



## Briefing Note – December 2016

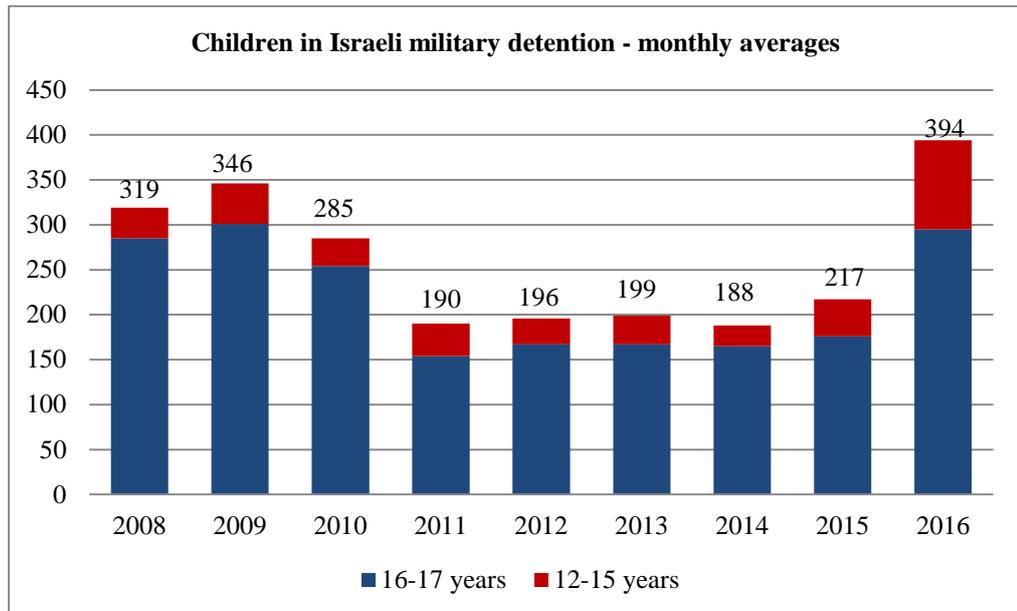
### 1. Introduction

- 1.1 In June 2012, the Foreign Office funded report – [Children in Military Custody](#) – found undisputed evidence that Israel's military detention system violated at least six articles under the UN Convention on the Rights of the Child and two articles under the Fourth Geneva Convention. The report concluded by making 40 recommendations.
- 1.2 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.
- 1.3 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 recommendations included in both reports and to consider any relevant developments in the military detention system. 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. Detention figures

- 2.1 According to the most recent 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](#). The age and gender breakdown for children held in detention in August 2016 was as follows:
  - 12-13 years – 1%
  - 14-15 years – 22%
  - 16-17 years – 77%
  
  - Male - 97%: Female - 3%
- 2.2 According to data provided by the military authorities to [UNICEF](#) and [ACRI](#), **1,004** Palestinian children were arrested by the military in the West Bank in 2013 and **861** children in 2014. 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 an [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, 13 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 **79 testimonies** collected by MCW in 2016 (reporting period), the evidence indicates as follows:

- **Night arrests – 51 percent** of children continue to report being arrested by the military at night. 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 sometimes their [bedrooms](#).
- **Hand ties - 90 percent** of children report being hand tied upon arrest often described as being "[painful](#)" or "[very tight and painful](#)". Children frequently remain tied for extended periods including [during interrogation](#). In some cases their hands become [swollen](#) and turn blue. Children continue to be shackled by the ankles during military court appearances.
- **Blindfolds - 84 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. In some cases children also report that they remained blindfolded during their [interrogation](#).

- **Physical abuse - 58 percent** of children report being subjected to various forms of physical abuse during arrest, transfer and/or interrogation. 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 - 76 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. 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. 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 - 48 percent** of children report being subjected to threats during arrest, transfer and/or interrogation. 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 - 87 percent** of children report not being informed of their right to silence. In the 13 percent of cases where children are 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 some cases the child was informed of his right to silence at the [conclusion](#) of the interrogation or after [multiple interrogations](#).
- **Access to lawyers - 91 percent** of children report being denied access to a lawyer prior to questioning. Under Israeli military law a detainee must be informed of the right to consult with a lawyer on arrival at a police station. However, the order does not stipulate when the consultation should take place. Children frequently report being informed of this right only [after interrogation](#) and most see their lawyer for the first time in the military court.
- **Documentation in Hebrew - 73 percent** of children report being shown, or made to sign, [documentation](#) written in Hebrew at the conclusion of their interrogation. 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 had [no idea](#) about the contents of the document.
- **Accompanied by a parent – 4 percent** of children report being accompanied by a parent throughout their interrogation. 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 - 59 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, **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. 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.

