

## Apartheid Outside Africa: The Case of Israel

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The term "apartheid" evokes South Africa, but systematic racial discrimination is not unique to that nation. Charges have emerged from many quarters. Some aboriginal peoples claim they are victims. Religious-based states may violate the rights of racial groups that do not adhere to the religion. Racial groups not reflected in the power base are found in Africa and the Middle East, where colonial-drawn boundaries threw racial groups together in a single state. As Eastern Europe changes its political face, racial animosities are surfacing that may yield systematic oppression of minorities.

The apartheid claim has been leveled in Israel, whose treatment of its minority population of Arabs has been the subject of controversy. The United Nations General Assembly called Zionism, the national ideology of Israel, "a form of racism and racial discrimination," a charge prompted primarily by Israel's treatment of the Arabs within its borders.<sup>1</sup> British historian Arnold Toynbee called Israel "a racialist state. . ." and said that "it is wrong that people feel differently about the rights and wrongs of the existence of the state of Israel versus white South Africa. . . ."<sup>2</sup>

Others have challenged this charge. Thomas Franck wrote that "[t]he South African problem has almost nothing in common" with that of Israel.<sup>3</sup> The term "racism" in the General Assembly resolution,

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1. G.A. Res. 3379, U.N. GAOR, 30th sess. Supp. No. 34, at 83, U.N. Doc. A/10034 (1976).

2. *Arnold Toynbee on the Arab-Israeli Conflict: Interview*, 2 *J. Palestine Stud.* 3, 11-12, no. 3 (1973). For other authors characterizing Israel's treatment of the Palestinian Arabs as apartheid-like, see Brice Harris, Jr., *The South Africanization of Israel*, 6 *ARAB STUD. Q.* 169-189 (1984); Shawky Zeidan, *A Human Rights Settlement: The West Bank and Gaza*, HUMAN RIGHTS AND THIRD WORLD DEVELOPMENT 170 (George Shepherd & Ved Nanda eds. 1985) [hereinafter Zeidan]; LEFTEN STAVRIANOS, *GLOBAL RIFT: THE THIRD WORLD COMES OF AGE 784* (1981).

3. THOMAS M. FRANCK, *NATION AGAINST NATION: WHAT HAPPENED TO THE U.N. DREAM AND WHAT THE U.S. CAN DO ABOUT IT* 219 (1985).

he said, "has been misapplied, egregiously, to Zionism."<sup>4</sup> John Norton Moore denied "that a class of citizens within Israel is denied self-determination as with apartheid in South Africa. . . ."<sup>5</sup>

Israel itself has strenuously denied that its policy towards the Arabs in its borders is one of apartheid. When Iraq leveled the charge at the United Nations in 1961, Israel's representative replied, "[t]o say the Jews deny ordinary rights is one of the most astonishing statements heard in the history of the United Nations."<sup>6</sup>

In the wake of the Persian Gulf War of 1991, resolution of the Palestinian-Israeli conflict is high on the international agenda. The major issue to be resolved is the situation of those Palestinian Arabs residing in the Gaza Strip and the West Bank, who came under Israel's control in 1967. But the question of Israel's treatment of the Arabs in its own territory has also sharpened of late. When in 1987 the Arabs of the Gaza Strip and West Bank initiated an uprising against Israel, the Arabs in Israel undertook sympathy actions in their support. They advocated not only Palestinian statehood for the Gaza Strip and West Bank but improvements in their own treatment.

This article assesses the two conflicting views about Israel's policy towards the Palestinian Arabs in the territory of Israel. It examines aspects of Israel's policy that are alleged to constitute apartheid. The internationally agreed definition of apartheid will serve as the guidepost.

## I. APARTHEID DEFINED

Racial discrimination is prohibited by both the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination.<sup>7</sup> This prohibition includes apartheid, which is an aggravated form of racial discrimination. The International Court of Justice has said, referring to South African policy in Namibia, that race-based distinctions "which constitute a denial of fundamental human rights" are a "flagrant violation of the purposes

4. *Id.* at 210.

5. John N. Moore, *The Arab-Israeli Conflict and the Obligation to Pursue Peaceful Settlement of International Disputes*, 19 KAN. L. REV. 403, 429 (1971).

6. *Iraqi UN Delegate Compares Zionism to Apartheid*, JERUSALEM POST, Nov. 8, 1961, at 2, col. 2.

7. International Covenant on Civil and Political Rights, Dec. 19, 1966, art. 2(1), 999 U.N.T.S. 171, 6 I.L.M. 368, 369 (1967); *see also* International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, art. 2, 660 U.N.T.S. 195, 5 I.L.M. 350, 354 (1966) [hereinafter *Elimination of All Forms of Racial Discrimination*].

and principles of the [United Nations] Charter,"<sup>8</sup> and that "[t]he norm of non-discrimination or non-separation on the basis of race has become a rule of customary international law."<sup>9</sup> The American Law Institute, in its *Restatement of Foreign Relations Law*, says, "[r]acial discrimination is a violation of customary law when it is practiced systematically as a matter of state policy, e.g., apartheid in the Republic of South Africa."<sup>10</sup>

While it is clear that apartheid is unlawful, defining it is complicated, because apartheid involves a series of policies. McDougal, Lasswell, and Chen defined apartheid as "a complex set of practices of domination and subjection, intensely hierarchized and sustained by the whole apparatus of the state, which affects the distribution of all values."<sup>11</sup>

A more detailed definition of apartheid appears in the International Convention on the Suppression and Punishment of the Crime of Apartheid, a treaty that holds those who perpetrate apartheid individually responsible.<sup>12</sup> The Convention has wide adherence.<sup>13</sup> Nonetheless, the American Law Institute, referring to the Apartheid Convention's definition of apartheid, said, "[p]resumably the same definition would obtain for purposes of the prohibition of apartheid."<sup>14</sup>

The Convention defined apartheid as "the following 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."<sup>15</sup> The listing that follows covers

8. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 16, 57.

9. South West Africa Cases (Ethiopia v. S. Africa; Liberia v. S. Africa), Second Phase, 1966 I.C.J. 6, 293 (Tanaka, J., dissent).

10. 2 REST. 3RD, RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES 165 (1986). See also *Apartheid*, 8 ENCYCLOPEDIA OF PUBLIC INT'L L. 37, 39 (Max Planck Inst. for Comp. Pub. L. and Int'l L. 1985).

11. MYRES S. MCDUGAL, *et al.*, HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY 523 (1980).

12. International Convention on the Suppression and Punishment of the Crime of Apartheid, Nov. 30, 1973, 1015 U.N.T.S. 243, 13 I.L.M. 50 (1974) [hereinafter *Apartheid Convention*].

13. States of the industrialized West have not ratified the Apartheid Convention. This is so not because they consider apartheid lawful, but because they object to characterizing it as a crime. Many of these states have ratified the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination. Israel is not a party to the Apartheid Convention.

14. RESTATEMENT, *supra* note 10, at 172 (reporter's note).

15. Apartheid Convention, *supra* note 12, art. 2.

the murder of members of a racial group, the infliction on them of serious bodily or mental harm, arbitrary arrest and imprisonment, the imposition of conditions calculated to cause a racial group's complete or partial physical destruction, measures that keep a racial group from participating in the political, social, economic, or cultural life of a state, measures that physically segregate a racial group, the expropriation of the land of a racial group, the subjection of a racial group to forced labor, and the persecution of persons who oppose apartheid.<sup>16</sup>

The Convention was drafted as its focus Rhodesia, Namibia, and South Africa. Article 2 defined the crime of apartheid as "similar policies and practices of racial segregation and discrimination as practiced in southern Africa. . . ."<sup>17</sup> But delegates of states involved in the drafting contemplated that the Convention would prohibit apartheid anywhere.<sup>18</sup> According to the United Nations Commission on Human Rights, "although southern Africa is the chief concern of the Convention," its "implementation is general," owing to "concern that apartheid be recognized and dealt with for what it is, regardless of where it occurs."<sup>19</sup>

## II. DISPLACED PALESTINIAN ARABS

In 1948 the state of Israel was established in a portion of the territory formerly called Palestine. The new state included what had been Palestine, less the Gaza Strip and the West Bank of the Jordan River. The population was predominantly Arab, but during the hostilities that surrounded the establishment of Israel in 1948, most of them were displaced. A small number of Arabs remained, as a minority within a majority Jewish population.

The Palestinian Arabs felt aggrieved by the displacement of their fellow countrypeople, and by their reduction from the predominant population group to a minority. The Jews who established Israel viewed it as a state for the Jews of the world, which implied less than full

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16. *Id.*

17. *Id.*

18. Roger S. Clark, *The Crime of Apartheid*, in 1 INTERNATIONAL CRIMINAL LAW: CRIMES 299, at 303 n.20, 311 n.45 (M. Cherif Bassiouni ed. 1986).

19. U.N. Commission on Human Rights, *Implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid: study on ways and means of insuring the implementation of international instruments such as the International Convention on the Suppression and Punishment of the Crime of Apartheid, including the establishment of the international jurisdiction envisaged by the Convention 1* (Introduction, ¶7), U.N. Doc. E/CN.4/1426 (Jan. 19, 1981).

status for others. For Israel, the Palestinian Arabs were a potential fifth column, hostile to the concept of a Jewish state in territory they deemed wrongfully taken from them. The government instituted and maintained martial law in the Arab-populated areas until 1966.

The first manifestation of an Israeli policy towards the Palestinian Arabs came in 1948, during the hostilities that led to the formation of Israel as a state. As Israeli military units captured Arab towns, they compelled many of their residents to vacate. They frightened away many others by heavy bombardment. The Arabs' fear was heightened by executions of substantial numbers of Arab civilians perpetrated by right-wing elements among the Israeli forces. Over 85% of the 900,000 Arabs who at the start of 1948 lived in the territory that came to be Israel were gone by the end of that year, having become refugees in nearby states.<sup>20</sup>

Count Folke Bernadotte, who visited the region as United Nations mediator in September 1948, urged Israel to repatriate the Arab refugees. Israel was bringing Jews into the country as migrants, thereby adding to the settlers who had brought the Jewish segment of Palestine's population from less than 5% in the nineteenth century to 30% by 1947. Bernadotte found something wrong in this Jewish migration coupled with the refusal to repatriate the Arabs. "It would be an offence against the principles of elemental justice," Bernadotte said, "if these [Palestinian Arab] victims of the conflict were denied the right to return to their homes while Jewish immigrants flow into Palestine."<sup>21</sup> But David Ben Gurion, Israel's first prime minister, said of the Arab refugees, "[w]e must do everything to ensure that they never do return!"<sup>22</sup> The United Nations General Assembly called on Israel to repatriate the Arab refugees.<sup>23</sup> To date, it has not done so.

