**Chapter One: Introduction**

**I.I Preface**

The child protection and children’s access to justice discourses are embedded within the national legal system, and are inevitably affected by its interests, agendas, and politics. Both the formal (e.g., welfare, law enforcement, and justice systems) and informal stakeholders (local and international NGOs) are represented by the state and the civil society to preserve children’s rights, especially those of the most vulnerable children and families of racial, ethnic, and political minorities. In regimes afflicted by political conflict and emergency regulations, children’s rights are highly affected, and the ability to preserve the ability of child rights defenders to advocate for and protect children’s rights becomes crucial. Within this reality, I question the legitimacy and ability of those who are appointed by the state and the civil society to fulfil their mandate and responsibilities in protecting children.

 After years of experience in humanitarian work in various contexts, studying the socio-economic and political complexity that defines Occupied East Jerusalem (OEJ), observing the influx of organisations operating within its neighbourhoods and following the recent rise in cases of violence against children, my research delves into the ability of children’s rights defenders and child protection agencies to fulfil their mandate and responsibility in protecting children who are suspected of or accused in security offences.

 This research examines the specific approaches, perspectives, and ideologies concerning Palestinian children’s access to justice as perceived by both formal and informal professionals as well as by the media, courts as reflected in court verdicts and official documents, and NGOs as revealed in their publications. In studying the socio-legal context of children in OEJ and undertaking an in-depth examination of the procedural and legislative measures used in child arrests, I follow a child-centred analysis (Ben-Arieh 2005; Bessell and Gal 2008; Roer-Strier and Kurman 2009; Shalhoub-Kevorkian 2015b) with the intent of supporting and promoting a child-centred judicial system that functions in accordance with international child rights treaties[[1]](#footnote-1) —in particular, UN Convention on the Rights of the Child (CRC) General Comment Number 10 (2007)[[2]](#footnote-2) on children’s rights in juvenile justice.

The analysis will be based on a theoretical overview of the global children’s rights framework, specifically focusing on children’s access justice, as enshrined by the CRC. To understand the complexities surrounding access to justice among children of ethnic and political minorities, I will first lay out a broad overview of this issue. This general overview will be followed by an examination of the Israeli juvenile justice legislation, local perceptions of children’s access to justice, and an overview of the juvenile delinquency and children’s access to justice among the Jewish and Palestinian populations. The final part of the theoretical analysis will specifically focus on the specific challenges faced by children in OEJ.

**I.II The International Framework for Child Rights and Children’s Access to Justice**

***The UN Convention of the Rights of the Child Framework***

The Convention on the Rights of the Child was adopted by resolution 44/25[[3]](#footnote-3) of November 20, 1989 at the Forty-Fourth session of the General Assembly of the UN.[[4]](#footnote-4) It dates back to 1924, when the League of Nations adopted a declaration on the rights of the child.[[5]](#footnote-5) A broadened version of the declaration was adopted by the United Nations in 1979 and over the course of a decade, international summits were held to fine-tune the Declaration on the Rights of the Child (CRC) (Berger 2010). The CRC extends the meaning of ‘child’ to any person up to 18 years (Hart 1992). Ratified by 194 countries,[[6]](#footnote-6) the convention includes 54 articles that cover all aspects of a child’s life and set out the civil, political, economic, social, and cultural rights that all children are entitled to. It also explains how adults and governments must work together to ensure that all children can fulfil their rights.[[7]](#footnote-7)

Tobin (2013) found that over the years, scholars have increasingly sought to answer the question ‘What is the moral justification of giving rights to children?’ (2013: 396). In 1973, Hilary Rodham reviewed the emerging children’s rights movement, claiming that children’s rights seemed a slogan in search of definition. She recommended a careful study of the sociological and legal issues concerning the idea of rights for children (Rodham 1973). Minow (1995b) explored the entrance and exit of five legal frameworks for thinking about children that emerged over the past three decades: ‘Child protection, child liberation, children as potential adults, children in need of traditional authority and social resource redistribution’ (1995b: 268). Minow (1995a) claimed that as persons, children should benefit from basic legal protections against abusive governmental power. As young persons, children should benefit from juvenile courts, schools, and parents. In this view, children need rights when they are perceived as adult, and do not need rights when perceived as children (1995a: 1577).

Minow (1995b) found that along with the revolutionary rhetoric of the 1960s, child liberationists like Holt and Farson drew on works by Rousseau and Dewey to argue that children deserve rights to fully participate in society and that adult perceptions of children as dependent reflect their own subjugation experiences (Ibid.:270). Alongside those who argued for children’s liberation from a constraining status (e.g., Holt 1974, Farson 1974, Rodham 1973), others advocated for protections, services, and care for children (e.g. Ladd 1996). Minow (1995b) further claimed that both liberationists and protectionists found that the language of rights offered a way to argue for more protection and independence for different children, or for the same children in different circumstances (1995b: 273). The absence of a clear conception of children’s legal status gave leeway to blame parents for the failure of state responsibility, to fault the state for the failure of parental responsibility, and to view children’s rights as threats to both parental and state authority (Ibid. 287).

Bessell and Gal (2008) found that the CRC provides a foundation based on international law for a human rights approach to the care and protection of children. Within a human rights approach, care and protection is not provided to children as an act of adult benevolence; instead, it is conceptualised as an entitlement of all children. This is a powerful social instrument in terms of challenging the sites and uses of power (2008: 4.5).

The four guiding principles of the CRC include: a) The right to participation;[[8]](#footnote-8) b) The best interests of the child;[[9]](#footnote-9) c) The right to life, survival and development;[[10]](#footnote-10) and d) the equality (non-discrimination) principle.[[11]](#footnote-11) Freeman (2007) stipulated that although the four principles of the convention are equal in importance, the recognition of the child’s best interests underpins all other provisions of the convention. James (2011) analysed the concept of agency in respect to children’s rights. She claimed that for many adults, the concept of children as having agency may raise questions as to what kind of agency this might be and how much freedom children are permitted to have to exercise it (2011:43). When examining participation as a necessary component of children’s social inclusion, Hill, Davis, Prout, and Tisdall (2004) claimed that social inclusion is fundamentally about participation. Participation should encompass consumption, social activities, and influence on choices and decisions (2004: 78). Hart (2006) found that the advancement of one dimension of children’s protection rights should be consistent with the preservations of the others. This will only be achieved if there is consistency in promoting protection rights at the local and international levels (Hart 2006).

Bessell and Gal (2008) concluded that the CRC provides a holistic human rights framework that brings new principles, most notably the child’s right to participation, which is necessary to achieve care, protection, and fulfilment of the child’s best interests. Rather than viewing children as vulnerable, needy, and incompetent, they should be recognised as bearers of rights who have competencies, legitimate views, and experiences (2008: 14).

***Children’s access to justice***

When referring to children’s access to justice within the child rights framework, Article 12, subsection 2 states: ‘1. States Parties shall assure to 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, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law’.[[12]](#footnote-12) Berger (2010) claimed that even though the CRC values the voicing of a child's opinion in judicial proceedings pertaining to the child, ‘children’s voices have been diluted in the court system, as the dominant paradigm in children’s legal theory has too often overlooked the voices of our youth’ (2010: 179. 175). She further emphasised the essence of listening to children’s voices in the courtroom and claimed that until they are fully heard, their voices remain absent or, at best, diluted from the legal system intended to help them (Ibid.). Smith, Taylor, and Gollop (2000) claimed that this article addresses the aspirational ideals of the CRC and its international agreement. Specifically, it looks at the US laws through the lens of the CRC, utilising it as a living document for the development of policies. Berger (2010) further asserted that the CRC’s dominant paradigm of children’s best interests has ignored, diluted, and overlooked children’s voices within the court system (192).

**I.III Children’s Access to Justice Among Ethnic and Political Minorities**

When examining the law enforcement system and how it affects youth and adolescents – specifically those who are members of marginalised and excluded social, ethnic, and political groups – it is important to look at different examples across various contexts.

In their study, Baker and Bacharach found that the odds of judging a police officer as using excessive force are approximately three times higher among African Americans than whites (2017: 693). These results are consistent with past studies on race and ethnicity that suggest that African Americans generally view the police more negatively than do white Americans (Brown and Benedict 2002; MacDonald, Stokes, Ridgeway, and Riley 2007; Sharp and Johnson 2009).

