



## **Briefing Note – December 2015**

### **1. Introduction**

- 1.1 In March 2013, UNICEF published a [report](#) which found that: “The ill-treatment of children who come in contact with the [Israeli] military detention system appears to be widespread, systematic and institutionalized throughout the process, from the moment of arrest until the child’s prosecution and eventual conviction and sentencing”.
- 1.2 In response to this finding the Israeli Ministry of Foreign Affairs [stated](#) that it would “study the conclusions and work to implement them through on-going cooperation with UNICEF”.
- 1.3 The purpose of this note is to review progress made in reducing the levels of reported abuse within the military detention system by reference to recent evidence as well as considering other developments.

### **2. Current evidence of issues of concern**

- 2.1 In February 2015, UNICEF issued an [update](#) to its original report and noted that allegations 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) indicating that ill-treatment within the system still appears to be “widespread, systematic and institutionalized” as of December 2015.
- 2.2 Since January 2015, MCW has collected **120 testimonies** from children who reported some form of ill-treatment as well as a denial of their basic legal rights in many cases following their arrest by the Israeli military in the West Bank. In each case, children reported multiple violations during the arrest, transfer, and interrogation phases.
  - **Night arrests – 65 per cent** of children continue to 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, the use of summonses appears to have fallen in 2015 (see comparative graph, page 4). With a fall in summonses there has been a corresponding jump in night arrests and related abuse, such as children being

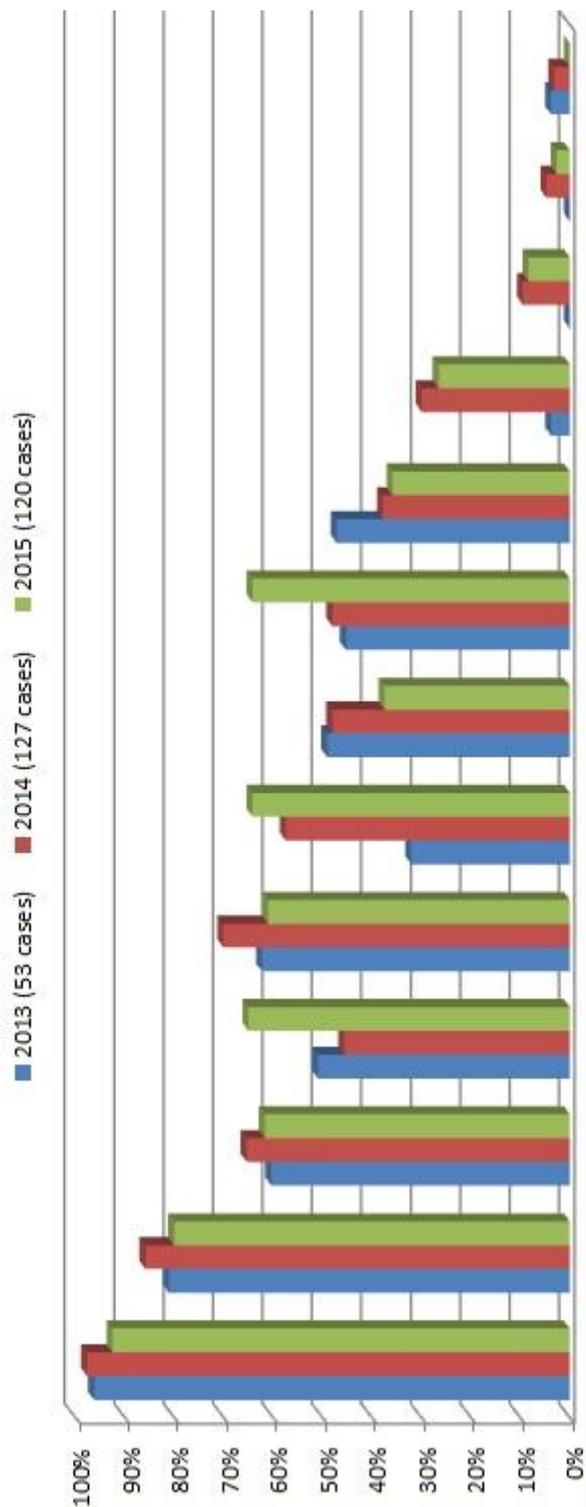
transferred from the place of arrest to interrogation centres on the metal floor of military vehicles. In the cases in which summonses were used, the evidence discloses a number of troubling features:

- In the overwhelming majority of cases the summons was delivered by the military [after midnight](#);
  - Relevant parts of the summonses were handwritten in [Hebrew](#) without Arabic translation;
  - Relevant information, such as the nature of the accusation, was [missing](#); and
  - No reference to the child's [legal rights](#) was included in any of the summonses.
- **Hand ties - 93 per cent** of children continue to 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 - 80 per cent** of children continue to report being blindfolded or hooded upon arrest in disregard of a recommendation made by [leading British lawyers](#) and UNICEF that this practice should be prohibited in all circumstances.
  - **Physical abuse - 62 per cent** of children continue to 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](#).
  - **Floor transfer - 64 per cent** of children continue to 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.
  - **Verbal abuse - 38 per cent** of children continue to report being subjected to verbal abuse during arrest, transfer and/or interrogation. The abuse mostly consists of [derogatory statements](#) about the child's mother or sister.
  - **Threats - 36 per cent** of children continue to 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](#).

