



STATE OF PALESTINE
PALESTINE LIBERATION ORGANIZATION
NEGOTIATIONS AFFAIRS DEPARTMENT



IT IS APARTHEID

**THE REALITY OF ISRAEL'S COLONIAL
OCCUPATION OF PALESTINE**



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In Memory of
Dr. Saeb Erekat



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Foreword: In Memory of Dr. Saeb Erekat



"It is time to end a dark chapter of apartheid in Palestine" was one of the phrases that Dr. Saeb Erekat never tired of repeating before members of the international community and in his many meetings with international officials, diplomats, and audiences wherever he met them. In explaining its meanings and contents, Dr. Erekat warned that the absence of the two-state solution would only result in one state with two systems, the "apartheid" system. He used to put forward the concept of "apartheid" to explain acts of violence, separation, and expulsion based on ethnic grounds and rooted in colonial origins. Israel has differentiated/distinguished itself from its colonial peers by combining three components that blatantly violate the international community's values and laws: occupation, colonialism, and apartheid.

Dr. Erekat repeatedly emphasized Israel's attempts to impose a one-state reality with two systems to consolidate its unlawful and unilateral acts. Through its successive governments, especially the extreme right-wing Netanyahu government, Israel seeks to destroy the two-state solution and replace it with this one-state reality. Israel has continuously disrupted peace efforts through a series of illegal legislations and discriminatory laws, the most prominent of which is the "Jewish Nation-State Law", to entrench an already existing apartheid regime to maintain its colonial settlement project and racist practices against the land and people of Palestine, especially in Jerusalem. The facts on the ground in occupied Palestine today expose the repercussions of Israel's disgraceful institutionalized apartheid.

On several occasions, Dr. Erekat asserted, "Israel has succeeded in making itself an apartheid regime by law, but the normalization of apartheid will not pass in Palestine. Our people will reject and resist it." In the name of the people of Palestine, Dr. Erekat firmly called on the international community and its institutions to assume its legal, political, and moral responsibilities. To translate its verbal condemnations into concrete actions to end the occupation by imposing strict penalties on Israel's occupation and colonial settlements and forcing it to comply with international law.

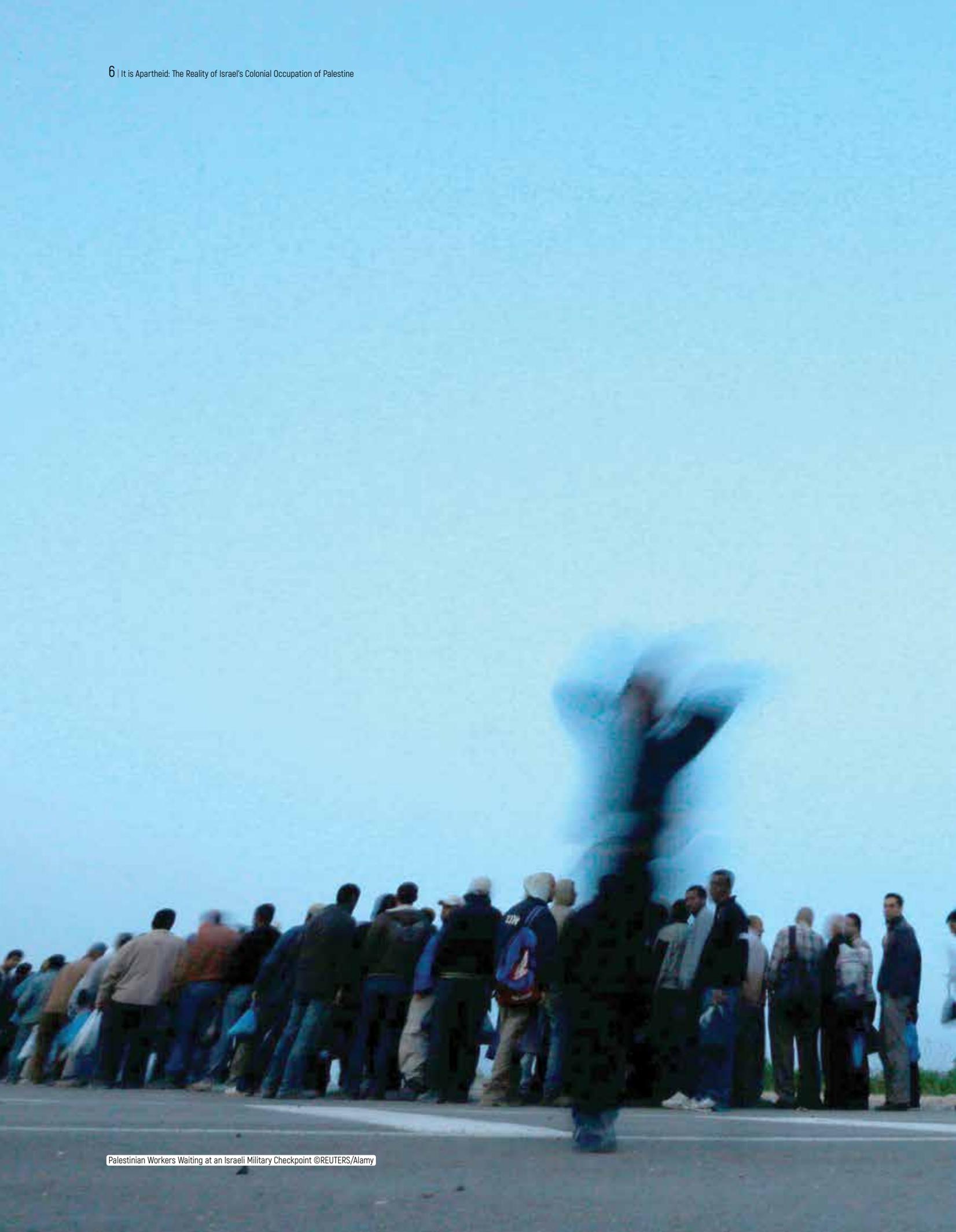
Dr. Erekat warned that static positions grant Israel immunity and encourage it to create a culture of impunity that fuels its grave violations of all universal norms and explains its survival and monopoly of our people, capabilities, and land for over half a century. In our turn, we reaffirm these legitimate demands and our steadfastness to continue the struggle toward the achievement of the national rights of the Palestinian people to self-determination and freedom by ending Israel's morally repugnant occupation and the embodiment of our national independence on the 1967 borders with East Jerusalem as the capital of the State of Palestine, releasing all Palestinian political prisoners, and finding a just solution to Palestine's refugees in accordance with UN resolution 194.

This publication presents a full explanation of Israel as an apartheid system. It defines continuing acts of apartheid by the State of Israel in the land of Palestine occupied since 1967 and how it maintains systematic racial oppression and domination over the Palestinian people as a whole to ensure that their continued fragmentation into separated groups prevents their collective right of self-determination and to consolidate its illegal settler-colonial enterprise. It highlights that the apartheid system is characterized by a series of racist Israeli laws implemented since 1948 and continued by the Israeli occupying forces in 1967 and further defines penalties under international law and human rights law provisions.

We started working on this publication per the initiative of Dr. Saeb Erekat. Just one day before his transfer to the hospital, he inquired about when he could receive the final copy to prepare its introduction, insisting that we publish it as soon as possible. In loyalty and appreciation to Dr. Erekat's legacy, we dedicate this work to his memory and all the martyrs of Palestine.

We miss you Dr. Saeb. May your soul rest in eternal peace.

The Support Team to the Negotiations Affairs Department



Palestinian Workers Waiting at an Israeli Military Checkpoint ©REUTERS/Alamy

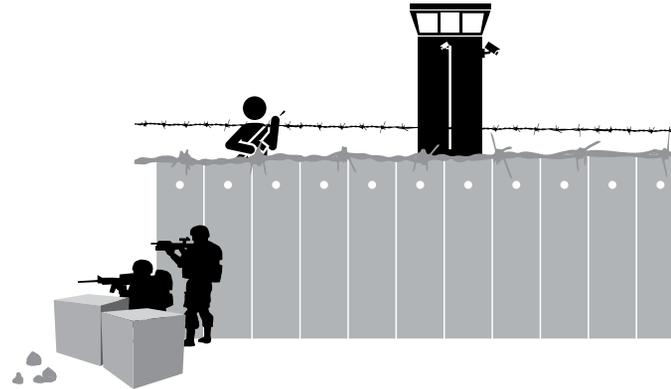
"...what acts like apartheid, is run like apartheid and harasses like apartheid, is not a duck - it is apartheid."

Yossi Sarid, Former Israeli Politician.





Introduction



Speaking in 1937, Israel's future Prime Minister, Ben Gurion explained his vision for the future State: 'We must expel Arabs and take their place'.¹ Since its establishment in 1948, Israel has carried out a sweeping ethnic cleansing of Palestine, radically altering its demography through the forced displacement of the Palestinian people, confiscation of Palestinian lands, the erasure of Palestinian villages and towns and the transfer in of newly arrived Jewish settlers. After 1967, the settler colonial project continued with the illegal transfer in of Israeli Jewish settlers into the occupied Palestinian territory. Today, more than seven million Palestinian refugees located in third countries are denied their right of return to their homes in Palestine.² Meanwhile Israel applies and maintains an institutionalized regime of systematic racial oppression and domination over the people of Palestine as a whole to further its settler colonial enterprise.³

Apartheid (an Afrikaans word meaning apartness) is rigidly enforced by Israel through the fragmentation of the Palestinian people as a whole into isolated, separate and segregated groups, and entrenched through the physical fragmentation of the territory, including through the construction of the Annexation Wall and its associated regime since 2003.⁴ From the very outset, since 1948, this policy had been implemented in the form of laws, policies, and practices discriminating against Palestinian citizens of Israel, and the systematic denial of the right of return of Palestinian refugees and exiles to their homes, lands, and property within the Green Line, from which they have been illegally displaced and dispossessed since the *Nakba*.

Today, the *Nakba* continues through the collective denial of the rights of return and self-determination, and the wider fragmentation of the Palestinian people across various territorial and juridical domains, with the clear aim of ensuring that they may never, through the exercise of their collective and inalienable human rights, challenge or change the colonial and discriminatory system to which they have been subjected.

Since 1967, Israel has continued its policies and practices of separating Palestinian populations in the occupied Palestinian territory, persisting with its illegal transfer in of Israeli-Jewish settlers and expansion of its settler-colonial enterprise, while forcing mass Palestinian population transfers, through the widespread expropriation of lands, destruction of properties and the creation of coercive environments to force displacement of Palestinian families.⁵ Although prolonged occupation has enabled Israel to retain the occupied Palestinian population under its effective military control while entrenching Israeli-Jewish national domination, this is merely one fragment of a much broader apartheid regime spanning both sides of the Green Line.

In occupied Gaza, the Palestinian people, of whom the majority are refugees from 1948, have been systematically isolated and besieged under prolonged Israeli closure and blockade in collective punishment of the entire population there. At the same time, Israel applies a separate administrative regime to govern Palestinians in occupied East Jerusalem as "permanent residents", a precarious status requiring continual proof that their so-called "center of life" is Jerusalem, and

demanding their allegiance to Israel, the Occupying Power.⁶ Moreover, Israel largely denies Palestinians in Gaza and the West Bank access to Jerusalem, entrenching segregation and blatantly aiming to undermine and disempower their collective resistance to its illegal colonization.

