

GENOCIDE IN GAZA

ANALYSIS OF INTERNATIONAL LAW AND ITS APPLICATION TO ISRAEL'S MILITARY ACTIONS SINCE OCTOBER 7, 2023

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EXECUTIVE SUMMARY

The prohibition of the crime of genocide is a peremptory norm of international law from which no derogation is permitted.¹ In light of the extraordinary implications of a finding that Israel may be committing genocide against the Palestinian people in Gaza, the University Network for Human Rights, the International Human Rights Clinic at Boston University School of Law, the International Human Rights Clinic at Cornell Law School, the Centre for Human Rights at the University of Pretoria, and the Lowenstein Human Rights Project at Yale Law School have conducted a thorough legal analysis of Israel's acts since October 7, 2023, as situated in their historical context.

As set forth in the Genocide Convention of 1948 and as interpreted by international courts and tribunals, the crime of genocide requires that a perpetrator kill, seriously harm, or inflict conditions of life calculated to bring about the destruction of a group, in whole or in part, with the intent to destroy the group as such.² The Genocide Convention and international jurisprudence form the basis of this report's analysis of Israel's conduct during the course of its military operation in Gaza since October 7, 2023.

After reviewing the facts established by independent human rights monitors, journalists, and United Nations agencies, we conclude that Israel's actions in and regarding Gaza since October 7, 2023, violate the Genocide Convention. Specifically, Israel has committed genocidal acts of killing, causing serious harm to, and inflicting conditions of life calculated to bring about the physical destruction of Palestinians in Gaza, a protected group that forms a substantial part of the Palestinian people. Between October 7, 2023, and May 1, 2024, Israel has killed at least 34,568 Palestinians and injured 77,765 other Palestinians in Gaza.³ These figures in total comprise more than 5 percent of Gaza's population,⁴ with over 2 percent of Gaza's children killed or injured.⁵ Approximately 14,500 of the Palestinians killed in Gaza have been children.⁶ Israel killed more children in the first four months of its assault than in all of the world's conflicts in the past four

¹ Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 23 (May 28); Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), para. 64, 2006 I.C.J. Rep. 168 (Dec. 19); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugoslavia), Preliminary Objections Judgment, 1996 I.C.J. 595, para. 31 (July 11).

² Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277, art. II

³ *Hostilities in the Gaza Strip and Israel | Flash Update #160*, OCHA (May 1, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-160>. As of April 30, 2024, out of this total number of Palestinians killed, 24,868 have been identified. This includes 10,006 men, 4,959 women, 7,797 children, and 1,924 elderly. *Hostilities in the Gaza Strip and Israel – Reported Impact | Day 217*, OCHA (May 10, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-217>.

⁴ As of August 2023, the population of Gaza was estimated to be approximately 2.17 million people. *Where We Work*, UNRWA, <https://www.unrwa.org/where-we-work/gaza-strip> (last visited May 1, 2024).

⁵ *Over 2% of Gaza's Child Population Killed or Injured in Six Months of War*, SAVE THE CHILDREN (Apr. 4, 2024), <https://www.savethechildren.net/news/over-2-gaza-s-child-population-killed-or-injured-six-months-war>.

⁶ Press Release, OHCHR, Onslaught of Violence Against Women and Children in Gaza Unacceptable: UN Experts, (May 6, 2024), <https://www.ohchr.org/en/press-releases/2024/05/onslaught-violence-against-women-and-children-gaza-unacceptable-un-experts>.

years combined.⁷ Israeli forces have killed Palestinians regardless of their protected status under international law, with the current bombardment constituting the deadliest conflict for journalists ever recorded⁸ and the number of UN personnel killed reaching a degree “never seen in . . . history.”⁹ Israel’s military operation has destroyed up to 70 percent of homes in Gaza, and has decimated civilian infrastructure, including hospitals, schools, universities, UN facilities, and cultural and religious heritage sites.¹⁰ A staggering 1.7 million civilians—over 75 percent of Gaza’s population—have been forcibly displaced as a result of Israel’s military offensive.¹¹ Civilians in Gaza face catastrophic levels of hunger and deprivation due to Israel’s restriction on, and failure to ensure adequate access to, basic essentials of life, including food, water, medicine, and fuel.¹²

Israel’s genocidal acts in Gaza have been motivated by the requisite genocidal intent, as evidenced in this report by the statements of Israeli leaders, the character of the State and its military forces’ conduct against and relating to Palestinians in Gaza, and the direct nexus between them. As this report details,¹³ officials at all levels of Israeli government, up to and including the Prime Minister, have made remarks that not only express blatant and unequivocal dehumanization and cruelty

⁷ Clarissa-Jan Lim, *More Children Killed in Gaza in Four Months than in Four Years of War Globally: Report*, MSNBC (Mar. 14, 2024), <https://www.msnbc.com/top-stories/latest/death-toll-children-gaza-israel-rcna143269>

⁸ *Gaza War ‘Most Dangerous Ever’ for Journalists, Says Rights Group*, REUTERS (Dec. 21, 2023) <https://www.reuters.com/world/middle-east/gaza-war-most-dangerous-ever-journalists-says-rights-group-2023-12-21>.

⁹ Antonio Guterres (@antonioguterres), X (Dec. 22, 2023, 8:01 PM), <https://x.com/antonioguterres/status/1738364044979896821?lang=en>.

¹⁰ *Gaza: Rights Experts Condemn AI Role in Destruction by Israeli Military*, U.N. NEWS (Apr. 15, 2024), <https://news.un.org/en/story/2024/04/1148561>; *Gaza: UN Experts Decry ‘Systemic Obliteration’ of Education System*, U.N. NEWS (Apr. 18, 2024), <https://news.un.org/en/story/2024/04/1148716>; *Gaza: ‘Systematic Dismantling of Healthcare Must End’ Says WHO*, U.N. NEWS (Apr. 6, 2024), <https://news.un.org/en/story/2024/04/1148316>; *Joint World Bank, UN Report Assesses Damage to Gaza’s Infrastructure*, WORLD BANK (Apr. 2, 2024), <https://www.worldbank.org/en/news/press-release/2024/04/02/joint-world-bank-un-report-assesses-damage-to-gaza-s-infrastructure>.

¹¹ *Situation Report #103 on the Situation in the Gaza Strip and the West Bank, including East Jerusalem*, UNRWA (Apr. 23, 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-103-situation-gaza-strip-and-west-bank-including-east-jerusalem>. See also *Hostilities in the Gaza Strip and Israel – Reported Impact | Day 203*, OCHA (Apr. 26, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-203>.

¹² INTEGRATED FOOD SECURITY PHASE CLASSIFICATION, GAZA STRIP: ACUTE FOOD INSECURITY SITUATION FOR 15 FEBRUARY - 15 MARCH 2024 AND PROJECTION FOR 16 MARCH - 15 JULY 2024 (Mar. 18, 2024), <https://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1156872/?iso3=PSE>; *Emergency: State of Palestine*, World Food Programme [hereinafter WFP], <https://www.wfp.org/emergencies/palestine-emergency> (last visited May 1, 2024); Press Release, OHCHR, Comment by UN High Commissioner for Human Rights Volker Türk on the Risk of Famine in Gaza (Mar. 19, 2024), <https://www.ohchr.org/en/statements-and-speeches/2024/03/comment-un-high-commissioner-human-rights-volker-turk-risk-famine>; Ramesh Rajasingham (Director of OCHA Coordination Division, on behalf of Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator, Mr. Martin Griffiths), *Updating the Security Council on Food Security Risks in Gaza*, OCHA (Feb. 27, 2024), <https://www.ochaopt.org/content/mr-ramesh-rajasingham-updating-security-council-food-security-risks-gaza>; *Gaza: Worst Famine Fears Realised as 10th Child Reportedly “Starves to Death”*, U.N. NEWS (Mar. 1, 2024), <https://news.un.org/en/story/2024/03/1147112>; INSECURITY INSIGHT, FLASH ANALYSIS REPORT: OVER FIVE MONTHS OF ATTACKS ON FOOD SECURITY IN GAZA (Mar. 2024), <https://insecurityinsight.org/wp-content/uploads/2024/03/Flash-Analysis-Over-Five-Months-of-Attacks-on-Food-Security-in-Gaza.pdf>.

¹³ See Section 3.b.i of this report.

against Palestinians in Gaza and elsewhere, but also explicitly reflect intentions to destroy and exterminate Palestinians as such. The patterns of conduct of Israeli military forces in Gaza further reinforce the finding of Israel's genocidal intent.¹⁴

This report documents its findings by drawing from a diverse range of credible sources, including reports by United Nations and aid agencies, investigations by human rights organizations, media reports, and public statements and testimonies. In determining violations of the Genocide Convention, our analysis is guided by established principles of international law, international jurisprudence, widespread state practice accepted as customary law, and the Convention's drafting history. Additionally, our report draws on Gaza's history leading to the present, in recognition that genocide rarely occurs as a single moment but is rather an unfolding result of processes and practices over time.

Israel's violations of the international legal prohibition of genocide amount to grave breaches of peremptory norms of international law that must cease immediately. These violations also give rise to obligations by all other States: to refrain from recognizing Israel's breaches as legal or taking any actions that may constitute complicity in these breaches; and to take positive steps to suppress, prevent, and punish the commission by Israel of further genocidal acts against the Palestinian people in Gaza.

The facts in this report are current as of May 1, 2024. Between its finalization and publication, reports emerged of additional, egregious abuses by Israel against Palestinians in the southern city of Rafah and elsewhere,¹⁵ where more than a million Palestinians are seeking refuge.¹⁶ These developments, though not reflected in the report, further demonstrate Israel's ongoing genocidal conduct and intent, and underscore the urgency with which the international community must act.

¹⁴ See Section 3.b.ii of this report.

¹⁵ See, e.g., Press Release, OHCHR, Israel/Occupied Palestinian Territory: Rafah threat is inhumane, says UN Human Rights Chief (May 6, 2024); *Targeting Rafah Could Lead to Slaughter, Warns UN Aid Agency*, U.N. NEWS (May 3, 2024), <https://news.un.org/en/story/2024/05/1149306>.

¹⁶ See *Occupied Palestinian Territory*, OCHA, <https://www.ochaopt.org> (updated regularly).

TABLE OF CONTENTS

PART 1: INTRODUCTION.....	6
PART 2: BACKGROUND.....	12
PART 3: LEGAL STANDARDS – THE GENOCIDE CONVENTION	22
1. The crime of genocide	23
1.a. Genocidal acts.....	24
1.b. Genocidal intent.....	27
2. Incitement to genocide.....	32
2.b. Direct and public incitement by State actors	33
2.c. Duty to prevent and punish direct and public incitement.....	35
PART 4: FACTS AND ANALYSIS.....	36
3. Evidence that Israel is committing genocide in Gaza under Article II of the Genocide Convention.....	36
3.a. Israel’s genocidal acts in Gaza	36
3.b. Evidence of Israel’s genocidal intent	57
3.d. Addressing Israel’s arguments about genocidal intent.....	69
3.f. Analysis: Israel’s acts in and statements about Gaza amount to genocide	83
4. Analysis: Israel is committing an act of direct and public incitement of genocide, in violation of Article III(c) of the Genocide Convention.....	86
5. Analysis: Israel has failed to punish and prevent incitement to genocide	88
PART 5: LEGAL CONSEQUENCES AND OBLIGATIONS FOR THIRD STATES.....	92
6. Duties of third States generated as a result of Israel’s violations of its obligations under the Genocide Convention.....	94
6.a. Duty of non-recognition	94
6.b. Duty to refrain from aiding or assisting violations of the prohibition of genocide.....	96
6.c. Positive duty to cooperate through lawful means to end violations of the prohibition of genocide	97
7. Legal consequences and obligations of States under the Genocide Convention.....	98
7.a. The duty under the Genocide Convention to prevent and punish genocide	98
7.b. The duty not to be complicit in genocide	102
8. Third States’ standing to invoke responsibility triggered by violations of the prohibition on genocide	104
PART 6: CONCLUSION	105

PART 1: INTRODUCTION

1. The crime of genocide is among the gravest crimes recognized in international law. It refers to specific acts committed against a group with the intent to destroy that group, in whole or in part. In recognition of the gravity of the crime of genocide and the extraordinary implications of a potential finding that Israel is committing genocide in Gaza, the University Network for Human Rights, the International Human Rights Clinic at Boston University School of Law, the International Human Rights Clinic at Cornell Law School, the Centre for Human Rights at the University of Pretoria, and the Lowenstein Human Rights Project at Yale Law School have conducted a thorough legal analysis of Israel's acts against the Palestinians in Gaza since October 7, 2023, as situated in their historical context.
2. The scope of the legal analysis in this report addresses the question of whether the actions taken by Israel in and regarding Gaza since October 7, 2023, meet the definition of genocide under international law. Specifically, it outlines the elements of the crimes of genocide, sets out the credibly documented acts by Israeli military forces in Gaza and statements of officials within the Israeli government, and analyzes these facts in light of international legal standards and international jurisprudence. The report concludes that Israel's conduct in and regarding Gaza following the Hamas attacks in Israel on October 7, 2023, amounts to breaches of the international legal prohibition of genocide.
3. We condemn all violations of international law committed by all parties, including violations committed by Hamas against Israeli civilians on or since October 7, 2023. We further emphasize that violations of international law by any party do not justify the commission of other violations of international law, including and especially the paramount crime of genocide.
4. The information in this report is current as of May 1, 2024.¹ Between the time of finalizing this report and its public release, an Israeli incursion into the southern city of Rafah has caused additional civilian deaths, devastation, and destruction.² These ongoing developments in Gaza further reinforce this report's findings and conclusions and underscore the urgent need for action to protect Palestinian civilians.

¹ The U.N. Office for the Coordination of Humanitarian Affairs (OCHA) publishes regular comprehensive updates on the situation in Gaza (and the rest of the Occupied Palestinian Territories). For the latest reported updates, please visit: *Occupied Palestinian Territory*, U.N. OFF. FOR THE COORDINATION HUMAN. AFF. [hereinafter OCHA], <https://www.ochaopt.org>.

² See, e.g., Press Release, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS [hereinafter OHCHR], *Israel/Occupied Palestinian Territory: Rafah threat is inhumane, says UN Human Rights Chief* (May 6, 2024); *Targeting Rafah Could Lead to Slaughter, Warns UN Aid Agency*, U.N. NEWS (May 3, 2024), <https://news.un.org/en/story/2024/05/1149306>.

5. Between October 7, 2023, and May 1, 2024, Israel has killed at least 34,568 Palestinians and injured 77,765 other Palestinians in Gaza.³ These figures in total comprise more than 5 percent of Gaza's population,⁴ with over 2 percent of Gaza's children killed or injured.⁵ Approximately 14,500 of the Palestinians killed in Gaza during this period have been children,⁶ with at least 1,000 more children losing a limb or multiple limbs, many by amputation without anesthetic.⁷ As of April 29, 2023, more than 8,000 Palestinians were reported "missing or under the rubble."⁸ Over the course of Israel's ongoing assault on Gaza, representatives of the Israeli government have repeatedly made statements evincing genocidal intent. This genocidal intent is further manifested in the nature and conduct of Israel's military operation, which has destroyed up to 70 percent of homes in Gaza, as well as the majority of its civilian infrastructure, including hospitals, schools, universities, United Nations (UN) facilities, and more.⁹ A staggering 1.7 million civilians—over 75 percent of Gaza's population—have been forcibly displaced as a result of Israel's military offensive.¹⁰ Famine has developed in North Gaza, while the population in the rest of Gaza faces catastrophic levels of hunger and deprivation due to Israel's restriction on, and failure

³ *Hostilities in the Gaza Strip and Israel | Flash Update #160*, OCHA (May 1, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-160>. As of April 30, 2024, out of this total number of Palestinians killed, 24,868 have been identified. This includes 10,006 men, 4,959 women, 7,797 children, and 1,924 elderly. *Hostilities in the Gaza Strip and Israel – Reported Impact | Day 217*, OCHA (May 10, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-217>.

⁴ As of August 2023, the population of Gaza was estimated to be approximately 2.17 million people. *Where We Work*, U.N. RELIEF AND WORKS AGENCY FOR PALESTINIAN REFUGEES IN THE NEAR EAST [hereinafter UNRWA] <https://www.unrwa.org/where-we-work/gaza-strip> (last visited May 1, 2024).

⁵ *Over 2% of Gaza's Child Population Killed or Injured in Six Months of War*, SAVE THE CHILDREN (Apr. 4, 2024), <https://www.savethechildren.net/news/over-2-gaza-s-child-population-killed-or-injured-six-months-war>.

⁶ Press Release, OHCHR, *Onslaught of Violence Against Women and Children in Gaza Unacceptable: UN Experts*, (May 6, 2024), <https://www.ohchr.org/en/press-releases/2024/05/onslaught-violence-against-women-and-children-gaza-unacceptable-un-experts>.

⁷ *UNICEF: Gaza Strip Most Dangerous Place in the World for Children*, EURONEWS (Feb. 12, 2023), <https://www.euronews.com/2023/12/02/unicef-gaza-strip-most-dangerous-place-in-the-world-for-children>. See also Sarah Ferguson, *More than 13,000 Children Reported Dead in Gaza as Famine Nears*, U.N. CHILDREN'S FUND [hereinafter UNICEF] (Mar. 19, 2024), <https://www.unicefusa.org/stories/more-13000-children-reported-dead-gaza-famine-nears>; *'Ten Weeks of Hell' for Children in Gaza: UNICEF*, U.N. NEWS (Dec. 19, 2023), <https://news.un.org/en/story/2023/12/1144927>.

⁸ Press Release, OHCHR, *Onslaught of Violence Against Women and Children in Gaza Unacceptable: UN Experts* (May 6, 2024), <https://www.ohchr.org/en/press-releases/2024/05/onslaught-violence-against-women-and-children-gaza-unacceptable-un-experts>.

⁹ *Gaza: Rights Experts Condemn AI Role in Destruction by Israeli Military*, U.N. NEWS (Apr. 15, 2024), <https://news.un.org/en/story/2024/04/1148561>; *Gaza: UN Experts Decry 'Systemic Obliteration' of Education System*, U.N. NEWS (Apr. 18, 2024), <https://news.un.org/en/story/2024/04/1148716>; *Gaza: 'Systematic Dismantling of Healthcare Must End' Says WHO*, U.N. NEWS (Apr. 6, 2024), <https://news.un.org/en/story/2024/04/1148316>; *Joint World Bank, UN Report Assesses Damage to Gaza's Infrastructure*, WORLD BANK (Apr. 2, 2024), <https://www.worldbank.org/en/news/press-release/2024/04/02/joint-world-bank-un-report-assesses-damage-to-gaza-s-infrastructure>.

¹⁰ *Situation Report #103 on the Situation in the Gaza Strip and the West Bank, including East Jerusalem*, UNRWA (Apr. 23, 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-103-situation-gaza-strip-and-west-bank-including-east-jerusalem>. See also *Hostilities in the Gaza Strip and Israel – Reported Impact | Day 203*, OCHA (Apr. 26, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-203>.

to ensure adequate access to, basic essentials of life, including food, water, medicine, and fuel.¹¹ Twenty-eight children have died of starvation and dehydration and “5 percent of children under age 2 were found to be acutely malnourished” as of April 1, 2023.¹² According to the UN Secretary General, “[f]our out of five of the hungriest people anywhere in the world are in Gaza.”¹³

6. On January 26, 2024, the International Court of Justice (ICJ) issued a provisional measures order that found “a real and imminent risk” that Israel is in violation of the rights of Palestinians in Gaza under the Genocide Convention.¹⁴ The Court ordered Israel to take “all measures within its power to prevent the commission of acts”¹⁵ that violate the prohibition of genocide and “to prevent and punish direct and public incitement to commit” genocide against Palestinians in Gaza.¹⁶ The Court issued a second provisional measures order on March 28, 2024, in which it unanimously instructed Israel to “take all necessary and effective measures to ensure, without delay, the unhindered provision of urgently needed basic services and humanitarian assistance . . . to Palestinians throughout Gaza.”¹⁷
7. Leading authoritative UN experts have warned of the risk of genocide, or asserted that genocide is actively being perpetrated, by Israel against Palestinians in Gaza. The current UN Special Rapporteur on the Situation of Human Rights in Palestinian Territories Occupied since 1967, Francesca Albanese, stated in a report to the UN Human Rights Council, “[b]y analysing the patterns of violence and Israel’s policies in its onslaught on

¹¹ INTEGRATED FOOD SECURITY PHASE CLASSIFICATION, GAZA STRIP: ACUTE FOOD INSECURITY SITUATION FOR 15 FEBRUARY - 15 MARCH 2024 AND PROJECTION FOR 16 MARCH - 15 JULY 2024 (Mar. 18, 2024), <https://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1156872/?iso3=PSE>; *Emergency: State of Palestine*, World Food Programme [hereinafter WFP], <https://www.wfp.org/emergencies/palestine-emergency> (last visited May 1, 2024); Press Release, OHCHR, Comment by UN High Commissioner for Human Rights Volker Türk on the Risk of Famine in Gaza (Mar. 19, 2024), <https://www.ohchr.org/en/statements-and-speeches/2024/03/comment-un-high-commissioner-human-rights-volker-turk-risk-famine>; Ramesh Rajasingham (Director of OCHA Coordination Division, on behalf of Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator, Mr. Martin Griffiths), *Updating the Security Council on Food Security Risks in Gaza*, OCHA (Feb. 27, 2024), <https://www.ochaopt.org/content/mr-ramesh-rajasingham-updating-security-council-food-security-risks-gaza>; *Gaza: Worst Famine Fears Realised as 10th Child Reportedly “Starves to Death”*, U.N. NEWS (Mar. 1, 2024), <https://news.un.org/en/story/2024/03/1147112>; INSECURITY INSIGHT, FLASH ANALYSIS REPORT: OVER FIVE MONTHS OF ATTACKS ON FOOD SECURITY IN GAZA (Mar. 2024), <https://insecurityinsight.org/wp-content/uploads/2024/03/Flash-Analysis-Over-Five-Months-of-Attacks-on-Food-Security-in-Gaza.pdf>.

¹² *Gaza: Israel’s Imposed Starvation Deadly for Children*, HUM. RTS. WATCH (Apr. 9, 2024), <https://www.hrw.org/news/2024/04/09/gaza-israels-imposed-starvation-deadly-children>.

¹³ António Guterres (U.N. Secretary General) (@antonioguterres), X (Dec. 23, 2023, 10:01 AM), <https://x.com/antonioguterres/status/1738575438136680790>.

¹⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Provisional Measures, 2024 I.C.J., para. 74 (Jan. 26) [hereinafter S. Afr. v. Isr., First Provisional Measures Order].

¹⁵ *Id.* at paras. 78.

¹⁶ *Id.* at paras. 78-79.

¹⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Provisional Measures, 2024 I.C.J., para. 51(2)(a) (Mar. 28) [hereinafter S. Afr. v. Isr., Second Provisional Measures Order].

Gaza . . . there are reasonable grounds to believe that the threshold indicating Israel's commission of genocide is met.”¹⁸

8. Many other UN Special Rapporteurs have issued similar warnings of genocide in Gaza. On October 19, 2023, in a joint statement following an Israeli strike on a hospital that killed 470 civilians, nine UN Special Rapporteurs warned, “[t]here is an ongoing campaign by Israel resulting in crimes against humanity in Gaza . . . there is also a risk of genocide against the Palestinian People.”¹⁹ On November 2, 2023, nine UN Special Rapporteurs raised the alarm that “[t]ime is running out to prevent genocide and human catastrophe in Gaza,”²⁰ and on November 16, 2023, 15 UN Special Rapporteurs and 21 members of UN Working Groups described Gaza as “a genocide in the making.”²¹ On November 20, 2023, Reem Alsalem, the UN Special Rapporteur on Violence Against Women and Girls, its causes and consequences, expressed concern that “thousands [in Gaza] have become victims of . . . an unfolding genocide.”²² On January 14, 2024, the Special Rapporteur on the Right to Health, Tlaleng Mofokeng, characterized Israel's occupation as “genocidal.”²³ In a landmark statement issued on February 23, 2024, a group of UN experts called for “an arms embargo on Israel,” recognizing that “Israel has repeatedly failed to comply with international law.”²⁴ On February 27, 2024, the UN Special Rapporteur on the Right to Food, Michael Fakhri, stated that Israel is “intentionally” starving Palestinians, calling this “a situation of genocide.”²⁵
9. Senior UN officials and heads of multiple UN agencies have also expressed concern over Israel's violations of Palestinians' human rights in Gaza. For example, on November 6, 2023, UN Secretary General António Guterres called the situation in Gaza a “crisis of humanity.”²⁶ On December 6, 2023, the UN High Commissioner for Human Rights, Volker

¹⁸ Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in Palestinian Territories Occupied since 1967, Francesca P. Albanese, Summary, U.N. Doc. A/HRC/55/73 (advanced unedited version) (Mar. 25, 2024), <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session55/advance-versions/a-hrc-55-73-auv.pdf>.

¹⁹ Press Release, OHCHR, Gaza: UN Experts Decry Bombing of Hospitals and Schools as Crimes Against Humanity, Call for Prevention of Genocide (Oct. 19, 2023), <https://www.ohchr.org/en/press-releases/2023/10/gaza-un-experts-decry-bombing-hospitals-and-schools-crimes-against-humanity>.

²⁰ Press Release, OHCHR, Gaza is ‘Running Out of Time’ - UN Experts Warn, Demanding a Ceasefire to Prevent Genocide (Nov. 2, 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-running-out-time-un-experts-warn-demanding-ceasefire-prevent-genocide>.

²¹ Press Release, OHCHR, Gaza: UN Experts Call on International Community to Prevent Genocide Against the Palestinian People (Nov. 16, 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>.

²² Press Release, OHCHR, Women Bearing the Brunt of Israel-Gaza Conflict: UN Expert (Nov. 20, 2023), <https://www.ohchr.org/en/press-releases/2023/11/women-bearing-brunt-israel-gaza-conflict-un-expert>.

²³ Dr. Tlaleng Mofokeng (Special Rapporteur on the Right to Health) (@drtlaleng), X (Jan. 14, 2024, 3:52 AM), <https://x.com/drtlaleng/status/1746455162481250770>.

²⁴ Press Release, OHCHR, Arms Exports to Israel Must Stop Immediately: UN Experts (Feb. 23, 2024), <https://www.ohchr.org/en/press-releases/2024/02/arms-exports-israel-must-stop-immediately-un-experts>.

²⁵ Nina Lakhani, *Israel is Deliberately Starving Palestinians, UN Rights Expert Says*, THE GUARDIAN (Feb. 27, 2024), <https://www.theguardian.com/world/2024/feb/27/un-israel-food-starvation-palestinians-war-crime-genocide>.

²⁶ Press Release, UN Secretary-General, Press Conference by Secretary-General António Guterres at United Nations Headquarters, SM/SM/22021 (Nov 6, 2023), <https://press.un.org/en/2023/sgsm22021.doc.htm>.

Türk, referred to the situation in Gaza as “catastrophic,”²⁷ and on December 12, 2023, the Commissioner-General of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Philippe Lazzarini, called Israel’s assault on Gaza “a war of all the superlative, everything is unprecedented.”²⁸ On January 10, 2024, the Director General of the World Health Organization (WHO), Tedros Adhanom Ghebreyesus, called the humanitarian conditions in Gaza “indescribable.”²⁹ On October 28, 2023, the former director of the New York Office of the High Commissioner of Human Rights (OHCHR), Craig Mokhiber, called the events in Gaza a “text-book case of genocide.”³⁰

10. Leading human rights organizations and scholars of international law and genocide studies have expressed grave concerns about the genocidal nature of Israel’s actions in Gaza. For example, on October 15, 2023, over 800 scholars and practitioners of international law, conflict studies, and genocide studies issued a public statement “warning of the possibility of genocide being perpetrated by Israeli forces against Palestinians in Gaza.”³¹ On October 18, 2023, the Center for Constitutional Rights (CCR) published an emergency legal briefing that concluded, “Israel is attempting to commit, if not actively committing, genocide in the occupied Palestinian territory, and specifically against the Palestinian people in the Gaza Strip,” and cautioned against U.S. complicity in genocide.³² On December 9, 2023, 55 scholars of the Holocaust, genocide, and mass violence warned “of the danger of genocide in Israel’s attack on Gaza.”³³ The International Federation for Human Rights (FIDH) released a statement on December 12, 2023, recognizing that “Israel’s actions against the Palestinian people constitute an unfolding genocide” and warning other States and individuals that rendering support or assistance to Israel would constitute complicity in genocide.³⁴ On December 20, 2023, over a hundred global human

²⁷ Volker Türk (UN High Comm’r Hum. Rts.), Opening statement by UN High Commissioner for Human Rights Volker Türk at press conference ahead of Human Rights Day (Dec. 6, 2023), <https://www.ohchr.org/en/statements-and-speeches/2023/12/opening-statement-un-high-commissioner-human-rights-volker-turk>.

²⁸ UNRWA (@UNRWA), X (Dec. 12, 2023, 2:46 PM), <https://x.com/UNRWA/status/1734585541591486755>.

²⁹ Tedros Adhanom Ghebreyesus (Director General of the WHO), Statement at Virtual Press Conference on Global Health Issues (Jan. 10, 2024), <https://www.who.int/publications/m/item/virtual-press-conference-on-global-health-issues-transcript-10-january-2024>.

³⁰ Letter from Craig Mokhiber to Volker Türk (U.N. High Comm’r Hum. Rts.) (Oct. 28, 2023), <https://s3.documentcloud.org/documents/24103463/craig-mokhiber-resignation-letter.pdf>.

³¹ Public Statement, Third World Approaches to Int’l L. Rev. (TWAIR), Scholars Warn of Potential Genocide in Gaza (Oct. 15, 2023), <https://twair.com/public-statement-scholars-warn-of-potential-genocide-in-gaza/>.

³² CTR. FOR CONST. RTS., ISRAEL’S UNFOLDING CRIME OF GENOCIDE OF THE PALESTINIAN PEOPLE & U.S. FAILURE TO PREVENT AND COMPLICITY IN GENOCIDE, p. 1 (Oct. 18, 2023), https://ccrjustice.org/sites/default/files/attach/2023/10/Israels-Unfolding-Crime_ww.pdf.

³³ Statement, Raz Segal, Contending Modernities, Statement of Scholars in Holocaust and Genocide Studies on Mass Violence in Israel and Palestine since 7 October (Dec. 9, 2023), <https://contendingmodernities.nd.edu/global-currents/statement-of-scholars-7-october/>.

³⁴ Press Release, Fédération Internationale pour les Droits Humains [hereinafter FIDH], The Unfolding Genocide Against the Palestinians Must Stop Immediately (Dec. 12, 2023), <https://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/the-unfolding-genocide-against-the-palestinians-must-stop-immediately>. *See generally* FIDH, Resolution on Israel’s Unfolding Crime of Genocide and Other Crimes in Gaza and Against the Palestinian People (Dec. 12, 2023), https://www.fidh.org/IMG/pdf/fidh_resolution_on_israel_s_unfolding_crime_of_genocide_and_other_crimes_in_gaza_and_against_the_palestinian_people.pdf.

rights organizations and defenders called on the International Criminal Court (ICC) to take measures to prevent “the continuing commission by Israeli officials of genocide.”³⁵ The Lemkin Institute for Genocide Prevention issued a statement on December 29, 2023, calling the Israeli attack on Gaza a genocide.³⁶ The Lemkin Institute also issued a subsequent urgent warning on March 30, 2024 of the “imminent genocide of Palestinians in Rafah,” which it called “the last sanctuary for a population facing genocide in the form of attrition and forced displacement.”³⁷ On January 24, 2024, more than 250 humanitarian and human rights organizations called for the suspension of arms transfers to Israel,³⁸ and on February 19, 2024, Amnesty International warned European Union officials of the “worrying signs of genocide” and the “abundance of irrefutable evidence concerning Israel’s violations of international humanitarian law and the ICJ’s [provisional measures] order.”³⁹

11. This report analyzes whether Israel’s acts or omissions in and regarding Gaza since October 7, 2023, amount to the crimes of genocide within the framework of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). The report begins in Part 2 with a brief historical background to the present events in Gaza, in recognition that genocide rarely occurs as a single event but is often a process informed by history that is carried out in progressive stages. Part 3 outlines the definition and elements of the crimes of genocide and incitement to genocide under the Genocide Convention and relevant jurisprudence. Part 4 analyzes whether Israel is in violation of its obligations under the Genocide Convention. Finally, Part 5 outlines the legal consequences and the obligations generated for third States as a result of a finding that Israel has violated the international law prohibition of genocide.

³⁵ Letter from Int’l Network for Econ. Soc. & Cultural Rts. [hereinafter ESCR-Net] on behalf of over one hundred organizations and human rights defenders to Karim Khan, Prosecutor of the International Criminal Court (Dec. 20, 2023), https://www.escr-net.org/sites/default/files/attachments/letter_icc_prosecutor_20dec2023.pdf; *See also Over a Hundred Organizations and Human Rights Defenders Calling for Arrest Warrants for Israeli officials to Prevent Genocide Against Palestinians*, ESCR-NET (Dec. 20, 2023), <https://www.escr-net.org/news/2023/over-hundred-organizations-and-human-rights-defenders-calling-arrest-warrants-israeli>.

³⁶ *Statement on Why We Call the Israeli Attack on Gaza Genocide*, LEMKIN INSTITUTE FOR GENOCIDE PREVENTION [hereinafter LEMKIN INSTITUTE] (Dec. 29, 2023), <https://www.lemkininstitute.com/statements-new-page/statement-on-why-we-call-the-israeli-attack-on-gaza-genocide>.

³⁷ *SOS Alert Gaza – Update #6 – The Genocidal Attack on Rafah*, LEMKIN INSTITUTE (Mar. 30, 2024), https://www.lemkininstitute.com/_files/ugd/547226_3f7f3adbc4b949dcb9970e7bbf4f088f.pdf.

³⁸ Letter from Amnesty Int’l to Josep Borell Fontelles, European Union High Representative for Foreign Affairs and Security Policy & Vice-President European External Action Service, and Foreign Affairs Ministers of the European Union (EU) Member States on Worrying Signs of Genocide in Gaza and Impending Invasion of Rafah (Feb. 15, 2024) [hereinafter Letter from Amnesty Int’l to EU Foreign Ministers], <https://www.amnesty.eu/wp-content/uploads/2024/02/Amnesty-International-Letter-Ahead-of-the-Foreign-Affairs-Council-on-Worrying-Signs-of-Genocide-in-Gaza-and-Impending-Invasion-of-Rafah-15-February-2024.pdf>; *see also More than 250 Humanitarian and Human Rights Organisations Call to Stop Arms Transfers to Israel and Palestinian Armed Groups*, AMNESTY INT’L (Jan. 24, 2024), <https://www.amnesty.org/en/latest/news/2024/01/more-than-250-humanitarian-and-human-rights-organisations-call-to-stop-arms-transfers-to-israel-palestinian-armed-groups/>.

³⁹ Letter from Amnesty Int’l to EU Foreign Ministers.

PART 2: BACKGROUND

12. Since October 7, 2023, Israel has escalated its decades-long violence against Palestinians in Gaza. At the time of writing, Israel has killed at least 34,568 Palestinians in Gaza,⁴⁰ of whom over 40 percent have been children.⁴¹ This section describes Israel's historical policies and decades-long practices of dehumanization, mass displacement, collective punishment, and occupation of Palestinians, decades of which have laid the groundwork for Israel's present violence against Palestinians in Gaza.
13. Before October 7, 2023, Gaza was home to 2.17 million Palestinians,⁴² nearly half of whom are children.⁴³ Over 1.5 million Palestinians in Gaza were refugees before October 7,⁴⁴ including many Palestinians and descendants of Palestinians who were forcibly displaced from their homes during and in the aftermath of the war that led to the 1948 establishment of the State of Israel.⁴⁵
14. During the period between 1947 and 1949, in the war known to Palestinians as the "Nakba," or "catastrophe" in Arabic, Zionist armed forces killed over 15,000 Palestinians, destroyed over 400 Palestinian villages, and expelled over 800,000 Palestinians from their ancestral homes.⁴⁶ The Israeli State confiscated the land and property of Palestinians they had killed or forcibly displaced.⁴⁷

⁴⁰ *Hostilities in the Gaza Strip and Israel | Flash Update #160*, OCHA (May 1, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-160>.

⁴¹ Press Release, OHCHR, *Onslaught of Violence Against Women and Children in Gaza Unacceptable: UN Experts*, U.N. NEWS (May 6, 2024), <https://www.ohchr.org/en/press-releases/2024/05/onslaught-violence-against-women-and-children-gaza-unacceptable-un-experts>. See also *Over 2% of Gaza's Child Population Killed or Injured in Six Months of War*, SAVE THE CHILDREN (Apr. 4, 2024), <https://www.savethechildren.net/news/over-2-gaza-s-child-population-killed-or-injured-six-months-war>.

⁴² Press Release, PALESTINIAN CENTRAL BUREAU OF STATISTICS (PCBS), *Palestinian Central Bureau of Statistics (PCBS) Presents the Conditions of Palestinian Population on the Occasion of the International Population Day*, 11/07/2022 (July 7, 2022), https://pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_InterPopDay2022E.pdf.

⁴³ *H.E. Dr. Awad, Highlights the Palestinian Children's Situation on the Occasion of Palestinian Child Day*, 05/04/2023, PALESTINIAN CENTRAL BUREAU OF STATISTICS (PCBS) (Apr. 5, 2023), <https://www.pcbs.gov.ps/site/512/default.aspx?tabID=512&lang=en&ItemID=4484&mid=3171&wversion=Staging>

⁴⁴ Nathan Citino, Ana Martín Gil & Kelsey P. Norman, *Generations of Palestinian Refugees Face Protracted Displacement and Dispossession*, MIGRATION POL'Y INST. (May 3, 2023), <https://www.migrationpolicy.org/article/palestinian-refugees-dispossession>.

⁴⁵ Statement, OHCHR, *Right of Return of Palestinian Refugees Must Be Prioritised over Political Considerations: UN Experts* (June 21, 2023), <https://www.ohchr.org/en/statements/2023/06/right-return-palestinian-refugees-must-be-prioritised-over-political>.

⁴⁶ The commander of the massacre in Deir Yassin in 1948 recalled that the majority of Zionist soldiers at the pre-attack meeting were deployed "for liquidation of all the men in the village and any other force that opposed us, whether it be old people, women, or children." Matthew Hogan, *The 1948 Massacre at Deir Yassin Revisited*, 63 THE HISTORIAN 309, 315 (2001). See generally ILAN PAPPE, *THE ETHNIC CLEANSING OF PALESTINE* (2006); BENNY MORRIS, *THE BIRTH OF THE PALESTINIAN REFUGEE PROBLEM REVISITED* (2004); NUR MASALHA, *PALESTINE NAKBA: DECOLONISING HISTORY, NARRATING THE SUBALTERN, RECLAIMING MEMORY* (2012).

⁴⁷ See generally NORWEGIAN REFUGEE COUNCIL, *LEGAL MEMO: THE ABSENTEE PROPERTY LAW AND ITS APPLICATION TO EAST JERUSALEM*, pp. 1–9 (Feb. 2017), https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf.

15. In the aftermath of the Six-Day War of 1967, Israel took control of the West Bank, Gaza Strip, and East Jerusalem, over which it continues to retain control to this day.⁴⁸ About 300,000 Palestinians were displaced by and following the 1967 War.⁴⁹
16. Between 1993 and 1995, the Israeli government and the Palestine Liberation Organization (PLO) signed the Oslo Accords and subsequent agreements.⁵⁰ The Oslo Accords, approved at the time as interim arrangements until a permanent peace agreement was reached, created the Palestinian Authority (PA) and divided the occupied West Bank into three areas, which were distributed between Israeli and limited PA control.⁵¹ In 1993, Israel began establishing military checkpoints and enacting its policy of “closure” in the West Bank and Gaza, heavily restricting the movement of goods and people into, out of, and among the occupied Palestinian territories of the West Bank, Gaza, and East Jerusalem.⁵² In 2002, Israel began construction of a separation wall
- 17.
18. that traced, and at many points breached, the border line between Israel and the West Bank as defined by the 1949 armistice—a structure that the ICJ in the *Wall* Advisory Opinion found to be in violation of Israel’s obligations under international humanitarian and human rights law.⁵³

⁴⁸ HUM. RTS. WATCH, A THRESHOLD CROSSED: ISRAELI AUTHORITIES AND THE CRIMES OF APARTHEID AND PERSECUTION, p. 24 (2021), https://www.hrw.org/sites/default/files/media_2021/04/israel_palestine0421_web_0.pdf [hereinafter HUM. RTS. WATCH, A THRESHOLD CROSSED].

⁴⁹ Laurence Michelmores (Comm’r-General of UNRWA), Report of the Commissioner-General of UNRWA, U.N. GAOR, 22nd Sess., Supp. No. 13, para. 1, U.N. Doc. A/6713, (July 1, 1966 – June 30, 1967). The number of Palestinians displaced from the West Bank in 1967 are estimated to be between 200,000 and 250,000, of which Israel only permitted about 17,000 to return. See NEVE GORDON, ISRAEL’S OCCUPATION 6 (2008).

⁵⁰ See Declaration of Principles on Interim Self-Government Arrangements (Oslo Accords or Oslo I) (Sept. 13, 1993), U.N. PEACEMAKER, <https://peacemaker.un.org/israelopt-osloaccord93>; Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II) (Sept. 28, 1995), U.N. PEACEMAKER, <https://peacemaker.un.org/israelopt-osloII95>.

⁵¹ The Oslo II agreement of 1995 divided the West Bank into three distinct areas, A, B, and C. Oslo II granted the Palestinian Authority (PA) internal self-rule in Area A and shared control with Israel of Area B, while Israel retained full control of Area C, which comprises 60% of the area of the occupied West Bank. *Map 3: Defining the Palestinian Bantustan. Element #1: West Bank Areas A, B and C*, ISRAELI COMM. AGAINST HOUSE DEMOLITIONS, <https://icahd.org/map3/> (last visited May 1, 2024). See generally HUM. RTS. WATCH, A THRESHOLD CROSSED; INTERNATIONAL HUMAN RIGHTS CLINIC AT HARVARD LAW SCHOOL & ADDAMEER PRISONER SUPPORT AND HUMAN RIGHTS ASSOCIATION, APARTHEID IN THE WEST BANK: A LEGAL ANALYSIS OF ISRAEL’S ACTIONS (Feb. 28, 2022), <https://hrp.law.harvard.edu/wp-content/uploads/2022/03/IHRC-Addameer-Submission-to-HRC-COI-Apartheid-in-WB.pdf>.

⁵² AMNESTY INT’L, ISRAEL’S APARTHEID AGAINST PALESTINIANS: CRUEL SYSTEM OF DOMINATION AND CRIME AGAINST HUMANITY (2022), p. 96, <https://www.amnesty.org/en/documents/mde15/5141/2022/en/> [hereinafter AMNESTY INT’L, ISRAEL’S APARTHEID AGAINST PALESTINIANS]. See generally *Israel’s Closure of the West Bank and Gaza Strip*, HUM. RTS. WATCH (July 1996), <https://www.hrw.org/legacy/reports/1996/Israel1.htm>.

⁵³ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, para. 137 (July 9) [hereinafter *Wall* Advisory Opinion]. The separation wall remains in place and has been expanded since this opinion was issued. Linah Alsaafin, *Israel’s Separation Wall Endures, 15 Years After ICJ Ruling*, AL-JAZEERA (July 9, 2019), <https://www.aljazeera.com/news/2019/7/9/israels-separation-wall-endures-15-years-after-icj-ruling>.

19. In 2005, Israel carried out “unilateral disengagement,”⁵⁴ withdrawing its military forces and settlers from Gaza and dismantling its settlements.⁵⁵ Hamas’s victory in the 2006 Palestinian Legislative Council elections, and its subsequent ouster of Fatah⁵⁶ from the Gaza Strip, consolidated Hamas’s control over Gaza’s internal government institutions in 2007.⁵⁷ In response, Israel imposed a blockade on Gaza, which intensified movement and economic restrictions and limited the categories and numbers of people and goods allowed in and out of Gaza through Israeli border crossings,⁵⁸ a policy that has been termed “a slow-moving precursor to the crime of genocide.”⁵⁹ Notwithstanding Israel’s proclaimed security rationales for these restrictions, Israeli officials have referred to them as part of “a policy of separation” of Gaza from the West Bank.⁶⁰ The World Bank described the blockade as transforming Gaza into a “walled hub of humanitarian donations.”⁶¹ The blockade of Gaza has undermined Palestinians’ “civil, political, economic, social and cultural rights” and their “basic human rights and economic prospects, as well as the availability of essential services, exacerbating poverty and aid dependency.”⁶² Moreover, the blockade has had a disproportionately devastating impact on Gazan women and girls, particularly regarding access to education, economic and employment opportunities, and healthcare, including reproductive health services.⁶³

⁵⁴ *Israel’s Disengagement from Gaza and North Samaria (2005)*, ISR. MINISTRY OF FOREIGN AFF., <https://embassies.gov.il/MFA/AboutIsrael/Maps/Pages/Israels%20Disengagement%20Plan-%202005.aspx> (last visited May 1, 2024).

⁵⁵ *Id.* See also AMNESTY INT’L, ISRAEL’S APARTHEID AGAINST PALESTINIANS at p. 18.

⁵⁶ Fatah (also spelled “Fateh”) is the largest faction within the Palestine Liberation Organization (PLO). See *Fatah-Palestinian Political Organization*, Britannica <https://www.britannica.com/topic/Fatah> (last visited May 1, 2024).

⁵⁷ Nathan J. Brown, *Palestinians: Fighting and Governing*, WILSON CTR. (Aug. 27, 2015), <https://www.wilsoncenter.org/article/palestinians-fighting-and-governing>.

⁵⁸ The term “blockade” is used by the UN to describe prolonged movement and economic restrictions on Gaza imposed since 2007. See, e.g., UN secretary-General, Report of the Secretary-General on the Human rights situation in the Occupied Palestinian Territory, including Jerusalem, paras. 10–12, U.N. Doc. A/HRC/24/30 (Aug. 22, 2013); UN Secretary-General, Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, paras. 30–34, U.N. Doc. A/69/347 (Aug. 25, 2014); G.A. Res. 69/93, pmbl., para. 12 (Dec. 16, 2014).

⁵⁹ *Scholars’ Consensus: Genocide in Gaza Marks Turning Point, Israel Must Be Held Accountable*, EURO-MED MONITOR (Nov. 3, 2023), <https://euromedmonitor.org/en/article/5914>. See also Haider Eid, *Israel’s Policies in Gaza are Genocidal*, Mondoweiss (Aug. 3, 2018), <https://mondoweiss.net/2018/08/israels-policies-genocidal/>; Mohammed Nijim, *Genocide in Palestine: Gaza as a Case Study*, 27 INT’L J. HUM. RTS. 165, 165-200 (2023).

