

Abstract:

This study discusses the subject of the legal system of the Palestinian nationality through a comparison with several other Arab legislations; it also discusses the nature of the Palestinian population and refugees and their nationality at the time of the British Mandate , and going through all the historical and political eras Palestine has passed through since Ottoman rule until the present time. The goal of discussing these eras was to present and analyze the effects of each era on the Palestinian population's nationality and the legality of it , to better visualize the future of this nationality.

This study was mainly a discussion and research of the Palestinian population nationality (within the British mandate's borders) since Ottoman rule till the time of the Palestinian authority ; taking into consideration the British mandate and the Israeli occupation of 1948 and 1967, and their effects of the nationality of the Palestinian population in each historical/political era. The study also includes the issues of refugees, Jordanian/Palestinian unity and later disengagement, and the Palestinian Authority and its sovereignty in the subject of nationality, especially the draft of Palestinian nationality law.

A problematic arose in this study where the legal side and the reality of Palestinian nationality were not in agreement, as a consequence of the different implemented policies in each era of the political conflicts in Palestine, which influenced the Palestinian nationality status , and we found that the law was following and tied to politics against the legal logic which states that law is above politics and that politics must follow law and serve it, as in any politically and legally stable country.

The importance of this study shows in being one of the first detailed studies that discuss this subject especially that it came in a sensitive political time for the Palestinian nationality , beginning with Palestinian-Israeli negotiations on the issues of borders and refugees and ending in presenting visualizations for the subject of nationality and the nature of it in Palestine, and specifically the Palestinian nationality Law project.

This study resulted in many conclusions such as the following :

The birth of the first Palestinian nationality at the time of the British Mandate starting at the Mandate's legal instrument, specifically article number seven.

The effect of the Israeli occupation year 1948 on the first Palestinian nationality to the residents of the occupied areas in 1948, to whom were given the Israeli nationality after having many hard conditions set to keep the demographics of the Arab –Israeli conflict -in which Israel aims to have higher number of Jewish population than the number of Arab population in the occupied areas- to suit the Zionist saying which is "Palestine is a land with no people , for a people with no land" . In addition to the refuge and Diaspora of many thousands of Palestinians in the neighboring Arab nations and of course the west bank and the Gaza strip.

The Jordanian-Palestinian Unity came to include the Palestinians living in the west bank , the Gaza strip and the Palestinian refugees to east Jordan until the speech of disengagement came and gave them back their original Palestinian nationality with out taking the necessary legal steps and measures to achieve significant political goals.

The Israeli occupation in 1967 increased the complexity of the situation for the residents of the west bank and Gaza strip to have Palestinian nationality, where the number of Palestinian refugees was in constant increase. The occupation set statuses which had no legal basis for the residents in east Jerusalem, and for the residents of the west bank and Gaza strip it gave another illegal status.

The Palestinian authority presented in reality many aspects of Palestinian sovereignty in the field of Palestinian nationality, the most prominent aspect was and still is the draft for the law of Palestinian nationality draft, and it is necessary to present many comments and notes till a Palestinian law that answers to the specific Palestinian needs is set.

After finishing this study our recommendations are:

- The importance of issuing a temporary law that grants the Palestinian nationality to the residents of the west bank including east Jerusalem, and the Gaza strip. Based on the international decisions 242 and 338 and the laws of the united Palestinian nationality 1925-1941 also the Jordanian nationality law of 1954 to have a visualization for

establishing a Palestinian nationality. And provide external protection for them , and contributing in applying laws legislated by the Palestinian legislative council.

- Granting Palestinian refugees (even if only as a formality) ; also granting them Palestinian passports after coordinating with their host countries and/or passports of the countries they live in. arranging with Arab countries to agree on letting Palestinian refugees to have double nationality as an exception and as support for the Palestinian people in their fight for independence and setting bilateral agreements with friend counties hosing those refugees.
- Slow and accurate study to put forward an all encompassing definition for the Palestinian nationality, to pave the way for a law that systemizes rules for the Palestinian nationality within the legal proceedings.
- Benefiting from previous experiences of other countries who recently worked on the nationality of their people , to make new legislations for the Palestinian nationality that are modern and up to international standards.
- Legislating a law of return specific to the special case of Palestinian refugees ,which grants all Palestinians or people from Palestinian descent (from both mother and father's side or from either side) the right to return to Palestine and have a Palestinian nationality . preparing an economic and social basis able to comprehend them, through investing the compensations of the refugees' case as a collective right in the growth and strengthening of the Palestinian infrastructure.