



## HOUSING AND LAND RIGHTS NETWORK

### Habitat International Coalition

#### **Response to the Questionnaire on transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts**

Mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

#### **Reparation in the Case of Palestine**

With this input, we note that this year begins the Fourth International Decade for the Eradication of Colonialism (2021–30). We also take note that Israel was one of only three states out of 193 (along with the United Kingdom and USA) to vote against the initiative. (Notably, Morocco absented itself from the vote.)<sup>1</sup>

The case of reparations in the ongoing colonization of Palestine is exceptional in that the needed transition had not yet taken place, nor do reparations appear on the near horizon. However, some aspects of reparation have already been considered at the highest levels, including within the UN, which bears permanent responsibility for Palestine,<sup>2</sup> and—at least nominally—by the State of Israel, the principal duty bearer for the crimes and abuses subject to reparation. The scope of subjects to consider is broad, including reparation for the violation of sacrosanct international law principles such as *uti possidetis iuris* proposed in the General Assembly’s “Partition of Palestine” resolution (1948),<sup>3</sup> which breached the long-standing prohibition against the partition or recolonization of a self-determination unit.<sup>4</sup> Although, resolution 181 clearly did not permit population transfer,<sup>5</sup> it provided a Israeli rational to conduct “ethnic cleansing,”<sup>6</sup> which crime already had taken place in Palestine shortly after being prosecuted at Nuremberg and Tokyo. The corresponding reparation for that legacy may be immeasurable. However, this input seeks to provide examples of efforts begun and gaps to be filled in the reparation process to accompany transitional justice (TJ) for serious violations of human rights and humanitarian law committed in the colonial context of Palestine.

Nonetheless, the historic precedents famously relate to only partial remedy for the Palestine refugees and displaced persons subject to Israel’s ethnic cleansing of Palestine in 1947–48. They focus on selective material consequences for the victims, but do not begin to address the moral damages incurred not the consequent loss and continuous denial of self-determination to the Palestinian people as a whole. Nonetheless, important lessons can be derived from these experiences for more-comprehensive TJ needed to remedy the ongoing violations.

In doing so, this outline explores elements of reparation for victims toward the objective of restorative justice, rather than retributive justice, or other forms of justice. Therefore, the criminal law and transitional-justice subjects of prosecution and punitive measures remain apart.

- 1. 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 opportunities encountered in investigating, prosecuting and sanctioning such crimes.**

No perpetrator of Israeli crimes has faced accountability, and no mechanisms have been established for such processes. Indeed, the Israeli legal and judicial systems shield past and current perpetrators from prosecution.<sup>7</sup> Rather, perpetrators and commanders of the war crimes, crimes against humanity, in particular, population transfer and apartheid, committed against the Palestinian people as a whole have

been elevated to high positions in Israel's military, intelligence and civil institutions. Notably, Israel's successive prime ministers form a rank of the most-notorious and even self-congratulatory perpetrators.<sup>8</sup> In response to mounting academic and popular attention to that history and its continuity, Israeli official institutions have expended much effort to expunge the memory, including documentary records, of those events and their authors.<sup>9</sup>

- 3. 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 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.**

#### **Provide reparation**

Reparation in this case involves seven elements provided in the UN framework<sup>10</sup>: Restitution, including return, resettlement, rehabilitation and compensation, as well as guarantees of non-repetition and the victims' satisfaction that justice has been served.

#### ***Return***

In the war to carve out a new and distinctly Jewish state, Israeli forces expelled as many as 780,000 Palestinians amid a chain of 33 strategic massacres and attacks against Palestinian villages in 1947–48, which is known as the Nakba (catastrophe, in Arabic).<sup>11</sup> , events that Palestinians refer to as the “Nakba”—the Catastrophe. Most left for surrounding countries, or to Gaza and the West Bank (controlled by Egypt and Jordan, respectively), while a small number made their way to Western countries. The descendants of these individuals living in other countries number more than five million. Israeli military advances created a second wave of 250–350,000 refugees from the Palestinian territories occupied by Israel in 1967.

Palestine refugees number over 7 million, either living in and around some 68 refugee camps served by UN Refugee Works Agency for Palestine Refugees (UNRWA) in four countries around Palestine, or in exile elsewhere. As of 2019, more than 5.6 million Palestinians were registered with UNRWA as refugees,<sup>12</sup> of which more than 1.5 million live in UNRWA-run camps.<sup>13</sup> The term “Palestine refugee” does not include some 200,000 internally displaced and “present absentee” Palestinians who became Israeli citizens.<sup>14</sup> As of 2015, 1,050,000–1,380,000 Palestine refugees and their descendants are not registered under neither UNRWA nor UNHCR mandates.<sup>15</sup>

The UN General Assembly (UNGA) resolution 194 (III) of 29 November 1949, called for the refugees' return to their homes, among other forms of reparation.<sup>16</sup> That same resolution created the United Nations Conciliation Commission for Palestine (UNCCP), made up of U.S., France and Turkey, whose primary mandate was overall conciliation between the parties, but also to find ways to effect refugee repatriation and/or compensation.

Of the three Member States forming the UNCCP (France, Turkey, USA), the USA effectively imposed “red lines” that Israel demanded behind the scenes. Among those was the insistence that repatriation was not feasible and that refugee compensation must replace and, thus, exclude return.<sup>17</sup> These collateral deals guided UNCCP efforts throughout. However, for reasons arising from its UNGA mandate, UNCCP continued to press Israel for at least token repatriation for some refugees.

