



Russell Tribunal on Palestine

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Suggested issue for consideration by the UN Committee on the Elimination of Racial Discrimination (CERD) in its review of Israel's 14th to 16th periodic reports to the Committee

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The Russell Tribunal on Palestine is pleased to submit this report to the UN Committee on the Elimination of Racial Discrimination (CERD) for consideration in its appraisal of Israel's combined 14th, 15th and 16th periodic reports to the Committee (25 October 2010) and its upcoming review of Israel in February 2012.

The Russell Tribunal on Palestine is an international citizen-based Tribunal of conscience created in response to the demands of civil society (NGOs, charities, unions, faith-based organisations) to inform and mobilise public opinion and relevant institutions and decision-makers in light of continuing failures to uphold international law in the context of the Israeli-Palestinian conflict.

The Tribunal proceedings, imbued with the same spirit and espousing the same rules as those inherited from the Russell Tribunal on Vietnam (1966-1967), comprise a number of sessions examining diverse elements of the situation in Israel/Palestine within the governing framework of international law. The proceedings of the third session of the Tribunal were heard in Cape Town, South Africa, in November 2011 and addressed the question of whether Israeli policy and practices vis-à-vis the Palestinian people may entail breaches of the prohibition of apartheid under international law. For this session, the Tribunal consisted of a panel of nine jurors, a combination of judges, lawyers and respected public figures.

Theme: Apartheid (Article 3)

While the laws and policies referred to below are pertinent to a range of provisions of the International Convention on the Elimination of all forms of Racial Discrimination, in keeping with the focus of the Cape Town session of the Russell Tribunal on Palestine, the present report addresses specifically the matter of apartheid as a institutionalised regime of systematic discrimination, as prohibited by Article 3 of the Convention and further defined in subsequent international legal treaties. The purpose of this report is not to document individual instances or forms of discrimination by the state of Israel, but rather to demonstrate their cumulative effect as part of an institutionalised system of racial discrimination, as determined by the Tribunal following its Cape Town hearings.

Israel's combined periodic reports dedicate a solitary paragraph to Article 3:

Apartheid has always been regarded as abhorrent by the Israeli Government and society, and continues to be so regarded. Apartheid has never been practiced in Israel. There exist in Israel no restrictions of any kind as to place of residence nor is there any segregation of any kind.

The findings of the Russell Tribunal on Palestine suggest multiple grounds to refute the claim that no apartheid or segregation practices exist under Israeli jurisdiction. The Tribunal made findings in respect of Israel's policies and practices by reference to three core elements of the definition of apartheid as drawn from its common elements under the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the International Convention on the Suppression and Punishment of the Crime of Apartheid (the Apartheid Convention) and the Rome Statute of the International Criminal Court:

- the presence of two distinct racial groups
- the commission of acts defined as 'inhuman acts' of apartheid
- the institutionalised nature of domination by one group over another

Distinct Racial Groups

While the Committee is consistently clear on the fact that ICERD governs Israel's treatment of the Palestinians both inside Israel itself and in the occupied Palestinian territory, it is necessary to address the common argument that Israeli Jews and Palestinian Arabs are not distinct racial groups and as such can not be situated in an apartheid rubric.

Palestinians identify themselves as a group of people who share a common origin, history and culture, as well as social and political structures and networks that have ensured a continuing bond despite forced displacement and fragmentation. The entire Palestinian people is a single group, regardless of current geographic location or constructed legal status. All Palestinians—refugees in exile; those under military occupation in the West Bank (including Jerusalem) and Gaza Strip; those who have remained in the territory that is now Israel—identify themselves as indigenous to

Palestine, where they lived and held citizenship until the end of the British Mandate in 1948. They are considered a single people who are collectively entitled to self-determination.

Under Israeli law and policy, group membership is an official category imposed and monitored by the state, not simply a voluntary identity. Israeli Jews are a group unified by law, sharing the same legal status wherever they reside, while Palestinian Arabs are a separate group, sub-divided into citizens, occupied residents (whose residence rights may be lost if they leave the territory in which they live), and refugees who do not have the right to return to any part of historic Palestine. No such restrictions apply to Jews: in fact, those who are not citizens already can acquire Israeli citizenship automatically by relocating to Israel or the occupied Palestinian territory. The law that enables this, Israel's 1950 Law of Return, codifies the descent-based aspect of Jewish identity. Palestinians who hold Israeli citizenship are not defined in the same legal category as Jewish citizens, who enjoy the further privileges of 'Jewish nationality'. The Jewish nation considers itself a distinct group with a unique claim as the historical indigenous people of Palestine.

