

**UNITED NATIONS COMMISSION OF INQUIRY ON THE OPT AND ISRAEL
ESTABLISHED PURSUANT TO UNHRC RESOLUTION S-30/1**

Before: NAVI PILLAY, *Chair of Commission of Inquiry*

AMBASSADOR FEDERICO VILLEGAS, *President of the Human Rights Council*

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Date: 14 February 2022

**REQUEST FOR NAVI PILLAY TO RECUSE HERSELF
FOR BIAS OR THE APPEARANCE THEREOF**

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INTRODUCTION

1. By this petition, United Nations Watch (“Petitioner”) requests Ms. Navi Pillay to recuse herself from the Commission of Inquiry (“COI”) established by the United Nations Human Rights Council (“UNHRC” or “Council”) under Resolution S-30/1, on grounds that her numerous prior public statements, as documented herein, evince demonstrable bias against Israel, including on issues specifically related to the case and controversy that is the object of this inquiry. These statements by Navi Pillay give rise to actual bias or the appearance thereof and raise serious questions about the process that led to her appointment. In the event that Ms. Pillay refuses to voluntarily recuse herself, United Nations Watch requests the President of the Council, Ambassador Federico Villegas, to take action to remove Pillay from the COI, if necessary, by requesting a legal opinion from the United Nations Legal Counsel, Under-Secretary-General Miguel de Serpa Soares.

2. United Nations Watch further requests the President of the Council to make public Navi Pillay’s application for membership on the COI, as well as any other of her communications with the UN in connection with this appointment. Under UN guidelines, Pillay was obliged to “disclose any information that may lead to questions being raised about [her] independence, impartiality and integrity, including, for example, any publication on the object of the inquiry.” The guidelines make clear that members of commissions of inquiry must have “a proven record of independence and impartiality.” Specifically, the guidelines cite “prior public statements” as a relevant factor that could affect their “independence or impartiality,” or create a “perception of bias.”

3. This petition presents a plethora of prior, public and partisan statements by Navi Pillay which unequivocally demonstrate her bias, actual or apparent, and consequently her failure to meet the minimal requirements of impartiality. One recent statement stands out. On 14 June 2021, mere weeks after the Hamas-Israel war that is to be examined in this inquiry, Pillay publicly declared Israel guilty of the very crimes that she is meant to impartially investigate. She did so in a joint letter to U.S. President Biden, decrying Israel’s “domination and oppression of the Palestinian people,” calling on the U.S. to “address the root causes of the violence” by ending Israel’s “ever-expanding discrimination and systemic oppression.” Pillay’s joint letter further determined that the April clashes at Al Aqsa in Jerusalem—also among the events to be examined by the inquiry—constituted

“aggressive actions by Israeli forces” against “peaceful protesters and worshippers,” which amounted to “forced dispossession of Palestinians,” the “latest evidence of a separate and unequal governing system.” That the Council appointed an individual to head an inquiry immediately after she declared one of the parties guilty in the case and controversy to be examined by the inquiry is astonishing.

4. Likewise, Pillay cannot impartially investigate Israel for alleged war crimes, human rights abuse and racism, when she has a long record of one-sided statements that single out Israel for condemnation over alleged war crimes, human rights abuse and racism. As recently as June 2020, Navi Pillay signed a petition to boycott the Jewish state, entitled “Sanction Apartheid Israel!”

5. In November 2017, Pillay said that “Apartheid is now being declared a crime against humanity in the Rome Statute, and it means the enforced segregation of people on racial lines, and that is what is happening in Israel.”

6. On 31 May 2010, while serving as UN High Commissioner for Human Rights, Pillay declared that “the Israeli Government treats international law with perpetual disdain.” Never throughout her UN tenure did Pillay employ such language regarding any other country—not even against serial abusers such as China, Russia, Iran, Syria or North Korea.

7. While UN Secretary-General Ban Ki-moon and previous High Commissioners criticized the UNHRC for its Agenda Item 7 which targets Israel alone, Navi Pillay stood out by, on the contrary, repeatedly defending this standing manifestation of discrimination. As Secretary-General of the UN’s Durban Review Conference in 2009, and as its primary champion, Pillay whitewashed the antisemitic Durban conference of 2001, and she demonized Jewish groups that sounded the alarm, calling them “lobby groups” that were “focused on single issues.” Pillay was a leading proponent for the Palestinians to join the International Criminal Court (“ICC”), supporting the Palestinian campaign to use the language and mechanisms of international law to delegitimize Israel as a criminal state.

8. The impartiality requirement under international law is unequivocal. Scholars list impartiality as the first principle of fact-finding. Impartiality, as a requirement, is set forth in Articles 3 and 25 of the UN Declaration on Fact-Finding. Impartiality is also listed as the first qualification in the UN’s own guidelines for Commissions of Inquiry, produced by the Office of the High Commissioner for Human Rights (“OHCHR”).

9. Precedents from analogous international tribunals are equally clear. In the 2004 case of *Sesay*, the Special Court for Sierra Leone disqualified a judge who had published statements on the culpability of an organization connected to the defendants. This precedent applies *a fortiori* to the case of Navi Pillay, who as noted has issued many statements indicting Israel for the crimes she is supposed to be investigating, including as recently as June 2021.

10. In light of the above, it is impossible to imagine how Navi Pillay could lead an impartial investigation into the events of April-May 2021, as well as “all underlying root causes...including systematic discrimination,” as she is mandated to do by Resolution S-30/1. A reasonable person would consider Navi Pillay to be partial, disqualifying her from serving as a member of the COI. The remedy applied in *Sesay* should apply here.

11. UNHRC investigative mechanisms on Israel, which were all sponsored by the Islamic group of states, have a history of being politicized and biased against Israel. This is not the first time that an individual with a history of anti-Israel pronouncements has been selected to head such a mechanism. In August 2014, Professor William Schabas was chosen to lead the Commission of Inquiry on that summer’s Hamas-Israel conflict. Like Navi Pillay, Schabas had a long history of accusing Israel and its officials of international law violations, including in connection with the very conflict he was appointed to investigate. After Schabas’ record of prior partisan statements was documented and it was revealed that he had done paid legal work for the PLO, the President of the Council sought legal advice from UN Headquarters. Seeing the writing on the wall, Schabas resigned. Navi Pillay should now do the same.

12. If the UNHRC is to live up to its founding principles of “universality, impartiality, objectivity and non-selectivity,” as set forth in UNGA Resolution 60/251, Navi Pillay cannot be a member, and much less the Chair, of this Commission of Inquiry. As a former judge of international tribunals, she ought to be the first person to understand this. Accordingly, United Nations Watch calls on Ms. Pillay to recuse herself. In the event that she refuses to do so, we request the President of the Human Rights Council to remove her.

STANDING

13. United Nations Watch is a non-governmental human rights organization accredited at the United Nations in Special Consultative Status with the Economic and Social Council, pursuant to Article 71 of the United Nations Charter. In this capacity, Petitioner is a recognized stakeholder at the UNHRC and a regular participant in its proceedings, intervening on a wide range of human rights themes and country situations. UN Watch reports, briefings and analyses on the Council are widely read by diplomats, academics and journalists, and its speeches in defense of the principles of universal human rights, democracy and accountability have been seen on the Internet by millions of concerned citizens around the world.¹

14. Petitioner actively participated in the 30th Special Session of the Council that adopted Resolution S-30/1, the mandate for this COI. Furthermore, Petitioner intends to make submissions before the COI on matters of procedure, fact and law.

15. Accordingly, United Nations Watch has standing to request that Ms. Pillay recuse herself on account of bias or else be removed by the President of the Council.

STATEMENT OF FACTS

A. Commission of Inquiry Was Created to Target Israel

16. Everything about the special session and resolution that created this commission of inquiry shows that it was designed to target one side—Israel. The 30th Special Session, which took place on 27 May 2021, was formally initiated by the Palestinian ambassador in Geneva, together with the Pakistani ambassador, acting on behalf of the 56-nation Organization of Islamic Cooperation. Israel strongly opposed the meeting.²

¹ See generally United Nations Watch website, www.unwatch.org.

² @MeiravEShahar, TWITTER (May 20, 2021, 1:29 PM), <https://twitter.com/MeiravEShahar/status/1395325781140770824>.

17. Resolution S-30/1 was not supported by any of Israel's allies. All Western democracies on the Council either voted in opposition (Austria, Bulgaria, Czech Republic, Germany, UK) or abstained (Denmark, France, Italy, Netherlands, Poland).

18. Before any country spoke at the meeting, a series of speakers were given the floor to condemn Israel, including Palestinian activists Issam Younis and Muna El Kurd. No activist was given the floor to condemn Hamas for firing more than 4,000 rockets at Israeli civilians, or to condemn the Islamic Republic of Iran for financing, arming and training Hamas.

19. The session concluded by adopting resolution S-30/1, which created an open-ended COI with the very broad mandate to:

[...] investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021, and all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity.

20. While on its face this appears to be a neutral mandate that could investigate both the Israeli and the Palestinian sides, the text of the full resolution, its context and implementation to date make clear that the purpose of the inquiry is to target Israel.

21. All of the Council's eight prior investigative mechanisms in relation to the Arab-Israel conflict have been sponsored by the Islamic states with the Palestinians, and focused on harshly condemning Israel, while downplaying attacks launched by Hamas, Islamic Jihad and Hezbollah, including rocket and terror attacks targeting civilians. The role of the Iranian regime in enabling these attacks was completely ignored.

