

1. Background

- 1.1 This year marks the 50th anniversary of the imposition of Israeli martial law in the West Bank and the establishment of military courts for the prosecution of Palestinian civilians, including children aged 12-17 years inclusive. During this time frame it is estimated that between 775,000 and 850,000 Palestinians have been detained by the military, including 45,000 children.¹ Available evidence suggests that at least half of those detained by the military were charged and prosecuted in the military courts, although it is difficult to obtain reliable and consistent data covering the entire period.
- 1.2 In 2013, UNICEF published a report - [Children in Israeli Military Detention](#) (UNICEF Report) and concluded that: "[T]he ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalised throughout the process." Since the publication of the UNICEF Report the Israeli Ministry of Foreign Affairs announced that it would "study the conclusions and work to implement them through on-going co-operation with UNICEF". During the intervening years there have been a number of legal, procedural and administrative developments in the system relevant to the treatment of children including, but not limited to, the following:
- (i) A new military order reducing the period of time within which a child must be brought before a judge following arrest;
 - (ii) The introduction of a form notifying parents of the reason for a child's arrest and place of detention;
 - (iii) Re-issuance of the military's standard operating procedures for the arrest of minors to all military units serving in the West Bank including a reminder of the prohibition against physical and verbal abuse and procedures for restraining children;
 - (iv) The introduction of a form notifying children of their legal rights in custody including the right to silence and the right to consult with a lawyer; and
 - (v) The introduction of a pilot scheme to use summonses in lieu of arresting children at night.

2. Detention figures

- 2.1 According to the latest data provided by the Israeli Prison Service (IPS) at the end of May 2017, **331 children** (12-17 years) were held in military detention. This compares with a 5-year monthly average detention rate of 257 children - representing an increase of 22 percent. The latest data includes 10 girls; 3 children under 14 years; and 2 children held without charge or trial in administrative detention. The age and gender breakdown of children held in detention in May 2017 was as follows:
- 12-13 years - 1%
 - 14-15 years - 21%
 - 16-17 years - 78%
 - Male - 97%: Female - 3%
- 2.2 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 **Annexure A**. For more details see [MCW - Statistics](#)

3. Issues of concern

3.1 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. Based on **127 testimonies** collected from children detained in the West Bank in 2016, the evidence indicates as follows (**Annexure B**) (MCW [Annual Report](#)):

- (i) **Night arrests - 53 percent** (67/127) of children reported being arrested by the military at night between the hours of 22:00 and 05:00. This compares with 51 percent 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](#).
- (ii) **Summons in lieu of night arrests - 2 percent** (3/127) of children reported being served with a summons as an alternative to night arrest. The pilot scheme to issue summonses was introduced in 2014. In cases where summonses are used most continue to be delivered at [night](#), frequently [lack details](#), are sometimes written in [Hebrew](#) and provide no information about the child's [legal rights](#) in custody.
- (iii) **Written notification of arrest - In 61 percent** (41/67) of cases where children were arrested from home it was reported that no written notification of the reasons for arrest or place of detention was provided. 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](#)).
- (iv) **Hand ties - 94 percent** (119/127) of children reported being hand tied on arrest often described as "[painful](#)" or "[very tight and painful](#)". This compares with 96 percent in 2013. In some cases their hands became [swollen](#) or [bleed](#). Children continue to be shackled by the ankles during court appearances. In **76 percent** of cases the evidence indicates non-compliance with the military's own standard operating procedures.²
- (v) **Blindfolds - 81 percent** (103/127) of children reported being blindfolded or hooded upon arrest in disregard of a recommendation made by UNICEF that this practice should be prohibited in all circumstances. This is the same percentage as in 2013.
- (vi) **Floor transfer - 78 percent** (99/127) of children reported being transferred on the metal floor of military vehicles from the place of arrest to an interrogation centre. This compares with 45 percent in 2013. This increase may be attributable to a significant rise in the detention rate in 2016.
- (vii) **Physical abuse - 64 percent** (81/127) of children reported being subjected to various forms of physical abuse following arrest. This compares with 60 percent in 2013. The types of reported abuse includes: [head-butting](#); [tripping](#); [aggressively dragging](#); [kicking](#); [beating](#); [punching](#); [Tasered](#); [struck with objects](#) including [sticks](#), [weapons](#) and [helmets](#); and the deliberate [over-tightening](#) of restraints. Some children also report being deliberately [sleep deprived](#) prior to interrogation. In [one case](#) a boy

reports that he was beaten so hard he offered to become a collaborator if the beating stopped.

