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**Human Rights situation in Palestine and
other occupied Arab territories**

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk*

Summary

In the present report, submitted pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, examines the current human rights situation in the Occupied Palestinian Territory, with a particular emphasis on the question of whether Israeli rule over the Occupied Palestinian Territory can now be called apartheid.

* The present report was submitted after the deadline so as to include the most recent information.



I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, pursuant to Commission on Human Rights resolution 1993/2 A and Council resolution 5/1.
2. The Special Rapporteur would like to note that he has yet to be granted access to the Occupied Palestinian Territory, and his requests to meet with the Permanent Representative of Israel to the United Nations have not been accepted. The Special Rapporteur notes again that access to the Occupied Palestinian Territory is a key element in the development of a comprehensive understanding of the human rights situation on the ground.
3. The present report is based primarily on written submissions. The Special Rapporteur was unable to travel to the region for further consultations owing to the coronavirus disease (COVID-19) pandemic.
4. The Special Rapporteur wishes to express his appreciation for the full cooperation extended by the Government of the State of Palestine. He further acknowledges the essential work of civil society organizations and human rights defenders to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses.

II. Current human rights situation

Civil society

5. Israeli authorities continued to take actions against Palestinian civil society organizations, which contributed to undermining the work of organizations promoting and supporting the human rights of Palestinians. These actions included the use of counter-terrorism legislation and military orders to restrict and criminalize human rights and humanitarian work, the denial of visas for staff with the United Nations and international non-governmental organizations, the use of Pegasus spyware, which was developed by the Israeli company NSO Group, on mobile telephones of Palestinian human rights workers,¹ and arbitrary arrests and criminal prosecution of human rights defenders.
6. On 19 October 2021, the Minister of Defence of Israel announced the designation of six Palestinian human rights and humanitarian organizations² as “terrorist organizations” under the Counter-Terrorism Law of 2016. The designation decisions were based on unsubstantiated links between these organizations and the Popular Front for the Liberation of Palestine, including the alleged diversion of funds. At the time of the drafting of the present report, no evidence proving these allegations had been presented by Israeli authorities despite several requests by the international community and concerned organizations.
7. The potential impact of these designations and subsequent declarations by the Israeli military commander for the West Bank is substantial.³ Both the Counter-Terrorism Law and the Defence (Emergency) Regulations of 1945 foresee prison terms for membership in or any

¹ Amnesty International, “Devices of Palestinian human rights defenders hacked with NSO Group’s Pegasus spyware”, 8 November 2021.

² Addameer Prisoner Support and Human Rights Association, Al-Haq, Bisan Center for Research and Development, Defence for Children International – Palestine, Union of Agricultural Work Committees and Union of Palestinian Women’s Committees.

³ On 3 November 2021, the Israeli military commander for the West Bank declared five of the Palestinian organizations as unlawful associations through military orders. According to Israeli law, the declarations of unlawful associations through military orders are applied in the West Bank and Gaza, while the terrorist designations under the Counter-Terrorism Law are applied in occupied East Jerusalem and Israel.

type of support or cooperation with such organizations, prohibition of activities, confiscation of property and closure of offices.⁴

III. From occupation to apartheid

A. Introduction

8. When the facts change, so must our minds.

9. In the Palestinian territory that Israel has occupied since 1967, there are now 5 million stateless Palestinians living without rights, in an acute state of subjugation and with no path to self-determination or a viable independent State, which the international community has repeatedly promised is their right.⁵ Over the past five decades, Israel has created 300 Jewish-only civilian settlements, all of them illegal,⁶ with 700,000 Israeli Jewish settlers now living in East Jerusalem and the West Bank in the midst of, but apart from, 3 million Palestinians. In Gaza, Israel has barricaded the 2 million Palestinians into what former British Prime Minister David Cameron called “an open-air prison”,⁷ a method of population control unique in the modern world. In recent years, prime ministers of Israel have regularly and openly proclaimed that the country’s rule over the Palestinians and their land is permanent and that no Palestinian State will emerge.⁸

10. The international community has declared time and again that the Israeli rule over the Palestinian territory is an occupation, strictly governed by international humanitarian law,⁹ as well as by international human rights law.¹⁰ By their very nature, occupations are required to be built with wood, not concrete. Accordingly, the occupation by Israel must be temporary, it must be short-term; Israel is prohibited from annexing even a millimetre of occupied territory and any changes to the occupied territory must be as minimal as possible. It must comply fully with international law and United Nations resolutions and cooperate in good faith with the Palestinian leadership to completely end the occupation and realize a genuine two-State solution.¹¹

11. None of this has happened, nor, based on the available cogent evidence, is any of this likely to happen, absent concerted international intervention. The occupation by Israel has been conducted in profound defiance of international law and hundreds of United Nations resolutions, with scant pushback from the international community.¹² Its 55-year-old occupation burst through the restraints of temporariness long ago. Israel has progressively engaged in the de jure and de facto annexation of occupied territory. It insists that the laws of occupation and human rights do not apply to its regime, and its proliferating facts on the ground have virtually extinguished what lingering prospects remain for a genuine Palestinian State. A legal oxymoron has emerged: an occupation in perpetuity.

⁴ Counter-Terrorism Law No. 5766 of 2016, sects. 20–24, 56 and 69–70; Defence (Emergency) Regulations of 1945, sects. 84–85; Military Order No. 1651 and Military Order No. 101.

⁵ See General Assembly resolution 76/150.

⁶ In its resolution 2334 (2016), the Security Council declared that the Israeli settlements are a flagrant violation under international law.

⁷ BBC, “David Cameron describes blockaded Gaza as a ‘prison’”, 27 July 2010.

⁸ Prime Minister Benjamin Netanyahu stated in 2018 that the Palestinians could have a “State-minus”, where Israel would maintain security control over all of the Palestinian territory. See Ben Sales, “Netanyahu says he supports a Palestinian ‘state-minus’ controlled by Israeli security”, Jewish Telegraphic Agency, 24 October 2018. In 2022, Prime Minister Naftali Bennett said: “I oppose a Palestinian State, and I am making it impossible to conduct diplomatic negotiations that might lead to a Palestinian State.” See Mazal Mualem, “Bennet, in interview blitz, reacts to Netanyahu criticisms”, Al-Monitor, 31 January 2022.

⁹ See Security Council resolutions 237 (1967) and 2334 (2016), as well as 20 other Security Council resolutions.

¹⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 149.

¹¹ See [A/72/556](#).

¹² See [A/74/507](#) and [A/75/532](#).

12. The inescapable question becomes: has the Israeli occupation curdled into something darker and more ominous? While the laws of occupation continue to apply in full force to the Palestinian territory, they have become an increasingly inadequate legal and political framework by which to accurately understand, let alone effectively regulate and end, the transformative reality that Israel has been imposing on the ground. Even as the protracted Israeli occupation has crossed the bright red line into illegality,¹³ this does not appear to sufficiently capture the full extent of the qualitative changes occurring in the Palestinian territory.

13. Distinguished voices have concluded in recent years that these inexorable facts amount to, or closely resemble, apartheid. Ban Ki-moon, the former Secretary-General of the United Nations, wrote in 2021 that the intent of Israel to maintain “structural domination and oppression of the Palestinian people through indefinite occupation ... arguably constitutes apartheid”.¹⁴ Nobel Laureate Desmond Tutu stated in 2014: “I know firsthand that Israel has created an apartheid reality within its borders and through its occupation.”¹⁵ The Minister for Foreign Affairs of South Africa, Naledi Pandor, spoke in 2022 about her country’s “significant dismay at the continued apartheid practices of Israel against the long-suffering people of Palestine”.¹⁶ Michael Ben-Yair, a former Attorney General of Israel, said in 2022 that Israel had become “an apartheid regime ... a one state reality, with two different peoples living with unequal rights”.¹⁷ Ami Ayalon, the former Director of Shin Bet, wrote in his memoir: “We’ve already created an apartheid situation in Judea and Samaria, where we control the Palestinians by force, denying them self-determination.”¹⁸ Furthermore, two former Israeli ambassadors to South Africa – Ilan Baruch and Alon Liel – stated in 2021 that the systematic discrimination of Israel “on the basis of nationality and ethnicity” now constituted apartheid.¹⁹

14. If these responsible figures have determined that this reality is apartheid, then it is incumbent upon the rest of us to test, through the tools of international law and human rights, whether these observations accurately reflect what is happening in the Palestinian territory.

