

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	758
Land:	Gaza-Vestbredden
Kilde:	HRC Special Rapporteur, Francesca Albanese
Titel:	Anatomy of a Genocide
Udgivet:	25. marts 2024
Optaget på baggrundsmaterialet:	2. august 2024

Advance unedited version

Distr.: General
25 March 2024

Original: English

Human Rights Council

Fifty-fifth session

26 February–5 April 2024

Agenda item 7

Human Rights situation in Palestine and other occupied Arab territories

Anatomy of a Genocide

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

Summary

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

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

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

I. Introduction

1. In this report, Francesca Albanese, the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 (“oPt”), addresses the crime of genocide as perpetrated by the State of Israel (“Israel”) in the oPt, specifically in the Gaza Strip, since 7 October 2023. As Israel prohibits her visits, this report is based on data and analyses from organisations on the ground, international jurisprudence, investigative reports and consultations with affected individuals, authorities, civil society and experts.

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

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

4. By Day 9, this assault had already caused more deaths (2,670)³ than Israel’s previous deadliest war against Gaza, in 2014 (2,251)⁴. Only a fraction of the mass killing, severe harm and ruthless, life-threatening conditions inflicted on Palestinians over the following five months of assault can be captured in this report.

5. UN independent experts,⁵ scholars,⁶ and states,⁷ including South Africa before the International Court of Justice (“ICJ”),⁸ have warned that acts committed in this latest onslaught may amount to genocide. The ICJ found a plausible risk of “irreparable prejudice” to the rights of Palestinians in Gaza, a protected group under the Genocide Convention,⁹ and ordered Israel, *inter alia*, to “take all measures within its power” to prevent genocidal acts, prevent and punish incitement to genocide, and ensure urgent humanitarian aid.¹⁰

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

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

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

² <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F356&Language=E&DeviceType=Desktop&LangRequested=False> para 4

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

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

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

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

⁷ https://www.oic-oci.org/topic/?t_id=40224&t_ref=26858&lan=en, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240208-pre-01-00-en.pdf>;

<https://www.youtube.com/watch?v=aoQeOsgs0Dc>; <https://au.int/ar/node/43236>

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

⁹ *Ibid*, Preliminary-Measures-Judgement, 26 January 2024, para. 54

¹⁰ *Ibid*, paras. 77–86

¹¹ *Ibid*, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf> 12 January 2024, paras. 6, 37; [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_\(2_NOV_2023\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_(2_NOV_2023).pdf)

II. Contextualizing genocide

A. Genocide as inherent to settler-colonialism

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

9. Genocidal intent and practices are integral to the ideology and processes of settler-colonialism,¹⁶ as the experience of Native Americans in the U.S., First Nations in Australia or Herero in Namibia illustrates. As settler-colonialism aims to acquire Indigenous land and resources, the mere existence of Indigenous peoples poses an existential threat to the settler society.¹⁷ Destruction and replacement of Indigenous people become therefore ‘unavoidable’ and take place through different methods depending on the perceived threat to the settler group. These include removal (forcible transfer, ethnic cleansing), movement restrictions (segregation, largescale carceralization), mass killings (murder, disease, starvation), assimilation (cultural erasure, child removal) and birth prevention.¹⁸ Settler-colonialism is a dynamic, structural process and a confluence of acts aimed at displacing and eliminating Indigenous groups, of which *genocidal extermination/annihilation* represents the peak.¹⁹

B. Palestine and the context of genocide

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

11. Practices leading to the mass ethnic cleansing of Palestine’s non-Jewish population occurred in 1947–1949, and again in 1967, when Israel occupied the West Bank, east Jerusalem and the Gaza Strip with mass displacement of hundreds of thousands, killings, destruction of villages and towns, looting and the denial of the right to return of expelled Palestinians.²³

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

¹³ Raphael Lemkin, *Axis Rule in Occupied Europe*, (The Lawbook Exchange: 2008), p. 92

¹⁴ *Ibid*, p. 79

¹⁵ Penny Green et al., *Countdown to Annihilation: Genocide in Myanmar*, (London: 2015)

¹⁶ Alexander Laban Hinton, “The Dark Side of Modernity: Toward an Anthropology of Genocide”, in *Annihilating Difference: The Anthropology of Genocide*, ed. Alexander Laban Hinton (University of California Press, 2002), pp. 1-40

¹⁷ Lorenzo Veracini, “Settler Collective, Founding Violence and Disavowal: The Settler Colonial Situation”, *Journal of Intercultural Studies*, vol. 29, no. 4 (2008), p. 369

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

¹⁹ Lemkin, *Axis Rule* (footnote 13), p. 92; Pauline Wakeham, “The Slow Violence of Settler Colonialism,” *Journal of Genocide Research*, vol. 24, no. 3 (2022), pp. 340-346.

²⁰ Gregory H. Stanton, *The Ten Stages of Genocide*, *Genocide Watch* (1996).

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

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

²³ Salman Abu-Sitta, *The Palestinian Nakba 1948: The Register of Depopulated Localities in Palestine* (The Palestinian Return Centre, 2000), ch. 15; Minorities at Risk Project, *Chronology for Palestinians in Jordan*, (2004)

12. Since 1967, Israel has advanced its settler-colonial project through military occupation, stripping the Palestinian people of their right to self-determination.²⁴ This has resulted in the segregation and control of Palestinians, including through land confiscation, house demolitions, revoked residencies and deportation.²⁵ Punishing their indigeneity and rejection of colonization, Israel construed Palestinians as a ‘security threat’ to justify their oppression and “de-civilianization”, namely the denial of their status as protected civilians.²⁶

13. Israel has progressively turned Gaza into a highly controlled enclave.²⁷ Since the 2005 evacuation of Israeli settlers (which Israel’s current Prime Minister Benjamin Netanyahu strongly opposed),²⁸ Israel’s settler movement and leaders have framed Gaza as a territory to be “re-colonized” and its population as invaders to be expelled.²⁹ These unlawful claims are integral to the project of consolidating the “exclusive and unassailable right of the Jewish people” on the land of “Greater Israel”, as reaffirmed by Prime Minister Netanyahu in December 2022.³⁰

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

III. Legal Framework

15. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide (“the Convention”) codifies genocide as an international crime the prohibition of which is a non-derogable peremptory norm (*jus cogens*). The *erga omnes* obligation to prevent and punish genocide binds all states under both the Convention and customary international law and requires them all to prevent and prosecute genocidal acts.³¹ Genocide cannot be justified under any circumstances, including purported self-defence.³² Complicity is expressly prohibited, giving rise to obligations for third states.³³

16. The ICJ and the International Criminal Court (“ICC”) have jurisdiction over the crime of genocide,³⁴ and so do State domestic courts. Prior to the establishment of the ICC, *ad hoc* international criminal tribunals advanced their interpretation of what constitutes genocide,³⁵ its intent and required evidence.³⁶

²⁴ <http://www.undocs.org/A/77/35> (2022)

²⁵ <https://badil.org/phocadownloadpap/badil-new/publications/research/working-papers/FT-Coercive-Environments.pdf> (2017)

²⁶ <http://www.undocs.org/A/HRC/53/59> paras. 80, 95

²⁷ *Ibid*, para. 82

²⁸ <https://www.theguardian.com/world/2005/aug/08/israel>

²⁹ Nicola Perugini, “Settler-Colonial Inversions: Israel’s ‘disengagement’ and the Gush Katif ‘Museum of Expulsion’ in Jerusalem”, *Settler-Colonial Studies*, vol. 9.1 (2019), pp. 44-45; Smotrich, <https://hashiloach.org.il/israels-decisive-plan/>; see <https://www.jpost.com/israel-news/otzma-candidate-ben-gvir-calls-to-return-to-gush-katif-584665>

³⁰ <https://www.reuters.com/world/middle-east/netanyahu-set-retake-power-head-far-right-government-2022-12-29/>. See also *Jewish Nation-State Basic Law* of 19 July 2018

³¹ M. Cherif Bassiouni, “International Crimes: Jus Cogens and Obligatio Erga Omnes”, *Law and Contemporary Problems*, vol. 59, no. 4 (1996), p. 68; A/CN.4/L.960/Add.1 (2022), conclusions 5, 17.

³² William Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: 2009), p.395; A/CN.4/L.960/Add.1 (2022), conclusions 3, 17.

³³ Convention, article III

³⁴ https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf, article IX; and <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (1998), article 6

³⁵ <https://www.ohchr.org/en/instruments-mechanisms/instruments/statute-international-tribunal-prosecution-persons-responsible> (1993); [http://www.undocs.org/S/RES/955\(1994\)](http://www.undocs.org/S/RES/955(1994)) (1994); *Prosecutor v. Blagojević and Jokić*, IT-02-60-T ICTY, Judgement, 17 January 2005; *Prosecutor v. Brdjanin*, IT-99-36-T ICTY, Judgement, 01 September 2004; *Prosecutor v. Krstić*, IT-98-33-T ICTY, Judgement, 02 August 2001; *Prosecutor v. Jelisić*, IT-95-10-T ICTY, Judgement, 14 December 1999

³⁶ *Prosecutor v. Popović et al.*, IT-05-88-A ICTY, Appeal-Judgement, 30 January 2015; *Prosecutor v. Karadžić*, IT-95-5/18-T ICTY, Judgement, 24 March 2016; *Prosecutor v. Mladic*, IT-09-92-T ICTY, Judgement, 22 November 2017; *Prosecutor v. Tolimir*, IT-05-88/2-A ICTY, Appeal-Judgement, 08 April 2015

A. Constitutive elements of genocide

17. The Convention codifies genocide as “any of the [specified] acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”³⁷ Accordingly, the crime of genocide comprises two interconnected elements:

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

- (i) killing members of the group;
- (ii) causing serious bodily or mental harm to members of the group;
- (iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (iv) imposing measures intended to prevent births within the group;
- (v) forcibly transferring children of the group to another group.³⁸

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

- (i) a general intention to carry out the criminal acts (*dolus generalis*), and
- (ii) a specific intention to destroy the target group as such (*dolus specialis*).³⁹

18. Both components must be satisfied for conduct to legally constitute genocide.⁴⁰ The perpetrator’s intent to destroy the group in whole or in part distinguishes genocidal acts from other international crimes.⁴¹ Specific intent may be established by direct evidence, e.g. statements by high command or official documents, or inferred from patterns of conduct.⁴² In the latter case, the patterns of conduct or the manner in which the acts are perpetrated must be such that they “only point to the existence of such [genocidal] intent”,⁴³ and the existence of intent results in “the only inference that could reasonably be drawn.”⁴⁴

19. Evidence of the result is required to establish the commission of three of the underlying acts (killing, inflicting harm and transferring children).⁴⁵ For the remaining two acts (inflicting conditions calculated to destroy the group and preventing births), the evidentiary threshold requires proof of an *intent to achieve* a given outcome, rather than its achievement.⁴⁶ Accordingly, if displacement, ethnic cleansing or mass deportation are perpetrated with the requisite intent to destroy the protected group as such, this may amount to genocide.⁴⁷ Similarly, these displacement actions can also be evidence of specific genocidal intent.⁴⁸

³⁷ Convention, article II

³⁸ *Ibid*; Rome Statute, article 6

³⁹ Kai Ambos, “What Does ‘Intent to Destroy’ in Genocide Mean?”, *International Review of the Red Cross*, vol. 91, no. 876 (2009), p. 834

