

## **The Contribution of the State of Palestine to the Special Rapporteur's Thematic Report on Racism, Racial Discrimination, and Xenophobia in the Contest of Laws, Policies and Practices Relating to Citizenship, Nationality and Immigration**

The State of Palestine aims, through the information provided in this document, to contribute to the Special Rapporteur's first thematic report on the abovementioned subject.

In theory, the legal framework applied in Palestine guarantees equality in the rights related to citizenship, nationality and immigration. In practice, the actual implementation of these rights are thwarted by the policies of Israel, the Occupying Power.

### **The Palestinian Constitutional and legislative relevant Framework**

Citizenship and nationality find their basis in various sources of law.

The Declaration of Independence of the State of Palestine is the foundational document of the modern legal system from which Palestinian law and jurisprudence is derived. It defines the contours of the Palestinian nationality and citizenship, based on the principle of equality.

The Declaration states that:

*“The State of Palestine is the state of Palestinians wherever they may be. The state is for them to enjoy in it their collective national and cultural identity, theirs to pursue in it a complete equality of rights”.*

[...] *“Governance will be based on principles of social justice, equality and non-discrimination in public rights of men or women, on grounds of race, religion, color or sex, under the aegis of a constitution which ensures the rule of law and an independent judiciary. Thus shall these principles allow no departure from Palestine's age-old spiritual and civilisational heritage of tolerance and religious coexistence”.*

It is in this spirit that, in 2014, the State of Palestine acceded to numerous human rights treaties, including of relevance the “International Convention on the Elimination of All Forms of Racial Discrimination” (ICERD). A Permanent Ministerial Committee on the Implementation of International Treaties was established shortly after to further the advancement of human rights, through the respect, application and evolution of international obligations.

The Palestinian High Constitutional Court ruled in 2017 that: *“...the international treaties rise above internal legislation, as the rules stated by these treaties gain superior force to the rules of internal legislation, all in accordance with national, religious and cultural identity of the Palestinian Arab People”.* This hierarchy of norms ensures that human rights guarantees transpire in the national laws and jurisprudence and as a consequence the contours of nationality, citizenship, immigration, entry, residence in the State of Palestine are rooted in principle of equality and non-discrimination.

Safeguards against discretionary citizenship requirements is provided for in Article (7) in the 2003 Amended Basic Law states that *“Palestinian citizenship shall be regulated by law”*.

Currently, Palestinian laws and laws inherited from the previous Ottoman, British, Jordanian and Egyptian rules are already in force and apply *mutatis mutandis*. Though the State of Palestine is working on updating relevant national legislation to form a comprehensive contemporary body of laws, the current Legal Framework already forms a baseline guarantee of non-discrimination on all basis, including race, colour, decent, national and ethnic origins.

- 1. Equality in the definition of Palestinian Nationality:** The definition of Palestinian nationality is based upon impartial and objective criteria such as: place of birth, filiation and lineage, and matrimony.

Article (27) in the 2007 Law on General Elections states that:

*“A person is considered Palestinian if:*

*A) he or she is born in Palestine in its borders defined in the British Mandate Period or had the right to gain the Palestinian nationality according to the laws applied in that period;*

*B) he or she is born in the Gaza Strip and the West bank including East Jerusalem.*

*C) paragraph (A) applies to one of their descendants regardless of where they were born; or,*

*D) he or she is the spouse of a Palestinian as defined above.*

In addition, article (28) in the Draft of the Palestinian Constitution defines a Palestinian as *“The citizens who resided normally in Palestine prior to 1947, regardless of whether they subsequently remained or left. Every person who was born to a Palestinian man or woman after this date is considered as a Palestinian”*.

- 2. Citizenship and naturalization are granted on equal requirements:** Article (12) in the 1954 Nationality Law (Jordanian era) indicates that the requirements for granting citizenship are impartial and objective, these are: four years of residence, fluency in Arabic, and good conduct and reputation.
- 3. Gender equality in granting citizenship:** Article (27) in the Law on general Elections provides that citizenship is to be granted equally to the spouses of Palestinians, regardless of gender.
- 4. Nationality revocation measures do target any certain group or nationality:** Article (18) in the 1954 Nationality Law indicates that nationality revocation is based on impartial and objective basis. These are: conducting military service for a foreign state without permission from the Ministerial cabinet and refusing to end such service upon request; conducting civil service for a foreign government and refusing to conduct civil service for the national government instead; and serving an enemy state.



