

Widespread, systematic and institutionalised abuse of minors in the West Bank

Submission

200 cases

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Submitted to:

 UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Juan Méndez.

Copied to:

UNICEF

Military Court Watch (MCW) is a voluntary association 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. Background

- 1.1 Since June 1967, it is conservatively estimated that at least 760,000 Palestinian men, women and children have been detained by the Israeli military and in some cases, prosecuted in military courts. Whilst the availability of official data is limited, the military authorities have confirmed that out of approximately 8,000 Palestinians detained for alleged security offences in 2013, 1,004 were minors below the age of 18 representing 12.5 per cent of the total.²
- 1.2 During the past 48 years reports of ill-treatment, as defined by the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), within Israel's military detention system have been commonplace. Concerns regarding these allegations and the application of military law in the West Bank have been raised by multiple institutions and bodies in recent years, including: the US State Department; governments of the UK, Netherlands, Slovenia and Ireland; UN Secretary-General; UN Human Rights Committee; UN Committee on the Rights of the Child; UN Committee against Torture; as well as numerous international and local rights' organisations.³

2. The UNICEF Report

- 2.1 In response to these persistent claims of abuse, UNICEF published the report Children in Israeli Military Detention (UNICEF Report) in March 2013. Following a review of over 400 affidavits collected through the UN's Monitoring and Reporting Mechanism on Grave Child Rights Violations, UNICEF 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."
- 2.2 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 co-operation with UNICEF". During the intervening two years there has been a significant level of official Israeli activity in response to the UNICEF report including an ongoing dialogue process, amendments to the military law and the re-issuance of standard operating military procedures in a clear acknowledgement that there are fundamental problems with the system.⁶
- 2.3 However, in spite of this activity, UNICEF noted in February 2015 that "reports of alleged ill-treatment of children during arrest, transfer and interrogation and detention have not significantly decreased in 2013 and 2014". This conclusion is based, in part, on a review of 208 new affidavits collected by UNICEF since the publication of the original Report. This finding suggests that the reforms and activities that have taken place have been largely ineffectual at stemming the abuse.
- 2.4 Since the commencement of 2013, MCW has also collected 200 testimonies from minors detained by the Israeli military in the West Bank in order to monitor and assess changes to the system and their impact on the treatment of children. In assessing this evidence MCW

has focused on 13 key issues of concern relating to the treatment of minors within the first 24 hours following arrest – the critical time frame during which most reports of abuse occur. The results of this assessment are presented in the following table.

Table 1- Analysis of 200 testimonies collected by MCW (2013-2015)

#	Description	No.	%
1	Hand tied	187	93%
2	Blindfolded	165	82%
3	Signed/shown documents in Hebrew	136	64%
4	Physical abuse	124	62%
5	Strip searched	98	49%
6	Transferred on floor of vehicle	97	48%
7	Arrested at night	93	46%
8	Verbal abuse	86	43%
9	Threats	78	39%
10	Informed of right to silence	43	21%
11	Summons in lieu of night arrest	13	6%
12	Access to a lawyer prior to interrogation	8	4%
13	Access to a parent throughout interrogation	7	3%

- 2.5 In order to further assess developments MCW has prepared a graph comparing the 13 issues of concern on a year-to-year basis since 2013 (see Annexure B). This comparison tends to confirm UNICEF's recent assessment that "reports of alleged ill-treatment of children during arrest, transfer and interrogation and detention have not significantly decreased". Further, the evidence also tends to suggest that UNICEF's original assessment that "the ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalized" is still valid in June 2015, some 48 years after military rule was imposed.
- 2.6 Attached to this submission are the following annexures:

Annexure A – Israeli Prison Service (IPS) detention figures for minors (2008-2015)

Annexure B – Comparative graph – issues of concern (2013-2015)

Annexure C – Table of issues of concern – 200 cases (2013-2015)

Annexure D – 200 testimonies (2013-2015)

Annexure E – Summons (May 2014)

Annexure F – Arrest document (April 2015)