15. Palestinians have urged the international community to understand their predicament as apartheid. Palestinian Ambassador Riyadh Mansour stated to the Security Council in February 2022 that apartheid was now entrenched in the Occupied Palestinian Territory.²⁰ Two premier Palestinian human rights organizations – Al-Haq and the Addameer Prisoner Support and Human Rights Association – have concluded that Israel was maintaining an apartheid regime over the Palestinian people as a whole.²¹ The Al Mezan Center for Human Rights, another leading Palestinian human rights group, recently reported that the enclosure of Gaza had become an integral part of the apartheid regime of Israel.²²

16. International and Israeli human rights organizations have likewise issued substantive reports that have determined that Israel has created an apartheid rule, either in the West Bank or throughout Israel and the Occupied Palestinian Territory. Human Rights Watch stated in 2021: “The Israeli government has demonstrated an intent to maintain the domination of

¹³ See [A/72/556](#).

¹⁴ “Ban Ki-moon: US should back a new approach to the Israeli-Palestinian conflict”, *Financial Times*, 29 June 2021.

¹⁵ Desmond Tutu, “Presbyterian General Assembly Biennial Meeting: my message on Israel and Palestine”, 16 August 2014.

¹⁶ Tovah Lazaroff, “Israeli apartheid charge: a matter of law, antisemitism or occupation?”, *Jerusalem Post*, 18 February 2022.

¹⁷ Michael Ben-Yair, “Former AG of Israel: with great sadness I conclude that my country is now an apartheid regime”, *thejournal.ie*, 10 February 2022.

¹⁸ Ami Ayalon, *Friendly Fire* (Steerforth Press, 2021), p. 260.

¹⁹ Ilan Baruch and Alon Liel, “It’s apartheid, says Israeli ambassadors to South Africa”, *GroundUp*, 8 June 2021.

²⁰ See the statement made by the Permanent Observer Mission of the State of Palestine to the United Nations on 23 February 2022 (see [S/PV.8973](#)).

²¹ Addameer Prisoner Support and Human Rights Association, Al-Haq, and Housing and Land Rights Network, “Entrenching and maintaining an apartheid regime over the Palestinian people as a whole”, submission to the Special Rapporteur, January 2022.

²² Al Mezan Center for Human Rights, *The Gaza Bantustan* (2021).

Jewish Israelis over Palestinians across Israel and the OPT.”²³ Amnesty International concluded in 2022: “Israel has perpetrated the international wrong of apartheid, as a human rights violation and a violation of public international law wherever it imposes this system.”²⁴ B’Tselem found in 2021 that Israel had created a “regime of Jewish supremacy from the Jordan River to the Mediterranean Sea” that constituted apartheid.²⁵ Furthermore, Yesh Din issued a comprehensive legal opinion in June 2020 by human rights lawyer Michael Sfard that determined that the crime of apartheid was being committed by Israel in the West Bank.²⁶

17. Israel and its supporters have strongly resisted the labelling of the policies and practices of Israel as amounting to apartheid. In January 2022, the Minister for Foreign Affairs, Yair Lapid, responded to the Amnesty International report by stating that its finding of apartheid was “false, biased and antisemitic”.²⁷ The chief executive officer of the American Jewish Committee, David Harris, said that the shortcomings of Israel could not be compared with apartheid in South Africa.²⁸ In a more reflective comment, Michael Koplow of the Israel Policy Forum criticized the use of “apartheid” as conceptually wrong in the context of Israel and Palestine, because it would lead decision makers away from solving the true problem on the ground.²⁹

18. In the following section of the report, the Special Rapporteur examines whether Israeli rule over the Occupied Palestinian Territory can now be called apartheid. The Special Rapporteur acknowledges that a number of human rights groups (Al-Haq, Addameer Prisoner Support and Human Rights Association, Human Rights Watch, Amnesty International and B’Tselem) have analysed the issue of apartheid in the context of Israel and the Occupied Palestinian Territory together, taking the view that it was impossible to have democracy here and apartheid there.³⁰ However, consistent with the mandate of the Special Rapporteur, the focus is on the practices of Israel in the West Bank, including East Jerusalem, and Gaza.

B. International law and prohibition of the crime of apartheid

19. The concept of apartheid – the term means “apartness” in Afrikaans – as an oppressive system of rule and a cornerstone legal prohibition of international law arose from the legal, political and social practices developed in southern Africa between the 1940s and the 1990s. It originated in South Africa as a declared State policy in 1948,³¹ and was also implemented in other settler colonies in southern Africa. Today, apartheid has acquired a universal meaning that transcends the specific practices in southern Africa and is applicable wherever it may exist.

20. The legal prohibition against apartheid has become well-established through both customary and conventional international law. It is regarded today as a *jus cogens* norm, a peremptory norm of international law from which no derogation is allowed.³² Elevating apartheid to the most serious of crimes in international law places it in the same category as war crimes, wars of aggression, territorial annexation, genocide, slavery, torture and crimes

²³ Human Rights Watch, *A Threshold Crossed* (2021).

²⁴ Amnesty International, *Israel’s Apartheid against Palestinians* (London, 2022).

²⁵ B’Tselem, “A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea”, 12 January 2021.

²⁶ Michael Sfard, “The Israeli occupation of the West Bank and the crime of apartheid”, position paper (Yesh Din, June 2020).

²⁷ Lazar Berman, “Israel blasts Amnesty UK for ‘antisemitic’ report accusing it of apartheid”, *Times of Israel*, 31 January 2022.

²⁸ Laurenz Gehrke, “Amnesty International report alleging ‘apartheid’ in Israel draws fierce criticism”, *Politico*, 1 February 2022.

²⁹ “The strange case of erasing nationalism from a national conflict”, In Koplow Column, Israel Policy Forum, 3 February 2022.

³⁰ See also N. Thrall, “The separate regimes delusion”, *London Review of Books* (7 January 2021).

³¹ N. Clark and W. Worger, *South Africa: the Rise and Fall of Apartheid*, 3rd ed. (Routledge, 2016).

³² United Nations, “Draft articles on responsibility of States for internationally wrongful acts, with commentaries”, commentary on art. 40 (2001).

against humanity. Furthermore, as a *jus cogens* norm, this gives rise to obligations *erga omnes*, creating a legal duty for all States to cooperate in order to end the violation.³³

Customary international law

21. The General Assembly first approved a resolution critical of apartheid in South Africa in 1950,³⁴ and subsequently adopted a volume of resolutions condemning the practice over the following 40 years. In 1968, the General Assembly declared that the policies of apartheid practised by the Government of South Africa were a crime against humanity, stating that it was part of the policy of South Africa to deny the majority population its right to self-determination.³⁵ In its Advisory Opinion on Namibia in 1971, the International Court of Justice ruled that the application of apartheid in Namibia by South Africa was a “flagrant violation of the purposes and principles of the Charter [of the United Nations]”.³⁶ In its resolution 473 (1980), the Security Council stated that the policy of apartheid was a crime against the conscience and dignity of mankind and was incompatible with the rights and dignity of man, the Charter of the United Nations and the Universal Declaration of Human Rights. Legal scholars have accepted that the prohibition against apartheid has acquired the status of a rule of customary international law,³⁷ meaning that it applies universally, regardless of whether a State has ratified a convention or international instrument outlawing apartheid.

