Entrenching and Maintaining an Apartheid Regime over the Palestinian People as a Whole

Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr Michael Lynk.

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Table of Contents

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1. Introduction and Historical Context

Since its inception, the Zionist settler colonialist ideology laid down the foundations for the system of racial discrimination and domination of the newly transferred in Jewish colonisers over the indigenous Palestinian people, through a system of laws, policies and practices which subsequently became the legal foundation of the State of Israel (SoI).[1] To fulfil and realize the Zionist settler-colonial quest for the establishment of a modern state for the constructed "Jewish people" in historic Palestine, the Palestinian people have been denied *inter alia* their collective and inalienable right to self-determination and their right of return as refugees and exiles to their homeland.[2]

Since 1948, the Palestinian people as a whole, have endured an ongoing *Nakba* of prolonged and sustained refugeehood, forced displacement, land appropriation, pillage, destruction of property, destruction of their institutions, and killing, amongst others, as well as, political, administrative and geographic fragmentation, as part of Israel's attempt to eradicate Palestinians from their land and homes. For over seven decades, Israel's settler-colonial project and apartheid regime has been maintained through a series of laws, military orders, policies and practices including the use of unnecessary and excessive force with the intent to dominate and oppress the indigenous Palestinian people. The UN Committee on the Elimination of Racial Discrimination has highlighted 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" and has called on Israel to eradicate policies and practices of racial segregation and apartheid that "severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory".[3]

Since 1967, Israel has extended this segregationist and fragmentary, apartheid regime of racial discrimination and domination of illegally transferred in Israeli-Jewish settlers over the protected Palestinian population, to the parts of the territory of Palestine held under its military occupation, i.e., the West Bank, including East Jerusalem, and the Gaza Strip. This prolonged occupation is characterized by gross violations of international law, including the land, sea, and air closure of the Gaza Strip, the annexation of Jerusalem, the construction of the Wall and the *de facto* annexation of parts of the West Bank.[4] Parallel to this, successive Israeli governments have established settler colonies of Jewish-Israeli citizens and other acclaimed "Jewish nationals" in the occupied Palestinian territory (OPT),[5] in blatant violation of the prohibition of

[1] Adalah, "Discriminatory Laws in Israel", available at:< https://www.adalah.org/en/law/index?page=4> [Accessed on 7 January 2022]
[2] Al-Haq, "Statement on International Day of Solidarity with the Palestinian People", 29 November 2021, at: <https://www.alhaq.org/advocacy/19254.html> [Accessed on 7 January 2022]
[3] CERD, "Concluding observations on the combined seventeenth to nineteenth reports of Israel", CERD/C/ISR/CO/R.17-19, paras 22-23, available at: <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_COC_ISR_40809_E.pdf> [Accessed on 7 January 2022].
[4] Al-Haq, "Questions and Answers: Israel's De Facto Annexation of Palestinian Territory", 25 May 2021, at: <https://www.alhaq.org/publications/18430.html> [Accessed on 7 January 2022].
[5] See *e.g.,* Al-Haq *et al*., "Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Mr Michael Lynk, on the Legal Status of the Israeli Colonial Settlements in the Occupied Palestinian Territory Under the Rome Statute of the International Criminal Court", 30 April 2021, at:

population transfer enshrined in the post-World War II Statutes of the International Military Tribunals,[6] the Fourth Geneva Convention[7] and the Rome Statute.[8]

The creation of nearly 300 illegal Israeli settlements across the West Bank, including East Jerusalem and the transfer in of approximately 700,000 Israeli-Jewish settlers, along with the mass land appropriations and an administrative system which perpetuates the fragmentation of the Palestinian people, has shattered the Palestinian landscape into Bantustan style cities and enclaves.[9] More specifically, the fragmentation of the Palestinian people and their administration by Israel under a myriad of different classifications (nationals of enemy territory, protected population, holders of permanent residencies, citizenship minus nationality, refugees and exiles) means that Palestinians in Gaza, Palestinians in the West Bank, Palestinians in Jerusalem, Palestinian citizens of Israel, and Palestinian refugees and exiles in the diaspora, are denied their freedom of movement and the collective exercise of their inalienable human rights– a fragmentation which also is intended to prevent them from collectively mobilising against the colonisation of their territory.[10] As such, the engineering of an Israeli-Jewish demographic majority in historic and occupied Palestine- ultimately serves to entrench Israel's *de jure* and *de facto* annexation of the Palestinian territory.

a. Institutionalizing Discrimination

The parastatal institutions of the SoI have enshrined both the race-based notions of Jewish distinction and preference (supremacy), as well as the correspondingly exclusive control of the country's resources.[11] Prior to the recognition of the State of Israel, the JNF assumed the task of acquiring and administering land resources essential to the formation of a viable colony and state. Other similarly chartered institutions were established to capture and administer the other resources of the country. Among these was the Histadrut (General Federation of Hebrew Labor), founded in 1920. It became the organization of the settler Jewish working class, managing human resources, but was also the key Zionist organization responsible for the formation of the Israeli state. It was Histadrut that founded Haganah, the Zionist terrorist group, also in 1920, that later became the Israeli armed forces.[12] David Ben-Gurion, Histadrut's first

<https://www.alhaq.org/cached_uploads/download/2021/05/04/210430-joint-submission-on-the-legal-status-of-the-israeli-colonial-settlements-1620134243.pdf> [Accessed on 7 January 2022].

[6] Charter of the International Military Tribunal (IMT), in Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (London Agreement), 8 August 1945, at:<https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf>; and International Military Tribunal for the Far East, 19 January 1946, at:<https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.3_1946%20Tokyo%20Charter.pdf> [Both accessed on 7 January 2022].

[7] Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, in particular, Article 49, at:<https://ihl-databases.icrc.org/ihl/INTRO/380> [Accessed on 7 January 2022].

[8] Rome Statute of the International Criminal Court, 17 July 1998, in particular, Articles 7 and 8, <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf> [Accessed on 7 January 2022].

[9] UN OHCHR, "UN experts say Israeli settlement expansion 'tramples' on human rights law" (3 November 2021), available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27758&LangID=E>

[10] PLO-NAD: It is Apartheid: The Reality of Israel's Colonial Occupation of Palestine (June 8, 2021) p. 9, available at: <http://www.dci.plo.ps/en/article/18496/PLO-NAD-It-is-Apartheid--The-Reality-of-Israel>

[11] United Nations ESCWA Report, *op.cit.*, p. 5. *See also* Al-Haq, BADIL, HIC-HLRN, and CIHRS, *Joint Submission*, 10 November 2019, para. 40-42, at:<https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf> [Accessed on 7 January 2022].

[12] Zeev Sternhell, Founding Myths of Zionism (Princeton NJ: Princeton University Press, 1998) p.180.

secretary-general, became chairman of the Jewish Agency in 1935 and the first Prime Minister of the SoI in 1948. Speaking of her role on the Histadrut Executive Committee, Golda Meir recalled that "this big labour union wasn't just a trade union organization. It was a great colonizing agency."[13]

Although Histadrut is less omnipresent today, it was the second-largest employer in Israel, owning 25 percent of Israeli industry, before the serial privatization of its enterprises in the 1980s and 1990s.[14] Histadrut also operated as an arm of Israeli and U.S. foreign policy since 1958, collaborating with the infamous International Institute for Development, Co-operation and Labor Studies, which was established as a means of furthering western interests in the third world.[15] It also actively collaborated with the apartheid South African state; Iskoor steel company, 51 percent owned by Histadrut's Koor Industries and 49 percent by the South African Steel Corporation, manufactured steel for South Africa's armed forces and shipped finished steel from Israel to South Africa, as did Histadrut weapons suppliers Tadiram and Soltam, enabling the apartheid state to escape tariffs and sanctions.[16]

Histadrut, JA and JNF collaborated in 1937 to establish the Israeli public owned Mekorot organization,[17] which practices Jewish-only privilege over the country's water resources.[18] After the proclamation of the SoI, Mekorot (Israel National Water Co.) was joined in 1951 by the Tahal Group, combining the efforts of the Israel Ministry of Agriculture with Mekorot's engineering division in 1952. This implementation agency today operates with majority shares (52 percent) held by the Government of Israel, with the remainder divided equally between JA and JNF.[19]

In 1967, the Israeli occupying forces (IOF) destroyed at least 120 Palestinian wells along the Jordan Valley,[20] establishing control over both the shoreline and the flow of the water, which is diverted, along with the Jordan headwaters in the occupied Golan, via the National Water Carrier (designed by Tahal and constructed by Mekorot) from Lake Tiberias to Jewish

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[13] Observer (24 January 1971), quoted in Uri Davies, Utopia Incorporated (London: Zed Press, 1977), p.142.
[14] "Separate and Unequal: The History of Arab Labour in pre-1948 Palestine and Israel," Sawt al-Amel (December 2006), p. 16, at:<http://www.labournet.net/world/0702/labvoice1.html> [Accessed on 7 January 2022].
[15] Benjamin Beit Hallahmi, The Israeli Connection: Whom Israel Arms and Whyn (London: I B Tauris & Co. Ltd., 1988), p.39.
[16] James Adams, Israel and South Africa: The Unnatural Alliance (London and New York: Quartet Books, 1984), cited in Tony Greenfield, "Histradrut - Israel's racist union," Research Gate (January 2011), at:<https://www.researchgate.net/publication/289674682_Histradrut_-_Israel's_racist_union> [Accessed on 7 January 2022].
[17] (Hebrew: מקורות, lit. "Sources").
[18] See, Al-Haq, "Water For One People Only: Discriminatory Access and 'Water-Apartheid' in the OPT" (8 April 2013), p. 35, available at: <https://www.alhaq.org/publications/8073.html>
[19] "Tahal" Jewish Virtual Library (2019), at:<https://www.jewishvirtuallibrary.org/tahal> [Accessed on 7 January 2022].
[20] Palestinian Authority Ministry of Agriculture and Palestinian Water Authority, Development of the Palestinian Valley: Plan for Development of Water Sources in Valley Governates (May 2010) [Arabic], pp. 3, 8, cited in Eyal Hareuveni, Dispossession & Exploitation Israel's policy in the Jordan Valley & northern Dead Sea (Jerusalem: B'Tselem, May 2011), p. 32, at: http://ecopeaceme.org/uploads/Btselem_Dispossession_and_Exploitation_Eng_201105.pdf>; Other sources report that Israeli forces either confiscated or destroyed 140 pumping units in the Jordan Valley in 1967. *See* Report on the situation of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Giorgio Giacomelli, Special Rapporteur, E/CN.4/2000/25, 15 March 2000, para. 24, at: https://spinternet.ohchr.org/_Layouts/15/SpecialProceduresInternet/Download.aspx?SymbolNo=E%2fCN.4%2f2000%2f25&Lang=en> [All accessed on 7 January 2022]; Fadia Daibes-Murad, *A New Legal Framework for Managing the World's Shared Groundwaters* (London and Seattle: IWA Publishing, 2005), p. 338.

settlements inside the Green Line.[21] Meanwhile Palestinians in the West Bank have been denied access to the waters of the Jordan River.[22]

Israeli parastatal institutions –primarily Mekorot– also retain control over the waters of the occupied West Bank's Mountain Aquifer, diverting 89 percent of this resource to Israelis, despite the fact that 80 percent of the water recharging the aquifer originates in the occupied Palestinian territory.[23] Such acts constitute a breach of the rules of usufruct under Article 55 of the Hague Regulations, and may amount to the war crime of pillage. Since its invasion and occupation, Israel has prohibited Palestinians throughout the whole OPT from drawing any of its waters, by declaring its riverbanks a closed military zone and by continuing its wartime military practice of destroying Palestinian pumps and irrigation infrastructure.[24]

b. Operationalizing Apartheid in the Occupied Palestinian Territory

Israel's obligations under International Humanitarian Law are enshrined in the Regulations Annexed to the Hague Convention IV Respecting the Laws and Customs of Wars on Land of 1907 (Hague Regulations), reflective of customary international law, and in the Fourth Geneva Convention Concerning the Protection of Civilian Persons in Time of War of 1949 (Fourth Geneva Convention), for the most part reflective of customary international law, and all the customary norms included in the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (1977) (Additional Protocol I). Article 43 of the Hague Regulations provides the general framework for the responsibility of the Occupying Power in the occupied territory. It requires the Occupying Power to undertake all measures in its "power to restore and ensure public order and safety," and requires the Occupying Power to "respect the laws and administrative rules in force in the occupied territory, unless absolutely necessary".[25]

Israel has significantly fragmented the occupied Palestinian territory, creating a patchwork of around 300 settlements, which has led to a de facto segregation of communities. In the West Bank, the oppressive zoning and planning regime is facilitated by a complex tapestry of land laws from Ottoman rule, the British mandate period, and Jordanian control supplemented by

[21] Al-Haq, "Geography and Hydrology of Water Resources in the OPT," 22 March 2013, at: <http://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/2012/Al%20Haq%20-factsheet%20_no_1_Geography%20and%20Hydrology_66.2013.pdf> [Accessed on 7 January 2022].
[22] Amnesty International, "The Occupation of Water", 29 November 2017, at: <https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/> [Accessed on 7 January 2022].
[23] Ahmed Abofoul, "Israel's Ecological Apartheid in the Occupied Palestinian Territory," Opinio Juris Blog, 22 October 2021, at: <http://opiniojuris.org/2021/10/22/israels-ecological-apartheid-in-the-occupied-palestinian-territory/>; Al-Haq, "Geography and Hydrology of Water Resources in the OPT," 22 March 2013, at:<http://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/2012/Al%20Haq%20-factsheet%20_no_1_Geography%20and%20Hydrology_66.2013.pdf> [Both accessed on 7 January 2022].
[24] Report of the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, 15 March 2019, A/HRC/40/73, para. 44, at:<https://undocs.org/A/HRC/40/73> [Accessed on 7 January 2022].
[25] Article 43, Hague Regulations (1907).

numerous Israeli military orders designed to displace Palestinians through arbitrary declarations of large parts of the land as belonging to the state in order to replace them with Jewish settlers.[26]

Following Israel's occupation of the West Bank in 1967, Israel appropriated significant portions of land from Sur Bahir in violation of international law, including 1,700 dunams to build the illegal Israeli settlements of East Talpiot (*Tel Buyūt*, in its Arabic original) and Har Homa, as well as additional land for the construction of the Annexation Wall, more settlements, related infrastructure and bypass roads.[27] The Annexation Wall cuts through the town and physically separates it from the rest of the West Bank by placing Oslo Accords-designated Areas A, B, and C of Sur Bahir on the Jerusalem side of the Annexation Wall.[28]

In addition to isolating Palestinians in Gaza through an illegal 15-year land, sea, and air blockade and closure, the Israeli occupying authorities have also designated land in Gaza as "access restricted areas" and "buffer zones" to restrict Palestinians' access to their land. Israel has established a restricted buffer zone that extends 100 to 300 meters beyond the border fence into Gaza, which is expanded during times of conflict, that is only accessible by foot by farmers.[29] The area within 100 meters of the fence is "a military no-go zone," in which access and the planting of trees and plants higher than 80 centimetres is strictly prohibited.[30] These restrictions affect up to 35 percent of Gaza's agricultural land, with deleterious effects on Gaza's ability to be food sufficient for its population of approximately two million Palestinians.[31]

Since 1967, Israel's military offensives have resulted in considerable destruction to the environment, agriculture and economies, the repercussions of which are current.[32] Echoing colonial projects of a foregone era,[33] Israel uses denial of food supply and natural resources as a measure of collective punishment, most drastically through its prolonged blockade of the

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[26] Badil, "Forced Population Transfer: The Case of Palestine – Discriminatory Zoning and Planning," December 2014, p. 27, at:<http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp17-zoninig-plannig-en.pdf> [Accessed on 7 January 2022].

