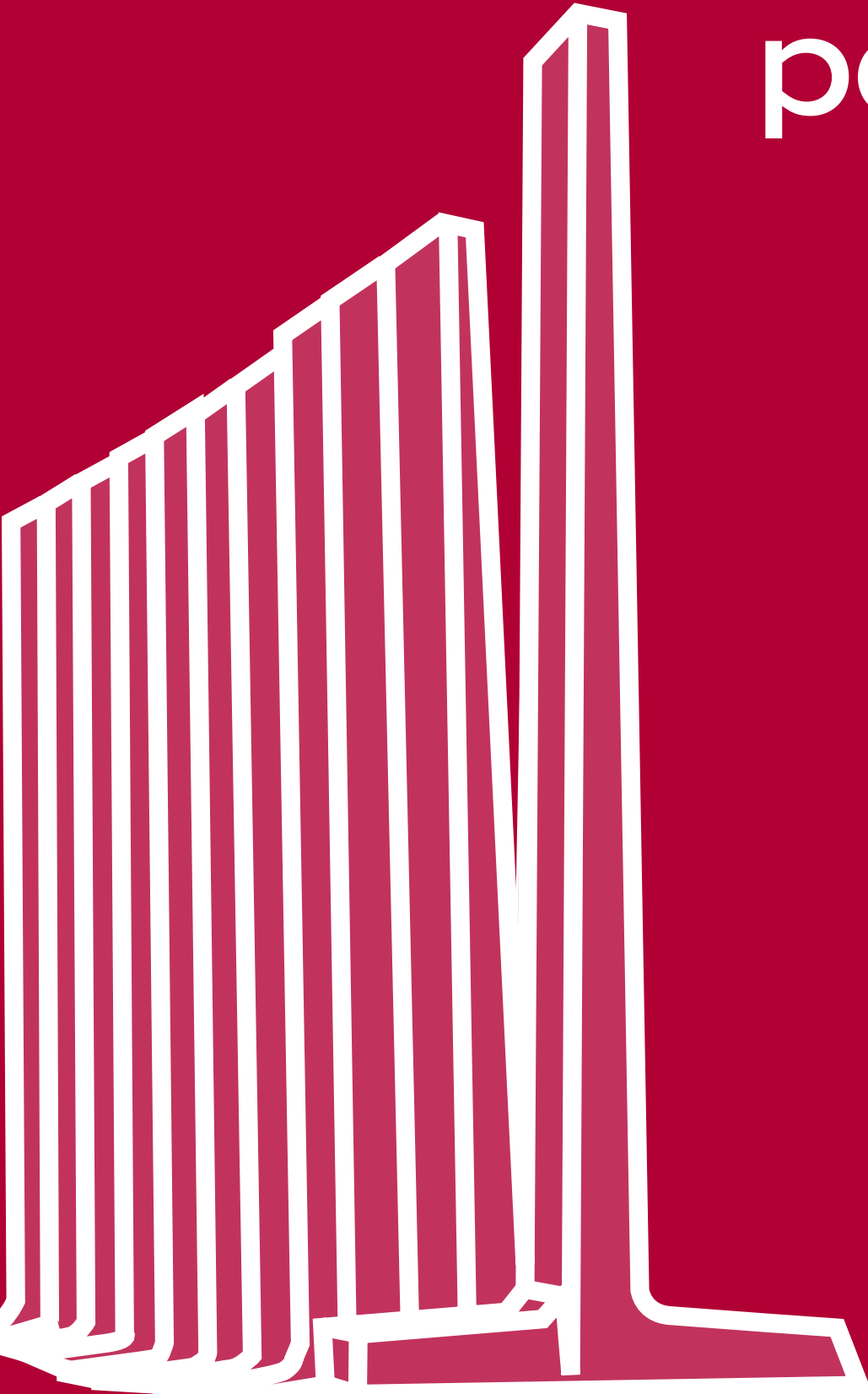


Apartheid against the Palestinian people

Report written by: **Luciana Coconi**

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About us

The campaign with Palestine in the heart is a solidarity campaign with the Palestinian people that started at the end of 2007 joining the efforts of about 30 catalan organizations committed with peacebuilding in the Middle East. Nowadays it receives the support of more than 60 organizations including NGO federations, unions and political parties.

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Apartheid against the Palestinian people

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Introduction

"If our madness could end as it did, it must be possible to do the same everywhere else in the world. If peace could come to South Africa, surely it can come to the Holy Land?"

Desmond Tutu

The aim of this report is to determine whether or not a crime of apartheid is being committed by Israel against the Palestinian people. It adopts an outside, non preconceived side whatsoever and it analyses, on the one hand, international human rights legislation and international humanitarian law and, on the other hand, internal legislation and its application, both in Israel and the Occupied Palestinian Territories.

Throughout the study, we shall observe what is understood to be the crime of apartheid. We know what happened in South Africa, we suspect it could be occurring in Israel and in the Occupied Palestinian Territories, but little has been researched about why apartheid arose and became a crime against humanity and exactly what its legal content is.

While it is indeed true that the international community decided to classify apartheid as a crime in the wake of what was happening in South Africa, now the original cause of its classification – the segregationist and racist South African regime – is history, the persecution of this crime is still underway, whether it be through the Convention on the Crime of Apartheid, the Rome Statute of the International Criminal Court or customary international law.

Article 7 of the Statute of the International Criminal Court defines the crime of apartheid as "inhumane acts committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime". Taking this latest definition available as a reference, which includes all jurisprudence and customary international law on this matter, this report shall attempt to determine, also in accordance with the Convention on the Crime of Apartheid, whether the Palestinian people are enduring a comparable situation and political stance.

Besides the violations of international humanitarian law being committed by Israel in the Occupied Palestinian Territories, the report centres on the analysis of international human rights law. On one hand, we count with the declarations by experts of the various treaty-based mechanisms regarding human rights. The key point is that these are international treaties ratified by Israel, to be applied in all territories under its jurisdiction – Israel and the Occupied Palestinian Territories, and which analyse information provided by the Israeli government itself. Therefore, the repeated condemnation given by these experts cannot be classed as biased or one-sided as the Israeli government itself has recognised this authority.

If this were not enough, in the report we shall also see how, in the field of non treaty-based mechanisms, various Special Rapporteurs have been categorical about the racist and segregationist policy carried out, as a preconceived plan, by certain Israel government departments and authorities. All that completed with other reports from the United Nations, including

the Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory.

Following the analysis of international legislation, the report focuses on legislation applicable in Israel and the Occupied Palestinian Territories and clearly illustrates not only the discrimination suffered by Palestinians, but also the negation and non-respect of their dignity as human beings, which itself has a specific legal denomination: **crime of apartheid**.

Now that the smoke screen that prevented the international community from seeing parallels between South Africa and Israel and the Occupied Palestinian Territories has been lifted, action plans have been proposed which should unite states, international organisations and civil society in the condemnation of these policies and the perpetrators of apartheid and break down the barriers, not only physical but also legal, that prevent the Palestinian people from recovering the dignity they are being denied and to let them enjoy the basic human rights and liberties they so rightly deserve.

Given the findings of the report, its author could have quite easily called it "The negation of reality", "An uncomfortable truth" or "How not to recognise the evidence?", but the ultimate title chosen, "Apartheid against the Palestinian people", seems the most appropriate, since it, regardless of ideologies and affinities, lets us see that, given objective information and strictly legal proof, there are more than enough reasons to condemn the crime of apartheid being committed against the Palestinian people.

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What is apartheid?

Apartheid is an Afrikaans word which literally means “**separateness**”. It is “a political regime whereby racism is imposed through parliamentary acts. A system which, through laws, policies and practices, sanctifies the supremacy of one human group over another, based on racist criteria. This system developed in South Africa between 1948 and 1990 and created an entire legal framework which institutionalised racial segregation.

ELEMENTS CONSTITUTING THE CRIME OF APARTHEID

As highlighted by the Working Group of Experts¹ of the United Nations Commission on Human Rights, these elements are:

- 1) The “Bantustan policy” consisting of the creation of reserved areas for certain groups.
- 2) The regulations concerning the movement of Africans in urban areas.
- 3) The population policies, which aim to reduce the black population yet favour white immigration.
- 4) The imprisonment and ill-treatment of non-white political leaders and non-white prisoners in general.

