

London

26 October 2023

Dear Prime Minister, Foreign Secretary, Defence Secretary,

We the undersigned legal practitioners, legal academics and former members of the judiciary in the United Kingdom (UK), dedicated to upholding the rule of law both domestically and internationally, call on the UK Government to act urgently to fulfil its international legal obligations in relation to the ever-escalating conflict in the Middle East.

In doing so, we are deeply mindful that many people in the UK – including Israelis and Palestinians, and those in the broader Jewish, Arab and Muslim communities – have close ties to the region, and we express our sympathy to all of them, particularly the bereaved, and those whose loved ones are still in grave danger. We are moved to intervene because, in a region already accustomed to great suffering, the death and other harm visited on individuals, families and whole communities in the last 20 days has been truly terrible.

### **The facts**

The situation in Gaza is catastrophic.

In response to the Hamas-led attacks in Israel on 7 October 2023, Israel has engaged in intensive airstrikes on Gaza.

In the morning hours of 7 October 2023, Hamas fired a barrage of thousands of rockets from Gaza into Israeli territory, before breaching the security barrier surrounding Gaza in multiple locations. They killed young people partying at a music festival, and engaged in a widespread attack against communities, towns and kibbutzim in Southern Israel, as well as Israeli military bases.<sup>1</sup> Approximately 1,400 Israelis and other nationals were killed on and after 7 October 2023, according to figures reported by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), most of them civilians, including multiple members of the same family, women and numerous children.<sup>2</sup> There are reports of mutilation. At least 224 hostages were seized, including

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<sup>1</sup>United Nations (UN) Office for the Coordination of Humanitarian Affairs (OCHA), [Hostilities in the Gaza Strip and Israel | Flash Update #1](#) (7 Oct 2023); and Human Rights Watch (HRW), [Israel/Palestine: Videos of Hamas-led attacks verified](#) (18 Oct 2023).

<sup>2</sup> OCHA, [Hostilities in the Gaza Strip and Israel / Flash update #19](#) (25 Oct 2023). Statistics cited in this letter are up to date to 25 Oct 2023. OCHA collates locally collected data.

at least one person with a disability, women, children, elderly people and Israeli soldiers.<sup>3</sup> Only four hostages have since been released to date, on 20 and 23 October 2023.<sup>4</sup> The others continue to be held in Gaza – *incommunicado*, save for a short video of one hostage released on 17 October 2023. An estimated 5,431 Israelis and others in Israel have been injured on and since 7 October 2023 – 299 critically or seriously – with 279 people hospitalised for traumatic stress.<sup>5</sup> 278 people remain in hospital, 40 of them in a critical condition.<sup>6</sup> Rockets continue to be fired into Israel from Gaza,<sup>7</sup> prompting hundreds of thousands of Israelis from communities near Gaza, as well as along the border with Lebanon, to flee or be evacuated.<sup>8</sup>

In response, Israel “declared war” on Hamas. The Israeli army has dropped thousands of bombs on Gaza, one of the most densely populated places on Earth, home to 2.1 million Palestinians,<sup>9</sup> of whom approximately half are children,<sup>10</sup> and the majority of whom are refugees from villages and towns now within Israel.<sup>11</sup> From 7 October 2023 to 25 October 2023, over 6,547 Palestinians in Gaza, including over 2,704 children, have been killed and more than 17,439 injured – thousands critically – according to figures reported by the OCHA.<sup>12</sup> Women and children are said to make up over 68 percent of those killed.<sup>13</sup> Over 688 Gazan families have lost two or more family members,<sup>14</sup> with all members of at least 47 multi-generational families being killed.<sup>15</sup> 1,600 people, including 900 children, are reported missing, presumed to be still trapped beneath the rubble,<sup>16</sup> and over 140 unidentified bodies have been buried in mass graves.<sup>17</sup>

On 9 October 2023, Israel cut off access by Palestinians in Gaza to food, water, electricity, fuel, medical supplies.<sup>18</sup> Clean drinking water is scarce, and the risks of fatal dehydration and the outbreak of waterborne diseases, including cholera, are acute.<sup>19</sup> The restricted amount of aid so far permitted into Gaza, on 21 to 24 October 2023 (62 trucks in total, as compared to 200 trucks

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<sup>3</sup> *Ibid.*; OCHA, [Hostilities in the Gaza Strip and Israel | Flash Update #4](#) (10 Oct 2023); see also, Human Rights Watch, [Hamas, Islamic Jihad: Holding Hostages is a War Crime](#) (19 Oct 2023).

