



# Russell Tribunal

on Palestine

With the support of  
The Bertrand Russell Peace Foundation Ltd

## Apartheid against the Palestinian People

Luciana Coconi and David Bondia

### **Index:**

I.- Introduction

II.- What is apartheid?

- A. Constitutive elements of the crime of apartheid.
- B. Where is the crime of apartheid categorized?
- C. The International Convention on the Suppression and Punishment of the Crime of Apartheid
- D. Can the people responsible for this crime be punished?

III.- International Legislation applicable in Israel and in the Occupied Palestinian Territories

- A. International legal regulations that Israel should apply
- B. Human Rights treaties ratified by Israel
- C. International humanitarian law applicable to the Occupied Palestinian Territories

IV.- Human Rights violations in Israel and the Occupied Palestinian Territories

- A. Violations identified by the Treaty Committees
- B. Violations identified by the United Nations Special Rapporteurs

V.- Legislation applicable in Israel and in the Occupied Palestinian Territories

- A. Different groups affected by this legislation
- B. Israeli legislation
- C. Military orders

VI.- Conclusion: Is there really apartheid in Israel and in the Occupied Palestinian Territories?

### **I.- Introduction**

This document, titled "*Apartheid against the Palestinian people*" aims to, from a distance -without any preconceived position- and through analysis, on one hand, of the international legal regulations and, on the other, of the national legislation and its application, both in Israel and in the Occupied Palestinian Territories, to determine the existence -or not- of a **crime of apartheid against the Palestinian people**.

Throughout this study, we will be able to distinguish what is understood as a crime of apartheid. We know what happened in South Africa, we suspect what might be happening in Israel and in the Occupied Palestinian Territories, but not much time has been dedicated to analysing why it arose and how was it categorized as a **crime against humanity** and what its legal content is.

While it is a fact that the international Community decided to typify the category of crime of apartheid because of what was happening in South Africa, it is also true that once the original

cause of its creation –the segregationist and racist South African regime-, the persecution of this crime against humanity is still applicable. This can be done through the Convention against Apartheid, the Rome Statute or international customary law.

As defined in article 7 of the Statute of the International Criminal Court, apartheid is “inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime”. Taking as a reference the most recent definition we have, which includes all jurisprudence and international customary law on this subject, it is a question of determining, following the guidelines established in the Convention against Apartheid, if the Palestinian people are suffering similar policies and situations.

The study is not only focused on the violations of international humanitarian law that Israel is committing in the Occupied Palestinian Territories; it is centred on the analysis of **international human rights law**. On one hand, the reports elaborated by the experts who are part of the various conventional mechanisms established in the international human rights treaties are fundamental. Their importance lies in that they are international treaties ratified by Israel, applicable in all the territories under its jurisdiction -Israel and the Occupied Palestinian Territories- and in that they analyse the information supplied by the Israeli government itself. So the repeated condemnations by these experts cannot be qualified as one-sided or biased because even the government of Israel has recognized that they have this authority.

And if this was not enough, this report we will be able to appreciate how, in the field of the various non-treaty based mechanisms, various Special Rapporteurs have been categorically regarding the racist and segregationist policies undertaken, as a preconceived plan, by several Israeli organs and authorities. All of this is completed with other United Nations documentation, including the Advisory Opinion of the International Criminal Court on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory.

After analysing the international regulations, the report focuses on the legislation applicable to Israel and the Occupied Palestinian Territories and it outlines not only the discrimination suffered by the Palestinian people, but also the plan aimed to deny the respect of their dignity as human beings. This denial has a specific legal categorization: **crime of apartheid**.

## II.- What is apartheid?

*Apartheid* is an Afrikaner term meaning “**separateness**”. It is a system establishing, through laws, policies and practices the supremacy of one human group over another, based on racial criteria. This system was developed in South Africa between 1948 and 1990, creating a legal framework institutionalizing racial segregation.

### A.- CONSTITUTIVE ELEMENTS OF THE CRIME OF APARTHEID

As determined by the Special Group of Experts<sup>1</sup> of the United Nations Commission on Human Rights, these elements are:

- 1) The “Bantustan policy”, creating reserved areas for specific racial groups.
- 2) The regulations concerning the circulation of black Africans and Asians in the urban areas.

---

<sup>1</sup> Human Rights Commission, Study Concerning the Question of Apartheid from the Point of View of International Penal Law, E/CN.4/1075, 15<sup>th</sup> of February, 1972, pp. 51 – 52.

3) Demographic policy with the aim of reducing the number of black population, while favouring white immigration.

4) The imprisonment and ill-treatment of non-white political leaders and of non-white prisoners in general.

All these violations are committed on a large scale, and they constitute a systematic discriminatory practice regarding the most essential human rights.

B.- WHERE IS THE CRIME OF APARTHEID CATEGORIZED?

- International Convention on the Elimination of All Forms of Racial Discrimination. (1965).
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968).
- International Convention on the Suppression and Punishment of the Crime of Apartheid (1973).
- Rome Statute of the International Criminal Court (1998).

Even if it does not exist in South Africa any more, apartheid, as a **crime against humanity**, is still condemned by international legislation, because it is one of the *worst forms of racial discrimination*.

C.- THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID

The Convention was adopted by 91 votes in favour, 4 against (the United States of America, Portugal, the United Kingdom and South Africa) and 26 abstentions. It entered into force on the 18<sup>th</sup> of July, 1976 in accordance with article XV and is currently ratified by 107 countries. Israel has not signed or ratified this Convention.

Article II defines apartheid as those

*"... 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"*

These acts are:

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

I. *Murder of members of a racial group or groups;*

II. *By the infliction upon the members of a racial group or groups 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;*

III. *Arbitrary arrest and illegal imprisonment of the members of a racial group or groups;*

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;*

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 denying 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;*

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;*

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

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

D.- CAN THE PEOPLE RESPONSIBLE FOR THIS CRIME BE PUNISHED?

Can the people responsible for committing this crime in Israel and the Occupied Palestinian Territory be punished, even though Israel has not ratified the Convention against Apartheid? **Yes.** Even if Israel is under no obligation due to its non-ratification of this International Treaty on the crime of apartheid, it must still respect the regulations it contains, because the suppression and the punishment of these crimes against humanity constitutes an **imperative rule generated from international customary law and therefore binds States irrespective if they have ratified the international treaties or not.**

As far as the responsibility of the individual is concerned, the Nuremberg Principles state that: "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law (Principle II)<sup>2</sup>.

Apartheid, as a **crime against humanity**, is subject to two principles that distinguish it from ordinary crimes:

- **Principle of universal or extraterritorial jurisdictions.** It implies the possibility of taking those responsible of crimes against humanity to trial, based exclusively on the nature of said crimes, without taking into consideration the nationality of the accused or of the victim or the place where the crime was committed. This principle features in various international treaties, among them the International Convention on the Suppression and Punishment of the Crime of Apartheid (articles IV and V) and in the internal legislation of several States, among them, Spain (article 23.4 of the Organic Law on Judiciary Power).
- **The principle of Non-Applicability of Statutory Limitations.** Crimes against humanity must be persecuted and their authors punished, irrespective of the moment when they were committed. In other words, their trial has no time limit, unlike other crimes.