The Apartheid Convention prohibits measures "designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group."<sup>24</sup> If relocation to

20. SIMHA FLAPAN, *THE BIRTH OF ISRAEL: MYTHS AND REALITIES* 42 (1987); BENNY MORRIS, *THE BIRTH OF THE PALESTINIAN REFUGEE PROBLEM, 1947-1949* 235-36, 297-98 (1987); JOHN QUIGLEY, *PALESTINE AND ISRAEL: A CHALLENGE TO JUSTICE* 57-65 (1990).

21. Progress Report of the United Nations Mediator on Palestine, 3 U.N. GAOR, Supp. (No. 11), at 14, U.N. Doc. A/648 (1948).

22. MICHAEL BAR-ZOHAR, *BEN GURION: THE ARMED PROPHET* 148 (1967) (David Ben Gurion, diary entry, July 18, 1948) [hereinafter BAR-ZOHAR].

23. G.A. Res. 194, art. 11, 3 U.N. GAOR, Res. at 21, U.N. Doc. A/810 (1948).

24. Apartheid Convention, *supra* note 12, art. 2(d).

reserves within a state constitutes apartheid, then, per force, relocation out of the state must as well, since it separates the population even more definitively.

The Convention requires that the dividing of the population be undertaken to establish domination by one racial group over another. That would seem to have been the intent behind the forced relocation of the Palestinian Arabs. The aim of the political movement that established Israel was to form a Jewish state in a territory that was Arab. A Jewish state was not possible so long as an Arab majority remained. When Ben Gurion, in December 1947, planned the military campaign that would give Palestine over to his movement, he said that the offensive would "greatly reduce the percentage of Arabs in the population of the new state."<sup>25</sup>

As a result of the forced relocation and refusal to repatriate, Jews in Israel enjoy a numerical predominance over Arabs (83% to 17%). This numerical advantage alone would give the Jews a preponderant role. However, the Israeli government uses exclusionary legislation directed against the Arabs in important aspects of social life. To these measures the following sections of this article are addressed.

### III. IDEOLOGY OF THE STATE

Israeli legislation reflects an official ideology that Israel is a Jewish state. Israel defines itself as a state of the Jews.<sup>26</sup> The Declaration of the Establishment of the State of Israel called Israel a "Jewish State." The signers identified themselves as "representatives of the Jewish Community of Eretz-Israel and of the Zionist Movement."<sup>27</sup> While the Declaration does not carry the force of law,<sup>28</sup> it has been held by the courts to define Israel's "fundamental credo."<sup>29</sup>

Israeli legislation identifies Israel as a Jewish state. In a 1952 law, the Knesset declared that Israel "regards itself as the creation of the

25. BAR-ZOHAR, *supra* note 22, at 103.

26. CLAUDE KLEIN, *LE CARACTÈRE JUIF DE L'ÉTAT D'ISRAËL* 14 (1977) [hereinafter KLEIN]; Yehuda Savir, *The Definition of a Jew under Israel's Law of Return*, 17 SW. L. J. 123, 124 (1963).

27. Declaration of the Establishment of the State of Israel, paras. 9-10, 1 LAWS OF THE STATE OF ISRAEL 3 (1948).

28. ELIAHU S. LIKHOVSKI, *ISRAEL'S PARLIAMENT: THE LAW OF THE KNESSET* 13-14 (1971); Izhak Englard, *Law and Religion in Israel*, 35 AM. J. COMP. L. 185, 190 (1987).

29. DAVID KRETZMER, *THE LEGAL STATUS OF THE ARABS IN ISRAEL*, 17 (1990) [hereinafter KRETZMER].

entire Jewish people.”<sup>30</sup> In a 1985 law the Knesset prohibited from standing in Knesset elections any candidates “rejecting the existence of the State of Israel as the state of the Jewish people.”<sup>31</sup> The Knesset also prohibited its members from tabling a bill that “negates the existence of the State of Israel as the state of the Jewish people.”<sup>32</sup>

In the Flag and Emblem Law, Israel’s parliament (Knesset) used a Jewish symbol, the Star of David, in the state flag, and another Jewish symbol, the menorah, as the official emblem of the state.<sup>33</sup> The menorah is connected to the remembrance of the destruction of the Second Temple in Jerusalem by the Roman Emperor Titus. Its use, said one scholar, signifies that the establishment of Israel was “a return of the Jews to political existence as an independent nation.”<sup>34</sup>

Judges in Israel refer to Jewish religious law in construing Israeli law.<sup>35</sup> One statute adopted by the Knesset requires a judge “faced with a legal question requiring decision” who “finds no answer to it in statute law or caselaw or by analogy” to “decide it in the light of the principles of freedom, justice, equity and peace of Israel’s heritage.”<sup>36</sup> Since Israel is defined legislatively as a Jewish state, “Israel’s heritage” means Jewish heritage.<sup>37</sup>

In legislative drafting, said a former attorney general of Israel, “[w]henver our experts find in Jewish law a provision which we can adapt to the needs of our modern and progressive country, we give it priority over the provisions of other law systems.”<sup>38</sup> The Ministry of

30. WORLD ZIONIST ORGANIZATION—JEWISH AGENCY (STATUS) LAW, 7 LAWS OF THE STATE OF ISRAEL 3 (1952).

31. Basic Law: The Knesset (amend. No. 9), SEFER HA-HUKIM [Primary Legislation], no. 1155, at 196, Aug. 7, 1985; Sammy Smooha, *Political Intolerance: Threatening Israel’s Democracy*, NEW OUTLOOK, at 27, 29 (July 1986).

32. 5746 YALKUT HAPIRSUMIM [Public Notices] 772 (1985, amendment to art. 134, Knesset Rules); KRETZMER, *supra* note 29, at 29; Asher Wallfish, *Knesset expected to bar racist bills*, JERUSALEM POST, Nov. 13, 1985, at 1, col. 2. Aryeh Rubinstein, *Knesset Forbids Racist and Anti-Zionist Bills*, JERUSALEM POST, Nov. 14, 1985, at 2, col. 2.

33. Flag and Emblem Law, 3 LAWS OF THE STATE OF ISRAEL 26 (1949).

34. KLEIN, *supra* note 26, at 25.

35. HAIM H. COHN, HUMAN RIGHTS IN JEWISH LAW 17 (1984); Izhak England, *The Problem of Jewish Law in a Jewish State*, 3 ISRAEL L. REV. 254, 272 (1968) (division of partnership property) [hereinafter England]; *see also id.* at 273-274 (validity of death-bed will).

36. Foundations of Law, 34 LAWS OF THE STATE OF ISRAEL 181 (1980).

37. KRETZMER, *supra* note 29, at 20.

38. SHABTAI ROSENNE, THE CONSTITUTIONAL AND LEGAL SYSTEM OF ISRAEL 11 (1957).

Justice set up a Jewish Law department to advise the Knesset committees on Jewish law as it relates to bills under consideration.<sup>39</sup> The drafters' commentary on the Succession Law of 1952 states: "In the essentials of the rules we have endeavoured to rest our proposals as far as possible upon Jewish Law, and in a number of matters—and among them the more basic, such as maintenance out of the estate—we regard our proposals as a kind of continuation of Jewish Law."<sup>40</sup> "Israel's specific mission is to constitute the national state of the Jews and to preserve and further Jewish national culture," explained one specialist in Jewish law.<sup>41</sup>

The Apartheid Convention includes as an act of apartheid "legislative measures" that are "calculated to prevent a racial group" from "participation in the political, social, economic and cultural life of the country."<sup>42</sup> A state's self-definition as a state of a single racial group impliedly excludes others, and where another substantial racial group is present, it is impliedly excluded. The state's self-definition is reflected in legislation on citizenship and on the role of Jewish organizations in national life. It is also seen in legislation on land-holding, political parties, housing, education, and child support.

#### IV. LAWS ON CITIZENSHIP

Preference for Jews is seen in Israel's laws on immigration and citizenship. The 1950 Law of Return gave "every Jew. . . the right to come to this country,"<sup>43</sup> while the 1952 Nationality Law conferred Israeli citizenship automatically on a Jew who settles in Israel.<sup>44</sup> An Israeli jurist-diplomat viewed this unrestricted immigration by Jews as an integral part of the aspiration for a Jewish state.<sup>45</sup> Ben Gurion, explaining the Law of Return, said, "[t]his is not a Jewish State only because Jews constitute a majority, but a State for Jews wherever they are, and for every Jew who wants to be here." He said that the Law

39. Englard, *supra* note 35, at 268.

40. Menachem Elon, *The Sources and Nature of Jewish Law and Its Application in the State of Israel*, 4 ISRAEL L. REV. 80, 82 (1969).

41. Englard, *supra* note 28, at 187.

42. Apartheid Convention, *supra* note 12, art. 2(c).

43. Law of Return, art. 1, 4 LAWS OF THE STATE OF ISRAEL 114 (1950).

44. Nationality Law, art. 2, 6 LAWS OF THE STATE OF ISRAEL 50 (1952) [hereinafter Nationality Law].

45. Shabtai Rosenne, *The Israel Nationality Law 5712-1952 and the Law of Return 5710-1950*, 81 JOURNAL DU DROIT INTERNATIONAL 5, 7 (1954) [hereinafter Rosenne].



of Return embodied "a central purpose of our state, the purpose of the ingathering of exiles."<sup>46</sup>

Palestinian Arabs displaced in 1948 have no right to return under Israeli law: They are excluded from citizenship by a provision in the Nationality Law that permits acquisition of nationality by a person who maintained continuous residence in Israel from May 14, 1948, to July 14, 1952, or who legally returned during that period, if, in addition, the person registered as an inhabitant, by March 1, 1952.<sup>47</sup> This provision was intended to apply to Palestinian Arabs,<sup>48</sup> and it excluded from citizenship those Palestinian Arabs who departed in 1948, unless they returned legally before July 14, 1952.

