

# **Legal and Regulatory Framework of Highly-Skilled Migration:**

## **The Case of the Palestinian Authority**

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### **I. Introduction<sup>1</sup>**

This paper will discuss highly-skilled migration to and from the occupied Palestinian territory. The migratory movement of Palestinians of the Diaspora from the countries of their habitual residence (with the exclusion of the West Bank and Gaza Strip) to third states (again, with the exclusion of the West Bank and Gaza Strip) and back again is of very great importance. However, this paper will limit itself to those laws and policies of the Palestinian Authority (the PA) that are related to highly-skilled migration.

This paper is largely descriptive, in that it will not presuppose an ideal model against which the PA's performance should be tested, or to which it should aspire when dealing with issues of migration. It is also analytical in that it will build a theoretical construction out of the laws and policies regulating highly-skilled migration or the absence of said laws. Available empirical data, based largely on secondary sources, will be exclusively used for the support of the arguments I intend to make. In contrast to its theoretical character and in order to meet the expectations and needs of the groups targeted in this paper, I will include, in the conclusion, some prescriptive statements for policy makers.

Although it may seem to be biased in terms of certain solutions, this paper does not include open-ended arguments; rather it aims to encourage policy makers to explore new options. The arguments advanced will set the path for a largely normative statement that I defend in the conclusion: namely that the PA should take heed of the needs of its

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<sup>1</sup> This paper was written originally in 2010, and was published by European University Institute, Robert Schuman Centre for Advanced Studies. The paper was updated in 2013, with few changes on the main argument advanced in original paper with regards to the PA but the researcher was not able for lack of resources and information to update situation of migration issues in Gaza Strip. Also, as Israel controls the borders of the West Bank, there is no direct impact on migration issues raised in this paper, as a result of changes in the neighboring Arab countries, despite massive refugee problem in some countries: such as in Jordan, where many Palestinian refugees of Syria are fleeing Syria to Jordan, seeking safe refuge. Special thanks to Hiba Saida and Zeinab Tanbouz for their assistance in updating the paper.

population and that it should act accordingly. Ignoring issues related to migration in general, and highly-skilled migration in particular, is no solution. In fact, it has become part of the problem.

The actions that the PA can undertake include, but are not limited to, regulations codified in legislative texts. Most importantly, the PA needs to adopt policies, based on knowledge of the issues at stake, rather than on their consequences. The aim of these policies is: to plan for the departure of skilled Palestinians, and the accommodation of skilled immigrants, and their possible movements; and to anticipate the effects of highly-skilled migration on the Palestinian economy, on Palestinian society as a whole, and on Palestinian national interests in building a state in the West Bank and the Gaza Strip.

I will, in section I, assess the legal framework for highly-skilled migration in the territories under PA control. I will show how the absence of a definition and legal regulation is related to the anomalous jurisdiction of the PA, which exercises its authority in the so-called ‘autonomous territories’, thus coexisting with the Israeli occupation authorities. I will, in section II, insist on the need to consider issues of migration (to and from the occupied Palestinian territory) in a larger context, which goes beyond economic factors. The transnational dimension of migration will be covered in section III. This is particularly relevant for Palestinians, who are, for the most part, abroad (the diaspora) rather than in the West Bank and Gaza Strip.

The second part of the paper concerns policies aimed at attracting skilled migrants, the facilitation, the coordination, or the hindrance, of the departure of skilled Palestinians. There are – as we see in section IV – indicators that the PA encourages diaspora Palestinians to make their ‘return’ to the West Bank and Gaza Strip<sup>2</sup>. At the same time, section V, shows reticence in dealing with the ‘problem’ of the emigration of skilled Palestinians. However, there are some signals that this is no longer the case. This revival

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<sup>2</sup> The word ‘return’ and ‘returnees’ is often used to describe the migration of Palestinians of the diaspora into the territories under PA control, carried out since Oslo, in agreement with Israel. The interesting thing about these terms is that they imply ‘return’ even if many of these Palestinians have never been in the West Bank and the Gaza Strip before, and even if they, or their ancestors, were supposedly to return to the (1948) territories that are now part of the state of Israel. For this reason, I use inverted commas when talking about ‘return’ and ‘returnees’, in order to make a clear distinction between the right of return, and the ‘return’ to the territories under PA control.

should, we suggest in section VI, be encouraged, without being given a weight that it does not or cannot pretend to have.

Finally I will be interested in initiatives that connect the skilled Palestinians of the Diaspora with the West Bank and Gaza Strip. These initiatives are not carried out only at the official/PA level. They are, as we will see in section VII, often initiatives undertaken by civil society itself, whether by universities, aiming at coordinating, making agreements, and encouraging coordination with foreign institutions. Alternatively, there are also, in section VIII, initiatives by other organizations and programs, often carried out with the support of the international community or UN agencies, particularly UNDP. I will conclude, in section IX, with some remarks and evaluations of the existing legal framework and policies, suggesting that highly-skilled migration should be looked at more carefully and expressly, and that not only the consequences, but also the roots of this phenomenon should be dealt with.

## **II. Defining ‘highly-skilled migration’**

While ‘immigrant’ refers to a non-national<sup>3</sup>, the difference between a national and a foreign national is often blurred in the context of the occupied Palestinian territory. Many Palestinians are *de facto* denied access to the territories under PA control and have been denied an ID number (still under Israeli control as part of the population registry). In fact, immigrants are often simply Palestinians who are denied an ID number. Many of them may have entered the occupied Palestinian territory with a visa, and overstayed. For Israel, these subjects are illegally residing in the occupied Palestinian territory, despite, or maybe regardless of, being ‘Palestinian nationals’. Many of them do not have any other travel document or permit or visa to reside legally in other countries. Those Palestinians, who do not have an ID card, are, for Israel, inexistent in legal terms. If they are arrested by Israeli soldiers, they risk deportation. If they leave the country, they are not able to return. This is a major obstacle towards free movement within the territories under the PA control, and, hence, the productivity of these territories.

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<sup>3</sup> Reference in this paper is exclusively to international migration, not internal migration.