All these violations occur on a large scale and constitutes a systematic practice of discrimination with regard to the most basic human rights.

WHERE IS THE CRIME OF APARTHEID RECORDED?

- International Convention on the Elimination of All Forms of Racial Discrimination (1965).
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968).
- International Convention on the Suppression and Punishment of the Crime of Apartheid (1973).
- Rome Statute of the International Court of Justice (1998).

While it may now be history in South Africa, apartheid, as a **crime against humanity**, is still condemned by international legislation, since it constitutes one of the *worst forms of racial discrimination*.

¹ Human Rights Commission, Study Concerning the Question of Apartheid from the Point of View of International Penal Law, E/CN.4/1075, 15th February 1972, pp. 51 – 52.

THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID

The Convention was adopted by 91 votes in favour, 4 against (The United States of America, Portugal, the United Kingdom and South Africa), and 26 abstentions. It entered into force on 18th July 1976 in accordance with Article 25 and is currently ratified by 107 nations. Israel has neither signed nor ratified this Convention.

Article II defines apartheid as those

“... 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”

These acts are:

a) *Denial to a member or members of a racial group or groups of the right to life and liberty of person:*

I. By murder of members of a racial group or groups;

II. By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

III. By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

b) *Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;*

c) *Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognised trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;*

d) *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, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;*

e) *Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;*

f) *Persecution of organisations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.*

CAN PERPETRATORS OF THIS CRIME BE PUNISHED?

Can perpetrators of this crime in Israel and the Occupied Palestinian Territories be punished, even though Israel has not ratified the Convention against Apartheid? **Yes.** Although Israel is under no obligation due to its non-ratification of this International Treaty concerning crimes of apartheid, it must equally respect it, since the suppression and punishment of crimes against humanity constitutes a **rule of international practice and therefore binds and obliges States regardless of whether they have or have not ratified international treaties.**

As for the responsibility of individuals, the Nuremberg Principles state that “The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law (Principle II)².”

Apartheid, as a **crime against humanity**, is subject to two principles which differentiate it from ordinary crimes:

- **Principle of universal or extraterritorial jurisdiction.** Allows the possibility to judge those responsible for the most serious crimes, in this case crimes against humanity, based exclusively on the nature of said crimes, regardless of the nationality of the accused or the victim, nor where the crime was committed. This principle features in several international treaties, including the International Convention on the Suppression and Punishment of the Crime of Apartheid (articles IV and V) and in the internal legislation of several States, Spain included (article 23.4 of the Organic Law on Judicial Power).
- **Principle of the non-applicability of statutory limitations.** Crimes against humanity must be prosecuted and their perpetrators punished, irrespective of the date of their commission, in other words, trials have no period of limitation, as other crimes do.

² Principles of International Law Recognised in the Charter of the Nuremberg Tribunal and in the Judgement of the Tribunal. Draft Code of crimes against the peace and security of mankind – Yearbook of the International Law Commission, UN, A/CN.4/368, 13th April 1983.

International Legislation applicable in Israel and in the Occupied Palestinian Territories

INTERNATIONAL LEGAL RULES WHICH SHOULD BE APPLIED BY ISRAEL

What international legislation concerning human rights and humanitarian law should Israel apply in its territory and in the Occupied Palestinian Territories? Israel affirms that the international human rights treaties it has ratified are only applicable in Israel, owing to the fact that said treaties protect citizens from the State itself in peacetime, and not in the Occupied Palestinian Territories, where humanitarian law is to be applied. Israel's official stance is that the belligerent occupation of Israel ended on 12th September 2005, the date on which full governmental powers were transferred to the Palestinian Authority, and for that reason Israel has no obligation to take charge of the well-being of the residents of the Gaza Strip³. We can see that this is not true:

- The International Court of Justice rule that human rights legislation and the rules of international humanitarian law should be applied in the Occupied Palestinian Territories⁴.
- As the **occupying force**, Israel is obliged to comply with the obligations established in international humanitarian law and international human rights law. This obligation stretches not only to the West Bank, but also the Gaza Strip, since "a territory is occupied if it is under the "effective control" of a State other than that of the territorial sovereign"⁵. Therefore, "the test for determining whether a territory is occupied under international law is effective control, and not the permanent physical presence of the occupying Power's military forces in the territory in question"⁶.

Thus, Israel's **effective control** is demonstrated by the following factors:

- a) Substantial control of Gaza's six land crossings control.
- b) Control through military incursions, rocket attacks and sonic booms.
- c) Complete control of Gaza's airspace and territorial waters.
- d) Control of the Palestinian Population Registry (the definition of who is "Palestinian" and who is a resident of Gaza and the West Bank is controlled by the Israeli military)⁷.

³ Decision of the Supreme Court of Israel in Al Bassiouni vs. the Prime Minister.

⁴ Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, A/ES-10/273, of 9th July 2004, paragraph 114.

⁵ Report of the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967, Mr. Richard Falk, A/63/326, August 2008.

⁶ Report of the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967, Mr. John Dugard, A/HRC/7/17, of 21st January 2008.

⁷ Source: *Ibid.*

ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE ON THE LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A WALL IN OCCUPIED PALESTINIAN TERRITORY⁸

Main conclusions reaffirming the law applicable to the Occupied Palestinian Territories in terms of international human rights law and international humanitarian law:

- a) The Palestinian population has a right to self-determination and the construction of the wall seriously undermines the exercise of this right;
- b) Israel has the legal obligation to apply the Fourth Geneva Convention in the Occupied Palestinian Territories;
- c) Settlements are illegal because they contravene paragraph 6 of article 49 of the Fourth Geneva Convention;
- d) Israel is required to apply the international human rights treaties and conventions in the Occupied Palestinian Territories and, therefore, its actions must be assessed in the light of international human rights treaties and conventions and of the Fourth Geneva Convention;
- e) The regime in force within the enclosed zone located between the wall and the Green Line proves an obstacle to the freedom of movement guaranteed in article 12 of the International Covenant on Civil and Political Rights and the right to employment, health-care, education and an adequate standard of living stipulated in the International Covenant on Economic, Social and Cultural Rights;
- f) The destruction of property to construct the wall contravenes article 53 of the Fourth Geneva Convention and is not justified on grounds of necessity for military operations nor national security;
- g) The wall cannot be justified on grounds of legitimate defence;
- h) The annexation of East Jerusalem is illegal;
- i) The construction of the wall being built by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem, and the related regime, are contrary to international law; and Israel is legally obliged to detain the construction of the wall, to dismantle it and to repair the damage caused by its construction;
- j) All States have the legal obligation not to recognise the illegal situation arising from the construction of the wall and to ensure that Israel respects the Fourth Geneva Convention;
- k) The United Nations, and in particular the General Assembly and the Security Council, should consider which additional measures are necessary to end the illegal situation arising from the construction of the wall and from the related regime, "duly bearing in mind the present advisory opinion".

⁸ A/ES-10/273, of 9th July 2004.

HUMAN RIGHTS TREATIES RATIFIED BY ISRAEL⁹

The rules of international human rights law which should be applied in the Occupied Palestinian Territories and in Israel, recorded in various human rights treaties ratified by Israel, are the following:

- **International Convention on the Elimination of All Forms of Racial Discrimination** (ratified by Israel on 03/01/1979).
- **International Covenant on Civil and Political Rights** (ratified by Israel on 03/10/1991).
- **International Covenant on Economic, Social and Cultural Rights** (ratified by Israel on 03/10/1991).
- **Convention on the Rights of the Child** (ratified by Israel on 03/10/1991).
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment** (ratified by Israel on 03/10/1991).
- **Convention on the Elimination of All Forms of Discrimination towards Women** (ratified by Israel on 03/10/1991).

INTERNATIONAL HUMANITARIAN LAW APPLICABLE TO THE OCCUPIED PALESTINIAN TERRITORIES

The rules of international humanitarian law which should be applied in the Occupied Palestinian Territories are the following:

- Those included in the **Hague Convention IV, relative to the laws and customs of war on land, and its annex, The Hague Regulations, of 18th October 1907**. Israel is not a party to this Convention, but the International Court of Justice ruled that its contents form part of customary law which, as such, obliges all States, including Israel¹⁰.
- Those included in the **Geneva Convention IV, of 12th August 1949, relative to the due protection of civilians in times of war** (ratified by Israel on 06/07/1951).
- The **customary rules of international humanitarian law applicable to occupation**, which, as such, must be observed by Israel.

