



ARBITRARY BY DEFAULT

PALESTINIAN CHILDREN IN THE ISRAELI MILITARY COURT SYSTEM



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Cover photo: Fawzi al-Juneidi, 16, from the city of Hebron, located in the southern West Bank, was subjected to Israeli military arrest on December 7, 2017, amid a widespread crackdown on protesters after U.S. President Trump's recognition of Jerusalem as Israel's capital. (Photo: Wisam Hashlamoun / Flash90)

Acknowledgements

Producing this report would not have been possible without the invaluable work of a number of individuals. Defense for Children International - Palestine's lawyers provide unparalleled legal representation to Palestinian children and have worked meticulously in order to retrieve, verify, and prepare the information documented in this report. DCIP's monitoring and documentation team of field researchers, coordinators, and office staff gather information integral to placing the arrest and systematic ill-treatment of Palestinian children within a broader context that exposes the root causes of violations against Palestinian children. For all their efforts, DCIP expresses its deepest appreciation. DCIP would like to extend particular gratitude and admiration to the victims and victims' families who willingly shared their testimonies.

Brad Parker, senior adviser, researched, wrote, and edited this report based on investigations conducted by DCIP's legal unit and documentation unit. Miranda Cleland, Advocacy Officer, contributed writing. Ayed Abu Eqtaish, accountability program director, edited the report.

Defense for Children International – Palestine is an independent, local Palestinian child rights organization dedicated to defending and promoting the rights of children living in the West Bank, including East Jerusalem, and the Gaza Strip. Since 1991, we have investigated, documented and exposed grave human rights violations against children; held Israeli and Palestinian authorities accountable to universal human rights principles; and advocated at the international and national levels to advance access to justice and protection for children. We also provide direct legal aid to children in distress.

For more information, please visit our websites:

www.dci-palestine.org

www.nowaytotreatachild.org

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Defense for Children International - Palestine

May 2023



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Israeli forces detain Palestinian men and boys in Yabad near the West Bank city of Jenin on May 12, 2020. (Photo: AFP / Jaafar Ashtiyeh)

1. Overview

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

Israeli military law has applied to Palestinians in the West Bank since 1967, when Israel occupied the territory following the Six Day War. Jewish settlers, however, who reside within the bounds of the West Bank, in violation of international law, are subject to the Israeli civilian legal framework. Accordingly, Israel operates two separate legal systems in the same territory.

Palestinian children who live in Jerusalem generally fall under Israeli civilian law. The legal distinctions between East Jerusalem and the rest of the West Bank also trace back to 1967, when Israel captured that part of the city and declared all of Jerusalem its “indivisible” capital.

Estimates place the number of Palestinian men, women, and children convicted in Israeli military courts in excess of 700,000, according to UN sources. The U.S. Department of State's 2014 human rights report on Israel states that the Israeli military courts have more than a 99 percent conviction rate for Palestinian defendants.

Israel has the dubious distinction of being the only country in the world that systematically prosecutes between 500 and 700 children in military courts each year.

Since 2016, Israel has held an average of 225 Palestinian children in custody each month, according to data provided by the Israel Prison Service.

Israeli military courts are not independent or impartial because they are composed of military personnel who are subject to military discipline and dependent on superiors for promotion.

Ill-treatment in the Israeli military detention system remains “widespread, systematic, and institutionalized throughout the process,” according to the UN Children’s Fund (UNICEF) report *Children in Israeli Military Detention Observations and Recommendations*.

Defense for Children International – Palestine (DCIP) collected affidavits from 766 West Bank children detained between 2016 and 2022 that show three-quarters of them endured some form of physical violence following arrest. 97 percent of the children had no parent present during interrogation, and two thirds were not properly informed of their rights. Israeli forces did not inform the children of the reason for their arrest in 85.5 percent of the cases.

Interrogators used position abuse, threats, and isolation to coerce confessions from some of these children. DCIP documented 178 Palestinian boys held in solitary confinement, for an average period of 16.5 days, during the reporting period.

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

Under Israeli military law, Palestinian child detainees have no right to a lawyer during interrogation. Israeli military court judges seldom exclude confessions obtained by coercion or torture, even those drafted in Hebrew, a language that most Palestinian children do not understand. In fact, military prosecutors rely, sometimes solely, on these confessions to obtain a conviction. During the reporting period nearly 52 percent of the Palestinian children interviewed were shown or signed papers written in Hebrew.

Palestinian children most commonly face the charge of throwing stones, which carries maximum sentences of 10 or 20 years, depending on the circumstances.

Children must appear before a military court judge within 24 to 72 hours after their arrest, depending on their age. For most, this serves as the first time they see a lawyer and their family.

Many children maintain their innocence, but plead guilty – most receive plea deals of less than 12 months – as the fastest way to get out of the system. Trials, on the other hand, can last a year, possibly longer, during which children remain behind bars as the military courts deny bail in the majority of cases.

During 2022, Israeli authorities transferred 69 percent of Palestinian child detainees from occupied territory to prisons inside Israel in violation of the Fourth Geneva Convention, according to Israel Prison Service data. As a practical consequence, children have limited family visits as parents struggle to obtain entry permits to Israel.

In no circumstance should children face detention and prosecution under the jurisdiction of military courts. As a minimum safeguard, however, Israeli authorities have an obligation

to ensure all procedures from the moment of arrest conform to international juvenile justice standards.

Israeli authorities have detained 57 Palestinian children without charge or trial pursuant to administrative detention orders since resuming the practice in the fall of 2015. Administrative detention is the imprisonment of individuals by the state for prolonged periods without charge or trial. The measure should never be used as a substitute for criminal prosecution.

While just a superficial review of the detention and prosecution of Palestinian children in the Israeli military court system suggests severe risks of arbitrary deprivation of liberty, what emerges from a full view through the experience of Palestinian child detainees is an inherently unjust system of control where arbitrary detention is the default practice.

The deprivation of liberty experienced by Palestinian children in the Israeli military detention and military court system is arbitrary by default because Israeli authorities systematically disregard and deny fundamental protections and guarantees concerning the right to a fair trial to the extent that nearly any deprivation of liberty as part of the military court system is of an arbitrary character.

Furthermore, Israeli authorities have an established pattern and practice of targeting young Palestinian males for arrest and prosecution on the basis of their Palestinian identity rather than based on any legitimate law enforcement objective.

From the widespread ill-treatment and torture of Palestinian children to the systematic denial of their due process rights emerges a system of control that masquerades as justice where arbitrary detention is the default policy.



Israeli soldiers detain a Palestinian girl in Ramallah, near the Jewish settlement of Beit El, in the occupied West Bank on December 13, 2018. (Photo: AFP / Abbas Momani)

2. Methodology

Defense for Children International - Palestine (DCIP) monitors, documents, and reports on international human rights and humanitarian law violations stemming from Israel's military occupation of Palestinians living in the West Bank, including East Jerusalem, and the Gaza Strip. Specializing in violations of children's rights as set out in the United Nations Convention on the Rights of the Child, as well as other international, regional, and local standards, DCIP works to effect positive change in the lives of children living across the Occupied Palestinian Territory (OPT). DCIP implements an integrative approach that utilizes the international human rights framework, evidence-based advocacy, and movement building to advance the rights and protection of Palestinian children.

This report provides an update to DCIP's 2016 No Way To Treat A Child: Palestinian Children in the Israeli Detention System report¹ and relies on the testimonies of 766 children detained by the Israeli military or police in the occupied West Bank between January 2016 and December 2022.

DCIP's Accountability Program focuses on child rights as they intersect with Israeli military and legal systems, and includes a socio-legal defense unit, a monitoring and documentation unit, and an advocacy unit. DCIP's socio-legal defense unit provides legal aid to Palestinian children in both the West Bank Israeli military detention system and the

¹ DCIP, No Way to Treat a Child: Palestinian Children in the Israeli Detention System (2016), <https://www.dci-palestine.org/palestinian-children-in-the-israeli-military-detention-system>.

Israeli civilian criminal justice system in East Jerusalem.² This unit represents an average of 211 Palestinian children each year in Israeli military courts and has developed a reputation for successfully limiting the time Palestinian children spend in custodial detention. DCIP's monitoring and documentation unit documents human rights abuses and violations against children in the occupied West Bank, including East Jerusalem, and the Gaza Strip.

DCIP lawyers and field researchers collect affidavits from children during prison visits and client meetings in accordance with UN standards and are trained to ask a series of non-leading questions, specifically focusing on the period of time between a child's arrest and his or her first appearance in an Israeli military court. Through a questionnaire DCIP also collects precise information and data on alleged violations of Palestinian child detainees' rights.

In their testimonies, children recount their experiences in chronological order, from the moment of arrest, through their subsequent interrogation, and appearance in an Israeli military court. The time frame covered in the testimonies generally ranges from several days up to several weeks, but occasionally longer.

Age ranges of the 766 children who provided testimonies

Age range	Number of children	Percentage
0 – 11 years	3	0.4%
12 – 13 years	21	2.7%
14 – 15 years	198	25.8%
16 – 17 years	544	71.1%
Total	766	100%

This report focuses on Palestinian children's experiences in Israeli military detention system and seeks to identify recurring patterns of ill-treatment and torture, such as physical violence, coercive interrogations, solitary confinement for interrogation purposes, painful methods of restraint, and systematic denial of due process rights.

