

“May this tribunal prevent the crime of silence.”

Bertrand Russell, London, 13 November 1966

The Russell Tribunal on Palestine (RToP) is an international citizen-based Tribunal of conscience created in response to the demands of civil society (NGOs, charities, unions, faith-based organisations) to educate public opinion and put pressure on decision makers. In view of the failure to implement the Advisory Opinion of 9 July 2004 of the International Court of Justice (ICJ) concerning the construction by Israel of a wall in the Occupied Palestinian Territory, the failure to implement resolution ES-10/15 confirming the ICJ Opinion, adopted by the United Nations General Assembly on 20 July 2004, and the Gaza events of December 2008 – January 2009, committees were established in different countries to promote and sustain a citizen’s initiative in support of the rights of the Palestinian people.

The RToP is imbued with the same spirit and espouses the same rigorous rules as those inherited from the Tribunal on Vietnam (1966-1967), which was established by the eminent scholar and philosopher Bertrand Russell, and the second Russell Tribunal on Latin America (1974-1976), organized by the Lelio Basso International Foundation for the Rights and Liberation of Peoples. The tribunal has no legal status; it operates as a court of the people.

The Israeli Government was invited to present its case before the Tribunal but chose not to exercise this right and provided no answer to correspondence from the RToP.

Following the hearings and the deliberations of the jury, the findings of the third session of Russell Tribunal on Palestine, held in Cape Town on 5-6 November 2011, are summarised as follows.

### **I. Apartheid**

The Tribunal finds that Israel subjects the Palestinian people to an institutionalised regime of domination amounting to apartheid as defined under international law. 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 concludes that Israel's rule over the Palestinian people, wherever they reside, collectively amounts to a single integrated regime of apartheid. #

The state of Israel is legally obliged to respect the prohibition of apartheid contained in international law. In addition to being considered a crime against humanity, the practice of apartheid is universally prohibited. The Tribunal has considered Israel's rule over the Palestinian people under its jurisdiction in the light of the legal definition of apartheid. Apartheid is prohibited by international law because of the experience of apartheid in southern Africa, which had its own unique attributes. The legal definition of apartheid, however, applies to any situation anywhere in the world where the following three core elements exist: (i) that two distinct racial groups can be identified; (ii) that 'inhuman acts' are committed against the subordinate group; and (iii) that such acts are committed systematically in the context of an institutionalised regime of domination by one group over the other.

#### *Racial Groups*

The existence of 'racial groups' is fundamental to the question of apartheid. On the basis of expert evidence heard by the Tribunal, the jury concludes that international law 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 question. 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 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.

#### *Inhuman Acts of Apartheid*

Individual inhuman acts committed in the context of such a system are defined by international law as crimes of apartheid. The jury heard abundant evidence of practices that constitute 'inhuman acts' perpetrated against the Palestinian people by the Israeli authorities. These include:

- widespread deprivation of Palestinian life through military operations and incursions, a formal policy of 'targeted killings', and the use of lethal force against demonstrations.
- torture and ill-treatment of Palestinians in the context of widespread deprivation of liberty through policies of arbitrary arrest and administrative detention without charge. The jury finds 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.

- systematic human rights violations that preclude Palestinian development and prevent the Palestinians 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.

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’.

*A systematic and institutionalised regime*

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 (see list of relevant legislation and proposed legislation in the attached Annex). 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.

## **II. Persecution as a Crime against Humanity**

Much of the evidence heard by the Tribunal relating to the question of apartheid is also relevant to the separate crime against humanity of persecution, which can be considered in relation to Israeli practices under the principle of cumulative charges. Persecution involves the intentional and severe deprivation of fundamental rights of the members of an identifiable group in the context of a widespread and systematic attack against a civilian population. The Tribunal concludes that the evidence presented to it supports a finding of persecution in relation to the following acts:

- the siege and blockade of the Gaza Strip as a form of collective punishment of the civilian population;
- the targeting of civilians during large-scale military operations;
- the destruction of civilian homes not justified by military necessity;
- the adverse impact on the civilian population effected by the Wall and its associated regime in the West Bank, including East Jerusalem;
- the concerted campaign of forcible evacuation and demolition of unrecognised Bedouin villages in the Negev region of southern Israel.

## **III. Legal Consequences**

Apartheid and persecution are acts attributable to Israel and entail its international legal responsibility. Israel must cease its apartheid acts and its policies of persecution and offer appropriate assurances and guarantees of non-repetition. In addition, Israel must make full reparation for the injuries caused by its internationally wrongful acts, with regard to any damage, whether material or moral. With regard to reparation, Israel must compensate the Palestinians for the damage it has caused, with compensation to cover any financially assessable damage for loss of life, property, and loss of profits insofar as this can be established.

States and international organisations also have international responsibilities. They have a duty to cooperate bring Israel's apartheid acts and policies of persecution to an end, including by not rendering aid or assistance to Israel and not recognising the illegal situation arising from its acts. They must bring to an end Israel's infringements of international criminal law through the prosecution of international crimes, including the crimes of apartheid and persecution.

#### **IV. Recommendations**

In view of the above findings, the Russell Tribunal on Palestine resolutely urges all relevant parties to act in accordance with their legal obligations.

