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CHILDREN IN ISRAELI MILITARY DETENTION

Observations and Recommendations

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Cover Photo: Ofer military court and prison in the West Bank
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Abbreviations and acronyms

- *Beijing Rules:* United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985)
- *CAT:* Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- *CRC:* Convention on the Rights of the Child
- *HRC:* Human Rights Committee
- *ICCPR:* International Covenant on Civil and Political Rights
- *Tokyo Rules:* United Nations Standard Minimum Rules for Non-Custodial Measures (1990).
- *Standard Minimum Rules:* United Nations Standard Minimum Rules for the Treatment of Prisoners (1955)
- *UNICEF:* United Nations Children's Fund

A. Executive summary

All children in contact with judicial systems should be treated with dignity and respect at all times. For several years, national lawyers, human rights organizations, United Nations experts and treaty bodies have been publishing reports of ill-treatment of children who come in contact with the Israeli military detention system.

Following an increasing number of allegations of ill-treatment of children in military detention, UNICEF has conducted a review of practices related to children who come into contact with the military detention system, from apprehension, to court proceedings and outcome.

The review further considers whether the military detention system is in conformity with the Convention on the Rights of the Child as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Following an overview of policies and norms related to the prohibition of ill-treatment in international law, the paper presents the structure and operation of the Israeli military detention system, including the legal framework, establishment of a juvenile military court, age of criminal responsibility and penalties under military law. The paper also reviews the legal safeguards in place against ill-treatment under military law and discusses their conformity with the norms, guarantees and safeguards found in international law. Subsequently, the treatment of children in the military detention system is presented, following the passage of children through the system.

This paper is a result of this review and analysis of practices. It concludes that the ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalized throughout the process, from the moment of arrest until the child's prosecution and eventual conviction and sentencing.

It is understood that in no other country are children systematically tried by juvenile military courts that, by definition, fall short of providing the necessary guarantees to ensure respect for their rights. All children prosecuted for offences they allegedly committed should be treated in accordance with international juvenile justice standards, which provide them with special protection. Most of these protections are enshrined in the Convention on the Rights of the Child.

The paper concludes with 38 specific recommendations grouped under 14 broad headings designed to improve the protection of children in line with the Convention on the Rights of the Child and other international laws, norms and standards.

B. Introduction and framework for analysis

International law requires that all children in contact with judicial systems be treated with dignity and respect at all times. Reports concerning the cruel, inhuman and degrading treatment or punishment (hereinafter 'ill-treatment') of Palestinian children in the Israeli military detention system are not new. For many years credible reports have emerged of ill-treatment within this system. These reports have come from international, Palestinian and Israeli lawyers; human rights organizations; and independent UN experts and bodies such as the Committee on the Rights of the Child, the Committee against Torture and the Human Rights Committee.

International law applicable in both Israel and the occupied Palestinian territory[1] prohibits the use of torture and other cruel, inhuman and degrading treatment or punishment under any circumstances. The prohibition is absolute and unconditional. This prohibition has no exceptions, not even for security considerations or for the threat of war. The Convention on the Rights of the Child, in article 37, also prohibits such treatment.

Since 2007, the UNICEF office in the occupied Palestinian territory has been leading inter-agency efforts to systematically gather accurate, timely and reliable information on grave violations committed against children in Israel and the occupied Palestinian territory, including the arrest and detention of children. This information – in addition to data on killing and injuries, recruitment and use of children in armed forces and groups, attacks against schools and hospitals, denial of humanitarian access and forced displacement – is reported regularly to the United Nations Security Council Working Group on Children and Armed Conflict, via the Office of the Special Representative of the Secretary-General for Children and Armed Conflict. Mounting allegations of ill-treatment of children held in the Israeli military detention system led UNICEF to monitor and review practices relating to children in that system.[2]

The methodology of this review included the analysis of cases documented through the monitoring and reporting mechanism on grave child rights violations, as well as an assessment of legal and other documents relevant to that system. These include Israeli military orders, domestic legislation and relevant jurisprudence; statistics from governmental and non-governmental organizations; and reports from UN bodies and Israeli and Palestinian non-governmental groups. The effort also involved discussions conducted by UNICEF with Israeli and Palestinian lawyers and Israeli officials and interviews with Palestinian children.

The review further considered whether the military detention system is in conformity with the 1989 Convention on the Rights of the Child, ratified by Israel in August 1991, and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Israel in 1991. It also addressed whether the legal safeguards in place against ill-treatment under Israeli military law are in line with the norms, guarantees and safeguards found in international law relevant to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

This paper summarizes the findings of the review. It concludes by recommending a number of practical measures to improve the protection of children within the system, in line with applicable international standards. Enforcing these recommendations is possible, as demonstrated by the fact that Israeli authorities have announced a few positive changes over the last two years. This is a welcome development that will help increase the protection of children, provided that these changes are fully implemented.

C. Legal policies and principles

The prohibition against torture and other cruel, inhuman and degrading treatment or punishment is universal and absolute. It can be found in both customary international law and in a number of treaties and conventions (see table 1).[3] There are no exceptional circumstances in which torture or other cruel, inhuman and degrading treatment or punishment are permitted, not even security considerations or the threat of acts endangering the security of a State or its population.[4] The prohibition is absolute.