Accordingly, it may be asserted that, in the case of most Palestinians, their decision to emigrate from, to return or not to return to, their home country is affected not only by economic factors but also by political and security considerations<sup>4</sup>. Besides, many Palestinians have their habitual residence in a foreign country, due to their having been, for decades, refugees abroad. Legal instability and economic fragility, coupled with refugeehood and statelessness, push many refugees into migrating: it should be remembered that access to territories under PA control is not an option, due to Israeli restrictions (Khalil 2009*b*).

Arab states (mainly the oil-producing Gulf States) have been home to large flows of skilled and professional labour migrants (Hilal 2007, 1, 3; Rosenfeld 2002, 520). Other highly-skilled Palestinians, however, have tended to emigrate to the Americas and Western Europe (Farsoun 2005, 238). Some Palestinian refugees have obtained citizenship in a host country. Jordan, for example, is an exporter of skilled labour (mainly of Palestinian origin) to oil-producing Gulf countries (Hilal 2007, 29). Accordingly, the migration of highly-skilled Jordanian citizens (of Palestinian origin) may constitute a matter of interest for both the Palestinian and Jordanian authorities and necessitate coordination.

PA law does not define highly-skilled migration. In fact, it does not define migration in general<sup>5</sup>. The only legal provision dealing with ‘foreigners’ as a category of persons that are distinguished for the purposes of the law appears in the Palestine Labour Law No.7 of 2000<sup>6</sup>. According to article 14 of the Labour Law a foreign national, willing to work legally in territories under PA control, needs to obtain, first, a work permit, issued by the PA Ministry of Labour. Council of Ministers Decision No.45 of 2004 (article 2)

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<sup>4</sup> For this reason, it is suggested (for example, see: Hanafi 2008, 98) that the issue of the emigration of highly-skilled Palestinians be seen in the light of Palestinian refugees’ many exoduses, since 1948.

<sup>5</sup> For more about the reasons why many issues related to migration are still unregulated, cf. Khalil (2006; 2007).

<sup>6</sup> There are other references to foreign nationals in different PA laws, such as in the Law on Civil and Commercial Procedures No. 2 of 2001, related to determining cases of the jurisdiction of Palestinian courts over foreign nationals; or in the Law on Charitable and Non-Governmental Organizations No. 1 of 2000, which determines the conditions in which foreign nationals can be part of these associations or in which foreign associations can open a branch in the territories under PA control (for more, see: Khalil 2006). However, for the purposes of formulating incentives for foreign nationals to establish themselves in the territories under PA control, and the legal constraints for their stay, there are few references.

determines the conditions for granting this permit, which are, *inter alia*: non-competition with the local labour force; the need for his or her work; and reciprocity of treatment. The same article grants the permit on the basis of the suitability of the skills and professional experience of the foreign national, requesting the permit and the job that he or she is able to fulfill. It should be noted, however, that the Labour Law does not condition the granting of a work permit for foreign nationals with a legal title of stay in the territories under PA control. This situation is largely related to a jurisdictional anomaly of the PA itself, since the title of stay (the visa or permit) is not granted by the PA, but rather by the Israeli occupation authorities (Khalil 2008b, 8-9)<sup>7</sup>.

### **III. Bilateral and Multilateral Agreements**

Since only one third of the Palestinian population resides in the West Bank and the Gaza Strip, the majority of Palestinians are expatriates. Most of those Palestinians are refugees, especially from neighboring Arab countries. Others may have migrated voluntarily but are unable to return to the West Bank and the Gaza Strip. This means that, for Palestinians, the bilateral as much as the regional dimension needs to be taken into account when dealing with highly-skilled migration.

The Palestinian Liberation Organization (the PLO) for the benefit of the the PA concluded several bilateral agreements with foreign governments and international organizations: for example, the EU-PLO Interim Association Agreement (1997)<sup>8</sup>. However, most of these are trade agreements<sup>9</sup> that have no relevance for highly-skilled migration.<sup>10</sup> Accordingly, for Palestinians, an important forum for dealing with highly-

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<sup>7</sup> For more, see section V.

<sup>8</sup> The “Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part” *Official Journal L 187*, 16/07/1997 P. 0003 – 0135. [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21997A0716\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21997A0716(01):EN:HTML)

<sup>9</sup> The Palestine Trade Center documents trade arrangements with the USA, Canada, the European Union (EU), the European Free Trade Association (EFTA), Russia, Egypt, Jordan, Saudi Arabia, Israel, Turkey and GAFTA. Cf. <http://www.paltrade.org/en/about-palestine/trade-agreements.php>.

<sup>10</sup> To the best of my knowledge, there is no similar agreement related to arranging or organizing the departure of skilled Palestinians to work in host countries. Emigration is often based on individual initiatives, making use of unofficial networks, such as family or relatives, or members of the same local community (Lubbad 2008, 3) who are already in the host country.

skilled migration is the League of Arab States (‘Arab League’), of which ‘Palestine’ is an active member. The Arab League has recently undertaken several different initiatives relating to migration.

Highly-skilled migration is often referred to, by the Arab League, as the ‘migration of brains’ or ‘brain drain’. The Arab Declaration on International Migration can be cited here as an example<sup>11</sup>. In this declaration the Arab league recognized the negative impact of highly-skilled migration on development efforts and its negative effect on the achievement of Millennium Development Goals in developing countries. They proved particularly conscious of the impact of the migration of workers in vital sectors such as health, education and research and development. The declaration called on Arab States to adopt necessary procedures and measures to benefit national competencies to ensure their stability and to prevent possible brain drain. The declaration calls for reinforcing relationship networks with migrant competencies and their institutions, engaging them in development efforts and in the transferal and the resettlement of knowledge.

