

# Russell Tribunal on Palestine

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## Findings of the South African Session



**Are Israel's practices against the Palestinian People  
in breach of the prohibition on Apartheid  
under International law.**

## Third international session – Cape Town, 5-7 November 2011

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### INTRODUCTION

The Cape Town session of the Tribunal was organised by:

The International Organising Committee (IOC): Ken Coates (†), Pierre Galand, Stéphane Hessel, Marcel-Francis Kahn, Robert Kissous, François Maspero, Paulette Pierson-Mathy, Bernard Ravenel, Brahim Senouci, Gianni Tognoni, and the Committee's International Secretariat: Frank Barat and Virginie Vanhaeverbeke.


The South African National Support Committee.

The Algerian, Belgian, British, Catalan, Chilean, Danish, DRC, Dutch, French, German, Indian, Italian, Irish, Israeli/Palestinian, Luxembourg, Portuguese, Spanish, South African and Swiss support committees.

The International Organising Committee wishes to thank all the individuals, organisations and foundations that facilitated the convening of the third session of the Russell Tribunal on Palestine.

The findings of the jury following the Cape Town session of the Russell Tribunal on Palestine are set out below.


The Jury of the Russell Tribunal on Palestine (hereinafter "the RToP") consists of the following individuals:

- **Stéphane Hessel**, Ambassadeur of France, Former Diplomat
  - **Mairead Corrigan Maguire**, Nobel Peace Prize Laureate, 1976, Northern Ireland
  - **Ronnie Kasrils**, Writer and Activist, South Africa
  - **Michael Mansfield**, Barrister, President of the Haldane Society of Socialist Lawyers, UK
  - **Jose Antonio Martin Pallín**, Emeritus Judge, Chamber II, Supreme Court, Spain
  - **Cynthia McKinney**, Former member of the US congress, USA
  - **Yasmin Sooka**, Executive Director of the Foundation for Human Rights, South Africa
  - **Alice Walker**, Author and Activist, USA
  - **Aminata Traore**, Author and former Minister of Culture of Mali, Mali
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**The RToP adopted the following findings in the following order:**

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## **I. ESTABLISHMENT OF THE TRIBUNAL**

- 1.1 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 inform and mobilise 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.
  - 1.2 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.
  - 1.3 Its International Support Committee is composed of a Nobel Prize laureate, a former United Nations Secretary-General, a former United Nations Under-Secretary-General, two former heads of state, other persons who have held high political office, and many representatives of civil society, writers, journalists, poets, actors, film directors, scientists, professors, lawyers and judges.
  - 1.4 Public international law constitutes the legal frame of reference of the Russell Tribunal on Palestine.
  - 1.5 The Tribunal proceedings comprise a number of sessions. The first session of the RToP was held on 1, 2 and 3 March 2010 in Barcelona. It was hosted and supported by the Barcelona National Support Committee and the Office of the Mayor of Barcelona, under the honorary presidency of Stéphane Hessel, Ambassadeur de France. The second session of the RToP was held in London on 20, 21 and 22 November 2010. The findings of the Barcelona and London sessions may be consulted at the following address: [www.russelltribunalonpalestine.com/](http://www.russelltribunalonpalestine.com/).
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## **II. TERMS OF REFERENCE OF THE RToP AT THE CAPE TOWN SESSION**

- 2.1 The Tribunal takes it as an established fact that some aspects of Israel's behaviour have already been characterised as violations of international law by a number of international bodies, including the UN Security Council, General Assembly and the International Court of Justice (ICJ) (see paragraph 19 of the Barcelona findings). The questions submitted to the RToP by the International Organising Committee at the Cape Town session is whether Israel's policy and certain practices affecting the Palestinian population residing in Israeli territory and in the Palestinian territories occupied by Israel:
1. amount to a breach of the international legal prohibition of apartheid?
  2. constitute persecution as a crime against humanity?
- 2.2 In the event of affirmative findings, what legal consequences and obligations arise for Israel and third states?


## **III. PROCEDURE**

- 3.1 The Organising Committee submitted the aforementioned questions to experts who were selected on the basis of their familiarity with the facts of the situation. With a view to respecting the adversarial principle, the questions were also submitted to the Israeli authorities by letters dated 15<sup>th</sup> August 2011 addressed to President Shimon Peres. Furthermore, Israel was invited to send representatives to the Tribunal to express its point of view.

The experts submitted written reports to the Tribunal.

Israel did not reply to the letters sent. The RToP regrets its decision to remain silent. Written or oral replies on the part of Israel would have assisted the RToP in preparing its findings.

- 3.2 The written stage of the proceedings was followed by an oral stage, during which the Tribunal heard statements by experts and witnesses called by the Organising Committee. The following experts and witnesses were heard (in alphabetical order):

- **Jazi Abu Kaf**, member of the Regional Council for the 45 unrecognised Bedouin villages of the Naqab.
  - **Marianne Blume**, Classical philologist who worked in Gaza for 10 years.
  - **Allan Boesak**, South African Dutch Reformed Church Cleric, Politician and anti-apartheid activist.
  - **Luciana Coconi**, Author of several essays and articles about Human Rights and International conflicts in Afghanistan, Middle East, Western Sahara and others.
  - **Francois Dubuisson**, Professor of International Law at the Free University of Brussels. Author of several articles on legal aspects of the Israeli-Palestinian conflict.
  - **John Dugard**, South African Professor of International Law and Former Special Rapporteur on Human Rights in the Palestinian Occupied Territories.
  - **Max Du Plessis**, Associate Professor of International Law at the University of KwaZulu-Natal in Durban, South Africa.
  - **Ran Greenstein**, Associate Professor in the Department of Sociology at the University of the Witwatersrand in Johannesburg, South Africa.
  - **Jeff Halper**, founder and director of the Israeli Committee Against House Demolitions based in Jerusalem
  - **Mahmoud Hassan**, Palestinian Lawyer at Addameer, a prisoner support and human rights organisation based in Jerusalem.
  - **Shawqi Issa**, Human Rights lawyer and General Director of Ensan Center for Human Rights in Bethlehem.
  - **Shawan Jabarin**, Veteran Human Rights activists and director of Al-Haq
  - **Ingrid Jaradat**, Founder member of BADIL and on Executive Committee of the Boycott National Committee in Palestine.
  - **Jamal Juma'a**, Coordinator of the Palestinian organisation Stop the Wall.
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- **David Keane**, Lecturer in Law at Middlesex University, London
- **Mohammed Khatib**, member of the Bil'in Popular Committee Against the Wall and coordinator of the Popular Struggle Coordination Committee.
- **Rafaelle Maison**, Professor of Law at the University of Paris Sud. She works mostly in the fields of Public International Law and International Criminal Law.
- **Emily Schaeffer**, American-Israeli Human Right lawyer and Activist based in Tel-Aviv, Israel.
- **Joseph Schechla**, Coordinator of the Habitat International coalition's Housing and Land Rights network.
- **Raji Sourani**, Palestinian Human Rights Lawyer and Director of the Palestinian Centre Human Rights in Gaza.
- **Lea Tsemel**, Israeli lawyer and legal adviser and Board member of the Public Committee Against Torture in Israel.
- **Zwelinzima Vavi**, General Secretary of Congress of South African Trade Unions (COSATU) and Vice-Chairperson of the Millenium Labour Council.
- **Rafeef Ziadah**, Palestinian Human Rights Activist, trade unionist and spoken word artist.
- **Haneen Zoabi**, member of the Knesset representing the Balad party.