Table 1. International guarantees, norms and safeguards relevant to torture and other cruel, inhuman and degrading treatment or punishment

#	Action	Guarantees, norms and safeguards	Source[5]
1.	Notification and reasons for arrest	All persons, including children, should be given reasons for their arrest, at the time of arrest. Parents or legal guardians should be informed of the arrest within the shortest possible time thereafter, in a language understood by the child and the parents or legal guardians.	International Covenant on Civil and Political Rights (ICCPR) art. 9 (1) and (2); Beijing Rules, Rule 10.1
2.	Use of instruments and methods of restraint	Children should be restrained only if they pose an imminent threat to themselves or to others, and all other means have been exhausted, or as a precaution against escape during transfer, but in all cases, only for as long as is strictly necessary.	Convention on the Rights of the Child (CRC) art. 37(c); CRC General Comment No. 10, para 89; UN Standard Minimum Rules, rules 33 and 34; Tokyo Rules, rule 64
3.	Privilege against self-incrimination	All children should be free from compulsory self-incrimination, which includes the right to silence. 'Compulsory' should be interpreted broadly and not limited to physical force. The age of the child and the length of the interrogation, the child's lack of understanding and the fear of unknown consequences may all lead a child to give a confession that is not true.	CRC, art 40(2)(b) (iv); Convention on the Rights of the Child General Comment No. 10, paras 56-58; Convention against Torture, art. 15; ICCPR, art 14(3)(g) and (4); Geneva IV, art. 31

4.	Access to legal representation and parents during interrogation, and audio-visual recording of all interrogations	There must be independent scrutiny of the methods of interrogation. This should include the presence of a lawyer and relative or legal guardian and audio-visual recording of all interrogations involving children.	CRC, art 40(2)(b)(ii) and (iv); Convention on the Rights of the Child General Comment No. 10, para 58; ICCPR, art 14(3)(b); HRC General Comment No. 20, para 11; HRC Concluding Observations, Israel (29 July 2010), ICCPR/C/ISR/CO/3, para 22; Convention against Torture, art. 2; UN Committee against Torture, General Comment No. 2, para 14, and Concluding Observations, Israel (14 May 2009), CAT/C/ISR/CO/4, paras 15, 16, 27 and 28
5.	Right to be brought before a judge and to challenge the legality of the detention	A child should be brought before a judge within 24 hours of detention. The legality of continued detention should be reviewed by a judge every two weeks. A child has the right to challenge the legality of the detention.	CRC, art. 37(d); Convention on the Rights of the Child General Comment No. 10, paras. 52 and 83; ICCPR art. 9 (3) and (4); Human Rights Council General Comment No. 8, para 2
6.	Exclusion of all evidence obtained by torture	Any statement that is established to have been made as a result of torture or ill-treatment shall not be invoked as evidence in any proceeding.	Convention against Torture, art. 15

The Convention on the Rights of the Child, in article 37, prohibits torture and other cruel, inhuman or degrading treatment or punishment (see box). It further provides that parties to the Convention "shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".[6] The Committee on the Rights of the Child has further stated that "any disciplinary measure […] including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned" must be strictly forbidden.[7]

As general guidance, following are some examples of practices that amount to torture or cruel, inhuman or degrading treatment according to the Committee against Torture:

- Restraining in very painful conditions;
- Hooding under special conditions;
- Threats, including death threats;
- Kicking, punching and beating with implements;
- Excessive use of force by law enforcement personnel and the military;
- Incommunicado detention without access to a lawyer or doctor or the ability to communicate with family members;
- Solitary confinement;
- Sensory deprivation and almost total prohibition of communication; and,
- Poor conditions of detention, including failure to provide food, water, heating in winter, proper washing facilities, overcrowding, lack of amenities, poor hygiene facilities and limited clothing and medical care.[8]

Article 37 of the Convention on the Rights of the Child

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

The prohibition against torture and cruel, inhuman or degrading treatment in Israel

In addition to Israel's obligations under international law, the guiding principles relating to the prohibition against torture in Israel are to be found in a 1999 decision of the Supreme Court, which is also legally binding on the Israeli military courts.[9] The Court concluded that a reasonable interrogation is necessarily one free of torture and cruel, inhuman or degrading treatment, and that this prohibition is absolute.[10]

D. Structure and operations of the Israeli military detention system

The authorities involved in the process of arrest, prosecution, sentencing and detention of children are the army, the police, the Israel Security Agency, the courts and the Israel Prison Service. All these agencies and security officials are responsible for the child at different stages of the process that a child goes through when in contact with the military detention system.

Israel imposed military law on the occupied Palestinian territory in June 1967, through a military order that gives the Israeli area commander full legislative, executive and judicial authority.[11]

Legal framework

According to the legal framework of occupation under international law, a local population under occupation should continue to be bound by its own penal laws and tried in its own courts. However, under security provisions, local laws can be suspended by the occupying power and replaced with military orders enforced by military courts.[12]

Based on the establishment of military law,[13] successive Israeli military commanders in the West Bank have issued over 1,600 military orders. These orders relate to a range of issues, including the establishment and jurisdiction of the military courts; detention, arrest, release, search, seizure and forfeiture; applicable practice, procedure and evidence in military courts; categories of offences; and more recently, the establishment of a juvenile military court.

The Israeli military order most relevant to this report is Military Order 1651. This order came into effect on 2 May 2010 and incorporates a number of previous military orders relating to children, including Military Order 132 (Adjudication of Juvenile Delinquents) and Military Order 1644 (Establishing a Juvenile Military Court). Military Order 1651 also contains the main jurisdictional provisions and specifies the main offences with which Palestinians, including children, who are living in areas under full Israeli control are charged, which were previously contained in Military Order 378 (Security Directives).