<sup>4</sup> International Committee of the Red Cross (ICRC), [Statement from President Mirjana Spoljaric – Israel and Occupied Territories: ICRC helps in the release of hostages in Gaza](#), Press Release (20 Oct 2023).

<sup>5</sup> Israeli Ministry of Health, [Press Release](#) (22 Oct 2023).

<sup>6</sup> Israeli Ministry of Health, [Press Release](#) (24 Oct 2023).

<sup>7</sup> OCHA, [Hostilities in the Gaza Strip and Israel / Flash update #19](#) (25 Oct 2023).

<sup>8</sup> *Ibid.*

<sup>9</sup> UNRWA, [Where We Work – Gaza](#).

<sup>10</sup> World Health Organisation (WHO), [WHO pleads for immediate reversal of Gaza evacuation order to protect health and reduce suffering](#) (13 Oct 2023).

<sup>11</sup> UNRWA, [Where We Work – Gaza](#); and UNRWA, [Palestine Refugees](#).

<sup>12</sup> OCHA, [Hostilities in the Gaza Strip and Israel / Flash update #19](#) (25 Oct 2023); and DCI-Palestine, [305 Palestinian Children Killed in Gaza in 24 Hours](#) (24 Oct 2023).

<sup>13</sup> OCHA, [Hostilities in the Gaza Strip and Israel / Flash update #19](#) (25 Oct 2023).

<sup>14</sup> OCHA, [Hostilities in the Gaza Strip and Israel / Flash update #19](#) (25 Oct 2023).

<sup>15</sup> OCHA, [Hostilities in the Gaza Strip and Israel | Flash Update #11](#), (17 Oct 2023); and Amnesty International, [Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza](#), (20 Oct 2023).

<sup>16</sup> OCHA, [Hostilities in the Gaza Strip and Israel / Flash update #19](#) (25 Oct 2023).

<sup>17</sup> OCHA, [Hostilities in the Gaza Strip and Israel | Flash Update #15](#) (21 Oct 2023).

<sup>18</sup> Emanuel Fabien, [Defence Minister announces complete siege of Gaza 'no power, food or fuel'](#), Times of Israel (9 Oct 2023).

<sup>19</sup> OCHA, [Hostilities in the Gaza Strip and Israel | Flash Update #16](#) (22 Oct 2023); and Médecins Sans Frontières, [Five ways the war in Gaza is impacting Palestinians' health](#) (20 Oct 2023).

into Gaza daily prior to the hostilities),<sup>20</sup> has been wholly insufficient to meet the needs of the civilian population, the majority of whom were already dependent on humanitarian assistance as a result of the 16-year blockade of the territory.<sup>21</sup> Hospitals, depleted of medical supplies, and now running out of fuel to power generators,<sup>22</sup> incubators and kidney dialysis machines,<sup>23</sup> are overwhelmed by the rise in patients in urgent need of assistance. Gaza's already fragile health system is on the verge of ceasing to be able to function.

