

Response to Human Rights Watch (HRW) 'Apartheid' Smear

EXECUTIVE SUMMARY

On April 27th, 2021, Human Rights Watch (HRW) released a report accusing Israel of engaging in apartheid practises. The report, which is just the latest attack in HRW's long-standing and relentless lawfare campaign against the State of Israel, relies on malicious lies, misleading statistics and gross distortion of both facts and law, to make their outrageous accusations.

This brief document responds to some of the most egregious lies and claims made in HRW's report.

Apartheid and Delegitimization -

1. The Crime of Apartheid under International Law

According to the [Rome Statute to the International Criminal Court](#), the crime of apartheid is defined as "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." These inhumane acts include murder, torture, extermination and enslavement - an extremely high bar that no country has yet been found to have met, since the end of the South African apartheid regime. Israel unequivocally does not engage in these kinds of acts. Furthermore, it must be stressed, in Israel, Arab citizens enjoy full legal equality and civil rights, whilst the vast majority of Palestinians reside in Judea, Samaria and Gaza, where they are subject to autonomous rule by the Palestinian Authority and Hamas.

South African Jurist Richard Goldstone has previously [written](#):

"In Israel, there is no apartheid. Nothing there comes close to the definition of apartheid under the 1998 Rome Statute... Israeli Arabs — 20 percent of Israel's population — vote, have political parties and representatives in the Knesset and occupy positions of acclaim, including on its Supreme Court. Arab patients lie alongside Jewish patients in Israeli hospitals, receiving identical treatment."

Similarly, international human rights expert and former Canadian Justice Minister, Irwin Cotler, has [said](#):

“To compare Israel with South African apartheid shames the real anti-apartheid struggle. When people say there's apartheid in Israel, they're saying that in apartheid South Africa you had a free press, unqualified franchise, gay rights, and so forth. This is not true. The analogy is false and harmful... Singling out Israel for selective opprobrium and condemnation, or denying Israel's right to exist and calling for its destruction, is discriminatory and hateful, and not saying so is destructive.”¹

2. The Apartheid Smear in the Campaign to Eliminate Jewish Self-Determination

The association of the Jewish national movement (Zionism) with racism and apartheid has its origins in the 1960s in Soviet anti-Western propaganda. This smear reached notable climaxes in the infamous 1975 UN “Zionism is racism” resolution and the 2001 Durban Conference, in which 1500 NGOs adopted a strategy of lawfare aimed at vilifying Jewish self-determination with the goal of ultimately destroying the Jewish state. The apartheid smear falsely portrays the Israeli-Palestinian conflict as motivated by Jewish racism against Palestinians, as opposed to a complex conflict between two national groups with competing territorial claims.

3. HRW has a long-standing anti-Israel Agenda

HRW has a well-documented and longstanding anti-Israel agenda.² [In short](#), they were instrumental in organizing the blatantly antisemitic Durban Conference in 2001; have used classical anti-Jewish imagery decrying supposed Israel bloodlust i.e. “an eye for an eye;” hired obsessive collectors of Nazi memorabilia; equated Israel with Nazi Germany and Zionism with white supremacy; blamed Israel for antisemitic attacks in Europe; and have regularly pushed for ICC actions against Israel.

Omar Shakir, the lead researcher and author of this report, had to leave Israel after his visa was not renewed due to promoting anti-Israel boycotts. This decision was upheld by the Israeli Supreme Court in 2019.³

¹ <https://www.politicsweb.co.za/opinion/irwin-cotler-and-the-israeli-apartheid-question>

² Steinberg, Gerald M. "Human Rights Watch's anti-Israel Agenda." *Israel Affairs* 27.1 (2021): 34-56.

³

<https://www.loc.gov/law/foreign-news/article/israel-supreme-court-approves-deportation-of-human-rights-watch-representative-for-bds-support/>

Israel within pre-1967 lines -

4. Israel as a Jewish and democratic state

HRW misrepresents Israel's identity as a Jewish state as meaning Jewish racial domination over non-Jewish Arab citizens. However, Israel is both the nation-state of the Jewish people, and a liberal democracy guaranteeing equal rights for all citizens, including Jewish and Arab.