### **III.- International Legislation applicable in Israel and in the Occupied Palestinian Territories**

A.- INTERNATIONAL LEGAL REGULATIONS THAT ISRAEL SHOULD APPLY

What international human rights and humanitarian legislation should Israel apply in its territory and in the Occupied Palestinian Territories? Israel declares that the international human rights treaties it signed are only applicable in Israel, because these treaties protect the citizens against the State itself in peacetime, and it does not apply to the Occupied Palestinian Territories, where the regulations of humanitarian law are still applicable. Israel also maintains that the occupation of the

---

<sup>2</sup> Principles of International Law recognized by the Charter of the Nuremberg Tribunal and in the Judgement of the Tribunal. Draft Code of Crimes Against the *Peace and Security* of Mankind- Yearbook of the International Law Commission, UN, A/CN.4/368, 13<sup>th</sup> of April, 1983.

Gaza Strip ended on the 12<sup>th</sup> of September, 2005, when it transferred full powers to the Palestinian Authority. This means that Israel is not responsible for the well-being of the citizens of the Strip<sup>3</sup>. We can ascertain why this is not truthful:

- The International Criminal Court determined that in the Occupied Palestinian Territories the legislation on human rights should also be applicable, and not only the regulations of international humanitarian law<sup>4</sup>.
- As the occupying force, Israel has the duty of fulfilling the obligations established by international humanitarian law and by international human rights law. And this obligation is extensive not only to the West Bank, but also to the Gaza Strip, because "a territory is occupied if it is under the "effective control" of a State other than that of the territorial sovereign"<sup>5</sup>. Therefore, "the test for determining whether a territory is occupied under international law is effective control and not the permanent physical presence of the occupying Power's military forces in the territory in question"<sup>6</sup>.

The **effective control of Israel over the Gaza Strip** is demonstrated through the following factors:

- a) Substantial control of Gaza's six land crossings.
- b) Control through military incursions, rocket attacks and sonic booms.
- c) Complete control of Gaza's airspace and territorial waters.
- d) Control of the Palestinian Population Registry: the definition of who is "Palestinian" and who is a resident of Gaza and the West Bank<sup>7</sup>.

#### B.- HUMAN RIGHTS TREATIES RATIFIED BY ISRAEL<sup>8</sup>.

The rules of international human rights law which should be applied in the Occupied Palestinian Territories and in Israel, recorded in various human rights treaties ratified by Israel, are as follows:

- **International Convention on the Elimination of All Forms of Racial Discrimination** (ratified by Israel on the 03/01/1979).
- **International Covenant on Civil and Political Rights** (ratified by Israel on the 03/10/1991).
- **International Covenant on Economic, Social and Cultural Rights** (ratified by Israel on the 03/10/1991).
- **Convention on the rights of the Child** (ratified by Israel on the 03/10/1991).
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (ratified by Israel on the 03/10/1991).

---

<sup>3</sup> Decision of the Supreme Court of Israel in Al Bassiouni vs the Prime Minister.

<sup>4</sup> Advisory Opinion of the International Criminal Court on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, A/ES-10/273, of the 9<sup>th</sup> of July, 2004, paragraph 114.

<sup>5</sup> Special Rapporteur's report on the Human Rights situation in the Occupied Palestinian Territories since 1967, Mr. Richard Falk, A/63/326, August 2008.

<sup>6</sup> Special Rapporteur's report on the Human Rights situation in the Occupied Palestinian Territories since 1967, Mr. John Dugard, A/HRC/7/17, of the 21<sup>st</sup> of January, 2008.

<sup>7</sup> Source: *Ibid*.

<sup>8</sup> Source: Office of the UN High Commissioner for Human Rights :  
<http://www.unhcr.ch/tbs/doc.nsf/newhvstatusbycountry?OpenView&Start=1&Count=250&Expand=84>

- **Convention on the Elimination of All Forms of Discrimination against Women** (ratified by Israel on the 03/10/1991).

#### C.- INTERNATIONAL HUMANITARIAN LAW APPLICABLE TO THE OCCUPIED PALESTINIAN TERRITORIES

The rules of international humanitarian which should be applied in the Occupied Palestinian Territories are the following:

- Those included in the **IV The Hague Convention, related to the laws and customs of war on land, in whose appendix there are the Rules of the Hague, of the 18<sup>th</sup> of October, 1907**. Israel is not to party of this Convention, but the International Criminal Court ruled that the dispositions it contained were part of **customary law**, which, as such, was binding for all the States, with Israel obviously included<sup>9</sup>.
- Those included in the **IV Geneva Convention of the 12<sup>th</sup> of August, 1949, relative to the due Protection of Civilians in time of war**(ratified by Israel on 06/07/1951).
- The **customary regulations of international humanitarian law applicable to occupation**, which, as such, are of mandatory application for Israel.

### IV.- Human Rights violations in Israel and the Occupied Palestinian Territories

#### A.- VIOLATIONS IDENTIFIED BY THE TREATY COMMITTEES

Israel has ratified the vast majority of international treaties related to the protection and promotion of human rights. Each of these treaties has a monitoring body called a "Committee", supervising its application and to whom States, *having freely accepted the treaty*, must send periodical reports in which they must detail how these rights have been incorporated into their legislations and made effective. The Committee "answers" these reports with its Concluding Observations, expressing its recommendations and worries to the State. In the specific case of Israel, the Committees, in their Concluding Observations, have condemned the constant human rights violations suffered by the Palestinian people, which, if analyzed as a whole, divulge the existence of an apartheid regime. We will now enumerate these violations, as mentioned in the most recent reports by the Committees of the aforementioned treaties.

#### 1. **Committee on the Elimination of Racial Discrimination**<sup>10</sup>

- **In Israel:**

- Establishment of a legislation of privileges in favour of Jewish nationals in relation to the **access to land and certain benefits** (§ 23).
- **Denial of the right of refugees and displaced Palestinians to return and repossess their land in Israel** (§ 23).
- **Exclusion of Arab Israeli citizens from certain lands** controlled by the State through what is established as a criterion of social adequacy to apply for access to land through the Israel Land

<sup>9</sup> Advisory Opinion of the International Criminal Court on the legal consequences of the construction of a Wall in Occupied Palestinian Territory, A/ES-10/273, of the 9<sup>th</sup> of July, 2004, paragraph 89.

<sup>10</sup> Final Observations for the Committee on the Elimination of Racial Discrimination, Israel, CERD/C/ISR/CO/13, 14<sup>th</sup> of June, 2007.



