



Joint Written Submission
United Nations Human Rights Council
43rd Regular Session – Item 9

Israel Entrenches its Apartheid Regime over the Palestinian People

Date: 3 February 2020

On 28 January 2020, the United States (US) revealed the Trump administration’s so-called “Deal of the Century,”¹ which entrenches Israel’s apartheid regime over the Palestinian people. The plan green lights further Israeli colonisation and fragmentation of the Palestinian people, by denying Palestinian refugees their right to return to their homes, lands, and property, through the illegal annexation of large swaths of the occupied West Bank, including the illegal annexation of Jerusalem, and the forcible transfer of some 260,000 Palestinian citizens from the Triangle region in a racially-motivated form of demographic engineering.² The plan denies the Palestinian people their inalienable right to self-determination in their homeland and calls for the creation of so-called “self-governing” Palestinian enclaves and bypass roads, thereby largely resembling the apartheid regime in South Africa.³ This submission examines Israel’s creation and maintenance of an apartheid regime of systematic racial oppression and domination over the Palestinian people as a whole, which amounts to the crime of apartheid, and shows how further fragmentation will only serve to entrench Israel’s apartheid regime.

Fragmentation as a Main Tool of Apartheid

In November 2019, eight Palestinian, regional, and international civil society organisations submitted a comprehensive joint parallel report to the United Nations (UN) Committee on the Elimination of Racial Discrimination (CERD), detailing Israel’s creation and maintenance of an apartheid regime over the Palestinian people as a whole, using the fragmentation of the Palestinian people as the main tool of apartheid.⁴ In doing so, the organisations endorsed the

¹ See White House, “Peace to Prosperity,” announced on 28 January 2020, available at: <https://www.whitehouse.gov/peacetoprosperty/>.

² Adalah, “Trump plan normalizes Israel's apartheid regime in West Bank, calls for forced transfer of 260,000 Palestinian citizens of Israel,” 30 January 2020, available at: <https://www.adalah.org/en/content/view/9900>.

³ *Ibid.*

⁴ See Al-Haq, “Palestinian, regional, and international groups submit report on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination,” 12 November 2019, available at: <http://www.alhaq.org/advocacy/16183.html>.

findings of the 2017 report of the UN Economic and Social Commission for Western Asia (ESCWA),⁵ which highlighted Israel's strategic fragmentation of the Palestinian people into four separate legal, political, and geographic domains. It is through this strategic fragmentation that Israel maintains and obfuscates the reality of its apartheid regime. Indeed, since 1967, Israel has strategically separated Palestinians into four different legal categories, including:

1. Palestinian citizens of Israel, subject to Israeli civil law;
2. Palestinians in Jerusalem, subject to Israeli permanent residency law;
3. Palestinians, including Palestinians in refugee camps, subject to Israeli military law in the occupied West Bank and Gaza Strip; and
4. Palestinian refugees and exiles living outside territory under Israel's control, but whose right of return to their homes, lands, and property Israel continues to deny as a matter of State policy.⁶

As argued in the ESCWA report, “the apartheid regime of Israel operates by splintering the Palestinian people geographically and politically into different legal categories. The international community has unwittingly collaborated with this manoeuvre by drawing a strict distinction between Palestinian citizens of Israel and Palestinians in the occupied Palestinian territory, and treating Palestinians outside the country as “the refugee problem”. The Israeli apartheid regime is built on this geographic fragmentation, which has come to be accepted as normative.”⁷

Israel's Maintenance of its Apartheid Regime

In their engagement with CERD ahead of Israel's review in December 2019, civil society organisations detailed Israel's creation and maintenance of an apartheid regime of systematic racial domination and oppression over all Palestinians, on both sides of the Green Line and as refugees and exiles abroad, whose right of return, as mandated by international law, Israel continues to deny.⁸ The organisations argued that Israel has consolidated its apartheid regime by entrenching the fragmentation of the Palestinian people, through the persistent denial of Palestinian refugee return and the imposition of restrictions on freedom of movement, residency,

⁵ UN ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation*, Issue No. 1, UN Doc. E/ESCWA/ECRI/2017/1, Beirut, 2017.

⁶ UN ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation*, Issue No. 1, UN Doc. E/ESCWA/ECRI/2017/1, Beirut, 2017, p. 4. *See also* Al-Haq, “Joint Oral Intervention to the 100th Session of CERD for the Review of Israel,” 2 December 2019, available at: <http://www.alhaq.org/advocacy/16266.html>.

⁷ UN ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation*, Issue No. 1, UN Doc. E/ESCWA/ECRI/2017/1, Beirut, 2017, p. 37.

⁸ *See* Al-Haq, “Palestinian, regional, and international groups submit report on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination,” 12 November 2019, available at: <http://www.alhaq.org/advocacy/16183.html>.

and access, in particular the closures of Jerusalem and the Gaza Strip, and the denial of family unification for Palestinians. Through these policies and practices, Israel has ensured that Palestinians from different areas are unable to meet, group, live together, share in the practice of their culture, and exercise any collective rights, in particular their right to self-determination.⁹

Accordingly, the organisations argued before CERD that Israel has created an apartheid regime in violation of Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which provides: “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.”¹⁰ Civil society further showed that, embedded in a system of impunity, Israel has maintained its apartheid regime by creating a coercive environment designed to drive Palestinian transfer and weaken the ability of Palestinians to effectively challenge the many facets of Israel’s apartheid regime, including through mass arbitrary detention and arrests, torture and other ill-treatment sanctioned by Israeli courts, widespread collective punishment, denial of access to healthcare as a method of subjugation and control, and a Government-led effort to silence opposition to Israel’s apartheid regime.¹¹

