ISSN 2349-7831

International Journal of Recent Research in Social Sciences and Humanities (IJRRSSH)
Vol. 13, Issue 4, pp: (1-8), Month: October - December 2026, Available at: www.paperpublications.org

Historical Apartheid in South Africa comparing to today's apartheid in Palestine

Christina Cushen

DOI: https://doi.org/10.5281/zenodo.23917133

Published Date: 03-November-2026

1. INTRODUCTION

Apartheid is a serious crime which does not just affect the citizens of a particular state but the entire wider international community. The dominate historical and present examples of apartheid policies are South Africa and Palestine. This paper will examine the history of apartheid through the lens of South Africa and Palestine.

This paper highlights the difficulties that international law has in enforcing the crime of Apartheid. International law is created by state consent and states are only bound by these laws if they have accepted the treaty or law which is therefore known as Customary International Law. At the time of the creation of the United Nations Charter, South Africa refused to accept its obligations under the charter. It soon became clear that South Africa also refused to acknowledge other fundamental treaties. In contrast, Israel has accepted the United Nations Charter and has ratified various other fundamental treaties. (Dugard, 2018)

History has shown that the crime of apartheid is a crime that has been forgotten and overlooked while elements of colonial occupation were being used by states over other states. Apartheid is a policy that is used to deprive a racial group of there fundamental human rights with the intention of hindering there purpose of existence. The United Nations and International law exists to ensure all human beings have a purpose for their existence and to ensure free and equal rights. This is what the crime of apartheid aims to oppress.

This paper examines the challenges that the International community faced in fighting the crime of Apartheid in South Africa compared to the challenges that are being currently face in frighting the crime of apartheid in Palestine. It will also dive deeper to examine how international law has developed over the years while also investigating how the crime of apartheid has changed.

South Africa Apartheid

The South African apartheid policy came about from the alienation policy which under International law is states are permitted to deport and to monitor 'aliens' within a state's domestic territory. South Africa had continued to argue that due to the ability of states to monitor 'aliens' within its territory under international law it has the ability to discriminate against the Black indigenous population. The South African government argued that the United Nations Charter permitted this under article 2 (7) where it stated that the United Nations cannot intervene into domestic matters that fall into the domestic jurisdiction of a state. (Dugard, 1984)

This is where the friction between South Africa and international community came about as many argued that this provision of the United Nations charter did not permit states to violate fundamental human rights of their citizens under the United Nations Charter. This meant instead of South Africa refusing to integrate the black indigenous population into its society it has continued with its position under article 2(7) to ensure that no Black South African is a citizen of South Africa with the view of invoking "statehood and nationality to further this goal." (Dugard 1984)

In South Africa, the racial division occurred by dividing "its citizens into two categories-the whites and the blacks….the second category was deprived of all rights so that the first category could survive and dominate!" (Gupta, 1982) Therefore, the majority of the South African population were not seen as South Africans but 'aliens'. This is very similar to what

occurred to the jewish population in World War 2 where they were divided from the rest of the population and power being used within it policy which would result in "law and form rid" (Dugard, 1984) of all black South Africans. This means that by the unwillingness to share there power with the black population, the black South Africans had lost control over their lives which have resulted them in living in dire and harsh conditions. (Dugard, 1984)

By the domination of the white population it took over the indigenous population domination which reflected thee centuries of European colonialism where segregation in the 1940's and onwards resembled the colonial white domination to permit the self-determination of the colonial population. (Dugard, 2013) The South African apartheid policy was about separating the white, blacks and asian on the basis which would mean that different races would be treated differently with the white race being the most privileged. The South African apartheid challenged international law as originally it was a policy for state domination based on race however over time international states pushed it further to the prohibition of self-determination and declaring it a serious breach of the fundamental human rights.

The events in South Africa caused the international serious concerns following the events of the jewish population in World War 2, which resulted in domination of race through through a "white monopoly of economic, political and social power". (Gupta, 1982) This continued development of the apartheid policy, this brought increased concerns in the International community as many states started to contend that "denationalisation measures based on race, ethnic, religious or other related grounds are impermissible under contemporary international law" (Dugard, 1984) which resulted in the United Nations developing the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and creation of the Universal Declaration for Human Rights.

