

LAWYERS FOR PALESTINIAN
HUMAN RIGHTS



**Lawyers for Palestinian Human Rights' briefing on Israel's
military detention of Palestinian children living in the
occupied Palestinian territory**

February 2018



About Lawyers for Palestinian Human Rights (LPHR)

LPHR is a lawyer-based charity in the UK that works on projects to protect and promote Palestinian human rights. We distinctly provide a legal and human rights perspective on issues affecting Palestinians. Our trustees include leading human rights lawyers, Sir Geoffrey Bindman QC and Tessa Gregory.

LPHR's expertise in children's rights

LPHR devised and implemented a 'Know Your Rights' campaign, in partnership with Defence for Children International Palestine, to empower and educate Palestinian children in the occupied West Bank to secure their basic rights if detained in Israel's military detention system. We prepared content for 'Know Your Rights' information cards that have been distributed to thousands of children, aged between 12-17 years old, at classroom tutorial sessions conducted by expert DCI Palestine fieldworkers. The campaign started in 2014 and is ongoing.

LPHR prepares a bi-monthly Child Rights Bulletin providing a record of violations of children's rights in the occupied Palestinian territory. Each bulletin covers the following categories: fatalities, injuries, settler violence, arrests, education, demolitions and displacement, updates from Military Court Watch and Defence for Children International Palestine, and an in-focus section on a discrete topic affecting children. They are published on our website.

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Introduction

1. Israel's military arrest and detention of Palestinian children living in the occupied Palestinian territory is a major and long-standing human rights problem. The process involves widespread and systematic violations of international law, including the UN Convention on the Rights of the Child. As the occupying state, Israel has a general responsibility under international human rights conventions for the safety, welfare and human rights protection of Palestinian children living in the occupied Palestinian territory. The glaring gaps in basic human rights protection for Palestinian children held in Israel's military detention system damages respect for the international rule of law and creates an environment which enables routine ill-treatment and lack of justice.
2. Israel is the only nation to automatically and systematically prosecute children in military courts that lack basic and fundamental due process guarantees. Around 500-700 Palestinian children, some as young as 12 years old, are arrested, detained and prosecuted in Israel's military detention system each year. The majority of children are detained from their homes in the occupied West Bank during the middle of the night by heavily armed soldiers. Several hours after their arrest, children arrive at an interrogation and detention centre alone, sleep deprived and often bruised and scared. Interrogations tend to be coercive, including a variety of verbal abuse, threats and physical violence that ultimately result in a confession.
3. Unlike Israeli children living in illegal settlements in the occupied West Bank, Palestinian children are not accompanied by a parent and are generally interrogated without the benefit of legal advice, or being informed of their right to silence. They are overwhelmingly accused of throwing stones, an offence that can lead to a potential maximum sentence of 10 to 20 years depending on a child's age. No Israeli children come into contact with Israel's military detention system.
4. There is an inextricable link between the systemic human rights violations of Palestinian children held in military detention and the overarching context of prolonged military occupation. The realisation of the right to self-determination for the Palestinian people is the optimum solution for the complete removal of "widespread, systematic and institutionalised" violations against Palestinian children held in military detention. In the interim, there is a vitally important and urgent need to fundamentally change the policy and practice of the Israeli military authorities treatment of Palestinian child detainees so that it effectively protects children's basic human rights and meets international legal standards.
5. LPHR has worked on the critical issue of Israel's military detention of Palestinian children since 2013. Our briefing references information from human rights organisations in Israel and the occupied Palestinian territory. We are thankful for their important work.



UNICEF and UK lawyers' reports on Palestinian children in Israeli military detention

6. In March 2013, UNICEF published a comprehensive report entitled “Children in Israeli Military Detention: Observations and Recommendations”¹. The report concluded 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, from the moment of arrest until the child’s prosecution and eventual conviction and sentencing.”²

7. When UNICEF released its second update to their report in February 2015³, it noted that allegations of ill-treatment of children “have not significantly decreased in 2013 and 2014”.⁴ Since then, the West Bank-based organisation Military Court Watch (“**MCW**”) has monitored issues of concern based on 530 child testimonies collected between 2013-2017. The disturbing results⁵ for 2017 are tabled below:

Description	Percentage
Hand Tied	93%
Blind-folded	79%
Physical violence	64%
Verbal abuse	41%
Transferred on floor of vehicle	56%
Arrested at night	63%
Not informed of the right to remain silent	84%
Denied access to a lawyer prior to, or during, their	79%