⁴⁰ ICJ, *Bosnia and Herzegovina v. Serbia and Montenegro*, Judgment (2007), paras. 187-188

⁴¹ *Prosecutor v. Kupreskic et al.*, IT-95-16-T ICTY, Judgment, 14 January 2000, para. 636

⁴² [https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration Expert William Schabas_w.pdf](https://ccrjustice.org/sites/default/files/attach/2023/11/Declaration%20Expert%20William%20Schabas_w.pdf) 11 January 24, para. 16

⁴³ *Bosnia v. Serbia* (footnote 40), para. 373

⁴⁴ ICJ, *Croatia v. Serbia*, Judgment (2015), para. 148

⁴⁵ Schabas, *Genocide in International Law* (footnote 32), p. 177

⁴⁶ *Ibid.*, pp. 177, 192, 195-197; *A-G Israel v. Eichmann* (1968), para. 196

⁴⁷ ICJ, *Gambia v. Myanmar*, Joint Declaration of Intervention of Canada, Denmark, France, Germany, the Netherlands, and the United Kingdom (2023), paras. 44-47; ICJ, *Bosnia v. Serbia*, Provisional-Measures-Judgment, 1993, Judge-Lauterpacht, para. 123; and Judgment (2007), para. 190; *Prosecutor v. Karadžić and Mladić*, IT-95-5-R61 ICTY, Review-of-Indictments, 16 July 1996, para. 94; *Prosecutor v. Krstić*, IT-98-33-A ICTY, Appeal Judgment, 19 April 2004, para. 31-33

⁴⁸ *Gambia v. Myanmar* (footnote 47), para. 72-74; IT-98-33-A, paras. 31-33

B. State Responsibility and Individual Criminal Liability

20. The crime of genocide gives rise to both individual and State responsibility. The Convention stresses the need for individual accountability before domestic or international courts,⁴⁹ regardless of any official role held by the perpetrator.⁵⁰ Individual criminal liability arises from direct involvement in committing, attempting, conspiring, directly and publicly inciting, planning, instigating, ordering and aiding and abetting (complicity in) genocidal acts, requiring a specific intent to contribute to the destruction of the target group.⁵¹ This implies *knowledge* of the possibility that an act will result in destruction of the group in whole or in part.⁵² Genocide gives rise to State responsibility when an individual has committed genocide exercising state authority; in this case the individual's conduct is attributable to the State.⁵³

IV. Genocidal Acts in Gaza

21. Genocidal acts can include deliberate actions or omissions, including the failure to protect the group from harm.⁵⁴ The evidence presented in the following sections suggests Israel has committed at least three of the acts proscribed in the Convention.

A. “Killing Members of the Group”

22. This act encompasses deaths resulting from direct actions or arising from neglect, including those caused by deliberate starvation, disease or other survival-threatening conditions imposed on the group.⁵⁵

23. Since 7 October, Israel has killed over 30,000 Palestinians in Gaza, equivalent to approximately 1.4 percent of its population, through lethal weapons and deliberate imposition of life-threatening conditions. By the end of February, a further 12,000 Palestinians were reported missing, presumed dead under the rubble.⁵⁶

24. During the first months of the campaign, Israel's army employed over 25,000 tons of explosives (equivalent to two nuclear bombs)⁵⁷ on innumerable buildings, many of which were identified as targets by Artificial Intelligence.⁵⁸ Israel used unguided munitions (“dumb bombs”)⁵⁹ and 2000-pound “bunker buster” bombs on densely populated areas and “safe zones”.⁶⁰ In the initial weeks, Israeli forces killed around 250 people daily, including 100

⁴⁹ Rome Statute, article 6

⁵⁰ Convention, article IV

⁵¹ Convention, article III; Rome Statute, article 25

⁵² *Prosecutor v. Popović et al.*, IT-05-88-T ICTY, Judgement, 10 June 2010, para. 1178; IT-98-33-T, para. 595; Ambos, “What Does ‘Intent to Destroy’ in Genocide Mean?” (footnote 39), p. 841

⁵³ <http://www.undocs.org/A/RES/56/83> (2002), article 4; *Bosnia v. Serbia* (footnote 40), paras. 384, 385-386, 396-400

⁵⁴ *Prosecutor v. Kambanda*, ICTR-97-23-S, Judgment, 04 September 1998, para.39 (ix); Schabas, *Genocide in International Law* (footnote 32), pp. 177–178.

⁵⁵ ICC, *Elements of Crimes*, (2013), p. 113; *Prosecutor v. Krnojelac*, IT-97-25-T, Judgement, 15 March 2002, para. 326; Schabas, *Genocide in International Law* (footnote 32), p. 180

⁵⁶ <https://www.unrwa.org/resources/reports/unrwa-situation-report-86-situation-gaza-strip-and-west-bank-including-east-jerusalem>

⁵⁷ <https://www.washingtonpost.com/world/2023/11/13/palestine-gaza-west-bank-nakba-displacement-israel-catastrophe/>; <https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/>; <https://www.theguardian.com/world/2023/dec/01/the-gospel-how-israel-uses-ai-to-select-bombing-targets>

⁵⁸ <https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/>; Omar Yusef Shehabi and Asaf Lubin, “Algorithms of War: Military AI and the War in Gaza”, *Articles of War*, 24 January 2024

⁵⁹ <https://www.washingtonpost.com/national-security/2023/12/14/israel-unguided-dumb-bombs-gaza/>

⁶⁰ <https://edition.cnn.com/gaza-israel-big-bombs/index.html>;

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

children,⁶¹ in attacks obliterating entire neighbourhoods and essential infrastructure.⁶² Thousands were killed by bombing, sniper fire or in summary executions;⁶³ thousands more were killed while fleeing via routes and in areas declared “safe” by Israel.⁶⁴ The victims included 125 journalists and 340 doctors, nurses and other health workers (four percent of Gaza’s healthcare personnel), students, academics, scientists and their family members.⁶⁵

25. Seventy percent of recorded deaths have consistently been women and children. Israel failed to prove that the remaining 30 percent, i.e. adult males, were active Hamas combatants – a necessary condition for them to be lawfully targeted. By early-December, Israel’s security advisors claimed the killing of “7,000 terrorists” in a stage of the campaign when less than 5,000 adult males in total had been identified among the casualties, thus implying that all adult males killed were “terrorists”.⁶⁶ This is indicative of an intent to indiscriminately target members of the protected group, assimilating them to active fighter status by default.

26. Moreover, Israel’s heightened blockade of Gaza has caused death by starvation, including 10 children daily, by impeding access to vital supplies.⁶⁷ Lack of hygiene and overcrowded shelters could cause more deaths than bombings,⁶⁸ having created “the perfect storm for disease”.⁶⁹ A quarter of Gaza’s population could die from preventable health conditions within a year.⁷⁰

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

27. This act must involve “a grave and long-term disadvantage to a person’s ability to lead a normal and constructive life”.⁷¹ The harm does not need to be permanent or irremediable,⁷² and can be brought about by various causes as torture, inhuman or degrading treatment,⁷³ sexual violence,⁷⁴ persecution,⁷⁵ deportation⁷⁶ or other conditions “designed to cause victims’ degradation and deprivation of their rights, and to suppress them and cause inhumane suffering and torture”.⁷⁷

⁶¹ <https://www.savethechildren.org.au/media/media-releases/gaza-10000-children-killed-in-nearly-100-days-of>

⁶² <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-72>;

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

⁶³ <https://www.un.org/unispal/document/unlawful-killings-in-gaza-city-ohchr-press-release/>;

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

⁶⁴ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-22>;

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

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

⁶⁵ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-145>

⁶⁶ https://www.timesofisrael.com/liveblog_entry/israel-has-killed-over-7000-terrorists-no-deadline-for-gaza-war-national-security-adviser/ 09 December 2023; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-63>

⁶⁷ <https://www.wfp.org/news/preventing-famine-and-deadly-disease-outbreaks-gaza-requires-faster-safer-aid-access-and-more>

⁶⁸ <https://gaza-projections.org/>

⁶⁹ https://www.youtube.com/watch?v=2MJFBaUXvYU&ab_channel=MiddleEastEye 06 December 2023; <https://www.bostonreview.net/articles/the-war-on-hospitals/> 20 December 2023;

https://www.emro.who.int/images/stories/Sitrep_-_issue_22.pdf?ua=1 30 January 2024

⁷⁰ <https://gaza-projections.org/>

⁷¹ IT-98-33-T, para. 513; *Prosecutor v. Krajišnik*, IT-00-39-T ICTY, Judgement, 27 September 2006, para. 862

⁷² Schabas, *Genocide in International Law* (footnote 32), pp. 182, 184

⁷³ *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement, 02 September 1998, para. 503

⁷⁴ *Ibid.*, para. 731; *Prosecutor v. Stakic*, IT-97-24-T ICTY, Judgement, 31 July 2003, para. 516; IT-95-5-R61, para. 93

⁷⁵ ICTR-96-4-T, para. 503; *A-G Israel v. Eichmann* (footnote 46), para. 199

⁷⁶ ICTY-98-33-T, para. 513

⁷⁷ Schabas, *Genocide in International Law* (footnote 32) p. 182

28. Since 7 October, Palestinians have suffered relentless physical and psychological harm. Many have endured violence and deprivation including severe hunger.⁷⁸

29. Israeli forces have detained thousands of Palestinians, mostly men and young boys, often refusing to disclose their whereabouts.⁷⁹ Many of them have been severely mistreated, including through torture at times leading to death.⁸⁰

30. Israel's lethal weapons and methods have injured seventy-thousand Palestinians, many with agonizing injuries, in some cases leading to long-term impairment or death.⁸¹

31. By causing critical shortages of medical supplies, including antibiotics and disinfectants, Israel's actions resulted in hazardous health procedures, such as amputations without anaesthetics, including on children.⁸² This has also prevented the administration of life-saving treatment to those with medical conditions, including chronic diseases.⁸³

32. The survivors will carry an indelible trauma, having witnessed so much death, and experienced destruction, homelessness, emotional and material loss, endless humiliation and fear.⁸⁴ Such experiences include fleeing amidst the chaos of war without telecommunications and electricity; witnessing the systematic destruction of entire neighbourhoods, homes, universities, religious and cultural landmarks;⁸⁵ digging through the rubble, often with bare hands, searching for loved ones;⁸⁶ seeing bodies desecrated;⁸⁷ being rounded up, stripped naked, blindfolded and subjected to torture and other cruel, inhuman and degrading treatment;⁸⁸ and ultimately, being starved, adults and children alike.⁸⁹

33. The savagery of Israel's latest assault is best illustrated by the torment inflicted upon children of all ages,⁹⁰ killed or rescued from under the rubble, maimed, orphaned,⁹¹ many without surviving family.⁹² Considering the significance of children to the future development of a society, inflicting serious bodily or mental harm to them can be reasonably "interpreted as a means to destroy the group in whole or in part".⁹³

⁷⁸ <https://www.ohchr.org/en/press-releases/2024/03/un-experts-condemn-flour-massacre-urge-israel-end-campaign-starvation-gaza>

⁷⁹ https://www.adalah.org/uploads/uploads/Submission_SR_Torture_final-15.2.24.pdf

