

December 08, 2021

## **False Knowledge as Power:**

### **Deconstructing Definitions of Apartheid that Delegitimise the Jewish State**

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#### **Executive Summary:**

#### **Background:**

At the beginning of 2021, Human Rights Watch (HRW) and B'Tselem published reports alleging Israel to be responsible for, and Israeli officials to be guilty of committing, the crime against humanity of apartheid. These publications were accompanied by an extensive PR campaign. Concurrently, NGOs were influential in the establishment of two UN bodies where the claim of apartheid will prominently feature, and these same groups are vigorously lobbying the International Criminal Court to include allegations of apartheid in its investigation into Israel.

However, the definition of apartheid used by HRW, B'Tselem, and other NGOs is not legally substantiated. Instead, these groups promote artificial and manufactured definitions designed to extend the ongoing campaigns that seek to delegitimize and demonize Israel.

Beyond its pejorative colloquial meaning ("apartheid state," "vaccine apartheid"), apartheid is also criminalized in some treaties as a crime against humanity and/or a war crime, establishing individual criminal responsibility. In addition, states are prohibited from practicing apartheid in other treaties and by customary international law.

Apartheid is a grave allegation both for the individuals accused as well as the country they represent. A conviction comes with long terms of imprisonment, while the accusation alone can result in severe penalties including sanctions and international isolation. It is not a claim to be made casually, and the crime itself must be precisely defined. However, the definition of apartheid is untested in international law as no courts have yet examined the crime, and there is little detailed analysis available. As a result, central actors in the delegitimization campaign have exploited this gap to advance narrow, and destructive, political agendas.

This report presents a corrective. First, it analyzes the policy and practices of apartheid as pursued historically in southern Africa. Second, it examines the nature and evolution of the apartheid allegation levelled against Israeli officials. Third, it addresses the legal vacuum and provides a full analysis grounded in international law of apartheid's definition as a crime against humanity.

In early 2022, NGO Monitor will issue a companion report, assessing whether apartheid, as defined here, is applicable to Israel and territories under its administration.

### **Definition of Apartheid in International Law:**

- There is no universally accepted legal definition of apartheid. However, there does appear to be a consensus that the South African reality between 1948 and 1994 informs our understanding of what constitutes apartheid.
- It is doubtful whether the crime against humanity of apartheid exists as such under customary international law, which is different than the definition of treaty crimes under the Rome Statute of the International Criminal Court (ICC) and the Apartheid Convention.
- The Rome Statute (1998), which defines crimes under the jurisdiction of the ICC, treats apartheid as a crime against humanity. Apartheid is defined by Article 7(2)(h) as a crime against humanity where there are inhumane acts of a character similar to other enumerated crimes against humanity (e.g. murder, extermination, torture, rape and forced transfer) committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups, committed with the intention of maintaining that regime and as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.
- As detailed in this report, each element of the crime (“inhumane acts,” “institutionalized regime,” “oppression,” “domination,” “racial group,” etc.) must be carefully defined. The version of apartheid manufactured by HRW and other NGOs does not correspond to the crime particularized in the Rome Statute.
- Other international instruments that criminalize or prohibit apartheid are either not widely accepted, or fail to offer any definition. The 1973 Apartheid Convention, drafted in the context of the Cold War, was not acceded to by Western states. The 1965 International Convention for the Elimination of all forms of Racial Discrimination (ICERD), which Israel and almost all other states have accepted, prohibits apartheid, but does not provide any definition of it. Moreover, the ICERD is directed at State responsibility rather than individual criminal responsibility.
- Unlawful discrimination is prohibited under international law, and apartheid is an aggravated form of racial discrimination. International human rights law does however, permit differential treatment based on citizenship or where there is a reasonable basis to support it.

- A situation of occupation does not inherently give rise to either oppression or apartheid. International humanitarian law – the legal framework that applies to a belligerent occupation – prohibits discrimination based solely on race, religion, and political opinion without reasonable grounds for the distinction. It does, however, permit the occupying power to apply different laws to its own citizens as opposed to the local population.

### **Warping the Definition of Apartheid to Apply Uniquely to Israel:**

- Beginning with anti-Zionist Soviet propaganda in the 1950s, the apartheid label has been falsely applied to the State of Israel. The purpose of the slander is to characterize the right of Jews to sovereign equality in their historic homeland as a violation of the international legal order. The overarching political objective is to erase and subsume the nation-state of the Jewish people into a single state of Palestine.
- During the Cold War, the Soviet Union and non-aligned states advanced the apartheid narrative in UN frameworks and other international fora, often based on antisemitic tropes. The 1975 UNGA resolution labeling Zionism as a form of racism was accompanied by the apartheid label.
- At the UN Durban Conference in 2001, NGOs embraced this decades-old delegitimization campaign by promoting a new and unique definition of apartheid reserved exclusively for Israel. Indeed, the Final Declaration of the conference’s infamous NGO Forum referenced “Israel’s brand of apartheid” and Israel’s “new form of apartheid.” As described in the declaration, the new definition was aimed at embracing a “policy of complete and total isolation of Israel.”
- As demonstrated in the report, proponents of the apartheid trope reject a negotiated two-state compromise between Israelis and Palestinians, claiming any agreement that retains a Jewish state would violate international law.
- In 2021, HRW and B’Tselem revived this discriminatory rhetoric by evoking tropes of an apartheid regime from the “river to the sea” and of “Jewish supremacy.”

To read the report in full, [click here](#).