

South African study concludes Israel is an apartheid state



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RHETORIC or REALITY?

Do Israel's Practices in the West Bank, East Jerusalem and Gaza Amount to Crimes of Apartheid under International Law?

*Summary of an International Legal Study
Funded and Coordinated by the Government of South Africa*

Is Israel an Apartheid State?

Summary of a legal study commissioned by
the Human Sciences Research Council of South Africa
and funded by the Department of Foreign Affairs of South Africa

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Is Israel an Apartheid State?

Summary of an International Legal Study

The Government of South Africa, seeking to eliminate and prevent the kind of suffering the South African and Namibian people suffered under apartheid, commissioned a legal study of the Israel-Palestine situation. "The aim of this project was to scrutinize the situation from the nonpartisan perspective of international law, rather than engage in political discourse and rhetoric."

An international team of legal and human rights scholars carried out this fifteen month collaborative study. They set out to examine legally the question:

Do Israel's practices in occupied Palestinian territory, namely the West Bank, East Jerusalem and Gaza, amount to the crimes of colonialism and apartheid under international law?

The study is comprehensive. It addresses pertinent international law and legal rulings, the legal status and laws governing historic Palestine from Ottoman times to the present, Israeli law and Israel's various legal arguments as to why international law does not apply. It reviews Israel's practices weighed against this legal context, citing similar practices carried out by the government of South Africa during apartheid.

The evidence in the study is broad. It addresses Israel's practices within the state of Israel proper and in occupied Palestinian territory as well as practices that affect Palestinian refugees. Conclusions about apartheid focus on Israel's practices after 1967 when it occupied the West Bank, East Jerusalem and the Gaza Strip.

The full study is posted at:

http://www.hsrb.ac.za/Media_Release-378.phtml

Apartheid defined under international law.

Apartheid is defined as an institutionalized form of racism in which states enact laws which function as the apparatus to commit inhuman acts 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. The practice of apartheid is a crime under international law.

Racism or racial group is any distinction, exclusion or preference based on race, color, religion, descent, national origin, ethnic origin or other criteria which has the purpose or effect of nullifying or impairing the rights of one group.

Apartheid Regimes Rely on Three “Pillars of Apartheid” to Maintain Their Domination

Pillar 1: The state codifies into law a preferred identity. It then establishes adjunct laws that grant preferential legal status and material privileges to the preferred group on the basis of their identity while discriminating against the non-preferred group on the basis of the inferior status afforded them.

Pillar 2: The state segregates the population into geographic areas based on identity. The favored identity receives preferential access to land, water, other resources and to government benefits and services while the non-preferred group is confined to ever-shrinking, non-contiguous, besieged territorial enclaves.

Pillar 3: The state establishes security laws and policies designed to suppress any opposition to the regime. The system of domination is reinforced through assassinations; administrative detention; torture; cruel, inhumane, or degrading treatment; and arbitrary arrest and imprisonment of the non-preferred group.

Using these criteria, the May 2009 South African study finds that “Israel, since 1967, is the belligerent Occupying Power in occupied Palestinian territory, and that its occupation of these territories has become a colonial enterprise which implements a system of apartheid.”

The Israeli Committee Against House Demolitions-USA has summarized the findings of this study to help people understand that talk of apartheid is more than just rhetoric and to provide a tool which concerned citizens can use to help bring an end to Israel’s apartheid regime.

Israel's Practices: Apartheid Pillar 1 – A preferred identity; separate system privileging Jews

- Israel's domestic law codifies the Jewish identity as the preferred identity. It establishes that collective rights extend to Jews only. All other people lack the right to a national life anywhere in Israel proper or in occupied Palestinian territory.
- Israel's state resources, including all of the land in occupied Palestinian territory which Israel has declared 'state land,' are specified as being for the exclusive benefit of Jews. These lands are administered under the World Zionist Organization, Jewish Agency and Jewish National Fund. These para-state organizations are authorized agents of the state of Israel, receive funding from the state of Israel and are empowered to manage Israeli state affairs. Their charters and Israeli law mandate that they operate in perpetuity for the exclusive benefit of world Jewry.
- In 1967, Israel supplanted existing laws governing Palestinian territory with two separate sets of law: Israeli domestic law to apply to Jewish settlers and Israeli military law to apply to Palestinians. (See page 13 for examples of Israel's military orders governing Palestinians).