Brunson and Miller (2006) discussed the disproportionate behaviour and misconduct by the police towards young people from African American and other ethnic minority groups and suggested that race comprises an important issue in police-suspect encounters. These interactions are further affected by geographical location and socio-economic circumstances of the suspects. Sharp and Atherton (2007) join other scholars such as Brunson and Miller (2006) in finding that the treatment of young people from African American and ethnic minority groups by the police in parts of Britain and the United States continues to raise concerns (Sharp and Atherton 2007: 757). They further examined the impact of police misconduct on the behaviour and attitudes of young people from ethnic minority groups in terms of their relationship with the police. The reports by participants were characterised by hostility, lack of confidence on behalf of the police, and a mistrust of authorities which holds implications on the strategies they employ during their interactions with men from ethnic minority groups (2007: 746). The Pittsburgh Youth Study (1987–2001)[[13]](#footnote-13) found that African American young men were overrepresented in official recorded arrest rates compared with white participants (Fite, Wynn, and Pardini 2009). Consistently, Loeber Ahonen, Stallings, and Farrington (2017) found that African American young men are overrepresented among the violent and homicide offenders, as well as among victims of violence (2017: 311).

When examining racial disparities in social policy, security measures, and law enforcement practices in various contexts, several studies have revealed that minority youth were more likely to be taken into custody by police than white youth and were more likely to be detained following arrest and formally petitioned to juvenile court (Piliavin and Briar 1964; Black and Reiss 1970; Thornberry 1973; Dannefer and Schutt 1982). According to Guevara and colleagues, the cumulative effect of race is illustrated in several studies that examined the way in which racial bias at the early processing decisions (i.e., detention and petition) affected later court decisions (Guevara, Herz, and Spoon 2008: 87).

While some researchers have found little or no evidence of racial discrimination in juvenile justice proceedings (e.g., Cohen and Kleugel 1978), others have pointed to contradictory findings involving both harshness or leniency or just leniency for African Americans compared to whites (e.g., Bell and Lang 1985; Leiber and Stairs 1999). Notably among these studies, using juvenile court data from Iowa, USA, Leiber and Mack (2003) examined the individual and joint effects of race, gender, and family status on the case processing outcomes for youth. They found that being African American affects justice outcomes.

When looking broadly at conflict-inflicted and settler-colonial societies, it is important to examine and address the impact of the complex social aspects and power dynamics on the child’s social identity and how it affects association with delinquent behaviour and access to justice.

**I.IV Perceptions of Child Rights and Children’s Access to Justice in Israel**

The Youth Law (Trial, Punishment and Modes of Treatment), 1971 determines the methods of operation for government agencies that focus on youth involved in criminal activities. The law applies to minors of ages 12–18 years. Given recognition that the Israeli legislation might not meet the standards of the CRC, which the state had ratified in 1991, in July of 2008, the Rotlevi Committee[[14]](#footnote-14) was founded to integrate principles of the CRC into Israeli juvenile justice procedures. That month, the Knesset passed Amendment No. 14 to the Youth Law. The amendment is intended to help realise the rights of minors in criminal proceedings while maintaining their dignity and giving due weight to their rehabilitation and integration into society. The amendment added special provisions concerning the right of the child to express his or her position before a decision is made on his or her case.[[15]](#footnote-15)

Kadman (2002) claimed that although the majority of countries had signed and ratified the CRC, globally, a large gap remained between the terms agreed to in theory, and the convention and practice on the ground. Indeed, this ratification does not guarantee the adherence to the basic rights as enshrined within the convention documents. Ben-Arieh, Natanson, and Kosher (2006) claimed that fulfilling these rights depends on the perceptions, beliefs, and attitudes towards understanding children’s rights in a given society and according to population group (by ages, cultures, ethnic groups, and socio-economic status).

In their analysis of the Israeli juvenile justice policies that defined the previous two decades, Ajzenstadt and Khoury-Kassabri (2013) claimed that the juvenile justice policy in Israel has been shaped by three interrelated discourses: a traditional rehabilitative discourse, a rights discourse, and an economic discourse. The rehabilitative discourse centred on a rehabilitative approach with an affinity for economic and rights discourses. The rights discourse remained independent from the justice discourse and was based on the belief that the state has a responsibility to ensure children’s proper development. The economic discourse mainly included practical economic concerns and was strongly linked to welfare ideas and beliefs. The authors found that these discourses, which were embedded with traditional values generated by Israel’s child-centred culture, helped to shape the Israeli juvenile justice system. Ajzenstadt and Khoury-Kassabri further claimed that the 1971 Youth Law and its accompanying regulations were based on the welfare approach, treating juvenile delinquents as victims of drives beyond their ability to control, whom the state thus must care for (2013: 115).

Advocates of children’s rights, along with legal practitioners, insisted that policies dealing with juvenile delinquents should reflect the CRC principles (Ajzenstadt and Khoury-Kassabri 2013: 118). While Israel joined the global recognition of the CRC, Israel’s rights discourse was strongly influenced by the welfare state approach and independent from the responsibility discourse, which emerged in other places (Ibid.: 122).

Ajzenstadt (2002) suggested that Zionist ideology is one of various factors affecting the juvenile justice system. She explained that under the eyes of Israeli regulation, children and youth were divided into three main categories: middle class Ashkenazi[[16]](#footnote-16) youth, new immigrants, and working class ‘orientals,’ and Palestinians. The perception of some groups as ‘primitive’ or ‘undeserving’ affected the mode in which the state, including the criminal justice system, treated them and reacted to their behaviours (Ajzenstadt 2002: 588).

**I.V Juvenile Delinquency and Child Arrest Among the Jewish and Palestinian Populations**

The Palestinian population in Israel is characterised by higher rates of poverty and unemployment than the Jewish one. Palestinian citizens of Israel suffer from many forms of discrimination, including lower governmental expenditure of public funds for educational, health, and social services, and inequalities in economic attainments (Landau 2006; Hammack 2010). According to the National Council for the Child, during 2015, 30% of all Israeli children were living in poverty – comprising one out of every three children and two out of three Palestinian children (NCC 2016). Moreover, the total percentage of Palestinian children living under the poverty rate had grown from 53% in 2000 to 66% in 2015. The municipality of Jerusalem has the highest percentage of children living in poverty at 58.2%. During 2016, the NCC report found that two out of three or 66% of Palestinian children live under the poverty line (NCC 2017).

In terms of juvenile delinquency, during 2015, 97.5% of the arrested minors were boys. Of these, 41% were Jews and 38.7% were Palestinians. A total of 66.9% of the arrests ended in pre-indictment detention. The overall number of minors with criminal files dropped from 23,527 in 2005 to 21,211 in 2015. The most common offences were against public order, bodily harm, and property damage. The percentage of Palestinian minors charged with security offences during 2015 was 88% and with assault against human life was 87.7%[[17]](#footnote-17) (NCC 2016). These figures show a relatively high percentage of Palestinian minors involved in delinquent behaviour and who encounter the juvenile justice system.

According to Israeli police reports, Palestinian youth form an especially high-risk group, committing 54% of reported incidents of juvenile delinquency in 2011, which is significantly disproportionate to their representation in the general population (27%). Consistent with the general trend in Israel, incidents of crime among Palestinian youth decreased slightly between 2005 and 2011 (from 3.1% to 2.8%). However, the level in 2011 was still more than twice as high as that among Jewish youth (1.1%) (Khoury-Kassabri, Khoury, and Ali 2015). Khoury-Kassabri, Khoury et al (2015) claim that these higher levels of criminality among Palestinian versus Jewish Israeli youth as reported in the official statistics may at least be partly attributed to differential treatment by the police and justice system. Palestinian youth likely received harsher treatment from law enforcement than Jewish youth; for example, they may have a greater chance of being arrested, held in detention pending investigation, or being referred to juvenile court. Such discrimination may result in disproportionate numbers of Palestinian youth in the official statistics (The State Comptroller Report 2001; Sherer 2009). However, a similar trend was reported in the National School Violence Study, wherein Palestinian students reported having significantly greater involvement in severe violence against peers than Jewish students did (Benbenishty, Khoury-Kassabri, and Astor 2006).

Al-Haj and Rosenfeld (1990) claim that the status of Palestinian citizens (including children) is subjected to and influenced by the ongoing national conflict. Palestinians’ status is defined and guided by three main principles: (1) the democratic nature of the State of Israel; (2) the State’s Jewish-Zionist nature; and (3) the need to preserve security. When these principles conflict, the latter two overcome the first one and guide the political and public agenda (Al-Haj and Yaniv 1983; Smooha 1990). Shalhoub-Kevorkian (2005) notes that Israeli child protection laws are based on western culture, whereas the Palestinians, to whom these laws also apply, live in a transitional state and culture with non-western social values and attitudes towards children. Given that the Palestinians have been in political conflict with the Jewish population since before Israel was founded in 1948, Palestinian youth lack confidence in the formal juvenile justice systems (2005: 1265).

