



## Briefing Note – February 2018

### Summary

1. **98 percent** of children arrested live within **1.02 km** from an illegal settlement.
2. The ill-treatment of children who come in contact with the military detention system still appears to be "widespread, systematic and institutionalised" as found by UNICEF in 2013.
3. **61 percent** of children are unlawfully transferred and detained inside Israel in violation of Article 76 of the Fourth Geneva Convention 1949. This practice has occurred for 50 years and is classified as a war crime under international and UK law.
4. More than 5 years after the publication of the FCO funded independent report - [Children in Military Custody \(June 2012\)](#) (UK lawyers' report), just one of the report's 40 recommendations has been substantially implemented - an implementation rate of **2.5 percent**.
5. While the military courts were lawfully established on 7 June 1967 in accordance with Article 66 of the Fourth Geneva Convention, after 50 years it is highly probable that these courts are now unlawful as currently constituted.

### 1. Introduction

- 1.1 In March 2013, UNICEF published a report - [Children in Israeli Military Detention](#) (UNICEF report) - which found that: "The ill-treatment of children who come in contact with the [Israeli] military detention system appears to be widespread, systematic and institutionalized throughout the process, from the moment of arrest until the child's prosecution and eventual conviction and sentencing". The report concluded by making 38 recommendations.
- 1.2 In response to these findings the Israeli Ministry of Foreign Affairs [stated](#) that it would "study the conclusions and work to implement them through on-going cooperation with UNICEF". During the intervening years there have been a number of legal, procedural and administrative [developments](#) in the system relevant to the treatment of children, but their impact appears limited. These developments include the following:
  - (i) A new military order reducing the period of time within which a child must be brought before a judge following arrest;
  - (ii) The introduction of a form notifying parents of the reason for a child's arrest and place of detention;

- (iii) Re-issuance of the military's standard operating procedures for the arrest of minors to all military units serving in the West Bank including a reminder of the prohibition against physical and verbal abuse and procedures for restraining children;
- (iv) The introduction of a form notifying children of their legal rights in custody including the right to silence and the right to consult with a lawyer; and
- (v) The introduction of a pilot scheme to use summonses in lieu of arresting children at night.

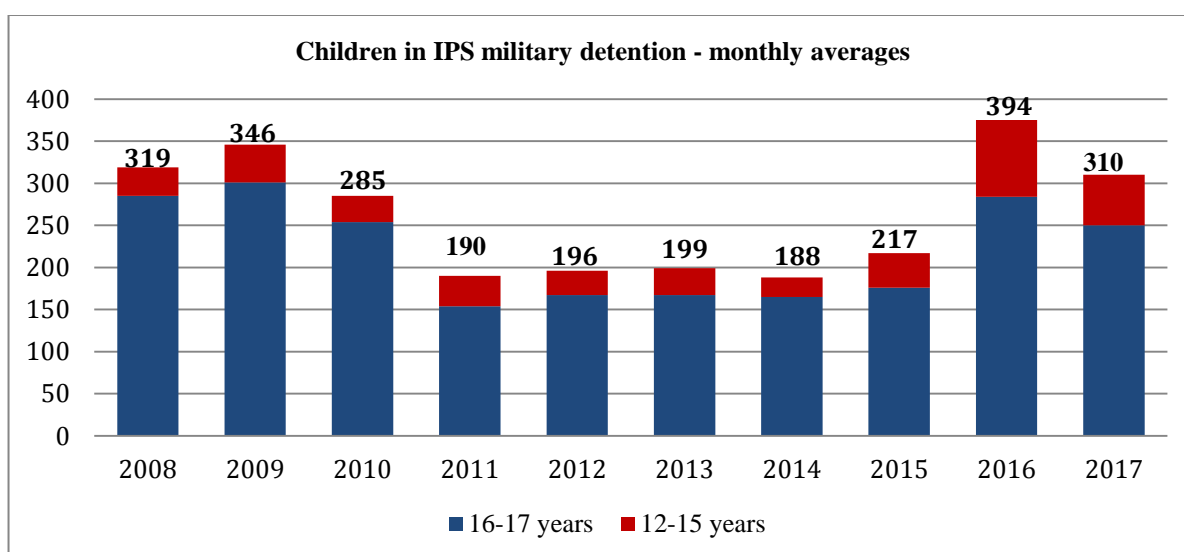
1.3 The purpose of this note is to provide an update on progress made in implementing the UNICEF/UK lawyers' recommendations and to consider recent developments in the military detention system. The information in this Note is based on 80 testimonies collected from children detained in 2017 and **550 testimonies** from children detained since 2013.

