

## **APPLICATION INSTITUTING PROCEEDINGS**

To the Registrar of the International Court of Justice, the undersigned, being duly authorised by the Government of the Republic of South Africa, state as follows:

In accordance with Articles 36 (1) and 40 of the Statute of the Court and Article 38 of the Rules of Court, I have the honour to submit this Application instituting proceedings in the name of the Republic of South Africa (“South Africa”) against the State of Israel (“Israel”). Pursuant to Article 41 of the Statute, the Application includes a request that the Court indicate provisional measures to protect the rights invoked herein from imminent and irreparable loss.

### **I. INTRODUCTION**

1. This Application concerns acts threatened, adopted, condoned, taken and being taken by the Government and military of the State of Israel against the Palestinian people, a distinct national, racial and ethnical group, in the wake of the attacks in Israel on 7 October 2023. South Africa unequivocally condemns all violations of international law by all parties, including the direct targeting of Israeli civilians and other nationals and hostage-taking by Hamas and other Palestinian armed groups. No armed attack on a State’s territory no matter how serious — even an attack involving atrocity crimes — can, however, provide any possible justification for, or defence to, breaches of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (‘Genocide Convention’ or ‘Convention’),<sup>1</sup> whether as a matter of law or morality. The acts and omissions by Israel complained of by South Africa are genocidal in character because they are intended to bring about the destruction of a substantial part of the Palestinian national, racial and ethnical group, that being the part of the Palestinian group in the Gaza Strip (‘Palestinians in Gaza’). The acts in question include killing Palestinians in Gaza, causing them serious bodily and mental harm, and inflicting on them conditions of life calculated to bring about their physical destruction. The acts are all attributable to Israel, which has failed to prevent genocide and is committing genocide in manifest violation of the Genocide Convention, and which has also violated and is continuing to violate its other fundamental obligations under the Genocide Convention, including by failing to prevent or punish the direct and public incitement to genocide by senior Israeli officials and others.

2. In preparing this Application, South Africa has paid close attention to the provisions of the Genocide Convention, to its interpretation, and to its application in the years following its entry into force on 12 January 1951, as well as to the jurisprudence of this Court and that of other international courts and tribunals, including the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court. South Africa is highly cognisant of the fact that acts of genocide are distinct from other violations of international law sanctioned or perpetrated by the Israeli government and military in Gaza — including intentionally directing attacks against the civilian population, civilian objects and buildings dedicated to religion, education, art, science, historic monuments, hospitals, and places where the sick and wounded are collected; torture; the starvation of civilians as a method of warfare; and other war crimes and crimes against humanity — though there is often a close connection between all such acts. South Africa is also aware that acts of genocide inevitably form part of a continuum — as Raphaël Lemkin who coined the

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<sup>1</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951), 78 *UNTS* 277.

term ‘genocide’ himself recognised.<sup>2</sup> For this reason it is important to place the acts of genocide in the broader context of Israel’s conduct towards Palestinians during its 75-year-long apartheid, its 56-year-long belligerent occupation of Palestinian territory and its 16-year-long blockade of Gaza, including the serious and ongoing violations of international law associated therewith, including grave breaches of the Fourth Geneva Convention,<sup>3</sup> and other war crimes and crimes against humanity. However, when referring in this Application to acts and omissions by Israel which are capable of amounting to other violations of international law, South Africa’s case is that those acts and omissions are genocidal in character, as they are committed with the requisite specific intent (*dolus specialis*) to destroy Palestinians in Gaza as a part of the broader Palestinian national, racial and ethnical group.

3. South Africa is acutely aware of the particular weight of responsibility in initiating proceedings against Israel for violations of the Genocide Convention. However, South Africa is also acutely aware of its own obligation — as a State party to the Genocide Convention — to prevent genocide. Israel’s acts and omissions in relation to Palestinians violate the Genocide Convention. That is the shared view of numerous other States parties to the Convention, including the State of Palestine itself, which has called on “world leaders” to “take responsibility... to stop the genocide against our people”.<sup>4</sup> United Nations experts have also repeatedly sounded “the alarm” for over 10 weeks that “[c]onsidering statements made by Israeli political leaders and their allies, accompanied by military action in Gaza and escalation of arrests and killing in the West Bank” there is a “risk of genocide against the Palestinian people”.<sup>5</sup> United Nations experts have also expressed their “profound ... concern” about “the failure of the international system to mobilise to prevent genocide” against Palestinians, and have called on the “international community” to “do everything it can to immediately end the risk of genocide against the Palestinian people”.<sup>6</sup> The Committee on the Elimination of Racial Discrimination (‘CERD’), acting under its ‘early warning and urgent action procedure’, has also called on “*all State parties*” to the Genocide Convention to “fully respect” their “obligation to prevent... genocide”.<sup>7</sup> This application by South Africa and its request for the indication of provisional measures fall to be considered in that context and in the light of those calls. It is made against the background of South Africa’s foreign policy objective for the attainment of a durable peace between Israel and the State of Palestine, with two States existing side by side within internationally recognised borders, based on those existing on 4 June 1967, prior to the outbreak of the 1967 Arab-Israeli war, in line with all relevant United Nations resolutions and international law.

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<sup>2</sup> Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (1944), Chapter IX.

<sup>3</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287.

<sup>4</sup> Speech by Mahmoud Abbas on Palestine TV, 18 November 2023, <https://www.youtube.com/watch?v=2uRGx02vULg>; translated by WAFA: “President Abbas urges Biden to stop Israel’s ongoing genocide of Palestinians”, WAFA (18 November 2023), <https://english.wafa.ps/Pages/Details/139394>.

<sup>5</sup> United Nations Office of the High Commissioner for Human Rights (‘UN OHCHR’), *Gaza: UN experts decry bombing of hospitals and schools as crimes against humanity, call for prevention of genocide* (19 October 2023) <https://www.ohchr.org/en/press-releases/2023/10/gaza-un-experts-decrys-bombing-hospitals-and-schools-crimes-against-humanity>.

<sup>6</sup> UN OHCHR, *Gaza: UN experts call on international community to prevent genocide against the Palestinian people* (16 November 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>.

<sup>7</sup> UN OHCHR, *Gaza Strip: States are obliged to prevent crimes against humanity and genocide, UN Committee stresses* (21 December 2023), <https://www.ohchr.org/en/press-releases/2023/12/gaza-strip-states-are-obliged-prevent-crimes-against-humanity-and-genocide>. Under CERD’s Early Warning and Urgent Action (‘EWUA’) procedure, CERD has extensive expertise in compiling indicators relevant to the prevention of genocide; in 2015 it issued a Declaration on the Prevention of Genocide which recalled this work in its preamble: see CERD, *Declaration on the Prevention of Genocide* (CRD/C/66/1) (17 October 2005), [https://www.ohchr.org/sites/default/files/Documents/HRBodies/CERD/declaration\\_genocide.doc](https://www.ohchr.org/sites/default/files/Documents/HRBodies/CERD/declaration_genocide.doc) (emphasis added).

4. The facts relied on by South Africa in this application and to be further developed in these proceedings establish that — against a background of apartheid, expulsion, ethnic cleansing, annexation, occupation, discrimination, and the ongoing denial of the right of the Palestinian people to self-determination — Israel, since 7 October 2023 in particular, has failed to prevent genocide and has failed to prosecute the direct and public incitement to genocide. More gravely still, Israel has engaged in, is engaging in and risks further engaging in genocidal acts against the Palestinian people in Gaza. Those acts include killing them, causing them serious mental and bodily harm and deliberately inflicting on them conditions of life calculated to bring about their physical destruction as a group. Repeated statements by Israeli State representatives, including at the highest levels, by the Israeli President, Prime Minister, and Minister of Defence express genocidal intent. That intent is also properly to be inferred from the nature and conduct of Israel’s military operation in Gaza, having regard *inter alia* to Israel’s failure to provide or ensure essential food, water, medicine, fuel, shelter and other humanitarian assistance for the besieged and blockaded Palestinian people, which has pushed them to the brink of famine. It is also clear from the nature, scope and extent of Israel’s military attacks on Gaza, which have involved the sustained bombardment over more than 11 weeks of one of the most densely populated places in the world, forcing the evacuation of 1.9 million people or 85% of the population of Gaza from their homes and herding them into ever smaller areas, without adequate shelter, in which they continue to be attacked, killed and harmed. Israel has now killed in excess of 21,110 named Palestinians, including over 7,729 children — with over 7,780 others missing, presumed dead under the rubble — and has injured over 55,243 other Palestinians, causing them severe bodily and mental harm. Israel has also laid waste to vast areas of Gaza, including entire neighbourhoods, and has damaged or destroyed in excess of 355,000 Palestinian homes, alongside extensive tracts of agricultural land, bakeries, schools, universities, businesses, places of worship, cemeteries, cultural and archaeological sites, municipal and court buildings, and critical infrastructure, including water and sanitation facilities and electricity networks, while pursuing a relentless assault on the Palestinian medical and healthcare system. Israel has reduced and is continuing to reduce Gaza to rubble, killing, harming and destroying its people, and creating conditions of life calculated to bring about their physical destruction as a group.

5. South Africa, mindful of the *jus cogens* character of the prohibition of genocide and the *erga omnes* and *erga omnes partes* character of the obligations owed by States under the Genocide Convention, is making the present application to establish Israel’s responsibility for violations of the Genocide Convention; to hold it fully accountable under international law for those violations; and — most immediately — to have recourse to this Court to ensure the urgent and fullest possible protection for Palestinians in Gaza who remain at grave and immediate risk of continuing and further acts of genocide.

6. In light of the extraordinary urgency of the situation, South Africa seeks an expedited hearing for its request for the indication of provisional measures. In addition, pursuant to Article 74(4) of the Rules of Court, South Africa requests the President of the Court to protect the Palestinian people in Gaza by calling upon Israel immediately to halt all military attacks that constitute or give rise to violations of the Genocide Convention pending the holding of such hearing, so as to enable any order the Court may make on the request for the indication of provisional measures to have its appropriate effects. To that end, the Court should order Israel to cease killing and causing serious mental and bodily harm to Palestinian people in Gaza, to cease the deliberate infliction of conditions of life calculated to bring about their physical destruction as a group, to prevent and punish direct and public incitement to genocide, and to rescind related policies and practices, including regarding the restriction on aid and the issuing of evacuation directives.

7. Mindful of the Court’s important role and the exercise of its grave responsibility in circumstances in which the genocidal acts of which South Africa complains have occurred very recently and are ongoing — and have not otherwise been subject to judicial determination or detailed fact-finding — South Africa’s application and request for provisional measures provide a more detailed factual account than might otherwise be usual. That account draws in significant part on statements and reports by United Nations chiefs and bodies and non-governmental organisations (‘NGOs’), as well as eye-witness accounts from Gaza — including from Palestinian journalists on the ground — in circumstances where Israel continues to restrict access to Gaza by international journalists, investigators and fact-finding teams. However, neither the Application nor the request for the indication of provisional measures depends on a determination by the Court of each individual incident or complaint referred to herein. Notably, as the Court’s caselaw makes clear, “[w]hat the Court is required to do at the stage of making an order on provisional measures is to establish whether... at least some of the acts alleged... are capable of falling within the provisions of the Convention”.<sup>8</sup> At least some of the acts alleged by South Africa are clearly capable of falling within those provisions.

## II. JURISDICTION OF THE COURT

8. South Africa and Israel are both Members of the United Nations and therefore bound by the Statute of the Court, including Article 36 (1), which provides that the Court’s jurisdiction “comprises . . . all matters specially provided for . . . in treaties and conventions in force”.

9. South Africa and Israel are also parties to the Genocide Convention. Israel signed the Genocide Convention on 17 August 1949 and deposited its instrument of ratification on 9 March 1950, thereby becoming a party when the Genocide Convention entered into force on 12 January 1951. South Africa deposited its instrument of accession on 10 December 1998. It became applicable between the parties on the ninetieth day thereafter, pursuant to Article XIII of the Convention.

10. Article IX of the Genocide Convention provides:

“Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

11. Neither South Africa nor Israel has entered any reservation to Article IX.

12. South Africa has repeatedly and urgently expressed its concerns and condemnation in respect of Israel’s acts and omissions which form the basis of this Application. South Africa and other States Parties to the Genocide Convention have, in particular, made clear that Israel’s actions in Gaza constitute genocide against the Palestinian people. By way of example, the Presidents of Algeria,<sup>9</sup>

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<sup>8</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 14, para. 30 (hereafter ‘*The Gambia v. Myanmar*, Provisional Measures, Order of 23 January 2020’).

<sup>9</sup> “Algeria, Türkiye discuss need for accountability over Gaza ‘genocide’”, *Middle East Monitor* (21 November 2023), <https://www.middleeastmonitor.com/20231121-algeria-president-tebboune-turkiye-president-erdogan-discuss-need-for-accountability-over-gaza-genocide/>. The People’s Democratic Republic of Algeria acceded to the Genocide Convention on 31 October 1963.

Bolivia,<sup>10</sup> Brazil,<sup>11</sup> Colombia,<sup>12</sup> Cuba,<sup>13</sup> Iran,<sup>14</sup> Türkiye,<sup>15</sup> and Venezuela<sup>16</sup> have all described Israel's actions as a genocide, as has the Palestinian President.<sup>17</sup> State officials and representatives from Bangladesh,<sup>18</sup> Egypt,<sup>19</sup> Honduras,<sup>20</sup> Iraq,<sup>21</sup> Jordan,<sup>22</sup> Libya,<sup>23</sup> Malaysia,<sup>24</sup> Namibia,<sup>25</sup> Pakistan,<sup>26</sup> Syria,<sup>27</sup>

<sup>10</sup> Luis Alberto Arce Catacora (Lucho Arce), Presidente Constitucional del Estado Plurinacional de Bolivia, @LuchoXBolivia, Tweet (2:43 am, November 16, 2023), <https://twitter.com/LuchoXBolivia/status/1724981446001967283>. The Plurinational State of Bolivia signed the Genocide Convention on 11 December 1948 and ratified it on 14 June 2005.

<sup>11</sup> "President Lula says war in the Middle East is genocide", *AgenciaBrazil* (25 October 2023), <https://agenciabrasil.ebc.com.br/en/politica/noticia/2023-10/president-lula-says-war-middle-east-genocide>. The Federative Republic of Brazil signed the Genocide Convention on 11 December 1948 and ratified it on 15 April 1952.

<sup>12</sup> Gustavo Petro, Presidente de la República de Colombia, @petrogustavo, Tweet (4:00 am, November 1, 2023) <https://twitter.com/petrogustavo/status/1719565081371935150>. The Republic of Colombia signed the Genocide Convention on 12 August 1949 and ratified it 27 October 1959.

<sup>13</sup> Ed Newman, "Díaz-Canel says Cuba will not accept ignoring genocide against Palestinians", *Radio Havana Cuba* (29 October 2023), <https://www.radiohc.cu/en/noticias/nacionales/337800-diaz-canel-says-cuba-will-not-accept-ignoring-genocide-against-palestinians>. The Republic of Cuba signed the Genocide Convention on 28 December 1949 and ratified it on 4 March 1953.

<sup>14</sup> "Iranian president condemns Gaza 'genocide' in meeting with Putin", *NBC News* (7 December 2023), <https://www.nbcnews.com/video/iranian-president-condemns-gaza-genocide-in-meeting-with-putin-199670853701>. The Islamic Republic of Iran signed the Genocide Convention on 8 December 1949 and ratified it on 14 August 1956.

<sup>15</sup> Recep Tayyip Erdoğan, President of Türkiye and AK Party Chairman, @RTErdogan, Tweet, (4:30 pm, 18 October 2023), <https://twitter.com/RTErdogan/status/1714665167978369531>. The Republic of Türkiye acceded to the Genocide Convention on 31 July 1950.

<sup>16</sup> Nicolás Maduro, Presidente de la República Bolivariana de Venezuela, @NicolasMaduro, Tweet (7:40 pm, November 4, 2023) <https://twitter.com/NicolasMaduro/status/1720888719568191585>. The Bolivarian Republic of Venezuela acceded to the Genocide Convention on 12 July 1960.

<sup>17</sup> "President Abbas urges Biden to stop Israel's ongoing genocide of Palestinians", *WAFA* (18 November 2023), <https://english.wafa.ps/Pages/Details/139394>. The State of Palestine acceded to the Genocide Convention on 2 April 2014.

<sup>18</sup> UN, Meetings Coverage and Press Releases, Seventy-Eighth Session, 39<sup>th</sup> and 40<sup>th</sup> Meetings, GA/12566, *Staggering Loss of Life in Gaza, Follow-on to Temporary Truce Dominate General Assembly Debate on Decades-Long Question of Palestine*, GA/12566 (28 November 2023), <https://press.un.org/en/2023/ga12566.doc.htm>. The People's Republic of Bangladesh acceded to the Genocide Convention on 5 October 1998.

<sup>19</sup> UN News, *UN General Assembly adopts Gaza resolution calling for immediate and sustained 'humanitarian truce'* (26 October 2023), <https://news.un.org/en/story/2023/10/1142847>. The Arab Republic of Egypt signed the Genocide Convention on 12 December 1948 and ratified the Convention on 8 February 1952.

<sup>20</sup> "Live updates | Israel rebuffs US push for humanitarian pause, says hostages must be released first", *Associated Press* (3 November 2023), <https://web.archive.org/web/20231117082155/https://thehill.com/homenews/ap-ap-international/ap-live-updates-israeli-troops-tighten-encirclement-of-gaza-city-as-top-us-diplomat-arrives-in-israel/>. The Republic of Honduras signed the Genocide Convention on 22 April 1949 and ratified the Convention on 5 March 1952.

<sup>21</sup> "Israel subjects Palestinians 'to genocide,' says Sudani", *Rudaw* (6 November 2023), <https://www.rudaw.net/english/middleeast/06112023>. The Republic of Iraq acceded to the Genocide Convention on 20 January 1959.

<sup>22</sup> "Jordan's foreign minister says Israel aiming 'to empty Gaza of its people'", *AlJazeera* (10 December 2023), <https://www.aljazeera.com/news/2023/12/10/jordan-foreign-minister-says-israel-aiming-to-empty-gaza-of-its-people>. The Hashemite Kingdom of Jordan acceded to the Genocide Convention on 3 April 1950.

<sup>23</sup> UN, Meetings Coverage and Press Releases, 9451<sup>st</sup> Meeting, SC/15462, *Amid Increasingly Dire Humanitarian Situation in Gaza, Secretary-General Tells Security Council Hamas Attacks Cannot Justify Collective Punishment of Palestinian People* (24 October 2023), <https://press.un.org/en/2023/sc15462.doc.htm>. The State of Libya acceded to the Genocide Convention on 16 May 1989.

<sup>24</sup> Ministry of Foreign Affairs, Malaysia, *Malaysia Acknowledges Breakthrough in the United Nations Security Council on the Israeli-Palestinian Conflict* (17 November 2023), <https://www.kln.gov.my/web/guest/-/malaysia-acknowledges-breakthrough-in-the-united-nations-security-council-on-the-israeli-palestinian-conflict>. Malaysia acceded to the Genocide Convention on 20 December 1994.

<sup>25</sup> Neville Gertze, Ambassador of Namibia to the United Nations, Ministry of International Relations and Cooperation-Namibia, *Facebook* (25 October 2023), <https://fb.watch/oTgiUXQdO/>. The Republic of Namibia acceded to the Genocide Convention on the 28 November 1994.

<sup>26</sup> Naveed Butt, "Pakistan terms Gaza siege genocide of Palestinians", *Business Recorder* (16 October 2023), <https://www.brecorder.com/news/40268277>. The Islamic Republic of Pakistan signed the Genocide Convention on 11 December 1948 and acceded to the Convention on 12 October 1957.

<sup>27</sup> UN, Meetings Coverage and Press Releases, Seventy-Eighth Session 24<sup>th</sup> and 25<sup>th</sup> Meetings, GA/SHC/4385, *Third Committee Spotlights Human Rights Abuses in Conflicts, Stressing Need to End Terrorist Attacks, Genocide, Illegal Hostage-Taking, Enforced Displacement* (17 October 2023), <https://press.un.org/en/2023/gashc4385.doc.htm>. The Syrian Arab Republic acceded to the Genocide Convention on 25 June 1955.

and Tunisia,<sup>28</sup> have also referred to genocide or the risk thereof in Gaza; as have heads of State and State officials from non-State parties to the Genocide Convention, including Qatar<sup>29</sup> and Mauritania.<sup>30</sup> Speaking on behalf of the ‘Arab Group’ at the 9498<sup>th</sup> meeting of the United Nations Security Council on 8 December 2023, ahead of the United Nations Security Council vote on a ceasefire, Egypt’s representative stated that the “[c]ivilian fatalities [in Gaza] lay bare the lie that the war is against an armed group. Rather, it is a collective punishment and *genocide against the Palestinian people* [...] Citing “the extensive destruction of civilian infrastructure and the targeting of United Nations staff members”, he stated that “the forcible displacement of 85 per cent of Gaza’s people, living in dire circumstances, represents . . . *an effort to eliminate the Palestinian people.*”<sup>31</sup>

13. Having regard to the fact that the prohibition of genocide has the character of a peremptory norm and that the obligations under the Convention are owed *erga omnes* and *erga omnes partes*,<sup>32</sup> Israel has been made fully aware of the grave concerns expressed by the international community, by States Parties to the Genocide Convention, and by South Africa in particular, as to Israel’s failure to cease, prevent and punish the commission of genocide. South Africa’s concern has been expressed, *inter alia*, as follows:

- On 30 October 2023, the **South African Department of International Relations and Cooperation** issued a statement calling on the international community to hold Israel accountable for breaches of international law. Warning that “the crime of genocide, sadly looms large” in Gaza, the statement recalled that “President Lula da Silva of Brazil has called the attacks on Gaza a genocide” and that the South African Minister of International Relations and Cooperation, Naledi Pandor, addressing the United Nations Security Council on 24 October 2023, had also “reminded the international community not to stand idle while another genocide is unfolding”.<sup>33</sup>
- On 7 November, addressing the South African National Assembly, **South Africa’s International Relations Minister** warned that “[t]he crime of genocide sadly looms large in the current situation in Gaza”, recalling that “in 1994, a genocide occurred on the African continent with much of the whole world watching as innocent people were massacred”, and underscoring that South Africa could not stand by and allow that to happen again.<sup>34</sup>
- On 10 November 2023, the Director-General of **South Africa’s Department of International Relations and Cooperation** (“DIRCO”), conducted a formal diplomatic

<sup>28</sup> United Nations, Meetings Coverage and Press Releases, 9451<sup>st</sup> Meeting, SC/15462, *Amid Increasingly Dire Humanitarian Situation in Gaza, Secretary-General Tells Security Council Hamas Attacks Cannot Justify Collective Punishment of Palestinian People* (24 October 2023), <https://press.un.org/en/2023/sc15462.doc.htm>. The Republic of Tunisia acceded to the Genocide Convention on the 29 November 1956.

<sup>29</sup> “Qatari emir: ‘This is a genocide committed by Israel’”, *Al Jazeera English* (5 December 2023), <https://www.youtube.com/watch?v=drOuwKvDt8o>.

<sup>30</sup> “Mauritania Condemns Israeli Heinous Crimes in Gaza”, *Agence Mauritanienne d’Information* (18 October 2023), <https://ami.mr/en/archives/11732>.

<sup>31</sup> UN Meetings Coverage, 9498<sup>th</sup> Meeting, SC/15518 (8 December 2023), <https://press.un.org/en/2023/sc15518.doc.htm> (emphasis added).

<sup>32</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 17, para. 41.

<sup>33</sup> South Africa, Department of International Relations and Cooperation (“DIRCO”), *South Africa calls for the International community to hold Israel accountable for breaches of International Law* (30 October 2023), <https://www.dirco.gov.za/south-africa-calls-for-the-international-community-to-hold-israel-accountable-for-breaches-of-international-law/>.

<sup>34</sup> South Africa, DIRCO, *Ministerial Statement on the Ongoing Israeli-Palestinian Conflict by Dr GNM Pandor, Minister for International Relations and Cooperation, in the National Assembly House of Parliament* (7 November 2023) <https://www.dirco.gov.za/ministerial-statement-on-the-ongoing-israeli-palestinian-conflict-by-dr-gnm-pandor-minister-for-international-relations-and-cooperation-in-the-national-parliament-7-november-2023/>.

démarche of the Ambassador of the State of Israel to South Africa, advising him that while South Africa “condemned the attacks on civilians by Hamas” which “should be investigated for war crimes”, “the response by Israel was unlawful”, and that South Africa “wants the ICC to investigate the leadership of Israel” for crimes including genocide.<sup>35</sup>

— On 13 November 2023, at a meeting at the Presidential residence with the leadership of the South African Jewish Board of Deputies, at which they called *inter alia* for the re-opening of the South African Embassy in Israel, the **President of South Africa, Mr Cyril Ramaphosa** “condemn[ed] the genocide that is being inflicted against the people of Palestine, including women and children, through collective punishment and ongoing bombardment of Gaza”.<sup>36</sup>

— On 17 November 2023, during the course of a State visit to Qatar, the **President of South Africa**, announced that South Africa was referring the Situation in the State of Palestine to the International Criminal Court, expressing his abhorrence for “what is happening right now in Gaza, which has now turned into a concentration camp where genocide is taking place”.<sup>37</sup>

— Later on 17 November 2023, the **Embassy of South Africa in The Hague**, acting on behalf of South Africa, jointly with three other States parties to the Genocide Convention — namely Bangladesh, Bolivia, and Comoros — and Djibouti, referred the Situation in the State of Palestine to the Office of the Prosecutor of the International Criminal Court, requesting that the Prosecutor vigorously investigate crimes within the jurisdictional scope of the Court, including the crime of genocide, as provided for in Article 6 (a), (b) and (c) of the Rome Statute of the International Criminal Court (‘Rome Statute’).<sup>38</sup>

— On 21 November 2023, addressing the Extraordinary Joint Meeting of BRICS (Brazil, Russia, India, China, and South Africa) Leaders and Leaders of invited BRICS members on the situation in the Middle East called to address “a matter of grave global concern” in the Middle East, the **President of South Africa** asserted that “[t]he deliberate denial of medicine, fuel, food and water to the residents of Gaza is tantamount to genocide”.<sup>39</sup>

— On 12 December 2023, speaking at the 10<sup>th</sup> Emergency Special Session of the United Nations General Assembly — at which Israel was represented — the **South African Ambassador to the United Nations** stated that “[t]he events of the past six weeks in Gaza have illustrated that Israel is acting contrary to its obligations in terms of the Genocide Convention”. She underscored that, “[a]s a UN Member State and owing to South Africa’s painful past

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<sup>35</sup> South Africa, DIRCO, *DIRCO démarches the Ambassador of the State of Israel* (10 November 2023)

<https://www.dirco.gov.za/dirco-demarches-the-ambassador-of-the-state-of-israel/>

<sup>36</sup> South Africa, The Presidency, *President Ramaphosa Meets with the South African Jewish Board of Deputies* (13 November 2023), <https://www.thepresidency.gov.za/president-ramaphosa-meets-south-african-jewish-board-deputies>.

<sup>37</sup> Kate Bartlett, “South Africa Refers Israel to The Hague Over Gaza ‘War Crimes’”, *VOA News* (17 November 2023) <https://www.voanews.com/a/south-africa-refers-israel-to-the-hague-over-gaza-war-crimes-/7359022.html>.

<sup>38</sup> South Africa, Embassy in the Netherlands, *Letter from the South African Embassy in the Netherlands to the Prosecutor of the International Criminal Court* (17 November 2023), <https://www.icc-cpi.int/sites/default/files/2023-11/ICC-Referral-Palestine-Final-17-November-2023.pdf>.

<sup>39</sup> South Africa, the Presidency, *Opening remarks by President Cyril Ramaphosa to the Extraordinary Joint Meeting of BRICS Leaders and Leaders of invited BRICS members on the situation in the Middle East* (21 November 2023), <https://www.thepresidency.gov.za/opening-remarks-president-cyril-ramaphosa-extraordinary-joint-meeting-brics-leaders-and-leaders>.

experience of a system of apartheid, this impresses on us, as Member States to take action in accordance with international law.”<sup>40</sup>

— On 21 December 2023, **South Africa sent a Note Verbale** to the Embassy of Israel in South Africa, in which South Africa raised its concerns about “credible reports that acts meeting the threshold of genocide or related crimes as defined in the 1948 Convention on the Prevention and Punishment of Genocide, have been and may still be committed in the context of the conflict” in Gaza. The Note Verbale recalled that “[a]s a State Party to the Convention on the Prevention and Punishment of the Crime of Genocide, South Africa is under a treaty obligation to prevent genocide from occurring, and therefore calls upon Israel which is also a State Party to the Convention to immediately cease hostilities in Gaza and to refrain from conduct constituting or failing to prevent violations of its obligations under the Convention”. South Africa, “[a]larmed by rhetoric from Israeli officials and others”, also called on Israel “to prevent and punish direct and public incitement to genocide”. This served to communicate directly to Israel South Africa’s claims regarding the fulfilment of its own obligations under the Genocide Convention and breaches by Israel of its obligations under the Genocide Convention and the detail thereof.<sup>41</sup>

14. Israel has not responded directly to South Africa’s Note Verbale sent on 21 December 2023. However, Israel has publicly rejected any suggestion that it has violated international law in its military campaign in Gaza. Notably, Israel has dismissed as “outrageous and false” the assertion that Israel’s military attacks on Gaza meet “the legal definition of genocide” and are aimed at “not just simply the killing of innocent people and the destruction of their livelihoods but a systematic effort to empty Gaza of its people”.<sup>42</sup> Israel denies that its conduct in Gaza violates its obligations under the Genocide Convention, asserting that “[t]he accusation of genocide against Israel is not only wholly unfounded as a matter of fact and law, it is morally repugnant” and “antisemitic”.<sup>43</sup> Moreover, Israel has engaged and continues to engage in acts and omissions against the Palestinian people in Gaza as have been asserted to be genocidal and, by its attitude and conduct, has refuted any suggestion that its actions in Gaza are constrained by its obligations under the Genocide Convention. Indeed, the Israeli Prime Minister asserted on 26 December 2023: “We are not stopping. We are continuing to fight, and *we are deepening the fighting in the coming days*, and this will be a long battle and it is not close to being over.”<sup>44</sup> Israel’s own conduct therefore serves to underline the parties’ disagreement. South Africa has not resiled from its own position that it is responsible as a State party to the Genocide Convention to act to prevent genocide or a risk thereof in Gaza.

15. According to the established case law of the Court, a dispute is “a disagreement on a point of law or fact, a conflict of legal views or interests” between parties.<sup>45</sup> Such a disagreement or “positive

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<sup>40</sup> UN News, *UN General Assembly votes by large majority for immediate humanitarian ceasefire during emergency session* (video of the session at 1:13:37) (12 December 2023) <https://news.un.org/en/story/2023/12/1144717>.

<sup>41</sup> South Africa, DIRCO, *Note Verbale* (21 December 2023).

<sup>42</sup> “Jordan says Israel aims to expel Palestinians from Gaza”, *Reuters* (10 December 2023), <https://www.reuters.com/world/middle-east/jordan-says-israel-aims-expel-palestinians-gaza-2023-12-10/>.

<sup>43</sup> Israeli Ministry of Foreign Affairs, *The War Against Hamas: Answering Your Most Pressing Questions* (15 December 2023), <https://www.idf.il/en/mini-sites/hamas-israel-war-23/all-articles/the-war-against-hamas-answering-your-most-pressing-questions/>.

<sup>44</sup> Statement by Israeli Prime Minister to Likud Party, 25 December 2023: Jeremy Sharon, “After rare visit to Gaza, Netanyahu says war ‘not close to being over’”, *The Times of Israel* (25 December 2023), [https://www.timesofisrael.com/liveblog\\_entry/after-gaza-visit-netanyahu-says-war-not-close-to-being-over/](https://www.timesofisrael.com/liveblog_entry/after-gaza-visit-netanyahu-says-war-not-close-to-being-over/).

<sup>45</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 13, para. 27, citing *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 315, para. 89.

opposition of the claim by one party by the other need not necessarily be stated *expressis verbis*... the position or the attitude of a party can be established by inference, whatever the professed view of that party".<sup>46</sup>

16. There is plainly a dispute between Israel and South Africa relating to the interpretation and application of the Genocide Convention, going both to South Africa's compliance with its own obligation to prevent genocide, and to Israel's compliance with its obligations not to commit genocide and to prevent and punish genocide — including the direct and public incitement to genocide — and to make reparations to its victims and offer assurances and guarantees of non-repetition. Given that South Africa's claim concerns its own obligations as a State party to the Genocide Convention to act to prevent genocide — to which Israel's acts and omissions give rise — South Africa plainly has standing in relation thereto. Moreover, given that "any State party to the Genocide Convention, and not only a specially affected State, may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, and to bring that failure to an end", South Africa also "has *prima facie* standing" to submit to the Court its dispute with Israel "on the basis of alleged violations of obligations under the Genocide Convention".<sup>47</sup>

17. Therefore, pursuant to Article 36 (1) of the Court's Statute and Article IX of the Genocide Convention, the Court has jurisdiction to hear the claims submitted in the present Application by South Africa against Israel.

### III. THE FACTS

#### A. Introduction

18. Since 7 October 2023, Israel has engaged in a large-scale military assault by land, air and sea, on the Gaza Strip ('Gaza'), a narrow strip of land approximately of 365 square kilometres – one of the most densely populated places in the world.<sup>48</sup> Gaza — home to approximately 2.3 million people, almost half of them children — has been subjected by Israel to what has been described as one of the "heaviest conventional bombing campaigns" in the history of modern warfare.<sup>49</sup> By 29 October 2023 alone, it was estimated that 6,000 bombs per week had been dropped on the tiny enclave.<sup>50</sup> In just over two months, Israel's military attacks had "wreaked more destruction than the razing of Syria's Aleppo between 2012 and 2016, Ukraine's Mariupol, or proportionally, the Allied bombing of Germany in World War II."<sup>51</sup> The destruction wrought by Israel is so extreme that "Gaza is now a different colour

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<sup>46</sup> *Ibid.*

<sup>47</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p.17, paras. 41-42.

<sup>48</sup> UN OCHA, *Hostilities in the Gaza Strip - Reported Impact* (5 December 2023),

[https://www.ochaopt.org/sites/default/files/Gaza\\_casualties\\_info-graphic\\_5\\_Dec\\_2023%20final.pdf](https://www.ochaopt.org/sites/default/files/Gaza_casualties_info-graphic_5_Dec_2023%20final.pdf).

<sup>49</sup> John Paul Rathbone, "Israel's Gaza attack 'one of history's heaviest conventional bombing campaigns'", *The Irish Times* (6 December 2023), <https://www.irishtimes.com/world/middle-east/2023/12/06/israels-gaza-attack-one-of-histories-heaviest-conventional-bombing-campaigns/>.

<sup>50</sup> Francesca Albanese, UN Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967, an interview with UN News, 29 October 2023, <https://news.un.org/en/story/2023/10/1142952>; see also: Natasha Bertrand and Katie Bo Lillis, "Exclusive: Nearly half of the Israeli munitions dropped on Gaza are imprecise 'dumb bombs', US intelligence assessment finds", CNN (14 December 2023), <https://edition.cnn.com/2023/12/13/politics/intelligence-assessment-dumb-bombs-israel-gaza/index.html>; "Why is Israel using so many dumb bombs in Gaza?", *The Economist* (16 December 2023), <https://www.economist.com/interactive/middle-east-and-africa/2023/12/16/why-is-israel-using-so-many-dumb-bombs-in-gaza>.

<sup>51</sup> Julia Frankel, "Israel's military campaign in Gaza seen as among the most destructive in history, experts say", AP News (21 December 2023), <https://apnews.com/article/israel-gaza-bombs-destruction-death-toll-scope-419488c511f83c85baea22458472a796>.

from space. It's a different texture".<sup>52</sup> As stated by the United Nations Secretary-General, in a letter dated 6 December 2023 to the President of the United Nations Security Council,<sup>53</sup> of which the United Nations General Assembly took express "note" in Resolution ESIO/22 of 12 December 2023 on the Protection of civilians and upholding legal and humanitarian obligations:<sup>54</sup>

"Civilians throughout Gaza face grave danger. Since the start of Israel's military operation, more than 15,000 people have reportedly been killed, over 40 per cent of whom were children. Thousands of others have been injured. More than half of all homes have been destroyed. Some 80 per cent of the population of 2.2 million has been forcibly displaced, into increasingly smaller areas. More than 1.1 million people have sought refuge in UNRWA facilities across Gaza, creating overcrowded, undignified, and unhygienic conditions. Others have nowhere to shelter and find themselves on the street. Explosive remnants of war are rendering areas uninhabitable. There is no effective protection of civilians.

The health care system in Gaza is collapsing. Hospitals have turned into battlegrounds. Only 14 hospitals out of 36 facilities are even partially functional. The two major hospitals in south Gaza are operating at three times their bed capacity and are running out of basic supplies and fuel. They are also sheltering thousands of displaced persons. Under these circumstances, more people will die untreated in the coming days and weeks.

Nowhere is safe in Gaza.

Amid constant bombardment by the Israel Defense Forces, and without shelter or the essentials to survive, I expect public order to completely break down soon due to the desperate conditions, rendering even limited humanitarian assistance impossible. An even worse situation could unfold, including epidemic diseases and increased pressure for mass displacement into neighbouring countries.

While delivery of supplies through Rafah continues, quantities are insufficient and have dropped since the pause came to an end. We are simply unable to reach those in need inside Gaza . . . We are facing a severe risk of collapse of the humanitarian system. The situation is fast deteriorating into a catastrophe with potentially irreversible implications for Palestinians as a whole and for peace and security in the region. Such an outcome must be avoided at all cost."<sup>55</sup>

19. Since that letter was written, the numbers have risen even more starkly: at least 21,110 Palestinians in Gaza have been killed and over 55,243 other Palestinians have been wounded, many severely.<sup>56</sup> The death toll includes over 7,729 children,<sup>57</sup> not including the 4,700 women and children still missing, and presumed dead under the rubble.<sup>58</sup> Entire multi-generational families have been wiped out completely. Over 355,000 homes equivalent to more than 60 per cent of Gaza's housing stock in

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<sup>52</sup> *Ibid.*

<sup>53</sup> The Secretary-General, *Letter by the Secretary-General to the President of Security Council invoking Article 99 of the United Nations Charter* (6 December 2023), [https://www.un.org/sites/un2.un.org/files/sg\\_letter\\_of\\_6\\_december\\_gaza.pdf](https://www.un.org/sites/un2.un.org/files/sg_letter_of_6_december_gaza.pdf).

<sup>54</sup> General Assembly resolution ES-10/22, Protection of civilians and upholding legal and humanitarian obligations, A/RES/ES-10/22 (12 December 2023), <https://www.un.org/unispal/wp-content/uploads/2023/12/N2339709.pdf>.

<sup>55</sup> The Secretary-General, *Letter by the Secretary-General to the President of Security Council invoking Article 99 of the United Nations Charter* (6 December 2023), [https://www.un.org/sites/un2.un.org/files/sg\\_letter\\_of\\_6\\_december\\_gaza.pdf](https://www.un.org/sites/un2.un.org/files/sg_letter_of_6_december_gaza.pdf).

<sup>56</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #78* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-78>; UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact| Day 82* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-82>. Statistics cited in this Application are up to date to 27 December 2023. UNOCHA collates locally collected data.

<sup>57</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #78* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-78>.

<sup>58</sup> Red Crescent Society, Palestine Red Crescent Society Response Report As of Saturday, October 7th 2023, 6:00 PM Until Sunday, December 24th 2023, 24:00 AM (24 December 2023), p.1, <https://www.palestinercs.org/public/files/image/2023/News/latestresponse23012023/en%2020220%202023.pdf>.

Gaza has been damaged or destroyed.<sup>59</sup> 1.9 million Palestinians — approximately 85 per cent of the total population — have been internally displaced.<sup>60</sup> Many fled the north of the territory to the south, having been ordered to do so by Israel, only to be bombed again in the south, and told to flee once again further south or the south west, where they are reduced to living in makeshift tents in camps with no water, sanitation or other facilities.<sup>61</sup> Israel has bombed, shelled and besieged Gaza's hospitals, with only 13 out of 36 hospitals partially functional, and no fully functioning hospital left in North Gaza.<sup>62</sup> Gaza's healthcare system has all but collapsed, with reports of operations, including amputations and caesarean sections, taking place without anaesthetic.<sup>63</sup> A significant proportion of the wounded and sick are unable to access any or adequate care.<sup>64</sup> Contagious and epidemic diseases are rife amongst the displaced Palestinian population, with experts warning of the risk of meningitis, cholera and other outbreaks.<sup>65</sup> The entire population in Gaza is at imminent risk of famine, whereas the proportion of households affected by acute food insecurity is the largest ever recorded according to the Integrated Food Security Phase Classification ('IPC').<sup>66</sup> Experts warn that silent, slow deaths caused by hunger and thirst risk surpassing those violent deaths already caused by Israeli bombs and missiles.<sup>67</sup>

20. The United Nations General Assembly has expressed "grave concern over the catastrophic humanitarian situation in the Gaza Strip and the suffering of the Palestinian civilian population",<sup>68</sup> with the United Nations Security Council noting in particular "the disproportionate effect on children".<sup>69</sup> In its Resolution ES10/22 of 12 December 2023, the United Nations General Assembly also took express "note" of a letter dated 7 December 2023 from the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East ('UNRWA'), addressed to the President of

<sup>59</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel - Reported Impact | Day 73* (19 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-73>.

<sup>60</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #77* (26 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-77>.

<sup>61</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #60* (5 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-60>.

<sup>62</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #78* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-78>.

<sup>63</sup> UN News, *Gaza: UN's Türk calls for political path out of 'horror'* (16 November 2023), <https://news.un.org/en/story/2023/11/1143657>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #32* (7 November 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-32>; UN News, *Interview: 5,500 women in Gaza set to give birth 'in race against death'* (7 November 2023), <https://news.un.org/en/interview/2023/11/1143327>.

<sup>64</sup> UN News, *Gaza doctors 'terrified' of deadly disease outbreak as aid teams race to deliver* (28 November 2023), <https://news.un.org/en/story/2023/11/1144032>.