In addition to Military Order 1651, some provisions of Israeli civilian criminal legislation also apply in the military courts, including laws relating to criminal procedure and evidence.[14]

Juvenile military court

In September 2009, in response to documentation of the prosecution of children as young as 12 in adult military courts, Israel established a juvenile military court.[15] It is understood that this is the first and only juvenile military court in operation in the world. In fact, it uses the same facilities and court staff as the adult military court.[16] The Committee on the Rights of the Child has stated that States Parties to the Convention on the Rights of the Child should establish separate facilities for children deprived of their liberty, including distinct, child-centred staff, personnel, policies and practices.[17]

With respect to juvenile justice, international child rights law is clear and unequivocal: accountability measures should be guided by the principles of diversion and alternatives to deprivation of liberty. First and foremost, children should be diverted from entering the law enforcement and judicial systems. The deprivation of liberty of children should only be used as a measure of last resort and for the shortest appropriate period of time. Accountability measures for alleged child perpetrators should be in the children's best interests and should be conducted in a manner that takes into account their age at the time of the alleged commission of the crime, promotes their sense of dignity and worth, and supports their reintegration and potential to assume a constructive role in society.[18]

The order that established the juvenile military court raises a number of issues of concern:

(i) Although proceedings involving minors (12-15 years) are to be heard before a military juvenile court, remand hearings, bail applications and hearings to determine whether a child remains in detention pending the conclusion of the case are specifically exempted from this requirement and can be heard in the military courts used for adults.[19]

(ii) Military juvenile judges are selected from the ranks of military court judges and given "appropriate training".[20] If a minor (12-15 years) is tried before an adult military court by mistake, and the mistake is discovered prior to the verdict, the adult military court can transfer the case to the military juvenile court, which is "authorized to hear the case from the stage it had reached in the previous court", rather than starting the hearing again before an appropriately qualified judge. Alternatively, the adult military court can continue to hear the case and is authorized to "act as if it were a military juvenile court", even though the judge may not have received the "appropriate training".[21] This provision in Military Order 1651 would appear to place little or no value on the skills and expertise that an appropriately trained juvenile judge can bring to proceedings involving a child. It should be noted, however, that in cases of "a grave miscarriage of justice" arising as a result of these provisions, the President of the Military Court of Appeals can order a retrial.[22]

(iii) The juvenile military court is authorized to conduct hearings in a location away from where adult trials are being conducted, but only "to the extent possible". Similarly, minors (12-15 years), "to the extent possible", are to be brought separately to and from court.[23]

(iv) Regarding the time period during which a child can be denied access to a lawyer and the guidelines relating to a child's release on bail, the same provisions govern both children and adults – the military order establishing the juvenile military court did not establish specific rules recognizing the special vulnerabilities of children.

Use of hand ties

In March 2010, the Office of the Israeli Military Advocate General stated in a letter to human rights organizations[24] that new procedures had been established and disseminated on the use of hand ties, to prevent pain and injury.[25]

Age of majority

On 27 September 2011, the Israeli military commander in the occupied West Bank issued Military Order 1676, which raised the age of majority in the military courts from 16 to 18 years. Israeli military courts previously considered Palestinian children to be minors only up to 15 years old. This positive development is in line with the Convention on the Rights of the Child. It should be noted, however, that this amendment translates into legislation an existing practice, and that it does not apply to the sentencing provisions; children aged 16 and 17 years are still sentenced based on provisions applicable for adults.

This new order also introduced requirements for the police to notify parents about the arrest of their children and to inform children that they have the right to consult a lawyer. However, it does not stipulate when the consultation should occur. Nor does it impose similar notification requirements on the army, which is the main body conducting arrests and detaining children in the West Bank before handing them over to the police, who carry out the interrogations of children. In addition, at the time of writing, Military Order 1676 had only been circulated in Hebrew and English, not Arabic, as required under international law.[26]

Age of criminal responsibility and penalties under military law

Military Order 1651 establishes 12 years as the minimum age of criminal responsibility and sets the maximum penalties that can be imposed on children in various age categories. These maximum penalties can vary significantly depending on the child's age (see table 2).

Table 2. Age categories under Military Order 1651 on penalties under military law

Age	Definition		Criminal responsibility
0-11 years	Child		No child shall be arrested or prosecuted in the military courts. (sec. 191)
12-13 years	Juvenile	Minor (sec 136)	Maximum 6 months' imprisonment. (sec. 168(B))
14-15 years	Young adult		Maximum 12 months' imprisonment, unless the offence carries a maximum penalty of 5 years or more. (sec 168(C))
16 years	Adult		As an adult – maximum penalties stipulated according to the offence.

The majority of children prosecuted in the military courts are charged with throwing stones,[27] which is an offence under Section 212 of Military Order 1651. It provides as follows:

(i) Throwing an object, including a stone, at a person or property with the intent to harm the person or property carries a maximum penalty of 10 years' imprisonment.[28]

Therefore, applying the limitation on sentences that can be imposed, a child aged between 12 and 13 years can receive a maximum sentence of six months, but a child aged between 14 and 15 years could in theory receive the maximum penalty of 10 years, as the maximum penalty for the offence exceeds five years; and

(ii) Throwing an object, including a stone, at a moving vehicle with the intent to harm it or the person travelling in it carries a maximum penalty of 20 years' imprisonment.[29]

Again, a child aged between 12 and 13 years can receive a maximum sentence of six months, but a child aged between 14 and 15 years could in theory receive the maximum penalty of 20 years, as the maximum penalty for the offence exceeds five years.

First appearance before a judge

On 1 August 2012, Israeli Military Order 1685 established that children detained by the Israeli security forces must be brought before a judge within four days of arrest, instead of the previously allowed eight days. Military Order 1711, issued on 28 November 2012, which will go into effect in April 2013, will further reduce the length of pre-trial detention, stipulating that children under 14-years-old should be brought before a Judge within 24 hours of arrest and children between 14 and 18 years old within 48 hours. This is a welcome development; however, it is still not in line with international standards, which recommend that the legality of the arrest be reviewed by a judge within 24 hours for all persons under 18 years.[30]

E. Treatment of children in the military detention system

This section analyses the treatment of children during four critical phases of the military detention process: the arrest, the transfer to an interrogation site, the interrogation itself and finally the hearing. The findings are based on UNICEF interviews with children.