Individual rights for all citizens are enshrined in the [Basic Law: Human Dignity and Liberty](#), as well as Supreme Court rulings. Israeli law accords the Arabic language a "special status" and protects the cultural and community rights of its Arab minorities in terms of an Arabic-language school system and religious (Muslim, Christian, Druze) court system for personal status issues.

Arab Israelis serve in the highest positions in the State of Israel, including the Parliament, Supreme Court, army and other institutions. Arab Israelis live and work alongside Jewish Israelis - in hospitals, employment and other areas.

Such Israeli Arab equality and integration is in obvious contrast to the South African apartheid regime, which instituted legal restrictions on the political participation, citizenship, residency and economic opportunities of Blacks.

The 2018 Jewish Nation-State Law does not negatively affect the civil rights of Israel's non-Jewish citizens and is comparable to [similar](#) constitutional arrangements in [other](#) liberal democracies.

HRW also erases the distinct identity of Israel's Arab citizens by lumping them under the blanket term of Palestinian - although only [7% identify](#) as such and many belong to minority religious or cultural communities such as Druze, Bedouins, Christian Arameans and Circassians.

5. Immigration Policy

HRW presents the contrast between Israel's Law of Return and Israel's refusal to allow the "return" of so-called Palestinian refugees as evidence of legally enshrined racism and apartheid. **Israel's Law of Return allows automatic citizenship to every Jew worldwide and fulfils the State of Israel's most fundamental *raison d'être*: to provide a safe haven for Jews worldwide.** The Law of Return must be seen on the background of millennia of Jewish dispersion and persecution, culminating in the Holocaust. However, the extension of citizenship rights to members of a national diaspora is not racist, nor unique to Israel and similar laws exist in countries such as Greece, Ireland, Armenia and Poland⁴.

⁴ Kontorovich, Eugene. "A Comparative Constitutional Perspective on Israel's Nation-State Law." *Israel Studies* 25.3 (2020): 137-152.

Israel's Law of Return also conforms with the standards of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), which mandates "special measures" for the "advancement of certain racial or ethnic groups" to protect "fundamental freedoms." These special measures are meant to rectify "inequalities resulting from the circumstances of history" ... and to "prevent[] further imbalances from arising." This certainly applies to the Jewish nation, which has historically suffered discrimination and racism, lacking a national home.

Meantime, people of all ethnic groups who are not eligible under the Law of Return may apply for citizenship. Every sovereign nation has the right to determine their immigration policy and have no legal obligation to accept everyone for citizenship.

In any case, **customary international law does not require any right of mass return or immigration.** Israel is under no obligation to provide citizenship to millions of Palestinians under a purported Palestinian 'right of return', who do not meet the internationally accepted definition of refugees in any event. In addition to the absence of such a right under international law, mass Palestinian immigration would confine Israeli Jews to a minority status and would thereby mean the end of Jewish self-determination, i.e. Israel's intentional politicide.

6. Acceptance Committees in Small Communities

Current Israeli law allows rural communities of up to 400 families to require potential members to receive approval from acceptance committees. Although these acceptance committees are a contentious topic in Israeli society, they have withstood judicial review from the Israeli Supreme Court.⁵ HRW falsely portrays these acceptance committees as designed to discriminate against Arab Israelis. However, the reasoning behind the committees is to protect the homogeneity of small communities and they have frequently denied membership based on criteria such as religious observance, sexual orientation, social or marital status. **The Supreme Court has ruled it unconstitutional for Jewish towns to exclude Arabs from residency.**⁶

Israeli society is composed of numerous religious, ethnic and national communities who often desire to live among similar groups. **The Israeli Supreme Court has previously**

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⁵ HCJ 2311/11 Ori Sabah v. the Knesset

⁶ HCJ 6698/95, Adel Ka'adan v. Israel Lands Administration

affirmed the decision to prevent Jews from purchasing territory in municipal projects intended for Bedouin communities.⁷

7. Bedouin Communities

HRW falsely portrays Israel's attempts to regulate Bedouin communities in the Negev as motivated by a desire to disenfranchise them. The Bedouin come from nomadic tribes that have moved across the political boundaries of Israel, the Palestinian Authority, Egypt, Jordan, and other countries in the area, and most choose not to live in urban frameworks. The related legal and policy challenges are highly sensitive and complex. **Nomadic communities also present significant housing, environmental, public health, and gender-related (high birth rate, polygamy) difficulties. Other states – including in Europe – have struggled providing services to and addressing the specific issues raised by nomadic communities.**

