

LAWFARE INITIATIVES

South Africa's Implementation and Protection of Palestinian Solidarity Rights Act (IPPSRA)

The Citizens' Bill

Attorney Ziyaad Ebrahim Patel

International Human Rights & Lawfare Advocate

www.zepattorneys.co.za

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الحملة العالمية
للعودة
إلى فلسطين



13 September 2015

Israeli Settlers storm Al-Aqsa mosque protected by Israeli forces, and Palestinian Worshipers stand up against them and defend the mosque.

WHAT IS THE LAWFARE CONTEXT TO ADVANCE THE PALESTINIAN CAUSE?

Lawfare means utilising legitimate policy tools including legal mechanisms / principles of law and customary universal jurisdiction against:

- ▶ present and former Israeli leaders and military commanders who either hold political or executive or military office with command line responsibility
- ▶ who are accountable for the most egregious and abominable international crimes perpetrated against Palestinian civilians and activists, which entail
 - genocide
 - ethnic cleansing
 - Gaza war crimes (Operation Cast Lead 2008-2009, Pillar of Defence 2012 and Protective Edge 2014)
 - crimes against humanity like settler colonialism, apartheid and torture
- ▶ Also the application of international conventions and resolutions which declare the perpetration of such conduct a violation of international law and international humanitarian law.

Why IPPSRA POLICY?

A lawful means to resist annexation and settler colonialism through principles of complementarity and codified universal jurisdiction

- ✓ Impactful lawfare initiative for other state jurisdictions to build comparative solidarity
 - ✓ Create domestic legislative and a regulatory framework as a state institutionalised response
 - ✓ Development of the international intifada of resistance through peaceful means
 - ❖ **WHY?**

Because of bias and intractable international institutions like the UN and the ICC in enforcement of international law against apartheid State of Israel
- ▶ **ALL ENCOMPASSING ADVOCACY LEGISLATION WHICH INCLUDES BOYCOTTS, DIVESTMENTS AND SANCTIONS (BDS)**
 - ▶ **POLITICAL CESSATION OR SEVERANCE OF TIES WITH APARTHEID ISRAEL**
 - ▶ **DEVELOPMENT OF LAWFARE MECHANISMS IN UPHOLDING INTERNATIONAL HUMAN RIGHTS**
 - ▶ **ACCOUNTABILITY OF SA CITIZENS SERVING IN THE IDF**
 - ▶ **AVENUE OF JUSTICE TO VICTIMS**

IPPSRA - INFORMED BY INTERNATIONAL RESOLUTIONS, CONVENTIONS AND NATIONAL FOREIGN POLICY

IPPSRA: PRE-AMBLE

- ✓ South Africa has a responsibility because of its own settler colonial history and crime of apartheid
- ✓ Apartheid is defined “as a crime against humanity”
- ✓ Historical geopolitical context
- ✓ Record of violations by apartheid Israel, international law and UN resolutions
- ✓ IPPSRA - means for South Africa meeting its international obligations
- ✓ SA is a signatory to the Rome Statute and domesticated the Implementation of the ICC Act.
- ✓ Conversion of political rhetoric holding the SA Government accountable in upholding its international obligations

APPENDICES AND ANNEXURES

- Appendix A - Policy considerations of the 53rd National Conference of the African National Congress CH 6, International Relations, P 43 (35 (a) - (j))
- December 2017 ANC Conference supporting downgrade of Israeli Embassy - reaffirmed by President Ramaphosa and other cabinet ministers
- Appendix B - Human Rights Council adopts resolutions and closes its Thirty-First Regular Session
- Contributions
PSC CT - Israeli genocide of Palestinians
- Advocate A. Solomon on situation in Bethlehem and Palestinian Christians

What is IPPSRA?