## 2. Detention figures

2.1 According to the latest data provided by the Israeli Prison Service (IPS) at the end of November 2017, **313 children** (12-17 years) were held in military detention. This represents a 17 percent decrease compared with 2016, but a 58 percent increase compared with the 5 year average detention rate recorded between 2011-2015. The latest data includes 9 girls and 2 children held without charge or trial in [administrative detention](#). The age and gender breakdown of children held in detention in 2017 was as follows:

- 12-13 years - 1%
- 14-15 years - 19%
- 16-17 years - 80%
- Male - 97%: Female - 3%

2.2 The IPS has not provided data for December 2017 which is expected to show a spike in detention rates following President Trump's decision to move the US Embassy to Jerusalem.



## 3. Current evidence of issues of concern

3.1 As part of MCW's monitoring programme, a number of issues of concern relating to the treatment of children in detention are tracked by reference to recent evidence. It should be noted

that in each case children reported multiple violations across a range of issues. Based on **80 testimonies** collected from children detained in 2017, the evidence indicates as follows:

- **Night arrests – 65 percent** of children report being arrested by the military at night between the hours of 22:00 and 05:00. This compares with 53 percent in 2016. Night arrest operations have a tendency to intimidate and terrify the targeted communities and children report being "[terrified](#)" when confronted with soldiers in their homes.
- **Summons in lieu of night arrests - 6 percent** of children report being served with a summons as an alternative to night arrest. This compares with 2 percent in 2016. In cases where summonses are used most are delivered at [night](#), [lack details](#), are sometimes written in [Hebrew](#) and provide no information about the child's legal rights.
- **Written notification of arrest - In 65 percent** of cases where children were arrested from home no written notification of reasons for arrest, or place of detention was provided. This is despite the military [informing](#) UNICEF in 2013 that a form written in Arabic/Hebrew must be given to parents of children arrested at home in every case ([Arabic/English](#)).
- **Hand ties - 94 percent** of children report being hand tied on arrest often described as "[very tight and painful](#)". Some children report remaining tied [during interrogation](#) and all children continue to be ankle shackled during military court appearances. In **58 percent** of cases the restraints do not comply with the military's own standard operating procedures.
- **Blindfolds - 78 percent** of children report being [blindfolded](#) or hooded following arrest. This compares with 81 percent in 2016. Both the [UK lawyers'](#) and [UNICEF](#) reports recommended a total prohibition on blindfolding or hooding children.
- **Floor transfer - 56 percent** of children report being [transferred](#) on the metal floor of military vehicles from the place of arrest to interrogation. This compares with 78 percent in 2016. Floor transfer naturally causes greater stress and injury to the detained child. The primary reason for floor transfer appears to be logistical.
- **Physical abuse - 65 percent** of children report being subjected to various forms of physical abuse following arrest. This compares with 64 percent in 2016. The types of reported abuse includes: [slapping](#); [punching](#); [kicking](#); [beaten with objects](#), such as assault rifles; holding [stress positions](#); and [pushed into objects](#), such as walls and barbed wire.
- **Threats - 59 percent** of children report being threatened following arrest or during interrogation. This compares with 54 percent in 2016. The types of threats include: [long-term detention](#); being [shot](#); [death threats](#); placed in [solitary confinement](#); [threatening gestures](#); subjected to "[special techniques](#)"; and subjected to a "[harsh interrogation](#)".
- **Verbal abuse - 46 percent** of children report being subjected to verbal abuse during arrest, transfer and/or interrogation. This compares with 41 percent in 2016. The types of verbal abuse tend to be directed at the child, at the child's mother or sister, or at the child's religion.