#### **IV. ADMISSIBILITY**

- 4.1 As indicated at 3.1 above, 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.
- 4.2 When considering the issues set out at 2.1 above, the Tribunal will refer to its previous findings of violations of international law by Israel (at the Barcelona session). Israel's absence from the present proceedings, here and in Barcelona and London, is not an impediment to the admissibility of witness evidence and expert reports on the violations. In passing judgment on violations of international law allegedly committed by a state that is not represented before the Tribunal, the Tribunal is not breaching the

rule of mutual agreement among the parties that is applicable before international judicial bodies responsible for the settlement of disputes between states (see the *Monetary Gold* and *East Timor* cases, *ICJ Reports*, 1954 and 1995). The work of this body is not comparable to that involved in a dispute referred, for instance, to the International Court of Justice: the facts presented as violations of international law committed by Israel in the Occupied Palestinian Territories have been characterized as such by the United Nations General Assembly and the Security Council, and also by a number of reports such as those of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories and the report of the United Nations Fact-Finding Mission on the Gaza Conflict, known as the Goldstone Report.

## **V. MERITS**

5.1 The Tribunal will address the question of apartheid (section **A** below); that is, whether Israel's rule over the Palestinian people may be characterized as a regime of apartheid, with its individual actions constituting crimes of apartheid; and that of persecution (section **B** below).

### **A. Apartheid**

5.2 The Tribunal has made findings below with regard to Israel's policies and practices vis-à-vis the Palestinian people with reference to the international legal prohibition of apartheid under the following headings:

1. The definition and status of apartheid under international law
2. Application of the definition of apartheid to Israeli policies and practices vis-à-vis the Palestinian people

#### **(1) THE DEFINITION AND STATUS OF APARTHEID UNDER INTERNATIONAL LAW**

##### **i - The definition of apartheid**

5.3 *Apartheid* is the Afrikaans word for 'separateness' or 'separate development' that was used to designate the official state policy of racial discrimination implemented in South Africa between 1948 and 1994. Indeed, 'apartheid' came to be prohibited by international law because of the experience of apartheid in southern Africa, which had its own unique attributes. However, the legal definition of apartheid 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.



- 5.4 Apartheid acquired the above specific legal meaning in international law by virtue of treaties enacted from the 1960s onwards. The *crime* of apartheid involves individual inhuman acts committed *in the context of the abovementioned institutionalised regime*. As the question to be addressed by the Tribunal is whether Israeli policies and practices affecting the Palestinian population may be characterised under international law as apartheid, the Tribunal must first lay out in more detail the bases and content of the legal definition.<sup>1</sup>

*(a) International Legal Treaties on apartheid*

- 5.5 The definition of apartheid applied by the Tribunal is based primarily on the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid (the ‘Apartheid Convention’) as the most comprehensive articulation of the meaning of apartheid under international law, but also draws on the International Convention for the Elimination of all forms of Racial Discrimination (ICERD) and the Rome Statute of the International Criminal Court (ICC).

*ICERD*

- 5.6 Adopted in 1965, ICERD was the first international legal instrument that expressly prohibited apartheid, with Article 3 specifying the obligation of States parties to the Convention to oppose such a regime:

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

*Apartheid Convention 1973*

- 5.7 ICERD provides no precise definition of apartheid, however. The Apartheid Convention was adopted in 1973 in order to make it possible “to take more effective measures at the international and national levels with a view to the suppression and punishment of the crime of apartheid.” The Apartheid Convention refers directly to Article 3 of ICERD in its preamble and is intended to complement the requirements of Article 3 of ICERD. Article 1 of the Apartheid Convention builds on earlier resolutions of the UN General Assembly by declaring apartheid to be a crime against humanity.<sup>2</sup> Notably, Israel voted with the majority in favour of that resolution.<sup>3</sup> As a

<sup>1</sup> The following section draws primarily on the expert testimony of Max du Plessis.

<sup>2</sup> See UNGA Resolution 2202 A (XXI) B, 16 December 1966.

<sup>3</sup> Ibid. Only South Africa voted against it. The vote was passed by 99 votes to 1.

result, the Convention obliges States parties to adopt legislative measures to suppress, discourage and punish the crime of apartheid and makes the offence an international crime which is subject to universal jurisdiction.<sup>4</sup>

- 5.8 Article 2 of the Apartheid Convention provides a clear definition of what constitutes apartheid for the purposes of international law. It defines apartheid as “inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them”, and goes on to enumerate a list of such inhuman acts.

### *ICC Statute*

- 5.9 The formulation used in Article 7(2)(h) of the Rome Statute of the International Criminal Court, adopted in 1998, is very similar, defining apartheid as inhumane acts “committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group and committed with the intention of maintaining that regime.”

- 5.10 The following sections address the **three core elements** of the definition of apartheid: the requirement of two distinct racial groups; the commission of acts listed as ‘inhuman acts’ of apartheid; and the institutionalised nature of the domination.

### *(b) Distinct racial groups*

- 5.11 The definition of apartheid requires domination by one racial group over another, thus requiring two distinct racial groups. The Apartheid Convention itself does not define a racial group. ICERD, however, gives a broad construction to the meaning of the term ‘racial’, with racial discrimination including discrimination based on race, colour, descent, or national or ethnic origin. The meaning of a racial group for the purposes of ICERD is established as a broad and practical one. In essence, it means an identifiable group. *If a group identifies itself as such, and is identified as such by others, for example through discriminatory practices, then it comes under the protection of the Convention.*<sup>5</sup>

- 5.12 The concept of ‘race’ has long been shown as a social construct, not a biological category. International human rights law allows wider scope for the meaning of race

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<sup>4</sup> Elsewhere, in the realm of international humanitarian law (the law of armed conflict), apartheid was included as a grave breach in the 1977 Additional Protocol I to the Geneva Conventions. Other treaties of international human rights law have also acknowledged and reinforced the prohibition of apartheid, including the 1979 Convention on the Elimination of Discrimination Against Women (CEDAW) which emphasises that “the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women.”

<sup>5</sup> Testimony of Dr. David Keane

than traditional ‘black vs. white’ parameters, and the UN Committee on the Elimination of all forms of Racial Discrimination has included groups that would not be considered ‘races’ in that traditional sense, including caste groups in South Asia, non-citizen groups such as migrant workers, and nomadic peoples. As testimony to the Tribunal by experts on the question of race in international law has shown, the determination of a racial group under international law is ultimately not a scientific question, but a practical one.<sup>6</sup>

*(c) Constitutive acts of apartheid*

5.13 Article 2 of the Apartheid Convention and Article 7(2)(j) of the Rome Statute both refer to inhuman acts that may constitute apartheid when committed in a context of racial domination, while Article 5 of ICERD enumerates a list of rights which must be guaranteed to all humans free from racial discrimination. The Tribunal draws principally on Article 2 of the Apartheid Convention as the primary guiding framework regarding the definition of apartheid. The following “inhuman acts” are established in Article 2 as constitutive of apartheid:

“For the purpose of the present Convention, the term ‘the crime of apartheid’, which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

- Denial to a member or members of a racial group or groups of the right to life and liberty of person:
  - By murder of members of a racial group or groups;
  - 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;
  - By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;
- Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part ;
- 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

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<sup>6</sup> Testimonies of Dr. David Keane and Ran Greenstein.

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 recognized 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;

- 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;
- Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;
- Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.”

5.14 The language of the Apartheid Convention indicates that this list is illustrative rather than exhaustive, and that not each and every inhuman act described is necessary for a regime of apartheid to exist. A broader potential range of policies is implied by the qualifier of “*similar* policies and practices ... as practiced in southern Africa” (emphasis added). *The “shall include...” wording suggests that not all practices cited in Article 2 are required for a positive finding of apartheid.*<sup>7</sup> That a narrower range of policies could constitute a case of apartheid is demonstrated by the history of apartheid South Africa, where, for example, Article 2(b) regarding the intended “physical destruction” of a group was not applicable. South Africa’s Truth and Reconciliation Commission concluded in this regard that the apartheid regime did not sustain an intentional policy to *physically destroy* the black population. Such conclusions on individual practices do not preclude an overall finding of a comprehensive system that has not only the effect but the purpose of maintaining racial domination by one racial group over the other.

