

Analysis of NGO Monitor's "[Analysis](#)" of the McCollum Bill

On 11/16, NGO Monitor (NGOM) published a hit-piece attacking legislation introduced by Congresswoman Betty McCollum (D-MN), [HR 4391](#), promoting the human rights of Palestinian children and seeking to ensure that United States tax dollars are not supporting violations of these rights by Israeli authorities. Below is a point-by-point analysis of NGOM's "analysis" of the bill.

Quote (para.2): *"In the Israeli-occupied West Bank, there are two separate legal systems, with Israeli military law imposed on Palestinians and Israeli civilian law applied to Israeli settlers."*

NGOM argument: "This statement intentionally attempts to mislead the uninformed reader, by inferring discrimination based on ethnicity. In reality, Israel's policy is guided by citizenship/residency status and the requirements of international law. The occupation paradigm applied by McCollum to the West Bank would require the same framework. Ethnicity is irrelevant."

Comment: With this argument, NGOM is defending "separate and unequal" as something that is normal and ok. It is not. Human Rights Watch issued an entire report about this: [Separate and Unequal](#). Also, see this [testimony](#) delivered before the UN Security Council (which was not contradicted, on the facts, by any Israeli official):

"Finally, there is one additional key policy – invisible to most people – that has further enabled the entrenchment of Israel's settlement enterprise and that underscores the fundamental rights violations it involves. This is the policy according to which Israeli law follows Israeli citizens who enter or live in the Occupied Territories. This means that Israeli settlers live under Israeli law – no different than if they were living inside Israel – while Palestinians live under military law.

"This policy has created a dangerous and ugly political reality in the occupied territories – a reality in which two populations live on the same land, under different legal systems, separate and entirely unequal, with the governing authority serving one population at the expense of the other.

"One population is comprised of privileged Israeli citizens, enjoying the benefits of a prosperous, powerful state, with their rights guaranteed by a democratic government accountable to their votes. The other population is comprised of disenfranchised Palestinians, living under foreign military occupation explicitly designed to protect and promote the interests not of Palestinian residents of the territories, but of Israeli settlers."

Quote (para. 3): *"The Israeli military detains around 500 to 700 Palestinian children between the ages of 12 and 17 each year and prosecutes them before a military court system that lacks basic and fundamental guarantees of due process in violation of international standards."*

NGOM arguments: [1]“This same law, again the law that McCollum and the NGOs claim are binding, requires Israel to create Military Courts (Fourth Geneva Convention, Art. 66). As a result, Palestinian minors residing in the West Bank can only be prosecuted by these courts and according to the jurisdictional parameters agreed to in the Oslo Accords. That other countries do not adhere to the applicable international law in other conflict zones is a reflection on those countries, not Israel, as claimed in the legislation and by the NGOs it is copied from. [2] In addition, the recitation of the average number of prisoners held each month is a meaningless statistic. Without any information relating to the involvement of Palestinian minors in criminal and terrorist activity, no informed conclusion can be made based on such an ‘average.’ Clearly, if there is an increase of minors committing violent crimes, there will be a corresponding increase in the number of minors held in custody.”

Comment: Point #1 is a straw man argument. Nothing in the McCollum bill suggests that military courts themselves exist in contravention of international law. The issue here is not the existence of these courts but the fact that minors tried in them lack basic and fundamental guarantees of due process in violation of international standards – something that NGOM cannot refute.

Point #2 is another straw man argument. The argument here is not there are too many minors being prosecuted in military courts that lack basic and fundamental guarantees of due process in violation of international standards. The argument here is that NO minors should be prosecuted in military courts that lack basic and fundamental guarantees of due process in violation of international standards. The fact that the numbers are so high only underscores the magnitude of the abuse of minors involved.