⁹ Source: Office of the United Nations High Commissioner for Human Rights: <http://www.unhcr.ch/tbs/doc.nsf/newhvstatusbycountry?OpenView&Start=1&Count=250&Expand=84#84>

¹⁰ Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, A/ES-10/273, of 9th July 2004, paragraph 89.

Violations of human rights in Israel and in the Occupied Palestinian Territories

VIOLATIONS IDENTIFIED BY THE TREATY COMMITTEES

Israel has ratified the vast majority of international treaties relative to the protection and promotion of human rights. Each of these treaties has a monitoring body called a “Committee”, which monitors the implementation of the treaty and to which States must submit periodic reports detailing how these rights are incorporated into legislation and made effective. Meanwhile, the Committee “answers” these reports with its Concluding Observations, expressing its recommendations and concerns to the State. In the specific case of Israel, the Committees, in their Concluding Observations, have condemned the constant violations of human rights to which the Palestinian population is submitted. Here is a list of these violations, according to the latest reports of the Treaty Committees:

1. Committee on the Elimination of Racial Discrimination¹¹

In Israel:

- **Privileges given to Jewish nationals** concerning **access to land and to certain benefits** (§ 23).
- **Denial of the right of many Palestinians to return and repossess their land in Israel** (§ 23).
- **Exclusion of Arab Israeli citizens from some State-controlled land** through the social suitability criterion to apply for access to land ruled by the Israel Lands Authority (the condition that applicants must be “suitable to a small communal regime”)(§ 23).
- **Separate Arab and Jewish “sectors”**, in particular in the area of **housing and education**, which results in unequal funding and treatment which may amount to racial segregation (§ 22).
- **Low level of education provision for Arab Israeli citizens**, which is a barrier to their access to employment, and that their average income is significantly lower than that of Jewish citizens (§ 24).
- Discrepancies still remaining between the **infant mortality rates and life expectancy rates** of Jewish and non-Jewish populations and the fact that minority **women and girls** are often the most disadvantaged (§ 24).
- Psychometric examinations used to test aptitudes, ability and personality, which **indi-**

¹¹ Concluding Observations of the Committee on the Elimination of Racial Discrimination, Israel, CERD/C/ISR/CO/13, 14th June 2007.

rectly discriminate against Arabs in accessing higher education (§27).

- **Racial discrimination through the access to public services associated with military service**, such as housing and education, bearing in mind that most Arab Israeli citizens do not perform national service (§ 21).

- **Non-protection of Arab cultural and religious heritage**, bearing in mind that there are Jewish cultural institutions which protect Jewish heritage. The same level of protection is not offered to Jewish and non-Jewish holy sites (§ 28).

- **Lack of protection and criminal law provisions against discriminatory acts**. The Attorney General has adopted a restrained policy in relation to prosecutions against politicians, government officials and other public figures for hate speech against the Arab minority (§ 29).

- Actions that change the demographic composition of the Occupied Palestinian Territories (§ 14).

In the Occupied Palestinian Territories:

- Presence of the separation wall in the West Bank (§ 33).

- **Restrictions on freedom of movement** imposed by the wall and other barriers (§ 34).

- Application of different laws to Israeli citizens and Palestinians (§ 36).

- Application of **different criminal laws leading to prolonged detention and harsher punishments for Palestinians** than for Israelis for the same offences (§ 36).

- **Unequal distribution of water resources** to the detriment of Palestinians (§ 36).

- **Demolition of Palestinian houses** (§ 26).

- **Persistence of violence perpetrated by Jewish settlers** towards the Palestinian people (§ 37).

2. Human Rights Committee¹²

In Israel:

- *Public pronouncements made by several prominent Israeli personalities in relation to Arabs, which may constitute advocacy of racial and religious hatred that constitutes incitement to discrimination, hostility and violence* (§ 20).

- **Israeli legislation that violates the rights of the Palestinian population** (Nationality and Entry into Israel Law (Temporary Order) of 31st July 2003 and the Law on Citizenship of 1952) (§ 22).

- **Low percentage of Arab Israelis in the civil service and public sector remain** and that progress towards improving their participation, especially of women, has been slow (§ 23).

In the Occupied Palestinian Territories:

- Frequent use of various forms of **administrative detention**, restrictions on access to a lawyer and to the lack of information on the reasons of detention (§ 12).

- **Ambiguous wording of rules relative to terrorism**, vagueness of definitions which run counter to the principle of legality, as well as the use of several evidentiary presumptions to the detriment of the defendant (§ 14).

¹² Concluding Observations of the Human Rights Committee: Israel. 21/08/2003, CCPR/CO/78/ISR. The third and most recent Periodic Report from Israel (CCPR/C/ISR/3 and HRI/CORE/ISR/2008, of 21/11/2008) will be considered during the 97th Session of the Human Rights Committee in Geneva in October 2009.

- Practice of **"targeted killings"** of those identified by Israel as suspected terrorists in the Occupied Territories, which would appear to be used at least in part as a deterrent or punishment (§ 15).
- **Demolition of property and family homes**, some of whose members were or are suspected of involvement in terrorist activities or suicide bombings, of a partly punitive nature (§ 16).
- Practice of **using local residents** as **"volunteers" or shields** during military operations in the Occupied Territories, especially in order to search houses and to help secure the surrender of those identified by the State party as terrorist suspects (§ 17).
- Use by Israel of *interrogation methods that constitute torture* (§ 18).
- *Serious and unjustifiably severe restrictions on the right to freedom of movement of Palestinians* following the construction of the **"Seam Zone"**, by means of a fence and, in part, of a wall, beyond the Green Line (§ 19).

3. Committee on Economic, Social and Cultural Rights¹³

In Israel:

- **Difference in treatment between Jews and non-Jews, in particular Arab and Bedouin communities, with regard to their enjoyment of economic, social and cultural rights in the State party's territory.** *"the excessive emphasis upon the State as a 'Jewish State' encourages discrimination and accords a second-class status to its non-Jewish citizens. This discriminatory attitude is apparent in the continuing lower standard of living of Israeli Arabs as a result, inter alia, of higher unemployment rates, restricted access to and participation in trade unions, lack of access to housing, water, electricity and health care and a lower level of education, despite the State party's efforts to close the gap..."* (§ 16).
- The Israeli Law of Return which *"results in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees"*. Practice of restrictive family reunification with regard to Palestinians, adopted for reasons of national security (§ 18).
- **Increase in the unemployment rate** in Israel, particularly significant in non-Jewish sectors of the population, and which is over 50 per cent in the Occupied Territories *"as a result of the closures which have prevented Palestinians from working in Israel"* (§ 20). The persisting inequality in wages of Jews and Arabs in Israel, as well as the severe under-representation of the Arab sector in the civil service and universities is also alarming (§ 21).

In the Occupied Palestinian Territories:

- *Deplorable living conditions of the Palestinians in the occupied territories, who - as a result of the continuing occupation and subsequent measures of closures, extended curfews, roadblocks and security checkpoints - suffer from impingement of their enjoyment of economic, social and cultural rights enshrined in the Covenant, in particular **access to work, land, water, health care, education and food*** (§ 19).
- **Limited access to and distribution and availability of water** for Palestinians in the occupied territories, as a result of inequitable management, extraction and distribution of shared water resources, which are predominantly under Israeli control (§ 25).

¹³ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 26/06/2003, E/C.12/1/Add.90.

- Practices by Israel of home demolitions, land confiscations and restrictions on residency rights. Adoption of policies resulting in **substandard housing and living conditions**, including *extreme overcrowding* and lack of services, of Palestinians in East Jerusalem, in particular in the old city. *The continuing practice of expropriation of Palestinian properties and resources for the expansion of Israeli settlements in the occupied territories* (§ 26).

