

# ISRAEL and the OCCUPIED TERRITORIES/ PALESTINIAN AUTHORITY

## The Right to Return: The Case of the Palestinians

### Policy Statement

#### Amnesty International's position on forcible exile and the right to return

1. In line with international law, Amnesty International opposes forcible exile -- when a government forces individuals to leave their own country on account of their political, religious or other conscientiously held beliefs or by reason of their ethnic origin, sex, colour, language, national or social origin, economic status, birth, or other status, and then prohibits their return, or, if they are already outside their own country, prevents them from returning for the same reasons. Amnesty International also opposes deportation from territories under military occupation in all cases.
2. Accordingly, Amnesty International calls for the recognition of the right of those who are forcibly exiled to return to their country. The right to return to one's own country is based in international law and is the most obvious way to redress the situation of those who are in exile. Amnesty International advocates the right to return regardless of the circumstances in which people have been exiled, whether, for example, it was the result of a decision relating to an individual or the product of mass expulsions, as in the practice of "ethnic cleansing".
3. Among the key human rights principles enshrined in the Universal Declaration of Human Rights is the right to return. Article 13 of the UDHR states: "*Everyone has the right to leave any country, including his own, and to return to his country.*"
4. The International Covenant on Civil and Political Rights (ICCPR), the treaty which gives legal force to many of the rights proclaimed in the UDHR, codifies the right to return, stating in Article 12.4: "*No one shall be arbitrarily deprived of the right to enter his own country.*"

5. The Human Rights Committee, which monitors implementation of the ICCPR, has given authoritative interpretation to the meaning of the phrase “own country”, which clarifies who is entitled to exercise the right to return. The Committee asserts that the right applies even in relation to disputed territories, or territories that have changed hands. In General Comment 27 (1999, paragraph 20) the Human Rights Committee determined:

*“The scope of ‘his own country’ is broader than the concept ‘country of his nationality’. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them.”*

6. Amnesty International believes that the right to return applies not just to those who were directly expelled and their immediate families, but also to those of their descendants who have maintained what the Human Rights Committee calls “close and enduring connections” with the area. **Lasting connections between individuals and territory may exist independently of the formal determination of nationality (or lack thereof) held by the individuals.** General Comment 27 (paragraph 19) explains that:

*“The right of a person to enter his or her own country recognizes the special relationship of a person to that country... It includes not only the right to return after having left one's own country; it may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person's State of nationality).”*

7. International law provides a standard for measuring the existence of a “close and enduring connection” between a person and his or her “own country” through a set of criteria established by the International Court of Justice in 1955. In the landmark *Nottebohm* case, which focused on the determination of nationality, the Court held that “*genuine*” and “*effective*” links between an individual and a state were based on “... a social fact of attachment, a genuine connection of existence, interests and sentiments...” The Court also noted that: “*Different factors are taken into consideration, and their importance will vary from one case to the next: there is the habitual residence of the individual concerned but also the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his*

*children, etc.*” Other criteria suggested by the Court include cultural traditions, way of life, activities, and intentions for the near future. The criteria established by the Court are likewise appropriate when determining a person’s “own country” in that they are regarded as a standard measure of the effective existence of ties between the individual and the State.

8. Amnesty International supports the return of exiles to their own homes or the vicinity of their own homes, where this is feasible. The rights of innocent third parties who may be living in the homes or on the lands of the exiles, should also be taken into account. Exiles who choose not to return are entitled to compensation for lost property; those returning should also be compensated for lost property.

9. Amnesty International recognizes that the resolution of protracted conflicts involving the displacement of populations may require durable solutions alternative to the exercise of the right to return, such as integration into the host country and resettlement in a third country. However, the decision to exercise the right to return or to avail themselves of alternative solutions must be the free and informed decision of the individuals concerned. The right to return is an individual human right, and as such should not be used as a bargaining chip by any of the parties involved in negotiating a settlement.