- **Right to silence - 73 per cent** of children continue to report being denied their right to silence. In the 27 per cent of cases where children were informed of this right, the manner and circumstances in which the information was conveyed raises serious questions 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. MCW continues to document multiple cases where children are subjected to [double interrogations](#) in which they are only informed of their rights during the second interrogation following a coercive first interrogation.
- **Access to lawyers - 97 per cent** of children continue to 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 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.
- **Documentation in Hebrew - 61 per cent** of children continue to 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.
- **Accompanied by a parent - No child** has so far reported being accompanied by a parent throughout their interrogation in 2015. 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. In 2014 this discretion was exercised in favour of accompaniment in 3 per cent of cases.
- **Strip searched - 64 per cent** of children continue to 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.

2.3 The following graph monitors progress across 13 issues of concern and is based on **300 testimonies** collected by MCW since 2013. 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 substantial improvement since UNICEF published its report in March 2013. Further, in five categories (physical abuse, night arrests, floor transfer, strip searches and access to parents) the situation appears to have deteriorated.

### COMPARATIVE GRAPH (2013 - 2015)



### **3. Upsurge in violence and detention figures**

- 3.1 The upsurge in violence that commenced in October continues with the targeting of Israeli soldiers and civilians by individual, non-affiliated Palestinians, and the excessive use of force by the military against perpetrators, alleged perpetrators and protestors. There has also been a dramatic increase in the number of minors held in military detention as well as the re-introduction of administrative detention orders for children.
- 3.2 The workload in the military courts has increased significantly since October. Recent observations suggest that there has been a sharp increase in the use of violent night raids across the West Bank and fewer minors are being released on bail by the military courts. There is also evidence that in response to recent developments the military authorities are engaging in a policy of collective punishment in an attempt to reduce unrest in the West Bank. These measures include revoking work permits for parents of detained minors and in some cases ripping up work permits when parents present them for inspection by soldiers at checkpoints between the West Bank and Israel.
- 3.3 According to the latest data provided by the [Israeli Prison Service](#) (IPS) at the end of October **307 children** (12-17 years) were held in military detention, an increase of **80 per cent** compared with the previous month. Not since April 2010 have there been this number of minors in Israeli military detention. The number of girls (3 girls) and young children (12-13 years) (2 young children) has also increased. The age breakdown for children held in detention in October was as follows:
- 12-13 years – 1%
  - 14-15 years – 25%
  - 16-17 years – 74%
- 3.4 As previously [reported](#), the 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 to include [young children](#).

### **4. Administrative detention**

- 4.1 According to the IPS four minors (16-17 years) were detained in October on administrative detention orders. Administrative detention is a procedure outside the judicial process whereby a person can be detained without charge or trial by order of an Israeli military commander. Under [Military Order 1651](#), a person can be detained for up to six months 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.
- 4.2 Administrative detention is permitted under international law in strictly limited circumstances and only if the “security of the state ... makes it absolutely necessary”. However, both the [UN Committee Against Torture](#) and the [UN Human Rights Committee](#)

have criticised the excessive use of the procedure which can amount to cruel, inhuman or degrading treatment or punishment.

- 4.3 This is the first time the procedure has been used on minors since December 2011. There are currently 425 Palestinian adults held in administrative detention.

## **5. Other developments**

- 5.1 In July 2015, the military authorities released [data on the number of Palestinian minors arrested](#) in the West Bank in 2014. According to the data a total of **861 minors** aged between 12-17 inclusive, were arrested. The data also indicates that 71 per cent of minors indicted in the military courts were denied bail. The supplied data does not disclose how many additional minors were detained for short periods by the military without being formally arrested – a number that is likely to be substantial.
- 5.2 In June 2015, [Military Order 1754](#) came into effect incorporating general parts of the Israeli civilian Penal Law into military law. It includes definitions of parties to an offence such as accomplices as well as adopting general principles such as: the best interpretation for the defendant; and a burden of proof beyond a reasonable doubt. Although the order is unlikely to have a significant impact in practice it does provide clarity regarding certain definitions and principles. The order does not appear to have been translated into Arabic as is required under international law.
- 5.3 In June 2015, MCW submitted 200 cases to the [UN Special Rapporteur on Torture](#) relating to the treatment of children held in Israeli military detention. Based on data provided by the Israeli military and the UN, the submission estimates that since martial law was imposed in 1967, some 95,000 children have been detained of which 59,000 are likely to have been subjected to some form of physical violence. The submission also draws a link between detention and the maintenance of Israeli settlements in the West Bank.
- 5.4 In June 2015, the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (OECD Guidelines) published findings that the [British security firm G4S](#) is currently violating three human rights obligations under the OECD Guidelines arising from its contracts to provide security services to Israeli military checkpoints and prisons located inside the West Bank and Israel. In 2014, G4S announced that it would not be renewing its contract to provide equipment and maintenance services to the IPS when it expires in 2017.
- 5.5 In April 2015, the [Rome Statute of the International Criminal Court](#) entered into force in Palestine with retro-active effect from 13 June 2014. The Office of the Prosecutor has [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 are met. Specifically, the Prosecutor will consider issues of jurisdiction, admissibility and the interests of justice in making this determination. Issues that may eventually come under investigation include the transfer of population groups in and out of occupied territory.