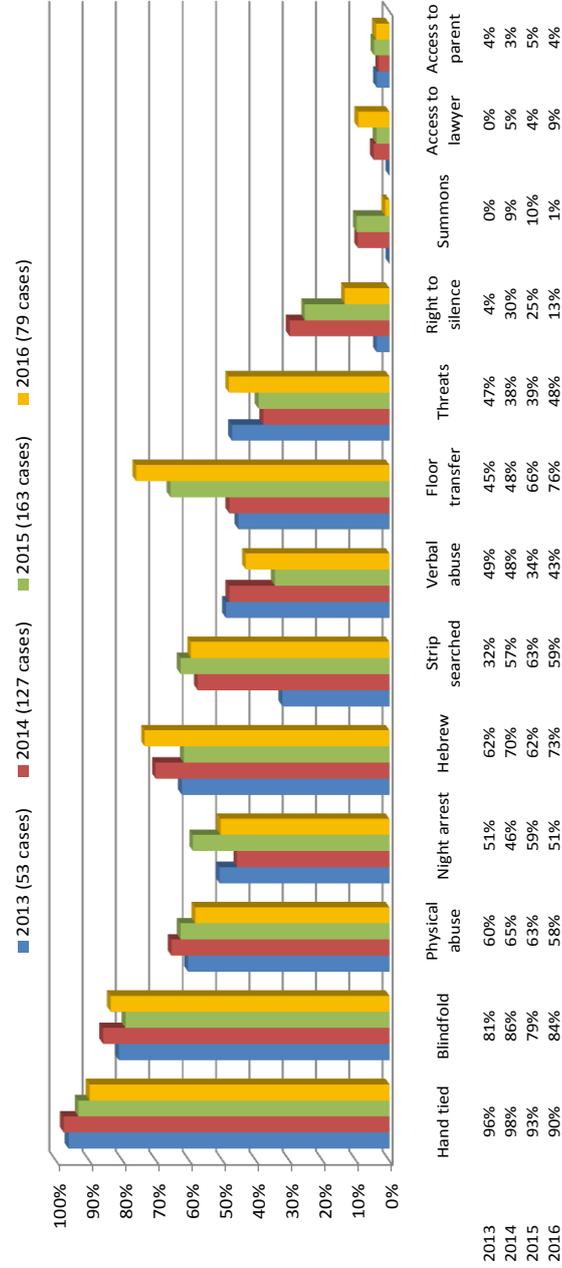
#### **4. Recent case examples**

- 4.1 On 26 July 2016, a [10-year-old boy](#) reports being detained by soldiers while picking figs near the Wall. He reports being held without explanation and becoming "terrified" after a soldier threatened that he would be attacked by dogs. He was taken to Al Jalama checkpoint where he was blindfolded and held in a room until 4:00 a.m. the following morning. He was not questioned or accused of an offence before being released into the custody of the Palestinian police. Under Israeli military law children below 12 years cannot be lawfully detained.
- 4.2 On 25 May 2016, a [14-year-old boy](#) reports being detained by soldiers at 3:15 a.m. One week earlier soldiers had delivered a summons at 2:00 a.m., which the family reports they complied with. He reports being painfully hand tied and blindfolded before being assaulted and verbally abused in the back of a military vehicle. He reports being put in a shipping container before being interrogated at 7:00 a.m. without being informed of his legal rights. He reports signing a document written in Hebrew without understanding its contents.
- 4.3 All **422 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 **422 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 substantial improvement since the publication of the UK and UNICEF reports.

