

# Children in Israeli Military Detention

## Observations and Recommendations

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### Background

All children in contact with military courts, law enforcement and justice institutions, whether they are juvenile justice systems, juvenile military courts or juvenile military detention, should be treated with dignity and respect at all times. On 6 March 2013, UNICEF released its paper entitled *Children in Israeli Military Detention – Observations and Recommendations*<sup>1</sup> (hereinafter referred to as the "UNICEF paper"). The UNICEF paper provided an overview of the journey of a child who is arrested and detained for alleged security offences in the West Bank<sup>2</sup> and who can come into contact with different authorities including the Israeli Defence Force (IDF), the Police, the Israel Security Agency<sup>3</sup> (ISA) and the Israel Prison Service (IPS). The UNICEF paper provided an overview of the Israeli military system and how that system dealt with children. It documented significant alleged violations of children's rights, using the Convention on the Rights of the Child (CRC), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) as key references. The purpose of this Bulletin is to provide an update on the status of the 38 recommendations in the UNICEF paper and their implementation.

### Progress to date

In response to the release of the UNICEF paper, the Ministry of Foreign Affairs of Israel stated it would study the conclusions and work to implement them through on-going cooperation with UNICEF. The Military Advocate General (MAG) has designated the 'Military Prosecutor for Judea and Samaria' (West Bank) as the focal point for dialogue on this issue with UNICEF.

Since the publication of the UNICEF paper, the Military Prosecutor has been engaging closely with UNICEF and has been reviewing the recommendations of the UNICEF paper. This engagement is facilitating a deeper analysis and understanding of the process of military arrest, detention and prosecution in the West Bank.

### Major developments

1. In September 2013, the IDF Central Command for the West Bank has agreed to pilot test summons of children in two areas of the West Bank, in lieu of night arrests. This is a critical development, because, if implemented effectively, it will contribute to address a number of concerns related to the first 24 hours after the arrest, during which children are most vulnerable. In particular, it will contribute to reduce the number of night arrests and the allegations of abuse en route to the interrogation centre.
2. The Military Prosecutor stated that since June 2013, the remand hearings for children are held separately from the adults. This is the result of a verbal agreement between the prosecution and the judges.
3. Two Military Orders have been issued in 2013 in relation to Palestinian children appearing before Israeli military courts. Military Order 1711, which came into effect in April 2013, reduces the time a Palestinian child can be detained prior to appearing before a military court judge for the first time. This measure, announced in late 2012, goes some way towards addressing recommendation 7(i) of the UNICEF paper by ensuring that children aged under the age of 14 have prompt access to an independent judicial review of the legality of their detention. In addition, Military Order 1726, which will come into effect on 6 October 2013, regulates the duration of remand prior to the indictment, which was not regulated before.

<sup>1</sup> UNICEF, *Children in Israeli Military Detention Observations and Recommendations*, Jerusalem, UNICEF, 2013, [http://www.unicef.org/oPt/UNICEF\\_oPt\\_Children\\_in\\_Israeli\\_Military\\_Detention\\_Observations\\_and\\_Recommendations\\_6\\_March\\_2013.pdf](http://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_6_March_2013.pdf)

<sup>2</sup> The UNICEF paper does not examine practices related to East Jerusalem and Gaza.

<sup>3</sup> The Israel Security Agency was formerly known as GSS or Shin Beit.

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4. Best Interests of the Child – the Military Prosecutor has committed to follow-up with different authorities to elaborate a set of rules that embody the Best Interests of the Child and ensure the universality of children's rights principles and standards.

### Realisation of recommendations

The 38 recommendations are grouped under 14 broad themes for action. The matrix below is a tool to record progress against the implementation of the recommendations.