Right to Housing and Natural Growth

– After occupying Palestinian territory in 1967, Israel froze the municipal boundaries of Palestinian towns and villages. Because Israel, in general, denies Palestinians the right to build outside municipal boundaries, this law has served as the basis for stemming Palestinian growth, denying Palestinians 90% of needed housing permits and destroying thousands of Palestinian homes.

– Since 1967, not one new Palestinian community has been established in occupied East Jerusalem.

Settler Benefits

– Israel encourages Jews from anywhere in the world to move into occupied Palestinian territory by providing automatic citizenship, settlement housing and financial benefits that include permanent exemption from real estate and employers' taxes, grants to cover moving expenses and loans for rent, utilities and the purchase of apartments. These loans convert to grants after three years

residence in the settlement. Settlers also receive free education from kindergarten through university and free technical education. Palestinians are afforded no such benefits.

Freedom of Residence

– Palestinians who procure residency or citizenship in another country immediately lose their right of residency in occupied East Jerusalem. Jews, however, can obtain both residency and citizenship in another country and still retain their right to reside in occupied East Jerusalem.

Freedom to Leave and Return to One's Country

– During the 1948 war, 750,000 Palestinians became refugees. During Israel's 1967 invasion and occupation of the West Bank, East Jerusalem and Gaza, another 550,000 Palestinians were expelled. Most of these 1948 and 1967 refugees live in refugee camps outside Mandate Palestine but 1.8 million are 'internally displaced,' living in Israel proper, the West Bank and Gaza. None of the 1948 refugees including those 'internally displaced' and the vast majority of the 1967 refugees have ever been allowed to return to their homes or reclaim their property. By contrast, Jews from anywhere in the world may 'return' to Israel proper or to occupied Palestinian territory, even if neither they nor any of their ancestors were born or had previously lived there.

Family Unification

– Jews have no restrictions preventing their living with or being unified with spouses and children who are not citizens of Israel. Palestinians of all categories are not afforded the same right to family unification.

Citizenship

– Israel has blocked the emergence of a Palestinian state where Palestinians can gain citizenship and, at the same time, Israel has refused Palestinians living in occupied territory the right to gain citizenship in Israel. By contrast, every Jew from anywhere in the world is entitled to automatic citizenship and substantial monetary benefits for transferring into and living in either Israel or occupied Palestinian territory.

Permit System

– Israel has imposed a burdensome permit system which requires Palestinians to get a permit for everything – repairing their homes, making deposits in their bank accounts, planting onions and using tractors to work their land. Often permits are issued depending on Palestinians' willingness to collaborate with the Israeli occupier.

Economic Rights

– Israel prevents imports, exports and Palestinian people from moving freely throughout Palestinian territory. This ‘closure’ policy has halted Palestinian economic development by fragmenting Palestinian economic space, raising the cost of doing business and eliminating the predictability needed to carry out successful businesses.

– Palestinians must obtain permits from Israel to grow crops. Permits are granted based on whether Palestinian crops compete with Israeli agricultural production.

– A Palestinian may not establish a factory or business employing more than ten individuals.

Trade Unions

– Palestinian laborers must pay 11% of their wages to Israel’s national trade union, Histadrut, for insurance tax. Yet Palestinians do not receive Histadrut insurance benefits such as unemployment compensation, disability benefits or old age pensions. In addition, Palestinian laborers pay 1% of their wages to Histadrut for membership dues. Yet Histadrut represents only Jewish laborers in disputes, and it cooperates with the Israeli military in tightening control over Palestinians.

Right to an Education

– Israel denies Palestinians the right to an education by obstructing movement so students cannot reach their schools, repeatedly closing Palestinian schools, attacking students and schools with its military, destroying school buildings, equipment and records and denying exit permits to students seeking to study abroad.

Freedom of the Press

– Israel restricts media reporting information from Palestinian territory by direct censorship and by refusing to issue or renew press cards, restricting movement of the press, damaging or destroying radio and TV installations, arresting and detaining journalists and beating, torturing and killing journalists.

