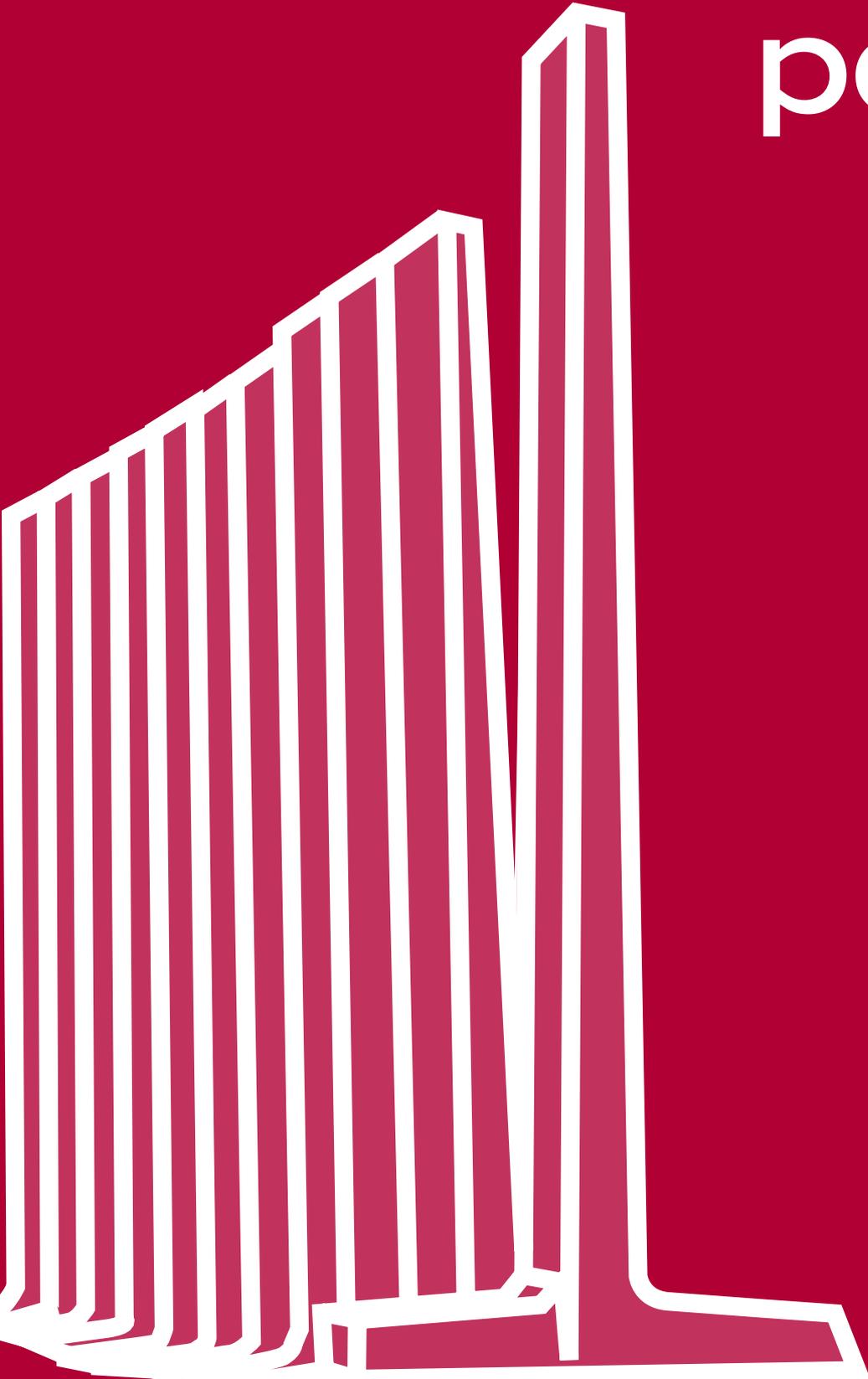


Apartheid against the Palestinian people

Report written by: **Luciana Coconi**

Report directed by: **David Bondia**





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Apartheid against the Palestinian people

Luciana Coconi and David Bondia

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Luciana Coconi. Graduate in Law from the Universidad Nacional de Córdoba, Argentina (2000). Master in International Studies from the Universitat de Barcelona (2003). She is the author of several publications, such as: *¿Islas Malvinas o Falkland Islands? La cuestión de la soberanía sobre las islas del Atlántico Sur*, Serie Conflictos Olvidados, Asociación para las Naciones Unidas en España (ANUE), Barcelona, 2007; *Afganistán ante la encrucijada de la reconstrucción*, Serie Conflictos Olvidados, ANUE, Barcelona, 2007. She has also written many articles including: *Los derechos de la mujer en Afganistán: la lucha continúa*, Revista ANUE Nº 37, Barcelona, 2009; *Les dones del Sàhara Occidental*, Secció Dones i Conflictes Armats, Observatori Solidaritat UB, Barcelona, 2008; *Tibet y los Juegos Olímpicos*, Revista ANUE Nº 36, Barcelona, 2008; *Fuerzas Internacionales en Afganistán*, Revista ANUE Nº35, Barcelona, 2007.

David Bondia. Professor of International Public Law and International Relations at the Universidad de Barcelona, where he lectures in Law and Political Sciences at undergraduate level, as well as in postgraduate programmes. He has also lectured on the protection mechanism established by the European Convention on Human Rights at several Spanish universities and at the University of Montpellier, and on the international protection of human rights at several universities abroad, including the Universities of Sofia, Sarajevo, Tuzla, Mostar, Mar del Plata, Flacso/San Andrés (Buenos Aires), Concepción (Chile), Nova Southeastern (United States) Cali and Bogotá (Colombia) and the Shahid Beheshti University (Iran). His lines of research have included the international protection of human rights, international penal jurisdiction, the legal system of unilateral acts of States and international sanctions. He is a member of the working group on Israel and Palestine of the Euro-Mediterranean Human Rights Network. He has participated in many lawyer's missions to the Occupied Palestinian Territories. He is also the Director of the Institut de Drets Humans de Catalunya.



Publication coordinated by Luca Gervasoni i Vila,
Codirector of NoVA- Peacebuilding and active nonviolence.

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Introduction

“If our madness could end as it did, it must be possible to do the same everywhere else in the world. If peace could come to South Africa, surely it can come to the Holy Land?”
Desmond Tutu

The aim of this report is to determine whether or not a crime of apartheid is being committed by Israel against the Palestinian people. It adopts an outside, non preconceived side whatsoever and it analyses, on the one hand, international human rights legislation and international humanitarian law and, on the other hand, internal legislation and its application, both in Israel and the Occupied Palestinian Territories.

Throughout the study, we shall observe what is understood to be the crime of apartheid. We know what happened in South Africa, we suspect it could be occurring in Israel and in the Occupied Palestinian Territories, but little has been researched about why apartheid arose and became a crime against humanity and exactly what its legal content is.

While it is indeed true that the international community decided to classify apartheid as a crime in the wake of what was happening in South Africa, now the original cause of its classification – the segregationist and racist South African regime – is history, the persecution of this crime is still underway, whether it be through the Convention on the Crime of Apartheid, the Rome Statute of the International Criminal Court or customary international law.

Article 7 of the Statute of the International Criminal Court defines the crime of apartheid as “inhumane acts committed in the context of an institutionalised 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”. Taking this latest definition available as a reference, which includes all jurisprudence and customary international law on this matter, this report shall attempt to determine, also in accordance with the Convention on the Crime of Apartheid, whether the Palestinian people are enduring a comparable situation and political stance.

Besides the violations of international humanitarian law being committed by Israel in the Occupied Palestinian Territories, the report centres on the analysis of international human rights law. On one hand, we count with the declarations by experts of the various treaty-based mechanisms regarding human rights. The key point is that these are international treaties ratified by Israel, to be applied in all territories under its jurisdiction – Israel and the Occupied Palestinian Territories, and which analyse information provided by the Israeli government itself. Therefore, the repeated condemnation given by these experts cannot be classed as biased or one-sided as the Israeli government itself has recognised this authority.

If this were not enough, in the report we shall also see how, in the field of non treaty-based mechanisms, various Special Rapporteurs have been categorical about the racist and segregationist policy carried out, as a preconceived plan, by certain Israel government departments and authorities. All that completed with other reports from the United Nations, including the Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory.

Following the analysis of international legislation, the report focuses on legislation applicable in Israel and the Occupied Palestinian Territories and clearly illustrates not only the discrimination suffered by Palestinians, but also the negation and non-respect of their dignity as human beings, which itself has a specific legal denomination: **crime of apartheid**.

Now that the smoke screen that prevented the international community from seeing parallels between South Africa and Israel and the Occupied Palestinian Territories has been lifted, action plans have been proposed which should unite states, international organisations and civil society in the condemnation of these policies and the perpetrators of apartheid and break down the barriers, not only physical but also legal, that prevent the Palestinian people from recovering the dignity they are being denied and to let them enjoy the basic human rights and liberties they so rightly deserve.

Given the findings of the report, its author could have quite easily called it “The negation of reality”, “An uncomfortable truth” or “How not to recognise the evidence?”, but the ultimate title chosen, “Apartheid against the Palestinian people”, seems the most appropriate, since it, regardless of ideologies and affinities, lets us see that, given objective information and strictly legal proof, there are more than enough reasons to condemn the crime of apartheid being committed against the Palestinian people.

Dr. David Bondia Garcia

Professor of Public International Law and International Relations
The University of Barcelona

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1. Introduction

This report aims to reveal and analyse an aspect of day-to-day life in Palestine: the overt discrimination the population suffers at the hands of the Israeli authorities. This analysis will enable us to determine whether this systematic discrimination constitutes a *crime against humanity*: the crime of *apartheid*.

In order to arrive at a conclusion, it will be necessary to highlight the serious violations of human rights being endured by the Palestinian people as a whole, taking into account not only what is happening in Gaza, but also in the West Bank, East Jerusalem, Israel and, additionally, the situation of Palestinian refugees across the world.

This report will also analyse the crime of apartheid in the light of international legislation on the matter, of United Nations reports concerning the situation of the Palestinian people, and of Israeli legislation, with the view of determining whether or not the crime of apartheid exists in Israel and the Occupied Palestinian Territories. Drawing from the conclusions reached, different plans of action will be suggested for civil society and nations, in accordance with the knowledge gained from the South African experience, and with the tools currently offered by international law.

This report is structured, aside from this introduction, into seven interlinked parts: definition of apartheid; analysis of what configures the crime of apartheid; study of international human rights legislation applicable in Israel and in the Occupied Palestinian Territories; verification of the violations of human rights – related to the crime of apartheid – being carried out in Israel and in the Occupied Palestinian Territories; domestic legislation applicable in Israel and in the Occupied Palestinian Territories; whether or not apartheid exists in light of the aforementioned; and, finally, suggested plans of action.

1.1 What is *apartheid*?

As an introductory clarification, it is necessary to define what is understood as apartheid, since the term is often used without its exact meaning being known. Apartheid is an Afrikaans word which literally means “separateness”. It is “a political regime whereby racism is imposed through parliamentary acts”¹. A system which, through laws, policies and practices, sanctifies the supremacy of one human group over another, based on racist criteria. This system developed in South Africa between 1948 and 1990 and created an entire legal framework which institutionalised racial segregation. “This racist system enabled 15% of the population (the white minority, of European origin) to exclude and oppress 85% of the population (the black and “coloured” majority, of African and Asian origin) in all walks of life...”². Nowadays, the persecution and repression of apartheid, one of the gravest forms of racial discrimination, is regulated, as we will see, in various international treaties. With regard to the South African case, the United Nations stated that “on the grounds of apartheid, the freedom of movement and the political and socioeconomic rights of Africans, coloured persons and Asians are severely restricted. 87% of land is reserved for the white minority. Africans are kept apart by force, assigned by the Government to reserves which constitute less than 13% of the most unproductive land in South Africa”³. Therefore, and regrettably as we will later see in this report, if we change the name of South Africa for Israel, we will see that the current situation of the Palestinian people is tantamount to that of the black and Asian South Africans back then.

Having defined apartheid, we shall now analyse the international legal aspects of the crime of apartheid.

¹ DAVIS, Uri, *Apartheid Israel, Possibilities for the Struggle Within*, Zed Books, London, 2003, p. 37.

² VALENCIA VILLA, Hernando, *Diccionario Espasa de Derechos Humanos*, Madrid, 2003, p. 15.

³ *A crime against humanity. Questions and answers about apartheid in South Africa*, United Nations, April 1982, p.3.

2. The crime of apartheid

The analysis of the international legal aspects of the crime of apartheid shall be founded on the International Convention on the Suppression and Punishment of the Crime of Apartheid and its antecedents, on the study of the significance of the domination of one racial group over another, on the definition of racial group and, finally, on the study of the subject of international criminal responsibility of the authors of crimes of apartheid.

2.1 The International Convention on the Suppression and Punishment of the Crime of Apartheid and its antecedents

Apartheid was annually condemned by the General Assembly of the United Nations from 1952 until 1990 as contrary to Articles 55 and 56 of the Charter of the United Nations, and the Security Council also regularly condemned it from 1960 onwards. In 1962, the General Assembly set up the **United Nations Special Committee against Apartheid** to examine South Africa's racist policies and to coordinate activities of the international community to promote a general plan of action against apartheid. In 1966, the General Assembly declared apartheid a **crime against humanity**, and as such, incompatible with the Charter of the United Nations and the Universal Declaration of Human Rights . In 1984 ⁴, the Security Council also labelled apartheid a *crime against humanity* ⁵. In 1971, prior to the ratification of the International Convention on the Suppression and Punishment of the Crime of Apartheid (henceforth Convention on Apartheid), the Commission on Human Rights established a Working Group of Experts to "*identify inhuman acts resulting from policies of apartheid which could constitute crimes against humanity*" ⁶. According to this Group, the expression "*inhuman acts resulting from policies of apartheid*" of Article 1 of the Convention "*refers to acts contrary to human rights as defined by the United Nations and resulting from policies of apartheid*" ⁷. Thus, inhuman acts resulting from policies of apartheid are "*acts which create fear and necessity and deprive Africans in the Republic of South Africa, Southern Rhodesia and Namibia of the full evolution of character and even of life itself, by jeopardising the economic, social and cultural rights, in addition to the civil and political rights of human beings which belong to a distinct racial group residing in the aforementioned territories; without these rights, Africans would lose their dignity and would not be able to participate in social progress and enjoy a better standard of living*"⁸.

As a result, the Working Group of Experts highlighted that the following elements constitute apartheid:

- "1) The **Bantustan policy** consisting of the creation of reserved areas for certain groups affects the African population by crowding them together in small areas where they cannot earn an adequate livelihood, and the Indian population by banning them to areas which are totally lacking the preconditions for the exercise of their traditional professions;
- 2) The **regulations concerning the movement of Africans in urban areas**, and especially the forcible separation of Africans from their spouses during long periods, thereby preventing African births;
- 3) The population policies in general, which are said to include deliberate malnutrition of large population sectors and birth control for the non-white population in order to reduce their numbers, whereas the official policy favours white immigration;

⁴ Resolution 2202 A (XXI) of the General Assembly, 16th December 1966.

⁵ Resolution 556 (1984), of the Security Council, 23rd October 1984.

⁶ Human Rights Commission, Study Concerning the Question of Apartheid from the Point of View of International Penal Law, E/CN.4/1075, 15th February 1972, p.

⁷ *Ibid*, p. 45.

⁸ *Ibid*, p. 47.

4) The **imprisonment and ill-treatment** of non-white political leaders and non-white prisoners in general, who die under suspicious circumstances often aimed at eliminating a part of the black population"⁹.

The Working Group of Experts also considered that apartheid policy consists of "the mental torture and the deliberate submission of a group of non-white citizens to living conditions which cause their physical destruction, in whole or in part"¹⁰. A Special Rapporteur of this Group, stated that "*all apartheid legislation*", in her opinion, "*aims to eliminate and suppress the threat felt by whites due to the presence of blacks in this country*"¹¹.

Another feature of the crime of apartheid is that "**all these violations occur on a large scale**. From 1967 onwards, the Special Group of Experts observed and could conclusively prove the continuous perpetration of these violations, which constitute typical elements of apartheid policy. They are committed against blacks, Indians and coloured people for racial and political reasons and against the white population essentially for political reasons. The perpetration of these acts by the South African authorities constitutes a systematic practice of discrimination with regard to the most basic human rights, which – particularly those stipulated in articles 6, 7 and 8 of the International Covenant on Civil and Political Rights – may not be derogated in any situation whatsoever, as stated in paragraph 2 of article 4 of the Covenant, considered the core of human rights. All these inhuman acts, which constitute a **system of discrimination** with regard to the most basic human rights established in United Nations instruments, are a blatant violation of human rights according to various United Nations directives. This system, entailing inhuman acts which should not only be considered individually but also as a whole and representing a systematic practice of the violation of human rights, can be classified as a *crime against humanity*"¹².

In short, this study, an antecedent of the Convention on Apartheid, contains a description of those inhuman acts which constitute the crime of apartheid, as **those acts contradicting human rights, committed on a large scale, which create fear and deprive citizens of the full evolution of character, by jeopardising economic, social and cultural rights, in addition to the civil and political rights of human beings belonging to a distinct racial group**. Examples of these acts include: the creation of areas reserved for certain racial groups, either to work or to live in; restrictions on movement; and measures adopted to alter the racial composition of the population, such as the separation of men and women to limit the number of births, birth control, or the encouragement of "white" immigration. These aspects were covered more in depth in the Convention on Apartheid.

A result of the ongoing condemnation of apartheid was the approval by the United Nations General Assembly of the Convention on Apartheid¹³ on 30th November 1973, in which apartheid was classified as a crime which violates the principles of international law. The Convention was adopted by 91 votes in favour, 4 against (The United States of America, Portugal, the United Kingdom and South Africa), and 26 abstentions. It entered into force on 18th July 1976 in accordance with Article 25 and is currently ratified by 107 nations.

There are several antecedents to this Convention. The **International Convention on the Elimination of All Types of Racial Discrimination**¹⁴, article 3 of which condemns racial segregation and apartheid, the **Convention on the Prevention and Punishment of the Crime of Genocide**¹⁵ and the **Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity**¹⁶, article 1 of which states that no statutory limitation shall apply, irrespective of the date of their commission, to "*eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid...*".

⁹ Ibid, p. 51-52.

¹⁰ Ibid, p. 52.

¹¹ Ibid, p. 52.

¹² Ibid, p. 73-74.

¹³ International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted and opened for signature and ratification by the United Nations General Assembly resolution 3068 (XXVIII) of 30th November 1973.

¹⁴ International Convention on the Elimination of All Types of Racial Discrimination, adopted and opened for signature and ratification by the United Nations General Assembly resolution 2106 A (XX) of 21st December 1965. Entry into force: 4th January 1969, in accordance with article 19. This Convention was ratified by Israel on 03/01/1979.

¹⁵ Convention for the Prevention and Punishment of the Crime of Genocide, adopted and opened for signature and ratification by the United Nations General Assembly resolution 260 A (III) of 9th December 1948. Entry into force: 12th January 1951, in accordance with article 18. Israel ratified this Convention on 09/03/1950.

¹⁶ Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted and opened for signature and ratification by the United Nations General Assembly resolution 2391 (XXIII) of 26th November 1968. Entry into force: 11th November 1970, in accordance with article 8. This Convention was neither signed nor ratified by Israel.

Article I of the **Convention on Apartheid** states:

“1. The States Parties to the present Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.

2. The States Parties to the present Convention declare criminal those organisations, institutions and individuals committing the crime of apartheid”.

Article II states that the crime of apartheid, *“shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa”,* such as

“inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them”.

Article II then lists the acts which constitute the crime of apartheid:

a) Denial to a member or members of a racial group or groups of the right to life and liberty of person: i) by murder of members of a racial group or groups; ii) by the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment; iii) by arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognised trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

f) Persecution of organisations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.”

Article III states that:

“International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organisations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they: a) commit, participate in, directly incite or conspire in the commission of the acts

mentioned in article II of the present Convention; b) Directly abet, encourage or co-operate in the commission of the crime of apartheid.

The following articles of the Convention refer to the obligation of States to adopt legislative measures to suppress or prevent policies of apartheid and to prosecute, bring to trial and punish the persons responsible for this crime (art. IV), the jurisdiction applicable to those accused of committing a crime of apartheid (art. V), cooperation with the competent organs of the United Nations with a view to achieving the purposes of the Convention (art. VI), the presentation of periodic reports to the Commission on Human Rights about advances which give effect to the Convention (arts. VII and IX), the powers of the Commission with relation to the persecution of the crime of apartheid (art. X), extradition (art. XI) and the powers of the International Court of Justice to settle any disputes regarding the interpretation of the Convention (art. XII). The remaining articles refer to the signature, ratification, accessions, entry into force, denunciations and other official matters (arts. XII to XIX).

It must be pointed out that “although the Apartheid Convention is dead as far as the original cause for its creation – apartheid in South Africa – is concerned, it lives on as a species of the crime against humanity, under both customary international law and the Rome Statute of the International Criminal Court”¹⁷. Similarly, the **Convention on the Elimination of Racial Discrimination**, in its General Recommendation N° 19 **Racial Segregation and Apartheid** (article 3) “calls the attention of States parties to the wording of article 3, by which States parties undertake to prevent, prohibit and eradicate all practices of racial segregation and apartheid in territories under their jurisdiction. *The reference to apartheid may have been directed exclusively to South Africa, but the article as adopted prohibits all forms of racial segregation in all countries.*”¹⁸

More recently, the **Rome Statute of the International Criminal Court**¹⁹, which established a permanent court with a view to judging and punishing persons responsible for committing, amongst others, crimes against humanity, stated in article 7 of the statute that apartheid constitutes a crime against humanity, to be understood as “*inhuman acts committed as part of a widespread or systematic attack against any civil population, with knowledge of the attack, committed in the context of an institutionalised 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.*”

It is also worth mentioning that the World Conference against Racism, held in Durban (South Africa) in 2001, stated that “apartheid and genocide in terms of international law constitute crimes against humanity and are major sources and manifestations of racism, racial discrimination, xenophobia and related intolerance... whenever and wherever they occurred, *they must be condemned and their recurrence prevented.*”²⁰

Having established the evolution of the international definition of the crime of apartheid, it is now appropriate to clarify what is understood as “domination of one racial group over another”, in order to specify what types of conduct it prohibits.

2.2 Domination of one racial group over another

In accordance with article II of the **Convention on Apartheid**, the purpose of acts of apartheid is to establish and maintain domination of one racial group over another. Therefore, **central to the definition of apartheid is the institutionalised domination of one racial group over another**²¹. They are discriminatory acts which constitute a policy or conduct which

¹⁷ DUGARD, John, International Convention on the Suppression and Punishment of the Crime of Apartheid, United Nations Audiovisual Library of International Law, www.un.org/law/avl

¹⁸ General Recommendation N° 19, Convention on the Elimination of Racial Discrimination, with reference to article 3 of the Convention, 47th session, HRI/GEN/1/Rev.7 at 244 (1995).

¹⁹ The Rome Statute of the International Criminal Court was adopted on 17th July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. It entered into force on 1st July 2002.

²⁰ World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration, approved on 8th September 2001 in Durban, South Africa, paragraph 15.

