



## Briefing Note – October 2017

### 1. Introduction

- 1.1 In March 2013, UNICEF published a report - [Children in Israeli Military Detention](#) - 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 recommendations and to consider recent developments in the military detention system.

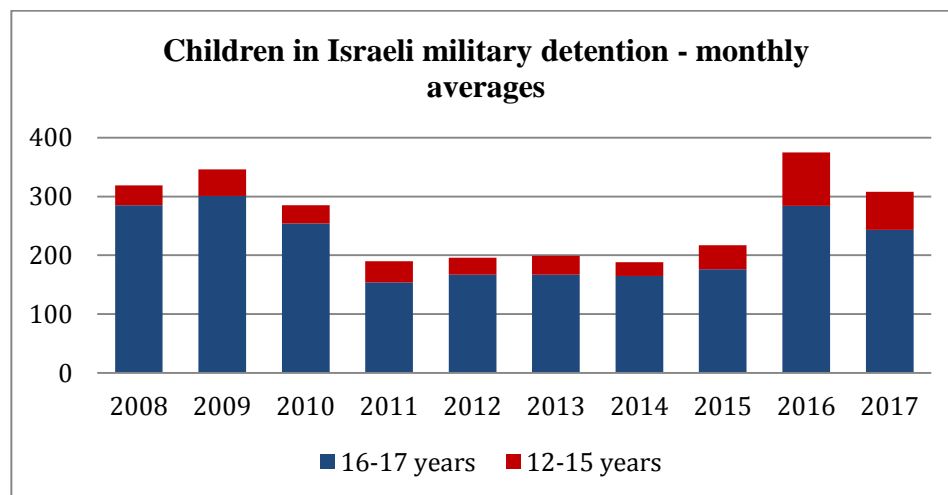
### 2. Detention figures

- 2.1 Since May 2016, the Israeli Prison Service (IPS) has been unable to provide timely prison statistics on a monthly basis in accordance with a long-standing Freedom of Information application submitted by [B'Tselem](#). In the 15 years prior to May 2016, the IPS provided updated prison statistics on a monthly basis. While the IPS is now publishing some figures, they are currently 3 months in arrears and issues of accuracy remain a concern.
- 2.2 According to the latest data provided by the Israeli Prison Service (IPS) at the end of May 2017, **331 children** (12-17 years) were held in military detention. This compares with the 5-year monthly average detention rate of 257 children - representing an increase of 22 percent.

The latest data includes 10 girls; 3 children under 14 years; and 2 children held without charge or trial in [administrative detention](#). The age and gender breakdown of children held in detention in May 2017 was as follows:

- 12-13 years - 1%
- 14-15 years - 21%
- 16-17 years - 78%
- Male - 97%: Female - 3%

2.3 Data relating to the monthly average number of Palestinian children detained by the military authorities and held in IPS prison facilities between 2008 and 2017 is presented in the following table. As previously mentioned the IPS has not updated this data since May 2017.



2.4 According to [data](#) released by the military and police authorities the total number of Palestinian children arrested in the West Bank between 2013 and 2015 was as follows:

- 2013 - **1,004** children
- 2014 - **861** children
- 2015 - **871** children

As previously [reported](#), the official statistics (IPS, military and police) most likely understate the number of minors detained and generally do not include [minors](#) held by the military and released within a few hours or a day – a number that is likely to be substantial and includes children below the [minimum age](#) of criminal responsibility.

### **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 **60 testimonies** collected from children detained in 2017 (reporting period), the evidence indicates as follows:

- **Night arrests** – **60 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 "[very scared](#)" or "[terrified](#)" when confronted with heavily armed soldiers in their homes and [bedrooms](#).