Administration (the condition for the applicants is that they have to be “ideal for living in a regime of small communities”) (§ 23).

- Existence of **separate "sectors" for Jews and Arabs**, in particular in **housing** and in **education**, causing unequal treatments and funding that may **represent** racial segregation (§ 22).

- **Low level of education provision for Arab Israeli citizens**, a barrier in the access to employment, something that is reflected in that their average income is considerably lower than that of the Jewish citizens (§ 24).

- Differences in the **rates of child mortality and life expectancy of the Jewish and non-Jewish population**. Women and girls of minorities tend to be the most disadvantaged (§ 24).

- Indirect **Discrimination** against Arabs through the psychometric examinations that are used to check aptitudes, ability and personality in **access to higher education** (§27).

- **Racial discrimination through access to public services associated to military service**, like housing and education, bearing in mind that most of the Arab-Israeli citizens do not perform military service. (§ 21).

- **Lack of preservation of the cultural and religious Arab heritage**, bearing in mind that there are Jewish cultural institutions dedicated to protect the Jewish heritage. There is a different level of protection for Jewish and Non-Jewish holy sites. (§ 28).

- **Lack of protection and effective legal instruments** against **discriminatory acts**. There is no clear and resolute policy of the Attorney-General in the trial of politicians, civil servants and other public figures if they incite hatred against the Arab minority (§ 29).

- Actions that alter the demographic composition of the Occupied Palestinian Territories (§ 14).

- **In the Occupied Palestinian Territories:**

- Existence of the **Wall of separation in the West Bank** (§ 33).

- **Restrictions on freedom of movement** imposed by the Wall and other barriers (§ 34).

- Application of **different laws for Jewish settlers and for Palestinians** (§ 36).

- Application of different criminal laws inflicting **more prolonged detentions and more severe punishments to Palestinians** than to Israelis for the same crimes (§ 36).

- **Unequal distribution of water resources** in prejudice of Palestinians (§ 36).

- **Demolition of Palestinian houses** (§ 26).

- **Persistence of violence by Jewish settlers** against the Palestinian population (§ 37).

## 2. Human Rights Committee<sup>11</sup>.

- **In Israel:**

- Public pronouncements by prominent Israeli figures in relation to Arabs, which may represent a *call to racial hatred and an invitation to discrimination, hostility and violence* (§ 20).

- **Israeli legislation violating the rights of the Palestinian people** (Law of Nationality and Entry into Israel Law (Temporary Order) of the 31<sup>st</sup> of July, 2003, and the Law on Citizenship Law of 1952) (§ 22).

---

<sup>11</sup> Concluding Observations of the Human Rights Committee: Israel. 21/08/2003, CCPR/CO/78/ISR. The third and last Periodical Report on Israel (CCPR/C/ISR/3 y HRI/CORE/ISR/2008, de 21/11/2008) will be considered in the 97<sup>th</sup> of the Human Rights Committee, in Geneva, October 2009.

- **Percentage law for the Israeli Arabs in the public sector and in the Civil Service.** There are no progresses in the improvement of participation, especially in relation with women (§ 23).

- **In the Occupied Palestinian Territories:**

- A frequent use of various forms of **administrative detention**, restrictions in the access to a lawyer and lack of information about the motives of detention (§ 12).

- **Ambiguous wording of the regulations related to terrorism**, vagueness in the definition of laws that threaten the principle of legality, like the use of probationary presumptions against the accused (§ 14).

- Practice of **"selective executions"** of people that Israel *suspects* are terrorists, a practice used, at least in part, as an element of deterrence or punishment. (§ 15).

- **Demolition of property and family homes**, some of whose members were or are considered as suspicious of participating in terrorist activities or in suicide bombings, *with punitive character, at least in part* (§ 16).

- The use of local residents as **"voluntary human shields"** by the Israeli Defence Forces (IDF) during military operations, particularly in order to search houses and to facilitate the surrender of people that Israel has considered as terrorist suspects (§ 17).

- The use by Israel of *interrogation methods* that constitute **torture** (§ 18).

- *Serious and unjustifiable restriction on the right to free movement of Palestinians through the establishment of a "Seperation Zone" by means of a fence and, in part, of a wall, beyond the Green Line* (§ 19).

### 3. Economic, Social and Cultural Rights Committee<sup>12</sup>.

- **In Israel:**

- **Different treatment of Jews and Non-Jews, particularly the Arab and Bedouin communities, in the exercise of economic, social and cultural rights.** *"The excessive emphasis upon the State as a 'Jewish State' encourages discrimination and accords a second-class status to its non-Jewish citizens. This discriminatory attitude is apparent in the continuing lower standard of living of Israeli Arabs as a result, inter alia, of higher unemployment rates, restricted access to and participation in trade unions, lack of access to housing, water, electricity and health care and a lower level of education, despite the State party's efforts to close the gap..."* (§ 16).

- The Israeli Law of Return which *"results in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees"*. A restrictive practice regarding the reunification of Palestinian families, adopted for national security reasons (§ 18).

- **Increase in the unemployment rate**, specially significant in the non-Jewish sectors of the population, and over 50% in the occupied territories *"as a result of the closures which have prevented Palestinians from working in Israel"* (§ 20). The persisting inequality in wages of Jews and Arabs in Israel, as well as the severe underrepresentation of the Arab sector in the civil service and universities is also alarming (§ 21).

- **In the Occupied Palestinian Territories:**

---

<sup>12</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 26/06/2003, E/C.12/1/Add.90.



- *Deplorable living conditions of the Palestinians in the occupied territories*, who - as a result of the continuing occupation and subsequent measures of closures, extended curfews, roadblocks and security checkpoints - suffer from an infringement on their enjoyment of economic, social and cultural rights enshrined in the Covenant, in particular **access to work, land, water, health care, education and food** (§ 19).

- **Limited access to and distribution and availability of water** for Palestinians in the occupied territories, as a result of inequitable management, extraction and distribution of shared water resources, which are predominantly under Israeli control (§ 25).

- *Home demolitions*, land confiscations and restrictions on residency rights by Israel. Adoption of policies resulting in **substandard housing and living conditions**, including *extreme overcrowding* and lack of services, of Palestinians in East Jerusalem, in particular in the old city. *The continuing practice of expropriation of Palestinian properties and resources for the expansion of Israeli settlements in the occupied territories* (§ 26).

#### 4. Committee on the Rights of the Child<sup>13</sup>.

##### • In Israel and in the Occupied Palestinian Territories:

- *Inequalities in the enjoyment of the economic, social and cultural rights* (i.e. access to education, health care and social services) of Israeli Arabs and other minorities and Palestinian children in the Occupied Palestinian Territories (§ 26).

- Large gap between services provided to Jewish and Israeli *Arab children with disabilities* (§ 42).

- In Israel the investment in and the quality of education in the Israeli Arab sector is significantly lower than in the Jewish sector (§ 54).

