

# ISRAEL'S APARTHEID AGAINST PALESTINIANS: CRUEL SYSTEM OF DOMINATION AND CRIME AGAINST HUMANITY

## SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE

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Amnesty International welcomes the opportunity to submit this document to the UN Human Rights Committee in advance of its review of Israel's 5<sup>th</sup> periodic report. This submission is based on Amnesty International's findings published in a recent report [Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity](#), which documents and analyses Israel's institutionalized and systematic discrimination against Palestinians within the framework of the definition of apartheid under international law.<sup>1</sup>

The concerns are relevant to provisions 2, 6, 7, 9, 12, 14, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the International Covenant on Civil and Political Rights. The full report contains an in-depth analysis of the ways in which successive Israeli governments have built and maintained a system of apartheid over Palestinians across Israel and the Occupied Palestinian Territories (OPT) and against Palestinian refugees and their descendants outside the territory. This submission is not an exhaustive list of Amnesty International's concerns in Israel or of Israel's compliance with its obligations under the Covenant.

Amnesty International has considered whether Israeli laws, policies and practices deployed against the Palestinian people violate international human rights law as well as whether they constitute crimes under the Apartheid Convention and the Rome Statute. Amnesty International understands apartheid as condemned by the International Convention on the Elimination of all forms of Racial Discrimination to constitute the creation and maintenance of a system or regime of oppression and domination by one racial group over another. The crime of apartheid is committed when inhuman or inhumane acts are committed within the context of a widespread or systematic attack directed at a civilian population with the intention of creating or maintaining such a system of oppression and domination by one racial group over any other racial group or groups.

## A SYSTEM OF APARTHEID

The totality of the regime of laws, policies and practices described in Amnesty International's report demonstrates that Israel has established and maintained an institutionalized regime of oppression and domination of the Palestinian population for the benefit of Jewish Israelis – a system of apartheid – wherever it exercises control over Palestinians' lives. The report concludes that the State of Israel considers and treats Palestinians as an inferior non-Jewish racial group. The segregation is conducted in a systematic and highly institutionalized manner through laws, policies and practices, all of which are intended to prevent Palestinians from claiming and enjoying equal rights with Jewish Israelis within the territory of Israel and within the OPT, and thus are intended to oppress and dominate the Palestinian people. This has been complemented by a legal regime that controls (by negating) the rights of Palestinian refugees residing outside Israel and the OPT to return to their homes. Israel's treatment of Palestinians is guided by its long-standing policy of establishing and maintaining a Jewish demographic hegemony and maximizing its control over land to benefit Jewish Israelis while minimizing the number of Palestinians and restricting their rights to obstruct their ability to challenge this dispossession.

Israel has ensured that the Palestinian people are segmented into different geographical areas and treated differently with the intention and effect of dividing the population while consistently preventing its members from exercising their fundamental human rights. Thus, the legal fragmentation of the Palestinian population between Israel, East Jerusalem, the rest of the West Bank, the Gaza Strip and the refugee communities serves as a foundational element of the regime of oppression and domination of Palestinians. This legal fragmentation denies Palestinians the possibility of realizing equality within Israel and the OPT.

<sup>1</sup> Amnesty International, *Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity* (Index: MDE 15/5141/2022), February 2022, [amnesty.org/en/documents/mde15/5141/2022/en](https://www.amnesty.org/en/documents/mde15/5141/2022/en)

Other aspects of the system of oppression and domination include legal regimes that deny Palestinians nationality and residence, violate their rights to family unification and to return to their country and/or their homes, and severely restrict freedom of movement; the use of military rule and restrictions on the right to political participation and popular resistance; dispossession of land and property including through a discriminatory allocation of expropriated Palestinian land for Jewish settlement and a discriminatory urban planning and zoning system; and the denial of Palestinians' economic and social rights.<sup>2</sup>

All of these have enabled and resulted in grave violations of social and economic rights, including access to housing, adequate standards of living, livelihoods, work, healthcare, food security, water and sanitation, and education. The outcome of these legal regimes has been the prolonged and cruel violation of the human rights of individual Palestinians wherever Israel exercises control over their enjoyment of these rights.

