

Universal Periodic Review (UPR) - Israel

Report submitted on 30 September 2013 by BADIL Resource Center for Palestinian Residency and Refugee Rights



Palestinian refugees and internally displaced persons (IDPs) are the largest and longest-standing case of displaced persons in the world today. There are at least 7.4 million displaced Palestinians including 360,000 IDPs in Israel, representing 66 percent of the entire Palestinian population (11.2 million) worldwide.¹ Among them are: 5.2 million who are registered with and assisted by the UN Relief and Works Agency for Palestine Refugees (UNRWA).²

Israel fails to respect and meet its obligations under international law, including UN resolutions, and continues its politics aiming at forcible population transfer of the Palestinian people. These politics are applied in order to annex, de facto, the main Israeli settlements in the occupied Palestinian territory (oPt), and establish a Israeli Jewish majority in areas populated by Palestinians, in particular in occupied East-Jerusalem, but also in the Naqab (Negev) and the Galilee.³

Denying the Right of Return

Most importantly, Israel is denying the return of Palestinian refugees through legal and political mechanisms. However, the right of return exists in the law of nationality, customary law, international humanitarian law, international human rights law, and refugee law.⁴ In fact, the

¹ See BADIL *Survey of Palestinian Refugees and Internally Displaced Persons, 2010-2012*, Badil Resource Center for Palestinian Residency & Refugee Rights (2012) at: <http://badil.org/en/documents/category/35-publications?download=1021%3Asurvey-2012&start=10>.

² UNRWA statistics at: <http://www.unrwa.org/sites/default/files/2013042435340.pdf>

³ See BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians*, Badil Resource Center for Palestinian Residency & Refugee Rights (2013) at: <http://badil.org/en/documents/category/35-publications?download=1045%3Abadil-handbook>; See Amjad Alqasis. "The Ongoing Nakba: The continuous forcible displacement of the Palestinian people", *al-Majdal* (Autumn 2012) at: <http://badil.org/en/al-majdal/item/1830-art3>.

⁴ GAIL J. BOLING, BADIL, THE 1948 PALESTINIAN REFUGEES AND THE INDIVIDUAL RIGHT OF RETURN AN INTERNATIONAL LAW ANALYSIS 5, 9 (2007), available at <http://www.badil.org/en/documents/category/35-publications?download=101%3Aindividualror-en>; Russell Tribunal on Palestine, *Executive Summary of the*

obligation to respect the right of return has been a customary, legally binding, norm of international law since before 1948. Later, in December 1948, the UN General Assembly called upon Israel to respect the Palestinian refugees' right of return in Resolution 194 (III). Also, in its resolution 237, June 1967, the UN Security Council called upon the government of Israel to "facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities". These resolutions, among many others, explicitly stated that Palestinians had the right of return to their homes of origin. Since Israel is the only state from which Palestinian refugees originated, it is the only state of origin and thus is obligated under international law to receive these refugees.

Legal statuses under Israeli law

Next to this, the Israeli nationality law embodies in law the separation of citizenship ('Israeli'), from nationality ('Jewish'). This separation was confirmed by the Israeli Supreme Court in *George Raphael Tamarin v State of Israel* 1972. Such a distinction allows Israel to discriminate against its Palestinian citizens and, even more severely, against Palestinian refugees by ensuring that certain rights and privileges are conditioned upon Jewish nationality. The Israeli regime has essentially divided the Palestinian people into several distinct political-legal statuses -Palestinian citizens of Israel, permanent residents of East Jerusalem, West Bank identity card holders, Gaza Strip identity card holders and the millions of Palestinian refugees living in forced exile. Despite their differing categorizations under Israeli law, Palestinians across the board maintain an inferior status to that of Jewish nationals living within the same territory or beyond.

Israel's distinction between Jewish nationality, Israeli citizenship, and Palestinian Arabs status within Israel, the oPt, including East Jerusalem, provides a basis upon which discriminatory policies are applied to the detriment of Palestinians, both within Israel and the oPt. Israel and the oPt are in fact treated as one legal entity by Israel, which has two effects: (1) Jewish nationals, wherever they may reside, benefit from a range of legal rights and privileges afforded by Israel; and (2) Palestinian Arabs, wherever they may reside, are collectively exposed to a single coherent structure of apartheid and discrimination. In particular, Israel's institutionalized discrimination aims to privilege Jewish nationals, and abridge the right of Palestinian Arabs, with regard to residency rights, land ownership, freedom of movement, nationality, citizenship and the right to leave and return to one's country.

