

Addameer Prisoners' Support and Human Rights Association  
Al-Haq – Defending Human Rights  
Hurryyat- Centre for Defence of Liberties and Civil Rights  
Jerusalem Center for Legal Aid and Human Rights  
Ramallah Center for Human Rights Studies  
Independent commission for Human Rights (Observer)

مجلس منظمات حقوق الإنسان الفلسطينية  
Palestinian Human Rights Organizations Council



Al-Mezan Center for Human Rights  
Addameer Association for Human Rights  
Defence for Children International – Palestine  
The Palestinian Centre for Human Rights  
Muwatin Institute for Democracy and Human Rights (Observer)

## 1. Introduction

1. The Palestinian Human Rights Organizations Council (PHROC) have written this submission in response to the inter-state complaint lodged with the UN Committee for the Elimination of All Forms of Racial Discrimination (the “Committee” or “CERD”) by the State of Palestine, pursuant to Articles 11-13 of the *International Covenant for the Elimination of All Forms of Racial Discrimination* (the “Convention” or “ICERD”).<sup>1</sup>
2. PHROC stresses that any meaningful analysis of Israel’s violations of the Convention directed towards Palestinians must be done within the context of Article 3, which prohibits and condemns racial segregation and apartheid.<sup>2</sup> In light of this, and in preparation for the State of Israel’s review under the Convention during the Committee’s 100<sup>th</sup> session, Palestinian and regional human rights organisations submitted an extensive and comprehensive Joint Parallel Report (the “Report”) illustrating and analysing Israel’s creation and maintenance of an apartheid regime based on racial oppression and domination. This Report is attached as an Annex to the present submission.<sup>3</sup>

## 2. Legal Definition of Apartheid

3. As outlined in detail in the Report, apartheid, as an international crime and breach of the fundamentals of the international legal order, is well recognised and codified in international law.<sup>4</sup> Chief among such instances are the *International Convention on the Suppression and Punishment of the Crime of Apartheid*<sup>5</sup>, which builds upon Article 3 CERD, and the *Rome Statute of the International Criminal Court*<sup>6</sup>, which lists apartheid as a crime against humanity within the Court’s jurisdiction under Article 7(1)(j). The International Court of Justice has further noted that “[t]o establish ... and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes

<sup>1</sup> *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195.

<sup>2</sup> Article 3, ICERD.

<sup>3</sup> Much of the analysis in this *amicus curiae* submission is derived from this Report, which was drafted by Al-Haq and its partners. As such, credit for much of this work must be given to the organizations named in the Report.

<sup>4</sup> See Report, sections 3.1.1-3.1.3.

<sup>5</sup> *International Convention on the Suppression and Punishment of the Crime of Apartheid* (adopted 30 November 1973, entry into force 18 July 1976) A/RES/34/27.

<sup>6</sup> *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3.

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and principles of the [UN] Charter”<sup>7</sup>, and thus creates *erga omnes* obligations for all States to oppose and rectify such situations.<sup>8</sup>

4. As an international crime, apartheid has a number of constitutive elements, namely: (1) an institutionalised regime of systemic oppression and domination; (2) by one racial group over any other racial group or groups; (3) with the intention of maintaining that regime.
5. As noted in the Report<sup>9</sup>, element (1) indicates that individual acts indicative of a regime must be part of a wider policy of systemic oppression and domination. Individual acts outside such a context, while may amount to reprehensible examples of racism, fall short of the definition of apartheid.
6. Element (2), meanwhile, requires the discrimination to be racial in character. PHROC notes that race is best understood as a social construct, in line with the thoughtful and compelling analysis of the Economic and Social Commission for Western Asia (ESCWA).<sup>10</sup> As ESCWA has noted, “[t]he question is therefore not whether Jewish and Palestinian identities are innately racial in character but whether those identities function as racial groups in the local environment of Israel-Palestine.”<sup>11</sup> As such, PHROC believes that these groups are “racial” for the purposes of Article 3.<sup>12</sup>
7. Finally, element (3) involves the special intent necessary for the crime of apartheid. It is important that any inhumane acts committed are carried out as part of an institutionalised regime by one racial group, in order to systemically dominate and oppress another, and it must be done with the intention of ensuring that this regime remains in place.

### 3. Previous Recognition of Israeli Apartheid

8. PHROC wishes to stress that the argument that Israeli has created and maintained an apartheid regime is neither new nor novel. The Committee itself, in 2007<sup>13</sup> and 2012<sup>14</sup>, found that Israel, as State Party to the Convention, is in violation of Article 3, urging Israel to take immediate measures to prohibit and eradicate any policies or practices of racial segregation and apartheid which disproportionately affect the rights of Palestinians.

<sup>7</sup> ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia [South West Africa] Notwithstanding Security Council Resolution 276 (Advisory Decision)* [1970] ICJ Reports 71 at 131.

<sup>8</sup> See Report, para 16.

<sup>9</sup> Report, para 23.

<sup>10</sup> ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid* (2017) p. 21.

<sup>11</sup> *Ibid.* p. 21.

<sup>12</sup> For analysis to this effect, see Report, section 3.2.2.

<sup>13</sup> CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination on the tenth to thirteenth periodic reports of Israel, 14 Jun 2007, UN Doc. CERD/C/ISR/CO/13.

