

Date: April 11, 2010
In response please cite: 37230

To: Mr. Ehud Bark
Minister of Defense

Via Fax
Urgent!

Dear Sir,

Re: Order regarding Prevention of Infiltration (Amendment No. 2) and Order regarding Security Provisions (Amendment No. 112)

1. I hereby appeal to you on behalf of HaMoked: Center for the Defence of the Individual, the Association for Civil Rights in Israel, Bimkom, B'Tselem, Gisha, the Public Committee Against Torture in Israel, Yesh Din, Adalah, Physicians for Human Rights and Rabbis for Human Rights regarding the orders cited in the heading which were signed on October 13, 2009 and are due to come into effect in the West Bank in two days, April 13, 2010. We request that you take action to have the orders revoked, or at least have their entry into effect delayed as they are unlawful and allow extreme and arbitrary injury to a vast number of people.
2. Once the orders enter into effect, every Palestinian in the West Bank may find him or herself in danger of being criminally prosecuted and deported or being deported without a process of appeal or review as required by law.
3. The wording of the Order regarding Prevention of Infiltration (Amendment No. 2) (hereinafter: **the amendment to the infiltration order**) defines anyone present in the West Bank, regardless of his status, as an "infiltrator" if they do not possess a permit given by the military commander or on his behalf – a permit whose exact nature is not defined in military legislation at all. In fact, the vast majority of individuals now living in the West Bank have never been required to possess any sort of permit.
4. Experience with the current conduct of the military commander raises the concern that at least as a first phase, the orders will be used against Palestinians in the West Bank whose registered address is in the Gaza Strip and against foreign nationals who are in the process of family unification. We estimate that this category may include tens of thousands of people. As stated, the wording of the order indicates that the definition of infiltrator may also apply to any other person.

We shall recall that from 2000 to this day – with the exception of a onetime gesture at the end of 2007 – Israel has been implementing a "freeze" policy – a complete and blanket refusal to process applications for renewal of visitor permits for foreign nationals or for granting permanent status in the Territories, which were transferred to it from the Palestinian Authority. This is among the causes for the fact that many people are currently living in the West Bank without status. These are individuals who have been living in the West Bank for many years and have had families there, yet, the "freeze" policy has suddenly turned them into "illegal aliens" in their homes. Now the order turns them into criminals facing jail terms.

The wording of the order and such a broad definition of "infiltrator" allows it to be implemented also to **Palestinian residents of the Territories who hold Palestinian Authority ID cards and legal status**, particularly those whose registered address is in the Gaza Strip.

Over the past few years, and more forcefully recently, the military has taken action to forcibly remove Palestinians living in the West Bank to the Gaza Strip, relying exclusively on the fact that their registered address is in the Gaza Strip. Some were born in the West Bank. Others lawfully moved to the West Bank from the Gaza Strip. Not one of them required a written permit from the military commander, since, as known, for many years such permits did not exist at all.

The orders also apply to other groups such as residents of East Jerusalem. Owing to circumstances and international law, these residents maintain close ties with their brethren who are residents of the West Bank. These orders allow for the abrupt severing of the fabric of life in contravention of international law.

5. It is clear that the decision on the aforesaid amendment was not accompanied by staff work to examine the situation of a vast number of people who, under existing military legislation, have never been required to obtain a written order from the military commander and will now face particularly severe sanctions. We shall further note that the order, which imposes criminal liability, has also not been properly publicized among the Palestinian population.
6. It must be noted that despite the fact that the order's wording requires any person present in the West Bank to possess a permit, presumably only Palestinians and their relatives will be effectively deported from the West Bank and prosecuted for not having a permit as stated. This, since even today, the military commander refrains from deporting Israelis who live in the West Bank regardless of the legality of their presence therein. It is clear that applying the order to protected residents only, will be another improper step toward creating demographic changes in the West Bank and entrenching a regime which discriminates between people on the basis of religion and nationality.
7. The new orders make the right of those individuals – **protected residents under international law** – to live in their homes, in their land, subject to a vague permit regime which relies on the will of the military commander. They create an alleged “legal” infrastructure for the deportation of protected residents from the occupied territory and enshrine a systematic regime of discrimination. **Enshrining these legal provisions in the security legislation of the Area** thus entirely contradicts the duties of the military commander under international humanitarian and human rights law **and is blatantly beyond his powers:**