Jewish people all over the world are given "the automatic right, by virtue of being Jewish, to immigrate to Israel and acquire Israeli citizenship [but] Arab Palestinians including the millions of Palestinian refugees, on the other hand, are denied to return to their homes and to acquire citizenship."⁵ Thus, under Israel's legal regime, *only* Jews have the right to return, and only

Findings of the Fourth Session of the Russell Tribunal, Russell Tribunal on Palestine (Oct. 2012), available at <http://www.russelltribunalonpalestine.com/en/sessions/future-sessions>.

⁵ Ibid.

“Jewish nationals and citizens of Israel” constitute the privileged group of Israeli citizens who have full access to [human rights].

Among Israel’s pillars is the policy of legal separation between Jewish nationality, Israeli citizenship and the status of Palestinian Arabs as well as the practice of forced population transfer: a practice aimed at displacing non-Jewish nationals (Palestinian Arabs) within Israel and the oPt.

Palestinians who did not meet the criteria of the 1952 Citizenship Law because they were outside the country or in territory controlled by Israeli-defined ‘enemy forces’ at certain cutoff dates, are excluded from Israeli citizenship and consequently made stateless by the law.⁶ At least 750,000 Palestinians and their descendants (approximately 6 million persons) suffer from statelessness and/or a lack of nationality (1948 Palestinian refugees) until today.⁷

Israel continues to deny and violate the right of these refugees to return to their country of origin. In 2001 the Israeli Knesset passed the *Entrenchment of the Negation of the Right to Return Law*.¹⁹ Section 2 of this law states that “refugees will not be returned to the territory of the State of Israel save with the approval of the majority of the Knesset Members.” Section 1 of the law defines a refugee as a person who “left the borders of the State of Israel at a time of war and is not a citizen of the State of Israel, including, persons displaced in 1967 and refugees from 1948 or a family member.” Furthermore, based on the 1954 *Prevention of Infiltration Law* and military orders 1649 and 165020 those Palestinians are prohibited from legally returning to Israel or the oPt as well.

In effect, Israel has institutionalized its exclusion of, and discrimination against, the indigenous Palestinian refugees who were forcibly displaced and denationalized. The Law of Return (1950)⁸ provides that every Jewish person in the world is automatically entitled to “Jewish nationality” in Israel. Under the Law of Return, a Jewish national is “born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.”⁹ Thus Jewish nationals enjoy the right to enter Israel even if they were not born in Israel and have no connection whatsoever to Israel. On the other hand Palestinians, the indigenous population of the territory, are excluded from the Law of Return on grounds that they are not of Jewish origin, do not enjoy the legal status of nationals under any other Israeli law; and have no right to enter the country.

⁶ See Haneen Na'amnih, “New Anti-Arab Legislation,” Adalah Newsletter, Volume 50, July 2008; See also “Israel begins revoking citizenship of four Arabs,” Haaretz, (6 May 2009); See also John Quigley, “Family Reunion and the Rights to Return to Occupied Territory,” Georgetown Immigration Law Journal, 6 (1992).

⁷ See supra note 1.

⁸ Passed by Knesset on 20th Tammuz, 5170 (5th July 1950) and Published in Sefer Ha-Chukkim No. 51 of the 21st of Tammuz.

⁹ Joseph Schechla, The Consequences of Conflating Religion, Race, Nationality, and Citizenship, Al Majdal, Winter-Spring 2010, 14.

Palestinian land

Israeli legislation is also threatening the land rights of Palestinian citizens of Israel, Palestinian residents of the oPt as well as those Palestinian refugees who are forcibly exiled. The Land Acquisition for Public Purposes Ordinance (1943) is a British-mandate era law that authorizes the Finance Minister to confiscate Palestinian lands for “public purposes” in perpetuity. In February 2010, the Knesset amended the law to prevent Palestinian landowners from restoring land confiscated pursuant to the ordinance even if it was never used for the alleged public purpose for which it was originally confiscated. The Amendment allows the state not to use the land for the original intended purpose for 17 years and it prevents landowners from demanding restoration if the land has been transferred to a third party or if more than 25 years has lapsed since the confiscation. This impacts Palestinians collectively as Israel confiscated significant portions of their lands over 25 years ago and has since transferred them to third parties.

