

Urgent Appeal

UA 2/12



Defence for Children International/Palestine Section
الحركة العالمية للدفاع عن الأطفال / فرع فلسطين

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| Incident: | Forcible transfer of children - Fourth Geneva Convention violation |
| Location: | Detention centres inside Israel |
| Date of incidents: | Continuing |
| Number of incidents: | Multiple |
| Ages: | 12 to 17 years |
| Date of issue: | 26 May 2012 |
| Updated: | 19 July 2012 |

Nature of incidents

Since 1967, more than 730,000 Palestinian men, women and children are estimated to have been prosecuted in Israeli military courts and imprisoned.¹ The majority of these prisoners are held in detention facilities inside Israel, in violation of the [Fourth Geneva Convention](#) (the Convention). Article 76 of the Convention prohibits the transfer of these prisoners into Israel.

Article 76 - Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein.

The practical consequence of this violation is that many prisoners, including children, receive either limited, or no family visits, due to freedom of movement restrictions and the time it takes to issue permits to visit a prison. In the case of children, this lack of adequate family contact also violates their rights under article 37 of the [Convention on the Rights of the Child](#).

Israeli Prison Service data

According to figures released by the Israeli Prison Service (IPS) in June 2012, **57 percent** of Palestinian child prisoners detained in IPS custody were held in facilities located inside Israel, in violation of the Convention. According to this data, **126 children** were held in Megiddo, Ha'sharon, Nitzan, Al Jalame and Al Mascobiyya prisons inside Israel, whereas 94 children were detained in Ofer prison, located in the occupied West Bank. It should also be noted that out of a total of **4,484** Palestinian prisoners (adults and children) in IPS detention in June, **3,809 (85 percent)** were held inside Israel, in violation of international law.

Application of the Fourth Geneva Convention

The Convention, ratified by [194](#) countries, contains detailed rules on the administration of occupied territory, including rules on issues such as detention and transfer of populations. Although Israel ratified the Convention in 1951, it does not accept that it has the full force of law in the West Bank, East Jerusalem and the Gaza Strip (occupied territory). The Israeli government primarily bases its position on an interpretation of article 2 of the Convention that has little, if any, authoritative international support, and was rejected by the [International Court of Justice](#). However, as a matter of policy, the Israeli government has stated on a number of occasions that it will apply the "humanitarian" provisions of the Convention to the West Bank. The specific issue of transferring Palestinian prisoners to detention facilities inside Israel has been considered by the Israeli Supreme Court on two occasions, most recently in the case of [Yesh Din v Minister of Defence](#), in 2010. In

rejecting the petition filed on behalf of the prisoners, the court ruled that the domestic emergency regulations permitting the transfer of Palestinian prisoners to facilities inside Israel prevail over the Convention to the extent that there is an inconsistency. However, the decisive point to note here is that a State cannot plead provisions of its own law or deficiencies in that law in answer to a claim it is in breach of a treaty obligation. (See: Article 27 of the [Vienna Convention on the Law of Treaties](#)).

The express or implicit position held by the overwhelming majority of the international community is that the Convention has full legal force in the occupied territory. (See for example: [Brazil](#), [EU](#), [France](#), [ICJ](#), [ICRC](#), [India](#), [South Africa](#), [UN](#), [UK](#)). Accordingly, the continuing practice of the Israeli government of transferring Palestinian prisoners to detention facilities located inside Israel, potentially exposes serving and former military court judges, military and police personnel involved in the transfer, IPS prison staff and their respective military and civilian chains of command, to individual criminal prosecution by virtue of articles 146 and 147 of the Convention.

Update: On 29 June 2012, the UK Foreign Office confirmed that “Israel’s policy of detaining Palestinians within Israel is contrary to Article 76 of the Fourth Geneva Convention and that domestic law cannot be used as a justification for violations of international law.” – [FCO letter dated 29 June 2012](#)

Recommended action

Please send Urgent Appeals recommending the following:

1. All Palestinian children detained under Israeli military law should be held in facilities in the Occupied Palestinian Territory and not in Israel, in accordance with article 76 of the Fourth Geneva Convention.

Appeals to:

- **Your elected representatives and Foreign Ministers;** and
- **The Israeli embassy in your country** [[list of Israeli diplomatic missions worldwide](#)].

ⁱ 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; and B’Tselem – Statistics on Palestinians in the custody of Israeli security forces (2008 to 2012).