

Statement by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Prof. John Dugard

22 March 2007

My report gives a detailed account of the violations of human rights and humanitarian law in the Occupied Palestinian Territory (OPT) by Israel. It makes no attempt to describe the violations of Israelis' human rights by Palestinians, by means of suicide bombers or Qassam rockets. Nor does it deal with the violations of human rights in the conflict between Fatah and Hamas. Such matters, although of concern to me, fall outside my mandate – a mandate that is confined to the violation of human rights by the occupying Power in an occupied territory. It is a special mandate for a unique situation – the occupation of a developing country by a developed, Western-affiliated regime. I do not believe that the Human Rights Council should change this mandate. However, I believe that the Council should use its best endeavours to persuade the Israeli government to accept the mandate and to work with the mandate-holder. The Israeli government often claims that my reports are one-sided. If they are, which I deny, the Israeli government has only itself to blame because it has refused to share information and concerns with me. On the other hand, the Israeli government has placed no obstacles in the way of my visits, for which I am grateful.

My report does not make pleasant reading.

Gaza remains an imprisoned society into which the prison guards have made frequent military incursions, killing hundreds of Palestinians and wounding thousands in the second half of 2006. Most of those killed and wounded have been civilians, and many have been children. Missiles, shells and bulldozers have destroyed public buildings and private homes, water pipelines and electricity networks. Agricultural land has been levelled by bulldozers. The siege of Gaza has resulted in unemployment and poverty. Ninety per cent of Gazans rely on food aid from international agencies to survive. Health, education and family life have suffered.

The situation in the West Bank is little better. Military incursions have dramatically increased – as evidenced by the raid on Nablus in late February which confined 50,000 Palestinians to their homes for several days. The Wall, now recognized by Israel as an instrument for the annexation of settlements, continues to disrupt lives and prevent access to agricultural land. In Jerusalem the Wall divides communities and families in its pursuit of the Judaization of the city. Checkpoints, now numbering over 500, make travel in the West Bank a nightmare. Road apartheid intensifies. The status of the Jordan Valley increasingly resembles the closed zone between the Wall and the Green Line and Israel excludes all but registered residents from the Valley. Settlements increase in size and population. There are over 460,000 settlers in the West Bank and East Jerusalem. Settlers, largely unrestrained by the Israel Defense Forces (IDF), subject many Palestinians to a reign of terror – particularly in Hebron.

There are over 9,000 Palestinian political prisoners in Israeli jails. There are serious complaints about the treatment of prisoners. Since 2000, over 500 persons have been killed by targeted assassinations, including a substantial number of innocent civilians. Israel prides itself on its abolitionist stance on the death penalty but in effect targeted assassinations constitute the implementation of the death penalty without trial.

Israel shows little respect for Palestinian family life. Thousands of Palestinian families are separated by Israeli laws.

In my report I state that Israel's occupation of the Palestinian territory contains elements of colonialism and apartheid. That Israel's settlements, with a population of nearly half a million, constitute a form of colonialism cannot seriously be disputed. Settlements violate both Article 49 (6) of the Fourth Geneva Convention and numerous resolutions of the General Assembly condemning colonialism. In previous reports I have carefully refrained from likening Israel's practices in the OPT to apartheid on account of the sensitivity of this issue. The uproar over Jimmy Carter's book Palestine: Peace not Apartheid (2006), and the serious attempts to impugn his integrity, particularly in the United States, has led me to reconsider this decision.

Of course there are similarities between the OPT and apartheid South Africa. Anyone who experienced apartheid has a sense of déjà vu when visiting the OPT. Laws and practices discriminate

against Palestinians. Restrictions on movement within the West Bank and Jordan Valley resemble the "pass laws" of apartheid both in their discriminatory nature and brutal application. There is a system of "separate but unequal" roads for settlers and Palestinians – which was never even contemplated in apartheid South Africa. Jews may travel freely within the closed zone between the Wall the Green Line but Palestinians require permits – which are frequently denied. The separate residential areas for Jews and Palestinians in Hebron remind one of the "group areas" for different races under apartheid. Palestinians are prohibited from living with their Arab Israeli spouses, but no such restrictions apply to foreigners living with Israeli Jewish spouses. House demolitions are carried out in a discriminatory manner. Over 9,000 Palestinian political prisoners are held in Israeli jails. Can it seriously be denied that such acts are committed for the purpose of establishing and maintaining domination by one racial group of persons over another racial group of persons – to use the language of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid?

