



# Scottish Palestine Solidarity Campaign

*Building effective solidarity with the Palestinian people*

## The IHRA Working Definition and hate crime legislation in Scotland

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## **Scottish Palestine Solidarity Campaign**

was founded in September 2000 in response to Israel's brutality against the Palestinian uprising, *Intifada*, when Israel fired over 1 million bullets at Palestinians during the first week. Palestinians were resisting military occupation, dispossession and state-enforced racism, i.e. apartheid.

We invite you to join a local branch, as a member at large or in a network in various parts of Scotland. SPSC is a wholly volunteer organisation; we have no paid employees and rely entirely on donations from supporters to finance our activities.

### **We stand for:**

- the right of all Palestinian refugees to return to their homes or the areas from which they were driven, in line with UN Resolution 194
- an end to the Zionist project of ethnic cleansing of Palestinians
- self-determination for Palestinians
- equal rights for Palestinians living in Israel
- an end to all British arms trade with Israel

Israel enjoys political, economic, military and diplomatic support but popular opinion across Scotland, the UK, Europe and most of the world is deeply hostile to Israeli crimes.

SPSC is committed to building support for the Palestinian call for Boycott, Divestment and Sanctions against the State of Israel until it ends its crimes against the Palestinian people. In Scotland, as around most of the world, we are strong and Israel is exceedingly weak.

By many accounts, the Israeli authorities are well aware of the strength of the BDS movement worldwide, which is why they are fighting back by trying to smear supporters of Palestine as antisemitic. We reject these smears with contempt. For SPSC, real antisemitism is a contemptible racism. Opposition to the pernicious ideology of Zionism and all its crimes is a duty for all anti-racists and decent people around the world.

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# Introduction

This booklet is a response to the growing storm of pro-Israel propagandists, politicians and media in the UK whose principle aim is to defend the Israeli State and its actions and shut down the Palestinian perspective and honest discourse about what is really going on in Israel / Palestine. This storm is exemplified by the open attacks on Jeremy Corbyn, leader of the UK Labour Party as an anti-Semite. Powerful vested interests see a left-leaning future Labour government as an existential threat and will stop at nothing to prevent Jeremy Corbyn being elected as the next British Prime Minister.

However, there is much more at stake. These attacks are not only a threat to the Body Politic and any concept of democracy in the UK, but are also a concerted and organised attempt to silence the voices of Palestinians and pro-Palestinian activists in Britain. As the Israeli State becomes evermore openly genocidal in its intentions and in its actions, it and its supporters cannot afford to have the truth out and acted upon.

The year 2018 has emerged as one of the most significant years in the bloody history of Israel and the heroic resistance of the



Palestinians. It marks the 70th anniversary of the Nakba, the catastrophe for Palestinians. The colonisation and occupation of Palestine is the longest ongoing occupation in modern history and it has left massacres, displacement and brutal repression in its wake.

Whilst Israelis celebrated the establishment of the Jewish State of Israel in 1948, Palestinians have shown their continued willingness to resist their oppression, to lay down their lives for justice and to reclaim the land that has been stolen from them. This has been particularly exemplified

by the Great March of Return in Gaza which began on 30 March, 2018. It is clear for all to see, that Palestinians will not submit to their obliteration as a people entitled to the same universal social, human and political rights as all humanity.

## **Support for Israel**

Israel has always been given unstinting support by the US, the UK and EU and their allies across the world. However, with the election of Donald Trump, the US has been emboldened to declare Jerusalem as Israel's



future capital, and to move its embassy there, further giving the green light to Israel to escalate its programme of genocide. There have also been manoeuvres amongst the pro-Israel bloc, to sell “the Deal of the Century,” an attempt to buy off the people of Palestine in exchange for a renunciation of all claims for equal rights, for the right to return or for any form of future struggle.

Israel itself, in full view of the world gunned down over 150 unarmed protesters in Gaza from sniper positions, including many children and minors, medical workers and journalists. Thousands more were crippled and seriously wounded by expanding bullets, banned under international law. As Gazans continue to protest on the border, so these murders continue, along with heavy shelling and bombings of buildings and populations within Gaza itself.

Israel and its allies would like to dispose of the problem of the Palestinians once and for all. The Palestinian struggle is an inconvenient barrier to its ultimate aim of creating a reactionary Apartheid Israel across as much of historic Palestine as possible, with unimpeded strategic, economic and political influence over the whole of the Middle East.



However, oppression and injustice breeds resistance, and as Israel ratchets up its genocidal policies and repression increases, so the struggle will continue and grow.

Solidarity movements worldwide are crucial and essential in this process. Palestinians, now more than ever, need real meaningful solidarity that makes a difference and adds to their heroic efforts.

## **IHRA, opposition to Israel and Lord Bracadale**

As we rally to the call for Boycott Divestment and Sanctions against Israel (BDS) as an effective method to put pressure on Israel, and we continue to expose the crimes of Israel, inevitably Palestine activists come face to face with the forces that wish to silence us and prevent solidarity from growing and being effective.

What better way to prevent us from doing this and from reaching others who might support Palestine than to describe all criticism of Israel as antisemitic. This is the reason why the current discourse around the IHRA (International Holocaust Memorial Alliance) working definition of antisemitism is so vital for solidarity activists to engage with, to clarify the issues and get them into the public consciousness.

In January 2017, the Scottish Government commissioned a Review of Hate Crime Legislation. This was headed by Lord Bracadale. The Review sought a broad range of opinion, and asked for submissions from individuals and organisations.

One of the questions for his consideration was whether an aggravation should apply *“where an offence is motivated by malice or ill-will towards a political entity which the victim is perceived to be associated with by virtue of their racial or religious group.”*

**Anti-Semitism is a crime**  
**Anti-Zionism is a duty**

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In this booklet, we bring together four submissions which are relevant to Palestine and to the IHRA Definition of anti-Semitism, all urging the Bracadale Review not to categorise the criticism of Israel as hate crime and thus make it an offence to campaign against Israeli actions against Palestinians.

The submissions comprise one from Scottish Palestine Solidarity Campaign (SPSC), one from the Association of Palestinian Communities in Scotland (ACPS) and one from individuals who faced “racially aggravated” charges. We have also included the SPSC press release from 31 May 2018, the day of the publication of the Review.

In his conclusions, Lord Bracadale stated that:

*“I accept the arguments advanced by those respondents who contended that hate crime legislation should not extend to political entities as protected characteristics. I consider that such an approach would extend the concept of hate crime too far and dilute its impact. The freedom of speech to engage in political protest is vitally important. For these reasons I do not recommend extending the range of protected characteristics to include political entities”*

This is a victory for all of those who contributed their input to the Review, and who have tirelessly campaigned over the years to take the experience of Palestinians to the Scottish people and build effective campaigns on their behalf.

The significance of Lord Bracadale's conclusion should not be underestimated and continually highlighted, as establishment politicians continue to push the IHRA Definition and will seek to bury the Review's conclusions on this issue. One of the key lessons is to oppose any and all attempts to stifle our rights to free speech on Palestine and to oppose any other attacks on democratic debate and discourse. We shall continue to assert these rights in every way we can.

# Submission One

*Scottish PSC response to Independent Review of Hate Crime Legislation in Scotland, 23 November 2017*

## **Introduction**

This document, a response to the ‘Independent Review of Hate Crime Legislation in Scotland’, is submitted by Scottish Palestine Solidarity Campaign (‘SPSC’).

SPSC was established in September 2000 at the start of the second Palestinian uprising (intifada) against Israeli settler colonialism, occupation and apartheid. SPSC has members, branches, and affiliates across Scotland.

We are a voluntary unincorporated association and a membership organisation. Our work is political and we campaign to build effective solidarity in Scotland with the Palestinian people.

This submission primarily focuses on the section ‘Perceived associations of certain groups’<sup>1</sup> and the reference to the so-called International Holocaust Remembrance Alliance (‘IHRA’) ‘working definition of antisemitism’.

