

Introduction: objectives and functioning of the RToP

The Russell Tribunal on Palestine (RToP) is a court of the people, a Tribunal of conscience created in reaction to injustices and violations of international law that are not dealt with by existing international jurisdictions, or that are recognised but continue with complete impunity due to the lack of political will of the international community.

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,⁽¹⁾ 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 Israeli assault on Gaza in December 2008 – January 2009, committees were established in different countries to promote and sustain this citizen's initiative in support of the rights of the Palestinian people.⁽²⁾

The RToP is imbued with the same spirit as the Tribunal on Vietnam (1966-1967), which was established by the eminent scholar and philosopher Bertrand Russell, and the Tribunal on Latin American dictatorships (1974-1976), organised together with the Lelio Basso International

Foundation for the Rights and Liberation of Peoples. "The legality of the Russell Tribunal comes from both its absolute powerlessness and its universality."⁽³⁾ Indeed, the RToP has no legal status, and draws its strength from the will of citizens who wish to put an end to the impunity that Israel enjoys while denying the Palestinians their most basic rights. It does not compete with other jurisdictions (domestic or international), but works on a complementary basis to enforce the law in the Israeli-Palestinian conflict.

The eminence of the RToP stems from its extensive International Support Committee, which includes Nobel Prize laureates, a former United Nations Secretary-General, former Heads of State, other personalities who have held high political office, and representatives of civil society, writers, journalists, poets, actors, film directors, scientists, professors, lawyers and judges.

The jury of the RToP is made up of international personalities known for their actions and moral integrity: **Stéphane Hessel**, Ambassador of France, honorary president of the RToP, a participant in the drafting of the Universal Declaration of Human Rights, France; **Mairead Corrigan Maguire**, Nobel Peace laureate 1976, Northern

⁽¹⁾ In this document the RToP uses, depending on the context, the terms Palestine, Palestinian territory, Occupied Palestinian Territories, Occupied Palestinian Territory and Palestinian people without prejudice to the judgment that will be rendered at the final session.

⁽²⁾ An International Organising Committee, chaired by Stéphane Hessel, Ambassadeur of France, and composed of Pierre Galand, Marcel-Francis Kahn, Robert Kissous, François Maspero, Paulette Pierson-Mathy, Bernard Ravenel, Brahim Senouci and the late Ken Koates, is in charge of the overall management of the RToP. An office based in Brussels ensures general coordination. It is run by Pierre Galand with the assistance of Frank Barat and Virginie Vanhaeverbeke.

⁽³⁾ Jean-Paul Sartre, Inaugural Statement at the Russell Tribunal on Vietnam, 1967.

Ireland; **John Dugard**, Professor of international law, former United Nations Special Rapporteur on Human Rights in the Occupied Palestinian Territories, South Africa; **Lord Anthony Gifford**, senior barrister and hereditary peer, founder of the law firm Gifford Thompson & Bright, United Kingdom; **Gisèle Halimi**, lawyer, former Ambassador to UNESCO, France; **Ronald Kasrils**, writer and activist, former Minister, South Africa; **Michael Mansfield**, barrister, President of the Haldane Society of Socialist Lawyers, United Kingdom; **José Antonio Martín Pallín**, Emeritus Judge, Chamber II, Supreme Court, Spain; **Cynthia McKinney**, former Member of the US Congress and 2008 presidential candidate, Green Party, USA; **Alberto San Juan**, actor, Spain; **Yasmin Sooka**, Executive Director of the Foundation for Human Rights, South Africa; **Aminata Traoré**, author and former Minister of Culture of Mali; **Alice Walker**, poet and writer, USA.

The RToP is supported by numerous contributions from individuals, associations, organisations and solidarity movements, some of whom are organised as National Support Committees (Belgium, Catalonia, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Portugal, the United Kingdom and South Africa). The independence of the RToP is guaranteed by the diversity and scale of the voluntary material and financial assistance it receives.

This third session of the RToP could not have taken place without the work accomplished by the South African Support Committee, presided by Judge Siraj Desai, Cape High Court judge.

