



Briefing Note – July 2016

1. Summary

- 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. A review of developments during the intervening four years indicates that just one of the report's 40 recommendations - the separation of children from adults while in custody - has been substantially implemented. This represents an implementation rate of **2.5 per cent**.

2. Introduction

- 2.1 In February 2013, eight months after the publication of the UK Report, 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”. The UNICEF Report concluded by making 38 recommendations similar to the recommendations included in the UK Report.
- 2.2 In response to the UK and UNICEF reports 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 reducing the levels of reported abuse and other issues of concern within the military detention system by reference to new evidence as well as other significant developments.

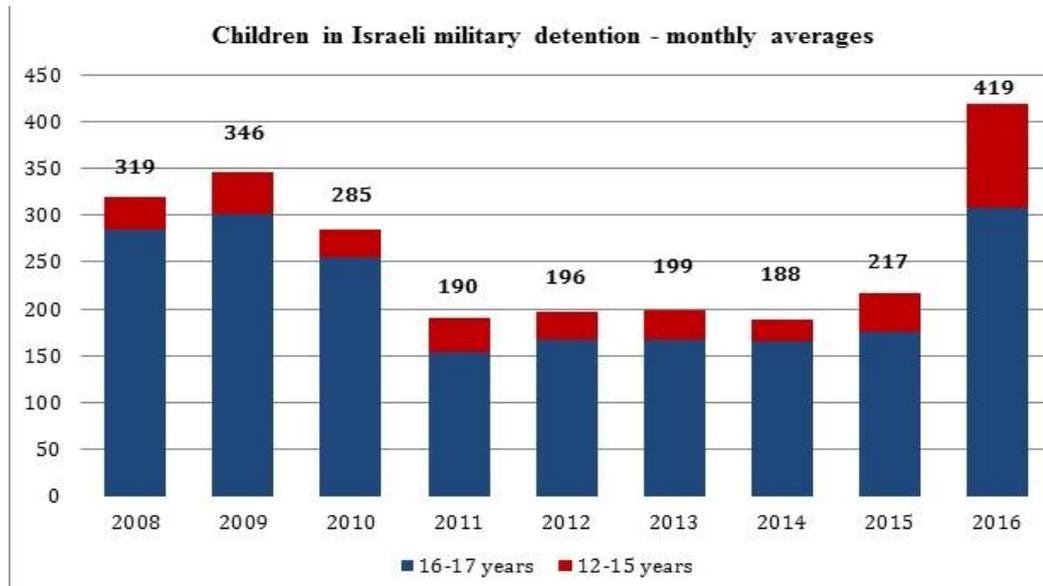
3. Detention figures

- 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 and gender breakdown for children held in detention in April 2016 was as follows:

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

- Male - 97%: Female - 3%

- 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 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](#)) in 2015 and 2016.
- 4.2 MCW has so far collected **50 testimonies** in 2016 (reporting period) from children who reported some form of ill-treatment or denial of basic legal rights following their detention by the Israeli military in the West Bank. In each case the children reported multiple violations. The evidence so far collected by MCW in 2016 indicates as follows:
- **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 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.