Our concerns centre around:

1. the origin and wording of this ‘definition’
2. the impact that adoption of this ‘definition’ can have in the fight against antisemitism
3. implications for freedom of expression and freedom of assembly and association

## **1: The ‘IHRA working definition on antisemitism’: origin and wording**

### **Defining antisemitism**

In his 2015 report published by the All Party Parliamentary Group Against Antisemitism, Professor David Feldman, Director of the Pears Institute for the Study of Antisemitism, recommends Oxford University philosopher Dr Brian Klug’s definition of antisemitism as “*a form of*

*hostility towards Jews as Jews, in which Jews are perceived as something other than what they are”.*<sup>2</sup>

Stephen Sedley, former appeal court judge, also accepts Klug’s definition, saying in addition that “Where it manifests itself in discriminatory acts or inflammatory speech it is generally illegal, lying beyond the bounds of freedom of speech and of action”<sup>3</sup>. SPSC supports this view and urge that Dr Klug’s definition be adopted, if guidance is needed by the Scottish Government, Police Scotland, the Crown Office and Procurator Fiscal Service (‘COPFS’), local authorities and other civil society organisations.

### **The origins of the IHRA working definition**

The ‘IHRA working definition of antisemitism’ first came to life in 2004 as the ‘EUMC working definition’<sup>4</sup>. The European Monitoring Centre on Racism and Xenophobia (‘EUMC’) was the predecessor to the European Union Agency for Fundamental Rights (‘FRA’)<sup>5</sup>.

In May 2016, the IHRA Plenary adopted the “non-legally binding working definition of antisemitism”<sup>6</sup> which is almost identical to the wording of the discarded ‘EUMC working definition’.

Interestingly, the authors of the EUMC and IHRA ‘definitions’ did not intend the documents to be legally binding, perhaps an acknowledgement of the lack of clarity in the text. Rather:

*“The purpose of this document is to provide a practical guide for identifying incidents, collecting data, and supporting the implementation and enforcement of legislation dealing with antisemitism.”*

This is even more worrying, especially given that the Scottish Government and other bodies have adopted or are using these ‘definitions’ that are intended to affect policy.

### **The ‘new antisemitism’**

During the period of the Palestinian second Intifada (or ‘uprising’) against Israel’s occupation and violations of Palestinian rights, Israeli and pro-Israel lobby groups and think tanks discussed how to counter the growing international awareness and sympathy for the Palestinian



struggle for freedom. An indicator of public opinion at the time was the EU poll in 2003 that placed Israel as the top threat to world peace. In response to the poll, Alon Liel, former head of Israel's foreign ministry, said:

*Do they hate us or are they truly frightened? Our natural predilection is to pull out of the drawer our usual weapon of self-defence - the weapon of anti-semitism - but this is probably the wrong place to do so.<sup>7</sup>*

Around this time, the concept of the 'new antisemitism' began to be propagated, particularly by pro-Israel authors, academics and lobby groups. In 2004 Dr Klug wrote about where the 'new' in the 'new antisemitism' comes from:

*The answer, in a word, is anti-Zionism. The "vilification of Israel," Iganski and Kosmin argue, is "the core characteristic" of Judeophobia (their term for "new anti-Semitism").*

Dr Klug continues:

*Zuckerman argues, "Just as historic anti-Semitism has denied individual Jews the right to live as equal members of society, anti-Zionism would deny the collective expression of the Jewish people, the State of Israel, the right to live as an equal member of the family of nations." This is a variation on an argument that is a staple in the "new anti-Semitism" literature. It goes like this: "Given the principle of self-determination for nations, the Jewish people have a right to their own state, like everyone else. To deny that right, especially if this means singling Jews out, is anti-Semitic."*

*This argument assumes that Jews, or the Jewish people, constitute a nation in the relevant sense, the sense in which the principle of self-determination applies. But this question is no less a burning issue today—not least for Jews themselves—than it was in 1917...<sup>8</sup>*

In December 2016, the same month that the British Government adopted the IHRA 'working definition', former Justice Secretary Michael Gove declared his view that "anti-Zionism is anti-Semitism"<sup>9</sup> in an address at a Henry Jackson Society event. Gove reiterated his position at a

Conservative Friends of Israel event in October 2017<sup>10</sup>. It should be noted that Gordon Brown confirmed the UK as the first government to endorse the EUMC ‘working definition’ by signing the ‘London Declaration’ in 2009.<sup>11</sup> Even though this concept of the ‘new antisemitism’ was given a fresh impetus at the start of the Second Intifada, it dates back decades. Abba Eban, Israel’s Foreign Minister in 1973 and an early practitioner of Israel’s hasbara (propaganda), wrote:

*One of the chief tasks of any dialogue with the Gentile world is to prove that the distinction between anti-Semitism and anti-Zionism is not a distinction at all. Anti-Zionism is merely the new anti-Semitism.*<sup>12</sup>

The ‘new antisemitism’ concept found a vehicle in ‘EUMC working definition’, which was drafted by pro-Israel lobby groups and placed on the EUMC website for further consultation and debate. It was never finalised, in 2010 FRA said that feedback on the document “drew attention to a number of issues which impacted on its effectiveness as a data collection support tool” and finally withdrew it from the FRA website<sup>13</sup>. In 2013, Israeli journalist Mira Bar Hillel was just one of the many Jewish and non-Jewish voices that welcomed the scrapping of the ‘working definition’ by the FRA<sup>14</sup>.

### **IHRA ‘working definition’: wording lacks clarity, is confusing and carries dangers**

Adoption by a different body has not made the ‘working definition’ any more effective or acceptable. Professor David Feldman was clear that the EUMC ‘working definition’:

*... points at issue included what the status of a ‘working definition’ actually was, whether the working definition was an effective and coherent definition at all, and, finally, controversy dogged the application of the working definition to debate on the State of Israel and its policies.*<sup>15</sup>

These same points also apply to the ‘working definition’ now promoted in the name of the IHRA.

Professor Feldman has described the IHRA ‘working definition’ passage

“Antisemitism is a certain perception of Jews, which may be expressed as hatred towards Jews” as “bewilderingly imprecise”.

Stephen Sedley also highlights the indefiniteness of the sentence, which *“...invites a string of questions. Is anti-Semitism solely a matter of perception? What about discriminatory practices and policies? What about perceptions of Jews that are expressed otherwise than as hatred?”*<sup>16</sup>

A legal opinion by Hugh Tomlinson QC of Matrix Chambers, ‘In the Matter of the Adoption and Potential Application of the IHRA Working Definition of Anti-Semitism’, was published in March 2017<sup>17</sup>. Hugh Tomlinson QC states that:

*The IHRA Definition does not purport to provide a legal definition of antisemitism. It does not have the clarity which would be required from such a definition. It is perhaps worth pointing out that the fact that conduct is ‘contrary’ to the IHRA Definition could not, of itself, render that conduct ‘illegal’ in any sense.”*

In addition:

*The use of language is unusual and therefore potentially confusing. The phrase “a certain perception” is vague and unclear in the context of a definition. The use of the word “may” is also confusing. If it is understood in its usual sense of “possibility” then the definition is of little value: antisemitism “may be expressed as hatred towards Jews but may also be expressed in other (unspecified) ways”. This does not work as a definition. In my view, the very least that is needed to clarify the IHRA Definition is to reformulate the first sentence so that it reads as follows:*

*“Antisemitism is a particular attitude towards Jews, which is expressed as hatred toward Jews”.*

*Even in these amended terms the definition is unsatisfactory. The apparent confining of antisemitism to an attitude which is “expressed” as a hatred of Jews seems too narrow and not to capture conduct which, though not expressed as hatred of Jews is*

*a clearly a manifestation of antisemitism. It does not, for example, include discriminatory social and institutional practices.*

Importantly, Hugh Tomlinson QC argues that:

*These problems with the wording of the IHRA Definition mean that it is very difficult to use as “tool”. It is obviously most unsatisfactory for the Government to “adopt” a definition which lacks clarity and comprehensiveness in this way. It means that there is likely to be lack of consistency in its application and a potential chilling effect on public bodies which, in the absence of definitional clarity, may seek to sanction or prohibit any conduct which has been labelled by third parties as antisemitic without applying any clear criterion of assessment.*

There is also confusion as to what part of the text is supposed to be the ‘definition’. The EUMC version included the listed examples of manifestations of antisemitism and while the IHRA press release placed the initial passages within a text box, the ‘definition’ is clearly intended to be used with reference to the examples provided.