In the course of the past decade, proponents have produced several practical scenarios for return of Palestine refugees. Among the most practical are those involving the return of refugees to their original villages, which remain largely unpopulated today.

Israel's 46 natural regions (before re-division) fall into four groups:

- A. 1,628 km<sup>2</sup> with a Jewish population of just over 3 million (67% of Israel's total Jewish population), representing lands acquired by Jews during the British Mandate period, around which most foreign Jewish colonists settled after Israel's proclamation as a state.
- B. 1,508 km<sup>2</sup> almost the same size as the land owned by the Palestinians who remained in Israel after the 1948 war (but located elsewhere). (Since 1948, Israel has confiscated two-thirds of the property of its Palestinian citizens). In this area live 436,000 Jews, or 9.6% of all Jews in Israel, along with 92,000 Palestinian citizens. Thus, 77% of Israeli Jews live in 15% of Israel's territory.
- C. 17,381 km<sup>2</sup>, in two large blocks, corresponding roughly to the Northern and Southern Districts, from which Israeli expelled Palestinians in 1948 (about 6 million persons, including their descendants). About 1 million Israeli Jews live in C, but 80% of them live either in cities that were originally Palestinian, many of which are now mixed, or in newer "development towns."
- D. 200,000 rural Jews who exploit vast areas of refugee land, the largest part of the remainder of the land, now used for military purposes and "afforestation." About 160,000 settlers live in *moshavim* (cooperative farms) and *kibbutzim* (collective farms). Today, only 8,600 kibbutzniks live on agriculture at the expense of about 6 million Palestine refugees.

Proposals suggest that well over 90% of refugees could return to empty sites. Of the small number of affected village sites, 75% are located on land totally owned by Arabs and 25% on Palestinian land in which Jews have a share. Only 27% of the villages affected by new Israeli construction have a present population of more than 10,000. The rest are much smaller.

Accommodating the returning refugees could follow the Bosnian model, with present inhabitants—where most tenure holders are institutions—retaining tenure on a 49-year lease. Meanwhile, they could rent or build housing for themselves in the vicinity, and indigenous Palestinians and Israeli Jews could build and live together.<sup>18</sup>

### ***Restitution***

To spite UNCCP efforts at restitution, Israel enacted legislation in 1948 to create a Custodian of Absentee Property to administer "abandoned" property. Concerned that this complicated compensation efforts (if not also return and restitution), UNCCP asked the Government of Israel (GoI) in 1949 to suspend the law's application, suggesting instead that Israel place the refugees' property under the control of a body that would safeguard the refugees' interests. Israel's delegation falsely claimed that the Absentee Property Regulations did just that.<sup>19</sup>

In 1949, Israel rejected the formation of a mixed working group on compensation for abandoned refugee orange groves, as well as for identifying and evaluating refugee property more generally. The UNCCP again attempted to form a mixed group on orange groves in September, but Israeli authorities refused.<sup>20</sup>

They had demolished about 52,000 Palestinian homes,<sup>21</sup> among many other structures, imposed a closed military zone over those localities to prevent refugee return and extended martial law over the surviving Palestinian communities for the next 20 years. The Jewish National Fund (JNF) subsequently reforested most of those former village sites to cover the crimes.<sup>22</sup>

In January 1949, shortly after the Armistice Agreements were signed, the GoI conferred one million dunums [1 dunum = 1,000 m<sup>2</sup>, or 1 million = 100,000 ha] of the Palestinian refugees' land and other properties to the JNF and, in October 1950, another 1.2 million dunums (120,000 ha). A JNF spokesperson

explained the tactical meaning of these land transfers as ensuring that JNF “will redeem the lands and will turn them over to the Jewish people—to the people and not the state, which in the current composition of population cannot be an adequate guarantor of Jewish ownership.”<sup>23</sup>

In September 1953, the Israeli Custodian of Absentee Properties transferred “ownership” of all Palestinian lands under his control to the Israeli Department of Construction and Development (IDCD), the “price” which IDCD retained as a loan. Meanwhile, the Custodian conveyed “ownership” of Palestinian houses and commercial buildings in cities to JNF affiliate Amidar, a quasi-public Israeli company founded to implant settlers,<sup>24</sup> and thus established an unbroken pattern of guaranteeing control of confiscated properties exclusively to those of “Jewish race or descendency.”<sup>25</sup> By 1953, those properties had been transferred at least three times, thus hampering the restitution, return and other forms of reparation to which the refugees and internally displaced persons (IDPs) remain entitled.<sup>26</sup>

Three months before that 1953 transaction, JNF also executed a contract with the Israeli Department of Construction and Development, acquiring 2,373,677 dunums of land. By then, JNF had become statutorily fused to the State of Israel (SoI) by the Status Law (1952). The deal was completed after IDCD concluded its transaction with the Custodian. Thus, Palestinian property changed hands and its consolidation under the JNF, whose “ownership” totaled over 90% of the total territories that fell under the SoI control in 1948. The landed properties are referred to as “national land,” a subtle but important distinction, understood to mean that it is limited to exclusive use by Jews (“Jewish nationals”), whoever and wherever they may be, and foreclosed to the indigenous Palestinian people, including its private and collective owners.<sup>27</sup>

The final public UNCCP report (May 1964) identified 7,069,091 dunums of Arab-owned land<sup>28</sup> in what became Israel, of which 6,057,032 dunums belonged to refugees. An earlier report (1951) identified 16,323,971 dunums of land, which included the total land that “passed from Arab to Jewish *ownership* during the fighting in 1947–48” (emphasis added). That counted also communal Palestinian Arab land, including the vast holdings in the Bi’r Sabi’/Beersheva region (Naqab), whereas the UNCCP’s 1964 figure included only privately owned land and a small fraction of Naqab land.