##### • In the Occupied Palestinian Territories:

- Difference in the **legal definition of childhood**. In Israel, children are persons under 18 and in the Occupied Palestinian Territories, children are *persons under 16* (§ 24).

- *Detention and interrogation of children* (§ 62)

- Allegations and complaints of **inhuman or degrading practices and of torture and ill-treatment of Palestinian children** by police officers during arrest and interrogation and in places of detention (§ 36).

- Military orders which may allow *prolonged rights, access to legal assistance* and family visits (§ 62).

- Serious deterioration of **the health of children** and of the health **services for children**, especially as a result of the measures imposed by the IDF, including, among others, road closures, curfews and mobility restrictions, and the destruction of Palestinian economic and health infrastructure. Delays and interference in the activities of the medical personnel, the shortages of basic medical supplies and malnutrition in children owing to the disruption of markets and the prohibitively high prices of basic foodstuffs (§ 44).

- *Large-scale demolition of houses and infrastructure in the occupied Palestinian territories, which constitutes a serious violation of the right to an adequate standard of living for children in those territories* (§ 50).

- Impact of *terrorism* on the rights of children in Israel, as well as the impact of *military action* on the rights of children in the Occupied Palestinian Territories and the lack of redress available to child victims of IDF in that territory (§ 58).

---

<sup>13</sup> 14 Concluding Observations of the Committee on the Rights of the Child: Israel. 09/10/2002, CRC/C/15/Add.195.

- **Serious deterioration of access to the education** of children in the occupied Palestinian territories as a result of the measures imposed by the IDF, including curfews, circulation restrictions and the destruction of school infrastructure (§ 52).

## 5. Committee against Torture<sup>14</sup>.

### • In Israel and the Occupied Palestinian Territories:

- *Reports of torture and ill-treatment of Palestinian minors* (§ 52).
- Administrative detention and the continued use of **isolated detention, even in the case of children** (§ 52).
- Few prosecutions started against the law enforcement officials accused of *torture and ill-treatment* (§ 52).
- **Israeli policies of closures and demolition of houses which may amount to cruel, inhuman or degrading treatment or punishment** (§ 52).
- Few prosecutions started against the law enforcement officials accused of *torture and ill-treatment* (§ 52).
- Cases of "**extrajudicial killings**" (§ 52).

## 6. Committee on the Elimination of Discrimination against Women<sup>15</sup>.

### • In Israel:

- Low number and level of representation of women in important posts in the civil service (§ 31).
- Arab Israeli women are in a situation of vulnerability, *discrimination and inequality*, especially obvious regarding *education and health* (§ 35). This inequality is even worse amongst the Bedouin women living in the Negev (§ 39).

### • In the Occupied Palestinian Territories:

- *Restrictions on the freedom of movement*, especially at Israeli checkpoints, undermining the rights of Palestinian women, including the right of access to health-care services for **pregnant women** (§ 37).

## B.- VIOLATIONS IDENTIFIED BY THE UNITED NATIONS SPECIAL RAPPORTEURS

"Special procedures" are the extra-conventional mechanisms for the protection of human rights established by the Commission on Human Rights (substituted in 2006 by the Human Rights Council). They are named, amongst other dominations, "Special Rapporteurs". Various special procedures have expressed concern about the human rights situation in Israel and the Occupied Palestinian Territories. Here we shall review the latest special procedure reports concerning the matter in question, namely the discrimination suffered by the Palestinian people.

<sup>14</sup> Concluding Observations of the Committee against Torture: Israel, 25/09/2002, A/57/44.

<sup>15</sup> Concluding Observation of the CEDAW Committee: Israel CEDAW/C/ISR/CO/3, of 22nd July 2005. The fourth and fifth reports now presented by Israel (CEDAW/C/ISR/4) shall be analysed in the upcoming session of the Committee.

## 1. Report of the Special Rapporteur on the Situation of Human Rights in Israel and the Palestinian Territories occupied since 1967, Mr. Richard Falk<sup>16</sup>.

- *"The Special Rapporteur takes particular note of the fact that the military occupation of the Palestinian territory has gone on for more than 40 years and that it possesses characteristics of colonialism and apartheid, as has been observed by the previous Special Rapporteur"* (§ 3).
- *"Dangerous and non-sustainable levels of **mental and physical suffering and trauma for the Palestinian people living under occupation are being reached**"* (§ 6).
- **Checkpoints** have a negative effect on the access to hospitals and medical facilities in the cities from villages and refugee camps. These adverse conditions cause various ailments, especially in children suffering from malnutrition and various traumas (§ 38).
- All movement is *extremely difficult* due to the combination of checkpoints, roadblocks and permit requirements. These restrictions also make access to Israel nearly impossible, for most Palestinians in the West Bank (§ 38). *"Such restrictions seem excessive, and have been frequently noted, combined with a variety of intimidating and humiliating practices which discourage Palestinian movement in the West Bank..."* (§ 44).
- *"The regime of confinement amounts to **collective punishment** ..."* (§ 44)
- *"The expansion of **settlements** has been particularly notable in East Jerusalem... The expansion also furthers the Israeli policy of making East Jerusalem into a place of majority Jewish residence, and is accompanied by expulsions of Palestinians. In addition, the presence of 250,000 Jews living "illegally" in East Jerusalem is being overlooked"* (§ 33).
- *"Palestinian land taken by Israel for settlements, for closed military zones (including almost the entire Jordan Valley), and for Israeli-declared nature preserves now renders 40 per cent of the West Bank inaccessible and unusable for residential, agricultural, commercial or municipal development"* (§ 32).
- **Closures and the "cantonisation" process** of the territory make it *practically impossible* to carry out any gainful economic activity (§ 38).
- *Extremely high unemployment and poverty rates.* The poverty rate for the West Bank and Gaza combined is currently 59 % and food insecurity affects at least 38 per cent of the overall population of the Occupied Palestinian Territory. The **unemployment level in Gaza is the highest in the world: 45 % of the population.** 95 % of the factories in Gaza are now closed due to the siege. The World Bank has suggested that that set of conditions could produce an *"irreversible" economic collapse* (§ 35).

## 2. Report of the Special Rapporteur on the Situation of Human Rights in Israel and the Palestinian Territories occupied since 1967, Mr. John Dugard<sup>17</sup>.

- *"*
- *"More than 38 per cent of the West Bank consists of **settlements, outposts, military areas and Israeli nature reserves that are off limits to Palestinians.** Settler roads link settlements to each other and to Israel. These roads are largely closed to Palestinian vehicles. (Israel has therefore introduced a system of "**road apartheid**", which was unknown in apartheid South Africa.)"* (§ 30).
- *"...Settlements constitute a form of colonialism... which is contrary to international law..."* (§ 32).

<sup>16</sup> Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967, Mr. Richard Falk, A/63/326, 25th August 2008.