Quote (para.4): *“Approximately 2,700,000 Palestinians live in the West Bank, of which around 47 percent are children under the age of 18, who live under military occupation, the constant fear of arrest, detention, and violence by the Israeli military, and the threat of recruitment by armed groups.”*

NGOM argument: “Based on this figures provided, there are approximately 1.27 million Palestinian minors living in the West Bank. If we take the maximal number from paragraph 3 (that Israel arrests 700 children annually), this amounts to miniscule amount of 0.055% of Palestinian minors who are actually arrested. In contrast, there are more than [1 million](#) (1.42%) juveniles arrested in the US annually, and without the context of armed conflict. Therefore, these statistics do not point to Israel unreasonably targeting Palestinian minors.”

Comment: With this argument, NGOM is suggesting that there is a reasonable percentage of minors in a given population (or, at least, in this particular population) whose rights it is permissible to violate. International law and conventions on the rights and protections of minors would disagree. Indeed, NGOM’s argument raises the questions: (1) exactly how many Palestinian minors is it acceptable to treat in ways that violate their rights as minors under international law? And (2) would NGOM make or accept a similar argument with respect the violation of rights of minors who were not Palestinian? For example, Israeli children?

Quote (para.6): *Children under the age of 12 cannot be prosecuted in Israeli military courts. However, Israeli military forces detain children under the age of 12 and question them, for several hours, before releasing them to their families or to Palestinian authorities.*

NGOM arguments: “[1] It is interesting to note that the age of criminal responsibility in the US is 11. Minors under the age of criminal responsibility are not immune from arrest for committing offences, in particular violent offences such as murder and attempted murder. [2] Moreover, at the time of arrest, the relevant arresting officer may not be immediately aware of the age of the suspect.”

Comment: Point #1 is another straw man argument. The McCollum bill is not suggesting that minors under the age of criminal responsibility are immune from consequences for their alleged actions. The bill is observing that even under Israeli military law, they cannot be tried in military courts. This makes the detention of these children and the violation of their rights as minors even starker.

Point #2 would carry some weight if this was a debate about the difference between, for example, a 17-year-old and a 19-year-old. Here we are talking about children who may be 12 and under. Where children this young are potentially involved, officers have a moral obligation to ensure that they are respecting the minor’s rights, even if the child’s exact age is not yet verified.

Quote (para.7): *“Human Rights Watch documented, in a July 2015 report titled “Israel: Security Forces Abuse Palestinian Children”, that such detentions also included the use of chokeholds, beatings, and coercive interrogation on children between the ages of 11 and 15 years.”*

NGOM arguments: “...Israeli Security Forces may only use reasonable force. The use of excessive force by Israeli Security Forces, including beatings is forbidden. If complaints of this nature are actually submitted to the relevant authorities and found to be justified, the perpetrators are dealt with accordingly. According to Israel laws of evidence, that are also applied as is in the military court, a confession must be given freely and willingly. Confessions coerced from the suspects will be excluded by the courts”

Comment: A recitation of Israeli official policy is not a refutation of the actual practice. In fact, Israeli practices with respect to use of force in detentions and interrogations are very well documented. Here are some Israeli resources to on the subject:

- Haaretz 4/3/17: [Most Palestinian Minors Arrested by Israel Claim Physical Violence During Detention](#)
- Btselem video: [No Minor Matter](#)
- Video of Palestinian child under interrogation: <https://youtu.be/vNPQC6qpLes>
- Video of night raid targeting children: <https://youtu.be/OLg-1IHPO0A>

Quote (para.8 & 9): *“The United Nations Children’s Fund (UNICEF) concluded, in a February 2013 report... that the “ill-treatment of children who come in contact with the military detention*

system appears to be widespread, systematic and institutionalized... The 2013 UNICEF report further determines that the Israeli system of military detention of Palestinian children profoundly deviates from international norms...

NGOM argument: “This publication has been discredited for its complete distortion of international law and of rudimentary criminal law concepts and procedures.”

Comment: Attacking UNICEF is not the same as refuting the very specific allegations made about the violations of the rights of Palestinian children.

