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By Brad Parker

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Palestinian Children in Israeli Military Detention

By Brad Parker

Over the past several decades, activists, grassroots organizations, and institutions generally deemed congressional advocacy focused on Palestinian rights as a completely futile exercise. Many avoided direct engagement with lawmakers, often expressing it would be a waste of time. Much necessary effort was put into public education campaigns, speaking tours, and BDS (boycott, sanctions, and divestment campaigns), which all have helped build and expand a broad U.S.-based movement demanding equality, freedom, and justice for Palestinians living under Israeli military occupation. However, without complementary efforts targeting policy and decision makers to help leverage these efforts for political change, the U.S.-based Palestinian rights movement lacked long-term policy vehicles to organize around.

In 2014, a handful of individuals, organized by American Friends Service Committee (AFSC) and Defense for Children International – Palestine (DCIP), came together in Chicago with the intention of building an evidence-based, rights-based congressional advocacy campaign to demonstrate not only that it wasn't futile to engage with members of Congress on a Palestinian rights issue, but also that it was entirely necessary for building political power to force change.

From these initial discussions, DCIP and AFSC's joint project, the *No Way to Treat a Child* campaign, was born. Launched in June 2015, the goal was to engage members of Congress on a narrowly-tailored and compelling child rights issue, like widespread and systematic ill-treatment and torture of Palestinian children detained by Israeli forces.

In just three years, the campaign has mobilized an extensive network of people across the U.S. through strategic congressional advocacy. In November 2017, we celebrated a historic achievement when Representative Betty McCollum (D-MN) and nine co-sponsors introduced the first-ever bill in the U.S. Congress focused on Palestinian human rights. By the end of September 2018, the bill, H.R. 4391, had 30 sponsors.

Here I will explain how an evidence-based advocacy made this legislation a reality.

About This Issue

Brad Parker is a staff attorney and international officer at Defense for Children International-Palestine and leads its legal advocacy efforts on Palestinian children's rights.

The cover photo by Wisam Hashlamoun/Flash90, taken in the West Bank city of Hebron on Dec. 7, 2017, shows 16-year-old Fawzi al-Juneidi, bloodied, bound and blindfolded, being taken away by over 20 Israeli soldiers.

John F. Mahoney, Executive Director

Evidence-Based, Rights-Based Advocacy

When meeting with policy and decision makers around the world, including members of Congress and their staff, on Palestinian rights issues, I utilize the human rights documentation and evidence collected by DCIP's lawyers and field researchers combined with illustrative and compelling human stories to push for action and accountability. I rely primarily on data and information collected on the ground directly from Palestinian children and families who are victims of human rights violations and work to ensure that policymakers rely on this documentation when setting policy. This is evidence-based advocacy.

As you can imagine, there are obstacles. The first is often getting lawmakers and policy makers to approach issues without being constrained by the traditional political framing rooted in the Oslo Accords or other Middle East "peace process" rhetoric, which has overwhelmingly dominated the political discourse concerning Israelis and Palestinians. I want them to put "final status" issues of borders and territory, Jerusalem, security, and Israel as a Jewish state aside because they are all somewhat irrelevant to a rights-based approach.

What is a rights-based approach? Generally, a human rights-based approach utilizes international human rights law as a framework to advance and operationalize the promotion and protection of universal human rights for all persons.

Yes, so-called "final status" issues are the context and reference point that many following the Israel and Palestine portfolio bring to the table; and, yes, resolution of these issues would have ramifications for individual rights of Palestinians. However, if one is trying to advance Palestinian human rights by highlighting the human impact of Israeli military occupation, then the main point is that realization of human rights is not *contingent* on the resolution of these "final status" issues or other political questions.

Pragmatically, a human rights-based approach provides a conceptual framework to articulate concretely the human rights denials and violations inherent in over 50 years of Israeli military occupation. It provides a framework to examine systemic inequality, discrimination, oppression, and

other issues deeply rooted in the Palestinian experience of life under prolonged Israeli military occupation. It provides a framework of rights and wrongs that not only allows advocates to identify policies and individual conduct as human rights violations, but also provides a structure to demand redress and accountability.

In essence, Palestinians are entitled to universal human rights regardless of whether a policy or decision maker emphatically supports a two-state solution or not. The goal is to empower them to adopt a rights-based discourse so they acknowledge that all Palestinians are, for example, entitled to equality, all civil and political rights, and freedom from torture and ill-treatment, among other rights.

