

**The Impact of Return
on
Compensation for Palestinian Refugees**

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Introduction

In the closing decades of the 20th century, the massive displacement of ethnic, religious, and national groups has brought about a fundamental shift in international efforts to respond to refugee needs and demands. While asylum and *non-refoulement* continue to be regarded as basic refugee rights, increasingly, international efforts have focused on a "pro-active, homeland-oriented and 'holistic' approach".¹ The 1998 report of the UNHCR notes that since 1987 almost every major peace agreement concluded around the world has included provisions related to the return of displaced populations.² The UNHCR also noted growing recognition of the need to secure title for refugee property and land. In some instances, this movement in favor of refugee return has forced the international community to grapple with traditional notions of sovereignty. Moreover, in areas where the generation of refugees has been rooted in conflicts of a regional nature, there has been an emphasis on initiatives that promote regional frameworks to secure the rights of refugees as a primary component for stability, reconciliation, and development.

These developments have interesting and perhaps significant implications as regards resolution of the Palestinian refugee issue, in general, and the issue of compensation, in particular. While recognizing the unique characteristics of individual refugee populations, it must be acknowledged that the developments of the last decade represent a growing body of experience of refugee return and compensation, largely untapped, from which to draw on in delineating any framework for a resolution of the Palestinian refugee issue.³ More specifically, recent research has demonstrated that, while significant political barriers stand in the way of Palestinian refugee return, Palestinian refugee land inside Israel remains largely unsettled.⁴ The potential space for Palestinian return is further evidenced by recent Israeli data, which disputes the notion that Israel is rapidly running out of space for development.⁵ This combination of factors (that refugees have the right to return, the right to their properties, that return is elemental to regional stability, reconciliation and development, and that the obstacle to return for Palestinians is not practical but political/ideological - i.e. that Israelis would not be displaced by the return of refugees) begs further research based on the assumption of the return of Palestinian refugees to their homelands.⁶

This working paper seeks to explore the issue of compensation within the context of refugee return, based on the shift in international policy and practice as summarized above. The first part of the paper provides a brief overview of the relationship between return and compensation as employed throughout the paper. The remainder of the paper focuses on the impact of refugee return as regards compensation. Three specific areas are examined: types of expenditures, distributive issues, and sums to be allocated.⁷ The paper concludes with some remarks about the impact of a regional framework for compensation and return.

Return and Compensation: A Framework

What are the parameters of compensation within the context of Palestinian refugee return? UN General Assembly Resolution 194 details two components of compensation for Palestinian refugees. The Resolution states, *inter alia*, 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."⁸ These principles have been affirmed by agreements facilitating compensation for refugees - including internal refugees - in several regions this past decade.⁹ More recently UNGAR 51/129 notes, *inter alia*, that "Palestine refugees are entitled to their property and to the income derived therefrom, in conformity with the principles of justice and equity."¹⁰ Precedents also exist regarding compensation for human capital losses and for psychological damage and pain.¹¹

Thus, what we are looking at is essentially at least four types of compensation: (1) compensation for those choosing not to return; (2) compensation to returnees for loss of property or material damages to property; (3) compensation in terms of income derived from the use of refugee property, and; (4) compensation for non-material damages. The scope of each type of compensation will likely be determined by several factors in addition to identification, evaluation criteria, and the extent of available financial resources. These other factors include the number of refugees wishing to return, refugee lobbying/mobilization, the level of international investment in reconstruction, and the nature of Israeli-Palestinian relations engendered by, and as a result of, the process of return. Given the variability of these factors, the paper avoids detailed calculations of refugee compensation, although some general examples are utilized throughout the paper. The paper assumes that a majority of refugees, particularly those living in camps, will choose to return to their homelands.¹²

