



Military Court Watch

Monitoring the treatment of children in Israeli military detention

Children in Military Detention

Complaint submission

Date: 1 March 2016

Submitted to:

- UN [Special Rapporteur](#) on torture and other cruel, inhuman or degrading treatment or punishment
- UN [Working Group](#) on Arbitrary Detention
- UN [Special Rapporteur](#) on the situation of human rights in the Palestinian territories occupied since 1967

Copied to:

- UNICEF

Military Court Watch (MCW) is a voluntary association founded by a group of lawyers and other professionals with a belief in the rule of law. MCW is guided by the principle that all children detained by the Israeli military authorities are entitled to all the rights and protections guaranteed under international law.

1. Introduction

- 1.1 The purpose of this submission is to review the practices relating to children who come in contact with the Israeli military detention system and to consider whether recent developments have materially improved their treatment. The submission is based on 163 testimonies collected by Military Court Watch (MCW) from children detained in 2015 as well as a review of changes to the military law, consideration of the Standard Operating Procedures issued to the military and court observations.
- 1.2 The testimonies were selected randomly in the sense that no prior enquiry was made as to the nature or seriousness of the allegations. The testimonies focus on the initial period of detention with particular regard to the first 24 hours following arrest, as it is during this time frame that most issues of concern arise. All 163 testimonies are included in this submission and marked "[Annexure A](#)".

2. Background

- 2.1 Following an increasing number of allegations of ill-treatment of children held in Israeli military detention, UNICEF commenced reviewing the practices applied to children in or about 2011. Following the review process UNICEF released a report in March 2013 - [Children in Israeli Military Detention](#) – which included the UN agency’s observations and recommendations from the review process (UNICEF Report).¹
- 2.2 The UNICEF Report reviewed over 400 affidavits from children detained in a system that has jurisdiction to prosecute children as young as 12 years in military courts and concluded that: “[T]he ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalised throughout the process, from the moment of arrest until the child’s prosecution and eventual conviction and sentencing”.
- 2.3 Following the release of the UNICEF Report the Israeli Ministry of Foreign Affairs stated that it would: “[S]tudy the conclusions and work to implement them through on-going cooperation with UNICEF”.² Since this statement was made there has been a significant level of dialogue between the Israeli authorities and UNICEF as well as the introduction of a number of measures, such as:
- (i) A pilot study to use summonses in lieu of night-time arrests;³
 - (ii) Distribution of forms notifying parents of the reasons for arrest and place of detention;⁴
 - (iii) Development of a form to notify minors of their right to silence and their right to consult with a lawyer;⁵
 - (iv) Re-issuing [Standard Operating Procedures](#) relating to the treatment of minors including the use of restraints and blindfolds. The Standard Operating Procedures also re-affirmed the prohibition against physical violence and degrading treatment;⁶

- (v) Mandating the audio-visual recording of all interrogations of minors suspected of “non-security” related offences;⁷ and
- (vi) Reducing the time in which a minor must be brought before a judge following arrest;⁸

2.4 Since March 2013, UNICEF has released two updates to its original report in October 2013 and February 2015.⁹ In its most recent update UNICEF noted that: “reports of alleged ill-treatment of children during arrest, transfer, interrogation and detention have not significantly decreased in 2013 and 2014”.¹⁰