In such circumstances, claims to private or communal land ownership are often made by these communities without substantive documentation as required by law. Moreover, the unrecognized and unplanned nature of these settlements, and their often-temporary status, create challenges for enforcing other regulations, such as environmental codes, as well as the provision and administration of basic services such as electricity and healthcare. These difficulties pose threats to the public safety and health of the communities themselves, as well as the surrounding area. Israeli policy aims at regulating Bedouin settlement and reducing the difficulties posed by nomadic lifestyles.

Judea and Samaria -

8. Parallel Systems of Law

HRW points out that Palestinians in Judea and Samaria are subject to Israeli military law, as opposed to Israeli citizens who are subject to Israeli civil law. This statement is misleading on several counts. First, the distinction is not between Jews and Arabs, but between Israel citizens (Jews and Arabs) and Palestinian non-citizens. Second, close to 95% of Palestinians are under the exclusive legal jurisdiction of the Palestinian Authority. According to the [Oslo Accords](#), Palestinian residents of Areas A and B are subject to the Palestinian Authority's legal system, with the exception of Palestinian residents of Area C who are under the PA's authority for matters of personal jurisdiction (taxation, education, health, etc.).

Palestinians are only tried under the Israeli military court for security related offenses. **This is a requirement of international law.** Since 1967, the State of Israel has voluntarily applied the humanitarian provisions of the Geneva Convention to Palestinian residents of Judea and Samaria and has treated the area under the legal prism of "belligerent

⁷ HCJ 528/88 Eliezer Abitan v. Israel Land Authorities

occupation". (The traditional position of the Israeli government is that the situation in Judea and Samaria is not legally one of occupation and that Israel maintains legal rights to the territory.)

Under such a legal prism, Israel is required to try residents of an administered territory under the military legal system. It is indeed ironic to point out that if Israel were to apply its civil law system to areas of Judea and Samaria, it would be accused of annexing the area.

Absurdly, the HRW criticizes Israel for denying Palestinians basic civil rights, such as freedom of speech and assembly. According to the report, "*authorities have targeted Palestinians for their anti-occupation speech, activism, and affiliations, jailing thousands, [and] outlawing hundreds of political and non-government organizations ... As of March 2020, the Israeli Defense Ministry maintained formal bans against 430 organizations, including the Palestine Liberation Organization that Israel signed a peace accord with, its ruling Fatah party, and all the other major Palestinian political parties.*" The report then directs readers to the Israel Defense Ministry's "[List of Declarations and Orders of Terrorist Organizations and Unlawful Associations](#)".

Contrary to HRW's assertion, the 428 organizations listed are not legitimate activist groups but rather terrorist organizations affiliated with Hamas, Hezbollah, al-Qaeda, Islamic State and others. The PLO and Fatah are not illegal organizations, despite HRW's erroneous claim.

Furthermore, Palestinians have recourse to the Israeli Supreme Court, above and beyond the requirements of international law. Access to the Court is extremely broad, with little to no procedural, substantive or financial hurdles.⁸ As such, the Court hears thousands of cases a year, in comparison to roughly a hundred heard each year in the US and the UK.⁹ Palestinian residents of Judea and Samaria have recourse to the Court and can petition against actions they believe to be unlawfully or unduly infringing on their human rights. Even individuals residing outside of the territory of the State of Israel or residents of an entity at war with Israel are able to access the Court. The Court has accepted appeals from the PA Ministry of Prisoners,¹⁰ and enemy nationals who are members of terrorist organizations.¹¹

9. Palestinian terror

⁸ For comparison with US Supreme Court, see Hoyt, Joshua. "Standing, Still? The Evolution of the Doctrine of Standing in the American and Israeli Judiciaries: A Comparative Perspective." *Vanderbilt Journal of Transnational Law* 53.2 (2020). For comparison with Canadian Supreme Court, see Singh, Ajit, *Public Interest Standing Before the Supreme Courts of Israel and Canada: Are Our Canadian Courts Accessible Enough?* (August 6, 2011). Available at SSRN: <https://ssrn.com/abstract=1963105> or <http://dx.doi.org/10.2139/ssrn.1963105>

