

Minors in Jeopardy

**Violation of the Rights
of Palestinian Minors by
Israel's Military Courts**

- Executive Summary -

בִּתְּסֵלֶם
B'TSELEM
بتسيلم

Minors in Jeopardy

Violation of the Rights of Palestinian Minors by Israel's Military Courts

Executive Summary | March 2018

Every year, hundreds of Palestinian minors undergo the same scenario. Israeli security forces pick them up on the street or at home in the middle of the night, then handcuff and blindfold them and transport them to interrogation, often subjecting them to violence en route. Exhausted and scared – some having spent a long time in transit, some having been roused from sleep, some having had nothing to eat or drink for hours – the minors are then interrogated. They are completely alone in there, cut off from the world, without any adult they know and trust by their side, and without having been given a chance to consult with a lawyer before the interrogation.

The interrogation itself often involves threats, yelling, verbal abuse and sometimes physical violence. Its sole purpose is to get the minors to confess or provide information about others. They are taken to the military court for a remand hearing, where most see their lawyer for the first time. In the vast majority of cases, the military judges approve remand, even when the only evidence against the minors is their own confession, or else allegedly incriminating statements made against them by others. This is the case even when the statements were obtained through severe infringement of the minors' rights. Given these circumstances and that a prison sentence is the likely outcome in any event, the minors agree to plead guilty as part of a plea bargain. They sign it so that they can resume their normal lives as soon as possible, after serving the prison sentence set out in the plea bargain, which was then approved by the justice of the juvenile military court.

Over the past decade, the state has made several changes to the military orders that deal with the arrest and detention of minors and their treatment in the military courts. On the face of it, these changes were meant to improve the protections afforded to minors in the military justice system. However, the changes Israel made have had no more than a negligible impact on minors' rights. It would seem that they have far more to do with improved appearances than with what happens in actual practice. The facts and figures all demonstrate that minors' rights are still being regularly and systematically violated.

Impact the so-called improvements in the military justice system have had on minors' rights

1. The military juvenile court does no more than approve plea bargains

The military juvenile court came into existence in 2009 and has been operating ever since. The state considers its establishment a landmark achievement in the protection of minors' rights in the military justice system. In practice, however, it has failed to improve the safeguarding of the rights of minors facing charges.

The jurisdiction of the military juvenile courts does not extend to minors' remand hearings, both pre- or post-indictment, despite there being no substantive reason for this limitation and even though the hearings constitute a major part of the legal proceedings against the minors. Remand hearings are held at the ordinary military court. However, when one of the detainees whose case is being heard on a particular day is a minor, the judge instructs the adult detainees and the spectators to leave the courtroom, and hears the minor's case separately. Yet it is still the same military judge, and it is still the same military courtroom.

The military juvenile court is given the authority to hear the trial itself. Yet trial hearings are very rare because the overwhelming majority of the cases are closed in a plea bargain between the defense and the prosecution; the prosecution usually drops some of the charges, the defendant pleads guilty to others, and the parties agree on the sentence, including the length of the prison term and the fine to be paid. The reason that so many defendants are prepared to enter into plea bargains is the military courts' policy on detention which results in minors being kept in custody from the time they are arrested until after they serve their prison sentence.

Going through trial while in prison is fraught with a host of difficulties, including multiple, exhausting trips back and forth between the detention facility and the court. In addition, defendants know that if

convicted, they will surely be given a prison sentence, and that even in the extremely unlikely event that they are ultimately acquitted, they will probably have been behind bars – in custodial remand – the same or more time as the prison term they would get in a plea bargain.

All this results in a situation in which the military prosecution rarely has to go to trial, in which it would have to present evidence of the minors' guilt and give them the chance to refute it by examining witnesses and presenting alternative evidence. It is thus that the role of the military juvenile court is reduced to signing off on plea bargains already reached between the prosecution and the defense.

