

Written Submission to the United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Mr. Fabian Salvioli, on Transitional Justice Measures and the Legacy of Human Rights Violations in Colonial Contexts

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i. Introduction

We welcome the initiative by the United Nations (UN) Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Fabian Salvioli to devote his report to the 76th session of the General Assembly on the question of the adoption of transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts. In response to this initiative and the questionnaire provided therein, we would like to direct our response to the first four questions posed regarding accountability, truth, reparations and memorialisation mechanisms in Palestine.

Acknowledging that transition to justice in Palestine is a far distant reality, and that the Israeli settler-colonial regime is not a legacy of the past but an ongoing settler-colonial structure,¹ it is important to ensure the transitional justice narrative on Palestine is not grounded on the hegemonic narrative, which neglects both the historical and ongoing nature of the Israeli settler-colonial regime.

ii. On Mechanisms for Accountability

Please indicate which mechanisms have been established in the concerned country to hold accountable persons accused of committing or bearing responsibility for gross violations of human rights and serious violations of international humanitarian law in colonial contexts. If such mechanisms were not adopted, please explain why. Please indicate the challenges and 2 opportunities encountered in investigating, prosecuting and sanctioning such crimes.

The UN Special Rapporteur on the Occupied Palestinian Territory, Mr. Michael Lynk wrote: “the enemies of accountability are impunity and exceptionalism.”² For 73 years, Israel has failed to comply with its international law obligations within a context of institutionalised impunity.

Israel’s military and civilian justice systems, have proved to be a driving force in the continued protection and entrenchment of the pervasive impunity enjoyed by Israeli authorities.³ Israel’s military investigative system is neither independent nor impartial.⁴ This is illustrated by the Israeli military’s role as the authorised investigative body into its own conduct.⁵

¹ Fayez Sayegh, ‘Zionist Colonialism in Palestine (1965)’ (2012) 2 *Settler Colonial Studies* 206; Tariq Dana and Ali Jarbawi, ‘A Century of Settler Colonialism in Palestine: Zionism’s Entangled Project’ (2017) xxiv *Brown Journal of World Affairs* 1; Tariq Dana and Ali Jarbawi, ‘A Century of Settler Colonialism in Palestine: Zionism’s Entangled Project’ (2017) xxiv *Brown Journal of World Affairs* 1.

² Human Rights Council, ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (21 October 2019) UN Doc A/74/507, para 1.

³ Al-Haq, ‘Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr Michael Lynk, on Accountability’ (31 May 2020), para 185.

⁴ *Ibid*, para 79.

⁵ The Military Advocate General (MAG) “performs a “dual role”: providing the military with legal advice prior to, and during military operations, and subsequently decides whether to initiate criminal investigations and proceedings. Al Mezan and Adalah, ‘Gaza 3 Years On: Impunity Over Accountability – Israel’s unwillingness

Following the receipt of 500 criminal complaints by the Military Advocate General (MAG), who is the key figure within the Israeli investigatory mechanism, in relation to Israel's 2014 aggressive military campaign on the Gaza Strip, which resulted in the killing of at least 2,251 Palestinians, and widespread destruction of over 31,000 civilian properties, only three Israeli soldiers were eventually indicted, and then only for a minor infringement of looting.⁶

The effective sanctioning of violations of peremptory norms of international law by Israeli courts, highlights their complicity in sustaining Israel's impunity. The Israeli courts have sanctioned the use of torture, under the so-called "ticking bomb" scenario.⁷ From 2001 until 2017, more than 1,000 complaints alleging torture during Israeli interrogations were filed, and all of them have been closed without a single indictment.⁸ In light of the active role of the Israeli justice system in maintaining Israel's impunity, the Palestinian people have been seeking accountability internationally.

The international community have failed to take effective measures to cooperate to bring the illegal situation imposed upon the Palestinian people to an end, in line with their responsibility as third states under international law.⁹ In fact, while the crime of deportation of civilians were being prosecuted elsewhere in the world in the aftermath of the second World War,¹⁰ Israel was accepted as a "peace-loving" new member of the United Nations (UN), despite the crimes and violations of international law surrounding its establishment, including those of forced transfer and deportation,¹¹ and despite breaching the UN's own condition for Israel's new membership, which was to ensure the right of return of the majority of the Palestinian people that it had illegally uprooted.¹²

Many accountability initiatives by the UN have failed to end Israel's impunity. Of the ten UN commissions of inquiry and fact-finding missions to investigate serious human rights violations committed in the occupied Palestinian territory (oPt), and the constant theme in their reports being "the necessity to ensure Israeli accountability and the prevailing culture of

to investigate violations of international law in the Gaza Strip' (28 August 2017) <<http://mezan.org/en/uploads/files/15039098601678.pdf>> accessed 06 May 2021.