⁸⁰ <https://www.ohchr.org/en/press-releases/2024/02/israelopt-un-experts-appalled-reported-human-rights-violations-against>; <https://www.nytimes.com/2024/01/23/world/middleeast/israel-gaza-palestinian-detainees.html>; <https://www.amnesty.org/en/latest/news/2023/12/urgently-investigate-inhumane-treatment-and-enforced-disappearance-of-palestinians-detainees-from-gaza>; IT-09-92-T, para. 634-691, 835-838, 3451; IT-05-88-T, para. 1097, 1120, 1122, 1177

⁸¹ <https://www.msf.org/no-safe-place-gaza-people-are-crushed-continuous-bombing>; <https://amnesty.ca/human-rights-news/israel-opt-identifying-the-israeli-armys-use-of-white-phosphorus-in-gaza/>; <https://www.who.int/news-room/fact-sheets/detail/white-phosphorus>

⁸² <https://news.un.org/en/story/2024/01/1145332>; <https://www.emro.who.int/media/news/risk-of-disease-spread-soars-in-gaza-as-health-facilities-water-and-sanitation-systems-disrupted.html>; <https://www.savethechildren.net/news/gaza-more-10-children-day-lose-limb-three-months-brutal-conflict>

⁸³ <https://news.un.org/en/story/2023/12/1145017>

⁸⁴ IT-98-33-T, para 596

⁸⁵ <https://press.un.org/en/2024/sc15564.doc.htm>

⁸⁶ <https://www.aljazeera.com/gallery/2023/11/10/this-israel-war-has-no-mercy-gaza-civil-rescuers-say>

⁸⁷ <https://edition.cnn.com/2023/12/23/middleeast/kamal-adwan-hospital-gaza-israel-abuse-allegations-intl-cmd/index.html>

⁸⁸ <https://www.alhaq.org/advocacy/22337.html>; <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-disturbing-reports-north-gaza-mass-detentions-ill-treatment-and-enforced-disappearances-possibly-thousands-palestinians>;

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

<https://www.ohchr.org/en/press-briefing-notes/2024/01/gaza-report-ground>

⁸⁹ <https://edition.cnn.com/2024/01/30/middleeast/famine-looms-in-gaza-israel-war-intl/index.html>

⁹⁰ <https://www.savethechildren.net/news/children-s-mental-health-gaza-pushed-beyond-breaking-point-after-nearly-month-siege-and>

⁹¹ By January there were 17,000 unaccompanied children, see <https://www.unicef.org/sop/reports/unicef-state-palestine-escalation-humanitarian-situation-report-no17>

⁹² <https://www.washingtonpost.com/world/2024/02/29/gaza-children-wcnfs-orphans/>

⁹³ *Gambia v. Myanmar* (footnote 47), para. 39

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

34. This act involves conduct that does not directly kill members of the group, but is *capable of leading*, through various means, to its physical destruction.⁹⁴ These may include starving, dehydrating, forcibly displacing the protected group, destroying objects indispensable for their survival, reducing essential medical services to below the minimum requirement,⁹⁵ depriving of housing, clothes, education, employment and hygiene.⁹⁶

35. By mid-December, Israel’s bombs and shells had destroyed or severely damaged most life-sustaining infrastructure, including 77 percent of healthcare facilities, 68 percent of telecommunication infrastructure, large numbers of municipal services (72), commercial and industrial sites (76), almost half of all roads,⁹⁷ over 60 percent of Gaza’s 439,000 homes,⁹⁸ 68 percent of residential buildings,⁹⁹ all universities, 60 percent of other educational facilities, including 13 libraries.¹⁰⁰ Israel has also destroyed at least 195 heritage sites, 208 mosques, 3 churches, and Gaza’s Central Archives (150 years of history).¹⁰¹ By the end of January, over one million civilians were forcibly displaced southward, their cities devastated.¹⁰²

36. Sixteen years of blockade had already transformed Gaza into an isolated, densely populated depleted and nearly “uninhabitable” enclave, when, on 9 October 2023, Israeli Defense Minister Yoav Gallant, announced a “complete siege (...) no electricity, no food, no water, no fuel”.¹⁰³ Israeli Minister of Foreign Affairs Israel Katz (then Minister of Energy) went further: “Humanitarian aid to Gaza? No electrical switch will be turned on, no water hydrant will be opened.”¹⁰⁴ Deliberately denying essential supplies to an already besieged population was destined to cause deaths “more silent than those caused by bombs”.¹⁰⁵

37. The total siege and near-constant carpet-bombing, along with draconian evacuation orders and ever-shifting ‘safe zones’, have created an unparalleled humanitarian catastrophe. Over 1.7 million Palestinians were displaced and forced into overcrowded UNRWA shelters and cramped quarters in southern Gaza,¹⁰⁶ systematically targeted by the Israeli army, and later into makeshift shelters.¹⁰⁷

38. Israel’s assault has decimated Gaza’s already fragile healthcare system.¹⁰⁸ Hospitals, also sheltering displaced Palestinians, have been overwhelmed.¹⁰⁹ By deliberately targeting

⁹⁴ Convention, article II(c); Rome Statute, article 6; ICTR-96-4-T, paras. 505–506

⁹⁵ ICTR-96-4-T, paras 505–506; *Prosecutor v Rutaganda*, ICTR-96-3-T, Judgement 06 December 1999 para 52

⁹⁶ IT-97-24-T, para. 517

⁹⁷ <https://www.wsj.com/world/middle-east/gaza-destruction-bombing-israel-aa528542>

⁹⁸ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-70>

⁹⁹ <https://www.conflict-damage.org/>; <https://unosat.org/products/3793>

¹⁰⁰ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-145>; <https://librarianswithpalestine.org/wp-content/uploads/2024/02/LAP-Gaza-Report-2024.pdf>

¹⁰¹ <https://www.ica.org/statement-of-the-international-council-on-archives-on-the-destruction-of-the-central-archives-of-the-municipality-of-gaza/>; <https://www.aljazeera.com/news/2024/1/14/a-cultural-genocide-which-of-gazas-heritage-sites-have-been-destroyed>

¹⁰² <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-107>

¹⁰³ <https://www.youtube.com/watch?v=ZbPdR3E4hCk> 09 October 2023

¹⁰⁴ <https://www.theguardian.com/world/2023/oct/12/no-power-water-or-fuel-to-gaza-until-hostages-freed-says-israeli-minister> 12 October 2023

¹⁰⁵ <https://www.ohchr.org/en/press-releases/2023/11/israel-must-stop-using-water-weapon-war-un-expert>

¹⁰⁶ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-108>

¹⁰⁷ <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-108>

¹⁰⁸ <https://www.ohchr.org/en/press-releases/2023/12/gaza-un-expert-condemns-unrelenting-war-health-system-amid-airstrikes>; <https://edition.cnn.com/interactive/2024/01/middleeast/gaza-hospitals-destruction-investigation-intl-cmd>

¹⁰⁹ <https://forensic-architecture.org/investigation/destruction-of-medical-infrastructure-in-gaza>; <https://x.com/UNOCHA/status/1719305737782878629?s=20>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-17>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-24>

hospitals,¹¹⁰ air and ground attacks gradually turned them into death zones.¹¹¹ Israeli soldiers have occupied hospitals,¹¹² encircling them with tanks and (drone-)snipers.¹¹³ By 12 February, only 11 of 36 hospitals and 17 percent of primary healthcare centres were functioning, only partially.¹¹⁴ Israeli soldiers have arrested, mistreated and tortured medical staff, patients and displaced people,¹¹⁵ and forced them – even premature babies – out of hospitals, in some cases causing the death of babies.¹¹⁶ The doctors who remained have worked night and day, making “impossible decisions” on patients to treat based on chance of survival.¹¹⁷

39. Ground invasion and aerial bombardment have destroyed agricultural land,¹¹⁸ farms, crops, animals and fishing assets,¹¹⁹ gravely undermining people’s livelihoods, the environment and agricultural system.

40. From 8–21 October, Israel impeded the entry of any aid into Gaza, subsequently allowing woefully inadequate amounts,¹²⁰ largely confined to the south.¹²¹ No fuel supplies were delivered until 18 November.¹²² In January, Israel-led attacks against UNRWA, the main agency providing a lifeline of support in Gaza, resulted in several States suspending payments to UNRWA, further aggravating the humanitarian situation.¹²³

41. By 7 December, over 90 percent of Gaza residents were suffering from severe food insecurity.¹²⁴ By February 2024, Palestinians trapped in northern Gaza resorted to animal

- ¹¹⁰ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-28>;
<https://www.hrw.org/news/2023/11/07/gaza-israeli-ambulance-strike-apparently-unlawful>;
<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-35>;
<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-45>;
<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-119>
- ¹¹¹ <https://www.who.int/news/item/18-11-2023-who-leads-very-high-risk-joint-humanitarian-mission-to-shifa-hospital-in-gaza>
- ¹¹² <https://forensic-architecture.org/investigation/destruction-of-medical-infrastructure-in-gaza>;
<https://www.nytimes.com/2023/11/14/us/politics/gaza-hospitals-cancer-israel.html>;
<https://shifa.forensic-architecture.org/>; <https://indonesian.alhaq.org/>;
<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-121>
- ¹¹³ <https://www.hrw.org/news/2023/11/14/gaza-unlawful-israeli-hospital-strikes-worsen-health-crisis>;
<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-36>;
https://www.emro.who.int/images/stories/palestine/WHO_Sitrep_13.pdf?ua=1;
<https://indonesian.alhaq.org/>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-115>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-87>
- ¹¹⁴ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-128>
- ¹¹⁵ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-73>;
<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-121>;
<https://x.com/HCWWatch/status/1750365056728965214?s=20>;
<https://www.reuters.com/world/middle-east/gaza-doctor-describes-ordeal-detention-2024-02-04/> -
 :~:text=He%20described%20having%20his%20hands,and%20with%20loud%20music%20blaring.;
- ¹¹⁶ <https://news.un.org/en/story/2023/11/1143497>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-34>; <https://www.washingtonpost.com/world/2023/12/03/gaza-premature-babies-dead-nasr/>
- ¹¹⁷ Mohammed Qandil, “Gaza: providing emergency care under fire”, *Emergency Medicine Journal* (9 February 2024)
- ¹¹⁸ <https://unosat.org/products/3792>; <https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza>
- ¹¹⁹ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-115>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-125>
- ¹²⁰ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-15>
- ¹²¹ <https://news.un.org/en/story/2024/01/1145557>; <https://www.newyorker.com/news/q-and-a/how-israels-inspection-process-is-obstructing-aid-delivery>; <https://edition.cnn.com/2024/03/01/middleeast/gaza-aid-israel-restrictions-investigation-intl-cmd/index.html>
- ¹²² <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-43>
- ¹²³ <https://www.ohchr.org/en/press-releases/2024/02/states-must-reinstate-and-strengthen-support-unrwa-amid-unfolding-genocide>
- ¹²⁴ https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Gaza_Acute_Food_Insecurity_Nov2023_Feb2024.pdf

feed and grass for sustenance,¹²⁵ with deaths by starvation on the rise.¹²⁶ Between mid-January and the end of February, the UN recorded numerous attacks against Palestinians seeking aid.¹²⁷

42. The supply of water was also severely affected.¹²⁸ Fuel scarcity hampered water sanitation, driving people to use water contaminated by sewage, solid waste and seawater.¹²⁹

43. The impact of these conditions on children is well-known:¹³⁰ in Gaza the risk of starvation,¹³¹ with thousands suffering from wasting,¹³² is already a tangible horrific reality.