Quote (para.10): *“UNICEF also released reports in October 2 2013 and February 2015 noting that Israeli authorities have, since March 2013, issued new military orders and taken steps to reinforce existing military and police standard operating procedures relating to the detention of Palestinian children. However, the reports still found continued and persistent evidence of ill-treatment of Palestinian children detained by Israeli forces.”*

NGOM arguments: “After Israeli officials rejected almost every claim in the 2013 UNICEF report, UNICEF issued a follow-up in 2015 integrating some of Israel’s comments. Yet, UNICEF has not publicly retracted the several erroneous sections of the 2013 report, and as a result, other UN bodies, as well as parliaments and NGOs continue to cite these false allegations.”

Comment: Attacking UNICEF is not the same as refuting the very specific allegations made about the violations of the rights of Palestinian children.

Quote (para. 11): *“In 2013, the annual Country Report on Human Rights Practices for Israel and the Occupied Territories (‘Annual Report’) published by the Department of State noted that Israeli security services continued to abuse, and in some cases torture, minors, frequently arrested on suspicion of stone-throwing, in order to coerce confessions. The torture tactics used included threats, intimidation, long-term handcuffing, beatings, and solitary confinement.”*

NGOM arguments: “While suggesting that the US State Department made a positive finding, in actuality, the Annual Report merely states, “Defense for Children International-Palestine (DCI-Palestine), Breaking the Silence, and other human rights NGOs **claimed** that Israeli security services continued to abuse, and in some cases torture, minors who they frequently arrested on suspicion of stone throwing to coerce confessions. Tactics included beatings, long-term handcuffing, threats, intimidation, and solitary confinement” (emphasis added).”

Comment: Arguing that these claims about the violations of the rights of Palestinian children were included, but not endorsed, in the annual Human Rights Report is not a refutation of the claims.

Quote (para. 12): *“The 2013 Annual Report also stated that ‘signed confessions by Palestinian minors, written in Hebrew, a language most could not read, continued to be used as evidence against them in Israeli military courts.’”*

NGOM arguments: “[1] Again, the context of the 2013 State Department report reflects that this quote was simply repeating a claim made by NGOs rather than issuing a positive finding. This conclusion is further supported by the 2016 US State Department report, which specifically attributes this claim to NGOs.” [2] Furthermore, DCI-P made a similar claim regarding confessions being drafted in Hebrew in their [2016 report](#). However, in reality, interrogations are conducted in Arabic, and when the statement of the suspect is documented in Hebrew, the interrogation must be audio or audio-visually recorded in order for an indictment to be submitted to the court.”

Comment: Point #1: Once again, arguing that these claims about the violations of the rights of Palestinian children were included, but not endorsed, in the annual Human Rights Report is not a refutation of the claims.

Point #2: Once again, a recitation of Israeli official policy is not a refutation of the allegations regarding actual practices.

Quote (para.13): *“The 2016 [State Department] Annual Report noted a “significant increase in detentions of minors” in 2016, and that “Israeli authorities continued to use confessions signed by Palestinian minors, written in Hebrew.” It also highlighted the renewed use of “administrative detention” against Palestinians, including children, a practice in which a detainee may be held indefinitely, without charge or trial, by the order of a military commander or other government official..”*

NGOM arguments: [1] The full quote from the [State Department’s 2016 Annual Report](#) reads, “**NGOs reported** a significant increase in detentions of minors including in the Jerusalem area” (emphasis added), with McCollum once again presenting NGO claims as if they have been verified by the State Department. The bill does not provide the full context, which appears in the State Department report, of a massive increase in terrorism and other violence from Palestinian minors, in particular in Jerusalem. [2] Similarly, the quote about confessions is truncated. The full quote is, “**NGOs reported** that Israeli authorities continued to use confessions signed by Palestinian minors, written in Hebrew... (emphasis added). [3] Finally, the claim regarding administrative detention is doubly misleading. One, the State Department notes that administrative detention was used against both Palestinians and Israelis, including 19 Palestinian minors and 11 Israeli minors (see page 13 of State Department Annual Report). Two, as opposed to the claim that administrative detention is “indefinite,” the State Department describes how “most detainees [are held] for less than one year but held some for more than one year and a small number for more than two years.”

Comments: With respect to Points #1 and #2: Once again, arguing that these claims about the violations of the rights of Palestinian children were included, but not endorsed, in the annual Human Rights Report is not a refutation of the claims.