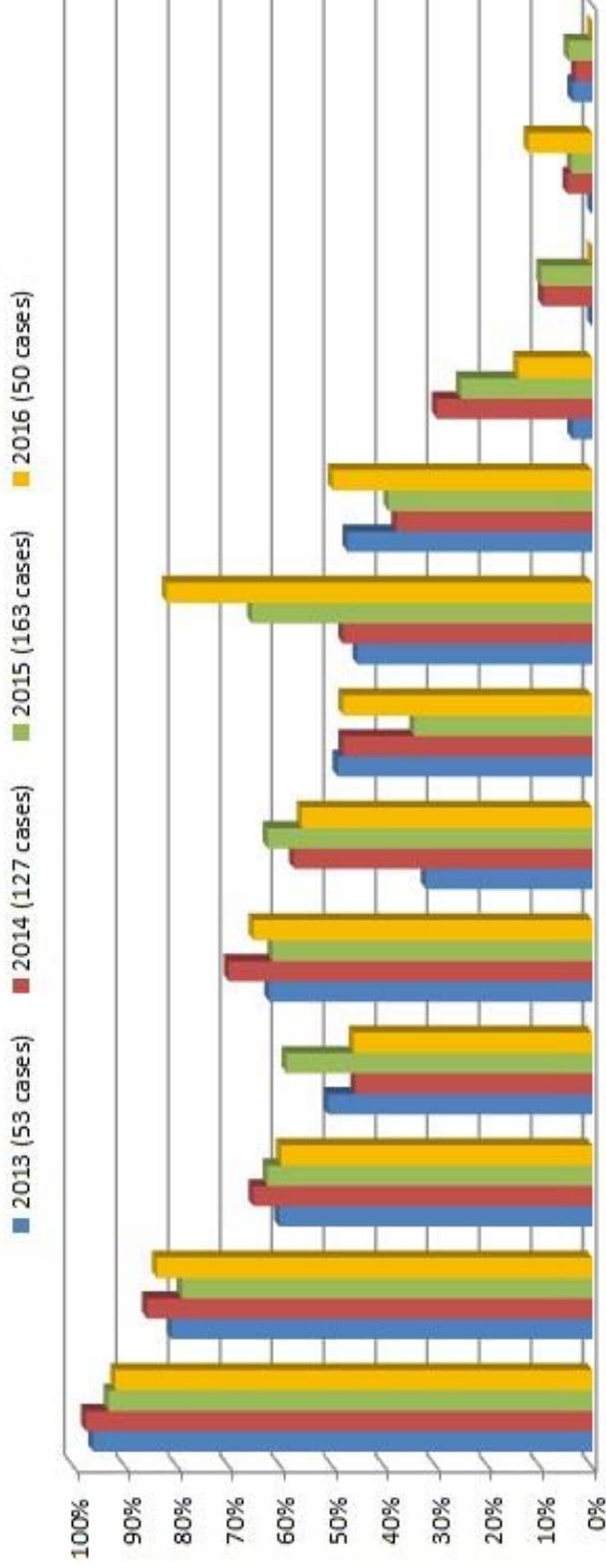
5. Recent case examples

- 5.1 On 23 May 2016, a [16-year-old boy](#) (U.M.H.N.) from Al Jalazun reports being detained by Israeli soldiers at 4:00 a.m. No reasons for the arrest were given. He reports being tied and blindfolded and then physically assaulted and verbally abused. He was then transferred on the floor of a military vehicle to the settlement of Bet El. He reports being sleep deprived and interrogated 15 hours after his arrest. He was accused of throwing stones but was not informed of his legal rights. He reports being yelled at by the interrogator before being asked to sign a document in Hebrew. He was released on 1 June 2016, on payment of NIS 2,000.
- 5.2 On 10 May 2016, a [15-year-old boy](#) (U.N.M.H.) from Qalandiya was detained by Israeli soldiers while herding sheep near the settlement of Kochav Ya'akov at 4:30 p.m. He was tied and his shirt was pulled up over his eyes. He reports that he was deliberately tripped and fell into a thorn bush causing injury. On arrival at the settlement he reports being physically assaulted. He reports being transferred to Binyamin settlement where he was interrogated at around midnight. He was not informed of his legal rights. He reports being yelled at, verbally abused and physically assaulted during the interrogation. At 3:00 a.m. he was released without charge and told to walk home.
- 5.3 All **393 testimonies** are available on MCW's [website](#).

6. Comparative graph - issues of concern (2013-2016)

- 6.1 The following 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 the publication of the UK and UNICEF reports.

COMPARATIVE GRAPH (2013 - 2016)



Updated: 8 July 2016

Information is based on testimonies collected by MCW

7. Other developments

- 7.1 *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 need for the mandatory wearing of body cams by all military personnel serving in the West Bank.
- 7.2 *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
- 7.3 *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.
- 7.4 *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.
- 7.5 *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.
- 7.6 *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.

- 7.7 ***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 system's ability to adequately investigate and provide accountability.
- 7.8 ***US State Department report*** – In April 2016, the US Department of State released its annual report on human rights for 2015. After referring to the UNICEF Report and the 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.
- 7.9 ***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 [announced](#) that their imminent visit to the region to update the 2012 UK Report 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**.
- 7.10 A comprehensive list of legislative and procedural developments in the military detention system is available on MCW's [website](#).

8. Unlawful detention inside Israel

- 8.1 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 [UN Security Council](#) resolutions.
- 8.2 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 both the UK and Palestine.
- 8.3 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.

- 8.4 On 27 June 2016, the UK Government again [confirmed in writing](#) that the Fourth Geneva Convention applies to the Israeli/Palestinian conflict, Israel has legal obligations as the occupying power and the transfer of Palestinians from the West Bank to prisons in Israel violates Article 76 of the Convention. A violation of Article 76 is classified as a "grave breach" of the Convention. It should be noted that the UK also has positive legal obligations under [Article 146](#) of the Convention:

"To search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts."

- 8.5 Although these international legal obligations have been incorporated into UK domestic law by the [Geneva Conventions Act 1957](#), the UK Government [announced](#) on 18 January 2016 that there were no plans to establish and maintain a watch list at UK ports of entry to identify potential war crime suspects entering the UK. Accordingly it is not immediately apparent how the UK Government intends to satisfactorily fulfill its legal obligations.

9. Unlawful discrimination

- 9.1 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.
- 9.2 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.
- 9.3 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](#).

10. Conclusion

- 10.1 During the intervening four years since the publication of the UK Report there has been a significant level of dialogue between the Israeli authorities, the [UK Government](#) and UNICEF regarding the treatment of children in military detention. During the same period a number of legislative and procedural changes have also been introduced.
- 10.2 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 recommendations contained in the UK and UNICEF reports.

- 10.3 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 July 2016.
- 10.4 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 and the international legal order.

11. Recommendations

- 11.1 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.

11 July 2016