It is becoming increasingly evident that the containment of the occupied Palestinian people under prolonged military control and subjugation is part of a larger State policy to facilitate and enable Israel's annexation of the occupied Palestinian territory.

Palestinians and the Israeli-Jewish settlers illegally transferred to the Palestinian land are governed under two different legal regimes ensuring both segregation and Israeli-Jewish privilege and domination, raising questions as to "whether Israel's role as the Occupying Power has crossed the bright red line into illegality".⁷ Palestinian cities, towns, and villages in the Oslo-defined "Areas A and B" of the West Bank are today fragmented into enclaves similar to South African apartheid-era Bantustans, while "Area C", where most of the settlements are located, is a contiguous area engineered through settlement infrastructure to directly connect to Israel.⁸ Large red signs warn Israeli citizens to turn back from Palestinian areas as entry "for Israeli citizens is forbidden, dangerous to your lives and is against the Israeli law".⁹

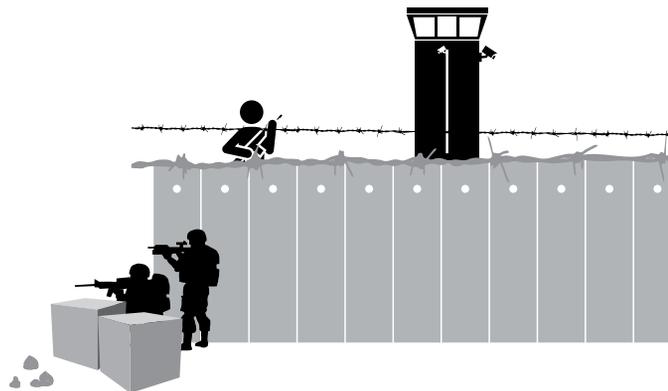
Recognizing that the crime of apartheid is being committed against the Palestinian people as a whole, on both sides of the Green Line. This publication primarily examines Israel's acts of apartheid in the territory occupied since 1967 and comprising the territory of the State of Palestine [i.e. the West Bank, including East Jerusalem, and the Gaza Strip].







Context



A. Apartheid as Aggravated Racial Discrimination

Apartheid is considered an aggravated form of racial discrimination under general international law and international human rights law. From its foundations, the Charter of the United Nations (UN) outlined the purposes of the UN as promoting respect for human rights and fundamental freedoms “without distinction as to race, sex, language, or religion”.¹⁰ In its consideration of apartheid in the Advisory Opinion on South West Africa, the International Court of Justice concluded that to establish and “enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter”.¹¹

Racial discrimination is further prohibited across the UN human rights treaties, which are universal, inalienable, indivisible, interdependent, interrelated, and inherent in all individuals “regardless of nationality, sex, national or ethnic origin, colour, religion, language, or any other status”.¹² While the UN human rights treaties share prohibitions on discrimination based on race, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) specifically enshrines the prohibition of apartheid.

Article 3 of ICERD requires that “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction”. The Committee on the Elimination of Racial Discrimination (CERD) stresses in its General Recommendation 19 of 1995 that apartheid is not limited to the situation in South Africa, but rather Article 3 “prohibits all forms of racial segregation in all countries”. In addition, the obligation to eradicate the consequences of apartheid includes the eradication of apartheid practices “imposed by forces outside the State”.¹³

Israel is a party to seven of the core international human rights treaties, including ICERD, and two optional protocols.¹⁴ Significantly Israel, as Occupying Power, not only has human rights obligations towards Palestinian citizens of the State, but also extraterritorially with respect to Palestinians under its effective military control in the occupied Palestinian territory.¹⁵ Therefore, Israel must respect, safeguard, and fulfil the human rights treaties in their entirety for the benefit of the Palestinian people on both sides of the Green Line.¹⁶

Over the years, UN committees have repeatedly expressed concerns over Israel's racially discriminatory policies and practices. In 2014, the UN Human Rights Committee described the application of a discriminatory tiered system of laws in Israel, granting different protections to Israeli-Jews, Palestinian citizens of Israel, and Palestinian residents of

occupied East Jerusalem.¹⁷ Similarly, in 2012 CERD highlighted Israel's violation of Article 3 on both sides of the Green Line through implementation of policies to keep communities segregated, including the application of two different education systems, one in Hebrew and another in Arabic, along with separate municipalities for Israeli-Jews and minorities.¹⁸ More recently, in December 2019, CERD called on Israel "to eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices which severely and disproportionately affect the Palestinian population" and to eradicate practices of apartheid on both sides of the Green Line.¹⁹

At the Human Rights Council, on 1 October 2020, the State of Palestine endorsed the 2019 conclusions of CERD recognizing "the continuity of Israeli policies and practices of racial segregation and apartheid over the Palestinian people" and warned that "Israel continues to pursue an illegal policy of population transfer aimed at altering the demographic composition of Palestine through settler colonialism and institutionalized racial oppression and domination thereby entrenching its illegal occupation and imposing apartheid over the Palestinian people".²⁰



B. Definition of the Crime of Apartheid

The practice of apartheid is criminalized in the International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973 (Apartheid Convention). The Apartheid Convention has been widely ratified by 109 States parties, including in 2014 by the State of Palestine.²¹ Israel is not a party to the Apartheid Convention, although the general prohibition of apartheid is binding on Israel as customary international law.²² A number of States, including France, Germany, Canada, United Kingdom and Italy, while not party to the Apartheid Convention, have ratified the Rome Statute, which similarly prohibits the crime of apartheid.²³

Apartheid is further considered a war crime and grave breach of Article 85(4)(c) of Additional Protocol I to the Geneva Conventions. The commentary to Additional Protocol I stresses that acts of apartheid were already considered grave breaches in 1949 and criminalized as outrages upon human dignity. The Geneva Conventions having acquired the status of customary international law, are binding on all States and therefore have automatic binding status in the domestic law of Israel.²⁴

Likewise, the Draft Code of Crimes against the Peace and Security of Mankind, 1996, recognizes as a crime against humanity, "institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population", and representative of customary international law at the time of drafting, and therefore also binding on Israel.²⁵

1. Crime Under the Apartheid Convention

Under the Apartheid Convention, the crime of apartheid results from "the policies and practices of apartheid, racial segregation, and discrimination" in violation of international law. As such it applies to "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". Accordingly, the Convention classifies apartheid as a crime against humanity, among the most serious crimes in the international legal order, while pointing out that certain acts of apartheid may also qualify as acts of genocide under international law.²⁶

Article II of the Apartheid Convention enumerates a list of six inhuman acts which if committed with "the purpose

of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them" may constitute acts of apartheid including:²⁷ murder, torture, inhuman treatment and arbitrary arrest of members of a racial group; deliberate imposition on a racial group of living conditions calculated to cause its physical destruction; legislative measures that discriminate in the political, social, economic and cultural fields; measures that divide the population along racial lines by the creation of separate residential areas for racial groups; the prohibition of interracial marriages; and the persecution of persons opposed to apartheid.²⁸

It must be prefaced here that the most serious wrongful acts in the international legal order, such as apartheid, are composite acts, comprising aggregate rather than individual acts, with the unlawful conduct amounting to a series of acts and omissions.²⁹ The International Law Commission (ILC) outlines that in such cases, "the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation".³⁰ In this respect, the cumulative character of apartheid distinguishes the wrongful act from individual acts of racism.³¹ Accordingly, acts of apartheid such as the denial of Palestinian national self-determination and the right of return to Palestinian refugees, displaced persons, and exiles since the Nakba and systematic acts of violence and repression against the Palestinian people as a whole, started in 1948 and continue to the present day.

2. Apartheid Under the Rome Statute of the International Criminal Court

The definition of apartheid in the Rome Statute is much narrower than that contained in the Apartheid Convention. Article 7(1)(j) of the Rome Statute provides that acts of apartheid constitute a "crime against humanity" when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.³²

Article 7(2)(h) clarifies that the crime of apartheid means inhumane acts which may include: "murder; extermination; enslavement; deportation or forcible transfer of populations; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national,



ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law; enforced disappearance".³³

The Elements of Crimes establish that the perpetrator will have committed an inhumane act against one or more persons,³⁴ in the "context of an "institutionalized regime" of systematic oppression and domination by one racial group over any other racial group or groups" with the intention of maintaining that regime.³⁵ The crime of apartheid is the only Rome Statute crime that refers to an "institutionalized regime", in this case, one of systematic oppression and domination by one racial group over another. In general, a "regime" can be taken to mean "a government especially an authoritarian one" or more broadly "a system or ordered way of doing things".³⁶ For example, Israel's administration of the occupied territory has been referred to as a "regime of prolonged occupation".³⁷ More broadly, the Russell Tribunal concluded in 2011 that, "Israel's rule over the Palestinian people, wherever they reside, collectively amounts to a single integrated regime of apartheid".³⁸

This publication agrees with this broader analysis and considers that the practices of the State of Israel, together with the administration of the military commander in the occupied Palestinian territory, amount cumulatively to an "institutionalized regime" for the purposes of analyzing Israel's systematic oppression and domination over the Palestinian people as a whole.³⁹

C. Analysis of the Crime in the Context of Palestine

1. Jurisdiction within the Framework of the Two-States

The crime of apartheid is a crime against humanity spanning at least two jurisdictions, the State of Israel, and the State of Palestine, including Palestinian refugees and exiles in the Diaspora.⁴⁰ The Apartheid Convention liberally provides for universal jurisdiction over an accused physically present on the territory of a State party, even where acts of apartheid are committed abroad, by a non-national and in the territory of a non-State party. For the State of Palestine, its territorial jurisdiction at International Criminal Court comprises the territory within the demarcated 1949 Armistice Line also known as the Green Line or the pre-1967 line, meaning the West Bank, including East Jerusalem, and the Gaza Strip, which together form a single territorial unit.⁴¹ While mindful

of the potential for much broader jurisdiction, this publication examines acts of apartheid carried out on the territory of the State of Palestine.

2. Israeli-Jews and Palestinians as Racial Groups

The question then turns to the domination of one racial group over another and whether Israeli-Jews and Palestinians qualify as two distinct racial groups in a relationship of domination, for the purposes of establishing apartheid.⁴² For example, CERD proposes that membership of a particular racial or ethnic group shall, "be based on self-identification of the individual concerned".⁴³ Jewish Law, or Halachah conveys Jewish identity from mother to child, regardless of the actual religious practice or beliefs of the individual.⁴⁴ In addition, Israel's so-called Law of Return, 1950 defines for the purposes of the law that "'Jew' means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion".⁴⁵



Likewise, for Palestinians, it is not enough to identify this grouping in the negative as say, “non-Jews”.⁴⁶ The Palestinian Citizenship Order, 1925 adopted during the British Mandate, accorded Palestinian citizenship based on bloodline to persons born in Palestine and abroad, within lawful matrimony and whose father was a Palestinian citizen at the time of their birth, in addition to legal acquisition of citizenship.⁴⁷ The 1964 Charter of the Palestine Liberation Organization (PLO) similarly considers Palestinian identity as carried on the paternal bloodline, establishing “the Palestinian personality is a permanent and genuine characteristic that does not disappear. It is transferred from fathers to sons”.⁴⁸

3. Israeli’s Institutionalized Regime of Systematic Oppression and Domination

A number of key laws adopted by the Israeli parliament (the Knesset) in addition to military orders issued in the occupied Palestinian territory, constitute provide for a single regime of systematic oppression and domination over all Palestinians, a system upheld by Israeli courts ensuring Israeli-Jewish national hegemony and the denial of Palestinian self-determination. These include laws governing return, citizenship, family unification, land acquisition, and settlement.

