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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Joint written statement* submitted by Al-Haq, Law in the Service of Man, Al Mezan Centre for Human Rights, BADIL Resource Center for Palestinian Residency and Refugee Rights, Cairo Institute for Human Rights Studies, Defence for Children International, Habitat International Coalition, and Palestinian Centre for Human Rights, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[03 February 2020]

* Issued as received, in the language(s) of submission only.

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Israel Entrenches Crime of Apartheid over the Palestinian People

On 28 January 2020, the United States of America (US) revealed its so-called “Deal of the Century,”¹ which entrenches the crime of apartheid over the Palestinian people,² defined in Article 7(2)(h) of the Rome Statute of the International Criminal Court (ICC) as “inhumane acts... committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other... and committed with the intention of maintaining that regime.”³ In fact, the plan green lights further Israeli fragmentation of the Palestinian people, by denying Palestinian refugees their right of return, through the illegal annexation of large parts of the West Bank, including the annexation of Jerusalem, and the threatened forcible transfer of some 260,000 Palestinian citizens from the Triangle region as a form of demographic manipulation.⁴ The plan denies the Palestinian people their inalienable right to self-determination in their homeland and creates so-called “self-governing” Palestinian enclaves and bypass roads largely resembling the former apartheid system in South Africa. This submission examines Israel’s commission of the crime of apartheid, arguing that further fragmentation will only serve to entrench Israel’s racial domination and oppression over all Palestinians.

Fragmentation as a Main Tool of Apartheid

In November 2019, eight Palestinian, regional, and international civil society organisations submitted a joint parallel report to the United Nations (UN) Committee on the Elimination of Racial Discrimination (CERD), detailing Israel’s commission of the crime of apartheid over the Palestinian people as a whole.⁵ In doing so, the organisations endorsed the findings of the 2017 report of the UN Economic and Social Commission for Western Asia (ESCWA), which highlighted as the main tool of racial domination and oppression Israel’s strategic fragmentation of the Palestinian people into four legal, political, and geographic domains, comprising:

- Palestinian citizens of Israel, subject to Israeli civil law;
- Palestinians in Jerusalem, subject to Israeli permanent residency law;
- Palestinians, including Palestinians in refugee camps, subject to Israeli military law in the West Bank and Gaza; and
- Palestinian refugees and exiles abroad, whose right of return to their homes, lands, and property Israel continues to deny as a matter of State policy.⁶

As argued in the ESCWA report, “the apartheid regime of Israel operates by splintering the Palestinian people geographically and politically into different legal categories. The international community has unwittingly collaborated with this manoeuvre by drawing a strict distinction between Palestinian citizens of Israel and Palestinians in the occupied Palestinian territory [oPt], and treating Palestinians outside the country as “the refugee

¹ White House, “Peace to Prosperity,” announced on 28 January 2020: <https://www.whitehouse.gov/peacetoprospersity/>.

² CIHRS, “Palestine: United States Plan to Entrench Israel’s Apartheid Regime Must be Rejected,” 5 February 2020: <https://cihrs.org/palestine-united-states-plan-to-entrench-israels-apartheid-regime-must-be-rejected/?lang=en>.

³ *Rome Statute of the International Criminal Court* (‘Rome Statute’), Article 7(2)(h).

⁴ Adalah, “Trump plan normalizes Israel’s apartheid regime in West Bank, calls for forced transfer of 260,000 Palestinian citizens of Israel,” 30 January 2020: <https://www.adalah.org/en/content/view/9900>.

⁵ Al-Haq, “Palestinian, regional, and international groups submit report on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination,” 12 November 2019: <http://www.alhaq.org/advocacy/16183.html>.

⁶ E/ESCWA/ECRI/2017/1, p. 4.

problem”. The Israeli apartheid regime is built on this geographic fragmentation, which has come to be accepted as normative.”⁷

Israel’s Maintenance of Apartheid over Palestinians

In their engagement with CERD ahead of Israel’s review in December 2019, civil society organisations detailed Israel’s maintenance of the crime of apartheid over all Palestinians, on both sides of the Green Line and as refugees and exiles abroad. The organisations argued that Israel has committed the crime of apartheid by entrenching the fragmentation of the Palestinian people, through the persistent denial of Palestinian refugee return and the imposition of movement, residency, and access restrictions, in particular the closures of Jerusalem and Gaza, and the denial of family unification. Through these policies and practices, Israel has ensured that Palestinians from different areas are unable to meet, group, live together, share in the practice of their culture, and exercise any collective rights, in particular their right to self-determination.⁸

