

al_majdal



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BADIL Resource Center for Palestinian Residency & Refugee Rights



Restitution – Making

Return

a

Reality

BADIL takes a rights-based approach to the Palestinian refugee issue through research, advocacy, and support of community participation in the search for durable solutions.

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Restitution – Making Return a Reality

When Palestinian refugees and internally displaced talk about the right of return they speak about return to a specific place – a village, a piece of land and a home. No one really knows how many refugees would choose to return if given the chance to do so. There are simply too many factors to consider. But like refugees from Guatemala, Bosnia, Kosovo and elsewhere, displaced Palestinians that wish to return to homes, lands and properties should be allowed to do so.



Destruction in Rafah, Gaza Strip, September 2005. © Nathalie Bardou/BADIL.

The new international Principles on Housing and Property Restitution for Refugees and Displaced Persons endorsed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights in August (reprinted in this issue of *al-Majdal*) provide a universal set of guidelines to resolve Palestinian claims. Prepared by the UN's Special Rapporteur on Housing and Property Restitution, Paulo Sergio Pinheiro of Brazil, the 'Pinheiro Principles' provide the first consolidated global standard on the housing, land and property rights of the displaced.

The Pinheiro Principles will come as no surprise to Palestinian refugees and internally displaced. The UN enunciated the same general principles in 1948 when the General Assembly reaffirmed (Resolution 194/III) that all persons displaced as a result of the conflict in Palestine should be permitted to return, not

just to their homeland, but to their homes. The General Assembly reiterated the right of the refugees to restitution in 1974 (Resolution 3236/XXIX) and again in 1981 (Resolution 36/146C) when it also said that they have a right to the revenues from their properties.

Land is still the issue...

The loss of home, land and property is not a mere incident of history for Palestinians. It has continued for more than five decades. Even today thousands of dunums of land are being expropriated, properties damaged and homes destroyed as Israel continues to build Jewish colonies and the Wall in the West Bank in contravention of international law. In August Israel began to expropriate more than 1,800 dunums of land to extend the Wall around Ma'aleh Adumim (E-1 Plan) effectively annexing the Jewish colony to Israeli-occupied eastern Jerusalem. Moreover, in September Israel's Supreme Court ruled that the Wall was legal.

At the same time, Israel's redeployment (disengagement) from the Gaza Strip and small parts of the northern West Bank over the summer means that Palestinians will, for the first time in nearly 60 years, face the challenge of sorting out restitution claims to land that Israel expropriated to build Jewish colonies and military bases. The Palestinian Authority issued a Presidential Decree and has compiled a draft law to deal with the land question in Gaza and the northern West Bank, including restitution of privately-owned property. It remains to be seen how this law will be enacted in practice.

While Israel was returning Palestinian land in the Gaza Strip, however, parallel plans to strengthen Jewish settlement in predominantly Palestinian inhabited areas of the state, especially in the Galilee and in the Naqab, heightened concerns about unresolved Palestinian housing, land and property claims and the transfer of remaining Bedouin into designated 'concentration points.' The US administration has said financial aid to Israel should serve all sectors of the Israeli population, but American support for Jewish restitution, including the establishment of a special office during the Clinton administration, stands in sharp contrast to the complete lack of support for outstanding Palestinian claims.

... and it just won't go away

Ariel Sharon reminded the United Nations of Israel's position on land rights of Palestinians when he spoke to the annual meeting of the UN General Assembly in September. "The right of the Jewish people to the Land of Israel," said Sharon, "does not mean disregarding the rights of others in the land." [Emphasis added] In other words, Palestinians may have rights, but this does not include a right to land. Sharon's language mirrors that of the infamous 1917 Balfour Declaration recognizing Zionist demands for a Jewish national home in Palestine. The grave implications of this position for a solution to the conflict extend to all Palestinians - those in the OPTs, inside Israel, and in exile.

In contrast, Majdi al-Khalidi, chief policy analyst at the Palestinian Foreign Ministry has said that, "If individual Jews can prove ownership of land [in the Gaza Strip] before Israel's creation in a Palestinian court, their claim will be recognized. Israeli law is different in this respect." ("Palestinian Jewish Settlers?" *al-Jazeera*, 5 June 2005) While it is unclear who would be responsible for such restitution claims since Palestinians did not expropriate the property and Israel did not raise the issue when it left the Gaza Strip, it is likely that the silence of the Israeli government on this issue is related to fears about creating precedents for restitution of Palestinian refugees.

"The adoption of the Principles by the UN will be an important step towards ensuring all restitution strategies, policies and programs, as implemented at both the national and international level, reflect international human rights and humanitarian law and standards. Displacement and forced migration are all too often results of massive human rights violations, including forced evictions. Displacement in most cases is the entry point to a future of uncertainty and insecurity, rendering individuals vulnerable to other human rights violations."

"The best solution to the plight of millions of refugees and displaced persons around the world is to ensure they attain the right to return freely to their countries and to have restored to them housing and property of which they were deprived during the course of displacement, or to be compensated for any property that cannot be restored to them. It is the most desired, sustainable, and dignified solution to displacement."

Paulo Sergio Pinheiro
UN Special Rapporteur on Housing and Property Restitution for Refugees and Displaced Persons

“The right to housing, land and property restitution is increasingly recognized as a fundamental element of the right to return for both refugees and IDPs. The right to return is now understood to encompass not merely returning to one’s country, but also to one’s original home, should one wish. This is a very positive development for refugees and IDPs wishing to return home.”

“The Middle East is a good example of this. Housing and property restitution is an essential element of reconstruction and recovery in post-conflict situations. It is a primary means of reversing ‘ethnic cleansing’ and vital to securing a war-torn nation’s future stability. The plight of refugees and IDPs such as the six million Palestinian refugees, and millions of other displaced persons in Sudan, Sri Lanka, the Balkans and elsewhere, clearly indicates that the prospects for workable peace agreements are highly unlikely until the restitution question is properly addressed.”

“The dispossession of Palestinian homes, lands and properties remains at the heart of the longstanding conflict which today seems no closer to being resolved. More than half of the original Palestinian population has been displaced from Palestine, and some six million Palestinian refugees need to achieve residential justice through the exercise of their legal rights to housing, land and property restitution. Any peace agreement between the Israelis and Palestinians will not be feasible until Israel acknowledges the right of Palestinians to return to and re-possess their homes which are now controlled by Israel.”

Scott Leckie
Executive Director, Centre on Housing Rights and Evictions (COHRE)

Israel and the Jewish Diaspora, which set some of the most important precedents for restitution in the 20th century, should be the first to realize that the restitution issue will simply not go away. As then Secretary-General of the World Jewish Congress, Israel Singer, told the US Congress, Sub-Committee on Foreign Affairs in 1994, “The return of that which was his, and which belonged to his and her community is a human right which every man deserves.” Restitution is not about trying to ‘turn back the clock’; like Jewish restitution in Europe, addressing the right of displaced Palestinians to housing, land and property is the remedy which can allow both Palestinians and Israelis to take the first steps to build a new future.

A forward-looking strategy

All refugees and displaced persons have the right to return to, recover and reside in their original homes, lands and properties. Palestinians should be afforded equal treatment. Allowing those Palestinian refugees and internally displaced wishing to do so to repossess their homes, lands and properties, while protecting the legitimate rights of Israelis, in a manner consistent with the new Pinheiro Principles, is essential to the resolution of the conflict, post-conflict peace-building, safe and sustainable return and the establishment of the rule of law.

Unfortunately, there is little prospect of an immediate rights-based intervention by the international community to apply the Pinheiro Principles to the Israeli-Palestinian conflict. As the UN Special Rapporteur on the situation of human rights in the 1967 OPTs observed in his last report, “Recent interventions suggest that the Quartet and the road map process to which it is committed are not premised on the rule of law or respect for human rights. If this is so, the road map runs the risk of repeating the failures of the Oslo process which likewise took no account of human rights considerations.” (UN Doc. A/60/271, 18 August 2005)

Palestinian, Israeli and international civil society can help pressure states to uphold international law and human rights through boycotts and divestment. And they can campaign for state sanctions against Israel until it complies with international law. But Palestinians and Israelis can also begin to prepare for future restitution. There is no need to wait for a peace agreement. They can raise awareness of the basic rights to restitution, organize needed documentation, and they can begin to explore practical programs for restitution. These activities can help begin to forge a solution regardless of inaction at the international level.

Making the Right to Return a Reality: Utilizing of the United Nations Principles on Housing and Property Restitution

by Scott Leckie and Mayra Gómez

In August, the United Nations Sub-Commission on the Promotion and Protection of Human Rights endorsed the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons and encouraged their application and implementation by all States, intergovernmental organizations, and other relevant actors. The 'Pinheiro Principles' are directly relevant to all refugee and displaced persons, including Palestinian refugees and IDPs.



South Africans celebrate the repossession of title to land, Masithuthuke Communal Property Association, KawZulu-Natal Region, November 2003. © BADIL.

When people are left with no option but to flee by forces beyond their control, they are forced to take flight not only from their country or place of origin, but from their homes, lands and property – often ancestral ones – as well. For the displaced – whether within or beyond borders – returning home in safety and dignity is almost invariably their primary objective.

Recognising the inherent moral *and* legal logic in this widely held sentiment, in recent years various international human rights bodies have repeatedly reaffirmed the right of all refugees and displaced persons to return freely to their countries and places of origin, and to have restored to them housing and property of which they were deprived during the course of displacement. Displacement, therefore, is seen by its very nature to be temporary; unless a refugee freely chooses otherwise and opts to

forego return for a new life in a foreign land. The legitimate expectation of the displaced, (and any ‘international community’ which is serious about resisting ‘ethnic cleansing’ or other illegal attempts to alter the demographics of a given territory) is to eventually return home. Consequently, when the displaced deem it appropriate to do so, thus, they should be accorded the rights and remedies required to enable them to exercise not simply the right to return to their original homeland, but the equally vital rights to recover their lands of origin, their housing of origin and their property of origin – their rights to restitution.

On 11 August 2005, the United Nations Sub-Commission on the Promotion and Protection of Human Rights took a major step in this direction with the endorsement of Principles on Housing and Property Restitution for Refugees and Displaced Persons. The ‘Pinheiro Principles’ (named after their author, Paulo-Sergio Pinheiro) are an important advancement in the field of restitution rights, and provide important guidance in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.

The Principles recognize the *right* of all refugees and displaced persons to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore. The Principles also stipulate that “States shall demonstrably prioritize the right to restitution as the preferred remedy to displacement and as a key element of restorative justice,” and that “[t]he right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.”

The endorsement of the Principles by the UN represents the end of a four-year process by Pinheiro in his capacity as UN Special Rapporteur on Housing and Property Restitution. The impetus for drafting a universally applicable standard on restitution arose in part from the conclusions of his preliminary study in 2003, which recognized that serious problems still exist in the implementation of post-conflict restitution programmes. All too often, restitution programmes are neither uniform in their approach, nor do they treat all human rights equitably. Restitution programmes have been implemented in varying situations with varying results, and this inconsistency in approach is at least partly attributable to the lack of a comprehensive and universal approach to restitution policy, firmly grounded in international human rights law.

Certainly, for displaced persons in all corners of the world, returning home is still all too often fraught with political, legal and economic uncertainty, even in situations where violence has ceased. Common obstacles to the successful implementation of restitution rights surely exist, suggesting that there may be room to advance a more standardized approach to the restitution process. Pinheiro focused particularly on finding ways to overcome hindrances to restitution, including the loss or destruction of housing and property records and documentation, discriminatory national legislation, secondary occupation, property destruction, the existence of ineffectual institutions, and the adoption of discriminatory restitution programmes and policies.

The Pinheiro Principles incorporate a forward-looking and holistic approach to housing, land and property restitution under international law. This approach is at the same time rooted in the lessons learned by restitution practitioners in the field, and the ‘best practices’ which have emerged in previous post-conflict situations where restitution has been treated as a key component of restorative justice. As such, the Principles incorporate some of the most useful provisions from various pre-existing national restitution policies and programs, including elements of those developed for Bosnia and Herzegovina, Burundi, Cambodia, Cyprus, Guatemala, Kosovo, South Africa and Rwanda.

The real advancement for restitution advocates, however, lays in the articulation of concrete standards related to legal, policy, procedural and institutional implementation mechanisms to secure these rights. As such, the Pinheiro Principles provide specific guidance regarding how best to ensure the right to housing, land and property restitution in practical terms.

The new standard also recognizes that in situations where restitution has been tried in post-conflict settings, effective and competent national institutions have been the cornerstone of successful restitution programmes. A focus on promoting institutional capacity and fairness is therefore at the heart of the Principles, including a focus on proper enforcement mechanisms for housing, land and property restitution decisions and judgments. The Principles contain extensive sections on national procedures, institutions and mechanisms; accessibility of restitution claims procedures; adequate consultation and participation in decision-making; housing, land and property records and documentation; the rights of tenants and other non-owners; and secondary occupants, among other issues critical to the creation and implementation of just and effective restitution programmes.

The Principles also note that States should ensure that the right of refugees and displaced persons to housing, land and property restitution is recognized as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law. Likewise, States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property. Subsidiary claimants should similarly be recognized, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.

The Principles are an important contribution to the protection of the rights of refugees and displaced persons throughout the world. Better yet, the Principles are, in fact, an international normative milestone that should develop into a living, breathing document; claimed by the displaced, implemented by Governments and enforced by courts of law.

It is clear that conflict and disaster situations have led to, and continue to lead to humanitarian crises which can only be adequately repaired through the application of just remedies. Now that the Pinheiro Principles have been adopted, much work remains to be done with respect to dissemination, publicity and implementation. In order for the promise of this new standard to be realized, the Principles must begin to be used by practitioners at local, national and international levels. Like all human rights standards, the life of the Principles must extend beyond the words on paper to penetrate living political structures, judicial decisions, and administrative policies.

The next stage for the Pinheiro Principles will involve restitution practitioners at all levels developing new and innovative strategies to secure restitution rights for all of the world's displaced, be they Bhutanese, Serb, Roma, Burundian, Sudanese, Sri Lankan, Iraqi, or Palestinians.

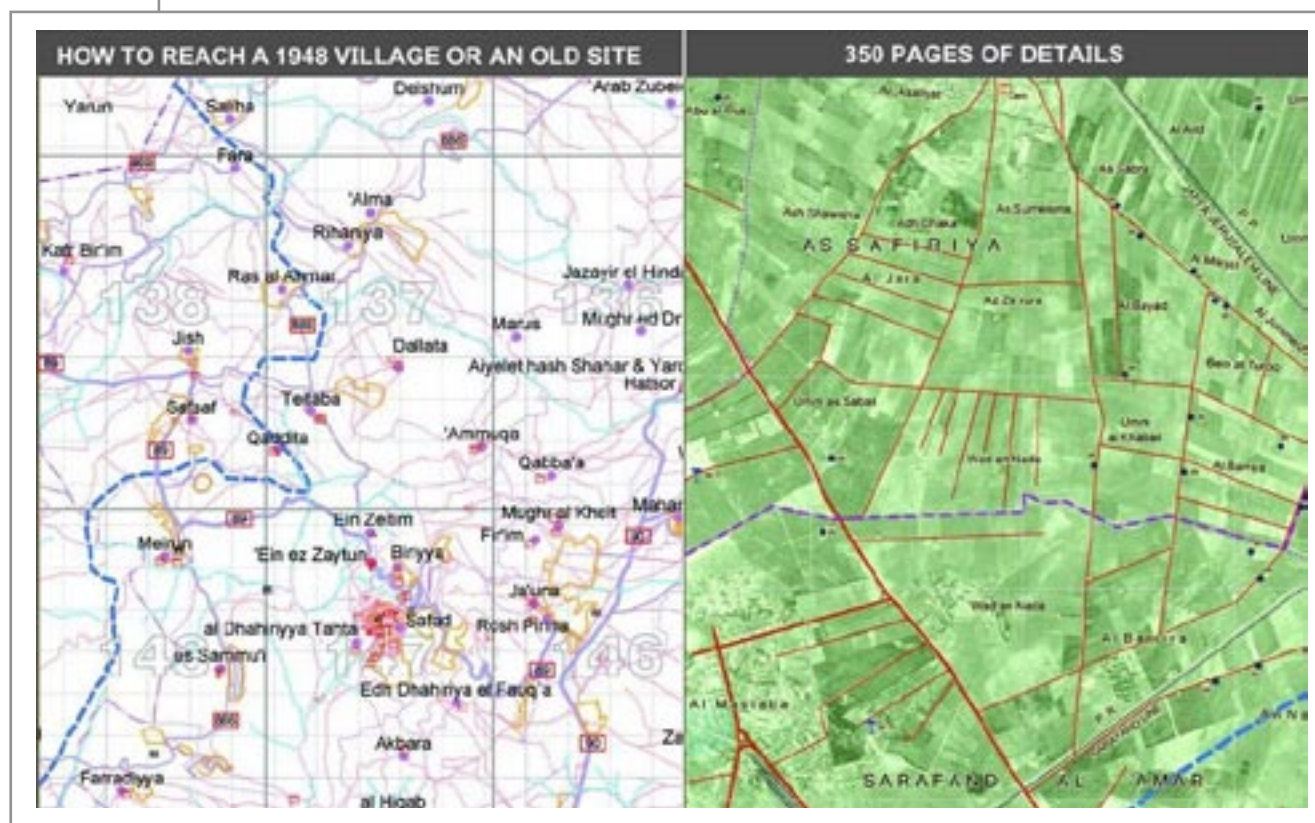
For further information on the Pinheiro Principles and training, advocacy, research and litigation relating to them, please contact COHRE's Housing and Property Restitution Programme (HPRP) at restitution@cohre.org.

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Atlas of Palestine 1948

BADIL Interview with Dr. Salman Abu Sitta



Combined map and aerial photo of part of the Naqab/Negev from the Atlas of Palestine.

Palestine is one of the most well-documented areas of the world. What makes the *Atlas of Palestine* unique?

Any Atlas is a graphic representation of data. Unless you are an explorer charting new territory, all atlases are based on existing data. In this sense, the *Atlas of Palestine 1948* is not unique. But it is the first time that such massive data on Palestine was assembled in one volume. That is in addition to the analysis of results. Let us not forget that compilation of all this data has a historical-political meaning. In July 1949, immediately after signing the last Armistice agreement with a neighboring Arab state (Syria), Israel's first Prime Minister, David Ben Gurion set up a committee of scholars to erase all existing Palestinian names and replace them with Hebrew names. The Atlas saves them from this erasure and puts them back on record.

What was your inspiration for creating the Atlas?

All my adult life, I have been trying to reconstruct my birthplace through photos, maps, documents and oral narrative. It was indelible in my memory, gained in the first 10 years of my life before I became a refugee. That was not enough. I wanted to pass this on to my children, relatives and Palestinians at large in a permanent record. I was very surprised to find a wealth of information in colonial capitals of Europe, especially England, and even in Istanbul, the old capital of the Ottoman Empire. Soon it became clear that this information can and should cover all of Palestine. Hence the shift from my birthplace to my homeland.

Assembling such a large volume of information is not a simple task. What kind of problems did you face?

The problems were immense. First to locate documents. Some references are well-known, like the Public Records Office. Even in well-known sources like the Royal Geographical Society, you need days to know that such valuable papers, like those of Bramley Jennings, the Sinai Inspector, actually exist. It is a common misconception to think that the Mandate papers for Palestine exist in one building. They are scattered in so many places that a book – known only to a few researchers – was compiled to list the location of these papers. Trips to the UN in New York were made to obtain copies of Armistice maps; to Munich to visit the War Museum; to the Bibliothèque Nationale in Paris and others. The main problem is that a single author has no authority to demand documents from states. In fact, the word Palestine was often a warning signal to librarians, not to give you information.

This of course created technical problems. We had to deal with small-scale maps and minimize errors as best as possible. If a large scale map was discovered, we had to repeat the work. The learning process took so long, especially since material and manpower resources were meager. It would have taken half the time of 10 years that it took to prepare the Atlas if such resources were readily available and sources of information were instructed to be cooperative.

What were some of the interesting discoveries that resulted from the mapping process?

To spend months and years peering over these maps is a very rewarding experience. Tens of thousands of place names spell the vocabulary of Palestinian life, especially in villages. Not only ancient names from Canaanite times, reproduced in holy books, but locally-carved names were most interesting. Here is where the horse (of an important man, possibly) fell and its rider killed. Here is where the most beautiful bride was wed. Here is where the holy man (*weli*) was buried. Here is the *tell* from where Napoleon viewed Acre which he could not conquer. A myriad of historical and social events were immortalized in these names whose copy-right, so to speak, is reserved for those Palestinians who made that history.

The most obvious and saddest impression is the staggering dimensions of the *Nakba*. In every spot you look at, you know there were people with their own local history and geography that sustained them for centuries. Now they are refugees living in exile for over half a century. Numbers alone cannot fully describe this human experience. Life has been snuffed out of 675 towns and villages. But in every one of them, indeed in every house and in every plot of land, life was destroyed and there is a story to be told.

Can you describe some of the interesting or unknown aspects concerning the borders of Palestine?

Although demarcated at different times by different people, Palestine's borders have much in common. In all cases, they were created by Colonial powers, competing for a larger piece of Arab land. In all cases, the local population was never consulted. When they agitated or rioted, a little allowance was made to that. In all cases, the borders shattered the life of a homogeneous community, separated them from each other, which ultimately gave them different nationalities.

Nowhere is this more vivid and dramatic than the split of the population and their land in demarcating the Armistice Line in the West Bank and Gaza Strip. Although this line is strictly not a border, it acted as one when Israel wanted to prevent the Palestinians from returning home and it became irrelevant when Israelis – soldiers and settlers alike, wanted to cross it.

The *Atlas* analyzes the different sources for Jewish ownership of land in Palestine before the *Nakba*. How do the different sources compare? What were your conclusions after examining the different sources?

Jewish immigrants were keen to record every piece of land they acquired in Palestine to prove their presence and to show their rich donors in Europe how the money was spent. The British Mandate policy created many land laws conducive to acquiring more land. In fact Zionists officials and British-Zionists,

such as Norman Bentwich, formulated these laws. But there was much forgery and violation of the Mandate laws especially after 1940. This is evident by comparing the various Jewish and British sources and analyzing the results, as was done in Part I of the Atlas. There is anywhere between 250,000-400,000 dunums (1 dunum = 1000 m²) which were fraudulently assumed under Jewish control before 1948. In later years, some Israeli authors admitted that and showed how it was done.

But this is not the point. The difference between the reliable figure of 5.4 per cent of Jewish ownership in Palestine and the exaggerated figure of 7 per cent, is irrelevant, because neither gives the Zionists the supremacy over Palestine and the right or excuse to expel or dispossess the Palestinians.

The real cause of the *Nakba* is the importation of Jewish immigrants, most of them of military age, especially after WWII. The Mandate allowed them to build their institutions, especially the Army. During this period the Jewish population increased 10-fold, from 56,000 in 1917 to 600,000 in 1947. They were able to deploy 65,000 armed soldiers at the onset of Plan Dalet in April 1948. This increased to 120,000 in January 1949. That is 20 per cent of the population, an unprecedented percentage. A typical country has 1-2 per cent of its population in the armed forces. The *Nakba* was inevitable.

The maps in the Atlas also contain interesting data on the infrastructure, public amenities and religious sites. How did you find their location?

The data on infrastructure, public buildings and religious sites are indeed interesting. This information is derived from large scale maps, when available, which show government or public buildings. Frequently they are given in abbreviated forms or symbols. They were shown because they were of particular interest to the British administration. It is amazing how many public buildings were built (or assigned to existing buildings) by the British Mandate in such a relatively short period of 28 years (1920-1948).

The religious sites were carefully marked as a reflection of the long-time interest in the Holy Land, since the well-known survey by the Palestine Exploration Fund, which started in 1871. The number of the shown landmarks in the Atlas is a conservative estimate, as shown by a new field survey of religious sites.

The surprise is the number of military installations (airports, airfields, camps) which the British left. These were shown on photos but were omitted from maps. All of them were seized, and used effectively, by Israel.

That Palestinian towns and villages were depopulated and their land and property seized by Israel is now generally known. But the fact rarely mentioned is that Israel seized a full civil and military infrastructure of a state, almost over night. An instant state was functioning on the morning of 15 May 1948. A Jewish civil servant of the Mandate would go to work on 15 May and find all the records, maps, documents and furniture in his office intact – minus his Palestinian colleagues who became refugees.

One of the novel features of the Atlas compared to other maps of Palestine is the use of aerial photos. Can you describe how you used these photos and what they tell us about Palestine?