22. Numerous references in the resolution indicate that it was intended to target Israel. For example:

- (a) Preambular Paragraph (PP) 6 refers to "the need for operationalization of the protection options" in the Secretary-General's report pursuant to UNGA resolution ES-10/20, which was adopted in June 2018 as part of the UN General Assembly's tenth Emergency Special Session on Israel. The referenced report (A-ES-10/794) concerning "protection of the Palestinian civilian population under

Israeli occupation,” blames Israel for violence and security threats faced by Palestinians.

- (b) PP7 calls on businesses to “refrain from contributing to human rights abuses arising from conflict,” a thinly veiled reference to the UNHRC’s blacklist of corporations that do business with Israeli Jews living beyond the 1949 armistice lines.
- (c) Operative Paragraph (OP) 1 determines that “systematic discrimination and repression” is a “root cause” of the conflict. It is less than plausible that the UNHRC was here referring to the systematic demonization of Israelis and Jews by Palestinian authorities in the West Bank and Gaza, a phenomenon that the Council has never addressed. Therefore, the clear purpose of this part of the inquiry is to legitimize the “Israel equals apartheid” narrative that was famously promoted at the 2001 Durban racism conference.
- (d) Only Israel is criticized by name in the resolution. OP 8 calls on Israel to “ensure the unimpeded delivery of...humanitarian assistance” to the Palestinians, implying falsely that Israel obstructs delivery of such humanitarian assistance. Nowhere in the resolution is Hamas or any other Palestinian entity singled out for criticism.

23. Moreover, the mandate of the COI as outlined in OP 2, supports the conclusion that the intended object of scrutiny and condemnation is Israel, not Hamas. For example, the COI mandate calls to “identify patterns of violations over time” by analyzing the findings “of previous United Nations fact-finding missions and commissions of inquiry on the situation.” This constitutes an endorsement of one-sided reports targeting Israel which were cheered by the Hamas terrorist organization, including the Council’s 2009 Goldstone Report—famously rejected later by Judge Goldstone himself—and the Council’s 2010 Flotilla Report, which itself was contradicted by the U.N. Secretary General’s Palmer Report.

24. Finally, the mandate aims to “make recommendations on measures to be taken by third States to ensure respect for international humanitarian law in the Occupied Palestinian

Territory,” to ensure such states “do not aid or assist in the commission of internationally wrongful acts.” It is possible that this refers to the role of the Iranian regime in arming, financing and training Hamas and Islamic Jihad terrorists to fire rockets against Israeli civilians, but not likely. Rather, most understand that this requests the COI to call on countries to take “measures” against Israel.

25. Resolution S-30/1 directed the President of the Council to appoint the members of the COI. On 22 July 2021, then-President Nazhat Shameem Khan appointed Navi Pillay, Miloon Kothari and Chris Sidoti as members of the Commission of Inquiry, naming Ms. Pillay to serve as Chair.³ This motion calling for the recusal of Ms. Pillay does not address any questions that may arise concerning other members of the COI.

B. Pillay Declared Israel Guilty for 2021 Hostilities That She is Investigating

26. On 14 June 2021, mere weeks after the May conflict which led to the creation of this inquiry, Ms. Pillay publicly accused Israel of being guilty of the very violations that she is meant to impartially investigate as head of the COI. She signed a joint letter, addressed to U.S. President Biden, decrying Israel’s “domination and oppression of the Palestinian people.”⁴ The letter was a one-sided denunciation of Israel, entirely absolving Hamas and other Palestinian actors of any culpability for the conflict. Pillay’s letter called on the U.S. to “address the root causes of the violence” by ending Israel’s “ever-expanding discrimination and systemic oppression.”⁵ Astonishingly, a month later, Ms. Pillay was appointed by the UNHRC to head an inquiry mandated to investigate “all underlying root causes” of recurrent tensions and protracted conflict, including “systematic discrimination and repression.”

27. In the letter, Ms. Pillay and her co-signatories specifically addressed multiple aspects of the April-May clashes that her COI is now tasked with investigating:

Even after a formal ceasefire, Israeli police and settler violence against Palestinians continues. The forced dispossession of Palestinians across the occupied West Bank, including families living in the East Jerusalem

³ *President of Human Rights Council appoints Members of Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, OHCHR (July 22, 2021), <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27331&LangID=E>.

⁴ *A Global Call to President Biden, #NOWISTHETIME* (June 14, 2021), <https://nowisthetimecoalition.com/>.

⁵ *Id.*

neighborhoods of Sheikh Jarrah and Silwan, and aggressive actions by Israeli forces against peaceful protesters and worshippers at Al-Aqsa Mosque, are the latest evidence of a separate and unequal governing system. These policies unravel the social fabric of communities and undermine any progress toward a democratic, just and peaceful future. The logic driving them has led to the recent displacement of 72,000 Palestinians in Gaza who must also survive the ongoing humanitarian crisis caused by a 14-year blockade.⁶

28. In other words, Ms. Pillay was appointed to impartially investigate the April 2021 clashes at Al-Aqsa weeks after she already declared that these amounted to “aggressive actions by Israeli forces” against “peaceful protesters and worshippers”; to impartially investigate the enforcement in Jerusalem of court orders enforcing private property rights weeks after she publicly determined that this amounted to “forced dispossession of Palestinians,” all of which constituted the “latest evidence of a separate and unequal governing system”; and to impartially investigate Israel’s response to the firing from Gaza of more than 4,000 rockets by Hamas, several hundred of which fell short and landed in Gaza, weeks after she determined that alleged Israeli policies of discrimination are what “led to the recent displacement of 72,000 Palestinians in Gaza,” a reference to that very conflict.⁷

C. Pillay Repeatedly Accused Israel of “Apartheid”

29. Prior to this letter, Pillay had repeatedly applied the “apartheid” label to Israel and openly endorsed the discriminatory BDS movement which seeks to isolate and demonize Israel. For example, in June 2020, Pillay signed a petition to “Sanction Apartheid Israel.”⁸ The petition accused Israel of decades of “occupation, colonization and apartheid,” equated the Jewish state with “the apartheid regime of South Africa,” and endorsed the 2017 “Israel is apartheid” report written by Richard Falk—who was condemned by UN Secretary-General Ban Ki-moon for 9/11 conspiracy

⁶ *Id.*

⁷ *Escalation in the Gaza Strip, the West Bank and Israel*, OCHA (18 May 2021), <https://www.ochaopt.org/content/escalation-gaza-strip-west-bank-and-israel-flash-update-8-1200-18-may-2021>.

⁸ *Stop the Trump-Netanyahu Steal of the Century: Sanction Apartheid Israel!*, SOLIDARITY FROM THE GLOBAL SOUTH (June 2020), (https://mcusercontent.com/36542688e353931ee951122b3/files/f6b47740-527e-4747-bb30-b348b750dd2c/Global_South_Statement_FINAL.pdf); see also 250+ prominent South Africans call for sanctions to stop annexation, BDS (June 18, 2020), <https://bdsmovement.net/news/250-prominent-south-africans-call-for-sanctions-stop-annexation>.

theories, and condemned for antisemitism by the UK government—at the request of a UN grouping of Arab states.⁹ The BDS petition signed by Pillay also called for states to take punitive action against Israel and to support “suspending free trade agreements with Israel,” “accountability from individuals and corporate actors complicit in Israel’s occupation and apartheid regime,” and “banning arms trade and military-security cooperation with Israel,” which would effectively deny Israel’s right to self-defense against Hamas and Hezbollah rockets and other Iranian-backed aggression. To all of this, Navi Pillay, who is meant to be impartial, signed her name.

30. This was hardly the first time that Pillay compared Israel to South African apartheid. In November 2017, after she addressed an event in Pretoria to mark the “International Day of Solidarity with Palestine,”¹⁰ Pillay gave an interview where she accused Israel of apartheid:

Israel really resents a comparison between apartheid South Africa and Israel. But apartheid is now being declared a crime against humanity in the Rome Statute, and it means the enforced segregation of people on racial lines, and that is happening in Israel.¹¹

31. In the same interview, Pillay also endorsed BDS:

I’m very pleased here at this conference to meet representatives who are pursuing this [BDS] campaign. But I was in the United Nations when this was launched by civil society...I hope it will catch on as did the anti-apartheid movement, which spread on a principled position of abhorrence against racism...¹²

D. Pillay Described Israel’s Actions as “Inhuman”

32. In a May 2021 lecture to a South African law school, Ms. Pillay compared Israel to apartheid South Africa, defended the singling-out of Israel under a special agenda item at the

⁹ The report by Falk was commissioned by the UN Economic and Social Commission of Western Asia (ESCWA), but then rejected by UN Secretary General Antonio Guterres, who removed it from the UN website. See *Senior U.N. official quits after ‘apartheid’ Israel report pulled*, REUTERS (March 17, 2017), <https://www.reuters.com/article/us-un-israel-report-resignation-idUSKBN16O24X>.

¹⁰ Navi Pillay, *General statement about colonization, discrimination, and apartheid*, delivered at the *United Nations International Day of Solidarity with the Palestinian People Seminar: The Year of O.R. Tambo and The Palestinian Struggle under Apartheid Rule*, Pretoria, South Africa, AFRICA4PALESTINE YOUTUBE (November 29, 2017) <https://www.youtube.com/watch?v=nF61qfb5J-k>. The ceremony was co-sponsored by the Palestinian embassy, the South African government and the UN.