Each year approximately 700 Palestinian children aged 12 to 17, the great majority of them boys, are arrested, interrogated and detained by Israeli army, police and security agents.[31] In the past 10 years, an estimated 7,000 children have been detained, interrogated, prosecuted and/or imprisoned within the Israeli military justice system – an average of two children each day.

> *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*
>
> Article 3, Convention on the Rights of the Child

The analysis of the cases monitored by UNICEF identified examples of practices that amount to cruel, inhuman or degrading treatment or punishment according to the Convention on the Rights of the Child and the Convention against Torture. What amounts to ill–treatment depends on the facts and circumstances of each case. However, the common experience of many children is being aggressively awakened

in the middle of the night by many armed soldiers and being forcibly brought to an interrogation centre tied and blindfolded, sleep deprived and in a state of extreme fear. Few children are informed of their right to legal counsel.

The arrest

Many children[32] are arrested in the middle of the night, awakened at their homes by heavily armed soldiers. Some children are arrested in the streets near their homes, near bypass roads used by Israeli settlers or at army checkpoints inside the West Bank. Many of the children arrested at home wake up to the frightening sound of soldiers banging loudly on their front door and shouting instructions for the family to leave the house.

For some of the children, what follows is a chaotic and frightening scene, in which furniture and windows are sometimes broken, accusations and verbal threats are shouted, and family members are forced to stand outside in their night clothes as the accused child is forcibly removed from the home and taken away with vague explanations such as "he is coming with us and we will return him later", or simply that the child is "wanted". Few children or parents are informed as to where the child is being taken, why or for how long.

The transfer to the interrogation site

> *"Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age."*
>
> Article 37(c), Convention on the Rights of the Child

Once a child has been identified, he or she is hand-tied and blindfolded and led to a waiting military vehicle for transfer to an interrogation site. Children are often prevented from saying goodbye to their parents and from putting on appropriate clothing for the journey. When the child is not transferred directly to an interrogation centre, he is often taken to another location, frequently a settlement in the West Bank, where he may wait until after daybreak before continuing the trip to the interrogation centre.

Many children are subjected to ill-treatment during the journey to the interrogation centre.[33] Some endure physical or verbal abuse; some suffer from painful restraints or from being forced to lie on the hard floor of the vehicle. The transfer process can take many hours and often includes intermediate stops at settlements or military bases where further ill-treatment is reported, including in some cases prolonged exposure to the elements and a lack of water, food or toilet facilities.

During these intermediate stops, many children are brought before medical staff and asked a series of general questions about their health. The blindfold is usually removed, but the child's hands remain tied. Very few children are physically examined. Some children report informing the doctor about their ill-treatment, but there is little evidence that these medical personnel provide medical attention even when the children have marks on their bodies from beatings or from the plastic ties.[34] After this medical interview, which lasts about 10 minutes, the blindfold is replaced before the child is taken outside.

The children's journey from the place of arrest to the interrogation site can take anywhere from one hour to an entire day.

The interrogation

The most common sites for interrogation of children from the West Bank have been the police stations in the settlements of Gush Etzion and Ari'el, as well as Ofer Prison and Huwwara Interrogation Centre. In a few cases, the children have been transferred to Al Mascobiyya Interrogation Centre in Jerusalem or Al Jalame Interrogation Centre, near Haifa in Israel. The children are interrogated soon after their arrival.

> *"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality ... Not to be compelled to testify against himself or to confess guilt."*
>
> Article 14(3), International Covenant on Civil and Political Rights

The children are questioned by men dressed in civilian clothes or military uniforms, or sometimes in Israeli police uniforms. No child has been accompanied by a lawyer or family member during the interrogation, despite article 37(d) of the Convention on the Rights of the Child, which requires that: "Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance." The children are rarely informed of their rights, particularly the right against self-incrimination, despite another requirement in the same article stating that every child deprived of liberty shall have "the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action." There is no independent oversight of the interrogation process.

The absence of independent oversight of the interrogation process is significant, because third-party scrutiny of the methods of interrogation can be an effective measure to limit the use of ill-treatment and other coercive techniques during questioning. This oversight can be provided by having the child's lawyer and family member present during questioning and by making an audio-visual recording of the proceedings. Recording the proceedings, implemented in a number of jurisdictions (including the Israeli civilian legal system in certain circumstances) provides some measure of protection to the detainee against ill-treatment. It also protects the interrogator against false allegations of wrongdoing.

The interrogation mixes intimidation, threats and physical violence, with the clear purpose of forcing the child to confess. Children are restrained during the interrogation, in some cases to the chair they are sitting on. This sometimes continues for extended periods of time, resulting in pain to their hands, back and legs. Children have been threatened with death, physical violence, solitary confinement and sexual assault, against themselves or a family member.

Most children confess at the end of the interrogation. The interrogator prints out some forms and orders the child to sign them, though the child often lacks a proper understanding of their contents. In most cases the forms are in Hebrew, which the overwhelming majority of Palestinian children do not understand.