Accordingly, the Tribunal urges:

- The **state of Israel** to immediately dismantle its system of apartheid over the Palestinian people, to rescind all discriminatory laws and practices, and to cease forthwith acts of persecution against Palestinians;
- **All states** to cooperate to bring to an end the illegal situation arising from Israel's practices of apartheid and persecution. In light of the obligation not to render aid or assistance, all states must consider appropriate measures to exert sufficient pressure on Israel, including the imposition of sanctions, the severing of diplomatic relations collectively through international organisations, or in the absence of consensus, individually by breaking bilateral relations with Israel.
- The **Prosecutor of the International Criminal Court** to accept jurisdiction as requested by the Palestinian authorities in January 2009, and to initiate an investigation 'as expeditiously as possible' as called for by the 'Goldstone Report', into international crimes committed in Palestinian territory since 1 July 2002, including crimes of apartheid and persecution;
- **Palestine** to accede to the Rome Statute of the International Criminal Court;
- **Global civil society** (including all groups and individuals working diligently inside Israel and the occupied Palestinian territory to oppose the system of racial domination that exists therein) to replicate the spirit of solidarity that contributed to the end of apartheid in South Africa, including by making national parliaments aware of the findings of this Tribunal;
- The **UN General Assembly** to reconstitute the UN Special Committee against Apartheid, and to convene a special session to consider the question of apartheid against the Palestinian people. In this connection the Committee should compile a list of individuals, organisations, banks, companies, corporations, charities, and any other private or public bodies which assist Israel's apartheid regime with a view to taking appropriate measures;
- The **UN General Assembly** to request an advisory opinion from the International Court of Justice as called for by the current and former UN Special Rapporteurs for human rights to the occupied Palestinian territory, as well as by the Human Sciences Research Council of South Africa, to examine the nature of Israel's prolonged occupation and apartheid;
- The **UN Committee on the Elimination of Racial Discrimination** to address the issue of apartheid in its forthcoming review of Israel in February 2012;
- The **government of South Africa**, as the host country for the third session of the Russell Tribunal on Palestine, to ensure that no reprisals of any sort are taken by

the state of Israel against the witnesses that testified before the Tribunal.

The Tribunal welcomes the decision of the United Nations Education, Scientific and Cultural Organisation (UNESCO) to admit Palestine as a member. It deplores the punitive action taken by the United States towards the organisation, and urges all states and international organisations to actively support the right of the Palestinian people to self-determination. The Tribunal welcomes the solidarity and support of those countries that have consistently and steadfastly supported Palestinian human rights, and urges them to continue with the struggle for justice.

Acts:

1. Law of Return (1950)
2. Citizenship Law (1952)
3. Covenant between the Government of Israel and the Zionist Executive (1952)
4. World Zionist Organization-Jewish Agency (Status) Law (1952)
5. Keren Kayemeth le-Israel Law (1953)
6. Covenant with Zionist Executive (1954, 1971)
7. The Chief Rabbinate of Israel Law (1980)
8. The Flag and Emblem Law (1949)
9. The State Education Law (1953) and its 2000 amendment
10. Absentee Property Law (1950)
11. The Land Acquisition Law (1953)
12. Basic Law: Israel Lands [The People's Lands] (1960)
13. Agricultural Settlement Law (1967)
14. Basic Law: The Knesset (1958), Amendment 9 (1985)
15. The Israel Land Administration (ILA) Law (2009)
16. Amendment (2010) to The Land (Acquisition for Public Purposes) Ordinance (1943)
17. The Admissions Committees Law (2011)
18. The Israel Lands Law (Amendment No. 3) (2011)
19. The Economic Efficiency Law (Legislative Amendments for Implementing the Economic Plan)
20. Absorption of Discharged Soldiers Law (1994) [2008 amendment]
21. Absorption of Discharged Soldiers Law (1994) (Amendment No. 12) (2010)
22. Law (2011) to Amend to the Budgets Foundations Law, Amendment No. 40 (The "Nakba Law")
23. The Regional Councils Law (Date of General Elections) (1994) Special Amendment No. 6 (2009)
24. Duty of Disclosure for Recipients of Support from a Foreign Political Entity Law (2011) ("NGO Foreign Government Funding Law")

Bills:

1. Bill to amend the Citizenship Law (1952) imposing loyalty oath for persons seeking naturalization in Israel and Israeli citizens seeking first ID cards
2. Bill (2009) to amend the Basic Law: Human Dignity and Liberty and limit the judicial review powers of the Supreme Court to rule on matters of citizenship .
3. Bill Granting Preference in Civil Service Appointments to Former Soldiers
4. Bill Awarding Preferences in Services to Former Soldiers
5. Bill to Prohibit Imposing a Boycott (2010) ("Ban on BDS Bill")
6. The Associations (Amutot) Law (Amendment – Exceptions to the Registration and Activity of an Association) (2010) ("Universal Jurisdiction Bill")
7. Bill to Protect the Values of the State of Israel (Amendment Legislation) (2009) ("Jewish and Democratic State Bill")
8. The new cinema bill – would regulate and condition that any state funds would be given to film makers only after they have signed a loyalty declaration to Israel and its institutions as 'a Jewish state'.