parents - immediately upon hospitalization, ensure that such a program is presented at all hearings relating to continued hospitalization, and enforce periodic reviews of placement. Only the Knesset can determine which professionals will participate in the hospitalization decision.

Hospitalized minors can feel helpless in the face of adults who think they are acting in their best interests. It is therefore necessary to change the decision-making and monitoring system so as to ensure a significant reduction in the number of psychiatric hospitalizations, an increase in alternative solutions, and empowering of minors, even when they are not fully capable of making decisions on their own.

## FROM WAR TO PEACE\*

by Dr. Philip E. Veerman

Old images of the enemy are not easy to relinquish and it requires a great effort to see those on the "other side" as human beings and their children as children. In the Arab-Israeli conflict both sides have preconceived images of the other, and because they have a lifetime of acquired stereotypes to overcome any attempt to establish a process of dialogue or process of normalization must be made carefully and sincerely. In 1984 a group of 9-11 year-old Israeli children in Haifa were interviewed and asked about their attitudes towards Arabs. Most of these children expressed a general fear of Arabs, whom they perceived as terrorists and murderers. Similarly, Palestinian children saw Jews — especially religious Jews as aggressors and killers. The attempt to understand the other's point of view is thus marred by the doubts one nurtures about the intentions of the other side, and this adds fuel to the fire of distrust. In the case of the Arab-Israeli conflict, stimulating dialogue between both sides means stimulating mourning on both sides — mourning that the grandiose dreams of both sides have evaporated, or at least cannot be realized in the way they were originally conceived.

Up until recently, the Arab-Israeli

\* Adapted version of a paper presented at the Conference on the Rights of Children in Armed Conflict, organized by the International Dialogue Foundation, Amsterdam, May 1994.

conflict and the atmosphere of fear and danger it wrought, created a feeling of unity which was in some ways the cement of Israeli society. The Oslo peace agreement of September 1993 with the PLO presented many — especially the young — with the questions: what does it mean to be an Israeli? Can we Israelis look beyond the question of survival to other pressing issues?

Between October 1989 and January 1990, a team of specialists, headed by clinical and educational psychologist Kalman Benyamini, interviewed 966 Jewish students in grades 8-12 from public schools in Jerusalem. Although they did believe that a solution could be obtained through compromise, they still harbored negative emotional feelings towards Arabs. These youngsters probably relate positively to the idea of compromise, and perhaps look forward to a resolution of the conflict, but this does not necessarily alter their basic fear of Arabs. Only a decrease in violent acts by Palestinians may be able to slowly convince them that the Israeli-PLO agreement is an improvement or step towards peace. Palestinian youngsters can, likewise, be convinced of the value of the agreement only if there is a significant reduction in the number of Palestinian casualties in clashes with the IDF on the West Bank (and in the case of the Palestinians: the economic situation which is very difficult now improves).

Occupying forces often feel they have to show who is in control, and in times of emotional agitation they do not always understand that they should stay out of densely populated centers, because their presence under such conditions leads to confrontation and bloodshed. Soldiers driving in a jeep through the streets can be seen by children on their way home from school as a provocation and invitation to throw stones, which in turn causes the soldiers to respond with gunfire. One



element of friction has disappeared since the Israel-PLO agreement. Waving the Palestinian flag had been an illegal act and had led to many incidents of bloodshed. In the past, DCI-Israel representatives pleaded with the IDF judge advocate-general's office to de-criminalize such activities as flag-waving and peaceful demonstration. We have consistently petitioned for a policy of non-intervention in non-violent demonstrations.

The intifada has been a movement mainly of Palestinian youngsters. It was *they* who rebelled not only against the Israeli occupier, but also their elders, leaders and father-figures who, in their eyes, had not done enough. It was the minors who managed to elevate the Palestinian issue a much higher place on the world's political agenda. But everything has a price. Data selected by the Israeli human rights organization B'tselem, shows that from the beginning of the intifada, and through the end of 1994, 1186 Palestinian residents of the Occupied Territories have been killed by the Israeli security forces. Among these were 255 children, of whom 68 were 12 years old and younger, and 187 of whom were aged 13-16.

It is very important to consider the other side of the story. According to all accounts, it is clear that fatalities and tragedies occur on both sides. The Polish-Jewish educator and pediatrician Janusz Korczak once said, "The tears of all mothers are equally salty."

On May 4, 1994 DCI-Israel legal coordinator Yair Ronen and I visited a Jewish child, Shlomi Eliahu in the Petah Tikva Children's Medical Center. Shlomi had been in a bus with his classmates in Afula, a town in the center of Israel, when a suicide bomber, belonging to the Hamas organization, blew up his car next to the bus. Shlomi was hospitalized with severe burns and had to have extensive plastic surgery. His Bar-Mitzva ceremony was to

be held the next day and many people were expected to come to the hospital to celebrate this important religious event together with him and his family. Shlomi showed me a photograph album, filled with pictures of how he looked immediately following the bomb explosion. He looked like the lead actor in the film, *The Invisible Man*, his face completely covered by bandages. The time has unfortunately not yet come, when Israeli children can feel at ease and safe from unexpected attacks.