The use of aerial photos has a tremendous impact on the visualization of life in Palestine. Line drawings are accurate but lifeless. They can be interpreted by professionals, not so easily by laymen. Photos show gardens, fields, *wadis* (valleys), clusters of houses, mountains. All such features have an intimate relationship to the life of Palestine. They are immediately recognized by a refugee. A grandfather can tell his grandchildren to see, not just to imagine, his village. On a personal note, I could see my father's house, his orchard and my school. Such features cannot be erased from my memory and, now, can be shared with my children.

Anyone who takes a quick look at the Atlas, even a non-Palestinian, would recognize there were people who built these towns and tilled these fields. Thus, the insidious lie that "Palestine is a land without people" becomes apparent. No doubt the Zionists knew this well but they wanted to make it so. They succeeded in the *Nakba* of 1948.

It is often said by those who oppose the return of Palestinian refugees that “the clock cannot be turned back”. What does the Atlas tell us about the future?

At least since the nineteenth century, Palestine was plagued by adventurers, spies, colonialists and imperialists which led ultimately to the destruction of Palestine. It is a mixed blessing that this has led also to Palestine becoming the most documented Arab country. The Atlas shows this clearly, not only in terms of land ownership and population distribution but also in the name, character and use of every square kilometer. A huge database was created. It is now linked with every camp and place of exile.

When this is linked with today’s satellite maps and data about the present situation, it becomes a straight forward exercise, at least from an analytical point of view, to restore homes and property to their owners.

As has been demonstrated earlier (see *From Refugees to Citizens at Home: The End of the Palestinian-Israeli Conflict*, London: Palestine Land Society and The Palestinian Return Centre, 2001), the return of the refugees is physically quite feasible. It is interesting to note that no Israeli scholar has challenged this argument on this score.

The right of return has a solid basis in international law. Currently available data will be of considerable value to the modalities and mechanisms established to implement the right of return. As to “the clock cannot be turned back”, we take a leaf from Herzl’s book and say: *it is easier to correct a wrong done than to create it against all odds.*

The production of the Atlas is a major undertaking. Is there more to be done in terms of mapping a solution for Palestinian refugees?

Yes there is a lot to be done. First an Arabic language edition is absolutely necessary. This should be an affordable edition, perhaps a number of small size volumes, each representing a district or a region. The Arabic version requires not merely translation. Far from it. It needs to verify the spelling, accent and emphasis on syllables of the original Arabic names. This requires research in Arab sources, but more importantly, field trips to various regions to verify the names.

Further, it is necessary to link this information to locations of exile, in order to reconnect various communities to their places of origin. Another useful application is to produce a guide booklet, showing old and modern maps, which can direct refugees to their old villages and sites.

The key task, which is technically quite feasible, is to link the massive data available for Israel today with the Palestinian data now saved from oblivion. This will surely secure the future of Palestine and Palestinians no matter long it takes. Leaders disappear, political regimes, however oppressive, dissolve one day but records and the people do not die.

For more information on how to obtain a copy of the Atlas of Palestine 1948 visit the website of the Palestine Land Society, <http://www.plands.org>.

Dr. Salman Abu Sitta is the founder and president of the Palestine Land Society.

UN body leaves heritage for future Palestinian restitution

In Bosnia the international community set up the Commission for Real Property Claims, in South Africa the government established the Commission on Restitution of Land Rights and a Land Claims Court. In Palestine, the UN had the foresight to establish an office to identify property ownership inside Israel and examine various interim measures by which refugees could derive income from their properties.

The UN Conciliation Commission for Palestine (UNCCP), mandated to protect refugees and facilitate solutions described in General Assembly Resolution 194/III, set up a Refugee Office in 1949/1950 to document all housing, land and property claims in Palestine. Previous efforts by the Commission to pressure Israel to reform property laws, return religious endowments (waqf) and allow owners of citrus groves and their workers to return and complete the harvest had all failed.

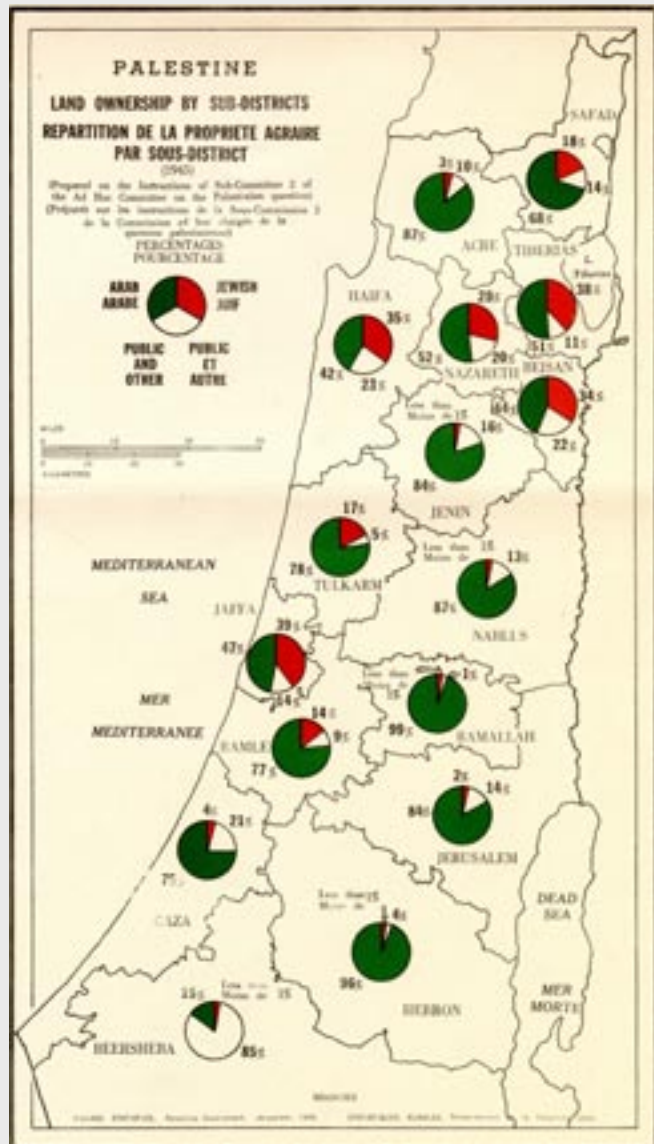
The UNCCP Refugee Office was established to gather the information that would one day form the basis for restitution and compensation claims. Individual identification of Palestinian property was based on British mandate records. Forms were prepared for each parcel owned by Arabs, including partnerships, companies and cooperative societies. Separate forms were prepared for land owned by the state, other public authorities, Jews and other non-Arab individuals.

The identification process was completed in the early 1960s. According to the global identification process, 16,324 sq. km (out of a total area of 26,320 sq. km) were determined to be private property owned by Palestinian Arabs. The database for individual holdings contains some 453,000 records documenting around 1.5 million holdings.

Digitization of the UNCCP database was completed in the late 1990s. Computerization revealed a number of flaws in the documentation process, and the Commission itself as well as independent experts note that the UNCCP records are problematic in several areas. Not all forms contained complete information. Some forms were missing. The total number of unique forms documenting Palestinian Arab land holdings exceeded the total number of unique parcels of land. More recent studies that attempt to compensate for errors in the UNCCP records, for example, estimate the total amount of refugee land inside Israel at 17,178 sq. km.

Still, the records provide the most comprehensive database of Palestinian refugee property to date. During final status negotiations between Israel and the PLO in the 1990s Israeli officials admitted that Palestinian refugee claims were likely to be more than 22 times greater than claims of Jews for lost properties in neighboring Arab countries. Until today, however, the UNCCP records are not publicly available. Palestinian refugees themselves are unable to view the records to verify property claims.

For a comprehensive study of the UNCCP property records, including results of the digitization carried out in the 1990s, see, Michael Fischbach, *Records of Dispossession, Palestinian Refugee Property and the Arab-Israeli Conflict*. New York: Columbia University Press, 2003. The reports of the UNCCP are available on the website of the UN Information System on Palestine.



Map prepared by the UNCCP showing land ownership in Palestine based on British Mandate records.

‘Nothing New to Report’: The Registry of Damage Resulting from the Construction of the Wall

BADIL Staff

Israel is obliged to make reparation for damage caused to all natural or legal persons harmed by the construction of the Wall in the West Bank, including in and around eastern Jerusalem. This was one of the primary conclusions of the July 2004 Advisory Opinion of the International Court of Justice (ICJ) on the legal consequences of Israel’s construction of a Wall in the 1967 occupied Palestinian territories.



The Wall in Aida refugee camp, Bethlehem, August 2005. © Nathalie Bardou/BADIL.

A month after the ICJ issued its ground-breaking opinion, the UN General Assembly adopted Resolution ES-10/15 (2 August 2004). The Resolution included a directive to the UN Secretary-General to set up “a register of damage caused to all the natural and legal persons concerned in connection with [the ICJ] advisory opinion.” In early 2005 UN Secretary-General Kofi Annan forwarded a letter to the General Assembly setting out a framework and the next moves for the creation of such a register.

Not a compensation or claims-resolution mechanism

According to the letter sent to the General Assembly, the proposed registry “is not a compensation commission or claims-resolution facility, nor is it a judicial or quasi-judicial body.” (UN Doc. A/ES-10/294, 13 January 2005). The statement appears to respond to the concerns of Palestinian landowners that the primary emphasis would be compensation rather than restitution. Nevertheless, evaluation of property *damages* would be useful for future claims regardless of whether a landowner repossesses his property.

The Secretary-General’s letter, rather describes the proposed registry as a technical, fact-finding process

of listing or recording the fact and type of the damage caused as a result of the construction of the Wall. “It thus entails a detailed submission process that would include a statement setting out the alleged damage, eligibility for registration and the causality between the construction of the wall and the damage sustained.”

A subsidiary organ of the United Nations

The registry is supposed to be a subsidiary organ of the UN operating under the authority of the Secretary-General consisting of: (a) a Board, whose members are appointed by the Secretary-General in their personal capacity, and who shall be independent; (b) legal and technical experts in land and agriculture and in such other fields as may be necessary, appointed by the Board; and (c) a small secretariat consisting of administrative and technical support staff.

The Board will be responsible for establishing the rules and regulations governing the work of the registry, and for its establishment and maintenance. It will establish eligibility criteria, categories of damage and the process of registration. On the recommendation of the experts, the Board will have the ultimate authority in determining the inclusion of damage in the register.

Under the authority of the Board, the experts will consider submissions for inclusion in the register and deal with any other question entrusted to them by the Board. They will also be empowered to recommend the inclusion of damage in the register. The secretariat will service the members of the Board and the experts. It will be responsible for the administration of the registry and the compilation of the database.

As a subsidiary organ of the United Nations the registry will be financed through assessed contributions. The registry is supposed to remain active for the duration of the process of registration. With the completion of the registration process, the registry will be dissolved. The register of damage will remain open for registration for the duration of the Wall in the occupied West Bank, including eastern Jerusalem.

Palestinian land expropriated and isolated by the Wall in the West Bank

District	Total (dunums)*	Area of isolated land by the Wall	Area of confiscated land to build the Wall
North West Bank	213,866	191,336	22,530
Middle West Bank	85,130	66,023	19,107
South West Bank	50,047	43,763	6,284
Total	349,043	310,122	47,921

* 4 dunums = 1,000 m²

Survey on the Impact of the Expansion and Annexation Wall on the Socio-Economic Conditions of Palestinian Localities which the Wall Passes Through, June 2005. The entire report is available at, <http://www.pcbs.gov.ps>.

Who can register damages and how?

In devising the process of registration, eligibility criteria and categories of damage, the Board will be guided by the relevant findings of the ICJ advisory opinion, general principles of law and, to the extent of their relevancy, principles of due process of law. The registry will be publicly available.

Both natural and legal persons who have sustained any form of material damage as a result of the construction of the Wall are eligible to request the inclusion of damage in the registry. In accordance with the advisory opinion, the damage must be material damage, and a causal link will have to be established between the construction of the Wall and the damage sustained.

The types of damage eligible for registration will include: destruction and requisition of properties, seizure

or confiscation of land, destruction of orchards, citrus groves, olive groves and wells and the seizure of other immovable property. Material damage sustained as a result of the construction of the Wall will not be limited to lands and crops, but will also include impeded access to means of subsistence, urban centres, work place, health services, educational establishments and primary source of water in areas between the green line and the Wall itself.

The categories of such material damage and their eligibility for registration will be elaborated in greater detail by the members of the Board. A decision when and if it would be appropriate to engage in a process of verifying the fact and extent of the damage will be taken at a subsequent stage.

Nothing new to report

More than a year after the General Assembly requested the Secretary-General to establish the registry, there is no registry. Israel continues to confiscate Palestinian land and has ordered authorities to speed up construction of the remaining sections of the Wall. Speaking at a special meeting on the Wall in his office, Ariel Sharon instructed officials responsible for the Wall's construction to "improve the pace". (Aluf Benn, "PM orders acceleration in work on West Bank Barrier," *Ha'aretz*, 6 July 2005)

Palestinians find it harder to access land cut off by the Wall

Reporting to the UN Commission on Human Rights following his fact-finding visit to the West Bank, eastern Jerusalem and Gaza Strip in early summer, the UN Special Rapporteur on the situation of human rights in the 1967 OPTs John Dugard, found that Palestinians are finding it more difficult to access land cut off by the Wall. In fact, the point of *de facto* annexation of large areas of the West Bank, as warned by the International Court of Justice in its July 2004 advisory opinion, may have already been reached.

"In the Governorate of Tulkarem, in the period 1 March to 31 May 2005, 58 per cent of 315 applicants from Attil, Deir al-Ghusun and Illar received permits; 22 per cent of 900 applicants from Akkaba received permits; and 19 per cent of 1,222 applicants from Baqa ash-Sharqiya, Nazlat Issa and Abu Nar received permits. In Qaffin, with a population of 9,000, 600 families between 3,000 and 3,600 people have land and trees on the other side of the fence. In May 2005, 1,050 villagers applied for permits to access their land. Only 70 were granted permits, 600 received a negative reply and the rest, 380 people, received no reply at all. The reason most frequently given for rejection was that the applicant was too distant a relation to the landowner. Several sons and grandsons of landowners were denied permits because they were considered distant relatives. Between January and June 2005, some 3,545 applications for permits were submitted in the Tulkarem area. Of these, 2,404 were refused, mostly on the grounds of inadequate proof of relationship to the owner."

Based on past Israeli practice in the OPTs, the increased restrictions appear to be part of a gradual plan to push more Palestinians off their land in those areas that Israel intends to maintain permanent control over due to the presence of Jewish colonies and natural resources like water. As Dugard observes, the International Court of Justice, "considered that the construction of the wall and its associated regime create a *fait accompli* on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation. It is highly arguable that this stage has now been reached."

Meanwhile, those Palestinians who are able to file legal claims against the expropriation of their property find it difficult if not impossible to demonstrate ownership due to the complex and discriminatory land regime in the 1967 OPTs. Dugard underscores this problem in his report. "[P]roof of ownership is alien to the traditional Palestinian land ownership system and has been resisted by Palestinian landowners over many generations. In part this can be ascribed to the fact that the registration of land under the Ottomans was very slow and little progress was made in respect of land registration during the British Mandate period or during the period of Jordanian rule before 1967. It is therefore not uncommon that people are unaware of the actual status of the land they are cultivating as they have not previously been required to prove ownership of the land. Much of this land has been held in families for generations according to traditional land tenure systems without registration. In these circumstances the demand for proof of land ownership or title to land is often an insurmountable obstacle."

For more details see, Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967. UN Doc. A/60/271, 18 August 2005. The entire report of the UN Special Rapporteur is available on the website of the UN High Commissioner for Human Rights, <http://www.ohchr.org>.

Moreover, in September Israel's Supreme Court ruled, contrary to the ICJ advisory opinion, that Israel has a right to build the Wall in the West Bank under international humanitarian law. The three tests set out by the Supreme Court include: that it is necessary to protect the Israeli population, including the settlers in the West Bank, that it must not cause disproportionate harm to the civilian Palestinian population, and, that the necessity of its construction is immediate.

Since the UN Secretary-General sent his initial proposal to the General Assembly at the beginning of this year there have been no further developments. "This process ... appears to have been lost in the bureaucracy of the United Nations," says John Dugard, the UN Special Rapporteur on human rights in the OPTs. "This is unfortunate because the International Court of Justice clearly attached great importance to Israel's obligation to pay compensation for the destruction of homes, orchards, olive groves and agricultural land caused by the construction of the wall." (UN Doc. A/60/271, 18 August 2005)

It appears that the process may have stalled due to Israeli objections and lack of international donor support to establish the registry. According to Annan's letter to the General Assembly, the establishment and operation of the registry will require Israeli cooperation in facilitating its operations, including granting the members and experts access to documentary materials, to any governmental or municipal authority, organization or institution, or any other person whose information can assist the Board in the submission process.

The newly adopted Principles on Housing and Property Restitution for Refugees and Displaced Persons call upon states to "provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner." The proposed registry will provide a documentary basis for future claims for restitution and compensation for damages. Serious international intervention, including a strong grassroots campaign, however, will be required to press Israel to comply with the ICJ advisory opinion and cooperation in the establishment and work of the registry.

UN says Palestinians also have a right to restitution

When one talks about refugees and restitution today one often thinks of Bosnia and South Africa where elaborate procedures and mechanisms were established to remedy the massive dispossession that resulted, respectively, from policies of ethnic cleansing and Apartheid.

The mass return of refugees around the world in the 1990s compelled activists, legal experts, policy makers and the UN to address, more clearly, the right of refugees and displaced persons to housing, land and property restitution. In many cases, it was the denial of this right that made return impractical and even impossible for many refugees and IDPs.

But the international community was dealing with housing, land and property restitution of refugees long before Bosnia and South Africa. Already in December 1948, long before the July 2004 advisory opinion of the International Court of Justice, the UN General Assembly said that all persons – Arabs and Jews – displaced in Palestine as a result of the conflict should be allowed to return to their homes.

"The underlying principle of paragraph 11 [of Resolution 194/III]," said the UN, "is that the Palestine refugees shall be permitted ... to return to their homes *and be reinstated in the possession of the property which they previously held.*" [Emphasis added] UN officials working on the Palestinian case were inspired by precedents from the 17th and 18th centuries as well as restitution to Jews after WWII.

The United Nations later reaffirmed the right of Palestinian refugees and IDPs to restitution in other resolutions: e.g., General Assembly Resolutions 3236 (22 November 1974), 36/146 (16 December 1981) and 58/129 (23 December 2003). The 1981 resolution says that, based on the Universal Declaration of Human Rights and principles of international law, the refugees "are

□

In the 1990s and until today many UN Human Rights Treaty Bodies have confirmed that Palestinians have a right to restitution. In 1998, for example, the Committee on the Elimination of All Forms of Discrimination said that: "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 re-possess their homes should be entitled to compensation." (CERD/C/304/Add.45, 30 March 1998)

The Fate of Decolonized Land in the Gaza Strip and Northern West Bank

BADIL Staff

Israel has dismantled all of its colonies and redeployed Israeli military forces from the Gaza Strip, but it still controls the land borders, coastal waters, and airspace over Gaza as well as the construction of essential infrastructure (e.g., sea and air ports). The Strip thus remains occupied. Several colonies in the northern West Bank were also evacuated. For the first time Palestinians are confronted with having to deal with restitution of land expropriated to build Jewish colonies in the OPTs in contravention of international law.



The Gaza/Egyptian border after Israeli redeployment. © Nathalie Bardou/BADIL.

The 17 Jewish colonies, related roads and military installations established since 1967 covered some 15 per cent of the total area of the Gaza Strip or 55 km². The bulk of this land is situated in the southern part of the Strip. Some 7,300 illegal Jewish settlers lived in these areas until they were removed this summer. Another 4 colonies and 500 settlers in the northern West Bank near Jenin were also evacuated.

From a development perspective, the land evacuated by Israel, in the Gaza Strip in particular, will make it possible to improve the lives of Palestinians, including the creation of public spaces, preservation of historic sites, economic opportunities, and construction of new housing.

Not all of these areas, however, may be available for public use. While some of the land may have been classified as public land before Israel occupied the Gaza Strip in 1967, Palestinians did hold private title to some of the land. These lands will be subject to a restitution process now being set up by the Palestinian Authority.

In early 2005 the Palestinian Authority issued a Presidential Decree Regarding the Areas to be Evacuated by the Israeli Occupation Forces. The Palestinian Legislative Council is also considering a draft law for dealing with Palestinian land claims.

What kind of restitution mechanism?

According to the Presidential Decree and the draft law all areas evacuated by Israeli forces will be immediately placed under the control of the Palestinian Authority until their fate is decided in accordance with the effective laws. The draft law specifically states that this seizure of property, both movable and immovable, “shall be temporary” in nature.

The Presidential Decree and the draft law propose slightly different mechanisms for handling land claims. The Decree establishes a committee comprised of the head of the Land Authority, Minister of Interior and Public Security, Minister of Finance, Minister of Public Works and Housing and the governor in each area to receive and decide claims.

The draft law, however, empowers the Council of Ministers to establish one or more committees to examine individual land claims in Gaza and those areas evacuated in the northern West Bank. Like the Presidential Decree, persons submitting claims must include supporting evidence and documents. Decisions by the committee/s are to be made by majority vote.

Individuals who receive a negative decision, however, may launch an appeal within 7 days to one or more courts established under the draft law. The court/s are to be comprised of a magistrate from Gaza and Jenin. Claims must be resolved within 15 days after submission to the court/s. The draft law further specifies that the court’s rulings shall be enforced by competent parties promptly and without delay.

Who can submit what type of claims?

All persons claiming to have a right in movable and immovable assets may submit a claim for restitution, except persons who acquired land through illegal means. Just prior to the Gaza redeployment, for example, persons acting on behalf of Jewish settlement organizations attempted to purchase land from Palestinians through false means. (“Settler Land Scam Results in injury of 11 Palestinian civilians,” Press Release, Palestinian Centre for Human Rights, 6 July 2005)

The draft law clearly states that “Any agreement or contract or form of disposition made between the Israeli occupation authority or by any person affiliated with it and any citizen before this Law takes effect on any property or estates under this Law shall be held void and null.” However, the draft law also empowers the Ministry of Planning, in coordination with concerned ministries and entities, to appropriate private immovable property for public purposes compatible with the Palestinian development plan.

The new Principles on Housing and Property Restitution for Refugees and Displaced Persons can provide additional guidance to Palestinian officials setting up the restitution process in the Gaza Strip. This includes elaboration of relevant principles; legal, policy, procedural and institutional implementation mechanisms, and the role of the international community and international organizations.

New Report

Ruling Palestine, A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine

The main focus of this study is the methodical process underlying the Zionist conquest of Palestine and dispossession and displacement of its indigenous Arab inhabitants, in particular legal instruments and policies relating to colonization and land acquisition. This process is measured against the standards of relevant international treaties and agreements.

Written and prepared by Souad R. Dajani.

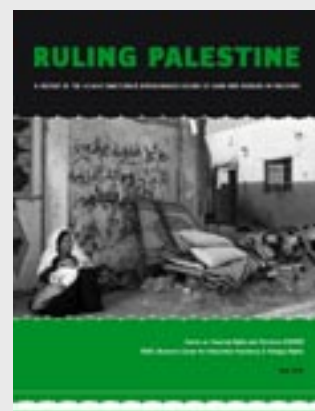
Published by the Centre on Housing Rights and Evictions and BADIL, 2005.

Available in English, 242 pages.

ISBN 92-95004-29-9.

The report is available in electronic format on the BADIL website, <http://www.badil.org>

Hardcopies of the report may also be purchased on the BADIL website.



A Struggle for Restitution: *The Case of Kafr Bir'im*

by Nihad Boqai'

The name of Kafr Bir'im is well-known in the context of Palestinian displacement. This Palestinian Christian village is located 4 km south of the Lebanese-Israel/Palestine border. In mid-November 1948, two weeks after Israeli forces occupied the village, residents were ordered to leave with a promise from Israeli officials that the people of Kafr Bir'im would be able to return to their homes within two weeks. Fifty-seven years later they remain in forced exile.



The church in Kafr Bir'im. © Zaha Hassan/BADIL.

While the experience of Kafr Bir'im in 1948, as well as the nearby village of Iqrit which faced a similar fate, illustrates Israel's direct responsibility in creating the Palestinian refugee problem, the case is important for another reason – the unique struggle of the displaced for return and restitution.

For more than five decades, displaced Palestinians from Kafr Bir'im have led one of the most intensive struggles for return and restitution on two related fronts – political-legal and social. The first front was directed towards Israel in order to allow them to return to their homes of origin. The second front focused on the displaced themselves, especially the new generations from the village, in order to keep the struggle for return alive. On both fronts, the church has played a central role.