As control of Palestinians living in the OPT is critical to Israel's seemingly permanent military occupation, this report seeks to identify means by which this control is exercised and furthered. It explores the Israeli military's use of two mechanisms for this purpose: first, the ill treatment, torture, and arbitrary detention of Palestinian children by Israeli forces, and second, the placement of Palestinian children within a military law framework where Israeli authorities exert total control.

² Unlike the occupied West Bank where Israeli military law is administered, East Jerusalem falls under Israeli civilian law. Contrary to principles of international humanitarian law and international law, Israel established a de facto annexation of East Jerusalem on June 28, 1967, a move unrecognized by the international community. Over the years since, Israeli authorities have taken various administrative, legislative, and demographic measures to unilaterally annex Jerusalem. One result is that children in East Jerusalem are subject to the Israeli Youth Law, which, theoretically, applies equally to Palestinian and Israeli children and provides special safeguards and protections to children in conflict with the law during the whole process — arrest, transfer, interrogation, and court appearances.



An Israeli police officer arrests a Palestinian boy in front of a Palestinian house whose occupants were forcibly evicted on September 5, 2017, and the house was given to Jewish settlers in Sheikh Jarrah, East Jerusalem.

(Photo: Activestills.org)

3. International children's rights and juvenile justice

Under international human rights law, regardless of their guilt or innocence or severity of any alleged offense, children in conflict with the law are entitled to special protections as well as all due process rights. International juvenile justice norms are built on two fundamental principles: the best interests of the child must be a primary concern in making decisions that affect them, and children must only be deprived of their liberty as a last resort, for the shortest appropriate period of time.³

International human rights law affirms that juvenile justice systems must be child-sensitive, non-violent, and avoid criminalization and punishment of children. Specifically, international human rights law obligates states to create a distinct juvenile justice system that recognizes the special status of children, protects them from violence, and focuses on rehabilitation and reintegration.⁴

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

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

⁴ See INTERNATIONAL NGO COUNCIL ON VIOLENCE AGAINST CHILDREN, CREATING A NON-VIOLENT JUVENILE JUSTICE SYSTEM (2013), http://www.childhelplineinternational.org/media/80443/inco_-_juvenile_justice.pdf.

International human rights law applies in the OPT, including the CRC, the Convention against Torture (CAT), and the International Covenant on Civil and Political Rights (ICCPR).⁵ These human rights treaties generally provide that in all actions involving or impacting children their best interests shall be a primary consideration, and children should only be detained as a measure of last resort and for the shortest appropriate period of time. All persons shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal, and torture and ill-treatment are absolutely prohibited without exception. International law establishes non-discrimination protections and guarantees of equality, barring states from discriminating on the basis of race or nationality when establishing and asserting penal jurisdiction.

Israel ratified the CRC in 1991, obligating itself to implement the full range of rights and protections included in the convention. During its initial review in 2002, the Committee on the Rights of the Child, the UN body that monitors implementation of the CRC, expressed serious concern regarding “allegations and complaints of inhuman or degrading practices and of torture and ill-treatment of Palestinian children” during arrest, interrogation, and detention.⁶

In July 2013, over a decade later, the Committee on the Rights of the Child last reviewed Israel’s compliance with the CRC and found the situation was even worse. The Committee found that Palestinian children arrested by Israeli forces were “systematically subject to degrading treatment, and often to acts of torture” and that Israel had “fully disregarded” previous recommendations to comply with international law.⁷

Below is a summary of specific guarantees and protections included in international human rights law relevant to juvenile justice:

⁵ See International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶¶ 101, 109-113 (Jul. 9, 2004), <http://www.icj-cij.org/docket/files/131/1671.pdf>. Israel ratified the International Covenant on the Elimination of All Forms of Racial Discrimination (CERD) in 1979; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) all in 1991; and the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) in 1992.

⁶ UN Committee on the Rights of the Child, Concluding Observations: Israel, U.N. Doc. CRC/C/15/Add.195, ¶ 36 (Oct. 9, 2002), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/453/97/PDF/G0245397.pdf>.

⁷ UN Committee on the Rights of the Child, Concluding Observations on the Second to Fourth Periodic Reports of Israel, U.N. Doc. CRC/C/ISR/CO/2-4, ¶ 73 (Jul. 4, 2013), <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ISR-CO-2-4.pdf>.

International human rights law guarantees relevant to juvenile justice

Issue	Guarantees and protections	Legal authority
Age of majority	A child means every human being below the age of 18 years.	Convention on the Rights of the Child (CRC) art. 1.
Non-discrimination	Rights apply without discrimination of any kind.	CRC art. 2.
Prohibition of torture	No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.	CRC art. 37(a); International Covenant on Civil and Political Rights (ICCPR), art. 6(5) and 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
Arbitrary detention	No child shall be deprived of his or her liberty unlawfully or arbitrarily.	CRC art. 37(b).
Notification and reason for arrest	Anyone arrested or detained must be informed, at the time of arrest, of the reasons for arrest and be promptly informed of any charges against him or her.	CRC art. 40(2)(b)(ii); ICCPR art. 9(1)-(2).
Methods of restraint	Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner that takes into account the needs of persons his or her age. Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted.	CRC art. 37(c); CRC General Comment No. 10, para. 89.
Presumption of innocence	Every child alleged to have infringed the penal law must be presumed innocent until proven guilty according to law.	CRC art. 40(2)(b)(i); ICCPR, art. 14(2).
Right against self-incrimination	No child can be compelled to give testimony or to confess guilt.	CRC art. 40(2)(b)(iv).
Right to legal counsel and presence of parents	Every child deprived of liberty shall have the right to prompt access to legal and other appropriate assistance.	CRC art. 37(d) and art. 40(2)(b)(ii)-(iii); ICCPR art. 14(3)(b) and (d).
Pre-trial detention	The arrest, detention, or imprisonment of a child shall be in conformity with the law and	CRC art. 37(b).

	shall be used only as a measure of last resort and for the shortest appropriate period of time.	
Prompt appearance before judge / Independent and impartial authority in a fair hearing	Every child has the right to have the matter determined without delay by a competent, independent, and impartial authority or judicial body in a fair hearing according to law.	CRC art. 40(2)(b)(iii); ICCPR art. 9 and 14(1).
Sentence of detention	A sentence of detention shall be used only as a measure of last resort and must be proportionate to circumstances, gravity of the offense, age, and needs of the child.	CRC art. 37(b) and 40(4).
Family visits	Every child shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.	CRC art. 37(c).
Review	Detention reviewed periodically to determine if early release is possible.	CRC art. 25 and 40(2)(b).

International humanitarian law, which regulates situations of armed conflict, prohibits Israeli forces from targeting civilians, including children, and obligates Israel to protect children from all acts of violence.⁸ By virtue of their age, children enjoy special protection under international humanitarian law.⁹

Israel consistently argues that international human rights law, specifically the treaties it has ratified, does not apply to Palestinians living under Israeli military occupation in the OPT. However, these arguments have found no international support and have been consistently rejected by the International Court of Justice and several UN human rights treaty bodies when assessing Israel's obligations under international law toward Palestinians in the OPT.¹⁰

⁸ See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3, Aug. 12, 1949, 75 U.N.T.S. 31; Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva IV), arts. 13 & 27, Aug. 12, 1949, 75 U.N.T.S. 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 51(2), 1125 U.N.T.S. 3; and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 13(2), Jun. 8, 1977, 1125 U.N.T.S. 609.

⁹ Protocol I, art. 77. Geneva IV, art. 23 and art. 50.

¹⁰ In 2004, the International Court of Justice found that both international humanitarian law and international human rights law applied in the OPT, and that Israel was obligated to implement the rights and protections found therein. The Israeli government and its armed forces must abide, at all times, by international humanitarian law as well as other human rights instruments that it has obliged itself to implement. International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, 2004 I.C.J. 136, ¶¶ 101, 109-113 (Jul. 9, 2004), <http://www.icj-cij.org/docket/files/131/1671.pdf>.



Outside the Israeli Ofer Military Court, West Bank, September 15, 2010.

(Photo: Activestills.org)

4. Israeli military detention and military court system

Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip in 1967 when Israeli forces entered and established authority in the territory.¹¹ In doing so, Israel became the “Occupying Power” under international humanitarian law, a status which carries clear obligations to protect the Palestinian civilian population under its control.

Under international humanitarian law, Israel as the occupying power has the authority to establish military courts in the territory it has occupied since 1967.¹² However, international human rights and humanitarian law, which apply in the OPT, restrict the jurisdiction of the Israeli military courts and guarantee basic safeguards for a fair trial. Accordingly, individuals should be presumed innocent, they should not be compelled to testify against themselves or confess guilt, and they should be informed promptly and in detail of the charges against them in a language that they understand.¹³

¹¹ Territory is deemed “occupied” when it, either wholly or in part, is placed under the authority of the hostile army. See Hague Convention (IV): Laws and Customs of War on Land art. 42, Oct 18, 1907, <https://www.icrc.org/applic/ihl/ihl.nsf/xsp/ibmmodres/domino/OpenAttachment/applic/ihl/ihl.nsf/4D47F92DF3966A7EC12563CD002D6788/FULLTEXT/IHL-19-EN.pdf>. Also, in 1967, the U.N. Security Council recognized that Israeli forces had occupied the West Bank, including East Jerusalem, and the Gaza Strip. See S.C. Res. 242, U.N. Doc S/RES/242 (Nov. 22, 1967), <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IP%20S%20RES%20242.pdf>.