In order to carry out this declaration, the Arab Observatory for International Migration<sup>12</sup> was launched by the Population Policies and Migration Department of the League of Arab States<sup>13</sup>. Many activities were undertaken in this framework, limited though to enhancing knowledge<sup>14</sup> and the exchange of data<sup>15</sup>. The available information suggests that the number of highly-skilled migrants doubled during the last decade (between 1990 and 2000) all over the world. According to data collected by the Population Policies and

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<sup>11</sup> Resolution 1664- G.A 78- 4/9/2006, adopted by the League of Arab States, Social-Economic Council in its general assembly (78) in 2006 at ministerial level. Available at: [http://www.poplas.org/upload/mig\\_dec\\_en.pdf](http://www.poplas.org/upload/mig_dec_en.pdf)

<sup>12</sup> Interesting data is available on the Website of the Observatory: <http://www.poplas.org/migration/index.asp>

<sup>13</sup> [http://www.un.org/esa/population/meetings/seventhcoord2008/P12\\_LAS.pdf](http://www.un.org/esa/population/meetings/seventhcoord2008/P12_LAS.pdf)

<sup>14</sup> This is done through the organization of conferences, workshops and other kinds of meetings, such as the Coordination Meeting on Fostering More Opportunities for Legal Migration in Cairo, Egypt, from 8 to 9 October 2008, held in collaboration with the International Organization for Migration (IOM); and the Arab Ministerial Meeting for Migration and Expatriates in Cairo, Egypt, from 17 to 18 February 2008, organized by the League of Arab States, a conference held in Sharm El-Sheikh, Egypt, from 21 to 22 October 2008, in collaboration with the Office of the United Nations High Commissioner for Refugees. For more, [http://www.un.org/esa/population/meetings/seventhcoord2008/P12\\_LAS.pdf](http://www.un.org/esa/population/meetings/seventhcoord2008/P12_LAS.pdf)

<sup>15</sup> The Population Policies and Migration Department of the League of Arab States published a report in 2008, which is available in Arabic at: [http://www.poplas.org/upload/migration\\_2008\\_ar\\_1.pdf](http://www.poplas.org/upload/migration_2008_ar_1.pdf); for a summary of the findings in English, [http://www.poplas.org/upload/migration\\_2008\\_en.pdf](http://www.poplas.org/upload/migration_2008_en.pdf)

Migration Department of the League of Arab States, this was also the case for skilled Arab migrants<sup>16</sup>, with some professional sectors being affected more than others<sup>17</sup>.

#### **IV. An Increasing Palestinian Interest**

A Palestinian Expatriates Affairs Department (PEAD) was established only in 2007 by PLO Executive Committee Chairman, Mahmoud Abbas<sup>18</sup>. PEAD is responsible for establishing contact with Palestinian communities in the diaspora<sup>19</sup>. PEAD participated in the Arab League's Meetings related to Migrants and Expatriates by the Arab League: Palestine is , it must be remembered, an active member of the League.

It should be noted, however, that PEAD is not the only Palestinian institution interested in keeping up links with expatriates. PEAD, in fact, coordinates with the PLO Department of Refugees Affairs, the PLO Department of Political Affairs, and the PA Ministry of Foreign Affairs so as to safeguard the right of return for Palestinian expatriates, and, more generally, to ensure their protection<sup>20</sup>.

Finally, it should be noted that the PA is playing an increasingly central role in coordinating with host countries and defending Palestinian migrant rights in Arab host states<sup>21</sup>. Most importantly, the PA, as the only Palestinian entity exercising direct jurisdiction over (parts) of the Palestinian people and land, revived the West Bank and Gaza Strip, which plays the role of 'center' with regards to Palestinian expatriates, and the Palestinian people as a whole. The laws and policies, affecting the Palestinian people are debated, decided and applied around that authority (the PA), that land (the occupied

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<sup>16</sup> See the summary of the report, available at: [http://www.poplas.org/upload/migration\\_2008\\_en.pdf](http://www.poplas.org/upload/migration_2008_en.pdf)

<sup>17</sup> According to the above-mentioned report, the Arab world suffers "Brain drain in the Health Sector", noticing that "[t]he percentage of migration of doctors born in Arab countries is higher than the total percentage of skilled migrants[.]"

<sup>18</sup> For more, see the official website of PEAD: <http://www.pead.ps/>

<sup>19</sup> With the exception of Jordan, Syria and Lebanon, where UNRWA is present and where the issue of Palestinian refugees is followed by another PLO department of Refugees Affairs.

<sup>20</sup> For more about the mandate of PEAD, see: <http://www.pead.ps/page.php?do=show&action=ta3>

<sup>21</sup> In September 2009, for example, three bilateral agreements were signed between the Cuban and Palestinian authorities aiming at boosting their cooperation in higher education, culture and sports. The agreement on higher education included clauses on how to boost the two countries' work in developing science and education in favor of both peoples' welfare. The news was reported by: [http://news.xinhuanet.com/english/2009-09/27/content\\_12115780.htm](http://news.xinhuanet.com/english/2009-09/27/content_12115780.htm)

Palestinian territory), and that people (the Palestinians of the West Bank and Gaza Strip). They are not applied with reference to the PLO, the host countries, and the diaspora<sup>22</sup>.

### **V. Incentives targeting skilled immigrants<sup>23</sup>**

The PA, since its establishment in 1994, has encouraged diaspora Palestinians to return to the West Bank and the Gaza Strip, to invest in its economy and to help build up national institutions. Most importantly, hundreds of thousands of Palestinians *did*, in fact, return to the occupied Palestinian territory thanks to the Oslo agreements. The numbers, the names, and the modalities of this return, were rigorously scrutinized, debated and negotiated with, and finally approved by, Israel. The attitude of the PA towards the ‘return’ of diaspora Palestinians may have a national dimension. However, their return was also perceived as being necessary in building a Palestinian economy and to establish the new PA bureaucracy; while, both viable economy and viable institutions were deemed necessary for the establishment of the state.

In its earliest years, the PA adopted an ‘Investment Promotion Law’ (Law no.1 of 1998, replacing Law no.6 of 1995) aimed at attracting or encouraging foreign nationals to establish businesses in Palestine. As its title suggests, this law is related to investment (the attraction of capital) and does not target particular kinds of migrants. The law, in fact, targets any investor, whether foreign or not; the law also does not distinguish between foreign nationals and diaspora Palestinians<sup>24</sup>.

