



Military Court Watch

Monitoring the treatment of children in Israeli military detention

UNICEF: CHILDREN IN ISRAELI MILITARY DETENTION

RECOMMENDATIONS

February 2013

ANNEXURE G

Date: November 2023

#	Recommendation	Substantially Implemented	Comments
Compliance with International Norms and Regulations			
1	The best interests of the child shall be a primary consideration. ¹	No	During the Reporting Period, ² most children most children were arrested at night, zip tied, blindfolded, physically assaulted, threatened, and denied their basic legal rights under Israeli military law. (See Part I - A/Y)
2	Non-discrimination. ³	No	During the Reporting Period military law was applied to Palestinian children in the occupied West Bank while civilian law, with more rights and protections, was applied to Israeli children living in settlements in the same territory - technically military law applies to everyone in the occupied West Bank. (See Part I - page 6, paragraph 3.3)
3	Use of detention only as a measure of last resort. ⁴	No	During the Reporting Period detention was the default position for almost every Palestinian child arrested by Israeli authorities in the occupied West Bank. (See Part I - S/T)
4	Alternatives to detention.	No	During the Reporting Period few alternatives to detention were available or utilized in the military detention system. (See Part I - S/T)
5	Diversion. ⁵	No	During the Reporting Period no policy of diversion was applied in the military detention system. (See Part I - S/T)
Notification			
6	All children shall be informed of the reasons for their arrest at the time of arrest and in a language they understand. ⁶	No	During the Reporting Period most Palestinian children are not informed of the reasons for arrest, at the time of arrest, and notification forms, when provided, were usually incomplete and/or written in Hebrew. (see Part I - C)
7	The competent military authority shall, on its own initiative, notify the legal guardian or close family member of the child about the arrest, reasons for arrest and place of detention, as soon as possible after the arrest, and in Arabic. A legal guardian must be authorized to accompany the child during transfer and stay with the child at all times during the interrogation.	No	During the Reporting Period in 57 percent of cases where a Palestinian child was arrested from home, no written information was provided to the parents. When written information was provided, it was generally incomplete and frequently provided in Hebrew. No cases of a parent/guardian attending a child's interrogation have been documented since 2019. (See Part I - C/M/R)
8	All children and their legal guardian or close family member should be provided with a written statement in Arabic informing them of their full legal rights while in custody.	No	During the Reporting Period no cases were documented of parents/guardians/family members being provided with written information about the child's rights in custody. In the overwhelming majority of cases children were not informed in writing

			of their legal rights while in custody. (See Part I - N/O)
Timing of Arrests and Arrest Warrants			
9	All arrests of children should be conducted during daylight, notwithstanding exceptional and grave situations.	No	During the Reporting Period 55 percent of Palestinian children detained by the military authorities in the occupied West Bank were arrested at night. (See Part I - A)
10	Copies of all relevant documentation, including arrest warrants and summons for questioning, should be provided to the child's legal guardian or close family member at the time of arrest or as soon as possible thereafter, and all documentation should be provided in Arabic.	No	During the Reporting Period in 57 percent of cases where Palestinian children was arrested from home the parents/guardian/family member were not provided with any documentation. In cases where documentation was provided it was generally incomplete and frequently written in Hebrew. No cases of written summons have been documented since 2021. (Part I - B/C/R)
Methods and Instruments of Restraint			
11	Children should only be restrained for the time that is strictly necessary. Use of restraining methods and instruments should respect the child's dignity and not cause unnecessary pain or suffering.	No	During the Reporting Period 96 percent of children detained were hand tied or cuffed and in some cases leg shackled - In 84 percent of these cases the military's standard operating procedures for the use of restraints were not followed. Most children were restrained for lengthy periods of time and reported pain or suffering. (Part I - D)
12	The use of single hand ties should be prohibited in all circumstances, and the prohibition must be effectively monitored and enforced.	No	During the Reporting Period many children continued to be restrained with a single zip tie. In 84 percent of these cases the military's standard operating procedures for the use of restraints were not followed. (Part I - D)
13	At all times during transfer, children should be properly seated, not blindfolded and treated with dignity.	No	During the Reporting Period 86 percent of children were blindfolded and 54 percent were transferred from the place of arrest to a military base or interrogation centre on the metal floor of a military vehicle. (Part I - F)
14	Except in extreme and unusual circumstances, children should never be restrained during interrogation, while detained in a cell or while attending court.	No	During the Reporting Period some children continued to be restrained during interrogation and while in cells. In all cases children attend military court hearings in leg shackles. (Part I - D)
15	The practice of blindfolding or hooding children should be prohibited in all circumstances.	No	During the Reporting Period 86 percent of children were blindfolded following their arrest. In August 2019, lawyers for the military authorities informed Israel's Supreme Court "that military orders and regulations forbid blindfolding of detainees, and action to clarify the rules has been taken and will continue to be taken on a continuous basis." This statement cannot be reconciled

