



Military Court Watch

Monitoring the treatment of children in Israeli military detention

Children in Israeli military detention

Submission

Date: 11 July 2016

Submitted to:

- UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Military Court Watch ([MCW](#)) is a registered non-profit company 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 **393 testimonies** collected by Military Court Watch (MCW) from children detained between 2013 and 2016 as well as a review of changes to the military law and procedures, consideration of the standard operating procedures issued to the military, military court observations and official prison statistics.
- 1.2 The testimonies relied on by this submission were collected randomly in the sense that no prior enquiry was made as to the nature or seriousness of the allegations and all 393 children were detained from across the West Bank. The testimonies focus on the initial period of detention with particular regard to the first 24 hours following arrest, as it is during this timeframe that most issues of concern generally arise. All 393 testimonies are available on MCW's website.¹

2. Background

- 2.1 Following an increasing number of allegations of ill-treatment of children held in Israeli military detention, UNICEF commenced a review of the system in or about 2011. Following the review process UNICEF released a report in February 2013 - [Children in Israeli Military Detention \(2013\)](#) - which included the UN agency's observations and 38 recommendations from the review process (UNICEF Report).²
- 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 institutionalized 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".³ 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 issue summonses in lieu of night-time arrests;⁴
 - (ii) Distribution of forms notifying parents of the reasons for arrest and place of detention;⁵
 - (iii) Development of a form to notify minors of their right to silence and their right to consult with a lawyer;⁶
 - (iv) Re-issuing of standard operating procedures to the military 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;⁷

- (v) Mandating the audio-visual recording of all interrogations of minors suspected of "non-security" related offences;⁸ and
- (vi) Reducing the time in which a minor must be brought before a military judge following arrest.⁹

2.4 Since February 2013, UNICEF has released two updates to its original report in October 2013 and February 2015.¹⁰ In its most recent update UNICEF noted that: "[R]eports of alleged ill-treatment of children during arrest, transfer, interrogation and detention have not significantly decreased in 2013 and 2014".¹¹

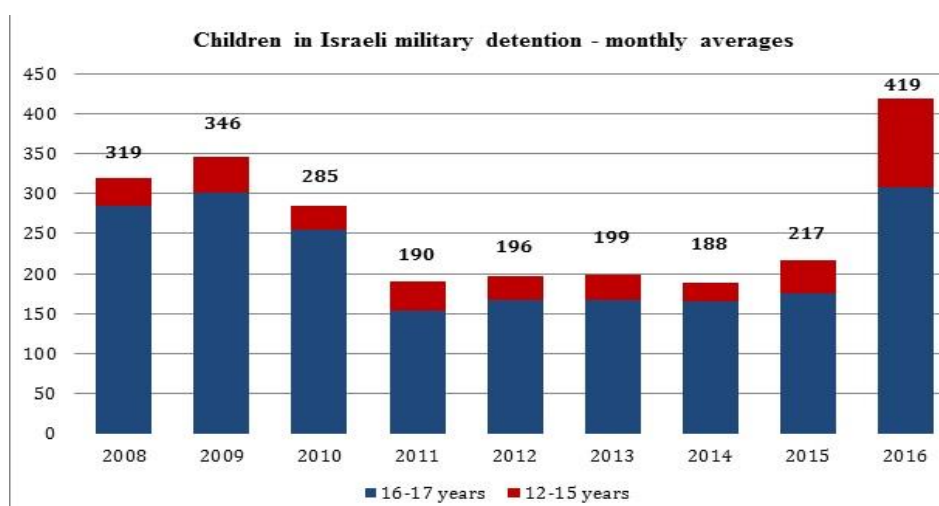
2.5 One other significant development in 2015 was Palestine's accession to the Rome Statute of the International Criminal Court which came into effect on 1 April 2015 with purported retro-active effect from 13 June 2014.¹²

3. Detention figures

3.1 According to the latest data provided by the Israeli Prison Service (IPS) at the end of April 2016, **414 children** (12-17 years) were held in military detention. This represents a **93 per cent** increase compared with the monthly average for 2015. The latest data includes 12 girls; three children under 14 years; and 13 children held without charge or trial in [administrative detention](#). The age breakdown for children held in detention in April 2016 was as follows:

- 12-13 years – 1%
- 14-15 years – 26%
- 16-17 years – 73%

3.2 According to data provided by the military authorities to [UNICEF](#) and [ACRI](#) pursuant to a freedom of information application, **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 [young children](#).



