



THE UNTOLD STORY: THE COSTS OF ISRAEL'S OCCUPATION TO THE PALESTINIANS IN THE WEST BANK AND GAZA

FACT SHEET 4 HOW TO ASSESS PALESTINIAN LOSSES*

The 37-year Israeli military occupation of the Palestinian West Bank, Gaza Strip and East Jerusalem has been marked by damage, destruction and loss of Palestinian life and property. As yet, there is no full account of such losses. These four fact sheets illustrate the kinds of losses that should be documented to underpin a compensation regime.¹

TRACKING THE INFORMATION A major difficulty that will face Palestinian policymakers seeking to establish Palestinian losses for the purposes of compensation is lack of data or inconsistency of the data that do exist. Moreover, data that did exist has been destroyed. For example,

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- Important Jordanian files were "lost" upon Israel's occupation of the West Bank in 1967.
- Israel reportedly destroyed records at various Palestinian institutions during its raids into West Bank towns in the spring of 2002.²
- In the 1980s, suspicious fires destroyed offices where land records were kept.³

Since the Second Intifada, international donors and other aid agencies have conducted various assessments. For example, the World Bank estimates that two years into the Intifada, over \$200mn worth of donor-funded capital assets had been destroyed.⁴ The value of this kind of information is that it provides pointers as to types of data required so as to calculate the extent of damage and destruction caused by Israel over 37 years of occupation, and a guide as to how to begin calculating amounts compensation due to the Palestinian people.

MAKING THE CASE In assessing losses, there are lessons to be learned from the 1948 Palestinian refugee situation, when around 800,000 Palestinians were expelled or forced to flee their homeland. The Palestinians' material losses in 1948 have variously been calculated at between \$8 to \$40bn, not including human suffering and pain, which if included, would bring the total to well over \$340bn.⁵ In other comparable situations around the world, refugees and victims of conflicts saw their rights and claims

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¹ This study has as its point of departure the continued applicability of international law, which clearly defines the West Bank and Gaza Strip (including East Jerusalem) as occupied territories from which Israel is obliged to withdraw.

² See for example, Ghada Karmi, "The World Looks on Ineffectually: Vanishing the Palestinians," CounterPunch (18 July 2004), <http://counterpunch.org/karmi07172004.html>.

³ A fire in the Nablus District Court in 1984 reportedly destroyed between 13,000-15,000 civil case files (including title deeds to land), and a few months later, in each of Jenin and Bethlehem. Around the same time, civil case files kept at the Ramallah District Court were trashed and shredded by unknown assailants. Raja Shehadeh, *The Law of the Land: Settlements and Land Issues Under Israeli Military Occupation* (Jerusalem: PASSIA, 1993), 126.

⁴ The World Bank, *Twenty-Seven Months: Intifada, Closures and Palestinian Economic Crisis*, May 2003.

⁵ See for example, Rex Brynen, "Financing Palestinian Refugee Compensation" and Donna Arzt, "The Right to Compensation, Basic Principles Under International Law," Palestinian Refugee ResearchNet (PRRN), <http://www.arts.mcgill.ca/MEPP/PRRN/biblio1.html>. It is important for Palestinians to familiarize themselves with Israeli calculations of their investments and funding in settlements such as data publicized in "The Price of Settlements," *Haaretz* (26 September 2003).

addressed by specific reparation and restitution regimes.⁶ The most relevant lesson from comparable experience lies not so much in mounds of data but rather the principles to guide assessments and claims. Such principles would include

- References to international laws that affirm the right of Palestinians to compensation, reparations and restitution.
- The obligation to compensate Palestinians for lost opportunities and/or prolonged suffering as well as settling property claims.
- Application of such principles to both 1948 refugees and Palestinians under occupation.
- Affirmation that compensation is not a substitute for the right of return, and that individuals (not only groups or governments) have a right to compensation.

The rest flows from there. This is precisely the approach employed in compensating Jews for their suffering during the Holocaust and has also been used in other conflicts.⁷

METHODOLOGY AND DEFINING THE TERMS To calculate the costs of various property losses under occupation Palestinians must also

- Decide on definitions, such as which properties should be included and the scope of losses (urban and rural areas, with or without their crops, infrastructure, furnishing, etc),
- How to value properties (in 1967 terms, in today's terms, or at any other point in history),
- Formulas for compensation (for individuals, families, groups, governing bodies), and
- Mechanisms for making the appropriate compensations.

Different scenarios are already being explored.

- A PLO Negotiating Affairs Department report, "Compensation to the Palestinian People and Government," covers confiscation and destruction of property, use and depletion of natural resources, breaches of human rights standards, killed and wounded civilians, expulsion of Palestinians, and administrative detention and torture of prisoners.⁸
- Canada's International Development Research Center funded "Israeli Settlement and the Palestinian Refugee Question: Evaluating the Prospects and Implications of Settlement Evacuation in the West Bank and Gaza Strip," in part to "inform Palestinian negotiators on settlements, refugee return and compensation scenarios."⁹
- Israelis have been exploring scenarios to deduct from total compensation to Palestinians amounts that would cover assets that might be left in settlements in the Gaza Strip.

The primacy of international law as a basis for compensation has been reaffirmed by the July 2004 Advisory Opinion of the International Court of Justice (ICJ), which affirmed the illegality of the Wall constructed in occupied lands; called for it to be dismantled; and called for restitution to Palestinians affected and compensation to those whose property cannot be returned.¹⁰

⁶ See for example, Maren Zerriffi, "Refugee Compensation: Selected Cases and Source Materials," International Development Research Center (July 1999) at PRRN, supra note 5.

⁷ The essence to the approach to Jewish victims of the Holocaust rested on the principle of "making good again," which entailed an acknowledgment and acceptance on the part of Germany and its people of their obligation to redress the historical injustice. The compensation and restitution regime that was finally put in place evolved over several years, and would come to include compensation for material and other properties paid to both the government of Israel and to individual survivors and their families. Part of funds would compensate for religious, ethnic and political discrimination and persecution suffered by victims.

⁸ Palestine Liberation Organization Negotiations Affairs Department, "Permanent Status Issues: Compensation," <http://www.nad-plo.org/hcopen.php>. Reports on this website provide more detailed information and supporting documents (including provisions of international law) on Jerusalem, settlements, water, refugees, borders, and economic relations.

⁹ International Development Research Center (IDRC), http://idrc.ca/en/ev-59300-201-1-DO_TOPIC.html. This project was to run between December 2002 - April 2004.

¹⁰ For a thorough analysis of the ICJ Advisory Opinion, see Susan Akram and John Quigley, "The International Court of Justice Advisory Opinion on the Legality of Israel's Wall in the Occupied Palestinian Territories: Legal Analysis and Potential Consequences" (Washington, DC: The Palestine Center, 2004), http://www.thejerusalemfund.org/palestinecenter/pubs/legalanalysis_potentialconsequences.pdf.