

APARTHEID AND PERSECUTION

**Human Rights Watch's landmark report says Israel is
committing crimes against humanity and demands
international sanctions**



Ireland-Palestine Solidarity Campaign

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“The international community has for too long explained away and turned a blind eye to the increasingly transparent reality on the ground. Every day a person is born in Gaza into an open-air prison, in the West Bank without civil rights, in Israel with an inferior status by law, and in neighboring countries effectively condemned to lifelong refugee status, like their parents and grandparents before them, solely because they are Palestinian and not Jewish.”¹ - Human Rights Watch

Introduction

Human Rights Watch’s recent report, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, is both a landmark moment and a wakeup call for the international community. Coming on the heels of similar reports by the Israeli NGOs Yesh Din and B’Tselem, Human Rights Watch’s (HRW) report goes further and systematically deconstructs many of the shibboleths that have served to veil understanding of what is actually occurring in Palestine. Namely that:

The enduring military **occupation of Palestine is not temporary** but rather is designed to continue in perpetuity.

The ‘security’ justification advanced for many of Israel’s calculated abuses of Palestinian rights is simply not tenable: **Palestinian rights are violated not because they pose a ‘security risk’ but simply because they are Palestinian.**

Israel is not a liberal democracy. In fact, far from being a democratic state, it deliberately implements policies and places on its statute books laws designed to curtail, diminish and deny Palestinian democratic rights.

The **‘peace process’ is not and has not been used in good faith by Israel** to bring about an end of the conflict, but rather as a diplomatic tool to emasculate international law and mask its theft of further Palestinian lands and resources.

Underpinning each of these violations of individual and collective Palestinian rights is the principle of racial inequality. Palestinians are not viewed as deserving of equality and are simply unwanted in their own country. Their very existence is, in Israel’s terminology, “a demographic threat” that is to be managed through demographic engineering – ‘Judiaising’ areas of territory under the principle of ‘maximum land with minimum Palestinians’, whilst corralling Palestinians

¹ HRW: A Threshold Crossed (2021), pg. 21: <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>

inside areas under the diametrically opposed principle of ‘the smallest territory possible for the greatest number of Palestinians.’

Human Rights Watch’s conclusion is unflinching: Israel is willfully and systematically implementing a system of governance that instrumentalises gross violations of human rights in service of the achievement of racial domination and supremacy. Viewing the situation in its entirety, *A Threshold Crossed* concludes that Israel’s practices, policies and structures constitute “specific crimes committed as part of a systematic attack, or acts committed pursuant to a state or organisational policy, directed against a civilian population;”² that in fact Israel is guilty of committing the twin crimes against of humanity of the Crime of Apartheid and the Crime of Persecution.

Unsparring in its condemnation, HRW ends *A Threshold Crossed* with a clear set of recommendations and actions for states to implement if they wish to continue to defend a rules-based international order, establish accountability and promote a purposeful and genuine peace based on international law, human rights and accountability.

The Crime Of Apartheid

Apartheid is recognised as a crime against humanity in the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute of the International Criminal Court (ICC). The Apartheid Convention defines apartheid as “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.”

The Rome Statute of the ICC defines apartheid as “inhumane acts... committed in the context of an institutionalised regime of systematic oppression and domination of one racial group over any other racial group or groups and committed with the intention of maintaining that regime.”

Apartheid is adjudged to be present when a system of domination of one racial group over another is coupled with inhumane acts carried out in a systematic or widespread manner.

Among the inhumane acts HRW identifies as contributing to a judgement of apartheid are “forcible transfer,” “expropriation of landed property,” “creation of separate reserves and ghettos,” and the denial of “the right to leave and return to their country, [and] the right to a nationality.”³ Each of these criminal actions is manifestly evident in Israel’s treatment of Palestinians.

² pg 5

³ Pg. 6.

The Crime of Persecution

The Rome Statute identifies the crime of Persecution as “the intentional and severe deprivation of fundamental rights... by reason of the identity of the group or collectivity.” Persecution is adjudged to be committed when severe abuses of rights are committed on a systematic basis with discriminatory intent.

The Applicability of these Charges towards Israel

Intent to Maintain Domination

A stated aim of the Israeli government is to maintain Jewish-Israeli domination across Israel and the occupied Palestinian territories (OPT). This is made explicit in the 2018 ‘Nation-State Law’, which affirms Israel as the “nation-state of the Jewish people” and declares that over the entirety of the territory of Israel and OPT the right to self-determination “is unique to the Jewish people” with “Jewish settlement” prioritised as a national value.