The World Health Organization has documented 20 hospitals and 24 ambulances which have been affected by attacks, with one third of hospitals (12 of 35) having to close completely, due to lack of fuel or damage.<sup>24</sup> Numerous healthcare professionals have been killed.<sup>25</sup> Israeli forces have also repeatedly hit places of worship, United Nations (UN) facilities, bakeries, schools, roads, water treatment facilities, and food storage facilities.<sup>26</sup> Human rights groups have also documented the use of white phosphorus in built-up areas.<sup>27</sup> The Israeli army has levelled or damaged over 177,781 homes, reported to constitute 45% of all housing units in Gaza,<sup>28</sup> and laid waste to entire neighbourhoods.<sup>29</sup> Over 1.4 million Gazans, including an estimated 15 percent with disabilities, have been displaced.<sup>30</sup> Many headed South pursuant to a warning by the Israeli military for them to leave the North of Gaza<sup>31</sup> – a warning described by UN Secretary General, António Guterres, as “dangerous” and capable of “devastating humanitarian consequences”,<sup>32</sup> and by the World Health Organization as “tantamount to a death sentence” for hospital patients.<sup>33</sup> Leaflets dropped by Israel over Gaza City – home to some 590,000 people – on 21 October 2023 warned residents that they may be considered “complicit with a terrorist organization” if they did not leave.<sup>34</sup> However, many civilians who fled have been killed or injured in Israeli airstrikes on the South or while

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<sup>20</sup> OCHA, [Hostilities in the Gaza Strip and Israel / Flash update #19](#) (25 Oct 2023); and Action Aid, [Insufficient aid will lead to more innocent deaths in Gaza](#) (19 Oct 2023).

<sup>21</sup> UNRWA, [Where We Work – Gaza](#).

<sup>22</sup> OCHA, [Hostilities in the Gaza Strip and Israel / Flash update #19](#) (25 Oct 2023).

<sup>23</sup> Statement by UNRWA Commissioner General Philippe Lazzarin, [The Gaza Strip: Fuel is running out, without fuel, humanitarian response will stop](#), UNRWA (22 Oct. 2023); [Seven hospitals running out of life saving fuel as “shameful” level of aid reaches Gaza](#), Action Aid (21 Oct 2023).

<sup>24</sup> OCHA, [Hostilities in the Gaza Strip and Israel / Flash update #19](#) (25 Oct 2023).

<sup>25</sup> OCHA, [Hostilities in the Gaza Strip and Israel | Flash Update #14](#) (20 Oct 2023).

<sup>26</sup> OCHA, [Hostilities in the Gaza Strip and Israel | Flash Update #13](#), (19 Oct 2023); Press Release, [Gaza: UN experts decry bombing of hospitals and schools as crimes against humanity, call for prevention of genocide](#), UN Special Procedures (19 Oct 2023).

<sup>27</sup> Human Rights Watch, [Questions and Answers on Israel’s Use of White Phosphorus in Gaza and Lebanon](#), (12 Oct 2023).

<sup>28</sup> OCHA, [Hostilities in the Gaza Strip and Israel / Flash update #19](#) (25 Oct 2023).

<sup>29</sup> OCHA, [Hostilities in the Gaza Strip and Israel | Flash Update #15](#), (21 Oct 2023).

<sup>30</sup> OCHA, [Hostilities in the Gaza Strip and Israel / Flash update #19](#) (25 Oct 2023).

<sup>31</sup> ICRC, [Israel and the Occupied Territories: Evacuation order of Gaza triggers catastrophic humanitarian consequences](#), (13 Oct 2023).

<sup>32</sup> António Guterres, [Why Israel Must Reconsider Its Gaza Evacuation Order – UN Secretary-General](#), New York Times Op-Ed, United Nations Guest Essay (13 Oct 2023).

<sup>33</sup> WHO, Statement, [Evacuation orders by Israel to hospitals in northern Gaza are a death sentence for the sick and injured](#) (14 Oct 2023).

<sup>34</sup> OCHA, [Hostilities in the Gaza Strip and Israel | Flash Update #16](#) (22 Oct 2023). The Israeli Army subsequently stated on English language social media that it did not consider those remaining to be members of a terrorist group (*ibid.*).

evacuating.<sup>35</sup> Due to continuous bombardments in the South, and their inability to find adequate shelter, an estimated 30,000 people are reported to be returning to the North.<sup>36</sup>