As is well known, a military commander in an occupied territory has **powers to act to further two purposes and two purposes only: securing the legitimate security interests of the entity holding the occupied territory** and securing the needs of protected persons. In this case too, the military commander's legislation was published without any accompanying explanation as regards the motives and purposes behind it and which it is alleged to advance. However, a reading of the order itself and experience with the current conduct of the military commander indicates that the new powers enshrined in the amendment to the infiltration order do not come under the terms of either one of these two purposes. It is clear that they do not serve the benefit of the protected population but will rather injure it severely. They do not stem from the security needs of the occupying power. Both the order and the military commander's conduct *vis-à-vis* the deportation of Palestinians from the West Bank to date point to the fact that extraneous considerations are behind the order.

The amendment to the order also enshrines in security legislation the authority to deport from the occupied territory, or alternatively to forcibly remove from one part of the occupied territory to the other, people who are “protected residents” under the Geneva Convention and as such contravenes a strict ban under international law (Article 49 of the Geneva Convention).

8. In addition, amendment no. 112 to the Order regarding Security Provisions indicates that challenging deportation orders issued pursuant to the Order regarding Prevention of Infiltration shall be carried out before a Committee for Examining Deportation Orders (as opposed to deportation orders issued in Israel which may be challenged in the courts at any given time). If this were not grave enough, the candidate for removal must wait until he is brought before the committee and may not contact it itself. The combination of the Order regarding Prevention of Infiltration and the Order regarding Security Provisions indicates that candidates for removal will not even be brought before the committee: the deportation may be carried out within 72 hours while a person can be brought before the committee up to 8 days from issuance of a deportation order. With no ability to initiate an appeal to the committee, a person is thus dependant on the mercy of the military commander not to remove him without judicial review. We have not found a provision in the legislation which clarifies that the deportation cannot take place before the candidate for deportation has the opportunity to exhaust his right to plead his case (on this obligation see HCJ 5973/92 **The Association for Civil Rights in Israel v. Minister of Defense**, *Piskey Din* 47(1) 267).
9. In light of the above, HaMoked: Center for the Defence of the Individual wrote to the GOC Central Command on March 25, 2010 requesting to delay the entry into effect of the orders. The letter to the GOC Central Command is attached to this letter.
10. We shall also refer to the arguments made in the letter sent to the GOC Central Command regarding the strict arrangements pertaining to “infiltrators” in the orders compared to the arrangements which apply to infiltrators (those unlawfully entering Israel from enemy states) and illegal aliens in Israel. This rigorousness is expressed both in far harsher penalties and in the curtailment of many procedural rights, as detailed therein.
11. Despite the urgency of the matter, no response to the letter has yet been received. Due to the lack of time and the dramatic implications of the aforesaid orders on the lives of a vast number of people, we appeal to you with a request to take urgent action to have the orders revoked, or at least have their entry into effect delayed in order to perform a serious and in-depth reexamination of the issue in light of our comments.

Respectfully,

Dalia Kerstein
Executive Director

Copies:

Attorney General, Mr. Yehuda Weinstein
Deputy Defense Minister, Mr. Matan Vilnai
GOC Central Command, Major General Avi Mizrahi
Coordinator of Government Activities in the Territories, Major General Eitan Dangot
Military Advocate General, Major General Avihai Mandelblit
Head of the Civil Administration, Brigadier General Yoav Mordechai
Legal Advisor for the West Bank, Colonel Eli Bar-On
Head of International Law Department at the Military Advocate General’s Office, Colonel Liron Libman
President of the Military Court of Appeals, Colonel Aharon Mishnayot
Vice President of the Military Court of Appeals, Lieutenant Colonel Netanel Benisho