Organisation of the sessions

The RToP proceedings comprise a number of sessions dealing with different aspects of the

complicity and responsibilities of states, international organisations and corporations in the ongoing occupation of Palestinian territories by Israel and the continuous violations of international law committed by Israel. They also aim to highlight the continuity and comprehensiveness of the Israeli policy that aims ultimately to render impossible the establishment of a Palestinian state.

The RToP met for its first international session in Barcelona from 1 to 3 March 2010 to consider the **complicity and omissions of the European Union and its Member States** in the ongoing occupation of Palestinian territories by Israel and the continuous violations of international law by Israel.

The second international session of the RToP was held in London from 20 to 22 November 2010. It examined **international corporate complicity** in Israel's violations of international human rights law and international humanitarian law.

This third international session of the RToP took place in South Africa from 5 to 7 November 2011 to deal with the following question: **"Are Israeli practices against the Palestinian people in breach of the prohibition on apartheid under international law?"**

The fourth international session of the RToP to be held in 2012 in New York will consider the **complicity and omissions of the United Nations and the United States of America** in the ongoing occupation of Palestinian territories by Israel and the continuous violations of the rights of the Palestinian people by Israel.

A **closing session** will be organised, by the beginning of 2013, to deliver the final conclusions of the RToP.

The full conclusions of the first three sessions are available at www.russelltribunalonpalestine.com

Terms of reference of the RToP at the cape town session

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, the UN General Assembly and the International Court of Justice (ICJ).⁽⁴⁾ The questions submitted to the RToP Jury at the Cape Town session are whether Israel's policy and certain practices affecting the Palestinian population residing in Israeli territory and in the Palestinian territories occupied by Israel (i) amount to a breach of the international legal prohibition of apartheid and (ii) constitute persecution as a crime against humanity. In the event of affirmative findings, what legal consequences and obligations arise for Israel and third states?

Procedure

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 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.

The written stage of the proceedings is followed by an oral stage during which members of the RToP hear statements by experts. The full list of experts and witnesses heard during this session can be found hereafter in the programme of the session.⁽⁵⁾

Admissibility

When considering the issues set out in this session, the Tribunal refers to its previous findings of violations of international law by Israel. 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 characterised 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. □

⁽⁴⁾ See paragraph 19 of the Barcelona findings.

⁽⁵⁾ The International Organising Committee wishes to thank the experts, witnesses, members of the jury and members of the committee of expert lawyers for their voluntary contributions.

Programme of the third international session of the RToP

ARE ISRAEL PRACTICES AGAINST THE PALESTINIAN PEOPLE IN BREACH OF THE PROHIBITION ON APARTHEID UNDER INTERNATIONAL LAW?

SATURDAY 5 NOVEMBER

Introduction: **Pierre Galand** and **Stéphane Hessel**.
Opening remarks: **Desmond Tutu**.

SETTING THE LEGAL CONTEXT

The Palestinian right to self-determination

Raji Sourani explains the content of the right, the nature of its denial in the Palestinian context, and its relation to apartheid and persecution.

APARTHEID

Apartheid in south africa, and the prohibition of apartheid in international law

Max du Plessis details the treaty and customary international law status of the prohibition on apartheid in international law.

The law and practice of apartheid in south africa and palestine

John Dugard gives a reminder of how the apartheid regime operated in law and policy in South Africa, and provides an overview of Israeli law and policy with respect to the prohibition on apartheid.

Elements of the definition of apartheid: racial groups under international law

David Keane explains the broad construction given to the term 'racial' in the context of 'racial discrimination' in International Law; **Ingrid Jaradat** presents Palestinian identity and Palestinians as a distinct racial group for the purposes of the definition of apartheid; and **Ran Greenstein** discusses the extent to which the legal definition of apartheid, based on the notion of racial domination, applies to the practices of the oppressing group in Israel/Palestine.