[27] Al-Haq, "Al-Haq Sends Urgent Appeal to UN Special Procedures and Calls for Immediate Halt to Demolitions in Wadi Al-Hummus," (22 July 2019), available at:<http://www.alhaq.org/advocacy/14686.html> [Accessed on 7 January 2022]. And 3 Israeli settlements in the OPT are illegal under international law, as recognised by numerous UN resolutions, e.g. UN Security Council, Res. 2334 (2016), 23 December 2016, UN Doc. S/RES/2334 (2016). In 2004, the International Court of Justice called on Israel to dismantle the Annexation Wall, see: Legal Consequences of the Construction of a Wall in the oPt, Advisory Opinion, I.C.J. Reports 2004, p. 136.

[28] Field Report on Wadi Al-Hummus, Al-Haq, 15 July 2019.

[29] Badil, "Forced Population Transfer: The Case of Palestine – Discriminatory Zoning and Planning," December 2014, pp. 50, available: <http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp17-zoninig-plannig-en.pdf> [Accessed on 7 January 2022].

[30] Badil, "Forced Population Transfer: The Case of Palestine – Discriminatory Zoning and Planning," December 2014, p. 38-9,. 50, at:<http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp17-zoninig-plannig-en.pdf> [Accessed on 7 January 2022].

[31] Al Mezan Center for Human Rights, "Farming in a Buffer Zone", February 2021, at:<https://www.mezan.org/en/uploads/files/16142371071857.pdf> [Accessed on 7 January 2022].

[32] Z. Brophy and Jad Isaac, "The environmental impact of Israeli military activities in the occupied Palestinian territory," (Bethlehem: Applied Research Institute – Jerusalem (ARIJ), 2009), at: <http://www.arij.org/files/admin/2009/The%20environmental%20impact%20of%20Israeli%20military.pdf>; *The Military's Impact on the Environment: A Neglected Aspect of the Sustainable Development Debate* (Geneva: International Peace Bureau, August 2002), at: <file:///D:/HIC-HLRN/HLRN%20MENA/Program/Palestine/Environment/IPB_military_impact_2002.pdf> [Both accessed on 7 January 2022].

[33] *See* Mike Davis, *Late Victorian Holocausts: El Niño Famines and the Making of the Third World* (London: Verso, 2000).

Gaza Strip.[34] Israel controls the quantity of food allowed to reach the Gaza population, even calculating the per-capita calorie intake.[35] The UN already determined that the Gaza Strip would be uninhabitable by 2020.[36] More immediately amid these conditions, the precarious funding situation has led the UN Relief Works Agency (UNRWA) to warn that 1 million Palestinians could starve in an impending "humanitarian catastrophe."[37]

c. Strategic Fragmentation – Israel's Principal Tool to Maintain Apartheid

As pointed out, since its establishment as a State, Israel has steadily been fragmenting the Palestinian people as a whole in order to impose and maintain its apartheid regime and prevent Palestinians from organising a unified resistance able to challenge the said regime.[38] The foundation of Israel's fragmentation policies is the strategic division of the Palestinian people into at least four main territorial and judicial 'domains', namely:[39]

1. Palestinian refugees abroad and involuntary exiles, who suffer the Israeli institutionalised regime of racial domination and oppression through the systemic denial of their right to return to their homes and property as enshrined in international law.[40]
2. The 1.9 million Palestinians with Israeli citizenship, who are conferred second-class legal status inferior to that of Jewish-Israeli citizens, who, by contrast, are granted "Jewish nationality" and benefit from "national rights".[41] Palestinians with Israeli citizenship receive inferior services, are subjected to discriminatory and restrictive zoning laws, face inequalities in their access to jobs, and are only superficially

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[34] Haidar Eid, "On Gaza and the horror of the siege," *Mondoweiss* (25 May 2017), at: <https://mondoweiss.net/2017/05/gaza-horror-siege/>; Associated Press, "Israel used 'calorie count' to limit Gaza food during blockade, critics claim," *The Guardian*, (17 October 2013), at: <https://www.theguardian.com/world/2012/oct/17/israeli-military-calorie-limit-gaza> [Both accessed on 7 January 2022].

[35] "Israel forced to release study on Gaza blockade," *BBC News* (17 October 2012), at: <https://www.bbc.com/news/world-middle-east-19975211>; Haaretz Exclusive 2,279 Calories per Person: How Israel Made Sure Gaza Didn't Starve State forced to release 'red lines' document," *Haaretz* (217 October 2002), at: <https://www.haaretz.com/.premium-israel-s-gaza-quota-2-279-calories-a-day-1.5193157>; Coordination of Government Activities in the Territories, "Food Consumption in the Gaza Strip – Red Lines," 1 January 2008, at: <https://www.haaretz.com/resources/Pdf/red-lines.pdf> [All accessed on 7 January 2022].

[36] "Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory: Report of the UNCTAD Secretariat," TD/B/62/3, 6 July 2015, pp. 12, 15, at: <https://unctad.org/en/PublicationsLibrary/tdb62d3_en.pdf> [Accessed on 7 January 2022].

[37] "More than one million people in Gaza – half of the population of the territory – may not have enough food by June," *UNRWA* (13 May 2019), at: <https://www.unrwa.org/newsroom/press-releases/more-one-million-people-gaza-%E2%80%93-half-population-territory-%E2%80%93-may-not-have> [Accessed on 7 January 2022].

[38] United Nations ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid*, p. 37, at:<https://oldwebsite.palestine-studies.org/sites/default/files/ESCWA%202017%20%28Richard%20Falk%29%2C%20Apartheid.pdf> [Accessed on 7 January 2022].

[39] *Ibid.*, p. 37–38

[40] Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 (hereinafter 'Hague Regulations'), Articles 23(g), 46, and 56; UNGA, Res. 194 (III), 11 December 1948, UN Doc A/RES/194 (III), para. 11. See also Francesca P Albanese and Lex Takkenberg, Palestinian Refugees in International Law (Oxford University Press 2020) 350. Salman Abu-Sitta, op. cit., p. 197; Susan M Akram, 'Myths and Realities of the Palestinian Refugee Problem: Reframing the right of return' in Susan M Akram, Michael Dumper, Michael Lynk, and Iain Scobbie (eds), International Law and the Israeli-Palestinian Conflict: A rights-based approach to Middle East peace (Routledge 2011) 30.

[41] See Adalah, "Israeli Supreme Court refuses to allow discussion of full equal rights & 'state of all its citizens' bill in Knesset," (30 December 2018), p.4, at:<https://www.adalah.org/en/content/view/9660> [Accessed on 7 January 2022].

represented in the Israeli Parliament, as political parties are barred by Israel's Basic Laws from challenging the racial character of the State.[42]

3. Palestinians living in occupied East Jerusalem, who carry a revocable "permanent residency" status due to which they face the incessant threat of forced evictions, house demolitions, residency revocations, and other policies and practices aimed at maintaining an Israeli-Jewish demographic majority in the city, as outlined in Israel's racist master plans for Jerusalem.[43]
4. Palestinians living in the occupied West Bank, excluding East Jerusalem, and in the Gaza Strip, are subjected to the most apparent form of apartheid as defined by the Apartheid Convention. This is because Israel has instituted in the same territory two distinct legal regimes for Palestinians and Israeli Jewish settlers – respectively subject to military law and civil law.[44]

Notably, fragmentation and separation are also widespread phenomena even within Palestinians living in the OPT. A blatant example of Israel's intent to separate and divide Palestinians and re-engineer the demographics of the entire Palestinian population is the 15-year illegal air, sea, and land blockade and closure of the Gaza Strip, which constitutes collective punishment, prohibited under international humanitarian law (IHL).[45]

In addition to this, Israel has also imposed severe restrictions on freedom of movement and residence to Palestinians on both sides of the Green Line, preventing Palestinians from different 'domains' to meet, gather, share about their common culture, or exercise any collective rights. Materialised by measures such as the closure Gaza Strip, the illegal annexation of East Jerusalem, the construction of the Wall and the *de facto* annexation of parts of the West Bank, the implementation of a racially discriminatory ID system or control over the OPT borders and checkpoints, the physical, political, and judicial fragmentation of the Palestinian people and territory, seriously hinders fundamental rights of the Palestinians, first and foremost their right to self-determination.[46] The Committee on Economic, Social and Cultural Rights (CESCR) highlighted more than two decades ago that Israel's freedom of movement restrictions "apply only to Palestinians and not to Jewish Israeli citizens".[47] Fragmentation, including denial of the right to return and freedom of movement and residence, is *per se* an element of the crime of apartheid under the Apartheid Convention, as "inhuman acts committed for the purpose of establishing and maintaining domination".[48] Moreover, Israel's fragmentation policies are not only functional to maintain its apartheid regime over the Palestinian People as a whole, but also to prevent them from fully exercising their right to self-determination and from exercising their permanent sovereignty over natural resources.

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[42] Israel's state report to CERD (2017) at 4 and para 115.
[43] United Nations ESCWA Report *op.cit.*, p. 5. *See also* Al-Haq, BADIL, HIC-HLRN, and CIHRS, Joint Submission, *op.cit.*, pp. 13–16.
[44] United Nations ESCWA Report *op.cit.*, p. 5. See also Article 49, Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287.
[45] ICRC, IHL Database, Customary IHL Rule 103: Collective Punishments, at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule103> [Accessed on 7 January 2022].
[46] Including their rights to family life, choice of residence and spouse, adequate housing and adequate standard of living.
[47] CESCR, UN Doc. E/C.12/1/Add.27, op. cit., para. 17.
[48] Article II(c), Apartheid Convention.

Against this backdrop, and in accordance with the mandate of the Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, this submission focuses on how the Israeli conduct of its prolonged occupation of the Palestinian territory is, in fact, in breach of the prohibition against apartheid in international law. Section (0) of this submission proceeds to discuss the applicable legal framework, including the interplay in practice between the rules of the law of occupation and the prohibition of apartheid under international law. Further, section (0) illustrates the legal architecture of Israel's apartheid. Subsection (3.a) shows how Israel has been entrenching and maintaining its apartheid regime through its occupation practices. Consequently, while subsection (3.b) illustrates how the Israeli occupation's land and property policies and practices serve to cement its apartheid, subsection (3.c) demonstrates how its residency and nationality policies and practices serve the same purpose. Finally, this submission concludes and provide recommendations to the UN, including to the Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967. In addition, this submission gives further recommendations to the international community and the International Criminal Court (ICC).

2. The Applicable Legal Framework

A proper answer to the question of whether Israel's conduct of its occupation of the Palestinian territory is in breach of the prohibition against apartheid in international law necessitates discussing the applicable legal framework in such a situation. At the outset, it is important to establish that the prohibition of apartheid applies extraterritorially, particularly in situations of occupation or any other form of control over a territory.[49] Moreover, IHL is not the only relevant and applicable legal framework in situations of occupation. It applies concomitantly with international human rights law (IHRL)[50] as well as other rules of international law, including the prohibition of apartheid.[51] It must be noted that Article 85 of the Additional Protocol I to the Geneva Conventions specifically finds as a grave breach, "practices of ' apartheid ' and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination" when such acts are "committed wilfully and in violation of the Conventions or the Protocol".

As for the question of whether the conduct of any occupation violates the prohibition of apartheid, one must consider the material relationship of domination and oppression that could form the basis of the required purpose of the state to establish and maintain such domination by one racial group over any other racial group. In the context of occupation, three scenarios are envisaged for the Occupying Power's treatment of the racial groups it controls in its territory and those of the territory it occupies: (i) a situation of two racial groups within the occupied territory, both protected persons; (ii) a situation of two racial groups within the occupied territory, one is a group of protected persons and the other does not fall within the group of protected persons; or (iii) a situation of a racial group within the occupied territory and a racial group within the Occupying Power's territory.

While the first possibility is not applicable in the situation in Palestine, both second and third are. Consequently, in this regard, two scenarios of Israel's treatment of racial groups under its control must be assessed; (i) its treatment of Palestinians (protected persons) compared to its treatment of its illegal settler (not protected persons) within the occupied territory, as well as, (ii) its treatment of the Palestinians (a racial group within the occupied territory) compared to its treatment of its citizens (a racial group within the Occupying Power's territory).

Even though it is understandable that the mandate of the Special Rapporteur only extends to the Palestinian territory occupied by Israel since 1967, the discussion of Israel's treatment of the Palestinians in the occupied territory as compared to its citizens in the 1948 territory is indispensable to properly answer the question at hand. This section, however, discusses the applicable legal framework in such a situation. Firstly, it scrutinizes the prohibition of apartheid in a situation of belligerent occupation. Secondly, it examines the interplay between the

[49] Miles Jackson, 'Expert Opinion on the Interplay between the Legal Regime Applicable to Belligerent Occupation and the Prohibition of Apartheid under International Law' Commissioned by Diakonia IHL Centre (May 2021), p. 14.
[50] Nuclear Weapons Advisory Opinion, para. 25; Wall Advisory Opinion, para. 106; Armed Activities, para. 216. See also HRC, General Comment 36, para. 64; ACHPR, 'General Comment 3, para. 13; ECtHR, Loizidou v Turkey, App. No. 15318/89, 23 March 1995; ECtHR, Al-Skeini v United Kingdom.
[51] Dinstein, The International Law of Belligerent Occupation (2nd ed. 2019) 81. See also Art 85(4)(c) Additional Protocol I.

apartheid and the law of occupation frameworks. Finally, it assesses the aforementioned interplay through addressing the purpose requirement in the prohibition of apartheid and the law of occupation.

a. The Prohibition of Apartheid in Situations of Belligerent Occupation

Article 2(a)-(f) of the Apartheid Convention lists the inhuman acts that amount to the commission of the crimes of apartheid when committed with the purpose of establishing and maintaining domination and systematic oppression by one racial group over another.[52] Further, the Rome State of the ICC defines the crime of apartheid as the commission of any inhumane act in the context of "an institutionalized 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."[53] The position that the prohibition of apartheid does not extend to situations of occupations –because it only applies to the territory of the state– enjoys little if any, support among legal scholars who repeatedly rendered it incorrect.[54] Further, it is accepted that the prohibition of apartheid applies extraterritorially, including in situations of occupation.[55]

It is, therefore, imperative to discuss the interactions between IHL and IHRL, especially in situations of belligerent occupation, and whether they can be considered mutually exclusive regimes of international law. The ICJ confirmed, on several occasions, the ongoing applicability of IHRL in times of armed conflict, including belligerent occupation.[56] In the same vein, the recent General Comment 36 on the Right to Life of the Human Rights Committee suggests that "[l]ike the rest of the Covenant, article 6 continues to apply also in situations of armed conflict to which the rules of [IHL] are applicable, including to the conduct of hostilities."[57] Moreover, Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) explicitly prohibits apartheid stipulating 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."[58] Similar positions have been made by the African Commission on Human and Peoples' Rights in respect of Article 4 of the African Charter.[59] Moreover, the case-law of several international human rights courts, including the European Court of Human Rights (ECtHR) and Inter-American Court of Human Rights (IACHR) affirmed the same position concerning their own constitutive instruments.[60]

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[52] UNGA, International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973, A/RES/3068(XXVIII).
[53] Article 7(2)(h) of the Rome Statute.
[54] Miles Jackson, op.cit., p. 16.
[55] *Ibid*.
[56] Nuclear Weapons Advisory Opinion, para. 25; Wall Advisory Opinion, para. 106; Armed Activities, para. 216.
[57] General Comment 36, para. 64.
[58] Article 3, ICERD.
[59] General Comment 3, para. 13.
[60] See *e.g.*, ECtHR, Loizidou v Turkey, App. No. 15318/89, 23 March 1995; ECtHR, Al-Skeini v United Kingdom; ECtHR, Hassan v United Kingdom, App. No. 29750/09, 16 September 2014; IACHR, Abella v Argentina, Report No. 55/97, Case No. 11.137, 18 November 1997.