In line with the call from civil society, CERD adopted its concluding observations on Israel on 12 December 2019,¹² recognising the continuity of Israeli policies and practices of racial segregation and apartheid targeting Palestinians on both sides of the Green Line.¹³ In particular, the Committee was concerned that “Israeli society continues to be segregated as it maintains Jewish and non-Jewish sectors, including two systems of education with unequal conditions, as well as separate municipalities... which raises issues under article 3 of the Convention.”¹⁴ The Committee was also appalled at the segregation between Palestinians and Israeli-Jewish settlers residing in illegal settlements throughout the occupied Palestinian territory, highlighting “the hermetic character of the separation of the two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services, lands and

⁹ See Al-Haq, “Joint Oral Intervention to the 100th Session of CERD for the Review of Israel,” 2 December 2019, available at: <http://www.alhaq.org/advocacy/16266.html>.

¹⁰ *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 7 March 1966 (entry into force 4 January 1969) 660 UNTS 195 (hereinafter ICERD)).

¹¹ *Ibid.*

¹² UN CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, UN Doc. CERD/C/ISR/CO/17-19, 12 December 2019.

¹³ See Al-Haq, “Human rights organisations welcome Concluding Observations of the UN Committee on the Elimination of Racial Discrimination on racial segregation and apartheid on both sides of the Green Line,” 21 December 2019, available at: <http://www.alhaq.org/advocacy/16324.html>.

¹⁴ UN CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, UN Doc. CERD/C/ISR/CO/17-19, 12 December 2019, para. 21.

water resources.”¹⁵ Accordingly, the Committee urged Israel “to give full effect to article 3 of the Convention to eradicate all forms of segregation” disproportionately affecting Palestinians.¹⁶

Conclusions and Recommendations

The United Nations (UN) Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, Michael Lynk, has warned that the recently-announced US plan “is not a recipe for a just and durable peace but rather endorses the creation of a 21st century Bantustan in the Middle East” consisting of “scattered archipelagos of non-contiguous territory completely surrounded by Israel.”¹⁷ Yet, a number of third States have welcomed the plan announced by the US administration, gravely defying the rules-based international order and their own obligations not to recognise as lawful situations resulting from breaches of peremptory norms of international law, and to cooperate to bring such breaches to an end.¹⁸

Today, apartheid is recognised as a crime against humanity of universal applicability, enshrined in the Rome Statute of the International Criminal Court,¹⁹ and in the International Convention on the Suppression and Punishment of the Crime of Apartheid,²⁰ giving rise to both State responsibility and individual criminal responsibility. Third States have an obligation to bring an end to breaches of peremptory norms, including the denial of the right to self-determination and breaches of the absolute prohibition on the acquisition of territory by force. As such, third States must prevent the crime of apartheid and punish its perpetrators, not recognise the illegal situation nor render aid or assistance in its maintenance, and adopt collective measures to bring the illegal situation to an end.

Accordingly, we call on the Human Rights Council and all UN Member States to:

- i. Recognise Israeli laws, policies, and practices enshrining an institutionalised regime of systematic racial domination and oppression over the Palestinian people as a whole, as amounting to apartheid, giving rise to both State responsibility and individual criminal responsibility of the perpetrator;

¹⁵ *Ibid.*, para. 22.

¹⁶ *Ibid.*, para. 23.

¹⁷ OHCHR, “Israel/OPT: UN expert alarmed by ‘lopsided’ Trump plan, says will entrench occupation,” 31 January 2020, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25513&LangID=E>.

¹⁸ ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, Article 41, available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

¹⁹ *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3.

²⁰ *International Convention on the Suppression and Punishment of the Crime of Apartheid* (adopted 30 November 1973, entry into force 18 July 1976) A/RES/34/27.

- ii. Undo Israel's strategic fragmentation of the Palestinian people by reiterating and welcoming the CERD concluding observations on Israel,²¹ which highlighted the continuity of Israeli policies and practices of racial segregation and apartheid over Palestinians in violation of Article 3 of ICERD, and recognise Israel's apartheid regime as targeting the Palestinian people as a whole, on both sides of the Green Line and as refugees and exiles abroad;
- iii. Refrain in their international relations from rendering aid or assistance in the maintenance of Israel's apartheid regime over the Palestinian people, including by opposing the US plan to further entrench the fragmentation of the Palestinian people;
- iv. Call for the reconstitution of the UN Centre against Apartheid to monitor the implementation of the Apartheid Convention with the aim of bringing Israel's apartheid regime over the Palestinian people to an end;
- v. Broaden the mandate of the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967 to cover the Palestinian people as a whole, on both sides of the Green Line and as refugees and exiles abroad, and call on the Special Rapporteur to report annually to the Human Rights Council and the Third Committee of the General Assembly on steps taken to comply with the terms of the Apartheid Convention, as recommended by the 2017 ESCWA report,²² and
- vi. Pursue international justice and accountability for widespread and systematic human rights violations committed against the Palestinian people, including the crime of apartheid, by activating universal jurisdiction mechanisms to try suspected perpetrators in their own jurisdictions and by supporting the investigation into the situation in Palestine by the International Criminal Court (ICC).

²¹ UN CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, UN Doc. CERD/C/ISR/CO/17-19, 12 December 2019.

²² UN ESCWA, Israeli Practices towards the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation, Issue No. 1, UN Doc. E/ESCWA/ECRI/2017/1, Beirut, 2017, pp. 52-55.