3. Evidentiary summary

- 3.1 Between January 2013 and May 2015 (reporting period), MCW has collected 200 testimonies from children detained by the Israeli military in the West Bank. The testimonies were selected randomly in the sense that no prior enquiry was made as to the nature or seriousness of the allegations. The testimonies focus on the initial period of detention with particular regard to the first 24 hours following arrest. The sample of evidence is broken down by years as follows:
 - 2013 51 cases
 - 2014 115 cases
 - 2015 34 cases
- 3.2 Based on data released by the Israeli military authorities it is estimated that at least 2,400 minors were detained by the military in the West Bank during the reporting period. Accordingly, the 200 testimonies annexed to this submission represent approximately 8 per cent of the total number of minors detained since 2013. If one extrapolates this data back to June 1967, then it is estimated that up to 95,000 children may have been detained by the Israeli military during the past 48 years. 9
- 3.3 The section below includes a brief summary of the evidence with specific reference to some of the 200 testimonies annexed to this submission for illustrative purposes. The testimonies highlighted below are not an exhaustive list of all cases where a particular issue of concern is present.

Arrest

- Based on the evidence it is apparent that familiar patterns of abuse continued throughout the reporting period. A significant number of minors reported being detained at night in terrifying military raids on their homes. It is important to recall that these night-time raids not only have a tendency to shock and intimidate the individual detained; they also terrify and traumatize the entire household and sometimes, a whole village. (**Testimonies**: 1, 18, 24, 30, 42, 56, 61, 62, 64, 71, 87, 98, 100, 113, 129, 135, 141, 165, 167, 168, 169, 173, 183, 186, 198, 200)
- 3.5 Those minors not arrested at night are generally detained during protests; on their way home from school or from the shops; off the street in their villages; near the Wall or military checkpoints; or by roads used by settlers (**Testimonies**: 21, 39, 69, 74, 80, 91, 108, 111, 150, 163, 164, 170, 171, 176, 178, 180, 187, 190, 193, 195)
- 3.6 Although the military conducted a pilot scheme to issue summonses in lieu of night arrests in 2014, in many cases the summonses were themselves delivered in terrifying military raids at night and in some cases the individual's personal details were handwritten in the summons in Hebrew. The military authorities have confirmed that the pilot scheme was suspended in or about September 2014 due to "increased violence" in the West Bank. (Annexure E Testimonies: 90, 94, 96, 99, 105, 106, 107, 113, 114, 116, 141, 162, 194)

- 3.7 In another development, in or about April 2014, the military started to hand out forms in about 50 per cent of cases informing parents where their child would be taken for interrogation. However, these forms do not include any information about the child's legal rights or authorize the parent to accompany the child to the interrogation centre. Again, the individual's personal details are frequently handwritten in Hebrew (**Annexure F** and **Testimonies**: 50, 57, 61, 175, 196, 197, 199, 200)
- 3.8 The overwhelming majority of minors continue to report being tied with plastic ties for prolonged periods. These ties are frequently described as being "painful" or "very painful" and in some cases cut into the minor's wrists and cause the hands to turn blue. Further, in the overwhelming majority of cases the Israeli military regulations for the use of plastic hand ties were not followed. In many cases minors also report that they remain tied whilst being interrogated in a secure military facility and their ankles are still shackled during military court appearances. (**Testimonies**: 10, 23, 31, 43, 58, 62, 76, 85, 97, 103, 119, 125, 133, 141, 152, 168, 173, 186, 188, 198, 199, 200)
- 3.9 Although UNICEF recommended that the practice of blindfolding or hooding minors should be prohibited in all circumstances, the procedure remains commonplace. (**Testimonies**: 11, 24, 30, 42, 53, 62, 76, 84, 98, 100, 111, 123, 137, 141, 150, 168, 176, 184, 197)