4. Committee on the Rights of the Child¹⁴

In Israel and in the Occupied Palestinian Territories:

- *Inequalities in the enjoyment of the economic, social and cultural rights* (i.e. access to education, health care and social services) of Israeli Arabs and other minorities and Palestinian children in the Occupied Palestinian Territories (§ 26).

- Large gap between services provided to Jewish and Israeli *Arab children with disabilities* (§ 42).

- In Israel the investment in and the quality of education in the Israeli Arab sector is significantly lower than in the Jewish sector (§ 54).

In the Occupied Palestinian Territories:

- Difference in the definition of a child. In Israel, children are persons under 18 and in the Occupied Palestinian Territories, children are persons under 16 (§ 24).

- *Detention and interrogation of children* (§ 62).

- Allegations and complaints of inhuman or degrading practices and of **torture and ill-treatment of Palestinian children** by police officers during arrest and interrogation and in places of detention (§ 36).

- Military orders which may allow *prolonged incommunicado detention of children, and which do not provide due process guarantees*, access to legal assistance and family visits (§ 62).

- **Serious deterioration of health and health services of children** in the occupied Palestinian territories, especially as a result of the measures imposed by the Israeli Defence Forces, including road closures, curfews and mobility restrictions, and the destruction of Palestinian economic and health infrastructure. In particular, the Committee is concerned about the consequent delays of and interference with medical personnel, the shortages of basic medical supplies and **malnutrition in children** owing to the disruption of markets and the prohibitively high prices of basic foodstuffs (§ 44).

- *Large-scale demolition of houses and infrastructure in the occupied Palestinian territories, which constitutes a serious violation of the right to an adequate standard of living for children in those territories* (§ 50).

- Impact of terrorism on the rights of children in the State party, as well as the impact of *military action* on the rights of children in the Occupied Palestinian Territories (...) and the lack of redress available to the child victims of Israeli Defence Forces operations there (§ 58).

- **Serious deterioration of access to education** of children in the occupied Palestinian territories as a result of the measures imposed by the Israeli Defence Forces, including road closures, curfews and mobility restrictions, and the destruction of school infrastructure (§ 52).

¹⁴ Concluding Observations of the Committee on the Rights of the Child: Israel, 09/10/2002, CRC/C/15/Add.195.

5. Committee against Torture¹⁵

In Israel and in the Occupied Palestinian Territories:

- *Alleged torture and ill-treatment of Palestinian minors* (§ 52).
- Administrative detention and the continued use of incommunicado detention, even in the case of children (§ 52).
- Very few prosecutions initiated against the alleged perpetrators of **torture and ill-treatment** by law enforcement officials (§ 52).
- **Israeli policies of closures and demolition of houses which may amount to cruel, inhuman or degrading treatment or punishment** (§ 52).
- Judicial practice of admitting objective evidence derived from an inadmissible confession (§ 52).
- Cases of **“extrajudicial killings”** (§ 52).

6. Committee on the Elimination of Discrimination against Women¹⁶

In Israel:

- Low level of representation of women in decision-making positions in the civil service (§ 31).
- Arab Israeli women in a **vulnerable and marginalised situation of inequality**, especially in regard to **education and health** (§ 35). This inequality is even greater amongst the Bedouin women living in the Negev (§ 39).

In the Occupied Palestinian Territories:

- Restrictions on the freedom of movement, especially at Israeli checkpoints, which have a negative impact on the rights of Palestinian women, including the right of access to health-care services for **pregnant women** (§ 37).

VIOLATIONS IDENTIFIED BY THE UNITED NATIONS SPECIAL RAPPORTEURS

“Special procedures” is the general name given to the extra-conventional mechanisms for the protection of human rights established by the Commission on Human Rights. They are named, amongst other dominations, “Special Rapporteurs”. Various special procedures have expressed concern at the human rights situation in Israel and the Occupied Palestinian Territories. Here we shall review the latest special procedure reports concerning the matter in question, namely the discrimination imposed on the Palestinian people.

1. Report of the Special Rapporteur on the Situation of Human Rights in Israel and the Palestinian Territories occupied since 1967, Mr. Richard Falk¹⁷.

¹⁵ Concluding Observations of the Committee against Torture: Israel, 25/09/2002, A/57/44.

¹⁶ Concluding Observation of the CEDAW Committee: Israel CEDAW/C/ISR/CO/3, of 22nd July 2005. The fourth and fifth reports now presented by Israel (CEDAW/C/ISR/4) shall be analysed in the upcoming session of the Committee.

- "The Special Rapporteur takes particular note of the fact that the military occupation of the Palestinian territory has gone on for more than 40 years and that it possesses characteristics of colonialism and apartheid, as has been observed by the previous Special Rapporteur" (§ 3)

- "Dangerous and non-sustainable levels of mental and physical suffering and trauma for the Palestinian people living under occupation are being reached" (§ 6).

- **Checkpoints**, roadblocks and permit requirements impede movement to and from medical facilities from villages and cities where hospitals and other medical facilities are located. It is widely reported that those conditions are causing a variety of ailments, especially in children suffering from malnutrition and trauma (§ 38).

- The combination of checkpoints, roadblocks and permit requirements impede movement. These restrictions also make access to Israel very difficult, and often impossible, for most Palestinians living in the West Bank (§ 38). "Such restrictions seem excessive, and have been frequently observed, combined with a variety of intimidating and humiliating practices which discourage Palestinian movement in the West Bank..." (§ 44).

- "The regime of confinement amounts to collective punishment..." (§ 44)

- "The expansion of **settlements** has been particularly notable in East Jerusalem... The expansion also furthers the Israeli policy of making East Jerusalem into a place of majority Jewish residence, and is accompanied by expulsions of Palestinians. In addition, the presence of 250,000 Jews living "illegally" in East Jerusalem is being overlooked" (§ 33).

- "Palestinian land taken by Israel for settlements, for closed military zones (including almost the entire Jordan Valley), and for Israeli-declared nature preserves now renders 40 per cent of the West Bank inaccessible and unusable for residential, agricultural, commercial or municipal development" (§ 32).

- **Closures and the "cantonisation" process** of the territory make it practically impossible to carry out any gainful economic activity (§ 38).

- *Extremely high unemployment and poverty rates.* The poverty rate for the West Bank and Gaza combined is currently 59 per cent, and food insecurity affects at least 38 per cent of the overall population of the Occupied Palestinian Territory. The **unemployment level in Gaza is officially listed at 45 per cent, the highest in the world**, but even that figure understates the true level for a variety of reasons. It is reported that 95 per cent of the factories in Gaza are now closed owing to the siege. The World Bank has suggested that that set of conditions could produce an "irreversible" economic collapse (§ 35).

2. Report of the Special Rapporteur on the Situation of Human Rights in Israel and the Palestinian Territories occupied since 1967, Mr. John Dugard¹⁸

- "More than 38 per cent of the West Bank consists of **settlements, outposts, military areas and Israeli nature reserves that are off limits to Palestinians**. Settler roads link settlements to each other and to Israel. These roads are largely closed to Palestinian vehicles. (Israel has therefore introduced a system of "**road apartheid**", which was unknown in apartheid South Africa.)" (§ 30).

- "...Settlements constitute a form of colonialism... which is contrary to international law..." (§ 32).

¹⁷ Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967, Mr. Richard Falk, A/63/326, of 25th August 2008.

¹⁸ Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967, Mr. John Dugard, A/HRC/17, 21st January 2008.

- **Confiscation of Palestinian land to construct roads:** “the road is part of Israel’s broader plan to replace territorial contiguity with “*transportational contiguity*” by artificially connecting Palestinian population centres through an elaborate network of alternate roads and tunnels and creating segregated road networks, one for Palestinians and another for Israeli settlers, in the West Bank” (§ 33).

- **Obstacles** preventing Palestinians’ freedom of movement in the West Bank that have disastrous consequences for both personal life and the economy. These obstacles, hundreds of them at that, consist of manned checkpoints and unmanned locked gates, earth mounds, concrete blocks and ditches. In addition, thousands of temporary checkpoints, known as flying checkpoints, are set up every year by Israeli army patrols on roads throughout the West Bank for limited periods, ranging from half an hour to several hours (§ 34).