			with the evidence. (Part I - E)
Strip Searches			
16	Strip searches should be carried out only under exceptional circumstances and used only as a last resort. When conducted, strip searches should be done with full respect for the dignity of the child and be conducted by more than one person of the same gender as the child, in the presence of a parent, guardian or other responsible adult, wherever possible. The strip search should be done in a private location and should not involve the removal of all garments at the same time. ⁷	No	During the Reporting Period 65 percent of children detained were strip searched. In no cases were strip searches conducted in accordance with UNICEF's recommendation. (Part I - L)
Access to a Lawyer			
17	All children in detention shall have prompt and regular access to an independent lawyer of their choice. ⁸	No	During the Reporting Period 81 percent of children did not consult with a lawyer prior to interrogation as required under Israeli military law. (Part I - N)
Judicial Review of the Arrest and Detention			
18	All children in detention shall, within 24 hours of their arrest, have prompt and effective access to an independent judicial review of the legality of their arrest and detention. ⁹	No	During the Reporting Period Israeli military law stipulates that children must be brought before a military court within 24-72 hours of arrest - depending on the age of the child (see Military Order 1798 (April 2018)). These time limitations are at least double the time periods applied to Israeli settler children living in the same territory. (MCW Annual Report (2021/22) - page 30)
19	The military courts should review every child's detention at least every two weeks, to ensure that detention is used only as measure of last resort and for the shortest time possible; that the child is not being subjected to any form of ill-treatment; and that the child is being granted access to relatives, a lawyer and a medical doctor.	No	During the Reporting Period there was no systematic procedure to ensure that a child's detention was reviewed every two weeks.
Medical Examinations			
20	Both prior to and after questioning, as well as upon transfer to another place of detention, the detained child should undergo a medical inspection by an independently qualified medical doctor. ¹⁰ The medical inspection should abide by the highest standards of medical ethics, document objectively any complaints and findings, and assess the child's physical and psychological state. ¹¹	No	During the Reporting Period most children were given a cursory medical inspection prior to interrogation. There is little evidence that the child's psychological state is assessed. Some children remain tied during the inspection and complaints are generally ignored. In many cases there is a sense that the inspection is more about fulfilling a bureaucratic requirement than ensuring the welfare of the child. (Part I - K)
21	Subject to the consent of the child's legal	Yes	During the Reporting Period medical records,

