

Written Submission
United Nations Human Rights Council
44th Regular Session – Item 7

US President Trump’s Vision: Marginalizing Palestinian Refugee and IDP Rights and Deviating from International Law

Date: 28 May 2020

1. For the past 72 years, the Palestinian people have been exposed to ongoing forcible displacement and transfer. The policies, mechanisms, and practices employed by Israel and its unwillingness to fulfill its responsibilities towards the Palestinian people have augmented and perpetuated this displacement. As of today, Palestinian refugees and internally displaced persons (IDPs) constitute 8.7 million – amounting to 66.7 percent of the Palestinian population worldwide.¹ This predicament is further reinforced by the reoccurring efforts of the United States (US) to liquidate the United Nations Relief and Works Agency (UNRWA), to erode the rights of displaced Palestinians, and to terminate the Palestinian refugee question all-together. A recent culmination of these efforts is seen in the US’ “Peace and Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People” (hereinafter, the Vision).² Similar to Israel’s strategy, the Vision sets out to deny Palestinian refugees and IDPs their right to just and durable solutions, namely voluntary repatriation (return), third-state resettlement, and host country integration as well as their right to reparations (i.e. right of return, property restitution, and compensation) – all of which constitute serious breaches of international law.³

The Vision’s Denial of Displaced Palestinians’ Right to Just and Durable Solutions: Right of Return, Property Restitution, and Compensation

2. As stipulated in international law and embodied in United Nations General Assembly (UNGA) Resolution 194 (III) and United Nations Security Council (UNSC) Resolution 237, the primary durable solution for Palestinian refugees and IDPs is return to their homes, real property restitution, and compensation for losses and damages.⁴
3. In direct violation of these resolutions, the Vision attempts to deny the rights guaranteed to IDPs by completely neglecting their existence, while also prohibiting Palestinian refugees from exercising their right of return to their homes – located in what is now Israel. Instead, the Vision proposes that the three options

¹ See BADIL, “Survey of Palestinian Refugees and Internally Displaced Persons 2016-2018,” Volume IX, 2019, p. 21, available at: <http://www.badil.org/phocadownloadpap/badil-new/publications/survey/survey2016-2018-eng.pdf>.

² See White House, “Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People,” announced on 28 January 2020, available at: www.whitehouse.gov/peacetoprosperty.

³ See BADIL, “Trump’s so-called Vision/Deal of the Century: A Move to End the Palestinian Refugee Issue through Serious Breaches of International Law,” Position paper, 15 May 2020, available at: <https://www.badil.org/en/publication/press-releases/92-2020/5074-pr-en-150520-21.html>.

⁴ UN General Assembly, 194 (III). “Palestine – Progress Report of the United Nations Mediator,” A/RES/194 (III), 11 December 1948, available at: www.unispal.un.org/DPA/DPR/unispal; UN Security Council, Security Council Resolution 237, S/RES/237, 14 June 1967, para. 1., available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/E02B4F9D23B2EFF3852560C3005CB95A>.

available to Palestinian refugees are: absorption into the new Palestinian entity, local integration in current host countries, and the acceptance of 50,000 refugees in individual Organization of Islamic Cooperation member countries.⁵ Through this, the Vision presents solutions that deviate from the right of displaced Palestinians to just and durable solutions as it denies return and formulates compulsory absorption, integration, and resettlement under the guise of pragmatism and in an approach that is devoid of rights.

4. The Vision's attempt to deny the right of return is in direct violation of international refugee law (IRL). IRL emphasizes that refugees are entitled to freely and informatively choose of one of the three just and durable solutions available to them, with voluntary repatriation as not only the preferred solution, but also the only one that constitutes a right, as the other two options – local integration and resettlement — are subject to states' consent and discretion.⁶
5. As such, the Vision's negation of the right of return and the subsequent imposition of vague and non-absolute formulations of local integration, absorption, and acceptance into third states does not constitute an adequate implementation of the Palestinian refugees' right to just and durable solutions. Additionally, the US' omission of the right of return deviates from a rich body of authority stemming from state practice reflecting the existence of *opinio juris* on the part of states where they are obligated under customary international law to allow displaced individuals, including refugees, to exercise their right of voluntary return to their homes of origin.⁷
6. Apart from the right of return, an indivisible part of the right to reparations guaranteed to Palestinian refugees and IDPs includes their right to property restitution and compensation, which the Vision flagrantly violates. UNGA Resolution 3236, amongst others, reaffirms the “inalienable rights of the Palestinians to return to their homes and property from which they have been displaced and uprooted.”⁸ With the Vision denying displaced Palestinians' the right to property restitution, the Trump administration in essence attempts to reward Israel for its illegal privatization of these properties by granting it dubious legitimacy within the proposed Vision.⁹ The Vision additionally fails to recognize that full compensation is an absolute and guaranteed right and cannot be treated as a component that can be done on a voluntary basis by cooperating states – a flawed proposal that is likely to generate financial hardships similar to those faced by UNRWA today.

