HAMOKED Center for the Defence of the Individual
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# The Order regarding Prevention of Infiltration (Amendment No. 2) (No. 1650)

## Legal and Factual Background

**Introduction: On April 13, 2010, the Order regarding Prevention of Infiltration (Amendment No. 2) (No. 1650) came into effect. The order must be read within the wider context of the army's positions and conduct in the past few years, which point to a clear trend toward separating the Gaza Strip and West Bank, eroding some of the powers transferred to the Palestinian Authority in the Oslo Accords and engaging in forcible transfers with no legal basis and in clear contravention of the provisions of the Fourth Geneva Convention.**

**The new order is worded such that it effectively allows the army the possibility to use the extreme measure of forcible transfers arbitrarily and bypass the criticism previously directed against it in Israeli courts.**

**The language of the order could be construed as meaning that it applies to all residents of the West Bank, whoever they may be. However, Israeli policy thus far leads to the conclusion that there are groups among the Palestinian population of the West Bank which face greater and more immediate danger relative to other groups within this population. The legal/historic analysis below focuses on these groups:**

It is important to clarify, at the outset, that legally, the entire area of the population registry and the arrangement of presence in the Territories was transferred to the Palestinian Authority in the Oslo Accords. Under the Accords, identity cards and visitation permits are issued by the Palestinian Authority (with prior authorization by Israel); updating of addresses is carried out by the Palestinian Authority exclusively with no need for prior contact with Israel. However, in practice, Israel has seized control of managing the population registry.

Not only is the new order the first ever reference in military registration to a demand that residents of the occupied Palestinian territories hold permits, but it also emphasizes that these permits must be issued by the Israeli military commander. This, when almost everyone living in the West Bank has, at most, documents issued to them by the Palestinian Authority under the Oslo Accords. In so doing, the new order, for the first time, revokes the arrangements established in the Oslo Accords, turns back the clock 15 years and once again makes the Israeli military commander the only official empowered to issue and determine which documents and permits allow people to be present and dwell in the Territories.

### Residents of the West Bank with Registered Addresses in the Gaza Strip

In the Oslo Accords, Israel acknowledged the fact that the Gaza Strip and the West Bank form a single, integral territorial unit, and pursuant to the Accords, the safe passage allowing free movement between the two areas was established.

However, since 2000, Israel has been taking measures to create a separation between the West Bank and Gaza Strip. In this context, Israel has been prohibiting the changing of official population registry

addresses of residents of the oPt from the West Bank to the Gaza Strip and vice versa. Thus, Israel created a situation whereby a person might live for many years in the West Bank – and perhaps even be born there – but his registered address still appears as Gaza.

In the past few years, Israel has begun taking action to forcibly remove Palestinians whose registered address is in the Gaza Strip from the West Bank to the Gaza Strip.

Israel carried this out via an attempt to rely on two military orders: the proclamation of the entire West Bank as a "closed military zone" from 1967 and the Order regarding Prevention of Infiltration (in its previous version).

HaMoked: Center for the Defence of the Individual has filed several petitions over these years in the matters of Palestinians who were forcibly transferred in this way to the Gaza Strip. In the vast majority of cases, Israel allowed their return to their homes following the petition and thus avoided bringing the policy and practice of deportation and forced transfer to the scrutiny of the High Court of Justice (HCJ).

In 2009, HaMoked filed two HCJ petitions in the matter of two Palestinians who have lived with their wives and children in the West Bank for many years and against whom Israel issued deportation orders to the Gaza Strip under previous military legislation. These were the first cases in which HaMoked managed to file a petition before the army could execute the deportation.

In the HCJ petitions, HaMoked clarified the unlawfulness of Israel's deportation policy: there is not, nor was there ever any legal provision in military legislation forcing Palestinian residents of the oPt to hold any permit in order to be present and live in the oPt – whether in Gaza or in the West Bank. Therefore, all those individuals are living in the West Bank entirely lawfully and there is an absolute prohibition on deporting or forcibly transferring them.

In the course of hearings in these petitions, the HCJ justices harshly criticized the position of the army while emphasizing the shaky legal grounds and the immense legal problem of executing such deportations or forced transfers. In one of the cases, the court issued an order nisi.

Following the HCJ's criticism, the military was forced to revoke the two deportation orders.

It is clear that the new order was designed as an "HCJ bypass" and a means to allow and facilitate the future deportation of residents of the West Bank whose registered address is in the Gaza Strip.

**Palestinians and Family Members of Palestinians Not Registered in the Palestinian Population Registry**

At the end of 2000, Israel froze processing of visitation permit and family unification applications, severed communications with the Palestinian Authority on these issues and refused to accept new applications for processing.

The result was that tens of thousands of Palestinians or their relatives found themselves with no possibility of arranging for their status in the oPt and declared by Israel "illegal aliens" in their own homes.

Over the course of 2007, HaMoked filed close to 50 HCJ petitions on behalf of such families.

HaMoked stressed before the court that the "freeze" was entirely unlawful. According to international law, these individuals have every right to live with their families in their country. According to the laws of occupation, the military commander may act only in the name of narrow and defined military necessities and he clearly may not apply sweeping moratoriums stemming from political considerations.

In the context of the HCJ, Israel insisted on its position that these were "illegal aliens" who had no right to continue to live in their country. However, the HCJ **did not accept this position and**

**ordered the state to consider the option of resuming processing of family unification applications**.

Consequently, and perhaps in order to avert a judgment, in late 2007, Israel announced a one-time quota as a political "gesture" to the head of the Palestinian Authority. In the context of this political gesture, Israel agreed to admit for processing and approve, in an exceptional and targeted manner, some 30,000 applications.

It is difficult to estimate the number of people who were not lucky enough to be included in this political gesture. A fleeting political gesture cannot substitute a regulated procedure allowing for family unification and the arrangement of status in the West Bank.

However, it is important to note that even receiving a Palestinian identity card in this manner is no guarantee against deportation. HaMoked is handling a number of cases of Palestinians who received a Palestinian identity card with Israeli approval in the context of the quota, but Israel subsequently decided to "revoke" the decision, immediately deleted their names from its copy of the Palestinian population registry and issued deportation orders against them.

According to the new order, all those individuals do not only face deportation but have suddenly turned into criminals facing a maximum prison term of three to seven years.

The new orders expand the power to deport in another manner, which entirely contravenes international law, in imposing a duty on the candidate for deportation to arrange the deportation procedures himself and to agree to be deported **to any country**. This expansion will allow, for the first time, the deportation of individuals who are stateless in a complete departure from international law.

## Conclusion

The new orders drastically expand the power to deport from the occupied Palestinian territories. Many people who, under existing legislation as well as international law, are entitled to continue to live in their homes in the oPt may now be defined as "infiltrators", deported from their homes and sentenced to lengthy prison terms. In effect, the new orders create an alleged "legal" basis for conducting patently illegal acts – forcible transfers and grave breaches of international law.