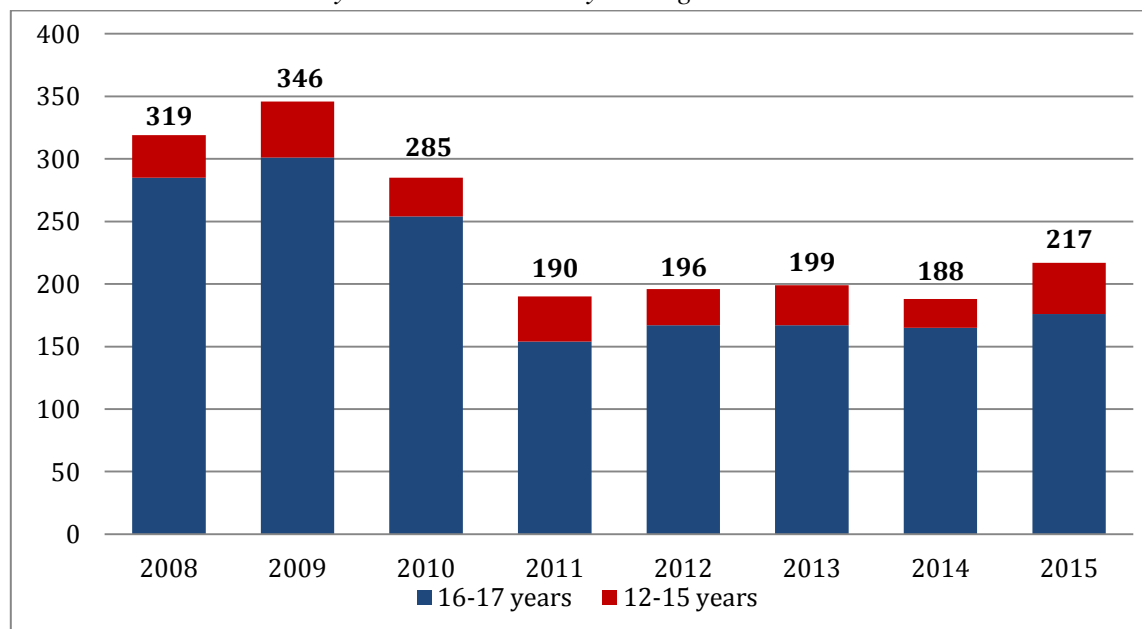
2.5 One other significant development in 2015 was Palestine’s accession to the Rome Statute of the International Criminal Court which came into effect on 1 April 2015 with retro-active effect from 13 June 2014.¹¹

3. Detention figures

3.1 During 2015 an average of 217 children were held in detention each month representing an annual increase of 15 per cent compared with 2014. However, since the upsurge of violence in October, the number of children in detention has increased significantly from 171 in September to 422 children in detention at the end of December 2015 – an increase of 147 per cent. The average number of children currently in detention is 9 per cent higher than when UNICEF published its report in 2013.

3.2 The military authorities do not release comprehensive figures on the total number of children detained in a single year but have confirmed that 1,004 children were arrested in 2013 and 861 children were arrested in 2014.¹² It should be noted that the Israeli Prison Service (IPS) statistics [understate](#) the number of minors detained and do not include minors held by the military and released within a few days – a number that is likely to be substantial – and do not include children held in IPS facilities between official monthly headcounts.¹³

Children in Israeli military detention – monthly averages. Source: Israeli Prison Service



4. Issues of concern – evidentiary review

4.1 As part of its monitoring programme, MCW tracks 13 issues to help assess whether or not changes introduced to the system are reducing the level of reported abuse and other issues of concern. These issues of concern are considered in more detail in the paragraphs below and the cumulative evidence collected since 2013 is presented in a comparative graph on page 7. The information below is based on 163 testimonies collected from children detained in the system between January and December 2015 (Reporting Period).

Night arrests and summonses

4.2 In 59 per cent of cases documented during the Reporting Period children report being [arrested at night](#) in what are frequently described as [terrifying](#) raids by the military. Although the military authorities announced the introduction of a [pilot scheme](#) to issue [summonses](#) to limit night arrests in February 2014, summonses are currently being used in just 10 per cent of cases. In cases where summonses are used the evidence discloses a number of troubling features:

- (i) In the overwhelming majority of cases the summons was delivered by the military [after midnight](#);
- (ii) Relevant parts of the summonses were handwritten in [Hebrew](#) without Arabic translation;
- (iii) Relevant information, such as the nature of the accusation, was [missing](#); and
- (iv) No reference to the child's [legal rights](#) was included in any of the summonses.

4.3 According to information released by the Dutch Foreign Minister in January 2015, the Military Prosecutor advised that the Pilot Study was suspended in or about September 2014 due to "increased violence" and further, the military authorities stated that they did not retain any statistics concerning the Study. However, the military commander did subsequently release data indicating that between January and September 2014 the military issued 63 summonses to minors (7%). Evidence collected by MCW suggests that the pilot study to issue summonses in lieu of night-time arrests re-commenced in or about March 2015 and is currently operating.