44. These human-made conditions have put at risk an estimated 50,000 pregnant Palestinian women and 20,000 newborn babies,¹³³ and increased miscarriages by up to 300 percent.¹³⁴

45. Gaza has been completely sacked. Israel's relentless targeting of all means of basic survival has compromised the ability of Palestinians in Gaza to live on that land.¹³⁵ This engineered collapse of life-sustaining infrastructure corresponds to the stated intentions to make Gaza "permanently impossible to live in" where "no human being can exist".¹³⁶

V. Genocidal Intent

46. The definition of genocide requires the commission of any of the listed acts with a specific intent. It must be established that the perpetrator, by committing one or more of the prohibited acts, seeks to achieve the total or partial destruction of a national, ethnical, racial or religious group, as such.¹³⁷ This intent must be established either through direct or indirect evidence.¹³⁸

47. As genocide is an organized crime, the commission of which invariably implies a *collective dimension*,¹³⁹ evidence of a state plan, including through statements and declarations by state officials, is usually decisive in establishing direct intent.¹⁴⁰

48. Proof of indirect intent can be inferred from facts or circumstances, including the overall context of the acts or omissions, scale of atrocities, systematic targeting of victims based on their affiliation with a particular group, perpetration of other "culpable acts"

¹²⁵ <https://edition.cnn.com/2024/01/30/middleeast/famine-looms-in-gaza-israel-war-intl/index.html>

¹²⁶ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-129>;

<https://mondoweiss.net/2024/03/un-expert-israel-is-engineering-famine-in-gaza/>

¹²⁷ <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-un-human-rights-office-strongly-deplores-killing-least-112-palestinians-during-food-aid-distribution-gaza-city-enar>

¹²⁸ [https://reliefweb.int/attachments/a4b1eefa-3717-4407-8101-bba6df81f488/Health WASH - Advocacy note on public health catastrophe - Final.pdf](https://reliefweb.int/attachments/a4b1eefa-3717-4407-8101-bba6df81f488/Health%20WASH%20-%20Advocacy%20note%20on%20public%20health%20catastrophe%20-%20Final.pdf)

¹²⁹ Ibid.

¹³⁰ *Gambia v. Myanmar* (footnote 47), paras. 40, 42

¹³¹ <https://www.unicef.org/mena/press-releases/intensifying-conflict-malnutrition-and-disease-gaza-strip-creates-deadly-cycle>; <https://www.savethechildren.net/news/gaza-time-running-out-reports-emerging-children-dying-due-lack-food-save-children>; <https://twitter.com/AJEnglish/status/1761601918344790340>

¹³² <https://www.wfp.org/news/preventing-famine-and-deadly-disease-outbreaks-gaza-requires-faster-safer-aid-access-and-more>

¹³³ <https://www.who.int/news/item/03-11-2023-women-and-newborns-bearing-the-brunt-of-the-conflict-in-gaza-un-agencies-warn>; <https://www.hrw.org/news/2023/12/01/birth-and-death-intertwined-gaza-strip>; <https://news.un.org/en/story/2024/01/1145677>

¹³⁴ <https://twitter.com/CARE/status/1748007265754312767>

¹³⁵ See ICTR-96-4-T, para. 505-506

¹³⁶ <https://www.ynet.co.il/yedioth/article/yokra13625377> 10 October 2023; <https://balfourproject.org/the-amas-attack-and-israels-war-on-gaza-a-place-where-no-human-being-can-exist/>, 24 November 2023

¹³⁷ *Prosecutor v. Jelisić*, IT-95-10-A ICTY, Appeal Judgement, 05 July 2001, para. 46

¹³⁸ IT-98-33-A, para. 34; IT-99-36-T, para. 704-706

¹³⁹ IT-98-33-T, para 549; Schabas, *Genocide in International Law* (footnote 32), pp. 242–243, 250–255

¹⁴⁰ IT-95-10-A, para.48; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, para. 94, 276; Schabas, *Genocide in International Law* (footnote 32), pp. 245–250, 265

directed against the group, or repetition of destructive and discriminatory acts.¹⁴¹ The ICC requires that such facts or circumstances take “place in the context of a manifest pattern of similar conduct directed against the group or... conduct that could itself effect such destruction”.¹⁴² International tribunals have also established that indirect intent can consist of a manifest pattern of similar conduct over time.¹⁴³ The systematicity with which genocidal acts are committed implies a degree of “preconceived plan or policy”.¹⁴⁴

49. The nature and scale of the atrocities, if demonstrably capable of achieving the genocidal outcome, are strong evidence of intent.¹⁴⁵ The words of state authorities, including dehumanizing language, combined with acts, are considered a circumstantial basis from which intent can be inferred.¹⁴⁶ Dehumanization can be understood as foundational to the process of genocide.¹⁴⁷ Evidence of context may help determine the intent, and must be considered with the actual conduct: intent should be evident above all from words and deeds, and “patterns of purposeful action”,¹⁴⁸ such that no other inference can be reasonably drawn.¹⁴⁹

50. In the latest Gaza assault, direct evidence of genocidal intent is uniquely present. Vitriolic genocidal rhetoric has painted the whole population as the enemy to be eliminated and forcibly displaced.¹⁵⁰ High-ranking Israeli officials with command authority have issued harrowing public statements evincing genocidal intent, including as follows:

(a) President Isaac Herzog stated that “an entire nation out there... is responsible” for the 7 October attack, and that Israel would “break their backbone”,¹⁵¹

(b) Prime Minister Benjamin Netanyahu referred to Palestinians as “Amalek”¹⁵² and “monsters”.¹⁵³ The Amalek reference is to a biblical passage in which God commands Saul “Now go and smite Amalek, and utterly destroy all that they have, and spare them not; but slay both man and woman, infant and suckling, ox and sheep, camel and ass”.¹⁵⁴

(c) Minister of Defense Yoav Gallant referred to Palestinians as “human animals”,¹⁵⁵ and announced “full offense” on Gaza, having “released all the restraints”, and that “Gaza will never return to what it was”;¹⁵⁶

¹⁴¹ IT-95-10-A, para. 47; IT-98-33-A, para. 27, 34-35; T-05-88-T, para. 1178;

<https://ccrjustice.org/israel-s-unfolding-crime-genocide-palestinian-people-us-failure-prevent-and-complicity-genocide>

¹⁴² ICC (footnote 55), pp. 6-8

¹⁴³ *Bosnia v. Serbia* (footnote 40), para. 373; ICTR-95-1-T, para. 93

¹⁴⁴ ICTR-96-4-T, para. 118, 478, 579-580; Schabas, *Genocide in International Law* (footnote 32), p. 248

¹⁴⁵ *Prosecutor v. Muhimana*, ICTR-95-1B-T, Judgement, 28 April 2005, para. 498; *Prosecutor v.*

Gacumbitsi, ICTR-2001-64-T, Judgement, 17 June 2004, para. 253; ICTR-95-1-T, para. 93;

Prosecutor v. Seromba, ICTR-01-66-A, Appeal Judgement, 12 March 2008, para. 176

¹⁴⁶ <http://www.undocs.org/A/HRC/39/64> (2018), para. 85 refers to “broader oppressive context and hate rhetoric; specific utterances of commanders and direct perpetrators; exclusionary policies, including to alter the demographic composition... and the extreme scale and brutality of the violence committed”; ICTR-95-1B-T, para. 496

¹⁴⁷ Penny Green and Tony Ward, *State Crime: Governments, Violence and Corruption* (London: Pluto Press, 2004); Raz Segal, “A Textbook Case of Genocide”, *Jewish Currents* (13 October 2023).

¹⁴⁸ ICTR-95-1-T, para. 93; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgement, 07 June 2001, para. 63

¹⁴⁹ *Croatia v. Serbia* (footnote 44), para. 148; *Bosnia v. Serbia* (footnote 40), para. 373

¹⁵⁰ <https://law4palestine.org/law-for-palestine-releases-database-with-500-instances-of-israeli-incitement-to-genocide-continuously-updated/>

¹⁵¹ <https://www.itv.com/news/2023-10-13/israeli-president-says-gazans-could-have-risen-up-to-fight-hamas> 13 October 2023

¹⁵² <https://www.youtube.com/watch?v=IIPkoDk6isc> 28 October 2023

¹⁵³ <https://www.gov.il/en/departments/news/christmas-message-from-pm-netanyahu-24-dec-2023> 24 December 2023

¹⁵⁴ Holy Bible 1 Samuel 15:3

¹⁵⁵ <https://www.youtube.com/watch?v=ZbPdR3E4hCk> 09 October 2023

¹⁵⁶ https://www.timesofisrael.com/liveblog_entry/gallant-israel-moving-to-full-offense-gaza-will-never-return-to-what-it-was/ 10 October 2023

(d) IDF Spokesperson Daniel Hagari stated that focus should be on causing “maximum damage”, demonstrating a strategy of disproportionate and indiscriminate violence;¹⁵⁷

(e) Minister of Agriculture Avi Dichter referred to Israel’s action as “the Gaza Nakba”;¹⁵⁸

(f) Minister of Heritage Amihai Eliyahu called for striking Gaza with “nuclear bombs”;¹⁵⁹

(g) Likud MK Revital Gottlieb wrote on her social media: “Bring down buildings!! Bomb without distinction!!... Flatten Gaza. Without mercy! This time, there is no room for mercy!”.¹⁶⁰

51. Such calls for annihilatory violence directed at troops on duty,¹⁶¹ constitute strong evidence of direct and public incitement to commit genocide.¹⁶² Decades of discourse dehumanizing Palestinians have prepared the groundwork for such incitements.¹⁶³

52. Since 7 October, the proliferation of statements inciting genocide have also involved several sectors of Israeli society, religious leaders,¹⁶⁴ journalists,¹⁶⁵ artists,¹⁶⁶ and various professionals (including doctors¹⁶⁷ and political commentators¹⁶⁸).