Transfer

- 3.10 The process of transferring a minor to an interrogation centre can take many hours and involve multiple stops at small military bases and settlements along the way. In around half of all cases the minor reports being transferred on the metal floor of a military vehicle surrounded by soldiers, still tied and blindfolded. Transferring a minor in this manner inevitably increases the likelihood of physical and psychological stress. (**Testimonies**: 2, 13, 21, 35, 42, 52, 61, 76, 83, 105, 124, 134, 141, 150, 169, 187, 189, 192, 197, 198, 199)
- 3.11 Reports of physical violence and verbal abuse during the arrest and transfer process are also still commonplace. Reports of violence usually involve slapping and kicking, or being struck with the back of an assault rifle. (**Testimonies**: 2, 17, 21, 34, 42, 58, 65, 73, 81, 104, 111, 121, 136, 145, 151, 164, 167, 170, 179, 183, 192, 193, 200)
- 3.12 For what appears to be practical reasons, minors are frequently left outside or in shipping containers in one of the smaller military bases or settlements that dot the West Bank before being taken to a larger interrogation centre later in the day. During these intermediate stops minors are given a cursory medical check during which any complaint about treatment is generally ignored, suggesting that these checks fulfill little more than an administrative function. (**Testimonies**: 3, 10, 25, 39, 40, 51, 64, 71, 84, 87, 98, 100, 114, 129, 131, 132, 133, 143, 150, 166, 168, 169, 171, 174, 186, 189, 195, 198, 199, 200)
- 3.13 The treatment of minors at this stage in the process is largely arbitrary some soldiers make an effort to treat the child with dignity, offering food and water many do not. Children continue to report being prevented from sleeping and left outside in the elements for extended periods of time whilst tied and blindfolded. (**Testimonies**: 61, 63, 176, 179)

Interrogation

- 3.14 By the time the minor arrives at a police station inside one of the larger settlements for interrogation (Ari'el, Gush Etzion, Kiryat Arba, Binyamin) he is generally sleep deprived and in a weakened physical and psychological condition. (**Testimonies**: 118, 186)
- 3.15 Although there has been an increase in the number of minors informed of some of their legal rights, 79 per cent of children still report not being informed of their right to silence. In cases where children are informed of their right to silence, few exercise the right, either because they do not comprehend what it means, or because the information is contradicted by the threatening or violent behavior of the interrogators. (**Testimonies**: 141, 167, 169, 184, 185, 194, 196, 197, 199, 200)
- 3.16 A common technique employed by the interrogators is to inform the minor that all of the other people detained at the same time have already provided a confession so denial is futile. Aggressive behavior, threats and violence are also sometimes utilized during the interrogation, including threats to beat, rape, hold in solitary confinement, electrocute or shoot the minor. (**Testimonies**: 21, 22, 32, 39, 50, 80, 90, 149, 170, 173, 185, 186, 190, 191, 192, 198)
- 3.17 In 94 per cent of cases minors are still denied access to a lawyer until after their interrogation and UNICEF's recommendation that every child should be accompanied by a parent throughout the process continues to be ignored in 97 per cent of cases. (**Testimonies:** 194, 199)
- 3.18 In recent years there appears to have been an increase in the practice of conducting double interrogations. The first interrogation is frequently conducted by an individual in civilian clothes who does not identify himself or inform the minor of his legal rights. This interrogation is typically coercive. At the conclusion of the first interrogation the minor is taken to another room and interrogated by a policeman in uniform who informs the minor of his rights and electronically records the interrogation. (**Testimonies**: 168, 170, 175, 189, 191, 197, 198)
- 3.19 At the conclusion of the interrogation, 56 per cent of Palestinian minors continue to report being shown, or made to sign, documentation written in Hebrew; a foreign language which most do not understand. (**Testimonies**: 30, 39, 69, 83, 100, 164, 170, 171, 179, 191, 194, 196, 197, 199)
- 3.20 According to data released by UNICEF, 4 per cent of minors still report being held in solitary confinement whilst under interrogation. The conditions in solitary confinement are typically harsh and include incarceration in a small, windowless cell in which the light is left on 24 hours per day. Based on data provided by the Israeli military and UNICEF, the use of solitary confinement appears to affect approximately 40 children each year in a practice that the Special Rapporteur has acknowledged "can amount to torture or cruel, inhuman or degrading treatment when used on juveniles". ¹² (**Testimonies**: 19, 73, 89)