<sup>14</sup> CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination on the fourteenth to sixteenth periodic reports of Israel, 3 April 2012, UN Doc. CERD/C/ISR/CO/14-16.

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9. Further, as noted above, ESCWA has greatly contributed to this area in its report entitled “Israeli Practices towards the Palestinian People and the Question of Apartheid” (the “ESCWA Report”). It is noteworthy that in its investigation, ESCWA found that the international community has played a key role in the normalization of Israel’s fragmentation of the Palestinian people, which it identified as a key component of Israeli apartheid. In doing so the international community has:

“unwittingly collaborated with this manoeuvre by drawing a strict distinction between Palestinian citizens of Israel and Palestinians in the occupied Palestinian territory, and treating Palestinians outside the country as ‘the refugee problem’.” The Israeli apartheid regime is built on this geographic fragmentation, which has come to be accepted as normative. The method of fragmentation serves also to obscure this regime’s very existence.”<sup>15</sup>

10. Importantly, ESCWA noted the division of the Palestinian people into four separate fragments or legal “domains”, in which the Palestinian people are “ostensibly treated differently but share in common the racial oppression that results from the apartheid regime.”<sup>16</sup> The four legal ‘domains,’ as identified in the ESCWA report, are as follows: (1) Israeli civil law governing Palestinian citizens of Israel; (2) Israeli permanent residency law governing Palestinians in the city of Jerusalem; (3) Israeli military law governing Palestinians, including Palestinians in refugee camps, under Israeli military occupation in the West Bank and Gaza Strip, since 1967; and (4) Israel’s policy to deny the return of Palestinian refugees or exiles, living outside territory under Israel’s control.<sup>17</sup>

#### **4. Establishing an Apartheid Regime**

##### **4.1. Israel’s Discriminatory Legal Foundation**

11. Since the foundation of the Israeli State, successive discriminatory laws have been put in place at the expense of the Palestinian people. PHROC and its partners, in the Report to the Committee, extensively outline this legal system, including an extended analysis of important legislative components of the wider apartheid machinery.<sup>18</sup> As this Report is attached as an annex, and has previously been submitted to the Committee, it is not necessary to reproduce a vast portion of this analysis here. Instead, section will provide a brief overview of a number of laws important for Israeli apartheid.

<sup>15</sup> ESCWA Report, p. 37.

<sup>16</sup> *Ibid.* p.4.

<sup>17</sup> *Ibid.*

<sup>18</sup> See Report, section 4.1.



12. The Law of Return (1950)<sup>19</sup> and Citizenship Law (1952)<sup>20</sup> are two closely linked components of the Israeli Basic Law. The Law of Return grants all Jewish immigrants the right to enter Israel while simultaneously categorically denying the international right to return to one's country<sup>21</sup> to Palestinian refugees both in the oPt and abroad. This provision has previously been recognised as a direct violation of Articles 5(d)(ii) and 5(d)(v) of the Convention<sup>22</sup>. The Citizenship Law supplements this, conferring automatic Israeli citizenship to any Jew who enters Israel under the Law of Return, while precluding Palestinians who were residing outside Israel between 1948 and 1952 from obtaining such citizenship, thereby further denying the right of return to millions of Palestinian refugees and exiles.<sup>23</sup>
13. The Entry into Israel Law (1952)<sup>24</sup> allows for the entry into the State of Israel all Jewish immigrants to enter Israel as if they were Israeli citizens under the auspices of the Law of Return. Comparatively, the Entry into Israel Law created the precarious and oppressive "permanent resident" status for Palestinians residing in occupied East Jerusalem. This status, which is infamously easy for Israeli authorities to revoke, as is often done arbitrarily, provides an effective means for Israel's apartheid regime to pursue its goals of population transfer and demographic manipulation, in violation of the collective Palestinian rights of self-determination and permanent sovereignty.<sup>25</sup> The revocation mechanism of this Law is further supplemented by the Citizenship and Entry into Israel Law (Temporary Order) (2003)<sup>26</sup>, an ostensibly temporary instrument which has nonetheless been consistently renewed since its introduction which prohibits the extension of residency or citizenship status to Palestinian spouses of Palestinian citizens of Israel, ensuring the prevention of family unification for such families. This order has also been criticised by the Committee, who called upon its abandonment "to facilitate family reunification of all citizens irrespective of their ethnicity or national or other origin."<sup>27</sup>

<sup>19</sup> State of Israel (Sol), The Law of Return (5710/1950), at: <https://knesset.gov.il/laws/special/eng/return.htm>.

<sup>20</sup> Sol, Citizenship Law (5712/1952), at: [http://www.knesset.gov.il/review/data/eng/law/kns2\\_nationality\\_eng.pdf](http://www.knesset.gov.il/review/data/eng/law/kns2_nationality_eng.pdf).

<sup>21</sup> Article 5(d)(ii), ICERD.

<sup>22</sup> CERD/C/ISR/CO/13, op. cit., para. 15.

<sup>23</sup> 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: <http://www.hsrc.ac.za/en/media-briefs/democracy-governance-and-service-delivery/report-israel-practicing-apartheid-inpalestinian-territories>.

<sup>24</sup> Sol, Entry into Israel Law (5712/1952), at: <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-LawsDatabase/English/40-Entry-into-Israel-Law-1952.pdf>.