Elements of the definition of apartheid: an institutionalised regime of systematic domination

Joseph Schechla and **Emily Schaeffer** identify discriminatory elements of the Israeli legal system and the separate legal systems and courts for Jewish-Israeli settlers and Palestinians in the Occupied Territories.

Acts of apartheid

Marianne Blume discusses whether there is a case of 'sociocide' through the deliberate imposition on a racial group or groups of living conditions calculated to cause its or their political,

social and cultural destruction in whole or in part.

Allan Boesak and **Mahmoud Hassan** give testimonies about extra-judicial killing, torture or cruel, inhuman or degrading treatment or punishment, arbitrary arrest and illegal imprisonment during Apartheid South Africa, and in the West Bank, the Gaza Strip and Israel.

Rafeef Ziadah discusses the issue of labour exploitation of members of a racial group (or groups) in relation to the facts that Israel has raised barriers to Palestinian employment inside Israel since the 1990s, and that Palestinian labour is now used extensively only in the construction and services sectors of Jewish-Israeli settlements in the Occupied Palestinian Territories, while **Zwelinzima Vavi** reminds people of the conditions of employment under Apartheid South Africa.

SUNDAY 6 NOVEMBER

Luciana Coconi, **Shawan Jabarin** and **Lea Tsemel** give testimonies about the denial of the right to freedom of movement, to freedom of residence, to leave and return to one's country, to a nationality, to work, to form recognised trade unions, to education, to freedom of opinion and expression, and to freedom of peaceful assembly and association.

Jeff Halper and **Jamal Juma'a** speak of measures designed to divide the population along racial lines such as the creation of separate reserves and ghettos, the prohibition of mixed marriages, and the expropriation of landed property in Israel/Palestine as well as in former Apartheid South Africa.

Haneen Zoabi and **Shawqi Issa** testify about persecution of persons and organisations, by depriving them of fundamental rights and freedoms, because they oppose apartheid: arrest, imprisonment, travel bans and the targeting of Palestinian parliamentarians, national political leaders and human rights defenders, the closing down of related organisations, and the current legislation being enacted to punish those who initiate or promote boycott measures for opposition to Israeli domination.

PERSECUTION

Rafaelle Maison sets out and explains the status of persecution as a crime against humanity and **Raji Surani**, **Mohammed Khatib** and **Jazi Abu Kaf** present evidence pursuant to the above with regard to the Gaza Strip, the West Bank, including East Jerusalem, and the Palestinian citizens of Israel.

Presentation by the Israeli Government

The Israeli Government did not reply to the Tribunal's invitation.

THIRD-PARTY RESPONSIBILITY AND REMEDIES

François Dubuisson elaborates on third-party responsibility and remedies if Israel is proved guilty of apartheid.

Closing remarks.

Jury retires to deliberate.

MONDAY 7 NOVEMBER

Press conference to present the conclusions of the Third Session of the RToP. □

Executive summary of the findings of the third session of the RToP

Following the hearings and the deliberations of the jury, the findings of the third session of the Russell Tribunal on Palestine are summarised as follows:

I. APARTHEID

The Tribunal finds that Israel subjects the Palestinian people to an institutionalised regime of domination amounting to apartheid as defined under international law. This discriminatory regime manifests itself in varying intensity and forms against different categories of Palestinians depending on their location. The Palestinians living under colonial military rule in the Occupied Palestinian Territory are subject to a particularly aggravated form of apartheid. Palestinian citizens of Israel, while entitled to vote, are not part of the Jewish nation as defined by Israeli law and are therefore excluded from the benefits of Jewish nationality and subject to systematic discrimination across the broad spectrum of recognised human rights. Irrespective of such differences, the Tribunal concludes that Israel's rule over the Palestinian people, wherever they reside, collectively amounts to a single integrated regime of apartheid.