⁶ Al-Haq, 'Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr Michael Lynk, on Accountability' (31 May 2020), paras 80-81.

⁷ Yara Hawari, 'The Systematic Torture of Palestinians in Israeli Detention' (Al-Shabaka, 28 November 2019) <<https://al-shabaka.org/briefs/the-systematic-torture-of-palestinians-in-israeli-detention/>> accessed 6 May 2021; Addameer, 'The Torture and Ill Treatment of Palestinian Detainees' (31 December 2009)

<<http://www.addameer.org/publications/torture-and-ill-treatment-palestinian-detainees>> accessed 6 May 2021

⁸ Amnesty International, 'Amnesty International Report 2017/18 – Israel and the Occupied Palestinian Territories' (22 February 2018) <<https://www.refworld.org/docid/5a9938e46.html>> accessed 6 May 2021

⁹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136 [101]; International Law Commission (ILC), 'Draft articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/49(Vol. I)/Corr.4, art 41; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, (adopted 12 August 1949) 75 UNTS 287, art 1.

¹⁰ John Reynolds, 'Anti-Colonial Legalities: Paradigms, Tactics & Strategy' (2015) 18 Palestine Yearbook of International Law 8, 15.

¹¹ In contravention of the prohibition on the acquisition of territory by force. Charter of the UN (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 2(4); UNGA, Resolution 273 (III) (11 May 1949) UN Doc A/RES/273 (III).

¹² UNGA, Resolution 273 (III) (11 May 1949) UN Doc A/RES/273 (III).

exceptionalism”,¹³ no accountability recommendation has ever been implemented.¹⁴ More generally, Israel had only implemented 2 per cent of the recommendations issued by relevant Human Rights Council mechanisms regarding accountability and access to justice.¹⁵

Prosecution at the International Criminal Court (ICC) may be the last resort for accountability for Palestinians.¹⁶ After 12 years of failed attempts by Palestinian authorities and civil society to trigger ICC jurisdiction over Israeli international crimes committed in occupied Palestine, the Office of the Prosecutor of the ICC in March 2021 announced the opening of a full criminal investigation into the Situation in Palestine. This is an important step to contribute to justice for Palestinian victims and end an overdue cycle of Israeli impunity. Unfortunately, the international community not only fails to fulfil their obligations under international law to ensure the Palestinian people exercise their right to self-determination, some have been undermining the work of the ICC.¹⁷

Along with the ICC, universal jurisdiction has emerged as an important avenue to counter Israel’s impunity. However some states again have failed to provide Palestinian victims access to the justice they deserve. For example, Belgium in 2003 amended its universal jurisdiction law to severely restrict the initiation of proceedings in relation to suspected crimes when they had no direct connection to Belgium.¹⁸ This amendment was in response to serious international pressure by the United States and Israel, after survivors of the Sabra and Shatila massacres lodged a criminal complaint in Belgium against Ariel Sharon, the Israeli Prime Minister at the time and others for the massacres, murders, rapes and disappearances of civilian populations.¹⁹

¹³ UN Human Rights Council (UNHRC), ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (21 October 2019) UN Doc A/74/507, para 29.

¹⁴ Al-Haq, ‘Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr Michael Lynk, on Accountability’ (31 May 2020), para 67. See also: Alessandro Tonutti, ‘International Commissions of Inquiry and Palestine: Overview and Impact – Study Analysis’ (Al-Haq Centre for Applied International Law, 2016).

¹⁵ UNHRC, ‘Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: comprehensive review on the status of recommendations addressed to all parties since 2009’ (12 June 2017) UN Doc A/HRC/35/19, 5.

¹⁶ Noura Erakat and John Reynolds, ‘We Charge Apartheid? Palestine and the International Criminal Court’ (Third World Approaches to International Law, April 2021) <https://twailr.com/we-charge-apartheid-palestine-and-the-international-criminal-court/?fbclid=IwAR3LG2jpbNkhP92Z7h6ksOIKXWqZ_JtF_qPEhZWKCxgID-wCYLGwSBh3lj4#> accessed 7 May 2021.

¹⁷ Noura Erakat and John Reynolds, ‘We Charge Apartheid? Palestine and the International Criminal Court’ (Third World Approaches to International Law, April 2021) <https://twailr.com/we-charge-apartheid-palestine-and-the-international-criminal-court/?fbclid=IwAR3LG2jpbNkhP92Z7h6ksOIKXWqZ_JtF_qPEhZWKCxgID-wCYLGwSBh3lj4#> accessed 6 May 2021.