The existence of 'racial groups' is fundamental to the question of apartheid. The situation in Israel/Palestine is not defined in terms of traditional conceptions of 'race' as it was in apartheid South Africa. On the basis of expert evidence heard during the Cape Town session, the Tribunal concluded that international law (including as applied in ICERD) gives a broad meaning to the term 'racial' as including elements of ethnic and national origin, and therefore that the definition of 'racial group' is a sociological rather than biological one. Perceptions (including self-perceptions and external perceptions) of Israeli Jewish identity and Palestinian identity illustrate that Israeli Jews and Palestinian Arabs can readily be defined as distinct racial groups for the purposes of the prohibition of apartheid under international law. From the evidence received, it was clear to the jury that two distinct, identifiable groups exist in a very practical sense and that the legal definition of 'racial group' applies to all circumstances in which the Israeli authorities have jurisdiction over Palestinians.

Constitutive "acts of apartheid"

The Tribunal's application of the constitutive acts of apartheid to Israel's practices followed the headings and structure of Article 2 of the Apartheid Convention as the most comprehensive elucidation of the definition of apartheid, itself prohibited as a jus cogens norm of customary international law. The Tribunal heard abundant evidence of practices that constitute the enumerated 'inhuman acts' set out below perpetrated against the Palestinian people by the Israeli authorities.

Denial to a member or members of a racial group or groups the right to life and liberty of person:

By murder of members of a racial group or groups

The Tribunal found evidence of widespread deprivation of Palestinian life through military operations and incursions, a formal policy of 'targeted killings', and the use of lethal force against demonstrations. Examples of large-scale Israeli military

operations in which Palestinian civilians have been targeted and disproportionately killed include Operation ‘Defensive Shield’ (2002), Operation ‘Determined Path’ (2002), Operation ‘Rainbow’ (2004), Operation ‘Summer Rains’ (2006), Operation ‘Autumn Clouds’ (2006), Operation ‘Hot Winter’ (2008), and Operation ‘Cast Lead’ (2008-9).

The use of lethal force against Palestinian demonstrations is a frequent factor of life in villages such as Bil’in and Ni’lin. Ongoing daily military incursions throughout the occupied Palestinian territory involve low but consistent Palestinian casualty figures. Lethal Israeli incursions in the last 10 years have resulted in the killing of some 6,418 Palestinians by Israeli security forces.¹

Palestinians living within Israel have also been a target of lethal force as when 13 peaceful protestors were killed by Israeli police in October 2000.

Through an official state policy of “targeted killings” - which constitute extrajudicial executions – the Israeli military targets Palestinian activists and members of armed groups, with the aim of suffocating any possible resistance to Israel’s rule. These killings affect not only the “targets”, but large numbers of civilians including family members and civilians. Hundreds of Palestinian civilian fatalities have resulted from air strikes and targeted killing operations by Israeli commandos.

By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment

The Tribunal heard evidence of the substantial history and continuing practices of torture and ill-treatment of Palestinian prisoners in Israeli prisons. Incarcerated Palestinians are categorised as “security prisoners” and subject to a specific regime of interrogation by the Israeli Security Agency, which often uses methods that amount to ill-treatment and torture. Jewish-Israeli prisoners, regardless of their crimes, are generally not categorised as security prisoners and are not subject to analogous interrogation or ill-treatment.

The Tribunal also noted forms of cruel, inhuman and degrading treatment through: movement restrictions that subject Palestinians to humiliation by Israeli soldiers and Palestinian women being forced to give birth at checkpoints; house demolitions as a form of inhuman and degrading treatment with severe psychological consequences for men, women and children.

The Tribunal therefore found that Palestinians are subjected to torture and ill-treatment in the context of widespread deprivation of liberty through policies of arbitrary arrest and administrative detention without charge. The Tribunal found that such measures frequently go beyond what is reasonably justified by security concerns and amount to a form of domination over the Palestinians as a group.

By arbitrary arrest and illegal imprisonment of the members of a racial group or groups

¹ See statistics provided by B’Tselem <http://old.btselem.org/statistics/english/Casualties.asp>

Palestinians in the occupied territory are routinely subject to arbitrary arrest and detention (including lengthy periods of pre-trial detention without access to legal assistance) and fall under the jurisdiction of a military court system that falls far short of international standards for fair trial. An entirely different legal system applies to Israeli Jews, who are subject to Israeli civil law and civil courts, with significantly enhanced procedural and substantive rights from arrest through to sentencing.