However, Israel undertook another ethnic cleansing operation in the Naqab between 1951 and 1953 to depopulate and dispossess the Palestinians living in the arid south. That operation destroyed some 108 villages and village points and concentrated the remaining Palestinian population into the *siyaj* (enclosure). The purpose was to eventually settle the Negev Bedouin Arabs into seven planned townships (which Israeli planners gave the unfortunate term of “concentrations” [*rekuzim*] in Hebrew). When completed, the *rekuzim* would house some 120,000 Bedouin citizens persons into a confined space with no land tenure.

### **Resettlement**

As early as August 1949, the U.S. State Department compiled a document entitled “The Palestinian Refugee Problem,” promoting no option for the Palestinian refugees but resettlement.<sup>29</sup> Thus UNCCP, through U.S. applying Israel’s preferences, variously pursued options other than return and related entitlements. However, all other states in the region opposed this plan. From its inception, the “resettlement” plan arising from the UN was inconsistent with the entitlements of reparation as understood in general principles of international law, and contradicted its own resolution 194.

Resettlement is a part of restitution when it is impossible to return to, or restore the Palestine refugee or displaced person’s original home, land or other property. Consensual and adequate resettlement is also a form of durable solution to which refugees, IDPs and communities are entitled.<sup>30</sup> It includes the right to alternative (equal or better quality) land and housing that must satisfy the criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitable location, and access to essential public and environmental goods and services such as water and sanitation, health and education.<sup>31</sup>

While restitution, including return, remains the first option and refugees' entitlement, resettlement is otherwise specified as the voluntary transportation of a person or persons (as an integral family and/or community) for relocation at a settlement site different from the original, as after some kind of upheaval. Resettlement includes:

1. The relocation of living quarters;
2. Finding and engaging in decent and acceptable new employment for those whose jobs are lost or severely curtailed;
3. Restoration (or compensation, as necessary) of affected productive resources, including land, workplaces, trees and infrastructure;
4. Restoration of other values and living standards (quality of life) adversely affected through
  - adequate land acquisition for affected persons and communities;
  - restoration of, or compensation for affected private and public enterprises;
  - restoration of cultural or common property, as appropriate.<sup>32</sup>

The UNCCP proffered no such conditions. Moreover, the UNCCP ceased to function by 1966, due to U.S. pressure and delinquency. In June 1967, Israel drove another 250–350,000 Palestinians into homelessness and dispossession, complicating the refugee reparation matters further. By that time also, the Palestine question has transformed from a predominantly refugee crisis to a wider struggle of national liberation. The reparation for Palestine refugees and IDPs remained in retrograde, and pushed further behind throughout the 30 years since the now-defunct Oslo process, which relegated refugees to the ever-elusive final status issues.

### ***Rehabilitation***

The entitlement of rehabilitation involves the restoration of normal living conditions following a disruption or displacement so as to return the inhabitants to a state of personal and community integrity. Such process "should include medical and psychological care as well as legal and social services."<sup>33</sup> Without any limiting qualifier, the reparations framework allows for all forms of rehabilitation needed to restore normal living conditions. This would involve, *ad minimum*, "economic and social rehabilitation," as recognized in resolution 194.<sup>34</sup>

However, certain types of entitled rehabilitation extend to non-refugee and non-displaced Palestinians. These forms would involve the restoration of the range of civil, cultural, economic, political and social rights. Rehabilitation of the human rights to the highest attainable standard of physical and mental health, for example, would require the extension of a wide range of therapeutic and prophylactic measures and services. These call for material provisions on the part of Israel, as well as in-kind efforts and affirmative actions.

Rehabilitation of reputation may require the reversal of propaganda and other forms of defamation that have sought to denigrate and dehumanize the Palestinian people as a whole, but also including and especially individuals who have resisted the occupation and its various forms of repression and persecution, as noted in the Apartheid Convention.<sup>35</sup> As noted under **Restitution** above, this aspect of reparations spans other reparation entitlements, and may also take material form in positively memorializing persons and/or groups for their roles in the human rights and self-determination struggles of the wider Palestinian and anti-apartheid communities.

### ***Compensation***

Compensation, a more-limited form of reparation, never restores original values, especially the intangible values of self-determination and the enjoyment of other human rights dependent upon restitution of land, housing and habitat and other social and cultural values. Compensation is monetary indemnification to cover values that are physical impossible to restore, including to assuage pain and suffering, loss of life

and limb, financial support to recover or replace lost heirlooms or cultural heritage. However, compensation does not substitute for the other elements of reparation, including restitution of the original situation before the gross violation.