¹⁸ Al-Haq, ‘Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr Michael Lynk, on Accountability’ (31 May 2020), paras 31.

¹⁹ See: Richard Falk, ‘Book Review: The Case of Ariel Sharon and the Fate of Universal Jurisdiction’ <<https://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/Review/5/Adalabs-Review-5-101-Falk-Universal-Jurisdiction.pdf>> accessed 7 May 2021; Victor Kattan, ‘From Beirut to Brussels: Universal jurisdiction, Statelessness and the Sabra and Chatila Massacres’ (2007) 11 Yearbook of Islamic and Middle Eastern Law 33.

The universal jurisdiction principle has also been used as a means to pursue corporate accountability.²⁰ In 2010, Al-Haq filed a criminal complaint against Lima Holding, the parent company of Riwal, in the Netherlands, for its involvement in international crimes in the OPT.²¹ The Dutch National Prosecutor's Office did not prosecute Riwal due to the supposed "small scale" and "occasional" nature of the use of equipment.²²

iii. On Mechanisms of Truth

Please indicate which measures have been established in the concerned country to inquire on and establish the truth about gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such mechanisms were established, please indicate how was the outcome of the inquiries made public and conveyed to victims and civil society in the affected country as well as to civil society in the former colonizing power. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender was adopted.

Palestine has witnessed dozens of international commissions of inquiry and fact-finding missions.²³ The most recent one was the UN Commission of Inquiry of 2018, which was mandated to investigate violations in the context of the military assaults on the large-scale civilian protests between 30 March and 31 December 2018 in the Gaza Strip.²⁴

On 30 March 2018, Palestinians launched the "Great March of Return" and hundreds of thousands protested each week for a year along the Israeli fence in the Gaza Strip and erected tents with the names of the villages they were forcibly displaced from in 1948.

Around 75 percent of the population in the Gaza Strip are refugees.²⁵ With the right to return as the main demand of the protest, they also protested the dire humanitarian conditions as a result of the Israeli blockade since 2007. The Israeli forces responded with lethal and excessive use of force against the peaceful protesters and killed 204 Palestinians, including 43 children, and injured more than 9,000 between 30 March 2018 and 1 May 2019.²⁶

²⁰ See Badil, 'Pursuing Accountability for Corporate Complicity in Population Transfer in Palestine' (December 2015); Al-Haq, 'Business and Human Rights in Palestine' (07 December 2016).

²¹ Particularly the construction of the Annexation Wall and illegal Israeli colonial settlements.

²² Al-Haq, 'Prosecutor Dismisses War Crimes Case against Riwal' (14 May 2013) <<https://www.alhaq.org/advocacy/6753.html>> accessed 6 May 2021.

²³ See: Alessandro Tonutti, 'International Commissions of Inquiry and Palestine: Overview and Impact' (Al-Haq, 03 December 2016).

²⁴ HRC, 'Report of the UN Commission of Inquiry on the 2018 protests in the OPT' (25 February 2018) UN Doc A/HRC/40/74.

²⁵ *ibid*, para 18

²⁶ Al-Haq, 'Q&A: The Great Return March: One Year On' (25 May 2019) <<https://www.alhaq.org/advocacy/6044.html>> accessed 7 May 2021

The UN Commission of Inquiry on the 2018 protests (the Commission) concluded that some of those violations may constitute war crimes or crimes against humanity.²⁷ The Commission, like other UN commissions of inquiry in Palestine which had limited mandates, focused its investigation on the outcomes rather than the root causes of the violations. The spark of the March, which is the call of the refugee population of Gaza of their inalienable right to return to their original homes, was mentioned in the background section of the Commission's report and no recommendations were adopted in this regard. Investigating outcomes without understanding causes obstructs understanding structural injustice.

The Palestinian people have been trapped in a hegemonic narrative that portrays the situation in Palestine as the "Israeli-Palestinian conflict" since the 1967 occupation, neglecting the history that shapes the identity and struggle of the Palestinian people against the Zionist settler-colonial project since 1917.²⁸ Engaging in a decolonisation struggle is the logical response to settler colonialism and to arrive at a decolonised future, there is a need to counter the hegemonic narrative, which neglects the historical injustice in Palestine.