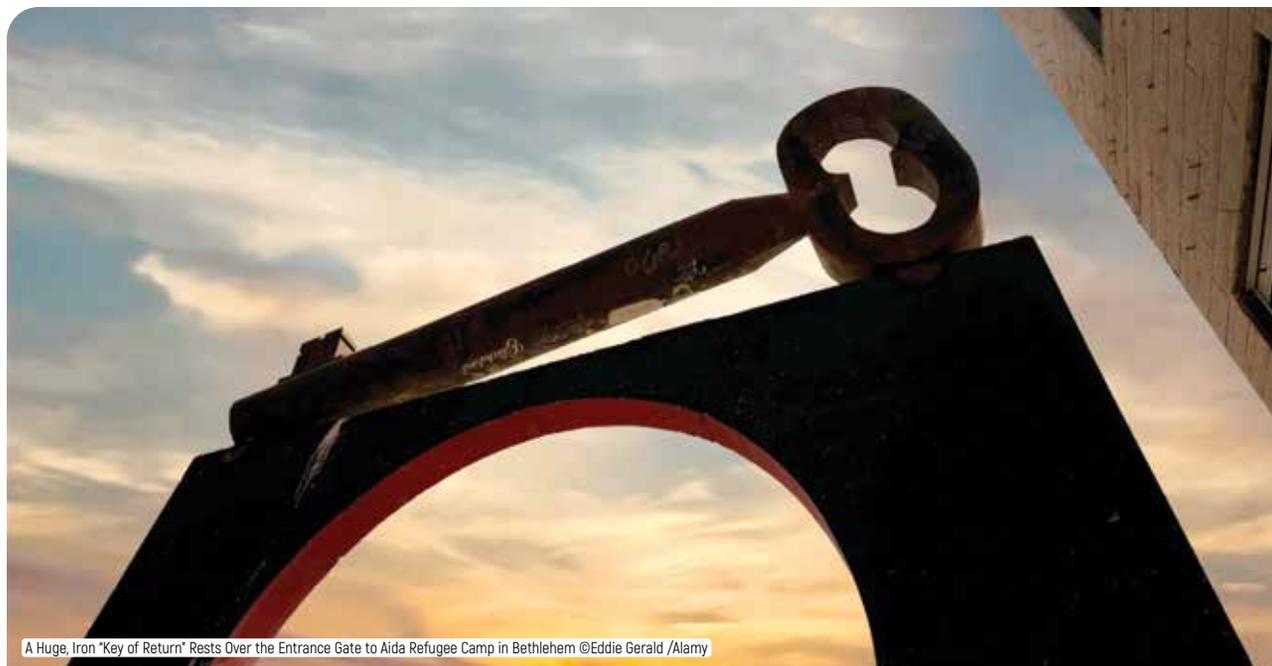
Israel separates the Palestinian people as a whole, into different “domains”,⁴⁹ with a different range of rights and freedoms depending on the density of the Palestinian population and the supposed demographic threat it poses in relation to the land controlled by Israel. In doing so, Israel maintains different spheres of rights, with Israeli-Jewish rights at the apex, having full rights of citizenship and nationality, as Jewish nationals of the State, which the Israeli Supreme Court has determined is a “Jewish Nation”. This “Jewish nation does not only consist of the Jews who live in Israel, but also of the Jews of the Diaspora” many of whom are incentivized by Israel, including through parastatal organizations such as the World Zionist Organization, to illegally transfer and settle in the occupied West Bank, including East Jerusalem, a war crime⁵⁰ in violation of Article 49 of the Fourth Geneva Convention.⁵¹ Israeli Parliamentary candidates who either “expressly or by implication” negate the “existence of the State of Israel as a Jewish and democratic state” are prevented from participating in elections.⁵² While elected parliamentarians “shall not approve a bill that in its opinion denies the existence of the State of Israel as the state of the Jewish People”.⁵³

In 1992, Israel enshrined in its semi-constitutional Basic Law “the values of the State of Israel as a Jewish and democratic state”.⁵⁴ Meanwhile in 2018, Israel adopted a new Basic Law



providing that “the State of Israel is the Nation State of the Jewish People” and holding that the right of self-determination in Israel is “unique to the Jewish People”.⁵⁵ Emphasizing in Article 7 that the development of Jewish settlement as a “national value” which it pledges to “encourage and promote its establishment and strengthening” thereby encouraging, inter alia, illegal settlement construction and expansion into the occupied Palestinian territory as well as racial segregation within the Green Line.⁵⁶

In October 2019, the Concluding Observations of the UN Committee for Social for Economic, Social and Cultural Rights (CESCR) condemned the Nation State Law as discriminatory, calling on Israel to amend or repeal the law, which breaches the rights of self-determination, non-discrimination and cultural rights of the non-Jewish population and whose settlement policy would lead to the deterioration of Palestinian rights in the occupied territory.⁵⁷ A number of constitutional challenges are pending and delayed at the Israeli High Court of Justice, with the former Israeli Justice Minister Shaked warning that a Court decision against the law “would cause an earthquake between different authorities”.⁵⁸



A Huge, Iron "Key of Return" Rests Over the Entrance Gate to Aida Refugee Camp in Bethlehem ©Eddie Gerald /Alamy

i) Discriminatory Laws Denying Palestinians their Right of Return

Israel grants foreign Jewish non-nationals rights in the State, which are denied to the indigenous Palestinian people, including Palestinian refugees, internally displaced persons, and Palestinian so-called "permanent residents" in Jerusalem. Israel's 1950 Law of Return described as both "theocratic or racial"⁵⁹ provides for the unfettered "return" of Jews to Israel and the occupied Palestinian territory, granting an "oleh's certificate" to "every Jew who has expressed his desire to settle in Israel".⁶⁰ In addition, Israel's Citizenship Law, 1952 grants automatic citizenship to Jews who immigrate under the Law of Return. Palestinians who were forcibly expelled during the ethnic cleansing of at least 418 Palestinian villages and towns during the *Nakba* are still denied their right of return to their homes, in violation of customary international law and UN General Assembly Resolution 194.⁶¹

The laws affect approximately 957,000 Palestinian refugees displaced during the 1948 *Nakba* and a further 450,000 Palestinian's displaced during the 1967 *Naksa*, and their descendants now number in the millions.⁶² Today seven million Palestinian refugees make up approximately 50 per cent of the global Palestinian population.⁶³ In its 2017 findings on apartheid, a UN Economic and Social Commission for Western Asia (ESCWA) report concluded that Israel's "refusal to allow refugees and involuntary exiles to return ensures that the Palestinian population never gains the demographic weight that would either threaten Israeli military control of the

[Palestinian territory], or provide the demographic leverage within Israel to allow them to insist on full democratic rights, which would supersede the Jewish character of the State of Israel. In short, [it] ensures that Palestinians will never be able to change the system".⁶⁴

ii) Discriminatory Laws Denying Citizenship and Family Unification

Meanwhile Palestinians face severe discrimination under the 2003 Citizenship and Entry into Israel Law (Temporary Order), which Israel applies to control the entry of all persons into the territory of Israel and the State of Palestine. In particular, the temporary order, renewed annually since 2003, prohibits the granting of citizenship or residency status to Palestinians from the West Bank or the Gaza Strip, who are married to Israeli citizens.⁶⁵ The discrimination only pertains to Palestinian spouses, for example a Palestinian citizen of Israel who marries any other nationality provided they are not classed as from an "enemy State", may apply for citizenship. A 2007 amendment further prohibits the granting of a license of residence or citizenship to individuals from Iran, Lebanon, Syria or Iraq, in particular, impacting Palestinian refugees in these States.⁶⁶ Despite repeated calls from CERD for its revocation as a racist law,⁶⁷ Israel's Supreme Court has upheld the Temporary Order finding that it "does not contain a defect or flaw".⁶⁸ In 2018, then-Israeli Minister of Defense Avigdor Lieberman warned "as long as I am Defense Minister, there will not be any reunification of Palestinian families. If they want, they can unite in Gaza".⁶⁹

At the same time, the Entry into Israel Law, 1952, classifies indigenous Palestinians from occupied East Jerusalem as “permanent residents”, essentially stripping them of their Palestinian citizenship and nationality status accorded under Palestinian Citizenship Order, 1925, instead conferring on them a temporary and revocable status usually reserved for immigrants.⁷⁰ Employed as a measure of forcible transfer, Palestinians are required to continually prove that their “center of life” is Jerusalem, and are subject to residency revocations, should they move outside the municipality. For example, in *La’afi v. Ministry of Interior* case, a Palestinian woman born in Jerusalem, where all her family lives, and who moved to join her husband in Kuwait for four years, had her permanent residency revoked. The Israeli High Court of Justice upheld the revocation stating, “the simple fact is that they preferred to raise their children in Kuwait”.⁷¹ As explained by the Court “a permit for permanent residency, when granted, is based on a reality of permanent residency. Once this reality no longer exists, the permit expires of itself”.⁷²

Children born into “mixed” Palestinian families of different ID holders in Jerusalem do not automatically receive an identity number at the hospital. Instead, births are registered with the Israeli Ministry of Interior subject to proof of the parents’ “center of life”.⁷³ These coercive practices to force transfer violate the International Covenant on Civil and Political Rights (ICCPR), which holds that “every child shall be registered immediately after birth” and that “every child has the right to acquire a nationality”, rights echoed in the Apartheid Convention.⁷⁴

iii) Laws Providing for the Confiscation of Palestinian Land and Property

In parallel to discriminatory nationality, citizenship, entry, and residency laws, Israel has implemented the Absentees’ Property Law, 1950, as a measure of mass land appropriation, taking possession of lands, properties, and moneys of Palestinian so-called “absentees” or “persons who were expelled, fled, or who left the country after 29 November 1947, mainly due to the war” and who are to this day denied their inalienable right of return. Article 19(a) of the Absentees’ Property Law, 1950, provides for the permanent alienation of Palestinian property by the State of Israel on the establishment of a Development Authority whereupon “it shall be lawful for the Custodian to sell the property to that Development Authority”.⁷⁵

With the adoption of the Israel Land Administration (Land Reform) Law, 2009 Israel has come full circle, adopting a law that now provides for the privatization of some two million acres of Palestinian refugee lands, and providing for the exchange of this land to the Jewish National Fund. The grants are limited for the exclusive use of the Jewish people and overseen by “Admissions Committees” who ensure that the land is conveyed only to “candidates approved by Zionist institutions working solely on behalf of the Jewish people”⁷⁶ – policies and practices which CERD has specifically identified as evident of Israel’s “racial segregation and apartheid”.⁷⁷



iv) Appropriating Lands Belonging to the State of Palestine

Sweeping appropriations of Palestinian land have been carried out by Israel across the occupied Palestinian territory across decades. In 1970, Israel passed the Legal Procedures and Implementation Law 5730-1970, applying Israeli domestic law and the Absentees' Property Law to occupied East Jerusalem; these measures are still being used to target Palestinian homes in the Old City and Silwan for illegal settlement.⁷⁸ Currently 74 Palestinian households/families in the Old City are subject to eviction proceedings filed by Israeli settler organizations.⁷⁹ In stark contrast, no laws were adopted to allow for Palestinian refugees in East Jerusalem to claim their pre-1948 property held by Israeli-Jews in West Jerusalem. The Israeli High Court of Justice in

Levy v. Afaneh upheld the application of the law to Palestinian property in occupied East Jerusalem, concluding that the "territory of Israel" means "the area in which the law of the State of Israel applies"⁸⁰, thus asserting Israeli sovereignty to territory unlawfully and forcibly acquired, in grave breach of international law.

