

## Palestinian refugees in the OPTs Citizens or Refugees?

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### *Introduction*

Palestinian refugees in the Occupied Palestinian Territories (OPTs), namely, the Gaza Strip and the West Bank, including eastern Jerusalem [and the Golan Heights], are in majority 1948 refugees from Mandate Palestine or persons displaced as a result of subsequent hostilities or violence who crossed the 1949 Armistice line delineating Israel from, what is since, the 1967 Occupied Territories.

Refugees in the OPTs total around 1.6 million persons, approximately half the population of the Territories of which 42 percent live across 27 camps in the West Bank and the Gaza Strip. Most Palestinian refugees are registered with UNRWA as 'Palestine Refugees' and receive basic services such as health and education. They have the same rights to housing, health, employment and education as non-refugees. Refugees outside the camps are illegible to vote in national legislative council and municipal elections, but refugees in the camps only participate in the national election.<sup>1</sup>

Palestinian refugees living in the OPTs find themselves under the jurisdiction of Israel, the Occupying Power. Israel, however, does not accept the application of *de jure* humanitarian law in the OPTs and thus does not recognize the right of return of Palestinians displaced as a result of the conflicts nor its responsibilities as an occupying power to ensure respect for international human rights law, including refugee law and the right of return. Palestinian refugees have the same residency status as non-refugee Palestinians in the OPTs. They are considered resident aliens or foreigners under Israeli civil and military law.

Despite its occupied status, the Territories are set to become the Palestinian state. The possible creation of a Palestinian state and with it a Palestinian citizenship has led some to argue that refugees in the OPTs are or will no longer be refugees, but *de facto* citizens of a Palestinian state. What then is the status of Palestinian refugees in the OPTs, refugees or citizens of a future state?

### *Refugees in the OPTs and the right of return*

The central idea to the notion of return is return to one's country of origin or, in the language of UNGAR 194, to "their homes". The places of origin and homes of the

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<sup>1</sup> Thus, for example, Palestinian refugees community organizations in the occupied West Bank decided in 1997 to abstain from participation in then proposed municipal elections conducted by the PNA and rather hold parallel elections to camp councils. In the municipal elections held in the West Bank in 2005, municipal voter registers included only the names of those refugees who reside in villages and towns outside the refugee camps. No voter stations were set up in the West Bank refugee camps.

Palestinian refugees in the OPTs are located in areas which are currently part of Israel. While it is true that some 780,000 refugees from the 1967 war and approximately 838,000 displaced persons from subsequent hostilities will be able to return to what is now the 1967 OPTs, this is so because they originate from the OPTs. Refugees from Mandate Palestine should be able to return to their homes of origin, even if a Palestinian state will be established. The separate but interrelated right to housing and property restitution of Palestinian refugees, whether living inside or outside the OPTs, also refers to properties now located in the territory of the state of Israel.

The right of return is based on the premium that refugees will have the choice to decide where they want to reside, and until refugees are able to choose on a voluntary basis either to return to Israel, integrate in a new Palestinian state or resettle in a third country, their legal status, and with it their right to return to Israel, remains unchanged. Hence, the creation of a Palestinian state and with it a Palestinian citizenship can not legally terminate the right of return of 1948 refugees to their place of origin in Israel, as stipulated in international human rights and humanitarian laws and in numerous UN Resolutions, most importantly, Resolution 194. This meaning of the right of return has also been reinforced through state practice, whereby the return of refugees and displaced persons to their place of origin and housing and property restitution have become an intrinsic part of peace agreements and peacebuilding efforts over the last decade.<sup>2</sup>

Moreover, Palestinian refugees in the OPTs are, under the law of state succession and nationality law, nationals of the state of Israel. Under this body of international law, Israel's denationalization of Palestinian refugees under its 1952 Citizenship and Entry into Israel Law is illegal, and Palestinian refugees in exile are citizens of Israel. Moreover, upon the Partition of Palestine and the creation of the state of Israel, Palestinians were, and still are, legally entitled to choose the nationality of their country of habitual residence or move to their affiliated state, i.e. Israel or Palestine.<sup>3</sup> This resolution, allowing for multiethnic states, must be guaranteed upon any peace agreement involving a two-state solution in order to guarantee equality and non-discriminatory rights to all persons within the states, as enshrined in Resolution 181. The creation of multicultural states is also an important mechanism to address the root causes of the conflict, undo ethnic cleansing and generate reconciliation.

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<sup>2</sup> "Refugee rights are a key element in any peace agreement and play a particularly important role in ethno-national conflicts. Most peace agreements that prescribe permanent solutions for refugees and displaced persons recognize their right to return and repossess their properties. This includes, for example, agreements in Macedonia, Kosovo, Croatia, Bosnia-Herzegovina, Tajikistan, Georgia, Burundi, Rwanda, Liberia, Sierra Leone, Mozambique, Cambodia, and Guatemala." BADIL Occasional Bulletin No. 14, "Peace Agreements and Refugees -Lessons Learned", BADIL Resource Centre; Bethlehem, December 2003, p. 2.