– The Israeli press practices a codified system of self censorship (the Nakdi Report) including prohibition of the use of terms such as ‘Palestinian,’ ‘Palestine’ and ‘East Jerusalem.’ Areas in the West Bank are not called by their Palestinian names. They are instead referred to as ‘Judea’ and ‘Samaria.’

– *Reporters without Borders*, an international organization advocating freedom of the press, ranks Israel 146th out of 166 countries in their annual press freedom index.

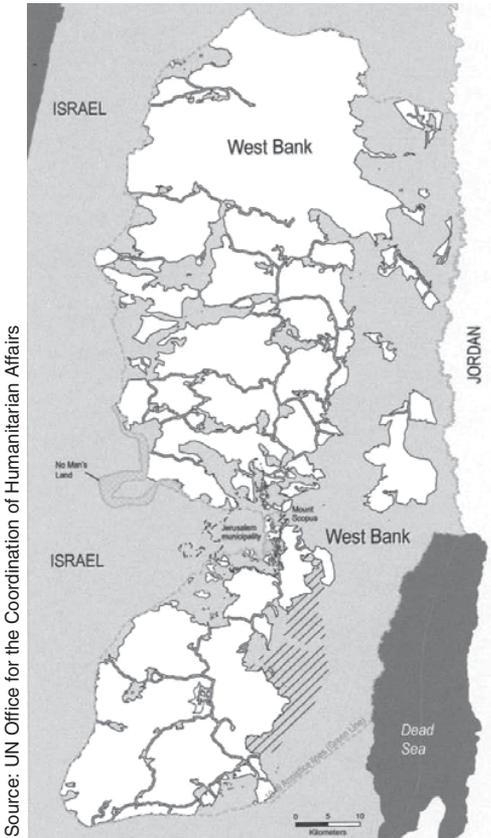
– Israel forbids the import and distribution of newspapers in the West Bank without a military-approved permit. Israel also forbids West Bank publishers from publishing and distributing articles and pictures with any political connotation.

Israel's Practices: Apartheid Pillar 2 – Segregation; exploitation of resources

- After occupying Palestinian territory in 1967, Israel issued Administration Order #1 annexing Palestinian East Jerusalem to the State of Israel.
- In 1967, Israel issued military orders declaring all Palestinian surface and ground water “public property” and the “sovereign property of Israel.”
- In 1978, the Jewish Agency/World Zionist Organization/Jewish National Fund declared the West Bank a permanent part of the “Land of Israel.”
- These para-state organizations laid out a master plan (the Drobles Plan) placing Jewish settlements and Jews-only highways around and between Palestinian populations with the stated purpose of carving up the territory to promote Jewish domination and prevent the creation of a Palestinian state.
- By the 1990s, the corridors of Jewish settlements and Jews-only highways enforced complete segregation of Jews and non-Jews. Palestinians have been pushed into disjointed, ever-shrinking enclaves.

Segregation

– Israel has appropriated over 50% of the West Bank for the exclusive benefit of Jews, including settlements and outposts, nature preserves, special security zones, the Wall, agricultural development for Jewish settlers, closed military zones and a Jews-only highway system. Palestinians are prohibited from using, or even crossing, the extensive Jews-only highway system that allows Jews to travel freely between settlements and between the West Bank and the state of Israel.



Divided Palestinian enclaves in white

– Israel’s Wall alone appropriates 10% of the West Bank by fencing that land into Israel proper.

– Tens of thousands of Palestinians have been trapped in the ‘seam zone.’ Their homes and villages are walled out of the West Bank. They are not allowed to pass into Israel for services and cannot freely pass through the Wall into Palestinian territory for services and community. In contrast, a Jew from anywhere in the world, Israeli citizen or not, is free to travel in and out of the seam zones.

– By September 2008, Israel had established 699 restrictions to Palestinian movement within the West Bank, including checkpoints, roadblocks, trenches, earth mounds, road gates, 89 ‘flying’ checkpoints (weekly average) and the Wall.

– As a result of this system – the Wall, settlements and highways – Israel has deliberately severed East Jerusalem from the rest of the West Bank. The West Bank is divided into reserves in which residence and entry are determined by group identity. Israel has also sealed and isolated the Gaza Strip from the rest of Palestinian territory.