2. Parents are excluded from the process

The state argues that the amendments made to the military orders provide for a great deal of parental involvement and give them a "central role" in proceedings against their child. For example, the orders stipulate that parents must be informed that their child is being taken into interrogation; they accord parents the right to be present at hearings, entitle them to file motions to the court on his behalf, and take part in sessions reviewing rehabilitation proceedings. Once again, these changes are of no more than symbolic import.

The level of involvement provided for in the new orders and procedures is negligible to begin with. For example, it does not even grant parents the right to be present during their child's interrogation. In addition, the orders set out a host of exceptions that allow authorities to deny parents even the limited role granted. Moreover, since the vast majority of the cases never even go to trial, ending instead in a plea bargain, parents actually have no opportunity to be involved in the trial.

3. Reduced detention times have no impact on minors' detention

Following several High Court petitions, some of the detention periods instituted in the military orders applicable to residents of the Occupied Territories were reduced for the purpose of judicial review. It was at this point that limitations on detention periods specifically for minors were first instituted. The reduced periods of detention addressed the period

of initial detention before being brought in front of a judge, remand in custody prior to indictment, and post-indictment remand (i.e., remand in custody pending completion of legal proceedings).

The shortened periods of detention set out did nothing to reduce the number of minors being held in detention and have had no impact on the rights of minors facing charges in the military justice system. For one thing, the detention times currently prescribed in the military orders can be extended relatively easily. Second, and more importantly, reduced detention times can be meaningful only under a system that practices substantive judicial review of each and every detention decision. It can be meaningful only under a system which considers detention an exceptional measure to be resorted to only when there is no other choice. Instead, in the military courts, the detention of Palestinian minors is standard procedure, and the presumptions introduced by the military judges result in lengthy detentions.

The key, decisive phase: Initial arrest and interrogation

The amendments which the state draws attention to address what goes on in the military courts proper. Yet these changes do not deal with the crucial stages of the initial arrest and interrogation, so that the state's focus on these amendments is no more than a smokescreen designed to divert attention from the crux of the matter. The way the military justice system works, what happens during the initial arrest and interrogation – and especially obtaining a confession from the minor or incriminating testimony from others – is what determines the case.

During these early phases, minors suffer much harm. They undergo the process in utter isolation, without their parents or a lawyer by their side, or any other adult who has their best interests at heart, to explain what is to come and inform them of their rights. Instead, they are surrounded by adults who are representatives of the regime of occupation under which they live. Some do not even speak their language, and all are entirely focused on extracting a confession or information from the minors.

The state argues that military procedures prohibit any harm to minors during the arrest and interrogation. The state also alleges that where such harm does occur, the military court takes a stern approach and often enough orders the release of the minor in question. The state's claims are completely unfounded.

The procedures the state cites are not implemented, but even if they were, they provide only partial protection. They do not restrict nighttime arrest or nighttime interrogation of minors; they do not require arrest to be a measure of last resort; and they do not provide for parental presence during the interrogation. Provisions along these lines are meant to protect minors and counter the inherent power imbalance between them and the interrogators. The fact that the minors go through the interrogation completely alone, with no possibility of consulting anyone who will look out for their interests and well-being severely undercuts the fairness of the investigation and the minors' chances of arguing their case convincingly.

Moreover, in point of fact, the military courts do not order the release of minors due to flaws in the interrogation. As a rule, even in cases in which they complain that their rights have been abused, minors are kept in custody from the moment they are arrested until the end of their prison sentence. The cases the state boasts of – of justices ordering that minors be released due to defects in the interrogation – are isolated exceptions and in no way reflect the longstanding policy of the courts. In hundreds of judgments that the state does not cite, military justices refer back time and again to the same case law they view as compelling and explain why the above-mentioned atypical rulings do not apply to the case at hand. The arrest of minors is perceived as standard court practice, and judges repeatedly state that the age of the defendant is just one of the considerations a judge may take into account, if at all.