1 The UNICEF report is available at:
http://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf

2 UNICEF Report, page 5.

3 The UNICEF update is available at: http://www.unicef.org/oPt/Children_in_Israeli_Military_Detention_-_Observations_and_Recommendations_-_Bulletin_No._2_-_February_2015.pdf

4 UNICEF Update, page 2.

5 <http://www.militarycourtwatch.org/page.php?id=MmNuAkpGrsa613395AWw2bO0pT3K>



interrogation.	
Strip searched	64%
Signed confession in Hebrew	79%

8. In relation to implementation of the 38 UNICEF report recommendations, the UNICEF February 2015 update stated that “four are in progress, 15 are partially addressed, 14 are under discussion, four are closed, and one has been rejected.”⁶
9. The recommendation strikingly rejected by Israel is that it will not change its unlawful policy and practice of forcibly removing Palestinian children from the occupied West Bank to Israel for the purpose of detention in prisons inside of Israel.⁷ This is a systematic violation of the Fourth Geneva Convention, which prohibits the transfer of prisoners from occupied territory into the territory of an occupying power (for more on this significant issue, please see paragraphs 32-35 of this briefing).
10. In its annual report in June 2017, MCW noted four years on from publication of the 38 UNICEF recommendations, only one (No. 21 - access by lawyers to medical records) has been substantially implemented - an implementation rate of 2.6 percent.
11. In June 2012, a group of senior UK lawyers, including Baroness Scotland QC (former Attorney General of England and Wales) and Sir Stephen Sedley (formerly Lord Justice Sedley), published an independent report entitled 'Children in Military Custody' (UK report).⁸ The report, funded by Foreign & Commonwealth Office, found that Israel was in breach of eight of its international legal obligations under the UN Convention on the Rights of the Child and the Fourth Geneva Convention arising out of its treatment of Palestinian children held in military detention. The report found violations relating to the following legal obligations: discrimination, best interests of the child, premature resort to detention, non-separation from adults, prompt access to lawyers, use of shackles, unlawful transfer and detention outside occupied territory, and failure to translate applicable laws.⁹
12. The UK report also found that if the allegations of ill-treatment during arrest, transfer, interrogation and detention are true, then Israel will also be in breach of the prohibition

⁶ UNICEF update, page 7.

⁷ UNICEF update, page 13.

⁸ The UK report is available at: http://www.childreninmilitarycustody.org.uk/wp-content/uploads/2012/03/Children_in_Military_Custody_Full_Report.pdf

⁹ UK report, page 31.



on torture or to cruel, inhuman or degrading treatment found in the UN Convention on the Rights of the Child.¹⁰

13. The UK report presented 40 specific recommendations in relation to arrest, interrogation, bail hearings, plea bargains, trial, sentencing, detention, complaints and monitoring.¹¹ MCW stated in October 2017 that after five years, only one of the recommendations (No. 33 separation of children from adults in detention) has been substantially implemented.¹²

Importance of applying international legal standards to protect children

14. LPHR agrees with the position taken by UNICEF in its February 2015 update that the application of fundamental legal standards is critical to the protection of children under military detention:

“UNICEF uses the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international legal instruments reflecting international juvenile justice standards as key reference documents. In line with these, UNICEF advocates for the universal principle that all children in contact with law enforcement and justice institutions (whether juvenile justice systems or military systems) have the right to be treated with dignity and respect at all times and to be afforded special protections.”¹³

15. Similarly, LPHR supports the emphasis placed by the UK report on according primacy to the international rule of law to the issue of Israel's military detention of Palestinian children, as reflected by the report's “three core recommendations”:

- “International law, international humanitarian law and the UN Convention on the Rights of the Child apply to the occupied Palestinian territory and therefore should be fully and effectively implemented.
- “The international legal principle of the best interests of the child should be the primary consideration in all actions concerning children, whether undertaken by the military, police, public or private welfare institutions, courts of law, administrative authorities or legislative bodies.
- “Israel should not discriminate between those children over whom it exercises penal jurisdiction. Military law and public administration should deal with Palestinian children on an equal footing with Israeli children.”¹⁴

10 Ibid.

11 UK report, pages 32-35.

12 Military Court Watch Briefing Note October 2017 page 8.

<http://www.militarycourtwatch.org/files/server/BRIEFING%20PAPER%20-%20OCT%202017%20-%20FINAL.pdf>