Types of Expenditures to be Financed

Based on the assumption that a large number of Palestinian refugees will choose to return, particularly those living in camps, compensation will be required primarily for types (2), (3), and (4). Assessment of compensation for losses or damages to property (2) may appear difficult at first glance, given the length of time - more than five decades - since refugees were expelled or fled. However, as noted above, this issue has not proved to be insurmountable in other cases this decade.¹³ As regards Palestine and Israel, moreover, there is substantial documentation.¹⁴ Compilation of these documents, using integrated databases and GIS technology should provide considerable evidence to facilitate identification and evaluation of properties.¹⁵ In assessing compensation it may also be helpful to consider ownership in terms of "identity in land" where traditional ownership at the time of dispossession, as with many indigenous groups, did not correlate well with western models of land registration.¹⁶ Additional information, criteria and procedures will be required to evaluate revenues for the use of refugee property, though records of relevant Israel government institutions should provide valuable data. The determination of values for human capital losses and psychological damages also require additional criteria.¹⁷ Concerning compensation (1) for those Palestinians

not wishing to return, numerous studies, including the individual identification and evaluation work of the UN Conciliation Commission for Palestine, provide a starting point for assessment of compensation.¹⁸ Based on Kubursi's estimate for individual property losses upgraded to 1998 US\$, the average compensation per family (based on a six person family) would be \$420,000.

Given the existence of favorable reintegration and peacebuilding¹⁹ efforts, refugees may find it acceptable to combine individual compensation for types (2), (3), and (4) (or part of it) with costs for reconstruction of the physical and social infrastructure on their lands. Hence a type of compensation in-kind. Such consent, however, would probably be dependent on the composition of the authority/regime responsible for reconstruction. Abed, for example, divides reconstruction costs into 15 types falling under two categories - physical infrastructure and social infrastructure.²⁰ If all refugees would return and homes were constructed according to 1990 figures, the total cost would be approximately \$14 billion, considerably less than the \$132 billion dollars in compensation for individual and public property calculated by Kubursi for 1994 even with the addition of cost increases between 1990 and 1994. Presumably, the cost would decrease somewhat based on the construction of multiple versus single family dwellings. The cost of social infrastructure, according to the same per capita investment calculated by Abed, for a full return of refugees would be along the lines of 3.7 billion dollars for hospitals and other health facilities and 1.9 billion dollars for educational facilities. Of course, the exact amount of these expenditures would be determined as well by the existing infrastructure on their lands. Based on existing UNRWA services (which admittedly require upgrading) in Lebanon, the return of registered refugees according to the District of Family Origin would require reconstruction investment for at least 18 primary health facilities and 55 schools in the Galilee.²¹ Additional investment would also be required for such things as employment and institutional capacity building.²²

Research areas:

- methods of property identification and evaluation
- methods for determining non-material losses
- impact of regional reconstruction programs on refugee compensation, including infrastructure assessment profiles for refugee return, according to population and area, and job creation and institution building profiles

Distributive Issues

Two main issues concerning distribution of compensation for refugees involve procedure and the notion of equity. Procedure includes three components: collection and compilation of documents; receiving and adjudicating claims; and, payment of compensation. These tasks may be carried out by one body, or by a combination of bodies. In Bosnia, for example, claims are handled by a Commission for Real Property Claims set up under the Dayton Peace Accords. Claims can also be filed with the Ombudsman of the state. In South Africa, claims can be mediated by a Land Claims Commission or settled by a Land Claims Court. Separate commissions may prove necessary to document and prepare claims such as the World Jewish Restitution Organization (WJRO), while still other

commissions may be responsible for dispensing payments. All three components may be combined into one international commission such as the Tribunal established to deal with claims against Iraq from the 1991 Gulf War. In some cases, like South Africa, international support has been provided to Non-Governmental Organizations (NGOs) to assist displaced populations in advancing their land claims. For returning refugees who find it acceptable to have a portion of their compensation converted for reconstruction of the physical and social infrastructure on their lands, funds would be administered by a reconstruction regime.

