

PART 1

APARTHEID: Defined

Three important documents define the crime of apartheid and describe its features: The Geneva Conventions; The International Convention on the Suppression and Punishment of the Crime of Apartheid; and the Rome Statute of the International Criminal Court.

Article 85, 4c of *The Geneva Convention* considers the practice of apartheid a war crime and a crime against humanity. It specifically cites that “the implementation of the system of Apartheid is a grave breach of International Law.” *The International Convention on the Suppression and Punishment of the Crime of Apartheid* defines apartheid 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.” *The Rome Statute of the International Criminal Court (ICC)*, Article 7, 1, describes apartheid as “the inhumane acts of a character...committed in the context of an institutionalized 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.” The ICC’s mandate lists apartheid as within its criminal jurisdiction.

Three conditions necessary to establish the crime of apartheid

A careful analysis of the documents reveals three decisive elements necessary to define the crime of apartheid and its paradigms: 1) the implementation of a system of separation or segregation based on race, creed, or ethnicity designed with the intent to maintain domination by one racial group over another is the first element that makes up the crime of apartheid; 2) the use of legislative measures to enforce separation and segregation, essentially legalizing separation from within its own legal system; 3) the commission of inhumane acts, human rights violations, denial of freedoms, and forced ghettoization, i.e., the practices used to impose and enforce separation within its regime.

Identifying these three elements in Israeli apartheid used to be as simple as highlighting how two populations residing in the same territory and sharing the same sovereign power live in vastly different conditions. Jewish settlers who reside in West Bank settlements live under an entirely separate legal, administrative and economic regime from that of West Bank Palestinians. But

today's situation is much more complicated. The regime of apartheid has evolved into something far more disturbing. The designation of apartheid no longer applies only to the occupied territories annexed in 1967, but to the whole area encompassing the Jordan River to the Mediterranean Sea.

Between the river and the sea, it is abundantly clear that Israel meets the definition of the crime of apartheid under international law. Both through the laws the state has adopted and its inhumane practices, Israel actively works to promote separation and segregation through a biased legal regime that offers specific rights and privileges to one group at the expense of the other to maintain its domination. For an Israeli Jew, there are no restrictions to movement or limitations to deciding where to live throughout Israel and the West Bank, while Israel limits the choices for Palestinians. Israeli Jews enjoy certain laws, administrative structures and privileges—such as education, social and health benefits. These are not afforded to Palestinians.

Four further features of Israeli apartheid

Four more features characterizing Israeli-practiced apartheid apply only to the Palestinian population. Jews are exempted based on their Jewish identity. All four features are enacted into laws and military orders in an elaborate system adopted by Israeli authorities through practices and legislative schemes, resulting in the oppressive and discriminatory treatment of the Palestinian population.

Fragmentation

Israel has not only created a system of separation between Jewish and Palestinian populations. It has also managed to fragment the Palestinian community by creating separate identities. Based on where each lives, these geographical “groups” are issued different-colored identity cards and afforded different privileges, in Israeli efforts to manage the Palestinian population and to create division and animosity between Palestinians. These privileges, unlike rights, can easily be stripped away.

Palestinian Arabs living in Israel

The first category of fragmentation, those at the “top of the heap,” are Palestinians living in Israel. Despite holding Israeli citizenship and occasionally serving in the army, they do not enjoy full equality in Israel. While these Palestinians are afforded the most privileges compared with those living in other areas—the right to vote in parliamentary elections, for example—they hold little to no political power. With Israel's 2018 passage of its Nation State Basic Law,

Israel defined itself solely as the state of the Jews, not the state of all its citizens. What Palestinians living in Israel experienced as *de facto* discrimination became discrimination *de jure*. Moreover, there are approximately 63 laws granting privileges to Jews and that are not granted to Palestinian Arab citizens of the state.