*(d) A systematic and institutionalised regime*

5.15 From both the Apartheid Convention and Rome Statute formulations, it is clear that the essence of the definition of apartheid is the systematic and institutionalised character of the discrimination involved. This systematic element distinguishes the practice of apartheid from other forms of prohibited discrimination. Thus, for the inhuman acts listed above to constitute a regime of apartheid, it is not enough that they occur in random or isolated instances. They must be sufficiently widespread, integrated and complementary to be described as **systematic**. Such acts must also be

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<sup>7</sup> Testimony of Max du Plessis.

sufficiently rooted in law, public policy and formal institutions to be described as **institutionalised**.

## **ii. The status of the prohibition of apartheid**

5.16 The prohibition of apartheid is established as part of customary international law (meaning that even states that are not party to the conventions prohibiting apartheid are still bound to uphold the prohibition) and as a norm of *jus cogens* (the most fundamental category of international legal rules, from which no derogation is ever permitted). It is also a universal prohibition, which although formulated in response to the situation in southern Africa was always intended to apply beyond southern Africa.<sup>8</sup>

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<sup>8</sup> Testimony of Max du Plessis.

(2) **APPLICATION OF THE DEFINITION OF APARTHEID TO ISRAELI POLICIES AND PRACTICES VIS-À-VIS THE PALESTINIAN PEOPLE**

5.17 The Tribunal now moves to consider whether Israeli policies and practices affecting the Palestinian population may be characterised as apartheid within the meaning of international law, with reference to the core elements of the definition of apartheid as outline above.

**i. Distinct Racial Groups**

5.18 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 entitled to collective self-determination.<sup>9</sup>

5.19 Under Israeli law and policy, group membership is an official category imposed and monitored by the state, not simply a voluntary identity.<sup>10</sup> 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.<sup>11</sup>

5.20 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 concludes that international law gives a broad meaning to the term 'racial' as including elements of ethnic and national origin, and

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<sup>9</sup> Testimony of Ingrid Jaradat.

<sup>10</sup> Testimony of Ran Greenstein.

<sup>11</sup> Testimony of Joseph Schechla.

therefore that the definition of ‘racial group’ is a sociological question, not a 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 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.

## ii. Constitutive “acts of apartheid”

5.21 The Tribunal’s application of the constitutive acts of apartheid to Israel’s practices follows the headings and structure of Article 2 of the Apartheid Convention as detailed above. Individual inhuman acts committed in the context of such a system are defined by international law as crimes of apartheid. The RToP heard abundant evidence of practices that constitute the ‘inhuman acts’ set out below perpetrated against the Palestinian people by the Israeli authorities.

### ***“a) 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”***

5.22 The RToP received 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.

5.23 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).<sup>12</sup>

5.24 The use of lethal force against Palestinian demonstrations is a frequent factor of life in villages such as Bil’in and Ni’lin.<sup>13</sup>

5.25 Ongoing daily military incursions that involve low but consistent Palestinian casualty figures.<sup>14</sup> However, lethal Israeli incursions into the OPT have been so frequent that in

<sup>12</sup> On Operation Cast Lead, see Human Rights in Palestine and Other Occupied Arab Territories. Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN doc. A/HRC/12.48, 25 September 2009. See also the findings of the UN Committee Against Torture quoted in Luciana Coconi, *Apartheid Contra El Pueblo Palestino* (Madrid: Ediciones del Oriente y del Mediterráneo, 2010), p. 95.

<sup>13</sup> Testimony of Mohammed Khatib.

<sup>14</sup> Testimony of Raji Sourani.

the last 10 years some 6,418 Palestinians have been killed by Israeli security forces according to Israeli human rights group B'Tselem.<sup>15</sup>

- 5.26 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
- 5.27 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”***

- 5.28 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.<sup>16</sup>

Jewish-Israeli prisoners, regardless of their crimes, are generally not categorised as security prisoners and are not subject to analogous interrogation or ill-treatment.

- 5.29 The Tribunal also notes 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;<sup>17</sup> house demolitions as a form of inhuman and degrading treatment with severe psychological consequences for men, women and children.<sup>18</sup>
- 5.30 The RToP therefore finds 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 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.

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<sup>15</sup> See statistics provided by B'Tselem <http://old.btselem.org/statistics/english/Casualties.asp>

<sup>16</sup> Testimony of Mahmoud Hassan.

<sup>17</sup> Testimony of Jamal Juma'a.

<sup>18</sup> Testimony of Jeff Halper.



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

- 5.31 Palestinians in the occupied territories 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.<sup>19</sup>
- 5.32 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.<sup>20</sup>

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

- 5.33 The Tribunal considers 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.<sup>21</sup>

***“c) 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”***

- 5.34 The entire Israeli legal system establishes an enormous gap between Israeli Jews and Palestinian Arabs, with legislation typically designed to favour Israeli Jews and keep

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<sup>19</sup> Testimony of Emily Schaeffer.

<sup>20</sup> Testimony of Mahmoud Hassan.

<sup>21</sup> Testimony of Marianne Blume.

Palestinian Arabs in a situation of inferiority. This can be clearly seen through certain 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.<sup>22</sup>

Palestinians who work in Israel have enormous difficulties in joining Israeli trade unions or forming their own trade unions in Israel.<sup>23</sup> 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.<sup>24</sup>

- 5.35 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.

***“d) 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”***

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

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<sup>22</sup> Testimonies of Joseph Schechla, Luciana Coconi and Haneen Zoabi.

<sup>23</sup> Testimony of Rafeef Ziadah.

<sup>24</sup> Testimonies of Jeff Halper, Haneen Zoabi and Joseph Schechla.

to resources.

- 5.37 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.<sup>25</sup>
- 5.38 The landscape of the West Bank is dominated by exclusively Israeli-Jewish settlements and their associated regime of separate roads, security buffer 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.<sup>26</sup> 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.<sup>27</sup>
- 5.39 Accordingly, the evidence has made it plain to the RToP 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’.<sup>28</sup>

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<sup>25</sup> Testimonies of Haneen Zoabi and Joseph Schechla.

<sup>26</sup> Testimony of Shawan Jabarin.

<sup>27</sup> Testimony of Shawan Jabarin, Jeff Halper, Jamal Juma’a, Luciani Coconi and Joseph Schechla.

<sup>28</sup> Testimony of Jeff Halper.

***“e) Exploitation of labour of the members of a racial group or groups, in particular by submitting them to forced labour”***

5.40 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 hardly any Palestinian workers employed in Israel. Since Hamas won the January 2006 elections in the Gaza Strip, no workers from this area whatsoever have access to Israel.<sup>29</sup>

***“f) Persecution of organisations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid”***

5.41 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 (it must be noted here that persecution of dissent in this context of the victimisation of those opposing discriminatory practices is different from the crime of persecution which will be addressed in the section B, below) 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.<sup>30</sup>

**iii. A systematic and institutionalized regime of racial domination**

5.42 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.

5.43 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

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<sup>29</sup> Testimony of Rafeef Ziadah.

<sup>30</sup> Testimony of Haneen Zoabi, Jamal Juma’a, and Mohammed Khatib.

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 legislation and proposed legislation in the annex to these findings). 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.

#### **A. Finding**

- 5.44 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.
- 5.45 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.