It is therefore clear that the applicability of IHL in a situation does not, in any way, categorically exclude the applicability of other rules of international law, particularly the customary rules. Such understanding is reflected in the ICJ's Nuclear Weapons Advisory Opinion when it confirmed that the general customary prohibition of genocide applies and continue to bind states even in times of armed conflict. As Jackson accurately concludes "[t]he same applies, without doubt, to the customary prohibition of apartheid binding states in international law."[61] This is also in line with API's listing of the practices of apartheid as a grave breach in its article Art 85(4)(c). Thus, in the words of Dinstein: "Irrefutably, the inhabitants of occupied territories are in principle entitled to benefit from the customary *corpus* of human rights that coexists with the law of belligerent occupation."[62]

There is a claim that in case of any substantive overlap between IHL and IHRL, the former, as the *"lex specialis"* body of law*,* simply prevails by way akin to that of *in toto* displacement of the later.[63] This view enjoys little, if any, support among international law scholars. As Jackson notes, "[i]n broad terms, specific rules may entail in a certain case nothing more than the particular elaboration of general standards of conduct."[64] Further, as the International Law Commission noted "[t]he specific and the general point, as it were, in the same direction."[65]

Where different applicable legal norms appear to be conflicting, the principle of legal reasoning *lex specialis* suggests that the general rule should be interpreted in a way that avoids the eventual putative conflict with the more specific rule.[66] Although the question of the practical interplay of the law of occupation and the prohibition of apartheid –thus the consideration of *lex specialis*– requires a case-by-case analysis, this submission argues against any rigid doctrinal interpretation of the concept of *lex specialis*, especially in situations of *prolonged belligerent occupation,* for which such rules of the law of occupation were not, *per se*, intended. Indeed, the rules of the law of occupation were intended for belligerent occupations of temporary nature. The rigid interpretation of the concept of *lex specialis* would somewhat allow occupying powers, Israel in this case, to further instrumentalise the law of occupation framework to entrench and maintain its apartheid regime. For example, Israel as an Occupying Power in the OPT has been adopting a policy akin to that of pick-and-choose of the rules of international (humanitarian) law. For instance, while it accepts the applicability of IHL provisions that entail different treatment (which, in a way, rationalise and downsize its apartheid practices), it rejects the applicability of other IHL provisions that do not serve its apartheid regime's settler-colonial ambition in Palestine, *e.g.*, provisions prohibiting transferring its own population to the territory it occupies, *i.e.*, its colonial settlements activities and expansion in the OPT.

[61] Miles Jackson, op.cit., p. 16.
[62] Dinstein, The International Law of Belligerent Occupation (2nd ed. 2019) 81.
[63] Bianchi, 'Dismantling the Wall: The ICJ's Advisory Opinion and its Likely Impact on International Law' (2004) 47 GYIL 343.
[64] Miles Jackson, op.cit., p. 16.
[65] Report of the Study Group of the International Law Commission, 'Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', A/CN.4/L.682, 13 April 2006, para. 56.
[66] Milanović, 'A Norm Conflict Perspective' (2010) 476. See also Frowein, 'The Relationship between Human Rights Regimes and Regimes of Belligerent Occupation,' (1998) 28 IYHR 1, 9-10; Krieger (2006).

b. The Interplay Between the Apartheid and Occupation Frameworks

At the outset, it is imperative to reiterate that the question of the practical interplay of the law of occupation and the prohibition of apartheid requires a case-by-case analysis. In general, the practical interplay between the inhuman acts in the prohibition of apartheid and the law of occupation is not captured through a single form of relationship. Rather, as described by Miles Jackson, four distinct forms of relationships between the inhuman acts in the prohibition of apartheid and the law of occupation must be distinguished, namely, parallel protection, complementary protection, conflict avoidance through interpretation, and conflict.[67]

Firstly, the relationship between the inhuman acts in the prohibition of apartheid and the law of occupation may be that of *parallel protection*. Article 43 of the Hague Regulations stipulates that the Occupying Power has a core duty to "take all the measures in [its] power to restore, and ensure, as far as possible, public order and safety."[68] This general duty –often described as a form of trusteeship– of the Occupying Power is consonant with the prohibition of apartheid which aims at preventing the imposition of a regime of domination and oppression. Particularly, the duty to prevent the imposition of a regime of racial discrimination and oppression. For certain acts, overlapping proscriptions may exist between the prohibition of apartheid and the law of occupation.[69] In such cases, the meaning of such proscriptions and duties for both the prohibition of apartheid and the law of occupation may be derived from IHRL.[70] Thus, when the duty or prohibition set out by the law of occupation is consonant with the prohibition of apartheid, in particular its inhuman acts. Compliance with the first thus entails compliance with the latter.

Secondly, the inhuman acts in the prohibition of apartheid may also provide *complementary protection* to that of the law of occupation. In particular, political rights are not specifically protected by the law of occupation but are referred to by the prohibition of apartheid. As, by contrast, IHRL provides further details about their meaning, political rights should mainly be interpreted in accordance with this framework. While it is worth noting that the occupant might impose for security reasons certain restrictions on these rights due to their limitable and derogable nature, requirements for doing so are stringent.[71]

Thirdly, in some cases, specific rules in the law of occupation may guide the *interpretation* of the inhuman acts of the prohibition of apartheid to avoid conflict. However, an inference of purpose might be required and influence the analysis, where it can be demonstrated that the acts are conducted for the purpose of maintaining domination and systematic oppression of the racial group.

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[67] Miles Jackson, op.cit., p. 16

[68] International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907.

[69] Miles Jackson, op.cit., fn. 130, p. 19.

[70] Krieger, 'A Conflict of Norms: The Relationship between Humanitarian Law and Human Rights Law in the ICRC Customary Law Study' (2006) 11 JCSL 265.

[71] HRC, General Comment 29, [3]: 'The Covenant requires that even during an armed conflict measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation.'

Finally, there may be conflicts between the inhuman acts of the prohibition of apartheid and the law of occupation. In some cases, the conflict might be avoided through derogations. When the demanding conditions for derogations are not met, two options exist. The first consists in understanding the applicability of the rule of the law of occupation as conditioned to the overall purposes of the occupant; the action that is permitted by the law of occupation but carried out pursuant to an overall purpose of racial domination would be deemed impermissible.[72] A second option would be to displace the conflicting permissible provision in the law of occupation based on the peremptory nature of the prohibition of apartheid.[73]

c. The Purpose Requirement – Interplay in Practice

Regarding the purpose requirement of apartheid, there are several possibilities of material relationships of domination and oppression in situations of occupation. First, there might be different racial groups within the category of protected persons under IHL, the occupant aiming at imposing domination of one group over the other(s).[74] Secondly, there might also exist a community within the occupied territory that is not composed of protected persons under IHL, *e.g.,* Nazi German colonists in the context of the Nazi German occupation of other European territories during World War II,[75] and Zionist colonist settlers in the context of the Israeli occupation of the Palestinian territory. Two questions arise as regards the prohibition of apartheid: whether the two groups, constituted of protected persons and non-protected persons, might be deemed 'racial groups'; and whether the groups might be classified based on nationality instead of race.[76] Worth noting that differences in treatment based on nationality can entail a regime of domination by one racial group over another.[77] Further, the Committee on the Elimination of Racial Discrimination (CERD) proposes that membership of a particular racial or ethnic group shall, "be based on self-identification of the individual concerned".[78]

Nevertheless, modern history provides us with examples where colonial Occupying Powers imposed apartheid regimes over the protected population of the territory it occupies. The post-mandate occupation of Namibia by Apartheid South Africa is a clear example of that. In this context, in its advisory opinion on the legal consequences for South Africa's occupation in Namibia, the ICJ clearly stated that:

> "[T]he Court finds that no factual evidence is needed for the purpose of determining whether the policy of apartheid as applied by South Africa in Namibia is in conformity with the international obligations assumed by South Africa under the Charter of the United Nations. In order to determine whether the laws and decrees applied by South Africa in Namibia, which are a matter of public record, constitute a violation of the

[72] Miles Jackson, op.cit., p. 23.
[73] Miles Jackson, op.cit., paras. 43-59.
[74] *Ibid*.., para. 63.
[75] Article (49)(6) of the GCIV was influenced by different experiences during WWII where Germany as an occupying power transferred part of its own population into the territories it occupied in order to annex those territories, which was called in Nuremberg International Military Tribunal (IMT) the "*War Crime of Germanization of Occupied Territories*" and those who were transferred were called "*German colonists*". See Trial of the Major War Criminals, 14 November 1945-1 October 1946, Nuremberg, 1947, Vol. 1, p. 63-65. Also, see J. Pictet, 'Commentary to the GC IV', ICRC, (Geneva 1958)283.
[76] Miles Jackson, *op.cit.*, para. 65.
[77] *Ibid*.
[78] PLO-NAD, "It is Apartheid: The Reality of Israel's Colonial Occupation of Palestine", 8 June 2021, p 16, at:<http://www.dci.plo.ps/en/article/18496/PLO-NAD-It-is-Apartheid--The-Reality-of-Israel> [Accessed on 7 January 2022].

> purposes and principles of the Charter of the United Nations, the question of intent or governmental discretion is not relevant; nor is it necessary to investigate or determine the effects of those measures upon the welfare of the inhabitants."[79]

In any way, it has to be always borne in mind that the prohibition of apartheid is a prohibition of any *inhuman* acts when committed with the purpose of establishing and maintaining domination and systematic oppression by one racial group over another. Similarly, although the law of occupation may entail different treatment of the two groups, it also entails an absolute prohibition of any *inhuman* acts against the protected persons.[80] Further, Article 84(5) of 1977 Additional Protocol I explicitly prohibits apartheid.[81] Therefore, the commission of *inhuman* acts –with the purpose of establishing and maintaining domination and systematic oppression by one racial group over another– in the context of occupation incontrovertibly violates the prohibition of apartheid under international law and constitutes a crime against humanity pursuant to Article 7(j) of the Rome Statute of the ICC.

[79] ICJ, "Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding UNSC Res. 276 (1970). I.C.J. Reports, 1971, p. 16.
[80] Art 27 GCIV.
[81] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3, at: <https://www.refworld.org/docid/3ae6b36b4.html> [accessed 7 January 2022]

3. The Legal Architecture of Apartheid

Israel's Basic Law: the Nation-State of the Jewish People of 2018 unequivocally proclaims the racial superiority of the Jewish people.[82] Implicitly, the Law acknowledges the inferior status conferred to non-Jewish people, in particular Palestinians, and the associated regime of systematic oppression and domination over the indigenous Palestinian people. The Nation-State Law is the culmination of an Israeli decades-long process of elaborating and strengthening the legal architecture of apartheid.

Since its establishment as a State, Israel has established and maintained its apartheid regime through a complex framework of laws that codifies the superior status of its Jewish citizens and the systematic discrimination against non-Jewish individuals, mainly Palestinians. This section outlines the key legal instruments that institutionalize and enables Israel's regime of apartheid imposed upon the indigenous Palestinian population in Israel, and the transposing of such laws and policies into military orders to take effect in the OPT.

a. Maintaining Apartheid Through Occupation

The law of occupation grants the Occupying Power wide authority over the occupied territory and its population to fulfil its duties, in particular, the administration of the occupied territory as laid out in Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention. With regards to its legislative powers, the Occupying Power shall, in principle, respect the laws in force in the country, unless they constitute a threat to the security of its own armed forces or an obstacle to the application of IHL. [83]

Aside from the broad grant of administrative powers, the Occupying Power is permitted to treat differently (1) protected persons and non-protected persons within the occupied territory, and (2) its own nationals and the population of the occupied territory. Although the protected population is subject to the jurisdiction of the Occupying Power as regards the fulfilment of their most basic rights, the Occupying Power is prevented from manifestly re-ordering the institutions and laws of the occupied territory which it must respect "unless absolutely prevented", and thereby is prevented from reordering the occupied territory to institute an apartheid regime.[84]

Several military orders successively issued upon occupation of the West Bank in 1967 constitute the core legal basis for deprivation of Palestinians' civil rights and entrenchment of the apartheid regime. In June 1967, Israel promulgated a military order permitting the application of the Defense (Emergency) Regulations, which were enacted in 1945 during the British Mandate. These regulations define "unlawful association" as "anybody of persons" which "advocates, incites or encourages […] the overthrow by force or violence", "hatred or

[82] For more details and examples see section (3.c.i) below.
[83] Hague Regulations, Article 43; Fourth Geneva Convention, Article 64; Jean Pictet (ed), The Geneva Conventions of 12 August 1949: Commentary, (IV) Geneva Convention Relative to the Protection of Civilian Persons in Time of War (ICRC 1958) 335–37; 'Expert Meeting - Occupation and Other Forms of Administration of Foreign Territory' (ICRC 2012), 56-59.
[84] Article 43, Hague Regulations (1907); Article 47, Fourth Geneva Convetion (1949).

contempt of, or the exciting of disaffection", "the destruction of or injury to property", and "acts of terrorism" against the authorities.[85] They also impose censorship,[86] govern detention and deportation,[87] and empower the authorities to destroy private properties,[88] impose curfew and declare any area as a closed area.[89]

Military Order 101, issued in August 1967, criminalizes activities such as participating in unpermitted political gatherings –punishable by sentences of up to ten years–, printing and disseminating political material, displaying flags and political symbols without army approval, or influencing public opinion, which is considered "political incitement".[90] Since 1967, the Israeli military authorities have extensively used the Defense (Emergency) Regulations to demolish houses and properties, forcibly deport Palestinians and limit their right to freedom of movement,[91] and have prosecuted and detained Palestinians under both the Defense (Emergency) Regulations and Military Order 101.[92]

In 2010, Military Order 1651 codified into the so-called Criminal Code twenty military orders previously issued relating to the arrest, detention and prosecution of an individual. Among others, Military Order 1651, replacing Military Order 1591, provides the basis for administrative detention orders by empowering military commanders to detain an individual for up to six-month renewable periods, without limit, if they have "reasonable grounds to presume that the security of the area or public security requires the detention".[93] It also punishes any individual attempting to influence public opinion "in a manner which may harm public peace or public order" with a 10-year sentence.[94] In accordance with Military Order 1651, most Palestinians detained in the West Bank are tried in military courts, where they face unfair trials and a conviction rate of almost 100 percent.[95] The judicial system established by the Israeli Occupying Power in the OPT is further detailed in Section (3.c.iii) below. Therefore, vaguely worded military orders have been used to monitor Palestinians' organizations, impose censorship, quash demonstrations, and arrest and administratively detain journalists, human rights defenders, and other activists for protesting or criticizing Israeli practices with the clear intention of preventing unified Palestinian resistance.[96]

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[85] Defense (Emergency) Regulations' (1945), at <https://web.archive.org/web/20150720054421/https://www.israellawresourcecenter.org/websitematerials/mapsg/mapsg1der1945.html> [Accessed on 7 January 2022], [Defense (Emergency) Regulations] Regulation 84.
[86] Defense (Emergency) Regulations, Regulation 94.
[87] Defense (Emergency) Regulations, Regulations 110-112.
[88] Defense (Emergency) Regulations, Regulation 119.
[89] Defense (Emergency) Regulations, Regulations 124-25.
[90] Addameer, 'Israeli Military Orders Relevant to the Arrest, Detention and Prosecution of Palestinians' (July 2017), at:<www.addameer.org/israeli_military_judicial_system/military_orders> [Accessed on 7 January 2022]; Human Rights Watch, 'Born without Civil Rights, Israel's Use of Draconian Military Orders to Repress Palestinians in the West Bank' (November 2019) 1.
[91] B'Tselem, 'Defense (Emergency) Regulations' at:<www.btselem.org/legal_documents/emergency_regulations> [Accessed on 7 January 2022].
[92] Addameer (n 90).
[93] Addameer (n 90).
[94] HRW (n 90).
[95] *Ibid*.; Chaim Levinson, 'Nearly 100% of All Military Court Cases in West Bank End in Conviction, Haaretz Learns,' (*Haaretz*, 29 November 2011) <www.haaretz.com/1.5214377> accessed 4 January 2022.
[96] HRW (n 90)1-2.

