

Palestinian Refugee Question a Test of Respect for Fundamental Principle of Equality

BADIL COMMENTARY

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In recent days Israeli Prime Minister Ehud Olmert has conditioned negotiations to resolve the Israeli-Palestinian conflict on Palestinian recognition of Israel as a Jewish state. At the same time, resolving the long standing Palestinian refugee question is a decisive test of respect for and commitment to the fundamental principles of equality and non-discrimination.

The Universal Declaration of Human Rights, which turns 60 next year, emphasizes in its opening preamble that 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. According to the UN committee of experts that oversees the implementation of the international Convention on the Elimination of All Forms of Discrimination, among the rights that states must protect and guarantee against discrimination is the right of all refugees and displaced persons freely to return to their homes of origin under conditions of safety, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them and the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance. (CERD General Comment 22/1996)

According to Israel's High Court, the Jewish character of the state is defined by three inter-related components: that the Jews form the majority of the state; that the Jews are entitled to preferential treatment such as the Law of Return; and, that a reciprocal relationship exists between the state and the Jews outside of Israel. (*Ben Shalom v Central Election Committee*) The implications of this linkage are two-fold. The most obvious is that the Jewish character of the state, as defined by the court, is incompatible with the rights of refugees and displaced persons referred to above. Israel's Foreign Minister Tzipi Livni reminded states of this fact in her address to the UN General Assembly earlier this year when she reiterated that "just as Israel is homeland to the Jewish people, so Palestine will be established as the homeland and the national answer for the Palestinian people, including the refugees." At the same time, Olmert's demand is also inconsistent with Israel's human rights treaty obligation to eliminate racial discrimination and guarantee equality before the law. Israeli legislation does not incorporate a fundamental right to equality, in part, to protect the character of the state as a Jewish state. While Israel's Declaration of Independence refers to complete equality in social and political rights for all inhabitants of the state, it is not considered constitutional law.

In March of this year the UN expert committee that reviews state compliance with the Convention on the Elimination of All Forms of Racial Discrimination recommended that Israel ensure that "the prohibition of racial discrimination and the principle of equality be enacted as general norms of high status in domestic law" and that "the definition of Israel as a Jewish nation State does not result, in any systemic distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin in the enjoyment of human rights." In that context committee members reiterated their ongoing concern "about the denial of the right of many Palestinians to return and repossess their land in Israel" and recommended that Israel "assure equality in the right to return to one's country and in the possession of property." Beginning in December of this year, the UN will launch a year of activities celebrating the 60th anniversary of the Universal Declaration of Human Rights under the slogan: "Justice and dignity for all of us." That slogan also encapsulates the basic demand of Palestinian refugees to freely return to their homes of origin inside Israel as they prepare to commemorate 60 years since their displacement and dispossession (the *Nakba*) and it should be a guiding principle for negotiations between Israel and the PLO and a foundation for any future peace agreement to the long standing conflict.