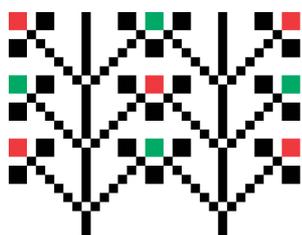




ISRAEL-PALESTINE: IT IS APARTHEID

The EU and its Member States must acknowledge
this fact and comply with their responsibilities

Position Paper - September 2021



E C C P
European Coordination
of Committees
and Associations
for Palestine

The European Coordination of Committees and Associations for Palestine was founded in 1986 as a network of European committees, organisations, NGOs and international solidarity movements, dedicated to the struggle of the Palestinian people for freedom and justice. The ECCP is based in Brussels and has a legal status as a non-profit organisation under Belgian law.

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Apartheid is a recognized and universal legal concept

The term "apartheid", which first referred to the situation in South Africa at one period in its history, is an internationally defined legal concept, which has become independent from that historical situation.

The International Convention for the Elimination of Racial Discrimination (ICERD)¹, which entered into force in 1969 and has been endorsed by a very large majority of countries (including Israel in January 1979), explicitly condemns racial discrimination and apartheid, and enumerates the rights which need to be granted to everyone irrespective of race, colour, or national or ethnic origin.

The International Convention on the Suppression and Punishment of the Crime of Apartheid² (Apartheid Convention), which entered into force in 1976, defines apartheid as a crime against humanity consisting of "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 International Criminal Court (ICC), in force since 1st July 2002, adopts a similar definition ("inhumane acts... committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime") while referring to personal responsibilities.

Focus on apartheid imposed by Israel on the Palestinian people

Israel has imposed a strategic fragmentation of the Palestinian people into four legal and political domains (Israel, West Bank and Gaza, East Jerusalem, refugees outside historical Palestine) with no freedom of movement, no right of return, and denial of family unification.

It is well documented by international bodies and major NGOs that Israel has "de facto" full control of the occupied Palestinian territory, with or without formal annexation. Therefore, the State of Israel applies its full power and domination to all the territory of the historical British mandate: the regime of apartheid applies to this whole territory and includes the Palestinian refugees.

The reality of the apartheid regime imposed by Israel on the Palestinian people relies on the following facts.

An institutionalised regime of systematic oppression and domination

The apartheid regime imposes a system of control which includes all Palestinians:

- **In the occupied territories:** by means of annexation in the case of East Jerusalem, by means of check points and walls in the case of the West Bank, and by holding the population captive in the case of the Gaza strip;
- **The refugees and diaspora:** by banning displaced Palestinians from returning to their home;
- **The Palestinian citizens of Israel:** by means of a number of discriminatory measures, including the restriction of land property, building permits and fulfilment of political rights.

The legal foundations of the state of Israel together with a number of laws³ (Law of Return, Law of Citizenship, Entry into Israel Law, Absentee Property Law) are features of this institutionalised regime of systematic oppression, ethnic discrimination and domination.

Finally, the so-called 'Basic Law: Israel as the Nation-State of the Jewish People' people enshrines its institutionalised domination and oppression over the Palestinian people in Israel's constitutional legal foundations.

Coercive environment and inhuman acts

In the occupied West Bank, Israel subjects Palestinians to draconian military law and enforces segregation. Palestinian people may be arrested, tried in a military court or held in custody under administrative detention at any time. In illegally annexed East Jerusalem, Israel provides the vast majority of the hundreds of thousands of Palestinians living there with limited and conditional residency permits which are liable to be revoked.

In the West Bank and East Jerusalem, the Palestinian people are subject to house demolitions, forcible displacement, destruction of cultural heritage, destruction of agricultural resources, land and water theft, violent suppression of peaceful protests, and the denial of the right to build houses and other structures. The endless military occupation, which aims at the development of settlements in the occupied territory, and involves the killing and displacement of people and the destruction of their livelihood, is a war crime under international law.

In the Gaza Strip, Israel imposes a generalized closure, sharply restricting the movement of people, health supplies and goods in general. The blockade of the Gaza Strip, in force since 2007, is a collective punishment, a war crime under the 1949 Geneva conventions, as are the repeated air attacks and bombardments on this territory, deemed as indiscriminate in type and excessive in force and causing numerous civilian deaths and injuries, terror for the population including the children and extensive destruction of civilian infrastructure, health and education facilities, and the general economy.

These inhuman acts are committed against Palestinians expressly because they are Palestinians, and part of the dominated group: all this falls within the definition of apartheid.