Some of the examples show clearly “a form of hostility towards Jews as Jews, in which Jews are perceived as something other than what they are”<sup>18</sup>. For example: “holding Jews collectively responsible for actions of the state of Israel” and “justifying the killing or harming of Jews in the name of a radical ideology”<sup>19</sup>.

However, according to Hugh Tomlinson QC, “in some cases, the examples do not explicitly refer to the “hatred” requirement and therefore need further elaboration”.

*Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor”. This must, again, be read in the light of the definition. A denial of a Jewish right to self-determination could be the result of a particular analysis of the nature of the Jewish people (motivated, for example, by religious considerations) which had nothing to do with the “hatred of Jews”. Furthermore, unless such a claim was informed by hatred to Jews, it would not be antisemitic to assert that as Israel defines*

*itself as a Jewish state and thereby by race, and that because non-Jewish Israelis and non-Jews under its jurisdiction are discriminated against, the State of Israel is currently a racist endeavour.*<sup>20</sup>

Professor Feldman also warns of the “dangers” carried by the text. Out of the eleven examples listed,

*Seven deal with criticism of Israel. Some of the points are sensible, some are not. Crucially, there is a danger that the overall effect will place the onus on Israel’s critics to demonstrate they are not antisemitic.*

## **2: The impact that adoption of this ‘definition’ can have in the fight against antisemitism**

The theme that runs through the ‘IHRA working definition’ is the concept of the state of Israel as a “Jewish collectivity” and therefore an example of a manifestation of antisemitism is “Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour”.

For Stephen Sedley, this example “bristles with contentious assumptions about the racial identity of Jews, assumptions contested by many diaspora Jews but on which both Zionism and anti-Semitism fasten, and about Israel as the embodiment of a collective right of Jews to self-determination”<sup>21</sup>.

Dr Klug elaborates on this idea of Israel as a ‘Jewish collectivity’:

*The first thing to say about these objections is that ‘anti-Zionism’ refers to several different positions concerning the existence of Israel as a Jewish state. These include the view that the state of Israel has no right to exist; that it should not have been created in the first place; that it ought not to continue to exist at all; or that it should not survive as a specifically Jewish polity. The objection lumps these positions together whereas each should be taken separately. Some people today, precisely because of the difference that history has made, reject the anti-Zionist stance that Israel should cease to exist, but still maintain the anti-Zionist view that it ought never to have*



*been created. They might also harbour the anti-Zionist (or post-Zionist) hope that Israel one day will repeal the Law of Return and evolve into a society that ceases to define itself in ethnic terms or to see itself, in Harkin's phrase, as 'the state of the Jews'... there is nothing inherently or inevitably antisemitic about any of these anti-Zionist positions. To some extent, Zionism raises issues that are unique; to that extent it is legitimate to 'single out' the Jewish state.*<sup>22</sup>

To accept the concept of the state of Israel as a "Jewish collectivity" is to accept the Zionist assertion that Israel is the state of the Jewish people everywhere, not a state of its citizens. To do so is to accept assertions by successive Israeli Prime Ministers that when Israel oppresses the Palestinians, demolishes yet another Palestinian home or launches an air strike on the Gazan civilian population, that it does so on behalf of all Jews<sup>23</sup>. When addressing the US Congress in 2011, Israel's Prime Minister Benjamin Netanyahu said that he spoke "on behalf of the Jewish people and the Jewish state"<sup>24</sup>.

SPSC has always been clear that a key area of our work is to educate members of the public on the history of the Zionist movement and its colonisation of historic Palestine. We reject this conflation of Zionism/ Israel and Jewish identity. We understand that our solidarity work with the Palestinian people takes place within a context where we reject racism within our society and communities. The same principles that inform our opposition to far right and fascist groups in Scotland inform our solidarity work with Palestinians.

Without the ability to discuss, debate, criticise and even oppose the assertions and ideas of the Zionist movement there can be no effective education that can ensure anger toward the actions of the state of Israel is not directed toward individuals or Jewish communities in Scotland.

Whatever the claim of Israel lobby groups or the pro-Israel leadership of organisations that purport to represent their communities, there is no consensus amongst Jews and within Jewish communities on issues related to Israel/Palestine.

American Jewish playwright Dan Fishback had a public reading of his

latest play cancelled following right-wing pressure. His play describes “the long years of alienation between two branches of a family, against the background of their disagreement over the Israeli-Palestinian conflict”. Fishback says: “I’ve been part of the Jewish cultural world all my adult life and I’ve seen how anti-Zionist Jewish voices are being blocked from different institutions:

*As an anti-Zionist, I do not just condemn the occupation of the West Bank and Gaza. Rather, I think there is something fundamentally wrong with any state that privileges one ethno-religious group over another. In Israel, the national interests of the Jewish people are prioritized above all others. That is the country’s founding principle, and it manifests every time the state bulldozes a Palestinian home in Jerusalem to make room for a Jewish neighborhood, and every time a Bedouin village in the Negev is destroyed so the Jewish National Fund can plant trees. These terrors happen within Israel itself, and they are not simply a matter of bad policy. Rather, this violence is fundamental to the character of a supremacist state that distinguishes between ‘Jewish’ and ‘Arab’ nationalities, and gives different rights to each.<sup>25</sup>*

Former director of the Institute for Jewish Policy Research, Antony Lerman, wrote in 2008:

*The redefinition of anti-Semitism has led to a further radical change in confronting the phenomenon. Many Jews are at the forefront of the growing number of anti-Israel or anti-Zionist groups. So, perceived manifestations of the “new anti-Semitism” increasingly result in Jews attacking other Jews for their alleged anti-Semitic anti-Zionism.<sup>26</sup>*

While noting the surge in interest in left-wing groups, such as Jews for Justice for the Palestinians, Professor Feldman drew attention to two “disturbing aspects” of Jewish responses during Operation Protective Edge:

*First, the concern expressed by many spokespeople for the Jewish community often lacked perspective and, in this way, contributed to a*

*climate of insecurity. We should recognise that the antisemitic portion of the opposition to Operation Protective Edge amounted to only a small part of a large body of opinion. Moreover, there was a want of perspective in assessing the current situation in comparison to the past. For example, the assertion from a leading communal figure that we are living through the most insecure time since the Jews' restoration in the seventeenth century has no basis in fact and encourages Jews to imagine their situation as far less secure than it really is.*

*Second, there are signs of a change in the way British Jews consider the relationship between antisemitism and controversy over Israel. In the past, it was customary for British Jewish leaders as well as non-Jews to draw a distinction between antisemitism and the debate on Israel. They argued that criticism of the Israeli government should not be regarded as antisemitic by definition. In the summer of 2014 the extent to which many British Jews conflated opposition to antisemitism with support for Israel, therefore, was a departure. Most visibly this could be witnessed at rallies against antisemitism when many people arrived bearing the Israeli flag. This identification of support for Israel with opposition to antisemitism was novel in its scale of expression. It was also dangerous. One point which we have tried to highlight in this report is that Jews hold a variety of opinions on Israel and the policies pursued by its government. Consequently, while it is correct to speak of a pro-Israel lobby, there is no Jewish lobby. Yet in the course of the summer many Jews appeared to suggest that support for Israel during Operation Protective Edge and opposition to antisemitism were one and the same thing. This is a hazardous move, not least because it might easily be taken to justify the antisemitic idea that Jews in the diaspora are collectively responsible for the policies of the State of Israel.<sup>27</sup>*

It has certainly been noticeable in Scotland that since 2014 some Jewish community organisations are working overtly as an Israel lobby, working together with the Israeli embassy and pro-Israel groups, including Christian Zionists, set up to tackle the growing campaign for boycott,

divestment and sanctions (BDS) against the state of Israel and complicit institutions.

In November 2017, giving testimony before the House Judiciary Committee in the United States, Barry Trachtenberg (Rubin Presidential Chair of Jewish History and the Director of the Jewish Studies Program at Wake Forest University) raised the alarm:

It is increasingly common to hear reports that a “new anti-Semitism” threatens to endanger Jews on a scale not seen since the second World War and the Holocaust. Studies from several major Jewish organizations have sounded the alarm that anti-Semitism is a “clear and present danger,” while a number of commentators have argued that yet another “war against the Jews” is upon us.