Scholars studying the Palestinian society both in Israel and in the Palestinian Authority suggest that children’s experiences and development are deeply shaped by their community’s status as a national minority subjected to economic and social disadvantages (Ben-Arieh, Khoury-Kassabri, and Haj-Yahia 2006: 384).Ajzenstadt and Khoury-Kassabri (2013) found that juveniles’ involvement in crime stems from a host of social factors that lie within the state’s realm of responsibility and not within the personal volition of offenders. In the Palestinian context, children lack access to basic social rights that the state should guarantee – the right to be cared for, to be supported by parents, and to be healthy and educated. The failure to fulfil basic rights is reinforced by the children’s inability to speak the state’s official language and their lack of confidence in its formal systems (2013). According to Judge Saviona Rotlevi, these conditions push Palestinian youth to become involved in criminal activity (Israel, Constitution, Law and Justice Committee, 2007).

Haj-Yahia, Leshem, and Guterman (2011) conducted one of the few studies on the dimensions of exposure to community violence among Palestinian youth in Israel. The study revealed that a substantial percentage of Palestinian adolescents aged 14–18 in Israel reported being directly exposed to community violence as victims (49.4%) or witnessing violent incidents (79.2%).

In their study examining the role of exposure to neighbourhood violence, perceived ethnic communication, normative beliefs, and parental communication about physical violence among Palestinian adolescents, Massarwi and Khoury-Kassabri (2016) found that the adolescents’ perpetration of serious physical violence against others correlated directly and indirectly with individual, family, and contextual factors. In addition, parenting was found to mitigate negative effects of contextual factors, which predicted adolescents’ perpetration of serious physical violence against others. Consistent with the results of previous studies (Huesmann and Guerra 1997; Gorman-Smith and Tolan 1998; Schwartz and Proctor 2000; McMahon and Watts 2002; Gorman-Smith, Henry, and Tolan 2004), the findings indicated that adolescents who reported higher levels of (direct and indirect) exposure to violence in their neighbourhood were more likely to perpetrate serious physical violence against others (Huesmann and Guerra 1997; Schwartz and Proctor 2000; McMahon and Watts 2002; Gorman-Smith et al. 2004).

In closely examining delinquent behaviour among Palestinian youth, Khoury-Kassabri, Khoury, and Ali (2015) found that Palestinian youth who had been assisted by the Division of At-Risk Youth in Jerusalem were found to be highly delinquent. Furthermore, the higher the level of the adolescent’s religiosity, the less likely he or she will engage in delinquent behaviour. Juveniles who have higher levels of parental involvement and stronger attachment to parents are associated with lower levels of involvement in delinquency and political violence. Notably, Attar-Schwartz, Ben-Arieh, and Khoury-Kassabri (2010) found fewer minors on probation in Palestinian localities than in Jewish secular localities. Gal, Ajzenstadt, Ben-Arieh, Holler and Zielinsky (2009) found that in Israel, the rate of suspected minor delinquents in 2006 stood at 2.1% in general, with a rate of 1.5% for Jews and 3.5% for non-Jews. However, the findings of Attar-Schwartz et al. (2010) did not correspond with this general description. One reason might be that Palestinian minors receive harsher punishment than Jewish minors and are not put on probation, which is perceived as a rehabilitative option. For instance, Mesch and Fishman (1999) examined ethnic differences in closing juvenile criminal cases and found that Palestinian minors face greater chances of standing trial than Jews do for similar charges, even after controlling for socio-economic and legal variables. Another possibility is that Palestinian youth are sentenced to probation less often and more often to imprisonment due to the lack of rehabilitative services in the Palestinian community (Kop 2007).

**I.VI The Unique Challenges Facing Children in Occupied East Jerusalem**

The Palestinian population in East Jerusalem is particularly disadvantaged, with high levels of unemployment, limited access to economic resources, poor educational attainment, high dropout rates from school, and poor sanitation as well as other economically depressing conditions (Yair and Alayan 2009; Choshen, Bluer, Korach, Yelinek, and Assaf-Shapira 2012; Shalhoub-Kevorkian 2014). Choshen, et al. (2012) find that this population is generally more traditional than the Palestinian population in Israel, more religious, and with stricter patriarchal familial and societal structures. According to Khoury-Kassabri, Khoury, and Ali (2015), unlike Palestinians who live in other parts of Israel, Palestinians in East Jerusalem are not Israeli citizens and only have resident status.

The ongoing Palestinian-Israeli conflict continually affects the social, economic, and political situation of Palestinians in Israel in general and in East Jerusalem in particular. Over the past four decades, the Israeli government has not allocated the necessary resources to develop East Jerusalem. As a result, East Jerusalem suffers from a severe shortage of infrastructure and public services including health and education, welfare, and water and sewage systems (UNOCHAOPT 2011; B’Tselem 2014; ACRI 2016, 2017).

According to the Central Bureau of Statistics (2016), in 2015, a total of 323,700 Palestinians lived in Jerusalem, amounting to 37% of all residents of Jerusalem. Notably, 76% of East Jerusalem residents and 83.4% of the East Jerusalemite children live under the poverty line.[[18]](#footnote-18) In 2016, more than 70% of the East Jerusalemite families were living under the poverty line, a rise in 10% from 1997. Furthermore, in 2016, 31% of all children in Israel were living under the poverty line, an increase in 9.2% from 1998. Of these, 1.1% were residents of East Jerusalem (Central Bureau of Statistics 2017).[[19]](#footnote-19)

In 2017, the welfare services in East Jerusalem defined 8,973 children as being at-risk. While the four welfare services that are active in East Jerusalem currently handle 11,451 Palestinian families, 598 families remain on the waiting list for governmental assistance (ACRI 2017). The NCC 2016 report found that of the 161,462 children living in Israel without Israeli citizenship (in 2015), 82.3% are residents of East Jerusalem.

In an attempt to address the escalating violence in OEJ, the high school dropout rate among students was discussed in a Knesset meeting that was held on February 10, 2014 by the Committee of Education, Culture and Sports (Protocol number 150). Moshe Tor Paz from the Jerusalem Municipality claimed that ‘only two thirds of the students are completing their high school education’. He further pointed out that the three main challenges concerning this high dropout rate are: (1) the shortage in classrooms; (2) feeling of aimlessness among the students, as a Palestinian high school diploma does not enable access to the Israeli higher education system; and (3) a cultural challenge, as many ninth and tenth graders are already working and do not envision a future for themselves in higher education. The Ministry of Education initiated various supplementary programmes to improve the academic achievements, but these are not relevant for schools that do not provide an Israeli high school diploma”(Protocol number 150).[[20]](#footnote-20)

School attendance in OEJ is problematic and highly inadequate, complicated by the chronic shortage of classrooms. On February 1, 2016, the Committee of Education, Culture, and Sports held another meeting to discuss the classroom shortage in OEJ (Protocol number 133). The number of students in East Jerusalem as presented at the meeting was as follows: 45,000 in the official school system, 43,000 students in the unofficial school system, and 17,000 students in private schools. Indeed, this stark situation is reflected in more current statistics of the Association for Civil Rights in Israel (ACRI). The 2017 ACRI report finds that 109,481 Palestinian students are enrolled in school. Only 41% study in recognised municipal schools that are managed by the Jerusalem Municipality; 4% of the children study in recognised but unofficial schools, which receive partial funding; and the remaining 18% study in private schools.[[21]](#footnote-21) About 17,717 children are not registered in any school system.[[22]](#footnote-22)

The Jerusalem Municipality estimates that 2,000 classes are currently missing in the East Jerusalem education system.[[23]](#footnote-23) This shortage remains despite the Supreme Court’s verdict from 2011, which granted the Jerusalem Municipality a period of five years to build new classrooms in East Jerusalem so that students who wish to move from unofficial and private education to official schools could do so.[[24]](#footnote-24) In the past five years, a total of 418 new classrooms were built.[[25]](#footnote-25)

As of the school year 2016–2017, half of the formal classes in East Jerusalem (857) were unsuitable for learning[[26]](#footnote-30) and 33% of students did not complete 12 years of studies.[[27]](#footnote-31) UNOCHA reports that pupils are often accommodated in rented houses, which do not meet basic educational and health standards; consequently, parents have resorted to costly education alternatives, although children are entitled to free education under Israeli law (OCHAOPT East Jerusalem, 2011).