	guardian, all medical records should be made available to the child's lawyer.		such as they are, were available to the child's lawyer on request. This generally did not occur as most cases were concluded by way of plea bargain without an in depth review of the evidence.
22	Children deprived of their liberty shall have access to prompt and adequate medical care at all times. ¹²	No	During the Reporting Period children were generally provided with a cursory medical examination following their arrest whose primary purpose appears to be to assess the child's fitness for interrogation rather than to assess the child's general wellbeing.
Questioning or Interrogation			
23	The questioning or interrogation of a child should always take place in the presence of a lawyer and a family member, and should always be audio-visually recorded for the purpose of independent oversight. ¹³	No	During the Reporting Period no child was interrogated in the presence of their lawyer and in 97 percent of cases parents did not attend the interrogation, even though the military has acknowledged that there is a discretion for parents to be present. In 81 percent of cases children did not even consult with a lawyer prior to interrogation - as required under Israeli military law. In no case was an audio-visual recording of an interrogation provided to the child's lawyer prior to the first hearing. (Part I - M, N)
24	At the commencement of each interrogation session, the child should be formally notified of his or her rights in Arabic, and in particular, informed of the privilege against self-incrimination.	No	During the Reporting Period 84 percent of children were not informed of their right to silence prior to their first interrogation. In cases where children are interrogated multiple times it is extremely rare for them to be informed of their legal rights prior to each interrogation session. (Part I - O)
25	Each interrogation session should begin with the identification of all persons present. The identity of all persons present should be included in the record and available to the child's lawyer.	No	During the Reporting Period most interrogators did not identify themselves and in cases where they did the name given is generally a pseudonym. (Part I - N, O, P (cases cited therein))
Solitary Confinement			
26	In no circumstances whatsoever should a child be held in solitary confinement.	No	During the Reporting Period 11 percent of children were placed in solitary confinement for an average of 13.6 days. Between 2020-2022 this percentage increased to 31 percent of detained children. (Part II)
Confessional Evidence			
27	No statement or confession made by a child deprived of his or her liberty, other than one made in the presence of a judge or the child's lawyer, should have probative value at any stage of the criminal proceedings, except as evidence against those who are accused of	No	During the Reporting Period confessional evidence continued to play a significant role in military court proceedings. (Part I - N, O)

	having obtained the confession by unlawful means. Cases involving children in military courts should not be determined solely on the basis of confessions from children.		
28	All confessions written in Hebrew and signed or adopted by a Palestinian child should be rejected as evidence by the military courts.	No	During the Reporting Period confessional evidence continued to play a significant role in military court proceedings. (Part I - R)
Bail and Plea Bargains			
29	Incarceration of a child should always be a measure of last resort and for the shortest possible time. Except in extreme circumstances, release on bail should be the standard procedure.	No	During the Reporting Period ¹⁴ 96 percent of children were denied bail. In the remaining 4 percent of cases, children were only released on bail after spending an average of 59 days in detention. (Part I - S)
30	The conditions under which bail and plea bargains are granted should be revised to make them consistent with the Convention on the Rights of the Child.	No	During the Reporting Period the overwhelming majority of children were denied bail. (Part I - S)
Location of Detention and Access to Relatives			
31	In accordance with international law, all Palestinian children detained in the Israeli military detention system shall be held in facilities located in the occupied Palestinian territory. ¹⁵	No	During the Reporting Period 58 percent of Palestinian child detainees were transferred out of the occupied West Bank to prisons located inside Israel amounting to between 4,466 - 6,380 children. According to the Israeli Prison Service, the transfer rate increased to 70 percent in 2023. ¹⁶ (Part 3A)
32	Wherever a child is detained, the right of family members to visit should be fully respected. All necessary measures should be taken to ensure that the administrative procedures in support of family visits, including all necessary permits, are promptly facilitated no later than 14 days after arrest.	No	During the Reporting Period applications for permits to visit children in prison continued to take up to 3 months. In some cases parents continued to be denied permits on "security grounds". Since 7 October 2023, the prisons have been placed in "lock down" and family visits suspended. (Part I - W)
33	All children should be entitled to regular telephone communication with their families in order to maintain close social relations.	Partial	During the Covid-19 pandemic prison visits were suspended. In lieu of family visits, the prison authorities installed phones which generally could be accessed by children once every two weeks for 10 minutes. This practice continued after the pandemic although the evidence suggests that it is not implemented uniformly in every prison. Since 7 October 2023, the prisons have been placed in "lock down" with telephone communication suspended. (Part I - W)
Accountability			
34	Any complaint by a child, at any stage of his or her detention, regarding any form of violence and unlawful treatment, shall be promptly, diligently and independently	No	During the Reporting Period accountability for unlawful treatment was minimal. (Part I - K, Y)

