

16
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Why Palestine is an issue for the African Human Rights System?

Time: 9.00 am GMT
Venue: ISLA Thematic Room 1,
Sir Dawda Karaiba
Jawara International
Conference Center

Organizers:

Boycott, Divestment, Sanctions (BDS) Movement; Center for Human Rights (CHR); Al Quds University Community Action Center (CAC); Initiative for Strategic Litigation in Africa (ISLA); International Federation for Human Rights (FIDH); International Lawyers; International Service for Human Rights (ISHR); Pan African Lawyers Union (PALU)

Event:

This event aims to interrogate the role the African Charter, its prime monitoring body, the African Commission on Human and Peoples' Rights, and African civil society movements could play to ensure Palestinians inalienable rights, including right to self-determination, and the right to be free from apartheid and genocide are respected, the legal and extra-legal tools that could be used and how best to engage states to ensure their obligations under the African Charter, in so far as their engagement with Israel is concerned, are respected. What role can the African Charter play in order to defend the values of human and peoples' rights, including the Palestinian right to self-determination, and the rule of international law broadly? In turn, what can Palestinian liberation contribute to the advancements or peoples and human rights in Africa and elsewhere.



Speakers:

- **Dr. Trésor Muhindo Makunya,**

Africa Legal and Advocacy Officer, International Service for Human Rights (ISHR)

- **Sibongile Ndashe,**

Executive Director of the Initiative for Strategic Litigation in Africa (ISLA).

- **Munir Nusiebah,**

Professor of law and director of Community Action Center at Al-Quds University

- **Saleh Hijazi,**

Policy Coordinator, BDS movement

Moderator:

Ruth Ogbewekon,

Pan African Lawyers Union (PALU)

Context and background:

The Palestinian struggle for national liberation is intrinsically linked to Africa and Africans. For close to a century, the African continent has been subjected to colonialism and various forms of foreign domination which have dehumanised the continent and its peoples as are Palestinians today. Following the wave of independence in the early 1960s, African states established the Organisation of African Unity (OAU) as the manifestation of their commitment to prevent foreign domination and to fight against neo-colonialism.

Interestingly, African states vowed through the OAU Charter to 'eradicate all forms of colonialism from Africa' and to 'promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights'. Based on their obligations deriving from the UN Charter, the African Charter and customary international law, all African states must respect and protect every peoples' rights to self-determination. The UN was, among other, formed to foster 'friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples' and international peace. As the violation of fundamental rights and freedoms may constitute serious threats to international peace and

security, it is within the interest of countries in the world to ensure every actors including states and non-state actors respect these rights the more so when some rights, such as peoples' rights to self determination, have acquired an erga omnes status under international law. The African Court on Human and Peoples' Rights recently reiterated this position.¹

Indeed, one of the hallmarks of the African Charter remains the recognition of self-determination as a peoples right. It enjoins member states to provide assistance to peoples' in their quest for liberation. It is not a dispute that Palestinians are a people within the meaning of Article 19. Yet they remain under the Zionist settler-colonial regime established in 1948 and are denied their inalienable right to self determination and the right of refugees to return home. Article 19 of the Charter does not distinguish among peoples and does not confer rights on 'Africans' alone as the qualifier 'African' is absent from the provision. The provision confers on peoples the right to be free from domination including Palestinians. Many African countries including the African Union have called on Israel to end its apartheid in 'the Occupied Palestinian Territories'.² This public support from African countries is unprecedented.

The African Union and African Commission approaches to Palestinian rights to self-determination and the need for Israel to end its occupation and apartheid policies in the occupied territories have either been weak or ambivalent. Although it called on parties to the conflict to respect international human rights standards on the protection of the civilian population in Gaza,³ the African Commission recently adopted a Resolution which failed to call on African states to align their engagement with Israel with their obligations under the African Charter. The African Union Commission's controversial decision to grant observer status to Israel, although suspended later, has been a significant blow on the African Charter's values and calls on various stakeholders to think of appropriate ways these values can be respected within and outside the continent if the African Charter is to serve the purpose for which it was adopted. UN Special Procedures have equally reminded governments of their international obligations to prevent genocide and

1 <https://www.african-court.org/cpmt/storage/app/uploads/public/632/e0f/3ad/632e-0f3ad580e748464681.pdf>

2 African Union Written statement before the ICJ <https://www.icj-cij.org/sites/default/files/case-related/186/186-20230725-wri-12-00-en.pdf>

3 <https://achpr.au.int/index.php/en/adopted-resolutions/48-resolution-situation-palestine-and-occupied-territories>

stressed that killing and causing irreparable harm against Palestinians violate basic international law norms and standards.⁴ Clearly, embracing African Charter values will enable African states to side by the civilian population broadly but specifically women, children, journalists, human rights defenders who suffer from the adverse effects of Israel apartheid and repressive policies.