Engaging Israeli officials

On the political-legal front, the struggle of the displaced started from the first day of exile, by holding meetings with and writing to officials, ministers and policy makers. These contacts produced some

results, such as allowing the displaced from Kafr Bir'im to use some of their land, but these contacts failed to achieve the main goal of the displaced - return and restitution.

Turning to the courts

The displaced then turned to the Israeli courts. In July 1951, the Israeli Supreme Court ruled that the displaced should be allowed to return to Kafr Bir'im. But they were still prevented from returning. In October of the same year the Court ordered the government to explain why it continued to prevent the displaced from returning to their village and lands. Israeli military forces subsequently declared the area a closed military zone and in 1953 destroyed the village.

Drafting return and restitution proposals

The displaced from Kafr Bir'im have also drafted their own return and restitution proposals. These were submitted to a ministerial committee set up in November 1993 to discuss the subject of Kafr Bir'im and Iqrit. The Committee was headed by then Minister of Justice David Libai. A committee of the displaced from the village presented four detailed proposals for a "return plan", with answers to the main Israeli "concerns".

On 24 December 1995, however, the Committee recommended that each person originally displaced in 1948 (together with two of his descendants) has the right to a long term *lease* for half a dunum (0.125 acres) to build a home. It also recommended granting 600 dunums (150 acres) for all the uprooted people who were driven away from their property instead of some 12,000 dunums owned by the village. The displaced people rejected the plan because it did not allow them to repossess their property and only enabled a limited number to return.

Social activities in the village

On the social front, there has been a process to strengthen identity and attachment to the village of Kar Bir'im. Efforts have been directed towards the second and the third generations who were not born in the village. It should be noted in this context that a positive refugee identity (i.e., "I'm from there") and not the negative one (i.e., "I'm not from here") is a central component of this socialization process. For example, the displaced have strongly rejected numerous government proposals for alternative land outside Kafr Bir'im, which could resolve many socio-economic obstacles related to their status as refugees and landless persons.

A number of social activities have taken place in Kafr Bir'im since the 1960s, when they started to bury the dead in the village cemetery (the first burial took place in 1956, with special permission from the military governor). In 1972 the first wedding took place in the village. Two years later, the displaced succeeded to get a permission to repair the village church. And since 1987, the displaced hold a one-week summer camp in Kar Bir'im with the participation of hundreds spanning three generations. Visits to the village to celebrate holidays have become a regular ritual.

While it is clear that after five decades Israel is not interested in allowing the displaced from the village to return, it is equally clear that displaced Palestinians from Kafr Bir'im themselves are not willing to give up their struggle. The efforts of the displaced over the past fifty some years are a testament not only to their persistence but also demonstrate the creativity of refugees in contributing to a solution to their plight.

Nihad Boqai' is the Coordinator of Research, Information and Legal Advocacy at BADIL.

How Israel acquired control over Palestinian property inside Israel



After 1948 tens of thousands of Palestinian homes in villages across Palestine were destroyed. In major urban areas, however, many of these old homes remain. These homes were expropriated by Israel, but unlike refugee lands which are still held as inalienable property of the state, some refugee homes were later sold to private buyers.
© Tineke D'haese/Oxfam Solidarite.

In October 2003 BADIL in cooperation with the Graduate Institute of Development Studies at the University of Geneva held a 3 day seminar on housing and property restitution for Palestinian refugees and IDPs. Experts familiar with Palestinian refugees and other refugee cases around the world participated in the seminar. The excerpts below are from working papers prepared by Usama Halabi and Hussein Abu Hussein, Palestinian lawyers from Israel who specialize in land law.

Israel's land regime*

Israeli authorities have used a two fold strategy to complete control of Palestinian land. Firstly to conquer land, not only by military means but also through "legal tools" i.e. laws and regulations, some created by the British Mandate and reactivated by the Israeli government, but most "Israeli made". The second stage has been to quickly "pass" the confiscated Palestinian villages and private lands (either declared "absentee property" or "abandoned property") into Jewish hands, and prevent the retransfer of the "redeemed lands" to the hostile group, i.e. the Palestinian Arabs.

The first stage has been achieved through various legal tools. The main legal tool in this regard has been the *Absentees' Property Law*, according to which the Custodian of Absentees' Property has been authorised to transfer "absentee properties" to the Development Authority established by the *1950 Development Authority (Transfer of Property) Law*. The latter then transferred the possession of those properties to Amidar (a governmental company responsible for Jewish settlement) and the World Zionist Organization, and to new Jewish immigrants creating new Jewish settlements over former Palestinian villages and lands.

Other important legal tools used to achieve the "legal conquest" of the Palestinian land are the *1953 Land Acquisition (Validity of Acts and Compensation) Law* according to which the Minister of Finance has assigned ownership of expropriated lands to the Development Authority, and the *1943 Lands (Acquisition for Public Purposes) Ordinance* mentioned above.

In order to secure the land in the long term, the Israeli legislator ensured that all lands taken from the Palestinians become part of *Mikarkih Yesrael* [Israel Lands], which includes: a) lands owned and registered in the name of the state of Israel, b) lands owned and registered in the name of the Jewish National Fund, and, c) lands registered in the name of Development Authority. According to Article 1 of the *1960 Basic Law: Lands of Israel* the ownership of "Israel lands" is not transferable through selling or any other way. This legislated land tenure system has ensured exclusive use by Jews of most of "Israel Lands" which are estimated to be at least 92 percent of the total lands in Israel.

The importance of land**

Land lies at the heart of the 'Palestine Question'. This is true not only because of its centrality in the negotiations that relate to the territories occupied by Israel since 1967. Land is also central to the situation of the Palestinian refugees from 1948, whose right of return to their land in Israel has to be considered as part of any solution that is in accordance with international law. But what is too often forgotten is that the question of land also lies at the heart of the nature of the state of Israel itself.

Looking ahead, it is difficult to see the will on the part of Israel to resolve the many aspects of the Palestinian land question. A crucial question for Palestinians is what will be done to redress fifty years of violations. Even if new legislation and policies were to effectively guarantee Palestinian access to land today, what of all the land lost and all of the violations committed during all the years since 1948? Even the Israeli High Court has acknowledged that expropriation does not sever the link between a land and its owner. The Israeli attempts to do so by passing land from the Custodian of Absentees' Properties to the Development Authority to the JNF, and now possibly to private owners, cannot magically make the historic rights of the Palestinian owners disappear.

At the same time, the legal and practical machinery used to dispossess Palestinians of their land and to limit Palestinian access to land in the state of Israel remains fully intact in all fundamental aspects, and Palestinian citizens of the state remain all too aware that these same laws could be used again. They also see little

will to change the policies and practices that have consistently denied Palestinians access to land. Planning is now taking place that will determine how Israel will look in 2020. These plans involve exactly the same objectives to contain Palestinian development and promote Jewish development that characterized earlier plans. This cannot be done without further harming the rights of Palestinians.

On a day to day level a million Palestinians live as citizens of Israel, but find it increasingly difficult to gain access to the land they need to survive. Palestinians in Israel, like any other population, depend on access to land for housing and the natural growth of their communities, industry and agriculture, leisure and other activities. Yet their growing communities are increasingly finding themselves hemmed in to ever decreasing amounts of land. If Israel is to evolve into a state that accepts basic international and human rights norms, it will have to prove itself willing to redress the wrongs of the past 50 years, modify its fundamental systems regarding land and allow equality of access to land to its Palestinian citizens.

* *Usama Halabi, Israel's Land Laws as a Legal-Political Tool, Confiscating and Appropriating Palestinian Arab Lands and Creating Physical and Legal Barriers in order to Prevent Future Property Restitution. Working Paper No. 7. Bethlehem: BADIL Resource Center for Palestinian Residency & Refugee Rights, December 2004.*

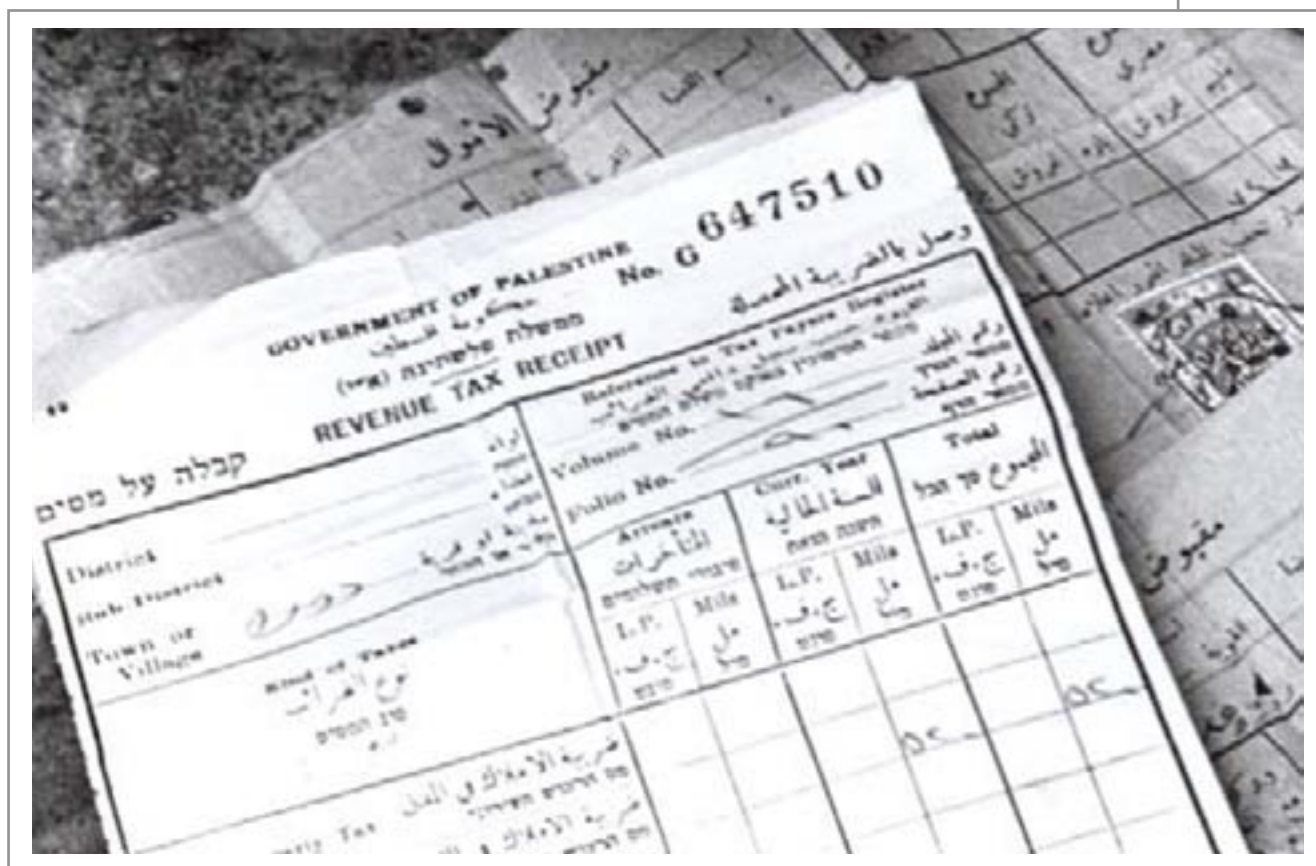
** *Hussein Abu Hussein, Right of Return – The Ever-Present Fear, The Iqrit Model and Land in Israel. Working Paper Prepared for the BADIL Expert Forum for a Rights Based Approach to the Palestinian Refugee Question, Geneva, 2-5 October 2003.*

Both papers are available on the BADIL website, <http://www.badil.org>.

Documenting Palestinian Refugee Claims: The Unfinished Job

by Terry Rempel

Palestinian refugees may be one of the longest-standing refugee cases in the world today; they are also one of the most documented group of refugees. Recent years have seen the digitization of housing and property records held by the United Nations. But there remains a gap in documentation – registration of those records still held by refugees themselves.



Tax receipt and land documents from the British Mandate era. © Tineke D'haese/Oxfam Solidarite.

There are literally hundreds of thousands of documents providing evidence of Palestinian housing, land and property claims dating back to the period before the unilateral establishment of the state of Israel in 1948 and the mass displacement of 80 per cent of the Arab population living in that part of former Palestine that became the new “Jewish state”.

These include Ottoman land records, British land registration files and tax records, aerial photographs of Palestine from the first and second world wars, the archives of the Refugee Office of the United Nations Conciliation Commission for Palestine, documents in the family files of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and the Israel Lands Administration records charting the transfer and subsequent use of Palestinian refugee lands.

In the 1990s the UN undertook to digitize the UNCCP land records. This included 5,625 maps, approximately 210,000 double-sided owners index cards, and 1,641 35mm films of British Mandate land registers.⁽¹⁾ A similar process to digitize UNRWA records is also underway. It is estimated that UNRWA family files contain more than 16 million documents, including land deeds, utility and tax bills, among a host of other documents. (See, Ron Wilkinson, “Preserving the Palestine Heritage,” *Majdal* 26, June 2005)

While these long-overdue efforts to preserve the heritage of Palestinian refugees are commendable, there remains at least one significant gap. Almost everyone familiar with the Palestinian refugee question has seen the image of the Palestinian refugee and his/her key. Sit down with refugees in any camp in the region, or further abroad, and many will soon pull out old documents attesting to their life in Palestine before they became refugees.

Many of these documents are in poor condition, some having survived successive waves of displacement, others plucked from safety before Israeli bulldozers push down the walls of yet another house in the occupied territories. Unlike records held by the UN, however, there is no comprehensive database of the hundreds of thousands of documents still in the hands of refugees themselves. And there is no current effort to preserve these documents.

Learning from Bhutanese refugees



Each refugee case is unique. There are, nevertheless, universal principles and best practice that can be transferred from one refugee case to the next. The response of Bhutanese refugees to their forced exiled in the 1990s is one example that may be instructive if not inspirational for Palestinians in dealing with the preservation of documents still held by refugees themselves.⁽²⁾

Today there are more than 100,000 Bhutanese refugees. The majority reside in seven camps in Nepal. These refugees, who comprise about about a sixth of Bhutan's population, were expelled from their homes in the southern districts of the country in 1990-91. Like Palestinian refugees, the Bhutanese refugees want to return home. Earlier this summer, hundreds of Bhutanese refugees attempted to return home on their own but were not permitted to cross the border.

Bhutanese refugees are ethnically, culturally and religiously distinct from the ruling Bhutanese elite. The Bhutanese government has thus been

unwilling to allow the refugees back. Refugee properties have been expropriated, resettled, in some cases towns have been given new names, while refugees were stripped of their citizenship. The central argument of the Bhutanese government has been that the refugees did not originate from Bhutan and are therefore not Bhutanese citizens.

In the late 1990s, AHURA Bhutan – a non-partisan and non-governmental human rights group – set up a project to document the history of the Bhutanese refugees. The primary objectives of the project are to prove that residents of the seven refugee camps are *bona fide* Bhutanese citizens with incontestable documentary evidence of their origin, nationality and property rights in Bhutan. The goal of the project is the early return of Bhutanese refugees and full restitution of their property and fundamental rights.

Actual work began at the beginning of 1999 with 18 full-time staff members. This included three in organization and management; three in computing; five in research; seven as general volunteers. Information was collected from volunteer camp residents and was subsequently verified by former village headmen, deputy headmen and village elders resident in the camps.⁽³⁾ By March 2000, when the first stage of the project was complete, AHURA-Bhutan had collected documentary evidence from half of the entire Bhutanese refugee population.

Information collected in the camps was digitized and stored in a database for easy access. The database was

produced in CD form to be used to lobby for the early return of the refugees. From a map of Bhutan one is able to click on a district, town and then see the list of families displaced from that area. Family and property details, plus important documents are organized and collated on a family, block and district basis. Documentary evidence includes Citizenship Identity Cards, Land Tax Receipts and photographs of houses and lands.

The project team, however, was unable to complete the documentation of 100 percent of the refugee population. According to AHURA-Bhutan, some of the refugees were either unwilling to participate or apathetic, doubting that the project would contribute to a solution to their plight. There was also evidence that some of the population were misinformed and misguided by various factions. Nevertheless, the project is an amazing example of how refugees themselves can contribute to building their case for return and restitution.

Towards the 60th anniversary of the Nakba

Palestinian refugees and IDPs do not need to wait for a peace agreement to work towards restitution of their homes, lands and properties. As one commentator has observed about refugees from Guatemala who organized themselves into commissions to negotiate directly the terms of their return and restitution, the refugees did not wait for peace, they helped to forge it and thereby became actors in the process of building peace and democratization.⁽⁴⁾

Following the example of Bhutanese refugees, Palestinian refugees could embark on a project to record their own claims for return and restitution. This could include digitization and registration of documents still held by refugees, including land titles, tax receipts, photographs, as well as oral history accounts of their expulsion and description of their homes and properties before the *Nakba*.

All of this information could be organized in digital format on an easy to use CD or DVD Rom. Users could click on a district of a map of Palestine, and then on a village to see the various refugee claimants, their story and their documentation. The project would have several benefits:

- 1) it would provide a means for refugees to preserve their documents, which are more than five decades old. Each refugee would retain their original document/s, but also receive a CD of the digitized document/s, as well as a quality reproduction;
- 2) it would raise awareness about Palestinian refugees and their claims;
- 3) it would provide a mechanism for refugees to learn about their rights to housing and property restitution and a way to participate in the process of finding a solution; and,
- 4) it would fill in the gap regarding documentation of housing and property claims.

In two and half years Palestinians will commemorate the 60th anniversary of the *Nakba*. This might prove to be a useful date to work towards and to ensure that Palestinian refugees claims to homes, lands and properties will never be forgotten.

For more information about the Bhutanese refugees and the documentation project visit the website of AHURA-Bhutan, <http://ahurabht.tripod.com>.

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Notes:

- (1) Michael Fischbach, *Records of Dispossession, Palestinian Refugee Property and the Arab-Israeli Conflict*. New York: Columbia University Press, 2003, p. 338.
- (2) This section is based on, Ratan Gazmere and Dilip Bishwo, "Bhutanese refugees: rights to nationality, return and property," *Forced Migration Review 7* (April 2000), pp. 20-22.
- (3) Information about the documentation project was disseminated to the refugees through leaflets, sample demonstrations, and verbal information through volunteers. The project team developed a standard collection format. Refugees came to the project office in Damak and were interviewed by volunteers trained in interviewing; any other information which could not be given by the interviewee then involved a camp visit.
- (4) Galit Wolfensohn, "Refugees and Collective Action: A Case Study of the Association of Dispersed Guatemalan Refugees," *19 Refuge 3* (2000), p. 14.

Do Israeli Rights Conflict with the Palestinian Right of Return? Identifying Possible Legal Arguments

Excerpts on restitution from BADIL Working Paper No. 10 (August 2005)

by Michael Kagan



In this working paper, refugee law expert Michael Kagan develops the idea of conflicting rights as a means of addressing Israeli objections to Palestinian refugee return. Rather than explore Palestinian arguments for the right of return, this paper starts from the assumption that the right of return exists and must be accepted by Israel in order to reach a just peace that complies with international law. Instead, this paper aims to identify and assess separate claims by Jews or Israelis that cannot coexist with refugee return. Without this separation, any assertion of Palestinian rights may be misunderstood as a denial of Israeli interests, and vice versa.

Because Palestinians base their right to return in international law, many Israelis may assume that international law leaves no room for their concerns. By looking at separate, conflicting rights, the interests of both sides can at least be acknowledged in the discussion, and both assessed through the lens of international law. This offers a channel of dialogue for Israelis and Palestinians who want a just solution to the conflict, and responds to Israeli intellectuals who have sought to acknowledge the justice of Palestinian claims while finding alternative reasons for opposing the full implementation of the right of return.

Kagan attempts to articulate the best case arguments that can be made under international law for different Israeli claims, and then assesses the relative strength of each argument. He concludes that Israelis can make serious arguments to resist specific cases of property restitution, and perhaps certain methods of refugee return. But he concludes that the frequently asserted claim that Jews collectively have a right to separate, exclusive self-determination in a state where they are the dominant majority has little merit in law.

Observations on the restitution problem

Individual property rights are the strongest conflicting rights claim that Israel can make against the right of return under international law. Secondary occupants' rights have been a major issue in other restitution programs. This means that Israelis can conceivably acknowledge the refugees' right to return without necessarily conceding that any Israelis need to be displaced. In order to comply with international law, restitution should be the primary or default remedy for refugee property claims which can be compromised only when it would impose substantial hardship. Whenever a Palestinian refugee is denied restitution, he or she would be owed substantial compensation by Israel, which is ultimately responsible for having confiscated refugee property. Nevertheless, a rights-based resolution of the refugee issue might not actually return all Palestinians to their original properties.

Nevertheless, the rights of secondary occupants are also subject to substantial limits.

First of all, secondary occupants' rights would not block all refugee return, and it would have little effect in areas of the country that are sparsely populated. Recent research by scholar Salman Abu Sitta has noted that the majority of Israeli Jews live in the central region of the country where much of the land was Jewish-owned before 1948. While much urban refugee property was transferred to Jews, the majority of confiscated land remains vacant or sparsely populated. Hence, even if a final settlement took a very

lenient approach toward Israeli property rights, the majority of Palestinian refugees would likely be able to return to their homes.

Second, not all Israeli property rights are equal. International law is most protective of residences and the right of people not to be displaced from their homes; commercial, industrial and agricultural property will be subject

to much less protection. In such cases, there is far less harm in displacing the secondary occupants, who at most should be able to claim compensation for their investments in the land. This compensation could come from the state, which is responsible for having misallocated the land, not from the returning refugees.

Third, the means by which various Israeli individuals and institutions acquired and used land may be an important consideration limiting defenses to restitution. The purpose of protecting secondary occupants is to avoid disrupting the lives of innocent persons. But where the secondary occupants were responsible for the original confiscation or for racially discriminatory allocation of land, it may not be equitable to protect their rights over those of return refugees. Proposed UN Principles on Housing and Property Restitution for Refugees and Displaced Persons state: 'The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, preempting the formation of bona fide property interests in such cases.'

The Jewish National Fund (JNF) in particular acquired a great deal of confiscated refugee property in the late 1940s and 1950s through land sales that were illegal even under Israeli law, and insists to the present day that its property can only be used for the benefit of Jews. A number of powerful Israeli constituencies lobbied the Israeli government to distribute particularly valuable homes to them, and to give lower standard accommodations to new Jewish immigrants. In such cases, Israeli secondary occupants may not be able to legitimately block property restitution to returning refugees.

Fourth, even where secondary occupants acquired property in good faith, some authorities state that it is the secondary occupant, not the returning refugee, who should accept compensation, at least where the original buildings are still in existence.

Finally, it remains open to Palestinians to argue that they were victims of a state-sponsored discriminatory land regime that was inseparable from a larger campaign of ethnic cleansing. Palestinians can argue that they were victims of Israel, and have a right to restitution from Israel. If this requires the state to evict other individuals, then arguably the secondary occupants should seek compensation or alternative property, rather than place the burden of compromise on people who spent decades as refugees in exile.

Since international law remains ambiguous about how refugees and secondary occupants' rights should be balanced, this is an area where Israeli and Palestinian negotiators may have substantial flexibility to design a solution. In other conflict resolution settings, the negotiated settlement prescribed general rules governing restitution along with an individual claims mechanism to resolve specific cases over the ensuing years. However, the precise rules varied considerably, especially on the question of how to weight the rights of secondary occupants.

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The Holocaust Industry Doesn't act Against Israel as it did Against Switzerland

by Shraga Elam

Since 1995 Jewish organizations have been leading an aggressive restitution campaign to reclaim dormant assets belonging to Jewish victims of the Nazi regime in Europe. In 1997 the same issue was raised in Israel but it has not been pursued with similar ferocity nor success.



Palestinian refugee property expropriated by Israel in western Jerusalem. © Tineke D'haese/Oxfam Solidarite.

Although Israel holds more Shoah assets than Switzerland, the international media was eager to publish a peculiar mixture of true and fictitious accusations against the Swiss banks, but remained rather silent on the well-founded charges against the state of Israel. This issue is relevant to the question of Palestinian refugee assets and suffering. It also demonstrates once again the callous attitude of Israel towards Jewish victims of the Nazis. In order to understand the mechanisms at work it is interesting to compare restitution campaigns in Switzerland and in Israel.