#### **B. Persecution**

- 5.46 The Tribunal will consider Israel's policies and practices vis-à-vis the Palestinian people with reference to the persecution as a crime against humanity under the following headings:

1. The definition and status of persecution under international law

2. Application of the definition of persecution to Israeli policies and practices vis-à-vis the Palestinian people

**(1) THE DEFINITION AND STATUS OF PERSECUTION UNDER INTERNATIONAL LAW**

- 5.47 Persecution is a crime against humanity according to the statutes of the international criminal courts and tribunals<sup>31</sup> and the ILC Draft Code of crimes against the peace and security of mankind (Art. 18, e).

The ICC rules state the most comprehensive definition of the persecution as a crime against humanity. According to Art. 7 of the ICC Statute:

7.1. For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

[...]

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

[...]

7.2. (g) ‘Persecution’ means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

- 5.48 According to the Elements of crime, “persecution” contains the following constituent elements:

1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.
2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.
4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.
5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

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<sup>31</sup> Testimony of Rafaëlle Maison, citing Nuremberg IMT Charter, Art. 6, c; Tokyo IMT Charter, Art. 5, c; ICTY Statute, Art. 5, h; ICTR Statute, Art. 3, h; ICC Statute, Art. 7, 1, h).

6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

5.49 In other words, the constituent elements of the persecution include:

- a material element (*actus reus*): a violation of fundamental rights and freedoms connected to one of the crimes provided for in Art. 7(1) of the ICC Statute; the material element is not limited to violence directed against the victim's body, it also includes damage to property<sup>32</sup>;
- a general mental element (*mens rea* or *dolus generalis*): the perpetrator has intent to engage in a conduct which is in connection with a violation of fundamental rights and freedoms;
- a specific mental element (*dolus specialis*): the conduct is directed against a group on political, racial, national, ethnic, cultural, religious or gender grounds;
- a contextual element: the conduct is committed as part of a widespread or systematic attack directed against a civilian population; the word "attack" is not limited to a classic military action committed in the context of an armed conflict; it also includes multiple violations of human rights directed against a civilian population.<sup>33</sup>

**(2) APPLICATION OF THE DEFINITION OF PERSECUTION TO ISRAELI POLICIES AND PRACTICES VIS-À-VIS THE PALESTINIAN PEOPLE**

5.50 First, the RToP notes that much of the evidence it heard that related to the question of apartheid was also clearly relevant to the separate crime against humanity of persecution, which can be considered in relation to Israeli practices under the principle of cumulative charges.

**i. The Siege of the Gaza Strip and Operation Cast Lead**

5.51 During the Barcelona session, the RToP concluded that Israel was in violation of international law through maintaining a blockade on the Gaza Strip in breach of the provisions of the Fourth Geneva Convention of 12 August 1949 (art. 33), which prohibits collective punishment (§§ A, 19.9). It further concluded that Israel also violated international law by inflicting extensive and serious damage, especially on persons and civilian property, and by using prohibited methods of combat during

<sup>32</sup> See a.o., U.S. Mil.Trib., 11-13 Apr. 1949, "Ministries Trial", in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law n° 10*, n° 10, vol. XIV, 1949, p. 678 ; also, ICTY, Case IT-99-36-T, 1 Sept. 2004, *Brdanin*, §§ 1029-1049 ; *id.*, Case IT-98-32/1-T, 20 July 2009, *Lukic*, § 1008, as cited in the testimony of Rafaele Maison.

<sup>33</sup> ICTY, cases IT-23 and 23/1-T, 22 Febr. 2001, *Kunarac et al.*, §§ 416, 570-578; *id.*, App., 12 June 2002, § 86

operation “Cast Lead” in Gaza (December 2008 – January 2009) (§§ A, 19.10).

- 5.52 At the London session, the RToP noted that the violations of international law by Israel in which corporations were particularly closely involved included the violations of international humanitarian law committed by Israel during operation “Cast Lead”. The London session referenced the report of the UN-Fact Finding Mission set up to examine the violation of international law during that conflict (“the Goldstone Report”) and took particularly note of the destruction of civilian property “without military necessity”, which constitutes a war crime. The London session also noted that the Goldstone report mentioned that possible crimes against humanity were committed during “Operation Cast Lead” (§§ 5.3.2).
- 5.53 Under international criminal law, the crime of persecution is a crime against humanity. As the Goldstone Report observed, “crimes against humanity are crimes that shock the conscience of humanity” (Goldstone Report, §§ 293, p. 77). In this connection, the report concluded that “the policy of blockade... amounts to collective punishment intentionally inflicted by the Government of Israel on the people of the Gaza Strip” (Goldstone Report, §§ 1878, pp. 404-405). It concluded that Cast Lead “was a deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population, radically diminish its local economic capacity both to work and to provide for itself, and to force upon it an ever increasing sense of dependency and vulnerability” (Goldstone Report, §§ 1893, p. 408).
- 5.54 Regarding the siege of the Gaza Strip, the Goldstone report concluded that the blockade policies implemented by Israel against the Gaza Strip, subject the local population to extreme hardship and deprivations that amounted to a violation of Israel’s obligations as an occupying Power under the Fourth Geneva Convention” (Goldstone Report, §§ 1931, p. 416). It added, “the conditions resulting from deliberate actions of the Israeli armed forces and the declared policies of the Government with regard to the Gaza Strip...cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip. The Mission, therefore, finds a violation of the provisions of article 33 of the Fourth Geneva Convention” (Goldstone Report, §§ 1934, p. 416).
- 5.55 Regarding the crimes of persecution, the ICTY in the *Tadić* case, noted that persecution encompasses a variety of acts, which included those of a physical, economic or judicial nature, that violate an individual’s right to the equal enjoyment of his basic rights”.<sup>34</sup> In the *Kupreskic* judgment, the ICTY explained that discriminatory acts charged as persecution must not be considered in isolation. Rather, persecution

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<sup>34</sup> *Prosecutor v. Tadić*, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, case No. IT-94-1-T, Judgment of 7 May 1997, para. 710.



usually forms part of a policy or at least of a patterned practice.<sup>35</sup> In the light of the evidence that the Tribunal heard in Cape Town,<sup>36</sup> it concurs with the following view, which was expressed by the authors of the Goldstone Report:

“...the series of acts that deprive Palestinians in the Gaza Strip of their means of subsistence, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their rights to access a court of law and an effective remedy, could lead a competent court to find that the crime of persecution, a crime against humanity, has been committed” (Goldstone Report, §§ 1936, p. 417).

5.56 In the light of the findings of the Goldstone Report, Israel’s siege of the Gaza Strip, its military operations during “Cast Lead”, and the evidence presented before it, the Tribunal concludes that Israel has committed the crime of persecution.

## **ii. Restrictions on Movement (including the Wall) and Access to Resources in West Bank as a form of Persecution**

5.57 During the London session, the RToP drew attention to the illegal construction of the Israeli wall in Palestinian territory, a project whose illegality had already been ascertained by the International Court of Justice in its Advisory Opinion of 2004 (London findings, §§ 5.4C.1 *et seq.*).

What the Court found to be illegal was not just the Wall itself, but its whole “associated regime” of land appropriation and restrictions on movement and access to natural resources. The UN Committee on the Elimination of Racial Discrimination has asserted that such restrictions are part of a policy to target the Palestinians as a group:

“The Committee is deeply concerned that the severe restrictions on the freedom of movement in the OPT, targeting a particular national or ethnic group, especially through the wall, checkpoints, restricted roads and permit system, have created hardship and have had a highly detrimental impact on the enjoyment of human rights by Palestinians, in particular their rights to freedom of movement, family life, work, education and health”<sup>37</sup>

5.58 According to the ICJ, the construction of the Wall has led to violations of diverse human rights of the Palestinian population:

<sup>35</sup> *Prosecutor v. Kupreškić et al*, case No. IT-95-16-T, Judgment of 14 January 2000, para. 615.