To maintain Jewish Israeli dominance over the ‘demographic threat’ that Palestinians are deemed to represent, Israel has instituted a compound mesh of policies and practices which include restricting Palestinians’ right to vote; separating Palestinians from Palestinians both physically and in legal status; Judaizing areas of territory to establish or maintain Jewish-Israeli control; corralling Palestinians into disconnected urban spaces lacking a hinterland, resources and the capacity for economic development in order to facilitate and nurture the growth of nearby Jewish-Israeli settlements under the principle of ‘maximum land with minimum Palestinians’.

Systematic Oppression and Institutional Discrimination

Jewish-Israeli domination is further coupled with systematic oppression and institutional discrimination. The degree of oppression and discrimination varies according to the Israeli-designated status of the territory in which a Palestinian resides, however, whether in Gaza, East Jerusalem, the West Bank, inside the State of Israel, or even in the refugee Disapora, a Palestinian's status and rights are by law always inferior to that of a Jewish-Israeli. HRW sums up this situation as follows:

“The fragmentation of the Palestinian population, in part deliberately engineered through Israel restrictions on movement and residency,

further the goal of domination and helps obscure the reality of the same Israeli governments repressing the same Palestinian population group, in varying degrees in different areas, for the benefit of the same Jewish Israeli dominant group.”⁴

Inhumane Acts and Other Abuses of Fundamental Rights

In addition to legally endorsed discrimination Israeli authorities have carried out a range of inhumane acts against Palestinians in the OPT. These include sweeping restrictions on the movement of 4.7 million Palestinians, mass confiscation of their land, categorical denial of building permits in the majority of West Bank territory thereby causing thousands of Palestinians to have to leave their homes under conditions HRW calls “*forcible transfer*.”

Inside Israel the Israeli authorities have similarly confiscated millions of dunams of Palestinian land and refused to permit them access to it. In the Negev region Israel has made it “virtually impossible” for tens of thousands of Palestinians to live lawfully in the communities they have lived in for decades.”⁵ Israel has also refused to permit the return of more than 700,000 Palestinian refugee and their descendants who were forcibly dispossessed and expelled between 1947 and 1949. Israel similarly imposes a blanket ban on legal residency preventing many Palestinian spouses and families from living together.

HRW’s Conclusions and Recommendations

Apartheid and Persecution - Racial Domination and Discrimination: the operating principles informing Israel’s rule over Palestinians

HRW concludes that successive Israeli governments have demonstrated an intent to maintain Jewish-Israeli dominance over Palestinians across Israel and the OPT, and that intent has been coupled with systematic oppression of and inhumane acts against Palestinians in the OPT and East Jerusalem. Human Rights Watch concludes: “When these three elements occur together, they amount to the crime of apartheid.”⁶

HRW further concludes that Israel is guilty of the crime against humanity of Persecution. This finding is based on the discriminatory intent behind Israel’s treatment of Palestinians and the attendant grave abuses carried out against them - abuses that HRW concludes are widespread

⁴ Pg. 8.

⁵ Pg. 9.

⁶ Pg 10

and systematic and are inflicted upon Palestinians for no other reason but “by virtue of their identity as Palestinians.”⁷

Implications for the Ireland and the International Community

A Threshold Crossed is clear: Israel is deliberately implementing the twin crimes against humanity of Apartheid and Persecution. This finding should engender deep consequences for Ireland and the international community in its dealings with Israel and the individual perpetrators who plan, implement and facilitate these crimes. In particular, politicians and statespeople have to ask themselves whether they are prepared to accept the truth of the reality HRW describes; and if they are, are they willing to meet their legal and ethical obligations to protect under international law?

The consequences of a failure to take effective action on Israel’s breaches of international law have already been grave and will continue to be so going forward. Failing to act now once Ireland has already acknowledged the *de facto* annexation of large swathes of Palestinian territory means that former-Israeli Prime Minister Netanyahu’s assertion that Israel will “continue to rule the entire territory, up to the Jordan [River]”⁸ in perpetuity will become true. It further means that states and politicians are prepared to abandon another sovereign people, a people deserving of self-determination and the full protection afforded by international and human rights law to the iniquity of racial apartheid.