Violent incidents have also increased significantly in the occupied West Bank, including East Jerusalem, where Israeli soldiers and armed settlers have killed at least 102 Palestinians since 7 October 2023 – including 31 children – and injured more than 1,850 others.<sup>37</sup> An Israeli soldier has also been killed.<sup>38</sup> West Bank Palestinian communities, including 545 adults and children in 84 households, have been displaced amid intensified settler violence and access restrictions.<sup>39</sup> Over 850 Palestinian adults and children have been detained,<sup>40</sup> with reports of some detainees being severely ill-treated.<sup>41</sup> Electricity and water to security wings in Israeli prisons, primarily housing Palestinian prisoners from occupied Palestinian territory, was reportedly cut off the day after the Hamas attacks.<sup>42</sup>

## The law

Hamas' attacks against Israeli civilians constitute serious violations of international law. International law strictly prohibits the targeting of civilians,<sup>43</sup> the use of indiscriminate weapons,<sup>44</sup> murder,<sup>45</sup> mutilation,<sup>46</sup> and hostage taking.<sup>47</sup> As stated by the UN Secretary General, *"Nothing can justify the deliberate killing, injuring and kidnapping of civilians – or the launching of rockets against civilian targets"*.<sup>48</sup>

As Palestine is a State Party to the Rome Statute of the International Criminal Court (RS), war crimes and crimes against humanity committed by Palestinian nationals, including attacks on civilians (RS, Arts 8.2.b.i/8.2.e.i), and hostage-taking (RS, Arts 8.2.a.viii/8.2.c.iii), would fall under the subject-matter and personal jurisdiction of the International Criminal Court (ICC) (RS, Arts 12.2.b and Art 13.a). Crimes committed by Hamas on 7 October 2023 would fall therefore to be investigated as part of the Office of the Prosecutor's investigation into the 'Situation in the State of Palestine'.<sup>49</sup>

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<sup>35</sup> Sari Bashi, [Why Israel's Gaza Evacuation Order is So Alarming](#), Human Rights Watch (16 Oct 2023).

<sup>36</sup> OCHA, [Hostilities in the Gaza Strip and Israel / Flash update #19](#) (25 Oct 2023).

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> Addameer, [Escalation of arrest campaigns](#) (19 Oct 2023).

<sup>41</sup> UN, *Spokesperson for the UN High Commissioner for Human Rights Ravina Shamdasan*, [Update on Israel/OPT](#), UN Press Briefing Notes (20 Oct 2023).

<sup>42</sup> Adalah, [Israel Cuts Off Electricity and Water to Palestinian Prisoners in the 'Security Wings' of Israeli Prisons](#) (14 Oct 2023).

<sup>43</sup> ICRC, Customary International Humanitarian Law database, [rule 1](#) (Principle of Distinction between Civilians and Combatants).

<sup>44</sup> ICRC, Customary International Humanitarian Law database, [rules 11–13](#) (Indiscriminate Attacks).

<sup>45</sup> ICRC Customary International Humanitarian Law database, [rule 89](#) (Violence to Life).

<sup>46</sup> ICRC, Customary International Humanitarian Law database, [rule 92](#) (Mutilation and Medical, Scientific or Biological Experiments).

<sup>47</sup> ICRC Customary International Humanitarian Law database, [rule 96](#) (Hostage – Taking).

<sup>48</sup> UN Secretary General (UNSG), [Secretary-General's remarks at press encounter – on the situation in the Middle East \[as delivered\]](#) (24 Oct 2023); and UNSG, [Secretary General's remarks at press encounter – on the situation in the Middle East](#) (25 Oct 2023).

<sup>49</sup> International Criminal Court, [State of Palestine: Investigation ICC-01/18](#) (3 Mar 2021).