In the years of UNCCP operations, all UN parties (including Israel) agreed that the refugees should be compensated. Compensating the landowners among the Palestinian refugees was an early UN concern<sup>36</sup> and resolution 194 called on Israel to pay compensation “for the property of those choosing not to return and for the loss of or damage to property.” However, the influential U.S. document of 1949 also omitted mention of compensation, as did a May 1949 report on the refugees drawn up by the U.S. Central Intelligence Agency.<sup>37</sup>

The UN Economic Survey Mission for the Middle East (Clapp Mission), established in August 1949, advised that compensation should be calculated as a lump-sum payment, rather than the total of individual pieces of property. Finally, commission head Gordon Clapp called upon UNCCP to appoint a Refugee Property Trustee to appraise refugee land through sampling, administer a trust fund for compensation payments, and recommend how the lump sum should be paid (i.e., to individual refugees on a *pro rata* basis, or through a rehabilitation/resettlement fund). He further recommended that, if the Israelis rejected the lump sum, they could be asked to pay 10–50% of the amount up front, with the balance to be paid upon the signing of a final peace settlement.<sup>38</sup> However, UNCCP considered Clapp’s recommendations “too ambitious” and considered even lesser options, included whether compensation should be paid for all land that refugees lost, but only for cultivated land, as Prime Minister David Ben Gurion had insisted.<sup>39</sup>

UNGA resolution 394(V) of December 1950 created a UNCCP Refugee Office to implement resolution 194 and a Committee of Technical Experts on Compensation to develop an informal estimate of the scope and value of refugee land. It determined that “16,323,971 dunums land had passed from Arab to Jewish ownership during the fighting from 1947–48” (emphasis added). By capitalizing British Mandatory tax-assessment figures, the Committee estimated the land at £P100,383,784 (US\$281,074,511) as of 29 November 1947, and figured that the refugees had lost £P19,100,000 in movable goods. None of the parties was satisfied with this estimate, and Israel dismissed the figure as “academic,” saying that the land had been obtained not via a business transaction, but through war, as if that diminished the property’s value for the refugee.

In September 1952, The Committee called upon the UN to oversee creation of a compensation fund with an initial capital of US\$50,000,000. Under the plan, the Israeli Custodian of Absentee Property would turn legal title to the refugees’ land over to the fund, from which compensation would be paid to the refugees. To raise the money, the fund would sell title to the land to GoI, JNF and Jews elsewhere, with Israel making up any losses. GoI refused any deal with a fund outside the UN, from which Israel presumably derived more legitimacy.

Nonetheless, Israel already had complicated any restitution of refugee land and other properties, as noted above. By the time Joseph Johnson, was appointed UNCCP special representative in August 1961, the die was cast. He had estimated the value of refugee lands at US\$1,377,456,000 (in 1962 dollars); however, later reported bitterly how the Israel delegation and Zionist lobby in the U.S. had blocked any progress toward even this limited compensation plan.

The Arab League had countered with its own estimate of over US\$35 billion (in 1990 dollars). Yusif Sayigh estimated lost Arab property at £P757 million in 1948 (US\$11.5 billion).<sup>40</sup> Other estimates by Atif Kubursi and Sami Hadawi calculated 1948 losses—including material losses, human-capital losses, and psychological damage at up to US\$92–147 billion in 1984 prices.<sup>41</sup> Rashid Khalidi cites a possible figure of US\$40 billion, based on an assumption of US\$20,000 for each of only 2 million eligible refugees.<sup>42</sup>

A study by Thierry Senechal for the Palestinian Negotiations Support Unit presents higher calculations of values subject to claim. This included privately owned rural and urban land, holy places, loss of employment and livelihoods, personal property and moveable assets, business losses and the Arab share of state-owned land, and placed total Palestinian losses at US\$3.3 billion in 1948. The report suggested a then current (2008) value of this at up to US\$310 billion when applying an appropriate rate of compound interest.<sup>43</sup>

However, monetary compensation for land is permissible only with the consent of the right holder, as liquid cash is no substitute for such a permanent asset and need for self-determination. Land for land is the habitual formula, and both monetary compensation or land swaps would not qualify as compensation in lieu of restitution of the 2,699,000 km<sup>2</sup> of Palestinian lands confiscated and under occupation.<sup>44</sup>

### Legal and Institutional Reform

Institutional and legal reform constitutes a typical and indispensable process in TJ. As neglected as this aspect of TJ may be in the colonial legacy over Palestine, many of the institutional subjects are identifiable.

At its inception amid Europe's late-19<sup>th</sup>-Century context of racist theories and ethno-nationalisms, the Zionist Movement (ZM) sought to carve out an ethnically exclusive "Jewish state." However, ZM lacked all of the classic Montevideo criteria<sup>45</sup> of a state: (1) a defined territory of effective control; (2) a distinct population (people or peoples) and (3) institutions carrying out public functions, including international relations.<sup>46</sup>

The land the ZM coveted—i.e., Palestine—rightly belonged to its indigenous Palestinian people, and the claim of representing a "Jewish people" was—and always will remain—contested.<sup>47</sup> Therefore, ZM prioritized the establishment of institutions that could compel the other two statehood criteria to materialize. These foundational institutions enshrine the elements of apartheid practiced by them and Sol ever since.

Hence, the World Zionist Organization (WZO), established 1897, and its 1929-founded sister institution, the Jewish Agency (JA), had sought recognition as public bodies under international public law.<sup>48</sup> They have long carried out public functions, including the direction and implementation of human-settlement policy<sup>49</sup> with funding shared<sup>50</sup> with GoI since 1948. Certain WZO/JA affiliates, especially JNF, also carry out public functions in housing, development and land administration based on chartered principles of "racial" discrimination and separation to favour persons of Jewish faith.