Some children have been held in solitary confinement, for a period ranging from two days up to one month before the court hearing as well as after sentencing. (The judge has the authority to extend the initial four-day period to one month, and then to further extend it up to a maximum of 90 days.) The effects of solitary confinement on a detainee were considered by the Special Rapporteur on Torture in a 2008 report to the General Assembly:

> "The weight of accumulated evidence to date points to the serious and adverse health effects of the use of solitary confinement: from insomnia and confusion to hallucinations and mental illness. The key adverse factor of solitary confinement is that socially and psychologically meaningful contact is reduced to the absolute minimum, to a point that is insufficient for most detainees to remain mentally well-functioning. Moreover, the effects of solitary confinement on pre-trial detainees may be worse than for other detainees in isolation, given the perceived uncertainty of the length of detention and the potential for its use to extract information or confessions. Pre-trial detainees in solitary confinement have an increased rate of suicide and self-mutilation within the first two weeks of solitary confinement".[35]

The detrimental impact of solitary confinement on the psychological well-being of a child has prompted the Committee on the Rights of the Child to advise strict prohibition of such treatment, a call echoed by the Special Rapporteur on Torture in a report to the United Nations General Assembly in October 2011.[36]

The hearing and the sentence

After the interrogation children are generally brought before a military court for a hearing. Children enter the courtroom in leg chains and shackles, wearing prison uniforms. This is in contravention of the Standard Minimum Rules for the Treatment of Prisoners, which stipulate that chains and irons shall never be used, and other forms of restraint should only be used in certain limited circumstances, including "as a precaution against escape during transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative body" and "such instruments must not be applied for any longer time than is strictly necessary."

Most children see their lawyers for the first time when they are brought to the court. Not all lawyers have easy access to the applicable military orders as they are not always made available in Arabic, as is required under international law.[37] Further, some Israeli criminal legislation, which also applies in the military courts, has never been translated into Arabic. This failure to make the applicable laws (as amended) and decisions of the courts readily available in Arabic places Palestinian defence lawyers at a distinct disadvantage and jeopardizes an accused child's chances of receiving a fair trial.[38]

A military court judge is authorized to extend the initial four-day period[39] of detention for a period not exceeding 30 days. Each time the period of detention expires, the judge can extend it again, up to a maximum of 188 days, with a military judge reviewing the detention every 30 days.[40] These provisions are not in line with the international standard requiring that a child be brought before a judge within the first 24 hours after arrest, with a review every two weeks thereafter.[41]

In most cases bail is denied. This directly contravenes article 37(b) of the Convention on the Rights of the Child, which requires that deprivation of liberty be used "only as

a measure of last resort…" The child is then ordered to remain in custody until the end of the legal proceedings.

In the majority of cases, the principal evidence against the child is the child's own confession, in most cases extracted under duress during the interrogation.[42] Sometimes the child is implicated in a confession given by another child. In some cases the children unknowingly sign a 'confession', written in Hebrew (which most Palestinian children do not understand), after being advised that 'confessing' is their only way out of the military detention system. Although many children reported providing confessions as a result of ill-treatment, few raise this matter before the court for fear that their complaints would lead to harsher sentences, even though international law prohibits the use of evidence obtained under duress by a court.[43]

Ultimately, almost all children plead guilty in order to reduce the length of their pre-trial detention. Pleading guilty is the quickest way to be released. In short, the system does not allow children to defend themselves.

Two of the three prisons run by the Israel Prison Service, where the majority of Palestinian children serve their sentences, are located inside Israel[44].The transfer of Palestinian children to prisons inside Israel contravenes article 76 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (hereinafter "Fourth Geneva Convention"). It provides that "protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein."

In practical terms, this makes family visits difficult, and in some cases impossible, due to regulations that restrict Palestinians with West Bank ID cards from travelling inside Israel and to the length of time it takes to issue a permit. This contravenes article 37(c) of the Convention on the Rights of the Child, which states that a child "shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances".

Incarcerating children has lasting harmful effects. By cutting them off from their families, sometimes for months, it causes emotional distress. It also interrupts their access to education, further contravening their rights. For these reasons children in conflict with the law should be granted bail whenever possible. It bears repeating, as noted in article 37 of the Convention on the Rights of the Child, that detention of a child shall be used only "as a measure of last resort and for the shortest appropriate period of time".

F. Conclusions

Ill-treatment of Palestinian children in the Israeli military detention system appears to be widespread, systematic and institutionalized. This conclusion is based on the repeated allegations about such treatment over the past 10 years and the volume, consistency and persistence of these allegations. The review of cases documented through the monitoring and reporting mechanism on grave child rights violations, as well as interviews conducted by UNICEF with Israeli and Palestinian lawyers and Palestinian children, also support this conclusion.

The pattern of ill-treatment includes the arrests of children at their homes between midnight and 5:00 am by heavily armed soldiers; the practice of blindfolding children and tying their hands with plastic ties; physical and verbal abuse during transfer to an interrogation site, including the use of painful restraints; lack of access to water, food, toilet facilities and medical care; interrogation using physical violence and threats; coerced confessions; and lack of access to lawyers or family members during interrogation.

Treatment inconsistent with child rights continues during court appearances, including shackling of children; denial of bail and imposition of custodial sentences; and transfer of children outside occupied Palestinian territory to serve their sentences inside Israel. The incarceration isolates them from their families and interrupts their studies.

These practices are in violation of international law that protects all children against ill-treatment when in contact with law enforcement, military and judicial institutions.

The April 2010 announcement by Israeli military officials of changes to the hand-tying procedure is a positive development. So too is military order 1676 (September 2011), which introduced requirements for the police (though not the army) to notify parents about the arrest of their children and to inform children that they have the right to consult a lawyer. Further measures should be introduced to ensure the protection of children under military detention and compliance of the system with international norms and regulations, as well as to dissipate false allegations of misconduct by the authorities.

G. Recommendations

The arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.[45]

The following recommendations are intended to assist Israeli officials to adopt a series of practical safeguards that would improve the protection of children under military detention and prevent practices that breach the absolute prohibition against torture and cruel, inhuman or degrading treatment. Some of these safeguards would also assist the authorities in dispelling any false allegations of wrongdoing.