The state of Israel is legally obliged to respect the prohibition of apartheid contained in international law. In addition to being considered a crime against humanity, the practice of apartheid is universally prohibited. The Tribunal has considered Israel's rule over the Palestinian

people under its jurisdiction in the light of the legal definition of apartheid. Apartheid is prohibited by international law because of the experience of apartheid in southern Africa, which had its own unique attributes. The legal definition of apartheid, however, applies to any situation anywhere in the world where the following three core elements exist: (i) that two distinct racial groups can be identified; (ii) that 'inhuman acts' are committed against the subordinate group; and (iii) that such acts are committed systematically in the context of an institutionalised regime of domination by one group over the other.

(i) Racial Groups

The existence of 'racial groups' is fundamental to the question of apartheid. On the basis of expert evidence heard by the Tribunal, the jury concludes that international law gives a broad meaning to the term 'racial' as including elements of ethnic and national origin, and therefore that the definition of 'racial group' is a sociological rather than a biological question. Perceptions (including self-perceptions and external perceptions) of Israeli Jewish identity and Palestinian identity illustrate that Israeli Jews and Palestinian Arabs can readily be defined as distinct racial groups for the purposes of international law. From the evidence received, it was clear to the jury that two distinct, identifiable groups exist in a very practical sense and that the legal definition of 'racial group' applies

to all circumstances in which the Israeli authorities have jurisdiction over Palestinians.

(ii) Inhuman Acts of Apartheid

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

- widespread deprivation of Palestinian life through military operations and incursions, a formal policy of 'targeted killings', and the use of lethal force against demonstrations;
- torture and ill-treatment of Palestinians in the context of widespread deprivation of liberty through policies of arbitrary arrest and administrative detention without charge. The jury finds that such measures frequently go beyond what is reasonably justified by security concerns and amount to a form of domination over the Palestinians as a group;
- systematic human rights violations that preclude Palestinian development and prevent the Palestinians 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, and freedom of opinion and association, are severely curtailed. Palestinian socio-economic rights are also adversely affected by discriminatory Israeli policies in the spheres of education, health and housing.

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

(iii) A Systematic and Institutionalised Regime

The inhuman acts listed above do not occur in random or isolated instances. They are sufficiently widespread, integrated and complementary to be described as systematic. They are also sufficiently rooted in law, public policy and formal institutions to be described as institutionalised. In the Israeli legal system, preferential status is afforded to Jews over non-Jews through its laws on citizenship and Jewish nationality, the latter of which has created a group privileged in most spheres of public life, including residency rights, land ownership, urban planning, access to services and social, economic and cultural rights (see list of legislation and proposed legislation in the attached Annex). The Tribunal heard expert evidence detailing the relationship between the State of Israel and the quasi-state Jewish national institutions (the Jewish Agency, the World Zionist Organization, and the Jewish National Fund) that embed and formalise many of the material privileges granted exclusively to Israeli Jews. Regarding the West Bank, the Tribunal highlights the institutionalised separation and discrimination revealed by the existence of two entirely separate legal systems: Palestinians are subject to military law enforced by military courts that fall far short of

international fair trial standards; Israeli Jews living in illegal settlements are subject to Israeli civil law and a civil court system. The result is a vastly different procedure and sentence for the same crime, committed in the same jurisdiction, by members of a different group. An apparatus of administrative control implemented through pervasive permit systems and bureaucratic restrictions adversely affects Palestinians throughout the territories under Israeli control. In contrast to the explicit and readily available South African apartheid legislation, the Tribunal draws attention to the obscurity and inaccessibility of many laws, military orders and regulations that underpin Israel's institutionalised regime of domination.

II. PERSECUTION AS A CRIME AGAINST HUMANITY

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

- the siege and blockade of the Gaza Strip as a form of collective punishment of the civilian population;
- the targeting of civilians during large-scale military operations;
- the destruction of civilian homes not justified by military necessity;
- the adverse impact on the civilian population

effected by the Wall and its associated regime in the West Bank, including East Jerusalem;

- the concerted campaign of forcible evacuation and demolition of unrecognised Bedouin villages in the Negev region of southern Israel.

III. LEGAL CONSEQUENCES

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

States and international organisations also have international responsibilities. They have a duty to cooperate 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.