The commission by one party to a conflict – including an armed group – of serious violations of international humanitarian law does not, however, justify their commission by another party. That fundamental principle applies, whatever the nature of the armed conflict, and whatever “*the causes espoused by or attributed to the Parties*” (Geneva Conventions (GC), Additional Protocol I (API)).<sup>50</sup> It also applies where a party seeks to invoke the right to self-defence.<sup>51</sup> Pursuant to the Geneva Conventions, Hamas’s war crimes cannot be justified by reference to any prior war crimes by Israel; neither do they justify further such crimes by Israel in its response, which must comply with international law (GCIV, Art 33; AP I, Arts 20 and 51(6); and customary law).<sup>52</sup> As the UN Secretary General has made unequivocally clear, the “*abhorrent attacks*” by Hamas in Israel “*can never justify the collective punishment of the Palestinian people. International humanitarian law – including the Geneva Conventions – must be upheld*”.<sup>53</sup>

International humanitarian law is not being upheld.

International humanitarian law requires parties to an armed conflict: to distinguish between civilians and civilian objects on the one hand and combatants and military objectives on the other, prohibiting both direct attacks against civilians and civilian objects, and means and methods of warfare that may lead to indiscriminate attack (the principle of distinction);<sup>54</sup> to take all feasible measures, including in the choice of the means and methods of attack, to spare civilians and civilian objects, and to verify that targets are military objectives (the principle of precaution);<sup>55</sup> and to ensure that the expected incidental loss of civilian life and damage to civilian objects are not excessive in light of the military advantage of an attack (principle of proportionality). Area bombardment is prohibited,<sup>56</sup> and where doubt exists, a civilian or object normally dedicated to civilian purposes must be presumed to remain as such.<sup>57</sup> In such a densely populated area as Gaza, home to a population – including over a million children – already weakened by 16 prior years of stringent blockade and decades of military occupation, and now under complete siege, heightened

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<sup>50</sup> ICRC, [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts](#) (Protocol I), 8 June 1977, 1125 UNTS 3. An analysis of the competing theories regarding the legal regime applicable to the conflict in Gaza is beyond the scope of this letter, which highlights the breaches of humanitarian law and criminal law applicable in international armed conflicts, non-international armed conflicts and military occupations, in relation to which there is in any event considerable overlap.

<sup>51</sup> Ryan Goodman, et al., [Expert Guidance: Law of Armed Conflict in the Israel-Hamas War](#), Just Security (17 Oct 2023). See also, UN General Assembly (UNGA), [Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel](#) (05 September 2023) UN Doc. A/78/198, §11.

<sup>52</sup> ICRC Customary International Humanitarian Law database, [rule 146](#) (Belligerent reprisals against persons protected by the Geneva Conventions are prohibited); see also GCI, Art 46; GCII, Art 47; and GCIII, 13.

<sup>53</sup> UNSG, [UN Secretary General António Guterres statement before the Cairo Peace Summit](#) (21 Oct 2023).

<sup>54</sup> ICRC Customary International Humanitarian Law database, [rule 1](#) (Principle of Distinction between Civilians and Combatants), [rule 2](#) (Principle of Distinction between Civilian Objects and Military Objectives), [rule 11](#) (Indiscriminate Attacks), and [rule 71](#) (Weapons That Are by Nature Indiscriminate); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, Art. 48; and [Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996](#), p. 226, at p. 257, para. 78.

<sup>55</sup> ICRC Customary International Humanitarian Law database, Chapter 5, in particular, [rules 16](#) (Target Verification) and [17](#) (Choice of Means and Methods of Warfare); see also [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts](#) (API), 8 June 1977, 1125 UNTS 3, Arts 50.1 and 57.2.a.ii.

<sup>56</sup> ICRC Customary International Humanitarian Law database, [rule 13](#) (Area Bombardment).

<sup>57</sup> ICRC Customary International Humanitarian Law database, [rule 6](#) (Civilians’ Loss of Protection from Attack).

care in the adherence to the laws of war is imperative. Instead, as the UN Secretary General has observed, “we are witnessing” ...“clear violations of international humanitarian law... in Gaza”.<sup>58</sup>

Customary international law prohibits the arbitrary failure to allow and facilitate the rapid, impartial and unimpeded passage of humanitarian relief, including food, water, medical supplies, clothing, bedding, shelter, heating fuel and other supplies and related services essential for the survival of a civilian population.<sup>59</sup> The starvation of a civilian population as a method of warfare, including wilfully impeding adequate relief supplies, as Israel is doing in Gaza, is strictly prohibited under customary international law (as codified in API, Art 54), has been robustly condemned by the UN Security Council,<sup>60</sup> and constitutes a war crime (RS Art 8.2.b.xxv).<sup>61</sup>