4. Current evidence of issues of concern

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 (393 testimonies) collected since 2013 is presented in a comparative graph on page 6. The information below is based on **50 testimonies** collected by MCW so far from children detained in the system in 2016 (Reporting Period).

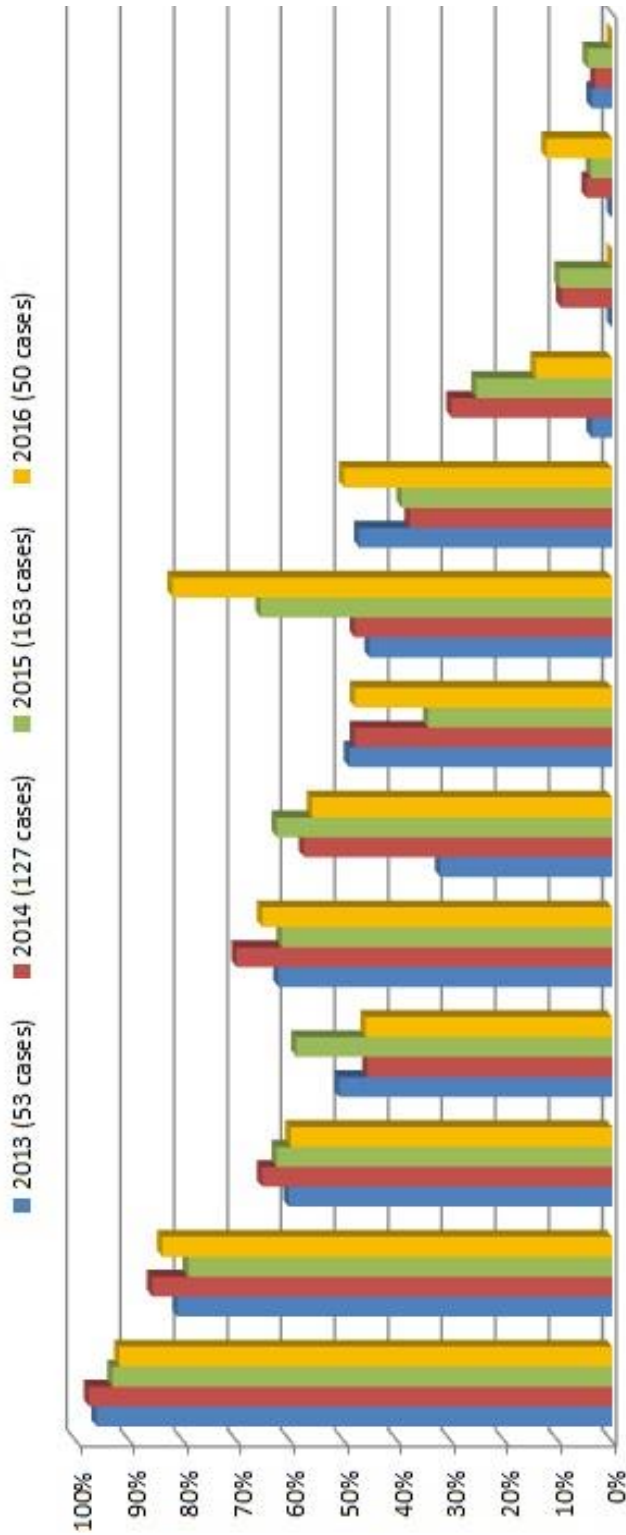
- **Night arrests – 46 per cent** of children continue to report being arrested by the military at night. Night arrest operations continue to intimidate and terrify communities and children report being "[scared](#)" or "[terrified](#)" when confronted with heavily armed soldiers in their homes and sometimes their [bedrooms](#).
- **Hand ties - 92 per cent** 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 per cent** 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 - 60 per cent** 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 - 82 per cent** 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 - 48 per cent** 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 - 50 per cent** 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 - 86 per cent** of children report not being informed of their legal right under Israeli military law to silence. In the 14 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 some cases the child was informed of his right to silence at the [conclusion](#) of the interrogation. MCW continues to document cases where a child is subjected to [multiple interrogations](#) and only informed of his rights during the final questioning..

- **Access to lawyers - 88 per cent** of 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 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, the obligation is on the police, not the military, to inform a suspect 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 - 65 per cent** 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 the written record is made in Hebrew which is then given to the child 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** – In **no cases** documented by MCW in 2016 was a child 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 - 56 per cent** 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.

4.2 The following comparative graph monitors progress across 13 issues of concern and is based on **393 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 UNICEF published its report in March 2013.