- **Strip searched - 66 percent** of children report being strip searched on arrival at a detention centre. This compares with 63 percent in 2016. Some children report having to "[crouch up and down naked](#)" while being searched. The authorities continue to ignore [UNICEF's](#) recommendations as to how these searches should be conducted.
- **Accompanied by a parent - 4 percent** of children report being accompanied by a parent [throughout their interrogation](#). This compares with 6 percent in 2016. While there is no legal right under Israeli military law for a parent to be present during interrogation, the authorities have acknowledged there is a [discretion](#) to allow their presence.
- **Access to lawyers - 81 percent** of children have no access to a lawyer prior to questioning. This compares with 88 percent in 2016. Some children report being informed of this right but are [questioned before the consultation](#) takes place. Other children report only being informed of this right [mid-way](#) through or [after](#) the interrogation is concluded. Many children continue to see their lawyer for the first time in the military courts.
- **Right to silence - 84 percent** of children report not being informed of their right to silence prior to questioning. This compares with 86 percent in 2016. In many cases where children are informed of this right, the [manner](#) and [circumstances](#) in which the information is conveyed raises questions as to whether the notification is [sufficient](#) or [misleading](#). Some children report being informed of the right but [physically assaulted](#) if they do not confess.
- **Audio-visual recording of interrogations** - In 2012 the UK lawyers' report recommended all interrogations should be audio-visually recorded with tapes made available to the defence before the first hearing. While audio-visual recording is now mandated in "non-security" offences the requirement does not apply in 95 percent of cases. MCW is unaware of any case where tapes were provided as recommended.
- **Solitary confinement** - According to data compiled by UNICEF, 8 children were held in solitary confinement between January and May 2017 for periods ranging between 4-17 days. Solitary confinement cases tend to occur during the interrogation phase in facilities jointly operated by the IPS and the Israeli Security Agency (ISA). This compares with 30 children for the whole of 2016.
- **Documentation in Hebrew - 77 percent** of children report being shown, or made to sign, documentation written in Hebrew during their interrogation. This compares with 74 percent in 2016. While interrogations are conducted in Arabic a written record is made in Hebrew which is often shown to the suspect for [signature](#).
- **Bail - 72 percent** of children indicted in the military courts in 2015 were denied bail and remanded in custody until the end of proceedings according to official [data](#). This compares with 71 percent in 2014. However, when children are released on bail this often only occurs after they have already spent [weeks](#) in custody. By way of contrast, **17.9 percent** of children indicted in Israel's civilian juvenile justice system were denied bail in 2015.
- **Conviction rate - 95 percent** of children indicted in the military courts in 2015 were convicted according to official [data](#). This compares with a conviction rate in cases

involving children of 98 percent in 2014. There is no official data currently available for 2016 or 2017.

- **Administrative detention** - In October 2015, the military authorities re-commenced issuing [administrative detention](#) orders for children following a four-year hiatus. The average number of children held administratively in any one month decreased from 8.5 children in 2016 to 1.5 in 2017. As of November 2017, there were 2 children held under administrative detention orders.
- **Translation** - Although the military courts are courts of precedent, no decisions have been officially translated into Arabic even though Arabic is an official language of the State of Israel and generally the exclusive language of the defendants in the military courts. Further, not all of the military orders have been translated into Arabic.
- **Education in prison** - Education opportunities for Palestinian children in IPS facilities remain limited. Where education is available, it is generally restricted to Arabic Hebrew and mathematics, with a prohibition on teaching history, geography and the sciences based on "security considerations". Many children drop out of school following their release.
- **Family visits and telephone communication in prison** - Children are entitled to a family visit (2 persons) every 2 weeks lasting 45 minutes. Some children do not receive visits as permits are denied on "security grounds" or because the bureaucracy to obtain a permit can take longer than the prison sentence. Unlike Israeli child detainees, Palestinian children are denied telephone communication with their families while in prison.