Originally, the apartheid policy was solely based on racial discrimination however the policy developed more sophisticatedly which hindered self determination and the basic human rights. As Albie Sachs states "[b]y their own theory and law, rulers of South Africa treat the majority of the population as a seperate and alien people." (Gupta, 1982) This sophistication resulted in the creation of independent homeland '*Banustans'* forcing blacks to obtain citizenship in a new independent homeland. This resulted in the Black South African population living in a dire seized were there struggle for liberation of movement was suppressed by the "classic imperialist-colonialist situation in which the ruling class domination". (Gupta, 1982)

By the creation of independent homelands, the United Nations had the challenge of establishing the link between racial equality and self - determination. This link was crucial as it enabled the United Nations to take action against decolonisation and self -determination of civilians of colonial states. This linkage was reiterated by the International Court of Justice stated in the advisory opinion in relation to Nambia that "the machinery of coercion and repression operates in relation to the black population as a colonial army of occupation does". (Gupta, 1982)

While international law does not prohibit a state from denationalising aliens from their territory however this interpretation of the law contradicts the fundamental principle that states have an obligation to protect aliens as states have "a duty not to discriminate against their nationals on grounds of race". (Dugard, 1984) This means that South Africa was arguing because the population are 'aliens' they are deemed not citizens of South Africa. Further, South African contention was based on the United Nations Charter, Article 2 stated that "[n]othing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within domestic jurisdiction of any state".(Jaichand, 1989)

This is not the case as international law is there to protect individuals when domestic law violates the fundamental rights of individuals. States cannot use there domestic legislation to shield there international obligations as state consent is not required to recognise the principles of international law. This was reiterated in by the International Court of Justice in there advisory opinion in regards to Namibia where the court stated that the United Nations charter is binding on South Africa as "they have acquired the force of custom through general practice accepted by law" as the United Nations Charter was adopted unanimously with South Africa being one of the abstainers. (Jaichand, 1989)

However, state sovereignty is a matter that is seen as a barrier under international law as minor international human rights breaches are seen as domestic matters unless the international law and community deems it as a gross human rights violation. This is important as once the violation is deemed a gross violation then "it become matters of international concern and no state can hide behind the principle of state sovereignty." (Jaichand, 1989) However to this day this is debatable as some argue that international law is only binding on states if the human rights violation of one state affects another state otherwise state sovereignty prevails.

The legal basis for the development the CERD came from the United Charter (UN) in article 1 where it states that the UN charter obliges states to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". CERD defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin" that restricts or impairs a person or a racial group from exercising or enjoying their human rights and their "fundamental freedoms in the political, economic, social, cultural or any other field of public life."

The issue with the above treaty is that South Africa had not ratified the treaty except for the United Nations Charter which it absented. This meant that unless if this treaty was deemed as international customary law, South Africa would be exempt from its obligations of this treaty. However over the years this became a challenge for South Africa as in the advisory opinion of Legal Consequences for States of the Continued Presence of South Africa in Namibia the court disagreed with that position by saying that "the basic principles of the convention lay down the law which binds also states which are not parties to the convention, but as Members of the United Nation, are parties to the Charter". At the time of this ruling South Africa was part of the United Nations before it became suspended from the General Assembly and the Security Council. (Jaichand, 1989) This reinforced the views of the international community that just because South Africa is not apart to a treaty does not mean they have the right to violate international law.

This argument became difficult for South Africa as South Africa ratified a multilateral convention, the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) which forbids racial discrimination in occupied territories during time of war. By South Africa ratifying this treaty many started to ask if it is will to protect the fundamental human rights during time of war then why won't it do the same during time of peace? (Jaichand, 1989) This question was dealt with in International Court of Justice: South West Africa cases where the court stated that "[t]he existence of human rights does not depend on the will of a state; neither internally on its on law or any other legislative measure, nor internationally on treaty or custom….A state or states are not capable of creating human rights by law or by convention; they can only confirm their existence and give them protection. The role of the state is no more than declaratory" (Jaichand, 1989) Therefore, by the acceptance of the United Nations Charter by abstaining and the ratification of Fourth Geneva Convention, South Africa acknowledged their obligations in relation to racial discrimination.