⁶⁰ GISHA, WHAT IS THE “SEPARATION POLICY”? pp. 3–4 (June 2012), <https://www.gisha.org/UserFiles/File/publications/Bidul/bidul-infosheet-ENG.pdf>.

⁶¹ World Bank, *Economic Restrictions: Moving Beyond the “Movement and Access” Approach*, in WEST BANK AND GAZA UPDATE 4, 4 (Oct. 2008), <https://unispa.un.org/pdfs/WBGUpdateOct08Eng.pdf>.

⁶² UN Secretary-General, Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem, paras. 5, 28, U.N. Doc. A/71/364 (Aug. 30, 2016). See also AMNESTY INT’L, ISRAEL’S APARTHEID AGAINST PALESTINIANS, at p. 96.

⁶³ See U.N. WOMEN, GENDER AND WARS IN GAZA UNTANGLED: WHAT PAST WARS HAVE TAUGHT US? (JUNE 2021), <https://palestine.unwomen.org/en/digital-library/publications/2021/06/gender-and-wars-in-gaza-untangled>; NORWEGIAN REFUGEE COUNCIL, GAZA: THE IMPACT OF CONFLICT ON WOMEN (Nov. 2015) <https://www.nrc.no/globalassets/pdf/reports/gaza---the-impact-of-conflict-on-women.pdf>; GISHA, DISCRIMINATION BY DEFAULT: A GENDER ANALYSIS OF ISRAEL’S CRITERIA FOR TRAVEL THROUGH EREZ CROSSING (Dec. 2020) https://gisha.org/UserFiles/File/publications/Discrimination_by_Default_EN.pdf.

20. Despite formally disengaging its military from Gaza in 2005, Israel continues to maintain its occupation of the Strip. Gaza is an occupied territory under international law, a status determined on the basis that “Israel still exercises key elements of authority over the strip, over its borders (airspace, sea, and land, at the exception with the border with Egypt).”⁶⁴ Israel also maintains further control of Gaza through its administration of the Palestinian population registry and other aspects of governance.⁶⁵ Gaza’s status as an occupied territory under international law has been affirmed by the UN General Assembly,⁶⁶ the UN Security Council,⁶⁷ UN mechanisms and experts,⁶⁸ the International Committee of the Red Cross (ICRC),⁶⁹ the Conference of High Contracting Parties to the Fourth Geneva

⁶⁴ *Frequently Asked Questions on ICRC’s Work in Israel and the Occupied Territories*, INT’L COMM. RED CROSS [hereinafter ICRC] (Mar. 27, 2024), <https://www.icrc.org/en/document/frequently-asked-questions-icrcs-work-israel-and-occupied-territories> (Under the question, “What is the status of the Gaza Strip under international law?”). While Egypt officially “controls” the Egypt-Gaza border, control ultimately belongs to Israel. Israel decides who can cross the border, and Israeli “consent and cooperation” is required to keep the crossing open. GISHA, *DISENGAGED OCCUPIERS: THE LEGAL STATUS OF GAZA 11* (2007),

<https://www.gisha.org/UserFiles/File/Report%20for%20the%20website.pdf>. The Independent International Commission of Inquiry on the Occupied Palestinian Territory, in concluding that Israel still occupied Gaza, noted Israel’s “control exercised over, inter alia, its airspace and territorial waters, land crossings at the borders, supply of civilian infrastructure, including water and electricity, and key governmental functions such as the management of the Palestinian population registry.” Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, para. 16, U.N. Doc. A/HRC/50/21 (May 9, 2022).

⁶⁵ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, para. 16, U.N. Doc. A/HRC/50/21 (May 9, 2022). For further information and analysis of the legal framework that Israel maintains in relation to the population registry in Gaza, see NORWEGIAN REFUGEE COUNCIL, *UNDOCUMENTED AND STATELESS: THE PALESTINIAN POPULATION REGISTRY AND ACCESS TO RESIDENCY AND IDENTITY DOCUMENTS IN THE GAZA STRIP* (Jan. 2012),

<https://www.nrc.no/globalassets/pdf/reports/undocumented-and-stateless.pdf>.

⁶⁶ G.A. Res. 77/247 (Dec. 30, 2022); G.A. Res. 76/126 (Dec. 10, 2021); G.A. Res. ES-10/18 (Jan. 23, 2009).

⁶⁷ S.C. Res. 1860 (Jan. 8, 2009) (“*Stressing* that the Gaza Strip constitutes an integral part of the territory occupied in 1967 and will be a part of the Palestinian state”).

⁶⁸ See, e.g., Concluding Observations of the Human Rights Committee on the fifth periodic report of Israel, para. 16, CCPR/C/ISR/CO/5 (May 5, 2022), <https://digitallibrary.un.org/record/3977037?ln=en>; Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, para. 7, U.N. Doc. A/77/328 (Sept. 14, 2022),

<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiopt/2022-10-19/Report-COI-OPT-14Sept2022-EN.pdf>; Report of the U.N. Commission of Inquiry on the 2018 Protests in the Occupied Palestinian Territory, para. 1, U.N. Doc. A/HRC/40/74 (Feb. 25, 2019), https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoIOPT/A_HRC_40_74.pdf; Report of the detailed findings of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory, para. 1., U.N. Doc. A/HRC/40/CRP.2 (Mar. 18, 2019), https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session40/Documents/A_HRC_40_74_CRP2.pdf. See also various reports of the Mandate of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, <https://www.ohchr.org/en/special-procedures/sr-palestine> (last visited May 1, 2024).

⁶⁹ *Frequently Asked Questions on ICRC’s Work in Israel and the Occupied Territories*, ICRC (Dec. 20, 2023), <https://www.icrc.org/en/document/frequently-asked-questions-icrcs-work-israel-and-occupied-territories> (Under the question, “What does ICRC do in Israel and the occupied territories?”).

Convention of December 2014,⁷⁰ the International Criminal Court (ICC),⁷¹ the European Union,⁷² the African Union,⁷³ and numerous non-government organizations (NGOs) and international law experts.⁷⁴

21. Israel's control of Palestinian life in Gaza extends to enforcing access restrictions to areas even within Gaza's borders. Since disengaging its ground troops and settlements from Gaza in 2005, Israel has continued to impose "buffer zones" along Gaza's land borders with Israel,⁷⁵ as well as to restrict the access of Palestinians in Gaza to "a fraction" of its territorial waters.⁷⁶ The size of the buffer zones has varied since 2005, extending up to 1,500 meters from the land border with Israel and blocking off up to 17 percent of Gaza's total area and about 35 percent of its farmland.⁷⁷ Similarly, Israel has restricted the access of Palestinians in Gaza to "fishing zones" that have ranged from three to nine nautical miles from the shore, in violation of the Interim Oslo Agreement of 1995, which entitled Palestinians to access up to 20 nautical miles off the coast of Gaza.⁷⁸ Israel has enforced land and sea access restrictions through violent measures, including the use of live ammunition, resulting in injuries and even death.⁷⁹ Moreover, Palestinians in Gaza have

⁷⁰ Paul Seger (Ambassador of Switzerland to the UN), Letter dated 29 December 2014 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General, Annex, para. 8, U.N. Doc. A/69/ 711 (Dec. 29, 2014), <https://www.un.org/unispal/document/auto-insert-187192/>.

⁷¹ Situation in the State of Palestine, Case No. ICC-01/18, Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the court's territorial jurisdiction in Palestine,' Pre-Trial Chamber, para. 48 (Feb. 5, 2021).

⁷² European Union Intervention, Hum. Rts Council Interactive Dialogue with the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, EUROPEAN UNION (Mar. 19, 2018), https://www.eeas.europa.eu/node/41718_en.

⁷³ Report of the Commission on the situation in Palestine and the Middle East, Executive Council 34th ordinary session, AFRICAN UNION (Feb. 7-8, 2019), https://archives.au.int/bitstream/handle/123456789/6461/EX%20CL%201115%20%28XXXIV%29%20_E.pdf.

⁷⁴ See, e.g., *Israel and Palestine*, DIAKONIA, <https://www.diakonia.se/en/where-we-work/middle-east-north-africa/israel-and-palestine-opt/> (last visited May 1, 2024); Submission of the International Commission of Jurists to the UN Human Rights Committee in view of the Committee's examination of Israel's fifth periodic report under Article 40 of the International Covenant on Civil and Political Rights, Hum. Rts. Committee 134th Sess., Feb. 28-Mar. 25, 2022, INT'L COMM. OF JURISTS (Jan. 31, 2022), https://icj2.wpenginepowered.com/wp-content/uploads/2022/01/ISRAEL_HRCommittee_Submission.pdf; HUMAN RIGHTS WATCH, BORN WITHOUT CIVIL RIGHTS: ISRAEL'S USE OF DRACONIAN MILITARY ORDERS TO REPRESS PALESTINIANS IN THE WEST BANK (Dec. 17, 2019), <https://www.hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress>; AMNESTY INTERNATIONAL, ISRAEL'S OCCUPATION: 50 YEARS OF DISPOSSESSION (Jun. 7, 2017), <https://www.amnesty.org/en/latest/campaigns/2017/06/israel-occupation-50-years-of-dispossession/>; *Alarming increase of human rights violations against Palestinians in the occupied territory and against Palestinian citizens of Israel*; FIDH (Nov. 9, 2023), <https://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/alarming-increase-of-human-rights-violations-against-palestinians-in>.

⁷⁵ Buffer zones are border areas inside the Gaza Strip on which Israel has exercised military control and enforced access restrictions. GISHA, CLOSING IN: LIFE AND DEATH IN GAZA'S ACCESS RESTRICTED AREAS I, p. 5 (Aug. 2018), https://gisha.org/UserFiles/File/publications/ARA_EN.pdf.

⁷⁶ *Id.* at p. 2.

⁷⁷ *Id.* at p. 5; See generally SARA ROY, THE GAZA STRIP: THE POLITICAL ECONOMY OF DE-DEVELOPMENT (2016).

⁷⁸ GISHA, CLOSING IN: LIFE AND DEATH IN GAZA'S ACCESS RESTRICTED AREAS I, p. 12 (Aug. 2018), https://gisha.org/UserFiles/File/publications/ARA_EN.pdf.

⁷⁹ *Gaza Up Close*, GISHA (June 28, 2023), <https://features.gisha.org/gaza-up-close/>.

been reportedly shot at a distance up to two kilometers from the fence⁸⁰ and on their private property located outside restricted zones.⁸¹ These access restrictions have caused significant losses for Gazan farmers, landowners, and fishermen, and have undermined Gaza's agricultural production and food security.⁸² The impact of these restrictions has been particularly harmful to women, whose percentage of the workforce in farming and fishing industries fell from 36 percent in 2007 to only 4 percent by 2018 following the imposition of the buffer zones.⁸³

22. Israel's restrictions on imports into Gaza have caused severe shortages of necessities, including housing, clean water, electricity, food, and medical care.⁸⁴ Israel's policy since at least 2008 of tightly controlling the import of food stuff into Gaza—"to put the Palestinians on a diet, but not to make them die of hunger," as Dov Weisglass, an adviser to Israel's Prime Minister, said as early as 2006—has primed Gaza for the current famine conditions.⁸⁵ The blockade has also rendered infrastructure-building materials largely inaccessible and inhibited travel, including basic movement for crucial medical care, in and out of Gaza.⁸⁶ In 2016, then -UN Secretary General Ban Ki-Moon called Israel's blockade "collective punishment" of Palestinians in Gaza.⁸⁷ In 2014, the Human Rights Committee observed the negative effect of the blockade "on Palestinians' access to all basic and life-saving services such as food, health, electricity, water and sanitation," in violation of Israel's commitments under international human rights law.⁸⁸
23. The UN Security Council,⁸⁹ the UN General Assembly,⁹⁰ and many Palestinian, Israeli, and international human right organizations have criticized Israel's control over and

⁸⁰ *Displacement in the "Buffer Zone" Three Years after Operation Cast Lead*, AL-MEZAN (Jan. 2, 2012), <https://reliefweb.int/report/occupied-palestinian-territory/displacement-%E2%80%9Cbuffer-zone%E2%80%9D-three-years-after-operation-cast>.

⁸¹ Rabea Eghbariah, *An Unarmed Teen Was Shot During a Cease-Fire. Israel Was Never Held to Account.*, N.Y. TIMES (Nov. 3, 2023), <https://www.nytimes.com/2023/11/03/opinion/unarmed-teen-israel-gaza.html>.

⁸² GISHA, CLOSING IN: LIFE AND DEATH IN GAZA'S ACCESS RESTRICTED AREAS I, at pp. 2–3, 8 (Aug. 2018), https://gisha.org/UserFiles/File/publications/ARA_EN.pdf.

⁸³ *Id.* at p. 2.

⁸⁴ See *Timeline: The Humanitarian Impact of the Gaza Blockade*, OXFAM, <https://www.oxfam.org/en/timeline-humanitarian-impact-gaza-blockade> (last visited May 1, 2024); *Gaza Up Close*, GISHA (June 28, 2023), <https://features.gisha.org/gaza-up-close/>.

⁸⁵ Conal Urquhart, *Gaza on Brink of Implosion as Aid Cut-Off Starts to Bite*, THE GUARDIAN (Apr. 15, 2006), <https://www.theguardian.com/world/2006/apr/16/israel>.

⁸⁶ Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Michael Lynk, para. 47, U.N. Doc. A/HRC/49/87 (Aug. 12, 2022); AMNESTY INT'L, ISRAEL'S APARTHEID AGAINST PALESTINIANS, at p. 27.

⁸⁷ Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Michael Link, para. 47, U.N. Doc. A/HRC/49/87 (Aug. 12, 2022) (citing *UN chief Ban Ki-moon calls for Israel to end 'collective punishment' blockade of Gaza*, HAARETZ (June 29, 2016), <https://www.haaretz.com/middle-east-news/2016-06-29/ty-article/ban-ki-moon-calls-for-israel-to-end-blockade-of-gaza/0000017f-e36f-d9aa-afff-fb7fd58f0000>).

⁸⁸ Concluding Observations of the Human Rights Committee on the fourth periodic report of Israel, para. 12, CCPR/C/ISR/CO/4 (Nov. 21, 2014), <https://www.ohchr.org/en/documents/concluding-observations/ccprcisrco4-concluding-observations-fourth-periodic-report-israel>.

⁸⁹ S.C. Res. 1544 (May 19, 2004).

⁹⁰ G.A. Res. 58/99 (Dec. 17, 2003).

violence against Palestinians in Gaza as violating Israel's obligations under international humanitarian law and international human rights law.⁹¹

24. Between 2008 and October 6, 2023, the Israeli military killed an estimated 6,417 Palestinians, 5,360 of which were residents of Gaza.⁹² Israel conducted multiple military campaigns in Gaza since commencing its blockade, often in response to rocket attacks by Hamas, including five major assaults, summarized below:
25. On December 27, 2008, Israel launched "Operation Cast Lead" in Gaza, which lasted for 22 days.⁹³ Israel's uninterrupted airstrikes, shelling, and ground operations killed 1,383 Palestinians, including 333 children, and injured over 5,300.⁹⁴ During this campaign, Israel bombarded an UNRWA compound sheltering over 600 Palestinians, al-Quds hospital, and al-Wafa Hospital, including with artillery shells containing white phosphorus.⁹⁵ On January 8, 2009, the UN Security Council passed a resolution calling for an "immediate" ceasefire and "immediate withdrawal of Israeli forces from Gaza."⁹⁶ A UN fact-finding mission found that Israel's conduct in "Operation Cast Lead" violated international humanitarian law and customary law principles and may have amounted to war crimes.⁹⁷

⁹¹ See generally Press Release, OHCHR, Collective punishment in Gaza must end: Israel's blockade enters its 7th year – UN Special Rapporteur (June 14, 2013), <https://www.ohchr.org/en/press-releases/2013/06/collective-punishment-gaza-must-end-israels-blockade-enters-its-7th-year-un>; Press Release, OHCHR, Israel's collective punishment of Palestinians illegal and an affront to justice: UN expert (June 14, 2013), <https://www.ohchr.org/en/press-releases/2020/07/israels-collective-punishment-palestinians-illegal-and-affront-justice-un>; AMNESTY INT'L, ISRAEL/OCCUPIED PALESTINIAN TERRITORIES: GAZA BLOCKADE – COLLECTIVE PUNISHMENT, AI Index MDE15/021/2008 (July 4, 2008), <https://www.amnesty.org/en/documents/mde15/021/2008/en/>; 'Collective Punishment': Israel Blocks Fuel Shipment to Gaza, AL-JAZEERA (July 17, 2018), <https://www.aljazeera.com/news/2018/7/17/collective-punishment-israel-blocks-fuel-shipment-to-gaza>; Assoc. Int'l. Dev. Agencies [hereinafter AIDA], *The Gaza Blockade: 15 Years of Collective Punishment* (Sept. 28, 2022), <https://reliefweb.int/report/occupied-palestinian-territory/gaza-blockade-15-years-collective-punishment-september-2022>; *15 years of blockade leaves Gaza facing perpetual health crisis*, MEDICAL AID FOR PALESTINIANS (June 15, 2022), <https://www.map.org.uk/news/archive/post/1363-15-years-of-blockade-leaves-gaza-facing-a-perpetual-health-crisis>; *End Collective Punishment of Gaza's Children*, DEF. FOR CHILD. INT'L PALESTINE https://www.dci-palestine.org/campaign_end_collective_punishment_of_gaza_s_children_petition (last visited Apr. 20, 2024); Press Release, B'Tselem, Collective Punishment of Gazans Continues: Family Visits Cancelled (Mar. 17, 2014), https://www.btselem.org/press_releases/20140317_gaza_crossings_remain_closed.

⁹² *Data on Casualties*, OCHA, <https://www.ochaopt.org/data/casualties> (last visited May 5, 2024). See also *Timeline of Recent Clashes Between Israel and Palestine*, DAWN (Oct. 7, 2023), <https://www.dawn.com/news/1779824>; *Gaza 2 Years On: Impunity Over Accountability*, ADALAH (Apr. 4, 2025), https://www.adalah.org/en/content/view/9082#_ftn1.

⁹³ IDF Editorial Team, *Operation Cast Lead 27.12.2008-18.01.2009*, ISRAELI DEFENSE FORCES (Oct. 30, 2017), <https://www.idf.il/en/mini-sites/wars-and-operations/operation-cast-lead/>.

⁹⁴ *Eight Years after the 2008-2009 (Cast Lead) Hostilities in Gaza: Lack of Accountability Persists*, OCHA (Mar. 11, 2017), <https://www.ochaopt.org/content/eight-years-after-2008-2009-cast-lead-hostilities-gaza-lack-accountability-persists>.

⁹⁵ UN Fact-Finding Mission on the Gaza Conflict, Human Rights in Palestine and other Occupied Arab Territories, pp. 133–49, U.N. Doc. A/HRC/12/48 (Sept. 25, 2009).

⁹⁶ S.C. Res. 1860, para. 1 (Jan. 8, 2009)

⁹⁷ See, e.g., UN Fact-Finding Mission on the Gaza Conflict, Human Rights in Palestine and other Occupied Arab Territories, paras. 595, 629, 652, 937. u, U.N. Doc. A/HRC/12/48 (Sept. 25, 2009).

26. In November 2012, Israel carried out another military campaign in Gaza, “Operation Pillar of Defense,”⁹⁸ in which it killed 174 Palestinians, including 33 children.⁹⁹ During the eight-day attack, Israel conducted over 1,500 airstrikes on Gaza, leading to destruction of civilian infrastructure and residential buildings.¹⁰⁰ Multiple human rights organizations have documented violations by Israel of international humanitarian law and human rights law principles throughout these hostilities.¹⁰¹
27. In July 2014, Israel launched “Operation Protective Edge,”¹⁰² a major military assault on Gaza that lasted 50 days and killed 2,251 Palestinians, including 551 children and 299 women, and injured 11,231.¹⁰³ Of the Palestinians killed, 1,462 were civilians.¹⁰⁴ Israeli shelling damaged 73 medical facilities and fully or partially destroyed 18,000 housing units.¹⁰⁵ A UN Independent Commission of Inquiry found that the Israeli military had targeted “civilians, at times children, who were not directly participating in the hostilities” during this operation.¹⁰⁶ The Commission concluded that Israel’s conduct of hostilities violated international human rights law, as well as international humanitarian law, including the principles of proportionality and distinction, and may have amounted to war crimes.¹⁰⁷
28. In 2018, Palestinians in Gaza participated in weekly peaceful demonstrations within Gazan territory, protesting the blockade and demanding the right of return for Palestinian refugees forcibly displaced by Israel.¹⁰⁸ Israeli military snipers killed 189 Palestinians and injured over 23,000 inside Gaza in the context of these demonstrations between March and December 2018.¹⁰⁹

⁹⁸ IDF Editorial Team, *Operation Pillar of Defense*, ISRAELI DEFENSE FORCES (Oct. 30, 2017), <https://www.idf.il/en/mini-sites/wars-and-operations/operation-pillar-of-defence/operation-pillar-of-defense/>.

⁹⁹ Report of the UN High Commissioner for Human Rights on the Implementation of Human Rights Council Resolutions S-9/1 and S-12/1, para. 6, U.N. Doc. A/HRC/22/35/Add.1.

¹⁰⁰ *Id.* at para. 7.

¹⁰¹ See, e.g., B’TSELEM, HUMAN RIGHTS VIOLATIONS DURING OPERATION PILLAR OF DEFENSE 14-21 NOVEMBER 2012 (May 2013), https://www.btselem.org/download/201305_pillar_of_defense_operation_eng.pdf; AL-HAQ, VOICES FROM THE GAZA STRIP: A YEAR AFTER OPERATION “PILLAR OF DEFENSE” (Nov. 21, 2013), <https://www.alhaq.org/monitoring-documentation/6700.html>; HUMAN RIGHTS WATCH, ISRAEL: GAZA STRIKES VIOLATED LAWS OF WAR (Feb. 12, 2013), <https://www.hrw.org/news/2013/02/12/israel-gaza-airstrikes-violated-laws-war>.

¹⁰² IDF Editorial Team, *Operation Protective Edge 8.7-26.8.2014*, ISRAELI DEFENSE FORCES (Oct. 30, 2017), <https://www.idf.il/en/mini-sites/wars-and-operations/operation-protective-edge/operation-protective-edge/>.

¹⁰³ *Key Figures on the 2014 Hostilities*, OCHA (June 23, 2015), <https://www.ochaopt.org/content/key-figures-2014-hostilities>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* See also *2014 Gaza Conflict*, UNRWA, <https://www.unrwa.org/2014-gaza-conflict> (last visited May. 1, 2024).

¹⁰⁶ Report of the Independent Commission of Inquiry established pursuant to Human Rights Council resolution S-21/1, para. 59, U.N. Doc. A/HRC/29/52 (June 24, 2015), <https://digitallibrary.un.org/record/800872?ln=en>.

¹⁰⁷ *Id.* at paras. 58-60.

¹⁰⁸ Report of the U.N. Commission of Inquiry on the 2018 Protests in the Occupied Palestinian Territory, para. 14, U.N. Doc. A/HRC/40/74 (Feb. 25, 2019), https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoIOPT/A_HRC_40_74.pdf.

¹⁰⁹ *Id.* at paras. 38, 93; *Trends Affecting Humanitarian Affairs in the Occupied Palestinian Territory*, OCHA (Dec. 27, 2018), <https://www.ochaopt.org/content/2018-more-casualties-and-food-insecurity-less-funding-humanitarian-aid>.

29. Between May 10 and May 21, 2021, in the midst of large-scale protests by Palestinians across the occupied territories and inside Israel against the forced evictions of Palestinian Jerusalemites from their homes and the storming of Al-Aqsa mosque by Israeli police forces,¹¹⁰ Hamas fired rockets into Israel that killed 12 civilians.¹¹¹ In response, Israel carried out a major military campaign, “Operation Guardian of the Walls,”¹¹² that killed 261 Palestinians, including 67 children and 41 women, and injured over 2,200 Palestinians.¹¹³ Many hospitals, houses, and civil infrastructure facilities were destroyed by Israeli attacks.¹¹⁴ The Independent International Commission of Inquiry on the OPT and Israel rejected Israel’s “use of pre-emption or deterrence as the legal basis justifying these actions” and found that “specific attacks carried out” in Gaza “were disproportionate to the military necessity and lacked necessary precautions.”¹¹⁵
30. Israel’s military assaults and blockade together have caused staggering economic precarity in Gaza. The UN Conference on Trade and Development (UNCTAD) estimated that the poverty rate in Gaza in 2017 was nearly four times what it would have been without Israel’s military offensives and access restrictions.¹¹⁶ In 2016, on the tenth year of the blockade in Gaza, the UN Secretary General asserted that the blockade “continued to undermine basic human rights and economic prospects, as well as the availability of essential services, exacerbating poverty and aid dependency.”¹¹⁷ Between 2007 and 2022, poverty levels in Gaza rose from 39 percent to 65 percent.¹¹⁸
31. Israeli violations of international law and the human rights of Palestinians, including violation of the international law prohibition of apartheid,¹¹⁹ have taken place in the context

¹¹⁰ *Overview | November 2021*, OCHA (Nov. 3, 2021), <https://www.ochaopt.org/content/overview-november-2021#ftn1>; Arwa Ibrahim, *Scores of Palestinians Hurt as Israel Police Storm Al Aqsa: Live*, AL-JAZEERA (May 8, 2021), <https://www.aljazeera.com/news/2021/5/7/jerusalem-dozens-of-palestinians-hurt-in-al-aqsa-clashes>.

¹¹¹ *Palestinian Rockets in May Killed Civilians in Israel, Gaza: Indiscriminate Attacks by Gaza-Based Armed Groups Are War Crimes*, HUM. RTS. WATCH (Aug. 12, 2021), <https://www.hrw.org/news/2021/08/12/palestinian-rockets-may-killed-civilians-israel-gaza>.

¹¹² IDF Editorial Team, *Operation Guardian of the Walls* (June 14, 2021), <https://www.idf.il/en/mini-sites/wars-and-operations/operation-guardian-of-the-walls/operation-guardian-of-the-walls-1/>

¹¹³ *Overview | November 2021*, OCHA (Nov. 3, 2021), <https://www.ochaopt.org/content/overview-november-2021#ftn1>.

¹¹⁴ *Id.*

¹¹⁵ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, para. 76, U.N. Doc. A/HRC/50/21 (May 9, 2022).

¹¹⁶ UN Conference on Trade and Development [hereinafter UNCTAD] Secretariat, *Developments in the Economy of the Occupied Palestinian Territory*, para. 50, U.N. Doc. TD/B/EX(74)/2 (Sept. 11, 2023).

¹¹⁷ UN Secretary-General, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, para. 5, U.N. Doc. A/71/364 (Aug. 30, 2016).

¹¹⁸ *Id.* at Table 2.

¹¹⁹ See Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, S. Michael Lynk, paras. 51-56 (Conclusions), U.N. Doc. A/HRC/49/87 (advanced unedited version) (Mar. 21, 2022), <https://www.ohchr.org/en/documents/country-reports/ahrc4987-report-special-rapporteur-situation-human-rights-palestinian>; Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca P. Albanese, paras. 40, 70, 74, U.N. Doc. A/77/356 (Sept. 21, 2022),

of a long history of violent discourse towards Palestinians by and within Israel. High-level Israeli officials have often used dehumanizing and demoralizing language when referring to Palestinians and have regularly expressed a desire to indiscriminately punish them. For example, in 2001, Prime Minister Benjamin Netanyahu claimed in an interview that “[the only way to deal with the Palestinians is to] beat them up, not once but repeatedly, beat them up so it hurts so badly, until it’s unbearable.”¹²⁰ In 2002, then Israeli Chief of Staff Moshe Yaalon said, “[t]he Palestinian threat harbours cancer-like attributes that have to be severed and fought to the bitter end.”¹²¹ In 2013, when arguing against a proposal to release Palestinian prisoners during a cabinet meeting, former Prime Minister Naftali Bennett said, “[i]f you catch terrorists, you have simply to kill them . . . I have killed lots of Arabs in my life – and there is no problem with that.”¹²² In 2014, Moshe Feiglin, then Deputy Speaker of the Knesset, published an article saying that “the only innocents in Gaza are the IDF soldiers” and calling Palestinians “savages of the desert.”¹²³ In 2014, Ayelet Shaked, then member of the Israeli Knesset, posted on her Facebook page excerpts from an article by Israeli writer, Uri Elitzur, which stated that “the entire Palestinian people is the enemy,” and that “they are all enemy combatants, and their blood shall be on all their heads.”¹²⁴ Less than a year later, she was appointed as the justice minister.¹²⁵ In 2016, Prime Minister Netanyahu called Palestinians and citizens of Arab neighboring countries “wild beasts.”¹²⁶ In 2019, Netanyahu stated that Israel is “not a state of all its citizens,” but that it was the “nation state only of the Jewish people.”¹²⁷ In April 2023, he said in a speech that “we

<https://www.ohchr.org/en/documents/country-reports/a77356-situation-human-rights-palestinian-territories-occupied-1967>; AL-MEZAN, *THE GAZA BANTUSTAN: ISRAELI APARTHEID IN THE GAZA STRIP* (2021), https://mezan.org/uploads/upload_center/kLakShfIAra2.pdf; HUM. RTS. WATCH, *A THRESHOLD CROSSED*; AMNESTY INT’L, *ISRAEL’S APARTHEID AGAINST PALESTINIANS*.

¹²⁰ Liel Leibovitz, *Fibi Netanyahu*, TABLET (July 15, 2010), <https://www.tabletmag.com/sections/news/articles/fibi-netanyahu>.

¹²¹ Ewen MacAskill, *We Must Destroy Palestinian Threat, Army Chief Says*, THE GUARDIAN (Aug. 26, 2002), <https://www.theguardian.com/world/2002/aug/27/israel>.

¹²² Ariel Ben Solomon, *Bennett under Fire for Comments about Killing Arabs*, THE JERUSALEM POST (July 30, 2013), <https://www.jpost.com/diplomacy-and-politics/bennett-under-fire-for-comments-about-killing-arabs-321467>.

¹²³ Moshe Feiglin, *We Are the Good Guys*, JEWISHPRESS.COM (July 31, 2014), <https://www.jewishpress.com/indepth/columns/moshe-feiglin/we-are-the-good-guys/2014/07/31/>; Josh Ruebner, *The Missing Israeli Incitement against Palestinians*, THE HILL (Sept. 30, 2015), <https://thehill.com/blogs/pundits-blog/international/255403-the-missing-israeli-incitement-against-palestinians/>. See also Akbar Shahid Ahmed, *‘Our Soldiers Are the Only Innocents In Gaza’: Here’s What Israel’s Far-Right Is Saying*, HUFFPOST (July 25, 2014), https://www.huffpost.com/entry/israel-far-right-gaza-moshe-feiglin_n_5621667.

¹²⁴ Ishaan Tharoor, *Israel’s New Justice Minister Considers All Palestinians to be the Enemy*, WASH. POST (May 7, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/05/07/israels-new-justice-minister-considers-all-palestinians-to-be-the-enemy/>; Ben Norton, *Netanyahu Appoints Ayelet Shaked—Who Called for Genocide of Palestinians—as Justice Minister in New Government*, MONDOWEISS (May 6, 2015), <https://mondoweiss.net/2015/05/netanyahu-palestinians-government/>.

¹²⁵ *Ayelet Shaked*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/ayelet-shaked> (last visited May 1, 2024).

¹²⁶ Peter Beaumont, *Netanyahu Plans Fence Around Israel to Protect it from ‘Wild Beasts’*, THE GUARDIAN (Feb 10, 2016), <https://www.theguardian.com/world/2016/feb/10/netanyahu-plans-fence-around-israel-to-protect-it-from-wild-beasts>.

¹²⁷ *Benjamin Netanyahu Says Israel is ‘Not a State of All its Citizens’*, THE GUARDIAN (Mar. 10, 2019), <https://www.theguardian.com/world/2019/mar/10/benjamin-netanyahu-says-israel-is-not-a-state-of-all-its-citizens>.

[Jews] are imbued with the mission of life, and they [Palestinians] are bathed in the lust of murder.”¹²⁸

PART 3: LEGAL STANDARDS – THE GENOCIDE CONVENTION

32. The term genocide was coined by Raphael Lemkin in 1944.¹²⁹ It is derived from the Greek prefix *genos*, meaning race or tribe, and the Latin suffix *cide*, meaning killing.¹³⁰ Genocide was first recognized as a crime under international law in 1946 by UN General Assembly Resolution 96.¹³¹ In the aftermath of the horrors of the Holocaust, and conscious of the shortcomings of international law at the time, the UN General Assembly in 1948 unanimously adopted the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention),¹³² which established a legal definition for the crime of genocide under international law.¹³³ The Genocide Convention entered into force on January 12, 1951.¹³⁴ At present, 153 States have ratified or acceded to the Genocide Convention, including Israel,¹³⁵ Palestine,¹³⁶ and the United States.¹³⁷
33. The Genocide Convention defines the crime of genocide as the intentional destruction, in whole or in part, of any national, ethnical, racial, or religious group, as such.¹³⁸ Article I stipulates that the contracting parties “confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”¹³⁹
34. The Genocide Convention specifies five categories of punishable crimes; these are: “(a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.”¹⁴⁰ The following

¹²⁸ Khaled Elgindy (@elgindy_), X, (Apr. 25, 2023, 4:31 PM), https://x.com/elgindy_/status/1650960729451687936.

¹²⁹ *Genocide*, UN OFF. ON GENOCIDE PREVENTION & RESP. TO PROTECT, <https://www.un.org/en/genocideprevention/genocide.shtml> (last visited May 1, 2024).

¹³⁰ *Id.*

¹³¹ *Id.*; G.A. Res. 96 (Dec. 11, 1946).

¹³² Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

¹³³ Genocide Convention, art. II. *See generally Genocide: A Commentary on the Convention*, 58 YALE L.J. 1142 (1949).

¹³⁴ U.N. OFF. ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, FACT SHEET: THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (1948), <https://www.un.org/en/genocideprevention/documents/Genocide%20Convention-FactSheet-ENG.pdf> (last visited May 1, 2024)

¹³⁵ Israel signed the Genocide Convention on August 17, 1949, and ratified it on March 9, 1950, thereby becoming a party when the Genocide Convention entered into force on January 12, 1951. Israel did not file any reservation to the Genocide Convention. Genocide Convention, Declarations and Reservations, UN TREATY COLLECTION, p. 2 <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-1.en.pdf> (last visited May 1, 2024).

¹³⁶ The State of Palestine ratified the Genocide Convention on April 2, 2014. *Id.* at p. 2.

¹³⁷ The United States signed the Genocide Convention on December 11, 1948, and ratified it on November 25, 1988. *Id.* at p. 3. The United States filed a reservation to the Genocide Convention barring it from being submitted to the jurisdiction of the ICJ without its specific consent. *Id.* at p. 5.

¹³⁸ Genocide Convention, art. II.

¹³⁹ Genocide Convention, art. I.

¹⁴⁰ Genocide Convention, art. III.

sections of the report address specifically the crime of genocide and direct and public incitement to commit genocide.

35. The prohibition on the crime of genocide in the Genocide Convention and in international customary law is *jus cogens*, or a peremptory norm, of international law, from which no derogation is permitted.¹⁴¹ This preemptory character of the prohibition gives rise to both obligations *erga omnes*¹⁴² and *erga omnes partes*,¹⁴³ that is, obligations that are the “concern of all States”¹⁴⁴ and of “all the States parties” to the Genocide Convention.¹⁴⁵ These obligations are discussed in further detail in Part 5 of this report.

1. The crime of genocide

36. Article II of the Genocide Convention defines the crime of genocide as the commission of any of the specified acts in the Article, with the intent “to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”¹⁴⁶
37. The acts enumerated in Article II of the Convention are:
- (a) Killing members of the group;
 - (b) Causing serious bodily or mental harm to members of the group;
 - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group; and
 - (e) Forcibly transferring children of the group to another group.¹⁴⁷

¹⁴¹ Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 23 (May 28). The Court affirmed the *jus cogens* character of the prohibition on genocide in the Democratic Republic of Congo v. Uganda judgment and in the Bosnia & Herzegovina v. Yugoslavia’s Preliminary Objections Judgment. Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), para. 64, 2006 I.C.J. Rep. 168 (Dec. 19) [hereinafter Dem. Rep. Congo v. Uganda]; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugoslavia), Preliminary Objections Judgment, 1996 I.C.J. 595, para. 31 (July 11) [hereinafter Bosn. & Herz. v. Yugoslavia Preliminary Objections Judgment].

¹⁴² *Erga omnes* obligations are obligations owed “towards the international community as a whole.” Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), 1970 I.C.J. 3, para. 32 (Feb. 5) [hereinafter *Barcelona Traction*]. See also Dem. Rep. Congo v. Uganda at para. 64; Bosn. & Herz. v. Yugoslavia Preliminary Objections Judgment at para. 31.

¹⁴³ *Erga omnes partes* obligations are obligations owed “by any State party [to a convention] to all the other State parties.” Application of Convention on Prevention and Punishment of Crime of Genocide (Gamb. v. Myan.), Provisional Measures, 2020 I.C.J. 3, para. 41 (Jan. 23) [hereinafter Gamb. v. Myan. Provisional Measures Order].

¹⁴⁴ See *Barcelona Traction* at para. 33, affirmed by the Court in the *Wall* Advisory Opinion at para. 155.

¹⁴⁵ Gamb. v. Myan. Provisional Measures Order at para. 41.

¹⁴⁶ Genocide Convention, art. II.

¹⁴⁷ *Id.*, arts. II(a)–(e).

38. The relevant acts for our analysis in this present case are: “killing members of the group,”¹⁴⁸ “causing serious bodily or mental harm to members of the group,”¹⁴⁹ and “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.”¹⁵⁰ The following section (1.a) discusses the legal standards governing findings of genocidal acts and genocidal intent in more detail.¹⁵¹
39. A “group” is determined by “the positive identification . . . with specific distinguishing characteristics,”¹⁵² which may be national, ethnical, racial, or religious.”¹⁵³ For the purposes of our analysis, the specific group under discussion is Palestinians in Gaza. As recognized by the ICJ in its provisional measures order: “The Palestinians appear to constitute a distinct ‘national, ethnical, racial or religious group,’ and hence a protected group within the meaning of Article II of the Genocide Convention. . . . Palestinians in the Gaza Strip form a substantial part of the protected group.”¹⁵⁴

1.a. Genocidal acts

1.a.i. Killing members of a group

40. Killing members of a group is one of the means by which genocide is committed. The Genocide Convention does not require a minimum number of victims for the crime, nor does ICJ jurisprudence. International criminal tribunals have further affirmed that “there is

¹⁴⁸ *Id.*, art. II(a).

¹⁴⁹ *Id.*, art. II(b).

¹⁵⁰ *Id.*, art. II(c).

¹⁵¹ These same elements comprise the crime of genocide in the Rome Statute, the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY), and the Statute of the International Criminal Tribunal for Rwanda (ICTR).¹⁵¹ The jurisprudence of these Statutes’ respective courts provides guidance in interpreting the elements of the crime of genocide under the Convention and their application to the facts of Israel’s actions in Gaza. Rome Statute of the International Criminal Court, art. 6, July 17, 1998, 2187 U.N.T.S. 3; S.C. Res. 1877 [hereinafter Rome Statute]; Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 4 (July 7, 2009); S.C. Res. 955; Statute of the International Criminal Tribunal for Rwanda, art. 2 (Nov. 8, 1994).

¹⁵² Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosn. & Herz. v. Serb. & Montenegro*), Judgment, 2007 I.C.J. 43, para. 194 (Feb. 26) [hereinafter *Bosn. & Herz. v. Serb. & Montenegro*]. The Court distinguishes a “positive” identification of a group, i.e. defining a group by “what it is,” from a negative definition, i.e. defining a group by “what it is not” or by exclusion from another group (paras. 193-194).

¹⁵³ *Id.* at para. 193. *See also* Prosecutor v. Al-Bashir, ICC-02/05-01/09, Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Al-Bashir, para. 135 (I.C.C. Mar. 4, 2009); Prosecutor v. Tolimir, IT-05-88/2-T, Trial Judgment, para. 735 (I.C.T.Y. Dec. 12, 2012) [hereinafter *Tolimir* Trial Judgment]. The ICTY held that a national, ethnical, racial, or religious group is identified “by using as a criterion the stigmatisation of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnical, racial or religious characteristics.” Prosecutor v. Blagojević and Jokić, IT-02-60-T, Trial Judgment, para. 667 (I.C.T.Y. Jan. 17, 2005) [hereinafter *Blagojević* Trial Judgment], citing Prosecutor v. Krstić, IT-98-33-T, Trial Judgment, para. 557 (I.C.T.Y. Aug. 2, 2001) [hereinafter *Krstić* Trial Judgment]; Prosecutor v. Nikolić, IT-94-2-R61, Review of the Indictment Pursuant to Rule 61, para. 27 (I.C.T.Y. Oct. 20, 1995); Prosecutor v. Jelisić, IT-95-10-T, Trial Judgment, para. 70 (I.C.T.Y. Dec. 14, 1999) [hereinafter *Jelisić* Trial Judgment]. In *Rutaganda*, the ICTR held that group membership under the Genocide Convention was “a subjective rather than an objective concept,” where “the victim is perceived by the perpetrator as belonging to a group slated for destruction.” Prosecutor v. Rutaganda, ICTR-96-3-T, Trial Judgment, para. 56 (I.C.T.R. Dec. 6, 1999) [hereinafter *Rutaganda* Trial Judgment].

¹⁵⁴ *S. Afr. v. Isr.* First Provisional Measures Order at paras. 44-45.

no numeric threshold of victims necessary to establish genocide,” as held by the International Criminal Tribunal for Rwanda (ICTR) in *Muhimana*.¹⁵⁵ These tribunals offer guidance on the scale of killing that may constitute a genocidal act. In *Krstić*, the International Criminal Tribunal for the former Yugoslavia (ICTY) held that a genocide may be found where the qualified acts are committed against a “reasonably significant number, relative to the total of the group as a whole, or else a significant section of the group, such as its leadership.”¹⁵⁶ In a joint intervention in *Gambia v. Myanmar*, Canada, Denmark, France, Germany, the Netherlands, and the United Kingdom affirmed that the “number of victims killed” is not a “focus” of the assessment, given that “circumstances may be such that the perpetrator cannot, or decides not to, avail itself of the fastest or most direct means” of destruction.¹⁵⁷

41. The ICTY clarified in *Galić* that in order for an act to be considered genocidal, the purpose of the act must be to kill members of the group, and that the act be of sufficient intensity as to suggest an attempt “to wipe out or even deplete the civilian population through attrition,” rather than, for example, to instill fear in the population.¹⁵⁸

1.a.ii. Causing serious bodily harm or mental harm to members of the group

42. This second category of acts covers two types of harm that may be inflicted upon individuals: bodily harm, which, according to the International Law Commission (ILC),¹⁵⁹ “involves some type of physical injury”; and mental harm, “which involves some type of impairment of mental faculties.”¹⁶⁰ The ILC further specifies that “bodily harm or the mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part.”¹⁶¹ The ICJ affirmed the ILC’s interpretation of the

¹⁵⁵ Prosecutor v. Muhimana, ICTR-95-1B-T, Trial Judgment, para. 498 (I.C.T.R. Apr. 28, 2005) [hereinafter *Muhimana* Trial Judgment]. In *Akayesu*, the ICTR specified that the act of “killing” requires that (1) the victim died, and (2) the death resulted by an unlawful act or omission of the perpetrator. Prosecutor v. Akayesu, ICTR-96-4-T, Trial Judgment, para. 589 (I.C.T.R. Sept. 2, 1998) [hereinafter *Akayesu* Trial Judgment].

¹⁵⁶ *Krstić* Trial Judgment, IT-98-33-T para. 587 (citation omitted). Leadership may include “political and administrative leaders, religious leaders, academics and intellectuals, business leaders, and others.” An attack on leadership “must be viewed in the context of the fate or what happened to the rest of the group,” that is, when leadership is exterminated while relatively large numbers of members of that group are forced to flee, “the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the [Genocide] Convention in a spirit consistent with its purpose.” Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992), Annex, at p. 25, para. 94, U.N. Doc. S/1994/674 (May 27, 1994).

¹⁵⁷ Application of Convention on Prevention and Punishment of Crime of Genocide (*Gamb. v. Myan.*), Joint Declaration of Intervention of Canada, Denmark, France, Germany, the Netherlands and the United Kingdom, 2023 I.C.J., para. 60 (Nov. 15) [hereinafter *Gamb. v. Myan. Joint Intervention of Canada et al.*].

¹⁵⁸ Prosecutor v. Galić, IT-98-29-T, Trial Judgment, para. 593 (I.C.T.Y. Dec. 5, 2003) [hereinafter *Galić* Trial Judgment].

¹⁵⁹ The International Law Commission [hereinafter ILC] is a group of experts elected by the United Nations that gives authoritative guidance for the development and codification of international law.

¹⁶⁰ ILC, Draft Code of Crimes against the Peace and Security of Mankind, with commentaries, 2 Y.B. INT’L L. COMM’N, art. 17, cmt. 14 (1996), https://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf [hereinafter ILC Draft Code of Crimes against Peace and Security of Mankind].

¹⁶¹ *Id.*

“serious” element, noting that the harm must “contribute to the physical or biological destruction of the group, in whole or in part.”¹⁶²

43. International criminal tribunals have offered further interpretations of “harm” for purposes of analyzing genocidal acts. The ICTY in *Stakić* defined harm to include “acts of torture, inhumane or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or injury,”¹⁶³ which “need not be permanent and irremediable.”¹⁶⁴ Other specific acts recognized by courts as causing harm include threats of death and knowledge of impending death,¹⁶⁵ acts causing intense fear or terror,¹⁶⁶ and forcible displacement.¹⁶⁷ The Appeals Chamber in *Tolimir* held that the separation of families in the context of forced displacement, the “fear and uncertainty” the victims felt for their fate, the “appalling conditions of the journey,” and the “financial and emotional difficulties they faced in their drastically changed lives” resulting from forced transfer amounted to serious mental harm.¹⁶⁸ Regarding the seriousness of the harm, the determination must be made on a “case-by-case basis, with appropriate considerations given to the particular circumstances.”¹⁶⁹ In their joint intervention in *Gambia v. Myanmar*, Canada, Denmark, France, Germany, the Netherlands, and the United Kingdom have argued that the threshold for “seriousness” varies with “the specific situation or position of the victims,” particularly when the victims are children, “as children have a higher susceptibility to harm.”¹⁷⁰

1.a.iii. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part

44. This category of genocidal acts is distinct from killing or causing serious bodily harm, in that here the deliberate infliction of conditions of life calculated to bring about a group’s physical destruction does not require that the destruction actually occur.¹⁷¹ Instead, this

¹⁶² Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croat. v. Serb.), Judgement 2015 I.C.J. 3, para. 157 (Nov. 18) [hereinafter *Croat. v. Serb.*].