53. There is cogent evidence that these statements have been internalized and acted upon by troops on the ground.¹⁶⁹ Israeli soldiers have, including on social media channels run by the Israeli military,¹⁷⁰ referred to Palestinians as “terrorists”, “roaches”, “rats”,¹⁷¹ and have

¹⁵⁷ <https://www.idf.il/en/mini-sites/hamas-israel-war-24/briefings-by-idf-spokesperson-rear-admiral-daniel-hagari/october-press-briefings/press-briefing-by-idf-spokesperson-rear-admiral-daniel-hagari-october-10th-morning/> 10 October 2023

¹⁵⁸ <https://twitter.com/hahauenstein/status/1723441134221869453> 11 November 2023

¹⁵⁹ https://www.timesofisrael.com/liveblog_entry/far-right-minister-nuking-gaza-is-an-option-population-should-go-to-ireland-or-deserts/ 5 November 2023

¹⁶⁰ <https://twitter.com/YehudaShaul/status/1714301964886917631> 17 October 2023

¹⁶¹ <https://law4palestine.org/law-for-palestine-releases-database-with-500-instances-of-israeli-incitement-to-genocide-continuously-updated/>

¹⁶² *Prosecutor v. Muvunyi*, ICTR-2000-55A-T, Judgement, 12 September 2006, paras. 502-505; *Prosecutor v. Kajelijeli*, ICTR-98-44A-T, Judgment, 01 December 2003, paras. 851-852; see also <https://www.hrw.org/reports/ictr0110webwcover.pdf> 2010, p. 64-66, 69-70

¹⁶³ <https://ccrjustice.org/genocide-palestinian-people-international-law-and-human-rights-perspective>; Nurit Peled-Elhanan, *Palestine in Israeli School Books: Ideology and Propaganda in Education* (London: I.B. Taurus, 2012), p.162; see also <http://www.theguardian.com/commentisfree/2023/oct/16/the-language-being-used-to-describe-palestinians-is-genocidal>

¹⁶⁴ <https://www.middleeasteye.net/news/israel-palestine-war-dozens-israeli-rabbis-endorse-bombing-hospitals-enemies> 01 November 2023;

<https://twitter.com/RavOuryCherki/status/1719713406050066491> 01 November 2023

¹⁶⁵ <https://x.com/MiddleEastEye/status/1732639958664356223?s=20> 07 December 2023; <https://x.com/jeremyscahill/status/1737489631199850519?s=20> 20/12/2023;

<https://x.com/YehudaShaul/status/1714301988358283769?s=20> 17 October 2023;

<https://twitter.com/dverthaim/status/1710684531114602891> 07 October 2023

¹⁶⁶ <https://www.youtube.com/watch?v=2bnhWYJh8-I> 20 November 2023;

https://twitter.com/gilmishali/status/1710653974397780392?s=46&t=JaT3Sau_ 07 October 2023;

<https://twitter.com/YehudaShaul/status/1739641280462815611> 26 December 2023

¹⁶⁷ <https://www.phr.org.il/en/physicians-call-eng/> 06 November 2023

¹⁶⁸ <https://www.instagram.com/middleeasteye/reel/C1elfQ7Nqeh/> 30 December 2023;

<https://x.com/PalestineChron/status/1737491845679128918?s=20> 20 December 2023

¹⁶⁹ IT-09-92-T, para. 3435; ICJ, *South Africa v. Israel* (footnote. 8), para. 20-29

¹⁷⁰ <https://www.haaretz.com/israel-news/security-aviation/2024-02-04/ty-article/.premium/israeli-army-its-admits-staff-was-behind-graphic-gaza-telegram-channel/0000018d-70b4-dd6e-a98d-f4b6a9c00000>, 04 February 2024

¹⁷¹ *Ibid.*; https://www.nytimes.com/2024/02/06/world/middleeast/israel-idf-soldiers-war-social-media-video.html?smid=nytcore-ios-share&referringSource=articleShare&fbclid=IwAR1KvmIOixGQNbAkJRPgU2Y7XyctR5IMWjOxQc6T6la5ODfYWYUT7lBFsA_aem_Aa7puefGHHUwoZuhoXZnJDZJzbGn8LuFsBZh4hLnUDtJN0lcdK2sacwGZKrJ7dGj0HI;%20and%20https://www.haaretz.com/israel-news/security-aviation/2024-02-04/ty-article/.premium/israeli-army-its-admits-staff-was-behind-graphic-gaza-telegram-channel/0000018d-70b4-dd6e-a98d-f4b6a9c00000, 06 November 2023

repeated terms articulated by political leaders, chanting that “there are no ‘uninvolved civilians’”,¹⁷² while also calling for the building of settlements in Gaza,¹⁷³ “occupy[ing] Gaza... wip[ing] off the seed of Amalek”,¹⁷⁴ boasting about killing “families, mothers, and children”,¹⁷⁵ humiliating detained Palestinians,¹⁷⁶ detonating dozens of homes,¹⁷⁷ destroying entire residential neighbourhoods,¹⁷⁸ and desecrating cemeteries and places of worship.¹⁷⁹

54. Israel’s Prime Minister and President have stated that Israel was fighting on behalf of “all civilized states and... peoples”,¹⁸⁰ “a barbarism that has no place in the modern world”,¹⁸¹ that they “will uproot evil and it will be good for the entire region and the world”.¹⁸² This racist rhetoric echoes that of other colonial powers, and tries to construe Israel’s genocidal violence as legitimate in light of Palestinians’ alleged “barbarian” and “premodern” character.¹⁸³

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

55. A core feature of Israel’s conduct since 7 October has been the intensification of its de-civilianization of Palestinians, a protected group under the Convention. Israel has used IHL terminology to justify its systematic use of lethal violence against Palestinian civilians as a group and the extensive destruction of life-sustaining infrastructures. Israel has done this by deploying IHL concepts such as human shields, collateral damage, safe zones, evacuations and medical protection in such a permissive manner so as to gut these concepts of their normative content, subverting their protective purpose and ultimately eroding the distinction between civilians and combatants in Israeli actions in Gaza.¹⁸⁴

56. Official statements¹⁸⁵ have translated into military conduct that repudiates the very notion of civilian protection. Israel has thus radically altered the balance struck by IHL

¹⁷² https://www.youtube.com/watch?v=qb_oBSAZjDs 08 December 2023

¹⁷³ https://www.nytimes.com/2024/02/06/world/middleeast/israel-idf-soldiers-war-social-media-video.html?smid=nytcore-ios-share&referringSource=articleShare&fbclid=IwAR1KvmIO%20%20ixGQNbtAkJRPgU2Y7XyctR5lMWjOxQc6T6la5ODfYWyUT7lBFsA_aem_Aa7puefGHHUwoZuhoXZnJDZJzbGn8LuFsBZh4hLnUDtJN0lcdK2sacwGZKrJ7dGj0HI;%20and%20https://www.haaretz.com/israel-news/security-aviation/2024-02-04/ty-article/.premium/israeli-army-its-admits-staff-was-behind-graphic-gaza-telegram-channel/0000018d-70b4-dd6e-a98d-f4b6a9c00000

¹⁷⁴ https://www.youtube.com/watch?v=qb_oBSAZjDs, 08 December 2023

¹⁷⁵ <https://twitter.com/1717Bazz/status/1712176168823107986> 11 October 2023;

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

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

¹⁷⁶ <https://www.haaretz.com/israel-news/2023-11-09/ty-article-magazine/.premium/growing-number-of-idf-soldiers-are-documenting-and-posting-their-own-abuse-of-palestinians/0000018b-ae60-dea2-a9bf-fefe96070000> 09 November 2023

¹⁷⁷ <https://twitter.com/QudsNen/status/1737593767752860117> 20 December 2023

¹⁷⁸ https://www.nytimes.com/2024/02/06/world/middleeast/israel-idf-soldiers-war-social-media-video.html?smid=nytcore-ios-share&referringSource=articleShare&fbclid=IwAR1KvmIO%20%20ixGQNbtAkJRPgU2Y7XyctR5lMWjOxQc6T6la5ODfYWyUT7lBFsA_aem_Aa7puefGHHUwoZuhoXZnJDZJzbGn8LuFsBZh4hLnUDtJN0lcdK2sacwGZKrJ7dGj0HI;%20and%20https://www.haaretz.com/israel-news/security-aviation/2024-02-04/ty-article/.premium/israeli-army-its-admits-staff-was-behind-graphic-gaza-telegram-channel/0000018d-70b4-dd6e-a98d-f4b6a9c00000, 06 February 2024

¹⁷⁹ *Ibid.*

¹⁸⁰ <https://www.gov.il/en/departments/news/pm-netanyahu-meets-with-romanian-pm-marcel-ciolacu-17-oct-2023> 17 October 2023

¹⁸¹ <https://www.nytimes.com/2023/11/03/opinion/isaac-herzog-israel-hamas-gaza.html?partner=slack&smid=sl-share> 03 November 2023

¹⁸² https://twitter.com/Isaac_Herzog/status/1713661051986678189?s=20 15 October 2023

¹⁸³ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), pp. 55–57, 75

¹⁸⁴ AP-I, articles 48, 51, 52 and 57; Customary IHL, rules 1, 7, 14–15

¹⁸⁵ <https://law4palestine.org/law-for-palestine-releases-database-with-500-instances-of-israeli-incitement-to-genocide-continuously-updated/>

between civilian protection and military necessity, as well as the customary rules of distinction, proportionality and precaution. This has obscured one cardinal tenet of IHL: indiscriminate attacks, which do not distinguish military targets from protected persons and objects, cannot be proportionate and are always unlawful.¹⁸⁶

57. On the ground, this distortion of IHL articulated by Israel as a state policy in its official documents, has transformed an entire national group and its inhabited space into a destroyable target, revealing an eliminationist conduct of hostilities. This has had devastating effects, costing the lives of tens of thousands of Palestinian civilians, destroying the structural fabric of life in Gaza and causing irreparable harm. This illustrates a clear pattern of conduct from which the requisite genocidal intent is the only reasonable inference to be drawn.¹⁸⁷

A. Human Shields and the logic of genocide

58. IHL strictly prohibits the use of human shields.¹⁸⁸ Their use constitutes a war crime,¹⁸⁹ as it violates the duty to protect the civilian population from dangers arising from military operations.¹⁹⁰ When human shields are used, the attacking party must take into account the risk to civilians.¹⁹¹ Indiscriminate or disproportionate harm to civilians remains unlawful and the civilian population can *never* be targeted.

59. Israel has accused Palestinian armed groups of deliberately using civilians as human shields in previous aggressions on Gaza (including in 2008-09,¹⁹² 2012,¹⁹³ 2014,¹⁹⁴ 2021¹⁹⁵ and 2022¹⁹⁶). It also used it to justify high civilian casualties and attacks against paramedics, journalists and others during the 2018-2019 'Great March of Return'.¹⁹⁷ UN independent fact-finding missions¹⁹⁸ and reputable human rights organizations¹⁹⁹ have consistently challenged these allegations, sometimes concluding that evidence of human shields had been

¹⁸⁶ Customary IHL, rule 12; Luigi Daniele, "A lethal misconception, in Gaza and beyond: disguising indiscriminate attacks as potentially proportionate in discourses on the laws of war", EJIL: Talk!, blog of *European Journal of International Law*, 7 November 2023.

¹⁸⁷ *Bosnia v. Serbia* (footnote 40), para. 373; *Croatia v. Serbia* (footnote 44), para. 148; ICTR-96-4-T, paras. 579-581; ICTR-95-1-T, para. 93-94; Schabas, *Genocide in International Law* (footnote 32), p. 248

¹⁸⁸ Customary IHL, rule 97; GCIII, article 23(1); GCIV, article 28; AP-I, articles 12 and 51(7)

¹⁸⁹ Rome Statute, article 8 (2) (b) (xxiii)

¹⁹⁰ AP-I, article 51

¹⁹¹ *Ibid*, article 51(8)

¹⁹² <https://www.amnesty.org/en/documents/mde15/015/2009/en/>

¹⁹³ <https://twitter.com/IDF/status/269218659472400384?s=20>;

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

¹⁹⁴ <https://www.amnesty.org/en/latest/news/2014/07/israelgaza-conflict-questions-and-answers/>; Neve Gordon and Nicola Perugini, "The politics of human shielding: On the resignification of space and the constitution of civilians as shields in liberal wars", *Environment and Planning D: Society and Space*, vol. 34 (2016), pp. 168, 182-183

¹⁹⁵ <https://www.hrw.org/news/2021/08/23/gaza-israels-may-airstrikes-high-rises>

¹⁹⁶ <https://www.amnesty.org.uk/files/2022-10/Gaza>

Offensive.pdf?VersionId=f4059c6Vn1FMnx5KvdJbnqVxAhXVvhVR -
:~:text=On%205%20August%202022%2C%20Israel,five%20children%20at%20a%20cemetery

¹⁹⁷ Neve Gordon and Nicola Perugini, *Human Shields, A History of People in the Line of Fire* (University of California Press, 2020), pp. 214-216

¹⁹⁸ <http://www.undocs.org/A/HRC/12/48> (2009), paras. 449-452

¹⁹⁹ <https://www.amnesty.org.uk/files/2022-10/Gaza>

Offensive.pdf?VersionId=f4059c6Vn1FMnx5KvdJbnqVxAhXVvhVR -
:~:text=On%205%20August%202022%2C%20Israel,five%20children%20at%20a%20cemetery;
<https://www.hrw.org/report/2009/08/13/white-flag-deaths/killings-palestinian-civilians-during-operation-cast-lead>

simply by being in “proximity to” potential Israeli targets.²¹⁴ Israel has thus transformed Gaza into a “world without civilians” in which “everything from taking shelter in hospitals to fleeing for safety is declared a form of human shielding”.²¹⁵ The accusation of using human shields has thus become a pretext, justifying the killing of civilians under a cloak of purported legality, whose all-enveloping pervasiveness admits only of genocidal intent.