- ✓ A future solidarity rights Act (Citizens Bill) standing with the oppressed people of Palestine to restore their fundamental human rights of life, dignity and equality
- ✓ The first of its kind
- ✓ Conversion of political rhetoric & posturing into a constructive legal & regulatory framework
- ✓ The implementation of Boycotts, Divestment and Sanctions (BDS) as an institutionalised State response within a period to be determined upon recommendations of the **BTDES&LC** - shall mean the establishment of the Boycotts, Trade Divestment, Economic Sanctions and Lawfare Council
- ✓ The breaking of diplomatic, trade and economic relations with Israel within a period to be determined upon recommendations of the **BTDES&LC**

WHAT IS IPPSRA? (CONTINUED)

- A legal and enabling framework in utilisation of present legislation including ratification of the Rome Statute and lawfare mechanisms because of Israeli:
 - repressive and oppressive apartheid policies and practices,
 - perpetration of war crimes and crimes against humanity,
 - stifling blockades and sieges imposed on Gaza, including amongst other trade restrictions & limitation of freedom of movement and association
 - belligerent occupation affecting peace initiatives in the ME region,
 - illegal and unlawful expansion settlements policies in contravention of international law, and
 - continued breaches of international law, torture conventions, international humanitarian law, civil and political/human rights.

HOW WILL IT BE UNDERTAKEN?

- ✓ By passing IPPSRA legislation and regulations to be promulgated
- ✓ Fulfilling international criminal and customary law obligations
- ✓ And abiding with
 - The Criminal Procedure Act and the criminal justice system
 - Universal jurisdiction, the Rome Statute and/or the SA's Implementation of the International Criminal Court Act
 - Regulation of Foreign Military Assistance Act or Prohibition of Mercenary Activities Act and Regulation of Certain Activities in Country of armed conflict (regulations to be promulgated), and
 - Amendment of Diplomatic Immunities Rights and Privileges Act where applicable

18 September 2015

Israeli Police requests Israeli snipers from the Army and stations them on roof tops to shoot Palestinians using live ammunition.

Section 7 - Scope of the BTDES And Lawfare Council (Updated)

Focus Areas

- ▶ Constituted by the Minister of Trade and Industry
- ▶ 30 members across Government, business and civil society & PAL NGO's - s7(1)&(2)
- ▶ 9 members Attorneys / Advocates s7(3)
- ▶ Advise and Inform
 - Lawfare Mechanisms
 - Risk Analysis across sectors on implementation of IPPSRA

Impacted Sectors

- Trade Industrial & Economic
- Sporting, cultural and religious
- Academic collaboration
- Environmental, Water and Energy
- Arms Trade and Munitions

MAGDALENA MUGHRABI - DEPUTY REGIONAL DIRECTOR AT AMNESTY INTERNATIONAL

“(we) must act concretely and stop the delivery of arms and military equipment to Israel”, and that inaction would “continue to fuel serious human rights abuses against thousands of men, women and children suffering the consequences of life under Israel’s cruel blockade of Gaza”. Israel is one of Washington’s closest allies and a major buyer of US-made military equipment, but European Union nations, including, France, Germany, the UK and Italy, have licensed large volumes of military equipment for Israel”

JURISDICTION OF SPECIALISED COURTS & THE HIGH COURT - s5(4)