<sup>65</sup> World Health Organization ('WHO'), *WHO Director-General's opening remarks at the Special Session of the Executive Board on the health situation in the occupied Palestinian territory – 10 December 2023* (10 December 2023), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-special-session-of-the-executive-board-on-the-health-situation-in-the-occupied-palestinian-territory---10-december-2023>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #67* (12 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-67>.

<sup>66</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #77* (26 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-77>; UN OCHA, *Remarks to the media by the Secretary-General* (22 December 2023), <https://www.ochaopt.org/content/remarks-media-secretary-general>.

<sup>67</sup> Interview with James Elder, UNICEF spokesperson by Channel 4, "This is a war on children" says UNICEF spokesperson James Elder, who recently returned from Gaza", *Channel 4* (14 December 2023), <https://www.channel4.com/news/this-is-a-war-on-children-says-unicef-spokesperson-james-elder-who-recently-returned-from-gaza>; "Disease could kill more in Gaza than bombs, WHO says amid Israeli siege", *AlJazeera* (28 November 2023), <https://www.aljazeera.com/news/2023/11/28/disease-could-kill-more-in-gaza-than-bombs-who-says-amid-israeli-siege>.

<sup>68</sup> General Assembly resolution ES-10/22, Protection of civilians and upholding legal and humanitarian obligations, A/RES/ES-10/22, (12 December 2023), <https://www.un.org/unispal/wp-content/uploads/2023/12/N2339709.pdf>; General Assembly resolution ES-10/21, Protection of civilians and upholding legal and humanitarian obligations, A/RES/ES-10/21, (30 October 2023), <https://www.un.org/unispal/document/protection-of-civilians-and-upholding-legal-and-humanitarian-obligations-ga-resolution-a-res-es-10-21/>.

<sup>69</sup> Security Council resolution 2712, The situation in the Middle East, including the Palestinian Question, S/RES/2712 (15 November 2023), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/359/02/PDF/N2335902.pdf?OpenElement>.

the General Assembly. In the unprecedeted letter, the Commissioner-General “predict[s] . . . the collapse of the mandate [he] is expected to fulfil” and calls for “an end to the *decimation of Gaza and of its people*”.<sup>70</sup>

## B. Background

### 1. The Gaza Strip ('Gaza')

21. Gaza is a narrow strip of land, bordered to the west by the Mediterranean Sea, to the south by Egypt and to the north and east by Israel. Together with the West Bank, including East Jerusalem, it is one of the two constituent territories of the occupied Palestinian territory ('oPt') — occupied by Israel in 1967 — and of the State of Palestine, recognised by South Africa on 15 February 1995, and accorded non-member observer State status in the United Nations on 29 November 2012.<sup>71</sup>

22. The population of Gaza consists of approximately 2.3 million people, over half of whom are children. 80 per cent of Palestinians in Gaza are refugees — and their descendants — from towns and villages in what is now the State of Israel,<sup>72</sup> expelled or forced to flee during the mass displacement of over 750,000 Palestinians or 'Nakba' during the establishment of the State of Israel.<sup>73</sup> The Nakba and the mass displacement associated with it therefore features prominently in the history and consciousness of Palestinians in Gaza, as it does for the wider Palestinian people. Palestinians in Gaza form a substantial part of the Palestinian national, racial and ethnical group: they are a prominent part of the group, making up the population of one of the two constituent territories of the State of Palestine. They are also a quantitatively substantial part of the Palestinian population of the State of Palestine under occupation, which counts approximately 5.48 million people.<sup>74</sup>

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<sup>70</sup> UNRWA, *Letter from UNRWA Commissioner-General Philippe Lazzarini to the UN General Assembly President Mr Dennis Francis dated 7 December 2023* (7 December 2023), <https://www.unrwa.org/resources/un-unrwa/letter-unrwa-commissioner-general-philippe-lazzarini-un-general-assembly> (emphasis added).

<sup>71</sup> General Assembly resolution 67/19, Status of Palestine in the United Nations, A/RES/67/19 (28 November 2012), [https://digitallibrary.un.org/record/739031/files/A\\_RES\\_67\\_19-EN.pdf](https://digitallibrary.un.org/record/739031/files/A_RES_67_19-EN.pdf). 82 States had recognised the State of Palestine in 1988, following the transmission of a declaration on the establishment of the State of Palestine by the Palestine Liberation Organization ('PLO') to the UN Secretary-General on behalf of the Arab League (Declaration of State of Palestine – Palestine National Council, Letter dated 18 November 1988 from the Permanent Representative of Jordan to the United Nations addressed to the Secretary-General (18 November 1988), <https://www.un.org/unispal/document/auto-insert-178680/>). The State of Palestine is now recognised by 138 States (Permanent Observer Mission of the State of Palestine to the United Nations New York, Diplomatic Relations, <http://palestineun.org/about-palestine/diplomatic-relations/>).

<sup>72</sup> UNRWA, *About UNRWA* (2012), <https://www.unrwa.org/userfiles/2012050753530.pdf>, p. 17.

<sup>73</sup> UN OCHA, *Right of return of Palestinian refugees must be prioritised over political considerations: UN experts* (21 June 2023), <https://www.ohchr.org/en/statements/2023/06/right-return-palestinian-refugees-must-be-prioritised-over-political>.

<sup>74</sup> State of Palestine – Palestinian Central Bureau of Statistics ('PCBS'), *The International Population Day, 11/07/2023* (10 July 2023), <https://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=4544#:~:text=About%2014.5%20Million%20Palestinians%20in.the%20State%20of%20Palestine%3B%20>.



Map of the Gaza Strip<sup>75</sup>

23. Gaza comprises five Governorates. The Gaza North and Gaza Governorates constituting ‘the North’ stretch from the north of Wadi Gaza towards Erez Crossing, a pedestrian crossing into Israel (also known as the ‘Beit Hanoun Crossing’). ‘The North’ is ordinarily home to approximately 1.1 million Palestinians,<sup>76</sup> many concentrated in Gaza City (approximately 713,488 inhabitants),<sup>77</sup> as well as in Beit Lahia and Beit Hanoun, and in the Beach and Jabalia refugee camps. It is where Gaza’s largest hospital, Al Shifa Medical Hospital, is situated, as well as the Kamal Adwan Hospital. The Deir al Balah Governorate (‘the Middle Area’) ordinarily counts 302,507 inhabitants,<sup>78</sup> primarily in Deir al Balah City, as well as in the Al Maghazi, An Nuseirat, Al Bureij and Deir al Balah refugee camps; it is where Gaza’s only power plant is located. The Khan Yunis and Rafah Governorates (‘the South’) are below Deir al Balah Governorate and extend to the Rafah crossing with Egypt. The major population centres in the South are Khan Yunis and Rafah, as well as the Khan Yunis and Rafah refugee camps. The Karem Shalom Crossing (also known as ‘Karem Abu Salem Crossing’) is located four km west of Rafah. The South is where the Nasser hospital is located.<sup>79</sup> The South’s pre-October 2023 population stood at

<sup>75</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel – reported impact | Day 73* (19 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-73>.

<sup>76</sup> UN OCHA, *Israel must rescind evacuation order for northern Gaza and comply with international law: UN expert* (13 October 2023), <https://www.ohchr.org/en/press-releases/2023/10/israel-must-rescind-evacuation-order-northern-gaza-and-comply-international>.

<sup>77</sup> State of Palestine – Palestinian Central Bureau of Statistics, *Estimated Population in Palestine Mid-Year by Governorate, 1997-2021*, <https://tinyurl.com/34rb8w38>.

<sup>78</sup> *Ibid.*

<sup>79</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #66* (11 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-66>.

approximately 673,844 inhabitants.<sup>80</sup> The Middle Area and the South now accommodate more than 1.2 million internally displaced persons in 98 UNRWA facilities,<sup>81</sup> and tens of thousands in makeshift tents in Al-Mawasi area — a Bedouin Palestinian town in a small strip of mostly undeveloped sand along Gaza's Mediterranean coast —<sup>82</sup> identified by Israel on the resumption of hostilities in the first week of December 2023 as a purportedly ‘safe zone’.<sup>83</sup> Around 160,000 more displaced Palestinians are believed to remain in UNRWA facilities in the North,<sup>84</sup> as well as others sheltering in other locations.

24. Until 2005, Gaza — like the West Bank today — was occupied by Israeli military forces on the ground. However, in 2005, Israel unilaterally ‘disengaged’ from Gaza, dismantling its military bases and relocating Israeli settlers from settlements in Gaza back to Israel and into the occupied West Bank.<sup>85</sup> Notwithstanding its ‘disengagement’, Israel continues to exercise control over the airspace, territorial waters, land crossings, water, electricity, electromagnetic sphere and civilian infrastructure in Gaza,<sup>86</sup> as well as over key governmental functions, such as the management of the Palestinian population registry for Gaza.<sup>87</sup> Given that continuing effective control by Israel over the territory, Gaza is still considered by the international community to be under belligerent occupation by Israel.<sup>88</sup> The near total control exercised by Israel over access to Gaza, and over its water, fuel, electricity and food supplies, has been demonstrated starkly since 7 October 2023.

25. Entry and exit by air and sea to Gaza has been prohibited since the early 1990s, with Israel operating only two crossing points – Erez (pedestrian) and Kerem Shalom (goods) – through which Palestinians in Gaza could access the West Bank, including East Jerusalem, for business, trade,

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<sup>80</sup> State of Palestine – Palestinian Central Bureau of Statistics, *Estimated Population in Palestine Mid-Year by Governorate, 1997-2021*, <https://tinyurl.com/34rb8w38>.

<sup>81</sup> UNRWA, *UNRWA Situation Report #53 on the Situation in the Gaza Strip and the West Bank, including East Jerusalem* (17 December 2023), <https://www.unrwa.org/resources/reports/unrwa-situation-report-53-situation-gaza-strip-and-west-bank-including-east-Jerusalem>.

<sup>82</sup> UN Economic and Social Commission for Western Asia (ESCWA), *Al-Mawasi area*, <https://archive.unescwa.org/al-mawasi-area>.

<sup>83</sup> Israel Defense Forces, “Based on the morals and values of our military establishment, the Israel Defence Army publishes a list of the number of blocks to direct the inhabitants of Gaza in the evacuation of targeted areas” (1 December 2023), <https://tinyurl.com/mtapebm7>; “Palestinians displaced to south Gaza’s overcrowded areas living on streets”, *AlJazeera* (10 December 2023), <https://www.aljazeera.com/gallery/2023/12/9/palestinians-displaced-to-south-gazas-overcrowded-areas-living-on-streets>.

<sup>84</sup> UNRWA, *UNRWA Situation Report #56 on the Situation in the Gaza Strip and the West Bank, including East Jerusalem* (22 December 2023), <https://www.unrwa.org/resources/reports/unrwa-situation-report-56-situation-gaza-strip-and-west-bank-including-east-Jerusalem>.

<sup>85</sup> Human Rights Council, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/HRC/50/21 (9 May 2022), para. 16.

<sup>86</sup> GOV.UK, *Guidance Overseas business risk: The Occupied Palestinian Territories* (22 February 2022), <https://www.gov.uk/government/publications/overseas-business-risk-palestinian-territories/overseas-business-risk-the-occupied-palestinian-territories>, para. 2.5.

<sup>87</sup> Human Rights Council, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/HRC/50/21 (9 May 2022), para. 16.

<sup>88</sup> See e.g., Security Council resolution 1860, S/RES/1860 (2009) (8 January 2009), where the Security Council stressed “that the Gaza Strip constitutes an integral part of the territory occupied in 1967 and will be a part of the Palestinian state,” <https://digitallibrary.un.org/record/645525?ln=en#record-files-collapse-header>. Recently reaffirmed in General Assembly Resolution 77/30, Assistance to the Palestinian People, A/RES/77/30 (6 December 2022), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/729/08/PDF/N2272908.pdf?OpenElement>. See also, Human Rights Council, Human rights situation in Palestine and the other occupied Arab territories, Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, A/HRC/40/CRP.2 (18 March 2019), [https://www.un.org/unispal/wp-content/uploads/2019/06/A.HRC\\_40.CRP\\_.2.pdf](https://www.un.org/unispal/wp-content/uploads/2019/06/A.HRC_40.CRP_.2.pdf). Security Council resolution 2720 (2023), adopted on 22 December 2023, stresses that “the Gaza Strip constitutes an integral part of the territory occupied in 1967” and reiterates “the vision of the two-State solution, with the Gaza Strip as part of the Palestinian State,” <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/424/87/PDF/N2342487.pdf?OpenElement>.

healthcare and social and family functions.<sup>89</sup> However, Israel imposed a stringent blockade of Gaza, following Hamas' electoral victory in 2006 that was followed by inter-Palestinian violence, declaring the entire territory to be a 'hostile territory'.<sup>90</sup> Existing restrictions on the movement of persons were significantly tightened, with most Palestinians in Gaza being ineligible for permits to travel, leading to prolonged, indefinite separation for many Palestinian families.<sup>91</sup> The few who were eligible to travel did "not necessarily receive permits and almost always encounter[ed] delays and difficulties in the process".<sup>92</sup> Between 2008 and 2021, the World Health Organization ('WHO') recorded that 839 Palestinians from Gaza had died while waiting for medical permits to leave Gaza for urgent medical treatment.<sup>93</sup> The majority of permits were for day labourers and agricultural traders, primarily to undertake low-skilled work in Israel and on Israeli settlements in the West Bank.<sup>94</sup> Between 2007 and 2010, Israel regulated food imports into Gaza in accordance with calories consumed per person, to limit the transfers of food to a 'humanitarian minimum', without causing hunger or malnutrition.<sup>95</sup> Israel thereafter applied a 'dual use' system to imports into Gaza, severely restricting the entry of goods by prohibiting goods considered to be capable of having a dual civilian/military use.<sup>96</sup>

26. Israel's parallel implementation of a wide buffer zone inside Gaza's eastern border fence (estimated to restrict access to approximately 24 per cent of Gaza) severely impacts internal food supply, by reducing the main agricultural area for farming.<sup>97</sup> Israel also made fishing extremely hazardous for Palestinians, who have not had full access to the fishing zone of 20 nautical miles stipulated in the Oslo Accords — interim agreements concluded between the PLO and Israel in the early 1990s. The naval blockade — policed by Israeli forces through the use of force, arrests and the confiscation of fishing equipment — severely reduced the fishing catchment area for Gaza's fishermen

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<sup>89</sup> Egypt operates a third crossing – the Rafah Crossing – between Gaza and Egypt. UNCTAD, *Economic costs of the Israeli occupation for the Palestinian people: the Gaza Strip under closure and restrictions* (13 August 2020), [https://unctad.org/system/files/official-document/a75d310\\_en\\_1.pdf](https://unctad.org/system/files/official-document/a75d310_en_1.pdf), paras. 6, 8.

<sup>90</sup> Israel Ministry of Foreign Affairs, *Security Cabinet declares Gaza hostile territory* (19 September 2007), <https://www.gov.il/en/Departments/General/security-cabinet-declares-gaza-hostile-territory>.

<sup>91</sup> General Assembly, Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Michael Lynk A/HRC/49/87 (12 August 2022), <https://www.un.org/unispal/document/report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-palestinian-territories-occupied-since-1967-report-a-hrc-49-87-advance-unedited-version/>, para. 42; Norwegian Refugee Council, *Legal Memo: Movement between the West Bank and the Gaza Strip* (December 2016), [https://www.nrc.no/globalassets/pdf/legal-opinions/legal\\_memo\\_movement\\_between\\_wb\\_gaza.pdf](https://www.nrc.no/globalassets/pdf/legal-opinions/legal_memo_movement_between_wb_gaza.pdf).

<sup>92</sup> Human Rights Council, Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, A/HRC/40/CRP.2 (18 March 2019), [https://www.un.org/unispal/wp-content/uploads/2019/06/A.HRC\\_40.CPR\\_2.pdf](https://www.un.org/unispal/wp-content/uploads/2019/06/A.HRC_40.CPR_2.pdf), para 163.

<sup>93</sup> World Health Organisation, *Fifteen Years of Gaza Blockade and Barriers to Health Access* (2022), [https://www.emro.who.int/images/stories/palestine/15\\_Years\\_Gaza\\_Blockade\\_Factsheet.jpg?ua=1](https://www.emro.who.int/images/stories/palestine/15_Years_Gaza_Blockade_Factsheet.jpg?ua=1).

<sup>94</sup> UNCTAD, *Developments in the economy of the Occupied Palestinian Territory* (2023) (11 September), TD/B/EX(74)/2, [https://unctad.org/system/files/official-document/tdbex74d2\\_en.pdf](https://unctad.org/system/files/official-document/tdbex74d2_en.pdf), para. 38; UN OCHA, *Movement in and out of Gaza: update covering July 2023* (15 August 2023), <https://www.ochaopt.org/content/movement-and-out-gaza-update-covering-july-2023>.

<sup>95</sup> United Nations Economic and Social Commission for Western Asia ('ESCWA'), *Palestine Under Occupation III Mapping Israel's Policies and Practices and their Economic Repercussions in the Occupied Palestinian Territory*, E/ESCWA/CL6.GCP/2021/3 (2022), [https://www.un.org/unispal/wp-content/uploads/2022/07/E.ESCWA\\_CL6\\_GCP\\_2021.3\\_220722.pdf](https://www.un.org/unispal/wp-content/uploads/2022/07/E.ESCWA_CL6_GCP_2021.3_220722.pdf), p. 38.

<sup>96</sup> The World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee* (30 April 2019), <https://documents1.worldbank.org/curated/en/942481555340123420/pdf/Economic-Monitoring-Report-to-the-Ad-Hoc-Liaison-Committee.pdf>, p. 4.

<sup>97</sup> UNCTAD, *Developments in the economy of the Occupied Palestinian Territory* (2023) (11 September), TD/B/EX(74)/2, [https://unctad.org/system/files/official-document/tdbex74d2\\_en.pdf](https://unctad.org/system/files/official-document/tdbex74d2_en.pdf), para 36; General Assembly, *Report prepared by the secretariat of the United Nations Conference on Trade and Development on the economic costs of the Israeli occupation for the Palestinian people: the Gaza Strip under closure and restrictions*, A/75/310 (13 August 2020); General Assembly, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/71/554 (19 October 2016), <https://undocs.org/A/71/554>.

to polluted waters immediately off the coastline, leading to overfishing impacting sustainability.<sup>98</sup> As long ago as 2015, the United Nations Conference on Trade and Development ('UNCTAD') warned that the restrictive measures imposed by Israel risked Gaza becoming uninhabitable by 2020.<sup>99</sup> In 2020, the United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 described the impact of Israel's blockade on Gaza as having turned Gaza "from a low-income society with modest but growing export ties to the regional and international economy to an impoverished ghetto with a decimated economy and a collapsing social service system".<sup>100</sup> In 2022, he described the situation as follows:

"In Gaza, the apparent strategy of Israel is the indefinite warehousing of an unwanted population of 2 million Palestinians, whom it has confined to a narrow strip of land through its comprehensive 15-year-old air, land and sea blockade (with further restrictions by Egypt on the southern border of Gaza). Ban Ki-moon has called this political quarantining of the population a "collective punishment", which is a serious breach of international law. The World Bank reported in 2021 that Gaza had undergone a multi-decade process of dedevelopment and deindustrialization, resulting in a 45 per cent unemployment rate and a 60 per cent poverty rate, with 80 per cent of the population dependent on some form of international assistance, in significant part because of the hermetic sealing of the access of Gaza to the outside world. The coastal aquifer, the sole source of natural drinking water in Gaza, has become polluted and unfit for human consumption because of contamination by seawater and sewage, substantially driving up water costs for an already destitute population. Gaza is heavily dependent on external sources — Israel and Egypt — for power, and Palestinians live with rolling power blackouts of between 12 and 20 hours daily, severely impairing daily living and the economy. The entry and export of goods is strictly controlled by Israel, which has throttled the local economy. The health-care system in Gaza is flat on its back, with serious shortages of health-care professionals, inadequate treatment equipment and low supplies of drugs and medicines. Palestinians in Gaza can rarely travel outside of Gaza, which is a denial of their fundamental right to freedom of movement. More acutely, they have endured four highly asymmetrical wars with Israel over the past 13 years, with enormous loss of civilian life and immense property destruction. The suffering was acknowledged by Antonio Guterres in May 2021, when he stated: "If there is a hell on earth, it is the lives of children in Gaza"."<sup>101</sup>

27. Between 29 September 2000 and 7 October 2023, approximately 7,569 Palestinians,<sup>102</sup> including 1,699 children,<sup>103</sup> were killed, including in those "four highly asymmetrical wars", as well as other smaller military assaults, with tens of thousands of others injured. A further 214 Palestinians,

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<sup>98</sup> UN OCHA, *Gaza Strip – The Humanitarian Impact of 15 Years of the Blockade* (June 2022), [https://www.unicef.org/mena/media/18041/file/Factsheet\\_Gaza\\_Blockade\\_2022.pdf](https://www.unicef.org/mena/media/18041/file/Factsheet_Gaza_Blockade_2022.pdf); UNCTAD, *Developments in the economy of the Occupied Palestinian Territory* (2023), TD/B/EX(74)/2 (11 September), [https://unctad.org/system/files/official-document/tdbex74d2\\_en.pdf](https://unctad.org/system/files/official-document/tdbex74d2_en.pdf), para 39.

<sup>99</sup> UN News, Global Perspectives and Stories, *Gaza could become uninhabitable in less than five years due to ongoing 'de-development' – UN report* (1 September 2015), <https://news.un.org/en/story/2015/09/507762>.

<sup>100</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/HRC/44/60 (15 July 2020), [https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session44/Documents/A\\_HRC\\_44\\_60.pdf](https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session44/Documents/A_HRC_44_60.pdf), para. 54.

<sup>101</sup> General Assembly, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Michael Lynk, A/HRC/49/87 (12 August 2022), <https://www.un.org/unispal/document/report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-palestinian-territories-occupied-since-1967-report-a-hrc-49-87-advance-unedited-version/>, para. 45.

<sup>102</sup> B'Tselem, *Fatalities All Data, Main Data* (6 October 2023), <https://statistics.btselem.org/en/all-fatalities/by-date-of-incident?section=overall&tab=overview>. (not including the casualties during the Great March of Return).

<sup>103</sup> *Ibid.*

including 46 children were killed during the ‘Great March of Return’,<sup>104</sup> a large-scale peaceful protest along the separation fence between Gaza and Israel, in which thousands of Palestinians participated every Friday for over 18 months, demanding that “the blockade imposed on Gaza be lifted and the return of Palestinian refugees” to their homes and villages in Israel.<sup>105</sup> On one particularly lethal day alone, Israel killed 60 Palestinian protesters.<sup>106</sup> As determined by the Independent Commission of Inquiry on the protests in the occupied Palestinian territory (‘Commission’):

“[D]uring these weekly demonstrations, the Israeli Security Forces (ISF) killed and gravely injured civilians who were neither participating directly in hostilities nor posing an imminent threat to life. Among those shot were children, paramedics, journalists, and persons with disabilities.”<sup>107</sup>

28. Those killed by Israeli soldiers, firing from behind the separation fence, included three medics and two journalists. A total of over 36,100 Palestinians, including nearly 8,800 children,<sup>108</sup> were injured by Israel, including 4,903 people who were shot in the lower limbs, “many while standing hundreds of metres away from the snipers, unarmed”.<sup>109</sup> 156 of them had to have at least one limb amputated,<sup>110</sup> and over 1,200 required specialised limb reconstruction treatment.<sup>111</sup> The Commission found that the maiming was not accidental: the rules of engagement adopted by Israel permitted snipers to shoot at the legs of the “major inciters”.<sup>112</sup> One Israeli soldier admitted that he shot “42 knees in one day”.<sup>113</sup>

29. The Commission found that there were reasonable grounds to believe that Israeli snipers “intentionally shot” children, knowing them to be children,<sup>114</sup> and they also “intentionally shot” health workers and journalists “despite seeing that they were clearly marked as such”.<sup>115</sup> It further found “reasonable grounds to believe” that Israeli snipers shot disabled demonstrators “intentionally, despite seeing that they had visible disabilities” and despite them not presenting an imminent threat.<sup>116</sup>

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<sup>104</sup> UN, *The Question of Palestine, Two Years On: People Injured and Traumatized During the “Great March of Return” are Still Struggling* (6 April 2020), <https://www.un.org/unispal/document/two-years-on-people-injured-and-traumatized-during-the-great-march-of-return-are-still-struggling/>.

<sup>105</sup> Human Rights Council, *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory*, A/HRC/40/CRP.2 (18 March 2019), <https://undocs.org/A/HRC/40/CRP.2>, para. 115.

<sup>106</sup> Human Rights Council, *Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*, A/HRC/40/74 (6 March 2019), <https://undocs.org/A/HRC/40/74>, para. 58.

<sup>107</sup> Human Rights Council, *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory*, A/HRC/40/CRP.2 (18 March 2019), <https://undocs.org/A/HRC/40/CRP.2>, summary.

<sup>108</sup> UN, *The Question of Palestine, Two Years On: People Injured and Traumatized During the “Great March of Return” are Still Struggling* (6 April 2020), <https://www.un.org/unispal/document/two-years-on-people-injured-and-traumatized-during-the-great-march-of-return-are-still-struggling/>.

<sup>109</sup> Human Rights Council, *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory*, A/HRC/40/CRP.2 (18 March 2019), <https://undocs.org/A/HRC/40/CRP.2>, summary.

<sup>110</sup> UN *The Question of Palestine, Two Years On: People Injured and Traumatized During the “Great March of Return” are Still Struggling* (6 April 2020), <https://www.un.org/unispal/document/two-years-on-people-injured-and-traumatized-during-the-great-march-of-return-are-still-struggling/>.

<sup>111</sup> *Ibid.*

<sup>112</sup> “42 Knees in One Day’: Israeli Snipers Open up about Shooting Gaza Protesters”, Haaretz (6 March 2020), <https://www.haaretz.com/israel-news/2020-03-06/ty-article-magazine/.highlight/42-knees-in-one-day-israeli-snipers-open-up-about-shooting-gaza-protesters/0000017f-f2da-d497-a1ff-f2dab2520000>.

<sup>113</sup> *Ibid.*

<sup>114</sup> Human Rights Council, *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory*, A/HRC/40/CRP.2 (18 March 2019), <https://undocs.org/A/HRC/40/CRP.2>, para. 519.

<sup>115</sup> *Ibid.* paras. 526, 536.

<sup>116</sup> *Ibid.* para. 537.

30. Other reports by United Nations bodies and mandates have repeatedly found Israel to have acted in serious violation of international law in its previous military attacks on Gaza. By way of example:

— **Report of the human rights inquiry commission established pursuant to Commission resolution S-5/1 of 19 October 2000 (16 March 2001):<sup>117</sup>**

“50. . . [T]he IDF apparently on grounds of military necessity, has *destroyed homes and laid to waste a significant amount of agricultural land*, especially in Gaza, which is already land starved. Statistics show that 94 homes have been demolished and 7,024 dunums of agricultural land bulldozed in Gaza. Damage to private houses is put at US\$ 9.5 million and damage to agricultural land at about US\$ 27 million. . . . Houses situated on this land had been destroyed and families compelled to live in tents. Water wells in the vicinity had also been completely destroyed. The Commission found it difficult to believe that such destruction, generally carried out in the middle of the night and without advance warning, was justified on grounds of military necessity. To the Commission it seemed that such destruction of property had been carried out in an intimidatory *manner unrelated to security*, disrespectful of civilian well-being and going well beyond the needs of military necessity. The evidence suggests that destruction of property and demolition of houses have been replicated elsewhere in the West Bank and Gaza. Palestinians, like other people, are deeply attached to their homes and agricultural land. *The demolition of homes and the destruction of olive and citrus trees, nurtured by farmers over many years, has caused untold human suffering to persons unconnected with the present violence . . .*

51. The Commission concludes that the IDF has engaged in the *excessive use of force* at the expense of life and property in Palestine.”

— **Report of the high-level fact-finding mission to Beit Hanoun established under Council resolution S-3/1 (1 September 2008, Archbishop Desmond Tutu and Professor Christine Chinkin):<sup>118</sup>**

“72. The mission expresses its sympathy to all victims of the shelling on 8 November 2006 of Beit Hanoun. The attack took lives, inflicted horrendous physical and mental injuries, tore families apart, destroyed homes, took away livelihoods and traumatized a population. Its aftermath compounded those ills . . .

75. . . In the absence of a well-founded explanation from the Israeli military (who is in sole possession of the relevant facts), the mission must conclude that there is a possibility that the shelling of Beit Hanoun constituted a war crime as defined in the Rome Statute of the International Criminal Court. . . .

76. One victim of the Beit Hanoun shelling was the rule of law. There has been no accountability for an act that killed 19 people and injured many more. . . .

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<sup>117</sup> UN Economic and Social Council Commission on Human Rights, *Report of the human rights inquiry commission established pursuant to Commission resolution S-5/1 of 19 October 2000*, E/CN.4/2001/121 (16 March 2001), <https://undocs.org/E/CN.4/2001/121>, paras. 50 and 51 (emphasis added).

<sup>118</sup> Human Rights Council, *Report of the high-level fact-finding mission to Beit Hanoun established under Council resolution S-3/1*, A/HRC/9/26 (1 September 2008), <https://undocs.org/A/HRC/9/26>, paras. 72, 75 and 76.

— Report of the United Nations Fact-Finding Mission on the Gaza Conflict established pursuant to Human Rights Council resolution S-9/1 of 12 January 2009 (25 September 2009):<sup>119</sup>

“36. . . . The Mission *did not find any evidence to support the allegations that hospital facilities were used by the Gaza authorities or by Palestinian armed groups to shield military activities or that ambulances were used to transport combatants or for other military purposes.* On the basis of its own investigations and the statements by United Nations officials, the Mission *excludes that Palestinian armed groups engaged in combat activities from United Nations facilities* that were used as shelters during the military operations. . . .

55. The Mission investigated four incidents in which the Israeli armed forces coerced Palestinian civilian men at gunpoint to take part in house searches during the military operations. . . . The Mission concludes that this practice amounts to *the use of Palestinian civilians as human shields* and is therefore prohibited by international humanitarian law. . . . The Palestinian men used as human shields were *questioned under threat of death or injury* to extract information about Hamas, Palestinian combatants and tunnels. This constitutes a further violation of international humanitarian law. . . .

60. In addition to arbitrary deprivation of liberty and violation of due process rights, the cases of the detained Palestinian civilians highlight a common thread of the interaction between Israeli soldiers and Palestinian civilians which also emerged clearly in many cases discussed elsewhere in the report: *continuous and systematic abuse, outrages on personal dignity, humiliating and degrading treatment* contrary to fundamental principles of international humanitarian law and human rights law. The Mission concludes that this treatment constitutes the *infliction of a collective penalty on these civilians and amounts to measures of intimidation and terror*. . . .

382. In assessing the Israeli strikes against the Legislative Council building and the main prison, the Mission first of all notes that Hamas is an organization with distinct political, military and social welfare components. . . .

391. The Mission rejects the analysis of present and former senior Israeli officials that, because of the alleged nature of the Hamas government in Gaza, the distinction between civilian and military parts of the government infrastructure is no longer relevant in relation to Israel’s conflict with Hamas. . . .

392. The Mission is of the view that *this is a dangerous argument that should be vigorously rejected as incompatible with the cardinal principle of distinction.* International humanitarian law prohibits attacks against targets that do not make an effective contribution to military action. Attacks that are not directed against military (or dual use) objectives are violations of the laws of war, no matter how promising the attacker considers them from a strategic or political point of view. . . .

522. The warning to go to city centres came at the start of the ground invasion. In the Mission’s view it was unreasonable to assume, in the circumstances, that civilians would indeed leave their homes. As a consequence, *the conclusion that allegedly formed part of the logic of soldiers on the ground that those who had stayed put had to be combatants was wholly unwarranted*. . . .

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<sup>119</sup> Human Rights Council, *Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, A/HRC/12/48 (25 September 2009), <https://undocs.org/A/HRC/12/48>, paras. 36, 55, 60, 382, 391-392, 522, 629, 1026-1027, 1214-1215, 1883, 1888-1093, 1905, 1927 and 1929 (emphasis added).

629. Taking into account the weapons used, and in particular the use of white phosphorous in and around *a hospital that the Israeli armed forces knew was not only dealing with scores of injured and wounded but also giving shelter to several hundred civilians*, the Mission finds, based on all the information available to it, that in directly striking the hospital and the ambulance depot the Israeli armed forces in these circumstances violated article 18 of the Fourth Geneva Convention and violated customary international law in relation to proportionality. . . .

1027. The Mission . . . found that the systematic destruction of food, production, water services and construction industries was related to the *overall policy of disproportionate destruction of a significant part of Gaza's infrastructure*.

1214. Through its overly broad framing of the "supporting infrastructure", the Israeli armed forces have sought to construct a scope for their activities that, in the Mission's view, was *designed to have inevitably dire consequences for the non-combatants in Gaza* . . . .

1215. Statements by political and military leaders prior to and during the military operations in Gaza leave little doubt that disproportionate destruction and violence against civilians were part of a deliberate policy. . . .

1883. The Gaza military operations were, according to the Israeli Government, thoroughly and extensively planned. *While the Israeli Government has sought to portray its operations as essentially a response to rocket attacks in the exercise of its right to self-defence, the Mission considers the plan to have been directed, at least in part, at a different target: the people of Gaza as a whole*. . . .

1888. The Mission recognizes fully that the Israeli armed forces, like any army attempting to act within the parameters of international law, must avoid taking undue risks with their soldiers' lives, but neither can they transfer that risk onto the lives of civilian men, women and children. The fundamental principles of distinction and proportionality apply on the battlefield, whether that battlefield is a built-up urban area or an open field.

1889. The *repeated failure to distinguish between combatants and civilians appears to the Mission to have been the result of deliberate guidance issued to soldiers*, as described by some of them, and not the result of occasional lapses. . . .

1891. It is clear from evidence gathered by the Mission that the destruction of food supply installations, water sanitation systems, concrete factories and residential houses was the result of a *deliberate and systematic policy* by the Israeli armed forces. *It was not carried out because those objects presented a military threat or opportunity, but to make the daily process of living, and dignified living, more difficult for the civilian population*. . . .

1892. Allied to the *systematic destruction of the economic capacity of the Gaza Strip, there appears also to have been an assault on the dignity of the people*. This was seen not only in the use of human shields and unlawful detentions sometimes in unacceptable conditions, but also in the vandalizing of houses when occupied and the way in which people were treated when their houses were entered. The graffiti on the walls, the obscenities and often racist slogans, *all constituted an overall image of humiliation and dehumanization of the Palestinian population*. . . .

1893. The operations were carefully planned in all their phases. Legal opinions and advice were given throughout the planning stages and at certain operational levels during the campaign. There were almost no mistakes made according to the Government of Israel.

Its in these circumstances that the Mission concludes that what occurred in just over three weeks at the end of 2008 and the beginning of 2009 was *a deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population, radically diminish its local economic capacity both to work and to provide for itself, and to force upon it an ever increasing sense of dependency and vulnerability*. . . .

1927. The Mission found that the Israeli armed forces in Gaza rounded up and detained large groups of persons protected under the Fourth Geneva Convention. The Mission finds that their detention cannot be justified either as detention of “unlawful combatants” or as internment of civilians for imperative reasons of security. . . .

1929. The Mission also finds that the Israeli armed forces unlawfully and wantonly attacked and destroyed without military necessity a number of food production or food processing objects and facilities (including mills, land and greenhouses), drinking-water installations, farms and animals in violation of the principle of distinction. From the facts ascertained by it, the Mission finds that this destruction was carried out with the purpose of denying sustenance to the civilian population, in violation of customary law reflected in article 54 (2) of the First Additional Protocol. The Mission further concludes that the Israeli armed forces carried out widespread destruction of private residential houses, water wells and water tanks unlawfully and wantonly.”

— **Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (24 June 2015):<sup>120</sup>**

“44. . . . the *large number of targeted attacks against residential buildings and the fact that such attacks continued throughout the operation, even after the dire impact of these attacks on civilians and civilian objects became apparent, raise concern that the strikes may have constituted military tactics reflective of a broader policy*, approved at least tacitly by decision-makers at the highest levels of the Government of Israel . . .

51. . . . *the fact that the Israel Defense Forces did not modify the manner in which they conducted their operations after initial episodes of shelling resulted in a large number of civilian deaths indicates that their policies governing the use of artillery in densely populated areas may not be in conformity with international humanitarian law.*

53. . . . *destruction by artillery fire, air strikes and bulldozers may have been adopted as a tactic of war*. Some destruction may arguably be the result of the legitimate attempts of the Israel Defense Forces to dismantle tunnels and to protect its soldiers. The concentration of destruction in localities close to the Green Line, in some areas amounting to 100 per cent, and the *systematic way in which these areas were flattened one after the other*, however, raise *concerns that such extensive destruction was not required by imperative military necessity*. If confirmed, this would constitute a grave breach of article 147 of the Fourth Geneva Convention, which is a war crime. . . .

55. . . . warnings to evacuate were meant to create “sterile combat zones”, and the people remaining in the area would no longer be considered civilians and thus benefit from the protection afforded by their civilian status. For example, the Head of the Doctrine Desk at the Infantry Corps Headquarters, . . . , reportedly stated: “. . . In peacetime security, soldiers stand facing a civilian population, but in wartime, there is no civilian population, just an enemy.” . . .

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<sup>120</sup> Human Rights Council, *Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1*, A/HRC/29/52 (24 June 2015), <https://undocs.org/A/HRC/29/52>, paras. 26, 37, 44-45, 50-53 and 55-58 (emphasis added).

56. . . . inferring that anyone remaining in an area that has been the object of a warning is an enemy or a person engaging in “terrorist activity”, or issuing instructions to this effect, contributes to creating an environment conducive to attacks against civilians. Those civilians choosing not to heed a warning do not lose the protection granted by their status. The only way in which civilians lose their protection from attack is by directly participating in the hostilities. Merely issuing a warning does not absolve the Israel Defense Forces of their legal obligations to protect civilian life . . .

57. An examination of actions by the Israel Defense Forces in Shuja’iya in July and Rafah on 1 August indicates that *the protection of Israeli soldiers significantly influenced the conduct of the Israel Defense Forces in these operations, at times overriding any concern for minimizing civilian casualties.* While force protection is a legitimate objective, the commission has the distinct impression that, when soldiers’ lives were at stake or there was a risk of capture. . . .

58. . . . The commission believes that the military culture created by such policy priorities may have been a factor contributing to the decision to unleash massive firepower in Rafah and Shuja’iya, in utter disregard of its devastating impact on the civilian population. Moreover, applying this protocol in the context of a densely populated environment through the use of heavy weaponry predictably leads to violations of the principles of distinction and proportionality.”

— **Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 of 23 July 2014 (24 June 2015):<sup>121</sup>**

293. The sheer number of shells fired, as well as the reported dropping of over 100 one-ton bombs in a short period of time in a densely populated area, together with the reported use of an artillery barrage, raise questions as to the respect by the IDF of the rules of distinction, precautions and proportionality. *These methods and means employed by the IDF could not, in such a small and densely populated area, be directed at a specific military target and could not adequately distinguish between civilians and civilian objects and military objectives* as required by IHL. The information available also indicates that during the Shuja’iya operation on 19 and 20 July the IDF violated the prohibition of treating several distinct individual military objectives in a densely populated area as *one single military objective*. Therefore, there are strong indications that the IDF’s Shuja’iya operation on 19 and 20 July was conducted in violation of the prohibition of indiscriminate attacks and may amount to a war crime.

294. The Shuja’iya operation also raises serious concerns that the IDF did not conform with its obligation to take precautionary measures in attack. *The choice of the methods and means used by the IDF cannot be reconciled with the obligation to take constant care to spare civilians and civilian objects* or at the very least to minimize incidental loss of civilian life and damage to civilian objects in a densely populated area. . . .

340. . . . The extensive devastation, carried out by the IDF in Khuza’a, in particular the razing of entire areas of the town by artillery fire, air strikes and bulldozers, indicates that *the IDF carried out destructions that were not required by military necessity*. . . .

341. The extent of the destruction combined with the statements made during the operation by the commander of the Brigade responsible for the Khuza’a operation to the effect that “*Palestinians have to understand that this does not pay off,*” are indicative of

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<sup>121</sup> Human Rights Council, *Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, A/HRC/29/CRP.4 (24 June 2015)*, <https://undocs.org/A/HRC/29/CRP.4>, paras. 226, 293-294, 340-342, 348, 418, 576, 671 (emphasis added).

*a punitive intent* in the action of the IDF in Khuza'a and may constitute collective punishment. . . .

342. Information received by the commission suggests that in several cases Palestinians who had been detained, mostly in their homes in Khuza'a, had been insulted, beaten, threatened to be killed and otherwise ill-treated by IDF soldiers. In some cases the treatment described by some of the witnesses could amount to torture. . . .

348. Other incidents and alleged patterns of behavior in Khuza'a raise a number of concerns under international law. . . . These incidents include: the incidents in which civilians were allegedly shot at by IDF soldiers; attacks against ambulances; and the failure to provide medical assistance to wounded persons. . . .

418. The IDF has argued that the high number of buildings destroyed in Operation "Protective Edge" resulted from the targeting of terrorist infrastructure and intense fighting on the ground. However, the evidence gathered by the commission, including the assessment of the episodes above, video and photo materials, observations by UNITAR-UNOSAT and anecdotal testimonies by IDF soldiers, indicate that *the vast scale of destruction may have been adopted as tactics of war.* . . .

576. Alongside the toll on civilian lives, there was *enormous destruction of civilian property in Gaza: 18 000 housing units were destroyed in whole or in part.* . . . [H]aving a home has an emotional dimension – the place where memories are stored – and often many other items to which inhabitants' memories relate. Having one's home destroyed or severely damaged means being deprived of more than a physical structure; *it also directly impacts on the very essence of one's existence . . .*

671. Questions arise regarding the role of senior officials who set military policy in several areas examined by the commission, such as in the attacks of the Israel Defense Forces on residential buildings; the use of artillery and other explosive weapons with wide-area effects in densely populated areas; the destruction of entire neighbourhoods in Gaza; and the regular resort to live ammunition by the Israel Defense Forces, notably in crowd-control situations, in the West Bank. In many cases, individual soldiers may have been following agreed military policy, but it may be that *the policy itself violates the laws of war.*"

— **Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (22 October 2021):**<sup>122</sup> The Special Rapporteur remarked that "[r]egrettably, the international community's remarkable tolerance for Israeli exceptionalism in its conduct of the occupation has allowed realpolitik to trump rights, power to supplant justice and impunity to undercut accountability."