Human Rights Watch Recommendations for Ireland

A Threshold Crossed recommends that Ireland and other EU states and institutions cease to support a so-called ‘peace process’ “which overlooks the deeply entrenched nature of Israeli discrimination and repression of Palestinians and minimizes serious human rights abuses by treating them as temporary symptoms of the occupation that the ‘peace process’ will soon cure.” HRW asserts that this approach has allowed Israel to escape accountability for its grave abuses whilst enabling “apartheid to metastasize and consolidate.” In short, HRW posits that this charade on the part of Ireland and the EU must stop if they are to avoid complicity in Israel’s crimes.

Concretely, Report’s recommendations:

Call on the International Criminal Court to:

- Investigate and prosecute those credibly implicated in the crimes against humanity of apartheid and persecution.

⁷ Pg. 10

⁸ Pg. 19

*Call on the **United Nations** to:*

- Establish an international commission of inquiry to investigate systematic discrimination and repression based on group identity in the OPT and Israel.
- Establish through the UN a position of UN global envoy for the crimes of persecution and apartheid with a mandate to advocate for their end and identify steps that states and judicial institutions should take to prosecute these crimes.

*Call on the **European Union collectively, individual states – including Ireland - unilaterally** to:*

- Impose unilateral measures in the form of targeted sanctions, including travel bans and asset freezes, against officials and entities credibly implicated in the crimes of apartheid and persecution;
- Condition arms sales and military and security assistance to Israel on Israeli authorities taking concrete and verifiable steps towards ending their commission of the crimes of apartheid and persecution;
- Conduct an ‘apartheid audit’ that would subject agreements, cooperation schemes, and all forms of trade and dealing with Israel to enhanced due diligence to screen for those directly contributing to the commission of crimes of apartheid and persecution of Palestinians, mitigate the human rights harms and, where not possible, end the activities and funding found to directly contribute to facilitating these serious crimes.
- Conduct a holistic assessment of the implications for EU and member states relations with Israel arising from the findings of the crimes of apartheid and persecution, identifying in particular the legal consequences and obligations under EU and international law that apply.
- Issue public statements of concern regarding Israeli authorities’ commission of the crimes of apartheid and persecution.

*Call on **private entities** to:*

- Cease business activities that directly contribute to the crimes of apartheid and persecution.
- Assess whether their goods and services contribute to the crimes of apartheid and persecution, such as equipment used in the unlawful demolition of Palestinian homes, and cease providing goods and services that will likely be used for such purposes, in accordance with the UN Guiding Principles on Business and Human Rights.

Concluding Reflections

Palestinians have waited 73 years for the international community to take meaningful action to bring accountability to this conflict. In its analysis and recommendations Human Rights Watch's *A Threshold Crossed* has the potential to play an important contribution in bridging this accountability deficit, but only if states act upon it.

Ireland has taken a first step in recognising the reality of Israel's occupation in its acknowledgement that Israel's settlement programme in the OPT is not just illegal but is in fact *de facto* annexation. However, Ireland must go further and take additional effective steps such as enacting the Occupied Territories Bill and implementing the recommendations of this report, including conducting an 'Apartheid Audit' of the state. We believe such an audit would, for example, mean no further collaboration by Irish institutions such as An Garda Síochána with the Israeli Ministry of Public Security, which oversees extrajudicial executions, mass incarceration, torture and psychological abuse of children and adults, home demolitions, and evictions.⁹ Further, as Ireland has not ratified the 1973 Convention on Apartheid, we call for the Irish government to do so forthwith.

Indeed, as the recent conflict in Gaza and the ongoing dispossessions, evictions and persecution of Palestinians in East Jerusalem confirm, there is no cost-free option of not acting. Not acting is in fact enabling and condoning. It is tantamount to complicity.

In 2011, in the aftermath Israel's 'Operation Cast Lead' assault on the people of Gaza, a group of young Palestinian students vented their frustration at the politics and the restrictions that perpetuate their suffering and the suffering of Gaza in particular. Amongst other culprits, their manifesto did not fail, in scathing language, to include the pusillanimous inaction of the international community:

"We are sick of being caught in this political struggle; sick of the indifference we meet from the international community, the so-called experts in expressing concerns and drafting resolutions but cowards in enforcing anything they agree on; we are sick and tired of living a shitty life, being kept in jail by Israel, beaten up by Hamas and completely ignored by the rest of the world."¹⁰

Human Rights Watch's report is an urgent demand that that indifference and inaction come to an end. The time to act is now.

⁹ <https://www.ipsc.ie/action-item/stop-gardai-psni-collaboration-with-israels-ministry-of-death-torture-and-racism>

¹⁰ The Gaza Youth Manifesto, (2011).