

# Reparations for Palestinian refugees

by Lena El-Malak

## Israel's failure to provide reparations to Palestinian refugees over the past six decades is in blatant violation of international law.

The abysmal failure of the Oslo process is in no small part due to its failure to provide some form of reparations to Palestinian refugees in accordance with principles of international law. Instead of redressing the historical injustice that is at the core of the Israeli-Palestinian conflict – the *Nakba* (catastrophe) – the Oslo process relegated the issue of refugees to final status negotiations.

Reparations may take various forms: restitution of lost property, compensation for damages incurred, an acknowledgment of the harm done or a combination of all. Under international law, “reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.” Following the flight of an estimated 726,000 refugees from Mandate Palestine to neighbouring Arab countries, the Israeli Cabinet voted in July 1948 to bar the refugees’ return to their homes, and adopted legislation aimed at denationalising them en masse and expropriating their property.

The status of international legal norms at the time still allowed some scope for debate of the legality of these measures. However, the intention of the international community with regard to the Arab population of Mandate Palestine was made unequivocal by the adoption of two UN General Assembly Resolutions in 1947-48. In resolution 181 – the so-called Partition Plan – the General Assembly called on both the Jewish and Arab states-to-be to grant citizenship to the respective minority residing on their territory. Resolution 181 provided additional guarantees to the minorities in both states by

prohibiting the expropriation of land owned by an Arab in the Jewish state and vice versa, except for public purposes, and stating that “in all cases of expropriation full compensation as fixed by the Supreme Court shall be paid previous to dispossession.”<sup>1</sup> The subsequent denationalisation of Palestinians en masse by Israel in order to prevent them from returning to their homes and the expropriation of their property could therefore not have been condoned by the international community.

Additionally, in 1948 the General Assembly adopted resolution 194 which resolved “that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.”<sup>2</sup>

Yet, almost 60 years later and despite an annual reaffirmation of resolution 194, Israel continues to preclude refugees from returning to their homes. It has also failed to reconstitute any of their property and provide compensation for their losses. Although the international community voted resolutions in favour of the rights of return, restitution and compensation, it has not exhibited sufficient political will to enforce these rights. The importance of providing reparations in international law must not be undermined. Beyond the moral significance of redressing a historical injustice, insistence that states have an obligation to provide reparations (restitution and/or compensation)

for giving rise to the conditions that create refugees would serve as a deterrent to states which resort to expulsion and population transfers to create or reinforce ethnically homogenous entities.

During the 1990s the Balkan Wars reinvigorated international focus on the need for repatriation and reparations, yet once again Palestinians were a case apart. For Palestinian refugees the ‘Oslo Peace Process’ simply enshrined their marginalisation. The international community’s failure or unwillingness to put pressure on Israel to provide reparations does not only have implications for the Palestinian refugees of 1948. This political impotence has given Israel the green light to displace hundreds of thousands of Palestinians over the decades – and, most recently, even Lebanese civilians – with the full knowledge that, once again, it would not be called upon to provide reparations to those it has wronged.

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See also:

- Leckie, S Peace in the Middle East: getting real on the issue of Palestinian refugee property, FMR 16 [www.fmreview.org/FMRpdfs/FMR16/fmr16.14.pdf](http://www.fmreview.org/FMRpdfs/FMR16/fmr16.14.pdf)
- Lee, Luke T, The Issue of Compensation for Palestinian Refugees [www.arts.mcgill.ca/MEPP/PRRN/lee.html](http://www.arts.mcgill.ca/MEPP/PRRN/lee.html)

1. UNGA res.181 (II), 29 November 1947.

2. UNGA res. 194, 11 December 1948 [www.badil.org/Documents/Durable-Solutions/GA/A-RES-194\(III\).htm](http://www.badil.org/Documents/Durable-Solutions/GA/A-RES-194(III).htm)  
See also [www.badil.org/Solutions/restitution.htm](http://www.badil.org/Solutions/restitution.htm) for more background documents.