

## **Reparations**

### **Some of the Lessons from the South African Restitution Experience**

In the discussions, meetings and visits conducted as part of the Badil-Zochrot study visit in Cape Town, several issues were raised that we saw as being of direct relevance to restitution and reparations in the case of Palestine. These included the following:

*(note: some of these may not have been directly experienced in South Africa, but were raised as questions and concerns by study visit participants in their examination of the South African restitution experience)*

- 1) In assessing return and restitution claims, the evidence accepted as part of these claims in the South African case included a combination of official documents, archival materials and "triangulated" (cross-referenced) oral history (e.g. asking former neighbors). We found this to be a good combination of rigor and flexibility that can be adapted to Palestinian reparations claims.
- 2) Several South African activists characterized the post-liberation state as a "Nanny State," on in which there was an overreliance by citizens on the transitional authority/state institutions at the expense of community and citizen empowerment. A possible lesson is to encourage community claims in which the onus is on civil society level activity among claimants (e.g. claimants struggling to return to a particular village or urban neighborhood) to develop and put forward their own plans for how to implement their own reparation and return.
- 3) Purely rights-based approaches that emphasize the restitution of properties and/or the responsibility of the state in acquiring the land from subsequent occupants in order to return them to their returnee owners are replete with problems. These include:
  - a. Such approaches often reward perpetrators of Apartheid by allocating state funds to purchasing properties from them at market prices;
  - b. Issues of economic sustainability and development objectives are not built-in to restitution. As such, restituted farm-land may be turned into housing with negative effects both on the economic and environmental level);
  - c. Economic disparities among returnees, as well as between returnees and occupants can be further entrenched. For instance, those with access to resources are more likely to be able to submit well-argued claims because of access to information and lawyers; those who owned a great deal of property before displacement end up with much more than those who did not own property; etc.
  - d. The passage of time has meant that communities and claimants are exponentially larger in number and diversity than they were at the time of displacement (for example, a village that had one thousand inhabitants in 1948 is a place of origin to many more thousands of people today; a refugee couple from 1948 is likely to have a family

numbering dozens of heirs today; a third- or fourth-generation Palestinian refugee is likely to have claim to several properties in several locations depending on what was owned by the refugee's grandparents and great-grandparents).

- e. Even with a flexible mechanism that incorporates a broad range of acceptable evidence for deciding claims, not all refugees may be able to prove rightful ownership of properties.
- 4) The involvement of global powers and international financial institutions (such as the International Monetary Fund and the World Bank) in determining the shape of post-apartheid transition proved to be detrimental to the liberated people of South Africa. By entrenching class differences that existed largely along racial lines, economic arrangements made, that overwhelmingly favored the wealthy elite minority, have served to make the poor poorer, while increasing the fortunes of the very few. One lesson from this is that any financial assistance to be accepted to facilitate post-apartheid transition should be unconditional, and that priority should be given to self-reliance and creativity in securing the funds necessary for the process.

### **Assumptions**

A fundamental assumption that our discussions assumed as given was that Zionism and its hold on power in Palestine has been overcome. As such, we aimed to propose and discuss ideas about the restitution of land and property to displaced Palestinians to be carried out as part of a transitional arrangement. In this, we further assumed the existence of a transitional authority with access to such resources as state funds and expertise.

Furthermore, and although we did not reach complete consensus on this, we assumed the transition to be taking place in the context of a state on the entire mandate territory of Palestine, in which all Palestinians (whether or not they have been displaced) and Israelis receive the citizenship of the new unified state, while allowing for multiple citizenships.

### **Principles**

Our discussions on the mechanisms of reparations, restitution and land and property redistribution, gave rise to the following key principles:

- 1) Palestinians have a guaranteed right to choose whether or not to return and receive compensation.
- 2) The fundamental human rights of all citizens are to be guaranteed, particularly their rights to equality and housing. The right to housing of all citizens is to be central to the constitution and priorities of the new state.
- 3) Refugee/returnee participation must occupy a central position in all decision making relating to the reparations process.
- 4) There can be no discrimination on the basis of gender between claimants.

- 5) Citizenship is to be given to all refugees who want to return. This is to be done at the beginning of the process, as soon as returnee claims are processed.
- 6) Special attention is to be given to environmental and economic sustainability, the creation and preservation of public space, and the beauty of the landscape.
- 7) To the greatest extent possible, all Palestinian claims are to be treated equally. The purpose of return and reparations is not to return the descendants of landlords and peasants to the socioeconomic positions of wealth or poverty that they were in before the Nakba.
- 8) The title of absentee landlords who did not live in Palestine pre-1948 is not to be recognized.
- 9) Claims are to be dealt with on the basis of the specificities of their context rather than developing a set method and mechanism of restitution to be applied to all claims. The aim of the reparations process should be far-reaching redistribution rather than return to the pre-1948 situation.
- 10) Incentives (e.g. awards, recognition) should be established for people who compromise something to facilitate the return and reparations process.

