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Human rights situation in Palestine and other occupied Arab territories

Anatomy of a genocide

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese*

Summary

After five months of military operations, Israel has destroyed Gaza. Over 30,000 Palestinians have been killed, including more than 13,000 children. Over 12,000 are presumed dead and 71,000 injured, many with life-changing mutilations. Seventy per cent of residential areas have been destroyed. Eighty per cent of the population has been forcibly displaced. Thousands of families have lost loved ones or have been wiped out. Many could not bury and mourn their relatives, forced instead to leave their bodies decomposing in homes, in the street or under the rubble. Thousands have been detained and systematically subjected to severe ill-treatment. The incalculable collective trauma will be experienced for generations to come.

By analysing the patterns of violence and Israeli policies in its onslaught on Gaza, the present report concludes that there are reasonable grounds to believe that the threshold indicating that Israel has committed genocide has been met. One of the key findings of the report is that the Israeli executive and military leadership and Israeli soldiers have intentionally distorted *jus in bello* principles, subverting their protective functions, in an attempt to legitimize genocidal violence against the Palestinian people.

* The present report was submitted to the conference services for processing after the deadline so as to include the most recent information.



I. Introduction

1. In the present report, the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, Francesca Albanese, addresses the crime of genocide as perpetrated by the State of Israel in the occupied Palestinian territory, specifically in the Gaza Strip, since 7 October 2023. Since Israel prohibits the Special Rapporteur from visiting Gaza, the report is based on data and analyses from organizations on the ground, international jurisprudence, investigative reports and consultations with affected individuals, authorities, civil society and experts.

2. The Special Rapporteur firmly condemns the crimes committed by Hamas and other Palestinian armed groups in Israel on 7 October and urges accountability and the release of hostages.¹ She does not examine those events in the present report, as they are beyond the geographic scope of the mandate.² Nor does she examine the situation in the West Bank, including East Jerusalem.

3. Since it imposed the siege on Gaza in 2007, which tightened the closure imposed since 1993, Israel, the occupying Power, has carried out five major assaults before the present one.

4. By the ninth day of the assault, Israel had already caused more deaths (2,670)³ than in its previous deadliest war against Gaza, in 2014 (2,251).⁴ Only a fraction of the mass killings, severe harm and ruthless, life-threatening conditions inflicted on Palestinians over the subsequent five months of the assault can be captured in this report.

5. United Nations independent experts,⁵ scholars⁶ and States,⁷ including South Africa in its case before the International Court of Justice,⁸ have warned that acts committed in the latest onslaught may amount to genocide. The Court found a plausible risk of “irreparable prejudice” to the rights of Palestinians in Gaza, a protected group under the Convention on the Prevention and Punishment of the Crime of Genocide,⁹ and ordered Israel, inter alia, to “take all measures within its power” to prevent genocidal acts, prevent and punish incitement to genocide and ensure urgent humanitarian aid.¹⁰

6. In its defence, Israel has argued that its conduct complies with international humanitarian law.¹¹ A key finding of the report is that Israel has strategically invoked the international humanitarian law framework as “humanitarian camouflage” to legitimize its genocidal violence in Gaza.

7. The context, facts and analysis presented herein lead to the conclusion that there are reasonable grounds to believe that the threshold indicating the commission of genocide by Israel has been met. More broadly, it is also indicated that Israeli actions have been driven by a genocidal logic integral to its settler-colonial project in Palestine, signalling a tragedy foretold.

¹ <https://www.ohchr.org/en/press-releases/2023/10/israeloccupied-palestinian-territory-un-experts-deplore-attacks-civilians#:~:text=%E2%80%9CThis%20amounts%20to%20collective%20punishment,amounts%20to%20a%20war%20crime.%E2%80%9D>.

² A/77/356, para. 4.

³ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-9>.

⁴ <https://www.ochaopt.org/data/casualties>.

⁵ <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>.

⁶ <https://contentingmodernities.nd.edu/global-currents/statement-of-scholars-7-october/>.

⁷ https://www.oic-oci.org/topic/?t_id=40224&t_ref=26858&lan=en; <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240208-pre-01-00-en.pdf>; and <https://www.youtube.com/watch?v=aoQeOsgs0Dc>; and <https://au.int/ar/node/43236>.

⁸ <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240111-ora-01-00-bi.pdf>.

⁹ <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>, para. 54.

¹⁰ *Ibid.*, paras. 77–86.

¹¹ <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>, paras. 6 and 37; and [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_\(2_NOV_2023\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_(2_NOV_2023).pdf).

II. Contextualizing genocide

A. Genocide as inherent to settler-colonialism

8. Genocide, as the denial of the right of a people to exist and the subsequent attempt or success in annihilating them, entails various modes of elimination.¹² Raphael Lemkin, who coined the term “genocide”, observed that genocide is “a composite of different acts of persecution or destruction”,¹³ ranging from physical elimination to the forced “disintegration” of a people’s political and social institutions, culture, language, national sentiments and religion.¹⁴ Genocide is a process, not an act.¹⁵

9. Genocidal intent and practices are integral to the ideology and processes of settler-colonialism,¹⁶ as illustrated by the experience of Native Americans in the United States of America, the First Nations in Australia and the Herero in Namibia. Since it is the aim of settler-colonialism to acquire Indigenous land and resources, the mere existence of Indigenous Peoples poses an existential threat to settler societies.¹⁷ The destruction and replacement of Indigenous Peoples therefore become “unavoidable” and take place through different methods depending on the perceived threat to the settler group. Such methods include removal (forcible transfer, ethnic cleansing), movement restrictions (segregation, large-scale carceralization), mass killings (murder, disease, starvation), assimilation (cultural erasure, child removal) and birth prevention.¹⁸ Settler-colonialism comprises a dynamic, structural process and a confluence of acts aimed at displacing and eliminating Indigenous groups, of which genocidal annihilation represents the peak.¹⁹

B. Palestine and the context of genocide

10. Historical patterns of genocide demonstrate that persecution, discrimination and other preliminary stages prepare the ground for the annihilation stage of genocide.²⁰ In Palestine, displacing and erasing the Indigenous Arab presence has been an inevitable part of the forming of Israel as a “Jewish State”.²¹ In 1940, Joseph Weitz, head of the Jewish Colonization Department, stated that there was no room for both peoples together in the country; that the only solution was Palestine without Arabs; and that there was no other way but to transfer all of them: not one village, not one tribe should be left.²²

11. Practices leading to the mass ethnic cleansing of the non-Jewish population of Palestine occurred from 1947 to 1949, and again in 1967, when Israel occupied the West Bank, East Jerusalem and the Gaza Strip, with mass displacement of hundreds of thousands, killings, the destruction of villages and towns, looting and the denial of the right to return of expelled Palestinians.

¹² Mohamed Adhikari, ed., *Civilian-Driven Violence and the Genocide of Indigenous Peoples in Settler Societies* (2019), p. 13.

¹³ Raphael Lemkin, *Axis Rule in Occupied Europe* (1944), p. 92.

¹⁴ *Ibid.*, p. 79.

¹⁵ Penny Green, Thomas MacManus and Alicia de la Cour Venning, *Countdown to Annihilation: Genocide in Myanmar* (2015).

¹⁶ Alexander Laban Hinton, “The dark side of modernity: toward an anthropology of genocide”, in *Annihilating Difference: The Anthropology of Genocide*, Alexander Laban Hinton, ed. (2002), pp. 1-40.

¹⁷ Lorenzo Veracini, “Settler collective, founding violence and disavowal: the settler colonial situation”, *Journal of Intercultural Studies*, vol. 29, No. 4 (2008), pp. 368 and 369.

¹⁸ Patrick Wolfe, “Settler colonialism and the elimination of the native”, *Journal of Genocide Research*, vol. 8, No. 4 (2006), p. 402.

¹⁹ Lemkin, *Axis Rule*, p. 92; and Pauline Wakeham, “The slow violence of settler colonialism”, *Journal of Genocide Research*, vol. 24, No. 3 (2022), pp. 340–346.

²⁰ Gregory H. Stanton, “The ten stages of genocide”, Genocide Watch (1996).

²¹ Rashid Khalidi, *The Hundred Years’ War on Palestine* (2020).

²² See Uri Davis, “Palestine into Israel”, *Journal of Palestine Studies*, vol. 3, No. 1 (Autumn, 1973), p. 89.

12. Since 1967, Israel has advanced its settler-colonial project through military occupation, stripping the Palestinian people of their right to self-determination.²³ This has resulted in the segregation and control of Palestinians, including through land confiscation, house demolitions, revoked residencies and deportation.²⁴ Punishing their indigeneity and rejection of colonization, Israel has designated Palestinians as a “security threat” to justify its oppression and “de-civilianization”, namely the denial of their status as protected civilians.²⁵

13. Israel has progressively turned Gaza into a highly controlled enclave.²⁶ Since the 2005 evacuation of Israeli settlers (which the current Prime Minister of Israel, Benjamin Netanyahu, strongly opposed),²⁷ the Israeli settler movement and its leaders have framed Gaza as a territory to be “recolonized” and its population as invaders to be expelled.²⁸ Those unlawful claims are integral to the project of consolidating the “exclusive and unassailable right” of the Jewish people on the land of “Greater Israel”, as reaffirmed by Prime Minister Netanyahu in December 2022.²⁹

14. This is the historical background against which the atrocities in Gaza are unfolding.

III. Legal framework

15. The 1948 Genocide Convention codifies genocide as an international crime, the prohibition of which is a non-derogable peremptory norm (*jus cogens*). The *erga omnes* obligation to prevent and punish genocide binds all States under both the Convention and customary international law and requires that all States prevent and prosecute genocidal acts.³⁰ Genocide cannot be justified under any circumstances, including purported self-defence.³¹ Complicity in genocide is expressly prohibited, giving rise to obligations for third States.³²

16. The International Court of Justice and the International Criminal Court have jurisdiction over the crime of genocide, as do State domestic courts.³³ Prior to the establishment of the International Criminal Court, ad hoc international criminal tribunals advanced their interpretation of what constitutes genocide,³⁴ its intent and required evidence.³⁵

²³ A/77/35.

²⁴ <https://badil.org/phocadownloadpap/badil-new/publications/research/working-papers/FT-Coercive-Environments.pdf>.

²⁵ A/HRC/53/59, paras. 80 and 95.

²⁶ Ibid., para. 82.

²⁷ <https://www.theguardian.com/world/2005/aug/08/israel>.

²⁸ Nicola Perugini, “Settler colonial inversions: Israel’s ‘disengagement’ and the Gush Katif ‘Museum of Expulsion’ in Jerusalem”, *Settler-Colonial Studies*, vol. 9, No. 1 (2019), pp. 44 and 45; see <https://hashiloach.org.il/israels-decisive-plan/>; and <https://www.jpost.com/israel-news/otzma-candidate-ben-gvir-calls-to-return-to-gush-katif-584665>.

²⁹ <https://www.reuters.com/world/middle-east/netanyahu-set-retake-power-head-far-right-government-2022-12-29/>. See also Basic-Law: The Nation State of the Jewish People (19 July 2018).

³⁰ M. Cherif Bassiouni, “International crimes: *jus cogens* and *obligatio erga omnes*”, *Law and Contemporary Problems*, vol. 59, No. 4 (1996), p. 68; and A/CN.4/L.960/Add.1, conclusions 5 and 17.

³¹ William Schabas, *Genocide in International Law: The Crime of Crimes* (2009), p. 395; and A/CN.4/L.960/Add.1, conclusions 3 and 17.

³² Convention on the Prevention and Punishment of the Crime of Genocide, art. III.

³³ Ibid., arts. V and IX; and Rome Statute of the International Criminal Court, art. 6.

³⁴ See <https://www.ohchr.org/en/instruments-mechanisms/instruments/statute-international-tribunal-prosecution-persons-responsible> (1993); Security Council resolution 955 (1994); International Tribunal for the Former Yugoslavia, *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T ICTY, Judgment, 17 January 2005; *Prosecutor v. Brđjanin*, Case No. IT-99-36-T ICTY, Judgment, 1 September 2004; *Prosecutor v. Krstić*, Case No. IT-98-33-T ICTY, Judgment, 2 August 2001; and *Prosecutor v. Jelišić*, Case No. IT-95-10-T ICTY, Judgment, 14 December 1999.