No.	Recommendations	Progress and Action
1.	<p><i>Compliance with international norms and regulations</i></p> <p><i>(The best interests of the child shall be a primary consideration; Non-discrimination; Use of detention only as a measure of last resort; Alternatives to detention; Diversion)</i></p>	<p>A military juvenile court decision of 31 August 2009 stated that "a minor is a minor whether he lives in an area where Israeli law applies or not", in reference to the changes in the Israeli juvenile law. Since then, this decision has been quoted in several subsequent decisions.</p> <p>Action: MAG will follow-up with different authorities to elaborate a set of rules that embody the Best Interests of the Child and ensure the universality of children's rights principles and standards.</p>
2.	<p><i>Notification</i></p> <p><i>(Informed of the reasons for arrest; Legal guardian or close family member notified; Informing of their full legal rights)</i></p>	<p>Action: In April 2013, the IDF in the West Bank introduced a form to notify parents of reasons of arrest and whereabouts of the child. In July 2013, NGOs working with children in detention noted they had not come across that form in their work.</p> <p>Action: MAG will follow-up and review implementation with IDF.</p>
3.	<p><i>Timing of arrests and arrest warrants</i></p> <p><i>(Arrests conducted during daylight; Relevant documentation provided to the child's legal guardian)</i></p>	<p>Action: In September 2013, the IDF Central Command for the West Bank has agreed to pilot test summons of children in two areas of the West Bank, in lieu of night arrests.</p> <p>It is understood that the right to counsel and the right to silence is a requirement established by applicable Military Orders. The practice does not show that the law is always applied.</p> <p>Action: The Military Prosecutor will facilitate a meeting with the Police to discuss how children are notified of these rights and explore options to ensure that children are clear that they can avail themselves of these rights.</p>
4.	<p><i>Methods and instruments of restraint</i></p> <p><i>(Children only restrained for the time that is strictly necessary; Single plastic hand ties prohibited; During transfer, children should be properly seated; Children never restrained; Blindfolding prohibited)</i></p>	<p>Recommendation applies to different authorities. Standard Operating Procedures are in place in relation to the use of three plastic ties. In practice, it seems that the procedures are not systematically applied.</p> <p>Action: Further action yet to be identified and agreed upon.</p>
5.	<p><i>Strip searches</i></p> <p><i>(Only under exceptional circumstances)</i></p>	<p>Strip searches are conducted by the Police and by the IPS. Strip searches are considered ill-treatment when the child is asked to undress completely. Standard Operating Procedures are in place in relation to strip searches by IPS. The practice does not show that the policy is consistently applied.</p> <p>Action: The Military Prosecutor will facilitate a meeting with the Police and the IPS to advocate for implementation of IPS Standard Operating Procedures and for the development of procedures for the Police.</p>
6.	<p><i>Access to a lawyer</i></p>	<p>The right to counsel and to avoid self-incrimination is a requirement under the Military Orders in force in the West Bank. The breach of this right results in the inadmissibility of the confession. The practice does not show that the policy is consistently applied.</p> <p>Action: The Military Prosecutor attempted to compile a list of lawyers representing children before the military juvenile courts to be made available at police stations. Consulted lawyer are yet to provide their details, which include telephone number and area of operation.</p> <p>Further action yet to be identified and agreed upon.</p>
7.	<p><i>Judicial review of the arrest</i></p>	<p>Military Order 1711 came into effect in April 2013. It reduces the time a</p>