Conventional international law

22. In conventional international law, the prohibition against the crime of apartheid is firmly anchored in the instruments of international human rights law, international humanitarian law and international criminal law.

23. In international human rights law, the International Convention on the Elimination of All Forms of Racial Discrimination³⁸ was adopted by the General Assembly to combat the scourge of racial supremacy, segregation and separation through the prohibition of discrimination on the basis of race, colour or ethnic origin.³⁹ Article 3 states that States parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.⁴⁰

24. In international humanitarian law, apartheid has been designated by the high contracting parties to the Geneva Conventions of 12 August 1949 as a grave breach under the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) if committed during circumstances regulated by the Conventions, such as an armed conflict or an occupation.⁴¹ Article 85 (4) defines a series of acts “committed wilfully” as “grave breaches” of the Protocol. Among the specifically listed acts are “practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based upon racial

³³ See [A/CN.4/727](#).

³⁴ Resolution 395 (V).

³⁵ Resolution 2396 (XXIII) and [A/CN.4/727](#).

³⁶ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, *I.C.J. Reports 1971*, para. 131.

³⁷ See [A/CN.4/727](#); and A. Cassese, *International Criminal Law*, 2nd ed. (Oxford University Press, 2008), p. 25.

³⁸ Entered into force on 4 January 1969. As at 1 February 2022, 182 States had ratified the International Convention on the Elimination of All Forms of Racial Discrimination.

³⁹ The International Convention on the Elimination of All Forms of Racial Discrimination was ratified by Israel in 1979 and by the State of Palestine in 2014.

⁴⁰ In its general recommendation No. 19 (1995), the Committee on the Elimination of Racial Discrimination stated that article 3 had universal application and the prohibition applied to all countries.

⁴¹ Protocol I Additional to the Geneva Conventions of 1949 entered into force on 7 December 1979. As at 1 February 2020, 174 States had ratified the Protocol. Israel ratified the Geneva Conventions of 1949 in 1951, but has not ratified the Protocol.

discrimination”. Additionally, article 85 (5) declares that “grave breaches” are to be regarded as “war crimes” under international humanitarian law.

25. The International Committee of the Red Cross, the guardian of the Geneva Conventions of 1949, considers that the prohibition against apartheid in international humanitarian law has achieved the status of customary international law.⁴² In international criminal law, the General Assembly adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid⁴³ in 1973. Article 1 of the Convention declares that apartheid is a crime against humanity. Article 2 defines the crime against humanity of apartheid as including similar policies and practices of racial segregation and discrimination as practised in southern Africa, and states that the term “crime of apartheid” is to 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 the members of a racial group of the right to life and liberty of person, through such means as murder, serious bodily or mental harm or arbitrary arrest and imprisonment;

(b) The deliberate imposition on a racial group of living conditions calculated to cause their physical destruction, in whole or in part;

(c) Legislative actions calculated to prevent a racial group from full participation in all features of a society’s economic, social, political and cultural life;

(d) Any measures designed to divide the population along racial lines by the creation of separate reserves or ghettos, the prohibition of mixed marriages or the expropriation of land;

(e) Exploitation of the labour of a racial group;

(f) Persecution of organizations, by depriving them of their fundamental rights and freedoms because they oppose apartheid.

26. In 1998, the international community further developed the criminality of apartheid with the adoption of the Rome Statute of the International Criminal Court.⁴⁴ Article 7 (2) (h) of the Rome Statute defines the crime of apartheid as inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over another racial group or groups and committed with the intention of maintaining that regime. Paragraph 1 of article 7 lists a number of inhumane acts, including:

(a) Deportation or forcible transfer of population;

(b) Imprisonment or other severe deprivation of liberty;

(c) Torture;

(d) Persecution against any identifiable group on political, racial, ethnic, cultural, religious, gender or other grounds;

(e) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

⁴² “Rule 88: non-discrimination”, Customary International Humanitarian Law database. Available at https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule88#:~:text=Apartheid-,Rule%2088.,other%20similar%20criteria%20is%20prohibited.

⁴³ Entered into force on 18 July 1976. As at 1 February 2022, 110 States had ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid. The State of Palestine ratified the Convention in 2014. Israel has not ratified it.

⁴⁴ Entered into force on 1 July 2002. As at 1 February 2022, 123 States had ratified the Rome Statute. It was ratified by the State of Palestine in 2015. Israel has not ratified it.

27. In February 2021, the Pre-Trial Chamber of the International Criminal Court ruled that it has criminal jurisdiction to hear complaints regarding purported violations of the Rome Statute with respect to the situation in Palestine.⁴⁵

28. Accordingly, the relevant international law establishes that the Occupied Palestinian Territory is a territorial unit where the prohibition against apartheid can be applied to assess whether apartheid practices exist. Among the factors that support this conclusion are the universal application of customary international law, the ratification by both Israel and the State of Palestine of the International Convention on the Elimination of All Forms of Racial Discrimination, the ratification by the State of Palestine of the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute, and the customary international humanitarian law status of the prohibition against apartheid.

Legal definition of apartheid

29. Only the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute provide legal definitions of apartheid. The two instruments were drafted and adopted in distinct eras, which likely explains the differences in their respective terminology. The drafting of the Convention in the early 1970s reflected the international community's focus on the specific practices of racial supremacy in southern Africa. When the Rome Statute was drafted and adopted 25 years later, the apartheid era in southern Africa had already ended, and the purpose of the Rome Statute was to provide a forward-looking definition with universal application. In particular, it made no reference to South Africa or southern Africa. Given this approach, there is no reasonable basis to think that the existence of apartheid is limited either in time or in geography. Furthermore, while the historical practice of apartheid in southern Africa provides useful reference points for assessing the possible existence of apartheid elsewhere, such historical and political comparisons are never exact, and cannot be expected to be.⁴⁶ Rather, the legal and political starting point to determine the presence of apartheid in another time and place is the application of a commonly accepted definition, drawn from the Convention and the Rome Statute.

30. In its report, Amnesty International correctly notes that there are two secondary differences between the definition of apartheid in the International Convention on the Suppression and Punishment of the Crime of Apartheid and that in the Rome Statute.⁴⁷ First, under the Rome Statute the crime of apartheid requires the existence of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group, with the intent of maintaining that regime. In contrast, the Convention takes a less-specific approach in that it does not refer to an "institutionalized regime". Nonetheless, since the Convention specifically mentions the "similar policies and practices" that were applied in southern Africa during the apartheid era, it stands to reason that these practices amounted to the sort of "institutionalized regime" that the Rome Statute refers to. The second difference goes to the broader list of inhuman acts proscribed in the Convention. However, a purposive reading of the respective lists indicates that there is considerable overlap, and the broad language used in the Rome Statute – that is, "other inhumane acts" – can reasonably be said to include the same prohibited provisions that are found on the list in the Convention.

31. These differences between the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute are secondary and reconcilable. Accordingly, the construction of a definition of the "crime against humanity of apartheid" that draws from, and is consistent with, both instruments would be made up of the following three features:

(a) There exists an institutionalized regime of systematic racial oppression and discrimination;

⁴⁵ *Situation in the State of Palestine*, No. ICC-01/18, Decision, 5 February 2021.

⁴⁶ J. Dugard and J. Reynolds, "Apartheid, International Law and the Occupied Palestinian Territory", *European Journal of International Law*, vol. 24, No. 3 (September 2013), pp. 867, 883–884.

⁴⁷ Amnesty International, *Israel's Apartheid against Palestinians*, note 28 at pp. 47–49.