- Palestinians are subjected to **numerous prohibitions** on travel and to requirements for permits for travel within the West Bank and to East Jerusalem. “*Checkpoints serve to humiliate Palestinians and to create feelings of deep hostility towards Israel. In this respect they resemble the “pass laws” of apartheid South Africa, which required black South Africans to demonstrate permission to travel or reside anywhere in South Africa*” (§ 35).

- **Separation wall constructed on Palestinian territory which has grave consequences on the lives of the Palestinians.** There is a closed Palestinian zone between the Green Line and the wall. People living there are cut off from places of employment, schools, universities and specialised medical care, and community life is seriously fragmented. Moreover, they do not have 24-hour access to emergency health services. Bureaucratic procedures for obtaining permits are “*humiliating and obstructive*”... Only about 18 per cent of those who used to work land in the closed zone before the construction of the wall receive permits to visit the closed zone today. The opening and closing of the gates leading to the closed zone are regulated in a highly restrictive manner: in 2007 OCHA carried out a survey in 67 communities located close to the wall which showed that only 19 of the 67 gates in the wall were open to Palestinians for use all the year round on a daily basis. To aggravate matters Palestinians coming into and out of the closed zone are frequently subjected to abuse and humiliation at the gates by the IDF. Hardships experienced by Palestinians living within the closed zone and in the precincts of the wall have already resulted in the displacement of some 15,000 persons (§ 36 to 38).

- Demolition of houses: “*Both law and fact show, however, that houses are not demolished in the course of “normal” town planning operations, but are instead demolished in a discriminatory manner to demonstrate the power of the occupier over the occupied*” (§ 41).

- In both East Jerusalem and that part of the West Bank categorised as Area C, **houses and structures may not be built without permits.** The bureaucratic procedures for obtaining permits are cumbersome and in practice permits are rarely granted. As a result, Palestinians are frequently compelled to build homes without permits. “*In East Jerusalem house demolitions are implemented in a discriminatory manner: Arab homes are destroyed but not Jewish houses. In Area C the IDF has demolished or designated for demolition homes, schools, clinics and mosques on the ground that permits have not been obtained*”. The Rapporteur continues, “*this brings back memories of the practice in apartheid South Africa of destroying black villages (termed “black spots”) that were too close to white residents...*” (§ 42).

- In short, “*The construction of the wall, the expansion of settlements, the restrictions on freedom of movement, house demolitions and military incursions have had a disastrous impact on the economy, health, education, family life and standard of living of Palestinians in the West Bank... Poverty and unemployment are at their highest levels ever; health and education*

are undermined by military incursions, the wall and checkpoints; and the social fabric of society is threatened" (§ 43). Both in Gaza and the West Bank, "**Israel's actions constitute an unlawful collective punishment of the Palestinian people**" (§ 44).

- Detainees, including minors and "administrative detainees" (that is, persons not convicted for any offence, held for renewable periods of up to six months) are treated in a **degrading and humiliating way**. (§ 45).

3. Report of the Special Rapporteur on Adequate Housing, as a component of the right to an adequate standard of living, Mr. Miloon Kothari¹⁹

- The serial destruction of households, property and patrimony is a continuous process in the Occupied Palestinian Territories. This causes untold suffering to people who have no connection whatsoever to the current hostilities... *Israel favours illegal settlers with generous land allotments, subsidies, impunity for violent criminal activity, State-sponsored and private financing, and all manner of services at the expense of the indigenous Palestinian host population and international peace and security. Essentially, the institutions, laws and practices that Israel had developed to dispossess the Palestinians (now Israeli citizens) inside its 1948 border (the Green Line) have been applied with comparable effect in the areas occupied since 1967*" (§ 7).

- A dominant feature of Israeli occupation is the **confiscation of land and properties belonging privately and collectively to the Palestinians**. As a consequence of these Israeli policies, the majority of Palestinians live in refugee camps, dilapidated historic city centres, high-density villages and slums. (§ 48).

- Territorial planning regulations established by Israel are discriminatory by nature. They lead to increased housing density, acute land shortage, depletion of water resources and exorbitant land prices (§ 17).

- Israeli occupation forces frequently carry out **punitive and violent demolitions of Palestinian homes** for lack of licence and sometimes the punishment is retroactive to the establishment or public disclosure of a master plan (§ 18). *The demolitions ordered either for lack of permit or another pretext have a military dimension and a gratuitously cruel nature* (§ 22).

- Violation of the right to housing perpetrated by the Israeli army through military shelling. Often, this shelling shows no military objective, rather the *implementation of the planned contiguity of the settler colonies by eliminating the indigenous population* (§ 26).

- **The settlements are an obstacle to peace** (§ 35). *"The active and sustained implantation of Jewish settler colonies serves the geostrategic purpose of acquiring territory and natural resources and limiting the living space of the Palestinian host population"* (§ 39).

4. Report of the Special Rapporteur on the Right to Food, Mr. Jean Ziegler. Mission to the Occupied Palestinian Territories²⁰

- *Already by 2003, more than half of Palestinian households would eat only once per day.* Around 60 per cent of Palestinians were living in **acute poverty** (75 per cent in Gaza and 50 per cent in the West Bank). Over 50 per cent of Palestinians were completely dependent on food aid (p. 3).

- The measures taken by Israel, for alleged *security reasons*, are totally disproportionate and counterproductive, as they cause **hunger and malnutrition** amongst the Palesti-

¹⁹ Report of the Special Rapporteur on Adequate Housing, as a component of the right to an adequate standard of living, Mr. Miloon Kothari, Addendum, Visit to the Occupied Palestinian Territories, E/CN.4/2003/5/Add.1, 17th June 2002

²⁰ Report of the Special Rapporteur on the Right to Food, Mr. Jean Ziegler, Addendum, Mission to the Occupied Palestinian Territories, E/CN.4/2004/10/Add.2, 31st October 2003.

nian population, women and children included, and therefore amount to the collective punishment of the Palestinian population (p. 3).

- The confiscation of land reveals the presence of a covert strategy of “**Bantustanisation**”. *“The construction of the security fence/apartheid wall is, in the opinion of many, a specific display of this Bantustanisation, as it divides the Occupied Palestinian Territories into five non-joining territorial areas without international borders and poses a threat to the future establishment of a viable Palestinian State with a normal economy that could ensure the right to food of its own population”* (p. 3).

5. Report of the Special Rapporteur on the Freedom of Religion or Beliefs, Ms. Asma Jahangir. Mission to Israel and the Occupied Palestinian Territories²¹

- The **freedom of movement**, including access to places of worship, is restricted, particularly for Muslims and Palestinian Christians, by means of the system of system of permits, checkpoints, curfews, visas and the wall (§ 27). *These restrictions appear to be disproportionate to their aim (security reasons) as well as discriminatory and arbitrary in their application* (§ 33).

- **Grave discrimination in the preservation of non-Jewish places of worship**: Israel has many legal provisions to protect holy sites and places of worship, but *this protection only applies to Jewish sites* (§ 37).

- The **indication of religious affiliation** on official identity cards carries a serious risk of abuse or subsequent discrimination based on religion or belief. Moreover, the degree of somebody’s ability to move in and out of Jerusalem or within the Occupied Palestinian Territory reportedly depends on which type of identity card he or she holds (§ 40 to 43).

- With relation to persons deprived of their liberty, their religious rights are not fully respected. While there are places for prayer for Jewish detainees and rabbis have been appointed for detention facilities, there are no or few religious representatives for Muslim and Christian detainees (§ 52).

- *Increase in both Israel and the Occupied Palestinian Territories of religious hatred that constitutes incitement to discrimination, hostility or violence* (§ 55).

6. Combined Report of the Special Rapporteur on the Situation in Gaza²²

- **Independent on the question of human rights and extreme poverty**: the blockade is the primary cause of poverty in Gaza (§ 27). Poverty in Gaza is a direct consequence of systematic violations of a wide range of *civil, political, economic, social and cultural rights* against Gazan residents. In particular, their rights to education, food, housing and health-care have been violated (§ 29).

- **Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context**: Overcrowding, lack of sanitation and other difficult living conditions have been not only the result of demolitions and destruction of homes in the recent military offensives, but a permanent urban condition that prevents the people of Gaza from having access to the acceptable minimal standards of adequate housing (§ 37).