These acts are now very well documented in a number of decisions and reports of international bodies (CERD, UN ESCWA), reports from Palestinian Human Rights organisations, NGOs and the PLO, reports from Israeli organisations (Yesh Din, B'Tselem) and the report by the international NGO Human Rights Watch. More details on these reports can be found in the annex.

Our call to the European Union and its Member States

Apartheid is a crime against humanity and, as such, triggers responsibilities for third States, which have legal obligations to act against it.

As a very first step, the European Union must officially acknowledge that the measures imposed by the State of Israel on the whole Palestinian people constitute the crime of apartheid as defined by the United Nations. This needs to include all the various forms of apartheid imposed on the Palestinian people in Jerusalem, Gaza, the West Bank, the Palestinians in Israel, the refugees and the diaspora.

As a European network of organisations committed to the principles of justice and equality and in support of the struggle of the Palestinian people for their rights, we call on the European Union and its Member States to fulfil their legal obligations under EU and international law, and therefore take the following actions:

Recognition: issue public statements recognizing and condemning the commission of the crime of apartheid by the State of Israel against the Palestinian people. Actively support initiatives pressing UN to launch international investigations into Israel's apartheid regime over the Palestinian people, including the reconstitution of the UN Special Committee against Apartheid and the UN Centre against Apartheid.

No collaboration with apartheid: ban all trade and all relation with illegal Israeli settlements by the EU institutions, member States and companies; ban arms trade and military-security co-

operation with Israel, including any support for research programs with possible dual-use applications.

Immediate measures: press Israel to put an immediate end to the occupation, colonisation, forcible transfer, annexation, house demolition, and the blockade of Gaza, to release the Palestinian prisoners and to restore fundamental civil rights (including freedom of movement and family reunification) for the Palestinians: this must be the starting point of a real effort for a just peace.

Accountability: explicitly support the ICC in its procedures related to crimes against humanity and war crimes committed against the Palestinian people; activate effective sanctions, in a specified time frame, including the suspension of the EU-Israel Association Agreement, as long as Israel imposes an apartheid regime on the Palestinian people.

Freedom, equality and non-discrimination are fundamental values of the European Union. Effective action against apartheid is not an option, it is a legal and moral obligation.

ANNEX: STATEMENTS AND REPORTS

Article 3 of ICERD enshrines the obligation that “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction”. Since then, notably in 2007 and 2012, the CERD found that Israel, as State party to ICERD, is in violation of Article 3 of the Convention and urged Israel to take immediate measures to prohibit and eradicate any policies or practices of racial segregation and apartheid, which disproportionately affect the rights of the Palestinian people in the OPT, comprising the Gaza Strip and the West Bank, including East Jerusalem.

In 2009, the **Human Science Research Council of South Africa**, with the contribution of **Al-Haq and Adalah**, established that the control of Israel over the OPT is a system of domination which can be qualified as apartheid.

In 2011, the **Russell Tribunal on Palestine** established that the apartheid regime was applied by Israel to the Palestinian people as a whole.

In 2013, a resolution adopted by the **FIDH (International Federation of Human Rights Leagues)** at its 38th congress⁴, regarding Canada’s position on Palestine, already quoted “the situation which makes Israel an Apartheid State since [...] the State is in violation of numerous dispositions of the International Convention on the Suppression and Punishment of the Crime of Apartheid”.

In 2017, **UN ESCWA (Economic and Social Committee for Western Asia)** issued the report prepared by Richard Falk and Virginia Tilley⁵, with legal study on the basis of the definition of Apartheid and its application to the regime imposed by Israel on the Palestinian people; it particularly stressed the strategic fragmentation of the Palestinian people as the main tool through which Israel carries out its apartheid regime.

For the **100th session of the CERD** (November-December 2019), a number of **Palestinian Human Rights NGOs together with international NGOs** issued a detailed report on the Israeli Apartheid regime⁶. In its conclusions for this session⁷, the CERD “urges the State party to give full effect to Article 3 of the Convention to eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices which severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory”.

In July 2020, the Israeli NGO **Yesh Din** issued a legal opinion entitled **‘The Occupation of the West Bank and the Crime of Apartheid’**⁸. The conclusion of this legal opinion is that the crime against humanity of apartheid is being committed in the West Bank. The perpetrators are Israelis, and the victims are Palestinians.

On 22 September 2020, 232 organisations from the whole world, including **25 prominent Palestinian organisations**, issued a very important call to the UNGA as a response to Israeli apartheid⁹.

