

## **Peace Agreements and Refugees – Lessons Learned**

*This Bulletin aims to provide a brief overview of issues related to Palestinian Refugee Rights*

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### ***Peace agreements—provisions on rights, refugees and participation:***

*The following is Part II of a three-part series analyzing provisions in recent peace agreements. It deals with refugees. Part III will be on public participation in formulating and implementing agreements. For Part I on human rights, see [www.badil.org](http://www.badil.org). All parts will be on the website in early December.*

### **Most peace agreements specify the rights of refugees But Middle East initiatives offer only options and quotas**

Palestinians make up the largest group of refugees in the world but their legal rights aren't even mentioned in initiatives being promoted to bring peace to the Middle East.

Conflicting parties in other parts of the world have been able to define their differences, find common ground, sign peace agreements and, most importantly, resolve refugee issues. Peace agreements that don't recognize and provide for the voluntary exercise of refugee rights carry the risk of sanctioning mass population displacements in the future.

*Each refugee case is unique and so are the mechanisms set up to facilitate permanent solutions for refugees. But in most cases, the right of refugees and displaced persons to return to their homes and repossess their properties is seen as an important element in finding durable solutions.*

The Palestinian-Israeli conflict to date is unique, not so much because of its particular characteristics, although some of these are certainly unique, but more so because of the complete absence of refugee rights and subsequent Israeli state obligations. As pointed out in Part I of this series, there is also a virtual absence, in any peace proposals to date, of human rights regulations or provision for the establishment of human rights institutions.

Human rights provide a common framework to regulate relations between former antagonists, mediate future disputes and reconcile past injustices. "In a balanced human rights perspective, the primary aspect is the right to remain in, or return to, the country of origin. It is the violation of this right which is the cause of the problem of refugees."<sup>\*</sup>

The individual decision to exercise one's rights as a refugee should always be voluntary. "Voluntariness means not only the absence of measures which push the refugee to repatriate, but also means that he or she should not be prevented from returning."<sup>\*\*</sup> Nor should the exercise of a refugee's individual rights be influenced by arbitrary or discriminatory incentives/disincentives and quotas.

Many agreements identify or establish international, national and/or local institutions to facilitate the return of refugees and displaced persons, repossession of property, compensation for losses and damage, and post-return monitoring to ensure effective reintegration of refugees into their communities of origin.

This analysis provides a summary of the role of refugee rights and the Palestinian-Israeli negotiation process and an overview of the role of refugee rights in comparative perspective.

### **Refugee rights are key to lasting solution**

Refugee rights have been absent from the recent Israeli-Palestinian peacemaking process since it began in Madrid more than a decade ago. The Madrid-Oslo process was based on the notion of two ethno-national states in historic Palestine--Israel and Palestine. According to this framework, refugees will be resettled in a future state of Palestine to be established in the West Bank, eastern Jerusalem and the Gaza Strip.

Permanent solutions for Palestinian refugees are therefore framed in "humanitarian terms" without reference to the legal norms applied in other refugee cases. There is no explicit reference in these peace proposals to the right of Palestinian refugees and displaced return to their homes. Nor is there explicit reference to the right to housing and property restitution.

Refugee rights are a key element in any peace agreement and play a particularly important role in ethno-national conflicts. Most peace agreements that prescribe permanent solutions for refugees and displaced persons recognize their right to return and repossess their properties. This includes, for example, agreements in Macedonia, Kosovo, Croatia, Bosnia-Herzegovina, Tajikistan, Georgia, Burundi, Rwanda, Liberia, Sierra Leone, Mozambique, Cambodia, and Guatemala.

In Macedonia, Kosovo, Croatia, Bosnia-Herzegovina, Burundi, Guatemala, and Liberia, agreements recognize the right of refugees and displaced persons to return specifically to their homes or place of residence. Under the 1999 Interim Agreement in Kosovo, for example, the parties "recognize that all persons have the right to return to their homes."

Additionally, many agreements affirm refugees' right to choose their place of residence within the country of origin free from arbitrary interference. The 1995 Dayton agreement (Bosnia-Herzegovina) explicitly states: "Choice of destination shall be up to the individual or family, ... The Parties shall not interfere with the returnees' choice of destination, nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life."

The voluntary character of the return process is also stressed. In Guatemala, the government undertook to "ensure that conditions exist which permit and

guarantee the voluntary return of uprooted persons to their places of origin or to the place of their choice.” In Bosnia the parties must take “all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons. This includes the repeal of domestic legislation and administrative practices with discriminatory intent or effect.”