The *No Way to Treat a Child* campaign utilizes documentation, data, and information collected through DCIP's provision of free legal services to Palestinian children detained and prosecuted in the Israeli military court system as the evidence base for advocacy. Approximately 2.9 million Palestinians live in the occupied West Bank, of whom around 43 percent are children under the age of 18. Palestinian children in the West Bank, like adults, face arrest, prosecution, and imprisonment under an Israeli military detention system that denies them basic rights.

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.

Israel has the dubious distinction of being the only country in the world that automatically and systematically prosecutes children in military courts that lack fundamental fair trial rights and protections. Israel prosecutes between 500 and 700 Palestinian children in military courts each year.

Children typically arrive to interrogation bound, blindfolded, frightened, and sleep deprived.

Children often give confessions after verbal abuse, threats, and physical or psychological violence that in some cases amounts to torture.

Israeli military law provides no right to legal counsel during interrogation, and Israeli military court judges seldom exclude confessions obtained by coercion or torture.

These points above are the basic temporal, factual, and legal foundations of the issues highlighted by the *No Way to Treat a Child* campaign. Themes of systemic discrimination, ill-treatment and torture of child detainees, and violations of basic due process and fair trial guarantees are all present.

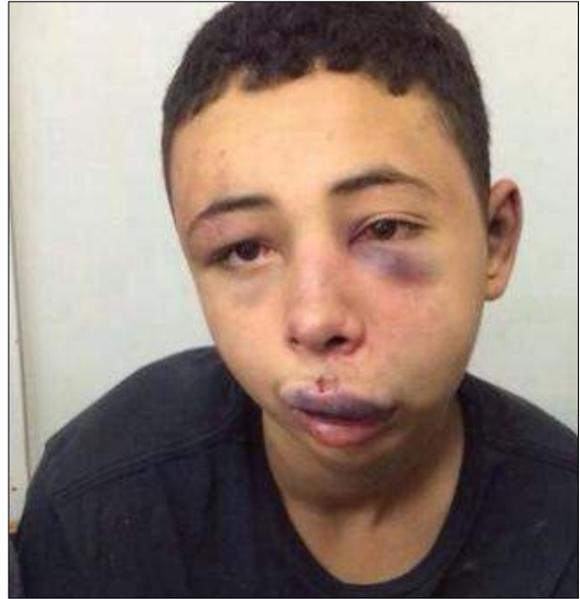
Compelling data and human stories are key to successful evidence-and rights-based advocacy, and empowering Palestinian children and their families to tell their own story is a necessity for successfully conveying the human impact of Israeli military occupation on Palestinians.

When we launched the *No Way to Treat a Child* campaign in June 2015, AFSC and DCIP hosted a congressional briefing on Capitol Hill that included Tariq Abu Khdeir, a Palestinian-American teenager who was beaten unconscious by Israeli paramilitary border police in Jerusalem before being arrested without charge during the summer of 2014. Suha Abu Khdeir, Tariq's mother, described the impact Tariq's arrest and detention had on their family, and highlighted the lack of accountability for Tariq's beating.

More recently, the high-profile detention of two Palestinian teenagers has helped create increasing space to highlight specific violations of Palestinian children's rights by Israeli forces.

Large-scale demonstrations, marches and clashes throughout the West Bank following the Trump administration's decision to recognize Jerusalem as Israel's capital in December 2017 corresponded with a spike in the number of Palestinian child detainees held in Israeli military detention.

The number of children arriving at Israel's Ofer prison in the central West Bank doubled in December, marking a spike in military detention where systematic ill-treatment of Palestinian minors is routine.



15-year-old Tariq Abu Khdeir beaten by Israeli border police.
Photo: Khdeir family.



17-year-old Ahed Tamimi spent 8 months in an Israeli prison for slapping an Israeli soldier.

Credit: Frontline Defenders

One Palestinian teenage girl, Ahed Tamimi, captured the world's attention when she was detained by Israeli forces from her home in the occupied West Bank in the middle of the night on December 19.

Ahed's detention and prosecution in Israel's military court system was not exceptional, but illustrated the widespread, systematic, and institutionalized ill-treatment of Palestinian

child detainees by Israeli forces and the fair trial denials inherent in Israel's military detention system.

Among those held in Ofer was 16-year-old Fawzi al-Juneidi, detained in the southern occupied West Bank city of Hebron on December 7, 2017. A photo of him blindfolded and surrounded by over 20 Israeli soldiers went viral within hours of his detention; see front cover.

My colleague, Farah Bayadsi represented Fawzi in the Israeli military courts. Fawzi told Farah that by the time he arrived to interrogation, one of his shoes had been kicked off and he had been repeatedly beaten and verbally abused for nearly two hours.

He was interrogated without the presence of a lawyer or family member and was allowed access to a lawyer following, not prior to, his interrogation.