#### **4. Recent case examples**

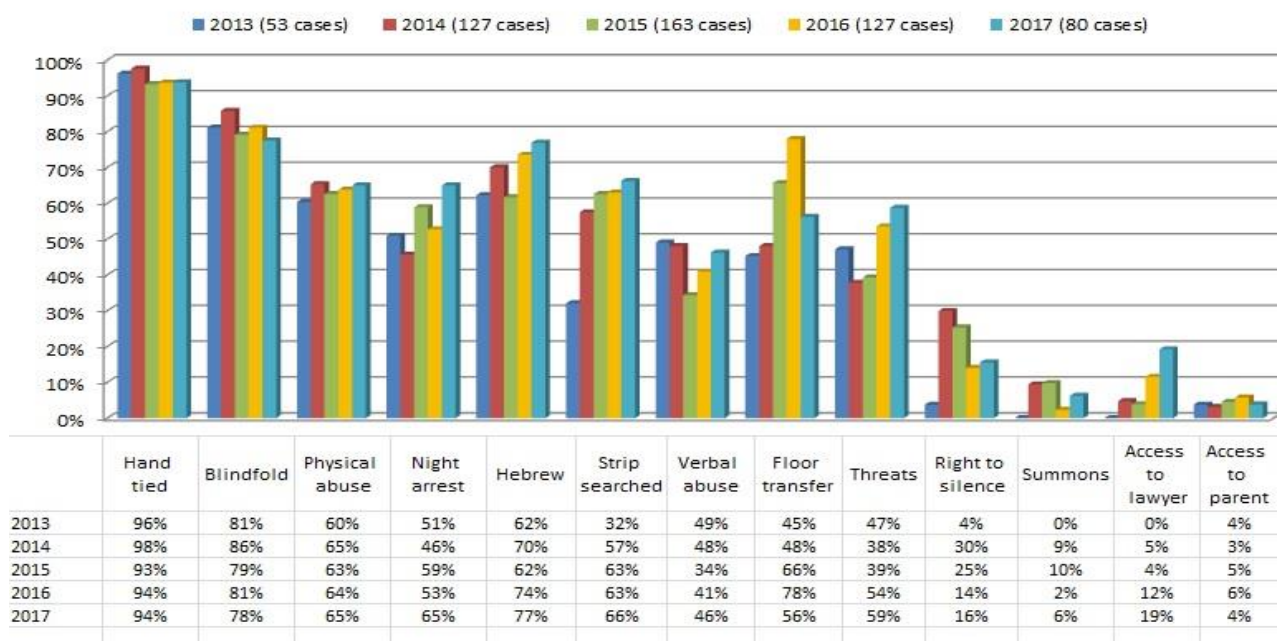
- 4.1 On 22 October 2017, a [17-year-old boy](#) was arrested at home at 1:30 a.m. He reports no reasons for his arrest were provided. He was then tied in accordance with military regulations and blindfolded. He was transferred on the floor of a military vehicle and reports being beaten. He was taken to the settlement of Etzion for interrogation. He reports not being informed of his right to silence or consulting with a lawyer prior to questioning. He was released on bail of NIS 2,000 by a military court on 1 November 2017.
- 4.2 On 25 September 2017, a [14-year-old boy](#) was arrested at home at 2:30 a.m. by soldiers in his bedroom. He reports being "terrified". He reports no reasons for his arrest were provided. He reports being tied and blindfolded. He was first taken to the settlement of Etzion for interrogation. He reports not being informed of his right to silence or consulting with a lawyer prior to questioning. He reports being physically and verbally abused by the interrogator. He was convicted in a plea bargain by a military court and released on 10 November 2017.
- 4.3 On 6 September 2017, a [16-year-old boy](#) was arrested at a checkpoint near the mosque in Hebron. He reports being tied with a single plastic tie that cut into his wrists. He was also blindfolded. He reports being pushed to the ground, kicked, beaten with a rifle and verbally abused. He reports that one soldier noticed his wrists were bleeding from the ties and replaced them with metal handcuffs. He was interrogated in the settlement of Kiryat Arba. He reports

being informed of his right to silence and talking to a lawyer by phone. He was released on bail of NIS 3,500 on 25 September 2017.

## **5. Comparative graph - issues of concern (2013-2017)**

5.1 The following graph monitors progress across 13 issues of concern and is based on **550 testimonies** collected by MCW between 2013 and 2018. All 550 testimonies were collected randomly in the sense that no prior enquiry was made as to the nature or seriousness of the allegations and all 550 children were detained from locations across the West Bank. The testimonies focus on the initial period of detention with particular regard to the first 24 hours following arrest, as it is during this timeframe that most issues of concern generally arise.

**COMPARATIVE GRAPH (2013 - 2017)**



**Updated: 16 January 2018**

Information is based on testimonies collected by MCW

## **6. Unlawful detention inside Israel**

6.1 According to data released by the IPS, on average **83 percent** of Palestinian detainees continue to be transferred and detained in Israel in 2017, including **61 percent** of child detainees. Transferring "protected persons" including detainees out of occupied territory is prohibited under [Article 76](#) of the Fourth Geneva Convention and is classified as a war crime under [Article 8\(2\)\(vii\)](#) of the Rome Statute of the International Criminal Court. The policy of transfer, which commenced in 1967, currently affects between 7,000-8,000 Palestinian men, women and children annually.

6.2 Since the Office of the Prosecutor of the International Criminal Court [announced](#) the opening of a preliminary examination into the situation in Palestine in order to establish whether the Rome Statute criteria for opening an investigation have been met in January 2015, it is estimated that

approximately 21,000 Palestinian men, women and children have been unlawfully transferred and detained outside the West Bank.