3.21 At some point during the process most minors will also experience a humiliating strip search. (**Testimonies**: 169, 170, 197)

Military court proceedings

- 3.22 In the overwhelming majority of cases minors continue to meet their lawyer for the first time in a military court after the conclusion of their interrogation. Minors are brought to the military courts in the same brown prison uniforms worn by adults, handcuffed and shackled by the ankles. Once inside the courtroom, handcuffs are removed but ankle shackles remain.
- 3.23 The outcome of the entire military court process is generally determined early on during the initial application for bail. Bail is frequently denied with the result that the quickest way out of the system for less serious offences is to plead guilty, whether or not the offence was committed. For the same reason, few children raise allegations of mistreatment before the military court as complaining is likely to prolong the period of detention. (**Testimonies**: 186)
- 3.24 In cases where bail is granted, it frequently occurs after the minor has spent a number of days or weeks in detention and has already experienced various forms of ill-treatment during the first 24 hours. (**Testimonies**: 169, 174, 185, 189, 191, 196, 197, 198)
- 3.25 It should be noted that although military law technically applies to anyone present in the West Bank, Israeli civilian law, which contains far greater rights and protections, is applied to Israeli citizens living in the settlements as a matter of public policy. This raises a number of legal issues relating to the discriminatory application of law in the same territory based on race or national identity.¹³

Unlawful transfer and detention

3.26 One of the recommendations made by UNICEF was that Palestinian minors from the West Bank must not be transferred or detained in facilities located inside Israel in violation of Article 76 of the Fourth Geneva Convention and Article 8 of the Rome Statute of the International Criminal Court. However, according to data released by the Israeli Prison Service, approximately 50 per cent of minors continue to be unlawfully transferred and detained outside the West Bank. (Testimonies: 4, 6, 7, 10, 12, 20, 44, 45, 57, 70, 72, 82, 83, 84, 89, 118, 139, 165, 166, 167, 168, 171, 173)

Cumulative impact of issues of concern

3.27 It is apparent from the table of issues of concern (**Annexure C**) that no child is simply exposed to one form of ill-treatment, but rather a combination of multiples. So for example, a minor who is arrested at night is also likely to be painfully hand tied, blindfolded and physically assaulted during the first 24 hours of detention. It is submitted that the cumulative effect of the treatment during the first 24 hours, as well as the minor's age, must be taken into consideration when considering whether the prohibitions contained in the Convention have been violated.

4. The link between detention and the settlement project

- 4.1 According to the latest data, there are now approximately 370,000 Israeli civilians living in West Bank settlements constructed in violation of international law. These settlements have a profound impact on the neighbouring Palestinian communities which includes: land confiscation; restrictions on access to land and freedom of movement; settler violence; and an increased military presence including frequent military incursions during the day and night.
- 4.2 The task of guaranteeing the protection of these settlers living amongst 2.7 million Palestinians in occupied territory is one of the primary responsibilities and a major challenge for the Israeli military. Not only must the immediate territory around a settlement be secured and suppressed, but so too must the extended network of roads used to link the settlements to each other and to Israel.
- 4.3 Evidence provided by former Israeli soldiers indicates that this task is achieved by the military "making its presence felt" in every Palestinian centre of population located in close proximity to a settlement or a road used by settlers. The objective is to ensure that swift punishment follows any act of resistance, big or small, but more importantly, that these Palestinian communities are subjected to constant intimidation until they understand that resistance to the settlement project is not a viable option. The effective combination of these reactive and proactive strategies is designed to intimidate the civilian population into submission, thereby enabling the settler population to go about their daily lives without disturbance.
- 4.4 The proactive aspect of this strategy was succinctly described by one soldier in a testimony describing the tactics employed to suppress Palestinian villages in the Nablus region of the West Bank.¹⁶
 - "A patrol goes in, or two patrols, two hummers secured by a jeep, and raise hell inside the villages. A whole company may be sent in on foot in two lines like a military parade in the streets, provoking riots, provoking children. The commander is bored and wants to show off to his battalion commander, and he does it at the expense of his subordinates. He wants more and more friction, just to grind the population, make their lives more and more miserable, and to discourage them from throwing stones, to not even think about throwing stones at the main road. Not to mention Molotov cocktails and other things. Practically speaking it worked. The population was so scared that they shut themselves in. They hardly came out."
- 4.5 The success of this strategy is perhaps best measured with regard to the fatality figures. According to the US State Department, in 2012 not a single Israeli settler in the West Bank was killed as a result of the conflict a remarkable achievement by any military standard.¹⁷ However, in order to achieve this result the military must adopt a strategy of mass intimidation and collective punishment.
- 4.6 It is no coincidence that in all 200 cases annexed to this submission the one thing each child has in common is that he lives within a few kilometres of an Israeli settlement, or a road used