Fawzi told Farah in a sworn testimony, "When I arrived at the checkpoint, I remember my face bleeding, mostly my lips because of the beating. They took me to a room, knocked me down to the floor and began kicking me all over my body."

Fawzi told Farah of the extreme pain in his right shoulder prompting her to demand a medical check-up.

On December 25, 2017, 18 days after he was detained, a medical examination confirmed a fractured shoulder sustained during his arrest.

Late on December 27, due to the fracture, Farah was able to get Fawzi released on 10,000 NIS (around US\$2,900) bail and a third-party bond in the same amount.

Fawzi and Ahed are among an estimated 500 to 700 children each year detained by Israeli forces and prosecuted in Israeli military courts that lack fundamental fair trial rights and protections. Their stories have, over the past year, provided the concrete human experience necessary to highlight structural and systemic human rights violations against Palestinian children detained by Israeli forces.

Articulating data and evidence through a human rights-based approach allows specific conduct to be identified as violations, not just immoral or unjust policy. For example, as Israeli authorities and officials operate and maintain two separate legal systems in the same territory, where Israelis and Palestinians have different sets of rights, this amounts to a

violation of basic and fundamental non-discrimination guarantees under international law.

Similarly, evidence of widespread, systematic, and institutionalized ill-treatment of Palestinian child detainees by Israeli forces, which in many cases amounts to torture, is a clear violation of the universal and absolute prohibition against ill-treatment and torture enshrined in international law.

The utility of this approach for congressional advocacy is that human rights violations inherent in Israel's military occupation of Palestinians can be presented in stark, sharply defined terms that remove the issues from the traditional political or policy paradigms. It forces a proactive rights-based discourse where policy makers are faced with few options: either accept and acknowledge the underlying evidence as a violation, or try to justify the wrongdoing.

For the *No Way to Treat a Child* campaign, the question we are asking is: Are you against ill-treatment and torture of Palestinian children or do you support ill-treatment and torture of Palestinian children? This is the question we want constituents to ask all members of Congress.

To be sure, it does not take great moral courage to say that child detainees should not be ill-treated and tortured, but it goes without saying that many members of Congress are not willing to stand up and agree publicly. Thus, in part, the goal is simply to create space and sustained engagement with policy makers on a narrowly-tailored, compelling, Palestinian human rights issue.

In Detail: Palestinian Children in Israeli Military Detention

Between February and November 2017, an average of 310 Palestinian children were in the Israeli prison system each month for "security offences," according to Israel Prison Service (IPS) data. Among them were an average of 60 children between the ages of 12 and 15. The IPS does not release the yearly total number of incarcerated Palestinian children and has stopped consistently releasing monthly data since May 2016.

DCIP collected affidavits from 727 West Bank children detained and prosecuted under the jurisdiction of Israeli mili-

tary courts between 2012 and 2017. The data shows that more than 72 percent of children endured some form of physical violence following arrest and 65 percent faced verbal abuse, humiliation, and/or intimidation.

In 334 out of the 727 cases (46 percent), the Israeli military arrested children from their homes in the middle of the night. In 627 out of the 727 cases (86 percent), Israeli forces arrested children without notifying parents of the reason for arrest.

Of the 727 documented cases, 700 children had no parent present during the interrogation or access to legal counsel. Israeli police also did not properly inform children of their rights in 79 percent of the cases.

Interrogators used physical violence, position abuse, threats, and isolation to coerce confessions from some of these children. Of the 727 children, 117 spent an average of 13 days in solitary confinement for interrogation purposes. In 2017, Israeli authorities held a 16-year-old in isolation for 23 days.

Israeli military court judges seldom exclude confessions obtained by coercion or torture, even those drafted in Hebrew – 300 out of 727 cases (41 percent) – a language that most Palestinian children do not understand. In fact, military prosecutors rely on these confessions to obtain a conviction.

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

Many children maintain their innocence, but plead guilty, as it is the fastest way to get out of the system. Most receive plea deals of less than 12 months. Trials, on the other hand, can last a year, possibly longer. Military judges rarely grant bail, which leaves most children behind bars as they await trial.

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.

Regardless of guilt or innocence, children in conflict with the law are entitled to special protections and all due process rights under international human rights law. 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.

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.

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. International human rights law applies in the Occupied Palestinian Territories (OPT), including the CRC, the Convention against Torture (CAT), and the International Covenant on Civil and Political Rights (ICCPR).

All persons shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal. Torture and ill-treatment are absolutely prohibited without exception. International law non-discrimination and equality protections and guarantees prohibit states from discriminating on the basis of race or nationality in the exercise and implementation of 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.

In July 2013, over a decade later, the Committee on the Rights of the Child again 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 interna-

tional law.