The provision had little practical effect, however, because the Israeli government permitted few Arabs to return legally. The government's justification for this exclusion was that Palestinian Arabs who departed in 1948 were working against Israel:

Insofar as relates to all non-Jews, the test of residence is the primary element, to be coupled with some external and easily ascertainable evidence of lack of disloyalty towards the State of Israel, for example by not having participated in the Arab exodus from Palestine organized by the Arab leaders in 1948 as part of the war plans of those days. . . .<sup>49</sup>

This rationale was based on a mischaracterization of the circumstances of the Palestinian Arabs' departure, which, as indicated above, was precipitated by the Israeli military.<sup>50</sup> Even if the departure had been voluntary, that fact would not be decisive. A voluntary departure to escape a military conflict does not imply a forfeiture of nationality.

For Jews, proof of continuous residence from May 14, 1948, to July 14, 1952, was not required by the Nationality Law, since any Jew from any state was automatically entitled to Israeli citizenship.<sup>51</sup> Thus, the proof requirement imposed on the Palestinian Arabs an obstacle not placed on Jews. Even for Arabs who never departed, the proof requirement was a serious impediment, because many Arabs could not prove residency to the satisfaction of authorities and thus

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46. 6 KNESSET DEBATES 2035 (July 3, 1950).

47. Nationality Law, *supra* note 44, art. 3.

48. Rosenne, *supra* note 45, at 9; KLEIN, *supra* note 26, at 93.

49. Rosenne, *supra* note 45, at 9.

50. *See supra* note 20.

51. Haim Margalith, *Enactment of a Nationality Law in Israel*, 2 AM. J. COMP. L. 63-66 (1953).

became stateless.<sup>52</sup> A child born of stateless parents was also stateless.

In 1968 the Nationality Law was amended to grant citizenship to such a stateless child if the child applied between the ages of 18 and 21 and had not been convicted of a security offense, or been sentenced to a term of five or more years imprisonment.<sup>53</sup> In 1980 the Nationality Law was amended again to remove the requirement of residency between 1948 and 1952 for those Arabs who were residents of Israel and to grant them citizenship from that time.<sup>54</sup>

Even with the 1968 and 1980 amendments, the Nationality Law retained distinctions between Jew and Arab. The legal route for acquiring Israeli nationality remained governed by different legislation.<sup>55</sup> The 1980 amendment permitted acquisition of Israeli nationality by only those Arabs who were citizens of Palestine at the time of the establishment of Israel, and many had held other citizenship.<sup>56</sup>

Apart from its implications for immigration, the Law of Return is used in legislation on import duties in a fashion that discriminates between Jew and Arab. The Specified Goods Tax and Luxury Tax Law of 1952 authorized the Minister of Finance to designate classes of persons for favorable treatment when they bring goods into Israel after a period of residence abroad.<sup>57</sup> Under this authorization, the Minister issued the Purchase Tax Order (Exemption) 1975, which required less import duty from a "returning national" than from a "returning resident."<sup>58</sup> The Order defined "returning national" to include only a person who "if the person were not an Israeli national the Law of Return would apply to him."<sup>59</sup> Thus, only a Jewish citizen of Israel qualified as a "returning national."<sup>60</sup> An Arab citizen of Israel

52. Israeli League for Human and Civil Rights, *Citizenship in the State of Israel Today* (Aug. 1971), DOCUMENTS FROM ISRAEL, 1967-1973: READINGS FOR A CRITIQUE OF ZIONISM 88 (Uri Davis & Norton Mezvinsky eds. 1975).

53. Nationality (Amendment No. 2) Law, art. 3, 22 LAWS OF THE STATE OF ISRAEL 241 (1968).

54. Nationality (Amendment No. 4) Law, 34 LAWS OF THE STATE OF ISRAEL 254 (1980) [hereinafter Nationality (Amendment No. 4) Law].

55. KRETZMER, *supra* note 29, at 39.

56. Nationality (Amendment No. 4) Law, *supra* note 54, art. 2; KRETZMER, *supra* note 29, at 39.

57. Specified Goods Tax and Luxury Tax Law, Sept. 3, 1952, art. 26, 6 LAWS OF THE STATE OF ISRAEL 150 (1952).

58. 5736 KOVETZ HATAKANOT 36; DAVID KRETZMER & OSAMA HALABI, THE LEGAL STATUS OF THE ARABS IN ISRAEL 59 (1987) [hereinafter KRETZMER & HALABI].

59. Purchase Tax Order (Exemption) 1975, Definition 15 (returning resident), Definition 20 (returning national).

60. KRETZMER & HALABI, *supra* note 58, at 59.

was, for this purpose, not a citizen, and was obliged to pay higher customs duty.<sup>61</sup>

The U.S. Department of State, in a human rights report, said that the two laws "confer an advantage on Jews in matters of immigration and citizenship."<sup>62</sup> It has been argued in reply that these laws are not discriminatory, since a number of states favor certain ethnic groups in citizenship, and human rights law does not preclude such preference.<sup>63</sup> While certain states do grant ethnic preference,<sup>64</sup> that is permissible only "provided that such provisions do not discriminate against any particular nationality."<sup>65</sup> The Law of Return and the Nationality Law disadvantage the Palestinian Arabs and therefore violate human rights norms.

The Law of Return and Nationality Law have been called a reflection of "legal apartheid."<sup>66</sup> By discriminating against the indigenous inhabitants, both those who were displaced and those who were not, the two statutes constitute apartheid legislation. They prevent a racial group from participating in the political and social life of the state.

## V. NATIONAL INSTITUTIONS

A legislatively mandated preference for Jews is found as well in the role accorded by Israeli law to the so-called national Jewish institutions.<sup>67</sup> The Jewish National Fund, the Jewish Agency (J.A.), and several other Jewish bodies perform important governmental functions

61. Purchase Tax Order (Exemption) 1975, art. 7 (duties assessed on a returning resident), art 7A (duties assessed on a returning citizen).

62. U.S. Dept. of State, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1983 1286 (1984); see also Roselle Tekiner, *On the Inequality of Israeli Citizens*, 1 WITHOUT PREJUDICE 48, 51-54 (1987).

63. Ruth Lapidoth, *The Right of Return in International Law with Special Reference to the Palestinian Refugees*, 16 ISRAEL Y.B. ON HUMAN RIGHTS 103, 121 (1986). Asa Kasher, *Justice and Affirmative Action: Naturalization and the Law of Return*, 15 ISRAEL Y.B. ON HUMAN RIGHTS 101-112 (1985); KRETZMER, *supra* note 29, at 36 (n. 6) (reviewing views of Israeli authors).

64. Castro, *La Nationalité, la Double Nationalité et la Supra-Nationalité*, 1961(1) RECUEIL DES COURS 515, 566-68.

65. Elimination of All Forms of Racial Discrimination, *supra* note 7, art. 1(3).

66. URI DAVIS, ISRAEL: UTOPIA INCORPORATED 96 (1977); see also MAXIM GHILAN, HOW ISRAEL LOST ITS SOUL 174 (1974) [hereinafter GHILAN].

67. Nancy Jo Nelson, *The Zionist Organizational Structure*, 10 J. PALESTINE STUD. 80, no. 1, (1980).

in Israel.<sup>68</sup> They take as their function the furtherance of the interests of Jews.<sup>69</sup> This is problematic under the Apartheid Convention, because the government in effect delegates some of its authority to agencies that serve only the predominant racial group.

The Jewish Agency was created in the 1920s as the political arm of the World Zionist Organization (W.Z.O.).<sup>70</sup> In 1948 the Agency established the Israeli state. After 1948 the two organizations continued to function, to mobilize Jewish support for Israel. They coordinated the migration of Jews to Israel and financed their settlement there.<sup>71</sup>

The immigration of Jews, as indicated,<sup>72</sup> was viewed by Israel's government as one of its key functions. By statute the Knesset authorized the W.Z.O. and J.A. to handle this activity. The World Zionist Organization/Jewish Agency (Status) Law stated that the executive arm of the W.Z.O. was a "juristic body"<sup>73</sup> that "takes care as before of immigration and directs absorption and settlement projects in the State."<sup>74</sup> Thus, the 1952 statute made the W.Z.O. and J.A. responsible for one of the government's most vital activities.<sup>75</sup> A W.Z.O./J.A. resolution characterized the work of the two organizations as being "conducted in the interests of the State of Israel within the Diaspora."<sup>76</sup>

In 1971 the J.A. and W.Z.O. were separated into two organizations. The W.Z.O. assumed responsibility for Zionist political activity, and for promotion of immigration to Israel from Western states. The Jewish Agency took activities in Israel—rural settlement, immigrant absorption, youth training, and later, urban rehabilitation.<sup>77</sup> Policy for

68. KRETZMER, *supra* note 29, at 96.

69. KRETZMER, *supra* note 29, at 97.

70. Nathan Feinberg, *The Recognition of the Jewish People in International Law*, JEWISH YEARBOOK OF INTERNATIONAL LAW 1948 1, 19-24 (1949).

71. TOM SEGEV, 1949: THE FIRST ISRAELIS 77, 103-05 (1986) [hereinafter SEGEV].

72. *See supra* notes 45-46.

73. World Zionist Organization—Jewish Agency (Status) Law, art. 11, 7 LAWS OF THE STATE OF ISRAEL 3 (1952).

74. *Id.*, art. 3.

75. ELMER BERGER, THE UNAUTHENTICITY OF 'JEWISH PEOPLE' ZIONISM, in JUDAISM OR ZIONISM: WHAT DIFFERENCE FOR THE MIDDLE EAST? 133, 141 (1986).

