

Updated orders regarding prevention of illegal infiltration into the West Bank

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Main Points:

In recent days concerns have been expressed regarding two orders enacted in relation to the prevention of infiltration into the West Bank. It appears that these concerns reflect a misunderstanding of the effect and purpose of these orders which add significant safeguards and protections to the existing legislation in relation to illegal infiltrators.

The orders apply to unlawful residents, defined as those who enter the area or remain unlawfully. The orders do not apply to other residents of the West Bank, such as those listed in the population registry.

It should be noted that the phenomenon of unlawful residents in the West Bank is a very limited one, in particular because of steps the Government of Israel has taken, at the request of the Palestinian Authority, to regularize the status of Palestinians and foreigners in the West Bank. In recent years over 30,000 Palestinians and foreigners, who were unlawfully residing in the West Bank, have been included in the population registry as part of this process.

Background:

The orders in question, **Order 1649** and **Order 1650** both enacted and published on 13 October 2009, amend an existing order, Order 329, dating from 29 June 1969. This original order, intended to prevent illegal infiltration into the West Bank, set out the sanctions relating to unlawful residents into the area, and provided that such infiltrators could be deported.

The Orders were enacted following rulings made by Israel's High Court of Justice (HCJ 2737/04 and HCJ 7607/05), which recommended that an internal judicial oversight mechanism be established as an additional layer of scrutiny over any repatriation decision.

Order 1649 In accordance with the High Court's recommendation, this Order establishes a new Committee to examine any repatriation order. Under the new Order, any individual who is the subject of a repatriation order must be brought before the oversight committee, not later than 8 days from the issuance of the order (4 days if the individual is under 18 years of age).

The Order provides the Committee with extensive powers, including the authority to cancel repatriation orders, release detainees and so on. It also sets out the rights of individuals appearing before the Committee, including the right to be represented by the person of their choice, and the right to make submissions in writing.

In the event that the Committee decides not to release the detainee, the Order provides that the detainee must be brought before the Committee again for review of the case within 60 days (30 days if under 18 years of age).

It should be stressed that the establishment of the new Committee does not in any way prejudice the right of an individual to petition the High Court of Justice for review of any decision made in their regard, and adds a new and additional layer of oversight, as recommended by the High Court.

Order 1650 also amends the provisions of the original Order from 1969. It clarifies the definition of illegal infiltration, providing that an individual in possession of a lawful certificate or permit to be present in the areas cannot be considered an unlawful resident. At the same time, it removes the restriction in the original order providing that illegal infiltration was only relevant in relation to infiltration from a limited list of countries.

The Order significantly reduces the sanctions applicable in respect of unlawful residents and also provides that, even prior to the issuance of a repatriation order, the subject of the order must be given the opportunity to make arguments, and that these must be brought before the military commander.

The Order further provides that the subject of a repatriation order must be provided with information, in a language they understand, regarding their rights, including the right to notify a friend or lawyer.

The Order also provides that repatriation orders can only come into effect 72 hours following their issuance – and that this period may be extended at the request of the subject of the order.

Regarding the costs of repatriation, the Order provides that unlawful residents may be required to bear such costs, but that they cannot exceed 7,500 NIS. This provision reflects the current legal situation in Israel. It should also be noted that the Committee established under Order 1649 is authorized to waive these costs.