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Human rights situation in Palestine and other occupied Arab territories

### **Joint written statement\* submitted by BADIL Resource Center for Palestinian Residency and Refugee Rights and Al-Haq, Law in the Service of Man, non-governmental organizations in special consultative status\***

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2013]

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\*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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## Denial of the right of return

Denying the return of Palestinian refugees is central to Israel's systematic oppression of Palestinians. By denying Palestinian refugees the right of return, Israel clearly forces them to remain displaced, preferably outside of Israel.<sup>1</sup> Israel's ongoing forced population transfer of Palestinians—characterized in part by the denial of return—is a continuing violation of Palestinian individual and collective rights. In fact, the erga omnes obligation to implement the collective right to self-determination first requires enabling refugees and other displaced persons to return to their homes and repossess their properties.<sup>2</sup> Consequently, it would be accurate to say that the Palestinian right to self-determination is meaningless without ensuring the Palestinian refugees' right to voluntary repatriation. Without the right of return, Palestinians remain marginalized and vulnerable to secondary and even multiple displacements. This issue grows more important as instability increases in states hosting Palestinian refugees—namely Syria, but potentially Egypt as well—and Palestinians face dangers in their host state, rendering them unable to remain in their present place of refuge or return to their places of origin long since dispossessed by Israel.

### Israel's consistent and continuous denial of the right of return

While the Israeli 1950 Law of Return and its amendments grant Jews around the world the right to move to Israel and acquire Israeli citizenship, Israel has denied the return of Palestinian refugees through legal and political mechanisms. The 1952 Citizenship Law restricts citizenship only to people present in "Israel, or in an area which became Israeli territory after the establishment of the State, from the day of the establishment of the State [in May 1948] to the day of the coming into force of this Law [in April 1952]," thus denying the right of absentees and refugees to return to their homes and claim citizenship. Additionally, the 1954 Prevention of Infiltration Law deems the, inter alia, following persons "infiltrators": national and citizens of nearby Arab countries; residents or visitors of those countries or the parts of Palestine outside Israel; and Palestinians without nationality or citizenship—or doubtful status—who moved out of what is now Israel in favor of a place outside Israel.<sup>3</sup>

Following the displacement of over 500,000 Palestinians after 1967, the Israeli military carried out a census of remaining Palestinians. Any unregistered Palestinian following this census was denied residency status and their right of return home. The Citizenship Law and census made it very easy for Israeli officials to continually displace Palestinians by merely denying their right to enter. Instead, in the best case scenario, a Palestinian refugee could only enter his/her homeland with a temporary, visitor's visa—the same kind given to foreign tourists. The 2001 Entrenchment of Negation of the Right to Return Law states that "refugees"—defined as persons who "left the borders of the State of Israel at a time of war and [are not] citizen[s] of the State of Israel, including, persons displaced in 1967 and refugees from 1948 or a family member"—"will not be returned to the territory of the State of Israel save with the approval of the majority of the Knesset Members."<sup>4</sup>

### Armed conflict perpetuates forced population transfer and results in multiple displacement

As of August 2013, approximately 50% of all registered Palestinian refugees in Syria have been displaced in Syria or to a neighboring country. Syria is particularly dangerous for Palestinian refugees due to their proximity to conflict zones.

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<sup>1</sup> <http://www.badil.org/en/al-majdal/item/1742-art-6>.

<sup>2</sup> <http://www.badil.org/en/documents/category/51-bulletins-briefs?download=584%3Abulletin-23-rights-of-return-and-self-determination-asserted-in-all-international-law>.

<sup>3</sup> <http://www.badil.org/en/documents/category/51-bulletins-briefs>.

<sup>4</sup> <http://www.badil.org/en/al-majdal/item/1742-art-6>.

Violence has affected Yarmouk refugee camp in Damascus, which houses the largest Palestinian population in Syria. Today, less than 30% of its 150,000 residents remain as many facilities—including health centers—have shutdown. To date, of the Palestinians displaced by the armed conflict in Syria, at least 235,000 are displaced in Syria; 92,000 in Lebanon; and 8,430 (or 2,075 families) in Jordan before its borders closed. Palestinians have also fled to Egypt and Turkey.<sup>5</sup> Since Palestinians have been denied their right of return to their homes in present-day Israel, they are multiply displaced: first by Israel, now from Syria.

Jordan publicly announced its policy of rejecting Palestinian refugees from Syria in the fall of 2012. On the other hand, Jordan welcomes Syrians, of whom at least 350,000 have entered. Families in which one spouse is Syrian and the other Palestinian are unable to enter together because the Palestinian spouse will be rejected. If the father is Palestinian, the children may be refused entry as well.<sup>6</sup>

Consequently, many Palestinian refugees fled to Lebanon until earlier this month. Before August 6, Lebanon allowed Palestinians from Syria to enter, but charged them \$17USD for a weeklong visa<sup>7</sup> while Syrian refugees are still granted a six-month extendable visa at no charge.<sup>8</sup> All Palestinian refugees in Lebanon are excluded from various jobs, schools, healthcare, and other services, while Syrian refugees can work without permits.<sup>9</sup> This illustrates the difference in treatment between Syrian refugees who have a home state and Palestinian refugees, who are considered to be stateless.

