

**THE NATION STATE LAW:**  
THE CULMINATION OF 70 YEARS OF  
**ISRAELI APARTHEID AND COLONIZATION**

**BADIL POSITION PAPER**



October 2018

**All rights reserved**

© BADIL Resource Center for Palestinian Residency and Refugee Rights

#### **Notations**

Any quotation of up to 500 words may be used without permission provided that full attribution is given. Longer quotations, entire chapters, or sections of this study may not be reproduced or transmitted in any form or by any means; electronic, mechanical, photocopying, recording, or otherwise, or stored in any retrieval system of any nature, without the express written permission of BADIL Resource Center for Palestinian Residency and Refugee Rights.

BADIL Resource Center for Palestinian Residency and Refugee Rights

Karkafa St.

PO Box 728, Bethlehem, West Bank; Palestine

Tel.: +970-2-277-7086; Fax: +970-2-274-7346

Website: [www.badil.org](http://www.badil.org)



BADIL Resource Center for Palestinian Residency and Refugee Rights is an independent, non-profit human rights organization working to defend and promote the rights of Palestinian refugees and Internally Displaced Persons (IDPs). Our vision, mission, programs and relationships are defined by our Palestinian identity and the principles of international humanitarian and human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

**THE NATION STATE LAW:**  
THE CULMINATION OF 70 YEARS OF  
**ISRAELI APARTHEID AND COLONIZATION**



October 2018



## **THE NATION STATE LAW: THE CULMINATION OF 70 YEARS OF ISRAELI APARTHEID AND COLONIZATION**

With the passing of the Nation State Law on 19 July 2018 – Israel has now constitutionally entrenched the homogenous ethnic sovereignty of the Jewish people. The law subordinates without consent all Palestinian and other non-Jewish citizens. It also enshrines into the fabric of Israeli statehood that only the Jewish people have the right to self-determination in Israel, Jewish settlement as a national value and the right of return for the Jewish people, omitting all others.

This law is controversial and cause for concern. The seven-year delay in its passing following its introduction into the Knesset in 2011 is indicative of its divisive nature and the necessity of appropriate geopolitical conditions to ease its passage and implementation. More than this, it is a law that stands in clear violation of a number of peremptory norms of international law, including the prohibition on racial discrimination, the prohibition on apartheid, and the prohibition on territorial annexation.

Yet the chorus of condemnation that the law is somehow just the start of apartheid Israel, almost invariably overlooks the long-entrenched state of affairs. It also misses the more salient and sinister reality of the law, in the foundation it lays for the formal annexation of the West Bank as part of the State of Israel. In other words, the Nation State law is the most recent step in a long-standing process of a deepening entrenchment of the colonial Zionist project in Mandatory Palestine.<sup>1</sup> It is a colonial project which the international community has emboldened through its lack of tangible and meaningful action to hold Israel accountable for its widespread and systematic violations of international law.

---

1 Mandatory Palestine refers to the area that was under the British Mandate for Palestine, which consists of Israel, the 1967 occupied West Bank, including East Jerusalem, and the Gaza Strip.

## EMBEDDING THE FOUNDATION OF APARTHEID

Most discernably, this law constitutionally entrenches the legal foundation of an apartheid state. It is a law that begins in Article 1 with an ambiguous reference to both a Land of Israel and a State of Israel, arguably making it a law that extends also to the occupied Palestinian territories. It then declares an undefined State of Israel to be for the Jewish people (Article 1(b)), extends the ‘nation’ to the Jewish people as a whole and not merely limited to its own Jewish citizens (Article 6(a)), upholds that the right to “national self-determination in the State of Israel is unique to the Jewish People” (Article 1(c)); states that the State will be “open for Jewish immigration” (Article 5), elevates the Hebrew language over Arabic (Article 4) and sets Jewish settlement as a national value (Article 7).

Each of these provisions separately violate a number principles of international law.