Another challenge facing children in OEJ involves the fundamental right to continue residing in their homes. According to ACRI (2017), during 2016, the Ministry of Interior withdrew the residency of 95 East Jerusalemite residents, including 41 women and 11 children. Moreover, Palestinian children and youth in East Jerusalem suffer from the Israeli establishment’s policy of demolishing homes. According to B’Tselem (2014), between 2004 and 2014, 2,028 people in East Jerusalem lost their homes, including 1,108 minors. B’Tselem (2014) also reports that the Jerusalem Municipality made 814 total or partial demolitions of houses and other structures in East Jerusalem between 1999 and 2013, while the Ministry of Interior carried out 174 demolitions during that same period. Schaeffer, Halper, and Epshtain (2013) suggest that demolition is a subjective and painful experience, to which men, women, and children react differently. These scholars posit that not only the acts of demolition but also the months and years leading up to it form a traumatic time for children. The experience of witnessing parents’ fear and powerlessness; feeling constantly afraid and insecure; seeing loved ones being beaten and losing their homes; experiencing the harassment of Civil Administration field supervisors; and then enduring the noise, violence, displacement, and destruction of the home that comprises a child’s entire world affect children for life (Schaeffer et al. 2013).

In addition to lack of access to social and educational opportunities, and to insecurity in the fundamental spheres of housing and residency, Palestinian children in East Jerusalem have been increasingly targeted by the Israeli criminal justice system. In 2010, human rights organisations reported a steep rise in the number of children in OEJ arrested by the Israeli authorities (OCHAOPT East Jerusalem 2011: 62). Indeed, this trend has continued. Continuous state violence, mainly over the past ten years, included three wars against Gaza. UNOCHA OPT (2015) reported that during the 51-day war in Gaza beginning in July 2014, 1,462 Palestinian civilians were killed, and a third of them were children. In the West Bank and OEJ, 27 Palestinians were killed and 3,020 were injured between June and August 2014. That summer was marked by a severe escalation in violence in Jerusalem (dubbed the Jerusalem Intifada) against the backdrop of the Gaza war and other violent attacks, especially the kidnapping and murder of 16-year-old Mohammed Abu Khdeir in July 2014.

According to UNOCHA OPT (2016), while most of 2015 witnessed a relative calm in OEJ compared to 2014, tension rose during September of that year, with protests, clashes, and violence spreading to the rest of the occupied territories. The sharp increase in violence was accompanied by a rise in Palestinian children’s involvement in acts of resistance, from throwing stones at military jeeps and police cars to stabbings of Israelis, including settlers, police, and military personnel.

Since 2014, new policy and legislative changes have been introduced – some of which relate to specific offences and/or populations, while others have a general character. Minors from East Jerusalem are mostly affected by the policy changes due to the rising number of East Jerusalemite children involved in disturbances and security offences (ACRI 2016). The newly introduced and adjusted legislative measures are presented in **the list** below:

**July 21, 2008:** Enactment of the Youth Law (Adjudication, Punishment, and Means of Treatment), Amendment 14, 5768-2008. The amendment introduced significant changes to the law consistent with the spirit of the CRC, the best interest of the minor, the possible harm caused by legal proceedings to the minor’s body and maturation, providing alternatives for rehabilitation, and an emphasis on a return to normative functioning. These changes were based on the recommendations of the Committee for the Evaluation of the Basic Rights of Children and the Law, headed by Judge Saviona Rotlevi, and their implementation by legislation, and in particular by the recommendations in the report of the Subcommittee on Children in the Criminal Proceeding, also headed by Judge Rotlevi. XX

**December 24, 2009:** Publication of the first version of the Enforcement Policy in the Offence of Stone Throwing, *State Prosecutor’s Office Guidelines* 2.19, 5770. The guidelines defined the relevant typical instance – a 16-year-old minor who threw stones without causing damage, and who has no prior criminal background. The starting penalty in this instance is set at three to four months’ actual imprisonment (not to be commuted to community service). In addition, it established the policy that the prosecution could consider whether to submit a request for detention prior to and throughout legal proceedings on a case-by-case basis. XX

**June 29, 2014:** Publication of Government Decision 1776, strengthening enforcement in offences of stone throwing (June 26, 2014). The decision established that the above-mentioned guidelines of the State Prosecutor’s Office “fail to provide an optimal response for the prevailing security reality in East Jerusalem.” The decision imposed a strict policy of indictment, including requests for detention until the end of proceedings, “with the goal of increasing the customary punishment, and with the intention of leading to the imposition of significant periods of actual imprisonment, suspended imprisonment, and considering the imposition of fines in appropriate cases” (Prime Minister’s Office, 2014).[[28]](#footnote-32)

**Publication of Programme 1775** for 2014–2018 aimed at intensifying personal security and socio-economic development in Jerusalem for the benefit of all its residents. The suggestions for intensifying deterrence are as follows:

1. Representatives of the Ministry of Justice proposed that the members of an inter-ministerial team assigned to review and examine the security issues in East Jerusalem will enact a specific offence relating to throwing stones at a moving vehicle, which would also include aggravating circumstances that require higher punishment.
2. Amendment of the State Prosecutor’s Office Guidelines from December 24, 2009. Representatives of the Ministry of Justice suggested that the guidelines of the State Prosecutor’s Office do not provide an optimal response to the existing security situation in East Jerusalem. Accordingly, they suggested that the inter-ministerial team work to update the decision, while expanding the cycle of offences to be used, in accordance with the circumstances of the case.
3. The inter-ministerial team recommended that the police code of conduct be updated immediately, and that the need for additional updates will be reviewed from time to time, taking into account the security situation (Prime Minister’s Office, 2014).[[29]](#footnote-33) Check if this was updated Shiran/Orit

**July 29, 2015:** Enactment of the Penal Code (Amendment No. 119), 5775-2015, which added the offence of throwing stones/ other objects at a police officer/ police vehicle – an offence incurring a penalty of up to five years’ imprisonment; the offence of throwing stones/ other objects at civilian vehicles, an offence incurring a penalty of up to 10 years’ imprisonment; an offence of throwing stones/ other objects with the goal of hitting a passenger or a person in his vicinity, an offence incurring a penalty of up to 20 years’ imprisonment. XX

**September 9, 2015:** Publication of an updated version of the “Enforcement Policy in the Offence of Stone Throwing,” *State Prosecutor’s Office Guidelines* 2.19, 5770, updated in August 2015. This detailed version addresses the legislative changes and is stricter than its predecessor. The most significant change in the guidelines is the declared policy to request detention through the end of proceedings for any person suspected of stone throwing and the effective elimination of alternatives to detention. (Ministry of Justice 2015).[[30]](#footnote-34)

**October 2015:** Amendment 20 to article 24A to the Youth Act (Trial, Punishment and Modes of Treatment), entitling the court to impose a fine on the minor as part of the verdict, and allowing the court – following conviction and in addition to punishment – to require a letter of commitment from parents holding them accountable for the minor’s future behaviour and obligating them to pay a fine to the victim or to cover trial expenses. The amendment was passed on October 20, 2015 (Israeli Knesset 2015).[[31]](#footnote-35)

**November 2, 2015:** Combined enactment of two amendments: The Youth Law (Adjudication, Punishment, and Means of Treatment) (Amendment No. 20), 5776-2015, which establishes the possibility to impose on the minor’s parents a fine, legal expenses, and payment of compensation to a person injured by an offence caused by a minor, following the conviction and sentencing of the minor. XX

Indirect Amendment No. 163 of the National Insurance Law (Combined Version), 5755-1995 permitting the denial of payment of welfare benefits to the parents of a minor who committed security/ stone-throwing offences and was sentenced to actual imprisonment. XX

**November 18, 2015:** Memorandum: Youth Law (Adjudication, Punishment, and Means of Treatment) (Amendment) (Means of Punishment), 5776-2015. This legislative memorandum was passed on August 2016 and determines that in serious manslaughter offences, it will be possible to impose actual imprisonment on minors who are sentenced before they reach the age of 14. The sentence is to be served in a secure juvenile detention centre until the age of 14, after which the minor enters prison (Israeli Knesset 2015).[[32]](#footnote-36)