With respect to Point #3: The first part of this argument misses the point: the issue is that administrative detention of minors is wrong, period (the McCollum bill in no way suggests that it is wrong to use on Palestinian minors but ok to use on Israeli minors). The second part is semantic game-playing. Administrative detention is by its nature indefinite, given that the

detainee has no due process (no trial and no sentence), and hence no firm date for release. In practice, periods of detention can and often are extended after the initial period has run out – meaning that until actual release, the detention is by its nature indefinite. Btselem explains the policy [here](#) and provides the official Israel government data [here](#).

Quote (para.14): *“The nongovernmental organization Defense for Children International Palestine collected affidavits from 429 West Bank children who were detained between 2012 and 2015, and concluded that....”*

NGOM argument: “[NGO Monitor’s detailed analysis of DCI-P’s publication](#) demonstrates that this NGO manipulatively and deliberately creates a false narrative regarding Palestinian children committing criminal offenses. Close inspection of their claims, material omissions, and distorted statistics demonstrates that this NGO disseminates propaganda, and not credible human rights research.”

Comment: Attacking DCI-P is not the same as refuting the arguments made about the violations of the rights of Palestinian children.

Quote (para.15): *“Amendments to Israeli military law concerning the detention of Palestinian children have had little to no impact on the treatment of children during the first 24 to 48 hours after an arrest, when the majority of their ill-treatment occurs.”*

NGOM argument: “Since the claims of ill-treatment are unfounded, there is no relevance to the initial periods of arrest proscribed by law.”

Comment: In effect, NGOM is asserting as a fact that Israel doesn’t violate the rights of Palestinian minors in its custody, and arguing that as a result, there is no relevance in discussing whether Israel sometimes violates the rights of Palestinian minors in its custody. This is not a refutation of allegations that Israel violates the rights of minors in its custody; it is a tautology.

Quote (para.16): *“In 2002, the United Nations Committee on the Rights of the Child, which monitors implementation of the Convention on the Rights of the Child, reviewed Israel’s compliance with the Convention and 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.”*

NGOM argument: “In addition to the unverified nature of the claims, they are more than fifteen years old and ignore the many improvements and reforms relating to juvenile justice in both the civilian and military courts.”

Comment: A few things are packed in here. First, to suggest that claims of abuse by many, many children should be ignored because they are not “verified” is concerning, given both the moral imperative to take seriously allegation of violations of the rights of children and the inherent

difficulty in “verifying” accusations made by children against legal authorities in any context, let alone in the context of a military justice system.

Second, NGOM appears to be suggesting both that allegations of systematic violations committed against minors should not be of concern if they happened more than a certain number of years in the past, and that allegations of systematic violations of the rights of children in the past are not germane to the question of whether violations being committed today. Both suggestions are morally and legally indefensible.

Third, the suggestions that the allegations of the minors dating to 2002 are “unverified” and thus, as implied by NGOM, unreliable, is challenged by NGOM’s own assertion that Israeli authorities have since that time made “improvements and reforms.”

Quote (para.17): *“In 2013, the [United Nations] Committee [on the Rights of the Child] declared that Palestinian children arrested by Israeli forces “continue to be systematically subject to degrading treatment, and often to acts of torture”.*

NGOM argument: “The quote provided is a close paraphrase of [DCI-P’s submission to the Committee](#), alleging “a pattern of systematic ill-treatment emerges, much of which amounts to cruel, inhuman or degrading treatment or punishment and in some cases, torture...” Again, the Committee did not verify the claims of DCI-P but merely repeated them uncritically.”

Comment: Attacking DCI-P is not a refutation of the very specific allegations made about the violations of the rights of Palestinian children.

Quote (Sec. 4 Sense of Congress 1): *“It is the sense of Congress that the detention and prosecution of Palestinian children in a military court system by the Government of Israel (1) violates international law and internationally recognized standards of human rights;”*

NGOM argument: “The detention and prosecution of Palestinian minors in military courts does not violate international law or recognized standards. Israel’s practices are well based on both the Convention on the Rights of the Child and the 1907 Hague Rules and the Fourth Geneva Convention.”