³⁵ International Tribunal for the Former Yugoslavia, *Prosecutor v. Popović et al.*, Case No. IT-05-88-A ICTY, Appeal-Judgment, 30 January 2015; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T ICTY, Judgment, 24 March 2016; *Prosecutor v. Mladić*, Case No. IT-09-92-T ICTY, Judgment,

A. Constitutive elements of genocide

17. The Genocide Convention codifies genocide as “any of the [specified] acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.³⁶ Accordingly, the crime of genocide comprises two interconnected elements:

(a) The *actus reus*: the commission of any one or more specific acts against a protected group, namely:

- (i) Killing members of the group;
- (ii) Causing serious bodily or mental harm to members of the group;
- (iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (iv) Imposing measures intended to prevent births within the group;
- (v) Forcibly transferring children of the group to another group;³⁷

(b) The *mens rea*: the intent behind the commission of one or more of the above-mentioned acts that must be established, which includes two intertwined elements:

- (i) A general intention to carry out the criminal acts (*dolus generalis*);
- (ii) A specific intention to destroy the target group as such (*dolus specialis*).³⁸

18. Both components must be satisfied for conduct to legally constitute genocide.³⁹ The perpetrator’s intent to destroy the group in whole or in part distinguishes genocidal acts from other international crimes.⁴⁰ Specific intent may be established by direct evidence, that is, statements by high command or official documents, or inferred from patterns of conduct.⁴¹ In the latter case, the patterns of conduct or the manner in which the acts are perpetrated must be such that they “only point to the existence of such [genocidal] intent”⁴² and the existence of intent results in “the only inference that could reasonably be drawn”.⁴³

19. Evidence of the result is required to establish the commission of three of the underlying acts (killing, inflicting harm and transferring children).⁴⁴ For the remaining two acts (inflicting conditions calculated to destroy the group and preventing births), the evidentiary threshold requires proof of an intent to achieve a given outcome, rather than its achievement.⁴⁵ Accordingly, if displacement, ethnic cleansing or mass deportation are perpetrated with the requisite intent to destroy the protected group as such, this may amount

22 November 2017; and *Prosecutor v. Tolimir*, Case No. IT-05-88/2-A ICTY, Appeal-Judgment, 8 April 2015.

³⁶ Genocide Convention, art. II.

³⁷ *Ibid.*; and Rome Statute, art. 6.

³⁸ Kai Ambos, “What does ‘intent to destroy’ in genocide mean?”, *International Review of the Red Cross*, vol. 91, No. 876 (2009), p. 834.

³⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, paras. 187 and 188.

⁴⁰ *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-T ICTY, Judgment, 14 January 2000, para. 636.

⁴¹ See https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration_Expert_William_Schabas_w.pdf, para. 16.

⁴² *Bosnia and Herzegovina v. Serbia and Montenegro*, para. 373.

⁴³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, para. 148.

⁴⁴ Schabas, *Genocide in International Law*, p. 177.

⁴⁵ *Ibid.*, pp. 177, 192 and 195–197; and District Court of Jerusalem, *Attorney-General v. Eichmann*, Case No. 40/61, Judgment, 11 December 1961, para. 196.

to genocide.⁴⁶ Similarly, these displacement actions can also be evidence of specific genocidal intent.⁴⁷

B. State responsibility and individual criminal liability

20. The crime of genocide gives rise to both individual and State responsibility. The Genocide Convention stresses the need for individual accountability before domestic or international courts⁴⁸ regardless of any official role held by the perpetrator.⁴⁹ Individual criminal liability arises from direct involvement in committing, attempting, conspiring, directly and publicly inciting, planning, instigating, ordering and aiding and abetting (complicity in) genocidal acts, requiring a specific intent to contribute to the destruction of the target group.⁵⁰ This implies knowledge of the possibility that an act will result in destruction of the group in whole or in part.⁵¹ Genocide gives rise to State responsibility when an individual has committed genocide while exercising State authority; in this case the individual's conduct is attributable to the State.⁵²

IV. Genocidal acts in Gaza

21. Genocidal acts can include deliberate actions or omissions, including the failure to protect the group from harm.⁵³ The evidence presented in the following sections suggests that Israel has committed at least three of the acts proscribed in the Genocide Convention.

A. “Killing members of the group”

22. This act encompasses deaths resulting from direct actions or arising from neglect, including deaths caused by deliberate starvation, disease or other survival-threatening conditions imposed on the group.⁵⁴

23. Since 7 October, Israel has killed over 30,000 Palestinians in Gaza, equivalent to approximately 1.4 per cent of its population, through lethal weapons and deliberate

⁴⁶ Joint declaration of intervention of Canada, Denmark, France, Germany, the Netherlands (Kingdom of) and the United Kingdom (2023) (regarding International Court of Justice, *the Gambia v. Myanmar*), paras. 44–47 (<https://www.icj-cij.org/sites/default/files/case-related/178/178-20231115-wri-01-00-en.pdf>); opinion of Judge Lauterpacht (regarding International Court of Justice, *Bosnia and Herzegovina v. Serbia and Montenegro*, Provisional Measures Judgement, 1993), para. 123 (<https://www.icj-cij.org/sites/default/files/case-related/91/091-19930913-ORD-01-05-EN.pdf>); *Bosnia and Herzegovina v. Serbia and Montenegro*, Judgment, 27 February 2007, para. 190. See also International Tribunal for the Former Yugoslavia, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 ICTY and IT-95-18-R61 ICTY, Review of Indictments, 11 July 1996, para. 94; and *Prosecutor v. Krstić*, Case No. IT-98-33-A ICTY, Appeal Judgment, 19 April 2004, paras. 31–33. ⁴⁷ <https://www.icj-cij.org/sites/default/files/case-related/178/178-20231115-wri-01-00-en.pdf>, paras. 72–74; and *Prosecutor v. Krstić*, Case No. IT-98-33-A ICTY, paras. 31–33.

⁴⁸ Rome Statute, art. 6.

⁴⁹ Genocide Convention, art. IV.

⁵⁰ *Ibid.*, art. III; and Rome Statute, art. 25.

⁵¹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T ICTY, Judgment, 10 June 2010, para. 1178; *Prosecutor v. Krstić*, Case No. IT-98-33-T, para. 595; and Ambos, “What does ‘intent to destroy’ in genocide mean?”, p. 841.

⁵² General Assembly resolution 56/83, annex, art. 4; and *Bosnia and Herzegovina v. Serbia and Montenegro*, paras. 384, 385, 386 and 396–400.

⁵³ *Prosecutor v. Kambanda*, Case No. ICTR-97-23-S, Judgment, 4 September 1998, para. 39 (ix); and Schabas, *Genocide in International Law*, pp. 177 and 178.

⁵⁴ International Criminal Court, *Elements of Crimes* (2013), p. 13; *Prosecutor v. Krnojelac*, Case No. IT-97-25-T ICTY, Judgment, 15 March 2002, para. 326; and Schabas, *Genocide in International Law*, p. 180.

imposition of life-threatening conditions. By the end of February, a further 12,000 Palestinians were reported missing, presumed dead under the rubble.⁵⁵

24. During the first months of the campaign, the Israeli army employed over 25,000 tons of explosives (equivalent to two nuclear bombs)⁵⁶ on innumerable buildings, many of which were identified as targets by artificial intelligence.⁵⁷ Israel also used unguided munitions (“dumb bombs”)⁵⁸ and 2,000-pound “bunker buster” bombs on densely populated areas and “safe zones”.⁵⁹ In the initial weeks, Israeli forces killed around 250 people daily, including 100 children,⁶⁰ in attacks obliterating entire neighbourhoods and essential infrastructure.⁶¹ Thousands were killed by bombing, sniper fire or in summary executions;⁶² thousands more were killed while fleeing using routes and within areas declared “safe” by Israel.⁶³ The victims included 125 journalists and 340 doctors, nurses and other health workers (four per cent of Gaza’s health-care personnel), students, academics, scientists and their family members.⁶⁴

25. As reported, 70 per cent of recorded deaths have consistently been women and children. Israel failed to prove that the remaining 30 per cent, comprising adult males, were active Hamas combatants – a necessary condition for them to be lawfully targeted. By early-December, Israeli security advisers claimed the killing of “7,000 terrorists” in a stage of the campaign when less than 5,000 adult males in total had been identified among the casualties, thus implying that all adult males killed were “terrorists”.⁶⁵ This is indicative of an intent to target members of the group indiscriminately.

26. Moreover, the heightened Israeli blockade of Gaza has caused death by starvation, especially among children, by impeding access to vital supplies.⁶⁶ Lack of hygiene and overcrowded shelters could cause more deaths than bombings,⁶⁷ having created “the perfect storm for disease”.⁶⁸ A quarter of Gaza’s population could die from preventable health conditions within a year.⁶⁹

⁵⁵ <https://www.unrwa.org/resources/reports/unrwa-situation-report-86-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

⁵⁶ <https://www.washingtonpost.com/world/2023/11/13/palestine-gaza-west-bank-nakba-displacement-israel-catastrophe/>; <https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/>; and <https://www.theguardian.com/world/2023/dec/01/the-gospel-how-israel-uses-ai-to-select-bombing-targets>.

⁵⁷ <https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/>; and Omar Yousef Shehabi and Asaf Lubin, “Algorithms of war: military AI and the war in Gaza”, *Articles of War*, Lieber Institute, 24 January 2024.

⁵⁸ <https://www.washingtonpost.com/national-security/2023/12/14/israel-unguided-dumb-bombs-gaza/>.

⁵⁹ <https://edition.cnn.com/gaza-israel-big-bombs/index.html>; and

<https://www.nytimes.com/2023/12/21/world/middleeast/israel-gaza-bomb-investigation.html>.

⁶⁰ <https://www.savethechildren.org.au/media/media-releases/gaza-10000-children-killed-in-nearly-100-days-of>.

⁶¹ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-72>; and

<https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/>.

⁶² <https://www.un.org/unispal/document/unlawful-killings-in-gaza-city-ohchr-press-release/>; and

<https://www.pbs.org/newshour/world/israeli-strikes-kill-civilians-sheltering-in-northern-gaza-as-assault-on-hamas-intensifies>.

⁶³ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-22>;

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-45>; and

<https://www.theguardian.com/world/2023/oct/14/gaza-civilians-afraid-to-leave-home-after-bombing-of-safe-routes>.

⁶⁴ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-145>.

⁶⁵ https://www.timesofisrael.com/liveblog_entry/israel-has-killed-over-7000-terrorists-no-deadline-for-gaza-war-national-security-adviser/ (9 December 2023); and

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-63>.

⁶⁶ <https://www.wfp.org/news/preventing-famine-and-deadly-disease-outbreaks-gaza-requires-faster-safer-aid-access-and-more>.

⁶⁷ <https://gaza-projections.org/>.

⁶⁸ https://www.youtube.com/watch?v=2MJFBaUXvYU&ab_channel=MiddleEastEye (6 December 2023); <https://www.bostonreview.net/articles/the-war-on-hospitals/> (20 December 2023); https://www.emro.who.int/images/stories/Sitrep_-_issue_22.pdf?ua=1 (30 January 2024).

⁶⁹ <https://gaza-projections.org/>.

B. “Causing serious bodily or mental harm to members of the group”

27. This act must involve “a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life”.⁷⁰ The harm caused does not need to be permanent or irremediable,⁷¹ and can be brought about by various causes such as torture, inhuman or degrading treatment,⁷² sexual violence,⁷³ persecution,⁷⁴ deportation⁷⁵ or other conditions “designed to cause their degradation, deprivation of their rights as human being, and to suppress them and cause them inhumane suffering and torture”.⁷⁶

28. Since 7 October, Palestinians have suffered relentless physical and psychological harm. Many have endured violence and deprivation, including severe hunger.⁷⁷

29. Israeli forces have detained thousands of Palestinians, mostly men and boys, often refusing to disclose their whereabouts.⁷⁸ Many of them have been severely mistreated, including through torture, at times leading to death.⁷⁹

30. Lethal Israeli weapons and methods have injured 70,000 Palestinians, many with agonizing injuries, in some cases leading to long-term impairment.⁸⁰

31. By causing critical shortages of medical supplies, including antibiotics and disinfectants, Israeli actions have resulted in hazardous health procedures, such as amputations without anaesthetics, including on children.⁸¹ This has also prevented the administration of life-saving treatment to those with medical conditions, including chronic diseases.⁸²

32. The survivors will carry an indelible trauma, having witnessed so much death, and experienced destruction, homelessness, emotional and material loss, endless humiliation and fear.⁸³ Such experiences include fleeing amidst the chaos of war without telecommunications or electricity; witnessing the systematic destruction of entire neighbourhoods, homes, universities, religious and cultural landmarks;⁸⁴ digging through the rubble, often with bare hands, searching for loved ones;⁸⁵ seeing bodies desecrated;⁸⁶ being rounded up, stripped

⁷⁰ *Prosecutor v. Krstić*, Case No. IT-98-33-T, para. 513; and *Prosecutor v. Krajišnik*, Case No. IT-00-39-T ICTY, Judgment, 27 September 2006, para. 862.

⁷¹ Schabas, *Genocide in International Law*, pp. 182 and 184.

⁷² International Criminal Tribunal for Rwanda, *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, 2 September 1998, para. 503.

⁷³ *Ibid.*, para. 731; *Prosecutor v. Stakić*, Case No. IT-97-24-T ICTY, Judgment, 31 July 2003, para. 516; and *Prosecutor v. Karadžić and Mladić*, para. 93.

⁷⁴ *Prosecutor v. Akayesu*, para. 503; and *Attorney-General, Israel v. Eichmann*, para. 199.

⁷⁵ *Prosecutor v. Krstić*, Case No. IT-98-33-T, para. 513.

⁷⁶ Schabas, *Genocide in International Law*, p. 182.

⁷⁷ <https://www.ohchr.org/en/press-releases/2024/03/un-experts-condemn-flour-massacre-urge-israel-end-campaign-starvation-gaza>.

⁷⁸ https://www.adalah.org/uploads/uploads/Submission_SR_Torture_final-15.2.24.pdf.