Israel takes care not to announce its apartheid practices. There are no signs on the roads or in the closed zone saying "No Palestinians Allowed" or "Settlers Only"; and there are no laws providing that only Palestinian houses built without a permit may be demolished. In this respect Israel has learnt the lesson of apartheid. But the result is the same – oppressive discrimination.

I can do no better than quote a recent article by a former Israeli Cabinet Minister, Shulamit Aloni (Indeed there is Apartheid in Israel, 31 December 2006):

"The US Jewish Establishment's onslaught on former President Jimmy Carter is based on him daring to tell the truth which is known to all: through its army, the government of Israel practices a brutal form of apartheid in the territory it occupies...."

"For example, Jewish only" roads have been built. Wonderful roads, wide roads, well-paved roads, brightly lit at night – all that on stolen land. When a Palestinian drives on such a road, his vehicle is confiscated...."

She then tells the story of an occasion when she questioned an Israeli soldier who was confiscating a vehicle belonging to a Palestinian for driving on a road that he described as "a Jews-only road". In response to her question whether, and if so where, there was a sign indicating that the road was for Jews only he replied: "It is (the Palestinian's) responsibility to know it. What do you want us to do, put up a sign here and let some anti-Semitic journalist take a photo so that he can show the world that Apartheid exists here?"

Apartheid and colonialism are contrary to international law. Occupation is a lawful regime, tolerated by the international community but not approved. What are the legal consequences of a regime of occupation that has continued for 40 years? A regime that has acquired characteristics of apartheid and colonialism? Is it a lawful regime? If not, what are the legal consequences for the occupied people, the occupying Power, and third States? Should the International Court of Justice not be asked for an Advisory Opinion on this matter? It is true that the Advisory Opinion on the Wall has had little impact – thanks to the Quartet. But it must be remembered that the United Nations requested four advisory opinions on South West Africa/Namibia to guide it in its handling of South Africa.

There is a desperate need for consensus on the part of the international community towards Palestine. The developing world sees Palestine as a human rights issue worthy of special attention because since the end of apartheid, it has become the only case in which a developing people are brutally subjugated by a Western-affiliated regime. The West, on the other hand, acting through the Quartet, prefers to pursue a policy of appeasement towards Israel coupled with economic sanctions on the Palestinians. An Advisory Opinion from the International Court of Justice might possibly serve to change the attitude of the West and promote a common policy towards the OPT, premised on respect for human rights.

Failure on the part of the international community to find and pursue such a common policy has serious implications for the future of human rights. The West cannot expect the developing world to share its concern for human rights violations in situations such as Darfur, Zimbabwe and Burma if it refuses to demonstrate a concern for human rights in the OPT. This places in danger the whole international human rights enterprise. I fear that this Council will not succeed in its basic task of promoting and protecting human rights throughout the world until consensus is reached on the human rights situation in the Palestinian Territory.

Report on Human Rights Council Resolution S-1/1 by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Prof. John Dugard

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On 6 July 2006 the Human Rights Council resolved to send a fact-finding mission headed by the Special Rapporteur on the Palestinian territories to investigate the situation in Gaza following the commencement of "Operation Summer Rains" by the Israel Defense Forces.

The President of the Human Rights Council requested the consent of the Government of Israel for this mission as required by General Assembly resolution 46/59. Preparations were made for this fact-finding mission but as the Government of Israel failed to give its consent to the mission I was unable to carry out the mission.

I visited the Occupied Palestinian Territory in December 2006 in my capacity as Special Rapporteur on the situation of human rights in the Palestinian territories. On this occasion I made it clear to the Israeli authorities that I was not visiting the region in pursuance of resolution S-1/1 of 6 July 2006 but as Special Rapporteur. The Government of Israel accepted this assurance and facilitated my visit to the OPT despite the fact that it declined to speak to me about the situation in the OPT. I greatly appreciate the assistance given to me in this way by the Government of Israel.