IV. ACTIONS REQUIRED AND RECOMMENDED.

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

Accordingly, the Tribunal urges:

- the **state of Israel** to immediately dismantle its system of apartheid over the Palestinian people, to rescind all discriminatory laws and practices, not to pass any further discriminatory legislation, and to cease forthwith acts of persecution against Palestinians;
- **all states** to cooperate to bring to an end the illegal situation arising from Israel's practices of apartheid and persecution. In light of the obligation not to render aid or assistance, all states must consider appropriate measures to exert sufficient pressure on Israel, including the imposition of sanctions, the severing of diplomatic relations collectively through international organisations or, in the absence of consensus, individually by breaking off bilateral relations with Israel;
- the **Prosecutor of the International Criminal Court** to accept jurisdiction as requested by the Palestinian authorities in January 2009, and to initiate an investigation 'as expeditiously as possible', as called for by the 'Goldstone Report', into international crimes committed in Palestinian territory since 1 July 2002, including crimes of apartheid and persecution;
- **Palestine** to accede to the Rome Statute of the International Criminal Court;
- **global civil society** (including all groups and individuals working diligently inside Israel and the occupied Palestinian territory to oppose the system of racial domination that exists therein) to replicate the spirit of solidarity that contributed to the end of apartheid in South Africa, including by making national parliaments aware of the findings of this Tribunal and supporting the campaign for Boycott, Divestment and Sanctions (BDS);
- the **UN General Assembly** to reconstitute the UN Special Committee against Apartheid, and

to convene a special session to consider the question of apartheid against the Palestinian people. In this connection the Committee should compile a list of individuals, organisations, banks, companies, corporations, charities, and any other private or public bodies which assist Israel's apartheid regime with a view to taking appropriate measures;

- the **UN General Assembly** to request an advisory opinion from the International Court of Justice, as called for by the current and former UN Special Rapporteurs on human rights to the Occupied Palestinian Territory, as well as by the Human Sciences Research Council of South Africa, to examine the nature of Israel's prolonged occupation and apartheid;
- the **UN Committee on the Elimination of Racial Discrimination** to address the issue of apartheid in its forthcoming review of Israel in February 2012;
- the **Government of South Africa**, as the host country for the third session of the Russell Tribunal on Palestine, to ensure that no reprisals of any sort are taken by the State of Israel against the witnesses that testified before the Tribunal.

The Tribunal welcomes the decision of the United Nations Educational, Scientific and Cultural Organization (UNESCO) to admit Palestine as a member. It deplores the punitive action taken by the United States towards the Organization, 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. □

Annex: Legislation and proposed legislation

ACTS:

1. Law of Return (1950)
2. Citizenship Law (1952)
3. Citizenship and Entry to Israel Law (2007)
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)
8. The Chief Rabbinate of Israel Law (1980)
9. The Flag and Emblem Law (1949)
10. The State Education Law (1953) and its 2000 amendment
11. Absentee Property Law (1950)
12. The Land Acquisition Law (1953)
13. Basic Law: Israel Lands [The People's Lands] (1960)
14. Agricultural Settlement Law (1967)
15. Basic Law: The Knesset (1958), Amendment 9 (1985)
16. The Israel Land Administration (ILA) Law (2009)
17. Amendment (2010) to The Land (Acquisition for Public Purposes) Ordinance (1943)
18. The Admissions Committees Law (2011)
19. The Israel Lands Law (Amendment No. 3) (2011)
20. The Economic Efficiency Law (Legislative Amendments for Implementing the Economic Plan)
21. Absorption of Discharged Soldiers Law (1994) [2008 amendment]
22. Absorption of Discharged Soldiers Law (1994) (Amendment No. 12) (2010)
23. Law (2011) to Amend to the Budgets Foundations Law, Amendment No. 40 (The "Nakba Law")
24. The Regional Councils Law (Date of General Elections) (1994) Special Amendment No. 6 (2009)
25. Duty of Disclosure for Recipients of Support from a Foreign Political Entity Law (2011) ("NGO Foreign Government Funding Law")

BILLS:

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