



## Briefing Note – May 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”. The purpose of this note is to review progress made in implementing the UNICEF recommendations and to consider recent developments in the military detention system.<sup>1</sup>

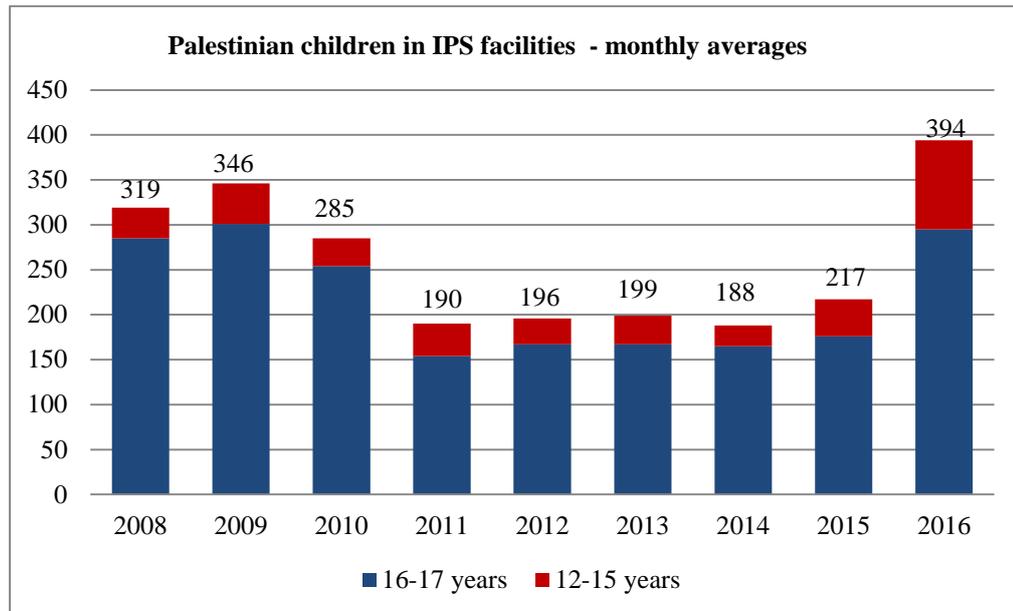
### 2. Detention figures

- 2.1 In May 2016, the Israeli Prison Service (IPS) stopped releasing regular monthly prison statistics in accordance with a Freedom of Information application submitted by the Israeli organisation B'tselem. Despite repeated requests this is the first time in over 15 years that the IPS has not disclosed the number of adults and children held in its facilities on a regular basis.
- 2.2 According to the latest published IPS [data](#), **319 children** (12-17 years) were held in military detention at the end of August 2016. This represents an **82 percent** increase compared with the monthly average for 2015. The latest data includes 11 girls; 2 children under 14 years; and 10 children held without charge or trial in [administrative detention](#). 97 percent of the detainees were male. The age breakdown for children in detention in August 2016 was as follows:
- 12-13 years – 1%
  - 14-15 years – 22%
  - 16-17 years – 77%
- 2.3 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

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<sup>1</sup> Various developments have also been presented on the [website](#) of the Israeli Military Advocate General Corps, the unit responsible for military law enforcement under the Ministry of Defence.

2.4 Data relating to the monthly average number of Palestinian children detained by the military authorities and held in IPS prison facilities between 2008 and 2016 is presented in the following table. As previously mentioned the IPS has not updated this data since August 2016.



2.5 As previously [reported](#), the official statistics (IPS and military) 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 In February 2015, UNICEF issued a second [update](#) to its original report and noted that "reports of alleged ill-treatment of children during arrest, transfer, interrogation and detention have not significantly decreased in 2013 and 2014". This finding is also confirmed by [evidence](#) collected by Military Court Watch ([MCW](#)).

3.2 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 **112 testimonies** collected from children detained in 2016 (reporting period), the evidence indicates as follows:

- **Night arrests – 52 percent** of children continue to report being arrested by the military at night. This compares with 51 percent when UNICEF published its report in 2013. Night arrest operations have a tendency to intimidate and terrify the targeted communities and children report being "[scared](#)" or "[terrified](#)" when confronted with heavily armed soldiers in their homes and [bedrooms](#).
- **Summons in lieu of night arrests - 2 percent** of children report being served with a summons as an alternative to night arrests. This compares with a figure of 10 percent in 2015. The pilot scheme to issue summonses as an alternative to night arrests was

introduced in February 2014 following widespread criticism of the practice of detaining children at night. In cases where summonses are used most continue to be delivered at [night](#), frequently [lack details](#) about the accusation, are sometimes written in [Hebrew](#) and provide no information about [legal rights](#) in custody.