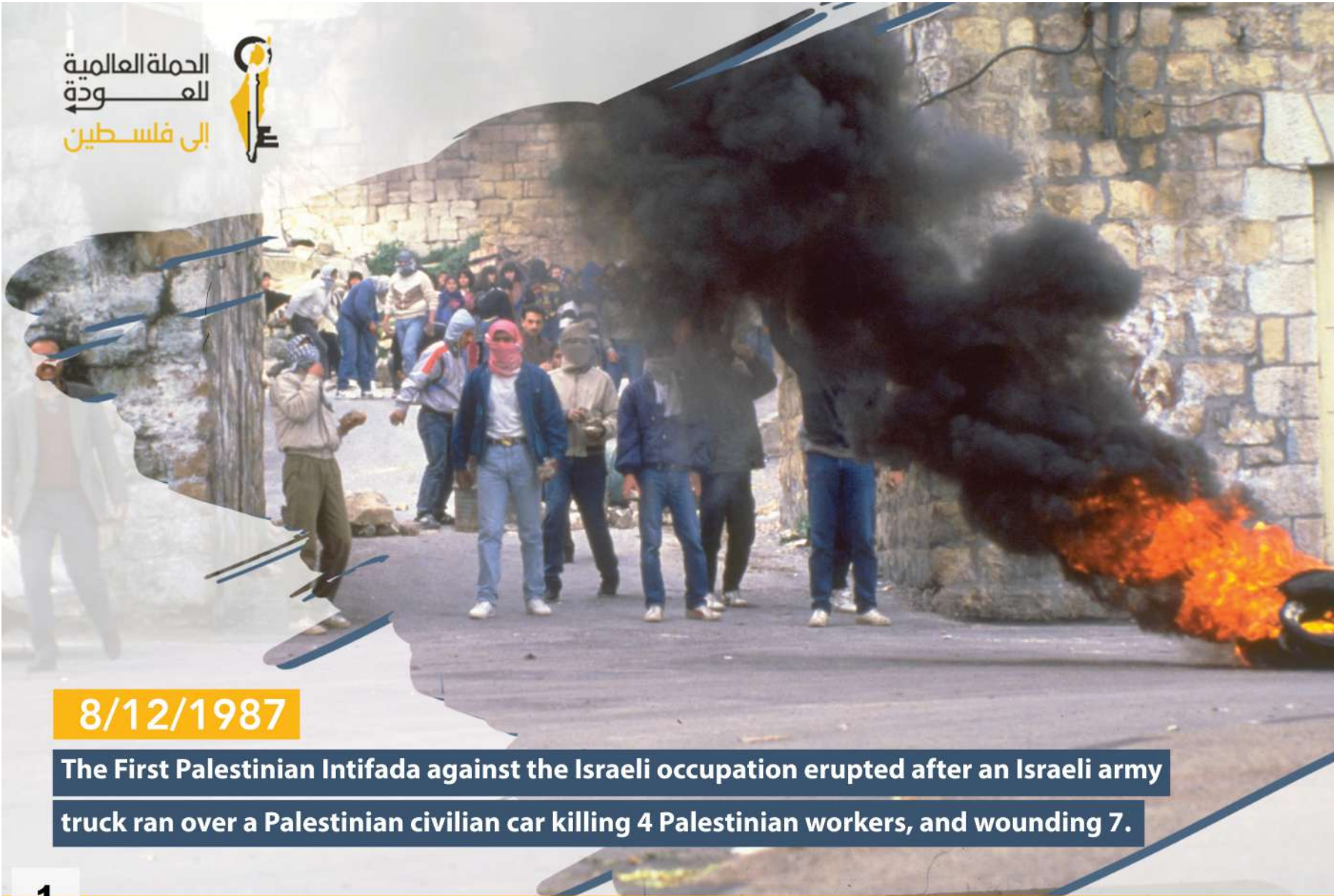
▶ TO INTERDCIT

- any form of trade or commercial activities by South African based companies, enterprises, multinational corporations based within the Republic or South African companies trading elsewhere with its principle place of business or its registered offices within the Republic conducting business with the State of Israel

▶ TO REVIEW OR SET ASIDE

- any commercial trade agreements with the State of Israel which are concluded contrary to the IPPSRA Act
- any sporting, cultural or religious agreement or academic collaboration activity (between universities and other institutions) which is contrary to the purport of the Act

الحملة العالمية
للعودة
إلى فلسطين



8/12/1987

The First Palestinian Intifada against the Israeli occupation erupted after an Israeli army truck ran over a Palestinian civilian car killing 4 Palestinian workers, and wounding 7.