¹⁶³ Prosecutor v. Stakić, IT-97-24-T, Trial Judgment, para. 516 (I.C.T.Y. July 31, 2003) [hereinafter *Stakić* Trial Judgment], citing *Akayesu* Trial Judgment, ICTR-96-4-T paras. 502–04; Prosecutor v. Kayishema and Ruzindana, ICTR-95-1-T, Trial Judgment (I.C.T.R. May 21, 1999), paras. 108–10 [hereinafter *Kayishema* Trial Judgment].

¹⁶⁴ *Stakić* Trial Judgment at para. 516.

¹⁶⁵ Prosecutor v. Tolimir, IT-05-88/2-A, Appeals Judgment, para. 206 (Apr. 8, 2015) [hereinafter *Tolimir* Appeals Judgment].

¹⁶⁶ R. v. Munyaneza, [2009] Q.C.C.S. 2201, para. 89 (Can. Que.).

¹⁶⁷ *Tolimir* Appeals Judgment at para. 208–09.

¹⁶⁸ *Tolimir* Appeals Judgment at para. 209 (“forced displacement may – depending on the circumstances of the case – inflict serious mental harm, by causing grave and long-term disadvantage to a person’s ability to lead a normal and constructive life so as to contribute or tend to contribute to the destruction of the group as a whole or a part thereof”).

¹⁶⁹ *Tolimir* Trial Judgment at para. 738; See also *Tolimir* Appeals Judgment at para. 202.

¹⁷⁰ Gamb. v. Myan., Joint Declaration of Intervention of Canada et al. at paras. 39–40.

¹⁷¹ ILC Draft Code of Crimes against Peace and Security of Mankind, art. 17, cmt. 18 (“[t]he article clearly indicates that it is not necessary to achieve the final result of the destruction of a group in order for a crime of genocide to have been committed”).

type of genocidal act requires that the perpetrator employed methods that “ultimately, seek” the physical destruction of the group.¹⁷²

45. The ICJ defined “conditions of life calculated to bring about its physical destruction in whole or in part” as those “methods of physical destruction, other than killing, whereby the perpetrator ultimately seeks the death of the members of the group,” which may include “deprivation of food, medical care, shelter or clothing, as well as lack of hygiene, [and] systematic expulsion from homes.”¹⁷³ International criminal tribunals similarly have found that “subjecting a group of people to a subsistence diet, systematic expulsion from homes,”¹⁷⁴ “rape, the starving of a group of people, reducing required medical services below a minimum, and withholding sufficient living accommodation for a reasonable period,”¹⁷⁵ are methods that meet the criteria of Article II(c) of the Genocide Convention, “provided the above would lead to the destruction of the group in whole or in part.”¹⁷⁶
46. While mass deportation is not explicitly listed under this subsection of the Genocide Convention, the ILC “considered that [Article II(c)] covered deportation when carried out with the intent to destroy the group in whole or in part.”¹⁷⁷ The ICJ reiterated this in *Bosnia and Herzegovina v. Serbia and Montenegro*, holding that “ethnic cleansing” may constitute genocide, “provided such action is carried out with the necessary specific intent (*dolus specialis*), that is to say with a view to the destruction of the group, as distinct from its removal from the region.”¹⁷⁸

1.b. Genocidal intent

47. When any of the offenses listed under Article II of the Genocide Convention has been committed, the offender must have carried out the act “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”¹⁷⁹ in order for it to constitute the crime of genocide.
48. The ILC explains that the intent must be to “destroy a group and not merely one or more individuals who are coincidentally members of a particular group,” and that “the prohibited act must be committed against an individual because of his membership in a particular group and as an incremental step in the overall objective of destroying the group.”¹⁸⁰ This requirement to destroy a group “as such” makes genocide an exceptionally grave crime and

¹⁷² *Akayesu* Trial Judgment at para. 505. *See also* Krstić Trial Judgment at paras. 574, 580, 595. In *Eichmann*, the District Court of Jerusalem held that imposing living conditions calculated to bring about the destruction of Jews was only applicable under this framework to those still alive, rather than to those who were killed. *A-G of Israel v. Eichmann* at para. 196.

¹⁷³ *Croat. v. Serb.* at para. 161.

¹⁷⁴ *Akayesu* Trial Judgment at para. 506.

¹⁷⁵ *Kayishema* Trial Judgment at para. 116.

¹⁷⁶ *Id.*

¹⁷⁷ ILC Draft Code of Crimes against Peace and Security of Mankind, art. 17, cmt. 15.

¹⁷⁸ *Bosn. & Herz. v. Serbia & Montenegro* at para. 190.

¹⁷⁹ Genocide Convention, art. II.

¹⁸⁰ ILC Draft Code of Crimes against Peace and Security of Mankind, art. 17, cmt. 6. *See also* Krstić Trial Judgment at para. 561.

distinguishes it from other serious crimes,¹⁸¹ including the crimes of homicide¹⁸² and persecution.¹⁸³

49. The crime of genocide does not require an intention to “achieve the complete annihilation of a group from every corner of the globe,” but rather, as the ILC explains, it requires “the intention to destroy at least a substantial part of a particular group.”¹⁸⁴ Given that “the object and purpose of the Genocide Convention as a whole is to prevent the intentional destruction of groups,” the ICJ in *Bosnia and Herzegovina v. Serbia and Montenegro* held that “the part targeted must be significant enough to have an impact on the group as a whole.”¹⁸⁵
50. The ICJ also held that genocide can be committed “where the intent is to destroy the group within a geographically limited area.”¹⁸⁶ In *Krstić*, the ICTY found that in the context of the forcible transfer of the Bosnian Muslim population, the systematic murder of Bosnian Muslim men of a military age in Srebrenica demonstrated genocidal intent to destroy, in part, the Bosnian Muslim group.¹⁸⁷ The ICTY Appeals Chamber in *Krstić* additionally noted, “[t]he intent to destroy formed by a perpetrator of genocide will always be limited by the opportunity presented to him. While this factor alone will not indicate whether the targeted group is substantial, it can – in combination with other factors – inform the analysis.”¹⁸⁸

1.b.i. Establishing genocidal intent

51. In *Bosnia and Herzegovina v. Serbia and Montenegro*, the ICJ affirmed that a finding of the crime of genocide requires that acts outlined in Article II of the Genocide Convention be committed with a “specific” or “special” intent (*dolus specialis*) to destroy a group in whole or in part.¹⁸⁹ This specific intent “has to be convincingly shown by reference to particular circumstances, unless a general plan to that end can be convincingly stated to exist.”¹⁹⁰ Additionally, “for a pattern of conduct to be accepted as evidence of its existence, it would have to be such that it could only point to the existence of such intent.”¹⁹¹ In *Croatia v. Serbia*, the ICJ concluded that “to infer the existence of *dolus specialis* from a

¹⁸¹ *Krstić* Trial Judgment at para. 553.

¹⁸² G.A. Res 96(I) (Dec. 11, 1946).

¹⁸³ *Krstić* Trial Judgment at para. 553.

¹⁸⁴ ILC Draft Code of Crimes against Peace and Security of Mankind, art. 17, cmt. 8. *See also* *Krstić* Trial Judgment at para. 634; *Jelisić* Trial Judgment at para. 82.

¹⁸⁵ *Bosn. & Herz. v. Serb. & Montenegro* at para. 198.

¹⁸⁶ *Id.* at para. 199.

¹⁸⁷ *Krstić* Trial Judgment at para. 595.

¹⁸⁸ *Prosecutor v. Radislav Krstić*, IT-98-33-A, Appeals Judgement, (I.C.T.Y. Apr. 19, 2004), para. 13 [hereinafter *Krstić* Appeals Judgment] (“Nazi Germany may have intended only to eliminate Jews within Europe alone; that ambition probably did not extend, even at the height of its power, to an undertaking of that enterprise on a global scale. Similarly, the perpetrators of genocide in Rwanda did not seriously contemplate the elimination of the Tutsi population beyond the country’s borders.”).

¹⁸⁹ *Bosn. & Herz. v. Serb. & Montenegro* at para. 187.

¹⁹⁰ *Id.* at para. 373.

¹⁹¹ *Id.*

pattern of conduct, it is necessary and sufficient that this is the only inference that could reasonably be drawn from the acts in question.”¹⁹²

52. The draft ILC commentary on the international crime of genocide clarifies this point on special intent: General intent to commit one of the enumerated acts, coupled with a “general awareness of the probable consequences of such an act with respect to the immediate victim or victims, is not sufficient for the crime of genocide.”¹⁹³ Rather, the definition of the crime of genocide “requires a particular state of mind or a specific intent with respect to the overall consequences of the prohibited act.”¹⁹⁴ The ICTR held in *Akayesu* that the culpability of the offender depends on whether he “knew or should have known that the act committed would destroy, in whole or in part, a group.”¹⁹⁵ This mental state is determined through analysis of a combination of factors that describe the intention to destroy a national, ethnical, racial, or religious group, as such, in whole or in part.
53. In negotiating the substance of the Genocide Convention, States recognized that obtaining official or explicitly genocidal plans by a perpetrator may be unrealistic, with the United Kingdom stating that it would be “practically impossible” to prove that an act was taken to encourage the perpetration of genocide.¹⁹⁶ The ICTR Appeals Chamber in *Gacumbitsi* affirmed that the “[t]ribunal’s jurisprudence conclusively establishes that genocidal intent can be proven through inference from the facts and circumstances of a case,” noting that “[b]y its nature, intent is not usually susceptible to direct proof,” because “[o]nly the accused himself has firsthand knowledge of his own mental state, and he is unlikely to testify to his own genocidal intent.”¹⁹⁷ In the absence of a confession, the ICTR in *Akayesu* found that “intent can be inferred from a certain number of presumptions of fact.”¹⁹⁸ Similarly, the court in *Kayishema and Ruzindana* determined that “intent can be inferred either from words or deeds and may be demonstrated by a pattern of purposeful action.”¹⁹⁹
54. The following sections discuss the jurisprudence on genocidal intent expressed through statements and demonstrated through acts.

1.b.ii. Establishing genocidal intent through words and statements

55. In the absence of guidance from the ICJ or commentary from the ILC, the jurisprudence of international criminal tribunals suggests the appropriate means for inferring intent from certain rhetoric. Some tribunals have noted that directly calling for the killing or destruction of individuals or a group can constitute evidence of intent. The ICTR found that

¹⁹² Croat. v. Serb. at para. 148.

¹⁹³ ILC Draft Code of Crimes against Peace and Security of Mankind, art. 17, cmt. 5.

¹⁹⁴ *Id.*

¹⁹⁵ *Akayesu* Trial Judgment at para. 520.

¹⁹⁶ Continuation of the consideration of the draft convention on genocide [E/794]: Report of the Economic and Social Council [A/633], U.N. GAOR, 6th Comm., 3rd Sess., Part I, 86th Mtg at p. 238 U.N. Doc. A/C.6/SR.86 (Oct. 28, 1948), <https://digitallibrary.un.org/record/604638?ln=en&v=pdf>.

¹⁹⁷ *Sylvestre Gacumbitsi v. The Prosecutor*, ICTR-2001-64-A, Appeals Judgment (I.C.T.R. July 7, 2006), para. 40. See also *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Judgement (I.C.T.Y. June 10, 2010), para. 823.

¹⁹⁸ *Akayesu* Trial Judgement at para. 523.

¹⁹⁹ *Kayishema* Trial Judgment at para. 93.

“Kanyabashi’s spoken words encouraging the population to search for the ‘enemy’ and ‘clear bushes’, being references to killing Tutsis, evidences Kanyabashi had the requisite intent to destroy, in whole or in part, the Tutsi ethnic group.”²⁰⁰ The Appeals Chamber in *Jelisić* held that evidence that the defendant “referred to a ‘plan’ for eradicating [prominent Muslims]” and expressed a desire to “cleanse . . . the extremist Muslims and balijas like one cleans the head of lice” provided a basis for a finding “beyond a reasonable doubt” of intent to destroy the Muslim group in the town of Brčko.²⁰¹

56. The use of discriminatory and derogatory language can also contribute to a finding of genocidal intent. The ICTR in *Kayishema and Ruzindana* considered evidence such as “the use of derogatory language toward members of the targeted group” to infer intent.²⁰² The Appeals Chamber in *Jelisić* similarly held that intent to destroy could be inferred from “scornful and discriminatory” remarks made about the targeted group, such as calling them “dirty” and “slaves for cleaning the toilets.”²⁰³

1.b.iii. Establishing genocidal intent through patterns of conduct

57. The ICJ has required that genocidal intent be the only reasonable inference drawn from a pattern of conduct.²⁰⁴ The ICJ in *Croatia v. Serbia* considered among the most important facts for establishing this pattern “the scale and allegedly systematic nature of the attacks, the fact that those attacks are said to have caused casualties and damage far in excess of what was justified by military necessity, the specific targeting of Croats and the nature, extent, and degree of the injuries caused to the Croat population.”²⁰⁵ In their joint intervention in *Gambia v. Myanmar*, Canada, Denmark, France, Germany, the Netherlands, and the United Kingdom interpreted this test in light of the “scope” and “severity” of destruction, noting that this approach does not mean that there can be no other alternative explanations for the acts, but that the level of destruction makes genocidal intent the dominant explanation.²⁰⁶
58. International criminal tribunals have found that an analysis of the totality of various acts can illustrate special genocidal intent. The ICTR in *Kayishema and Ruzindana* held that special genocidal intent can be inferred from a range of evidence “such as the physical targeting of the group or their property; . . . the weapons employed and the extent of bodily

²⁰⁰ Prosecutor v. Pauline Nyiramasuhuko et. al., ICTR-98-42-T, Trial Judgment (I.C.T.R. June 24, 2011), para. 6012.

²⁰¹ Prosecutor v. Golan Jelisić, IT-95-10-A, Appeals Judgment (I.C.T.Y. July 5, 2001), paras. 67-68 [hereinafter *Jelisić Appeals Judgment*].

²⁰² *Kayishema* Trial Judgment at para. 93.

²⁰³ *Jelisić Appeals Judgment* at paras. 60, 62, 68.

²⁰⁴ *Croat. v. Serb.* at para. 148.

²⁰⁵ *Id.* at para. 413.

²⁰⁶ *Gamb. v. Myan.*, Joint Declaration of Intervention of Canada et al. at paras. 52–53.

injury; the methodical way of planning, the systematic manner of killing. Furthermore, the number of victims from the group is also important.”²⁰⁷

59. The ICTY in *Karadžić and Mladić* additionally considered amongst these factors the political doctrine which “gave rise to the acts.”²⁰⁸ The court noted:

The project of an ethnically homogeneous State formulated against a backdrop of mixed populations necessarily envisages the exclusion of any group not identified with the Serbian one. The concrete expressions of these plans by the SDS [Serb Democratic Party] before the conflict would confirm the existence of an intent to exclude those groups by violence . . . These elements, taken together, would confirm the project . . . contemplates the destruction of the non-Serbian groups.²⁰⁹

60. In the context of armed conflict, courts may struggle to determine whether the attacking side has genocidal intent or commits mass killings with the intention of winning the war. In *Krstić*, the defense argued that the purpose of the killings of the Bosniak men in Srebrenica was to remove a military threat.²¹⁰ However, both the ICTY Trial Chamber and Appeals Chamber found that the killings were genocidal, noting that the eradication of “two or three generations of men”²¹¹ would have a lasting catastrophic impact on the group.²¹² Additionally,

[t]he Bosnian Serb forces knew by the time they decided to kill all of the military aged men, that the combination of those killings with the forcible transfer of the women, children and elderly would inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica. . . . The Bosnian Serb forces effectively destroyed the community of the Bosnian Muslims in Srebrenica and eliminated all likelihood that it could ever re-establish itself on that territory.²¹³

61. The ICJ accepted as legally significant with regard to the intent requirement the ICTY’s conclusion that the Bosnian Serb Army’s military objectives at some point changed from shrinking the Srebrenica enclave to overrunning it entirely.²¹⁴ In such circumstances, even a military objective framed in terms of territorial control (as distinguished from mass

²⁰⁷ *Kayishema* Trial Judgment at para. 93. *See also Akayesu* Trial Judgement at para. 477 (considering factors including “the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others, . . . the scale of atrocities committed, their general nature, [and] in a region or a country . . . the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups”).

²⁰⁸ *Prosecutor v. Karadžić and Mladić*, IT-95-5-R61, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, para. 94 (I.C.T.Y. July 11, 1996) [hereinafter *Karadžić* Indictments Review].

²⁰⁹ *Id.*

²¹⁰ *Krstić* Trial Judgement at para 593.

²¹¹ *Id.* at para. 595

²¹² *Id.*; *Krstić* Appeals Judgement at para 37.

²¹³ *Krstić* Trial Judgement at para. 595.

²¹⁴ *Bosn. & Herz. v. Serb. & Montenegro* at paras. 294-295.

killings on that territory to weaken the enemy's ranks or its resolve) can be evidence of genocidal intent.²¹⁵

62. The systematic destruction of cultural sites may assist in proving intent, even if it does not amount to an independent violation under this subsection. In light of evidence of the widespread destruction of religious monuments and libraries in Bosnia,²¹⁶ the ICTY observed in *Krstić* that “where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group.”²¹⁷ The ICJ endorsed this observation in *Bosnia and Herzegovina v. Serbia and Montenegro*.²¹⁸
63. Finally, conduct after the commission of genocidal acts may also be used to infer genocidal intent. In *Krstić*, the Trial Chamber held that the creation of mass graves, bodily mutilation, and the exhumation and relocation of mass graves was indicative of genocidal intent.²¹⁹

2. Incitement to genocide

64. Article III(c) of the Genocide Convention renders punishable the “direct and public incitement of genocide.”²²⁰ Like all the other acts in Article III, a State can be found in breach of Article III if it commits the act of incitement to genocide.²²¹ Additionally, States have the duty to punish non-State actors who incite genocide. Article IV of the Genocide Convention obliges States to punish individuals who commit “any of the other acts enumerated in Article III . . . whether they are constitutionally responsible rulers, public officials or private individuals.”²²² The requirement to prevent non-State actors from committing incitement also inheres in the more general Article I obligation to prevent and punish genocide.²²³
65. The ICJ confirmed the duty to prevent incitement to genocide in its provisional measures order in *South Africa v. Israel*, directing Israel to “take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip.”²²⁴

²¹⁵ *Id.*

²¹⁶ *Id.* at paras. 342–344.

²¹⁷ *Krstić* Trial Judgment at para. 580.

²¹⁸ *Bosn. & Herz. v. Serb. & Montenegro* at para. 344.

²¹⁹ *Krstić* Trial Judgment at para. 596.

²²⁰ Genocide Convention, art. III(c).

²²¹ *Bosn. & Herz. v. Serb. & Montenegro* at paras. 382–283.

²²² Genocide Convention, art. IV.

²²³ ILC, *Draft Articles on the Prevention and Punishment of Crimes Against Humanity, with commentaries*, art. 4, cmt. 9, 2 Y.B. INT’L L. COMM. (2019) [hereinafter ILC Draft Articles on Crimes Against Humanity], citing Hum. Rts. Council, Res. 28/34, para. 2 (Apr. 7, 2015).

²²⁴ *S. Afr. v. Isr.*, First Provisional Measures Order at paras. 379, 86(3).

2.b. Direct and public incitement by State actors

66. Article III of the Genocide Convention renders punishable the crime of direct and public incitement of genocide. This provision aims to prevent genocide at its earliest stages by preempting the spread of genocidal ideas.²²⁵ One way in which a State incurs responsibility for violating Article III is by engaging itself or through its actors in public and direct incitement to genocide.
67. Incitement to genocide requires that the perpetrator possess the intent to provoke others to commit genocide and that the speech qualifies as both “public” and “direct.”
68. The intent requirement of incitement to genocide is an “intent to directly prompt or provoke another to commit genocide.”²²⁶ Specifically, the inciter must intend to create a “state of mind necessary to commit such a crime in the minds of the person(s) he is so engaging.”²²⁷ Indicators of intent include the actual language employed by the speaker²²⁸ and the commission (by other actors) of acts of genocide subsequent to the speech.²²⁹
69. An incitement is “public” if it involves “a call for criminal action to a number of individuals in a public place or to members of the general public at large by such means as the mass media, for example, radio or television.”²³⁰ The “direct” element of incitement requires “more than mere vague or indirect suggestion.”²³¹ An incitement is “direct” when it “specifically provoke[s] another to engage in a criminal act.”²³² General statements of hatred do not suffice—the perpetrator must call for others to take action.²³³
70. Nevertheless, it is not necessary for the perpetrator to explicitly call for the extermination of a group to be liable for incitement to genocide.²³⁴ Directness must be evaluated within its cultural and linguistic context; what appears direct in one cultural setting may appear indirect in another.²³⁵ For this reason, an incitement can be direct even if it was implicit, ambiguous, or open to multiple interpretations.²³⁶ The focus is whether, taken in context,

²²⁵ See Wibke Kristin Timmerman, *Incitement in International Criminal Law*, 88 INT’L REV. RED CROSS 823, 836 (2006).

²²⁶ *Akayesu* Trial Judgment at para. 560.

²²⁷ *Id.*

²²⁸ Prosecutor v. Ferdinand Nahimana et. al., Case No. ICTR-99-52-T, Trial Judgment (I.C.T.R. Dec. 3, 2003), para. 1007 [hereinafter *Nahimana* Trial Judgment]; Prosecutor v. Ferdinand Nahimana et al., Case No. ICTR-99-52-A, Appeals Chamber Judgment (I.C.T.R. Nov. 28, 2007), para. 706 [hereinafter *Nahimana* Appeals Judgment].

²²⁹ *Nahimana* Appeals Judgment at para. 709 (“in some circumstances, the fact that a speech leads to acts of genocide could be an indication that in that particular context the speech was understood to be an incitement to commit genocide and that this was indeed the intent of the author of the speech. The Appeals Chamber, notes, however, that this cannot be the only evidence adduced to conclude that the purpose of the speech (and of its author) was to incite the commission of genocide”).

²³⁰ *Akayesu* Trial Judgment at para. 556.

²³¹ *Id.* at para. 557.

²³² *Id.* See also *Nahimana* Appeals Judgment at para. 692 (holding that the speech must be “a direct appeal to commit an act,” and that general statements of hatred do not suffice).

²³³ *Nahimana* Appeals Judgment at para. 696.

²³⁴ *Id.* at para. 702-03.

²³⁵ *Akayesu* Trial Judgment at para. 557.

²³⁶ *Id.*; *Nahimana* Appeals Judgment at para. 701.

“the persons for whom the message was intended immediately grasped the implication thereof.”²³⁷ For example, the use of metaphors can constitute direct incitement to genocide. In *Nyiramasuhuko*, the ICTR held that the defendant’s exhortation to the audience to “continue their work” and “sweep the dirt outside” constituted incitement to genocide because “the audience understood the words of the accused . . . to mean they needed to kill Tutsis.”²³⁸

71. It is not necessary under the Genocide Convention for the speech to actually induce the audience to conduct genocide. Rather, Article III criminalizes the speech act, irrespective of whether it achieves the desired result. International criminal tribunals have confirmed that it is the speech act *per se* that is criminalized.²³⁹ The International Military Tribunal in Nuremberg convicted the publisher of a weekly antisemitic newspaper for crimes against humanity on the basis of articles that supported and called for the annihilation of Jews, finding that these articles in themselves evidenced “incitement to murder and extermination.”²⁴⁰ Similarly, the ICTR Appeals Chamber in *Nahimana* confirmed that “it is not necessary to show that direct and public incitement to commit genocide was followed by actual consequences.”²⁴¹ Thus, even if the genocide would have occurred without the speech, the speaker could still be guilty of incitement.²⁴² Such characterization of incitement as an “inchoate”²⁴³ crime arises from the fact that “genocide clearly falls within the category of crimes so serious that [incitement] must be punished as such, even where such incitement failed to produce the result.”²⁴⁴
72. The *travaux préparatoires* (drafting records) of the Genocide Convention, constituting a subsidiary source of treaty interpretation,²⁴⁵ further support that incitement is punishable regardless of whether genocide is carried out. Rejecting an unsuccessful U.S. proposal to remove Article III(c) from the Convention, France and Haiti identified that incitement should be punishable even if unsuccessful²⁴⁶ and “even if . . . the crime was not actually committed.”²⁴⁷ Uruguay noted that a clause specifying that unsuccessful incitement was punishable would have been “superfluous,”²⁴⁸ indicating that the wording of Article III(c)

²³⁷ *Akayesu* Trial Judgment at para. 558.

²³⁸ Prosecutor v. Nyiramasuhuko, Case No. ICTR-98-42-A, Appeals Judgment (I.C.T.R. Dec. 14, 2015), paras. 2335–2336.

²³⁹ *Nahimana* Appeals Judgment, ICTR-99-52-A, para. 766. See also *Nahimana* Trial Judgment at para. 1007 (surveying jurisprudence on incitement in other human rights contexts).

²⁴⁰ International Military Tribunal (Nuremberg), Judgment, 502 (Oct. 1, 1946).

²⁴¹ *Nahimana* Appeals Judgment at para. 766.

²⁴² *Id.*

²⁴³ *Id.* at para. 678.

²⁴⁴ *Akayesu* Trial Judgment at para. 562.

²⁴⁵ See Vienna Convention on the Law of Treaties Art. 31, 22 May 1969, 1155 U.N.T.S.

²⁴⁶ Continuation of the consideration of the draft convention on genocide [E/794]: Report of the Economic and Social Council [A/633], U.N. GAOR, 6th Comm., 3rd Sess., Part I, 84th Mtg, p. 216, U.N. Doc. A/C.6/SR.84 (Oct. 26, 1948), <https://digitallibrary.un.org/record/604636?v=pdf> [hereinafter Genocide Convention Travaux, 84th Meeting].

²⁴⁷ *Id.* at p. 217.

²⁴⁸ Continuation of the consideration of the draft convention on genocide [E/794]: Report of the Economic and Social Council [A/633], U.N. GAOR, 6th Comm., 3rd Sess., Part I, 85th Mtg, p. 222, U.N. Doc. A/C.6/SR.85 (Oct. 27, 1948), <https://digitallibrary.un.org/record/604637?ln=en&v=pdf>. [hereinafter Genocide Convention Travaux, 85th Meeting].

is sufficiently clear. The *travaux* also emphasize that the object and purpose of this provision is to curtail the wider societal dissemination of genocidal ideas and propaganda. Poland emphasized, “Incitement to genocide was one of those typical cases in which the law should intervene at a very early stage.”²⁴⁹ Poland highlighted that the object of the Convention was not just to punish genocide, but to prevent it.²⁵⁰ These statements by the negotiating States reinforce the fact that a State is liable for incitement to genocide even if it does not successfully induce others to commit genocide.

2.c. Duty to prevent and punish direct and public incitement

73. Article IV of the Genocide Convention obliges States to punish individuals who commit “any of the other acts enumerated in Article III . . . whether they are constitutionally responsible rulers, public officials or private individuals.”²⁵¹ The requirement to prevent incitement also inheres in the Article I obligation to prevent and punish genocide.²⁵²
74. During negotiations surrounding incitement, several States parties noted the aim of preventing the spread of genocidal ideas. Venezuela emphasized that States needed to “punish incitement to commit genocide, in view of the fact that that crime was usually the result of hatred instilled in the masses by inciters,” and in light of the Convention’s purpose of preventing genocide.²⁵³ Yugoslavia noted that criminalizing and preventing incitement was the “first step” in preventing genocide, as genocide originates from “the preparation and mobilization of the masses, by means of theories disseminated through propaganda, by the circles who had financed that propaganda.”²⁵⁴ Poland envisioned that the prohibition of incitement should lead to the regulation of the press, because “freedom must not be so great as to permit the Press to engage in incitement to genocide.”²⁵⁵ The *travaux préparatoires*, therefore, demonstrate that the States parties intended the prohibition of incitement to also regulate private, non-State actors.
75. It follows that States must enact regulations that prevent non-State actors from committing direct and public incitement of genocide. Moreover, given that the aim of Article III of the Genocide Convention (as demonstrated by the *travaux*) is to effectively curb the spread of genocidal propaganda, the provision also demands effective enforcement of those regulations. The failure of a State to enact or enforce measures to stop the spread of genocidal ideas constitutes a violation of the prohibition on incitement to genocide.

²⁴⁹ Genocide Convention Travaux, 84th Meeting at p. 215.

²⁵⁰ Genocide Convention Travaux, 84th Meeting at p. 215. *See also* Genocide Convention Travaux, 85th Meeting at p. 223 (Egypt), p. 227 (Soviet Union).

²⁵¹ Genocide Convention, art. IV.

²⁵² ILC Draft Articles on Crimes Against Humanity, art. 4, cmt. 9, citing Hum. Rts. Council, Res. 28/34, para. 2 (Apr. 7, 2015).

²⁵³ Genocide Convention Travaux, 84th Meeting at p. 208.

²⁵⁴ *Id.* at p. 216.

²⁵⁵ *Id.* at p. 215.

PART 4: FACTS AND ANALYSIS

3. Evidence that Israel is committing genocide in Gaza under Article II of the Genocide Convention

76. Using the framework of the Genocide Convention and its corresponding jurisprudence, this section analyzes Israel's actions following October 7, 2023, to determine whether they constitute the crime of genocide. The facts below show that Israel has killed Palestinian civilians in Gaza indiscriminately and *en masse*, caused serious bodily and mental harm to Palestinians, and inflicted on Palestinians in Gaza conditions of life calculated to bring about their physical destruction in whole or in part. These conditions include deprivation of food, water, and medical services; forcible displacement of the majority of Palestinians in Gaza; and destruction of civilian infrastructure, the education system, the healthcare system, and cultural and religious heritage sites. Concomitantly, in both its actions and in the statements of its leaders, the Israeli government has demonstrated a clear intent to destroy, in whole or in part, the Palestinians in Gaza. High Israeli Government officials with decision-making power have expressly signaled their intention to cause massive destruction and have employed dehumanizing and derogatory rhetoric toward Palestinians in Gaza. Meanwhile, genocidal intent can likewise be inferred from the conduct of the Israeli military in Gaza, as summarized above and elaborated on below.

3.a. Israel's genocidal acts in Gaza

3.a.i. Israel has killed Palestinians in Gaza

77. Between October 7, 2023, and May 1, 2024, Israeli military operations in Gaza have killed at least 34,568 Palestinians in Gaza.²⁵⁶ Approximately 14,500—over 40 percent—of the Palestinians killed in Gaza have been children.²⁵⁷ This does not include the thousands of Palestinians reported missing, many of whom are presumably buried dead or alive under the rubble of destroyed buildings.²⁵⁸ Neither do these numbers account for the incapacitation of local public health and safety authorities in recovering and calculating all of the dead, and thus almost surely represent an undercount, according to experts.²⁵⁹ As of March 14, 2024, “[m]ore children [have been] killed in Gaza in four months than in four

²⁵⁶ *Hostilities in the Gaza Strip and Israel | Flash Update #160*, OCHA (May 1, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-160>.

²⁵⁷ *Onslaught of Violence Against Women and Children in Gaza Unacceptable: UN Experts*, U.N. NEWS (May 6, 2024), <https://www.ohchr.org/en/press-releases/2024/05/onslaught-violence-against-women-and-children-gaza-unacceptable-un-experts>. See also *Over 2% of Gaza's Child Population Killed or Injured in Six Months of War*, SAVE THE CHILDREN (Apr. 4, 2024), <https://www.savethechildren.net/news/over-2-gaza-s-child-population-killed-or-injured-six-months-war>.

²⁵⁸ *Onslaught of Violence Against Women and Children in Gaza Unacceptable: UN Experts*, U.N. NEWS (May 6, 2024), <https://www.ohchr.org/en/press-releases/2024/05/onslaught-violence-against-women-and-children-gaza-unacceptable-un-experts>.

²⁵⁹ See, e.g., Victoria Kim, *Death Toll in Gaza Passes 30,000*, N.Y. TIMES (Feb. 29, 2024), <https://www.nytimes.com/2024/02/29/world/middleeast/gaza-death-toll-war.html>.

years of war globally.”²⁶⁰ UNICEF has described Gaza as a “graveyard for . . . children.”²⁶¹ On December 8, 2023, the head of Palestinian Civil Defense in northern Gaza stated that “due to lack of fuel, rescuers have been left with just one operational vehicle” to retrieve bodies from under the rubble, leaving Palestinians in Gaza without the proper equipment to search for loved ones buried under the destruction.²⁶² The extent of death is such that people have been buried in mass graves,²⁶³ and “[c]orpses [are] left lying in the road.”²⁶⁴ Babies have died in incubators because Israel cut off the fuel needed to run facilities at Al-Shifa Hospital.²⁶⁵ Israel’s policy of forced starvation—through blocking the entry of necessary humanitarian aid—has also killed Palestinians in Gaza (described further in Section 3.a.iii.1).²⁶⁶

78. Israel has killed Palestinians in Gaza wherever they are—in their homes, hospitals, “safe zones,” refugee camps, UN schools, and elsewhere. Israel has destroyed entire buildings filled with civilians. On October 31, 2023, for example, Israel struck a residential building, killing at least 106 civilians, 54 of whom were children in an attack that Human Rights Watch called an “apparent war crime.”²⁶⁷ Many Palestinians have been killed by airstrikes on UNRWA schools (which enjoy inviolability under international law²⁶⁸) sheltering

²⁶⁰ Clarissa-Jan Lim, *More Children Killed in Gaza in Four Months than in Four Years of War Globally: Report*, MSNBC (Mar. 14, 2024), <https://www.msnbc.com/top-stories/latest/death-toll-children-gaza-israel-rcna143269>.

²⁶¹ Press Release, UNICEF, Gaza Has Become a Graveyard for Thousands of Children (Oct. 31, 2023), <https://www.unicef.org/press-releases/gaza-has-become-graveyard-thousands-children>. See also Press Release, UNICEF, Children Disproportionately Wearing the Scars of the War in Gaza - Geneva Palais Briefing Note (Apr. 16, 2024), <https://www.unicef.org/press-releases/children-disproportionately-wearing-scars-war-gaza-geneva-palais-briefing-note>.

²⁶² *Hostilities in the Gaza Strip and Israel | Flash Update #65*, OCHA (Dec. 10, 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-65>.

²⁶³ Press Release, EURO-MED MONITOR, Israel Demolishes Gaza Cemeteries, Confiscates Dead Bodies of Palestinians (Dec. 14, 2023), <https://reliefweb.int/report/occupied-palestinian-territory/israel-demolishes-gaza-cemeteries-confiscates-dead-bodies-palestinians-enar>.

²⁶⁴ OCHA, Briefing to the UN Security Council on the humanitarian situation in Israel and the Occupied Palestinian Territory by Mr. Martin Griffiths (Jan. 12, 2024), <https://reliefweb.int/report/occupied-palestinian-territory/mr-martin-griffiths-under-secretary-general-humanitarian-affairs-and-emergency-relief-coordinator-briefing-un-security-council-humanitarian-situation-israel-and-occupied-palestinian-territory-12-january-2024-enhe>.

²⁶⁵ Hamdi Alkhshali et al., *Doctors Race to Save Newborns as Israel Says It’s Battling Hamas Around Gaza’s Largest Hospital*, CNN (Nov. 14, 2023), <https://www.cnn.com/2023/11/13/middleeast/gaza-babies-incubators-al-shifa-hospital-israel-intl-hnk/index.html>.

²⁶⁶ *Gaza: Israel’s Imposed Starvation Deadly for Children*, HUM. RTS. WATCH (Apr. 9, 2024), <https://www.hrw.org/news/2024/04/09/gaza-israels-imposed-starvation-deadly-children>; *Six Children Die of Malnutrition in Gaza Hospitals: Health Ministry*, AL-JAZEERA (Feb. 28, 2024), <https://www.aljazeera.com/news/2024/2/28/children-die-of-malnutrition-in-gaza-hospitals-health-ministry> [hereinafter “Six Children Die”].

²⁶⁷ *Gaza: Israeli Strike Killing 106 Civilians an Apparent War Crime*, HUM. RTS. WATCH (Apr. 4, 2024), <https://www.hrw.org/news/2024/04/04/gaza-israeli-strike-killing-106-civilians-apparent-war-crime>.

²⁶⁸ See Official Statement, UNRWA, The Neutrality and Inviolability of UNRWA Installations Must be Respected at All Times (June 4, 2021), <https://www.unrwa.org/newsroom/official-statements/neutrality-and-inviolability-unrwa-installations-must-be-respected-all>; Official Statement, UNRWA, UNRWA Reiterates the Inviolability of its Installations Must be Respected at All Times (Aug. 11, 2021), <https://www.unrwa.org/newsroom/official-statements/unrwa-reiterates-inviolability-its-installations-must-be-respected-all>.

displaced families,²⁶⁹ hospitals, refugee camps, and other forms of civilian infrastructure, as detailed below in Section 3.a.iii. Also as detailed in Section 3.a.iii, Israel has bombed evacuation routes designated as “safe,” thereby killing Palestinians who followed Israeli evacuation orders. Israeli military forces have shot civilians in front of their families,²⁷⁰ shot civilians waving white flags,²⁷¹ and opened fire into crowds gathered around aid trucks desperately seeking food, leading to the death of at least 112 in one incident (see Section 3.b.ii.2).²⁷² Starting in December 2023, Israel intensified its airstrikes on Rafah, the supposed “safest” area in the south of the Gaza Strip.²⁷³ Approximately 1.2 million Palestinians, out of the 1.7 million internally displaced by Israel’s ongoing military campaign, are seeking refuge in Rafah.²⁷⁴ During just one night—the night of February 11, 2024, and the morning of February 12, 2024—at least 94 Palestinians were killed by Israeli airstrikes and shelling in Rafah.²⁷⁵

79. In the 200 days after October 7, 2023, Israel dropped an estimated 70,000 tons of explosives on the 2.17 million Palestinians in Gaza.²⁷⁶ Nearly half of the Israeli munitions used have been unguided munitions or “dumb bombs,” which are imprecise and pose a grave threat to civilians,²⁷⁷ particularly in areas such as Gaza, which is one of the most densely

²⁶⁹ ‘This Must Stop,’ UN Chief Says as Deaths, Displacement Ripple Across Gaza, U.N. NEWS (Nov. 19, 2023), <https://news.un.org/en/story/2023/11/1143762>.

²⁷⁰ Press Release, OHCHR, Unlawful killings in Gaza City (Dec. 20, 2023), <https://www.un.org/unispal/document/unlawful-killings-in-gaza-city-ohchr-press-release/>.

²⁷¹ Yaniv Kubovich, *Preliminary IDF Report: Hostages Killed by Soldiers Waved White Flag, One Yelled for Help in Hebrew*, HAARETZ (Dec. 16, 2023), <https://www.haaretz.com/israel-news/2023-12-16/ty-article/.premium/preliminary-idf-report-hostages-killed-by-soldiers-waved-white-flag-yelled-help-hebrew/0000018c-7283-db38-a9fc-fba363100000>; *Video of Gaza civilian shot and killed in group while waving white flag*, NBC NEWS (Jan. 24, 2024), <https://www.nbcnews.com/video/video-shows-gaza-civilian-shot-and-killed-in-group-waving-white-flag-202880581884>.

²⁷² Press Release, Al-Mezan, Al-Haq & The Palestinian Center for Human Rights, ‘Flour Massacre’: Impunity Persists as Israeli Forces Open Fire On Starving Palestinians Seeking Vital Aid (Feb. 29, 2024), <https://www.mezan.org/en/post/46391>.

²⁷³ *Israel/OPT: New Evidence of Unlawful Israeli Attacks in Gaza Causing Mass Civilian Casualties Amid Real Risk of Genocide*, AMNESTY INT’L (Feb. 12, 2024), <https://www.amnesty.org/en/latest/news/2024/02/israel-opt-new-evidence-of-unlawful-israeli-attacks-in-gaza-causing-mass-civilian-casualties-amid-real-risk-of-genocide/>.

²⁷⁴ *Gaza: Heatwave Brings New Misery and Disease Risk to Rafah*, U.N. NEWS (Apr. 25, 2024), <https://news.un.org/en/story/2024/04/1149011>. See also *Hostilities in the Gaza Strip and Israel – Reported Impact | Day 203*, OCHA (Apr. 26, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-203>.

²⁷⁵ Helen Regan & Abeer Salman, *Israeli Airstrikes Kill More than 100 in Rafah as International Alarm Mounts over Anticipated Ground Offensive*, CNN (Feb. 12, 2024), <https://www.cnn.com/2024/02/12/middleeast/israel-airstrikes-rafah-ground-offensive-looms-intl-hnk/index.html>.

²⁷⁶ *200 Days of Military Attack on Gaza: A Horrific Death Toll Amid Intl. Failure to Stop Israel’s Genocide of Palestinians*, EURO-MED MONITOR (Apr. 24, 2024), <https://euromedmonitor.org/en/article/6282/200-days-of-military-attack-on-gaza%3A-a-horrific-death-toll-amid-intl.-failure-to-stop-israel’s-genocide-of-palestinians>.

²⁷⁷ Natasha Bertrand & Katie Bo Lillis, *Exclusive: Nearly Half of the Israeli Munitions Dropped on Gaza are Imprecise ‘Dumb Bombs,’ US Intelligence Assessment Finds*, CNN (Dec. 14, 2023), <https://www.cnn.com/2023/12/13/politics/intelligence-assessment-dumb-bombs-israel-gaza/index.html>.

populated places in the world.²⁷⁸ Two thousand-pound “dumb bombs” and “bunker-busters” have regularly killed scores of Palestinians in single strikes.²⁷⁹ On October 10, Israeli military spokesperson Rear Admiral Daniel Hagari stated, “while balancing accuracy with the scope of damage, right now we’re focused on what causes maximum damage.”²⁸⁰

80. Israeli forces have killed Palestinians regardless of their protected status under international humanitarian law. As of April 15, 2024, 140 journalists and media workers have been killed in the course of Israel’s military operations in Gaza,²⁸¹ despite wearing marked jackets and helmets or traveling in marked press vehicles, which signal their protected status.²⁸² According to the Committee to Protect Journalists, Israel’s bombardment of Gaza has been the deadliest conflict for journalists ever recorded.²⁸³ As of April 11, 2024, Israeli military forces have killed at least 224 aid workers.²⁸⁴ Israeli forces have also killed 182 UNRWA staff in Gaza as of April 30,²⁸⁵ a number of fatal attacks on UN personnel that has been

²⁷⁸ *Gaza: Nowhere to go, as humanitarian crisis reaches ‘dangerous new low’*, U.N. NEWS (Oct. 13, 2023), <https://news.un.org/en/story/2023/10/1142282>.

²⁷⁹ *Israel/OPT: US-Made Munitions Killed 43 Civilians in Two Documented Israeli Air Strikes in Gaza— New Investigation*, AMNESTY INT’L (Dec. 5, 2023), <https://www.amnesty.org/en/latest/news/2023/12/israel-opt-us-made-munitions-killed-43-civilians-in-two-documented-israeli-air-strikes-in-gaza-new-investigation/>.

²⁸⁰ Bethan McKernan & Quique Kierzenbaum, *‘We’re Focused on Maximum Damage’: Ground Offensive into Gaza Seems Imminent*, THE GUARDIAN (Oct. 10, 2023), <https://www.theguardian.com/world/2023/oct/10/right-now-it-is-one-day-at-a-time-life-on-israels-frontline-with-gaza>.

²⁸¹ *Hostilities in the Gaza Strip and Israel | Flash Update #153*, OCHA (Apr. 15, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-153>.

²⁸² Press Release, OHCHR, *Gaza: UN Experts Condemn Killing and Silencing of Journalists* (Feb. 1, 2024), <https://www.ohchr.org/en/press-releases/2024/02/gaza-un-experts-condemn-killing-and-silencing-journalists>.

²⁸³ *Gaza War ‘Most Dangerous Ever’ for Journalists, Says Rights Group*, REUTERS (Dec. 21, 2023) <https://www.reuters.com/world/middle-east/gaza-war-most-dangerous-ever-journalists-says-rights-group-2023-12-21>.

²⁸⁴ Press Release, UN Security Council, *Press Statement on Humanitarian Workers and Threat of Famine in Gaza* (Apr. 11, 2024), <https://press.un.org/en/2024/sc15658.doc.htm>; *Gaza: ‘No Protection’ for Civilians, Aid Workers, Security Council Hears*, U.N. NEWS (Apr. 4, 2024), <https://news.un.org/en/story/2024/04/1148276>.

²⁸⁵ *UNRWA Situation Report #105 on the Situation in the Gaza Strip and the West Bank, including East Jerusalem*, UNRWA (Apr. 30, 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-105-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

“never seen in . . . history.”²⁸⁶ Doctors,²⁸⁷ Palestine Red Crescent Society staff,²⁸⁸ and hundreds of paramedics²⁸⁹ have been among those killed by Israeli forces.

81. In late April 2024, 283 bodies were recovered from a mass grave at Gaza’s Nasser Medical Complex in Khan Younis.²⁹⁰ According to a spokesperson for the UN High Commissioner for Human Rights, “among the deceased were allegedly older people, women, and wounded, while others were found with their hands . . . tied and stripped of their clothes,” adding that there could be “many more” Palestinian victims.²⁹¹ Two additional mass graves with 30 Palestinian bodies were found in the courtyard of Al-Shifa Hospital in Gaza City.²⁹²

3.a.ii. Israel has caused serious bodily or mental harm to Palestinians

82. Israel has injured over 77,765 Palestinians in Gaza since October 7, 2023.²⁹³ Many of the tens of thousands of Palestinians injured are unable to access medical care, as active targeting of healthcare facilities and fuel shortages caused by the Israeli siege have incapacitated the healthcare system in Gaza.²⁹⁴ Over 1,000 Palestinian children have had a

²⁸⁶ *Situation Report #75 on the Situation in the Gaza Strip and the West Bank, including East Jerusalem*, UNRWA (Feb. 10, 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-75-situation-gaza-strip-and-west-bank-including-east-jerusalem>; Antonio Guterres (@antonioguterres), X (Dec. 22, 2023, 8:01 PM), <https://x.com/antonioguterres/status/1738364044979896821?lang=en>.

²⁸⁷ *Hostilities in the Gaza Strip and Israel | Flash Update #46*, OCHA (Nov. 21, 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-46>.