Agreements also provide for return in safety and dignity. The 2000 Arusha Peace and Reconciliation Agreement in Burundi states that return “must take place in dignity with guaranteed security, and taking into account the particular vulnerability of women and children.” Under the 1995 Dayton Agreement, parties are required to ensure “that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.”

Security guarantees and amnesty for refugees also characterize a number of agreements. The government of Tajikistan agreed “not to institute criminal proceedings against returning refugees or displaced persons for their participation in the political confrontation and the civil war, in accordance with the legislative acts in force in the Republic.” Under the 1994 Quadripartite Agreement in Georgia, “displaced persons/refugees shall have the right to return peacefully without risk of arrest, detention, imprisonment or legal criminal proceedings.”

The right of refugees and displaced persons to repossess their homes and properties is usually recognized. This includes Bosnia, Kosovo, Cambodia, Guatemala, Mozambique, Rwanda, Croatia, Burundi and Georgia. The 1999 Interim Agreement in Kosovo, for example, states that “all persons shall have the right to reoccupy their real property, assert their occupancy rights in state-owned property, and recover their other property and personal possessions.” The 1995 Erdut Agreement in Croatia states that, “The right to recover property, to receive compensation for property that cannot be returned, and to receive assistance in reconstruction of damaged property shall be equally available to all persons without regard to ethnicity.”

### **Information essential for making choices**

Agreements reviewed here state that refugees should be given as much information as possible so that they can make an informed choice on their future. In Burundi, for example, the agreement calls for information and awareness campaigns for refugees and *sinistrés* as well as visits to their places of origin in Burundi. In Georgia, the Parties agreed that refugees and displaced persons will be guaranteed unimpeded access to all available information on the situation in the areas where repatriation will take place.

Peace agreements also identify and/or establish international, national, and local institutions mandated to facilitate the implementation of return and restitution. Under the 1997 General Peace agreement in Tajikistan, for example, the parties call upon the United Nations, the Organization for

Security and Cooperation in Europe (OSCE) and the Office of the United Nations High Commissioner for Refugees (UNHCR) to provide assistance in order to ensure the safety of returning refugees and displaced persons and to establish and expand their presence at places where such persons are living. In Cambodia, the UN transition administration was accorded a key role in facilitating the return of refugees to their homes. In Burundi the parties agreed to establish and constitute a National Commission to organize and coordinate, together with international organizations and countries of asylum, the return and reintegration of refugees.

Separate institutions to process housing and property claims have been set up such as the Commission on Real Property Claims (CRPC) in Bosnia-Herzegovina and commissions are provided for in Georgia and Burundi. In other cases such as Kosovo, new institutions subsequently established by the United Nations deal with housing and property claims. Finally, some agreements, including those in Bosnia and Burundi, also establish special funds to compensate refugees not wishing to return and repossess their homes and properties.

#### Palestinian refugee issue postponed

The 1993 Palestinian-Israeli framework agreement (Declaration of Principles) (Article V (3)) and the 1995 Interim Agreement (Chapter III, Article XVII) state that the issue of refugees displaced in 1948 will be covered at a later stage in the context of final peace negotiations, during permanent status negotiations. Solutions for Palestinians displaced from the West Bank and Gaza in the 1967 war were to be dealt with as a first step in the interim period. For this purpose, the Declaration of Principles [also] establishes a quadripartite continuing committee (Article XII) to decide on "the modalities of admission of persons displaced from the West Bank and Gaza Strip in 1967." Similar provisions for Palestinians who became refugees or displaced persons as a result of the 1967 occupation by Israel of the West Bank and Gaza are found in the 1994 Gaza-Jericho Agreement (Article XVI(2)) and in the 1995 Interim Agreement (Chapter Four, Article XXVII(2)).

By the time Israeli-Palestinian peace negotiations broke down in 2000/1, none of the interim provisions regarding 1967 displaced Palestinians had been implemented and no detailed proposals for a solution of the 1948 Palestinian refugee issue had been drafted or negotiated.

More recent unofficial outlines of a final status agreement such as the Nusseibeh-Ayalon plan and the Geneva understandings also omit explicit reference to the right of refugees and displaced persons to return to their homes and repossess their properties. While some initiatives include language related to informed and voluntary choice from a package of options (as opposed to rights), provisions for quotas as well as arbitrary incentives and disincentives mean that choices presented to refugees cannot be considered voluntary.