¹¹ *Navi Pillay On Israel being and Apartheid State: Short Version*, AFRICA4PALESTINE YOUTUBE (November 29, 2017), <https://www.youtube.com/watch?v=6sIEfCf1Dhs>.

¹² *Id.*

UNHRC, lamented America's "unequal" support for Israel, and described Israel's treatment of the Palestinians as "inhuman."¹³

E. Pillay Defended Antisemitic Durban Process

33. Navi Pillay's depictions of Israel as an oppressive, apartheid state and her advocacy of boycotts and sanctions against Israel are consistent with a pattern and practice of targeting Israel that characterized her term as UN High Commissioner for Human Rights from 2008 to 2014. Upon entering office in 2008, one of Pillay's first actions was to declare herself a champion of the Durban II conference, which sought to reaffirm the 2001 World Conference on Racism, an event held in Durban, South Africa that was tainted by ugly displays of antisemitism. The infamous Durban conference was summed up by the late U.S. Congressman Tom Lantos, a Holocaust survivor and co-founder of the Congressional Human Rights Caucus: "For me, having experienced the horrors of the Holocaust firsthand, this was the most sickening and unabashed display of hate for Jews I have seen since the Nazi period."¹⁴ Pillay, however, ardently championed the 2009 follow-up to this event, urging countries to attend.¹⁵

34. In a series of statements and interviews, Pillay repeatedly smeared Jewish activists for seeking to prevent antisemitism from infecting the UN's 2009 Durban II conference on racism. The conference process was the subject of "ferocious" and "often distorted, criticism" by "certain lobby groups" who were "focused on single issues," stated a release from Pillay's office in September 2008, at the start of her tenure.¹⁶ Likewise, in March 2009 she referred to "a sustained campaign and propaganda" against the Durban II conference, "I think because of the hurtful conduct against Israel...

¹³ Navi Pillay, *15th Annual Human Rights Lecture*, FACULTY OF LAW STELLENBOSCH UNIVERSITY YOUTUBE (May 20, 2021, Minute 1:25:06 to 1:31:05), https://youtu.be/z_R2VoGWwM?t=5106.

¹⁴ Tammy Rossman Benjamin, *From Durban to L.A.: the BDS movement's long trail of anti-Semitism*, PITTSBURGH JEWISH CHRONICLE (March 19, 2015), <https://jewishchronicle.timesofisrael.com/from-durban-to-l-a-the-bds-movements-long-trail-of-anti-semitism/>.

¹⁵ *Top UN human rights official urges States to uphold pledges to fight racism*, UN NEWS (October 6, 2008), <https://news.un.org/en/story/2008/10/276782-top-un-human-rights-official-urges-states-uphold-pledges-fight-racism>.

¹⁶ *High Commissioner for Human Rights stresses need to tackle discrimination and inequality, and prevent genocide*, OHCHR (September 8, 2008) https://www.un.org/en/durbanreview2009/pr_8-9-08.shtml.

I can't tell you exactly who the lobby is. I can just pick out that it seems to be one source putting out this wrong information and labeling this review conference as 'hate fest'."¹⁷

35. Pillay criticized member states who took a moral stance by choosing not to attend.¹⁸ "I am shocked and deeply disappointed by the United States decision not to attend... A handful of states have permitted one or two issues to dominate their approach to this issue," she said, lamenting what she called a "highly organized campaign of disinformation."¹⁹ Ten countries, including Canada, the United States, Germany, Australia and the Netherlands, ultimately boycotted Durban II.²⁰

36. At the conference itself in April 2009, Iran's Holocaust-denying president, Mahmoud Ahmadinejad was the opening speaker. He called Israel "a totally racist government in occupied Palestine," which he claimed was established "under the pretext of Jewish suffering."²¹

37. Since then, Pillay has continued to defend the Durban Declaration and to belittle its critics.²² In September 2021, she alleged that Jews and Israel "ganged up together" to distort what happened at the 2001 Durban conference.²³ That same month, 38 countries including major democracies pulled out of Durban IV, the 20th anniversary of the original conference in South Africa, citing the antisemitism that plagued the process. Once again, Navi Pillay stood on the other side, defending Durban.

F. Pillay Defended Agenda Item Targeting Israel

38. One of the most well-known manifestations of the UN's unequal treatment of Israel is the Human Rights Council's standing agenda item, No. 7 ("Agenda Item 7"), focused only on alleged violations by Israel. Dozens of Western democracies like the United States, Britain, France, Germany,

¹⁷ *Anti-racism conference decision looms*, ABC NEWS (AUSTRALIA) (March 12, 2009), <https://www.abc.net.au/am/content/2008/s2513815.htm>.

¹⁸ *High Commissioner for Human Rights shocked by US withdrawal from Review Conference and urges States to focus on racism not politics*, OHCHR (April 19, 2009), <https://www.ohchr.org/EN/NewsEvents/Pages/HcshockedByUSWithdrawalReviewConferenceRacism.aspx>.

¹⁹ *Id.* See also *A highly organized campaign of disinformation*, UN YOUTUBE (April 24, 2009), <https://www.youtube.com/watch?v=EG9xbKkcOTU>.

²⁰ *Say No to Durban IV*, UN WATCH (last visited November 24, 2021), <https://unwatch.org/durban-4/>.

²¹ *Id.*

²² *Former UN Human Rights Chief Navi Pillay Delivers Inaugural Handa Center Lecture on Human Rights*, STANFORD (August 12, 2015), <https://www.youtube.com/watch?v=yjJY5Zfy74E>.

²³ *Navi Pillay: "Durban Conference on Racism produced comprehensive document to end racism and related intolerance"*, NEWZROOM AFRIKA YOUTUBE (September 24, 2021), <https://www.youtube.com/watch?v=75TUwnH4XsU&t=153s>.

the Netherlands, Canada and Australia do not participate in debates held under this agenda item, on grounds that it discriminates against Israel. These and other democracies have publicly condemned the existence of the agenda item targeting Israel as a breach of the Council's own principles of universality, impartiality, objectivity and non-selectivity.²⁴

39. Top UN officials have rightly criticized the agenda item targeting Israel. Pillay's predecessor as High Commissioner, Louise Arbour, wrote a letter to Canadian lawyers in which she criticized the agenda item as being "selective." Likewise, in June 2007, when the Council adopted Agenda Item 7, UN Secretary-General Ban ki-Moon "voiced disappointment at the Council decision to single out Israel as the only specific regional item on its agenda, given the range and scope of allegations of human rights violations throughout the world."²⁵

40. By contrast, Navi Pillay has been one of the most prominent defenders of this discriminatory agenda item. This suggests an innate bias by Pillay against the Jewish state. For example, in a March 2010 speech before a committee of the Italian parliament, when Pillay was challenged over the Council's one-sided approach toward the Middle East, she defended it, saying, "the occupation must end in order to remove Israel from the [UNHRC] agenda." She implicitly compared that situation to apartheid South Africa.²⁶

41. During a visit to Kuwait in April 2010, Navi Pillay again justified the Council's unequal treatment of Israel, saying, "while the occupation continues, it (item 7 on the human rights situation in Palestine and other occupied Arab territories) will remain on the agenda."²⁷

42. In fact, however, there is no agenda item on any other country in the world—including none on countries that occupy or have annexed territories, such as Russia, Turkey, China and Armenia, nor is there any agenda item on any of the world's gross human rights abusers,

²⁴ *GA renews UN rights chief who was wrong on China, Iran and Israel*, UN WATCH (May 25, 2012), <https://unwatch.org/ga-renew-un-rights-chief-who-was-wrong-on-china-iran-and-israel/>.

²⁵ *Id.*

²⁶ *Hearing of the United Nations High Commissioner for Human Rights, Navanethem Pillay, Standing Committee on Human Rights of the Parliament of Italy*, XVII LEGISLATURA (March 11, 2010), https://leg16.camera.it/461?stenog=/_dati/leg16/lavori/stencomm/03/indag/violazioni/2010/0311&pagina=s010; see also *GA renews UN rights chief who was wrong on China, Iran and Israel*, UN WATCH (May 25, 2012), <https://unwatch.org/ga-renew-un-rights-chief-who-was-wrong-on-china-iran-and-israel/>.

²⁷ *Huge progress made in Gulf on human rights issue - UN official*, KUWAIT NEWS AGENCY (April 21, 2010) <https://www.kuna.net.kw/ArticleDetails.aspx?id=2077372&language=en>; see also *GA renews UN rights chief who was wrong on China, Iran and Israel*, *Id.*

including Syria, Iran and North Korea. Pillay's attempt to rationalize the singling out of Israel is baseless.