In the rest of occupied Palestine, Israel has carried out land appropriations under military orders, appropriating Palestinian public lands as "State lands", for residential, agricultural, and industrial settlement, and confiscating private lands as military training zones, national parks, archaeological zones, for settlement, commercial, and touristic use.⁸¹ Between 1969 and 2014, the Israeli military commander issued 1,150 land seizure orders across the occupied territory, for the appropriation of 25,800 acres





of Palestinian land.⁸² In this way, Israel has orchestrated widespread and systematic land and property appropriations aimed at the forced displacement and effective erasure of the Palestinian people from their land for their replacement with Israeli-Jewish settlers.

v) The Role of Zionist Parastatal Organizations

Israel's colonial-settlement project is coordinated and facilitated by three main Zionist organizations under the auspices of the State of Israel – the World Zionist Organization (WZO), the Jewish Agency and the Jewish National Fund. Mandated as “authorized bodies aimed at the development of Israel, its settlement” and “immigrants’ absorption”, the World Zionist Organization (WZO) is tasked with settlement beyond the Green Line, meaning in the occupied Palestinian territory and the Jewish Agency with settlement within the Green Line.⁸³ In doing so, the organizations are chartered to carry out material discrimination against non-Jews,⁸⁴ narrowly establishing for only “Jewish people a legally

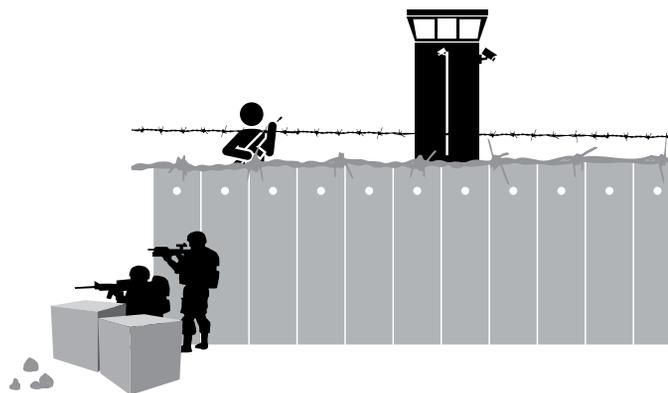
assured home in Eretz Yisrael”,⁸⁵ to “benefit, directly or indirectly, those of Jewish race or descendency”.⁸⁶ Israel's “large scale and systematic confiscation of Palestinian land and property” and subsequent “transfer of that property to these agencies” has been condemned by CESCR, as amounting to an “institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non Jews”.⁸⁷

It is worth noting that severe and intentional deprivation of property rights amounting to persecution, alongside the forcible transfer of populations to facilitate settlement comprise crimes against humanity and span acts committed within and outside a situation of armed conflict, when carried out as part of a State policy and widespread or systematic attack against the civilian population.⁸⁸ Further, settlements in occupied territory constitute an illegal regime determined inter alia by the UN Security Council as having “no legal validity and constitutes a flagrant violation under international law”.⁸⁹



A Palestinian Building is Blown Up by The Israeli Occupying Forces in Sur Baher in East Jerusalem ©REUTERS /Alamy

How Israel Maintains Its Apartheid Regime Over the Palestinian People



A. Fragmentation of the Palestinian People as a Whole

The authoritative 2017 ESCWA report explains that Israel maintains an apartheid regime over the Palestinian people as a whole by administering Palestinians under different bodies of law, in what are described as four legal “domains”.⁹⁰ The first domain is the administration of Palestinians citizens in the State of Israel under Israeli civil law; the second domain is the administration of Palestinians in occupied East Jerusalem through a precarious “permanent residency” status; third, Israel, as Occupying Power, governs Palestinians in the occupied territory, excluding occupied East Jerusalem, under military laws treating them as a “permanently alien population”; a fourth domain applies to Palestinian refugees and exiles abroad denied their right of return to their homes, lands, and properties, which remain under Israeli control.⁹¹

Noting that the crime of apartheid is a crime against humanity spanning a number of jurisdictions and committed against the Palestinian people as a whole, this section primarily examines the apartheid policies and practices as they are applied in occupied Palestine more specifically.

Segregating and Fragmenting Palestinians to Entrench Apartheid

Article II(6) of the Apartheid Convention finds that acts of apartheid include “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” for the purposes of establishing and maintaining domination. As a matter of official State policy, Israel’s Jerusalem Municipality has pursued “demographic goals” in favour of an Israeli-Jewish demographic majority in Jerusalem, at the expense of the indigenous Palestinian people. In its Jerusalem 2020 Master Plan, the Jerusalem Municipality endorses segregation, explaining: “spatial segregation of the various population groups in the city is a real advantage...The segregation limits the potential sources of conflict between and among the various populations. It is appropriate, therefore, to direct a planning policy that encourages the continuation of spatial segregation”.⁹²

The Annexation Wall, perhaps the most visible and ominous symbol of Israel’s apartheid fragmentation runs in and around occupied East Jerusalem and the West Bank for 465 kilometers and will total 712 kilometers on completion.⁹³ The Annexation Wall stands in grey concrete slabs replete with concrete military watchtowers, fences, checkpoints, and crossings operated by Israeli military personnel and permanent staff. Palestinian pedestrian and vehicular movement is curtailed by the presence of 705 permanent obstacles across the West Bank.⁹⁴ Built mostly on occupied Palestinian lands, requisitioned in violation of the Hague Regulations, the Annexation Wall cuts off entire Palestinian villages (such as Barta’a and Nabi Samwil) in the closed areas designated by Israel as seam zones⁹⁵ between the Annexation Wall and the Green Line, disrupting family and social life,



undermining Palestinians' livelihoods, and fragmenting the territorial contiguity of the State of Palestine.⁹⁶ Speaking in 2003, then Israeli Finance Minister Benjamin Netanyahu highlighted what he termed as the "demographic problem" with "Israeli Arabs who will remain Israeli citizens" noting that Israel should be a so-called "Jewish and democratic State", and advising that the containment of the occupied Palestinian people behind the Annexation Wall would help to prevent a "demographic spillover" of Palestinians into Israel.⁹⁷

Segregation is entrenched by Israel's physical fragmentation of the occupied Palestinian territory into over 250 illegal Israeli-Jewish settlements and outposts supplied and serviced by Israel with water, electricity, telecommunications, and transport, including a sophisticated road and rail infrastructure connecting the settlements to Israel.⁹⁸ For example, the so-called 'E1' colonial project, which designates a wide belt at the eastern gateway to Jerusalem, includes the strategically located illegal Israeli residential settlement

of Ma'ale Adumim and industrial settlement of Mishor Adumim, located along the outer perimeter of Jerusalem, with plans to absorb and annex the entire area planned for the 'E1' colonial project into Jerusalem. In 2019, Israel's Higher Planning Council approved the expansion of the Ma'ale Adumim settlement by 2,304 new settlement homes.⁹⁹ At the time, European Union (EU) High Representative Josep Borrell warned that the construction would "cut the geographic and territorial contiguity between East-Jerusalem and the West Bank" and "sever the connection between Northern and Southern West Bank"¹⁰⁰ while causing "serious damage to the prospects for a viable and contiguous Palestinian State and, more broadly, to the possibility of a negotiated two-state solution in line with the internationally agreed parameters and with Jerusalem as the future capital of two states".¹⁰¹

In the meantime, Israeli Defense Minister, Naftali Bennett has proposed plans for a separate Palestinian-only highway to connect the Palestinian villages of Za'ayem, Anata, Hizma,

and al-Ram for “Palestinian vehicles to move without crossing inside the Ma’aleh Adumim bloc, near Jewish communities”.¹⁰² In November 2020, Israel opened bidding for tenders to construct a new Israeli-Jewish settlement Giva’t Hamatos in Jerusalem, strategically placed to sever Jerusalem from Bethlehem, and further connect illegal settlements in Jerusalem and Hebron. The government whip, Miki Zohar applauded the development stating: “this is a neighborhood in a strategic place between Beit Safafa and Hebron Road. The construction here is essential to preserve Jewish contiguity between [the] Talpiyot and Gilo [settlements]”.¹⁰³

In Hebron, where Israeli settlements are located inside the densely-populated occupied Palestinian city, the Israeli occupying authorities operate the national bus service Egged on lines 380, 381, and 382, using armoured buses to connect settlers to Jerusalem, a service and city that are off limits to Hebron’s Palestinian people.¹⁰⁴ In Jerusalem, Israel’s light rail connects West Jerusalem to the illegal Israeli-Jewish settlements of Pisgat Ze’ev and Ramot in occupied East Jerusalem, appropriating approximately eight hectares of Palestinian land while servicing only Israeli-Jewish settlers. A second so-called “green” tramway line under construction intends to link the illegal Gilo settlement to Mount Scopus in occupied east Jerusalem and a further blue line is planned to connect the illegal Ramot and Gilo settlements to each other and to West Jerusalem.¹⁰⁵ A railway line announced by Israel’s Minister for Transportation will connect Ariel settlement to Barkan Industrial Zone and west to Tel Aviv, with 300 hectares of Palestinian land slated for confiscation.¹⁰⁶ Companies such as Construcciones y Auxiliar de Ferrocarriles (CAF), CRRC Corporation Limited, Alstom and Bombardier, Mitsubishi Electric, and Siemens have engaged the preliminary tender process, while CAF and CRRC continue to bid acting with knowledge to aid and abet the maintenance and continuation of acts of illegal population transfer and apartheid.¹⁰⁷

In this way, large tracts of the Palestinian people are fragmented and prevented from challenging Israel’s illegal settlement project, and more broadly its apartheid regime against the Palestinian people as a whole. Meanwhile Israeli occupying authorities appropriate more Palestinian land, destroy Palestinian homes and infrastructure, engage in radical demographic manipulation, erase Palestinian economic, social, political, and cultural life and permanently replace the Palestinian presence it with illegal Israeli-Jewish settlements and infrastructure, and even archaeology-framed narratives to ensure Israeli-Jewish national domination.