⁷⁹ <https://www.ohchr.org/en/press-releases/2024/02/israelopt-un-experts-appalled-reported-human-rights-violations-against>; <https://www.nytimes.com/2024/01/23/world/middleeast/israel-gaza-palestinian-detainees.html>; <https://www.amnesty.org/en/latest/news/2023/12/urgently-investigate-inhumane-treatment-and-enforced-disappearance-of-palestinians-detainees-from-gaza>; see also *Prosecutor v. Mladić*, vol. I, paras. 634–691 and 835–838 and vol. III, para. 3451; and *Prosecutor v. Popović et al.*, paras. 1097, 1120, 1122 and 1177.

⁸⁰ <https://www.msf.org/no-safe-place-gaza-people-are-crushed-continuous-bombing>; <https://amnesty.ca/human-rights-news/israel-opt-identifying-the-israeli-armys-use-of-white-phosphorus-in-gaza/>; and <https://www.who.int/news-room/fact-sheets/detail/white-phosphorus>.

⁸¹ <https://news.un.org/en/story/2024/01/1145332>; <https://www.emro.who.int/media/news/risk-of-disease-spread-soars-in-gaza-as-health-facilities-water-and-sanitation-systems-disrupted.html>; and <https://www.savethechildren.net/news/gaza-more-10-children-day-lose-limb-three-months-brutal-conflict>.

⁸² <https://news.un.org/en/story/2023/12/1145017>.

⁸³ *Prosecutor v. Krstić*, Case No. IT-98-33-T, para. 596.

⁸⁴ <https://press.un.org/en/2024/sc15564.doc.htm>.

⁸⁵ <https://www.aljazeera.com/gallery/2023/11/10/this-israel-war-has-no-mercy-gaza-civil-rescuers-say>.

⁸⁶ <https://edition.cnn.com/2023/12/23/middleeast/kamal-adwan-hospital-gaza-israel-abuse-allegations-intl-cmd/index.html>.

naked, blindfolded and subjected to torture and other cruel, inhuman or degrading treatment or punishment;⁸⁷ and, ultimately, being starved, adults and children alike.⁸⁸

33. The savagery of the latest Israeli assault is best illustrated by the torment inflicted upon children of all ages,⁸⁹ who have been killed or rescued from under the rubble, maimed or orphaned,⁹⁰ and many left without surviving family.⁹¹ Considering the significance of children to the future development of a society, inflicting serious bodily or mental harm to them can reasonably be interpreted as a means to destroy the group in whole or in part.⁹²

C. “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”

34. This act involves conduct that does not directly kill members of the group, but is capable of leading, through various means, to its physical destruction.⁹³ This may include starving, dehydrating, forcibly displacing the protected group, destroying objects indispensable for their survival, reducing essential medical services to below the minimum requirement⁹⁴ or depriving them of housing, clothes, education, employment and access to hygiene.⁹⁵

35. By mid-December, Israeli bombs and shells had destroyed or severely damaged most life-sustaining infrastructure, including 77 per cent of health-care facilities, 68 per cent of the telecommunications infrastructure, large numbers of municipal services (72), commercial and industrial sites (76), almost half of all roads,⁹⁶ over 60 per cent of Gaza’s 439,000 homes,⁹⁷ 68 per cent of residential buildings,⁹⁸ all universities and 60 per cent of other educational facilities, including 13 libraries.⁹⁹ Israel has also destroyed at least 195 heritage sites, 208 mosques, 3 churches and the Central Archives of Gaza, containing 150 years of history.¹⁰⁰ By the end of January, over one million civilians had been forcibly displaced southward, their cities devastated.¹⁰¹

36. Sixteen years of blockade had already transformed Gaza into an isolated, densely populated, depleted and nearly “uninhabitable” enclave, when, on 9 October 2023, the Israeli Defense Minister Yoav Gallant, announced a “complete siege (...) no electricity, no food, no water, no fuel”.¹⁰² The Israeli Minister for Foreign Affairs, Israel Katz, then Minister of Energy, went further, stating that no “electrical switch will be turned on, no water hydrant

⁸⁷ <https://www.alhaq.org/advocacy/22337.html>; and <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-disturbing-reports-north-gaza-mass-detentions-ill-treatment-and-enforced-disappearances-possibly-thousands-palestinians>;

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-73>; and <https://www.ohchr.org/en/press-briefing-notes/2024/01/gaza-report-ground>.

⁸⁸ <https://edition.cnn.com/2024/01/30/middleeast/famine-looms-in-gaza-israel-war-intl/index.html>.

⁸⁹ <https://www.savethechildren.net/news/children-s-mental-health-gaza-pushed-beyond-breaking-point-after-nearly-month-siege-and>.

⁹⁰ By January there were 17,000 unaccompanied children, see <https://www.unicef.org/sop/reports/unicef-state-palestine-escalation-humanitarian-situation-report-no17>.

⁹¹ <https://www.washingtonpost.com/world/2024/02/29/gaza-children-wcnf-orphans/>.

⁹² See <https://www.icj-cij.org/sites/default/files/case-related/178/178-20231115-wri-01-00-en.pdf>, para. 39.

⁹³ Genocide Convention, art. II (c); Rome Statute, art. 6; and *Prosecutor v. Akayesu*, paras. 505–506.

⁹⁴ *Prosecutor v. Akayesu*, paras. 505 and 506; *Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgment (6 December 1999), para. 52.

⁹⁵ *Prosecutor v. Stakić*, para. 517.

⁹⁶ <https://www.wsj.com/world/middle-east/gaza-destruction-bombing-israel-aa528542>.

⁹⁷ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-70>.

⁹⁸ <https://www.conflict-damage.org/>; <https://unosat.org/products/3793>.

⁹⁹ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-145>; and <https://librarianswithpalestine.org/wp-content/uploads/2024/02/LAP-Gaza-Report-2024.pdf>.

¹⁰⁰ <https://www.ica.org/statement-of-the-international-council-on-archives-on-the-destruction-of-the-central-archives-of-the-municipality-of-gaza/>; <https://www.aljazeera.com/news/2024/1/14/a-cultural-genocide-which-of-gazas-heritage-sites-have-been-destroyed>.

¹⁰¹ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-107>.

¹⁰² <https://www.youtube.com/watch?v=ZbPdR3E4hCk> (9 October 2023).

will be opened and no fuel truck will enter”.¹⁰³ Deliberately denying essential supplies to an already besieged population was destined to cause deaths “more silent than those caused by bombs”.¹⁰⁴

37. The total siege and near-constant carpet-bombing, along with draconian evacuation orders and ever-shifting “safe zones”, have created an unparalleled humanitarian catastrophe. Over 1.7 million Palestinian have been displaced and forced into overcrowded United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) shelters and cramped quarters in southern Gaza,¹⁰⁵ systematically targeted by the Israeli army, and later into makeshift shelters.¹⁰⁶

38. The Israeli assault has decimated Gaza’s already fragile health-care system.¹⁰⁷ Hospitals, which also shelter displaced Palestinians, have been overwhelmed.¹⁰⁸ By deliberately targeting hospitals,¹⁰⁹ air and ground attacks have gradually turned them into death zones.¹¹⁰ Israeli soldiers have occupied hospitals,¹¹¹ encircling them with tanks and snipers (human or drone).¹¹² By 12 February, only 11 out of 36 hospitals and 17 per cent of primary health-care centres were functioning, and then only partially.¹¹³ Israeli soldiers have arrested, mistreated and tortured medical staff, patients and displaced people¹¹⁴ and have forced them, including even premature babies, out of hospitals, in some cases causing the death of babies.¹¹⁵ The doctors who remained have worked night and day, making “impossible decisions” on which patients to treat based on chance of survival.¹¹⁶

¹⁰³ <https://www.theguardian.com/world/2023/oct/12/no-power-water-or-fuel-to-gaza-until-hostages-freed-says-israeli-minister> (12 October 2023).

¹⁰⁴ <https://www.ohchr.org/en/press-releases/2023/11/israel-must-stop-using-water-weapon-war-un-expert>.

¹⁰⁵ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-108>.

¹⁰⁶ <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-108>.

¹⁰⁷ <https://www.ohchr.org/en/press-releases/2023/12/gaza-un-expert-condemns-unrelenting-war-health-system-amid-airstrikes>; <https://edition.cnn.com/interactive/2024/01/middleeast/gaza-hospitals-destruction-investigation-intl-cmd>.

¹⁰⁸ <https://forensic-architecture.org/investigation/destruction-of-medical-infrastructure-in-gaza>; <https://x.com/UNOCHA/status/1719305737782878629?s=20>;

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-17>; and

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-24>.

¹⁰⁹ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-28>;

<https://www.hrw.org/news/2023/11/07/gaza-israeli-ambulance-strike-apparently-unlawful>;

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-35>;

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-45>; and

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-119>.

¹¹⁰ <https://www.who.int/news/item/18-11-2023-who-leads-very-high-risk-joint-humanitarian-mission-to-al-shifa-hospital-in-gaza>.

¹¹¹ <https://forensic-architecture.org/investigation/destruction-of-medical-infrastructure-in-gaza>;

<https://www.nytimes.com/2023/11/14/us/politics/gaza-hospitals-cancer-israel.html>;

<https://shifa.forensic-architecture.org/>; <https://indonesian.alhaq.org/>; and

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-121>.

¹¹² <https://www.hrw.org/news/2023/11/14/gaza-unlawful-israeli-hospital-strikes-worsen-health-crisis>;

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-36>;

https://www.emro.who.int/images/stories/palestine/WHO_Sitrep_13.pdf?ua=1;

<https://indonesian.alhaq.org/>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-115>; and <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-87>.

¹¹³ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-128>.

¹¹⁴ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-73>;

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-121>;

<https://x.com/HCWWatch/status/1750365056728965214?s=20>;

<https://www.reuters.com/world/middle-east/gaza-doctor-describes-ordeal-detention-2024-02-04/>; and

<https://www.bbc.com/news/world-middle-east-68513408>.

¹¹⁵ <https://news.un.org/en/story/2023/11/1143497>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-34>; and <https://www.washingtonpost.com/world/2023/12/03/gaza-premature-babies-dead-nasr/>.

¹¹⁶ Mohammed Qandil, “Gaza: providing emergency care under fire”, *Emergency Medicine Journal* (9 February 2024).

39. The ground invasion and aerial bombardments have destroyed agricultural land,¹¹⁷ farms, crops, animals and fishing assets,¹¹⁸ gravely undermining people's livelihoods, the environment and agriculture.

40. From 8 to 21 October, Israel impeded the entry of all aid into Gaza, subsequently allowing woefully inadequate amounts,¹¹⁹ largely restricted to the south.¹²⁰ No fuel supplies were delivered until 18 November.¹²¹ In January, Israeli-led attacks against UNRWA, the main agency providing a lifeline of support in Gaza, resulted in several States suspending payments to UNRWA, further aggravating the humanitarian situation.¹²²

41. By 7 December, over 90 per cent of Gaza residents were suffering from severe food insecurity.¹²³ By February 2024, Palestinians trapped in northern Gaza resorted to animal feed and grass for sustenance,¹²⁴ with deaths by starvation on the rise.¹²⁵ Between mid-January and the end of February, the United Nations recorded numerous attacks against Palestinians seeking aid.¹²⁶

42. The supply of water was also severely affected.¹²⁷ Fuel scarcity hampered water sanitation, driving people to use water contaminated by sewage, solid waste and seawater.¹²⁸

43. The impact of these conditions on children is well-known:¹²⁹ in Gaza the risk of starvation,¹³⁰ with thousands suffering from wasting,¹³¹ is already a tangible horrific reality.

44. These human-made conditions have put at risk an estimated 50,000 pregnant Palestinian women and 20,000 newborn babies;¹³² miscarriages have increased by up to 300 per cent.¹³³

45. The relentless Israeli targeting of all means of basic survival has compromised the ability of Palestinians in Gaza to live on that land.¹³⁴ This engineered collapse of

¹¹⁷ <https://unosat.org/products/3792>; <https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza>.

¹¹⁸ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-115>; and <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-125>.

¹¹⁹ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-15>.

¹²⁰ <https://news.un.org/en/story/2024/01/1145557>; <https://www.newyorker.com/news/q-and-a/how-israels-inspection-process-is-obstructing-aid-delivery>; and <https://edition.cnn.com/2024/03/01/middleeast/gaza-aid-israel-restrictions-investigation-intl-cmd/index.html>.

¹²¹ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-43>.

¹²² <https://www.ohchr.org/en/press-releases/2024/02/states-must-reinstate-and-strengthen-support-unrwa-amid-unfolding-genocide>.

¹²³ https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Gaza_Acute_Food_Insecurity_Nov2023_Feb2024.pdf.

¹²⁴ <https://edition.cnn.com/2024/01/30/middleeast/famine-looms-in-gaza-israel-war-intl/index.html>.

¹²⁵ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-129>; and <https://mondoweiss.net/2024/03/un-expert-israel-is-engineering-famine-in-gaza/>.

¹²⁶ <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-un-human-rights-office-strongly-deplores-killing-least-112-palestinians-during-food-aid-distribution-gaza-city-enar>.