## **7. Unlawful discrimination**

- 7.1 Since 1967, Israel has exercised penal jurisdiction over both Palestinians and Israeli settlers living in the West Bank. Although Israeli military law technically applies to all individuals in the West Bank, in practice, the authorities apply civilian law to settlers and military law to Palestinians at the discretion of the prosecutor. The military law applied to Palestinians, including children, has fewer rights and protections than the civilian law applied to Israeli settlers living in the same territory.
- 7.2 Although Israel is not permitted to apply its civilian law to Palestinians in the West Bank on the grounds that this would be tantamount to unlawful annexation, the laws that are applied must contain rights and protections no less favourable than those applied to Israelis living in the settlements. Failure to do so violates the principle of non-discrimination. In 2017, Israel continues to operate two legal systems in the West Bank based on the race or national identity of the individuals concerned. Some key differences between the two legal systems relating to children are included in the following table.

#	Description	Civilian law		Military law	
1	Prohibition against night-time interrogation.	Yes		No	
2	Legal right to have a parent present during interrogation.	Yes		No	
3	Maximum period of detention before being brought before a judge.	12-13 yrs	12 hrs	12-13 yrs	24 hrs
		14-17 yrs	24 hrs	14-15 yrs	48 hrs
				16-17 yrs	96 hrs
4	Maximum period of detention without access to a lawyer	48 hrs		96 hrs	
5	Maximum period of detention prior to indictment.	10 days		15 days	
6	Maximum period of detention between indictment and conclusion of trial.	6 months		12 months	

## **8. A link between child detention and the settlements**

- 8.1 By mid-2017, there were approximately 410,000 Israeli civilians living in West Bank settlements constructed in violation of international law. In order to protect settlers living in occupied territory the military maintains a heavy presence in and around Palestinian communities located near to settlements, leading to friction, protests and resentment. Out of 127 cases documented by MCW in 2016, 125 children (**98 percent**) live within an average of **1.02 kilometres** from a settlement or road used by settlers. In the remaining 2 cases there was no proximate link between the place of arrest and the place of residence.

## 9. Recommendations

9.1 Since the publication of the UNICEF Report in 2013 there have been a number of developments across a range of issues. However, based on available evidence the UN agency's conclusion that the ill-treatment of children who come into contact with the system is "widespread, systematic and institutionalized" appears valid in 2018. MCW continues to advocate for the effective implementation of the following 6 non-severable recommendations:

#	Recommendation	Comments
1	<b>Children should only be arrested during daylight hours except in rare and exceptional circumstances. In all other cases summonses should be used.</b>	In 2017, <b>65 percent</b> of children reported being arrested at night. A pilot scheme to issue summonses in lieu of night arrests introduced in 2014 was utilized in <b>6 percent</b> of cases in 2017. In cases where summonses were used and complied with the levels of reported abuse were generally significantly lower.
2	<b>All children, and their legal guardians, should be provided on arrest with a written statement in Arabic informing them of their full legal rights in custody.</b>	In 2017, <b>35 percent</b> of children arrested from home reported that a document with details about their arrest was provided. As in previous years these forms do not include information about the child's rights while in custody.
3	<b>All children must consult with a lawyer of their choice prior to questioning.</b>	In 2017, <b>19 percent</b> of children reported being allowed to consult with a lawyer prior to interrogation. Most children continue to see their lawyer for the first time in a military court after interrogation. Under Israeli military law a detainee must be informed of his/her right to consult with a lawyer on arrival at a police station.
4	<b>All children must be accompanied by a family member throughout their questioning.</b>	In 2017, <b>4 percent</b> of children reported being accompanied by a family member throughout their questioning. Whilst there is no legal right under Israeli military law for a parent to accompany a child during interrogation, the military authorities have acknowledged that there is a <a href="#">discretion</a> to permit parents to accompany children.
5	<b>Every interrogation must be audio-visually recorded and a copy of the tape must be provided to the defence prior to the first hearing.</b>	In 2017 MCW did not document a single case in which an interrogation was audio-visually recorded <b>and</b> a copy of the tape was provided to the defence prior to the first hearing. In September 2014, <a href="#">MO 1745</a> came into effect providing for the audio-visual recording of interrogations involving minors in "non security" cases. However, the overwhelming majority of children are accused of "security offences".
6	<b>Breach of any of these recommendations should result in the discontinuation of the prosecution and the child's immediate release.</b>	Although some military judges are now more critical of the treatment of children, evidence obtained in breach of these recommendations is routinely <a href="#">relied</a> on to obtain a conviction.