¹² See Hague Convention (IV): Laws and Customs of War on Land art. 43, Oct 18, 1907; Geneva IV arts. 64 and 66.

¹³ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 14, U.N. Doc. A/6316 (1966), <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>; UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, ¶ 22, UN Doc. CCPR/C/GC/32 (Aug. 23, 2007), http://www.un.org/en/ga/search/view_doc.asp?symbol=CCPR/C/GC/32.

While Israeli military law gives military courts the authority to try any person located inside the occupied territory as long as they are 12 years or older, in practice, the West Bank is governed by two separate systems of law. The military courts adjudicate cases only against the Palestinian population. Israeli settlers who commit offenses in the West Bank appear in the Israeli civilian criminal legal system.

Palestinians from East Jerusalem, who commit an offense in the city or inside Israel, face prosecution in the Israeli civilian criminal legal system. While international law considers East Jerusalem part of the OPT, Israel claims the entirety of the city as its undivided capital.¹⁴ Palestinians living inside Israel, who hold Israeli citizenship, are also prosecuted in the civilian criminal legal system.

Since Israel's September 2005 "disengagement" from the Gaza Strip, Palestinians from the coastal enclave detained by Israeli authorities face prosecution in Israel under civilian security legislation, and not under Israeli military law.

Palestinians in the West Bank who commit offenses against other Palestinians typically face prosecution in Palestinian courts.

Since 1967, over 2000 military orders have been issued, regulating all aspects of Palestinian life in the OPT. Israel ultimately retains full authority to enter all areas of the occupied West Bank at any time based upon "security concerns" or in the interest of "maintaining public order."

A. Israeli military law framework: Military Order 1651

The primary military order relevant to the arrest, detention, and prosecution of Palestinian children is Military Order 1651 or "Order Regarding Security Provisions."¹⁵ This order touches on a range of issues, including the authority to arrest and imprison Palestinians for "security offenses," such as causing death, assault, personal injury or property damage, kidnapping, and harming a soldier.

Military Order 1651 establishes a minimum age of criminal responsibility at 12 years, which provides the Israeli military courts with jurisdiction over any person 12 years and older. Children under the age of 12 cannot be prosecuted in the military courts. However, Israeli forces often detain children under 12 and question them for several hours before releasing them to their families or Palestinian authorities.

Maximum penalties for children are also set out in Military Order 1651 and can vary dramatically depending on the child's age. Although the age of majority was raised to 18 years in September 2011, this amendment does not apply to sentencing provisions, allowing 16 and 17 year olds to be sentenced as adults in the Israeli military courts.

¹⁴ See International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 (Jul. 9, 2004), <http://www.icj-cij.org/docket/files/131/1671.pdf>.

¹⁵ See Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009, § 212(1)-(3) (Nov. 1, 2009), available at https://assets.nationbuilder.com/dcipalestine/pages/5323/attachments/original/1685106693/Military_Order_1651.pdf [hereinafter *Military Order 1651*].

The maximum custodial sentence for a child aged 12 to 13 years is six months, unless they are convicted of certain offenses where an exception in the military law provides no maximum for children.¹⁶ The maximum sentence for a child aged 14 to 15 years is 12 months, unless the offense carries a maximum potential sentence of five years or more.¹⁷ Children aged 16 to 17 years are subject to the same maximum potential sentences as adults.¹⁸

Throwing stones is a specific offense under Military Order 1651, which provides as follows:

- Throwing an object, including a stone, at a person or property, with the intent to harm the person or property, carries a maximum penalty of 10 years in prison.¹⁹
- Throwing an object, including a stone, at a moving vehicle, with the intent to harm it or the person traveling in it, carries a maximum penalty of 20 years in prison.²⁰

Other offenses under Military Order 1651 include insulting or offending an Israeli soldier's honor, which comes with a potential maximum penalty of one year in prison.²¹ Also included is any act or omission that "entails harm, damage, disturbance or danger to the security of the region or the security of the [Israeli military], or to the operation, use or security of a road, dirt path, vehicle or any property of the State of Israel or of the [Israeli military]."²² The maximum penalty stipulated for such an act or omission is life in prison.

Despite repeated calls to end night arrests and ill-treatment and torture of Palestinian children in Israeli military detention, Israel has persistently failed to implement practical changes to stop violence against Palestinian child detainees.²³ Growing international pressure has forced Israeli leaders to respond by making slight changes to the military law applicable to Palestinian children. However, these changes are cosmetic and fail to address the systematic and widespread ill-treatment that Palestinian children face in the first 24 to 48 hours after an arrest.²⁴

¹⁶ Military Order 1651, § 168(B) as amended by Military Order 1885.

¹⁷ Military Order 1651, § 168(C).

¹⁸ Amendments to Military Order 1651 raising the age of majority from 16 to 18 years are not specified to apply to Chapter J of Military Order 1651, which contains sentencing provisions.

¹⁹ Military Order 1651, § 212(2).

²⁰ Military Order 1651, § 212(3).

²¹ Military Order 1651, § 215(D).

²² Military Order 1651, § 222(A) & (D).

²³ See Committee on the Rights of the Child, Concluding Observations on the Second to Fourth Periodic Reports of Israel, U.N. Doc. CRC/C/ISR/CO/2-4 (Jul. 4, 2013), <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ISR-CO-2-4.pdf>.

²⁴ See DCIP, No Way to Treat a Child: Palestinian children in the Israeli military detention system, p. (

Relevant amendments to Military Order 1651

Military Order 1644

Establishing a juvenile military court

Effective Date:
September 27, 2009 (60 days after
issue date)

Relevant provisions

Minors must appear before military juvenile courts. The head of the Military Court of Appeals appoints judges from the military courts of first instance who “must be prepared to be competent for the post.” Regular military courts can proceed with juvenile cases if a minor is “charged with an adult in the same case” or under “certain and special circumstances,” but must act as juvenile courts. If the “outcome is a serious injustice” because a juvenile judge did not preside over the case, the ruling is invalid. Minors also appear before regular military courts for “extension of detention or release” hearings.

Minors should be separated from adults while being brought to and returned from military court and while in a holding cell awaiting their sessions “inasmuch as possible.” Minors must be held in separate facilities from adults throughout their incarceration period.

After conviction, the military juvenile court may order a social welfare report on the situation of the minor to hand down the appropriate sentence.

Military Order 1676

Raising the age of majority

Effective Date:
October 29, 2011 (30 days after
issue date)

Relevant provisions

The order changes the definition of minors from persons under the age of 16 to those under 18.²⁵ The amendment gave military juvenile courts jurisdiction over 16- and 17-year-olds, but did not apply to other articles under Military Order 1651, including sentencing provisions. Minors aged 16 and 17 continue to face the same penalties as adults.²⁶

²⁵ The amendment brought Israeli military law partially in line with international and Israeli civilian law. Article 1 of the CRC provides that “a child means every human being below the age of eighteen unless under the law applicable to the child, majority is attained earlier.” See *a/so* Israeli Youth (Trial, Punishment and Modes of Treatment) Law (1971), § 1.

²⁶ Military Order 1676 applies only to article 136, in Chapter G, “Adjudicating Juveniles” and puts them in the juvenile courts. It constitutes a cosmetic change which merely codifies de facto practice. Since Military Order 1651’s inauguration in 2009, children up to age 18 face trial in the juvenile court. The amendment does not apply to the rest of 1651’s sections, including in the chapter that contains sentencing provisions.

Police officers must notify the minor’s parents as soon as possible upon arrival at a police station of his or her arrest, subject to the minor providing their contact information.²⁷ If the police officer fails to locate the parents, he or she can provide notice to an adult relative or adult familiar to the minor, subject to the minor providing their contact information.

Notice to parents can be delayed for eight hours in instances where officers bring a minor to a police station without arresting him or her. Police officers will not provide notice if a minor objects on reasonable grounds.

A police officer may withhold notice if he or she is convinced it would harm the minor or another person, disrupt the investigation procedure, or if the crime is a security offense as defined in Military Order 1651.²⁸

Note that parents may receive notice, but have no legal entitlement to be present during their child’s interrogation, a practical safeguard generally granted both legally and in practice to Israeli children.²⁹ In addition, notice requirements only apply to the police. The Israeli army, which carries out arrests in the West Bank and holds minors for several hours, does not have an obligation to notify parents.

Before proceeding with the investigation, the police officer must notify the minor “in a manner which will be understood by him according to his age and level of maturity” of the “right to consult with legal counsel in private.”³⁰

Military Order 1685	
Appearing before a military court judge	<i>Effective Date:</i> August 1, 2012

Relevant provisions

Police officers can issue an arrest warrant for a maximum detention period of 96 hours from the time of arrest for adults and minors suspected of committing a security offense as defined in Military Order 1651.

The maximum detention period of an arrest warrant for a person suspected of a non-security related offense is 48 hours.

If a police officer “is satisfied” that a stop in the investigation would harm the outcome, he or she can extend the maximum detention period of a person suspected of a security offense to six days from the time of arrest, with the approval of the Israel Security Agency (ISA), also known as Shin Bet. If stopping

²⁷ Military Order 1651, § 136(a) (as amended by Military Order 1676).