Jewish restitution in Switzerland

Until 1995, the Jewish Agency (JA) and the government of Israel led a rather discreet campaign to obtain unclaimed Jewish assets in Switzerland. According to Akiva Lewinsky, the Jewish Agency treasurer who led the campaign, in 1995 these unclaimed assets did not exceed 50 million Swiss Francs (SFr). The sum was not spectacular and did not make international headlines.

All this changed as a new generation of officials came to power in various Jewish organizations, and especially after journalist Itamar Levin published an article in the *Globes*, an Israeli financial paper, in April 1995, in which he revealed the discovery of an important official Swiss document from 1946. In this document, Swiss authorities allegedly admitted that at the time heirless Jewish assets amounted to 300 million SFr. According to Levin's calculations, the 1995 value of these assets was \$6.4 billion.

But the scoop had a "small" flaw. The document was not official; it was written by a Swiss refugee welfare organization. Nor did the document refer to Jewish assets. It described an agreement between Switzerland and Western allies under which the Swiss were obliged to pay 250 million SFr for gold reserves in Switzerland looted by the Nazis. An additional sum of 50 million SFr. was to be paid in advance for other German assets in Switzerland. Ninety-five per cent of the latter amount was to go to the Jewish Agency for the rehabilitation and resettlement of non-repatriable Jewish refugees. In July 1947 Switzerland gave the Jewish Agency only 20 million SFr which was most likely used to finance the war and not for Jewish refugees.

Before publication of the article I warned Levin against his incorrect reading of the document. Levin

published the story just the same. This journalistic goose made international headlines and brought Levin an Israeli prize. According to a subsequent book by Levin, Avraham Burg, the head of the Jewish Agency at the time, was impressed by the fantastic figures and passed on the article to then Prime Minister Yitzhak Rabin. Rabin told Burg to contact Edgar Bronfman, President of the World Jewish Congress (WJC), to launch a campaign to reclaim the assets.⁽¹⁾

The WJC and the JA managed to launch a successful campaign despite the fact that it was based on faulty historical research. They exploited the arrogance and anti-Jewish prejudice of negotiating officials from the Swiss banks for their own purposes. Effective lobbying in the US and a well-orchestrated international media campaign caused bank officials to totally overestimate the strength and influence of so-called 'Jewish Power' and overlook flawed allegations leveled at the banks.⁽²⁾

In 1998 the Swiss banks agreed to pay a \$1.25 billion global settlement, much more than the actual size of the heirless Jewish assets. The banks, nevertheless, brokered a favorable deal as the agreement excluded the Nazi loot that the Swiss had refused to return after WWII. Assets of IG Farben, a large company deeply involved in the Auschwitz project, for example, were appropriated by the Swiss Bank UBS with the support of the Swiss government. These assets alone are estimated to be around \$3 billion.

Jewish organizations claimed they had pressed for a quick deal with the Swiss banks because Shoa survivors were passing away. Seven years later, however, only about half of the sum, around half a billion dollars, has been distributed and this is only due to very generous eligibility criteria. The fate of the rest of the money is still an object of dispute. It is quite clear that these Jewish organizations and Israel calculated (and still do) that they could profit from the arrangement, since it was unlikely that heirs would be found for the majority of the unclaimed assets in Switzerland.

Jewish restitution in Israel

The issue of heirless Jewish assets, however, is not just a Swiss problem. In 1997, i.e. two years after Switzerland, the same problem came to light in Israel itself. Information about the scope of these assets was more reliable, but, unlike Switzerland, it was mainly the state itself - and affiliated organizations - that had taken over these assets.

In 1996 professor Yossi Katz from Bar Ilan University, like Levin, discovered an interesting document. This time there was no misinterpretation. The document from the Central Zionist Archives in Jerusalem clearly indicated that state-controlled Bank Leumi's predecessor held dormant Shoah assets. A year later Katz published the first results of his research in the daily *Ha'aretz*. His well-researched scoop did not make many international headlines, even though the assets were considerably greater (up to \$20 billion) than those in Switzerland.⁽³⁾

The Israeli Administrator General, who holds unclaimed assets in trust, subsequently announced that he had unpublicized information about more than 11,000 unclaimed plots of land in Israel. Professor Katz continued to investigate the subject. In 2000 he published a book which made the dimensions of the scandal even clearer. "The worst thing about it", says Katz, a religious Jew who lives in the West Bank settlement of Efrat, "is that it is precisely the state of Israel, which accuses all European nations of committing this sin, that is committing this sin itself."

In February 2000 Israel set up a "Parliamentary Inquiry Committee on the Location and Restitution of Assets (in Israel) of Victims of the Holocaust". The Committee, headed by Labor MP Colette Avital, limited its work to unclaimed bank deposits. Moreover, Israeli banks stymied the work of committee auditors. Protocols from the inquiry reveal the heavy pressure put on the committee. The state-controlled Bank Leumi received the most media attention because of its leading role and negative attitude towards the investigation.

Yehuda Barlev, a prestigious auditor who led the investigation of Leumi claims that the bank threatened to destroy him. At the last minute, when his report was in the print shop, Barlev discovered that somebody had made an unauthorized change to neutralize conclusions that Leumi still held accounts belonging to Nazi victims. Even after publication of the report in January 2005, Leumi continues to deny the existence

of such accounts. It should be noted as well that Barlev's report is by far not a comprehensive examination of all the Shoah assets held by Bank Leumi.⁽⁴⁾ Leumi was one of the key players responsible for the repeated postponement of the publication of the Committee's report and for diluting the findings and recommendations.

Palestinians support Jewish restitution claims

During the Oslo negotiations some academics and policy makers attempted to draw a linkage between housing, land and property losses suffered by Palestinians for more than 50 years and those suffered by Jews from Arab countries who came to Israel after its establishment in 1948.

In recent years a number of organizations have stepped up campaigns to press for the claims of Jews from Arab countries. These include the World Association of Jews from Arab Countries (WOJAC) and Justice for Jews from Arab Countries (JJAC). In addition, Israel's Ministry of Justice set up a program to gather documentation about Jewish claims from Arab countries.

Palestinians and others rejected this linkage, not because they felt that this group of Jews did not have a similar right to restitution, but because the proper address for those claims was the state from which they originated – e.g., Iraq, Egypt, Syria, Morocco, etc.

In 1999 in the period leading up to the failed final status negotiations between Israel and the PLO leading members of Palestinian civil society and policy makers endorsed a petition (*Restitution: A Basic Human Right*) affirming the right of all displaced persons to restitution, including Jews from around the world who continue to fight for and receive restitution.

The petition signatories appealed to "all fair-minded people, governments, parliamentarians, human rights groups and particularly Jewish organizations to recognize, support and call for restitution of Palestinians through the restoration of their homes and properties to their rightful owners as well as restitution for other material and non-material losses."

"While restitution can never fully make amends for all losses, suffering and crimes against humanity," they wrote, "restitution establishes a precedent which should prevent the repetition of such catastrophes in the future."

For more information about the petition see, al-Majdal 1 (March 1999).

The crucial question of how the current value of the unclaimed deposits will be assessed has yet to be settled.⁽⁵⁾ It is estimated that Leumi will have to pay between \$8-69 million depending on the number of heirs located. Furthermore, the state of Israel will have to pay between \$29-131 million for unclaimed assets transferred from the British Custodian of Enemy Property to the Israeli Custodian of Enemy Property and Administrator General. A mechanism to identify heirs still needs to be set up. Experts are skeptical that serious efforts will be made because the process is complex, costly and neither the banks nor the state are interested in paying the higher sum. If they do not find any heirs, or if they wait long enough, most of the survivors will die and the lower payment will simply be a transfer from one state pocket to the other.

It is even more scandalous that there has yet to be a formal investigation to locate real estate in Israel belonging to Nazi victims. Only a few preliminary steps have been taken. Moreover, in June 2005 the Knesset speaker Reuven Rivlin (Likud) called off the parliamentary inquiry into this issue. He declared that the investigation was the responsibility of the government. Knesset spokesman Giora Pordes explained that the reason for Rivlin's position was that a government-sponsored bill on restoring property had already passed its first reading. Professor Katz, meanwhile, said that government handling of the search for unclaimed real estate was tainted by a conflict of interest, because a considerable portion of these assets is government owned.

The connection to Palestinian refugees

While it is obvious that the Israeli government refuses to retribute billions of dollars of assets owed to Shoah survivors there is another reason for this reluctance. According to Speaker Rivlin, "a Knesset role in locating and restoring land properties belonging to Holocaust victims could serve as a precedent for Arab-Israeli and Palestinian demands for the restoration of their property in Israel transferred to Israeli hands after 1948. Efforts have already been made to locate property originally owned by Arabs, including property entrusted to the Custodian General."⁽⁶⁾ Rivlin is not the only politician who is afraid that restitution of dormant Jewish assets in Israel might be a precedent for Palestinian demands, which are even higher.

The government stance demonstrates once again the callous Zionist attitude not only towards legitimate Palestinian demands but also towards Jewish victims of the Nazi regime. The latter were abandoned by the Zionist leadership during WWII, which repeatedly sabotaged rescue plans that would have endangered the Zionist project in Palestine. Resettlement of Jews elsewhere would have destroyed the basis of the Zionist demand for political and financial support. Already during WWII plans were drafted to "inherit" Nazi victims and use their suffering to further national goals. David Ben-Gurion referred this policy as "Catastrophe [Shoah] is Power".

Most of the survivors living in Israel have experienced the heartless approach of their government and affiliated institutions for years. Official reluctance to reconstitute victim's assets comes as no surprise. Nevertheless, their loyalty to Zionist ideology is stronger. They still believe in the myth that the establishment of Israel was their rescue. This is the main reason why their protests against state organized embezzlement started only recently and have remained rather limited and cautious.

A former Israeli minister who survived the Nazis in Hungary, Yosef Tommy Lapid has repeatedly launched verbal fireworks which make media headlines in Israel but lack substance. Recently, for example, he called the treasury officials "blood suckers" because of their Shoah assets policy.

Avraham Roet, head of the umbrella organization Forum for Restitution of Shoah Victims' Property in Israel, declared that if the government did not settle the property claims it would be a "stain on the country." He said Israel should be a "light unto the nations." His organization, which focuses its public activities against Bank Leumi, has demonstrated in front of the bank's head office and has accused the bank of waiting until all the survivors were dead. At the end of June they threatened to launch an international campaign to "undermine the financial stability" of the bank unless it grants complete access to all documents about unclaimed accounts.

Until now nothing has happened publicly and Roet, who is over 70 and one of the younger survivors, says that he is looking for a pragmatic solution that will help needy survivors soon. He does not expect full restitution, neither from the banks nor from the state, and says that anyway he would not know what to do with billions of dollars.

Shraga Elam is an Israeli investigative journalist based in Zurich/Switzerland. In the mid-80's he began his research about the Nazi Judeocide and on the role of the Jewish Agency at that time. In 2000 Elam published a book in German on the cooperation between the Nazis and the JA leadership. He exposed from the mid-1990's onwards several explosive affairs concerning Switzerland during the Nazi era. In 2004 he won the prestigious Australian Gold Walkley Award for his revelation about the Swiss accounts of three prominent Australian figures by the Israeli Bank Leumi (Switzerland).

Notes:

- (1) At the time, the WJC was looking for an issue to focus on after it had unsuccessfully tried in the 1980s to defame Austrian president and former UN General-Secretary Kurt Waldheim as a Nazi war criminal based on faulty historical research. Even the famous Nazi hunter Simon Wiesenthal defended Waldheim.
- (2) Among the flaws was the impression that all or most of the Nazi gold held in Switzerland belonged to Jewish victims, while, in reality there were only a few kilos of victims' gold in Switzerland. Most of this precious metal had been robbed by the Nazis from European central banks. Moreover, there are strong indications that most of the Jewish assets believed to be deposited in the Swiss banks were actually held by the American Jewish Joint Distribution Committee (Joint), a Jewish welfare organization.
- (3) These include bank accounts as well as real estate located in central and expensive locations in Israel. At the beginning of the 20th century European Jews, motivated primarily by Zionist ideology, started to invest in Palestine. Many of these investors were killed by the Nazis and had no heirs, and if they had heirs, they were not aware of the investments.
- (4) Many issues that Barlev raised to the parliamentary committee in his interim reports remained open because of the bank's strong pressure. First, deposits in the UK branch of the bank were not fully investigated. In January 2004 Barlev told the committee that his team had found hundreds of Shoah accounts and that these findings were confirmed by Leumi's own auditors. Contrary to its own declaration, the bank had not transferred all these deposits as ordered to the British Mandate authorities. According to Barlev, documents prove that the bank found ways to bypass the British order. The final report refers to some 180 accounts that most likely belong to Nazi victims. The owners still have to be identified because this was not part of Barlev's mandate. Secondly, Bank Leumi claimed that it did not profit from Shoah accounts. According to Barlev, "The bank surely benefited from these deposits throughout the entire period. We see also that its profitability rose. [...] These Shoah victims' accounts served as securities for the banks. They knew that they [the victims] will not withdraw these monies and they used them as guarantees for loans that they took." An important document relating to this issue was not included in the report. Barlev was told by the Committee chairwoman Avital that this was due to a secrecy agreement between the banks and the parliament. Publication of such data has to be approved by the parliamentary legal adviser, but this was never done with regard to the above-mentioned document.
- (5) Two methods of calculation were decided: a higher one for accounts where legitimate owners or heirs are identified and one for those accounts where no owner is located. In the second case the money will be used to fund welfare programs for Shoah survivors and for commemoration of the Nazi Judeocide.
- (6) *Globes*, 7 June 2005.

Restitution and holy sites – a question of equal treatment

The landscape in Israel is dotted with the remains of Palestinian villages including Muslim and Christian Holy Sites. During the early years of its operation the UN Conciliation Commission for Palestine called upon Israel to return the Holy Sites to their respective faith communities. Today many of these sites have been destroyed, others have fallen into disrepair, while still others are used for purposes not in keeping with their status as Holy Sites.



The mosque in the depopulated Palestinian village of Beit Jibrin, which has been used by the nearby Israeli kibbutz as an animal pen. © BADIL.

The issue of respect for Holy Sites came to the fore of Israeli Jewish debate surrounding the August evacuation of Jewish colonies and redeployment of Israeli forces from the Gaza Strip. While the government of Israel initially committed itself to dismantling Jewish synagogues built illegally in the Strip, it later changed its mind. The debate about what to do with the synagogues ignited comparisons with Israel's treatment of Muslim and Christian Holy Sites after 1948.

Today Palestinians remaining inside Israel, including internally displaced from 1948, continue to struggle to gain access to and maintain mosques, churches and cemeteries in villages depopulated and destroyed as a result of the 1948 war. Only a few Holy Places were completely destroyed during the war; subsequent destruction, misuse and denial of access to Palestinians to maintain these sites stands in sharp contrast to Israel and the Jewish Diaspora's demand for the protection and return of Holy Sites in Europe.

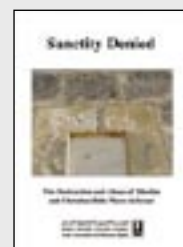
According to a recent study by the Nazareth-based Arab Association for Human Rights, Muslim and Christian Holy Sites in the densely populated center of Israel have suffered the highest levels of destruction. Development in these areas often takes place without regard for the protection or preservation of Muslim and Christian Holy Sites. There are more remains of Holy Sites in rural areas, but Palestinians more often than not are unable to access these sites which are sometimes fenced off or declared closed military areas.

Due to the lack of access these sites are subject to further deterioration. The Arab Association for Human Rights, and other organizations seeking to preserve the sites, like the al-Aqsa Foundation and the al-Aqsa Association, report repeated desecration and attacks on these sites. Such incidents, however, are rarely reported in the Israeli and international media and are not usually investigated by the police.

The situation is equally difficult with respect to Muslim and Christian cemeteries. Even Palestinian citizens of Israel are often denied access to tend the graves of relatives buried in these sites before the 1948 war. As the Arab Association for Human Rights observes in its report, comparison with Jewish Israeli cemeteries reveals painful discrepancies.

The Association recommends that Israel allow and facilitate, through funding and other means, Muslim and Christian civil society to repair and develop their Holy Places; work to bring religious tourism to Muslim and Christian communities inside Israel in a way that will directly benefit those communities; formally recognise that the Holy Places referred to in the 1967 Protection of Holy Places Law are also Muslim and Christian and implement this legislation; allow independent elections from the Muslim community for the Boards of Trustees who administer the Muslim *waqf* property for the state; undertake never to demolish Holy Places of either the Muslim or Christian traditions, and investigate fully attacks or desecrations of these sites; and, undertake never to prevent Muslims or Christians from praying in their places of worship.

Information is based on a report entitled, Sanctity Denied: The Destruction and Abuse of Muslim and Christian Holy Places in Israel. The report was published by the Arab Association for Human Rights in December 2004. The entire report is available on their website, <http://www.arabhra.org>.



Taking Restitution Claims to the European Court of Human Rights

Interview with Titina Loizidou, Cyprus

In November 2004 BADIL Resource Center organized a study tour of Cyprus for Palestinian refugee activists (See Majdal 24, December 2004). During the visit participants met with Ms. Titina Loizidou, a tour guide and displaced person from the northern Cyprus port town of Kyrenia. After the division of the island in 1974 Ms. Loizidou became active in a movement called 'Women Walk Home' which held regular demonstrations calling for a united Cyprus, return home and human rights for all.

In the 1980s she decided to submit an application against Turkey to the European Commission on Human Rights based on the denial of her property. The case was referred to the European Court of Human Rights in 1993. In 1998 the Court ordered Turkey to pay Ms. Loizidou \$640,000 in compensation for denial of access to her property. Ms. Loizidou's peaceful enjoyment of her property (restitution) is pending. The following interview was conducted in November 2004 in Nicosia, Cyprus.



Ms. Titina Loizidou explaining her petition for restitution filed with the European Court of Human Rights. Photo in the picture is her hometown of Kyrenia in northern Cyprus. © BADIL.

Why did you decide to file a petition about your property with the European Court of Human Rights (ECHR)?

Well, I come from Kyrenia, which is in the northern part of the Cyprus. It's the town where I grew up, where I have my family connections, and it's the place that I identify with. I was deprived of this place in 1974 [after the Turkish invasion], and my application, I would say, symbolizes the fact that no one has the right to deprive me of the place that I come from.

The decision to file the petition was more than an issue of property. I felt that I was deprived of all those experiences and all those people that I would have liked to be with, and whoever was the aggressor, whoever deprived me of these things, if I had the chance to do it, I would file the application.

Like anything you do in life, there are pros and cons, however, I felt that I would try to use those mechanisms of the Council of Europe available to me as a citizen of a member country of the Council. I was fortunate enough to be able to make use of a system which is unique in the world, as it examines violations of human rights on a regional basis.

What was your primary goal in taking your case to the ECHR?

I think that the primary objective was that an individual, whoever that person is, should not be deprived of the basic human right to live where they want to live. I think people should have the possibility to decide on their own where they would like to be. I think it was a very important issue and it was underlined in my application.

What was the reaction from the community when you filed the case?

First of all, I had the full support of my family, my husband, my children, and, of course, my father who was already in his seventies. He was very supportive. Some people were skeptical because of the ongoing division and presence of Turkish troops in Cyprus. However, when we had the first decision and the second decision, I think this gave hope to people that something could be done on the legal level that will eventually help on the political level.

What do you think about the process today given the fact that you still do not have access to your property?

Yes, my rights have not been fully restored, however, I feel that the property issue is so important for the solution of the Cyprus problem. And I feel pleased in a way that this case has set a precedent regardless of what plan is proposed to the Cypriots. Property rights cannot be dismissed. So I feel that this case has contributed to that.

The relationship between your case a solution to the Cyprus conflict raises an interesting discussion about whether law is an obstacle to a political solution. How do you see the role of law?

I am not a lawyer, I am an individual, I am a citizen of the Republic of Cyprus. I am a person who has seen Cyprus divided, divided not only physically, but I have also seen people divided. Turkish and Greek Cypriots used to live together. I feel that law can be supportive of a political decision not to discriminate between people. It can give respect to people within the framework of human rights. I am not saying this in a strict way, I am saying this in a wider perspective, because without a system to promote and protect human rights, I do not think things will develop well. I am talking about law in many aspects, securing human rights in everyday life. I am not only talking about the right to property. Law that will ensure respect between people, because if there is no respect between people then human rights will be repressed again.

Given the rejection of the Anan Plan what are your predictions on how the property issues for both Turkish Cypriots and Greece Cypriots will be resolved in the future?

Well, I think that people should have the right to decide about their properties. I think the very complicated way that the Anan Plan proposed to deal with properties did not take into account the fact that people were attached to their properties sentimentally. Property was a way to identify themselves with the places they came from. I believe that if the plan had been less restrictive and given people more freedom to decide how to use their properties, people would have been happier. I would have been happier myself.

People felt that with the Anan Plan, although the politicians came together in order to reach a solution, quite a lot of the people themselves were kept in the dark. We have gone through very dramatic experiences which needed to be resolved before facing a solution which the people did not know about or knew that the politicians were discussing. People were taking stands for or against it even though they did not know the elements of the solution, and having developed a human rights consciousness, people did not feel that it met their views.

What does Kyrenia mean to you today, and in terms of the future of Cyprus itself?

Kyrenia is my hometown, it's Cyprus for me. I cannot really divide it from me. I always see Cyprus as a whole. Of course, the situation in Kyrenia has changed [since 1974]. I have no problems to go back to Kyrenia, to live in Kyrenia with a Turkish Cypriot administration. For me it is still Kyrenia. Obviously, the people that I relate to from before 1974 will not be there. It will be a different situation, but I hope I will be able to help build a new situation, and be a link, being one of the old of the older generation now. This is how I would like things to turn out, to be able to share Kyrenia with people who would go back and with people who are there and do not want to leave. For me it still Kyrenia, it is still Cyprus without the people that I loved and that I communicated with, but people are people, and I am prepared to share Kyrenia with the Turkish Cypriots, and they are Cypriots anyway.

*For a summary of legal mechanisms and Palestinian restitution see, *Fora Available for Palestinian Restitution, Compensation and Related Claims. BADIL Information & Discussion Brief No. 2*, by Susan. M. Akram. The Brief is available on the BADIL website: <http://www.badil.org>.*

The role of the Jewish National Fund in blocking refugee restitution

The Jewish National Fund (JNF) was set up at the beginning of the 20th century to acquire lands in Palestine for Jewish-only settlement. In 1949 the JNF acquired 1.1 million dunums of Palestinian refugee property held by the Israeli Custodian of Absentees' Property. It acquired a further 1.27 million dunums in 1950. It is estimated that the JNF holds Palestinian refugee properties in some 372 villages that were depopulated in 1948 and later destroyed.

In 1949 the Bank of American National Trust and Saving Association in San Francisco (Bank of America) extended a \$15 million loan which enabled the JNF to buy refugee land, complete its 'Series A' settlement plan as well as construct 80 new settlements. It is hard to believe that the American Bank was not aware of the fact that the JNF was using the loan to 'launder' Palestinian refugee properties, however, no investigation has ever been undertaken against the bank. The US Export-Import Bank also extended a \$100 million loan to Israel in 1948.

The majority of Palestinian refugee property is held and managed by the Israel Lands Administration (ILA), which is responsible for the management of all publicly held lands in Israel. Public lands comprise 93 per cent of the total area of the state. The JNF holds half the seats in this institution and thus has an important say in the way these lands are managed. According to the JNF's Memorandum of Association it is responsible for raising funds for Jewish-only settlement.

The UN Committee on Social, Economic and Cultural Rights has expressed "grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries including the Jewish National Fund to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities."

"A State Party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies, constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties by non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant." (UN Doc. E/C.12/1/Add.27, 4 December 1998)

In the summer of 2004 activists from the Palestine Solidarity Campaign (PSC) in Scotland launched a campaign to strip the JNF of its charitable status in Scotland. In November 2004, the Scottish parliament's Communities Committee agreed to take the PSC's concerns into account in deliberations on the new Charities Bill before the legislature. A similar campaign was launched in Canada in March 2005.

*Sources: *Financing Racism and Apartheid, Jewish National Fund's Violation of International and Domestic Law*. London: Palestine Land Society, August 2005; *Records of Dispossession, Palestinian Refugee Property and the Arab-Israeli Conflict*. New York: Columbia University Press, 2003. Also see, Joseph Schechla, "Jewish Nationality', 'National Institutions' and Institutionalized Dispossession," *Majdal* 24 (December 2004).*

For more information on the JNF campaigns visit websites of the Scottish Palestine Solidarity Campaign, <http://www.scottishpsc.org.uk/index.html>; and al-Awda Canada, <http://www.al-awda.ca>.

For more information on recent legal action against the JNF inside Israel visit the Adalah – Center for Arab Minority Rights website: <http://www.adalah.org>.