The events in South Africa, brought the issue of racial segregation and denationalisation based on race to the General Assembly to question whether this constitutes an international Crime. The Convention on the Suppression and Punishment of the Crime of Apartheid declared that the crime of apartheid has elements of genocide due to"individual criminal responsibility…..irrespective of the motive involved, to individuals, members of organisations and institutions and representatives of the state…such responsibility is incurred for the commission's, participation, conspiring or incitement of the acts or aiding, abetting encouragement or co-operation in the crime of apartheid." By the acts of the South African government committing crimes of apartheid, many stated that this was not just the suppression of self-determination and the right of free movement but the elements of genocide existed due to the racist alien domination as the apartheid convention reflects similar language as to the Genocide Convention. (Dugard & Reynolds, 2013)

The racial discrimination in South Africa brought vivid memories of what occurred to the Jewish population in particular to the crimes that were prosecuted during the Nuremberg Trial. While the crimes that were prosecuted were Genocide which is a Crimes against Humanity, the fact that racial discrimination and segregation during the Nuremberg Trial was the priority for the international community, the international community was keen not to allow the apartheid policy in South Africa to repeat history.

It is important to remember that racial discrimination is not just a policy that is for oppression and empowering the self-determination of another race. A state that systematically, repeatedly violates international law and *jus cogens* involving racial discrimination and infringement of self-determination does not just isolate their state from the rest of the world but alienates their population from the right to self-determination. (Gupta, 1982)

Palestine Apartheid

Israel has been criticised for it's policies since the middle of the 20th century however in recent times, following the South African apartheid, Israeli polices have brought the world's attention. While Israel's apartheid policies have existed for decades, it was isolated issue until 2000 when the second wave of Palestinian uprising occurred. In 2008 the then president of the General Amiably Miguel d'Escoto Brockmann stated "We must not be afraid to call something what it is. It is the

United Nations, after all, that passed the International Convention against the Crime of Apartheid, making it clear to all the world that such practices of offical discrimination must be outlawed". (Dugard & Reynolds, 2013)

In 2012, CERD committee raised serious concerns in relation to the situation in the West Bank and the committee made the following observations, "[t]he Committee is particularly appalled at the hermetic character of the separation of 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 and water resources"(Keane, 2022). At that time, the international community continued to fall short of declaring that Israel is committing the crime of apartheid.

Israeli policies has brought debate as to what constitutes an apartheid compared to racial segregation. One academic described that racial segregation is discrimination through exclusion where as apartheid is not just discrimination through exclusion but domination over a particular race that is integrated into state policies. (Keane, 2022) In 2021, the former Secretary-General Ban Ki-moon stated that Israel's "structural domination and oppression of the Palestinian people through indefinite occupation….arguably constitutes apartheid." (Lynk, 2022)

In 2004 the International Court of Justice provided an advisory opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory and observed that the territories around the wall have been occupied by Israel since 1967 following Israel's annexation of the territory around the green line dividing the Arab Forces and Israeli forces. Under Customary International Law, in Article 42 of the Regulations Respecting the Laws and Customs of War on Lands (also known as The Hague Regulations of 1907) it defines occupied territory when the territory is "placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised". (International Court of Justice, 2004)

In 2024 the International Court of Justice provided an advisory opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem made the determination that the Israeli occupation has resulted in the systematic discrimination of Palestinians. By this determination, the court took a broader view by realising that the restrictions imposed on Palestinians is exacerbated by the Israeli occupation which has resulted in ongoing deprivation of self-determination of the Palestinian people. The International Court of Justice stated that "the establishment of a closed area between the Green Line and the wall itself and the creation of enclaves have moreover imposed substantial restriction on the freedom of movement". (International Court of Justice, 2004) The Palestinian population in that occupied territory have been cut off from their land, schools, religion, culture and workplaces by the construction of the wall. (International Court of Justice, 2004) This is a crucial element as Fourth Geneva Convention provides protection to all civilians in an occupied territory by ensuring that their fundamental freedoms are protected which "shall not be deprived…by any agreement concluded between the authorities of the occupied territories and the Occupying Power". (International Court of Justice, 2024)