76. Resolution, *Status for the Zionist Organization*, para. c, Organization Department of the Zionist Executive, *Fundamental Issues of Zionism at the 23rd Zionist Congress* 135-136 (1952), W. Thomas Mallison, *The Legal Problems Concerning the Juridical Status and Political Activities of the Zionist Organization/Jewish Agency*, 9 WILLIAM & MARY L. REV. 556, at 583 (1968).

77. Abraham Rabinovich, *Expanded Agency Opens Founding Session Today*, JERUSALEM POST, June 21, 1971, at 8, col. 3.

the two organizations was set by a single body—the World Zionist Congress.

The governmental role of the W.Z.O. and J.A. is reflected by the fact that the 1971 division required an amendment of the 1952 Status Law. The amendment stated that the two bodies should coordinate their activities with the government of Israel through a government-W.Z.O. committee and a government-J.A. committee: "Two committees shall be set up for the coordination of activities between the Government and the World Zionist Organization and the Jewish Agency for Israel."<sup>78</sup>

Until 1968 the two organizations alone were responsible for immigrant absorption, to the exclusion of the government. In that year the government established a Ministry of Immigrant Absorption,<sup>79</sup> but the J.A. continued to handle the bulk of the task, administratively and financially.<sup>80</sup>

The J.A. performs other statutory duties that involve it in governmental decisions. It nominates (for appointment by the Minister of the Interior) one member to the National Board for Planning and Building, which oversees building construction in Israel.<sup>81</sup> It nominates a member to the Committee for the Protection of Agricultural Land, which prevents encroachment on agricultural land.<sup>82</sup> The major role of the national institutions is in the control and management of land.

## VI. LAND-HOLDING

In 1901 the W.Z.O. established the Jewish National Fund (J.N.F.) (Keren Kayemeth LeIsrael) to acquire land in Palestine,<sup>83</sup> and, in 1920, the Palestine Foundation Fund (Keren Hayesod), to finance settlement

78. World Zionist Organization—Jewish Agency for Israel (Status)(Amendment) Law, art. 7, 30 LAWS OF THE STATE OF ISRAEL, 43 (1975).

79. ISRAEL GOVERNMENT YEAR BOOK 5729 (1968/69) 255 (Prime Minister's Office, 1969).

80. Hasan Amun, Uri Davis & Nasr Dakhllallah San'allah, *Deir Al-Asad: The Destiny of an Arab Village in Galilee: A Case Study towards a Social and Political Analysis of the Palestinian-Arab Society in Israel*, PALESTINIAN ARABS IN ISRAEL: TWO CASE STUDIES 1, 59 (Hasan Amun et al. eds. 1977).

81. Planning and Building Law, art. 1(2)(b)(11), 19 LAWS OF THE STATE OF ISRAEL 331 (1965).

82. *Id.*, First Schedule, sec. 2(5).

83. ABRAHAM GRANOTT, THE LAND SYSTEM IN PALESTINE: HISTORY AND STRUCTURE 275-85 (1952).

on land purchased by the J.N.F.<sup>84</sup> Headquartered in New York, the J.N.F. continues to function as a subordinate body of the W.Z.O./J.A.<sup>85</sup> Like the W.Z.O./J.A., the J.N.F. operates in Israel on the basis of a statute recognizing it and its functions. The Jewish National Fund Law of 1953 made the J.N.F. an Israeli corporation "to continue the activities of the existing company."<sup>86</sup>

The J.N.F. describes its role as using "charitable funds" in ways "beneficial to persons of Jewish religion, race or origin."<sup>87</sup> Like the J.N.F., the Keren Hayesod was transformed after 1948 into an Israeli corporation by special legislation. It was renamed "Keren Hayesod—United Israel Appeal."<sup>88</sup>

The government of Israel expropriated the land of the Arabs who left as refugees in 1948, and thereafter expropriated most of the land of those who remained.<sup>89</sup> This would seem to violate the Apartheid Convention's prohibition against "the expropriation of landed property belonging to a racial group."<sup>90</sup>

The Knesset legislated a land tenure system that ensured exclusive use by Jews of most of Israel's land. The government and the J.N.F. own 75% and 17.6%, respectively, of Israel's land, for a total of 92.6%.<sup>91</sup> Of the remaining 7.4%, some is encumbered by deed clauses prohibiting sale to persons other than Jews.<sup>92</sup> The U.S. State Department, reporting on human rights in Israel, stated, "[t]itle to 93 percent of the land in Israel is held by the State or quasi-public organizations in trust for the Jewish people. According to law, anyone may purchase the remaining seven percent of privately-owned land through ordinary commercial transactions."<sup>93</sup>

84. ARIEH L. AVNERI, *THE CLAIM OF DISPOSSESSION: JEWISH LAND-SETTLEMENT AND THE ARABS 1878-1948* 111 (1948).

85. LEE O'BRIEN, *AMERICAN JEWISH ORGANIZATIONS & ISRAEL* 130-34 (1986).

86. Keren Kayemeth LeIsrael Law, art. 2, 8 *LAWS OF THE STATE OF ISRAEL* 35 (1953).

87. Keren Kayemeth LeIsrael, Head Office, *Report on the Legal Structure, Activities, Assets, Income and Liabilities of the Keren Kayemeth LeIsrael*, (1973), in NOAM CHOMSKY, *TOWARDS A NEW COLD WAR* 247-48 (1982) [hereinafter Chomsky].

88. Keren Hayesod Law, art. 2, 10 *LAWS OF THE STATE OF ISRAEL* 24 (1956).

89. IAN LUSTICK, *ARABS IN THE JEWISH STATE: ISRAEL'S CONTROL OF A NATIONAL MINORITY* 179 (1980) [hereinafter LUSTICK].

90. Apartheid Convention, *supra* note 12, art. 2(d).

91. LUSTICK, *supra* note 89, at 99.

92. Uri Davis & Walter Lehn, *And the Fund Still Lives: The Role of the Jewish National Fund in the Determination of Israel's Land Policies*, 7 *J. PALESTINE STUD.* 3, 23-25, no. 4, (1978) [hereinafter Davis & Lehn].

93. U.S. DEPT. OF STATE, *COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1984* 1266 (1985).

Neither the government nor the J.N.F. may sell land they own. By statute, "[t]he ownership of Israel lands, being the lands in Israel of the State, the Development Authority or the Keren Kayemet Le-Israel [J.N.F.], shall not be transferred either by sale or in any other manner."<sup>94</sup> The J.N.F. Memorandum of Association also prohibits it from alienating any of its land.<sup>95</sup>

As result of the prohibition against alienation much land confiscated from Palestinian Arabs is inalienable, and therefore cannot be re-acquired by them, even by purchase.<sup>96</sup> "Thus," as explained by a former Chairman of the Board of the J.N.F., "a great rule was laid down, which has a decisive and basic significance—that the property of absentees cannot be transferred in ownership to anyone but national public institutions alone, namely, either the State itself, or the original Land Institution of the Zionist Movement."<sup>97</sup>

The J.N.F. promotes Jewish settlement on its land. Its Memorandum of Association (corporate charter) requires it to use its land and resources to benefit Jews, namely, "to purchase. . .land. . .for the purpose of settling Jews on such lands" and "to make donations. . .and to provide means, to promote the interests of the Jews."<sup>98</sup>

The fact that by legislation most of the land of Israel is reserved for use by Jews is comparable to the legislative situation in South Africa when apartheid was instituted. The Native Land Act of 1913 set aside 7% of the territory for Africans and prohibited them from acquiring land in the other 93%.<sup>99</sup> In 1936 the Native Trust and Land Act increased the amount of land available to Africans to 13%.<sup>100</sup> The South African law protected the 13% as indigenous land, whereas the Israeli legislation excludes the indigenous population from the settlers'

94. Basic Law: Israel Lands, art. 1, 14 LAWS OF THE STATE OF ISRAEL 48 (1960).

95. Keren Kayemeth LeIsrael, Memorandum of Association, art. 3(h), May 20, 1954, approved by Minister of Justice, *reprinted in* 2 PALESTINE Y.B. INT'L L. 206 (1985) [hereinafter *LeIsrael*].

96. Even before the enactment in 1960 of the Basic Law: Israel Lands, this result was achieved by the Development Authority Law. 4 LAWS OF THE STATE OF ISRAEL 151 (1950).

97. ABRAHAM GRANOTT, *AGRARIAN REFORM AND THE RECORD OF ISRAEL* 104 (1956).

98. *LeIsrael*, *supra* note 95, art. 3(a)(g).

99. Bantu Land Act, No. 27, 9 STATUTES OF THE REPUBLIC OF SOUTH AFRICA 21 (1913).

100. Bantu Trust and Land Act, No. 18, 9 STATUTES OF THE REPUBLIC OF SOUTH AFRICA 371 (1936).

land but does not exclude the settlers from the indigenous land: In this respect, Israel's land tenure system is less favorable to the indigenous population than South Africa's.

Legislation does not prohibit the leasing of state or J.N.F. land to non-Jews. However, the J.N.F. controls both categories of land and does not lease to non-Jews. Land owned by the J.N.F. has, since 1960, been administered by the Israel Lands Administration.<sup>101</sup> The J.N.F. participates in management of the Administration. The J.N.F. has leased much land for construction of housing for Jews<sup>102</sup> and for kibbutzim, collective farms that accept only Jews as members.<sup>103</sup> However, it does not lease to Arabs, except on occasion for short terms.<sup>104</sup> Thus, Arabs "are excluded from using or living on those large tracts of their own country which belong to the Jewish National Fund."<sup>105</sup>

A prohibition against lease of J.N.F. land to non-Jews was contained in the J.N.F. 1907 Memorandum of Association, which included among J.N.F. objectives: "to let any land. . . of the Association to any Jew or to any unincorporated body of Jews" or to a company "under Jewish control."<sup>106</sup> The proviso was omitted from a revised charter when the J.N.F. was incorporated in Israel in 1954. The 1954 Memorandum of Association, however, directed the Fund to purchase land "for the purpose of settling Jews on such land,"<sup>107</sup> implying that it would be leased to Jews.