Shlomi



Parents and children will feel scared when their school buildings are not guarded, and all citizens, young and old, are constantly alert in watching out for suspicious-looking objects left unattended in public places (such as bus-stops near school buildings).

Introducing principles of humanitarian law and children's rights to different groups on both sides of the conflict remains a difficult task. On the Palestinian side, there is the Palestinian Authority representing the people, but there are also a host of opposition Palestinian groups with which both the PA and the IDF must contend.

Coming back to Palestinian children: Reluctant to invest in riot equipment, the Israeli army used military force to deal with violent unrest in refugee camps and villages, with the result that children wielding stones and burning tires were often met with lethal gunfire. This was a recipe for many casualties. Article 2 of the U.N. Convention on the Rights of the Child says that the Convention applies to all children *under the jurisdiction* of the Party. DCI-Israel interprets this principle of 'jurisdiction' to mean all children *under the effective control of the State*, and this therefore includes the children in the Occupied Territories. Since there is not yet a Palestinian 'State' which can formally ratify the U.N. Convention, we see it as our task to help protect the rights of Palestinian children, in accordance with the stipulations of the Convention. The withdrawal of the Israeli army from Gaza and Jericho and limited self-rule there has created a unique situation for implementation of the U.N. Convention, since no similar situation exists elsewhere in the world.

Article 38 of the U.N. Convention on Children's Rights says that "member states will take all feasible measures to ensure that persons who have not attained the age of 15 do not take direct part in hostilities." It should be pointed out that this article of the United Nations Convention does



not exempt a government from protecting the rights of children who do take part in mass demonstrations or stone-throwing incidents. Even if there are others responsible for encouraging children to participate in these activities — and this is a deplorable situation — this does not absolve the governing State from its obligation to the Convention and its responsibility for protecting children's rights. Consideration of the particular vulnerability of children and the unequivocal responsibility of states for their protection, must be a high priority for both Israeli and Palestinian authorities.

Over the last eight years, a trend could be seen where Palestinian youngsters became more radical than their parents. In many instances, parents opposed their children's involvement in protest activities, terrified that something might happen to them. Families on the highest rung of the social ladder have their 'martyrs', children killed by the IDF. Many children, acting independently from their fathers — who once had made all decisions, have turned the family structure upside down, and this has led to an increasing lack of respect for parents and teachers. The Israeli army has also contributed to this phenomenon. The search for wanted fugitives led to house searches, and during such searches, parents were often beaten in front of their children. The knock on the door in the middle of the night and the sight of soldiers searching the home of a frightened family is probably one of the most harmful experiences for the mental health of the children in places like Gaza. Such experiences contributed to acute feelings of hatred of Israelis.

Central to the 'normal' image of childhood and the family is the understanding of the special status of childhood, which is characterized by dependency on parents and other figures of authority in the community. It was the Palestinian youngsters who caught the attention of the world media for

the Palestinian cause, but it is these same youngsters who will find it most difficult to begin a new life in Gaza, and leading the, comparatively speaking, rather dull life of going to school, (children lost many days of school because of curfews and strikes), and beginning the painstaking process of building a new society. DCI-Israel is pleased to have the honor of working with Palestinian Lawyers for Human Rights in Khan Younis, and sharing with them our knowledge of juvenile justice, so that they can build their own juvenile justice system. They face an awesome task and building must take place on many fronts: there are currently no residential treatment centers, hostels, nor half-way facilities for youth, and if the economic situation does not improve soon, there will be a growing number of juvenile offenders reaching their courts.

The swift pace of the peace process is, nevertheless, amazing. A year and a half ago, DCI-Israel and IMUT (Mental Health Workers for Peace) arranged for meetings of prominent Israeli mental health experts to be held in Gaza to study the situation of Palestinian children. The meetings, which were coordinated on the Palestinian side by the Gaza Community Mental Health Program, led to a DCI-Israel and IMUT report: "Situation Analysis of Palestinian Children." The report was presented during the Week of the Child in Israel to the Knesset Human Rights Caucus. Many of the problems revolving around clashes between Palestinian children in Gaza and the IDF, are no longer an issue. Since our meeting in the Knesset last summer, the situation for children in Gaza has improved considerably. But although there are many improvements to report, the situation is very complicated. Children's rights organizations definitely have their own role to play. Recalling the famous Chinese curse, "May you live in interesting times" we can add that we don't think it is such a bad thing to live in interesting times,

because at least things are finally moving and many people have recovered their hope that a better future awaits their children.

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#### AS WE GO TO PRESS...

On Sunday, October 9, 1994 Dr. Yitzhak Mendelsohn was shot and seriously wounded during a Hamas terrorist attack in Jerusalem's downtown pedestrian mall in the Nahalat Shiva neighborhood. In 1992, Dr. Mendelsohn, a psychologist, led a delegation of 20 Israeli Jewish and Arab youngsters to Spain at the invitation of DCI-Spain.

All of us at DCI-Israel wish Dr. Mendelsohn a speedy and complete recovery.