- **Written notification of arrest - 56 percent** of parents report not being notified in writing of the reasons for arrest or place of detention in cases where children were arrested from home. 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](#)). It should be noted that these forms still do not include any information about the child's legal rights while in custody.
- **Hand ties - 93 percent** of children report being hand tied upon arrest often described as being "[painful](#)" or "[very tight and painful](#)". This compares with 96 percent when UNICEF published its report in 2013. Children frequently remain tied for extended periods including [during interrogation](#). In some cases their hands become [swollen](#) or [bleed](#). Children continue to be shackled by the ankles during military court appearances. In **76 percent** of cases where children are restrained the evidence indicates non-compliance with the military's own standard operating procedures introduced in 2010.
- **Blindfolds - 80 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 when UNICEF published its report in 2013. In a few cases children also report that they remained blindfolded for at least part of their [interrogation](#).
- **Physical abuse - 63 percent** of children report being subjected to various forms of physical abuse during arrest, transfer and/or interrogation. This compares with 60 percent when UNICEF published its report in 2013. The types of reported abuse includes: [head-butting](#), [kicking](#), [beating](#), [punching](#), struck with objects including [weapons](#); and the deliberate [over-tightening](#) of restraints. In one case a boy [reports](#) that he was beaten so hard he offered to become a collaborator if the beating stopped.
- **Floor transfer - 79 percent** of children report being transferred on the metal floor of military vehicles from the place of arrest to an interrogation centre. This represents a significant increase compared with previous years possibly due to the increase in the number of detentions. Once on the floor children frequently report being pushed, kicked, [beaten](#), [verbally abused](#) and/or [humiliated](#).
- **Verbal abuse - 43 percent** of children report being subjected to [verbal abuse](#) during arrest, transfer and/or interrogation. This compares with 49 percent when UNICEF published its report in 2013. In some cases the purpose of the abuse appears to be to intimidate and [humiliate](#) the child. In other cases the abuse is directed at the child's [mother](#) or [sister](#) in an apparent attempt to strip the child of his/her dignity and self-worth.
- **Threats - 54 percent** of children report being subjected to threats during arrest, transfer and/or interrogation. This compares with 47 percent when UNICEF published its report in

2013. The types of threats documented during the reporting period include: [electrocution](#); revoking [work permits](#); [life imprisonment](#); prevented from seeing family members [ever again](#); [rape](#); threatened with a [knife](#); [violence](#); [yelling and shouting](#); threatened with a [drill](#) and spreading rumours of [collaboration](#).

- **Right to silence - 88 percent** of children report not being informed of their right to silence. This compares with 96 percent when UNICEF published its report in 2013. In the 12 percent of cases where children are being informed of this right, the manner and [circumstances](#) in which the information was conveyed raises serious questions as to whether the notification is sufficient. In some cases the child was informed of his right to silence at the [conclusion](#) of the interrogation or after [multiple interrogations](#).
- **Access to lawyers - 90 percent** of children report being denied access to a lawyer prior to questioning. This compares with 100 percent of children when UNICEF published its report in 2013. Under Israeli military law a detainee must be informed of the right to consult with a lawyer on arrival at a police station, and to be meaningful the consultation must take place prior to questioning. Children frequently report being informed of this right only [after interrogation](#) and most continue see their lawyer for the first time in the military courts.
- **Documentation in Hebrew - 72 percent** of children report being shown, or made to sign, [documentation](#) written in Hebrew at the conclusion of their interrogation. This compares with 62 percent when UNICEF published its report in 2013. 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.
- **Accompanied by a parent – 7 percent** of children report being accompanied by a parent throughout their interrogation. This compares with 4 percent when UNICEF published its report in 2013. 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 accompany children.
- **Strip searched - 62 percent** of children report being strip searched on arrival at a detention centre. 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.
- **Solitary confinement** - According to data compiled by UNICEF, **30 children** reported being held in solitary confinement in 2016 for periods ranging from 7 to 21 days. Solitary confinement cases tend to occur during the interrogation phase in facilities jointly operated by the IPS and the Israeli Security Agency (ISA). MCW has documented two cases in 2016 (1)(2) in which both children report spending 11 days in solitary confinement in a cold windowless cell at [Al Jalame](#) interrogation centre near Haifa in Israel. The number of cases involving children held in solitary confinement in 2016 has jumped **131 percent** compared with the previous year.

- **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 after they have already spent a number of [weeks](#) or more in custody. There is no official data currently available for 2016. By way of contrast, **17.9 percent** of children indicted in Israel's civilian juvenile justice system were denied bail in 2015.
- **Convictions** - 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.
- **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 August 2016, **10 children** were being held pursuant to these orders.