¹²⁷ https://reliefweb.int/attachments/a4b1eefa-3717-4407-8101-bba6df81f488/Health_WASH_-_Advocacy_note_on_public_health_catastrophe_-_Final.pdf.

¹²⁸ *Ibid.*

¹²⁹ <https://www.icj-cij.org/sites/default/files/case-related/178/178-20231115-wri-01-00-en.pdf>, paras. 40 and 42.

¹³⁰ <https://www.unicef.org/mena/press-releases/intensifying-conflict-malnutrition-and-disease-gaza-strip-creates-deadly-cycle>; <https://www.savethechildren.net/news/gaza-time-running-out-reports-emerging-children-dying-due-lack-food-save-children>; and <https://twitter.com/AJEnglish/status/1761601918344790340>.

¹³¹ <https://www.wfp.org/news/preventing-famine-and-deadly-disease-outbreaks-gaza-requires-faster-safer-aid-access-and-more>.

¹³² <https://www.who.int/news/item/03-11-2023-women-and-newborns-bearing-the-brunt-of-the-conflict-in-gaza-un-agencies-warn>; <https://www.hrw.org/news/2023/12/01/birth-and-death-intertwined-gaza-strip>; <https://news.un.org/en/story/2024/01/1145677>.

¹³³ <https://twitter.com/CARE/status/1748007265754312767>.

¹³⁴ See, more generally, *The Prosecutor v. Jean-Paul Akayesu*, paras. 505 and 506.

life-sustaining infrastructure corresponds to the stated intentions to make Gaza “permanently impossible to live in” where “no human being can exist”.¹³⁵

V. Genocidal intent

46. The definition of genocide in the Genocide Convention requires the commission of any of the listed acts with a specific intent. It must be established that the perpetrator, by committing one or more of the prohibited acts, seeks to achieve the total or partial destruction of a national, ethnical, racial or religious group, as such.¹³⁶ This intent must be established either through direct or indirect evidence.¹³⁷

47. As genocide is an organized crime, the commission of which invariably implies a collective dimension,¹³⁸ evidence of a State plan, including through statements and declarations by State officials, is usually decisive in establishing direct intent.¹³⁹

48. Proof of indirect intent can be inferred from facts or circumstances, including the overall context of the acts or omissions, the scale of atrocities, systematic targeting of victims based on their affiliation with a particular group, perpetration of other “culpable acts” directed against the group or the repetition of destructive and discriminatory acts.¹⁴⁰ The International Criminal Court requires that such facts or circumstances take “place in the context of a manifest pattern of similar conduct directed against the group or ... conduct that could itself effect such destruction”.¹⁴¹ International tribunals have also established that indirect intent can consist of a manifest pattern of similar conduct over time.¹⁴² The systematicity with which genocidal acts are committed implies a degree of “preconceived plan or policy”.¹⁴³

49. The nature and scale of the atrocities, if demonstrably capable of achieving the genocidal outcome, are strong evidence of intent.¹⁴⁴ The words of State authorities, including dehumanizing language, combined with acts, are considered to comprise a circumstantial basis from which intent can be inferred.¹⁴⁵ Dehumanization can be understood as foundational to the process of genocide.¹⁴⁶ Evidence of context may help determine intent, and must be considered along with actual conduct: intent should be evident above all from

¹³⁵ <https://www.ynet.co.il/yedioth/article/yokra13625377>, 10 October 2023 (in Hebrew); and <https://balfourproject.org/the-amas-attack-and-israels-war-on-gaza-a-place-where-no-human-being-can-exist/>, 24 November 2023.

¹³⁶ *Prosecutor v. Jelisić*, Case No. IT-95-10-A ICTY, Appeal Judgment, 5 July 2001, para. 46.

¹³⁷ *Prosecutor v. Krstić*, Case No. IT-98-33-A, para. 34; *Prosecutor v. Brđanin*, Case No. IT-99-36-T, Judgment of 1 September 2004, paras. 704–706.

¹³⁸ *Prosecutor v. Krstić*, Case No. IT-98-33-T, para. 549; Schabas, *Genocide in International Law*, pp. 242–243 and 250–255.

¹³⁹ *Prosecutor v. Jelisić*, para. 48; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, paras. 94 and 276; Schabas, *Genocide in International Law*, pp. 245–250 and 265.

¹⁴⁰ *Prosecutor v. Jelisić*, para. 47; *Prosecutor v. Krstić*, Case No. IT-98-33-A, paras. 27, 34 and 35; *Prosecutor v. Popović et al.*, para. 1178; and <https://ccrjustice.org/israel-s-unfolding-crime-genocide-palestinian-people-us-failure-prevent-and-complicity-genocide>.

¹⁴¹ International Criminal Court, *Elements of Crimes* (2013), pp. 6–8.

¹⁴² *Bosnia and Herzegovina v. Serbia and Montenegro*, para. 373; *Prosecutor v. Kayishema and Ruzindana*, para. 93.

¹⁴³ *Prosecutor v. Akayesu*, paras. 118, 478, 579 and 580; Schabas, *Genocide in International Law*, p. 248.

¹⁴⁴ *Prosecutor v. Muhimana*, ICTR-95-1B-T, Judgment, 28 April 2005, para. 498; *Prosecutor v. Gacumbitsi*, ICTR-2001-64-T, Judgment, 17 June 2004, para. 253; *Prosecutor v. Kayishema and Ruzindana*, para. 93; *Prosecutor v. Seromba*, ICTR-01-66-A, Appeal Judgment, 12 March 2008, para. 176.

¹⁴⁵ A/HRC/39/64, para. 85, refers to “broader oppressive context and hate rhetoric; specific utterances of commanders and direct perpetrators; exclusionary policies, including to alter the demographic composition ... and the extreme scale and brutality of the violence committed”; see also *Prosecutor v. Muhimana*, para. 496.

¹⁴⁶ Penny Green and Tony Ward, *State Crime: Governments, Violence and Corruption* (London: Pluto Press, 2004); Raz Segal, “A Textbook Case of Genocide”, *Jewish Currents* (13 October 2023).

“words and deeds” and “patterns of purposeful action”¹⁴⁷ such that no other inference can be reasonably drawn.¹⁴⁸

50. In the latest Gaza assault, direct evidence of genocidal intent is uniquely present. Vitriolic genocidal rhetoric has painted the whole population as the enemy to be eliminated and forcibly displaced.¹⁴⁹ High-ranking Israeli officials with command authority have issued harrowing public statements evincing genocidal intent, including the following:

(a) President Isaac Herzog stated that “an entire nation out there ... is responsible” for the 7 October attack and that Israel would “break their backbone”;¹⁵⁰

(b) Prime Minister Benjamin Netanyahu referred to Palestinians as “Amalek”¹⁵¹ and “monsters”.¹⁵² The Amalek reference is to a biblical passage in which God commands Saul, “Now go and smite Amalek, and utterly destroy all that they have, and spare them not; but slay both man and woman, infant and suckling, ox and sheep, camel and ass”;¹⁵³

(c) Minister of Defense, Yoav Gallant, referred to Palestinians as “human animals”,¹⁵⁴ and announced a “full offense” on Gaza, having “released all the restraints”, and that “Gaza will never return to what it was”;¹⁵⁵

(d) Israel Forces Spokesperson Daniel Hagari stated that focus should be to “maximize damage”, demonstrating a strategy of disproportionate and indiscriminate violence;¹⁵⁶

(e) Minister of Agriculture Avi Dichter referred to Israeli action as “the Gaza Nakba”;¹⁵⁷

(f) Minister of Heritage Amihai Eliyahu called for striking Gaza with “nuclear bombs”;¹⁵⁸

(g) Member of the Knesset for the Likud party, Revital Gottlieb, wrote on her social media post: “Bring down buildings!! Bomb without distinction!!...Flatten Gaza. Without mercy! This time, there is no room for mercy!”.¹⁵⁹

¹⁴⁷ *Prosecutor v. Kayishema and Ruzindana*, para. 93; and *Prosecutor v. Bagilishima*, ICTR-95-1A-T, Trial Judgment, 7 June 2001, para. 63.

¹⁴⁸ *Croatia v. Serbia*, para. 148; *Bosnia and Herzegovina v. Serbia and Montenegro*, para. 373.

¹⁴⁹ <https://law4palestine.org/law-for-palestine-releases-database-with-500-instances-of-israeli-incitement-to-genocide-continuously-updated/>.

¹⁵⁰ <https://www.itv.com/news/2023-10-13/israeli-president-says-gazans-could-have-risen-up-to-fight-amas> (13 October 2023).

¹⁵¹ <https://www.youtube.com/watch?v=IIPkoDk6isc> (28 October 2023).

¹⁵² <https://www.gov.il/en/departments/news/christmas-message-from-pm-netanyahu-24-dec-2023> (24 December 2023).

¹⁵³ Holy Bible (Samuel 15:3).

¹⁵⁴ <https://www.youtube.com/watch?v=ZbPdR3E4hCk> (9 October 2023).

¹⁵⁵ https://www.timesofisrael.com/liveblog_entry/gallant-israel-moving-to-full-offense-gaza-will-never-return-to-what-it-was/ (10 October 2023).

¹⁵⁶ <https://www.idf.il/en/mini-sites/hamas-israel-war-24/briefings-by-idf-spokesperson-rear-admiral-daniel-hagari/october-press-briefings/press-briefing-by-idf-spokesperson-rear-admiral-daniel-hagari-october-10th-morning/> (10 October 2023).

¹⁵⁷ <https://twitter.com/hahauenstein/status/1723441134221869453> (11 November 2023).

¹⁵⁸ https://www.timesofisrael.com/liveblog_entry/far-right-minister-nuking-gaza-is-an-option-population-should-go-to-ireland-or-deserts/ (5 November 2023).

¹⁵⁹ <https://twitter.com/YehudaShaul/status/1714301964886917631> (17 October 2023).

51. Such calls for annihilatory violence, directed at Israeli troops on duty,¹⁶⁰ constitute strong evidence of direct and public incitement to commit genocide.¹⁶¹ Decades of discourse dehumanizing Palestinians have prepared the groundwork for such incitements.¹⁶²

52. Since 7 October, the proliferation of statements inciting genocide have also involved several sectors of Israeli society, religious leaders,¹⁶³ journalists,¹⁶⁴ artists¹⁶⁵ and various professionals, including doctors¹⁶⁶ and political commentators.¹⁶⁷

53. There is cogent evidence that these statements have been internalized and acted upon by troops on the ground.¹⁶⁸ Israeli soldiers have, including on social media channels run by the Israeli military,¹⁶⁹ referred to Palestinians as “terrorists”, “roaches” and “rats”,¹⁷⁰ and have repeated terms articulated by political leaders, chanting that “there are no ‘uninvolved civilians’”,¹⁷¹ while also calling for the building of settlements in Gaza,¹⁷² “occupy[ing] Gaza ... wip[ing] off the seed of Amalek”,¹⁷³ boasting about killing “families, mothers and

¹⁶⁰ <https://law4palestine.org/law-for-palestine-releases-database-with-500-instances-of-israeli-incitement-to-genocide-continuously-updated/>.

¹⁶¹ *Prosecutor v. Muvunyi*, ICTR-2000-55A-T, Judgment, 12 September 2006, paras. 502–505; *Prosecutor v. Kajelijeli*, ICTR-98-44A-T, Judgment, 1 December 2003, paras. 851 and 852; and <https://www.hrw.org/reports/ictr0110webwcover.pdf> 2010, pp. 64–66 and 69–70.

¹⁶² <https://ccrjustice.org/genocide-palestinian-people-international-law-and-human-rights-perspective>; Nurit Peled-Elhanan, *Palestine in Israeli School Books: Ideology and Propaganda in Education* (2012), p.162; see also <http://www.theguardian.com/commentisfree/2023/oct/16/the-language-being-used-to-describe-palestinians-is-genocidal>.

¹⁶³ <https://www.middleeasteye.net/news/israel-palestine-war-dozens-israeli-rabbis-endorse-bombing-hospitals-enemies> (1 November 2023); and <https://twitter.com/RavOuryCherki/status/1719713406050066491> (in Hebrew and English) (1 November 2023).

¹⁶⁴ <https://x.com/MiddleEastEye/status/1732639958664356223?s=20> (7 December 2023); <https://x.com/jeremyscahill/status/1737489631199850519?s=20> (20 December 2023); <https://x.com/YehudaShaul/status/1714301988358283769?s=20> (17 October 2023); and <https://twitter.com/dverthaim/status/1710684531114602891> (7 October 2023).

¹⁶⁵ <https://www.youtube.com/watch?v=2bnhWYJh8-I> (20 November 2023); https://twitter.com/gilmishali/status/1710653974397780392?s=46&t=JaT3Sau_ (7 October 2023); and <https://twitter.com/YehudaShaul/status/1739641280462815611> (26 December 2023).

¹⁶⁶ <https://www.phr.org.il/en/physicians-call-eng/> (6 November 2023).

¹⁶⁷ <https://www.instagram.com/middleeasteye/reel/C1elfQ7Nqeh/> (30 December 2023); and <https://x.com/PalestineChron/status/1737491845679128918?s=20> (20 December 2023).

¹⁶⁸ *Prosecutor v. Mladić*, vol. III, para. 3435; International Court of Justice, *South Africa v. Israel*, paras. 20–29.