13 UNICEF update, page 1.

14 UK report, page 33.



Night-time arrests remain prevalent despite the announcement of a summons scheme

16. The UNICEF report urged that “all arrests of children should be conducted during daylight, notwithstanding exceptional and grave situations.”¹⁵ The practice of night time raids by Israeli military personnel is a prevalent practice which causes a huge amount of distress to children and their families. It is a practice which does not consider the best interests of the child as a primary consideration in accordance with article 3 of the UN Convention on the Rights of the Child, and indeed places the needs and priorities of the Israeli military above the welfare of the child under arrest.
17. A pilot scheme was announced by Israel in February 2014 following the UNICEF report which introduced the use of a summons in order to notify children and their families that a child is suspected of committing an offence and is required to attend a police station for questioning. During that period UNICEF documented 24 cases in which summonses were used in lieu of arresting children at night, but noted that some were delivered by the military during night-time raids and violations continued to be reported during the subsequent interrogation process.¹⁶
18. MCW reports that the use of summonses in lieu of night arrests has been very low.¹⁷ In October 2017, MCW states that 7 percent of children in 2017 had reported being served with a summons as an alternative to night arrest. In 2016 it was 2 percent. Even in the cases where summonses are used, MCW identified a host of troubling features:
- In every case 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.¹⁸
19. MCW also reports that of the 70 cases it has documented in 2017, 63 per cent of children report being arrested at night in what are frequently described as terrifying raids by the military.¹⁹ It is clearly apparent that since the scheme has been in operation, it is a) infrequently utilised, and b) arrests by traumatic night raids still frequently occur.

15 UNICEF report, page 19.

16 UNICEF update, page 5.

17 Military Court Watch ‘Night Arrests’ <http://www.militarycourtwatch.org/page.php?id=Ernzg0qPv5a621954Avo5jgk8UzY>

18 ‘Military Court Watch Briefing Note October 2017 page 3.

<http://www.militarycourtwatch.org/files/server/BRIEFING%20PAPER%20-%20OCT%202017%20-%20FINAL.pdf>

19 Military Court Watch Comparative graph- Issues of Concern <http://www.militarycourtwatch.org/page.php?id=MmNuAkpGrsa613395AWw2bO0pT3K>



20. LPHR supports the call of those organisations working routinely to support and protect vulnerable Palestinian child detainees that children must only be arrested during daylight hours; that in all other cases summonses should be used; and that detention must only be used as a last resort.

Lack of effective access to fundamental due process rights including the right to silence and right to consult with a lawyer

21. The right to silence is a fundamental due process right afforded to both adults and children who are arrested on suspicion of committing an offence, in order to grant them privilege against self-incrimination. In the context of interrogating children, this right is arguably even more important as it provides vulnerable children with necessary protection from undue pressure which may lead to forced false confessions. The temptation to provide a false account of an event, or to agree with an interrogator during the process of questioning, is an understandable one given the level of fear which a child may be feeling when being questioned by military personnel.
22. MCW notes that 84 per cent of children continue to report not being informed of their right to silence.²⁰ MCW further notes that in the 16 percent of cases where children are informed of this right, “the manner and circumstances in which the information is conveyed raises serious questions as to whether the notification is sufficient. For example, in one case where an interrogator informed the child that he had the right to silence, a second interrogator told the child he would be raped if he did not confess. In other cases children are asked to sign a document acknowledging that they have been informed of their rights even when this is not so and in another case a child was beaten for attempting to exercise his right to silence. MCW continues to document multiple cases where children are subjected to double interrogations in which they are only informed of their rights during the second interrogation.”²¹
23. Similarly, access to legal representation is a basic and fundamental due process right. International legal standards provide that interrogations should take place in the presence of legal counsel in order to protect the privilege against self-incrimination and to provide further safeguards against potential ill-treatment or coercion. The right to legal counsel forms the basis of the right to an adequate defence in line with basic and uncontroversial fair trial principles. The exclusion of a lawyer from a fundamental process in the investigation of a suspect provides unequal and unfettered power in the hands of the Israeli military.