The earlier proviso permitting leasing to Jews was omitted, according to a Fund internal memorandum, only because "[t]he undesirable impression might be created of so-called racist restrictions." The memorandum continued: "even without these explicit prohibitions, the J.N.F. Board of Directors will know how to administer the work of the institution in accordance with the explicit object as specified in the aforementioned clause [the restriction regarding leasing to Jews only] which remains unchanged."<sup>108</sup>

101. Israel Lands Administration Law, art. 2(a), 14 LAWS OF THE STATE OF ISRAEL 50 (1960).

102. David Tanne, *Housing, IMMIGRATION AND SETTLEMENT IN ISRAEL* 122, 125 (Israel Pocket Library, 1973) [hereinafter *IMMIGRATION AND SETTLEMENT IN ISRAEL*].

103. J. Weisman, *The Kibbutz: Israel's Collective Settlement*, 1 ISRAEL L. REV. 99, 101 (1966).

104. KRETZMER, *supra* note 29, at 62.

105. Editorial, *Struck Off the Israeli List*, THE TIMES (London), June 20, 1984, at 11, col. 1.

106. Keren Kayemeth LeIsrael Limited, Memorandum of Association, art. 3(3), March 28, 1907, reprinted in 2 PALESTINE Y.B. INT'L L. 195 (1985).

107. Keren Kayemeth LeIsrael, *supra* note 95, art. 3(a).

108. *The JNF, Association Limited by Guarantee and Not Having a Capital Divided into Shares* (1952), Davis & Lehn, *supra* note 92, at 9.



Regarding state land, there is no statutory limitation as to the race of a lessee. However, the government follows the same practice as the J.N.F., which takes a primary role in administering state land. Lands owned by both the state and Fund are administered together by the Israel Lands Administration, which is directed by the Israel Lands Council, which in turn is appointed by the government.<sup>109</sup> The government has appointed six J.N.F. representatives and seven government representatives.<sup>110</sup> The J.N.F. thus wields considerable influence in the administration of state land.

In 1961 the government and J.N.F. concluded between them a "land covenant" that gave the Fund the exclusive right and obligation for land development in Israel. Accomplished by the J.N.F. Land Development Administration, this task includes land reclamation, drainage, afforestation, and the opening of new border areas for settlement.<sup>111</sup> The J.N.F. is also the joint operator, along with the Ministry of Agriculture, of the Israel Lands Administration, which controls all state-owned land.<sup>112</sup> Its regulations limiting use of land to Jews apply to this state land as well as to J.N.F. land. Power exercised by the J.N.F. over state land means that the J.N.F. exclusivist principles became official policy.<sup>113</sup> A 1973 J.N.F. report indicated that the 1960 land legislation had been enacted by the Knesset only on J.N.F. agreement and that the legislation made its exclusivist policies into state policy.<sup>114</sup>

The J.N.F. Memorandum of Association provided that once the Fund leases land, "no lessee shall be entitled to effect any sublease. . . ."<sup>115</sup> Nevertheless, in the 1950s and 1960s some Jewish lessees of Fund and state agricultural land sublet it to Arab farmers. In 1967 the Knesset enacted a law that prohibited subleasing. As a penalty it provided for the forfeiture of lease rights in land a Jew might sublet.<sup>116</sup> One Knesset member objected that the purpose was to prevent

109. Israel Lands Administration Law, arts. 2-3, 14 LAWS OF THE STATE OF ISRAEL 50 (1960).

110. Jacob Tsur, *The Jewish National Fund*, IMMIGRATION AND SETTLEMENT IN ISRAEL, *supra* note 102, at 112, 115.

111. Covenant between the State of Israel and Keren Kayemeth LeIsrael, art. 10, Nov. 28, 1961, 2 PALESTINE Y.B. INT'L L. 214 (1985) [hereinafter Covenant]; LUSTICK, *supra* note 89, at 99.

112. Covenant, *supra* note 111, art. 2; LUSTICK, *supra* note 89, at 99.

113. CHOMSKY, *supra* note 87, at 248.

114. Keren Kayemeth LeIsrael Head Office, Jerusalem, *Report on the Legal Structure, Activities, Assets, Income and Liabilities of the Keren Kayemeth LeIsrael* 6 (1973), CHOMSKY, *supra* note 87, at 249.

115. Keren Kayemeth LeIsrael, *supra* note 95, art. 3(e).

116. Agricultural Settlement (Restrictions on Use of Agricultural Land and of Water) Law, art. 7, 21 LAWS OF THE STATE OF ISRAEL 105 (1967).

subleasing to Arabs.<sup>117</sup> Another member said that this law reflected "racism and national discrimination."<sup>118</sup>

Under the 1967 law the government has confiscated land sublet to Arab farmers.<sup>119</sup> The Director of the Galilee office of the Jewish Agency's Settlement Department sent a notice in 1975 to settlements established by the Department in Galilee, which has a large Arab population, warning of the illegality of leasing state or J.N.F. land to Arabs to be cultivated by them as share-croppers, or of renting orchards to Arabs for picking and marketing of fruit. To bolster its warning, the Department noted that it had in 1974 pressed charges against violators.<sup>120</sup>

The legislation providing for performance of governmental functions by the W.Z.O./J.A., the J.N.F., and the Keren Hayesod "means that the Zionist doctrine is professed officially by the state."<sup>121</sup> The governmental character of these organizations is reflected in the fact that the Israeli penal code includes employees of the W.Z.O., J.A., J.N.F., and the Keren Hayesod—United Israel Appeal in its definition of "public servant."<sup>122</sup> This definition applies to such offenses as bribery, abuse of office, and impersonation or insult of a public servant.<sup>123</sup>

In 1989 the National Labor Court ruled that the World Zionist Organization was a "public body" and was therefore bound by Israel's administrative law as regards the dismissal of its staff workers. The W.Z.O. had dismissed a worker for political reasons, but the Court ordered reinstatement. The Court treated the W.Z.O. as a governmental institution.<sup>124</sup>

While the national institutions perform tasks of a governmental nature, their mandate restricts them to dealing with the Jewish sector.<sup>125</sup> A J.N.F. official acknowledged that "[t]he Government would have to look after all citizens if they [the Government] owned the land; since the JNF owns the land, let's be frank, we can serve just the Jewish

117. 47 KNESSET DEBATES 165 (Oct. 31, 1966) (MK Uri Avnery).

118. *Id.* at 168 (MK Tawfiq Toubi).

119. Uri Davis, *Palestine into Israel*, 3 J. PALESTINE STUD. 88, 97-98, no. 1 (1973).

120. Meir Hareuveni, *The Israeli Settlement Authorities Are Taking Action Against the Leasing of Lands to Arabs*, MA'ARIV, July 3, 1975, at 4.

121. KLEIN, *supra* note 26, at 22.

122. Penal Law, art. 2, arts. 277-297, LAWS OF THE STATE OF ISRAEL: SPECIAL VOLUME, 5737-1977 9 (1977).

123. *Id.*, arts. 277-280, 283-285, 290.

124. BULLETIN OF LEGAL DEVELOPMENT (British Institute of International and Comparative Law), no. 23, Dec. 1, 1989.

125. KRETZMER, *supra* note 29, at 96-97.

people."<sup>126</sup> Since it acquires and protects land for the Jewish sector of the population only, the J.N.F. acts in a discriminatory fashion.<sup>127</sup>

The Apartheid Convention prohibits "legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country," if such measures are undertaken to maintain "domination by one racial group" over another.<sup>128</sup>

Performance of governmental functions by the national institutions is an act of apartheid in two ways: first, these institutions promote the interests of Jews; second, the Palestinian Arabs are not permitted participation in the management of the institutions and thus they are excluded from a role in important governmental activity.

## VII. PARLIAMENTARY REPRESENTATION

The Apartheid Convention prohibits the exclusion of a racial group from the political process.<sup>129</sup> The Palestinian Arabs in Israel have the right to vote and to be elected to the Knesset.<sup>130</sup> As a result of the 1948 expulsion, however, the number of Arabs eligible to vote (17% of the electorate) is too small to threaten Jewish control.<sup>131</sup> The 17%, moreover, includes the 100,000 Arabs of East Jerusalem, few of whom vote because they object to the attempted annexation of East Jerusalem by Israel in 1967.<sup>132</sup> The confiscation of Arab land cut the economic base of the Arab population and thereby reduced its political power. Arabs have never held more than eight of the 120 seats in the Knesset.<sup>133</sup>

Although the Palestinian Arabs, because of their numbers, have no possibility of controlling the Knesset, Israel's government has moved

126. LUSTICK, *supra* note 89, at 106.

127. *Id.* at 100 (As "a convenient instrument for an acquisitive, exclusivist land policy. . .the JNF contributes to the segmentation of Israeli society between Jews and Arabs").

128. Apartheid Convention, *supra* note 12, art. 2.

129. Apartheid Convention, *supra* note 12, art. 2(c).

130. Basic Law (The Knesset), arts. 5-6, 12 LAWS OF THE STATE OF ISRAEL 85 (1958).

131. GEORGE JABBOUR, SETTLER COLONIALISM IN SOUTHERN AFRICA AND THE MIDDLE EAST 81 (1970); Mohammed Aly El Ewainy, *Racial Ideology in Israel and Southern Africa*, 29 REVUE ÉGYPTIENNE DE DROIT INTERNATIONAL 279, 282 (1973); John Dugard, Review of *Israel: An Apartheid State*, 4 PALESTINE Y.B. INT'L L. 366, 367 (1987-88).