(b) The regime was established with the intent to maintain the domination of one racial group over another;

(c) The regime features inhumane and inhuman acts committed as an integral part of the regime.

This definition has been accepted by scholars and human rights organizations that have assessed the contemporary meaning of apartheid in international law.⁴⁸ It must be noted that all three features are required: examples or patterns of racial discrimination by themselves are insufficient.

Question of “race” and “racial group”

32. The question of race and racial groups in the context of apartheid and domination requires an explanation. Neither the International Convention on the Suppression and Punishment of the Crime of Apartheid nor the Rome Statute defines “racial group”. The initial approach towards “racial group” in the Convention might suggest that it was influenced by the racial categories employed by the apartheid regimes in southern Africa, which focused on black and white skin colour.⁴⁹ However, the understanding of “race” and “racial groups” has evolved significantly in recent decades, such that it has been recognized for some time that “race” and “racial group” are social constructs rather than a biological determination based on skin colour and/or assumptions regarding inherent racial differences.⁵⁰ Indeed, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination – which preceded the International Convention on the Suppression and Punishment of the Crime of Apartheid and is specifically mentioned in the preamble to that Convention – provides a broad definition of “racial discrimination” that goes beyond “race” and “colour” to include ethnicity, descent and national origin, that is, any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms.⁵¹

33. Therefore, in the context of the actions of Israel towards the Palestinians living in the occupied territory, Jewish Israelis and Palestinian Arabs may be understood as distinct racial groups distinguished by their nationality, ethnicity, religion, ancestry and descent.⁵² As social constructions, racial identities should be seen as a matter of perception, particularly in the eyes of a dominant group that distinguishes itself from other groups based on these various social markers. In the present case, the Government of Israel has determined the allocation, and the denial, of rights in the Occupied Palestinian Territory through a series of laws, practices and policies that define who is a Jew and who is not a Jew (the non-Jewish population being overwhelmingly Palestinian). The important point in international law is not what these respective groups represent in terms of any purported fixed identity, but rather how these respective groups are *treated* because of their perceived identity and classification.

⁴⁸ J. Dugard and J. Reynolds, “Apartheid, international law and the Occupied Palestinian Territory”, note 51; Human Rights Watch, *A Threshold Crossed*, note 27; Amnesty International, *Israel’s Apartheid against Palestinians*, note 28; and International Human Rights Clinic at Harvard Law School and Addameer Prisoner Support and Human Rights Association, “Apartheid in the Occupied West Bank”, joint submission to the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, February 2022.

⁴⁹ C. Lingaas, “Jewish Israeli and Palestinians as distinct ‘racial groups’ within the meaning of the crime of apartheid?”, EJIL:Talk!, 6 July 2021.

⁵⁰ C. Lingaas, *The Concept of Race in International Criminal Law* (Routledge, 2019).

⁵¹ This definition was applied by the International Court of Justice in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, note 40, para. 131.

⁵² International Human Rights Clinic at Harvard Law School and Addameer Prisoner Support and Human Rights Association, “Apartheid in the Occupied West Bank”, note 53; and R. Falk and V. Tilley, “Israeli practices towards the Palestinian people and the question of apartheid”, *Palestine and the Israeli Occupation*, No. 1 (Spring 2017), pp. 1–65.

Laws of occupation and legal prohibition against apartheid

34. The crime against humanity of apartheid is capable of being committed during an occupation that is governed by international humanitarian law. First, article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination obligates States to prevent, prohibit and eradicate all practices of this nature (i.e. “racial segregation and apartheid”) in territories under their jurisdiction. This definition, drafted in the shadow of apartheid during the illegal rule of South Africa over Namibia, would capture the practices of any alien rule by a State beyond its recognized borders. Second, Protocol I Additional to the Geneva Conventions of 1949 expressly prohibits apartheid, meaning that the high contracting parties anticipated that the crime could be committed during an occupation. Third, the application of one body of law does not displace the operation of the other, except in cases of express contradiction. The application of *lex specialis* – a traditional approach in international humanitarian law that postulates that, if two laws govern a particular situation, the more specific law overrides the more general law – must be interpreted carefully in these circumstances, in order not to deny the intended beneficiaries the robust protection of these laws.⁵³ The ascendent legal view is that different bodies of laws can apply simultaneously to a given situation where they may provide complementary and concurrent protection.⁵⁴ This applies equally to the laws of occupation and the prohibition against apartheid.⁵⁵

C. Application of the apartheid test to the Occupied Palestinian Territory

35. Since the beginning of the occupation in June 1967, the rule of Israel over the Palestinian territory has been epitomized by two core features. The first is the establishment of designed-to-be irreversible “facts-on-the-ground”: the creation of 300 civilian settlements, with 700,000 Jewish settlers, meant to demographically engineer an unlawful sovereignty claim through the annexation of the occupied territory while simultaneously thwarting the Palestinians’ right to self-determination. The second is the development of an oppressive system of military rule over the 2.7 million Palestinians in the West Bank, a shrunken and tenuous range of residency rights for the 360,000 Palestinians living in East Jerusalem, and a medieval military blockade of the 2 million Palestinians in Gaza.

36. These two features are deeply intertwined: it is impossible for an acquisitive occupying Power to settle hundreds of thousands of its citizens into occupied territory, create for them attractive living conditions equivalent to the home territory, and expropriate and alienate huge swaths of land and resources for their benefit and security, without also immiserating the indigenous people and triggering their perpetual rebellion. The past 70 years has taught us that a covetous alien Power has two choices: either to abandon the fever dream of settler colonialism and recognize the freedom of the indigenous people or instead to double down with increasingly more sophisticated and harsher methods of population control as the inevitable consequence of entrenching permanent alien rule over a people profoundly opposed to their disenfranchisement and destitution.

37. Israel has chosen the second path. Kofi Annan described this as a “prolonged and sometimes brutal occupation”.⁵⁶ Ban Ki-moon has written that “indefinite occupation” by Israel has been imposed by “inhumane and abusive acts”.⁵⁷ Barack Obama has criticized the “slow-motion annexation” of Palestinian land by Israeli settlements.⁵⁸ We must ask ourselves: has this occupation now congealed into apartheid?

⁵³ M. Jackson, “Expert opinion on the interplay between the legal regime applicable to belligerent occupation and the prohibition of apartheid under international law”, paper prepared for the Diakonia International Humanitarian Law Centre, 23 March 2021.

⁵⁴ See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

⁵⁵ M. Jackson, “Expert opinion on the interplay between the legal regime applicable to belligerent occupation and the prohibition of apartheid under international law”, note 58; and Al-Haq, Addameer Support and Human Rights Association, and Housing and Land Rights Network, “Entrenching and maintaining an apartheid regime over the Palestinian people as a whole”, note 25.

⁵⁶ K. Annan, *Interventions: a Life in War and Peace* (Penguin, 2012), p. 268.

⁵⁷ Ban Ki-moon, “Ban Ki-moon: US should back a new approach to the Israeli-Palestinian conflict”.

⁵⁸ B. Obama, *A Promised Land* (Crown, 2020), p. 632.

Institutionalized regime of systematic racial oppression and discrimination

38. At the heart of the settler colonial project of Israel is a comprehensive dual legal and political system that provides comprehensive rights and living conditions for the Jewish Israeli settlers in the West Bank, including East Jerusalem, while imposing upon the Palestinians military rule and control without any of the basic protections of international humanitarian and human rights law.⁵⁹ Against the grain of the twenty-first century, Israel assigns, or withholds, these rights and conditions on the basis of ethnic and national identity.