<sup>25</sup> Common Article 1, *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entry into force 23 March 1976) 16 December 1966, 999 UNTS 171, *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entry into force 3 January 1976) 16 December 1966, 993 UNTS 3.

<sup>26</sup> Sol, Nationality [sic] and Entry into Israel Law (Temporary Order), 2003, at: [https://www.adalah.org/uploads/oldfiles/features/famuni/20030731fam\\_uni\\_law\\_eng.pdf](https://www.adalah.org/uploads/oldfiles/features/famuni/20030731fam_uni_law_eng.pdf).

<sup>27</sup> CERD/C/ISR/CO/14-16, op. cit., para. 18. See also CERD/C/ISR/CO/13, op. cit., para. 20.



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14. Most recently, the introduction of The Basic Law: The Nation-State of the Jewish People (2018)<sup>28</sup> consolidates the status of Israeli Jews as a privileged class in Israel, to the detriment of all other groups, in particular Palestinians. The law “articulates the ethnic-religious identity of the state as exclusively Jewish” and “weakens the constitutional status of the Palestinian minority in Israel”.<sup>29</sup> While much can be said regarding this law, two aspects are of particular interest within the context of apartheid. First, the law modifies the constitutional framework of the State of Israel so as to enshrine self-determination in Israeli law as being a uniquely Jewish right<sup>30</sup>, as well as to elevate the illegal settlement enterprise in the oPt as a “national value”.<sup>31</sup>
  15. PHROC further notes that Israel’s Zionist parastatal institutions have played a key role in the implementation and imposition of these racist policies of domination and oppression, in particular the World Zionist Organization, Jewish National Fund, and Jewish Agency.<sup>32</sup>

## 5. Maintaining Israel’s Apartheid Regime

16. Israel’s discriminatory legal foundation establishes the basis for its creation of an apartheid regime over the Palestinian people, whereas it is through its policies and practices of fragmentation, population transfer, and demographic manipulation that this regime is maintained. Thus, the former facilitates the latter, culminating in a widespread and systemic campaign of violations of, and impunity for, racial discrimination, oppression, and domination amounting to apartheid, in direct contravention of Israel’s obligation as a State Party to “condemn racial segregation and apartheid and to undertake to prevent, prohibit and eradicate all practices of this nature.”<sup>33</sup>

### 5.1. Entrenching Fragmentation

17. As noted by ESCWA, the fragmentation of the Palestinian people into the aforementioned “domains” is the primary method through which Israel imposes and maintains its regime of apartheid.<sup>34</sup> As such, the Committee must consider the Palestinian population as a whole, separated through a prolonged campaign of entrenched fragmentation. The Report

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<sup>28</sup> Sol, Basic Law: Israel – The Nation State of the Jewish People, 2018, at: <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>.

<sup>29</sup> See Report, para 36.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*, para 37.

<sup>32</sup> On this, see Report, sections 4.2-4.3.

<sup>33</sup> Article 3, ICERD.

<sup>34</sup> ESCWA Report, p. 37.

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submitted by PHROC and its partners contains an extended analysis on this fragmentation<sup>35</sup>, which will be briefly outlined here.

18. As noted above, the first of these domains is comprised of the approximately 1.9 million Palestinian citizens of Israel. Although superficially represented in the Knesset, Israel's parliament, their representatives are restricted by the Basic Law from challenging or introducing legislation which would compromise the racial and discriminatory character of the State.<sup>36</sup> Tellingly, in Israel, rights which would typically be linked to citizenship in other States are instead contingent on "Jewish nationality". Palestinian citizens are not eligible for such a designation, nor is there a concept of "Israeli nationality" for non-Jewish citizens to attain these rights.<sup>37</sup>
19. The second domain encompasses the 323,700 Palestinian so-called "permanent residents" of East Jerusalem.<sup>38</sup> This status was imposed following the invasion, occupation, and illegal annexation of East Jerusalem in 1967, which was formalised in 1980 through the introduction of the Basic Law: Jerusalem, Capital of Israel. This was condemned by the UN Security Council, which declared the annexation to be "null and void"<sup>39</sup>, however Israel has not reversed this unlawful measure. Palestinians in East Jerusalem are therefore "foreigners for whom residency in the land of their birth is a privilege rather than a right, subject to revocation."<sup>40</sup> Thus, Palestinians in East Jerusalem, who are the target of a concerted strategy of economic and cultural suffocation,<sup>41</sup> must constantly prove that their "centre of life" is in Jerusalem, and face the perpetual threat of forced evictions, house demolitions, and other such policies and practices which are designed to ensure the maintenance of an Israeli-Jewish demographic majority in the city.<sup>42</sup>
20. The third domain may be found throughout the rest of the oPt, namely the 4.7 million Palestinians in the West Bank, and the further 2 million in the Gaza Strip. The population of the West Bank and Gaza are the fragment most clearly living under apartheid conditions,

<sup>35</sup> Report, section 5.1.

<sup>36</sup> See Adalah, "Israeli Supreme Court refuses to allow discussion of full equal rights & 'state of all its citizens' bill in Knesset," (30 December 2018), at: <https://www.adalah.org/en/content/view/9660>.

<sup>37</sup> As the Israeli Supreme Court twice affirmed in the landmark cases of *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>.