Israel has also used its legislative powers granted by the law of occupation to subject Palestinians to dispossession and forced displacement on the pretext of security reasons, as subsections (3.b) and (3.c) below describe with details. In particular, the Israeli military authorities have repeatedly invoked the notion of "necessities of war" originating from the law of armed conflict,[97] and "necessities of the army of occupation"[98] and "military operations"[99] to implement in the OPT its discriminatory policy of extensive demolitions of Palestinian homes and land and reinforce the Israeli oppression and domination over the Palestinian people.[100] As an Occupying Power, Israel has violated its obligations under the Hague Regulations, particularly in relation to the protection of the land and property of the occupied population, to establish a discriminatory framework that enables it to maintain its apartheid regime imposed upon the indigenous Palestinian population.

More generally, Israel complies with the provisions of the law of occupation that serve its apartheid regime while constantly setting aside other rules such as the prohibition on population transfers,[101] which constitute a war crime under Article 8(2)(a)(vii) of the Rome Statute. Most notably, Israel treats differently the Palestinian protected population, and the non-protected persons, namely Israeli settlers, and imposes two distinct legal regimes on the two groups. As a result, Palestinians are subject to inferior legal status to Israeli citizens and settlers, face severe discrimination and suffer from grave violations of their fundamental rights guaranteed by international law, as the following subsections further explain.[102]

Finally, the Israeli authorities have constantly taken advantage of the effective control that the Israeli army exerts over the OPT to impose a coercive environment upon the indigenous Palestinian people. In particular, Israel has physically fragmented the Palestinian territory, through the unlawful Annexation Wall, the network of physical barriers within the West Bank – which includes checkpoints, military watchtowers, surveillance systems, alongside the permit regime –, and the full siege and military closure of the Gaza Strip imposed since 2007.[103] The physical fragmentation of the Palestinian territory ensures the division of the Palestinian people into four administrative domains, both contributing to the entrenchment of the apartheid regime.

b. Land and Property Policies and Practices

Israel's law, policy and implementing institutions in the housing and land sectors exemplify the common strategies of other colonial and apartheid regimes to eliminate indigenous peoples physically and/or spatially from their habitats and coveted lands by various types of force. Those former systems have involved a composite of acts now classified and prohibited in

[97] Article 23(g), Hague Convention (1907).
[98] Article 52, Hague Regulations (1907).
[99] Article 53, Hague Regulations (1907).
[100] B'Tselem, 'Demolition for Alleged Military Necessity' (11 November 2017) <https://m.btselem.org/razing> [Accessed on 7 January 2022]; Adalah, 'Challenging the Israeli Army's Use of the "Military Necessity" Exception to Justify its Home Demolitions Policy' <www.adalah.org/en/content/view/6711> [Accessed on 7 January 2022].
[101] Fourth Geneva Convention, Article 49.
[102] See Section 3(b) and 3(c) below.
[103] Susan Power, 'The Legal Architecture of Apartheid' (*AARDI*, 2 April 2021) at:<https://aardi.org/2021/04/02/the-legal-architecture-of-apartheid-by-dr-susan-powers-al-haq/> [Accessed on 7 January 2022].

contemporary law among the most serious international crimes of apartheid[104] and population transfer.[105]

While other examples of apartheid arose from already-recognized states, Israel remains unique in that the tools of apartheid are enshrined in its founding instruments and proto-state institutions. Those predate the proclamation of the SoI in 1948, the same year as Israel's then close ally, South Africa, formalized apartheid under the Afrikaner ethnic National Party. However, those colonial organizations survive as Israel's 'national institutions' with their original purpose to direct policy in multiple sectors with the tools and objectives that meet the international law definition of apartheid.

One feature of Israel's apartheid housing, land and natural resource development policy distinct from southern Africa's racist colonial regimes is the sheer scale and objective of the removals of the indigenous people, first by expelling the majority of the indigenous Palestinians, while implanting religiously and racially distinct settlers loyal to the colonial project in their place. While population transfer—with these push-and-pull factors—was being codified[106] and eventually prosecuted[107] as a war crime and crime against humanity, Israel's civilian Zionist institutions were plotting and perpetrating the same serious crime within their growing sphere of influence in Palestine, including during the British Mandate and through government bureaus in Western capitals. Despite emerging IHL prohibitions, this violent form of spatial segregation and fragmentation of the indigenous Palestinian people has been carried out also as the military doctrine of Israeli forces since 1948 by targeting Palestinian homes, shelters and shelter seekers.[108] In a complementary fashion, Zionist institutions and persecuting military operations

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[104] Convention on Punishment and Prevention of the Crime of Apartheid (1973); Rome Statue of the International Criminal Court, defined as a crime against humanity in Article 7, and as a war crime in Article 8 (1998).

[105] Rome Statue op. cit., defined as a crime against humanity in Article 7, and as a war crime in Article 8 (1998). *See also* "The human rights dimensions of population transfer, including the implantation of settlers," E/CN.4/Sub.2/1993/17, 6 July 1993, at:<http://www.refworld.org/docid/3b00f4194.html> [Accessed on 7 January 2022]

[106] Resolution on German War Crimes (London Charter) (12 January 1942), *Inter-Allied Review* (15 February 1942), at:<https://www.legal-tools.org/doc/bb0570/pdf/>; Polish Cabinet in Exile (17 October 1942), in Louise W. Holborn, ed., *War and Peace Aims of the United Nations: 1 September 1939 – 31 December 1942* (Boston, World Peace Foundation, 1943), p. 462; Statue of the International Military Tribunal, Nuremberg, at:<https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf>; Agreement for the prosecution and punishment of the major war criminals of the European Axis, signed at London 8 August 1945, at:<https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf>; Statue of the International Military Tribunal of the Far East (19 January 1946), at:<https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.3_1946%20Tokyo%20Charter.pdf>; draft Code of Crime against the Peace and Security of Mankind (1991), at:<https://legal.un.org/ilc/guide/7_4.shtml>; see also Aun .S. Khasawneh and Ribot Hatano, The human rights dimension s of population transfer, including the implantation of settlements, A/CN.4/2/1993/17 (6 July 1993), at:<https://undocs.org/pdf?symbol=en/E/CN.4/Sub.2/1993/17>; Ghislain Poissonnier and Eric David, "Israeli Settlements in the West Bank, a War Crime ?" *Revue des droits de l'homme*, N° 17 (2020), at:<https://journals.openedition.org/revdh/7613> [All accessed on 7 January 2022].

[107] See the infamous cases of Nuremberg Tribunal defendants Alfred Rosenberg and Alfred Jodl. Avalon Project, *Nazi Conspiracy and Aggression, Volume 2, Chapter XVI, Part 7, Alfred Jodl*. Available at:<http://avalon.law.yale.edu/imt/chap16_part07.asp> and *Judgement: Sentences*, at:<http://avalon.law.yale.edu/imt/judsent.asp>; Avalon Project, *Trials of the War Criminals before the Nuerenberg Military Tribunals Under Control Council Law No. 10, at:*<http://avalon.law.yale.edu/imt/indict4.asp> [Both accessed on 7 January 2022].

[108] "Targeting Homes, Shelters and Shelter Seekers during Operation Cast Lead in the Context of Israeli Military Practice" submission of the Housing and Land Rights Network – Habitat International Coalition to the UN Fact-finding Mission on the Gaza Conflict, 29 July 2009, at:<http://www.hic-mena.org/documents/Submission.pdf> [Accessed on 7 January 2022].

have combined to ensure an unbroken pattern of dispossession and transfer under Jewish domination over all of historic Palestine until today.

Since the beginning, the WZO/JA have carried out public functions, including the direction and implementation of human-settlement policy[109] with funding shared[110] with the Government of Israel since 1948.[111] Certain WZO/JA affiliates, especially the JNF, also carry out public functions in housing, development and land administration based on principles of 'racial' discrimination and separation to favour Jewish persons.

The consistent WZO program and strategy have pursued 'agricultural colonization [of Palestine] based on [exclusive] Jewish labour' and land acquisition, or 'redeeming' (finance and acquisitions) of colonizing Palestine, the 5th Zionist Congress (1901) founded the JNF as a subsidiary of the WZO and its eventual sister organization, the JA. In 1905, JNF began purchasing lands in Palestine.

The JNF's charter explicitly restricts its benefits "whether directly or indirectly, to those of Jewish *race* or descent"[112] (emphasis added). Its chartered purpose and "primary objective" were—and remain—to "acquire lands in Palestine"[113] and to "promote the interests of Jews in the prescribed region."[114]

In decoding Zionist law and policy of housing and land administration in the SoI, any reference to the principles of these parastatal institutions[115] in public functions means a statutory obligation to discriminate against non-Jews. The JNF charter also stipulates that "upon [its]

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[109] The Basle Program of the First Zionist Congress affirmed that the Zionist Organization, like Zionism, in general, "aims at establishing for the Jewish people a legally assured home in Palestine. For the attainment of this purpose, the Congress considers the following means serviceable: 1. The promotion of the settlement of Jewish agriculturists [farmers], artisans, and tradesmen in the Land of Israel; 2. The federation [unified organisation] of all Jews into local or general groups, according to the laws of the various countries; and 3. The strengthening of the Jewish feeling and consciousness [national sentiment and national consciousness]. Preparatory steps for the attainment of those governmental grants which are necessary to the achievement of the Zionist purpose. First Zionist Congress, at <http://www.wzo.org.il/home/movement/first.htm>; Basle Program, at <http://www.wzo.org.il/home/movement/first.htm> [Accessed on 7 January 2022].

[110] Amy Teibel, "Lawsuit brings murky West Bank land deals to light," *Associated Press* (20 June 2009), at:<https://www.sandiegouniontribune.com/sdut-ml-israel-disputed-deal-062009-2009jun20-story.html> [Accessed on 7 January 2022]. In 2014, the Settlement Division received NIS130m (US$34.7m) from Israel, see Nimrod Bousso, "Israel to Allocate $35m to World Zionist Organization's Settlement Division," *Haaretz* (23 October 2014), at: Israel to Allocate $35m to World Zionist Organization's Settlement Division.

[111] Since June 1967, over 60,000 Israeli citizens have settled in some 100 locations, including East Jerusalem in clear violation of article 49(6) of the Fourth Geneva Convention. These settlements continue. The World Zionist Organization, in 1980, offered a plan calling for expenditure of $187 million to expand existing settlements and create new ones. It suggests the creation of 70 new settlements that would increase the Jewish population to 100,000. David K. Shipler, *The New York Times Magazine*, 6 April 1980; Nimrod Bossou, "Israel to Allocate $35m to World Zionist Organization's Settlement Division," *Haaretz* (23 October 2014), at:<https://www.haaretz.com/.premium-what-will-wzo-do-with-nis-130m-1.5318862>; Peace Now, "Involvement of KKL-JNF and the Settlement Division in the Settlements," 10 February 2020, at:<https://peacenow.org.il/en/involvement-of-kkl-jnf-and-the-settlement-division-in-the-settlements> [Both accessed on 7 January 2022].

[112] That is "to purchase, acquire on lease, or in exchange, or receive on lease or otherwise, lands, forests, rights of possession, easements and any similar rights, as well as immovable properties of any class…for the purpose of settling Jews on such lands and properties." Keren Kayemet l'Yisrael ("Permanent Fund for Israel," a.k.a. Jewish National Fund) Memorandum of Association, Appendix "B" (published in y.p. 1952 no. 354), Article 3(iii).

[113] Emphasis added. JNF Memorandum of Association, dated 1901, Article 3(a), and dated 1952, Article 3(i).

[114] *Ibid*., Article 3(g) and Article 3(vii), respectively.

[115] For example, "applying the principles of the Jewish Agency," or "consistent with the principles of the JNF in regards to its lands," etc.

dissolution…any properties whatsoever…shall be transferred to the Government of Israel,"[116] further affirming its public and state functions.

The close working relationship of the WZO/JA and JNF to the British Mandate Administration emerged as a shadow government in Palestine, leading up to the SoI's 1948 proclamation.[117] Those specialized colonial, apartheid and population-transfer institutions were soon fused to SoI by a series of legislative acts of Knesset (parliament), including:

- World Zionist Organization-Jewish Agency (Status) Law (1952);
- Keren Kayemet Le-Israel [Jewish National Fund] Law (1953);
- Covenant with Zionist Executive (1954, amended 1971);
- Basic Law: Israel Lands [People's Lands] (1960);
- Agricultural Settlement Law (1967).

The WZO/JA and JNF remain pillars of Israel's discriminatory systems of housing, urban planning and development, and land administration. They advise, draft, promote and implement laws and policies that discriminate—not explicitly, but with deference to their apartheid charters—against the indigenous Palestinian Arab population of Israel, comprising 20 percent of SoI's citizens. They likewise discriminate materially against the roughly five million Palestinians in the OPT, as well as today's seven million dispossessed and dispersed Palestinian refugees and internally displaced persons. Israel does so, by continuing to administer and transfer those population-transfer victims' properties confiscated during and after its largely JNF-funded war and ethnic cleansing of much of Palestine in 1947–49.[118]

i. Palestinian Refugee Land and Housing

The *Nakba* (catastrophe), beginning with the events of 1947–48, involved Zionist forces conducting 31 calculated massacres of some 5,000 Palestinians[119] in strategically located Palestinian villages to spread terror throughout the indigenous Palestinian population,[120] and the subsequent depopulation and razing of at least 531 Palestinian villages.[121] This amounted to some 154–156,000 demolished Palestinian homes,[122] among an untold number of other

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[116] *Ibid*., Article 6.
[117] Report of the Anglo-American Committee of Inquiry, in Sally V. Mallison and W. Thomas Mallison, *The Palestine Question in International Law and World Order* (London: Longman, 1986), p. 100.
[118] Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oxford: One World, 2007).
[119] Mark Levene, review of Pappé, *The Ethnic Cleansing of Palestine*, *Journal of Genocide Research*, Vol. 9, No. 4 (2007), pp. 675–80, esp. 677–80, at:<https://www.tandfonline.com/doi/abs/10.1080/14623520701644465?journalCode=cjgr20> [Accessed on 7 January 2022].
[120] *Ibid.,* p. 258.
[121] Salman Abu Sitta, *From Refugees to Citizens at Home* (London: Palestine Land Society, 2001), "Location of Palestinian Villages," at:<https://www.plands.org/en/books-reports/books/from-refugees-to-citizens-at-home/location-of-palestinian-villages>. Zochrot cites: "678 Palestinian localities destroyed by Israel during the Nakba: 220 of them had fewer than 100 inhabitants; 428 had between 100 and 3,000; 30 towns and cities had more than 3,000 Palestinian inhabitants. 22 Jewish localities that were destroyed in 1948; some were rebuilt that same year." Eitan Bronstein Aparicio, "Mapping the Destruction," *Zochrot* (March 2013), at: <https://www.zochrot.org/en/article/54783> [Accessed on 7 January 2022].
[122] For housing units destroyed in the Nakba, we based the estimate on the number of expelled refugees divided by 5. Using Janet Abu Lughod's reliable figures (770–780K expelled), the resulting estimate would be 154–156K housing units, among other buildings. An absolute minimum round number would be 150,000. The Israeli Committee against Home Demolitions (ICAHD) cites 52,000 units destroyed, "Categories of Home Demolitions," 14 March 2020, at:<https://icahd.org/2020/03/14/categories-of-home-demolitions/> [Accessed on 7 January 2022]. However, this estimate is approximately one-third of the total. Note it took the Israelis 15 years to demolish them all between the 1948 to 1967 wars.

structures. Israeli forces imposed a closed military zone over those localities to prevent refugee return and extended martial law over the surviving Palestinian communities for the next 20 years. JNF subsequently reforested most of those former village sites to cover the crimes.[123]

In January 1949, shortly after the Armistice Agreements were signed, the Government of Israel conferred one million dunams (100,000 ha) of the Palestinian refugees' land and other properties to the JNF and, in October 1950, another 1.2 million dunams (120,000 ha). A JNF spokesperson explained the tactical meaning of these land transfers as ensuring that JNF "will redeem the lands and will turn them over to the Jewish people—to the people and not the state, which in the current composition of the population cannot be an adequate guarantor of Jewish ownership."[124]

In September 1953, the Israeli Custodian of Absentee Properties executed a contract transferring "ownership" of all Palestinian lands under his control to the Israeli Department of Construction and Development (IDCD). The price for these properties was to be retained by IDCC as a loan. Meanwhile, the Custodian conveyed the "ownership" of Palestinian houses and commercial buildings in cities to JNF affiliate Amidar, a quasi-public Israeli company founded to implant settlers,[125] and thus began an unbroken pattern of systemic "race-based" segregation and dispossession to this day. By 1953, those properties had been transferred at least three times, thus hampering the restitution, return and other forms of reparation to which the refugees and internally displaced persons (IDPs) remain entitled.[126]

ii. Nationality vs. Citizenship in Housing

Israel's two-tiered civil status and the corresponding legal provisions are central to the housing and land apartheid practised against the Palestinian people as a whole, but particularly against the surviving Palestinians within the SoI and Jerusalem, as well as in the OPT.

