—— **SYMPOSIUM PROCEEDINGS** ——

Reflections on the HSRC Report

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Towards the end of the 1970s, as a first-year student at the Hebrew University of Jerusalem, I took a course called "Introduction to South African History." The lecturer drew two concentric circles on the blackboard and said: "South Africa is like these two circles. In the inner circle, about 5 million whites live in a democracy – they hold free parliamentary elections, have a justice system and a free press. In the outer circle, there are 30 million black people, who have no rights." I was very young, but still, it made no sense. How could the whites have democracy if the blacks did not? "How can there be a magic line between those who have and those who do not, in a democracy?" I asked. Where exactly is the line separating the two worlds? How could the whites in the inner circle have democracy and rights and be impervious to those in the outer circle? What happens, for example, if a white woman is married to a black man? Does she have rights or not?

"It almost never happens," was the answer I received. "The Mixed Marriage Act of 1950 prohibits inter-racial marriage."

"And if a white journalist wants to report on what is happening in the outer circle?" I asked. "Is that possible?"

"South Africa has censorship. Whatever is perceived as a threat to national security is censored."

"What about a political party that supported black rights? Would people be able to vote for it, like for any other party in the South African democracy?"

"Some parties are banned. There is legislation against Communist gatherings, for example."

How strange it seemed to me, this whites-only democracy. The line separating those with rights from those without was one that I never managed to see or understand. I still can't conceive of it.

Thirty years later, I am teaching at the Hebrew University and those invisible dividing lines – unseen yet palpable – separate the campus from its surroundings in the heart of Arab East Jerusalem. The magic line that could not be legitimised in South Africa, between those who have rights and those who do not, runs through the heart of Jerusalem, separating Jews and Palestinians. Israel is perceived as a democratic state, while the Occupied Territories (or "administered territories" as they are officially called in Israel) are under military rule – just for now, until we find a political solution that Israel can live with. Meanwhile, Palestinians have been living in occupied territory for over forty years, with no rights, and Israel, which

existed for only 19 years before it conquered the Palestinian Territories and instituted military rule, is still considered a democracy.

For most Israelis, the comparison of Israel with apartheid South Africa is unacceptable. It angers and threatens Israelis in general and liberal Israelis in particular; because it challenges the basic belief that the Israeli-Palestinian conflict was imposed upon Israel, and is so unique that it cannot be compared with any other conflict in the world.[1]

Yet, even among Israelis, the comparison that was virtually taboo during the eighties and nineties is being heard more and more. An editorial in *Ha'aretz* iterated it incisively in 2007:

> Today, because of its constancy, the de facto separation between Palestinians and Israelis resembles political apartheid more than it does an occupation. [2]

The differences

There are, of course, a great many differences between Israel and apartheid South Africa. I will address four, which I regard as central.

Firstly, in South Africa, a small **minority** controlled the nation's resources and power and denied the majority its rights. If we look at Israel-Palestine overall, the number of Jews is slightly bigger than the number of Arabs and thus it is the majority denying the minority equal rights.[3] Of course, the white rulers of apartheid South Africa also claimed that there was a white majority.[4]

The basic idea behind the Bantustan policy was to define the civil rights of the native black population on a tribal basis, in such a manner as to ensure that the whites would be considered the majority. This objective required two moves. First, the black majority was dismantled into several minority groups by being classified as different ethnic groups, each one of which had a language, a culture, and political aspirations of its own. These could be realised in its "own" territory. In this way, the black majority ceased to exist and everyone became part of one of ten minority groups. Second, South Africa rejected the claims of black Africans, who it defined as members of different national groups, to political rights in the country. As members of "other nations" and citizens of "other states," they were not part of the South African nation, and needless to say, were not entitled to rights and privileges in South Africa.

Nevertheless, the enormous numeric advantage of blacks over whites in South Africa made it difficult to maintain the inequality for the long term. In Israel-Palestine, there is no such clear-cut demographic divide.