B. Turning Gaza as a whole into a ‘military objective’

63. International law stipulates that attacks must be “strictly limited” to those objects which “by their nature, location, purpose or use make an effective contribution to military action”, whose “total or partial destruction, capture or neutralization” in the circumstances ruling at the time “must offer a definite military advantage”.²¹⁶

64. Israel has misused this rule to “militarize” civilian objects and whatever surrounds them, justifying their indiscriminate destruction. According to Israel’s Ministry of Foreign Affairs, “many ostensibly civilian objects may become legitimate targets”,²¹⁷ losing their protection under IHL or become “collateral” damage as a result of Hamas’s choice. Gaza’s civilian population and infrastructure are presented as obstructions positioned amongst, in front of and above targets.²¹⁸ Instead of abiding by circumstantial status determinations in line with IHL for each attack undertaken, as is required, Israel has characterized the whole territory as a military objective.

65. Protected civilian objects can lose their immunity from attacks if and *for as long as* they are used by combatants in hostilities. However, Israel considers any object that *has allegedly been or might be* used militarily as a legitimate target, so that entire neighbourhoods can be razed or demolished under fictions of legality.²¹⁹ In Israel’s logic, civilian objects, such as houses and apartments, become military objectives by proximity, as if the status of ‘lawful’ target spread through a vicinity by ‘viral contagion’. For example, residential tower blocks, each comprising dozens of floors and hundreds of (functionally separate and autonomously usable) flats, purportedly become military objectives in their entirety if a single flat or room had allegedly been used by armed groups.²²⁰

66. Paradigmatic examples are referred to as “power targets”,²²¹ encompassing any civilian object, including residential buildings, under the pretext that “Hamas is everywhere in Gaza”.²²² Entire multi-storey buildings have been levelled while full of civilians, knowingly killing hundreds in single strikes.²²³ The attack on the Al-Taj tower in Gaza City, bombed on 25 October, killed 101 people, including 44 children and 37 women, and injured hundreds.²²⁴

67. Israel has thus *de facto* abolished the distinction between civilian objects and military objectives. In the offensive’s first three weeks, entire residential areas across northern Gaza were erased.²²⁵ Meanwhile, neighbourhoods in ‘safe areas’ in the south were already being

²¹⁴ Gordon & Perugini (footnote 197), pp.159–169; <https://blogs.icrc.org/law-and-policy/2021/11/18/proximate-human-shields/>

²¹⁵ Elyse Semerdjian, “A World Without Civilians”, *Journal of Genocide Research*, 24 January 2024, p.3

²¹⁶ AP-I, article 52 (2); Customary IHL, rule 8.

²¹⁷ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_\(Israel_MFA,_6.12.23\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_(Israel_MFA,_6.12.23).pdf): FAQs, pp. 2, 9.

²¹⁸ *Ibid.*, p. 9

²¹⁹ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_\(Israel_MFA,_6.12.23\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_(Israel_MFA,_6.12.23).pdf): FAQs p.14; <https://www.maariv.co.il/breaking-news/Article-1044157> admitted neighbourhoods attacked “on a large scale and not in a surgical manner”; <https://www.youtube.com/watch?v=3-APSXZy9UI>

²²⁰ Declared previously, e.g. <https://twitter.com/IDF/status/1393553534218604552?s=20>;

<https://www.justsecurity.org/76657/the-idfs-unlawful-attack-on-al-jalaa-tower/>

²²¹ <https://www.israeldefense.co.il/node/37949>

²²² <https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/>

²²³ *Ibid*

²²⁴ <https://airwars.org/civilian-casualties/ispt0587-october-25-2023/>

²²⁵ <https://www.theguardian.com/world/2023/oct/27/gaza-before-and-after-satellite-images-show-destruction-after-israeli-airstrikes>

bombarded.²²⁶ By November, the devastation of cities in northern Gaza far exceeded that of Dresden in 1945.²²⁷

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

C. Indiscriminate killing as “collateral damage”

69. Israel has also sought to provide legal cover for indiscriminate attacks by misusing the notion of ‘collateral damage’,²²⁸ unlimitedly expanding what can be considered ‘incidental civilian harm’. Examples of indiscriminate attacks include attacks that by any methods or means strike multiple lawful targets at once in areas with high concentrations of civilians or civilian objects. To justify killing members of the protected group, Israel has defended such actions as causing only *incidental* harm to civilians, proportionate to concrete and direct military advantages anticipated.²²⁹

70. Invoking the concept of ‘proportionate collateral damage’ to knowingly shell large numbers of members of the protected group, Israel asserts that when attacks result in more collateral damage than expected, this does not necessarily indicate a violation, since “compliance is conduct-oriented, not result-oriented”.²³⁰

71. However, in all attacks launched against residential towers²³¹ without warnings, extensive civilian harm has been anticipated as the main outcome. The Al-Taj building was full of families at the time of the 31 October strike, which must have been anticipated as certainly killing or injuring all the civilians living there.²³² The fact that so many people were killed was entirely predictable – hence at least indirectly *intended* – as is evident from the images that the Israeli military itself published.²³³ The attack on the Jabalia refugee camp on 25 October killed at least 126 civilians, including 69 children, and injured a further 280.²³⁴ Israeli military personnel affirmed that the target was one Hamas commander in an underground base.²³⁵

72. For a proportionality assessment to be lawful, the principle of distinction must first be respected, otherwise the civilian harm anticipated from an attack ceases to be an incidental, unintended consequence of the attack itself.²³⁶ While both indiscriminate and disproportionate attacks appear to have been committed systematically and repeatedly throughout the latest Israeli campaign,²³⁷ the fact that both types of unlawful attacks have been consistently deemed by Israel as lawful suggests that it operates under a policy of *condoning* mass killing.

73. Under IHL, the concrete and direct military advantage expected from a single attack must be weighed against the foreseeable incidental harm to civilians and civilian objects. However, in its strained proportionality assessments, Israel’s Ministry of Foreign Affairs states that “military advantage [...] may refer to the military advantage anticipated” not from

²²⁶ <https://www.nytimes.com/2023/12/21/world/middleeast/israel-gaza-bomb-investigation.html>

²²⁷ <https://www.ft.com/content/7b407c2e-8149-4d83-be01-72dcae8aee7b>

²²⁸ Daniele, “A lethal misconception” (footnote 186).

²²⁹ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_\(Israel_MFA,_6.12.23\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_-_FAQs_(Israel_MFA,_6.12.23).pdf): FAQs, pp. 4, 11–13.

²³⁰ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_\(2_NOV_2023\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_(2_NOV_2023).pdf): Key Legal Aspects, 02 November 2023, pp. 10.

²³¹ <https://ig.ft.com/gaza-damage/~:text=The%20bombardments%20have%20destroyed%20livelihoods,flattened%20or%20suffered%20heavy%20damage>

²³² <https://airwars.org/civilian-casualties/ispt0783-october-31-2023/>

²³³ <https://twitter.com/IDF/status/1717840051491541077>

²³⁴ <https://airwars.org/civilian-casualties/ispt0783-october-31-2023/>

²³⁵ <https://edition.cnn.com/videos/world/2023/10/31/wolf-idf-spokesperson-gaza-refugee-camp-airstrike-reaction-vpx.cnn>,

²³⁶ Daniele, “A lethal misconception” (footnote 186).

²³⁷ <https://www.amnesty.org/en/latest/news/2023/10/damning-evidence-of-war-crimes-as-israeli-attacks-wipe-out-entire-families-in-gaza/>

a specific military action but “from an operation as a whole”,²³⁸ alluding to the *overall purpose of the war*.²³⁹

74. Israel’s proportionality assessments have flouted legal requirements by defining military advantage, in each attack, in relation to the destruction of the whole Hamas organization *both politically and militarily*.²⁴⁰ It is manifestly illegal to declare as a war aim the destruction of the other side’s political capacity (particularly in the context of a 56-year military occupation which deprives the occupied population of its right to self-determination). But when such an overall ‘political’ war purpose is taken as the value against which proportionality is to be measures in relation to anticipated harm to civilians, there is virtually no magnitude of expected civilian harm that could ever be considered “excessive” so long as the unlawful political objective, as defined by the attacker, is not met. In this context, the indiscriminate killing of protected persons and destruction of protected objects will always be represented, by the attacker, as “proportionate” incidental harm despite its manifest illegality.²⁴¹

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

D. Evacuations and safe zones

76. Under IHL, parties to the conflict must evacuate the civilian population and remove civilian objects from the vicinity of military objectives.²⁴² Evacuations are admissible, *as long as they do not displace the protected persons outside the occupied territory*; evacuated persons must be transferred back to their homes as soon as hostilities in the area in question have ceased.²⁴³ The displaced, wounded and sick should be protected through the creation of “hospital and safety zones” – also called “safe areas” or “safe zones” – which shall “be far removed from military operations” and established through agreement between the parties.²⁴⁴

77. The mass evacuation order of 13 October – when 1.1 million Palestinians were ordered to evacuate northern Gaza in 24 hours to Israeli-designated “safe zones” in the south²⁴⁵ – was communicated through at least 23 different airdropped leaflets, social media postings,²⁴⁶ text messages²⁴⁷ and recorded phone messages.²⁴⁸ Instead of increasing safety for civilians, the sheer scale of evacuations amidst an intense bombing campaign, and the

²³⁸ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel Conflict 2023 - Some Factual and Legal Aspects - Israel Ministry of Foreign Affairs \(2 NOV 2023\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel Conflict 2023 - Some Factual and Legal Aspects - Israel Ministry of Foreign Affairs (2 NOV 2023).pdf); :Key Legal Aspects, 02 November 2023, p. 10.