²¹ MAC ALLISTER, Karine, Applicability of the Crime of Apartheid to Israel, al-Majdal Articles, Issue N° 38 (Summer 2008) p. 3.

seeks to guarantee the domination of one racial group over another. Thus, apartheid consists in “instilling racism in the political and constitutional system and in the form of government”²².

As we shall have the opportunity to verify, Israeli laws establish a whole range of privileges for Jews, and impose disadvantages on Palestinians, which strengthens and perpetuates the racial domination of the former group over the latter. Thus, for example, although we shall cover this in more depth later on, Israel has seized land and water from the Occupied Palestinian Territories and has imposed a system of domination over the Palestinians to guarantee their submission to these measures.

The next step is to determine what is understood by racial group.

2.3 Definition of racial group

The definition of *racial group* is fundamental for this analysis. Before continuing, it is therefore necessary to define what a racial group is within the context of Israel and the Occupied Palestinian Territories. Historically, the concepts of “race” and “racial” have evolved from one biological conception to another which takes other factors into account, such as culture or a shared past. What is deemed as racial is not only a historical reality, but is also political and social. It must be pointed out that “**racial group**” and “**ethnic group**” are terms often used as synonyms. In practice, the Convention on the Elimination of Racial Discrimination uses these terms interchangeably.

According to Max Weber, ethnic groups “are those human groups that entertain a subjective belief in their common descent because of similarities of physical type or of customs or both, or because of memories of colonisation and migration; and this belief must be important for group formation”²³. Other sociologists, such as Milton Yinger, define an ethnic group as “one whose members are thought, by themselves and/or others, to have a common origin and to share important segments of a common culture and who, in addition, participate in shared activities in which the common origin and culture are significant ingredients”²⁴. Consensus does not exist amongst sociologists when it comes to the meaning of ethnicity, therefore many of them, due to the complexity of this concept, have opted to “identify ethnic groups through the combination of some of the following characteristics: common geographical origins; migratory status; race; language or dialect; religious belief or beliefs; bonds which go beyond kinship, neighbourhoods and the community; shared traditions, values and symbols; literature, folklore and music; culinary preferences; patterns of settlement and employment; special interests regarding politics; institutions which specifically serve and maintain the group; an inner feeling of being different and an outer perception of that difference”²⁵.

Membership of a certain “racial” or “ethnic” group is the result of one’s own identification as member of said group, which requires a voluntary and conscious choice. The Convention on the Elimination of Racial Discrimination established: “Having considered reports from States parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic groups or groups, [the Convention] is of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned”²⁶.

Therefore, in the case of the Palestinian people, it can be stated that they constitute a racial or ethnic group, as Palestinians share an identity based on their common history, culture and origin. For this consideration **it is irrelevant whether we talk about Palestinians residing in Israel, refugees or inhabitants of the Occupied Palestinian Territories.**

²² Draft Code of the International Law Commission, A/CN.4/L. 371, 36th session, 1984.

²³ RODRÍGUEZ CAAMAÑO, Manuel J. [translated from] *Temas de Sociología II*, Huerga Fierro Editores, Madrid, 2001, p. 60.

²⁴ *Ibid.*, p. 62.

²⁵ *Ibid.*, p. 62.

²⁶ General Recommendation Nº 8, Convention on the Elimination of Racial Discrimination, with reference to paragraphs 1 and 4 of article 1 of the Convention, 38th session, HRI/GEN/1/Rev.7 at 236 (1990).

Alongside self-identification as a member, identification with a racial or ethnic group may be the result of perceptions projected by other groups or by the very State of 'the other'. Therefore, by projecting or imposing the perceptions of 'the other', the person, State or other group builds their own identity. "In the context of an apartheid regime, this identification of 'the other' takes on an added **bureaucratic** form to facilitate the administration of discriminatory legislation, policy and practice... On the legal and administrative level, the definition of who is a Palestinian national is for instance imposed through Israeli control of the population registry in **Israel** and the Occupied Palestinian Territories. This control allows **Israel** to define who is a Palestinian - namely, a 'non-Jew' (i.e., Arab), 'absentee' or 'present-absentee'.²⁷

As for Jewish citizens of Israel, it is clear that "only those who have voluntarily become Israeli citizens and adhere to Israel's political ideology, Zionism, constitute the relevant 'racial' or 'ethnic' group in this context. Political Zionism - "the transformation of Palestine, in whole or in part, into the Jewish Land of **Israel** (*Eretz Israel*), through the dispossession and mass transfer of the native indigenous Palestinian Arab population out of Palestine, and the establishment, through the Jewish colonisation of Palestine, of a sovereign Jewish state - is the heart of the legal, political and historical reality of the state of **Israel**, a state controlled by Zionist Jewish Israelis. Hence, the common element of this ethno-national group is self-identification as **Jewish Israeli** and **Zionist**".²⁸

Hence, strictly speaking, for the purpose of the applicability of the crime of apartheid to the state of Israel, the two racial or ethnic groups are Palestinian nationals and the ruling Zionist Jewish Israelis, the latter being those who establish and apply these policies of discrimination.

The applicability of this policy of apartheid, attributable to a State, is the result of the decisions of political leaders whose acts, if they could be proved, also generate international responsibility of an individual nature.

2.4 International criminal responsibility of the authors of crimes of apartheid

As previously mentioned, apartheid is a *crime against humanity*, in other words, a crime which harms humanity as a whole, and endangers international peace and security. These crimes, "are not directed against individuals, as such, but against human beings as members of social groups belonging to the global community itself and under its protection. Crimes against humanity can endanger international peace and security"²⁹. Crimes against humanity constitute the most serious violations of human rights, therefore, they are subject to two closely interlinked principles, which differentiate them from ordinary crimes:

- **Principle of universal or extraterritorial jurisdiction.** Based on the premise that "*the most serious crimes of concern to the international community as a whole must not go unpunished*"³⁰, universal jurisdiction allows the possibility to judge those responsible for the most serious crimes, in this case crimes against humanity, based exclusively on the nature of said crimes, regardless of the nationality of the accused or the victim, nor where the crime was committed. This principle features in several international treaties, including the International Convention on the Suppression and Punishment of the Crime of Apartheid (articles IV and V) and in the internal legislation of several States, Spain included (article 23.4 of the Organic Law on Judicial Power).

- **Principle of the non-applicability of statutory limitations.** Crimes against humanity must be prosecuted and their perpetrators punished, irrespective of the date of their com-

²⁷ MAC ALLISTER, Karine, Op. cit., p. 4.

²⁸ Ibid., p. 5.

²⁹ Human Rights Commission, Op. Cit., p. 12.

³⁰ Preamble of the Rome Statute of the International Criminal Court.

mission, In other words, trials have no period of limitation, as other crimes do, since “*the application to crimes against humanity of the rules of municipal law relating to the period of limitation for ordinary crimes is a matter of serious concern to world public opinion, since it prevents the prosecution and punishment of persons responsible for those crimes*”³¹.

Another fundamental element, mentioned previously, must be added to these principles. Although Israel is under no obligation due to its non-ratification of international legislation concerning crimes of apartheid, it must equally respect it, since **the suppression and punishment of crimes against humanity constitutes an rule of international practice and therefore binds and obliges States regardless of whether they have or have not ratified international treaties**. In this sense, it is important to highlight the statement of the Examining Magistrate of the *case of the Mauthausen concentration camp*, in the preliminary proceedings: “the category of crimes against humanity is a pre-existing category in International Law, of customary origin (...). The legal principle applicable to international crimes such as crimes against humanity is not internal, but the international principle contained in art. 15 of the 1966 International Covenant on Civil and Political Rights (...). A crime against humanity (prohibited under *ius cogens*) is a crime categorised in international law regardless of whether a peremptory norm as such exists in internal legislation”³².

The aforementioned article 15 of the Covenant on Civil and Political Rights states that:

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under internal or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

(2) *Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations.*³³

In the case of South African apartheid, the **Human Rights Commission Working Group of Experts** stated that “no State is obliged to assume the obligations established by any convention, since the ratification thereof always depended on the free will of the States. Nevertheless, this does not mean that the obligation to suppress and punish crimes committed according to international law itself is not legally binding (for South Africa). In fact, this obligation has not been recently established by the Conventions in question. Its existence should be considered as a rule of general international law presupposed by written instruments”³⁴. Moreover, it states that, “... in accordance with the principle of the supremacy of international law over internal law, those persons having committed an international crime are responsible for said crime and are subject to punishment by virtue of international law, whichever the legal provisions of internal law may be. In fact, the Nuremberg Trial deemed that international law may impose obligations on individuals, even though internal law does not oblige them to respect international law: the very essence of the Statute rests on the fact that individuals have international obligations superior to internal obligations imposed in the respective States. This infers that **those in charge of executing policies of apartheid are not obliged to apply the criminal laws of their State, and those who do so are entirely culpable**”³⁵. Appropriately enough, the Nuremberg Principles state that, “The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law (Principle II)”³⁶.

³¹ Preamble of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

³² Court of Instruction Nº2, Preliminary Proceedings 211/09 L, of 17th July 2008, quoted in España, la lucha contra la impunidad a través de la jurisdicción universal [Spain, the struggle against impunity through universal jurisdiction], Amnesty International, October 2008, p. 47.

³³ Own italics.

³⁴ Human Rights Commission, Study Concerning the Question of Apartheid, Op. Cit., pp. 44, 45.

³⁵ Ibid, p. 63.

³⁶ Principles of International Law Recognised in the Charter of the Nuremberg Tribunal and in the Judgement of the Tribunal. UN, A/CN.4/368, 13th April 1983, <http://www.icrc.org/ihl.nsf/FULL/390?OpenDocument>

In short, the international criminal responsibility of perpetrators of the crime of apartheid clearly transcends the obligations conventionally assumed by States. **Perpetrators of the crime of apartheid violate international law, and they must pay for this violation, even though the internal legislation of the State of which they are a national or in which they commit the crime may not say anything on this matter.**

Let us now analyse the international human rights legislation which is applicable in Israel and the Occupied Palestinian Territories.

3. Human rights legislation applicable in Israel and the Occupied Palestinian Territories

It is fundamental to determine what human rights legislation is applied in Israel and the Occupied Palestinian Territories, since Israel affirms that the international human rights treaties it has ratified are only applicable in Israel, owing to the fact that said treaties protect citizens from the State itself in peacetime, and not in the Occupied Palestinian Territories, where humanitarian law is to be applied. In turn, since 2005 Israel has deemed the Gaza Strip to no longer form part of the Occupied Palestinian Territories, due to the so-called “Disengagement Plan”.

Regarding this, it must be highlighted that the rules of **international human rights law**³⁷ protect citizens from the State at all times. In turn, the rules of **humanitarian law**³⁸ protect people in the event of armed conflict, either domestic or international. Yet it is not a case of watertight divisions, as these rules are intimately linked. Thus, we can find rights which belong only to international humanitarian law, rights which belong to international human rights law, and rights which belong to both groups of International Law. We must begin with the assumption that “people are protected at all times by international rules, be they related to Human Rights Law, with a wide-reaching scope or with limitations permitted in the event of internal hostilities, or be they related to International Humanitarian Law, with a content which ranges from elaborate rules applicable to international armed conflicts to *minimum humanitarian standards* applicable to internal armed conflicts governed by Common Article 3 of the Geneva Conventions”³⁹. Similarly, “it can be said that the Geneva Conventions of 1949 and their Additional Protocols of 1977 serve the same purpose as international human rights instruments, namely the protection of persons, even though the two conventions belong to two different legal systems each with its own basis and mechanisms, with international humanitarian law being applied in situations of armed conflict, without affecting – and this is a crucial observation – the concurrent applicability of human rights in every single situation”⁴⁰.

The **International Court of Justice**, in its Advisory Opinion of 8th June 1996, threw light on the existing relation between international humanitarian law and human rights law, by expressing that the protection offered in the International Covenant on Civil and Political Rights “does not cease in the event of armed conflict”: the protection offered by the human rights Conventions “does not cease in the event of armed conflict, except when certain dispositions may be derogated”. Therefore, “wherever a State may exercise its functions, these having a personal or territorial basis, a sovereign basis or not, it must respect the obligations established by this branch of public international law (human rights law)”⁴¹. Treaties are applicable to the acts of a State in the exercise of its authority although this may take place outside its own territory. Therefore, it can be stated that **the rules of human rights are applicable not only in the territory of Israel, but also in the Occupied Palestinian Territories where, moreover, the rules of humanitarian law are applicable**⁴².

As the **occupying force**, Israel is obliged to comply with the obligations established in the Fourth Geneva Convention regarding the due protection of civilians in wartime (1949). This obligation stretches not only to the West Bank, but also the Gaza Strip, although Israel argues that since the Disengagement Plan was applied in 2005, the Gaza Strip is no longer occupied. Israel’s official stance is that the belligerent occupation of Israel ended on 12th September 2005, the

³⁷ Included in the Declarations, Treaties and Protocols on the International Protection of Human Rights.

³⁸ Included principally in the Four Geneva Conventions of 1949 and their Additional Protocols of 1977.

³⁹ REMIRO BROTONS, Antonio, [translated from] *Derecho Internacional*, Tirant Lo Blanch, Valencia, 2007, p. 1222.

⁴⁰ PÉREZ GONZÁLEZ, Manuel, [translated from] *La Declaración Universal de Derechos Humanos y el Derecho Internacional Humanitario*, in *La Declaración Universal de los Derechos Humanos*, ANUE, Asociación para las Naciones Unidas en España, Icaria Antrazyt, Barcelona, 1998, p. 44.

⁴¹ SAURA ESTAPÁ, Jaume, [translated from] *Nota introductoria a la Opinión Consultiva de la Corte Internacional de Justicia, Las consecuencias jurídicas de la construcción de un Muro en el Territorio Palestino Ocupado*, ANUE, Asociación para las Naciones Unidas en España, Barcelona, 2004, p. 19.

⁴² Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, A/ES-10/273, of 9th July 2004, paragraphs 102 to 121.

date on which full governmental powers were transferred to the Palestinian Authority, and for that reason Israel has no obligation to take charge of the well-being of the residents of the Gaza Strip⁴³. The **Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967**, Mr. Richard Falk, “disputes that assessment of the situation in the Gaza Strip, contending that a **territory is occupied if it is under the “effective control” of a State other than that of the territorial sovereign**. Israel has, since its disengagement, continued to exert strict and continuous control over the borders, entrance and exit, airspace and territorial waters of Gaza. In addition, it has mounted numerous military incursions and deadly attacks on targeted individuals, and subjected the entire civilian population of the territory to siege conditions ever since Hamas convincingly won the general legislative elections in January 2006, and it tightened the siege after Hamas took over Gaza in mid-June 2007. The establishment of a siege imposing great stress on the inhabitants of Gaza and attempts to gain international participation in that siege have made it impossible for the administering Palestinian authorities to provide for the minimum well-being of the 1.5 million inhabitants. On the basis of those considerations, it is clear beyond a reasonable doubt that **from the perspective of international law, the Gaza Strip remains under Israeli occupation, with legal responsibilities attendant on being the occupying Power, and that the Geneva Conventions remain fully operative**”⁴⁴. Along the same lines, the former Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967, Mr. John Dugard, stated that “The test for determining whether a territory is occupied under international law is **effective control**, and **not the permanent physical presence of the occupying Power’s military forces in the territory in question**. Judged by this test it is clear that Israel remains the occupying Power as technological developments have made it possible for Israel to assert control over the people of Gaza without a permanent military presence.

Israel’s effective control is demonstrated by the following factors:

a) **Substantial control of Gaza’s six land crossings**: the Erez crossing is effectively closed to Palestinians wishing to cross to Israel or the West Bank. The Rafah crossing between Egypt and Gaza, which is regulated by the Agreement on Movement and Access entered into between Israel and the Palestinian Authority on 15 November 2005 (brokered by the United States, the European Union and the international community’s envoy for the Israeli disengagement from Gaza), has been closed by Israel for lengthy periods since June 2006. The main crossing for goods at Karni is strictly controlled by Israel and since June 2006 this crossing too has been largely closed, with disastrous consequences for the Palestinian economy;

b) **Control through military incursions, rocket attacks and sonic booms**: sections of Gaza have been declared “no-go” zones in which residents will be shot if they enter;

c) **Complete control of Gaza’s airspace and territorial waters**;

d) **Control of the Palestinian Population Registry**: the definition of who is “Palestinian” and who is a resident of Gaza and the West Bank is controlled by the Israeli military. Even when the Rafah crossing is open, only holders of Palestinian identity cards can enter Gaza through the crossing; therefore control over the Palestinian Population Registry is also control over who may enter and leave Gaza. Since 2000, with few exceptions, Israel has not permitted additions to the Palestinian Population Registry.

The fact that Gaza remains occupied territory means that Israel’s actions towards Gaza must be measured against the standards of international humanitarian law.”⁴⁵.

⁴³ Decision of the Supreme Court of Israel in Al Bassiouni vs. the Prime Minister.

⁴⁴ Report of the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967, Mr. Richard Falk, A/63/326, August 2008. The bold is the author’s own.

⁴⁵ Report of the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967, Mr. John Dugard, A/HRC/7/17, of 21st January 2008, paragraph 11.

It must be highlighted that, although Israel upholds that human rights treaties are applied solely in its territory, as we shall see, both in reports of the human rights committees⁴⁶, and in reports by the Special Rapporteurs, it clearly states that **human rights treaties are applied in all the territories and areas under the effective control of Israel: therefore, they are applied in Israel and the Occupied Palestinian Territories**. Israel, then, must take responsibility for the obligations arising therefrom both in its territory and in the aforementioned Occupied Palestinian Territories: the West Bank, East Jerusalem and the Gaza Strip.

Here we should pause for a moment to analyse the violations of international humanitarian law committed by Israel in the Occupied Palestinian Territories, as they will be useful to spotlight the systematic policy of infringement of rights carried out by the Israeli authorities towards the Palestinian population.

⁴⁶All Committees expressed concern about the State's position that the respective treaties do not apply beyond its own territory, notably in the West Bank and in Gaza. The Committees reaffirmed their view that the State's obligations under each treaty apply to all territories and populations under its effective control". Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the annex to Human Rights Council Resolution 5/1. A/HRC/WG.6/3/ISR/2, of 25th September 2008, p. 2.

4. Violations of humanitarian law in the Occupied Palestinian Territories

As previously mentioned, international humanitarian law is the set of rules seeking to protect people in wartime, both those who participate in the hostilities and those who do not, be it because they have stopped doing so or because they are civilians. Its main objective is to limit and avoid human suffering in times of armed conflict. These rules are applied in the event of international armed conflict, civil war (internal conflict) and in the event of occupation (arts. 2 and 3, Geneva Conventions), and should be respected not only by Governments and their armed forces, but also by all parties in the conflict⁴⁷. The principal international humanitarian law instruments are the four Geneva Conventions of 1949 and their two Additional Protocols of 1977.

Israel continuously violates, intentionally and systematically, the rules of humanitarian law, a fact condemned by various United Nations bodies. These violations are in addition to Israel's discriminatory policies towards the inhabitants of the Occupied Palestinian Territories. Israel has been the occupying force of the Palestinian territories since the Six Day War in 1967, when, amongst others, it occupied the Gaza Strip, the West Bank and East Jerusalem⁴⁸. This occupation began over forty years ago, but Israel's obligations as occupying force have not diminished as a consequence of the duration of the occupation.

As such, Israel must abide by the following rules, amongst others:

- those included in the **Hague Convention IV**, of 18th October 1907, relative to the laws and customs of war on land (henceforth, the **Hague Convention**);
- those included in the **Geneva Convention IV**, of 12th August 1949, relative to the due protection of civilians in times of war;
- the **customary rules of international humanitarian law** applicable to occupation⁴⁹.

With regard to occupation, articles 42 and 43 of the Hague Convention state that a territory is considered occupied when it is actually placed under the authority of the hostile army. The occupant 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.

The Geneva Convention IV, meanwhile, establishes a series of obligations of the occupying force towards the population of the occupied territory. Said obligations state that the occupant must ensure that the population is treated humanely at all time. Similarly, article 53 states that any **destruction by the occupying power of real or personal property** belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organisations, **is prohibited**, except where such destruction is rendered absolutely necessary by military operations. Israel should not destroy Palestinian property in the Occupied Palestinian Territories, unless such destruction is rendered necessary by military operations. Therefore, there is no justification for the intentional destruction of Palestinian civilian property, such as houses and other civilian buildings, by air or land attacks. Between 1967 and April 2009, Israel is estimated to have demolished 24,145 houses in the Occupied Palestinian Territories⁵⁰.

One of the obligations Israel has as occupying power, in accordance with article 55 of the Geneva Convention IV, is to **ensure food and medical supplies of the population**. If the

⁴⁷ In the text of the National Unity Government programme presented by Prime Minister Ismail Haniya to the Palestinian Legislative Council on 17th March 2007, Hamas demonstrated its commitment to respect international law and humanitarian law. Source: Combined report of the Special Rapporteurs, A/HRC/10/22, of 20th March 2009, paragraph 10.

⁴⁸ Report of the United Nations Secretary General: Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12th August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories, A/60/296, of

⁴⁹ For a full list of the customary rules of humanitarian law: International Red Cross Committee: <http://www.icrc.org/web/spa/sitespa0.nsf/htmlall/customary-law-rules-291008?opendocument>

⁵⁰ For a detailed study: Israeli Committee Against House Demolitions, <http://www.icahd.org/eng/docs/datos%20sobre%20demoliciones.pdf>

resources of the territory are inadequate, it should bring them in. Article 56 states that the occupying power, to the fullest extent of the means available to it, has the duty of **ensuring and maintaining**, with the cooperation of national and local authorities, **the medical and hospital establishments and services, public health and hygiene in the occupied territory**. Moreover, article 59 states that if the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

Not only does Israel not adequately supply the population of the Occupied Palestinian Territories, but it has also deliberately blocked or prevented by other means the arrival of humanitarian aid and emergency supplies. Proof enough is that during the bombardment of Gaza in December 2008, Israeli attacks struck aid convoys and obstructed the work of medical personnel.

Article 33 of the Geneva Convention IV prohibits collective penalties by stating that no person shall be punished for an act they have not committed. **Prohibition is laid on collective penalties and any measure of intimidation or terrorism**. Likewise, article 50 of the Hague Convention states that no general penalty shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible. One can affirm that the Gaza blockade constitutes a collective penalty on the entire population, as this is a penalty upon persons for acts they have not committed.

As for the **detention of persons**, the occupying power must ensure that persons taking no active part in the hostilities must be treated humanely at all times, in accordance with common article 3 of the four Geneva Conventions. Many Palestinians suspected of taking part in acts of terrorism are arrested under the mechanism of “administrative detention”, with neither an accusation nor a trial. Some of them are then tried by military tribunals. This situation also violates article 75 of the first Additional Protocol, according to which any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognised principles of regular judicial procedures.

Regarding the **civilian population**, the customary rules of humanitarian law state that the parties in conflict should at all time distinguish between civilians and combatants. **Attacks may only be directed towards combatants. Civilians must not be attacked**. Totally prohibited are acts or threats of violence which have the main objective of terrorising the civilian population. Civilians are afforded protection from attacks, unless they directly participate in the hostilities and whilst such participation lasts. Civilians are considered to be those who are not members of the armed forces. No State party in a conflict would acknowledge having intentionally attacked the civilian population, so one of the ways to justify these attacks – used by Israel – is **to deny that the victims were actually civilians**.