The Oslo Accords of 1993, which was signed between the government of Israel and the Palestine Liberation Organization (PLO) with the intention to achieve "peace", despite ongoing settler-colonialism, and by leaving central justice issues such as a durable solution for Palestinian refugees and historical injustice, has reinforced the hegemonic discourse and created an international collective amnesia in relation to the history of the Palestinian people.²⁹

In the vacuum of an official representative who would voice the structural nature of the injustice of the Palestinian people, and within an ongoing denial by the Israeli authorities of any responsibility of their historical and ongoing violations against the Palestinian people, Palestinian grassroots initiatives have led their own way to reclaim a narrative, that portrays Israel as a historical and ongoing settler-colonial regime.³⁰

After the 1948 *Nakba*, when Zionist militias forcibly displaced 85 percent of the indigenous Palestinian people,³¹ destroyed 531 Palestinian villages and towns, and carried out more than 70 massacres in which more than 15,000 Palestinians were killed,³² the Palestinian people who

²⁷ UN, 'UN Independent Commission of Inquiry on Protests in Gaza Presents its Findings – Press Release' (28 February 2019) <<https://www.un.org/unispal/document/un-independent-commission-of-inquiry-on-protests-in-gaza-presents-its-findings-press-release/>> accessed 7 May 2021

²⁸ Jamil Hilal, 'Reclaiming the Palestinian Narrative' (Al-Shabaka, 6 January 2013) <<https://al-shabaka.org/commentaries/reclaiming-the-palestinian-narrative/>> accessed 7 May 2021; Awad Abdelfattah and Jeff Halper, 'A just future demands the decolonization of Palestine – and a democratic state for all' (+972 Magazine, 10 December 2019) <<https://www.972mag.com/decolonization-palestine-one-state/>> accessed 7 May 2021

²⁹ Brendan Ciarán Browne, 'Transitional justice and the case of Palestine' in Cheryl Lawther, Luke Moffett and Dov Jacobs (eds), *Research Handbook on Transitional Justice* (Edward Elgar Press 2017) 496.

³⁰ Nur Masalha, '60 Years after the Nakba: Historical Truth, Collective Memory and Ethical Obligations' (2009) 3 *Kyoto Bulletin of Islamic Area Studies* 37, 41.

³¹ Salman Abu-Sitta, 'The Right of Return: Sacred, Legal and Possible' in Naseer Aruri (ed) *Palestinian Refugees: The Right of Return* (Pluto Press 2001), 195.

³² PCBS, 'Dr. Ola Awad, reviews the conditions of the Palestinian people via statistical figures and findings, on the 72nd Annual Commemoration of the Palestinian Nakba' <<http://www.pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=3734>> accessed 7 May 2021

had been forcibly displaced around the world tried to reclaim the truth behind their ethnic cleansing.

They repaired their archival loss, by establishing research institutions and archival centres. Unfortunately, two of the most unique curators of the Palestinian historical archives, which were established after the *Nakba*, were raided and their contents were confiscated or destroyed by Israeli forces.³³ Since the loss of the invaluable materials of these two institutions, the Palestinian people have continued to preserve their history and heritage by establishing new documentation and resource centres.³⁴

Oral history has been an important tool in the hands of grassroots initiatives, to document life before 1948, stories of displacement, the destruction of Palestinian villages and towns in 1948,³⁵ and the life of the refugees at the present time.³⁶

The Israeli NGO *Zochrot* (remembering in Hebrew) is an active organisation in initiatives to reclaim Palestinian history and collective memory.³⁷ *Zochrot* undertakes oral history projects such as conducting interviews with Zionist paramilitary fighters, arranging tours to destroyed Palestinian villages and towns, and in an unprecedented manner, it launched a Truth Commission on the Responsibility of Israeli Society for the Events of 1948–1960 in the Negev.³⁸ While this non-governmental truth commission is flawed because of its establishment during ongoing settler-colonisation, its data may still be beneficial to an envisioned official truth commission.

iv. On Mechanisms of Reparations

Please indicate which measures have been established in the concerned country to provide reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such processes were established, please indicate which type of reparation was provided to victims (for example: restitution, compensation, satisfaction, and /or rehabilitation). If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered

³³ These raided institutions are the Palestinian Research Centre in Beirut in 1982 and the Orient House in Jerusalem in 2001. Nur Masalha, *The Palestine Nakba: Decolonising History, Narrating the Subaltern, Reclaiming Memory* (Zed Books, 2012) 135-147.

³⁴ Nur Masalha, *The Palestine Nakba: Decolonising History, Narrating the Subaltern, Reclaiming Memory* (Zed Books, 2012) 147.

³⁵ Rosemary Sayigh, 'Oral History, Colonialist Dispossession, and the State: The Palestinian Case' (2015) 5 *Settler Colonial Studies* 193, 198.