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. By virtue of their age, children enjoy special protection under international humanitarian law.

Israel consistently argues that international human rights law, specifically the treaties it has ratified, does not apply to Palestinians living under Israeli occupation in the Occupied Palestinian Territories (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. 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.

Under international humanitarian law, Israel as the occupying power has the authority to establish military courts in the territory it has occupied since 1967. However, international human rights and humanitarian law, which applies to the OPT, restricts the jurisdiction of the Israeli military courts and guarantees 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.

Despite the fact that Israel has ratified many of the core international human rights treaties, and, as a result, has bound itself to act in accordance with those treaties, Israeli authorities persistently disregard and fail to comply with international law. Trying civilians in military courts should be exceptional, yet Israeli authorities automatically prosecute Palestinian children arrested by Israeli military and police in the occupied West Bank in the military court system.

Aside from the denial of fundamental due process rights, it is doubtful whether the use of military courts to try civil-

ians can ever satisfy the requirements of international human rights law to a trial before an independent and impartial tribunal. The Committee on the Rights of the Child has declared, on June 2, 2008, that "the conduct of criminal proceedings against children within the military justice system should be avoided."

On June 7, 1967, the day Israeli forces occupied the West Bank, including East Jerusalem, Israeli authorities issued Military Proclamation No. 2, which provided the military commander in the area with full legislative, executive, and judicial powers over the West Bank. Since then, Palestinian children have been living under Israeli military law and prosecuted in military courts that lack basic due process rights.

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

Since 1967, over 1,700 military orders have been issued, which regulate 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 in the interest of "security concerns" or "maintaining public order."

The primary military order relevant to the arrest and detention of Palestinian children is Military Order 1651 or "Order regarding Security Provisions." 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. The maximum custodial sentence

for a child aged 12 to 13 years is six months. The maximum custodial 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. Children aged 16 to 17 years are subject to the same maximum potential sentences as adults.

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.
- * 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.

Other offenses under Military Order 1651 include insulting or offending a soldier's honor, which comes with a potential maximum penalty of one year in prison. Also, 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]." The maximum penalty stipulated for such an act or omission is life in prison.

Under the military legal framework, any soldier or police officer is authorized to arrest persons without a warrant, even children, when they have a suspicion that the individual has committed an act violating one of the "security offenses" in Israeli military law. Most children are arrested on suspicion, without arrest warrants. There is little to no independent oversight over arrests.

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 child detainees. Growing international pressure has forced Israeli leaders to respond by making slight changes to the military law applicable to Palestinian children. However, the changes fail to address the systematic and widespread ill-treatment that Palestinian children face in the first 24 to 48 hours after an arrest.

The Israeli military detention system consists of a network

of 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, some 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 Jewish-only settlements in the 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 settlements.

On March 17, 2014, Israeli soldiers arrested 14-year-old Waleed Lebdeh, around 8 p.m., after he reportedly threw a stone at a car near the Jewish-only settlement of Ma'ale Shomeron, near the West Bank village of Azzun. The armed guard at the entrance to the settlement saw Waleed, and shouted at him to stay still. The guard radioed Israeli forces, which soon arrived, and Waleed was blindfolded and bound at the wrists with a single plastic cord. He was transported in a military vehicle to Ariel police station, located in Ariel settlement, arriving around 10 p.m.

Waleed was permitted to drink water and use the bathroom before interrogation, which proceeded without a reading of his rights nor any legal guardian or counsel present. "He interrogated me for about an hour," Waleed said. "He was shouting and pounding the table to intimidate me. I confessed to throwing one stone."

Waleed signed a statement in Hebrew without knowing its contents. Although there was a translator in the room, the document was not translated for him.

Waleed was again blindfolded, bound, and transported to

Huwwara interrogation and detention center, where he was detained until 10 a.m. the following morning. Subsequently, he was transferred to Megiddo prison inside Israel, arriving around noon. There, he was strip searched and detained in the juvenile section.

He first appeared before a judge in Salem military court on March 19, 2014, and on March 20, 2014, Waleed pled guilty to throwing stones.

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 in Israel's Ofer military base, between Ramallah and Jerusalem. Salem military court is located in the northern West Bank, near the city of Jenin. The military appeals court is also located at Ofer military base.

Israeli authorities have also established military courts at interrogation and detention centers inside Israel used by the Israel Security Agency (ISA), also known as the Shin Bet. 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.

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. Under international human rights law, a fair trial can only occur under an independent and impartial system. As such, DCIP asserts that Israeli military courts cannot be considered impartial and independent arbitrators.