Israel's system of institutionalized segregation and discrimination against Palestinians, as a racial group, in all areas under its control amounts to a system of apartheid, and a serious violation of Israel's human rights obligations. Almost all of Israel's civilian administration and military authorities, as well as governmental and quasi-governmental institutions, are involved in the enforcement of a system of apartheid against Palestinians across Israel and the OPT and against Palestinian refugees and their descendants outside the territory. The intention to maintain this system has been explicitly declared by successive Israeli political leaders, emphasizing the overarching objective of maintaining Jewish Israeli domination by excluding, segregating and expelling Palestinians. The intention was clearly crystallized in the 2018 nation state law, which constitutionally enshrined racial discrimination against non-Jewish people in Israel and the OPT. Senior civilian and military officials have also issued numerous public statements and directives over the years that reveal, maintain and enforce the institutionalized regime of systematic oppression and domination of Palestinians, being fully aware of, and therefore fully responsible for, the atrocious consequences the regime has for the lives of the Palestinian population.

## CRIME AGAINST HUMANITY OF APARTHEID

Israel continues to perpetrate widespread as well as systematic human rights violations against the Palestinian population against a backdrop of decades of state-sponsored discrimination, segregation and persecution, targeting the Palestinian population as a whole on the basis of their non-Jewish identity and national status. The report documents inhuman and inhumane acts, serious human rights violations and crimes under international law that Israel has committed against the Palestinian population with the intent to maintain this system of oppression and domination.

Amnesty International has examined specifically the inhumane acts of forcible transfer, administrative detention and torture, unlawful killings and serious injuries, and the denial of basic freedoms or persecution committed against the Palestinian population in Israel and the OPT. The organization has concluded that the patterns of proscribed acts perpetrated by Israel form part of a systematic as well as widespread attack directed against the Palestinian population, and that the inhuman or inhumane acts committed within the context of this attack have been committed with the intention to maintain this system and amount to the crime against humanity of apartheid under both the Apartheid Convention and the Rome Statute.<sup>3</sup>

States parties to the Rome Statute have affirmed "that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation". The Rome Statute also provides "that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes". In light of these provisions, states parties to the Rome Statute should ensure that they investigate and prosecute perpetrators of the crime against humanity of apartheid in line with their Rome Statute undertakings.

Nearly six years after the Prosecutor of the International Criminal Court (ICC) announced the opening of a preliminary examination into the "Situation in Palestine", in February 2021, the Pre-Trial Chamber concluded that the "Court's territorial jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem,"<sup>4</sup> paving the way for investigation into crimes committed in the OPT since 13 June 2014. On 3 March 2021, the Prosecutor announced that her office was proceeding to open an investigation into Rome Statute crimes committed in the OPT. Amnesty International is

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<sup>2</sup> Of particular relevance to Israel's compliance with its obligations under the Covenant are concerns raised in the following sections of Amnesty International's report: 5.1 Intent to oppress and dominate the Palestinian people, 5.2 Fragmentation into domains of control, 5.3.1 Denial of right to equal nationality and status, 5.3.2 Restrictions on freedom of movement as a means of control over land and people, 5.3.3 Separation of families through discriminatory laws, 5.3.4 Use of military rule, 5.3.5 Restrictions on right to political participation and popular resistance.

<sup>3</sup> The inhuman and inhumane acts of forcible transfer, administrative detention and torture, unlawful killings and serious injuries, and the denial of basic freedoms or persecution are analysed in the following sections of Amnesty International's report: 6.1, 6.2, 6.3 and 6.4.

<sup>4</sup> ICC, Situation in the State of Palestine, Case ICC-01/18, Pre-Trial Chamber, Decision on the "Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine", 5 February 2021, para. 118.

therefore calling on the Office of the Prosecutor of the ICC to consider the applicability of the crime against humanity of apartheid within its current formal investigation.

While the ICC has held that it has jurisdiction over Rome Statute crimes committed in the OPT, it does not have jurisdiction over crimes committed within Israel itself. However, the UN Security Council has the power to refer to the ICC situations where it appears that one or more of the Rome Statute crimes have been committed, which would include the crime against humanity of apartheid (as defined in the Rome Statute), regardless of whether or not the state in question is a state party to the Rome Statute.<sup>5</sup>

## RECOMMENDATIONS

Dismantling Israel's cruel system of apartheid is essential for the millions of Palestinians who continue to live in Israel and the OPT, as well as for the return of Palestinian refugees who remain displaced in neighbouring countries so that they can enjoy their human rights free from discrimination. Among other, more specific recommendations, Amnesty International is calling the Israeli authorities to take the following actions:<sup>6</sup>