With regard to **property**, humanitarian law establishes that the parties in conflict must at all times make the distinction between civilian objects and military objectives. Attacks may only be directed against military objectives. Civilian property is considered to be all objects not classed as military objectives. **Civilian objects must not be attacked**. Military objectives are those whose

nature, location, purpose or use, make an effective contribution to military action, and whose total or partial destruction, capture or neutralisation would provide a definite military advantage.

The Israeli authorities always deny having intentionally attacked civilians, yet they have launched attacks against civilians and civilian objects, without giving convincing explanations as to the military necessity for said attacks. For example, in Gaza, they have bombed Palestinian government buildings, United Nations premises, schools, mosques, health centres, houses and media offices. Israel justifies these attacks by claiming that these apparently civilian objects are used for military purposes, such as arms depots, command centres, refuges for combatants, or places from which Israel or the Israeli forces have been attacked. But these claims have not been backed by corroborative proof.

Humanitarian law prohibits **indiscriminate attacks**. Classed as indiscriminate are attacks: (a) that are not directed at a specific military objective; (b) that employ a method or means of combat that cannot be directed at a specific military objective; or (c) that employ a method or means of combat that cannot be limited, as international humanitarian law demands; and which, as a consequence, can indiscriminately reach both military objectives and civilians or civilian objects. **Israel's artillery bombardment of densely-populated civilian areas such as Gaza could constitute indiscriminate attacks.** Artillery and mortar attacks and bombardments from tanks and warships are not accurate enough against targets in densely-populated residential areas. Israel has the obligation to choose methods of attack which minimise civilian risk.

Humanitarian law also prohibits the use of **human shields**. Article 28 of the Geneva Convention IV states that the presence of a protected person may not be used to render certain points or areas immune from military operations. This rule has been violated by the Israeli Defence Forces (IDF) through the practice of entering Palestinian houses and obliging those living there to remain inside, whilst the forces establish a military base there and fire shots.

One of the most blatant violations of the rules of humanitarian law concerns **settlements**, which contravenes Article 49, which prohibits the occupying power from transferring part of the civilian population to the occupied territory. The unlawful nature of these settlements has been confirmed in General Assembly and Security Council resolutions⁵¹. Settlements, in addition to generating violence and hostilities between settlers and the local population, threaten the territorial continuity of Palestine and make the establishment of a future Palestinian State infeasible. There are currently settlements authorised and funded by consecutive Israeli governments plus unauthorised enclaves which split up the West Bank. "According to the OCHA (Office for the Coordination of Humanitarian Affairs), the settlements are the factor which bears most upon the movements and restrictions of access suffered by the 2.5 million Palestinian who live in the West Bank. Area C, which according to the Oslo Agreements is totally under Israeli control, makes up 60% of the West Bank territory and is destined exclusively to settlements"⁵².

⁵¹ For example: Res. 32/91 C, of the General Assembly, of 13th December 1977.

⁵² ELDAR, Akiva, [translated from] Colonos, el enemigo interior, El País, 13th June 2009. See: OCHA: West Bank Movement and Access Update - May, <http://ochaonline2.un.org/Default.aspx?alias=ochaonline2.un.org/oPt>

⁵³ For further information about the humanitarian law applicable in the Occupied Palestinian Territories, see: The Conflict in Gaza, A briefing on Applicable Law, Investigations, and Accountability. Amnesty International: <http://www.amnesty.org/en/library/asset/MDE15/007/2009/en/b650e080-eece-11dd-b1bd-6368f1b61c3f/mde150072009spa.pdf>

Another important point is Article 147 of the Geneva Convention IV, which states that grave breaches include wilfully causing great suffering or serious injury to body or health, depriving a protected person of the rights of fair trial, or the destruction of property not justified by military necessity and carried out unlawfully and wantonly⁵³.

On the other hand, Common Article 1 of the four Geneva Conventions establishes that "The High Contracting Parties undertake to respect and ensure respect for the present Convention in all circumstances". Therefore, the States that have ratified these Conventions must do everything

within their means to ensure that Israel respects the rules of humanitarian law in the Occupied Palestinian Territories. This has also been reiterated by various United Nations organs⁵⁴.

It is now important to carry out a detailed analysis of the various violations of the human rights of the Palestinian population committed in Israel and in the Occupied Palestinian Territories and which as a whole form a crime of apartheid.

⁵⁴ Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory , A/ES-10/273, of 9th July 2004; Resolution of the General Assembly, A/60/296, of 23rd August 2005.

5. Violations of human rights in Israel and in the Occupied Palestinian Territories

The analysis of these violations of human rights and basic liberties committed towards Palestinians shall be approached by using objective information included in reports of the international human rights committees and the contents of the various United Nations Special Rapporteur reports, complemented with other United Nations and International Court of Justice documentation.

5.1 Analysis of reports of the UN Treaty Bodies

Israel has ratified the vast majority of international treaties relative to the protection and promotion of human rights. Each of these treaties has a monitoring body called a “Committee”, which monitors the implementation of the treaty and to which States must submit periodic reports detailing how these rights are incorporated into legislation and made effective. Meanwhile, the Committee “answers” these reports with its Concluding Observations, expressing its recommendations and concerns to the State. In the specific case of Israel, the Committees, in their Concluding Observations, have condemned the constant violations of human rights to which the Palestinian population is submitted. Below, we shall perform an analysis of the latest reports of the treaty Committees.

a) Committee on the Elimination of Racial Discrimination (CERD)

The monitoring body of the **International Convention on the Elimination of All Forms of Racial Discrimination**⁵⁵ is the **Committee on the Elimination of Racial Discrimination** **Racial**⁵⁶ (henceforth CERD Committee). In its Concluding Observations of the latest reports submitted by Israel⁵⁷, it aired its concerns about a great deal of matters. It highlighted the **existing discrimination between Arab Israelis and Jews regarding access to land, the protection and guarantee of rights and access to certain benefits**. It also highlighted the **existing discrimination in the Occupied Palestinian Territories**.

With regard to the first matter, the CERD Committee expressed its concern at the **privileges given to Jewish nationals** (through the Law of Return) concerning **access to land and to certain benefits**, in breach of articles 1, 2 and 5 of the Convention. It also aired its concern at the **denial of the right of many Palestinians to return and repossess their land in Israel** (in breach of article 5 (d) (ii) and (v) of the Convention), urging equality in the right to return to one’s country and in the possession of property (paragraph 18). The CERD Committee pointed out that *the social suitability criterion to apply for access to land ruled by the Israel Lands Administration*⁵⁸ (the condition that applicants must be “suitable to a small communal regime”) may allow, in practice, for the exclusion of Arab Israeli citizens from some State-controlled land. (Articles 2, 3 and 5 (d) and (e) of the Convention) (paragraph 23).

With relation to the **protection and guarantee of rights and access to certain benefits**, the CERD Committee highlighted the existence of serious discrimination. On the subject of the **right to health, education and housing**, the CERD Committee made the following recommendations. There are currently **separate Arab and Jewish “sectors”, in particular in the area of housing and education**, which results in unequal funding and treatment (articles 3,

⁵⁵ This Convention was ratified by Israel on 03/01/1979. On doing so, Israel introduced a reservation, which states its exclusion from the implementation of article 22, according to which, any dispute between two or more States Parties with respect to the application of this Convention, shall be referred to the International Court of Justice for decision.

⁵⁶ Israel did not accept the the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention, as set forth in article 14.1.

⁵⁷ Concluding Observations of the Committee for the Elimination of Racial Discrimination, Israel, CERD/C/ISR/CO/13, 14th June 2007.

⁵⁸ The Israel Lands Administration (ILA) is the government body responsible for the administration of public land (93% of the total). Further information: http://www.mmi.gov.il/envelope/indexeng.asp?page=/static/eng/f_general.html

5 and 7 of the Convention) and **may amount to racial segregation** (paragraph 22). As for the **low level of education provision for Arab Israeli citizens**, the CERD Committee remarked that this is a barrier to their access to employment, and that their average income is significantly lower than that of Jewish citizens. Also of concern for the CERD Committee are the discrepancies still remaining between the **infant mortality rates and life expectancy rates** of Jewish and non-Jewish populations and the fact that minority **women and girls** are often the most disadvantaged (articles 2 and 5 (e) of the Convention) (paragraph 24). The CERD Committee also expressed its concern about information that psychometric examinations used to test aptitudes, ability and personality **indirectly discriminate against Arabs** in **accessing higher education** (articles 2 and 5 (e) of the Convention) (paragraph 27). When it comes to **military service**, the CERD Committee observed that it **provides highly advantageous access to various public services, such as housing and education**. This is not compatible with articles 2 and 5 of the Convention, bearing in mind that most Arab Israeli citizens do not perform national service (paragraph 21).

With regard to the protection of cultural and religious heritage, the CERD Committee expressed its concern at information that several laws create **Jewish cultural institutions**, but that none create similar centres for Arab Israeli citizens, and that the same level of protection is not offered to Jewish and non-Jewish holy sites (articles 2, 5 (d) (vii) and (e) (vi), and article 7 of the Convention) (paragraph 28).

Regarding protection and criminal law provisions against discriminatory acts, the CERD Committee was concerned that the Attorney General has adopted a restrained policy in relation to prosecutions against politicians, government officials and other public figures for hate **speech against the Arab minority** (paragraph 29). It noted with concern there are a high number of complaints filed by Arab Israeli citizens against law enforcement officers are not properly and effectively investigated and that the Police Investigations Unit (Mahash) of the Ministry of Justice lacks independence. (paragraph 30).

Another serious situation condemned by the CERD Committee are the **actions that change the demographic composition of the Occupied Palestinian Territories**, as they are violations of human rights and international humanitarian law (paragraph 14).

As for the Occupied Palestinian Territories, before detailing the discriminatory situations reported by the CERD Committee, it is worth noting that *“The Committee reiterates its concern at the position of the State party to the effect that the Convention does not apply in the Occupied Palestinian Territories and the Golan Heights. Such a position cannot be sustained under the letter and spirit of the Convention, or under international law, as also affirmed by the International Court of Justice. The Committee is concerned at the State party’s assertion that it can legitimately distinguish between Israelis and Palestinians in the Occupied Palestinian Territories on the basis of citizenship. It reiterates that the Israeli settlements are illegal under international law. **The Committee recommends that the State party review its approach and interpret its obligations under the Convention in good faith**, in accordance with the ordinary meaning to be given to its terms in their context, and in the light of its object and purpose. The Committee also recommends that the State party ensures that Palestinians enjoy full rights under the Convention without discrimination based on citizenship and national origin”* (paragraph 32).

Specifically, the situations condemned by the CERD Committee, with regard to the Occupied Palestinian Territories, are: the presence of the separation wall in the West Bank; the restrictions on freedom of movement imposed by the wall and other barriers; the application of different

laws to Israeli citizens living in the Occupied Palestinian Territories and Palestinians; the unequal distribution of water resources; and the demolition of Palestinian houses.

Referring to the wall in the West Bank, the CERD Committee *“is concerned that the State party has chosen to disregard the 2004 advisory opinion of the International Court of Justice on the legal consequences of the construction of the wall in the Occupied Palestinian Territories. The Committee is of the opinion that the wall and its associated regime raise serious concerns under the Convention, since they gravely infringe a number of human rights of Palestinians residing in the territory occupied by Israel. These infringements cannot be justified by military exigencies or by the requirements of national security or public order. (Articles 2, 3 and 5 of the Convention). The Committee recommends that the State party cease the construction of the wall in the Occupied Palestinian Territories, including in and around East Jerusalem, dismantle the structure therein situated and make reparation for all damage caused by the construction of the wall. The Committee also recommends that the State party take action to give full effect to the 2004 advisory opinion of the International Court of Justice on the legal consequences of the construction of the wall in the Occupied Palestinian Territories.”* (paragraph 33).

The CERD Committee expresses its concern at **the severe restrictions on the freedom of movement in the Occupied Palestinian Territories targeting the Palestinian population**, as a consequence of the **wall, checkpoints, restricted roads and permit system**, which *“have created hardship and have had a highly detrimental impact on the enjoyment of human rights by Palestinians, in particular their rights to freedom of movement, family life, work, education and health”*. It is also concerned that the Order on Movement and Travel (Restrictions on Travel in an Israeli Vehicle) (Judea and Samaria), of 19 November 2006, which bans Israelis from transporting Palestinians in their vehicles in the West Bank, except in limited circumstances, has been suspended but not cancelled. (Articles 2, 3 and 5 of the Convention). *“The State party should review these measures to ensure that restrictions on freedom of movement are not systematic but only of temporary and exceptional nature, are not applied in a discriminatory manner, and do not lead to segregation of communities. The State party should ensure that Palestinians enjoy their human rights, in particular their rights to freedom of movement, family life, work, education and health.”* (paragraph 34).

The CERD committee *“notes with concern the application in the Occupied Palestinian Territories of **different laws, policies and practices applied to Palestinians on the one hand, and to Israelis on the other hand**. It is concerned, in particular, by information about **unequal distribution of water resources to the detriment of Palestinians**, about the **disproportionate targeting of Palestinians in house demolitions** and about the **application of different criminal laws leading to prolonged detention and harsher punishments for Palestinians than for Israelis for the same offences**. (Articles 2, 3 and 5 of the Convention). The State party should ensure equal access to water resources to all without any discrimination. The Committee also reiterates its call for a halt to the demolition of Arab properties, particularly in East Jerusalem, and for respect for property rights irrespective of the ethnic or national origin of the owner. Although different legal regimes may apply to Israeli citizens living in the Occupied Palestinian Territories and Palestinians, the State party should ensure that the same crime is judged equally, not taking into consideration the citizenship of the perpetrator”*. (paragraph 35).

Finally, the CERD Committee highlights the persistence of violence perpetrated by Jewish settlers, in particular in the Hebron area. (Articles 4 and 5 of the Convention). *“The Committee recommends that the State party increase its efforts to protect Palestinians against such violence. The State party should ensure that such incidents are investigated in a prompt, transparent and indepen-*

dent manner, the perpetrators are prosecuted and sentenced, and that avenues for redress are offered to the victims" (paragraph 37).

In short, the CERD Committee highlighted **several clearly discriminatory Israeli policies towards the Palestinian population, both of Israel and of the Occupied Palestinian Territories**: the lack of access to land; the denial of the right of refugees to return and repossess their land; the presence of separate sectors for Jews and Arabs in education and in housing; discrimination in accessing further education; the provision of public services and various privileges only to Jews, through military service duties (reserved solely for Jews); the lack of protection of Palestinian cultural institutions and non-Jewish holy sites; the legal loophole in the case of racist declarations by Jewish politicians and government officials; the serious restrictions to the freedom of movement that only affect Palestinians; the unequal distribution of water resources; the demolition of Palestinian houses; and the application of different legislation to Palestinian and Jews. These discriminatory situations entail a whole range of restrictions to the normal development of life for the Palestinian people, who cannot enjoy the most basic and essential rights.

b) Human Rights Committee (CCPR)

In its Concluding Observations to the second Periodic Report submitted by Israel⁵⁹, the **Human Rights Committee** (henceforth, **HRC**), in charge of monitoring the implementation of the **International Covenant on Civil and Political Rights**⁶⁰, pinpointed, in 2003⁶¹, some worrying aspects of the human rights situation of the Palestinian population, where – despite Israel's opinion to the contrary – this Covenant and all other instruments to protect human rights and humanitarian law are applied. In this sense, *"The Committee has noted the State party's position that the Covenant does not apply beyond its own territory, notably in the West Bank and in Gaza, especially as long as there is a situation of armed conflict in these areas. The Committee reiterates the view, previously spelled out in paragraph 10 of its concluding observations on Israel's initial report (CCPR/C/79/Add.93 of 18 August 1998), that the applicability of the regime of international humanitarian law during an armed conflict does not preclude the application of the Covenant, including article 4 which covers situations of public emergency which threaten the life of the nation. Nor does the applicability of the regime of international humanitarian law preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of their authorities outside their own territories, including in occupied territories. The Committee therefore reiterates that, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law. The State party should reconsider its position and to include in its third periodic report all relevant information regarding the application of the Covenant in the Occupied Territories resulting from its activities therein"* (paragraph 11).

The HRC expressed its concern at the frequent use of various forms of **administrative detention, restrictions on access to a lawyer** and to the **lack of information on the reasons of detention**, specifically in the case of Palestinians from the Occupied Territories. *"These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7"* (paragraph 12). According to the HRC, Israel, seeking protection in the state of emergency, limits certain rights excessively, beyond that authorised by the Covenant itself. **Prolonged detentions** without any access to a lawyer or other persons

⁵⁹ The third and most recent Periodic Report from Israel (CCPR/C/ISR/3 and HRI/CORE/ISR/2008, of 21/11/2008) will be considered during the 97th Session of the Human Rights Committee in Geneva in October 2009.

⁶⁰ International Covenant on Civil and Political Rights. Adopted and opened to signature, ratification and accession by the General Assembly, resolution 2200 A (XXI), of 16th December 1966. Entry into force: 23rd March 1976, in accordance with article 49. Israel ratified this Treaty on 03/10/1991.

⁶¹ Concluding Observations of the Human Rights Committee: Israel. 21/08/2003, CCPR/CO/78/ISR.

of the outside world violates articles the Covenant (arts. 7, 9, 10 and 14, para. 3 (b)). Israel should ensure that no one is held for more than 48 hours without access to a lawyer. (paragraph 13).

The ambiguous wording of the provisions and the vagueness of definitions run counter to the principle of legality, as well as the use of several evidentiary presumptions to the detriment of the defendant. This has adverse consequences on the rights protected under article 15 of the Covenant. (paragraph 14). The HRC is also concerned at the practice of “**targeted killings**” of those identified by Israel as suspected terrorists in the Occupied Territories, which would appear to be used at least in part as a deterrent or punishment. Israel should ensure that the utmost consideration is given to the principle of proportionality in all its responses to terrorist threats and activities and should not use “targeted killings” as a deterrent or punishment. At the same time, complaints about disproportionate use of force should be investigated promptly by an independent body (paragraph 15).

As for the **demolition of property and houses of families**, some of whose members were or are suspected of involvement in terrorist activities or suicide bombings, in the opinion of the HRC this **contravenes the obligation of the State to ensure without discrimination the right not to be subjected to arbitrary interference with one’s home** (art. 17), **freedom to choose one’s residence** (art. 12), **equality of all persons before the law and equal protection of the law** (art. 26), and **not to be subject to torture or cruel and inhuman treatment** (art 7). The HRC deplors deplors what it considers to be the partly punitive nature of the demolition of property and homes in the Occupied Territories and states that Israel should discontinue this practice (paragraph 16).

The Israeli Defence Forces (IDF) should likewise discontinue the practice of **using local residents as “volunteers” or shields** during military operations in the Occupied Territories, especially in order to search houses and to help secure the surrender of those identified by the State party as terrorist suspects (paragraph 17).

The HRC also points out that Israel uses **interrogation methods that constitute torture**, in breach of art. 7 of the Covenant. These practices are prohibited in all circumstances, however exceptional they may be. Israel should ensure that all cases of ill-treatment and torture are vigorously investigated by genuinely independent mechanisms, and that those responsible for such actions are prosecuted (paragraph 18).

The HRC also points out that the construction of the “**Seam Zone**”, by means of a fence and, in part, of a wall, beyond the Green Line, imposes **additional and unjustifiably severe restrictions on the right to freedom of movement of Palestinians within the Occupied Territories**, which surpass the security reasons put forward by Israel. “*The “Seam Zone” has adverse repercussions on nearly all walks of Palestinian life; in particular, the wide-ranging restrictions on freedom of movement disrupt access to health care, including emergency medical services, and access to water. The Committee considers that these restrictions are incompatible with article 12 of the Covenant... The construction of a “Seam Zone” within the Occupied Territories should be stopped*” (paragraph 19).

The HRC “*is concerned by **public pronouncements** made by several prominent Israeli personalities in relation to Arabs, which may constitute advocacy of **racial and religious hatred that constitutes incitement to discrimination, hostility and violence**. The State party should take necessary action to investigate, prosecute and punish such acts in order to ensure respect for article 20, paragraph 2, of the Covenant*” (paragraph 20).

The HRC then refers to **certain Israeli legislation that violates the rights of the Palestinian population**. First of all, the HRC expresses its concern with regard to the **Nationality and Entry into Israel Law (Temporary Order) of 31st July 2003**, which suspends the possibility of family reunification, subject to limited and subjective exceptions especially in the cases of marriages between an Israeli citizen and a person residing in the West Bank and in Gaza. *"The Committee notes with concern that the suspension order of May 2002 has already adversely affected thousands of families and marriages. The State party should revoke the Nationality and Entry into Israel Law (Temporary Order) of 31 July 2003, which raises serious issues under articles 17, 23 and 26 of the Covenant. The State party should reconsider its policy with a view to facilitating family reunification of all citizens and permanent residents. It should provide detailed statistics on this issue, covering the period since the examination of the initial report"* (paragraph 21). Secondly, the HRC refers to the **1952 Law on Citizenship**, which enables the revocation of Israeli citizenship, especially its application to Arab Israelis. *"The Committee is concerned about the compatibility with the Covenant, in particular article 24 of the Covenant, of the revocation of citizenship of Israeli citizens. The State party should ensure that any changes to citizenship legislation are in conformity with article 24 of the Covenant.* (paragraph 22).

Finally, the HRC notes with concern that the percentage of Arab Israelis in the civil service and public sector remains very low and that progress towards improving their participation, especially of **women**, has been slow. *"The State party should adopt targeted measures with a view to improving the participation of Arab Israeli women in the public sector and accelerating progress towards equality"* (paragraph 23).

The **HRC observations** clearly illustrate the **existence of discriminatory laws and discriminatory policies**, which relegate Palestinians into a situation of vulnerability, which prevent them from fully exercising their rights and their personal development. These are: inequality before the courts; the violation of legal rights (violation of the principle of innocence, legality, etc.); interrogation methods which constitute torture; targeted killings; the demolition of houses; the use of human shields; violations of the freedom of movement; lack of legal response to the racist behaviour of public personalities; lack of Palestinian representation in the public sector; and clearly discriminatory laws which establish privileges in favour of the Jewish population, such as the Law on Citizenship and the Nationality and Entry into Israel Law.

c) Committee on Economic, Social and Cultural Rights (CESCR)

As in the first report, in the Concluding Observations of the second periodic report of Israel in June 2003⁶², the Committees in charge of monitoring the observance of the **International Covenant on Economic, Social and Cultural Rights**⁶³ (henceforth, CESCR), rejected Israel's interpretation of the law applicable in the Occupied Palestinian Territories: Israel claims that in the Occupied Palestinian Territories the CESCR Covenant is only applicable to Israeli citizens, and not to the rest of the population and, as a result of this, Israel refuses to present reports about the implementation of the Covenant in the Occupied Palestinian Territories: *"the Committee is deeply concerned at the insistence of the State party that, given the circumstances in the occupied territories, the law of armed conflict and humanitarian law are considered as the only mode whereby protection may be ensured for all involved, and that this matter is considered to fall outside the sphere of the Committee's responsibility"* (paragraph 15). Later, the Committee *"recognises that the State party has serious security concerns, which must be balanced with its efforts to comply with its obligations under international human rights law. However, the Committee reaffirms its view that the State party's*

⁶² Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 26/06/2003, E/C.12/1/Add.90.