In both cases (attracting foreign nationals and encouraging diaspora Palestinians to ‘return’) the final word remains though with Israel. Since 1967, Israel has maintained full control over borders and the Palestinian population registry (Khalil 2008a; Khalil

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<sup>22</sup> The centrality of the PA and PA institutions with regards to Palestinian ‘expatriates’ explains the earlier interest of the Palestinian Legislative Council in the issue. According to the Palestinian Legislative Council By-Law of 2000 (art. 48), a permanent committee is established (Refugees Committee) which is responsible for following up issues related to expatriates, as much as to refugees and internally-displaced Palestinians.

<sup>23</sup> Given the difficulty of determining who is a Palestinian national for the purposes of PA laws, the distinction between incentives for attracting Palestinians of the Diaspora to the territories under PA control, and other incentives targeting foreign nationals, in general, needs always to be kept in mind.

<sup>24</sup> The reference here is to all those Palestinian nationals who do not have an ID card and are, thus, *de facto* denied access to the occupied Palestinian territory, unless provided with a visa or permit by the Israeli occupation authority. For more, see Section II.

2008b)<sup>25</sup>. Issues related to the exit of residents and foreign nationals from or to territories under PA control, and their re-entry, are still under direct Israeli control. Accordingly, a foreign national (for Israel, this term refers to any non-ID holder and Israel itself determines who can be granted an ID-number) wanting to access the territories under PA control needs a visa or permit; any visa needs to be renewed every three months and does not grant any right to work in Israel or in the territories under PA control (Khalil 2008b)<sup>26</sup>.

This goes a long way to explaining why PA laws avoid defining who is a Palestinian for the purposes of the law, and always make reference to ‘Palestinian’, not to ID card holders, or to those legally residing in the West Bank and Gaza Strip. This means that the law applicable to diaspora Palestinians who ‘return’ to the territories under PA control, even if they are not ID holders, is not the law for foreign nationals but the law for nationals (Khalil 2008a). Those Palestinians migrating to the West Bank and the Gaza Strip are not dealt with as immigrants, but as ‘returnees’.

## **VI. Incentives targeting Palestinians emigrants**

The establishment of the PA and the prospects for peace, as much as the agreement aimed at permitting the return of hundreds of thousands of Palestinians of the Diaspora, made the West Bank and Gaza Strip attractive for skilled migration. This phenomenon was, however, short-lived, and both Palestinian regions went back to exporting skilled labour after the onset of the second *Intifada* at the end of September 2000 (Hilal 2007, 3)<sup>27</sup>.

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<sup>25</sup> The way Rafah was regulated and administered following the Israeli withdrawal in 2005 did not change, until a deal was reached between the Israelis and the Palestinians (Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing). This agreement was later on suspended following Hamas’ taking control of PA institutions in 2007, and the retreat of the European Union Border Assistance Mission Rafah (EU BAM Rafah). Since then, the Gaza Strip has been under siege. For more, cf. Khalil (2009a, 271-272).

<sup>26</sup> In recent years, Israel has started to apply restrictive measures on foreign nationals wanting to enter territories under PA control. Many of those denied access to territories under PA control are of Palestinian origin, others are married to Palestinians. Many others work in international NGOs and Palestinian institutions, such as in Palestinian universities or are working with PA institutions such as the PA Ministry of Planning. A campaign was organized in order to urge the international community to intervene in this matter. For more about the Campaign for the Right to Enter the Occupied Palestinian Territory, cf. <http://www.righttoenter.ps/>

<sup>27</sup> According to the Palestinian Central Bureau of Statistics (cited in Hanafi 2008, 96), the number of Palestinians with habitual residence abroad, who returned to the Palestinian territories rose to 267,355, i.e. 10% of the total population. A report was published in 2007 by the Palestinian Central Bureau of Statistics

Some reports suggested that, two years after the *Intifada* had begun, the number of those who had left the West Bank had reached 100,000; these migrants were young, well-educated persons employed by the private sector, and PA employees who resigned their positions and left the territory (Sletten and Pedersen 2003, 31). Other reports bear witness to an increase in the number of visas or migration requests from western embassies and emigration offices between 2000 and 2001 (Bocco *et al* 2001, 36)<sup>28</sup>. In 2006 some 10,000 requests had been accepted, mostly from Palestinian graduates<sup>29</sup>. A survey, carried out in 2006, showed that almost one Palestinian in three was seriously thinking about emigrating<sup>30</sup>.

In 2010, the Palestinian Bureau of Statistics undertook a large scale survey to determine, *inter alia*, the number of Palestinians who emigrated 2005-2009. This was determined at 6,570 Palestinians *per* year (Palestinian Central Bureau of Statistics 2011, 58 cited by Malki 2013, 13). There have been critiques over the survey method, including the lack of information for the emigration of whole families where there are no remaining relatives to give information<sup>31</sup>. Majdi Malki (2013, 13-14), nevertheless, reached the conclusion that the emigration of Palestinians is mostly temporary. He argued, first, that the emigration of Palestinians is directed towards education (34.4%), then work (28.3%), and, then, accompaniment of a member of family who is emigrating (21.9%): it follows that those who emigrate for education will possibly return after the completion of their

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(available at: [http://www.pcbs.gov.ps/Portals/\\_PCBS/Downloads/book1487.pdf](http://www.pcbs.gov.ps/Portals/_PCBS/Downloads/book1487.pdf)). According to the report (p.92) the number of Foreign-Born Palestinian Population (only in the Remaining West Bank) in 2007 was 125,581. This number is slightly inferior to the number of foreign born Palestinian population in the West Bank 1997 (available at: [http://www.pcbs.gov.ps/Portals/\\_pcbs/phc\\_97/2037c758-f8db-4f66-9a0f-e5bcea387235.aspx](http://www.pcbs.gov.ps/Portals/_pcbs/phc_97/2037c758-f8db-4f66-9a0f-e5bcea387235.aspx)).