132. Henry Kamm, *Most Arabs Boycott Jerusalem Election*, N.Y. TIMES, Jan. 1, 1974, at A2, col. 4.

133. U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1984 1266 (1985).

administratively to keep them from playing an important political role. For example, in the 1950s, using its martial law powers, Israel's government prevented Arab political organizing. The military administration did not permit travel by Arabs from one town to another without a permit, and it routinely denied permits to political activists.<sup>134</sup> It issued house arrest orders against some activists.<sup>135</sup> It prevented meetings and public speeches of a nationalist group called the Popular Front.<sup>136</sup>

In national elections, the military administration coerced Arabs to vote for the party in power, which was called Mapai.<sup>137</sup> Military authorities threatened land confiscation or loss of work permits to persons supporting non-Zionist parties.<sup>138</sup> "[T]hrough the military government," said Teddy Kollek, later the mayor of Jerusalem, "Arab votes were secured."<sup>139</sup>

The Mapai Party pressured Arabs to put together lists of Arab candidates for the general elections, to co-opt the Arabs.<sup>140</sup> A 1959 Mapai internal memorandum explained that through the lists Mapai "ensured that those lists would not consolidate into an independent Arab bloc."<sup>141</sup>

In local politics in Arab areas, the Israeli government thwarted election to municipal councils of nationalist-minded candidates.<sup>142</sup> In some instances when such candidates were elected, the Ministry of the Interior dissolved the council or cut allocations to the municipal budget.<sup>143</sup>

134. LUSTICK, *supra* note 89, at 192-93.

135. Michael Saltman, *The Use of the Mandatory Emergency Laws in Israel*, 10 INT'L J. SOCIOLOGY OF L. 385, 392 (1982) [hereinafter Saltman].

136. JACOB M. LANDAU, *THE ARABS IN ISRAEL: A POLITICAL STUDY* 94 (1969).

137. Atallah Mansour, *Israel's Arabs Go to the Polls*, NEW OUTLOOK, at 23-24 (Jan. 1960); ELIA ZUREIK, *THE PALESTINIANS IN ISRAEL: A STUDY IN INTERNAL COLONIALISM* 120 (1979) [hereinafter ZUREIK]; RAFIK HALABI, *THE WEST BANK STORY* 237 (1982); SABRI JIRYIS, *THE ARABS IN ISRAEL* 50-51 (1976) [hereinafter JIRYIS].

138. WALTER SCHWARZ, *THE ARABS IN ISRAEL* 67 (1959) [hereinafter SCHWARZ]; GHILAN, *supra* note 66, at 197-198; *see also* MOSHE MENUHIN, *THE DECADENCE OF JUDAISM IN OUR TIME* 194 (1965) (statement by Third Force Movement to U.N. Commission on Human Rights, Nov. 21, 1961: "The Governor will also see to it that a worker who has expressed sympathy with the anti-Zionist party should get no permit to go to look for work, and he and his family should remain unemployed and hungry").

139. TEDDY KOLLEK, *FOR JERUSALEM* 121 (1978).

140. SEGEV, *supra* note 71, at 66.

141. SEGEV, *supra* note 71, at 66 (Recommendations for Dealing with the Arab Minority in Israel, Sept. 1959).

142. JIRYIS, *supra* note 137, at 248.

143. LUSTICK, *supra* note 89, at 142-143.

The official who served in the 1950s as the Israeli government's advisor on Arab affairs used apartheid terminology to describe the government's exclusion of Arabs from the political process: "I behaved toward them [Arabs] as a wolf in sheep's clothing—harsh, but outwardly decent. I opposed the integration of Arabs into Israeli society. I preferred separate development."<sup>144</sup> "Separate development" is the term used in English by the South African government to translate "apartheid". The Israeli official understood that "separate development" excluded Arabs from the political process: "True, this prevented the Arabs from integrating into the Israeli democracy. Yet they had never had democracy before. Since they never had it, they never missed it. The separation made it possible to maintain a democratic regime within the Jewish population alone."<sup>145</sup>

Despite the pressures of the government and of Mapai, Arab nationalists tried to form political parties of their own, but the government moved to stop them. In the late 1950s, the military government prevented the operation of a nationalist group called the Arab Front.<sup>146</sup> In 1960, the military government confiscated publications of the nationalist political organization called Al-Ard (The Land) and arrested its leaders.<sup>147</sup> In 1964, Al-Ard presented a list of candidates for Knesset elections under the name Arab Socialist List. The district commissioner of Haifa denied the group the right to form on the ground that "its aim was to undermine the existence and security of the State of Israel."<sup>148</sup> The Supreme Court upheld the denial, with Judge Witkon stating that Al-Ard's platform "expressly and totally negates the existence of the state of Israel in general and its existence within its present boundaries in particular."<sup>149</sup> Following the Supreme Court decision, the Minister of Defense declared Al-Ard an "illegal association."<sup>150</sup>

In 1965 ten candidates sought to run for the Knesset as the Arab Socialist List. The Central Elections Committee rejected the List as

144. SEGEV, *supra* note 71, at 67 (interview with Yehoshua Felmann (Palmon), Advisor on Arab Affairs, June 6, 1983).

145. *Id.*

146. SCHWARZ, *supra* note 138, at 90-92.

147. ZUREIK, *supra* note 137, at 173.

148. Sabri Jiryis v. Haifa District Commissioner, High Court Case No. 253/64, 18(4) Piskei Din 673 (1964), *summarized in Law Report*, JERUSALEM POST, Nov. 17, 1964, at 4, col. 1.

149. *Id.* (Witkon, J.).

150. ORI STENDEL, *THE MINORITIES IN ISRAEL: TRENDS IN THE DEVELOPMENT OF THE ARAB AND DRUZE COMMUNITIES, 1948-1973* 143-44 (1973).

“an unlawful association, because its promoters deny the integrity of the State of Israel and its very existence.”<sup>151</sup> The Supreme Court affirmed the rejection. Judge Agranat said that the Committee could not disregard “the continuity and perpetuity” of Israel as a “sovereign Jewish state.”<sup>152</sup> Judge Sussman said that the List’s aim was “destruction of the state.”<sup>153</sup> Judge Cohn dissented on the ground that the election law did not authorize the exclusion of prospective candidates on the basis of their views.<sup>154</sup>

In 1980 the government banned two political congresses, planned to be held in the towns of Nazareth and Shfar’am, that might have led to the founding of an Arab political party.<sup>155</sup> In 1980 the Knesset amended the Prevention of Terrorism Ordinance to prohibit:

any act manifesting identification or sympathy with a terrorist organization in a public place or in such manner that persons in a public place can see or hear such manifestation of identification or sympathy, either by flying a flag or displaying a symbol or slogan or by causing an anthem or slogan to be heard, or any other similar overt act clearly manifesting such identification or sympathy as aforesaid.<sup>156</sup>

This provision effectively outlawed any political activity to support the Palestine Liberation Organization, which the Israeli government deemed terrorist.

In 1984 the Central Elections Committee disqualified a list of Knesset candidates presented by an Arab-Jewish coalition called the Progressive List for Peace, which advocated a West Bank-Gaza Palestinian state and negotiations between Israel and the Palestine Liberation Organization.<sup>157</sup> The candidates stood, after a favorable ruling by the Supreme Court on their appeal of the Committee action.<sup>158</sup> The Court

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151. *Yaridor v. Central Elections Committee*, 19(3) Piskei Din, 369 (1965).

152. *Id.* at 386.

153. *Id.* at 389.

154. *Id.* at 381-82.

155. U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1980 998 (1981); Saltman, *supra* note 135, at 393.

156. Prevention of Terrorism Ordinance (Amendment) Law, 34 LAWS OF THE STATE OF ISRAEL 211 (1980).

157. Christopher Walker, *Inter-racial Party Forced Out of Elections by Second Israeli Ban*, THE TIMES (London), June 20, 1984, at 6, col. 1.

158. *Naiman v. Chairman of the Central Elections Commission for the Eleventh Knesset*, 39(2) Piskei Din 233 (1984); U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1984 1266 (1985).

found that the Progressive List for Peace did not aim to destroy Israel or deny its existence.<sup>159</sup>

The legislative and administrative restrictions on Arab political activity have prevented Arabs from exercising an effective political role in Israel. While these limitations have not kept Arabs entirely out of politics, they violate the Apartheid Convention's prohibition against "any legislative measures and other measures calculated to prevent a racial group. . . from participation in the political. . . life of the country."<sup>160</sup> That language prohibits not only a total exclusion from politics, but also any official measures intended to marginalize a racial group's political participation.

### VIII. HOUSING

The Apartheid Convention prohibits measures that limit a racial group's participation in the social or economic life of the country.<sup>161</sup> In a number of social-service areas, the law and governmental practice in Israel discriminate against Palestinian Arabs. One of those areas is housing.

In the late 1940s and early 1950s, the government allocated to Jews the houses of displaced Palestinian Arabs,<sup>162</sup> including the houses of Arabs displaced outside Israel and of other Arabs (numbering several tens of thousands) displaced from their home areas, but not out of Israel. The government did not permit these Arabs to re-occupy their homes, even after they formally petitioned the government. Ben Gurion explained, "[w]e do not want to create a precedent for the repatriation of refugees," meaning those outside Israel.<sup>163</sup> Confiscating the housing of a racial group and giving it to a favored racial group would seem to be an act of apartheid under the Convention's definition.

Subsequent housing policy has also been of dubious legality. Some housing in Israel is constructed by the national institutions, which sell to Jews only.<sup>164</sup> Other housing is constructed by the Ministry of Hous-

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159. Naiman, *supra* note 158, at 243, 275-276 (Shamgar, J.), at 288 (Elon, J.), at 304, at 307 (Barak, J.), at 324 (Beiski, J.).

160. Apartheid Convention, *supra* note 12, art. 2(c).

161. *Id.*

162. Tanne, IMMIGRATION AND SETTLEMENT IN ISRAEL, *supra* note 102, at 129; DON PERETZ, ISRAEL AND THE PALESTINE ARABS 156 (1958).