There are two types of judicial panels in the Israeli military courts. Where the maximum potential sentence is less than 10 years in prison, a single military judge will preside over the case. For an offense that carries a potential maximum sentence of more than 10 years in prison, there is a required panel of three military judges. The Israeli military appeals court has a panel of three military judges, if the appealed prison sentence exceeds three years.

Military judges must have five years of legal experience and

at the least hold the rank of captain. To sit on the military appeals court, military judges need a minimum of seven years legal experience and must at least hold the rank of lieutenant colonel.

The president of the military appeals court heads the Israeli military court system and is an officer with seven years of legal experience and the rank of colonel. To maintain tenure, a judge needs to remain an active member of the military.

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 part 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, in order to meet their annual military service requirement, come to the military courts for short periods of time.

When it comes to plea bargains, most 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 have the right to an attorney, but they can be prevented from meeting with their attorney for up to 90 days. Currently, five organizations represent children for free, alongside the provision of private lawyers. DCIP represents 22 to 25 percent of cases involving children before the Israeli military courts each year. Defense attorneys generally speak and read Hebrew as all 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."

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, it becomes evident that the Israeli detention and court system is not interested in justice.

Rather, the widespread and systematic ill-treatment of Palestinian children from the moment of arrest by Israeli forces illustrates how the system serves control interests of the occupation. As long as Palestinians live under Israeli occupation, the 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.

Let me illustrate this through a concrete example involving “attempts” to limit night arrests.

For several years, in an effort to end physical violence during arrest and increase immediate protections for children detained by the Israeli military, DCIP advocated for a practical alternative to arresting children at night. DCIP and others, including UNICEF, regularly called on Israeli authorities to issue a written summons to appear at a police station during daylight hours for questioning. Summonses could potentially eliminate the need for night raids as the default process for detention, and would allow parents and/or a lawyer to be present during interrogation.

Responding to mounting international criticism of the Israeli military’s ill-treatment of Palestinian children, Israel’s chief military prosecutor for the West Bank, Lieutenant Colonel Maurice Hirsch, declared in February 2014, he would implement a pilot summons program in limited areas of the West Bank as an alternative to arresting Palestinian children from their homes at night.

In the same month, DCIP documented six cases involving children summoned for questioning who reported ill-treatment and torture once in Israeli military detention.

The children, all from Beita, a village near the West Bank city of Nablus, were summoned — either by telephone call from Israeli intelligence officers or by written summons delivered by Israeli forces during a night raid — to report for questioning the next morning.

In all cases, the children reported to an interrogation facility in the occupied West Bank as requested, and then were promptly taken into custody, denied access to a lawyer, and

interrogated without the presence of a family member.

In sworn affidavits collected by DCIP, all six children reported experiencing some form of ill-treatment while at least one of them, Bashir D, 17, was beaten during interrogation.

Bashir told DCIP: “[The Israeli interrogation officer] kicked me twice on my legs, punched me twice in the stomach and three times on the head, while shouting, *‘You better confess because I won’t stop beating you unless you confess.’*”

In two cases, written summonses drafted in Hebrew were delivered by Israeli forces during a night raid, while all the other children received calls to their or their parent’s mobile phones, demanding they appear at the Huwwara interrogation and detention center near Nablus.

All six children who spoke to DCIP in February 2014 testified to being strip searched, handcuffed and blindfolded, and interrogated without access to legal advice or the presence of a family member.

On April 6, 2014, Ghazi Edaily received a telephone summons from an Israeli army officer for his son, Ahmad, 17, to report to Huwwara district coordination office (DCO) the next morning. No reason for the summons was given. On April 7, 2014, Ahmad and his father arrived at Huwwara DCO around 10 a.m. His father was told to remain outside while Ahmad was directed inside and strip searched. Ahmad recounts, “While he was searching me, he pushed me against the wall and called me a ‘son of a whore.’”

An Israeli intelligence officer told him that he was under arrest without stating charges. Ahmad was bound, blindfolded and detained in a room for about 30 minutes. Soldiers then forced Ahmad to walk—punching and kicking his back and legs—to Huwwara interrogation and detention center (IDC).

During the course of detention, Ahmad was verbally and physically assaulted by soldiers multiple times. One assault caused his ear to bleed and impaired his hearing. Ahmad notes that he did not receive any medical attention for this injury — nor food or water — until he arrived at Megiddo prison inside Israel, around 5 p.m.

On April 8, 2014, Ahmad was interrogated for approximately four hours in Salem IDC without the presence of a lawyer, family member, or any explanation of his rights. He

was slapped and hit on the head during interrogation, while still shackled. Ahmad signed a confession in Arabic after reading it. He first appeared before a judge on April 10, 2014.