39. Politically and legally, Jewish Israeli settlers enjoy the same fulsome citizenship rights and protections as Israeli Jews living inside the country's borders of 1949. The 475,000 Israeli settlers in the West Bank, all of whom live in Jewish-only settlements, have the full panoply of laws and benefits of the citizenship of Israel extended to them personally and extraterritorially. Like Israelis in Tel Aviv or Eilat, the West Bank settlers have the same access to health insurance, national insurance, social services, education, regular municipal services and the right of entry into and out of Israel and around much of the West Bank. They also received targeted benefits and incentives from the Government of Israel to live and work in the settlements.⁶⁰ The settlers are an integrated part of a wealthy society with a European standard of living.⁶¹ The utilities and services that the settlements enjoy – water, power, housing, access to well-paid jobs, roads and industrial investment – are far superior to those available to the Palestinians. If settlers are charged with a crime, they are tried in an Israeli court with the full protection of Israeli criminal law. These settlers have the right to vote in Israeli elections, even though Israeli laws formally restrict the ability of Israeli citizens who live outside the country's territory to vote. To be sure, there are some citizenship rights possessed by a citizen of Israel that are not automatically extended territorially to the West Bank settlers, particularly regarding property, planning and building laws. However, Israeli military orders have been created to assign these rights to the local and regional settler councils in the West Bank, which effectively bridges the gap. These settler councils are regarded by Israel as equivalent to municipal councils inside Israel, and they are allocated substantial benefits and budgets by the Government of Israel accordingly. The major para-statal institutions that have been given the authority to operate in the occupied territory – the Jewish National Fund, the Jewish Agency for Israel, the World Zionist Organization and a multitude of foreign charities – work solely for the benefit of consolidating the presence of Israeli Jews in the settlements.

40. In sharp contrast, the 2.7 million Palestinians living in the West Bank enjoy none of the rights, protections and privileges possessed by the Israeli Jewish settlers living among them. They can vote in elections (when they are held) for the Palestinian Authority, but it has exceptionally limited powers. They have no democratic or political rights to hold the occupying Power – which exercises overwhelming control over their lives – accountable. The ubiquitous barriers to freedom of personal and commercial movement throughout the occupied territory have resulted in a structurally de-developed economy. The United Nations Conference on Trade and Development has estimated that Israeli closures, the confiscation of land and resources, rapacious settlement growth and military operations have cost the Palestinian economy \$57.7 billion in arrested development since 2000.⁶² Yet, notwithstanding the travails of the occupation, Palestinian society has become highly literate and quite well educated.⁶³ The result is a dynamic and talented population whose economy has become depleted and impoverished by a protracted military occupation, which is heavily

⁵⁹ International Human Rights Clinic at Harvard Law School and Addameer Prisoner Support and Human Rights Association, "Apartheid in the Occupied West Bank", note 53; N. Thrall, "The separate regimes delusion"; Amnesty International, *Israel's Apartheid against Palestinians*, note 28; Association for Civil Rights in Israel, *One Rule, Two Legal Systems* (October 2014); Human Rights Watch, *A Threshold Crossed*; Al-Haq and others, note 25; and D. Kretzmer and Y. Ronen, *The Occupation of Justice*, 2nd ed. (Oxford University Press, 2021).

⁶⁰ B'Tselem, *This Is Ours – and This, Too* (2021).

⁶¹ According to the World Bank, Israeli gross domestic product per capita in 2020 was \$44,168.

⁶² See [A/76/309](#).

⁶³ Palestinian Central Bureau of Statistics, *Palestine in Figures 2020* (2021).

dependent on international aid and which has only one thirteenth the gross domestic product per capita of Israel.⁶⁴

41. The lives of the Palestinians in the West Bank are governed by more than 1,800 military orders issued since 1967 by the Commander of the Israel Defense Forces, covering such issues as security, taxation, transportation, land planning and zoning, natural resources, travel and the administration of justice. In particular, Israel has imposed a military legal system in the West Bank that applies to Palestinians but not the Jewish settlers. The focus of the military legal system is the regulation of security, which covers such offences as participating in protests and non-violent civil disobedience, standard criminal acts, traffic violations, terrorism, membership in over 400 banned organizations, taking part in political meetings and engaging in civil society activities. Palestinians arrested for security offences can be detained without charge for a much longer period of time than Israeli settlers. The military legal system is presided over by Israeli military judges and trials are conducted in Hebrew (which many Palestinian detainees do not speak). The system offers few of the procedural and substantive protections of a purposive criminal legal system, while the prisoners' lawyers are significantly restricted in their access to evidence and the conviction rate is over 99 per cent.⁶⁵ Even more draconian, there are at any one time hundreds of Palestinians imprisoned indefinitely through administrative detention, where they are incarcerated without the façade of a formal proceeding, that is, without charges, evidence, a trial or a conviction, and whose detention can be extended indefinitely. Investigations by the military into deaths and serious injuries rarely result in any accountability.

42. A central strategy of Israeli rule has been the fragmentation of the Palestinian territory into separate areas of population control, with Gaza, the West Bank and East Jerusalem physically divided from one another. The West Bank itself is further splintered into 165 disconnected enclaves. This strategic fragmentation – *divide et impera* – is geographically enforced by Israel through an elaborate series of walls, checkpoints, barricades, military closure zones, Palestinian-only roads and Israeli-only roads.⁶⁶ Israel closely monitors Palestinian society through advanced cyber-surveillance and its full control over the Palestinian population registry. The Occupied Palestinian Territory lacks any secure land, sea or air access to the outside world, with Israel controlling all of its borders (with the exception of the Rafah crossing between Gaza and Egypt). Palestinians require difficult-to-obtain special permits from the Israeli military to travel between the West Bank, East Jerusalem and Gaza.⁶⁷ This geographic division severs the Palestinians under occupation not only from each other socially, economically and politically, but also from Palestinians living in Israel and the wider world.⁶⁸ As the Special Rapporteur previously observed: “No other society in the world faces such an array of cumulative challenges that includes belligerent occupation, territorial discontinuity, political and administrative divergence, geographic confinement and economic disconnectedness.”⁶⁹

43. In the West Bank and East Jerusalem, Palestinian lands – the single most important natural resource in the territory – are being steadily expropriated by Israel for Jewish-only use and settlement, buttressed by discriminatory planning laws and military orders. Since 1967, Israel has confiscated more than 2 million dunams of Palestinian land in the West Bank,⁷⁰ which has been used to build settlements, Israeli-only highways and roads, recreational parks, industrial centres and military bases and firing zones, all for the purpose

⁶⁴ According to the World Bank, Palestinian gross domestic product per capita in 2020 was \$3,239. (The World Bank measures only the West Bank and Gaza; it excludes East Jerusalem.)

⁶⁵ War on Want, *Judge, Jury, Occupier* (London, 2021).

⁶⁶ Regarding the separate highway system, see Israeli Centre for Public Affairs and Breaking the Silence, *Highway to Annexation* (2020).

⁶⁷ Sari Bashi and Eitan Diamond, *Separating Land, Separating People: Legal Analysis of Access Restrictions between Gaza and the West Bank* (Tel Aviv-Jaffa, Gisha, 2015).

⁶⁸ Former Prime Minister Benjamin Netanyahu explained in 2019 that “maintaining a separation between the PA in the West Bank and Hamas in Gaza helps prevent the establishment of a Palestinian state”. See Lahav Harkov, “Netanyahu: money to Hamas part of strategy to keep Palestinians divided”, *Jerusalem Post*, 12 March 2019.

⁶⁹ A/71/554, para. 41.