- The right to self-determination is a long-established peremptory norm of international law,<sup>2</sup> which entails the right to freely determine political status and pursue economic, social and cultural development.<sup>3</sup> It is not a right which demands or implies territorial exclusivity,<sup>4</sup> and it does not apply for one group to the exclusion of the right of other groups to self-determination. Moreover, self-determination does not equate

---

2 International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, p.85, available at: [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf) [hereinafter, ILC, Draft Articles on Responsibility]

3 UN General Assembly, International Covenant on Civil and Political Rights, Annex, A/RES/21/2200, 16 December 1966, Art 1.1, available at: <http://www.un-documents.net/iccpr.htm>

4 On the contrary, international law principles explicitly state that the right to self-determination does not permit any action that would “dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States”, by extension, the right to self-determination and territorial integrity are separate and distinct principles of international law – see UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, A/RES/25/2625, 24 October 1970, available at <http://www.un-documents.net/a25r2625.htm> [accessed 16 October 2018].

to a right to nationhood as a culturally homogenous entity. Yet the Nation State Law buttresses an existing regime that recognizes all three principles as necessary to the realization of the Jewish right to self-determination in Israel.

- The prohibition on racial discrimination is similarly a peremptory norm of international law,<sup>5</sup> one from which no derogation is permitted. This international law exists to prohibit preference and differential treatment of any person or community on the ground of race. Yet this Nation State Law makes it a characteristic of the State, the requirement that Israeli state institutions discriminate favorably towards Jewish persons and Jewish interests.
- The right to return is also a principle protected under international human rights law, humanitarian law, the law of nations and refugee law.<sup>6</sup> Yet this law explicitly omits the Palestinian right of return. It also creates a scenario in which the exercise of the Palestinian right of return now runs directly counter to the constitutional priority of Jewish settlement, and the existence of a Jewish State.

More to the point, juxtaposed against the definition of apartheid, the true reality of this law is clear. Apartheid is defined in the International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention) as a non-exhaustive series of prohibited or inhumane acts, policies and/or practices, which are 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”.<sup>7</sup> In other words, those acts, policies and/or practices, committed separately or in combination, will

---

5 ILC, Draft Articles on Responsibility, *supra* note 2, p.85.

6 BADIL Resource Centre for Palestinian Residency and Refugee Rights (BADIL), *Working Paper No. 22: Forced Population Transfer: the Case of Palestine – Denial of Reparations*, 2018 (Bethlehem, Palestine), p.23-25, available at <http://www.badil.org/en/publication/press-releases/87-2018/4901-pr-en-091008-31.html>.

7 UN General Assembly, *International Convention on the Suppression and Punishment of the Crime of Apartheid*, 1015 UNTS 243, 30 November 1973, Article 2, available at <https://treaties.un.org/doc/publication/unts/volume%201015/volume-1015-i-14861-english.pdf> [hereinafter Apartheid Convention].

constitute the crime of apartheid when they are committed as part of “an institutionalized regime of systematic oppression and domination by one racial group over any other racial group” and are committed with the intention of maintaining that regime of racial domination and oppression.<sup>8</sup>

This Nation State Law constitutionalizes the superiority of the Jewish people and preferences their priorities as a peoples. The corollary of this is necessarily the systematic inferiorization of Palestinians. They are explicitly denied their right to self-determination within the Israeli state structure, excluded by omission and incompatibility from national priorities of settlement and return, and their language and other cultural identifiers diminished in standing or unacknowledged in entirety.

This law, however, does not sit in isolation. It is part of a much larger system of oppression and domination across the whole of Mandatory Palestine that many human rights advocates, legal scholars and practitioners have long-concluded constitutes an apartheid regime.<sup>9</sup> On the one hand are the laws and commensurate military orders, some in force since 1948, which systematically deny Palestinians their basic rights. Palestinians are denied their right of return,<sup>10</sup> stripped of their property rights,<sup>11</sup> restricted in their access to land in other

---

8 See UN General Assembly, *Rome Statute of the International Criminal Court*, 2187 UNTS 90, 17 July 1998, available at: <http://www.refworld.org/docid/3ae6b3a84.html> [hereinafter Rome Statute of the ICC], Article 7(2)(h), the elements of which are further articulated in the International Criminal Court (ICC), *Elements of Crimes*, ICC-ASP/1/3(Part II-B), 9 September 2002, available at: <http://www.refworld.org/docid/4ff5dd7d2.html> [accessed 16 August 2018].