Israel has indicated that generally it has been complying with the Fourth Geneva Convention in good faith by applying the humanitarian provisions to protect civilians in the occupied territories. However, Israel has disputed the application of the Fourth Geneva Convention as Israel argued that if the Fourth Geneva Convention applies due to article 2 as the occupied Palestinian Territory as the lack of sovereign recognition of the territory prior to the territory's annexation by Jordan and Egypt therefore means it is not a territory which falls under sovereignty of High Contracting Parties as the conflict broke out between Jordan and Israel. This contention was raised following the issue of order No.3 by the Israeli forces in 1967 following the annexation of the West Bank were it states that "the Military Court…must apply the provisions of the Fourth Geneva Convention dated 12 August 1949…with respect to judicial procedures". (International Court of Justice, 2004)

However the court disputed this as the application of the Fourth Geneva Convention is dictated by article 2. The court acknowledges that article 2, has two elements which must be satisfied. Firstly, that there is a an armed conflict with or without a declaration of war and secondly, that the conflict has occurred between two parties. If these two elements are satisfied then Israel cannot dispute the application of the Fourth Geneva Convention. The purpose of these elements is to clarify to states that even if occupation during conflict with no military use, the Fourth Geneva Convention is still applicable. (International Court of Justice, 2004)

In 2024 the court stated that occupation of a territory is a temporary response and occupation does not give authority for transfer of sovereignty. Even though the Fourth Geneva Convention does provide a temporal limitation period for annexation, this does not provide an avenue for the use of force or the right to self-determination to be withheld.

(International Court of Justice, 2024) In contrast, Israel by the use of domestic law is treating East Jerusalem as their own territory and has implemented full force of Israeli law. The Oslo II Accord allows Israel to carry responsibilities of external security such as the threat of terrorism, for the purpose of internal security, however this is limited to areas that are not the territory of Palestine as Article XVII states that "the Israeli Military government shall retain the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law"(International Court of Justice, 2024). This provision does not give additional powers to Israel while occupying the territory and these provisions reinforce the obligation of preserving the limited powers that Israel has during occupation. (International Court of Justice, 2024)

Israel has always maintained its position of controlling Jerusalem and the West Bank even if it means to continual violation of international law. In 2019, the then Former Prime Minister Benjamin Netanyahu stated that "[a] Palestinian state will endanger our existence … I will not divide Jerusalem, I will not evacuate any community [settlement] and I will make sure we control the territory west of Jordan". (Lynk, 2022) The Palestinian people have been living in prison style conditions where there lives have been controlled as Israel has instead insisted that "laws of occupation and human rights do not apply to its regime" as it attempts to extinguish the existence of a Palestinian state. (Lynk, 2022)

Israel's territorial occupation has meant that millions of Palestinians are barracked in Gaza while concurrently the territory of the West Bank shows that Israel does not have the intention of surrendering its occupation. After more than 55 years of occupation it has become clear that the Israeli intention of occupation was permanent. This has meant that the occupation of the occupied Palestinian Territory has been broadened to crime of Apartheid. As the former United Nations Secretary-General Bank Ki-Moon stated that the "structural domination and oppression of the Palestinian people through indefinite occupation….arguably constitutes apartheid". (Lynk, 2022)

The Israeli occupation involves the subdivision of two racial groups, one which group that has full civil rights and the other is deprived of their rights. The Israeli population are superior due to being the jewish settlement group. The aim of the occupation is to "encourage jews to settle through the West Bank, from the green line to the Jordan Valley. It aims to fragment the Palestinian territory into a cluster of Palestinian enclaves like Bantustan". (Dugard, 2018) While occupation is not normally classified as a form of apartheid however the occupation conducted by the Israeli forces has resulted in the crime of apartheid by the use of occupation as a weapon to oppress, segregate and dominate over the Palestinian population. Israel's transfer of thousands jewish settlers into the West Bank and Jerusalem by the use of force through the "discrimination, repression, and territorial fragmentation" against the Palestinian population is the key to the element of the commissioning of the crime of apartheid. (Dugard, 2018)

Today there are two different treaties that define the Crime of Apartheid. The Rome Statue defines the crime of apartheid as inhumane acts of a character similar to those referred to in paragraph 1, that are committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over another racial group or groups and committed with the intention of maintaining that regime. The Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention) define 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". (United Nations, 1973) The main differences between the two treaties is that the Rome Statue requires the element of an 'institutionalised regime' with the intention of a particular race dominating over another racial group to maintain that racial regime. In comparison, the Apartheid Convention has a broader approach as it does not focus on an 'instutionalized regime'. (Lynk, 2022)