Accordingly, the organisations argued that Israel has established an apartheid system over the Palestinian people as a whole, in violation of Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which provides: “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.” The organisations further showed that, embedded in a system of impunity, Israel has created a coercive environment designed to drive Palestinian transfer and weaken the ability of Palestinians to effectively challenge Israel’s apartheid system, including through mass arbitrary detention, torture and ill-treatment sanctioned by Israeli courts, widespread collective punishment, denial of access to healthcare as a method of subjugation, and a Government-led effort to silence opposition.⁹

Adopting its concluding observations on Israel on 12 December 2019,¹⁰ CERD recognised the continuity of Israeli policies and practices of racial segregation and apartheid on both sides of the Green Line.¹¹ The Committee was concerned that “Israeli society continues to be segregated as it maintains Jewish and non-Jewish sectors, including two systems of education with unequal conditions, as well as separate municipalities...”.¹² The Committee was also appalled at the segregation between Palestinians and settlers residing in illegal settlements in the oPt, highlighting “the hermetic character of the separation of the two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services, lands and water resources.”¹³ Accordingly, the Committee urged Israel “to give full effect to article 3 of the Convention to eradicate all forms of segregation” disproportionately affecting Palestinians.¹⁴

Conclusion and Recommendations

The UN Special Rapporteur on the human rights situation in the oPt, Michael Lynk, has warned that the recently-announced US plan “endorses the creation of a 21st century Bantustan in the Middle East” consisting of “scattered archipelagos of non-contiguous

⁷ E/ESCWA/ECRI/2017/1, p. 37.

⁸ Al-Haq, “Joint Oral Intervention to the 100th Session of CERD for the Review of Israel,” 2 December 2019: <http://www.alhaq.org/advocacy/16266.html>.

⁹ Ibid.

¹⁰ CERD/C/ISR/CO/17-19.

¹¹ Al-Haq, “Human rights organisations welcome Concluding Observations of the UN Committee on the Elimination of Racial Discrimination on racial segregation and apartheid on both sides of the Green Line,” 21 December 2019: <http://www.alhaq.org/advocacy/16324.html>.

¹² CERD/C/ISR/CO/17-19, para. 21.

¹³ Ibid., para. 22.

¹⁴ Ibid., para. 23.

territory completely surrounded by Israel.”¹⁵ Yet, a number of third States have welcomed the plan, gravely defying the rules-based international order and their own obligations not to recognise situations resulting from breaches of peremptory norms. Today, apartheid is recognised as a crime against humanity in the Rome Statute¹⁶ and in the Apartheid Convention,¹⁷ giving rise to State responsibility and individual criminal responsibility. Accordingly, third States must prevent the crime of apartheid, punish its perpetrators, and adopt effective collective measures to bring the illegal situation to an end. We therefore call on the Human Rights Council and all UN Member States to:

- Recognise Israeli laws, policies, and practices as enshrining an institutionalised regime of systematic racial domination and oppression over the Palestinian people as a whole, which amounts to the crime of apartheid;
- Undo Israel’s strategic fragmentation of the Palestinian people by reiterating and welcoming the CERD concluding observations on Israel, which highlighted Israel’s violation of Article 3 of ICERD, and recognise Israel’s maintenance of a legal regime over the Palestinian people as a whole, as amounting to the crime of apartheid;
- Refrain in their international relations from rendering aid or assistance in the maintenance of the illegal situation, including by opposing the US plan to further entrench the fragmentation of the Palestinian people;
- Call for the reconstitution of the UN Centre against Apartheid to monitor the implementation of the Apartheid Convention with the aim of bringing the illegal situation to an end;
- Expand the mandate of the UN Special Rapporteur on the human rights situation in the oPt to cover the Palestinian people as a whole, on both sides of the Green Line and as refugees and exiles abroad, and call on the Special Rapporteur to report annually to the Human Rights Council and the Third Committee of the General Assembly on steps taken to comply with the terms of the Apartheid Convention, as recommended by the ESCWA report;¹⁸ and,
- Pursue international justice and accountability for widespread and systematic human rights violations committed against Palestinians, including the crime of apartheid, by activating universal jurisdiction mechanisms and supporting the opening of an ICC investigation into the Situation in Palestine.

ADDAMEER Prisoner Support and Human Rights Association, Al Dameer Association for Human Rights, Civic Coalition for Palestinian Rights in Jerusalem, Community Action Center (Al-Quds University), Jerusalem Legal Aid and Human Rights Center, and Ramallah Center for Human Rights Studies, NGO(s) without consultative status, also share the views expressed in this statement.

¹⁵ OHCHR, “Israel/OPT: UN expert alarmed by ‘lopsided’ Trump plan, says will entrench occupation,” 31 January 2020: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25513&LangID=E>.

¹⁶ Rome Statute, Article 7(1)(j).

¹⁷ International Convention on the Suppression and Punishment of the Crime of Apartheid, Article I.

¹⁸ E/ESCWA/ECRI/2017/1, pp. 52-55.