As much as these sort of statements try to call our attention to a looming catastrophe, they are motivated less by an actual threat facing American or world Jewry than they are part of a persistent campaign to thwart debates, conversations, scholarly research, and political activism (all of which often occur within the Jewish community itself) that is critical of the State of Israel.

Since Israel lobby groups are promoting the ‘EUMC/IHRA working definition’ worldwide, and the testimony is in response to attempts to codify the definition, Trachtenberg goes on to challenge the examples and assertions of the document. He goes on to clarify that our priority should be to oppose actual antisemitism:

The truth is that the “old anti-Semitism” — such as we saw in Charlottesville this summer, where torch-bearing marchers carried Nazi and Confederate flags, chanted “You/Jews will not replace us,” and murdered a protester — is still alive in the United States and in many places around the world and requires vigilance and persistent resistance. It is a poor use of our time to distract ourselves by crafting legislation that dictates what can and cannot be said on college campuses regarding the State of Israel. <sup>28</sup>

### **3: Freedom of Expression and Freedom of Assembly and Association**

SPSC opposes the adoption of the 'IHRA working definition' within any legislation, or even as guidance to legislation. We also believe that, given what we know of the origin, wording and construction and promoters, of the definition that the use of the 'working definition', whether in its IHRA or EUMC incarnation, also holds serious implications for the rights to free speech and to freedom of assembly and association.

Hugh Tomlinson QC outlines the effects of the UK government's 'decision to adopt':

*The Government has decided to “adopt” the IHRA Definition. This is not a decision made in accordance with any statutory power but is a freestanding statement of policy. It cannot, and does not purport to, have any binding effect on any public body and no public body is under a resulting obligation to adopt or use this definition. It is simply a “suggestion” by the Government as to a “definition of antisemitism” which public bodies might wish to use. No public body could properly be criticized for refusing to adopt the IHRA Definition. On the contrary, in view of the unsatisfactory nature of the IHRA Definition, it is my view that a public body should give very careful consideration to its suitability for use as a guide to decision making and should, if it is adopted, give careful guidance as to its application.*

He goes on to outline the general obligation of a public authority if it were to apply the 'IHRA working definition':

*Public authorities cannot lawfully act in a manner which is inconsistent with rights under the European Convention on Human Rights (“the Convention”).*

*This means that, for example, a public authority cannot interfere with freedom of expression unless this is justified under Article 10(2) of the Convention or with freedom of assembly unless this is justified under Article 11(2).*

*Such justifications must be “convincingly established”. It is, of*



*course, fundamental that freedom of expression is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that “offend, shock or disturb the State or any sector of the population”....*

*In addition to the “negative obligation” on public authorities not to interfere with freedom of expression unless such interference is justified under Article 10(2) of the Convention, they are also under a “positive obligation”:*

*“to create a favourable environment for participation in public debates for all concerned, allowing them to express their opinions and ideas without fear, even if these opinions and ideas are contrary to those defended by the official authorities or by a large part of public opinion, or even if those opinions and ideas are irritating or offensive to the public”*

Hugh Tomlinson QC’s warns that universities, polytechnics and colleges also have a statutory “duty to ensure freedom of speech”, specifically to “take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees... and visiting speakers”. In other words, public authorities “would not be lawfully entitled to prohibit conduct on the sole basis that supporters of the State of Israel found it upsetting or offensive”.

Regarding protests and actions critical of Israel or in support of Palestinian rights, Hugh Tomlinson QC states that:

*In my view any public authority which sought to apply the IHRA Definition to decisions concerning the prohibition or sanctioning of activity which was critical of the State or Government of Israel would be acting unlawfully if it did not require such activity also to manifest or incite hatred or intolerance towards Jews. If an authority applied the IHRA Definition without such a requirement it would be in breach of Article 10 of the Convention and would, therefore, be acting unlawfully under domestic law in the United Kingdom...*

*The starting point should be that events which seek to protest*

*against the actions of the State of Israel or the treatment of Palestinians are lawful expressions of political opinion. There is no justification in law for treating such events any differently from any other political protests. Any policy which a public authority adopts for the regulation of political meetings or protests should be applied consistently to all events and protests. In particular, the organisers of events of the kind mentioned should not be required to justify them or prove that they are not motivated by antisemitism and should not be subject to special restrictions or conditions. In the absence of positive evidence of antisemitism such restrictions or conditions would be unlawful.* <sup>29</sup>

#### **4: Conclusions**

We are concerned that the 'IHRA working definition' should have been considered at all as part of a process to review hate crime legislation in Scotland. We also question why the Consultation Paper highlighted only the 'IHRA working definition' examples that related to the state of Israel.

In Conclusion:

1. The 'IHRA working definition' wording does not have the clarity required to be effective as a definition
2. That there is confusion about the status of the definitions and the associated list/text
3. The purpose of these definitions appear to be motivated by Israel lobby group that wish to see governments and public authorities sanction individuals and organisations that oppose Zionism and support Palestinian rights
4. That there are dangers inherent in the way the definitions are worded and presented that could make it harder for communities to identify antisemitism as "a form of hostility towards Jews as Jews, in which Jews are perceived as something other than what they are". <sup>30</sup>
5. That adoption and application of the definitions, even informally, breaches the right of Palestinians to describe and oppose the ongoing violations of their rights as a result of Israel's occupation and settler

colonial project

6. There is no one communal voice that can speak on behalf of Jews and Jewish communities on Zionism and Israel
7. That anti-Zionist Jewish voices are being excluded from institutions and are themselves being attacked as antisemitic for their political opinions on Zionism and Israel and their support for Palestinian equality, justice and freedom
8. That these 'definitions' have been and is still being used to prevent Palestine solidarity groups on campuses and elsewhere organise meeting, protests and campaigns, particularly those in support of the Palestinian call for BDS
9. That the Scottish Government, Police Scotland, and any other body that is currently using the IHRA or EUMC 'working definitions' or have adopted it in any way, should immediately cease their use and distance itself from them
10. That the Scottish Government, Police Scotland, and any other concerned body should also investigate whether statistics on anti-Semitic incidents and hate crime, particularly those gathered by the Community Security Trust<sup>31</sup>, use these definitions to collate their data.

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## Submission Two

*Submission to Scottish Government Independent Review of Hate Crime Legislation from individuals who faced “racially aggravated” charges: Niel Forbes, Vanesa Fuertes, Sofiah MacLeod, Mick Napier, Jim Watson*

## Question

Should an aggravation apply where an offence is motivated by malice and ill-will towards a political entity (e.g. foreign country, overseas movement) which the victim is perceived to be associated with by virtue of their racial or religious group? Please give your reasons for your



answer.

## **Answer**

Based on our own experience, and with regard to the submissions below, we consider that, if not carefully drafted, measures which on the surface might appear innocuous can in fact be deployed in order to silence legitimate criticism of political entities, including states. We would ask that in reviewing relevant legislation, the opportunity be taken to consider the impact of current and proposed measures on the ability to legitimately criticise political entities. We would also ask that consideration be given to the impact on the critics themselves, who face the constant threat of racially-linked prosecution even where their motivation is the opposite of racist.

Free speech and free association for Palestine advocacy in Scotland has been under sustained political and legal attack for some years; “adopting” the IHRA definition of anti-Semitism, as your consultation document appears to do, would be a political development for the worse.

### ***1. An Edinburgh prosecution for racially aggravated conduct***

For more than eighteen months until April 2010 Edinburgh prosecutors pursued charges of “racially aggravated conduct” against five Scottish Palestine Solidarity Campaign (SPSC) members following a protest against Israel’s blockade of Gaza during a performance by four “Distinguished IDF musicians” at the 2008 Edinburgh Festival.<sup>1</sup> The Crown case was finally revealed to rest on a claim that it is “racist” to say the words, “End the Siege of Gaza!”, “Genocide in Gaza!” in any public place and the offence is made more serious by repeating the phrases.<sup>2</sup> All five accused were charged with evincing malice and ill will towards the Israeli Army’s “Distinguished Musicians” on the basis of their “Israeli nationality”, although such Israeli nationality is barred by several Israeli Supreme Court rulings as incompatible with the Zionist nature of the Israeli State.<sup>3</sup> Fortunately for the five, the sheriff considered that the fiscal’s attempts to “squeeze” malice and ill will out of the agreed facts was “rather strained”. After discussion throughout the case of the significance even of facing a charge of racism, whether or not an

acquittal results, ultimately the sheriff found the prosecution to be disproportionate and deserted the case simpliciter. The sheriff found that the protest was against the state of Israel, and considered that continued prosecution would be to undermine important rights to free speech.