**August 2, 2016**: Enactment of the Youth Law (Adjudication, Punishment, and Means of Treatment), Amendment 22, determining a prison sentence for minors who were convicted of a terrorist offence even before reaching the age of 14. Although the Youth Law stipulates that a minor under the age of 14 cannot be sentenced to imprisonment, the amendment calls to establish a temporary order for three years, according to which the court will be authorised to sentence a minor convicted of manslaughter, murder, or attempted murder, who at the time of his sentence is under 14 years of age, to a residential imprisonment for a determined period and to transfer the minor to imprisonment when he reaches 14 years of age. In addition, another hearing is to be held towards the end of the period of the residential imprisonment, and follow-up discussions are to be allowed from periodically, wherein the court can consider postponing the date of the minor's transfer to imprisonment and the period of imprisonment. (Israeli Knesset 2016).[[33]](#footnote-37)

Due to the significant increase in the numbers of Palestinian minors arrested in Jerusalem for stone-throwing offences, the policy changes concerning minors suspected of stone throwing, security offences, and disturbances are more tangible in OEJ more than anywhere else (ACRI 2016). According to official Israeli police statistics,[[34]](#footnote-38) 600 Palestinian minors aged 12–18 were arrested in OEJ in 2014, and 608 were arrested in 2015 – an increase of 105% percentage compared to 2010.[[35]](#footnote-39) Statistics reported by the police to ACRI (2016), however, show different figures: 792 Palestinian minors were arrested in OEJ in 2014. From September 13, 2015 through December 15, 2015 – a three-month period that was one of the most violent that Jerusalem has experienced – 398 Palestinian minor residents of East Jerusalem were arrested. Indictments have been served against 30% of all minors arrested.[[36]](#footnote-40) According to the Jerusalem Institute for Policy Research, during 2015, a total of 414 juveniles were arrested in the city. Of these, 266 were convicted,[[37]](#footnote-41) and the remaining 148 were not convicted; 35% of arrested juveniles are Jews, while 65% are Palestinians. Of the convicted juveniles, 78% are Palestinians.[[38]](#footnote-42) The 2016 NCC report on children in Israel showed that during the period of January–November 2015, a total of 1,115 juvenile prisoners from OEJ and the Occupied Palestinian Territories were held in the Israeli prisons; the majority (62.7%) were held for security offences.

Child arrests in OEJ violate the basic principles and measures outlined in the CRC and other international legal frameworks and safeguards.[[39]](#footnote-43) During 2016–2017, B’Tselem and Hamoked collected affidavits from 60 teenage boys who had been arrested and interrogated during May 2015–October 2016. The findings that emerge from these affidavits, in conjunction with information gathered by Hamoked, B’Tselem, and other human rights organisations, demonstrate that the State of Israel implements a clear and explicit policy involving its various relevant authorities: the police pull boys out of bed in the middle of the night, unnecessarily handcuff them and make them spend a long time in the interrogation; the Israeli Prison Service keeps the boys incarcerated under harsh conditions; and in court, judges almost automatically extend the boys’ custodial remand, even in cases when the arrest was unwarranted to begin with and in cases in which the child defendants complain of being subjected to physical abuse (B’Tselem and Hamoked 2017).

During 2013, the Israeli State Comptroller Office examined the Israel Police’s conduct concerning East Jerusalemite minors in criminal proceedings. The examination focused on the application of Amendment No. 14 to the Youth Law. A sample of juvenile arrest files was examined to reveal whether minors are being informed of their rights, able to consult with a public defence lawyer, and have parental presence in their interrogation, as well as to examine the frequency of night interrogations and the usage of interrogators who specialise in youth. The examination found that most files lack the information necessary to determine if the minor was treated according to the judicial protocol. This inadequate recording prevents proper monitoring of the arrest and interrogation. The criticism shows a grim picture of the implementation of the relevant provisions of the law dealing with minors in criminal proceedings. The report states that the police should adhere to Amendment No. 14 to ensure that all files include a letter to the parents, that all interrogations are with parental presence, and that minors are informed of their rights and are interrogated during the daytime with a youth interrogator. Moreover, the police should continuously seek for alternatives to detention for minors (The Israeli Annual State Comptroller Report for 2014).[[40]](#footnote-44)

**I.VII Research Objectives and Questions**

Throughout the research, I examined whether children’s access to justice in OEJ abide by Israeli and international law by (1) examining forms and modes of arrest, including time of arrest, violence used, and the legality of arrest; (2) assessing claims made by human rights organisations that work with children and their families in OEJ questioning the Israeli juvenile justice proceedings in relation to the CRC and the Israeli legal measures; (3) identifying current gaps and pitfalls in related policies and practices concerning children’s rights in accordance with the CRC and other international treaties[[41]](#footnote-45); and (4) supporting the development of a theoretical and contextual knowledge base related to children’s access to the juvenile justice system in East Jerusalem.

By interviewing human rights defenders and judicial and law enforcement professionals, as well as conducting round-table and focus group discussions, the study closely examines the state’s criminal justice proceedings – including modes of arrest such as night arrests with dogs and by men dressed in black; interrogation under threats; short-term arrests as ‘scare tactics’; reasons for arrest; length of arrest; and location, time, and techniques used during and following children’s arrest. These perspectives are essential for understanding different perceptions towards child arrest and, ultimately, for promoting a child-centred justice system.

This study is part of a broader child arrest research group which is led by Prof. Nadera Shalhoub-Kevorkian and funded by the Israeli Science Foundation. Members of this group are comprised of both MA and PhD students representing the Faculty of Law and the School of Social Work and Social Welfare at the Hebrew University. Throughout the research, members of this group have been supporting each other’s work by sharing data, findings, and relevant literature. As the group members represent different disciplines, this constellation has allowed me to access the most relevant and updated resources and continuously consult with my peers.

The study raises the following research questions and objectives:

* What are the characteristics of child arrest in OEJ?
* How does the Israeli law enforcement and legal systems refer to Palestinian children in OEJ when and while arrested?
* In accordance with international child rights guidelines, what are the mandates, contributions, and challenges faced by human rights organisations and judicial professionals in safeguarding children’s rights within the specific context of OEJ?

**I. VII Dissertation Outline**

This dissertation is comprised of three chapters, which constitute three published articles. The three chapters illustrate and study different aspects related to child arrests in East Jerusalem. An outline of each chapter and how it addressed the research questions is presented below:

**I. Chapter four, entitled, ‘Children’s Rights, State Criminality and Settler Colonialism: Violence and Child Arrest in Occupied East Jerusalem’.** This chapter was published as an article in *State Crime Journal, 5*(1), Palestine, Palestinians and Israel’s State Criminality (Spring 2016), 109–138. DOI: 10.13169/statecrime.5.1.0109.

This paper addresses the first research question: What are the unique characteristics of child arrest in the OEJ? The article examines violence against children during arrest by juxtaposing official state documents recording debates and analysis of children’s rights with published reports by human rights and civil society organisations.

The research presents two main arguments. Firstly, children are deeply imbricated in questions of politics and power, and their reality cannot be adequately understood through apolitical criminological analyses. Secondly, racialised state politics towards children, particularly those belonging to otherised groups, can justify structural violence against them, including by being defined by the state as “terrorist” others.

**II. Chapter five, entitled, ‘Child Arrest, Settler Colonialism, and the Israeli Juvenile System: A Case Study of Occupied East Jerusalem’.** This chapter was published online on September 15, 2017 as an article in the *British Journal of Criminology.* doi.org/10.1093/bjc/azx059.

This paper addresses the second research question: How the Israeli law enforcement and legal systems refer to Palestinian children in OEJ when and while arrested? The research was based on the analysis of Knesset protocols, participatory observations of court proceedings, a review of court proceedings and verdicts, interviews with children, parents and professionals, a focus group, and round-table discussions.

The research finds that the sovereign regime of control is apparent in police conduct, as well as in judicial proceedings, which in most cases, favours securitised ideologies over adherence to the legislative framework. The main contribution of this article lies in two aspects; the first relates to the methodological contribution. Here the study used innovative participatory observation while juxtaposing it with the formal legal and informal reports, data, and statistics. The second contribution lies in the theoretical framework, as moving from and between three theoretical frameworks; institutional racism, settler colonialism, and security reasoning, helped to analyse and examine the data collected.

**III. Chapter six, entitled,** ‘**Children, Human Rights Organisations, and the Law under Occupation: The Case of Palestinian Children in East Jerusalem’.** This chapter was published online on November 22, 2017, as an article in the *International Journal of Human Rights*. [doi.org/10.1080/13642987.2017.1397635](https://doi.org/10.1080/13642987.2017.1397635).