¹⁶⁹ <https://www.haaretz.com/israel-news/security-aviation/2024-02-04/ty-article/.premium/israeli-army-its-admits-staff-was-behind-graphic-gaza-telegram-channel/0000018d-70b4-dd6e-a98d-f4b6a9c00000> (4 February 2024).

¹⁷⁰ *Ibid.*; https://www.nytimes.com/2024/02/06/world/middleeast/israel-idf-soldiers-war-social-media-video.html?smid=nytcore-ios-share&referringSource=articleShare&fbclid=IwAR1KvmIOixGQNbtAkJRPgU2Y7XyctR5IMWjOxQc6T6la5ODfYWyUT7IBFsA_aem_Aa7puefGHHUwoZuhoXZnJDZJzbGn8LuFsBZh4hLnUDtJN0lcdK2sacwGZKrJ7dGj0HI;%20and%20https://www.haaretz.com/israel-news/security-aviation/2024-02-04/ty-article/.premium/israeli-army-its-admits-staff-was-behind-graphic-gaza-telegram-channel/0000018d-70b4-dd6e-a98d-f4b6a9c00000, (6 November 2023).

¹⁷¹ https://www.youtube.com/watch?v=qb_oBSAZjDs (8 December 2023).

¹⁷² https://www.nytimes.com/2024/02/06/world/middleeast/israel-idf-soldiers-war-social-media-video.html?smid=nytcore-ios-share&referringSource=articleShare&fbclid=IwAR1KvmIO%20%20ixGQNbtAkJRPgU2Y7XyctR5IMWjOxQc6T6la5ODfYWyUT7IBFsA_aem_Aa7puefGHHUwoZuhoXZnJDZJzbGn8LuFsBZh4hLnUDtJN0lcdK2sacwGZKrJ7dGj0HI;%20and%20https://www.haaretz.com/israel-news/security-aviation/2024-02-04/ty-article/.premium/israeli-army-its-admits-staff-was-behind-graphic-gaza-telegram-channel/0000018d-70b4-dd6e-a98d-f4b6a9c00000.

¹⁷³ https://www.youtube.com/watch?v=qb_oBSAZjDs (8 December 2023).

children”,¹⁷⁴ humiliating detained Palestinians,¹⁷⁵ detonating dozens of homes,¹⁷⁶ destroying entire residential neighbourhoods¹⁷⁷ and desecrating cemeteries and places of worship.¹⁷⁸

54. The Prime Minister and President of Israel have stated that Israel was fighting, on behalf of “all civilized States and ... peoples”,¹⁷⁹ “a barbarism that has no place in the modern world”,¹⁸⁰ and that they “will uproot evil and it will be good for the entire region and the world”.¹⁸¹ This racist rhetoric echoes that of other colonial powers and tries to construe Israeli genocidal violence as legitimate in the light of Palestinians’ alleged “barbarian” and “premodern” character.¹⁸²

VI. Humanitarian camouflage: distorting the laws of war to conceal genocidal intent

55. A core feature of Israeli conduct since 7 October has been the intensification of its de-civilianization of Palestinians, a protected group under the Genocide Convention. Israel has used international humanitarian law terminology to justify its systematic use of lethal violence against Palestinian civilians as a group and the extensive destruction of life-sustaining infrastructures. Israel has done this by deploying international humanitarian law concepts, such as human shields, collateral damage, safe zones, evacuations and medical protection, in such a permissive manner as to gut those concepts of their normative content, subverting their protective purpose and ultimately eroding the distinction between civilians and combatants in Israeli actions in Gaza.¹⁸³

56. Official statements¹⁸⁴ have translated into military conduct that repudiates the very notion of civilian protection. Israel has thus radically altered the balance struck in international humanitarian law between civilian protection and military necessity, as well as the customary rules of distinction, proportionality and precaution. This has obscured one cardinal tenet of international humanitarian law: indiscriminate attacks, which do not distinguish military targets from protected persons and objects, cannot be proportionate and are always unlawful.¹⁸⁵

¹⁷⁴ <https://twitter.com/1717Bazz/status/1712176168823107986> (11 October 2023);

<https://twitter.com/MiddleEastEye/status/1712918166437806294> (13 October 2023);

<https://www.middleeastmonitor.com/20231228-israeli-soldier-says-he-possibly-killed-a-12-year-old-girl/> (28 December 2023).

¹⁷⁵ <https://www.haaretz.com/israel-news/2023-11-09/ty-article-magazine/.premium/growing-number-of-idf-soldiers-are-documenting-and-posting-their-own-abuse-of-palestinians/0000018b-ae60-dea2-a9bf-fefe96070000> (9 November 2023).

¹⁷⁶ <https://twitter.com/QudsNen/status/1737593767752860117> (20 December 2023).

¹⁷⁷ https://www.nytimes.com/2024/02/06/world/middleeast/israel-idf-soldiers-war-social-media-video.html?smid=nytcore-ios-share&referringSource=articleShare&fbclid=IwAR1KvmIO%20%20ixGQNbtAkJRPgU2Y7XyctR5lMWjOxQc6T6la5ODfYWyUT7lBFsA_aem_Aa7puefGHHUwoZuhoXZnJDZJzbGn8LuFsBZh4hLnUDtJN0lcdK2sacwGZKrJ7dGj0HI;%20and%20https://www.haaretz.com/israel-news/security-aviation/2024-02-04/ty-article/.premium/israeli-army-its-admits-staff-was-behind-graphic-gaza-telegram-channel/0000018d-70b4-dd6e-a98d-f4b6a9c00000 (6 February 2024).

¹⁷⁸ *Ibid.*

¹⁷⁹ <https://www.gov.il/en/departments/news/pm-netanyahu-meets-with-romanian-pm-marcel-ciolacu-17-oct-2023> (17 October 2023).

¹⁸⁰ <https://www.nytimes.com/2023/11/03/opinion/isaac-herzog-israel-amas-gaza.html?partner=slack&smid=sl-share> (3 November 2023).

¹⁸¹ https://twitter.com/Isaac_Herzog/status/1713661051986678189?s=20 (15 October 2023).

¹⁸² Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (2004), pp. 55–57 and 75.

¹⁸³ Protocol I Additional to the Geneva Conventions of 1949, arts. 48, 51, 52 and 57; Customary International Humanitarian Law Database, rules 1, 7, 14–15.

¹⁸⁴ <https://law4palestine.org/law-for-palestine-releases-database-with-500-instances-of-israeli-incitement-to-genocide-continuously-updated/>.

¹⁸⁵ Customary International Humanitarian Law Database, rule 12; Luigi Daniele, “A lethal misconception, in Gaza and beyond: disguising indiscriminate attacks as potentially proportionate and

57. On the ground, the distortion of international humanitarian law, articulated by Israel as a State policy in its official documents, has transformed an entire national group and its inhabited space into a destroyable target, revealing an eliminationist conduct of hostilities. This has had devastating effects, costing the lives of tens of thousands of Palestinian civilians, destroying the structural fabric of life in Gaza and causing irreparable harm. This illustrates a clear pattern of conduct from which genocidal intent is the only reasonable inference to be drawn.¹⁸⁶

A. Human shields and the logic of genocide

58. International humanitarian law strictly prohibits the use of human shields.¹⁸⁷ Their use constitutes a war crime,¹⁸⁸ as it violates the duty to protect the civilian population from dangers arising from military operations.¹⁸⁹ When human shields are used, the attacking party must take into account the risk to civilians.¹⁹⁰ Indiscriminate or disproportionate harm to civilians remains unlawful; the civilian population can never be targeted.

59. Israel has accused Palestinian armed groups of deliberately using civilians as human shields in previous aggressions on Gaza (including in 2008–2009,¹⁹¹ 2012,¹⁹² 2014,¹⁹³ 2021¹⁹⁴ and 2022¹⁹⁵). It also used it to justify high civilian casualties and attacks against paramedics, journalists and others during the 2018–2019 “Great March of Return”.¹⁹⁶ United Nations independent fact-finding missions¹⁹⁷ and reputable human rights organizations¹⁹⁸ have consistently challenged these allegations, sometimes concluding that evidence of human shields had been fabricated.¹⁹⁹ Nevertheless, Israel has used these accusations – sometimes

discourses on the laws of war”, EJIL: Talk!, blog of *European Journal of International Law*, 7 November 2023.

¹⁸⁶ *Bosnia and Herzegovina v. Serbia and Montenegro*, para. 373; *Croatia v. Serbia*, para. 148; *Prosecutor v. Akayesu*, paras. 579–581; *Prosecutor v. Kayishema and Ruzindana*, paras. 93 and 94; and Schabas, *Genocide in International Law*, p. 248.

¹⁸⁷ Customary International Humanitarian Law Database, rule 97; Third Geneva Convention, art. 23 (1); Fourth Geneva Convention, art. 28; Protocol I Additional to the Geneva Conventions of 1949, arts. 12 and 51 (7).

¹⁸⁸ Rome Statute, art. (2) (b) (xxiii).

¹⁸⁹ Protocol I Additional to the Geneva Conventions of 1949, art. 51.

¹⁹⁰ *Ibid.*, art. 51 (8).

¹⁹¹ <https://www.amnesty.org/en/documents/mde15/015/2009/en/>.

¹⁹² <https://twitter.com/IDF/status/269218659472400384?s=20>; and

<https://www.theguardian.com/world/2012/dec/11/gaza-child-killed-nothing-changed>.

¹⁹³ <https://www.amnesty.org/en/latest/news/2014/07/israelgaza-conflict-questions-and-answers/>.

¹⁹⁴ <https://www.hrw.org/news/2021/08/23/gaza-israels-may-airstrikes-high-rises>.

¹⁹⁵ <https://www.amnesty.org.uk/files/2022-10/Gaza>

[Offensive.pdf?VersionId=f4059c6Vn1FMnx5KvdJbnqVxAhXVvhVR -](#)

[~:text=On%20August%202022%2C%20Israel,five%20children%20at%20a%20cemetery.](#)

¹⁹⁶ Neve Gordon and Nicola Perugini, *Human Shields: A History of People in the Line of Fire* (2020), pp. 214–216.

¹⁹⁷ A/HRC/12/48, paras. 449–452.

¹⁹⁸ <https://www.amnesty.org.uk/files/2022-10/Gaza>

[Offensive.pdf?VersionId=f4059c6Vn1FMnx5KvdJbnqVxAhXVvhVR -](#)

[~:text=On%20August%202022%2C%20Israel,five%20children%20at%20a%20cemetery;](#)

<https://www.hrw.org/report/2009/08/13/white-flag-deaths/killings-palestinian-civilians-during-operation-cast-lead>.

¹⁹⁹ Law for Palestine, Joint Communication to the Office of the Prosecutor of the International Criminal Court Regarding the Perpetration of the Crime of Genocide by Members of the Israeli War Cabinet (20 March 2024).

subsequently retracted²⁰⁰ – to justify the widespread and systematic killing of Palestinian civilians in its ongoing assault.²⁰¹

60. After 7 October, the macro-characterization of Gaza's civilians as a population of human shields has reached unprecedented levels, with top-ranking Israeli political and military leaders consistently framing civilians as either Hamas operatives, "accomplices" or human shields among whom Hamas is "embedded".²⁰² In November, the Israeli Ministry of Foreign Affairs defined "the residents of the Gaza Strip as human shields" and accused Hamas of using "the civilian population as human shields".²⁰³ The Ministry defines armed groups fighting from urban areas as deliberately "embedded" in the population to such an extent that it "cannot be concluded from the mere fact that seeming 'civilians' or 'civilian objects' have been targeted, that an attack was unlawful".²⁰⁴ Two rhetorical elements of this key legal policy document indicate the intention to transform the entire Gaza population and its infrastructures of life into a "legitimate" targetable shield: (a) the use of the all-encompassing "the"; (b) combined with the quotation marks to qualify "civilians" and "civilian objects". Israel has thus sought to camouflage genocidal intent with humanitarian law jargon.

61. International law does not permit the blanket claim that an opposing force is using the entire population as human shields en bloc. Any such usage must be assessed and established on a case-by-case basis before each individual attack.²⁰⁵ The crime of using human shields occurs when the use of civilians or civilian objects to impede attacks on lawful targets is the result of a deliberate tactical choice, not merely arising from the nature of the battlefield, such as hostilities in densely populated urban terrain.²⁰⁶

²⁰⁰ A/HRC/12/48, paras. 449–452; and <https://www.amnesty.org.uk/files/2022-10/Gaza-Offensive.pdf?VersionId=f4059c6Vn1FMnx5KvdJbnqVxAhXVvhVR-~:text=On%20August%202022%2C%20Israel,five%20children%20at%20a%20cemetery.>

²⁰¹ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_\(Israel_MFA,_6.12.23\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_(Israel_MFA,_6.12.23).pdf): FAQs, pp. 2–3.

²⁰² <https://www.gov.il/en/departments/news/president-herzog-reveals-hamas-captive-taking-handbook-15-oct-2023>; <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/10/18/remarks-by-president-biden-and-prime-minister-benjamin-netanyahu-of-israel-before-expanded-bilateral-meeting-tel-aviv-israel/>; <https://www.gov.il/en/departments/news/1swords-of-iron-151023>; <https://www.idf.il/en/mini-sites/hamas-israel-war-24/briefings-by-idf-spokesperson-rear-admiral-daniel-hagari/october-press-briefings/press-briefing-by-idf-spokesperson-rear-admiral-daniel-hagari-october-10th-evening/>.

