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The crime of apartheid in South Africa and beyond



Thursday 22–Friday 23 June

School of Law, University of Nottingham

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Concept note

Apartheid – the Afrikaans word for the state of being separate or apart – is the ultimate slur in international politics. The crime of apartheid, like the crime of genocide, is a pejorative that provokes indignation from government officials accused of perpetrating it. No government wants to be accused of practising apartheid. No state wants to become an international pariah. And yet, despite the criminalisation of apartheid in widely ratified treaties, and the norm prohibiting apartheid constituting *jus cogens*, no official has ever been prosecuted for the crime against humanity of apartheid in South Africa or anywhere else.

So, what is apartheid, exactly? Is it an ideology, a doctrine, a system, a practice, a policy, or a grand plan for transforming society – as its adherents in South Africa once argued? Or is apartheid better understood as a war crime, a crime against humanity, and the ultimate violation of human rights?

Can apartheid be separated from its association with southern Africa (South Africa, Namibia, and Rhodesia), in the way that the crime of genocide, which originated as a term to describe the crimes in Nazi-occupied Europe in the Second World War, applies to genocides that occurred elsewhere in the world, such as in Rwanda or the Sudan? In other words, can we theorise apartheid as a crime against humanity that can be removed from its southern African context? And if the crime against humanity of apartheid is applicable beyond southern Africa, why have the United Nations' (UN) political organs been cautious about describing similar policies and practices of racial discrimination outside South Africa as a form of apartheid (such as, in Myanmar), or have condemned expert UN reports that have stridently made this claim for example, in respect of Israel and Palestine? Finally, what are we to make of popular uses of the word apartheid, as in global apartheid, gender apartheid, economic apartheid, nuclear apartheid, medical apartheid, occupational apartheid, or even vaccine apartheid? Can we give these expressions of apartheid a concrete meaning, or must we distinguish the use of the word apartheid in these contexts from its definition as a crime in international law?

More specific questions that might be addressed at the conference, in addition to those mentioned above, include the following:

- How should courts interpret the reference to ‘racial groups’ in the principal treaties that criminalise the crime against humanity of apartheid?
- To what extent does the definition of the crime against humanity of apartheid overlap with the crime of genocide?
- Can the UN Human Rights Council succeed to the role played by the old Commission of Human Rights with a view to reappointing states to the ‘Group of Three’ pursuant to Article IX of the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) (‘the 1973 Apartheid Convention’) to examine states obligations under the Convention?
- Does the crime against humanity of apartheid impose a customary international law obligation on states to prosecute individuals accused of the crime?
- Does the crime only apply to individuals and groups, or does it also apply to companies?
- Why has no Western state become party to the 1973 Apartheid Convention and why has South Africa (in contrast to Namibia) still not acceded to the Convention?
- To what extent has the 1973 Apartheid Convention’s Cold War legacy, when the Convention was associated with the foreign policy of the Soviet Union and the Eastern bloc, affected the way in which the treaty continues to be viewed by states today?
- Why has no individual been prosecuted for the crime against humanity of apartheid to date, whether in South Africa, or elsewhere?
- Is there a problem with the definition of the crime or a lack of clarity over its application beyond southern Africa?
- And finally, why have the UN’s political organs been so reticent to condemn contemporary policies and practices of apartheid?

Over the course of two days, leading experts from the fields of anthropology, history, theology, political science, and law, will meet to discuss these issues, and more. Particular attention will be devoted to the categorisation of apartheid as a crime against humanity in the 1973 Apartheid Convention, in the Rome Statute of the International Criminal Court (1998), and in the ongoing work at the UN’s Sixth Committee on crimes against humanity.

Conference programme

Thursday 22 July (day 1)

B63, Law and Social Sciences Building

9am	Registration Tea and coffee
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9.45am	Welcome Olympia Bekou – Professor of Public International Law and Head of the School of Law, University of Nottingham Victor Kattan – Senior Research Fellow, University of Nottingham
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10am	Opening keynote Barney Pityana – Professor Emeritus of Law, University of South Africa Followed by Q&A
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10.45am	Break
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11am	Panel 1: Reflections on histories of apartheid in South Africa This panel takes the form of a conversation about apartheid in South Africa between four leading historians. It will include a discussion of Professor Simpson’s new book <i>History of South Africa: 1902 to Present</i> (Hurst 2022), which was the winner of South Africa’s National Institute for the Humanities and Social Sciences Non-Fiction Book Award. The panel will also discuss the different approaches to writing about South Africa’s troubled past, and what made apartheid distinctive to other forms of racial discrimination. Chair: Zinhle Koza – PhD candidate, University of Nottingham Thula Simpson – Associate Professor of History, University of Pretoria Onyeka Nubia – Assistant Professor, Department of History, University of Nottingham Rachel Johnson – Assistant Professor in (African) History, Durham University William Beinart – Emeritus Professor at St Antony’s College and the African Studies Centre, University of Oxford
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12.30pm	Lunch
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2pm	Panel 2: Apartheid, race, and racism Racism was at the heart of South Africa’s apartheid system, but how did that system divide the population by racial groups, and to what extent can contemporary understandings of race and racial discrimination elucidate claims that apartheid is taking place beyond South Africa today? Is race a sociological concept or a biological one and why does this matter? How does international criminal law define the concept of racial groups in the crime of apartheid? Chair: Thamil Ananthavinayagan – Teaching Associate, University of Nottingham Carola Lingaas – Associate Professor of Law, VID Specialized University David Keane – Assistant Professor in Law, Dublin City University Noura Erakat – Associate Professor of Africana Studies, Rutgers University Victor Kattan – Senior Research Fellow, University of Nottingham
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3.30pm	Break
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Thursday 22 July (day 1)

B63, Law and Social Sciences Building

4pm **Panel 3: Forms of apartheid**

Apartheid has taken many forms. In South Africa it was initially defined as a policy, a practice, and even a doctrine. Then there were those in South Africa who distinguished grand apartheid from petty apartheid, associating the former with South Africa's theory of separate development. By the late 1960s the UN was describing apartheid as a crime against humanity. This panel will revisit different forms of apartheid, such as global apartheid, gender apartheid, social apartheid, and apartheid in labour relations.