Israeli planning criteria for statutory recognition of villages are not published, but evident in practice. Many long-standing and populous Arab villages in the southern Naqab remain "unrecognized," while Jewish settlements, notably smaller than the legal minimum population criterion, are "recognized" with all rights, privileges and public services provided. With such a

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[123] Irus Braverman, "Planting the Promised Landscape: Zionism, Nature, and Resistance in Israel/Palestine," *Natural Resources Journal*, Vol. 49, No. 2 (spring 2009), pp. 317–65, at:<https://www.jstor.org/stable/24889569?seq=1>; Bill Skidmore, "Canadian charity hides history, destruction of Palestinian villages," *ricochet*, 6 March 2019, at:<https://ricochet.media/en/2531/canadian-charity-hides-history-destruction-of-palestinian-villages?fbclid=IwAR1mj9dxN7uqRtIvqX5kRXqTELD9IX7A6me6GHU1QKb7U1CEgW2eqKNK7eU>; "Greenwashing by the Jewish National Fund, Israel," *Environmental Justice Atlas*, at:<https://ejatlas.org/conflict/greenwashing-by-the-jewish-national-fund-and-trees-as-a-weapon-of-dispossession-israel>; Jesse Benjamin, M.B. Levy, S. Kershnar and M. Sahibzada, eds., *Jewish National Fund – Colonizing Palestine Since 1901*, International Jewish Anti-Zionist Network, *Greenwashing Apartheid: The Jewish National Fund's Environmental Cover Up*, JNF eBook, Vol. 4 (15 May 2011), at:<http://www.ijan.org/wp-content/uploads/2015/10/FINAL-JNFeBookVol4.pdf> [Accessed on 7 January 2022].

[124] Jewish National Fund, Report to the 23rd Congress (1951), pp. 32–33 (emphasis in original), cited in Walter Lehn with Uri Davis, *The Jewish National Fund* (London and New York: Kegan Paul, 1988), p. 108.

[125] Sabri Jiryis, *The Arabs in Israel* (New York: Monthly Review Press, 1976), 77–101; Usama Halabi, "Israeli Law as a Tool of Confiscation, Planning, and Settlement Policy," *Adalah's Review*, Vol. 2 (fall 2000), pp. 7–13, at:<https://www.adalah.org/uploads/Adalah_review_2_Land.pdf> [Accessed on 7 January 2022].

[126] UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of IHRL and Serious Violations of IHL," A/RES/60/147, 21 March 2006, at:<http://www.hlrn.org/img/documents/A_RES_60_147 remedy reparation en.pdf> [Accessed on 7 January 2022].

double standard for official recognition of a human settlement in Israel, it is clear that the operative criterion denying those Palestinian Arab villages their formal status and corresponding rights, including public services, is the resident citizens' lack of "Jewish nationality."[127]

The SoI and parastatal institutions devote considerable resources to establishing and expanding Jewish-only towns and neighborhoods (i.e., settler colonies in the OPT) on claimed "state lands" under Israeli domestic planning law. Planning law and practice embody and apply the discriminatory provisions of the parastatals that determine eligibility for residence and access to housing and land. In local and municipal development, Israel's racist criteria have weaponized the concepts of "social and cultural fabric" and "social cohesion" to exclude indigenous Palestinians from development opportunities.[128] The Absentees Property Law (1950) and Negev Individual Settlements Law (2011) have operated to deny Palestinians housing and land, including properties that Palestinian citizens rightfully own.

The Admissions Committees in Israeli Regional Planning Councils have long operated to provide an additional patina of planning procedure that bans Arabs from housing and land. These bodies ensure a tie-breaking JA majority vote to discriminate against "non-Jewish nationals" in hundreds of communities in Israel to reject housing applicants for their "social unsuitability." In 2009, this customary practice was enshrined in the Admissions Committees Law to prevent Arab citizens from living with Jews and enforce *de facto* housing segregation between Jewish and Arab citizens. Despite 2011 amendments to the law, restricting discrimination, and a Knesset report exposing abuse,[129] the Israeli Supreme Court dismissed numerous petitions challenging the law and discriminatory practice, ruling that the discriminatory nature of the Admissions Committees did not clearly violate constitutional rights.[130]

iii. Unconventional Lawfare

Much of Israel's legislation and jurisprudence does not adhere to the international convention for a modern state. Under Israel's two-tiered civil status of dominant "Jewish nationals" and less-privileged holders of mere citizenship.[131] The Israel Lands Law ("The People's Land") (1960) establishes that lands will be managed, distributed and developed in accord with the principles of the JNF and its apartheid charter. The Israel Land Administration, also established

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[127] Joseph Schechla, "The Invisible People Come to Light: Israel's 'Internally Displaced' and the 'Unrecognized Villages'," *Journal of Palestine Studies* (autumn 2001), pp. 20–31.

[128] This evokes the memory of South African apartheid terminology, whereas South African Prime Minister Daniel Malan is attributed with coining the Afrikaans term "apartheid" in 1944 as state policy of racial segregation between whites and various non-white groups, Minister of Native Affairs Hendrik Verwoerd, appointed in 1950, is considered the architect of operational apartheid, euphemistically claiming it to be a policy of "good neighbourliness." *See* "Apartheid: 'A Policy of Good Neighborliness'," at: <https://fabryhistory.com/2015/05/11/apartheid-a-policy-of-good-neighborliness/> [Accessed on 7 January 2022].

[129] "ועדות קבלה ביישובים קהילתיים בנגב ובגליל," Knesset Research and Information Center report, 2 May 2019, at: <https://www.adalah.org/uploads/uploads/Knesset_research_020519.pdf> [Accessed on 7 January 2022].

[130] Adalah: The Legal Center for Arab Minority Rights in Israel, "Adalah demands Israel cancel illegal 'admissions committees' enforcing segregation in dozens of communities across the country," 25 June 2019, at: <https://www.adalah.org/en/content/view/9751> [Accessed on 7 January 2022].

[131] See Tekiner, op. cit.

in 1960, rests on four "cornerstones": Basic Law: Israel Lands (1960), Israel Land Administration Law (1960), Keren Kayemet Le-Israel [JNF] Law (1953) and the 1954 Covenant between SoI and the Zionist Executive (WZO/JA and JNF). The Israel Land Council (ILC) determines land policy, with the Vice Prime Minister, Minister of Industry, Trade, Labor and Communications as its chairman, while the 22-member Council is composed of 12 government ministry representatives and ten representing the JNF, with its mandatory conditions of Jewish-only beneficiaries.

The Israel Lands Authority Law, Amendment 7 (2009) and a 2010 amendment of the British Mandate-era Land Ordinance (Acquisition for Public Purposes) (1943) introduced tactical adjustments to the land tenure system. The former authorized more powers to the JNF in its special status and role in land management. It also established the Israel Lands Authority (ILA) with increased powers, provided for the granting of private ownership of lands, and set approval criteria for the transfer of state lands and Development Authority lands to the JNF. The 2010 amendment "makes sure" that lands expropriated for "public use" do not "revert" to original owners and now can be transferred to a third party (likely the JNF). Legislation in 2010 also circumvents a precedent-setting Supreme Court judgment[132] that obliged authorities to return confiscated land if it were not used for the purpose for which it was confiscated.

According to the amendments, JNF continues to hold six of 13 executive seats in the Israel Lands Authority (which also can function with just ten members). That ensures JNF's continued key role, ensuring discrimination against indigenous Palestinians in the development of policies and programs affecting 93% of the lands of Palestine under Israel's control. These amendments allow SoI and the JNF to exchange lands, facilitating "development" through the privatization of lands owned by the JNF in urban areas.

As in the past, JNF agreed that the new ILA manage its lands within "the principles of the JNF in regards to its lands" (Article 2). Amendments to the law regulating land administration enable further circumvention of legal oversight and legislate against equality in land-use rights. As the JNF's charter excludes non-Jews from benefiting from its land or services, any such transfer of public land to the JNF prevents citizens' equal access to land. In other words, the state could more readily "redeem" and "Judaize" land and discriminate against its non-Jews by transferring these lands to the JNF.

The 2010 law appears to prevent –or severely impede– Palestinian citizens of Israel from ever reclaiming their Israel-confiscated land. It forecloses such a citizen's right to demand the return of her/his confiscated land if it were not used for the public purpose for which it was originally confiscated, if that ownership has been transferred to a third party, or if not used more than 25 years after confiscation. Well over 70 years have passed since Israel's confiscated the vast majority of Palestinian land inside Israel, including the Naqab, while the ownership of large tracts of land has been transferred to third parties, including Zionist institutions such as the "racially" exclusive JNF.

[132] H.C. 2390/96 *Karsik v. State of Israel* 55(2), P.D. 625.

The ILA rationalizes its policy of restricting bids for JNF-owned lands to Jews only by citing the 1961 Covenant between the State and JNF. Under that statute, ILA is obliged to respect the objectives of the JNF, which include the acquisition of land "for the purpose of settling Jews."[133] Thus, JNF serves as SoI's subcontractor for discrimination based on a constructed "Jewish race and nationality," but not for other Israeli citizens.

iv. Occupied Palestinian Territory: West Bank including Jerusalem and the Gaza Strip

Israel's housing and land regimes contravene fundamental principles of IHL, including the prohibition against the occupier altering the legal system[134] and transfer of its own population into the IHL-protected territory.[135] With the 1970 Zionist Congress decision nominally to divide WZO/JA territorial roles, WZO cooperates with JNF also to ensure demographic change and illegal settler-colony construction throughout the 1967-occupied territories.[136] The apartheid-chartered JNF only leases the lands it purchases and illegally acquires to Jews, with the help of the Government of Israel, and currently controls over 2,500km^2 of Palestinian land in Israel and over 14 percent of land in the OPT.

In the West Bank, for example, local law empowered the High Planning Council (HPC), operating under the (Jordanian) Minister of Planning. As of June 1967, Israel, the Occupying Power began administering the occupied territory by military orders, transferring planning authority to "anyone appointed by the commander,"[137] who also appoints other members of the HPC. The HPC has maintained three subcommittees for (1) Israeli settlement, (2) (Palestinian) house demolitions and (3) local planning and development. The first of these secretive subcommittees has organized and sanctioned transfer, demolition and settler implantation activity classified as war crimes.[138] The third of these, as its name indicates, oversees physical planning and development in Palestinian towns and villages, and still operates in 61 percent of the West Bank designated Areas C during the Oslo II (1995) phase of occupation.[139]

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[133] Jewish National Fund Articles of Incorporation, para. 3(1).

[134] Article 43: The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country. Laws and Customs of War on Land (Hague, IV), Convention signed at The Hague, 18 October 1907, with annex of Regulations, at:<https://www.loc.gov/law/help/us-treaties/bevans/m-ust000001-0631.pdf> [Accessed on 7 January 2022]. Since the Beit El case (HCJ 606, 610/78, *Suleiman Tawfiq Ayyub et al. v. Minister of Defence* et al, *Piskei Din* 33(2)), the High Court of Justice has ruled that The Hague Regulations (1907) are customary law, therefore, automatically part of municipal law and judiciable in Israel.

[135] Article 49: Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. Geneva IV, *op. cit*. Israel ratified Geneva IV on 6 July 1949, but has since officially reneged on its application in the territories has occupied since 1967.

[136] Jerusalem, West Bank, Gaza Strip and the Syrian Golan.

[137] Order regarding the Towns, Villages and Buildings Planning Law (Judea and Samaria) (No. 418), 5731-1971 (QMZM 5732 1000; 5736 1422, 1494; 5741 246; 5742 718, 872; 5743, No. 57, at 50; 5744, No. 66, at 30), para. 8.

[138] For example, as stipulated in the International Military Tribunal (Nuremberg), the International Law Commission's draft Code on Crimes against the Peace and Security of Mankind, Article 22; and the Rome Statute on the International Criminal Court, Article 22.

[139] World Bank, "West Bank and Gaza: Area C and the future of Palestinian economy," Report No. AUS2922, 2 October 2014, at:<https://openknowledge.worldbank.org/bitstream/handle/10986/16686/AUS29220REPLAC0EVISION0January02014.pdf?sequence=1> [Accessed on 7 January 2022].

Traditionally rural Area C, excluding East Jerusalem, is now home to at least 385,900 Israeli settlers[140] among approximately 300,000 Palestinians.[141]

In 1971, the Israeli military commander further institutionalized discrimination and further negated the indigenous law by issuing military order 418. The order authorizes the Israeli HPC to "amend, cancel, or condition the validity of any plan or permit." Formalizing an arbitrary basis of discrimination, military order 418 authorizes the same HPC to "exempt any person from the obligation to obtain a permit required under the Law," [142] which privilege is bestowed on Jewish settlers to facilitate their lawless construction and colonization on Palestinian territory. Israel's Apartheid Wall construction has imposed further punitive measures, including a Palestinian construction ban, also applied retroactively, across a swath of 60 m on either side of the Wall.[143]

The Military Government of Israel (COGAT) planning authorities lavishly allot OPT land to Jewish settlers, banning Palestinian building within a 500m radius around each colony's edge.[144] The planning maps remain largely inaccessible to the public, and especially to the Palestinian public. However, available data indicate that occupation authorities have allotted over 40 percent of all West Bank land to settler colonies as building, planning and development zones.[145] WZO has been the principal factor in settler-colony—including outpost—planning and construction.[146] More recently, JNF has announced expanding its acquisition of lands and properties in Areas C.[147]

Home demolitions remain the most dramatic manifestation of Palestinian housing rights denials across the country, with Israeli occupation forces razing over 55,000 Palestinian homes in the OPT since 1967.[148] In the OPT, these fall into roughly four categories: (1) Punitive demolitions