However, the adoption of the convention has not come with criticism as many states found that the Apartheid Convention was seeking to broaden the scope of the international criminal jurisdiction. This does not mean that states like Israel are not bound by international law as Israel has ratified CERD, International Covenant on Civil and Political Rights (ICCPR), United Nations Charter and the Universal Declaration on Human Rights. These treaties reflect the principle that racial discrimination is prohibited under international law. This is important as even though Israel does not accept the prohibition of the crime of apartheid under CERD, these treaties and declarations have formed part of the fundamental principle of *jus cogens* which racial discrimination is an established *jus cogens* which has been emphasised by Barcelona Traction Case before the International Court of Justice. (Dugard & Reynolds, 2013)

Article 2 of ICCPR mandates that all individuals under a state's territory must have their rights protected "without distinction of any kind of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The Fourth Geneva Convention also has a similar proven under article 27 where it states that

"[w]ithout prejudice …all protected persons shall be treated with the same consideration by the state party to the conflict on whose power they are without adverse distinction based, in particular, on race, religion or political opinion." Further Article 1 of CERD defines racial discrimination as "any diasctintion, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise…of human rights and fundamental freedoms in the political, economic, social, cultural or any field of public life."

A number of states submitted in there submissions to the International Court of Justice in 2024 that Israel's policies in Palestine breaches article 3 of CERD as it amounts to segregation or apartheid. Article 3 of CERD states that "[s]tates 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 International Court of Justice agreed with these submissions as the segregation is physical by the implementation of a residential permit system, use of distinct road networks and separation from their own communities due to Israeli settlement. The separation is also a judicial as the use of Israeli law in the occupied territory treats Israeli settlers and Palestinians differently. (International Court of Justice, 2024) This is significant as under the Fourth Geneva Convention an occupying power cannot deport or transfer its own population into the occupied territory in other words transfer or forced transfer that occurred during World War 2 or the transfer of protected persons in prohibited. (International Court of Justice, 2024 and 2004)

Israel has further contended that the human rights conventions has no applicability due to occupation and only humanitarian law has applicability. However just because a territory is in conflict does not mean states have the right to violate human rights conventions. In 1998 Israel stated to the committee of the ICCPR that "whether individuals resident in the occupied territories were indeed subject to Israel's jurisdiction…….the covenant and similar instruments did not apply directly to the current situation in the occupied territories". (International Court of Justice, 2004) The court disagreed with this as ICCPR is not just applicable to state jurisdictional sovereignty but to state territorial jurisdiction outside of its own territory.

Israel is not just attempting to expand its territory but it is attempting reinstate colonialism in twenty first century. In 2016, an Israeli politician, Yair Lapid stated that "[m]y principle says maximum jews on maximum land with maximum security and with minimum Palestinians." The Israeli Nation State Law supports this through Article 7 where it states that "the state views the development of Jewish settlement as national value and shall act to encourage and promote its establishment and consolidation." (Lynk, 2022) The Nation State reinforces Israel's policy that ethnic identity defeats human rights as the law permits racial discrimination between Israelis and Palestinians by distinguishing the legal rights between Israeli and the Palestinian people.

Comparison of South Africa and Palestine

The definition of race and racial groups have developed over the decades. Originally, during the South African apartheid, the definition of race and racial groups focused on racial categories which focused on skin colour (black, white or coloured). Recently the definition of race and racial groups has expanded to social constructions rather than solely on the biological construction. (Lynk, 2022) The traditional view is that Jews and Palestinians are not a race which therefore meant that it does not meet the elements of an apartheid however it is now accepted in international law that the crime of apartheid is a form of racial discrimination. Therefore, it can be argued that jews and Palestinians are a form of racial group. (Tilley, 2012)

In South Africa, race was determined between Europeans and non - europeans, this was implemented through a racial register. The racial register classified people as a white person, coloured or Black. The racial classification was determined through a person's physical appearance, descent or social classification. (Dugard, 2018) In Contrast, the Palestinian race is more complex as there religion has a mixed composition however it still can be defined as a racial group through national and family origin as well a strong historical connection to the homeland and to local customs. The division of race in Palestine is not based on colour but on religion. The two categories are Arabs, Jews and non jew being Muslims, Druzes, Arab Christians, Bedouins and Circassains. In the case of *Akayesu* before the Rwanda Tribunal, the tribunal stated that a racial group is based on "hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors" while a religious group is "one whose members share the same religious, denomination or mode of worship". (Dugard & Reynolds, 2013) This is important as CERD provides for a broader construction of the meaning of racial and racial discrimination.