<sup>17</sup> Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967, Mr. John Dugard, A/HRC/17, 21st January 2008.

- **Confiscation of Palestinian land to construct roads:** *"the road is part of Israel's broader plan to replace territorial contiguity with "transportational contiguity" by artificially connecting Palestinian population centres through an elaborate network of alternate roads and tunnels and creating segregated road networks, one for Palestinians and another for Israeli settlers, in the West Bank" (§ 33).*

- **Physical barriers** preventing Palestinians' movements within the West Bank, with *disastrous consequences for both personal life and the economy.* These hundreds of barriers, consist of manned checkpoints and unmanned locked gates, earth mounds, concrete blocks and ditches. In addition, thousands of temporary checkpoints, known as flying checkpoints, are set up every year by Israeli army patrols on roads throughout the West Bank for periods ranging from half an hour to several hours (§ 34).

- **Limitations and prohibitions on travelling** for Palestinians who need permits to travel to the West Bank and East Jerusalem. *"Checkpoints serve to humiliate Palestinians and create feelings of deep hostility towards Israel. In this respect they resemble the "pass laws" of apartheid South Africa, which required black South Africans to demonstrate permission to travel or reside anywhere in South Africa" (§ 35).*

- **Separation wall constructed on Palestinian territory which has grave consequences on the lives of the Palestinians.** There is a Palestinian zone trapped between the Green Line and the wall. People living there are cut off from places of employment, schools, universities and specialised medical care. Bureaucratic procedures for obtaining these permits are *"humiliating and obstructive"...* Only about 18 % of those who used to work these land in the closed zone receive permits. The regulation on the **opening and closing of the gates** leading to the closed zone is extremely restrictive: in 2007 only 19 of the 67 gates in the wall were open to Palestinians for use all year round on a daily basis. The IDF humiliate and ill-treat the Palestinians who use these doors. All these hardships experienced by Palestinians living within the closed zone and in the precincts of the wall have already resulted in the *displacement* of some 15,000 persons (§ 36 to 38).

- Demolition of houses: *"Both law and fact show, however, that houses are not demolished in the course of "normal" town planning operations, but are instead demolished in a discriminatory manner to demonstrate the power of the occupier over the occupied" (§ 41).*

- In both East Jerusalem and that part of the West Bank categorised as Area C, **houses and structures may not be built without -extremely hard to get- permits.** Due to this, Palestinians are frequently forced to build homes without permits. *"In East Jerusalem house demolitions are implemented in a discriminatory manner: Arab homes are destroyed but not Jewish houses. In Area C the IDF has demolished or designated for demolition homes, schools, clinics and mosques on the ground that permits have not been obtained".* The Rapporteur concludes by stating that *"this brings back memories of the practice in apartheid South Africa of destroying black villages (termed "black spots") that were too close to white residents...(§ 42).*

- In short, *"The construction of the wall, the expansion of settlements, the restrictions on freedom of movement, house demolitions and military incursions have had a disastrous impact on the economy, health, education, family life and standard of living of Palestinians in the West Bank... Poverty and unemployment are at their highest levels ever; health and education are undermined by military incursions, the wall and checkpoints; and the social fabric of society is threatened "* (§ 43). Both in Gaza and the West Bank, **"Israel's actions constitute an unlawful collective punishment of the Palestinian people"** (§ 44).

- Detainees, including minors and *"administrative"* detainees (people not convicted for any offence, held for renewable periods of up to six months) are **systematically treated in a degrading and humiliating way.** (§ 45).

### 3. Report of the Special Rapporteur on Adequate Housing, as a component of the right to an adequate standard of living, Mr. Miloon Kotharin, Mission in the Occupied Palestinian Territories<sup>18</sup>.

- *The serial destruction of households, property and patrimony is a continuous process in the Occupied Palestinian Territories. This causes untold suffering to people who have no connection with the actual violence... Israel favours illegal settlers with generous land allotments, subsidies, impunity for violent criminal activity, State-sponsored and private financing, and all manner of services at the expense of the indigenous Palestinian host population and international peace and security. Essentially, the institutions, laws and practices that Israel had developed to dispossess the Palestinians (now Israeli citizens) inside its 1948 border (the Green Line) have been applied with comparable effect in the areas occupied since 1967" (§ 7).*
- A dominant feature of Israeli occupation is the **confiscation of land and properties belonging privately and collectively to the Palestinians**. As a consequence of these Israeli policies, most of the Palestinian population lives in refugee camps, the old quarters of the city, densely populated villages and slums. (§ 48).
- *Territorial planning regulations established by Israel are discriminatory by nature. Due to these regulation, the Palestinian population suffers from **acute land shortage**, with the consequence of higher prices, depletion of water resources and a higher population density (§ 17).*
- The occupation forces carry out **punitive and violent demolitions of Palestinian** houses for lack of licence and, many times, the punishment is *retroactive* to the establishment or public disclosure of a master plan (§ 18). *The demolitions ordered either for lack of permit or another pretext have a military dimension and a gratuitously cruel nature (§ 22).*
- Violation of the right to housing by the Israeli army through military **bombing**. Often, this bombing has no military objective, but is part of the *implementation of the planned contiguity of the settler colonies by eliminating the indigenous population (§ 26).*
- **The settlements are an obstacle to peace (§ 35). "The active and sustained implantation of Jewish settler colonies serves the geostrategic purpose of acquiring territory and natural resources and limiting the living space of the Palestinian host population" (§ 39).**

### 4. Report of the Special Rapporteur on the Right to Food, Mr. Jean Ziegler. Mission to the Occupied Palestinian Territories<sup>19</sup>.

- *Already by 2003, more than half of Palestinian households would eat only once per day. Around 60 per cent of Palestinians were living in acute poverty (75 per cent in Gaza and 50 per cent in the West Bank). **Over 50 per cent of Palestinians were completely dependent on food aid (p. 3).***
- The measures taken by Israel, for alleged *security reasons*, are totally *disproportionate and counterproductive*, as they cause **hunger and malnutrition** amongst the Palestinian population, women and children included, and therefore amount to the collective punishment of the Palestinian population (p. 3).
- The confiscation of land reveals the presence of a covert strategy of "**Bantustanisation**". *"The construction of the security fence/apartheid wall is, in the opinion of many, a specific display of this Bantustanisation, as it divides the Occupied Palestinian Territories into five non-joining territorial areas without international borders and poses a threat to the future establishment of a viable Palestinian State with a normal economy that could ensure the right to food for its own population" (p. 3).*

---

<sup>18</sup> Report of the Special Rapporteur on Adequate Housing, as a component of the right to an adequate standard of living, Mr. Miloon Kothari, Addendum, Visit to the Occupied Palestinian Territories, E/CN.4/2003/5/Add.1, 17th June 2002.