Customary international law also strictly prohibits the forcible transfer of the civilian population from one area to another, unless the security of the civilians involved or imperative military reasons so demand (GCIV, Art 49/APII, Art 17(1)).<sup>62</sup> Breach of the prohibition constitutes a war crime (RS, Arts 8.2.a.vii/8.2.b.viii/8.2.e.viii) and a grave breach of the Geneva Conventions (GCIV, Art 147); and may amount to a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population (RS, Art 7.1.d). Importantly, a demand that the civilian population leave a given area does not deprive remaining civilians or civilian objects in that area – such as homes, schools and hospitals – of their civilian status. The International Committee of the Red Cross (ICRC) – entrusted by the international community with the role of “guardian” and “watchdog” of international humanitarian law<sup>63</sup> – has stated in terms that: *[t]he instructions issued by the Israeli authorities for the population of Gaza City to immediately leave their homes, coupled with the complete siege explicitly denying them food, water, and electricity, are not compatible with international humanitarian law*.<sup>64</sup> Nine UN Special Rapporteurs have further warned that the “complete siege of Gaza coupled with unfeasible evacuation orders and forcible population transfers” also constitute “a violation of international... criminal law”,<sup>65</sup> amounting to a war crime; and human rights organisations have expressly called on the UK and

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<sup>58</sup> UNSG, [Secretary-General's remarks to the Security Council - on the Middle East \[as delivered\]](#) (24 Oct 2023).

<sup>59</sup> ICRC Customary International Humanitarian Law database, [rule 55](#) (Access for Humanitarian Relief to Civilians in Need).

<sup>60</sup> UN Security Council [Resolution 2417](#) (24 May 2018) S/RES/2417; and ICRC Customary International Humanitarian Law database, [rule 53](#) (Starvation as a Method of Warfare).

<sup>61</sup> Tom Dannenbaum, [The Siege of Gaza and Starvation as a War Crime](#), Just Security, (11 Oct 2023); see also, Oxfam, [Starvation as a Weapon of War Being Used against Gaza Civilians](#), Press Release (25 Oct 2023).

<sup>62</sup> ICRC Customary International Humanitarian Law database, [rule 129](#) and [rule 131](#) (The Act of Displacement and Treatment of Displaced Persons).

<sup>63</sup> Yves Sandoz, [The International Committee of the Red Cross as guardian of international humanitarian law](#), *International Committee of the Red Cross*, ICRC (31 Dec 1998).

<sup>64</sup> ICRC, [Israel and the Occupied Territories: Evacuation order of Gaza triggers catastrophic humanitarian consequences](#), International Committee of the Red Cross (13 Oct. 2023). See also, UNSG, [Secretary-General's remarks to the Security Council - on the Middle East \[as delivered\]](#) (24 Oct 2023): “Protecting civilians does not mean ordering more than one million people to evacuate to the south, where there is no shelter, no food, no water, no medicine and no fuel, and then continuing to bomb the south itself”; and Amnesty International, [Israel/OPT: Israeli army threats ordering residents of northern Gaza to leave may amount to war crimes](#), News (25 Oct 2023).

<sup>65</sup> UN, [Gaza: UN experts decry bombing of hospitals and schools as crimes against humanity, call for prevention against genocide](#), Press Release (19 Oct 2023); see also: Human Rights Watch, [Why Israel's Gaza Evacuation Order is So Alarming](#) (16 Oct 2023); Amnesty International, [Israel/OPT: Appalling Gaza “evacuation order” must be rescinded by Israel immediately](#) (13 Oct 2023).

other States with influence to “demand that the illegal and impossible order to relocate is immediately rescinded”.<sup>66</sup> Any forced movement of some or all Palestinians from Gaza into Egypt would also be similarly incompatible with international humanitarian law (GCIV, Art 49; APII, Art 17(2)); constituting a grave breach (GCIV, Art 147) and a possible crime against humanity (RS, Art 7.1.d).

