

LPHR SEMINAR: SYSTEMS OF SEGREGATION AFFECTING PALESTINIANS

20 March 2012

Garden Court Chambers

Chair: Hannah Rought-Brooks

DR. MICHAEL KEARNEY

LSE Fellow of the Department of Law, London School of Economics
Consultant, Al Haq

BEN WHITE

Author of “Palestinians in Israel: Segregation, Discrimination and Democracy”

VICTOR KATTAN

Programme Director of Al Shabaka: The Palestinian Policy Network

DR MICHAEL KEARNEY: APARTHEID IN INTERNATIONAL LAW

Dr. Kearney opened the seminar by defining the concept of apartheid within international law, and outlining in particular on the key sources relating to its prohibition: International Convention on the Elimination of All Forms of Racial Discrimination (1965); the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973); First Additional Protocol (1977) to the Geneva Conventions of 1949; and the Rome Statute of the International Criminal Court (1998).

Dr. Kearney first pointed to the fact that despite its prohibition in international law, no one was prosecuted for the crime of Apartheid during Apartheid era South Africa or since. Furthermore, there is very little jurisprudence or academic work on the subject of Apartheid, as compared to other violations and crimes against humanity. The exception is a brief mention in the International Court of Justice Advisory Opinion on Namibia (1971).

The **International Convention on the Elimination of All Forms of Racial Discrimination** was the first instrument to expressly prohibit apartheid. Article 3 specifically condemns apartheid alongside racial segregation, and places an obligation on states to “prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

Portugal, the United States, South Africa and the United Kingdom voted against the **International Convention on the Suppression and Punishment of the Crime of Apartheid**. Dr. Kearney pointed to the significance of this Convention as it introduces individual criminal responsibility, complementing existing obligations on States. The Convention is intended to facilitate the suppression and punishment of apartheid by making it a crime subject to international jurisdiction. It also gives a detailed definition of the crime and examples of practice amounting to apartheid.

Apartheid is a crime giving rise to individual criminal responsibility, and is not confined or restricted to the South African context. The **First Additional Protocol** recognised apartheid as a grave breach of the Geneva Conventions. The **Rome Statute of the International Criminal Court** asserts jurisdiction over apartheid as a crime against humanity, and defines the crime of apartheid as “*inhumane acts [...] 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.*” Of note is that the 120 states who have ratified the statute haven’t entered reservations on the inclusion of apartheid.

Dr. Kearney concluded by highlighting the lack of jurisprudence and academic work on apartheid, and specifically work on its meaning and scope. Despite increasing use of the term to describe the situation in Israel/Palestine, it is possible if not probable that if the ICC asserts jurisdiction and investigates the situation, it might instead focus on other well documented and (academically) researched crimes against humanity. Finally, Dr. Kearney notes the significance of the recent [Committee for the Elimination of Racial Discrimination](#) (CERD) report, perhaps the strongest critique of a state made since the end of apartheid in South Africa. The Committee stated that it was appalled by Israel's behaviour and racist practices in Israel and the Occupied Palestinian Territory:

“The Committee is extremely concerned at the consequences of policies and practices which amount to de facto segregation, such as the implementation by the State party in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities grouped in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The 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. Such separation is concretised by the implementation of a complex combination of movement restrictions consisting of the Wall, roadblocks, the obligation to use separate roads and a permit regime that only impacts the Palestinian population.”

This strong statement by the CERD is extremely significant given their general non-confrontational approach. It appears to demonstrate their frustration with Israel's ongoing practices.

BEN WHITE

Mr. White opened his discussion by stating that Palestinians face segregation both in Israel (pre-1967 borders) and in the Occupied Palestinian Territory (OPT). He explained that when assessing the situation, it is key to consider that there is but one regime under which people controlled by Israel are afforded different rights based on ethnicity.