- **Summons in lieu of night arrests - 7 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 continue to be delivered at [night](#), frequently [lack details](#), are sometimes written in [Hebrew](#) and provide no information about the child's [legal rights](#) in custody.
- **Written notification of arrest - In 81 percent** of cases where children were arrested from home it was reported that no written notification of the reasons for arrest or place of detention was provided. This is despite the military [informing](#) UNICEF in April 2013 that a standard form written in Arabic and Hebrew must be given to parents of children arrested at home in every case ([Arabic/English](#)).
- **Hand ties - 92 percent** of children report being hand tied on arrest often described as "[painful](#)" or "[very tight and painful](#)". This compares with 94 percent in 2016. Some children report that they remain tied [during interrogation](#) and all children continue to be shackled by the ankles during military court appearances. In **64 percent** of cases the evidence indicates non-compliance with the military's own standard operating procedures for the use of hand restraints introduced in 2010 following High Court intervention.
- **Blindfolds - 77 percent** of children report being [blindfolded](#) or hooded upon arrest in disregard of a recommendation made by UNICEF that this practice should be prohibited in all circumstances. This compares with 81 percent in 2016.
- **Floor transfer - 58 percent** of children report being transferred on the [metal floor](#) of military vehicles from the place of arrest to an interrogation centre. This compares with 78 percent in 2016. Floor transfer naturally has a tendency to cause greater [stress and injury](#) to the detained child. The spike in reports in 2016 is likely the product of a higher [detention rate](#) that year.
- **Physical abuse - 62 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](#); [kicking](#); [punching](#); deliberate [over-tightening](#) of restraints; and being [beaten with objects](#) including guns.
- **Threats and verbal abuse - 57 percent** of children report being subjected to threats during arrest, transfer and/or interrogation. This compares with 54 percent in 2016. The types of reported 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](#)". **38 percent** of children also report being subjected to [verbal abuse](#) during arrest, transfer and/or interrogation. This compares with 41 percent in 2016.

- **Strip searched - 60 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 military and prison authorities continue to disregard [UNICEF's](#) recommendations as to how these searches should be conducted.
- **Accompanied by a parent - 5 percent** of children report being accompanied by a parent [throughout their interrogation](#). This compares with 6 percent in 2016. While there is arguably 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 [discretion](#) to permit parents to accompany their children.
- **Access to lawyers - 24 percent** of children report having access to a lawyer prior to questioning. This compares with 12 percent in 2016. Under Israeli military law a detainee must be informed of the right to consult with a lawyer on arrival at a police station, and while there are limited exceptions, the consultation should occur prior to interrogation. Some children report being informed of this right but are [questioned before the consultation](#) can take place. Other children report only being informed of this right [mid-way](#) through or [after the interrogation](#) is concluded. Other children report being [handed a telephone](#) by the interrogator and informed that the person on the phone is a lawyer - in some cases this unidentified "lawyer" gives clearly [incompetent legal advice](#). Other children report being told to [sign a document stating falsely](#) that they have been informed of their legal rights. Most children continue to see their lawyer for the first time in the military courts.
- **Right to silence - 19 percent** of children report being informed of their right to silence under military law. This compares with 14 percent in 2016. In many cases where children are informed of this right, the [manner](#) and [circumstances](#) in which the information is conveyed raises serious questions as to whether the notification is [sufficient](#) or deliberately [misleading](#). Some children report being informed of their right to silence and then [physically assaulted](#) when they do not confess. The evidence also suggests that the manner in which children are informed of this right is manifestly inadequate - one child stating that he understood the interrogator to mean that he was [not permitted to interrupt](#). In some cases the child is informed of his right to silence [halfway through the interrogation](#) or between [multiple interrogations](#).
- **Audio-visual recording of interrogations** - In 2012 a report by a delegation of prominent [UK jurists](#) recommended that all interrogations of children should be audio-visually recorded with tapes made available to defence lawyers prior to the first hearing. [UNICEF](#) echoed this practical recommendation in 2013 as a means of providing independent oversight for the protection of all parties to the interrogation. In September 2014 the military authorities [amended the law](#) to mandate the audio-visual recording of all interrogations of minors in the West Bank but limited this safeguard to "non-security" related offences - thereby excluding approximately 95 percent of all cases involving minors in the military courts. Although some interrogations are audio-visually recorded, MCW is unaware of a single case during the past 5 years in which tapes have been

provided to defence lawyers prior to the first hearing.