- (viii) **Threats and verbal abuse - 54 percent** (68/127) of children reported being subjected to threats during arrest, transfer and/or interrogation. This compares with 47 percent in 2013. The types of threats documented during the reporting period include: [electrocution](#); [shot](#); revoking [work permits](#); denial of [permits](#) generally; [house demolition](#); [life](#) or [long-term](#) imprisonment; adding [more serious allegations](#); prevented from seeing [family members](#) ever again; [rape](#); [rape of a family member](#); threatened with a [knife](#); [violence](#); [shouting](#); [yelling hysterically](#); threatened with a [drill](#) and spreading rumours of [collaboration](#). **41 percent** (52/127) of children reported being subjected to verbal abuse following arrest. This compares with 49 percent in 2013.
- (ix) **Strip searched - 63 percent** (80/127) of children reported 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.
- (x) **Accompanied by a parent - 94 percent** (7/127) of children reported not being accompanied by a parent throughout their interrogation. This compares with 96 percent in 2013. While 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 their children.
- (xi) **Access to lawyers - 88 percent** (15/127) of children reported being denied access to a lawyer prior to questioning. This compares with 100 percent 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. Some children [report](#) being informed of this right but are questioned before the consultation takes place. Other children [report](#) only being informed of this right after interrogation. In some cases children are asked to sign a document [falsely acknowledging](#) that they have been informed of their rights. Most continue to see their lawyer for the first time in the military courts.
- (xii) **Right to silence - 86 percent** (109/127) of children reported not being informed of their right to silence. This compares with 96 percent in 2013. In the 14 percent 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 or after [multiple interrogations](#).
- (xiii) **Solitary confinement** - According to data compiled by UNICEF, **30 children** were held in solitary confinement in 2016 for periods of 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). The number of reports of children held in solitary confinement in 2016 jumped **131 percent** compared with the previous year.

- (xiv) **Documentation in Hebrew - 74 percent** (94/127) of children reported being shown, or made to sign, documentation written in Hebrew at the conclusion of their interrogation. This compares with 62 percent 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.
- (xv) **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 only after they have already spent a number of [weeks](#) or more in custody. By way of contrast, **17.9 percent** of children indicted in Israel's civilian juvenile justice system were denied bail in 2015. There is no official data currently available for 2016.
- (xvi) **Conviction rate** - 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.
- (xvii) **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 May 2017, 2 children were being held pursuant to these orders.
- (xviii) **Education in prison** - Education opportunities for Palestinian children inside IPS facilities remain limited. Where education is available, it is generally restricted to Arabic and mathematics, with a prohibition on teaching history, geography and the sciences based on "security considerations". When education is available, it is insufficient to ensure the child's smooth reintegration back into the Palestinian school system and the subsequent drop-out rate upon release is high.
- (xix) **Family visits and telephone communication in prison** - Children are entitled to a family visit (2 persons) every 2 weeks lasting for 45 minutes. As in previous years, some children do not receive visits as permits are denied on "security grounds" or because the bureaucracy to obtain a permit can take up to 2 months. Unlike Israeli child detainees, Palestinian children are denied telephone communication with their families while in prison.

