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status in Arab and Israeli legislation



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On May 15, 1948, the land of Palestine was divided into three parts. The major part was occupied by Zionist forces, where the new settlers declared the "State of Israel". The second part, what became known as the "West Bank", was under the control of the Jordanian Arab army forces, and the third part, Gaza Strip which was then controlled by the Egyptian forces. As a consequence, the Palestinian people were split into four parts; the biggest Palestinian population has become refugees living in Lebanon, Syria, Jordan, Iraq and Egypt. Others have moved not only to Arab countries surrounding Palestine, but also were scattered across other parts of the world, with a small population has remained under Israeli rule. The last part found refuge in the West Bank and Gaza Strip.

On December 13, 1949, the Jordanian Council of Ministers passed the Law No. 56 of 1949, an Addendum to their Citizenship Law of 1928. According to Article 2 of this law "All those who at the time when this Law goes into effect habitually reside in Transjordan or in the Western part [of the Jordan] which is being administered by [the Hashemite Kingdom of Jordan], and who were holders of Palestinian citizenship, shall be deemed as Jordanians enjoying all rights of Jordanians and bearing all the attendant obligations". This law came into force

on the 20th of December 1949. This move by the government of Jordan to grant Jordanian citizenship to all Palestinians who have taken refuge in the East Bank or who have stayed in the West Bank was praiseworthy, because it saved those Palestinians the hardship of living without citizenship. A new Jordanian Law, No. 6, on nationality was enacted in 1954. It was intended to regulate Jordanian Citizenship, ways of its acquisition, loss and naturalization, with this new law maintaining the Palestinians rights gained under the Law of 1949.

Meanwhile, the situation of Palestinians who took refuge in Syria has not observed from 1948 and up until now any changes, where the Palestinian refugees were granted equal rights to those of Syrian citizens and the same obligations except for the right of acquiring the Syrian nationality, as the Palestinians were prevented from acquiring thereof in order to avoid dissolution of their identity. The Law 260, adopted on the 7th of October 1956 provided for the administration of Palestinians affairs in Syria and this law is still in effect. Likewise, the Palestinians who had sought refuge in Iraq were treated similarly, with equal rights to that of Iraqi citizens except for the acquisition of Iraqi nationality, a situation which witnessed a dramatic change after the occupation of Iraqi territories by US troops in 2003. The American invasion of Iraq has led among other things to the violation of all rights of Palestinian refugees, and to their displacement from their whereabouts in Iraq due to the absence of law and order under the US occupation.

Speaking of Lebanon, the country has no honorable record, albeit modest, regarding the treatment of Palestinian refugees, as it has continued to persecute and maltreat them in the worst possible ways. A sufficient evidence to point out is the Sabra

and Shatila massacre committed in September 1982 by the Lebanese Forces and the Phalangist militiamen, who did not feel any embarrassment in collaborating with the Israeli occupation authorities to commit the massacre. In addition to Lebanese Forces who were not the only ones that can be condemned in the Lebanese arena for what was committed against the Palestinian refugees, there are as well political symbols who were disgraced for their conniving complicity in persecution of the Palestinian refugees. To this day, the Palestinian refugees living in Lebanon still deprived of practicing about 26 jobs in the Lebanese labor market. The injustice has reached a point to the extent that it is prohibited for a Palestinian professional to work even inside the refugees' camp where his family is settling down.

The Palestinians who had remained in Palestine under Israeli rule have lived a unique and bitter experience at the same time, as the persecution and maltreatment of Palestinian population was performed under the guise of legality". A census of the population conducted by Israel in 1949, with the staff carrying out the registration of inhabitants neglecting many of Palestinian villages, failed to show in its records more than 10% of the Palestinians, totaling their number then to about 160,000. Those who have been counted became Israeli citizens; the rest of Palestinians have remained stateless, having children born without citizenship up to 1977. In that year, the elections for the Knesset were held, and for electoral purposes only, the Palestinians received Israeli citizenship. However, the acquisition of Israeli citizenship by these Palestinians did not put an end to their suffering.

Before getting into the details of the suffering of the Palestinians who have acquired Israeli citizenship, we have to draw attention to two issues of particular importance in this

context. The first issue is that nearly half of those Palestinians have been displaced from their villages and remained within Israel, in addition to been prevented from returning to their villages though some of them got judicial rulings issued by the Israeli High Court of Justice, ordering the Israeli army to allow them to return, but with the army leadership still refraining from implementing these decisions. The issue of the villagers of Kfar Bar'am and Iqrit represents the best proof of this unjust policy. In the same manner, when the residents of Kafr _In_n, filed a petition in the Supreme Court of Justice demanding to return to their village, the Israeli army blew up the houses of the village. Also, the people of al-Ghabsiyya in Galilee were expelled from their homes and displaced to another village, deserted within the Israeli borders. There are many examples of a category of Palestinians, who currently hold Israeli citizenship, but who are considered now as “absentees”.