The second difference pertains to **labour relations** in Israel and South Africa. Supporters of segregation in South Africa saw the blacks as "racially inferior but useful, their labour

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[1] The *Guardian*'s award-winning Middle East Correspondent Chris McGreal published an assessment of the comparison between Israel and South Africa, after four years reporting from Jerusalem and more than a decade reporting from Johannesburg. McGreal's fascinating articles were not translated or published in Israeli newspapers, though *Ha'aretz*, the liberal Israeli daily, did publish a scathing response to McGreal by Benjamin Pogrund, who claimed that the comparison between Israel and apartheid South Africa was unjustified. See McGreal, C, 'Worlds apart', *The Guardian*, 6 February 2006; McGreal, C., 'Brothers in arms -- Israel's secret pact with Pretoria', *The Guardian,* 7 February 2006; and Pogrund, B., 'Why depict Israel as a chamber of horrors like no other in the world?', *The Guardian,* 8 February, 2006 (also published in *Ha'aretz*).

[2] *Ha'aretz* editorial, 3 October 2007, 'Where is the occupation?'

[3] See http://www.israelipalestinianprocon.org/populationpalestine.html.

[4] On the means by which Israel seeks to maintain the Jewish majority and thus justify its self-perception as a Jewish democratic state, see Golan-Agnon, D. (2007) 'The Israeli human rights movement – lessons from South Africa', in *Crime, Social Control and Human Rights* (Downes, D., Rock, P., Chinkin, C. and Gearty, C., eds) pp. 270-293, Willan Publishing.

force".[5] Black South Africans worked as domestic servants in white houses, shared white people's most intimate moments, were present in white cities and homes – an oppressed labour force, but nevertheless present. In Israel, the segregationist policy prevents Israelis from encountering Palestinians. Very few Palestinians work in Israel. Most Palestinians are not allowed to enter Israeli territory and thus Israelis are not witness to the daily humiliation that most Palestinians experience. [6]

In *A Dry White Season*, Andre Brink writes about the enlightenment of a white family that witnesses the suffering and humiliation of the family of its black gardener.[7] In Israel, Palestinians gardeners are becoming more and more of a rarity. The fences, walls, checkpoints and prohibitions make it impossible for Israelis to see the misery they inflict on Palestinians.[8]

As Mira Hamermesh explains in her wonderful work *Maids and Madams*,[9] despite all the racism, white South African women left what they held dearest, their children, in the care of black nannies. Such intimacy, daily contact between Israelis and Palestinians is all but non-existent in Israel today.

The third significant difference is the role played by **religion**. The Afrikaner myth of settlement is based on the Old Testament and their self-perception as the chosen people in the Promised Land. The Biblical story of the chosen people travelling to their promised land is the corner stone of Afrikanerdom. But Christianity also played an important part in the healing and reconciliation process that took place in South Africa in the 1990s. Here, could we see religions as reconciliatory forces? How does our legal language fit with the different religions here?

And finally, the fourth difference I would highlight is the role played by the **international community**. The international community used sanctions in an effort to bring about an end to apartheid aimed at creating a democratic state in South Africa where each person would have a vote. Yet, in the case of the Israeli-Palestinian conflict the solution suggested by the international community is of two separate states - Palestine and Israel.

While the international community imposed sanctions on the South African regime in order to end apartheid, Israel gets billions of dollars every year from the US, along with economic privileges from the European Union.

I will go back to the international community and international law later, but let me say that with all the differences mentioned above, there are many similarities.

The similarities

During apartheid in South Africa, not only did millions of people live without minimal rights and in ongoing poverty, but the discrimination that gave rise to these conditions was anchored in a complex system of laws: laws that prohibited marriage between blacks and whites; laws that prohibited blacks from living in cities declared white; laws legislated in a pseudo-democratic process, enforced by a system of attorneys and courts and administered by a gigantic bureaucracy constructed to maintain it. The Occupied Territories are also governed

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[5] Greenstein, R. (2006), 'On Citizenship and Political Integration: What Lessons Can We Learn From the Rise and Fall of the apartheid Regime?', 10 *Mishpat uMimshal* 127 (Hebrew)

[6] According to the 2006 annual report of the workers' hotline, there were 124,000 Palestinians employed inside the Green Line during 2000, until the month of October. In 2006 the number had dropped to 55,000.
http://www.kavlaoved.org.il/UserFiles/news973_file.doc

[7] Brink, A. (1980). *Dry White Season*. William Morrow & Co.