After 1948, Israel ‘inherited’ all the land that was registered in the High Commissioner’s name from the British government, which thus became Israeli state land.¹⁰ After 1967, Israel also claimed all the ‘state land’ that Jordan had designated as such under its rule in the West Bank. This was achieved through the application of a 1967-adopted military order, the Order Concerning Government Property (No. 59).¹¹ This defines state land as property that, on the “relevant date” (7 June 1967, the day Israel occupied the West Bank), belonged to an enemy state and/or corporation of which an enemy state had control or rights or that was registered at that time in its name.¹² Furthermore, the Order bestows administration of state land to the Custodian who is appointed by the Israeli Military Commander and empowered, “to take possession of government property and to take any measure he deems necessary to that end”.¹³ The Order also allows for the custodian to deem any lands as state lands, even if they are retroactively shown not to be state lands, provided he held “good faith” that they were state lands.¹⁴ This Order was since amended.

Parallel to that in 1968 the Israeli military commander passed the Order concerning Land and Water Settlement (Judea and Samaria) (No. 291) – an order which forbade any further land settlement/registration for Palestinians and put a halt to any settlements, or registrations which were at that time being processed which has resulted in only 33% of all West Bank land being registered.¹⁵

In 1969 a provision was added to the Order Concerning Government Property stating that, “if the Custodian confirms in a written document with his signature that a given property is government

¹⁰ See Supra note 3.

¹¹ Order Concerning Government Property (Judea and Samaria) (No. 59), 1967.

¹² Definitions article in the original version of the Order concerning Government Property, as published in Collections of Proclamations, Orders and Appointments No. 5, 15 November 1967, pp. 162 -165.

¹³ Article 2 of the Original Version of Order No. 59.

¹⁴ Ibid., Article 5.

¹⁵ Land Registration Study for the Ministry of Planning – by Land Equity International, May 2007 p. 28.

property, that property will be considered government property unless proven otherwise”.¹⁶ This transferred the burden of proof from the State to the individual. In 1984, the military commander amended the Order Concerning Government Property to expand the types of land that could fall under its control. The amendment defines government property as, “property that on the relevant date or thereafter belongs, is registered in the name of or is imparted to an enemy state or a corporation in which an enemy state has rights”.¹⁷ The use of the word “thereafter” offers scope to expand upon a previously static definition of state land.

Declaration process

The declaration (of state land) process is not anchored in the law or in military legislation, but rather in the procedures of the Israeli Civil Administration alone.¹⁸ Among their requirements is that the Custodian must sign a certificate specifying the location of the land for declaration accompanied by a map demonstrating the plot’s total area.

Various petitions filed by Palestinians against the declaration process and against the appeals committee (whereby individuals can oppose declarations) failed before the Israeli Supreme Court.¹⁹ The Court upheld the legality of the declaration mechanism and rejected the petitioners’ right to object: as they could not prove personal injury on non-private, ‘state land’.

Absentee Property Law

The *Absentee Property Law* of 1950 is another law that is applied in order to confiscate Palestinian land. The term ‘absentee’ was defined so broadly as to include not only Palestinians who had fled the newly established state of Israel but also those who had fled their homes but remained within its borders.

Estimates of the total amount of ‘abandoned’ lands to which Israel laid claim vary between 4.2 and 5.8 million dunums (4,200-5,800 km²).²⁰ As a result of the Absentee Property Law, the pre-1948 Palestinian Bedouins of the Naqab lost 90% of their lands and property.²¹ Between 1948

¹⁶ Order Concerning Government Property (Amendment No. 4) (Judea and Samaria) (No. 364) 1969, Article 2(c).

¹⁷ Order Concerning Government Property (Amendment No. 7) (Judea and Samaria) (No. 1091) 1984.

¹⁸ Sfar, M., Schaeffer, E., et al., “A Guide to Housing Land and Property Law in Area C of the West Bank”, February 2012, p. 46.

¹⁹ See, for example: HJC 81/285, Fadil Muhammad a-Nazar et al v. Commander of Judea and Samaria et al., Piskei Din 36 (1) 701.