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[140] Israel Central Bureau of Statistics, "Localities and Population, by Population Group, District, Sub-District and Natural Region," 2019, at:<https://www.cbs.gov.il/en/publications/Pages/2019/Population-Statistical-Abstract-of-Israel-2019-No-70.aspx> [Accessed on 7 January 2022].
[141] B'Tselem, "Planning Policy in the West Bank," 11 November 2017, updated: 6 February 2019, at:<https://www.btselem.org/planning_and_building> [Accessed on 7 January 2022].
[142] Military Order 418, op. cit., para. 7.
[143] Legal Consequences of the Construction of a Wall in the oPt, Advisory Opinion, I.C.J. Reports 2004.
[144] B'Tselem, Acting the Landlord: Israel's Policy in Area C, the West Bank, June 2013, at:<https://www.btselem.org/download/201306_area_c_report_eng.pdf>; UN Habitat Palestine, *Spatial Planning in Area C of the Israeli occupied West Bank of the Palestinian territory: Report of an International Advisory Board*, May 2015, at:<https://unispal.un.org/pdfs/UNHABSTUDY_MAY15.pdf>; Israeli settlements in the OPT, including East Jerusalem, and in the occupied Syrian Golan – Report of the United Nations High Commissioner for Human Rights, A/HRC/46/65, 15 February 2021, at:<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_65.docx> [Accessed on 7 January 2022].
[145] *Ibid*.
[146] Talia Sasson, "Summary of the Opinion Concerning Unauthorized Outposts" (Jerusalem: Prime Minister's Office, Communications Department, 10 March 2005), at:<http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/956aa60f2a7bd6a185256fc0006305f4?OpenDocument&Highlight=0,outposts> [Accessed on 7 January 2022].
[147] Barak Ravid, "Palestine: JNF to Boost Occupied-land Purchases, *Axios* (11 February 2021), at:<https://www.axios.com/jewish-national-fund-expand-west-bank-settlements-e88ee22c-230e-4ed1-a3cf-ad60d0d8785d.html> [Accessed on 7 January 2022].
[148] Based on information from the Israeli Ministry of Interior, Jerusalem Municipality, Civil Administration, UN OCHA and other UN sources, Palestinian and Israeli human rights organizations, Amnesty International, Human Rights Watch, Israeli Committee against House Demolitions (ICAHD) field work and other sources (updated as of February 2019.) ICAHD,

(3 percent), including collective punishments against families of security-offence suspects; (2) administrative demolitions in East Jerusalem and Area C for lack of a building permit, which Israeli planning authorities deny to 97 percent of Palestinian applicants; (3) land-clearing and military operations (about 66 percent of demolitions since 1967), whereby Israeli forces variously clear land, including for extrajudicial executions; and (4) undefined demolitions, mainly resulting from land-clearing operations and Palestinian depopulation.[149]

Israel has concentrated on the de-Palestinianization of occupied Jerusalem, illegally annexed by Israel in 1967, for which the UN Security Council has repeatedly condemned Israel[150] and determined any resulting changes to the physical character, demographic composition, institutional structure and status to be illegal, null and void. [151] These crimes now particularly target Jerusalem Palestinian neighbourhoods of Silwan,[152] Sheikh Jarrah, the eastern periphery areas E1 and Khan al-Ahmar/Abu Helu villages,[153] as well as the Old City. Since 2017 legislation has facilitated this demographic manipulation and hampered Palestinians' access to justice.[154] These settler assaults on Palestinian tenure are facilitated by biased judges,[155] including settler/judges, as in the case of the al-Kurd family of Sheikh Jarrah.[156]

This "lawfare" against Palestinian Jerusalemites' housing and land rights complements draconian restrictions on their residency status in their own capital city.[157] These old and new

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"Categories of Home Demolitions," 14 March 2020, at:<https://icahd.org/2020/03/14/categories-of-home-demolitions/> [Accessed on 7 January 2022].

[149] *Ibid.*

[150] UNSC Res. 476, 30 June 1980; UNSC Res. 478, 20 August 1980; UNSC Res. 476, 30 June 1980; UNSC Res. 478, 20 August 1980; UNSC Res. 2334, 23 December 2016.

[151] SC has determined that "all measures taken by Israel to change the physical character, demographic composition. institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity," UNSC Res. 465, 1 March 1980, para. 5, https://undocs.org/S/RES/465(1980).

[152] UN Office for the Coordination of Humanitarian Affairs (OCHA), "Palestinian Family Evicted from its Home in East Jerusalem," 10 December 2020, at:<https://www.un.org/unispal/document/palestinian-family-evicted-from-its-home-in-east-jerusalem-ocha-article/> [Accessed on 7 January 2022].

[153] Israeli court approves razing West Bank Bedouin village," *The Guardian* (18 May 2018), at:<https://www.theguardian.com/world/2018/may/25/israel-court-approves-razing-khan-al-ahmar-bedouin-village?CMP=Share_iOSApp_Other>; "Israeli Court OKs Razing Palestinian Village," *Middle East Eye* and agencies (24 May 2018), at:<http://www.middleeasteye.net/news/israels-top-court-okays-demolition-palestinian-village-1074858494> [Both accessed on 7 January 2022].

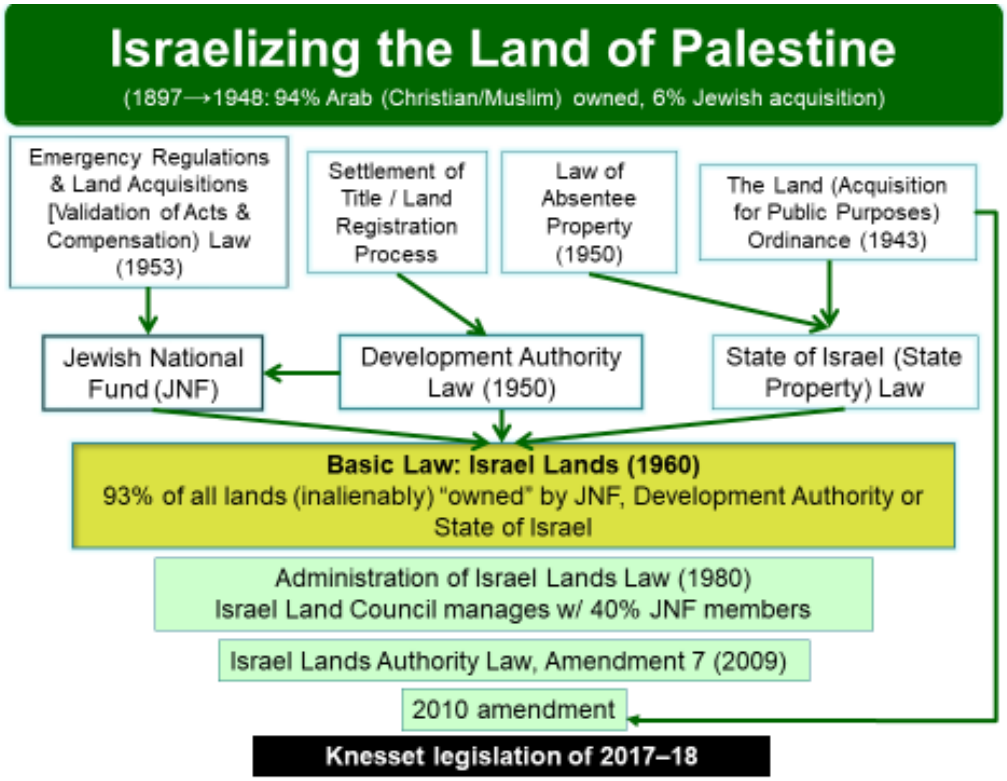
[154] The Land Regulation Law, adopted 6 February 2017, allowing SoI s to confiscate private Palestinian lands in the West Bank for settler-colony construction and grants CAP discretion to reclassify land, including all "state land" (42%) in OPT.; a bill introduced by Israeli Justice Minister Ayelet Shaked, strips High Court's jurisdiction over West Bank land disputes, blocking Palestinians' access to the High Court for claiming land ownership of land on which Israeli settlers have built, requiring claimants to petition the Jerusalem District Court first, 18 July 2018, Jacob Magid, "Bill stripping High Court's power to adjudicate West Bank land disputes advances," *Times of Israel* (25 February 2018), at:<https://www.timesofisrael.com/bill-seizing-high-courts-power-to-adjudicate-west-bank-land-disputes-advances/>; the "United Jerusalem Bill," 18 July 2018, retroactively regularizing "outposts" built on private Palestinian land, "Blocking the division of Jerusalem, *Aruts Sheva* (16 January 2017), at:<http://www.israelnationalnews.com/News/News.aspx/231125> [Both accessed on 7 January 2022].

[155] Enabled by Civil Service Law (Appointments) (Amendment No. 20) (Appointment of Legal Counsel to Government Ministries), 5727 – 2017. See ACRI, "Changing the Method for Appointing Legal Advisers," 27 June 2018, at:<https://law.acri.org.il/en/2018/06/27/changing-the-method-for-appointing-legal-advisers/> [Accessed on 7 January 2022].

[156] Rory McCarthy, "Palestinian couple evicted from home of 50 years as Jerusalem settlers move in," *The Guardian* (10 November 2008), at:<https://www.theguardian.com/world/2008/nov/10/israelandthepalestinians>; Nir Hasson, "Court Orders Dozens of Palestinians Out of Jerusalem Homes to Make Way for Settlers," *Haaretz* (15 September 2020), at:<https://www.haaretz.com/israel-news/.premium-court-orders-dozens-of-palestinians-out-of-jerusalem-homes-to-make-way-for-settlers-1.9157320?fbclid=IwAR0mYKz5G6geY-1D4hLoy2GYnavPak8Uixe2cPp4HNMgpuw0v7UCgBnAy7I> [Both accessed on 7 January 2022].

[157] Amendment 30 to the Entry into Israel Law, or "breach of loyalty" legislation, 7 March 2018, allows interior minister to revoke permanent residency status of Palestinians in East Jerusalem who engage in so-called "terror," or other "anti-Israel

measures involve the separation of families,[158] despite the International Law Commission determination that "the forcible transfer of members of a group, particularly when it involves the separation of family members, could also constitute genocide."[159]



[160]

c. Residency and Nationality Policies and Practices

i. Jewish Nationality versus Israeli Citizenship

With regard to the Apartheid Convention's consideration of inhuman acts, the denial of nationality to members of a racial group, Israel's two-tiered civil status and the corresponding legal provisions are central to the apartheid practised against the Palestinian people as a whole, but particularly against the surviving Palestinians within the SoI and Jerusalem, as well as against the Palestinians in the other Israeli-occupied territories. However, the denial of "nationality" status to Palestinians does not appear explicitly in the text of a single Israeli law

activities" and any permanent residents involved in such acts, and allows SoI to deport anyone whose Jerusalem residency status is revoked.

[158] ILC, Draft Code of Crimes against the Peace and Security of Mankind with commentaries, 1996, YILC, vol. II, Part Two (1996), under Article 17(c), Commentary on Article 17: Genocide, para. 7, p. 46, at:<https://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf> [Accessed on 7 January 2022].

[159] International Law Commission, Draft Code of Crimes against the Peace and Security of Mankind with commentaries. 1996, YILC, vol. II, Part Two (1996), under Article 17(c), Commentary on Article 17: Genocide, para. 7, p. 46, at:<https://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf> [Accessed on 7 January 2022].

[160] Figure 1: The evolution of Israel's land-related legislation incrementally converting indigenous Palestinian tenure, including ownership, to "Israel land" owned by either the state or parastatal Zionist institutions (e.g., JNF). Israel applies these criteria also in occupied territories in violation of Article 43 of The Hague Regulations, prohibiting the occupying Power from altering the legal system in an occupied territory. Source: Joseph Schechla, adapting analysis based on Usama Halabi, "Redeeming the National (Jewish) Fund," *Jewish National Fund* (winter–spring 2010), at:<http://www.stopthejnf.org/explanatory-diagramredeeming-the-national-jewish-fund/> [Accessed on 7 January 2022].

before the 2018 Nation-State Law, but rather in their implicit subordination to the discriminatory principles of the apartheid-chartered parastatal organizations carrying out essential housing and land administration functions wherever the SoI asserts its control. Since the Oslo Accords, this especially affects Areas C, comprising about 60 percent of the West Bank.

In the OPT, this institutionalized discrimination manifests explicitly in Israel's application of its domestic laws and institutions applied to illegal Israeli settlers, on the one hand, and military orders and other restrictions imposed on the indigenous Palestinian population. As explained above, in the absence of a defined "people" criterion of a state, the early WZO/JA, JNF and affiliates have promoted the dual concepts of "Jewish race or descent" and "Jewish nationality" (לאום יהודי / *le'om yahudi*) as the unique basis to benefit from all resources, as well as related services both within the SoI and the territories of effective Israeli control. This racially charged concept of "Jewish nationality" has been upheld twice by Israel's Supreme Court as the only recognized nationality within the state.[161] That distinction remains operational despite Israel's deceptive official mistranslation of its Law of "Citizenship" (אזרחות / *ezrahūt*) as a law of nationality (לאום / *le'om*)). While common "Israeli citizenship" is variously accessible as a subordinate status within the SoI, no common "nationality" is. Against this legal and ideological backdrop, Palestinians in the OPT are subject to racially constructed discrimination in access, use and control of the commons, infrastructure, natural resources and related services. By applying its domestic law and apartheid-chartered institutions in the OPT, local Palestinians are subject to material discrimination while subject to a civil and legal status inferior to both Israeli citizens and "Jewish nationals" in their territory.

Israel has systematically failed to respect, protect, or fulfil the right of Palestinian refugees and displaced persons to return, a violation that has continued for over seven decades, while most of the Palestinian people have been forced into a situation of prolonged refugeehood, displacement, and statelessness. Through a series of laws, policies, and practices pertaining to nationality, residency, and immigration, Israel has displaced, transferred, and strategically fragmented the Palestinian people, as explained above. As described in the 2017 United Nations Economic and Social Commission for Western Asia (ESCWA) report, Israel ensures that Palestinians never gain "the demographic weight that would either threaten Israeli military control of the [OPT] or provide the demographic leverage within Israel to allow them to insist on full democratic rights, which would supersede the Jewish character of the State of Israel."[162]

Israel's persistent refusal to grant Palestinian refugees, displaced persons, and their descendants their right of return amounts to a core element in the establishment and maintenance of its apartheid regime. By denying the right of return to Palestinian refugees, Israel has "cast Palestinian refugees out of legal existence" altogether.[163] This is also a core method used by

[161] *George Raphael Tamarin v. The State of Israel* (CA 630 70), 1971, at:<https://nakbafiles.org/nakba-casebook/tamarin-v-state-of-israel-ca-63070/>; and *Udi Ornan et al v. Ministry of Interior* (CA 8573 08, 2013, at:<https://versa.cardozo.yu.edu/opinions/ornan-v-ministry-interior> [Both accessed on 7 January 2022].
[162] United Nations ESCWA Report (n 38) 48.
[163] Davis, Uri, *Apartheid Israel: Possibilities for the Struggle Within*, Zed Books, 2003.

Israel to prevent the Palestinian people from exercising their collective right to self-determination and from challenging Israel's apartheid regime.