In 2019, CERD stated that it was “appalled” at the different legal systems which Israel applies in occupied Palestine,

granting unequal access to infrastructure, land, water resources and basic services. It noted that the separation is enforced through “the implementation of a complex combination of movement restrictions consisting of the Wall, the settlements, roadblocks, military checkpoints, the obligation to use separate roads and a permit regime”.¹⁰⁸ The Committee urged Israel to take immediate measures to “prohibit and eradicate any such policies or practices of racial segregation and apartheid” which severely and disproportionately affect the Palestinian people in occupied Palestine and in Israel proper, in violation of Article 3 of ICERD.

B. Undermining Palestinian Cultural Life

Since 1967, Israel, the Occupying Power, has deliberately hampered, undermined and eroded Palestinian cultural life in the occupied Palestinian territory through its policies and practices to maintain related to imposition and entrenchment of its occupation as well as Israeli-Jewish national domination.¹⁰⁹ Immediately following the beginning of the occupation, Israel issued Military Order 101 forbidding Palestinians to “hold, wave, display or affix flags or political symbols, except in accordance with a permit of the military commander”.¹¹⁰

In 2018, after reviewing recorded evidence of the mass killing of Palestinian civilians by IOF during the Great March of Return demonstrations in the besieged Gaza Strip, the UN Commission of Inquiry observed, “no one is holding anything apart from the flags”.¹¹¹

Cultural denial and obstruction have taken many forms, including the demotion of the Arabic language from an official language under the 2018 Jewish Nation-State Basic Law, the Judaization and/or transliteration of Palestinian place names from Hebrew,¹¹² the erasure of Palestinian place names from maps,¹¹³ industrial scale appropriation of Palestinian archaeological lands for Israeli-Jewish settler commercial touristic use (for example Herodium national park outside Bethlehem, Nabi Samwil, Qumran, Mount Gurizim, Ein Prat National Park, the so-called City of David and the Old City in occupied East Jerusalem)¹¹⁴ including the use of Zionist touristic narratives to erase Palestinian presence, raids and arrests on Palestinian cultural centers,¹¹⁵ pillage of Palestinian artifacts¹¹⁶ and impunity for violent and recurrent settler attacks on olive harvesting, including the burning of trees,¹¹⁷ noting that olive harvesting is deeply embedded in the rich agricultural tradition of Palestine and considered an expression of Palestinian national identity.¹¹⁸



C. Maintaining Economic Domination Through Exploitation of Natural Resources

Israel further maintains Israeli-Jewish national domination over Palestinians by crippling the Palestinian national economy and ensuring a captive market and the denial of economic self-determination, in violation of its obligations as Occupying Power and the Protocol on Economic Relations.¹¹⁹ For example in 2019, the World Bank reported that "the estimated total annual recurrent Palestinian fiscal leakage and losses, i.e., fiscal costs, resulting from the occupation that can be quantitatively substantiated are enormous" and calculated the amount to be an accumulated USD \$47.7 billion in losses to the Palestinian National Authority for the years 2000-2017.¹²⁰

These projections do not include losses accumulated from the denial of access to natural resources, such as quarries, oil, gas, and minerals in occupied Palestine. Since 1993, Israel, as Occupying Power, has denied all Palestinian applications for quarrying,¹²¹ a USD \$30 billion industry,¹²² instead granting licenses to international corporations including, for example, German Heidleberg Cement who profit from the exploitation of Palestinian finite natural resources, prohibited acts of war crime pillage.¹²³ Since 1999, Israel has prevented development of the Gaza Marine field to supply gas to the Palestinian domestic market.¹²⁴

Likewise, water is a key tool to ensure the success of Israeli colonization, with illegal Israeli settlements strategically dotted along the groundwater boundary and beside the Jordan River.¹²⁵ Israel controls Palestinian water aquifers and transboundary water resources, directing them to the sole use of the Israeli State-owned water company, Mekorot. Using discriminatory water allocation as a tool of racial oppression and domination, Israel allocates 90 per cent of exploited Palestinian water for exclusive Israeli use and less than ten per cent for Palestinian use.¹²⁶ To maintain Israeli-Jewish national domination over water resources, any Palestinian development of alternative water resources is suppressed by Israeli military force. Across the West Bank, water wells are targeted under military orders by Israel's occupying forces, destroying what they argue are "unlicensed" Palestinian wells and water infrastructure, including the demolition of nine public water wells in the Oslo-defined "Area C" in 2019.¹²⁷

In 2017, the United Nations Conference on Trade and Development (UNCTAD) concluded that "ongoing erosion of the productive base and continuing loss of land and natural resources to settlements and the annexation of land in the West Bank, as well as fragmentation of the economy into disconnected markets and regions and restrictions by Israel ... set the economy onto a distorted path of high unemployment and widespread poverty".¹²⁸

D. Obstructing Palestinian Political Life Under Apartheid

To entrench its apartheid regime over Palestinians, Israel implements legislative and military measures to hamper and obstruct participation in Palestinian political life. A blanket military order prohibition on assemblies, processions, vigils and publications, relating to “political matter(s) or one liable to be interpreted as political”¹²⁹ breaches *en masse* Palestinian rights to freedom of expression and assembly in the occupied territory.¹³⁰ In the occupied Gaza Strip, Israel has imposed a devastating land and naval closure, to “accelerate the separation of Gaza from the West Bank”,¹³¹ a measure of illegal collective punishment and persecution of the Palestinian people.¹³²

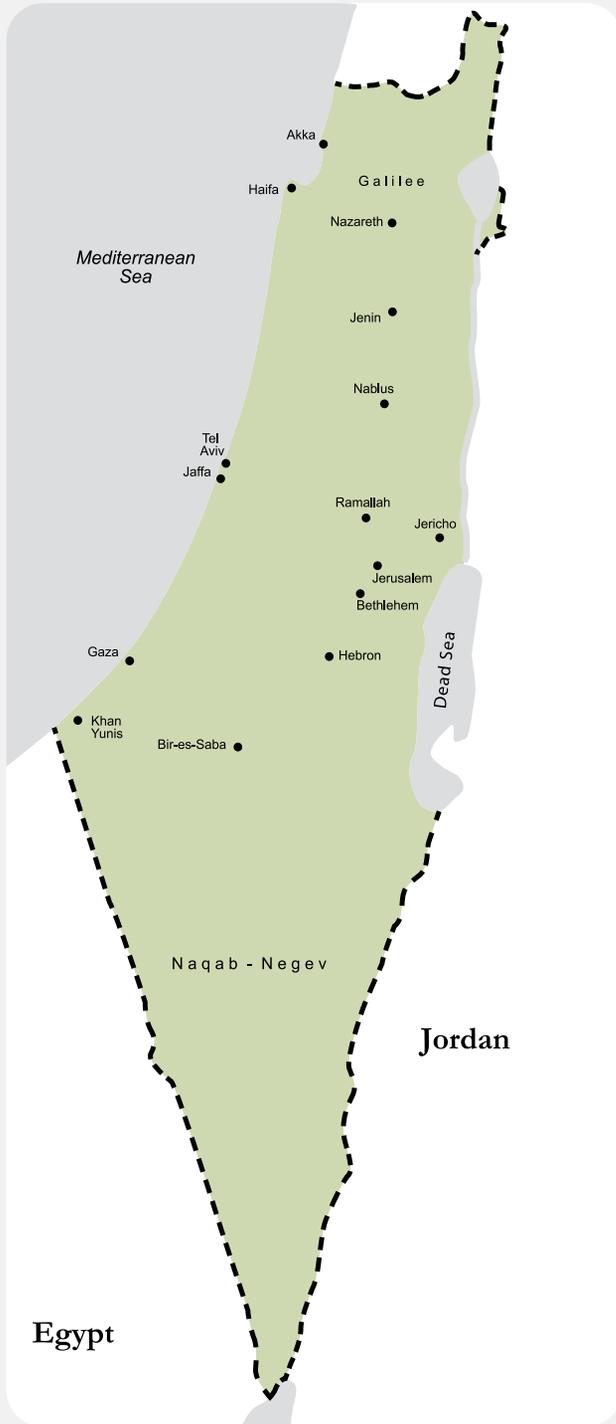
Since 1967, in occupied East Jerusalem, Israel has closed over 120 Palestinian institutions including the Court of Cassation and Jerusalem Chamber of Commerce.¹³³ More recently, in 2018, Israel implemented Amendment 30 of the Entry into Israel Law, criminalizing Palestinian political representation as a “breach of allegiance” to the State of Israel and an act of treason under the Israeli Penal Code of 1977.¹³⁴ Recommended in a ruling by the Israeli High Court of Justice, the amendment provides for the revocation of Palestinians’ residency

status in Jerusalem including parliamentarians to the Palestinian Legislative Council.¹³⁵ The residency revocations and resulting forcible transfers from Jerusalem effectively quash Palestinian political engagement and representation and are aimed at silencing and de-activating Jerusalem’s Palestinians, further facilitating Israeli schemes to undermine Jerusalem as the capital of the State of Palestine and silencing opposition to Israeli occupation and apartheid.

Israel’s systematic and deliberate failure to fulfill the Oslo Accords agreement to transition the occupied Palestinian territory to full Palestinian control within a five-year period prevents the State of Palestine from exercising full sovereign authority while denying the collective right of the Palestinian people to self-determination. Instead, following the publication of the United States’ so called “Peace to Prosperity” Plan in January 2020, Israel announced plans to annex illegal settlements and agricultural lands in the Jordan Valley by 1 July 2020.¹³⁶ In response, UN Special Rapporteur Michael Lynk warned that the “plan would crystalize a 21st century apartheid, leaving in its wake the demise of the Palestinians’ right to self-determination” – a position further endorsed in an unprecedented and powerful joint statement by some 47 UN Special Rapporteurs in June 2020.¹³⁷ Notwithstanding much of the West Bank remains *de facto* annexed.¹³⁸