4. Unlawful detention inside Israel

- 4.1 According to data released by the IPS, on average **82 percent** of Palestinian detainees continued to be transferred and detained in Israel in 2017, including **74 percent** of child detainees. Transferring "protected persons" including detainees out of occupied territory is prohibited by Article 76 of the Fourth Geneva Convention and is classified as a war crime by Article 8(2)(vii) of the Rome Statute of the International Criminal Court. The policy of transfer, which commenced in 1967, currently affects between 7,000 - 8,000 Palestinian men, women and children annually. Since the Office of the Prosecutor of the International Criminal Court [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 have been met in January 2015, it is estimated that up to 20,000 Palestinian men, women and children have been transferred and detained inside Israel in violation of international law.

5. Unlawful discrimination

- 5.1 Since 1967, Israel has exercised penal jurisdiction over both Palestinians and Israeli settlers living in the West Bank. Although Israeli military law technically applies to all individuals in the West Bank, in practice, the authorities apply civilian law to settlers and military law to Palestinians at the discretion of the prosecutor. The military law applied to Palestinians, including children, has fewer rights and protections than the civilian law applied to Israeli settlers living in the same territory. 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. Some of the key differences between the two legal systems relating to children are included in **Annexure C**. Amendments proposed by the State and military authorities scheduled to be introduced in May 2018 do not eliminate the differentials.

6. A link between child detention and the settlements

- 6.1 By mid-2017 there will be approximately 410,000 Israeli civilians living in West Bank settlements constructed in violation of international law.³ In order to protect settlers living in occupied territory the military is compelled to adopt a strategy of intimidation and collective punishment focused on Palestinian communities located in proximity to the settlements and the roads used by settlers, such as Route 60 and 443. Out of 127 cases documented by MCW in 2016, 125 children resided and were arrested within an average of **1.02 kilometres** from a settlement, checkpoint, or major road used by settlers (Routes 60 and 443). In the remaining 2 cases there was no proximate link between the place of arrest and the place of residence.

7. Concluding words

- 7.1 Since the previous review and publication of the UNICEF Report there have been a number of developments across a range of issues. However, MCW estimates that just 1 of UNICEF's 38 recommendations has been substantially implemented at the time of writing and the conclusion that the ill-treatment of children in the system appears to be "widespread, systematic and institutionalized" is still valid in June 2017.

Endnotes

¹ The UN estimates that between June 1967 and January 2008, 700,000 Palestinians were "imprisoned". This estimate suggests an annual average of 17,000 giving a total of 850,000 after 50 years (See: UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Professor John Dugard, Human Rights Situation in Palestine and Other Occupied Arab Territories, 21 January 2008, A/HRC/7/17, paragraph 45). According to references cited in the IDF Law Review, Vol. 18 (2005), page 299 at page 300, in the 8 years between 1993 and 2000, 124,000 "prosecutions" were conducted in the military courts, with an annual average of 15,500. This would translate into 775,000 prosecutions since June 1967 if one assumes a constant rate for the past 50 years. According to the Annual Activity Report of the Military Courts, between 2008 and 2013, an average of 8,343 "indictments" were filed, or 417,150 indictments since 1967, assuming a constant rate. This figure does not include those detained but released without indictment - a number that is likely to be substantial. In the case of children according to information provided by the Israeli military authorities pursuant to a Freedom of Information application, between 2013 and 2015 an annual average of 912 children were arrested by the military in the West Bank over the course of 3 years. Assuming a constant rate for 50 years, this would total 45,600 children.

² The military 's standard operating procedures for the use of hand ties introduced in 2010 provide as follows: 1) Hands should be tied in front unless security considerations require tying from behind; 2) Three plastic ties should be used, one around each wrist with one connecting the two; 3) There should be a finger space between the ties and each wrist; 4) The restraints should avoid causing suffering as much as possible; and 5) The officer in charge is responsible for ensuring compliance with these procedures.

³ According to the Israeli Central Bureau of Statistics there were 385,900 settlers in the West Bank at the end of 2015 with an annual growth rate of 4.1 percent. The Jerusalem Post, Settler Population was 385,900 by end of 2015, 6 October 2016. Available at: <https://is.gd/3dhy9n>