⁶³ International Covenant on Economic, Social and Cultural Rights. Adopted and opened to signature, ratification and accession by the General Assembly, resolution 2200 A (XXI), of 16th December 1966. Entry into force: 3rd January 1976, in accordance with article 27. Israel ratified this Covenant on 03/10/1991.

obligations under the Covenant apply to all territories and populations under its effective control. The Committee repeats its position that even in a situation of armed conflict, fundamental human rights must be respected and that basic economic, social and cultural rights, as part of the minimum standards of human rights, are guaranteed under customary international law and are also prescribed by international humanitarian law. Moreover, the applicability of rules of humanitarian law does not by itself impede the application of the Covenant or the accountability of the State under article 2 (1) for the actions of its authorities. The Committee therefore requests that the State party provide more extensive information on the enjoyment of economic, social and cultural rights enshrined in the Covenant by those living in the occupied territories in its next periodic report (paragraph 31).

The CESCR expresses its deep concern about the continuing **difference in treatment between Jews and non-Jews**, in particular Arab and Bedouin communities, with regard to their enjoyment of economic, social and cultural rights in the State party's territory. **"The Committee reiterates its concern that the "excessive emphasis upon the State as a 'Jewish State' encourages discrimination and accords a second-class status to its non-Jewish citizens" (ibid., para. 10). This discriminatory attitude is apparent in the continuing lower standard of living of Israeli Arabs as a result, inter alia, of higher unemployment rates, restricted access to and participation in trade unions, lack of access to housing, water, electricity and health care and a lower level of education, despite the State party's efforts to close the gap. In this regard, the Committee expresses its concern that the State party's domestic legal order does not enshrine the general principles of equality and non-discrimination (paragraph 16).**

The CESCR is also concerned about the contents of the **Israeli Law of Return**, which is a ground for exclusive preferential treatment for persons of Jewish nationality. This law grants Jewish nationals automatic citizenship and financial government benefits, "thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees". The Committee is also concerned about the **practice of restrictive family reunification with regard to Palestinians**, adopted for reasons of national security. (paragraph 18).

The CESCR highlights the increase in the **unemployment rate** in Israel, particularly significant in non-Jewish sectors of the population, and which is **over 50 per cent in the Occupied Territories "as a result of the closures which have prevented Palestinians from working in Israel"** (paragraph 20). The **persisting inequality in wages of Jews and Arabs in Israel**, as well as the **severe under-representation of the Arab sector in the civil service and universities** is also alarming (paragraph 21).

Palestinians living in the Occupied Palestinian Territories and working in Israel find it incredibly difficult to join Israeli trade unions or to establish their own trade unions in Israel (paragraph 22).

With regard to the Occupied Palestinian Territories, the CESCR regrets that Israel only provides information on the living conditions of Israeli settlers in the occupied territories, and does not refer to the rest of the population, as requested in its 2001 Concluding Observations. **"The Committee continues to be gravely concerned about the deplorable living conditions of the Palestinians in the occupied territories, who - as a result of the continuing occupation and subsequent measures of closures, extended curfews, roadblocks and security checkpoints - suffer from impingement of their enjoyment of economic, social and cultural rights enshrined in the Covenant, in particular access to work, land, water, health care, education and food"** (paragraph 19).

With reference to the **Wall**, which at the time was under construction, **"The Committee is particularly concerned about information received concerning the construction of a "security fence" around the oc-**

cupied territories, which allegedly would **infringe upon the surface area of the occupied territories and which would limit or even impede access by Palestinian individuals and communities to land and water resources**. The Committee regrets the fact that the delegation did not respond to questions by the Committee concerning the security fence or wall during the dialogue" (paragraph 24).

As for **water resources**, the CESCR is concerned about "limited access to and distribution and availability of water for Palestinians in the occupied territories, as a result of **inequitable management, extraction and distribution** of shared water resources, which are predominantly under Israeli control" (paragraph 25).

The CESCR, as on previous occasions, reiterates its concern about the continuing practices by the State party of **home demolitions, land confiscations and restrictions on residency rights**, and "its adoption of policies resulting in substandard housing and living conditions, including extreme overcrowding and lack of services, of Palestinians in East Jerusalem, in particular in the old city (E/C.12/1/Add.27, para. 22). Furthermore, the Committee is gravely concerned about the continuing practice of **expropriation of Palestinian properties and resources for the expansion of Israeli settlements in the occupied territories**" (paragraph 26).

In a State such as **Israel**, where the principles of equality and non-discrimination are not recognised in legislation, a **system that recognises inequality and sentences the Palestinian people to live in a situation of inferiority** has been established and, as the CESCR states, **renders them second-class citizens**. As a result, the economic, social and cultural rights affected by these discriminatory laws and policies, as the CESCR denounces, are reflected in the high unemployment rate, restrictions on trade union activities, restricted access to housing, healthcare and education, lack of access to natural resources such as water, restrictions on family reunification laid down by migration legislation, restrictions on the freedom of movement which all seriously affect the enjoyment of all economic, social and cultural rights, which lead to a low standard of living for the Palestinian population.

d) Committee on the Rights of the Child (CRC)

The monitoring body of the **Convention on the Rights of the Child**⁶⁴, the Committee on the Rights of the Child (henceforth, CRC), in its Concluding Observations⁶⁵ of the initial report presented by Israel on 9th October 2002, made several observations about the discriminatory stances and policies of the Israeli authorities.

First of all, it noted Israel's responsibility to implement the Convention in the Occupied Palestinian Territories, regretting the lack of any information about the situation of children in these territories (paragraph 2). Although the CRC recognises the difficulties of implementing the full implementation of the Convention due to the context of violence caused by both sides in the conflict, "it recognises that the illegal occupation of Palestinian territory, the bombing of civilian areas, extrajudicial killings, the disproportionate use of force by the Israeli Defence Forces, the demolition of homes, the destruction of infrastructure, mobility restrictions and the daily humiliation of Palestinians continue to contribute to the cycle of violence".

The CRC was concerned that **Israeli legislation discriminates in the definition of the child** between Israeli children (e.g. persons under 18 in the 1962 Guardianship and Legal Capacity Law, and the Youth (Trial, Punishment and Modes of Treatment) Law) and Palestinian children in

⁶⁴ Convention on the Rights of the Child. Adopted and opened to signature, ratification and accession by the General Assembly, resolution 44/25, of 20th November 1989. Entry into force: 2nd September 1990, in accordance with article 49. Israel ratified this Convention on 3/10/1991.

⁶⁵ Concluding Observations of the Committee on the Rights of the Child: Israel. 09/10/2002, CRC/C/15/Add.195.

the occupied Palestinian territories (i.e. **persons under 16** in Military Order No. 132). (paragraph 24). This difference **violates the Convention rules which establish that the State party must ensure the protection of the rights of children subject to its jurisdiction without racial, religious or ethnic distinctions**, etc. (articles 1 and 2). The CRC also highlighted “*the allegations and complaints of inhuman or degrading practices and of **torture and ill-treatment of Palestinian children** by police officers during arrest and interrogation and in places of detention*”⁶⁶ (paragraph 36).

The CRC also aired its concern about the **principle of non-discrimination not being ensured, and about the inequalities in the enjoyment of the economic, social and cultural rights (i.e. access to education, health care and social services)** of Israeli Arabs and other minorities and Palestinian children in the Occupied Palestinian Territories (paragraph 26). In Israel there is a large gap between services provided to Jewish and Israeli Arab children with disabilities (paragraph 42).

As for the **right to healthcare**, “*the Committee is deeply concerned about the **serious deterioration of health and health services of children in the occupied Palestinian territories**, especially as a result of the measures imposed by the Israeli Defence Forces, including road closures, curfews and mobility restrictions, and the destruction of Palestinian economic and health infrastructure. In particular, the Committee is concerned about the consequent delays of and interference with medical personnel, the shortages of basic medical supplies and **malnutrition in children** owing to the disruption of markets and the prohibitively high prices of basic foodstuffs*” (paragraph 44). The CRC also expressed its concern at the **persistent and significant gap in health indicators between Israeli Jews and Arabs** (paragraph 46).

With regard to the right to an **adequate standard of living**, the CRC expressed its concern at the very high percentage of **families living in poverty**, particularly Arab families (paragraph 48). “*The Committee is deeply concerned at the **large-scale demolition of houses and infrastructure in the occupied Palestinian territories, which constitutes a serious violation of the right to an adequate standard of living for children in those territories***” (paragraph 50). Likewise, the CRC aired its concern at “*the **impact of terrorism on the rights of children in the State party, as well as the impact of military action on the rights of children in the Occupied Palestinian Territories (...)** and the lack of redress available to the child victims of Israeli Defence Forces operations there*” (paragraph 58).

As for the **right to education**, “*the Committee is concerned about the **serious deterioration of access to education of children in the occupied Palestinian territories** as a result of the measures imposed by the Israeli Defence Forces, including road closures, curfews and mobility restrictions, and the destruction of school infrastructure*” (paragraph 52). The CRC also condemns that in Israel the **investment in and the quality of education in the Israeli Arab sector is significantly lower than in the Jewish sector** (paragraph 54).

To end, the CRC **highlights three issues for concern**: “*a) The differential application of law concerning children, such as with respect to the definition of a child in Israel and in the occupied Palestinian territories; b) The practice relating to the arrest and interrogation of children in the occupied Palestinian territories; c) Military Orders Numbers 378 and 1500, as well as all other military orders which may allow prolonged incommunicado detention of children, and which do not provide due process guarantees, access to legal assistance and family visits.*” (paragraph 62).

The observations of the CRC clearly illustrate the **widespread discrimination suffered by Palestinian children both in Israel and in the Occupied Palestinian Territories**. Children

⁶⁶ Namely the Ma'ale Adummim, Adorayim, Beit El, Huwarra, Kedumin, Salem and Gush Etzion police stations and prisons such as Terza, Ramleh, Megiddo y Telmond.

suffer even more than adults from the consequences of these discriminatory laws and policies which affect their normal physical, mental and emotional development. As a result, Palestinian children suffer from illnesses for which they receive inadequate medical attention, deficient educational services, poor diet, homelessness due to demolitions carried out by the IDF, chronic poverty, torture and ill-treatment – those who are detained -, etc. All of this made even worse by the restrictions on movement, curfews, road closures and destruction of infrastructures imposed by the Israeli authorities.

e) Committee against Torture (CAT)

In its Concluding Observations⁶⁷ to the third and latest periodic report presented by Israel about the implementation of the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**⁶⁸, the Committee (henceforth CAT) made several observations about the discriminatory practices carried out by the Israeli authorities. In accordance with article 2, paragraph 2 of the Convention, it reiterated that **no exceptional circumstances whatsoever may be invoked as a justification of torture** (paragraph 51).

The CAT expressed its concern at the **alleged torture and ill-treatment of Palestinian minors**, in particular of those detained in the Gush Etzion police station. Like the Committee for the Rights of the Child, it also highlighted the differences between the definition of a child in Israel and in the Occupied Palestinian Territories (paragraph 52).

The CAT also noted that **administrative detention** does not conform with article 16 of the Convention, and expressed its concern at the continued use of **incommunicado detention**, even in the case of **children** (paragraph 52).

The CAT also spotlighted the very few prosecutions initiated against the alleged perpetrators of **torture and ill-treatment** by law enforcement officials (paragraph 52). *“While noting that according to the delegation any allegation of physical violence against a detainee is always treated and investigated as a criminal offence, the Committee is concerned that the Department for the Investigation of Police Misconduct (DIPM) may decide that a police officer or ISA investigator should only be subject to disciplinary action, in lieu of criminal proceedings. This may amount to a violation of article 7, paragraph 1, of the Convention”* (paragraph 52).

The CAT also noted that **Israeli policies on closure may amount to cruel, inhuman or degrading treatment or punishment** (article 16 of the Convention). Likewise, the CAT expressed its concern at the judicial practice of **admitting objective evidence derived from an inadmissible confession** and at the instances of **“extrajudicial killings”** drawn to its attention (paragraph 52).

Torture being such a heinous act, there is absolutely no justification or exceptional circumstances to implement it, as the Convention in question rightly establishes. That is why the CAT findings are of great concern, as is the **scarce legal response to reports of cases of torture**. Certain acts must be highlighted, such as the demolition of houses or the policies of closures and restrictions on the freedom of movement which, as the Committee states, may constitute **torture**, not only **physical**, but also **psychological**, and which undermines the dignity of the entire Palestinian population.

⁶⁷ Concluding Observations of the Committee against Torture: Israel, 25/09/2002, A/57/44.

⁶⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted and opened to signature, ratification and accession by the General Assembly, resolution 39/46, of 10th December 1984. Entry into force: 26th June 1987, in accordance with article 27 (1). Israel ratified the Convention on 3rd October 1991.

f) Committee on the Elimination of Discrimination against Women (CEDAW)

The Committee on the Elimination of Discrimination against Women (henceforth, CEDAW), in its Concluding Observations to Israel's third periodic report, made a series of observations⁶⁹.

With regard to Israel's position that the **Convention on the Elimination of All Forms of Discrimination against Women**⁷⁰ applies only in its territory and not in the Occupied Palestinian Territories, the CEDAW observed that *"it is contrary to the views of the Committee and of other treaty bodies, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee against Torture and also of the International Court of Justice, which have all noted that **obligations under international human rights conventions as well as humanitarian law apply to all persons brought under the jurisdiction or effective control of a State party** and have stressed the applicability of the State party's obligations under international human rights conventions"* (paragraph 23). As a result, *"the Committee urges the State party to reconsider its position and to give full effect to the implementation of its obligations under the Convention in regard to all persons under its jurisdiction, including women in the Occupied Territories, and to provide in its next periodic report detailed information on the enjoyment by all women, including if still relevant, women living in the Occupied Territories, of their rights under the Convention.* (paragraph 24).

The CEDAW highlighted the **low level of representation of women in decision-making positions in the civil service** (paragraph 31). It also expressed its concern that **Israeli Arab women remain in a vulnerable and marginalised situation of inequality**, especially in regard to **education and health**. (paragraph 35). This inequality is even greater amongst the Bedouin women living in the Negev, who are marginalised especially in regard to education, employment and healthcare. *"The Committee is especially concerned with the situation of Bedouin women who live in unrecognised villages with poor housing conditions and limited or no access to water, electricity and sanitation"* (paragraph 39).

As for restrictions on the freedom of movement, *"The Committee is concerned about the number of incidents at Israeli checkpoints which have a negative impact on the rights of Palestinian women, including the right of access to **health-care services for pregnant women**"* (paragraph 37).

Like the Human Rights Committee, the CEDAW expressed its concern at the Nationality and Entry into Israel Law (Temporary Order) of 31st July 2003 which suspends the possibility of family reunification, with limited exceptions, especially in cases of marriages between an Israeli citizen and a person residing in the Occupied Palestinian Territories. *"The Committee notes with concern that the suspension order, which has currently been extended through August 2005, has already adversely affected the marriages and family life of Israeli Arab women, citizens and Palestinian women from the Occupied Territories"* (paragraph 33).

The CEDAW report clearly illustrates that **Arab Israeli women** – the only Palestinian women referred to by the text – **are in a vulnerable situation**, which exposes them to **violations of human rights** and to **discrimination**, especially in the fields of healthcare and education.

Not only have the Committees monitoring the various international treaties on the subject of human rights – and let us not forget that Israel has ratified - observed the existence of serious discrimination against Palestinians which as a whole forms a crime of apartheid, but also various **reports by the United Nations Special Rapporteurs** have also reiterated this situation. Below we shall analyse some of the most noteworthy.

⁶⁹ Concluding Observation of the CEDAW Committee: Israel CEDAW/C/ISR/CO/3, of 22nd July 2005. The fourth and fifth reports now presented by Israel (CEDAW/C/ISR/4) shall be analysed in the upcoming session of the Committee.

⁷⁰ Convention on the Elimination of All Forms of Discrimination against Women. Adopted and opened to signature, ratification and accession by the General Assembly, resolution 34/180, of 18th December 1979. Israel ratified this Convention on 3rd October 1991.

5.2 Analysis of reports by UN Special Rapporteurs

“Special procedures” is the general name given to the extra-conventional mechanisms for the protection of human rights established by the Commission on Human Rights. They are either an individual (called “Special Rapporteur”, “Special Representative of the Secretary-General” or “Independent Expert”) or a group formed usually by five members called a “Working Group”. Their task is to **examine, monitor, advise and publicly report on human rights situations in specific countries or territories**, known as country mandates, or on **major phenomena of human rights violations worldwide**, known as thematic mandates. Various activities can be undertaken by special procedures, including responding to individual complaints, conducting studies, providing advice on technical cooperation at the country level, and engaging in general promotional activities. They also carry out country visits to investigate the situation of human rights at the national level. The findings of their studies are published in a report presented to the **Human Rights Council**, which replaced the Commission on Human Rights in 2006.

Various special procedures have expressed concern at the human rights situation in Israel and the Occupied Palestinian Territories. In 1993, the post of **Special Rapporteur on the Situation of Human Rights in Israel and the Palestinian Territories occupied since 1967**⁷¹ was established. Other special procedures have examined this matter and carried out visits, such as the **Special Rapporteur on Violence against Women, the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living**, and the **Special Rapporteur on the Freedom of Religion or Beliefs**, amongst others⁷².

Now we shall analyse the latest special procedure reports concerning the matter in question.

a) Report of the Special Rapporteur on the Situation of Human Rights in Israel and the Palestinian Territories occupied since 1967, Mr. Richard Falk⁷³.

This was the first report presented by Richard Falk, referring to the period between January and July 2008, in which he paid particular attention to the non-compliance with the rules of international humanitarian and human rights law and to the consequences of a prolonged occupation which has systematically ignored United Nations guidelines with respect to the rights of people residing in an occupied territory. He also highlighted the violation of international humanitarian law constituted by the separation wall, the excessive use of force by Israel to break up peaceful demonstrations and the abuse committed at border crossings. *“The Special Rapporteur takes particular note of the fact that the military occupation of the Palestinian territory has gone on for more than 40 years and that it possesses characteristics of **colonialism and apartheid**, as has been observed by the previous Special Rapporteur”* (paragraph 3). The Occupied Palestinian Territories are suffering a state of constant deterioration, *“reaching dangerous and non-sustainable levels of mental and physical suffering and trauma for the Palestinian people living under occupation”* (paragraph 6). In general, during this period the situation of the Palestinian people has worsened: more land has been taken for settlements; the crisis conditions persist in Gaza as a whole; the restrictions on movement throughout the West Bank have been maintained or tightened; and additional legal moves to expel Palestinians living in Jerusalem have been taking place.

With regard to the situation in the **West Bank**, the Rapporteur made the following observations. Concerning **closures and military operations** carried out by the IDF and **abuses against the civilian population**, particularly in the city of Naplusa, the Rapporteur stated that *“not only do the Palestinians have to endure material losses inflicted by recent occupation policies and the psychological harm caused by the terrifying experience of daily late-night military incursions by*

⁷¹ The holders of this special procedure have been: René Felber (Switzerland), 1993-1995; Hannu Halinen (Finland) 1995-1999; Giorgio Giacomelli (Italy) 1999-2001; John Dugard (South Africa) 2001-2008, and since 1st May 2008, Richard Falk (United States of America).

⁷² All the reports on special procedure visits to the Occupied Palestinian Territories: <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm#palestine>

⁷³ Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967, Mr. Richard Falk, A/63/326, of 25th August 2008.

heavily armed Israeli forces, but also there is the growing sense of physical isolation produced by the numerous checkpoints and roadblocks that surround the city" (paragraph 21).

With reference to **settlements and land claims**, the Rapporteur stated that *"The extent of the settlement encroachment on West Bank and East Jerusalem territory is difficult to calculate with precision owing to the continuous process of expansion. The prevailing best estimate is that settlement land claims (together with Palestinian land seized for the construction of the separation wall) have led to the confiscation of 14 per cent of the territory of the West Bank, which itself represents only 22 per cent of the original British Mandate of Palestine. According to recent figures, there are currently some 200 settlements, 100 outposts and 29 Israeli military bases. The cost of sustaining the settlement network is about \$556 million per year, and the number of settlers is estimated to be between 480,000 and 550,000. The rate of settlement expansion is placed at approximately 4 per cent per year, both with respect to land and population. There are a variety of special problems raised by the settlements that contribute to violence, both the violence of settlers towards Palestinians, and the violence of Palestinian resistance. The city of Hebron has been a persistent flashpoint and the scene of repeated violent incidents and tragic deaths, where 700 settlers are protected by 300 Israeli soldiers in a city of 150,000 Palestinian inhabitants. Perhaps, the most telling statistic (compiled by the United Nations Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory) is that Palestinian land taken by Israel for settlements, for closed military zones (including almost the entire Jordan Valley), and for Israeli-declared nature preserves now renders 40 per cent of the West Bank inaccessible and unusable for residential, agricultural, commercial or municipal development"* (paragraph 32).

Closures and the "cantonisation" process of the territory make it practically impossible to carry out any gainful economic activity. A basic difficulty is associated with the combination of checkpoints, roadblocks and permit requirements that impede movement to and from medical facilities even within the West Bank, especially from villages and refugee camps surrounding the larger towns and cities where hospitals and other medical facilities are located. The restrictions also make access to Israel very difficult, and often impossible, for most Palestinians living in the West Bank. It is widely reported that those conditions are causing a variety of ailments, especially in children suffering from malnutrition and trauma (paragraph 38). *"Such restrictions seem excessive, and have been frequently observed, combined with a variety of intimidating and humiliating practices which discourage Palestinian movement in the West Bank. Over time, the situation is causing serious damage to the health of inhabitants. The regime of confinement amounts to collective punishment, and violates article 13 (1) of the Universal Declaration of Human Rights, which states, "Everyone has the right to freedom of movement and residence within the borders of each State"*. (paragraph 44).

The Rapporteur also spotlighted the **terrible economic and social situation** being endured by the Palestinian population in **Gaza and the West Bank**, with extremely high unemployment and poverty rates. According to both United Nations and World Bank sources, the poverty rate for the West Bank and Gaza combined is currently 59 per cent, and food insecurity affects at least 38 per cent of the overall population of the Occupied Palestinian Territory. The unemployment level in Gaza is officially listed at 45 per cent, the highest in the world, but even that figure understates the true level for a variety of reasons. It is reported that 95 per cent of the factories in Gaza are now closed owing to the siege. The World Bank has suggested that that set of conditions could produce an "irreversible" economic collapse. (paragraph 35).

With regard to the **health crisis in the Palestinian territories**, to which he dedicates a major part of this report, the Rapporteur informs of the **lack of medical supplies and equipment** and the inability to import spare parts or obtain replacements. Ill Gazans in need of specialised medical attention not available in Gaza have great difficulty acquiring exit permits to obtain

treatment in Israel, and many have died because they did not receive timely medical attention. "According to the Gaza Community Mental Health Programme, the cumulative effect of those conditions has had serious mental consequences for the Palestinian people, with the majority of civilians suffering from feelings of anger, anxiety, panic, depression, frustration and hopelessness as a result of Israeli occupation practices, the siege and poverty" (paragraph 37).

Talking about the city of **Jerusalem**, the Rapporteur stated that "The expansion of settlements has been particularly notable in East Jerusalem... **The expansion also furthers the Israeli policy of making East Jerusalem into a place of majority Jewish residence, and is accompanied by expulsions of Palestinians.** In addition, the presence of 250,000 Jews living "illegally" in East Jerusalem is being overlooked" (paragraph 33).