20 Ibid

21 Military Court Watch Right to silence <http://www.militarycourtwatch.org/page.php?id=vT6OsAyMjua625758A8mfEko91JL>



24. The February 2015 UNICEF update notes that Israel's military prosecutor highlighted both that Israeli Military Order 1651 provides a detainee with the right to meet and consult with a lawyer, and that the Israeli Supreme Court has recognised the right to consult with a lawyer as a fundamental right, which if breached could lead to the inadmissibility of evidence obtained against the suspect.²²
25. However, Military Order 1651 crucially does not stipulate when this consultation must occur; either before, during or after questioning. There is, therefore, no clear legal requirement under Israel's military law that a lawyer be present during interrogation. In this context, MCW reports that of 70 testimonies they have collected in 2017, 79 per cent of children report not having access to a lawyer prior to or during interrogation.²³ As a result most children continue to consult with a lawyer for the first time in a military court after the interrogation phase is over.²⁴
26. It is against this deeply appalling context for basic and fundamental due process protections that Israel's military court system has an extremely disconcerting reported conviction rate of over 99 per cent.²⁵ Confession evidence is central to the securing of convictions in this process. It need not be emphasised that the highest level of scrutiny of these confessions must be provided in order to ensure that convictions are based on evidence which has been reliably and respectfully obtained. Scrutiny of interrogations and confessions is however a difficult exercise to undertake in the absence of children having legal counsel or a family member present during questioning.
- 27. As an absolute minimum of protection, LPHR supports the calls of those organisations working routinely to support and protect vulnerable Palestinian child detainees that children must be properly informed of their right to silence; and must have access to legal representation and parents prior to and during interrogations.**

Audio-visual recording of interrogations not required where a child is arrested for suspected stone-throwing

28. The UNICEF and UK reports recommended audio-visual recordings of all interrogations of children. Israeli Military Order 1745 was subsequently published in September 2014 which provides that audio-visual recordings are to be carried out during interrogations. However, an important provision exists within Military Order 1745 which renders its protection for Palestinian children largely redundant.

²² UNICEF update. Page 10.

²³ Military Court Watch Comparative graph- Issues of Concern <http://www.militarycourtwatch.org/page.php?id=MmNuAkpGrsa613395AWw2bO0pT3K>

²⁴ Military Court Watch Access to lawyers <http://www.militarycourtwatch.org/page.php?id=86gG3xcG6Na627660A5vAgvoylwf>

²⁵ US Department of State, 2016 Human Rights Reports: Israel and the Occupied Territories. Available at: <https://www.state.gov/documents/organization/265712.pdf>



29. The requirement of audio visual recording applies to all cases apart from interrogations which deal with ‘security offences’. This exception significantly excludes the vast majority of Palestinian children held in Israeli military detention who are arrested for the suspected offence of stone throwing, which is categorised as a ‘security offence’. MCW is unaware of a single case during the past 5 years in which audio-visual recordings have been provided to defence lawyers prior to the first hearing.²⁶ Military Order 1745 also stipulates that interrogations should be conducted in the language of the accused. However, according to MCW, 79 per cent of children in 2017 continue to report being shown, or made to sign, documentation written in Hebrew during their interrogation.²⁷
30. Military Order 1745 therefore effectively provides only superficial regard to the UNICEF recommendation concerning audio-visual recording of all interrogations. The circumstances for Palestinian children held in Israel's military detention system remains they are virtually certain to be denied access to basic and fundamental due process protections. Consequently there should properly be little faith in the legitimacy of the outcomes of Israeli military authorities’ interrogations of Palestinian children.
31. **As an absolute minimum of protection, LPHR supports the calls of those organisations working routinely to support and protect vulnerable Palestinian child detainees that all interrogations must be audio-visually recorded without exception; and that children should not be required to sign confessions and statements written in a language other than their own.**

Detention process may breach the international law prohibition on torture and ill-treatment

32. Reports by Palestinian children of being painfully hand-tied, blindfolded, transferred to detention on the floor of a military vehicle, and subjected to physical and verbal abuse have been consistently documented by NGOs operating in Israel and the occupied Palestinian territory. These issues have also been highlighted by the UNICEF and UK reports. As noted at paragraph 12 above, the UK report found that if the allegations of ill-treatment during arrest, transfer, interrogation and detention are true, then Israel will be in breach of the prohibition on torture or to cruel, inhuman or degrading treatment found in the UN Convention on the Rights of the Child.