Comment: Stating that the rights of Palestinian minors are not being violated and reciting Israeli official policies does not constitute a refutation of the very specific allegations made about the violations of the rights of Palestinian children. It is like a lawyer saying to a jury: my client is innocent, because he is innocent.

Quote (Sec. 4 Sense of Congress 2): *...is contrary to the values of the American people and the efforts of the United States to support equality, human rights, and dignity for both Palestinians and Israelis; (3) undermines efforts by the United States to achieve a just and lasting peace between Israel and the Palestinians;*

NGOM argument: “It is unclear why the detention and prosecution of Palestinian minors who commit violent offences, including murder and attempted murder, even of American citizens, is ‘contrary to the values of the American people’ or in any way contradicts the US support of equality or human rights. The opposite is true: promoting immunity for terrorism, simply because the attacker is a Palestinian and the victim a Jew, breaches the very moral fiber of American values, promotes inequality, and ignores the basic human rights of the victims of these crimes. It is similarly unclear why the detention and prosecution of Palestinian minors who commit violent offences undermine the efforts of the US to achieve a just and lasting peace. Here too, the opposite is true: condoning and promoting impunity for Palestinian minors who commit violent terrorist attacks would only increase the frequency of these attacks, which would in turn, be severely detrimental to promoting any peace effort.”

Comment: In effect, this argument helpfully clarifies NGOM’s underlying (but never stated) assumption that Palestinian minors enjoy none of the rights and protections of minors elsewhere in the world, precisely because they are Palestinian.

Quote: (Sec. 4 Sense of Congress 4): *“Should be terminated and replaced with a juvenile justice system in which Israeli authorities do not discriminate between the treatment of Israeli and Palestinian children and that adheres to internationally recognized standards of human rights and obligations.”*

NGOM arguments: “[1] Israeli authorities do not discriminate between Israelis and Palestinians in their treatment children, and it is false to claim so. [2] Similarly, Israel’s juvenile justice system fully adheres to international recognized standards of human rights and obligations. [3] The claim that West Bank Palestinians and Israeli citizens and residents should be subject to exactly the same law would breach international law and reflects a fundamental lack of understanding of the concept of jurisdiction. [4] Were Israel to apply its domestic law to West Bank Palestinians as the McCollum legislation demands, this would amount to the annexation of the West Bank. It is clear that this is not the stated policy of the United States. In addition, this section of the legislation would clearly violate the Oslo Accords, witnessed and guaranteed by the United States, which regulates the jurisdiction of Israel and the Palestinian Authority”

Comment: Point #1 is objectively and self-evidently false. When the same authority maintains two different justice systems that have different sets of rules, and the rules governing the rights of one group are different and harsher than those governing the other, that is discrimination.

Point #2 is another straw man argument. Nothing in the McCollum bill challenges Israel’s juvenile justice system as it pertains to Israeli citizens. Indeed, Israel’s respect for the rights and special protections of minors as required under international law when it comes to the treatment of minors who are Israeli citizens underscores the enormity of the violations Israeli engages in with respect to Palestinian minors.

Point #3 is yet another straw man argument. The two justice systems in the West Bank – Israeli law for Israelis, military law for Palestinians – are both arms of the State of Israel. The McCollum bill does not call for Israeli law to be extended to West Bank Palestinians; what it calls for is a juvenile justice system for Palestinian minors that treats them with the same rights and

protections as Israeli minors (hence, does not “discriminate” in treatment) AND adheres to internationally recognized standards of human rights and obligations.

Quote (Sec. 6 PROHIBITION a): *“Notwithstanding any other provision of law, none of the funds authorized to be appropriated for assistance to Israel may be used to support the military detention, interrogation, abuse, or 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.”*

NGOM argument: “Since Israel does not use any of the practices mentioned, there would be no impediment for the Secretary of State to issue such a certification.”