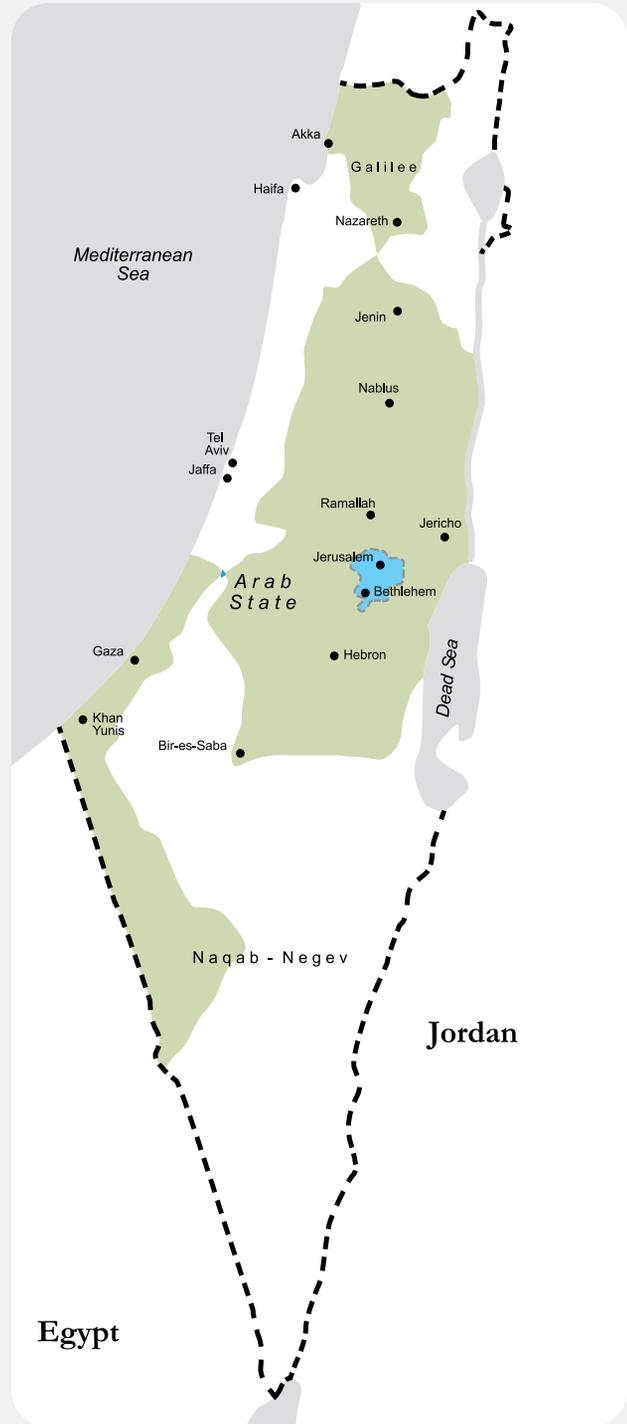


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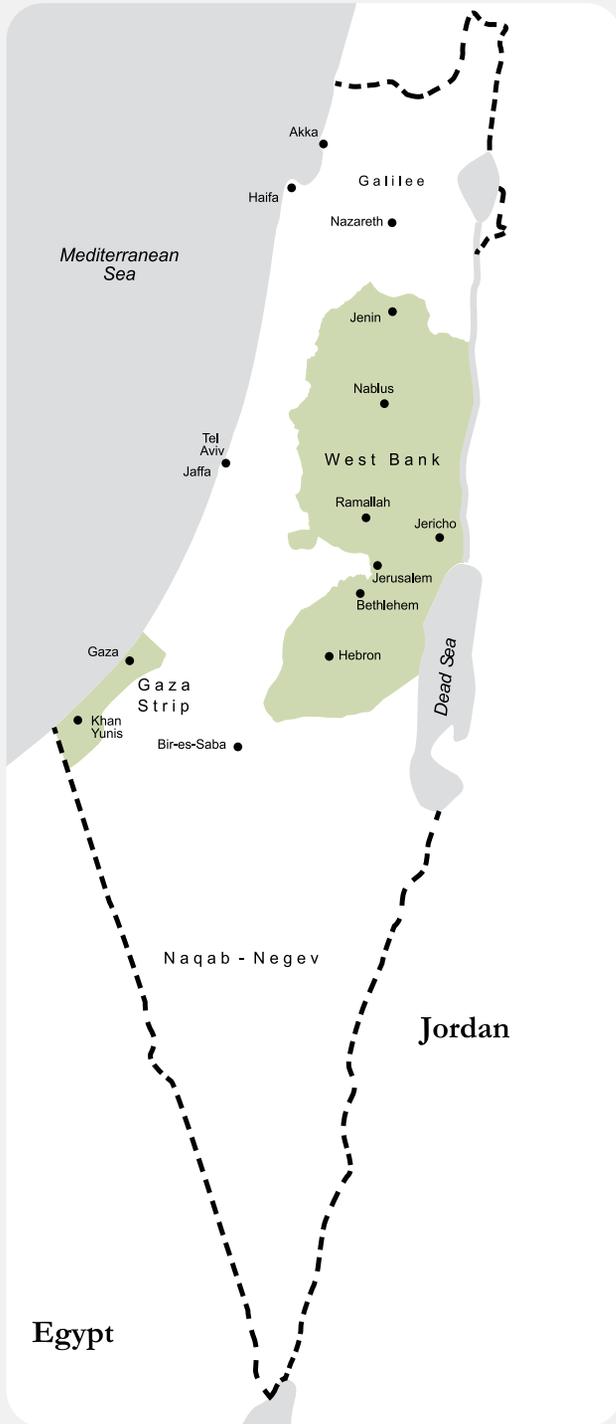
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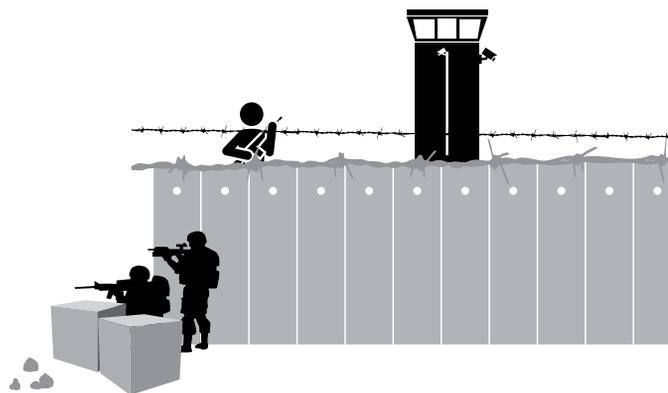
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Israel's Inhumane Acts of Apartheid in Occupied Palestine



Having established that Israel maintains an apartheid regime over the Palestinian people as a whole, this section briefly presents a series of non-exhaustive illustrative inhumane acts committed by the Israeli occupying forces (IOF) in occupied Palestine, which are indicative of elements of the crime of apartheid as drawn from provisions of the Rome Statute and the Apartheid Convention.

A. Inhumane Act of Forcible Transfer: The Case of East Jerusalem

East Jerusalem, capital of the State of Palestine, is an extreme example of a two-tier city in which Palestinians live under Israeli apartheid. In 1967, Israel illegally annexed occupied East Jerusalem, expanding the city's municipal boundaries and illegally extending Israeli laws, jurisdiction, and administration over the city.¹³⁹ The international community responded with UN Security Council Resolution 252, calling "upon Israel to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem".¹⁴⁰ Nevertheless, Israel continued to consolidate its control over the city and in 1980, adopted its Basic Law declaring "Jerusalem, complete and united, [as] the capital of Israel".¹⁴¹ The UN Security Council responded condemning "all legislative and administrative measures and actions taken by Israel, the Occupying Power, which have altered or purport to alter the character and

status of the Holy City of Jerusalem, and in particular the recent 'Basic Law' on Jerusalem, [and declaring them to be] are null and void and must be rescinded forthwith".¹⁴²

In a deliberate attempt to radically engineer the demography in occupied East Jerusalem, Israel works towards a stated ethnic cleansing goal of achieving a 70:30 demographic ratio of Israel-Jews to Palestinians living in the city.¹⁴³ Undertaking a population census in 1967, Israel assigned to approximately 66,000 Palestinians present in Jerusalem a temporary and revocable "permanent residency" status, a colonial policy imposing a continual burden on Palestinians to prove that their "center of life" is Jerusalem.¹⁴⁴ By 2019 Israel had revoked 14,683 of these residencies in what has been termed a "quiet deportation" policy.¹⁴⁵ Continuing this policy, the Jerusalem Municipality's Jerusalem 2050 Plan refers to "the desire to have a solid and distinct Jewish majority in Jerusalem".¹⁴⁶

Israel applies a discriminatory planning and zoning regime across occupied East Jerusalem to prevent Palestinian population growth and development, as a coercive environment to force transfer. Despite Palestinians in East Jerusalem comprising 370,000 people, some 40 per cent of the city's population, they are granted a mere 13 per cent of the allocated housing permits, a percentage that has not changed since 1967.¹⁴⁷ In 2019 alone, Israel carried out 64 house demolitions in East Jerusalem, leaving 236 Palestinians displaced.¹⁴⁸ Companies such as JCB,¹⁴⁹ Volvo, Caterpillar, Hyundai, and Hidromek contribute to the maintenance of Israel's apartheid regime, supplying equipment to the IOF

for illegal house demolitions.¹⁵⁰ At the same time, Israel has located a strategic ring of 11 illegal settlements inside the city perimeter, illegally transferring in 209,270 settlers to colonize Jerusalem, including 2,800 Israeli-Jews into the Old City, acts amounting to war crimes in violation of international criminal law.¹⁵¹

Discriminatory measures, such as heavy fines, target the ability of Palestinian business-owners to operate in the Old City of Jerusalem, including confiscation of street vendors' carts for reported "licensing issues" with one vendor explaining: "I have been harassed and attacked by members of the [Israeli occupation's] municipality over the course of my work probably over 50 times and each time I have been fined 475 shekels...I have to pay all of the fines so that my permit to enter Jerusalem is not revoked".¹⁵² Arieh King, a member of Israel's Jerusalem City Council confirmed in a newspaper article how he had sent municipal inspectors to a stand selling pretzels and falafels in the Old City, stating: "As I promised, we ensured the law was enforced against the offender while contributing a little to the Judaization of Jerusalem. We made sure to somewhat protect the Jewish character and the feeling that you are living in /visiting a Jewish city. The stand with all its foods has been confiscated. Thank you to the municipal inspectors".¹⁵³

B. Persecution of the Palestinian People: The Case of the Besieged Gaza Strip

The containment of the Palestinian people in the besieged and densely-populated Gaza Strip as a separate and distinct entity is particularly evident from the now permanently entrenched illegal closure and blockade of the Gaza Strip. In 2007, the then Israeli Strategic Affairs Minister Lieberman spoke of Israel's plans to separate Palestinians in the occupied Gaza Strip from the West Bank, stating: "Israel will start regarding Gaza and the West Bank as two separate entities – the Palestinian [National] Authority jurisdiction will cover the West Bank alone, Gaza will be regarded a hostile, independent political entity – Hamastan".¹⁵⁴

The 2020 so-called "Peace to Prosperity" Plan proposed Gaza's connection to the West Bank by an "infrastructure solution" such as bridges and tunnels, "crossing over or under the State of Israel".¹⁵⁵ Following this, US Secretary of State Pompeo announced the separate labeling of goods produced in Gaza as "products of Gaza", thereby maintaining and continuing the fragmentation and separation of the

Palestinian people for the benefit of Israeli-Jewish national domination.¹⁵⁶

Although Israel holds the Gaza Strip under military occupation,¹⁵⁷ it denies its administrative obligations applying only limited *ad hoc* provisions of the Geneva Conventions and denies the applicability of human rights treaties.¹⁵⁸ Israel considers the two million Palestinians, of whom half are children, held under illegal Israeli siege in Gaza, as "hostile" and systematically denies their most basic rights, including to freely exit and enter the Gaza Strip and other parts of historic Palestine.¹⁵⁹