<sup>28</sup> It should be noted that, the fact that a large number of Palestinians hold a foreign passport (besides their PA travel document), that they have relatives in foreign countries, and that they may not need a visa to enter certain countries (such as Jordan for Palestinians on the West Bank) facilitated this movement (Bocco *et al* 2001, 36).

<sup>29</sup> According to reports by the PA Foreign Ministry, reported in *The Jerusalem Post* (June 10, 2007): <http://www.jpost.com/servlet/Satellite?cid=1181228581339&pagename=JPost%2FJPArticle%2FShowFull>

<sup>30</sup> 29% of people surveyed; see: <http://www.neareastconsulting.com/surveys/all/p43/> The former PA Minister of Planning, Samir Abdalla, is reported by PNN (Palestine News Network) to have said (in 25.3.2008) that the migration of highly-skilled Palestinians has slowed since relations with donor communities have been restored. [http://arabic.pnn.ps/index.php?option=com\\_content&task=view&id=28509&Itemid=45](http://arabic.pnn.ps/index.php?option=com_content&task=view&id=28509&Itemid=45) It is unclear though, to which data (if any) the former Minister of Planning was referring in making this claim.

<sup>31</sup> Malki 2013, 12.

education. Second, Malki noted that most of those who emigrate, reside in Arab countries (52%), particularly in Jordan (23.5%) and in the Gulf states (20.4%): this means, of course, that most Palestinian émigrés will have neither citizenship nor permanent residency status in those countries. This is because of the restrictive measures adopted by most Arab countries towards naturalization or residency rights for foreign nationals in general and Palestinians in particular.

The emigration of skilled Palestinians, often connected to political and economic deterioration in the occupied Palestinian territory, is dealt with as a problem because it deprives Palestinian society of highly-skilled professionals. It makes it impossible for them to contribute to the Palestinian economy. Various works have shown that ‘the continual loss, through emigration, of skilled and highly educated individuals from Palestinian communities in the West Bank and Gaza Strip meant their deprivation from the more innovative and dynamic members’ (Hilal 2007, 30). And in the PA Council of Ministers annual report (for the period 16/6/2007-16/6/2008) this phenomenon was considered one of the obstacles to re-construction and development (PA-Presidency of the Council of Ministers 2008, 37).

The danger of this phenomenon, however, goes beyond economic and social factors; and thus, beyond the emigration of skilled Palestinians. It has a clear national dimension (perceived as dangerous for the Palestinian cause, and for resistance to occupation), and more interestingly, it has even acquired a religious dimension<sup>32</sup>!

The main concern of the PA was in encouraging the ‘return’ of Palestinians, not their departure. It seems comprehensible, then, that the PA would be reticent in encouraging, coordinating or giving incentives for emigration. The PA, fearing the impact on

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<sup>32</sup> The PA grand *mufti* had taken an unprecedented step of issuing a *fatwa* forbidding Muslims to emigrate (Abu Toameh 2007). As for Christian churches, the emigration of Christians from Palestine was always a matter of concern, though it is not limited to the occupied Palestinian territory, it is often related to the Israeli occupation. See different reports published in local and international news, such as: “Strife Spurs Slow Exodus of West Bank Christians” published in *Los Angeles Times* (April 14, 2005): <http://articles.latimes.com/2005/apr/14/world/fg-holyland14> and a report about a recent document from the Vatican, published on Al-Quds (January 20, 2010): <http://www.alquds.com/node/231015> .

Palestinian unity<sup>33</sup>, did not even deal publicly with the issue; but when it did, it was clear that the PA did not have a specific policy with regards to emigration (Hanafi 2005b, 14).

The PA had recently adopted certain policies and undertaken certain actions, aiming at creating job opportunities – and thus reducing pressures on skilled and university educated Palestinians to emigrate: including (1) the activation by the Ministry of Labor of the Fund for Employment and Social Protection of Labourers, that was founded by Presidential Decree No. 9 of 2003<sup>34</sup>; (2) the creation of the Labour Market Information System<sup>35</sup>; (3) the agreement of all universities to establishing an Alumni Unit in each University to help graduating students in getting better access to labor market<sup>36</sup>; (4) the determination of the Minimum wage in 2012<sup>37</sup>, as requested by the PA Labour Law No.7 of 2000<sup>38</sup>; (5) the establishment of a National Team, presided over by Prime Minister Salam Fayyad himself, for the planning of a Social Security Law<sup>39</sup>. Such undertaken actions are coherent with the priorities set forward by PA National Development Plan (2011-2013): the Establishment of the Palestinian State and the Construction of the Future<sup>40</sup>.

However, despite this reticence, there are no laws forbidding, or policies restricting the migration of highly-skilled professionals<sup>41</sup>. But even if there were, it is difficult to imagine how the PA could enforce such rules, while not in control of its own borders. The PA, indeed, has no legal tools or, indeed, jurisdiction to enforce policies aimed at

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<sup>33</sup> Until recently, the issue of emigration was not well debated, researched or assessed. As noted by (Bocco *et al* 2001, 35), '[t]he emigration phenomenon seems to be a well-kept secret, and it is easy to understand why. Reporting about it may well be perceived as detrimental to Palestinian national unity.'

<sup>34</sup> Available at: <http://muqtafi2.birzeit.edu/en/Legislation/LegCard.aspx?id=14222>

<sup>35</sup> Check website at: <http://lmiis.pna.ps/>

<sup>36</sup> At Birzeit University for example: the unit was under construction as this paper was being finalized for publication.

<sup>37</sup> The Council of Ministers No.11 of 2012, available at: <http://muqtafi2.birzeit.edu/Legislation/PDFPre.aspx?Y=2012&ID=16472>

<sup>38</sup> Available at: <http://muqtafi2.birzeit.edu/Legislation/PDFPre.aspx?Y=2000&ID=13975>

<sup>39</sup> As confirmed by Asef Said, undersecretary at the Ministry of Labor for Districts Affairs, in an interview with research assistant Zeinab Tanbouz on 12 March 2013.