COMPARATIVE GRAPH (2013 - 2016)



	Hand tied	Blindfold	Physical abuse	Night arrest	Hebrew	Strip searched	Verbal abuse	Floor transfer	Threats	Right to silence	Summons	Access to lawyer	Access to parent
2013	96%	81%	60%	51%	62%	32%	49%	45%	47%	4%	0%	0%	4%
2014	98%	86%	65%	46%	70%	57%	48%	48%	38%	30%	9%	5%	3%
2015	93%	79%	63%	59%	62%	63%	34%	66%	39%	25%	10%	4%	5%
2016	92%	84%	60%	46%	65%	56%	48%	82%	50%	14%	0%	12%	0%

Updated: 8 July 2016

Information is based on testimonies collected by MCW

5. Other developments

- 5.1 *Allegations of evidence being planted* – During the reporting period there have been a number of [media reports](#) raising allegations that evidence, such as knives, was planted on suspects by military personnel during arrest. MCW has documented two cases during the reporting period in which children allege that a [knife](#) and a [slingshot](#) were planted on them at the time of arrest. The evidence in such cases is contested and highlights the utility in mandating the wearing of body cameras by all military personnel serving in the West Bank.
- 5.2 *Pilot scheme to limit night arrests* – Although the military authorities announced the introduction of a [pilot scheme](#) to issue summonses to limit night arrests in February 2014, MCW has not recorded a single case of a summons being issued in 2016. In 2015, MCW documented the use of summonses in 10 per cent of cases, however:
- 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
- 5.3 *Notification of reasons for arrest* – In April 2013 the military authorities [announced](#) the introduction of a form, printed in Hebrew and Arabic, which has to be given to the parents when a child is arrested at home. The form is supposed to provide parents with information on the reasons for arrest and where the child will be taken. In 2016, according to the evidence collected by MCW these documents are being given to parents in just **38 per cent** of cases where a child was arrested at home and in some cases the relevant material was handwritten in [Hebrew](#). In no case was any information provided about the child’s legal rights while in custody.
- 5.4 *Standard operating procedures for hand ties* – Following legal action in 2010, the Office of the Military Advocate General announced that [new procedures](#) had been established and disseminated on the use of hand-ties to prevent pain and injury. Under the new procedures, hands should be tied from the front, unless security considerations require tying from behind. Three plastic ties should be used; one around each wrist and one connecting the two; there should be the space of a finger between the ties and the wrist; the restraints should avoid causing suffering as much as possible; and the officer in charge is responsible for ensuring compliance. In May 2013 these standard operating procedures were [redistributed](#) to the military and police serving in the West Bank as a reminder. In 2016, according to evidence collected by MCW these procedures continue to be ignored in **76 per cent** of cases.
- 5.5 *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 per cent** of children indicted in the military courts were released on bail following a military court appearance in 2014.
- 5.6 *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 April 2016, 13 children were being held pursuant to these orders, the highest level since August 2008.

- 5.7 ***B'Tselem ceases engagement with military's complaint mechanisms*** - In May 2016, the Israeli rights group B'Tselem [announced](#) that after 25 years it would no longer refer complaints to the military's law enforcement mechanisms due to a lack of confidence in the ability of the system to adequately investigate and provide accountability.
- 5.8 ***US State Department report*** – In April 2016, the US Department of State released its annual report on human rights for 2015. After referring to UNICEF's 2013 report - [Children in Israeli Military Detention](#) - and the UN agency's finding that the "mistreatment of Palestinian children in the Israeli military detention system appears to be widespread, systematic, and institutionalized," the State Department noted that reports of mistreatment continued in 2015.
- 5.9 ***UK legal delegation cancelled*** - In February 2016, a follow-up mission by a delegation of prominent UK lawyers funded by the Foreign and Commonwealth Office (FCO) [announced](#) that their imminent visit to the region to update their 2012 report - [Children in Military Custody](#) - had been cancelled due to a lack of co-operation by the Israeli authorities. Four years on MCW is of the view that one of the UK report's 40 recommendations (separation from adults) has been substantially implemented - a compliance rate of just **2.5 per cent**.
- 5.10 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 2013 UNICEF 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 [UN Security Council](#) resolutions.
- 6.2 Although there is no serious dispute as to the law, according to the IPS, so far in 2016 on average **40 per cent** of minors and **86 per cent** of adult Palestinian detainees were 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 acceded to by Palestine in 2015.
- 6.3 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 [expressly rely](#) on [Article 66](#) of the same Convention to justify the prosecution of thousands of Palestinian men, women and children in military courts. It is submitted that this cherry-picking of legal obligations can only serve to undermine the credibility of the international legal order.