³⁶ Joe Catron, 'Gaza researchers determined to record Nakba generation before time runs out' (The Electronic Intifada, 23 October 2013) <<https://electronicintifada.net/content/gaza-researchers-determined-record-nakba-generation-time-runs-out/12872>> accessed 32 July 2020; Rosemary Sayigh, 'Oral History, Colonialist Dispossession, and the State: The Palestinian Case' (2015) 5 *Settler Colonial Studies* 193, 198; Thayer Hastings, 'Palestinian Oral History as a Tool to Defend Against Displacement' (The Electronic Intifada, 15 September 2016) <<https://al-shabaka.org/commentaries/palestinian-oral-history-tool-defend-displacement/#note-5682-2>> accessed 7 May 2021.

³⁷ *Zochrot*, 'Pre-Transitional Justice' <<https://zochrot.org/en/testimony/all>> accessed 7 May 2021; Brendan Ciarán Browne, 'Transitional justice and the case of Palestine' in Cheryl Lawther, Luke Moffett and Dov Jacobs (eds), *Research Handbook on Transitional Justice* (Edward Elgar Press 2017) 502-503.

³⁸ *ibid.*

in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

Around 66.7 percent of Palestinians worldwide are forcibly displaced persons, with at least 7.94 million Palestinian refugees.³⁹ Israel persistently denies the right of reparation, including consensual return to their homes, lands, and property restitution, compensation and rehabilitation, to Palestinian refugees and other persons displaced in the waves of ethnic cleansing carried out since the state's establishment.

Israel has sealed the dispossession of Palestinian refugees, displaced persons, and other Palestinians who were abroad at the time of the 1948 *Nakba*, by barring their inalienable right of return and through the mass appropriation of their property by the State.⁴⁰

As per its settler-colonial logic, the return of millions of refugees and internally displaced persons is a threat to the “the existence of Israel as a Jewish state, obliterating its basic identity as the homeland of the Jewish people and a refuge for persecuted Jews worldwide.”⁴¹

In the 1950s, the internally displaced Palestinians of the village of Iqrit in the Galilee, who were forcibly displaced from their village and their village was declared as a closed area and transferred to Jewish settlers, filed a case at the Israeli Supreme Court to demand their right to return.⁴² Despite the Court's ruling in 1951 that ordered the Israeli Minister of Defence to implement the right to return of the Iqrit villagers to their homes, the Israeli military demolished the whole village.⁴³ Commenting on the story of Iqrit, the then Israeli Prime Minister Ben Gurion stated: “we don't want this to create a precedent for the repatriation of refugees.”⁴⁴

While Palestinian refugees and internally displaced persons remain denied their right to return to their homes to this day, Israel continues to implement forcible transfer policies and measures, as well as creating and maintaining coercive environments across historic Palestinian, to drive the ongoing displacement of the Palestinian people.

Even 73 years on from the *Nakba* of 1948, both the internationally mandated bodies and the international community continue to fail to take any measures to adequately address this

³⁹ Badil, ‘Q and A: What you need to know about Palestinian Refugees and Internally Displaced Persons’ (March 2020) 5.

⁴⁰ Al-Haq and others, ‘Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports’ (10 November 2019) para 28.

⁴¹ Israel Ministry of Foreign Affairs, ‘Israel, the Conflict and Peace: Answers to frequently asked questions’ (2009)

<https://mfa.gov.il/MFA/ForeignPolicy/FAQ/Pages/FAQ_Peace_process_with_Palestinians_Dec_2009.aspx#Refugees1> accessed 7 May 2021.

⁴² Noura Erakat, *Justice for Some: Law and The Question of Palestine* (Stanford University Press 2019) 6.

⁴³ *Ibid.*

⁴⁴ Peter Grose, ‘Villagers Lose Appeal in Israel’ (New York Times, 24 July 1972)

<<https://www.nytimes.com/1972/07/24/archives/villagers-lose-appeal-in-israel-arabs-ejected-from-homes-in-48-may.html>> accessed 7 May 2021.. Also quoted in: John Quigley, *Palestine And Israel: A Challenge to Justice* (Duke University Press 1990) 106.

ongoing *Nakba* by the provision of just and durable solutions as stipulated by international law.⁴⁵

Displaced Palestinians are subject to a separate legal protection framework, created prior to the adoption of the Refugee Convention or establishment of the UNHCR. Following the *Nakba* of 1948, the UN set up two separate agencies: the UN Conciliation Commission for Palestine (UNCCP) in 1948, mandated to seek durable solutions for and protect Palestinian refugees, and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in 1949, mandated to provide humanitarian assistance.