<sup>40</sup> Available at: <http://www.mopad.pna.ps/attachments/article/3/ArabicNDPforwep.pdf>

<sup>41</sup> As confirmed by Fahoum Shalabi, Undersecretary of the PA Ministry of Higher Education in an interview with research assistant Zeinab Tanbouz on 12 March 2013.

reducing or regulating this issue<sup>42</sup>. The lack of jurisdiction partially explains the lack of correct numbers concerning the phenomenon of migration. With the exception of the 2010 Survey cited above, there are, indeed, few resources and little research on migration in the Palestinian territory<sup>43</sup>.

## VII. Cooperation with Foreign Academic Institutions

The Higher Education Law No.11 of 1998, states that higher education institutes should aim, *inter alia*: at opening the way for all qualified students to enter higher education; and developing their educational capabilities domestically and abroad (art.4/1). The law, then, enumerates the ‘responsibilities’ of the Ministry of Higher Education in this regard<sup>44</sup>. It should be noted, however, that Palestinian universities are older than the PA. As a matter of fact, they are mostly autonomous private institutions.

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<sup>42</sup> While one may argue that Israel, which often restricted entry or re-entry of Palestinians, would have no particular interest in coordinating the issue of emigration of Palestinians with the PA, it is a matter of fact that, during the second *Intifada*, it was Jordan that unilaterally imposed restrictions on the entry of Palestinians to the West Bank so as to avoid mass migration (Hanafi 2005b, 11). Similarly, it was Egypt, again unilaterally, that imposed restrictions on the entry of Gaza Palestinians to Egypt in 2007, following the Israeli siege of Gaza.

<sup>43</sup> According to Mohammad Dreidi, from the Palestinian Central Bureau of Statistics. Phone interview with research assistant, Hiba Saida, 14 March 2013.

<sup>44</sup> The Ministry of Higher Education has the following responsibilities: ‘...3) To conclude official governmental agreements relating to the organization of international cooperation relations in the field of higher-education development... 10) To coordinate the affairs of expatriate students and teachers according to the agreements and contracts concluded with their States. 11) To recognize Arab and foreign higher-education institutions, form the committees which are concerned therewith, organize the activities of student service offices, supervise the affairs thereof, publish the tables relating to the names and addresses of the recognized universities and any amendment made thereon. 12) To specify the conditions according to which foreign higher education institutions would be allowed to establish branches or institutions thereto in Palestine as well as grant them the necessary licenses for the carrying out of the work thereof. 13) To formulate the general policy for scholarships, grants, education assistance and to follow up the affairs within the country and abroad as well as formulating the regulations and instructions for the implementation of this policy. 14) To recommend the consultants and attachés for the strengthening of cultural relations with sister and friendly countries. 15) To provide the additional sources of funds necessary for making up the coverage of the expenses relating to Palestinian higher-education and scientific research institutions as well as defining the basis and mechanism of the distribution thereof. 16) To coordinate with the Ministries and concerned parties in formulating the regulations for licensing the practice of occupations which require scientific qualifications. 17) To determine the minimum averages in the general secondary education certificate examinations or the equivalent thereof as a basis for acceptance in the Palestinian higher education institutions. 18) To fix the number of students who are permitted to be accepted with every one of the Palestinian higher education institutions on the basis according to which such institutions and educational programmes are accredited in the light of the potentials thereof. 19) To approve the holding of any general examinations after the general secondary exam which the higher-education institution deems necessary. 20) To equalize and certify higher-education certificates and the general secondary education certificate or the equivalent thereof according to the equalization and certification regulations.’

Many Palestinian universities established cooperation agreements with other universities to facilitate the exchange of students and professors. Since only limited PhD programs have recently been adopted in a few Palestinian Universities, Palestinian students often need to study abroad<sup>45</sup>. Agreements with foreign universities regularly include arrangements to host Palestinian students in foreign universities. Those who receive a scholarship through a university frequently sign an agreement with the local university to return, once their studies abroad are terminated, to work at local universities for a number of years. There are also several joint programs (and joint degrees) between Palestinian local universities and foreign universities. Such programs encourage the exchange of students and professors. This is the case, for example, with ‘Erasmus Mundus University II’<sup>46</sup>, and the PEACE Programme<sup>47</sup>.

It should be noted, finally, that the crucial problem pertaining to higher education in the occupied Palestinian territory is not necessarily a lack of academic skills, but rather the negative correlation between the growing numbers of academically-skilled Palestinians and the narrow opportunities for the exploitation of these skills in the under-developed local labor market (Rosenfeld 2002, 531). Accordingly, it is crucial that any policy or law dealing with highly-skilled migration investigates the incentives and opportunities that the local work market is offering.

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<sup>45</sup> For Mirvat Bulbul, Head of the Accreditation and Quality Assurance Commission, the lack of a PhD program is considered one of the major reasons for emigration. Interview with research assistant Zeinab Tanbouz, 12 March 2013.

<sup>46</sup> This program, established within the framework of the new European mobility program (Erasmus Mundus External Cooperation Window), was approved by the European Commission. The Vrije Universiteit Brussel took a lead in setting up a consortium of 20 universities, 10 from Europe and 10 from Egypt, Palestine and Israel which are partners of Erasmus Mundus University II. Partner Palestinian Universities are: An Najah National University, Nablus, Al Quds University, Jerusalem, Arab American University, Jenin, Al Azhar University, Gaza, Community College of Applied Science and Technology, Gaza. For more about the program, see [http://portal.unesco.org/education/en/ev.php-URL\\_ID=54247&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/education/en/ev.php-URL_ID=54247&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>47</sup> PEACE stands for “Palestinian-European-American Cooperation in Education”. The program was established in 1992 under the direction of UNESCO. The objectives of PEACE are: “Promoting international cooperation with Palestinian Universities through: exchange of staff and students; grants for Palestinian students and young academics to complete graduate studies abroad; academic projects aimed at enhancing teaching and research at Palestinian higher education institutions.” There are 61 member institutions in 18 countries and territories in this program. For more, see: [http://portal.unesco.org/education/en/ev.php-URL\\_ID=52853&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/education/en/ev.php-URL_ID=52853&URL_DO=DO_TOPIC&URL_SECTION=201.html)

## VIII. Temporary and Virtual Return

The participation of skilled Palestinians is vital in the construction of a viable Palestinian state (Hanafi 2005c). However, given the impossibility of permanent physical return due to Israeli restrictions, even a temporary return remains an option worth exploring<sup>48</sup>. Here, two initiatives, referred to rightly as “Promising Arab Initiatives”<sup>49</sup>, are worth exploring: TOKTEN and PALESTA. Both are unofficial (that is they are sponsored by neither the PLO or PA) and aim at establishing contact between highly-skilled Palestinians in the Diaspora and the country of origin. The former encourages their temporal or permanent return, the latter aims at creating links, using technology (internet) as a way to help local Palestinian institutions profit from highly-skilled Palestinians in the Diaspora.