²⁸ Military Order 1651, § 136(b) (as amended by Military Order 1676).

²⁹ Israeli Youth (Trial, Punishment and Modes of Treatment) Law (1971), § 9H. Under the Israeli civilian juvenile justice system, a parent is allowed to be present at all times during police questioning of a child in circumstances where the child is not formally under arrest, but may not interfere with the interrogation process. An exception to this rule is permitted upon written authority from an authorized officer, and in cases in which the wellbeing of the child requires that the parent not be present.

³⁰ Military Order 1651, § 136c(b)

the interrogation process causes harm to someone’s life, the maximum detention period rises to eight days.³¹

A person must appear before a military judge after the applicable maximum detention period elapses.

Military Order 1711

Appearing before military court judge

Effective Date:
April 2, 2013

Relevant provisions

Police officers can issue an arrest warrant for a maximum detention period of 24 hours from the time of arrest for a “boy” suspected of committing a security offense as defined in Military Order 1651. The maximum detention period doubles to 48 hours for “young adults.”³²

The period doubles for boys to 48 hours and for young adults to 96 hours if a police officer believes a “necessary interrogation” must take place.

Boys and young adults must appear before a military judge after the applicable maximum detention period elapses.

Military Order 1711 does not provide an age range for those considered “young adults.” However, Military Order 1651 defines the term as persons between the ages of 14 and 15. As such, minors ages 16 and 17 remain subject to the same maximum detention periods as adults under Military Order 1685.

Under the Israeli civilian legal system, arrest warrants for Israeli children, including those living in illegal Jewish-only settlements in the occupied West Bank, have shorter maximum detention periods. Police officers can hold children below age 14 for 12 hours from the time of arrest and those older for 24 hours.

Under Military Order 1711, a minor imprisoned for one year from the date of indictment without a final ruling from the military court of first instance must appear before a military appeals court judge.

Military Order 1726

Maximum detention period for interrogation purposes

Effective Date:
October 6, 2013

Relevant provisions

A military court judge can detain a minor for interrogation purposes by issuing an arrest warrant for a maximum period of 15 days and can extend detention for additional periods, provided their total does not exceed 40 days.

³¹ Military Order 1651, § 32(A) (as amended by Military Order No. 1685).

³² Military Order 1651, §§ 31 & 32 (as amended by Military Order No. 1711).

The Military Court of Appeals, however, has the authority to extend the detention beyond the 40-day maximum.

Military Order 1745

Audio-video recording of interrogations

Effective Date:
September 10, 2014

Relevant provisions

Police officers must interrogate a minor suspected of committing an offense in a language that he or she understands. Any written statement must also be in the minor's language. Interrogations in connection with offenses that carry a maximum sentence of 10 years or more must be video recorded.

The order, however, does not apply to minors suspected of committing security offenses as defined in Military Order 1651, such as stone throwing,³³ under which the majority of children face arrest and interrogation, and rarely applies to Palestinian children charged in the Israeli military courts.

Military Order 1798

Appearing before a military court judge

Effective Date:
May 11, 2018

Relevant provisions

The maximum period of time permitted before a detained child aged 16 or 17, can appear before a military judge is reduced from 96 to 72 hours.

Trials may last up to nine months in security offense cases and six months in criminal offense cases. If the court proceedings have not concluded within that time period, the case must be brought before a judge of the Military Court of Appeals. The appeals judge can rule to either release the child or extend the child's remand in custody for a period of three months each time. Military law has no stated limit for how many times this extension can be renewed.

Military Order 1885

Eliminating maximum sentences for 12 & 13 year olds for certain offenses

Effective Date:
May 19, 2020

Relevant provisions

Eliminates the six-month maximum custodial sentence for 12 and 13 year olds when convicted of specific offenses in Military Order 1651, including causing or intending to cause the death of another person³⁴ or causing the death membership in a group where one or more of its members committed an offense in the past or were arrested while committing an offense while the accused was a member of

³³ Military Order 1651 §136d(6) as amended by Military Order No. 1745.

³⁴ Military Order 1651, §§ 209(a) and 210(a).

the group,³⁵ and intentionally causing harm to a person with a bullet, knife, stone, dangerous weapon or other weapon that causes harm,³⁶ among others.

B. Israeli military detention system

The Israeli military detention system consists of a network of military courts, military bases, interrogation and detention centers, and police stations in the West Bank, including East Jerusalem, and inside Israel. Palestinians, predominantly from the West Bank, are initially taken to one of these facilities for questioning and temporary detention. Some of these facilities are inside Jewish-only settlements in the West Bank.

Palestinians, including children, are held at these facilities for interrogation purposes, pre-trial detention, or prior to appearing in the military courts. Following an initial appearance in one of the military courts, Palestinian child detainees are transferred to prisons, most of which are located inside Israel, where they sit in pre-trial detention, wait to be sentenced, or serve their prison sentence.

Transfer of Palestinian detainees, including children, to prisons and interrogation and detention facilities inside Israel, even for brief periods, constitutes an unlawful transfer in violation of Article 76 of the Fourth Geneva Convention.

In practice, Israel's illegal Jewish-only settlements in the occupied West Bank are part of the Israeli military detention system's structural framework as Israeli military and police detain and interrogate children at police stations located in illegal settlements.

C. Israeli military court system

Under Israeli military law, the military courts have the authority to hear security, criminal, and administrative matters.

There are two Israeli military courts located in the occupied West Bank that serve as courts of first instance and are used to prosecute Palestinians, including children. Ofer military court is located on Israel's Ofer military base located between Ramallah and Jerusalem. Salem military court is located in the northern West Bank near the city of Jenin. The Military Court of Appeals is also located at Ofer military base.

Israeli authorities have also established military courts at interrogation and detention centers inside Israel used by Shin Bet, the Israeli Security Agency. These military courts hear remand applications, or motions to extend the detention of suspects held for interrogation purposes, often in solitary confinement for extended periods.

³⁵ Military Order 1651, § 209(b).

³⁶ Military Order 1651, § 210(c).

- Occupied Palestinian Territory
- Israel

Israeli Military Juvenile Detention System

MILITARY COURTS

- Ofer Military Court
- Salem Military Court

INTERROGATION CENTERS

- Salem
- Huwwara
- Ariel Police Station*
- Gush Etzion**
- Mascobiyya
- Kishon / Al-Jalame
- Petah Tikva
- Shikma / Asqalan
- Atarot**
- Binyamin Police Station *
- Ma'ale Adumim Police Station*

PRISONS

- Megiddo
- Ofer
- Damon

* Located inside of a Jewish-only settlement.
 ** Located inside of a closed military area.



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Within the Israeli military court structure, judges and prosecutors are active members of the Israeli military. They are subject to military discipline and dependent on superiors for promotion. They are fundamentally part of the system enforcing the occupation.³⁷ Under international law, a fair trial can only occur under an independent and impartial system.

There are two types of judicial panels in the Israeli military courts. Where the maximum potential sentence is less than ten years in prison, a single military judge will preside over the case.³⁸ An offense that carries a potential maximum sentence of more than 10 years in prison requires a panel of three military judges. The Israeli Military Court of Appeals has a panel of three military judges, if the appealed sentence exceeds three years imprisonment.

Israeli military judges must have five years of legal experience and hold at least the rank of captain.³⁹ To maintain tenure, a military judge needs to remain an active member of the military. Military judges need a minimum of seven years legal experience and must at least hold the rank of lieutenant colonel to sit on the Military Court of Appeals.⁴⁰ The president of the Israeli Military Court of Appeals heads the Israeli military court system and is an officer with at least seven years of legal experience and the rank of colonel.⁴¹

Israeli military prosecutors most often have a legal background, with some of them currently studying law or in training after having just finished their studies. These individuals typically participate in administrative hearings. Others are members of the Israeli bar association. The only requirement to be a military prosecutor is that the individual be a current member of the Israeli military. Some military prosecutors come to the military courts for short periods of time in order to meet their reserve duty requirement.

When it comes to plea bargains, most of the military prosecutors are lawyers who have completed their legal degree. Certain military prosecutors specialize in certain offenses, like stone throwing, and often the defense lawyers encounter the same military prosecutors.

Defendants before the Israeli military courts have the right to an attorney,⁴² but they can be prevented from meeting with their attorney for up to 90 days.⁴³ Three organizations currently represent children for free. Families can also hire private attorneys to represent their children in the Israeli military courts. DCIP represents 25 to 30 percent of cases involving children before the Israeli military courts each year.

Defense attorneys generally speak and read Hebrew, as all Israeli military court proceedings are conducted in Hebrew with Arabic translation. In administrative detention cases, defense attorneys often do not have access to all prosecution material due to the absence of interrogation notes and withholding of information for “security reasons.”

³⁷ See Sharon Weill, *The Judicial Arm of the Occupation: The Israeli Military Courts in the Occupied Territories*, 89 INT'L REVIEW OF THE RED CROSS 395, 399-400 (2007).

³⁸Military Order 1651, § 17(C)(1).

³⁹Military Order 1651, § 11(A)(1).

⁴⁰Military Order 1651, § 11(A)(4).

⁴¹Military Order 1651, § 11(A)(5).

⁴²Military Order 1651, § 56(A).

⁴³Military Order 1651, §§ 58(C)-(D) & 59 (C)-(D).



