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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 Cairo Institute for Human Rights Studies, Al-Haq, Law in the Service of Man, Centro de Estudios Legales y Sociales (CELS) Asociación Civil, East and Horn of Africa Human Rights Defenders Project, Habitat International Coalition, Human Rights & Democratic Participation Center "SHAMS", 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.

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

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Civil Society Welcomes Mounting Recognition of Israel's Commission of the Crime of Apartheid Against the Palestinian People

On 13 August 2020, the United States of America announced that it had brokered a new agreement between the United Arab Emirates and Israel to normalize relations in exchange for Israel's suspension of "declaring sovereignty" over areas outlined in the Trump plan.¹ Israel's Prime Minister immediately thereafter reiterated plans to formally annex large swaths of the occupied West Bank, stating that these plans had merely been postponed but not abandoned.²

For decades, Israel has deepened its institutionalized oppression of the Palestinian people and the colonization of Palestine, facilitated by a systematic effort to transfer the indigenous Palestinian people from their lands, the prolonged occupation of Palestinian territory, the de facto annexation of the West Bank, and the de jure annexation of Jerusalem and the occupied Syrian Golan, contrary to international law. Whether or not further formal annexation of the West Bank moves forward, the fact remains that Israel has aggressively pursued an illegal policy of population transfer and demographic manipulation, thereby entrenching apartheid over the Palestinian people on both sides of the Green Line and as refugees and exiles abroad denied their right of return.

This statement examines the mounting and cumulative recognition of Israel's imposition of the crime of apartheid over the Palestinian people, defined in Article 7(2)(h) of the Rome Statute of the International Criminal Court 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

1. The Imposition of a System of Apartheid over the Palestinian People

In 2017, the United Nations (UN) Economic and Social Commission for Western Asia (ESCWA) recognized, in its report on Israeli Practices towards the Palestinian People and the Question of Apartheid,⁴ that Israel uses strategic fragmentation as the main tool to establish institutionalized racial oppression and domination over the indigenous Palestinian people as a whole, within the definition of the crime of apartheid. Over the years Israel has strategically fragmented the Palestinian people into four distinct legal, political, and geographic domains, comprising Palestinian citizens of Israel, Palestinians residents of Jerusalem, Palestinians subject to military law in the West Bank and Gaza, and Palestinian refugees and exiles abroad who are denied the right to return to their homes, lands, and property.⁵ Although Israel tries to obfuscate the reality of a single legal regime of systematic racial oppression and domination over the Palestinian people in its entirety through strategic fragmentation, the reality is that Israel's laws, policies, and practices target all Palestinians regardless of their status.

As defined by the Apartheid Convention and Rome Statute,⁶ intention to maintain apartheid is a core element of the crime. To create a climate of fear and intimidation, Israel systematically resorts to arbitrary detention and arrests, torture and other ill-treatment

¹ White House, "Joint Statement of the United States, the State of Israel, and the United Arab Emirates," 13 August 2020: <https://www.whitehouse.gov/briefings-statements/joint-statement-united-states-state-israel-united-arab-emirates/>.

² Israel Ministry of Foreign Affairs, "PM Netanyahu on the historic peace agreement with the UAE," 16 August 2020: <https://mfa.gov.il/MFA/PressRoom/2020/Pages/PM-Netanyahu-on-the-historic-peace-agreement-with-the-UAE-16-August-2020.aspx>.

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

⁴ E/ESCWA/ECRI/2017/1, p. 37.

⁵ *Ibid.*, p. 4.

⁶ International Convention on the Suppression and Punishment of the Crime of Apartheid ('Apartheid Convention'), Article II; Rome Statute, Article 7(2)(h).

sanctioned by Israeli courts, and unlawful collective punishment.⁷ Further, the silencing of opposition to Israeli oppression is a key method used to maintain apartheid over the Palestinian people, notably carried out through government-led smear and delegitimization campaigns targeting human rights defenders and organizations seeking to challenge Israeli policies.⁸

2. Mounting Recognition that Israel Commits the Crime of Apartheid

Following more than a decade of work by Palestinian civil society on the question of apartheid, there has been increasing international recognition of the apartheid system established and maintained by Israel over the Palestinian people. On 12 December 2019, the UN Committee on the Elimination of Racial Discrimination (CERD) recognized the continuity of Israeli policies and practices of racial segregation and apartheid as disproportionately impacting Palestinians on both sides of the Green Line.⁹ CERD was deeply alarmed by the segregation between Palestinians and settlers in illegal settlements in the Occupied Palestinian Territory and highlighted “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 other resources.”¹⁰ Urging Israel “to eradicate all forms of segregation,”¹¹ CERD was also 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.”