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<https://www.supremecourt.uk/faqs.html#:~:text=for%20more%20information.,How%20many%20cases%20are%20heard%20in%20a%20year%20by%20the,cases%20heard%20by%20the%20JCPC.>

¹⁰ HCJ 1101/10, 1104/10 and 3368/10

¹¹ HCJ 794/98 Obeid v. Defense Minister and Additional Civil Hearing 5698/11 State of Israel v. Dirani

For HRW, Palestinian terror is either non-existent or entirely whitewashed. Israeli security measures such as restriction on citizenship for Palestinian spouses of Israeli citizens or military checkpoints are used “as a justification to advance demographic objectives” and that “many of these abuses...have no legitimate security justifications.” **HRW’s dismissal of Israeli security concerns ignores the thousands of Israelis brutally murdered or maimed by Palestinian terror.**

The Palestinian Authority continues to incentivize terror through its infamous “pay-for-slay” program, while antisemitic [incitement](#) is commonplace and constant in the Palestinian school system, mosques and media. The Hamas regime in Gaza regularly fires rockets at Israeli civilian populations along the Gaza border and even within the center of the country.

HRW deliberately hides the fact that amendment to the Citizenship and Entry Law, for example, was passed after Palestinian spouses of Israeli Arab citizens were [responsible](#) for terrorist attacks against Israel. In a [May 2017 Knesset Foreign Affairs and Defense Committee hearing](#), an Israeli security official revealed that, from 2001 to April 2017, 49 Palestinians who had received legal status in Israel as a result of “family unification,” engaged in terrorist activity.

Furthermore, there is no universal principle or international law requirement that spouses of citizens receive automatic citizenship or residency rights. Therefore, it is ridiculous to accuse Israel of apartheid by not complying with a non-existent principle.

10. Palestinian Building in Area C

HRW’s discussion of Palestinian building permits in Area C is a case of cherry-picking. According to the Oslo Accords, the Palestinian Authority is responsible for building permits in Area A and B (40% of Judea and Samaria). In those areas, Palestinians build freely without a need for building permits from the Israel authorities. Jews are barred from buying property in these areas.

According to the Oslo Accords, Israel maintains responsibility for building permits in Area C. Citing the percentage of permits denied is meaningless without proper context - as parts of its diplomatic strategy, the Palestinian Authority seeks to build in sensitive and strategic areas, such as hills, passes or closed military sites. If 90% of permits requested in closed military zones are rejected, that does not say very much about discriminatory policies.

HRW failed to mention that Palestinian law proscribes the [death penalty](#) for Palestinians who sell land to Jews. Palestinians accused of selling land have often found themselves in the torture chambers of the Palestinian security services.

Gaza -

11. Gaza's Legal Status

HRW dishonestly claims that Gaza is occupied by Israel.

In the summer of 2005, Israel evacuated its entire civilian and military presence from the Gaza Strip as part of its 'Disengagement Plan'. There is no Israeli 'occupation' of Gaza, which is entirely ruled by the Hamas terror organization.

In 2007, Hamas seized control of Gaza in a bloody coup from the Palestinian Authority and has ruled the territory *de facto* ever since, bearing sole responsibility for the humanitarian situation in the Strip.

Insofar as Israel imposed a blockade of Gaza, this is in direct response to the Hamas security threat and the ensuing terror that emanates from the Gaza Strip, including the firing of thousands of rockets.

Blockades of hostile areas are distinct from occupation and are an accepted part of warfare, recognized under international law. Even the [Palmer Report](#) of the United Nations held that Israel has the right to enforce a naval blockade of Gaza, including in international waters, as a "legitimate security measure" to prevent weapons from entering Gaza by sea and that its implementation complied with the requirements of international law.

Israel does not impose a travel ban on Gaza either, as alleged by HRW and the only goods Israel restricts on entering the Gaza Strip, are those that have 'dual use', meaning those that have both civilian *and* military purposes.

It is also important to bear in mind, that Egypt also controls the border with Gaza, through the Rafah Crossing, another point seemingly overlooked by HRW in their report.