[8] Data from the workers' hotline, http://www.kavlaoved.org.il.

[9] Hamermesh, M. (1986). *Maids and Madams*. (Channel 4).

by a complex system of laws, hundreds of them. Some are left over from the British; others have been inherited from Turkish, Jordanian and Egyptian legislation. There are Israeli and international human rights laws, as well as military edicts, *shariah* law and the legislation effected by the Palestinian Authority.

In Israeli law there are two separate legal systems, one for Palestinians and one for Israelis who live in the Occupied Territories. If an Israeli and a Palestinian commit the same crime, together, in the territories, they will stand trial before different courts and according to a different set of laws. Though they live in the same occupied territory, the Israeli will come before an Israeli civil court, the Palestinian will be brought before a military court.

As in South Africa, Israel employs hundreds of attorneys, lawyers and consultants to explain how, in this system, things may be unjust but are legal.

The laws of the South African apartheid regime distinguished between 4 categories of people – each with its own laws and rights. The State of Israel and its legal system distinguish between the rights of 6 different groups of people under its jurisdiction, each with its own set of rights:

1. Palestinians living in Gaza, which is defined by Israeli law as a hostile entity.
2. Palestinians in the West Bank.
3. The one quarter of a million Palestinians who live in Jerusalem (as residents of Israel, but not citizens).
4. Palestinian citizens of Israel, who number about one million and constitute 20% of the country's citizens.
5. Jews who enjoy full rights.
6. A growing migrant labor force and refugees who live in Israel without rights.

Each of these groups are given different rights according to Israeli law. Both apartheid South Africa and Israel have maintained systems of domination, exploitation and discrimination not only through military force, but also with the help of the legal system.

On international law

In the past twenty years, we have witnessed many new international conventions, courts, and committees which did not exist at the time of the struggle against apartheid in South Africa. But let me pose a few questions about the use of international law:

1. International law is written in foreign lands, in different cultures and often seems far from the reality of all of us here. If we do want to live together here, in a just society, with dignity and rights – we also need to work for change in the laws here.

2. Focusing the discussion on provisions of conventions opens the door to a legalistic debate, to which Israel brings its top legal experts. If we read the Israeli High Court decisions about the Wall, one could not but note that the High Court refers the International Court of Justice opinion, and decided in a small number of cases to alter the route of the Wall. However, in terms of the most important issue – the legality of the settlements and the Wall itself the Court ruled very differently. So we are left with a situation that the Israeli High Court not only approves most of the human rights violations that the army declares to be necessary for security, it actually provides the State with an appearance of adhering to the rule of law.

3. International law in itself is problematic in its definition of protected people in occupied territory. For as long as the debate is about the enforcement of the Fourth Geneva Convention, we accept the separation which international law suggests: that some people who live on one side of the Green Line have less rights than others – until the occupation is over. But for how long can we accept this separation?

Finally, two questions about the important report:

1. Yes, it is time to reassess Israel practices in the occupied Palestinian territories but why write separately about the 1967 and 1948 occupations? What does it mean in terms of thinking about our shared future?

2. Following on from that, I also wonder about the reason for bringing two different concepts into one report? One is apartheid—which provides a good framework for analysing the reality of the situation and for working towards resolving it. This paradigm also instills hope for a better future.

But why also use the framework of colonialism? Is it really helpful in terms of how we imagine the future? If we focus on the Occupied Palestinian Territories only, for sure we can say the settlements are colonies. But if we think about the whole area -- Israel-Palestine -- in the context of colonisation, do we think that Israel will withdraw and all the Jewish settlers will leave as the French did in Algeria?

I was born in Israel, I raise my children in Jerusalem, I have no other passport, and I don't want to go and live anywhere else.

I believe that we should have a shared future and that – as in South Africa – a shared future will be built only if we go back to the past. We must not start our analysis in 1967, as this report does, but in the history of the *Nakba* in 1948 and long before.

We must keep asking and working for a better future – in which all of us will have the same rights, to live in dignity, in equality, and in peace.

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