The recommendations take into consideration the situation of unrest prevailing in Israel and the occupied Palestinian territory, as well as Israel's legitimate security concerns and its duty to protect from violence its citizens and other persons under its jurisdiction or de facto control.[46] However, the absolute nature of the prohibition against torture and cruel, inhuman or degrading treatment or punishment requires immediate implementation of measures to ensure that children held in the military detention system are never subjected to treatments that breach the pledges Israel agreed to fulfil in ratifying the Convention on the Rights of the Child.

1. Compliance with international norms and regulations

With respect to the arrest and detention of children, in accordance with the Convention on the Rights of the Child and other international norms and standards,[47] the following principles must apply under all circumstances:

(i) ***The best interests of the child shall be a primary consideration.*** In all actions concerning children, whether undertaken by public or private social-welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.[48]

(ii) ***Non-discrimination.*** States Parties to the Convention on the Rights of the Child shall respect and ensure that the rights set forth in the Convention apply to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents' race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.[49]

(iii) ***Use of detention only as a measure of last resort.*** Children should only be deprived of their liberty as a measure of last resort and for the shortest appropriate period of time.[50]

(iv) ***Alternatives to detention.*** Alternatives to detaining children should always be considered and encouraged, at both the pre-trial and post-sentencing stages of any judicial or military detention system.

(v) ***Diversion.*** Children in conflict with the law should be channelled away from judicial proceedings through the development and implementation of procedures or programmes that enable many – possibly most – to avoid the potential negative effects of formal judicial proceedings, provided that human rights and legal safeguards are fully respected.[51]

2. Notification

(i) All children shall be informed of the reasons for their arrest at the time of arrest and in a language they understand.[52]

(ii) The competent military authority shall, on its own initiative, notify the legal guardian or close family member of the child about the arrest, reasons for arrest and place of detention, as soon as possible after the arrest, and in Arabic. A legal guardian must be authorized to accompany the child during transfer and stay with the child at all times during interrogation.

(iii) All children and their legal guardian or close family member should be provided with a written statement in Arabic informing them of their full legal rights while in custody.

3. Timing of arrests and arrest warrants

(i) All arrests of children should be conducted during daylight, notwithstanding exceptional and grave situations.

(ii) Copies of all relevant documentation, including arrest warrants and summons for questioning, should be provided to the child's legal guardian or close family member at the time of arrest or as soon as possible thereafter, and all documentation should be provided in Arabic.

4. Methods and instruments of restraint

(i) Children should only be restrained for the time that is strictly necessary. Use of restraining methods and instruments should respect the child's dignity and not cause unnecessary pain or suffering.

(ii) The use of single plastic hand ties should be prohibited in all circumstances, and the prohibition must be effectively monitored and enforced.

(iii) At all times during transfer, children should be properly seated, not blindfolded and treated with dignity.

(iv) Except in extreme and unusual circumstances, children should never be restrained during interrogation, while detained in a cell or while attending court.

(v) The practice of blindfolding or hooding children should be prohibited in all circumstances.

5. Strip searches

(i) Strip searches should be carried out only under exceptional circumstances and used only as a last resort. When conducted, strip searches should be done with full respect for the dignity of the child and be conducted by more than one person of the same gender as the child, in the presence of a parent, guardian or other responsible adult, wherever possible. The strip search should be done in a private location and should not involve the removal of all garments at the same time.[53]

6. Access to a lawyer

(i) All children in detention shall have prompt and regular access to an independent lawyer of their choice.[54]

7. Judicial review of the arrest and detention

(i) All children in detention shall, within 24 hours of their arrest, have prompt and effective access to an independent judicial review of the legality of their arrest and detention.[55]

(ii) The military courts should review every child's detention at least every two weeks, to ensure that detention is used only as a measure of last resort and for the shortest time possible; that the child is not being subjected to any form of ill-treatment; and that the child is being granted access to relatives, a lawyer and a medical doctor.

8. Medical examinations

(i) Both prior to and after questioning, as well as upon transfer to another place of detention, the detained child should undergo a medical inspection by an independently qualified medical doctor.[56] The medical inspection should abide by the highest standards of medical ethics, document objectively any complaints and findings, and assess the child's physical and psychological state.[57] Any immediate medical needs should be attended to.

(ii) Subject to the consent of the child's legal guardian, all medical records should be made available to the child's lawyer.

(iii) Children deprived of their liberty shall have access to prompt and adequate medical care at all times.[58]

9. Questioning or interrogation

(i) The questioning or interrogation of a child should always take place in the presence of a lawyer and a family member, and should always be audio-visually recorded for the purpose of independent oversight.[59]

(ii) At the commencement of each interrogation session, the child should be formally notified of his or her rights in Arabic, and in particular, informed of the privilege against self-incrimination.

(iii) Each interrogation session should begin with the identification of all persons present. The identity of all persons present should be included in the record and available to the child's lawyer.

10. Solitary confinement

(i) In no circumstances whatsoever should a child be held in solitary confinement.

11. Confessional evidence

(i) No statement or confession made by a child deprived of his or her liberty, other than one made in the presence of a judge or the child's lawyer, should have probative value at any stage of the criminal proceedings, except as evidence against those who are accused of having obtained the confession by unlawful means. Cases involving children in military courts should not be determined solely on the basis of confessions from children.

(ii) All confessions written in Hebrew and signed or adopted by a Palestinian child should be rejected as evidence by the military courts.

12. Bail and plea bargains

(i) Incarceration of children should always be a measure of last resort and for the shortest possible time. Except in extreme circumstances, release on bail should be the standard procedure.

(ii) The conditions under which bail and plea bargains are granted should be revised to make them consistent with the Convention on the Rights of the Child.