The Erasure of the Palestinian Refugee Issue: Transferring Israel's Responsibilities to Third States

⁵ See White House, “Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People,” announced on 28 January 2020, p. 32, available at: www.whitehouse.gov/peacetoprosperty.

⁶ UNHCR, “Conclusion on Voluntary Repatriation: No. 18 (XXXI),” UNHCR ExComm, No. 12A (A/35/12/Add.1), 16 October 1980, clause (a), available at: <https://www.unhcr.org/excom/exconc/3ae68c6e8/voluntary-repatriation.html>.

⁷ See Gail J. Boling, “The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis,” BADIL, 2007, p. 77-82, available at: http://www.badil.org/phocadownloadpap/Badil_docs/publications/individualROR-en.pdf.

⁸ UN General Assembly, “Question of Palestine,” 22 November 1974, A/RES/3236, available at: <http://www.refworld.org/docid/3b00f0468.html>.

⁹ See BADIL, “Forced Population Transfer: The Case of Palestine – Denial of Reparations,” October 2018, available at: <http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/WP22-Reparations-of-Reparations.pdf>.

7. Since the Nakba, Israel has intended to transfer international responsibility for Palestinian refugees to host and Arab states with a goal to exempt itself from its responsibility towards Palestinian refugees. The US Vision attempts to grant Israel this exoneration by claiming that Arab states have a moral responsibility towards Palestinian refugees.¹⁰ Assigning moral responsibility to third-state parties, specifically Arab states, that were not responsible for creating nor sustaining the Palestinian refugee issue is a clear attempt to negate Israel's legal obligations and responsibilities.
8. Under the Law of Nationality in relation to state succession, the newly emerged successor state is under the binding customary obligation to allow all habitual residents to return to their homes of origin from which they were displaced during the succession process.¹¹ International Humanitarian Law also reaffirms that refugees and IDPs, as persons who have been subjected to forcible displacement, are entitled to the right to reparations from the perpetrator state.¹² Thus, the state responsible for ensuring and implementing the right of return as well as property restitution and compensation in the Palestinian case is legally Israel, as the successor state responsible for creating the displacement issue. Israel, and no other state, has a legal responsibility to offer remedies for displaced Palestinians. Accordingly, asserting that Arab states must bear moral responsibility is a meager attempt to conceal legal rights by appealing to arbitrary moral obligations.

Conclusion and Recommendations

9. The current state of affairs, including the denial of the Palestinian refugee issue specifically and the denial of Palestinian self-determination generally, is a manifestation of the ongoing failure of the international community to hold Israel accountable and to provide Palestinians with the protection to which they are entitled. The new proposed US peace plan attempts to buttress this failure by providing Israel with blanket impunity for its ongoing crimes towards the Palestinian people.

On this basis, BADIL calls on third party and UN member states to:

10. Reject the US' Vision and recognize it as a plan that directly violates the rights of Palestinian refugees and IDPs as enshrined and guaranteed in numerous UNGA resolutions, international conventions, and customary international law.
11. Fulfill their obligations to hold Israel accountable for its wrongdoings by cooperating to bring an end to Israel's denial of displaced Palestinians' right to just and durable solutions, particularly voluntary repatriation, property restitution, and compensation.

¹⁰ See White House, "Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People," announced on 28 January 2020, p. 31, available at: www.whitehouse.gov/peacetoprosperty.

¹¹ International Law Commission, "Draft Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries)," 3 April 1999, Supplement No. 10 (A/54/10), art. 14, available at: <http://www.refworld.org/docid/4512b6dd4.html>.

¹² UN General Assembly, 60/147, "Basic Principles on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," A/RES/60/147, 16 December 2005, available at:

<https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>.