<sup>3</sup> "Palestinian citizens residing in Palestine outside the City of Jerusalem, as well as Arabs and Jews who, not holding Palestinian citizenship, reside in Palestine outside the City of Jerusalem shall, upon the recognition of independence, become citizens of the State in which they are resident and enjoy full civil and political rights. Persons over the age of eighteen years may opt, within one year from the date of recognition of independence of the State in which they reside, for citizenship of the other State, providing that no Arab residing in the area of the proposed Arab State shall have the right to opt for citizenship in the proposed Jewish State and no Jew residing in the proposed Jewish State shall have the right to opt for citizenship in the proposed Arab State. The exercise of this right of option will be taken to include the wives and children under eighteen years of age of persons so opting." See GA Resolution 181 (II) , A/RES/181(II)(A+B), 29 November 1947, Chapter 3, para. 1.

### *Opposing arguments based on so-called political constraints*

It has been argued that refugees in the OPTs are already citizens or will automatically become so once the state of Palestine is formed and that returnees will return to a newly formed Palestinian state, not to their homes of origin in Israel. From this perspective, the return of refugees is linked to the state of nationality and not the state of origin.

This argument is based on the political assumption that return to the state of origin, Israel, is unlikely in the event of a peace agreement as it would undermine the ethnic separation inherent to a two-state solution. Indeed, following Oslo and the envisioned partition of the land as two ethno-national entities, i.e. Jewish and Palestinian, return of refugees to Israel has been deemed unfeasible for it would negate ethnic partition based on the Israeli demand to be a Jewish state. The Israeli argument to a Jewish state has however, never legally been recognized.<sup>4</sup> Hence, within this context, the refugee question cannot be resolved within the borders of a future Palestinian state.

### *Palestinian refugees in a Palestinian state?*

Legally speaking, there is no citizenship under the Palestinian Authority which is independent from Israel's immigration laws and orders. In the absence of an independent and sovereign Palestinian state, all Palestinians in the 1967 OPT, refugees and non-refugees, hold the legal status of "permanent residents" under Israel's military orders and political agreements signed between Israel and the PLO. Legally speaking, refugees are still, today, refugees with a right to return to their homes of origin. Refugees in the OPTs will retain their right of return even in the advent of a Palestinian state, and this even if their right to return to their place of origin remains unavailable. If their right to return to Israel is respected, they will thus be able to choose the option most appropriate to them, i.e. return to Israel, take the nationality of a new Palestinian state or resettle in a third country.

The only way in which Palestinian refugees in the OPT can legally cease to be refugees is through the individual and voluntary choice by these refugees to opt, within the framework of an international agency involving both parties to the conflict, for either return (to places of origin in Israel), local integration (into the PNA in the OPT or a future state of Palestine) or resettlement elsewhere. Refugees cannot be pressured nor subject to arbitrary and discriminatory incentives/disincentives or limitations such as quotas, which would undermine their right to choose and the possibility of their return. Thus, until refugees have all the necessary information and opportunities to take an informed and voluntary decision, including the right of return, no political negotiators, state or UN agency can make a decision on behalf of refugees or revoke their refugee status. The decision to return, resettle and even take the citizenship of a new Palestinian state is the sole prerogative of the refugees.

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<sup>4</sup> For a discussion on the Jewish state see Micheal Kagan, who argues that "Israel has acquired legitimacy only as a state, not as a specifically Jewish state. The Road Map plan makes no mention of the ethnic or religious identity of either state; it does not say that Israel must be "Jewish", not that the proposed Palestinian state must be "Arab". One could that this is implied in a two-state solution, but one can also still say that Israel's existence as a specifically Jewish state has never been explicitly endorsed in a legally binding instrument." See Micheal Kagan, "Do Israeli Rights Conflict With the Palestinian Right of Return?", Working Paper No.10, BADIL Resource Centre; Bethlehem, August 2005, p. 19.

### *Conclusion*

While law is often subject to the constraints of political realities, balance of power and state interests, fundamental rights such as the right of return cannot be negotiated away. The legal status of refugees is thus not contingent upon political developments but rather on the informed and voluntary choice of the refugee.

Palestinian refugee community organizations in the OPT, the PLO Department for Refugee Affairs, and the PNA have adopted this analysis since 1997. It is their consensual position that the Palestinian Authority represents a “host country/authority” for its refugees, and that irrespective of the special and national character of the PNA, refugees' status is similar to the legal status of Palestinian refugees in other host countries.