²⁸⁸ *IFRC on Three Palestine Red Crescent members killed: ‘Unacceptable,’* INTERNATIONAL FEDERATION OF RED CROSS AND RED CRESCENT SOCIETIES [hereinafter IFRC] (Feb. 2, 2024), <https://www.ifrc.org/article/ifrc-three-palestine-red-crescent-members-killed-unacceptable>.

²⁸⁹ *Hostilities in the Gaza Strip and Israel | Flash Update #67*, OCHA (Dec. 12, 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-67>.

²⁹⁰ *Mass Graves in Gaza Show Victims’ Hands Were Tied, Says UN Rights Office*, U.N. NEWS (Apr. 23, 2024), <https://news.un.org/en/story/2024/04/1148876>. See also Liam Stack, Hiba Yazbek & Nick Cumming-Bruce, *U.N. Calls for Inquiry into Mass Graves at 2 Gaza Hospitals*, N.Y. TIMES (Apr. 23, 2024), <https://www.nytimes.com/2024/04/23/world/middleeast/gaza-mass-grave.html>; Ruth Michaelson, *UN Rights Chief ‘horrificed’ by reports of mass graves at two Gaza hospitals*, THE GUARDIAN (Apr. 23, 2024), <https://www.theguardian.com/world/2024/apr/23/un-rights-chief-horrified-by-reports-of-mass-graves-at-two-gaza-hospitals>.

²⁹¹ *Mass Graves in Gaza Show Victims’ Hands Were Tied, Says UN Rights Office*, U.N. NEWS (Apr. 23, 2024), <https://news.un.org/en/story/2024/04/1148876>.

²⁹² *Id.*

²⁹³ *Hostilities in the Gaza Strip and Israel | Flash Update #160*, OCHA (May 1, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-160>.

²⁹⁴ See *Lifesaving Medical Care Collapsing under Assault in Gaza: WHO*, U.N. NEWS (Feb. 16, 2024), <https://news.un.org/en/story/2024/02/1146632>; Press Release, OHCHR, Gaza: U.N. Expert Condemns ‘Unrelenting War’ on Health System amid Airstrikes on Hospitals and Health Workers (Dec. 7, 2023), <https://www.ohchr.org/en/press-releases/2023/12/gaza-un-expert-condemns-unrelenting-war-health-system-amid-airstrikes>.

limb or multiple limbs amputated.²⁹⁵ Many Palestinians have been severely burned.²⁹⁶ As discussed further in Section 3.a.iii, the lack of medical supplies in hospitals has meant that injured Palestinians have often had to endure painful, invasive procedures without anesthesia.²⁹⁷

83. Furthermore, the continued bombardment, as well as Israel's obstruction of the entry of adequate humanitarian aid into Gaza, has exacerbated mental health problems for Palestinians in Gaza. Children have been most acutely impacted, exhibiting post-traumatic stress disorder, anxiety, and severe depression, among other behavioral health issues.²⁹⁸ In October 2023, sixteen days into Israel's assault, a psychologist in Gaza stated that children had "started to develop serious trauma symptoms such as convulsions, bed wetting, fear, aggressive behavior, nervousness, and not leaving their parents' sides."²⁹⁹ Providers in Gaza were forced to develop a new acronym after October 7, "WCNSF," which stands for "Wounded Child, No Surviving Family," underscoring the severe bodily and mental harm that Israel has caused Palestinian children.³⁰⁰ UNICEF reported that "one million children in Gaza are traumatized by the war."³⁰¹ Children as young as five years old have expressed "they would prefer to die," according to the head of Médecins Sans Frontières (Doctors Without Borders, or MSF) in an address to the UN Security Council on February 22, 2024.³⁰² "Children who do survive this war will not only bear the visible wounds of traumatic injuries, but the invisible ones too. . . . There is a repeated displacement, constant fear and witnessing family members literally dismembered before their eyes."³⁰³ This most recent mass traumatization has exacerbated already dire mental health circumstances in Gaza, with studies indicating that huge segments of the population were suffering from

²⁹⁵ *UNICEF: Gaza Strip most dangerous place in the world for children*, EURONEWS (Feb. 12, 2023), <https://www.euronews.com/2023/12/02/unicef-gaza-strip-most-dangerous-place-in-the-world-for-children>.

²⁹⁶ *Gaza Strip: MSF Treating Patients for Severe Burns Following Airstrike*, MÉDECINS SANS FRONTIÈRES [hereinafter MSF] (Nov. 19, 2023), <https://www.doctorswithoutborders.org/latest/gaza-strip-msf-treating-patients-severe-burns-following-airstrike-0>.

²⁹⁷ *Hostilities in the Gaza Strip and Israel | Flash Update #32*, OCHA (Nov. 7, 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-32>.

²⁹⁸ *Gaza: "Profoundly Alarming" Mental Health and Medical Needs*, PROJECT HOPE (Jan. 5, 2024), <https://www.projecthope.org/gaza-profoundly-alarming-mental-health-and-medical-needs/>.

²⁹⁹ Harriet Sherwood, *Children in Gaza 'Developing Severe Trauma' After 16 Days of Bombing*, THE GUARDIAN (Oct. 22, 2023), <https://www.theguardian.com/world/2023/oct/22/children-in-gaza-developing-severe-trauma-after-16-days-of-bombing>.

³⁰⁰ See, e.g., *MSF Briefing on Gaza to the UN Security Council*, MSF (Feb. 22, 2024), <https://www.msf.org/msf-briefing-gaza-un-security-council>; *Children under Attack*, OCHA (Jan. 17, 2024), <https://www.unocha.org/news/gaza-children-under-attack>.

³⁰¹ Juan Carlos Sanz, *UNICEF Official in Palestine: 'There Are One Million Children in Gaza Traumatized by the War'*, EL PAÍS (Jan. 30, 2024), <https://english.elpais.com/international/2024-01-30/unicef-official-in-palestine-there-are-one-million-children-in-gaza-traumatized-by-the-war.html>.

³⁰² *MSF Briefing on Gaza to the UN Security Council*, MSF (Feb. 22, 2024), <https://www.msf.org/msf-briefing-gaza-un-security-council>.

³⁰³ *Id.*

symptoms consistent with post-traumatic stress disorder and suicidal ideation prior to October 7, 2023.³⁰⁴

84. Israeli forces have engaged in cruel, inhuman, and degrading treatment of Palestinians in Gaza that has directly caused serious bodily and mental harm. Video evidence shows Israeli forces rounding up hundreds of Palestinians in North Gaza—boys as young as twelve years old—blindfolding them, forcing them to strip to their underwear, photographing them, and abducting them to a detention camp where they have been subjected to dehumanizing conditions.³⁰⁵ The arbitrary arrest and subsequent ill-treatment of Palestinians are flagrant violations of international law.³⁰⁶ Testimonies of released detainees have detailed Israel’s cruelty toward and degradation of thousands of detained Palestinians, among them Palestinians from Gaza, including stripping them, beating them, holding them in cages, attacking them with dogs, and denying them food and bathroom access, among other cruel practices.³⁰⁷ Additionally, firsthand testimony to Euro-Med Human Rights Monitor indicates that Israeli soldiers have invited Israeli civilians to witness their torture and inhuman treatment of Palestinian detainees.³⁰⁸ Euro-Med Human Rights Monitor has also reported that Israeli soldiers have deliberately driven tanks over “dozens” of Palestinian civilians while they were alive.³⁰⁹ Many members of the Israeli military forces have themselves documented their cruel treatment of detainees and disseminated the photographs and videos on social media or the Israeli army’s Telegram channel “72 Virgins – Uncensored.”³¹⁰

³⁰⁴ Seventy percent of Gazans and 57 percent of West Bank residents surveyed reported symptoms consistent with post-traumatic stress disorder, with the prevalence higher for women and those who had been displaced. Alia Aghajanian & Arden Finn, *The Importance of Measuring Mental Health in Trauma-Exposed Populations: The Case of West Bank & Gaza*, WORLD BANK BLOGS (Mar. 24, 2022), <https://blogs.worldbank.org/arabvoices/the-importance-of-measuring-mental-health-in-trauma-exposed-populations-the-case-of-west-bank-gaza>. An estimated 38 percent of young people in the Gaza Strip have considered suicide at least once. *On the Brink: Gaza’s Youth Are Turning to Suicide Amid Growing Desperation*, ISLAMIC RELIEF WORLDWIDE (Nov. 29, 2020), <https://reliefweb.int/report/occupied-palestinian-territory/brink-gaza-s-youth-are-turning-suicide-amid-growing>.

³⁰⁵ Israel Debre & Wafaa Shurafa, *Hungry, Thirsty and Humiliated: Israel’s Mass Arrest Campaign Sows Fear in Northern Gaza*, AP NEWS (Dec. 14, 2023), <https://apnews.com/article/palestinians-detained-israel-hamas-gaza-war-0ecbc338e4024add059b87b38022086d>.

³⁰⁶ Press Release, OHCHR, OPT: Disturbing Reports from the North of Gaza of Mass Detentions, Ill-Treatment and Enforced Disappearances of Possibly Thousands of Palestinians (Dec. 16, 2023), <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>.

³⁰⁷ “New Guantanamo”: Euro-Med Monitor Calls for International Probe into Israel’s Torture and Murder of Gaza Detainees, EURO-MED MONITOR (Dec. 18, 2023), <https://reliefweb.int/report/occupied-palestinian-territory/new-guantanamo-euro-med-monitor-calls-international-probe-israels-torture-and-murder-gaza-detainees-enar>.

³⁰⁸ “They Brought Israeli Civilians to Watch Our Nude Torture”: IDF Torture of Palestinian Prisoners Is Turned into Entertainment for Israeli Viewers, EURO-MED MONITOR (Feb. 12, 2024), <https://euromedmonitor.org/en/article/6153/They-brought-Israeli-civilians-to-watch-our-nude-torture-IDF-torture-of-Palestinian-prisoners-is-turned-into-entertainment-for-Israeli-viewers>.

³⁰⁹ *Israeli Tanks Have Deliberately Run over Dozens of Palestinian Civilians Alive*, EURO-MED MONITOR (Mar. 4, 2024), <https://euromedmonitor.org/en/article/6202>.

³¹⁰ Yaniv Kubovich, *Israeli Army Admits Running Unauthorized Graphic Gaza Influence Op*, HAARETZ (Feb 4, 2024), <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>.

85. UN experts “expressed alarm over credible allegations of egregious human rights violations” committed by the Israeli military against Palestinian women and girls in Gaza, including “targeting and extrajudicial killing . . . in places where they sought refuge, or while fleeing,” arbitrary detention, inhuman and degrading treatment, and denial of basic needs, including menstrual pads.”³¹¹ In particular, female Palestinian detainees have reported having been subjected to multiple forms of sexual violence and harassment, including “being stripped naked and searched by male Israeli army officers,”³¹² threats of sexual violence and rape, and torture while in the custody of the Israeli military.³¹³ Some reported that their photos in “degrading circumstances” were taken and uploaded online by Israeli military personnel.³¹⁴

3.a.iii. Israel has deliberately inflicted on Palestinians in Gaza conditions of life calculated to bring about its physical destruction in whole or in part

86. The ICJ has recognized several categories of acts that qualify as Article II(c) violations, including “deprivation of food, medical care, shelter or clothing, as well as lack of hygiene, [and] systematic expulsion from homes.”³¹⁵ Similarly, international criminal tribunals have defined the deliberate infliction on a group of “conditions calculated to bring about its physical destruction, in whole or in part” to include “subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement”³¹⁶ as well as “withholding sufficient living accommodation for a reasonable period.”³¹⁷ Israel has committed all these acts in Gaza. Israeli actions falling within these categories are described in Sections 3.a.iii (1-6) of this report. Israel’s full destruction of Gaza’s education system (Section 3.a.iii.5) and cultural heritage (Section 3.a.iii.6) are further indications of Israel’s deliberate destruction of Palestinian life in Gaza.

3.a.iii.1. Israel has deprived Palestinians in Gaza of adequate food and water to survive

87. Israel has deprived Palestinians in Gaza of necessities for survival since October 7, 2023. The entire population of Gaza (about 2.17 million) “is facing high levels of acute food

³¹¹ Press Release, OHCHR, UN Experts Appalled by Reported Human Rights Violations against Palestinian Women and Girls (Feb. 19, 2024), <https://www.ohchr.org/en/press-releases/2024/02/israelopt-un-experts-appalled-reported-human-rights-violations-against>.

³¹² *Id.*

³¹³ *Id.*; *In Testimonies to Euro-Med Monitor, Women from Gaza Report Being Subjected to Sexual Violence, Torture by Israeli Forces*, EURO-MED MONITOR (Feb. 27, 2024), <https://euromedmonitor.org/en/article/6188/In-testimonies-to-Euro-Med-Monitor,-women-from-Gaza-report-being-subjected-to-sexual-violence,-torture-by-Israeli-forces>; Julia Frankel, ‘They Wanted to Humiliate Us.’ *Palestinian Women Detained by Israel Allege Abuse in Israeli Custody*, AP NEWS (Mar. 2, 2024), <https://apnews.com/article/israel-hamas-gaza-detainee-palestinian-deaths-hospitals-51d4727a1365b9e06198579c3eb856f8>.

³¹⁴ Press Release, OHCHR, UN Experts Appalled by Reported Human Rights Violations against Palestinian Women and Girls (Feb. 19, 2024), <https://www.ohchr.org/en/press-releases/2024/02/israelopt-un-experts-appalled-reported-human-rights-violations-against>.

³¹⁵ *Croat. v. Serb.* at para. 161.

³¹⁶ *Akayesu* Trial Judgment at para. 506.

³¹⁷ *Kayishema* Trial Judgment at para. 116.

insecurity,”³¹⁸ with about 1.1 million Palestinians experiencing “catastrophic hunger” due to Israel’s siege.³¹⁹ Director of Coordination at the UN Office for the Coordination of Humanitarian Affairs Ramesh Rajasingham warned in February that over half a million Palestinians—one quarter of the population of Gaza—are “one step away from famine.”³²⁰ In some areas, famine has already taken hold, as confirmed by the heads of the U.S. Agency for International Development (USAID) and the World Food Programme (WFP).³²¹ The UN Special Rapporteur on the Right to Food has warned, “[e]very single person in Gaza is hungry right now. . . . We’ve never seen an entire population, 2.2 million people, made to go hungry this quickly and this completely.”³²² Medical Aid for Palestinians CEO Melanie Ward has stated, “[t]his is the fastest decline in a population’s nutrition status ever recorded. That means children are being starved at the fastest rate the world has ever seen.”³²³ As conditions worsen, at least 28 children have reportedly died of starvation as of April 2024.³²⁴

88. The UN High Commissioner of Human Rights stated that “the extent of Israel’s continued restrictions on the entry of aid into Gaza, together with the manner in which it continues to conduct hostilities, may amount to the use of starvation as a method of war, which is a war

³¹⁸ INTEGRATED FOOD SECURITY PHASE CLASSIFICATION, GAZA STRIP: ACUTE FOOD INSECURITY SITUATION FOR 15 FEBRUARY - 15 MARCH 2024 AND PROJECTION FOR 16 MARCH - 15 JULY 2024 (Mar. 18, 2024), <https://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1156872/?iso3=PSE>.

³¹⁹ Elizabeth Bryant, *Hunger in Gaza: Famine Findings a ‘Dark Mark’ on the World, Says WFP Palestine Country Director*, WFP (Mar. 18, 2024), <https://www.wfp.org/stories/hunger-gaza-famine-findings-dark-mark-world-says-wfp-palestine-country-director>. See also *Emergency: State of Palestine*, WFP, <https://www.wfp.org/emergencies/palestine-emergency> (last visited May 1, 2024); INSECURITY INSIGHT, FLASH ANALYSIS REPORT: OVER FIVE MONTHS OF ATTACKS ON FOOD SECURITY IN GAZA (Mar. 2024), <https://insecurityinsight.org/wp-content/uploads/2024/03/Flash-Analysis-Over-Five-Months-of-Attacks-on-Food-Security-in-Gaza.pdf>; *Palestine*, WFP, <https://www.wfp.org/countries/palestine> (last visited Apr. 30, 2024).

³²⁰ Ramesh Rajasingham, Director of OCHA Coordination Division, Updating the Security Council on Food Security Risks in Gaza, OCHA (Feb. 27, 2024), <https://www.ochaopt.org/content/mr-ramesh-rajasingham-updating-security-council-food-security-risks-gaza>.

³²¹ Emma Graham-Harrison & Julian Borger, *Aid ‘Still Not Reaching Gaza’, as Top US Official Warns Famine Has Started*, THE GUARDIAN (Apr. 12, 2024), <https://www.theguardian.com/world/2024/apr/11/aid-still-not-reaching-gaza-as-top-us-official-warns-famine-has-started>; Kyla Guilfoil, *World Food Programme Director Cindy McCain: Northern Gaza Is in a ‘Full-Blown’ Famine*, NBC NEWS (May 3, 2024), <https://www.nbcnews.com/politics/politics-news/world-food-programme-director-cindy-mccain-gaza-full-blown-famine-rcna150644>.

³²² Democracy Now! (@democracynow), X (Feb. 29, 2024, 8:50 AM), <https://x.com/democracynow/status/1763200098039709780>.

³²³ Medical Aid for Palestinians (@MedicalAidPal), X (Feb. 29, 2024, 3:59 AM), <https://x.com/MedicalAidPal/status/1763172220900151317>; see also *Hostilities in the Gaza Strip and Israel | Flash Update #123*, OCHA (Feb. 21, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-123> (noting that food insecurity situation is “. . . a decline in a population’s nutritional status that is unprecedented globally in three months”).

³²⁴ *Gaza: Israel’s Imposed Starvation Deadly for Children*, HUM. RTS. WATCH (Apr. 9, 2024), <https://www.hrw.org/news/2024/04/09/gaza-israels-imposed-starvation-deadly-children>. See also *Acute Malnutrition Has Doubled in One Month in the North of Gaza Strip: UNICEF*, UNICEF (Mar. 15, 2024), <https://www.unicef.org/press-releases/acute-malnutrition-has-doubled-one-month-north-gaza-strip-unicef>.

crime.”³²⁵ The WHO called Israel’s siege “a cruel campaign” directed “against the whole population of Gaza,”³²⁶ and Human Rights Watch stated that Israel is “using starvation as a method of warfare.”³²⁷ In March 2023, the European Union’s High Representative for Foreign Affairs and Security Policy Josep Borrell Fontelles, and Commissioner for Crisis Management Janez Lenarčič, issued a joint statement warning that “[h]unger cannot be used as a weapon of war. What we are seeing is not a natural hazard but a manmade disaster, and it is our moral duty to stop it.”³²⁸

89. On October 9, 2023, Israel intensified the 16-year blockade on Gaza to a total siege, prohibiting the entry of food, water, and fuel, and disconnecting electricity.³²⁹ Israeli authorities cut off Gaza’s electricity on October 11, 2023, and Palestinians in Gaza have since lived under a blackout, with Gaza’s only solar power plant having been depleted of fuel.³³⁰
90. Humanitarian relief in Gaza has been limited and gravely inadequate. On October 15, 2023, Israel resumed the supply of water to some areas in South Gaza and allowed limited humanitarian aid in through the Rafah border crossing on October 21, 2023.³³¹ However, aid access to the north has been “largely severed”—not including the brief pause which allowed some flour and biscuits to the population.³³² The Palestinian Red Crescent Society estimated that merely 9,800 humanitarian aid trucks were permitted to enter Gaza between October 21, 2023 and February 1, 2024, averaging 94.5 trucks per day;³³³ in April 2024,

³²⁵ Press Release, OHCHR, Comment by UN High Commissioner for Human Rights Volker Türk on the Risk of Famine in Gaza (Mar. 19, 2024), <https://www.ohchr.org/en/statements-and-speeches/2024/03/comment-un-high-commissioner-human-rights-volker-turk-risk-famine>.

³²⁶ Press Briefing, Statement of Christian Lindmeier (World Health Organization spokesperson), Briefing, U.N. WEB TV (Dec. 8, 2023), <https://webtv.un.org/en/asset/k1e/k1eez0ym7c>.

³²⁷ *Israel: Starvation Used as Weapon of War in Gaza*, HUM. RTS. WATCH (Dec. 18, 2023), <https://www.hrw.org/news/2023/12/18/israelstarvation-used-weapon-war-gaza>. See also *Gaza: Israel’s Imposed Starvation Deadly for Children*, HUM. RTS. WATCH (Apr. 9, 2024), <https://www.hrw.org/news/2024/04/09/gaza-israels-imposed-starvation-deadly-children>.

³²⁸ Statement by High Representative Josep Borrell and Commissioner for Crisis Management Janez Lenarčič on Famine in Gaza, *European Commission* (Mar. 18, 2024), https://civil-protection-humanitarian-aid.ec.europa.eu/news-stories/news/statement-high-representative-josep-borrell-and-commissioner-crisis-management-janez-lenaric-famine-2024-03-18_en.

³²⁹ *Israeli Defense Minister Orders ‘Complete Siege’ on Gaza*, AL-JAZEERA (Oct. 9, 2023), <https://www.aljazeera.com/program/newsfeed/2023/10/9/israeli-defence-minister-orders-complete-siege-on-gaza>.

³³⁰ *Hostilities in the Gaza Strip and Israel | Flash Update #104*, OCHA (Jan. 28, 2024), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-104>.

³³¹ *Israel: Starvation Used as Weapon of War in Gaza*, HUM. RTS. WATCH (Dec. 18, 2023), <https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza>.

³³² *Id.*

³³³ PRCS (@PalestineRCS), X (Feb. 4, 2024, 3:22 PM), <https://x.com/PalestineRCS/status/1754239103996969299>.

the average daily number of trucks entering Gaza was 190 trucks, which falls far below the minimum UN humanitarian target of 500 aid trucks per day.³³⁴

91. Despite coordinating all movements with Israel, UNRWA humanitarian aid trucks have been damaged by Israeli attacks.³³⁵ As the Secretary-General commented:

Many people are measuring the effectiveness of the humanitarian operation in Gaza based on the number of trucks. . . . This is a mistake. The real problem is that the way Israel is conducting this offensive is creating massive obstacles to the distribution of humanitarian aid inside Gaza.³³⁶

92. On April 1, 2024, the Israeli military shelled three cars that belonged to World Central Kitchen (WCK), a humanitarian organization providing food aid within Gaza. The attack killed seven aid workers.³³⁷ The vehicles, struck within a mile and a half of each other, bore the distinctive WCK logo on their roofs.³³⁸ A former Israeli artillery officer suggested in an interview with the Washington Post that the vehicles were struck with a missile that was “very accurate with significant penetrating power,” indicating that the strikes were targeted.³³⁹ The Israeli military attacked the convoy despite “coordinating movements” with WCK.³⁴⁰ Following the strike, WCK suspended its Gaza operations,³⁴¹ and prompted vessels delivering seaborne aid from Cyprus to turn back.³⁴² The American Near East Refugee Aid (ANERA), another humanitarian aid organization and WCK partner providing food, water, and medicine—including 150,000 meals per day—in Gaza, halted its Gaza operations after Israel’s strike on the WCK vehicles, concluding “delivering aid

³³⁴ *Situation Report #105 on the Situation in the Gaza Strip and the West Bank, Including East Jerusalem*, UNRWA (Apr. 30, 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-105-situation-gaza-strip-and-west-bank-including-east-jerusalem>. See also *Situation Report #104 on the Situation in the Gaza Strip and the West Bank, Including East Jerusalem*, UNRWA (Apr. 26, 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-104-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

³³⁵ Philippe Lazzarini (UNRWA Comm’r General) (@UNLazzarini), X (Feb. 5, 2024, 9:24 AM), <https://x.com/UNLazzarini/status/1754511426406744518>.

³³⁶ *Remarks to the Media by the Secretary-General*, OCHA (Dec. 22, 2023), <https://www.ochaopt.org/content/remarks-media-secretary-general>.

³³⁷ *7 WCK Team Members Killed in Gaza*, WORLD CENTRAL KITCHEN (Apr. 2, 2024), <https://wck.org/news/gaza-team-update>.

³³⁸ Steve Hendrix, Imogen Piper, Meg Kelly & Miriam Berger, *How Israeli strikes on a World Central Kitchen Convoy in Gaza Unfolded*, WASH. POST (Apr. 2, 2024), <https://www.washingtonpost.com/world/2024/04/02/israel-strike-wck-humanitarian-convoy/>.

³³⁹ *Id.*

³⁴⁰ ³⁴⁰ *7 WCK Team Members Killed in Gaza*, WORLD CENTRAL KITCHEN (Apr. 2, 2024), <https://wck.org/news/gaza-team-update>.

³⁴¹ Wafaa Shurafa & Samy Magdy, *World Central Kitchen halts Gaza operations after Israeli strike kills 7 aid workers*, PBS NEWS HOUR (Apr. 2, 2024), <https://www.pbs.org/newshour/world/world-central-kitchen-halts-gaza-operations-after-israeli-strike-kills-7-aid-workers>.

³⁴² Michele Kambas, *Gaza Sea Corridor Aid Returns to Cyprus After Israel kills NGO workers*, REUTERS (Apr. 2, 2024), <https://www.reuters.com/world/cyprus-president-says-cyprus-gaza-corridor-will-continue-operate-2024-04-02/>.

safely is no longer feasible.”³⁴³ ANERA resumed operations a week later,³⁴⁴ and WCK announced resuming operations on April 28.³⁴⁵ This was not Israel’s first strike on different elements of the aid distribution system. On March 13, 2024, an Israeli airstrike damaged an aid distribution center in Rafah, one of the few UNRWA aid distribution centers remaining in Gaza.³⁴⁶ UNRWA Commissioner-General Phillippe Lazzarini noted that the Israeli authorities were informed of the coordinates of the center the day before the strike.³⁴⁷

93. Since the ICJ’s ruling on provisional measures, Israel has reduced the access of humanitarian aid trucks even further: Israel allowed 2,784 trucks into Gaza in the month following the ruling—44 percent less than the preceding month.³⁴⁸ An Oxfam report characterized Israel’s behavior as “actively hindering” the provision of humanitarian aid.³⁴⁹
94. The Israeli policy of continuously blocking fuel entry into Gaza has exacerbated dire food and water shortages.³⁵⁰ The lack of fuel has caused the shutdown of bakeries, water desalination plants, wells, hospitals, and other key facilities necessary for survival.³⁵¹ By November 7, 2023, no bakery in North Gaza was operational due to a lack of fuel, water, and flour, as well as structural damage from shelling.³⁵² It was not until April 2024 that four bakeries resumed operations in North Gaza for the first time in 170 days.³⁵³ The fuel and water shortages have had a devastating impact on agriculture, as livestock have died from a shortage of fodder and water, and fields have become barren due to the lack of fuel

³⁴³ *Anera is Pausing Gaza Operations Amid Rising Threats and Attack on WCK*, ANERA (Apr. 2, 2024), <https://www.anera.org/blog/anera-is-pausing-gaza-operations-amid-rising-threats-and-attack-on-wck/>.

³⁴⁴ Sean Carroll, *Statement from ANERA’s President on Resuming Operations in Gaza*, ANERA (Apr. 11, 2024), <https://www.anera.org/blog/anera-president-statement-on-resuming-gaza-operations/>.

³⁴⁵ *World Central Kitchen Resuming Gaza Operations*, WORLD CENTRAL KITCHEN (Apr. 28, 2024), <https://wck.org/news/chefs-for-gaza>.

³⁴⁶ *Hostilities in the Gaza Strip and Israel | Flash Update #139*, OCHA (Mar. 14, 2024), <http://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-139>.

³⁴⁷ *Id.*

³⁴⁸ Press Release, Oxfam, *Israel Government Continues to Block Aid Response Despite ICJ Genocide Court Ruling* (Mar. 17, 2024), <https://www.oxfam.org/en/press-releases/israel-government-continues-block-aid-response-despite-icj-genocide-court-ruling>.

³⁴⁹ *Id.*

³⁵⁰ *Hostilities in the Gaza Strip and Israel - reported impact | Day 208*, OCHA (May 1, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-208>.

³⁵¹ *Hostilities in the Gaza Strip and Israel | Flash Update #40*, OCHA (Nov. 15, 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-40-enarhe>; *Gaza: Lack of Fuel Threatening to Shut Down Entire Humanitarian Operation*, U.N. NEWS (Nov. 16, 2023), <https://news.un.org/en/story/2023/11/1143672>.

³⁵² *Hostilities in the Gaza Strip and Israel | Flash Update #39*, OCHA (Nov. 14, 2023), <http://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-39>. See also *Aid Brings a Gaza Bakery Back to Life*, REUTERS (Apr. 16, 2024), <https://www.reuters.com/world/middle-east/aid-brings-gaza-bakery-back-life-2024-04-15/>.

³⁵³ *WFP Palestine Emergency Response External Situation Report #18*, WFP (Apr. 24, 2024), <https://reliefweb.int/report/occupied-palestinian-territory/wfp-palestine-emergency-response-external-situation-report-18-23-april-2024>.

to pump irrigation water.³⁵⁴ Between November 24, 2023, and April 21, 2024, Israel allowed 12,340 tons of cooking gas into Gaza, with an average of approximately 82 tons per day.³⁵⁵ This falls woefully short of the necessary amount to maintain subsistence and is 68 percent lower than the daily average between January and September 2023.³⁵⁶ The impact of the fuel shortages is especially serious in North Gaza, where “families have been forced to rely on expensive and unsafe alternatives, such as burning firewood, charcoal, plastic and chemicals,” leading to serious risks of respiratory diseases.³⁵⁷

95. The impact of the siege on Palestinians has been disastrous. The World Food Program declared in March 2024 that Palestinians in Gaza were “starving to death,” and that half of Gaza’s population was struggling with “catastrophic hunger,” leading to the highest levels of hunger ever registered by the WFP’s Integrate Food Security Phase Classification (IPC) system.³⁵⁸ According to UNICEF, 1 in 3 children under two in northern Gaza suffer from acute malnutrition.³⁵⁹ The only water desalination plant in North Gaza is not functional.³⁶⁰ According to the UN Humanitarian Coordinator, the acute shortage of clean and safe water and the disruption of sanitation systems are causing waterborne diseases and are leading to dire disease.³⁶¹ MSF reported in February 2024 that only about 0.63 liters of clean water is available per person per day to Palestinians in Gaza,³⁶² falling far short of the WFP’s “survival threshold” of three liters.³⁶³

³⁵⁴ *Hostilities in the Gaza Strip and Israel | Flash Update #51*, OCHA (Nov. 26, 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-51>.

³⁵⁵ *Hostilities in the Gaza Strip and Israel | Flash Update #156*, OCHA (Apr. 22, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-156>.

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Famine Imminent in Northern Gaza, New Report Warns*, WFP (Mar. 18, 2024), <https://www.wfp.org/news/famine-imminent-northern-gaza-new-report-warns>.

³⁵⁹ Press Release, UNICEF, *Acute Malnutrition Has Doubled in One Month in the North of Gaza Strip* (Mar. 15, 2024), <https://www.unicef.org/sop/press-releases/acute-malnutrition-has-doubled-one-month-north-gaza-strip-unicef>.

³⁶⁰ *Hostilities in the Gaza Strip and Israel | Flash Update #66*, OCHA (Dec. 11, 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-66>.

³⁶¹ *UN Says Waterborne Illnesses Spread in Gaza Due to Heat, Unsafe water*, REUTERS (Apr. 12, 2024), <https://www.reuters.com/world/middle-east/un-says-waterborne-illnesses-spread-gaza-due-heat-unsafe-water-2024-04-12/>.

³⁶² *Water: A Resource More Precious Each Day in Gaza*, MSF (Feb. 8, 2024), <https://www.doctorswithoutborders.org/latest/water-resource-more-precious-each-day-gaza>.

³⁶³ Press Release, UNICEF, *‘Barely a Drop to Drink’: Children in the Gaza Strip Do Not Access 90 Per Cent of their Normal Water Use* (Dec. 20, 2023), <https://www.unicef.org/press-releases/barely-drop-drink-children-gaza-strip-do-not-access-90-cent-their-normal-water-use>.

3.a.iii.2. Israel has forcibly displaced the majority of Palestinians in Gaza

96. As of April 21, 2024, 1.7 million people, or 75 percent of the population, have been displaced across Gaza.³⁶⁴ This includes many families displaced multiple times, as they are forced to repeatedly relocate in search of safety.³⁶⁵
97. Since October 13, 2023, Israel has issued numerous evacuation orders demanding that Palestinians abandon their homes and evacuate to other parts of Gaza. An October 13, 2023, evacuation order targeted 1.1 million Palestinians residing in North Gaza, ordering their relocation to southern Gaza and requiring that they complete the evacuation within 24 hours.³⁶⁶ The International Committee of the Red Cross called “the evacuation orders, coupled with the complete siege,” incompatible with international humanitarian law.³⁶⁷ The WHO stated that “[f]orcing more than 2000 patients to relocate to southern Gaza, where health facilities are already running at maximum capacity and unable to absorb a dramatic rise in the number of patients, could be tantamount to a death sentence.”³⁶⁸ Despite calls by UN agencies and humanitarian organizations, including the Norwegian Refugee Council and Amnesty International, for Israel to rescind this order,³⁶⁹ Israel has maintained the evacuation order and issued several more orders for populations in the north.³⁷⁰
98. The fates of the Palestinians who were unable or unwilling to leave their homes and those who fled the north both have been characterized by acute suffering. Israel has subjected Palestinians remaining in North Gaza to intense bombing³⁷¹ and other cruel, inhuman, and degrading treatment, such as mass detention of men and boys and forcing them to strip to their underwear.³⁷² Many of these abuses have been filmed and widely circulated by the Israeli perpetrators themselves.³⁷³ Palestinians who fled to the south pursuant to the

³⁶⁴ *Situation Report #103 on the Situation in the Gaza Strip and the West Bank, including East Jerusalem*, UNRWA (Apr. 23, 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-103-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

³⁶⁵ *Id.*

³⁶⁶ Israeli Defence Forces (@IDF), X (Oct. 13, 2023, 6:50AM), <https://x.com/IDF/status/1712707301369434398>.

³⁶⁷ *Israel and the occupied territories: Evacuation order of Gaza triggers catastrophic humanitarian consequences*, ICRC, (Oct. 13, 2023), <https://www.icrc.org/en/document/israel-and-occupied-territories-evacuation-order-of-gaza-triggers-catastrophic-humanitarian-consequences>.

³⁶⁸ *Evacuation Orders by Israel to Hospitals in Northern Gaza Are a Death Sentence for the Sick and Injured*, WHO (Oct. 14, 2023), <https://www.who.int/news/item/14-10-2023-evacuation-orders-by-israel-to-hospitals-in-northern-gaza-are-a-death-sentence-for-the-sick-and-injured>.

³⁶⁹ Helen Regan, et. al., *Israel Tells 1.1 million Gazans to Evacuate South. UN says Order is ‘Impossible’*, CNN (Oct. 13, 2023), <https://edition.cnn.com/2023/10/13/middleeast/israel-gaza-hamas-war-friday-intl-hnk/index.html>.

³⁷⁰ *Hostilities in the Gaza Strip and Israel | Flash Update #57*, OCHA (Dec. 2, 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-57>.

³⁷¹ *Id.*

³⁷² News Release, OHCHR, *Disturbing reports from the north of Gaza of mass detentions, ill-treatment and enforced disappearances of possibly thousands of Palestinians* (Dec. 16, 2023), <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>.

³⁷³ Quds News Network (@QudsNen), X (Dec. 25, 2023), <https://x.com/QudsNen/status/1739315746163859606>.

evacuation orders have been bombed on purportedly “safe routes.”³⁷⁴ For residents of the south and new arrivals, Israel’s promises of safety there have been belied by ongoing bombardment. Reports show that Israel has routinely used 2,000-pound bombs in South Gaza, despite designating the area as safe for civilians.³⁷⁵

99. In Gaza, as the UN Secretary-General’s office has said that there is “nowhere safe to go.”³⁷⁶ After forcing the relocation of over a million Palestinians to the south, Israel again on December 1, 2023, issued evacuation orders for parts of the south of Gaza to which Palestinians had just fled.³⁷⁷ Meanwhile, Palestinians who have tried to return to the north have been attacked by Israeli military forces.³⁷⁸ On December 24, 2023, the Israeli military bombed Al Maghazi Refugee Camp in Middle Gaza, killing more than 100 people.³⁷⁹ As noted by the Office of the UN High Commissioner for Human Rights (OHCHR), the bombardment “comes after Israeli forces ordered residents from the south of Wadi Gaza to move to Middle Gaza.”³⁸⁰
100. The majority of internally displaced Palestinians in Gaza have nowhere safe to shelter, and no longer have homes, as Israel has destroyed or damaged at least 60 to 70 percent of Gaza’s residential structures.³⁸¹ Over one million Palestinians in Gaza have taken shelter in overcrowded UNRWA facilities or makeshift shelters, which lack insulation from the ground and from weather conditions, as well as basic infrastructure and sanitation, thus heightening the risk of exposure to infectious diseases.³⁸² The UN Secretary General stated

³⁷⁴ Beth McKernan & Sufian Taha, *Gaza civilians afraid to leave home after bombing of ‘safe routes’*, THE GUARDIAN (Oct. 15, 2023), <https://www.theguardian.com/world/2023/oct/14/gaza-civilians-afraid-to-leave-home-after-bombing-of-safe-routes>.

³⁷⁵ Robin Stein, et. al., *A Times Investigation Tracked Israel’s Use of One of Its Most Destructive Bombs in South Gaza*, N.Y. TIMES (Dec. 21, 2023), <https://www.nytimes.com/2023/12/21/world/middleeast/israel-gaza-bomb-investigation.html>.

³⁷⁶ Press Release, U.N. Secretary General, Statement attributable to the Spokesperson for the Secretary-General – on the Middle East (Dec. 4, 2023), <https://www.un.org/sg/en/content/sg/statement/2023-12-04/statement-attributable-the-spokesperson-for-the-secretary-general-%E2%80%93-the-middle-east%C2%A0%C2%A0%C2%A0>.

³⁷⁷ *Hostilities in the Gaza Strip and Israel | Flash Update #61*, OCHA (Dec. 6, 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-61>.

³⁷⁸ *Hostilities in the Gaza Strip and Israel | Flash Update #53*, OCHA (Nov. 28, 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-53>.

³⁷⁹ *Gaza’s Maghazi Refugee Camp in Ruins After Deadly Israeli Attack*, AL-JAZEERA (Dec. 25, 2023), <https://www.aljazeera.com/gallery/2023/12/25/photos-gazas-al-maghazi-refugee-camp-in-ruins-after-deadly-israeli-attack>.

³⁸⁰ Statement, OHCHR, Comment by UN Human Rights Office spokesperson Seif Magango on continued bombardment of Middle Gaza (Dec. 26, 2023), <https://www.ohchr.org/en/statements/2023/12/comment-un-human-rights-office-spokesperson-seif-magango-continued-bombardment>.

³⁸¹ *Gaza: Rights Experts Condemn AI Role in Destruction by Israeli Military*, U.N. NEWS (Apr. 15, 2024), <https://news.un.org/en/story/2024/04/1148561>; *The Right to Adequate Housing is Under Attack in Gaza*, ANERA (Apr. 18, 2024), <https://www.anera.org/blog/the-right-to-adequate-housing-is-under-attack-in-gaza/>.

³⁸² *The Right to Adequate Housing is Under Attack in Gaza*, ANERA (Apr. 18, 2024), <https://www.anera.org/blog/the-right-to-adequate-housing-is-under-attack-in-gaza/>; *See also Situation Report #51 on the Situation in the Gaza Strip and the West Bank, Including East Jerusalem*, UNRWA (Dec. 13, 2023), <https://www.unrwa.org/resources/reports/unrwa-situation-report-51-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

that this continuous forced displacement of Palestinians between areas under bombardment has placed them at “a breaking point of deprivation and despair.”³⁸³

3.a.iii.3. Israel has deprived Palestinians of adequate medical services

101. Israel has deliberately attacked the medical system in Gaza, including protected facilities, personnel, and patients. The WHO declared in April that access to healthcare in Gaza had become “totally inadequate,”³⁸⁴ and the UN Special Rapporteur on the Right to Health described the current situation as “an unrelenting war on the health system,” which has left healthcare in Gaza “completely obliterated.”³⁸⁵ The WHO has recorded 410 attacks on healthcare, resulting in the death of an estimated 685 Palestinians and injury of approximately 902 Palestinians in Gaza, and causing damage to 99 hospitals and medical facilities as of mid-March 2024.³⁸⁶ Additionally, 104 ambulances had been destroyed or damaged.³⁸⁷ Just 12 of Gaza’s 36 hospitals were still partially functioning as of May 1, 2024, but with significantly reduced capabilities.³⁸⁸
102. The few hospitals that remain have overflowed with tens of thousands of internally displaced Palestinians seeking safety from Israeli bombings.³⁸⁹ These hospitals have been so overwhelmed with trauma cases that suffering patients have been forced to lie on the floors, and medical personnel have been unable to adequately treat the wounded due to massive shortages of medical supplies.³⁹⁰ These shortages in critical medical supplies have meant that doctors have had to perform amputations (made necessary due to the risk of

³⁸³ U.N. Secretary-General, Letter dated 5 January 2024 from the Secretary-General addressed to the President of the Security Council, S/2024/26 (Jan. 5, 2024), <https://digitallibrary.un.org/record/4033002?ln=en>.

³⁸⁴ *Gaza: Systematic Dismantling of Healthcare Must End, Says WHO*, U.N. NEWS (Apr. 6, 2024), <https://news.un.org/en/story/2024/04/1148316>. See also INSECURITY INSIGHT, ATTACKS ON HEALTHCARE IN ISRAEL AND THE OCCUPIED PALESTINIAN TERRITORIES (Feb. 13-19, 2024), <https://insecurityinsight.org/wp-content/uploads/2024/02/19.-13-19-February-2024-Attacks-on-Health-Care-in-Israel-and-the-oPt.pdf>.

³⁸⁵ Press Release, OHCHR, Gaza: UN Expert Condemns ‘Unrelenting War’ on Health System amid Airstrikes on Hospitals and Health Workers (Dec. 7, 2023) <https://www.ohchr.org/en/press-releases/2023/12/gaza-un-expert-condemns-unrelenting-war-health-system-amid-airstrikes>.

³⁸⁶ WHO in occupied Palestinian territory (@WHOoPt), X (Mar. 20, 2024, 6:05 AM), https://x.com/whoopt/status/1770391176085938611?s=46&t=zP8Eq6ZzsC_cl7tWFYM-jQ.

³⁸⁷ *Id.*

³⁸⁸ *Hostilities in the Gaza Strip and Israel - reported impact | Day 208*, OCHA (May 1, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-208>. See also *Hostilities in the Gaza Strip and Israel | Flash Update #156*, OCHA (Apr. 22, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-156>; *Hostilities in the Gaza Strip and Israel - Reported Impact | Day 146*, OCHA (Mar. 1, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-146>.

³⁸⁹ *UN Workers Delivering Aid to Gaza Hospital Describe ‘Bloodbath’ in Overflowing Emergency Department*, U.N. NEWS (Dec. 16, 2023), <https://news.un.org/en/story/2023/12/1144877>.

³⁹⁰ *Id.*

infection)³⁹¹ and painful and invasive procedures without anesthetic or sterilized tools.³⁹² U.S. volunteer physicians described that the medical sector in Gaza is “completely overwhelmed, that both hospitals and staff are targets of violence, and that lack of access to food, water, supplies is compounding the risks of patients even with treatable injuries.”³⁹³ MSF has described Gaza’s hospitals as “death zone[s]”³⁹⁴ and “morgues and ruins.”³⁹⁵

103. The Israel military has directly targeted hospitals and medical staff in Gaza. Israeli military attacks have destroyed critical hospital and healthcare infrastructure, such as generators and solar panels,³⁹⁶ and mass-detained and transferred Palestinians from hospitals to unknown locations—including “medical staff, patients, and [internally displaced persons].”³⁹⁷ In a raid on Kamal Adwan Hospital in North Gaza, Israeli soldiers reportedly “desecrated the bodies of dead patients with bulldozers, let a military dog maul a man in a wheelchair, and shot multiple doctors even after vetting them for terror links.”³⁹⁸ In November 2023, Israeli forces shelled Al-Nasr Hospital then subsequently gave those inside the hospital thirty minutes to evacuate.³⁹⁹ There were no ambulances to transport

³⁹¹ Jason Burke, ‘*We are Overwhelmed*’: Southern Gaza’s Exhausted Doctors Forced to Leave Children to Die, THE GUARDIAN (Nov. 24, 2023), <https://www.theguardian.com/world/2023/nov/24/we-are-overwhelmed-southern-gazas-exhausted-doctors-forced-to-leave-children-to-die>.

³⁹² *Hostilities in the Gaza Strip and Israel | Flash Update #32*, OCHA (Nov. 7, 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-32>.

³⁹³ *U.S. Doctors Return from Gaza, Report Critical Situation for Medical Sector*, SYRIAN AMERICAN MEDICAL SOCIETY (Mar. 18, 2024), https://www.sams-usa.net/press_release/u-s-doctors-return-from-gaza-report-critical-situation-for-medical-sector/.

³⁹⁴ *WHO Leads Very High-Risk Joint Humanitarian Mission to Al-Shifa Hospital in Gaza*, WHO (Nov. 18, 2023), <https://www.who.int/news/item/18-11-2023-who-leads-very-high-risk-joint-humanitarian-mission-to-al-shifa-hospital-in-gaza>.

³⁹⁵ *Gaza: “It Must All Stop Now,” Letter to UN Security Council*, MSF (Dec. 4, 2023), <https://www.msf.org/letter-gaza-un-security-council>.

³⁹⁶ *Israeli Forces Target Solar Panels at Gaza’s Al-Shifa Hospital*, AL-JAZEERA (Nov. 6, 2023), <https://www.aljazeera.com/news/2023/11/6/israeli-forces-target-solar-panels-at-gazas-al-shifa-hospital>; *Hostilities in the Gaza Strip and Israel | Flash Update #66*, OCHA (Dec. 11, 2023), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-66-enhe>.

³⁹⁷ Statement, WHO, WHO Calls for Protection of Humanitarian Space in Gaza Following Serious Incidents in High-Risk Mission to Transfer Patients, Deliver Health Supplies (Dec. 12, 2023), <https://www.who.int/news/item/12-12-2023-who-calls-for-protection-of-humanitarian-space-in-gaza-following-serious-incidents-in-high-risk-mission-to-transfer-patients--deliver-health-supplies>; News Release, OHCHR, Disturbing Reports from the North of Gaza of Mass Detentions, Ill-Treatment and Enforced Disappearances of Possibly Thousands of Palestinians (Dec. 16, 2023), <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>.