43. At a February 2011 press conference, Pillay defended the UNHRC against charges of discrimination, insisting that the Council "has not singled out Israel" and claiming that the Council carries out its human rights mandate "without distinction of any kind."²⁸ By contrast, two weeks earlier, then-Secretary-General Ban ki-Moon had rebuked the UNHRC for singling out certain countries.²⁹

44. Pillay reiterated this sentiment at a July 2014 press briefing, in the midst of the summer 2014 war between Hamas and Israel, when she criticized the U.S. for taking a principled stand against the UN's anti-Israel bias. Pillay said she was "appalled at Washington consistently voting against resolutions on Israel" at the UN.³⁰

45. After stepping down as High Commissioner, Navi Pillay has continued to defend the UNHRC's agenda item targeting Israel. In her 2017 speech in commemoration of the UN's International Day of Solidarity with the Palestinian People, she said:

South Africa and Palestine under occupation by Israel, you will recall, were the last two states still subject to colonialism, and therefore fell for consideration under Agenda Item 7 of the old Human Rights Commission. In 1994, when apartheid ended, South Africa came off the radar, and the Israeli occupation of Palestine continues to remain on Agenda Item 7. Now, there is so much criticism of this from Israel, from the United States, and from the lobbies supporting Israel. And they use [the] expression that the Human Rights Council "bashes Israel"... There is...complete hostility to any comparison with apartheid. But the importance of retaining Agenda Item 7 and the occupation *is* that there is continued monitoring by the Human Rights Council on the situation there and the violations.³¹

46. In other words, on repeated occasions, Pillay falsely portrayed the singling-out of Israel on the HRC agenda as the product of a rational decision based on objective criteria, when in

²⁸ Pillay: *UNHRC doesn't single out Israel*, JERUSALEM POST (February 12, 2011), <https://www.jpost.com/middle-east/pillay-unhrc-doesnt-single-out-israel>.

²⁹ *Id.*

³⁰ REUTERS, *Israel must be probed for war crimes by world powers, UN rights chief says*, JERUSALEM POST (July 31, 2014), <https://www.jpost.com/operation-protective-edge/israel-must-be-probed-for-war-crimes-by-world-powers-un-rights-chief-says-369589>.

³¹ Navi Pillay, *General statement about colonization, discrimination, and apartheid*, *supra* note 8, <https://www.youtube.com/watch?v=nF61qfb5J-k>.

fact it was an act of discrimination instituted at the behest of the Arab and Islamic states for political reasons.

G. Pillay Pre-Judged Israel Guilty in Prior Gaza Conflicts

47. Navi Pillay was closely involved with two UNHRC special sessions that created controversial commissions of inquiry—in January 2009 and July 2014—in the wake of conflicts between Israel and the Hamas terrorist group in Gaza. In her later lectures, Pillay takes credit for having made statements that led to the creation of these inquiries.³² Although it is the 47-nation Council that convenes such sessions and establishes the investigations, Pillay's role as High Commissioner meant that her office oversaw both the hiring and the work of staff for five UNHRC investigative mechanisms targeting Israel, including the Fact-Finding Mission on the 2009 Gaza conflict (for which Pillay's office hired anti-Israel activist Grietje Baars to write key chapters³³), the Fact-Finding Mission on the 2010 Gaza flotilla, and the Commission of Inquiry on the 2014 Gaza conflict. In each of these cases, Navi Pillay made prominent statements that prejudged Israel's guilt while the conflict was still underway, or just after it had concluded yet before there was any time to investigate and verify the facts. While some of her statements also condemned Hamas for war crimes, she persistently reserved her harshest criticisms for Israel.

48. Pillay's lopsided approach is evident from the facts that Pillay: (a) consistently made a moral equivalence between Israel, a UN Member State and democracy, and the terrorist group Hamas, thus undermining Israel's legal right to self-defense; (b) misapplied international humanitarian law by wrongly using results (*i.e.*, numbers killed and injured on each side) to determine culpability; (c) criticized Israel, not only for its military strikes on Hamas in self-defense against rockets, but also for the precautions it took to mitigate Gaza civilian casualties; (d) suggested Israeli self-defense actions merited harsher scrutiny or that Israel was somehow more culpable because it had

³² *Former UN Human Rights Chief Navi Pillay Delivers Inaugural Handa Center Lecture on Human Rights*, STANFORD (August 12, 2015), <https://youtu.be/yjJY5Zfy74E?t=2223>

³³ *Request for Investigation into OHCHR Breaches of Neutrality and Conflict of Interest Obligations in Hiring Staff for Goldstone Probe*, UN WATCH (May 25, 2017), <https://unwatch.org/wp-content/uploads/2017/05/Letter-brief-re-grietje-baars-052517-FINAL-Neuer-to-Guterres.pdf>; see also Hillel Neuer, *Why the Schabas Report Will Be Every Bit as Biased as the Goldstone Report*, THE TOWER (March 2015), <http://www.thetower.org/article/why-the-schabas-report-will-be-every-bit-as-biased-as-the-goldstone-report/>.

an Iron Dome to protect its citizens from Hamas rockets while Gazans did not, and (e) relied on incomplete information, including unverified reports from organizations with a partisan political agenda, to conclude that the Israeli court system could not provide accountability and that therefore Israeli officials must be prosecuted at the International Criminal Court (ICC).

Pillay Prejudged Israel Guilty in 2009 Hamas-Israel Conflict

49. On 28 December 2008, just after hostilities began, Navi Pillay determined that Israel was using “disproportionate force” in response to indiscriminate Hamas rocket fire. Her office’s press release from that day stated:

While condemning the rocket attacks by Hamas that led to the death of one Israeli civilian, she also strongly condemned Israel’s disproportionate use of force resulting in the reported death of more than 270, a large number of which were civilians, and the wounding of over 600 persons. She called on Israel’s leaders to uphold international humanitarian law principles, especially those relating to proportionality in the use of military force and the prevention of collective punishment and the targeting of civilians.³⁴

50. During the 10 January 2009 Special Session, more than a week before the conclusion of hostilities, Navi Pillay rushed to accuse Israel of international law violations and collective punishment. She said:

Let me also underscore that while indiscriminate rocket attacks against civilian targets in Israel are unlawful, Israel’s responsibility to fulfill its international obligations is completely independent from the compliance of Hamas with its own obligations under international law. The obligation of a state to protect civilian life is not subject to reciprocity...Article 33 of the Fourth Geneva Convention prohibits collective penalties or punishment of a civilian population.³⁵

51. In both statements, then-High Commissioner Pillay morally equated Israel with Hamas. Furthermore, she qualified her brief criticism of Hamas and ultimately blamed Israel for the loss of civilian life. The gist of her remarks was that Hamas may be acting unlawfully, but what Israel is doing is far worse and deserved the bulk of the UN’s attention, condemnation and moral outrage.

³⁴ *UN human rights chief expresses her grave concern in the escalating violence in Gaza*, OHCHR (December 28, 2008),

<https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9448&LangID=E>.

³⁵ *Tovah Lazaroff, UNHRC set to censure Israel for 21st time*, JERUSALEM POST (January 9, 2009), <https://www.jpost.com/israel/unhrc-set-to-censure-israel-for-21st-time>.

52. In contrast to Pillay, certain other UN officials were more balanced. UN Under-Secretary-General for Humanitarian Affairs John Holmes spoke out against “the reckless and cynical use of civilian installations by Hamas.”³⁶

53. Also in contrast to Pillay, several major democracies supported Israel’s right to self-defense. U.S. President George W. Bush blamed the violence on Hamas. “This recent outburst of violence was instigated by Hamas — a Palestinian terrorist group supported by Iran and Syria that calls for Israel’s destruction.” Canada’s Foreign Minister Lawrence Cannon said that “Israel has a clear right to defend itself against the continued rocket attacks by Palestinian militant groups which have deliberately targeted civilians.”³⁷ German Chancellor Angela Merkel stressed Israel’s right to self-defense and stated that responsibility for the conflict lies “clearly and exclusively” with Hamas, which must “immediately and permanently” cease attacks on Israel.³⁸ Pillay, however, took the opposite position.

Pillay Prejudged Israel Guilty Within Hours of 2010 Flotilla Incident

54. On 31 May 2010, mere hours after Israeli soldiers were attacked as they tried to intercept a flotilla of ships to stop them from forcefully breaching Israel’s lawful military blockade of Gaza, Navi Pillay immediately charged Israel with “disproportionate use of force.” She said:

I unequivocally condemn what appears to be disproportionate use of force, resulting in the killing and wounding of so many people attempting to bring much-needed aid to the people of Gaza, who have now been enduring a blockade for more than three years.³⁹

55. In her statement, Pillay predetermined that Israel’s Gaza blockade was illegal. In language that she has never used on any other country, Pillay accused Israel of showing “perpetual

³⁶ *Israel must allow full access for aid and supplies to rehabilitate Gaza – UN relief chief*, UN NEWS (January 27, 2009), <https://news.un.org/en/story/2009/01/289082-israel-must-allow-full-access-aid-and-supplies-rehabilitate-gaza-un-relief>.

³⁷ David M. Weinberg, *Canada’s important support for Israel*, JERUSALEM POST (January 9, 2014), <https://www.jpost.com/opinion/columnists/canadas-important-support-for-israel-337711>.

³⁸ Benjamin Weinthal, *Merkel: The terror of Hamas cannot be accepted German leader’s pro-Israel stance criticized as demonstrations spread*, JERUSALEM POST (January 4, 2009), <https://www.pressreader.com/israel/jerusalem-post/20090104/281608121305807>.