⁷⁰ A metric dunam is 1,000 square metres.

of cementing a permanent and immovable demographic presence. Israel has employed three primary methods for land confiscation: (a) the appropriation of land for “military needs”, some of which was later converted for civilian Jewish settlements, (b) the designation of land for “public needs”, with the purpose of primarily or exclusively Jewish Israeli use, and (c) the declaration of “State land”, with the ultimate aim of using these lands primarily for Jewish Israeli purposes. According to Peace Now in 2018, the allocation of 99.76 per cent of State land was for the exclusive use of Israeli settlements.⁷¹ Unlike Jewish settlers, Palestinians have no representation or voice in decision-making over zoning and property use throughout most of the West Bank. The United Nations has observed that, because permits for construction for Palestinian homes and property in East Jerusalem and Area C of the West Bank “are nearly impossible to obtain”, Palestinians often build without one. In turn, the Israeli military frequently orders the demolition of Palestinian homes and property built without a permit: the number of structures demolished in 2021 and 2020 are the second and third highest since these figures were first recorded in 2009.⁷² In addition, outside of official expropriation policies are the tolerated actions of Israeli settlers, whose violence has been regularly employed to seize Palestinian land or to make its use untenable.⁷³

44. In East Jerusalem, the 360,000 Palestinians have a more enhanced social and legal status than Palestinians in the West Bank, but their position is still greatly inferior to the 230,000 Jewish settlers who live among them in Jewish-only settlements. The Jewish settlers are regarded by Israel as residing in sovereign Israeli territory (arising from its two-stage illegal annexation of East Jerusalem in 1967 and 1980)⁷⁴ and, as such, they enjoy full citizenship rights, benefits and privileges. Almost all East Jerusalemite Palestinians possess residency status as opposed to Israeli citizenship; while this entitles them to some Israeli social rights (including health insurance), this residency status can be cancelled if they leave Jerusalem for a period of time, a threat that Jewish Israelis do not face. Approximately 75 per cent of Palestinian families in East Jerusalem live below the poverty line, compared to 22 per cent of Jewish families. About 38 per cent of land in East Jerusalem – mostly private Palestinian land, but some of it public land – had been expropriated by 2017 by the Government of Israel for Jewish-only use, leaving Palestinian Jerusalemites with a diminished land base to accommodate their growing population.⁷⁵ The Palestinian neighbourhoods in East Jerusalem live with significant shortages in schools, higher housing congestion, the discriminatory application of zoning and housing permits, and poorer access to municipal services (including sewage and water) than the Jewish settlers in their midst. About 120,000–140,000 Palestinian Jerusalemites have been forced to live on the West Bank side of the separation wall, physically separated from access to the city and its services.⁷⁶ The intentionally discriminatory neglect of Palestinians in East Jerusalem is best illustrated by the Jerusalem Master Plan, in which there is a target of maintaining a Jewish demographic majority with a 60:40 ratio, after an earlier target of 70:30 was not maintained.⁷⁷

45. In Gaza, the apparent strategy of Israel is the indefinite warehousing of an unwanted population of 2 million Palestinians, whom it has confined to a narrow strip of land through its comprehensive 15-year-old air, land and sea blockade⁷⁸ (with further restrictions by Egypt on the southern border of Gaza). Ban Ki-moon has called this political quarantining of the

⁷¹ “State land allocation in the West Bank: for Israelis only”, 17 July 2018.

⁷² Office for the Coordination of Humanitarian Affairs, “Data on demolition and displacement in the West Bank”. Available at <https://www.ochaopt.org/data/demolition>.

⁷³ B’Tselem, “State business: Israel’s misappropriation of land in the West Bank through settler violence”, November 2021.

⁷⁴ See Security Council resolutions 476 (1980), 478 (1980) and 2334 (2016).

⁷⁵ United Nations Human Settlements Programme (UN-Habitat), *Right to Develop: Planning Palestinian Communities in East Jerusalem* (2015).

⁷⁶ Association for Civil Rights in Israel, “East Jerusalem: facts and figures”, May 2021.

⁷⁷ International Crisis Group, “Reversing Israel’s deepening annexation of occupied East Jerusalem”, Middle East Report, No. 202 (Brussels, June 2019).

⁷⁸ Al Mezan Center for Human Rights, *The Gaza Bantustan*; Gisha, “Area G: from separation to annexation” (June 2020); and D. MacIntyre, *Gaza: Preparing for Dawn* (Oneworld, 2017).

population a “collective punishment”,⁷⁹ which is a serious breach of international law.⁸⁰ The World Bank reported in 2021 that Gaza had undergone a multi-decade process of de-development and deindustrialization, resulting in a 45 per cent unemployment rate and a 60 per cent poverty rate, with 80 per cent of the population dependent on some form of international assistance, in significant part because of the hermetic sealing of the access of Gaza to the outside world.⁸¹ The coastal aquifer, the sole source of natural drinking water in Gaza, has become polluted and unfit for human consumption because of contamination by seawater and sewage, substantially driving up water costs for an already destitute population. Gaza is heavily dependent on external sources – Israel and Egypt – for power, and Palestinians live with rolling power blackouts of between 12 and 20 hours daily, severely impairing daily living and the economy. The entry and export of goods is strictly controlled by Israel, which has throttled the local economy. The health-care system in Gaza is flat on its back, with serious shortages of health-care professionals, inadequate treatment equipment and low supplies of drugs and medicines. Palestinians in Gaza can rarely travel outside of Gaza, which is a denial of their fundamental right to freedom of movement. More acutely, they have endured four highly asymmetrical wars with Israel over the past 13 years, with enormous loss of civilian life and immense property destruction. The suffering was acknowledged by Antonio Guterres in May 2021, when he stated: “If there is a hell on earth, it is the lives of children in Gaza.”⁸²

Established with intent to maintain domination of one racial group over another

46. Across most of the political spectrum in Israel is a widely held consensus: Israel will keep East Jerusalem and either most or all of the West Bank, whether or not there is a peace agreement, and the Palestinians will remain under its permanent security control. Former Prime Minister Benjamin Netanyahu stated in 2019: “A Palestinian state will endanger our existence ... I will not divide Jerusalem, I will not evacuate any community [settlement] and I will make sure we control the territory west of Jordan.”⁸³ Before he became prime minister, Naftali Bennett stated: “The world does not respect a nation that is willing to give up its homeland. We need to apply Israeli law in Judea and Samaria.”⁸⁴ Minister of Defence Benny Gantz declared in 2019: “We will strengthen the settlement blocs and the Golan Heights, from which we will never retreat. The Jordan Valley will remain our eastern security border.”⁸⁵ Minister for Transportation Merav Michaeli, when campaigning in 2019, stated: “No one thinks that half-a-million settlers will be evacuated from Judea and Samaria.”⁸⁶ Furthermore, before he became Minister for Foreign Affairs, Yair Lapid explained in 2016: “My principle says maximum Jews on maximum land with maximum security and with minimum Palestinians.”⁸⁷ Among recent and current Israeli political leaders, the only debate regarding the Palestinians has come down to tertiary issues: whether the Palestinians will be granted a shrunken statelet with its own postage stamps and a seat at the United Nations or, alternatively, kept in their present state of statelessness. Either way, the intent is for the Palestinians to be encased in a political ossuary, a museum relic of twenty-first century colonialism.

⁷⁹ Haaretz, “UN chief Ban Ki-moon calls for Israel to end ‘collective punishment’ blockade of Gaza”, Reuters, 29 June 2016.

⁸⁰ Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 33.

⁸¹ These are among the highest rates of any economic unit in the world monitored by the World Bank. See World Bank, “Economic monitoring report to the Ad Hoc Liaison Committee”, 17 November 2021.

⁸² UN News, “Gaza children living in ‘hell on earth’, UN chief says, urging immediate end to fighting”, 20 May 2021.

⁸³ Haaretz, “Netanyahu says will begin annexing West Bank if he wins Israel election”, 7 April 2019.

⁸⁴ Alex Traiman, “On AIPAC sidelines, Israeli ministers express support for settlements”, Jewish News Syndicate, 6 March 2018.

⁸⁵ Haaretz, “Benny Gantz, Netanyahu rival, gives campaign launch speech”, 30 January 2019.