<sup>36</sup> Testimonies of Raji Sourani, Mohammed Khatib and Jazi Abu Kaf in particular.

<sup>37</sup> Concluding Observations: Israel, CERD/C/ISR/CO/13, 14<sup>th</sup> June 2007, § 34, cited in the testimony of Luciana Coconi.

- by contributing to “the departure of Palestinian populations from certain areas”<sup>38</sup> and by altering the demographic composition of the occupied territory,<sup>39</sup> the construction of the wall violates the right of self-determination of the Palestinian people;<sup>40</sup>
- by cutting off “Palestinians between the Wall and Green Line [...] from their land and workplaces, schools, health clinics and other social services”, and by effectively annexing “most of the western aquifer system (which provides 51 per cent of the West Bank’s water resources)”,<sup>41</sup> the construction of the wall impedes the exercise by the Palestinians concerned of diverse human rights, namely: “liberty of movement” (International Covenant on Civil and Political Rights, Art. 12, § 1), and “the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the United Nations Convention on the Rights of the Child”.<sup>42</sup>

5.59 By way of example of the pervasive effect of the Wall’s construction, the Tribunal notes evidence presented that “after May 2006, the Wall cut off 75,000 people of Abu Dis and other Palestinian villages near Jerusalem and left them unable to reach the city where they worked”.<sup>43</sup>

5.60 On the related issue of access to natural resources, the UN Human Rights Committee has asserted its concern over the discriminatory effect of Israeli policy on the Palestinian population:

“The Committee is concerned at water shortages disproportionately affecting the Palestinian population of the West Bank, due to prevention of construction and maintenance of water and sanitation infrastructure, as well as the prohibition of construction of wells. The Committee is further concerned at allegations of pollution by sewage water of Palestinian land, including from settlements.”<sup>44</sup>

Here the Tribunal notes that the route of the Wall is almost identical to the “red line” drawn in 1977 by former Israeli water commissioner Menachem Cator, pursuant to a request from the Israeli government at the time to delineate the areas of the West Bank from which Israel could withdraw without having to relinquish its control over key

<sup>38</sup> ICJ, *Wall*, Opinion, *Reports 2004*, p. 184, § 122.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*, p. 191, § 133.

<sup>42</sup> *Ibid.*, p. 191, § 134.

<sup>43</sup> Testimony of Rafeef Ziadah on behalf of the Palestinian Trade Union Coalition for Boycotts, Divestments and Sanctions (PTUC-BDS).

<sup>44</sup> Concluding observations of the Human Rights Committee: Israel, CCPR/C/ISR/CO/3, 29 July 2010, § 18, quoted by witness Luciana Coconi.

water sources used to supply Israel and the settlements.<sup>45</sup>

### iii. Persecution of Palestinian Citizens of Israel

5.61 The RToP observes the following facts (and refers to the Annex setting out relevant Israeli legislation and proposed legislation):

- the 2007 Israeli law relating to Citizenship and Entry to Israel “prevents family unification between Palestinian citizens in Israel and Palestinians in the occupied territories”;<sup>46</sup> the same law prevents an Arab citizen of Israel who marries an Arab citizen of an “enemy State”, *i.e.*, from Iran, Iraq, Syria or Lebanon, from living in Israel;<sup>47</sup> these prohibitions violate the right to respect for private life combined with the prohibition of “distinction of any kind such as [...] national or social origin [...]” (1966 International Covenant on Civil and Political Rights, Art. 2, § 1, and 17);
- According to the 28 March 2011 Israeli law relating to Citizenship, courts can “revoke the citizenship of persons convicted of treason, espionage, assisting the enemy in time of war, and acts of terrorism as defined under the Prohibition on Terrorist Financing Law (2005), if asked to do so by the Ministry of the Interior, as part of a criminal sentence delivered”.<sup>48</sup>

If this provision applies to Israeli Jewish citizens as well as to Palestinian citizens, the provision does not seem to be arbitrary; if this is not the case and if the law only applies to Palestinian citizens, deprivation of nationality would be discriminatory and arbitrary (*cf.* Committee on the Elimination of Racial Discrimination, *Final Observations, Lithuania*, CERD/C/LTU/CO/3, 11 April 2006, § 23).

- The Land Acquisition Law (1953) and the Absentees’ Property Law (1950) allows Israel to confiscate Palestinian-owned land in Israel<sup>49</sup> without any compensation; if the Palestinian owners have been obliged to leave their land but if they did not abandon their property title, the confiscation of their land without compensation is arbitrary and violates their property rights (UDHR, Art. 17); even if the confiscation of the land is done to achieve public purposes, a fair compensation is required (*cf.* 1<sup>st</sup> Protocol to the ECHR, Art. 1, which expresses international custom).

<sup>45</sup> Human Sciences Research Council, *Occupation, Colonialism, Apartheid: A re-assessment of Israel’s practices in the occupied Palestinian territories under international law* (Cape Town, 2009), 145, citing David Arsenault and Jamie Green, ‘The Effects of the Separation Barrier on the Viability of a Future Palestinian State,’ in Israel/Palestine Centre for Research and Information, *Second Israeli-Palestine International Conference on Water for Life in the Middle East* (Atalya, Turkey, 10-14 October 2004).

<sup>46</sup> Testimony of Haneen Zoabi

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

- Various Israeli programs deprive Palestinians of their land and allocate land or parts of the land to Israel or to Israeli settlers; a compensation is granted but is not fair since the Arab Palestinians would receive 180,000 - 200,000 dunams while 600,000 dunams have been taken;<sup>50</sup> this is another violation of individual property rights or customary collective rights as stated above.
- In many respects, the Palestinians citizens are not treated in the same way as Israeli citizens: their forced evacuation from historical Palestinian sites such as in Jaffa and Acre; the building of cities for Israeli citizens only, not for Palestinians; the water supply for Palestinian agriculture is only 2.5% of the entire water that is supplied to that sector in Israel; “judaization” of the public space by using exclusively Hebrew names and ignoring Arabic ones; the silence of education about Palestinian history and its focus on Jewish history; the building of 1000 new Jewish settlements and cities since 1948; compared to just 7 for Palestinians in the Negev; the facilities awarded to discharged Israeli soldiers (Palestinians generally do not serve in the Israeli army) for access to the higher education system (1994 law).<sup>51</sup>
- In the Negev desert, 90,000 Palestinians live in “unrecognised” villages: although these villages existed before 1948, they

“are not allowed to connect to the water or the electricity grids. These villages do not have access to medical or educational services in their localities, although each of these localities has a population of 700-6000 people; far more than many of the Jewish localities which receive all services”.<sup>52</sup>

Indeed, the Tribunal heard evidence of a concerted campaign of forcible evacuation and demolition of unrecognised Bedouin villages in the Negev region of southern Israel.

These institutionalized and factual discriminations between Israeli citizens violate several provisions of the International Convention on the Elimination of all forms of Racial Discrimination (Art. 2, § 1, a, and Art. 5, d, iii, iv, v, combined with Art. 1, § 1).