This separate legal framework, however, has been deactivated and has been utilised to exclude Palestinian refugees from the protection regime of the 1951 Refugee Convention and the oversight of UNHCR.⁴⁶ At present, UNRWA is the only active international mechanism that has the Palestinian refugees in its mandate. That being said, the mandate of UNRWA does not provide a comprehensive solution for Palestinian refugees and IDPs, but rather focuses on providing the refugees with essential humanitarian assistance.

Despite the fact that UNRWA's mandate falls short on delivering a solution to the Palestinian refugees' issue, it has been under an ongoing, and growing, campaign, led by Israel and the United States, to terminate it. Due to the voluntary nature of UNRWA's funding, the provision of its services is dependent of the will of donors. Consequently, UNRWA is vulnerable to political pressure and interference.⁴⁷ In 2018, for example, the USA abruptly terminated its funding to UNRWA,⁴⁸ and resumed it in April 2021.⁴⁹ Most recently, and following delegitimation reports led by the Israeli organisation IMPACT-se, the EU Parliament passed a motion condemning the so-called 'hate and violence' in UNRWA textbooks.⁵⁰

The current deployed humanitarian and political approaches, which are based on an immense imbalance of power and lack any foundation in international law, cannot ensure the inalienable rights of the Palestinian people, principally to self-determination and reparations for forcible displacement.

v. On Mechanisms of Memorialization

Please indicate which measures have been established in the concerned country to memorialize the gross violations of human rights and serious violations of international

⁴⁵ Rule 132 of Customary IHL; the Fourth Geneva Convention; Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; UNGA Resolution 194 of 1948; UNSC Resolution 337 of 1967; UNGA Resolution 3236 of 1974; UNGA Resolution 3376 of 1975.

⁴⁶ Badil, 'Q and A: What you need to know about Palestinian Refugees and Internally Displaced Persons' (March 2020), 31.

⁴⁷ Al-Haq, 'The ongoing Nakba must end: the time has come for the international community to act' (12 May 2018) <<https://www.alhaq.org/palestinian-human-rights-organizations-council/6224.html>> accessed 7 May 2021.

⁴⁸ The Guardian, 'US confirms end to funding for UN Palestinian refugees' (31 August 2018) <<https://www.theguardian.com/world/2018/aug/31/trump-to-cut-all-us-funding-for-uns-main-palestinian-refugee-programme>> accessed 7 May 2021.

⁴⁹ US Department of State, 'The United States Restores Assistance for the Palestinians' (7 April 2021) <<https://www.state.gov/the-united-states-restores-assistance-for-the-palestinians/>> accessed 7 May 2021.

⁵⁰ The Times of Israel, 'EU Parliament passes motion condemning 'hate and violence' in UNRWA textbooks' (28 April 2021) <https://www.timesofisrael.com/liveblog_entry/eu-parliament-passes-motion-condemning-hate-and-violence-in-unrwa-textbooks/> accessed 7 May 2021.

humanitarian law committed in colonial contexts. If yes, please indicate whether memorialization processes were established in the affected country and /or in the former colonizing power. If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

On 29 October 1956, Israeli border police shot 48 Palestinian citizens of Israel, including 23 children, as they returned to their homes in the Kafr Qasem village from work, unknowingly “violating” the new military curfew that had been announced only 30 minutes earlier on their village, ordering the border police to “shoot to kill” anyone outside their homes after 10 pm, instead of the usual 5 pm curfew.⁵¹

The military curfew order should be seen within Israel’s wider military rule, which since its establishment, has been a distinctive tool of dispossession and domination against the Palestinian people.⁵² Besides the effective role of the military rule in land expropriations, it has been a tool to suppress Palestinians in the form of closures, curfews, movement restrictions and administrative detention, denying Palestinians of their right to self-determination.

In the immediate aftermath of the massacre, the Israeli government tried to impose a 7-week media gag on the “incidents”, and a three-month cordon on the village.⁵³ The government further refused to hold a public trial; pardoned the convicted soldiers and promoted responsible commanders; failed to compensate fully the families;⁵⁴ and continues to refuse to acknowledge formal responsibility for the massacre.⁵⁵

In addition, Israel tried to prevent Palestinian popular memorialisation and “to impose its own memory of the crime.”⁵⁶ The people of Kafr Qasim marked the massacre's first anniversary, in an undercover legal manoeuvring that coerced the families into accepting a privately arranged damages settlement.⁵⁷ The government prevented the villagers from holding their memorial

⁵¹ Israel was taking “all precautionary measures to maintain quiet on the Jordanian border” in parallel to Israel, France and Great Britain, preparation to attack Sinai Peninsula. Shira Robinson, ‘Local Struggle, National Struggle: Palestinian Responses to the Kafr Qasim Massacre and Its Aftermath, 1956-66’ (2003) 35 Int. J. Middle East Stud 393, 393-395.