The consistent WZO program and strategy have pursued "agricultural colonization [of Palestine] based on [exclusive] Jewish labour" and land acquisition, or "redeeming" land as "inalienable"; i.e., for Jewish possession "in perpetuity."<sup>51</sup> To manage the material dimensions (finance and acquisitions) of colonizing Palestine, the 5<sup>th</sup> Zionist Congress (1901) founded JNF as a WZO subsidiary and the eventual JA. In 1905, JNF began purchasing lands in Palestine.

The JNF's charter explicitly restricts its benefits "whether directly or indirectly, to those of Jewish *race* or descendency"<sup>52</sup> (emphasis added). It's chartered purpose and "primary objective" were—and remain—to "acquire lands in Palestine"<sup>53</sup> and to "promote the interests of Jews in the prescribed region."<sup>54</sup> However, JNF functions as the arm of an acclaimed state in the international system that proscribes such institutionalized, material discrimination.

In decoding Sol's Zionist law and policy of housing and land administration, any reference to these parastatal institutions<sup>55</sup> in public functions means a statutory obligation to discriminate against all others. The JNF charter also stipulates that, "upon [its] dissolution...any properties whatsoever...shall be transferred to the Government of Israel,"<sup>56</sup> further affirming its public and state functions.

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The close working relationship of the WZO/JA and JNF to the British Mandate Administration already had insinuated themselves as a shadow government in Palestine.<sup>57</sup> Those specialized colonial, apartheid and population-transfer institutions were soon fused to SoI by a series of legislative acts of Knesset (parliament), including:

- World Zionist Organization-Jewish Agency (Status) Law (1952)
- Keren Kayemet Le-Israel [Jewish National Fund] Law (1953)
- Covenant with Zionist Executive (1954; amended in 1971)
- Basic Law: Israel Lands [People's Lands] (1960)
- Agricultural Settlement Law (1967)

The WZO/JA and JNF remain pillars of Israel's discriminatory systems of housing, urban planning and development, and land administration. They advise, draft, promote and implement laws and policies that discriminate—not explicitly, but by simply by deferring to their apartheid charters—against the indigenous Palestinian Arab population of Israel, comprising 20% of SoI's citizens, part of the whole Palestinian people. They likewise discriminate materially against the roughly five million Palestinians in the occupied Palestinian territory (oPt), as well as today's seven million dispossessed and dispersed Palestinian refugees and internally displaced persons, by administering those population-transfer victims' properties Israel confiscated during and after its war and ethnic cleansing of much of Palestine in 1947–49.<sup>58</sup>

JNF's role was to collect financial resources to ensure that the ethnic cleansing acts of Jewish terrorist gangs became sustainable colonial advances. JNF programs in Palestine evolved by (1) acquiring land (first by purchase, if possible, and subverting the traditional tenure system with Mandate help to forcibly evict farmers), (2) razing vacated Palestinian villages, (3) conducting a “naming” committee to give Hebrew appellation to acquired properties, villages and localities, (4) forestation to cover the scene of the crimes, and (5) recruiting and settling Jews in depopulated Palestinian villages and urban areas, including through affiliate/sister “companies” exclusive serving Jews. WZO/JA, JNF and local planners ensured sequestration of remaining IDP Palestinians in urban centers to Arab “ghettos” (e.g., al-'Ajami quarter in Yaffa, Wadi Nisnas in Haifa). This involved also selling the act of forestation of ruins of Palestinian villages as parks and reserves as “environmental” functions. Turning pillage into ostensible “development,” ensuring the continuation of the Nakba as an ongoing process.

JNF largely funded these activities since the Nakba, while entrusted with assets at the time, forming the major channel of funding of the war with the dividends and individual contributions. The Fund's assets and financial operations remain opaque, despite repeated investigations and calls for why JNF has so much money.<sup>59</sup>

Several parties have called on these parastatal apartheid institutions to be dismantled or substantially reformed.<sup>60</sup> At least one group has formally proposed that WZO/JA, JNF and affiliates be converted into TJ processes.<sup>61</sup>

### Conclusion

With the U.S. dominating the UNCCP, with its two other NATO allies, Washington could ensure that UNCCP policy and initiatives did not cross the “red lines” Israel had established for resolving the conflict.

Despite the continuously cumulative losses, costs and damages under Israel's ongoing settler-colonial project against the Palestinian people and land as a whole, the UN effort at restitution of victims, including refugees has ceased.<sup>62</sup>

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Yes, the instrument does not explicit :Commented [JS3R2] say so, but instead defers to the apartheid-chartered institution. The sentence already says that. Does the edit help make that clearer?

A renewed effort to register losses from the Apartheid Wall that Israel has erected across the West Bank was to implement the 2004 ICJ advisory opinion, calling on the General Assembly to define entitled “reparation for the damage caused to all natural or legal persons affected by construction of the wall,”<sup>63</sup> which it did in 2006.<sup>64</sup> Again, the corresponding action has fallen into doubt. The UN Register of Damage was established without a reparative purpose,<sup>65</sup> and the records remain inert, stored at the UN Office in Vienna, with only a skeleton operation in country. Notably also, the UNGA advised all states “not to render aid or assistance in maintaining that situation and to co-operate with a view to putting an end to the alleged violations and to ensuring that reparation will be made therefor.”<sup>66</sup>

The costs and complications of reparation mount with time. At this writing, the 74<sup>th</sup> anniversary of the Nakba is upon us, and the quantification and other calculation processes required to enable return, restitution and compensation for the Palestinian people still remain unfulfilled. This submission in response to the Special Rapporteur’s call for input on TJ measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts is only an illustration of what measures remain to be done to institute justice for Palestine.