## **Finding**

### *The material elements of persecution*

5.62 The Tribunal finds that the material elements of “persecution” are present in this case:

- the living conditions imposed on Palestinians deprive them, “contrary to

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<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> Testimony of witness Jazzi Abu Kaf.

international law ... of fundamental rights” (Elements of Crimes, Art. 7, § 1 (h), persecution, § 1), including their right of self-determination and numerous civil and socio-economic rights (London findings, § 5.4C.5; ICJ advisory opinion)<sup>53</sup>

- the Palestinians in Gaza and in territories that are encircled or crossed by the Wall and its associated regime in the West Bank are a group that has been “targeted” as such (Elements of Crimes, Art. 7, § 1 (h), persecution, § 2);
- the practical consequences of the imposition of such conditions is the targeting of Palestinians on grounds that are political and national [Israel’s conflict with the Palestinians]” (*ibid.*, § 3);
- the acts are “committed in connection with [...] any crime within the jurisdiction of the Court” (*ibid.*, § 4); *in casu*, the acts are connected with the war crime consisting of the establishment of Israeli settlements in the Occupied Palestinian Territory (London findings, § 5.3.2);
- the acts form “part of a widespread or systematic attack directed against a civilian population” (Elements of Crimes, Art. 7, § 1 (h), persecution, § 5), *in casu* the Palestinian population.

#### *The mental element of persecution*

5.63 The mental element of persecution consists in knowledge of the “attack” directed against the victims of the crime. The construction of the Wall and its associated regime of restrictions on movement and access to natural resources by the Israeli authorities forms “part of a widespread or systematic attack directed against” the Palestinian population (Elements of Crimes, Art. 7, § 1 (h), persecution, § 6), knowingly implemented by the architects of Israel’s policies in respect of siege of Gaza and the implementation of large scale military operations, as well as the living conditions imposed in the West Bank.

#### *The contextual element of persecution*

5.64 The Tribunal notes that, according to the *Elements of Crimes*, the “attack” referred to in Art. 7 “need not constitute a military attack”. Operation Cast Lead clearly constituted a military attack. Even if the siege of Gaza in itself and the conditions imposed in the West Bank by the Wall and its associated regime cannot be characterised as military offensives involving overt hostilities and the use of force, they are nonetheless a military character. It is not necessary for the Tribunal to engage in a semantic discussion of the meaning of the term “attack”; it is sufficient to note that the *Elements of Crimes* endow the term with a broader import than its customary and ordinary meaning, since they do not limit its scope to a classical military attack. It follows that the conditions imposed in the Occupied Palestinian Territory are analogous to “a widespread or systematic attack” directed against the Palestinian population. The contextual criterion of persecution as a crime against humanity as a

<sup>53</sup> ICJ, *Wall*, Opinion, *Reports 2004*, pp. 189-192, §§ 133 and 134.

crime against humanity is thus fulfilled. The human rights violations against Palestinian citizens of Israel are also a form of mistreatment of a civilian population; this mistreatment amounts to a permanent attack against the Palestinian population according to the meaning of the word “attack” provided by Art. 7, § 1, of the ICC Statute and the jurisprudence applicable to the concept. This population is mistreated because of its national origin.

5.65 The Tribunal considers, in the light of the above, that certain Israeli practices are analogous to persecution as a “crime against humanity” within the meaning of Article 7(1)(h) of the Rome Statute of the International Criminal Court, to which Israel is not a party but whose customary status has already been noted by the RToP (London findings, §§ 5.3.2, 6.9). The facts in question have been found to combine the material elements, the mental element and the contextual criterion of the crime of persecution. As noted, 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.

## **VI. LEGAL CONSEQUENCES**

### **A. Legal consequences for Israel**

6.1 Apartheid and persecution are acts attributable to Israel and entail its international legal responsibility. (2001 Draft Articles of the International Law Commission [ILC] on Responsibility of States for Internationally Wrongful Acts, Art. 1-2). Israel must cease its apartheid acts and its policies of persecution and offer appropriate assurances and guarantees of non-repetition (*ibid.*, Art. 30).

6.2 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 (*ibid.*, Art. 31). 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.<sup>54</sup> The reparation obliges Israel “to compensate for the damage caused thereby” and “the compensation shall cover any financially assessable damage including loss of profits insofar as it is established” (*ibid.*, Art. 36).

## **B. Duties of third states under public international law**

- 6.3 States and international organisations also have international responsibilities. Indeed, the conclusion that Israel’s discriminatory and segregationist policies in the occupied territories as well as in Israel collectively amount to a regime of apartheid has serious consequences for states and international organisations under international law. Apartheid and persecution, as defined in the foregoing, are internationally wrongful acts and international law crimes which trigger specific responsibilities. Third states have a duty to cooperate to 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.
- 6.4 The Tribunal will address responsibility for apartheid and persecution, on the one hand, as internationally wrongful acts, and on the other hand, as international law crimes.
- 6.5 First, states and international organisations have an obligation to ensure that Israel respects international law. Second, states and international organisations have an obligation to bring to an end Israel’s apartheid regime because apartheid in and of itself amounts to a systematic breach of a peremptory norm of international law. Third, states and international organizations are required to cooperate to bring to an end Israel’s infringements of international criminal law. In this connection they have an obligation to cooperate with each other in the judicial sphere regarding the prosecution of international crimes.
- 6.6 With respect to international criminal law, the Tribunal would observe that the 1973 Apartheid Convention requires states “[t]o adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of

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<sup>54</sup> Testimony of Dr. François Dubuisson.

apartheid and similar segregationist policies or their manifestations”.<sup>55</sup> Because we say more about the question of universal jurisdiction below, we shall next turn to the matter of state responsibility.

### *Duty of cooperation*

6.7 Under Article 41 of the International Law Commission’s Articles on State Responsibility third states are required to cooperate to bring to an end through lawful means any serious breach of an obligation arising under a peremptory norm of general international law. As the International Court of Justice explained in the *Barcelona Traction* case, certain peremptory norms are derived “from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination”.<sup>56</sup> In this connection, the Tribunal would observe that apartheid is a peculiarly egregious form of racial discrimination and has been universally condemned as such. Hence, the prohibition of apartheid is considered a peremptory norm of general international law.<sup>57</sup>

6.8 Article 41 of the Articles on State Responsibility further stipulate that no state shall recognise as lawful a situation created by a serious breach of a peremptory norm of general international law, nor render aid or assistance in maintaining that situation.

### *Non-recognition and non-assistance*

6.9 An obligation of non-recognition can arise from the denial by a state of the right to self-determination of peoples. As the commentary to the ILC’s Articles on State Responsibility explains, the obligation of collective non-recognition would apply to the attempted acquisition of sovereignty over territory through a denial of the right to self-determination of peoples.<sup>58</sup> The Tribunal observes that the ICJ has already found Israel to be in breach of the Palestinian people’s right to self-determination, which is a breach of a peremptory norm of international law.<sup>59</sup> In addition, no state which enters into a treaty relationship with Israel that is connected to its apartheid regime may

<sup>55</sup> Article 4, Apartheid Convention.

<sup>56</sup> See *Barcelona Traction, Light and Power Company, Limited, Judgment*, I.C.J. Reports 1970, p. 3 at p. 32, para. 34.

<sup>57</sup> James Crawford, *The International Law Commission’s Articles on State Responsibility: Introduction, Text, and Commentaries* (Cambridge: Cambridge University Press, 2002), p. 246.

<sup>58</sup> Crawford, *The International Law Commission’s Articles on State Responsibility*, *ibid.*, p. 250.