5. **No certain group nor nationality is excluded from immigrating to, entering and/or residing in the State of Palestine:** Article (2) in the 1941 Immigration Law (British era) distinguishes between types of persons entering and/or residing in Palestine only on the purpose of entry:
- A foreigner is *“any person who is not a Palestinian”*
  - An Immigrant who is *“any person who is not a permanent resident in Palestine, but has entered it in a legitimate manner to with the aim of becoming a permanent resident”*.
  - A Permanent Resident is a person *“that lives permanently in Palestine, whether a Palestinian or a foreigner”*.
  - A Temporary Worker is *“every foreigner who entered Palestine in a legitimate way with the aim of conducting a temporary work in certain fields or projects, and is not a permanent resident or an itinerant”*
  - An Itinerant is *“every foreigner who entered Palestine in a legitimate manner for any aim but permanent residency or finding a job”*.
6. **Laws and policies imposing restrictions on immigration and entry are not targeted towards a certain group or nationality:** Article (5) in the 1941 Immigration Law (British era) provides a list of reasons to deny the entry and the immigration of a foreigner is based on an assessment of the individual’s respect for public order. Considerations include the lack of legal capacity, if he or she was convicted for murder, if it is proven that such person threatens peace and order in Palestine, etc. None of the restrictions provided in this article discriminate on the basis of race, ethnicity or nationality.

### **Practices and policies of the Occupying Power**

Despite the existence of the aforementioned legal framework, Israel, the Occupying Power exerts an overwhelming and illegitimate control on citizenship, neutralization, residence and, civil affairs issues as part of its colonial goal of displacing and replacing Palestinians and the goal of impeding the Palestinian Right to self-determination. The Occupying Power uses its belligerent occupation and its associated settlement regime as a vehicle to achieve these goals by applying a wide range of illegal polices and measures in violation to International Humanitarian Law and International Human Rights Law.

The Occupying Power has created a coercive environment with the aim to make Palestinian presence unbearable to force them to leave through the following:

- The arbitrary deprivation of the right to life, and the right to physical safety through extrajudicial killings and targeting of Palestinian civilians, and through settler violence<sup>1</sup>.

---

<sup>11</sup> Statement by Philip Luther, Middle East and North Africa Director at Amnesty International, commenting on Amnesty International’s report: Trigger-happy, Israel’s excessive force in the West Bank, February 2014, available

- The arbitrary deprivation of the right to liberty through politically motivated mass imprisonment, arbitrary administrative detention<sup>2</sup> and in addition to the deprivation of the right to a fair trial and a military judicial system weaponized against the Palestinians.
- The deprivation of the right to movement through the inhumane and illegal blockade against the Gaza Strip, and severe impediments to the right to movement in the West Bank through military barriers, forbidden roads accessible only to settlers, and the annexation Wall<sup>3</sup>.
- Discriminatory planning and zoning policies that ensure the accelerated expansion of illegal Israeli settlements while effectively preventing Palestinian presence or development. This is achieved by making it impossible for Palestinians to obtain permit for building homes and developing infrastructure without the risk of demolition, while on the other hand, facilitating and financing of Settler building including the retroactive approval of building without permit<sup>4</sup>.

The Occupying Power discriminates between Palestinians and Israelis in the right of entry and residence, especially in the Palestinian right to return provided for in UNGA Resolution 194.

The Committee on the Elimination Racial Discrimination (CERD), in its final observations of the year 1992, expressed concern “*over Israeli policy that, on the one hand, accorded citizenship automatically to Jewish immigrants arriving in Israel and, on the other hand, barred the return to their former homes of Arabs displaced by war*”.<sup>5</sup>

In 2017, two legal experts authored a report on the situation in the State of Palestine and the question of apartheid, in which they assert that Israel has enacted “*the Law of Return and Citizenship (often wrongly translated as Nationality Law) to provide Israeli citizenship to Jews from any part of the world, while denying citizenship even to those Palestinians who have a documented history of residency in the country*”.<sup>6</sup>

In 2007, The UN Special Rapporteur on the situation of human rights in the Palestinian territory has indicated that Israel “*started to refuse the renewal of visas for Palestinians with foreign passports. Israel does not permit non-Jewish foreigners to receive residency rights in the OPT, but previously it allowed foreign passport holders, many of whom were born in Palestine, to renew their tourist visas every three months. The discontinuation of this policy ... has resulted in persons who have lived in the OPT for years being denied visas and refused re-entry to the OPT.*”<sup>7</sup>

---

at:<https://www.amnesty.org/en/latest/news/2014/02/trigger-happy-israeli-army-and-police-use-reckless-force-west-bank/>.

<sup>2</sup> See, Addameer, On administrative detention, July 2017, available at:

<http://www.addameer.org/israeli-military-judicial-system/administrative-detention>.