## Endnotes:

- <sup>1</sup> Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, A/RES/75/123, 21 December 2020, <https://digitallibrary.un.org/record/3894258?ln=en>.
- <sup>2</sup> The General Assembly annually reaffirms: "the United Nations has a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy...: See Peaceful settlement of the question of Palestine, A/RES/75/22, 8 December 2020, <https://undocs.org/en/A/RES/75/22>; Committee on the Exercise of the Inalienable Rights of the Palestinian People, A/RES/75/20, 8 December 2020, <https://undocs.org/pdf?symbol=en/A/RES/75/20>;
- <sup>3</sup> UN General Assembly, Resolution 181 (II). Future government of Palestine, A/RES/181(II), 29 November 1947, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/7F0AF2BD897689B785256C330061D253>.
- <sup>4</sup> Marcelo G. Kohen, "La Contribución de América Latina al desarrollo progresivo del derecho internacional en materia territorial," *Anuario de derecho internacional*, Vol. XVII (2001), pp. 57–78., <https://revistas.unav.edu/index.php/anuario-esp-dcho-internacional/article/download/28469/24272>.
- <sup>5</sup> Resolution 181, *op. cit.*, Part I(c), Chapter 3(1).
- <sup>6</sup> See Ilan Pappé, *The Ethnic Cleansing of Palestine* (London: One World, 2006).
- <sup>7</sup> *Fake Justice: The Responsibility Israel's High Court Justices Bear for the Demolition of Palestinian Homes and the Dispossession of Palestinians* (Jerusalem: B'Tselem, 2019), [https://www.btselem.org/publications/summaries/201902\\_fake\\_justice](https://www.btselem.org/publications/summaries/201902_fake_justice).
- <sup>8</sup> In particular, David Ben-Gurion, Moshe Sharett, Levi Eshkol, Yigal Allon, Golda Meir, Yitzhak Rabin, Menachem Begin, Yitzhak Shamir, Ehud Barak and Ariel Sharon.
- <sup>9</sup> *Silencing: DSDE's Concealment of Documents in Archives* (Jerusalem: Akevot Institute Report, July 2019), <https://www.akevot.org.il/en/news-item/akevots-report-reveals-dsdes-unlawful-concealment-of-files-in-archives/>; Haifa Rashed, Damien Short and John Docker, Nakba Memoricide: Genocide Studies and the Zionist/Israeli Genocide of Palestine," *Holy Land Studies*, Vol. 13, Issue 1 (May 2014), pp. 1–23, [https://www.researchgate.net/publication/270031317\\_Nakba\\_Memoricide\\_Genocide\\_Studies\\_and\\_the\\_ZionistIsraeli\\_Genocide\\_of\\_Palestine](https://www.researchgate.net/publication/270031317_Nakba_Memoricide_Genocide_Studies_and_the_ZionistIsraeli_Genocide_of_Palestine); Hagar Shezaf, "Burying the Nakba: How Israel Systematically Hides Evidence of 1948 Expulsion of Arabs," *Haaretz* (5 July 2019), <https://www.haaretz.com/israel-news/premium.MAGAZINE-how-israel-systematically-hides-evidence-of-1948-expulsion-of-arabs-1.7435103>.
- <sup>10</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006, [http://www.hlrn.org/img/documents/A\\_RES\\_60\\_147\\_remedy\\_reparation\\_en.pdf](http://www.hlrn.org/img/documents/A_RES_60_147_remedy_reparation_en.pdf).
- <sup>11</sup> Janet AbuLughod, "The Demographic Transformation of Palestine," in Ibrahim AbuLughod, ed., *The Transformation of Palestine* (Evanston IL: Northwestern University Press, 1971), pp. 139–63.
- <sup>12</sup> UNRWA, "UNRWA mandate - Definition of Refugees, Descendants, and Solutions," undated, accessed 7 May 2021, <https://www.unrwa.org/who-we-are/frequently-asked-questions>.
- <sup>13</sup> *Ibid.*
- <sup>14</sup> Uri Davis, *Citizenship and the state: a comparative study of citizenship legislation in Israel, Jordan, Palestine, Syria and Lebanon* (London: Ithaca Press, 1997), p. 49. "Children of 'absentees,' whether born inside or outside of the State of Israel, are similarly classified as 'absentees'."
- <sup>15</sup> *Survey of Palestinian Refugees and Internally Displaced Persons 2013-2015* (Bethlehem: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2015), <http://www.badil.org/en/publication/survey-of-refugees.html?download=1192:badil-survey-2015>.
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- <sup>17</sup> Michael Fischbach, *Records of Dispossession...*
- <sup>18</sup> Salman Abu-Sitta, "The Implementation of the Right of Return," in Roane Carey, *The new Intifada: resisting Israel's apartheid* (London and New York: Verso, 2001); abridged version *The Palestine-Israel Journal*, Vols. 15–16 No. 3 (2008), <https://pij.org/articles/1217/the-implementation-of-the-right-of-return>.
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- <sup>21</sup> Israeli Committee against Home Demolitions (ICAH), "Categories of Home Demolitions," 14 March 2020, <https://icahd.org/2020/03/14/categories-of-home-demolitions/>.