9 See for instance Uri Davis, *Israel: An Apartheid State*, (London: Zed Books, 1987); John Quigley, “Apartheid Outside Africa: The Case of Israel,” *Indiana International and Comparative Law Review*, 2, 1, (1991), 221, available at <https://journals.iupui.edu/index.php/iiclr/article/view/17379> [accessed 13 August 2018]; and Virginia Tilley (ed), *Occupation, Colonialism, Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law*, Human Sciences Research Council of South Africa, 29 May 2009, available at <http://www.hsrc.ac.za/en/research-data/view/4634> [accessed 13 August 2018].

10 See the Law of Return, 5710–1950, 4 LSI 114 (1949–1950) (Isr.) and the Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, 8 LSI 133, (5714-1953/54), (Isr.). The latter of which was immediately preceded by a 1948 military order to the same effect, which together served to deny Palestinian return.

11 See Absentee Property Law, 5710-1950, SH No.37, 86 (Isr.).

respects,<sup>12</sup> diminished in their citizenship and residential status,<sup>13</sup> and forcibly denied many of their basic human rights to security of person, family, water, housing, and freedom of movement. This state of affairs is particularly pronounced in the occupied territories where Israeli Jewish colonizers are subject to an entirely separate and more favourable legal regime, but it is a discriminatory administration that inferiorizes all Palestinians regardless of where they live. This systematic denial of basic rights, as individuals and as a people, is the first key pillar of an apartheid state.<sup>14</sup>

On the other hand are the web of laws and policies, which fragment the Palestinian population by subjecting them to different legal regimes that disregard and disrespect their rights in a myriad of ways. In so doing, these laws and policies serve to weaken the cohesiveness, identity and capacity for self-determination as a Palestinian people. Added to this, there is also a complex permit system keeps the Palestinian community segregated;<sup>15</sup> there are severe restrictions on the conferral of legal status by marriage or birth, which inhibit the capacity for formation of unified families and connections between Palestinians from different areas;<sup>16</sup> and tight economic and political

---

12 See the 1960 Basic Law: Israeli Lands, which constitutionally demands that land owned by the State, the Jewish National Fund and the Israeli Development Agency be held in perpetuity for the Jewish peoples. Similarly, the 1952 World Zionist Organization-Jewish Agency (Status) Law and the 1953 Jewish National Fund Law, which confer governmental status on each agency, thus giving legal force to the explicit mandates of each organization to act exclusively for the benefit of Jews.

13 See Law of Citizenship (Nationality), 5712-1952, 14 July 1953, (Isr.). This law stipulates that all Jews shall be provided with Israeli citizenship upon their 'return', immediately enjoying full civil and political rights within the 1948 borders. Alongside this, the law explicitly limited Palestinian eligibility for citizenship to those who were residing in the territory of what became Israel between 1948 and 1952 and their descendants, regardless of the documented evidence of connection to land, and in contravention of international law of state succession. Additionally, following the illegal annexation of East Jerusalem in 1967, Israel began applying the 1952 Law of Entry to Israel to Palestinians from East Jerusalem, only offering them permanent residency.

14 Apartheid Convention, *supra* note 7, Article 2(a)-(c),(e).

15 See BADIL, *Working Paper No. 18: Forced Population Transfer: the Case of Palestine – Instalment of a Permit Regime*, 2015 (Bethlehem, Palestine), available at <http://www.badil.org/en/publication/press-releases/87-2018/4901-pr-en-091008-31.html>

16 See BADIL, *Working Paper No. 16: Forced Population Transfer: the Case of Palestine – Denial of Residency*, 2014 (Bethlehem, Palestine), available at <http://www.badil.org/phocadownload/badil-new/publications/research/working-papers/wp16-Residency.pdf>

controls and oppression constrain any opportunity for unity. This fragmentation is the second pillar of an apartheid state, essential to the strategy of subordination of a people.<sup>17</sup>