³⁹⁸ Abeer Salman & Kareem Khadder, *Doctors Accuse Israeli Troops of Desecrating Bodies and Shooting Civilians at Hospital Israel Says Hamas ‘Command Center’*, CNN (Dec. 23, 2023, 1:00 AM), <https://edition.cnn.com/2023/12/23/middleeast/kamal-adwan-hospital-gaza-israel-abuse-allegations-intl-cmd/index.html>.

³⁹⁹ Allegra Goodwin, et al., *Infants Found Dead and Decomposing in Evacuated Hospital ICU in Gaza. Here’s What We Know*, CNN (Dec. 8, 2023), <https://edition.cnn.com/2023/12/08/middleeast/babies-al-nasr-gaza-hospital-what-we-know-intl/index.html>.

patients, and, as a result, medical staff and health officials were forced to leave patients behind who could not be transported, including babies.⁴⁰⁰ The decomposing bodies of the babies were found weeks later during the temporary ceasefire.⁴⁰¹

104. During the last two weeks of March, the Israeli military conducted a siege of the Al-Shifa Medical Complex, the site of Gaza's biggest hospital.⁴⁰² While Israel claimed that it "took out over 200 terrorists" during its "surgical" operation,⁴⁰³ preliminary investigations reveal that 21 patients died in the hospital during the raid.⁴⁰⁴ Euro-Med Human Rights Monitor reported that 13 children had been shot in and around the complex, including two boys aged six and nine.⁴⁰⁵ In the aftermath of the siege, "[b]odies lay decomposing in the hospital's dirt courtyard, which was laden with unexploded ordnance. Other people were shot and left to die in its hallways, maimed and crushed by tanks outside its gates, decomposing on side streets and in buildings."⁴⁰⁶ The hospital, which once had 800 beds, has been described by the WHO as now "an empty shell."⁴⁰⁷ The WHO reported, "No patients remain at the facility. Most of the buildings are extensively damaged or destroyed and the majority of equipment is unusable or reduced to ashes. . . . [T]he scale of devastation has left the facility completely non-functional."⁴⁰⁸ As a result, North Gaza is left without access to CT scanning, only one source of medical oxygen, and severely limited laboratory capacity.⁴⁰⁹

3.a.iii.4. Israel has destroyed civilian infrastructure

105. Israel has damaged or destroyed 70 percent of Gaza's civilian infrastructure, according to recent estimates.⁴¹⁰ A joint report by the World Bank and the UN estimated the cost of damage to critical infrastructure in Gaza to be around \$18.5 billion as of January 2024, equivalent to 95 percent of the combined gross domestic product (GDP) of the West Bank

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² Aya Batrawy & Omar El Qattaa, *Here's What We Found after Israel's Raid on Al-Shifa, Gaza's Biggest Hospital*, NPR (Apr. 6, 2024), <https://www.npr.org/2024/04/06/1243045199/al-shifa-hospital-gaza-israel-raid-before-aftermath>.

⁴⁰³ *Id.*

⁴⁰⁴ *Six Months of War Leave Al-Shifa Hospital in Ruins*, WHO Mission Reports, WHO (Apr. 6, 2024), <https://www.who.int/news/item/06-04-2024-six-months-of-war-leave-al-shifa-hospital-in-ruins--who-mission-reports>.

⁴⁰⁵ *In a Week, Israeli Army Executes 13 Children in and Near Al-Shifa Hospital*, EURO-MED MONITOR (Mar. 27, 2024), <https://euromedmonitor.org/en/article/6246/In-a-week,-Israeli-army-executes-13-children-in-and-near-Al-Shifa-Hospital>.

⁴⁰⁶ Aya Batrawy & Omar El Qattaa, *Here's What We Found after Israel's Raid on Al-Shifa, Gaza's Biggest Hospital*, NPR (Apr. 6, 2024), <https://www.npr.org/2024/04/06/1243045199/al-shifa-hospital-gaza-israel-raid-before-aftermath>.

⁴⁰⁷ *Six Months of War Leave Al-Shifa Hospital in Ruins*, WHO Mission Reports, WHO (Apr. 6, 2024), <https://www.who.int/news/item/06-04-2024-six-months-of-war-leave-al-shifa-hospital-in-ruins--who-mission-reports>.

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *In 4th Month of Israeli Genocide, 4 Percent of Gaza's Population Dead, Missing, or Injured; 70 Percent of Strip's Infrastructure Destroyed*, EURO-MED MONITOR (Jan. 5, 2024), <https://euromedmonitor.org/en/article/6079>.

and Gaza in 2022.⁴¹¹ The damage to Gaza's housing infrastructure accounted for 72 percent of the costs.⁴¹² In some areas, entire neighborhoods have been almost completely destroyed, including Shuja'iyya,⁴¹³ Beit Lahia,⁴¹⁴ Beit Hanoun, and the Gaza Old City.⁴¹⁵ This has led experts, including the UN Special Rapporteur on the Right to Adequate Housing, to refer to the destruction unfolding in Gaza as "domicide."⁴¹⁶ Domicide refers to the systematic destruction of homes and other civilian infrastructure, carried out with the knowledge that the territory would be uninhabitable as a result.⁴¹⁷

106. In Gaza, the destruction has stretched beyond homes to the core elements of Palestinian life. As of April 15, 2024, experts estimated that 60 to 70 percent of homes in Gaza, including up to 84 percent of homes in North Gaza, have been fully or partially destroyed.⁴¹⁸ A spatial statistics study in April 2024, found that between October 7, 2023, and November 22, 2023, 60.8 percent of health, 68.2 percent of education, and 42.1 percent of water facilities in Gaza were damaged.⁴¹⁹ On April 6, 2024, the WHO deplored Israel's "systematic dismantling of healthcare" in Gaza, and warned that access to healthcare had become "totally inadequate."⁴²⁰ By April 18, 2024, UN independent human rights experts reported that 80 percent of Gaza's schools had been damaged or destroyed, in addition to 227 mosques and three churches.⁴²¹ Human Rights Watch further documented the

⁴¹¹ *Joint World Bank, UN Report Assesses Damage to Gaza's Infrastructure*, WORLD BANK (Apr. 2, 2024), <https://www.worldbank.org/en/news/press-release/2024/04/02/joint-world-bank-un-report-assesses-damage-to-gaza-s-infrastructure>.

⁴¹² *Id.*

⁴¹³ *Hostilities in the Gaza Strip and Israel | Flash Update #74*, OCHA (Dec. 20, 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-74>.

⁴¹⁴ ANADOLU ENGLISH, *Drone Footage Shows Massive Destruction in Beit Lahia After Israeli Attacks on #Gaza #Israel*, YOUTUBE (Dec. 27, 2023), <https://www.youtube.com/watch?v=yiPB7kdYcS8>.

⁴¹⁵ Situation Maps, OCHA, *Before and After: Satellite Images of Gaza Showing Damage Caused in Hostilities* (Nov. 9, 2023), <https://www.ochaopt.org/content/and-after-satellite-images-gaza-showing-damage-caused-hostilities>.

⁴¹⁶ Press Release, OHCHR, *Gaza: Destroying Civilian Housing and Infrastructure is an International Crime, Warns UN Expert* (Nov. 8, 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-destroying-civilian-housing-and-infrastructure-international-crime>.

⁴¹⁷ Patrick Wintour, *Widespread Destruction in Gaza Puts Concept of 'Domicide' in Focus*, THE GUARDIAN (Dec. 7, 2023, 10:06 AM), <https://www.theguardian.com/world/2023/dec/07/widespread-destruction-in-gaza-puts-concept-of-domicide-in-focus>.

⁴¹⁸ *Gaza: Rights Experts Condemn AI Role in Destruction by Israeli Military*, U.N. NEWS (Apr. 15, 2024), <https://news.un.org/en/story/2024/04/1148561>. See also WORLD BANK, EUROPEAN UNION & UNITED NATIONS. GAZA STRIP – INTERIM DAMAGE ASSESSMENT: SUMMARY NOTE (Mar. 29, 2024), <https://thedocs.worldbank.org/en/doc/14e309cd34e04e40b90eb19afa7b5d15-0280012024/original/Gaza-Interim-Damage-Assessment-032924-Final.pdf>.

⁴¹⁹ Yara Asi et al., *'Nowhere and No One is Safe': Spatial Analysis of Damage to Critical Civilian Infrastructure in the Gaza Strip During the First Phase of the Israeli Military Campaign, 7 October to 22 November 2023*, 18 CONFLICT AND HEALTH (Apr. 2, 2024).

⁴²⁰ *Gaza: Systematic Dismantling of Healthcare Must End, Says WHO*, U.N. NEWS (Apr. 6, 2024), <https://news.un.org/en/story/2024/04/1148316>. See also INSECURITY INSIGHT, *ATTACKS ON HEALTHCARE IN ISRAEL AND THE OCCUPIED PALESTINIAN TERRITORIES* (Feb. 13-19, 2024), <https://insecurityinsight.org/wp-content/uploads/2024/02/19.-13-19-February-2024-Attacks-on-Health-Care-in-Israel-and-the-oPt.pdf>.

⁴²¹ *Gaza: UN Experts Decry 'Systemic Obliteration' of Education System*, U.N. NEWS (Apr. 18, 2024), <https://news.un.org/en/story/2024/04/1148716>.

deliberate razing of orchards, greenhouses, and farmland in North Gaza by Israel's army.⁴²² By March 2024, Gaza's agricultural lands had been struck by explosive weapons on at least 119 occasions, creating land contamination with clear negative and long-term impacts on food production and security.⁴²³ Satellite images of Gaza revealed large-scale degradation of agricultural land.⁴²⁴ As of February 2024, more than one third of Gaza's agricultural lands, one fifth of its greenhouses, and one third of its irrigation infrastructure had been destroyed⁴²⁵—destruction that has been labeled “a deliberate act of ecocide.”⁴²⁶

3.a.iii.5. Israel has attacked the entire education system in Gaza

107. Israel's systematic attacks on the education system have nearly eliminated access to education in Gaza. UN independent human rights experts reported in April 2024, that 80 percent of Gaza's schools had been damaged or destroyed.⁴²⁷ By early February 2024, Israel had damaged 390 schools, 140 of which have sustained major damage or have been completely destroyed.⁴²⁸ These schools previously served about 433,000 children and employed more than 16,200 teachers.⁴²⁹ Among the damaged school buildings, 65 UNRWA schools have been completely or partially destroyed.⁴³⁰ At least 133 schools have been serving as shelters for internally displaced Palestinians.⁴³¹ In total, more than 625,000 students and nearly 23,000 teachers in Gaza have been affected by Israel's attacks on the education system and the related school closures, as of early March 2024.⁴³²

⁴²² *Israel: Starvation Used as Weapon of War in Gaza*, HUM. RTS. WATCH (Dec. 18, 2023), <https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza>.

⁴²³ INSECURITY INSIGHT, FLASH ANALYSIS REPORT: OVER FIVE MONTHS OF ATTACKS ON FOOD SECURITY IN GAZA (Mar. 2024), <https://insecurityinsight.org/wp-content/uploads/2024/03/Flash-Analysis-Over-Five-Months-of-Attacks-on-Food-Security-in-Gaza.pdf>.

⁴²⁴ *Id.*

⁴²⁵ Rob Vos & Soonho Kim, *Long-Lasting Devastation to Livelihoods from Damage to Agricultural Lands in Gaza*, IFPRI (Feb. 20, 2024), <https://www.ifpri.org/blog/long-lasting-devastation-livelihoods-damage-agricultural-lands-gaza>.

⁴²⁶ *'No Traces of Life': Israel's Ecocide in Gaza 2023-2024*, FORENSIC ARCHITECTURE (Mar. 29, 2024), <https://forensic-architecture.org/investigation/ecocide-in-gaza>.

⁴²⁷ *Gaza: UN Experts Decry 'Systemic Obliteration' of Education System*, U.N. NEWS (Apr. 18, 2024), <https://news.un.org/en/story/2024/04/1148716>; *UN Experts Deeply Concerned over 'Scholasticide' in Gaza*, U.N. NEWS (Apr. 18, 2024), <https://www.ohchr.org/en/press-releases/2024/04/un-experts-deeply-concerned-over-scholasticide-gaza>.

⁴²⁸ *Hostilities in the Gaza Strip and Israel | Flash Update #115*, OCHA (Feb. 9, 2024), <http://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-115>.

⁴²⁹ *Id.*

⁴³⁰ *Israel Kills Dozens of Academics, Destroys Every University in the Gaza Strip*, EURO-MED MONITOR (Jan. 20, 2024), <https://euromedmonitor.org/en/article/6108/Israel-kills-dozens-of-academics,-destroys-every-university-in-the-Gaza-Strip>.

⁴³¹ *Id.*

⁴³² *Hostilities in the Gaza Strip and Israel - Reported Impact | Day 146*, OCHA (Mar. 1, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-146>; *Hostilities in the Gaza Strip and Israel | Flash Update #115*, OCHA (Feb. 9, 2024), <http://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-115>.

Commissioner-General of UNRWA Phillipe Lazzarini warned that the systematic damage to the Gazan education system would result in a “lost generation” of Gaza’s youth.⁴³³

108. Israel’s attacks have targeted every level of the education system. Israel has destroyed every university in Gaza, blowing up the last of Gaza’s universities on January 17, 2024.⁴³⁴ Videos recorded by Israeli forces showed the destruction of Israa University with a controlled detonation of explosives.⁴³⁵ The Israeli military reportedly was using the building for 70 days as a military base and an *ad hoc* detention facility for interrogating Palestinian detainees.⁴³⁶ More than 1,600 academics across North America have condemned Israel for “scholasticide” by “[d]enying access to education through the widespread and systematic destruction of educational infrastructure, along with deliberate and indiscriminate killing of educators and students.”⁴³⁷
109. UN experts reported that Israel’s attacks had killed more than 5,800 students and teachers and injured more than 8,575 by April 18, 2024.⁴³⁸ Israeli forces have killed dozens of displaced Palestinians sheltering in schools, including at least 15 people at the UNRWA Al Fakhoura school and 25 people at the Al-Buraq school.⁴³⁹

3.a.iii.6. Israel has destroyed Gaza’s cultural heritage

110. Israel has damaged or destroyed key civilian infrastructure needed for the maintenance of civil, educational, and cultural life in Gaza, including 195 heritage sites.⁴⁴⁰ Among these

⁴³³ Wyre Davies, *Gaza Destruction Risks Lost Generation of Children, Says UN Official*, BBC (Jan. 19, 2024), <https://www.bbc.com/news/world-middle-east-68023080>.

⁴³⁴ *Hostilities in the Gaza Strip and Israel | Flash Update #96*, OCHA (Jan. 18, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-96>; *Gaza: UN Experts Decry ‘Systemic Obliteration’ of Education System*, U.N. NEWS (Apr. 18, 2024), <https://news.un.org/en/story/2024/04/1148716>; *UN Experts Deeply Concerned over ‘Scholasticide’ in Gaza*, U.N. NEWS (Apr. 18, 2024), <https://www.ohchr.org/en/press-releases/2024/04/un-experts-deeply-concerned-over-scholasticide-gaza>; *How Israel Has Destroyed Gaza’s Schools and Universities*, AL-JAZEERA (Jan. 24, 2024), <https://www.aljazeera.com/news/2024/1/24/how-israel-has-destroyed-gazas-schools-and-universities>.

⁴³⁵ *Id.*

⁴³⁶ *Hostilities in the Gaza Strip and Israel | Flash Update #96*, OCHA (Jan. 18, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-96>.

⁴³⁷ Judy Maltz, *More Than 1,600 North American Professors Accuse Israel of ‘Scholasticide’*, HAARETZ (Apr. 9, 2024), <https://www.haaretz.com/us-news/2024-04-09/ty-article/.premium/more-than-1-600-north-american-professors-accuse-israel-of-scholasticide/0000018e-c1a3-dc93-adce-eff3471a0000>.

⁴³⁸ *Gaza: UN Experts Decry ‘Systemic Obliteration’ of Education System*, U.N. NEWS (Apr. 18, 2024), <https://news.un.org/en/story/2024/04/1148716>; *UN Experts Deeply Concerned over ‘Scholasticide’ in Gaza*, U.N. NEWS (Apr. 18, 2024), <https://www.ohchr.org/en/press-releases/2024/04/un-experts-deeply-concerned-over-scholasticide-gaza>. See also *Hostilities in the Gaza Strip and Israel | Flash Update #115*, OCHA (Feb. 9, 2024), <http://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-115>.

⁴³⁹ *How Israel Has Destroyed Gaza’s Schools and Universities*, AL-JAZEERA (Jan. 24, 2024), <https://www.aljazeera.com/news/2024/1/24/how-israel-has-destroyed-gazas-schools-and-universities>.

⁴⁴⁰ *Gaza: UN Experts Decry ‘Systemic Obliteration’ of Education System*, U.N. NEWS (Apr. 18, 2024), <https://news.un.org/en/story/2024/04/1148716>; *UN Experts Deeply Concerned over ‘Scholasticide’ in Gaza*, U.N. NEWS (Apr. 18, 2024), <https://www.ohchr.org/en/press-releases/2024/04/un-experts-deeply-concerned-over-scholasticide-gaza>.

structures, Israel has destroyed the Palace of Justice, the center of the Palestinian court system in Gaza;⁴⁴¹ Gaza City’s main public library;⁴⁴² Gaza City’s Central Archive building, storing a vast collection of historical documents;⁴⁴³ all of Gaza’s universities;⁴⁴⁴ numerous cultural centers and museums, such as the Rafah Museum, which spent thirty years curating ancient artifacts;⁴⁴⁵ 227 mosques,⁴⁴⁶ including the Omari Mosque, dating back to the fifth century; and three churches,⁴⁴⁷ including the Church of Saint Porphyrius, the third oldest church in the world.⁴⁴⁸ As of April 10, 2024, the UN Educational, Scientific, and Cultural Organization (UNESCO) has verified damage to 43 heritage cultural properties of historic, religious, or artistic interest since October 7.⁴⁴⁹ The targeting of cultural properties impedes Palestinians’ ability to carry on their culture, historical memory, and identity as a group.

3.b. Evidence of Israel’s genocidal intent

111. The genocidal intent of the Israeli government is demonstrated by its statements and its acts. This collection of words, deeds, and “patterns of purposeful actions”⁴⁵⁰ elevate Israel’s conduct from individual war crimes, crimes against humanity, and human rights violations to genocide, “the crime of crimes.”⁴⁵¹ The following facts—organized by explicit expressions by Israeli officials and analysis of Israeli hostilities in Gaza, respectively—together provide clear evidence of Israel’s genocidal intent in Gaza.
112. Much of the existing jurisprudence on the crime of genocide is concerned with drawing inferences of intent from circumstantial evidence, absent explicit expressions of genocidal intent, in recognition that the latter is often unlikely and uncommon evidence. Yet in this case, officials at all levels of Israeli government up to and including the Prime Minister

scholasticide-gaza; Indlieb Farazi Saber, *A ‘Cultural Genocide:’ Which of Gaza’s Heritage Sites Have Been Destroyed*, AL-JAZEERA (Jan. 14, 2024), <https://www.aljazeera.com/news/2024/1/14/a-cultural-genocide-which-of-gazas-heritage-sites-have-been-destroyed>.

⁴⁴¹ Leanne Abraham, et al., *Israel’s Controlled Demolitions Are Razing Neighborhoods in Gaza*, N.Y. TIMES (Feb. 1, 2024), <https://www.nytimes.com/interactive/2024/02/01/world/middleeast/Israel-gaza-war-demolish.html>.

⁴⁴² Sarvy Geranpayeh, *Gaza City Archives Among Heritage Sites Destroyed in Israel-Hamas War*, THE ART NEWSPAPER (Dec. 22, 2023), <https://www.theartnewspaper.com/2023/12/22/gaza-city-archives-among-heritage-sites-destroyed-in-israel-hamas-war>.

⁴⁴³ *Id.*

⁴⁴⁴ *UN Experts Decry ‘Systemic Obliteration’ of Education System*, U.N. NEWS (Apr. 18, 2024), <https://news.un.org/en/story/2024/04/1148716>.

⁴⁴⁵ Ahmad Ibsais, *Israel’s Cultural Genocide Is Destroying Gaza’s Very Memory*, THE NATION (Feb. 8, 2024), <https://www.thenation.com/article/world/gaza-cultural-genocide>.

⁴⁴⁶ *Gaza: UN Experts Decry ‘Systemic Obliteration’ of Education System*, U.N. NEWS (Apr. 18, 2024), <https://news.un.org/en/story/2024/04/1148716>; *UN Experts Deeply Concerned over ‘Scholasticide’ in Gaza*, U.N. NEWS (Apr. 18, 2024), <https://www.ohchr.org/en/press-releases/2024/04/un-experts-deeply-concerned-over-scholasticide-gaza>.

⁴⁴⁷ *Id.*

⁴⁴⁸ Chloe Veltman, *More Than 100 Gaza Heritage Sites Have Been Damaged or Destroyed by Israeli Attacks*, NPR (Dec. 3, 2023), <https://www.npr.org/2023/12/03/1216200754/gaza-heritage-sites-destroyed-israel>.

⁴⁴⁹ *Gaza Strip: Damage Assessment*, UNESCO (Apr. 10, 2024), <https://www.unesco.org/en/gaza/assessment>.

⁴⁵⁰ *Kayishema* Trial Judgment at para. 93.

⁴⁵¹ *Prosecutor v. Kambanda*, Case No. ICTR-97-23-S, Trial Judgment, para. 16 (Sept. 4, 1998).

have made remarks that not only express blatant and unequivocal dehumanization and cruelty against Palestinians in Gaza and elsewhere, but also explicitly reflect intentions to destroy and exterminate Palestinians as such.

3.b.i. Evidence of genocidal intent: words

113. Since October 7, 2023, officials as high as Israeli Prime Minister Benjamin Netanyahu have issued public statements describing their intent to destroy Palestinian lives. Israeli leaders have also repeatedly invoked dehumanizing rhetoric and imagery of Palestinians.
114. Many experts have sounded the alarm about the danger of the rhetoric used by Israel's officials. The UNRWA Commissioner-General noted that the severity of the situation in Gaza is "compounded by dehumanizing language."⁴⁵² The Committee on the Elimination of Racial Discrimination warned of "racist hate speech and dehumanization directed at Palestinians,"⁴⁵³ and a group of 37 Special Rapporteurs and other UN experts described the Israeli rhetoric as "discernibly genocidal and dehumanizing."⁴⁵⁴

3.b.i.1. Plans to destroy

115. The highest officials in the Israeli government, including the heads of State, government, and military, as well as lower-level government and military officials, have publicly and repeatedly expressed intentions to destroy Palestinians and Palestinian society in Gaza; collectively punish Palestinians and cause them to suffer militarily and through the blockading of basic necessities; and push the Palestinian population out of Gaza. In doing so, they have intentionally blurred the lines between civilians and combatants, while encouraging the Israeli military to cause massive death and destruction. The government's highest official, Prime Minister Benjamin Netanyahu, has explicitly evoked Biblical commandments to wipe out an entire nation, including men, women, and children, in Israel's war efforts, as described below. Other officials have expressed pleasure and pride at the devastation in Gaza and the hope of enacting another Nakba, the violent dispossession of 800,000 Palestinians from their homes between 1947 and 1949. The following is a non-exhaustive sampling of these statements.⁴⁵⁵

⁴⁵² Official Statement, UNRWA, The Gaza Strip: 100 Days of Death, Destruction and Displacement (Jan. 13, 2024), <https://www.unrwa.org/newsroom/official-statements/gaza-strip-100-days-death-destruction-and-displacement>.

⁴⁵³ Committee on the Elimination of Racial Discrimination [hereinafter CERD], Statement 5 (2023), Israel and the State of Palestine (Oct. 27, 2023), https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=6xB5VA8bX7dpmO6n1lnwY2Alk9JI7Y3M2BOW7bF4xdaLCnCEEGmf/BeCqA52axvhoqUA6j4NbmKQI7erG/ykDg==.

⁴⁵⁴ Press Release, OHCHR, Gaza: UN experts call on international community to prevent genocide against the Palestinian people (Nov. 16, 2023), <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>.

⁴⁵⁵ See, e.g., 85 *Israeli Genocidal Intent Quotes*, ZIONISM OBSERVER, <https://zionism.observer/quotes/genocidal-intent> (Last visited May 1, 2024).

116. In a televised address on the night of October 7, Prime Minister Netanyahu ordered the 2.2 million Palestinians in Gaza to “get out now. We will be everywhere and with all our might.”⁴⁵⁶
117. In an address publicly broadcasted on October 28, 2023, and posted on the government’s official YouTube account, Netanyahu stated: “You must remember what Amalek has done to you, says our Holy Bible. And we do remember.”⁴⁵⁷ The Prime Minister’s Office again referred to this phrase in a Post on X on November 3, 2023.⁴⁵⁸ The relevant Biblical passage reads, “Now go, attack Amalek, and proscribe all that belongs to him. Spare no one, but kill alike men and women, infants and sucklings, oxen and sheep, camels and asses.”⁴⁵⁹
118. Upon initiating a total blockade on Gaza, Israel’s Minister of Defense Yoav Gallant stated, “I have ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel, everything is closed. . . . We are fighting human animals and we are acting accordingly.”⁴⁶⁰ The Minister of Defense also stated that he had “released all the restraints,”⁴⁶¹ and that “Gaza won’t return to what it was before. We will eliminate everything. If it doesn’t take one day, it will take a week. It will take weeks or even months, we will reach all places.”⁴⁶²
119. Israeli President Isaac Herzog underscored Israel’s intent to target all Palestinians in Gaza, without distinguishing between militants and civilians, by declaring, “[i]t’s an entire nation out there that is responsible. It’s not true this rhetoric about civilians not being aware, not involved. It’s absolutely not true.”⁴⁶³ Minister of National Security Itamar Ben-Gvir likewise declared, “[t]o be clear, when they say that Hamas needs to be eliminated, it also

⁴⁵⁶ Times of Israel Staff, *Barkat: Promising Merciless War on Hamas, Netanyahu Says Israel Will ‘Avenge this Black Day’*, TIMES OF ISR. (Oct. 6, 2023), <https://www.timesofisrael.com/promising-merciless-war-on-hamas-netanyahu-says-israel-will-avenge-this-black-day/>.

⁴⁵⁷ IsraeliPM, *Address by the Prime Minister of Israel*, YOUTUBE (Oct. 28, 2023), <https://www.youtube.com/watch?v=IIPkoDk6isc>. Translation in Israel-Hamas war: ‘We Will Fight and We Will Win’, says Benjamin Netanyahu, SKY NEWS (Oct. 28, 2023), <https://news.sky.com/video/israel-hamas-war-we-will-fight-and-we-will-win-says-benjamin-netanyahu-12995212>.

⁴⁵⁸ Prime Minister’s Office in Hebrew (@IsraeliPM_heb), X (Nov. 3, 2023, 11:43 AM), https://x.com/IsraeliPM_heb/status/1720406463972004198.

⁴⁵⁹ Sefaria, I *Samuel* 15:1-34, JPS, 1985, https://www.sefaria.org/I_Samuel.15.1-34?lang=bi. The message to kill all men, women, and infants is consistent across versions.

⁴⁶⁰ Emanuel Fabian, *Defense Minister Announces ‘Complete Siege’ of Gaza: No Power, Food or Fuel*, TIMES OF ISR. (Oct. 9, 2023, 12:26 PM), https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/. Emphasis added.

⁴⁶¹ Kipa News, *Filmography: Ariel Harmoni, Ministry of Defense*, YOUTUBE (Oct. 10, 2023), <https://www.youtube.com/watch?v=l9wx7e4u-xM>. Trans. in Emanuel Fabian, *Gallant: Israel Moving to Full Offense, Gaza Will Never Return to What it Was*, TIMES OF ISR. (Oct. 10, 2023, 7:33 PM), https://www.timesofisrael.com/liveblog_entry/gallant-israel-moving-to-full-offense-gaza-will-never-return-to-what-it-was/.

⁴⁶² Kipa News, *Filmography: Ariel Harmoni, Ministry of Defense*, YOUTUBE (Oct. 10, 2023), <https://www.youtube.com/watch?v=l9wx7e4u-xM>. Trans. in *Israeli Defense Minister Warns Hamas ‘Will Regret’ Deadly Attacks*, BLOOMBERG (Oct. 10, 2023), <https://www.youtube.com/watch?v=vtjHcnNB0E8>.

⁴⁶³ Paul Blumenthal, *Israeli President Says There Are No Innocent Civilians in Gaza*, HUFFINGTON POST (Oct. 13, 2023, 11:43 AM), https://www.huffpost.com/entry/israel-gaza-isaac-herzog_n_65295ee8e4b03ea0c004e2a8.

means those who sing, those who support and those who distribute candy, all of these are terrorists.”⁴⁶⁴

120. Speaking at the “Return to Gaza” Conference, Minister of National Security Ben-Gvir reportedly said that the “only humane solution for Gaza is the mass deportation of its inhabitants.”⁴⁶⁵
121. As Israeli Energy Minister Israel Katz cut off all electricity to the Gaza Strip, he stated Israel’s clear intention against the Palestinian people: “What was will not be.”⁴⁶⁶
122. Major General Ghassan Alian, head of the Israeli military’s Coordinator of Government Activities in the Territories (COGAT), responsible for administering the siege on Gaza,⁴⁶⁷ explicitly declared Israel’s intention to bring about physical destruction to Palestinians in Gaza, stating: “Human animals must be treated as such. There will be no electricity and no water [in Gaza], there will only be destruction. You wanted hell, you will get hell.”⁴⁶⁸
123. Israel’s Minister of Economy Bezalel Smotrich stated, “Israel has a very clear message to our enemies. We are saying to them, look what’s happening in Gaza—you are going to get the same treatment if you attack us. We are going to wipe you off the face of the earth.”⁴⁶⁹ Smotrich also publicly invoked the commandment of Amalek earlier expressed by Netanyahu in calling for the “total annihilation” of Gaza as recently as April 29, 2024, stating at an event: “There are no half measures. [The Gazan cities of] Rafah, Deir al-Balah, Nuseirat – total annihilation. ‘You will blot out the remembrance of Amalek from under heaven’ – there’s no place under heaven.”⁴⁷⁰
124. Israeli Defense Force Spokesperson Rear Admiral Daniel Hagari stated, “[w]hile balancing accuracy with the scope of damage, right now we’re focused on what causes maximum

⁴⁶⁴ Ikram Kouachi, *Anyone Who Supports Hamas Should Be Eliminated: Israeli Minister*, ANADOLU AJANSI (Nov. 13, 2023), <https://www.aa.com.tr/en/middle-east/anyone-who-supports-hamas-should-be-eliminated-israeli-minister/3051463>.

⁴⁶⁵ Itay Epshtain (@EpshtainItay), X (Jan. 28, 2024, 10:45 AM), <https://twitter.com/EpshtainItay/status/1751677871318311127>.

⁴⁶⁶ Israel Katz (@Israel_katz), X (Oct. 11, 2023, 7:29 AM), https://x.com/Israel_katz/status/171208312227909116.

⁴⁶⁷ See COORDINATION OF GOVERNMENT ACTIVITIES IN THE TERRITORIES, GOV.IL, <https://www.gov.il/en/departments/coordination-of-government-activities-in-the-territories/govil-landing-page> (last visited May 1, 2024).

⁴⁶⁸ Gianluca Pacchiani, *COGAT Chief Addresses Gazans: “You Wanted Hell, You Will Get Hell”*, TIMES OF ISR. (Oct. 10, 2023, 4:01 PM), https://www.timesofisrael.com/liveblog_entry/cogat-chief-addresses-gazans-you-wanted-hell-you-will-get-hell/.

⁴⁶⁹ Times of Israel Staff, *Barkat: We’ll Wipe Iran’s Leaders Off the Face of the Earth if They Expand Conflict*, TIMES OF ISR. (Oct. 23, 2023, 6:43 PM), <https://www.timesofisrael.com/barkat-well-wipe-irans-leaders-off-the-face-of-the-earth-if-they-expand-conflict/>.

⁴⁷⁰ Noa Shpigel, *Israel’s Far-right Minister Smotrich Calls for ‘No Half Measures’ in the ‘Total Annihilation’ of Gaza*, HAARETZ (Apr. 30, 2024), <https://www.haaretz.com/israel-news/2024-04-30/ty-article/.premium/smotrich-calls-for-no-half-measures-in-the-total-annihilation-of-gaza/0000018f-2f4c-d9c3-abcf-7f7d25460000>.

damage.”⁴⁷¹ He also boasted about Israel’s intent to destroy Gaza, stating, “Gaza will eventually turn into a city of tents. There will be no buildings.”⁴⁷²

125. Israeli Energy Minister Katz also stated Israel’s intent to eliminate Palestinians: “All civilian population in [G]aza is ordered to leave immediately. We will win. They will not receive a drop of water or a single battery until they leave the world.”⁴⁷³
126. Israel’s Social Equality and Women’s Advancement Minister May Golan said in the Knesset, “I am proud of the ruins of Gaza, and that every baby, even 80 years from now, will tell their grandchildren what the Jews did.”⁴⁷⁴
127. Israeli Heritage Minister Amichai Eliyahu asserted on public radio, “[w]e must find ways for Gazans that are more painful than death,” and called for encouraging Palestinians to leave Gaza.⁴⁷⁵ He also stated that Israel dropping a nuclear bomb on Gaza is “an option,”⁴⁷⁶ and stated:

The north of the Gaza Strip, more beautiful than ever. Everything is blown up and flattened, simply a pleasure for the eyes . . . We must talk about the day after. In my mind, we will hand over lots to all those who fought for Gaza over the years and to those evicted from [an illegal Israeli settlement].⁴⁷⁷

128. Avi Dichter, Minister of Agriculture and former head of the Israeli Security Agency, Shin Bet, stated, “[w]e are now actually rolling out the Gaza Nakba.”⁴⁷⁸
129. The intent to annex parts of Gaza is also clear in statements by Israeli Minister Gideon Sa’ar, a member of the newly created “war cabinet.” Sa’ar has said that Gaza “must be smaller at the end of the war.”⁴⁷⁹

⁴⁷¹ Bethan McKernan & Quique Kierszenbaum, “*We’re Focused on Maximum Damage*”: Ground Offensive into Gaza Seems Imminent, THE GUARDIAN (Oct. 10, 2023), <https://www.theguardian.com/world/2023/oct/10/right-now-it-is-one-day-at-a-time-life-on-israels-frontline-with-gaza>.

⁴⁷² Omar Shakir, Yasmine Ahmed & Akshaya Kumar, *We Are Seeing Urgent Signs of More Mutual Mass Atrocities to Come in Israel and Gaza*, HUM. RTS. WATCH (Oct. 20, 2023),

<https://www.hrw.org/news/2023/10/20/we-are-seeing-urgent-signs-more-mutual-mass-atrocities-come-israel-and-gaza>.

⁴⁷³ Israel Katz (@Israel_katz), X (Oct. 13, 2023, 5:01 PM), https://twitter.com/Israel_katz/status/1712876230762967222.

⁴⁷⁴ May Golan (@GolanMay), X (Feb. 19, 2024, 2:25 PM), <https://x.com/GolanMay/status/1759675501424042329>.

⁴⁷⁵ Ahmed Asmar, *Another Israeli Minister Calls for Encouraging Palestinians to Leave Gaza*, ANADOLU AJANSI (Jan. 5, 2024), <https://www.aa.com.tr/en/middle-east/another-israeli-minister-calls-for-encouraging-palestinians-to-leave-gaza/3101423>.

⁴⁷⁶ *Id.*

⁴⁷⁷ Amichai Eliyahu, FACEBOOK (Nov. 1, 2023), <https://www.facebook.com/eliyau.a/videos/148918588283326/>.

⁴⁷⁸ Michael Hauster Tov, “*We’re Rolling Out Nakba 2023*” Israeli Minister Says on Northern Gaza Strip Evacuation, HAARETZ (Nov. 12, 2023), <https://www.haaretz.com/israel-news/2023-11-12/ty-article/israeli-security-cabinet-member-calls-north-gaza-evacuation-nakba-2023/0000018b-c2be-dea2-a9bf-d2be7b670000>.

⁴⁷⁹ Patrick Wintour, Ruth Michaelson & Bethan McKernan, *Blinken Returning to Israel to Try to Limit Death Toll from an Invasion of Gaza*, THE GUARDIAN (Oct. 15, 2023), <https://www.theguardian.com/world/2023/oct/15/egypt-moves-troops-to-gaza-border-amid-fears-of-expulsion-of-palestinians>.

130. Galit Distel Atbaryan, former Minister of Public Diplomacy and current Knesset Member for the Likud Party (part of the governing coalition), declared:

Erase all of Gaza from the face of the earth. That the Gazan monsters will fly to the southern fence and try to enter Egyptian territory or they will die and their death will be evil. Gaza should be erased. . . . A vengeful and cruel IDF is needed here. Anything less is immoral. Just unethical.⁴⁸⁰

131. Deputy Knesset Speaker and member of Likud’s governing coalition Nissim Vaturi stated, “[n]ow we all have one common goal: erasing the Gaza Strip from the face of the earth.”⁴⁸¹ Knesset Member, Ariel Kallner said, “[r]ight now, one goal: Nakba. A Nakba that will overshadow the Nakba of 1948. Nakba in Gaza and Nakba to anyone who dares to join.”⁴⁸² Another Knesset Member, Hanoch Milbitsky, told Knesset Member Ayman Odeh, who is an Arab Palestinian citizen of Israel, “You will die, your children will die, your grandchildren will die, there won’t be a Palestinian State, there will never be.”⁴⁸³

3.b.i.2. Dehumanization

132. Alongside statements that explicitly express intent and outline plans to cause mass destruction of Palestinians and Palestinian society in Gaza, officials from the highest to lowest levels in government have used dehumanizing, derogatory, and discriminatory rhetoric against Palestinians, often employing dog whistles that harken back to eliminationist rhetoric in other colonialist contexts. These are relevant to an analysis of intent. The court in *Kayishema and Ruzindana*, for example, considered derogatory language in its assessment of intent: utterances by the Defendant that referred to Tutsis as *Inyenzi* (“cockroach”), “dirt . . . to be removed,” and “Tutsi dogs,” for example, constituted evidence of specific intent to commit genocide.⁴⁸⁴
133. Israeli Prime Minister Netanyahu has repeatedly used dehumanizing rhetoric against Palestinians, including language that casts Palestinians as universally evil. In a letter to Israeli soldiers subsequently published on X (formerly Twitter), the Prime Minister stated: “This is the war between the sons of light and the sons of darkness. We will not let up on our mission until the light overcomes the darkness – the good will defeat the extreme evil that threatens us and the entire world.”⁴⁸⁵ The Prime Minister has deployed similar

⁴⁸⁰ Galit Distel Atbaryan (@GalitDistel), X (Nov. 1, 2023, 8:13 AM), <https://x.com/galitdistel/status/1719689095230730656>.

⁴⁸¹ Antonio Pita, ‘Wipe Gaza Off the Face of the Earth’: The Statements Made by Israeli Politicians on Which South Africa Supports its Genocide Case, EL PAÍS (Jan. 11, 2024, 22:16 PM), <https://english.elpais.com/international/2024-01-11/wipe-gaza-off-the-face-of-the-earth-the-statements-made-by-israeli-politicians-on-which-south-africa-supports-its-genocide-case.html>.

⁴⁸² Ariel Kallner (@ArielKallner), X (Oct. 7, 2023, 9:29 PM), <https://twitter.com/ArielKallner/status/1710769363119141268>.

⁴⁸³ Quds News Network (@QudsNen), X (Feb. 21, 2024, 11:07 AM), <https://twitter.com/QudsNen/status/1760380651444805715>.

⁴⁸⁴ *Kayishema* Trial Judgment at para. 538.

⁴⁸⁵ Prime Minister’s Office in Hebrew (@IsraeliPM_heb), X (Nov. 3, 2023, 11:44 AM), https://x.com/IsraeliPM_heb/status/1720406469055500583.

dehumanizing sentiment on multiple occasions, saying, for example: “This will be a victory of good over evil, of light over darkness, of life over death. In this war we will stand steadfast, more united than ever, certain in the justice of our cause. This is the mission of our lives. This is also the mission of my life.”⁴⁸⁶ He also called Israel’s attacks on Gaza a “struggle between the children of light and the children of darkness, between humanity and the law of the jungle.”⁴⁸⁷ In his “Christmas Message,” Prime Minister Netanyahu asserted that “we’re facing monsters, monsters who murdered children in front of their parents. . . . This is a battle not only of Israel against these barbarians, it’s a battle of civilization against barbarism.”⁴⁸⁸

134. Numerous Israeli officials, by referring to Palestinians in Gaza as “human animals” (see Section 3.b.i.1), have engaged in an age-old and textbook tactic of dehumanization.⁴⁸⁹

3.b.ii. Evidence of intent: acts

135. It is in the context of the above statements that Israel has committed all the acts delineated in Section 3.a. These acts do not simply depict a harrowing story of months of suffering. Viewed in their entirety, they are probative of genocidal intent. Specifically, Israel has caused broad physical destruction and severe bodily injury to Palestinians in Gaza; indiscriminately, systematically, and consistently harmed them, including civilians attempting to seek aid; destroyed Palestinians’ property, including cultural property; used weapons intended to unleash extreme suffering and devastation on Gaza; and created mass graves of and desecrated Palestinians’ bodies.

3.b.ii.1. Israel has physically targeted Palestinians and caused severe bodily injury to an unprecedented number of Palestinians in Gaza

136. Many international tribunals have concluded that the broad scale of destruction of members of the group may lead to an inference of genocidal intent (Section 1.b.ii). The ICTR in *Muhimana*, for example, held that while there is “no numerical threshold of victims necessary” for a finding of genocide, “the relative proportionate scale of the actual or attempted destruction of a group, by any act listed in Article II of the Statute, is strong evidence of the intent to destroy a group, in whole or in part.”⁴⁹⁰

⁴⁸⁶ Press Release, Prime Minister Benjamin Netanyahu, Statement by PM Netanyahu (Oct. 28, 2023), <https://www.gov.il/en/departments/news/statement-by-pm-netanyahu-28-oct-2023>.

⁴⁸⁷ Press Release, Israel Ministry of Foreign Affairs, Excerpt from PM Netanyahu’s remarks at the opening of the Winter Assembly of the 25th Knesset’s Second Session (Oct. 16, 2023), <https://www.gov.il/en/pages/excerpt-from-pm-netanyahu-s-remarks-at-the-opening-of-the-knesset-s-winter-assembly-16-oct-2023>.

⁴⁸⁸ Press Release, Israel Ministry of Foreign Affairs, Christmas Message from PM Netanyahu (Dec. 24, 2023), <https://www.gov.il/en/departments/news/christmas-message-from-pm-netanyahu-24-dec-2023>.

⁴⁸⁹ These most recent dehumanizing statements are not unique but rather follow historic patterns of dehumanization and erasure of Palestinians in the statements of Israeli leaders. See, e.g., Melissa F. Weiner, *Palestinian Erasure and Dehumanization in Introductory Sociology Texts, Symposium: Radicalization and Continued Oppression of Palestine*, 49:6 CRITICAL SOCIOLOGY 991, 991-1008 (Sept. 2023).

⁴⁹⁰ *Muhimana* Trial Judgment at para. 498.

137. Israel has killed or injured more than 5 percent of the population of Gaza since October 7, 2023 (see Section 3.a).⁴⁹¹ As discussed in detail in Sections 3.a.i and 3.a.ii, Israel has systematically directed violence against Palestinians. Israel killed more children in the first four months of its assault than in all of the world's conflicts in the past four years combined.⁴⁹² In November 2023, UN Secretary-General Antonio Guterres underscored that the death toll in Gaza is “unparalleled and unprecedented.”⁴⁹³ The death toll has more than doubled since.⁴⁹⁴ Recognizing the extent of bodily injury, the number of victims, and the scale of destruction as a result of Israel's violence, over thirty UN experts have called for an arms embargo on Israel.⁴⁹⁵

3.b.ii.2 Israel has systemically, consistently, and indiscriminately targeted and killed Palestinians in Gaza

138. The systematic and consistently applied nature of harms against a group is relevant to determining genocidal intent, according to the ICJ's judgment in *Bosnia and Herzegovina v. Serbia and Montenegro*.⁴⁹⁶
139. There are many examples of Israeli forces indiscriminately targeting Palestinians in Gaza, as described in Section 3.a. Notably, Israeli military attacks have repeatedly targeted Palestinian civilians attempting to receive humanitarian aid. Between mid-January and February 2024, there have been at least 14 reported incidents of “shooting, shelling and targeting groups gathered to receive urgently needed supplies from trucks or airdrops between mid-January and the end of February 2024.”⁴⁹⁷ On the morning of February 29, 2024, in what has been referred to as the Flour Massacre, Israeli forces killed 115 Palestinians and injured 760 in Gaza City as they sought out food aid.⁴⁹⁸ Israel's attack on Palestinians desperately trying to find food came as at least 1.1 million Palestinians in Gaza

⁴⁹¹ *Hostilities in the Gaza Strip and Israel | Flash Update #153*, OCHA (Apr. 15, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-153>; United Nations Geneva (@UNGeneva), X (Feb. 16, 2024, 8:01 PM), <https://x.com/UNGeneva/status/1758657840925872443>.

⁴⁹² Clarissa-Jan Lim, *More Children Killed in Gaza in Four Months than in Four Years of War Globally: Report*, MSNBC (Mar. 14, 2024), <https://www.msnbc.com/top-stories/latest/death-toll-children-gaza-israel-rcna143269>; Press Release, UNICEF, *Children Disproportionately Wearing the Scars of the War in Gaza - Geneva Palais Briefing Note* (Apr. 16, 2024), <https://www.unicef.org/press-releases/children-disproportionately-wearing-scars-war-gaza-geneva-palais-briefing-note>.

⁴⁹³ *Gaza: ‘Thousands of Children Killed’ Within a Few Weeks, Says UN’s Guterres*, U.N. NEWS (Nov. 20, 2023), <https://news.un.org/en/story/2023/11/1143772>.

⁴⁹⁴ See, e.g. *Hostilities in the Gaza Strip and Israel | Flash Update #160*, OCHA (May 1, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-160>.

⁴⁹⁵ Press Release, OHCHR, *Arms Exports to Israel Must Stop Immediately: UN Experts* (Feb. 23, 2024), <https://www.ohchr.org/en/press-releases/2024/02/arms-exports-israel-must-stop-immediately-un-experts>.

⁴⁹⁶ *Bosn. & Herz. v. Serb. & Montenegro* at para. 370.