The 1950 Law of Return grants every Jewish person the exclusive right to enter Israel as a Jewish immigrant.[164] In contrast, Palestinian refugees living in the OPT or abroad are categorically denied the right of return by the SoI. During the 1948 war, 85 percent of the Palestinian people were forcibly expelled from 531 Palestinian towns, cities, and villages across Palestine as well as involuntary exiles who found themselves outside Palestine during the war, a situation which has been cemented by the Law of Return, despite customary international law,[165] as it stood at the time, guaranteeing this inalienable right.[166]

The Law of Return also establishes a "nationality" right as a superior status distinct from Israeli citizenship. Within this constructed race-based classification, as promoted by the apartheid-chartered WZO/JA and JNF, it "assigns the right for 'Jewish nationality' to every Jewish individual anywhere in the world."[167] The Law of Return has also been used by Israel to extend the same benefits and privileges to Israeli-Jewish settlers illegally residing in the OPT, who are considered residents of Israel or are "entitled to immigrate under the Law of Return."[168] By contrast, Israel denies the Palestinian refugees their rights of return, restitution, rehabilitation and compensation promised in UN General Assembly resolution 194 of 1948.[169]

This is supplemented by the Citizenship Law of 1952,[170] which is officially mistranslated in English as a "Nationality Law," to confound the actual distinction between the two distinct levels of civil status in Israeli law. That 1952 law confers Israeli citizenship by ways customary under laws of citizenship; that is, by birth, marriage, or residency. However, it confers automatic citizenship to any Jew who enters Israel under the category of "return," under the Law of Return, and grants them the right to settle anywhere within Israel's jurisdiction or

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[164] Adalah: The Legal Center for Arab Minority Rights in Israel, "Law of Return," available at:<https://www.adalah.org/en/law/view/537> [Accessed on 7 January 2022].
[165] The 1945 London Charter of the International Military Tribunal at Nuremberg prohibited as war crimes or violations of the laws and customs of war the "deportation to slave labour or for any other purpose of civilian population of or in occupied territory" and "wanton destruction of cities, towns, or villages, or devastation not justified by military necessity," while it prohibited as crimes against humanity "deportation, and other inhumane acts committed against any civilian population." Accordingly, the transfer of the Palestinian people was illegal under international law at the time of the Nakba, and Israel, following the establishment of the State, was under an obligation to repatriate and compensate those displaced under the laws of war, which had become customary by 1945.
[166] Francesca Albanese, "Ending seventy years of exile for Palestinian refugees," Mondoweiss (10 May 2018), at: <https://mondoweiss.net/2018/05/seventy-palestinian-refugees/> [Accessed on 7 January 2022]; Salman Abu-Sitta, "The Right of Return: Sacred, Legal and Possible" in Naseer Aruri, ed., Palestinian Refugees: The Right of Return (London: Pluto Press 2001), p. 195.
[167] Badil, *Forced Population Transfer: The Case of Palestine – Denial of Residency Working Paper No. 16*, April 2014, pp. 10, at:<http://www.badil.org/phocadownload/badil-new/publications/research/working-papers/wp16-Residency.pdf> [Accessed on 7 January 2022].
[168] Adalah, *NGO Report*, *op. cit.*, p. 4.
[169] Palestine – Progress Report of the United Nations Mediator, A/RES/194 (III), 11 December 1948, para. 11, <https://unispal.un.org/UNISPAL.NSF/0/C758572B78D1CD0085256BCF0077E51A>. The General Assembly has recognized additional entitlements of resettlement, guarantees of non-repetition and satisfaction of the victims. *See* "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of IHRL and Serious Violations of IHL," A/RES/60/147, 21 March 2006, at:<http://www.un.org/Docs/asp/ws.asp?m=A/RES/60/147> [Both accessed on 7 January 2022].
[170] SoI, Citizenship Law (5712/1952), at:<http://www.knesset.gov.il/review/data/eng/law/kns2_nationality_eng.pdf> [Accessed on 7 January 2022].

effective control, including the OPT. Israel's Citizenship Law grants "return" as the pathway to Israeli citizenship unique to Jews, defined as persons born to a Jewish mother or, in rare cases, having converted to Judaism.

Because of the superior status of "Jewish nationality," citizenship is not a basis for equal rights in Israel.[171] Like the Law of Return, the Law of Citizenship precludes Palestinians who were residing outside of Israel between 1948 and 1952 (i.e., "absentees") from obtaining Israeli citizenship, denying the right of return to millions of Palestinian refugees and exiles in the OPT and elsewhere.[172]

The 2018 Jewish Nation-State Law codifies the Jewish character of the SoI and further elevates the privileged status of persons of Jewish faith or birth of a Jewish mother as "Jewish nationals," whether or not they hold Israeli citizenship. This law "articulates the ethnic-religious identity of the state as exclusively Jewish" and "weakens the constitutional status of the Palestinian minority in Israel."[173] As a Basic Law, the Jewish Nation-State Law modifies Israel's constitutional framework to serve one "ethnic" group and explicitly provides that "[t]he exercise of the right to national self-determination in the [SoI] is unique to the Jewish people." This further entrenches Israel's regime of institutionalized racial domination and repression against the Palestinian people by denying them their inalienable right to self-determination, including permanent sovereignty over natural wealth and resources.

ii. Revocation of Citizenship and Residency

The revocation of citizenship and residency is a key tool used by Israel as part of its wider strategy to transfer and fragment the Palestinian people and ensure a favourable demographic reality. While Palestinians permanently residing within Israel after 1948 have been granted Israeli citizenship, an inferior status to "Jewish nationality," it remains a precarious status that can be revoked at any time, using broad and vague criteria. Amendment No. 30 (2008) to the Citizenship Law allows the Israeli government to revoke citizenship on the grounds of "breach of allegiance" to the state, which is defined broadly and lists as grounds for revocation the act of residing in one of nine Arab and Muslim states as well as Gaza and allows for revocation without requiring a criminal charge or investigation.[174] This amendment has been used to revoke the citizenship of Palestinian citizens of Israel but has never been used against a Jewish Israeli citizen.[175]

The Entry into Israel Law of 1952 pertains to the entry of non-citizens into Israel and grants preferential treatment to an "*oleh*," meaning Jewish immigrants under the Law of Return, and

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[171] See Tekiner, op. cit., pp. 39–55.
[172] Virginia Tilley, ed., *Occupation, Colonialism, Apartheid? A re-assessment of Israel's Practices in the Occupied Palestinian Territories Under International Law* (Cape Town: Human Sciences Research Council, May 2009), p. 212–14, at:<> [Accessed on 7 January 2022].
[173] Adalah, *NGO Report*, *op. cit.,* p. 1.
[174] Na'amnih, Hannen, "New Anti-Arab Legislation," *Adalah's Newsletter*, Volume 50, July 2008, available at:<http://www.adalah.org/newsletter/ara/jul08/haneene.doc> [Accessed on 7 January 2022].
[175] Hamoked, "'Ceased Residency': between 1967 and 1994 Israel revoked the residency of some quarter million Palestinians from the West Bank and Gaza Strip," 12 June 2012, available at:<http://www.hamoked.org/Document.aspx?dID=Updates1175> [Accessed on 7 January 2022].

allows them to enter as if they were Israeli citizens, but with pre-emptive recognition as a "Jewish national." It is also under this Law that Israel gave the precarious "permanent resident" status to Palestinians in occupied East Jerusalem, following its occupation and unlawful annexation in 1967. This status effectively renders Palestinians foreign visitors in their own capital and the land of their birth, with the ultimate goal of population transfer and demographic manipulation in service of Israel's demographic goals in the city to replace them with Israeli-Jewish settlers and settler colonies, in violation of the status of the City of Jerusalem under international law[176] and the inalienable rights of the Palestinian people to self-determination and permanent sovereignty.

By creating the precarious status of "permanent residents" for Palestinians in occupied East Jerusalem, Israel has created a situation whereby entry into and residency in Jerusalem is a revocable privilege as opposed to a right. Residency revocation is the most common and direct tool used to transfer protected Palestinians from occupied East Jerusalem. Over the years, Israel has gradually expanded the criteria for the revocation of residency rights, including on punitive grounds. Since 1967, at least 14,500 Palestinians have had their residency revoked.[177]

Similarly, Israel continues to control the granting of residency status to Palestinians in the OPT. After the 1967 War, Israel put in place a residency system for Palestinians in the rest of the West Bank and Gaza under Israeli military law. This system also included mechanisms for revoking residency statuses. Palestinians in the OPT were required to acquire exit permits, at the discretion of the Israeli Ministry of Interior, to travel abroad. If a resident failed to return before the expiration of their permit, they were at risk of being deleted from the Population Registry and losing their residency status.[178] From 1967 until 1994, Israel revoked the residency status of around 140,000 Palestinians from the West Bank and 108,878 from the Gaza Strip.[179] Under the Oslo Accords, authority over the population registry was transferred to the newly established Palestinian Authority (PA) in 1995. The PA was given the right to grant permanent residency in the West Bank, excluding East Jerusalem, and Gaza for family unification subject to Israel's approval.

iii. Law and the Judicial System [Legislative and Judicial Powers]

Israel, as the Occupying Power, has established a full apartheid apparatus to suppress, control and delegitimize the Palestinian people. The military regime in the OPT exercises legislative, executive, and judicial powers that have been a forceful tool in carrying out the Israeli

[176] *The Status of Jerusalem* (New York: United Nations, 1997), at:<https://www.un.org/unispal/wp-content/uploads/2016/07/The-Status-of-Jerusalem-Engish-199708.pdf>; Henry Cattan, "The Status of Jerusalem under International Law and United Nations Resolutions," *Journal of Palestine Studies*, Vol. 10, No. 3 (1980/81) p. 3, <https://oldwebsite.palestine-studies.org/jps/fulltext/38683>; John Quigley, "The Legal Status of Jerusalem under International Law," The Turkish Yearbook, Vol. XXIV (1994), pp. 11–23, <https://dergipark.org.tr/tr/download/article-file/845666> [Accessed on 7 January 2022].

[177] OCHA, "West Bank | East Jerusalem: key humanitarian concerns", 21 December 2017, at: <https://www.ochaopt.org/content/west-bank-east-jerusalem-key-humanitarian-concerns> [Accessed on 7 January 2022].

[178] Badil, *Forced Population Transfer: The Case of Palestine – Denial of Residency Working Paper No. 16*, April 2014, pp. 18, at:<http://www.badil.org/phocadownload/badil-new/publications/research/working-papers/wp16-Residency.pdf> [Accessed on 7 January 2022].

[179] Hamoked, "'Ceased Residency': between 1967 and 1994 Israel revoked the residency of some quarter million Palestinians from the West Bank and Gaza Strip," 12 June 2012, available at:<http://www.hamoked.org/Document.aspx?dID=Updates1175> [Accessed on 7 January 2022].

occupation's discriminatory and unjust policies. The Israeli occupation has used military orders and pre-existing British Mandate era Emergency Regulations to impose and maintain control over Palestinians. The Israeli military judicial system has proven to become an inseparable part of the Israeli apartheid apparatus prosecuting Palestinian civilians based on Israeli military orders issued by the Israeli military commander in the West Bank (and previously for Gaza), who acts as the supreme law-making power in the occupied territory. Within the framework of Israeli military courts, hundreds of thousands of Palestinians have been tried and convicted with disproportionate prison sentences and excessive fines, notwithstanding the brutal detention conditions.

On 7 June 1967, the Israeli military commander issued three proclamations: the first declared the commander's executive, security, and public order authority over the OPT,[180] the second related to the establishment of a military judicial system complementary to the occupation,[181] and the third focused on the implementation of the security provisions order relating to the judicial procedures taken before military courts.[182] Later, these provisions were amended into Military Order 378, which established military courts, defined their jurisdiction, and set out the applicable criminal code, defining "security offence" and regulating detainees' rights under military law. Moreover, since its establishment, the Israeli occupation authorities have issued over 1800 military orders. These military orders have served to regulate many aspects of Palestinians' daily lives, including public health, education, and land and property law. Furthermore, they have criminalized many forms of political, social, and cultural expression, association, movement, nonviolent protest, traffic offences, and any other acts that might be considered opposing the occupation and its policies.

Such practices violate Article 64 of the Fourth Geneva Convention, which emphasizes that priority goes to the occupied populations pre-existing domestic laws, as they should remain in force along with the domestic justice system. Article 64 entails that the legislative powers of the Occupying Power must be limited to its responsibilities under the Fourth Geneva Convention and the implementation of the safeguards set under the Convention for the protection of the occupied people.[183] The Commentary of 1958 further explains that these legislative powers under Article 64 "must not under any circumstances serve as a means of oppressing the population".[184] With that in mind, Israeli military orders serve the sole purpose of maintaining control over the Palestinian people and ensuring the Occupying State's security.

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[180] Proclamation No. 1 Regarding Regulation of Administration and Law (West Bank Area), 7 June 1967.
[181] Proclamation No. 2 Regarding Administrative and Judiciary Procedures (West Bank Area) 5727-1967
[182] Proclamation No. 3 Regarding Entry into Force of the Order Concerning Security Provisions (West Bank Area) (No. 3) 5727-1967
[183] International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, Art.64, available at:<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380> [Accessed on 7 January 2022].
[184] International Committee of the Red Cross (ICRC), Commentary of 1958, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, Art.64. Available at:<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=9DA4ED335D627BBFC12563CD0042CB83> [Accessed on 7 January 2022].

Furthermore, IHL principles emphasize the importance of apolitical military courts.[185] However, in reality, Israeli military courts have asserted an expanded personal jurisdiction and a broadened subject-matter jurisdiction, in which they assume jurisdiction over crimes beyond those permitted under IHL.[186] While military courts are presented as dealing primarily with security-related offences, the Israeli military courts' subject-matter jurisdiction is not restricted to "security offences" relating to hostilities and violations of the Occupying Power's security. It extends to offences against public order, including membership in political parties and student movements deemed unlawful under Israeli military orders, freedom of opinion, and expression.[187] In addition, offences also consist of traffic infractions occurring on bypass roads and connecting roads between Palestinian cities, and offences relating to entering the Green Line without a permit.[188]

According to principle 29 of the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, "the jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court."[189] By expanding the list of crimes falling under the courts' jurisdiction and further broadening each crime's definition, the Israeli military commander has granted military courts a wide margin of discretion pertaining to the arrest, detention, and prosecution of Palestinians.

In 2007, the Israeli Knesset (parliament) adopted the Emergency Regulations, which state under Article 2(a) that "Israeli courts have jurisdiction to try according to Israeli law any person who is present in Israel and who committed an act in the region, and any Israeli who committed an act in the Palestinian Authority if those acts would have constituted an offence had they occurred in the territory under the jurisdiction of Israeli courts."[190] Under section 2(c) "this Regulation does not apply to residents of the region or the Palestinian Authority, who are not Israelis."[191] This establishes in law the already long-established practice of trying Israeli

[185] International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, Art.66. Available at:<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380> [Accessed on 7 January 2022].
[186] Weill, Sharon, "The Judicial Arm of the Occupation: the Israeli Military Courts in the Occupied Territories", International Review of the Red Cross: June 2007, V.89, No. 866. Available at:<http://www.artistes-contre-le-mur.org/doss_articles/The_judicial_arm_of_the_occupation_Sharon_Weill_IRRC_2007.pdf> [Accessed on 7 January 2022].
[187] See, e.g., HRW, "Born Without Civil Rights Israel's Use of Draconian Military Orders to Repress Palestinians in the West Bank", 17 December 2019, at: <https://www.hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress> [Accessed on 7 January 2022].
[188] See, e.g., B'Tselem, "Forbidden Roads Israel's Discriminatory Road Regime in the West Bank", August 2004, at: <https://www.btselem.org/download/200408_forbidden_roads_eng.pdf> [Accessed on 7 January 2022].
[189] United Nations Human Rights Commission, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, E/CN.4/2005/102/Add.1, 8 February 2005, para. 29, at:<https://undocs.org/E/CN.4/2005/102/Add.1> [Accessed on 7 January 2022].
[190] Law for Amending and Extending the Validity of Emergency Regulations (Judea and Samaria- Jurisdiction in Offenses and Legal Aid), 2007, Art.2(a). Available at:<http://nolegalfrontiers.org/israeli-domestic-legislation/isr19ed2?lang=en> [Accessed on 7 January 2022].
[191] Law for Amending and Extending the Validity of Emergency Regulations (Judea and Samaria- Jurisdiction in Offenses and Legal Aid), 2007, Art.2(c). Available at:<http://nolegalfrontiers.org/israeli-domestic-legislation/isr19ed2?lang=en> [Accessed on 7 January 2022].

settlers, living in the West Bank or having committed crimes there, not in the Israeli military courts, but in Israeli civil courts.

This practice embodies the discriminatory and racist nature of the Israeli military judicial system. It rejects the principle of territoriality respected in criminal law and further establishes a dual legal system in OPT based on nationality. Thus, although the personal jurisdiction of Israeli military courts extends to cover all alleged perpetrators responsible for breaking Israeli military law in the OPT, Israeli settlers residing in illegal Israeli settlements built on Palestinian lands are not subjected to these courts' jurisdiction.[192] That means Israeli settlers who commit crimes in the OPT are brought before Israeli domestic courts and tried based on Israeli domestic laws alone.[193] Palestinians, however, accused of breaching Israeli military orders, are tried in Israeli military courts in the OPT, under military orders. It emphasizes the apartheid nature of the Israeli occupation in which "Palestinians living under Israeli rule are treated inferior in rights and status to Jews who live in the same areas".[194]

The general principles of IHRL and IHL guarantee that "no one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees."[195] In accordance, the Israeli occupation is obligated to respect and ensure Palestinian detainees' right to fair trial standards. However, Israeli military courts systematically violate this right. The violations of fundamental rights involved are so serious as to give rise to the war crime of wilfully denying protected persons of their right to a fair trial under Article 8(2)(a)(vi) of the Rome Statute of the ICC.