by settlers. Further, it is apparent from the evidence that not only are the settlements a primary driving force behind why children find themselves in military detention; the settlements also provide a network of holding facilities and interrogation centres used to process the children once they are taken into custody.

4.7 Whereas international law imposes a duty on the Israeli military to protect Palestinian civilians in the West Back, the policies adopted by successive Israeli governments of settling parts of its own population in the territory has in practice reversed the duty – resulting in the protection of settlers at the expense of those defined as "protected persons" under the Fourth Geneva Convention.

5. Concluding words

- 5.1 The sample of evidence annexed to this submission represents just 8 per cent of the total number of children detained during the reporting period. It is sobering to consider that since UNICEF published its report in March 2013, over 2,400 children are likely to have experienced similar treatment. Further, if the evidence is representative, it is reasonable to conclude that 1,000 of these children were detained in terrifying night raids and 1,500 were physically assaulted.
- 5.2 Further, if one extrapolates these figures back to June 1967, then the abuse becomes truly industrial in scale. It is estimated that since 1967, some 95,000 children may have been detained, of which 43,000 were arrested in night raids and 59,000 physically assaulted. It should be noted that these figures may considerably under state the true position as the current detention rates are at historically low levels.¹⁸
- 5.3 The evidence annexed to this submission tends to confirm UNICEF's recent assessment that "reports of alleged ill-treatment of children during arrest, transfer, interrogation and detention have not significantly decreased in 2013 and 2014". Further, it appears 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" is still valid in June 2015.
- 5.4 MCW requests that the Special Rapporteur considers two issues for further inquiry: 19
 - (i) Verification that the evidence supports the conclusion that the ill-treatment of children who come in contact with the military detention system still appears to be widespread, systematic and institutionalized; and
 - (ii) Confirmation of a causative link between the policy of successive Israeli governments of transferring parts of its own civilian population into the territory it occupies and the detention of Palestinian minors.

End notes

¹ 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. The report estimates that between 1967 and 2008, 700,000 Palestinians were detained by the Israeli military. In 2014, the Israeli military authorities released data indicating that approximately 8,000 Palestinians were detained in 2013. Applying the figure of 8,000 per annum between January 2008 and May 2015, gives an estimate of 59,335 detainees and a total of almost 760,000 since 1967. It should be noted that this figure is conservative as the number of detainees held between 2008 and 2011 almost certainly exceeded 8,000 per annum. The military courts currently have jurisdiction over minors aged 12 and above.

² Briefing conducted by Israel's chief military prosecutor in the West Bank, Lieutenant Colonel Maurice Hirsch, at Ofer military court on 26 February 2014.