⁸⁶ Tovah Lazaroff, “Michaeli: no one thinks half a million settlers will be evacuated”, *Jerusalem Post*, 9 March 2019.

⁸⁷ Gil Stern Hoffman, “Lapid: US helped Iran fund its next war against Israel”, *Jerusalem Post*, 26 January 2016.

47. Except for a few weeks immediately following its 1967 occupation of the West Bank, East Jerusalem and Gaza, Israel has never accepted the international community's wall-to-wall consensus that the Palestinian territory is occupied, that the Geneva Conventions of 1949 apply, and therefore the strict rules of international humanitarian law apply.⁸⁸ The refusal by Israel to accept the international community's direction is not an honest difference in views over the interpretation of international law, but the obfuscation of an acquisitive occupier determined to maintain permanent control over the land and its indigenous population. Within a few months of the Six-Day War, the Israeli Cabinet was debating not whether to return the territory, but whether to either keep all of it or return only the major Palestinian cities to Jordan in a condominium arrangement.⁸⁹ In the summer of 1967, Israel initiated the construction of its first civilian Jewish settlements, covertly at first, and then openly. The most reliable route for an alien Power that covets the territory it occupies is to establish irreversible facts on the ground through the creation of civilian settlements. This not only establishes a thickening demographic footprint that consolidates the planting of the national flag, but it also generates a growing domestic political constituency that will support the embryonic claim for territorial annexation. The intention of Israel in building the settlements was never primarily about security or increasing the incentive of neighbouring Arab States to negotiate a final peace agreement, but to ensure that it retained as much of the land as possible. As the Minister of Labour of Israel at the time, Yigal Allon, a leading proponent of the settlements, explained in 1969: "Here, we create a Greater Eretz Israel from a strategic point of view, and establish a Jewish state from a demographic point of view."⁹⁰ Today, 10 per cent of Jewish citizens of Israel live in settlements in the Occupied Palestinian Territory, and the political constituency among Israeli Jews in support of settlement expansion continues to grow ever larger.

48. In 2018, the Israeli Knesset enacted the Basic Law: Israel – the Nation State of the Jewish People.⁹¹ While Israel does not have a constitution, it has adopted a series of Basic Laws that have acquired a quasi-constitutional status. The Nation State Law entrenches constitutional inequality and racial-national discrimination into Israeli law by distinguishing the rights of Jewish Israelis from those of Palestinians and other non-Jewish citizens of Israel.⁹² Senior American foreign policy scholar David Rothkopf has written in Haaretz that the Nation State Law "creates an apartheid society in which ethnic identity trumps fundamental human rights".⁹³ The Nation State Law is consistent with the regular proclamation by Israeli political leaders, including Benjamin Netanyahu, that "Israel is the national state, not of all its citizens, but only of the Jewish people".⁹⁴ The constitutionality of the Nation State Law was upheld by the Israeli High Court in July 2021.⁹⁵ For the purposes of the present report, article 7 proclaims that "the State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation".

49. The reach of the Nation State Law is not limited to the pre-1967 boundaries of Israel, as the Law refers to "the Land of Israel", a broader and more flexible term applying to areas of historic Jewish settlement, including the Occupied Palestinian Territory. As Israel considers the Jewish settlements in East Jerusalem and the West Bank to be part of the country, it is to be expected that article 7 will be employed by Israel in the future to justify

⁸⁸ T. Meron, "The West Bank and international humanitarian law on the eve of the fiftieth anniversary of the Six-Day War", *American Journal of International Law*, vol. 111, No. 2 (April 2017).

⁸⁹ I. Zertal and A. Eldar, *Lords of the Land* (Nations Books, 2007).

⁹⁰ R. Friedman, *Zealots for Zion* (Random House, 1992).

⁹¹ Law No. 5778 of 2018.

⁹² Adalah: Legal Center for Minority Arab Rights in Israel, "Israel's Jewish Nation-State Law", 20 December 2020.

⁹³ David Rothkopf, "Why it's now every American Jew's duty to oppose Israel's Government", Haaretz, 5 August 2018.

⁹⁴ Bill Chappell and Daniel Estrin, "Netanyahu says Israel is 'Nation-State of the Jewish people and them alone'", National Public Radio, 11 March 2019. The Minister of the Interior of Israel, Ayelet Shaked, made similar remarks. See Joseph Krauss, "Israel renews law to keep out Palestinian spouses", 11 March 2022.

⁹⁵ Netael Bandel, "Israel's top court rules the Nation-State Law is constitutional, denies petitions against it", Haaretz, 8 July 2021.

further settlement expansion and the related methods to achieve that, including the expropriation of Palestinian land and resources.

Inhumane and inhuman acts committed as an integral part of the regime

50. The administration of the occupation by Israel has been replete with a range of inhumane and inhuman acts prohibited by the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute. In summary, these acts include the following:

(a) **Denial of the right to life and liberty.** The rule by Israel is requiring increasingly more violence and confinement to be maintained: between January 2008 and February 2022, 5,988 Palestinians were killed in the context of the occupation and conflict (262 Israelis died during the same time period). For Palestinians, 2021 was the deadliest year since 2014.⁹⁶ State-sanctioned extrajudicial killings by Israel continue to be part of its toolbox, including the killings of civilians posing no immediate threat to Israeli troops, and with little or no internal accountability.⁹⁷ In addition, the military courts incarcerate thousands of Palestinians on security charges through a judicial system that offers few of the international protections regarding due process or the prevention of arbitrary arrest and detention.⁹⁸ Additionally, hundreds of Palestinians languish in administrative detention under open-ended confinement.⁹⁹ Collective punishment is frequently employed, whether it is the blockade of Gaza, the demolition of family homes of terror suspects or the withholding of bodies.¹⁰⁰

(b) **Denial of full participation in all features of a society.** Palestinians not only have no voice or vote to hold the military regime that governs much of their lives accountable, but they are also severely restricted through Israeli military orders in the exercise of their inherent rights to freedom of expression, assembly, association and movement within their own society. They are confined in their travel by hundreds of checkpoints and separate roads and by the permit and identification system. They are restricted in their ability to leave and return to Palestine. Their right to work is impeded by a smothered economy, travel restrictions and the fragmentation of their territory. Hundreds of political and civil organizations are banned, and leading human rights organizations have been designated as “terrorist” groups. Israel has imprisoned members of the (dormant) Palestinian Legislative Council. Fragmentation divides Palestinians and ensures more comprehensive control by Israel.

(c) **Measures that divide the population along racial lines.** Israel has created hundreds of Jewish-only settlements in East Jerusalem and the West Bank, with settlers living separately and apart from Palestinian Arabs. The Israeli settlers enjoy substantially superior rights, benefits, privileges and standards of living. In 2022, the Israeli Knesset adopted the Citizenship Law, which restricts the ability of Palestinians from Israel to marry individuals from the West Bank or Gaza; this does not apply to Israeli Jews.¹⁰¹ The Israeli military application of land, zoning and property rules in East Jerusalem and the West Bank discriminatorily benefits Israeli Jewish settlers and significantly disadvantages Palestinians. Separate settler and Palestinian highways run throughout the West Bank, and Jewish settlers do not encounter the myriad checkpoints and travel obstructions throughout the West Bank. Separate legal systems govern Israeli Jews and Palestinians.

(d) **Exploitation of labour of a racial group.** Palestinians have become a reserve labour force for Israel and for its settlements. Israel recently announced that it was planning

⁹⁶ Office for the Coordination of Humanitarian Affairs, “Data on casualties”. Available at <https://www.ochaopt.org/data/casualties>.

⁹⁷ See A/HRC/40/74; and Al-Haq, “Al-Haq sends urgent appeal to UN Special Rapporteur on Israel’s extrajudicial killing of three Palestinian men in Nablus”, 13 March 2022.

