

PUBLIC

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11 November 2003

Further Information on UA 292/03 (MDE 15/092/2003, 15 October 2003) Fear of forcible transfer

ISRAEL/ OCCUPIED TERRITORIES

16 Palestinian Administrative Detainees: Rami Fawaz Hassan Hjeili (m), Hussam Hamdallah Abdelqader 'Odeh (m), Rasem Khattab Hassan Mustafa (m), Sami Hassan 'Ali Sous (m), Shadi Ismail Satti 'Ayash (m), Hani Hamdi Hammid Rajabi (m), Samer Abdelghafar Fayad Abu Zeina (m), Munther Mohammed Yunis al-Ju'bi (m), Nasser Yusef Jum'a (m), Lo'ai Daud (m), Taha Dweik (m), Samer Bader (m), Raja Hirzallah (m), Mustafa 'Abed (m), Ahmad Mishkah (m), Ala' Hassuni (m)

New Names: Kamal Muhammad Idris (m) and Ghanem Tawfiq Salama (m)

On 6 November, the Israeli High Court upheld the Israeli army's decision to forcibly transfer Palestinian administrative detainee, Taha Dweik, from the West Bank to the Gaza Strip. His forcible transfer is imminent. On 10 November, Kamal Muhammad Idris, whose petition to the High Court was rejected on 4 November, was forcibly transferred to Gaza.

Following a suicide bombing in mid-October, which killed at least 20 Israelis and injured scores of others, the Israeli army West Bank Commander, Moshe Kaplinski, ordered the forcible transfer of 18 Palestinian administrative detainees from the West Bank to the Gaza Strip. Most are to be transferred for two years and some for one year. The 18 are alleged to be supporters of the Palestinian armed group Islamic Jihad, which had claimed responsibility for the bombing. The detainees appealed to the Military Advisory Appeal Board, which confirmed the forcible transfer orders. They then petitioned the Israeli High Court of Justice, which issued temporary injunctions halting their transfer pending a final decision on the cases. These decisions are expected in the coming days.

The Israeli authorities claim that the forcible transfer of Palestinians from the West Bank to the Gaza Strip falls within the provisions of "assigned residence" contained in Article 78 of the Fourth Geneva Convention, which states that an occupying power may use assigned residence only when absolutely necessary for its security. The commentary to Article 78 states that: "...such measures can only be ordered for real and imperative reasons of security; their exceptional character must be preserved".

Article 49 of the Fourth Geneva Convention states that "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive." Even though the West Bank and Gaza Strip are both part of the Occupied Territories under Israel's control, they are geographically separate and the Israeli army does not allow Palestinians living in the Gaza Strip access to the West Bank and vice-versa. Hence, the forcible transfer of Palestinians from the West Bank to the Gaza Strip also contradicts the spirit of Article 49.

The Israeli authorities have contended that the forcible transfer of Palestinians from the West Bank to the Gaza Strip is a lesser measure than imprisonment. However, for Palestinians being expelled from their home towns brings back painful memories of the mass expulsion and forced flight of hundreds of thousands of Palestinians from their towns and villages at the time of the establishment of the State of Israel in 1948 and again at the time of Israel's occupation of the West Bank and Gaza Strip in 1967. Forcible transfer to the Gaza Strip is particularly evocative, as more than 83% of the Gaza Strip's population are Palestinian refugees from the 1948 and 1967 wars.

Israel has the right to take measures to protect the security of its citizens, but such measures must be reasonable, necessary and proportionate, and must comply with international law. If the authorities believe that these 18 detainees pose a threat to Israel's security, their forcible transfer to the Gaza Strip does not in any way constitute a preventive or protective measure – as they could easily engage in activities against Israel in the Gaza Strip. The Israeli authorities have repeatedly accused the Palestinian Authority (PA) of failing to arrest people involved in attacks against Israelis who reside in areas under PA jurisdiction and notably in the Gaza Strip. It is difficult to see how, transferring people, whom Israel considers to be potentially dangerous for its security, to the Gaza Strip can effectively remove or reduce the security danger they allegedly pose to Israel's security.

Amnesty International believes that the Israeli authorities are using forcible transfer as a form of collective punishment, a violation of Article 33 of the Fourth Geneva Convention, and a grave violation of one of the most basic principles of international human rights law - notably the right of any accused to a fair trial and to challenge any evidence used against them.

The Israeli authorities claim that these administrative detainees, like thousands of others who have also been detained without charge or trial, are a danger to Israel's security. The organization believes that the above-named 18 and anyone else suspected of a recognizably criminal offence should be promptly charged and brought to trial in accordance with international standards for fair trial, and that the Israeli authorities' failure to produce the necessary evidence to prosecute and convict suspects in a court of law should not result in a situation where people are punished for the actions of others or as a deterrent to others.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English, Hebrew or your own language:

- calling for the annulment of the military order for the unlawful forcible transfer of the 18 administrative detainees named above and any others against whom forcible transfer orders may have been issued;
- urging the Israeli authorities to comply with Article 33 and other relevant provisions of the Fourth Geneva Convention, which Israel has ratified and which states that "No protected person (Palestinians living in the Occupied Territories are protected persons under the terms of the Convention) may be punished for an offence he or she has not personally committed...".
- pointing out that if these administrative detainees have committed any offence they should be promptly charged and brought to trial in accordance with international standards for fair trial. If the authorities have no intention of bringing them to justice for any recognizably criminal offences they should be released.

APPEALS TO:

Ministry of Justice

Minister of Justice Yosef Lapid
29 Salah al-Din Street
Jerusalem 91010, Israel

Telegram: Justice Minister, Jerusalem, Israel

Fax: +972 2 6285438

E-mail: sar@justice.gov.il

Salutation: Dear Minister

Judge Attorney General

General Menachem Finkelstein,
Israel Defence Forces

No address available

Fax: +972 3 5694370

Salutation: Dear General Finkelstein

COPIES TO: Diplomatic representatives of Israel/Occupied Territories accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 23 December 2003.