<sup>59</sup> See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, at p. 199, para. 155.



expect the UN or its member states to recognise the validity or the effects of such a relationship.<sup>60</sup> During the struggle against apartheid in South Africa the international community repeatedly called on states not to aid or assist the apartheid regime. The Tribunal recalls that the Security Council and General Assembly called on all states not to recognise the legality of the Bantu Homelands established by South Africa within South Africa and within Namibia.<sup>61</sup>

- 6.10 Given the character and the importance of the rights and obligations involved, the Tribunal is of the view that all states are under an obligation not to recognize the illegal situation resulting from the establishment of an apartheid regime in Israel and the occupied territories. They are also under an obligation not to render aid or assistance in maintaining the situation created by such a regime. In relation to South Africa's illegal presence in Namibia, the International Court of Justice ruled that states had a duty "to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the territory".<sup>62</sup> This included a duty not to render aid or assistance to South Africa whether it was economic, industrial or financial assistance, in the form of gifts, loans, credit, advances or guarantees, or in any other form. This prohibition is not confined to states. It also extends to international organisations in which states have voting rights.<sup>63</sup>
- 6.11 It is for all states, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the maintenance of a regime of apartheid, to the exercise by the Palestinian people of its right to self-determination, is brought to an end. Whilst the Tribunal is of the view that the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from Israel's apartheid regime, it recalls that in the struggle against apartheid in South Africa, international civil society routinely resorted to boycotts, divestment, and sanctions. It is for the international community to decide what modalities are most practical to ensure Israel's compliance with international law. But the Tribunal would reiterate the position expressed by the ILC and reiterated by the German Constitutional Court that a serious violation of a peremptory norm, "obliges the community of States to cooperate in order to terminate the violation using the means of international law".<sup>64</sup>

<sup>60</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, I.C.J. Reports 1971, p. 16, at p. 56, para. 126.

<sup>61</sup> See SC Res. 402, 22 December 1976 and SC Res. 407, 25 May 1977. See also, See John Dugard, *Recognition and the United Nations* (Cambridge: Grotius Publications, 1987), pp. 98-108.

<sup>62</sup> See *Namibia* advisory opinion, ICJ Rep, 1971, 55-56, para. 124.

<sup>63</sup> *Namibia* advisory opinion, *ibid.*, separate opinion of Judge Ammoun, 67 at 94-95, para. 14.7.

<sup>64</sup> See Article 41 of the Draft Articles on State Responsibility, 2001 Report of the Secretary-General, *Responsibility of States for internationally wrongful acts: comments and information received from Governments*, UN Doc.A/62/63 (9 March 2007), comments by Germany, 15-16, para.36: for an account of this case, see 15-17, paras.33-38.

Should states fail to bring Israel into compliance with international law, they may find themselves complicit with regards to Israel's violations, with their responsibility engaged.

### **C. Duties of states regarding universal jurisdiction and international crimes**

6.12 Apartheid and persecution are not only internationally wrongful acts: they are also international crimes which entail individual criminal responsibility of the perpetrators (1973 Apartheid Convention, Art. 4; ICC Statute, Art. 7, § 1, h, and Art. 25, as expressions of international custom) and a universal obligation either to prosecute the presumed perpetrators or to extradite them to any State that claims them for prosecution – *judicare vel dedere* – (1973 Apartheid Convention, Art. III-V and XI; ICC Statute, preamble, para. 4-6).

6.13 The criminal responsibility of the individual perpetrators does not exclude international responsibility of Israel. As stated in the ICC Statute:

“No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.” (Art. 25, § 4)

The attribution to a State of an international law crime has been enshrined by the ICJ in the 2007 *Genocide Convention Application* judgement (Bosnia and Herzegovina v/ Yugoslavia) when the ICJ stated that

“State responsibility can arise under the Convention for genocide and complicity, without an individual being convicted of the crime or an associated one.” (*ICJ Rep.2007*, p. 120, § 182).

6.14 This reasoning is equally applicable to apartheid and persecution as crimes against humanity.

## **VII. ACTION REQUIRED AND RECOMMENDED**

7.1 The Tribunal has a responsibility to go beyond its legal findings and its formal description of the legal consequences for Israel and third parties relating to apartheid and persecution, by resolutely urging all relevant parties to act in accordance with their legal obligations. While in some cases, this will involve political actions, these are in many cases required be resolutely urges all relevant parties to act in accordance with their legal obligations because of the legal consequences flowing from the findings of

apartheid and persecution.

7.2 Accordingly, the Tribunal urges:

7.2.1 The **state of Israel** to immediately dismantle its system of apartheid over the Palestinian people, to rescind all discriminatory laws and practices, not to pass any further discriminatory legislation, and to cease forthwith acts of persecution against Palestinians;

7.2.2 **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;

7.2.3 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;

7.2.4 **Palestine** to accede to the Rome Statute of the International Criminal Court;

7.2.5 **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 and supporting the campaign for Boycott, Divestment and Sanctions (BDS);

7.2.6 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;

7.2.7 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 in 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;

- 7.2.8 The **UN Committee on the Elimination of Racial Discrimination** to address the issue of apartheid in its forthcoming review of Israel in February 2012;
- 7.2.9 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.
- 7.3 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.

## **VIII. CONTINUATION OF THE PROCEEDINGS**

- 8.1 These conclusions close the third session of the Russell Tribunal on Palestine in Cape Town. They are the result of a *prima facie* assessment of the facts brought to its knowledge and are without prejudice to the final verdict that the Tribunal will deliver at its closing session.
- 8.2 The Next session of the RToP will take place in New York, USA, towards the end of 2012.

ANNEX<sup>65</sup>

## ANNOTATED LIST OF ISRAELI LEGISLATION &amp; PROPOSED LEGISLATION

In 1948, Israel was established as a Jewish state. The definition of Israel as “the Jewish State” or “the State of the Jewish People” makes inequality a practical, political and ideological reality for Palestinian citizens of Israel, who are marginalized and discriminated against by the state on the basis of their national belonging and religious affiliation as non-Jews.

The main laws that achieve this systematic discrimination is that Palestinian citizens of Israel are afforded differential and unequal treatment under Israeli law in the field of citizenship rights. The most important immigration and nationality laws are:

1. Law of Return (1950)
2. Citizenship Law (1952)
3. Citizenship and Entry to Israel Law (2007)<sup>66</sup>

These laws openly privilege Jews and Jewish immigration.<sup>67</sup>

Israeli law also confers special quasi-governmental standing on the World Zionist Organization, the Jewish Agency, the Jewish National Fund (JNF) and other bodies, which by their own charters cater only to Jews.

4. Covenant between the Government of Israel and the Zionist Executive (1952)
5. World Zionist Organization-Jewish Agency (Status) Law (1952)
6. Keren Kayemeth le-Israel Law (1953)
7. Covenant with Zionist Executive (1954, 1971)

Note also the criminalisation of acts in any part of the world against Jewish agencies:

8. Penal Law of Israel (626/1996)<sup>68</sup>

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<sup>65</sup> This annex cross refers to 5.43 & 5.61 above

<sup>66</sup> See para 5.61 for a summary of this law.

<sup>67</sup> Also note The Law to Revoke Citizenship for Acts Defined as Espionage and Terrorism (2011), enacted on 28 March 2011, which allows courts to revoke the citizenship of persons convicted of treason, espionage, assisting the enemy in time of war, and acts of terrorism as defined under the Prohibition on Terrorist Financing Law (2005), if asked to do so by the Ministry of the Interior, as part of a criminal sentence delivered. Citizenship can only be revoked if the defendant has dual citizenship or else resides outside Israel (in which case the law creates an assumption that such a person has dual citizenship). If a person does not have dual citizenship or reside abroad, then he or she will be granted residency status in Israel instead of citizenship, a downgrading that severely restricts the right to political participation. The law was proposed following the arrest and indictment of Arab civil society leader Amr Makhoul on charges of espionage.

<sup>68</sup> Chapter Three: Incidence in Respect of Foreign Offences –  
13. (a) Israeli penal law shall apply to foreign offences against:

(1) the security, foreign relations or secrets of the State; (2) the governmental system of the State; (3) the proper functioning of the authorities of the State; (4) the property and economy of the State and its transport

The following laws give recognition to Jewish educational, religious, and cultural practices and institutions, and define their aims and objectives strictly in Jewish terms, while no similar laws providing similar legal recognition to the religious and cultural rights of the Palestinian minority in Israel have been legislated.