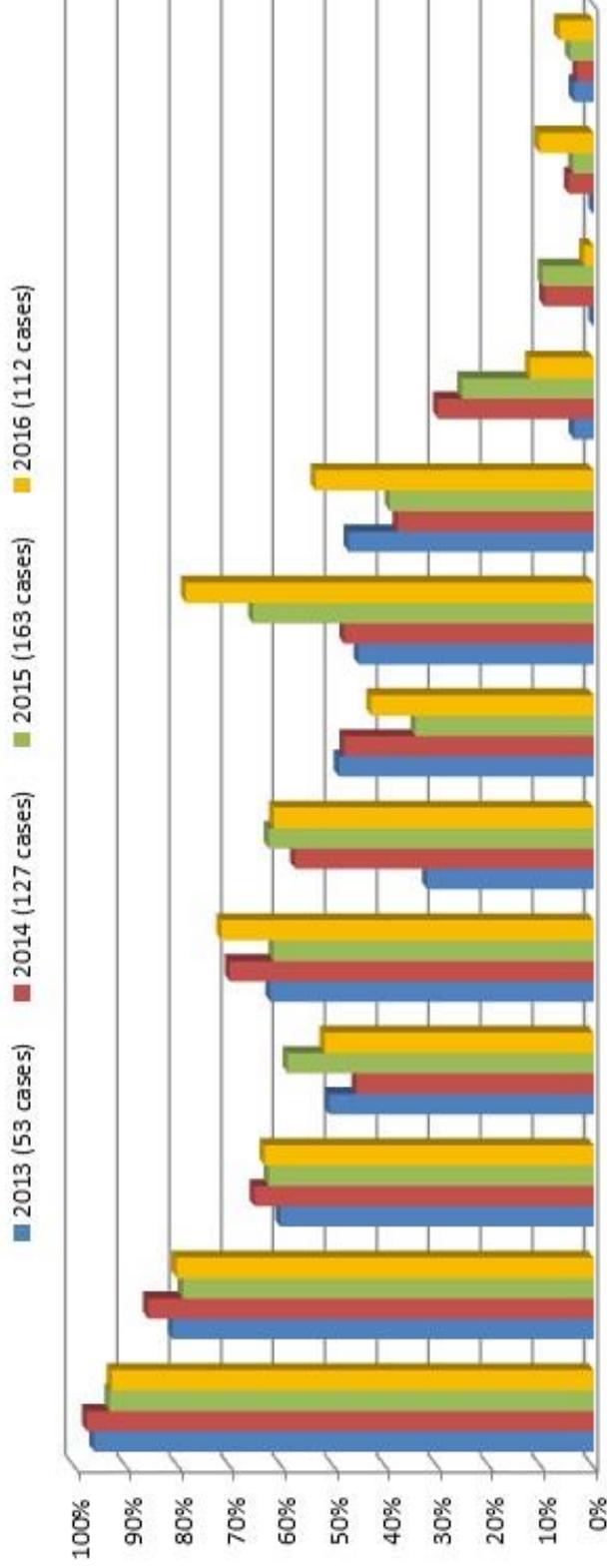
#### **4. Recent case examples**

- 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 16 January 2017, a [16-year-old boy](#) was arrested by soldiers at 2:00 a.m. A document was provided to his father about his arrest. Tied, but not in accordance with standard operating procedures, blindfolded and put on the floor of a military vehicle. Interrogated in Etzion settlement at 8:00 a.m. while tied. Reports not being informed of his legal rights and was slapped once. Taken to a courtyard and sat in the rain for an hour. Signed a statement in Hebrew and was strip searched being forced to crouch up and down while naked. Released on 20 February 2017.
- 4.3 All **455 testimonies** are available on MCW's [website](#).

#### **5. Comparative graph - issues of concern (2013-2016)**

- 5.1 The following graph monitors progress across 13 issues of concern and is based on **455 testimonies** collected by MCW between 2013 and 2016. This data tends to confirm UNICEF's conclusion that the ill-treatment of children still appears to be "widespread, systematic and institutionalized" and there appears to have been little substantive improvement since the publication of the UK and UNICEF reports.