Habitat International Coalition's Housing and Land Rights Network Launches New Violations Database

On World Habitat Day, 2005, Habitat International Coalition's Housing and Land Rights Network (HLRN) launched a new interactive and participatory feature on its website. It is an initiative by HLRN officers and members to build a simple database that will host basic information on the world's most common housing and land rights violations. The Violations Database Project (VDP) will offer a very simple method for documenting violations arising from cases of (1) forced eviction, (2) demolition, (3) confiscation and (4) privatization of public goods and services. The VDP has been created for members, but HLRN invites the general public to participate and benefit.



Constructing the Wall around Jerusalem with Caterpillar equipment. © Anne Paquier.

While HLRN has developed its Housing and Land Rights Toolkit, its monitoring methods and training modules from the experiences of HIC and HLRN members, it is also a fact that many HIC members and others in the human settlements field do not have systems for monitoring and documentation, and many do not have websites or other means of disseminating information about cases in their region. The VDP will help them to develop good monitoring practices, globally publicize local events and developments, and pose solutions.

All types of individuals and groups in the field can use this simple tool to register violations in their locality. Periodically, HLRN will produce reports of housing and land rights violation data to provide global examples, trends and developments from the rich pool of member experiences. The data also will integrate with the regular services and activities of HIC-HLRN, advocacy, Urgent Actions, the Solidarity Network, social production of habitat, training and UN cooperation.

For the first year, the VDP will be a prototype upon which HLRN will be able to develop, share and customize IT tools that serve members to become ever better at their vital task of defending the human right to adequate housing (HRAH) for all. In the meantime, it is intended that the VDP will provide several immediate advantages, including to:

- (1) Illustrate the "violations approach" to the human right to housing;
- (2) Offer a simplified and uniform methodology for documenting cases;
- (3) Provide a chance to promote cases, proposed solutions and strategies;
- (4) Give HIC-HLRN members a means to relate their experiences to each other;
- (5) Give HLRN regional coordinators a tool and opportunity to relate to their constituents;
- (6) Allow other members to see at a glance what is happening on other HIC-HLRN regions;
- (7) Give members a chance to this database to create their own databases for locally specific purposes;
- (8) Allow users to search from primary data to produce reports by time, location and/or type of violation;
- (9) Serve as a mechanism for members to find partners on the basis of type of case, experience and strategy; and
- (10) With experience at this simplified documentation exercise, users then can graduate to more-advanced methods in the HLRN Toolkit.

For more information visit Habitat International Coalition's website, <http://www.hic-mena.org>.

Israel Tries to Tighten Immigration by Following Europe

by Michael Kagan

After 57 years, the State of Israel is thinking about coming up with a comprehensive immigration policy.



Jewish immigrant children in the Palestinian village of Tarshiha in May 1949. © Kluger Zoltan/Israel Government Press Office.

The emergence of immigration reform on the political agenda this summer took some by surprise because Israel's migration policies have always been clear on two points. First, Israel refuses to let the Palestinian refugees that it expelled return to their homes. Second, Israel encourages Jews of all nationalities to become Israeli citizens through its Law of Return. This basic arrangement – an open door to Jews, and a closed door to nearly everyone else – is not likely to change soon.

Yet, on the nuts-and-bolts of immigration law, Israeli policy has been vague and sometimes *ad hoc*. What happens when an Israeli citizen marries a non-Jewish foreigner? What if the foreign spouse has children from a previous marriage? What if an Israeli wants to marry an illegal immigrant? What if migrant workers don't leave or have children born inside Israel?

European and North American governments have filled thick law books with answers to these kinds of questions. But in Israel they've been left open, with thousands of people's fates dependent on the discretion of the Ministry of Interior and its Population Administration. Hundreds of thousands of migrant

workers came to Israel during the 1990s, many replacing Palestinian workers shut out by “closure” of the occupied territories. Tens of thousands of migrants have been left in limbo.

In May, Israel’s new Minister of Interior Ophir Pines-Paz formed a commission of legal scholars to propose comprehensive legislation. Media reports indicate that members of the Israeli cabinet want to strictly limit non-Jews’ ability to obtain any status in Israel, even if they are a close relative of an Israeli citizen.

The commission has only recently begun its work. Most of the information about its work has come through speculation in the media. If Israel’s government falls apart and goes to new elections, the whole project may be suspended or could lose its political foundation.

Like so many things in Israel, it began with fears that Jews would lose their demographic dominance in Israel. But the scope and direction of the commission’s mandate are unique. All of Israel’s immigration-related laws are reportedly on the table, including possibly tightening the Law of Return to make it harder for non-Jews with Jewish grandparents to immigrate. And at least some politicians want Israel to model its immigration laws on strict European models.

Israeli politicians often talk about the self-declared Jewish State as something unique, with the Law of Return among its defining features. Israel defies international law on the Palestinian right of return, and its Law of Return is openly discriminatory against non-Jews. It is therefore not at all routine for Israeli Ministers to look at western Europe for models of immigration policy. But the fact that Israeli leaders can realistically consider international models shows a great deal about the global state of immigrant rights today.

Immigration is the last vestige of racism in international law. At least in principle, governments - Israel included - have agreed to ban racial and ethnic discrimination in “political, economic, social, cultural or any other field of public life.”⁽¹⁾ But when states wrote the International Convention on the Elimination of All Forms of Racial Discrimination they left one form of discrimination intact:

Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.⁽²⁾

This allows leading western democracies to give preferences to certain nationalities and ethnicities when it comes to citizenship that would be abhorrent in nearly any other field. It also provides Israel legal cover for its Law of Return.

Of course, Israel’s willingness to look at international law is inconsistent at best. While international law allows general discrimination in immigration, states are prohibited from singling out specific nationalities for exclusion. Yet Israel has done exactly that, renewing its temporary legislation to Palestinians from the occupied territories. The UN Committee on the Elimination of Racial Discrimination has twice called for the exclusion to be revoked.⁽³⁾

Israel’s pro-Jewish immigration law is among the most extreme discriminatory immigration laws, and stands out for its tie to religion. But it is not completely unique. Several other countries have immigration laws that make it easier for people of certain national or ethnic backgrounds to obtain citizenship. Denmark’s Nationality Act favors people from Finland, Iceland, Norway or Sweden. Greece allows any “ethnic Greek” to apply for naturalization.

In 1984, the Inter-American Court of Human Rights ruled that Costa Rica could legally favor “nationals of other Central American countries, Spaniards and Ibero-Americans” in its nationality laws.⁽⁴⁾ The Inter-American Court tried to explain immigration discrimination by arguing that close “historical, cultural and spiritual bonds” will ease assimilation and preserve traditional values that a state “has the right and duty to preserve.”

Hence, in immigration, discrimination remains generally legal, an area of law that seem more rooted in the

19th Century than in the post-World War II human rights era. One has to question how committed governments really are to equality if they insist on retaining the right to discriminate on the essential question of citizenship. Most western immigration laws discriminate against people from Asia, Africa and Latin America, and favor Europeans and North Americans. It should be very disturbing that mainly white northerners have a generally easier time moving around the world than southerners who are mainly people of color.

These moral doubts have particular weight in the case of Israel. Israel has made discriminatory immigration central to its national identity in a way that other countries have not. In the words of the Israeli Ministry of Immigrant Absorption's website: "The Zionist enterprise of *aliyah* and absorption, has been, and remains, the human basis for the establishment and flourishing of the State of Israel." Palestinian citizens of Israel have long questioned how they can be equal in a state that openly prefers Jews above all others.

As a legal matter, the Law of Return for Jews and the right of return for Palestinians have little to do with each other. The Law of Return is about immigration for people who had no previous association with Israel. But Palestinians are not seeking to immigrate; they are asking to return home. The same convention that lets states discriminate in immigration forbids any bias about "the right to return to one's country."

But Israel's denial of Palestinian return still poses the greatest moral challenge to its pro-Jewish immigration policy. Costa Rica's favoritism toward "Ibero-Americans" and Greece's open door toward "ethnic Greeks" do not have such direct connections to ethnic cleansing. Israel is not merely asserting a historical or spiritual connection with Jews; it is simultaneously refusing to acknowledge the historical, cultural and spiritual bonds between Palestinians and their homes in Safad, Majdal, Jaffa, and hundreds of other villages and cities.

Israel's government intends its immigration reform effort to maintain Jewish dominance, not to make the country more open. Beyond closing doors to foreigners, the resulting policies could have a sharp edge for Israeli citizens, many of whom might be prevented from living in their own country with their partners, spouses and children.

The Interior Ministry's expert commission has yet to make any concrete proposals, but its mere existence has already sparked debates within the Israeli government, academia and human rights movement.

If Israeli immigration reform gathers momentum, there will be two main things to watch. First, how much hardship is the Israeli government willing to impose even on its own people to prevent the slightest drop in the Jewish demographic advantage? Second, to what degree will Israel be able to use international law and western European examples to legitimize harsh and discriminatory laws?

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Notes:

- (1) International Convention on the Elimination of All Forms of Racial Discrimination article I.
- (2) *Ibid.*
- (3) Committee on the Elimination of Racial Discrimination, CERD/C/65/Dec.2. (20 August 2004).
- (4) Advisory Opinion on the Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica (OC-4/84), paras. 57, 60.

The Forgotten: The Case of Non-ID Palestinians in Lebanon



The situation of non-ID Palestinian refugees in Lebanon has recently been the subject of increased attention. The plight of several hundred thousand Palestinian refugees in Lebanon is one of the most critical in the region. Among these refugees, some have not been identified, i.e., non-ID refugees: they are not registered with UNWRA or the Lebanese authorities. Non-ID refugees are considered illegal aliens and live in a legal limbo. They are deprived of basic legal protection and access to UNRWA services.

This article presents the main findings of two recent reports as well as their conclusions and recommendations. The first report is entitled *Survey report on the situation of non-ID Palestinian refugees in Lebanon compared to registered and non-registered refugees residing in camps and gatherings (Survey)*. This study is the result of a survey undertaken by the Danish Refugee Council (DRC) and the Palestine Human Rights Organisation (PHRO) between August and November 2004. The second report, *Falling Through the Cracks: Legal and practical gaps in Palestinian refugee status, A case study of unrecognized refugees in Lebanon (Falling Through the Cracks)*, was produced by the Frontiers Association. *Falling Through the Cracks* is a draft report subject to further discussion among relevant parties in Beirut this autumn and thus, is still under consideration.

Report summaries

The *Survey* collected data from 1,745 refugee households from 11 official camps and 27 unregistered gatherings in Lebanon.⁽¹⁾ The objectives of the *Survey* are to find out why non-ID refugees are undocumented and how this situation came about, what is their current legal status, living conditions, and whether they encounter particular difficulties as well as what possible solutions could be explored. One of the first findings is that the number of non-ID refugees is approximately 3,000, most of whom came in the 1970s as single men, as a result of either the events known as Black September in Jordan or subsequent political events.⁽²⁾

Results from the *Survey* show that the vast majority of the respondents claim to have Palestinian nationality (96%) while a small number mentioned Jordanian, Syrian, Egyptian and Iraqi nationality. The *Survey* found that, though classified as undocumented in Lebanon, most refugees hold some sort of legal document proving their identity (86.5% of the respondents). Although most of these documents are no longer valid, they can nevertheless serve to prove a refugee's identity by contacting the authority once responsible for their registration, a process that can potentially provide a solution to their lack of legal status.

According to non-ID refugees, the three most acute problems they face are restriction of movement, lack of registration and access to medical services. The *Survey* found that non-ID Palestinian refugees endure harsh socio-economic conditions as they are often unable to find work due to a lack of documentation. They cannot leave the perimeter of the camp or travel abroad as they may be intercepted, fined or jailed. Movement restrictions confine non-ID refugees to the camps, where they often work for political parties. In comparison to other refugees, non-ID refugees are disadvantaged when it comes to access to fundamental services, in particular, education and health. They are denied or have to pay for health care, educational facilities or other forms of humanitarian assistance.⁽³⁾ Non-ID Palestinian children are left

without access to higher education, as only primary education is offered in the camps. Children often drop out of school because of lack of ID (in 42.3% of the cases) and if they complete their education, they cannot receive a diploma because they do not hold valid identification papers.

The second report by Frontiers, *Falling Through the Cracks*, is an ongoing project which is a continuation and somehow complementary to the *Survey*. Rather than focusing on data collection, it examines the civil and legal status of both non-registered (registered with the Lebanese government but not with UNRWA) and non-ID Palestinian refugees. The report examines the reasons why some refugees lack UN and/or government recognition. The goal of this research is thus slightly different as it seeks to provide an explanation as to what led to the current lack of legal status of these refugees. In short, the report from Frontiers provides additional information as to the historical, political and legal developments that shaped the status and treatment of Palestinian refugees in Lebanon.

According to the report, there are three reasons for the situation in which non-ID refugees find themselves. First, it is argued that the definition and application of the term Palestine refugee has been rigidly applied and is unable to accommodate the particularities of the Palestinian displacement. While most Palestinians have remained in their first host country, some have moved and found themselves without valid legal document in their new country of residence and unable to return to their previous host country. Some of these refugees have lost their identification papers, but in most cases, it is UNRWA that does not transfer their file from their first host country to their new one, Lebanon. According to the report, the non-transfer of registration files seems to be the main reason for non-ID status with the Agency. Modernization of UNRWA's registration system, which is currently underway, however, may address this problem.

The second reason for non-ID status is the lack of recognition of post-1967 displacement. Indeed, while a large number of people have been displaced during the Black September events in Jordan, others were displaced as a result of the Israeli occupation of the Palestinian territories. Refugees from the post-1967 period have generally not received assistance from UNRWA.

The third problem stems from the fact that both UNRWA and Lebanon discriminate on a gender basis against women. When they get married, women take the legal status of their husband, even if he does not have one. If women are registered with UNRWA, their registration is frozen. Lack of formal status also means that their children will be non-ID children, and this, even if their mother is registered with UNRWA and/or the Lebanese government. As the report contends, this situation not only discriminates against women but also perpetuates the problem. UNRWA is currently reviewing policy regarding registration of refugee women married to non-refugee men.

Recommendations

The *Survey* concludes with ten recommendations:

- 1) raise awareness about the situation of non-ID refugees;
- 2) transfer UNRWA files between fields, including Lebanon;
- 3) non-ID refugees should have full access to UNRWA services;
- 4) non-ID refugees should be included under the UNRWA mandate;
- 5) non-ID refugees with protection needs should be recognised as persons of concern to UNHCR;
- 6) refugees who volunteer to return to previous host countries should be accepted;
- 7) the Palestinian Authority should issue IDs;
- 8) children should be able to take the citizenship or status of their mother as well as their father;
- 9) Lebanese authorities should register non-ID Palestinians;
- 10) suggest ways of providing assistance to vulnerable cases.

Falling Through the Cracks, for its part, proposes to

- 1) re-assess UNRWA's working definition of a Palestine refugee;
- 2) re-assess Lebanon's regulations governing Palestinian refugee status in the country.

- 3) recommend stronger mechanisms for assessing individual circumstances, along with more civil society involvement in advising individual refugees of their rights.

In sum, there is no doubt that both reports suggest concrete steps to end the plight of non-ID refugees in Lebanon. As a central point, they recommend more flexibility from the part of UNRWA and the Lebanese government to minimally provide non-ID refugees with some sort of identification paper as well as access to UNRWA's services.

Conclusion

Over the past few months, this process, seeking to understand and expose the non-ID refugee problem in Lebanon, has gained momentum and recently reached the international community. Indeed, in October 2005, Amnesty International raised the issue of non-ID refugees in Lebanon at the 56th session of the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) in Geneva. Amnesty insisted that no Palestinian be left without protection or assistance. The impact of these two reports has thus, within a short period of time, alerted the international community to the seriousness of the protection gap.

The Survey is available on the website of the Danish Refugee Council, <http://www.drc.dk/Lebanon.1740.0.html>. The Frontiers Association report is available at, http://www.rsdwatch.org/index_files/Page2611.htm.

Amnesty International calls for urgent debate on Non-ID Palestinians

"[Non-ID Palestinian] refugees have fallen into a particularly iniquitous protection gap, and Amnesty International believes it is of vital importance that a debate is started as a matter of urgency within the international community, including the relevant UN agencies, host states and other relevant states including member and observer states to EXCOM, as well as NGOs, in order to find solutions to bridge this protection gap. Such solutions should ensure that no group of Palestinian refugees is left in a situation where they receive neither international protection nor assistance."

"Amnesty International believes that durable solutions respectful of the human rights of Palestinian refugees must be made available to them in any final peace agreement between the Palestinian Authority and Israel. Amnesty International recognizes that voluntary repatriation or return in safety and dignity is in general the preferred durable solution for refugees. The right of return is enshrined in international law and the organisation believes that Palestinian refugees should be able to exercise their right of return to their homes and lands."

"Amnesty International believes, however, that until such time as this right is fulfilled, Palestinian refugees should benefit from civil and political, as well as economic, social and cultural rights in their host countries, including, but not limited to, the right to work, the right to education, the right to healthcare, the right to adequate housing and the right to an adequate standard of living."

Amnesty International's Concerns at the 56th Session of the Executive Committee of the United Nations High Commissioner for Refugees, October 2005, IOR 41/060/2005, 1 October 2005. Available at, <http://www.amnesty.org>.

Notes:

- (1) The gatherings are defined as "areas where more than 250 Palestinian refugees live in camp-like conditions."
- (2) These "non-identified" refugees should be distinguished from the non-registered refugees, who are approximately 35,000 and are not registered with UNRWA because they fall outside its mandate, but are registered with the Lebanese government.
- (3) Non-ID refugees can receive medical care if they can afford to pay for health services from the Palestine Red Crescent Society.

Palestinians in Lebanon and Right to Work

Amendment to Allow More Refugees Access to Employment

by Suhail Natur

In early 2005 the Lebanese Ministry of Labor tabled a memorandum concerning an amendment to Lebanon's labor law affecting Palestinian refugees. Annexed to the memorandum was the text of the current law, the proposed bill, analysis of the amendment vis-a-vis international and Arab conventions to which Lebanon is a signatory, and the reasons for the change.



Ein el-Hilweh is the largest Palestinian refugee camp in Lebanon, housing more than 80,000 Palestinian refugees. A main street within Ein el-Hilweh refugee camp in southern Lebanon. Many residents of the camp rely on an internal economy, due to laws of the Lebanese government, which, until recently, had prohibited Palestinians from working in over 70 professions. Notice the various stores and shops of the camp lining the main street. © Stefan Christoff.

The situation of Palestinian labor in Lebanon

Legislation regulating foreign labor in Lebanon and access to social welfare establish two rules for foreigners, among them Palestinian refugees: acquisition of a work permit and reciprocity with the foreigner's state of origin.⁽¹⁾ Additional conditions defined by the Minister of Labor allow Lebanese nationals to maintain a monopoly over certain professions. This includes some 70 restricted professions.⁽²⁾ Employment in agriculture and construction does not require a work permit.

Work permits are valid for one year and must be renewed, they are expensive, and they are no longer valid if the holder changes his/her place of employment. Employment in certain professions (e.g. medicine, law and pharmacology) is restricted to persons holding Lebanese citizenship for 10 years and reciprocal employment opportunities for Lebanese in the foreigner's country of origin. Likewise, access to social welfare benefits is restricted to foreigners whose country of origin provides reciprocal benefits to Lebanese citizens.⁽³⁾

These restrictions, which do not take into account the particular circumstances of Palestinian refugees (they are stateless which negates the rule of reciprocity and they cannot exercise their right of return due to the Israeli occupation of their homeland), have led to a situation where Palestinian refugees can rarely acquire a work permit. Lebanese employers who hire foreigners without work permits face heavy fines. And Palestinians are also obliged to pay fees for social welfare but do not benefit from any services.

How many Palestinians are affected by these restrictions? The number of Palestinian laborers in Lebanon has varied. There are some 400,000 registered Palestinian refugees in Lebanon according to UNRWA records and the Lebanese Ministry of Interior. In reality, however, decades of migration have resulted in a situation where only half that number are actually residing in Lebanon today, of whom 60 per cent are 12 years and under. Therefore, the estimated maximum size of the working-age population is 70-80,000 persons.

Due to the restrictions described above, Palestinian refugees in Lebanon are forced to rely on services provided by the UN Relief and Works Agency for Palestine Refugees (UNRWA), and non-governmental and political organizations. Remittances from family members abroad is the most important source of income, followed by self-employment and employment in construction and agriculture. Most Palestinian refugees, however, work without any legal status and without any protection.

Why did Lebanon amend its labor law?

Reviewing the status of Arab labor in Lebanon Labor Minister Trad Hamada was surprised to find out that Palestinian refugees who are residents of Lebanon are not entitled to work. On 27 June 2005 Hamada issued Decision No. 1/67 which excludes Palestinians who were born in Lebanon and registered with the Ministry of Interior from the provisions of Article 1 of Decision No. 1/79 (2 June 2005) restricting certain professions to Lebanese citizens.

The decision opens the way for Palestinian refugees to work in a number of previously restricted fields – e.g., clerks, security guards, etc. – however, conditions for employment in certain professions (Lebanese citizenship for 10 years and reciprocity) remain unchanged. Palestinians who stand to benefit from the amendment must still obtain a work permit from the relevant ministry and pay the required fees.

Moreover, the decision does not rectify the discriminatory situation affecting Palestinians in relation to social welfare benefits. Palestinian refugees will still be required to contribute to Lebanon's social welfare programs but will be unable to claim any benefits.

Undoubtedly, international and regional pressure on Lebanon, and a desire to improve the country's reputation concerning the treatment of Palestinian refugees, contributed to the change in the labor law. Many Palestinians believe that non-governmental and Palestinian organizations, such as the Democratic Front for the Liberation of Palestine (DFLP), which hoisted the flag of social and economic demands, and the struggle for Palestinian human rights for years, also contributed to the change.⁽⁴⁾

Another reason for the change may be the positive attitude of Lebanese themselves towards Palestinians who made it clear that they were neutral – i.e., not in favor or against any group – during recent unrest and political change in Lebanon. Palestinian refugees in Lebanon have actively sought the support of all Lebanese.

Two Lebanese factors also contributed to the change. First, efforts to improve the treatment of Palestinians through the 10-point program of the Progressive Socialist Party (PSP). Second, Labor Minister Hamada has close relations with Hizbullah, which has long supported Palestinian rights in Lebanon. Both the PSP and Hizbullah support parallel efforts to improve the conditions of refugees and preserve Palestinian resistance. This includes a demand to establish a special ministry for refugee affairs.

This positive atmosphere is reflected in a number of recent meetings between Lebanese and Palestinian officials, visits by prominent Palestinians to Lebanon, and in the meeting between PLO Chairman Mahmoud Abbas (Abu Mazen) and the Lebanese Prime Minister at the Brazil Summit earlier this year. The desire on both sides to cooperate to find solutions to the problems of employment, ownership and construction in the camps opens the way for a new era of relations between the two peoples.



Burj el-Shemali is a Palestinian refugee camp located in Southern Lebanon on the outskirts of the city of Tyre. Upwards of 20 000 refugees reside in Burj el-Shemali, which is one of Lebanon's most impoverished camps. Burj el-Shemali like other camps in the south such as Rashidieh Camp is home to cases of extreme poverty, thousands of camp residents are essentially homeless, residing in make-shift shelters with zinc roofing, without basic plumbing, water supply and little income. Pictured in this photo is a street within the camp of zinc housing, built by residents who had their homes destroyed during the Lebanese civil-war. © Stefan Christoff.

About timing and actions

There have been insinuations by some parties that have a phobia about the resettlement of Palestinian refugees in Lebanon that the amendment to the labor law, which took place shortly after the visit of Minister Hamada to the US, is part of a secret agreement to resettle the refugees in Lebanon. Hamada has repeatedly denied these charges, characterizing the claims as shameful and baseless.

Nevertheless it is well understood in Lebanon that resettlement, which is prohibited by the Lebanese constitution – not to mention the fact that Palestinians themselves have struggled against resettlement – cannot be implemented through the administrative decision of a single government ministry. Reinstating the right to own property, likewise, has nothing to do with resettlement.

Resettlement of Palestinian refugees is a decision that no single state can take in isolation from the Palestinian and Arab consensus. It will never happen, especially in the context of the *intifada*'s partial victory symbolized in the forced withdrawal of the Israeli occupation from Gaza. The Palestinian refugee issue is one of the most complicated issues in the Arab-Israeli conflict. At the heart of the issue is the preservation of the right of return.