⁵² Upon its establishment, Israel imposed a military law against Palestinian citizens of Israel, lifting it in 1966, believing that Palestinian citizens of Israel, who had been rendered second-class, had been adequately controlled, Noura Erakat, *Justice for Some: Law and The Question of Palestine* (Stanford University Press 2019) 59. Since 1967, the West Bank, including East Jerusalem, and the Gaza Strip, have been subjected to Israel’s military occupation. Tariq Dana and Ali Jarbawi, ‘A Century of Settler Colonialism in Palestine: Zionism’s Entangled Project’ (December 2017) xxiv *Brown Journal of World Affairs* 1, 9-12.

⁵³ Shira Robinson, ‘Local Struggle, National Struggle: Palestinian Responses to the Kafr Qasim Massacre and Its Aftermath, 1956-66’ (2003) 35 Int. J. Middle East Stud 393, 396-400.

⁵⁴ *Ibid.*

⁵⁵ In 2007, Israeli President Peres visited Kafr Qasem, carefully phrasing his words on the massacre as part of a statement praising peace: “I have chosen to visit Kafr Qasem, where in the past a very serious event occurred that we greatly regret, and today in practice there is cooperation and a life of peace between Jews and Arabs.” Tom Segev, ‘Apology in Kafr Qasem’ (*Haaretz*, 26 December 2007) <<https://www.haaretz.com/1.497210>> accessed 7 May 2021.

⁵⁶ Shira Robinson, ‘Local Struggle, National Struggle: Palestinian Responses to the Kafr Qasim Massacre and Its Aftermath, 1956-66’ (2003) 35 Int. J. Middle East Stud 393, 394.

⁵⁷ *Ibid.*, 402.

service privately, and carefully arranged a guest list of speakers permitted to join the mourners, dominating the tone and content of the ceremony.⁵⁸

Three weeks after the first anniversary, high-ranking Israeli officials arranged and attended a “reconciliation ceremony” in a *sulha* style (an Arab conflict resolution custom), to conclude the “affair” and to heal the wounds of the 2000 people in the village, whom almost everyone lost a relative.⁵⁹ The villagers were immensely pressured to participate in the ceremony. The Israeli authorities even unsuccessfully tried to bring the accused murderers of the massacre to the ceremony while their trial was ongoing at that time, to intimidate the villagers to pardon them. The ceremony itself was charged with intimidation against the villagers, with speeches calling for coexistence.⁶⁰ In effect, the *sulha* revealed the government’s intention to deny any responsibility of the massacre.

The massacre sparked Palestinian grassroots memorial activity and the ongoing Israeli measures to prevent the popular memorialisation of the massacre and its attempts to impose its own memory on Palestinians transformed it into a central site of resistance against historical displacement and dispossession of the 1948 *Nakba* and the ongoing Israeli military rule as a tool of dispossession and control.⁶¹

For the first three years, grieving families commemorated privately in the village. It was during the early 1960s that the commemoration shifted in its form into memorial processions, sign-holding, poetry readings, and political speeches.⁶²

Nationally, the following decade on the massacre witnessed an unprecedented and mass mobilization, the formation of local committees, letters and petitions campaign to the government, memorial processions, protests, mourning prayers, meetings, demonstrations, and strikes, across Palestinian villages and towns in Israel.⁶³

Every year, residents of Kafr Qasim march and assemble at the monument they erected at their own expense and hold a memorial service,⁶⁴ reaffirming that they will not forget, neither forgive.⁶⁵ The “reconciliation ceremony” is “part of the crime that Palestinians commemorate today.”⁶⁶

The Kafr Qasem massacre is not a distinct crime from the ongoing violent settler-colonial Israeli structure against the Palestinian people. The Israeli authorities continue to adopt

⁵⁸ Ibid, 403.

⁵⁹ Ibid, 402-404.

⁶⁰ Ibid, 393.

⁶¹ Ibid, 394.

⁶² Ibid, 408.

⁶³ Ibid, 393-410.

⁶⁴ Shirley Racah and Abed Kannaneh, ‘48 human beings were massacred – and we have forgotten them’ (+972 Magazine, 3 November 2013) <<https://www.972mag.com/48-human-beings-were-massacred-and-we-have-forgotten-them/>> accessed 7 May 2021.