— **Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (22 December 2020):**<sup>123</sup> The Special Rapporteur found that "the actions of Israel towards the protected population of Gaza amount to collective punishment under international law. *The two million Palestinians of Gaza are not responsible for the deeds of Hamas and other militant groups, yet they have endured a substantial share of the punishment, intentionally so.*"

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<sup>122</sup> General Assembly, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Michael Lynk, A/76/433 (22 October 2021), <https://undocs.org/A/76/433>, para. 32.

<sup>123</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Michael Lynk, A/HRC/44/60 (22 December 2020), <https://undocs.org/A/HRC/44/60>, para. 60 (emphasis added).

— **Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (28 August 2023)**: as regards the treatment by Israel of Palestinian detainees, the Special Rapporteur found “instances of torture and cruel, inhumane or degrading treatment include sexual assaults; being hooded and blindfolded, forced to stand for long hours, tied to a chair in painful positions, deprived of sleep and food, or exposed to loud music for long hours; and being punished with solitary confinement”.<sup>124</sup> In relation to Palestinian children, in particular, the Special Rapporteur determined that they “endure severe ill-treatment” during interrogation.<sup>125</sup>

31. In 2019, the then Prosecutor of the International Criminal Court ('ICC') held that “there is a reasonable basis to believe” that the Israeli army committed “war crimes... in the context of the 2014 hostilities in Gaza”, in particular.<sup>126</sup> Recently, in October 2023, the Prosecutor has confirmed that his “Office has an ongoing investigation with jurisdiction over Palestine... [a]nd this includes jurisdiction over current events in Gaza and also current events in the West Bank”.<sup>127</sup> The Prosecutor noted that Israel’s “[i]mpeding [of] relief supplies... may constitute a crime within the Court's jurisdiction”.<sup>128</sup> He further indicated that his Office would “scrutinise” all information in relation to Israeli attacks on dwelling houses, schools, hospitals, churches, and mosques, for compliance with international humanitarian law.<sup>129</sup> The Prosecutor has not given any more recent indication as to the state of progress of any investigation in relation to the Situation in the State of Palestine, including in response to the request of 17 November 2023 by South Africa and other States that the ICC investigate *inter alia* the crime of genocide.<sup>130</sup>

## 2. *The West Bank (including East Jerusalem)*

32. The West Bank, including East Jerusalem, the larger constituent part of the occupied Palestinian territory, comprises 5,655 km<sup>2</sup>, with a population of 2.9 million Palestinians, is geographically separated from Gaza, and fragmented by Israeli settlements.<sup>131</sup>

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<sup>124</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Francesca Albanese, A/HRC/53/59 (28 August 2023), <https://undocs.org/A/HRC/53/59>, para. 61.

<sup>125</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Francesca Albanese, A/HRC/53/59 (28 August 2023), <https://undocs.org/A/HRC/53/59>, para. 67.

<sup>126</sup> International Criminal Court, *Situation in Palestine | Summary of Preliminary Examination Findings* (20 December 2019), <https://www.icc-cpi.int/sites/default/files/itemsDocuments/210303-office-of-the-prosecutor-palestine-summary-findings-eng.pdf>.

<sup>127</sup> International Criminal Court, *Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel* (30 October 2023), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>; International Criminal Court, @IntlCrimCourt (4:08 p.m., October 29, 2023), <https://twitter.com/intlcrimcourt/status/1718661091155161172?s=46&t=bZu5nJejRUuojpOH1KVB5Q>.

<sup>128</sup> International Criminal Court, *Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel* (30 October 2023), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>.

<sup>129</sup> *Ibid.*

<sup>130</sup> South Africa, Embassy in the Netherlands, *Letter from the South African Embassy in the Netherlands to the Prosecutor of the International Criminal Court* (17 November 2023), <https://www.icc-cpi.int/sites/default/files/2023-11/ICC-Referral-Palestine-Final-17-November-2023.pdf>; the fact that the Prosecutor has not yet completed any investigation or opened a prosecution in relation to the Situation in the State of Palestine since 31 January 2021, nor opened an investigation formally in response to the referral of genocide by South Africa and others, is no bar to the ICJ determining the present application. Notably, the ICC's investigation is to determine individual criminal responsibility for the crime of genocide, contrary to the Rome Statute of the International Criminal Court, whereas the ICJ's jurisdiction is to determine disputes concerning State responsibility for genocide under the Genocide Convention.

<sup>131</sup> UN Palestine, *Israeli Occupation of Palestinian Territory in facts and figures*, <https://www.un.org/unispal/in-facts-and-figures/>.

33. The Oslo Accords divided administrative competences over three areas of the West Bank (Areas A, B, and C — not including East Jerusalem) between the Palestinian Authority and Israel, the Occupying Power. Area A, comprising 18 per cent of the West Bank is stated to be under the full administrative control of the Palestinian Authority; Area B, comprising 22 per cent of the West Bank is under the administrative control of the Palestinian Authority and the security control of Israel; and Area C, comprising 60 per cent of the West Bank, is under full Israeli administrative and security control.<sup>132</sup> In 1967, Israel purportedly annexed occupied East Jerusalem to its territory, and in 1980, it incorporated a provision into its Basic Law claiming Jerusalem ‘united’ as the capital of Israel, a move censured by the United Nations Security Council as “null and void” and to “be rescinded forthwith”.<sup>133</sup> Since 1967, Israel has constructed 279 ‘settlements’ for Israeli civilians across the West Bank — including 14 settlements in East Jerusalem — appropriating 750,000 dunums (185,329 acres) of Palestinian land.<sup>134</sup> The United Nations Security Council has repeatedly declared that the establishment of such settlements by Israel has “no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace”.<sup>135</sup> Regardless, the number of Israeli settlers transferred into the West Bank (including East Jerusalem) has increased dramatically from an estimated 247,000 at the time of the Oslo Accords,<sup>136</sup> to over 700,000 in 2023.<sup>137</sup> The Prosecutor of the International Criminal Court (‘ICC’) has determined that there is “a reasonable basis to believe” that “members of the Israeli authorities have committed war crimes... in relation, inter alia, to the transfer of Israeli civilians into the West Bank.”<sup>138</sup>

34. The United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, described the situation in the West Bank as follows:

“53. ...There, the Palestinians are subject to a harsh and arbitrary legal system quite unequal to that enjoyed by the Israeli settlers. Much of the West Bank is off-limits to Palestinians, and they regularly endure significant restrictions on their freedom of movement through closures, roadblocks, and the need for hard-to-obtain travel permits.

54. Access to the natural resources of the occupied territory, especially to water, is disproportionately allocated to Israel and the settlers. Similarly, the planning system administered by the occupying power for housing and commercial development throughout the West Bank, including East Jerusalem, is deeply discriminatory in favour of settlement construction, while imposing significant barriers on Palestinians, including ongoing land confiscation, home demolitions and the denial of building permits. Israel employs practices that in some cases may amount to the forcible transfer of Palestinians, primarily those living in rural areas, as a means of confiscating land for settlements, military weapons training areas and other

<sup>132</sup> Letter dated 27 December 1995 from the Permanent Representatives of the Russian Federation and the United States of America to the United Nations addressed to the Secretary-General, A/51/889 (5 May 1997), [https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS\\_950928\\_InterimAgreementWestBankGazaStrip%28OsloI%29.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS_950928_InterimAgreementWestBankGazaStrip%28OsloI%29.pdf).

<sup>133</sup> Security Council resolution 478, Territories Occupied by Israel, S/RES/478 (20 August 1980), <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/399/71/PDF/NR039971.pdf?OpenElement>.

<sup>134</sup> Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan* (12 March 2023) A/HRC/52/76, <https://undocs.org/A/HRC/52/76>, para. 5, 8.

<sup>135</sup> See e.g. Security Council resolution 446, Territories occupied by Israel, S/RES/446 (22 March 1979), <https://digitallibrary.un.org/record/1696?ln=en>, para. 1; Security Council resolution 2334, The situation in the Middle East, including the Palestinian question (23 December 2016), <https://digitallibrary.un.org/record/853446?ln=en>, para.1.

<sup>136</sup> UN ESCWA, *Countering economic dependence and de-development in the occupied Palestinian territory* (October 2022) [https://www.un.org/unispal/wp-content/uploads/2023/03/ESCWAREPORT\\_280223.pdf](https://www.un.org/unispal/wp-content/uploads/2023/03/ESCWAREPORT_280223.pdf).

<sup>137</sup> Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan* (12 March 2023), A/HRC/52/76, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/020/49/PDF/G2302049.pdf?OpenElement>, para. 5, 8.

<sup>138</sup> International Criminal Court, *Situation in Palestine | Summary of Preliminary Examination Findings* (20 December 2019), <https://www.icc-cpi.int/sites/default/files/itemsDocuments/210303-office-of-the-prosecutor-palestine-summary-findings-eng.pdf>, para. 4.

uses exclusive to the occupying power that have little or nothing to do with its legitimate security requirements.

55. As for East Jerusalem, the occupation has increasingly detached it from its traditional national, economic, cultural and family connections with the West Bank because of the wall, the growing ring of settlements and related checkpoints, and the discriminatory permit regime. It is neglected by the municipality in terms of services and infrastructure, the occupation has depleted its economy and the Palestinians have only a small land area on which to build housing.”<sup>139</sup>

35. The institutionalised regime of discriminatory laws, policies and practices applied by Israel subjects Palestinians to what constitutes an apartheid regime.<sup>140</sup> Palestinians in the West Bank are contained behind a segregating Wall, subjected to: discriminatory land zoning and planning policies; punitive and administrative house demolitions,<sup>141</sup> violent Israeli army incursions into Palestinian villages, towns, cities and refugee camps, including in Area A;<sup>142</sup> routine violent Israeli raids on their homes; arbitrary arrests and indefinitely renewable administrative detention (internment without trial); and a dual legal system pursuant to which Palestinians are tried under Israeli military legislation in Israeli military courts, without basic protections of international humanitarian and human rights law, while Israeli settlers living in the same territory are subject to a different legal regime, and tried in Israeli civilian courts with full due process.<sup>143</sup>

36. Palestinians in the West Bank are also subjected to routine violence by Israeli soldiers and armed settlers. Prior to 7 October 2023, between 1 January and 6 October 2023, 199 Palestinians had been killed by Israeli soldiers or settlers in the West Bank and 9,000 more had been injured.<sup>144</sup> By

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<sup>139</sup> General Assembly, Situation of human rights in the Palestinian territories occupied since 1967, A/72/556, (23 October 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/340/02/PDF/N1734002.pdf?OpenElement>, paras. 53-55.

<sup>140</sup> Committee on the Elimination of Racial Discrimination ('CERD'), Concluding Observations on the Combined Seventeenth to Nineteenth Reports of Israel, CERD/C/ISR/CO/17-19 (27 January 2020), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/019/68/PDF/G2001968.pdf?OpenElement>, para. 23; General Assembly, *Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Michael Lynk, A/HRC/49/87 (12 August 2022), <https://www.un.org/unispal/document/report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-palestinian-territories-occupied-since-1967-report-a-hrc-49-87-advance-unedited-version/>, para. 52; Amnesty International, *Israel's Apartheid Against Palestinians A Look Into Decades of Oppression and Domination* (2022), <https://www.amnesty.org/en/latest/news/2022/02/israels-apartheid-against-palestinians-a-cruel-system-of-domination-and-a-crime-against-humanity/>; B'Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid* (12 January 2021), [https://www.btselem.org/publications/fulltext/202101\\_this\\_is\\_apartheid](https://www.btselem.org/publications/fulltext/202101_this_is_apartheid); and Addameer et al., *Israeli Apartheid: Tool of Zionist Settler Colonialism* (29 November 2022), [https://www.alhaq.org/cached\\_uploads/download/2022/12/22/israeli-apartheid-web-final-1-page-view-1671712165.pdf](https://www.alhaq.org/cached_uploads/download/2022/12/22/israeli-apartheid-web-final-1-page-view-1671712165.pdf). See also the 300-page report by the South African Human Sciences Research Council ('HSRC') which noted that the three pillars of apartheid in South Africa are all practised by Israel in the occupied Palestinian territory, the pillars being: first, the demarcation of the population of South Africa into racial groups, with superior rights, privileges and services being accorded to one group; second, the segregation of the population into different geographic areas, which were allocated by law to different racial groups, and the restriction of passage by members of any group into the area allocated to other groups; and third, the imposition of a matrix of draconian 'security' laws and policies, employed to suppress any opposition to the regime and to reinforce the system of racial domination, by providing for administrative detention, torture, censorship, banning, and assassination (HSRC Democracy and Governance Programme, Middle East Project, Occupation, Colonialism, Apartheid?: A re-assessment of Israel's practices in the occupied Palestinian territories under international law (June 2009), [http://sro.sussex.ac.uk/id/eprint/43295/1/Occupation\\_Colonialism\\_Apartheid-FullStudy\\_copy.pdf](http://sro.sussex.ac.uk/id/eprint/43295/1/Occupation_Colonialism_Apartheid-FullStudy_copy.pdf).

<sup>141</sup> General Assembly, Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Michael Lynk, A/HRC/49/87 (12 August 2022), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/448/72/PDF/G2244872.pdf?OpenElement>, para. 41, 43.

<sup>142</sup> UN OCHA, *Special Rapporteur on the situation of human rights in the Occupied Palestinian Territories: Israel has imposed upon Palestine an apartheid reality in a post-apartheid world* (25 March 2022), <https://www.ohchr.org/en/press-releases/2022/03/special-rapporteur-situation-human-rights-occupied-palestinian-territories>.

<sup>143</sup> General Assembly, Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Michael Lynk, A/HRC/49/87 (12 August 2022), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/448/72/PDF/G2244872.pdf?OpenElement>, paras. 38, 39, 50.

<sup>144</sup> UN OCHA, *Data on casualties*, <https://www.ochaopt.org/data/casualties>.

September 2023, Save the Children had already declared 2023 the deadliest year for Palestinian children in the West Bank since 2005 with at least 38 Palestinian children having been killed.<sup>145</sup> Since 7 October 2023, a further 295 Palestinians, including 77 children, have been killed by Israeli soldiers and settlers, and a further 3,803, including 576 children, wounded — many seriously.<sup>146</sup> A total of 495 Palestinians have been killed in total in the West Bank, making it “the deadliest year for Palestinians” since 2005.<sup>147</sup>

37. In a wave of arbitrary mass arrests, Israel has detained more than 3,000 Palestinians from the West Bank and East Jerusalem, including for social media posts relating to the situation in Gaza.<sup>148</sup> Israel significantly increased the number of Palestinians held in administrative detention, without charge or trial, to 2070.<sup>149</sup> Thousands of Palestinians from Gaza working in Israel were also arbitrarily arrested and detained, with 3,200 being forcibly returned to Gaza on 3 November 2023 into intense full scale bombardments. Reports that the Palestinian labourers were mistreated on arrest and subjected to physical violence, abuse and humiliation are widespread.<sup>150</sup> Many Palestinian adult and child detainees from the West Bank released in exchange for Israeli hostages report also severe ill-treatment, serious beatings and other outrages to personal dignity since 7 October 2023 in particular, alongside restrictions on access to food, water, medical treatment, and electricity in Israeli detention.<sup>151</sup> Six Palestinian detainees from the West Bank have died in Israeli custody since 7 October 2023, in particular.<sup>152</sup> 19 Israeli prison guards were reportedly questioned for beating to death one of the prisoners, Tha'er Abu Asab, in Ketziot Prison.<sup>153</sup>

38. Since 7 October 2023, Israeli forces have carried out airstrikes and military raids on refugee camps in the West Bank, killing many Palestinians, bulldozing roads, and imposing severe restrictions on movement.<sup>154</sup> There have been 236 attacks on ‘healthcare’ — including hospitals — in the West Bank, with Israeli forces detaining health staff and ambulances and preventing ambulances from

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<sup>145</sup> Save the Children, *2023 marks deadliest year on record for children in the occupied West Bank* (18 September 2023), <https://www.savethechildren.net/news/2023-marks-deadliest-year-record-children-occupied-west-bank>.

<sup>146</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #77* (26 December 2023), <https://www.un.org/unispal/document/hostilities-in-the-gaza-strip-and-israel-unocha-flash-update-77/>.

<sup>147</sup> *Ibid.*

<sup>148</sup> UN OHCHR, *Press Release: Dramatic rise in detention of Palestinians across occupied West Bank* (1 December 2023), <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-dramatic-rise-detention-palestinians-across-occupied-west-bank>; Tahani Mustafa, “With All Eyes on Gaza, Israel Tightens Its Grip on the West Bank”, *Crisis Group* (24 November 2023), <https://www.crisisgroup.org/middle-east-north-africa/east-mediterranean-mena/israelpalestine/all-eyes-gaza-israel-tightens-its>.

<sup>149</sup> Amnesty International, “*Israel/OPT: Horrifying cases of torture and degrading treatment of Palestinian detainees amid spike in arbitrary arrests*”, (8 November 2023), <https://www.amnesty.org/en/latest/news/2023/11/israel-opt-horrifying-cases-of-torture-and-degrading-treatment-of-palestinian-detainees-amid-spike-in-arbitrary-arrests/>.

<sup>150</sup> “Gaza workers expelled from Israel accuse Israeli authorities of abuse, including beatings”, *CNN* (9 November 2023), <https://edition.cnn.com/2023/11/06/middleeast/gaza-workers-allege-abuse/index.html>; Bethan McKernan and Rory Carroll, “Israel deport thousands of stranded Palestinian workers back to Gaza”, *The Guardian* (3 November 2023), <https://www.theguardian.com/world/2023/nov/03/israel-deports-thousands-of-stranded-palestinian-workers-back-to-gaza>; Gisha, “Israeli cabinet decision to return Gaza workers to the Strip” (3 November 2023), <https://gisha.org/en/israeli-cabinet-decision-to-return-gaza-workers-to-the-strip/>; Amnesty International, “*Israel/OPT: Horrifying cases of torture and degrading treatment of Palestinian detainees amid spike in arbitrary arrests*” (8 November 2023), <https://www.amnesty.org/en/latest/news/2023/11/israel-opt-horrifying-cases-of-torture-and-degrading-treatment-of-palestinian-detainees-amid-spike-in-arbitrary-arrests/>.

<sup>151</sup> UN OHCHR, *Press Release: Dramatic rise in detention of Palestinians across occupied West Bank* (1 December 2023), <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-dramatic-rise-detention-palestinians-across-occupied-west-bank>.

<sup>152</sup> *Ibid.*

<sup>153</sup> “Israel probes death of Palestinian prisoners by 19 prison guards – report”, *The Jerusalem Post* (21 December 2023), <https://www.jpost.com/israel-news/article-778924>.

<sup>154</sup> UN OHCHR, *Gaza: UN experts call on international community to prevent genocide against the Palestinian people* (16 November 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>.

accessing the wounded.<sup>155</sup> Armed Israeli settler attacks on Palestinians — overtly supported by Israeli politicians — have also escalated dramatically.<sup>156</sup> Settlers — often accompanied by Israeli soldiers — have killed at least eight Palestinians and injured at least 85 others, instilling terror among Palestinians, especially farming communities, and damaging property.<sup>157</sup> 2,186 Palestinians in the West Bank, including 1,058 children, have been internally displaced since 7 October 2023 as a result of extreme Israeli settler violence, alongside punitive or administrative house demolitions carried out by the Israeli army and damage caused to homes during Israeli military raids and operations.<sup>158</sup> The Prosecutor of the International Criminal Court indicated in December 2023 that he was “accelerating investigations” into Israeli settler attacks in the West Bank.<sup>159</sup>

39. Israel’s actions in the West Bank since 7 October 2023 — including its support for and failure to prevent or punish Israeli settlers for incitement and violence against Palestinians and Palestinian property, including the driving out of vulnerable Palestinian communities from their lands — are intrinsically connected to Israel’s actions in Gaza, and provide at the very least important context to Israel’s violations of the Genocide Convention.

### *3. The attacks in Israel of 7 October 2023*

40. Israel’s military assault in Gaza and its heightened military campaign in the West Bank were launched in response to an attack in Israel on 7 October 2023 (dubbed ‘Operation Al Aqsa Flood’) by two Palestinian armed groups – the military wing of Hamas (the ‘Izz ad-Din al-Qassam Brigades’) and Palestinian Islamic Jihad. The groups launched a large barrage of rockets towards Israel, breached the Israeli fence besieging Gaza, and attacked Israeli military bases and civilian towns, as well as a music festival attended by thousands of young people, in circumstances being investigated by the Prosecutor of the ICC.<sup>160</sup> South Africa unequivocally condemns the targeting of Israeli and foreign national civilians by Hamas and other Palestinian armed groups and the taking of hostages on 7 October 2023, as expressly recorded in its Note Verbale to Israel of 21 December 2023.

41. Since 7 October 2023, over 1,200 Israelis and foreign nationals have been killed in Israel, according to figures provided by the Israeli authorities, including 36 children, the vast majority on 7 October 2023 itself.<sup>161</sup> Approximately 240 civilians — including elderly people, women and children — and Israeli soldiers were taken as hostages into Gaza. Only 110 of them have been released to date in exchange for 240 Palestinians — including elderly people, women and children — imprisoned or

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<sup>155</sup> World Health Organisation, *oPt Emergency Situation Update Issue 16* (7 December 2023), [https://www.emro.who.int/images/stories/palestine/oPt\\_Emergency\\_Situation\\_Update\\_-DEC7b.pdf](https://www.emro.who.int/images/stories/palestine/oPt_Emergency_Situation_Update_-DEC7b.pdf).

<sup>156</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #72* (18 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-72>.

<sup>157</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #77* (26 December 2023), <https://www.un.org/unispal/document/hostilities-in-the-gaza-strip-and-israel-unocha-flash-update-77/>.

<sup>158</sup> *Ibid.*

<sup>159</sup> International Criminal Court, *Statement of ICC Prosecutor Karim A. A. Khan KC from Ramallah on the situation in the State of Palestine and Israel* (6 December 2023), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-ramallah-situation-state-palestine-and-israel>.

<sup>160</sup> International Criminal Court (“ICC”), *Statement of the Prosecutor of the International Criminal Court, Karim A.A. Khan KC, on the Situation in the State of Palestine: receipt of a referral from five States Parties* (17 November 2023), <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-aa-khan-kc-situation-state-palestine>; ICC, *Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel* (30 October 2023), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>.

<sup>161</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #72* (20 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-72>; and UNOCHA relies on information provided to it by the Israeli authorities.

‘administratively detained’ by Israel.<sup>162</sup> 57 hostages are reported to have been killed in Israeli bombardments of Gaza; a further three hostages are confirmed to have been shot dead by Israeli soldiers in Gaza.<sup>163</sup> Rockets continue to be fired from Gaza into Israeli territory, leading to the ongoing evacuation of tens of thousands of Israelis, particularly from communities bordering the security fences with Gaza and Lebanon.<sup>164</sup> The ICC Prosecutor has warned that hostage-taking “represents a grave breach to the Geneva Conventions” and the taking and holding of children is an “egregious breach of fundamental principles of humanity”.<sup>165</sup> United Nations General Assembly Resolutions ES-10/21 and ES-10/22 (2023) condemn acts of violence aimed at Israeli civilians and call for the release of all civilians who are being illegally held captive.<sup>166</sup> United Nations Security Council Resolution 2712 (2023) also calls for “the immediate and unconditional release of all hostages held by Hamas and other groups”.<sup>167</sup>

42. In response to the attacks of 7 October 2023, Israel vowed to “crush and eliminate” Hamas, and “to clear out the hostile forces that infiltrated our territory and restore the security”.<sup>168</sup> On 7 October 2023, the Israeli Prime Minister declared that “the IDF will immediately use all its strength to destroy Hamas’s capabilities. We will destroy them and we will forcefully avenge this dark day that they have forced on the State of Israel and its citizens”.<sup>169</sup> On 9 October 2023, the Prime Minister announced that “Israel is at war”.<sup>170</sup> Both he and the Israeli President have invoked ‘the right of self-defence’ as justification for Israel’s ongoing military activities in Gaza.<sup>171</sup> The escalation in hostilities between Israel and Hamas, dubbed the ‘Swords of Iron War’ by Israel, has been referred to in international Western media and commentary as the ‘Israel-Hamas War’.<sup>172</sup>

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<sup>162</sup> Israel Ministry of Foreign Affairs, Statement by PM Netanyahu (16 December 2023), <https://www.gov.il/en/departments/news/statement-by-pm-netanyahu-16-dec-2023>.

<sup>163</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #33* (8 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-33>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #70* (15 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-70>

<sup>164</sup> “About 200,000 Israelis internally displaced amid ongoing Gaza war, tensions in north”, *The Times of Israel* (22 October 2023), [https://www.timesofisrael.com/about\\_200000-israelis-internally-displaced-amid-ongoing-gaza-war-tensions-in-north/](https://www.timesofisrael.com/about_200000-israelis-internally-displaced-amid-ongoing-gaza-war-tensions-in-north/).

<sup>165</sup> International Criminal Court, “Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel” (30 October 2023), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-ke-cairo-situation-state-palestine-and-israel>; International Criminal Court “ICC Prosecutor, Karim A. A. Khan KC, concludes first visit to Israel and State of Palestine by an ICC Prosecutor: “We must show that the law is there, on the front lines, and that it is capable of protecting all” (3 December 2023), <https://www.icc-cpi.int/news/icc-prosecutor-karim-khan-ke-concludes-first-visit-israel-and-state-palestine-icc-prosecutor>.

<sup>166</sup> General Assembly resolution ES10/21, Protection of civilians and upholding legal and humanitarian obligations, A/RES/ES-10/21 (27 October 2023); General Assembly resolution ES-10/22, Protection of civilians and upholding legal and humanitarian obligations, A/RES/ES-10/22 (12 December 2023).

<sup>167</sup> Security Council resolution 2712, The situation in the Middle East, including the Palestinian Question, S/RES/2712 (15 November 2023), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/359/02/PDF/N2335902.pdf?OpenElement>.

<sup>168</sup> Address by the Prime Minister of Israel, 11 October 2023, <https://www.youtube.com/watch?v=Jb1krYLPLZI>; Statement of the Prime Minister of Israel, 7 October 2023, <https://twitter.com/IsraeliPM/status/1710627409634922912>.

<sup>169</sup> Statement of the Prime Minister of Israel, 7 October 2023, <https://www.gov.il/en/departments/news/event-statement071023>.

<sup>170</sup> Statement of the Prime Minister of Israel, 9 October 2023, <https://www.gov.il/en/departments/news/event-statement091023>.

<sup>171</sup> See e.g., Prime Minister of Israel, @IsraeliPM, Tweet (1:49 pm, November 6, 2023), <https://twitter.com/IsraeliPM/status/1721525305393766829>;

Ministry of Foreign Affairs Israel, *President Herzog meets with Cypriot President Nikos Christodoulides* (21 October 2023), <https://www.gov.il/en/departments/news/president-herzog-meets-with-cypriot-president-nikos-christodoulides-21-oct-2023>;

Ministry of Foreign Affairs Israel, *President Herzog meets with UK Prime Minister Rishi Sunak* (19 October 2023), <https://www.gov.il/en/departments/news/president-herzog-meets-with-uk-prime-minister-rishi-sunak-19-oct-2023>.

<sup>172</sup> Ministry of Foreign Affairs, “*Swords of Iron: War in the South – Hamas’ Attack on Israel*”, (18 December 2023), <https://www.gov.il/en/departments/news/swords-of-iron-war-in-the-south-7-oct-2023>.

## C. Genocidal Acts Committed against the Palestinian People

43. This section provides an overview of the acts in which Israel has engaged that are genocidal in character, having regard to their nature, scope and context. These acts are ongoing, and ongoing in a conflict context, where Israel is deliberately imposing telecommunications blackouts on Gaza and restricting access by fact-finding bodies<sup>173</sup> and the international media.<sup>174</sup> At the same time Palestinian journalists are being killed at a rate significantly higher than has occurred in any conflict in the past 100 years. In the two months since 7 October 2023, the number of journalists killed already exceeded that of the entirety of World War II.<sup>175</sup> Further detail will be provided regarding these acts over the course of these proceedings. However, such information as is available establishes that Israel: (1) is engaged in killing Palestinians in Gaza — including Palestinian children — in large numbers; (2) is causing serious bodily and mental harm to Palestinians in Gaza, including Palestinian children; and is inflicting on them conditions of life intended to bring about their destruction as a group. Those conditions include: (3) expulsions from homes and mass displacement, alongside the large-scale destruction of homes and residential areas; (4) deprivation of access to adequate food and water; (4) deprivation of access to adequate medical care; (5) deprivation of access to adequate shelter, clothes, hygiene and sanitation; and (6) the destruction of the life of the Palestinian people in Gaza; and (7) imposing measures intended to prevent Palestinian births.

44. United Nations chiefs and the International Committee of the Red Cross ('ICRC') — no strangers to conflict situations — have called what is unfolding in Gaza a "crisis of humanity".<sup>176</sup> "Humanitarian veterans who have served in war zones and disasters around the world — people who have seen everything — [say] they have seen nothing like what they see today in Gaza" (United Nations

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<sup>173</sup> There is a long-standing practice of Israel restricting access to the oPt, alongside expelling and/or denying visas to UN staff, Special Rapporteurs and fact-finding teams, including UN commissions of inquiry: see, e.g., United Nations, General Assembly, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/78/198 (5 September 2023), para. 4, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/260/71/PDF/N2326071.pdf?OpenElement>; UN OCHA, *Bachelet deplores Israel's failure to grant visas for UN Human Rights staff in the occupied Palestinian territory* (30 August 2022), <https://www.ohchr.org/en/press-releases/2022/08/bachelet-deplores-israels-failure-grant-visas-un-human-rights-staff-occupied>; UN OHCHR, *Occupied Palestinian Territory: UN human rights expert says Israel bent on further annexation* (12 July 2019), <https://www.ohchr.org/en/press-releases/2019/07/occupied-palestinian-territory-un-human-rights-expert-says-israel-bent>; United Nations, General Assembly, Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/, A/HRC/29/52 (24 June 2015), para. 3, <https://www.ohchr.org/en/hr-bodies/hrc/co-i-gaza-conflict/report-co-i-gaza#report>; United Nations Human Rights Council, Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, A/HRC/40/74 (27 February 2019), para. 3, [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoIOP/T/A\\_HRC\\_40\\_74.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoIOP/T/A_HRC_40_74.pdf); Rebekah Yeager-Malkin, Israel will not renew visa of one UN employee, denies visa for another citing UN response to Hamas attacks", *Jurist* (26 December 2023), <https://www.jurist.org/news/2023/12/israel-will-not-renew-the-visa-of-one-un-employee-denies-the-visa-of-another/>.

<sup>174</sup> To date, only correspondents embedded with and subject to the censorship of the Israeli army have been permitted entry; see, e.g., "Foreign correspondents petition Israel Supreme Court for Gaza access", *Reuters* (19 December 2023), <https://www.reuters.com/world/middle-east/foreign-correspondents-petition-israel-supreme-court-gaza-access-2023-12-19/>.

<sup>175</sup> IFJ, *Ninety-four journalists killed in 2023, says IFJ* (8 December 2023), <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/ninety-four-journalists-killed-in-2023-says-ifj>; "How deadly is the Israel-Gaza war for journalists?", *AlJazeera* (9 November 2023), <https://www.aljazeera.com/news/2023/11/9/how-deadly-is-the-israel-gaza-war-for-journalists>.

<sup>176</sup> United Nations, *Press Conference by Secretary-General António Guterres at United Nations Headquarters* (6 November 2023), <https://press.un.org/en/2023/sgsm22021.doc.htm>; "UN chief says Gaza 'crisis of humanity' demands immediate ceasefire", *The Times of Israel* (6 November 2023), [https://www.timesofisrael.com/liveblog\\_entry/un-chief-says-gaza-crisis-of-humanity-demands-immediate-ceasefire/](https://www.timesofisrael.com/liveblog_entry/un-chief-says-gaza-crisis-of-humanity-demands-immediate-ceasefire/).

Secretary-General).<sup>177</sup> This is “a moral failure” causing “intolerable suffering” (ICRC President).<sup>178</sup> “This is an apocalyptic situation now, because these are the remnants of a nation being driven into a pocket in the south” (Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator at the United Nations).<sup>179</sup> They describe Palestinians in Gaza as “living in utter, deepening horror” as they “continue to be relentlessly bombarded by Israel... suffering death, siege, destruction and deprivation of the most essential human needs such as food, water, lifesaving medical supplies and other essentials on a massive scale”; it is “apocalyptic” (United Nations High Commissioner for Human Rights).<sup>180</sup> “An entire population is besieged and under attack, denied access to the essentials for survival, bombed in their homes, shelters, hospitals and places of worship” (Principals of the United Nations Inter-Agency Standing Committee).<sup>181</sup> Gaza is “the most dangerous place in the world to be a child” (United Nations International Children’s Emergency Fund (UNICEF) Executive Director).<sup>182</sup> “It is a “living hell”, it is “a war of all the superlative, everything is unprecedented” and “[w]e are out of words to describe what is going on” (UNRWA Commissioner-General).<sup>183</sup>

## *1. Killing Palestinians in Gaza*

45. Over 21,110 Palestinians are reported to have been killed since Israel began its military assault on Gaza, according to the Palestinian Health Ministry, at least 70 per cent of whom are believed to be women and children.<sup>184</sup> An additional estimated 7,780 people, including at least 4,700 women and

<sup>177</sup> UN, *Press Conference by Secretary-General António Guterres at United Nations Headquarters* (22 December 2023), <https://press.un.org/en/2023/sgsm22095.doc.htm>.

<sup>178</sup> ICRC, *Gaza: ICRC president calls for the protection of civilians in the face of “moral failure”* (4 December 2023), <https://www.icrcnewsroom.org/story/en/2075/gaza-icrc-president-calls-for-the-protection-of-civilians-in-the-face-of-moral-failure>; ICRC, *Israel and the occupied territories: President of the ICRC arrives in Gaza, calls for the protection of civilians* (4 December 2023), <https://www.icrc.org/en/document/israel-and-occupied-territories-president-icrc-arrives-gaza>.

<sup>179</sup> Julian Borger, “‘Apocalyptic’ conditions in southern Gaza blocking aid, top UN official says”, *The Guardian* (5 December 2023), <https://www.theguardian.com/world/2023/dec/05/un-martin-griffiths-idf-campaign-southern-gaza-apocalyptic-conditions>; Interview with UN Relief Chief Martin Griffiths on CNN, 22 November 2023, at Christiane Amanpour, @amanpour, Tweet (3:08 pm, November 22, 2023), <https://twitter.com/amanpour/status/1727343309486542926>.

<sup>180</sup> UN OHCHR, *Opening statement by UN High Commissioner for Human Rights Volker Türk at press conference ahead of Human Rights Day* (6 December 2023), <https://www.ohchr.org/en/statements-and-speeches/2023/12/opening-statement-un-high-commissioner-human-rights-volker-turk>.

<sup>181</sup> UN IASC, *Statement by Principals of the Inter-Agency Standing Committee, on the situation in Israel and the Occupied Palestinian Territory, “We need an immediate humanitarian ceasefire”* (5 November 2023), <https://interagencystandingcommittee.org/about-inter-agency-standing-committee/statement-principals-inter-agency-standards-situation-israel-and-occupied-palestinian-territory/>.

<sup>182</sup> UNICEF, *Statement by UNICEF Executive Director Catherine Russell on the Resumption of Fighting in Gaza* (1 December 2023), <https://www.unicef.org.uk/press-releases/statement-by-unicef-executive-director-catherine-russell-on-the-resumption-of-fighting-in-gaza/>.

<sup>183</sup> UNRWA, Remarks of UNRWA Commissioner-General Philippe Lazzarini at the Global Refugee Forum (13 December 2023), <https://www.unrwa.org/newsroom/official-statements/statement-unrwa-commissioner-general-philippe-lazzarini-global-refugee>; UNRWA, @UNRWA, Tweet (2:46 pm, December 12, 2023), <https://twitter.com/UNRWA/status/1734585541591486755>.

<sup>184</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 82* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-82>.

For a list of those killed before 27 October 2023, see: Ministry of Health, Palestine, *Detailed report for the victims of the Israeli aggression on the Gaza Strip during the period (7-26 October 2023)* (26 October 2023),

<https://web.archive.org/web/20231026174513/https://www.moh.gov.ps/portal/wp-content/uploads/2023/10/تقرير-نهائي-بساماء-الشهداء-1.pdf>. Due to the ongoing bombardment, the UN is currently relying on numbers provided by the Gaza Ministry of Health. UN officials see no reason to doubt the figures, which have not been inflated in the past, and which recent studies demonstrate are not now being inflated, see e.g., Adam Taylor, "More than 20,000 dead in Gaza, a historic human toll", *Washington Post* (22 December 2023), <https://www.washingtonpost.com/world/2023/12/22/gaza-israel-war-20000-dead/>; and Benjamin Q Huny, Elizabeth T Chin, Paul B Spiegel, "No evidence of inflated mortality reporting from the Gaza Ministry of Health", *The Lancet* (6 December 2023), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(23\)02713-7/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)02713-7/fulltext). There may in fact be underreporting, as those whose bodies are not brought to a hospital or morgue are not routinely included in the casualty numbers. In circumstances where so many hospitals have ceased

children, are reported missing, presumed dead under the rubble of destroyed buildings — dying slow deaths — or decomposing in the streets where they were killed.<sup>185</sup> Israel's blockage of adequate fuel imports, its destruction of infrastructure and the communication blackouts it imposes severely hamper rescue attempts. As of 8 December 2023, only one rescue vehicle was reportedly operational in the whole of Gaza, with survivors forced to try to dig for survivors with their bare hands.<sup>186</sup> The level of Israel's killing is so extensive that bodies are being buried in mass graves, often unidentified.<sup>187</sup>

46. “Nowhere is safe in Gaza”, as the United Nations Secretary-General — and many other United Nations experts — have now made clear to the international community.<sup>188</sup> Palestinians in Gaza have been killed in their homes, in places where they sought shelter, in hospitals, in UNWRA schools, in churches, in mosques, and as they tried to find food and water for their families. They have been killed if they failed to evacuate, in the places to which they fled, and even while they attempted to flee along Israeli declared “safe routes”.<sup>189</sup> Reports are multiplying of Israeli soldiers performing summary executions, including of multiple members of the same family — men, women and older people.<sup>190</sup> One such account is the reported execution in Gaza City of at least 11 male members of the Annan family and their relatives — boys and men, said to have been separated out by Israeli soldiers and shot in front of their family — before the women and children were then attacked.<sup>191</sup> There are also reports of unarmed people — including Israeli hostages — being shot dead on sight, despite posing no threat, including while waving white flags.<sup>192</sup> Attacks on Palestinian homes and residential blocks account for

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functioning, where Palestinians are unable to reach them — and indeed, as there are repeated reports of people having to resort to burying bodies on the street where they find them, the underreporting could be significant. At present, approximately 7,780 people are missing, presumed dead, but not yet included in the official statistics, Zeina Jamaluddine, Francesco Checchi, Oona M R Campbell, “Excess mortality in Gaza: 7-26, 2023”, *The Lancet* (26 November 2023), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(23\)02640-5/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)02640-5/fulltext).

<sup>185</sup> Red Crescent Society, *Palestine Red Crescent Society Response Report As of Saturday, October 7th 2023, 6:00 PM Until Sunday, December 24<sup>th</sup> 2023, 24:00 AM* (24 December 2023), p.1, <https://www.palestinercs.org/public/files/image/2023/News/latestresponse23012023/en%202020%202023.pdf>.

<sup>186</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #63* (8 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-63>; and Wafaa Shurafa and Samy Magdy, “Thousands of bodies lie buried in rubble in Gaza. Families dig to retrieve them, often by hand”, *AP* (17 November 2023), <https://apnews.com/article/israel-palestinians-gaza-buried-rubble-airstrikes-89c0e8d0934d573d94d2fbfeba44d933>.

<sup>187</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #48* (23 November 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-48-enarhe>.

<sup>188</sup> Letter by the Secretary-General to the President of Security Council invoking Article 99 of the United Nations Charter, (6 December 2023), [https://www.un.org/sites/un2.un.org/files/sg\\_letter\\_of\\_6\\_december\\_gaza.pdf](https://www.un.org/sites/un2.un.org/files/sg_letter_of_6_december_gaza.pdf); UNICEF, *A dystopic scene that seemed to stretch on endlessly* (November 2023), [https://www.icrc.org/en/document/israel-and-occupied-territories-deescalate-now-prevent-further-human-suffering](https://www.unicef.org.uk/what-we-do/emergencies/no-safety-for-children-in-gaza/#:~:text=%E2%80%9CUnless%20those%20conditions%20are%20met,need%20a%20humanitarian%20ceasefire%20now.%E2%80%9D</a>; ICRC, <i>Israel and the occupied territories: Deescalate now to prevent further human suffering</i> (28 October 2023), <a href=).

<sup>189</sup> UN OHCHR, *UN Human Rights has “grave fears” about toll on civilians in Gaza* (17 October 2023), <https://www.ohchr.org/en/press-briefing-notes/2023/10/un-human-rights-has-grave-fears-about-toll-civilians-gaza>; “Gaza civilians afraid to leave home after bombing of ‘safe routes’”, *The Guardian* (15 October 2023), <https://www.theguardian.com/world/2023/oct/14/gaza-civilians-afraid-to-leave-home-after-bombing-of-safe-routes>; ICRC, *The ICRC urges protection for Gaza civilians evacuating and staying behind* (13 November 2023), <https://blogs.icrc.org/ir/en/2023/11/the-icrc-urges-protection-for-gaza-civilians-evacuating-and-staying-behind/>.