13. Location of detention and access to relatives

(i) In accordance with international law, all Palestinian children detained in the Israeli military detention system shall be held in facilities located in the occupied Palestinian territory.[60]

(ii) Wherever a child is detained, the right of family members to visit should be fully respected. All necessary measures should be taken to ensure that the administrative procedures in support of family visits, including all necessary permits, are promptly facilitated no later than 14 days after arrest.

(iii) All children should be entitled to regular telephone communication with their families in order to maintain close social relations.

14. Accountability

(i) Any complaint by a child, at any stage of his or her detention, regarding any form of violence and unlawful treatment, shall be promptly, diligently and independently investigated in accordance with international standards. All perpetrators shall be brought promptly to justice.[61]

(ii) Unless the allegations are manifestly unfounded, the personnel allegedly involved in the unlawful treatment of children should be suspended from duties involving contact with children, pending the outcome of an independent investigation and any subsequent legal or disciplinary proceedings.

(iii) In addition to efficient and effective complaint mechanisms, Israeli military authorities should take all necessary measures to establish effective and independent internal oversight mechanisms to monitor the behaviour of all personnel in contact with children in Israeli military detention.

(iv) Child victims of ill-treatment should obtain redress and adequate reparation, including rehabilitation, compensation, satisfaction and guarantees of non-repetition.

(v) The Israeli authorities should give immediate consideration to establishing an independent investigation into the reports of ill-treatment of children in the military detention system, in accordance with the 2002 recommendations made by the UN Special Rapporteur on the situation of human rights on Palestinian territories occupied since 1967.[62]

Endnotes

1 This report adopts the international legal definition of the occupied Palestinian territory, which includes the West Bank, East Jerusalem and the Gaza Strip.

2 UNICEF Monitoring and Reporting Mechanism Database (hereinafter referred to as the MRM Database).

3 CRC, article 37(a); CAT, article 2; ICCPR, article 7; and the Fourth Geneva Convention, common article 3.

4 CAT, article 2(2).

5 For formal names/titles of rules, please see Acronyms and Abbreviations, pg. 2.

6 CRC, articles 19 and 37(a).

7 Committee on the Rights of the Child, General Comment No. 10, paragraph 89.

8 'The United Nations Convention Against Torture – A Commentary', Nowak and McArthur, 2008, pp. 62, 66, 542, 551, 557, 559 and 566-568.

9 Public Committee Against Torture in Israel and others v. The State of Israel (1999) 53 (4) PD 81 (The Torture Ruling). The ruling related to any interrogation performed by Israeli authorities, not limited by territory, and to Israeli Security Agency interrogations in particular.

10 Ibid., paragraph 23.

11 Israel Defense Forces Proclamation No. 2, Proclamation Regarding Law and Administration (7 June 1967).

12 Hague Regulations (1907), article 43; and Fourth Geneva Convention (1949), articles 64 and 66.

13 Israel Defense Forces Proclamation No. 2, Proclamation Regarding Law and Administration (7 June 1967).

14 Military Order 1651, Section 86 provides that: "Concerning the laws of evidence, the military court will act in accordance with the obligatory rules in criminal matters in courts within the State of Israel." The relevant Israeli domestic criminal legislation is: Evidence Ordinance [New Version], 1971; Criminal Procedure Ordinance (Testimony), 1927 Sections 1–3; and Military Order 1651. Section 88 provides that: "The military court is authorized to order, in any matters of trial procedure not determined under this order, trial procedures that appear to it most appropriate for ensuring a just trial." This section is frequently used to import criminal procedural elements from Israeli civilian legislation, including: Criminal Procedure Law [Consolidated Version] 1982; Criminal Procedure Law (Powers of Enforcement – Arrest) 1996; and Criminal Procedure Law (Interrogation of Suspects) 2002; Prisons Ordinance (New Version), 1971 Sections 1-68E and First and Second Addendums; Criminal Procedure Regulations (Powers of Enforcement – Arrests) (Conditions in Detention), 1997; and Procedures Regulations (Prisoners' Petitions), 1980.

15 See Committee against Torture, Concluding Observations (2009), CAT/C/ISR/CO/4, paragraph 28. As to criticism of attempts to incorporate principles of juvenile justice

into military courts, see: Committee on the Rights of the Child, Concluding Observations (2010), CRC/C/OPAC/ISR/CO/1, paragraph 33.

16 Ofer juvenile military court is presided over by Youth Court judge Sharon Rivlin-Ahai.

17 The UN Standard Minimum Rules stipulate that chains and irons shall never be used, and other forms of restraint should only be used in certain limited circumstances including "as a precaution against escape during transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative body" and "such instruments must not be applied for any longer time than is strictly necessary". Further, the Committee on the Rights of the Child has stated that States Parties to the Convention on the Rights of the Child should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices.

18 Sharanjeet Parmar, Mindy Jane Roseman, Saudamini Siegrist and Theo Sowa, eds., *Children and Transitional Justice: Truth-Telling, Accountability and Reconciliation* (Boston: Human Rights Program at Harvard Law School, Harvard University Press, 2010), Annex I, p. 408.

19 Military Order 1651, Section 138(A) and (B).

20 Military Order 1651, Section 137.

21 Military Order 1651, Section 140(A) and (B).

22 Military Order 1651, Section 142.

23 Military Order 1651, Section 143.

24 In 2009, the Public Committee Against Torture filed a petition in the Supreme Court (Public Committee Against Torture in Israel v Prime Minister of Israel (HCJ 5553/09). Prior to judgment, lawyers for the State informed the Supreme Court that new procedures relating to the use of hand ties had been introduced to prevent pain and injury, thereby making further court action unnecessary.

25 These new procedures instruct the following: hands should be tied from the front, unless security considerations require tying from behind; three plastic ties should be used, one around each wrist, and one connecting the two; there should be the space of a finger between the ties and the wrist; the restraints should avoid causing suffering as much as possible; and the officer in charge is responsible for ensuring compliance with these regulations.