In short, the Rapporteur highlight the process initiated by Israel to **isolate and reduce the percentage of the Palestinian population.** This process is illustrated by the policies of closures and military operations, the refusal of permits to enter Israel to receive medical treatment, the creation of settlements and the practice of land claims which leads to the "cantonisation" of the territory, all of which result in **material losses and psychological damage, the inability to pursue gainful economic activities, poverty, unsafe foodstuffs, unemployment and illnesses.**

b) Report of the Special Rapporteur on the Situation of Human Rights in Israel and the Palestinian Territories occupied since 1967, Mr. John Dugard

The previous Special Rapporteur, John Dugard, in his final report of 21st January 2008⁷⁴, also made a series of considerations. The elements that have characterised this prolonged occupation are: the **settlements**; the **checkpoints**; the **demolition of houses**; **torture**; the **closure of border crossings** and **military incursions**. New violations of human rights and humanitarian law are added as they occur, such as the **construction of the wall** (since 2003), **sonic booms, targeted killings**, the **use of Palestinians as human shields**, and the **humanitarian crisis produced by the non-payment of tax money due to the Palestinians**. All these violations of human rights are suffered on a **daily basis by Palestinians by the hands of the occupier Israel** (paragraph 3).

With regard to land occupation in the West Bank, the Rapporteur states that "More than 38 per cent of the West Bank consists of settlements, outposts, military areas and Israeli nature reserves that are off limits to Palestinians. Settler roads link settlements to each other and to Israel. These roads are largely closed to Palestinian vehicles. (Israel has therefore introduced a system of "**road apartheid**", which was unknown in apartheid South Africa.)" (paragraph 30).

40% of land occupied by settlements in the West Bank is privately owned by Palestinians. "Settlements are illegal under international law as they violate article 49, paragraph 6, of the Fourth Geneva Convention. This illegality has been confirmed by the International Court of Justice in its Advisory Opinion on the construction of the wall, by the High Contracting Parties to the Fourth Geneva Convention in a declaration published in 2001, and by both the Security Council and the General Assembly. Furthermore settlements constitute a form of colonialism which is contrary to international law" (paragraph 32).

With regard to the **confiscation of Palestinian land to construct roads**, the Rapporteur reports that "The road is part of Israel's broader plan to replace territorial contiguity with "transportational contiguity" by artificially connecting Palestinian population centres through an elaborate network of alternate roads and tunnels and **creating segregated road networks, one for Palestinians and another for Israeli settlers, in the West Bank**" (paragraph 33).

⁷⁴ Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967, Mr. John Dugard, A/HRC/17, 21st January 2008.

With regard to the various **obstacles preventing Palestinians' freedom of movement in the West Bank**, it is evident that they have **disastrous consequences for both personal life and the economy**. These obstacles, hundreds of them at that, consist of manned checkpoints and unmanned locked gates, earth mounds, concrete blocks and ditches. In addition, thousands of temporary checkpoints, known as flying checkpoints, are set up every year by Israeli army patrols on roads throughout the West Bank for limited periods, ranging from half an hour to several hours (paragraph 34). What's more, **Palestinians are subjected to numerous prohibitions on travel and to requirements for permits for travel within the West Bank and to East Jerusalem**. These restrictions violate article 12 of the International Covenant on Civil and Political Rights which has been held to be binding on Israel in the OPT by the International Court of Justice in its Advisory Opinion on the construction of the wall. "**Checkpoints serve to humiliate Palestinians and to create feelings of deep hostility towards Israel. In this respect they resemble the "pass laws" of apartheid South Africa, which required black South Africans to demonstrate permission to travel or reside anywhere in South Africa**" (paragraph 35).

Regarding the **wall**, the construction of which is illegal according to the International Court of Justice, and is largely built on Palestinian territory, it is clear that it has **grave consequences on the lives of the Palestinians**. There is a closed Palestinian zone between the Green Line and the wall. People living there are cut off from places of employment, schools, universities and specialised medical care, and **community life is seriously fragmented**. Moreover, they do not have 24-hour access to emergency health services. Over 100 persons residing in the closed zone have not received permits to leave the area. Palestinians who live on the eastern side of the wall but whose land lies in the closed zone face serious economic hardship, as they are not able to reach their land to harvest crops or to graze their animals without permits. **Permits are not easily granted and the bureaucratic procedures for obtaining them are humiliating and obstructive**. The Office for the Coordination of Humanitarian Affairs (OCHA) has estimated that **only about 18 per cent of those who used to work land in the closed zone before the construction of the wall receive permits to visit the closed zone** today. The opening and closing of the gates leading to the closed zone are regulated in a highly restrictive manner: in 2007 OCHA carried out a survey in 67 communities located close to the wall which showed that **only 19 of the 67 gates in the wall were open to Palestinians for use all the year round on a daily basis**. To aggravate matters Palestinians coming into and out of the closed zone are frequently subjected to abuse and humiliation at the gates by the IDF. Hardships experienced by Palestinians living within the closed zone and in the precincts of the wall have already resulted in the displacement of some 15,000 persons (paragraphs 36 to 38).

A further characteristic feature of the occupation is the **demolition of houses**. Different reasons or justifications are advanced for such demolitions: military necessity, punishment and failure to obtain a building permit. With regard to the latter, the Rapporteur explains that "*Houses are frequently demolished for "administrative" reasons, on the grounds that no permit has been obtained to build - which Israel defends as a normal feature of town planning. Both law and fact show, however, that houses are not demolished in the course of "normal" town planning operations, but are instead demolished in a discriminatory manner to demonstrate the power of the occupier over the occupied.*" (paragraph 41).

In both East Jerusalem and that part of the West Bank categorised as Area C, houses and structures may not be built without permits. The bureaucratic procedures for obtaining permits are cumbersome and in practice permits are rarely granted. As a result, Palestinians are frequently compelled to build homes without permits. "*In East Jerusalem house demolitions*

are implemented in a discriminatory manner: Arab homes are destroyed but not Jewish houses. In Area C the IDF has demolished or designated for demolition homes, schools, clinics and mosques on the ground that permits have not been obtained". The Rapporteur continues, "this brings back memories of the **practice in apartheid South Africa of destroying black villages (termed "black spots") that were too close to white residents**. Article 53 of the Fourth Geneva Convention prohibits the destruction of personal property "except where such destruction is rendered absolutely necessary by military operations".

In short, "The construction of the wall, the expansion of settlements, the restrictions on freedom of movement, house demolitions and military incursions have had a disastrous impact on the economy, health, education, family life and standard of living of Palestinians in the West Bank... Poverty and unemployment are at their highest levels ever; health and education are undermined by military incursions, the wall and checkpoints; and the social fabric of society is threatened" (paragraph 43). Both in Gaza and the West Bank, **"Israel's actions constitute an unlawful collective punishment of the Palestinian people"** (paragraph 44).

Concerning Palestinian detainees and prisoners, the list of violations is long. Detainees, including minors and "administrative detainees" (that is, persons not convicted for any offence, held for renewable periods of up to six months) are treated in a **degrading and humiliating way**. Israel sees such prisoners as terrorists or ordinary criminals. Palestinians see them as political prisoners who have committed crimes against the occupier (paragraph 45). "Following arrest, persons are frequently beaten and stripped in a humiliating manner. The interrogation of subjects is then carried out in a degrading and inhuman manner, sometimes amounting to torture... The treatment of children is equally disturbing... they are on average detained for between 8 to 21 days before being brought to court; denied the presence of a parent or lawyer during interrogation; cursed, threatened, beaten and kept in solitary confinement during interrogation" (paragraph 46). "Most Palestinian prisoners are held in jails in Israel. This violates article 76 of the Fourth Geneva Convention which requires persons from an occupied territory to be detained in the occupied country, and if convicted, to serve their sentences therein". Family visits are difficult and frequently impossible, especially since 2003 when all visits for families from Gaza to their relatives detained in Israeli prisons were suspended (paragraph 47).

As we have seen, in his report the Special Rapporteur refers to certain practices similar to South African apartheid, such as the demolition of houses and the destruction of villages, the segregation of the Palestinian population by means of physical barriers which make movement difficult or almost impossible, the fragmentation of community life, or what he calls "road apartheid" - an unprecedented phenomenon. He condemns the collective punishment to which the Palestinian population is subjected and the ill-treatment suffered by Palestinian prisoners.

c) Report of the Special Rapporteur on Adequate Housing, as a component of the right to an adequate standard of living, Mr. Miloon Kothari. Mission to the Occupied Palestinian Territories⁷⁵

The Special Rapporteur visited Israel and the Occupied Palestinian Territories between 5th and 10th January 2002. In this report, the Rapporteur, keeping in view the **indivisibility of human rights**, sees the right to housing as including dimensions of land rights, forced evictions, population transfer, the right to a safe environment and the right to water. A number of congruent rights take on a particular meaning in the occupied Palestinian territories: the right to life; the right to an adequate standard of living; the right to freedom of movement and residence; the right to popular participation; the right not to be subjected to arbitrary interference with one's

⁷⁵ Report of the Special Rapporteur on Adequate Housing, as a component of the right to an adequate standard of living, Mr. Miloon Kothari, Addendum, Visit to the Occupied Palestinian Territories, E/CN.4/2003/5/Add.1, 17th June 2002

privacy, family and home; and the right not to be subjected to cruel, inhuman and degrading treatment or punishment. (paragraph 4).

The serial destruction of households, property and patrimony is a continuous process in the Occupied Palestinian Territories. This causes untold suffering to people who have no connection whatsoever to the current hostilities. The number of Palestinian homes destroyed by Israeli administrative and military acts climbs almost daily. *“The occupation imposes spatial restrictions on Palestinian physical development by imposing planning criteria and supplanting local codes in violation of the international laws of war and humanitarian provisions applying to occupied territories. Israel favours illegal settlers with generous land allotments, subsidies, impunity for violent criminal activity, State-sponsored and private financing, and all manner of services at the expense of the indigenous Palestinian host population and international peace and security. Essentially, the institutions, laws and practices that Israel had developed to dispossess the Palestinians (now Israeli citizens) inside its 1948 border (the Green Line) have been applied with comparable effect in the areas occupied since 1967”* (paragraph 7).

A dominant feature of Israeli occupation is the **confiscation of land and properties belonging privately and collectively to the Palestinians.** *“... This practice violates the long-established public law principle of the unacceptability of the acquisition of territory by force, as well as specific resolutions concerning Israel’s confiscation of land and settlement activities. Since 1967, Israel has confiscated land for public, semi-public and private (Jewish) use in order to create Israeli military zones, Jewish settlements, industrial areas, elaborate “bypass” roads, nature reserves, “green areas” and quarries, as well as to hold “State lands” for exclusive use by Israeli citizens and others whom Israeli law entitles with the status of “Jewish nationality”* (paragraph 11). As a consequence of **these Israeli policies, the majority of Palestinians live** in refugee camps, dilapidated historic city centres, high-density villages and slums. *“Forty per cent of the 3 million Palestinians in the occupied Palestinian territories live in housing that is inadequate by any definition. Refugees are the most consistently and gravely affected victims of the rekuz (“concentration”) pattern of living preferred by Israeli planners for Palestinians, but additional thousands of non-refugee residents share comparably squalid living conditions. Under present conditions, the proportion and numbers of Palestinians underhoused in the occupied territories are expected to burgeon”* (paragraph 48).

In the occupied Palestinian territories, planning since 1967 has been assumed by the military authorities and, for instance, continues to be carried out for Areas B and C in the West Bank by the civil Israeli administration based in the Jewish settlement of Bayt El. **“Thus, the Israeli occupation forces have dismissed those legally responsible for planning in favour of the occupiers’ military and demographic imperatives.** *This practice violates the Hague Regulations (1907), which prohibit an occupying Power from altering the legal system in occupied territories (art. 43). Israeli domestic laws, including Basic Laws, military orders and planning regulations, are applied with discrimination against, and disadvantage to the Palestinian population”* (paragraph 16).

These planning regulations are legally invalid and discriminatory by nature, as Israel simultaneously grants vast areas of land for the planning of illegal Jewish settlements on Palestinian territories, in addition to the facilities and services Israeli institutions provide to them, leading **to increased housing density, acute land shortage, depletion of water resources and exorbitant land prices** (paragraph 17). *“Among the most common complaints of Palestinians, when asked about their housing rights, is the palpable and constant problem of high housing density. Palestinian families and communities crave space to live in and develop, as is natural for indigenous people in their own country. However, the Israeli occupation forecloses such a choice by*

imposing domination by a colonizing population" (paragraph 47). While applying very tight restrictions and granting very few building permits, **Israeli occupation forces frequently carry out punitive and violent demolitions of Palestinian homes for lack of licence. Interlocutors reported myriad difficulties confronting and discrimination practised against Palestinians seeking to obtain building permits and information about imposed master plans.** Sometimes the punishment is retroactive to the establishment or public disclosure of a master plan. This practice leaves Palestinian families underhoused, and those whose houses Israel demolishes are left homeless and often impoverished. Since 1987, at least 16,700 Palestinians (including 7,300 children) have lost their homes under this policy. (paragraph 18). *"Israel's administrative housing destruction as a punitive action does not comply with the norms of the rule of law with a view to ensuring human rights. **The demolitions ordered either for lack of permit or another pretext have a military dimension and a gratuitously cruel nature.** Orders are often issued without specifying the affected home(s), without indicating the date of the order or demolition, and without sufficient warning to inhabitants. Some administrative demolitions are carried out with no orders at all. In most cases of demolition for lack of permit, authorities wait until construction is complete before coming to destroy the home, inflicting the heaviest possible material loss to the victim"* (paragraph 22)⁷⁶.

With regard to water resources, the Rapporteur pointed out that "Patterns of land use and consumption indicate severe discrimination against Palestinians in access to water throughout the occupied Palestinian territories, and lavish consumption by the occupying population. Water is not only an essential human need, but its place in human rights lies at the confluence of human rights and housing, health and food" (paragraph 65). The Rapporteur highlighted six principal methods of **Israeli violations of the Palestinian people's right to water**, which are:

- a) Destruction by military and paramilitary (settlers) of Palestinian water sources, pumps, wells and distribution infrastructure;
- b) Non-provision of water infrastructure, including networks and facilities for local solutions;
- c) Lack of proper maintenance of existing infrastructure so as to prevent leakage and water loss;
- d) Outright prevention of Palestinians from drilling and constructing water-delivery facilities, most notably in areas of Jewish settler colonies;
- e) Discriminatory distribution and insufficient water supply to Palestinians in areas that the Israeli water utility (Mekorot) controls; and
- f) Pollution and contamination of Palestinian aquifers through the combined dumping of lethal waste, hazardous use of chemical fertilizers and overpumping, leading to salinisation." (paragraph 66).

Another **violation of the right to housing perpetrated by the Israeli army is military shelling.** Often, this shelling shows no military objective, rather the **implementation of the planned contiguity of the settler colonies by eliminating the indigenous population.** (paragraph 26). *"In addition to the cost to life and limb during Israel's destructive actions against Palestinian homes, negative psychological effects are in evidence. The violent and abrupt loss of one's home has a collective dimension for Palestinians. It invokes the long history of Israel's forcible transfer and dispossession, which adds feelings of humiliation to the personal sense of loss"* (paragraph 28). The psychological effects of house demolitions for both victims and witnesses include high levels of compound mental anxiety (dread of the occupation army, diminished concentration, anxiety attacks, nightmares, constant weeping and re-experiencing the traumatic event) and depression. Children tend to suffer this more disproportionately (paragraph 29). Israel's active military command has rationalised house demolitions and the use of lethal force on the pretext that it is operating a combat zone, and that the Hague Regulations therefore apply as a justification for measures

⁷⁶With regard to the arbitrary, disproportionate and discriminatory nature of this form of Israeli punishment, housing rights defenders note that even the Israeli assassin of former Prime Minister Yitzhak Rabin was not subjected to the demolition of his family's home, the common collective punishment for Palestinians merely suspected of a real or potential act of resistance.

taken under its own criteria for “security” and “necessities of war” (paragraph 31).

With regard to **settlements**, the Rapporteur concludes that they are an obstacle to peace (paragraph 35). “ *The active and sustained implantation of Jewish settler colonies serves the **geos-trategic purpose of acquiring territory and natural resources and limiting the living space of the Palestinian host population**. By contrast, Israeli planning authorities assign jurisdictional areas to Jewish settlements in vast disproportion to the restricted land use for comparable Palestinian population centres in the occupied Palestinian territories*” (paragraph 39).

The Rapporteur illustrates how legislation and practice thereof in the Occupied Palestinian Territories seeks to reduce the Palestinian population, restricting the physical space for its development, depriving it of properties and increasingly establishing more sectors for the exclusive use of the Jewish population. The right to housing is widely violated, including the Palestinians’ right to water or right to a healthy environment through the system of territorial planning, which favours only the settlers, and allows the confiscation of land and the destruction of Palestinian property, and the demolition of houses and shelling that shows no military objective. The consequences of these policies for the Palestinians are acute land shortage, non-provision of water resources and a greater density of housing, in addition to psychological trauma, military shelling and demolitions.

d) Report of the Special Rapporteur on the Right to Food, Mr. Jean Ziegler. Mission to the Occupied Palestinian Territories⁷⁷

The Special Rapporteur, concerned about the imminent humanitarian crisis, visited the Occupied Palestinian Territories between 3rd and 12th July 2003. In his report, the Rapporteur highlighted that over 22% of children under 5 were suffering from **malnutrition** and 15.6% from **acute anaemia**, which for many will have permanent negative effects on their physical and mental development. **More than half of Palestinian households would eat only once per day**. The World Bank reported that food consumption had fallen by over 25% per capita. Around 60 per cent of Palestinians were living in **acute poverty** (75 per cent in Gaza and 50 per cent in the West Bank). Even when food was available, many Palestinians could not afford to buy it due to the **sharp rise in unemployment**. At the time, over **50 per cent of Palestinians were completely dependent on food aid**. The Special Rapporteur “*believes that Israel, as occupying Power, is not complying with its obligation to ensure the right to food to the Palestinian population as required by international law. Security measures – such as closures, curfews, permit systems and checkpoints – threaten the physical and economic access to food and water and are causing the collapse of the economy. The constant confiscation and destruction of Palestinian land and water resources also deprives Palestinians of their means of existence and is equivalent to the gradual expropriation of the Palestinian population. The construction of the security fence/apartheid wall on Palestinian land also constitutes a violation of the obligation to respect the right to food because it cuts off Palestinians from their lands and imprisons them within the winding route of the fence/wall*” (page 3).

The Rapporteur also stated that the **measures taken by Israel**, for alleged security reasons, are **totally disproportionate and counterproductive**, as they cause hunger and malnutrition amongst the Palestinian population, women and children included, and therefore amount to the **collective punishment of the Palestinian population**. This form of punishment is prohibited by international law: it is not permissible to punish the whole population for the actions of a few of its members. The Rapporteur also expresses his concern at the confiscation of land, which reveals

⁷⁷ Report of the Special Rapporteur on the Right to Food, Mr. Jean Ziegler, Addendum, Mission to the Occupied Palestinian Territories, E/CN.4/2004/10/Add.2, 31st October 2003.

the presence of a **covert strategy of “Bantustanisation”**. “*The construction of the security fence/apartheid wall is, in the opinion of many, a specific display of this Bantustanisation, as it **divides the Occupied Palestinian Territories into five non-joining territorial areas without international borders and poses a threat to the future establishment of a viable Palestinian State with a normal economy that could ensure the right to food of its own population***” (page 3).

The Rapporteur illustrates how the measures implemented by Israel jeopardise the normal development of Palestinians’ lives. The confiscation of land and water resources, the closure of roads, the physical obstacles to movement, in short **Bantustanisation policies**, increase unemployment, prevent minimum provisions to survive, force Palestinians to live in poverty and prevent the enjoyment of such a basic right as the right to food, which, in turn, should be ensured by Israel as the occupying force.

e) Report of the Special Rapporteur on the Freedom of Religion or Beliefs, Ms. Asma Jahangir. Mission to Israel and the Occupied Palestinian Territories⁷⁸

The Special Rapporteur on the **Freedom of Religion or Beliefs** visited Israel and the Occupied Palestinian Territories between 20th and 27th January 2008, and presented the following report. The Rapporteur focusses on the following issues of concern: **restricted access to places of worship**; the **preservation and protection of religious sites**; the **indication of religious affiliation on official identity cards**; **matters of personal status**; the **religious rights of persons deprived of their liberty**; **advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence**; and further concerns within the Occupied Palestinian Territories.

The Rapporteur highlighted that the freedom of movement, including access to places of worship, is restricted, particularly for Muslims and Palestinian Christians, by means of the system of system of **permits, checkpoints, curfews, visas and the wall**. The Israeli government justifies these restrictions for security reasons, to which the Rapporteur responds stating that **all measures adopted to combat terrorism must comply with the requirements that States have under International Law**. The closure regime causes difficulties during religious holidays, such as Ramadan, when due to the long queues at checkpoints many Muslims cannot observe their prayers and break the fast at the mosque of their choice. There may also be an adverse social and psychological impact, for example when Palestinian applicants do not receive travel permits for the celebration of religious festivals, marriages or funeral ceremonies with their family members who live in different cities (paragraph 27).

Furthermore, on several occasions age restrictions have been imposed by the Government of Israel on the access to al-Haram al-Sharif/Temple Mount in Jerusalem. During Ramadan in 2007, for example, sometimes only Palestinians over the age of 45 were allowed entrance and at other times only Jerusalem identity cardholders or only residents of the old city over the age of 50 were permitted. On some Fridays, children were allowed to cross Israeli checkpoints with older relatives but on the last Friday of Ramadan in 2007 even young children were reportedly turned back. On 21 September 2007, no access was permitted for Palestinians from the West Bank since all checkpoints were closed for the Jewish holiday of Yom Kippur (paragraph 28).

The various restrictions imposed on the access of Palestinians to religious sites appear to be disproportionate to their aim (security reasons) as well as discriminatory and arbitrary in their application (paragraph 33).

⁷⁸ Report of the Special Rapporteur on the Freedom of Religion or Beliefs, Ms. Asma Jahangir, Addendum, Mission to Israel and the Occupied Palestinian Territory, A/HRC/10/8/Add.2, 12th January 2009.

The Rapporteur highlighted several legal provisions in Israel which aim to safeguard and preserve sacred places from desecration and stipulate criminal sanctions for the violation of a holy site. However, all the 136 places which have been designated as holy sites until the end of 2007 are Jewish and the Government of Israel has so far only issued implementing regulations for Jewish holy sites. This approach may ultimately have **grave discriminatory effects for the preservation of non-Jewish places** and related budgetary allocations since the determination of holy sites also provides state funding to institutions which protect the sanctity of these places and preserve them from damage. There is an urgent need to preserve and protect Muslim and Christian religious sites, many of which have been made inaccessible or neglected since decades. In some cases, such religious sites have been converted into bars, night clubs or stores, which may also offend religious sensitivities (paragraph 37).