OCCUPIED PALESTINIAN TERRITORY

1. **Colonies:** Israeli settlements are not, contrary to some impressions, isolated pockets of caravans. Settlements form the core part of the apartheid regime in the West Bank (including East Jerusalem). Settlements are reserved for Israeli citizens, and these settlements are fully integrated into Israel, in terms of rights, laws, and access. While the actual urban build up of the settlements is quite small in the West Bank, one must consider that settlements are the skeletons on which the regime rests – in addition to housing units there are agricultural areas, nature reserves, military training areas, and an extensive network of roads. Around these live Palestinians not afforded the same rights, with limited and problematic autonomy. Settlements are a key part of the fragmentation and colonization.
2. **Separation Wall:** The Wall is a more recent development, although the idea although the idea was present from the mid-1990s. The Israeli government states that the Wall is necessary on grounds of “security”, but from its route it is clear that its purpose is to affect the de facto annexation of settlement blocks – Ariel and around East Jerusalem in particular. This annexation means that many Palestinian villages and Palestinian farmland is isolated in the “seam zone” between the Green Line and the Wall. In addition, the Wall isolates Palestinians from other Palestinians, particularly in East Jerusalem.

ISRAEL

3. Selection Committees: These committees regulate and control who can live in towns in Israel. They operate in around 70% of Israeli towns, Representatives from organisations such as the World Zionist Organisation and the Jewish Agency, which have mandates to primarily benefit Jews, sit on these committees. Now these committees have a role that is legislated (applied in 40% of Israeli towns), and have the ability - by law - to exclude people based on 'incompatibility'. While this term 'incompatibility' in the legislation does not directly exclude Palestinians, it is important to note that those in the Knesset that supported the new legislation did so to be able to exclude non-Jews. As MK Hasson (Kadima) stated, the legislation "preserves ability to realize the Zionist dream in practice".
4. Planning and Regional Councils: Councils are used to implement policies of segregation. Since 1948, building density in Palestinian communities has increased 16-fold, given restrictions on planning and building outside of set areas. While Palestinians comprise approximately 70% of the population of the Galilee, their municipalities control only 16% of the land. Misgav Regional Council, for example, describes itself as part of "a strategic plan, to preserve the state plan."

VICTOR KATTAN: THE RUSSELL TRIBUNAL ON PALESTINE

Mr. Kattan concentrated his discussion on the The Russell Tribunal on Palestine (RTOP). He explained RTOP was established in 2009, following Israel's Operation Cast Lead offensive in the Gaza Strip. The original Russell Tribunal was founded in 1966 by Sir Bertrand Russell, to mobilise public opinion against the Vietnam War. A second Tribunal was convened on Latin America, focusing on human rights violations in Argentina, Brazil and Chile.

RTOP is a people's tribunal and not a court of law; it doesn't compete with other jurisdictions, domestic or international. It draws its strength from the will of citizens wishing to put an end to the impunity that Israel enjoys while denying Palestinians their most basic rights. Previous sessions of RTOP addressed corporate responsibility for human rights violations (London session) and EU complicity (Barcelona session).

In Cape Town, the tribunal addressed the question whether Israeli practices against the Palestinians are in breach of the prohibition on apartheid within international law. The session was held in the District Six Museum, and the jury included Stéphane Hessel (who helped draft the Universal Declaration of Human Rights), Cynthia McKinney, Mairead Maguire, Alice Walker, Yasmin Cooka, Michael Mansfield QC, and Antonio Martin Pallin. Archbishop Desmond Tutu delivered the inaugural address, and 25 witnesses were called before the tribunal.

Unlike previous studies of apartheid, the RTOP looked at Israel and the occupied Palestinian territory as one single territorial unit, which had important ramifications for its findings. The Tribunal found that "Israel subjects the Palestinian people to an institutionalized regime of domination amounting to apartheid as defined under international law. This discriminatory regime manifests in varying intensity and forms against different categories of Palestinians depending on their location. The Palestinians living under colonial military rule in the OPT are subject to a particularly aggravated form of apartheid. Palestinian citizens of Israel, while entitled to vote, are not part of the Jewish nation as defined by Israeli law and are therefore excluded from the benefits of Jewish nationality and subject to systematic segregation across the broad spectrum of recognized human rights. Irrespective of such differences, the Tribunal concludes that Israel's rule over the Palestinian people, wherever they reside, collectively amounts to a single integrated regime of apartheid."

Finally, it is important to highlight the March 2012 CERD report¹, in which two striking issues emerge. First, the Committee explicitly references Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination, which calls upon states to eradicate and prohibit segregation and apartheid. The Committee apparently accepts that apartheid is being practised within Israel. Second, the Committee used very strong language on Israel's practices within the OPT, and explicitly used the word “apartheid” (at paragraph 24 of its report) – likely the first time that an official United Nations body (as opposed to individual United Nations experts) has used this term in relation to Israel's policy towards the Palestinians.

¹<http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>