Hand ties

4.4 In 93 per cent of cases documented during the Reporting Period children report being [hand tied](#) upon arrest which is frequently described as "[painful](#)" or "[very tight and painful](#)". Some children reported that the plastic ties used to restrain them [cut](#) into their wrists. Many of these children also reported being restrained for extended periods of time including during interrogation. The [standard operating procedures](#) for the use of hand ties introduced by the Israeli military in 2010 continue to be ignored in many cases.

Blindfolds

- 4.5 In 79 per cent of cases documented during the Reporting Period 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.

Children transferred on the floor of military vehicles

- 4.6 In 66 per cent of cases documented during the Reporting Period children report being [transferred on the metal floor](#) of military vehicles from the place of arrest to an interrogation centre. Transferring children on the floor of a military vehicle whilst tied and blindfolded adds significantly to their mental and physical stress whilst often leading to other forms of abuse, such as being shoved and kicked by the soldiers seated around them in the armoured vehicle.

Physical and verbal abuse

- 4.7 In 63 per cent of cases documented during the Reporting Period children report being subjected to various forms of [physical abuse](#) during arrest, transfer and/or interrogation. The types of reported abuse includes: [punching](#), [slapping](#), [kicking](#), [beating](#) with, or [pushing](#) into objects, prolonged [exposure](#) to the elements, [spat on](#), [position abuse](#) and [electric shocks](#). In 34 per cent of cases documented during the Reporting Period children report being subjected to some form of [verbal abuse](#) mostly consisting of [derogatory statements](#) about the child's mother or sister.

Threatening behaviour

- 4.8 In 39 per cent of cases documented during the Reporting Period children report being subjected to [threats](#) during arrest, transfer and/or interrogation. The types of threats reported include: [beating](#); [indefinite detention](#); [electrocution](#); [shooting](#); [shouting and intimidation](#); placed in a room with [snakes and scorpions](#); bringing [dogs](#) into the interrogation room; [thrown off the roof](#) of the interrogation centre and [rape](#).

Denial of the right to silence

- 4.9 In 75 per cent of cases documented during the Reporting Period children report being denied their [right to silence](#). In the 25 per cent of cases where children were informed of this right, the manner and circumstances in which the information was conveyed raises serious concerns as to whether the notification was sufficient. In [one case](#) an interrogator informed the child that he had the right to silence whilst a second interrogator told the child he would be raped if he did not confess. In other cases children are asked to [sign documents](#) acknowledging that they have been informed of their rights even when this is not so and in one case a child was beaten when he [attempted to exercise](#) his right to silence.

- 4.10 MCW continues to also document multiple cases where children are subjected to [double interrogations](#) in which they are only informed of their rights during the second interrogation following an coercive undocumented preliminary interrogation.

Prompt access to lawyers

- 4.11 In 96 per cent of cases documented during the Reporting Period children report being [denied access to a lawyer](#) prior to questioning. Under Israeli military law a detainee must be informed of his/her right to consult with a lawyer by the police on arrival at a police station. However, the order does not stipulate when the consultation should take place, rendering the right to consult with a lawyer largely illusory and ineffectual in most cases. Further, there is no obligation whatsoever on the military to inform a detainee of this right. Most children continue to see their lawyer for the first time in a military court after the interrogation phase has been completed.

Access to parents

- 4.12 In 95 per cent of cases documented during the Reporting Period children report being interrogated in the absence of a parent or close family member. 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 [discretion](#) to permit parents to do so. In 2015 this discretion was exercised in favour of accompaniment in just 5 per cent of cases documented by MCW.