## ***2. The sequence of events leading to the above prosecution for racially aggravate conduct***

i. August 29, 2008 Five SPSC protestors arrested after a protest against the siege of Gaza and charged with Breach of the Peace. Court appearances followed. More than five months elapse...

ii. Tuesday February 17, 2009: the London Declaration promoting the EUMC working definition of anti-Semitism was agreed and announced from Lancaster House. The Declaration called on legislators to “expose, challenge and isolate political actors who...target the State of Israel as a Jewish collectivity.”<sup>4</sup> Eight days later...

iii. Wednesday February 25, 2009: PM Gordon Brown signs the London Declaration, adopting the EUMC Definition of anti-Semitism on behalf of the UK Government.<sup>5</sup>

Two working days intervene before...

Monday March 2, 2009 The five “were told [breach of the peace] charges would be dropped and new charges alleging they committed racially aggravated conduct raised against them”.<sup>6</sup>

It is impossible to say with certainty, but it is at least plausible that there may have been some causal link between the timing and nature of the above chain of events. Is it not possible, or even likely, that because of the vague meaning of the term in this context, “adoption” of the IHRA definition will prompt ambitious Procurators Fiscal to launch further unfounded “racial aggravation” charges against critics of Israel?

## ***3. A Glasgow prosecutor’s idea of racism***

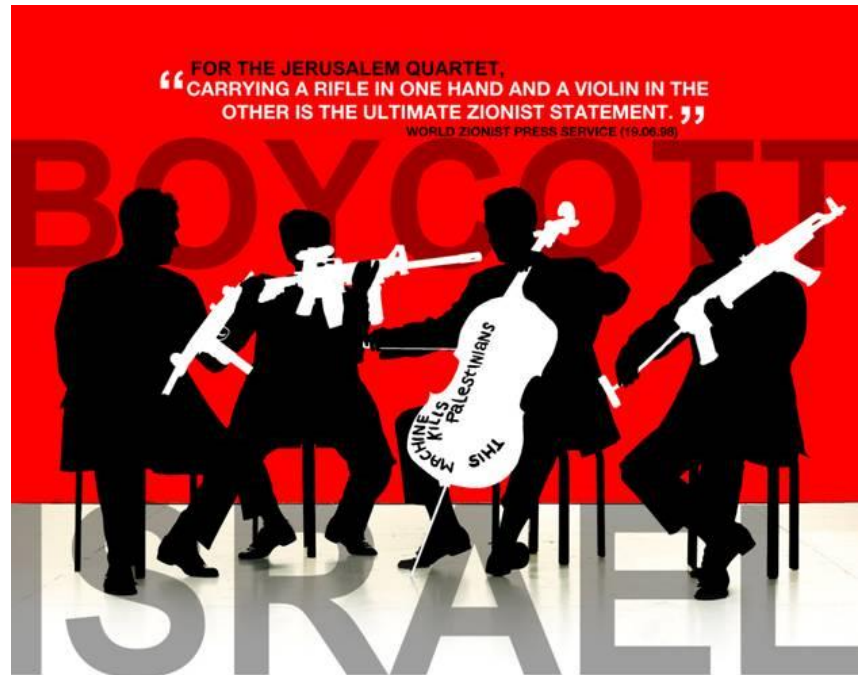
For three years until July 2017 the Crown pursued charges including a “racial aggravation” against two SPSC members following a protest against an Israeli Dead Sea cosmetics company in Glasgow Braehead Shopping Centre shortly after Israel’s summer 2014 killing of 2,200

Palestinians in Gaza.<sup>7</sup>

The Crown claimed in Glasgow Sheriff Court that the red blood symbol on this poster did not refer to the 2,200 Palestinians recently killed but was in fact a hidden reference to Medieval anti-Semitic fantasies that Jews killed Christian children to use their blood to bake bread.

#### **4. 'Racism' charges dismissed**

➔ Two Scottish sheriffs showed common sense in distinguishing between hatred of a population and opposition to a political system. Racial aggravation charges were rejected in the Edinburgh case<sup>8</sup>



referred to in para 1, and deleted in the Glasgow case, para 2. The two Glasgow accused were convicted of aggravated trespass-related charges.

These rulings were in line with the outcome of many other cases brought by pro-Israel campaigners on grounds of supposed anti-Semitism

➔ All ten complaints of "anti-Semitic" harassment brought against the UCU (University and College Union) by a member who is Director of Academic Friends of Israel were rejected outright. After 20 days of evidence, a three-judge tribunal "greatly regret that the case was ever brought. At heart it represents an impermissible attempt to achieve a political end by litigious means...underlying it we sense a worrying disregard for pluralism, tolerance and freedom of expression...It would be very unfortunate if an exercise of this sort were ever repeated."<sup>9</sup>

➔ Three UK councils - Leicester City, Swansea City and Gwynedd - were cleared of anti-Semitism by the High Court after they imposed boycotts on Israeli goods. Presiding judge Lord Justice Simon said: "The

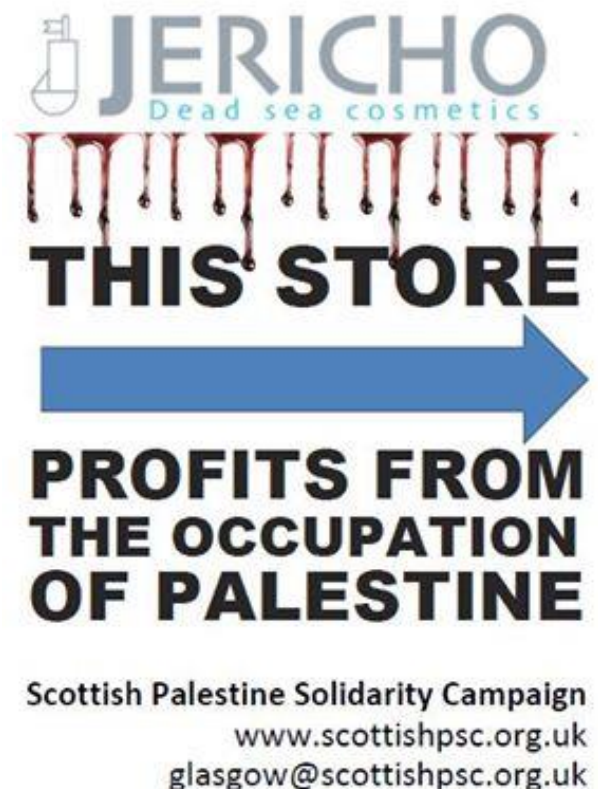
council resolutions did not override, or even affect, the lawful exercise of its public functions in relation to public supply or works contracts.”

Campaign group Jewish Human Rights Watch, however, likened the council action to the boycott of Jewish shops in 1930s Nazi Germany.<sup>10</sup>

## **5. Background**

The surreal nature of the charges, together with the desperate measures to which the Crown, and pro-Israel campaigners have been resorting for some time, should be seen in the wider context of:

- a bill making its way through the US Congress that will impose fines of up to \$1 million and decades-long prison sentences for the US equivalents of those Scots who campaign in support of the Palestinian BDS Call.<sup>11</sup>
- some European Governments passing legislation that criminalises BDS campaigning while others have protected such peaceful, democratic political activity.<sup>12</sup>
- some UK universities banning events on Israel/Palestine or putting them on special measures.<sup>13</sup>
- churches and other traditional public meeting spaces in Scotland and elsewhere beginning to cancel meetings for pro-Palestine groups that have been hitherto unobjectionable.<sup>14</sup>



## **6. IHRA Definition<sup>15</sup> predecessor – the EUMC Working Definition of anti-Semitism<sup>16</sup>**

As noted above, the IHRA Definition on anti-Semitism has a predecessor, the EUMC Working Definition of anti-Semitism. Virtually identical to the IHRA version, it was adopted by Prime Minister Gordon Brown<sup>17</sup> in February 2009 on behalf of the UK Government, shortly after a major Israeli Army massacre of 1,400 Palestinians in Gaza.<sup>18</sup> Prime

Minister Gordon Brown's signature was never annulled – has the UK Government now adopted two virtually identical definitions of anti-Semitism? The EUMC document and the London Declaration on Combatting Anti-semitism<sup>19</sup> within which it is embedded contain a list of unremarkable proposals to combat anti-Semitism, but they smuggle in some anti-democratic initiatives which aim to criminalise BDS campaigning.