<sup>19</sup> Report of the Special Rapporteur on the Right to Food, Mr. Jean Ziegler, Addendum, Mission to the Occupied Palestinian Territories, E/CN.4/2004/10/Add.2, 31st October 2003.



## 5. Report of the Special Rapporteur on the Freedom of Religion or Beliefs, Ms. Asma Jahangir. Mission to Israel and the Occupied Palestinian Territories<sup>20</sup>.

- The **freedom of movement**, including access to places of worship, is restricted, particularly for Muslims and Palestinian Christians, by means of the present system of permits, checkpoints, curfews, visas and the wall (§ 27). *These restrictions appear to be disproportionate to their aim (security reasons) as well as discriminatory and arbitrary in their application* (§ 33).
- **There is a serious discrimination in the preservation of non-Jewish places of worship:** Israel has many legal provisions to protect holy sites and places of worship, but *this protection only applies to Jewish sites* (§ 37).
- The **indication of religious affiliation** on official identity cards carries a serious risk of abuse or discrimination based on religion or belief. Moreover, the degree of mobility in Jerusalem and in the Occupied Palestinian Territory depends on one's type of identity card (§ 40 to 43).
- In relation to persons deprived of their liberty, their religious rights are not respected. While there are places for prayer and rabbis for Jewish detainees, there are no or few religious representatives for Muslim and Christian detainees (§ 52).
- *Increase in both Israel and the Occupied Palestinian Territories of religious hatred that constitutes incitement to discrimination, hostility or violence* (§ 55).

## 6. Combined Report of the Special Rapporteurs on the Situation in Gaza<sup>21</sup>.

- **Independent expert on the question of human rights and extreme poverty: the blockade** is the primary cause of poverty in Gaza (§ 27). Poverty in Gaza is a direct consequence of systematic violations of a wide range of *civil, political, economic, social and cultural rights* against Gazan residents. In particular, their rights to education, food, housing and healthcare have been violated (§ 29).
- **Special Rapporteur on Adequate Housing as a component on the right to an adequate standard of living, and the right to non-discrimination in this context:** Overcrowding, lack of sanitation and other difficult living conditions have not only been the result of demolitions and destruction of homes in the recent military offensives, but a *permanent urban condition that prevents the people of Gaza from having access to acceptable minimal standards of adequate housing* (§ 37).
- **Special Rapporteur on the right to food:** the violation of the right to food of the Gaza population is *on a large scale* and on a routine basis, not only due to the latest attacks; it is a long-standing tendency (§ 45).
- **Special Rapporteur on the right of everyone to enjoy the highest attainable standard of physical and mental health:** The material damages caused by the recent hostilities, the border closures resulting, the restricted entry of medical supplies and equipment and the denial of access to health care outside the borders of Gaza constitute *grave violations of the right to the health* (§ 63).

---

<sup>20</sup> Report of the Special Rapporteur on the Freedom of Religion or Beliefs, Ms. Asma Jahangir, Addendum, Mission to Israel and the Occupied Palestinian Territory, A/HRC/10/8/Add.2, 12<sup>th</sup> January 2009.

<sup>21</sup> Human Rights Situation in Palestine and other Occupied Arab Territories, Combined report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to education and the Independent Expert on the question of human rights and extreme poverty (A/HRC/10/22), 20<sup>th</sup> March 2009.



- **Special Rapporteur on the right to education:** The destruction of schools and restrictions on the entry of supplies necessary to guarantee access to education, as well as the prolonged deterioration of Gaza educational infrastructure, constitute *violations of the right to education*. (§ 72).

- **Special Rapporteur on violence against women, its causes and consequences:** *the denial of safe access to pregnant women to appropriate health care and hospitals owing to the constant shelling constitutes a grave violation of human rights* (§ 76). Disproportionate effects of house demolitions on women, children and the elderly (§ 78).

- **Representative of the Secretary-General on the human rights of internally displaced persons:** *the occupation policies and practices that Israel has pursued since the 1967 war have infringed on the human rights of Palestinians and resulted in large-scale forced displacement of Palestinians within the Occupied Palestinian Territory, even before the Israeli military incursion into Gaza that began in December 2008. These displacements are caused by incursions and military operations, evictions and land appropriations, the expansion of illegal settlements and related infrastructure, the illegal construction of the Wall in the Occupied Palestinian Territory, the violence and harassment by the settlers, the revocation of residency rights in East Jerusalem, discriminatory denial of building permits and house demolitions.* Forced displacement is also caused by a system of closures and restrictions on the right to freedom of movement through an elaborate regime of permits and checkpoints that *make life unsustainable for many residents of Palestinian enclaves, forcing them to leave* (§ 80).

## V.- Legislation applicable in Israel and in the Occupied Palestinian Territories

In a **system of apartheid, legislation plays a crucial role**, as it lays down **criteria of segregation and division of the population along racial lines**, or it **limits the practice of certain human rights**.

### A.- DIFFERENT GROUPS AFFECTED BY THIS LEGISLATION

Israeli legislation has different effects on the Palestinian population, depending on which of these three great groups they would be ascribed to:

- Palestinian refugees
- inhabitants of the Occupied Palestinian Territories
- Israeli Palestinians (i.e.: Palestinians with Israeli citizenships).

Legislation applied by the State of Israel to each of the groups is different, depending on the place of residence, and does not reach the entire Palestinian population.

- Within the territory of the **State of Israel** and therefore Palestinians with Israeli citizenship are subject to it. Part of this legislation also affects Palestinian refugees. This is the legislation that prevents them from returning to their places of origin.
- As for the Occupied Palestinian Territories, Gaza and the situation of the West Bank and East Jerusalem, their situations must be distinguished one from one another.
- In **Gaza** no form of Israeli legislation is applied, neither civil nor military.
- In the **West Bank**, different "zones" must be recognised. In the so-called "**zone C**", representing approximately 61% of the territory of the West Bank, Israel has military and civil control as far as construction and territorial planning are concerned. Israeli legislation is applied to a lesser extent in "**zone B**", where Israel has military control and the Palestinian

Authority has civil control, and is not applied in “**zone A**”, which is under Palestinian Authority control<sup>22</sup>. The lives of Palestinians living in zones B and C of the West Bank are ruled by a series of Military Orders and Regulations, which are issued and usually published by the IDF Military Commander in the West Bank and which, as such, are not subject to review by any civil legal authority. As there are no established rules of procedure in relation to those orders, their content may vary from day to day and from Commander to Commander, because the manner of their implementation is left largely to the criteria of the soldiers. The IDF also apply certain “emergency” regulations inherited from the British Mandate and reviewed by the Israeli authorities as Defence (Emergency) regulations of 1945<sup>23</sup>.