26 Military Court Watch Briefing Note October 2017 pages 4-5.

<http://www.militarycourtwatch.org/files/server/BRIEFING%20PAPER%20-%20OCT%202017%20-%20FINAL.pdf>

27 Military Court Watch Comparative graph- Issues of Concern <http://www.militarycourtwatch.org/page.php?id=MmNuAkpGrsa613395AWw2bO0pT3K>



33. MCW noted in November 2017 that: “during the intervening four-and-a-half years [since the UNICEF report], the percentage of children reporting abuse has actually increased from 60 percent in 2013, to 64 percent in 2017.”²⁸

34. In this context, the Israeli human rights organisation, Physicians for Human Rights Israel, commissioned an expert psychiatric opinion from Dr Graciela Carmon, M.D., on the emotional and developmental factors that lead children to make false confessions during interrogations, and the implications of these confessions for the lives of these children and those around them. Her concluding summary, which outlines a causal connection between human rights violations against Palestinian children held under Israeli military detention and serious psychological harm, is excerpted in full below:

“The violent arrest process and psychological interrogation methods mentioned above lead to the breaking of the ability of the child or adolescent to withstand the interrogation and flagrantly violate his or her rights. These interrogation methods, when applied to children and adolescents, are equivalent to torture. These methods deeply undermine the dignity and personality of the child or adolescent, and inflict pain and severe mental suffering. Uncertainty and helplessness are situations that can too easily lead a child or adolescent to provide the requested confession out of impulsiveness, fear or submission. It is a decision that is far from free and rational choice.

“The social and mental consequences of the use of the aforementioned methods of detention and interrogation by the investigating and/or detaining authority for the life of the child or adolescent are difficult to remedy and damaging. They can cause serious mental suffering to a child or adolescent and cause psychological and psychiatric problem, as well as post-traumatic stress disorder (PTSD), psychosomatic diseases, fits of anger, difficulties in learning and concentration, memory problems, fears and anxieties, sleep disorders, eating disorders, regressive symptoms, and bedwetting. Such outcomes are devastating to the normative development of the child or adolescent, especially when he or she is innocent.

“These detention and interrogation methods ultimately create a system that breaks down, exhausts and permeates the personality of the child or adolescent and robs him or her of hope. These methods are particularly harmful to children and adolescents who live in poor, isolated populations, in a state of conflict, political tension, and/or severe social stress, such as the occupied Palestinian population. The harmful effects on children can also harm the society to which they belong. Every child has the right to be a child, to his or her dignity, and to protection from all forms of violence.”²⁹

28 Military Court Watch November 2017 Newsletter <http://www.militarycourtwatch.org/page.php?id=MMmuiuoUxPa1047051AubjophUMV>

29 'The expert opinion of Graciela Carmon, May 2011', available at: <http://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/On-Torture/On-Torture-English-13-Carmon-85-91.pdf>



35. As a bare minimum of protection, LPHR supports the calls of those organisations working routinely to support and protect vulnerable Palestinian child detainees that children must not be subjected to physical or psychological violence; must not be blindfolded or painfully restrained; must not be subjected to coercive force or threats; that children should have access to a full medical examination both prior to and after interrogation that objectively documents any complaints and findings and the child's lawyer should have access to the assessment; that there should be a prompt independent investigation of any complaint made by, or in respect of, a child about unlawful or ill-treatment; and that any statement made as a result of torture or ill-treatment must be excluded as evidence in any proceeding.

Compromised role of medical personnel in relation to children during the detention process

36. Information provided to UNICEF by Israel's military prosecutor as part of the February 2015 UNICEF review outlined that “upon arrival to the police station and prior to interrogation, a child normally goes through a medical check with the medic/doctor on duty, as well as upon entering the IPS detention facility and upon request during the pre-trial and trial detention.” Additionally, the military prosecutor reaffirmed that all medical staff have an obligation to act on any alleged abuse.³⁰

37. However, the hierarchical structure of the prison service, means that medical professionals within the prison service are subject to non-medical authorities and, as a result, will undertake such administrative functions as detailed by the prison service (medical assessments upon registration of etc.) within the context of their employment and association with their colleagues in the prison service. Physicians for Human Rights and the Public Committee Against Torture in Israel have found that the current employment conditions of medical professionals in the prison service “prevents them from reaching independent clinical and ethical decisions and creates direct organizational, social and economic connections between doctors and their ‘colleagues’, the prison guards and interrogators.”³¹ As a result, throughout the process of arrest, detention and interrogation, a child will not come into contact with a single individual whose sole motivation is for the health and well-being of the child.³²

38. LPHR supports the calls of those organisations working routinely to support and protect vulnerable Palestinian child detainees that the medical apparatus treating prisoners must be removed from the jurisdiction of the Israel Prison Service and

³⁰ UNICEF update, page 11.