International humanitarian law prohibits the intentional directing of attacks against the civilian population, against individual civilians not taking a direct part in hostilities,<sup>67</sup> as well as against civilian objects, such as Red Cross/Crescent buildings, vehicles and personnel, and against UN premises.<sup>68</sup> Violation of the prohibition constitutes a war crime (RS, Art 8.2.b.i-iii/Art 8.2.e.i-iii). Even attacks directed against legitimate military objectives are unlawful under customary international law if they breach the precaution or proportionality principles. Constant care must be taken to spare the civilian population, civilians and civilian objects.<sup>69</sup> Intentionally launching an attack in the knowledge that it will cause incidental loss of life or injury to civilians, damage to civilian objects, or widespread, long-term severe damage to the natural environment that would be clearly excessive in relation to the concrete and direct military advantage anticipated is a war crime (RS, Art 8.2.b.iv/customary international law<sup>70</sup>). The sheer scale of the loss of life and injury in Gaza, particularly to women and children, together with the widespread damage to civilian objects and infrastructure appear to indicate clear breaches of those principles and rules,<sup>71</sup> and violations of international law. Amnesty International has asserted that its “research points to damning evidence of war crimes in Israel’s bombing campaign that must be urgently investigated”.<sup>72</sup> Indeed, seven Special Rapporteurs have asserted that Israel’s “wilful and systematic destruction of civilian homes and infrastructure” is “resulting in crimes against humanity in Gaza”.<sup>73</sup>

Those and other Rome Statute crimes committed in Gaza or the West Bank fall within the subject-matter and territorial jurisdiction of the ICC’s investigation into the ‘Situation in the State of Palestine’ (RS, Arts 12.2.a and 13.a), which extends “to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem”.<sup>74</sup>

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<sup>66</sup> Human Rights Watch, [Why Israel’s Gaza Evacuation Order is So Alarming](#) (16 Oct 2023); Amnesty International, [Israel/OPT: Appalling Gaza “evacuation order” must be rescinded by Israel immediately](#) (13 Oct 2023); Norwegian Refugee Council, [Statement by Jan Egeland, Secretary General of the Norwegian Refugee Council, Israeli ultimatum to Gaza must be reversed](#) (13 Oct 2023).

<sup>67</sup> See: Nils Melzer, [Interpretive guidance on the notion of Direct participation in hostilities under international humanitarian law](#), International Committee of the Red Cross (ICRC) (May 2009).

<sup>68</sup> ICRC Customary International Humanitarian Law database, [rules 7 to 10](#) (Distinction Between Civilian Objects and Military Objectives).

<sup>69</sup> ICRC Customary International Humanitarian Law database, [rule 15](#) (Principle of Precaution in Attack).

<sup>70</sup> *Ibid*, [rules 14](#) (Proportionality in Attack) and [156](#) (Definition of War Crimes); and J.M. Henckaerts and L. Doswald-Beck, [Customary International Humanitarian Law](#), ICRC, (CUP, 2009), Vol. 1, p.600-602.

<sup>71</sup> For the relevant legal framework, see Adil Ahmad Haque, [The IDF’s unlawful attack on Al Jalaa Tower](#), Just Security, (27 May 2021).

<sup>72</sup> Amnesty International, [Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza](#), (20 Oct 2023).

<sup>73</sup> UN, [Gaza: UN experts decry bombing of hospitals and schools as crimes against humanity, call for prevention against genocide](#), Press Release (19 Oct 2023).

<sup>74</sup> ICC, Situation in Palestine, [Decision on the ‘Prosecution request pursuant to article 19\(3\) for a ruling on the Court’s territorial jurisdiction in Palestine’](#), ICC-01/18-143 (5 Feb. 2012), para 118, para 118.