²⁰ For more information, see: Adalah, BADIL, and Habitat International Coalition (HIC), *Recurring Dispossession and Displacement of 1948 Palestinian Refugees in the Occupied Palestinian Territory*, Joint written statement to the UN Human Rights Council (August 27, 2009); available from <http://unispal.un.org/UNISPAL.NSF/0/0F9AB8AF7EE5F0A185257647006A47D0>.

²¹ Through a combination of a discriminatory Master Plan, *The National Planning and Building Law (1965)* and the most recent Praver Plan, Israel is continuing to implement a forcible removal and relocation of the Palestinian Bedouin originating from the Naqab. Jamjourn, Hazem, *Al-Naqab: The Ongoing Displacement of Palestine’s Southern Bedouin*, Al-Majdal, (Autumn 2008 – Winter 2009) available at: <http://www.badil.org/en/al-majdal/item/6-al-naqab-the-ongoing-displacement-of-palestine%5C's-southern-bedouin>.

and 1953 alone, 350 of the 370 new Israeli Jewish settlements were created in lands confiscated under the Law.²²

The authority to declare land or property as ‘abandoned’ extends to property whose owner is “unknown”. Following the mass forcible displacement of Palestinians from their homes and lands in 1948, the *Absentee Property Law* transferred the ownership of such lands to the State of Israel should the owner have been residing, even for a short while, in one of a list of territories outlined in the law between the 29th November 1947, and the day on which “it shall be declared that the state of emergency shall cease to exist”. Along with the ‘state of emergency’, the law continues to apply. Further, the law even applies to persons who left their ordinary place of residence in Palestine, to another location in Palestine. Such persons are referred to as ‘*Present Absentees*’, to whom Absentee Law also applies. Absentee property is any property, within Israel, that the ‘absentee’ owns or has a right to. This requirement that the property itself be located within the State of Israel, also applies to East Jerusalem subsequent to Israel’s illegal 1967 annexation.

Custodian

The Custodian of Absentee Property is appointed by the Israeli Minister of Finance to retain possession of “absentee property” pursuant to a prescribed manner. As these rights are automatically transferred no notice of this transfer is given to the owner and they may only be made aware of it when granted an eviction order, or when attempting to sell the property.

Article 17(a) outlines that, should the Custodian designate or ‘believe’ that a certain property is owned by an absentee, then it is automatically considered so even if the rightful owner can later prove that they were not an ‘absentee’. If the property in question had already been sold to a ‘third’ party, then there is nothing the rightful owner could do to reclaim it, under the principle that the transaction was made in ‘good faith’.²³

Privatizing occupied lands

On 3 August 2009, the Israeli Knesset ratified the *Israel Land Administration Law (Amendment No. 7) 5769 – 2009* reforming land management for 93% of the State of Israel’s territory, commonly known as the Land Reform Law. The Law, which applies to Israel-proper and occupied East Jerusalem and the Golan Heights, enables a process of privatizing land comprising 800,000 dunums or 4% of the State. The Law also increases control of land to the Jewish National Fund, an organization that explicitly excludes non-Jewish residents from lands under its management.

²² See supra note 5, p. 55.

²³ Absentees Property Law, Section 17(a) states: “Any transaction made in good faith between the Custodian and another person in respect of property which the Custodian considered, at the time of the transaction, to be vested property shall not be invalidated and shall remain in force even if it is proved that the property was not at the time vested property”.

Recommendations

We urge the Human Rights Council to:

- Declare that Israel's policies aimed at excluding Palestinian refugees from their homes of habitual residence, coupled with laws and policies aimed at diminishing the number of Palestinians within Israel proper and the occupied Palestinian territory, amounts to forced population transfer.
- Urge Israel to recognize and facilitate the right of Palestinian refugees to return to their homes, to compensation, and to restitution, by amending the discriminatory laws that permit only Jewish nationals to enjoy the benefits of the Law of Return.
- Urge Israel to establish legal and proper mechanisms aiming at returning all property confiscated under the Absentee Property Law to their original owners.
- Urge Israel to amend the Land Acquisition for Public Purposes Ordinance (1943) to afford mechanisms for Palestinian refugees, who have been displaced from their homes and unable to claim their private lands, to make those claims.
- Urge Israel to repeal the Land Administration Law (Amendment No. 7) 5769 – 2009 (commonly known as Land Reform Law) and ensure that refugees' property is not privatized.