³¹ https://stoptorture.org.il/wp-content/uploads/2015/10/Doctoring-the-Evidence-Abandoning-the-Victim_November2011.pdf pg 54

³² https://stoptorture.org.il/wp-content/uploads/2015/10/Doctoring-the-Evidence-Abandoning-the-Victim_November2011.pdf pg 54



Ministry of Internal Security and its doctors be transferred to the responsibility of Israel's Ministry of Health.

Israeli military authorities has informed UNICEF it will not end policy of unlawfully detaining children inside Israel

39. Israeli Prison Service data shows that Palestinian children from the West Bank continue to be transferred to prisons inside of Israel (MCW notes 61% of all child detainees in 2017).³³ The transfer of Palestinian detainees outside the occupied Palestinian territory constitutes a breach of Article 49 of the Fourth Geneva Convention, prohibiting the transfer of protected persons from occupied territory, and Article 76 of the same Convention, providing that protected persons convicted of offences shall be detained and serve their sentences within the occupied territory. The unlawfulness of this policy has been confirmed by the Foreign & Commonwealth Office.³⁴ Unlawful transfer of protected persons further amounts to a grave breach of the Fourth Geneva Convention and is a war crime under the Rome Statute of the International Criminal Court.
40. MCW notes that the decision by Israeli military authorities to refuse to terminate the policy of unlawfully transferring detainees from the West Bank to Israel (see paragraph 9 above) “increases the likelihood that these issues will become the subject of a formal investigation by the Prosecutor of the International Criminal Court, thereby exposing Israeli officials, past and present, to possible criminal liability.”³⁵
41. The unlawful transfer of Palestinian children for detention inside Israel makes family visits very difficult, if not impossible. Family members of detainees from the West Bank must apply for a permit to enter Israel, and these applications do not always result in the issuing of a permit. As a consequence, children can serve their entire sentence without a visit from a family member. Where permits are issued, the necessary journey is long and often involves lengthy searches of the person and possessions. This separation is compounded by the fact that, unlike Israeli child detainees, Palestinian children are denied telephone communication with their families while in prison.
42. **LPHR agrees with the calls of those organisations working routinely to support and protect vulnerable Palestinian child detainees that children must not be transferred out of the occupied West Bank in violation of international law.**

33 Military Court Watch December 2017 Monthly Update <http://www.militarycourtwatch.org/page.php?id=rDLpvROZyfa1056561AuYsNXinBgf>

34 Foreign & Commonwealth Office letter to the National Union of Teachers & University and College Union, dated 20 July 2012. Available at: http://www.militarycourtwatch.org/files/server/fco_letter_to_unions.pdf

35 Military Court Watch December 2015 Briefing Note, page 9.



Ahed Tamimi is one of hundreds of Palestinian children in Israeli military detention and concerns with an aspect of the UK Government's response

43. The 16 year old human rights defender and prominent activist, Ahed Tamimi, was arrested during a 3am night raid on her home in the village of Nabi Saleh, in the occupied West Bank, on 19 December 2017. Three days prior to her arrest, Ahed Tamimi had been filmed confronting Israeli soldiers following the shooting of her cousin, 14 year old Mohammed Tamimi. She remains in detention to this date. Her arrest and detention has become a high profile case.
44. It must, however, be underscored that Ahed Tamimi's detention is disturbingly not an isolated case. According to the latest Israel Prison Service figures, at the end of November 2017, a total of 313 Palestinian children were imprisoned in Israel's military detention system.³⁶ The 5-year monthly average detention rate is 257 children.³⁷
45. It should also be noted that the UK Government's response to an LPHR urgent letter on Ahed Tamimi's detention included stating that it “we welcomed progress made in recent Israeli policy developments”. These were listed as: “a reduction in the number of minors from 12 to 14 years old, the increase in the age of majority from 16 to 18 years old, the establishment of separate juvenile courts and the enactment of a special statute of limitation for minors”.
46. LPHR has subsequently informed the UK Government that this part of its response presents an undeservedly positive impression of Israel's action in response to the extremely significant and serious concerns raised about its military detention of children. None of the four 'recent policy developments' listed by the UK Government are either particularly recent or have led to effective change. Each one is briefly evaluated below.
47. The establishment of a separate juvenile court took place nearly nine years ago (September 2009). However, the UN Committee on the Rights of the Child has since recommended that children should never be tried in military courts. Furthermore, the UN Special Rapporteur on Independence of Judges and Lawyers has stated: “the exercise of jurisdiction by a military court over civilians not performing military tasks is normally inconsistent with the fair, impartial and independent administration of justice.
48. The requirement for 16 and 17 year olds to be tried in a military juvenile court took place nearly seven years ago (September 2011). However, it has been noted by MCW that the amendment largely reflected existing practice and does not apply to arrest,