²⁰³ [https://www.gov.il/BlobFolder/news/hamas-israel-conflict2023-key-legal-aspects/en/English_Documents_Hamas-Israel%20Conflict%202023%20-%20Some%20Factual%20and%20Legal%20Aspects%20-%20Israel%20Ministry%20of%20Foreign%20Affairs%20\(2%20NOV%202023\).pdf](https://www.gov.il/BlobFolder/news/hamas-israel-conflict2023-key-legal-aspects/en/English_Documents_Hamas-Israel%20Conflict%202023%20-%20Some%20Factual%20and%20Legal%20Aspects%20-%20Israel%20Ministry%20of%20Foreign%20Affairs%20(2%20NOV%202023).pdf) (2 November 2023), pp. 7 and 9; and <https://www.gov.il/en/departments/general/swords-of-iron-faq-6-dec-2023>.

²⁰⁴ [https://www.gov.il/BlobFolder/news/hamas-israel-conflict2023-key-legal-aspects/en/English_Documents_Hamas-Israel%20Conflict%202023%20-%20Some%20Factual%20and%20Legal%20Aspects%20-%20Israel%20Ministry%20of%20Foreign%20Affairs%20\(2%20NOV%202023\).pdf](https://www.gov.il/BlobFolder/news/hamas-israel-conflict2023-key-legal-aspects/en/English_Documents_Hamas-Israel%20Conflict%202023%20-%20Some%20Factual%20and%20Legal%20Aspects%20-%20Israel%20Ministry%20of%20Foreign%20Affairs%20(2%20NOV%202023).pdf) (2 November 2023), p. 2.

²⁰⁵ Stéphanie Bouchié de Belle, "Chained to cannons or wearing targets on their T-shirts: human shields in international humanitarian law", *International Committee of the Red Cross*, vol. 90, No. 872 (2008).

²⁰⁶ *Ibid.*, pp. 890–898.

62. Nevertheless, Israeli authorities have arbitrarily linked churches,²⁰⁷ mosques,²⁰⁸ schools,²⁰⁹ United Nations facilities,²¹⁰ universities,²¹¹ hospitals and ambulances²¹² with Hamas to reinforce the perception of a population characterized as broadly “complicit” and therefore killable. Significant numbers of Palestinian civilians are defined as human shields simply by being in “proximity to” potential Israeli targets.²¹³ Israel has thus transformed Gaza into a “world without civilians” in which “everything from taking shelter in hospitals to fleeing for safety is declared a form of human shielding”.²¹⁴ The accusation of using human shields has thus become a pretext used to justify the killing of civilians under a cloak of purported legality, whose pervasiveness only admits of genocidal intent.

B. Turning Gaza as a whole into a “military objective”

63. International law stipulates that attacks must be “strictly limited” to objects, which, “by their nature, location, purpose or use make an effective contribution to military action”, whose “total or partial destruction, capture or neutralization” in the circumstances ruling at the time “must offer a definite military advantage”.²¹⁵

64. Israel has misused this rule to “militarize” civilian objects and whatever surrounds them, thus justifying their indiscriminate destruction. According to the Ministry of Foreign Affairs, “many ostensibly civilian objects may become legitimate targets”,²¹⁶ losing their protection under international humanitarian law or may become “collateral” damage as a result of Hamas’s choice. The civilian population and the infrastructure of Gaza are presented as obstructions positioned among, in front of and above targets.²¹⁷ Instead of abiding by circumstantial status determinations in line with international humanitarian law for each attack undertaken, as is required, Israel has characterized the whole territory as a military objective.

65. Protected civilian objects can lose their immunity from attacks if and for as long as they are used by combatants in hostilities. However, Israel considers any object that has allegedly been or might be used militarily as a legitimate target, so that entire neighbourhoods can be razed or demolished under fictions of legality.²¹⁸ In the logic used by Israel, civilian objects, such as houses and apartments, become military objectives by proximity, as if the status of “lawful” target is spread through a vicinity by “viral contagion”. For example, residential tower blocks, each comprising dozens of floors and hundreds of (functionally

²⁰⁷ <https://www.aljazeera.com/news/2023/10/20/war-crime-israel-bombs-gaza-church-sheltering-displaced-people> - ~:text=War%20on%20Gaza-.Israel%20bombs%20Greek%20Orthodox%20Gaza%20church%20sheltering%20displaced%20people,%27large%20number%27%20of%20people.

²⁰⁸ <https://twitter.com/IDF/status/1727059761466650632?s=20>.

²⁰⁹ <https://twitter.com/IDF/status/1725683576522334603?s=20>.

²¹⁰ <https://www.cbsnews.com/news/israel-photos-hamas-gaza-weapons-un-facilities-including-schools/>, (8 November 2023); <https://twitter.com/IDF/status/1724002788810600946?s=20>.

²¹¹ <https://www.timeshighereducation.com/news/academia-gaza-has-been-destroyed-israeli-educide>.

²¹² <https://twitter.com/IDF/status/1725455901824323697?s=20>.

²¹³ Gordon and Perugini, pp.159–169; <https://blogs.icrc.org/law-and-policy/2021/11/18/proximate-human-shields/>.

²¹⁴ Elyse Semerdjian, “A world without civilians”, *Journal of Genocide Research*, 24 January 2024.

²¹⁵ Protocol I Additional to the Geneva Conventions of 12 August 1949, art. 52 (2); and Customary International Humanitarian Law Database, rule 8.

²¹⁶ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_FAQs_\(Israel_MFA,_6.12.23\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_FAQs_(Israel_MFA,_6.12.23).pdf): FAQs, pp. 2 and 9.

²¹⁷ *Ibid.*, p. 9.

²¹⁸ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_FAQs_\(Israel_MFA,_6.12.23\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_FAQs_(Israel_MFA,_6.12.23).pdf): FAQs p.14; <https://www.maariv.co.il/breaking-news/Article-1044157> admitted neighbourhoods attacked “on a large scale and not in a surgical manner” (in Hebrew); and <https://www.youtube.com/watch?v=3-APSXZy9UI>.

separate and autonomously useable) flats, purportedly become military objectives in their entirety if a single flat or room had allegedly been used by an armed group.²¹⁹

66. Paradigmatic examples are referred to as “power targets”,²²⁰ encompassing all civilian objects, including residential buildings, under the pretext that “ Hamas is everywhere in Gaza”.²²¹ Entire multistorey buildings have been levelled while full of civilians, knowingly killing hundreds in single strikes.²²² In the attack on the Al-Taj tower in Gaza City, bombed on 25 October, 101 people were killed, including 44 children and 37 women, and hundreds were injured.²²³

67. Israel has thus de facto abolished the distinction between civilian objects and military objectives. In the first three weeks of the offensive, entire residential areas across northern Gaza were erased.²²⁴ Meanwhile, neighbourhoods in “safe areas” in the south were already being bombarded.²²⁵ By November, the devastation of cities in northern Gaza far exceeded that of Dresden in 1945.²²⁶

68. Rationalizing patterns of attacks on civilian objects, knowingly killing civilians *en masse*, has become a military strategy premised upon probable war crimes presented as abiding with international humanitarian law. This strategy reasonably and solely infers a genocidal policy.

C. Indiscriminate killing as “collateral damage”

69. Israel has also sought to provide legal cover for indiscriminate attacks by misusing the notion of “collateral damage”,²²⁷ expanding, without limit, what can be considered “incidental civilian harm”. Examples of indiscriminate attacks include attacks which, by any methods or means, strike multiple lawful targets at once in areas with high concentrations of civilians or civilian objects. To justify killing members of the protected group, Israel has defended such actions as causing only incidental harm to civilians, proportionate to concrete and direct military advantages anticipated.²²⁸

70. By invoking the concept of “proportionate collateral damage” to knowingly shell large numbers of members of the protected group, Israel asserts that when attacks result in more collateral damage than expected, it does not necessarily indicate a violation, since “compliance is conduct-oriented, not result-oriented”.²²⁹

71. However, in all attacks launched against residential towers²³⁰ without warnings, extensive civilian harm has been anticipated as the main outcome. The Al-Taj building was full of families at the time of the 25 October strike, and it must have been anticipated that it was certain to kill or injure all the civilians living there.²³¹ The fact that so many people were killed was entirely predictable – and hence at least indirectly intended – as is evident from

²¹⁹ Declared previously, for example, at: <https://twitter.com/IDF/status/1393553534218604552?s=20>; and <https://www.justsecurity.org/76657/the-idfs-unlawful-attack-on-al-jalaa-tower/>.

²²⁰ <https://www.israeldefense.co.il/node/37949>.

²²¹ <https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/>.

²²² Ibid.

²²³ <https://airwars.org/civilian-casualties/ispt0587-october-25-2023/>.

²²⁴ <https://www.theguardian.com/world/2023/oct/27/gaza-before-and-after-satellite-images-show-destruction-after-israeli-airstrikes>.

²²⁵ <https://www.nytimes.com/2023/12/21/world/middleeast/israel-gaza-bomb-investigation.html>.

²²⁶ <https://www.ft.com/content/7b407c2e-8149-4d83-be01-72dcae8aee7b>.

²²⁷ See Daniele, “A lethal misconception”.

²²⁸ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_\(Israel_MFA,_6.12.23\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_(Israel_MFA,_6.12.23).pdf): FAQs, pp. 4 and 11–13.

²²⁹ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_\(2_NOV_2023\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_(2_NOV_2023).pdf): Key Legal Aspects, (2 November 2023), p. 10.

²³⁰ <https://ig.ft.com/gaza-damage/>.

²³¹ <https://airwars.org/civilian-casualties/ispt0587-october-25-2023/>.

the images published by the Israeli military itself.²³² The attack on the Jabalia refugee camp on 31 October killed at least 126 civilians, including 69 children, and injured a further 280.²³³ Israeli military personnel affirmed that the target was one Hamas commander in an underground base.²³⁴

72. In order for a proportionality assessment to be lawful, the principle of distinction must first be respected, otherwise the civilian harm anticipated from an attack ceases to be an incidental, unintended consequence of the attack itself.²³⁵ While both indiscriminate and disproportionate attacks appear to have been committed systematically and repeatedly throughout the latest Israeli campaign,²³⁶ the fact that both types of unlawful attacks have been consistently deemed by Israel as lawful suggests that it operates under a policy that condones mass killing.

73. Under international humanitarian law, the concrete and direct military advantage expected from a single attack must be weighed against the foreseeable incidental harm to civilians and civilian objects. However, in its strained proportionality assessments, the Israeli Ministry of Foreign Affairs states that “military advantage [...] may refer to the military advantage anticipated” not from a specific military action but “from an operation as a whole”,²³⁷ alluding to the overall purpose of the war.²³⁸

74. Israeli proportionality assessments have flouted legal requirements by defining military advantage, in each attack, in relation to the destruction of the whole Hamas organization both politically and militarily.²³⁹ It is manifestly illegal to declare as a war aim the destruction of the other side’s political capacity (particularly in the context of a 56-year military occupation that deprives the occupied population of its right to self-determination). But when such an overall “political” purpose of war is taken as the value against which proportionality is to be measured in relation to the anticipated harm to civilians, there is virtually no magnitude of expected civilian harm that could ever be considered “excessive” so long as the unlawful political objective, as defined by the attacker, is not met. In this context, the indiscriminate killing of protected persons and destruction of protected objects will always be represented, by the attacker, as “proportionate” incidental harm,²⁴⁰ despite its manifest illegality.

75. Presenting indiscriminate lethal violence against the protected group as a “proportionate means” to pursue the war aims points to an intent to target the Palestinian population as a whole, consistent with the genocidal statements announcing the campaign. In other words, Israel appears to represent itself as conducting a “proportionate genocide”.

²³² <https://twitter.com/IDF/status/1717840051491541077>.

²³³ <https://airwars.org/civilian-casualties/ispt0783-october-31-2023/>.

²³⁴ <https://edition.cnn.com/videos/world/2023/10/31/wolf-idf-spokesperson-gaza-refugee-camp-airstrike-reaction-vpx.cnn>.

²³⁵ Daniele, “A lethal misconception”.

²³⁶ <https://www.amnesty.org/en/latest/news/2023/10/damning-evidence-of-war-crimes-as-israeli-attacks-wipe-out-entire-families-in-gaza/>.

²³⁷ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_\(2_NOV_2023\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_(2_NOV_2023).pdf); Key Legal Aspects (2 November 2023), p. 10.

²³⁸ <https://www.justsecurity.org/90789/israels-rewriting-of-the-law-of-war/3>.

²³⁹ <https://www.youtube.com/watch?v=Jb1krYLPLZI> (in Hebrew);

<https://www.youtube.com/watch?v=2yRI-cc-D3w> (in Hebrew); and

<https://twitter.com/QudsNen/status/1723784790682358189>. While such arguments have been tempered over time (see [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_\(Israel_MFA,_6.12.23\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_(Israel_MFA,_6.12.23).pdf); FAQs, p. 11–12), action on the ground has remained ruthless; see, inter alia, the attacks on the Gaza police while assisting food delivery in northern Gaza, and

<https://www.washingtonpost.com/world/2024/02/22/gaza-aid-deliveries-looting-police-hamas/>.