Israeli paramilitary border police remove Palestinian children from the vicinity of the Ibrahimi Mosque in the divided West Bank city of Hebron on February 28, 2022. (Photo: AFP / Hazem Bader)

5. Ill-treatment and torture of Palestinian children in Israeli military detention

Each year, between 500-700 children (12-17 years), face arrest and prosecution in Israel's military detention and court system. Palestinian children exposed to the Israeli military detention system suffer ill-treatment that is "widespread, systematic and institutionalized throughout the process, from the moment of arrest until the child's prosecution and eventual conviction and sentencing."⁴⁴

Since 2000, Israeli military authorities have detained, interrogated, prosecuted, and imprisoned over 13,000 Palestinian children, according to DCIP estimates. During the reporting period, Israeli authorities detained an average of 225 Palestinian children (12-17 years) at any given time.

The number of children under 14 years old is lower than previous periods because the majority of children aged 12-13 years spend less than one month in Israeli custody, so they do not appear in the end of month headcounts by the Israel Prison Service.

⁴⁴ UNICEF, *Children in Military Detention Observations and Recommendations Bulletin No. 2: February 2015*, at 1 (2015), http://www.unicef.org/oPt/Children_in_Israeli_Military_Detention_-_Observations_and_Recommendations_-_Bulletin_No._2_-_February_2015.pdf.

Total number of Palestinian children (12-17) in Israeli custody at the end of each month

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg
2016	406	438	444	414	332	300	343	319	271	285	284	275	343
2017	301	297	289	303	331	318	304	297	325	318	313	352	312
2018	351	356	304	315	291	273	251	239	230	220	217	203	271
2019	209	205	215	205	201	210	210	185	188	185	182	186	198
2020	183	201	194	168	142	151	154	153	157	148*	148*	148*	162
2021	130	146	143	138	161	170	162	157	159	177	155	144	154
2022	131	124	124	140	147	137	127	124	129	150	149	157	137

*Estimated data because the Israel Prison Service did not provide precise data.
Source: Israel Prison Service

Total number of Palestinian children aged 12-15 years old in Israeli detention at the end of each month

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg
2016	114	108	112	112	77	60	73	72	50	61	70	65	81
2017	70	66	59	63	74	60	52	48	55	60	61	78	62
2018	75	86	62	60	49	50	42	35	41	42	49	43	53
2019	46	32	30	31	31	26	28	22	27	25	18	26	29
2020	20	32	30	20	17	14	21	11	18	-	-	-	20
2021	-	-	-	-	-	-	17	16	26	50	31	35	29
2022	29	28	20	24	23	22	18	19	19	32	29	21	24

Total number of Palestinian girls (12-17) in Israeli detention at the end of each month

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg
2016	8	12	15	12	13	11	11	11	12	12	10	11	12
2017	10	11	11	10	10	10	10	10	9	9	9	8	10
2018	7	7	7	7	6	5	3	2	1	2	2	1	4
2019	0	0	0	0	0	0	0	0	0	0	0	0	0
2020	0	0	0	0	0	0	0	0	0	-	-	-	0
2021	0	0	0	0	0	0	0	0	0	0	0	1	0
2022	1	1	1	1	1	1	1	1	1	1	3	2	1

Ill-treatment starts from the moment of arrest, as the overwhelming majority of Palestinian children arrested by Israeli forces in the West Bank have their hands tied and eyes blindfolded, and nearly three quarters of children experience some form of physical violence during arrest or prior to or during interrogation.

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

The following sections are based on an analysis of 766 sworn testimonies collected by DCIP between January 2016 and December 2022. The testimonies describe a child's experience as they enter and pass through the Israeli military detention system.

Ill-treatment against Palestinian child detainees between 2016 and 2022

Type of ill-treatment		West Bank	
		Number of cases	Percentage
	Total children	766	100.00%
1	Night arrest	449	58.62%
2	Not informed of reason for arrest	655	85.51%
3	Hands bound	745	97.26%
4	Blindfolded	679	88.64%
5	Physical violence	571	74.54%
6	Transfer on vehicle floor	416	54.31%
7	Verbal abuse, humiliation and intimidation	448	58.49%
8	Denial of food and water	318	41.51%
9	Denial of access to toilet	239	31.20%
10	Exposure to the elements	187	24.41%
11	Strip searched	615	80.29%
12	No access to counsel prior to interrogation	549	71.67%
13	Improperly informed of rights	508	66.32%
14	No family member during interrogation	745	97.26%
15	Threats and coercion	278	36.29%
16	Threats of sexual assault	5	0.65%
17	Stress positions	194	25.33%
18	Solitary confinement (2 days or more)	178	23.24%
19	Attempted recruitment	19	2.48%
20	Shown or signed documents in Hebrew	397	51.83%
21	Confined with adults	41	5.35%



Fawzi al-Juneidi, 16, from the city of Hebron, located in the southern West Bank, was subjected to Israeli military arrest on December 7, 2017, amid a widespread crackdown on protesters after U.S. President Trump's recognition of Jerusalem as Israel's capital. (Photo: Wisam Hashlamoun / Flash90)

6. Deprivation of personal liberty and arbitrary detention

Everyone has the right to life, liberty and security of person.⁴⁵ These are universally protected fundamental human rights that comprise Article 3 of the Universal Declaration of Human Rights (UDHR), an historic and foundational document for the recognition, promotion, and obligatory respect for basic human rights. While the right to liberty, at its core, is rooted much farther back in time, the right to liberty reaffirmed by the UDHR and subsequent international treaties broadly protects an individuals' freedom from arbitrary and unreasonable restraints.

International human rights law and international humanitarian law both include absolute prohibitions against the arbitrary deprivation of liberty⁴⁶ and establish that no person shall be deprived of their liberty except on grounds and in accordance with such procedures as are established by law.⁴⁷ Furthermore, obligatory international law norms establish due

⁴⁵ Universal Declaration of Human Rights, Art. 3, U.N.G.A. Res. 217 A (Dec. 10, 1948).

⁴⁶ Specific prohibitions on arbitrary detention are included in article 9(1) of the ICCPR and article 37(b) of the CRC, while state practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts. Arbitrary detention runs afoul of common Article 3 of the Geneva Conventions, as well as both Additional Protocols I and II, which require that all civilians and persons hors de combat be treated humanely, whereas arbitrary deprivation of liberty is not compatible with this requirement.

⁴⁷ ICCPR Art. 9(1).

process and fair trial guarantees such as the right to be informed of the reason for arrest and promptly informed of any charges against them,⁴⁸ presumption of innocence,⁴⁹

Specifically, under international law norms, “deprivation of liberty” means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which the person is not permitted to leave at will, by order of any judicial, administrative or other public authority.⁵⁰ Deprivation of liberty is not limited to criminal legal systems as individuals are deprived of their liberty for protective and humanitarian reasons, such as when a person is under the custody and supervision of certain institutions or centers for migrants, refugees, asylum or refugee seekers.

Regardless of the reason for the deprivation of liberty, any detained person is protected by several fundamental guarantees in international human rights law and international humanitarian law, including the right to life, the prohibition against the arbitrary deprivation of liberty, and the prohibition against torture and cruel, inhuman or degrading treatment.

⁴⁸ ICCPR Art. 9(2).

⁴⁹ UDHR Art. 11(1) (“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”)

⁵⁰ See United Nations Rules for the Protection of Juveniles Deprived of their Liberty, U.N. G.A. Res. 45/113, Dec. 14, 1990,



Israeli soldiers detain a Palestinian youth in the Bab al-Zawiya area of the city of Hebron in the occupied West Bank on September 29, 2022. (Photo: AFP / Mosab Shawer)

7. Arbitrary detention defined

The United Nations Working Group on Arbitrary Detention (UN WGAD), an international body of experts with the mandate to investigate alleged cases of arbitrary detention, has adopted specific criteria to assess individual complaints they receive.⁵¹ The UN WGAD finds that deprivation of liberty is arbitrary if a case falls into one of the following five categories:

- **Category I:** When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of their sentence or despite an amnesty law applicable to them);
- **Category II:** When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights;

⁵¹ Working Group on Arbitrary Detention, *About Arbitrary Detention*, <https://www.ohchr.org/en/about-arbitrary-detention> (last accessed Mar. 23, 2023).

- **Category III:** When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.
- **Category IV:** When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy; and
- **Category V:** When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights.

When considering what is arbitrary, there is a requirement that the deprivation of liberty is taken in accordance with the applicable law and procedure and that it is proportional to the aim sought, reasonable and necessary. Arbitrariness is not a strict assessment and is interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability or due process of law.



Israeli forces arrest a Palestinian youth in occupied East Jerusalem, on September 18, 2015.
(Photo: AFP / Ahmad Gharabli)

8. Arbitrary detention of Palestinian children by Israeli forces

Each year the Israeli military detains and prosecutes between 500 to 700 Palestinian children in Israeli military courts that lack basic safeguards for a fair trial. From the moment of arrest, Palestinian children encounter ill-treatment and torture at the hands of Israeli forces. Despite the fact that international norms reaffirm that civilians, including children, must never be brought before military courts, Israel persists in being the only country in the world to automatically and systematically prosecute children in military courts.