The Israeli military suspended the pilot summons program in June 2014 after the launch of a military operation in the West Bank known as Operation Brother's Keeper, following the abduction of three Israeli settler teens — two were boys under age 18 — on June 12, 2014.

In 2014, DCIP documented a total of 24 cases involving summonses for questioning made by phone and written summonses delivered during night raids by Israeli forces into Palestinian communities. DCIP documented a handful of cases involving summonses during each subsequent year; the testimonies, however, reveal that even where summonses exist, whether written or by phone, they have done little to mitigate ill-treatment of Palestinian children once they are in Israeli military custody.

The Israeli military's resistance to implementing a summons process for Palestinian minors, or other practical changes to address violence and abuse, suggest an inherent conflict within the military court system between seeking justice and legitimizing control of the Palestinian population living under military occupation.

A summons process, if implemented throughout the West Bank, would potentially reduce the number of Palestinian child detainees who experience violence during their arrest and interrogation, but it directly challenges the role night arrests and raids play in furthering the Israeli military's "control" objectives over the occupied Palestinian population.

Night arrests frighten, threaten, and intimidate Palestinian families and communities throughout the occupied West Bank, particularly ones that organize weekly protests or are located near illegal Jewish-only settlements.

Arresting children from their homes in the middle of the night, ill-treating them during arrest and interrogation, and prosecuting them in military courts that lack basic fair trial guarantees, works to stifle dissent and control an occupied population.

Here are a few key questions to consider. Does the military

court system exist to administer justice or is it a practical tool of the occupation that acts to legitimize control of the Palestinian population? Are the military courts something that can be "fixed" or are they working exactly as intended?

The pilot summons process forces Israeli officials to address the competing objectives inherent in these questions. As night arrests continue and due process rights are systematically denied to Palestinian children, it should suggest the military courts are not interested in justice.

Congressional Advocacy on Palestinian Child Detainees

Palestinian children have the right to a safe and just future and I believe that lawmakers and governments must take concrete steps towards this future by holding Israeli authorities accountable for its violations of Palestinian children's rights. This is at the core of the *No Way to Treat a Child* campaign and why as a campaign we harness congressional advocacy to build grassroots power.

The early seeds of the campaign were planted in 2013 when a group of local activists, determined to raise awareness about the issues facing Palestinian children, invited Defense for Children International-Palestine (DCIP) to Chicago to lead a workshop on child detention in the Israeli military system. This group, with staff from the American Friends Service Committee (AFSC) and DCIP, formed the core that would become the *No Way to Treat a Child* campaign.

Since then, we have grown from a small group of activists in Chicago to an international movement fighting to defend Palestinian children and hold perpetrators of grave human rights violations accountable.

The *No Way to Treat a Child* campaign seeks to challenge and end Israel's military occupation of Palestinians by organizing, supporting, and empowering an extensive network of people, including lawmakers, to demand immediate protections for Palestinian children held in Israeli military detention.

By mobilizing and supporting constituents and directly empowering specific lawmakers, the campaign is challenging

the decades-long U.S.-led "peace process" that has consistently demanded peace without justice, enabling and perpetuating an unjust and oppressive military occupation.

To build the campaign, it was necessary to create congressional vehicles to facilitate engagement and discussion with lawmakers on issues related to Palestinian child detainees. From using congressional briefings to create a presence on Capitol Hill to pushing for co-signers on "Dear Colleague" letters, we were able to build enough of a base in Congress for these issues that introducing legislation on Palestinian rights became possible.

The *No Way to Treat a Child* campaign celebrated one of our first major victories in June 2015, when 19 members of Congress signed and sent a Dear Colleague letter to then Secretary of State John Kerry. The letter, initiated by Representative Betty McCollum (D-MN), highlighted the ill-treatment of Palestinian child detainees in the Israeli military system.

The letter noted that "Israel's military detention system targeting children is an anomaly in the world," and that UNICEF has found ill-treatment of Palestinian children is "widespread, systematic and institutionalized" throughout the detention process. The lawmakers urged "the Department of State to elevate the human rights of Palestinian children to a priority status in [the U.S.'s] bilateral relationship with the Government of Israel."

The letter came following three days of advocacy in Washington in early June, organized by AFSC and DCIP. Events included a Capitol Hill briefing on the widespread ill-treatment of Palestinian children in Israeli military detention that drew over 100 attendees, including staff from at least 30 different congressional offices.

This first letter and related advocacy not only gave us a baseline to build on, but helped us show that this work was not futile. It allowed us to have a vehicle that prompted a reason for sustained engagement by members of Congress who signed the letter, and also helped mobilize people throughout the country by showing there was some hope.