²⁴⁰ <https://academic.oup.com/jcs/article/29/1/21/7644943>.

D. Evacuations and safe zones

76. Under international humanitarian law, parties to conflict must evacuate the civilian population and remove civilian objects from the vicinity of military objectives.²⁴¹ Evacuations are admissible, as long as they do not displace the protected persons outside the occupied territory; evacuated persons must be transferred back to their homes as soon as hostilities in the area in question have ceased.²⁴² The displaced, wounded and sick should be protected through the creation of “hospital and safety zones” – also called “safe areas” or “safe zones” – which shall “be far removed from military operations” and established through agreement between the parties.²⁴³

77. The mass evacuation order of 13 October – when 1.1 million Palestinians were ordered to evacuate northern Gaza in the span of 24 hours to Israeli-designated “safe zones” in the south²⁴⁴ – was communicated through at least 23 different airdropped leaflets, social media postings,²⁴⁵ text messages²⁴⁶ and recorded phone messages.²⁴⁷ Instead of increasing safety for civilians, the sheer scale of evacuations, amidst an intense bombing campaign, and the haphazardly communicated safe zones system, along with extended communications blackouts,²⁴⁸ increased levels of panic, forced displacement and mass killing.²⁴⁹

78. Immediately after the 13 October evacuation orders and the transformation of southern Gaza into an ostensible “safe zone”, Israel illegally categorized the inhabitants of northern Gaza who had remained (including the sick and wounded) as “human shields”²⁵⁰ and “accomplices” of terrorism.²⁵¹ This policy points to the intention by Israel to “transform” hundreds of thousands of civilians into “legitimate” military targets or collateral casualties through impossible-to-follow evacuation orders.²⁵² The mass evacuation order included a staggering 22 hospitals in the area,²⁵³ putting at risk more than 2,000 patients and displaced people sheltering in the hospitals, and deprived those remaining of life-sustaining services.²⁵⁴

79. The erasure of civilian protections in the evacuated area was combined with indiscriminate targeting of evacuees and inhabitants of the areas designated as safe zones. Since the beginning of its assault, Israel has perfidiously bombarded the designated “safe” areas causing significant casualties.²⁵⁵ Of the roughly 500 2,000-pound bombs dropped by Israel in the first six weeks of hostilities, 42 per cent were deployed in the designated safe

²⁴¹ Protocol I Additional to the Geneva Conventions of 1949, art. 58 (a).

²⁴² Fourth Geneva Convention, art. 49.

²⁴³ Draft agreement relating to hospital zones and localities, art. 4 (c), as cited in the Fourth Geneva Convention, art. 14.

²⁴⁴ <https://mezan.org/en/post/46293>; and <https://mezan.org/en/post/46287>.

²⁴⁵ <https://x.com/AvichayAdraee/status/1712846493747495223?s=20> (in Arabic); and https://www.timesofisrael.com/liveblog_entry/idf-urges-palestinians-to-leave-northern-gaza-strip-by-8-p-m/.

²⁴⁶ <https://www.nytimes.com/2023/10/15/world/middleeast/israel-gaza.html>.

²⁴⁷ <https://www.bbc.com/news/world-middle-east-67327079>.

²⁴⁸ https://content.forensic-architecture.org/wp-content/uploads/2024/03/Humanitarian-Violence_Report_FA.pdf (7 March 2024), sects. 6.1.2 and 6.1.3.

²⁴⁹ <https://www.aljazeera.com/opinions/2024/1/6/safe-zones-israels-technologies-of-genocide>.

²⁵⁰ <https://www.idf.il/en/mini-sites/hamas-israel-war-24/war-on-hamas-2023-resources/the-idf-continues-the-effort-to-move-the-residents-of-the-gaza/>; and

https://www.mezan.org/uploads/files/2024/1/17096645765_november.jpeg (in Arabic).

²⁵¹ https://www.theguardian.com/world/2024/feb/08/israeli-soldiers-idf-gaza-fighting-disaster-area?CMP=share_btn_tw; and https://www.mezan.org/uploads/files/2024/1/1709664576signal-2023-10-22-030620_002.jpeg (in Arabic).

²⁵² Regulations respecting the Laws and Customs of War on Land (Hague Regulations) (1907), art. 26; Protocol I Additional to the Geneva Conventions of 1949, article 57 (2)(c). The term used in these provisions is “advance warning”; see also *Bosnia and Herzegovina v. Serbia and Montenegro*, para. 373.

²⁵³ https://www.emro.who.int/images/stories/palestine/WHO_oPt_Sitrep_6s.pdf.

²⁵⁴ <https://www.who.int/news/item/14-10-2023-evacuation-orders-by-israel-to-hospitals-in-northern-gaza-are-a-death-sentence-for-the-sick-and-injured>.

²⁵⁵ <https://edition.cnn.com/gaza-israel-big-bombs/index.html>.

zones in southern areas.²⁵⁶ Israel targeted southern Gaza also with other munitions from air, sea and land, causing large-scale destruction of civilian areas in the “safe zones”.²⁵⁷

80. By 28 October, two weeks after the Israeli mass evacuation order, about 37 per cent of killings occurred in the declared safe areas south of Wadi Gaza.²⁵⁸ By 20 November, 34 per cent of all Palestinians killed in Gaza were in that area,²⁵⁹ and by 22 January, 42 per cent were located in that area, which, by then, held the majority of the population.²⁶⁰ Simply put, “safe areas” were deliberately turned into areas of mass killing.

81. Similar patterns emerge from the Israeli militarization of the “humanitarian corridors” it instructed the population to use in order to evacuate. In contrast with the humanitarian rhetoric through which these “safe routes” were announced,²⁶¹ the corridors were systematically and perfidiously targeted by bombardment, shelling and sniper fire,²⁶² becoming “death corridors”. Israel set up checkpoints for facial scans and identity checks, where fleeing Palestinians were often detained and later mistreated and tortured.²⁶³

82. By the end of November, the Palestinian death toll reached 15,000.²⁶⁴ Responding to mounting international criticism, the Israeli military reconfigured its evacuation mechanisms, introducing a new “humanitarian” tool: the “evacuation grid”.²⁶⁵ The army published a grid map on social media, showing a division of Gaza into 600 blocks and indicating areas to be “evacuated” and “safe” areas.²⁶⁶ The system – introduced when the army had cut off Gaza from all forms of communication²⁶⁷ – threw residents into panic, increasing the level of chaos and, subsequently, the number of deaths.²⁶⁸ From early December, Israel routinely ordered Palestinian civilians in the areas south of Wadi Gaza to move to new zones designated as safe areas according to the grid. Immediately afterwards, the army targeted those “safe zones”.²⁶⁹

83. From the end of December to February, Israel intensified its offensive in the “safe areas” of Al-Mawasi and Rafah, which were sheltering the majority of the displaced population.²⁷⁰ These assaults continued even after the International Court of Justice ordered

²⁵⁶ Ibid.; <https://www.nytimes.com/2023/12/21/world/middleeast/israel-gaza-bomb-investigation.html>.

²⁵⁷ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-34>; https://sheltercluster.s3.eu-central-1.amazonaws.com/public/docs/gsc_opt_gaza_strip_damage_affected_areas_27october2023_a1.pdf?VersionId=bTM7V0miJzKDudKwJL8Dvy1Kdt2uy4kZ; <https://www.alhaq.org/advocacy/22044.html>.

²⁵⁸ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-22>.

²⁵⁹ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-45>.

²⁶⁰ <https://english.elpais.com/international/2024-01-22/25000-deaths-in-gaza-why-the-destruction-of-this-war-exceeds-that-of-other-major-conflicts.html?outputType=amp>.

²⁶¹ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-8>; <https://www.theguardian.com/world/2023/oct/14/gaza-civilians-afraid-to-leave-home-after-bombing-of-safe-routes>; and <https://www.nbcnews.com/news/world/live-blog/israel-hamas-war-live-updates-rcna120252>.

²⁶² <https://reliefweb.int/report/occupied-palestinian-territory/pauses-corridors-and-safe-zones-gaza-rhetoric-vs-reality>; and <https://www.ft.com/content/95c5fcf1-c756-415f-85b8-1e4bbff24736>.

²⁶³ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-35>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-46>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-50>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-105>; and <https://www.alhaq.org/advocacy/22452.html>.

²⁶⁴ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-53>.

²⁶⁵ <https://www.theguardian.com/world/2023/dec/02/israeli-grid-system-makes-life-in-gaza-macabre-game-of-battleships-say-aid-workers>.

²⁶⁶ <https://www.bbc.com/news/world-middle-east-67630489>.

²⁶⁷ <https://www.savethechildren.net/news/complete-communication-blackout-four-days-and-counting-makes-aid-distribution-gaza-near>; and <https://edition.cnn.com/2024/01/18/middleeast/gaza-communications-blackout-one-week-israel-hamas-intl/index.html>.

²⁶⁸ <https://www.reuters.com/world/middle-east/israel-says-ground-forces-operating-across-gaza-strip-offensive-builds-2023-12-04/>.

²⁶⁹ Ibid; see also <https://www.youtube.com/watch?v=JIGmwCMETMs>.

²⁷⁰ https://apnews.com/article/israel-hamas-war-news-12-26-2023-698c895797ccb057d13fe4f68690c98b?taid=658b24eaca93ff0001d4103d&utm_campaign=TrueAnthem&utm_medium=AP&utm_source=Twitter; <https://www.savethechildren.org/us/about-us/media->

Israel to “take[s] all measures within its power” to prevent genocide.²⁷¹ Instead, by February Israel had killed a further 3,135 Palestinians, many of whom were killed while seeking refuge.²⁷²

84. By the beginning of February, 1.4 million Palestinians had been displaced to Rafah, rendering that governorate the most overcrowded area in Gaza with “an average density of over 22,200 per square kilometre, five times its pre-conflict levels”.²⁷³ Continuous bombardment of the “safe areas” targeted premises hosting displaced people²⁷⁴ and medical facilities.²⁷⁵

85. Just as the evacuations and safe zones were being implemented, high-ranking Israeli officials advocated for settler colonial replacement. The Prime Minister advocated for ethnic transfer;²⁷⁶ the Finance Minister expressed support for expelling two million Palestinians from Gaza;²⁷⁷ the Minister of National Security declared the war to be an opportunity to “concentrate on encouraging the migration of the residents of Gaza”; while other cabinet ministers advocated that Palestinians be resettled²⁷⁸ into the Sinai,²⁷⁹ Western countries²⁸⁰ and elsewhere.²⁸¹ The Minister of Communications revealed that the expulsion of the evacuated Palestinians outside Gaza was discussed “at government meetings”.²⁸² On 12 January, a conference for the recolonization of Gaza and the expulsion of Palestinians was attended by Israeli cabinet ministers.²⁸³

86. The pattern of killings of civilians who evacuated to the south, in combination with statements of some senior Israelis declaring an intent to forcibly displace Palestinians outside Gaza and replace them with Israeli settlers, lead, reasonably, to the inference that evacuation orders and safe zones have been used as genocidal tools to achieve ethnic cleansing.

and-news/2024-press-releases/gaza-mostly-children-killed-by-israeli-airstrikes-near-al-mawasi-~:text=4%2C%202024)%E2%80%94Fourteen%20people,aid%20agency%20Save%20the%20Children; <https://www.amnesty.org.uk/press-releases/israelopt-fresh-evidence-probable-war-crimes-israeli-attacks-rafah>; and <https://edition.cnn.com/2024/02/06/middleeast/palestinians-trapped-rafah-israeli-offensive-intl/index.html>; <https://www.reuters.com/world/middle-east/israel-strikes-rafah-refugee-camp-22-killed-local-health-officials-say-2024-02-12/>.

²⁷¹ International Court of Justice, *South Africa v. Israel*, para. 86.

²⁷² <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-129>.

²⁷³ <https://www.nrc.no/news/2024/february/gaza-israels-military-operation-in-rafah-would-be-fatal-for-displaced-civilians-and-humanitarian-aid/>.

²⁷⁴ https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-101?_gl=1*11oo43s*_ga*MTEwMzc0OTEwNC4xNzA3ODMyMTQ0*_ga_E60ZNX2F68*MTcwOTQwMDA0OC42LjEuMTcwOTQwMTEyNi42MC4wLjA.

²⁷⁵ <https://forensic-architecture.org/investigation/assessment-israeli-material-icj-jan-2024>.

²⁷⁶ <https://www.israelhayom.co.il/news/geopolitics/article/15002089>; <https://www.trtworld.com/middle-east/live-blog-netanyahu-reportedly-pushes-for-voluntary-migration-from-gaza-16382395> (in Hebrew).

²⁷⁷ <https://www.reuters.com/world/middle-east/israeli-minister-calls-voluntary-emigration-gazans-2023-11-14/>; and <https://www.timesofisrael.com/smotrich-doubles-down-on-resettlement-of-gazans-rejecting-us-criticism/>.