While just a superficial review of the detention and prosecution of Palestinian children in the Israeli military court system suggests severe risks of arbitrary deprivation of liberty, what emerges from a full view through the experience of Palestinian child detainees and the lawyers that represent them is an inherently unjust system of control where arbitrary detention is the default practice.

The deprivation of liberty experienced by Palestinian children in the Israeli military detention and military court system is arbitrary by default primarily because Israeli authorities systematically disregard and deny fundamental protections and guarantees concerning the right to a fair trial to the extent that nearly any deprivation of liberty as part of the military court system is of an arbitrary character.

Furthermore, Israeli authorities have an established pattern and practice of targeting young Palestinian males for arrest and prosecution on the basis of their Palestinian identity rather than based on any legitimate law enforcement objective resulting in a violation of international law for reasons of discrimination based on national, ethnic, or social origin, and gender.

Accordingly, the deprivation of liberty Palestinian children experience as part of the Israeli military detention and court system constitutes arbitrary detention due to the fact

Palestinian boys are detained on a discriminatory basis, specifically on national, ethnic and social origin and gender grounds.⁵²

A. Category III. Israeli authorities' systematic denial of the right to a fair trial

A deprivation of liberty is arbitrary when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, is of such gravity as to give the deprivation of liberty an arbitrary character.

Despite Israel's ratification of many of the core international human rights treaties and its obligations to act in accordance with those treaties,⁵³ Israeli authorities persistently disregard and fail to comply with international law. Israel's military court system is not independent or impartial and Israeli military law denies basic and fundamental fair trial protections and guarantees. The result is the systematic denial of the right to a fair trial for Palestinian children detained and prosecuted in the Israeli military court system.

i. Israeli military courts are not independent or impartial

Universal fair trial guarantees provide all persons deprived of their liberty the right to challenge their detention and to be tried by a competent, independent and impartial tribunal.⁵⁴ Under international human rights law, a fair trial can only occur under an independent and impartial system.

Israeli military courts do not meet the standards of an independent and impartial tribunal for the purposes of considering matters involving civilians, including children. Israeli military courts are not independent or impartial primarily because they are composed of military personnel who are subject to military discipline and dependent on superiors for

⁵² See U.N. Working Group on Arbitrary Detention, Opinion No. 73/2018 concerning a minor whose name is known by the Working Group (Israel), U.N. Doc. A/HRC/WGAD/2018/73 (Feb 18, 2019), https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_73.pdf; U.N. Working Group on Arbitrary Detention, Opinion No. 60/2021 concerning Amal Nakhleh (Israel), U.N. Doc. A/HRC/WGAD/2021/60 (Nov 17, 2021), https://www.ohchr.org/sites/default/files/2022-01/A_HRC_WGAD_2021_60_isr_AEV.pdf; U.N. Working Group on Arbitrary Detention, Opinion No. 4/2022 concerning Mohammad Ghassan Ahmad Mansour (Israel), U.N. Doc. A/HRC/WGAD/2022/4 (May 25, 2022), <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-4-ISR-AEV.pdf>.

⁵³ Israel ratified the International Covenant on the Elimination of All Forms of Racial Discrimination (CERD) in 1979; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) all in 1991; and the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) in 1992.

⁵⁴ ICCPR, Art. 14(1); CRC Arts. 37(d) and 40; and common Article 3 of the Geneva Conventions establishes that only a "regularly constituted court" may pass judgment on an accused person.

promotion.⁵⁵ Israeli military court judges and prosecutors are active members of the Israeli military.⁵⁶

Additionally, military courts and tribunals are generally not considered competent to try civilians let alone children and should only be considered competent to try military personnel for military offenses.⁵⁷ International juvenile justice norms require that cases involving children in conflict with the law be adjudicated in courts specifically equipped to deal with children ensuring that detention is used only as a measure of last resort in accordance with the principle of the best interests of the child.

The United Nations Working Group on Arbitrary Detention has noted that the right to an independent review should be given greater weight in the Occupied Palestinian Territory due to Israel's prolonged military occupation and application of military law to Palestinians for more than 50 years.⁵⁸

While trying civilians in military courts should be exceptional, Israeli authorities automatically and systematically prosecute Palestinians, including children, arrested by Israeli military and police in the occupied West Bank in the Israeli military court system. As a result, Palestinian children detained and prosecuted by Israeli forces in the Israeli military detention and court system are denied the right to a fair hearing by a competent, independent, and impartial tribunal under Article 14 (1) of the International Covenant on Civil and Political Rights and Article 40(2)(b)(iii) of the Convention on the Rights of the Child, which constitutes arbitrary detention in accordance with the Category III definition.

ii. No absolute prohibition on torture or cruel, inhuman or degrading treatment

International law includes an absolute prohibition against torture or other cruel, inhuman or degrading treatment or punishment. This absolute prohibition is a fair trial safeguard during investigation and interrogation. While torture is absolutely prohibited and cannot be justified under any circumstances, Israeli law does not define torture as an explicit

⁵⁵ See U.N. Working Group on Arbitrary Detention, Opinion No. 73/2018 concerning a minor whose name is known by the Working Group (Israel), U.N. Doc. A/HRC/WGAD/2018/73 (Feb 18, 2019), https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_73.pdf; U.N. Working Group on Arbitrary Detention, Opinion No. 60/2021 concerning Amal Nakhleh (Israel), U.N. Doc. A/HRC/WGAD/2021/60 (Nov 17, 2021), https://www.ohchr.org/sites/default/files/2022-01/A_HRC_WGAD_2021_60_isr_AEV.pdf; U.N. Working Group on Arbitrary Detention, Opinion No. 4/2022 concerning Mohammad Ghassan Ahmad Mansour (Israel), U.N. Doc. A/HRC/WGAD/2022/4 (May 25, 2022), <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-4-ISR-AEV.pdf>.

⁵⁶ See Sharon Weill, The Judicial Arm of the Occupation: The Israeli Military Courts in the Occupied Territories, 89 INT'L REVIEW OF THE RED CROSS 395, 399-400 (2007).

⁵⁷ U.N. Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention, ¶ 69, U.N. Doc. A/HRC/27/48, (Jun. 30, 2014), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/068/65/pdf/G1406865.pdf>.

⁵⁸ U.N. Working Group on Arbitrary Detention, Opinion No. 73/2018 concerning a minor whose name is known by the Working Group (Israel), ¶ 50, U.N. Doc. A/HRC/WGAD/2018/73 (Feb 18, 2019), https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_73.pdf.

crime and permits the “defense of necessity” as a justification for the crime of torture.⁵⁹ As a result, 571 out of 766 (74.5 percent) Palestinian children reported physical violence at the hands of Israeli forces.

Israeli military court judges seldom exclude confessions obtained by coercion or torture. In a system where warrants are rare and Israeli forces overwhelmingly arrest Palestinian children on suspicion, torture and ill-treatment become the interrogator’s tools to extract or produce incriminating statements or information that can be passed on to an Israeli military prosecutor to charge the Palestinian child in the Israeli military courts.

As a result, Israeli forces and authorities’ systemic non-observance of the obligatory and absolute prohibition against torture or cruel, inhuman or degrading treatment constitutes arbitrary detention in accordance with the Category III definition.

iii. No parents present and no right to a lawyer during interrogation

International fair trial guarantees provide children deprived of their liberty the right to prompt access to legal and other appropriate assistance, including the right to the presence of a lawyer or family member during interrogation.⁶⁰ The right to have a lawyer present during interrogation works to ensure that children will be presumed innocent, will not be subjected to torture and ill-treatment, and will not be compelled to confess guilt.

Despite these basic and obligatory norms, Israeli military law provides no right to legal counsel during interrogation, actively denying Palestinian children a basic and fundamental fair trial guarantee and ensuring that Palestinian children are alone during interrogation. Only 217 out of 766 (28.3 percent) Palestinian children reported having brief access to an attorney prior to interrogation, which is usually a brief phone consultation that is not substantive or meaningful. Additionally, 745 out of 766 (97.3 percent) Palestinian children reported they were interrogated without the presence of a family member.

Israeli forces and authorities’ systematically deny Palestinian children their right to prompt access to legal assistance and the presence of a family member during interrogation, constituting the non-observance of international norms relating to the right to a fair trial and arbitrary detention in accordance with the Category III definition.

⁵⁹ Adalah, Physicians for Human Rights - Israel, & Al-Mezan Center for Human Rights, *Joint NGO Submission: Key concerns regarding Israel's use of torture and ill-treatment against Palestinians from the OPT*, (Mar. 25, 2016), <https://www.adalah.org/uploads/uploads/Key-Concerns-Torture-EU-Israel-Dialogues-March-2016.pdf>.

⁶⁰ U.N. Convention on the Rights of the Child, Art. 37(d).

B. Category I. No legal basis to justify deprivation of liberty

A deprivation of liberty is arbitrary when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. For a detention to have a legal basis, it is not sufficient that there is a law that authorizes the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.⁶¹

International human rights law includes the right to be presented with an arrest warrant and informed of the reason for arrest. These are procedurally inherent in the right to liberty and security of person and the prohibition against arbitrary detention.⁶²

Despite these universal legal norms, Israeli forces systematically arrest Palestinian children based on suspicion and without arrest warrants. In the overwhelming majority of arrests, Israeli forces do not in any way inform Palestinian children or their parents of the reason for arrest. The result is a default Israeli military practice of arresting Palestinian children where there is no legal basis established to justify the deprivation of liberty, which constitutes arbitrary detention under the Category I definition.

i. Soldiers arrest on suspicion, warrants rarely issued, and not informed of reason for arrest.