This article addresses the third research question: In accordance with international child rights guidelines, what are the mandates, contributions, and challenges faced by human rights organisations and judicial professionals in safeguarding children’s rights within the specific context of OEJ?

Considering Israel’s political reality – and consequently, the Israeli justice system’s mode of operation and treatment of Palestinian children – the study analyses both Israeli and Palestinian media coverage, key informant interviews, and focus group and round-table discussions to examine the role and mandate of human rights organisations and state judicial actors’ success in safeguarding children’s rights in OEJ.

The study finds that the human rights organisations operating in OEJ lie between two polarised spectrums, one that can be fully co-opted by the state’s official racialised position towards Palestinian children, and the other that works within the system, trying to challenge it from within, and in doing so, ends up operating in a catch 22 situation.

The state’s securitised conduct when handling East Jerusalemite children creates a situation in which children and families mistrust both the informal and formal stakeholders. The human rights organisations reinforce the existing status quo and the state’s control by operating within its system and according to its rules, a situation which ultimately results in keeping Palestinian children in a state of suffering and exclusion.

Overall, the dissertation reveals that the Israeli state contradicts the spirit of the CRC and other national and international children’s rights agendas and frameworks through a violent treatment and long-term detention of Palestinian youth, lack of implementation of the Youth Law, and a focus on punishment instead of rehabilitation. In this reality, while there is an influx of Israeli and international human rights organisations operating to ‘safeguard’ children in accordance with the CRC and the Israeli Youth Law frameworks, the Israeli juvenile justice system treats East Jerusalemite children in an increasingly discriminatory manner.

The dissertation concludes by asserting that within the complex and fragile reality of OEJ, the civil society stakeholders should ‘pick-up’ where the government has failed its East Jerusalemite residents in the form of institutional discrimination, deprivation of basic rights, and denial of access to essential services. A strong local civil society network, which is independent of government support of both Israeli and other foreign governments funds, can become a central player in determining children’s rights discourses and preserving children’s rights. Advocacy through public appeals, policy statements, and participation in Knesset meetings will ultimately push the institutional approach concerning these children towards accountability not only of the current regime and its security concerns, but also in addressing the needs and securing the rights of children and their families in OEJ.

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**Chapter Five: Discussion, Conclusions, and Contribution**

**Discussion and Conclusions**

The fulfilment of human rights, including children’s rights is the focal mandate and core existence of human rights organisations, specifically those focused on the well-being of children and their families (Minow 1995b; UNICEF 2013; Linnarsson and Sedletzky 2014). After more than a decade of working in human rights organisations focused on safeguarding vulnerable children’s rights, this doctoral thesis has allowed me to closely and critically examine the modus operandi used by these organisations to advocate for and defend children’s rights.

Through this study, I found that the protection of children’s rights in conflict-ridden areas – particularly the rights of those children who are already disadvantaged in times of peace – reveals a very complex reality that is defined by a disparity between legislation and the applicability of the law not only in maintaining children’s access to justice but also in perceptions and conduct of policy makers, legislators, and the law enforcement personnel.

In the complex reality of OEJ, where, as human right organisation have demonstrated, the violation of children’s rights are apparent in the deprivation of proper access to education (UN OCHA OPT East Jerusalem 2011; UNICEF 2013; ACRI 2016, 2017), due process (B’Tselem 2014; DCI Palestine 2014; B’Tselem and Hamoked 2017), mobility and welfare (UN OCHA OPT East Jerusalem 2011, B’Tselem 2014; ACRI 2015), the state and its institutions are failing to protect children and preserve their rights. By analysing Knesset protocols, court verdicts, and interviews with both formal and informal stakeholders, the study found that by denying access to basic services, children are pushed towards a violent reality that can result in them being situated at the limits of justice (Shalhoub-Kevorkian, 2015a), and pushed away from living a healthy childhood. As various studies have shown (UNICEF 2013; Shalhoub Kevorkian 2014, 2015a, 2015b) and this study has confirmed, living in an environment that refers to these children as potential or active criminals and security threats means that they can no longer fulfil their full rights as children, who should be protected and nurtured by their surrounding formal and non-formal circles (e.g., the home, the school, the community, the police, the welfare and judicial systems).

My analysis of police data on arrests, Palestinian and Israeli media publications, protocols of Knesset meetings, and participatory observations of Knesset meetings indicates that such a reality creates a vicious cycle that emphasises punishment instead of rehabilitation, borders instead of access, imprisonment instead of decarceration, and deprivation instead of investment in childhood. Within this oppressive reality, human rights organisations are the agents appointed by the local and international civil society as the protectors safeguarding children’s rights in their full meaning.

Referring to the research objectives as outlined in the Introduction, throughout the study, I was able to examine children’s access to justice, legislative measures, perceptions, and attitudes towards juvenile justice and child arrest in general, and in particular within the context of OEJ. Studying the unique characteristics of OEJ in relation to child arrest through the Knesset protocols, as well as official and unofficial reports and the other sources I included, has allowed me to identify gaps and pitfalls in policies and practices concerning children’s access to justice.

In examining claims made by the State Comptroller Report (2014), civil society organisations (e.g., UNICEF 2013; B’Tselem and Hamoked 2017; ACRI 2016) and the Israeli and Palestinian media (Electronic Intifada and Haaretz) pointing to the juvenile justice system’s impartial and discriminatory treatment towards Palestinian children in OEJ, I analysed these practices and critically examined the role and effectiveness of judicial practitioners and civil society stakeholders in protecting children’s rights in accordance with the CRC, as well as other international and Israeli child rights measures.

As noted in the Introduction, the study addressed the following research questions:

* What are the unique characteristics of child arrest in the OEJ?
* How do the Israeli law enforcement and legal systems refer to Palestinian children in OEJ when and while arrested?
* In accordance with international child rights guidelines, what are the mandates, contributions, and challenges faced by human rights organisations and judicial professionals in safeguarding children’s rights within the specific context of OEJ?

As Israel has ratified the CRC, the need to adhere to the legal codes of state-approved measures becomes a state responsibility if not a moral necessity (Kadman 2002). In analysing court verdict protocols, NGO reports, and the interviews with professionals and the round-table discussions, the study reveals that while there is an influx of Israeli and international human rights organisations operating to ‘safeguard’ children in OEJ in accordance with the CRC and the Israeli Youth Law framework, the Israeli juvenile justice system treats East Jerusalemite children in an increasingly discriminatory manner.

The Israeli state brutally contradicts the spirit of the CRC and other national and international children’s rights agendas through legislation, long-term detention of Palestinian youth, lack of implementation of the Youth Law, a focus on punishment instead of rehabilitation, and the violent treatment of children. These findings are supported by reviewing the Knesset protocols of meetings discussing the issues of child arrest and incarceration in OEJ and in statements such as:

Currently, there is no Arabic-speaking judge and most children do not speak Hebrew. [The judges] are not able to communicate directly with the children, a situation which influences the whole decision-making process (D.S. Public Defence Advocate).

I had a case of a fifteen-year-old boy who was arrested for stone throwing. As soon as he told the interrogators his identity and they learned that he was the brother of a suspect in a stabbing case, he was brutally beaten (S.W. The Public Committee Against Torture).

In this reality where the politics of state ideology affect the invocation of law as discussed by Shalhoub-Kevorkian (2005, 2015a) and Ajzenstadt and Khoury-Kassabri (2013), and further analysed throughout the three articles produced for this research, children can never prove their innocence, as the system functions to deny them the right to argue against incriminating evidence. The structure of oppression that marks children as ‘terrorist others’ maintains its power through the dispossession of their right to welfare, safety, and due process.

In an attempt to synthesise the research findings, I raise the following key arguments: *First*, East Jerusalemite children are deeply imbricated in questions of a history of conflict, state politics, and power, which cannot adequately be understood through apolitical and ahistorical criminological analysis. This can be found when reviewing the different legislative changes and plans of action,[[42]](#footnote-46) as well as through the interviews with both official and informal stakeholders.

*Second*, racialised state politics towards children, particularly those belonging to otherised groups (e.g., Nunn 2002; Ward 2012; Shalhoub-Kevorkian 2014, 2015a), can justify structural violence against them, including by their being defined by the state as ‘terrorist others’. This can be found in Knesset protocols and interviews with lawyers. The political performance of ‘counter tourism’, and its ‘expertise’, which imposes the status of a ‘security threat’ on Palestinian children in OEJ, enables the state to erase these children from the human category and the legal apparatus of ‘human rights’. Such dehumanisation and demonisation amounts to state-perpetrated hate crimes.