- 5.6 A comprehensive list of legislative and procedural developments in the military detention system is available on MCW's [website](#).

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

- 6.1 In June 2012, the British Government funded and facilitated the independent report on [Children in Military Custody](#) by leading British lawyers. The report recommended, *inter alia*, that: “[A]ll Palestinian children detained under Israeli military law should be held in facilities in the Occupied Palestinian Territories and not held in Israel, which constitutes a breach of the Fourth Geneva Convention”. A similar recommendation was made by UNICEF in March 2013.
- 6.2 More than three years after this recommendation was made, monthly data released by the [IPS](#), a government instrumentality, indicates that on average **49 per cent** of child detainees and **90 per cent** of adult detainees from the West Bank continue to be transferred to prisons located inside Israel. Under the Fourth Geneva Convention (Convention) ([Article 76](#)) and the Rome Statute of the International Criminal Court (Rome Statute) ([Article 8 2\(vii\)](#)) the unlawful transfer and detention of prisoners outside occupied territory is classified as a war crime.
- 6.3 In July 2012, the Foreign and Commonwealth Office [acknowledged in writing](#) that this policy amounts to a “grave breach” of the Fourth Geneva Convention and that Israel cannot rely on provisions of its domestic law as justification for violations of international law. However, in February 2015, [UNICEF announced](#) that it had been informed by the Israeli military authorities that they had no intention of changing the policy.
- 6.4 This policy, which commenced in 1967, currently affects between 7,000 to 8,000 individuals, including minors, annually. It is submitted that a violation of the Convention of this magnitude and duration has the potential to undermine the credibility of the international legal order and its institutions with adverse implications for the rule of law extending beyond Israel and Palestine to the detriment of all. These concerns were [recently raised](#) by a group of Israeli, Palestinian and UK lawyers with Britain’s ambassador in Tel Aviv.
- 6.5 It should be noted that under the [Geneva Conventions Act 1957](#) (UK), any person who commits, or aids, abets or procures the commission by any other person of a “grave breach” of the Convention, including unlawful transfer and detention of protected persons, is liable to imprisonment for a term not exceeding 30 years if convicted.

## **7. Unlawful discrimination**

- 7.1 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.

- 7.2 Although Israel is not permitted to apply its civilian law to Palestinians in the West Bank on the grounds that this would be tantamount to unlawful annexation, the laws that are applied must contain rights and protections no less favourable than those applied to Israelis living in the settlements. Failure to do so violates the principle of non-discrimination.
- 7.3 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](#).

## **8. Recent case examples**

- 8.1 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.
- 8.2 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.
- 8.3 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 reports being released on bail by a military court four days later.
- 8.4 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.

8.5 All 300 testimonies are available on MCW's [website](#).

## **9. Conclusions**

9.1 In June 2012, the British Government funded and facilitated the independent report on [Children in Military Custody](#) by leading British lawyers. The report recommended, *inter alia*, that:

- Children should not be arrested at night except in extreme and unusual circumstances;
- Children should never be blindfolded or hooded;
- Children must be allowed to meet with a lawyer prior to interrogation;
- Children should have a parent present throughout the interrogation;
- All interrogations should be audio-visually recorded; and
- No child should be transferred out of the West Bank in violation of international law.

As of December 2015, the evidence indicates that none of these recommendations have been effectively implemented in spite of repeated efforts by the British Government.

9.2 According to [UNICEF](#), in the two-and-a-half years since the publication of the report - Children in Israeli Military Detention – the UN agency has been “engaging in a dialogue with the Israeli authorities on children’s rights while in military detention and on specific actions that can be undertaken to improve the protection of these children”. The evidence indicates that these steps have not substantially reduced the levels of abuse and issues of concern, and in some areas the situation has deteriorated.

9.3 Based on 120 testimonies collected by MCW since January 2015, the evidence indicates that UNICEF’s 2013 assessment 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, from the moment of arrest until the child’s prosecution and eventual conviction and sentencing” is still valid in December 2015.

9.4 The lack of significant progress in reducing the level of reported abuse and terminating the policy of unlawfully transferring detainees from the West Bank increases the likelihood that these issues will become the subject of a formal investigation by the Prosecutor of the International Criminal Court, thereby exposing Israeli officials, past and present, to possible criminal liability.