⁴⁹⁷ Press Release, OHCHR, *UN Experts Condemn ‘Flour Massacre’, Urge Israel to End Campaign of Starvation in Gaza* (Mar. 5, 2024), <https://www.ohchr.org/en/press-releases/2024/03/un-experts-condemn-flour-massacre-urge-israel-end-campaign-starvation-gaza>.

⁴⁹⁸ *UN Chief Appalled by ‘Tragic Human Toll’ of Gaza War*, U.N. NEWS (Feb. 29, 2024), <https://news.un.org/en/story/2024/02/1147082>; *In Press Conference, Euro-Med Confirms Israel's Full Involvement in Gaza Flour Massacre*, EURO-MED MONITOR (Mar. 3, 2024), <https://euromedmonitor.org/en/article/6200>.

experienced “catastrophic hunger,”⁴⁹⁹ and one in six children under the age of two in northern Gaza suffered from acute malnutrition.⁵⁰⁰ As noted above, Israel’s blockade of humanitarian aid, including food, has caused widespread, catastrophic hunger and malnutrition. At least 28 children have reportedly died of starvation, and others remain in critical condition due to dehydration and starvation as of April 2024.⁵⁰¹

140. Israeli leadership has not only failed to condemn or investigate the deaths; it also demonized the victims and spun the event to justify further restrictions on aid. In response to the February 29, 2024, massacre, Israeli Minister of National Security Itamar Ben-Gvir stated in a post on X:

Total support must be given to our heroic fighters operating in Gaza, who acted excellently against a Gazan mob that tried to harm them. Today it was proven that the transfer of humanitarian aid to Gaza is not only madness while our abductees are being held in the Strip under substandard conditions, but also endangers the IDF soldiers. This is another clear reason why we must stop transferring this aid, which is in fact aid to harm the IDF soldiers and oxygen to Hamas.⁵⁰²

141. On March 3, 2024, Israeli forces once again targeted Palestinians in Gaza waiting for aid, killing and wounding dozens of people in Gaza City.⁵⁰³ Save the Children, in a statement addressing the massacre and targeting of Palestinians civilians while they wait for aid, stated: “As children in Gaza die due to a lack of food, their parents are being killed trying to get it for them.”⁵⁰⁴

3.b.ii.3. *Israel has systematically and extensively targeted Palestinians’ property in Gaza*

142. The ICTR in *Kayishema and Ruzindana* determined that genocidal intent can be inferred from “the physical targeting of the group or their property.”⁵⁰⁵ As noted in Section 3.a.iii,

⁴⁹⁹ Elizabeth Bryant, *Hunger in Gaza: Famine Findings a ‘Dark Mark’ on the World, Says WFP Palestine Country Director*, WFP (Mar. 18, 2024), <https://www.wfp.org/stories/hunger-gaza-famine-findings-dark-mark-world-says-wfp-palestine-country-director>. See also *Emergency: State of Palestine*, WFP, <https://www.wfp.org/emergencies/palestine-emergency> (last visited May 1, 2024).

⁵⁰⁰ Meeting Coverage, U.N. Security Council, *Famine Imminent in Gaza, Humanitarian Officials Tell Security Council, Calling for Immediate Ceasefire*, U.N. Meeting Coverage SC/15604 (Feb. 27, 2024).

⁵⁰¹ *Gaza: Israel’s Imposed Starvation Deadly for Children*, HUM. RTS. WATCH (Apr. 9, 2024), <https://www.hrw.org/news/2024/04/09/gaza-israels-imposed-starvation-deadly-children>; See also *Six Children Die*, AL-JAZEERA (Feb. 28, 2024), <https://www.aljazeera.com/news/2024/2/28/children-die-of-malnutrition-in-gaza-hospitals-health-ministry>.

⁵⁰² Itamar Ben-Gvir (@itamarbengvir), X (Feb. 29, 2024, 8:37 AM), <https://x.com/itamarbengvir/status/1763196768458604583>.

⁵⁰³ Tamila Varshalomidze, Usaid Siddiqui & Maziar Motamedi, *Israel’s War on Gaza Live: Israel Again Attacks Aid-Seekers in Gaza City*, AL-JAZEERA (Mar. 3, 2024), <https://www.aljazeera.com/news/liveblog/2024/3/3/israels-war-on-gaza-live-every-minute-counts-as-hunger-kills-in-gaza>.

⁵⁰⁴ *While Children Die from Lack of Food, Their Parents are Killed Trying to Get it for them*, SAVE THE CHILDREN (Feb. 29, 2024), <https://www.savethechildren.net/news/while-children-die-lack-food-their-parents-are-killed-trying-get-it-them-save-children>.

⁵⁰⁵ *Kayishema* Trial Judgment at para. 93.

Israel has destroyed at least 60 to 70 percent of Palestinian homes in Gaza, including up to 84 percent of North Gaza homes.⁵⁰⁶ Israel has also destroyed hundreds of buildings, including entire residential neighborhoods, mosques, university campuses, UN schools, and a resort.⁵⁰⁷ Social media posts of Israeli soldiers in Gaza show Israeli forces destroying Palestinian civilians' property, vandalizing shops, and bulldozing civilian neighborhoods, while celebrating and using derogatory and racist language towards Palestinians.⁵⁰⁸

143. The ICJ held that systematic attacks on cultural and religious property may also be probative of intent.⁵⁰⁹ Israel has damaged or destroyed key Palestinian cultural heritage and religious sites as it has destroyed other civil infrastructure and killed, injured, and displaced Palestinians *en masse* (see Section 3.a.iii.6).

3.b.ii.3. Israel has used weapons intended to cause severe damage and widespread death

144. The types of weapons used in an offensive may also indicate genocidal intent, according to the ICTR in *Kayishema and Ruzindana*.⁵¹⁰
145. The weapons used by Israel indicate an intent to systematically destroy Palestinians and their property. Nearly 50 percent of the bombs Israel has dropped on Gaza have been unguided “dumb bombs,” which are “less precise and can pose a greater threat to civilians, especially in such a densely populated area like Gaza.”⁵¹¹ Israel has used white phosphorus, which burns at more than 800 degrees Celsius and causes severe and deep burns to the flesh, in the densely populated Gaza Strip.⁵¹² Israel has also dropped hundreds of 2,000-

⁵⁰⁶ *Gaza: Rights Experts Condemn AI Role in Destruction by Israeli Military*, U.N. NEWS (Apr. 15, 2024), <https://news.un.org/en/story/2024/04/1148561>. See also Press Release, OHCHR, Over One Hundred Days into the War, Israel Destroying Gaza's Food System and Weaponizing Food, Say UN Human Rights Experts (Jan. 16, 2024), <https://www.ohchr.org/en/press-releases/2024/01/over-one-hundred-days-war-israel-destroying-gazas-food-system-and>.

⁵⁰⁷ Leanne Abraham, *Israel's Controlled Demolitions Are Razing Neighborhoods in Gaza*, N.Y. TIMES (Feb. 1, 2024), <https://www.nytimes.com/interactive/2024/02/01/world/middleeast/Israel-gaza-war-demolish.html>.

⁵⁰⁸ See e.g., Aric Toler, et. al., *What Israeli Soldiers' Videos Reveal: Cheering Destruction and Mocking Gazans*, N.Y. TIMES (Feb. 6, 2024), <https://www.nytimes.com/2024/02/06/world/middleeast/israel-idf-soldiers-war-social-media-video.html>; Ivana Kottasová & Celine Alkhalidi, *Videos Show Israeli Soldiers in Gaza Burning Food, Vandalizing a Shop and Ransacking Private Homes*, CNN (Dec. 15, 2023), <https://www.cnn.com/2023/12/15/middleeast/israeli-soldiers-burningfood-gaza-intl/index.html>; *Israeli Soldier Destroys Civilian's Property in Mockery of Gazan Hardships*, MIDDLE EAST MONITOR (Jan. 27, 2024), <https://www.middleeastmonitor.com/20240127-israeli-soldier-destroys-civilians-property-in-mockery-of-gazan-hardships/>.

⁵⁰⁹ *Bosn. & Herz. v. Serb. & Montenegro* at para. 344, citing *Krstić* Trial Judgment at para. 580.

⁵¹⁰ *Kayishema* Trial Judgment at para. 93.

⁵¹¹ Natasha Bertrand & Katie Bo Lillis, *Exclusive: Nearly Half of the Israeli Munitions Dropped on Gaza are Imprecise “Dumb Bombs,” US Intelligence Assessment Finds*, CNN (Dec. 14, 2023), <https://www.cnn.com/2023/12/13/politics/intelligence-assessment-dumb-bombs-israel-gaza/index.html>.

⁵¹² *Questions and Answers on Israel's Use of White Phosphorus in Gaza and Lebanon*, HUM. RTS. WATCH (Oct. 12, 2023), <https://www.hrw.org/news/2023/10/12/questions-and-answers-israels-use-white-phosphorus-gaza-and-lebanon>.

pound bombs.⁵¹³ These weapons are capable of killing and injuring people more than 1,000 feet away from the location of impact.⁵¹⁴

3.b.ii.4. Israel has desecrated Palestinian bodies and created mass graves in Gaza

146. Just as in *Krstić*, wherein the Trial Chamber held that the creation of mass graves, bodily mutilation, and the exhumation and relocation of mass graves was indicative of genocidal intent,⁵¹⁵ Israeli forces have desecrated at least sixteen cemeteries in Gaza since October 7, removing some corpses and leaving others exposed to the elements.⁵¹⁶ The Israeli military has, in cases like the Bani Suheila cemetery, bulldozed and used the locations of cemeteries as military staging grounds.⁵¹⁷ Investigations have found that Israeli forces “targeted the majority of the cemeteries in the Gaza Strip” including Al-Fallujah; Ali bin Marwan; Sheikh Radwan; Al-Shuhada; Sheikh Shaaban; St. Porphyrius Church, and Al-Shuhada Cemeteries.⁵¹⁸
147. In April 2024, multiple mass graves were uncovered in Gaza at Nasser Hospital in Khan Younis and at Al-Shifa Hospital in Gaza City.⁵¹⁹ Hundreds of bodies of older people, women, and wounded Palestinians were found in these mass graves, some with their hands tied and stripped of their clothes.⁵²⁰

3.b.iii Relevant political context

148. Israeli officials’ dehumanizing and genocidal rhetoric, as well as the systematic violence carried out against Palestinians in Gaza by Israel, have coincided with government rhetoric, legislation, and practice that reinforces Jewish supremacy and forecloses the possibility of a two-state solution. These facts lend further support to the evidence of genocidal intent detailed above. As in *Karadžić and Mladić*, where the ICTY found that the political project

⁵¹³ Tamara Qiblawi et. al., ‘Not Seen Since Vietnam’: Israel Dropped Hundreds of 2,000-Pound Bombs on Gaza, *Analysis Shows*, CNN (Dec. 22, 2023), <https://www.cnn.com/gaza-israel-big-bombs/index.html>.

⁵¹⁴ *Id.*

⁵¹⁵ *Krstić* Trial Judgment at para. 596.

⁵¹⁶ Jeremy Diamond et. al. *At Least 16 Cemeteries in Gaza Have Been Desecrated by Israeli Forces, Satellite Imagery and Videos Reveal*, CNN (Jan. 20, 2024), <https://www.cnn.com/2024/01/20/middleeast/israel-gaza-cemeteries-desecrated-investigation-intl-cmd/index.html>.

⁵¹⁷ *Id.*

⁵¹⁸ *Id.*

⁵¹⁹ *Mass Graves in Gaza Show Victims’ Hands Were Tied, Says UN Rights Office*, U.N. NEWS (Apr. 23, 2024), <https://news.un.org/en/story/2024/04/1148876>. See also Liam Stack, Hiba Yazbek & Nick Cumming-Bruce, *U.N. Calls for Inquiry into Mass Graves at 2 Gaza Hospitals*, N.Y. TIMES (Apr. 23, 2024), <https://www.nytimes.com/2024/04/23/world/middleeast/gaza-mass-grave.html>; Ruth Michaelson, *UN Rights Chief ‘Horried’ by Reports of Mass Graves at Two Gaza Hospitals*, THE GUARDIAN (Apr. 23, 2024), <https://www.theguardian.com/world/2024/apr/23/un-rights-chief-horrified-by-reports-of-mass-graves-at-two-gaza-hospitals>.

⁵²⁰ *Id.* See also Liam Stack, Hiba Yazbek & Nick Cumming-Bruce, *U.N. Calls for Inquiry into Mass Graves at 2 Gaza Hospitals*, N.Y. TIMES (Apr. 23, 2024), <https://www.nytimes.com/2024/04/23/world/middleeast/gaza-mass-grave.html>; Ruth Michaelson, *UN Rights Chief ‘Horried’ by Reports of Mass Graves at Two Gaza Hospitals*, THE GUARDIAN (Apr. 23, 2024), <https://www.theguardian.com/world/2024/apr/23/un-rights-chief-horrified-by-reports-of-mass-graves-at-two-gaza-hospitals>.

of the Serb Democratic Party, in imagining an “ethnically homogeneous State” in a territory of multiple populations, “contemplates the destruction of the non-Serbian groups,”⁵²¹ the explicit Israeli policy of a Jewish State covering the entirety of Israeli and Palestinian territory must be considered in inferring genocidal intent. The history of Israel’s objective to expand the State of Israel, while simultaneously ensuring that Israeli Jews maintain numerical, political, and cultural supremacy, is long, well-documented, and consistent. This report does not expound on the extensive historical examples of this political project, but the following are recent reiterations. In 2019, Israeli Prime Minister Benjamin Netanyahu stated that Israel is “not a state of all its citizens,” but rather the “nation state only of the Jewish people.”⁵²² This rhetoric reflects the 2018 Nation-State of the Jewish People Law: a “basic law,” or constitutional law, which grants “the right to exercise national self-determination” exclusively to Jewish people.⁵²³ The law establishes Hebrew as Israel’s official language and downgrades Arabic to a language of “special status.”⁵²⁴ The law further establishes “Jewish settlement as a national value” and mandates that the state “will labor to encourage and promote its establishment and development.”⁵²⁵ The same year that the Nation-State Law was passed, a bill proposing Israel as “a country for all its citizens” was blocked in the Knesset.⁵²⁶

149. In September 2023, while speaking at the 78th Session of the UN General Assembly, Netanyahu held up a map entitled “The New Middle East,” which excluded any depictions of a Palestinian State and labeled all of the occupied Palestinian territories as part of Israel.⁵²⁷ A political doctrine of total refusal of a Palestinian State was a basic tenet of Netanyahu’s election platform: in March 2015, he affirmed that if elected, “there will not be a Palestinian State.”⁵²⁸ Netanyahu’s Likud Party is currently the largest single party in the Israeli Knesset (with 32 of 120 seats).⁵²⁹
150. The platform of Netanyahu and the Likud Party is consistent with the government’s steady, *de facto* annexation of land in the West Bank, where Israeli military authorities have

⁵²¹ Karadžić Indictments Review at para. 94.

⁵²² Benjamin Netanyahu Says Israel is Not a State of All its Citizens’, THE GUARDIAN (Mar. 10, 2019), <https://www.theguardian.com/world/2019/mar/10/benjamin-netanyahu-says-israel-is-not-a-state-of-all-its-citizens>.

⁵²³ Raoul Wootliff, *Final Text of Jewish Nation-State Law, Approved by the Knesset Early on July 19*, TIMES OF ISR. (July 18, 2018), <https://www.timesofisrael.com/final-text-of-jewish-nation-state-bill-set-to-become-law/>.

⁵²⁴ *Id.*

⁵²⁵ *Id.*

⁵²⁶ Jonathan Lis, *Knesset Council Bans Bill to Define Israel as State for All Its Citizens*, HAARETZ (June 4, 2018), <https://www.haaretz.com/israel-news/2018-06-04/ty-article/.premium/knesset-council-bans-bill-to-define-israel-as-state-for-all-citizens/0000017f-e764-d62c-a1ff-ff7f6ce30000>.

⁵²⁷ Netanyahu Brandishes Map of Israel that Includes West Bank and Gaza at UN Speech, TIMES OF ISR. (Sept. 22, 2023), https://www.timesofisrael.com/liveblog_entry/netanyahu-brandishes-map-of-israel-that-includes-west-bank-and-gaza-at-un-speech/.

⁵²⁸ Barak Ravid, *Netanyahu: If I’m Elected, There Will Be No Palestinian State*, HAARETZ (Mar. 16, 2015), <https://www.haaretz.com/2015-03-16/ty-article/netanyahu-if-im-elected-there-will-be-no-palestinian-state/0000017f-e7c4-dea7-adff-f7ff54dd0000>.

⁵²⁹ Number of Seats in the 25th Knesset in Israel in 2022, by Political Party, STATISTA (Aug. 2023), <https://www.statista.com/statistics/1278850/number-of-seats-in-the-24th-knesset-in-israel-by-political-party/>.

appropriated more than one third of the land.⁵³⁰ Israel has either tacitly or overtly encouraged increasing settlement by the Israeli Jewish population in the West Bank and East Jerusalem, where, as of early 2024, an estimated 700,000 Israeli settlers resided illegally.⁵³¹

151. Members of Israel's coalition government have also expressed a desire for full Israeli control over Gaza, including establishing settlements. Tzvi Sukkot, a member of the Religious Zionist Party said, "[w]e first need to occupy, annex to destroy all the houses there, build neighborhoods there."⁵³² Finance Minister Bezalel Smotrich stated that Israel "will rule there. And in order to rule there securely for a long time, we must have a civilian presence."⁵³³ Though Prime Minister Netanyahu has reportedly rejected settlement activity in Gaza, he has asserted Israel will keep "full security control."⁵³⁴
152. Since October 7, 2023, Prime Minister Netanyahu's government has explicitly rejected Palestinian statehood, with Netanyahu saying that he was "proud" that he prevented the establishment of a Palestinian State and asserted that he would "not let the State of Israel go back to the fateful mistake of Oslo."⁵³⁵ The Israeli Ambassador to the United Kingdom, Tzipi Hotovely, relayed a similar message, telling Sky News that there was "absolutely no" prospect of Israel's government agreeing to a two-state solution.⁵³⁶

3.d. Addressing Israel's arguments about genocidal intent

153. Israel has asserted that the intent needed for the crime of genocide is absent because the State has other legitimate reasons for its actions in Gaza. First, Israel argues that it is engaging in self-defense.⁵³⁷ Self-defense, however, is bounded by requirements of necessity and proportionality; Israel's conduct in Gaza does not appear to meet either of these requirements. Second, Israel contends that its conduct in Gaza comports with international humanitarian law, which, therefore, demonstrates that it does not have the requisite intent to carry out genocide. The facts set forth in Sections 3.a above, however, indicate that Israel has committed numerous war crimes in violation of international

⁵³⁰ See HUM. RTS. WATCH, A THRESHOLD CROSSED at p. 147.

⁵³¹ *Israel Advances Peak number of West Bank Settlement Plans in 2023, Watchdog Says*, REUTERS (July 13, 2023), <https://www.reuters.com/world/middle-east/israel-advances-peak-number-west-bank-settlement-plans-2023-watchdog-2023-07-13/>.

⁵³² Mick Krever et al., *Israel's Far-Right Wants to Move Palestinians Out of Gaza. Its Ideas Are Gaining Attention*, CNN (Jan. 17, 2024), <https://www.cnn.com/2024/01/17/middleeast/israel-far-right-gaza-settler-movement-cmd-intl/index.html>.

⁵³³ *Id.*

⁵³⁴ *Id.*

⁵³⁵ Jeremy Sharon, *Pointing to Hamas's Little State, Netanyahu Touts His Role Blocking 2-State Solution*, TIMES OF ISR. (Dec. 17, 2023), <https://www.timesofisrael.com/pointing-to-hamass-little-state-netanyahu-touts-role-blocking-2-state-solution/>.

⁵³⁶ Jon Stone, *UK's Cameron Hits Back After Israeli Ambassador Rejects Two-State Solution*, POLITICO (Dec. 14, 2023), <https://www.politico.eu/article/david-cameron-israel-hamas-ambassador-rejects-two-state-solution/>.

⁵³⁷ *War Against Hamas in Gaza is Act of Self-Defence, Israel Tells World Court*, U.N. NEWS (Jan. 12, 2024), <https://news.un.org/en/story/2024/01/1145452>; CR 2024/2, Opening Statement of Gilad Noam, Verbatim Record, para. 20 (Jan. 12, 2024). [hereinafter Noam Opening Statement].

humanitarian law. Thus, contrary to the Israeli government's assertions, its conduct in Gaza demonstrates genocidal intent through the State's violation of the principles of necessity, distinction, precaution, and proportionality, alongside its obstruction of critical humanitarian aid to the people of Gaza (see Section 3.d.ii).

3.d.i. Israel's claim that it is engaging in self-defense

154. Israel has rejected accusations that it is committing genocide in Gaza, insisting that it is "in a war of defence against Hamas"⁵³⁸ and is exercising "the legitimate and inherent right of a State to defend itself"⁵³⁹ against Hamas's October 7, 2023, attacks.
155. The question of whether Israel may assert the right to self-defense against attacks by non-state actors from within a territory and polity it is occupying is disputed under international law⁵⁴⁰ and is outside the scope of this report.⁵⁴¹ An assertion by Israel of a right to self-defense, even if it were proper, does not relieve the Israeli State of its obligations under international humanitarian law and human rights law,⁵⁴² and, in particular, its obligations under the Genocide Convention.
156. The right to self-defense is bound by the customary requirements of necessity and proportionality.⁵⁴³ Israel's self-defense claim likely fails the necessity test. Under

⁵³⁸ *War Against Hamas in Gaza is Act of Self-Defence Israel Tells World Court*, U.N. NEWS (Jan. 12, 2024), <https://news.un.org/en/story/2024/01/1145452>.

⁵³⁹ *Id.*

⁵⁴⁰ Article 51 of the UN Charter describes the inherent right of individual or collective self-defense in the case of an armed attack. See U.N. Charter, art. 51. However, whether Israel can claim self-defense in this case is contested for two reasons. First, the ICJ has interpreted Article 51 of the UN Charter to create an inherent right of self-defense only in the case of an armed attack by one State against another State, first in the *Wall Advisory Opinion* (see *Wall Advisory Opinion* at para. 139) and again in the *Democratic Republic of Congo v. Uganda* case (see *Dem. Rep. Congo v. Uganda* at paras. 146-147). Israel does not claim that the October 7 attacks against it are imputable to a foreign State. Second, Article 51 of the UN Charter does not apply to threats that originate from occupied territories. In the *Wall Advisory Opinion*, the Court held that the threat which Israel regarded as justifying the construction of the wall originated within the Israeli-controlled OPT, rendering Article 51 of the Charter irrelevant (see *Wall Advisory Opinion* at para. 139). Likewise, though Israel officially "disengaged" from Gaza in 2005, Gaza remains occupied under international law (See para. 18 of this report).

⁵⁴¹ For analysis of Israel's claim to self-defense in Gaza, see, e.g., Ralph Wilde, *Israel's War in Gaza is Not a Valid Act of Self-Defence in International Law*, OPINIO JURIS (Nov. 9, 2023), <https://opiniojuris.org/2023/11/09/israels-war-in-gaza-is-not-a-valid-act-of-self-defence-in-international-law/>; Marko Milanovic, *Does Israel Have a Right to Defend Itself?* EJIL: TALK! (Nov. 14, 2023), <https://www.ejiltalk.org/does-israel-have-the-right-to-defend-itself/>.

⁵⁴² See *Bosn. & Herz. v. Serb. & Montenegro* at para. 430 ("every State may only act within the limits permitted by international law"); *Prosecutor v. Thaçi et al.*, KSC-BC-2020-06/F01536, Decision on Defence Motion for Judicial Notice of Adjudicated Facts with Annex I, para. 24 (Kosovo Specialist Chambers May 18, 2023) ("[S]elf-defence cannot operate as a defence to justify violating a prohibition that is recognized in international law as being absolute.").

⁵⁴³ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 266, para. 41 (July 8). See also *Military and Paramilitary Activities in and against Nicaragua* (Nicar. v. U.S.), para. 176, 1984 I.C.J. 169 (July 27). In the context of the current Israeli military campaign in Gaza, the requirements of necessity and proportionality were further emphasized by many UN member states. See Meeting Coverage, U.N. Security Council, Amid Increasingly Dire Humanitarian Situation in Gaza, Secretary-General Tells Security Council Hamas Attacks Cannot Justify Collective Punishment of Palestinian People, 9451st Meeting, SC 15462 (Oct. 24, 2023), <https://press.un.org/en/2023/sc15462.doc.htm>.

customary international law, self-defense satisfies the requirement of necessity “only if [the State] can demonstrate that it could not have achieved these goals without resort to force and that the degree of force employed did not exceed what was reasonably required for that purpose.”⁵⁴⁴ Inherent in the necessity requirement, therefore, is an obligation to seek peaceful means of resolving conflict, where possible.⁵⁴⁵ This requirement that a State justify an assertion of the right to self-defense is continuous throughout the conflict—a principle well established under customary international law and *jus ad bellum*.⁵⁴⁶

157. Israel has not exhausted peaceful measures or shown that force is the only means available to achieve a legitimate aim in its conduct in Gaza. In fact, Israel has explicitly and repeatedly rejected peaceful measures since October 7, 2023, with Prime Minister Benjamin Netanyahu stating in January 2024, that he “will not compromise on full Israeli security control over all the territory west of Jordan.”⁵⁴⁷ The Israeli Government has consistently ruled out ceasefire agreements and rejected hostage-release proposals in favor of “absolute victory.”⁵⁴⁸ It is improbable that Israel’s continuous and unrelenting attack on Gaza constitutes the only means to safeguard Israeli interests, including freeing hostages and protecting Israel’s security (see Section 3.d.ii).
158. Given the facts set forth in Section 3.a above, Israel’s self-defense claim likely also fails the proportionality test. Proportionality in the exercise of self-defense applies to a military operation as a whole.⁵⁴⁹ Proportionality demands an assessment of whether the force is

⁵⁴⁴ Christopher Greenwood, *Self-Defence*, in MAX PLANCK ENCYC. OF INT’L LAW, para. 27 (2011). *Jus ad bellum* is the branch of international humanitarian law that defines the conditions under which a State may resort to war. *What is Jus ad Bellum and Jus in Bello?* ICRC (Jan. 22, 2015), <https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0%EF%BB%BF>.

⁵⁴⁵ JAMES CRAWFORD, BROWNIE’S PRINCIPLES OF INTERNATIONAL LAW 722 (8th ed. 2019); Christopher Greenwood, *Self-Defence*, in MAX PLANCK ENCYC. OF INT’L LAW, para. 27 (2011); Elizabeth Wilmschurt, *Principles of International Law on the Use of Force by States in Self-Defence*, CHATHAM HOUSE 7 (Oct. 1, 2005), <https://www.chathamhouse.org/2005/10/principles-international-law-use-force-states-self-defence>.

⁵⁴⁶ See generally Christopher Greenwood, *The Relationship between Ius ad Bellum and Ius in Bello*, 9 REV. INT’L STUD. 221 (1983); Eliav Liebllich, *On the Continuous and Concurrent Application of ad bellum and in bello Proportionality*, in NECESSITY AND PROPORTIONALITY IN INTERNATIONAL PEACE AND SECURITY LAW (2020); RUSSELL BUCHAN & NICHOLAS TSAGOURIAS, THE RIGHT OF INDIVIDUAL AND COLLECTIVE SELF-DEFENSE 67 (2021).

⁵⁴⁷ Abeer Salman et al., *Netanyahu Again Rejects Palestinian Sovereignty Amid Fresh US Push for Two-State Solution*, CNN (Jan. 21, 2024), <https://www.cnn.com/2024/01/21/middleeast/netanyahu-palestinian-sovereignty-two-state-solution-intl/index.html>.

⁵⁴⁸ *Netanyahu Rejects Hamas Terms for Cease-Fire, Vows to Fight Until ‘Absolute Victory*, PBS (Feb. 7, 2024), <https://www.pbs.org/newshour/world/blinden-meets-with-israeli-leaders-to-discuss-possible-cease-fire-and-hostage-talks>; Patrick Kingsley, *Netanyahu Rejects Calls for a Cease-fire — and for His Resignation*, N.Y. TIMES (Oct. 30, 2023), <https://www.nytimes.com/2023/10/30/world/middleeast/netanyahu-israel-hamas-cease-fire.html>.

⁵⁴⁹ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, para. 77, Judgment, 2003 I.C.J. 161 (Nov. 6).

required to reverse the effects of the armed attack⁵⁵⁰ and if “the harmful effects of the force . . . are outweighed by achieving the legitimate aims.”⁵⁵¹

159. Israel’s declared military objective is to destroy Hamas.⁵⁵² Assuming this is a legitimate aim, its indiscriminate military attacks on civilian targets in Gaza and the use of collective punishment against Palestinian civilians, including through starvation and restriction of humanitarian aid (see Section 3.a), give rise to grave violations of international humanitarian law. Israel’s attacks on Gaza have violated international legal principles demanding that the military distinguish between civilians and combatants⁵⁵³ and balance the anticipated loss of civilian life and damage with the strategic military advantage of each attack.⁵⁵⁴

3.d.ii. Israel’s claim that its conduct in Gaza negates genocidal intent.

160. In its opening statements to the ICJ, Israel claimed that proof of genocidal intent was lacking on multiple grounds. According to Israel, what it “seeks by operating in Gaza is not to destroy a people, but to protect a people, its people, who are under attack on multiple fronts, and to do so in accordance with the law.”⁵⁵⁵ It further asserted that, by attacking Gaza, “Israel seeks neither to permanently occupy Gaza or to displace its civilian population,”⁵⁵⁶ but rather to engage in “a war of defense against Hamas – not against the Palestinian people.”⁵⁵⁷ These assertions are directly contradicted by multiple declarations by Israeli leadership that have indicated a clear intent to inflict damage and devastation upon Gaza and its people (see Section 3.b.i) and occupy the territory (see Section 3.b.iii).
161. Israel has additionally claimed that a primary objective of its attack on Gaza was to secure the release of Israeli hostages, thus negating genocidal intent.⁵⁵⁸ This too is undermined by the Israeli military’s conduct during the war on Gaza, which continues to endanger the lives of Israeli hostages. Specifically, while 105 Israeli hostages were released under a negotiated temporary ceasefire deal, Israeli strikes on Gaza have reportedly killed a number

⁵⁵⁰ Christopher Greenwood, *Self-Defence*, in MAX PLANCK ENCYC. OF INT’L LAW, para. 28 (2011).

⁵⁵¹ Noam Lubell, *The ILA’s 2018 Report on Aggression and the Use of Force*, 6 J. ON THE USE OF FORCE AND INT’L L. 4,10 (2018). See also David Kretzmer, *The Inherent Right to Self-Defense and Proportionality in Jus Ad Bellum*, 24 EUR. J. INT’L LAW 235, 235-282.

⁵⁵² CR 2024/2, Statement of Malcolm Shaw on Prime Facie Jurisdiction and Preservation of the Rights of the Parties, Verbatim Record, para. 50 [quoting a January 10, 2024, statement by the Israeli Prime Minister] (Jan. 12, 2024) [hereinafter Statement of Malcolm Shaw].

⁵⁵³ 1907 Hague Regulations, art. 25; AP I, art. 48 (adopted by consensus), art. 51(2) (adopted by 77 votes in favor, one against and 16 abstentions), and art. 52(2) (adopted by 79 votes in favor, none against and 7 abstentions).

⁵⁵⁴ AP I, art. 51(5)(b) (adopted by 77 votes in favor, one against and 16 abstentions) (cited in Vol. II, Ch. 4, § 1) and Article 57(2)(a)(iii) (adopted by 90 votes in favor, none against and 4 abstentions) (cited in Vol. II, Ch. 5, § 325).

⁵⁵⁵ CR 2024/2, Opening Statement of Tal Becker, Verbatim Record, para. 48 (Jan. 12, 2024) [hereinafter Becker Opening Statement].

⁵⁵⁶ Becker Opening Statement, para. 50.

⁵⁵⁷ Becker Opening Statement, para. 51. See Section 3.d.i on the question of the existence of a right to self-defense for Israel against the people it occupies in Gaza.

⁵⁵⁸ Statement of Malcolm Shaw, para. 47.

of Israeli hostages, and Israeli sniper fire has killed three hostages.⁵⁵⁹ Multiple military experts, members of the current war cabinet,⁵⁶⁰ former Israeli Prime Minister Ehud Barak,⁵⁶¹ and even released hostages have warned that Israel's conduct of the hostilities in Gaza presents a grave danger to the life and safety of Israeli hostages in Gaza.⁵⁶²

162. Finally, Israel has argued before the ICJ that its conduct in Gaza negates genocidal intent, asserting that (a) it has restricted "its targeting practices to attack military personnel or objectives"⁵⁶³ and that it has done so in a "proportionate manner in each case";⁵⁶⁴ and (b) it actively mitigates civilian harm "such as by forewarning civilians of impending action by the unprecedented and extensive use of telephone calls, leafletting and so forth, coupled with the facilitation of humanitarian assistance."⁵⁶⁵
163. Contrary to these claims, Israel has targeted both military and civilian targets; has failed to protect civilians; and has impeded humanitarian aid access. Each of Israel's defensive claims are undermined by its defiance of the most basic international humanitarian legal principles governing the rules of war, including the principle of proportionality (see Section 3.d.i);⁵⁶⁶ the principle of distinction, whereby the State must take care to verify the status of the target as a legitimate military target, and *not* a civilian target (Section 3.d.ii.1);⁵⁶⁷ and the principle of precaution, whereby they must take "all feasible precautions" to minimize loss of civilian life and damage to civilian objects (Section 3.d.ii.2).⁵⁶⁸ Relatedly, Israel through its acts and omissions has actively undermined critical humanitarian assistance for civilians in Gaza (Section 3.d.ii.3).
164. Israel's conduct of hostilities in Gaza, therefore, demonstrates a failure to adhere to the principles of international humanitarian law requiring the protection of civilians. Even if

⁵⁵⁹ Emily Rose, *Israeli troops killed hostages, mistaking their cries for help as ambush -military*, REUTERS (Dec. 28, 2023), <https://www.reuters.com/world/middle-east/israeli-troops-killed-hostages-mistaking-their-cries-help-ambush-military-2023-12-28/>.

⁵⁶⁰ Julia Frankel, Najib Jobain & Bassem Mroue, *Rifts Emerge Among Top Israeli Officials Over How to Handle the War Against Hamas in Gaza*, AP NEWS (Jan. 19, 2024), <https://apnews.com/article/israel-hamas-war-news-1-19-2024-e5f45fb7b14d3dc8ff64b0ace4b473aa>.

⁵⁶¹ Rania Abushamala, *Former Israeli Prime Minister Warns Netanyahu: 'We Will End Up Mired in Gaza Quagmire'*, ANADOLU AJANSI (Jan. 20, 2024), <https://www.aa.com.tr/en/middle-east/former-israeli-prime-minister-warns-netanyahu-we-will-end-up-mired-in-gaza-quagmire/3114056>.

⁵⁶² Ivana Kottasová & Adi Koplewitz, *Israel's repudiation of a deal with Hamas draws fury from hostages' families*, CNN (Feb. 9, 2024), <https://www.cnn.com/2024/02/09/middleeast/israel-rejects-deal-hostage-families-anger-intl-cmd/index.html>; Irene Nasser, Tim Lister & Richard Greene, *Leaked audio of heated meeting reveals hostages' fury at Netanyahu*, CNN (Dec. 6, 2023), <https://www.cnn.com/2023/12/06/middleeast/leaked-audio-of-heated-meeting-reveals-hostages-fury-at-netanyahu/index.html>; *Israeli hostage families angry after meeting with Netanyahu*, REUTERS (Dec. 5, 2023), <https://www.reuters.com/world/middle-east/israeli-hostage-families-angry-after-meeting-with-netanyahu-2023-12-05/>.

⁵⁶³ Statement of Malcolm Shaw, para. 37.

⁵⁶⁴ *Id.*

⁵⁶⁵ Becker Opening Statement, para. 37.

⁵⁶⁶ Rule 14. Proportionality in Attack, ICRC, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule14>.

⁵⁶⁷ Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, arts. 51, 57, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter AP I]; Rule 1, the Principle of Distinction between Civilians and Combatants, ICRC, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule1>.

⁵⁶⁸ Rule 15, Principle of Precautions in Attack, ICRC, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule15>.

compliance with international humanitarian law can negate genocidal intent, Israel has failed to demonstrate its compliance, given its indiscriminate attacks on civilian targets, failure to mitigate civilian harm, and imposition of impediments to humanitarian aid.

3.d.ii.1. Violation of principle of distinction

165. Under the principle of distinction, a State has the burden of verifying that an object or individual is a legitimate military target. In cases of doubt, commanders must presume the civilian status of the object or individual.⁵⁶⁹ Similarly, when there is uncertainty as to whether an object normally dedicated to civilian purposes, “such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action,” the commander shall presume that it is a civilian object.⁵⁷⁰
166. Israel’s extensive attacks on Palestinian civilians in Gaza have been documented in Section 3.f. Moreover, facts indicate that Israeli military policy actively disregards the mandate to distinguish between military targets and civilians. This policy is evident in the existence of and reliance on an artificial intelligence (AI) targeting system known as “Lavender,” as revealed by six current Israeli intelligence officers to the Israeli publication, *+972 Magazine*.⁵⁷¹
167. Israeli intelligence officers stated that during the early phases of the conflict, the army “almost completely relied on [L]avender,” which categorized as many as 37,000 Palestinians as suspected militants.⁵⁷² There was “no requirement to thoroughly check why the machine made those choices or to examine the raw intelligence data on which they were used,”⁵⁷³ nor meaningful capacity to audit AI-generated targeting choices, even if there had been such a requirement.⁵⁷⁴ This raw training data treated the term “ Hamas operative” loosely to include civil defense workers. The target generation resulting from this overly inclusive training data “made Lavender more likely to select civilians by

⁵⁶⁹ AP I, arts. 50(1), 52(3).

⁵⁷⁰ AP I, art. 52(3); *Rechtbank Den Haag*, C/09/581972 HA ZA 19-1099 and C/09/604819 HA ZA 20/1244, 23-11-2022, para 5.18 [hereinafter *Dutch Chora Case*].

⁵⁷¹ Yuval Abraham, *‘Lavender’: The AI Machine Directing Israel’s Bombing Spree in Gaza*, *+972 MAGAZINE* (Apr. 3, 2024), <https://www.972mag.com/lavender-ai-israeli-army-gaza/> (According to statements from six current Israeli intelligence officers, Lavender gathers data on “incriminating features” possessed by existing Hamas militants and rapidly assesses whether individuals among the Gaza general population share those features, giving each individual a rating of 1 to 100 that expresses how likely it is that they are a militant. The Israeli military determines the acceptable rating threshold at which to attack the target.).

⁵⁷² *Id.*

⁵⁷³ *Id.*

⁵⁷⁴ “But an equally problematic aspect of the deployment of AI in these scenarios is the probabilistic nature of AI assessments. Systems like ‘The Alchemist’ and ‘The Gospel’ introduce claims based on statistical correlations, the nature of which is at best partially understood by the decisionmaker. Military commanders who bear the onus of responsibility under IHL for faulty targeting, already suffer from a lack of nuanced understanding of traditional intelligence production cycles making them inadequate in supervising those processes. Their capacity to do so in an AI-environment, where they have even less capacity to challenge the algorithmic black box advising them, entails ever further erosion of their moral agency.” Omar Yousef Shehabi & Asaf Lubin, *Israel-Hamas 2024 Symposium- Algorithms of War: Military AI and the War in Gaza*, *LIEBER INST.* (Jan. 24, 2024), <https://lieber.westpoint.edu/algorithms-war-military-ai-war-gaza/>.

mistake when its algorithms were applied to the general population.”⁵⁷⁵ As an Israeli military source admitted, “it means you’re including many people with a civilian communication profile as potential targets.”⁵⁷⁶ According to one military source, human beings served as a “rubber stamp” for the machine’s decisions, spending roughly 20 seconds per target—primarily to check whether the target was male—before authorizing a bombing.⁵⁷⁷ Lavender also designated children as targets; as one source noted, “[n]ormally, operatives are over the age of 17, but that was not a condition.”⁵⁷⁸ As a result of the unchecked AI program’s algorithm, “thousands of Palestinians—most of them women or children or people who were not involved in the fighting—were wiped out by Israeli airstrikes.”⁵⁷⁹

168. The intelligence officers further noted that Lavender mistakenly flagged individuals with “communication patterns similar to known Hamas or PIJ [Palestinian Islamic Jihad] operatives,” despite not being members of Hamas—including civil defense workers, policemen, the relatives of militants, and residents, who shared a similar name or nickname to an operative.⁵⁸⁰ A senior Israeli military officer noted, “the machine did it coldly. And that made it easier.”⁵⁸¹ The same officer noted that the automation was a result of a constant push within the Israeli military to generate targets. If Lavender did not identify targets in a given day, “we attacked at a lower threshold. We were constantly being pressured: ‘Bring us more targets.’ They really shouted at us. We finished [killing] our targets very quickly.”⁵⁸²
169. International humanitarian law demands that during combat, military forces must “at all times distinguish between civilians and combatants” and verify the military status of the target.⁵⁸³ The use of AI mass targeting, which uses data known to confuse militants with civilians, and which is employed without human verification or means to audit the system, violates the principle of distinction. Israel’s contravention of this principle is further demonstrated by its complete disregard for the number of civilian casualties that accompanied its AI targeting system.
170. In addition to using indiscriminate AI-generated targeting, Israel has created “kill zones” (also known as “combat zones”) in and around areas of Gaza.⁵⁸⁴ According to a reserve officer quoted in the Israeli newspaper *Haaretz*, “As soon as people enter it, mainly adult

⁵⁷⁵ Yuval Abraham, ‘Lavender’: The AI machine directing Israel’s bombing spree in Gaza, +972 MAGAZINE (Apr. 3, 2024), <https://www.972mag.com/lavender-ai-israeli-army-gaza/>.

⁵⁷⁶ *Id.*

⁵⁷⁷ *Id.*

⁵⁷⁸ *Id.*

⁵⁷⁹ *Id.*

⁵⁸⁰ *Id.*

⁵⁸¹ *Id.*

⁵⁸² *Id.*

⁵⁸³ Rule 1, the Principle of Distinction between Civilians and Combatants, ICRC, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule1>.

⁵⁸⁴ Yaniv Kubovich, *Israel Created ‘Kill Zones’ in Gaza. Anyone Who Crosses into Them is Shot*, HAARETZ (Mar. 31, 2024), <https://www.haaretz.com/israel-news/2024-03-31/ty-article-magazine/.premium/israel-created-kill-zones-in-gaza-anyone-who-crosses-into-them-is-shot/0000018e-946c-d4de-afef-f46da9ee0000>.

males, orders are to shoot and kill, even if that person is unarmed.”⁵⁸⁵ The “kill zones” lack clear markings, and local commanders are described as “writing their own rules of engagement.”⁵⁸⁶ The designation of entire areas where those entering are automatically targeted, without further verification as to their military or civilian status, violates the principle of distinction.

171. Regarding attacks on civilian objects, Israel has targeted schools and universities (see Section 3.a.iii.5), hospitals (see Section 3.a.iii.3), and mosques (see section 3.b.ii.3). Israel argues that civilian casualties accrue because Hamas uses the civilian population, as well as civilian objects, as cover and “human shields.”⁵⁸⁷ Israel argued before the ICJ that Hamas fighters have planted explosives in mosques and schools, used ambulances to transport fighters, dressed up as civilians, commandeered aid trucks, and fired from UN facilities.⁵⁸⁸ Israel further argued that “civilian damage and loss are caused in the legitimate pursuit of military objectives.”⁵⁸⁹
172. International humanitarian law prohibits the use of human shields.⁵⁹⁰ Nevertheless, even where a party to a conflict uses civilian presence to shield its forces from attack, international humanitarian law does not release the other party from its obligations with respect to civilians.⁵⁹¹ As the ICTY Trial Chamber in *Karadžić* emphasized, “the presence of individual combatants within the civilian population attacked does not necessarily change the fact that the ultimate character of the population is civilian.”⁵⁹²
173. Ignoring the requirements of international humanitarian law to safeguard civilian populations, Israeli intelligence sources reported that they were authorized to kill up to 15 to 20 civilians alongside each “junior militant,” otherwise known as “garbage targets” because of their low-level role.⁵⁹³ Along with senior Hamas commanders, operatives were permitted to kill “hundreds” of civilians per target—the majority of whom were “women and children.”⁵⁹⁴
174. Furthermore, despite Israel’s claims that its targeting has complied with international law as a matter of institutional policy (e.g., through regular Israeli military directives that urge compliance with international humanitarian law⁵⁹⁵), Israel has demonstrated a failure in the past to seek credible intelligence that confirms the military nature of its targets, using

⁵⁸⁵ *Id.*

⁵⁸⁶ *Id.*

⁵⁸⁷ Statement of Malcolm Shaw, para. 47 [quoting a January 10, 2024, statement by the Israeli Prime Minister].

⁵⁸⁸ Becker Opening Statement, para. 43.

⁵⁸⁹ Statement of Malcolm Shaw, para. 7.

⁵⁹⁰ AP I, art. 51 (7).

⁵⁹¹ AP I, art. 51 (8).

⁵⁹² Prosecutor v. Radovan Karadžić, para. 453 IT-95-5/18-T, Trial Judgment (I.C.T.Y. Mar. 24, 2016) [hereinafter *Karadžić Trial Judgment*].

⁵⁹³ Yuval Abraham, ‘Lavender’: The AI machine directing Israel’s bombing spree in Gaza, +972 MAGAZINE (Apr. 3, 2024), <https://www.972mag.com/lavender-ai-israeli-army-gaza/>.

⁵⁹⁴ *Id.*

⁵⁹⁵ Statement of Malcolm Shaw, paras. 43–44.

information that had not been updated “over the past year or checked prior to the attack.”⁵⁹⁶ Breaking the Silence, an Israeli military veteran whistleblower group, stated that in prior campaigns, the Israeli military granted “lower-ranking officers the power to approve strikes that may result in significant collateral damage to civilians.”⁵⁹⁷

175. Israel’s failure to enforce compliance with international humanitarian law is further demonstrated by illegal conduct at the lower ranks.⁵⁹⁸ Footage has surfaced, for example, of Israeli soldiers boasting about killing an unarmed civilian,⁵⁹⁹ burning down and demolishing houses,⁶⁰⁰ and running over a Palestinian man with a tank.⁶⁰¹ An incident where Israeli military soldiers killed three unarmed Israeli hostages further demonstrates a clear disregard of international humanitarian law. The three hostages cried for help and waved a white flag,⁶⁰² but instead of presuming that the individuals were civilian, as international humanitarian law requires,⁶⁰³ the Israeli soldiers believed that such cries for help were “a ruse by Hamas militants.”⁶⁰⁴ Rather than seeking further intelligence to verify the status of the individuals, the Israeli soldiers killed them.⁶⁰⁵ These instances of Israeli forces failing to abide by principles of distinction, many months into the conflict, illuminate the Israeli military’s failure to implement the rules of international humanitarian law.