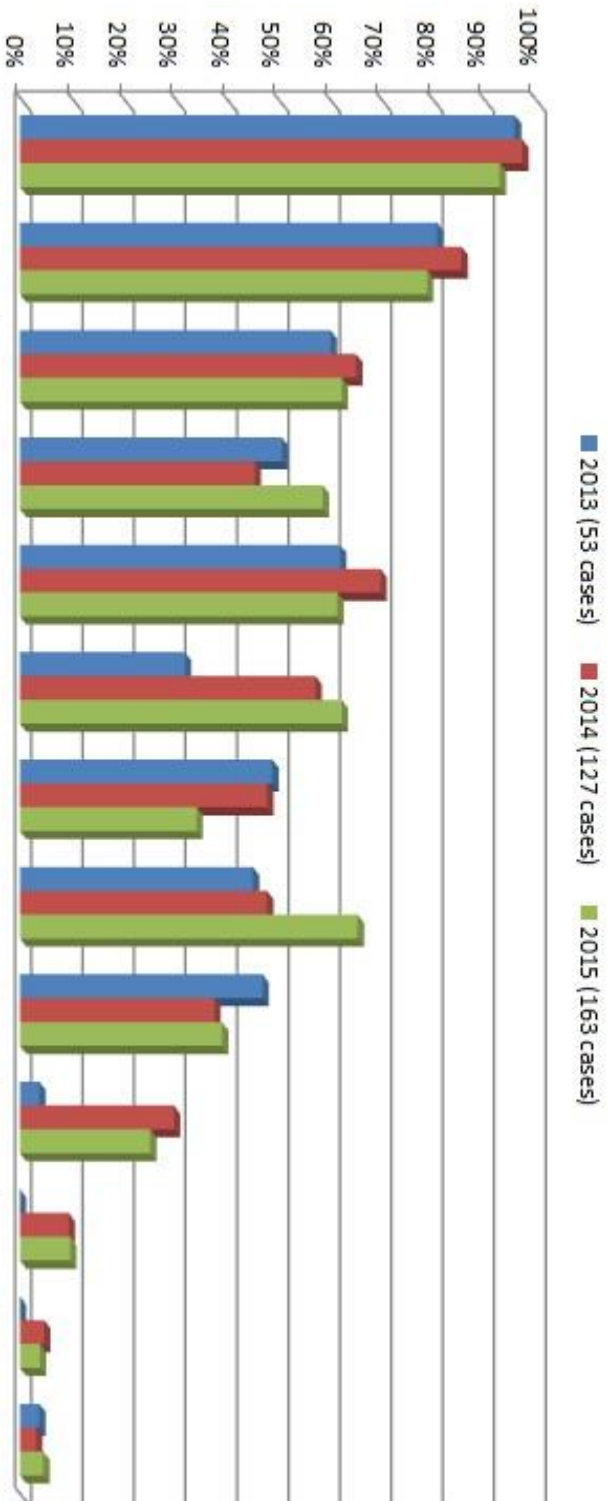
Legal proceedings conducted in a foreign language

- 4.13 In 62 per cent of cases documented during the Reporting Period children report being shown, or made to sign, documentation written in [Hebrew](#) at the conclusion of their interrogation. Some children refuse to sign whilst others sign acknowledging that they had no idea about the contents of the document. Proceedings in the military courts continue to be conducted in Hebrew with translation provided by unqualified conscripts. The translation varies in standard from quite good to incomprehensible. Most court documents and all judgments are only available in Hebrew, including judgments of the Israeli Supreme Court, even though Arabic is an official language of the State. Further, some military orders are still only available in Hebrew despite the obligation to translate contained in [article 65](#) of the Fourth Geneva Convention.

Strip searches

- 4.14 In 63 per cent of cases documented during the Reporting Period children report being [strip searched](#) on arrival at a detention centre in circumstances frequently described as “[embarrassing](#)” and/or “[humiliating](#)”. The military and prison authorities continue to disregard [UNICEF](#)’s recommendations as to how these searches should be conducted.

COMPARATIVE GRAPH (2013 - 2015)



Updated: March 2016

Information is based on testimonies collected by MCW

5. Solitary confinement

5.1 According to data compiled by UNICEF, 13 children were held in solitary confinement in 2015. The length of time the children remained in solitary confinement ranged from 4 to 45 days. The children were held in solitary confinement in Al Jalame (62%), Petah Tikva (15%), Asqalan (15%) and Megiddo prisons (8%) generally as part of the interrogation process. Due to the adverse psychological impact of holding individuals in solitary confinement, the UN Special Rapporteur on Torture recommended a complete ban on its use for children in 2011.¹⁴

6. Case examples

6.1 On 4 February 2015, a 16-year-old boy ([M.J.H.](#)) from Beit Ummar was arrested by Israeli soldiers at 2:00 a.m. He reports that his hands were tied and he was blindfolded before being transferred on the metal floor of a military vehicle. He was transferred to the settlement of Kiryat Arba and questioned by two interrogators at around 6:30 a.m. He reports that one interrogator informed him that he had the right to silence whilst the other interrogator threatened to rape him if he did not confess.