36 Israel Prison Service figures are replicated by B'Tselem here:

http://www.btselem.org/statistics/minors_in_custody

37 <http://www.militarycourtwatch.org/files/server/BRIEFING%20PAPER%20-%20OCT%202017%20-%20FINAL.pdf>



detention, interrogation, and sentencing – all of which still retain the age of majority of 16 years old.

49. The reduction of the the statute of limitations from 2 years to 1 year took place nearly seven years ago (September 2011). However, it significantly has an exception for 'security offences', which includes stone-throwing. In effect, therefore, the amendment does not apply to most children held in Israeli military detention.

50. Finally, the reference to a reduction in the detention of minors aged 12-14 years old is not reflected in official Israeli Prison Service data, which conversely shows that detention of children in this age group has actually increased in the last two years.

Resumption of administrative detention against children

51. As of November 2017, two Palestinian children were in administrative detention.³⁸

Administrative detention is the imprisonment of individuals for prolonged periods without charge or trial. In the occupied West Bank, Israeli Military Order 1651 permits administrative detention for a period of up to six months, and can be renewed indefinitely. It is an extreme measure that violates the basic right to liberty and fundamental due process rights.

52. Prior to the resumption of its use against children in October 2015, the last time a Palestinian child from the West Bank was held under administrative detention was in December 2011. It is notable that the period when administrative detention was not used against children coincided with the publication and aftermath of the UK and UNICEF reports, when international scrutiny was placed on Israel's military detention of Palestinian children.

53. As a bare minimum of protection, LPHR supports the UK report recommendation that no vulnerable child should be subjected to the use of administrative detention.

Increasing use of solitary confinement against children as an interrogation technique

54. Defence for Children International Palestine (DCI Palestine) recently reported the increasing use of solitary confinement against Palestinian children as an interrogation technique³⁹. DCI Palestine collected affidavits from 161 children from the West Bank who were detained during 2016 and found that a) larger numbers of children are being held in solitary confinement, and b) the length of time in which children are being placed in solitary confinement is also increasing, with the average period of solitary confinement increasing by 23% to 16 days.

38 Israel Prison Service figures are replicated by B'Tselem here:

https://www.btselem.org/statistics/minors_in_custody

39 http://www.dci-palestine.org/palestinian_children_held_in_solitary_confinement_for_longer_periods



55. DCI Palestine is concerned that the use of solitary confinement is primarily for the purposes of coercing a confession out of child detainees. Conditions of solitary confinement increases a child's vulnerability and likelihood of making a forced false confession. The UN Special Rapporteur on torture has highlighted that the detrimental psychological and physical effects of solitary confinement can manifest after only a few days in solitary confinement⁴⁰.
56. The UNICEF report recommends that “in no circumstances whatsoever should a child be held in solitary confinement”.⁴¹ Israeli’s former chief military prosecutor in the West Bank, Lt. Col Maurice Hirsch, has responded to this recommendation by stating that there is no policy of solitary confinement, and that UNICEF’s criticisms and recommendations are borne out of a misunderstanding of the reality of the situation. He justified the use of solitary confinement on the grounds that Israeli military law requires children to be held separately from adults, and no other children were present at the time⁴².
57. DCI Palestine does not accept this explanation, stating that “Evidence and documentation collected by DCIP overwhelmingly suggests an apparent policy and practice implemented by Israeli authorities to use isolation for Palestinian child detainees solely for interrogation purposes, particularly to obtain a confession or gather intelligence or information on other individuals.”⁴³
- 58. As an absolute minimum of protection for vulnerable Palestinian children held in military detention, LPHR supports the UNICEF recommendation that no child should be subjected to solitary confinement.**

UK makes meaningful recommendations at the Universal Periodic Review of Israel in January 2018