In 1950, the Israeli Knesset passed the Absentee' Property Law. This law came to regulate the robbery and illegal seizure of the properties of Palestinians whom this law has considered “absentees”. It enlarges upon who should be considered as “absentee”, where it included not only the refugees who have crossed international borders of Palestine and fled to Jordan, Syria or Lebanon, but also any Palestinian who happened to be traveling even for one day from his village in Galilee to Haifa. Within the definition falls as well this category mentioned above, i.e., those who were forced to leave their villages and who remained within the area that became the state of Israel, the Palestinians known by the term of “present absentees”. The status of this citizen of Palestinian origin, with Israeli citizenship, has become due to Israeli laws a blatant example of so-called “Israeli democracy”. This Palestinian resident is entitled, because of his Israeli citizenship, to vote and to be

elected, he has the right to apply for public service, the right to social security and health insurance, but he cannot file a lawsuit in an Israeli court for the recovery of his house or land located in the village where he came from, as the court dismisses the case on the grounds of his consideration as an “absentee”!! This represents the best application of the “present absentees” law, a new version of the philosophy of apartheid!!! Of course the Palestinians in Israel are enduring much harsher situations because of a series of Israeli laws that impose severe discrimination against them more than the Absentees' Property Law does.

Another issue that should be looked into is the case of Palestinian refugees who either took refuge in Jordan during and after the 1948 war, or remained in the West Bank under Jordanian Army control. As noted above, the Jordanian government has imposed Jordanian citizenship on all Palestinians, and it was a good deed, although imposing a nationality is considered illegal by the principles of international law. On July 31, 1988, the Jordanians and Arabs were surprised by a televised address to nation by the late King Hussein of Jordan, announcing full legal and administrative disengagement from the West Bank. This speech was not transformed into a legislative form, and no Jordanian laws were enacted to translate it into legislation. This discourse has remained to date (in 2013) just one of many of the royal speeches delivered by the King on various occasions.

The big surprise was the quick move of the then Jordanian government, and of the successive governments of Jordan thereafter, to issue directives which are not published in the official Gazette or local newspapers, and that remain confidential, to be seen only by the Interior Ministry concerned

agencies, particularly the Follow-up and Inspection Department. One of the most prominent results of these directives was the revocation of Jordanian citizenship from all Palestinians living usually in the West Bank. If it happens, that one of those who were citizens before July 31, 1988, was working in a government department in Amman, he has to resign, and if his wife was working as a nurse in a government hospital must quit as well, and if his children were enrolled in state school, they must leave the latter and continue their education in a private school when the head of household is able to cover private school expenses. The members of this family are not entitled to medical services of government hospitals or clinics. Summing up, they become “foreigners” in a country where a short time earlier were citizens thereof enjoying all rights and complying with all duties.

The secret “directives” continue to be issued now and then with the Palestinian-Jordanians being unaware of the new regulations, which come to light only when the Follow-up and Inspection Department strips them of their citizenship for various reasons. For example, some Palestinian-Jordanians were surprised to being stripped of their Jordanian nationality because they have taken jobs in Palestinian Authority institutions. When they objected to the decision as they did not know about such directive, the officer of the Follow-up and Inspection Department turned a deaf ear by saying that he is “carrying out superior orders”, and when asked about the location of those “superior orders”, they get nothing but a show of the hand with the index finger pointing upward. They were unable to explain why a Jordanian citizen can serve in the Kuwaiti army, for example, or in the Bahraini government or in the judicial system in Dubai or with the police forces in Oman, without being punished, while if he serves in the Palestinian Authority

institutions he got punished by revoking his nationality without any prior notice or notification.

For the record, the Jordanian Nationality Law of 1954 can be seen as an advanced law in terms of human rights standards, even before the human rights has become an important issue on the agenda of international community. The said law stipulates that if the government of Jordan is willing to revoke the nationality of Jordanian citizen working as a civil servant in a foreign country, it shall comply with the following procedures:

First, the government should send a letter to the Jordanian citizen asking him to leave the service and return to his country.

Second, if the citizen is not complied with the government request, the Council of Ministers shall decide to revoke his citizenship.

Third, this decision must be coupled with the approval of the king.

Fourth, following the royal approval the decision shall be published in the official Gazette.