Recently, on 16 June 2020, in an unprecedented move, 47 UN Special Procedures mandates warned that “the morning after annexation would be the crystallization of an already unjust reality: two peoples living in the same space, ruled by the same state, but with profoundly unequal rights. This is a vision of a 21st century apartheid.”¹² Similarly, in a previous statement, the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (oPt) warned that Israel’s plans “would crystalize a 21st century apartheid, leaving in its wake the demise of the Palestinians’ right to self-determination.”¹³

Finally, during the 43rd Regular Session of the Human Rights Council in June 2020, 114 civil society organizations from Palestinian territories and around the world delivered a joint statement under Item 9, emphasizing that now is the time for UN Member States to recognize the establishment and continued maintenance of an apartheid system by Israel over the Palestinian people as a whole, on both sides of the Green Line and in exile. The organizations called on States to support the reconstitution of the UN Special Committee against Apartheid

⁷ See, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/44/60.

⁸ Al-Haq, “Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports,” 10 November 2019, p. 43: http://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf.

⁹ Al-Haq, “Human rights organizations 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>.

¹⁰ CERD/C/ISR/CO/17-19, para. 21.

¹¹ Ibid, para. 23.

¹² Office of the UN High Commissioner for Human Rights (OHCHR), “Israeli annexation of parts of the Palestinian West Bank would break international law – UN experts call on the international community to ensure accountability,” 16 June 2020: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25960&LangID=E>.

¹³ OHCHR, “Israeli Annexation Plans Would Lead to ‘Cascade of Bad Human Rights Consequences’ Says Special Rapporteur on the Situation of Human Rights in the oPt – Press Release,” 1 May 2020: <https://www.un.org/unispal/document/israeli-annexation-plans-would-lead-to-cascade-of-bad-human-rights-consequences-says-special-rapporteur-on-the-situation-of-human-rights-in-the-opt-press-release/>.

and the UN Centre against Apartheid as a critical step towards ending Palestinian oppression.¹⁴

3. Conclusion and Recommendations

Recognized as a crime against humanity,¹⁵ apartheid gives rise to individual criminal responsibility and State responsibility to bring the illegal situation to an end. Accordingly, third States must urgently act to uphold the inalienable rights of the Palestinian people, including self-determination and return, by adopting effective measures to overcome the system of apartheid imposed by Israel over the Palestinian people, end the occupation, and ensure accountability for all grave violations and international crimes within this context.

In light of the above, we urge Member and Observer States of the Human Rights Council to:

1. Deliver a joint statement during the 45th Regular Session of the Human Rights Council in September 2020, under relevant agenda items, including Items 7 and 9, recognizing that, through its laws, policies, and practices, Israel has established an institutionalized regime of systematic oppression and domination over the Palestinian people as a whole, amounting to the crime of apartheid;
2. Call for the reconstitution of the UN Special Committee against Apartheid and the UN Centre against Apartheid to monitor the implementation of the Apartheid Convention with the aim of bringing the illegal situation to an end; and
3. Pursue international justice and accountability for widespread and systematic human rights violations committed against the Palestinian people, including the crime of apartheid, by activating universal jurisdiction mechanisms, ensuring implementation of the Apartheid Convention, and supporting a full, thorough, and comprehensive investigation by the International Criminal Court into the situation in Palestinian territories without any further delay.

Jerusalem Legal Aid and Human Rights Center, Ramallah Center for Human Rights Studies – RCHRS, Treatment and Rehabilitation Center (TRC), Sareyyet Ramallah, The Arab Center for Agriculture Development (ACAD), Palestinian Non-Governmental Organizations Network, Land Research Center – Palestine, NGO(s) without consultative status, also share the views expressed in this statement.

¹⁴ Cairo Institute for Human Rights Studies, “United Nations: In Response to Unprecedented Recognition of Israel’s Apartheid Regime, States Must Take Concrete Steps to End this Unjust Reality,” 17 June 2020: <https://cihrs.org/united-nations-in-response-to-unprecedented-recognition-of-israels-apartheid-regime-states-must-take-concrete-steps-to-end-this-unjust-reality/?lang=en>.

¹⁵ Apartheid Convention, Article I; Rome Statute, Article 7(1)(j).