	<p><i>and detention</i></p> <p><i>(Judicial review within 24 hours; Detention reviewed every two weeks)</i></p>	<p>Palestinian child can be detained prior to appearing before a military court judge for the first time. The new order reduces the time from four days to 24 hours for children aged 12-13 and to 48 hours for children aged 14-15. There is no change for children aged 16-17, which remains 48 hours for minors suspected of committing criminal offences and 96 hours for minors suspected of committing security offences, the same time period applied to adult detainees. This time period can be extended by the Police for an additional 24, 48 or 96 hours for exceptional and urgent investigative purposes. This measure, announced in late 2012, goes some way towards addressing recommendation 7(i) of the UNICEF paper by ensuring that children aged under the age of 14 have prompt access to an independent judicial review of the legality of their detention.</p> <p>In addition, Military Order 1726 was signed by the Force Commander in September 2013. According to the amendment, the remand of a child can only be extended for periods up to 10 days. After a cumulative period of investigation exceeding 15 days, the jurisdiction to extend the remand of the child lies with the Military Court of Appeal. The Military Order was scheduled to come into effect on 6 October 2013.</p> <p>Action: Further action yet to be identified and agreed upon.</p>
8.	<p><i>Medical examinations</i></p> <p><i>(Medical inspection; Medical records made available to the child's lawyer; Access to medical care at all times)</i></p>	<p>Action: To counter reports by children that ill-treatment occurs and /or is not documented during medical checks, the Military Prosecutor will take steps with the relevant IDF Forces to reiterate standing IDF regulations regarding the duties of medical personnel. Further action yet to be identified and agreed upon.</p>
9.	<p><i>Questioning or interrogation</i></p> <p><i>(Interrogation in the presence of a lawyer; Notified of his or her rights in Arabic; Identification of all persons present during interrogation)</i></p>	<p>Action: The Military Prosecutor will facilitate a meeting with the Police to discuss how children are notified of their rights (including to silence) prior to interrogation, and explore options to ensure that children are clear that they can avail themselves of these rights, and that their right to do so is protected. Further action yet to be identified and agreed upon.</p>
10.	<p><i>Solitary confinement</i></p> <p><i>(No solitary confinement)</i></p>	<p>Solitary confinement is considered ill-treatment when a child is held alone for a period over 24 hours.</p> <p>Action: Further action yet to be identified and agreed upon.</p>
11.	<p><i>Confessional evidence</i></p> <p><i>(Cases not be determined solely on the basis of confessions from children; Confessions written in Hebrew rejected as evidence)</i></p>	<p>Action: Further action yet to be identified and agreed upon.</p>
12.	<p><i>Bail and plea bargains</i></p> <p><i>(Incarceration a measure of last resort; Plea bargains revised in line with CRC)</i></p>	<p>Action: Further action yet to be identified and agreed upon.</p>
13.	<p><i>Location of detention and access to relatives</i></p> <p><i>(Not held in facilities located in the occupied Palestinian territory; Family visits; Entitled to regular telephone communication)</i></p>	<p>Action: Further action yet to be identified and agreed upon.</p>
14.	<p><i>Accountability</i></p> <p><i>(Complaint by a child investigated; Personnel involved in the unlawful treatment of children suspended; Complaints mechanisms established; Redress for ill-treatment; Independent investigation into the reports of ill-treatment)</i></p>	<p>Action: Further action yet to be identified and agreed upon.</p>

In May 2013, the IDF Legal Adviser for the West Bank reportedly issued a letter to the heads of all Brigades, Divisions, Police and Military Police operating in the West Bank to remind all units of existing Standard Operating Procedures and policies in relation to the arrest of minors. The letter reportedly included reference to the following: blindfolds should only be used when there is a security need; handcuffing should be done at the discretion of the head of the forces and always with three plastic ties; the family needs to be notified immediately of reasons for arrest; and the child needs to be immediately transferred to the relevant authorities.

### **Steps taken**

The following information provides a summary of key steps taken in the process of bringing about the change required to realise the recommendations and ensure the protection of children's rights.

#### ***Response to the UNICEF Paper by the Government of Israel***

The Military Prosecutor has advised UNICEF that the Government of Israel is considering releasing an official response to the UNICEF paper.

The Military Prosecutor informed UNICEF that the Arabic translation of Military Order 1676 was published on the IDF MAG website in 2012 <http://www.law.idf.il>.

#### ***Experts Consultation***

An Experts Consultation was convened in early July by UNICEF with participation by the Military Prosecutor, the Ministry of Foreign Affairs of Israel, the ICRC, independent lawyers and civil society organizations, and UNICEF. The purpose of the Consultation was to review the recommendations of the UNICEF paper from an operational perspective to understand the changes required in the system to translate the recommendations into concrete actions. Key themes emerging from the Consultation included:

- Gaps between policy and practice, e.g. there are a number of Standard Operating Procedures in place that should ensure greater protection of children's rights in areas such as the use of restraints, and strip searches, but practice appears to deviate from policy;
- Gaps in the degree and quality of training of security forces; their ability to apply different processes for the arrest of adults and children; and their level of understanding of the age of criminal responsibility;<sup>4</sup>
- Lack of use of the formal complaints mechanism already in place, in contrast with a significant body of evidence compiled by NGOs on the ill treatment of children.

The Consultation provided advice on how to move forward on many of the recommendations.

#### ***Review of State Party Report by the Committee on the Rights of the Child***

In June 2013, the Committee on the Rights of the Child<sup>5</sup> called on Israel to ensure that juvenile justice standards are applied to all children without discrimination; that children in detention have access to an independent complaints mechanism; and that the institutionalized system of detention be dismantled.