## COMPARATIVE GRAPH (2013 - 2016)



**Updated: 5 May 2017**

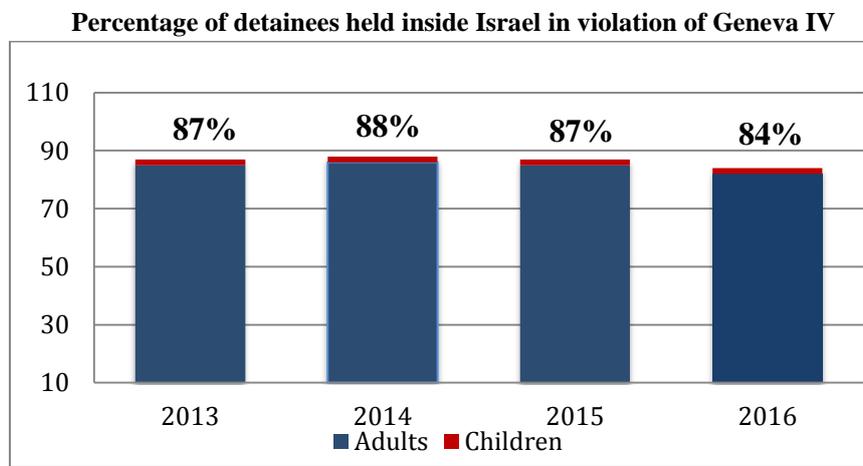
Information is based on testimonies collected by MCW

## **6. Other developments**

- 6.1 ***The right to a lawyer and admissibility of evidence in the military courts*** - On 22 February 2017, a judge at Ofer military court [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 there is [evidence](#) to indicate that up to 90 percent of children detained by the military in the West Bank continue to be interrogated without prior access to a lawyer. The decision involves the case of a 15-year-old boy who was alleged to have been involved in throwing Molotov cocktails at a military sentry point in Hebron in December 2015.
- 6.2 ***Supreme Court petition: social welfare reports for bail applications in the military courts*** - On 27 February 2017, the law firm of Gaby Lasky & Partners filed a petition in Israel's Supreme Court seeking an order requiring the production of [social welfare reports](#) at every remand hearing involving a child (12-17 years inclusive) in the Israeli military courts in the West Bank. The petition seeks to address a fundamental shortcoming in the military courts whereby the overwhelming majority of Palestinian children continue to be denied bail and are held in custody on remand 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.
- 6.3 ***US State Department's Country Report for 2016*** - On 3 March 2017, the US State Department released its [annual report](#) on human rights for 2016. The report is mandated by Congress and documents human rights conditions in nearly 200 countries and territories. Diplomats posted to US embassies compile the information included in the report. As in previous years the report highlights various human rights violations by multiple actors in Israel/Palestine and includes information on the treatment of children in military detention. In a break with tradition neither the Secretary of State nor a senior State Department official launched this year's report.
- 6.4 ***UNICEF report: 4 years on*** - March 2017 marked the fourth anniversary since the publication of the UNICEF report: [Children in Israeli Military Detention](#). Following a review of the system, which included analysing over 400 affidavits collected from detained children, the UN agency concluded that: "The ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalised throughout the process." UNICEF also made 38 recommendations based on Israel's legal obligations. During the intervening 4 years there have been a number of legal and procedural changes to the system but reports of ill-treatment and denial of legal rights remain largely constant at 2013 levels.
- 6.5 ***UK lawyers report: One recommendation implemented in 4 years*** - June 2016 marked the fourth anniversary since the publication of a Foreign Office funded report prepared by a delegation of senior lawyers - [Children in Military Custody](#). Following a review of the report's 40 recommendations, MCW estimates that just one recommendation (separation from adults) has been substantially implemented after four years - a compliance rate of **2.5 percent**. In February 2016, a follow-up mission by the delegation [announced](#) that their imminent visit to the region to update the report had been cancelled due to a lack of co-operation by Israeli officials.

## 7. Unlawful detention inside Israel

- 7.1 The UK and UNICEF reports both recommended that "all Palestinian children detained in the Israeli military detention system should be held in facilities in the occupied Palestinian territory" in accordance with [Article 76](#) of the Fourth Geneva Convention (the Convention), a position implicit in numerous binding [UN Security Council](#) resolutions.
- 7.2 Although there is no serious dispute as to the law, according to the [IPS](#), in 2016 an average of **84 percent** of Palestinian detainees continue to be transferred and detained inside Israel. This policy currently affects between 7,000 to 8,000 protected persons annually and is classified as a war crime under [Article 8\(2\)\(vii\)](#) of the Rome Statute of the International Criminal Court.
- 7.3 It is relevant to note that while the Israeli authorities reject the *de jure* application of the Convention to the West Bank, East Jerusalem and Gaza in relation to settlement construction and the transfer of protected persons, the military authorities appear to [expressly rely](#) on [Article 66](#) of the same Convention to justify the prosecution of thousands of Palestinian men, women and children in military courts - a position that only serves to undermine the credibility of the international legal order.



## 8. Unlawful discrimination

- 8.1 Although the UK Report recommended that "Israel should not discriminate between those children over whom it exercises penal jurisdiction", during the reporting period [two legal systems](#) continued to be applied 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](#).

## **9. Recommendations**

- 9.1 MCW continues to advocate for the effective implementation of the following six 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.

**8 May 2017**