



# Military Court Watch

Monitoring the treatment of children in Israeli military detention

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Australian Representative Office  
48 Othman Ben Affan St  
Trust Building 7<sup>th</sup> Floor  
El Bireh  
Ramallah, West Bank

Email: [Tom.Wilson@dfat.gov.au](mailto:Tom.Wilson@dfat.gov.au)

Attention: Tom Wilson, Australian Representative

2 December 2015

## **Re: Forcible transfer of protected persons from the West Bank**

Dear Mr Wilson

In 2013 UNICEF published a report on the treatment of children held in Israeli military detention (*Children in Israeli Military Detention: Observations and Recommendations*) and made 38 recommendations. One of the recommendations related to the State of Israel's decades long practice of transferring thousands of Palestinian detainees, including children, from the West Bank to detention facilities inside Israel in violation of Article 76 of the Fourth Geneva Convention (the Convention):

### ***UNICEF recommendation 13(i)***

*In accordance with international law, all Palestinian children detained in the Israeli military detention system shall be held in facilities located in the occupied Palestinian territory.*

More than two years after this recommendation was made, monthly data released by the Israeli Prison Service (IPS), a government instrumentality, indicates that on average 88 per cent of Palestinian detainees from the West Bank continue to be transferred to prisons located inside Israel. This practice, which commenced in 1967, is currently affecting between 7,000 to 8,000 individuals annually, who are classified as protected persons under the Convention. Further, in February 2015, UNICEF announced that it had been informed by the Israeli military authorities that they had no intention of changing this policy.

This policy has been challenged in the Israeli Supreme Court twice (Sejadia (1988) and Yesh Din (2010) cases) and rejected on both occasions based on the primacy of Israeli domestic law over provisions of international law where the two are in direct conflict. However, this position is not maintainable under international law by virtue of Article 27 of the Vienna Convention on

the Law of Treaties, reflecting customary international law (Lagrand Case). Accordingly, there is no available domestic remedy.

We are concerned that a violation of the Convention of this magnitude and duration has the potential to undermine the credibility of the international legal order and its institutions with adverse implications for the rule of law extending beyond Israel and Palestine. We also note that the unlawful deportation or transfer or unlawful confinement of protected persons is now classified as a war crime under the Rome Statute of the International Criminal Court, Article 8(2)(a)(vii), acceded to by Palestine in 2015.

We would like to take this opportunity to ask what specific steps will the Australian Government be taking to ensure that the practice of forcibly transferring protected persons from the West Bank ceases in accordance with the legal obligations undertaken by the signatories to the Convention.

We thank you in advance and look forward to receiving your response.

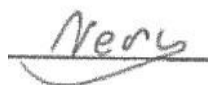
Yours sincerely



**Raja Shehadeh**  
Lawyer



**Gerard Horton**  
Lawyer



**Nery Ramati**  
Lawyer



**Danny Friedman QC**  
Lawyer



**Sir Geoffrey Bindman QC**  
Lawyer – Bindmans LLP



**Diala Shamas**  
Lawyer



**Ms Saimo Chahal QC (hon)**  
Lawyer – Bindmans LLP