- With regard to **East Jerusalem**, this was the commercial and administrative centre of the West Bank until 1967, when it was annexed by Israel. In 1980, a law adopted by the Knesset (“Basic Law: Jerusalem – capital of Israel”), declared that “Jerusalem, complete and united, is the capital of Israel” and “the seat of the President of the State, the Knesset, the Government and the Supreme Court”<sup>24</sup>. At present, East Jerusalem is occupied and controlled by Israel. It must be pointed out that Palestinians in the city of Jerusalem have a status inferior to the Jews. Palestinians are not citizens of the eastern part of the city, as Jews are, but they are simply residents<sup>25</sup>. Israeli legislation is applied there.

#### B.- ISRAELI LEGISLATION

The following Israeli legislation is clearly discriminatory, and as a whole, as we shall see, constitutive of a crime of apartheid towards the Palestinian people::

- **Law of Return (1950)**. Grants every Jew, wherever he may be, the right to come (“to return”) to Israel as an *oleh* (a Jew immigrating to Israel) and become an Israeli citizen. By this law, Non-Jews are not eligible, regardless of birth, ancestry or other factors. The fact that Jews can “return”, unlike the Palestinians who left the zone during the 1948 war, is clearly discriminatory.

- **Nationality Law (1952)**. While specifically not stating so, it discriminates against native Palestinians and states that Palestinian refugees are excluded from the right to citizenship in the State of Israel. So, Jews hold Israeli nationality and citizenship, whereas Palestinian citizens who remain in Israel only have citizenship, implying the deprivation of a series of rights.

- **Citizenship and Entry into Israel Law (2003) Temporary Order 5763 of 31st May 2003, extended to 31st July 2008**. This law introduces restrictions in the granting of residence permits and Israeli citizenship to the spouses of Israeli citizens residing in the Gaza Strip or the West Bank, through family reunification.

- **Absentee Property Law (1950)**. This law established that the properties of Palestinians who had fled from Israel during the 1948 war, or who had been displaced provisionally for reasons of security, remained under the custody of the Custodian of Absentee Property. As a result of this law, many Palestinians lost their properties in Israel.

- **Status Law of Israel (1952)**. This law determines that most of the land of Israel be used exclusively to benefit Jews, through the World Zionist Organisation/Jewish Agency and the Jewish National Fund.

---

<sup>22</sup> These zones were established in the Oslo Accords (1993), a series of agreements negotiated between the Israeli government and the Palestinian Liberation Organisation, which acted on behalf of the Palestinian population.

<sup>23</sup> See: KIRSHBAUM, David, Israeli emergency regulations & the Defense (Emergency) Regulations of 1945, <http://www.geocities.com/savepalestinenow/emergencyregs/essays/emergencyregsessay.htm>

<sup>24</sup> Ministry of Foreign Affairs of Israel, <http://www.mfa.gov.il/MFAES/Facts%20About%20Israel/Jerusalem%20-%20la%20Capital%20de%20Israel>

<sup>25</sup> See: MARGALIT, Meir, *Discrimination in the heart of the Holy City*, The International Peace and Cooperation Center, Jerusalem, 2006.

- **Basic Law: Israel Lands (1960)**. This law prohibits the transfer of the ownership of land. Thus, land is administrated for the development of Jews, but cannot be transferred nor can it belong to others.

- **Land Acquisition Law (1953)**. This law retroactively validated Israel's acquisition of lands that had been confiscated from the Palestinians.

- **Planning and Construction Law (1965)**. This law envisaged the future expansion of Jewish communities whilst also limiting and assigning very small spaces to Palestinians, many of which were declared "illegal".

- **Law on Agricultural Settlement (1967)**. This law prohibited the Jewish National Fund from subletting land to non-Jews.

#### C.- MILITARY ORDERS

The following legislation is applied only in the Occupied Palestinian Territories and is an example of the many Military Orders which discriminate and violate the rights of the Palestinians, and as a whole, constitute a crime of apartheid:

#### 1. Military Orders affecting legal procedures and the detention of persons:

- **Military Order N° 29 (1967)** concerning the operation of prisons. States that prisoners can be denied access to lawyers at any time and at the discretion of the Israeli Military Commander.

- **Military Order N° 378 (1970)**. Authorises Military Commanders to establish military courts with prosecutors, magistrates and presidents appointed by the Commander himself. These courts are authorised to diverge from legal rules (with regard to laws of evidence, etc.)

#### 2. Military Orders concerning the ownership of land:

- **Military Order N° 58 (1967)**. Grants Israeli military authorities the control of the land of "absentees" (according to the definition of absentee in the Absentee Property Law of 1950).

- **Military Order N° 59 (1967)**. Assigns military authorities with the "Custody of Government Property", being able to appropriate private lands from individuals or groups by declaring them "Public Lands" or "Lands belonging to the State".

- **Military Order N° 291 (1968)**. Grants Israeli military authorities the control of all disputes concerning land or water.

- **Military Order N° 1060 (1983)**. Transfers all pending disputes concerning land from the local Jordanian Courts to the Israeli Military Committee for their judgement.

- **Military Order N° 321 (1969)**. Gives military authorities the right to confiscate Palestinian land in the name of "Public Service" (not defined) and without giving compensation.

#### 3. Military Orders concerning freedom of expression:

- **Military Order N° 107**. It concerns the use of textbooks. It sets out a list of 55 books which are not allowed to be taught in schools. This list includes books in Arabic, and history, geography, sociology and philosophy books.

- **Military Order N° 50 (1967)**. Anything published in the West Bank, or imported into the West Bank, must be approved by the Israeli military authorities.

- **Military Order N° 101 (1967)**. Prohibits publications with political content in all of the media.

- **Military Order N° 1079**. Prohibits the use of material of a political nature in videos and audio.

#### 4. Military Orders which create a different legal system for settlers of the Occupied Palestinian Territories

**Military Order N° 561 (1974).** Sets out “Religious Councils” to administer the Jewish settlements in the West Bank.

**Military Order N° 783 (1979).** Sets out 5 additional “Religious Council” and Municipal Courts for specific settlements in the West Bank, and states that they are all constituted and operating in accordance with the regulation set out by the Military Area Commander.

**Military Order N° 981 (1982).** Establishes Rabbinical Courts in the settlements to resolve matters concerning the personal status of the settlers (divorce, adoption, inheritances etc.)

## 5. Other military orders of interest

**Military Order N° 224 (1967).** Brings back into force the Emergency Regulations established by the British Mandate Authorities in 1945. These regulations “authorise” military forces to violate a whole series of civil rights under the pretence of an “emergency situation” in the West Bank.

**Military Order N° 92 (1967).** Concerns jurisdiction regulating water supplies. This order confers all powers established in Jordanian legislation concerning water and its use to an Israeli official nominated by the Area Commander, who will have total control of all water resources. Any person or entity wishing to install any mechanism used for water extraction (such as pumps, irrigation systems etc.) must request a permit from this Israeli authority, who, once it has been conceded, may cancel it at any moment and for any reason.