- **Special Rapporteur on the right to food**: the right to food is violated *on a large scale*, and on a routine basis, in the Gaza Strip, owing to both recent events and long-standing

²¹ Report of the Special Rapporteur on the Freedom of Religion or Beliefs, Ms. Asma Jahangir, Addendum, Mission to Israel and the Occupied Palestinian Territory, A/HRC/10/8/Add.2, 12th January 2009.

²² Human Rights Situation in Palestine and other Occupied Arab Territories, Combined report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to education and the Independent Expert on the question of human rights and extreme poverty (A/HRC/10/22), 20th March 2009.

trends. (§ 45).

- **Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health:** The material damages caused by the recent hostilities, the border closures resulting in the restricted entry of medical supplies and equipment and the denial of access to health care outside the borders of Gaza constitute grave violations of the right to the health (§ 63).

- **Special Rapporteur on the right to education:** *The destruction of schools and restrictions on the entry of supplies necessary to guarantee access to education, as well as the prolonged deterioration of Gaza educational infrastructure, constitute violations of the right to education.* (§ 72).

- **Special Rapporteur on violence against women, its causes and consequences:** *the denial of safe access to pregnant women to appropriate health care and hospitals owing to the constant shelling constitutes a grave violation of human rights* (§ 76). Disproportionate effects of house demolitions on women, children and the elderly (§ 78).

- **Representative of the Secretary-General on the human rights of internally displaced persons:** the occupation policies and practices that Israel has pursued since the 1967 war have infringed on the human rights of Palestinians and resulted in **large-scale forced displacement of Palestinians within the Occupied Palestinian Territory**, even before the Israeli military incursion into Gaza that began in December 2008. **Displacement is often caused by incursions and military clearing operations, evictions and land appropriation, the illegal expansion of settlements on occupied territory and related infrastructure, the illegal construction of the Wall in the Occupied Palestinian Territory, violence and harassment by settlers, the revocation of residency rights in East Jerusalem, discriminatory denial of building permits and house demolitions.** Forced displacement is also caused by a system of closures and restrictions on the right to freedom of movement through an elaborate regime of permits and checkpoints that make life untenable for many residents in Palestinian enclaves and force them to leave (§ 80).

Legislation applicable in Israel and in the Occupied Palestinian Territories

In a **system of apartheid, legislation plays a crucial role**, as its lays down **criteria of segregation and division of the population along racial lines**, or it **limits the practice of certain human rights**.

DIFFERENT GROUPS AFFECTED BY THIS LEGISLATION

Israeli legislation affects Palestinians in different ways, depending on which of three main demographic groups they belong to:

- Palestinian refugees
- inhabitants of the Occupied Palestinian Territories
- Israeli Palestinians, i.e. Palestinians with Israeli citizenship

Legislation applied by the State of Israel to each of the groups is different, depending on the place of residence, and does not reach the entire Palestinian population.

- Within the territory of the **State of Israel** and therefore Palestinians with Israeli citizenship are subject to it. Part of this legislation also affects Palestinian refugees. This is the legislation that prevents them from returning to their places of origin.
- As for the Occupied Palestinian Territories, the situation of Gaza and the situation of the West Bank and East Jerusalem must be distinguished from one another.
- In **Gaza** no form of Israeli legislation is applied, neither civil nor military.
- In the **West Bank**, different “zones” must be recognised. In the so-called “Zone C”, which represents approximately 61% of the territory of the West Bank, Israel has military and civil control as far as construction and urban planning are concerned. Israeli legislation is applied to a lesser extent in “Zone B”, where Israel has military control and the Palestinian Authority has civil control, and is not applied in “Zone A”, which is under Palestinian Authority control²³. The lives of Palestinians living in zones B and C of the West Bank are ruled by a series of Military Orders and Regulations, which are issued and usually published by the IDF Military Commander in the West Bank and which, as such, are not subject to review by any civil legal authority. As there are no established rules of procedure in relation to those orders, their content can vary from day to day and from Commander to Commander, while the manner of their implementation is left largely to the discretion of the soldiers²⁴. The IDF also apply certain “emergency” regulations inherited from the British Mandate and enacted by the Israeli authorities as Defence (Emergency) Regulations of 1945²⁵.

²³ These zones were established in the Oslo Accords (1993), a series of agreements negotiated between the Israeli government and the Palestinian Liberation Organisation, which acted on behalf of the Palestinian population.

²⁴ See: Report of the Secretary-General: Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, A/63/518, of 5th November 2008.

²⁵ See: KIRSHBAUM, David, Israeli emergency regulations & the Defense (Emergency) Regulations of 1945, <http://www.geocities.com/savepalestinenow/emergencyregs/essays/emergencyregessay.htm>

• With regard to **East Jerusalem**, this was the commercial and administrative centre of the West Bank until 1967, when it was annexed by Israel. In 1980, a law adopted by the Knesset (Basic Law: Jerusalem – capital of Israel), declared that “Jerusalem, complete and united, is the capital of Israel” and “the seat of the President of the State, the Knesset, the Government and the Supreme Court”²⁶. East Jerusalem is currently occupied and controlled by Israel. It must be pointed out that Palestinians in the city of Jerusalem have a status inferior to the Jews. Palestinians are not citizens of the eastern part of the city, as Jews are, but they are simply residents²⁷. Israeli legislation is applied there.

ISRAELI LEGISLATION

The following Israeli legislation is clearly discriminatory, and as a whole, as we shall see, constitutes a crime of apartheid towards the Palestinian people:

- **Law of Return (1950)**. Grants every Jew, wherever he may be, the right to come (“to return”) to Israel as an *oleh* (a Jew immigrating to Israel) and become an Israeli citizen. Non-Jews are not eligible for this a “right” regardless of birth, ancestry or other factors. The fact that Jews can “return”, unlike Palestinians who left the zone during the 1948 war, is clearly discriminatory.

- **Nationality Law (1952)**. While specifically not stating so, this law discriminates against native Palestinians and states that Palestinian refugees are excluded from the right to citizenship in the State of Israel. So, Jews hold Israeli nationality and citizenship, whereas Palestinian citizens who remain in Israel only have citizenship, which goes hand-in-hand with the deprivation of a series of rights.

- **Citizenship and Entry into Israel Law (2003) Temporary Order 5763 of 31st May 2003, extended to 31st July 2008**. This law suspends the possibility of granting Israeli citizenship and residence permits to the spouses of Israeli citizens residing in the Gaza Strip or the West Bank, including through family reunification.

- **Absentee Property Law (1950)**. This law established that the properties of Palestinians who had fled during the 1948 war, or who had been displaced provisionally for reasons of security, remained under the custody of the Custodian of Absentee Property. As a result of this law, many Palestinians lost their properties in Israel.

- **Status Law of Israel (1952)**. This law authorises the World Zionist Organization/Jewish Agency and the Jewish National Fund to control most of the land in Israel to benefit Jews exclusively.

- **Basic Law: Israel Lands (1960)**. This law prohibits the transfer of the ownership of land. Thus, land is administered for the development of Jews, but cannot be transferred nor can it belong to others.

- **Land Acquisition Law (1953)**. This law retroactively validated Israel’s acquisition of lands that had been confiscated from the Palestinians.

- **Planning and Construction Law (1965)**. This law envisaged the future expansion of Jewish communities whilst also limiting and assigning very small spaces to Palestinians, many of which were declared “illegal”.

- **Law on Agricultural Settlement (1967)**. This law prohibited the Jewish National Fund from subletting land to non-Jews.

²⁶ Ministry of Foreign Affairs of Israel, <http://www.mfa.gov.il/MFAES/Facts%20About%20Israel/Jerusalem%20-%20la%20Capital%20de%20Israel>

²⁷ See: MARGALIT, Meir, *Discrimination in the heart of the Holy City, The International Peace and Cooperation Center, Jerusalem, 2006*.

MILITARY ORDERS

The following legislation is applied only in the Occupied Palestinian Territories and is an example of the many Military Orders which discriminate and violate the human rights of the Palestinians, and as a whole, constitute a crime of apartheid.