Another 10,000 Palestinians refugees have left Syria for Egypt; again, unlike their Syrian counterparts, they are not recognized as refugees and do not receive the same access to healthcare and other services. Palestinian refugees from Syria arriving in Egypt receive extendable weeklong visas, but concerns about being denied extensions have prevented many from seeking renewals. Meanwhile, Syrians typically receive three or six-month visas and can register with UNHCR, which Palestinians are precluded from accessing due to the existence of and lack of coordination with UNRWA.<sup>10</sup>

Egypt and other countries' discriminatory policies towards Palestinians may emerge from the desire to ensure that the UN—not host states—takes responsibility for Palestinians and also to protect Palestinian's claims to statehood.<sup>11</sup> If Palestinians were able to return to their rightful homes, such policies would be unnecessary as granting the right of return also provides a measure of self-determination on the individual and collective level. In turn, Palestinian refugees are extremely likely to return to their place of origin instead of suffering under harsh conditions in states like Lebanon and Egypt. The right of return would end the cycle of forced population transfer endured by Palestinians for 65 years.

Denial of the right of return violates international law

The right of return is explicitly grounded in Art. 12(4) of the ICCPR and Art. 13(2) of the UDHR.<sup>12</sup> The right of return and return itself are preconditions for the fundamental right to self-determination. The Human Rights Committee's General Comment No. 27 states that the right of return can be applied collectively to large groups as well.

The right of return exists in the law of nationality, customary law, international humanitarian law, international human rights law, and refugee law.<sup>13</sup> In fact, the obligation to respect the right of return of refugees has been a customary,

<sup>5</sup> <http://www.unrwa.org/etemplate.php?id=1847>.

<sup>6</sup> <http://www.hrw.org/news/2013/03/21/jordan-obama-should-press-king-asylum-seeker-pushbacks>.

<sup>7</sup> <http://www.unrwa.org/etemplate.php?id=1761>.

<sup>8</sup> <http://www.hrw.org/news/2013/08/07/lebanon-palestinians-fleeing-syria-denied-entry>.

<sup>9</sup> <http://www.hrw.org/world-report/2013/country-chapters/lebanon?page=2>.

<sup>10</sup> <http://livewire.amnesty.org/2013/06/25/fish-out-of-water-yet-again-palestinian-refugees-from-syria-in-egypt/>.

<sup>11</sup> <http://livewire.amnesty.org/2013/06/25/fish-out-of-water-yet-again-palestinian-refugees-from-syria-in-egypt/>.

<sup>12</sup> <http://www.badil.org/en/documents/category/35-publications?download=101%3Aindividualror-en>.

<sup>13</sup> <http://www.russelltribunalonpalestine.com/en/sessions/future-sessions>.

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). This resolution explicitly states that Palestinians have the right of return to their homes of origin. Because 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.<sup>14</sup> Moreover, since 1948, various UN bodies have regularly reaffirmed the Palestinian right of return.

Armed conflict, instability, and discriminatory policies result in multiple displacements of Palestinian refugees, which would not occur if Israel respected Palestinians internationally recognized right of return. While Palestinian refugees from such places like Syria face great risks, Jordan, Lebanon, and Egypt have rejected asylum-seekers. This violates the principle of non-refoulement, which is an accepted norm under customary international law that is codified in various human rights treaties. The denial of the right of return coupled with unfriendly policies have left Palestinians in limbo, sometimes unable to find even the temporary sanctuary that they must be afforded in cases of "massive refugee exodus," seen now in Syria.<sup>15</sup>

The undersigned organizations urge the Human Rights Council to:

1. Prioritize the fulfillment of the right of return in light of growing instability in refugee host countries, which has continued to forcibly displace Palestinians—sometimes multiple times;
2. Call upon all States to adopt practical measure to ensure that Israel respects the fundamental right of Palestinian refugees and IDPs to return to their homes, properties, and lands as well as their right to compensation for losses and damages over the years;
3. Coordinate efforts among different agencies, namely UNRWA and UNHCR as well as activate UNCCP in order to provide protection and relief to Palestinian refugees, particularly those displaced again by recent armed conflicts;
4. Call upon all States—especially Lebanon, Jordan, and Egypt—to open their doors to refugees fleeing Syria without discrimination and also increase their financial and humanitarian support for all refugees.

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Addameer Prisoners' Support and Human Rights Association; Ramallah Centre for Human Rights Studies NGO(s) without consultative status, also share the views expressed in this statement.

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<sup>14</sup> <http://www.badil.org/en/documents/category/35-publications?download=101%3Aindividualror-en>.

<sup>15</sup> <http://www.hrw.org/news/2013/03/21/jordan-obama-should-press-king-asylum-seeker-pushbacks>.