<sup>38</sup> The Association for Civil Rights in Israel (ACRI), "East Jerusalem: Facts and Figures 2017," (21 May 2017), at: <https://law.acri.org.il/en/wp-content/uploads/2017/05/Facts-and-Figures-2017.pdf>.

<sup>39</sup> United Nations, *The Status of Jerusalem* (New York: United Nations, 1997), at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/533B4714451B48BF0525651B00488D02>. See also UN Security Council, Resolution 478 (1980), 20 August 1980, S/RES/478 (1980) paras. 1 and 3.

<sup>40</sup> ESCWA Report, p. 42.

<sup>41</sup> See Report, section 5.1.3.

<sup>42</sup> ESCWA Report, p. 5.

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being subject to a separate military justice system, as opposed to the Israeli civil system in place for settlers.<sup>43</sup> Palestinians in the oPt are further subjected to draconian restrictions on freedom of movement and residence, posing severe issues for family life, choice of residence and spouse, adequate housing, and an adequate standard of living.<sup>44</sup> Such restrictions are imposed through, *inter alia*, a discriminatory and oppressive permit regime, the construction of the Annexation Wall<sup>45</sup>, a discriminatory, tiered ID system<sup>46</sup>, and most shockingly the ongoing 13 year unlawful closure and blockade of the Gaza Strip.<sup>47</sup>

21. Finally, the fourth domain comprises the Palestinian refugees and involuntary exiles who were displaced following 1948 and 1967. This often forgotten and neglected fragment, while outside the territory under Israel's effective control or jurisdiction, is nonetheless impacted by its apartheid regime through the system refusal to uphold their inalienable right to return to their homes and properties. Israel does so in order to defend itself from what it refers to as a "demographic threat" posed by in influx of Palestinian refugees, which would render the continued maintenance of the apartheid regime burdensome.<sup>48</sup> This protracted campaign of discriminatory isolation has included concerted efforts to undermine the functioning of, and threaten the provision of funding to, UNRWA<sup>49</sup> and indicates a concerted effort to ensure that Palestinian refugees remain as such permanently.<sup>50</sup>

## 5.2. Creating a Coercive Environment

22. As part of Israel's ongoing policy of displacement, it has created a coercive environment whose clear goal is the displacement and erasure of the indigenous Palestinian population, to suppress the Palestinian will, and to undermine their exercising their inalienable rights. As noted in our Report, this is done in numerous ways, chiefly population transfer and demographic manipulation, discriminatory planning and zoning, including the denial of access to natural resources, the excessive use of force, and the denial of access to, and fragmentation of, healthcare.<sup>51</sup>

<sup>43</sup> Report, para 52.

<sup>44</sup> *Ibid.*, para 65.

<sup>45</sup> *Ibid.*, para 66.

<sup>46</sup> *Ibid.*, para 67.

<sup>47</sup> See extended analysis at *ibid.*, section 5.1.4.

<sup>48</sup> ESCWA Report, p. 5.

<sup>49</sup> Report, para 64.

<sup>50</sup> For extended analysis, see *ibid.*, section 5.1.1.

<sup>51</sup> See Report, section 5.2.



23. In the occupied West Bank, including East Jerusalem, the construction of Israeli settlements, and the *ex post facto* legalisation of those built illegally<sup>52</sup> go hand in hand with a discriminatory planning and zoning regime<sup>53</sup> in order to pursue a goal of demographic manipulation. The revocation of residency rights for Palestinian Jerusalemites, and the alteration of the boundaries of the city of Jerusalem clearly illustrate the intention to guarantee and ensure an Israeli-Jewish majority in the city.<sup>54</sup> This strategy further extends to illegal settlements within the West Bank; through the transfer of civilians from Israeli proper to the oPt, Israel proliferates the creation of illegal settler colonies and expands those which already exist. As such, Israel empowers colonial-settlers to expropriate Palestinian land and exploit natural resources for their own benefit, while simultaneously creating the façade of the oPt as an Israeli-Jewish territory.<sup>55</sup>
24. Perhaps the most visible pillar of the coercive environment created by Israel is the targeting of Palestinians with the excessive use of force.<sup>56</sup> The intimidation and repression of Palestinians seeking to exercise their inalienable rights clearly indicates the intention to maintain, including through the use of lethal force, the apartheid regime. The Israeli occupying forces' (IOF) shoot-to-kill policy resulted in the killing of 704 children, including 184 children between 1 October 2015 and 30 September 2019, and a further 32 in the year 2020.<sup>57</sup> In the context of the Great March of Return in Gaza that lasted nearly two years from 30 March 2018, 217 Palestinians were killed, including 48 children, nine persons with disabilities, four paramedics, and two journalists.<sup>58</sup> The UN Commission of Inquiry that was established to investigate these incidents found that the IOF "killed and gravely injured civilians who were neither participating directly in hostilities nor posing an imminent threat to life."<sup>59</sup>
25. The apartheid regime's restrictions on Palestinian movement and excessive use of force coalesce in the issue of the denial of access to, and fragmentation of, healthcare.<sup>60</sup> In 2017 a

<sup>52</sup> Jonathan Lis and Yotam Berger, "Israeli Ministers Approve Bill That Would Legalize 66 West Bank Outposts," *Haaretz*, 16 December 2018, at: <https://www.haaretz.com/israel-news/.premium-israeli-ministers-approve-bill-that-would-legalize-66-west-bank-outposts-1.6747792>.