59. On 23 January 2018, the third Universal Periodic Review of Israel at the Human Rights Council in Geneva took place. The UK was one of a number of states that participated in a dialogue with Israel on its human rights record. The UK’s statement to Israel included three principled and meaningful recommendations. One of them importantly addressed the critical issue of Israel’s systemic mistreatment of Palestinian children in military detention. The UK Government stated:

40 http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/268 (para 62)

41 UNICEF Report

42 <http://www.jpost.com/Israel-News/Outgoing-Prosecutor-reveals-details-about-secret-dialogue-with-UNICEF-482016>

43 http://www.dci-palestine.org/palestinian_children_held_in_solitary_confinement_for_longer_periods



“The UK remains concerned about children in detention in Israel. The UN Convention on the Rights of the Child, to which Israel is a State Party, clearly sets out the need to grant special care and protection to children.

The UK recommends:

1) Taking action to protect child detainees, ensuring the mandatory use of audio-visual recording in interrogations with all child detainees, ending the use of painful restraints, and consistently fully informing detainees of their legal rights.”

60. The UK Government's three recommendations above are clear, substantive and extremely important. They are firmly grounded in respect of international law and the need to protect the basic human rights of Palestinian children in Israeli detention. This is reinforced by the important explicit reference to Israel's legal obligations as a signatory to the UN Convention on the Rights of the Child.

61. It is vital, however, that the UK Government fully supports these excellent recommendations with consistent and effective policy measures that encourages the Israeli Government to actually implement the three crucial reforms recommended in its statement above, plus essential others that are listed at the end of this briefing.

Conclusion

62. LPHR notes the striking conclusion of MCW that “[B]ased on the available evidence, the UN agency's conclusion that the ill-treatment of children who come into contact with the military detention system is "widespread, systematic and institutionalized" appears to still be valid in 2017.”⁴⁴

63. Under international law it is the state of Israel that bears primary responsibility to ensure that its military detention system for Palestinian children is compliant with international legal standards. Unfortunately the track record indicates that Israel's military authorities are not willing to undertake substantial and meaningful reform of its systematic mistreatment of Palestinian child detainees.

64. A significant responsibility therefore bears upon on all other governments, including the British government, to apply effective pressure on Israel to implement the international law compliant recommendations of the UNICEF and UK reports.

65. To this end, we urge the UK government to consider arranging a delegation of government experts to Israel to assist in the swift and substantial implementation of the

44 Military Court Watch October 2017 Briefing Note, page 10.

<http://www.militarycourtwatch.org/files/server/BRIEFING%20PAPER%20-%20OCT%202017%20-%20FINAL.pdf>



recommendations cited in this briefing (listed in the annex below) and the UK and UNICEF reports.

66. Entering into a constructive technical dialogue with their Israeli counterparts in which experience of good practice can be shared, should expedite the reforms urgently required to remediate the systemic and harmful lack of basic human rights protections provided to Palestinian children held within Israel's military detention system.

Tareq Shrourou



Key specific recommendations:

Night arrests

- Children must only be arrested during daylight hours and that in all other cases a summonses should be used;
- Detention must only be used as a measure of last resort.

Due process protections

- Children must have access to legal representation and parents prior to and during interrogations;
- Children must be properly informed of their right to silence;
- All interrogations of children must be audio-visually recorded without exception;
- Children should not be required to sign confessions and statements written in a language other than their own.

Child safety and welfare

- Children must not be subjected to physical or psychological violence;
- Children must not be blindfolded or painfully restrained;
- Children must not be subjected to coercive force or threats;
- Children should have access to a full medical examination both prior to and after interrogation that objectively documents any complaints and findings and the child's lawyer should have access to the assessment;
- There should be a prompt independent investigation of any complaint made by, or in respect of, a child about unlawful or ill-treatment;
- Any statement by a child made as a result of torture or ill-treatment must be excluded as evidence in any proceeding;
- The medical apparatus treating prisoners must be removed from the jurisdiction of the Israel Prison Service and Ministry of Internal Security and its doctors be transferred to the responsibility of Israel's Ministry of Health.

Administrative Detention

- Children must not be subjected to administrative detention.

Solitary confinement

- Children must not be subjected to solitary confinement.

Transfer of children outside of occupied Palestinian territory into Israel for detention

- Children must not be transferred out of the occupied West Bank in violation of international law.