### **Initial Proposals for Reparations Process**

What follows are some preliminary ideas on ways in which the reparations process can be carried out in line with the lessons, assumptions and principles outlined above.

#### ***Phase One (before, during and after return)***

Examine and map the existing situation of each locality. Localities are places of origin including villages, urban neighborhoods and **can also include refugee camps (for those who would prefer to remain in these areas)** throughout the Mandate territory of Palestine. These can combine the 1947 and present maps of the country. Such mapping exercises would aim to enable the development and presentation of different reparations scenarios (zoning plans, economic development ideas, etc.) of land use upon return. Such models can include (one or more of):

- Rebuilding community space (establishment of a new locality)
- Economic project/s: tourism, industry, agriculture, national parks, universities etc.
- Urban, sub-urban, rural absorption options
- Small and large / collectively and privately owned farms and agricultural projects;
- Monetary compensation/restitution;
- Other options

Work on the tasks related to this phase can begin now, and build both on work already conducted to map out various localities and on technological advancements that allow for mapping and representation of the space and features of different localities that can be presented to displaced communities.

#### ***Phase Two: Implementation***

In implementing reparations, we discussed *four possible tracks* that returnees can use. These tracks are mutually exclusive, that is, returnees cannot submit claims as part of more than one track.

*Track One: Individual Returnee (Fast Track)*

Individuals would return without any form of property restitution. The incentive for this would be speedy processing of their claims. Successful claimants would immediately receive their citizenship papers and a modest compensation package while forfeiting other reparations packages. Such claimants would also be considered to have facilitated the reparations process and receive recognition as such.

*Track Two: House Still Standing (Direct Restitution Track)*

This would only apply to properties (particularly homes) that are still standing, whether or not they are currently occupied. Such claimants would file claims for restitution and go through mediation and arbitration in cases where there is a “second occupant” (e.g. someone living in the house).

Second Occupant Cases

While only a minority of cases, second occupant cases (cases where an original owner was forced to abandon the property which was later occupied by the occupant who acquired it in good will) are associated with a host of problematic issues deserving of further investigation. The guiding principles for such cases should *give priority to consensual resolution* (through mediation) while guaranteeing the right to housing for both the original owner and the occupant. This track does not apply to people who were tenants at the time of displacement. Some of the guidelines that emerged from our discussion on how to deal with such cases included:

- In all cases, legal title should **revert** to the **original owner and their heirs**.  
\*We faced a point of disagreement on the issue of possession, namely, whether eviction and relocation of the occupant is permissible under any circumstances. In such cases, some of the proposals included the possibility of allowing occupant's possession to continue until the occupant passes away (lifetime lease).
- In all cases, the state/transitional authority is responsible for finding housing for whichever party ends up without housing as a result of the arbitration. If the occupant gives up the house, considering the possibility that s/he gets full compensation which enables him/her to acquire another house or compensation amount at the market value of the relinquished property that can be inherited by the occupants' heirs.
- Israeli regime members given property by party and/or state should be considered as having very weak claims to maintain occupancy of the properties.
- Public acknowledgement of the history of the property (how its original owners were displaced and how it was later obtained by the occupant) can be considered as options in the mediation and arbitration process.

### *Track Three: Community Reparation Track*

This track is itself divided into three phases.

#### Phase 1 (3-5 years)

First phase would be to allow claimants to sign up to a community of returnees based on locality (e.g, Deir Aban, Haifa, Bethlehem, etc.). The communities refer to localities throughout the country but not restricted to refugees from them, i.e. it is entirely based upon the returnees' choice. For example, the Deir Aban community can include refugees from Ajjur who wish to join them.

#### Phase 2

**(can begin immediately alongside the work of mapping and planning return communities)**

This phase involves community meetings, preferably led by community members themselves, in which different workable scenarios of return are presented to and discussed by returnees. Participatory and community-led process in which decisions can be made as to how to allocate and divide the restituted property and in which kind of community and life style they wish to live. The foundation for this is to be based on community approval and expert feedback regarding feasibility. In this process, economic and environmental sustainability are to be given priority alongside community approval.

#### Phase 3 (upon reaching community approval of a reparations plan)

Implementation of reparations plan with emphasis on community leadership and participation.

### *Track Four: Public Housing Track*

In this track, the state/transitional authority plans and constructs housing units in places most suited to such construction on the basis **of economic and employment development goals, (in ways that learn from the successes and failures of the Jewish Aliyah processes)** in which housing projects are planned in relation to development considerations, possibilities and objectives. Individual refugees can sign up to be considered for housing in these housing projects. Priority will be given to the returnees originally from the areas in which these housing projects are built. Track Three returnees whose localities cannot be restituted can also be given priority for such housing, while also receiving forms of compensation (monetary and or leases on an individual or community level for lands that cannot be restituted).