<sup>53</sup> Report, section 5.2.2.

<sup>54</sup> *Ibid.*, para 93.

<sup>55</sup> *Ibid.*, para 91.

<sup>56</sup> *Ibid.*, section 5.2.3.

<sup>57</sup> *Ibid.*, para 110; Al-Haq Annual Field Report on Human Rights Violations in 2020 (2 March 2021), available at: <https://www.alhaq.org/monitoring-documentation/17950.html>

<sup>58</sup> Al Mezan Center for Human Rights, "Attacks on Unarmed Protesters at the 'Great March of Return' Demonstrations," 28 March 2020, at: <http://mezan.org/en/uploads/files/15952354571567.pdf>

<sup>59</sup> Human Rights Council, Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, 25 February 2019, A/HRC/40/74, para 114.

<sup>60</sup> See Report, section 5.2.4.



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reported 54 Palestinian patients died after being unable to leave the Gaza Strip for potentially lifesaving treatment in the rest of the oPt, in Israel, or abroad.<sup>61</sup> The ability to travel for medical care outside of Gaza is governed by Israel's gratuitous and discriminatory permit-application regime, wherein Palestinians are routinely denied permission, ostensibly due to Israel's "security" concerns. In countless, particularly disturbing cases, patients or their companions are interrogated by the IOF and endure attempts to be coerced into acting as collaborators in exchange for treatment.<sup>62</sup> Moreover, the World Health Organisation reported an approval rate of just 76 per cent of applications at the start of this year,<sup>63</sup> still a relatively high figure compared to just 54 per cent reported in 2017.<sup>64</sup> During the Great March of Return, the World Health Organisation reported an approval rate of just 18 per cent of applications on behalf of injured protesters seeking care, reflecting a punitive practice by the Israeli authorities that targeted Palestinians specifically for their participation in the demonstrations.<sup>65</sup> Israel's patient permit system has been the subject of considerable criticism, particularly from the Committee for Economic, Social and Cultural Rights, which has called for a "[r]eview [of] the medical exit permit system with a view to facilitating timely access to all medically recommended health care services by residents of Gaza."<sup>66</sup>

### 5.3. Silencing of Opposition

26. A core method of ensuring the maintenance of Israel's apartheid machinery is through the silencing of any and all opposition to its systemic and widespread human rights violations. This is done through the creation of a climate of fear and intimidation through arbitrary detention, torture and ill-treatment, collective punishment, and smear and delegitimation campaigns against human rights defenders, private individuals, and civil society and human rights organisations.<sup>67</sup>

<sup>61</sup> Al Mezan Center for Human Rights et al., "Israel: Record-Low in Gaza Medical Permits," data, at:

<http://mezan.org/en/post/22378>

<sup>62</sup> Report, paras 117-119.

<sup>63</sup> WHO occupied Palestinian territory, Health Access: Barriers for patients in the occupied Palestinian territory, Monthly report, January 2021, at:

[https://www.emro.who.int/images/stories/palestine/documents/WHO\\_Jan\\_2021\\_Monthly\\_Report.pdf](https://www.emro.who.int/images/stories/palestine/documents/WHO_Jan_2021_Monthly_Report.pdf)

<sup>64</sup> WHO occupied Palestinian territory, Health Access: Barriers for patients in the occupied Palestinian territory, Monthly report, December 2017, at:

[https://www.emro.who.int/images/stories/palestine/documents/who\\_monthly\\_gaza\\_access\\_report\\_dec\\_2017-final.pdf](https://www.emro.who.int/images/stories/palestine/documents/who_monthly_gaza_access_report_dec_2017-final.pdf)

<sup>65</sup> WHO occupied Palestinian territory, Health Access: Barriers for patients in the occupied Palestinian territory, Monthly report, September 2019, p. 3, at:

[http://www.emro.who.int/images/stories/palestine/documents/september\\_monthly\\_report\\_2019.pdf?ua=1](http://www.emro.who.int/images/stories/palestine/documents/september_monthly_report_2019.pdf?ua=1).

<sup>66</sup> CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights on the fourth periodic report of Israel, 18 October 2019, E/C.12/ISR/CO/4, para. 59.

<sup>67</sup> Report, section 5.3.