Meanwhile, underpinning these two pillars is the third pillar of apartheid, which is the security apparatus of the State and serves to keep any rejection of the status quo by the Palestinian people repressed.<sup>18</sup>

It is these long-standing laws and policies that establish the system of apartheid in Mandatory Palestine. What the Nation State Law does is to make an arguably debated state of apartheid, incontrovertible. This law embeds this apartheid reality into the foundation and character of the State, in that, as a constitutional law, it authorizes and requires all State institutions and decision-makers to operate within the framework of a now intrinsically discriminatory state structure. By constitutionally declaring Israel to be a state for the Jewish people above all else, a legal declaration Israel had to-date resisted stating in law, if not in practice, Israel has become the only state to define its sovereignty based on the ethnicity of a people. In so doing, it has put the issue of whether or not it is an apartheid state beyond question.

---

17 Apartheid Convention, *supra* note 7, Article 2(d). See also discussion of fragmentation in the withdrawn report issued by UN Economic and Social Commission for Western Asia (UN ESCWA), Israeli practices towards the Palestinian People and the Question of Apartheid, E/ESCWA/ECRI/2017/1, 15 March 2017, p. 37-48, available at [https://www.middleeastmonitor.com/wp-content/uploads/downloads/201703\\_UN\\_ESCWA-israeli-practices-palestinian-people-apartheid-occupation-english.pdf](https://www.middleeastmonitor.com/wp-content/uploads/downloads/201703_UN_ESCWA-israeli-practices-palestinian-people-apartheid-occupation-english.pdf) [hereinafter the UNESCWA Apartheid Report].

18 Apartheid Convention, *supra* note 7, Article 2(f). See also discussion of the features of apartheid in the withdrawn UNESCWA Apartheid Report, *supra* note 17.

## LEGALIZING THE DE-FACTO ANNEXATION OF THE OPT

The second and arguably more significant feature of the Nation State Law is the manner in which it lays the groundwork for formal annexation of the West Bank. The very first article of the Nation State Law refers to the “Land of Israel is the historical homeland of the Jewish people” (emphasis added). This is distinct from subsequent references to the “State of Israel” and contains clear political ramifications. The Land of Israel is the direct translation of the Hebrew, Eretz Yisrael, which is a reference to the biblical conferral of land referred to in the Torah,<sup>19</sup> and is the Hebrew name by which Mandatory Palestine was known under British rule.

Put differently, this is a law that constitutionally recognizes the Israeli claim to the whole of the land that was Mandatory Palestine; this includes the occupied Palestinian territory (oPt). It fails to define the borders of the State of Israel, merely stating that the State of Israel was created within the Land of Israel. While at the same time it declares “the development of Jewish settlement as a national value”, requiring the State to “act to encourage and promote its establishment and strengthening.” The cumulative effect of which is two-fold:

1. A constitutional basis for future domestic Israeli laws annexing West Bank territory; and
2. The application of each of these legal provisions to the expanded ‘State of Israel’.

In relation to the former, laws annexing territory are domestic laws, over which Israeli civil courts have jurisdiction to determine legal validity of legislation. With this law, those courts will now be bound to follow this Nation State Law in any legal challenge to any future annexation laws. As such, any Israeli judicial determination will now take its starting point from the basis of the constitutional principles that (a) Israel already has a claim to the land of the West Bank, and (b)

---

<sup>19</sup> Based on the reference in the Torah, the Land of Israel may lay between the Nile River in Egypt, and the Furat River (Euphrates River) in Iraq.

Jewish settlement is to be prioritized and strengthened, before judicial attention can turn to other factors to determine if an annexation law is lawful. In these circumstances, it is difficult to see how any annexation law would be found unlawful by the Israeli courts.

To the latter, the ambiguity of the definition of the State of Israel means that these principles will automatically apply to any newly annexed territory that becomes part of the State. In doing so, the law itself also minimizes the demographic and civic threat of any growth in the Palestinian population of Israel that comes from formal annexation, because that new population will also attain inferior status automatically by reason of the apartheid system set up by this law. Also, in legalizing discrimination, this law allows for the passage of new laws which seek to directly address this demographic issue, such as laws authorizing population transfer.