Military Orders affecting legal procedures and the detention of persons:

- **Military Order N° 29 (1967)** concerning the operation of prisons. States that prisoners can be denied access to lawyers at any time and at the discretion of the Israeli Military Commander.
- **Military Order N° 378 (1970)**. Authorises Military Commanders to establish military courts with prosecutors, magistrates and presidents appointed by the Commander himself. These courts are authorised to diverge from the rules of trials (with regard to laws of evidence) if deemed necessary.

Military Orders concerning the ownership of land:

- **Military Order N° 58 (1967)**. Grants Israeli military authorities the control of the land of "absentees" (according to the definition of absentee in the Absentee Property Law of 1950).
- **Military Order N° 59 (1967)**. Assigns military authorities with the "Custody of Government Property", being able to appropriate private lands from individuals or groups by declaring them "Public Lands" or "Lands belonging to the State".
- **Military Order N° 291 (1968)**. Grants Israeli military authorities the control of all disputes concerning land or water.
- **Military Order N° 1060 (1983)**. Transfers all pending disputes concerning land from the local Jordanian Courts to the Israeli Military Committee for their judgement.
- **Military Order N° 321 (1969)**. Grants Israeli military authorities the right to confiscate Palestinian lands in the name of "Public Service" (which is not defined) and without compensation.

Military Orders concerning the freedom of expression:

- **Military Order N° 107**. Concerning the use of textbooks. Establishes a list of 55 books which cannot be taught in schools. This list includes books on Arabic language, history, geography, sociology and philosophy.
- **Military Order N° 50 (1967)**. All written material published in the West Bank, or imported into the West Bank, must be approved by the Israeli military authorities.
- **Military Order N° 101 (1967)**. Prohibits publications with any type of political content.
- **Military Order N° 1079**. Prohibits video and audio materials of a political nature.

Military Orders creating a different legal system for settlers in the Occupied Palestinian Territories.

- **Military Order N° 561 (1974)**. Establishes "Religious Councils" to administrate Jewish settlements in the West Bank.

- **Military Order N° 783 (1979)**. Establishes 5 regional “Religious Councils” in the West Bank to cover all the land controlled by Israel in the West Bank.
- **Military Order N° 892 (1980)**. Establishes additional “Religious Councils” and Municipal Courts for specific settlements in the West Bank, and states that all of them are constituted and operate in accordance with the regulations established by the Military Area Commander.
- **Military Order N° 981 (1982)**. Establishes Rabbinical Courts in the settlements to resolve questions concerning the personal status of settlers (divorce, adoption, inheritance, etc.)

Other Military Orders of interest

- **Military Order N° 224 (1967)**. Reintroduces into force the Emergency Regulations established by the Authorities of the British Mandate in 1945. These regulations “authorise” military forces to violate a series of civil rights under the guise of an “emergency situation” in the West Bank.
- **Military Order N° 92 (1967)** concerning powers for the purpose of water provisions. This Order confers all the powers established in Jordanian legislation concerning water and its use to an Israeli official appointed by the Area Commander, who holds full control of water provisions. Any person or entity who wishes to install any type of water pumping machinery (such as pumps, irrigation equipment, etc.) must request a permit from said Israeli military official, who, having granted said permit, may cancel it at any time and for any reason.
- **Military Order N° 5** concerning closure of the West Bank. Declares the entire West Bank a closed military zone, with exit and entry controlled according to conditions stipulated by the military forces.
- **Military Order N° 537 (1974)** concerning Municipal Law. This grants wide-ranging powers to the Area Commander concerning municipal boundaries and services, their planning and who carries them out. It also grants the Area Commander the power to dismiss democratically-elected mayors.
- **Military Order N° 297**. Establishes a system of identification cards, which are required to carry out any commercial transaction. Grants the military authorities the right to confiscate them for any reason.

Conclusion: Does apartheid exist in Israel and in the Occupied Palestinian Territories?

Having reached this point and as a result of the analysis carried out, it is clear that the discrimination to which the Palestinian population is subjected by Israel constitutes a crime of apartheid.

This crime has certain specific characteristics which distance it from the South African case, but in any case do coincide with the Convention on Apartheid. Thus, we shall now compare article II of the Convention with the analysed laws and practises in Israel.

Article II of the Convention on Apartheid states:

“For the purpose of the present Convention, the term “the crime of apartheid”, which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following 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:

a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

I) By murder of members of a racial group or groups;

Through “targeted killings” - which actually constitute **extrajudicial executions** – the IDF eliminates Palestinian activists, with a view to stifle any uprising. These killings, which are usually carried out in response to attacks against Israel carried out by Palestinian groups, affect not only the “targets”, but also many other people, such as family members or persons who at the time were nearby. Hundreds of Palestinians have met their death in these precise strikes by Israeli elite commandos and helicopters.

II) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

The **restrictions on the freedom of movement, through roadblocks, closure of roads or physical barriers such as the wall** inflict bodily and mental harm on those living in the Occupied Palestinian Territories in many different ways. They prejudice those people who must leave the Occupied Territories to receive medical treatment or pregnant women who need to reach a hospital to give birth, who many times do not arrive and must give birth without the necessary medical attention. They lead to malnutrition and illnesses arising from insufficient food intake by preventing the entrance of food aid to the Occupied Palestinian Territories through the blockades. They prevent access to farmers’ own lands which happen to be located between the Green Line and the wall, thus affecting their right to health and food. The controls to which the Palestinians are subjected when they must cross these physical barriers are humiliating and degrading.

The **demolition of houses and infrastructure** also inflicts bodily and mental harm on those living in the Occupied Palestinian Territories, as it sentences entire families to live in poverty and overcrowded situations, or without the minimum services necessary to carry out a normal life (schools, medical centres, electricity, etc.). All these actions constitute collective punishment and **psychological torture**.

The **ill-treatment and interrogation methods constituting torture** to which Palestinians – adults and children – are subjected when they are detained and imprisoned.

III) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

The practice of “**administrative detentions**”, with no charges nor trials, which can extend for long periods of time and which affect not only adults but also under-18s.

b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

The **closure of border crossings with Gaza**, with the consequent restriction on movement of persons and food as well as the damage caused to the food production infrastructure, sentences the population to **hunger and malnutrition**.

c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognised trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

The entire **Israeli legal system establishes an enormous gap between Jews and Palestinian Arabs**, since all legislation is designed to favour Jews and keep Palestinian Arabs in a situation of inferiority. This can be clearly seen in certain examples.

Several Israeli laws prevent Palestinian refugees from returning, recovering their land and enjoying a nationality, thus violating their right to enter and leave the country, the freedom of movement and residency and the right to a nationality. In Israel, the unequal allocation of resources for education and cultural activities for Palestinians, the restrictions on leaving and returning to Israel and the Occupied Palestinian Territories, the restrictions on family reunification for those living in the Occupied Palestinian Territories or the lack of representation in the civil service are violations of all the rights stipulated in this subsection c).

Palestinians residing in the Occupied Palestinian Territories and working in Israel have enormous difficulties in joining Israeli trade unions or forming their own trade unions in Israel, which violates their rights to work and to form recognised trade unions. A further violation of rights is the demolition of houses and prohibition to build new ones in the Occupied Palestinian Territories, as are all the restrictions on the freedom of opinion and expression established through Military Orders prohibiting the organisation of meetings or the publication and dissemination of ideas.

d) 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, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

The Jewish and Palestinian populations are clearly separated and are allocated different physical spaces, with varying levels and quality of infrastructure, services and access to resources. In Israel, Palestinians live in crowded spaces, unable and unauthorised to refurbish or construct houses, living in villages which often are not even officially recognised. Jews occupy larger expanses of land, guaranteed by Jewish public or government-managed agencies (Jewish National Fund, Israel Land Administration), which ensure that the best land is allocated exclusively to Jews. At the same time, the Occupied Palestinian Territories are dominated by Jewish settlements, “islands” which jeopardise the continuity of the territory, where settlers enjoy the protection of Israeli authorities, which have their own laws and where scarce resources such as water are used, to the detriment of the Palestinian population. Coupled with this is the prohibited access for Palestinians to outposts, military zones and natural reserves, These settlements are linked by roads for use exclusively by Jews. Palestinians have their movement restricted through the need for Israeli permits to undertake any type of journey.