We have escalated our congressional advocacy work following the first letter, and while the letter served as an excellent organizing tool through the second half of 2015 and into early 2016 both on grassroots engagement and direct engage-

ment with lawmakers, we needed another vehicle.

So, on June 20, 2016, twenty members of the United States Congress signed a letter to President Barack Obama urging the appointment of a Special Envoy for Palestinian Children



Rep. Betty McCollum, D MN.

Credit: U.S. Government

to ensure the U.S. government prioritized Palestinian children's rights.

The letter came just months after tensions over the Al-Aqsa Mosque in Jerusalem erupted into violence across the occupied West Bank in early October 2015. Israeli forces overwhelmingly responded with excessive and intentional lethal force, including the use of live ammunition against children.

As a result, Israeli forces killed an increasing number of Palestinian children in October 2015 as Israeli forces responded to escalating violence with what appeared to be a 'shoot-to-kill' policy, which in some incidents amounted to extrajudicial or willful killings.

The letter, again initiated by Rep. Betty McCollum, expressed concern for Palestinian children under 18 years old living "under the constant fear of arrest, detention, and violence at the hands of the Israeli military," and declared "[t]he situation on the ground is rapidly deteriorating and we must act now."

The lawmakers specifically raised “profound concern” regarding the Israeli government’s longstanding policy of arresting and prosecuting Palestinian children in the Israeli military detention system, and generally declared that “ignoring the trauma being inflicted on millions of Palestinian children undermines our American values and will ensure the perpetuation of a conflict and occupation we all want to see end peacefully.”

Building on the 2015 letter, we wanted to have something that both helped expose grave human rights violations against Palestinian children and also one that played a role in addressing accountability for a deteriorating situation where impunity continued to be the norm.

Since the Obama administration had significantly expanded the use and appointment of special envoys, or senior officials at the U.S. Department of State responsible for collecting and analyzing information and monitoring developments on specific foreign policy issues, we determined calling for the creation of a Special Envoy for Palestinian Children would be a concrete request that connected directly to the situation on the ground as well as built on the 2015 letter.

The goal was for a Special Envoy for Palestinian Children to examine and monitor the situation of Palestinian children living in the Occupied Palestinian Territory, and work to hold Israeli and Palestinian governments accountable to their obligations under international human rights instruments, promote greater respect for human rights, and increase protections for Palestinian children.

In July 2016, the State Department responded to Representative McCollum on President Obama’s behalf. The response letter expressed shared “concern over the conditions under which some of these [Palestinian] children are living,” as well as a shared “commitment to protect their right to grow up with dignity and opportunity.” It also generally acknowledged “ongoing violence” as deeply troubling.

The State Department then dismissed the need for a Special Envoy for Palestinian Children stating, “[b]ecause our Embassy in Tel Aviv, our Consulate General in Jerusalem, and our Special Envoy for Israeli-Palestinian Negotiations have been deeply involved in all of these issues that so significantly affect the lives of Palestinian children, we believe that

they are best placed at this time to carry out the important work that you suggest.”

In short, we were deeply troubled by the Administration’s response because it was devoid of any rights-based reply to the lawmakers’ core concerns regarding grave and systematic human rights violations against Palestinian children.

Responding to the lawmakers’ concern regarding the systematic denial of due process rights, including the renewed use of administrative detention against children, and widespread ill-treatment and torture of Palestinian children in the Israeli military detention system, the State Department simply declared “[w]e will continue to engage with the Government of Israel on the implementation of policies to make the military detention system more humane, especially as it relates to minors.”

While the Obama Administration noted they were aware of the issues, it was clear they were not willing to take any concrete action to address the lawmakers’ concerns. The State Department, by declaring they would continue to work with Israeli authorities to make the military detention system “more humane,” mistakenly presumed the Israeli military detention and court system is interested in administering justice.

The 20 members of Congress who signed the letter to President Obama recognized systemic impunity and persistent grave human rights violations combined with limited prospects for Palestinian youth are, at least in part, the triggers for violence and that demanding justice and accountability was the minimum they could do. They also understood that failing to demand human rights, justice and equality for Palestinian children perpetuated injustice and a then nearly 50-year occupation with no end in sight.

Following this response and the imminent November 2016 presidential election, we began to develop different congressional advocacy options for a post-Obama administration so we could continue pushing these members of Congress to challenge Israel’s military occupation.

Faced with an incoming Trump administration expected to be hostile to anything concerning Palestinian rights, we were forced to think creatively about the next congressional vehicle for the campaign. We knew we needed something

longer term than the two previous “Dear Colleague” letters so we began to imagine what options existed for pragmatic legislation concerning ill-treatment of Palestinian child detainees.

