



July 4, 2023

## **Detention and Adjudication of Children as Adults: Cruel and Inhuman Treatment of Minors**

### **Position of the Public Committee Against Torture in Israel concerning the Proposed Youth Law (Adjudication, Penalizing and Manners of Treatment) (Amendment – Detention and Imprisonment in Terror Offenses), 5783–2023**

The Proposed Youth Law (Adjudication, Penalizing and Manners of Treatment) (Amendment – Detention and Imprisonment in Terror Offenses), 5783–2023, which has been tabled before the Knesset, seeks to cause mortal damage to the rights and protections afforded to minors during detention, interrogation, and adjudication, if the offense of which they are suspected is manslaughter or attempted manslaughter and the act constitutes an act of terror, or if the act was committed in the framework of membership of a terror organization and for the purpose of advancing the goals of such an organization, as these are defined in the Counter-Terrorism Law.

The proposed law seeks to deprive minors suspected of the offenses detailed above of all the protections regarding detentions afforded in the framework of the Youth Law (Adjudication, Penalizing and Manners of Treatment) (Amendment – Detention and Imprisonment in Terror Offenses), 5731-1971, including:

- The right to detention as a last resort (section 10A)
- The right not to be shackled in a public place (section 10B)
- The right to be brought before a judge within not more than 12 hours, for minors under the age of 14 (section 10C)
- The right to be brought before a judge within not more than 24 hours, for minors under the age of 14, solely by way of a decision of the appointed officer and on restrictive conditions (section 10D)
- The right to the consideration of alternatives to detention taking into account their physical and psychological condition (section 10E)
- The right to the appointment of a defense counsel for a hearing in the detention (section 10F)
- The right to a detention review (section 10G)
- The right to summons a parent or relative to a hearing in the detention (section 10H)
- The right to the shortening of lengths of detention prior to the serving of an indictment (section 10I)
- The right to the shortening of lengths of detention if no indictment is served (section 10L)



- The right to the shortening of lengths of detention in the event of the renewal or extension of detention (section 10M)
- The right to the shortening of lengths of detention in the event of an application for renewed detention (section 10M1)
- The right to the involvement of a probation officer (section 12)
- The right to an alternative proceeding (section 12A)
- The right to be detained separately from adults (section 13)
- The right to be held in certain conditions (section 13A)
- The right to be held in conditions appropriate to the minor's age and needs, with an emphasis on their physical and psychological wellbeing (section 13B)
- The right for notification of release to be delivered to a parent or relative (section 13C).

The proposed law also seeks to deprive minors under the age of 14 convicted of the above-mentioned offenses of the right not to be imprisoned, including life imprisonment.

In the opinion of the Public Committee against Torture in Israel (PCATI), this is a draconian proposal that seeks to eliminate the balance currently embodied in the Youth Law (Adjudication, Penalizing and Manners of Treatment) between the need to investigate and penalize those who commit offenses and recognition of the special characteristics of minors. This balance seeks to maintain the minors' ability to return to society and to protect their physical and psychological health. The proposal flagrantly ignores the State of Israel's undertakings in accordance with the Convention on the Rights of the Child and with the Basic Law: Human Dignity and Liberty, in a manner that is liable to cause deliberate and serious injury to the physical, psychological, and developmental condition of minors suspected of the above-mentioned offenses, amounting to cruel, inhuman, and degrading treatment.

Law enforcement experts and professionals in the fields of welfare, education, and health agree that children deserve special protections under law due to their unique vulnerability at young ages; that the legislator must, accordingly, distinguish between the conditions of interrogation, detention, and imprisonment of minors and adults; and that the courts must hear minors in accordance with guiding principles adapted to their developmental age. The Youth Law (Adjudication, Penalizing and Manners of Treatment) is based on recognition of the unique characteristics of minors, who tend to act impulsively, to give greater weight to short-term outcomes offering social benefit, and have a limited perspective of time, in a manner that influences their ability to cope with the criminal proceeding and defend their rights during its course (Public Defender's Office, 2018 Activity Report, p. 40). There is effectively consensus that the criminal proceeding per se is not suited for minors and has a very strong influence on the minor's life in the short and long term, and that the activation of criminal tools against minors is liable to damage their chances to become responsible adults and to impair their development (Public Defender's Office, 2021 Activity Report).



Depriving minors suspected of the above-mentioned offenses of all these rights ignores the fact that these minors share the same unique characteristics that expose them to serious physical, psychological, and developmental damage if the criminal proceeding is not adapted to their condition. Accordingly, the proposed law constitutes nothing more than vindictive and unbridled penalization incompatible with current principles in Israel and elsewhere.

Moreover, the negation of the vital distinction between adults and minors in the eyes of the law enforcement and judicial systems paves the way for the activation of draconian tools against children during interrogation and detention, and for treatment that may constitute the cruel, inhuman, and degrading treatment of minors, who enjoy special rights under international conventions due to their young age.

The above-mentioned proposed law has nothing to do with security. This proposed law is another dangerous step on a slippery slope, showing that its proponents do not believe that children should enjoy the legal protections afforded by most of the world's democracies.

If the proposed amendment is adopted, it will cause serious physical, psychological, and developmental damage to minors. It is liable to expose the minors to the heightened use of torture and cruel, inhuman, and degrading treatment during detention and interrogation. It also raises concern that the law may be abused, in particular, against Palestinian children as part of a process of anti-democratic legislation that is tainted by profound racism.

Accordingly, PCATI urges Members of Knesset from all factions to oppose vigorously the Proposed Youth Law (Adjudication, Penalizing and Manners of Treatment) (Amendment – Detention and Imprisonment in Terror Offenses), 5783–2023 – a proposal that is tantamount to providing a legal rubber stamp for the cruel, inhuman, and degrading treatment of children.