Furthermore, the military courts have ruled that allegations by minors that their confessions were obtained through an interrogation that violated their rights are to be heard and addressed during the proceedings of the main trial. Until that time, the courts remand them to custody. Given that the

vast majority of the cases end in plea bargains, the said "main trial" never takes place. Consequently, the prosecution never has to prove that the minors' rights were upheld during their interrogation or that their confessions were lawfully obtained.

Keeping up appearances

Israel chose to institute a military court system in the West Bank and to use it also when trying Palestinian minors. Official documents indicate that the state understands, at least in theory, that minors are entitled to special protections and that a juvenile justice system must be guided by principles different from those that apply to adult proceedings. However, the situation on the ground indicates that these statements are no more than lip service. They are entirely in the realm of public relations, and bear no relation to what actually goes on.

The changes introduced to the military justice system are superficial, and affect nothing more than form. The system continues to ignore the basic tenets that are the cornerstone of juvenile justice systems under international law as well as in many countries around the world, including Israel. Among these tenets are the principle of the best interests of the child, that arrest and detention must be measures of last resort in the absence of any other choice, and a preference for rehabilitation over legal proceedings.

In the military juvenile justice system, protocols and orders are written by Israelis, always over the heads of Palestinians, who have no way of influencing the content of the orders that govern their lives. The rules are implemented by soldiers, judges and prosecutors, all of whom are uniformed Israelis representing the interests of the occupying country. It is a system in which Palestinians are always suspect. The military courts are not, nor can they ever be, neutral arbiters. They constitute one of the main apparatuses of the occupation Israel uses to oppress the Palestinian population and quell any sign of resistance to its continued control over the Occupied Territories.

This is also why attempts by Israeli officials to draw parallels between the military justice system and the Israeli justice system are futile. The two systems are predicated on different values and are designed

to protect different interests. Whereas the courts in Israel proper, inside the Green Line, reflect the interests of the defendants' own society and seek to protect them, the military courts in the West Bank reflect the interests of a regime of occupation, and primarily its determination to endure. These courts do not reflect the interests of the defendants or their society. This substantive difference leads to the disparity between the two systems in terms of how arrests are made, the types of offenses adjudicated, the evidentiary requirements for indictments, the grounds for detention, and the sentences handed down. Therefore, any comparison of figures across these two systems is irrelevant and designed only to legitimize the military justice system.

The military justice system is not the only area in which Israel takes pains to create a façade of legality in an attempt to hide the human rights abuses associated with enforcing the regime of occupation. Israel does this with the military law enforcement (or rather, non-enforcement) system. The complex apparatus it established, ostensibly designed to address Palestinians' complaints against soldiers, actually serves as a whitewashing mechanism. Israel does this when it demolishes Palestinian homes, alleging that they were built without construction permits. Yet in reality, Palestinians have no way of actually securing such permits so they can build their homes legally. It is a situation the Israeli authorities are not only fully aware of but are actually responsible for creating. This is also what Israel

does when it insists that it has not annexed the West Bank. Yet in practice, Israel treats the territory as its own, applying its laws at will and ignoring the needs of the Palestinian population.

This façade does nothing to safeguard human rights. Its sole purpose is to legitimize the regime of occupation. To that end, this regime occasionally introduces processes, meetings, committees, pilot projects and reports. The façade also makes the regime of occupation more palatable to the public, both in Israel and internationally. It is easier to stomach the imprisonment of a boy when a judge appears to have "considered the full weight of the evidence." It is easier to stomach the demolition of the home of an entire family because of an attack one of its members carried out in Israel, when it seems like a Supreme Court justice has "reviewed the case." It is easier to stomach the expansion of a settlement when it seems that the land on which it was built had been declared "state land" as per proper procedure instituted by the authorities.

But behind this façade lurks a regime that has been responsible for the violent abuse of millions of people, day in and day out, without anyone or anything getting in its way, for fifty years now. No law, no military order, no procedure or ruling can obscure this fact. Lift the veil, and the regime of occupation is exposed in all its ugliness for all to see.