Palestinians living in East Jerusalem

Three-hundred-thousand Palestinian residents of East Jerusalem comprise the second category of fragmentation. These Palestinians were given the status of “residents” after the illegal annexation of Jerusalem in 1967. Unlike the Palestinians of ’48 living in the state of Israel, Palestinian Jerusalemites are “residents but not citizens” of Israel. While Israeli law and administration apply to them, they cannot participate in Israeli Elections. One of the greatest threats these Palestinians face is the loss of their right to remain in East Jerusalem. Should they dare to live in Bethlehem or Ramallah or on the outskirts of Jerusalem, they run the risk of losing their residency status—considered by Israel to be a privilege not a right. While East Jerusalemites have fewer privileges than the Palestinian citizens of Israel, they hold more privileges than Palestinians living in the West Bank. One of these privileges is access to the health care system.

Palestinian living in the West Bank

Approximately three million Palestinian residents live in the West Bank. While some administrative power has been given to the Palestinian Authority (PA) within the densely populated cities, the entire West Bank falls under the command, permit system and courts of Israeli military rule. While the PA bravely claims to be a “state in the making”—working to obtain and maintain symbols and appearances of statehood and sovereignty—Israel continues to treat the PA as a subcontractor, assigning it the responsibility of controlling the West Bank Arab population and relieving Israel of its responsibility under international law to provide services.

Palestinians living in Gaza

The two million Palestinians living in the Gaza Strip comprise the fourth category of fragmentation. The most disadvantaged of Palestinians, they live in the most crowded place on earth, suffering from a lack of clean water, consistent electric power and other services. Since 2005, Israel has established a military and economic embargo of Gaza in which no person or product can enter or exit without Israel’s approval. In addition, Israel maintains military control over Gaza’s air space and coastline, creating what many have labeled an open-air prison.

Still another category of fragmentation can be added: Palestinian refugees who reside outside Israel and the occupied territory. These refugees and their descendants are still waiting for their right to return to their ancestral homeland. They have zero rights in Palestine. Even the privilege of visiting is many times denied. In contrast, any person on the face of the earth who affiliates with the Jewish religion can enjoy the freedom to immigrate and live in Israel, while receiving financial and economic incentives.

Pervasive permit system

In addition to Israel's systematic fragmentation of the Palestinian people, a second distinctive feature of its apartheid is the pervasive system of permits Israel has instituted to manage nearly every aspect of private and public life. Controlling where one may attend university, access medical care and shop, and establishing and running a business: this biased system limits personal freedom, economic development and the natural growth of Palestinian villages and cities. The arbitrary system of permits and licenses is adjudicated through Israel's military authority in the West Bank. Palestinian Israelis and Arab communities in Israel face some of these same restrictions.

Limit to housing and development

A third feature of Israeli apartheid is the act of limiting where one chooses to live. It is not enough for Israel to separate and favor the Jewish Israeli citizen. Israel controls zoning schemes and ultimately determines and limits how and where Palestinians may live. The limitation of housing and economic development is explicitly seen throughout the Arab areas of Israel and in East Jerusalem. This restrictive zoning scheme is also at work in many parts of the West Bank, most notably area C, comprising 62% of the West Bank where Jewish settlement construction continues to expand at the expense of Palestinian growth, and where virtually no building permits are granted to Palestinians.

Collective punishment

A fourth feature of Israeli apartheid is the persistent use of collective punishment. A violation of international law, collective punishment is the imposition of sanctions, restrictions and/or physical punishment on a group of people in response to the actions of a single person. Israel routinely punishes Palestinian cities, neighborhoods, and families as a means of collective punishment. Gaza is the most prominent example, where its two million inhabitants are repeatedly punished by military force for the acts of a few. Other examples include demolishing an alleged perpetrator's family home and immediately revoking the permits and privileges of a group of people.

Conclusion

A thorough examination of the actual facts on the ground clearly establishes the basis for the charge of the crime of apartheid. Some will charge that labeling Israel an apartheid regime is an expression of antisemitism or an attempt to delegitimize the state of Israel. But to date, those who would distract the world's attention by making such charges have yet to publish a reasoned argument refuting these facts.

To call Israel an apartheid regime, is not a political epithet, nor does it require comparisons with South Africa, but an examination of the actual facts on the ground, which fulfills the legal elements established for the crime of Apartheid. These elements are so clearly there, that it is no surprise that Israel is worried about the International Criminal Court, or that it seeks to label as "terrorist organizations" those organizations that are carefully documenting its behavior on the ground, in preparation for the day when the ICC will hear this case.