9. The Chief Rabbinate of Israel Law (1980)
10. The Flag and Emblem Law (1949)
11. The State Education Law (1953) and its 2000 amendment

#### Land laws

12. Absentee Property Law (1950)
13. The Land Acquisition Law (1953)
14. Basic Law: Israel Lands [The People's Lands] (1960)
15. Agricultural Settlement Law (1967)
16. Basic Law: The Knesset (1958), Amendment 9 (1985)<sup>69</sup>
17. The Israel Land Administration (ILA) Law (2009)<sup>70</sup>
18. Amendment (2010) to The Land (Acquisition for Public Purposes) Ordinance (1943)<sup>71</sup>

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or communication links with other countries; (5) the property, rights and proper functioning of any association or body specified in, or designated under, the provisions of subsection (c).

(c) "Association or body," for the purposes of subsection (a)(6) means:

(1) the World Zionist Organization; (2) the Jewish Agency for Eretz-Israel; (3) the Keren Kayemet Le-Israel; (4) the Keren Ha-Yesod - United Israel Appeal; (5) an inspected body, within the meaning of the State Comptroller Law (Consolidated Version), 5718–1958.

<sup>69</sup> This requires every political party to desist from denying the existence of Israel as 'a Jewish and democratic state'

<sup>70</sup> The law, enacted by the Knesset on 3 August 2009, institutes broad land privatization. Much of the land owned by the Palestinian refugees and internally-displaced persons (currently held by the state as "absentees' property"), some of the lands of destroyed and evacuated Arab villages, and land otherwise confiscated from Palestinian citizens, can be sold off to private investors under the law and placed beyond future restitution claims. This land, which totals an estimated 800,000 dunams, includes refugees' properties now located in the mixed Arab-Jewish cities and land that has been developed or that is zoned for development in master plans. It also grants decisive weight to representatives of the Jewish National Fund (JNF) (6 out of 13 members) in a new Land Authority Council, to replace the Israel Land Administration (ILA), which manages 93% of the land in Israel.

<sup>71</sup> This British Mandate-era law allows the Finance Minister to confiscate land for "public purposes". The state has used this law extensively, in conjunction with other laws – as above - to confiscate Palestinian- owned land in Israel. The new amendment, which passed on 10 February 2010, confirms state ownership of land confiscated under this law, even where it has not been used to serve the original confiscation purpose. It allows the state not to use the confiscated land for the original confiscation purpose for 17 years, and prevents landowners from demanding the return of confiscated land not used for the original confiscation purpose if it has been transferred to a third party, or if more than 25 years have elapsed since the confiscation. The amendment expands the Finance Minister's authority to confiscate land for "public purposes," which under the law includes the establishment and development of towns, and allows the Minister to declare new purposes. The new law was designed to prevent Arab citizens of Israel from submitting lawsuits to reclaim confiscated land: over 25 years have passed since the confiscation of the vast majority of Palestinian land, and large tracts have been transferred to third parties, including Zionist institutions like the JNF.

19. The Admissions Committees Law (2011)<sup>72</sup>
20. The Israel Lands Law (Amendment No. 3) (2011)<sup>73</sup>

#### Economic, Social and Cultural Rights

21. The Economic Efficiency Law (Legislative Amendments for Implementing the Economic Plan
22. Absorption of Discharged Soldiers Law (1994) (Amendment No. 12) (2010)<sup>74</sup>
23. [2008 amendment to the same law] - anchors the use of the military service criterion in determining eligibility for student dormitories in all higher education institutions into law, and grants broad discretion to these institutions to grant additional economic benefits to discharged soldiers, regardless of the benefits provided to them under any other law.
24. Law (2011) to Amend to the Budgets Foundations Law, Amendment No. 40 (The “Nakba Law”)

#### Other legislation

25. The Regional Councils Law (Date of General Elections) (1994) Special Amendment No. 6 (2009)
26. Duty of Disclosure for Recipients of Support from a Foreign Political Entity Law (2011) (“NGO Foreign Government Funding Law”)

<sup>72</sup> The Admissions Committees Law legalizes “admission committees” that operate in nearly 700 small community towns built on state land in the Naqab and Galilee. The law gives admission committees, bodies that select applicants for housing units and plots of land, full discretion to accept or reject individuals from living in these towns. The committees include a representative from the Jewish Agency or the World Zionist Organization, quasi-governmental entities, and are used in part to filter out Arab applicants, in addition to other marginalized groups. While one of the law’s provisions states a duty to respect the right to equality and prevent discrimination, the law allow these committees to reject applicants deemed “unsuitable to the social life of the community... or the social and cultural fabric of the town,” thereby legitimizing the exclusion of entire groups. The ILA instituted arbitrary and exclusionary criterion of “social suitability” in order to bypass the landmark Supreme Court decision in Ka’adan from 2000, in which the court ruled that the state’s use of the Jewish Agency to exclude Arabs from state land constituted discrimination on the basis of nationality. The law also authorizes admissions committees to adopt criteria determined by individual community towns themselves based on their “special characteristics”, including those community towns that have defined themselves as having a “Zionist vision”.

<sup>73</sup> The law, passed in March 2011, prevents any person or party (public or private) from selling land or renting property for a period of over five years or from bequeathing or transferring private ownership rights in Israel to “foreigners”. Under the law, foreigners are any persons who are not residents or citizens of Israel, or Jews, who have the automatic right to immigrate to Israel under the Law of Return (1950). Under the law Palestinian refugees – the original owners of the land, who are entitled to the return of and to their properties under international law – become “foreigners”, along with all other persons who do not hold Israeli citizenship or residency, with the exception of Jewish people.

<sup>74</sup> Enacted in July 2010, any registered university or college student who has completed his or her military service and is a resident of a designated “National Priority Area” such as the Naqab, the Galilee or the illegal Jewish settlements in the West Bank will be granted a “compensation package” including: full tuition for the first year of academic education; a year of free preparatory academic education; and additional benefits in areas like student housing. This benefits package goes far beyond and adds to the already extensive educational benefits package that is enjoyed by discharged soldiers in Israel. In general, Palestinian Arab citizens of Israel are exempt from military service and thus they are excluded from receiving these state- allocated benefits and discriminated against on the basis of their national belonging. A number of other bills that condition various benefits on the performance of military/national service are also pending in the Knesset (see below)

## 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

A proposed amendment to the Citizenship Law requires all persons seeking to naturalize via the naturalization process and Israeli citizens applying for their first ID cards (which is obligatory at the age of 16) to declare a loyalty oath to Israel as a “Jewish, Zionist, and democratic state, to its symbols and values, and to serve the state in any way demanded, through military service or alternative service, as defined by law.”

**NB:** according to numerous other bills introduced in the Knesset, declarations of allegiance to a Jewish and democratic state could soon be required of all ministers, Knesset members, civil service employees, etc.

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 .

This bill was proposed in December 2009 and seeks to limit the judicial review powers of the Israeli Supreme Court on citizenship issues. It was put forward in the context of Supreme Court hearings on petitions filed against provisions of the Citizenship and Entry into Israel Law (Temporary Order) - 2003 (amended 2007) that prohibit entry into Israel by Palestinians in the OPT and other “enemy states,” as defined by Israel (such as Syria, Lebanon, Iran and Iraq) for purposes of family unification with Israeli citizens, overwhelmingly Arab citizens of Israel.

Bills directing benefits to those who serve in the army (which excludes almost all non-Jewish citizens of Israel):

3. Bill Granting Preference in Civil Service Appointments to Former Soldiers
4. Bill Awarding Preferences in Services to Former Soldiers

Other bills:

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”, if passed, 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'.