Israel's widespread practice of administrative detention without charge or trial, involves detention periods of up to 6 months at a time which can be, and often are, renewed and prolonged indefinitely, affecting Palestinian adults and minors, whereas not applied to Israeli Jews.

Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part

The Tribunal held that although Israeli policies of blockade and collective punishment in the Gaza Strip in particular and consequent restrictions on vital supplies of food and medicine entail grave consequences for Palestinian life and health, they do not meet the threshold required by this provision of *intent* to cause the physical destruction of the Palestinian people.

Instead, living conditions imposed are calculated to cause the displacement of the Palestinian in whole or in part from Israeli jurisdiction.

Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognised trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association

The Israeli legal system establishes an enormous gap in entitlements and access to services between Israeli Jews and Palestinian Arabs, with legislation typically designed to favour Israeli Jews and keep Palestinian Arabs in a situation of inferiority. This can be seen through illustrative examples.

Several Israeli laws prevent Palestinian refugees from returning and recovering their land, thus violating their right to enter and leave the country, freedom of movement and residency and the right to a nationality. In Israel, the unequal distribution of resources for education and cultural activities for Palestinians, restrictions on family reunification for spouses with residence permits on different sides of the Green Line and the lack of representation in the civil service are violations of rights that feed in to Israel's prevention of Palestinian development and participation in political and social life.

Palestinians who work in Israel have enormous difficulties in joining Israeli trade unions or forming their own trade unions in Israel. Further rights violations preventing Palestinian development and political participation include privileges afforded to Jews in the sphere and land ownership, house demolitions and building restrictions; as well as pervasive restrictions on the freedom of opinion and expression through the closure of organisations, prohibition on public gatherings and demonstrations and media censorship by the Israeli authorities.

In summary, Palestinians are subjected to systematic human rights violations that preclude their development and prevent the Palestinians as a group from participating in political, economic, social and cultural life. Palestinian refugees who remain displaced are also victims of apartheid by virtue of the ongoing denial of their right to return to their homes, as well as by laws that remove their property and citizenship rights. Policies of forced population transfer remain widespread, particularly in the occupied Palestinian territory. Civil and political rights of Palestinians including rights to movement, residence, freedom of expression and association are severely curtailed. Palestinian socio-economic rights are also adversely affected by discriminatory Israeli policies in the spheres of education, health and housing.

Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof

The Israeli Jewish and Palestinian populations are separated and allocated different physical spaces, with varying levels and quality of infrastructure, services and access to resources.

In Israel, Palestinians live in crowded spaces, often unable and unauthorised to refurbish or construct houses, living in villages that are sometimes not even officially recognised. Israeli Jews occupy larger expanses of land, guaranteed by Jewish national or government-managed agencies (Jewish National Fund, Israel Land Administration), which ensure that 93% of the land is reserved for exclusive Jewish use.

The landscape of the West Bank is dominated by exclusively Israeli-Jewish settlements and their associated regime of separate roads, closed military zones, checkpoints and the Wall which interrupt the contiguity of the territory, and ensure that Palestinian communities are confined to isolated enclaves. Israeli settlers enjoy the protection of the authorities and military, with their own laws and preferential access to scarce resources such as water, to the detriment of the Palestinian population. Palestinians are prohibited from entering settlements (unless with special permission, such as for workers), military zones and 'natural reserves', meaning that almost half of the West Bank territory is closed to its Palestinian population. These settlements are linked by roads for the exclusive use of Israeli Jews. Palestinian movement restricted and access to farm land is restricted by a pervasive permit system. Regarding access to beaches, for example, in Israel's defence it is commonly

stated that Israel does not segregate such access, in the way that South Africa designated certain beaches for whites and certain beaches for blacks or non-Europeans. Significantly, the Tribunal heard evidence describing how Palestinian access even to beaches along the Palestinian shore of the Dead Sea is prohibited by Israeli regulations. The expropriation of Palestinian property in general has continued since the creation of the State of Israel, and is underpinned by a series of laws and Military Orders that have stripped Palestinians of much of their land.