³ US Department of State, Country Reports on Human Rights Practices, Israel and the Occupied Territories (2011-2013) (available at: http://is.gd/5U0ozj); Children in Military Custody (2012), a report by British lawyers funded by the Foreign and Commonwealth Office (available at: http://is.gd/BTrG3x); statement to parliament by Hugh Robertson, Minister of State for the Foreign and Commonwealth Office, 20 January 2014 (available at: http://is.gd/eNgeEM); UN Working Group on the Universal Periodic Review, 1 November 2013 (available at: http://is.gd/eNgeEM); UN Working Group on the Universal Periodic Review, 1 November 2013 (available at: http://is.gd/eXIDj0); UN Secretary-General's Annual Report on Children and Armed Conflict (May 2014) (available at: http://is.gd/eXIDj0); UN Human Rights Committee, Concluding Observations, November 2014 (available at: http://is.gd/eXIDj0); UN Committee on the Rights of the Child, Concluding Observations, June 2013 (available at: http://is.gd/smyxlt); UN Committee against Torture, Concluding Observations, May 2009 (available at: http://is.gd/sh8Fky); and B'Tselem, No Minor Matter: Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone Throwing, July 2011 (available at: http://is.gd/2vz0or); and ACRI, One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank, October 2014 (available at: http://is.gd/DcbUty).

⁴ UNICEF, Children in Israeli Military Detention, March 2013. Available at: http://is.gd/Yu59IN

⁵ UNICEF, Bulletin No. 1, October 2013, page 1. Available at: http://is.gd/lm8mqR

⁶ UNICEF, Bulletin No. 2, February 2015. Available at: http://is.gd/ECGFkV; and MCW Progress Report, April 2015. Available at: http://is.gd/hQBwJq. On 19 May 2015, the Israeli Ministry of Foreign Affairs organized a roundtable at which UNICEF and various Israeli military and civilian officials gave presentations and to which the diplomatic community was invited. However, although the chief military prosecutor was invited to give a presentation no practicing defence lawyers from the military courts were invited to participate. See http://is.gd/rF8Ffr

⁷ Ibid. Page 2.

⁸ This estimate is based on the figure provided by the Israeli military authorities of 1,004 children detained in 2013. Assuming a consistent rate of detention throughout 2014 and 2015 of 84 children detained each month, the total number of children detained between January 2013 and May 2015 is estimated to be 2,436.

⁹ At a briefing provided by the Israeli military authorities at Ofer military court on 26 February 2014, it was stated that 8,000 Palestinians were detained on alleged security related offences in 2013, of which 1,004 (12.5 per cent) were minors. Assuming the percentage of minors detained remained constant at 12.5 per cent of the total since June 1967 – then it is estimated that 95,000 children have been detained (12.5 per cent of 760,000 = 95,000). As today, some of these children would have been detained for a matter of hours, whilst others would have been prosecuted in the military courts and sentenced to prison terms of a number of months or more.

¹⁰ MCW statement, Pilot study to end night arrests suspended, 29 January 2015. Available at: http://is.gd/da4MO2

MCW Progress Report, April 2015, paragraphs 7.3-7.4. Available at: http://is.gd/hQBwJq.

¹² Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, 5 August 2011, A/66/268.

¹³ MCW Progress Report, April 2015, paragraphs 10.1-10.7. Available at: http://is.gd/hQBwJq.

¹⁴ Israeli Prison Service monthly statistics. Available at: http://is.gd/M3B8Q2

¹⁵ B'tselem, Settlements: statistics on settlements and settler population. The data is current up to the end of 2013 and a growth rate of 4.4 per cent has been used for 2014. Available at: http://is.gd/SXlpEt. The figure of 370,000 does not include a further 200,000 settlers living in East Jerusalem.

¹⁶ Breaking the Silence, Children and Youth: Soldiers' Testimonies, 2005-2011, testimony 1.

¹⁷ US Department of State, Country Reports on Human Rights Practices (2013) – Israel and the Occupied Territories. Available at: http://is.gd/5U0ozj

¹⁸ Israeli Prison Service monthly statistics. Available at: http://is.gd/M3B8Q2

¹⁹ MCW is referring these cases to the UN Special Rapporteur because there are no reasonable prospects for achieving accountability utilising existing Israeli complaint mechanisms. See MCW Progress Report, April 2015, paragraphs 11.1-11.3. Available at: http://is.gd/hQBwJq.