	investigated in accordance with international standards. All perpetrators shall be brought promptly to justice. ¹⁷		
35	Unless the allegations are manifestly unfounded, the personnel allegedly involved in the unlawful treatment of children should be suspended from duties involving contact with children, pending the outcome of an independent investigation and any subsequent legal or disciplinary proceedings.	No	During the Reporting Period MCW has seen no evidence to indicate compliance with this recommendation. (Part I - Y)
36	In addition to efficient and effective complaint mechanisms, Israeli military authorities should take all necessary measures to establish effective and independent internal oversight mechanisms to monitor the behaviour of all personnel in contact with children in Israeli military detention.	No	During the Reporting Period MCW has seen no evidence to indicate compliance with this recommendation. (Part I - Y)
37	Child victims of ill-treatment should obtain redress and adequate reparation, including rehabilitation, compensation, satisfaction and guarantees of non-repetition.	No	During the Reporting Period MCW has seen no evidence to indicate compliance with this recommendation.
38	The Israeli authorities should give immediate consideration to establishing an independent investigation into the reports of ill-treatment of children in the military detention system, in accordance with the 2002 recommendations made by the UN Special Rapporteur on the situation of human rights on Palestinian territories occupied since 1967. ¹⁸	No	During the Reporting Period MCW has seen no evidence to indicate compliance with this recommendation.

¹ Convention on the Rights of the Child (CRC), article 3.

² Reporting Period: 2013-2023

³ CRC, article 2.

⁴ CRC, article 37(b); and Beijing Rules, Rule 13.

⁵ Beijing Rules, Rule 11.

⁶ International Covenant on Civil and Political Rights (ICCPR), article 9(2); and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/RES/43/173 (9 December 1988), Principles 13, 14 and 16.

⁷ The child should keep a top garment on while searched on the lower part of the body and keep a lower garment on while searched on the top part of the body.

⁸ ICCPR, article 14; Body of Principles on Detention, Principle 17; and CAT/C/ISR/CO/4, paragraph 15.

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

¹⁰ Body of Principles on Detention, Principle 24.

¹¹ See in particular: The Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly in 1982; and the Declaration of Tokyo adopted by the World Medical Association in 1975.

¹² See in particular the Standard Minimum Rules for the Treatment of Prisoners, Rule 22, 24, 25, 26, 52 and 82; and the Body of Principles on Detention, Principle 24.

¹³ See CRC, article 40(2)(b)(ii); Committee on the Rights of the Child, General Comment No. 10, paragraph 58; ICCPR, article 14(3)(b); Human Rights Committee, General Comment No. 20, paragraph 11; Human Rights Committee, Concluding Observations, Israel (2010), ICCPR/C/ISR/CO/3, paragraph 22; Committee against Torture, Concluding Observations, Israel (2009), CAT/C/ISR/CO/4, paragraphs 15, 16, 27 and 28. The primary sources for the audio-visual recording of interrogations are: CRC, article 40(2)(b)(iv); Committee on the Rights of the Child, General Comment No. 10, paragraph 58; CAT, article 2; Committee against Torture, General Comment No. 10, paragraph 58; CAT, article 2; Committee against Torture, General Comment No. 2, paragraph 14; Committee against Torture, Concluding Observations, Israel (2009), CAT/C/ISR/CO/4, paragraph 16; and the Human Rights Committee, Concluding Observations, Israel (2010), ICCPR/C/ISR/CO/3, paragraph 22.

¹⁴ In this category data is available for 2018-2022.

¹⁵ Fourth Geneva Convention, article 76.

¹⁶ At the time of writing the IPS has issued data up to 30 June 2023.

¹⁷ See Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in resolution 55/89.

¹⁸ UN Special Rapporteur (OPT), available at: www2.ochr.org/english/bodies/cat/docs/co/IsraelCO27.pdf.