An arrest warrant generally establishes a legal basis for a detention because it is issued by a competent, independent, and impartial authority and describes the act for which the individual named in the arrest warrant is being charged. The threshold for issuing an arrest warrant is generally whether a reasonable person would believe the information presented is sufficient to suggest unlawful activity.

Where law enforcement officers are authorized to detain individuals based on suspicion there generally must be reasonable grounds to believe an offense is being committed, has been committed, or will soon be committed. Inherent in this reasonable suspicion standard, the law enforcement officer should have close proximity in time and space to the suspected unlawful conduct.

Under the Israeli military legal framework, specifically Military Order 1651, any soldier or police officer is authorized to arrest persons without a warrant, even children, where they have a suspicion that the individual has committed an act violating one of the “security offenses” contained in the Israeli military law.⁶³

Most Palestinian children are arrested on suspicion, without arrest warrants. There is little to no independent oversight over arrests. Between 2016 and 2022, none of the 766 Palestinian children reported that Israeli authorities provided them with an arrest warrant at the time they were arrested. Only 111 out of 766 (14.5 percent) Palestinian children

⁶¹ See U.N. Working Group on Arbitrary Detention, Opinion No. 4/2022 concerning Mohammad Ghassan Ahmad Mansour (Israel), U.N. Doc. A/HRC/WGAD/2022/4 (May 25, 2022), <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-4-ISR-AEV.pdf>.

⁶² See UDHR arts. 3 & 9; ICCPR art. 9(1).

⁶³ Military Order 1651, §§ 31(A) & 32(A).

reported being informed generally of the reason for arrest, meaning 85.5 percent of children have no information on why they are being detained at the moment of arrest.

In fact, only 32 out of 766 (4.2 percent) Palestinian children reported that they received a summons by Israeli authorities for investigation and questioning. These summonses fall short of the threshold for constituting an arrest warrant because they do not include a reason for the suspicion or information on any charges. Out of the 32 Palestinian children that received a summons from Israeli authorities to appear for questioning, 21 received phone call summons and 11 received a written summons delivered to their family.

Israeli authorities systematically arrest Palestinian children from the occupied West Bank without any attempt to issue arrest warrants that would establish a legal basis for the detentions. Furthermore, Israeli authorities overwhelmingly fail to explain or inform the Palestinian child or their family of the reasons for an arrest. Thus, in the overwhelming majority of cases Israeli authorities systematically fail to invoke any legal basis justifying the deprivation of liberty of Palestinian children arrested from the occupied West Bank constituting arbitrary detention under the Category I definition.

ii. Administrative detention of Palestinian children

Administrative detention is a form of imprisonment without charge or trial regularly used by Israeli authorities to detain Palestinians, including children. Palestinian children held under administrative detention orders are not presented with charges, and their detention is based on secret evidence that is neither disclosed to the child nor their attorney, preventing them from preparing a legal challenge to the detention and any alleged legal basis. Administrative detention of Palestinian children by Israeli authorities constitutes arbitrary detention under the Category I definition because there is no legal basis for the deprivation of liberty.

Administrative detention orders are issued by the Israeli military commander of the area, or a military officer delegated by the military commander. The orders are approved by military court judges giving the illusion of independent legal oversight, yet Israeli military courts fail to meet international standards for independence and impartiality because Israeli military court judges are active duty or reserve officers in the Israeli army.

Administrative detention orders can be approved for periods lasting up to six months. There is no limit to the number of times an administrative detention order can be renewed. As a result, Palestinian children held in administrative detention by Israeli authorities face the added uncertainty of indefinite imprisonment, in addition to the ordinary struggles custodial detention and imprisonment without charge presents for detained children.

Between 2012 and 2015, Israeli forces briefly suspended its practice of detaining Palestinian children under administrative detention orders. However, in 2015, following a three-year suspension of the practice, Israeli authorities began arresting and imprisoning Palestinian children without charge pursuant to administrative detention orders. Since resuming the practice in October 2015 through December 2022, Israeli authorities have detained at least 57 Palestinian children without charge or trial pursuant to administrative detention orders.

The practice should never be used as an alternative to filing charges or as a general deterrent for future activity, yet Israeli authorities routinely use the practice to imprison Palestinians without charge in violation of international law.

Between 2018 and 2022, DCIP submitted four individual complaints to the UN WGAD on behalf of Palestinian children held in Israeli custody without charge or trial pursuant to administrative detention orders. In the first three cases, the UN WGAD found on multiple grounds that Israeli authorities arbitrarily detained each of the Palestinian children.⁶⁴

a. Laith Kharma

In March 2018, DCIP filed a petition with the UN WGAD on behalf of 17-year-old Laith Kharma, a Palestinian teen who had already been detained without charge by Israeli authorities for more than six months.⁶⁵ The UN WGAD concluded that the Israeli military authorities' detention of Laith was in contravention of articles 2, 3, 7, 8, 9, 10, 11(1) and 19 of the Universal Declaration of Human Rights and articles 2(1) and (3), 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights, and was arbitrary and falls within categories I, II, III and V.⁶⁶

Spotlight Feature: Laith Kharma

It began like most night arrests. Early on the morning of September 20, 2017, around 2 a.m., Israeli soldiers entered Laith Karma's home in Kafr Ein village, outside of Ramallah. Laith, then 17 years old, was bound, blindfolded, and physically assaulted by Israeli forces. He was neither informed of the reason for his arrest nor presented with a warrant.

Over the next eleven hours, Laith was transferred to multiple locations, including a military checkpoint and an Israeli police station in an illegal settlement.

"While inside the jeep, it felt like the trip took hours," he later told Defense for Children International - Palestine.



Laith arrived at Israel's Ofer military compound around 1 p.m. During interrogation, he was questioned about throwing stones, a "security offense" under Israeli military law. He

⁶⁴ DCIP submitted the fourth case to the UN WGAD in late 2022 and an opinion was not yet issued at the time this report was finalized, however, the facts and circumstances of this case are consistent with the previously submitted cases.

⁶⁵ See DCIP, *Israel's army detained a child for nearly a year without charge*, Jul. 9, 2019, https://www.dci-palestine.org/israel_s_army_detained_a_child_for_nearly_a_year_without_trial, and DCIP, *Petition to the U.N. Working Group on Arbitrary Detention on behalf of Laith Kharma*, Mar. 28, 2018, https://d3n8a8pro7vhmx.cloudfront.net/dcipalestine/pages/5318/attachments/original/1579705665/WGAD_doc_Petition_re_LKharma_FINAL_Redacted_Name_27MAR2018.pdf.

⁶⁶ U.N. Working Group on Arbitrary Detention, Opinion No. 73/2018 concerning a minor whose name is known by the Working Group (Israel), U.N. Doc. A/HRC/WGAD/2018/73, (Feb. 18, 2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/041/69/PDF/G1904169.pdf>.

denied the allegations. The interrogator printed out a statement in both Arabic and Hebrew and made him sign it.

That afternoon, Laith had his first appearance before a military court judge at Ofer military court. It was there that Laith first learned of the Israeli military authorities' intention to detain him without any charges against him. At this initial hearing, Laith's detention was extended for 72 hours to allow Israeli military authorities to prepare and issue an administrative detention order.

Not then, nor at any of his subsequent court appearances, was Laith — or his DCIP attorney — ever informed of the reason for his detention.

Six days after he was detained, an Israeli military judge approved a four-month administrative detention order against Laith. The order was renewed in January 2018 for an additional four months, and renewed for a second time in May.

On August 6, 2018, more than 6 weeks prior to the September 17 expiration of Laith's third administrative detention order, Israeli forces released Laith without explanation. He spent nearly 46 weeks in military detention and was never formally charged with a crime. This prolonged detention forced him to miss his final year of high school.

In March 2018, after Laith had already been imprisoned for more than six months without charge and with no end to his detention in sight, DCIP filed a petition on Laith's behalf with the U.N. Working Group on Arbitrary Detention. The Working Group concluded Israeli military authorities' detention of Laith amounted to an arbitrary detention. The Working Group found the detention arbitrary based on four of the five categories that the Working Group considers. The conditions need only be established in one of the five categories for the Working Group to determine a detention to be arbitrary.

In its favorable opinion released in November 2018, the Working Group described Laith's interrogation as "wholly unacceptable according to international standards," expressed serious concern about Israeli forces' treatment of Laith, and referred his case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The Working Group also noted that many of the administrative detention cases follow "familiar pattern[s]" of systematic human rights violations, which could amount to crimes against humanity.

b. Amal Nakhleh

In April 2021, DCIP filed a petition with the UN WGAD on behalf of 17-year-old Amal Nakhleh, a Palestinian teen who had already been imprisoned without charge by Israeli authorities for 92 days. Amal suffers from myasthenia gravis, a rare chronic autoimmune, neuromuscular disease that causes muscle weakness, including in the muscles used for breathing and swallowing. His treatment requires ongoing medical treatment and that he takes medication regularly and without interruption.

In May 2021, Israeli authorities decided to extend his detention without charge for an additional four months despite Amal's rare autoimmune disorder. An Israeli military court judge at Israel's Ofer military court, located near Ramallah in the occupied West Bank, approved a new four-month administrative detention order against Amal on May 20, 2021.