Equity relates to the distribution of compensation per sector of the refugee community. One concern raised in relation to individual compensation is that it harbors the potential to harden and/or exacerbate economic cleavages, widening the gap between the poor and the rich. While more research is necessary to substantiate this claim, equity can be addressed through the institution of land reform, including the repealing of laws that discriminate against returnees. Such reforms have taken place, for example, in South Africa where land reform, through restitution, tenure reform, and redistribution, is designed to contribute to reconciliation, growth and development by addressing ownership and development patterns, which were reflective of the political and economic conditions under apartheid.²³ Tenure reform may be one effective way to deal with potential equity problems given the absence of strong tenants rights legislation in pre-1948 Palestine, which contributed to peasant land alienation and inequitable land distribution. The issue of equity would also be impacted by the type and level of skills which refugees bring to the areas to which they return combined with potential reconstruction investment in these areas. According to the 1997 FAFO report on Palestinian refugees in Jordan, the majority of refugees and displaced persons residing in camps dominate trade, commercial services and manufacturing.²⁴ Equity would be seemingly be increased, for example, with high levels of employment and opportunities for occupational advancement in the areas to which these refugees would return, primarily the Jerusalem and Lydda districts.

Research areas:

- compensation commissions, types and modalities of operation
- labour force and skills profiles for returning refugees per region
- resource assessment profiles of areas to which refugees would return
- land reform and refugee return

Sums to be Allocated

As noted, it is difficult the estimate to size of any compensation package for Palestinian refugees without data on the number of Palestinians choosing to return, those choosing not to return, those choosing to return but not to their property, and those choosing not to return but wishing to have their property returned. Estimates for individual compensation, however, indicate the sheer enormity of Palestinian refugee losses with some estimates reaching 500 billion dollars. Obviously there are questions about the ability, financially and politically, of the international community to martial such financial resources. Assuming that a substantial number of refugees will either chose to return to their homelands or have their

homelands returned to them, particularly those living in more extreme conditions such as Lebanon and Gaza, individual compensation becomes a much more feasible option with significantly lower costs. For those not wishing to return, compensation for material losses may also be foregone by a return of property. Such was the framework put forward by the World Jewish Restitution Organization (WJRO), for example, when East European countries claimed that sums for individual compensation would exceed their ability to pay. Likewise, in-kind compensation for those whose property may not be able to be returned (i.e. property used for roads, other public infrastructure, etc.) would reduce the overall value of monetary compensation.

Another area, which inflates the overall level of compensation to Palestinian refugees, is the inclusion of non-material damages, i.e. human capital losses and psychological damages. According to Kubursi, for example, the addition of human capital losses to material losses would increase the overall sum by over 50% while the addition of damages for injury and psychological damage would increase the original sum by nearly 100%. Although there are precedents for such compensation, it is not a standard component in agreements reached during the past decade to facilitate the return of refugees. Refugees may choose to forego this kind of compensation given a positive post-conflict atmosphere and sufficient reconstruction efforts. Compensation for psychological damage and pain may also be substituted by in-kind compensation, such as truth commissions, which addresses the social or psychological aspect of refugee integration.

The level of compensation may also be significantly reduced if types (2) through (4) are substituted in large part by post-conflict reconstruction efforts already highlighted above. Using an average investment figure per refugee based on Abed's 1990 estimate for resettlement of 1.2 million Palestinians to the West Bank and Gaza, the total figure for a return of all refugees in 1990 would result in a sum of \$41 billion, substantially less than Kubursi's estimate for individual property compensation and six times less than the overall compensation figure including human capital losses, injuries and psychological damages. While this figure still appears substantially large, investments over a 5-10 year period would bring the sum within the range of the international community for regional reconstruction efforts. The significant experience gathered over the past five years of international assistance to the Palestinian Territories, moreover, should provide valuable lessons regarding the delivery and efficient use of financial resources. In addition there is a potential knock-on effect with new construction, consumer spending etc. The maintenance of UNRWA funding, moreover, over the 5-10 year period, would further reduce the size of new financial outlays and provide valuable technical assistance regarding the reconstruction of the social infrastructure for returning refugees. Based on the 1999 General Fund Budget of UNRWA for education and health the total investment over a ten year period would be, respectively, 1.6 billion dollars and 640 million dollars or with a 5% increase per annum (the estimated donor increase necessary to maintain services) the total calculated investment would reach 2 billion dollars for education and 800 million dollars for health.