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27. Since the beginning of the occupation in 1967, some 800,000 Palestinians have been detained pursuant to Israeli military orders, amounting to approximately 20 per cent of the total Palestinian population. 10,000 of these detainees have been women, and 8,000 have been children. In 2021, Addameer Support and Human Rights Association documented that Israel had detained a total of 4,450 Palestinian political prisoners, 440 of whom are administrative detainees, including 10 members of the Palestinian Legislative Council, 37 women, and 140 children.<sup>68</sup> Those detained under administrative detention are held without charge or trial, supposedly on grounds of “security”.<sup>69</sup>
28. While detained, the torturing and mistreatment of Palestinians has unfortunately become commonplace as the IOF’s primary technique to extract statements.<sup>70</sup> Such techniques include physical beatings, stress positions, sleep deprivation, isolation, and solitary confinement during interrogation, subjection to sounds of torture from neighbouring cells, deliberate medical neglect, screaming and cursing, threats of sexual harassment, particularly against women and children detainees, threats of harming family members, and new physical and psychological torture techniques which Israel continues to develop, including for use on children.<sup>71</sup> The use of torture has been sanctioned by the Israeli High Court of Justice through the sophistic “ticking bomb” scenario, wherein intelligence officials may torture detainees when they suspect information which could prevent an impending threat to life is being withheld.<sup>72</sup> The judicial approval of the use of torture was criticised by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment following a similar judgement by the Supreme Court in November 2018: “[b]y exempting alleged perpetrators from criminal investigation and prosecution, the Supreme Court has essentially provided them with a judicially sanctioned ‘license to torture’”.<sup>73</sup>
29. While a core component of the maintenance of Israel’s apartheid regime is the punishment of those who voice opposition, collective punishment of Palestinians as a whole has also featured as a staple of the prolonged occupation of the oPt, including East Jerusalem.<sup>74</sup> Designed to create a climate of fear, repression, and intimidation, the use of collective punishment is often directed towards the families, neighbours, and friends of those

<sup>68</sup> *Ibid.*, para 123.

<sup>69</sup> *Ibid.* paras 124, 126. See, Addameer, Statistics, (5 April 2021), available at: <https://www.addameer.org/index.php/statistics>

<sup>70</sup> *Ibid.*, para 127.

<sup>71</sup> *Ibid.*, para 128.

<sup>72</sup> Israeli Supreme Court Decision No. 94/5100, *Public Committee Against Torture in Israel et al. v. Government of Israel et al.*, Judgment. An English translation of the Court decision available at: [http://www.hamoked.org/files/2012/264\\_eng.pdf](http://www.hamoked.org/files/2012/264_eng.pdf).

<sup>73</sup> OHCHR, “UN expert alarmed at Israeli Supreme Court’s “license to torture” ruling,” (20 February 2018), available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22675&LangID=E>.

<sup>74</sup> Report, section 5.3.3.



convicted or suspected of challenging the apartheid regime. Expressly prohibited under Article 33 of the *Fourth Geneva Convention*<sup>75</sup>, measures of collective punishment may include the punitive revocation of permanent residency status for East Jerusalemites<sup>76</sup>, punitive house demolitions and sealing<sup>77</sup>, and perhaps most disturbingly withholding the bodies of relatives killed by the IOF<sup>78</sup>.

30. Those human rights defenders who are not detained or subject to Israel's various forms of collective punishment are often subjected to other forms of intimidation, harassment, and smear campaigns. This includes the raiding of Palestinian human rights organisations' offices<sup>79</sup>, the branding of human rights defenders as "terrorists" by Israel's Ministry of Strategic Affairs<sup>80</sup>, and the issuing of death threats.<sup>81</sup> As such, the message is abundantly clear that "anyone who dares to speak out about Israeli human rights violations in Israel and the Occupied Palestinian Territories risks coming under attack."<sup>82</sup>
31. As the Committee has noted that the Convention's prohibition of, and obligation to combat, hate speech<sup>83</sup> is "central to the struggle against racial discrimination"<sup>84</sup>, it is also worth considering the rampant dissemination of hate speech, amounting to incitement to racial hatred, from Israeli officials, and the use of existing Israeli hate speech legislation to further silence and monitor Palestinians online. 7amleh – The Arab Center for the Advancement of Social Media recorded a total of 574,000 posts on social media amounting to hate speech and incitement against Palestinians in 2020 – an average of one every 55 seconds.<sup>85</sup> Despite

<sup>75</sup> *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287.

<sup>76</sup> Report, section 5.3.3.1.

<sup>77</sup> *Ibid.*, section 5.3.3.2.

<sup>78</sup> *Ibid.*, section 5.3.3.3.

<sup>79</sup> See for example, the 19 September 2019 raid of the Addameer Prisoner Support and Human Rights Association offices in Ramallah, Addameer, "Israeli Occupation Forces Raid Addameer's Office and Steal its Belongings," 19 September 2019, at: <http://www.addameer.org/news/israeli-occupation-forces-raid-addameers-office-and-steal-its-belongings>.

<sup>80</sup> See, for example, Al-Haq, "Al-Haq submits a joint urgent appeal to the United Nations Special Procedures on the ongoing Israeli smear campaign against Al-Haq," (24 August 2019), at: <http://www.alhaq.org/advocacy/14857.html>. See also Al-Haq, "Israeli Ministry of Strategic Affairs Campaign of Institutionalised Harassment Continues with the Alleged Closure of Palestinian NGOs' Financial Accounts," 19 June 2019, at: <http://www.alhaq.org/advocacy/6039.html>.

<sup>81</sup> See, for example, Al-Haq, "Al-Haq Under Attack – Staff Member's Life Threatened," (3 March 2016), at: <http://www.alhaq.org/advocacy/6432.html>.

<sup>82</sup> Amnesty International, "Israel ramps up assault on civil society with chilling raid on Palestinian NGO Addameer," (19 September 2019), at: <https://www.amnesty.org/en/latest/news/2019/09/israel-ramps-up-assault-on-civil-society-with-chillingraid-on-palestinian-ngo-addameer/>.

<sup>83</sup> Article 4, ICERD.