The UN WGAD issued an opinion in November 2021 analyzing Nakhleh's case and found that his detention was arbitrary, concluding that he was detained on a discriminatory basis, including "national, ethnic, and social origin" and his gender. The opinion noted that the Israeli military shows a "clear pattern of targeting young males for detention." The UN WGAD also reaffirmed its position that Israeli military courts imposing administrative detention do not meet international legal requirements for independence and impartiality.⁶⁷

Amal was originally arrested on November 2, 2020, and charged with throwing stones. However, on November 24, 2020, he was ordered to be released on bond by Israeli military judge Sharon Keinan, according to Ha'aretz. The Israeli military prosecution appealed the ruling to the Military Court of Appeals, arguing a secret file on Amal would justify an administrative detention order against him. On December 10, 2020, the Israeli military prosecution appeal was rejected, and Amal was subsequently released. Military prosecutors said that if released on bail, Amal would be put in administrative detention, according to Ha'aretz.

Then, Israeli forces arrested Amal from his home around 3:30 a.m. on January 21, 2021, in the occupied West Bank city of Ramallah, and the initial six-month administrative detention order was issued and accepted against him on January 25, 2021. That order was later reduced by two months on appeal and expired on May 20, 2021.

Israeli military court judges approved three additional four-month administrative detention orders against Amal on May 20, 2021, September 19, 2021, and January 13, 2022.

Amal was detained at Israel's Megiddo prison, located inside Israel, north of the occupied West Bank since the initial administrative detention order was issued.

He was released after being held for 481 days by Israeli authorities in administrative detention without charge or trial.



⁶⁷ U.N. Working Group on Arbitrary Detention, Opinion No. 60/2021 concerning Amal Nakhleh (Israel), U.N. Doc. A/HRC/WGAD/2021/60 (Nov 17, 2021), https://www.ohchr.org/sites/default/files/2022-01/A_HRC_WGAD_2021_60_isr_AEV.pdf.

c. Mohammad Mansour

Israeli forces arrested Mohammad Mansour from his home in Jenin around 2 a.m. on April 9, 2021 when he was 17 years old. He was detained for 15 days in degrading and inhumane conditions at Israel's Huwwara detention center located in the northern West Bank. While at Huwwara detention center, he appeared via video link before Israel's Salem military court and his detention was extended on at least five different occasions. Then, on April 25, 2021, an Israeli military court judge at Ofer military court approved a six-month administrative detention order against him that expired on October 25, 2021.



Mansour appealed the administrative detention order and on August 9, 2021, the Israeli Military Court of Appeals at Israel's Ofer military court held a hearing to consider the appeal. The appeal was rejected and Mohammad was imprisoned at Israel's Megiddo prison, located inside Israel, north of the occupied West Bank.

Later, a second administrative detention order was approved on October 7, 2021, for an additional four-month period and then an Israeli military court judge approved a four-month administrative detention order on February 13, 2022, extending the detention of Mansour until at least June 6, 2022.

After nearly 14 months in Israeli custody without charge or trial, Mohammad was released on June 6, 2022.

Neither Mohammad nor his lawyer was provided with access to any evidence against him during his detention. His prolonged detention was based on "secret information" that was not provided to him or his lawyer.

In April 2022, following a petition submitted by DCIP on Mohammad's behalf, the UN WGAD adopted an opinion during its 93rd session finding that Israeli authorities' imprisonment of Mohammad amounted to an arbitrary detention and called for his immediate release.⁶⁸

The Working Group found that Mohammad's detention lacked any legal basis, that Israeli authorities denied his right to a fair trial, and that he was detained on a discriminatory basis, namely his national, ethnic, and social origin. The opinion noted that Israeli authorities' use of administrative detention follows familiar patterns of due process rights violations and indicated that "under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity."

⁶⁸ U.N. Working Group on Arbitrary Detention, Opinion No. 4/2022 concerning Mohammad Ghassan Ahmad Mansour (Israel), U.N. Doc. A/HRC/WGAD/2022/4 (May 25, 2022), <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-4-ISR-AEV.pdf>.

d. Jihad Bani-Jaber

Israeli authorities are arbitrarily detaining a 16-year-old Palestinian boy by denying his release from Israeli custody after he completed a custodial sentence in September 2022.

Heavily-armed Israeli forces arrested Jihad Maher Nafez Bani-Jaber, 16, around 3 a.m. on May 3, 2022, from his home in Aqraba, near Nablus in the northern occupied West Bank. Jihad was held in isolation for interrogation purposes for 13 days at Israel's Petah Tikva interrogation and detention center located in central Israel.

While at Petah Tikva interrogation and detention center, Jihad was interrogated several times and was not allowed to consult with a lawyer or have a lawyer present. Israeli military authorities extended his detention up to eight separate times before a charge sheet was issued against him on May 31, 2022 in Israel's Salem military court.

Jihad was accused of not sharing information with Israeli authorities and agreed to a plea agreement for a four-month sentence, including time spent in isolation and pre-trial detention. The plea agreement was accepted by an Israeli military court judge and Jihad was scheduled to be released on September 1, 2022.

After completing the four-month sentence, instead of being released from Israeli custody, Israel's Vice Military Commander for the West Bank issued a four-month administrative detention order against him on September 1, 2022. At the end of 2022, Israeli authorities renewed his administrative detention for another four months. On April 30, 2023, his administrative detention was renewed again for another four months. Jihad remains arbitrarily detained by Israeli authorities at least through August 30, 2023, when the latest order expires.

C. Category V. No Israeli child comes into contact with the Israeli military courts

Israeli forces have established a clear pattern and practice of targeting Palestinian boys for arrest and prosecution on the basis of their Palestinian identity as Israeli authorities prosecute between 500–700 Palestinian boys before the Israeli military courts each year. Additionally, while Israeli military law should apply to any person located within occupied territory and despite Israeli children living throughout the occupied West Bank in illegal Israeli settlements, no Israeli child comes into contact with the Israeli military court system.

Accordingly, the deprivation of liberty experienced by Palestinian boys targeted for arrest and prosecution in the Israeli military court system falls within category V because it constitutes a violation of international law for reasons of discrimination based on national, ethnic and social origin, in violation of Articles 2 and 7 of the Universal Declaration of Human Rights and Articles 2(1) and 26 of the International Covenant on Civil and Political Rights.



Demonstrators gather to protest against Israel, outside the US Capitol in Washington, DC, on April 30, 2022.
(Photo: AFP / Stefani Reynolds)

9. Conclusions and recommendations

Often in the international community, there is a notion that Israeli military courts are “broken” and can be improved or “fixed.” This mistakenly presumes that the Israeli military detention and court system is interested in administering justice. As Palestinian children continue to experience widespread ill-treatment and torture and the systematic denial of due process rights amounting to arbitrary detention by default, it becomes clear that the Israeli military detention and court system is not interested in justice.

Rather, the widespread and systematic ill-treatment of Palestinian children from the moment of their arrest by Israeli forces and their arbitrary detention by Israeli authorities illustrates how the system serves control interests of a seemingly permanent Israeli military occupation. As long as Palestinians live under Israeli occupation, the Israeli military courts will continue to systematically deny basic rights and Israeli authorities will continue to make only cosmetic changes to the Israeli military law.

In actuality, the Israeli military detention and court system is working exactly as it is intended to, and failing to acknowledge this simply perpetuates injustice for Palestinian children.

To be clear, in no circumstance should children be detained or prosecuted under the jurisdiction of military courts.

In order to challenge systemic and seemingly perpetual impunity and increase immediate protections for children, Defense for Children International – Palestine (DCIP) strongly urges that the following measures be taken:

1) The Government of Israel should end the practice of arresting and prosecuting Palestinian children from the occupied West Bank.

2) The State of Palestine should:

- Reissue a declaration accepting the International Criminal Court's jurisdiction over crimes committed in the Occupied Palestinian Territory since July 1, 2002;
- Make efforts that enhance the capacity of former Palestinian child prisoners to cope with the trauma and negative impact of incarceration after the children's release from Israeli military detention; and
- Make efforts to help society understand the situation of former child prisoners, particularly in schools, to mitigate stigmatization and prepare society to accept these children through family intervention and community education.

3) The international community should:

- End complicity and financial and diplomatic support to the Israeli apartheid regime, specifically taking all necessary action to ensure no foreign military aid or assistance is provided to Israeli military and police units involved in the arrest and arbitrary detention of Palestinian children;
- Demand the Government of Israel end the practice of arresting and prosecuting Palestinian children from the occupied West Bank;
- Fully support the International Criminal Court's exercise of jurisdiction over the Occupied Palestinian Territory, and oppose and refrain from taking any punitive measures against the State of Palestine for engaging with the International Criminal Court; and
- Use all available means to hold Israeli authorities accountable for targeted attacks and repression of Palestinian human rights and civil society organizations.

Defense for Children International - Palestine is an independent, local Palestinian child rights organization based in Ramallah dedicated to defending and promoting the rights of children living in the West Bank, including East Jerusalem, and the Gaza Strip. Since 1991, we have investigated, documented and pursued accountability for grave human rights violations against children; held Israeli and Palestinian authorities accountable to universal human rights principles; and advocated at the international and national levels to advance access to justice and protection for children. We provide direct legal aid to children in distress.



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