In its treatment of Gaza as a separate enclave under siege, Israel carries out acts of persecution including "intentional



and severe deprivation of fundamental rights contrary to international law".¹⁶⁰ As the UN warned in 2012, basic humanitarian conditions have deteriorated to the point where Gaza has become uninhabitable.¹⁶¹ The Palestinian healthcare system is at breaking point hampered by a complex and arbitrary permit regime – a situation compounded by mass poverty and unemployment, a depleted water aquifer, reduced electricity supply, and the destruction of essential infrastructure brought about from Israel's three military offensives on the besieged territory.¹⁶² In 2019, the UN Special Rapporteur Michael Lynk reported that medical patients have been particularly affected, "on account of the deteriorating conditions in hospitals within Gaza and the lack of needed supplies and electricity".¹⁶³

As part of its closure regime, Israel operates a so-called "dual use" list, prohibiting items from entering the Gaza Strip for alleged security reasons, which according to the World Bank hinders "the delivery of public infrastructure projects, as those require multiple items in the dual use list including building materials, machinery and chemicals".¹⁶⁴ Meanwhile, Israel reduces the Gaza Strip's electricity supply to between four to five hours per day, a measure of illegal collective punishment designed to stifle Palestinian life.¹⁶⁵ Notably the UN Commission of Inquiry has recommended that Israel "address structural issues that fuel the conflict" including to "lift, immediately and unconditionally, the blockade on Gaza"¹⁶⁶ – a blockade which UN Special Rapporteur Michael Lynk, has warned "amounts to collective punishment" and "should be urgently lifted".¹⁶⁷



C. Imprisonment or Other Severe Deprivation of Physical Liberty of Palestinians

Historically, Israel has instituted administrative detention as a tool to suppress any kind of Palestinian resistance to Israeli oppression, colonization, and apartheid. Between 1948 and 1966, Palestinian citizens of Israel were governed separately from Israeli-Jewish citizens, tried in military courts and placed under administrative detention in Israel. Today, in the occupied West Bank, Israel continues to operate two separate legal regimes, one for Israeli settlers policed under Israeli domestic law, and another for protected Palestinians administered under the military laws of occupation. Although Article 78 of the Fourth Geneva Convention permits internment as an exceptional security measure, Israel has, since 1967, used administrative detention on security pretexts as a form of institutionalized repression, issuing arbitrarily-enforced successive detentions based on undisclosed evidence, without charge or trial in violation of internationally-recognized guarantees of due process and a fair trial.¹⁶⁸ In addition Israel systematically transfers Palestinians to interrogation and detention centres in Israel, measures prohibited under Articles 49 and 76 of the Fourth Geneva Convention.¹⁶⁹

Israel's current incarceration of ten Palestinian parliamentarians¹⁷⁰ includes Fatah leader Marwan Barghouti,¹⁷¹ Ahmed Saadat, Secretary-General of the Popular Front for

the Liberation of Palestine (PFLP) and Palestinian Legislative Council (PLC) deputy, and successive administrative detentions of PFLP member and PLC deputy Khalida Jarrar, a leading Palestinian human rights defender and member of the State of Palestine's Steering Committee on the International Criminal Court.¹⁷²

Military courts established under Israeli Military Order 378 provide the IOF with liberal jurisdiction to hear acts intended to harm the "security in the Area", effectively criminalizing all forms of Palestinian resistance to the Israeli occupation. Since 1967, approximately 800,000 Palestinians have been detained under Israeli military order,¹⁷³ including 10,000 Palestinians during the first *Intifada*, 1,860 Palestinians during the second *Intifada*¹⁷⁴ and 400 Palestinians immediately prior to Israel's 2014 military offensive on Gaza.¹⁷⁵ Continuing this policy, as of September 2020 some 4,400 Palestinian political prisoners and 350 administrative detainees remain incarcerated including 170 children.¹⁷⁶

Families of Palestinians who commit alleged attacks face illegal collective punishment measures, including punitive house demolitions and residency revocations upheld as acts of "deterrence" by the Israeli High Court of Justice. According to the National Campaign for the Retrieval of Palestinian and Arab War Victims Bodies held by Israel, currently Israel holds the bodies of 69 deceased Palestinians from their families as bargaining chips - and further retains 253 deceased Palestinians in morgues and the unmarked "cemetery of numbers" - punishments reserved for Palestinian families only.¹⁷⁷

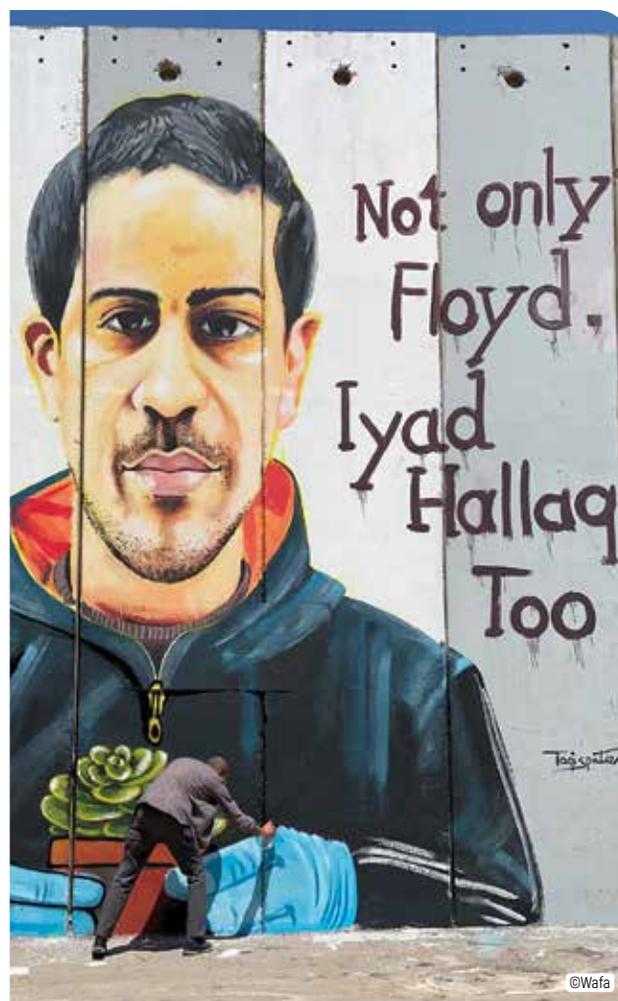


D. Murder and Wilful Killing

Israel ensures the continuation of its apartheid regime over Palestinians through oppressive use of lethal and excessive force by the IOF. Since 2010, OCHA has documented the killing of 3,601 Palestinians and the injury of over 101,897 Palestinians by the IOF.¹⁷⁸ Israel has waged a number of military offensives on the besieged Gaza Strip, including in 2014 killing 2,251 Palestinian civilians,¹⁷⁹ indicating its employment of military policies in breach of international humanitarian law. The UN Commission of Inquiry, 2015 further explained: "Questions arise regarding the role of senior officials who set military policy in several areas examined by the commission, such as in the attacks of the [IOF] on residential buildings; the use of artillery and other explosive weapons with wide-area effects in densely populated areas; the destruction of entire neighbourhoods in Gaza; and the regular resort to live ammunition by the [IOF], notably in crowd-control situations, in the West Bank. In many cases, individual [Israeli] soldiers may have been following agreed military policy, but it may be that the policy itself violates the laws of war".¹⁸⁰

During the 2018-2019 Great March of Return demonstrations, the IOF shot with unnecessary and disproportionate force at Palestinian civilian men, women, children, medical personnel, journalists, and persons with disabilities, killing 217 protesters¹⁸¹ and leaving approximately 9,000 with injuries, including complex injuries and amputations from its use of high-velocity weapons at close range.¹⁸² The UN Commission of Inquiry on the 2018 protests in the occupied Palestinian territory established by the Human Rights Council "found reasonable grounds to believe that Israeli snipers shot at journalists, health workers, children and persons with disabilities, knowing they were clearly recognizable as such".¹⁸³ It determined that "the legal framework applicable to policing the protests was that of law enforcement, based in international human rights law".¹⁸⁴ Noting that it had found "serious human rights violations that may constitute crimes against humanity",¹⁸⁵ the Commission concluded that Israel's "use of lethal force [was] neither necessary nor proportionate, and therefore impermissible".¹⁸⁶

The IOF operate a shoot-to-kill policy targeting carrying out extrajudicial executions without warning and as an alternative to apprehending Palestinian suspects. In 2015, Israeli Prime Minister Netanyahu altered the laws governing resort to lethal force, lowering the standard from absolute necessity to permitting lethal force whenever there is a so-called "immediate and concrete danger to police or civilians" thus breaching the standard of absolute necessity set under the ICCPR.¹⁸⁷ In 2019, the IOF killed seven Palestinians in occupied

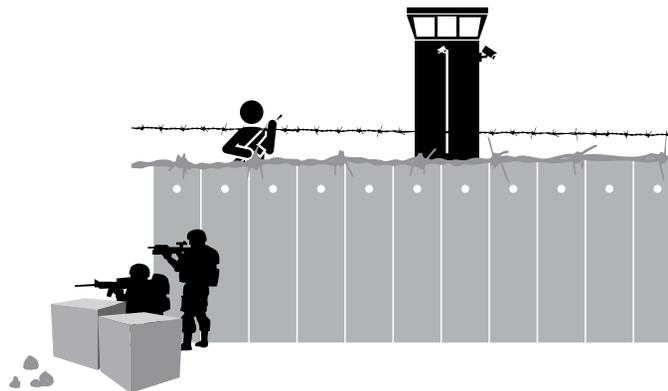


East Jerusalem, including Abdallah Ghaith, 15, shot with lethal force in the chest while attempting to cross the Annexation Wall between Bethlehem and Jerusalem.¹⁸⁸ By October 2020, Israel killed another six Palestinians including, Iyad Al-Hallaq, 31, who had autistic and physical disabilities. He was shot with lethal force by the IOF as he walked to Elwyn Center day centre, despite his carer's calls that he was a person with disability.¹⁸⁹ On 23 June, Ahmad Erekat, 26, was shot with unnecessary lethal force, at the Container checkpoint, where he was left unattended for one and a half hours to bleed to death. His remains have been withheld indefinitely by Israel in a further measure of collective punishment.¹⁹⁰ Meanwhile Israel continues the shoot to kill policy in the West Bank, killing 21 Palestinians between January and October 2020.