### IN GENERAL

- End the system of apartheid by dismantling measures of discrimination, segregation and oppression currently in place against the Palestinian population and undertake a review of all laws, regulations, policies and practices that discriminate on racial, ethnic or religious grounds, and repeal or amend them to bring them into line with international human rights law and standards, in particular Israel's obligations to ensure the principle of non-discrimination under international law.
- Grant equal and full human rights to all Palestinians in Israel and the OPT in line with principles of international human rights law and without discrimination, while ensuring respect for protections guaranteed for Palestinians in the OPT under international humanitarian law.
- Immediately order members of all state authorities to end and refrain from all future conduct that violates international law, including forcible transfer of population, arbitrary arrest, administrative detention, torture and other ill-treatment, unlawful killings and infliction of injuries, as well as restrictions on other fundamental rights, such as arbitrarily restricting Palestinians' freedom of movement and residence in their communities, their right to family life, and their rights to access livelihoods, housing, food, water, essential healthcare services and education.
- Order prompt, impartial, independent and effective investigations into all allegations of crimes against humanity and other serious human rights violations by state officials and actors. Where there is sufficient admissible evidence, bring those reasonably suspected of individual criminal responsibility, including command responsibility, to trial in proceedings that meet international standards of fairness.
- Provide victims of human rights violations, crimes against humanity and serious violations of international humanitarian law – and their families – with full reparations. These should include restitution of and compensation for all properties acquired on a racial basis, including restitution of and compensation for properties confiscated by the Custodian of Absentee Property.
- Accede to the Apartheid Convention and to the Rome Statute; issue a declaration accepting the ICC's jurisdiction since 1 July 2002; and incorporate the provisions of these treaties into domestic law.

### SPECIFICALLY RELATING TO ISRAEL

- Repeal or substantially amend legislation that facilitates discrimination against Palestinian citizens of Israel, including the 2018 nation state law, and provide constitutional protection to the principle of non-discrimination by introducing it into Israel's Basic Laws.
- Introduce specific safeguards to ensure that no individual is arbitrarily deprived of their citizenship, including by amending the 1952 Nationality Law.
- End policies that prevent Palestinians' family unification, refrain from pursuing the enactment of a new version of the Citizenship and Entry into Israel Law in force from 2003 to 2021 and ensure that processing family unification applications for spouses and children of Israeli citizens and Palestinian residents of Jerusalem and of the OPT is done according to the principle of non-discrimination, examining each case on an individual basis and on its merit.

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<sup>5</sup> Rome Statute, Article 13(b). So far, the UNSC has referred two situations, that of Darfur, Sudan, and Libya to the ICC. UNSC, Resolution 1593 (2005), adopted on 31 March 2005, UN Doc. S/RES/1593; and UNSC, Resolution 1970 (2011), adopted on 26 February 2011, UN Doc. S/RES/1970.

<sup>6</sup> A fuller set of Amnesty International recommendations are included in the report.

- Ensure an end to discrimination in the exercise of the right of all people to participate in public life, including by voting and standing for election. In particular, take effective steps to increase the representation and participation of minorities in decision-making processes, and refrain from disqualifying them on discriminatory grounds such as political opinion.
- Revoke discriminatory policies that allow for discrimination against Palestinian citizens of Israel based on military service in accessing social and economic benefits or certain forms of work in Israel.
- Provide adequate provisions to ensure non-discrimination, transparency and accountability in terms of distribution and use of state land in Israel, and reform the role and/or scope of responsibilities of quasi-state Jewish institutions in order to achieve this end.
- Ensure adequate remedies, including just compensation and restitution, for all those whose land was illegally expropriated as state land.
- Repeal or amend discriminatory laws and policies governing the zoning and allocation of land in Israel and ensure that such laws and policies are implemented in a manner that respects the prohibition of discrimination on grounds including race, religion, national or ethnic origin and descent.
- Cancel all outstanding orders for evictions and demolitions and introduce a moratorium on future evictions and demolitions until the law is amended in a manner that complies with international standards and thereby ensures Palestinians are not subjected to forced evictions.
- Immediately grant legal recognition and status to the unrecognized villages in the Negev/Naqab. Legal security of tenure should be afforded to the residents of these villages. Sustainable access to safe, potable drinking water, electricity, sanitation, sewage, refuse disposal, emergency services, medical care and education must be guaranteed to all residents. Efforts to forcibly remove the inhabitants of unrecognized villages should be immediately halted.
- Ensure access to effective redress and reparation to those who have had their homes demolished as a result of discriminatory policies.