**\*There is a question as to whether title to the housing should belong to the recipients or to the state.**

### **Issues of Concern**

In our discussions, several issues were raised that require much further discussion and exploration. Initial thoughts were outlined on how to deal with such issues as follows:

- In cases of collective property claims (Track 3 reparations), who can claim to represent the community?

The goal should be horizontal returnee participation in which there is broad based and participatory decision making, mediated by the transitional authority and community members and leaders chosen by the community. “Popular return committees” elected by community claimants are one possible mechanism for representation.

- Where will the money for all of this come from?

A substantial allocation of the state budget is essential (the current Israeli State’s military budget, for example, should be rendered unnecessary by the reparations process). Furthermore, international community funding will be essential, and can draw on the possibility of short term continuation of existing international funding for such bodies as UNRWA and the Palestinian Authority.

- How far back do we go? What is the cutoff/starting point in time?

Possibilities discussed included leaving the option for claims open (i.e. if a returnee can make a valid claim for any time in the past then the claim should be considered); or to set a cutoff date of the earliest cases of Palestinian evictions under the British mandate in the 1920s.

- Who has title in communal reparations (Track 3)?

Leaving the answer to this question open, to be decided on the basis of the particular locality’s context. Possibilities can include municipal authority ownership, private ownership in cases where the small plots of land are allocated, state ownership also a possibility. What to do in cases in which there is no community level consensus or agreement requires further exploration.

- Much of the reparations results may lead to segregated communities where Jewish and non-Jewish citizens live in isolation from one another. How can such a situation be avoided for the purposes of medium and long-term integration and reconciliation?

Incentives should be created for mixing communities (e.g. housing subsidies, larger compensation packages for people opting to live in communities of the “other”). Current (Jewish) occupants who relinquish, and thereby facilitate reparations process can be given priority access to other returnee housing.

- What is to be the fate of the OPT and the settlements?

Also to be treated as context sensitive. Title for land where settlements have been built on privately owned land should be returned to the rightful owners with mediation and adjudication as to options for settlers, including relocation, tenancy agreements, etc. There should also be special arrangement for settlers who took land violently on their own volition. All rural and agricultural lands (not built-upon) should be immediately restituted to owners.

- With the influx of returnees, how is employment and economic capacity to be created to minimize pressure on the state, economy and environment?

This should be given particular emphasis in community mediation processes (Track 3) as well as priority in the reparations process as a whole. Compensation packages can also incentivize the possibility for some claimants, particularly those with other passports, to opt out of the reparations process, while maintaining the primacy of returnees' choice.

- With such an ambitious process of creating and guaranteeing housing for returnees, is it not a contradiction to allow for continued cases Jewish homelessness in the country?

The right to housing should be guaranteed for all citizens of the state, which includes Jewish citizens. Issues of prioritization require further discussion, including prioritization between Palestinian claimants.

- What about Internally Displaced Palestinians on both sides of the "Green Line"?

There should be no differentiation between external and internal refugees in terms of access to the reparations process.

- What about restitution of Jews expelled from Palestinian areas?

The reparations process should be open to Jewish citizens' claims.

- What about refugees who wish to remain in the OPT?

This option should remain open, and perhaps even incentivized through various compensation packages. It may form the basis for a fifth track of claimants (a compensation track).

- What about refugees who wish to remain in host countries?

For those who do not possess citizenship in these host countries, this is a matter for negotiations with the host countries. Such cases can also be included in the "compensation track" suggested in the previous item.

- What about Jews displaced from Arab countries?

This is primarily an issue to be decided by the countries of origin, and can be an issue taken up for negotiations between the new state and those states.

### **Outstanding Issues/Questions**

These are issues requiring further discussion and exploration that were raised but not discussed:

- What possible issues/problems might emerge from having a differentiated legal regime over land (e.g. collective in some cases, state ownership in others, and private ownership in others)?
- Given that there will be no discrimination on the basis of gender, and that the majority of claimants will undoubtedly be family members (i.e. married, parents of adult offspring): how many claims can a family submit? How can this be administered?

- Given the limitations on resources, job opportunities and available housing, and given that successful claimants will have an immediate right to citizenship, how is the timing and prioritization of return to be decided.
- Should there be a limitation on alienation (particularly sale) of restituted property as in the South African case?
- What about lands sold to Israelis in bad faith or under coerced agreements?
- What about the Mizrahim who are the other victims of Zionism?

### **Issues of Disagreement**

These are issues on which we could not reach consensus within our discussion groups.

*Note: some of these have been mentioned above.*

- One state solution vs. two-state solution in which reparations for displacement takes place.
- Permissibility of forced eviction in second occupant cases where no agreement can be reached through mediation.
- Regarding refugees who choose to stay in their host countries: The refugees will choose whether to return to Palestine or stay in the host country and give up their return. Disagreement over goals of incentives to be offered: one argument was that reduced compensation in such cases is desirable to maximize state resources available to be invested within the new state. Another argument was that incentives given for people to stay in their host countries would help prevent rapid overpopulation and pressure on state capacities and resources.