²³⁹ <https://www.justsecurity.org/90789/israels-rewriting-of-the-law-of-war/3>

²⁴⁰ <https://www.youtube.com/watch?v=Jb1krYLPZLI>; <https://www.youtube.com/watch?v=2yRl-cc-D3w>; <https://twitter.com/QudsNen/status/1723784790682358189>. While such arguments have been tempered over time (see [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas Conflict 2023 - FAQs \(Israel MFA, 6.12.23\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas Conflict 2023 - FAQs (Israel MFA, 6.12.23).pdf): FAQs, p.11-12), action on the ground has remained ruthless; see, among others, the attacks on the Gaza police while assisting food delivery in northern Gaza, <https://www.washingtonpost.com/world/2024/02/22/gaza-aid-deliveries-looting-police-hamas/>

²⁴¹ Luigi Daniele, “Incidentally Capsized”, *Oxford Journal of Conflict and Security Law*, vol. 29, no. 1, forthcoming.

²⁴² API, article 58(1).

²⁴³ GCIII, article 49.

²⁴⁴ *Ibid.*

²⁴⁵ <https://mezan.org/en/post/46293>; <https://mezan.org/en/post/46287> - :~:text=A1%20Mezan%20Center%20for%20Human,Transfer%2C%20Urgent%20Intervention%20is%20Needed

²⁴⁶ <https://x.com/AvichayAdraee/status/1712846493747495223?s=20>; https://www.timesofisrael.com/liveblog_entry/idf-urges-palestinians-to-leave-northern-gaza-strip-by-8-p-m/

²⁴⁷ <https://www.nytimes.com/2023/10/15/world/middleeast/israel-gaza.html>

²⁴⁸ <https://www.bbc.com/news/world-middle-east-67327079>

haphazardly communicated safe zones system, along with extended communications blackouts,²⁴⁹ increased levels of panic, forced displacement and mass killing.²⁵⁰

78. Immediately after the 13 October evacuation orders and the transformation of southern Gaza into an ostensible “safe zone”, Israel illegally categorized the inhabitants of northern Gaza who had remained (including the sick and wounded) as “human shields”²⁵¹ and “accomplices” of terrorism.²⁵² This policy points to the intention by Israel to ‘transform’ hundreds of thousands of civilians into ‘legitimate’ military targets or collateral casualties through impossible-to-follow evacuation orders.²⁵³ The mass evacuation order included a staggering 22 hospitals in the area,²⁵⁴ putting at risk more than 2,000 patients and displaced people sheltering in the hospitals, and depriving those remaining of life-sustaining services.²⁵⁵

79. The erasure of civilian protections in the evacuated area was combined with indiscriminate targeting of evacuees and inhabitants of the areas designated as safe zones. Since the beginning of its assault, Israel has perfidiously bombarded the designated ‘safe’ areas causing significant casualties.²⁵⁶ Of the roughly 500 2,000-pound bombs dropped by Israel in the first six weeks of hostilities, 42 percent were deployed in the designated safe zones in southern areas.²⁵⁷ Israel targeted southern Gaza also with other munitions from air, sea and land, causing large-scale destruction of civilian areas in the “safe zones”.²⁵⁸

80. By 28 October, two weeks after Israel’s mass evacuation order, about 38 percent of killings in Gaza occurred in the declared safe areas south of Wadi Gaza.²⁵⁹ By 20 November, 34 percent of all Palestinians killed in Gaza were in this area,²⁶⁰ and by 22 January, 42 percent were located in the area, which by then held the majority of the Gaza population.²⁶¹ Simply put, “safe areas” were deliberately turned into areas of mass killing.

81. Similar patterns emerge from Israel’s militarization of the “humanitarian corridors” it instructed the population to use in order to evacuate and reach the safe areas. In contrast with the humanitarian rhetoric through which these “safe routes” were announced,²⁶² these corridors were systematically and perfidiously targeted by bombardment, shelling and sniper

²⁴⁹ https://content.forensic-architecture.org/wp-content/uploads/2024/03/Humanitarian-Violence_Report_FA.pdf 07/03/2024, sections 6.1.2 and 6.1.3

²⁵⁰ <https://www.aljazeera.com/opinions/2024/1/6/safe-zones-israels-technologies-of-genocide>

²⁵¹ <https://www.idf.il/en/mini-sites/hamas-israel-war-24/war-on-hamas-2023-resources/the-idf-continues-the-effort-to-move-the-residents-of-the-gaza/>;
https://www.mezan.org/uploads/files/2024/1/17096645765_november.jpeg

²⁵² https://www.theguardian.com/world/2024/feb/08/israeli-soldiers-idf-gaza-fighting-disaster-area?CMP=share_btn_tw; https://www.mezan.org/uploads/files/2024/1/1709664576signal-2023-10-22-030620_002.jpeg

²⁵³ Hague Regulations (1907), article 26; AP-I, article 57(2)(c). The term used in these provisions is ‘advance warning’; see *Bosnia v. Serbia* (footnote 40), para.373.

²⁵⁴ https://www.emro.who.int/images/stories/palestine/WHO_oPt_Sitrep_6s.pdf

²⁵⁵ <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>

²⁵⁶ <https://edition.cnn.com/gaza-israel-big-bombs/index.html>

²⁵⁷ *Ibid*; <https://www.nytimes.com/2023/12/21/world/middleeast/israel-gaza-bomb-investigation.html>

²⁵⁸ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-34>;
https://sheltercluster.s3.eu-central-1.amazonaws.com/public/docs/gsc_opt_gaza_strip_damage_affected_areas_27october2023_a1.pdf?VersionId=bTM7V0miJzKDudKwJL8Dvy1Kdt2uy4kZ;
<https://www.alhaq.org/advocacy/22044.html>

²⁵⁹ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-22>

²⁶⁰ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-45>

²⁶¹ <https://english.elpais.com/international/2024-01-22/25000-deaths-in-gaza-why-the-destruction-of-this-war-exceeds-that-of-other-major-conflicts.html?outputType=amp>

²⁶² <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-8>;
<https://www.theguardian.com/world/2023/oct/14/gaza-civilians-afraid-to-leave-home-after-bombing-of-safe-routes>; <https://www.nbcnews.com/news/world/live-blog/israel-hamas-war-live-updates-rcna12052>

fire,²⁶³ becoming ‘death corridors’. Israel set up checkpoints for facial scans and identity checks, where fleeing Palestinians were often detained and later mistreated and tortured.²⁶⁴

82. By the end of November, the Palestinian death toll reached 15,000.²⁶⁵ Responding to mounting international criticism, the Israeli military reconfigured its evacuation mechanisms, introducing a new “humanitarian” tool: the “evacuation grid”.²⁶⁶ The army published on social media a grid map dividing Gaza into 600 blocks and indicating areas to be “evacuated” and “safe” areas.²⁶⁷ The system – introduced when the army had cut off Gaza from all forms of communication²⁶⁸ – threw residents into panic, increasing the level of chaos and, subsequently, the number of deaths.²⁶⁹ From early December, Israel routinely ordered Palestinian civilians in the areas south of Wadi Gaza to move to new zones designated as safe according to the grid. Immediately afterwards, the army targeted these “safe zones”.²⁷⁰

83. From the end of December to February, Israel intensified its offensive in the ‘safe areas’ of Al Muwasi and Rafah, which were sheltering the majority of the displaced population.²⁷¹ These assaults continued even after the ICJ ordered Israel to “take[s] all measures within its power” to prevent genocide.²⁷² Instead, by February Israel had killed a further 3,135 Palestinians, many of whom while seeking refuge.²⁷³

84. By the beginning of February, 1.4 million Palestinians had been displaced to Rafah, rendering that governorate the most overcrowded in Gaza with “an average density of over 22,200 per square kilometre, five times its pre-conflict levels”.²⁷⁴ Continuous bombardment of these “safe areas” targeted premises hosting displaced people²⁷⁵ and medical facilities.²⁷⁶

85. Just as the evacuations and safe zones were being implemented, high-ranking Israeli officials advocated for settler colonial replacement. Israel’s Prime Minister advocated for

²⁶³ <https://reliefweb.int/report/occupied-palestinian-territory/pauses-corridors-and-safe-zones-gaza-rhetoric-vs-reality>; <https://www.ft.com/content/95c5fcf1-c756-415f-85b8-1e4bbff24736>

²⁶⁴ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-35>;
<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-46>;
<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-50>;
<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-105>;
<https://www.alhaq.org/advocacy/22452.html>

²⁶⁵ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-53>

²⁶⁶ <https://www.theguardian.com/world/2023/dec/02/israeli-grid-system-makes-life-in-gaza-macabre-game-of-battleships-say-aid-workers>

²⁶⁷ <https://www.bbc.com/news/world-middle-east-67630489>

²⁶⁸ <https://www.savethechildren.net/news/complete-communication-blackout-four-days-and-counting-makes-aid-distribution-gazanear:~:text=Gaza%2C%2017%20December%202023%20%2D%20The,Rafah%2C%20says%20Save%20the%20Children.>;
<https://edition.cnn.com/2024/01/18/middleeast/gaza-communications-blackout-one-week-israel-hamas-intl/index.html>

²⁶⁹ <https://www.reuters.com/world/middle-east/israel-says-ground-forces-operating-across-gaza-strip-offensive-builds-2023-12-04/>

²⁷⁰ *Ibid*; <https://www.youtube.com/watch?v=JIGmwCMETMs>

²⁷¹ https://apnews.com/article/israel-hamas-war-news-12-26-2023-698c895797ccb057d13fe4f68690c98b?taid=658b24eaca93ff0001d4103d&utm_campaign=TrueAnthem&utm_medium=AP&utm_source=Twitter; [https://www.savethechildren.org/us/about-us/media-and-news/2024-press-releases/gaza-mostly-children-killed-by-israeli-airstrikes-near-al-mawasi:~:text=4%2C%202024\)%E2%80%94Fourteen%20people,aid%20agency%20Save%20the%20Children;https://www.amnesty.org.uk/press-releases/israelopt-fresh-evidence-probable-war-crimes-israeli-attacks-rafah](https://www.savethechildren.org/us/about-us/media-and-news/2024-press-releases/gaza-mostly-children-killed-by-israeli-airstrikes-near-al-mawasi:~:text=4%2C%202024)%E2%80%94Fourteen%20people,aid%20agency%20Save%20the%20Children;https://www.amnesty.org.uk/press-releases/israelopt-fresh-evidence-probable-war-crimes-israeli-attacks-rafah); <https://edition.cnn.com/2024/02/06/middleeast/palestinians-trapped-rafah-israeli-offensive-intl/index.html>; <https://www.reuters.com/world/middle-east/israel-strikes-rafah-refugee-camp-22-killed-local-health-officials-say-2024-02-12/>

²⁷² *South Africa v. Israel* (footnote 8), para.86.