<sup>190</sup> UN, *The Question of Palestine, Unlawful Killings in Gaza* (20 December 2023), <https://www.un.org/unispal/document/unlawful-killings-in-gaza-city-ohchr-press-release/>. Euro-Med Human Rights Monitor, *Euro-Med Monitor sends UN rapporteurs, ICC Prosecutor primary report documenting dozens of field execution cases in Gaza* (25 December 2023), <https://euromedmonitor.org/en/article/6058>.

<sup>191</sup> UN, *The Question of Palestine, Unlawful Killings in Gaza* (20 December 2023), <https://www.un.org/unispal/document/unlawful-killings-in-gaza-city-ohchr-press-release/>.

<sup>192</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #70* (15 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-70>; “Israeli soldiers kill hostages waving white flag after mistaking them for Hamas fighters”, *Financial Times* (17 December 2023), <https://www.ft.com/content/2e299603-2fed-4855-9694-9801008c48dc>.

a significant number of the dead,<sup>193</sup> with Israel reportedly using Artificial Intelligence ('AI') to generate up to 100 bombing targets per day.<sup>194</sup>

47. Israel is said to be dropping 'dumb' (*i.e.*, unguided) bombs on Gaza,<sup>195</sup> as well as heavy bombs weighing up to 2,000 lbs (900 kgs),<sup>196</sup> which have a predicted lethal radius "of up to 360m", and are "expected to cause severe injury and damage as far as 800 metres from the point of impact".<sup>197</sup> This weaponry is being deployed in one of the most densely populated areas in the world, where approximately one in every 100 people has now been killed. Some Israeli strikes on Palestinian homes and refugee camps have killed upwards of 110 Palestinians.<sup>198</sup> An estimated 1,779 Palestinian families in Gaza have lost multiple family members, and hundreds of multigenerational families have been killed in their entirety, with no remaining survivors — mothers, fathers, children, siblings, grandparents, aunts, cousins — often all killed together.<sup>199</sup> By 7 November 2023, 312 Palestinian families in Gaza had lost over 10 members each.<sup>200</sup> Numerous Palestinian families have lost upwards of 70 members each.<sup>201</sup> The level of mortality in Palestinian families is such that medics in Gaza have had to coin a new acronym: 'WCNSF', meaning 'wounded child, no surviving family'.<sup>202</sup>

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<sup>193</sup> UN OCHA *Hostilities in the Gaza Strip and Israel | Flash Update #72* (18 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-72>.

<sup>194</sup> Yuval Abraham, "A mass assassination factory": Inside Israel's calculated bombing of Gaza", *+972 Magazine* (30 November 2023), <https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/>; and Harry Davies, Bethan McKernan and Dan Sabbagh, "'The Gospel': how Israel uses AI to select bombing targets in Gaza", *The Guardian* (1 December 2023), <https://www.theguardian.com/world/2023/dec/01/the-gospel-how-israel-uses-ai-to-select-bombing-targets>.

<sup>195</sup> Office of the Director of National Intelligence assessment, reported by Natasha Bertrand and Kattie Bo Lillis, "Exclusive: Nearly half of the Israeli munitions dropped on Gaza are imprecise 'dumb bombs', US intelligence assessment finds", *CNN* (13 December 2023), <https://edition.cnn.com/2023/12/13/politics/intelligence-assessment-dumb-bombs-israel-gaza/index.html>; and John Paul Rathbone, "Military briefing: the Israeli bombs raining on Gaza", *Financial Times* (6 December 2023), <https://www.ft.com/content/7b407c2e-8149-4d83-be01-72dcae8aee7b>.

<sup>196</sup> Amnesty International, *Israel/OPT: US-made munitions killed 43 civilians in two documented Israeli air strikes in Gaza – new investigation* (5 December 2023), <https://www.amnesty.org/en/latest/news/2023/12/israel-opt-us-made-munitions-killed-43-civilians-in-two-documented-israeli-air-strikes-in-gaza-new-investigation/>.

<sup>197</sup> Action on Armed Violence (AOAV), *Explosive weapons with large destructive radius: air-dropped bombs (the Mark 80 series and Paveway attachments)* (1 March 2016), <https://aoav.org.uk/2016/large-destructive-radius-air-dropped-bombs-the-mark-80-series-and-paveway-attachments/>; see also: Robin Stein, Haley Willis, Ishaan Jhaveri, Danielle Miller, Aaron Byrd and Natalie Reneau, "A Times Investigation Tracked Israel's Use of One of Its Most Destructive Bombs in South Gaza", *New York Times* (21 December 2023), <https://www.nytimes.com/2023/12/21/world/middleeast/israel-gaza-bomb-investigation.html>.

<sup>198</sup> David Gritten, "Gaza health ministry says Israeli strikes kill 110 in Jabalia", *BBC News* (18 December 2023), <https://www.bbc.com/news/world-middle-east-67749557>.

<sup>199</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 78* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-78>; Amnesty International, *Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza*, (20 October 2023), <https://www.amnesty.org/en/latest/news/2023/10/damning-evidence-of-war-crimes-as-israeli-attacks-wipe-out-entire-families-in-gaza/>; Child Rights Connect, *Child Rights Connect deplores the grave violations of children's rights in Israel and the occupied Palestinian territory* (23 October 2023), <https://childrightsconnect.org/child-rights-connect-deplores-the-grave-violations-of-childrens-rights-in-israel-and-the-occupied-palestinian-territory/>.

<sup>200</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 32* (7 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-32>.

<sup>201</sup> See e.g., UNDP, *Statement on the killing of UNDP staff member & family in Gaza* (22 December 2023), <https://www.undp.org/speeches/statement-killing-undp-staff-member-family-gaza>; "Palestinian-Americans speak out about family, friends killed in Israel-Hamas war", *ABC Eyewitness News* (19 December 2023), <https://abc7ny.com/palestinian-american-gaza-war-victims/14202160/>.

<sup>202</sup> Save the Children, *Children's Mental Health in Gaza Pushed Beyond Breaking Point After Nearly a Month Of Siege and Bombardment* (7 November 2023), <https://www.savethechildren.org.uk/news/media-centre/press-releases/childrens-mental-health-in-gaza-deteriorates-one-month-on->

48. For Palestinian children, in particular, “[d]eath is everywhere” and “nowhere is safe”.<sup>203</sup> A total of over 7,729 Palestinian children have been killed in Gaza to date — over 115 Palestinian children in Gaza are killed every day.<sup>204</sup> It is estimated that more Palestinian children were killed in the first three weeks in Gaza alone (a total of 3,195) than the total number of children killed each year across the world’s conflict zones since 2019.<sup>205</sup> The scale of Palestinian child killings in Gaza is such that United Nations chiefs have described it as “a graveyard for children”.<sup>206</sup> Indeed, the unprecedented rate of Palestinian child casualties has prompted UNICEF’s spokesperson to call Israel’s attacks on Gaza a “war on children”. He explained:

“Most crises, they impact children terribly because children are the most vulnerable, but most have about a casualty rate of children of around 20 per cent. This is 40. This is twice as lethal to children as many conflicts we’ve seen in the last 15 or 20 years, and unfortunately that is because of the sheer density of population, the indiscriminate nature, and when we see that there’s been not even lip service to safe zones having water and sanitation for children and young girls. That same disregard for children is being shown in the bombardments. That’s why we see 40 per cent of casualties are children. That’s why it’s a war on children.”<sup>207</sup>

49. Doctors, journalists, teachers, academics and other professionals are also being killed at wholly unprecedented rates. To date, Israel has killed: over 311 doctors, nurses and other health workers, including doctors and ambulance drivers killed on duty;<sup>208</sup> 103 journalists, amounting to over one per day,<sup>209</sup> and more than 73 per cent of the total number of journalists and media workers killed globally in 2023;<sup>210</sup> 40 civil defence workers — responsible for helping to dig victims out of the rubble — killed while on duty; and over 209 teachers and educational staff.<sup>211</sup> 144 United Nations employees have also been killed, the “highest number of aid workers killed in UN history in such a short time”.<sup>212</sup> It is

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<sup>203</sup> UNICEF, *Press Release: The war on children resumes: Geneva Palais briefing note* (1 December 2023), <https://www.unicef.org/press-releases/war-children-resumes-geneva-palais-briefing-note>; James Elder (UNICEF Spokesperson), “Bearing witness: No safety for children in Gaza”, UNICEF (15 December 2023), <https://www.unicef.org/blog/bearing-witness-no-safety-children-gaza>.

<sup>204</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 73* (19 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-73>; UN, *United Nations Türkiye, Gaza crisis: Aid agencies warn of ‘tragic, avoidable surge’ in child deaths* (22 November 2023), <https://turkiye.un.org/en/253479-gaza-crisis-aid-agencies-warn-%E2%80%99tragic-avoidable-surge%E2%80%99-child-deaths>.

<sup>205</sup> Save the Children, *Press Release: GAZA: 3,195 children killed in three weeks surpasses annual number of children killed in conflict zones since 2019* (29 October 2023), <https://www.savethechildren.net/news/gaza-3195-children-killed-three-weeks-surpasses-annual-number-children-killed-conflict-zones>.

<sup>206</sup> UNICEF, *Gaza has become a graveyard for thousands of children* (31 October 2023), <https://www.unicef.org/press-releases/gaza-has-become-graveyard-thousands-children>.

<sup>207</sup> Interview with James Elder, UNICEF Spokesperson by CNN, “CNN speaks to UNICEF about dire situation in Gaza”, CNN (15 December 2023), <https://edition.cnn.com/videos/world/2023/12/15/exp-unicef-gaza-james-elder-live-121402psseg1-cnni-world.cnn>.

<sup>208</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 82* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-82>; International Federation of Journalists, *Ninety-four journalists killed in 2023, says IFJ* (8 December 2023), <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/ninety-four-journalists-killed-in-2023-says-ifj>.

<sup>209</sup> *Ibid.*

<sup>210</sup> UN OHCHR, *Killings of journalists and their family members in Gaza – OHCHR press release* (14 December 2023), <https://www.un.org/unispal/document/killings-of-journalists-and-their-family-members-in-gaza-dec14-2023/>.

<sup>211</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #78* (27 December 2023), <https://reliefweb.int/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-78#:~:text=According%20to%20Ministry%20of%20Education,teachers%20were%20injured%20in%20Gaza>.

<sup>212</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 82* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-82>; UN News, *UN honours 101 staff killed in Gaza conflict* (13 November 2023), <https://news.un.org/en/story/2023/11/1143512>.

estimated that “it will take years to recover the remains of people from beneath the rubble” and that “the costly, technical process will not result in the identification of each body”.<sup>213</sup>

50. In addition to being killed by Israeli weaponry, Palestinians in Gaza are also at immediate risk of death by starvation, dehydration and disease as a result of the ongoing siege by Israel, the insufficient aid being allowed through to the Palestinian population, and the extreme difficulties in distributing such limited aid that is permitted to enter the territory due to the decimation of Gaza’s infrastructure in Israel’s military attacks.<sup>214</sup>

## 2. *Causing Serious Bodily and Mental Harm to Palestinians in Gaza*

51. Over 55,243 Palestinians have been wounded in Israel’s military attacks on Gaza since 7 October 2023, the majority of them women and children.<sup>215</sup> Burns and amputations are typical injuries,<sup>216</sup> with an estimated 1,000 children having lost one or both legs.<sup>217</sup> There are reports of Israeli forces using white phosphorus in densely populated areas in Gaza: as the World Health Organization describes, even small amounts of white phosphorus can cause deep and severe burns, penetrating even through bone, and capable of reigniting after initial treatment.<sup>218</sup> There are no functioning hospitals in the North of Gaza, in particular, such that injured persons are reduced to “waiting to die”, unable to seek surgery or medical treatment beyond first aid, dying slow, agonising deaths from their injuries or from resultant infections.<sup>219</sup>

52. The extreme levels of bombardment and lack of any safe areas are also causing severe mental trauma in the Palestinian population in Gaza.<sup>220</sup> Even before the latest onslaught, Palestinians in Gaza suffered severe trauma from prior attacks: 80 per cent of Palestinian children experienced higher levels of emotional distress, demonstrating bedwetting (79 per cent) and reactive mutism (59 per cent), and engaging in self-harm (59 per cent), and suicidal thoughts (55 per cent).<sup>221</sup> Eleven weeks of relentless bombardment, displacement and loss will necessarily have led to a further increase in those figures, particularly for the estimated tens of thousands of Palestinian children who have lost at least one parent, and those who are the sole surviving members of their families.<sup>222</sup> For the families who remain intact

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<sup>213</sup> Bassam Massou and Maggie Fick, “Gaza death toll: why counting the dead has become a daily struggle”, *Reuters* (21 December 2023), <https://www.reuters.com/world/middle-east/fight-keep-counting-dead-gaza-2023-12-21/>.

<sup>214</sup> UN News, *Gaza humanitarian disaster heralds ‘breakdown’ of society* (8 December 2023), <https://news.un.org/en/story/2023/12/1144547>; UN News, *Gaza: Aid access to north entirely blocked as war escalates in the south* (4 December 2023), <https://news.un.org/en/story/2023/12/1144302>.

<sup>215</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #78* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-78>.

<sup>216</sup> WHO, *WHO leads very high-risk joint humanitarian mission to Al-Shifa Hospital in Gaza* (18 November 2023), <https://www.who.int/news/item/18-11-2023-who-leads-very-high-risk-joint-humanitarian-mission-to-al-shifa-hospital-in-gaza>.

<sup>217</sup> UN News, *‘Ten weeks of hell’ for children in Gaza: UNICEF* (19 December 2023), <https://news.un.org/en/story/2023/12/1144927>.

<sup>218</sup> Amnesty International, *Israel/OPT identifying the Israeli army’s use of white phosphorus in Gaza* (13 October 2023), <https://amnesty.ca/human-rights-news/israel-opt-identifying-the-israeli-armys-use-of-white-phosphorus-in-gaza/>; WHO, *White Phosphorus* (20 October 2023), <https://www.who.int/news-room/detail/white-phosphorus>.

<sup>219</sup> UN News, *UPDATED: Injured patients ‘waiting to die’ in northern Gaza as last hospital shuts down, amid rising ‘catastrophic’ hunger levels* (21 December 2023), <https://news.un.org/en/story/2023/12/1145017>.

<sup>220</sup> WHO, *Escalation of Violence in Israel and the occupied Palestinian territory* (13 November 2023), [https://apps.who.int/gb/COVID-19/pdf\\_files/2023/13\\_11/Item1.pdf](https://apps.who.int/gb/COVID-19/pdf_files/2023/13_11/Item1.pdf); UN United Nations Office at Geneva, *Nowhere and no one is safe in Gaza, WHO chief tells Security Council* (10 November 2023), <https://www.ungeneva.org/en/news-media/news/2023/11/87337/nowhere-and-no-one-safe-gaza-who-chief-tells-security-council>.

<sup>221</sup> Save the Children, *Trapped: The impact of 15 years of blockade on the mental health of Gaza’s children* (2022), [https://resourcecentre.savethechildren.net/pdf/gaza\\_blockade\\_mental\\_health\\_palestinian\\_children\\_2022.pdf](https://resourcecentre.savethechildren.net/pdf/gaza_blockade_mental_health_palestinian_children_2022.pdf).

<sup>222</sup> Save the Children, *Children’s Mental Health in Gaza Pushed Beyond Breaking Point After Nearly a Month of Siege and Bombardment* (7 November 2023), <https://www.savethechildren.org.uk/news/media-centre/press-releases/childrens-mental->

or partially intact, “it’s about doing everything you can so your child doesn’t realise that you’ve lost control”.<sup>223</sup>

53. It is already known that “[r]epeated exposure to conflict and violence, including witnessing and experiencing housing demolition, combined with Israel’s siege of Gaza since 2007” is “associated with high levels of psychological distress among Palestinians”.<sup>224</sup> Indeed, the United Nations Security Council in Resolution 2712 (2023) expressed its “deep concern that the disruption of access to education has a dramatic impact on children, and that conflict has lifelong effects on their physical and mental health”.<sup>225</sup> That disruption and its “dramatic impact” on children must be considered, in particular, in the context of the number of Palestinian students and educators who have been killed (4,037 and 209 respectively), and wounded (estimated at 7,259),<sup>226</sup> and the number of Palestinian schools having been damaged or destroyed (352, or 74 per cent of the schools in the whole of Gaza).<sup>227</sup> Medical professionals assess that “[t]he health effects on all Palestinian children, women, men, older people, people with disabilities, and people of marginalised identities are immense”.<sup>228</sup> An Emergency Coordinator for Médecins sans Frontières interviewed on her return from five weeks in Gaza described:

“[I]t’s even worse in reality than it looks. It’s - the amount of suffering is just something... incomparable. It’s really unbearable. I’m speechless when I try and think of the future of this children. It’s generations of children who will be handicapped, who will be traumatized. The very children in our mental health program are telling us that they would rather die than continue living in Gaza now.”<sup>229</sup>

54. Alongside its military campaign, Israel has engaged in the dehumanisation, and cruel, inhuman and degrading treatment of members Palestinians in Gaza. Large numbers of Palestinian civilians, including children, have reportedly been arrested, blindfolded, forced to undress and remain outside in the cold weather, before being forced on to trucks and taken to unknown locations.<sup>230</sup> Medics and first responders, in particular, have been repeatedly detained by Israeli forces, with many being detained incommunicado at unknown locations.<sup>231</sup> Videos published by Israeli media on Christmas Day appeared

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[health-in-gaza-deteriorates-one-month-on-](#); Maram Humaid, “‘War is stupid and I want it to end’: Injured Palestinian children speak”, *Al Jazeera* (15 December 2023), <https://www.aljazeera.com/news/2023/12/15/war-is-stupid-and-i-want-it-to-end-injured-palestinian-children-say#:~:text=At%20least%202024%20C000%20children%20have,with%20some%20in%20critical%20condition..>

<sup>223</sup> UNICEF spokesperson, quoted in: Neda Samir Hamdouna, Aseel Mousa and Julian Borger, “The plight of ‘WCNSFs’ – wounded child, no surviving family”, *The Guardian* (22 December 2023), <https://www.theguardian.com/world/2023/dec/22/the-plight-of-gazas-wcnsfs-wounded-child-no-surviving-family>.

<sup>224</sup> Alix Faddoul, Geordan Shannon, Khudejha Ashgar, Yamina Boukari, James Smith and Amy Neilson, “The health dimensions of violence in Palestine: a call to prevent genocide”, *The Lancet* (18 December 2023), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(23\)02751-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)02751-4/fulltext).

<sup>225</sup> Security Council resolution 2712, The situation in the Middle East, including the Palestinian Question, S/RES/2712 (15 November 2023), [https://undocs.org/S/RES/2712\(2023\)](https://undocs.org/S/RES/2712(2023)).

<sup>226</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #78* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-78>.

<sup>227</sup> *Ibid.*

<sup>228</sup> Alix Faddoul, Geordan Shannon, Khudejha Ashgar, Yamina Boukari, James Smith and Amy Neilson, “The health dimensions of violence in Palestine: a call to prevent genocide”, *The Lancet* (18 December 2023), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(23\)02751-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)02751-4/fulltext).

<sup>229</sup> Aya Batrawy, “An aid worker describes the ‘unbearable’ suffering of wounded children in Gaza”, *NPR* (26 December 2023), <https://www.npr.org/2023/12/26/1221743518/an-aid-worker-describes-the-unbearable-suffering-of-wounded-children-in-gaza#:~:text=Palestinian%20health%20officials%20say%20in,trying%20to%20care%20for%20children>.

<sup>230</sup> UN OHCHR, *OHCHR is alarmed at Israeli strikes on or in the vicinities of schools and hospitals in the north of Gaza* (9 December 2023), <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-ohchr-alarmed-israeli-strikes-or-vicinities-schools-and-hospitals-north-gaza>.

<sup>231</sup> WHO, *WHO calls for protection of humanitarian space in Gaza following serious incidents in high-risk mission to transfer patients, deliver health supplies* (12 December 2023), <https://www.who.int/news/item/12-12-2023-who-calls-for-transfer-patients-deliver-health-supplies>.

to show hundreds of Palestinians, rounded up inside Al Yarmouk football stadium in Gaza City, “including children, older people and persons with disabilities, being forced to strip to their underwear in degrading conditions”.<sup>232</sup> Many Palestinian detainees who have been released report having been subjected to torture and ill-treatment, including the deprivation of food, water, shelter and access to toilets,<sup>233</sup> the United Nations Office for the Coordination of Humanitarian Affairs (“OCHA”) reports “video footage showing bruises and burns on the ... bodies” of detainees.<sup>234</sup> Images of mutilated and burned corpses — alongside videos of armed attacks by Israeli soldiers — billed as ‘exclusive content from the Gaza Strip’, are reportedly circulated in Israel via a social media ‘Telegram’ channel called ‘72 Virgins - Uncensored’.<sup>235</sup>

### 3. Mass expulsion from homes and displacement of Palestinians in Gaza

55. It is estimated that over 1.9 million Palestinians out of Gaza’s population of 2.3 million people — approximately 85 per cent of the population — have been forced from their homes.<sup>236</sup> There is nowhere safe for them to flee to, those who cannot leave or refuse to be displaced have been killed or are at extreme risk of being killed in their homes.

56. Israel is repeatedly issuing ‘evacuation orders’ demanding that Palestinian civilians in certain areas of Gaza leave their homes for other areas. The first such order, issued on 13 October 2023 demanded that the 1.1 million Palestinians living or otherwise present in the North of Gaza, including Gaza City, move to the South of Gaza within a 24-hour window.<sup>237</sup> The International Committee of the Red Cross warned that the evacuation directive, impacting approximately 36 per cent of Gaza’s territory — combined with the complete siege of Gaza — was not compatible with international humanitarian law.<sup>238</sup> The World Health Organization warned that it “could be tantamount to a death sentence” for hospital patients.<sup>239</sup> The evacuation was, however, maintained and has been reissued on a number of occasions, including on 28 October 2023,<sup>240</sup> ahead of the Israeli announcement of ground operations in

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[protection-of-humanitarian-space-in-gaza-following-serious-incidents-in-high-risk-mission-to-transfer-patients--deliver-health-supplies](#); “Gaza healthcare workers ‘taken’ by Israeli forces, says doctor, amid ‘horrendous conditions’ at hospitals”, CNN (13 December 2023), <https://edition.cnn.com/2023/12/13/middleeast/gaza-kamal-adwan-hospital-doctors-idf-intl/index.html>.

<sup>232</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #77* (26 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-77>; Quds News Network, @QudsNen, Tweet (4:02 pm, December 25, 2023), <https://twitter.com/QudsNen/status/1739315746163859606>.

<sup>233</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #69* (14 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-69>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #77* (26 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-77>.

<sup>234</sup> *Ibid.*

<sup>235</sup> See e.g., Yaniv Kubovich, “Graphic Videos and Incitement: How the IDF Is Misleading Israelis on Telegram”, *Haaretz*, (12 December 2023), <https://www.haaretz.com/israel-news/security-aviation/2023-12-12/ty-article/.premium/graphic-videos-and-incitement-how-the-idf-is-misleading-israelis-on-telegram/0000018c-5ab5-df2f-adac-febd01c30000>.

<sup>236</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel – reported impact | Day #82* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-82>.

<sup>237</sup> Israeli Defence Forces, @IDF, Tweet (6:50am, October 13, 2023), <https://twitter.com/IDF/status/1712707301369434398>; UN OHCHR, *Israel must rescind evacuation order for northern Gaza and comply with international law: UN expert* (13 October 2023) <https://www.ohchr.org/en/press-releases/2023/10/israel-must-rescind-evacuation-order-northern-gaza-and-comply-international>.

<sup>238</sup> ICRC, *Israel and the occupied territories: Evacuation order of Gaza triggers catastrophic humanitarian consequences* (13 October 2023), <https://www.icrc.org/en/document/israel-and-occupied-territories-evacuation-order-of-gaza-triggers-catastrophic-humanitarian-consequences>.

<sup>239</sup> WHO, *Evacuation orders by Israel to hospitals in northern Gaza are a death sentence for the sick and injured* (14 October 2023), <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>.

<sup>240</sup> Israeli Defence Forces, @IDF, Tweet (2:16 pm, October 28, 2023), <https://twitter.com/IDF/status/1718240244129059167>.

northern Gaza, and again thereafter. Israel has also issued more specific evacuation notices, ordering people in certain parts of Gaza City to evacuate to other parts.<sup>241</sup> Many of those who are unwilling or unable to evacuate are then bombed in their homes.<sup>242</sup>

57. Palestinians fleeing the North pursuant to Israel's evacuation orders were urged to move south along Gaza's main traffic artery, Salah Al Din Road, on certain days, during certain designated hours. However, there were numerous reported instances of shelling along the routes and of other violence by Israeli forces against evacuating Palestinian civilians, including inhuman and degrading treatment, arbitrary arrests, unlawful detention, and killings.<sup>243</sup> Israel has also continued bombing south of Wadi Gaza throughout this time, killing many Palestinians who evacuated,<sup>244</sup> initially prompting many Palestinian families to seek to return north to at least risk being bombed in the familiar surrounding of their homes.<sup>245</sup> Some of those attempting to return north during the temporary pause in hostilities between Israel and Hamas were shot at by Israeli forces, who killed at least two people, and injured others.<sup>246</sup>

58. On 1 December 2023 — the end of the eight-day temporary truce between Israel and Hamas — Israel began dropping leaflets, urging Palestinians to leave areas in the South to which they had previously been told to flee — an area constituting approximately 30 per cent of Gaza.<sup>247</sup> As stated by the United Nations Special Rapporteur on the human rights of internally displaced persons, “Israel has reneged on promises of safety made to those who complied with its order to evacuate northern Gaza two months ago. Now, they have been forcibly displaced again, alongside the population of southern Gaza”.<sup>248</sup> Israel also published a detailed map online, dividing the Gaza Strip into hundreds of small areas.<sup>249</sup> The map was ostensibly intended to provide notice of Israeli orders to evacuate individual areas ahead of planned air strikes. However, as noted by OCHA, “the publication does not specify where people should evacuate to”. Moreover, after months of bombardment — amidst the ongoing electricity blackout imposed by Israel since 11 October 2023 and regular telecommunications blackouts<sup>250</sup> — most Palestinians in Gaza have little access to electricity to charge phones or other

<sup>241</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #57* (2 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-57>.

<sup>242</sup> *Ibid.*

<sup>243</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #40* (15 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-40>; UN OCHA, *Today's top news: Occupied Palestinian Territory, South Sudan, Somalia, Ukraine* (9 November 2023), <https://www.unocha.org/news/todays-top-news-occupied-palestinian-territory-south-sudan-somalia-ukraine>.

<sup>244</sup> See e.g. UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #9* (15 October 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-9>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #10* (16 October 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-10>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #24* (30 October 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-24>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #25* (31 October 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-25>.

<sup>245</sup> According to UNRWA, approximately 30,000 Palestinians returned North due to the lack of any safe zone, see UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #19* (25 October 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-19>.

<sup>246</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #53* (28 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-53>.

<sup>247</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #61* (6 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-61>.

<sup>248</sup> UN OHCHR, *Israel working to expel civilian population of Gaza, UN expert warns* (22 December 2023), <https://www.ohchr.org/en/press-releases/2023/12/israel-working-expel-civilian-population-gaza-un-expert-warns>.

<sup>249</sup> IDF, “Based on the ethics and values of our military institution, the IDF publishes a list of block numbers to guide Gaza residents in evacuating the targeted areas” (1 December 2023), [https://www.idf.il/ar/-جيش-ال الدفاع-الإسر ائي/swordsoffiron-011223-150/](https://www.idf.il/ar/-جيش-الدفاع-الإسرائيلي/-جيش-ال الدفاع-الإسر ائي/swordsoffiron-011223-150/).

<sup>250</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #77* (26 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-77>.

devices and no reliable way of accessing the map.<sup>251</sup> The United Nations Secretary-General has remarked that “the people of Gaza are being told to move like human pinballs – ricocheting between ever-smaller slivers of the south, without any of the basics for survival.”<sup>252</sup>

59. Palestinians are not safe, even in those “small … slivers”: as United Nations chiefs keep reiterating. “No place is safe”,<sup>253</sup> there is “nowhere safe to go”.<sup>254</sup> The Director of UNRWA Affairs in Gaza has pleaded that “[p]eople in Gaza are people … they are not pieces on a checkerboard - many have already been displaced several times. The Israeli Army just orders people to move into areas where there are ongoing airstrikes”.<sup>255</sup> This is creating terror.<sup>256</sup> The increased population density as a result of the evacuation ‘orders’ is also rendering Israeli strikes ever more lethal. On Christmas Eve itself, the Israeli army bombed Al Maghazi Refugee Camp in the Middle Area — an area to which tens of thousands of Palestinians had fled from the North — killing an estimated 86 people, including many women and children, and injuring many others.<sup>257</sup> A spokesperson for the OHCHR stated that they were “gravely concerned” that “this latest intense bombardment comes after Israeli forces ordered residents from the south of Wadi Gaza to move to Middle Gaza”.<sup>258</sup>

60. For many Palestinians, the forced evacuation from their homes is necessarily permanent. Israel has now damaged or destroyed an estimated 355,000 Palestinian homes — amounting to 60 per cent of the entire housing stock in Gaza. The extent of the destruction in the North of Gaza, in particular, has rendered it largely unliveable, with the destruction in the South reaching a similar level. As noted by the Special Rapporteur on the human rights of internally displaced persons, “Gaza’s housing and civilian infrastructure have been razed to the ground, frustrating any realistic prospects for displaced Gazans to return home, repeating a long history of mass forced displacement of Palestinians by Israel”.<sup>259</sup> The forced displacements in Gaza are genocidal, in that they are taking place in circumstances calculated to bring about the physical destruction of Palestinians in Gaza.<sup>260</sup>

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<sup>251</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #56* (1 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-56>.

<sup>252</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #63* (8 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-63>.

<sup>253</sup> UNRWA, *Gaza: UNRWA school sheltering displaced families is hit* (17 October 2023), <https://www.unrwa.org/newsroom/official-statements/gaza-unrwa-school-sheltering-displaced-families-hit>

<sup>254</sup> UN Secretary-General, *Statement attributable to the Spokesperson for the Secretary-General – on the Middle East* (4 December 2023), <https://www.un.org/sg/en/content/sg/statement/2023-12-04/statement-attributable-the-spokesperson-for-the-secretary-general-%E2%80%93-the-middle-east%C2%A0%C2%A0%C2%A0%C2%A0>.

<sup>255</sup> Thomas White, @TomWhiteGaza, Tweet (9:22 AM, December 23, 2023), [https://twitter.com/TomWhiteGaza/status/1738475273522205155?ref\\_src=twsrc%5Etfw](https://twitter.com/TomWhiteGaza/status/1738475273522205155?ref_src=twsrc%5Etfw).

<sup>256</sup> See, e.g., Israeli strikes on Deir Al Balah on 4 December, preceding civilians being told to flee to these areas, UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #60* (5 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-60>; and on the 12th of December 2023 the City of Rafah, after evacuation orders to Rafah, UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #67* (12 December 2023), following civilians being told to flee to these areas; Ben van der Merwe, Michelle Inez Simon Olive Enokido-Lineham, and Data & Forensics Unit “Israel said Gazans could flee to this neighbourhood - then it was hit”, *Sky News* (22 December 2023), <https://news.sky.com/story/israel-said-gazans-could-flee-to-this-neighbourhood-then-it-was-hit-13034936>; Ben van der Merwe, Michelle Inez Simon Olive Enokido-Lineham, and Data & Forensics Unit “Israel said Gazans could flee to this neighbourhood - then it was hit”, *Sky News* (22 December 2023), <https://news.sky.com/story/israel-said-gazans-could-flee-to-this-neighbourhood-then-it-was-hit-13034936>.

<sup>257</sup> UN OHCHR, *Comment by UN Human Rights Office spokesperson Seif Magango on continued bombardment of Middle Gaza* (26 December 2023), <https://www.ohchr.org/en/statements/2023/12/comment-un-human-rights-office-spokesperson-seif-magango-continued-bombardment>.

<sup>258</sup> *Ibid.*

<sup>259</sup> UN OHCHR, *Israel working to expel civilian population of Gaza, UN expert warns* (22 December 2023), <https://www.ohchr.org/en/press-releases/2023/12/israel-working-expel-civilian-population-gaza-un-expert-warns>.

<sup>260</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p.71-72, para. 163.

#### 4. Deprivation of access to adequate food and water to Palestinians in Gaza

61. On 9 October 2023, Israel declared a “complete siege” on Gaza, allowing no electricity, no food, no water and no fuel to enter the strip.<sup>261</sup> Although the siege has been partially alleviated since then, with some aid trucks being permitted in since 21 October 2023, this remains wholly insufficient, and well below the pre-October 2023 average of approximately 500 trucks per day.<sup>262</sup> Moreover, fuel imports — permitted since 21 November 2023 — are “well below the minimum requirements for essential humanitarian operations”,<sup>263</sup> meaning that such limited humanitarian aid as is being allowed in cannot easily be moved around Gaza away from entry points.<sup>264</sup> As the Secretary-General has starkly assessed, the level of destruction in Gaza is now so catastrophic that:

“[t]he conditions for the effective delivery of humanitarian aid no longer exist . . . But even if sufficient supplies were permitted into Gaza, intense bombardment and hostilities, Israeli restrictions on movement, fuel shortages, and interrupted communications, make it impossible for UN agencies and their partners to reach most of the people in need.”<sup>265</sup>

62. In light of that, the United Nations Security Council Resolution 2720 of 22 December 2023 is widely slated to be ineffectual, despite demanding that “the parties to the conflict allow and facilitate the use of all available routes to and throughout the entire Gaza Strip, including border crossings” and requesting “that the Coordinator expeditiously establish a United Nations mechanism for accelerating the provision of humanitarian relief consignments”.<sup>266</sup> That is because the watered-down resolution fails properly to address the “four elements” identified by the United Nations Secretary-General as necessary for allowing *effective* aid, capable of assisting Palestinians in Gaza: (1) security (“We are providing aid in a war zone. The intense Israeli bombardment and active combat in densely populated urban areas throughout Gaza threaten the lives of civilians and humanitarian aid workers alike”); (2) staff (“The humanitarian operation requires staff who can live and work in safety. 136 of our colleagues in Gaza have been killed in 75 days — something we have never seen in the history of the United Nations . . . In these appalling conditions, they can only meet a fraction of the needs”); (3) logistics (“Many of our vehicles and trucks were destroyed or left behind following our forced, hurried evacuation from the north, but the Israeli authorities have not allowed any additional trucks to operate in Gaza. This is massively hampering the aid operation. Delivering in the north is extremely dangerous due to active conflict, unexploded ordnance, and heavily damaged roads. Everywhere, frequent communications blackouts make it virtually impossible to coordinate the distribution of aid, and to let people know how to access it”); (4) and the resumption of commercial activities (“Shelves are empty; wallets are empty; stomachs are empty. Just one bakery is operating in the whole of Gaza. I urge the Israeli authorities to

<sup>261</sup> Statement by Yoav Gallant, 9 October 2023, <https://www.youtube.com/watch?v=1nxvS9VY-t0>. Translation by Emmanuel Fabian, “Defense minister announces ‘complete siege’ of Gaza: No power, food or fuel”, *The Times of Israel* (9 October 2023), [https://www.timesofisrael.com/liveblog\\_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/](https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/). Gaza’s only power plant is no longer operational, Israel having reportedly threatened to target the plant if it resumes operation: UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #6* (12 October 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-6>.

<sup>262</sup> World Health Organization, *WHO Director-General’s remarks at the Emergency Meeting of the United Nations Security Council – 10 November 2023* (10 November 2023), <https://www.who.int/director-general/speeches/detail/who-director-general-s-remarks-at-the-emergency-meeting-of-the-united-nations-security-council--10-november-2023>.

<sup>263</sup> UN Palestine, *War and health crisis in Gaza a ‘recipe for epidemics’ warns WHO* (21 November 2023), <https://palestine.un.org/en/253317-war-and-health-crisis-gaza-%E2%80%99recipe-epidemics%E2%80%99-warns-who>.

<sup>264</sup> MSF, *Inside Gaza: Staying alive is only a matter of luck* (18 December 2023), <https://www.msf.org/inside-gaza-staying-alive-only-matter-luck>.

<sup>265</sup> United Nations Secretary-General, *People of Gaza ‘Being Told to Move like Human Pinballs’, but Nowhere Is Safe, Secretary-General Tells Security Council, Pleading for Humanitarian Ceasefire* (8 December 2023), <https://press.un.org/en/2023/sksam22076.doc.htm> (emphasis added).

<sup>266</sup> Security Council Resolution 2720, S/RES/2720, (22 December 2023), [https://undocs.org/S/RES/2720\(2023\)](https://undocs.org/S/RES/2720(2023)).

lift restrictions on commercial activity immediately. We are ready to scale up our cash grant support to vulnerable families — the most effective form of humanitarian aid. But in Gaza, there is very little to buy”).<sup>267</sup> Having regard to those factors, the Secretary-General was clear to advise that focusing on the number of trucks permitted into Gaza daily was misleading:

“Many people are measuring the effectiveness of the humanitarian operation in Gaza *based on the number of trucks* from the Egyptian Red Crescent, the UN and our partners that are allowed to unload aid across the border. *This is a mistake.* The real problem is that *the way Israel is conducting this offensive is creating massive obstacles to the distribution of humanitarian aid inside Gaza.*”<sup>268</sup>

63. It is for that reason that United Nations Security Council Resolution 2720 — which fails properly to address the situation on the ground, including by failing to call for a ceasefire — has been described by a former senior UNRWA official as “a greenlight for continued genocide”, marked by “the wholesale and industrial ignoring of international humanitarian law”.<sup>269</sup> Oxfam has called the “failure to call for a ceasefire” in the resolution “incomprehensible and utterly callous” as well as a “profound dereliction of duty” on the part of the United Nations Security Council,<sup>270</sup> having regard to the extreme seriousness of the situation in Gaza.

64. Israel has now pushed the Palestinian population in Gaza to the brink of famine, with international agencies warning that “the risk of famine is real” (World Food Programme or ‘WFP’) and that it is “increasing each day” (IPC).<sup>271</sup> Most of the Palestinian people in Gaza are now *starving*, with levels of starvation rising daily.<sup>272</sup> The World Health Organization warns that “[h]unger is ravaging Gaza”.<sup>273</sup> As the United Nations Secretary-General has stated, “[f]our out of five of the hungriest people anywhere in the world are in Gaza”,<sup>274</sup> with Palestinians in Gaza facing the highest levels of acute food insecurity ever classified by the IPC.<sup>275</sup> UNRWA’s Commissioner-General describes “[d]esperate, hungry and terrified” people, who are now “stopping aid trucks, taking the food, and eating it right away.”<sup>276</sup> The World Health Organization has stated that “[a]n unprecedented 93% of the population in Gaza is facing crisis levels of hunger, with insufficient food and high levels of malnutrition”. They say that “[a]t least 1 in 4 households are facing ‘catastrophic conditions’: experiencing an extreme lack of

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<sup>267</sup> UN OCHA, *Remarks to the media by the Secretary-General* (22 December 2023), <https://www.ochaopt.org/content/remarks-media-secretary-general>.

<sup>268</sup> *Ibid* (emphasis added).

<sup>269</sup> “UNSC resolution ‘greenlighting genocide’: Former UNRWA official”, *Al Jazeera English* (22 December 2023), <https://www.youtube.com/watch?v=IT0yW6kS3Uo>.

<sup>270</sup> Oxfam, *Oxfam: UNSC’s failure to call for a ceasefire “utterly callous”* (19 December 2023), <https://www.oxfam.org/en/press-releases/oxfam-unscs-failure-call-ceasefire-utterly-callous>.

<sup>271</sup> WFP Media, @WFP\_Media, Tweet (10:35 pm, December 9, 2023), [https://twitter.com/WFP\\_Media/status/1733616413636530607](https://twitter.com/WFP_Media/status/1733616413636530607); and Integrated Food Security Phase Classification, *Gaza Strip: Acute Food Insecurity Situation for 24 November - 7 December 2023 and Projection for 8 December 2023 - 7 February 2024* (21 December 2023), <https://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1156749/?iso3=PSE>.

<sup>272</sup> UN Web TV, Press conference by Carl Skau (World Food Program), 14 December 2023, <https://webtv.un.org/en/asset/k13/k139z8z7t5>; and Integrated Food Security Phase Classification, *Gaza Strip: Acute Food Insecurity Situation for 24 November - 7 December 2023 and Projection for 8 December 2023 - 7 February 2024* (21 December 2023), <https://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1156749/?iso3=PSE>.

<sup>273</sup> WHO, *Lethal combination of hunger and disease to lead to more deaths in Gaza* (21 December 2023), <https://www.who.int/news/item/21-12-2023-lethal-combination-of-hunger-and-disease-to-lead-to-more-deaths-in-gaza>.

<sup>274</sup> UN OCHA, *Remarks to the media by the Secretary-General* (22 December 2023), <https://www.ochaopt.org/content/remarks-media-secretary-general>.

<sup>275</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #75* (21 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-75>.

<sup>276</sup> UNRWA, *Remarks by UNRWA Commissioner-General Philippe Lazzarini at Geneva Press Conference* (14 December 2023), <https://www.unrwa.org/newsroom/official-statements/remarks-unrwa-commissioner-general-philippe-lazzarini-geneva-press>.

food and starvation and having resorted to selling off their possessions and other extreme measures to afford a simple meal". They caution that "[s]tarvation, destitution and death are evident",<sup>277</sup> calling Israel's actions in cutting off Gaza "from water, food, anything which is necessary for any sort of life" "a cruel campaign", brought "*against the whole population of Gaza*".<sup>278</sup> Their Emergency Medical Teams Coordinator explained that "every single person" he speaks to is hungry: "Everywhere we go, people are asking us for food even in the hospital, I walked around in the emergency department, somebody with an open bleeding wound, an open fracture; they asked for food. If that's not an indicator of the desperation, I don't know what is".<sup>279</sup> The situation is such that the United Nations High Commissioner for Human Rights has felt the need to caution that "[s]tarvation must never be a means or result of warfare".<sup>280</sup> Oxfam and Human Rights Watch have gone even further in expressly accusing Israel of using starvation "as a weapon of war" against the Palestinian people in Gaza.<sup>281</sup>

65. The conditions created by the siege are exacerbated by Israel's continuing strikes on Gaza, including on its bakeries, water facilities and last remaining operating mill, and its razing of agricultural lands, crops, orchards and greenhouses.<sup>282</sup> By 16 November 2023, the food infrastructure in Gaza was already considered "no longer functional", given shop and market closures, the lack of essential food items, and the inflated price of the scarce food available.<sup>283</sup> Bread is scarce or non-existent,<sup>284</sup> with food scarcity leading to significant price hikes, and the price of flour increasing by 65 per cent at one stage.<sup>285</sup> Livestock that has not been killed is facing starvation, and crops are damaged or destroyed.<sup>286</sup> Many Palestinians are resorting to foraging due to hunger, collecting spilled flour from aid distributions from the road, or other unsafe food practices.<sup>287</sup>

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<sup>277</sup> WHO, *Lethal combination of hunger and disease to lead to more deaths in Gaza* (21 December 2023), <https://www.who.int/news/item/21-12-2023-lethal-combination-of-hunger-and-disease-to-lead-to-more-deaths-in-gaza>.