Chair: [Dirk Van Zyl Smit](#) – Emeritus Professor of Comparative and International Penal Law, University of Nottingham

[Catherine Besteman](#) – Francis F Bartlett and Ruth K Bartlett Professor of Anthropology, Colby College, Maine

[Penny Andrews](#) – John Marshall Harlan II Professor of Law, New York Law School, Director, Racial Justice Project

[Balakrishnan Rajagopal](#) – Associate Professor of Law and Development, MIT, and UN Special Rapporteur on the Right to Adequate Housing

[Urmila Bhoola](#) – Principal Research Fellow in Justice and Global Antislavery, Rights Lab, University of Nottingham

5.30pm **Closing remarks**

6pm **Conference drinks with canapés – Senate Chamber, Trent Building**

Open to all attendees

7.30pm **Conference dinner – Council Dining Room, Trent Building**

For speakers and chairs only

Conference programme

Friday 23 July (day 2)

B63, Law and Social Sciences Building

9am Registration

Tea and coffee

9.25am Welcome

Victor Kattan – Senior Research Fellow, University of Nottingham

9.30am Panel 4: Reflections on the law of apartheid

One of the ironies of the crime against humanity of apartheid is that it was lawful within South Africa until the end of National Party rule in 1994. Within South Africa, the law of apartheid referred to the statutes adopted by South Africa's parliament enshrining racial discrimination in law. This panel will reflect on the how apartheid, considered a crime against humanity by the international community, was considered by many South African jurists to be consistent with the rule of law until the fall of apartheid. How were these jurists able to reconcile these views, and what are the legacies of this discriminatory legal system in South Africa today?

Chair: Dino Kritsiotis – Professor of Public International Law, University of Nottingham

Barney Pitso – Professor Emeritus of Law, University of South Africa

Kate O'Regan – Professor of Human Rights Law, and Director of the Bonavero Institute of Human Rights, University of Oxford

John Dugard – Judge Ad Hoc, ICJ, The Hague, Professor Emeritus, Leiden University

David Dyzenhaus – University Professor of Law and Philosophy and Albert Abel Chair, University of Toronto Faculty of Law

11am Break

11.15am Panel 5: Apartheid as a Crime against Humanity

The 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid and the 1998 Rome Statute of the International Criminal Court provide individual criminal responsibility for officials who perpetrate the crime against humanity of apartheid. This panel will consider the definition, scope, and the customary international law status of the crime against the backdrop of recent developments in South Africa concerning the possible prosecution of former agents of the apartheid regime for the murder of the COSAS Four (the name given to four anti-apartheid activists who were members of the Congress of South African Students) in 1985.

Chair: Olympia Bekou – Professor of Public International Law and Head of the School of Law, University of Nottingham

Mia Swart – Senior Lecturer in International Human Rights Law at Edge Hill University

Ntombizozo Dyani-Mhango – Professor and Head of the Department of Public Law, University of Pretoria

Gerhard Kemp – Professor of Criminal Law, University of the West of England, Bristol

Chris Gevers – Lecturer in the School of Law, the University of KwaZulu-Natal

Friday 23 July (day 2)

B63, Law and Social Sciences Building

12.45pm Lunch

2pm **Panel 6 Apartheid beyond South Africa: Palestine and the United States of America (Black Lives Matter)**

As a crime against humanity, the crime of apartheid can be committed anywhere even though it remains closely associated with the policies and practices of the National Party-led Government of South Africa before 1994. This panel considers the extent to which the crime of apartheid applies to situations beyond southern Africa, from the struggle against Jim Crow laws and racial segregation in the US and the rise of the Black Power Movement in the 1960s, to the contemporary struggle for Black lives in the United States and human rights in occupied Palestine (East Jerusalem, the West Bank, and Gaza). Why is there so much resistance to describing apartheid as a crime against humanity beyond southern Africa? Is apartheid even a helpful concept to describe discrimination against African Americans and Palestinians, or is it a distraction from other forms of accountability?

Chair: [Matthew Windsor](#) – Associate Professor in Public International Law, University of Nottingham

[Russell Rickford](#) – Associate Professor of History, Cornell University

[Robyn Spencer-Antoine](#) – Associate Professor of History, CUNY–Lehman College

[Francesca Albanese](#) – UN Special Rapporteur for Human Rights in the territories occupied by Israel since 1967

[Omar Shakir](#) – Israel and Palestine director at Human Rights Watch

[Daniel Levy](#) – President of the US/Middle East Project

3.30pm Break

3.45 **Closing keynote**

[Dr Hassan Jabareen](#) – Founder and General Director of Adalah, The Legal Center for Arab Minority Rights in Israel

Followed by Q&A

4.30pm **Closing remarks**