Quote (Sec. 6. PROHIBITION a.4) *“...Incommunicado detention or solitary confinement.”*

NGOM argument: “Since Israel does not use any of the practices mentioned, there would be no impediment for the Secretary of State to issue such a certification.”

Comment: Asserting that Israel does not use the alleged practices, contradicting testimony collected by Israeli human rights organizations for years, does not constitute a refutation of the very specific allegations of violations. Again, it is like a lawyer saying to a jury: my client is innocent, because he is innocent. And notably, if NGOM is convinced that there would be no impediment for the Secretary of State to issue such certifications, why does it object to the certifications being required?

Quote: (Sec. 6. PROHIBITION a.5): *“...Administrative detention, as described in section 2(13).”*

NGOM argument: “Contrary to the implication of the legislation, administrative detention is well recognized in international law (art. 78 GCIV) and is also used by the US. Furthermore, there is no restriction in international law regarding the use of administrative detention against minors. As previously noted, the McCollum legislation distorts the findings of the US State Department. Administrative detention is used only in exceptional cases when the person placed in administrative detention poses a real and immediate threat to public security. As regards minors, the instrument is used (against both Israelis and Palestinians) to prevent them from carrying out terrorist attacks that endanger lives. Since Israel’s use of administrative detention complies with international law, and since the arrest of persons who are suspected of being directly involved in imminent terror attacks supports the efforts of America to reach a just and lasting peace, it is unclear why this stipulation has been made.”

Comment: Detaining minors indefinitely, and without due process, is a grave violation of the rights and protections of children. Arguing that such practices are permissible because other countries (including the United States) use them does not make it so.

Quote(Sec.6. PROHIBITION a.6) *“Denial of access to parents or legal counsel during interrogations.”*

NGOM arguments: “[1] Under Israeli law, Israeli minors under arrest do not have the right to have a parent present during their interrogation. This same principle is applied to Palestinian minors. [2] Since a previous suggestion of the legislation was to ensure equal treatment of Israelis and Palestinians, it is unclear why the section of the legislation would promote discrimination against Israeli citizens, conferring preferential rights only to Palestinian offenders. It is most strange that the McCollum legislation includes this provision given that many jurisdictions in the United States also apply the same rule.”

Comment: Point #1: Interrogating minors without a parent or legal counsel present is a grave violation of the rights and protections of children. This is true whether it is being done to Palestinian children or children in Israel, or in U.S. jurisdictions.

Point #2: These are straw man arguments. The McCollum legislation calls for a juvenile justice system that gives equal treatment of Israeli and Palestinian minors AND adheres to internationally recognized standards of human rights and obligations.

Quote (Sec.6. PROHIBITION a.7) *“Confessions obtained by force or coercion.”*

NGOM arguments: “[1] This section of the proposed legislation implies that Israel obtains confessions by force or coercion. This is simply false. The rules of evidence applied in the Israeli military courts are exactly the same as the rules of evidence applied in the Israeli domestic courts. According to these rules, confessions that were not given freely and willingly can be excluded as evidence by a judge and serve as the basis for an acquittal. As in any jurisdiction, there may be instances where the rules are violated, but this legislation offensively implies that such behavior is condoned by the law enforcement establishment in Israel. [2] On principle, the application of this section of the proposed legislation only to Israel reflects selective targeting and setting a specific and different standard only for Israel.”

Comment: Point #1: Again, a recitation of Israeli official policies, contradicting testimony collected by Israeli human rights organizations for years, does not constitute a refutation of the allegations made about the violations of the rights of Palestinian children. Again, it is like a lawyer saying to a jury: my client is innocent, because he is innocent.

Point #2: With this final point, NGOM is in fact not complaining that Israeli is being held to a higher standard than other countries, but is demanding that Israeli be held to a lower standard, based on the argument that other countries violate international law, too. In essence, NGOM is arguing that it is anti-Israel to do other than to hold Israel the lowest standard of behavior internationally, including with respect to the rights and protections of Palestinian children. Whether from the perspective of rights and international law, or from the perspective of caring about Israel and its health as a democracy governed by rule of law and a member of the community of nations, this argument should be cause for serious concern.