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- <sup>23</sup> Jewish National Fund, Report to the 23<sup>rd</sup> Congress (1951), pp. 32–33 (emphasis in original), cited in Walter Lehn with Uri Davis, *The Jewish National Fund* (London and New York: Kegan Paul, 1988), p. 108.
- <sup>24</sup> Sabri Jiryis, *The Arabs in Israel* (New York: Monthly Review Press, 1976), 77–101; Usama Halabi, “Israeli Law as a Tool of Confiscation, Planning, and Settlement Policy,” *Adalah’s Review*, Vol. 2 (fall 2000), pp. 7–13, at: [https://www.adalah.org/uploads/Adalah\\_review\\_2\\_Land.pdf](https://www.adalah.org/uploads/Adalah_review_2_Land.pdf).
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- <sup>26</sup> UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” A/RES/60/147, 21 March 2006, [http://www.hlmn.org/img/documents/A\\_RES\\_60\\_147\\_remedy\\_reparation\\_en.pdf](http://www.hlmn.org/img/documents/A_RES_60_147_remedy_reparation_en.pdf).
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- <sup>28</sup> Fischbach (2001), *op. cit.*, note. 22.
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- <sup>30</sup> Basic Principles and Guidelines on Development-based Evictions and Displacement, Annex 1, of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, 2007, [https://www.ohchr.org/documents/issues/housing/guidelines\\_en.pdf](https://www.ohchr.org/documents/issues/housing/guidelines_en.pdf).
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- <sup>32</sup> Objectives of Resettlement Plan and Definition of Resettlement Terminology, [http://209.225.62.100/Documents/Resettlement\\_Plans/PRC/Ningxia/ningxia\\_chap01.pdf](http://209.225.62.100/Documents/Resettlement_Plans/PRC/Ningxia/ningxia_chap01.pdf).
- <sup>33</sup> A/RES/60/147, *op. cit.*, para. 21.
- <sup>34</sup> Resolution 194 (III), *op. cit.*
- <sup>35</sup> Including “inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:” such as “Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.” International Convention on the Suppression and Punishment of the Crime of Apartheid, UNGA resolution 3068 (XXVIII), 30 November 1973, Article II(f), [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10\\_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf).
- <sup>36</sup> Resolution 181 states: “No expropriation of land owned by an Arab in the Jewish State [or by a Jew in the Arab State] shall be allowed except for public purposes. In all cases of expropriation full compensation as fixed by the Supreme Court shall be paid previous to dispossession.” The final report of UN mediator Count Folke Bernadotte, dated 16 September 1948—the day before he was assassinated by Israeli extremists—stated, “There have been numerous reports from reliable sources of large-scale looting, pillaging and plundering, and of instances of destruction of villages without apparent military necessity. The liability of the Provisional Government of Israel to restore private property to its Arab owners and to indemnify those owners for property wantonly destroyed is clear irrespective of any indemnities which the Provisional Government may claim from the Arab States.”<sup>2</sup>
- <sup>37</sup> Fischbach (2001), note 6.
- <sup>38</sup> Fischbach (2001), note 7.
- <sup>39</sup> Fischbach (2001), *op. cit.*, p. 38, notes 8 and 9.
- <sup>40</sup> Don Peretz, Palestinian Refugee Compensation Information Paper 3 (Washington, DC: Center for Policy Analysis on Palestine, May 1995), pp. 14–15.
- <sup>41</sup> Sami Hadawi, Palestinian Rights and Losses in 1948: A Comprehensive Study (London: al-Saqi Books, 1988), p. xvii. A lower figure of \$25 billion results from directly converting the 1948 assessment of £1.18 billion using the rates adopted by Peretz.
- <sup>42</sup> Rashid Khalidi, “Toward a Solution,” in *Palestinian Refugees: Their Problem and Future Special Report* (Washington: Center for Policy Analysis on Palestine, October 1994), p. 24.
- <sup>43</sup> Thierry J Senechal, ‘Valuation of Palestinian Refugee Losses’, PLO Negotiations Support Unit (NSU), 18 June 2008, 17–40, <http://www.ajtransparency.com/files/2767.pdf>. See also Thierry J Senechal and Leila Hilal, ‘The Value of 1948 Palestinian Refugee Material Damages: An Estimate Based on International Standards’ in Brynen and El-Rifai (n 8) 132.
- <sup>44</sup> “Over 33 Million Due Restitution in MENA,” *Land Times*, Issue 17 (March 2019), <http://landtimes.landpedia.org/newsdes.php?id=pm5m&catid=ow=&edition=03A>.
- <sup>45</sup> See Montevideo Convention on the Rights and Duties of States (1933), Article 1.
- <sup>46</sup> The last of these should include government capable of asserting sovereignty and, thus, recognized by other states.
- <sup>47</sup> See Elmer Berger, *The Jewish Dilemma* (New York: Devin-Adair, 1945); Shlomo Sand, transl. by Jeremy Forman, *Invention of the Jewish People* (London and New York: Verso, 2012).