With regard to **religious affiliation on official identity cards**, the Rapporteur also made a series of observations. Every permanent resident of Israel and the Occupied Palestinian Territory above the age of 16, whether a citizen or not, is required by law to carry an official identity card. There are four kinds of identity cards: Israeli, West Bank Palestinian, Gaza Palestinian and Jerusalem Palestinian identity cards. The Government of Israel started issuing identity cards to Palestinian residents of the West Bank and the Gaza Strip following their occupation in 1967. Subsequent to the Oslo Declaration of Principles on Interim Self-Government Arrangements, the Palestinian Authority issues its residents with Palestinian identity cards; however, Israeli authorities control the population registry and identity cards of Palestinians are issued on the basis of this registry. The approach with regard to indicating the holders' religious affiliation is different with the four kinds of identity cards. Since 2005, identity cards of Israeli citizens no longer state the holder's ethnic affiliation; however, it can still be determined whether a citizen is Jewish or not when the birth date of Jews are indicated in Hebrew letters according to the Jewish calendar while listing that of others according to the Gregorian calendar. Identity cards of Palestinians with West Bank or Gaza identity cards show whether the cardholder is Muslim or Christian. No other options of religious affiliation are allowed and consequently those who are not believers are classified the same way as their parents. Palestinians holding Jerusalem identity cards were listed until 2002 as "Arab" on their identity card but this approach has been discontinued. **The degree of somebody's ability to move in and out of Jerusalem or within the Occupied Palestinian Territory reportedly depends on which type of identity card he or she holds.**

The Special Rapporteur reiterated that **indicating the religious affiliation on official identity cards carries a serious risk of abuse or subsequent discrimination based on religion or belief.** In case the State wishes to include on official documents an indication of religious affiliation, it is discriminatory to provide only the possibility to choose from a limited number of officially recognized religions. In addition, any indication of one's religious affiliation on official documents should in general be on a voluntary basis.

Terrorist-profiling practices based on stereotypical assumptions that persons of a certain religion or ethnic origin are particularly likely to commit attacks may lead to practices that are incompatible with the principle of non-discrimination. Consequently, it seems advisable to have no direct or indirect reference to the individual's religious or ethnic affiliation on official identity cards and in related application forms (paragraphs 40 to 43).

With relation to **persons deprived of their liberty**, the Rapporteur noted that, although the Government of Israel confirms that all detainees must be given the opportunity, to the extent prac-

ticable, to observe the commandments of their religion, reports have been received that the **religious rights of detainees are not fully respected**. While there are places for prayer for Jewish detainees and rabbis have been appointed for detention facilities, there are no or few religious representatives for Muslim and Christian detainees. The Special Rapporteur reiterated **Rule 41 of the Standard Minimum Rules for the Treatment of Prisoners** (A/60/399, para. 81) which provides that a qualified representative of a religion should be appointed or approved if the institution contains a sufficient number of prisoners of the same religion and that the arrangement should be on a full-time basis if the number of prisoners justifies it and conditions permit (paragraph 52).

She also stated that Muslim detainees do not necessarily have access to books of religious observance and instruction of their denomination. Collective prayers for Muslims are allowed in detention centres only on some Fridays (paragraph 53).

The Special Rapporteur also referred to towards the increase in both Israel and the Occupied Palestinian Territories of **religious hatred that constitutes incitement to discrimination, hostility or violence** (paragraph 55). And although Israel provided several examples of recent indictments and judgements concerning cases of incitement to racism against the Arab population, there are also numerous cases of violence by Jewish settlers against Muslims which have not even been investigated (paragraph 56).

In her report, the Rapporteur highlighted the blatant discrimination towards person who do not profess the Jewish faith, in all walks of community life. This discrimination is directed mainly towards Palestinians, Muslims or Christians, who suffer restrictions concerning access to places of worship – some of which do not respond to objective criteria, but are totally arbitrary -, aggravated by restrictions on the freedom of movement, due to the indication of religious affiliation on identity cards, the non-preservation of holy sites, the lack of religious rights in detention centres and prisons, and the increase in acts of violence caused by racial or religious hatred.

f) Combined Report of the Special Rapporteurs on the Situation in Gaza⁷⁹

This report was compiled by a group of Special Rapporteurs, pursuant to a United Nations Human Rights Council resolution of 12th January 2009, to urgently seek and gather information on violations of the human rights of the Palestinian people, particularly due to the Israeli military attacks against the occupied Gaza Strip between December 2008 and January 2009. The Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967 submitted a separate report⁸⁰. The other Rapporteurs submitted individual sections in this report, as well as a joint introduction, a legal analysis, and a set of recommendations. Here we shall highlight the most important findings of each Special Rapporteur involved in this report.

- The **Independent Expert on the question of human rights and extreme poverty stated that the blockade is the primary cause of poverty in Gaza** (paragraph 27). She also expressed her grave concern at the fact that poverty in Gaza is a direct consequence of systematic violations of a wide range of civil, political, economic, social and cultural rights against Gazan residents, and that poverty in Gaza has also led to specific violations of human rights. (paragraph 29). The damage that the blockade and military incursions by Israel has inflicted upon the land, the environment and industrial infrastructure in Gaza has led to an escalation in unemployment and undermined the ability of the Palestinian people to find basic means of subsistence. The World Bank estimates that 98 per cent of Gaza industrial operations were inactive as a result of

⁷⁹ Human Rights Situation in Palestine and other Occupied Arab Territories, Combined report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to education and the Independent Expert on the question of human rights and extreme poverty (A/HRC/10/22), 20th March 2009.

⁸⁰ Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967, Mr. Richard Falk, A/HRC/10/20, 20th March 2009.

the closures. Up to 70,000 workers are reported to have lost their jobs since 2007. In December 2008, the Office for the Coordination of Humanitarian Affairs estimated that 18 months of closures had caused a 50 per cent increase in unemployment (paragraph 30).

- The **Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context** made the following observations. Disregard for the right to adequate housing in the Occupied Palestinian Territory far predates the recent military offensive. **Overcrowding, lack of sanitation** and other difficult living conditions have been not only the result of **demolitions and destruction of homes in the recent military offensives**, but a **permanent urban condition that prevents the people of Gaza from having access to the acceptable minimal standards of adequate housing** (paragraph 37). The massive destruction and damage caused by the Israeli offensive to homes and infrastructure, including roads, water stations and electrical facilities, and the continued restrictions imposed on the urgent transport of reconstruction materials into Gaza could constitute grave violations of the right to adequate housing and are the cause of a severe humanitarian crisis. Reports received by the Rapporteur indicate that Israeli attacks have not always complied with the principle of distinction between civilians and combatants, and that some of the houses and properties attacked did not meet the definition of military objectives (paragraph 40). Countless communities in Gaza have been rendered virtually uninhabitable. In urban areas and several refugee camps in the northern part of Gaza, entire neighbourhoods have been flattened. These acts seem to be contrary to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, in particular Article 53 (paragraph 41). The recent attacks have worsened the living conditions of the people of Gaza, who have been confined for decades to a small territory, in overcrowded conditions, with poor housing and sanitation conditions, problems that have been poorly managed to date. The Special Rapporteur is particularly concerned that the scale of destruction bringing further destitution and the hardship endured by the people of Gaza will only add to the cycle of violence (paragraph 44).

- The **Special Rapporteur on the right to food** sustained that the right to food is violated on a large scale, and on a routine basis, in the Gaza Strip, owing to both recent events and long-standing trends. **The breakdown of the food system in Gaza** and the **lasting damage that has been inflicted on the Gaza food production infrastructure**, resulting in the loss of jobs and incomes for many families, further aggravate a situation which, even before the recent military operation of December 2008-January 2009, was intolerable. The **chronic restrictions on the movements of goods and people have also had a major impact on the right to food of the people living in Gaza** (paragraph 45).

Even before the recent conflict, recurrent closure of border crossings and other security measures had impeded the passage and delivery of food assistance and of traded foodstuffs (paragraph 47).

According to the *Palestine Monitor Factsheet* of 18th December 2008, even before the hostilities, approximately 80 per cent of families in Gaza relied on humanitarian food aid in order to survive, this number had reached approximately 91 per cent by early February 2009. In this context, **obstacles to the delivery of urgently needed food aid** during the recent hostilities caused by fuel shortages and the closure of the borders resulted in **violations of the right to food on a large scale**. The number of hungry people without access to basic food necessary for their survival soared as a result. The total number of people dependent on food aid from the World Food Programme and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) has increased to 1,275,300 (paragraph 49).

- The **Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health** stated that the prolonged conflict has seriously damaged the health infrastructure in Gaza, which has greatly undermined public health and service delivery throughout the affected area. The health situation has been further aggravated by the long-standing blockade imposed by Israel since June 2007. The blockade has prevented the passage of basic goods, including medical supplies, spare parts and fuel necessary for the normal functioning of medical facilities (paragraph 55).

The **denial of access to medical treatment outside the Gaza Strip** for seriously ill Palestinian patients is a long-standing issue. There are indications of a worsening trend in the denial of access to healthcare, as evidenced by the decline in the percentage of requests approved for medical permits for patients referred for treatment outside Gaza Strip, from 80 per cent in 2007 to 66 per cent in the first half of 2008 (paragraph 60).

The Special Rapporteur condemned the **targeting of medical facilities and workers** by Israeli forces. For example, 16 medical workers were killed and 25 injured while on duty. Furthermore, 15 hospitals, 43 primary health centres and 29 ambulances were destroyed. In early February 2009, only 44 of 56 primary health care centres were functioning. Use of primary healthcare facilities has significantly declined since the military offensive; the WHO estimates that 40 per cent of chronically ill patients no longer turn to public health-care centres for care (paragraph 62).

The material damages caused by the recent hostilities, the border closures resulting in the restricted entry of medical supplies and equipment and the denial of access to health care outside the borders of Gaza constitute grave violations of the right to the health (paragraph 63).

- The **Special Rapporteur on the right to education** expressed that the blockade on Gaza imposed in June 2007 and the resulting restrictions on movement and goods have resulted in serious violations of the right to education, which was further exacerbated by the Israeli offensive on Gaza that began on 27 December 2008. Consequently, educational facilities have suffered extensive damage and destruction, their repair and reconstruction has been obstructed and students have experienced significant psychosocial distress, all of which pose great challenges to the creation of an environment conducive to the realization of the right to education (paragraph 64). The Rapporteur deplores the targeting of schools during wartime, an act that provided the schools are not military objectives- is explicitly prohibited under customary international law, and notes that such an attack has been qualified as a war crime by the Rome Statute (paragraph 66).

In addition to the particular violations of the right to education caused by the hostilities that began on 27 December 2008, access to safe and adequate educational conditions in Gaza has faced long-standing obstacles that far pre date recent events. **Overcrowding in the schools** in Gaza had already caused a restriction in the hours of schooling, in order to allow for morning and afternoon shifts to accommodate the region's 450,000 students; this problem has particularly affected the schooling of some 200,000 refugee children in Gaza, who have attended UNRWA schools in the past year. Efforts by UNRWA to continue the regular school feeding programme have been hampered by repeated restrictions on the entry of supplies. According to UNICEF, power shortages owing to restrictions on the entry of fuel caused students to gather in classrooms that lacked heating and electricity, as well as light bulbs and other basic supplies, such as paper, chalk and essential equipment for teaching, such as printers and overhead projectors. Higher education has also been affected, illustrated by the

denial by Israel, in November 2007, of permission for 670 Palestinian scholars to leave Gaza in order to study abroad, including six Fulbright scholars (paragraph 69).

The destruction of schools and restrictions on the entry of supplies necessary to guarantee access to education, as well as the prolonged deterioration of Gaza educational infrastructure, constitute violations of the right to education. The Special Rapporteur recalls that, while education is often interrupted in times of conflict, its restoration is an urgent priority. (paragraph 72). As he pointed out in a previous report, *“military occupations are an appreciable curb on the human right to education, and the most egregious example is that of the Israeli-Palestinian conflict (E/CN.4/20005/50, para. 124). The recent events in Gaza provide an even stronger illustration of the violations of the right to education in a conflict situation”* (paragraph 73).

- The **Special Rapporteur on violence against women, its causes and consequences** expressed her grave concern at the violations of human rights and international humanitarian law during the Israeli military attacks against the Gaza Strip. The scale of civilian deaths, injuries and destruction during the offensive was unprecedented by all accounts. Among the casualties, it is estimated that 114 women were killed and 800 suffered injuries (paragraph 74). The **denial of safe access to pregnant women to appropriate health care and hospitals owing to the constant shelling** constitutes a grave violation of human rights. In a press release dated 14 January 2009, the United Nations Population Fund (UNFPA) warned that the continuing violence and displacement presented serious risks to more than 40,000 pregnant women in Gaza, and reported on **many cases of premature labour and delivery resulting from shock and trauma from continuous bombing, and the exposure of premature and newborn infants to hypothermia owing to the lack of electricity**. UNFPA findings for the period during the crisis showed a 40 per cent increase in cases of miscarriage admitted to maternities, a 50 per cent increase in neonatal deaths and an important increase in the number of premature deliveries (paragraph 76).

In addition, the worsening food insecurity in Gaza following the military operation led to a further deterioration in the health and nutritional status of the majority of Gazans, in particular women and children, many of whom are already largely dependent on meagre humanitarian assistance. The Special Rapporteur highlights the disproportionate effects of house demolitions on women, children and the elderly (paragraph 78).

- The **Representative of the Secretary-General on the human rights of internally displaced persons** wrote that the occupation policies and practices that Israel has pursued since the 1967 war have infringed on the human rights of Palestinians and resulted in **large-scale forced displacement of Palestinians within the Occupied Palestinian Territory**, even before the Israeli military incursion into Gaza that began in December 2008. **Displacement is often caused by incursions and military clearing operations, evictions and land appropriation, the illegal expansion of settlements on occupied territory and related infrastructure, the illegal construction of the Wall in the Occupied Palestinian Territory, violence and harassment by settlers, the revocation of residency rights in East Jerusalem, discriminatory denial of building permits and house demolitions**. Forced displacement is also caused by a **system of closures and restrictions on the right to freedom of movement through an elaborate regime of permits and checkpoints that make life untenable for many residents in Palestinian enclaves and force them to leave** (paragraph 80). International law prohibits arbitrary displacement, a notion that includes displacement in situations of armed conflict that is incompatible with international humanitarian law because it is not warranted by the security of the civilians involved or imperative military reasons (paragraph 83).

When the present report was finalised, thousands of persons remained homeless because their homes had been destroyed or damaged during the fighting; the total number of displaced was unknown. Most displaced persons are staying in poor, overcrowded living conditions with host families who are already overstretched and face shortages of food, non-food items (such as mattresses and blankets), water and electricity. Continuing an 19-month blockade of Gaza, which had created a serious humanitarian crisis even before the military incursion began, Israel still restricts access to Gaza for goods urgently required to address emergency humanitarian needs and to permit rehabilitation and reconstruction efforts (paragraph 86).

- Finally, the **Special Rapporteur on extrajudicial, summary or arbitrary executions** expressed that all killings during the Gaza conflict that violated applicable human rights and humanitarian law norms come within the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions. For that reason, the major focus is on the principle of accountability (paragraph 89). Estimates say that a total of 1,440 people were killed. The principal dispute concerns the proportion of the Palestinian men killed who can be classified as civilians or combatants. Israel has estimated that at least 700 Hamas fighters were among the dead, while the estimate of the Palestinian Centre for Human Rights is closer to 300. The difference relates in part to the status of those members of the civilian police force in Gaza whom were not engaged in fighting, and who Israel apparently intentionally targeted (paragraph 90). There are reports of **war crimes and other violations of international norms**. On the basis of the extensive information available, the great majority of observers have concluded that systematic and impartial war crimes investigations must be undertaken (paragraph 91).

In short, this **joint report** illustrates the disastrous consequences for the Palestinian population of the Israel military attacks last December/January. We can also see the results of systematic violations of the Palestinians' human rights which the Israeli blockade and military incursions have caused since well before this military offensive.

Direct consequences of the Israeli policies towards Gaza are: the lack of adequate housing (overcrowding, poor sanitation, demolitions); permanent damage to infrastructures (food production, electricity stations and water reserves, medical centres, educational centres); restrictions to transport and the import of various materials (medical, construction materials, supplies); restriction to the admission of humanitarian and food aid; denial of exit permits to receive medical treatment; lack of protection and access to medical centres for pregnant women, etc. These directly cause a serious food crisis, acute poverty, overcrowding in houses and schools, premature births and miscarriages, forced displacement...

The various international human rights Committees and Special Rapporteurs are not alone in condemning the Israeli policies which as a whole configure a crime of apartheid. Other United Nations organs have made declarations on the subject. Below, we shall proceed to analyse these official reports.

5.3 Analysis of other United Nations and International Court of Justice reports:

Official United Nations reports also coinciding with the configuration of crime of apartheid with regard to the various Israeli policies being implemented and which will be analysed below are: the Report of the High Commissioner for Human Rights on the issue of Palestinian pregnant women giving birth at Israeli checkpoints; the Report of the Secretary-General: Israeli practices

affecting the human rights of the Palestinian population in the Occupied Palestinian Territories, including East Jerusalem; and the Advisory Opinion of the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territories.

a) Report of the High Commissioner for Human Rights on the issue of Palestinian pregnant women giving birth at Israeli checkpoints⁸¹

According to **UNFPA (United Nations Population Fund) and UNIFEM (United Nations Development Fund for Women), an estimated 2,500 births per year face difficulties en route to a delivery facility.** Many Palestinian women have developed **various higher-risk coping mechanisms** in reaction to movement restrictions and for fear of being unable to cross Israeli checkpoints in a timely manner to reach healthcare services. Consequently, birth location patterns have been affected drastically: there has been an increase in home deliveries, further compounding the risk **to women's health and to their babies.** The Palestinian Ministry of Health has assessed the proportion of deliveries outside health facilities as high as 13.2 per cent (paragraph 16). The critical impact of the closure regime (e.g., the Wall, checkpoints, road closures, earth mounds, etc.) on Palestinian women's access to adequate prenatal, natal and post-natal medical care remains a matter of serious concern, impairing the fulfilment of the right of everyone to the highest attainable standard of physical and mental health. It should also be noted that **Israeli policies on closure may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment under article 16 of the Convention against Torture.** Finally it is reiterated that the issue of pregnant Palestinian women giving birth at Israeli checkpoints must be understood within the context of the broader regime of the Israeli occupation and associated restrictions on movement, impacting as they do on all aspects of life in the Occupied Palestinian Territories (paragraph 17).

This report illustrates that the restrictions on the freedom of movement particularly affect Palestinian pregnant women, which constitutes **cruel, inhuman or degrading treatment.**

b) Report of the Secretary-General: Israeli practices affecting the human rights of the Palestinian population in the Occupied Palestinian Territories, including East Jerusalem⁸²

This report, which covers the period between January and August 2008, focusses on the following issues: the **policy of closures and severe restrictions**, including its impact on the socio-economic situation in the Occupied Palestinian Territory, **the wall and the destruction of property**, and **the conditions affecting Palestinian prisoners in Israel.**

With regard to the **policy of closures and severe restrictions**, the report notes that the complex array of physical and administrative obstacles have a severe and detrimental impact on the rights of Palestinians as guaranteed in article 12 of the International Covenant on Civil and Political Rights, and more specifically the **individual's right to freedom of movement, to choose a residence and to leave and re-enter the Occupied Palestinian Territory (paragraph 7).** In addition to this, the restrictions undermine the enjoyment of other rights guaranteed under international human rights law, such as healthcare, education and employment, and have also caused significant financial hardship and the interruption of essential social networks and communities (paragraph 8). *"Imposed under military orders and regulations, restrictions on free-*

⁸¹ A/HRC/10/35, of 26th February 2009.

⁸² A/63/518, of 5th November 2008.

dom of movement in the West Bank are issued and usually published by the Military Commander of the Israel Defence Forces (IDF) in the West Bank. As **there are no established rules of procedure in relation to those orders, their content can vary from day to day and from commander to commander, while the manner of their implementation is left largely to the discretion of the soldiers**" (paragraph 10). Palestinian identification card holders need permits to enter Israel, to travel to East Jerusalem and the West Bank, to gain access to certain areas along the wall - in the "seam zone" - or to cross certain checkpoints by car, for instance in Nablus (paragraph 11). "The application process for permits is time-consuming and expensive, and applications are frequently rejected. **The rules as to whether a permit for travel is required or will be granted are fluid and can change daily.** Even when a permit is granted, it does not automatically guarantee the holder permission to pass through a checkpoint. There is no formal process for appealing a rejection, the only option being to resubmit the application. Furthermore, there is no automatic renewal procedure for a permit that has expired. All permits must be applied for anew, and there is no guarantee that a new one will be granted" (paragraph 12).

The permit system is enforced by a web of checkpoints operating along the Green Line and in the West Bank and East Jerusalem. At the end of April 2008, the Office for the Coordination of Humanitarian Affairs estimated that there were 88 manned obstacles out of a total of 607 closure obstacles in the West Bank. The general closure can be enforced at any time without notice. "In the first half of 2008, 41 days of general closure were enforced in the West Bank, compared to 19 in 2007. As far as Gaza is concerned, the Strip has been completely sealed off since January 2008, which has led to a serious humanitarian crisis..." (paragraph 13). "Checkpoints are manned by the Israeli security forces, border police or private contractors. In areas of the West Bank where the barrier encloses agricultural land, Palestinians need to have the appropriate permit in order to have access to their land. Even individuals who have been issued a permit enjoy no guarantee of permission to cross, as the decision whether to allow passage is ultimately in the hands of the personnel staffing the checkpoint.⁵ According to information received, Palestinian identification card holders face long delays, personal searches and, at times, harassment by checkpoint personnel" (paragraph 14).

Additional restrictions can be instituted at checkpoints with little or no notice. For instance, males between the ages of 16 and 35 are often refused permission to cross, or people are often limited to crossing at specific times and are usually prohibited from doing so in the evening or at night. Local closures and curfews can be imposed at any time without notice (paragraph 15). "The Government of Israel has not met the conditions established under article 4 of the International Covenant on Civil and Political Rights for derogation from the right to freedom of movement. This article requires that when imposed, a derogation must be temporary, existing only during an officially proclaimed state of emergency that threatens the life of the nation. The measures taken under the derogation must be imposed only to the extent strictly required by the exigencies of the state of emergency. They must not be inconsistent with the State's other international legal commitments and must not involve discrimination on the ground of race, colour, sex, language, religion or social origin" (paragraph 17).

With regard to the **separation wall**, the report finds that the said wall, which fragments the West Bank into non-contiguous enclaves, brought new restrictions on movement and access for Palestinians living near the wall, in addition to widespread restrictions and measures associated with checkpoints and roadblocks, thus undermining the enjoyment of a host of other fundamental human rights" (paragraph 23).

"The majority of the route, approximately 87 per cent, runs inside the West Bank and East Jerusalem rather than along the 1949 Armistice Line (Green Line). Despite the judgement of the Israeli High

Court of Justice in February 2004, and despite the advisory opinion of the International Court of Justice of 9th July 2004, construction of the wall continues, with approximately 57 per cent of it already completed and 9 per cent presently under construction" (paragraph 24).

The **constant violations of human rights of Palestinians living nearby** are also reported. *"In areas located between the barrier and the Green Line, which represent 9.8 per cent of the West Bank, access by Palestinian farmers to their lands and water resources is severely limited and can be achieved only through restrictive permit and gate regimes. Farmers need "visitor" permits to cross the wall to reach their farms and wells and, according to the Office for the Coordination of Humanitarian Affairs and the United Nations Relief and Works Agency for Palestine Refugees in the Near East, fewer than 20 per cent of farmers who used to work on their land in those areas prior to the completion of the barrier are now granted access to them" (paragraph 26).*

These limitations mean that communities that used to export food have been transformed into recipients of food aid. Health and education services are difficult to access as they lie in what has become the Palestinian side of the barrier. Children, patients and workers have to pass through gates to reach schools, medical facilities and workplaces and to visit family members living on the other side of the wall (paragraph 27). *"For those granted permits, access is possible through a limited number of designated gates. Along the total length of the wall, there are 66 gates currently open on a daily, weekly or seasonal basis. Restricted opening times and the inconvenient location of some gates severely curtail the time available for farming, with a consequent negative impact on rural livelihoods" (paragraph 28).* *"As at the date of the present report, a 168-kilometre-long section of the wall separates East Jerusalem from the rest of the West Bank... In conjunction with the identification card and permit system and the series of checkpoints, the wall has weakened the social and economic connections between residents of East Jerusalem and the West Bank" (paragraph 29).*

Access to specialist health care has become increasingly difficult for Palestinians of the West Bank and East Jerusalem due to requirement of permits to cross the wall.