- **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. UNICEF has recommended that in no circumstances whatsoever should a child be held in solitary confinement due to its damaging psychological impact.
- **Documentation in Hebrew** - **76 percent** of children reported 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 then generally shown to the suspect for signature. Some children refuse to sign whilst others sign acknowledging that they have [no idea](#) about the contents of the document. Some children report being asked to [sign documentation](#) other than their statements written in Hebrew.
- **Bail** - According to [data](#) obtained under a freedom of information application, **72 percent** of children indicted in the military courts in 2015 were denied bail and remanded in custody until the end of proceedings. This compares with 71 percent of children denied bail in 2014. However, evidence collected by MCW indicates that in cases where children are released on bail this frequently occurs only after they have already spent a number of [weeks](#) or more in custody. By way of contrast, **17.9 percent** of children indicted in Israel's civilian juvenile justice system were denied bail in 2015. There is no official data currently available for 2016 or 2017.
- **Conviction rate** - According to [data](#) obtained under a freedom of information application, **95 percent** of children indicted in the military courts in 2015 were convicted. 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 procedure provides for the detention of a person without charge or trial by order of a military commander. The UN Committee Against Torture has criticised the military's use of this procedure which in certain circumstances can amount to cruel, inhuman or degrading treatment or punishment. In May 2017, 2 children were being held pursuant to these orders.
- **Education in prison** - Education opportunities for Palestinian children inside 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". When education is available, it is insufficient to ensure the child's smooth reintegration back into the Palestinian school system and the subsequent drop-out rate upon release is high.

- **Family visits and telephone communication in prison** - Children are entitled to a family visit (2 persons) every 2 weeks lasting for 45 minutes. As in previous years, some children do not receive visits as permits are denied on "security grounds" or because the [bureaucracy](#) to obtain a permit can take up to 2 months. Unlike Israeli child detainees, Palestinian children are denied telephone communication with their families while in prison.