Even though these initiatives do include more detail on international institutions responsible for facilitating solutions for Palestinian refugees, they contain insufficient detail on definitions and implementation powers. They also fail to identify and define the role and responsibilities of parallel national and local institutions in facilitating return and housing and property restitution.

### **Why are refugee rights missing?**

*Recognition of individual refugee rights entails state obligations. Israel does not accept obligations that would require it to grant equal rights to non-Jewish Palestinians. The right of Palestinian refugees to return to their homes of origin poses a challenge to Israel's self-definition of itself as a Jewish state. According to Yossi Beilin, one of the architects of the Geneva understandings, it means that Israel "will be an ordinary state, and not a state as we want it to be." (al-Quds, 5 January 2001)*

*Refugee rights are therefore missing simply because the refugees are Palestinian and not Jewish. "[T]he moment Israel loses its Jewish majority it will lose its [ethno-] national character. It will not be able to exist with the same contents of its creation." Israel's Jewish majority and Jewish control of the land – i.e., the 'contents of its creation' – arose only because Palestinians were deprived of the basic human right to remain in or return to their country of origin.*

Refugee rights are also missing because peacemaking efforts have been based on the political assumption that the Palestinian-Israeli conflict is primarily related to Israel's ongoing military occupation. International recognition of Palestinian claims to self-determination and a state are based on the prohibition against the use of force to acquire territory rather than within a colonial-racist framework. The PLO was forced to accept this assumption as a condition for political negotiations.

*Israeli withdrawal from the West Bank and Gaza Strip and the establishment of a Palestinian state in these territories, by itself, fails to address root causes of the conflict, which include mass displacement, dispossession and denationalization. Peacemaking efforts focused solely on collective claims to territory and the establishment of two-sovereign states defined along ethnic, national and religious lines ignore individual human rights that define permanent solutions for refugees.*

For many Palestinians the refugee problem is the product of a colonization process that began more than 50 years ago and continues until this day. Decolonization would entail the return of refugees and repossession of homes and properties illegally expropriated by Israel. Most Israelis reject this view of the conflict. The legal basis for a Jewish state in Palestine is assumed and based, among others, on the need for a safe haven from anti-Jewish persecution. A solution to the Palestinian refugee problem must therefore exclude refugee rights. As long as there is no agreement about the nature of the conflict, there can be no agreement about refugee rights.

### **Lack of rights undermines peace prospects**

Refugee rights are *sine qua non* for a peace agreement. Disregarding refugee rights, or subordinating these rights to political considerations, can only undermine the prospects of achieving durable peace and security. It is not

possible to produce peace against the background of unfulfilled desires for return.

The recognition of the right of refugees to return to their homes and repossess their properties in all major peace agreements addressing refugee problems worldwide in the last 10 years, suggests that there is no reason why these principles should not be included in a final peace agreement between the PLO and Israel.

Recognition of these rights has become a key marker of democracy and respect for fundamental rights and freedoms. An agreement that does not recognize and provide for the voluntary exercise of refugee rights carries the danger of underwriting mass displacement and facilitating its occurrence in the future.

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***BADIL looks at experience and best practice:*** *BADIL has been encouraging research into the role of international law in crafting durable solutions to the Palestinian refugee issue and has also organized study visits by Palestinians to regions where the reconciliation process is under way. The first, to Bosnia-Herzegovina examined progress in refugee return and property restitution. A recent visit to South Africa looked at the mechanism of land reform and community involvement in that country's peace and reconciliation process. BADIL has also sponsored fact-finding visits to depopulated Palestinian villages in Israel and areas now inhabited by Jewish Israelis.*

Through its series of seminars in Ghent, Geneva and Cairo, BADIL is bringing together academics, policy makers and legal practitioners to discuss various aspects of peacemaking. The third seminar in Cairo next spring will look at international and regional mechanisms for protecting Palestinian refugees.

*The foregoing analysis of recent peace agreements in 13 areas of the world is also part of BADIL's effort to focus attention on best practice, past experience, rule of law (especially human rights and humanitarian law) and community participation in the process of reaching a peace agreement.*

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\* G.J.L Coles, "UNHCR and the Political Dimension of Protection" (1995).

\*\* UNHCR, *Handbook on Voluntary Repatriation: International Protection* (1996).

\*\*\* Christine Bell, *Peace Agreements and Human Rights*, 2000