<sup>84</sup> CERD, General Recommendation XV on article 4 of the Convention, 15 September 1993, A/48/18, para 1

<sup>85</sup> 7amleh, "Anti-Palestinian racism and incitement in Israeli social media increased by 16% in 2020 – center" (8 March 2021), available at: <https://english.wafa.ps/Pages/Details/123582>; 7amleh, "The Index of Racism and Incitement in Israeli Social Media 2018: An inciting post against Palestinians every 66 seconds," (11 March 2019), available at:

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this, it is instead Palestinians who are arrested for political participation, with 350 having been arrested in the occupied West Bank, including East Jerusalem, in 2018, ostensibly on charges on “incitement”, with a further 25 per cent of Palestinian youth having reportedly been interrogated on similar grounds.<sup>86</sup> Meanwhile, Israeli officials and public representatives freely disseminate hate speech and incitement to racial hatred online; in one particularly concerning example, Ayelet Shaked, former Israeli Minister of Justice posted the following message:

“They [Palestinians] are all enemy combatants, and their blood shall be on all their heads. Now this also includes the mothers of the martyrs, who send them to hell with flowers and kisses. They should follow their sons, nothing would be more just. They should go, as should the physical homes in which they raised the snakes. Otherwise, more little snakes will be raised there.”<sup>87</sup>

## 6. Conclusion and Recommendations

### 6.1. Conclusion

32. It is evident that rather than take positive measures, as per its obligations under the Convention, to combat racial discrimination within its jurisdiction and areas of effective control, Israel has instead opted to create and maintain an institutionalised apartheid regime of racial domination and oppression at the expense of the Palestinian people as a whole. In doing so, it has fragmented the Palestinian population as its primary tool of maintenance, and has instituted policies and legal provisions to ensure that any attempts to challenge the racist *status quo* is met with individual and collective punitive measures including arbitrary detention and torture, and wider intimidation, harassment, and smear campaigns. As such, despite the coercive, and in some cases fundamentally uninhabitable environments created by Israel, due to these measures, and their wider fragmentation, Palestinians are manifestly unable to meaningfully challenge Israeli apartheid.
33. It is therefore imperative that the Committee, in the proceedings of the present inter-state complaint procedure, view all forms of racial discrimination carried out by the State of Israel within the lens of apartheid, as included in Article 3 ICERD. **PHROC stresses that Palestinians**

<https://7amleh.org/2019/03/11/the-index-of-racism-and-incitement-in-israeli-social-media-2018-aninciting-post-against-palestinians-every-66-seconds/>.

<sup>86</sup> “Silencing Networks: The Chilling Effect among Palestinian Youth in Social Media” 7amleh (October 2019), at: <https://7amleh.org/2019/10/20/silenced-net-the-chilling-effect-among-palestinian-youth-in-social-media/>.

<sup>87</sup> See listed statements at “Israeli Official Incitement: September 2019,” State of Palestine, Palestine Liberation Organization, Negotiations Affairs Department, at: <https://www.nad.ps/en/media-room/israeli-incitement-reports/israeli-official-incitementseptember-2019>.

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**will be unable to exercise their inalienable rights to self-determination and permanent sovereignty until such a point that the Israeli apartheid machinery has been dismantled.**

## 6.2. Recommendations

34. As with the previous Report submitted by Palestinian and regional organisations, PHROC offers the following recommendations to the Committee:

- i. We urge the Committee to recognise and declare that Israel's discriminatory laws, policies, and practices have established, and continue to maintain, an institutionalised regime of racial domination and oppression over the Palestinian people as a whole, using fragmentation as a main measure to maintain its apartheid regime, in violation of Article 3 of ICERD, and giving rise to individual criminal responsibility at the ICC in addition to giving rise to Israel's State responsibility and obligations of third States to bring the illegal situation to an end, in line with the findings of the 2017 ESCWA report.
- ii. We recommend that the Committee demand that Israel repeal all legislation enshrining racial discrimination, domination, and oppression, including repealing the Basic Laws and other statutes that directly or indirectly effect the enjoyment of human rights through racial and/or racialized distinctions, including on the basis of religion. In particular, we urge the Committee to call on Israel to repeal the following laws, as foundational to Israel's creation of an apartheid regime, including but not limited to:
  - (a) The Basic Law: The Law of Return (1950);
  - (b) The Citizenship Law (1952);
  - (c) The Absentee Property Law (1950);
  - (d) The Entry into Israel Law (1952) and its amendments; and
  - (e) The Basic Law: Israel as the Nation-State of the Jewish People (2018).
- iii. We urge the Committee to recognise and to declare that the Jewish Nation-State Law (2018) is antithetical to the object and purpose of the Convention as it has the purpose of nullifying the recognition, enjoyment, and exercise, on an equal footing, of all human rights and fundamental freedoms in the State Party.
- iv. We recommend that the Committee call on Israel to revoke the 2003 Citizenship and Entry into Israel Law (Temporary provision) and ensure family unification

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of all persons within its territory or subject to its effective control, irrespective of their ethnicity or national or other origin.