26 Fourth Geneva Convention, article 65. This article provides that "the penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language".

27 Data based on the work of organizations providing legal support to children show that children charged with throwing stones and prosecuted in the military courts are receiving prison sentences in the range of 2 weeks to 10 months.

28 Military Order 1651, Section 212(2).

29 Military Order 1651, Section 212(3).

30 Committee on the Rights of the Child, General Comment No. 10 (2007), Children's rights in juvenile justice.

31 Exact figures on the number of Palestinian children detained each year by Israeli authorities are not published. The estimated number of 700 children prosecuted in the Israeli system is based on figures provided by the Israel Prison Service of the number of children in prison facilities, and the best estimate of lawyers from organizations that appear daily in the military courts and conduct regular prison visits.

32 The UNICEF MRM database includes over 400 cases of detention and ill treatment that have been documented since 2009, which constitute the evidence base for this report.

33 UNICEF MRM Database.

34 For more on the role of doctors in the military court system, visit the website of Physicians for Human Rights-Israel, at www.phr.org.il/default.asp?PageID=22.

35 Report of the Special Rapporteur: Question of torture, and other cruel, inhuman or degrading treatment or punishment (2008) – A/63/175.

36 Committee on the Rights of the Child, General Comment No. 10, paragraph 89; Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, August 2011, A/66/268.

37 Fourth Geneva Convention, article 65. This article provides that "the penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language." See also Haaretz, Civil Administration wants Palestinians to submit requests in Hebrew only, 12 December 2010, available at www.haaretz.com/news/national/civil-administration-wants-palestinians-to-submit-requests-in-hebrew-only-1.330111.

38 In July 2008, Machsom Watch published a set of laws applicable in the military courts in Arabic, Hebrew and English. But as the authors of this publication note, Military Order 378 alone has been amended at least nine times since their work was first published: Machsom Watch, The Law of the Israeli Military Courts in the West Bank, Military Orders and Israeli Domestic Legislations, Source Book (2009), edited by Adv. Smadar Ben Natan, Adv. Tahreer Atamleh-Mohana and Adv. Lymor Wolf Goldstein.

39 Previously it was 8 days but was changed to 4 days by Military Order 1685, which came into effect on 1 August 2012.

40 Military Order 1651, Sections 32(A), 37 and 38.

41 The primary sources for this Standard are: CRC, article 37(d); Committee on the Rights of the Child, General Comment No. 10, paragraphs 52 and 83; ICCPR, article 9(3) and (4); and the Human Rights Committee, General Comment No. 8, paragraph 2.

42 UNICEF MRM Database.

43 Convention against Torture, article 15. Evidence Ordinance [New Version] 1971, Section 12. Further, under Israeli law applicable in military courts, judges are given wide discretion as to whether or not to admit illegally obtained evidence: Prv. Yisacharov v. The Chief Military Prosecutor (2006) (C.A. 5121/98). This wide discretion to admit illegally obtained evidence was recently criticized by the Committee against Torture, which recommended the introduction of legislation prohibiting its use: Committee against Torture, Concluding Observations, Israel (2009), paragraph 25.

44 Israel Prison Service figures for December 2010.

45 CRC, article 37(b).

46 See CAT/C/ISR/CO/4 (14 May 2009), paragraph 10.

47 See in particular CRC articles 37(b), 40.1, 40.3(b) and 40.4.

48 CRC, article 3.

49 CRC, article 2.

50 CRC, article 37(b); and Beijing Rules, Rule 13.

51 Beijing Rules, Rule 11.

52 ICCPR, article 9(2); and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/RES/43/173 (9 December 1988), Principles 13, 14 and 16.

53 The child should keep a top garment on while searched on the lower part of the body and keep a lower garment on while searched on the top part of the body.

54 ICCPR, article 14; Body of Principles on Detention, Principle 17; and CAT/C/ISR/CO/4, paragraph 15.

55 CRC, article 37(d); Committee on the Rights of the Child, General Comment No. 10, paragraphs 52 and 83; ICCPR, article 9; Human Rights Committee, General Comment No. 8, paragraph 2; and Body of Principles on Detention, Principles 11, 32 and 37.

56 Body of Principles on Detention, Principle 24.

57 See in particular: The Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly in 1982; and the Declaration of Tokyo adopted by the World Medical Association in 1975.

58 See in particular the Standard Minimum Rules for the Treatment of Prisoners, Rules 22, 24, 25, 26, 52 and 82; and the Body of Principles on Detention, Principle 24.

59 See CRC, article 40(2)(b)(ii); Committee on the Rights of the Child, General Comment No. 10, paragraph 58; ICCPR, article 14(3)(b); Human Rights Committee, General Comment No. 20, paragraph 11; Human Rights Committee, Concluding Observations, Israel (2010), ICCPR/C/ISR/CO/3, paragraph 22; Committee against Torture, Concluding Observations, Israel (2009), CAT/C/ISR/CO/4, paragraphs 15, 16, 27 and 28. The primary sources for the audio-visual recording of interrogations are: CRC, article 40(2)(b)(iv); Committee on the Rights of the Child, General Comment No. 10, paragraph 58; CAT, article 2; Committee against Torture, General Comment No. 2, paragraph 14; Committee against Torture, Concluding Observations, Israel (2009), CAT/C/ISR/CO/4, paragraph 16; and the Human Rights Committee, Concluding Observations, Israel (2010), ICCPR/C/ISR/CO/3, paragraph 22.

60 Fourth Geneva Convention, article 76.

61 See Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in resolution 55/89.

62 UN Special Rapporteur (OPT), available at: www2.ohchr.org/english/bodies/cat/docs/co/IsraelCO27.pdf.

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