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JURISDICTION OF SPECIALISED COURTS & THE HIGH COURT - s5(4)

FUNCTIONS AND POWERS OF REVIEW

- ▶ any bilateral trade agreement which may be in contravention of the purport of this act
- ▶ vary decision of the National Director of Public Prosecutions not to prosecute alleged war criminals
- ▶ Contravention of PAJA (Promotion of Administrative Justice) - s8
- ▶ To issue warrants of arrest for accused persons in pursuit of investigations as the court may direct or deem necessary;
- ▶ To interdict accused persons from leaving the Republic pending an investigation as contemplated in the Act
- ▶ The Minister of Safety and Security and the Minister of Justice and Constitutional Development must create the necessary enabling environment in order for the relevant authorities and courts to carry out its functions and duties as provided hereto

Section 10 - OFFENCES AND PENALTIES

- ❖ Natural Person fine R 300 000 or five years
 - ❖ Juristic Person fine R 1 000 000
 - Imprisonment of its directors five years
 - ❖ Penalties
 - Arms Manufacturers to be determined by Minister *via* Regulations
- ❑ Corporations and multinational Companies:
 - ▶ Immediate trade suspension
 - ▶ license revocation
 - ❑ Sporting, cultural, religious, educational, environmental, water and waste management collaboration exchanges:
 - ▶ upon the recommendations of Boycotts, Trade Divestment, Sanctions and Lawfare Council promulgated by the Minister of such defined activities
 - ▶ to cease within the prescribed period to be determined.

CO-ORDINATION AND CO-OPERATIVE GOVERNANCE BETWEEN MINISTRIES, DEPARTMENTS & ORGANS OF STATE

- Home Affairs
 - Trade and Industry
 - Economic Development
 - Arts and Culture
 - Education
 - Science and Technology
 - Water & Environmental Affairs
 - Sports and Recreation
- Informed by co-operative governance

- ▶ Presidency
- ▶ International Relations and Co-operation
- ▶ Safety and Security
- ▶ Justice and Constitutional Development
 - ▶ High Court & Special Courts
- ▶ SAPS
 - Priority Crimes Investigation Unit - DIPCI
- ▶ NDPP
 - Priority Crimes Litigation Unit - PCLU

OTHER IMPORTANT CONSIDERATIONS

Promulgation of Regulations by Minister - s9

Offences and Penalties - s10

Transitional Regulations - s11

Co-operative Governance - s12

Diplomatic Immunity & Privileges - resolute conditions -s13

ADOPTION BY OTHER JURISDICTIONS (Updated)

- ✓ Challenges the apartheid Zionist regime globally and will achieve the defeat of apartheid Israel
- ✓ Gives back dignity and freedom to Palestinians
- ✓ Redresses violations of the past, including:
 - Right of Return and other alienated Palestinian rights
 - Strengthen the global campaign for the respect of fundamental human rights where there are habitual transgressions

OLIVER TAMBO GLOBAL SOLIDARITY ANTI - APARTHEID MOVEMENT DURING SOUTH AFRICA'S DARKEST YEARS OF ISOLATION AND EXILE



- *“The fight for freedom must go on until it is won, until our country is free and happy and peaceful as part of the community of man, we cannot rest - Oliver Tambo”*
- *“Our watchword must be mobilization, organization, struggle. All our people must be mobilized into action. All our people must be organized for action. All our people must engage in struggle. That must be our reply to the enemy's desperate counteroffensive - Oliver Tambo”*
- *“We believe the world too can destroy apartheid, firstly by striking at the economy of South Africa - Oliver Tambo”*

CONCLUSION ON IPPSRA BILL

- Creates a culture for change towards a new democratic and constitutional world order
- Palestine and South Africa become models of “peaceful, democratic and revolutionary change”
- Forces reform of the ICC and other UN structures
 - a shift from international intractability