The London Declaration on Combatting Anti-Semitism (2009) proposed to extend state protection to Zionist political ideas and to criminalise democratic critiques of Israeli policy and Zionist theory and practice. Examples of propositions which the London Declaration and the EUMC Working Definition sought to criminalise include:

- Israel should evolve into a state of all its citizens, rather than one for Jews internationally over Palestinian Israeli citizens.<sup>20</sup>
- The existence of the State of Israel is a racist endeavour.<sup>21</sup>
- Contemporary Israeli policy can be compared to that of the Nazis.<sup>22</sup>

### **7. The IHRA definition reads:**

*Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.*

Religion and ethnicity are already protected characteristics. It is clearly legitimate to identify a racially-aggravated component in physical attacks on certain buildings such as cultural centres, mosques, or synagogues. Allowing political critiques of “community institutions” to be treated as racist offences is a very radical step; blurring or erasing the distinction between a population and institutions that claim, perhaps imperfectly or even falsely, to be based within or even to represent a population will criminalise previously legitimate political activities.

Hateful words or actions against Catholics, Jehova's Witnesses, Muslims, Palestinians or Jews on the basis of supposed characteristics



of those populations should be a hate crime; critiques of the activities of any church, Muslim institution, Palestinian organisation, or the Jewish National Fund must be protected free speech.

### ***8. Free speech rights of Palestine solidarity campaigners need to be protected against the IHRA (1)***

In 2011, Jeremy Corbyn and the then-Father of the House of Commons, Gerald Kaufman, proposed an EDM (Early Day Motion)<sup>23</sup> in the House of Commons that 66 other MPs signed. The motion supported the work of SPSC and others to highlight the crimes of this self-proclaimed “Jewish Community Institution”.

That this House welcomes the Stop the Jewish National Fund (JNF) Campaign launched on 30 March 2011 by the Palestinian Boycott National Committee, the International Jewish Anti-Zionist Network, Scottish Palestine Solidarity Campaign and others to inform the public about the JNF - Karen Kayemet L'Yisrael, its ongoing illegal expropriation of Palestinian land, concealing of destroyed Palestinian villages beneath parks and forests, and prevention of refugees from returning to their homes; notes that the JNF's constitution is explicitly discriminatory by stating that land and property will never be rented, leased or sold to non-Jews; further notes that the UN rejected the JNF USA's application for consultative status with the Economic and Social Council on the ground that it violates the principles of the UN Charter on Human Rights; regrets that the Prime Minister is a JNF honorary patron; and believes that there is just cause to consider revocation of the JNF's charitable status in the UK.

Such activity should not be criminalised. MPs enjoy Parliamentary immunity. Campaigners in the wider society should have their rights to free speech protected, including the right to criticise or call for the abolition of any institution of any kind.

### ***9. Free speech rights of Palestine solidarity campaigners need to be protected (2)***

Gerald Kaufman eloquently spoke<sup>24</sup> in the House of Commons during an Israeli massacre of 1,400 Palestinians in January 2009. His widely

shared speech violates the letter and spirit of the IHRA Definition's prohibition on comparing Israel's current behaviour to an earlier bestial regime:

*My parents came to Britain as refugees from Poland. Most of their families were subsequently murdered by the Nazis in the holocaust. My grandmother was ill in bed when the Nazis came to her home town of Staszow. A German soldier shot her dead in her bed.*

*My grandmother did not die to provide cover for Israeli soldiers murdering Palestinian grandmothers in Gaza. The current Israeli Government ruthlessly and cynically exploit the continuing guilt among gentiles over the slaughter of Jews in the holocaust as justification for their murder of Palestinians. The implication is that Jewish lives are precious, but the lives of Palestinians do not count.*

*On Sky News a few days ago, the spokeswoman for the Israeli army, Major Leibovich, was asked about the Israeli killing of, at that time, 800 Palestinians—the total is now 1,000. She replied instantly that, “500 of them were militants.”*

*That was the reply of a Nazi. I suppose that the Jews fighting for their lives in the Warsaw ghetto could have been dismissed as militants.*

The individuals submitting this document prefer to view Israel through the framework of a settler-colonial state – South Africa, Australia, North America, etc. – with a built-in tendency for systematic violence towards the native people and a potential for genocide which may or may not be realised. We usually avoid comparisons with Nazi Germany, but that doesn't mean the comparison should be criminalised.

### **10. Politically-driven allegations of anti-Semitism**

There remains strong political pressure from pro-Israel lobbyists and their political supporters to criminalise BDS campaigning. This is often backed up by exaggerated or even wholly fabricated examples of anti-Semitism, of which two of the most egregious and obviously dishonest must stand as examples:

- The broadcasts of this year's Church of Scotland General Assembly debates record a contribution by Dr Michael J Stewart in front of 6-700 attendees in which he claims that Palestine solidarity supporters shouted "Kill the Jews" extensively on Princes Street, Edinburgh.<sup>25</sup> Preposterous as his claim is, impossible to imagine and disavowed by Police Scotland in a private communication available on request, Stewart's wild and baseless accusations are not unique or unprecedented, but possibly a feeble-minded utterance encouraged by others who encouraged him.

- The Scottish Council of Jewish Communities (SCoJeC) works with the Israeli Embassy and some openly-racist Friends of Israel groups, to promote a political Zionist agenda. SCoJeC is one of the bodies Review staff met with and consulted.

It is noteworthy that SCoJeC has invented anti-Semitic outrages in the past; following one invention, SCoJeC had to pulp 6,000 copies of one of their publications<sup>26</sup> because the pamphlet falsely defamed Scottish Palestine Solidarity Campaign as "demonising Jews" (see attached letter from First Minister Alex Salmond).

Pro-Israel lobbyists are, of course, politically-committed Zionists, often of an extreme stripe<sup>27</sup>. Religious and secular Jewish Zionists often have a political motive to stress, exaggerate or invent anti-Semitic outrages since they wish ideally that all Jews should leave Europe for Israel. Christian fundamentalist Zionists, although relatively rare in Scotland, occupy leading positions in Scottish pro-Israel agitation to further their goal of ingather Jews in Palestine based on their Christian eschatology. SCoJeC's record of exaggerating anti-Semitism in Scotland has been ably critiqued from inside the Scottish Jewish community.<sup>28</sup>

## **11. Zionists and Jews**

Most Zionists are not Jews and most Jews are not Zionists, i.e. they show no sign of following the Zionist injunction to give up their citizenship, leave their native lands and move to Israel/Palestine.

The deliberate vagueness of the IHRA definition, however, together with the carefully crafted content of the IHRA definition encourages the confusing of hostility to the actions of the State of Israel with racism

towards Jews.

## ***12. Public opinion has long run against Israel***

Public opinion in Scotland, the UK and across Europe and most of the world is running strongly against the State of Israel as a result of its violent and aggressive actions<sup>29</sup>. Having lost the public debate, pro-Israel lobbyists are making efforts to close down public spaces for discussion of Israel/Palestine or to keep criticism of Israel within limits acceptable to Israel's supporters.

### **NOTES**

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Brown "noted that the Department for Communities and Local Government is organizing...to look in detail at how the government can implement the declaration."

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18. <https://imeu.org/article/operation-cast-lead>

19. <http://jfjfp.com/?p=44050>

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## Submission Three

### *Submission to Scottish Government Independent Review of Hate Crime Legislation from Association of Palestinian Communities in Scotland*

This paper represents the views of the Palestinian community in Scotland.

We are Scottish Palestinians, some of us citizens and long-term residents who arrived here following earlier waves of Israeli ethnic cleansing<sup>1</sup>, others more recent arrivals, some stateless.

We are writing to express our need to be free to narrate freely our experiences, to discuss freely our tragic past and our hopes for a future founded on justice and freedom in occupied Palestine.

