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**Human rights situation in Palestine and other
occupied Arab territories**

Written statement* submitted by the Mouvement contre le Racisme et pour l'Amitié entre les Peuples (MRAP), a non- governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 April 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Final Session of the Russell Tribunal on Palestine: time for accountability

On 16th and 17th March 2013, the Russell Tribunal on Palestine held its final session in Brussels¹ in order to summarize the violations of international law by State of Israel in the Occupied Palestinian Territories as well as the responsibility of the international community and the private sector in assisting the State of Israel in its violations of international law.

I. The particular violations of international law committed by Israel

As noted by the Tribunal at its previous sessions, well documented acts committed by Israel constitute violations of the basic rules of international law²:

- violation of the right of the Palestinian people to self-determination codified in resolutions 1514 (XV) and 2625 (XXV);
- in relation to the construction of the wall, as stated at Paragraph 142 of the Advisory Opinion: “The Court accordingly finds that the construction of the wall, and its associated regime, are contrary to international law... Consequently, Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law.”;
- violation of international customary law, human rights norms (A/RES/194/III, § 11), customary IHL as codified by the ICRC in 2005 in Rule 132, and of Article 12 of the International Covenant on Civil and Political Rights by prohibiting the return of Palestinian refugees to their homes;
- violation of United Nations Security Council (UNSC) resolutions requiring Israel to withdraw from the Occupied Territory (88 in total as at the end of 2012), the UN Charter which obliges Member States to “carry out the decisions of the Security Council” (Art. 25);
- violation of “[...] the principle of the inadmissibility of the acquisition of territory by war” (UNSC Res. 242), as well as the Security Council Resolutions condemning the annexation of Jerusalem³
- violation of the Palestinian people’s right to their natural resources and wealth through Israeli use of Palestinian agricultural land, the exploitation of Palestinian

¹ Due to the length constraints, we are unable to present the full document, which can be found at <http://www.russelltribunalonpalestine.com/en/sessions/final-session/findings-of-the-final-session>

² customary international law, treaties, United Nations General Assembly and Security Council resolutions, as to which see in particular the Advisory Opinion *on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

³ The Tribunal notes that the Occupied Palestinian Territory refers to the West Bank, including East Jerusalem, as well as to the Gaza Strip, since Israel’s 2005 withdrawal did not end the occupation of the 360-square-mile territory. This appears from the fact that Israel still maintains effective control, in accordance with Article 42 of the Hague Regulations, of all air and maritime spaces of the Gaza Strip, as well as control along the land border and inside the Gaza Strip, a 300-metre-wide buffer zone (600 and 1,500 meters wide in some places), which is a no-go zone depriving Gaza of 35% of its cultivable areas.

water reserves and denial of Palestinians' access to more than 10% of their safe drinking water reserves (A/RES/64/292);

- violation of international humanitarian law prohibiting:
 - the establishment of Israeli settlements (IVth Geneva Convention of 1949, Arts. 49 and 147, Advisory Opinion of the ICJ on the Wall, 2004) and the expulsions of Palestinians from their territory (*idem*);
 - the demolitions and expropriations of Arab houses and lands situated in the occupied country (1907 Hague Regulations, Arts. 46 and 55);
 - mistreatment, torture and prolonged administrative detention of Palestinians in Israeli prisons (4th GC, Arts. 3, 32 and 78);
 - non-compliance with the right of return of Palestinian refugees to their homes (A/RES/194/III, § 11 and customary IHL as codified by the International Committee of the Red Cross (ICRC) in 2005, Rule 132);
 - military attacks against civilians, and indiscriminate and disproportionate attacks against Gaza and Palestinian refugees camps (customary international humanitarian law, Rules 1 and 14);
 - collective punishment of the Palestinian population of Gaza, where the World Health Organization reports that life will not be sustainable by the year 2020 (Art. 33, IVth Geneva Convention);
- violation of fundamental rights and freedoms such as freedom of movement, freedom of religion, and the right to work, to health and to education because of the Israeli wall and checkpoints in the occupied territory which deny Palestinians free access to their workplace, school, health services and places of worship (1966 Covenant on Civil and Political Rights, Arts. 12 and 18; International Covenant on Economic, Social and Cultural Rights, Arts. 6, 12, 13).

In its deliberations in Brussels on 16-17 March 2013, the jury expressed particular concern over the continued imprisonment of Palestinians on a large scale by the Israeli authorities⁴. It noted that the mass incarceration of political prisoners, including internment without trial, is typically a particularly prevalent issue in colonial contexts.