The Apartheid Convention and the Rome Statute do not define racial discrimination, CERD defines Racial Discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin" that

restricts or impairs a person or a racial group from exercising or enjoying their human rights and their "fundamental freedoms in the political, economic, social, cultural or any other field of public life." This means that the Apartheid Convention invokes CERD and therefore the CERD and the Apartheid Convention go beyond just the issue of race but includes racial groups, ethnic origin, nationality and colour where there is domination and oppression between groups.(Tilley, 2012)

Under Israeli law and the World Zionist Organisation - Jewish Agency, Israel can only have one religion being the Jewish population and only one nationality has standing. Under the Israeli Basic Law, it describes that "the values of the State of Israel as a Jewish and democratic state". Further, the jewish national identity is based on descent and national origin and therefore the jewish population have the right to self-determination and sovereignty over the historic Palestine. This is based on ancestry traces that mean that Arab Palestinians lack their national identity in Palestine. (Tilley, 2012)

Palestinian nationality is more than national citizenship however it is a national origin that is inter-generational. The Charter of the Palestinian Liberation Organisation (PLO) 1968, emphasis the importance of Arab Palestinian identity as "Palestine is the homeland of the Arab Palestinian people; it is an indivisible part of the Arab homeland, and the Palestinian people are an integral part of the Arab nation" (Tilley, 2012) While the Palestinian identity defers from the Arab language and customs they are still part of the larger pan-Arab nation, this is reiterated in Charter of the Palestinian Liberation Organisation (PLO) 1988, where it states that "[t]he State of Palestine affirms its obligations to abide by the Charter of the League of Arab States, whereby the coordination of the Arab states with each other shall be strengthened." (Tilley, 2012)

At the time of the apartheid regime in South Africa, South Africa was not a party to the Universal Declaration of Human Rights nor was it a party to the Convention Against Torture, CERD and ICCPR. This meant that the outrage by the international community was a moral outrage not a legal outrage. In comparison, Israel is a party to many of these treaties and through development of international law, the international community outrage is more a legal outrage than a moral outrage. This legal outrage against the Israeli apartheid regime is exacerbated through various decisions by the International Court of Justice. This means that violations by Israel are clearer than in South Africa as Israel is a party to various treaties compared to South Africa during the apartheid regime. (Dugard, 2018)

South Africa and Palestine have significant similarities through there discrimination and territorial division. In South Africa, the the territory was divided into to main categories being the white population and the black population. Similarly Palestine has its territory divided into two categories being the Israeli jewish and Palestinian population. (Dugard, 2018) In South Africa the white population controlled ownership of land, freedom of movement, had access to developed education system and healthcare, similarly in Palestine the Jewish population live in superior conditions where they have access to advanced settlers schools, hospitals, and have access to more developed infrastructure. (Dugard, 2018)

In South Africa, the Apartheid system was enforced by the Pass System which required all people to carry an identity document which identified their origin, employment records, details of their police encounters and a photo of themselves. The pass system became legislation for the purpose of categorising people into specific groups based on their colour however this system was a very powerful system as it controlled where people lived and worked as well as restricted their freedom of movement. (Regan, 2008) Equally, the road segregation in Palestine has benefited the Israeli settlers as it has resulted in the Palestine population being barred from using certain roads due to the road system. Similar to the Pass System in South Africa, Palestinian population also have an identification card which provides them with a designated residency neighbourhood. (Regan, 2008)

The Palestinian apartheid is the question of occupation of territory. While the South African sovereign territory was never in dispute however the territory which the black South African population were able to occupy was disputed. (Regan, 2008) In contrast, the Palestinian people have the right to occupy the territory of historic Palestine however part of the the territory is disputed with Israel. This disputed territory is what is known today as the Occupied Palestinian Territory. Within this territory, the Israeli regime treats Israeli jews differently to the Palestinian population. (Regan, 2008)