Thank you

Questions & Answers



ENFORCEMENT OF UN SECURITY COUNCIL RESOLUTION 2334

- ▶ **AND WHEREAS**, the United Nations Security Council Resolution (UNSC) 2334, re-affirms amongst other findings that the establishment by the State of Israel of settlements in the Palestinian territories occupied since 1967, including East Jerusalem, have no legal validity and constitutes a flagrant violation under international law and is a major obstacle to the achievement of the two-State solution towards achieving a just, lasting and comprehensive peace

STATUS OF JERUSALEM

THE UN GENERAL ASSEMBLY

- ▶ Reaffirming its relevant resolutions, including resolution A/RES/72/15 of 30 November 2017 on Jerusalem.
- ▶ *Stressing that Jerusalem is a final status issue to be resolved through negotiations in line with relevant United Nations resolutions,*
- ▶ *Expressing, in this regard, its deep regret at recent decisions concerning the status of Jerusalem;*
- ▶ Affirms that any decisions and actions which purport to have altered the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council, and in this regard calls upon all States to refrain from the establishment of diplomatic missions in the Holy City of Jerusalem, pursuant to Council resolution 478 (1980);
- ▶ Demands that all States comply with Security Council resolutions regarding the Holy City of Jerusalem, and not recognize any actions or measures contrary to those resolutions;

EXPANSION OF LAWFARE: JERUSALEM

- ▶ Settler judaization of Jerusalem through force, torture, ethnic cleansing is an international CRIME and must be challenged in the legal, political and social arenas
- ▶ What are some of the crimes perpetrated?
 - ▶ House demolitions
 - ▶ Extra judicial killings
 - ▶ Forcible transfers and displacements
 - ▶ Administrative arrests
 - ▶ Home confinement of Palestinian and Jerusalemite children and teenagers
 - ▶ Torture and detention / imprisonment
 - ▶ Unlawful interrogation

AREAS OF EXPANSION OF LAWFARE

UNLAWFUL DE FACTO ANNEXATION

- ▶ Holding leaders accountable who unlawfully recognise the “deal of the century”, countries like the US and Arab states (Saudi Arabia, Egypt, UAE etc) on altering the status of Jerusalem - violation of international law, whereby:
 - ▶ giving the “green light” for expansion of settlements - contravention of UN Security Council Resolution 2334 & UN resolutions;
 - ▶ Occupation and annexation violate the sovereignty rights of Palestinians, noting annexation of the West Bank settlements constituting at least 30% of the West Bank, East Jerusalem and Jordan Valley;
 - ▶ Such acts cannot affect or extinguish the inalienable rights of Palestinians over Jerusalem under any proposed annexed territory;
 - ▶ Sovereignty of Palestinian rights is of a nature that cannot be legally lost or destroyed.

EXPANSION OF LAWFARE ADVOCACY - PRISONERS & CHILD PRISONERS RIGHTS

- ▶ Complicity of Prison wardens and Israeli state security apparatus - systemically entrenched crimes against Palestinian political and child prisoners (Jerusalemite children)
- Requires URGENT attention and advocacy from all Palestinian advocacy campaigners
- Previous cases of Ahed Tamimi, Ahmed Al Manasra, Fawzi Al Juneidi
- Nader Hijazi a child who is under the age of three - Apprehensions and the conditions of prisoners by *Tadamon Prisoners Rights Group, 2019 period under review*
- Jerusalem settlers are organised and instigated by apartheid Israeli security apparatus constituting **civil, political and military** into home demolitions and arson attacks - the **case of Ahmed Dawabshe**
- UNHRC resolutions reaffirms the protection of rights and treatment of Palestinian political and child prisoners



www.zepattorneys.co.za

Phone

Tel: +27 11 782 2644

Cell: +27 83 309 5238

Email

Email: info@zepattorneys.co.za

Direct fax: +27 88 011 782 6293

Address

PO Box 291 397, Melville 2109