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

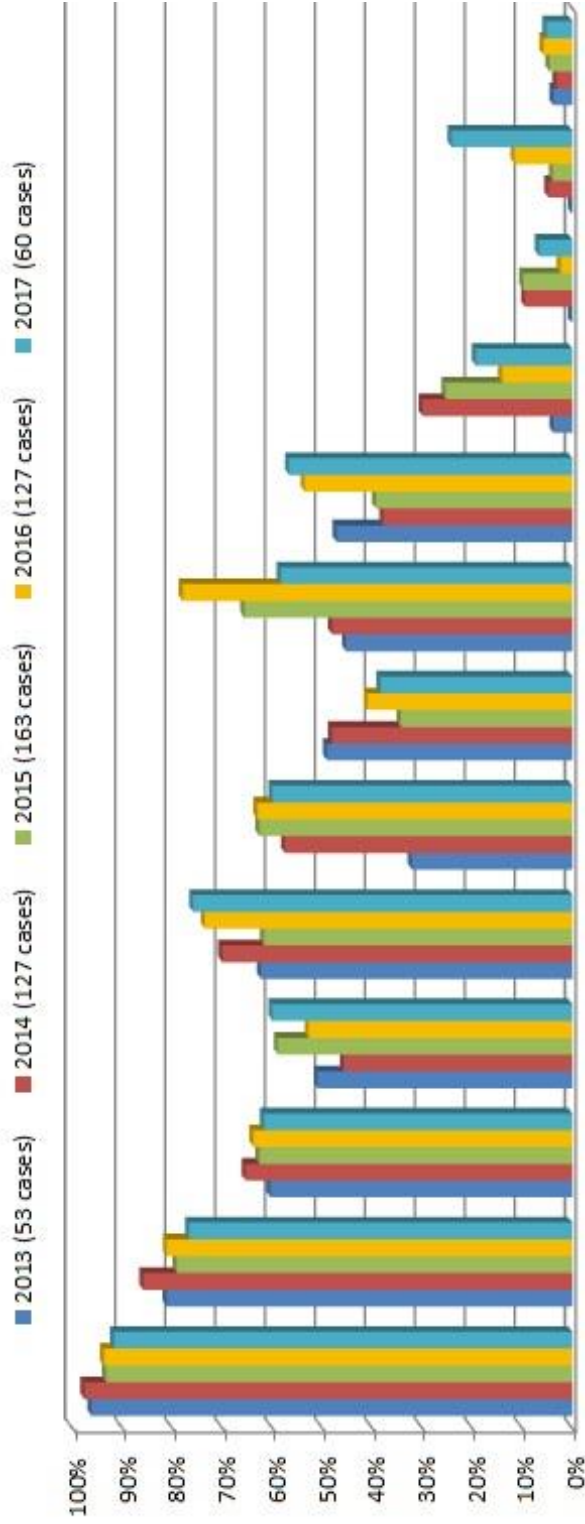
- 4.1 On 26 February 2017, a [13-year-old boy](#) was served with a summons by soldiers at 2:30 a.m. Complying with the summons he went to the settlement of Kiryat Arba at 9:00 a.m. but was told to go to Etzion settlement. He waited with his father outside Etzion until 1:00 p.m. before being interrogated. The father was permitted to attend the interrogation. The boy was not informed of his right to consult a lawyer or right to silence. He was given a document in Hebrew to sign. He was separated from his father and taken to Ofer prison before being released on bail on 1 March.
- 4.2 On 19 July 2017, a [16-year-old boy](#) was arrested by soldiers at home at 2:00 a.m. He reports no reasons or documents about the arrest were provided. He was handcuffed behind his back which was "very tight and painful". He was also blindfolded. He was transferred on the floor of a military vehicle and reports being beaten. He was taken to the settlement of Karmi Zur where he reports being verbally abused and kicked. At 8 a.m. he reports being interrogated in Etzion settlement without prior access to a lawyer or being informed of his right to silence.
- 4.3 On 7 August 2017, a [15-year-old boy](#) was arrested by soldiers at home at 2:30 a.m. The commander gave his father a document about the arrest. He reports being tied to the front with one plastic tie which was "very tight and painful". He complained and a soldier loosened the tie. He was also blindfolded. At Etzion settlement he reports being made to stand in the hot sun for an extended period before fainting. He reports being verbally abused and physically assaulted. He was permitted to consult with a lawyer but told he had to confess by the interrogator.
- 4.4 All **530 testimonies** are available on MCW's [website](#).

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

- 5.1 The following graph monitors progress across 13 issues of concern and is based on **530 testimonies** collected by MCW between 2013 and 2017. All 530 testimonies were collected randomly in the sense that no prior enquiry was made as to the nature or seriousness of the allegations and all 530 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: 7 October 2017**