<sup>278</sup> Statement of Christian Lindmeier (World Health Organization spokesperson), 8 December 2023: UN Web TV, Geneva Press Briefing: WHO, FAO, UNHCR, ICRC, 8 December 2023, <https://webtv.un.org/en/asset/k1e/k1eez0ym7c> (emphasis added).

<sup>279</sup> UN News, *UPDATED: Injured patients 'waiting to die' in northern Gaza as last hospital shuts down, amid rising 'catastrophic' hunger levels* (21 December 2023), <https://news.un.org/en/story/2023/12/1145017>.

<sup>280</sup> UN News, *Gaza crisis: Starvation must never be allowed to happen, says UN rights chief* (22 December 2023), <https://news.un.org/en/story/2023/12/1145047>.

<sup>281</sup> Oxfam, *Starvation as weapon of war being used against Gaza civilians* (25 October 2023), <https://www.oxfam.org.uk/media/press-releases/starvation-as-weapon-of-war-being-used-against-gaza-civilians/>; and HRW, *Israel: Starvation Used as Weapon of War in Gaza* (18 December 2023), <https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza>.

<sup>282</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #35* (10 November 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-35-enarhe>; and UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #40* (15 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-40>; and HRW, *Israel: Starvation Used as Weapon of War in Gaza* (18 December 2023), <https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza>.

<sup>283</sup> WFP, *Gaza faces widespread hunger as food systems collapse, warns WFP* (16 November 2023), <https://www.wfp.org/news/gaza-faces-widespread-hunger-food-systems-collapse-warns-wfp>.

<sup>284</sup> *Ibid.*

<sup>285</sup> Action Against Hunger, *Action Against Hunger calls for permanent ceasefire in Gaza* (1 December 2023), <https://www.actionagainsthunger.org/press-releases/action-against-hunger-calls-for-permanent-ceasefire-in-gaza/>.

<sup>286</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #51* (26 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-51>.

<sup>287</sup> WFP, *Food Security Update for internally displaced populations in Southern Gaza Strip* (14 December 2023), <https://docs.wfp.org/api/documents/WFP-0000155014/download/>; and "Children collect flour from the ground in Gaza", *Middle East Eye* (23 December 2023), [https://www.youtube.com/watch?v=\\_ZYpZ\\_aU\\_Ho](https://www.youtube.com/watch?v=_ZYpZ_aU_Ho).

66. Water is also severely depleted. Israel continues to cut off piped water for the North of Gaza,<sup>288</sup> and the North's water desalination plant is non-functioning.<sup>289</sup> From 15 October 2023, Israel began piping a small amount of water to the South, in part to "push the civilian population to the southern [part of the] Strip".<sup>290</sup> The damage from Israeli airstrikes and shelling has also rendered most of the water system inoperable.<sup>291</sup> The World Food Programme has reported that there is only 1.5 to 1.8 litres of clean water available per person per day, for all uses (drinking, washing, food preparation, sanitation and hygiene).<sup>292</sup> This is far below the 'emergency threshold' of 15 litres per day for "war or famine-like conditions", or the 'survival threshold' of 3 litres per day.<sup>293</sup> The World Health Organization Emergency Medical Teams Coordinator described the scene at Al Ahli Arab Hospital, where medical staff were struggling to cope with "no food, no fuel, no water", stating that "it looks more like a hospice now than a hospital. But a hospice implies a level of care that the doctors and nurses are unable to provide . . . It's pretty unbearable to see somebody with casts on multiple limbs, external fixator on multiple limbs, without drinking water and almost no IV fluids available". He said that "patients were crying out in pain, but they were also crying out for us to give them water". He urged that "[t]he time is now. We are dealing with starving people now, adults, children, it's unbearable".<sup>294</sup>

67. The lack of water is severely impacting lactating women, in particular, who, even if undertaking only a moderate amount of exercise, require a supply of 7.5 litres of water a day for drinking, sanitation and hygiene to keep themselves and their babies healthy.<sup>295</sup> Young mothers — unable to breastfeed for lack of proper nutrition arising from the food scarcity — have been forced to use contaminated water to prepare formula — where it is available — risking disease in vulnerable babies. In parallel, the chronic unavailability of formula is also risking the lives of newborn babies, who are already reportedly dying from avoidable causes due to the absence of medical care, food, water and adequate sanitation.<sup>296</sup> The impacts of malnourishment on older children may also be particularly grave and long-lasting, preventing them from reaching their full potential in terms of physical growth, cognitive capacity,

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<sup>288</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel – reported impact | Day #82* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-82>.

<sup>289</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #66* (11 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-66>.

<sup>290</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #9* (15 October 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-9>; and Amy Spiro, Jacob Magid and Agencies, "Israel says it is restarting water supply to southern Gaza Strip", *The Times of Israel* (15 October 2023), <https://www.timesofisrael.com/israel-says-it-is-restarting-water-supply-to-southern-gaza-strip/>.

<sup>291</sup> UN News, *Barely a drop of safe water to drink in Gaza, UN aid agency warns* (20 December 2023), <https://news.un.org/en/story/2023/12/1144972>; and Anera, *Gaza Ceasefire: A Welcome Pause, But Far From Enough* (23 November 2023), <https://www.anera.org/blog/pause-in-gaza-war-not-enough/>.

<sup>292</sup> WFP, *Gaza Food Security Assessment* (6 December 2023), <https://docs.wfp.org/api/documents/WFP-0000154766/download>.

<sup>293</sup> UNICEF, *Gaza's Children running out of time: water shortages spark disease alarm* (21 November 2023), <https://www.unicef.org/press-releases/gazas-children-running-out-time-water-shortages-spark-disease-alarm>; and UNICEF, *'Barely a drop to drink': children in the Gaza Strip do not access 90 per cent of their normal water use* (20 December 2023), <https://www.unicef.org/press-releases/barely-drop-drink-children-gaza-strip-do-not-access-90-cent-their-normal-water-use>.

<sup>294</sup> UN Web TV, Geneva Press Briefing: WHO, FAO, UNHCR, ICRC, 8 December 2023, <https://webtv.un.org/en/asset/k1e/k1eez0ym7c>.

<sup>295</sup> UNDP, *Human Development Report 2006 - Beyond scarcity: power, poverty and the global water crisis* (14 December 2012), <https://www.undp.org/libya/publications/human-development-report-2006-beyond-scarcity-power-poverty-and-global-water-crisis>.

<sup>296</sup> CARE International, "70% of those killed in Gaza are women and children" CARE warns the Security Council (15 November 2023), <https://www.care-international.org/news/70-those-killed-gaza-are-women-and-children-care-warns-un-security-council>; Oxfam, *Press Release: Babies dying from preventable causes in besieged Gaza - Oxfam* (23 November 2023), <https://www.oxfam.org/en/press-releases/babies-dying-preventable-causes-besieged-gaza-oxfam>.

school performance and productivity later in life.<sup>297</sup> Many health workers also lack sufficient food and water to continue working, which will also necessarily further impact on health and mortality rates.<sup>298</sup>

68. This is all happening to a population that was already extremely vulnerable as a result of Israel's prior actions against Gaza. Israel has long hindered the creation and repair of water installation and desalination plants in Gaza, such that 95 per cent of water from Gaza's sole aquifer was already unsuitable for consumption prior to 7 October 2023.<sup>299</sup> Through its 16-year blockade, Israel also severely impacted water supply.<sup>300</sup> Its repeated attacks on Gaza and its restrictions on repairing the degraded wastewater infrastructure damaged the soil, rendering agriculture challenging.<sup>301</sup> Israel also restricted access by Palestinians in Gaza to up to 35 per cent of agricultural land and up to 85 per cent of Gaza's fishing waters.<sup>302</sup> Consequently, over 68 per cent of households (around 1.3 million people) were severely or moderately food insecure prior to 7 October 2023, with 58 per cent of the population dependent on humanitarian aid.<sup>303</sup> 7,685 children under five years of age in Gaza were suffering from life-threatening 'wasting', the deadliest form of child malnutrition.<sup>304</sup> The impact on Palestinian children of Israel's forced starvation of Gaza will necessarily be serious and long-lasting.

69. Recent reports of Israeli plans to flood tunnels in Gaza with seawater is of extreme concern, given the risks it would pose of further degradation and collapse of Gaza's water and sewage infrastructure, and of long-lasting contamination of Gaza's aquifer and soil.<sup>305</sup> Environmental experts have warned that the strategy "risks causing an ecological catastrophe" that would leave Gaza with no drinkable water, devastate what little agriculture is possible and "ruin the conditions of life of everyone in Gaza".<sup>306</sup> The United Nations Special Rapporteur for the right to water is reported to have compared

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<sup>297</sup> Global Nutrition Cluster - State of Palestine, *Call for Immediate Action: Child deaths in the Gaza Strip due to disease and malnutrition can and must be prevented* (3 December 2023), [https://www.nutritioncluster.net/sites/nutritioncluster.com/files/2023-11/SoP%20Nutrition%20Cluster%20advocacy\\_final.pdf](https://www.nutritioncluster.net/sites/nutritioncluster.com/files/2023-11/SoP%20Nutrition%20Cluster%20advocacy_final.pdf)

<sup>298</sup> UN Web TV, Geneva Press Briefing: WHO, FAO, UNHCR, ICRC, 8 December 2023, <https://webtv.un.org/en/asset/k1e/k1eez0ym7c>.

<sup>299</sup> United Nations, Human Rights Council, *The allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem A/HRC/48/43* (15 October 2021), <https://undocs.org/A/HRC/48/43>; Amnesty, *The Occupation of Water* (29 November 2017), <https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/>; EWASH, *Israel's control of water in the Occupied Palestinian Territories* (26 September 2012), <https://reliefweb.int/report/occupied-palestinian-territory/israels-control-water-occupied-palestinian-territories>.

<sup>300</sup> United Nations, Human Rights Council, *The allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem A/HRC/48/43* (15 October 2021), <https://undocs.org/A/HRC/48/43>.

<sup>301</sup> UN FAO, *Farming without Land, Fishing without Water: Gaza Agriculture Sector Struggles to Survive* (25 May 2010), <https://www.un.org/unispal/document/auto-insert-205890/>.

<sup>302</sup> UN Palestine, *United Nations Common Country Analysis for the Occupied Palestinian Territory* (16 August 2022), [https://palestine.un.org/sites/default/files/2022-09/United%20Nations%20Common%20Country%20Analysis%20for%20the%20Occupied%20Palestinian%20Territory\\_16\\_August\\_2022.pdf](https://palestine.un.org/sites/default/files/2022-09/United%20Nations%20Common%20Country%20Analysis%20for%20the%20Occupied%20Palestinian%20Territory_16_August_2022.pdf).

<sup>303</sup> UN OCHA, *Food insecurity in the oPt: 1.3 million Palestinians in the Gaza strip are food insecure* (14 December 2018), <https://www.ochaopt.org/content/food-insecurity-opt-13-million-palestinians-gaza-strip-are-food-insecure>; UN OCHA, *Humanitarian Response Plan OPT* (January 2023), [https://www.ochaopt.org/sites/default/files/HRP\\_2023.pdf](https://www.ochaopt.org/sites/default/files/HRP_2023.pdf).

<sup>304</sup> Global Nutrition Cluster - State of Palestine, *Call for Immediate Action: Child deaths in the Gaza Strip due to disease and malnutrition can and must be prevented* (3 December 2023), [https://www.nutritioncluster.net/sites/nutritioncluster.com/files/2023-11/SoP%20Nutrition%20Cluster%20advocacy\\_final.pdf](https://www.nutritioncluster.net/sites/nutritioncluster.com/files/2023-11/SoP%20Nutrition%20Cluster%20advocacy_final.pdf).

<sup>305</sup> UN OCHA, *Humanitarian Coordinator Lynn Hastings briefs the press in Geneva* (13 December 2023), <https://www.ochaopt.org/content/humanitarian-coordinator-lynn-hastings-briefs-press-geneva>; Emmanuel Fabian, "IDF trial of flooding Hamas tunnels with seawater proves successful, ToI told", *The Times of Israel* (15 December 2023), <https://www.timesofisrael.com/idf-trial-of-flooding-hamas-tunnels-with-seawater-proves-successful-toi-told>.

<sup>306</sup> Damien Gayle and Nina Lakhani, "Flooding Hamas tunnels the seawater risks 'ruining basic life in Gaza', says expert", *The Guardian* (23 December 2023), <https://www.theguardian.com/world/2023/dec/23/israel-flooding-hamas-tunnels-seawater-risks-ruining-basic-life-gaza-expert>.

the plan to the mythical Roman ‘salting’ of the fields of Carthage to prevent crop growth and render the territory uninhabitable.<sup>307</sup>

70. Experts are now predicting that more Palestinians in Gaza may die from starvation and disease than airstrikes,<sup>308</sup> and yet Israel is intensifying its bombing campaign, precluding the effective delivery of humanitarian assistance to Palestinians. It is clear that Israel is through its actions and policies in Gaza, deliberately inflicting on Palestinians conditions of life calculated to bring about their destruction.<sup>309</sup>

5. *Deprivation of access to adequate shelter, clothes, hygiene and sanitation to Palestinians in Gaza*

71. The majority of the 1.9 million displaced Palestinians in Gaza are seeking shelter in UNRWA facilities, which primarily consist of schools and tents.<sup>310</sup> These locations are themselves not safe: to date — and despite Israel having been provided with the coordinates of all United Nations facilities<sup>311</sup> — Israel has killed hundreds of Palestinian men, women and children seeking shelter in UNRWA facilities, and injured over a thousand.<sup>312</sup>

72. The situation in UNRWA shelters was described as follows by the Commissioner-General of UNRWA in his 7 December 2023 letter of which the United Nations General Assembly took note in its Resolution ES-10/22 of 12 December 2023:

“Today, as a result of Israel’s military operation, nearly 1.2 million civilians are sheltering in UNRWA premises. The Agency has become the primary *platform for humanitarian assistance* to over 2.2 million people in Gaza — a platform *on the verge of collapse*.

UNRWA is, as of today, still operational in Gaza, though just barely. Our staff are still operating health centers, managing shelters, and supporting traumatized people, some arriving carrying their dead children. We are still distributing food, even though the corridors and courtyards of our premises are too crowded to walk through. Our staff take their children to work so they know they are safe or can die together. *More than 130 UNRWA staff are confirmed killed in bombardments, most with their families*; the number might rise by the time you read this. At least 70% of UNRWA staff are displaced, and lack food, water and adequate shelter. We are hanging on by our fingertips. If UNRWA collapses, humanitarian assistance in Gaza will also collapse.

*The humanitarian situation is now untenable.* Conditions in Gaza were already appalling when I stayed overnight two weeks ago. I witnessed constant explosive munitions from sky, land and sea, and the massive destruction of civilian infrastructure.

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<sup>307</sup> *Ibid.*

<sup>308</sup> Save the Children, *Press Release: Deaths by starvation and disease may top deaths by bombs as families squeezed into deadly “safe zones”, two months into Gaza crisis* (9 December 2023), <https://www.savethechildren.net/news/deaths-starvation-and-disease-may-top-deaths-bombs-families-squeezed-deadly-safe-zones-two>.

<sup>309</sup> *Ibid.*

<sup>310</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 82* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-82>; UNRWA Situation Report #56 *On the Situation in the Gaza Strip and the West Bank, including East Jerusalem* (22 December 2023), <https://www.unrwa.org/resources/reports/unrwa-situation-report-56-situation-gaza-strip-and-west-bank-including-east-Jerusalem>.

<sup>311</sup> UNRWA, *Gaza: UNRWA school sheltering displaced families hit* (17 October 2023), <https://www.unrwa.org/newsroom/official-statements/gaza-unrwa-school-sheltering-displaced-families-hit>.

<sup>312</sup> UNRWA Situation Report #56 *On the Situation in the Gaza Strip and the West Bank, including East Jerusalem* (22 December 2023), <https://www.unrwa.org/resources/reports/unrwa-situation-report-56-situation-gaza-strip-and-west-bank-including-east-Jerusalem>.

This week, the Israeli military forces have instructed people to move further South, forcing Gaza's population into an ever-shrinking space. Shelters are shockingly overcrowded, with high risk of epidemic illness. In these overfull and unsanitary spaces, more than 700 people use a single toilet, women give birth (an average of 25 per day), and people nurse open wounds. Tens of thousands sleep in courtyards and streets. People burn plastic to stay warm. Nearly 90 UNRWA premises, including schools, have been hit or impacted by munitions, killing over 270 internally displaced people, many this week. In Gaza as a whole, over 16,000 people, two thirds of whom are women and children, are reported killed during bombardments. Large swathes of Gaza are destroyed and uninhabitable.

*The premise of UNRWA's mandate — to provide services to Palestine Refugees until there is a political solution — is at great risk:* without safe shelter and aid, civilians in Gaza risk death or will be forced to Egypt and beyond. Forced displacement out of Gaza may end prospects for the political solution that is intrinsic to UNRWA's mandate, with grave risks for regional peace and security. A forced displacement beyond Palestinian land, reminiscent of the 1948 Nakba, must be prevented.

In my 35 years working in complex emergencies, *I have never written such a letter — predicting the killing of my staff and the collapse of the mandate I am expected to fulfil.*<sup>313</sup>

73. Those Palestinians with a place in UNRWA shelters are “the lucky ones”, according to UNRWA’s Commissioner-General.<sup>314</sup> Others attempt to find shelter in the homes of relatives or strangers, in government facilities, hospital courtyards, or makeshift camps, without any access to food, water or sanitary facilities, or simply live and sleep in the streets, exposed to the elements. UNRWA’s shelters now have on average 486 people using a single toilet,<sup>315</sup> while other locations where people are seeking to shelter often have no toilets at all.<sup>316</sup> Palestinians are unable to maintain personal hygiene, with menstruating girls and women being particularly impacted.<sup>317</sup> The World Health Organization estimates that there is on average “only one shower for every 4500 people”.<sup>318</sup> Newborns in shelters are reportedly dying from avoidable causes due to the absence of adequate sanitation, food, water and medical care.<sup>319</sup>

74. Since the Commissioner-General of UNRWA wrote to the President of the United Nations General Assembly on 7 December 2023, advising that the humanitarian situation in Gaza was already “untenable”,<sup>320</sup> over one million Palestinians have continued to be forced by Israeli military ‘orders’ into the Rafah Governorate near the Egyptian border. The area has become the “epicentre of displacement”, with an estimated “fourfold” increase in its population density, thought to now exceed

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<sup>313</sup> UNRWA, *Letter from UNRWA Commissioner-General Philippe Lazzarini to the UN General Assembly President Mr. Dennis Francis* (7 December 2023), <https://www.unrwa.org/resources/un-unrwa/letter-unrwa-commissioner-general-philippe-lazzarini-un-general-assembly> (emphasis added).

<sup>314</sup> UN News, ‘Desperate, hungry, terrified’: Gazans stopping aid trucks in search of food (14 December 2023), <https://news.un.org/en/story/2023/12/1144807>.

<sup>315</sup> UNRWA, *UNRWA Situation Report #54 on the situation in the Gaza Strip and the West Bank, including East Jerusalem* (18 December 2023), <https://www.unrwa.org/resources/reports/unrwa-situation-report-54-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

<sup>316</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #69* (14 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-69>.

<sup>317</sup> United Nations Population Fund (UNFPA), *UNFPA Palestine Situation Report Issue 4* (11 December 2023), [https://palestine.unfpa.org/sites/default/files/pub-pdf/unfpa\\_situation\\_report\\_4\\_december\\_11.pdf](https://palestine.unfpa.org/sites/default/files/pub-pdf/unfpa_situation_report_4_december_11.pdf).

<sup>318</sup> WHO, *Lethal combination of hunger and disease to lead to more deaths in Gaza* (21 December 2023), <https://www.who.int/news/item/21-12-2023-lethal-combination-of-hunger-and-disease-to-lead-to-more-deaths-in-gaza>.

<sup>319</sup> Oxfam, *Press Release: Babies dying from preventable causes in besieged Gaza - Oxfam* (23 November 2023), <https://www.oxfam.org/en/press-releases/babies-dying-preventable-causes-besieged-gaza-oxfam>.

<sup>320</sup> UNRWA, *Letter from UNRWA Commissioner-General Philippe Lazzarini to the UN General Assembly President Mr. Dennis Francis* (7 December 2023), <https://www.unrwa.org/resources/un-unrwa/letter-unrwa-commissioner-general-philippe-lazzarini-un-general-assembly>.

12,000 people per square kilometre.<sup>321</sup> OCHA is warning there is “no empty space left for people to shelter, not even in the streets and other open areas”.<sup>322</sup> Al-Mawasi — a sandy, barren strip of approximately 14 square kilometres along the Mediterranean Sea, without aid provisions, water, food or sanitation — the so-called ‘safe zone’ to which Israel has told Palestinians in Gaza to flee, is anything but safe. As UNRWA has underscored “unilaterally-declared ‘safe zones’ are not safe at all. Nowhere in Gaza is safe”.<sup>323</sup> The Head of Humanitarian Policy at Save the Children International has warned: “People are in overcrowded shelters in makeshift tents. There is no access to clean water, there are crumbling sanitation facilities. We’ve heard of children starving in the so-called ‘safe zone’ of Al-Mawasi.”<sup>324</sup>

75. Throughout Gaza, there are acute shortages in warm clothes, bedding, blankets and critical non-food items, with people heavily dependent on salvaged wood and waste for cooking and warmth, raising the risk of respiratory diseases.<sup>325</sup> There is also an acute shortage of clean water, severely impacting not just the ability to hydrate, but to wash, clean and cook.<sup>326</sup> The siege and infrastructure damage from bombing continue to prevent adequate water treatment and distribution, and sewage management, with flooding exponentially increasing the risks of the spread of infectious diseases amongst displaced Palestinians.<sup>327</sup> On 20 December 2023, the Director General of the World Health Organization warned that “Gaza is already experiencing soaring rates of infectious disease outbreaks. Diarrhoea cases among children aged under 5 are 25 times what they were before the conflict. Such illnesses can be lethal for malnourished children, more so in the absence of functioning health services”.<sup>328</sup> Sewage is flowing into the streets where Palestinians are living, as it can no longer be managed.<sup>329</sup> “Everywhere you look, is congested with makeshift shelters. Everywhere you go, people are desperate, hungry and terrified.”<sup>330</sup> These conditions — deliberately inflicted by Israel — are calculated to bring about the destruction of the Palestinian group in Gaza.

#### 6. *Deprivation of adequate medical assistance to Palestinians in Gaza*

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<sup>321</sup> UNRWA Situation Report #56 *On the Situation in the Gaza Strip and the West Bank, including East Jerusalem* (22 December 2023), <https://www.unrwa.org/resources/reports/unrwa-situation-report-56-situation-gaza-strip-and-west-bank-including-east-jerusalem>; and UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #75* (21 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-75>.

<sup>322</sup> UN News, *Gaza humanitarian disaster heralds ‘breakdown’ of society* (8 December 2023), <https://news.un.org/en/story/2023/12/1144547>.

<sup>323</sup> Julian Borger and Ruth Michaelson, “IDF instructions on Gaza refuge zones cruel ‘mirage’, say aid agencies”, *The Guardian* (7 December 2023), <https://www.theguardian.com/world/2023/dec/07/idf-israel-gaza-refuge-zones-cruel-mirage-say-aid-agencies>.

<sup>324</sup> *Ibid.*

<sup>325</sup> ICRC, *Israel and the occupied territories: The ICRC urges protection for Gaza civilians evacuating and staying behind* (12 November 2023), <https://www.icrc.org/en/document/israel-and-occupied-territories-icrc-urges-protection-gaza-civilians-evacuating-and-staying>; and UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #71* (16 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-71>.

<sup>326</sup> WFP, *Gaza Food Security Assessment* (6 December 2023), <https://docs.wfp.org/api/documents/WFP-0000154766/download/>.

<sup>327</sup> UN News, *Barely a drop of safe water to drink in Gaza, UN aid agency warns* (20 December 2023), <https://news.un.org/en/story/2023/12/1144972>; and UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #76* (22 December 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-76-enarhe>.

<sup>328</sup> Tedros Adhanom Ghebreyesus, Director-General of the World Health Organization, @DrTedros, Tweet (7:05 pm, December 20, 2023), <https://twitter.com/DrTedros/status/1737549701728092481>.

<sup>329</sup> UN News, *Gaza: Lack of fuel threatening to shut down entire humanitarian operation* (16 November 2023), <https://news.un.org/en/story/2023/11/1143672>.

<sup>330</sup> UN News, *Barely a drop of safe water to drink in Gaza, UN aid agency warns* (20 December 2023), <https://news.un.org/en/story/2023/12/1144972>.

76. Almost above all else, Israel's military assault on Gaza has been an attack on Gaza's medical healthcare system, indispensable to the life and survival of the Palestinians in Gaza. Israel "has declared an 'unrelenting war' on the health system in Gaza", as observed by the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In a statement issued on 7 December 2023, the United Nations expert noted that "[t]he healthcare infrastructure in the Gaza strip has been completely obliterated" and that "[w]e bear witness to a shameful war on healthcare workers". She warned that "[w]e are in the darkest time for the right to health in our lifetimes" and that "[w]e have descended into depths from which we must quickly emerge".<sup>331</sup>

77. In a letter to the United Nations Security Council on 4 December 2023, the International President of Médecins Sans Frontières wrote:<sup>332</sup>

*"Israel has shown a blatant and total disregard for the protection of Gaza's medical facilities. We are watching as hospitals are turned into morgues and ruins. These supposedly protected facilities are being bombed, are being shot at by tanks and guns, encircled and raided, killing patients and medical staff. The World Health Organization has documented 203 attacks on health care that have led to at least 22 fatalities and 59 injuries of health workers on duty. Medical staff, including our own, are utterly exhausted and in despair. They have had to amputate limbs from children suffering from severe burns without anaesthesia or sterilised surgical tools. Due to forcible evacuations by Israeli soldiers, some doctors have had to leave patients behind after facing the unimaginable choice between their lives or those of their patients. There is no justification for the atrocious attacks on healthcare... Four of our MSF staff have been killed; many more have lost family members. Numerous other colleagues have been injured. Other humanitarian organisations have reported dozens of their staff have been killed..."*

Northern Gaza is being erased from the map. *The health system has collapsed...* Our emergency team in Khan Younis, in southern Gaza, has reported massive influxes of wounded after intense bombing. Last Saturday, 60 dead and 213 injured people arrived at the emergency room of Al-Aqsa hospital. These strikes are also hitting overcrowded, squalid refugee camps, where people are barely surviving on the sparse humanitarian aid available. If the bombs do not get them, infectious diseases and starvation will...

*"We did what we could. Remember us."* These are the words our Dr Mahmoud Abu Nujaila, who has since been killed in a hospital strike, wrote on a Gaza hospital whiteboard normally used for planning surgeries. When the guns fall silent and the true scale of devastation is revealed, will the Council and its members be able to say the same?"

78. Since early December 2023, Israeli army attacks on Palestinian hospitals have only increased. The Israeli army has continued to attack and besiege hospitals and healthcare centres; to deprive them of electricity and fuel crucial to maintain effective functioning and equipment; to obstruct them from receiving medical supplies, food and water; to force their evacuations and closure; and effectively to destroy them. The North of Gaza, without any functioning hospital for a week, has only four severely challenged partially functioning hospitals available now.<sup>333</sup> Israel has transformed Palestinian hospitals

<sup>331</sup> UN OHCHR, *Gaza: UN expert condemns 'unrelenting war' on health system amid airstrikes on hospitals and health workers* (7 December 2023) <https://www.ohchr.org/en/press-releases/2023/12/gaza-un-expert-condemns-unrelenting-war-health-system-amid-airstrikes>.

<sup>332</sup> Médecins Sans Frontières ('MSF'), *Gaza: "It must all stop now"*, Letter to UN Security Council (4 December 2023), <https://www.msf.org/letter-gaza-un-security-council>.

<sup>333</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #78* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-78>.

in Gaza from places of healing into “death zone[s]”,<sup>334</sup> and scenes of “bloodbath”,<sup>335</sup> “death, devastation and despair”.<sup>336</sup> Many hospitals have now become mere “place[s] where people are waiting to die”.<sup>337</sup> The World Health Organisation describes the situation as “unconscionable” and “beyond belief”.<sup>338</sup>

79. There have now been more than 238 attacks on ‘healthcare’ in Gaza, in which over 61 hospitals and other healthcare facilities have been damaged or destroyed.<sup>339</sup> Only 13 out of 36 hospitals and 18 out of 72 healthcare centres are still even functioning — some of them barely — despite the overwhelming number of people injured in Israeli attacks.<sup>340</sup> The Israeli army has targeted hospital generators, hospital solar panels,<sup>341</sup> and other life-saving equipment, such as oxygen stations and water tanks.<sup>342</sup> It has also targeted ambulances, medical convoys and first responders.<sup>343</sup> 311 health workers have been killed (on average four killed per day),<sup>344</sup> including at least 22 health workers killed on duty.<sup>345</sup> Those killed include some of Gaza’s most experienced and skilled doctors including Dr Hani Al Haitham, Head of the Emergency Section at Al Shifa hospital, killed with his wife, Dr Sameera Ghirafi, and their children;<sup>346</sup> Dr Mohammad Dabbour, Head of Pathology at Al Shifa Hospital, reportedly killed with his son and father while attempting to flee Gaza City;<sup>347</sup> Dr Medhat Saidam, plastic reconstructive burn surgeon at Al Shifa Hospital and Dr Hammam Alloh, nephrologist at Al Shifa Hospital were killed in attacks on their family homes.<sup>348</sup> Interviewed shortly before his death, Dr Alloh responded as follows when asked why he was not fleeing the North to the South: “If I go who would treat my patients? We are not animals, we have the right to receive proper health care. You think I went to medical school and for my postgraduate degrees for a total of 14 years so I think only about my life and not my patients?”<sup>349</sup> The systematic destruction of Palestinian hospitals and the killing of

<sup>334</sup> WHO, *WHO leads very high-risk joint humanitarian mission to Al-Shifa Hospital in Gaza* (18 November 2023), <https://www.who.int/news/item/18-11-2023-who-leads-very-high-risk-joint-humanitarian-mission-to-al-shifa-hospital-in-gaza>.

<sup>335</sup> UN News, *UN workers delivering aid to Gaza hospital describe ‘bloodbath’ in overflowing emergency department* (16 December 2023), <https://news.un.org/en/story/2023/12/1144877>.

<sup>336</sup> WHO, *WHO appalled by latest attack on Indonesian Hospital in Gaza* (20 November 2023), <https://www.emro.who.int/media/news/who-appalled-by-latest-attack-on-indonesian-hospital-in-gaza.html>.

<sup>337</sup> UN News, *UPDATED: Injured patients ‘waiting to die’ in northern Gaza as last hospital shuts down, amid rising ‘catastrophic’ hunger levels* (21 December 2023), <https://news.un.org/en/story/2023/12/1145017>.

<sup>338</sup> UN News, *‘Ten weeks of hell’ for children in Gaza: UNICEF* (19 December 2023), <https://news.un.org/en/story/2023/12/1144927>.

<sup>339</sup> WHO, *oPt Emergency Situation Update Issue 17* (14 December 2023), [https://www.emro.who.int/images/stories/Sitrep\\_issue\\_17\\_for\\_review.pdf?ua=1](https://www.emro.who.int/images/stories/Sitrep_issue_17_for_review.pdf?ua=1).

<sup>340</sup> *Ibid.*

<sup>341</sup> The organisation Forensic Architecture has compiled an analysis of the various attacks on Gaza’s hospitals: Forensic Architecture, *Destruction of Medical Infrastructure in Gaza* (20 December 2023), <https://forensic-architecture.org/investigation/destruction-of-medical-infrastructure-in-gaza>.

<sup>342</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #37* (12 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-37>.

<sup>343</sup> MSF, *MSF convoy attack in Gaza: All elements point to Israeli army responsibility* (1 December 2023), <https://www.doctorswithoutborders.org/latest/msf-convoy-attack-gaza-all-elements-point-israeli-army-responsibility>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #28* (3 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-28>.

<sup>344</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel – Reported Impact | Day #70* (15 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-70>.

<sup>345</sup> WHO, *oPt Emergency Situation Update, issue 14* (23 November 2023), [https://www.emro.who.int/images/stories/palestine/oPt\\_Emergency\\_Situation\\_Update\\_-\\_NOV24.pdf?ua=1](https://www.emro.who.int/images/stories/palestine/oPt_Emergency_Situation_Update_-_NOV24.pdf?ua=1).

<sup>346</sup> Asmahan Qarjouli, “Israel ‘brutally murdered’ Al-Shifa emergency dept chief in Gaza”, *Doha News* (19 December 2023), <https://dohanews.co/israel-brutally-murdered-al-shifa-emergency-dept-chief-in-gaza/>.

<sup>347</sup> Weronika Strzyżyska and Harriet Sherwood, “Doctors, poets, families, babies: victims of Israel’s war on Gaza”, *The Guardian* (23 October 2023), <https://www.theguardian.com/world/2023/oct/23/doctors-poets-families-babies-victims-of-israels-war-on-gaza>.

<sup>348</sup> Vanessa Romo, “Doctors are among the many dead in Gaza. These are their stories”, *NPR* (16 November 2023), <https://www.npr.org/2023/11/16/1213307710/gaza-doctors-al-shifa-hospital>.

<sup>349</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #72* (18 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-72>.

specialist Palestinian doctors is not only impacting the care of Palestinians in Gaza at present, it is also undermining the prospect of a future Palestinian healthcare system in Gaza, destroying its capacity to rebuild and to care effectively for the Palestinian people in Gaza.

80. At least 570 Palestinians have been killed at hospitals and healthcare centres in Gaza and a further 746 have been injured.<sup>350</sup> They include patients and internally displaced Palestinians, who vainly sought sanctuary on or near hospital grounds, killed by Israeli strikes or snipers.<sup>351</sup> Palestinian mothers have been killed in maternity hospitals, and Palestinian children in children's hospitals.<sup>352</sup> Even those tending to and counting the dead — like Saeed Al Shorbaji, Director of Nasser Hospital's mortuary — have themselves been killed.<sup>353</sup> Some have been victims of Israeli attacks multiple times over, like 12-year old Dina Abu Mohsen — interviewed by UNICEF after losing her parents, two siblings and her leg in an Israeli strike on her home — she was then killed herself when the Israeli army shelled the hospital where she was being treated.<sup>354</sup>

81. Other Palestinians have died as a direct result of Israel cutting off electricity and fuel to hospitals; they include five premature babies and 40 ICU and kidney patients at Al Shifa hospital.<sup>355</sup> Other Palestinians have died as a direct result of Israel's forced evacuation of hospitals, including at least four babies in Al Nasr hospital, whose tiny bodies were found weeks later — during a temporary ceasefire — decomposing in their hospital beds.<sup>356</sup> Hospital courtyards have been turned into sites of mass graves:<sup>357</sup> at Al-Shifa Hospital, it was medics themselves who had to dig a mass grave for the decomposing bodies of 179 patients and others.<sup>358</sup> Israeli bulldozers excavated and exhumed a hospital mass grave in the besieged Kamal Adwan hospital on 16 December, where 26 Palestinians had been buried.<sup>359</sup> Speaking to CNN, Hossam Abu Safiya, Head of Paediatric Services at Kamal Adwan

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<sup>350</sup> WHO, *oPt Emergency Situation Update Issue 17* (14 December 2023), [https://www.emro.who.int/images/stories/Sitrep\\_issue\\_17\\_for\\_review.pdf?ua=1](https://www.emro.who.int/images/stories/Sitrep_issue_17_for_review.pdf?ua=1).

<sup>351</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #38* (13 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-38>; and UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #72* (18 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-72>.

<sup>352</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #55* (30 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-55>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #66* (11 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-66>.

<sup>353</sup> Bassam Massou and Maggie Fick, "Gaza death toll: why counting the dead has become a daily struggle", *Reuters* (21 December 2023), <https://www.reuters.com/world/middle-east/fight-keep-counting-dead-gaza-2023-12-21/>.

<sup>354</sup> UNICEF, @UNICEF, Tweet (10:28 pm, December 17, 2023), <https://twitter.com/UNICEF/status/1736876099890565478>.

<sup>355</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #42* (17 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-42>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #44* (19 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-44>.

<sup>356</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #55* (30 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-55>; Human Rights Watch (HRW), "Birth and Death Intertwined in Gaza Strip: Maternity Care Facilities Gravely Affected by Strikes, Blockade" (1 December 2023), <https://www.hrw.org/news/2023/12/01/birth-and-death-intertwined-gaza-strip>.

<sup>357</sup> See e.g., the Al Yaman Al Saeed Hospital in Jabalia refugee camp: UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #65* (10 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-65>.

<sup>358</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #40* (15 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-40>.

<sup>359</sup> Al-Haq, Al Mezan Center for Human Rights, Palestinian Centre for Human Rights ('PCHR'), *Palestinian Human Rights Organisations Condemn the Serious Israeli Violations at Kamal Adwan Hospital in Northern Gaza* (21 December 2023), <https://alhaq.org/advocacy/22388.html>.

Hospital, stated, “[t]he soldiers dug up the graves this morning and dragged the bodies with bulldozers, then crushed the bodies with the bulldozers … I have never seen such a thing before”.<sup>360</sup>

82. United Nations General Assembly Resolution ES10/21 of 27 October 2023 — calling for the “respect and protection … of all civilian and humanitarian facilities, including hospitals and other medical facilities … as well as all of humanitarian and medical personnel”<sup>361</sup> — has been resolutely ignored. Doctors and medics have continued not only to be killed but also to be rounded up and disappeared by the Israeli authorities.<sup>362</sup> They include the General Director of Al Shifa and his staff, seized and held incommunicado since 23 November 2023.<sup>363</sup>

83. Those wounded by Israel in Gaza are being deprived of life-saving medical care.<sup>364</sup> Gaza’s healthcare system — already crippled by years of blockade and prior attacks by Israel — is unable to cope with the sheer scale of the injuries, now at 55,243 injured including at least 8,663 children.<sup>365</sup> There are reports of severely injured patients walking for miles trying to find help. UNICEF highlighted the case of a boy from the North “whose leg had been blown off in the violence”, who “had spent ‘three or four days’ trying to reach the south, delayed by checkpoints … The smell [of decomposition] was clear … and that boy had shrapnel all over. Potentially, he was blind and had burns to 50 per cent of his body”.<sup>366</sup> OCHA identified the case of a woman with shrapnel injuries in her abdomen, who had walked from the North to the South pressing a towel against her wounds.<sup>367</sup> Palestinians have had to evacuate their sick, disabled and wounded in a forced march from the North to the South — and then again from the South onwards — dragging hospital beds behind cars, pushing wheelchairs, raising them on makeshift stretchers, or simply carrying them in their arms.<sup>368</sup>

84. Those hospitals which are still functioning are described as scenes from a “horror movie”.<sup>369</sup> The critical shortages of staff and supplies — including anaesthetics, analgesics, medicine and

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<sup>360</sup> Abeer Salman and Kareem Khadder, “Doctors accuse Israeli troops of desecrating bodies and shooting civilians at hospital Israel says was Hamas ‘command center’”, CNN (23 December 2023), <https://edition.cnn.com/2023/12/23/middleeast/kamal-adwan-hospital-gaza-israel-abuse-allegations-intl-cmd/index.html>.

<sup>361</sup> UNGA Res ES10/21, Protection of civilians and upholding legal and humanitarian obligations, A/RES/ES-10/21 (27 October 2023), <https://digitallibrary.un.org/record/4025940?ln=en>.

<sup>362</sup> WHO, *WHO calls for protection of humanitarian space in Gaza following serious incidents in high-risk mission to transfer patients, deliver health supplies* (12 December 2023), <https://www.who.int/news-room/detail/12-12-2023-who-calls-for-protection-of-humanitarian-space-in-gaza-following-serious-incidents-in-high-risk-mission-to-transfer-patients--deliver-health-supplies>.

<sup>363</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #48* (23 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-48>.

<sup>364</sup> UN News, *UPDATED: Injured patients ‘waiting to die’ in northern Gaza as last hospital shuts down, amid rising ‘catastrophic’ hunger levels* (21 December 2023), <https://news.un.org/en/story/2023/12/1145017>.

<sup>365</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel – Reported Impact | Day #70* (15 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-70>; UN OCHA, *Hostilities in the Gaza Strip and Israel – reported impact | Day #82* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-82>.

<sup>366</sup> UN News, *Gaza doctors ‘terrified’ of deadly disease outbreak as aid teams race to deliver* (28 November 2023), <https://news.un.org/en/story/2023/11/1144032>.

<sup>367</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #45* (20 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-45>.

<sup>368</sup> “Panic as Gaza’s al-Shifa evacuates, Israel army denies ordering it to do so”, *Al Jazeera* (18 November 2023), <https://www.aljazeera.com/news/2023/11/18/israel-gives-gazas-al-shifa-hospital-one-hour-to-evacuate>.