Israel operates a system of institutionalized impunity for lethal IOF and settler terror attacks, with the UN Commission of Inquiry urging that "Israel must break with its recent lamentable track record in holding wrongdoers accountable, not only as a means to secure justice for victims but also to ensure the necessary guarantees for non-repetition".¹⁹¹



Recognition and Implications of Israel as an Apartheid Regime



A. Recognition of Israel as an Apartheid Regime

Israel is a self-described apartheid regime, with former Israeli Attorney-General having stated: “In effect, we established an apartheid regime in the occupied territories immediately following their capture. That oppressive regime exists to this day”.¹⁹² Acknowledging the existence of an apartheid regime over the Palestinian people, Israeli Education Minister Shulamit Aloni outlines: “the State of Israel practices its own, quite violent, form of apartheid with the native Palestinian population”.¹⁹³ Similarly, former Israeli Environment Minister Yossi Sarid observes, “what acts like apartheid, is run like apartheid and harasses like apartheid, is not a duck – it is apartheid”.¹⁹⁴

In 1961, then South African Prime Minister Hendrik Verwoerd (the architect of South African apartheid), applauded Israel as a fellow apartheid State, stating, “(Israelis) took Israel from the Arabs after they had lived there for a thousand years. In that, I agree with them. Israel, like South Africa, is an apartheid State”.¹⁹⁵ Meeting records of the UN Special Political Committee from 1970, contain an intervention from Libyan Arab Republic delegate Mr Treki who noted that the UN Special Committee against Apartheid “stressed the need to consider apartheid in the broader context” and that “Israeli Zionism, like South African apartheid, imposed on indigenous populations, a system which based on racial discrimination and hatred, reduced Palestinian Arabs to the status of third class citizens”.¹⁹⁶

Successive UN Special Rapporteurs since 2007 have called for a referral of the question of apartheid in Palestine for an International Court of Justice Advisory Opinion.¹⁹⁷ Former UN Special Rapporteur John Dugard found that “elements of the occupation [of the OPT] constitute forms of colonialism and of apartheid, which are contrary to international law”.¹⁹⁸ Further highlighting by way of example, Israel’s discriminatory permit system, house demolitions, and laws infringing on Palestinian family unification as amounting to a vehement denial of the guarantees of non-discrimination,¹⁹⁹ and indicative of an intention or purpose by Israel to “establish and maintain domination by one racial group (Jews) over another racial group (Palestinians)”.²⁰⁰ Echoing these observations, in 2011, former UN Special Rapporteur Richard Falk reflected that the application of two legal regimes, along with the illegal transfer in of settlers into the occupied West Bank, including East Jerusalem, benefiting from a preferential legal and administrative structure, contributed to the “impression of apartheid (as a result of its discriminatory, coercive and ethnically specified characteristics)”.²⁰¹

Following a three-day hearing and jury deliberations in Cape Town, South Africa in 2011, the Russell Tribunal comprising a panel of eminent scholars and persons of moral integrity, concluded their deliberations finding that Israel exacted a system of apartheid over the Palestinian people as a whole, with the discriminatory regime taking on varying degrees of intensity and forms given the location of the people, and concluding that “Israel’s rule over the Palestinian people, wherever they reside, collectively amounts to a single integrated regime of apartheid”.²⁰²

The 2017 ESCWA report further authoritatively concluded that "Israel has established an apartheid regime that dominates the Palestinian people as a whole" providing credible evidence that Israel's policies and practices constitute the crime of apartheid as defined primarily under Article II of the Apartheid Convention.²⁰³ In 2019, a joint Palestinian-led civil society report to CERD drawing on the findings of the ESCWA report explained that "it is through this systematic and widespread fragmentation that Israel obfuscates the reality of its apartheid regime and thoroughly represses the ability of Palestinians to oppose and challenge it".²⁰⁴ This led to the significant and important finding of CERD that Israel operates apartheid policies and practices contrary to Article 3 of ICERD on both sides of the Green Line.²⁰⁵

In October 2019, UN Special Rapporteur Michael Lynk noted that serious violations and grave breaches of international humanitarian law including "practices of racial discrimination and separateness" have either been "substantively alleged or actually established during Israeli conduct of the occupation".²⁰⁶ In October 2020, in its Item 9 right of reply statement at the Human Rights Council, South Africa endorsed the joint statement of the 47 UN Special Rapporteurs "that the situation in the occupied Palestinian territories is one akin to apartheid imposed by the Occupying Power and therefore that the characterization is correct".²⁰⁷ Namibia further outlined that "[t]he international community, particularly this Council, has a responsibility to address the apartheid practices being perpetuated against the Palestinian people by Israel... practices which are in flagrant violation of international law".²⁰⁸

B. International Responsibility Arising from Israel's Apartheid Regime

1. State Responsibility

The prohibition of racial discrimination and apartheid are norms of a *jus cogens* nature, peremptory norms of international law from which no derogation is permitted.²⁰⁹ *Jus cogens* norms signal to the international community their deterrent effect, and any treaties giving effect to acts of apartheid will be void *ab initio*.²¹⁰ Notably, acts of apartheid giving rise to State responsibility, may also constitute acts of a continuing character. Therefore, the obligation on States and third States of the international community to prevent internationally wrongful acts of apartheid, "occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation".²¹¹

It is important to emphasise that Israel, as the responsible State, must immediately bring an end to its apartheid regime, offer guarantees of non-repetition, and make full reparations for the injury caused. Further, Israel should under its domestic laws investigate and prosecute persons including corporate agents, who may have committed acts of apartheid. Third States also have obligations not to recognise as lawful any situation created by an internationally wrongful



Abu Nuwar Bedouin Community at the Risk of Forcible Transfer for the Expansion of Israel's Colonial Enterprise. "Ma'ale Adumim" Settlement in the Background



act, including Israel's apartheid regime over the Palestinian people as a whole.²¹² In this vein, third States may draw from the example of South Africa and Namibia, in their Human Rights Council and official statements recognising Israel's apartheid regime as unlawful, and endorsing the 2019 CERD concluding observations on the continuity of apartheid policies and practices on both sides of the Green Line.

Further, third States must not render aid or assistance in maintaining Israel's apartheid regime over all Palestinians,²¹³ and must cooperate to bring the situation to an end through lawful means, including through international organisations such as the UN.²¹⁴ In this respect, the ILC draws on the example of UN Security Council resolutions²¹⁵ prohibiting aid or assistance in maintaining the illegal apartheid regime in South Africa, as "applicable to all situations created by serious breaches".²¹⁶ Therefore, for internationally wrongful acts of the magnitude of apartheid, States must adopt adequate collective countermeasures commensurate to the breach, including adopting trade restrictions, arms embargoes, and economic, political, and diplomatic sanctions on Israel

to ensure the cessation of the breach.²¹⁷ Domestically, third States should adopt legislative measures prohibiting the import of illegal settlement goods and services, which contribute to the maintenance and continuation of Israel's apartheid regime, in addition to supporting the continued annual update of the UN Database of businesses active in illegal Israeli settlements released in February 2020.

In order to make relevant assessments on apartheid it is recommended that the UN General Assembly reconstitute its mechanisms on apartheid, in particular the UN Special Committee against Apartheid and the UN Center against Apartheid as critical steps towards ending Israel's institutionalized impunity and apartheid regime over the Palestinian people as a whole.

2. Individual Criminal Responsibility

Individuals who act with knowledge to aid or abet the commission of acts of apartheid may be held internationally criminally liable at the International Criminal Court (ICC). In

2017, a coalition of Palestinian human rights organizations submitted a communication for preliminary examination to the Office of the Prosecutor of the ICC, which included *inter alia*, evidence of the commission of the crime of apartheid.²¹⁸ In December 2019, the ICC Prosecutor concluded the preliminary examination of the Situation in the State of Palestine, declaring that there is reasonable basis to believe that war crimes have been committed in the occupied Palestinian territory and that “all statutory criteria for the opening of an investigation have been met”.²¹⁹ Noting that in 2019, the preliminary examination report of the Office of the Prosecutor, detailed crimes against humanity committed in the West Bank including East Jerusalem.²²⁰ Subsequent to a ruling on territorial jurisdiction at the Pre-Trial Chamber, an ICC investigation into the crime of apartheid perpetrated by the Israeli occupying power may follow.

Additionally, third States have obligations to respect and ensure respect for the Geneva Conventions in all circumstances in line with Common Article 1, and must prosecute perpetrators of the grave breach of apartheid, who are present on their territory or are nationals of the State. Similarly, the Apartheid Convention provides a form of universal jurisdiction, to prosecute non-nationals present in their territory, for crimes of apartheid committed in the territory of a non-State party.²²¹ It is incumbent on third States to hold individuals, including corporate agents or corporations domiciled in their jurisdictions, accountable for aiding and abetting the commission of the crime apartheid.

C. The Role of the Boycott, Divest and Sanctions (BDS) Movement

The Apartheid Convention details as an inhuman act “the persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid”. Critically, the Boycott, Divest and Sanctions (BDS) movement is an important Palestinian-led initiative “effectively challenging international support for Israeli apartheid and settler-colonialism” and calling for “action to pressure Israel to comply with international law”.²²² Given the failure of the international community to adopt economic sanctions and countermeasures against Israel for its manifest violations of international law, including for the annexation of Jerusalem, population transfer, and internationally wrongful acts of apartheid, it is incumbent on civil society and human rights defenders to lead and agitate for the boycott, divestment, and sanctioning of the State of Israel.²²³

Responding to BDS, Israel has prohibited entry to foreign nationals calling for BDS in Israel or “any area under its

control”.²²⁴ While Knesset parliamentarians are prevented from travelling abroad on funding provided by “a body calling for a boycott of the State of Israel”.²²⁵

Meanwhile the Israeli Ministry of Strategic Affairs launched an international campaign equating BDS with anti-Semitism.²²⁶ Following suit, Germany,²²⁷ France, and Austria adopted resolutions equating BDS to anti-Semitism, while Denmark and Switzerland prevented the public funding of groups associated with BDS. In the United States, the Trump administration revealed plans to even designate Amnesty International, Human Rights Watch and Oxfam as anti-Semitic for their reporting on Israel's illegal settlement activities.²²⁸ In an unprecedented departure from UN Security Council resolution 2334 and principles of general international law, the US denounced BDS and “practices that facilitate it” including “labelling” and the “publication of databases of companies that operate in Israel or Israeli-controlled areas” as anti-Semitic.²²⁹ A designation seeming to include even the UN Database under the mandate of the Office of the High Commissioner of Human Rights.

In 2020, the European Court of Human Rights in a landmark ruling held that criminal convictions of BDS activists in France violated the freedom of expression enshrined in the European Convention on Human Rights.²³⁰ This is an important endorsement from Europe's highest court of the necessity of protecting the rights of Palestinian and international activists, and human rights defenders to call for BDS, to bring an end to Israel's apartheid regime, and to promote the realisation of the individual and collective rights of the Palestinian people as a whole to self-determination, including permanent sovereignty, and to return to their homes, lands, and properties in line with international law.

As with apartheid in South Africa, a departure from the institutionalised regime of oppression and domination over Palestinians may be difficult for most to imagine. Nonetheless, it is important to note that through a commitment to the rule of law, international justice and accountability, and international solidarity boycotts, that access can be gained to inherent, inalienable, and indivisible rights. Only by recognising that the oppression and domination faced by the Palestinian people as a whole stems from a singular, holistic discriminatory regime, can Palestinians and the international community together work towards dismantling the infrastructure of apartheid and eradicate the policies and practices maintaining continual *Nabka* toward achieving the right of the people of Palestine to self-determination and the realization of a free, independent, contiguous, and sovereign State of Palestine with East Jerusalem as its capital.

A photograph of a wall with a mural of a girl. The girl is depicted in profile, facing right, with her hair in a ponytail. She is wearing a light-colored, short-sleeved shirt and shorts. The mural is painted on a grey, textured wall. In the background, there is a paved area, a utility pole with wires, and a long, low wall with a red and white striped pattern. The sky is blue with white clouds.

“When South Africans visit Palestine most are shocked at how much worse apartheid is there than that of the old South Africa. And they comment that it cannot be called anything other than apartheid.”

Dr. Essop G. Pahad, Former South African Politician/Author.

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