6.2 On 18 May 2015, a 16-year-old boy ([H.S.R.](#)) from Al 'Arrub refugee camp was arrested by Israeli soldiers at 2:00 a.m. He reports being painfully hand tied with a single plastic tie contrary to army regulations and blindfolded before being taken to Etzion settlement for questioning. He reports that soldiers slapped, kicked and poured water over him whilst laughing. He was informed of his right to silence but did not consult with a lawyer before questioning. When he denied the allegations the interrogator slapped him. He was released 18 hours later without charge.

6.3 On 31 May 2015, a 15-year-old boy ([S.A.Z.](#)) and his uncle were grazing their sheep near the settlement of Ma'aleh Mikhmas. At around 9:00 a.m. a group of Israeli soldiers exited the settlement and forced S.A.Z. and his uncle into the settlement at gunpoint. The pair were not formally arrested and were not informed why they were being detained. The pair were painfully tied and left outside in the sun for three hours. They were finally released 12 hours later. This detention is unlikely to be recorded in any published official statistics.

6.4 On 17 June 2015, a 15-year-old boy ([A.J.H.](#)) from Silwad was arrested by Israeli soldiers at 3:30 a.m. When his father asked for documentation about the arrest he was told to shut-up. He reports that he was painfully hand tied with a single plastic tie contrary to army regulations and blindfolded. He also reports being slapped and kicked as well as verbally abused. He was then transferred to Ofra settlement on the floor of a jeep and left outside in the sun for eight hours. He reports that he was threatened with long-term detention if he did not confess to throwing stones and with violence if he did not sign a statement written in Hebrew.

6.5 On 19 October 2015, a 14-year-old boy ([M.R.A.](#)) from Tuqu' was arrested by Israeli soldiers at 1:30 a.m. He reports waking up to see soldiers in his bedroom. He was tied and blindfolded before being taken outside and put on the metal floor of a jeep. He was taken to the settlement of Etzion where he sat on the ground until 2:00 p.m. He was not given

- anything to eat or drink, or permitted to use the toilet until his interrogation 12 hours after his arrest. The interrogator did not inform him of his legal rights. At the end of the interrogation he was given a document in Hebrew to sign but he refused. He was released 10 days after his arrest after his parents paid a fine.
- 6.6 On 26 October 2015, a 13-year-old boy ([M.A.B.](#)) from Beit Ummar was served with a summons by Israeli soldiers at 4:00 a.m. He reports that his father took him to Etzion settlement later that day in accordance with the summons but his father was told to go home. He reports that he was informed of his right to silence but was kicked by the interrogator when he refused to identify other boys in a photograph. He reports signing a statement in Hebrew because he was scared before he was left outside in the rain for two hours, tied and blindfolded. He also reports being kicked and shouted at by settlers. He was released on bail by a military court four days later.
- 6.7 On 29 October 2015, a 16-year-old boy ([S.F.S.](#)) from Ni'lin was arrested by Israeli soldiers at 2:00 a.m. He reports that the soldiers did not allow him to get dressed before he was blindfolded and his hands were tied behind his back with a single plastic tie contrary to standard operating procedures. He was put on the metal floor of a jeep and reports that a soldier struck him in the eye with his rifle and accused him of throwing stones. He was taken to Binyamin settlement and interrogated eight hours after arrest. The first interrogator informed him of his right to silence but a second interrogator threatened to rape him if he did not confess. He was released four days later without appearing in court.
- 6.8 On 26 November 2015, a 17-year-old boy ([S.E.B.](#)) from Deir Jarir was detained by Israeli soldiers at 7:00 p.m. He reports that the soldiers deliberately crashed their jeep into the vehicle he was travelling in and then verbally abused and beat the occupants. He was blindfolded and his hands were painfully tied behind his back with a single plastic tie contrary to standard operating procedures before being placed on the metal floor of a jeep. He was taken to the settlement of Ofra and left outside in the cold still tied and blindfolded. He was prevented from using the toilet and was not given anything to eat or drink. He was released 15 hours later without being charged or questioned.
- 6.9 On 1 December 2015, a 13-year-old boy ([I.A.A.](#)) from Hizma was detained by Israeli soldiers at 1:00 p.m. He reports that soldiers stormed into his house after he had been playing with some friends nearby. He reports being beaten before being tied with a single plastic tie contrary to standard operating procedures. He was also blindfolded. He was then transferred on the metal floor of a military vehicle and on arrival placed in a shipping container for four hours. He was later transferred to Binyamin settlement where he was questioned by a group of soldiers and verbally abused without being informed of his legal rights. He was formally interrogated at 1:00 a.m. He signed a document written in Hebrew and was released at 4:30 a.m. after his brother paid NIS 2,000.
- 6.10 On 9 December 2015, a 17-year-old boy ([S.M.L.](#)) from Qalandia refugee camp was detained by Israeli soldiers near the checkpoint at 4:00 p.m. He reports that there were no stone throwing incidents at the time. He was tied with one plastic tie contrary to standard operating procedures and later blindfolded. His legs were also tied. He was given a document in Hebrew to sign and was later told that it stated that he had not been beaten. At around 7:00