Exploitation of Resources

- Israel has integrated the Palestinian electrical grid and water supplies into those of Israel, thus denying Palestinians control over their own municipal services and water resources.
- Israel diverts all of Palestinian Jordan River water and 87% of Palestinian ground water to the state of Israel proper and to the illegal Jewish settlers. The remaining 13% of Palestinian ground water is distributed back to 2.5 million Palestinians living in the West Bank.
- Israel cuts off Palestinian access to water by destroying wells; destroying all Palestinian pumps and ditches accessing the Jordan River; destroying cisterns and irrigation systems; preventing the construction of new water infrastructure; preventing the repair of out-dated infrastructure; preventing Palestinians from drilling new wells; and hindering access through ‘security measures’ such as roadblocks, closures, checkpoints and the Wall.
- The route of Israel’s security Wall delineates the eastern boundary of high groundwater production from the Western Aquifer. The Wall fences those areas of high water production into Israel, closing off Palestinians’ access to more than 95% of their groundwater resources – over 630 million cubic meters of water per year.
- Since 1967, not one permit has been granted for the drilling of new Palestinian controlled wells in the largest and most productive of all the aquifer basins, the Western Aquifer.
- Palestinians pay from four to twenty times more for water than Jewish settlers pay, but are restricted to 10 to 60 liters of water per day, far less than the 100 liters-per-day minimum standard set by the World Health Organization. Jewish settlers enjoy from 274 to 450 liters of water per day.
- Five thousand Jewish settlers living in the Jordan Valley consume the equivalent of 75% of the water used by the entire West Bank population of over 2.5 million Palestinians.
- All 149 Israeli-approved Jewish settlements in the West Bank are connected to a running water network, while over 200 Palestinian communities in the West Bank have no running water.

Gaza Aquifer, the only source of fresh water in the Gaza Strip

- Israel, through years of over-pumping deep-bore wells along the Gaza Strip, has drawn sewage and salt water contamination into the Gaza Aquifer.
- Israel has reduced natural recharge of the Gaza Aquifer by constructing a physical barrier or ‘verge’ to prevent fresh water from the Hebron Hills from reaching the Gaza Aquifer.
- Today 90 to 95% of the Gaza Aquifer is unfit for human consumption, much of it unfit even for irrigation or showering.
- Between 2000 and mid-2006, Israel destroyed 244 of Gaza’s wells and destroyed 6.2 miles of culinary water lines.
- By January 2008, 40% of the homes in Gaza had no running water.

Israel’s Practices: Apartheid Pillar 3 – Matrix of security laws to suppress opposition

- Security for the state of Israel is equated with upholding Israel’s institutions, the same institutions that enforce domination of Palestinians.
- All Palestinian resistance to Israeli domination is treated as a ‘security threat.’ Palestinians who resist are labeled ‘terrorists.’
- Israel invokes ‘security’ to justify sweeping restrictions on Palestinian freedom of expression, assembly, association and movement.
- Assassination, torture, arbitrary arrest and imprisonment without due process are sanctioned by the state of Israel and often approved by the Israeli judicial system.
- Israel’s military court system is the “institutional centerpiece of Israel’s apparatus of control over Palestinians.”

Use of Military Courts to Suppress Opposition

- Jews living in Palestinian territory and charged with a civil offense, such as tax evasion or traffic violations, are tried in civilian courts. Palestinians charged with identical violations are tried in Israeli military courts.
- From 2002 to 2006, Israel’s military courts filed more than 43,000 indictments against Palestinians, of which only one third were security-related.
- Israel’s military courts do not comply with international standards of due process.
- There is no ‘presumption of innocence,’ placing the burden of proof on the defense.
- Palestinian defendants are not informed of charges against them until their first court hearing. Defendants and their attorneys are then expected to respond immediately, with no time to study the indictment.
- Indictments are written and presented in Hebrew – a language most defendants do not understand.
- Court decisions can be based on ‘secret evidence’ not provided to a detainee or his or her lawyer.
- Decisions of the court are not published.
- All judges are Israeli military officers, many without legal background or education.
- If a defendant refuses to plea-bargain, the result is a far more severe penalty.
- 95% to 97% of convictions are the result of plea bargains.
- The average hearing lasts just 3 minutes and 4 seconds.
- In 2006, the acquittal rate for Palestinian defendants was only 0.29%.