²⁷³ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-129>

²⁷⁴ <https://www.nrc.no/news/2024/february/gaza-israels-military-operation-in-rafah-would-be-fatal-for-displaced-civilians-and-humanitarian-aid/>

²⁷⁵ https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-101?_gl=1*11oo43s*_ga*MTEzMzc0OTEwNC4xNzA3ODMyMTQ0*_ga_E60ZNX2F68*MTcwOTQwMDA0OC42LjEuMTcwOTQwMTEyNi42MC4wLjA

²⁷⁶ <https://forensic-architecture.org/investigation/assessment-israeli-material-icj-jan-2024>

ethnic transfer;²⁷⁷ Israel's Finance Minister expressed support for expelling two million Palestinians from Gaza;²⁷⁸ Israel's Minister of National Security declared the war to be an opportunity to "concentrate on encouraging the migration of the residents of Gaza", while other cabinet ministers advocated to "resettle"²⁷⁹ Palestinians into the Sinai,²⁸⁰ Western countries,²⁸¹ and elsewhere.²⁸² Israel's Minister of Communications revealed that the expulsion of the evacuated Palestinians outside Gaza was discussed "at government meetings".²⁸³ On 12 January, a conference for the re-colonization of Gaza and the expulsion of Palestinians was attended by Israeli ministers.²⁸⁴

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

E. Medical Shielding

87. A final layer of Israel's "humanitarian camouflage" concerns its efforts to provide legal cover for systematic attacks against medical facilities and personnel, causing the progressive collapse of Gaza's healthcare sector.²⁸⁵ Targeting medical facilities while accusing the enemy of shielding within them had already been employed by Israel as a strategy of "medical lawfare" in previous wars.²⁸⁶ In the current assault, Israel has invoked this legal strategy to justify genocide through the complete destruction of life-sustaining infrastructure.²⁸⁷

88. Civilian healthcare is specially protected under international law: there is a high threshold for the protected status of civilian medical units to be lost.²⁸⁸ International law protects hospitals while prohibiting their use for military purposes or as shields for military activities, such as positioning military targets in their proximity.²⁸⁹ Since the beginning of the hostilities, Israel has framed Gaza's hospitals as Hamas "headquarters"²⁹⁰ and spaces used

²⁷⁷ <https://www.israelhayom.co.il/news/geopolitics/article/15002089>; <https://www.trtworld.com/middle-east/live-blog-netanyahu-reportedly-pushes-for-voluntary-migration-from-gaza-16382395>

²⁷⁸ <https://www.reuters.com/world/middle-east/israeli-minister-calls-voluntary-emigration-gazans-2023-11-14/>; <https://www.timesofisrael.com/smotrich-doubles-down-on-resettlement-of-gazans-rejecting-us-criticism/>

²⁷⁹ <https://www.timesofisrael.com/ministers-call-for-resettling-gazas-palestinians-building-settlements-in-strip/> 01 January 2024

²⁸⁰ <https://www.timesofisrael.com/intelligence-ministry-concept-paper-proposes-transferring-gazans-to-egypt-sinai/>

²⁸¹ https://www.facebook.com/story.php?story_fbid=pfbid036UqRhGJTnem4PTjwWbfen66cwCGAP4zDQsMhcwuWE7PQ5fMJAeWpaSYyhnR95Cbl&id=100050298347371&paipv=0&eav=AfaYuQI6JO9t5f79-OwyTkll4XyPbjoOR76oXREbhs_jTghukglHzJy9kKH7cIrHWo&_rdr; <https://www.wsj.com/articles/the-west-should-welcome-gaza-refugees-asylum-seekers-hamas-terrorism-displacement-5d2b5890>; <https://www.timesofisrael.com/israel-in-talks-with-congo-and-other-countries-on-gaza-voluntary-migration-plan/>; <https://twitter.com/israeltrnsld/status/1741891754196901934>

²⁸² <https://www.timesofisrael.com/israel-in-talks-with-congo-and-other-countries-on-gaza-voluntary-migration-plan/>; <https://twitter.com/israeltrnsld/status/1741891754196901934>

²⁸³ https://www.huffingtonpost.co.uk/entry/israeli-cabinet-minister-says-war-will-lead-to-emigration-from-gaza_uk_659fa54de4b0fbd2bc05cc78 11 January 2024

²⁸⁴ <https://www.haaretz.com/israel-news/2024-01-28/ty-article/ministers-from-netanyahus-party-join-thousands-of-israelis-at-resettle-gaza-conference/0000018d-512f-dfdc-a5ad-db7f35e10000>

²⁸⁵ <https://www.youtube.com/watch?v=e8nyroIXIM>

²⁸⁶ Nicola Perugini and Neve Gordon, "Medical Lawfare." *Journal of Palestine Studies*. Spring 2024, forthcoming.

²⁸⁷ *Ibid*; <https://forensic-architecture.org/investigation/destruction-of-medical-infrastructure-in-gaza> 20/12/2023; https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Israel-Hamas_Conflict_2023_FAQs (Israel MFA, 6.12.23).pdf: FAQs, 06/12/2023, p. 2, 9, 13, 14.

²⁸⁸ AP-I, articles 13(1) and 52(3); GCI, article 21; GCIV, articles 18 and 19; AP-II 2, article 11(2).

²⁸⁹ GCIV, articles 18-19; AP-I, article 12(4).

²⁹⁰ Hagari, <https://www.youtube.com/watch?v=-ggBF9rnBe0>

for shielding military activities,²⁹¹ aiming to blur the distinction between civilian and military objects, transforming hospitals into “hospital shields”,²⁹² and legitimizing the destruction of Gaza’s entire healthcare sector.²⁹³

89. In November 2023, Al Shifa Hospital in northern Gaza was hosting tens of thousands of displaced people – when it was besieged and invaded.²⁹⁴ On 27 October, the Israeli military published a 3D video representing the hospital’s underground as a complex network of tunnels functioning as a “ Hamas command centre”.²⁹⁵ On 2 November, the Ministry of Foreign Affairs published a legal document designating the hospital as a military centre concealing military assets.²⁹⁶ The hospital was then placed under siege and invaded in mid-November, with Israel accusing Hamas of using medical personnel as “human shields”.²⁹⁷ After days of attacks, the hospital was turned into a “death zone”;²⁹⁸ five newborn babies and 14 patients were injured;²⁹⁹ at least 31 people were killed,³⁰⁰ and parts of the hospital turned into mass graves.³⁰¹

90. Media reports challenged Israel’s allegations that Hamas were using hospitals as shields, asserting that there was no evidence to suggest that the rooms connected to the hospital had been used by Hamas; the hospital buildings (contrary to Israeli military 3D images) were found not to be connected to the tunnel network; and there was no evidence that the tunnels were accessible from the hospital wards.³⁰² In addition, Israeli army reportedly rearranged weaponry at the Al Shifa before news crews visits³⁰³, raising further suspicions of fabrication after the Israeli army had claimed that a “list of terrorists” it had found in another Gaza hospital—the Al Rantisi—turned out to be a calendar of the days of the week in Arabic.³⁰⁴ Whether or not Israel’s accusations of hospital shielding at Al Shifa were true – but still remain to be proven –, the civilians in the hospitals should have been protected and not subjected to siege and military attack.

91. That the intent behind Israel’s “humanitarian camouflage” in this instance can only be characterized as genocidal is clear for two reasons. First, Israel was aware of the large-scale destruction of the healthcare system since the World Health Organization had reported in mid-November that a “public health catastrophe” was developing in Gaza, with 26 of 35 hospitals no longer operational due to Israel’s bombing and siege.³⁰⁵ Second, Israel knew that its military operation was resulting in a significant number of wounded.³⁰⁶ Physical trauma constitutes the most predominant cause of excess mortality in Gaza.³⁰⁷ It was predictable that forcibly suspending services at the largest hospital in Gaza would seriously harm the

²⁹¹ <https://www.idf.il/en/mini-sites/hamas-operations-in-hospitals/>

²⁹² Neve Gordon and Nicola Perugini, “‘Hospital Shields’ and the Limits of International Law”, *EJIL* 30, no. 2 (May 2019), p. 43.

²⁹³ <https://www.reuters.com/world/middle-east/israeli-military-says-hamas-hiding-tunnels-operations-centres-gaza-hospital-2023-10-27/>

²⁹⁴ <https://shifa.forensic-architecture.org/>; <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-16>

²⁹⁵ <https://twitter.com/IDF/status/1718010359397634252?s=20>

²⁹⁶ [https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_\(2_NOV_2023\).pdf](https://www.gov.il/BlobFolder/generalpage/swords-of-iron-faq-6-dec-2023/en/English_Documents_Hamas-Israel_Conflict_2023_-_Some_Factual_and_Legal_Aspects_-_Israel_Ministry_of_Foreign_Affairs_(2_NOV_2023).pdf); :Key Legal Aspects, p. 9

²⁹⁷ <https://www.theguardian.com/world/2023/nov/12/control-of-al-shifa-hospital-in-gaza-is-a-key-israeli-military-and-political-aim>

²⁹⁸ <https://www.bbc.co.uk/news/world-middle-east-67462615>

²⁹⁹ <https://www.reuters.com/world/middle-east/too-close-too-cold-premature-babies-grave-peril-gazas-al-shifa-hospital-2023-11-13/>

³⁰⁰ Figures provided by WHO Eastern Mediterranean Region 24 February 2024

³⁰¹ https://www.emro.who.int/images/stories/palestine/WHO_Sitrep_13.pdf?ua=1

³⁰² <https://www.washingtonpost.com/world/2023/12/21/al-shifa-hospital-gaza-hamas-israel/>; <https://www.youtube.com/watch?v=NIBtJhI1flw>; <https://forensic-architecture.org/investigation/assessment-israeli-material-icj-jan-2024>

³⁰³ https://edition.cnn.com/middleeast/live-news/israel-hamas-war-gaza-news-11-18-23/h_1d70c190adde686e6a2b59e963499e82

³⁰⁴ <https://www.france24.com/en/tv-shows/truth-or-fake/20231116-idf-claims-to-find-list-of-hamas-names-but-it-s-the-days-of-the-week-in-arabic>

³⁰⁵ https://www.emro.who.int/images/stories/palestine/WHO_Sitrep_13.pdf?ua=1

³⁰⁶ <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-40>

³⁰⁷ <https://gaza-projections.org/> p. 10

prospects for survival of the injured, the chronically ill and newborn babies in incubators. Therefore, by targeting Al Shifa Hospital, Israel knowingly condemned thousands of sick and displaced people to preventable suffering and death.³⁰⁸

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

VII. Conclusions

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

94. Israel has sought to conceal its eliminationist conduct of hostilities sanctioning the commission of international crimes as IHL-abiding. Distorting IHL customary rules, including distinction, proportionality and precautions, Israel has *de facto* treated an entire protected group and its life-sustaining infrastructure as 'terrorist' or 'terrorist-supporting', thus transforming everything and everyone into either a target or collateral damage, hence killable or destroyable. In this way, no Palestinian in Gaza is safe by definition. This has had devastating, intentional effects, costing the lives of tens of thousands of Palestinians, destroying the fabric of life in Gaza and causing irreparable harm to its entire population.

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

VIII. Recommendations

96. The Special Rapporteur urges member states to enforce the prohibition of genocide in accordance with their non-derogable obligations.³⁰⁹ Israel and those states that have been complicit in what can be reasonably concluded to constitute genocide must be held accountable and deliver reparations commensurate with the destruction, death and harm inflicted on the Palestinian people.

97. The Special Rapporteur recommends that member states:

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

(b) Support South Africa having resort to the UNSC under article 94(2) of the UN Charter following Israel's non-compliance with the above-mentioned ICJ measures;

³⁰⁸ Perugini and Gordon, "Medical Lawfare" (footnote 286)

³⁰⁹ <http://www.undocs.org/a/RES/56/83> (2002), article 31

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

- (i) **cooperating with international independent fact-finding/investigative and accountability mechanisms;**
- (ii) **referring the situation in Palestine to the ICC immediately, in support of its ongoing investigation;**
- (iii) **discharging their obligations under the principles of universal jurisdiction, ensuring genuine investigations and prosecutions of individuals who are suspected of having committed, or aided or abetted, in the commission of international crimes, including genocide, starting with their own nationals;**

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

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

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

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

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