- <sup>48</sup> The First Zionist Congress of 1897 at Basle explicitly set out to achieve that public status for the Zionist Organization and its constituents. See W. Thomas Mallison Jr., “The Legal Problems Concerning the Juridical Status and Political Activities of the Zionist Organization/Jewish Agency: A Study in International and United States Law,” *William and Mary Law Review*, Vol. 9, Issue 3 (1968), pp. 558–629, esp. 566–608, <http://scholarship.law.wm.edu/wmlr/vol9/iss3/3>.
- <sup>49</sup> The Basle Program of the First Zionist Congress affirmed that the Zionist Organization, like Zionism, in general, “aims at establishing for the Jewish people a legally assured home in Palestine. For the attainment of this purpose, the Congress considers the following means serviceable: 1. The promotion of the settlement of Jewish agriculturists [farmers], artisans, and tradesmen in the Land of Israel; 2. The federation [unified organisation] of all Jews into local or general groups, according to the laws of the various countries; and 3. The strengthening of the Jewish feeling and consciousness [national sentiment and national consciousness]. Preparatory steps for the attainment of those governmental grants which are necessary to the achievement of the Zionist purpose.” “ZIONISM – Timeline of Events” Mfa.gov.il, reprinted in “World Zionist Organization” Wikipedia, [https://en.wikipedia.org/wiki/World\\_Zionist\\_Organization#cite\\_ref-7](https://en.wikipedia.org/wiki/World_Zionist_Organization#cite_ref-7); First Zionist Congress, <http://www.wzo.org.il/home/movement/first.htm>; Basle Program, <http://www.wzo.org.il/home/movement/first.htm>.
- <sup>50</sup> Amy Teibel, “Lawsuit brings murky West Bank land deals to light,” *Associated Press* (20 June 2009), at: <https://www.sandiegouniontribune.com/sdut-ml-israel-disputed-deal-062009-2009jun20-story.html>. In 2014, the Settlement Division received NIS130m (US\$34.7m) from Israel, see Nimrod Bousso, “Israel to Allocate \$35m to World Zionist Organization’s Settlement Division,” *Haaretz* (23 October 2014), at: Israel to Allocate \$35m to World Zionist Organization’s Settlement Division.
- <sup>51</sup> See Yossi Katz, *The Land Shall Not Be Sold in Perpetuity: The Jewish National Fund and the History of State Ownership of Land in Israel* (Berlin and Boston: De Gruyter; Jerusalem: The Hebrew University/Magnes Press, 2016), <https://egilib.org/book/3435899/d98c20?id=3435899&secret=d98c20>.
- <sup>52</sup> That is “to purchase, acquire on lease, or in exchange, or receive on lease or otherwise, lands, forests, rights of possession, easements and any similar rights, as well as immovable properties of any class...for the purpose of settling Jews on such lands and properties.” Keren Kayemet l’Yisrael (“Permanent Fund for Israel,” a.k.a. Jewish National Fund) Memorandum of Association, Appendix B, published in Government Gazette, No. 354, 10 June 1954, Article 3(iii).
- <sup>53</sup> Emphasis added. JNF Memorandum of Association, dated 1901, Article 3(a), and dated 1952, Article 3(i).
- <sup>54</sup> *Ibid.*, Article 3(g) and Article 3(vii), respectively.
- <sup>55</sup> For example, “applying the principles of the Jewish Agency,” or “consistent with the principles of the JNF in regards to its lands,” etc.
- <sup>56</sup> *Ibid.*, Article 6.
- <sup>57</sup> Report of the Anglo-American Committee of Inquiry, in Sally V. Mallison and W. Thomas Mallison, *The Palestine Question in International Law and World Order* (London: Longman, 1986), p. 100.
- <sup>58</sup> Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oxford: One World, 2007).
- <sup>59</sup> “The Jewish National Fund Must Be Made Transparent,” editorial, *Haaretz* (8 May 2014, updated 10 April 2018), <https://www.haaretz.com/opinion/the-jnf-must-be-transparent-1.5247549>.
- <sup>60</sup> Sami Peretz, “It’s Time for Israel to Shut Down the Jewish National Fund,” *Haaretz* (10 November 2017), <https://www.haaretz.com/israel-news/premium-it-s-time-for-israel-to-shut-down-the-jnf-1.5463918>; Michael Kagan, “Restitution as a Remedy for Refugee Property Claims in the Israeli-Palestinian Conflict,” *Scholarly Works*, University of Nevada, Las Vegas -- William S. Boyd School of Law, Paper 628 (2007), p. 488, <http://scholars.law.unlv.edu/facpub/628>.
- <sup>61</sup> HIC-HLRN, “Palestine: occupied Jordan Valley: ethnic cleansing,” Urgent Action PAL–DN 270507, 28 August 2007, <http://www.hlrn.org/img/cases/PAL-FEDN%20270807-full%20Ar.doc>.
- <sup>62</sup> The remnant of the UNCCP manifests in an annual report to the General Assembly, the entire text of which typically reads: “In paragraph 2 of its resolution 74/83, the General Assembly requested the United Nations Conciliation Commission for Palestine to report to the Assembly as appropriate, but no later than 1 September 2020. The Commission recalls its report of 26 August 2019 (A/74/332) and observes that it has nothing new to report since its submission.” Seventy-fourth report of the United Nations Conciliation Commission for Palestine, A/75/305, 11 August 2020, <https://www.un.org/unispal/document/seventy-fourth-report-of-the-united-nations-conciliation-commission-for-palestine-a-75-305/>.
- <sup>63</sup> Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, General List No. 131, 9 July 2004, para. 38; Separate opinion of Judge Elaraby, para. 2.1; separate opinion of Judge Owada, para. 14, <https://www.un.org/unispal/document/auto-insert-178825/>.
- <sup>64</sup> A/RES/60/147, *op. cit.*
- <sup>65</sup> UNGA, Establishment of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory, resolution ES 10/17, 24 January 2007, <https://undocs.org/A/RES/ES-10/17>.
- <sup>66</sup> *Ibid.*, para. 146.