TOKTEN stands for the Transfer of Knowledge through Expatriate Nationals. It is a global UNDP mechanism to attract expatriate nationals, who have migrated to other countries and who have achieved professional success abroad. It aims to mobilize them in undertaking short-term consultancies in their countries of origin, under the UN umbrella<sup>50</sup>. TOKTEN is often cited as a ‘Brain Gain’ success story. More than 400 Palestinian experts have contributed to Palestinian development through TOKTEN<sup>51</sup>. Successful and promising as this may be, the number of skilled professionals has hardly been significant (Hanafi 2005a, 586).

PALESTA (Palestinian Scientists and Technologists Aboard) is an internet-based network. It is funded by UNDP and hosted by the PA Ministry of Planning (Hanafi 2005b, 27). Its aim is to cover the gap created by the limited physical return of Palestinian professionals, enabling communication and exchange between Palestinian professionals and the Palestinian homeland<sup>52</sup>.

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<sup>48</sup> For more about such initiatives for facilitating the temporary return of skilled Palestinians from the diaspora see Hanafi (2008, 99) who refers to ‘virtual return’, see below section VIII.

<sup>49</sup> This is the way the Population Policies and Migration Department of the League of Arab States referred to these initiatives in its report of 2008. For more, see Section III.

<sup>50</sup> For more, <http://www.toktenpalestine.org/page.aspx?pid=1>

<sup>51</sup> <http://www.toktenpalestine.org/page.aspx?pid=3>

<sup>52</sup> For an extended discussion of TOKTEN and PALESTA and their impact, see Hanafi (2005a).

UNDP, however, reported several challenges facing PALESTA, including: a low participation rate; the lack of interaction among network members; the inability to mobilise local organisations to identify problems that obstruct development in the Palestinian Territories; and insufficient co-operation between PALESTA and local institutions and ministries (UNDP- Capacity Development Group, 2007, 17).

## **IX. Conclusion**

The PA has no jurisdiction over the borders of the occupied Palestinian territory, nor, indeed, does it control the Palestinian population registry. The West Bank and Gaza Strip are still deemed occupied territory, and Israel remains an occupying power. This fact explains why the PA did not legislate much on migration; and why, in those few cases where it did, the legislative product was ambiguous and indeterminate, with regards to what makes a Palestinian (and a non-Palestinian) in legal terms.<sup>53</sup> PA policies towards the ‘return’ of Palestinians, though largely compatible with the objective of establishing a Palestinian state for all Palestinians, were nonetheless typically dealt with on an *ad hoc* basis.

The first waves of Palestinians were, for the most part, absorbed by the nascent PA bureaucracy and security services; the PA has been the major job provider for the last 15 years. Now that it is saturated, and the tendency is reversed, different options need to be explored. The Palestinian economy is dependent, to a very great extent, on the Israeli market. It is also undermined by Israeli unilateral restrictive acts, while depending on foreign aid. The local labour market is consequently poor. The utopia of Palestine (now taken to mean the West Bank and Gaza Strip, while in reality the real jurisdiction of the PA is more restricted) for all Palestinians, needs to come face to face with reality. Indeed, the PA must meet its many internal challenges, both social (the integration of newly-arrived Palestinians, with different cultures, different levels of education, different experiences...) and economic (the possibility of creating new jobs, the viability of the PA public sector to absorb and maintain its huge number of civil servants and military and security agents, the poverty level and the dependency on international aid). Similar doubts can be raised with regards to the possibility of accommodating skilled Palestinians

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<sup>53</sup> For more, see: Khalil 2006.

in jobs that are adequate to their specializations and professions, in order to make it possible to profit from their knowledge and skills.

The doubts I express and the arguments I make are not related to the incapacity of the West Bank and Gaza Strip, to accommodate new arrivals, and new skilled immigrants. It is rather related to the absence of a migration framework, in general, and a highly-skilled migration framework in particular: the absence of legal regulations makes the process unpredictable, depending on *ad hoc* measures undertaken by the PA, host countries, and Israel. Besides, the absence of policies means that national concerns will be left to individual initiatives. Such individual initiatives will be vulnerable to crisis, whether related to the occupation itself or not.

The fact that Israel maintains control of Palestinian borders and the population registry does, indeed, mean that the PA can postpone dealing with issues of migration, and avoid the formation of laws, regulations and even policies. The weak labor market, the high level of unemployment, and the fragmented and dependent economy, are all depressing indicators. They show that the West Bank and Gaza Strip are incapable, in their current shape, of absorbing new arrivals and of satisfying the needs of its population. Given the likely unattractiveness of its labor market for highly-skilled migrants, the West Bank and Gaza Strip may witness a very pervasive movement of migration: the tendency of skilled Palestinians to migrate may intensify, while only under-skilled Palestinians, with no better chances abroad, will make their 'return' to the stuttering economy of the West Bank and in Gaza Strip.