3.d.ii.2. Violation of principle of precaution

176. Israel has further asserted that it has made “extensive” efforts to “mitigate civilian harm.”⁶⁰⁶ Under customary international law, “all feasible precautions must be taken to

⁵⁹⁶ Yaniv Kubovich & Jack Khoury, *Outdated Intelligence, Social Media Rumors: Behind Israel's Killing of Gaza Family*, HAARETZ (Nov. 15, 2019), <https://www.haaretz.com/israel-news/2019-11-15/ty-article/.premium/outdated-intelligence-social-media-rumors-behind-israels-killing-of-gaza-family/0000017f-e69e-dc7e-adff-f6bf11f50000>.

⁵⁹⁷ Avner Gvoryahu, *The Myth of Israel's 'Moral Army': The Failure of the IDF's Targeting Protocols is Producing Massive Civilian Casualties*, FOREIGN AFF. (Mar. 4, 2024), <https://www.foreignaffairs.com/israel/myth-israels-moral-army>.

⁵⁹⁸ Statement of Malcolm Shaw, paras. 43–44.

⁵⁹⁹ Laith Arafah (@ArafahLaith), X (Mar. 10, 2024, 5:11 AM), <https://x.com/ArafahLaith/status/1766753821764575540>.

⁶⁰⁰ Middle East Eye, *Israeli soldiers boast about burning down a house in Gaza*, YOUTUBE (Jan. 2, 2024), <https://www.youtube.com/watch?v=0JMu4OaDNeQ>; Middle East Eye (middleeasteye), TikTok (Dec. 29, 2023), <https://www.tiktok.com/@middleeasteye/video/7318014077530361121>.

⁶⁰¹ Middle East Eye, *Israeli soldier boasts about 'running over' Palestinian man with tank*, YOUTUBE (Mar. 6, 2024), <https://www.youtube.com/watch?v=RligSztmG18>.

⁶⁰² Emily Rose, *Israeli troops killed hostages, mistaking their cries for help as ambush -military*, REUTERS (Dec. 28, 2023), <https://www.reuters.com/world/middle-east/israeli-troops-killed-hostages-mistaking-their-cries-help-ambush-military-2023-12-28/>.

⁶⁰³ AP I, arts. 50(1), 52(3).

⁶⁰⁴ Emily Rose, *Israeli Troops Killed Hostages, Mistaking their Cries for Help as Ambush -Military*, REUTERS (Dec. 28, 2023), <https://www.reuters.com/world/middle-east/israeli-troops-killed-hostages-mistaking-their-cries-help-ambush-military-2023-12-28/>.

⁶⁰⁵ *Id.*

⁶⁰⁶ Becker Opening Statement, para. 42.

avoid, and in any event to minimize, incidental loss of civilian life.”⁶⁰⁷ This encompasses the duty to give “effective advance warning”⁶⁰⁸ and to use means and methods of war that minimize civilian casualties.⁶⁰⁹

177. Contrary to its claims of mitigating civilian harm, Israel’s military operations demonstrate an absence of care that violates the principle of precaution. Whereas the duty of precaution under international humanitarian law requires taking “all feasible precautions” to minimize incidental civilian loss, the Israeli military has chosen not to subject its targets to further verification after the Lavender AI has mass-generated them, beyond the simple assessment of whether the target is male.⁶¹⁰ In this regard, the Israeli military has clearly failed to take “all feasible” measures to minimize civilian loss and thus have violated the principle of precaution.
178. Other evidence showing Israel has not taken “all feasible precautions” to minimize civilian casualties includes the types of munitions that its military has used in its bombardment of Gaza. In *Martić*, the ICTY Trial Chamber held that a “non-guided, high dispersion” weapon constituted an indiscriminate weapon, “the use of which in densely populated civilian areas . . . will result in the infliction of severe casualties.”⁶¹¹ The Tribunal concluded that this was evidence of a deliberate attack against the civilian population, sufficient to convict the defendant of violating the laws and customs of war.⁶¹² In *Karadžić*, the indiscriminate and prolonged shelling of Sarajevo, including the “high numbers of shells that fell on the city during the conflict, including on its residential areas and civilian objects,” constituted the deliberate and disproportionate targeting of civilians.⁶¹³ Comparatively in Gaza, the Office of the Director of National Intelligence, a U.S. governmental agency, has noted that around 40 to 45 percent of Israel’s air-to-ground munitions have been unguided.⁶¹⁴ Israel has also deployed 2,000-pound “dumb” bombs, which have a fragmentation radius of 1,200 feet, in a bombardment campaign unrivalled in density since the Vietnam war.⁶¹⁵ Israel’s use of unguided “dumb bombs,” in one of the

⁶⁰⁷ Rule 15, Principle of Precautions in Attack, ICRC, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule15>; Prosecutor v. Kupreškić et. al., para. 425, IT-95-16, Trial Judgment (I.C.T.Y. Jan. 14, 2000) [hereinafter *Kupreškić Trial Judgment*].

⁶⁰⁸ Rule 20, Advance Warning, ICRC, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule20>.

⁶⁰⁹ AP I, art. 57(2)(a)(ii). For a discussion of state practice in relation to these requirements, see Rule 15, Principle of Precautions in Attack, ICRC, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule15>.

⁶¹⁰ Yuval Abraham, ‘Lavender’: The AI Machine Directing Israel’s Bombing Spree in Gaza, +972 MAGAZINE (Apr. 3, 2024), <https://www.972mag.com/lavender-ai-israeli-army-gaza/>. See also Avner Gvanyahu, *The Myth of Israel’s ‘Moral Army’: The Failure of the IDF’s Targeting Protocols is Producing Massive Civilian Casualties*, FOREIGN AFF. (Mar. 4, 2024), <https://www.foreignaffairs.com/israel/myth-israels-moral-army>.

⁶¹¹ Prosecutor v. Milan Martić, para. 463, IT-95-11-T, Trial Judgment (I.C.T.Y. June 12, 2007) [hereinafter *Martić Trial Judgment*].

⁶¹² *Martić Trial Judgment* at para. 472.

⁶¹³ *Karadžić Trial Judgment* at para. 4497.

⁶¹⁴ Natasha Bertrand & Katie Bo Lillis, *Exclusive: Nearly Half of the Israeli Munitions Dropped on Gaza are Imprecise ‘Dumb Bombs,’ US Intelligence Assessment Finds*, CNN (Dec. 14, 2023), <https://www.cnn.com/2023/12/13/politics/intelligence-assessment-dumb-bombs-israel-gaza/index.html>.

⁶¹⁵ Tamara Qilbawi et al., ‘Not Seen Since Vietnam’: Israel Dropped Hundreds of 2,000-Pound Bombs on Gaza, Analysis Shows, CNN (Dec. 22, 2023), <https://www.cnn.com/gaza-israel-big-bombs/index.html>.

densest civilian areas in the world violates the international humanitarian legal principle that States must take “all feasible precautions . . . to avoid, and in any event to minimize, incidental loss of civilian life.”⁶¹⁶

179. Under international humanitarian law, the Israeli military must also give “effective advance warning” to civilians prior to commencing military operations that may threaten them.⁶¹⁷ Although the Israeli military has, at various times, given civilians in Gaza warnings to evacuate prior to an attack, it has also repeatedly conducted airstrikes on designated evacuation routes and people fleeing through them.⁶¹⁸ For example, in October 2023, Israel issued guidance for residents in North Gaza to flee to the south of Wadi Gaza “for your own safety and the safety of your families,” and nonetheless proceeded to bomb the area south of Wadi Gaza the next day.⁶¹⁹ Israel has also bombed areas which it had previously declared as “safe zones.”⁶²⁰ This pattern of warning civilians, then bombing the areas to which they evacuate,⁶²¹ indicates such warnings were not intended to protect persons fleeing from being targeted and killed. These advance warnings by Israel’s were ineffective at best, and at worst, served to expose civilians to grave harm.
180. Additionally, warnings that induce mass evacuation can also constitute a violation of the prohibition on the forcible displacement of civilians.⁶²² International tribunals have held that inducing civilians to leave via such measures constitutes unlawful displacement if there is no realistic alternative to departure, and if the State undertook the measures with the intent of forcing people to leave.⁶²³ The ICTY Appeals Chamber in *Stakić* emphasized that forcible expulsions include expulsions conducted by “fear of violence, duress, detention, psychological oppression or abuse of power . . . or by taking advantage of a coercive environment.”⁶²⁴ Furthermore, relocation that arises out of a State’s own inducement of a humanitarian crisis constitutes unlawful displacement.⁶²⁵ As evidenced by the facts in Section 3.a.iii.2, Israel’s relocation of over one million people to the south, and continued relocation further and further to the edges of Gaza’s southern border, constitutes forced expulsion.

⁶¹⁶ Rule 15, Principle of Precautions in Attack, ICRC, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule15>; *Kupreškić* Trial Judgment at para. 524.

⁶¹⁷ AP I, art. 57(2)(c).

⁶¹⁸ Yahya Abou-Ghazala, *They Followed Evacuation Orders. An Israeli Airstrike Killed Them the Next Day.*, CNN (Oct. 17, 2023), <https://www.cnn.com/2023/10/16/middleeast/israel-palestinian-evacuation-orders-invs/index.html>.

⁶¹⁹ *Id.*

⁶²⁰ Najib Jobain, Samya Kullab & Ravi Nessman, *As Israel’s Bombing Hits Declared Safe Zones’, Palestinians Trapped in Gaza Find Danger Everywhere*, PBS (Oct. 19, 2023), <https://www.pbs.org/newshour/world/as-israels-bombing-hits-declared-safe-zones-palestinians-trapped-in-gaza-find-danger-everywhere>.

⁶²¹ Ruth Sherlock & Daniel Wood, *Israel Told Palestinians to Evacuate to Southern Gaza — and Stepped-Up Attacks There*, NPR (Nov. 18, 2023), <https://www.npr.org/2023/11/17/1213579692/israel-gaza-evacuation-south-attacks>.

⁶²² Sara Benabbass & Marten Zwanenburg, *The Interaction Between the Obligation to Warn and Other Rules of IHL*, J. INT’L HUMAN. LEGAL STUD. 1, 20 (2023); Geneva Convention IV, art. 49.

⁶²³ Eritrea-Ethiopia Claims Commission, Civilian Claims, Ethiopia’s Claim 5, Partial Award, para. 121–26 (Dec. 17, 2004).

⁶²⁴ Prosecutor v. Milomir Stakić, para. 281, IT-97-24-A, Appeals Judgment (I.C.T.Y. Mar. 22, 2006) [hereinafter *Stakić* Appeals Judgment].

⁶²⁵ *Stakić* Appeals Judgment, para. 287.

3.d.ii.3. *Failing to facilitate and actively undermining access to humanitarian aid*

181. Israel has also argued that it has facilitated the entry of humanitarian aid into Gaza.⁶²⁶ Under international law, “the parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.”⁶²⁷ If a humanitarian organization which provides relief on an impartial and non-discriminatory basis has the capability to deliver aid to a civilian population threatened with starvation, “a party is obliged to give their consent” and, in any case, they cannot refuse consent “on arbitrary grounds.”⁶²⁸ In its first provisional measures order of January 26, 2024, the ICJ ordered Israel to “take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip.”⁶²⁹
182. Despite these ICJ directives, the humanitarian situation in Gaza has deteriorated such that the Court issued a second provisional measures order indicating further binding obligations for Israel on March 28, 2024.⁶³⁰ The Court noted, “Palestinians in Gaza are no longer facing only a risk of famine . . . but that famine is setting in,”⁶³¹ that Palestinians in Gaza are experiencing “unprecedented levels of food insecurity,”⁶³² and that the already “catastrophic humanitarian situation . . . has deteriorated even further.”⁶³³ The Court additionally noted that “there is no substitute for land route and entry points from Israel into Gaza to ensure the effective and efficient delivery,” and that there is an “urgent need to increase the capacity and number of open land crossing points into Gaza and to maintain them open so as to increase the flow of aid delivery.”⁶³⁴
183. In its second provisional measures order, the Court instructed the State of Israel:
- [First, to take all] necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary.⁶³⁵

⁶²⁶ Statement of Malcolm Shaw, para. 42.

⁶²⁷ Rule 55, Access for Humanitarian Relief to Civilians in Need, ICRC, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule55>.

⁶²⁸ *Id.*

⁶²⁹ *S. Afr. v. Isr.*, First Provisional Measures Order at para. 86(4).

⁶³⁰ *Id.* at paras. 21–22.

⁶³¹ *S. Afr. v. Isr.*, Second Provisional Measures Order at para. 21.

⁶³² *Id.* at para. 31.

⁶³³ *Id.* at para. 30.

⁶³⁴ *Id.* at para. 35.

⁶³⁵ *Id.* at para. 51(2)(a).

Second, the ICJ ordered Israel to ensure that its military does not commit acts in violation of the Genocide Convention, “including by preventing, through any action, the delivery of urgently needed humanitarian assistance.”⁶³⁶ These obligations are binding on Israel, pursuant to Article 41 of the Statute of the ICJ.⁶³⁷

184. In his separate declaration, Judge Salam, President of the ICJ, emphasized that these new orders can only “take full effect” if Israel complies with the ceasefire ordered by Security Council Resolution 2728 (2024),⁶³⁸ and if this “leads to a lasting sustainable ceasefire.”⁶³⁹ Judge Yusuf similarly emphasized that “the only effective way” for Israel to comply with the Genocide Convention “is to suspend its military operations to allow for the delivery of aid.”⁶⁴⁰ Judges Xue, Brant, Gómez Robledo, and Tladi emphasized in their joint declaration that “suspension of military operations . . . appears indispensable for any meaningful implementation of the provisional measures indicated.”⁶⁴¹ Judge Charlesworth also noted that the suspension of military operations “is the only way to ensure that basic services and humanitarian assistance reach the Palestinian population.”⁶⁴²
185. Israel has violated its duties under international humanitarian law and the two ICJ provisional measure orders to facilitate the entry of humanitarian aid into Gaza. The majority of the population in Gaza is threatened with starvation (see Section 3.a.iii.1). By July 2024, more than half the population is projected to experience “catastrophic” levels of food insecurity, the most severe level classified by the Integrated Food Security Phase Classification scale.⁶⁴³ The UN Committee on the Rights of the Child also issued a statement noting that “children in Gaza are starving to death,” and that the “looming invasion of Rafah will take the fragile situation to the breaking point, putting the lives of 600,000 children at immediate risk, and will rapidly reach the tipping point of famine.”⁶⁴⁴
186. Despite the threat of starvation, Israel continues to arbitrarily refuse and impede aid entering Gaza. In December 2023, Israeli forces conducted an air strike on the Karem Abu Salem/Kerem Shalom crossing—killing the director responsible for coordinating the entry of aid.⁶⁴⁵ In the weeks following the first ICJ provisional measures order, the number of

⁶³⁶ *Id.* at para. 51(2)(b).

⁶³⁷ *Id.* at para. 48.

⁶³⁸ S.C. Res. 2728 (Mar. 25, 2024).

⁶³⁹ S. Afr. v. Isr., Second Provisional Measures Order, Declaration of President Salam, 2024 I.C.J., para. 11.

⁶⁴⁰ S. Afr. v. Isr., Second Provisional Measures Order, Declaration of Judge Yusuf, 2024 I.C.J., para. 8.

⁶⁴¹ S. Afr. v. Isr., Second Provisional Measures Order, Declaration of Judges Xue, Brant, Gómez Robledo, and Tladi, 2024 I.C.J., para. 7.

⁶⁴² S. Afr. v. Isr., Second Provisional Measures Order, Declaration of Judge Charlesworth, 2024 I.C.J., para. 7.

⁶⁴³ INTEGRATED FOOD SECURITY PHASE CLASSIFICATION, GAZA STRIP: ACUTE FOOD INSECURITY SITUATION FOR 15 FEBRUARY - 15 MARCH 2024 AND PROJECTION FOR 16 MARCH - 15 JULY 2024 (Mar. 18, 2024), <https://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1156872/?iso3=PSE>.

⁶⁴⁴ Press Release, OHCHR: Gaza: Halt the War Now to Save Children Dying of Imminent Famine, UN Committee Warns (Mar. 21, 2024), <https://www.ohchr.org/en/press-releases/2024/03/gaza-halt-war-now-save-children-dying-imminent-famine-un-committee-warns>.

⁶⁴⁵ OXFAM, INFLECTING UNPRECEDENTED SUFFERING AND DESTRUCTION: SEVEN WAYS THE GOVERNMENT OF ISRAEL IS DELIBERATELY BLOCKING AND/OR UNDERMINING THE INTERNATIONAL HUMANITARIAN RESPONSE IN THE GAZA STRIP 5 (Mar. 15, 2024), <https://policy-practice.oxfam.org/resources/inflicting-unprecedented-suffering-and-destruction-seven-ways-the-government-of-621591/>.

trucks entering Gaza decreased by a third.⁶⁴⁶ As Oxfam reported, Israel has rejected an entire warehouse full of oxygen, incubators, water, and sanitation gear.⁶⁴⁷ Israel has also allowed Israeli protestors to cause severe delays in aid delivery by obstructing the Nitzana scanning point, which scans aid trucks going into Gaza.⁶⁴⁸ Israel has banned the entry into Gaza of fuel and backup generators, causing the collapse of Gaza's water, sanitation, and hygiene system.⁶⁴⁹

187. Furthermore, Israeli soldiers have targeted and killed many civilians who attempted to access the aid that has reached Gaza. There have been at least 14 reported incidents of “shooting, shelling and targeting groups gathered to receive urgently needed supplies from trucks or airdrops between mid-January and the end of February 2024,” including a “massacre” of 112 people gathered to collect flour on February 29, 2024.⁶⁵⁰ As early as October 2023, Israeli airstrikes targeted bakeries supported by UNRWA.⁶⁵¹
188. Israel continues to deliberately target humanitarian workers, thereby deterring aid from reaching Gaza. Merely five days after the ICJ's second provisional measures order, the Israeli military struck three cars that belonged to World Central Kitchen (WCK), killing seven aid workers (see Section 3.a.iii.1).⁶⁵² Following the strike, WCK and other humanitarian aid organizations suspended operations in Gaza.⁶⁵³ This attack violated Israel's obligations under international humanitarian law to facilitate the flow of humanitarian aid, as well as its legal obligations arising from the ICJ's provisional measures order to ensure “without delay . . . the unhindered provision of aid” and to refrain

⁶⁴⁶ *Israel Defying ICJ Ruling to Prevent Genocide by Failing to Allow Adequate Humanitarian Aid to Reach Gaza*, AMNESTY INT'L (Feb. 26, 2024), <https://www.amnesty.org/en/latest/news/2024/02/israel-defying-icj-ruling-to-prevent-genocide-by-failing-to-allow-adequate-humanitarian-aid-to-reach-gaza/>.

⁶⁴⁷ Press Release, Oxfam, Israel Government Continues to Block aid Response Despite ICJ Genocide Court Ruling (Mar. 17, 2024), <https://www.oxfam.org/en/press-releases/israel-government-continues-block-aid-response-despite-icj-genocide-court-ruling>.

⁶⁴⁸ OXFAM, INFLECTING UNPRECEDENTED SUFFERING AND DESTRUCTION: SEVEN WAYS THE GOVERNMENT OF ISRAEL IS DELIBERATELY BLOCKING AND/OR UNDERMINING THE INTERNATIONAL HUMANITARIAN RESPONSE IN THE GAZA STRIP 5 (Mar. 15, 2024), <https://policy-practice.oxfam.org/resources/inflicting-unprecedented-suffering-and-destruction-seven-ways-the-government-of-621591/>.

⁶⁴⁹ *Id.* at 6.

⁶⁵⁰ Press Release, OHCHR, UN Experts Condemn ‘Flour Massacre’, Urge Israel to End Campaign of Starvation in Gaza (Mar. 5, 2024), <https://www.ohchr.org/en/press-releases/2024/03/un-experts-condemn-flour-massacre-urge-israel-end-campaign-starvation-gaza>.

⁶⁵¹ Kaamil Ahmed & Elena Morresi, *Airstrikes on Gaza Bakeries Add to ‘Catastrophic’ Food Shortages*, THE GUARDIAN (Oct. 28, 2023), <https://www.theguardian.com/global-development/2023/oct/28/airstrikes-on-gaza-bakeries-add-to-catastrophic-food-shortages>.

⁶⁵² *7 WCK Team Members Killed in Gaza*, WORLD CENTRAL KITCHEN (Apr. 2, 2024), <https://wck.org/news/gaza-team-update>.

⁶⁵³ Wafaa Shurafa & Samy Magdy, *World Central Kitchen Halts Gaza Operations After Israeli Strike Kills 7 Aid Workers*, PBS NEWS HOUR (Apr. 2, 2024), <https://www.pbs.org/newshour/world/world-central-kitchen-halts-gaza-operations-after-israeli-strike-kills-7-aid-workers>; Press Release, ANERA, ANERA Pauses Gaza Operations Amid Rising Threats and Attack on WCK (Apr. 2, 2024), <https://www.anera.org/press/unprecedented-pause-anera-suspends-gaza-operations-amid-rising-threats/>.

from committing military acts that “prevent[], through any action,” the delivery of humanitarian aid.⁶⁵⁴

3.f. Analysis: Israel’s acts in and statements about Gaza amount to genocide

189. Applying the facts in the present case (Sections 3.a, 3.b, and 3.c), Israel’s conduct and statements meet the definition of genocide (Part 3) under the Genocide Convention.
190. Its military assault and complete siege on Palestinians in Gaza, and the effects of such assault and siege, amount to acts of genocide and violate Article II(a), Article II(b), and Article II(c) of the Genocide Convention.
191. Israel has violated Article II(a), killing members of the group, by killing at least 34,568 Palestinians in Gaza since October 7, 2023.⁶⁵⁵ Israel has killed more than 8,485 Palestinians since the ICJ issued provisional measures on January 26, 2024, which ordered Israel to stop committing all acts within the scope of Article II.⁶⁵⁶ The death toll is substantial and massively disproportionate, in that the vast majority of those killed have been civilians, with about 70 percent of those killed identified as women and children.⁶⁵⁷ Following the guidance of the ICJ and criminal tribunals, an objective evaluation of the scale of destruction carried out and still ongoing in Gaza is indicative of its genocidal nature. Furthermore, in Gaza, bombardment is not merely a tactic to instill fear or encourage flight, as was found in the *Galić* case; rather, it is killing as such and amounts to an intense and consistent assault on par with the crime of genocide. For Palestinians in Gaza, leaving is not an option due to the siege and closure of borders. The purpose of the shelling in Gaza is to kill Palestinians, not only to encourage their flight, as illustrated by the Israeli military’s targeting of designated “safe” routes and “safe” regions that were bombed after the arrival of evacuating Palestinians. These attacks on densely populated areas frequently make use of unguided, 2,000-pound bombs and other munitions designed to inflict maximum destruction. This case is thus distinguishable from tactics used to encourage a population to flee its territory.

⁶⁵⁴ S. Afr. v. Isr., Second Provisional Measures Order at paras. 51(2)(a)–(b).

⁶⁵⁵ *Hostilities in the Gaza Strip and Israel | Flash Update #160*, OCHA (May 1, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-160>.

⁶⁵⁶ *Id.*; *Hostilities in the Gaza Strip and Israel | Flash Update #103*, OCHA (Jan. 26, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-103>.

⁶⁵⁷ *Situation Report #105 on the Situation in the Gaza Strip and the West Bank, Including East Jerusalem*, UNRWA (Apr. 30, 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-105-situation-gaza-strip-and-west-bank-including-east-jerusalem>. See also Press Release, U.N. WOMEN, Two Mothers are Killed in Gaza Every Hour as Fighting Exceeds 100 Days (Jan. 19, 2024), <https://www.unwomen.org/en/news-stories/press-release/2024/01/press-release-two-mothers-are-killed-in-gaza-every-hour-as-fighting-exceeds-100-days>; *Onslaught of violence against women and children in Gaza unacceptable: UN experts*, U.N. NEWS (May 6, 2024), <https://www.ohchr.org/en/press-releases/2024/05/onslaught-violence-against-women-and-children-gaza-unacceptable-un-experts>.

192. Israel has violated Article II(b), causing serious bodily or mental harm to members of the group. Israel has injured 77,765 Palestinians since October 7, 2023.⁶⁵⁸ Israel's continued bombardment and siege on Gaza has also caused serious mental harm to Palestinians in Gaza, particularly children. The Israeli military has also committed numerous acts constituting cruel, inhuman, and degrading treatment against detained Palestinians in Gaza. Human rights organizations and UN agencies have documented beatings, torture, rape and other forms of sexual violence, and other extreme acts of brutality. Israel has perpetrated severe harm against the general population through creating the conditions for widespread starvation and spread of infectious disease. Furthermore, the mass displacement of Palestinians from their homes has subjected Palestinians to serious mental harm. Similar to the facts of *Tolimir*, the separation of Palestinian families, the degraded living conditions they face as displaced people, and the loss of hope of ever returning to their homes amounts to serious mental harm. Israel's assault on Gaza had a particularly severe impact on children. Thousands of children suffer permanent physical disability, the majority of children are suffering from traumatic stress disorders, and the staggering death toll has left many children orphaned.
193. Israel has also violated Article II(c), deliberately inflicting conditions of life calculated to bring about its physical destruction in whole or in part. Israel has forcibly expelled over 85 percent of Palestinians from their homes in Gaza. Israel has deprived Palestinians in Gaza of basic necessities including food and clean water. Due to a lack of clean water and the conditions of sheltering in tents or in dirty, crowded facilities, disease and infection are widespread. The entire population of Palestinians in Gaza is experiencing or is at imminent risk of famine. Israel has also deliberately targeted and disabled Gaza's medical system while preventing medical supplies from entering Gaza and depriving Palestinians in Gaza of medical care. While all of these conditions threaten the survival of Palestinians currently in Gaza, Israel has also wrought destruction that threatens the survival of future generations. Israel has destroyed the majority of homes, destroyed key civilian infrastructure—including entire city blocks—and completely devastated every level of the education system in Gaza. Israel has also destroyed Palestinians' cultural heritage in Gaza, preventing the restoration of civil, political, and cultural life. All of these are actions deliberately inflicted by Israel to bring about conditions of life calculated to result in the physical destruction in whole or in part of Palestinians in Gaza.
194. The commission of these prohibited acts by Israel has been accompanied by the requisite intent.⁶⁵⁹ Israel's intent to destroy the Palestinians in Gaza as such can be inferred from the totality of the circumstances, including the rhetoric of Israeli political and military leadership that dehumanizes Palestinians and refers to plans to destroy Gazans, alongside evidence of Israel's conduct in Gaza and the political doctrine giving rise to such conduct.
195. The highest elected officials in Israel's government have voiced the genocidal intent behind the Israeli military's actions on numerous well-publicized occasions. These statements

⁶⁵⁸ *Hostilities in the Gaza Strip and Israel | Flash Update #160*, OCHA (May 1, 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-160>.

⁶⁵⁹ *S. Afr. v. Isr.*, First Provisional Measures Order at para. 45.

have included assertions that all civilians in Gaza were legitimate targets and threats to completely flatten Gaza and eradicate Gazan life and culture. Taken together, they indicate the knowledge and intention of causing widespread death and suffering to Palestinians in Gaza. Just as the court in *Kayishema and Ruzindana* considered derogatory language in its assessment of intent, the statements made by Israeli officials, such as those labelling Palestinians as “human animals,” attest to Israel’s discriminatory intent towards Palestinians. These expressions by Israeli officials establish that the assault on Gaza is not simply a military operation targeting combatants, but an operation intended to destroy the population.

196. The systematic nature and scale of the destruction in Gaza provides evidence of Israel’s genocidal intent. As shown above, Israel has killed civilians using weapons designed to maximize the death toll in every part of Gaza, even areas designated as “safe.” As in *Krstić*, where the court found that the “Bosnian Serb forces could not have failed to know” that the “selective destruction” of men in Srebrenica would “have a lasting impact on the entire group,”⁶⁶⁰ the Israeli State in this case could not have failed to know that the extent of killing and destruction “effectively destroyed the community.”⁶⁶¹ Israel knew or should have known that this level of destruction would amount to destroying the targeted group, in whole or in part. Israel’s attacks on children, its use of highly destructive weapons against civilians and in densely populated civilian areas, and its frequent targeting of observably civilian gatherings such as crowds of people seeking food and aid makes it clear that Israel treats every Palestinians in Gaza as a legitimate target. Israel has also committed acts that strongly indicate its intent to destroy the group as such by targeting and destroying historical and cultural sites, desecrating bodies, and creating and exhuming mass graves. These attacks have not been reserved for military targets. Overall, the scope and severity of Israel’s destruction of Gaza makes genocidal intent the only reasonable inference to draw from these acts.
197. Israel’s claim that it is waging a war of self-defense and that its conduct in Gaza negates an inference of genocidal intent is specious (See Section 3.d). In its conduct of hostilities in Gaza, the Israeli military has demonstrated a failure to adhere to the principles of international humanitarian law relevant to the protection of civilians—an imperative condition even if self-defense were warranted.
198. Finally, an evaluation of Israel’s genocidal intent cannot be separated from Israeli political doctrine that gives rise to these acts. Israel’s political leaders have made it clear to their public and to other States that they intend to maintain Israeli control of the occupied Palestinian territory and preclude the establishment of an independent Palestinian State (See Section 3.b.iii). The massive destruction and killing in Gaza, committed while Israel’s leadership disavows Palestinian self-determination in Gaza, reasonably leads to the inference that Israel intends to destroy the Palestinians of Gaza.

⁶⁶⁰ *Krstić* Trial Judgment at para. 598.

⁶⁶¹ *Id.* at para. 597.

199. The application of the facts shows that Israel’s assault on Palestinians in Gaza amounts to a violation of Article II of the Genocide Convention.

4. Analysis: Israel is committing an act of direct and public incitement of genocide, in violation of Article III(c) of the Genocide Convention

200. As noted above, in a public address on October 28, 2023, Prime Minister Netanyahu stated: “You must remember what Amalek has done to you, says our Holy Bible. And we do remember.”⁶⁶² The Prime Minister’s Office again referred to this phrase in a Post on X on November 3, 2023.⁶⁶³ The relevant Biblical passage reads: “Now go, attack Amalek, and proscribe all that belongs to him. Spare no one, but kill alike men and women, infants and sucklings, oxen and sheep, camels and asses.”⁶⁶⁴ Law professor Alan Dershowitz acknowledges that comparing ethnic groups with Amalek can constitute “incitement to murder.”⁶⁶⁵
201. In *Nahimana*, the Appeals Chamber held that encouragements to kill Tutsis so that their population disappears across generations constituted incitement to genocide.⁶⁶⁶ Similarly, in comparing the enemy to Amalek, and in light of the context provided by the relevant Biblical passage—in particular, the call to kill infants—Prime Minister Netanyahu has called for the destruction of Palestinians as a group. The Prime Minister, whose statements are attributable to the State of Israel, has thus publicly and directly incited genocide.
202. Furthermore, President Herzog stated in a press conference to the media: “It’s an entire nation out there that is responsible. It’s not true this rhetoric about civilians not aware. It’s absolutely not true . . . and we will fight until we break their backbone.”⁶⁶⁷ In *Akayesu*, the ICTR Trial Chamber found the defendant, who “urged the population to unite in order to eliminate the sole enemy”—identified as the entire Tutsi ethnic group—guilty of incitement of genocide.⁶⁶⁸ In *Nahimana*, predictive statements that use the word “will” were held to be an implicit call to action.⁶⁶⁹ Similarly, the identification of the entire Palestinian nation as responsible for the Hamas attacks on October 7, 2023, before

⁶⁶² IsraeliPM, *Address by the Prime Minister of Israel*, YOUTUBE (Oct. 28, 2023), <https://www.youtube.com/watch?v=IIPkoDk6isc>. Translation in Israel-Hamas war: ‘We will fight and we will win’, says Benjamin Netanyahu, SKY NEWS (Oct. 28, 2023).

⁶⁶³ Prime Minister’s Office in Hebrew (@IsraeliPM_heb), X (Nov. 3, 2023, 11:43 AM), https://x.com/IsraeliPM_heb/status/1720406463972004198.

⁶⁶⁴ Sefaria, I *Samuel* 15:1-34, JPS, 1985, https://www.sefaria.org/I_Samuel.15.1-34?lang=bi. The message to kill all men, women, and infants is consistent across versions.

⁶⁶⁵ ALAN DERSHOWITZ, *THE VANISHING AMERICAN JEW: IN SEARCH OF JEWISH IDENTITY FOR THE NEXT CENTURY* 225 (1997).

⁶⁶⁶ *Nahimana* Appeals Judgment at para. 756.

⁶⁶⁷ Rageh Omaar, *Israeli president Isaac Herzog says Gazans could have risen up to fight ‘evil’ Hamas*, ITV NEWS (Oct. 13, 2023), <https://www.itv.com/news/2023-10-13/israeli-president-says-gazans-could-have-risen-up-to-fight-hamas>; see also @Sprinter99800 X, <https://x.com/Sprinter99800/status/1713064886027063584>

⁶⁶⁸ *Akayesu* Trial Judgment at para. 673(iii).

⁶⁶⁹ *Nahimana* Appeals Judgment at para. 773.

subsequently declaring that the State “will break their backbone,” constitutes incitement to genocide.

203. There is evidence that listeners of these speeches “immediately grasped the implication[s].”⁶⁷⁰ On December 7, 2023, a video surfaced of active-duty Israeli military soldiers chanting phrases that include, “I stick by one Mitzvah [a divine command], to wipe off the seed of Amalek,”⁶⁷¹ directly calling for the killing of Palestinians and their lineages while echoing Prime Minister Netanyahu’s Biblical reference. The soldiers further chant, “I left home behind me, won’t come back until victory. We know our slogan, there are no ‘uninvolved’ civilians.”⁶⁷² Utilizing President Herzog’s endorsement of the absence of “uninvolved civilians,” the video again shows an intent towards violence against an entire ethnic group without distinguishing between combatants and civilians, indicating genocidal incitement. On January 30, 2024, another video by Israeli military soldier Chai Ben Hamo, filmed in the ruins of Khan Younis, recorded him saying, “We have destroyed a vast territory, killed thousands of [Amalekites]. . . . The rest will fall into place once we understand morally that every Arab is a suspicious entity. . . . To be moral is to conquer and flatten all parts of the land of Israel.”⁶⁷³ As with the December 7, 2023, video, the reference to Amalek relates to suspicion towards an entire ethnic group and the call to induce military destruction, indicating genocidal intent.
204. References to Amalek have proliferated in wider Israeli society. In January and February of 2024, pictures surfaced on social media showing phrases such as “obliterate the memory of Amalek, don’t forget”⁶⁷⁴ and “wipe out the memory of Amalek, you shall not forget.”⁶⁷⁵ These phrases, and others like them, were also displayed on the sides of buses and taxis in cities such as Haifa and Tel Aviv. Harbu Darbu [translation: Swords and Strikes], a “hip-hop war anthem” that has topped the charts in Israel⁶⁷⁶ with over 21 million views on YouTube,⁶⁷⁷ calls those “coming and shouting ‘Free Palestine’” the “children of Amalek.”⁶⁷⁸
205. These videos and photographs suggest that statements made by Israeli leaders facilitated, in both the Israeli military and civilian populace, the “state of mind necessary to commit such a crime in the minds of the person(s) he is so engaging.”⁶⁷⁹ The State of Israel, through

⁶⁷⁰ *Akayesu* Trial Judgment at para. 558.

⁶⁷¹ Middle East Eye, *Israeli soldiers cheering and chanting “to occupy Gaza,”* YOUTUBE (Dec. 8, 2023), https://www.youtube.com/watch?v=qb_oBSAZjDs.

⁶⁷² *Id.*

⁶⁷³ Younis Tirawi (@ytirawi), X (Jan. 30, 2024, 5:04 PM), <https://x.com/ytirawi/status/1752452789077147808>.

⁶⁷⁴ Tali (@TalulaSha), X (Feb. 4, 2024, 12:44 PM), <https://x.com/TalulaSha/status/1754199155151433737>.

⁶⁷⁵ B.M. (@ireallyhateyou), X (Jan. 10, 2024, 9:21 AM), <https://x.com/ireallyhateyou/status/1745088385197260808>.

⁶⁷⁶ Gavriel Friske, *Hip-hop war anthem reaches number one in Israel*, TIMES OF ISR. (Nov. 21, 2023, 10:56 AM), <https://www.timesofisrael.com/hip-hop-war-anthem-reaches-number-one-in-israel/>.

⁶⁷⁷ Ness Ve Stilla, נס X הרבו דרבו - סטילה (Prod. By Stilla), YOUTUBE (Nov. 14, 2023), <https://www.youtube.com/watch?v=1rk3n9V-aQs>.

⁶⁷⁸ Nessa & Stilla – Harbu Darbu (English Translation), GENIUS (Nov. 14, 2023), <https://genius.com/Genius-english-translations-ness-and-stilla-harbu-darbu-english-translation-lyrics>.

⁶⁷⁹ *Akayesu* Trial Judgment at para. 560.

the speeches of its leaders, has committed the act of direct and public incitement to genocide, in violation of Article III(c) of the Genocide Convention.

5. Analysis: Israel has failed to punish and prevent incitement to genocide

206. Prominent members of the Israeli press, clergy members, and other notable figures have made public statements explicitly calling for the complete destruction of Gaza and of Palestinians in Gaza that echo the genocidal expressions delineated in Section 4 and Section 3.b.i. of this report. Despite its obligations under the Genocide Convention to prevent and punish public and direct incitement to genocide, and the ICJ's provisional measures issued on January 26, 2024, requiring the same, Israel has not taken measures to respond to many of the most blatant instances of incitement to genocide within its society. The following are a few examples of such incitement:

207. David Azoulai, Mayor of Metula, said during his appearance on an Israeli radio station:

The whole Gaza Strip needs to be empty. Flattened. Just like in Auschwitz. Let it be a museum for all the world to see what Israel can do. Let no one reside in the Gaza Strip for all the world to see, because October 7 was in a way a second Holocaust.⁶⁸⁰

After Poland's Auschwitz-Birkenau State Museum condemned the statement, Azoulai clarified to the Times of Israel, "I would like to see Gaza's population relocated."⁶⁸¹

208. Rabbi Shmuel Eliyahu, Chief Rabbi of Safed, wrote in a statement in October 2023:

The Arabs of Gaza have the legal status of Amalek and we are obliged to execute our obligation to wipe out Amalek in relationship to them . . . Therefore it is a mitzvah [a divine command] to wage war upon them until they are totally decimated. It is forbidden to conduct any negotiations for peace with them. They are the embodiment of evil.⁶⁸²

He continues to write and speak as a Rabbi as of April 2024.⁶⁸³

⁶⁸⁰ *Israel Should Make Gaza Look Like Auschwitz Museum - Council Head*, JERUSALEM POST (Dec. 19, 2023), <https://www.jpost.com/israel-hamas-war/article-778367>.

⁶⁸¹ Cnaan Lidor, *Israeli Mayor Calls for Turning Gaza into 'Auschwitz-Like' Museum, Prompting Rebuke*, TIMES OF ISR. (Dec. 18, 2023), https://www.timesofisrael.com/liveblog_entry/israeli-mayor-calls-for-turning-gaza-into-auschwitz-like-museum-prompting-rebuke.

⁶⁸² (October 2023) ישיבה, "ואהב חמס שנגאז נפשו", הרב שמואל אליהו, <https://www.yeshiva.org.il/midrash/52638>, translated in Herzl Hefter, *Hamas Is Evil, but Don't Be Too Quick to Equate it with Amalek*, TIMES OF ISR. (Mar. 13, 2024), <https://blogs.timesofisrael.com/hamas-is-evil-but-dont-be-too-quick-to-equate-it-with-amalek/>.

⁶⁸³ הרב שמואל אליהו, "משנכנס אדר מרבין בשמחה - משמעות הלכתית", ישיבה (March 12, 2024), <https://www.yeshiva.org.il/midrash/51432>; Rabbi Shmuel Eliyahu (@haravshmuel), YOUTUBE, <https://www.youtube.com/@haravshmuel/videos>.

209. Another Rabbi, Rabbi Eliyahu Mali, head of Shirat Moshe Hesder Yeshiva in Yaffa,⁶⁸⁴ has similarly referred to religious mandates to kill every Palestinian in Gaza. Mali said in a speech:

The basic law in a religious war, and in this case in Gaza, is that ‘you shall not leave alive anything that breathes’ (Deuteronomy), and if you do not kill them, they will kill you. Today’s saboteurs are the children in the previous military operation whom you kept alive and the women are the ones who produce the saboteurs . . . It is either you or them. No soul can live on the basis of: ‘If someone comes to kill you, rise up and kill him first’ (Babylonian Talmud). This applies not only to the 14- or 16-year-old boy, or the 20- or 30-year-old man who points a gun at you, but also to the future generation. This also applies to those who produce the future generation as well, because in reality there is no difference.⁶⁸⁵

When asked about whether his position applied to the elderly in Gaza, he said, “There is a difference between a civilian population elsewhere and a civilian population in Gaza. In Gaza, according to estimates, 95-98 percent want to annihilate us.”⁶⁸⁶ When asked about children, he continued, “It’s the same thing. You can’t embellish with the Torah. Today, he’s a child, tomorrow he’s a fighter. There are no questions here. Today’s terrorists were 8-year-old children in the previous military operation. So, you cannot stop there. Therefore, the ruling concerning Gaza is different.”⁶⁸⁷

210. Ezra Yachin, a 95-year-old army reservist, released a video clip on social media that reached two million views that instructed people:

Finish them off and don’t leave anyone behind. Erase the memory of them. Erase them, their families, mothers and children. These animals can no longer live . . . Every Jew with a weapon should go out and kill them. If you have an Arab neighbor, don’t wait, go to his home and shoot him . . . We want to invade, not like before, we want to enter and destroy what’s in front of us, and destroy houses, then destroy the ones after it. With all of our forces, complete destruction, enter and destroy . . . Let them drop bombs on them and erase them.⁶⁸⁸

⁶⁸⁴ See *About the Yeshiva*, HESDER YESHIVA SHIRAT MOSHE, <https://www.yafo.org.il/en> (last visited Apr. 24, 2024).

⁶⁸⁵ *Yaffa Rabbi: ‘According to Jewish Law, All Gaza Residents Must Be Killed’*, MIDDLE E. MONITOR (Mar. 9, 2024), <https://www.middleeastmonitor.com/20240309-yaffa-rabbi-according-to-jewish-law-all-gaza-residents-must-be-killed/>.

⁶⁸⁶ *Id.*

⁶⁸⁷ *Id.*

⁶⁸⁸ “*These Animals Can No Longer Live*” Says Israel’s Oldest Reservist, AL-JAZEERA (Oct. 14, 2023), <https://www.aljazeera.com/program/newsfeed/2023/10/14/these-animals-can-no-longer-live-says-israels-oldest-reservist>.

According to Israeli pundit Hananya Naftali, Yachin had been “drafted into the reserves to boost morale by talking with soldiers.”⁶⁸⁹

211. Statements inciting genocide have continued to reverberate across Israeli public discourse, including by legislators, clergy, members of the military, and other officials and figures, with impunity.⁶⁹⁰ Several members of the Israeli press in particular have made overtly genocidal public statements, non-comprehensively accounted for below.
212. Yehuda Schlesinger, an Israeli broadcast journalist, declared during a televised interview on Channel 12 on October 7, 2023, “there are no innocents” in Gaza.⁶⁹¹ Sharing the clip on his X account, Schlesinger wrote, “[t]here are no innocents in Gaza. All of Gaza supports terrorism. All of Gaza is dead. It's time the landlord went crazy.”⁶⁹² Schlesinger published multiple other posts on X since October 7, 2023, that repeated the claim that there were no innocents in Gaza,⁶⁹³ including a post in which he stated, “There are no innocents in Gaza. There are no ordinary citizens in Gaza. Every adult was trained to kill. Every woman is a monster. Every boy aspires to be a martyr[.] Every baby will grow up to be a terrorist. [W]ipe out, kill, destroy, destroy.”⁶⁹⁴ During an April 21, 2024, appearance on the Channel 12 program Israel Today, Schlesinger said,

These people there [in Gaza] deserve death, a hard death, an agonizing death. . . . There are no innocent people there. . . . They are now enjoying on the beach, instead of starving, being jerked around, instead of being severely tormented, instead of hiding from shelling. . . . We should have seen there a lot more revenge, a lot more rivers of Gazans' blood.⁶⁹⁵

⁶⁸⁹ Hananya Naftali (@HananyaNaftali), X (Oct. 10, 2023, 11:27 AM), <https://x.com/HananyaNaftali/status/1711765279951171609?lang=en>.

⁶⁹⁰ See, e.g., *Law for Palestine Releases Database with 500+ Instances of Israeli Incitement to Genocide – Continuously Updated*, LAW FOR PALESTINE (Jan. 4, 2024), <https://law4palestine.org/law-for-palestine-releases-database-with-500-instances-of-israeli-incitement-to-genocide-continuously-updated/>; Accountability Archive (@archivegenocide), X, <https://twitter.com/archivegenocide> (last visited Apr. 30, 2024); *85 Israeli Genocidal Intent Quotes*, ZIONISM OBSERVER, <https://zionism.observer/quotes/genocidal-intent> (Last visited May 1, 2024).

⁶⁹¹ יהודה שלזינגר (@judash0), X (Oct. 7, 2023, 9:55 PM), <https://x.com/judash0/status/1710881487724204423?lang=en>.

⁶⁹² *Id.*

⁶⁹³ יהודה שלזינגר (@judash0), X (Oct. 8, 2023, 7:44 AM), <https://x.com/judash0/status/1710984530113241455>; יהודה שלזינגר (@judash0), X (Oct. 24, 2023, 1:01 PM), <https://x.com/judash0/status/1716862391273529429>; יהודה שלזינגר (@judash0), X (Oct. 28, 2023, 12:06 PM), <https://x.com/judash0/status/1718298179353927735>; יהודה שלזינגר (@judash0), X (Oct. 31, 2023, 4:39 AM), <https://x.com/judash0/status/1719272863947985050>; יהודה שלזינגר (@judash0), X (Nov. 18, 2023, 6:05 PM), <https://x.com/judash0/status/1725998656136827335>; יהודה שלזינגר (@judash0), X (Nov. 28, 2023, 11:04 AM), <https://twitter.com/judash0/status/1729516714704900318>; יהודה שלזינגר (@judash0), X (Nov. 28, 2023, 1:52 PM), <https://x.com/judash0/status/1729558880600965213>; יהודה שלזינגר (@judash0), X (Nov. 30, 2023, 12:04 PM), <https://x.com/judash0/status/1730256443998126280>; יהודה שלזינגר (@judash0), X (Dec. 9, 2023, 11:47 PM), <https://x.com/judash0/status/1733513613107732579>; יהודה שלזינגר (@judash0), X (Dec. 14, 2023, 3:36 PM), <https://x.com/judash0/status/1735383162572652995>.