³⁹ *UN human rights chief condemns violent interception of Gaza aid flotilla*, OHCHR (May 31, 2010), <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10079&LangID=E>.

disdain” for international law. She urged Israel to “heed the almost unanimous international view that the continued blockade of Gaza is both inhumane and illegal,” while proclaiming:

The blockade lies at the heart of so many of the problems plaguing the Israel-Palestine situation, as does the impression that the Israeli Government treats international law with perpetual disdain. If the blockade had been lifted, there would be no need for flotillas like this.⁴⁰

56. In a media interview a few days later, on 5 June 2010, Pillay went so far as to imply that the Israeli blockade constituted “starvation” of civilians. “International humanitarian law prohibits starvation of civilians as a method of warfare and...it is also prohibited to impose collective punishment on civilians,” she said.⁴¹

57. In contrast to Pillay, some in the UN human rights system had completely different reactions. Ruth Wedgwood, an expert of the 18-member United Nations Human Rights Committee, and a professor of international law at Johns Hopkins University, said the ships were legally required to allow the Israelis to board. “This was a made-for-TV confrontation,” she said. “It ought to have been resolved by having the Freedom Flotilla submit to search. Then you could have had a principled dispute about whether Israel is refusing humanitarian aid to Gaza.”⁴²

58. Likewise contradicting Pillay was the UN Secretary-General’s 2011 Panel of Inquiry on the Flotilla incident, led by former New Zealand Prime Minister Sir Geoffrey Palmer, which found that Israel’s Gaza blockade is legal under international law. “Israel faces a real threat to its security from militant groups in Gaza,” determined the UN inquiry. “The naval blockade was imposed as a legitimate security measure in order to prevent weapons from entering Gaza by sea and its implementation complied with the requirements of international law.”⁴³

59. The UN’s Palmer Report also expressly found that Israel had taken steps to ensure that the humanitarian aid carried by the Flotilla would reach Gaza, contradicting Pillay’s preposterous suggestion that Israel was engaging in “starvation” of civilians:

⁴⁰ *Id.*

⁴¹ *Gaza blockade illegal, must be lifted-UN’s Pillay*, REUTERS (June 5, 2010), <https://www.reuters.com/article/israel-flotilla-un-idUSLDE65404020100605>.

⁴² *Israel’s blockade of Gaza is legal, many scholars say*, SAN FRANCISCO CHRONICLE (June 5, 2010), <https://www.sfgate.com/world/article/Israel-s-Gaza-blockade-legal-many-scholars-say-3186426.php>.

⁴³ *Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident* (September 2011), https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_2235.pdf.

Humanitarian missions must respect the security arrangements put in place by Israel. They must seek prior approval from Israel and make the necessary arrangements with it. This includes meeting certain conditions such as permitting Israel to search the humanitarian vessels in question. The Panel notes provision was made for any essential humanitarian supplies on board the vessels to enter Gaza via the adjacent Israeli port of Ashdod, and such an offer was expressly made in relation to the goods carried on the flotilla.⁴⁴

60. Once again, in this incident as with others, what is clear is that across a spectrum of views, Navi Pillay stood out by adopting the most anti-Israel position.

Pillay Prejudged Israel Guilty in 2014 Hamas-Israel War

61. Hamas' June 2014 kidnapping and murder of three Israeli teens was followed by Hamas rocket attacks against Israeli cities. In response, Navi Pillay described Israel's actions to defend against illegal Hamas rockets as worse than the rocket attacks themselves, effectively negating Israel's right to self-defense. In a 3 July 2014 press statement, she said "I utterly condemn these rocket attacks and more especially I condemn Israel's excessive acts of retaliation."⁴⁵

62. In a rare criticism of a UN official, Canadian Foreign Affairs Minister John Baird rebuked Pillay:

Canada rejects UN High Commissioner for Human Rights Navi Pillay's uncalled-for criticism of Israel's response to rocket attacks from Gaza. Focusing her comments on Israel is neither helpful nor reflective of the reality of this crisis. There must be no moral equivalence between Hamas, a listed terrorist organization, and its blatant disregard for human life, and the liberal democratic State of Israel's duty and obligation to defend its people from cowardly and indiscriminate attacks...⁴⁶

63. Other world leaders likewise supported Israel's right to self-defense. U.S. President Barack Obama reaffirmed his "strong support for Israel's right to defend itself. No nation should accept rockets being fired into its borders, or terrorists tunnelling into its territory."⁴⁷ British Prime Minister David Cameron said: "I have been clear throughout this crisis that Israel has the right to

⁴⁴ *Id.* at ¶ 80.

⁴⁵ *Israel Boosts Forces Near Gaza As Border Heats Up*, CHANNELSTV (July 3, 2014), <https://www.channelstv.com/tag/navi-pillay/>.

⁴⁶ *Canada Rejects UN High Commissioner for Human Rights' Criticism of Israel's Response to Rocket Attacks from Gaza*, GLOBAL AFFAIRS CANADA (July 12, 2014), <https://www.canada.ca/en/news/archive/2014/07/canada-rejects-high-commissioner-human-rights-criticism-israel-response-rocket-attacks-gaza.html>.

⁴⁷ *Transcript @ThisHour With Berman and Michaela*, CNN (July 18, 2014), <http://edition.cnn.com/TRANSCRIPTS/1407/18/ath.02.html>.

defend itself.”⁴⁸ He also emphasized that the war “was triggered by Hamas raining hundreds of rockets on Israeli cities, indiscriminately targeting civilians in contravention of all humanitarian law norms.”⁴⁹ Australian Prime Minister Tony Abbott said: “We support Israel’s right to self-defense and we deplore the attacks on Israel from Gaza.”⁵⁰

64. Nevertheless, Pillay continued to impugn Israel. In her 23 July 2014 statement to the UNHRC Special Session, while the conflict was still ongoing, Navi Pillay precipitously accused Israel of “war crimes.” Citing examples of Israeli strikes that killed Palestinian civilians, she said:

These are just a few examples where there seems to be a strong possibility that international humanitarian law has been violated, in a manner that could amount to war crimes. Every one of these incidents must be properly and independently investigated.⁵¹

65. Although she did condemn some violations by Hamas, Pillay made a point to qualify that: “However, international law is clear: actions of one party do not absolve the other party of the need to respect its obligations under international law.” She went out of her way to criticize, rather than praise, the precautions taken by Israel to minimize civilian casualties, accusing Israel, not Hamas, of “disregard for international humanitarian law and for the right to life.”⁵² In a word, she said both Israel and Hamas were equally violating international law, but that Israel bore the greater responsibility.

66. A few days later, on 31 July 2014, weeks before the ceasefire, Navi Pillay again adjudged Israel guilty of war crimes, for alleged targeting of UN schools:

Six UN schools have now been hit, including another deadly strike on 24 July that also killed civilians. The shelling and bombing of UN schools which have resulted in the killing and maiming of frightened women and children and civilian men, including UN staff, seeking shelter from the conflict are horrific acts and may possibly amount to war crimes.⁵³

⁴⁸ *Prime Minister’s statement in Ukraine and Gaza*, GOV.UK (July 21, 2014), <https://www.gov.uk/government/speeches/prime-ministers-statement-on-ukraine-and-gaza>.

⁴⁹ *Id.*

⁵⁰ *Abbott: ‘Israel’s right to self-defense,’ AUSTRALIAN JEWISH NEWS* (July 18, 2014), <https://www.australianjewishnews.com/abbott-israels-right-to-self-defence/>.

⁵¹ *Statement by Navi Pillay, UN High Commissioner for Human Rights at the Human Rights Council 21st Special Session: Human Rights Situation in the Occupied Palestinian Territory, including East Jerusalem*, OHCHR (July 23, 2014), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14893&LangID=E>.

⁵² *Id.*

⁵³ *Pillay condemns continuing attacks on civilians in Gaza*, OHCHR (July 31, 2014), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14916&LangID=E>.

67. Significantly, the UN itself later admitted that it was “highly likely” that armed groups in Gaza had used UNRWA schools for weapons storage and to launch rocket attacks during the 2014 war.⁵⁴

68. In the 31 July statement, Pillay charged Israel with “killing entire families” and said that “the numbers don’t begin to adequately tell the tale of the ongoing human tragedy in Gaza.” By quoting a Palestinian child who had wished for “a Palestinian ‘Iron Dome’ protecting him and his family from Israeli attacks,” Pillay implied that the fact that Israel had developed this defense technology which the Palestinians did not possess somehow weakened Hamas’s culpability while strengthening Israel’s obligations.

69. Pillay’s lopsided approach is evident from the fact that less than ten percent of her 31 July statement addressed violations by Hamas, which was not even referred to by name. Rather, she generically condemned “armed groups in Gaza” for rocket attacks, and for locating military assets in densely populated civilian areas. However, as in previous statements, Pillay qualified this by saying that such violations did not “excuse either party from their continuing obligations to protect civilians and respect the core principles of distinction, proportionality and precautions in attack.”

70. In a separate news briefing Navi Pillay made her views clear when she accused Israel of deliberately defying international law. “I would say that they [Israel] appear to be defying...deliberate defiance of obligations that international law poses on Israel,” she said.⁵⁵ Rather than praising Israel’s pioneering Iron Dome defense technology which protects its citizens from Hamas rockets, she implied this was a bad thing. At the briefing, Pillay attacked the United States not only for providing Israel with weapons, but also for providing close to \$1 billion to support Israel’s Iron Dome defense system “to protect the Israelis from rocket attacks,” while “no such protection has been provided to Gazans against the shelling.”⁵⁶ Pillay failed to recognize that Israel built bomb

⁵⁴ *UN admits Palestinians fired rockets from UNRWA schools*, UN WATCH (April 7, 2015), <https://unwatch.org/un-admits-palestinians-fired-rockets-unrwa-schools/>.