Some believe that the amendment will be used to open the question of the Palestinian presence in Lebanon in the context of UN Security Council Resolution 1559.⁽⁵⁾ They describe the improvement in the labor situation as a trade off to “reduce and limit Palestinian suffering in return for disarmament” of the camps. The danger in attempting to force a link between the two issues, however, is that it could ignite an explosive issue that enemies of Lebanon and Palestine will use to portray Palestinians in a negative light.

Politicians have long played this game and used it as an excuse for the miserable conditions in the camps claiming that any improvements will influence refugees to stay in Lebanon. In contrast the media today has pointed to the need to confront the issue “without any lies or delusions. Palestinians have suffered without social services, job opportunities, security or stability. Moreover, many camps have turned into closed areas that shelter wanted people wrongfully accused of crimes that have been committed elsewhere in Lebanon”.

Not many people argue against the authority of the Minister to issue the decision amending the labor law. Attempts, moreover, to plant doubts by pointing to the timing of the decision – i.e. why was this decision taken now? – do not take into account press reports that the Minister actually signed the decree on 3 June 2005 before his visit to the US. He only postponed the announcement of the change in order to study the possible consequences of the amendment.

The new government that was formed after the elections earlier this year, and the continuity of Trad Hamada as Labor Minister, have strengthened hopes for improvements in the situation of Palestinian refugees in Lebanon despite the obvious challenges. And it is questionable whether a new labor minister could revoke the change in light of current international scrutiny of Lebanon and the positive response of European countries to the decision, as well as from major sectors of Lebanese society. The National Federation of Trade Unions in Lebanon, for example, sent a message to the Palestinian General Federation of Palestinian Workers praising the courage and timing of the decision.

Four final questions

The reasoning beyond the decision suggests that more can and should be done to improve the situation of Palestinian refugees in all areas of employment in the private sector, not just manual and clerical labor, as well as problems in the social welfare system faced by Palestinians.

The decision has also reignited discussion about the role of previous labor ministers who belonged to the Syrian Social National Party and the Baath Arab Socialist Party and the lack of understanding about the severe consequences of their policies on Palestinian refugee laborers.

Palestinians have always demanded that Lebanon implement the provisions of the 1965 Casablanca Protocol, which included the commitment of Arab states to treat refugees on par with their own citizens, in terms of employment and labor, the right to enter and leave the country and travel documents and visas. Palestinians received the same treatment as citizens of Syria, Jordan, Algeria and Morocco, but were treated as foreigners in Egypt, Libya Iraq, Kuwait, the Gulf States and Lebanon. Following the 1991 Gulf War the treatment of refugees deteriorated severely when the Arab League adopted Resolution 5093 allowing host countries to treat Palestinian refugees in accordance with national standards rather than the Protocol. Due to the absence of an Arab consensus about the Protocol, Palestinians in Lebanon did not raise the demand for adherence to the agreement.

Palestinians are still monitoring the actual implementation of the recent amendment in Lebanon. They continue to work to improve access to all sectors of the labor market, ownership of property and social welfare benefits. After a long period of suffering they feel that the time has come to open the refugee file and rearrange relations with Lebanon in order to coordinate all efforts against resettlement, and to serve the right of return by acts, not only by words.

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Translation by Nimr Awaini.*

Notes:

- (1) See the Law Regarding Entry to, Residency in and Exit from Lebanon (1962) prohibiting non-Lebanese from engaging in work in Lebanon without a license from the Ministry of Labor and Social Affairs, Law No. 17561 (1964) and the Social Welfare Law.
- (2) See, for example, Decision No. 289/1 (18 December 1982) issued by Labor Minister Dr. Adnan Marwa, Decision No. 3/1 (11 January 1993) issued by Labor Minister Abd-Allah al-Ameen and Decision No. 1/621 (18 December 1995) issued by Labor Minister As'ad Hardan. The difference between the al-Ameen and al-Hardan decisions and the decision issued by Marwa is that the latter provided relatively easier access to practice certain professions. However, decisions issued by al-Ameen and al-Hardan provided some exemptions to foreigners if they met conditions set out in Article 8 of Law No. 17561. This included foreigners who had resided in Lebanon since birth, were born to a Lebanese mother or from Lebanese origin, and those married to a Lebanese woman for more than one year.
- (3) This includes coverage for illness, maternity, emergencies, workers compensation, family allowance, and severance pay.
- (4) Examples of recent efforts that were successful include the government's decision to rescind the re-entry visa to Lebanon, which was imposed between the years 1994 – 1999, and the decision in 2001-2002 to cancel the doubling of fees at Lebanese universities for Palestinian students. Also note the positive response to the continuous demands to reinstate the right to own a residential flat after this right was revoked at the end of 2001.
- (5) UNSC Resolution 1559, 2 September 2004, calls upon all remaining foreign forces to withdraw from Lebanon, calls for the disbanding and disarmament of all Lebanese and non-Lebanese militias; supports the extension of the control of the Government of Lebanon over all Lebanese territory; and, declares its support for a free and fair electoral process in Lebanon's upcoming presidential election conducted according to Lebanese constitutional rules devised without foreign interference or influence.

New Book

BADIL launches protection handbook at annual UNHCR NGO consultations

“None of the participants in the drafting sessions then taking place would likely have predicted that, over 50 years later, Palestinians would still be without a solution, or that their entitlement to protection would continue to be disputed, or that a Handbook such as this would need to be published.”

Professor Guy S. Goodwin-Gill, University of Oxford

Closing Protection Gaps, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention was first presented to the public at the 2005 annual UNHCR NGO Consultations held in Geneva in September. It is intended to serve as a practical guide for refugee experts, lawyers, judges, UNHCR offices, national authorities, NGOs and others who are involved in asylum claims submitted by Palestinian refugees.

The Handbook addresses problems and protection gaps facing Palestinian refugees who seek protection under the 1951 Refugee Convention and/or the 1954 Stateless Convention in third countries outside the Arab world. It aims to strengthen implementation of legal protection standards applicable to Palestinian refugees, in particular the rights embodied in Article 1D of the 1951 Refugee Convention.

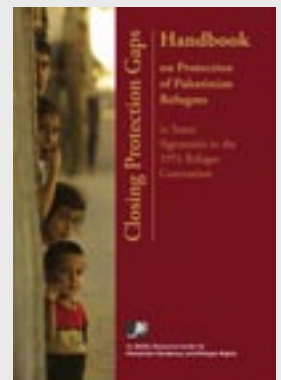
The first two chapters of the Handbook provide background information about the particular regime set up by the United Nations for protection and assistance to this refugee population, i.e. United Nations Conciliation Commission for Palestine (UNCCP), United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and United Nations High Commissioner for Refugees (UNHCR). Chapters Three and Four focus on the identification and interpretation of relevant international instruments and protection standards (1951 Refugee Convention, including Article 1D, and 1954 Stateless Convention). Chapters Five and Six provide findings and conclusions of comparative research on national practices with regard to protection of Palestinian refugees in 23 non-Arab countries signatories to these instruments. A set of BADIL recommendations for bridging the current protection gaps and improving protection afforded to Palestinian refugees is presented in Chapter Seven.

Findings are based on comparative research conducted in 23 countries. Research was led by Elna Sondergaard, BADIL legal consultant, in 2003 - 2004. UNRWA and UNHCR, refugee lawyers, and national immigration/asylum authorities worldwide provided valuable input. The preface was contributed by Professor Guy S. Goodwin-Gill, University of Oxford.

English, 488 pages
August 2005
ISBN: 9950-339-00-6

Copies of the Handbook can be ordered online at the BADIL website, <http://www.badil.org>

For more information about the outcome of the NGO consultations see 'Documents' in this issue.



Who is Monitoring Palestinian IDPs in the Occupied West Bank?

Everyone knows that the Wall Israel is constructing in the West Bank is causing damage; land is being annexed, the ecosystem is destabilized, a strict permit system is imposed in the closed military zones, houses are destroyed, businesses are closed etc... but, what does this really entail? How are the Palestinian people coping? They are forced to move.



Cultivating land in the shadow of the Wall near Qalqilya. © Nathalie Bardou/BADIL.

In a history punctuated by forced displacement, Palestinians affected by the Wall are becoming the most recent victims of this disturbing pattern. According to a recent report from the Palestinian Central Bureau of Statistics, 15,000 Palestinian have already been forcibly displaced as a direct consequence of the Wall and its regime.

Who are these new internally displaced persons (IDP), are they displaced for the first time or refugees suffering multiple displacement, where are they from and where are they now, why did they move, are they in need of protection and/or assistance? These are just some of the pressing questions that remain unaddressed. In fact, little is known about these new forcibly displaced persons. Not only is little known about them, little is also known about who is responsible to monitor their displacement, provide assistance and protection.

While the General Assembly has requested a registry to monitor the damages caused by the construction of the Wall, nobody seemed to have envisaged that the Wall could be generating a new wave of displacement. So who then, should be responsible for these new IDPs? The primary responsibility for IDPs lies with national authorities, in this case, the occupying power. But Israel, as is well-known, has been unwilling to meet its responsibilities to ensure respect for humanitarian and human rights law in the 1967 occupied Palestinian territories.

Palestinian households and individuals displaced by the Wall

District	Number of Persons			Number of Households
	Total	Female	Male	
Northern West Bank	4,709	2,268	2,441	802
Middle West Bank	9,628	4,750	4,878	1,641
Southern West Bank	27	13	14	5
Total	14,364	7,031	7,333	2,448

Survey on the Impact of the Expansion and Annexation Wall on the Socio-Economic Conditions of Palestinian Localities which the Wall Passes Through, June 2005. Ramallah: Palestinian Central Bureau of Statistics, September 2005.

So who else? Here, there might be some light. Indeed, since 1999, the UN Inter-Agency Standing Committee (IASC) has shaped a mechanism and recently published a paper called the *Collaborative Response to Situations of Internal Displacement* (Collaborative Response). Due to the large number of IDPs, an estimated 20 million worldwide, no single UN agency has been identified as the sole responsible agency. Instead, a response to the IDP crisis has been conceptualized to include “a broad range of governmental and non-governmental actors [that] work together...on the basis of their individual mandates and expertise.”

The Collaborative Response spells out a clear Action Plan to assess the type of protection and assistance required by the IDPs. The Response also includes setting up a Country Team responsible for the implementation of the Plan. The Plan puts protection as a core objective; all UN agencies that have a protection mandate should pursue activities reinforcing the protection of IDPs’ fundamental rights and work with the country team to monitor, report, manage information and advocate with the authorities.

The Collaborative Response recommends that labor be divided among all relevant UN agencies, but first spells out the basic steps to follow: first, collect, analyze and disseminate information on the objectives/needs of the IDPs; second, establish a mechanism for the coordination of agencies dealing with IDPs and consider the creation of an IDP working group or forum; third, identify the role of agencies and their specific responsibilities to ensure a good division of labor based on their expertise and capacity.

To implement the Collaborative Response, a whole set of actors at the international and local levels need to be involved. Internationally, the Emergency Relief Coordinator (ERC) is mandated by the General Assembly to ensure inter-agency coordination of protection and assistance to IDPs and can, when necessary, bring issues to the Secretary-General and the Security Council. In addition, the Inter-Agency Internal Displacement Division (within UNHCR) has been established to promote a predictable and concerted response and assist country teams. The Representative of the Secretary-General on the Human Rights of Internally Displaced Persons has been mandated to address the complex problem of internal displacement while the IASC stands as the inter-agency forum for consultation on all matters regarding IDPs.

At the local level, there should be a Humanitarian and/or Resident Coordinator (HC/RC) who strategically ensures protection and assistance to IDPs. More precisely, some of the HC/RC responsibilities are to consult with national and local authorities in order to evaluate their capacity to respond to the needs of IDPs; suggest to the government and local authorities the appointment of a focal point within their structures on issues of internal displacement; lead the process of full consultation between different agencies in order to establish a procedural roadmap so as to avoid gaps; oversee the implementation of the Action Plan by the country team, and emphasize protection.

As a support to the HC/RC, the Office for the Coordination of Humanitarian Affairs (OCHA) is usually deployed. OCHA is responsible to gain access to IDPs and other vulnerable groups; collect, analyze and disseminate IDP-relevant information; support the development of the Common Humanitarian Action Plan and Consolidated Appeal and ensure the inclusion of IDP concerns therein; organize and participate in inter-agency assessments; and convene coordination forums. The International Red Cross and Red

Crescent Movement (ICRC) may also be involved as its mandate include protection and assistance to the most vulnerable.

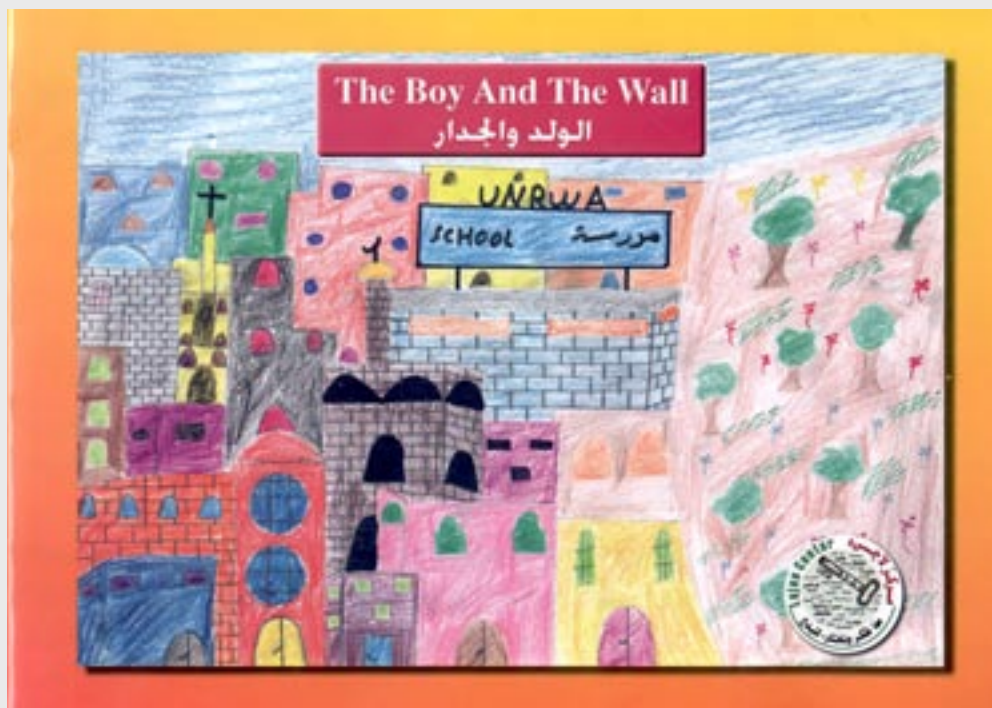
Now that the main components of the Collaborative Response are known, it is necessary to find the UN agencies responsible to implement the Collaborative Response in the OPT. After some discussions with various UN agencies working in the OPT, there is no clear conclusion. What we do know, however, is that no UN agency has started work on the question of IDPs and no Humanitarian and/or Resident Coordinator has, so far, been named for the occupied Palestinian Territories.

While the Office of the United Nations Special Coordinator (UNSCO) is the overall UN coordinator, its role is mainly a political one, and may not be the best body to oversee the implementation of the Collaborative Response. OCHA and the Office of the High Commissioner for Human Rights (OHCHR) may be in a better position to implement the Response. The UN Relief and Work Agency (UNRWA) may also have a role to play, especially for Palestinian refugees displaced by the Wall and if the UN considers that IDPs fall within UNRWA's mandate to provide protection "to those in need of assistance as a result of continued hostilities."

However, in order to determine which agency should have the lead role and where the HC/RC should be based, consultation among the UN agencies is required. Currently, different UN agencies participate in the OHCHR Human Rights Working Group where the question of IDPs is being discussed.

New Book

The Boy and the Wall



The Boy and the Wall was written and illustrated by youth at the Lajee Centre in Aida refugee camp. In 2004, Israel began to build an eight meter high concrete wall just a few meters from the houses of the camp. Just like the boy in the book, children in the camp used to play soccer and pick flowers and find turtles on land that is now behind the Wall.

24 pages

English and Arabic text.

Color illustrations.

To obtain a copy of the book contact: info@lajee.org. For more information about the Lajee Center visit their website: <http://www.lajee.org>.

CEDAW on Israel: Failure to Address Core Issues

by Karine Mac Allister

The Committee on the Elimination of Discrimination against Women (CEDAW) released its Concluding Comments to Israel in July 2005. The Committee, as in its previous Concluding Comments in 1997, reiterated its concern over the non-implementation of the Convention on the Elimination of Discrimination against Women to the Occupied Palestinian Territories (OPT) and urged Israel to “give full effect to the implementation of its obligation under the Convention in regard to all persons under its jurisdiction, including women in the Occupied Territories.”



In the shadow of the Wall at Abu Dis. © Nathalie Bardou/BADIL.

Main recommendations

Concerns were expressed over participation, health and education of Arab women in Israel, especially Bedouin women. More precisely, a specific recommendation was made “to eliminate discrimination against Bedouin women and ... enhance respect for their human rights through effective and proactive measures ... in the field of education, employment and health.”

The Israeli government is also encouraged to take sustained measures to address the low level of representation and participation of Arab women in decision-making positions in local authorities, elected and appointed bodies as well as in institutions of higher education.

On family reunification, the Committee expressed concern towards the Israeli Nationality and Entry into Israel Law, which basically prohibits family reunification for Palestinians. The Committee called on Israel to “balance its security interests with the human rights of persons affected by such policies” and provide periodic report on the evolution of the situation and its impact on affected women.

The sole Recommendation regarding the OPT calls on the state party to ensure that “Israeli authorities at the checkpoints are instructed to ensure access to health-care for pregnant women, while protecting the security of Israel.”

Failure to address core issues

While discussions of members of the Committee and the Israeli delegation have been fruitful, and at times, have touched upon core issues of the conflict, i.e., inequalities between Jewish and Palestinian women, the Concluding Comments fall short of exposing the root causes of the problems affecting Palestinian women’s rights, namely, Israel’s rejection of the return of Palestinian refugees and internally displaced persons (IDP) and the continued annexation of Palestinian land for the exclusive benefit of Jews in Israel and the OPT. All this, to consolidate a Jewish majority over the largest amount of Palestinian land with the smallest possible number of Palestinians.

The Committee also omitted to consider the dual legal system being applied to the OPT, whereby Jewish women are protected under Israeli Law, and therefore included in Israel’s report to the Committee, while Palestinian women are subject to a mixture of Israeli military orders, Jordanian, and Egyptian laws, and are excluded from the state’s report (despite the fact that Israel is the Occupying Power and is responsible to ensure respect for international humanitarian and human rights law). What does this dual legal system concretely entail? Palestinian women in the OPT are not accorded equal rights and are not protected by the Occupying Power - Israel.

Failure to address new developments

Furthermore, over the past three years, Israel has relentlessly pursued the construction of the Wall and its associated regime; a permit system has been implemented in ‘closed military zones’, and more recently, ‘border terminals’ have been built, furthering the annexation of Palestinian land, unilaterally determining the future border between Israel and the OPT and undermining the right to self-determination of the Palestinian people.

As Israel continues to acquire territory by force, Palestinians continue to be forcibly displaced, sometimes for a second or third time. Recent reports have emerged and are clearly confirming this troubling pattern: ‘closed military zones’ are slowly being emptied of their residents; houses too close to the Wall are being destroyed, farmers and land owners can no longer access their land to harvest crops while women and girls can no longer access basic services. A recent report by the Palestinian Central Bureau of Statistics estimates that 15,000 Palestinians have already been forcibly displaced as a result of the Wall and its regime.

More recently, plans have been drawn to move the Bedouin population in the Naqab to ‘concentration points’ in Israel in order to allow for the urban expansion of the Jewish population.⁽¹⁾ These plans may lead to the forcible displacement of part of the Bedouin population and the destruction of their lifestyle. Similar ‘urban development’ projects are planned in the Galilee, where most of the Palestinian population reside, and may have similar effects on Palestinian communities.

In comparison...

In comparison with other UN Human Rights Committees, CEDAW stands out as one of the most conservative Committees. Indeed, while recommending improvements and changes to the state party, these are in most cases, superficial or conditional upon Israel’s security; an undefined concept, often misused and abused.

In contrast, the Committee on the Elimination of Racial Discrimination (CERD) recognizes the denial of the “right of many Palestinians to return and possess their homes in Israel” as a situation perpetuating and generating violations of fundamental human rights. CERD also characterizes the colonies and their related system as “actions that change the demographic composition of the Occupied Territories...”⁽²⁾ Hence, CERD addressed the question of Palestinian refugees and the effects of Israel’s actions in the OPT.

The Committee on Economic, Social and Cultural Rights (CESCR) reached similar conclusions in 2003 on the status of “Jewish nationality”, which it says, is ground for “exclusive preferential treatment” resulting in practice “in discriminatory treatment against non-Jews, in particular Palestinian refugees.”⁽³⁾ It also stated its deep regret

at “the refusal of the State party to provide ... additional information on the living conditions of population groups other than Israeli settlers in the occupied territories...” and its grave concern “about the continuing practice of expropriation of Palestinian properties and resources for the expansion of Israeli settlements in the occupied territories.”⁽⁴⁾

The Human Rights Committee also examined land issues in Israel, where it came to the conclusion that the Israeli Land Administration (ILA), which owns 93% of the land in Israel, has developed few, if any, Arab localities. In light of this information, the Committee recommended that “urgent steps be taken to overcome the considerable inequality and discrimination which remain in regard to land and housing.”⁽⁵⁾

Hence, most Human Rights Treaty Committees have addressed issues that are central to Israel’s policies towards the Palestinians in Israel and the OPT, namely, illegitimate and discriminatory denial of return of Palestinian refugees, confiscation and expropriation of Palestinian land, and annexation of occupied Palestinian land for the expansion of colonies.

Conclusion

As mentioned, the goal of the Israeli government is the acquisition of Palestinian land without the Palestinian people. This rationale guides Israel’s administrative and legal systems. The resulting inherent inequalities between Jews and Palestinians in Israel and in the OPTs have not been addressed by the Committee on the Elimination of Discrimination against Women. In this sense, the Committee’s comments and recommendations can, at best, be a balm to limit the damage, but are unable to lead to a tangible improvement of the lives of Palestinian women in Israel, the OPT and in forced exile around the world.

Karine Mac Allister is Assistant to the Coordinator of the Research, Information and Legal Advocacy at BADIL.

New Deputy Commissioner General of UNRWA Appointed

The UN Secretary General appointed Filippo Grandi (Italy) as Deputy Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Mr. Grandi replaces Karen AbuZayd who was promoted to Commissioner General of UNRWA earlier in the year.



Mr. Grandi has been serving since May 2004 as the Deputy Special Representative of the Secretary General responsible for political affairs at the United Nations Assistance Mission in Afghanistan (UNAMA). Prior to that, and also in Afghanistan, he was Chief of Mission of the United Nations High Commissioner for Refugees (UNHCR), a position he held from September 2001.

From 1997 to 2001, Mr. Grandi worked in the Executive Office of the UNHCR in Geneva, as Special Assistant and then Chief of Staff. Since 1988, when he joined UNHCR, Mr. Grandi was posted in Sudan, then served in refugee programmes in Syria, Turkey and Iraq after the first Gulf War, led various emergency operations – in Kenya, Benin, Ghana, Liberia, the Great Lakes Region of Central Africa, Yemen and Afghanistan among others – and was Field Coordinator for UNHCR and UN humanitarian activities in the Democratic Republic of Congo during the civil war in 1996-1997. Between 1984 and 1987 he worked with different non-governmental organizations carrying out refugee programmes in Thailand and Italy.

Mr. Grandi (48), graduated from the State Universities of Venice and Milan (Italy), and from the Gregorian University in Rome (Italy) with a BA in philosophy.

Notes:

- (1) Israel wrote in its response to the Committee questions “Approximately 83,000 Bedouin (60% of the total Bedouin population) live in planned, urban settlements. 40% of the remaining 55,000 reside in hundreds of illegal clusters over an area of more than half a million dunams, obstructing the urban expansion in the greater Negev area and the common good of the Bedouin population. The State encourages the Bedouin population to move into the permanent towns, by granting special financial aid, also through the allocation of subsidized land.” UN CEDAW, Responses to the list of issues and questions for consideration of the combined fourth and fifth periodic report, CEDAW/PSWG/2005/II/CRP.2/Add.7, 11 May 2005, para. 23.
- (2) UN CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, CERD/C/304/Add.45, 30 March 1998, para. 10.
- (3) UN ECOSOC, Concluding observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/1/Add.90, 23 May 2003, paras. 18.
- (4) *Ibid*, paras. 19, 26.
- (5) UN HRC, Concluding Observations of the Human Rights Committee: Israel, CCPR/C/79/Add.93, 18 August 1998, para. 25.