⁶⁹⁴ יהודה שלזינגר (@judash0), X (Oct. 24, 2023, 1:01 PM), <https://twitter.com/judash0/status/1716862391273529429>.

⁶⁹⁵ MIDDLE EAST EYE, *Israeli Journalist: ‘These people deserve a hard agonising death,’* YOUTUBE (Apr. 21, 2024), https://www.youtube.com/watch?v=_NAhjWphqt4.

213. Prominent Israeli journalist and radio presenter David Mizrahy Verthaim called for turning Gaza “into a slaughterhouse.”⁶⁹⁶ He was still actively writing, appearing on radio, and commenting on social media as of April, including defending his original post.⁶⁹⁷
214. Hallel Bitton Rosen, a journalist with Israeli news station Channel 14, posted a Tweet in Hebrew stating, “[a]s it is written – ‘Wipe out the memory of Amalek’,”⁶⁹⁸ another reference to the Biblical commandment to exterminate a nation that has been regularly employed as a rallying cry in Israel’s assault on Gaza (see Section 3.b.i.1). Bitton Rosen still appeared on Channel 14 broadcasts as of April 24, 2024.⁶⁹⁹
215. In late December 2023, a group of Israeli lawyers submitted a letter to the country’s judicial authorities claiming the attorney general and state prosecutors were ignoring incitement to genocide across Israeli society. They wrote: “For the first time that we can remember, the explicit calls to commit atrocious crimes, as stated, against millions of civilians have turned into a legitimate and regular part of Israeli discourse. . . . Today, calls of these types are an everyday matter in Israel.”⁷⁰⁰
216. The Israeli Attorney General’s Office issued a statement on January 9, 2024, announcing her office may examine cases of potential incitement to harm civilians.⁷⁰¹ However, the *Times of Israel* reported in late February that “[the] Attorney General’s Office has said nothing since the January comment about progress in prosecuting incitement, while ‘examinations’ are not full-blown investigations but rather preliminary proceedings to evaluate if an investigation is necessary.”⁷⁰² In a letter regarding Israel’s compliance with the ICJ’s provisional measures, the International Commission of Jurists expressed concern “that Israel has failed so far to initiate full criminal investigations into allegations of incitement to commit genocide.”⁷⁰³

⁶⁹⁶ David Mizrahy Verthaim (@dverthaim), X (Oct. 7, 2023, 11:52 AM), <https://twitter.com/dverthaim/status/1710684531114602891?s=48>.

⁶⁹⁷ דוד ורטהיים, “גם כתבת הניו יורק טיימס שהושעתה בגלל לייק היא קורבן של מכונת רעל,” דוד ורטהיים (February 27, 2024), <https://b.walla.co.il/item/3646902>; David Mizrahy Verthaim (@dverthaim), X, <https://twitter.com/dverthaim> (last visited Apr. 24, 2024).

⁶⁹⁸ Hallel Bitton Rosen (@BittonRosen), X (Apr. 10, 2024, 7:40 AM), <https://x.com/BittonRosen/status/1778070472082493662>.

⁶⁹⁹ See 14 עכשיו (@Now14Israel), X (Apr. 24, 2024, 10:53 AM), <https://x.com/Now14Israel/status/1783192618886680675>.

⁷⁰⁰ Emma Graham, Harrison and Quique Kierszenbaum, *Israeli Public Figures Accuse Judiciary of Ignoring Incitement to Genocide in Gaza*, THE GUARDIAN (Jan. 3, 2024), <https://www.theguardian.com/world/2024/jan/03/israeli-public-figures-accuse-judiciary-of-ignoring-incitement-to-genocide-in-gaza>.

⁷⁰¹ Tova Zimuky, *Israel Mulls Investigating Lawmakers over Calls to Harm Gazan Civilians*, YNET NEWS (Jan. 10, 2024), <https://www.ynetnews.com/article/h1tnwvjdp>.

⁷⁰² Jeremy Sharon, *Report Card: Israel to File Compliance Update to ICJ over Genocide Charges*, TIMES OF ISR. (Feb. 26, 2024), <https://www.timesofisrael.com/report-card-israel-to-file-compliance-update-to-icj-over-genocide-charges/>.

⁷⁰³ *Gaza: One Month On, Israel Fails to Comply with the Order of the International Court of Justice*, INT’L COMM’N OF JURISTS (Feb. 26, 2024), <https://www.icj.org/gaza-one-month-on-israel-fails-to-comply-with-the-order-of-the-international-court-of-justice/>.

217. On April 8, 2024, Adalah, the Legal Center for Arab Minority Rights in Israel, submitted a letter to Israel's State Attorney, Attorney General, Commissioner of Police, and Minister of Justice, "demanding an immediate investigation into potential incidents of incitement to genocide perpetrated by various public figures" since October 7, 2023, and deploring the lack of any official investigation into these incidents to date.⁷⁰⁴
218. That none of the abovementioned individuals have faced legal consequences for their incitements as of this drafting is a strong indication that Israel has failed to discharge its obligation under the Genocide Convention and the ICJ's provisional measures to prevent and punish incitement to genocide.

PART 5: LEGAL CONSEQUENCES AND OBLIGATIONS FOR THIRD STATES

219. The foregoing analyses lead to the conclusion that Israel is violating the international legal prohibition of genocide against the Palestinian people in Gaza. Strong evidence indicates that Israel is violating Article II(a) (the killing of Palestinians in Gaza), II(b) (the causing of serious bodily or mental harm to Palestinians in Gaza), and II(c) (the deliberate infliction of conditions of life calculated to bring about the destruction of Palestinians in Gaza) of the Genocide Convention, all with the requisite genocidal intent. Evidence also indicates that Israel is in violation of Article III of the Genocide Convention, by inciting to genocide, failing to prevent genocide, and failing to punish those responsible in the Israeli government, press, and others who are likewise inciting genocide.
220. The prohibition of genocide in the Genocide Convention and in customary international law is a peremptory norm (*jus cogens*),⁷⁰⁵ serious breaches of which generate obligations for both the responsible State as well as all other States, known as obligations *erga omnes*.⁷⁰⁶ The ICJ has affirmed that *erga omnes* obligations are the "concern of all States"⁷⁰⁷ and that "all States can be held to have a legal interest in their protection."⁷⁰⁸

⁷⁰⁴ Letter, Adalah, Letter Demanding Israel Investigate and Prosecute Incitement to Genocide by Public Figures (Apr. 8, 2024), available in Hebrew at https://www.adalah.org/uploads/uploads/incitement_genocide_080424.pdf.

⁷⁰⁵ Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 23 (May 28). *See also* Dem. Rep. Congo v. Uganda at para. 64; Bosn. & Herz. v. Yugoslavia Preliminary Objections Judgment at para. 31.

⁷⁰⁶ Bosn. & Herz. v. Yugoslavia Preliminary Objections Judgment at para. 31; Dem. Rep. Congo v. Uganda at para. 64; ILC, Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, art. 40., U.N. Doc. A/56/10 (2001), https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf [hereinafter ARSIWA]. Article 40(2) of ARSIWA defines a serious breach of *jus cogens* norms as "a gross or systematic failure by the responsible State to fulfil the obligation." *See also* ARSIWA, art. 40, cmt. 8.

⁷⁰⁷ *Barcelona Traction* at para. 33, affirmed by the court in the *Wall* Advisory Opinion at para. 155.

⁷⁰⁸ *Id.* In the *Chagos* Advisory Opinion, the court stated that "all States have a legal interest in protecting" an *erga omnes* right. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, para. 180 (Feb. 25). The ILC Commentary on ARSIWA describes the concept of *erga omnes* obligations as addressing "the legal interest of all States in compliance – i.e., . . . in being entitled to invoke the responsibility of any State in breach." ARSIWA, art. 39, cmt. 7.

221. The Genocide Convention also creates obligations for all States parties to the Convention, obligations *era omnes partes*, as “all the States parties to the Genocide Convention have a common interest to ensure that acts of genocide are prevented.”⁷⁰⁹ Namely, all States parties to the Convention have duties to prevent and punish genocide and to not be complicit in the commission of genocide.⁷¹⁰
222. As duty holders under international law, all States are responsible for making individual assessments of whether a violation of the prohibition of genocide has occurred for the purpose of determining their own duties, and no determination by international courts or tribunals is necessary in order to trigger these duties.⁷¹¹
223. On January 26, 2024, the ICJ issued a provisional measures order recognizing as plausible “the right of Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III [of the Genocide Convention], and the right of South Africa to seek Israel’s compliance with the latter’s obligations under the Convention.”⁷¹² The Court ordered Israel to take “all measures within its power to prevent the commission of all acts within the scope of Article II of [the] Convention,” and “to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip.”⁷¹³ The Court emphasized the urgency to take these measures and the “real and imminent risk” of irreparable harm to the rights of Palestinians in Gaza under if no measures were taken,⁷¹⁴ “namely the right . . . to be protected from acts of genocide and related prohibited acts.”⁷¹⁵ This determination by the UN’s highest judicial organ has the effect of alerting all third States to the aforementioned risks, most grave of which is the imminent risk that Palestinians may be subjected to genocidal acts within the scope of Article II of the Genocide Convention. States, therefore, must assess their duties and obligations in light of these risks.⁷¹⁶
224. In relation to the above, legal consequences to third States⁷¹⁷ may comprise duties to refrain from certain actions, duties to undertake certain actions, as well as rights to invoke certain responsibilities before international tribunals. Section 6 below outlines the broad duties and obligations of third States generated under customary international law, and Section 7

⁷⁰⁹ *Gamb. v. Myan.* Provisional Measures Order at para. 41.

⁷¹⁰ Genocide Convention, arts. I, III(e).

⁷¹¹ *See Bosn. & Herz. v. Serb. & Montenegro* at para. 431. *See also* Ralph Wilde, *Legal Consequences for Third States of Israel’s Potential Breaches of the Genocide Convention in the Light of the ICJ’s Provisional Measures Orders in the South Africa v Israel Case - Legal Opinion for the Arab Organisation for Human Rights in the UK* (Apr. 22, 2024), <https://aohr.org.uk/wp-content/uploads/2024/04/Wilde-Gaza-genocide-third-states-opinion.pdf>, p. 19, paras. 29-30 [hereinafter Wilde, Legal Opinion 2024].

⁷¹² *S. Afr. v. Isr.*, First Provisional Measures Order at para. 54.

⁷¹³ *Id.* at paras. 78-79.

⁷¹⁴ *Id.* at para. 61.

⁷¹⁵ *Id.* at para. 66.

⁷¹⁶ *See* Wilde, Legal Opinion 2024 at p. 20, para. 32 (arguing that “[t]he effect of the ICJ’s determination is that States must proceed on the basis of a working assumption that Israel is violating the genocide obligations, and there is a risk that these violations will continue, and other violations will arise, and that the rights and obligations they have in consequence, which will be elaborated on below, are engaged”).

⁷¹⁷ “Third States” refers to any State party to the Genocide Convention other than Israel and Palestine.

follows with an emphasis on specific duties and obligations that arise from the Genocide Convention as a result of a determination that Israel has violated the prohibition on genocide. Section 8 discusses the right of third States to invoke responsibilities triggered by Israel's violations of *erga omnes* and *erga omnes partes* obligations.

6. Duties of third States generated as a result of Israel's violations of its obligations under the Genocide Convention

225. Violation by any State of a peremptory (*jus cogens*) norm of international law, including the prohibition of genocide, triggers obligations under customary international law for all third States to (1) refrain from recognizing as lawful “a situation created by a serious breach; (2) not “render aid or assistance in maintaining” the situation created by a breach; and (3) “cooperate to bring to an end through lawful means any serious breach” of the relevant peremptory norm.⁷¹⁸
226. As discussed above, the totality of Israel's conduct of military operations in Gaza violates the prohibition of genocide under international law, which bears *jus cogens* and *erga omnes* status,⁷¹⁹ in addition to violating international humanitarian law. The gravity and scale of Israel's violations (see Sections 3.a and 3.d.ii), and clear expressions of the genocidal intent of its use of force in Gaza (see Section 3.b) render it practically impossible to separate the genocidal elements of Israel's military operations from elements that are non-genocidal, for purposes of assessing the legality of specific parts of Israel's military operations in Gaza. It follows, therefore, that States have a duty to refrain from recognizing as lawful all of Israel's military operations in Gaza (Section 6.a) and from rendering any aid or assistance to Israel in its conduct of military operations in Gaza (Section 6.b). Furthermore, States have a positive duty to cooperate to bring to an end Israel's military operations in Gaza (Section 6.c).

6.a. Duty of non-recognition

227. All States have an obligation not to recognize Israel's violations of the prohibition of genocide resulting from its ongoing military operations in Gaza.⁷²⁰ This duty of non-recognition is enshrined in the jurisprudence of international tribunals,⁷²¹ as well as expressed in multiple UN Security Council resolutions affirming that serious breaches have “no legal validity, and are considered null and void.”⁷²² These sources affirm that

⁷¹⁸ ARSIWA, art. 41.

⁷¹⁹ *Barcelona Traction* at para. 34.

⁷²⁰ See Wilde, Legal Opinion 2024 at pp.14-18, paras. 11-25 (for analysis of the legality of Israel's use of force in Gaza in light of the ICJ's provisional measures of January 26 and March 28).

⁷²¹ The ICJ held in the *Namibia* Advisory Opinion that “the termination of the Mandate and the declaration of the illegality of South Africa's presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law” (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276, para. 126, 1971 I.C.J. 16 (June 21), [hereinafter *Namibia* Advisory Opinion]).

⁷²² S.C. Res. 662 (Aug. 9, 1990); S.C. Res. 216 (Nov. 12, 1965); G.A. Res. 31/6 A (Oct. 26, 1976), endorsed in S.C. Res. 402 (Dec. 22, 1976).

“collective non-recognition . . . marks the minimum necessary response by States” to serious breaches.⁷²³

228. In the *Wall* Advisory Opinion of 2004, the ICJ held that all States are under an obligation to not recognize the illegal situation arising from Israel’s *jus cogens* violations in the Occupied Palestinian Territory and to not render aid or assistance in maintaining that situation.⁷²⁴ The ICC has further held that “as a general principle of law, there is a duty not to recognize situations created by certain serious breaches of international law”⁷²⁵ This obligation of non-recognition “not only refers to the formal recognition of these situations, but also prohibits acts which would imply such recognition.”⁷²⁶
229. In the *Namibia* Advisory Opinion, the ICJ held in 1971 that South Africa’s illegal presence in Namibia created an obligation on the part of all States “to recognize the illegality and invalidity of South Africa’s continued presence,”⁷²⁷ and further held that States were obligated to “make it clear to the South African authorities that the maintenance of diplomatic or consular relations with South Africa does not imply any recognition of its authority with regard to Namibia.”⁷²⁸ Following the Advisory Opinion, the Security Council passed Resolution 301, which called on States “to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration.”⁷²⁹
230. Similarly, in 1990, the Security Council, after having declared the illegality of Iraq’s annexation of Kuwait, called upon “all States, international organizations and specialized agencies to not recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation.”⁷³⁰
231. Under this precedent, States are under an obligation to not recognize Israel’s military operations in Gaza as lawful. In particular, they may not invoke or adopt any justification—including that of self-defense—to justify Israel’s conduct in Gaza. As in the *Namibia* case, the duty of non-recognition of Israel’s conduct in Gaza further extends to refraining from any acts or dealings with the Government of Israel that may imply recognition of the legality of its conduct.

⁷²³ ARSIWA, art. 41, cmt. 8.

⁷²⁴ *Wall* Advisory Opinion at paras. 146, 159. *See also* *Namibia* Advisory Opinion at para. 199.

⁷²⁵ The Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06-1707, Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9, of January 2017, Trial Chamber VI, I.C.C., para. 53.

⁷²⁶ ARSIWA, art. 41, cmt. 5.

⁷²⁷ *Namibia* Advisory Opinion at para. 119.

⁷²⁸ *Id.* at para. 123 (referring to the duty of non-recognition imposed by Security Council Resolution 276 of 1970, paras. 2, 5).

⁷²⁹ S.C. Res. 301, para. 6(2) (Oct. 20, 1971). *See also* S.C. Res. 283, para.1 (July 29, 1970) (requesting all states “to refrain from any relations—diplomatic, consular or otherwise—with South Africa implying recognition of the authority of the Government of South Africa over the Territory of Namibia”).

⁷³⁰ S.C. Res. 662, paras. 1-2 (Aug. 9, 1990).

6.b. Duty to refrain from aiding or assisting violations of the prohibition of genocide

232. States may not provide aid or assistance to Israel in its violation of the prohibition of genocide. This duty was affirmed by the ICJ in the *Wall* Advisory Opinion, which declared that all States are under an obligation “not to render aid and assistance in maintaining the situation” created by violations of *erga omnes* norms of international law.⁷³¹ In the *Namibia* Advisory Opinion, the ICJ likewise declared that States are “under obligation to refrain from lending any support or any form of assistance to South Africa with reference to its occupation of Namibia.”⁷³² A third State need not intend that its aid contribute to such violations in order for the State to be required to cease such assistance.⁷³³
233. Multiple UN General Assembly and Security Council resolutions have addressed the scope of the duty not to aid or assist in cases of violations of different *erga omnes* obligations. For example, in 1975, the General Assembly, in Resolution 2414, called on all States to “desist from supplying Israel with any military or economic aid as long as it continues to occupy Arab territories and deny the inalienable national rights of the Palestinian people,”⁷³⁴ and again reiterated this call in subsequent resolutions in 1981⁷³⁵ and 1983.⁷³⁶ In Resolution 36/226A of 1981, the General Assembly called on States “to put an end to the flow to Israel of any military, economic, and financial resources that would encourage it to pursue its aggressive policies against the Arab countries and the Palestinian people,”⁷³⁷ and later affirmed the call for these measures in 1983 and further instructed States to review “any agreement, whether military, economic or otherwise, concluded with Israel.”⁷³⁸
234. In *Nicaragua v. Germany*, a 2024 case in which Nicaragua has challenged Germany’s transfer of weaponry to Israel as a violation of the Genocide Convention, the ICJ emphasized that it was “particularly important to remind all States of their international obligations relating to the transfer of arms” to avoid the risk of States’ violating their international obligations, including those under the Genocide Convention.⁷³⁹
235. States have a duty to not render aid or assistance in maintaining Israel’s breaches of the prohibition on the crimes of genocide against Palestinians in Gaza. This encompasses a duty to refrain from providing aid or assistance to Israel’s military operations in Gaza,

⁷³¹ *Wall* Advisory Opinion at paras. 155, 159.

⁷³² *Namibia* Advisory Opinion at para. 119.

⁷³³ See Separate Opinion of Judge Higgins, *Wall* Advisory Opinion, para. 38 (observing it to be “self-evident” that third parties may not assist an illegal situation).

⁷³⁴ G.A. Res. 3414 (XXX), para. 3 (Dec. 5, 1975).

⁷³⁵ G.A. Res. 36/27, para. 3 (Nov. 13, 1981) (reiterating the “call to all States to cease forthwith any provision to Israel of arms and related material of all types which enable it to commit acts of aggression against other States”).

⁷³⁶ G.A. Res. 38/180A, para 13(a) (Dec. 19, 1983) (calling all Member States “[t]o refrain from supplying Israel with any weapons and related equipment and to suspend any military assistance that Israel receives from them”).

⁷³⁷ G.A. Res. 36/226A, para. 13 (Dec. 17, 1981).

⁷³⁸ G.A. Res. 38/180E, paras. 4 (Dec. 19, 1983).

⁷³⁹ *Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory (Nicar. v. Ger.)*, Request for Provisional Measures, Order, I.C.J. Apr. 30, 2024, para. 24 [hereinafter *Nicar. v. Ger.*, Provisional Measures Order].

including though diplomatic and political support, as well as financial, logistical, or military aid that may contribute to the continuation of these operations.⁷⁴⁰

6.c. Positive duty to cooperate through lawful means to end violations of the prohibition of genocide

236. As discussed above, the prohibition of genocide is a *jus cogens* norm of international law, of which “serious breaches”⁷⁴¹ trigger a positive duty for all other States to cooperate to bring it to an end through “lawful means.”⁷⁴² States may take a wide variety of cooperative measures, through institutionalized mechanisms such as the UN, as well as non-institutionalized cooperative mechanisms, to end the serious breach.⁷⁴³ The duty to cooperate to bring an end to a serious breach is an obligation *erga omnes*, that is, it “applies to States whether or not they are individually affected by the serious breach.”⁷⁴⁴ As a matter of customary international law, in response to a breach, any State may “take lawful measures against [another] State to ensure cessation of the breach and reparation” to the injured State.⁷⁴⁵
237. The duty to cooperate to bring to an end Israel’s genocidal acts in Gaza may take multiple forms, including institutionalized cooperation through the UN and its major organs. For example, in the context of concerted State action against South Africa’s apartheid regime, the General Assembly issued multiple resolutions calling for an end to cultural, educational, and sporting exchanges⁷⁴⁶ and oil and arms supplies to South Africa.⁷⁴⁷ Similarly, the Security Council issued several resolutions calling upon States to cease shipment of military items,⁷⁴⁸ to not recognize illegitimate elections,⁷⁴⁹ and to declare null and void South Africa’s apartheid constitution as contrary to the UN Charter.⁷⁵⁰ Outside of institutionalized cooperation, States may also cooperate to deploy a range of “lawful means” to cease serious breaches of international law, which States may determine depending on the particular context.⁷⁵¹
238. In the present case, States are obligated to cooperate to bring to an end Israel’s genocidal actions against Palestinians in Gaza. In particular, member States of the UN Security Council have a duty to cooperate to issue a resolution calling for a permanent ceasefire in

⁷⁴⁰ See ARSIWA, art. 41.

⁷⁴¹ See ARSIWA, art. 40 and its commentary for a definition of serious breaches.

⁷⁴² ARSIWA, art. 41; ARSIWA art. 41, cmt. 2.

⁷⁴³ ARSIWA, art. 41, cmt. 2; ILC, Draft conclusions on identification and legal consequences of preemptory norms of general international law (*jus cogens*), with commentaries, Conclusion 19, cmt. 10, U.N. Doc. A/77/10 (2022).

⁷⁴⁴ ARSIWA, art. 41, cmt. 3.

⁷⁴⁵ ARSIWA, art. 54.

⁷⁴⁶ G.A. Res. 2396 (XXIII), para. 12 (Dec. 2, 1968).

⁷⁴⁷ G.A. Res. 1899 (XVIII), para. 7 (Nov. 13, 1963).

⁷⁴⁸ S.C. Res. 181, para. 3 (Aug. 7, 1963).

⁷⁴⁹ S.C. Res. 554, para. 5 (Aug. 17, 1984).

⁷⁵⁰ *Id.* at para. 1.

⁷⁵¹ ARSIWA, art. 41, cmts. 2-3.

Gaza. States may also cooperate to deploy additional appropriate countermeasures,⁷⁵² such as economic sanctions, withholding military assistance, travel bans, or other methods aimed at preventing their citizens and corporate actors from participating in or contributing to Israel's military campaign in Gaza.⁷⁵³

239. Whether States may enact economic sanctions as third-party countermeasures is a matter that the ILC has left for further development in international law.⁷⁵⁴ Since the publication of ARSIWA, state practice has proliferated in the form of unilateral sanctions (against both States and specific individuals) that respond to grave breaches of international law.⁷⁵⁵ For example, the United States and European Union instituted asset freezes against high-level officials in Myanmar in response to human rights violations committed against the Rohingya in 2018.⁷⁵⁶ More recently, various States have enacted sanctions against the Russian Federation for its invasion of Ukraine, including the United States, the European Union (EU) (and individual EU Member States), Australia, Japan, New Zealand, Singapore, South Korea, and Switzerland.⁷⁵⁷

7. Legal consequences and obligations of States under the Genocide Convention

240. The Genocide Convention provides an additional basis that underscores duties and obligations of third States, which have *erga omnes partes* character, meaning that all States parties to the Genocide Convention share a legitimate interest in ensuring the compliance of other State parties with the Convention. This legitimate interest was affirmed by the ICJ in the *Gambia v. Myanmar* case, holding that States parties have a “common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity.”⁷⁵⁸ The Convention enumerates two broad duties for State parties: first, all States have a duty to “prevent and punish” genocide under Article I of the Convention; and second, third States have a duty under Article III(e) to refrain from complicity in genocide.

7.a. The duty under the Genocide Convention to prevent and punish genocide

241. All States parties to the Genocide Convention have a duty to prevent and punish breaches of the Convention.⁷⁵⁹ This duty under Article I of the Convention “imposes positive obligations on State parties to take action or ‘to do their best to ensure that such acts do not

⁷⁵² Countermeasures are defined as non-forcible measures that would ordinarily be considered wrongful, but their wrongfulness is precluded only in relation to their use by a State against another State in response to a previous international wrongful act. See ARSIWA, art. 22 and its commentary.

⁷⁵³ See ARSIWA, art. 54, cmt. 3.

⁷⁵⁴ ARSIWA, art. 54, cmt. 6.

⁷⁵⁵ Amanda Bills, *The Relationship between Third-Party Countermeasures and the Security Council's Chapter VII Powers: Enforcing Obligations erga omnes in International Law*, 89 NORD. J. INT'L L. 117, 127–28 (2020). See generally MARTIN DAWIDOWICZ, *THIRD-PARTY COUNTERMEASURES IN INTERNATIONAL LAW* (2017).

⁷⁵⁶ *Id.*

⁷⁵⁷ *Sanctions Against Russia – a Timeline*, S&P GLOBAL MARKET INTELLIGENCE (Mar. 26, 2024), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/sanctions-against-russia-8211-a-timeline-69602559>.

⁷⁵⁸ *Gamb. v. Myan.* Provisional Measures Order at para. 41.

⁷⁵⁹ Genocide Convention, art. I.

occur.”⁷⁶⁰ A State is in violation of this obligation if it “manifestly failed to take all measures to prevent genocide which were within its power and which might have contributed to preventing the genocide.”⁷⁶¹ In *Bosnia and Herzegovina v. Serbia and Montenegro*, the ICJ explained that the obligation to prevent and punish genocide and the duty to discharge this obligation “arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.”⁷⁶² The Court affirmed that States are obligated “to employ all means reasonably available to them, so as to prevent genocide so far as possible.”⁷⁶³

7.a.i. The obligation to prevent and punish genocide is not territorially limited

242. All States parties to the Genocide Convention have a duty to prevent and punish violations by all other States of their obligations under the Convention.⁷⁶⁴ The Convention does not impose territorial limits, but rather emphasizes the importance of international cooperation “in order to liberate mankind from such an odious scourge.”⁷⁶⁵
243. The ICJ underscored in *Bosnia and Herzegovina v. Serbia and Montenegro* that States have a duty to prevent genocide, writing that the “obligation to prevent the commission of the crime of genocide is imposed by the Genocide Convention on any State party which, in a given situation, has in its power to contribute to restraining in any degree the commission of genocide.”⁷⁶⁶ In this way, the “combined efforts of several States, each complying with its obligation to prevent,” could avert the commission of genocide when one State’s efforts alone are insufficient.⁷⁶⁷

7.a.ii. At this time, third States have sufficient knowledge of a serious risk of genocide in Gaza, triggering their duty to prevent genocide

244. The duty to prevent genocide is triggered “at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that Genocide will be committed.”⁷⁶⁸ As the ICJ held in *Bosnia and Herzegovina v. Serbia and Montenegro*, the actual or constructive knowledge of the risk of genocide can be established by evidence that State officials were directly informed of the risk of genocide,⁷⁶⁹ statements by State officials acknowledging allegations of genocide,⁷⁷⁰ “international concern about what

⁷⁶⁰ See *Nicar. v. Ger.*, Provisional Measures, Declaration of Judge Cleveland, para. 5 [quoting *Bosn. & Herz. v. Serb. & Montenegro* at para. 432].

⁷⁶¹ *Bosn. & Herz. v. Serb. & Montenegro* at para. 430.

⁷⁶² *Id.* at para. 431.

⁷⁶³ *Id.* at para. 430.

⁷⁶⁴ Genocide Convention, art. I.

⁷⁶⁵ Genocide Convention, Preamble. In the preliminary objections phase of *Bosnia and Herzegovina v. Serbia and Montenegro*, the ICJ confirmed that the duty to prevent and punish genocide “is not territorially limited.” *Bosn. & Herz. v. Serb. & Montenegro* Preliminary Objections Judgment at para. 31.

⁷⁶⁶ *Bosn. & Herz. v. Serb. & Montenegro* at para. 461.

⁷⁶⁷ *Id.* at para. 430.

⁷⁶⁸ *Id.* at para. 431.

⁷⁶⁹ *Id.* at paras. 436–37.

⁷⁷⁰ *Id.* at para. 438.

looked likely to happen” in the relevant territory (including through the ICJ’s own determinations),⁷⁷¹ or the knowledge that there was a “climate of deep-seated hatred”⁷⁷² between different ethnic groups. These would establish that a State “could not have been unaware” of the risk that genocide is likely to occur.⁷⁷³

245. The plausibility of the imminent risk that Israel is violating the right of Palestinians in Gaza to be protected from genocide and other provisions of the Genocide Convention, and the urgency to take measures to protect these rights, have been recognized by the ICJ in the provisional measures orders it issued in the case brought by South Africa concerning Israel’s violation of the Genocide Convention.⁷⁷⁴
246. Since mid-October 2023, numerous authoritative international law experts, UN Special Rapporteurs and mechanisms, high UN officials, leading scholars and practitioners of international law and genocide studies, and credible human rights advocacy organizations have issued repeated warnings and declarations to alert the international community of the risk—or the actual unfolding—of genocide against the Palestinian people in Gaza.⁷⁷⁵
247. Moreover, pronouncements by State officials, such as those from the United States,⁷⁷⁶ demonstrate that third States have been put on notice regarding concerns of genocide.⁷⁷⁷ As the ICJ held in *Bosnia and Herzegovina v. Serbia and Montenegro*, the fact that officials had “information, voicing serious concern, in their possession” demonstrates knowledge.⁷⁷⁸ Even if there was “no certainty . . . that genocide was about to be committed or was under way,” their awareness of serious risk triggers the applicability of the duty to prevent genocide.⁷⁷⁹
248. It therefore can be established that at this time, all States parties to the Genocide Convention have learned, or should have learned, of the grave risks that through its actions in Gaza, Israel has violated, and continues to violate, its obligations under the Genocide Convention in Gaza, thereby triggering the duty to prevent and punish genocide.

⁷⁷¹ *Id.*

⁷⁷² *Id.*

⁷⁷³ *Id.* at para. 461.

⁷⁷⁴ *S. Afr. v. Isr.*, First Provisional Measures Order at para. 54; *S. Afr. v. Isr.*, Second Provisional Measures Order at para. 27.

⁷⁷⁵ See the Introduction of this report for a thorough list of examples of statements warning of and condemning the genocidal nature of Israel’s acts in Gaza.

⁷⁷⁶ Daphne Psalidakis & Simon Lewis, *US ‘Not Seeing Acts of Genocide’ in Gaza, State Dept Says*, REUTERS (Jan. 3, 2024, 3:34 PM), <https://www.reuters.com/world/us-not-seeing-acts-genocide-gaza-state-dept-says-2024-01-03/>; Simon Lewis, Doina Chiacu & David Brunnstrom, *Blinken Says Daily Toll in Gaza too High, Israel Genocide Charge Meritless*, REUTERS (Jan. 9, 2024, 6:06PM EST), <https://www.reuters.com/world/middle-east/blinken-says-daily-toll-gaza-too-high-israel-genocide-charge-meritless-2024-01-09/>.

⁷⁷⁷ See *S. Afr. v. Isr.*, First Provisional Measures Order at para. 54.

⁷⁷⁸ *Bosn. & Herz. v. Serb. & Montenegro* at para. 438.

⁷⁷⁹ *Id.* at para. 432.

7.a.iii. The duty to prevent genocide varies in accordance with its political capacity to influence the party committing genocide

249. States are required to “employ all means reasonably available” to them to prevent genocide.⁷⁸⁰ The duty to prevent genocide “varies greatly from one State to another,” and depends on a given State’s “capacity to influence effectively the action of persons likely to commit, or already committing, genocide.”⁷⁸¹
250. Several factors can determine the capacity of a third State to exert influence, including “the geographical distance of the State concerned from the scene of the events” and “the strength of the political links, as well as links of all other kinds, between the authorities of the State and the main actors in the events.”⁷⁸² States that provide military support to a perpetrating State have a higher duty to prevent genocide from occurring.⁷⁸³
251. In *Bosnia and Herzegovina v. Serbia and Montenegro*, the ICJ held that the Federal Republic of Yugoslavia (FRY) had unique influence over Bosnian Serbs, who committed genocide in Srebrenica, “owing to the strength of the political, military and financial links between the FRY on the one hand and the Republika Srpska and the VRS on the other.”⁷⁸⁴ Forty-two percent of ammunition used by the VRS military was inherited from the former Yugoslav Army.⁷⁸⁵ The former Yugoslav Army continued to supply 47 percent of VRS military “requirements”;⁷⁸⁶ and the Yugoslav government gave enough “financial support” to the extent that, had it withdrawn its support, it “would have greatly constrained the options that were available to the Republika Srpska authorities.”⁷⁸⁷ Given these links, Yugoslavia had the obligation to make “the best efforts within their power to try and prevent” the commission of genocide in Srebrenica.⁷⁸⁸
252. The ICJ also emphasized that acts of omission violated the duty to prevent under Article I.⁷⁸⁹ In other words, a State is in violation of the Genocide Convention if it fails to act after having learned of the risk of another State’s violation of its Convention obligations. In relation to arms exports and military assistance, in particular, “all States parties have an international legal obligation to exercise due diligence,” as emphasized in the separate declaration of Judge Cleveland in *Nicaragua v. Germany*.⁷⁹⁰
253. In the present case, the duty to prevent genocide in Gaza encompasses a range of measures. First, it is imperative that States exercise all means of political and diplomatic pressure towards the cessation of Israeli military operations in Gaza. States exporting arms or

⁷⁸⁰ *Id.* at para. 430.

⁷⁸¹ *Id.*

⁷⁸² *Id.*

⁷⁸³ *Id.* at para. 438.

⁷⁸⁴ *Id.* at para. 434. “VRS” was the Bosnian Serb Army of Republika Srpska.

⁷⁸⁵ *Bosn. & Herz. v. Serb. & Montenegro* at para. 239.

⁷⁸⁶ *Id.*

⁷⁸⁷ *Id.* at para. 241.

⁷⁸⁸ *Id.* at para. 438.

⁷⁸⁹ *Id.* at para. 432.

⁷⁹⁰ *See* *Nicar. v. Ger.*, Provisional Measures, Declaration of Judge Cleveland at para. 16.

military equipment to Israel, or providing other forms of military aid or logistical assistance, which contribute to or otherwise enable Israel's military operations against Palestinians in Gaza, have an obligation to immediately terminate all forms of aid and assistance. Failure to take measures to cease such aid or assistance may constitute a violation of a State's obligation under Article I of the Genocide Convention.

254. States also have the duty to punish violations of the Genocide Convention, including through assisting and enabling the assignment of individual criminal responsibility for genocide.⁷⁹¹ States must cooperate in good faith to investigate, prosecute, or extradite suspects, and States parties to the Rome Statute must work towards enabling the prosecution of suspects in the International Criminal Court.⁷⁹²

7.b. The duty not to be complicit in genocide

255. Article III(e) of the Genocide Convention prohibits complicity in genocide.⁷⁹³ Complicity can only exist where the crime of genocide has been committed.⁷⁹⁴
256. In *Bosnia and Herzegovina v. Serbia and Montenegro*, the ICJ noted that “complicity” under the Genocide Convention is analogous to the notion of “aid or assistance” in committing an internationally wrongful act under customary international law.⁷⁹⁵ Hence, a State has violated Article III when the conditions of Article 16 of ARSIWA are met, i.e., when the State provides aid or assistance in a manner that contributes directly and substantially to the commission of the crime, “with knowledge of the circumstances of the internationally wrongful act.”⁷⁹⁶
257. A violation of the prohibition of complicity in genocide does not require that the assistance have a “causal relationship”⁷⁹⁷ with or be “indispensable”⁷⁹⁸ to the commission of the crime. Rather, it suffices that the assistance had a “substantial effect on the commission of the crime.”⁷⁹⁹ Moreover, “moral support” (for example, encouragement) can constitute complicity if it has a “significant legitimising or encouraging effect” on the persons or States committing genocide.⁸⁰⁰

⁷⁹¹ See Wilde, Legal Opinion 2024 at pp. 31-32, paras. 71-74, <https://aohr.org.uk/wp-content/uploads/2024/04/Wilde-Gaza-genocide-third-states-opinion.pdf>.

⁷⁹² See Rome Statute, art. 6.

⁷⁹³ Genocide Convention, art. III(e).

⁷⁹⁴ *Akayesu* Trial Judgment at para. 529.

⁷⁹⁵ *Bosn. & Herz. v. Serb. & Montenegro* at para. 419.

⁷⁹⁶ ARSIWA, art. 16.

⁷⁹⁷ *Prosecutor v. Furundžija*, IT-95-17/1, Trial Judgment (I.C.T.Y. Dec. 10, 1998), para. 233 [hereinafter *Furundžija* Trial Judgment].

⁷⁹⁸ *Gerechtof's-Hertogenbosch*, 21-04-2017, ECLI:NL:GHSHE:2017:2650 13-06-2017 (Public Prosecutor/Kouwenhoven), at L.2, <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHSHE:2017:2650>. [hereinafter *Kouwenhoven*].

⁷⁹⁹ *Furundžija* Trial Judgment at para. 234; *Prosecutor v. Édouard Karemera et al.*, ICTR-98-44-A, Appeals Judgment (I.C.T.R. Sept. 29, 2014), para. 489.

⁸⁰⁰ *Furundžija* Trial Judgment at para. 232.

258. International criminal tribunals have held that complicity can comprise various kinds of acts, including aiding and abetting.⁸⁰¹ The provision of weapons has been held to constitute complicity. In *Akayesu*, the ICTR Trial Chamber held that the “procuring [of] means, such as weapons, instruments, or any other means” satisfies the *actus reus* (or act requirement) of complicity.⁸⁰² In the *Zyklon B* case, the British military court convicted of aiding and abetting defendants who, through their businesses, supplied poison gas into Germany knowing that it was to be used in extermination camps.⁸⁰³ The ICJ further clarified that acts of complicity may include the “provision of means to enable or facilitate the commission of the crime.”⁸⁰⁴
259. A specific intent to commit genocide is not required for a finding of complicity; rather, it is sufficient for a State to act with the knowledge that the direct perpetrator had the specific intent to commit genocide, as affirmed by the ICJ in *Bosnia and Herzegovina v. Serbia and Montenegro*.⁸⁰⁵ The District Court in the Hague, which adjudicated a case involving the application of a Dutch statute implementing the Genocide Convention, held that a finding of complicity requires knowledge of “the genocidal intention of the perpetrator” rather than specific genocidal intent of the accomplice.⁸⁰⁶ The Trial Chamber in *Akayesu* and the Appeals Chamber in *Ntakirutimana* noted that complicity does not require that the perpetrator share the same specific intent,⁸⁰⁷ only that the accomplice must have known of the genocidal plan and that the assistance would help in the commission of the act.⁸⁰⁸
260. Knowledge of the direct perpetrator’s genocidal intention can be established through circumstantial evidence. For example, the British Military Court in *Zyklon B* held that one defendant, Weinbacher, had knowledge of the genocidal plan even in the absence of direct evidence that he knew how the Zyklon B was being used at Auschwitz.⁸⁰⁹ In light of the scrupulousness and level of sensitivity with which Weinbacher ran their poison gas business, the court found that he “must have known every little thing about his business,” including that his chemicals were being used to exterminate Jews in Auschwitz.⁸¹⁰ In *Van*

⁸⁰¹ *Akayesu* Trial Judgment at para. 533; *Kristić* Appeals Judgment at paras. 138–39; Prosecutor v. E. and G. Ntakirutimana, Cases Nos. ICTR-96-10-A & ICTR-96-17-A, Appeals Judgment (I.C.T.R. Dec. 13, 2004), para. 371 [hereinafter *Ntakirutimana* Appeals Judgment]. See also Marko Milanović, *State Responsibility for Genocide*, 17 EUR. J. INT’L L. 553, 574 (2006); WILLIAM SCHABAS, GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES 293 (2000).

⁸⁰² *Akayesu* Trial Judgment at para. 537.

⁸⁰³ United Kingdom v. Tesch et al., Case No. 9, Judgment, British Military Court in Hamburg, 1 L. Rep. Trial War Crim. 93, 101–102 (1947) [hereinafter *Zyklon B* case].

⁸⁰⁴ Bosn. & Herz. v. Serb. & Montenegro at para. 419.

⁸⁰⁵ *Id.* at para. 421.

⁸⁰⁶ Rechtbank’s-Gravenhage, 23-12-2005, 31-05-2006 (Public Prosecutor/Frans Cornelis Adrianus van Anraat), para. 6.5.1 (Neth.), trans. Asser Institute, Ctr. for Int’l & Eur. L., https://www.asser.nl/upload/documents/DomCLIC/Docs/NLP/Netherlands/vanAnraat_Judgment_23-12-2005_EN.pdf [hereinafter *Van Anraat*]. See also Kouwenhoven at L.2 (holding that, “from an international criminal law perspective, the requirements for the ‘aider or abettor’ are not significantly heavier or different”).

⁸⁰⁷ *Akayesu* Trial Judgment at para 485.

⁸⁰⁸ *Id.* at para. 538; *Ntakirutimana* Appeals Judgment at para 364.

⁸⁰⁹ *Zyklon B*. Case at 101.

⁸¹⁰ *Id.*

Anraat, the Hague district court emphasized that a defendant could be put on notice of the genocidal plan through “extensive coverage in international media” of genocidal acts.⁸¹¹ Only because such news reports occurred *after* the defendant conducted the arms sale did the Court find him not guilty of complicity in genocide.⁸¹²

261. As discussed above (see Section 7.a.ii), it can be established at this time that States have, or should reasonably have, knowledge of plausible Israeli violations of the Genocide Convention in Gaza. This triggers their obligations to cease any actions—whether military, logistical, financial, political, or diplomatic—that aid or abet Israel’s commission of genocidal actions against Palestinians in Gaza.

8. Third States’ standing to invoke responsibility triggered by violations of the prohibition on genocide

262. The violation of the prohibition of genocide, an *erga omnes* obligation under customary international law, generates standing for every State in the international community to invoke the responsibility of another State.⁸¹³ This is reflected in Article 48(1)(b) of ARSIWA, which affirms the right of a non-injured State to invoke the responsibility of the breaching State when “the obligation breached is owed to the international community as a whole.”⁸¹⁴ A non-injured State may also claim from the breaching State reparations for the benefit of the injured State or other beneficiaries of the obligation breached.⁸¹⁵
263. The obligations under the Genocide Convention are also *erga omnes partes*. The ICJ affirmed this in *Gambia v. Myanmar*, confirming the “right of all other Contracting Parties to assert the common interest in compliance with the obligations *erga omnes partes* under the Convention,” and holding that the Gambia had standing to bring a claim before the ICJ against Myanmar despite being uninjured by Myanmar’s actions.⁸¹⁶ The provisional measures order in *South Africa v. Israel* reinforces this jurisprudence, concluding that South Africa had standing to bring a claim before the ICJ under Article IX of the Convention for an alleged breach of *erga omnes partes* obligations.⁸¹⁷ Hence, Israel’s violations of the Genocide Convention entitle all States parties to the Convention to invoke Israel’s responsibility.
264. All States therefore have standing to bring claims before appropriate international tribunals—under both the Genocide Convention and customary international law—to demand a cessation of Israel’s breaches of the prohibitions of genocide and to call for

⁸¹¹ Van Anraat at para. 8.

⁸¹² *Id.*

⁸¹³ *Barcelona Traction* at 32; ARSIWA, art. 48(1)(a); James Crawford, *Responsibility for Breaches of Communitarian Norms: An Appraisal of Article 48 of the ILC Articles on Responsibility of States for Internationally Wrongful Acts*, in FROM BILATERALISM TO COMMUNITY INTEREST: ESSAYS IN HONOUR OF BRUNO SIMMA 224, 227 (2011).

⁸¹⁴ ARSIWA, art. 48(1)(b).

⁸¹⁵ *Id.*, art. 48(2)(b).

⁸¹⁶ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Gamb. v. Myan.*), Preliminary Objections Judgment, 2022 I.C.J. 477, para. 108 (July 22).

⁸¹⁷ *S. Afr. v. Isr.* First Provisional Measures Order at paras. 33–34.

reparations on behalf of Palestinians in Gaza.⁸¹⁸ In particular, States are entitled to institute proceedings against Israel before the ICJ, pursuant to Article IX of the Genocide Convention.⁸¹⁹

PART 6: CONCLUSION

265. This report has demonstrated that actions—past and continuing—taken by Israel’s government and military in and regarding Gaza following the Hamas attacks in Israel on October 7, 2023, constitute breaches of the international legal prohibitions on the commission of genocide, incitement to genocide, and failure to prevent and punish genocide.
266. This report has shown that Israel has committed the genocidal acts of killing, causing serious harm to, and inflicting conditions of life calculated to bring about the physical destruction of Palestinians in Gaza, a protected group that forms a substantial part of the Palestinian people. These genocidal acts have been motivated by the requisite genocidal intent, as evidenced in this report by the statements of Israeli leaders, the character of the State and its forces’ conduct against and relating to Palestinians in Gaza, and the direct nexus between them.
267. Israel’s violations of the international legal prohibition of genocide and other related crimes amount to grave breaches of peremptory norms of international law that must be ceased immediately. Furthermore, these violations give rise to obligations by all other States: to refrain from recognizing Israel’s breaches as legal or taking any actions that may amount to complicity in these breaches; and to take positive steps to suppress, prevent, and punish the commission by Israel of further genocidal acts against the Palestinian people in Gaza.

⁸¹⁸ ARSIWA, arts. 48(1)(a), 48(2)(a)–(b).

⁸¹⁹ S. Afr. v. Isr. First Provisional Measures Order at paras. 33-34.