This freedom is essential if the crisis in our homeland is to be resolved. If adopted, the IHRA (International Holocaust Remembrance Alliance) definition could criminalise or inhibit the telling of us being driven from our homes, or being denied basic human rights<sup>2</sup> in our own land, Palestine.

Suppression or denial of historical realities, including the colonisation of Palestine and the expulsion of the native Palestinians can only delay a just solution.

The Palestinian community in Scotland and its members must be free to describe the crimes to which we and our families have been subjected, because these crimes continue to the present day<sup>3</sup>.

That description cannot avoid identifying the collective perpetrator, i.e.

the Zionist movement to colonise Palestine<sup>4</sup> and the State of Israel which that movement created within living memory, nor the right of Palestinians anywhere to resist and end that colonisation.

There is evidence of numerous baseless allegations made on social media or broadcast against Palestinian activists on social media that they are calling for the killing of Jews<sup>5</sup> or other serious hate crimes. Such accusations by the Zionist movement and its supporters are false and not based on any evidence.

The Independent Review of Hate Crime Legislation in Scotland has issued a consultation paper<sup>6</sup> inviting submissions on the topic of 'Perceived associations of certain groups' (pp 26-27) with foreign states.

Our Palestinian community in Scotland has an extremely close relationship to a foreign state, the State of Israel. The State of Israel was founded by a violent process of ethnic cleansing of the majority<sup>7</sup> of the Palestinian people; in that process many of our families were driven from their homes, massacred, exiled to become refugees and stateless persons.

Palestinian refugees fled the conflict zones assuming they would return after the blood-letting had ended but have found their right to return to their homes denied. This right is enshrined in international law<sup>8</sup> and was unanimously agreed<sup>9</sup> by the UN as a condition for recognising the new State of Israel, which developed state structures based openly on the notion of institutionalized supremacy of Jews over native Palestinians<sup>10</sup>.

The State of Israel today continues its programme of ethnic cleansing<sup>11</sup>. This works openly to reduce the numbers of Palestinians across the area of Historic Palestine, while increasing the numbers and proportion of Jews from across the world<sup>12</sup>.

This process involves mass incarceration<sup>13</sup>, confiscation of property<sup>14</sup> and periodic massacres<sup>15</sup> of Palestinian refugees<sup>16</sup>. Our families are denied basic human rights in our native land<sup>17</sup>.

Although many of us are long-term residents of Scotland and fully integrated into the social fabric of this country, all of us feel the pain of

exclusion from our homes or that we must submit to humiliating and capricious Israeli procedures<sup>18</sup> to visit the reducing area<sup>19</sup> where Palestinians are allowed to live in Palestine.

A fundamental freedom is surely to be able to speak openly as a community and as individuals of our lived experiences as a people, and to express our hopes for a future based on justice and freedom from state-enforced racial segregation, i.e. apartheid.<sup>20</sup>

We should be free to inform our fellow Scots, and they should be free to hear and evaluate the truth of what we report; dispossession launched 100 years ago by a British government with the notorious Balfour Declaration, carried out by the pre-1948 Zionist movement and accelerated by the State which that movement created on the ruins of most of Palestine<sup>21</sup>, including on the ruins of some of our homes, in 1948.

Each Palestinian living in Scotland, as elsewhere, shares in the agony and vulnerability of our friends and relatives in refugee camps spread across the Middle East because they are refused their right to return to their homeland. We hear daily of gross violations of the human rights of those remaining under Israel's system of residential<sup>22</sup>, employment<sup>23</sup> and legal apartheid<sup>24</sup>.

We know well that there are some who would silence our voices by claiming that our struggle for freedom is aimed at harming others. Nothing could be further from the truth; the Palestinian community in Scotland joins its voice to our national demand for equality, justice and freedom for all.

The occupying power of our Palestinian land has committed the worst crimes against humanity in the past 70 years until now without any prosecution of the perpetrators for those crimes. And now, pro-Israel campaigners in Scotland are asking that even our verbal condemnation of those actions and our calls for equality and peace in Palestine is to be criminalized.

There are three demands in the Boycott, Divestment and Sanctions (BDS) Call<sup>25</sup> from virtually every institution of Palestinian civil society, in



the occupied territories, Israel and in the diaspora.

**1. Ending its occupation and colonization of all Arab lands and dismantling the Wall**

**2. Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality;**

**and**

**3. Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN resolution 194.**

The pro-Israel lobby in Scotland, steered by the Israeli Embassy<sup>26</sup>, is attempting to criminalise the effort here by Scots who work for human rights through the democratic, non-violent campaign for BDS. The pro-Israel lobby is attempting to close down democratic critiques of Zionism<sup>27</sup>, the ideology and movement that has long driven and is still driving the dispossession of our Palestinian people.

Palestinians in Scotland understand very well that the actions of the State of Israel are those of a settler-colonial state<sup>28</sup> and a political movement with origins in Europe. Palestinians reject the dangerous and racist notion that Jews in Scotland and around the world must have some sort of alignment with the State of Israel. This political claim denies the Jewish individual the right to reject the political ideology of Zionism and to oppose the sinister axiom of political Zionism that (s)he cannot live safely in Scotland or anywhere else outside Israel<sup>29</sup>.

We oppose the efforts of the Israeli State and its supporters to implicate Scottish Jews in the crimes of the State of Israel. Palestinians and those who advocate for equality and justice for Palestinians are endlessly smeared by the pro-Israel lobby as being driven by a racist agenda.

Palestinians in Scotland oppose the adoption by the Scottish Government of the IHRA definition of anti-Semitism.

The IHRA wording is very confusing. Informed public discussion around it has significantly focussed on its potential to shield the State of Israel from criticism<sup>30</sup>. Promoters of the IHRA definition would criminalise a

view all Palestinians share, derived from our lived experience, that the "existence of the State of Israel is a racist endeavour", even though UN and other bodies have concluded after extensive study that which we consider to be obvious, that the Israeli State has central features based on state-enforced racism.

The IHRA definition also seeks to criminalise the political activity of "drawing comparisons of contemporary Israeli policy to that of the Nazis". But Albert Einstein, a Zionist who was once offered the Presidency of the State of Israel, was among the many who noticed early how the political movement that would later control the Israeli Government was "a political party closely akin in its organization, methods, political philosophy and social appeal to the [pre-Holocaust] Nazi and Fascist parties."<sup>31</sup>

Many of us have relatives or friends condemned to live in refugee camps, prevented from returning to their homes because they are Palestinians, while Jews from around the world are incentivised to take over our lands and homes even though the majority of them have no personal ties to Palestine whatsoever.

We have separate roads and streets in Palestine reserved for Jews only<sup>32</sup>. Land and homes in large areas of the land surface of 1948-67 may not be leased or sold to the more than one million Palestinian citizens of Israel<sup>33</sup>. To have our opposition to Israel's state-enforced racism conflated with anti-Semitism is to criminalise our ideas, our feelings, and our knowledge.

The IHRA definition would add to the original violation of our rights a secondary denial of our rights to speak about those past and ongoing violations. This bogus definition should not be given any legal status within legislation or as guidance to any piece of legislation in Scotland.

Palestinians in Scotland must be free to tell their national history and their individual and family histories of being ethnically cleansed, dispossessed and driven from their land and farms and homes. We cannot describe how our human and national rights were violated and continue to be denied without being free to describe and analyse the aims and record of the violators as a collective militia, army, state and

international movement.

We believe that Scottish legislation should not be changed to protect from criticism a foreign state that violates our basic human rights.

Yours Sincerely

*The Association of Palestinian Communities in Scotland*

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## Press Release

*Palestine campaigners welcome hate crime recommendation and call on Scottish Government to reject the IHRA 'definition on antisemitism'*

*31st May 2018*

Scottish Palestine Solidarity Campaign (SPSC) welcomes Lord Bracadale's rejection of the IHRA's 'working definition of antisemitism' and his opposition to the creation of "a statutory aggravation to cover hostility towards a political entity".

In the light of Lord Bracadale's analysis, commissioned by the Scottish Government, SPSC calls on the Scottish Government to reject the IHRA 'working definition on antisemitism' as publicly as it adopted it.

Lord Bracadale was appointed by the Scottish Ministers in January 2017 to undertake a review of hate crime legislation in Scotland; his final report and recommendations were published today.