The **expropriation of Palestinian property** has been happening since the State of Israel was created, and is backed up by a series of laws and Military Orders which have stripped Palestinians of almost all their land.

e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

Although Israel has no exploitation system of the labour of the Palestinian population, its policies have restructured the Palestinian workforce by **suppressing Palestinian industry**, establishing restrictions on exports and other measures that have increased the Occupied Palestinian Territories’ dependence on Israel, and now more than ever before, on international aid. Up to the mid-1980s, Israel intensively used Palestinian labour for work connected to agriculture and construction, with workers subjected to appalling employment conditions and without any of the benefits enjoyed by Jewish workers. But since 1993, the number of Palestinian workers in Israel has plummeted from over 100,000 to just a few hundred. And since the construction of the wall, there are hardly any Palestinian workers employed in Israel. Since Hamas won the January 2006 elections in the Gaza Strip, no workers from this area whatsoever have access to Israel²⁸.

f) Persecution of organisations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

Israel persecutes and imposes restrictions on persons who oppose the regime of segregation, who condemn the violations of human rights by the government or who criticise the IDF. It also suppresses all demonstrations in the Occupied Palestinian Territories, both by organisations and individuals, against the wall or the discriminatory administration of land, water and infrastructure.

Having seen all these violations suffered by the Palestinian people on a day-to-day basis, we can clearly state that they are victims of a crime of apartheid.

²⁸ See: Human Sciences Research Council, *Occupation, Colonialism, Apartheid?*, May 2009, Cape Town, South Africa, p. 268.

Suggested plans of action

In 1983, the Special Committee against Apartheid stated that “the main obstacle to the elimination of apartheid is the constant collaboration with South Africa”. Many world powers were still maintaining all types of commercial relations with this regime, which gave it the strength to continue operating. *“With the support of certain Western countries and Israel, [South Africa] has accumulated a large quantity of military equipment and acquired the ability to manufacture nuclear weapons, which poses a serious threat to Africa and to the world”²⁹.*

Due to the serious violations of human rights perpetrated by this regime, and the threat it posed to the international community, the United Nations decided to adopt a **Programme of Action against Apartheid**, as the conclusion had been reached that in order to end the regime it was fundamental to isolate it totally. This stance was assumed by the General Assembly, by the Security Council and by the Committee against Apartheid.

To achieve this objective, not only was the role played by United Nations crucial, but also by States and civil society organisations, such as universities, trade unions, churches and non-governmental organisations, who adopted their own measures to fight this regime, and pressurised their governments and private companies not to participate in any way with a system that denied human rights to a sector of the population.

The aforementioned Programme of Action against Apartheid³⁰ highlighted different plans of action to fight this regime both for governments and specialist bodies, intergovernmental organisations, trade unions, sporting and educational entities, etc.

Considering that, as a result of this report, it is clear that the grave and systematic discrimination to which the Palestinian population is subjected by the Israeli authorities constitutes a crime of apartheid, we shall restate, expand upon and update some of the plans of action suggested for the case of South Africa, since they are fully applicable to the case in question.

Specifically, our proposals are:

GOVERNMENT PLANS OF ACTION:

1. The recommended application of an arms embargo, without any further ado, avoiding all collaboration with the violations of human rights carried out in the area. Recommendations entail:

- Terminating the supply of arms and related material, including the sale or transfer of arms and ammunition, military vehicles and equipment and related spare parts,
- Terminating the supply of any type of equipment and material and the concession of licences for the manufacture of arms and ammunition, military vehicles and equipment, paramilitary police equipment and related spare parts,
- Revoking all existing contracts with local companies and licences or patents granted for the manufacture and maintenance of arms, all forms of ammunition and military vehicles and equipment,
- Refraining from the supply of any type of material for use by the armed forces, the police and paramilitary organisations,
- Giving assistance to persons obliged to leave the country on grounds of conscientious objection.

²⁹ Programme of Action against Apartheid, approved by the Special Committee against Apartheid at its 530th session, held in New York on 25th October 1983, paragraphs 11 and 13.

³⁰ *Ibid.*

tious objection, of rendering services in the military forces or the police of the regime, amongst other similar measures, all aimed at terminating the supply of arms to a regime which violates human rights.

2. Demand compliance with international legislation, which entails:

- Demanding compliance with the International Court of Justice Advisory Opinion on the Construction of a Wall in the Occupied Palestinian Territory.
- Demanding compliance with the rules and obligations established by international humanitarian law, by calling for a new Conference of the High Contracting Parties to the Geneva Conventions on measures to enforce the Fourth Geneva Convention in the Occupied Palestinian Territories.
- Demanding compliance with the Concluding Observations of the reports presented by Israel to the treaty monitoring bodies.
- Applying the human rights clause of article 2 of the EU-Israel Association Agreement, which entails the suspension of preferential conditions for the import of Israeli products into Europe, until the human rights inherent to the Palestinian population are respected fully.

CIVIL SOCIETY PLANS OF ACTION:

3. Civil society organisations should pressurise governments that collaborate with the apartheid regime so that they desist from doing so and instead support the imposition of obligatory economic sanctions in accordance with chapter VII of the United Nations Charter. Public campaigns should be intensified in order to reveal the role played by economic collaboration in the maintenance of the apartheid system.

4. Trade unions should contribute to the international anti-apartheid campaign by promoting and organising activities to brief public opinion on the crimes of apartheid; oppose the apartheid regime's acts of aggression, destabilisation and terrorism; isolate the apartheid regime; and lend assistance to the oppressed population and its liberation movements in its fight against apartheid.

5. People should be educated against apartheid: alerting public opinion about the threat posed to international peace and security by apartheid policies and fostering understanding of the oppressed population's struggle.

OTHER PROPOSALS:

- Both governments and private companies should end all economic collaboration with the authorities that commit a crime of apartheid by: refraining from the supply of strategic materials, refraining from the concession of loans, investment funds, and technical assistance to the government or to private companies, and refusing preferential customs treatment.
- Governments, civil society organisations, universities, educational entities and sporting federations should end all cultural, educational, sporting and similar collaboration with authorities which promote apartheid, which entails: suspending all cultural, educational, sporting and similar exchanges with the racist regime and with organisations and institutions which practice apartheid, revoking and cancelling cultural agreements and similar, and revoking any agreements which refer to partnerships between municipal entities, universities or other educational entities with organisations from the state of Israel.
- Specialist and government organisations, including cooperation agencies, in accordance with their respective mandates, should contribute to an international anti-apartheid cam-

paign. Specifically, they should: exclude the racist regime from all participation in their organisations; provide suitable aid to the oppressed population and to its movements of national liberation; spread information about apartheid; refrain from granting facilities to banks, financial institutions and companies that invest in countries which encourage apartheid; refrain from the direct or indirect purchase of products in countries where apartheid is present; and refuse to lend assistance to non-governmental organisations which collaborate with the racist regime and to institutions based on racial discrimination.

- States which exercise apartheid should be expelled from all from all international sporting federations of which they are a member, national and local sports organisations should be persuaded to break the links with apartheid sport, and publicity or media support of sporting events in which apartheid states are to participate should be prevented.

- Also recommended is adopting measures to persuade artists, musicians and theatre, cinema and television personalities to boycott apartheid states, as well as adopting measures to encourage writers, painters and cinema directors to refuse to authorise the representation or exhibition of their work in apartheid states.

- Another recommended measure is the **boycott of tourism** to Israel through campaigns against companies and organisations that promoted it, striving to end tourism to Israel which, in addition to strengthening the apartheid economy, promoted a false image of the regime.



The aim of this report is, from outside, without any preconceived side-taking whatsoever, to determine whether or not there is a crime of apartheid against the Palestinian people. While it is indeed true that the international community decided to classify the crime of apartheid in the wake of what was happening in South Africa, now the original cause of its classification – the segregationist and racist South African regime – is history, the persecution of this crime is still underway, whether it be through the Convention on the Crime of Apartheid, the Rome Statute of the International Criminal Court or customary international law.

Article 7 of the Statute of the International Criminal Court defines the crime of apartheid as “inhumane acts committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime”. Taking this latest definition available as a reference, which includes all jurisprudence and customary international law on this matter, this report shall attempt to determine, also in accordance with the Convention on the Crime of Apartheid, whether the Palestinian people are enduring a comparable situation and political stance.

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