⁵⁵ REUTERS, *Israel must be probed for war crimes by world powers, UN rights chief says*, JERUSALEM POST (July 31, 2014), <https://www.jpost.com/operation-protective-edge/israel-must-be-probed-for-war-crimes-by-world-powers-un-rights-chief-says-369589>.

⁵⁶ *Id.*

shelters and anti-missile systems to defend its citizens, while Hamas chose to build terror tunnels for its gunmen, and to use Palestinian civilians as human shields.

71. Finally, Pillay called for an ICC probe to pursue criminal complaints against Israeli officials. She dismissed the Israeli justice system, stating that “accountability and justice cannot be expected to be achieved through (Israeli) domestic proceedings,” due to “lack of adequate investigations by Israel.”⁵⁷ Pillay’s conclusion was not based on an independent investigation into Israel’s military justice system, but rather on reports by organizations sharing the same partisan political agenda, and on one public report by Israel’s Military Advocate General (“MAG”) regarding one Israeli military operation, which did not provide the full picture.⁵⁸

72. In November 2014, after stepping down as High Commissioner, Pillay published an op-ed in the *New York Times* supporting the Palestinian bid to join the ICC, even though the purpose of this endeavor was to label Israel as a war criminal and it was strongly opposed by the U.S., Israel, and other allies. Pillay said Palestinian membership in the ICC would cause Israel to no longer “shell hospitals” or “shoot down children.”⁵⁹

LEGAL DISCUSSION

A. International Law Requires Fact-Finders to Be Impartial

73. International fact-finding in the field of human rights is considered a quasi-judicial process that should be guided by the relevant substantive and procedural rules of international law.⁶⁰ These are not rigid but should be consistent with the principles of natural justice and due process—a

⁵⁷ *Id.*

⁵⁸ *Statement by Navi Pillay, UN High Commissioner for Human Rights at the Human Rights Council 21st Special Session: Human Rights Situation in the Occupied Palestinian Territory, including East Jerusalem*, OHCHR (July 23, 2014), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14893&LangID=E>. In his report, Israel’s MAG decided not to open criminal investigations into 65 incidents from its November 2012 war with Hamas based on recommendations from the MAG’s special operational legal division for investigating war crimes allegations and a committee of senior battle commanders. See Yonah Jeremy Bob, *MAG rejects Pillar of Defense investigations*, JERUSALEM POST (April 14, 2013), <https://www.jpost.com/national-news/mag-rejects-pillar-of-defense-criminal-investigation-309804>. While the report was criticized by certain NGOs, Pillay did not explain how the report established Israel’s justice system to be deficient.

⁵⁹ Navi Pillay, *Europe is Blocking Mideast Peace*, NEW YORK TIMES (November 7, 2014), <https://www.nytimes.com/2014/11/07/opinion/europe-is-blocking-mideast-peace.html?referrer=>.

⁶⁰ See Bertrand Ramcharan, *Substantive Law Applicable*, in B.G. Ramcharan, ed., INTERNATIONAL LAW AND FACT-FINDING IN THE FIELD OF HUMAN RIGHTS, at p. 26 (Boston and London, 1982).

necessity for the fact-finding to be a credible procedure.⁶¹ It is generally recognized that the credibility of fact-finding depends on the observance of fair rules of procedure.

74. The minimal rules of due process require that fact-finders in the human rights field be impartial.⁶² According to Professor Thomas M. Franck, the late NYU scholar and former president of the American Society of International Law, this requirement implies that “the persons conducting an investigation should be, and should be seen to be, free of commitment to a preconceived outcome.”⁶³ The credibility and impact of fact-finding depend upon the extent to which it is perceived to have been objective, fair and impartial. In the words of Professor Franck, fact-finding must be “as impartial and as fair to the parties as procedural and evidentiary rules can render it without making the inquiry’s task impossible, not merely for ethical reasons but in order to maximize the credibility and impact of the facts found.”⁶⁴

75. Similarly, in K. T. Samson’s outline of the procedural law applicable to international fact-finding in the field of human rights, the International Labor Organization’s former coordinator for human rights cited this principle first: “A basic requirement is to ensure the impartiality and objectivity of the fact-finders.”⁶⁵

76. There is no one set of comprehensive standards adopted by the United Nations to govern UN fact-finding.⁶⁶ However, a statement of general standards is found in the Declaration on Fact-finding by the UN in the Field of the Maintenance of International Peace and Security (“Declaration on Fact-Finding”).⁶⁷ Impartiality is twice listed as a requirement. Article 3 provides: “Fact-finding should be comprehensive, objective, impartial and timely.” Article 25 renders this obligatory: “Fact-finding missions have an obligation to act in strict conformity with their mandate and perform their task in an impartial way.” While recusal is not expressly listed in this declaration,

⁶¹ *Id.*

⁶² T.M. Franck & H.S. Fairley, *Procedural Due Process in Human Rights Fact-Finding by International Agencies* (1980) 74 AMERICAN JOURNAL OF INTERNATIONAL LAW 308, at pp. 313, 344.

⁶³ *Id.* at p. 313.

⁶⁴ *Id.* at p. 310.

⁶⁵ K.T. Samson, *Procedural Law, in B.G. Ramcharan, ed., INTERNATIONAL LAW AND FACT-FINDING IN THE FIELD OF HUMAN RIGHTS*, at pp. 41-42 (Boston and London, 1982).

⁶⁶ Lillich, Hannum, Anaya and Shelton (eds.), *International Human Rights: Problems of Law, Policy, and Practice*, at p. 1025 (Aspen Publishers, 2006).

⁶⁷ *Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security*, U.N. Doc. A/RES/46/59, Annex (1991), <https://undocs.org/en/A/RES/46/59>.

several UN human rights bodies do list it.⁶⁸ Accordingly, by retaining Navi Pillay as chair—someone who has already pronounced herself on the specific incidents and alleged violations that the COI is mandated to investigate—the COI will necessarily be in breach of the UN Declaration on Fact-Finding.

B. UN Guidelines Required Pillay to Disclose Prior Partisan Statements

77. Moreover, the Office of the High Commissioner for Human Rights (“OHCHR”), as Secretariat for the Human Rights Council, published a Guidance and Practice on COIs in 2015 (“OHCHR Guide”). It refers to the UN Fact-Finding Declaration as one of the international legal and methodological standards and instruments for fact-finding missions.⁶⁹ In the section on “Qualifications,” the OHCHR Guide expressly states that COI members should “have a proven record of independence and impartiality” and that “prior public statements” could impact their “independence and impartiality,” or “create perceptions of bias.”⁷⁰ Pillay’s numerous one-sided, partisan and inflammatory prior pronouncements, detailed above, clearly undermine her impartiality and create the perception of bias.

78. The gravity of this requirement for “independence and impartiality” by UNHRC COI appointees is underscored by further rules obligating candidates to disclose “any information that may lead to questions” about their “independence, impartiality and integrity,” and obligating COI members, once appointed, to sign an undertaking to act independently and impartially throughout their tenure. The language of the undertaking in this regard is: “I solemnly declare and promise to exercise my functions independently, impartially, loyally and conscientiously...”⁷¹ If Ms. Pillay reflects objectively on her solemn undertaking, she should decide that there is no choice but to recuse herself.

⁶⁸ UN human rights fact-finding bodies contemplate recusal as an option, like the Human Rights Committee and the Committee Against Torture. *See* Rules of Procedure of the Human Rights Committee, Rules 108 and 109; Rules of the CAT Committee, Rules 109 and 110. *See also* Frans Viljoen, *Fact-Finding by UN Human Rights Complaints Bodies: Analysis and Suggested Reforms*, MAX PLANCK YEARBOOK OF UNITED NATIONS LAW Vol. 8, No. 1, at pp. 86-87 (2004) https://www.mpil.de/files/pdf1/mpunyb_viljoen_8.pdf.

⁶⁹ *Commissions of Inquiry and Fact-Finding Missions on International Human Rights Law: Guidance and Practice*, p. 106, OHCHR (2015), https://www.ohchr.org/documents/publications/coi_guidance_and_practice.pdf.

⁷⁰ *Id.* at p. 19.

⁷¹ *Id.* at pp. 21-22.

C. International War Crimes Tribunals Disqualify Judges for Appearance of Bias

79. Both the rules and precedents of international war crimes tribunals are a relevant source of international law in this case. While they relate to judicial proceedings, their principles are analogous to the due process principles of the quasi-judicial process of international fact-finding and should be applied where pertinent. According to these rules and precedents, a judge must be disqualified in cases of both actual and apparent bias.

80. Court rules for these international tribunals provide that a judge whose impartiality is affected must recuse herself or be disqualified. For example, Rule 15(A) of the UN-created Special Court for Sierra Leone provides that “a Judge may not sit at a trial or appeal in any case in which his impartiality might reasonably be doubted on any substantial ground.”⁷² Similarly, the parallel Rule 15(A) of the International Criminal Tribunal for Rwanda provides that a judge may not sit in any case “concerning which he has or has had any association which might affect his impartiality.”⁷³ This provision has been interpreted to permit any allegation of bias to be raised as a basis for disqualification.⁷⁴

81. The remedy for bias is disqualification of the judge or fact-finder. Rule 15(B) of the Special Court for Sierra Leone provides: “Any party may apply to the Chamber of which the Judge is a member for the disqualification of the said Judge on the above ground.”⁷⁵

82. The rules of the ICC, the court upon which Judge Pillay sat from 2003 to 2008, similarly provide for disqualification of judges on grounds of impartiality. Article 41(2) of the ICC’s Rome Statute expressly states that “a judge shall not participate in any case in which his or her impartiality might reasonably be questioned on any ground.”⁷⁶ Rule 34(d) of the ICC Rules of

⁷² Rules of Procedure and Evidence, Special Court for Sierre Leone (last visited February 10, 2022), <http://hrlibrary.umn.edu/instree/SCSL/Rules-of-proced-SCSL.pdf>.