163. Peter Grose, *Villagers Lose Appeal in Israel*, N.Y. TIMES, July 24, 1972, at A2, col. 4.

164. Tanne, IMMIGRATION AND SETTLEMENT IN ISRAEL, *supra* note 102, at 125. The Histadrut is a labor and economic development organization.

ing, which also sells to Jews only.<sup>165</sup> From 1948 to 1968 the government and national institutions built twenty-eight new towns for Jews in the Negev and Galilee, much of it for recent migrants.<sup>166</sup> In the Galilee, as explained by the J.A., the aim was "to convert the territory to a region with a large Jewish population."<sup>167</sup> The Ministry built two major urban settlements in the 1950s—Upper Nazareth and Carmiel. Although no statute requires the Ministry to sell its housing to Jews only, by its regulations the Ministry sells only to persons who have served in the Israel Defense Force or in the prison service. This is disguised discrimination, because few Arabs serve in these institutions.<sup>168</sup> Asked in the Knesset why the Ministry did not sell to Arabs, Joseph Almogi, the Minister of Housing, replied, "Carmiel was not built in order to solve the problems of the people in the surrounding area."<sup>169</sup>

In 1967 the government expanded the Jewish quarter of the Old City of Jerusalem, evicting several thousand Arab residents from surrounding Arab areas.<sup>170</sup> A government corporation, the Company for the Restoration and Development of the Jewish Quarter in the Old City of Jerusalem, Ltd., built new housing. In a public offering, the Company stated that it would sell to new immigrants who were residents of Israel, or to resident citizens of Israel who had served in the I.D.F. (or received an exemption from I.D.F. service, or served in a Jewish organization prior to May 14, 1948).

Muhammed Bourkan, an Arab and a former resident of the Jewish Quarter, applied to purchase an apartment, although, like most East Jerusalem residents, he was a citizen not of Israel but of Jordan. The Company refused to sell to Bourkan. He sued in the Israel Supreme

165. Arabs may, however, purchase housing from Jews who have purchased it from the Ministry. Ya'acov Friedler, *Upper Nazareth—A Mixed Town*, JERUSALEM POST INTERNATIONAL EDITION, week ending Aug. 16, 1986, at 20, col. 1.

166. Jacob Dash, *Planning and Development*, IMMIGRATION AND SETTLEMENT IN ISRAEL, *supra* note 102, at 117; Tanne, IMMIGRATION AND SETTLEMENT IN ISRAEL, *supra* note 102, at 128; the government has built some public housing for Arabs, but very little. AZIZ HAIDAR, SOCIAL WELFARE SERVICES FOR ISRAEL'S ARAB POPULATION 50 (1987); LUSTICK, *supra* note 89, at 291 (n. 19).

167. *Proposal for a General Development Program in the Galilee Hills* (1973); CHOMSKY, *supra* note 87, at 436.

168. Akiva Orr, *Socialism and the Nation-State*, DEBATE ON PALESTINE 40, 41 (Fouzi el-Asmar, Uri Davis & Naim Khader eds. 1981); Abraham Rabinovich, *The Two Nazareths: Too Close for Comfort*, JERUSALEM POST INTERNATIONAL EDITION, week ending Mar. 5, 1988, at 12, col. 1.

169. 41 KNESSET DEBATES 486 (Dec. 2, 1964).

170. DONALD NEFF, WARRIORS FOR JERUSALEM 324 (1984).



Court, where the Company acknowledged its policy to sell to Jews only. The Court found no unlawful discrimination, reasoning that the expulsion and exclusion of Arab residents was justified by 1948 expulsions of Jewish residents by Arab authorities.<sup>171</sup>

By administrative action the government has tried to keep Arab and Jewish housing separate. Meir Shamir, Director of the Israel Land Registration Office, said his office received governmental guidelines "not to encourage mixed peripheral areas."<sup>172</sup> The Ministry of Housing extends loans to individuals. It makes two kinds of housing loans to Jews on favorable terms.<sup>173</sup> One is loans to persons immigrating under the Law of Return, who are permitted to rent at a low rate, and then to purchase on preferential terms.<sup>174</sup> These immigrants can be Jewish only. The other type of loan is offered to the general public. If, however, the applicant is a "veteran," according to the Ministry's regulations, the loan is given for a larger percentage of the purchase price, part of the loan is interest-free, and the applicant is relieved of a requirement that interest be adjusted for inflation.<sup>175</sup>

"Veteran" is defined in the regulations as a person who holds a military identification number. No particular length of service is required. Thus, anyone who entered the military qualifies, even if they never served. The regulations include as a "veteran" not only a person who holds a military identification number but also the parent, sibling, child, or spouse of such a person. The regulations further include as a "veteran" a person who has received an individual exemption from military service. The Ministry of Defense issues individual exemptions only to persons subject to the draft, which means, with minor exceptions, to Jews only. The regulations also include as a "veteran" a person who has been issued a military service postponement, which the Ministry of Defense typically gives to Orthodox Jews. This expansive definition

171. *Muhammad Said Bourkan v. Minister of Finance, Company for the Restoration and Development of the Jewish Quarter in the Old City of Jerusalem, Ltd., and Minister of Housing*, Supreme Court sitting as a High Court of Justice, June 14, 1978, opinions of Cohn, Shamgar, Bechor, JJ., 32(2) *Piskei Din* 800-808 (1978).

172. Moshe Lichtman, *An Arab Kept Separately Is a Good Arab*, *MONITIN*, at 110, 111 (March 1983).

173. HENRY ROSENFELD, *THE CONDITION AND STATUS OF THE ARABS IN ISRAEL* 53 (1985) [hereinafter ROSENFELD].

174. OFFICE OF THE PRIME MINISTER, *ISRAEL GOVERNMENT YEAR BOOK* 5729 (1968-69) 250 (1969); OFFICE OF THE PRIME MINISTER, *ISRAEL GOVERNMENT YEAR BOOK* 5732 (1971-72) 222 (1972).

175. SARAH GRAHAM-BROWN, *EDUCATION, REPRESSION AND LIBERATION: PALESTINIANS* 39 (1984) [hereinafter GRAHAM-BROWN].

of "veteran" indicates that the preference is not a reward for military service. The preference discriminates against Arabs, because, with minor exceptions, the Ministry of Defense does not draft Arabs.<sup>176</sup>

The Ministry of Housing by regulation gives preferences in financing of housing it builds in "development areas," which are Jewish-inhabited. These preferences are available, according to regulation, to "a person who has served, or whose father, mother, brother, sister, son or daughter has served, in the Israel Defence Force, police or prison service."<sup>177</sup>

Such persons are eligible for grants or loans to purchase the housing, or for rent subsidies in rental housing.<sup>178</sup> Persons not falling into this category get no such preferences. The broad definition—requiring no minimum military service and including the designated relatives—indicates that this benefit is not a reward to military service. The definition includes most Jews and excludes most Arabs.

Under a 1963 statute, persons employed for at least one year in the public or private sector are entitled to severance pay if "dismissed." A person who resigns voluntarily to take up residence in an "agricultural settlement" or "development area" is deemed to have been dismissed and therefore is entitled to severance pay. The statute authorizes the Minister of Labor to define "agricultural settlement" and "development area."<sup>179</sup>

By a 1964 regulation, the Minister defined "development area" to include 60 named areas, all Jewish-inhabited. He defined "agricultural settlement" to mean either a *kibbutz* or *moshav* (both of which are inhabited only by Jews), or other settlement (*yishuv*) most of whose inhabitants are employed in agriculture.<sup>180</sup> Because of land confiscation, Arab towns do not have enough inhabitants employed in agriculture to qualify under this definition. The effect of the regulation is that only a Jew may take up residence in one of the specified locations and receive severance pay.

The housing restrictions in Israel's legislation and regulatory practice do not achieve a total separation of the races. However, they

176. KRETZMER, *supra* note 29, at 98-100; David Shipler, *Israeli Arabs: Scorned, Ashamed and 20th Class*, N.Y. TIMES, Dec. 29, 1983, at A2, col. 3 [hereinafter Shipler].

177. KRETZMER, *supra* note 29, at 105.

178. *Id.* at 105.

179. Severance Pay Law, arts. 1, 8, 30, 17 LAWS OF THE STATE OF ISRAEL 161 (1963).

180. MINISTER OF LABOR, SEVERANCE PAY REGULATIONS, CALCULATION OF COMPENSATION AND RESIGNATION THAT IS DEEMED DISMISSAL (1964), Regulation 12(b).

seriously discriminate against Arabs and in favor of Jews. By discriminating against Arabs and in favor of Jews, these measures limit the Arabs' participation in the economic and social life of Israel and thus constitute acts of apartheid.

## IX. HIGHER EDUCATION

Limitations on Arab participation in social and economic life are found in the government's policy on higher education. Universities in Israel are private. They are forbidden by government regulation to discriminate in the admission of students on the basis of "race, sex, religion, national origin or social status."<sup>181</sup> But the universities do not admit Arab applicants to certain faculties, on security grounds.<sup>182</sup> Certain scholarships are given by the Office of Absorption of the J.A. Arabs are not eligible to compete for the scholarships.<sup>183</sup> Certain privately funded scholarships are open only to students with I.D.F. service.<sup>184</sup>

The government provides tuition loans and grants to a "veteran" and to persons who reside in a "development town" or "renewal neighborhood." Guidelines for these loans and grants were adopted by a commission appointed in 1982 by the Minister of Education and Culture and chaired by Moshe Katzav, Deputy Minister of Housing.<sup>185</sup>

The commission defined "veteran" as including the parent or sibling of a person who has served in the I.D.F. A student from a family with four or more children and who is eligible as a veteran for a supplemental allowance for a child is eligible for a grant covering half tuition. "Development towns" and "renewal neighborhoods" are inhabited only by Jews. A resident of either is eligible for a loan for one third of the university tuition. The loan is forgiven if the student resides in the "development town" or "renewal neighborhood" after graduation.<sup>186</sup> The criterion of the "development town" or the "renewal neighborhood" residence and the expansive definition of "veteran" allows most Jews to qualify, but few Arabs.

181. Council for Higher Education (Recognition of Institutions) Rules (1964), Rule 9; KRETZMER, *supra* note 29, at 170.

182. ZUREIK, *supra* note 137, at 155; GRAHAM-BROWN, *supra* note 175, at 57.

183. ROSENFELD, *supra* note 173, at 53-54.

184. *Arab Students in Israeli Universities*, AL-AUDEH ENGLISH WEEKLY, July 20, 1986, at 11.

185. KRETZMER, *supra* note 29, at 105-06.

186. *Id.* at 106 n.37.