²⁷⁸ <https://www.timesofisrael.com/ministers-call-for-resettling-gazans-palestinians-building-settlements-in-strip/> (1 January 2024).

²⁷⁹ <https://www.timesofisrael.com/intelligence-ministry-concept-paper-proposes-transferring-gazans-to-egypt-sinai/>.

²⁸⁰ <https://www.wsj.com/articles/the-west-should-welcome-gaza-refugees-asylum-seekers-terrorists-displacement-5d2b5890>.

²⁸¹ https://www.facebook.com/story.php?story_fbid=pfbid036UqRhGJTnem4PTjwWbfen66cwCGAP4zDQsMhcwuWE7PQ5fMJAeEwpaSYyhnR95Cbl&id=100050298347371&paipv=0&eav=AffaYuQI6JO9t5f79-OwyTkI4XyPbjoOR76oXREbhs_jTghukglHjzJy9kKH7cIrHwO&_rdr (in Hebrew); <https://www.timesofisrael.com/israel-in-talks-with-congo-and-other-countries-on-gaza-voluntary-migration-plan/>; and <https://twitter.com/israeltrnsLtd/status/1741891754196901934>.

²⁸² https://www.huffingtonpost.co.uk/entry/israeli-cabinet-minister-says-war-will-lead-to-emigration-from-gaza_uk_659fa54de4b0fbd2bc05cc78 (11 January 2024).

²⁸³ See <https://www.haaretz.com/israel-news/2024-01-28/ty-article/ministers-from-netanyahus-party-join-thousands-of-israelis-at-resettle-gaza-conference/0000018d-512f-dfdc-a5ad-db7f35e10000>.

E. Medical shielding

87. A final layer of the “humanitarian camouflage” concerns its efforts to provide legal cover for systematic attacks against medical facilities and personnel, causing the progressive collapse of the health-care sector in Gaza.²⁸⁴ Accusing the enemy of using medical facilities as a shield, which Israel then targets, had already been employed as a strategy of “medical warfare” in previous wars.²⁸⁵ In the current assault, Israel has invoked this legal strategy to justify genocide through the complete destruction of Gaza’s life-sustaining infrastructure.²⁸⁶

88. Civilian health care has special protection under international law, and there is a high threshold for the loss of the protected status for civilian medical units.²⁸⁷ International law protects hospitals while prohibiting their use for military purposes or as shields for military activities, such as positioning military targets in their proximity.²⁸⁸ Since the beginning of the hostilities, Israel has framed hospitals in Gaza as Hamas “headquarters”²⁸⁹ and spaces used for shielding military activities,²⁹⁰ aiming to blur the distinction between civilian and military objects, transforming hospitals into “hospital shields”²⁹¹ and legitimizing the destruction of the entire health-care sector.²⁹²

89. In November 2023, Al-Shifa Hospital in northern Gaza was hosting tens of thousands of displaced people when it was besieged and invaded.²⁹³ On 27 October, the Israeli military published a 3D video representing the hospital’s underground as a complex network of tunnels functioning as a “ Hamas command centre”.²⁹⁴ On 2 November, the Ministry of Foreign Affairs published a legal document designating the hospital as a military centre concealing military assets.²⁹⁵ The hospital was subsequently placed under siege and was invaded in mid-November, with Israel accusing Hamas of using medical personnel as “human shields”.²⁹⁶ After days of attacks, the hospital was turned into a “death zone”:²⁹⁷ five newborn babies and 14 patients were injured;²⁹⁸ at least 31 people were killed;²⁹⁹ and parts of the hospital turned into mass graves.³⁰⁰

90. Media reports challenged Israeli allegations that Hamas was using hospitals as shields, asserting that there was no evidence to suggest that the rooms connected to the hospital had

²⁸⁴ <https://www.youtube.com/watch?v=e8nyroIIXIM>.

²⁸⁵ <https://www.pure.ed.ac.uk/ws/portalfiles/portal/433934921/PeruginiGordonJPS2024MedicalLawfare.pdf>.

²⁸⁶ *Ibid.*; see also <https://forensic-architecture.org/investigation/destruction-of-medical-infrastructure-in-gaza-20/12/2023>; [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_\(Israel_MFA,_6.12.23\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_(Israel_MFA,_6.12.23).pdf): FAQs, (6 December 2023) pp. 2, 9, 13–14.

²⁸⁷ Protocol I Additional to the Geneva Conventions of 1949, arts. 13 (1) and 52 (3); First Geneva Convention, art. 21; Fourth Geneva Convention, arts. 18 and 19; and Protocol II to the Geneva Conventions of 1949, art. 11 (2).

²⁸⁸ Fourth Geneva Convention, arts. 18 and 19; Protocol I Additional to the Geneva Conventions of 1949, art. 12 (4).

²⁸⁹ <https://www.youtube.com/watch?v=-ggBF9rnBe0>.

²⁹⁰ <https://www.idf.il/en/mini-sites/hamas-operations-in-hospitals/>.

²⁹¹ Neve Gordon and Nicola Perugini, “‘Hospital shields’ and the limits of international law”, *European Journal of International Law*, vol. 30, No. 2 (May 2019).

²⁹² <https://www.reuters.com/world/middle-east/israeli-military-says-hamas-hiding-tunnels-operations-centres-gaza-hospital-2023-10-27/>.

²⁹³ <https://shifa.forensic-architecture.org/>; and <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-16>.

²⁹⁴ <https://twitter.com/IDF/status/1718010359397634252?s=20>.

²⁹⁵ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_\(2_NOV_2023\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_(2_NOV_2023).pdf): Key Legal Aspects, p. 9.

²⁹⁶ <https://www.theguardian.com/world/2023/nov/12/control-of-al-shifa-hospital-in-gaza-is-a-key-israeli-military-and-political-aim>.

²⁹⁷ <https://www.bbc.co.uk/news/world-middle-east-67462615>.

²⁹⁸ <https://www.reuters.com/world/middle-east/too-close-too-cold-premature-babies-grave-peril-gazas-al-shifa-hospital-2023-11-13/>.

²⁹⁹ Figures provided by WHO office for the Eastern Mediterranean Region, 24 February 2024.

³⁰⁰ https://www.emro.who.int/images/stories/palestine/WHO_Sitrep_13.pdf?ua=1.

been used by Hamas; the hospital buildings (contrary to Israeli military 3D images) were found not to be connected to the tunnel network; and there was no evidence that the tunnels were accessible from the hospital wards.³⁰¹ In addition, Israeli army reportedly rearranged weaponry at the Al-Shifa before the visits of news crews,³⁰² raising further suspicions of fabrication after the Israeli army had claimed that a “list of terrorists” it had found in another Gaza hospital, Al-Rantisi children’s hospital, turned out to be a calendar of the days of the week in Arabic.³⁰³ Whether or not Israeli accusations that hospital shielding at Al-Shifa were true – but still remain to be proven – civilians in the hospitals should have been protected and not subjected to siege and military attack.

91. That the intent behind the “humanitarian camouflage” deployed by Israel in this instance can only be characterized as genocidal is clear for two reasons. First, Israel was aware of the large-scale destruction of the health-care system since the World Health Organization had reported in mid-November that a “public health catastrophe” was developing in Gaza, with 26 of 35 hospitals no longer operational owing to the bombing and siege inflicted by Israel.³⁰⁴ Second, Israel knew that its military operation had resulted in a significant number of wounded people.³⁰⁵ Physical trauma constitutes the predominant cause of excess mortality in Gaza.³⁰⁶ It was predictable that forcibly suspending services at the largest hospital in Gaza would seriously harm the prospects for survival of the injured, the chronically ill and newborn babies in incubators. Therefore, by targeting Al-Shifa Hospital, Israel knowingly condemned thousands of sick and displaced people to preventable suffering and death.³⁰⁷

92. The reliance on the strategy of treating hospitals as medical shields, disregarding their function as indispensable hubs of societal survival for the thousands injured and the many more seeking shelter, exposes yet another aspect of the genocidal logic underpinning the military strategy adopted by Israel.

VII. Conclusions

93. **The overwhelming nature and scale of the Israeli assault on Gaza and the destructive conditions of life it has inflicted reveal an intent to physically destroy Palestinians as a group. The present report finds that there are reasonable grounds to believe that the threshold indicating the commission of the following acts of genocide against Palestinians in Gaza has been met: killing members of the group; causing serious bodily or mental harm to groups’ members; and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. Genocidal acts were approved and given effect following statements of genocidal intent issued by senior military and government officials.**

94. **Israel has sought to conceal its eliminationist conduct of hostilities by defending the commission of international crimes as abiding with international humanitarian law. By distorting customary rules of international humanitarian law, including distinction, proportionality and precautions, Israel has de facto treated an entire protected group and its life-sustaining infrastructure as “terrorist” or “terrorist-supporting”, thus transforming everything and everyone into either a target or collateral damage, hence killable or destroyable. In this way, no Palestinian in Gaza is safe by definition. This**

³⁰¹ <https://www.washingtonpost.com/world/2023/12/21/al-shifa-hospital-gaza-hamas-israel/>; <https://www.youtube.com/watch?v=NIBtJh1fIw>; <https://forensic-architecture.org/investigation/assessment-israeli-material-icj-jan-2024>.

³⁰² https://edition.cnn.com/middleeast/live-news/israel-hamas-war-gaza-news-11-18-23/h_1d70c190adde686e6a2b59e963499e82.

³⁰³ <https://www.france24.com/en/tv-shows/truth-or-fake/20231116-idf-claims-to-find-list-of-hamas-names-but-it-s-the-days-of-the-week-in-arabic>.

³⁰⁴ https://www.emro.who.int/images/stories/palestine/WHO_Sitrep_13.pdf?ua=1.

³⁰⁵ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-40>.

³⁰⁶ <https://gaza-projections.org/>, p. 10.

³⁰⁷ <https://www.pure.ed.ac.uk/ws/portalfiles/portal/433934921/PeruginiGordonJPS2024MedicalLawfare.pdf>.

has had devastating, intentional effects, costing the lives of tens of thousands of Palestinians, destroying the fabric of life in Gaza and causing irreparable harm to its entire population. It constitutes a pattern of conduct from which the only reasonable inference to be drawn is that there is a State policy of genocidal violence against the Palestinian people in Gaza.

95. The Israeli genocide against the Palestinians in Gaza is an escalatory stage of a long-standing settler colonial process of erasure. For over seven decades this process has suffocated the Palestinian people as a group – demographically, culturally, economically and politically – seeking to displace it and to expropriate and control its land and resources. The ongoing Nakba must be stopped and remedied once and for all. This is an imperative owed to the victims of this highly preventable tragedy, and to future generations in that land.

VIII. Recommendations

96. The Special Rapporteur urges Member States to enforce the prohibition of genocide in accordance with their non-derogable obligations.³⁰⁸ Israel and those States that have been complicit in what can reasonably be concluded to constitute genocide must be held accountable and must deliver reparations commensurate with the destruction, death and harm inflicted on the Palestinian people.

97. The Special Rapporteur recommends that Member States:

(a) Immediately implement an arms embargo on Israel, as it appears to have failed to comply with the binding measures ordered by the International Court of Justice on 26 January 2024, as well as other economic and political measures necessary to ensure an immediate and lasting ceasefire and to restore respect for international law, including sanctions;

(b) Support the action of South Africa in resorting to the Security Council under Article 94 (2) of the Charter of the United Nations following the non-compliance by Israel with the above-mentioned measures of the International Court of Justice;

(c) Act to ensure a thorough, independent and transparent investigation of all violations of international law committed by all actors, including those amounting to war crimes, crimes against humanity and the crime of genocide, including by:

(i) Cooperating with international independent fact-finding/investigative and accountability mechanisms;

(ii) Referring the situation in Palestine to the International Criminal Court immediately, in support of its ongoing investigation;

(iii) Discharging their obligations under the principles of universal jurisdiction, ensuring genuine investigations and prosecutions of individuals who are suspected of having committed, aided or abetted in the commission of international crimes, including genocide, starting with their own nationals;

(d) Ensure that Israel, as well as States which have been complicit in the Gaza genocide, acknowledge the colossal harm done, commit to non-repetition, with measures for prevention and full reparations, including the full cost of the reconstruction of Gaza, for which the establishment of a register of damage with an accompanying verification and mass claims process is recommended;

(e) Within the General Assembly, develop a plan to end the unlawful and unsustainable status quo constituting the root cause of the latest escalation, which ultimately culminated in the Gaza genocide, including through the reconstitution of the Special Committee against Apartheid, to comprehensively address the situation in Palestine and stand ready to implement diplomatic, economic and political measures provided under the Charter in case of non-compliance by Israel;

³⁰⁸ General Assembly resolution 56/83, annex, art. 31.

(f) **In the short term and as a temporary measure, in consultation with the State of Palestine, deploy an international protective presence to constrain the violence routinely used against Palestinians in the occupied Palestinian territory;**

(g) **Ensure that UNRWA is properly funded to enable it to meet the increased needs of Palestinians in Gaza.**

98. **The Special Rapporteur calls on the Office of the High Commissioner for Human Rights to enhance its efforts to end the current atrocities in Gaza, including by promoting and accurately applying international law, notably the Genocide Convention, in the context of the occupied Palestinian territory as a whole.**