<sup>369</sup> UN Web TV, *UNICEF, WHO, OHCHR, UNHCR - Press Briefing: Rob Holand, Emergency Coordinator WHO* (1 December 2023), <https://webtv.un.org/en/asset/k1r/k1r0ld247a> (at 22:15).

disinfectants<sup>370</sup> — have led not only to otherwise unnecessary amputations of limbs,<sup>371</sup> but also to amputations *without anaesthesia*, often undertaken by flashlight.<sup>372</sup> Pregnant women are also being subjected to caesareans without anaesthetic.<sup>373</sup> Patients are being treated on dirty floors covered with blood, with family members having to stand holding saline bags, where saline is even available.<sup>374</sup> There are insufficient staff and resources for adequate wound or post-operative wound care.<sup>375</sup> Unclean wounds — often infested with worms and flies — rapidly become infected, necrotic or gangrenous.<sup>376</sup> Patients plead for food and water.<sup>377</sup> Even basic pain-management treatment is often unavailable, and patients are at risk of dying from treatable conditions.<sup>378</sup> One doctor described having to do procedures without anaesthetic, he said:

“I was forced to do dressing changes on massive wounds, excruciatingly painful wounds. There was a girl with just her whole body covered in shrapnel. She was nine. I ended up having to change and clean these wounds with no anaesthetic and no analgesic. I managed to find some intravenous paracetamol to give her ... her Dad was crying, I was crying, and the poor child was screaming...”<sup>379</sup>

85. In addition to the war wounded, there are hundreds of thousands of Palestinians in Gaza who still need routine medical care for conditions such as high blood pressure, cardiovascular disease or diabetes.<sup>380</sup> Thousands of Palestinians in Gaza are also in need of urgent care for kidney disease and cancer, and an estimated 130 premature babies are dependent on incubators for survival at any given time.<sup>381</sup> Many of them are now unable to receive medical assistance. UNICEF warns that “[w]omen, children and newborns in Gaza are disproportionately bearing the burden of the escalation of hostilities

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<sup>370</sup> Jason Burke, “‘We are overwhelmed: southern Gaza’s exhausted doctors forced to leave children die”, *The Guardian* (24 November 2023), <https://www.theguardian.com/world/2023/nov/24/we-are-overwhelmed-southern-gazas-exhausted-doctors-forced-to-leave-children-to-die>.

<sup>371</sup> Claire Gillbody-Dickerson, “Doctors in Gaza forced to amputate limbs because they lack means to treat injuries”, *iNews* (30 October 2023), <https://inenews.co.uk/news/world/doctors-gaza-forced-amputate-limbs-hospitals-israel-evacuate-2720777>.

<sup>372</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #32* (7 November 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-32>.

<sup>373</sup> UN News, *Interview: 5,500 women in Gaza set to give birth ‘in race against death’* (7 November 2023), <https://news.un.org/en/interview/2023/11/1143327>.

<sup>374</sup> UN News, *UN workers delivering aid to Gaza hospital describe ‘bloodbath’ in overflowing emergency department* (16 December 2023), <https://news.un.org/en/story/2023/12/1144877>; Rajini Vaidyanathan, “WHO says Al-Shifa ‘looked almost like a battlefield hospital’”, *BBC* (17 December 2023), <https://www.bbc.com/news/live/world-middle-east-67732895>.

<sup>375</sup> UN News, *UPDATED: Injured patients ‘waiting to die’ in northern Gaza as last hospital shuts down, amid rising ‘catastrophic’ hunger levels* (21 December 2023), <https://news.un.org/en/story/2023/12/1145017>.

<sup>376</sup> Lilia Sebouai, “‘Bodies scratched, bleeding and full of flies’: Infections plague Gaza’s hospitals”, *The Telegraph* (6 November 2023), <https://www.telegraph.co.uk/global-health/terror-and-security/hospital-infections-gaza-medical-supplies-clean-water/>; Dr. Hafez Abukhoussa, “The Horrors I’ve Seen Treating Patients at Gaza’s Remaining Hospitals”, *Time Magazine* (12 December 2023), <https://time.com/6358269/horrors-treating-patients-khan-younis-gaza/>.

<sup>377</sup> UN News, *UPDATED: Injured patients ‘waiting to die’ in northern Gaza as last hospital shuts down, amid rising ‘catastrophic’ hunger levels* (21 December 2023), <https://news.un.org/en/story/2023/12/1145017>.

<sup>378</sup> WHO, *WHO delivers health supplies to Al-Shifa Hospital, appeals for continued access to address urgent needs in north Gaza* (17 December 2023), <https://www.who.int/news/item/17-12-2023-who-delivers-health-supplies-to-al-shifa-hospital--appeals-for-continued-access-to-address-urgent-needs-in-north-gaza>; WHO, *WHO Director-General’s remarks at the Informal Plenary Meeting of the United Nations General Assembly* (17 November 2023), <https://www.who.int/director-general/speeches/detail/who-director-general-s-remarks-at-the-informal-plenary-meeting-of-the-united-nations-general-assembly---17-november-2023>.

<sup>379</sup> Interview with Dr Ghassan Abu-Sittah on Channel 4 News, 27 November 2023: “‘We were having to do procedures without anaesthetic’, says Gaza war surgeon”, *Channel 4* (27 November 2023), <https://www.channel4.com/news/we-were-having-to-do-procedures-without-anaesthetic-says-gaza-war-surgeon>.

<sup>380</sup> WHO, *oPt Emergency Situation Update Issue 16* (7 December 2023), [https://www.emro.who.int/images/stories/palestine/oPt\\_Emergency\\_Situation\\_Update\\_-\\_DEC7b.pdf](https://www.emro.who.int/images/stories/palestine/oPt_Emergency_Situation_Update_-_DEC7b.pdf).

<sup>381</sup> *Ibid.*

in the occupied Palestinian territory, both as casualties and in reduced access to health services".<sup>382</sup> Older persons and persons with disabilities lack essential medication, and are at higher risk of communicable diseases, malnutrition and death.<sup>383</sup> Pregnant women are also particularly vulnerable.<sup>384</sup>

86. Experts are beginning to warn that the numbers of Palestinians dying as a result of disease and hunger, could *already* be outstripping violent deaths caused by Israeli army assaults.<sup>385</sup> There have already been over 360,000 documented cases of communicable diseases reported in UNRWA shelters alone, brought on or exacerbated by unsanitary conditions, hunger and lack of clean water, with the actual numbers believed to be considerably higher.<sup>386</sup> As stated by the World Health Organization:

"Gaza is already experiencing soaring rates of infectious diseases. Over 100 000 cases of diarrhoea have been reported since mid-October. Half of these are among young children under the age of 5 years, case numbers that are 25 times what was reported before the conflict.

Over 150 000 cases of upper respiratory infection, and numerous cases of meningitis, skin rashes, scabies, lice and chickenpox have been reported. Hepatitis is also suspected as many people present with the tell-tale signs of jaundice.

While a healthy body can more easily fight off these diseases, a wasted and weakened body will struggle. Hunger weakens the body's defences and opens the door to disease.

Malnutrition increases the risk of children dying from illnesses like diarrhoea, pneumonia and measles, especially in a setting where they lack access to life-saving health services.

Even if the child survives, wasting can have life-long impacts as it stunts growth and impairs cognitive development...

The people of Gaza, who have already suffered enough, now face death from starvation and diseases *that could be easily treated with a functioning health system*. This must stop. Food and other aid must flow in far greater amounts. WHO reiterates its call for an immediate humanitarian ceasefire."<sup>387</sup>

87. Experts assess that the death toll from disease and hunger "could be multiples of that from fighting and air strikes".<sup>388</sup> Israel is through its relentless attacks on the Palestinian healthcare system in Gaza is deliberately inflicting on Palestinians in Gaza conditions of life calculated to bring about their destruction.<sup>389</sup> Writing in the British medical journal, *The Lancet*, a group of medics "highlight the

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<sup>382</sup> UNICEF, *Joint Statement by UNICEF, UNDP, UNFPA, WFP and WHO on Humanitarian Supplies Crossing into Gaza* (4 November 2023), <https://www.unicef.org/press-releases/joint-statement-by-unicef-undp-unfpa-wfp-and-who-on-humanitarian-supplies-crossing-into-gaza/>.

<sup>383</sup> HRW, *Gaza: Israeli Attacks, Blockade Devastating for People with Disabilities* (1 November 2023), <https://www.hrw.org/news/2023/11/01/gaza-israeli-attacks-blockade-devastating-people-disabilities>; UN OHCHR, *Occupied Palestinian territory and Israel: UN experts call for permanent ceasefire to protect rights and futures of women and girls* (14 December 2023), <https://www.ohchr.org/en/press-releases/2023/12/occupied-palestinian-territory-and-israel-un-experts-call-permanent>.

<sup>384</sup> See further Section 8 *infra*.

<sup>385</sup> See e.g., Tedros Adhanom Ghebreyesus, Director-General of the WHO, @DrTedros, Tweet (6:26 am, November 29, 2023), <https://twitter.com/DrTedros/status/1729748696890245146>; UN News, 'Ten weeks of hell' for children in Gaza: UNICEF (19 December 2023), <https://news.un.org/en/story/2023/12/1144927>.

<sup>386</sup> UNICEF, *State of Palestine Escalation Humanitarian Situation Report Issue No. 10, 7-13 December* (14 December 2023), <https://www.unicef.org/media/150141/file/SoP-Humanitarian-SitRep-14-December-2023.pdf>; WHO, *oPt Emergency Situation Update Issue 16* (7 December 2023), [https://www.emro.who.int/images/stories/palestine/oPt\\_Emergency\\_Situation\\_Update\\_-DEC7b.pdf](https://www.emro.who.int/images/stories/palestine/oPt_Emergency_Situation_Update_-DEC7b.pdf)

<sup>387</sup> WHO, *Lethal combination of hunger and disease to lead to more deaths in Gaza* (21 December 2023), <https://www.who.int/news/item/21-12-2023-lethal-combination-of-hunger-and-disease-to-lead-to-more-deaths-in-gaza>.

<sup>388</sup> Henry Mance, "UN aid chief Martin Griffiths: 'the war in Gaza isn't halfway through'", *Financial Times* (18 December 2023), <https://www.ft.com/content/01b592be-47c7-4a20-9bbd-621aa40f7640>.

<sup>389</sup> *Ibid.*

health dimensions of violence resulting from the ongoing siege and attacks against Palestinians” rightly warning of a “grave risk of genocide against the Palestinian people”.<sup>390</sup>

## 7. Destruction of Palestinian life in Gaza

88. On 16 November 2023, 15 United Nations Special Rapporteurs and 21 members of United Nations Working Groups, warning of a “genocide in the making” in Gaza, observed that the level of destruction that had by then taken place of “housing units, as well as hospitals, schools, mosques, bakeries, water pipes, sewage and electricity networks . . . threatens to make the continuation of Palestinian life in Gaza impossible”.<sup>391</sup> As they note, Israel has in its bombing campaign against Gaza used “powerful weaponry with inherently indiscriminate impacts, resulting in a colossal death toll and *destruction of life-sustaining infrastructure.*”<sup>392</sup> Israel has destroyed not only individual homes, houses, and whole apartment blocks; it has destroyed entire streets, and entire neighbourhoods: Shuja'iyya, a suburb of Gaza City, once home to approximately 110,000 Palestinians, appears to now be a vast wasteland, entirely flattened as far as the eye can see.<sup>393</sup> Its shops, schools, vibrant market place, family homes, doctors clinics, historic streets and Ibn Uthman Mosque, and everything that once sustained Palestinian life there has been damaged or destroyed, along with so many of its people.<sup>394</sup> Other areas in Gaza appear to have experienced a similar level of destruction, including Beit Hanoun,<sup>395</sup> Beit Lahia,<sup>396</sup> Gaza Old City,<sup>397</sup> Al Rimal,<sup>398</sup> and Nuseirat refugee camp in the South.<sup>399</sup>

89. Across Gaza, Israel has targeted the infrastructure and foundations of Palestinian life, deliberately creating conditions of life calculated to bring about the physical destruction of Palestinian people. In addition to the attacks previously cited on homes, neighbourhoods, hospitals, water systems, agricultural lands, bakeries and mills, Israel has also targeted the foundational civil

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<sup>390</sup> Alix Faddoul, Geordan Shannon, Khudejha Ashgar, Yamina Boukari, James Smith and Amy Neilson, “The health dimensions of violence in Palestine: a call to prevent genocide”, *The Lancet* (18 December 2023), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(23\)02751-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)02751-4/fulltext).

<sup>391</sup> UN OHCHR, *Gaza: UN experts call on international community to prevent genocide against the Palestinian people* (16 November 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>.

<sup>392</sup> UN OHCHR, *Gaza: UN experts call on international community to prevent genocide against the Palestinian people* (16 November 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against> (emphasis added).

<sup>393</sup> “The documentation that dropped Gazans’ jaws: the Shuja'iyya neighbourhood was completely wiped out: Watch”, *JDN* (20 December 2023), <https://www.jdn.co.il/video/2103783/>; Israeli soldier reports “Shujaiya neighbourhood gone”: Bazz News, @1717Bazz, Tweet (2:50 pm, December 20, 2023), <https://twitter.com/i/web/status/1737485648158748674>, (translation by Middle East Eye, @MiddleEastEye (8:00am, December 21, 2023), <https://twitter.com/MiddleEastEye/status/1737744722649546979>).

<sup>394</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #74* (20 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-74>.

<sup>395</sup> UN OCHA, *Before and after: satellite images of Gaza showing damage caused in hostilities* (9 November 2023), <https://www.ochaopt.org/content/and-after-satellite-images-gaza-showing-damage-caused-hostilities>.

<sup>396</sup> Dominic Bailey, Erwan Rivault, Daniele Palumbo, “Nearly 100,000 Gaza buildings may be damaged, satellite images show”, *BBC News* (1 December 2023), <https://www.bbc.com/news/world-middle-east-67565872>.

<sup>397</sup> UN OCHA, *Before and after: satellite images of Gaza showing damage caused in hostilities* (9 November 2023), <https://www.ochaopt.org/content/and-after-satellite-images-gaza-showing-damage-caused-hostilities>.

<sup>398</sup> Al-Haq, Al Mezan Center for Human Rights, Palestinian Centre for Human Rights, *Destruction of al-Rimal Neighborhood in Gaza City, an Attack on the Economic Existence of a National Group* (19 October 2023), <https://www.alhaq.org/advocacy/21943.html>; “How Israeli Airstrikes Destroyed a Busy Neighbourhood in Gaza”, *The Financial Times* (24 October 2023), <https://ig.ft.com/gaza-damage/>.

<sup>399</sup> Dominic Bailey, Erwan Rivault, Daniele Palumbo, “Nearly 100,000 Gaza buildings may be damaged, satellite images show”, *BBC News* (1 December 2023), <https://www.bbc.com/news/world-middle-east-67565872>.

system in Gaza. Israel has targeted the Palace of Justice,<sup>400</sup> — the main Palestinian court building in Gaza — housing the Palestinian Supreme Court, the Constitutional Court, the Court of Appeal, the Court of First Instance, the Administrative Court and the Magistrates’ Court, as well as an archive of court records and other historical files. Israel has also significantly damaged the Palestinian Legislative Council complex.<sup>401</sup> It has targeted Gaza City’s Central Archive building, containing thousands of historical documents and national records dating back over 100 years, and forming an essential archive of Palestinian history, as well as more modern records for Gaza City’s urban development.<sup>402</sup>

90. Israel has left Gaza City’s main public library in ruins.<sup>403</sup> It has also damaged or destroyed countless bookshops, publishing houses, libraries,<sup>404</sup> and hundreds of educational facilities.<sup>405</sup> Israel has targeted every one of Gaza’s four universities — including the Islamic University of Gaza, the oldest higher education institution in the territory, which has trained generations of doctors and engineers, amongst others,<sup>406</sup> — destroying campuses for the education of future generations of Palestinians in Gaza. Alongside so many others, Israel has killed leading Palestinian academics, including: Professor Sufian Tayeh, the President of the Islamic University — an award-winning physicist and UNESCO Chair of Astronomy, Astrophysics and Space Sciences in Palestine — who died, alongside his family, in an airstrike; Dr Ahmed Hamdi Abo Absa, Dean of the Software Engineering Department at the University of Palestine, reportedly shot dead by Israeli soldiers as he walked away, having been released from three days of enforced disappearance; and Professor Muhammad Eid Shabir, Professor of Immunology and Virology, and former President of the Islamic University of Gaza, and Professor Refaat Alareer, poet and Professor of Comparative Literature and Creative Writing at the Islamic University of Gaza, were both killed by Israel with members of their families. Professor Alareer was a co-founder of ‘We are Not Numbers’, a Palestinian youth project seeking to tell the stories behind otherwise impersonal accounts of Palestinians — and Palestinian deaths — in the news.<sup>407</sup>

91. Israel has damaged and destroyed numerous centres of Palestinian learning and culture, including: the Al Zafar Dmari Mosque and Center for Manuscripts and Ancient Documents;<sup>408</sup> the Orthodox Cultural Centre; the Al Qarara Cultural Museum; the Gaza Centre for Culture and Arts; the Arab Social Cultural Centre; the Hakawi Society for Culture and Arts; and the Rafah Museum — Gaza’s newly opened museum of Palestinian heritage, housing hundreds of cultural and archaeological artefacts. Israel’s attacks have destroyed Gaza’s ancient history: eight sites have been damaged or

<sup>400</sup> Diakonia International Humanitarian Law Centre, *2023 Hostilities And Escalating Violence In The OPT | Account of Events* (13 December 2023), <https://www.diakonia.se/ihl/news/2023-hostilities-in-gaza-and-israel-factual-account-of-events/>.

<sup>401</sup> Josh Holder, “Gaza After Nine Weeks of War”, *The New York Times* (12 December 2023), <https://www.nytimes.com/interactive/2023/12/12/world/middleeast/gaza-strip-satellite-images-israel-invasion.html>.

<sup>402</sup> International Council on Archives, *Statement of the International Council on Archives on the Destruction of the Central Archives of the Municipality of Gaza* (13 December 2023), <https://www.ica.org/en/statement-of-the-international-council-on-archives-on-the-destruction-of-the-central-archives-of-the>.

<sup>403</sup> Mohamad El Chamaa, “Gazans mourn loss of their libraries: Cultural beacons and communal spaces” *The Washington Post* (1 December 2023), <https://www.washingtonpost.com/world/2023/11/30/gaza-library-palestinian-culture/>.

<sup>404</sup> Laila Hussein Moustafa, “Opinion: When libraries like Gaza’s are destroyed, what’s lost is far more than books”, *Los Angeles Times* (12 December 2023), <https://www.latimes.com/opinion/story/2023-12-12/gaza-library-bombing>.

<sup>405</sup> UNICEF, *UNICEF in the State of Palestine Escalation Humanitarian Situation Report No. 10* (14 December 2023), <https://www.unicef.org/media/150141/file/SoP-Humanitarian-SitRep-14-December-2023.pdf>.

<sup>406</sup> Brendan O’Malley, Wagdy Sawahel, “Israel bombs Gaza university, alleging use by military”, *University World News* (12 October 2023), <https://www.universityworldnews.com/post.php?story=20231012162739531>.

<sup>407</sup> We Are Not Numbers, *Tributes to Refaat Alareer, killed Dec. 9, 2023* (18 December 2023), <https://wearenotnumbers.org/tributes-to-refaat-alareer-killed-dec-9-2023/>.

<sup>408</sup> ANSCH, *Report on the Impact of the Recent War in 2023 on the Cultural Heritage in Gaza Strip – Palestine* (7 November 2023) <https://www.heritageforpeace.org/wp-content/uploads/2023/11/Report-of-the-effects-of-the-last-war-of-2023-on-the-cultural-heritage-in-Gaza-Strip-Palestine-english.pdf>.

destroyed, including the ancient port of Gaza (known as ‘Anthedon Harbour’ or ‘Al Balakhiya’) — the archaeological site of a 2,000-year-old Roman cemetery listed on both the Islamic Heritage List and the tentative UNESCO World Heritage List.<sup>409</sup> Israel has also destroyed Gaza City’s ‘Old City’, including its 146-year-old historic houses, mosques, churches, markets and schools. It has also destroyed Gaza’s more recent history of more hopeful times, including the Rashad al-Shawa Cultural Center — site of a historic meeting between United States President Bill Clinton and Palestinian President Yasser Arafat 25 years ago — and an important cultural hub for Palestinians in Gaza, with its theatre, library and event space.<sup>410</sup> And Israel is destroying Gaza’s future academic and cultural potential: alongside the 352 Palestinian schools it has damaged or destroyed,<sup>411</sup> the 4,037 students and 209 teachers and educational staff it has killed, alongside the other 7,259 students and 619 teachers it has injured.<sup>412</sup>

92. Israel has damaged or destroyed an estimated 318 Muslim and Christian religious sites, demolishing the places where Palestinians have worshipped for generations.<sup>413</sup> These include the Great Omari Mosque, originally a fifth century Byzantine church, an iconic landmark of Gaza’s history, architecture and cultural heritage, and a place of worship by Christians and Muslims for over 1,000 years.<sup>414</sup> Israeli shelling has also damaged the Church of Saint Porphyrius, founded in 425 AD and believed to be the third oldest church in the world — alongside two other churches that have sustained direct Israeli fire.<sup>415</sup> Gaza’s Christians themselves have been targeted and killed by Israel in the very church compounds where they sought shelter.<sup>416</sup>

93. Along with its destruction of the physical monuments to the history and heritage of the Palestinians in Gaza, Israel has sought to destroy the very Palestinian people who form and create that heritage: Gaza’s celebrated journalists, its teachers, intellectuals and public figures, its doctors and nurses, its film-makers, writers and singers, the directors and deans of its universities, the heads of its hospitals, its eminent scientists, linguists, playwrights, novelists, artists and musicians. Israel has killed and is killing Palestinian story-tellers and poets, Palestinian farmers and fishermen, alongside Gaza’s local legends: pastry chef Masoud Muhammad al-Qatati, killed in an Israeli airstrike on his house on 3 November 2023, whose shop’s motto ‘let the poor eat’ — and reputation for giving away the popular Palestinian treat ‘knafeh’ to indigent customers — earned him the nickname ‘Father of the Poor’; 84-year-old Elham Farah, from one of Palestine’s oldest Christian families — a reputed accordionist and music teacher, known as ‘Mother Orange’ to generations of Palestinian music students for her shock of red hair,<sup>417</sup> — shot dead by an Israeli sniper outside the Holy Family Church in Gaza City when she

<sup>409</sup> UNESCO, *Anthedon Harbour* (2 April 2012), <https://whc.unesco.org/en/tentativelists/5719/>.

<sup>410</sup> “Erasing History: The Destruction of Gaza’s Cultural Heritage by Israel’s War Machine”, *LBC International* (8 December 2023), <https://www.lbcgroup.tv/news/news-bulletin-reports/740070/erasing-history-the-destruction-of-gazas-cultural-heritage-by-israels/en>.

<sup>411</sup> UNICEF, *UNICEF in the State of Palestine Escalation Humanitarian Situation Report No. 10* (14 December 2023), <https://www.unicef.org/media/150141/file/SoP-Humanitarian-SitRep-14-December-2023.pdf>.

<sup>412</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #78* (27 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-78>.

<sup>413</sup> Palestine Red Crescent Society, *Response Report as of Saturday, October 7th 2023, 6:00 PM Until Sunday, December 24th 2023, 24:00 AM* (24 December 2023), <https://reliefweb.int/report/occupied-palestinian-territory/palestine-red-crescent-society-response-report-saturday-october-7th-2023-600-pm-until-sunday-december-24th-2023-2400-am-enar>.

<sup>414</sup> “Images show major damage to Gaza’s oldest mosque”, *BBC News* (8 December 2023), <https://www.bbc.com/news/world-middle-east-67664853>.

<sup>415</sup> “Photos show Gaza’s Church of Saint Porphyrius, one of the oldest churches in the world, after the complex was damaged by Israeli airstrikes”, *Business Insider* (24 October 2023), <https://www.businessinsider.com/israel-gaza-war-church-airstrikes-damage-2023-10>.

<sup>416</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #72* (18 December 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-72>.

<sup>417</sup> “84-year-old Elham Farah: Accordionist, aunt and Gaza’s first ever music teacher killed by Israeli sniper”, *The New Arab* (7 December 2023), <https://www.newarab.com/features/gazas-first-music-teacher-elham-farah-killed-sniper>.

returned home for warm clothes, and was left to bleed to death;<sup>418</sup> and Al-Shaima Saidam, the student with the highest final high school exam grades in the whole of Palestine, killed with multiple members of her family in a strike on Al Nuseirat refugee camp.<sup>419</sup> Just as Israel is destroying the official memory and records of Palestinians in Gaza through its destruction of Gaza's archives and landmarks, it is obliterating Palestinian personal lives and private memories, histories and futures, through bombing and bulldozing graveyards,<sup>420</sup> destroying family records and photographs, wiping out entire multi-generational families,<sup>421</sup> and killing, maiming and traumatising a generation of children.<sup>422</sup> As a Palestinian man, in a video by UNRWA, succinctly sums up: "These are all our memories, our entire lives . . . Now it's all gone; everything has turned into ashes."<sup>423</sup>

94. The Israeli army — erecting the Israeli flag over the wreckage of devastated Palestinian homes, towns and cities, including in Gaza City's Palestine Square itself,<sup>424</sup> and spurred on by calls from within the Israeli government and without to 'flatten Gaza' and re-establish Israeli settlements on the rubble of Palestinian homes,<sup>425</sup> — is destroying the very fabric and basis of Palestinian life in Gaza. Israel is thereby deliberately inflicting on the Palestinian group in Gaza conditions of life calculated to bring about its destruction.

#### 8. *Imposing measures intended to prevent Palestinian births*

95. As set out above, Israel's actions are impacting Palestinian women and children in Gaza especially severely, with 70 per cent of those killed estimated to be women and children. Two mothers are estimated to be killed every hour in Gaza. Over 7,729 children were estimated to have been killed by 11 December 2023 alone,<sup>426</sup> and at least 4,700 other women and children are reported missing,

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<sup>418</sup> Nadda Osman, "Israel-Palestine war: The elderly Christian music teacher killed by Israeli soldiers in Gaza", *Middle East Eye* (14 November 2023), <https://www.middleeasteye.net/news/israel-palestine-war-christian-music-teacher-killed-gaza>.

<sup>419</sup> Nader Durgham, "Israel-Palestine war: Palestine's top student killed by Israeli air strikes", *Middle East Eye* (17 October 2023), <https://www.middleeasteye.net/news/israel-palestine-war-top-high-school-student-killed>.

<sup>420</sup> "Damage to Gaza War Cemetery shows challenge of caring for monuments in conflict zones", *Canadian Press* (10 November 2023), <https://www.cp24.com/news/damage-to-gaza-war-cemetery-shows-challenge-of-caring-for-monuments-in-conflict-zones-1.6639255>; Christoph Koettl, Christian Triebert, "Satellite Imagery and Video Shows Some Gazan Cemeteries Razed by Israeli Forces", *The New York Times* (14 December 2023), <https://www.nytimes.com/2023/12/14/world/middleeast/gaza-cemeteries-damage-israel.html>.

<sup>421</sup> Mahmoud Mushtaha, "A Second Nakba: Israeli attacks are erasing entire families from Gaza's civil registry", *The New Arab* (31 October 2023), <https://www.newarab.com/features/gaza-entire-families-being-wiped-out-civil-registry>.

<sup>422</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #74* (20 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-74>; UNICEF, *Emergency Response Children Trapped In Gaza Conflict Face Generational Trauma* (1 November 2023), <https://www.unicefusa.org/stories/children-trapped-gaza-conflict-face-generational-trauma>.

<sup>423</sup> Quoted in UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #70* (15 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-70>.

<sup>424</sup> "Israeli flag raised in symbolic Palestine Square in Gaza City, video shows", *CNN* (8 December 2023), [https://edition.cnn.com/middleeast/live-news/israel-hamas-war-gaza-news-12-08-23/h\\_7516b0f4b4970e9a01bffb26f1bb4739](https://edition.cnn.com/middleeast/live-news/israel-hamas-war-gaza-news-12-08-23/h_7516b0f4b4970e9a01bffb26f1bb4739).

<sup>425</sup> "Far-right minister calls for Israel to 'fully occupy' Gaza, reestablish settlements", *The Times of Israel* (15 December 2023), <https://www.timesofisrael.com/far-right-minister-calls-for-israel-to-fully-occupy-gaza-reestablish-settlements/>.

<sup>426</sup> UNICEF, *Joint Statement by UNICEF, UNDP, UNFPA, WFP and WHO on Humanitarian Supplies Crossing into Gaza* (4 November 2023), <https://www.unicef.org/press-releases/joint-statement-by-unicef-undp-unfpa-wfp-and-who-on-humanitarian-supplies-crossing-into-gaza/>; UN Women, *Facts and figures: Women and girls during the war in Gaza* (22 December 2023), <https://www.unwomen.org/en/news-stories/feature-story/2023/10/facts-and-figures-women-and-girls-during-the-war-in-gaza>.

believed to be buried under the rubble.<sup>427</sup> There are multiple eye-witness accounts of pregnant women being killed by Israeli soldiers, including while trying to access healthcare.<sup>428</sup>

96. Pregnant women and children — including newborn babies — are also particularly impacted by displacement, lack of access to food and water, shelter, clothes, hygiene and sanitation, and lack of access to health services. These effects are severe and significant. An estimated 5,500 of approximately 52,000 pregnant Palestinian women in Gaza giving birth each month are doing so in unsafe conditions, often with no clean water, much less medical assistance, “in shelters, in their homes, in the streets amid rubble, or in overwhelmed healthcare facilities, where sanitation is worsening, and the risk of infection and medical complications is on the rise”.<sup>429</sup> Where they are able to get to a functioning hospital, pregnant women are having to undergo caesarean sections without anaesthetic.<sup>430</sup>

97. Given the lack of access to critical medical supplies, including blood— doctors are being compelled to perform ordinarily unnecessary hysterectomies on young women in an attempt to save their lives, leaving them unable to have more children.<sup>431</sup> Indeed, the Minister of Health for the State of Palestine, Dr May al-Kaileh, confirms that the only option facing Palestinian women in Gaza who ‘bleed out’ after giving birth is to undergo a hysterectomy in order for their lives to be saved.<sup>432</sup> The lack of available drugs, such as the anti-D injection — given to Rhesus negative women on the birth of a Rhesus positive baby — also seriously impacts the possibility of future healthy pregnancies for affected women.

98. Premature births have reportedly increased by between 25-30 per cent, as stressed and traumatised pregnant women face a myriad of challenges, including being compelled to walk long distances in search of safety, attempting to escape from bombs and being crowded into shelters in often squalid conditions. Particularly in northern Gaza, cases of placenta abruption — a serious condition that occurs to pregnant women during childbirth which is potentially life-threatening to both mother and baby — have more than doubled.<sup>433</sup>

99. An ever-increasing number of Palestinian babies in Gaza are reportedly dying from entirely preventable causes, brought about by Israel’s actions: newborns up to three months old are dying of diarrhoea, hypothermia, and other preventable causes. Without essential equipment and medical support, premature and underweight babies have little to no chance of survival.<sup>434</sup> Palestinian newborn

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<sup>427</sup> Red Crescent Society, Palestine Red Crescent Society Response Report As of Saturday, October 7th 2023, 6:00 PM Until Sunday, December 24th 2023, 24:00 AM (24 December 2023), p.1, <https://www.palestinercs.org/public/files/image/2023/News/latestresponse23012023/en%2020220%202023.pdf>.

<sup>428</sup> ”مشاهد الحصار والدمار في تل الرزعر بمخيّم جباليا“، *Al Jazeera* (23 December 2023), <https://www.aljazeera.net/videos/2023/12/23/>; ”Israeli forces 'kill pregnant women in Gaza, run over bodies with bulldozers': report“ *The New Arab* (23 December 2023), <https://www.newarab.com/news/israeli-army-shot-pregnant-women-ran-over-bodies-report>.

<sup>429</sup> WHO, *Women and newborns bearing the brunt of the conflict in Gaza, UN agencies warn* (3 November 2023), <https://www.who.int/news/item/03-11-2023-women-and-newborns-bearing-the-brunt-of-the-conflict-in-gaza-un-agencies-warn>.

<sup>430</sup> UN News, *Interview: 5,500 women in Gaza set to give birth 'in race against death'* (7 November 2023), <https://news.un.org/en/interview/2023/11/1143327>.

<sup>431</sup> Juzoor for Health and Social Development, *The ravages of war: impact on mothers & newborns in Gaza* (11 November 2023), [https://www.juzoor.org/cached\\_uploads/download/2023/11/11/maternal-health-report-final-1699726911.pdf](https://www.juzoor.org/cached_uploads/download/2023/11/11/maternal-health-report-final-1699726911.pdf); ”الف امرأ حامل في غزة يواجهن مصيرًا مجهولًا“، *Al Jazeera Arabic* (30 October 2023), <https://www.aljazeera.net/women/2023/10/30/>.

<sup>432</sup> Interview with Dr Mai Al-Kaileh (Palestinian Minister of Health) on Al Arabiya, 27 December 2023, <https://www.instagram.com/reel/C1W2QFCvmM8/?igsh=Ynk1NjRzdndnaHM5>.

<sup>433</sup> Oxfam, *Babies dying from preventable causes in besieged Gaza – Oxfam* (24 November 2023), <https://reliefweb.int/report/occupied-palestinian-territory/babies-dying-preventable-causes-besieged-gaza-oxfam>.

<sup>434</sup> *Ibid.*

babies have died due to the lack of fuel to supply hospital generators;<sup>435</sup> others have been found decomposing in their hospital cots, medical staff taking care of them having been forced by Israel to evacuate.<sup>436</sup>

100. On 3 November 2023, the World Health Organisation warned that “[m]aternal deaths are expected to increase given the lack of access to adequate care”, with deadly consequences on reproductive health, including a rise in stress-induced miscarriages, stillbirths and premature births.<sup>437</sup> The impact will necessarily be long lasting and severe for Palestinians in Gaza as a group. By 22 November 2023 the United Nations Special Rapporteur on violence against women and girls, its causes and consequences, has expressly warned that:

“[T]he reproductive violence inflicted by Israel on Palestinian women, newborn babies, infants, and children could be qualified as... *acts of genocide under Article 2 of the Convention on the Prevention of Genocide* ... including “imposing measures intended to prevent births within a group”. She stressed that “States must prevent and punish such acts in accordance with their responsibilities under the Genocide Convention.”<sup>438</sup>

#### **D. Expressions of Genocidal Intent against the Palestinian People by Israeli State Officials and Others**

101. Evidence of Israeli State officials’ specific intent (*‘dolus specialis’*) to commit and persist in committing genocidal acts or to fail to prevent them has been significant and overt since October 2023. Those statements of intent — when combined with the level of killing, maiming, displacement and destruction on the ground, together with the siege — evidence an unfolding and continuing genocide. They include statements by the following individuals in the positions of the highest responsibility:

— **Prime Minister of Israel:** On 7 October 2023, in a televised address by the Government Press Office, Prime Minister Benjamin Netanyahu promised to “operate forcefully everywhere”.<sup>439</sup> On 13 October 2023, he confirmed that “[w]e are striking our enemies with unprecedented might . . .”.<sup>440</sup> On 15 October 2023, when Israeli airstrikes had already killed over 2,670 Palestinians, including 724 children,<sup>441</sup> the Prime Minister stated that Israeli soldiers “understand the scope of the mission” and stand ready “to defeat the bloodthirsty monsters who

<sup>435</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #44* (19 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-44>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #48* (23 November 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-48>.

<sup>436</sup> “Abandoned babies found decomposing in Gaza hospital weeks after it was evacuated”, *NBC News* (2 December 2023), <https://www.nbcnews.com/news/world/abandoned-babies-found-decomposing-gaza-hospital-evacuated-rcna127533>.

<sup>437</sup> WHO, *Women and newborns bearing the brunt of the conflict in Gaza, UN agencies warn* (3 November 2023), <https://www.who.int/news/item/03-11-2023-women-and-newborns-bearing-the-brunt-of-the-conflict-in-gaza-un-agencies-warn>.

<sup>438</sup> UN Press Release, *Women bearing the brunt of Israel-Gaza conflict: UN expert* (20 November 2023), <https://www.ohchr.org/en/press-releases/2023/11/women-bearing-brunt-israel-gaza-conflict-un-expert> (emphasis added).

<sup>439</sup> Prime Minister of Israel, @IsraeliPM, Tweet (10:31 pm, October 7, 2023), <https://twitter.com/IsraeliPM/status/1710769906373775373>.

<sup>440</sup> Address by the Prime Minister of Israel, (13 October 2023), <https://www.youtube.com/watch?v=T4HXaZ20M6Q>. Translation in “Only the beginning” says Netanyahu as Israel makes first raids into Gaza”, *Reuters* (13 October 2023), <https://www.reuters.com/world/middle-east/now-is-time-war-says-israels-military-chief-2023-10-12/>.

<sup>441</sup> UNICEF, *Immediate Needs Document in the State of Palestine (October – December 2023)* (17 October 2023), <https://reliefweb.int/report/occupied-palestinian-territory/immediate-needs-document-state-palestine-october-december-2023>. (Total as of 17:45, 15 October 2023; children as of 12:00, 14 October 2023).

have risen against [Israel] to destroy us”.<sup>442</sup> On 16 October 2023, in a formal address to the Israeli Knesset, he described situation as “a struggle between the children of light and the children of darkness, between humanity and the law of the jungle”,<sup>443</sup> a dehumanising theme to which he returned on various occasions, including: on 3 November 2023, in a letter to Israeli soldiers and officers also published on the platform ‘X’ (formerly Twitter); the letter asserted that: “[t]his is the war between the sons of light and the sons of darkness. We will not let up on our mission until the light overcomes the darkness — the good will defeat the extreme evil that threatens us and the entire world.”<sup>444</sup> The Israeli Prime Minister also returned to the theme in his ‘Christmas message’, stating: “we’re facing monsters, monsters who murdered children in front of their parents . . . This is a battle not only of Israel against these barbarians, it’s a battle of civilization against barbarism”.<sup>445</sup> On 28 October 2023, as Israeli forces prepared their land invasion of Gaza, the Prime Minister invoked the Biblical story of the total destruction of Amalek by the Israelites, stating: “you must remember what Amalek has done to you, says our Holy Bible. And we do remember”.<sup>446</sup> The Prime Minister referred again to Amalek in the letter sent on 3 November 2023 to Israeli soldiers and officers.<sup>447</sup> The relevant biblical passage reads as follows: “Now go, attack Amalek, and proscribe all that belongs to him. Spare no one, but kill alike men and women, infants and sucklings, oxen and sheep, camels and asses”.<sup>448</sup>

— **President of Israel:** On 12 October 2023, President Isaac Herzog made clear that Israel was not distinguishing between militants and civilians in Gaza, stating in a press conference to foreign media — in relation Palestinians in Gaza, over one million of whom are children: “It’s an entire nation out there that is responsible. It’s not true this rhetoric about civilians not aware not involved. It’s absolutely not true. . . and we will fight until we break their backbone.”<sup>449</sup> On 15 October 2023, echoing the words of Prime Minister Netanyahu, the President told foreign media that “we will uproot evil so that there will be good for the entire region and the world.”<sup>450</sup> The Israeli President is one of many Israelis to have handwritten ‘messages’ on bombs to be dropped on Gaza.<sup>451</sup>

— **Israeli Minister of Defence:** On 9 October 2023, Defence Minister Yoav Gallant in an Israeli Army ‘situation update’ advised that Israel was “imposing a complete siege on Gaza. No electricity, no food, no water, no fuel. Everything is closed. We are fighting human animals and

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<sup>442</sup> Israel Prime Minister’s Office, *PM Netanyahu asks Ministers to Rise for a Moment of Silence* (15 October 2023), <https://www.gov.il/en/departments/news/spoke-start151023> (emphasis added).

<sup>443</sup> Israel Ministry of Foreign Affairs, Press Release: Excerpt from PM Netanyahu’s remarks at the opening of the Winter Assembly of the 25<sup>th</sup> Knesset’s Second Session, 16 October 2023, <https://www.gov.il/en/departments/news/excerpt-from-pm-netanyahu-s-remarks-at-the-opening-of-the-knesset-s-winter-assembly-16-oct-2023>.

<sup>444</sup> Prime Minister’s Office in Hebrew, @IsraeliPM\_heb (11:44 am, November 3, 2023), [https://twitter.com/IsraeliPM\\_heb/status/1720406469055500583](https://twitter.com/IsraeliPM_heb/status/1720406469055500583).

<sup>445</sup> Israel Ministry of Foreign Affairs, Christmas message from PM Netanyahu, 24 December 2023, <https://www.gov.il/en/departments/news/christmas-message-from-pm-netanyahu-24-dec-2023>.

<sup>446</sup> Address by the Prime Minister of Israel, 28 October 2023, <https://www.youtube.com/watch?v=IIIPkoDk6isc>. Translation in, “Israel-Hamas war: ‘We will fight and we will win’, says Benjamin Netanyahu”, *Sky News* (28 October 2023), <https://news.sky.com/video/israel-hamas-war-we-will-fight-and-we-will-win-says-benjamin-netanyahu-12995212>.

<sup>447</sup> Prime Minister’s Office in Hebrew, @IsraeliPM\_heb, Tweet (11:43 am November 3, 2023), [https://twitter.com/IsraeliPM\\_heb/status/1720406463972004198](https://twitter.com/IsraeliPM_heb/status/1720406463972004198).

<sup>448</sup> Sefaria, I Samuel 15:1-34, JPS, 1985, [https://www.sefaria.org/I\\_Samuel.15.1-34?lang=bi](https://www.sefaria.org/I_Samuel.15.1-34?lang=bi).

<sup>449</sup> Rageh Omaar, “Israeli president Isaac Herzog says Gazans could have risen up to fight ‘evil’ Hamas”, *ITV News* (13 October 2023), <https://www.itv.com/news/2023-10-13/israeli-president-says-gazans-could-have-risen-up-to-fight-hamas>.

<sup>450</sup> President of the State of Israel, @Isaac\_Herzog, Tweet (10 pm, October 15, 2023), [https://twitter.com/Isaac\\_Herzog/status/1713661051986678189](https://twitter.com/Isaac_Herzog/status/1713661051986678189).