Accordingly, the evidence made it plain to the Tribunal that since 1948 the Israeli authorities have pursued concerted policies of colonisation and appropriation of Palestinian land. Israel has through its laws and practices divided the Israeli Jewish and Palestinian populations and allocated them different physical spaces, with varying levels and quality of infrastructure, services and access to resources. The end result is wholesale territorial fragmentation and a series of separate reserves and enclaves, with the two groups largely segregated. The Tribunal heard evidence to the effect that such a policy is formally described in Israel as *hafrada*, Hebrew for ‘separation’.

Exploitation of labour of the members of a racial group or groups, in particular by submitting them to forced labour

Although Israel has no exploitation system of labour of the Palestinian population, its policies have restructured the Palestinian workforce by suppressing Palestinian industry, establishing restrictions on exports and other measures that have increased the occupied Palestinian territory’s dependence on Israel and - now more than ever before - on international aid. Until the mid-1980s, Israel intensively used Palestinian labour for work connected to agriculture and construction, with appalling employment conditions and without any of the benefits enjoyed by Israeli Jewish workers. But since 1993, the number of Palestinian workers in Israel has plummeted from over 100,000 to just a few hundred. And since the construction of the Wall, there are very few Palestinian workers from the occupied territory permitted to work in Israel. Since the January 2006 elections in the Gaza Strip, no workers from this area whatsoever have access to Israel.

Persecution of organisations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid

Israel persecutes and imposes restrictions on those who oppose the regime of segregation, who condemn human rights violations or who criticise the actions of the Israeli military. It also suppresses demonstrations in the occupied Palestinian territory, both by organisations and individuals, against the Wall or the discriminatory administration of land, water and infrastructure. Such persecution manifests itself through the closure of organisations, travel bans and arbitrary detention of political and human rights activists and related restrictions on freedom of expression and thought.

A systematic and institutionalized regime of racial domination

The inhuman acts listed above do not occur in random or isolated instances. They are

sufficiently widespread, integrated and complementary to be described as systematic. They are also sufficiently rooted in law, public policy and formal institutions to be described as institutionalised.

In the Israeli legal system, preferential status is afforded to Jews over non-Jews through its laws on citizenship and Jewish nationality, the latter of which has created a group privileged in most spheres of public life, including residency rights, land ownership, urban planning, access to services and social, economic and cultural rights. The Tribunal heard expert evidence detailing the relationship between the State of Israel and the quasi-state Jewish national institutions (the Jewish Agency, World Zionist Organisation, and Jewish National Fund) that embed and formalise many of the material privileges granted exclusively to Israeli Jews. Regarding the West Bank, the Tribunal highlights the institutionalised separation and discrimination revealed by the existence of two entirely separate legal systems: Palestinians are subject to military law enforced by military courts that fall far short of international fair trial standards; Israeli Jews living in illegal settlements are subject to Israeli civil law and a civil court system. The result is a vastly different procedure and sentence for the same crime, committed in the same jurisdiction, by members of a different group. An apparatus of administrative control implemented through pervasive permit systems and bureaucratic restrictions adversely affects Palestinians throughout the territories under Israeli control. In contrast to the explicit and readily available South African apartheid legislation, the Tribunal draws attention to the obscurity and inaccessibility of many laws, military orders and regulations that underpin Israel's institutionalised regime of domination.

Conclusion

The Tribunal held accordingly that Israel subjects the Palestinian people to an institutionalised regime of domination amounting to apartheid as defined under international law and prohibited by, inter alia, Article 3 of ICERD. This discriminatory regime manifests in varying intensity and forms against different categories of Palestinians depending on their location.

The Palestinians living under colonial military rule in the occupied Palestinian territory are subject to a particularly aggravated form of apartheid. Palestinian citizens of Israel, while entitled to vote, are not part of the Jewish nation as defined by Israeli law and are therefore excluded from the benefits of Jewish nationality and subject to systematic discrimination across the broad spectrum of recognised human rights. Irrespective of such differences, the Tribunal found grounds to conclude that Israel's rule over the Palestinian people under its jurisdiction, regardless of their zone of residence, collectively amounts to a single integrated regime of apartheid.

Suggested questions

- By adopting citizenship, residence and land use and allocation laws and policies based on demographic considerations and a discernible intent to separate the Jewish and Palestinian populations both in Israel and in the occupied territory, how does Israel support the claim that it presides over no

- segregation of any kind?
- By implementing two entirely separate legal systems and sets of institutions for two different racial groups in the West Bank, how does Israel comply with the prohibition of institutionalised discrimination amounting to apartheid?

Executive summary of Cape Town session: [Exec Summary](#).

Full findings: [Full](#).