*Third*, security justifications and structural racism are apparent not only in police reactions but – as the various interviews and data analysed revealed – also in most of the judges’ behaviours and modes of treating cases of arrested children in OEJ. This can be found through the analysis of court verdict protocols and interviews with public defence attorneys.

My *fourth* argument reveals that child arrest under conditions of continued political violence and colonial dispossession rendered legislation, law enforcement personnel, criminal proceedings, and even child rights defenders as entities enrolled by the state’s ideologies. This was found through the analysis of interviews with both official and informal stakeholders, the review of both Israeli and Palestinian online coverage of child arrests in OEJ, as well as the round-table and focus group discussions.

*Fifth*, in a context where the child rights discourse is connected to the securitised legal system, as witnessed through the discussions and the leading discourse in the Knesset meeting held by the Committee of Child Rights (December 2016) and its supplementary research documents (Research and Information Centre, Israeli Knesset, 2016), I question the existence and ability of child rights defenders to challenge and counter the existing systems and legislation.

*Finally*, I find that the current discriminatory and oppressive conduct towards East Jerusalemite children allows the state to continue in its policy. Through the analysis of online media publications and interviews, I discovered that this situation reinforces the legitimacy, survivability, and mandate of formal and informal stakeholders who are appointed by the state as well as the national and international communities to safeguard children. My third article determined that this situation creates a vicious cycle of dependency on state funds and enforcement, which leaves the children behind in a reality where justice is denied. As both the formal and informal agencies are enforced, fed, and legitimised by the state’s ideology of deprivation of justice, the current modus operandi is essential for their core existence and without this, they have no mandate for subsistence and operation.

All three articles showed that the applicability of child-centred laws is curbed, and state officials maneuvre these laws when handling Palestinian children in OEJ. The state’s use of ‘security’ to justify a discriminatory ideology of denying access to justice violates children’s rights and increases their suffering. Thereby, the state maintains a continued and systematic status quo in which Palestinian children and their families mistrust both the human rights defenders (i.e., local and international civil society representatives) and the formal stakeholders (i.e., social welfare practitioners and representatives of the law enforcement and justice systems). All these entities are perceived as stakeholders in a self-perpetuating cycle that accepts and turns violent exceptions into norms. Basing on my analysis of online media reports and interviews, the humanitarian intervention that should carry the flag of preserving and observing children’s rights is incapable of properly addressing the needs of the most vulnerable children and is becoming an active servant and prosecutor of the oppressive regime and its systems. The data collected further showed that instead of challenging the discriminatory systems that are embedded within the settler-colonial setting, these stakeholders reinforce the existing status quo and the state’s control by operating within its system and according to its rules. In so doing, these entities effectively assist the state in keeping Palestinian children in a state of access denied and suffering within their ‘otherised’ spaces.

The context of state violence against Palestinian children in OEJ has turned its space into an unpredictable maze of injustice (see illustration in appendix one) – a disposable zone of multiple violations interacting and feeding off each other. The maze of injustice characterises all circles surrounding the child; the home, the school, extended family and neighbourhood, the municipal area, and above all, the State of Israel. As the study revealed, Palestinian children in OEJ experience child rights violations across these circles, while the capability of both formal and informal stakeholders to support them and advocate for their well-being and better access to education, welfare and justice is jeopardised

**Contribution of Research**

The methodological contribution of this research lays in its ability to mobilise qualitative research methods, such as participatory Knesset observations, focus group and round-table discussions, to serve as the basis for social actions in addressing legislative and practical gaps and pitfalls in the fulfilment of children’s rights to access justice. Through the participatory observations and the round-table discussions, I was able to share the research findings with formal stakeholders and national legislators, and by doing so, the Hebrew University of Jerusalem has become a vital player and front liner in addressing children’s rights in OEJ. Also, the round-table and focus groups discussions held at the Hebrew University have gathered both formal and informal stakeholders working on different aspects related to child arrest and juvenile in OEJ. This was the first time that these stakeholders were given the opportunity to meet, engage, share their experiences and recommendations, and discuss different alternatives to the current practices.

Furthermore, this study was unique as it was the first condensed effort to address the issue of child arrest and juvenile justice in OEJ. The incorporation of interviews with children whose experience enlightened the research process and questions, as well as juxtaposing different sources such as official and informal documents, police data, protocols of Knesset meetings, court verdicts and interviews with both formal and informal stakeholders allowed me to pull different themes and thoroughly analyse them through the different resources.

Theoretically, the research has contributed to the theoretical framework concerning children’s access to justice among ethnic and racial minorities in a context of unending political violence. By constructing this research on previous studies that focused on children’s rights and access to justice (e.g., Rodham 1973; Minow 1995a; Berger 2010; Tobin 2013), access to justice of children of minorities (e.g., Brunson and Miller 2006; Baker and Bacharach 2017), child rights in settler-colonial regimes (e.g., Moses 2005; Veracini 2007; Wolfe 2006, 2008; Tauri and Porou 2014) and in conflict-ridden areas (Maslen 1996; Wessells 1998; Udombana 2006), the study was able to offer a unique theoretical epistemology of children’s access to justice in a context which is unique but can be also characterised by the above frameworks

Following in the footsteps of previous studies concerning the role of the state in fulfilling children’s rights (Kadman 2002), the state’s interpretation of the CRC and the Youth Law (Ajzenstadt 2002; Ben-Arieh, Natanson, and Kosher 2006; Ajzenstadt and Khoury-Kassabri 2013), and the state’s discriminatory treatment towards Palestinian children in general (e.g., Al-Haj and Rosenfeld 1990; Mesch and Fishman 1999; Shalhoub-Kevorkian 2005; Benbenishty, Khoury-Kassabri, and Astor 2006; Landau 2006; Hammack 2010; Khoury-Kassabri, Khoury, and Ali 2015), and in particular in OEJ (Yair and Alayan 2009; Choshen, Bluer, Korach, Yelinek, and Assaf-Shapira 2012; Shalhoub-Kevorkian 2014; Khoury-Kassabri, Khoury, and Ali 2015), I sincerely hope that this study has helped to shed light and cover various aspects and perceptions concerning child arrest and access to justice within the specific and unique context of OEJ. Through this study, it is hoped that policymakers, judicial, law enforcement and civil society stakeholders will re-examine their mandate, role, responsibilities, and actions in addressing the needs of East Jerusalemite children throughout and following the different stages of their encounters with the Israeli juvenile justice system.

The Rotlevi Committee (2008) was initiated to protect children’s rights in accordance with CRC and its recommendations. This was a crucial benchmark in terms of Israel’s adherence with the international standards concerning children’s rights. However, my research reveals major discrepancies in the probation of access to education and justice and protection of children’s rights. In today’s Israel, which is characterised by heated discussions around the rights of prisoners and improper mode of interrogation, this research wonders whether we need another investigation like Rotlevi’s. Furthermore, the publication of this study, at this point and time, in Israel require that we stop and think whether children who belong to ethnic minority groups with a history of political conflict with the state, like Palestinian children studied in this research, can enjoy due process, access justice, or end up with no right to right?

My recommendation is that considering East Jerusalemite’s children’s unique status and its impact on the likelihood of their arrest and detainment by Israeli police forces, the juvenile justice and welfare systems should invest more focus and efforts on long-term rehabilitation, investment in education and welfare services that are specifically tailored to the needs of the population in OEJ in accordance with the CRC.

Drawing upon Minow’s (1995b) reflections over the future of children’s rights, she claims that human rights in the international sphere depend upon the development of a community that believes in them rather than an authority – court of legislature – that will enforce them (1995b: 294). Following this discourse, I believe that the grassroots civil society stakeholders should re-visit and strengthen their support systems and complaint mechanisms to directly support families and children in fulfilling their rights during and following judicial proceedings in accordance with the CRC and the Israeli Youth Law. Hence, based on the previous literature and the results of this study, I would recommend the re-creation of an ombudsman or a similar mechanism to serve, detect, document, and protect children’s rights.