10. Amnesty International has supported the right to return of people from countries in all regions of the world, including Bhutan, Bosnia-Herzegovina, Croatia, East Timor, El Salvador, Guatemala, Kosovo, and Rwanda.

### The case of the Palestinians

11. With regard to the specific issue of Palestinian exiles, Amnesty International believes that durable solutions respectful of their human rights must be made available to them in any final peace agreement. Their right to return has been recognized by the United Nations since UN General Assembly Resolution 194 (III) of 11 December 1948, which states:

*“refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that*

*compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.”*

12. The right of Palestinians to return continues to be recognised by authoritative bodies within the UN system for the protection of human rights. In March 1998 the Committee on the Elimination of Racial Discrimination examined the report presented by Israel. In its Concluding Observations (see Israel. 30/03/98, CERD/C/304/Add.45) the CERD was unequivocal about the obligations of Israel in relation to the right to return of the Palestinians. It stated:

*“The right of many Palestinians to return and possess their homes in Israel is currently denied. The State party should give high priority to remedying this situation. Those who cannot repossess their homes should be entitled to compensation.”*

13. The UN General Assembly in Resolution A/RES/51/129 of December 1996 affirms that *“Palestinian Arab refugees are entitled to their property and to the income derived therefrom, in conformity with the principles of justice and equity”*. It *“requests the Secretary-General to take all appropriate steps... for the protection of Arab property, assets and property rights in Israel and to preserve and modernize the existing records.”* Regarding Palestinians in exile since the 1967 war, the General Assembly resolved in Resolution A/RES/52/59 of December 1997 that it: *“Reaffirms the right of all persons displaced as a result of the June 1967 and subsequent hostilities to return to their homes or former places of residence in the territories occupied by Israel since 1967.”*

14. Any peace agreement reached should resolve the issue of the Palestinian diaspora through means that respect and protect individual human rights. Amnesty International recognises that there are other considerations that must be addressed in the negotiations -- the security concerns of both sides, for instance -- but these issues must be resolved within a framework that does not sacrifice individual human rights to political expediency.

15. Accordingly, Amnesty International calls for Palestinians who fled or were expelled from Israel, the West Bank or Gaza Strip, along with those of their descendants who have maintained genuine links with the area, to be able to exercise their right to return. Palestinians who were expelled from what is now Israel, and then

from the West Bank or Gaza Strip, may be able to show that they have genuine links to both places. If so, they should be free to choose between returning to Israel, the West Bank or Gaza Strip.

16. Palestinians who have genuine links to Israel, the West Bank or Gaza Strip, but who are currently living in other host states, may also have genuine links to their host state. This should not diminish or reduce their right to return to Israel, the West Bank or Gaza Strip.

17. However, not all Palestinian exiles will want to return to their “own country”, and those who wish to remain in their host countries -- or in the West Bank or Gaza Strip -- should be offered the option of full local integration. The international community should also make available to Palestinian exiles the option of third-country resettlement. Whatever solution the individuals choose should be entirely voluntary, and under no circumstances should they be coerced into making a particular choice.

18. Where possible, Palestinians should be able to return to their original home or lands. If this is not possible -- because they no longer exist, have been converted to other uses, or because of a valid competing claim -- they should be allowed to return to the vicinity of their original home.

19. Palestinians who choose not to exercise their right to return should receive compensation for lost property, in accordance with principles of international law. Those returning should likewise be compensated for any lost property.

20. Amnesty International calls on all parties to the negotiations to agree terms for the establishment of an independent, international body which, *inter alia*, will oversee the implementation of the return process, set criteria for individual claims, examine and determine claims and disputes, and establish a process for awarding compensation.

21. Amnesty International calls on the international community to provide all necessary assistance, including funding, for the implementation of such a return program.

22. The same principles apply to Israeli citizens who were once citizens of Arab or other countries and who fled or were expelled from such countries. If they have maintained genuine links with such countries and wish to return, they should be allowed to do so. They should also be entitled to compensation for any lost property.

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