<sup>3</sup> See, Amnesty International, Israel/Occupied Territories: Crippling Movement Restrictions Condemned as Collective Punishment, 8 September 2013, available at: <https://www.amnesty.org.uk/press-releases/israel-occupied-territories-crippling-movement-restrictions-condemned-collective>; also see, B’Tselem, Restriction of Movement, 8 February 2017, available at: [http://www.btselem.org/freedom\\_of\\_movement/checkpoints\\_and\\_forbidden\\_roads](http://www.btselem.org/freedom_of_movement/checkpoints_and_forbidden_roads)

<sup>4</sup> UNOCHA, *Fragmented Lives – Settlements: A Key Driver of Humanitarian Vulnerability*, 13 June 2016, p. 2.

<sup>5</sup> (A/46/18), paragraph 369.

<sup>6</sup> Falk R and Tilly V, *Supra Note*, Page 32.

<sup>7</sup> A/HRC/4/17, paragraph 48



The Occupying Power considers the Palestinians of East Jerusalem as permanent residents and foreigners in their own illegally annexed land, while facilitating the transfer of its own civilian population into the city (and into the West Bank), in violation of Article (49) in the Fourth Geneva Convention. In addition, Palestinians have to keep providing evidence that Jerusalem is their “Center of Life” or risk losing their residency.

In 2014, the UN Special Rapporteur of human rights in the Palestinian territory has stated that: *“Palestinians living in East Jerusalem are regarded as “permanent residents” and subject to a gradual and bureaucratic process of ethnic cleansing”*<sup>8</sup>. Moreover, The 2017 Apartheid report described these practices as one of Israel’s efforts to pursue *“efforts to weaken the Palestinians politically and contain their demographic weight.”*<sup>9</sup>

Moreover, Palestinian Jerusalemites has been subjugated to an isolated and distinct status, as they have been excluded from bearing the identification cards and the passports of the State of Palestine, and granting the distinct (Jerusalemite only) indemnification and travel documents.

The Occupying Power issued the 2003 “temporary” Citizenship and Entry into Israel Law which suspends the possibility of granting Israeli citizenship and residence permits in Israel, including through family reunification, to residents of the State of Palestine, except in limited and discretionary exceptions. This law and its amendments suspend family reunification for:

- A Palestinian from the West Bank and Gaza with family in East Jerusalem, or Israel; and,
- A citizen of Lebanon, Syria, Iraq, or Iran with family in the occupied territory or Israel.

The Committee on the Elimination of Racial Discrimination, in its 2007 final observations, recommended that *“the State party revoke the Citizenship and Entry into Israel Law (Temporary Order), and reconsider its policy with a view to facilitating family reunification on a non-discriminatory basis. The State party should ensure that restrictions on family reunification are strictly necessary and limited in scope, and are not applied on the basis of nationality, residency or membership of a particular community.”*<sup>10</sup>

In 2007 The UN Special Rapporteur stated: *“Israeli law and practice shows little respect for family life. Israeli Palestinians married to Palestinians from the Occupied Palestinian Territory cannot live together in Israel ..... Jerusalemites with Jerusalem identity cards cannot live together with their spouses who hold West Bank identity cards.”*<sup>11</sup>

Even outside of the scope of the above-mentioned law, it is difficult for any Palestinian to have a family tie or partnership with any person of a foreign nationality. It is practically impossible for any foreigner in a relationship with a Palestinian to get a visa or a residency permit to live with their partner in the occupied territory, a practice that is clearly part and parcel of the policy of

---

<sup>88</sup> A/HRC/25/67, paragraph 34

<sup>9</sup> Falk R and Tilly V, Ibid, Page 42.

<sup>10</sup> CERD/C/ISR/CO/13, paragraph 20.

<sup>11</sup> A/HRC/4/17, paragraph 48.

forcible displacement.<sup>12</sup> In 2007, the Special Rapporteur clearly said that “*Palestinians from the OPT cannot live together with foreign spouses.*”<sup>13</sup> The 2017 Apartheid Report also raised the issue, stating that “*Israeli law normally allows spouses of Israeli citizens to relocate to Israel but uniquely prohibits this option in the case of Palestinians from the occupied territory or beyond*”.

<sup>14</sup>

The ongoing blockade on the Gaza Strip severely affects the rights of all individuals wishing to immigrate to or enter and exit the territory. Gazans face even greater difficulty in entering any of territory of the State of Palestine, due to the Israeli Occupation’s restrictions on their right to movement and residence.

---

<sup>12</sup> Hass H, 2017, *Israel Makes It Increasingly Difficult for Palestinians' Foreign Spouses to Stay in West Bank*, Haaretz, <https://www.haaretz.com/middle-east-news/palestinians/.premium-israel-makes-it-hard-for-palestinians-foreign-spouses-to-stay-in-w-bank-1.5449374>

<sup>13</sup> A/HRC/4/17, paragraph 48.

<sup>14</sup> Falk R and Tilly V, *Supra Note*, Page 3