Research areas:

- international aid envelopes and funding of refugee compensation
- post-conflict reconstruction budgets as compared to individual compensation
- impact of truth commissions as compared to compensation for psychological damages

Conclusion

There should be no doubt that the return of Palestinian refugees will be a complex and difficult process. As the UNHCR notes, return marks only the beginning of a tough relocation process with potential problems concerning physical security, social and psychological security, legal security, and material security. At the same time, however, the return of Palestinian refugees would appear to have a positive impact on the issue of compensation in addition to regional stability, reconciliation, and development. As the World Bank has noted: "as long as significant portions of a society's population are displaced, the conflict has not ended. There can be no hope of normalcy until the majority of those displaced are able to reintegrate themselves into their societies."²⁵

As regards compensation, the return of Palestinian refugees would appear to cost significantly less than individual compensation, although the short-term outlays seem rather steep. A regional framework, moreover, holds the possibility of dealing with broader issues related to citizenship and land ownership based on the idea of inclusivity rather than narrow ethnic, religious, or national parameters. A regional initiative holds the benefit of addressing issues related to citizenship and property of Jews with origins in the Arab states of the region according to the same principles. The regional approach also creates a natural framework for compensation of host countries.²⁶ This kind of compensation is much more feasible in the context of regional reconstruction, through debt relief and regional infrastructure investment. At this level, the focus groups of the multilaterals on refugees appear to interface easily with a larger regional initiative.

While there are problems in implementation, regional agreements adopted in the last decade could provide important and useful keys to a resolution of the Palestinian issue. The International Conference on Central American Refugees (CIREFCA), for example, recognized that there could be no lasting peace without a resolution to the problem of refugees, returnees and displaced persons. CIREFCA provided for an integrated approach to repatriation of refugees to Nicaragua, El Salvador, and Guatemala. The Bishek Agreement of 1992 established a framework for addressing the political, economic, and social rights of displaced persons in the Commonwealth of Independent States. The outlines of a future reconstruction plan for the Balkans that addresses issues of return, property, and compensation remains to be defined. Whether or not return, at this stage, is seen to be politically possible or palatable, however, should not inhibit research based on the return of Palestinian refugees. Indeed, if refugees are to have choices, the full range of choices must be supported by solid research.

¹ US Committee for Refugees, *World Refugee Survey* (1998), p. 20. The *Survey* further notes that "repatriation is the favored solution for refugees and assumption of long-term exile is outdated."

² The report notes that "the principle of voluntary repatriation affirms the right of all refugees to return to their own countries." Furthermore, according to the report, under the Preamble to the 1951 Convention, people obliged to leave their homes are assured "the widest possible exercise" of all other fundamental rights affirmed in the UN Charter and the Universal Declaration of Human Rights. This would include the right to return. The UN Human Rights Commission has thus affirmed "the right of persons to remain at peace in their homes, on their lands and in their own countries." *State of the World's Refugees: A Humanitarian Agenda*, UNHCR (1998) [UNHCR website edition]. For Palestinians, the Commission recently reaffirmed this principle in late April 1999.

³ A brief search of the FAFO bibliography on Palestinian refugees, for example, using the terms return and compensation yields not one comparative study on these two issues.

⁴ Salman Abu-Sitta, "The Establishment of a Palestinian Land Society," *al-Hayat* (9 November 1998).

⁵ According to the Applied Institute the built up area of Israel in 1995 (excluding the Negev which accounts for approximately 60% of the area of Israel) was 6% or about 465 sq. km. The projected built up area in 2020 would be 8%. If the Negev is included the built up area would be around 3%. *Ha'aretz*, (22 February 1999).

⁶ The term homelands refers to both title to and identity in the land.

⁷ These classifications are employed by Ruth Klinov, *Reparations and the Rehabilitation of Palestinian Refugees*, 1995.

⁸ General Assembly Resolution 194 (III), 11 December 1948, Para. 11. Takkenberg provides a list of eight principles in international law concerning compensation. Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford: Clarendon Press, 1998), pp. 240-241. Also see Luke T. Lee, "The Right to Compensation: Refugees and Countries of Asylum," *American Journal of International Law*, vol. 80, no. 3 (1986), pp. 532-567.