Civitas: Foundations for the Participation of Palestinian Refugees and Exile Communities

by Karma Nabulsi, Rabie Masri, and Mezna Qato

The aim of the Civitas collective research project, based at the University of Oxford, is to assess how Palestinian refugee communities living in exile in the Middle East, Europe and further afield can strengthen civic mechanisms to enable better communication with their national representative the PLO and its institutions, the host country, the humanitarian agencies that serve them, and other refugee communities, both inside and outside of Palestine.



Palestinian women's syndicate meeting in Lebanon. © Civitas.

Civitas is almost entirely a volunteer project run by the communities themselves, and has been facilitated by a small team who are co-ordinating the activities in order to carry forward the voices of the refugees to the relevant bodies, and bring the urgent needs of the Palestinian refugees to the attention of the international community. During a series of publicly convened debates, each community has run their own needs-assessment exercise where they determine for themselves which mechanisms they might need – for example, by strengthening existing structures such as unions and associations, by regular newsletters, delegations, monthly meetings, twinning, committees, and other means of communication. They have also discussed the issues concern them, and that they want raised with these bodies.

The series of publicly convened debates and workshops began in March 2005 and continue until November 2005, and are taking place in dozens of cities in over 25 countries across the Middle East, Europe, North and Latin America. The series of debates that have taken place or are set to take place in the coming weeks follow different models according to the local geographic, social, and political constraints. Active members of Palestinian refugee communities have taken it upon themselves to find the most efficient ways, according to their capacities and local circumstances, to reach out to the different sectors of their community in the hopes of being as inclusive as possible. Additionally, during the debates great care is taken to ensure that the ideas and suggestions of the participants are noted down in detail by two notetakers, and are also recorded on audio and/or video cassettes so as to guarantee that their voices and views are accurately recorded.

Between March and July 2005, several public and syndicate meetings took place within Palestinian refugee and exile communities across the Middle East, Europe and North America. By the end of the month of August, meetings had taken place in the following countries: Lebanon, Iraq, Yemen, Sudan, UAE, Oman, Spain, Germany, Netherlands, Denmark, Sweden, Austria, Greece, Norway, Canada, the United Kingdom, Australia, Italy, the United States, and Palestine. Throughout the autumn months, a final series of meetings are taking place in Saudi Arabia, Italy, Egypt, Jordan and Chile.

During the meetings that have taken place thus far, participation has been impressive and diverse, varying in attendance from 20 up to 400 people, depending on the form of the meeting, the size of the community in the region in question, and the capacity of the local organizers to reach out to the community at large, all of which are integral components and factors that have been taken into account during preparations. Many of the new generation have participated in the debates and are expressing their concerns, and in many refugee areas these meetings are the first time they had come together for many years, if at all. The first issue that refugees raised was the primacy of the right of return, as well as the centrality of strengthening the institutions of their sole legitimate representative, the PLO, which they affirmed through recommending broadening channels, as well as reactivating unions and other institutional and associational mechanisms. Suggestions and ideas brought forth during the meetings so far have been creative and rich, both in their content and their quantity. Other ideas range from enhancing existing civic structures; practical issues such as obtaining Palestinian I.D. papers for local refugee communities in Europe as a way to both prove and protect Palestinian identity; twinning programs and network-building with Palestinian refugee communities around the world; radio stations and web-sites; maintaining and updating their registration with UNRWA if they are currently residing outside UNRWA mandate areas; organizing delegations and committees to voice concerns with all relevant bodies: the PLO, international humanitarian agencies such as the UNHCR, the host country or other refugee communities. As such, the refugees expressed the view that improving their political, economic, social and legal conditions will empower them, give them better chances to participate effectively in decisions relating to their future, and will help them better argue for, and obtain, their rights. Many more ideas and recommendations are coming in daily as the debates unfold.

Between March and May 2005, an extensive series of 21 meetings were held all over Lebanon. After long and well thought-out preparations, several teams organized many types of meetings in the different key regions in Lebanon. The series of meetings began with public meetings and were followed by syndicate meetings for workers, youth/students, and women in the Tyre, Beirut, Tripoli, Baalbak and Sidon regions. In the Tyre region, around 125 people participated in a public meeting in the El-Rashidiyeh refugee camp, followed by a meeting for students in El-Rashidiyeh, a meeting for workers and the unemployed as well as a meeting for women in El-Bass refugee camp. Additionally, an opening public meeting was held for Tripoli, where more than 250 Palestinians from the refugee camps of Nahr El-Barad and El-Baddawi and the surrounding areas attended, many arriving in buses in order to actively participate in the meeting which lasted for several hours. These were followed by syndicate meetings for students, women, and workers in both El-Baddawi and Nahr El-Bared refugee camps. An open public meeting in Bourj El Barajneh refugee camp initiated the series of meetings that took place in the Beirut area, which included syndicate meetings for students, women and workers in the refugee camps of Beirut. In Baalbak's Wavell camp, a public meeting attended by around 120 people as well as syndicate meetings for students and women were convened. In Ein El-Helweh, syndicate meetings for women and workers were also held. A special meeting for youth with disabilities and special needs from all of the refugee camps concluded the series of meetings in Lebanon.

A series of seven meetings were also held in Iraq, which included five meetings for active members of the community covering the various areas of Baghdad, some held in shelters, a meeting for women and a meeting for students at the University of Baghdad. A series of four meetings were also held in Yemen during the last week of April: in addition to the preparatory meeting, there was a public meeting as well as meetings for youth, and professors. Also, the Palestinian community in Sudan held a public meeting in Khartoum. The United Arab Emirates' Palestinian community held three syndicate meetings for male and female students as well as professors in early June, with more meetings to take place in early September. Several meetings have taken place in various cities in Saudi Arabia which are continuing, and syndicate meetings have begun in Egypt.

In Denmark, members of the Palestinian community have organized, in active coordination with the local organizations and community members, 11 meetings in 8 different cities where there are sizable Palestinian refugee communities. During the month of April, three public meetings took place throughout Sweden in the cities of Malmo, Uppsala and Stockholm, all of which have sizable Palestinian refugee populations; these were followed by syndicate meetings for women and students during the month of May. In Norway, four public meetings were held in the cities of Oslo, Bergen, Christiansen and Salvager

during the month of June. In Germany, where one of the largest Palestinian communities in Europe is to be found, public and focus group meetings were held in the cities of Berlin and Frankfurt. In the Netherlands on March 31st, an open public meeting with more than 120 participants was convened on the occasion of Land Day. In Greece, during the months of April and May, a total of seven meetings, including two public meetings and syndicate meetings for women and active members of the community, were held in Athens and Thessalonica. A large public meeting was also held in Vienna, Austria, during the month of January. The Palestinian community in the United Kingdom held a large public meeting in London in early July. A public meeting was held in Barcelona, Spain, and two meetings were held in Italy in the month of October, one in the city of Rome, and the other in the northern town of Padua.

In Ottawa, Canada, a public meeting was held on June 11, 2005. In a workshop model, this was followed on the same day with syndicate meetings for women, men, and children, followed by a closing public meeting, where the different ideas and thoughts from the syndicate meetings were exchanged. Public meetings were also held in the cities of Montreal and Toronto in July. In the United States, public meetings were held in the cities of Detroit and Chicago, and will be held in New York in September. Meetings have been held in Sydney and Melbourne, Australia, and a public meeting will be held in Santiago, Chile, on November the 3rd.

The transcriptions of these debates are now being gathered together in a large report that will be presented in late January/ early February to the international community, through a series of public events which will be co-hosted with the international and national institutions that serve the Palestinian people in exile, and through popular events organised by the communities themselves. The record and findings of these debates will be a resource for the Palestinian refugee and exile communities themselves, wherever they are.

For more information about the Civitas project visit the Civitas website: <http://www.civitas-online.org>

Karma Nabulsi is the Project Director of Civitas. Rabie Masri and Mezna Qato are members of the Project Team.

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Update:

Boycott – Divestment – Sanctions until Israel Complies with International Law and UN Resolutions

by Muhammad Jaradat

On 9 July, the first anniversary of the ICJ advisory opinion on Israel's illegal Wall in the OPT, over 170 Palestinian civil society issued their joint Call for Boycott, Divestment and Sanctions against Israel. Endorsing organizations reflect the three integral parts of the Palestinian people: Palestinian refugees, Palestinians under occupation, and Palestinian citizens of Israel.



Demonstration during a football match between Israel and Switzerland in September 2005.

The signatories call for Israel's isolation until it respects three basic conditions for the exercise of the Palestinian people's right to self-determination: ending the occupation and colonization; full equality of the Arab-Palestinian citizens of Israel; and, the right of Palestinian refugees to return to their homes and properties (See, "Visions – Missions – Strategies: Can Palestinian NGOs Make a Difference?", *al-Majdal* 26, Summer 2005). Subsequent events and developments have shown that a global civil society BDS Campaign is both justified and feasible.

Although Israel's withdrawal of settlers from the Gaza Strip was a momentous event, the Gaza Strip has remained occupied territory. Moreover, the UN Special Rapporteur on Human Rights in the OPT since 1967, John Dugard, finds in his most recent report: "The human crisis in Gaza is likely to continue as the economy will further deteriorate because of Israeli control. [] The construction of the wall and the expansion of settlements [in the West Bank] seriously threaten the right to self-determination of the Palestinian people and undermine the prospects for Palestinian statehood. The annexation of Palestinian territory is probably already a *fait accompli*" (Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, 18 August 2005, para. 37.)

Although the ICJ held that states are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance, and although politicians express their support for a two-State solution, the international community has failed to take action in order to bring Israel in compliance with international law. The UN Special Rapporteur, for example, reports that on 30 June, Switzerland, in its capacity as depositary to the Geneva Conventions, informed the General Assembly that there was little support for resuming the Conference of High Contracting Parties, although it found that the majority of States believe that the legal framework for confronting the situation in Palestine was provided by the ICJ advisory opinion; moreover, on 21 July, the UN

Security Council decided not to embark on a consideration of the construction of the wall and the advisory opinion.

Recent statements of the Quartet and the comprehensive EU strategy announced on 5 October 2005 fail to mention the construction of the wall, the expansion of colonies in the West Bank including eastern Jerusalem, the violations of human rights in the OPT and self-determination of the Palestinian people (See: http://europa.eu.int/comm/external_relations/mepp/index.htm). The United Nations itself has so far failed to make progress in the implementation of General Assembly resolution ES-10/15, which, pursuant to the ICJ advisory opinion, requested the Secretary-General to establish a register of damage caused to all natural or legal persons who have suffered as a result of the construction of the wall.

UN Special Rapporteur on the human rights situation in the 1967 OPTs

"In its advisory opinion the International Court of Justice stressed the right of the Palestinian people to self-determination. In recent times politicians of all persuasions have given support to a two-State solution, with the States of Israel and Palestine living side by side in peace and security. This vision is unattainable without a viable Palestinian territory. The construction of the wall, the expansion of settlements and the de-Palestinization of Jerusalem are incompatible with the two-State solution. Interlocutors within both Israel and the West Bank warned the Special Rapporteur that with the two-State solution becoming increasingly difficult, if not impossible, consideration should be given to the establishment of a binational Palestinian State. The demography of the region increasingly points to such an outcome."

Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, 18 August 2005, para. 36.

For more on BDS campaigns see:

www.divest-from-israel-campaign.org
www.pcusa.org/stepstowardpeace
www.boycottisrael.ps
www.bigcampaign.org
www.boycottisraeligoods.org
www.against-the-wall.org
www.gush-shalom.org/boycott/boycotteng.htm

Recent resources and references:

Fighting the New Apartheid, A Guide to Campus Divestment from Israel. Prepared by Fayyad Sbaihat, University of Wisconsin Divestment from Israel Campaign, Summer 2005. Available at, <http://alawda.rso.wisc.edu>

A Call for Morally Responsible Investment, A Nonviolent Response to the Occupation. Prepared by Sabeel Ecumenical Liberation Theology Center. Available at, <http://www.sabeel.org>.

As states and the United Nations show a lack of commitment to the rule of law and human rights, civil society organizations worldwide are taking action. On 13 July, the Palestinian BDS Call was unanimously adopted by the participants in the UN International Conference of Civil Society for Peace in the Middle East held in Paris. It has since served as a reference for declarations, petitions and debates over appropriate campaigns and strategies for holding Israel and other states to account, including:

- a 28 August statement issued by a European fact-finding delegation of former ministers from the Netherlands, Ireland and Germany welcoming divestment from Israel and calling upon the EU to suspend all forms of military cooperation with Israel and to inform Israel that its Association Agreement with Israel will be suspended if it does not live up to relevant benchmarks and obligations under the Agreement's human rights clause;
- a resolution passed by faculty of the University of Michigan calling on the University administration to review University investments in Israel and Palestine and to investigate if divestment is warranted;
- a public call "Boycott Apartheid – Free Palestine" launched during a soccer game of Israel's and Switzerland's team in Basel on 3 September;
- and, preparations of a Europe-wide enlargement meeting on sanctions and other campaigns to be convened by the European Coordinating Committee on Palestine (ECCP) in Brussels in October.

Throughout the summer and fall, faith-based organizations, large NGOs, unions, campus student committees, academia and solidarity organizations continued efforts at clarifying their policy regarding Israel divestment, boycott, arms embargoes and sanction campaigns. Several Israeli organizations, such as the Israeli Committee Against House Demolition (ICAHD) and Yesh Gvul, also launched calls for boycott and/or sanctions, or joined in law suits filed abroad under universal jurisdiction legislation against former and acting Israeli military personnel allegedly involved in war crimes and crimes against humanity in the OPT. By September, Israeli media and

politicians could no longer ignore the growing threat of isolation and pressure deriving from BDS campaigns and war crimes suits abroad, and the broad Israeli public was – for the first time since long – confronted with the possible cost of continued violation of international law in the OPT (See for example: Amiram Barakat, "The Divestment Snowball", *Ha'aretz*, 14 September 2005).

The current picture of global and local civil society efforts at building pressure for enforcement of international law and human rights – a condition for Palestinian freedom and a just peace between Palestinians and Israelis – is one of multiple and diverse campaigns. However, if Palestinian and international civil society can create the conditions, and an umbrella, for sustained involvement of diverse actors and initiatives, these campaigns can be transformed into a concerted, broad, and likely more effective campaign.

Muhammad Jaradat is the Coordinator of the BADIL Campaign for Palestinian Refugee Rights.

War crimes pursuit heats up

The end of the summer saw the stirrings of new moves to end impunity for Israeli security officials allegedly responsible for the commission of war crimes against Palestinians in the 1967 occupied Palestinian territories. What makes these cases new is that the complaints were co-filed by Israeli Jewish organizations.

On 10 September the Chief London Magistrate issued an arrest warrant against Israeli General (res.) Doron Almog, former head of the IDF Southern Command under the Geneva Conventions Act (1957), on the basis of suspicion of involvement in the destruction by the Israeli army of 59 Palestinian homes in a Rafah refugee camp in Gaza on 10 September 2002.



*Israeli General (res.)
Doron Almog*

Almog arrived in London aboard an El-Al flight but Israel's Ambassador to the UK was tipped off by unknown sources about the arrest warrant and informed Israeli foreign ministry officials who in turn informed Almog. The General refused to leave the aircraft which returned to Israel several hours after landing at Heathrow international airport.

The complaint against General Almog was filed by the London law firm of Hickman and Rose, which specializes in human rights law. The firm has been working closely with the Palestinian Center for Human Rights in Gaza. Daniel Machover, one of the partners in the firm who has dual Israeli and British citizenship told *Ha'aretz* that his clients and his firm "were deeply sorry that Almog slipped away from the British justice system, but the fact that he feels that he cannot stand up to it, is at least significant in showing that there is no immunity for war criminals in Britain." (*Ha'aretz*, 12 September 2005)

Amnesty International deplored the failure of the UK authorities to arrest Almog, describing this as a clear violation of the UK's obligations under both national and international law. Amnesty is calling on the UK authorities to urge Interpol to circulate the arrest warrant, and on other states party to the Geneva Conventions to cooperate with the UK in carrying out the arrest and handing Almog over to the UK's courts. (Amnesty International, Press Release, 12 September 2005)

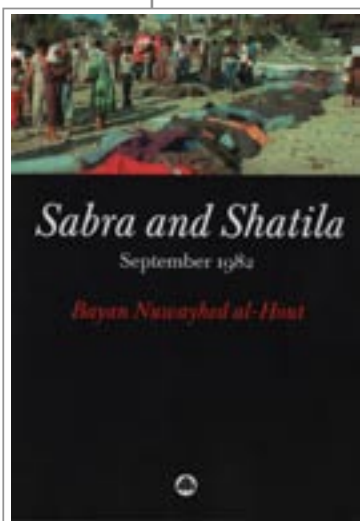
Residents of eastern Jerusalem whose homes were demolished by the municipality on the grounds they did not obtain the proper construction permits have also decided to file complaints in the United Kingdom with the assistance of Hickman and Rose against inspectors, for alleged war crimes. The focus is on Micha Ben-Nun, the head of the municipality's licensing department, and Zvi Schneider, who oversees construction in the Jerusalem District for the Interior Ministry. (*Ha'aretz*, 15 September 2005)

Meanwhile a Knesset bill that would prohibit Israeli citizens from filing lawsuits and criminal complaints in foreign countries against members of Israel's security forces or anyone who was involved in anti-terror activities on behalf of the state of Israel was submitted by MK Yuval Steinitz (Likud), chairman of the Knesset's Foreign Affairs and Defense Committee. Under Steinitz's draft bill, anyone who violated the law would face up to three years imprisonment and face having his or her passport suspended for up to three years. (*Ha'aretz*, 14 September 2005)

43 Hours In Sabra and Shatila

by Bayan Nuwayhed El Hout

On the 23rd anniversary of the massacre of Sabra and Shatila criminals who committed the massacre and those who supported, armed, protected and brought them in to the area, yet later were able to claim before the world that they “never saw or heard or witnessed anything”, have yet to face trial. The official Israeli report about the massacre (Kahan Commission) itself mentioned the fact that reports written by Israeli soldiers and commanders to their superiors never made it to the desks of senior officials like Begin and Sharon. Thus, important information pertaining to the main question of “who is responsible” has been lost, along with the chance for fair trial”.



Ever since I published my book *Sabra and Shatila* (1982) I have been asked: “How have you lived with all those details for more than twenty years”? The question enveloped in the question was: “Didn’t you have a break down”? My answer is that living with these details is an experience of continuous torture, but the facts revealed through suffering, reflection and comparisons are worth it.

Actually, I didn’t live with these details for all those years. The gathering of testimonies, documents and names, and field research were completed during the three years following the massacre. After that I concealed the files and went back to my normal life of teaching at the university and conducting research and lectures. But Sabra and Shatila never skipped my mind. The memory chased me all through my days and my journeys.

Thus, I collected everything I could lay my hands on: books, essays, conversations and data. Circumstances led me to devote myself exclusively to writing about Sabra and Shatila at the turn of the century. The question about the long years I lived with Sabra and Shatila I answer with another question: “Who said I was done? We all are responsible, as long as justice is not yet served.”

Another question I am often asked is, “What do you think are the most important findings of your research?” My answer to this is that I am still searching, and that I may not yet have found the most important. However, it is important to establish the rule that our history, tragedies and resistance are documented for the sake of a better future, not only for our people, but for all the oppressed and for the entire human race. I hope that I have gathered documentation that scholars can build on in the future.

The official Israeli Kahan Report about Sabra and Shatila was issued on 7 February 1983. It was welcome internationally and praised as a sign of democracy in Israel by the smaller number of those who actually read the report, and by the majority who merely read about it. Its numerous flawed and often contradictory findings are not addressed in this article. The discussion, rather, is devoted to one single issue, i.e., when did the Lebanese militia really leave the scene of the massacre? The Kahan Report answers this question in a fashion which blatantly contradicts the reality of what happened.

Everybody agrees that the massacre started by sunset, at around 6 pm, on Thursday, 16 September 1982, and continued through Friday until Saturday. The question is when exactly on Saturday did the massacre end? The history of massacres is calculated by the hour and by the minute, not by days and weeks. While the massacre was at its peak, General Eitan held a meeting with the commanders of Lebanese forces at 4:30 pm on Friday afternoon. He agreed to let the Lebanese militia remain until Saturday dawn. The fact is that the massacre continued for 43 hours, while the Kahan Report states that the Lebanese forces had completely left the camps by around 8 on Saturday morning.

The closing chapter of my book entitled “Who is Responsible”, discusses at length the fifth chapter of the Kahan Report which tries to establish the exact time when the massacre in “the greater Shatila area” came to an end. The details of what happened on that third and last day, hour by hour, story by story, constitute an independent episode, just like the first and the second days. It became clear to us that, contrary to the account of the Kahan Report, the killers did not leave on Saturday morning. From dawn



Aftermath of the Sabra and Shatila massacre. © Bayan al-Hout.

onwards, they started to scream at residents and drag them out of their houses towards Sabra Square. At 7 in the morning, they were leading foreign volunteer physicians and nurses out of the Gaza Hospital in order to interrogate them. They were led along the road from Sabra Square and through the main street of Shatila. Residents gathered like a flock of sheep, observing the team of physicians and awaiting their destiny, as well as their own.

The so-called “Big March” of the tortured inhabitants set out at about 8 am from Sabra Square, at about the time the armed men withdrew according to the Kahan Report. Women, children and men were forced to walk under constant insults; at times they were ordered to stand up, at times sit down. Then they were ordered to gather in the Square, on the sandy hills across the Kuwaiti Embassy near the Ersal neighborhood. The bulldozers were roaring as they knocked down houses or turned bodies of victims over in the sand. The crowd was walking as if someone were calling this young man or that, to be taken to an unknown destination. Death squads randomly field marshaled this or that person and pushed him into the pits of death, or took him to a mysterious place (the destiny of the kidnapped and the missing is not known until today). Many of those who were able to continue on the “Big March” towards the Sports City were killed by land mines left behind by the Israeli invaders.

Many testimonies about the events of that Saturday state that the massacre continued until after 12 noon, and in several cases until 1 in the afternoon, especially around the Kuwaiti Embassy. My research relies basically on oral history accounts. Forty-six testimonies of tragedies of families or individuals were selected from among 140 interviews. This collection was entitled “The Accounts of the 46”; these accounts were divided into chronological order by chapter. Based on this chronology, it became evident from account number 39 that the massacre was still at its peak shortly before

Saturday noon. The narrator of that story is the only one who actually went down into a death pit and came out alive.

The account below is taken from testimony number 16. I interviewed the witness on 16 February 1983. Haj Mahmoud is a technician who lived in Sabra. He is about 50 years of age. Some parts of the testimony were edited for length from the original published account. These parts were summarized into four points deriving from his testimony.

Statistical method confirms findings from oral history

The death pit

Place: across from the Kuwaiti Embassy
Time: 11 am, Saturday, 18 September 1982
General scene: looks like dooms day

Crowds of hundreds awaited their turn to be interrogated or to be thrown into the death pit without a single question, or possibly to continue on "their last march" towards the Sports City...

There, not very far from the interrogation site, not out of sight of the Israelis, was more than one pit, named death pits by the witnesses. The account of Haj Mahmoud about the biggest death pit is important. According to our knowledge he is the only one that went down into the "death pit" and came back out. He spoke...

The Haj heard the killer or interrogator say:

"Come here ... you come here, you Haj, what do you do for a living? You Haji ?..."

The Haj does not remember anything but himself saying spontaneously:

"I serve God's houses."

The interrogator did not say a word but made a profane gesture with his hand. The line of people was moving close towards the biggest pit. Then, the Haj said repeatedly, the interrogator was "generous enough" and pushed me into the pit.

Haj Mahmoud's testimony did not end with his escaping certain death. He is also a witness to the continuation of the Big March, interrogations by the Israelis, the explosions of land mines and the killing that continued until 1 p.m.

Oral history research resulted in 906 named and documented cases of victims murdered in the massacre. Four hundred and eighty-four cases of kidnapped and missing persons could be documented (the names published in the annex of my book are based on seventeen different sources). It was, however, impossible at the time of the chaos around the massacre, to discover all victims' names. The total number of victims based on estimates and comparisons is estimated to be at least 3,500.

My field research conducted in the spring of 1984 included 430 murdered victims and 100 kidnapped persons. We were able to identify the place and time of every incident of murder and kidnapping, thereby shedding light on the scope of incidents on each of the three days. The findings showed that the percentage of victims was highest on the first day, despite the fact that the massacre started in the evening. The first day accounts for up to 56.51% of the victims. 29.77% of the incidents happened on the second day, and 13.72% on the third day.