Mass Incarceration

- Over 40% of the Palestinian male population has been imprisoned at some time, many without charges, in repeating 6-month administrative detention terms, a process that can go on for years.

– By April 2009, 45 members of the Palestinian Legislative Council (over one third of the democratically elected Parliament) had been imprisoned, most convicted of belonging to a political party Israel deems a ‘threat.’ Eight legislators were administratively detained without any charges or trial.

Prosecuting Children

– Palestinian children are prosecuted as adults at age 12. Jewish settler children are not prosecuted as adults until age 18.

– Over 700 Palestinian children are prosecuted by Israeli military courts each year, mostly for throwing stones, including throwing stones at the Wall. Throwing stones carries a prison term of six months to twenty years.

Freedom of Assembly and Association

– Palestinian public gatherings of more than ten people are forbidden unless Israel is given advance notice and the names of all attendees.

– Israel uses live ammunition, tear gas, sound bombs, rubber-coated steel bullets and physical violence against public gatherings and demonstrations.

Persecution of Organizations or Persons Because They Oppose Apartheid

– Israel has declared most Palestinian political parties to be ‘terrorist organizations.’ Charitable, educational or cultural organizations deemed to be connected directly or indirectly to a political party are subject to closure, destruction and military attack.

– In 2008, Israel carried out a military attack targeting a residential area, a school, two medical clinics and two orphanages because Israel suspected some donors to the charity that built them to be members of Hamas.

Prisoners’ Rights

– Jewish prisoners classified as ‘security prisoners’ are allowed numerous rights including conjugal visits, daily phone calls, visits with family and friends and leave to take vacation time from prison. No Palestinian ‘security prisoner’ has ever been awarded such privileges. Palestinian ‘security prisoners’ are denied telephone calls to their attorneys, walks in the open air, beds (they are provided with floor mats), newspapers, books, TVs, radios, razors and mirrors, basins, fans, heaters, detergent and wall lights.

Cruel and Inhumane Treatment: Gaza

- From 2000 to 2004, Israel demolished over 2500 homes in the Gaza Strip leaving 16,000 Palestinians homeless.

- In 2006, Israel bombed Gaza’s only power plant, destroying all six transformers and halting electrical production. This left Gaza almost completely dependent on Israel to pump sewage and water and as the sole provider of electricity, power and desalination.

- Years of systematic bombing and destruction transformed Gaza into a dependent population. Israel then isolated Gaza with an encircling ‘security wall’ and in October 2007 initiated a blockade on Gaza limiting fuel, water and electricity and cutting basic supplies to less than one-fifth their former levels. Ninety-five percent of Gaza’s industries shut down. Poverty levels reached 80%. Hospitals experienced power cuts of 8 to 10 hours per day. Thirty to forty million liters of raw sewage poured into the Mediterranean Sea daily. 1.1 million Gazans were living below the poverty line.

- Gaza’s fishing grounds extend 20 miles off shore, yet Israel enforces a three-mile limit, opening fire on Palestinian fishing vessels beyond three miles, severely damaging Palestinian fishermen’s livelihood and denying a viable food source to Gaza.

- On December 27, 2008, Israel launched *Operation Cast Lead*, a three-week military attack on Gaza, killing 1380 Palestinians and injuring 5380. During this attack Israel prevented Palestinian civilians from leaving Gaza, “subjecting the entire population to the extreme physical and psychological hazards of modern warfare.”

- Since *Operation Cast Lead*, Israel has continued the blockade, preventing Palestinians from rebuilding, thus deepening the humanitarian disaster in Gaza.