**Military Order N° 5.** Relates to the closure of the West Bank. It declares the West Bank a closed military area, with its entrances and exits controlled according to the conditions stipulated by the military forces.

**Military Order N° 537 (1974).** Relates to Municipal Legislation. It gives ample powers to the Area Commander over municipal boundaries and services, their planning and those who execute and supervise them. It gives the Area Commander the power to dismiss mayors who have been democratically elected.

**Military Order N° 297.** It establishes a system of identity cards, which are required for undertaking any commercial transaction. It gives the military authorities the right to confiscate them for any reason.

## VI.- Conclusion: Is there really apartheid in Israel and in the Occupied Palestinian Territories?

Having reached this point and as a result of our analysis, we can affirm that the discrimination to which Israel is submitting the people of Palestine constitutes a *crime of apartheid*.

The situation of the Palestinian people is similar to that of the South African, with some added characteristics which also adjust to those established in the Convention on Apartheid. For this reason, we will make a comparison between the contents of Article II of the Convention and the laws and practices of Israel which we have analysed.

Article II of the Convention on Apartheid establishes the following:

***““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:***

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

***i) By murder of members of a racial group or groups;***

Through “**selective killings**” - which actually constitute extrajudicial executions – the IDF eliminates Palestinian activists, with the aim of suffocating any possible uprising. These killings, which are usually carried out in response to attacks against Israel carried out by Palestinian groups, affect not only the “targets”, but also many other people, such as family members or persons who at the time were nearby. Hundreds of Palestinians have met their death in these precise strikes by Israeli elite commandos and helicopters.

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

The restrictions on the **freedom of movement**, through roadblocks, closure of roads or physical barriers such as the Wall, inflict physical and mental harm on the people living in the Occupied Palestinian Territories in many different ways. They prejudice those people who must leave the Occupied Territories to receive medical treatment or pregnant women who need to get to a hospital to give birth. Many times they do not make it and are forced to give birth without the necessary medical attention. They lead to malnutrition and illnesses arising from insufficient food intake by preventing the entrance of food aid to the Occupied Palestinian Territories through the blockades. They prevent farmers from getting to their own lands, when they happen to be located between the Green Line and the Wall, thus affecting their right to health and food. The controls to which the Palestinians are subjected when they must cross these physical barriers are humiliating and degrading.

The demolition of **houses and infrastructures** also inflicts physical and mental harm on the people living in the Occupied Palestinian Territories, as it sentences entire families to live in poverty and overcrowded situations, or without the minimum services necessary to lead a normal life (schools, medical centres, electricity, etc.). All these actions constitute collective punishment and psychological **torture**.

The **ill-treatment and interrogation methods constituting torture** to which Palestinians – adults and children – are subjected to when they are detained and imprisoned.

***iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;***

The practice of “**administrative detentions**”, without charges or trials, which can be prolonged for extended periods of time and which affects not only adults but also under-18s.

***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;***

The **closure of the Gaza border crossings**, with the consequent restrictions on the movement of persons and food, and the damage caused to the food production infrastructure, effectively sentences the population to **hunger and malnutrition**.

***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;***



The **entire Israeli legal system** establishes an **enormous gap between Jews and Palestinian Arabs**, since all legislation is designed to favour Jews and keep Palestinian Arabs in a situation of inferiority. This can be clearly seen through certain examples.

Several Israeli laws prevent Palestinian refugees from returning and recovering their land and enjoying a nationality, thus violating their right to enter and leave the country, the 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, the restrictions on leaving and returning to Israel and the Occupied Palestinian Territories, the restrictions on family reunification for those living in the Occupied Palestinian Territories or the lack of representation in the civil service are violations of all the rights stipulated in this subsection c.

The Palestinians who reside in the Occupied Palestinian Territories and work in Israel have enormous difficulties in joining Israeli trade unions or forming their own trade unions in Israel. This violates their right to work and to form recognised trade unions. A further violation of rights is the demolition of houses and the prohibition to build new ones in the Occupied Palestinian Territories, and so are all the restrictions on the freedom of opinion and expression, prohibiting the organisation of meetings or the publication and dissemination of ideas.

***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;***

**The Jewish and Palestinian populations are clearly separated and are allocated different physical spaces, with varying levels and quality of infrastructure, services and access to resources.** In Israel, Palestinians live in crowded spaces, unable and unauthorised to refurbish or construct houses, living in villages which often are not even officially recognised. Jews occupy larger expanses of land, guaranteed by Jewish public or government-managed agencies (Jewish National Fund, Israel Land Administration), which ensure that the best land goes to this segment of the population. Another issue is that the Occupied Palestinian Territories are dominated by Jewish settlements, "islands" interrupting the continuity of the territory, where settlers enjoy the protection of Israeli authorities, with their own laws and where they enjoy scarce resources such as water, to the detriment of the Palestinian population. To all this we must add the prohibition for Palestinians to travel to outposts, military zones and natural reserves. These settlements are linked by roads for the exclusive use by Jews. Palestinians have their movement restricted by the need for Israeli permits to undertake any type of journey. The expropriation of Palestinian property has been happening since the creation of the State of Israel, and is backed up by a series of laws and Military Orders which have stripped Palestinians of almost all their land.

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

Although Israel has no exploitation system of labour of the Palestinian population, its policies have restructured the Palestinian workforce by suppressing Palestinian industry, establishing restrictions on exports and other measures that have increased the Occupied Palestinian Territories' 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 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>26</sup>.

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

Israel persecutes and imposes restrictions on the people who oppose this regime of segregation, who condemn the violations of human rights by the government or who criticise the actions of the IDF. It also suppresses all demonstrations in the Occupied Palestinian Territories, both by organisations and individuals, against the Wall or the discriminatory administration of land, water and infrastructures.

Having seen all these violations suffered by the Palestinian people on a day-to-day basis, we can clearly state that they are victims of a crime of apartheid.

It must also be mentioned that this crime of apartheid is not of recent execution. More than sixty years have passed since the start of discriminatory measures against the Palestinian people and they have become, gradually, a systematic practice that implies a domination of one ethnic group over another, through laws, policies and practices. It is obvious that if such a situation has been going on for more than sixty years, it is because Israel has benefited from the (active or passive) complicity of the International community. In this aspect, the institutional silence of the European Union and its member States is particularly remarkable. Silence not only in view of the serious violations of international humanitarian law and of international human rights law that were committed during the bombing of the Gaza Strip, in December 2008 and January 2009 (made evident in the sense of the votes on the Goldstone Report before the Human Rights Council and the General Assembly of the United Nations), but also in the silence and hypocrisy that impedes the European Union and its member states from denouncing this crime of apartheid and that leads them to consent the perpetuation of a policy that denies the respect of the principle of human dignity to the Palestinian people.

---

<sup>26</sup> See: Human Sciences Research Council, *Occupation, Colonialism, Apartheid?*, May 2009, Cape Town, South Africa, p. 268.