<sup>451</sup> President of the State of Israel, @Isaac\_Herzog, Tweet (5:16 pm, December 25, 2023), [https://twitter.com/Isaac\\_Herzog/status/173933430267074594](https://twitter.com/Isaac_Herzog/status/173933430267074594).

we are acting accordingly.”<sup>452</sup> He also informed troops on the Gaza border that he had “released all the restraints”,<sup>453</sup> stating in terms that: “Gaza won’t return to what it was before. We will eliminate everything. If it doesn’t take one day, it will take a week. It will take weeks or even months, we will reach all places.”<sup>454</sup> He further announced that Israel was moving to “a full-scale response” and that he had “removed every restriction” on Israeli forces.<sup>455</sup>

— **Israeli Minister for National Security:** On 10 November 2023, Itamar Ben-Gvir clarified the government’s position in a televised address, stating: “[t]o be clear, when we say that Hamas should be destroyed, it also means those who celebrate, those who support, and those who hand out candy — they’re all terrorists, and they should also be destroyed.”<sup>456</sup>

— **Israeli Minister of Energy and Infrastructure:** ‘Tweeting’ on 13 October 2023, Israel Katz stated: “All the civilian population in Gaza is ordered to leave immediately. We will win. They will not receive a drop of water or a single battery until they leave the world.”<sup>457</sup> On 12 October 2023, he ‘tweeted’: “Humanitarian aid to Gaza? No electrical switch will be turned on, no water hydrant will be opened and no fuel truck will enter until the Israeli abductees are returned home. Humanitarianism for humanitarianism. And no one will preach us morality.”<sup>458</sup>

— **Israeli Minister of Finance:** On 8 October 2023, Bezalel Smotrich stated at a meeting of the Israeli Cabinet that “[w]e need to deal a blow that hasn’t been seen in 50 years and take down Gaza.”<sup>459</sup>

— **Israeli Minister of Heritage:** On 1 November 2023, Amichai Eliyahu posted on Facebook: “The north of the Gaza Strip, more beautiful than ever. Everything is blown up and flattened, simply a pleasure for the eyes … We must talk about the day after. In my mind, we will hand over lots to all those who fought for Gaza over the years and to those evicted from Gush Katif” [a former Israeli settlement].<sup>460</sup> He later argued against humanitarian aid as “[w]e

<sup>452</sup> Statement by Yoav Gallant, 9 October 2023, 9 October 2023, <https://www.youtube.com/watch?v=1nxvS9VY-t0>. Translation in Emanuel Fabian, “Defense minister announces ‘complete siege’ of Gaza: No power, food or fuel”, *The Times of Israel* (9 October 2023), [https://www.timesofisrael.com/liveblog\\_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/](https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/).

<sup>453</sup> Filmography: Ariel Harmoni, Ministry of Defense, Kipa News, 10 October 2023, <https://www.youtube.com/watch?v=l9wx7e4u-xM>. Translation in Emanuel Fabian, “Gallant: Israel moving to full offense, Gaza will never return to what it was”, *The Times of Israel* (10 October 2023), [https://www.timesofisrael.com/liveblog\\_entry/gallant-israel-moving-to-full-offense-gaza-will-never-return-to-what-it-was/](https://www.timesofisrael.com/liveblog_entry/gallant-israel-moving-to-full-offense-gaza-will-never-return-to-what-it-was/).

<sup>454</sup> Filmography: Ariel Harmoni, Ministry of Defense, Kipa News, 10 October 2023, <https://www.youtube.com/watch?v=l9wx7e4u-xM>. Translation in “Israeli Defense Minister Warns Hamas ‘Will Regret’ Deadly Attacks”, *Bloomberg* (10 October 2023), <https://www.youtube.com/watch?v=vtjHcnNB0E8>.

<sup>455</sup> Bill Hutchinson, “Bombarded by Israeli airstrikes, conditions in Gaza grow more dire as power goes out”, *ABC News* (12 October 2023), <https://abcnews.go.com/International/bombarded-israeli-airstrikes-conditions-gaza-grow-dire-power/story?id=103899193#:~:text=The%20airstrikes%20were%20launched%20by,have%20been%20hit%20in%20Gaza>.

<sup>456</sup> Interview with Itamar Ben-Gvir on Channel 12, 11 November 2023, <https://www.youtube.com/watch?v=2yR1-cc-D3w> [10:30 onwards]. Translated by Quds News Network, @QudsNen, Tweet (7:28 pm, November 12, 2023), <https://twitter.com/QudsNen/status/1723784790682358189>.

<sup>457</sup> Israel Katz, Minister of Energy and Infrastructure, Member of the Political-Security Cabinet, Member of Knesset, @Israel\_katz, Tweet (6:01 pm, October 13, 2023) [https://twitter.com/Israel\\_katz/status/1712876230762967222](https://twitter.com/Israel_katz/status/1712876230762967222).

<sup>458</sup> Israel Katz, Minister of Energy and Infrastructure, Member of the Political-Security Cabinet, Member of Knesset, @Israel\_katz, Tweet (7:34 am, October 12, 2023) [https://twitter.com/Israel\\_katz/status/1712356130377113904](https://twitter.com/Israel_katz/status/1712356130377113904). Translation in “First Thing: no power, water or fuel for Gaza until hostages are freed, Israel says”, *The Guardian* (12 October 2023), <https://www.theguardian.com/us-news/2023/oct/12/first-thing-no-power-water-fuel-gaza-until-hostages-freed-israel-says>.

<sup>459</sup> “By abducting over 100 people into Gaza, Hamas has put Netanyahu in a political bind”, *The Times of Israel* (8 October 2023), <https://www.timesofisrael.com/by-abducting-over-100-people-into-gaza-hamas-has-put-netanyahu-in-a-political-bind/>.

<sup>460</sup> Amichai Eliyahu, Facebook Post (1 November 2023), <https://www.facebook.com/eliyau.a/videos/148918588283326/>.

wouldn't hand the Nazis humanitarian aid", and "there is no such thing as uninvolved civilians in Gaza".<sup>461</sup> He also posited a nuclear attack on the Gaza Strip.<sup>462</sup>

— **Israeli Minister of Agriculture:** On 11 November 2023, Avi Dichter in a television interview recalled the Nakba of 1948, in which over 80 percent of the Palestinian population of the new Israeli State was forced from or fled their homes, stating that "[w]e are now actually rolling out the Gaza Nakba".<sup>463</sup>

— **Deputy Speaker of the Knesset and Member of the Foreign Affairs and Security Committee:** On 7 October 2023, Nissim Vaturi 'tweeted' that: "[n]ow we all have one common goal — erasing the Gaza Strip from the face of the earth. Those who are unable will be replaced."<sup>464</sup>

102. Similar statements have been made by Israeli army officials, advisers and spokespersons, and others engaging with Israeli troops being deployed in Gaza:

— **Israeli Army Coordinator of Government Activities in the Territories ('COGAT'):** On 9 October 2023, in a video statement addressed to Hamas and Gaza residents, published by COGAT's official channel, Major General Ghassan Alian warned: "Hamas became ISIS and the citizens of Gaza are celebrating instead of being horrified. Human animals are dealt with accordingly. Israel has imposed a total blockade on Gaza, no electricity, no water, just damage. You wanted hell, you will get hell."<sup>465</sup>

— **Israeli Army Reservist Major General, former Head of the Israeli National Security Council, and adviser to the Defence Minister:**<sup>466</sup> On 7 October 2023, Giora Eiland, describing the Israeli order to cut off water and electricity to Gaza, wrote in an online journal: "This is what Israel has begun to do — we cut the supply of energy, water and diesel to the Strip . . . But it's not enough. In order to make the siege effective, we have to prevent others from giving assistance to Gaza . . . *The people should be told that they have two choices; to stay and to starve, or to leave.* If Egypt and other countries prefer that these people will perish in Gaza, this

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<sup>461</sup> Gili Cohen, Dov Gil-Har, Itay Blumenthal, Sulieman Masvidan, "Minister Amichai Eliyahu: Atomic bomb on Gaza? This is one of the possibilities", *Kan* (5 November 2023), <https://www.kan.org.il/content/kan-news/politic/596470/>. Translation in "Far-right minister: Nuking Gaza is an option, population should 'go to Ireland or deserts'", *The Times of Israel* (5 November 2023), [https://www.timesofisrael.com/liveblog\\_entry/far-right-minister-nuking-gaza-is-an-option-population-should-go-to-ireland-or-deserts/](https://www.timesofisrael.com/liveblog_entry/far-right-minister-nuking-gaza-is-an-option-population-should-go-to-ireland-or-deserts/).

<sup>462</sup> *Ibid.* The radio comment was criticised by the Prime Minister. Prime Minister of Israel, @IsraeliPM, Tweet (8:05 am, November 5, 2023), <https://twitter.com/IsraeliPM/status/1721076229518823826>. The Prime Minister's Office announced that the MK had been suspended from government meetings until further notice, although he reportedly voted in a meeting later that day. "Netanyahu 'suspended' the minister who did not fire an atom bomb on Gaza - even though there is no such option in the government regulations", *Yedioth Ahronoth* (5 November 2023), <https://www.ynet.co.il/news/article/ridl5ebm6>.

<sup>463</sup> Interview with Avi Dichter on Channel 12. Hanno Hauenstein, @hahauenstein, Tweet (8:42 pm, November 11, 2023), <https://twitter.com/hahauenstein/status/1723441134221869453>.

<sup>464</sup> Nissim Vaturi, Deputy Speaker of the Knesset. Member of the Foreign Affairs and Security Committee, @nissimv, Tweet (5:33 pm, October 7, 2023) <https://twitter.com/nissimv/status/1710694866009596169>. Translation in "Public Statement: Scholars Warn of Potential Genocide in Gaza", *Opinio Juris* (18 October 2023), <https://opiniojuris.org/2023/10/18/public-statement-scholars-warn-of-potential-genocide-in-gaza/>.

<sup>465</sup> Video address by Ghassan Alian, 10 October 2023, <https://www.youtube.com/shorts/5a0EWv-o7mE>.

<sup>466</sup> "Former security officials and strategic advisor: the 'cabinet' established by Gallant for himself", *Yedioth Ahronoth* (26 October 2023), <https://www.ynet.co.il/news/article/r1zlcnoga>.

is their choice.”<sup>467</sup> On the same day, he asserted in a national newspaper that “[w]hen you are at war with another country you don't feed them, you don't provide them electricity or gas or water or anything else . . . *A country can be attacked in a much broader way, to bring the country to the brink of dysfunction. This is the necessary outcome of events*” in Gaza.<sup>468</sup> He has repeatedly asserted the benefits for Israel of the creation of a humanitarian crisis in Gaza, stating that “*Israel has no interest in the Gaza Strip being rehabilitated* and this is an important point that needs to be made clear to the Americans”,<sup>469</sup> and that “[i]f we ever want to see the hostages alive, the only way is to create a *severe humanitarian crisis in Gaza*”.<sup>470</sup> He has indicated that water should be targeted, noting that water in Gaza “comes from wells with salt water unfit for consumption. They have water treatment plants, Israel should hit those plants. When the entire world says we have gone insane and this is a humanitarian disaster — we will say, it's not an end, it's a means.”<sup>471</sup> In a Times radio interview on 12 October 2023, he reiterated the army should:

“[C]reate such a huge pressure on Gaza, that Gaza will become an area where people cannot live. People cannot live, until Hamas is destroyed, which means that Israel not only stops to supply energy, diesel, water, food . . . as we did in the last twenty years . . . but we should prevent any possible assistance by others, and to create in Gaza such a terrible, unbearable situation, that can last weeks and months”.<sup>472</sup>

Giora Eiland has repeatedly been given a media platform to call for Gaza to be made uninhabitable, declaring “*the State of Israel has no choice but to make Gaza a place that is temporarily, or permanently, impossible to live in.*”<sup>473</sup> In an interview on 6 November 2023, he suggested that, “if there is an intention for a military action at Shifa [Hospital], which I think is inescapable, I hope that the head of the CIA got an explanation of why this is necessary, and why *the US must ultimately back even an operation like this, even if there are thousands of bodies of civilians in the streets afterward.*”<sup>474</sup> Further he proposed that “Israel needs to create a humanitarian crisis in Gaza, compelling tens of thousands or even hundreds of thousands to seek refuge in Egypt or the Gulf . . . *Gaza will become a place where no human being can exist.*”<sup>475</sup> Echoing the words of President Herzog, he has repeatedly underscored that there should be no distinction between Hamas combatants and Palestinian civilians, saying:

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<sup>467</sup> Giora Eiland, “A new turning point in the history of the State of Israel. Most people don't understand that”, *Fathom* (7 October 2023), <https://fathomjournal.org/opinion-a-new-turning-point-in-the-history-of-the-state-of-israel-most-people-dont-understand-that/> (emphasis added).

<sup>468</sup> Giora Eiland, “The state of Gaza has started a war against Israel - and it should be fought accordingly”, *Mako* (7 October 2023), [https://www.mako.co.il/news-columns/2023\\_q4/Article-fcf787ad0ba0b81027.htm](https://www.mako.co.il/news-columns/2023_q4/Article-fcf787ad0ba0b81027.htm) (emphasis added).

<sup>469</sup> Interview with Giora Eiland on Kann News, 17 November 2023. Kann News, @kann\_news, Tweet (6:42 pm, November 17 2023), [https://twitter.com/kann\\_news/status/172558514333622129](https://twitter.com/kann_news/status/172558514333622129) (emphasis added).

<sup>470</sup> Ariel Whitman, “Giora Eiland outlines plan to get hostages back alive”, *Globes* (8 October 2023), <https://en.globes.co.il/en/article-giora-eiland-outlines-plan-to-get-hostages-back-alive-1001459631> (emphasis added).

<sup>471</sup> “How should one respond to the massacre of hundreds?”, *Yedioth Ahronoth* (print) (9 October 2023), <https://drive.google.com/file/d/1l5Ow2T0Na20BcoL2yautiobij8ldNsVK/view>.

<sup>472</sup> How Israel plan to ‘destroy Hamas’ | Major General Giora Eiland, 12 October 2023, <https://www.youtube.com/watch?v=CRHz0dZwF2A>.

<sup>473</sup> Giora Eiland, “This is not revenge. It's either us or them”, *Yedioth Ahronoth* (10 October 2023), <https://www.ynet.co.il/yedioth/article/yokra13625377> (emphasis added).

<sup>474</sup> “Ex-top general: IDF op against Hamas at Shifa Hospital inescapable; US must back it”, *The Times of Israel* (6 November 2023), [https://www.timesofisrael.com/liveblog\\_entry/ex-top-general-idf-op-against-hamas-at-shifa-hospital-inescapable-us-must-back-it/](https://www.timesofisrael.com/liveblog_entry/ex-top-general-idf-op-against-hamas-at-shifa-hospital-inescapable-us-must-back-it/) (emphasis added).

<sup>475</sup> Giora Eiland, “It's time to rip off the Hamas band-aid”, *Yedioth Ahronoth* (12 October 2023), <https://www.ynetnews.com/article/sju3uabba> (emphasis added).

“Who are the ‘poor’ women of Gaza? *They are all the mothers, sisters or wives of Hamas murderers.* On the one hand, they are part of the infrastructure that supports the organization, and on the other hand, if they experience a humanitarian disaster, then it can be assumed that some of the Hamas fighters and the more junior commanders will begin to understand that the war is futile . . . The international community warns us of a humanitarian disaster in Gaza and of severe epidemics. We must not shy away from this, as difficult as that may be. After all, *severe epidemics in the south of the Gaza Strip will bring victory closer . . . It is precisely its civil collapse that will bring the end of the war closer.* When senior Israeli figures say in the media ‘It’s either us or them’ we should clarify the question of who is ‘them’. ‘They’ are not only Hamas fighters with weapons, but also *all the ‘civilian’ officials, including hospital administrators and school administrators, and also the entire Gaza population* who enthusiastically supported Hamas and cheered on its atrocities on October 7th.”<sup>476</sup>

- **Israeli Army reservist “motivational speech”:** On 11 October 2023, 95-year old Israeli army reservist Ezra Yachin — a veteran of the Deir Yassin massacre during the 1948 Nakba — reportedly called up for reserve duty to “boost morale” amongst Israeli troops ahead of the ground invasion, was broadcast on social media inciting other soldiers to genocide as follows, while being driven around in an Israeli army vehicle, dressed in Israeli army fatigues:

“Be triumphant and finish them off and don’t leave anyone behind. *Erase the memory of them. Erase them, their families, mothers and children. These animals can no longer live . . . Every Jew with a weapon should go out and kill them. If you have an Arab neighbour, don’t wait, go to his home and shoot him . . . We want to invade, not like before, we want to enter and destroy what’s in front of us, and destroy houses, then destroy the one after it.* With all of our forces, *complete destruction*, enter and destroy. As you can see, we will witness things we’ve never dreamed of. Let them drop bombs on them and erase them.”<sup>477</sup>

- **Head of the Israeli army’s Air Operations Group:** On 28 October 2023, Lieutenant colonel Gilad Kinan described the Air Force as “work[ing] together with all the bodies in the IDF when the goal is clear — to *destroy everything* that has been touched by the hand of Hamas”.<sup>478</sup>

- **Commander in the 2908<sup>th</sup> Battalion of the Israeli army:** In a video posted online on 21 December 2023, Yair Ben David said that the Israeli army had “entered Beit Hanoun and did there as Shimon and Levi did in Nablus,” and that “[t]he entire Gaza should resemble Beit Hanoun”, referring to the city in northern Gaza which has been entirely devastated by the Israeli army.<sup>479</sup> The biblical passage in issue reads: “On the third day, when they were in pain, Simeon

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<sup>476</sup> Giora Eiland, “Let’s not be intimidated by the world”, *Yedioth Ahronoth* (print) (19 November 2023), in Bezalel Smotrich, Minister of Finance, Chairman of the Religious Zionist Party, @bezalelsm, Tweet (11:20 am, November 19, 2023), <https://twitter.com/bezalelsm/status/1726198721946480911>. Translation by Talula Sha, Tweet (19 November 2023), <https://twitter.com/TalulaSha/status/1726267178201362438> (emphasis added).

<sup>477</sup> Bazz News, @1717Bazz, Tweet (7:39 pm, October 11, 2023), <https://twitter.com/1717Bazz/status/1712176168823107986>. Translation by Middle East Eye, @MiddleEastEye, Tweet (8:48 pm, October 13, 2023), <https://twitter.com/MiddleEastEye/status/1712918166437806294> (emphasis added).

<sup>478</sup> Israel Defense Forces, @idfonline, Tweet (6:23 am, October 28, 2023), <https://twitter.com/idfonline/status/1718136442805686351>. Informal translation, emphasis added.

<sup>479</sup> Yair Ben David, Commander in the 2908th Battalion, statement, 20 December 2023, <https://www.youtube.com/watch?v=NK8ZnGKspeI>. Translation in “War on Gaza: Israeli commander vows to flatten ‘entire’ Gaza Strip”, *Middle East Eye* (21 December 2023), <https://www.middleeasteye.net/news/war-gaza-israeli-commander-vows-flatten-entire-gaza-strip>.

*and Levi, two of Jacob's sons, brothers of Dinah, took each his sword, came upon the city unmolested, and slew all the males*".<sup>480</sup>

103. The above statements by Israeli decision-makers and military officials indicate in and of themselves a clear intent to destroy Palestinians in Gaza as a group "as such". They also constitute clear direct and public incitement to genocide, which has gone unchecked and unpunished. The clear inference from the acts of the Israeli army on the ground — including from the vast number of civilians killed and injured, and the scale of displacement, destruction and devastation wrought in Gaza — is that those genocidal statements and directives are being implemented against the Palestinian people. That is also the clear and necessary inference to be drawn from the emerging evidence from Israeli army soldiers serving in Gaza, including those stationed on the ground:

— **Israeli Army Colonel, Deputy Head of COGAT:** speaking in a video filmed in Beit Lahia — one of the areas of Gaza which appears to have suffered particularly severe levels of destruction — and broadcast on Israeli television on 4 November 2023, Colonel Yogeve Bar-Sheshet stated: "[w]hoever returns here, if they return here after, will find scorched earth. No houses, no agriculture, no nothing. They have no future;" another Army Colonel recorded in the same video, Colonel Erez Eshel (Reserve), also commented that: "Vengeance is a great value. There is vengeance over what they did to us ... This place will be a fallow land. They will not be able to live here".<sup>481</sup>

— **Israeli army soldiers:** Israeli soldiers in uniform have been filmed on 5 December 2023 dancing, chanting and singing "May their village burn, May Gaza be erased",<sup>482</sup> and, two days later, on a separate occasion *inside Gaza* on 7 December 2023, dancing, singing and chanting, "we know our motto: *there are no uninvolved civilians*" and "*to wipe off the seed of Amalek*".<sup>483</sup>

104. Notably, the second video of soldiers chanting that there are "no uninvolved citizens" in Gaza and that they will "wipe off the seed of Amalek" was filmed on 7 December 2023. By that date, 17,177 Palestinians in Gaza had been killed — an estimated 70 per cent of whom were women and children. 7-8 December 2023 was particularly devastating for Palestinians, with 350 people killed in the space of 24 hours — approximately one Palestinian in Gaza killed every four minutes.<sup>484</sup>

105. This genocidal rhetoric of governmental and military officials is also widespread and commonplace amongst non-cabinet members of the Israeli Knesset ('MKs') who have repeatedly called

<sup>480</sup> Genesis 34:25 (NJPS 1985), <https://www.sefaria.org/Genesis.34.25?lang=bi&with=all&lang2=en> (emphasis added).

<sup>481</sup> Channel 14 segment, 4 November 2023, <https://www.youtube.com/watch?v=fqEj3DzadiM>: "Special documentation from the heart of Gaza: this is how our forces fight deep in enemy territory", *Now 14* (5 November 2023), <https://www.now14.co.il/>.

<sup>482</sup> Video of Kobi Peretz with soldiers, 17 November 2023, <https://www.youtube.com/watch?v=xch2o4c5KZY> (emphasis added).

<sup>483</sup> Yinon Magal, @YinonMagal, Tweet (6:44 am, 7 December 2023)

<https://twitter.com/YinonMagal/status/1732652279461757102>. Translation by Middle East Eye, @MiddleEastEye, Tweet (1:30 pm, December 8, 2023) <https://twitter.com/MiddleEastEye/status/1733116719668113618> (emphasis added).

<sup>484</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #62* (7 December 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-62-enar>.

for Gaza to be “wiped out”,<sup>485</sup> “flatten[ed]”,<sup>486</sup> “eras[ed]”,<sup>487</sup> and “[c]rush[ed] . . . on all its inhabitants”.<sup>488</sup> Parliamentarians have publicly deplored anyone “feel[ing] sorry” for the “uninvolved” Gazans, asserting repeatedly that “there are no uninvolved”,<sup>489</sup> that “[t]here are no innocents in Gaza”,<sup>490</sup> that “the killers of the women and children should not be separated from the citizens of Gaza”,<sup>491</sup> that “the children of Gaza have brought this upon themselves”,<sup>492</sup> and that “there should be one sentence for everyone there — death”.<sup>493</sup> Parliamentarians have stated “[w]e must not forget that even the ‘innocent citizens’ — the cruel and monstrous people from Gaza took an active part . . . there is no place for any humanitarian gesture — the memory of Amalek must be protested”,<sup>494</sup> and that “[w]ithout hunger and thirst among the Gazan population, we will not be able to recruit collaborators”.<sup>495</sup> Parliamentarians have also called for “mercilessly” bombing “from the air”,<sup>496</sup> calling for the use of nuclear (“doomsday”) weapons,<sup>497</sup> and a “Nakba that will overshadow the Nakba of 48”.<sup>498</sup>

106. Similar genocidal rhetoric is also commonplace in Israeli civil society, with genocidal messages being routinely broadcast — without censure or sanction — in Israeli media. The media reports call for Gaza to be “erase[d]”,<sup>499</sup> turned into a “slaughterhouse”,<sup>500</sup> that “Hamas should not be eliminated” but rather “Gaza should be razed”,<sup>501</sup> on the repeated claim that “[t]here are *no innocents*... There is no

<sup>485</sup> Revital Gottlieb, @TallyGotliv, Tweet (5:10 pm, October 29, 2023), <https://twitter.com/TallyGotliv/status/1718676748542296207>.

<sup>486</sup> Interview with Katrin “Keti” Shitrit-Peretz on Now 14, 1 November 2023: Now 14, @Now14Israel, Tweet (9:50 pm, November 1, 2023), <https://twitter.com/Now14Israel/status/1719834297832526215>; Revital Gottlieb, @TallyGotliv, Tweet (10:41 am, October 10, 2023), <https://twitter.com/TallyGotliv/status/1711678420235534705>.

<sup>487</sup> Galit Atbaryan, @GalitDistel, Tweet (12:13 pm, November 1, 2023), <https://twitter.com/galitdistel/status/1719689095230730656>.

<sup>488</sup> Eliyahu Revivo, @revivoeliyahu, Tweet (2:46 pm, November 1, 2023), <https://twitter.com/revivoeliyahu/status/1719727722459508915>.

<sup>489</sup> Revital Gottlieb, @TallyGotliv, Tweet (3:46 pm, December 7, 2023), <https://twitter.com/TallyGotliv/status/1732788632430186872>.

<sup>490</sup> Avigdor Lieberman, @AvigdorLieberman, Tweet (6:45 pm, November 30, 2023), <https://twitter.com/avigdorliberman/status/1730297081959530685> (emphasis added).

<sup>491</sup> Interview with Katrin “Keti” Shitrit-Peretz on Now 14, 1 November 2023: Now 14, @Now14Israel, Tweet (9:50 pm, November 1, 2023), <https://twitter.com/Now14Israel/status/1719834297832526215> (emphasis added).

<sup>492</sup> Meirav Ben-Ari, Knesset Session, 16 October 2023, [https://www.facebook.com/watch/live/?ref=watch\\_permalink&v=3497251110531404](https://www.facebook.com/watch/live/?ref=watch_permalink&v=3497251110531404) [2:29:57] (emphasis added).

Translation by Jonathan Ofir, “Israeli Politician Says ‘Children of Gaza Have Brought This Upon Themselves’”, *Truthout* (18 October 2023), <https://truthout.org/articles/israeli-politician-says-children-of-gaza-have-brought-this-upon-themselves/>.

<sup>493</sup> “MK Yitzhak Kroizer: ‘The Gaza Strip should be wiped off the map’, *Galey Israel* (5 November 2023) <https://www.gly.co.il/item?id=30587>.

Translation in “Fire Israel’s Far Right”, *Haaretz* (6 November 2023), [https://www.haaretz.com/opinion/editorial/2023-11-06/ty-article/\\_premium/fire-israels-far-right/0000018b-a11c-dc0b-a1cb-e5de69890000](https://www.haaretz.com/opinion/editorial/2023-11-06/ty-article/_premium/fire-israels-far-right/0000018b-a11c-dc0b-a1cb-e5de69890000).

<sup>494</sup> Boaz Bismuth, @BismuthBoaz, Tweet (8:02 am, October 16, 2023) <https://twitter.com/BismuthBoaz/status/1713812686784311358>.

<sup>495</sup> Statement by Revital Gottlieb in the Knesset, 23 October 2023: Knesset Channel, @KnessetT, Tweet (6:10 pm, October 23, 2023), <https://twitter.com/KnessetT/status/1716502486331113922>.

<sup>496</sup> Revital Gottlieb, @TallyGotliv, Tweet (7:39 am, December 13, 2023), <https://twitter.com/TallyGotliv/status/1734840416522948800>.

<sup>497</sup> Revital Gottlieb, @TallyGotliv, Tweet (5:59 pm, October 9, 2023) <https://twitter.com/TallyGotliv/status/1711426284322996613>.

<sup>498</sup> Ariel Kallner, @ArielKallner, Tweet (10:29 pm, October 7, 2023), <https://twitter.com/ArielKallner/status/1710769363119141268>. Translated in the New Arab: “Erase Gaza’: How genocidal rhetoric became normalised in Israel”, *The New Arab* (30 November 2023), <https://www.newarab.com/analysis/erase-gaza-how-genocidal-rhetoric-normalised-israel> and informal translation.

<sup>499</sup> Interview with Eyal Golan on Now 14, 15 October 2023: Now 14, @Now14Israel, Tweet (1:24 pm, October 15, 2023), <https://twitter.com/Now14Israel/status/1713531211300167928>.

<sup>500</sup> David Mizrahy Verthaim, @dverthaim, Tweet (4:52 pm, October 7, 2023), <https://twitter.com/dverthaim/status/1710684531114602891>.

<sup>501</sup> Moshe Feiglin, @moshefeiglin, Tweet (6:16 am, October 12, 2023), <https://twitter.com/moshefeiglin/status/1712336429982846977>.

population. *There are 2.5 million terrorists*".<sup>502</sup> One local official, reportedly called for Gaza to be "desolate and destroyed" like the Auschwitz Museum, "demonstrating the madness of the people who lived there".<sup>503</sup> Former MKs have called for a level of destruction akin to that of Dresden and Hiroshima,<sup>504</sup> asserting that it would be "immoral" for the Israeli army not to show themselves to be "vengeful and cruel".<sup>505</sup> In an Israeli news interview, one former MK called for all Palestinians in Gaza to be killed saying:

*"I tell you, in Gaza without exception, they are all terrorists, sons of dogs. They must be exterminated, all of them killed. We will flatten Gaza, turn them to dust, and the army will cleanse the area. Then we will start building new areas, for us, above all, for our security."*<sup>506</sup>

107. Those statements by prominent members of Israeli society — including former parliamentarians and news anchors — constitute clear direct and public incitement to genocide, which has gone unchecked and unpunished by the Israeli authorities. That such sentiment appears to be so widespread and mainstream in Israeli society is of particular concern, in circumstances where the soldiers serving in Gaza are largely reservists, drawn from and informed by civil society.

## **E. Recognition of Israel's genocidal intent against Palestinians**

108. As set out above, numerous States have rightly recognised Israel's statements in relation to Gaza as demonstrating genocidal intent. That assessment is shared by a significant number of United Nations experts who have repeatedly warned since at least mid-October 2023 that the Palestinian people are at grave risk of genocide by Israel. By way of example:

— On 19 October 2023, **nine United Nations Special Rapporteurs** sounded “the alarm”, warning that “[t]here is an ongoing campaign by Israel resulting in crimes against humanity in Gaza. Considering statements made by Israeli political leaders and their allies, accompanied by military action in Gaza and escalation of arrests and killing in the West Bank, there is also a *risk of genocide against the Palestine People.*”<sup>507</sup>

— On 27 October 2023, the **United Nations Committee on the Elimination of Racial Discrimination** underscored that it was “[h]ighly concerned about the sharp increase in racist

<sup>502</sup> Interview with Eliyahu Yossain on Now 14 Israel, 29 October 2023: Now 14, @Now14Israel, Tweet (9:32 pm, October 29, 2023), <https://twitter.com/Now14Israel/status/171874274745503922>. Translated by Ahmed Eldin, Instagram Post (30 October 2023) <https://www.instagram.com/reel/CzB77JritW/>.

<sup>503</sup> “Israel should make Gaza look like Auschwitz - council head”, *Jerusalem Post* (17 December 2023), <https://www.jpost.com/israel-hamas-war/article-778367>.

<sup>504</sup> Interview with Moshe Feiglin on Aljazeera, 25 October 2023,

[عضو کنیست سابق-یدعو لکرار سیناریو 25 اکتوبر 2023](https://www.aljazeeramubasher.net/news/politics/2023/10/25/144)

<sup>505</sup> Galit Distel Atbaryan, @GalitDistel, Tweet (12:13 pm, November 1, 2023),

<sup>506</sup> “Former Israeli Knesset member calls on the complete destruction of Gaza”, *Middle East Eye* (25 December 2023), <https://twitter.com/galitdistel/status/1719689095230730656>.

<sup>507</sup> UN OHCHR, *Gaza: UN experts decry bombing of hospitals and schools as crimes against humanity, call for prevention of genocide* (19 October 2023), <https://www.ohchr.org/en/press-releases/2023/10/gaza-un-experts-decrys-bombing-hospitals-and-schools>.

and schools crimes against humanity (emphasis added). The statement was made by Pedro Arrojo Agudo, Special Rapporteur on the human rights to safe drinking water and sanitation; Francesca Albanese, Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967; Reem Alsalem, Special Rapporteur on violence against women and girls; Paula Gaviria Betancur, Special Rapporteur on the human rights of internally displaced persons; Michael Fakhri, Special Rapporteur on the right to food; Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Balakrishnan Rajagopal, Special Rapporteur on the right to adequate housing; Farida Shaheed, Special Rapporteur on the right to education; Ashwini K.P., Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

hate speech and *dehumanization* directed at Palestinians since 7 October, particularly on the Internet and in social media, including by senior officials, politicians, members of the Parliament, and public figures, particularly the statement of 9 October made by the Israeli Minister of Defense, Yoav Gallant, in which he referred to Palestinians as ‘human animals’, language which could *incite genocidal actions*.<sup>508</sup>

— On 28 October 2023, the **Director of the New York Office of the High Commissioner of Human Rights** (‘OHCHR’) stepped down, after penning a widely reported resignation statement describing the situation in Gaza as a “*text-book case of genocide*”.<sup>509</sup>

— On 2 November 2023, **eight Special Rapporteurs** warned that they “remain convinced that *the Palestinian people are at grave risk of genocide*.” The experts stated that “[t]he time for action is now”, underscoring that “Israel’s allies also bear responsibility and must act now to prevent its disastrous course of action”.<sup>510</sup>

— On 16 November 2023, **15 United Nations Special Rapporteurs and 21 members of United Nations Working Groups** cautioned that “[g]rave violations committed by Israel against Palestinians in the aftermath of 7 October, particularly in Gaza, point to *a genocide in the making*”. The statement highlights “evidence of *increasing genocidal incitement, overt intent to “destroy the Palestinian people under occupation”*, loud calls for a ‘second Nakba’ in Gaza and the rest of the occupied Palestinian territory, and the use of powerful weaponry with inherently indiscriminate impacts, resulting in a colossal death toll and destruction of life-sustaining infrastructure”. The experts expressed “profound … concern … about … the *failure of the international system to mobilise to prevent genocide*”, cautioning that “[t]he failure to urgently implement a ceasefire risks this situation spiralling towards *a genocide conducted with 21st century means and methods of warfare*"; they called on “[t]he international community, including not only States but also non-State actors” to “do everything it can to *immediately end the risk of genocide against the Palestinian people*”.<sup>511</sup>

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<sup>508</sup> CERD, *Statement 5 (2023) Israel and the State of Palestine* (27 October 2023), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSWA%2F9904](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSWA%2F9904) (emphasis added).

<sup>509</sup> Letter from Craig Mokhiber to Volker Türk, High Commissioner for Human Rights (28 October 2023), <https://s3.documentcloud.org/documents/24103463/craig-mokhiber-resignation-letter.pdf> (emphasis added).

<sup>510</sup> UN OHCHR, *Gaza is ‘running out of time’ UN experts warn, demanding a ceasefire to prevent genocide* (2 November 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-running-out-time-un-experts-warn-demanding-ceasefire-prevent-genocide> (emphasis added). The statement was made by the above Special Rapporteurs on safe drinking water; the Palestinian Territory; violence against women and girls; internally displaced persons; food; physical and mental health; and racism; as well as Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

<sup>511</sup> UN OHCHR, *Gaza: UN experts call on international community to prevent genocide against the Palestinian people* (16 November 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against> (emphasis added). The statement was made by the above Special Rapporteurs on the Palestinian Territory; safe drinking water; education; adequate housing; racism; internally displaced persons; freedom of opinion and expression; violence against women and girls; as well as by Margaret Satterthwaite, Special Rapporteur on the Independence of Judges and Lawyers; Surya Deva, Special Rapporteur on the right to development; Olivier De Schutter, Special Rapporteur on extreme poverty and human rights; Siobhán Mullally, Special Rapporteur on trafficking in persons, especially women and children; Mary Lawlor, Special Rapporteur on the situation of human rights defenders; Ben Saul, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Tomoya Obokata, Special Rapporteur on contemporary forms of slavery, including its causes and consequences; as well as by Livingstone Sewanyana, Independent Expert on the promotion of a democratic and equitable international order; Claudia Mahler, Independent Expert on the enjoyment of all human rights by older persons; as well as by Barbara G. Reynolds (Chair), Bina D’Costa, Dominique Day, Catherine Namakula, Working Group of experts on people of African Descent; Dorothy Estrada Tanck (Chair), Claudia Flores, Ivana Krstić, Haina Lu, and Laura Nyirinkindi, Working Group on discrimination against

- On 20 November 2023, the **United Nations Special Rapporteur on violence against women and girls, its causes and consequences**, issued a statement warning that “[s]ince 7 October, the assault on Palestinian women’s dignity and rights has taken on new and terrifying dimensions, as thousands have become victims of war crimes, crimes against humanity and an *unfolding genocide*”. The Special Rapporteur “expressed alarm at the *genocidal and dehumanising rhetoric about the Palestinian people*, including women and children, by top Israeli Government officials and public figures calling them “children of darkness””. The Special Rapporteur referred to the description of Palestinians as ‘human animals’ and the calls for a ‘second Nakba’ by Israeli officials, cautioning that “[s]uch statements make the Israeli Government’s intention to destroy the Palestinian people, in whole or in part, absolutely and consistently clear”.<sup>512</sup>
- On 8 December 2023, ahead of the United Nations Security Council ceasefire resolution vote vetoed by the United States of America, **22 United Nations Special Rapporteurs and 28 Members of United Nations Working Groups** reiterated their previous statement “warning against the *commission of genocide*”.<sup>513</sup>
- On 21 December 2023, the **Committee on the Elimination of Racial Discrimination**, acting under its ‘early warning and urgent action procedure’, reiterating its earlier statement, and warning of “hate speech and dehumanising discourse targeted at Palestinians, raising severe concerns regarding Israel’s and other State parties’ obligation to prevent … genocide”. The Committee called on “all State parties to fully respect their international obligations, in particular those arising from … the Convention on the Prevention and Punishment of the Crime of Genocide and to cooperate to bring an end [to] the violations that are taking place and to prevent … genocide”. The Committee made detailed reference to the ongoing situation in Gaza, stating *inter alia* that it was “gravely concerned about the racist hate speech, incitement to violence and genocidal actions, as well as dehumanizing rhetoric targeted at Palestinians since

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women and girls; Carlos Salazar Couto (Chair-Rapporteur), Sorcha MacLeod, Jovana Jezdimirovic Ranito, Chris M. A. Kwaja, Ravindran Daniel, Working Group on the use of mercenaries; Damilola Olawuyi (Chairperson), Robert McCorquodale (Vice-Chairperson), Elżbieta Karska, Fernanda Hopenhaym, and Pichamon Yeophantong, Working Group on the issue of human rights and transnational corporations and other business enterprises.

<sup>512</sup> UN OHCHR, *Women bearing the brunt of Israel-Gaza conflict: UN expert* (20 November 2023), <https://www.ohchr.org/en/press-releases/2023/11/women-bearing-brunt-israel-gaza-conflict-un-expert> (emphasis added).

<sup>513</sup> UN OHCHR, *UN experts urge States to unite for peace and push for ceasefire in Gaza* (8 December 2023), <https://www.ohchr.org/en/press-releases/2023/12/un-experts-urge-states-unite-peace-and-push-ceasefire-gaza> (emphasis added). The statement was made by the above Special Rapporteurs on safe drinking water; the Palestinian Territory; violence against women and girls; internally displaced persons; development; extreme poverty; food; freedom of opinion and expression; human rights defenders; physical and mental health; trafficking in persons; contemporary forms of slavery; adequate housing; independence of judges and lawyers; countering terrorism; education; and racism; as well as David Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Beatriz Miranda Galarza, Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members; Clément Nyaletsossoi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association; Francisco Cali Tzay, Special Rapporteur on the rights of indigenous peoples; and Alexandra Xanthaki, Special Rapporteur in the field of cultural rights; as well as by the above members of the working group on People of African Descent; discrimination against women and girls; the use of mercenaries; human rights and transnational corporations and other business enterprises; and Aua Baldé (Chair-Rapporteur), Gabriella Citroni (Vice-Chair), Angkhana Neelapajit, Grażyna Baranowska, Ana Lorena Delgadillo Perez, Working Group on enforced or involuntary disappearances; as well as the above Independent Expert on the enjoyment of all human rights by older persons; Cecilia Bailliet, Independent Expert on human rights and international solidarity; Graeme Reid, Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity; and Attiya Waris, Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights.

7 October 2023 by Israeli senior government officials, members of the Parliament, politicians and public figures".<sup>514</sup>

109. The Organisation of Islamic Cooperation has repeatedly condemned Israel's military actions in Gaza as "genocide",<sup>515</sup> as has the Arab group at the United Nations.<sup>516</sup> The International Federation for Human Rights have called for an end to the "genocide", with the International Commission of Jurists calling on third States "to take all reasonable measures within their power to prevent genocide in Gaza".<sup>517</sup> Palestinian non-governmental organisations have also strongly condemned the genocide, calling on the International Criminal Court to investigate the crime.<sup>518</sup> The Palestinian Human Rights Organizations Council on 14 November 2023 issued a detailed briefing note calling on the State of Palestine and third States to intervene taking concrete measures and legal action to prevent genocide in Gaza. The report cautions that "[t]here have been significant warnings by United Nations independent human rights experts, as well as actions taken by third States, including the removal of their diplomatic missions from Israel, some in response to the ongoing Israeli genocidal statements and acts. Together, these warnings and State actions put the international community of States on notice, that there is a very real risk that genocide is being, or may be committed against Palestinians in Gaza".<sup>519</sup>

#### IV. THE CLAIMS OF SOUTH AFRICA

110. Based on the above, as well as the further evidence to be presented over the course of these proceedings, South Africa considers that the conduct of Israel — through its State organs, State agents, and other persons and entities acting on its instructions or under its direction, control or influence — in relation to Palestinians in Gaza, is in violation of its obligations under the Genocide Convention, including Articles I, III, IV, V and VI, read in conjunction with Article II. Those violations of the Genocide Convention include, but are not limited to:

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<sup>514</sup> UN OCHA, *Gaza Strip: States are obliged to prevent crimes against humanity and genocide*, UN Committee stresses (21 December 2023), <https://www.ohchr.org/en/press-releases/2023/12/gaza-strip-states-are-obliged-prevent-crimes-against-humanity-and-genocide> (emphasis added). Under CERD's Early Warning and Urgent Action ('EWUA') procedure, CERD has extensive expertise in compiling indicators relevant to the prevention of genocide; in 2015 it issued a Declaration on the Prevention of Genocide which recalled this work in its preamble: see CERD, *Declaration on the Prevention of Genocide* (CRD/C/66/1) (17 October 2005), [https://www.ohchr.org/sites/default/files/Documents/HRBodies/CERD/declaration\\_genocide.doc](https://www.ohchr.org/sites/default/files/Documents/HRBodies/CERD/declaration_genocide.doc).