Furthermore, the socio-political reality in OEJ is extremely fragile and constantly affected by global politics, as well as Israeli national strategic ‘securitised’ policies and legislation. Within this fragility, the civil society stakeholders should ‘pick-up’ where the government has failed. A strong local civil society network, which is independent of government funds and support of both Israeli and other foreign governments, can truly challenge the current oppressive conduct towards East Jerusalemite children and their families. Actions such as advocacy through public appeals, policy statements, and participation in Knesset meetings held by the Committee of Child Rights will push the institutional approach concerning these children towards adherence to the child rights discourse, which will ultimately lead to genuine efforts to supporting the accessibility of justice.

Children’s access to justice is a social and moral responsibility. Criminological and victimological studies and interventions, mainly in a state where political violence affects the framing of justice and the naming of children as children, should be guided by ethical commitment to the welfare and rights of children. Denying children their right to justice can not only affect their welfare but can also jeopardise the integrity of the entire justice system and the preservation of international and local amendments and laws. The maintenance of a morally responsible justice system accountable to CRC and committed to the preservation of child right, is, to my knowledge, a crucial element in any democracy.

1. UN Standard minimum rules for the administration of juvenile justice (the Beijing Rules 1985); UN Rules for the Protection of Juveniles Deprived of their Liberty (1990); Children’s rights in juvenile justice; Guidelines for Action on Children in the Criminal Justice System (ECOSOC 1997); Nations Model Strategies and Practical Measures on the Elimination of Violence Against Children in the Field of Crime Prevention and Criminal Justice (2015). [↑](#footnote-ref-1)
2. <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>. [↑](#footnote-ref-2)
3. https://treaties.un.org/doc/source/docs/A\_RES\_44\_25-Eng.pdf [↑](#footnote-ref-3)
4. https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\_no=IV-11&chapter=4&lang=en [↑](#footnote-ref-4)
5. http://www.un-documents.net/gdrc1924.htm [↑](#footnote-ref-5)
6. https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\_no=IV-11&chapter=4&lang=en [↑](#footnote-ref-6)
7. https://www.unicef.org.uk/what-we-do/un-convention-child-rights/ [↑](#footnote-ref-7)
8. Anchored in Article 12 of the CRC [↑](#footnote-ref-8)
9. Anchored in Article 3 of the CRC [↑](#footnote-ref-9)
10. Anchored in Article 6 of the CRC [↑](#footnote-ref-10)
11. Anchored in Article 2 of the CRC [↑](#footnote-ref-11)
12. http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf [↑](#footnote-ref-12)
13. The Pittsburgh Youth Study was part of the larger ‘Program of Research on the Causes and Correlates of Delinquency’ initiated by the Office of Juvenile Justice and Delinquency Prevention in 1986. [↑](#footnote-ref-13)
14. The Committee was headed by Judge Saviona Rotlevi. [↑](#footnote-ref-14)
15. Israeli Government Proposed Law: The Youth Law (Adjudication, Punishments, and Methods of Treatment), Amendment No. 14, 5766-2006, Government Proposed Law 244, June 12, 2006, p. 468. [↑](#footnote-ref-15)
16. Jews of European descent. [↑](#footnote-ref-16)
17. This type of offence includes nationalist stone throwing, attempted manslaughter, and murder threats. [↑](#footnote-ref-17)
18. <https://www.btl.gov.il/Publications/oni_report/Documents/oni2015.pdf>. [↑](#footnote-ref-18)
19. <https://www.btl.gov.il/Publications/oni_report/Documents/oni2016-new.pdf>. [↑](#footnote-ref-19)
20. <https://oknesset.org/committee/meeting/8539/>. [↑](#footnote-ref-20)
21. See the Jerusalem Municipality’s answer to ACRI on March 20, 2017 following the request for information based on the freedom of information law <http://www.acri.org.il/he/wp-content/uploads/2017/05/EJ-education-290317.pdf>.. [↑](#footnote-ref-21)
22. Ibid. [↑](#footnote-ref-22)
23. A Knesset discussion protocol number 133 for a meeting held by the committee of Education, Culture and Sports on 01.02.2016 to discuss the shortage in classrooms in East Jerusalem, [↑](#footnote-ref-23)
24. https://www.psakdin.co.il/Court/בג%22צ-על-משרד-החינוך-לקלוט-תלמידי-מזרח-י-ם-במסגרת-חינוך-רשמי-בעיר -תוך-5-שנים#.WgGAAM49rBI. [↑](#footnote-ref-24)
25. <https://oknesset.org/committee/meeting/11710/>. [↑](#footnote-ref-25)
26. See the Jerusalem Municipality’s answer to ACRI on March 20, 2017 following the request for information based on the freedom of information law at <http://www.acri.org.il/he/wp-content/uploads/2017/05/EJ-education-290317.pdf>. [↑](#footnote-ref-30)
27. Knesset discussion Protocol Number 133 for a meeting held by the committee of Education, Culture and Sports on February 1, 2016 to discuss the shortage in classrooms in East Jerusalem. [↑](#footnote-ref-31)
28. <http://www.pmo.gov.il/Secretary/GovDecisions/2014/Pages/dec1776.aspx>. [↑](#footnote-ref-32)
29. <http://www.pmo.gov.il/Secretary/GovDecisions/2014/Pages/dec1775.aspx>. [↑](#footnote-ref-33)
30. <http://www.justice.gov.il/Units/StateAttorney/Guidelines/02.19.pdf>. [↑](#footnote-ref-34)
31. [http://main.knesset.gov.il/Activity/committees/Huka/News/pages/אושר-לקריאה-שנייה-ושלישית-החמרת-ענישה-למיידי-אבנים.aspx](http://main.knesset.gov.il/Activity/committees/Huka/News/pages/%D7%90%D7%95%D7%A9%D7%A8-%D7%9C%D7%A7%D7%A8%D7%99%D7%90%D7%94-%D7%A9%D7%A0%D7%99%D7%99%D7%94-%D7%95%D7%A9%D7%9C%D7%99%D7%A9%D7%99%D7%AA-%D7%94%D7%97%D7%9E%D7%A8%D7%AA-%D7%A2%D7%A0%D7%99%D7%A9%D7%94-%D7%9C%D7%9E%D7%99%D7%99%D7%93%D7%99-%D7%90%D7%91%D7%A0%D7%99%D7%9D.aspx). [↑](#footnote-ref-35)
32. <https://www.nevo.co.il/law_word/law14/law-2576.pdf>. [↑](#footnote-ref-36)
33. <http://main.knesset.gov.il/News/PressReleases/pages/press030816-op92w.aspx>. [↑](#footnote-ref-37)
34. Information sent by the Israeli Police on May 16,.2016 under request number 4173 to the Author, following a request for information submitted on May 1,.2016 based on the Freedom of Information Law. [↑](#footnote-ref-38)
35. According to the Israeli Youth Act, Section 34f of the Penal Code 1977: “A person shall not be held criminally responsible for acts committed before he was twelve years old.” [↑](#footnote-ref-39)
36. Police reply to ACRI dated October 19, 2015, based on the Freedom of Information Law. [↑](#footnote-ref-40)
37. The offences include disturbing security or public order, offences against human life, and causing bodily harm. [↑](#footnote-ref-41)
38. Statistical Yearbook of Jerusalem Chapter XIV-Public Order. [↑](#footnote-ref-42)
39. The CRC specifies principles concerning juvenile justice procedures and prohibits the use of torture and cruel, inhuman, or degrading treatment in order to extract an admission or a confession (art. 37a). According to the CRC, child arrest is always the last resort and can only be used in the absence of other alternatives. If arrested, children should have access to education, family visitation, legal support, and respectful treatment. [↑](#footnote-ref-43)
40. In the sample used by the State Comptroller Report for 2014, 80% relates specifically to OEJ and the West Bank. [↑](#footnote-ref-44)
41. UN Standard minimum rules for the administration of juvenile justice (the Beijing Rules 1985); the CRC General Comment number 10 (2007): Children’s rights in juvenile justice; Guidelines for Action on Children in the Criminal Justice System (ECOSOC, 1997); UN Rules for the Protection of Juveniles Deprived of their Liberty (1990); Nations Model Strategies and Practical Measures on the Elimination of Violence Against Children in the Field of Crime Prevention and Criminal Justice (2015).

 The right to parental presence during each phase of the juvenile justice procedure is grounded in the Beijing Rules Article 7.1. [↑](#footnote-ref-45)
42. e.g., Government Decision 1776, Program 1775 for 2014-2018 (June 2014); Amendment number 119 to the Penal Code (July 2015); Amendment number 20 to article 24A to the Youth Law (October 2015); Amendment number 22 to the Youth Law (August 2016). [↑](#footnote-ref-46)