#### **SPECIFICALLY RELATING TO THE WEST BANK, INCLUDING EAST JERUSALEM, AND GAZA STRIP**

- Immediately cease all settlement activity as a first step towards dismantling all Israeli settlements and related infrastructure in the West Bank including East Jerusalem, and relocate Israeli civilians living in such settlements outside of the OPT. Immediately end policies and practices that confer privileged access to resources for Israeli settlers in the West Bank.
- Cease the arbitrary revocations of the residency of Palestinian residents in East Jerusalem, and establish a mechanism to promptly re-examine, according to the principle of non-discrimination, cases of arbitrary revocations of residency.
- Resume the processing of family unification applications for all Palestinian families in the OPT: those in East Jerusalem that include Palestinian residents of the rest of the OPT, as well as those in the rest of the West Bank and the Gaza Strip that include foreign spouses, and do so in an expeditious and non-discriminatory manner. Establish a mechanism to promptly process the backlog of thousands of applications across the OPT and to re-examine, according to the principle of non-discrimination, applications that were refused prior to the suspension of the processing of applications.

#### ***Forcible transfer***

- Immediately stop the destruction of houses, land and other properties without absolute military necessity as prescribed by international humanitarian law. Anyone whose property has been unlawfully destroyed without adequate prior notification and the effective opportunity to challenge the decision before a court of law should receive reparation and be allowed, where possible, to rebuild their property in the same place.
- Transfer the responsibility for planning and building policies and regulations in the West Bank, including in East Jerusalem, to the local Palestinian communities.

#### ***Restrictions on movement***

- Ensure Palestinians enjoy their right to freedom of movement without discrimination of any kind, by ending the West Bank regime of closures in its current form, as well as other forms of restrictions on freedom of movement of people and goods, that result in collective punishment. Ensure that any restrictions on movement are only imposed if they are absolutely necessary to respond to a specific security threat or for other compelling reasons and are non-discriminatory and proportionate in terms of their impact and duration, and do not target whole communities.
- Stop the construction of the fence/wall inside the West Bank, including East Jerusalem, which results in unlawful restrictions on the right to free movement of Palestinians and the arbitrary destruction or seizure of their homes and property, and undermines other rights, including the rights to adequate housing, to work, to an adequate standard of living and to respect for family life. Sections of the fence/wall already constructed that violate these rights should be removed.

- Lift the blockade on the Gaza Strip and other forms of arbitrary restrictions on freedom of movement of people and goods that result in collective punishment. Any restriction may only be imposed if it is necessary to respond to security threats, is non-discriminatory and proportionate in terms of its impact and duration, and is imposed on named individuals, not on whole communities.
- Allow all patients in need of medical treatment not available in Gaza to leave and guarantee that they will be allowed to return after their treatment.
- Allow into Gaza as a matter of urgency the material and equipment necessary for the construction and repair of water and sanitation facilities, and the quantities of fuel necessary for operating these facilities, and ensure that water is never used as an instrument of political or economic pressure under any circumstances. Allow the passage into Gaza of aid, fuel, electricity and other necessities to resume unhindered.

***Discriminatory allocation of resources***

- Allow the Palestinian population to access natural resources in the West Bank and Gaza Strip, including fertile agricultural land, water, fishery, oil and gas resources, stone and Dead Sea minerals, in a manner that satisfies their personal and domestic needs and for their economic development, including the development of their industrial and agricultural activities and other activities necessary to enjoy their rights to an adequate standard of living, water, food, adequate housing, health and work.
- Ensure Palestinians in the OPT have access to their social and economic rights to livelihoods, healthcare and education without undue obstructions, and halt any discriminatory and restrictive policies that may hinder their access to these rights.

**SPECIFICALLY RELATING TO PALESTINIAN REFUGEES OUTSIDE ISRAEL AND OPT**

- Recognize the right of Palestinian refugees and their descendants to return to homes where they or their families once lived in Israel or the OPT, and to receive restitution and compensation and other effective remedies for the loss of their land and property.