On November 14, 2017, U.S. lawmakers introduced H.R. 4391, the "Promoting Human Rights by Ending Israeli Military Detention of Palestinian Children Act" into the U.S. Congress, which followed previous actions taken by members of Congress concerning ill-treatment of Palestinian child detainees arrested by Israeli forces.

H.R. 4391 seeks to promote justice, equality and human rights by ensuring that United States financial assistance provided to the Government of Israel is not used to support the detention of Palestinian children by Israeli forces in a military detention system where ill-treatment is widespread and institutionalized; or their prosecution in a military court system that has been found to lack basic fair trial protections and guarantees.

The bill requires the Secretary of State to certify annually that none of the funds obligated or expended in the previous fiscal year by the United States for assistance to the Government of Israel have been used to support the ill-treatment of Palestinian children in violation of international humanitarian law or to support the use against Palestinian children of any of the following practices:

- (1) Torture or cruel, inhumane, or degrading treatment.
- (2) Physical violence, including restraint in stress positions.
- (3) Hooding, sensory deprivation, death threats, or other forms of psychological abuse.
- (4) Incommunicado detention or solitary confinement.
- (5) Administrative detention.
- (6) Denial of access to parents or legal counsel during interrogations.
- (7) Confessions obtained by force or coercion.

H.R. 4391 requires the Secretary of State to certify to the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate

that no U.S. taxpayer funds have been used by the Government of Israel to support personnel, training, lethal materials, equipment, facilities, logistics, transportation or any other activity that supports the practices listed in the bill.

Importantly, the bill leaves current financial assistance to the Government of Israel in place and does not adjust or cut financial assistance already committed to Israel by the United States. Rather, the focus of the bill is on certification and reporting in order to enhance transparency regarding financial assistance to Israel.

If such a certification cannot be made, the Secretary must transmit a report to each committee describing in detail the amount of funds used by the Government of Israel in violation of the specific prohibitions noted in the legislation and each activity supported by such funds.

The findings provisions in the bill, based on persistent and credible evidence-based reports from UNICEF, Human Rights Watch, and others, establish that ill-treatment of Palestinian children by Israeli forces is widespread, systematic and institutionalized from the moment of arrest in the Israeli military detention system.

Interestingly, existing legal authority already exists in U.S. law for the prohibitions included in H.R. 4391. The problem is that the generally applicable laws are not specifically and comprehensively enforced regarding Israel’s armed forces.

Two provisions in U.S. law, known as the “Leahy laws,” prohibit assistance to armed forces of a foreign country where credible information exists that a specific unit has committed grave human rights violations. The State Department Leahy law is codified as section 620M of the Foreign Assistance Act of 1961, and includes torture, extrajudicial killing, enforced disappearance, and rape under color of law as human rights violations that would trigger Leahy law accountability.

H.R. 4391 seeks to ensure that U.S. taxpayer funds are not being used to support grave human rights violations against Palestinian children detained by Israeli forces. It is an effort to enhance transparency regarding U.S. financial assistance to the Government of Israel. By aligning US policy toward Israel and the Palestinian people with international law

norms, the bill would also work to end grave human rights violations against Palestinian children detained by Israeli forces and help increase protections.

Importantly, H.R. 4391 does not place conditions on military aid and leaves current financial assistance to the Government of Israel in place.

The bill is limited and very narrow in the sense that it only obligates U.S. actors. Under the bill, Israeli authorities are essentially free to continue using torture and the other prohibited practices listed in H.R. 4391. The obligation is on the Secretary of State to ensure no U.S. taxpayer funds further those practices.

Conclusion



Brad Parker

Instead of growing up with a law-based, negotiated settlement founded on universal human rights principles, justice and respect for human dignity; Palestinian youth have had their futures stifled and suppressed by systemic discrimination, settlement expansion, and a military oc-

cupation with no end in sight where impunity is the norm.

While the U.S. government now provides \$3.8 billion in foreign military aid to Israel, it is necessary that taxpayers demand elected officials act, at a bare minimum, to ensure taxpayer funds are not supporting grave human rights violations against Palestinian children. Because failing to demand Israeli authorities comply with international law simply works to enable abuse and perpetuate injustice against Palestinian children.

Evidence-based, human-rights based congressional advocacy campaigns when combined with and working in conjunction with other efforts has shown to be necessary to building a political movement that can eventually force real policy change. □

Co-signers of H. R.4391

Rep. Katherine Clark, D-MA
 Rep. Michael Doyle, D-PA
 Rep. Carol Shea-Porter, D-NH
 Rep. Seth Moulton, D-MA
 Rep. Dwight Evans, D-PA
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