- v. We urge the Committee to call on Israel to cease all measures and policies which contribute to the fragmentation of the Palestinian people, including the denial of Palestinian refugee return, the closure of Jerusalem and of the Gaza Strip, the construction of the Annexation Wall, and the imposition of severe movement and access restrictions, as core elements in Israel's creation of an apartheid regime over the Palestinian people on both sides of the Green Line and elsewhere. We also urge the Committee to demand Israel make suitable and sufficient reparation to all fragments of the affected Palestinian people, including Palestinian refugees and displaced persons, as mandated by international law.
- vi. We urge the Committee to consider Israel's persistent refusal to grant Palestinian refugees and displaced persons their right of return to their homes and property in their villages, towns, and cities of origin, as a core element in its creation and maintenance of an institutionalised regime of racial domination and oppression over the Palestinian people, and urge the Committee to reaffirm the right of return of all Palestinian refugees and internally displaced persons to their homes, property, and land which they were forced to flee in 1948 and thereafter, and to call on Israel to comply with Articles 5(d)(ii) and 5(d)(v) of ICERD.
- vii. We urge the reversal of Israel's policies and practices with regards to demographic manipulation as a manifestation of the crimes of population transfer and apartheid, in violation of Article 3 of the Convention, through the fragmentation of the Palestinian people as a whole, the prolonged and illegal closure of Gaza, the closure of Jerusalem and the precarious "permanent residency" status of Palestinians in East Jerusalem, the imposition of two separate legal systems in the occupied West Bank, and the denial of the internationally recognised right of return of Palestinians living as refugees and in exile.
- viii. We urge the Committee to demand Israel cease forthwith the ongoing closure and lift the blockade of Gaza with immediate effect, to lift restrictions on dual use items, and to recognise that Israel's discriminatory policies, and practices, amounting to the crime of apartheid, have already made the Gaza Strip uninhabitable and violate the full spectrum of rights owed to the Palestinian people, including Palestinian refugees, in the Gaza Strip by denying them the enjoyment on an equal footing of fundamental rights and freedoms, in violation of Articles 3 and 5 of the Convention.

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- ix. We urge the Committee to request information from Israel, the occupying Power, on measures taken to implement the recommendations of the UN Commission of Inquiry on the 2018 protests in the oPt, and in particular in relation to the Committee's calls on Israel to lift the blockade on Gaza with immediate effect, to fulfil the right to health of all Palestinians, and to bring Israel's rules of engagement for the use of live fire in line with international human rights law, and refrain from resort to excessive and lethal force in violation of international standards.
- x. We urge the Committee to call on Israel to uphold the right of the Palestinian people to the highest attainable standard of physical and mental health, including to ensure Palestinians in the Gaza Strip, including those injured during the Great March of Return, are ensured their right to access treatment in the rest of the oPt, in Israel, or abroad, ensuring the safety of health workers from attacks by the Israeli occupying forces, refraining from obstructing healthcare provision in the oPt, and removing all barriers to the enjoyment of the right to health of Palestinians, including the underlying determinants of good health and well-being.
- xi. We recommend that the Committee reaffirm the findings of the 2004 ICJ Advisory Opinion on the illegality of the Annexation Wall built in the occupied West Bank, including in and around East Jerusalem, and call on Israel to uphold its obligation to cease forthwith the works of construction of the Annexation Wall, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with international law.
- xii. We call on the Committee to urge Israel to cease conferring public functions of the State to the WZO/JA and JNF, which are chartered to carry out material discrimination against non-Jewish persons and have historically prevented the indigenous Palestinian people on both side of the Green Line from accessing or exercising control over their means of subsistence, including their natural wealth and resources, by exploiting and diverting Palestinian natural resources for the benefit of Israeli-Jewish settlers.
- xiii. We urge the Committee to call on Israel to reconsider its entire planning and zoning policy in consultation with the indigenous Palestinian people directly affected by Israel's discriminatory measures, including illegal house demolitions and destruction of property, denial of access to land and natural resources, and

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the creation of coercive environments designed to drive Palestinian transfer. We further recommend that the Committee consider Israel's discriminatory planning and zoning regime as a manifestation of the crimes of population transfer and apartheid, in violation of Article 3 of the Convention.

- xiv. In light of the ongoing targeting of human rights defenders, organisations, and members of civil society, as well as individual Palestinians in their private capacity online, we urge the Committee to demand Israel immediately cease any and all practices of intimidation and silencing of these groups, in violation of their right to freedom of expression, including through arbitrary detention, torture and ill-treatment, institutionalised hate speech and incitement, residency revocations, deportations, and other coercive or punitive measures.
- xv. We urge the Committee to demand Israel immediately cease the construction of all illegal settlements in the occupied West Bank, including East Jerusalem, and dismantle those already in existence, in accordance with its obligations, as occupying Power, under international humanitarian law and as mandated by international criminal law, in particular the Rome Statute applicable in the oPt, and to call for an end to Israel's prolonged occupation of the Palestinian territory, in line with its obligation to uphold the right of the Palestinian people to self-determination, including permanent sovereignty over natural wealth and resources.
- xvi. We urge the Committee to call for accountability and access to justice for apparent and serious violations of international law as a means of bringing to an end and rectifying this illegal situation created and maintained by Israel. Further we call on the Committee to urge State parties to the Rome Statute to cooperate with the investigation of the Office of the Prosecutor of the ICC as a viable independent judicial body capable of ending impunity for crimes committed in the oPt and effectively deterring the commission of future crimes.



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