Finally, the Jordanian citizen who was subjected to nationality revocation shall be entitled to appeal against the decision of the Council of Ministers reinforced by the royal approval, in front of the Supreme Court of Justice, as it is an administrative decision that can be appealed within a period specified by the law. Thus the law has surrounded the Jordanian citizen with numerous jurisdictional immunities preventing the withdrawal of his nationality to be done as easily as the withdrawal of nationality from Jordanians of Palestinian origin is taking place.

By comparison, any decision taken by the Follow-up and Inspection Department to withdraw the nationality of a Jordanian citizen of Palestinian origin may not be challenged before the Supreme Court of Justice, under the guidance of the Jordanian government, which has asked the Court of Justice to dismiss any claim related to the subject of citizenship revocation from Jordanians of Palestinian origin as this represents an “act of state”. One famous case that illustrates the situation is when the Chief Justice of the Supreme Court at that time, Dr. Farouq Al-Kilani, one of the Kingdom’s most prominent and respected lawyers, refused to carry out the government’s directives and ruled in the case before him that the “directives” issued by the government do not constitute a law, as the law draws specific procedures to withdraw citizenship from Jordanian citizen, so the directives or regulations which are inferior to the law, may not prevail over the law. After the ruling was announced, he was asked to submit his resignation, and he did. His experience was related in his valued book titled “The Independence of the Judiciary”.

It should be indicated that the role of the Supreme Court of Justice has been restrained with regard to consideration of nationality issues if the applicant was a Jordanian of Palestinian origin. In a different case of applicant, the court is competent to look into the case, and this reveals that the government defense of its acts as “acts of state” is nothing but a thin cover that exposes the illegality of the government of Jordan actions in this context, as the description of acts of state is about the act and not the applicant. Finally, complementing the argument of “acts of state”, it must be pointed out that this theory is fading away and has become confined to extremely narrow scene.

Perhaps looking at what we read or hear about the green card or the yellow card held by the Jordanian-Palestinians is worthy of explanation, because it shows how far the state of Jordan has reached in humiliating some Jordanian citizens, who have been holding the Jordanian citizenship for decades and have contributed to building the nation and the state. All the countries in the world (with the exception of Liberia and Israel) establish their nationality laws on the basis of two principles, namely: the right of blood (*jus sanguinis*), which means that a child born to a Lebanese or Egyptian father is Lebanese or Egyptian at birth, even if he is born outside the borders of the state, and this principle applies to Jordan as well. The second principle is the right of the soil (*jus soli*), meaning that if a Jordanian was born in Canada, he acquires Canadian citizenship because of birthplace, even if he acquires Jordanian citizenship by virtue of the right of blood as well. Jordan has acted alone, among the other countries of the world, and added the color of the citizenship card held by Palestinian-Jordanian (not held by citizens of Jordanian origin) as a basis for revoking or keeping the citizenship. If the card is green, the Palestinian is stripped of his Jordanian citizenship. On the other hand, if it is a yellow card, the Palestinian is a Jordanian citizen until further notice. Originally, this color system was established for statistical purposes only. In the early 1980s, and in anticipation of the then Jordanian government to monitor the possibility of Palestinian migration eastward, it asked all residents of the West Bank to obtain a green card, therefore the Jordanian authorities were able to count the number of people coming to the East Bank from the West Bank and the number of people returning to the West Bank. The Palestinian Jordanians usually residing outside the West Bank were given yellow cards, to indicate that they are not residents of the West Bank. This color categorization which

was introduced for statistical purposes has become the basis for revoking and granting the citizenship, an action with no foundation neither in national law nor international law.

The excuses given by various Jordanian governments to justify this maltreatment of Jordanians of Palestinian origin are numerous. Sometimes the Jordanian officials maintain that this act shall help to preserve the right to return to Palestine, other times they say it is in compliance with the decision of the Arab League summit, meeting at Rabat, in 1974, recognizing the Palestinian Liberation Organization as the sole legitimate representative of the Palestinian people, at times they say that this act has been coordinated with the Palestinian Authority, and that stripping the Palestinian of his Jordanian nationality will help in building the State of Palestine. The list of excuses and justifications is endless, but it does not hold up when analyzed and disassembled, as all what is said is refuted by the Jordanian government's commitment to the Wadi Araba treaty signed with Israel in 1994 to resettle the refugees. Thus, how consistent this commitment with any of the previous arguments and justifications?

The truest description of the situation of Palestinian Jordanians came from the former Prime Minister of Jordan Ali Abu al-Ragheb, when he said, “Palestinians went to bed as Jordanian citizens, and woke up as stateless persons! No, this should not be happening... this is really disgraceful”.