Israel does not accept that it's policies and laws constitute a form of apartheid. This is based on the experiences of the jewish population in World War 2 (WW2). The holocaust experience and the labels of Israel as 'antisemites' provides Israel the grounds to commit revenge for what occurred in WW2. This has meant that antisemitism has become a "powerful weapon in that hands of Israel". (Dugard, 2018) While human rights violations are occurring against the Palestinian population, this has not stopped the western countries from condemning Israel. This is because many of the western countries try to see the

jewish population as victims of the holocaust and Israel is a victim state, however Palestine has been made to be seen as if they were responsible in some way for the Holocaust. As an English Historian Arnold Toynbee stated "'[I]t was not the Palestinian Arabs who committed genocide against the European Jews. It was the Germans. The Germans murdered the Jews: the Palestinian Arabs have been made to pay for what the Germans did". Therefore, history has made Israel uncriticizable and that if a state criticises Israel for their human rights violations it is seen as a form of antisemitism (Dugard, 2018)

2. CONCLUSION

Unfortunately, there are many similarities between the apartheid in Palestine and the apartheid that occurred in South Africa however there are substantial differences. The most significant differences between Palestine and South Africa is that the apartheid in Palestine is being committed by a foreign state who sees themselves as a victim of a mass atrocity. This is further differentiated to South African apartheid as Israel has ratified majority of the international treaties however, ultimately this has not stopped Israel from committing these violations and nor has it brought condemnation from the western states.

These atrocities being committed decades apart raises alarm bells given the similarities to the genocide that was committed during World War 2. After decades of the South African regime and decades of Israeli occupation of Palestine questions should be asked whether the international law is protecting all human beings for their right to existence and their right to freedom of racial discrimination.

BIBLIOGRAPHY

[1] Dugard, J. (1984). The Denationalization of Black South Africans in Pursuance of Apartheid A Question for the International Court of Justice? International Commission of Jurists Review, 33, 49–60.

[2] Dugard, J., & Reynolds, J. (2013). Apartheid, International Law, and the Occupied Palestinian Territory. European Journal of International Law, 24(3), 867–913. https://doi.org/10.1093/ejil/cht045

[3] Dugard, J. (2018). Apartheid in South Africa and the occupied Palestinian territory: A useful comparison? In J. Stern-Weiner (Ed.), Moment of truth: Tackling Israel-Palestine's toughest questions (pp. 351–388).

[4] Gupta, A. (1982). South Africa, Human Rights and the United Nations. Indian Quarterly, 38(3/4), 334–343.

[5] International Court of Justice. (2004). Legal consequences of the construction of a wall in the occupied Palestinian territory, advisory opinion. I.C.J. Reports 2004, p. 136

[6] Jaichand, V. (1989). INTERNATIONAL HUMAN RIGHTS LAW, SOUTH AFRICA AND RACIAL DISCRIMINATION. Notre Dame Law School Journal of Legislation, 15(1/3).

[7] Keane, D. (2022) 'PALESTINE V ISRAEL AND THE COLLECTIVE OBLIGATION TO CONDEMN APARTHEID UNDER ARTICLE 3 OF ICERD', Melbourne Journal of International Law, 23(2).

[8] Lynk, M. (2022). Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk (Document No. A/HRC/49/87)

[9] Regan, B. (2008). The state of Israel and the apartheid regime of South Africa in comparative perspective. Holy Land Studies, 7(2), 201–212.

[10] Tilley, V. (2012). Chapter 4: Review of Israeli practices relative to the prohibition of apartheid. In Beyond occupation: Apartheid, colonialism and international law in the occupied Palestinian territories.

[11] United Nations. (1949, August 1949). Geneva Convention Relative to the Protection of Civilian Persons in Time of War

[12] United Nations. (1969, January 1969). International Convention on the Elimination of All Forms of Racial Discrimination.

[13] United Nations. (1973, November 30). International Convention on the Suppression and Punishment of the Crime of Apartheid.

[14] United Nations. (1945, June 26). Charter of the United Nations.