<sup>515</sup> See e.g., Organisation of Islamic Cooperation ('OIC'), *Final Communiqué of the extraordinary open-ended meeting of the OIC Executive Committee at the level of Foreign Ministers on the brutal Israeli military aggression against the Palestinian people* (18 October 2023), [https://www.oic-oci.org/topic/?t\\_id=39767&t\\_ref=26705&lan=en](https://www.oic-oci.org/topic/?t_id=39767&t_ref=26705&lan=en); OIC, *OIC Condemns the Massacre Committed by the Israeli Occupation in Jabalia Camp* (1 November 2023), [https://www.oic-oci.org/topic/?t\\_id=39849&t\\_ref=26728&lan=en](https://www.oic-oci.org/topic/?t_id=39849&t_ref=26728&lan=en); OIC, *OIC Strongly Condemns Incursion into Gaza City Al-Shifa Hospital and Continued Israeli Aggression against the Palestinian People* (15 November 2023), [https://www.oic-oci.org/topic/?t\\_id=39936&t\\_ref=26759&lan=en](https://www.oic-oci.org/topic/?t_id=39936&t_ref=26759&lan=en); OIC, *OIC Strongly Condemns the Successive Massacres Committed by the Israeli Occupation against the Palestinian People* (18 November 2023), [https://www.oic-oci.org/topic/?t\\_id=39945&t\\_ref=26762&lan=en](https://www.oic-oci.org/topic/?t_id=39945&t_ref=26762&lan=en).

<sup>516</sup> UN Meetings Coverage, 9498<sup>th</sup> Meeting, SC/15518 (8 December 2023), <https://press.un.org/en/2023/sc15518.doc.htm>.

<sup>517</sup> Fédération Internationale pour les Droits Humains ('FIDH'), *Resolution on Israel's unfolding crime of genocide and other crimes in Gaza and against the Palestinian People* (12 December 2023), [https://www.fidh.org/IMG/pdf/fidh\\_resolution\\_on\\_israel\\_s\\_unfolding\\_crime\\_of\\_genocide\\_and\\_other\\_crimes\\_in\\_gaza\\_and\\_against\\_the\\_palestinian\\_people.pdf](https://www.fidh.org/IMG/pdf/fidh_resolution_on_israel_s_unfolding_crime_of_genocide_and_other_crimes_in_gaza_and_against_the_palestinian_people.pdf); International Commission of Jurists, *Gaza/Palestine: States have a Duty to Prevent Genocide* (17 November 2023), <https://www.icj.org/gaza-occupied-palestinian-territory-states-have-a-duty-to-prevent-genocide/>.

<sup>518</sup> Al Haq, Al Mezan Center, and PCHR, *Palestinian Human Rights Organisations call on ICC to issue arrest warrants against Israeli leaders for genocide and incitement to genocide* (9 November 2023), <https://www.alhaq.org/advocacy/22138.html>.

<sup>519</sup> Palestinian Human Rights Organizations Council, *PHROC Calls on the State of Palestine and Third States to Intervene Taking Concrete Measures and Legal Action to Prevent Genocide in Gaza* (14 November 2023), [https://www.alhaq.org/cached\\_uploads/download/2023/11/15/briefing-note-genocide-third-state-responsibility-14-november-2023-1700041879.pdf](https://www.alhaq.org/cached_uploads/download/2023/11/15/briefing-note-genocide-third-state-responsibility-14-november-2023-1700041879.pdf).

- (a) failing to prevent genocide in violation of Article I;
- (b) committing genocide in violation of Article III (a);
- (c) conspiring to commit genocide in violation of Article III (b);
- (d) direct and public incitement to commit genocide in violation of Article III (c);
- (e) attempting to commit genocide in violation of Article III (d);
- (f) complicity in genocide in violation of Article III (e);
- (g) failing to punish genocide, conspiracy to commit genocide, direct and public incitement to genocide, attempted genocide and complicity in genocide, in violation of Articles I, III, IV and VI;
- (h) failing to enact the necessary legislation to give effect to the provisions of the Genocide Convention and to provide effective penalties for persons guilty of genocide, conspiracy to commit genocide, incitement to genocide, attempted genocide, and complicity in genocide, in violation of Article V; and
- (i) failing to allow and/or directly or indirectly impeding the investigation by competent international bodies or fact-finding missions of genocidal acts committed against Palestinians in Gaza, including those Palestinians removed by Israeli State agents or forces to Israel, as a necessary and corollary obligation pursuant to Articles I, III, IV, V and VI.

#### V. THE RELIEF SOUGHT

111. While reserving the right to revise, supplement or amend this Application, and subject to the presentation to the Court of the relevant evidence and legal arguments, South Africa respectfully requests the Court to adjudge and declare:

- (1) that the Republic of South Africa and the State of Israel each have a duty to act in accordance with their obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the members of the Palestinian group, to take all reasonable measures within their power to prevent genocide; and
- (2) that the State of Israel:
  - (a) has breached and continues to breach its obligations under the Genocide Convention, in particular the obligations provided under Article I, read in conjunction with Article II, and Articles III (a), III (b), III (c), III (d), III (e), IV, V and VI;
  - (b) must cease forthwith any acts and measures in breach of those obligations, including such acts or measures which would be capable of killing or continuing to kill Palestinians, or causing or continuing to cause serious bodily or mental harm to Palestinians or deliberately inflicting on their group, or continuing to inflict on their

group, conditions of life calculated to bring about its physical destruction in whole or in part, and fully respect its obligations under the Genocide Convention, in particular the obligations provided under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI;

(c) must ensure that persons committing genocide, conspiring to commit genocide, directly and publicly inciting genocide, attempting to commit genocide and complicit in genocide contrary to Articles I, III (a), III (b), III (c), III (d) and III (e) are punished by a competent national or international tribunal, as required by Articles I, IV, V and VI;

(d) to that end and in furtherance of those obligations arising under Articles I, IV, V and VI, must collect and conserve evidence and ensure, allow and/or not inhibit directly or indirectly the collection and conservation of evidence of genocidal acts committed against Palestinians in Gaza, including such members of the group displaced from Gaza;

(e) must perform the obligations of reparation in the interest of Palestinian victims, including but not limited to allowing the safe and dignified return of forcibly displaced and/or abducted Palestinians to their homes, respect for their full human rights and protection against further discrimination, persecution, and other related acts, and provide for the reconstruction of what it has destroyed in Gaza, consistent with the obligation to prevent genocide under Article I; and

(f) must offer assurances and guarantees of non-repetition of violations of the Genocide Convention, in particular the obligations provided under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI.

## VI. REQUEST FOR PROVISIONAL MEASURES

112. In accordance with Article 41 of the Statute of the Court, and Articles 73, 74 and 75 of the Rules of Court, South Africa requests that the Court indicate provisional measures. In light of the nature of the rights in issue, as well as the ongoing, extreme and irreparable harm being suffered by Palestinians in Gaza, South Africa requests that the Court address this request as a matter of extreme urgency.

113. This Application describes an exceptionally brutal military campaign by Israel in Gaza, which is extensive and ongoing, and which Israel intends to intensify further still.<sup>520</sup>

114. Israel has engaged in and failed to prevent or to punish acts and measures which are genocidal, constituting flagrant violations of Israel's obligations under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI of the Genocide Convention. As further evidenced in the materials set out in the application, the acts of genocide in question in breach of Articles II (a), II (b), II (c) and II (d), in particular, that collectively target the Palestinians in Gaza include, *inter alia*:

(1) **killing Palestinians in Gaza**, including a large proportion of women and children — estimated to account for around 70 per cent of the more than 21,110 fatalities — some of whom appear to have been summarily executed;

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<sup>520</sup> Statement by Israeli Prime Minister to Likud Party, 25 December 2023: Jeremy Sharon, "After rare visit to Gaza, Netanyahu says war 'not close to being over'", *The Times of Israel* (25 December 2023), [https://www.timesofisrael.com/liveblog\\_entry/after-gaza-visit-netanyahu-says-war-not-close-to-being-over/](https://www.timesofisrael.com/liveblog_entry/after-gaza-visit-netanyahu-says-war-not-close-to-being-over/).

- (2) **causing serious mental and bodily harm to Palestinians in Gaza**, including through maiming, psychological trauma, and inhuman and degrading treatment;
- (3) **causing the forced evacuation and displacement of around 85 per cent of Palestinians in Gaza** — including children, the elderly and infirm, and the sick and wounded — as well as causing the large scale destruction of Palestinian homes, villages, refugee camps, towns and entire areas in Gaza, precluding the return of a significant proportion of the Palestinian people to their homes;
- (4) **causing widespread hunger, dehydration and starvation to besieged Palestinians in Gaza**, through the impeding of sufficient humanitarian assistance, the cutting off of sufficient water, food, fuel and electricity, and the destruction of bakeries, mills, agricultural lands and other methods of production and sustenance;
- (5) **failing to provide and restricting the provision of adequate shelter, clothes, hygiene or sanitation to Palestinians in Gaza**, including the 1.9 million internally displaced people, compelled by Israel's actions to live in dangerous situations of squalor, alongside the routine targeting and destruction of places of shelter and the killing and wounding of those sheltering, including women, children, the disabled and the elderly;
- (6) **failing to provide for or to ensure the provision for the medical needs of Palestinians in Gaza**, including those medical needs created by other genocidal acts causing serious bodily harm, including through directly attacking Palestinian hospitals, ambulances and other healthcare facilities in Gaza, killing Palestinian doctors, medics and nurses, including the most qualified medics in Gaza, and destroying and disabling Gaza's medical system; and
- (7) **destroying Palestinian life in Gaza**, through the destruction of Gaza's universities, schools, courts, public buildings, public records, stores, libraries, churches, mosques, roads, infrastructure, utilities and other facilities necessary to the sustained life of Palestinians in Gaza as a group, alongside the killing of entire family groups — erasing entire oral histories in Gaza — and the killing of prominent and distinguished members of society.
- (8) **Imposing measures intended to prevent Palestinian births in Gaza**, through the reproductive violence inflicted on Palestinian women, newborn babies, infants, and children.

115. Provisional measures are necessary in this case to protect against further, severe and irreparable harm to the rights of the Palestinian people under the Genocide Convention, which continue to be violated with impunity. South Africa requests that the Court indicate provisional measures to protect and preserve those rights as well as its own rights under the Convention, and to prevent any aggravation or extension of the dispute, pending the determination of the merits of the issues raised by the Application.

116. South Africa notes that there are other related matters that do not directly engage obligations under the Genocide Convention and are therefore not properly within the Court's jurisdiction in this case, including the urgent return of Israeli and other hostages. South Africa considers that the provisional measures requested are nevertheless consistent with and capable of assisting towards the progression and resolution of those matters.

## **A. Compelling Circumstances Require the Indication of Provisional Measures**

117. As detailed above, contrary to Article I of the Convention, Israel has perpetrated and is perpetrating genocidal acts identified in Article II. Israel, its officials and/or agents, have acted with the intent to destroy Palestinians in Gaza, part of a protected group under the Genocide Convention. The compelling circumstances are set out in detail in the Application, and include that:

- Nowhere is safe in Gaza.
- Israel is dropping ‘dumb’ bombs and bombs weighing up to 2,000 lbs (900 kgs) on one of the most densely populated places in the world.
- Palestinians in Gaza are being killed at a rate of approximately one person every six minutes.
- At least 21,110 Palestinians have been killed to date in Gaza, with a further estimated 7,780 are missing, presumed dead under the rubble.
- An estimated 7,729 Palestinian children had already been killed by 12 December 2023; at least 4,700 other children and women are reported missing, presumed dead under the rubble, leading UNICEF to describe Israel’s military attacks as a ‘war against children’.
- Hundreds of Palestinians in Gaza are being wounded daily, many with life-changing and life-threatening injuries.
- Besieged and bombed hospitals are no longer able to treat the sick and wounded; only 13 of Gaza’s 36 hospitals are still functioning.
- 1.9 million Palestinians in Gaza — approximately 85 per cent of the population — have been forcibly displaced from their homes.
- Palestinians in Gaza are being corralled into ever smaller areas of Gaza, without sufficient shelter, where they continue to be bombed by Israel.
- Israel continues to prevent sufficient humanitarian assistance to Palestinians in Gaza, including preventing sufficient access to food, water, shelter, medicine and medical assistance.
- Vulnerable Palestinians, including the sick and infirm, children and expectant mothers are at particular risk.
- Infectious diseases are spreading rapidly.
- International experts are warning of imminent mass starvation.

118. Israel has also failed to prevent or to punish: genocide, conspiracy to commit genocide, direct and public incitement to genocide, attempted genocide and complicity in genocide, contrary to Articles III and IV of the Genocide Convention.

119. Israel denies wrongdoing in relation to its military activities in Gaza and is resisting all calls by South Africa and by the broader international community to prevent and cease the commission of genocide. Instead of ceasing violations of the Genocide Convention, preventing such violations and punishing their perpetrators, Israel has continued, escalated and threatened further to escalate its military campaign. It is also destroying evidence of its wrongdoing: the mass demolition and clearance of vast areas of Gaza, and the prevention of the return of internally displaced Palestinians to their homes, raises serious concerns about the destruction of evidence and its effect on future investigation into crimes, including the gravest crimes under international law. Israel’s killing of large numbers of Palestinian journalists and media workers in Gaza — at least 82 to date, often alongside multiple members of their families — coupled with its attacks on Gaza’s telecommunications network, are

hampering scrutiny of Israel's actions against Palestinians in Gaza.<sup>521</sup> So too is Israel's continuing refusal to allow access to Gaza by fact-finders and foreign journalists, other than a limited number of journalists permitted to embed themselves with the Israeli army subject to restrictions and censorship of their reports. Palestinian NGOs and human rights defenders, themselves at risk of attack by the Israeli army, are not able to document in real time the unremitting acts of genocide and other violations of international law being committed by Israel.

## B. The *Prima Facie* Jurisdiction of the Court

120. The Court is empowered to indicate provisional measures “if the provisions relied on by the Applicant appear *prima facie* to afford a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case”.<sup>522</sup>

121. As set out above, the jurisdiction of the Court is founded on Article 36, para 1, of the Statute of the Court and Article IX of the Genocide Convention. Article IX of Genocide Convention provides:

“Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

122. South Africa and Israel are both United Nations Member States and State parties to the Genocide Convention. Both have accepted the jurisdiction of the Court under Article IX of the Genocide Convention without any reservation. They are consequently bound by it.

123. In order for this Court to determine whether it has *prima facie* jurisdiction in order to indicate provisional measures, the matters complained of must themselves be *prima facie* “capable of falling within the provisions of [the Convention]”, such that “the dispute is one which the Court has jurisdiction *ratione materiae* to entertain”.<sup>523</sup> The case law of the Court establishes that a dispute is “a disagreement on a point of law or fact, a conflict of legal views or of interests” between parties.<sup>524</sup> In order for a dispute to exist, “[i]t must be shown that the claim of one party is positively opposed by the other”.<sup>525</sup> The two sides must “hold clearly opposite views concerning the question of the performance or non-performance of certain’ international obligations”.<sup>526</sup> The existence of a dispute is “a matter for objective determination by the Court; it is a matter of substance, and not a question of form or

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<sup>521</sup> Amnesty, *Israel/OPT: Civilians in Gaza at unprecedented risk as Israel imposes communication black-out during bombardment and expanding ground attacks* (27 October 2023), <https://www.amnesty.org/en/latest/news/2023/10/israel-opt-civilians-in-gaza-at-unprecedented-risk-as-israel-imposes-communication-black-out-during-bombardment-and-expanding-ground-attacks/>.

<sup>522</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 9, para. 16; and *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022*, I.C.J. Reports 2020, p. 10-11, para. 24 (hereafter ‘Ukraine v. Russian Federation, Provisional Measures, Order of 16 March 2022’).

<sup>523</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 1, para. 20, citing *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016*, I.C.J. Reports 2016 (II), p. 1159, para. 47.

<sup>524</sup> *Ukraine v. Russian Federation, Provisional Measures, Order of 16 March 2022*, p. 11, para. 28, quoting *Mavrommatis Palestine Concessions*, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

<sup>525</sup> *Ibid*, quoting *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328.

<sup>526</sup> *Ibid*, p.11-12, para 28, quoting *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 26, para. 50.

procedure”.<sup>527</sup> For the purposes of deciding whether there was a dispute between the Parties at the time of the filing of the Application, the Court “takes into account in particular any statements or documents exchanged between the Parties, as well as any exchanges made in multilateral settings. In so doing, it pays special attention to the author of the statement or document, their intended or actual addressee, and their content”.<sup>528</sup>

124. For the purposes of the indication of provisional measures, the Court is *not* required to ascertain whether any violation of Israel’s obligations under the Genocide Convention has occurred.<sup>529</sup> Importantly, as previously held by the Court, “[s]uch a finding, which would notably depend on the assessment of the existence of an intent to destroy, in whole or in part, the group … [of Palestinians] as such, could be made by the Court *only at the stage of the examination of the merits of the present case*”.<sup>530</sup> Instead, “[w]hat the Court is required to do at the stage of making an order on provisional measures is to establish *whether the acts complained of… are capable of falling within the provisions of the Genocide Convention*”.<sup>531</sup> The Court does not have to determine that *all* of the acts complained of are capable of falling within the provisions of the Convention. It suffices that “*at least some of the acts alleged … are capable of falling within the provisions of the Convention*”.<sup>532</sup>

125. At least some of the acts alleged by South Africa are plainly “capable of falling within the provisions of the Convention”. They have been considered to be capable of falling within the provisions of the Convention by numerous States and United Nations experts and bodies, including the Committee on the Elimination of Racial Discrimination.<sup>533</sup> Notably, they are plainly capable of falling within the provisions of Article II (a), II (b), II (c) and II (d) of the Convention, constituting as they do: (1) the killing of Palestinians in Gaza, (2) their serious bodily or mental harm, (3) the deliberate infliction of conditions of life calculated to bring about the destruction of Palestinians in Gaza, and (4) the imposition of measures intended to prevent births within the group. In relation to II (c), the Court has previously explained this as including “methods of physical destruction, other than killing, whereby the perpetrator ultimately seeks the death of the members of the group”.<sup>534</sup> Citing jurisprudence from international tribunals, the Court held that “such methods of destruction include notably deprivation of food, medical care, shelter or clothing, as well as lack of hygiene, systematic expulsion from homes, or exhaustion as a result of excessive work or physical exertion.”<sup>535</sup> Those international tribunals have also identified the following methods of destruction: “subjecting the group to a subsistence diet; failing to provide adequate medical care… and generally creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter, clothing, sanitation”.<sup>536</sup> This Court has also determined that forced mass displacement is capable of being considered a genocidal act.<sup>537</sup> The materials relied on in

<sup>527</sup> *Ibid*, p.13-14, para. 35, citing *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 12, para. 26.

<sup>528</sup> *Ibid*, pp. 220-221, para. 35, citing *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 12, para. 26.

<sup>529</sup> *Ibid*, p. 15, para. 43.

<sup>530</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 14, para. 30.

<sup>531</sup> *Ibid*, p. 14, para. 30 (emphasis added); see also *Ukraine v. Russian Federation, Provisional Measures, Order of 16 March 2022*, p. 15, para. 43.

<sup>532</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 14, para. 30 (emphasis added).

<sup>533</sup> See Section III. Facts, E. Recognition of Israel’s genocidal intent against Palestinians in Gaza, *supra*.

<sup>534</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 70, para. 161.

<sup>535</sup> *Ibid*, citing ICTY, Trial Chamber II, *Prosecutor v. Brđanin*, Case No. IT-99-36-T, Judgment (1 September 2004), para. 691 and *Prosecutor v. Stakić*, Case No. IT-97-24-T, Judgment (31 July 2003), paras. 517-518.

<sup>536</sup> ICTY, Appeals Chamber, *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-A, Judgment (8 April 2015), p. 327, para. 740.

<sup>537</sup> *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*, p. 123, para. 190 ('*Bosnia v. Serbia, Judgment*').

this Application constitute clear evidence of the creation by Israel of circumstances plainly capable of constituting those methods of destruction.

126. The evidence regarding the direct and public incitement to commit genocide by Israeli State officials, politicians and others — as set out above — and the failure by Israel to punish those responsible, are also plainly capable of falling within the provisions of Article III and IV of the Convention.

127. “The above mentioned elements” serve to “establish *prima facie* the existence of a dispute between the Parties relating to the interpretation, application or fulfilment of the Genocide Convention”.<sup>538</sup> The dispute concerns Israel’s breaches of its obligations under the Genocide Convention, including its failure to prevent and its perpetration of genocide, and South Africa’s own obligations under the Genocide Convention to prevent genocide, including by taking actions to influence effectively the actions of persons likely to commit genocide.<sup>539</sup> The Court has described the nature of that dispute as follows: “[A] state’s obligations to prevent, and corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make use of these means as the circumstances permit”.<sup>540</sup>

128. The Court plainly has *prima facie* jurisdiction to indicate provisional measures in this case as a consequence.

### C. The Rights the Protection of Which Is Sought, their Plausible Character and the Link between such Rights and the Measures Requested

129. The Court has “the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party”, pursuant to Article 41 of the Statute of the Court. The power of the Court to indicate provisional measures “has as its object the preservation of the respective rights claimed by the parties in a case, pending [the Court’s] decision on the merits thereof”.<sup>541</sup> It follows that “the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party”.<sup>542</sup> At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which South Africa seeks to protect *exist*; it need only decide whether it is satisfied that the rights asserted by South Africa on the merits, and for which it is seeking protection, are “at least plausible”,<sup>543</sup> *i.e.* “grounded in a *possible* interpretation” of the Convention.<sup>544</sup> Those rights are clearly plausible, having regard *inter alia* to the statements of United Nations experts and bodies asserting that there is at

<sup>538</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 14, para. 31.

<sup>539</sup> *Bosnia v. Serbia, Judgment*, p. 221, para 430.

<sup>540</sup> *Ibid.* p. 43 para 431.

<sup>541</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 18, para. 43; and *Ukraine v. Russian Federation, Provisional Measures, Order of 16 March 2022*, p. 223, para. 50.

<sup>542</sup> *Ibid.*

<sup>543</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 18, para. 43; and *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018*, p. 422, para. 43 (hereafter ‘*Qatar v. United Arab Emirates, Provisional Measures, Order of 23 July 2018*’).

<sup>544</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, p. 152, para. 60 (emphasis added).

the very least a real risk of genocide — which risk gives rise to the obligation to prevent genocide, pursuant to Article I of the Convention, which is binding on both Israel and South Africa. It also gives rise to obligations binding on Israel not to commit genocide, and to punish those who directly and publicly incite to genocide.<sup>545</sup>

130. For the Court to indicate one or more provisional measures, there must also be a link between the rights the protection of which is sought and the provisional measure being requested.<sup>546</sup> Such a link clearly exists between the rights claimed by South Africa and the provisional measures requested, which are directly linked to the rights which form the subject-matter of the dispute.

131. In relation to the nature of the rights asserted by South Africa under the Genocide Convention, as recently recalled by the Court:

“In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.”<sup>547</sup>

132. Having regard to their “shared values”, all the States parties to the Genocide Convention thus have “a common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity”.<sup>548</sup> As determined by the Court, “that common interest implies that the obligations in question are owed by any State party to all the other States parties to the Convention”.<sup>549</sup> As a consequence, the relevant provisions of the Genocide Convention generate “obligations [which] may be defined as ‘obligations *erga omnes partes*’ in the sense that each State party has an interest in compliance with them in any given case”.<sup>550</sup> Consequently, as recently confirmed by the Court:

“It follows that any State party to the Genocide Convention, and not only a specially affected State, may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, and to bring that failure to an end.”<sup>551</sup>

133. South Africa seeks hereby, pursuant to that common interest urgently to protect the rights of Palestinians in Gaza, as members of a protected group under the Convention, including their right to exist as a group and their right to be protected from acts of genocide and the risk thereof, from conspiracy to commit genocide, from direct and public incitement to commit genocide, from attempted genocide, and from complicity in genocide. South Africa also seeks to protect the *erga omnes partes* rights it has under the Genocide Convention as well as the *erga omnes* obligations it has to prevent genocide, which mirror the *erga omnes* obligations of the Convention with which it is entitled to seek

<sup>545</sup> *Bosnia v. Serbia, Judgment*, pp. 113-114, paras. 165-169.

<sup>546</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 18, para. 44, citing *Qatar v. United Arab Emirates, Provisional Measures, Order of 23 July 2018*, p. 422, para. 44.

<sup>547</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 17, para. 41, quoting its Advisory Opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion of 28 May 1951, *I.C.J. Reports 1951*, p. 23 (hereafter ‘Advisory Opinion of 28 May 1951’).

<sup>548</sup> *Ibid.*

<sup>549</sup> *Ibid.*

<sup>550</sup> *Ibid.*, applying *mutatis mutandis* *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, p. 449, para. 68.

<sup>551</sup> *Ibid.*

compliance by Israel, including Israel’s obligations not to commit genocide, to prevent genocide, and to punish genocide, including acts of genocide, conspiracy to commit genocide, direct and public incitement to genocide, attempted genocide and complicity in genocide against Palestinians. The Court has previously recognised “the universal character both of the condemnation of genocide and of the co-operation required ‘in order to liberate mankind from such an odious scourge’”<sup>552</sup>.

134. For the purposes of indicating provisional measures, the Court does not need to establish definitively that Palestinians are at risk of genocide, that they are being subjected to genocidal acts, or that Israel is otherwise breaching its obligations under the Genocide Convention. Rather, it is sufficient that the obligation of South Africa to act to prevent genocide, or the right of South Africa to seek compliance by Israel with its obligations under the Convention not to commit genocide, and to prevent and punish genocide and related prohibited acts under the Convention, be “plausible”.<sup>553</sup> Equally, there is no requirement, before granting provisional measures, for the Court to ascertain whether the existence of a genocidal intent is the *only* inference to be drawn from the material before the Court, as this requirement would amount to the Court making a determination on the merits. Notably, the fact that the genocidal acts are occurring — and not being prevented or punished — in the course of an armed conflict or in asserted response to an attack by an armed group, has no bearing on whether the rights asserted by South Africa under the Genocide Convention are “at least plausible”.<sup>554</sup> The absence of a prior determination of genocide by a court or fact-finding tribunal is similarly no bar to the adjudication by this Court of an application under the Genocide Convention, much less a request for the indication of provisional measures.<sup>555</sup>

135. The facts and circumstances described in this Application and request for provisional measures establish that the acts complained of — which Israel has committed and is committing — are capable of being characterised at the very least as plausibly “genocidal”. The requisite *dolus specialis* can be deduced not only from Israel’s conduct against Palestinians in Gaza, but also from clear, repeated dehumanising statements by Israeli governmental and military officials towards them. Indeed, they have been so characterised by numerous heads of State and other State officials and representatives, as well as by a large number of United Nations experts and various expert human rights organisations and institutions who have repeatedly warned that Israel’s actions amount to or risk the genocide of the Palestinian people.<sup>556</sup> Consequently, the rights relied on by South Africa in its request for the indication of provisional measures are at the very least “plausible. Indeed, their protection coincides with the very object and purposes of the Genocide Convention.

#### D. The Risk of Irreparable Prejudice and Urgency

136. The Court “has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such

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<sup>552</sup> Advisory Opinion of 28 May 1951, p. 23.

<sup>553</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 18, para. 43.

<sup>554</sup> *Ibid.*

<sup>555</sup> See *Bosnia v. Serbia, Judgment*, p. 120, para. 182: “State responsibility can arise under the Convention for genocide and complicity, without an individual being convicted of the crime or an associated one”. As explained by the Court: “Any other interpretation could entail that there would be no legal recourse available under the Convention in some readily conceivable circumstances: genocide has allegedly been committed within a State by its leaders but they have not been brought to trial because, for instance, they are still very much in control of the powers of the State including the police, prosecution services and the courts and there is no international penal tribunal able to exercise jurisdiction over the alleged crimes”: *ibid*, pp. 119-120, para. 182.

<sup>556</sup> See section III. Facts, E. Recognition of Israel’s genocidal intent against Palestinians in Gaza, *supra*.

rights may entail irreparable consequences”.<sup>557</sup> In particular, the Court has the power to indicate provisional measures “if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused before the Court gives its final decision”.<sup>558</sup> As the Court recently confirmed, “[t]he condition of urgency is met when the acts susceptible of causing irreparable prejudice can ‘occur at any moment’ before the Court makes a final decision on the case”.<sup>559</sup>

137. For the purposes of its decision on a request for the indication of provisional measures in a case involving allegations of violations of the Genocide Convention, “[t]he Court is not called upon . . . to establish the existence of breaches of the Genocide Convention, but to determine whether the circumstances require the indication of provisional measures for the protection of rights under this instrument”,<sup>560</sup> as “found to be plausible”.<sup>561</sup> As held by the Court, this does not require it to “make definitive findings of fact or of imputability”, and “the right of each Party to . . . submit arguments in respect of the merits, must remain unaffected by the Court’s decision” on the request for the indication of provisional measures.<sup>562</sup>

138. In assessing whether the condition of urgency is satisfied in cases involving allegations of genocide in the course of an ongoing conflict, the Court typically has regard to whether the population at risk is particularly vulnerable, and the fragility of the overall situation, including the likelihood and the risk of the re-occurrence of harm. The Court considers a civilian population to be “extremely vulnerable” where the military operations have “resulted in numerous civilian deaths and injuries” and have “caused significant material damages, including the destruction of buildings and infrastructure”, and where “[a]ttacks are ongoing and are creating increasingly difficult living conditions for the civilian population”.<sup>563</sup> In indicating provisional measures, the Court has considered the lack of access by many individuals to “the most basic food-stuffs, potable water, electricity, essential medicines or heating”,<sup>564</sup> and attempts by a “very large number of people . . . to flee from the most affected cities under extremely insecure conditions”.<sup>565</sup> The Court has also considered the following factors, raised by a United Nations General Assembly Resolution, to be materially relevant in assessing whether the condition of urgency is satisfied in cases involving allegations of genocide: “attacks on civilian facilities such as residences, schools and hospitals, and of civilian casualties, including women, older persons, persons with disabilities, and children”; the “scale” of military operations, including their comparison with other conflicts, the “deteriorating humanitarian situation” in a territory, and the “increasing number of internally displaced persons and refugees in need of humanitarian assistance”.<sup>566</sup> Similarly, the Court has had regard to findings of a fact-finding mission, considering factors such as “the systematic stripping of human rights”, “dehumanizing narratives and rhetoric”, “methodical planning, “mass

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<sup>557</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 24, para. 64; and *Ukraine v. Russian Federation, Provisional Measures, Order of 16 March 2022*, p. 226, para. 65, both citing *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Provisional Measures, Order of 3 October 2018*, I.C.J. Reports 2018, p. 645, para. 77.

<sup>558</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 24, para. 65; see also *Ukraine v. Russian Federation, Provisional Measures, Order of 16 March 2022*, p. 226, para. 66.

<sup>559</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 24, para. 65; and *Ukraine v. Russian Federation, Provisional Measures, Order of 16 March 2022*, pp. 226-227, para. 66.

<sup>560</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, pp. 24-25, para. 66.

<sup>561</sup> *Ukraine v. Russian Federation, Provisional Measures, Order of 16 March 2022*, p. 227, para. 67.

<sup>562</sup> *Bosnia v. Serbia, Provisional Measures, Order of 8 April 1993*, I.C.J. Reports 1993, p. 22, para. 44.

<sup>563</sup> *Ukraine v. Russian Federation, Provisional Measures, Order of 16 March 2022*, p. 228, para. 75.

<sup>564</sup> *Ibid.*

<sup>565</sup> *Ibid.*; see also *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 27, para. 71; and *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011*, I.C.J. Reports 2011, p. 550, para. 53.

<sup>566</sup> *Ukraine v. Russian Federation, Provisional Measures, Order of 16 March 2022*, pp. 228-229, para. 76.

killing”, “mass displacement”, “mass fear”, “overwhelming levels of brutality, combined with the physical destruction of the home of the targeted population, in every sense and on every level”.<sup>567</sup>

139. Notably, as the Court has underscored, States parties to the Genocide Convention have “expressly confirmed their willingness to consider genocide as a crime under international law which they must prevent and punish independently of the context ‘of peace’ or ‘of war’ in which it takes place”.<sup>568</sup> Consequently, a State remains bound by the obligations incumbent upon it as a State party to the Genocide Convention, regardless of “the fact that there may be an ongoing . . . conflict between armed groups and the . . . military”.<sup>569</sup> Such a context “does not stand in the way of the Court’s assessment of the existence of a real and imminent risk of irreparable prejudice to the rights protected under the Convention”.<sup>570</sup>

140. Where past violations have occurred, the Court has found provisional measures appropriate when it is “not inconceivable” that they might occur again.<sup>571</sup> The Court has also ordered provisional measures in circumstances that were “unstable and could rapidly change”, with “ongoing tension and the absence of an overall settlement to the conflict” that meant the affected group remained vulnerable.<sup>572</sup> Consequently, any ceasefire to be agreed or any other acts by Israel that could be perceived as capable of ameliorating the circumstances for Palestinians in the short term would not have a dispositive effect and would impact neither on the merit nor the urgency of South Africa’s arguments.

141. There is a clear risk of irreparable prejudice to the rights of the Palestinians and to South Africa’s own rights under the Genocide Convention. The utmost urgency of the situation is self-evident: Palestinians have suffered and are suffering irreparable harm from genocidal acts by Israel in violation of Article II of the Genocide Convention, and from Israel’s other violations of the Convention, including its failure to prevent or punish direct and public incitement to genocide. Should these violations of the Genocide Convention go unchecked, there is not only a risk but a certainty of further significant and irreparable loss of life and property, serious injury and an ever-deepening humanitarian crisis. The opportunity to collect and preserve evidence for the merits stage of the proceedings would also be seriously undermined, if not lost entirely.

142. As of the date of this application, an estimated 21,110 Palestinians have been killed in Gaza, including at least 7,729 children. 55,243 Palestinians have been injured, including at least 8,663 children, of whom over 1,000 are amputees, disabled for life. Approximately 70 per cent of those killed are said to be women and children. One Palestinian child in Gaza has been killed approximately every 15 minutes since Israel commenced military action in Gaza on 7 October 2023. Thousands more are missing under the rubble. 61 hospitals and health care facilities in Gaza have been damaged or destroyed; many have been placed under siege or have been subjected to forced evacuation, and only 13 hospitals are still partially functional, weighed down by mass overcrowding. 311 health workers have been killed, many while working, meaning that many of the wounded, including seriously injured children, cannot access healthcare. An estimated 5,500 women are having to give birth in unsafe

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<sup>567</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 22, para. 55.

<sup>568</sup> *Ibid.* pp. 27-28, para. 74, citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996*, p. 615, para. 31.

<sup>569</sup> *Ibid.* p. 27, para. 74. The conflict raised as being in issue in that case was an internal armed conflict.

<sup>570</sup> *Ibid.* p. 28, para. 74.

<sup>571</sup> *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016*, p. 1169, para. 89.

<sup>572</sup> See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 396, para. 143.

conditions every month. Babies are dying from preventable causes: in addition to disease and malnutrition, premature babies have died due to lack of fuel to supply hospital generators; others have been found decomposing in their hospital cots, medical staff having been forced to evacuate. Over 60 per cent of homes in Gaza have been damaged or destroyed. Vast swathes of Gaza have been destroyed, including entire villages, refugee camps, towns and cities that have been or are deliberately being rendered uninhabitable. Israel has made a humanitarian response impossible with constant bombardment, including of safe routes. 1.9 million people, nearly 85 per cent of the population, are displaced, including elderly, wounded and disabled people, living in makeshift tents, lacking any or adequate sanitation and water, in United Nations schools and with relatives. The entire population is facing starvation: 93 per cent of the population in Gaza is facing crisis levels of hunger, with more than one in four facing “catastrophic conditions” — with death imminent. Against that background, the Israeli Prime Minister asserted on 25 December 2023: “We are not stopping, we are continuing to fight and we are deepening the fighting in the coming days, and this will be a long battle and it is not close to being over”.<sup>573</sup> The circumstances could not be more urgent.

143. The 2.3 million Palestinians in Gaza, including over a million children, are extremely vulnerable. There is a grave threat to their existence. They are in urgent and severe need of the Court’s protection. With each passing day that Israel’s military attacks continue, further significant loss of life and property is being caused, and grave human rights violations are being committed. There can be no doubt that the requirements for the indication of provisional measures are satisfied here.

#### **E. Provisional Measures Requested**

144. On the basis of the facts set forth above, South Africa, as a State party to the Convention on the Prevention and Punishment of the Crime of Genocide, respectfully requests the Court, as a matter of extreme urgency, pending the Court’s determination of this case on the merits, to indicate the following provisional measures in relation to the Palestinian people as a group protected by the Genocide Convention. These measures are directly linked to the rights that form the subject matter of South Africa’s dispute with Israel:

- (1) The State of Israel shall immediately suspend its military operations in and against Gaza.
- (2) The State of Israel shall ensure that any military or irregular armed units which may be directed, supported or influenced by it, as well as any organisations and persons which may be subject to its control, direction or influence, take no steps in furtherance of the military operations referred to point (1) above.
- (3) The Republic of South Africa and the State of Israel shall each, in accordance with their obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the Palestinian people, take all reasonable measures within their power to prevent genocide.
- (4) The State of Israel shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the Palestinian people as a

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<sup>573</sup> Statement by Israeli Prime Minister to Likud Party, 25 December 2023: Jeremy Sharon, “After rare visit to Gaza, Netanyahu says war ‘not close to being over’”, *The Times of Israel* (25 December 2023), [https://www.timesofisrael.com/liveblog\\_entry/after-gaza-visit-netanyahu-says-war-not-close-to-being-over/](https://www.timesofisrael.com/liveblog_entry/after-gaza-visit-netanyahu-says-war-not-close-to-being-over/) (emphasis added).

group protected by the Convention on the Prevention and Punishment of the Crime of Genocide, desist from the commission of any and all acts within the scope of Article II of the Convention, in particular:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to the members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
- (d) imposing measures intended to prevent births within the group.

(5) The State of Israel shall, pursuant to point (4)(c) above, in relation to Palestinians, desist from, and take all measures within its power including the rescinding of relevant orders, of restrictions and/or of prohibitions to prevent:

- (a) the expulsion and forced displacement from their homes;
- (b) the deprivation of:
  - (i) access to adequate food and water;
  - (ii) access to humanitarian assistance, including access to adequate fuel, shelter, clothes, hygiene and sanitation;
  - (iii) medical supplies and assistance; and
- (c) the destruction of Palestinian life in Gaza.

(6) The State of Israel shall, in relation to Palestinians, ensure that its military, as well as any irregular armed units or individuals which may be directed, supported or otherwise influenced by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in (4) and (5) above, or engage in direct and public incitement to commit genocide, conspiracy to commit genocide, attempt to commit genocide, or complicity in genocide, and insofar as they do engage therein, that steps are taken towards their punishment pursuant to Articles I, II, III and IV of the Convention on the Prevention and Punishment of the Crime of Genocide.

(7) The State of Israel shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide; to that end, the State of Israel shall not act to deny or otherwise restrict access by fact-finding missions, international mandates and other bodies to Gaza to assist in ensuring the preservation and retention of said evidence.

(8) The State of Israel shall submit a report to the Court on all measures taken to give effect to this Order within one week, as from the date of this Order, and thereafter at such regular intervals as the Court shall order, until a final decision on the case is rendered by the Court.

(9) The State of Israel shall refrain from any action and shall ensure that no action is taken which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

145. The provisional measures requested are directly linked to the rights which form the subject-matter of the dispute.<sup>574</sup> In particular, the first six provisional measures have been requested to ensure

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<sup>574</sup> *The Gambia v. Myanmar, Provisional Measures, Order of 23 January 2020*, p. 18, para. 44.

Israel's compliance with its obligations under the Genocide Convention not to engage in genocide, and to prevent and to punish genocide, as well as to uphold and reaffirm the rights and obligations of South Africa to prevent genocide, and to protect Palestinians in Gaza from destruction. The last three provisional measures requested are aimed at protecting the integrity of the proceedings before the Court and South Africa's right to have its claim fairly adjudicated, including by ensuring the preservation of evidence.

146. South Africa respectfully requests that this request for provisional measures be considered urgently, at the Court's earliest possible opportunity, including the scheduling of a hearing in person or remotely by video link in the week of 1 January 2024.

147. South Africa reserves its right to request additional provisional measures to prevent irreparable harm to the rights at issue in this case, and/or to prevent further aggravation of the dispute between the Parties, should they become necessary, during the course of these proceedings.

#### VII. RESERVATION OF RIGHTS

148. South Africa reserves the right to revise, supplement or amend the terms of this Application, as well as the grounds invoked.

#### VIII. APPOINTMENT OF AGENT

149. South Africa has designated as its Agent His Excellency Ambassador Vusimuzi Philemon Madonsela, Ambassador Extraordinary and Plenipotentiary of the Republic of South Africa to the Kingdom of the Netherlands.

150. Pursuant to Article 40, paragraph 1, of the Rules of Court, all communications relating to this case should be sent to:

Embassy of the Republic of South Africa  
40 Wassenaarseweg  
2596 CJ  
The Hague  
The Netherlands

151. I have the honour to assure the Court of my highest esteem and consideration.



A handwritten signature in black ink, appearing to read "Vusimuzi Philemon Madonsela". Below the signature, the date "28/12/2023" is written vertically.

The Hague,  
(Signed)