Information is based on testimonies collected by MCW

## **6. Other developments**

- 6.1 *The right to a lawyer and admissibility of evidence in the military courts* - In February 2017, a military judge [rejected the admissibility](#) of a statement taken from a 15-year-old boy during interrogation on the basis that, *inter alia*, the boy was denied access to a lawyer prior to interrogation as required under military law. This decision has potential significance, as the [evidence](#) indicates that 76 percent of children detained by the military in the West Bank continue to be interrogated without prior access to a lawyer.
- 6.2 *Supreme Court petition: social welfare reports for bail applications in the military courts* - In February 2017, a petition was filed in Israel's Supreme Court seeking an order requiring the production of [social welfare reports](#) at every remand hearing involving a child in the military courts in the West Bank. The petition seeks to address a fundamental shortcoming in the military courts whereby the overwhelming majority of children continue to be denied bail and are held in custody pending the conclusion of the legal proceedings. In the absence of a social welfare report the military judges have limited evidence to support a decision to release on bail. These reports are mandatory in Israel.
- 6.3 *4th anniversary of the UNICEF report* - March 2017 marked the fourth anniversary of the [UNICEF report](#). Following the report's release Israel's Ministry of Foreign Affairs (MOFA) announced it would co-operate with UNICEF to implement the recommendations. MOFA delegated this task to the military prosecutor in the West Bank, Lt. Col. Maurice Hirsch, [a resident of a West Bank settlement](#). In 2013 and 2015, UNICEF published two updates ([Bulletin No. 1](#) and [Bulletin No. 2](#)) listing progress made following co-operation with the military authorities but acknowledged that "reports of alleged ill-treatment of children during arrest, transfer, interrogation and detention have not significantly decreased in 2013/14". While UNICEF has not published any bulletins since 2015, Hirsch has retired as a prosecutor and participates in [advocacy tours](#) with the right-wing Israeli organisation, NGO Monitor. MCW [estimates](#) that after four years, 1 of UNICEF's 38 recommendations (No. 21 - access by lawyers to medical records) has been substantially implemented - an implementation rate of **2.6 percent**.
- 6.4 *5th anniversary of the UK lawyers' report* - June 2017 marked the fifth anniversary of the independent lawyers' report - [Children in Military Custody](#). The UK Foreign Office funded report found undisputed evidence that the military detention system violated at least six Articles under the UN Convention on the Rights of the Child and two Articles under the Fourth Geneva Convention. In February 2016, a follow-up mission by the lawyers [announced](#) that their visit to the region to review progress in implementing the recommendations had been cancelled due to a lack of co-operation by Israeli civilian and military authorities. MCW [estimates](#) that after five years, 1 of the UK report's 40 recommendations (No. 33 - separation of children from adults in detention) has been substantially implemented - an implementation rate of **2.5 percent**.
- 6.5 A comprehensive list of developments is available on MCW's [website](#).

## **7. Unlawful detention inside Israel**

- 7.1 According to data released by the IPS, on average **82 percent** of Palestinian detainees continue to be transferred and detained in Israel in 2017, including **74 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.

- 7.2 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.

## **8. Unlawful discrimination**

- 8.1 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.
- 8.2 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	<b>Prohibition against night-time interrogation.</b>	Yes		No	
2	<b>Legal right to have a parent present during interrogation.</b>	Yes		No	
3	<b>Maximum period of detention before being brought before a judge.</b>	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	<b>Maximum period of detention without access to a lawyer</b>	48 hrs		96 hrs	
5	<b>Maximum period of detention prior to indictment.</b>	10 days		15 days	
6	<b>Maximum period of detention between indictment and conclusion of trial.</b>	6 months		12 months	

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

9.1 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.

## **10. Recommendations**

10.1 Since the publication of the UNICEF Report in 2013 there have been a number of developments across a range of issues. However, based on the available evidence the UN agency's conclusion that the ill-treatment of children who come into contact with the military detention system is "widespread, systematic and institutionalized" appears to be still valid in 2017. MCW continues to advocate for the effective implementation of the following 6 non-severable recommendations:

- (i) Children should only be arrested during daylight hours except in rare and exceptional circumstances. In all other cases summonses should be used.
- (ii) 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.
- (iii) All children must consult with a lawyer of their choice prior to questioning.
- (iv) All children must be accompanied by a family member throughout their questioning.
- (v) Every interrogation must be audio-visually recorded and a copy of the tape must be provided to the defence prior to the first hearing.
- (vi) Breach of any of these recommendations should result in the discontinuation of the prosecution and the child's immediate release.