One of the questions for his consideration was whether an aggravation should apply "where an offence is motivated by malice and ill-will towards a political entity which the victim is perceived to be associated with by virtue of their racial or religious group?".

He concluded that:

*"I accept the arguments advanced by those respondents who*

*contended that hate crime legislation should not extend to political entities as protected characteristics. I consider that such an approach would extend the concept of hate crime too far and dilute its impact. The freedom of speech to engage in political protest is vitally important. For these reasons I do not recommend extending the range of protected characteristics to include political entities.”*

To illustrate his reasoning, Lord Bracadale refers to a case involving five SPSC members:

*“In one case, members of the Scottish Palestine Solidarity Campaign shouted slogans during a concert at which the Jerusalem string quartet was performing. These included “they are Israeli army musicians”; “genocide in Gaza”; “end genocide in Gaza”; “boycott Israel”. The accused were members of a political organisation which campaigns against Israeli occupation of the Palestinian Territories and advocates boycott. The content of their remarks was political in nature, including a call for a boycott. The evidence did not permit the inference that their comments were made because they presumed the musicians to be Israeli or Jewish.”*

As well as SPSC, the Faculty of Advocates, the Glasgow Bar Association, Law Society of Scotland, Fife Centre for Equalities, Coalition for Racial Equality and Rights, and the Senators of the College of Justice also opposed an extension of hate crime legislation to include hostility to a state body.

Bracadale reported concerns that:

*“A new aggravation in this area would be difficult to legislate for and potentially contentious, and would therefore introduce complexity and uncertainty into the law. In addition, a new aggravation would be open to interpretation and abuse for political ends, and open to change over time, depending on the political climate.”*

*“A further argument was based on freedom of speech. Freedom to hold differing political views, and to debate those views, was fundamental to a democratic society and should be protected. This included freedom to subject political entities and foreign states to*

*legitimate criticism. A new aggravation of this type could, therefore, have unintended consequences regarding the curtailment of freedom of expression and freedom of political debate.”*

He goes on to discuss:

*“The right to engage in legitimate political protest is fundamental in a democratic society. There is a tension between, on the one hand, freedom of expression, which protects legitimate political protest, and, on the other hand, conduct which is racially aggravated. In the abstract, it can be difficult to distinguish political protest or criticism from racially/religiously aggravated conduct. In chapter 5 I examine the significance, in the context of stirring up of hatred offences, of article 10 of the European Convention on Human Rights (ECHR).*

*What emerges is that context and content of the conduct in any particular case is critical. Freedom of expression carries with it duties and responsibilities.”*

*“There is an obligation to avoid, as far as possible, expressions of opinion or belief that are gratuitously offensive to others and thus an infringement of their rights (for example freedom of religion), and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs.”*

Campaigners noted that the introduction to Question 7 in the consultation document referred almost exclusively to the International Holocaust Remembrance Alliance (IHRA) ‘working definition on antisemitism’ which was adopted by the Scottish Government in 2017.

Mick Napier of Scottish PSC said:

*“Solidarity with the Palestinian people against the settler colonial project of Zionism is not going to be criminalised in Scotland anytime soon, despite the Scottish Government’s adoption of the definition that Bracadale has rejected. Bracadale has recognised the assault on free speech that adoption of the IHRA bogus definition of antisemitism would entail and has decisively rejected the claims of those who seek to criminalise Palestine solidarity, above all BDS campaigning. We must remain ever vigilant against those in and out*



*of the Labour Party who seek to silence supporters of Palestinian freedom, who work to smear those who oppose an ethno-religious state in Israel/Palestine.”*

*“The Scottish Government should urgently review its 2017 adoption of the IHRA definition of antisemitism in the light of Lord Bracadale’s findings.”*

**END**

## **Notes**

Independent Review of Hate Crime Legislation in Scotland, Final Report - Recommendation 6 (page 25-26): <http://www.gov.scot/Resource/0053/00535892.pdf>

Scottish PSC response to Question 7: [https://consult.gov.scot/hate-crime/independent-review-of-hate-crime-legislation/consultation/download\\_public\\_attachment?sqld=pasted-question-1467894590.05-55511-1467894590.71-30316&uuld=176714920](https://consult.gov.scot/hate-crime/independent-review-of-hate-crime-legislation/consultation/download_public_attachment?sqld=pasted-question-1467894590.05-55511-1467894590.71-30316&uuld=176714920)

Association of Palestinian Communities response to Question 7: [https://consult.gov.scot/hate-crime/independent-review-of-hate-crime-legislation/consultation/download\\_public\\_attachment?sqld=pasted-question-1467894590.05-55511-1467894590.71-30316&uuld=159865511](https://consult.gov.scot/hate-crime/independent-review-of-hate-crime-legislation/consultation/download_public_attachment?sqld=pasted-question-1467894590.05-55511-1467894590.71-30316&uuld=159865511)

Mike Napier, Niel Forbes, Vanesa Fuertes, Sofiah MacLeod, Jim Watson response to Question 7: [https://consult.gov.scot/hate-crime/independent-review-of-hate-crime-legislation/consultation/download\\_public\\_attachment?sqld=pasted-question-1467894590.05-55511-1467894590.71-30316&uuld=644011820](https://consult.gov.scot/hate-crime/independent-review-of-hate-crime-legislation/consultation/download_public_attachment?sqld=pasted-question-1467894590.05-55511-1467894590.71-30316&uuld=644011820)

***Consultation responses to Question 7:***

<https://consult.gov.scot/hate-crime/independent-review-of-hate-crime-legislation/consultation/>

Faculty of Advocates:

“No. This is clearly a sensitive matter but, on balance, it is submitted that such a scenario is not readily equated with the other named “characteristics”. Freedom to hold differing political views and to express them is essential in a democracy, even in circumstances where expression of those views may be motivated by malice or ill will.”

The Glasgow Bar Association:

“An aggravation should not be relevant in such circumstances. Legitimate criticism of political entities is a fundamental democratic right and a person’s Article 10 rights should be protected insofar as legitimate freedom of expression is concerned. It is recognised that the expression of certain views may be controversial but these should not be unduly restricted. Any necessary restrictions to prevent disorder should be proportionate to legitimate aims within a democratic institution. There is a danger in conflating the two issues and racism or prejudice in a criminal context should be readily identifiable in the absence of any politically motivated factors. The offence should be capable of standing alone avoiding ambiguity about any legitimate politically motivated conduct.”

Law Society of Scotland:

“We would not offer comment other than to indicate our concerns about the uncertainty on what might be deemed to be ‘political’. Political entities change from time to time. Introduction of the political concept may well widen the scope of hate crime too far. Even in the examples provided in the consultation paper, the offending behaviour is likely to be included within the working definition of hate crime.”

Fife Centre for Equalities:

“We feel applying aggravation to political entity will be contentious and could potentially undermine the protection being afforded to certain social groups. For example, there are individuals who dislike UKIP because of their potential racist rhetoric. If those individuals choose to

protest peacefully against UKIP, under new legislation, UKIP could argue that they are being harassed because of their political beliefs.”

Coalition for Racial Equality and Rights:

“CRER understands that equality law (and the specific protected characteristics) pertains to immutable, intrinsic characteristics that an individual or group has that constitute part of an individual or collective identity. We believe that levels of condemnation levied against identity-based crimes will diminish if aggravations are brought forward that do not pertain to the listed, inherent protected characteristics. In addition, CRER share some of the concerns that have been highlighted by various stakeholders regarding the government’s adoption of the International Holocaust Remembrance Alliance’s working definition of anti-Semitism.”

Senators of the College of Justice:

“It should be appreciated that, if introduced, such a measure could open a potentially wide door. It would depart from the concept of hostility towards a protected group. It would be likely to add a significant layer of complexity and uncertainty to the existing law. In general it is thought that the common law will be able to deal with cases which fall outside the current legislation and where additional condemnation is plainly required.”

# **Scottish Palestine Solidarity Campaign**

*Building effective solidarity with the Palestinian people*

Scottish PSC is an extension to the Palestinian struggle for freedom against Israel's programme of ethnic cleansing and genocide in Palestine. SPSC exists to channel public opposition to the Zionist settler-colonial project into an effective and dynamic Scottish component of the global campaign that sends a powerful message of solidarity with the Palestinian people and a warning to Israel that its crimes must end.



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