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 4 May 2016, a [15-year-old boy](#) (N.T.A.T.) from the Al 'Arrub refugee camp was detained by Israeli soldiers at 3:00 a.m. No reasons were given for the arrest. He reports being tied not in accordance with the military's standard operating procedures and blindfolded. He reports being head-butted by a soldier before being transferred on the floor of a military vehicle to Etzion interrogation centre. He was not informed of his legal rights and was accused of throwing stones at soldiers. He reports being subjected to physical and verbal abuse during interrogation. He was released without charge on 15 May 2016.
- 8.2 On 18 April 2016, a [14-year-old boy](#) (K.M.F.T.) from Beit Fajjar was detained by Israeli soldiers during a demonstration at the entrance to his village at 6:00 p.m. He reports being tied and blindfolded. He was taken to Etzion interrogation centre where he was questioned while tied. He was not informed of his legal rights. He confessed to throwing stones and reports signing a document in Hebrew. After he confessed the interrogator phoned his father and advised him to hire a lawyer. He was sentenced by military court to one month in prison and fined NIS 1,500.
- 8.3 On 13 April 2016, a [15-year-old boy](#) (A.A.S.D.) from Beit Fajjar was detained by Israeli soldiers at 2:00 a.m. His parents were provided with a document written in Hebrew. He reports being tied not in accordance with the military's standard operating procedures and blindfolded. He reports being transferred on the floor of a military vehicle and then placed in a shipping container in Etzion interrogation centre where he was physically assaulted. He reports being interrogated without being informed of his legal rights and verbally abused. He signed a statement in Hebrew and was released on bail on 21 April 2016.
- 8.4 All **393 testimonies** are available on MCW's [website](#).

9. Conclusion

- 9.1 During the three years (**40 months**) since the publication of the UNICEF report, [Children in Israeli Military Detention](#), there has been a significant level of dialogue between the Israeli authorities, UNICEF and various governments regarding the treatment of children in military detention. During the same period a number of legislative and procedural changes have also been introduced.
- 9.2 However, based on evidence collected by UNICEF and MCW, these developments have not substantially reduced the levels of abuse and issues of concern, and in some cases the situation appears to have deteriorated. Further, there is some indication that the Israeli authorities may now have taken a decision to disengage from any further meaningful discussion on the issue with a view to effectively implementing the 38 recommendations contained in the UNICEF report.
- 9.3 Based on 393 testimonies collected from children since 2013, as well as a review of recent legislative and procedural changes, MCW is of the view that UNICEF's 2013 conclusion that "the ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalized throughout the process" still appears valid in June 2016.
- 9.4 Finally, although there is no dispute of fact concerning the number of Palestinians being transferred and detained inside Israel and the applicable legal principles are beyond any serious challenge, the military authorities have informed [UNICEF](#) that the policy will not be changed, thereby presenting a clear and unambiguous challenge to the rule of law.

10. Recommendations

- 10.1 MCW continues to advocate for the effective introduction 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.

End notes

¹ Military Court Watch testimonies (children) available at: <https://is.gd/yJmFA3>

² UNICEF, Children in Israeli Military Detention: Observations and Recommendations (February 2013) – Available at: <http://is.gd/Yu59IN>

³ UNICEF, Bulletin No. 1 (October 2013), page 1. Available at: <http://is.gd/1m8mqR>

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

⁵ UNICEF Bulletin No. 2 (February 2015), page 1. Available at: <http://is.gd/ECGFkV>

⁶ UNICEF Bulletin No. 2 (February 2015), page 2. Available at: <http://is.gd/ECGFkV>

⁷ Standard Operation Procedures – Procedures for Arresting Minors (June 2014). Available at: <http://is.gd/TSi8b0>

⁸ Military Order 1745 (September 2014). Available at: <http://is.gd/Gi5QJ4>

⁹ Military Order 1711 (April 2013).

¹⁰ UNICEF Bulletins Nos. 1 and 2. Available at: <http://is.gd/1m8mqR> and <http://is.gd/ECGFkV>

¹¹ UNICEF Bulletin No. 2 (February 2015), page 2. Available at: <http://is.gd/ECGFkV>

¹² MCW statement: Rome Statute enters into force in Palestine, 1 April 2015. Available at: <http://is.gd/7HntzW>