⁶⁵ Yasmine Bakria, ‘Hundreds Attend Rally Marking the 63rd Anniversary of the Kafr Qasem Massacre: ‘An Open Wound’ (Haaretz, 29 October 2019) <<https://www.haaretz.com/israel-news/.premium-hundreds-attend-rally-marking-the-63rd-anniversary-of-the-kafr-qasem-massacre-1.8054431>> accessed 7 May 2021.

⁶⁶ Shira Robinson ‘Commemorations under Fire: Palestinian Responses to the 1956 Kafr Qasim Massacre’ in Ussama Makdisi and Paul Silverstein (eds) *Memory and violence in the Middle East and North Africa* (Indiana University Press, 2006) 114-115.

discriminatory laws to suppress Palestinian collective memory. For example, the Budget Foundations Law of 2011, makes it illegal for state sponsored groups in Israel to actively promote commemoration of the Palestinian *Nakba*, and criminalizes the actions of grassroots Israeli NGOs dedicated to memory recall.⁶⁷ For the Palestinian people, the *Nakba* has been a key site of collective memory that “connects all Palestinians to a specific point in time.”⁶⁸ The *Nakba* is also an ongoing process and reality, exemplified in Israel’s denial of the Palestinian refugees’ right of return, and the coercive environments designed to drive the current and ongoing forcible transfer of Palestinians. The suppression of *Nakba* commemoration, through the Budget Foundations Law and other laws and policies suppressing Palestinian political rights,⁶⁹ is the suppression of Palestinian history, collective memory, and reality.

vi. Conclusion and recommendations

In order to achieve any just and durable solution to the Palestinian struggle, and to put an end to Israel’s settler-colonial and apartheid regime, a rights-based approach must be adopted. As long as the international community is passive, and Israel enjoy a culture of impunity, the Palestinian people will continue to endure Israel’s settler-colonial apartheid regime, as well as continuous and systematic denial of their collective rights, including the right to self-determination and to return to their original homes.

In light of the above, we urge the Special Rapporteur to:

- i. Recognise and address Israel’s settler-colonial and apartheid regime in his report, as well as the role of corporations in the maintenance of Israel’s settler-colonial enterprise;
- ii. Call on the UN and its Members States to enable and facilitate the return of Palestinian refugees to their original homes, and ensure restitution of their property and compensation for the damages inflicted upon them, as a result of their displacement, including through the reactivation of the UN Conciliation Commission for Palestine.
- iii. Call on the UN General Assembly to establish a mandatory financing mechanism, rather than voluntary state contributions, in order to secure consistent and sustainable funding of UNRWA and to expand the mandate of UNRWA in order to fulfil the legal protection standards that refugees are entitled to;
- iv. Urge UN Member States to adopt and implement the recommendations of the UN Commission of Inquiry on the Protests in the Occupied Palestinian Territory, including the immediate activation of international accountability measures to bring

⁶⁷ Adalah, "Nakba Law" - Amendment No. 40 to the Budgets Foundations Law <<https://www.adalah.org/en/law/view/496>> accessed 7 May 2021.; Brendan Ciarán Browne, ‘Transitional justice and the case of Palestine’ in Cheryl Lawther, Luke Moffett and Dov Jacobs (eds), *Research Handbook on Transitional Justice* (Edward Elgar Press 2017) 503.

⁶⁸ Nur Masalha, ‘60 Years after the Nakba: Historical Truth, Collective Memory and Ethical Obligations’ (2009) 3 *Kyoto Bulletin of Islamic Area Studies* 37, 41.

⁶⁹ See Silencing of opposition section in Al-Haq and others, ‘Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports’ (10 November 2019) 43-54.

Israel into compliance with its obligations under international law and prosecute perpetrators of international crimes; and

- v. Publicly call for international justice and accountability for Israel's war crimes and crimes against humanity, including its apartheid regime, including by calling on third States to comply with their humanitarian law obligations under Article 1 of the Fourth Geneva Convention and Rome Statute obligations to fully cooperate with the Office of the Prosecutor of the ICC.
- vi. Call on the UN and its Members States to reconstitute the UN Special Committee against Apartheid and the UN Centre against Apartheid as critical steps towards ending Israel's institutionalized impunity and apartheid regime.
- vii. Urge the UN Human Rights Council to establish a Commission of Inquiry to investigate the historical injustice inflicted on the Palestinian people, to unpack the historical and ongoing Israeli settler-colonial regime in Palestine.