#### ***Documentation and evidence of violations of children's rights***

Through the Working Group on Grave Violations against Children, support is being provided to Israeli, Palestinian and international civil society organizations to maintain timely, accurate and objective documentation, based on interviews with children and legal affidavits. A number of civil society organizations are working to publish more in-depth research and studies on specific aspects affecting children in Israeli military detention. This high quality documentation will further develop and strengthen the knowledge base of the situation and inform advocacy and targeted programmatic interventions in communities at risk.

#### ***Advocacy***

The release of the UNICEF paper generated considerable discussion in the Palestinian, Israeli, and international media about the treatment of children in contact with Israeli military detention, with over 200 articles appearing in the media. While more detailed analysis of the media coverage is required, there appears to be a consensus, including in Israel, that the ill-treatment of Palestinian children in military detention is unacceptable.

<sup>4</sup> <http://www.jpost.com/Defense/IDF-legal-adviser-backs-detention-of-5-year-old-Palestinian-stone-thrower-321696>

<sup>5</sup> Committee on the Rights of the Child, Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session (27 May – 14 June 2013)

## Key data

Data primarily covering the period from 1 April to 31 August 2013 reveal that:

- The number of Palestinian children detained has been fluctuating at around 200 per month over the past two and a half years.
- The monthly average for 2013 shows that 219 children per month were in Israeli military custody, compared to 196 per month in 2012, marking a 12 per cent increase.
- On 30 August 2013, 180 boys aged 12 to 17 years (31 between the ages of 12 and 15 years) were in Israeli detention for alleged security violations.
- Out of the 180 boys, 115 boys were in pre-trial detention and 65 were serving a sentence.
- During the second quarter of 2013<sup>6</sup>, a sample comprised of 19 cases of alleged ill-treatment by the Israeli army and police were documented through affidavits. Twelve affidavits were from boys above the age of 16, seven were from boys below the age of 16, including two aged 13, three aged 14, and three aged 15.
  - In all of the 19 cases documented, parents were not allowed to accompany their children, and none of the children were informed of their right to legal counsel.
  - 19 boys detained reported being painfully hand-tied and 16 boys blindfolded.
  - 19 boys reported suffering physical violence (beating, slapping, kicking, including with sticks, on various parts of the body including the head and the face).
  - 17 boys reported suffering verbal abuse during the journey to the interrogation centre.<sup>7</sup>
  - 18 boys reported suffering from painful restraints or from being forced to lie on the floor of the vehicle.
  - 13 boys reported being strip searched at least once while in custody. Nine children were strip searched upon arrival at interrogation centres such as Al-Jalame, and Huwwara. One child said he was strip searched at a military camp and one child said he was strip searched upon arrival at the Megiddo IPS detention centre.

The Military Prosecutor informed UNICEF that according to IDF-MAG statistics, in the period of 1 April to 30 June 2013, three complaints alleging ill-treatment of children detainees were received. Two of the complaints received were based on protocols of hearings in the Military courts in the West Bank.

## The next six months

UNICEF will continue to engage with the MAG and advocate for the implementation of all 38 recommendations of the UNICEF paper, in order to put an end to the violations of children's rights. A second Experts Consultation will be convened to assess progress thus far and to solicit technical advice on how the proposed reforms, such as the testing of the use of summons, could be strengthened to deliver tangible results for children.

Over the next six months, a coalition of agencies will produce information and education materials and conduct awareness-raising sessions with children, families and communities, in the most affected communities. Positive practices and interventions aiming at strengthening the capacity of children to understand their rights when in contact with the Israeli Security Forces will be documented. These efforts will build on the work of Palestinian, Israeli and International civil society groups who have been working with the Palestinian population for a number of years to raise awareness with children, families and communities to ensure they are informed of their specific rights when they are detained by the Israeli military.

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<sup>6</sup> The information in the present section is based on affidavits (sworn testimony of children) collected by UNICEF through the Monitoring and Reporting Mechanism on Grave Child Rights Violations.

<sup>7</sup> The UNICEF MRM Database records all physical violence and verbal abuse, but does not capture the time of the event. The statistics related to physical violence and verbal abuse relate to the whole detention process including the arrest, transfer and interrogation.