These two legal provisions are critical precursors to formal annexation of West Bank territory. They address first the domestic legality of the action itself, which accords with Israel's insistence on democratic principles and the veneer of legality. They also address the existential threat that has always concerned Israel in relation to the Jewish character of the State and the need for a Jewish majority.

Such an act of territorial annexation stands in flagrant disregard of international law. Unilateral territorial annexation breaches the peremptory prohibition on the use of force under Article 2(4) of the UN Charter, as it necessarily requires force or the threat of force to facilitate the acquisition. It is also inconsistent and in contravention of the laws on military occupation under the Geneva Conventions, which require that an occupation is temporary and do not entertain such an occupation to become permanent via the acquisition of territorial sovereignty without consent. The prohibition on annexation is considered a principle of customary international law, which has arguably also attained the status of a *jus cogens* principle. Moreover, it is an act that carries individual criminal liability having been defined as act of aggression and prohibited under international criminal law.<sup>20</sup>

---

20 Rome Statute of the ICC, *supra* note 8, Article 8 *bis*.

## INTERNATIONAL OBLIGATIONS AND ISRAELI ACCOUNTABILITY

This law lays bare the underlying intention of Israel, with regards to Palestine and its negotiations with Palestinians. More than facilitating annexation and grounding apartheid in the character of the State, the Nation State Law carries the fundamental hallmarks of a colonial enterprise. Territorial acquisition and control being one of the core features of colonization. The other being the denial of self-determination to the indigenous peoples of the land, to which the aforementioned policies of apartheid are explicitly directed.<sup>21</sup>

The 1960 UN Declaration on the Granting of Independence to Colonial Countries and Peoples recognized “that all peoples of the world ardently desire the end of colonialism in all its manifestations.” Although colonization is typically associated with European colonization of African, Asian and other non-European nations, and generally assumed to be a product of a by-gone era, the passage of this law demands consideration of the reality of Israel’s policies towards Palestine. It also calls into question, whether Israel was ever really negotiating in good faith with the Palestinian people.

The broadening consensus that Israel is imposing a regime of apartheid on Palestinians culminated in the release of a comprehensive report by the UN Economic and Social Commission for Western Asia (ESCWA) only last year, prior to the passage of the Nation State Law. It found that “the weight of the evidence supports beyond a reasonable doubt the contention that Israel is guilty of imposing an apartheid regime on the Palestinian people.”<sup>22</sup> At that time, its contents alone should have been sufficient for robust action from the international community. Instead, that report was promptly withdrawn following sustained and

---

21 Although the elements of colonization are not clearly defined in international law, it is generally understood that the features of colonization are territorial acquisition and denial of self-determination, including denial of civil, political, social, cultural and economic rights. These two key features are reflected in the language of the UN Declaration on the Granting of Independence to Colonial Countries and Peoples; UN General Assembly, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960, A/RES/1514(XV), available at: <http://www.refworld.org/docid/3b00f06e2f.html> [accessed 17 October 2018].

22 UNESCWA Apartheid Report, *supra* note 17, p.53.

heavy pressure from Israel and its supporters, paving the way for the passing of the Nation State Law.

With the passage of this law, the imperative for urgent international action has never been stronger. It is now incumbent on members of the international community to uphold their obligations under international law, and exercise their duties to hold Israel accountable. This means that states are obligated to cooperate to bring to an end to Israel's system of apartheid, annexation and colonization, including but not limited to the imposition of sanctions; and states are obligated to refrain from any action which expressly or tacitly recognizes such a system as lawful, and any act which directly or indirectly aids or assists in continuation and perpetuation of this unlawful situation.<sup>23</sup>

---

23 ILC, Draft Articles on Responsibility, *supra* note 2, Article 41.



“With the passing of the Nation State Law on 19 July 2018 – Israel has now constitutionally entrenched the homogenous ethnic sovereignty of the Jewish people. The law subordinates without consent all Palestinian and other non-Jewish citizens. It also enshrines into the fabric of Israeli statehood that only the Jewish people have the right to self-determination in Israel, Jewish settlement as a national value and the right of return for the Jewish people, omitting all others.”