Since Israel began carrying out the genocide against 2.3 million Palestinian in the occupied and besieged Gaza strip the International Court of Justice (ICJ) has come out in two separate instances to further clarify and confirm the obligation of states and international organizations with regards to Israel's illegal occupation, apartheid, and genocide in Palestine. By accepting South Africa's case against Israel for violation of the Convention on the Prevention and Punishment of the Crime of Genocide and ruling for provisional measures to protect Palestinians from genocide the ICJ confirmed the plausibility of genocide and thus triggered legal obligations on states to act to prevent and punish genocide. In July 2024 the ICJ delivered its advisory opinion requested by the UN General Assembly on the legal consequences arising from Israel's illegal occupation of the Palestinian territories. The ICJ has found that Israel's policies and practices breach the right of the Palestinian people to self-determination and declared that Israel's occupation of the Gaza Strip and the West Bank, including East Jerusalem, is unlawful and must be ended as quickly as possible. It confirmed that Israel must dismantle all its settlements, provide full reparations to Palestinian victims, and facilitate the return of displaced Palestinians. The Court also declared that, in the context of the 1967 occupied Palestinian territory (OPT), Israel is violating the international prohibition on racial segregation and apartheid. It underlined the inalienable rights of the Palestinian people, particularly the right to self-determination, right of return, restitution, and reparation to those it displaced. The Advisory Opinion, adopted by the UNGA in resolution on 13 September 2024, triggers legal obligations for Third States, both individually and collectively, to end complicity and hold Israel accountable. They also trigger responsibilities for organizations, including corporations and institutions, to end complicity in Israel's gross human rights violations. The African Union and some member states have made written and oral submission to the ICJ in the context of the request for an Advisory Opinion. The African Union and some African states have welcomed the ICJ ruling of provisional measures

4 <https://www.ohchr.org/en/press-releases/2024/01/over-one-hundred-days-war-israel-destroying-gazas-food-system-and>

in South Africa's case against Israel for committing genocide. Such rulings by the ICJ further emphasize the obligation of the African human rights system and African states to address Israel's violations of the Palestinian inalienable rights.

Israel's ongoing genocide in Gaza, which is Africa's only land border with Asia, has had a tremendous effect on Africa and Africans. African citizens, mainly from North Africa, continue to be victimized by Israel's genocide and apartheid. Many were killed and some may be in Israeli prisons being subjected to torture. African citizens in colonized Palestine remain the subject of systematic crimes by Israel including forced displacement and persecution. Israel's crimes against Palestinians and in Palestine has had direct impact on African states, particularly Egypt, which is the first recipient of those fleeing Israel's apartheid and genocide, particularly in Gaza. Needless to say, African states remain hosts of Palestinians who have been previously forcibly displaced by Israel, from 1948 onwards, and denied their right to return home.

Recently Israel has enacted a policy of recruiting African asylum seekers as mercenaries in the army in return to granting them legal status, in clear violation of international law. This is reflective of Zionist settler-colonialism, racism and dehumanization of Africans in Israel as well as in the continent. Israel's history of fueling civil wars, supporting apartheid and ruthless dictatorships across the African continent is well documented. One such example is Israel's role in the Rwanda genocide, when, as early as 1992, Israel provided weapons, and later training, to the Rwandan military and Hutu militia that in 1994 perpetrated crimes against humanity against the Tutsis. Another example is Israel's fueling of the civil war in Sudan which was condemned by the UN.

Biographies of speakers

Saleh Hijazi is the Policy Coordinator at the Palestinian Boycott, Divestment and Sanctions National Committee (BNC), the leadership of the global BDS movement working to end complicity with and towards dismantling Israel's settler-colonialism, military occupation, and apartheid. Before joining the BDS movement Saleh spent 11 years at Amnesty International, most recently as MENA Deputy Regional Director, and was co-author of the organization's report "Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity". He had previously worked with Al-Quds University Human Rights Clinic in Palestine. Saleh is a Palestinian, born and raised in Jerusalem and holds a BA in liberal arts from Lawrence University and MA in human rights from the University of Essex.

Dr Munir Nuseibah is a human rights lawyer and academic based in Al-Quds University in Jerusalem, Palestine. He is an assistant professor at Al-Quds University's faculty of law; the director (and co-founder) of Al-Quds Human Rights Clinic, the first accredited clinical legal education program in the Arab World; and the director of the Community Action Center in Jerusalem. He holds a B.A. degree in Law from Al-Quds University; an LL.M in International Legal Studies from the Washington College of Law of the American University in Washington

DC and a PhD degree from the University of Westminster in London, UK. Dr. Nuseibah heads a number of research and services projects that focus on forced displacement, international law and Jerusalem.

Dr Trésor Muhindo Makunya is a Legal and Advocacy Officer at the International Service for Human Rights. He holds a doctorate in comparative constitutional and international human rights law in Africa from the Centre for Human Rights, Faculty of Law, University of Pretoria. He led the Publications Unit of the Centre for Human Rights, taught Comparative Constitutionalism in Africa on the Master's in Human Rights and Democratisation in Africa and co-edited the African Human Rights Yearbook before joining ISHR.

Sibongile Ndashe is the Founder and Executive Director of the Initiative for Strategic Litigation in Africa (ISLA). She is a feminist who has worked as a public interest lawyer for the past twenty years. Her work is driven by developing jurisprudence in gender and sexuality, before the African Human Rights Systems. Through her work, she is nurturing a pool of feminist litigators with expertise on gender and sexuality in addition to the legal empowerment of social movements to make decisions about litigation. She holds a LLB from University of Western Cape.