p.m. he was put in a military jeep and beaten before being taken to Atarot police station. His father arrived at the police station and was permitted to accompany S.M.L during his interrogation which took place at 10:00 p.m. He was not informed of his legal rights. He was accused of throwing stones. He was released on 17 December 2015 following the payment of NIS 1,500.

7. Unlawful transfer and detention of protected persons

- 7.1 In 1967 the Israeli military authorities commenced transferring and detaining Palestinians from the territories it occupied in June of that year to prisons located inside Israel in violation of the Fourth Geneva Convention (the Convention).¹⁵ This practice is also in breach of article 8 of the Rome Statute of the International Criminal Court since Palestine's accession to the treaty in 2015.¹⁶
- 7.2 According to data released by the Israeli Prison Service (IPS), a government instrumentality, during the course of 2015, an average of 48 per cent of detained minors and 88 per cent of adults continued to be unlawfully transferred and detained in prison facilities inside Israel. It is estimated that between 7,000 to 8,000 "protected persons" are currently being unlawfully transferred and detained in this manner each year constituting a "grave breach" of the Convention.¹⁷
- 7.3 The policy of unlawfully transferring Palestinian detainees has been challenged in the Israeli Supreme Court twice (Sejadia (1988) and Yesh Din (2010) cases) and rejected on both occasions based on the primacy of Israeli domestic law over provisions of international law where the two are in direct conflict – a conclusion that is not maintainable under international law by virtue of Article 27 of the Vienna Convention on the Law of Treaties, reflecting customary international law (Lagrand Case) – accordingly, there are no available domestic remedies.
- 7.4 Furthermore, in response to a recommendation made by UNICEF in 2013 that: "all Palestinian children detained in the Israeli military detention system shall be held in facilities located in the occupied Palestinian territory", the military authorities have confirmed that they have no intention of changing the policy.¹⁸ It should also be noted that the unlawful nature of this policy has been confirmed in writing by the UK government.¹⁹

8. Unlawful discrimination

- 8.1 During the reporting period Israeli authorities continued to apply two legal systems in the occupied territories based on race or national identity. Israeli military law is applied to Palestinians in the West Bank, while Israeli settlers fall under the jurisdiction of Israeli civilian law.
- 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.

- 8.3 Further details concerning the application of dual legal systems in the West Bank can be found in a recent [report](#) by the Association of Civil Rights in Israel (ACRI) - One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank.²⁰

9. Administrative detention of minors

- 9.1 In October 2015, the military authorities resumed the practice of issuing administrative detention orders for minors following a four year hiatus. Under this procedure an individual, including a minor, can be held without charge or trial for renewable six-month periods.²¹ According to the IPS six minors (16-17 years) and 425 adults were detained under administrative detention orders as of the end of December 2015.