**COMPARATIVE GRAPH (2013 - 2016)**



**Updated: 28 November 2016**

Information is based on testimonies collected by MCW

## **6. Other developments**

6.1 ***Pilot programme to limit night arrests*** - Following widespread criticism of the practice of arresting children at night the military authorities announced, as an alternative, the introduction of pilot scheme to issue summonses in February 2014. In the first year of operation summonses were issued in 9 percent of cases, rising to 10 percent in 2015. However, according to evidence collected by MCW the use of summonses has now fallen to just **1 percent** in 2016. According to evidence collected by MCW, even when more summonses were issued in 2015 a number of concerns remain:

- Two-thirds of summonses were 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](#);
- Although the authorities acknowledge a [discretion](#) to permit a parent to accompany a child during interrogation, this safeguard was [denied](#) and the parent was made to wait outside the interrogation centre or go home; and
- No reference to the child's [legal rights](#) was included in any summons.

Meanwhile, the practice of arresting children at night remains constant at 51 percent, the same as [2013 levels](#) .

6.2 ***Use of plastic hand ties*** - Following numerous complaints and legal action concerning pain and injury caused by the use of plastic hand ties by the Israeli military on detainees, the office of the Military Advocate General announced the introduction of [new procedures](#) for the use of restraints in 2010. The nature of the complaints regarding the use of plastic ties includes [swelling](#), ties [cutting](#) into wrists and [pain](#). According to evidence collected by MCW in 2016, 90 percent of children continue to be restrained upon arrest, most with plastic ties. In **67 percent** of cases where restraints are used, the military regulations for their use are disregarded and many children continue to report experiencing pain.

6.3 ***Use of blindfolds*** - In 2013 UNICEF recommended that the practice of blindfolding or hooding children should be prohibited in all circumstances. In disregard of this recommendation **84 percent** of children continue to be blindfolded on arrest and frequently remain blindfolded for prolonged periods of time prior to their interrogation.

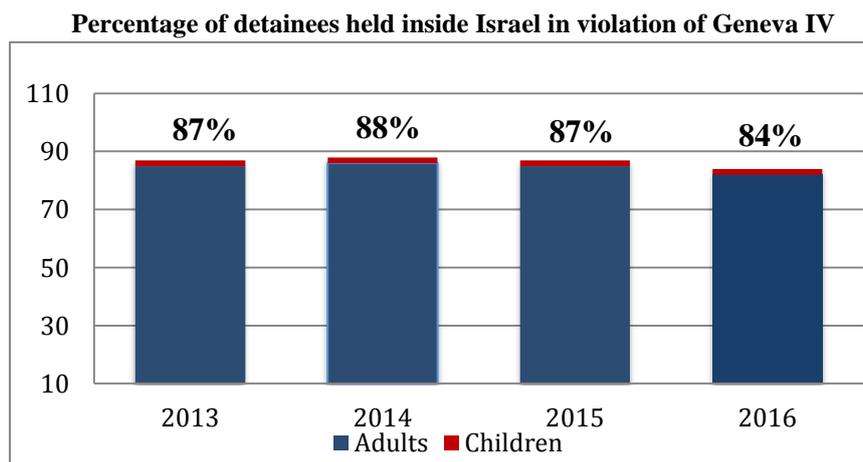
6.4 ***Bail*** - Consistent with the principle that detention of children should be a matter of last resort there should be a presumption in favour of release on bail. According to data obtained under a [freedom of information application](#), just **16 percent** of children indicted in the military courts were released on bail following a military court appearance in 2014.

6.5 ***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.

- 6.6 **UK Government confirms transfer of prisoners violates the Fourth Geneva Convention** - In June 2016, the UK Government re-affirmed in [writing](#) its longstanding position that "Israel has legal obligations as an Occupying Power with respect to the Occupied Palestinian Territories under applicable international law, including the Fourth Geneva Convention." The Government also confirmed that "the UK considers Israel's detention of Palestinian prisoners within Israel to be contrary to Article 76 of the Fourth Geneva Convention."
- 6.7 **UK lawyers report - less than 3 percent of recommendations implemented after 4 years** - June 2016 marked the fourth anniversary since the publication of a UK 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 legal delegation supported by the Foreign Office [announced](#) that their imminent visit to the region to update the report had been cancelled due to a lack of co-operation by Israeli authorities.

## **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.