The Tribunal expresses its solidarity with the Palestinian political prisoners, and condemns in the strongest possible terms:

- the use of military law to criminalise political expression;
- the prosecution of Palestinian civilians, including children, by military courts in violation of international standards for fair trial;
- the systemic torture and ill-treatment of Palestinian detainees;
- the pervasive policy of internment without charge or trial.

⁴ Palestinian prisoner rights organization Addameer detail the relevant statistics: since the Israeli occupation of Palestinian territory in 1967, more than 800,000 Palestinians have been detained under Israeli military orders in the occupied Palestinian territory (OPT). This number constitutes approximately 20 per cent of the total Palestinian population in the OPT and as much as 40 per cent of the total male Palestinian population. It also includes approximately 10,000 women jailed since 1967, as well as 8,000 Palestinian children arrested since 2000.

Several of these violations of international law are criminally sanctioned: war crimes⁵, crimes against humanity⁶ and the crime of apartheid (1973 UN Convention, Art.1) – as to which see further below.

Further, much of the evidence heard by the Tribunal led it to consider the crime against humanity of persecution⁷.

II. Apartheid & Sociocide

In its Cape Town session⁸, the Tribunal found that Israel subjects the Palestinian people to an institutionalized regime of domination amounting to apartheid as defined under international law. This discriminatory regime manifests in varying intensity and forms against different categories of Palestinians depending on their location. 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 recognized human rights.

Since 1948 the Israeli authorities have pursued concerted policies of colonization 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’.

In its concluding observations, issued in March 2012⁹, the Committee on the Elimination of Racial Discrimination (CERD) urged Israel, pursuant to Article 3 of the Convention, to prohibit and eradicate policies or practices of racial segregation and apartheid that ‘severely and disproportionately affect the Palestinian population’.

Positive international law does not recognize the crime of sociocide as a distinct crime in and of itself. There is evidence neither of its existence in international law nor of a current trend in international affairs that would soon lead to its recognition as an international crime.

While the notion of a crime of sociocide therefore remains, as such, an academic concept, this was also the case with “genocide” when it was first used in 1944, yet within 4 years it was adopted as a legal concept (Genocide Convention 1948).

The systematic destruction of the essence of a social group, *i.e.* of all the elements that make a group more than the sum of its members, will inevitably result in the destruction of the group itself even though its members are, for the most part, still physically unscathed.

Most of the acts which constitute sociocide are already condemned in their own right by current positive international law as being either pre-existing well-recognised crimes

⁵ Israeli settlements, inhumane treatment, torture, indiscriminate attacks, home demolitions, forced population transfer, collective punishment, 1996 ILC Draft Code of crimes against the peace and security of mankind, Art. 20; IVth Geneva Convention, Art. 147, Rome Statute, Art. 8.

⁶ Persecution defined by the International Criminal Court (ICC), Art. 7, codifying international custom.

⁷ 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.

⁸ 5 -7 November 2011

⁹ CERD/C/ISR/CO/14–16

against humanity or war crimes or *apartheid* crimes under, as the case may be, the ICC Statute, the 1949 Geneva Conventions, the 1977 1st Additional Protocol, the 1973 UN convention on the suppression and punishment of the crime of *apartheid*.

Accordingly, following further deliberations by the jury of the Tribunal on 16-17 March 2013, the jury support further work being done on a legal definition that emphasizes the illegal and criminal nature of colonialism and depriving a people from exercising their collective right of self-determination.

III. Time for accountability

The State of Palestine is now in a position to sign and ratify the Rome Statute of the International Criminal Court, and thus to become a full member of the ICC. The Tribunal supports the call of Palestinian civil society for Palestine to take those steps immediately and for the ICC to commence immediate investigations into the crimes against humanity and war crimes referred to by the Tribunal and documented by Palestinian and international NGOs and legal experts over many years, dating back to the coming into force of the Rome Statute on 1 July 2002.

In any event, the Tribunal call on the Prosecutor of the International Criminal Court to accept jurisdiction over Palestine, as requested by the Palestinian Authority 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

Similarly, the Tribunal support the calls for Palestine to ratify other important Conventions, including:

- the four Geneva Conventions of 1949 on the laws of war and its two Protocols of 1977;
- the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,
- other important human rights conventions;
- the Vienna Conventions on Diplomatic and Consular Relations;
- the Law of the Sea Convention¹⁰.

¹⁰ This would provide Palestine with a strong legal basis to claim a territorial sea of 12 nautical miles and an exclusive economic zone of 200 nautical miles in respect of the waters off Gaza.