## X. CHILD SUPPORT PAYMENTS

As a birth-encouragement measure, the Ministry of Labor and Social Welfare makes child support payments to parents. This is done under the National Insurance Law, which provides child support payments without regard to the status of the parents.<sup>187</sup> However, a 1949 law, the Discharged Soldiers (Reinstatement in Employment) Law,<sup>188</sup> was amended in 1970 to authorize the Ministry, through the National Insurance Authority, to make supplemental child support payments to persons qualifying on the basis of military service.<sup>189</sup>

The Minister adopted Regulations on Grants for Soldiers and Their Families (1970), which provides grants for a third child and additional children at a level approximately equal to the amount payable under the National Insurance Law.<sup>190</sup> Thus, a qualifying person receives double the amount of others.<sup>191</sup>

The 1970 amendment defined "soldier" as "a person who is serving or has served in the Israeli Defence Force, the police or the prison service" or who served in one of the Zionist military formations (Haganah, Etzel, or Lehi) prior to the establishment of Israel.<sup>192</sup> The Minister's 1970 Regulation broadened this definition to include the "[s]pouse, children, or parents of a soldier."<sup>193</sup> Eligibility does not turn on length of military service and thus is not a reward for service. The expansion of the definition to include children means that a person whose parent served at any time in the past qualifies.

Further, the Ministerial Committee on the Interior and Services, acting without statutory authorization, provides the extra child support

187. National Insurance Law (Consolidated Version), arts. 104-105, 22 LAWS OF THE STATE OF ISRAEL 114 (1968), as amended; see *National Insurance Law (Consolidated Version) 5728—1968 in English Translation Incorporating All Amendments, Up to and Including Amendment No. 60*, (A.G. Publications Ltd., 1986).

188. 3 LAWS OF THE STATE OF ISRAEL 10 (1949).

189. Discharged Soldiers (Reinstatement in Employment)(Amendment No. 4) Law, art. 1, 24 LAWS OF THE STATE OF ISRAEL 126 (1970).

190. KRETZMER, *supra* note 29, at 100; Shipler, *supra* note 176; Sabri Jiryis, *Israeli Law and the U.N. Universal Declaration of Human Rights*, THE LEGAL ASPECTS OF THE PALESTINE PROBLEM WITH SPECIAL REGARD TO THE QUESTION OF JERUSALEM 258-59 (Hans Köchler ed. 1981) [hereinafter LEGAL ASPECTS].

191. ROSENFELD, *supra* note 173, at 53; GRAHAM-BROWN, *supra* note 175, at 39.

192. Discharged Soldiers (Reinstatement in Employment)(Amendment No. 4) Law, 24 LAWS OF THE STATE OF ISRAEL 126 (1970).

193. Regulations on Grants for Soldiers and Their Families, art. 1, KRETZMER, *supra* note 29, at 100.

payments to parents who have not served in the I.D.F. but who are students in Jewish seminaries.<sup>194</sup> The impact of the 1970 amendment, the 1977 Regulation, and the Committee decision for seminarians is that nearly all Jews qualify for the additional payment while few Arabs qualify. The provision of the supplemental child support payments to Jews but not to Arabs is another limitation on the participation by Arabs in the economic and social life of the country, hence an act of apartheid.

## XI. CONCLUSION

Israel's policy towards the Arabs, explained Israeli diplomat Abba Eban, "should not be one of integration."<sup>195</sup> Race separation was perhaps inevitable in Israel, given the manner of its creation. There was no inclination on the part of the Arabs to assimilate into the Jewish population that had taken over Palestine and forced out the majority of their countrypeople, just as Africans in southern Africa were not inclined to assimilate into the European groups that took those areas.

If separation could not be avoided, discrimination could. The legislative and administrative actions to keep Arabs subordinate find no justification in human rights principles. Some analysts find Israel's racial discrimination less formal than South Africa's.<sup>196</sup> Yet the enumerated instances of discrimination in Israel's legislation effect a difference in treatment in major aspects of state policy. South African legal scholar John Dugard identified the franchise, education, housing, and land allocation as the "major areas of statutory discrimination" in South Africa.<sup>197</sup> As indicated, Israel by statute and administrative regulation discriminates against Arabs in these areas. Regarding the franchise, the exclusion was not so complete as in South Africa. Re-

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194. *Id.* at 106-07.

195. ABBA EBAN, *VOICE OF ISRAEL* 76 (1969).

196. Alfred T. Moleah, *Violations of Palestinian Human Rights: South African Parallels*, LEGAL ASPECTS, *supra* note 190, at 263, 269 ("Whereas South Africa has laws clearly identifiable as racist, Zionist racism is informal, *de facto* and deceptive"); ZUREIK, *supra* note 137, at 16 ("While official *de jure* apartheid of the South African variety does not exist in Israel, national apartheid on the latent and informal levels—as manifested in segregation in housing, land ownership (although . . . because of land regulation laws, which are strictly based on national criteria, a case could be put forward that this is an example of official apartheid), education, interpersonal contact, modes of political organization and occupational distribution, not to mention the area of marriage—is a characteristic feature of Israeli society").

197. John Dugard, review of Uri Davis, *Israel: An Apartheid State*, in 4 PALESTINE Y.B. INT'L L. 366, 367 (1987/88).

garding land, the separation was more complete, however, since no percentage of the land was set aside for Arabs.

In two other respects, Israel's discrimination was more severe than South Africa's. The national institutions, as a device to institutionalize preferences for Jews over Arabs, had no counterpart in South Africa. In addition, Israel was more efficient in separating out the indigenous population. Whereas South Africa tried to move Africans into "bantustans," Israel forced Palestinian Arabs out. "The regime in Pretoria since 1948 has often dreamt of the day when the heartland of South Africa would be completely white," said Ali Mazrui, an analyst of apartheid, "but the regime has yet to engineer a nightmare to send Blacks fleeing to their homelands. On this issue of demographic manipulation there is little doubt that Zionism since 1948 has been more ruthless and cynical than [South African] apartheid."<sup>198</sup>

Under the Apartheid Convention, Israel's discriminatory practices qualify as apartheid policy. The discriminatory practices are not isolated phenomena, but part of a whole whose purpose is to keep the Palestinian Arabs in a subordinate status. The Palestinian Arabs became second-class citizens of Israel.<sup>199</sup> Israel's self-definition as Jewish shows the intent to make a state for Jews and indicates that the various acts of discrimination are carried out with the purpose to maintain domination by one racial group over another.

The Jewish state that was formed in Palestine in 1948 shared an historical similarity with South Africa, in that European settlers established themselves and then, to take control, fought Britain, which in both cases ruled the territory. The Organization of African Unity said that the two states "have a common imperialist origin."<sup>200</sup> Former South Africa Prime Minister John Vorster drew this historical parallel and said that Israel had an "apartheid problem" with its Arab in-

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198. Ali Mazrui, *Zionism and Apartheid: Strange Bedfellows or Natural Allies?*, 9 ALTERNATIVES 73, 91, no. 1 (1983) [hereinafter Mazrui]; see also Glenn E. Perry, *The Reality and Distorting Lenses*, PALESTINE: CONTINUING DISPOSSESSION 3, at 4 (Glenn E. Perry ed. 1986) ("[w]hile the victims of the White settlers in South Africa still constitute the overwhelming majority—albeit a disenfranchised, segregated one—of their country's population, the victims of the Jewish state are mainly exiled from their homeland").

199. SYDNEY D. BAILEY, *THE MAKING OF RESOLUTION 242* 189 (1985); Zeidan, *supra* note 2, at 170; GHILAN, *supra* note 66, at 165.

200. Assembly of the Heads of State and Government of the Organization of African Unity, *Resolution on the Question of Palestine*, O.A.U. Doc. AHG/Res. 77 (XII), reprinted in 30 U.N. GAOR, *Letter dated 13 October 1975 from the Permanent Representative of Dahomey to the United Nations addressed to the Secretary-General* at 9, U.N. Doc A/10297, annex 2 (1975).

habitants. He said, "we view Israel's position and problems with understanding and sympathy."<sup>201</sup> In 1919 Morris Cohen, an American Jew who opposed the idea of a Jewish state in Palestine, worried aloud that "a national Jewish Palestine must necessarily mean a state founded on a peculiar [sic] race."<sup>202</sup> The goal of establishing a Jewish state, said historian Maxime Rodinson, "could not help but lead to a colonial-type situation and to the development. . . of a racist state of mind."<sup>203</sup>

In both Israel and southern Africa, the racial group in charge established conditions that went beyond holding the other group at arm's length. It set up legal obstacles to keep the other group in a subordinate role in the national life. In both instances, the group in charge was motivated by an ideology that proclaimed its right to the land. Mazrui said, "[t]hey are both discriminatory ideologies whose implementation inevitably and logically necessitated strategies of repression and ethnic exclusivity."<sup>204</sup>

If, as part of a political settlement, the Palestinian Arabs in the Gaza Strip and West Bank gain autonomy or independence, some of the Arabs in Israel might move there, but the vast majority will stay. Thus, the issue of the Arabs in Israel is not likely to disappear. With the increased Jewish population in Israel as a result of Soviet migration in the 1990s, Arab economic status is in further jeopardy in Israel.

The international community has exerted considerable effort to eliminate apartheid in southern Africa. It has been eliminated in Namibia and Rhodesia (Zimbabwe), and South African reform has been initiated. The demise of apartheid in South Africa is viewed as essential to peaceful relations in that region. If equality were established in Israel, there too it would set a powerful precedent for a broader political settlement in the region. Apartheid is a system of governance that severely inhibits a racial group in its pursuit of living a normal life. As apartheid in Southern Africa diminishes, the international community cannot become complacent. Systematic racial discrimination remains an actual or potential phenomenon in many locations. Eradicating such discrimination must remain a high priority.

201. C.L. Sulzberger, *Strange Nonalliance*, N.Y. TIMES, Apr. 30, 1971, at A39, col. 1.

202. Morris R. Cohen, *Zionism: Tribalism or Liberalism?*, MORRIS R. COHEN, THE FAITH OF A LIBERAL 329 (1946), originally published in 18 NEW REPUBLIC 182 (March 8, 1919).

203. MAXIME RODINSON, ISRAEL: A COLONIAL-SETTLER STATE? 77 (1973).

204. Mazrui, *supra* note 198, at 92.