Selected Examples of the 2500 Military Orders Governing Palestinians

- Military Order #818--establishes how Palestinians can plant decorative flowers.
- Military Order #998--requires Palestinians to get Israeli military permission to make a withdrawal from their bank accounts.
- Military Order #93 and amendment--gives all Palestinian insurance business to the Israeli Insurance Syndicate.
- Military Order #96--forbids transport or purchase of goods on a donkey.
- Military Order #537--removes democratically elected Mayors of West Bank cities from their positions.
- Military Order #811 and #847--allows Jews to purchase land from unwilling Palestinian sellers by using a 'power of attorney.'
- Military Order #25--forbids public inspection of land transactions.
- Military Order #58--makes land transactions immune to review so long as the transaction was carried out by an Israeli 'acting in good faith.'
- Military Order #58, Article 5--says any land transaction will not be voided even if proven to be invalid.
- Military Order #101--forbids a gathering of more than 10 people unless the Israeli military receives advance notice with names of all participants.
- Military Order #107--bans publications of works on Arabic grammar, histories of the Crusades and works on Arab nationalism.
- Military Order #92 and #158--gives the Israeli military control of all the water resources in the West Bank and Gaza Strip.
- Military Order #128--gives the Israeli military the right to take over any Palestinian business which does not open during regular business hours.
- Military Order #1015--requires Palestinians to get Israeli military permission to plant and grow fruit trees. Permits expire in one year or each June 15th.
- Military Order #847--declares only Israeli notaries can authenticate signatures.
- Military Order #134--prohibits Palestinians from operating tractors or other farm machinery made in Israel or imported from any other country.

- Military Order #363--requires Palestinian mechanics to report to the Israeli military the particulars of any and all cars they repair.
- Military Order #1147 (amendment)--requires Palestinians to get permission from the Israeli military to grow onions.
- Military Order #1229--authorizes Israel to hold Palestinians in administrative detention for up to six months without charge or trial. Six-month detentions can be renewed indefinitely.

Conclusions

The conclusions of the study address Israel's practices in occupied East Jerusalem, the West Bank and the Gaza Strip. The study finds Israel's practices in these territories constitute both colonialism and apartheid.

The study contains much evidence of similar practices within the state of Israel itself, suggesting the need for additional studies in areas where Israel's laws dominate. That would include Israel's practices within the state of Israel proper, where 1.7 million Palestinian Israelis, nearly 24% of the population, are considered "citizen non-members of Israel and afforded a status inferior to that of Jewish citizens;" Israel's practices regarding Palestinian refugees where Israel's citizenship laws place inhumane limits on refugees' right to return to their homes and reclaim their property confiscated by Israel in 1948 and 1967; and Israel's practices in the occupied Golan Heights.

Under international law, practices of colonialism and apartheid are judged damaging to international legal order and seriously threaten world peace and security. Findings of colonialism and apartheid legally obligate third party nations to oppose the colonialism-apartheid system. Findings of apartheid, a crime against humanity, also give rise to individual criminal responsibility.

The State of Israel has the duty to:

- 1) Cease its unlawful activity
- 2) Dismantle the structures of colonialism and apartheid
- 3) Promote full rights and expression of the Palestinian people
- 4) Pay reparations and damages to the Palestinian people

Third party states are obligated to:

- 1) Not recognize the illegal situation as lawful
- 2) Not render aid or assistance in maintaining the situation
- 3) Cooperate to bring the illegal situation to an end
- 4) Not become complicit in the crimes by failing to fulfill the first three obligations

As a next step the study recommends that states take action to meet their legal obligations under international law and urgently request the International Court of Justice to render an advisory opinion on the question of Israel's practices in occupied Palestinian territory.

What Citizens Can Do

This legal study recognizes Israeli apartheid and colonization as a matter of global significance. The study has named and delineated this egregious policy. It warns that states providing aid to Israel can be found complicit in this international crime. It implies that individuals aiding Israel may bear criminal responsibility. The study further suggests that international methods that helped end apartheid in South Africa are applicable to ending Israeli apartheid.

Concerned citizens play a critical role in ending the practice of Israeli apartheid. We must make our governments aware of breaches of international law and of human rights violations carried out by the Israeli government. We must demand that our leaders take responsibility, end their complicity and press for change. Specifically, individuals can meet with their representatives; petition their legislators to request an advisory opinion from the International Court of Justice on Israel's practices in occupied Palestinian territory; hold non-violent protests; join international boycott, divestment and sanctions (BDS) efforts—all strategies similar to those used to end apartheid in South Africa.





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“I am not interested in picking up crumbs of compassion thrown from the table of someone who considers himself my master. I want the full menu of rights.”

Desmond Tutu



Palestinian women waiting in checkpoint near Bethlehem.

Source: OCHA Sababa/Maanimages