These restrictions also hamper medical staff from reaching their workplaces, a serious situation when it is a question of emergencies (paragraph 31).

The wall is fragmenting the lives of Palestinians: *"upon completion, 87 per cent of the wall will be located inside the West Bank, and 9.8 per cent of West Bank territory, including East Jerusalem, will be cut off from the rest of the West Bank. Approximately 420,000 settlers in 80 settlements and 285,000 Palestinians (including in East Jerusalem) will be located between the wall and the Green Line. Approximately 125,000 Palestinians in 28 communities will be surrounded on three sides by the wall, and 26,000 Palestinians in 8 communities will be surrounded on four sides" (paragraph 37).*

As for **Palestinians in Israeli prisons**, the report condemns the Israeli practice of so-called **"administrative detentions"**, i.e. those without charge or trial, authorised by an administrative order rather than by judicial decree, which represents *"a serious violation of fundamental rights to due process contained in articles 9 and 14 of the International Covenant on Civil and Political Rights, which is binding on Israel both in the Occupied Palestinian Territory and in the Israeli State proper"* As at 31 August there were 8,403 prisoners in Israeli jails and detention centres, 649 of whom were administrative detainees (paragraph 47). In terms of **family visits to Palestinian detainees** (only visits by first-degree relatives are allowed), detainees whose families live in the Gaza Strip have not been allowed visits since June 2007. This measure affects over 900 Palestinian detainees (paragraph 50).

c) Advisory Opinion of the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territories⁸³.

In June 2002, the Israeli government began the construction of a 723-kilometre-long wall to separate Israel from the West Bank, declaring that its objective was to prevent Palestinian suicide bombers from entering Israel. On 8th December 2003, the United Nations General Assembly requested the International Court of Justice to render an advisory opinion on the legal consequences arising from the construction by Israel of this separation wall. The question on which the Court's opinion was based was the following: **What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?**⁸⁴.

In response to this question, the International Court of Justice delivered an advisory opinion, which, as such, has no binding effect, but does provide important clarifications with regard to the law applicable to the Occupied Palestinian Territories in the case of human rights violations. The Court's main conclusions were the following:

- a) The Palestinian population has a right to self-determination and the **construction of the wall seriously undermines the exercise of this right;**
- b) **Israel has the legal obligation to apply the Fourth Geneva Convention in the Occupied Palestinian Territories;**
- c) **Settlements are illegal** because they contravene paragraph 6 of article 49 of the Fourth Geneva Convention;
- d) **Israel is required to apply the international human rights treaties and conventions in the Occupied Palestinian Territories** and, therefore, its actions must be assessed in the light of international human rights treaties and conventions and of the Fourth Geneva Convention;
- e) The regime in force within the enclosed zone located between the wall and the Green Line **proves an obstacle to the freedom of movement** guaranteed in article 12 of the International Covenant on Civil and Political Rights and **the right to employment, health-care, education and an adequate standard of living** stipulated in the International Covenant on Economic, Social and Cultural Rights;
- f) The **destruction of property to construct the wall** contravenes article 53 of the Fourth Geneva Convention and is not justified on grounds of necessity for military operations nor national security;
- g) The **wall cannot be justified** on grounds of legitimate defence;
- h) The **annexation of East Jerusalem is illegal;**
- i) The construction of the wall being built by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem, and the related regime, are **contrary to international law**; and Israel is legally obliged to detain the construction of the wall, to dismantle it and to repair the damage caused by its construction;
- j) All **States have the legal obligation not to recognise the illegal situation arising from the construction of the wall** and to ensure that Israel respects the Fourth Geneva Convention;

⁸³ A/ES-10/273, of 9th July 2004.

⁸⁴ Resolution ES-10/14

k) The **United Nations**, and in particular the General Assembly and the Security Council, should **consider which additional measures are necessary to end the illegal situation** arising from the construction of the wall and from the related regime, “duly bearing in mind the present advisory opinion”.

Therefore, we can see that the International Court of Justice clearly expressed that the **construction of the wall and its related regime is illegal**. Israel is legally obliged to detain the construction of the wall, to dismantle it and to repair the damage caused by its construction. All other States have the legal obligation not to recognise this illegal situation and to abstain from helping Israel to maintain it.

Having analysed United Nations reports which condemn, based on international legislation, the policies carried out by the Israeli authorities against the Palestinian population, it is now opportune to determine the extent to which national legislation also generates systematic and multidimensional discrimination towards the Palestinians, which makes them victims of the crime of apartheid.

6. Legislation applicable in Israel and the Occupied Palestinian Territories.

The study of the applicable legislation will illustrate the different groups affected by this legislation; the special characteristics of Israeli legislation; an analysis of this legislation, and specific legislation for the Occupied Palestinian Territories (Military Orders).

6.1 Different groups affected by this legislation

Here we must consider **two fundamental elements**. On one hand, the **structure of the Palestinian population**, which can be divided into **three major groups**: Palestinian refugees; the inhabitants of the Occupied Palestinian Territories; and Israel Palestinians, i.e. Palestinians with Israeli citizenship. On the other hand, we must remember that the **legislation applied by the State of Israel to each of the groups is different**, depending on the place of residence, and does not reach the entire Palestinian population.

With regard to the first aspect, and concerning **Palestinian refugees**, several things must be considered in order to understand the reality of the fact. Many of these refugees are under the protection of the UNRWA. Palestine refugees are persons whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict. When the agency became operational in 1950, it was responding to the needs of about 750,000 Palestine refugees. Today, 4.6 million Palestine refugees are eligible for UNRWA services⁸⁵. One-third of the registered Palestine refugees, about 1.3 million, live in 58 recognised refugee camps in the area of operations in Jordan, Lebanon, Syria, the West Bank and Gaza Strip. The other two-thirds of the registered refugees live in and around the cities and towns of the host countries, and in the West Bank and the Gaza Strip, often in the environs of official camps⁸⁶. Although this UNRWA data provides a basic reference point, it offers us a partial view of the reality of Palestinian refugees, as it does not include refugees from 1948 who did not register or did not meet the UNRWA eligibility requirements, refugees from 1967, people displaced after 1967 and people displaced internally. **There has never been a complete and exhaustive count of Palestinian refugees, so it is highly difficult to give an exact number**. Estimates are based on registers from different UN agencies, census data provided by host countries or estimates made by the Palestinian population itself. If we look for a global figure for this forced displacement, including people displaced internally and refugees from 1948, 1967 and post-1967, it is estimated that up to three quarters of the Palestinian population have been displaced since 1948. The BADIL Resource Centre for Palestinian Residency and Refugees' Rights estimates that total number of displaced Palestinians to be more than seven million. Approximately one in three refugees in the world is Palestinian⁸⁷.

With regard to the **inhabitants of the Occupied Palestinian Territories**, many of them are refugees from 1948, who at the time fled to the West Bank and the Gaza Strip, which were under Jordanian and Egyptian control respectively until their occupation by Israel in 1967. Many of these Palestinians and inhabitants of the Occupied Palestinian Territories have since been displaced again due to the war, the demolition of houses, the loss of Jerusalem residency rights and the construction of illegal Jewish settlements, as well as the wall and its related regime.

Finally, the third group of the Palestinian population⁸⁸ is made up by **Palestinians with Is-**

⁸⁵ UNRWA, Who is a Palestine Refugee? <http://www.un.org/unrwa/refugees/whois.html>

⁸⁶ UNRWA, Where do the refugees live? <http://www.un.org/unrwa/refugees/wheredo.html>

⁸⁷ REMPEL Terry M., Who are Palestinian refugees? Forced Migration Review No. 26, March 2007

⁸⁸ SOROETA Juan, Una visión del conflicto palestino: bloqueo histórico, colapso jurídico y fracaso político, en Derechos Humanos y conflictos internacionales, Cursos de Derecho Internacional y Relaciones Internacionales de Vitoria-Gasteiz 2006, Universidad de País Vasco.

raeli citizenship. It is a minority, but important in terms of numbers, as it makes up a **sixth of the population of Israel.** It is a tenth of the total Palestinian population. Within this group there is an often forgotten minority, the Bedouin of Negev (southern Israel), a traditionally pastoral nomadic tribe, which constitutes 12% of the Arab population of the country⁸⁹.

6.2 Special characteristics of Israeli legislation

The Israeli legal system has **special characteristics** that makes it unique. It includes remnants of Ottoman law (in force until 1917), British Mandate laws (1918-1948), which incorporate a large body of English common law, elements of Jewish religious law, and some aspects of other systems. Israel has no constitution, but a set of Basic Laws, which regulate the main state institutions and other aspects of Israeli everyday life, enacted by Parliament or the Knesset, with parliamentary supremacy⁹⁰. In general terms, the Basic Laws are superior to general laws, emergency laws and military orders.

With regard to the scope of this legislation and who it affects, several distinctions must be made. On one hand, Israeli legislation is applied, logically, within the territory of the State of Israel and therefore Palestinians with Israeli citizenship are subject to it. Part of this legislation also affects Palestinian refugees. This is the legislation that prevents them from returning to their places of origin.

As for the **Occupied Palestinian Territories**, the **situation of Gaza** and the **situation of the West Bank and East Jerusalem** must be distinguished from one another. In Gaza no form of Israeli legislation is applied, neither civil nor military. In the West Bank, different “zones” must be recognised. In the so-called “Zone C”, which represents approximately 61% of the territory of the West Bank, Israel has military and civil control as far as construction and urban planning are concerned. Israeli legislation is applied to a lesser extent in “Zone B”, where Israel has military control and the Palestinian Authority has civil control⁹¹, and is not applied in “Zone A”, which is under Palestinian Authority control. The lives of Palestinians living in zones B and C of the West Bank are ruled by a series of Military Orders and Regulations, which are issued and usually published by the IDF Military Commander in the West Bank and which, as such, are not subject to review by any civil legal authority. As there are no established rules of procedure in relation to those orders, their content **can vary from day to day and from Commander to Commander**, while the manner of their implementation is left largely to the discretion of the soldiers⁹². The IDF also apply certain “emergency” regulations inherited from the British Mandate and enacted by the Israeli authorities as Defence (Emergency) Regulations of 1945⁹³.

With regard to **East Jerusalem**, this was the commercial and administrative centre of the West Bank until 1967, when it was annexed by Israel. In 1980, a law adopted by the Knesset (Basic Law: Jerusalem – capital of Israel), declared that “Jerusalem, complete and united, is the capital of Israel” and “the seat of the President of the State, the Knesset, the Government and the Supreme Court”⁹⁴. East Jerusalem is currently occupied and controlled by Israel. It must be pointed out that Palestinians in the city of Jerusalem have a status inferior to the Jews. Palestinians are not citizens of the eastern part of the city, as Jews are, but they are simply residents⁹⁵. Israeli legislation is applied there.

6.3 Analysis of legislation

In a **system of apartheid, legislation plays a crucial role**, as its lays down **criteria of segregation and division of the population along racial lines**, or it **limits the practice**

⁸⁹ “In order to acquire the maximum amount of Arab land for Jewish settlement of the Negev, Israel has denied almost all pre-existing land rights or ownership. Israel regards the Negev as a vacuum domicilium or terra nullius, an empty space yet to be used for settlement. The Bedouin are seen as rootless nomads without territorial connection or rights”. KOELLER Kathrin, The Bedouin of the Negev: a forgotten minority.

⁹⁰ See: Ministry of Foreign Affairs of Israel [http://www.mfa.gov.il/MFAES/Facts%20About%20Israel/EL%20ESTADO-%20La%20ley%20del%20pas%20and%20La%20base%20legal%20en%20Israel%20Un%20pa%C3%ADs%20sin%20Constituci%C3%B3n.%20\[Text%20in%20Spanish\]](http://www.mfa.gov.il/MFAES/Facts%20About%20Israel/EL%20ESTADO-%20La%20ley%20del%20pas%20and%20La%20base%20legal%20en%20Israel%20Un%20pa%C3%ADs%20sin%20Constituci%C3%B3n.%20[Text%20in%20Spanish]) World Zionist Organisation. Department of Hagshama: <http://www.hagshama.org.il/es/recursos/view.asp?id=1086>

⁹¹ These zones were established in the Oslo Accords (1993), a series of agreements negotiated between the Israeli government and the Palestinian Liberation Organisation, which acted on behalf of the Palestinian population.

⁹² See: Report of the Secretary-General: Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, A/63/518, of 5th November 2008.

⁹³ See: KIRSHBAUM, David, Israeli emergency regulations & the Defense (Emergency) Regulations of 1945, <http://www.geocities.com/savepalestinnow/emergencyregs/essays/emergencyregressay.htm>

⁹⁴ Ministry of Foreign Affairs of Israel, <http://www.mfa.gov.il/MFAES/Facts%20About%20Israel/Jerusalem%20-%20La%20Capital%20de%20Israel>

⁹⁵ See: MARGALIT, Meir, Discrimination in the heart of the Holy City, The International Peace and Cooperation Center, Jerusalem, 2006.

of certain human rights, amongst other things, as stipulated in article 2 of the Convention on Apartheid.

In this section an analysis will be carried out of Israeli laws - clearly discriminatory - which conform with article 2 of the Convention.

With regard to the curious Israeli legislation concerning all matters of **nationality**, which shall be analysed first, some clarifications must be made. Importantly, "Nationality status in Israel is not linked to origin from, or residence in a territory, as is the norm in international law. Rather, the basic theocratic character of the Israeli legal system establishes ethnic criteria as the grounds for the enjoyment of full rights"⁹⁶. According to Israeli law, Under Israeli law, anyone considered eligible for "Jewish nationality" can obtain it on the basis of (a) a claim to profess the Jewish religion and (b) arrival in the country. By contrast, a citizen of the State of Israel who is not bona fide as Jewish can never hold this status, even if s/he is born there.

There is a difference in the Hebrew text of laws, which distinguishes between "Ezrahut" (Citizenship) and being a member of the people of Israel, referring to all Jews anywhere in the world. **Gentiles cannot be part of the nation of Israel, even if citizens of the State.** By Israeli law, every Jew, regardless of culture, genetics or citizenship is considered a national of Israel, a member of the people of Israel, and is entitled to automatic benefits of residency and life in the self-declared Jewish state⁹⁷.

Taking this into consideration, let us now analyse various laws: the Law of Return of 1952; the Nationality Law of 1952; the Citizenship and Entry into Israel Law of 2003; the Absentee Property Law of 1950; the Status Law of Israel of 1952; the Basic Law: Israel Lands of 1960; the Land Acquisition Law of 1953; the Planning and Construction Law of 1965; and the Law on Agricultural Settlement of 1967.

a) Law of Return (1950)

The Law of Return (1950), **one of the most important Israeli laws**, grants every Jew, wherever he may be, the right to come to Israel as an *oleh* (a Jew immigrating to Israel) and become an Israeli citizen. Returning Jews receive financial and logistical support from the government. For the purposes of this Law, "Jew" means a person who was born of a Jewish mother, or has converted to Judaism and is not a member of another religion. Israeli citizenship becomes effective on the day of arrival in the country or of receipt of an *oleh's certificate*. Since 1970, the right to immigrate under this law has been extended to include the child and the grandchild of a Jew, the spouse of a child of a Jew and the spouse of the grandchild of a Jew⁹⁸. The "law of return" clearly applies to members of a particular religion and gives them an automatic right of citizenship in a country where they have never physically been. Non-Jews are not eligible for this a "right" regardless of birth, ancestry or other factors. Jews who do not identify with Zionist ideologies can also be excluded at the discretion of the interior ministry under the section that talks about a threat to the Jewish nation. Thus, Palestinian refugees maybe excluded even if they convert to Judaism. Israel is the only country that nationalizes any person regardless of where they live only by virtue of a religious identification (being Jewish)⁹⁹.

This law **excludes "non-Jews" from the rights enjoyed by Israeli nationals**. Palestinians do not specifically appear as a national/racial group in the laws and public documents of the State of Israel. **Palestinians are appointed the term of "persons outside the scope of the Law of Return" in Israeli laws**¹⁰⁰. The fact that **Jews can "return", unlike Palestinians who**

⁹⁶ In the case of George Tamarin v. the State of Israel (1971), a Jewish Israeli petitioned the High Court of Israel unsuccessfully to have the official registration of his nationality changed from "Jewish" to "Israeli." The High Court ruled that "there is no Israeli nation separate from the Jewish nation ... composed not only of those residing in Israel but also of Diaspora Jewry". Then President of the High Court Justice Shimon Agranat explained that acknowledging a uniform Israeli nationality "would negate the very foundation upon which the State of Israel was formed"; New York Times, 21 January 1972, p. 14; cited in Oscar Kraines, *The Impossible Dilemma: Who is a Jew in the State of Israel* (New York: Bloch Publishing, 1976). Report of the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, E/CN.4/2003/5/Add.1, p. 6.

⁹⁷ Ver: QUMSIYEH, Mazin, *Sharing the land of Canaan*, Chapter 7: Is Israel a Democracy? <http://qumsiyeh.org/chapter7/>

⁹⁸ Ministry of Foreign Affairs of Israel: <http://www.mfa.gov.il/MFAES/Facts%20About%20Israel/Adquisicin%20de%20la%20Nacionalidad%20Israel>

⁹⁹ QUMSIYEH, Mazin, *Op. cit.*

¹⁰⁰ *United against apartheid, colonialism and occupation. Dignity and justice for the Palestinian people. Palestine Civil Society strategic position toward the Durban Review Conference*, Geneva, 20-24 April 2009.

¹⁰¹ Concluding Observations of the Committee on Economic, Social and Cultural Rights, Israel, 4th December 1998, E/C.12/1/Add.27, paragraph 13.

left the zone during the 1948 war, is clearly discriminatory. Concerning this point, the CESCR “notes with concern that the Law of Return, which allows any Jew from anywhere in the world to immigrate and thereby virtually automatically enjoy residence and obtain citizenship in Israel, discriminates against Palestinians in the diaspora upon whom the Government of Israel has imposed restrictive requirements which make it almost impossible to return to their land of birth¹⁰¹.”

b) Nationality Law (1952)

This law was passed to regulate the acquisition of Israeli citizenship by Jews and non-Jews. Citizenship may be acquired by birth, through the Law of Return, through residence or through naturalisation. Acquisition of nationality is granted to: 1) persons who were born in Israel to a mother or father who are Israeli citizens; 2) persons born outside Israel, if their father or mother holds Israeli citizenship, acquired either by birth in Israel, according to the Law of Return, by residence, or by naturalisation; 3) persons born after the death of one of their parents, if the late parent was an Israeli citizen by virtue of the conditions enumerated in 1. and 2. above at the time of death; and 4) persons born in Israel, who have never had any nationality and subject to limitations specified in the law, if they: apply for it in the period between their 18th and 25th birthday and have been residents of Israel for five consecutive years, immediately preceding the day of the filing of their application¹⁰². Thus, while specifically not stating so, this law **discriminates against native Palestinians and states that Palestinian refugees are excluded from the right to citizenship in the State of Israel.** So, Jews hold Israeli nationality and citizenship, whereas Palestinian citizens who remain in Israel only have citizenship, which goes hand-in-hand with the deprivation of a series of rights. **Those who are citizens but not nationals, such as the Palestinians who remained after the expulsions of 1947-1949, cannot benefit from any of the institutions or privileges reserved to nationals.** These include services of the supra-state groups that basically wield significant portion of power on Israel lands and resources such as the Jewish National Fund, World Zionist Organization, Jewish Agency. JNF controls one third of the water resources for example. The Israel Lands Administration controls 90% of the land in Israel¹⁰³.

c) Citizenship and Entry into Israel Law (2003)

Temporary Order 5763 of 31st May 2003, extended to 31st July 2008. This law suspends the possibility of granting Israeli citizenship and residence permits to the spouses of Israeli citizens residing in the Gaza Strip or the West Bank, including through family reunification. The CERD expressed that “*such restriction targeting a particular national or ethnic group in general is not compatible with the Convention, in particular the obligation of the State party to guarantee to everyone equality before the law. (Articles 1, 2 and 5 of the Convention). The Committee recommends that the State party revoke the Citizenship and Entry into Israel Law (Temporary Order), and reconsider its policy with a view to facilitating family reunification on a non-discriminatory basis. The State party should ensure that restrictions on family reunification are strictly necessary and limited in scope, and are not applied on the basis of nationality, residency or membership of a particular community*”¹⁰⁴.

¹⁰² Ministry of Foreign Affairs of Israel: <http://www.mfa.gov.il/MFAES/Facts%20About%20Israel/Adquisicin%20de%20la%20Nacionalidad%20Israel>

¹⁰³ See: QUMSIYEH, Mazin, op. cit.

¹⁰⁴ Observaciones finales del Comité para la Eliminación de la Discriminación Racial, Israel, párrafo 20, CERD/C/ISR/CO/13, 14 de junio de 2007.

prohibition of family reunification for reasons of “security” and claims that the law aims to reduce the potential threat of attacks on Israel by Palestinians. However, Israeli ministers and authorities have repeatedly described the percentage of Palestinian citizens of Israel as a “demographic threat” and a threat to the Jewish nature of the State. This suggests that the law forms part of a long-term policy to restrict the number of Palestinians allowed to live in Israel and East Jerusalem¹⁰⁵.

With regard to the **use and property of land**, the following **discriminatory laws** must also be highlighted.

d) Absentee Property Law (1950)

This law established that the properties of Palestinians who had fled during the 1948 war, or who had been displaced provisionally for reasons of security, remained under the custody of the Custodian of Absentee Property. This law defined absentees as any persons who had been away from their home, within the borders of Israel or in a neighbouring State, on or after 29th November 1947. This law created a paradoxical category: “**present absentees**”, for example: Palestinians who had remained within the borders of the State after 29th November, but were outside their village. These citizens, away from their usual places of residence, constitute at least a quarter of the Palestinian population. The law, passed in 1950, was retroactive and had terrible consequences for many Palestinians, who lost their houses and properties, especially those Palestinians who remained in the newly-created State of Israel. These properties were confiscated by the Israeli authorities as if they were abandoned properties. The Jewish Agency then assumed the ownership of them, and later granted them to “those persons who benefit from the Law of Return”, in other words, only Jewish people.