On 12 January 2021, the Israeli NGO **B’Tselem** issued its report, **‘A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid’**¹⁰.

This report analyzes how the Israeli regime works to advance its goals of Jewish supremacy in the entire area under its control. It presents the principles that guide the regime, demonstrates how it implements them and points to the conclusion that emerges from all of this as to how the regime should be defined and what that means for human rights.

On 27 April 2021, **Human Rights Watch**, a large and renowned NGO based in the US, issued an in-depth and documented report, **‘A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution’**¹¹, citing the two crimes against humanity under International criminal law for situations of systematic discrimination and repression. The report illustrates through a thorough legal analysis of facts that “abusive Israeli policies constitute crimes of apartheid, persecution” and that “crimes against humanity should trigger action to end repression of Palestinians”.

On 8 June 2021, **PLO Negotiation Affairs Department** issued a new report, **‘It is Apartheid: The reality of Israel’s colonial occupation of Palestine’**¹².

Year	Author/ organization	Document
2007, 2012	UN CERD (Committee for the Elimination of Racial Discrimination)	Periodic reports
2009	Human Science Research Council of South Africa, with Al-Haq and Adalah	Report establishing the nature of the Israel apartheid regime
2011	Russell Tribunal on Palestine	Part of the report
2013	FIDH (International Federation of Human rights)	Resolution adopted by the 38 th congress of FIDH: <i>Canada: resolution on Canada’s position on Palestine</i>
2017	Richard Falk and Virginia Tilley for the UN ESCWA (Economic and Social Committee for Western Asia)	Report/ legal study: Israeli Practices towards the Palestinian People and the Question of Apartheid
Nov 2019	Al-Haq, PCHR, Addameer, Badil, Al-Mezan, Civic Coalition (Jerusalem), Cairo Institute, Habitat International Coalition	Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination
July 2020	Yesh Din	Legal opinion: <i>The Occupation of the West Bank and the Crime of Apartheid.</i>
Jan 2021	B’Tselem	Report: <i>A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: THIS IS APARTHEID</i>
April 2021	Human Rights Watch	Report: <i>A threshold crossed: Israeli authorities and the crimes of apartheid and persecution</i>
June 2021	PLO Negotiation Affairs Department	Report: <i>It is Apartheid – the reality of Israel’s colonial occupation of Palestine</i>

NOTES AND REFERENCES

1. International Convention for the Elimination of Racial Discrimination (ICERD)

<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

2. International Convention on the Suppression and Punishment of the Crime of Apartheid

https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf

3. See the list of discriminatory laws identified by Adalah - The Legal Center for Arab Minority Rights in Israel:

<https://www.adalah.org/en/law/index>

4. Resolution adopted by FIDH 38th Congress: 'Canada: resolution on Canada's position on Palestine'

<https://www.fidh.org/en/region/americas/canada/canada-resolution-on-canada-s-position-on-palestine-13798>

5. Report by Richard Falk and Virginia Tilley to ESCWA: Israeli Practices towards the Palestinian People and the Question of Apartheid (2017)

https://www.middleeastmonitor.com/wp-content/uploads/downloads/201703_UN_ESCWA-israeli-practices-palestinian-people-apartheid-occupation-english.pdf

6. Joint parallel report by Palestinian NGOs to the 100th session of the UN CERD (November 2019)

https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_NGO_ISR_39700_E.pdf

7. CERD report on Israel after its 100th session, December 2019

https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_COC_ISR_40809_E.pdf

8. Yesh Din legal opinion on Israeli apartheid, July 2020

<https://www.yesh-din.org/en/the-occupation-of-the-west-bank-and-the-crime-of-apartheid-legal-opinion/>

9. A call to the UNGA from Palestinian and international Civil Society Organizations (September 2020)

<https://www.alhaq.org/advocacy/17305.html>

10. B'Tselem: A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid (January 2021)

https://www.btselem.org/publications/fulltext/202101_this_is_apartheid

and the full report in pdf:

https://www.btselem.org/sites/default/files/publications/202101_this_is_apartheid_eng.pdf

11. Human Rights Watch (HRW): Abusive Israeli Policies Constitute Crimes of Apartheid, Persecution (April 2021)

<https://www.hrw.org/news/2021/04/27/abusive-israeli-policies-constitute-crimes-apartheid-persecution>

and the full report:

<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>

12. PLO-NAD: It is Apartheid: The Reality of Israel's Colonial Occupation of Palestine (June 2021)

<http://www.dci.plo.ps/en/article/18496/PLO-NAD-It-is-Apartheid--The-Reality-of-Israel>