⁹⁸ Luigi Daniele, “The Israeli military justice system and international law”, *Questions of International Law*, vol. 20, No. 31 (November 2017).

⁹⁹ Addameer Prisoner Support and Human Rights Association, “Administration detention”, July 2017.

¹⁰⁰ See A/HRC/44/60.

¹⁰¹ Noa Shpigel, “Israel just re-banned Palestinian family unification. What does this law do, and how can it be fought?”, Haaretz, 12 March 2022. In supporting the Law, the Minister of the Interior of Israel stated that there was no need to mince words, that the bill also had demographic reasons.

to issue up to 10,000 permits for Palestinians in Gaza to work in Israel.¹⁰² Similarly, about 90,000 Palestinians in the West Bank have permits to work in Israel.¹⁰³ Another 35,000 Palestinians work in the Israeli settlements.¹⁰⁴ Many more work without permits. These jobs are almost all menial unskilled and semi-skilled positions in construction, agriculture and manufacturing. They are at the low end of the labour market in Israel, highly precarious, with no union protection, and involve long journeys each day. Palestinians working in Israel are paid more than their counterparts in the occupied territory, but their working conditions and wages are considerably inferior to those of Israelis in the Israeli labour market and they are subject to an abusive permit brokerage system. In a report from 2022, the International Labour Organization noted the exceptionally harsh impact that the COVID-19 pandemic had on Palestinian employment and working conditions, given that Palestinian society lacked the social shock absorbers possessed by Israel to manage the abrupt labour crisis.¹⁰⁵

(e) **Other inhumane and inhuman acts causing great suffering.** Although strictly prohibited under international law, torture continues to be used in practice by Israel against Palestinians in detention. Methods of torture include sleep deprivation, beating and slapping, humiliation, unhygienic conditions and extended shackling in contorted positions.¹⁰⁶ Challenges to the Israeli Supreme Court against its use have been unsuccessful.¹⁰⁷ Beatings by Israeli soldiers of Palestinians during arrests are regularly reported, with little accountability.¹⁰⁸

IV. Conclusions

51. **International humanitarian law permits differential treatment of an indigenous population during an occupation, but only in a restricted fashion. Such treatment must be anchored in the principle that any infringements to human rights and equality are to be as minimal and proportional as possible during the conduct of an occupation that is both temporary and short-term. This is not the case in the 55-year-old occupation by Israel. Permanent alien rule over occupied territory and its indigenous population is the antithesis of international humanitarian law and, in recent decades, the inexorable Israeli occupation has become indistinguishable from annexation.**

52. **Is this situation now apartheid? Applying each of the three steps of the amalgamated test from the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute, the Special Rapporteur has concluded that the political system of entrenched rule in the Occupied Palestinian Territory that endows one racial-national-ethnic group with substantial rights, benefits and privileges while intentionally subjecting another group to live behind walls and checkpoints and under a permanent military rule *sans droits, sans égalité, sans dignité et sans liberté* (without rights, without equality, without dignity and without freedom) satisfies the prevailing evidentiary standard for the existence of apartheid.**

53. **First, an institutionalized regime of systematic racial oppression and discrimination has been established. Israeli Jews and Palestinian Arabs in East Jerusalem and the West Bank live their lives under a single regime that differentiates its distribution of rights and benefits on the basis of national and ethnic identity, and that ensures the supremacy of one group over, and to the detriment of, the other. (The Palestinian Authority exercises restricted jurisdiction and provides services in limited**

¹⁰² Emanuel Fabian, "Israel to boost number of Palestinian workers from Gaza, Gantz says", *Times of Israel*, 1 March 2022.

¹⁰³ Daniel Avis, "Israel to offer more work permits for Palestinians, Bennet says", *Bloomberg*, 18 January 2022.

¹⁰⁴ International Labour Organization, *The Situation of Workers of the Occupied Arab Territories* (Geneva, International Labour Office, 2022), para. 16.

¹⁰⁵ *Ibid.*; and Al-Haq, *Captive Markets Captive Lives* (Ramallah, West Bank, 2021).

¹⁰⁶ Public Committee against Torture in Israel, "Torture in Israel 2021: situation report".

¹⁰⁷ World Organisation against Torture, "It's now (even more) official: torture is legal in Israel", 21 March 2019.

¹⁰⁸ B'Tselem, "Torture and abuse in interrogation", 11 November 2017.

parts of the West Bank that Israel has no interest in delivering.) The differences in living conditions and citizenship rights and benefits are stark, deeply discriminatory and maintained through systematic and institutionalized oppression.

54. Second, this system of alien rule has been established with the intent to maintain the domination of one racial-national-ethnic group over another. Israeli political leaders, past and present, have repeatedly stated that they intend to retain control over all of the occupied territory in order to enlarge the blocs of land for present and future Jewish settlement while confining the Palestinians to barricaded population reserves. This is a two-sided coin: the plans for more Jewish settlers and larger Jewish settlements on greater tracts of occupied land cannot be accomplished without the expropriation of more Palestinian property together with harsher and more sophisticated methods of population control to manage the inevitable resistance. Under this system, the freedoms of one group are inextricably bound up in the subjugation of the other.

55. Third, the imposition of this system of institutionalized discrimination with the intent of permanent domination has been built upon the regular practice of inhumane and inhuman acts. Arbitrary and extrajudicial killings. Torture. The violent deaths of children. The denial of fundamental human rights. A fundamentally flawed military court system and the lack of criminal due process. Arbitrary detention. Collective punishment. The repetition of these acts over long periods of time, and their endorsement by the Knesset and the Israeli judicial system, indicate that they are not the result of random and isolated acts but integral to the system of rule by Israel.

56. This is apartheid. It does not have some of the same features as practised in southern Africa; in particular, much of what has been called “petit apartheid” is not present. On the other hand, there are pitiless features of the “apartness” rule by Israel in the Occupied Palestinian Territory that were not practised in southern Africa, such as segregated highways, high walls and extensive checkpoints, a barricaded population, missile strikes and tank shelling of a civilian population, and the abandonment of the Palestinians’ social welfare to the international community.¹⁰⁹ With the eyes of the international community wide open, Israel has imposed upon Palestine an apartheid reality in a post-apartheid world.

V. Recommendations

57. The Special Rapporteur recommends that the Government of Israel fully comply with its obligations under international law and completely and unconditionally end the occupation of the Palestinian territory, with all deliberate speed. Throughout this process and thereafter, it must:

(a) End all discriminatory and apartheid laws, practices and policies that privilege Jewish Israelis living in the occupied territory and subjugate Palestinian Arabs;

(b) Fully respect the national rights and human rights of Palestinians, enable them to exercise their freedom of movement, assembly, expression and association, and remove all arbitrary and inequitable restrictions on family life, property, employment, access to and enjoyment of resources, education and daily life.

58. The Special Rapporteur recommends that the international community accept and adopt the findings by Palestinian, Israeli and international human rights organizations that apartheid is being practised by Israel in the Occupied Palestinian Territory and beyond. The international community should:

(a) Assemble a diplomatic menu of accountability measures to bring the Israeli occupation and its practice of apartheid in the Palestinian territory to a complete end;

¹⁰⁹ J. Dugard, *Confronting Apartheid: a Personal History of South Africa, Namibia and Palestine* (Johannesburg, Jacana Media, 2018).

(b) **Support any references or applications to the International Criminal Court and/or the International Court of Justice with respect to the legal consequences of the practice of apartheid in the Occupied Palestinian Territory.**

59. **The Special Rapporteur recommends that the United Nations re-establish the Special Committee against Apartheid to investigate any and all practices of systematic discrimination and oppression purportedly amounting to apartheid anywhere in the world, including the Occupied Palestinian Territory.**