⁷³ Rules of Procedure and Evidence, International Criminal Tribunal for Rwanda (last visited February 10, 2022), <https://unictr.irmct.org/sites/unictr.org/files/legal-library/150513-rpe-en-fr.pdf>.

⁷⁴ *Prosecutor v. Karemera et. al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera’s Motion For disqualification of Judges Byron, Kam, and Joensen (Bureau) (March 7, 2008), http://www.worldcourts.com/ictt/eng/decisions/2008.03.07_Prosecutor_v_Karemera.htm.

⁷⁵ Rules of Procedure and Evidence, Special Court for Sierre Leone *supra note* 67.

⁷⁶ Article 41(2), <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.

Procedure further provides that grounds for disqualification of a judge include “expression of opinions” that “objectively, could adversely affect the [judge’s] required impartiality.”⁷⁷

83. The requirement of impartiality is violated not only where a judge is actually biased, but also where there is an appearance of bias. The authoritative exposition of this rule comes from the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY). In the case of *Prosecutor v. Anto Furundzija*, the Appeals Chamber found that, “as a general rule, courts will find that a Justice ‘might not bring an impartial and unprejudiced mind’ to a case if there is proof of actual bias or of an appearance of bias.”⁷⁸

84. The ICTY reached its ruling in part by analyzing the jurisprudence of the European Court of Human Rights:

In considering subjective impartiality, the [European Court of Human Rights] has repeatedly declared that the personal impartiality of a Justice must be presumed until there is proof to the contrary. In relation to the objective test, the Court has found that this requires that a tribunal is not only genuinely impartial, but also appears to be impartial. Even if there is no suggestion of actual bias, where appearances may give rise to doubts about impartiality, the Court has found that this alone may amount to an inadmissible jeopardy of the confidence which the Court must inspire in a democratic society.⁷⁹

85. The ICTY further noted that the European Court considers that it must determine whether or not there are “ascertainable facts which may raise doubts as to...impartiality.” In deciding this question, “the standpoint of the accused is important but not decisive... What is decisive is whether this fear can be held objectively justified.” Thus, one must ascertain, apart from whether a Justice has shown actual bias, whether one can apprehend an appearance of bias.⁸⁰

86. The ICTY Appeals Chamber concluded that “there is a general rule that a Judge should not only be subjectively free from bias, but also that there should be nothing in the surrounding circumstances which objectively gives rise to an appearance of bias.”⁸¹ An appearance of bias exists,

⁷⁷ Rule 34(d), <https://www.icc-cpi.int/Publications/Rules-of-Procedure-and-Evidence.pdf>.

⁷⁸ *Prosecutor v. Furundzija* (Appeal Judgement), IT-95-17/1-A, International Criminal Tribunal for the former Yugoslavia, ¶ 179 (July 21, 2000), <https://www.icty.org/x/cases/furundzija/acjug/en/fur-aj000721e.pdf>.

⁷⁹ *Id.* at ¶ 182.

⁸⁰ *Id.* at ¶ 182.

⁸¹ *Id.* at ¶ 189.

inter alia, where “the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.”⁸²

87. This rule does not exist only in theory. Where actual or apprehended bias has been found, international tribunals will apply the remedy of disqualification. The Appeals Chamber of the Special Court of Sierra Leone did so in 2004, in the case of *Sesay*, when it granted the defendant’s motion to disqualify Justice Geoffrey Robertson, the President of the Special Court, for comments he made in a 2002 book about the events in Sierra Leone.⁸³ Justice Robertson had accused the Revolutionary United Front, whose members included the defendant as well as two other accused that subsequently joined the motion, of committing war crimes. When the judge refused to voluntarily recuse himself, his fellow judges on the Appeals Chamber ordered him to do so, finding there was “no doubt” that “a reasonable man will apprehend bias, let alone an accused person.”⁸⁴

88. The precedent of *Sesay* applies *a fortiori* to the remarks of Navi Pillay. In both cases, a judge or fact-finder required to be impartial made statements prior to their sitting that gave the appearance of bias. Navi Pillay’s case is more severe, however, both because of the substantially higher number of comments expressed over many years and because those comments directly relate to the specific incidents at issue in this COI.

89. National legal systems equally apply the remedy of recusal in cases of real or apprehended bias, as surveyed by the ICTY Appeals Chamber in *Furundzija*.⁸⁵ For example, U.S. federal law provides that “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”⁸⁶ The U.S. Supreme Court has ruled that what matters here “is not the reality of bias or prejudice but its appearance,” and that a judge should recuse him or herself when it would appear to a reasonable person, knowing all the relevant facts, that a judge’s impartiality might reasonably be questioned.

⁸² *Id.* at ¶ 189.

⁸³ *Prosecutor v. Sesay*, Decision on Defence Motion Seeking the Disqualification of Justice Robertson from the Appeals Chamber, ¶ 16 (Sierra Leone Appeals Chamber, March 13, 2004), <https://sierralii.org/sl/judgment/special-court-sierra-leone/2004/1>.

⁸⁴ *Id.* at ¶ 15.

⁸⁵ See *Furundzija*, *supra* note 73 at ¶¶ 183-188.

⁸⁶ Disqualification of justice, judge, or magistrate judge, 28 U.S.C. 455(a).

Liteky v. United States, 510 U.S. 540, 548 (1994). “[T]he appearance of partiality is as dangerous as the fact of it.” *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1980).

90. Ultimately, as the courts in the U.S. have determined, “[T]he judge’s actual state of mind, purity of heart, incorruptibility, or lack of partiality are not the issue. . . . The standard is purely objective. The inquiry is limited to outward manifestations and reasonable inferences drawn therefrom. In applying the test, the initial inquiry is whether a reasonable factual basis exists for calling the judge’s impartiality into question.” *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993).

D. Navi Pillay Must be Disqualified for Actual or Apparent Bias

91. Applying these rules to our case, Navi Pillay must be disqualified both on grounds of actual and apparent bias.

92. Under Resolution S-30/1, the mandate of the COI, inter alia, is to investigate “systematic discrimination and repression based on national, ethnic, racial or religious identity” in the “Occupied Palestinian Territory, including East Jerusalem and in Israel.” Thus, as Chair of the COI, Navi Pillay is currently leading an investigation into allegations that Israel commits racial discrimination against the Palestinians. However, she has already determined that Israel is guilty of apartheid and discrimination, as she made patently clear in her 29 November 2017 UN speech, and in the public letters that she signed in June 2020 and June 2021, including after the COI was already established. Accordingly, Ms. Pillay cannot lead an impartial investigation on this issue.

93. The COI mandate is also to investigate “all alleged violations of international humanitarian law and alleged violations and abuses of international human rights law leading up to and since 13 April 2021.” The time frame here is completely open-ended and arguably includes all of the past confrontations on which Navi Pillay has already publicly pronounced her view that Israel committed international law violations and possible war crimes. Accordingly, she cannot lead an impartial investigation with regard to any of those incidents.

94. Furthermore, in her June 2021 letter to U.S. President Joe Biden, Navi Pillay determined in advance that Israeli police had engaged in “aggressive actions” during the Temple Mount confrontations, and that Israel’s policies of “discrimination and systemic oppression” were

responsible for the May 2021 Israel-Hamas conflict, all of which constitute incidents that will be examined by the COI.

95. The June 2021 letter is particularly significant because it takes a position on matters within this COI's mandate and was published just a few weeks before Pillay was appointed. In a case similar to this in 2009, many questioned the impartiality of Prof. Christine Chinkin, a member of the UNHRC's Goldstone Commission, because she had signed a letter taking a legal position on the very alleged crimes she was charged with investigating. In her joint letter, Chinkin not only determined that Israel's actions "amount to aggression, not self-defence," but also that they were "contrary to international humanitarian and human rights law," and constituted "prima facie war crimes."⁸⁷

Former Chair of UN Human Rights Committee Criticized Goldstone Inquiry's Christine Chinkin for Failing to Recuse Herself For Bias

96. Commenting on the controversy, the late Sir Nigel Rodley, former Chair of the UN Human Rights Committee, criticized Chinkin's failure to recuse herself, saying "there was regrettably a basis for questioning the appearance of bias" as a result of her public letter. "If such a statement were made by a member of a standing fact-finding body," wrote Rodley, "it could be expected that such a member would move to recuse himself or herself from the hearing of the issues." Chinkin was also criticized by a larger group of academics from Chatham House, which in diplomatic but unmistakable language, rebuked her by emphasizing that "fact-finding missions should avoid any perception of bias," that its members should not "act in a way that would damage their impartiality," and should "therefore exercise great care when writing or speaking on international disputes that could potentially be subject to an investigation."⁸⁸

Scholar's Criticism of Chinkin's Bias in 2009 Applies A Fortiori to Pillay

97. In a 2011 article titled *International Judges and Experts' Impartiality and the Problem of Past Declarations*, Professor Frédéric Mégret of McGill University law school criticized the UN for sometimes selecting individuals "on purpose and not accidentally because of certain

⁸⁷ *UN expert on Chinkin: 'a basis for questioning the appearance of bias,'* UN WATCH (March 27, 2014), <https://unwatch.org/un-expert-on-chinkin-a-basis-for-questioning-the-appearance-of-bias/>.