Palestinian lawyers who represent Palestinians in Israeli military courts face many obstacles that systematically erode the right of Palestinian detainees to legal representation. Defence counsel must contend with military orders, Israeli laws, and prison procedures that curtail their ability to provide adequate counsel to their clients. Lawyers' citizenship or residency status dictates their ability to represent Palestinians. The difficulties faced by Palestinian lawyers from the West Bank in the exercise of their work are mainly related to the arbitrary nature of occupation and impunity. As they are not permitted any special travel privileges in order to reach the detainees. They are subjected to the same travel restrictions as all Palestinians in the occupied Palestinian territories.

Such practices stand in violation of Article 72 of the Fourth Geneva Convention, in regards to the right to defence. The Convention states that the accused person "shall have the right to be assisted by a qualified advocate or counsel of their own choice, …, and shall enjoy the necessary facilities, unless they freely waive such assistance, be aided by an interpreter, both during

[192] There has been only one case in which Erez military court prosecuted an Israeli settler for transferring Palestinian workers inside Israel without permits.
[193] Ben-Natan, Smadar, "*The Application of Israeli Law in the Military Courts of the Occupied Palestinian Territories*", Jerusalem Van Leer Institute: 2014 (45-74).
[194] B'Tselem, "*A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Seas: This is Apartheid*", 12 January 2021. Available at:<https://www.btselem.org/publications/fulltext/202101_this_is_apartheid> [Accessed on 7 January 2022].
[195] International Committee of the Red Cross, IHL Database, Rule 100 Fair Trial Guarantees. Available at:<https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule100> [Accessed on 7 January 2022].

preliminary investigation and during the hearing in court."[196] The establishment and later development of the procedures adopted in Israeli military courts are based on Israeli law and Israeli domestic courts' judicial procedures. Therefore, the Israeli occupation authorities do not only impose a foreign legal language on Palestinians but also a whole unfamiliar judicial system and legislation, in grave breach of the general principles and customary law of war, and further preventing many Palestinian lawyers from preparing an effective defence.

The Israeli occupation state branches, including the judicial system, consistently provide legal and judicial cover for all acts of torture, cruel and degrading treatment against Palestinian detainees by the Israeli soldiers and intelligence agencies. The Israeli Occupation Forces have systematically put Palestinian detainees under severe physical and psychological pressure from the first moments of the arrest until their detention or release, primarily during the interrogation process, as a means to extract confessions. Although the Israeli High Court's 1999 ruling confirms the prohibition of the use of torture, however, it does permit the practice of "moderate physical pressure" in cases of "necessity defence" as outlined in article 34(11) of the Israeli Penal Code of 1977.[197] The necessity defence presents a serious loophole that allows the interrogation of a person suspected of possessing information on "military operations," thus providing a legal cover for Shabak interrogators to practice impunity torture and cruel treatment against Palestinian prisoners. On 26 November 2018, the Israeli Supreme Court rejected Firas Tubayesh's petition regarding torture, undermining the absolute prohibition on torture.[198] This ruling's gravity extends beyond legitimizing torture to broadening the definition of the "necessity defence."

De jure and de facto, Israel separates detainees in Israeli prisons into three different groupings, with each grouping treated according to varying standards. These include Israeli-Jewish criminal prisoners; Palestinian criminal prisoners with Israeli citizenship; and Palestinian political prisoners from the OPT, in addition to Palestinian political prisoners who hold Israeli residency. Israel makes legal, political, and procedural distinctions when dealing with each of the three groups of prisoners. Palestinian political prisoners with Israeli residency do not enjoy the same rights as Israeli-Jewish prisoners, including the right to use a telephone, home visits, early releases after serving two-thirds of a sentence, and family visits without being separated by barriers.[199]

The practices of the Israeli judicial system during the escalation of violence and aggression especially in the past year undoubtedly point to an apartheid system in which two separate, racist legal systems govern Jews and Palestinians, including those who hold Israeli nationality.

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[196] International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, article 72, at:<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380> [Accessed on 7 January 2022].
[197] Addameer, "The Systematic use of Torture and Ill-Treatment at Israeli Interrogation Centers Cases of Torture Committed at al-Mascobiyya Interrogation Center", at:<https://www.addameer.org/sites/default/files/publications/story_based_torture_final.pdf> [Accessed on 7 January 2022].
[198] Addameer, "Annual Violations Report 2018", at:<https://www.addameer.org/sites/default/files/publications/for_webtqryr_lnthkt_lnhyy_lnjlyzy.pdf> [Accessed on 7 January 2022].
[199] *Ibid*.

These practices began with the impunity given to Israeli settler violence pre-arrest—as opposed to the wide-scale arrests and assault on Palestinians—and continue prominently in the apartheid judicial system.[200] Despite clear acts of violence and provocation, Israeli settler violence was afforded impunity and protection: this is best captured by the event on 22 April 2021 in which Israeli settlers, including those affiliated with the Israeli far-right group Lehava, roamed the streets chanting 'death to Arabs," throwing rocks and attacking Palestinian cars, homes, and business.[201] According to the Palestinian Red Crescent, 105 Palestinians were wounded, 22 of whom were hospitalized. Nevertheless, occupation forces arrested 50 Palestinians, accusing them of "violence."[202]

Official statistics, taken from the Israeli Public Prosecutor's Office, indicate that the occupation forces arrested 1,160 Palestinians in Jerusalem and historic Palestine from the beginning of the events in April 2021, most of whom were released with or without stipulations, while indictments were submitted against 155 of them. The indictments submitted against Palestinian detainees centred on charges of incitement to "murder Jews," incitement to "terrorism," "obstruction of police work," and other racially-motivated changes aimed at the intentional portrayal of Palestinian detainees as violent and racists committing ideologically-motivated activities. Notably, Israeli judges refused to address physical evidence of assault and beatings evident on the detainees' bodies. Conversely, occupation forces arrested 159 Israeli Jews and released most of them. The Israeli Prosecutor's Office submitted indictments against only 15 Israeli Jews, including charges related to stone-throwing and attacks on Israeli press crews covering events. Moreover, Israeli courts imposed arbitrary release conditions against Palestinian detainees, such as house arrest, deportation from certain neighbourhoods, and a ban on participating in demonstrations. The majority of detainees, especially in Jerusalem and historic Palestine were released through high fines and signing financial guarantees, or by forced transfer to home arrest.[203] The release of most of the detainees without charges highlights the arbitrary nature of mass arrests of Palestinians, which are rather aimed at harassment and repression of Palestinians. Meanwhile, the majority of the detainees in the West Bank remained in detention, where they were prosecuted in military courts that lack the basic fair trial standards.[204]

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[200] Yousef Munayyer, "The Tip of the Spear: Israeli Settler Terror", 17 November 2021, at: <https://arabcenterdc.org/resource/the-tip-of-the-spear-israeli-settler-terror/> [Accessed on 7 January 2022].
[201] Mondoweiss, "Israeli mobs chant 'Death to Arabs' in night of violence in Jerusalem", 23 April 2021, at:<https://mondoweiss.net/2021/04/israeli-mobs-chant-death-to-arabs-in-night-of-violence-in-jerusalem/> [Accessed on 7 January 2022].
[202] AA, "Israeli settlers assault Palestinians in occupied Jerusalem", 23 April 2021, at:<https://www.aa.com.tr/en/middle-east/israeli-settlers-assault-palestinians-in-occupied-jerusalem/2218004> [Accessed on 7 January 2022].
[203] Addameer, "Mass Arrests and Detention Amidst the Escalation of Israeli Oppression against the Palestinian People", 21 May 2021, at: <https://www.addameer.org/sites/default/files/publications/Mass%20Arrests%20and%20Detention%20Amidst%20the%20Escalation%20of%20Israeli%20Oppression%20against%20the%20Palestinian%20People.pdf> [Accessed on 7 January 2022].
[204] Ibid.

4. Conclusion and Recommendations

a. Conclusion

Since its inception, the centrality of the racial dimension of Zionism has formed the foundation of Israel's ever-lasting institutionalised racial discrimination and apartheid regime. Further, Israel has strategically used the fragmentation of the Palestinian People as the principal tool to establish, entrench, and operationalise its apartheid regime in Palestine. Contrary to the claim that Israel's prolonged occupation has turned into apartheid, Israel's occupation is, in fact, part and parcel of the overarching settler colonial and apartheid regime that Israel always intended –and continues– to impose on the Palestinian people as a whole.

Israel has been instrumentalising the law of occupation framework to entrench and maintain its apartheid regime. Israel, as an occupying Power in the OPT, has been adopting a policy akin to that of pick-and-choose of the rules of the law of occupation. For instance, while it accepts the applicability of IHL provisions that entail different treatment (which, in a way, rationalise and downsize its apartheid practices), it rejects the applicability of other IHL provisions that do not serve its apartheid regime's settler-colonial ambition in Palestine, *e.g.*, provisions prohibiting transferring its own population to the territory it occupies, *i.e.*, its colonial settlements activities and expansion in the OPT.

With Zionism as the ideology of the state, its foundational apartheid-chartered institutions largely determine housing and land, as well as, residency and nationality laws, policies and practices, ensuring these powerful instruments for change dispossess the indigenous Palestinian people from their land and housing, entrenching privilege and exploitation, and altering the demographic composition in favour of the dominant group of "Jewish race or descent."

Historically and today, in any jurisdiction in which they operate, including extraterritorially, the WZO/JA and JNF also have been principal bodies promoting the concepts of "Jewish *race*" and "Jewish *nationality*," formally assigned in Israeli law and policy as the unique civil status that confers full economic, social and cultural rights. Claiming "the Jewish people" as its exclusive constituency, and with "Jewish nationality" twice upheld by the Israeli Supreme Court as the only nationality legally recognized within the state,[205] apartheid is the *modus operandi* wherever those organizations operate inside historic Palestine, or extraterritorially, where they also claim private and nongovernmental tax-exempt charity in some 50 other countries.[206]

In Israeli public parlance, "people", "public", "national", "redeeming land", "Jewish", "democracy", "law", "settlement", "citizen", and "social cohesion" have idiomatic meanings

[205] *Tamarin v. SoI, op. cit.; Ornan et al v. Ministry of Interior, op. cit.*

[206] Argentina, Australia, Austria, Belgium, Belarus, Bolivia, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Curacao, Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Greece, Honduras, Hong Kong, Hungary, Ireland, Israel, Italy, Latvia, Luxembourg, Mexico, Moldova, Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Poland, Russian Federation, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Uzbekistan and Venezuela. See *Jewish Agency for Israel Yellow Pages*, at:<http://www.jafi.org.il/about/abroad.htm> [Accessed on 7 January 2022].

as euphemisms to conceal the apartheid reality. However, disambiguating these Zionist institutions, their charters, and SoI's corresponding legislation, policy, and military doctrine are vital to unravelling the deception that camouflages the grave damage Israeli apartheid continues to wreak on the Palestinians people as a whole.

For decades, Palestinian civil society and human rights organisations have been accurately characterising the Israeli occupation practices in the OPT as that of apartheid.[207] Followingly, there has been a growing recognition and condemnation of Israeli apartheid, including reports by prominent institutions such as the ESCWA,[208] CERD –through its jurisdiction and Admissibility decisions–,[209] as well as, by Israeli,[210] regional, and international human rights organisations.[211] Indeed, the latest brazen designations of Palestinian civil society and human rights organisations at "terrorist organisations" show how anxious Israel is about international recognition and condemnation of its apartheid regime.[212] It further shows that Israel is willing to do anything to silence those who expose the war crimes and crimes against humanity of its apartheid regime.[213] Notably, Article II(f) explicitly lists the "Persecution of organizations and persons by depriving them of fundamental rights and freedoms, because they oppose apartheid," as one of the inhuman acts of apartheid.[214] Therefore, it is time that the international community hold Israel accountable for its apartheid.[215] It is time that the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967 recognises the apartheid regime on both sides of the Green Line, in violation of the prohibition against apartheid under the rules of international law.

b. Recommendations

i. To the International Community:

- Recognize and condemn Israeli apartheid against the Palestinian people; discharge their duty of nonrecognition and take effective measures, including stopping arms trade (among the many options already adopted in S/465 (1980) A/RES/37/123,

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[207] See e.g., Al-Haq "South African study finds that Israel is practicing colonialism and apartheid in the Occupied Palestinian Territory", 13 October 2010, at: <https://www.alhaq.org/advocacy/7207.html> [Accessed on 7 January 2022]; and Al-Haq, BADIL, HIC-HLRN, and CIHRS, Joint Submission, *op.cit.*

[208] United Nations ESCWA Report (n 38).

[209] CERD, Jurisdiction decision, 12 December 2019, at:<https://ohchr.org/Documents/HRBodies/CERD/CERD-C-100-5.pdf>; CERD, Admissibility decision, 20 May 2021 at:<https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/CERD_C_103_R-6_9416_E.pdf> [Accessed on 7 January 2022].

[210] B'Tselem, "A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid", 12 January 2021, at:<https://www.btselem.org/publications/fulltext/202101_this_is_apartheid> [Accessed on 7 January 2022].

[211] See e.g., Human Rights Watch, "A Threshold Crossed Israeli Authorities and the Crimes of Apartheid and Persecution", April 2021, at:<https://www.hrw.org/sites/default/files/media_2021/04/israel_palestine0421_web_0.pdf> [Accessed on 7 January 2022].

[212] Ahmed Abofoul, "Israel's Brazen Attack on Al-Haq – Troubled from Apartheid Charges, Armed with Terrorism Designations and Blessed by U.S. Silence," Opinio Juris Blog, 15 November 2021, at: <http://opiniojuris.org/2021/11/15/israels-brazen-attack-on-al-haq-troubled-from-apartheid-charges-armed-with-terrorism-designations-and-blessed-by-u-s-silence/> [Accessed on 7 January 2022].

[213] *Ibid*.

[214] Article II(f) of the Apartheid Convention.

[215] Ahmed Abofoul, "Unwilling or Unable? The International Community's Failure to Hold Israel Accountable for the Ongoing Apartheid in Occupied Palestine," Opinio Juris Blog, 21 June 2021, at: <http://opiniojuris.org/2021/06/21/unwilling-or-unable-the-international-communitys-failure-to-hold-israel-accountable-for-the-ongoing-apartheid-in-occupied-palestine/> [Accessed on 7 January 2022].

A/RES/39/146 and those proposed in the NGOs' joint letter of 2009 in the Goldstone follow-up)

- Ensure that Israel dismantles its regime of institutional discrimination, oppression, and apartheid against the Palestinian people and ends the occupation of Palestine;
- Ensure that Israel fulfils and facilitates Palestinian refugees' right to return
- Ensure that Israel immediately, fully, and unconditionally lifts its illegal closure and blockade on the Gaza Strip;
- Ensure accountability and justice for widespread, gross, and systemic violations against the Palestinian people, including for the crime of apartheid;
- States which have not already done so must ratify the 1973 Apartheid Convention;
- Support the independence of the International Criminal Court and protect the Court against attacks or political pressure as it conducts its investigation into the Situation in Palestine, including the crime of apartheid against the Palestinian people;
- Support the mandate of the UN Independent International Commission of Inquiry on the OPT, including East Jerusalem, and Israel, established in May 2021.

ii. To the United Nations:

- Reconstitute the UN Centre Against Apartheid and the UN Special Committee against Apartheid;
- Expanding mandate of Special Rapporteur to include the Palestinian people as a whole on both sides of the Green Line and abroad;

iii. To the ICC:

- Conduct a prompt, thorough, and comprehensive investigation of the crimes of apartheid and persecution, and other associated crimes that fall within the jurisdiction of the Court concerning the Situation in Palestine, and accordingly prosecute relevant perpetrators.