Statistical data regarding kidnapped and missing persons fit the logic of developments as described in the oral history accounts. Unlike the rate of killings, kidnappings started out at a very low rate and then rose steadily. The rate of kidnapping operations on the first day was 8%, it rose to 33% on the second day and reached 59% on the third day.

The combined rate of killings and kidnappings on the first day was 47.36%, 30.38% on the second day and 22.26% on the third day. In numbers, the ratio of the third day is equal to 180 victims from among the population researched in 1984. The ratio accounts for 309 victims from among the total number of victims documented by the list of names based on the seventeen different sources. The final research focused on the documented names and numbers without mentioning the estimated numbers due to the possible differences from one analyst to another.

Could 309 people have been killed and kidnapped in one or two hour's time while the invading killers were getting ready to leave? If Judge Yitzhak Kahan had asked a sufficient number of Israeli soldiers

and commanders who besieged Sabra and Shatila in mid-September 1982 when the killers actually left the area of the massacre, he would have come closer to the truth, regardless of the conflicting statements.

The victims have been tortured enough, they were unlawfully killed. Ignoring the victims, however, is even more brutal, because by doing so truth, justice and the spirit of humanity are murdered.

Bayan Nuwayhed al-Hout is the author of Sabra and Shatila: September 1982. London: Pluto Press, 2004. Translation by Nimr Awaini.

New BADIL Publications

Closing the Gap, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention

The Handbook addresses problems and protection gaps facing Palestinian refugees who seek protection under the 1951 Refugee Convention and/or the 1954 Stateless Convention in third countries outside the Arab world. It aims to strengthen implementation of legal protection standards applicable to Palestinian refugees, in particular the rights embodied in Article 1D of the 1951 Refugee Convention. *Available in English. 488 pages. ISBN: 9950-339-00-6.*



Do Israeli Rights Conflict with the Palestinian Right of Return? Identifying the Possible Legal Arguments. *Working Paper No. 10.*

In this working paper, refugee law expert Michael Kagan develops the idea of conflicting rights as a means of addressing Israeli objections to Palestinian refugee return. Rather than explore Palestinian arguments for the right of return, this paper starts from the assumption that the right of return exists and must be accepted by Israel in order to reach a just peace that complies with international law. Instead, this paper aims to identify and assess separate claims by Jews or Israelis that cannot coexist with refugee return. Without this separation, any assertion of Palestinian rights may be misunderstood as a denial of Israeli interests, and vice versa. *Available in English. 34 pages.*



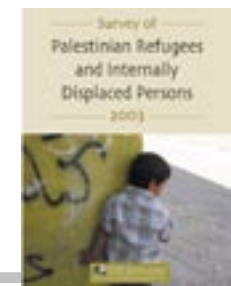
Ruling Palestine, A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine

The main focus of this study is the methodical process underlying the Zionist conquest of Palestine and dispossession and displacement of its indigenous Arab inhabitants, in particular legal instruments and policies relating to colonization and land acquisition. This process is measured against the standards of relevant international treaties and agreements. *Available in English. 242 pages. ISBN 92-95004-29-9.*



Survey of Palestinian Refugees and Internally Displaced Palestinians 2003

The *Survey* provides basic historic and current information on Palestinian refugees and internally displaced persons. The *Survey* includes 6 chapters covering the historical circumstances of Palestinian displacement, population, legal status, socio-economic profile, international protection and assistance, and durable solutions. *Available in English and Arabic. 200 pages. ISSN 1728-1679.*



Information Packet on Palestinian Refugees

The packet includes a short summary of the popular campaign for Palestinian refugee rights and a brief history of the Palestinian refugee issue, a poster, and a set of postcards.



Selected BADIL Publications

Proceedings of the Fourth Annual Meeting of the Global Palestine Right of Return Coalition

Includes working papers submitted to the fourth annual meeting of the Global Palestine Right of Return Coalition held in London, November 2003. The publication also includes a summary of discussions and debate as well as the final statement issued by the Coalition. *Arabic with English summaries.*



BADIL Expert Forum Working Papers

Papers address the relationship between international law and peacemaking, housing and property restitution for refugees, international protection, and obstacles to implementation of durable solutions for Palestinian refugees.

The Right to Housing and Property Restitution in Bosnia and Herzegovina: A Case Study, Paul Prettitore, Legal Advisor, Organization for Security and Cooperation in Europe. *English and Arabic.* 28 pages.

Justice Against Perpetrators, the Role of Prosecution in Peacemaking and Reconciliation, Sandra Vicente, Assistant Legal Officer, International Tribunal for the Former Yugoslavia. *English and Arabic.* 24 pages.

The Role of International Law and Human Rights in Peacemaking and Crafting Durable Solutions for Refugees: Comparative Comment, Lynn Welchman Director, Center of Islamic and Middle Eastern Law, School of Oriental and African Studies. *English and Arabic.* 20 pages.

Popular Sovereignty, Collective Rights, Participation and Crafting Durable Solutions for Palestinian Refugees, Karma Nabulsi. *English and Arabic.* 13 pages.

Temporary Protection for Palestinian Refugees: A Proposal, Susan Akram, Boston University School of Law, and Terry Rempel, BADIL Research and Information. *English and Arabic.* 44 pages.

Land Restitution in South Africa, Overview and Lessons Learned, Jean du Plessis, Deputy Director, Center on Housing Rights and Evictions. *English and Arabic.* 16 pages.

Israel's Land Laws as a Legal-Political Tool, Usama Halabi, advocate, LL.M. *English and Arabic.* 12 pages.

Arab Protection for the Palestinian Refugees, Khaled Al-Az'ar. *English and Arabic.* 30 pages.

UNRWA's Role in Protecting Palestinian Refugees, Harish Parvathaneni, Chief, Policy Analysis Unit, UNRWA. *English and Arabic.* 24 pages.



“Experiencing the Right of Return, Palestinian Refugees Visit Bosnia”

This 20 video documents a study visit of a delegation of Palestinian refugees to Bosnia-Herzegovina in June 2002. The delegation, comprised of refugees from Palestine/Israel, Lebanon, Jordan, Syria, and Europe traveled to Bosnia in order to understand: What was done and how? What didn't work and why? What are the lessons for Palestinians and their struggle for the implementation of the right of return and real property restitution?

Available in English and Arabic.



Jerusalem 1948: The Arab Neighborhoods and their Fate in the War [Al-Quds 1948: al-ahya' al-'arabiyah wa-masiruha fi harb 1948]

Salim Tamari (ed.). Published by BADIL Resource Center and the Institute for Palestine Studies, 2002. ISBN 9953-9001-9-1.

To order contact IPS-Beirut, ipsbrt@cyberia.net.lb, or www.palestine-studies.org.



BADIL Hebrew Language Packet/The Right of Return

The Packet includes: Main Reader, 'Palestinian Refugees:' overview of the issue and demands of Palestinian refugees; law and principles guiding solutions to refugee problems; answers to frequently asked questions; obstacles to be tackled by a law- and rights-based solution (24 pages); Legal Brief, 'Palestinian Refugees and their Right of Return, an International Law Analysis' (16 pages); Executive Summary, 'The Right of Return:' Report of the Joint British Parliamentary Commission of Inquiry into Refugee Choice (28 pages; translation from the English original published in London, March 2002); Readers' feedback sheet and background information about BADIL Resource Center for Palestinian Residency and Refugee Rights.

The BADIL Hebrew-language Information Packet is available for NIS 30. For postal orders inside Israel, please send a check to Andalus Publishers, PO Box 53036, Tel Aviv 61530 (andalus@andalus.co.il).



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BADIL Resource Center

1. Principles on Housing and Property Restitution for Refugees and Displaced Persons
2. NGO Statement on International Protection submitted to the 2005 Meeting of the Executive Committee of the UNHCR

1. Principles on Housing and Property Restitution for Refugees and Displaced Persons

The Principles on Housing and Property Restitution for Refugees and Displaced Persons were drafted by the UN Special Rapporteur on Housing and Property Restitution for Refugees and Displaced Persons, Sergio Paulo Pinheiro from Brazil. They were adopted by the UN Commission on the Promotion and Protection of Human Rights in August. The Principles and Commentary are available on the BADIL website, <http://www.badil.org>.

Preamble

Recognizing that millions of refugees and displaced persons worldwide continue to live in precarious and uncertain situations, and that all refugees and displaced persons have a right to voluntary return, in safety and dignity, to their original or former habitual homes and lands,

Underscoring that voluntary return in safety and dignity must be based on a free, informed, individual choice and that refugees and displaced persons should be provided with complete, objective, up-to-date and accurate information, including on physical, material and legal safety issues in countries or places of origin,

Reaffirming the rights of refugee and displaced women and girls, and recognizing the need to undertake positive measures to ensure that their rights to housing, land and property restitution are guaranteed,

Welcoming the many national and international institutions that have been established in recent years to ensure the restitution rights of refugees and displaced persons, as well as the many national and international laws, standards, policy statements, agreements and guidelines that have recognized and reaffirmed the right to housing, land and property restitution,

Convinced that the right to housing, land and property restitution is essential to the resolution of conflict and to post-conflict peace-building, safe and sustainable return and the establishment of the rule of law, and that careful monitoring of restitution programmes, on the part of international organizations and affected States, is indispensable to ensuring their effective implementation,

Convinced also that the implementation of successful housing, land and property restitution programmes, as a key element of restorative justice, contributes to effectively deterring future situations of displacement and building sustainable peace.

SECTION I.

SCOPE AND APPLICATION

1. Scope and Application

1.1 The Principles on housing and property restitution for refugees and displaced persons articulated herein are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.

1.2 The Principles on housing and property restitution for refugees and displaced persons apply equally to all refugees, internally displaced persons and to other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee (hereinafter “refugees and displaced persons”) who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

SECTION II.

THE RIGHT TO HOUSING AND PROPERTY RESTITUTION

2. The right to housing and property restitution

- 2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.
- 2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

SECTION III.

OVERARCHING PRINCIPLES

3. The right to non-discrimination

- 3.1 Everyone has the right to be protected from discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.
- 3.2 States shall ensure that de facto and de jure discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

4. The right to equality between men and women

- 4.1 States shall ensure the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.
- 4.2 States should ensure that housing, land and property restitution programmes, policies and practices recognize the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach.
- 4.3 States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

5. The right to be protected from displacement

- 5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.
- 5.2 States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.

5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.

5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

6. The right to privacy and respect for the home

6.1 Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.

6.2 States shall ensure that everyone is provided with safeguards of due process against arbitrary or unlawful interference with his or her privacy and his or her home.

7. The right to peaceful enjoyment of possessions

7.1 Everyone has the right to the peaceful enjoyment of his or her possessions.

7.2 States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law. Whenever possible, the “interest of society” should be read restrictively, so as to mean only a temporary or limited interference with the right to peaceful enjoyment of possessions.

8. The right to adequate housing

8.1 Everyone has the right to adequate housing.

8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.

9. The right to freedom of movement

9.1 Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.

9.2 States shall ensure that freedom of movement and the right to choose one’s residence are not subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with international human rights, refugee and humanitarian law and related standards.

SECTION IV.

THE RIGHT TO VOLUNTARY RETURN IN SAFETY AND DIGNITY

10. The right to voluntary return in safety and dignity

10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.

10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations.

10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and

displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.

- 10.4 States should, when necessary, request from other States or international organizations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.

SECTION V.

Legal, Policy, Procedural and Institutional Implementation Mechanisms

11. Compatibility with international human rights, refugee and humanitarian law and related standards

- 11.1 States should ensure that all housing, land and property restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with international human rights, refugee and humanitarian law and related standards, and that the right to voluntary return in safety and dignity is recognized therein.

12. National procedures, institutions and mechanisms

- 12.1 States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims. In cases where existing procedures, institutions and mechanisms can effectively address these issues, adequate financial, human and other resources should be made available to facilitate restitution in a just and timely manner.

- 12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognize the equal rights of men and women, as well as the equal rights of boys and girls, and reflect the overarching principle of the “best interests of the child”.

- 12.3 States should take all appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. States should provide all relevant agencies with adequate financial, human and other resources to successfully complete their work in a just and timely manner.

- 12.4 States should establish guidelines that ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, including guidelines pertaining to institutional organization, staff training and caseloads, investigation and complaints procedures, verification of property ownership or other rights of possession, as well as decision-making, enforcement and appeals mechanisms. States may integrate alternative or informal dispute resolution mechanisms into these processes, insofar as all such mechanisms act in accordance with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.

- 12.5 Where there has been a general breakdown in the rule of law, or where States are unable to implement the procedures, institutions and mechanisms necessary to facilitate the housing, land and property restitution process in a just and timely manner, States should request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes for providing refugees and displaced persons with the procedures, institutions and mechanisms necessary to ensure effective restitution remedies.

- 12.6 States should include housing, land and property restitution procedures, institutions and mechanisms in peace agreements and voluntary repatriation agreements. Peace agreements should include specific undertakings by the parties to appropriately address any housing, land and property issues that require remedies under international law or threaten to undermine the peace process if left unaddressed, while demonstrably prioritizing the right to restitution as the preferred remedy in this regard.

13. Accessibility of restitution claims procedures

- 13.1 Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, to have a determination made on their claim and to receive notice of such determination. States should not establish any preconditions for filing a restitution claim.
- 13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process.
- 13.3 States should ensure that separated and unaccompanied children are able to participate and are fully represented in the restitution claims process, and that any decision in relation to the restitution claim of separated and unaccompanied children is in compliance with the overarching principle of the “best interests of the child”.
- 13.4 States should ensure that the restitution claims process is accessible for refugees and other displaced persons regardless of their place of residence during the period of displacement, including in countries of origin, countries of asylum or countries to which they have fled. States should ensure that all affected persons are made aware of the restitution claims process, and that information about this process is made readily available, including in countries of origin, countries of asylum or countries to which they have fled.
- 13.5 States should seek to establish restitution claims-processing centres and offices throughout affected areas where potential claimants currently reside. In order to facilitate the greatest access to those affected, it should be possible to submit restitution claims by post or by proxy, as well as in person. States should also consider establishing mobile units in order to ensure accessibility to all potential claimants.
- 13.6 States should ensure that users of housing, land and/or property, including tenants, have the right to participate in the restitution claims process, including through the filing of collective restitution claims.
- 13.7 States should develop restitution claims forms that are simple and easy to understand and use and make them available in the main language or languages of the groups affected. Competent assistance should be made available to help persons complete and file any necessary restitution claims forms, and such assistance should be provided in a manner that is age and gender sensitive.
- 13.8 Where restitution claims forms cannot be sufficiently simplified owing to the complexities inherent in the claims process, States should engage qualified persons to interview potential claimants in confidence, and in a manner that is age and gender sensitive, in order to solicit the necessary information and complete the restitution claims forms on their behalf.
- 13.9 States should establish a clear time period for filing restitution claims. This information should be widely disseminated and should be sufficiently long to ensure that all those affected have an adequate opportunity to file a restitution claim, bearing in mind the number of potential claimants, potential difficulties of collecting information and access, the extent of displacement, the accessibility of the process for potentially disadvantaged groups and vulnerable individuals, and the political situation in the country or region of origin.
- 13.10 States should ensure that persons needing special assistance, including illiterate and disabled persons, are provided with such assistance in order to ensure that they are not denied access to the restitution claims process.
- 13.11 States should ensure that adequate legal aid is provided, if possible free of charge, to those

seeking to make a restitution claim. While legal aid may be provided by either governmental or non-governmental sources (whether national or international), such legal aid should meet adequate standards of quality, non-discrimination, fairness and impartiality so as not to prejudice the restitution claims process.

13.12 States should ensure that no one is persecuted or punished for making a restitution claim.

14. Adequate consultation and participation in decision-making

14.1 States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities.

14.2 States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention

15. Housing, land and property records and documentation

15.1 States should establish or re-establish national multipurpose cadastral or other appropriate systems for the registration of housing, land and property rights as an integral component of any restitution programme, respecting the rights of refugees and displaced persons when doing so.

15.2 States should ensure that any judicial, quasi-judicial, administrative or customary pronouncement regarding the rightful ownership of, or rights to, housing, land and/or property is accompanied by measures to ensure registration or demarcation of that housing, land and/or property as is necessary to ensure legal security of tenure. These determinations shall comply with international human rights, refugee and humanitarian law and related standards, including the right to be protected from discrimination.

15.3 States should ensure, where appropriate, that registration systems record and/or recognize the rights of possession of traditional and indigenous communities to collective lands.

15.4 States and other responsible authorities or institutions should ensure that existing registration systems are not destroyed in times of conflict or post-conflict. Measures to prevent the destruction of housing, land and property records could include protection in situ or, if necessary, short-term removal to a safe location or custody. If removed, the records should be returned as soon as possible after the end of hostilities. States and other responsible authorities may also consider establishing procedures for copying records (including in digital format), transferring them securely and recognizing the authenticity of said copies.

15.5 States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.

15.6 States and other responsible authorities or institutions conducting the registration of refugees or displaced persons should endeavour to collect information relevant to facilitating the restitution process, for example by including in the registration form questions regarding the location and status of the individual refugee's or displaced person's former home, land, property or place of habitual residence. Such information should be sought whenever information is gathered from refugees and displaced persons, including at the time of flight.

15.7 States may, in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, adopt the conclusive presumption that persons fleeing their

homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.

- 15.8 States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.

16. The rights of tenants and other non-owners

- 16.1 States should ensure that the rights of tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property are recognized within restitution programmes. To the maximum extent possible, States should ensure that such persons are able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

17. Secondary occupants

- 17.1 States should ensure that secondary occupants are protected against arbitrary or unlawful forced eviction. States shall ensure, in cases where evictions of such occupants are deemed justifiable and unavoidable for the purposes of housing, land and property restitution, that evictions are carried out in a manner that is compatible with international human rights law and standards, such that secondary occupants are afforded safeguards of due process, including an opportunity for genuine consultation, adequate and reasonable notice, and the provision of legal remedies, including opportunities for legal redress.
- 17.2 States should ensure that the safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner.
- 17.3 In cases where evictions of secondary occupants are justifiable and unavoidable, States should take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means of facilitating the timely restitution of refugee and displaced persons' housing, land and property. Lack of such alternatives, however, should not unnecessarily delay the implementation and enforcement of decisions by relevant bodies regarding housing, land and property restitution.
- 17.4 In cases where housing, land and property has been sold by secondary occupants to third parties acting in good faith, States may consider establishing mechanisms to provide compensation to injured third parties. The egregiousness of the underlying displacement, however, may arguably give rise to constructive notice of the illegality of purchasing abandoned property, pre-empting the formation of bona fide property interests in such cases.

18. Legislative measures

- 18.1 States should ensure that the right of refugees and displaced persons to housing, land and property restitution is recognized as an essential component of the rule of law. States should ensure the right to housing, land and property restitution through all necessary legislative means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices. States should develop a legal framework for protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law.
- 18.2 States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property, most notably refugees and displaced persons. Subsidiary claimants should similarly be recognized, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.

18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as these agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.

19. Prohibition of arbitrary and discriminatory laws

19.1 States should neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.

19.2 States should take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.

19.3 States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to be protected from discrimination and to equality in both law and practice.

20. Enforcement of restitution decisions and judgements

20.1 States should designate specific public agencies to be entrusted with enforcing housing, land and property restitution decisions and judgements.

20.2 States should ensure, through law and other appropriate means, that local and national authorities are legally obligated to respect, implement and enforce decisions and judgements made by relevant bodies regarding housing, land and property restitution.

20.3 States should adopt specific measures to prevent the public obstruction of enforcement of housing, land and property restitution decisions and judgements. Threats or attacks against officials and agencies carrying out restitution programmes should be fully investigated and prosecuted.

20.4 States should adopt specific measures to prevent the destruction or looting of contested or abandoned housing, land and property. In order to minimize destruction and looting, States should develop procedures to inventory the contents of claimed housing, land and property within the context of housing, land and property restitution programmes.

20.5 States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgements, including failing to vacate occupied housing, land and property voluntarily and damaging and/or looting of occupied housing, land and property.

21. Compensation

21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.

SECTION VI.

THE ROLE OF THE INTERNATIONAL COMMUNITY, INCLUDING INTERNATIONAL ORGANIZATIONS

22. Responsibility of the international community

- 22.1 The international community should promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity.
- 22.2 International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition against unlawful or arbitrary displacement and, in particular, the prohibition under international human rights law and related standards on the practice of forced evictions.
- 22.3 International organizations should work with national Governments and share expertise on the development of national housing, land and property restitution policies and programmes and help ensure their compatibility with international human rights, refugee and humanitarian law and related standards. International organizations should also support the monitoring of their implementation.
- 22.4 International organizations, including the United Nations, should strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through the establishment of national procedures, institutions, mechanisms and legal frameworks.
- 22.5 International peace operations, in pursuing their overall mandate, should help to maintain a secure and stable environment wherein appropriate housing, land and property restitution policies and programmes may be successfully implemented and enforced.
- 22.6 International peace operations, depending on the mission context, should be requested to support the protection of the right to housing, land and property restitution, including through the enforcement of restitution decisions and judgements. Members of the Security Council should consider including this role in the mandate of peace operations.
- 22.7 International organizations and peace operations should avoid occupying, renting or purchasing housing, land and property over which the rights holder does not currently have access or control, and should require that their staff do the same. Similarly, international organizations and peace operations should ensure that bodies or processes under their control or supervision do not obstruct, directly or indirectly, the restitution of housing, land and property.

SECTION VII.

INTERPRETATION

23. Interpretation

- 23.1 The Principles on housing and property restitution for refugees and displaced persons shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee and humanitarian law and related standards, or rights consistent with these laws and standards as recognized under national law.

2. NGO Statement on International Protection submitted to the 2005 Meeting of the Executive Committee of the UNHCR [Excerpt]

The NGO Statement on International Protection was drafted and delivered at the 56th Session of the Executive Committee of the High Commissioner's Programme on 3-7 October 2005 on behalf of a wide range of NGOs. The excerpt below addresses the Palestinian refugee situation which was raised in numerous meetings at the pre-Executive Committee consultations between NGOs and UNHCR. The entire statement is available on the website of the Geneva-based International Council of Voluntary Agencies, <http://www.icva.ch>.

We would like to draw the Executive Committee's attention to the unique position of forcibly displaced Palestinians. Millions of Palestinians fall into a gap with no access to any form of international protection. In this regard, we call on all actors to redouble their efforts at addressing this gap for Palestinian refugees. UNHCR, governments and other UN agencies should ensure Palestinian refugees' protection under the 1951 Refugee Convention to Palestinian refugees in light of the inclusion clause of Article 1D. Of continuing concern is the lack of protection provided to Palestinians under UNRWA's mandate, as well as those new IDPs created by the destruction of refugee camps and the illegal wall under construction.



Remnants of al-Majdal

Source: www.palestineremembered.com

About the meaning of al-Majdal

al-Majdal is an Aramaic word meaning fortress. The town was known as Majdal Jad during the Canaanite period for the god of luck. Located in the south of Palestine, al-Majdal was a thriving Palestinian city with some 11,496 residents on the eve of the 1948 war. Majdalawis produced a wide variety of crops including oranges, grapes, olives and vegetables. Palestinian residents of the town owned 43,680 dunums of land. The town itself was built on 1,346 dunums.

The town of al-Majdal suffered heavy air and sea attacks during the latter half of the 1948 war in Palestine. Israeli military operations (Operation Yoav, also known as “10 Plagues”) aimed to secure control over the south of Palestine and force out the predominant Palestinian population. By November 1948, more than three-quarters of the city’s residents had fled to the Gaza Strip. Israel subsequently approved the resettlement of 3,000 Jews in Palestinian refugee homes in the town. In late 1949 Israel began to drive out the remaining Palestinian population using a combination of military force and administrative measures. The process was completed by 1951. Israel continues to employ similar measures in the 1967 occupied West Bank, including eastern Jerusalem, and the Gaza Strip.

Palestinian refugees from al-Majdal now number over 71,000 persons. Like millions of other Palestinian refugees, Majdalawis are not allowed to return to their homes of origin. Israel opposes the return of the refugees due to their ethnic, national and religious origins. al-Majdal, BADIL’s quarterly magazine, reports about and promotes initiatives aimed at achieving durable solutions for Palestinian refugees and displaced persons based on international law and relevant resolutions of the United Nations.

— Survey of —
**Palestinian Refugees
and Internally
Displaced Persons**
— 2003 —



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al-Majdal is a quarterly magazine of BADIL Resource Center that aims to raise public awareness and support for a just solution to Palestinian residency and refugee issues.