⁸⁸ *Report of an Expert Meeting which Assessed Procedural Criticisms made of the UN Fact-Finding Mission on the Gaza Conflict (The Goldstone Report)*, CHATHAM HOUSE (November 27, 2009), <https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/il271109summary.pdf>.

known beliefs.”⁸⁹ He cited the Chinkin case as an example of a UN fact-finder whose statement had gone beyond the “red line” for partiality. Among other things, Mégret pointed out that the statement evidenced bias because it concerned the specific events at issue and was extremely recent—“the utterance in question occurred mere weeks before she was appointed, leaving little space to imagine how she could envisage the issue any differently so little time afterwards.”⁹⁰

98. Mégret suggested that Chinkin should have recused herself:

It seems to defy common sense that those about who suspicions linger maintain their candidacies once these suspicions have emerged. There should be cases where competence is overshadowed by specific declarations. In such cases, to give the person in question the benefit of the doubt if s/he claims to be nonetheless impartial is to ask too much of the public. Recusal should remain the preferred route to avoiding partiality.⁹¹

99. The same applies here, *a fortiori*. Navi Pillay’s June 2021 statement about the events in question, including her accusing Israel of “discrimination and systemic oppression” and holding Israel responsible for the May 2021 violence—mere weeks before she was appointed, as Professor Mégret noted concerning Chinkin—demonstrates bias, and certainly the appearance of bias, with regard to the issues covered by her mandate. This alone constitutes sufficient grounds for Pillay to recuse herself or be removed. The case of Pillay is far more severe than that of Chinkin, however, because Pillay has made numerous additional harsh statements against Israel that relate to the object of the inquiry.

100. For example, there is no doubt that Pillay’s numerous prior statements during various Hamas-Israel clashes—in which she systematically presumed Israel’s actions as guilty—give the appearance of bias, and raise serious questions as to her competence to lead this investigation impartially. There is legitimate reason to believe that a reasonable observer, properly informed, would reasonably apprehend bias, a fear that can be held objectively justified.

101. At least since 2008, Navi Pillay has repeatedly accused Israel of international law violations and war crimes in its past confrontations with Hamas. In one 2010 statement, she accused

⁸⁹ Frédéric Mégret, *International Judges and Experts’ Impartiality and the Problem of Past Declarations*, 10 *Law & Prac. Int’l Cts. & Tribunals* 31 (2011) 31-66, at p. 64.

⁹⁰ *Id.* at pp. 50-54.

⁹¹ *Id.* at p. 64.

Israel of “perpetual disdain” for international law, language she never used against any other country. Pillay has persistently justified the UNHRC’s notorious Agenda Item 7, which singles out Israel for discriminatory treatment. She took this position despite criticism of the agenda item by her predecessor, by UN Secretary-General Ban Ki-moon, and by numerous democracies. Navi Pillay played a key role in defending and organizing Durban II, despite the antisemitism that tainted the process since 2001, causing so many democracies to pull out. Pillay declared Israel to be a racist “apartheid” state as recently as 2020. The volume, tone and severity of her statements against Israel over the last fourteen years, including as recently as this summer, would lead a reasonable observer, properly informed, to reasonably apprehend bias on the part of Navi Pillay in all matters relating to the conflict between Israel and the Iranian-backed Hamas.

E. Schabas Resignation is Precedent for Recusal of Biased UNHRC Fact-Finder

102. There is precedent for removing a member of a commission of inquiry at the UNHRC. In August 2014, the Council appointed Professor William Schabas to chair its Commission of Inquiry into the summer 2014 Hamas-Israel war. Schabas was demonstrably biased, having made numerous statements over many years accusing Israel of international law violations, including with regard to the very summer 2014 conflict which he was mandated to investigate. He was on record calling for Israel’s leaders to be prosecuted in the International Criminal Court.

103. In addition, Schabas had a conflict of interest because he had done paid legal work for the Palestine Liberation Organization (“PLO”), which he had not disclosed during the application process.⁹²

104. As in the current case, in September 2014, United Nations Watch filed a petition for William Schabas to recuse himself due to strong evidence of bias or the appearance thereof.⁹³ In January 2015, the State of Israel requested the removal of Professor Schabas due to his conflict of interest as a lawyer for the PLO. A few days later, Professor Schabas resigned of his own accord,

⁹² @HillelNeuer, TWITTER (February 3, 2015, 7:08 PM), <https://twitter.com/HillelNeuer/status/562658961728364544>.

⁹³ *Request for William Schabas to Recuse Himself for Bias or the Appearance Thereof*, UN WATCH (September, 4, 2014), <https://unwatch.org/wp-content/uploads/2009/12/UN-WATCH-REQUEST-TO-DISQUALIFY-WILLIAM-SCHABAS-FROM-UN-COI-ON-GAZA-4-SEPTEMBER-2014.pdf>.

citing the conflict of interest. In his resignation letter, Schabas noted that the UNHRC Bureau had informed him of its intention to “examine the complaint [by Israel] and request a legal opinion from United Nations Headquarters in New York.”⁹⁴

105. In his resignation letter, Schabas sought to defend his long record of prior partisan statements, arguing that they were public, and that he was never asked to “provide any details” about them:

In early August 2014, when I was asked if I would accept a nomination to the Commission of Inquiry, I was not requested to provide any details on any of my past statements and other activities concerning Palestine and Israel. Of course, my views on Israel and Palestine as well as on many other issues were well known and very public. My curriculum vitae was readily available indicating public lectures and writings on the subject. My opinions were frequently aired on my blog.⁹⁵

106. In accepting Schabas’ resignation, the President emphasized the importance of avoiding “even the appearance of a conflict of interest” for purposes of “preserving the integrity of the process.”⁹⁶ The same ought to apply here. Consistent with the precedents cited above, the same reasoning by the HRC President applies to a case of actual or apparent bias. Navi Pillay must be removed.

107. Significantly, it was in wake of the Schabas case that the Office of the High Commissioner published its Guide for COIs, in which it affirmed application of the rules and principles cited herein to UNHRC investigative mechanisms, concerning actual or apparent bias.

108. Specifically, the OHCHR Guide endorses the UN Declaration on Fact-Finding (Annex I, p. 106) and includes Model Rules requiring COI members to declare that they will carry out their work “impartially” (Annex II, Rule 3, p. 108). Furthermore, it puts “independence and impartiality” at the top of the list of qualifications that must “always guide the selection of members” (p. 19). This is defined as having “a proven record of independence and impartiality,” in addition to

⁹⁴ *Letter of Resignation from William Schabas to Joachim Rucker, UNHRC President* (February 2, 2015), <https://unwatch.org/wp-content/uploads/2021/11/Letter-of-resignation-from-Prof-Schabas-tp-President-2-2-15.pdf>.

⁹⁵ *Id.*

⁹⁶ *Press Statement on the resignation of the Chairperson of the Commission of Inquiry on the 2014 Gaza Conflict*, UNHRC (February 3, 2015), <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=15535&LangID=E>.

ensuring that “prior public statements” do not affect members’ “independence or impartiality, or create perceptions of bias.”⁹⁷ Thus, the OHCHR Guide effectively adopts the apparent bias rule cited above.

109. In light of Navi Pillay’s numerous statements summarized herein, she certainly does not have “a proven record of independence and impartiality” when it comes to Israel, as required by the OHCHR Guide. At the very least, Pillay’s prior statements “create perceptions of bias.” Accordingly, OHCHR’s own rules for COI members require the disqualification of Navi Pillay.

110. Moreover, no longer can a member of a COI claim, as Schabas did, that “I was not requested to provide any details on any of my past statements and other activities concerning Palestine and Israel.” The post-Schabas Guide imposes a duty on candidates to “disclose any information that may lead to questions being raised about their independence, impartiality and integrity...” (p. 21). Regrettably, while applications for UNHRC Special Procedure mandates are public, applications for COI members are not. Yet in light of the foregoing disclosure rule and the evidence herein of bias on the part of Navi Pillay, it is imperative that Pillay’s application and any required disclosures be made public.

⁹⁷ *Commissions of Inquiry and Fact-Finding Missions on International Human Rights Law: Guidance and Practice*, supra note 64.

CONCLUSION

111. Wherefore, for the reasons stated above, Petitioner respectfully urges Navi Pillay to immediately and permanently withdraw from this Commission of Inquiry.

112. Petitioner further requests that the HRC President:

- (a) Make public the application and communications of Navi Pillay in connection with her request to serve as a member of this COI, including any required disclosures she made regarding information that raise questions about her impartiality, including prior public statements that show the opposite of a proven record of impartiality, relate to the very object of the inquiry and/or create perceptions of bias;
- (b) Request a legal opinion from United Nations Headquarters concerning the matter raised herein, particularly to determine whether in light of her numerous recent and past statements Navi Pillay meets the standards for impartiality necessary for UNHRC fact-finding missions; and
- (c) Remove Navi Pillay from the COI, in the event that she fails to disqualify herself and step down.

Dated: 14 February 2022

Respectfully submitted,

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