⁹ This includes, by way of a few examples, refugees from Bosnia, displaced indigenous peoples in Guatemala, internally displaced blacks in South Africa, and in a host of countries concerning Jewish claims.

¹⁰ General Assembly Resolution 51/129, 13 December 1996, Para. 1.

¹¹ See for example, compensation for Jewish victims of Nazi atrocities under the *Wiedergutmachung* program, described in Atif Kubursi, *Palestinian Losses in 1948: The Quest for Precision* (Washington, DC: The Center for Policy Analysis on Palestine, 1996).

¹² If those refugees registered as living in camps (according to UNRWA figures for 31 December 1998) return, this would include 1,159,669 persons or somewhere between 150 - 200,000 families. If the total number of refugees registered with UNRWA return, the number would double. If all the refugees would return, highly unlikely, the total number of persons as of December 1998, according to Abu-Sitta, would reach 4,942,121 persons. The total land area to which the refugees would return to would be approximately 17,000 sq. km in which, according to Abu-Sitta, there were some 956,000 Israeli Jews living in 1994, most of whom were living in urban areas.

¹³ Admittedly, Palestine does have problems related to land registration, which differ from some of these cases.

¹⁴ This documentation includes the records of the UN Conciliation Commission; maps of the Palestine Exploration Fund; Survey of Palestine maps; aerial photography, the *Tabu*, records of the Israeli Custodian of Absentees' Property, land records of pre-1948 Jewish/Zionist colonization organizations, the Jewish National Fund, the Israel Lands Administration, personal documents attached to UNRWA family files, and personal documents still held by refugees.

¹⁵ The collection of this information represents what might be called a hidden cost but one which should be factored into the overall cost of compensation.

¹⁶ Andre C. Horn, *The Identity of Land in the Pretoria District, 19 June 1913: Implications for Land Restitution*. [Website of the University of Cape Town, Department of Environmental and Geographical Sciences.]

¹⁷ See, for example, the theoretical work of Kubursi.

¹⁸ This also includes work completed by the Arab League, Yosef Sayigh and Atif Kubursi.

¹⁹ Reintegration, using the UNHCR definition, refers to the erosion and disappearance of observable distinctions between returnees and compatriots, particularly with regard to socioeconomic and legal

status. Peacebuilding to establishment of effective judicial procedures, pluralistic government and the equitable distribution of resources.

²⁰ Physical Infrastructure: 1. Housing 2. Roads 3. Irrigation, land reclamation, and rural infrastructure 4. Power/electricity capacity and networks 5. Water and sewage facilities 6. Communications 7. Air and seaport facilities 8. Public buildings 9. Other facilities Social Infrastructure: 10. Hospitals and other facilities 11. Educational facilities 12. Social institutions 13. Public facilities (parks, etc.) 14. Tourism facilities (public share) 15. Other facilities. George T. Abed, *The Economic Viability of a Palestinian State* (Washington, DC: Institute for Palestine Studies, 1990), p. 25.

²¹ The figures represent a rough estimate based on UNRWA's list of services for 1998 and the distribution of UNRWA registered refugees by district of Family Origin in 1992 in Rex Brynen, "Imagining a Solution: Final Status Arrangements and Palestinian Refugees in Lebanon," *Journal of Palestine Studies* XXVI, no. 2 (Winter 1997), p. 49.

²² A second area concerning the types of allocations is the logistical costs associated with refugee return - i.e. education about conditions, transportation, etc. - a presumably smaller subset of costs, not traditionally seen as compensation. A third area will be costs associated with post-conflict peacebuilding.

²³ [Government of South Africa website.] Taking one settlement under the 1994 Restitution of Land Rights Act as an example, the Elandskooft settlement allowed for the securing of land rights to former tenants who were removed from the lands they farmed when the land was sold by the church to a white farmer. [Ford Foundation website.]

²⁴ Marie Arneberg, *Living Conditions Among Palestinian Refugees and Displaced in Jordan* (Norway: FAFO, 1997), p. 54.

²⁵ S. Holtzman, "Post-conflict reconstruction," Environment Department Work in Progress, Washington, DC: World Bank (1995), p. 15.

²⁶ See Lee, for example, on the rights of host countries to compensation.