

Apartheid in South Africa and Palestine?

John Dugard

John Dugard is a South African international lawyer who headed the Centre for Applied Legal Studies in Johannesburg during the Apartheid era. In 1995 he assisted in the drafting of the Bill of Rights in the South African Constitution. For seven years he was Special Rapporteur on the human rights situation in the Occupied Palestinian Territory to the UN Human Rights Council and Commission on Human Rights.

Professor Dugard gave evidence to the Third Session of the Russell Tribunal on Palestine, which met in Cape Town from 5 to 7 November 2011. The theme of the Session was Israel and Apartheid under international law.

I spent most of my adult life in South Africa opposing apartheid, as an advocate, legal academic and, from 1978-1990, director of the Centre for Applied Legal Studies (a research institute engaged in human rights advocacy and litigation). In my work I compared and contrasted apartheid with international human rights standards and advocated a Constitution with a Bill of Rights in a democratic South Africa. Unlike many other South Africans, I was never imprisoned but I was prosecuted, arrested and threatened by the security police. My major book, *Human Rights and the South African Legal Order* (1978), the most comprehensive account of the law and practice of apartheid, was initially banned.

I had wide experience and knowledge of the three pillars of the apartheid state – racial discrimination, repression and territorial fragmentation. I led lawyers' campaigns against the eviction of black persons from neighbourhoods set aside for exclusive white occupation by the Group Areas Act, and against the notorious 'pass laws', which made it an offence for blacks to be in so-called 'white areas' without the correct documentation. These campaigns took the form of free legal defence to all those arrested, which made the systems unmanageable. Through the Centre for Applied Legal Studies I engaged in legal challenges to the implementation of the security laws and emergency laws, which allowed detention without trial and house arrest – and, in practice, torture. I also challenged the establishment of Bantustans in the courts.

After South Africa became a democracy, I was appointed to a small committee of

experts charged with the task of drafting a Bill of Rights for the 1996 South African Constitution.

I visited Israel and the Occupied Palestinian Territory in 1982, 1984, 1988 and 1998 to participate in conferences on issues affecting the region. In 2001, I was appointed as Chair of a Commission of Enquiry established by the Commission on Human Rights to investigate human rights violations during the Second Intifada. I was also appointed as Special Rapporteur to the Commission on Human Rights (later Human Rights Council) on the human rights situation in the Occupied Palestinian Territory. In this capacity I visited the Occupied Palestinian Territory twice a year and reported to the Commission and the Third Committee of the General Assembly. My mandate expired in 2008. In February 2009, I led a Fact-Finding Mission established by the League of Arab States to investigate and report on violations of human rights and humanitarian law in the course of Operation Cast Lead.

From my first visit to Israel/the Occupied Palestinian Territory I was struck by the similarities between apartheid in South Africa and the practices and policies of Israel in the Occupied Palestinian Territory. These similarities became more obvious as I became better informed about the situation. As Special Rapporteur I deliberately refrained from making such comparisons until 2005, as I feared that such comparisons would prevent many governments in the West from taking my reports seriously. However, after 2005 I decided that I could not, in good conscience, refrain from making such comparisons.

Of course, the two regimes are very different. Apartheid South Africa was a state that practised discrimination and repression against its own people. Israel is an occupying power that controls a foreign territory and its people under a regime recognized by international humanitarian law. But in practice there is little difference. Both regimes were/are characterized by discrimination, repression and territorial fragmentation. The main difference is that the apartheid regime was more honest. The law of apartheid was openly legislated in Parliament and was clear for all to see, whereas the law governing Palestinians in the Occupied Palestinian Territory is largely contained in obscure military decrees and inherited emergency regulations that are virtually inaccessible.

In my work as Commissioner and Special Rapporteur I saw every aspect of the occupation of the Occupied Palestinian Territory. I witnessed the humiliating checkpoints, which reminded me of the implementation of the pass laws (but worse), separate roads (unknown in apartheid South Africa), and the administrative demolition of houses, which reminded me of the

demolition of houses in 'black areas' set aside for exclusive white occupation. I visited Jenin in 2003 shortly after it had been devastated by the Israeli Defence Force. I spoke to families whose houses had been raided, and vandalized by the IDF; I spoke to young and old who had been tortured by the IDF; and I visited hospitals to see those who had been wounded by the IDF. I saw and, on occasion, visited settlements; I saw most of the Wall and spoke to farmers whose lands had been seized for the construction of the Wall; and I travelled through the Jordan Valley viewing destroyed Bedouin camps and checkpoints designed to serve the interests of the settlers.

A final comment based on my personal experience. There was an altruistic element to the apartheid regime, albeit motivated by the ideology of separate development, which aimed to make the Bantustans viable states. Although not in law obliged to do so, it built schools, hospitals and roads for black South Africans. It established industries in the Bantustans to provide employment for blacks. Israel even fails to do this for Palestinians. Although in law it is obliged to cater for the material needs of the occupied people, it leaves this all to foreign donors and international agencies. Israel practises the worst kind of colonialism in the Occupied Palestinian Territory. Land and water are exploited by an aggressive settler community that has no interest in the welfare of the Palestinian people – with the blessing of the state of Israel.

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