After occupying East Jerusalem during the Six Day War in 1967, Israel did not reapply this law in the occupied area of the city until the Israeli government decided to do so in 2005. On that occasion, the Attorney General of Israel ruled that the re-establishment of the law was illegal¹⁰⁶.

e) Status Law of Israel (1952)

This law authorises the World Zionist Organization/Jewish Agency and the Jewish National Fund to control **most of the land in Israel to benefit Jews exclusively**. The CESC stated that “*large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an **institutionalised form of discrimination** because these agencies by definition would deny the use of these properties to non--Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant*”¹⁰⁷.

f) Basic Law: Israel Lands (1960)

This law prohibits the transfer of the ownership of land. It states that “The ownership of Israel lands, being the lands in Israel of the State, the Development Authority or the Keren Kayemet Le-Israel, shall not be transferred either by sale or in any other manner”. In this law “lands” means land, houses, buildings and anything permanently fixed to land¹⁰⁸. The Israel Land Authority is the governmental office created in the same year to administrate all Israeli lands, including the land of “absentees”. Thus, land is administrated for the development of Jews, but cannot be trans-

¹⁰⁵ Amnesty International: [translated from] Familias desgarradas por políticas discriminatorias, <http://www.es.amnesty.org/noticias/noticias/articulo/familias-desgarradas-por-politicas-discriminatorias/>

¹⁰⁶ FEDERMAN, Josef, Attorney General of Israel: [translated from] La confiscación de Jerusalén es ilegal, 4th February 2005, <http://www.geocities.com/lospobresdelatierra/palestinalibre/feder-man040205.html>

¹⁰⁷ Concluding Observations of the Committee on Economic, Social and Cultural Rights, Israel, 4th December 1998, E/C.12/1/Add.27, paragraph 11.

¹⁰⁸ Ministry of Foreign Affairs of Israel: http://www.mfa.gov.il/MFA/MFAArchive/1960_1969/Basic+Law+Israel+Lands.htm

ferred nor can it belong to others.

g) Land Acquisition Law (1953)

This law retroactively validated Israel's acquisition of lands that had been confiscated from the Palestinians.

h) Planning and Construction Law (1965)

This law established a regulatory framework and a national plan for the future development of land in Israel. Land was divided into residential, agricultural and industrial zones, any form of unlicensed construction was prohibited, and construction in agricultural zones was also prohibited. It also stipulated where Jews and Palestinian Israelis could live. This law envisaged the future expansion of Jewish communities whilst also limiting and assigning very small spaces to Palestinians, many of which were declared "illegal". Part of Palestinian-owned land was reclassified as agricultural land, thus prohibiting any form of construction on it. Non-recognised Palestinian villages were marginalised from urban development plans, and as a result were left with no sanitation services, water, electricity, sewerage, etc. According to the Arab Human Rights Association¹⁰⁹ there are almost 100 Palestinian villages not recognised by the Israeli authorities. Approximately 70,000 Palestinian Arab citizens live in villages under threat of destruction, prevented from development and which do not appear on any map. The majority of these "non-recognised villages" existed before the creation of Israel. But they are condemned to disappear, as they have no services, nor is the repair of run-down houses and the construction of new ones permitted. "These measures coincide with a wider policy of concentrating Palestinian Arabs and "redeeming" their lands for new Jewish mitzvim (The mitzvim "lookout" settlements were established as part of the Judaisation of the Galilee program to change the demographic balance of Arab areas.) settlements. Many of these settlements are built next to their unrecognised neighbours, often illegally, yet with a complete provision of services"¹¹⁰.

i) Law on Agricultural Settlement (1967)

This law prohibited the Jewish National Fund from subletting land to non-Jews. Beforehand, only the sale and direct letting of land was prohibited. This law also ensured that water quotas from Jewish National Fund lands could not be transferred to lands not pertaining to the JNF.

The ultimate objective of all this legislation regarding the use and property of land is that **Palestinians who lived or live in Israel cannot recover ownership of said land**. "This is why Israel never allowed the Palestinian minority to construct not even one new hamlet or rural settlement, let alone villages or towns (with the exception of three Bedouin settlements at the start of the 1960s, which were actually Israel's recognition of the permanent residence that the sedentary tribes had established there). The same laws, on the other hand, allowed the country's Jewish population, whose natural growth rate was far lower, to build on these lands (apart from those destined towards forestation programmes) settlements, villages and towns alike as they so desired"¹¹¹.

¹⁰⁹ The Arab Association for Human Rights: <http://www.arabhra.org/HRA/Pages/Index.aspx>

¹¹⁰ QUMSIYEH, Mazin, *op. cit.*

¹¹¹ PAPPÉ Ilan, *The Ethnic Cleansing of Palestine*, One World Publications, 2006.

Alongside this legislation analysed above, one must bear in mind the specific legislation for the Occupied Palestinian Territories, namely, Military Orders.

6.4 Specific legislation for the Occupied Palestinian Territories: Military Orders

There are a great deal of Military Orders referring to almost every aspect of the lives of **Palestinians in the Occupied Palestinian Territories**. Said Orders **limit and encroach on the human rights of the Palestinian population**. Let us look at the following examples ¹¹²:

a) Orders affecting legal procedures and the detention of persons:

Military Order N° 29 (1967) concerning the operation of prisons. States that prisoners can be denied access to lawyers at any time and at the discretion of the Israeli Military Commander.

Military Order N° 378 (1970). Authorises Military Commanders to establish military courts (art. 3) with prosecutors (art. 8), magistrates and presidents (art. 4) appointed by the Commander himself. These courts are authorised to diverge from the rules of trials (with regard to laws of evidence, etc., arts. 9 to 11) if deemed necessary. If the Area Commander does not agree with the passing of sentence, he is entitled to cancel the findings of the trial and order a retrial before a different military court (art. 42.4). There can be no appeal against a judgement on jurisdictional grounds, but there can be in connection with the finding of guilt or the sentence (art. 43). It allows the courts to order “administrative detention”, without charges, for an extendible period of six months (art. 87). The burden of proof falls on the accused (art. 94). It states that Military Commanders may restrict the freedom of movement of any person (art. 85), including confinement in a specific area, such as the accused’s house (art. 86). They may also restrict the use of all types of vehicles (art. 88), order curfews (art. 89) and close any building, institution or business, prohibiting both entrance and exit (arts. 90 and 91).

Military Order N° 815, modifying Military Order N° 378. Changes the procedures for administrative detentions. An Area Commander may issue an administrative detention order for a period of up to six months and a Regional Commander may issue a detention order for up to 96 hours, which can be renewed indefinitely every six months. These orders must be reviewed by a Military Committee within 96 hours of their issue and every 3 months from then on. The prisoner may appeal against this decision, but has no right to be heard in the trial, which is neither a public trial. These appeals are resolved by a Military Court, whose findings are not binding.

b) Military Orders concerning the ownership of land:

Military Order N° 58 (1967). Grants Israeli military authorities the control of the land of “absentees” (according to the definition of absentee in the Absentee Property Law of 1950). It allows the military authorities to retain the property of said absentees even if by error it were to be considered abandoned.

Military Order N° 59 (1967). Assigns military authorities with the “Custody of Government Property”, being able to appropriate private lands from individuals or groups by declaring them “Public Lands” or “Lands belonging to the State”. It establishes that these lands are “appropriable” because they were lands administrated or owned by enemies or citizens of enemy nations of Israel during the 1967 war.

¹¹² To see a list of Israeli Military Orders: Israeli Law Resource Center: <http://www.geocities.com/savepalestinenow/israelmilitaryorders/israelimilitaryorders.htm>

Military Order N° 291 (1968). Grants Israeli military authorities the control of all disputes concerning land or water. It cancels incomplete Palestinian register of land ownership and cancels all pending disputes before the Courts of the West Bank.

Military Order N° 1060 (1983). Transfers all pending disputes concerning land from the local Jordanian Courts to the Israeli Military Committee for their judgement.

Military Order N° 321 (1969). Grants Israeli military authorities the right to confiscate Palestinian lands in the name of “Public Service” (which is not defined) and without compensation.

c) Military Orders concerning the freedom of expression:

Military Order N° 107 concerning the use of textbooks. Establishes a list of 55 books which cannot be taught in schools. This list includes books on Arabic language, history, geography, sociology and philosophy.

Military Order N° 50 (1967). All written material published in the West Bank, or imported into the West Bank, must be approved by the Israeli military authorities.

Military Order N° 101 (1967). Prohibits publications with any type of political content.

Military Order N° 1079. Prohibits video and audio materials of a political nature. It establishes a list of over 1,000 articles, including novels, poems, etc.

d) Military Orders creating a different legal system for settlers in the Occupied Palestinian Territories.

Military Order N° 561 (1974). Establishes “Religious Councils” to administrate Jewish settlements in the West Bank.

Military Order N° 783 (1979). Establishes 5 regional “Religious Councils” in the West Bank to cover all the land controlled by Israel in the West Bank.

Military Order N° 892 (1980). Establishes additional “Religious Councils” and Municipal Courts for specific settlements in the West Bank, and states that all of them are constituted and operate in accordance with the regulations established by the Military Area Commander.

Military Order N° 981 (1982). Establishes Rabbinical Courts in the settlements to resolve questions concerning the personal status of settlers (divorce, adoption, inheritance, etc.)

e) Other Military Orders of interest

Military Order N° 224 (1967). Reintroduces into force the Emergency Regulations established by the Authorities of the British Mandate in 1945. These regulations “authorise” military forces to violate a series of civil rights under the guise of an “emergency situation” in the West Bank.

Military Order N° 92 (1967) concerning powers for the purpose of water provisions. This Order confers all the powers established in Jordanian legislation concerning water and its use to an Israeli official appointed by the Area Commander, who holds full control of water provisions. Any person or entity who wishes to install any type of water pumping machinery (such as pumps, irrigation equipment, etc.) must request a permit from said Israeli military official, who, having granted said permit, may cancel it at any time and for any reason.

Military Order N° 5 concerning closure of the West Bank. Declares the entire West Bank a closed military zone, with exit and entry controlled according to conditions stipulated by the military forces.

Military Order N° 537 (1974) concerning Municipal Law. This grants wide-ranging powers to the Area Commander concerning municipal boundaries and services, their planning and who carries them out. It also grants the Area Commander the power to dismiss democratically-elected mayors.

Military Order N° 297 concerning identification cards and personal status. Establishes a system of identification cards, which are required to carry out any commercial transaction. Grants the military authorities the right to confiscate them for any reason.

7. Does apartheid exist in Israel?

Having reached this point and as a result of the analysis carried out, it is clear that the **discrimination to which the Palestinian population is subjected by Israel constitutes a crime of apartheid.**

This crime has **certain specific characteristics** which distance it from the South African case, but in any case do coincide with the **Convention on Apartheid**. Thus, we shall now compare article II of the Convention with the analysed laws and practises in Israel.

Article II

“For the purpose of the present Convention, the term “the crime of apartheid”, which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

i) By murder of members of a racial group or groups;

Through “targeted killings” - which actually constitute **extrajudicial executions** – the IDF eliminates Palestinian activists, with a view to stifle any uprising. These killings, which are usually carried out in response to attacks against Israel carried out by Palestinian groups, affect not only the “targets”, but also many other people, such as family members or persons who at the time were nearby. Hundreds of Palestinians have met their death in these precise strikes by Israeli elite commandos and helicopters.

ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

The **restrictions on the freedom of movement, through roadblocks, closure of roads or physical barriers such as the wall** inflict bodily and mental harm on those living in the Occupied Palestinian Territories in many different ways. They prejudice those people who must leave the Occupied Territories to receive medical treatment or pregnant women who need to reach a hospital to give birth, who many times do not arrive and must give birth without the necessary medical attention. They lead to malnutrition and illnesses arising from insufficient food intake by preventing the entrance of food aid to the Occupied Palestinian Territories through the blockades. They prevent access to farmers’ own lands which happen to be located between the Green Line and the wall, thus affecting their right to health and food. The controls to which the Palestinians are subjected when they must cross these physical barriers are humiliating and degrading.

The **demolition of houses and infrastructure** also inflicts bodily and mental harm on those living in the Occupied Palestinian Territories, as it sentences entire families to live in poverty and overcrowded situations, or without the minimum services necessary to carry out a normal life (schools, medical centres, electricity, etc.). All these actions constitute collective punishment

and psychological torture.

iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

The practice of “**administrative detentions**”, with no charges nor trials, which can extend for long periods of time and which affect not only adults but also under-18s.

b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

The **closure of border crossings with Gaza**, with the consequent restriction on movement of persons and food as well as the damage caused to the food production infrastructure, sentences the population to hunger and malnutrition.

c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognised trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

The entire **Israeli legal system establishes an enormous gap between Jews and Palestinian Arabs**, since all legislation is designed to favour Jews and keep Palestinian Arabs in a situation of inferiority. This can be clearly seen in certain examples.

Several Israeli laws prevent Palestinian refugees from returning, recovering their land and enjoying a nationality, thus violating their right to enter and leave the country, the freedom of movement and residency and the right to a nationality. In Israel, the unequal allocation of resources for education and cultural activities for Palestinians, the restrictions on leaving and returning to Israel and the Occupied Palestinian Territories, the restrictions on family reunification for those living in the Occupied Palestinian Territories or the lack of representation in the civil service are violations of all the rights stipulated in this subsection c).

Palestinians residing in the Occupied Palestinian Territories and working in Israel have enormous difficulties in joining Israeli trade unions or forming their own trade unions in Israel, which violates their rights to work and to form recognised trade unions. A further violation of rights is the demolition of houses and prohibition to build new ones in the Occupied Palestinian Territories, as are all the restrictions on the freedom of opinion and expression established through Military Orders prohibiting the organisation of meetings or the publication and dissemination of ideas.

d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a

racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

The Jewish and Palestinian populations are clearly separated and are allocated different physical spaces, with varying levels and quality of infrastructure, services and access to resources. In Israel, Palestinians live in crowded spaces, unable and unauthorised to refurbish or construct houses, living in villages which often are not even officially recognised. Jews occupy larger expanses of land, guaranteed by Jewish public or government-managed agencies (Jewish National Fund, Israel Land Administration), which ensure that the best land is allocated exclusively to Jews. At the same time, the Occupied Palestinian Territories are dominated by Jewish settlements, “islands” which jeopardise the continuity of the territory, where settlers enjoy the protection of Israeli authorities, which have their own laws and where scarce resources such as water are used, to the detriment of the Palestinian population. Coupled with this is the prohibited access for Palestinians to outposts, military zones and natural reserves. These settlements are linked by roads for use exclusively by Jews. Palestinians have their movement restricted through the need for Israeli permits to undertake any type of journey.

The **expropriation of Palestinian property** has been happening since the State of Israel was created, and is backed up by a series of laws and Military Orders which have stripped Palestinians of almost all their land.

e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

Although Israel has no exploitation system of the labour of the Palestinian population, its policies have restructured the Palestinian workforce by **suppressing Palestinian industry**, establishing restrictions on exports and other measures that have increased the Occupied Palestinian Territories’ dependence on Israel, and now more than ever before, on international aid. Up to the mid-1980s, Israel intensively used Palestinian labour for work connected to agriculture and construction, with workers subjected to appalling employment conditions and without any of the benefits enjoyed by Jewish workers. But since 1993, the number of Palestinian workers in Israel has plummeted from over 100,000 to just a few hundred. And since the construction of the wall, there are hardly any Palestinian workers employed in Israel. Since Hamas won the January 2006 elections in the Gaza Strip, no workers from this area whatsoever have access to Israel¹¹³.

f) Persecution of organisations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

Israel persecutes and imposes restrictions on persons who oppose the regime of segregation, who condemn the violations of human rights by the government or who criticise the IDF. It also suppresses all demonstrations in the Occupied Palestinian Territories, both by organisations and individuals, against the wall or the discriminatory administration of land, water and infrastructure.

With it clear that policies and actions of the Israeli authorities configure a crime of apartheid against the Palestinian people, it is now necessary to consider some suggested plans of action to fight, from various points, in favour of respect for the Palestinian people’s dignity.

¹¹³ See: Human Sciences Research Council, *Occupation, Colonialism, Apartheid?*, May 2009, Cape Town, South Africa, p. 268.

8. Suggested plans of action

In 1983, the **Special Committee against Apartheid** stated that *“the main obstacle to the elimination of apartheid is the constant collaboration with South Africa”*. Many world powers were still maintaining all types of commercial relations with this regime, which gave it the strength to continue operating. *“With the support of certain Western countries and Israel, [South Africa] has accumulated a large quantity of military equipment and acquired the ability to manufacture nuclear weapons, which poses a serious threat to Africa and to the world”*¹¹⁴.

Due to the **serious violations of human rights perpetrated by this regime**, and the threat it posed to the international community, the United Nations decided to adopt a **Programme of Action against Apartheid**, as the conclusion had been reached that in order to end the regime it was fundamental to isolate it totally. This stance was assumed by the General Assembly, by the Security Council and by the Committee against Apartheid.

To achieve this objective, not only was the role played by **United Nations** crucial, but also by **States** and **civil society organisations**, such as universities, trade unions, churches and non-governmental organisations, who adopted their own measures to fight this regime, and **pressurised their governments** and **private companies not to participate in any way with a system that denied human rights to a sector of the population**.

The aforementioned **Programme of Action against Apartheid**¹¹⁵, approved by the Committee against Apartheid, highlighted different plans of action to fight this regime both for governments and specialist bodies, intergovernmental organisations, trade unions, sporting and educational entities, etc. Let us compare and verify that **some of these measures might also be useful in the case of Israel**.

With regard to governments, the Committee recommended the application of an arms embargo, without any further ado, which entailed:

- a) Terminating the supply of arms and related material, including the sale or transfer of arms and ammunition, military vehicles and equipment and related spare parts,
- b) Terminating the supply of any type of equipment and material and the concession of licences for the manufacture of arms and ammunition, military vehicles and equipment, paramilitary police equipment and related spare parts,
- c) Revoking all existing contracts with local companies and licences or patents granted for the manufacture and maintenance of arms, all forms of ammunition and military vehicles and equipment,
- d) Refraining from the supply of any type of material for use by the armed forces, the police and paramilitary organisations,
- e) Giving assistance to persons obliged to leave the country on grounds of conscientious objection, of rendering services in the military forces or the police of the regime, amongst other similar measures, all aimed at terminating the supply of arms to a regime which violates human rights.

As for **trade**, the Committee recommended the **termination of all economic collaboration with South Africa** by:

¹¹⁴ Programme of Action against Apartheid, approved by the Special Committee against Apartheid at its 530th session, held in New York on 25th October 1983, paragraphs 11 and 13.

¹¹⁵ Ibid.

- a) Refraining from the supply of strategic materials,
- b) Refraining from the concession of loans, investment funds, and technical assistance to the government or to private companies,
- c) Prohibiting loans from banks or other financial institutions in their country to the government or to companies,
- d) Refusing preferential customs treatment,
- e) Taking suitable measures, individually or as a whole, against multinational companies which collaborate with the government.

With regard to cultural, educational, sporting and similar collaboration, the Plan proposed:

- a) Suspending cultural, educational, sporting and similar exchanges with the racist regime and with organisations and institutions which practice apartheid,
- b) Revoking and cancelling cultural agreements and similar.

With **regard to specialist organisations and other non-governmental organisations**, the Committee underlined that they should contribute as much as possible, in accordance with their respective mandates, to the **international campaign against apartheid**. Specifically they should:

- a) Exclude the racist regime from all participation in their organisations,
- b) Refuse all aid to the racist regime,
- c) Provide suitable aid to the oppressed population and to its movements of national liberation,
- d) Spread information about apartheid,
- e) Refrain from granting facilities to banks, financial institutions and companies that invest in South Africa,
- f) Refrain from the direct or indirect purchase of products from South Africa,
- g) Refuse to lend assistance to non-governmental organisations which collaborate with the racist regime and to institutions based on racial discrimination.

With regard to activities carried out by **trade unions, churches, anti-apartheid and solidarity movements, other non-governmental organisations and by private individuals**, the Committee recommended that all public organisations should: contribute to the **international anti-apartheid campaign** by promoting and organising activities to brief public opinion on the **crimes of apartheid**; oppose the apartheid regime's acts of aggression, destabilisation and terrorism; isolate the apartheid regime; and lend assistance to the oppressed population and its liberation movements in its fight against apartheid.

People should be **educated against apartheid**: alerting public opinion about the threat posed to international peace and security by apartheid policies and fostering understanding of the oppressed population's struggle.

Civil society organisations should pressurise governments that collaborate with the apartheid regime so that they desist from doing so and instead support the imposition of obligatory economic sanctions in accordance with **chapter VII of the United Nations Charter**.

Public campaigns had to be intensified in order to reveal the role played by economic collaboration in the maintenance of the apartheid system. Said campaigns included:

- a) The boycott of all South African products,
- b) The divestment of companies operating in South Africa,
- c) The control of loans to South Africa,
- d) The boycott of the main banks collaborating with South Africa.

In the field of **sports**, the Committee recommended:

- a) Guaranteeing the expulsion of South Africa from all international sporting federations of which it was a member,
- b) Opposing all important sporting tours to and from South Africa,
- c) Persuading all national and local sports organisations to break the links with apartheid sport,
- d) Preventing publicity or media support of sporting events in which South Africa was to participate.

In the **cultural** realm, the Committee recommended:

- a) Adopting measures to persuade artists, musicians and theatre, cinema and television personalities to boycott South Africa,
- b) Adopting measures to encourage writers, painters and cinema directors to refuse to authorise the representation or exhibition of their work in South Africa.

Another recommended measure was the **boycott of tourism** to South Africa through campaigns against companies and organisations that promoted it, striving to end tourism to South Africa which, in addition to strengthening the apartheid economy, promoted a false image of the regime.

These measures are just an example of the many recommended by the United Nations to end the apartheid regime in South Africa. In the **case of Israel, some further more specific measures** could be highlighted to undermine this racist and discriminatory regime, until it is replaced by another that respects everybody's human rights without distinctions:

With regard to governments:

- Demand compliance with the International Court of Justice **Advisory Opinion on the Construction of a Wall in the Occupied Palestinian Territory**.
- Demand compliance with the rules and obligations established by international humanitarian law, by calling for a new **Conference of the High Contracting Parties to the Geneva Conventions on measures to enforce the Fourth Geneva Convention in the Occupied Palestinian Territories**.
- Demand compliance with the Concluding Observations of the reports presented by Israel to the treaty monitoring bodies.

With regard to the Member states of the European Union:

- Apply the human rights clause of article 2 of the **EU-Israel Association Agreement**, which entails the suspension of preferential conditions for the import of Israeli products into Europe, until the human rights inherent to the Palestinian population are respected fully.

With regard to civil society organisations:

- File **lawsuits against Israeli leaders for war crimes and crimes against humanity** before the courts of those States which accept universal jurisdiction.

If these measures are applied, in a **joint effort by the international community**, this racist regime which clearly commits a **crime of apartheid** against a sector of the population, as occurred in South Africa, could be overthrown. To that end, it is necessary to continue condemning what is happening in Israel, to demand responsibilities for the violations of human rights and to demand respect for the rules aimed at the protection of all people, without any distinction whatsoever.

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The aim of this report is, from outside, without any preconceived side-taking whatsoever, to determine whether or not there is a crime of apartheid against the Palestinian people. While it is indeed true that the international community decided to classify the crime of apartheid in the wake of what was happening in South Africa, now the original cause of its classification – the segregationist and racist South African regime – is history, the persecution of this crime is still underway, whether it be through the Convention on the Crime of Apartheid, the Rome Statute of the International Criminal Court or customary international law.

Article 7 of the Statute of the International Criminal Court defines the crime of apartheid as “inhumane acts committed in the context of an institutionalised 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”. Taking this latest definition available as a reference, which includes all jurisprudence and customary international law on this matter, this report shall attempt to determine, also in accordance with the Convention on the Crime of Apartheid, whether the Palestinian people are enduring a comparable situation and political stance.

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