In this sense, the recent interest of the PA in migration is something to be encouraged: better late than never<sup>54</sup>! This revival should not be limited in the interests of the 'dangerous' phenomenon of skilled Palestinian emigration; rather, the PA should also look at the reasons for migration: lack of economic opportunities, political and security instability, which leads to 'hardship and hopelessness, especially for the young' (Lubbad 2008, 3). The PA should concentrate on the creation of an attractive economy and a

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<sup>54</sup> See section IV.

market that can absorb skilled Palestinians<sup>55</sup>. If, and when, this happens, many skilled Palestinians would have less temptation to leave because they would be absorbed into the national labour market. The skilled Palestinians of the diaspora, meanwhile, would not only be able to ‘return’ to the West Bank and Gaza Strip. They would also be motivated to stay longer, maybe permanently in the West Bank and Gaza Strip, so building up the Palestinian state.

PA policies should be based on knowledge of the real capacity of the local market and of the needs of the West Bank and Gaza Strip. The PA, in other words, does not only need to encourage the return of skilled migrants; it needs to make their return *work*. This return should not be a burden for the PA, nor should it be a disappointment for skilled and professional Palestinians; rather it should be a success story. These skilled Palestinians may be facing the hard reality of whether to remain put but unemployed in Palestine, and so to suffer political and economic instability there, or to re-emigrate to other countries. Migratory movements intensified, according to available data, during the second *Intifada*<sup>56</sup>, and following the Siege of Gaza, in 2007<sup>57</sup>, This suggests that the Palestinians in question may choose the second option.

However, it must also be said that the fact that the Palestinians look for better jobs and a better level of life, in the absence of alternatives in the territories under PA control, is a completely understandable concern. This has been the case historically, and still is, for many populations all over the world. The ‘national’ interest in keeping Palestinians in Palestine, and most importantly, keeping skilled Palestinians in the occupied Palestinian territories to build ‘Palestine’ is also though a legitimate national concern. This does not mean, of course, that the PA should reject, *a priori*, a variety of options because they are, or seem not to be, ‘politically correct’.

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<sup>55</sup> I am aware of the fact that many of the issues that I have raised here are largely out of the control of the PA itself, given the unilateral Israeli acts towards the Palestinians people and their land which renders impractical any developmental efforts.

<sup>56</sup> See section VI.

<sup>57</sup> According to Associated Press, thousands of Palestinians are faking illness to flee the Gaza siege. See full article in Haaretz (12.10.2009), available at: <http://www.haaretz.com/hasen/spages/1134137.html>

To 'put an end' to the emigration of skilled Palestinians, the PA need not adopt restrictive measures towards those Palestinians wanting to exercise their right to freedom of movement. Rather, this phenomenon needs to be dealt with by looking at the reasons behind their departure, and the necessary incentives for them to stay. One may object: 'easier said than done'. And the point is a valid one. After all, there is no denying the already difficult financial problems of the PA. There is also the economic fragility of the West Bank and the Gaza Strip, and the PA's complete dependency on donors; not to mention the internal division between the Hamas-controlled Gaza Strip and the PA-controlled West Bank. But what is the alternative? People are already emigrating. It is most important not to force them to stay. It would, in any case, be impossible! Given this, why not encourage them to reach their objectives in a way that marches hand-in-hand with national interests?

The PA, despite the reticence it has, thus far, shown should work on arranging and coordinating with host countries to facilitate migrant integration in host countries' work markets. Indeed, their work situation, their rights and their freedoms in Arab or foreign markets should be at the center of the PA's concerns. Given the nature of the PA, as a non-sovereign entity, there is a need for full cooperation with PLO offices and host countries. Most importantly, given the current waves of migration, so dependent on unofficial networks (family or relatives, or private initiatives), the PA does not need to replace but to compliment a pre-existing structure. These networks are often the only safety nets for Palestinians out in the diaspora.

The PA might even work on arranging the departure (and later on the return) of skilled Palestinians, in the framework of bilateral agreements with neighboring Arabs or other states: if people emigrate, why not make planned arrangements? Despite the many likely inconveniences, the emigration of Palestinians may contribute to decreasing unemployment rates within the young, well-educated and highly-skilled population, a population which the local market cannot fully absorb. The PA may also give due consideration to the positive impact of the work of Palestinian migrants in foreign countries, towards the development of the Palestinian national economy: they inject remittances into the local economy. This may also increase PA assets, thus decreasing the dependency of the PA on foreign aid.

In all circumstances, the Israeli occupation, the siege of the Gaza Strip, and the fragmentation of the West Bank are major obstacles to developing a viable and attractive Palestinian economy. Many issues related to migration, currently unregulated and unplanned, will need to be dealt with, when and if the PA takes control of the movement of population, to and from the West Bank and Gaza Strip. While still under occupation, the legal regulation, the definition of Palestinians and non-Palestinians will, at best, be irrelevant. Given the Israeli control of both the borders and the population register it cannot be otherwise. This does not mean though that the PA has to avoid dealing with migration issues all together.

Some may suspect that any policies aimed at coordinating the departure and the arrival of skilled Palestinians are contrary to Palestinian national interest: there is the fear of losing the demographic challenge and fear of their impact on the right of return. This may, in fact, be the case. However, this author would argue that, the PA needs to take the needs of the population under its jurisdiction seriously, and also to take the necessary actions to ameliorate their living conditions. Most importantly, this author would challenge the overwhelming tendency to prioritize national interests over an individual's freedom to opt for a better life, for themselves and for their families.

The PA may decide to continue, as a matter of national policy, to discourage the departure of Palestinians, and to encourage the 'return' of Palestinians from the diaspora maintaining, in this way, the *status quo*. But if they do so, it will no longer be an arbitrary decision, a reaction to circumstances and others' decisions (whether host countries, Israel, or even private initiatives). It will, rather, be a reflected and planned solution. Not taking action is a decision that one may or may not agree with, but it remains a more attractive option than not taking a decision.

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**XI. List of Interviews:**

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Mohammad Dreidi, the Palestinian Central Bureau of Statistics. Phone interviewed on March 14, 2013.

Asef Said, undersecretary at the Ministry of Labor for Districts Affairs. Interviewed on March 12, 2013.

Fahoum Shalabi, Undersecretary of the PA Ministry of Higher Education. Interviewed on March 12, 2013.