10. Conclusions and recommendations

- 10.1 The evidence collected by MCW tends to confirm UNICEF's earlier finding that the ill-treatment of children who come in contact with the military detention system appears to be "widespread, systematic and institutionalised" is still valid despite changes made to the system during the intervening three years. Of particular concern are reports of physical violence during arrest, transfer and interrogation which appear to have increased since the publication of the UNICEF Report.
- 10.2 Furthermore, the policy of unlawfully transferring Palestinian detainees out of the West Bank to prisons inside Israel continues and the relevant authorities have confirmed that the practice will not be terminated. It is submitted that a violation of the Fourth Geneva Convention constituting a "grave breach" on this scale and duration undermines the credibility of the international legal order and its institutions with potential adverse implications for the rule of law both in the region and beyond.

Recommendations

- 10.3 MCW requests that the Special Rapporteurs and Working Group independently assess the issues raised in this submission and consider what actions can be taken to:
- (i) Further the effective implementation of all 38 recommendations adopted by the UNICEF Report including the prohibition on cruel, inhuman or degrading treatment or punishment and a ban on the use of solitary confinement for minors;
 - (ii) Ensure that administrative detention orders are not applied to minors; and
 - (iii) Advance compliance and accountability for the continuing violation of the Fourth Geneva Convention relating to the unlawful transfer and detention of protected persons, including minors, out of occupied territory;

End notes

¹ UNICEF, Children in Israeli Military Detention: Observations and Recommendations (February 2013) – Available at: <http://is.gd/Yu59IN>

² UNICEF, Bulletin No. 1 (October 2013), page 1. Available at: <http://is.gd/1m8mqR>

³ UNICEF Bulletin No. 2 (February 2015). Available at: <http://is.gd/ECGFkV>

⁴ UNICEF Bulletin No. 2 (February 2015), page 1. Available at: <http://is.gd/ECGFkV>

⁵ UNICEF Bulletin No. 2 (February 2015), page 2. Available at: <http://is.gd/ECGFkV>

⁶ Standard Operation Procedures – Procedures for Arresting Minors (June 2014). Available at: <http://is.gd/TSi8b0>

⁷ Military Order 1745 (September 2014). Available at: <http://is.gd/Gi5QJ4>

⁸ Military Order 1711 (April 2013).

⁹ UNICEF Bulletins Nos. 1 and 2. Available at: <http://is.gd/1m8mqR> and <http://is.gd/ECGFkV>

¹⁰ UNICEF Bulletin No. 2 (February 2015), page 2. Available at: <http://is.gd/ECGFkV>

¹¹ MCW statement: Rome Statute enters into force in Palestine, 1 April 2015. Available at: <http://is.gd/7HntzW>

¹² The 2013 data was provided by Israel's chief military prosecutor in the West Bank, Lt.-Col. Maurice Hirsch, at Ofer Military Court on 26 February 2014 and again to UNICEF in preparation of Bulletin No.2 (February 2015). The 2014 data was released by the military authorities pursuant to a Freedom of Information application in July 2015. See: <http://is.gd/1Bwgc9>

¹³ MCW statement: Do official Israeli Prison Service figures present the full picture?, 19 January 2015. Available at: <http://is.gd/ru1r15>

¹⁴ Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, 5 August 2011, A/66/268.

¹⁵ Fourth Geneva Convention, Article 76.

¹⁶ MCW statement: Rome Statute enters into force in Palestine, 1 April 2015. Available at: <http://is.gd/7HntzW>

¹⁷ Fourth Geneva Convention, Article 147.

¹⁸ UNICEF Bulletin No. 2 (February 2015), page 13. Available at: <http://is.gd/ECGFkV>

¹⁹ Foreign and Commonwealth Office letter dated 20 July 2012. Available at: <http://is.gd/wRWrz4>

²⁰ The Association of Civil Rights in Israel (ACRI): One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank (2014). Available at: <http://is.gd/DcbUty>

²¹ Military Order 1651 provides that a person can be detained for up to six months under this procedure with an indefinite number of renewals. The process is reviewed by a military court judge but is generally based on secret evidence which the recipient of the order is not entitled to see. While administrative detention is permitted under international law in strictly limited circumstances and only if the "security of the state ... makes it absolutely necessary", both the UN Committee Against Torture and the UN Human Rights Committee have criticised the excessive use of the procedure by the Israeli military authorities which can amount to cruel, inhuman or degrading treatment or punishment.