The rhetoric from senior Israeli Government and military officials immediately before and during the military assault on Gaza is of extreme concern, having regard to the nature, scale and impact of the attacks. By way of illustration, Israeli Minister of Defence, Yoav Gallant, has publicly declared that he has “*released all restraints*”,<sup>75</sup> that the Israeli army are “*fighting human animals and will act accordingly*”,<sup>76</sup> that the plan is to “*eliminate everything*” and that “*Gaza won’t return to what it was before*”.<sup>77</sup> Senior Israeli military and governmental officials have variously declared that “*the emphasis is on damage and not on accuracy*”<sup>78</sup> and that “*there will be no electricity and no water, there will only be destruction. You wanted hell, you will get hell*”.<sup>79</sup> Former Head of the Israeli National Security Council, Major General (Res) Giora Eiland, has publicly asserted that “[c]reating a severe humanitarian crisis in Gaza is a necessary means to achieve the goal” and that “*Gaza will become a place where no human being can exist*”.<sup>80</sup> Israel’s Ambassador to the UK, Tzipi Hotovely, has repeatedly invoked the Allies’ bombing of Dresden and other German cities in World War II – which she asserts caused 600,000 deaths – to justify Israel’s military objectives in Gaza.<sup>81</sup> Israeli President, Isaac Herzog, has asserted that “*it’s an entire nation out there that is responsible – it’s not true this rhetoric about civilians not aware not involved, it’s absolutely not true...*”,<sup>82</sup> while Prime Minister, Benjamin Netanyahu, has described the conflict as “*a struggle between the children of light and the children of darkness*”.<sup>83</sup>

Such statements indicate an intention not to be bound by the fundamental principles of international law, and an intention to engage in unlawful collective punishment. Indeed, coupled with the actions of Israeli forces in Gaza and the West Bank, they have prompted nine UN Special Rapporteurs to warn of a risk of genocide of Palestinians.<sup>84</sup>

## **Urgent requests**

The UK is duty-bound to “*respect and ensure respect*” for international humanitarian law as set out in the Four Geneva Conventions in all circumstances (1949 Geneva Conventions, Common Art 1). That means that the UK must not itself violate international humanitarian law, as set out therein and that it must neither encourage, nor aid or assist its violation by others. It is also interpreted as

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<sup>75</sup> Emanuel Fabian and Jacob Magid, [Gallant: Israel moving to full offense, Gaza will never go back to what it once was](#), Times of Israel, (10 Oct 2023).

<sup>76</sup> “[We are fighting human animals](#)” said Israeli Defence Minister Yoav Gallant.

<sup>77</sup> See, [Israeli Defense Minister Warns Hamas 'Will Regret' Deadly Attacks](#) (10 Oct 2023).

<sup>78</sup> Bethan McKernan and Quique Kierszenbaum, “['Emphasis is on damage, not accuracy': ground offensive into Gaza seems imminent](#)”, The Guardian (10 Oct 2023).

<sup>79</sup> Gianluca Pacchiani, [COGAT chief addresses Gazans: 'You wanted hell, you will get hell'](#), The Times of Israel (10 Oct 2023).

<sup>80</sup> Giora Eiland, [It's time to rip off the Hamas band-aid](#), Ynet News (12 Oct 2023).

<sup>81</sup> [We may kill "600,000 civilians" in Gaza, suggests Israeli ambassador](#), YouTube (19 Oct 2023); [Israel's UK ambassador compares their 24 hour warning to Dresden bombings on BBC Radio 4](#), Yahoo News UK (16 Oct 2023).

<sup>82</sup> CNN, [The Lead with Jake Tapper, Rush Transcript](#) (13 Oct 2023).

<sup>83</sup> Israeli Ministry of Foreign Affairs, [Excerpt from PM Netanyahu's remarks at the opening of the Winter Assembly of the 25th Knesset's Second Session](#), Press Release (16 Oct 2023).

<sup>84</sup> OHCHR, [Gaza: UN experts decry bombing of hospitals and schools as crimes against humanity, call for prevention of genocide](#), Press Release (19 Oct 2023).



incorporating a duty on States to do everything in their power to prevent or bring to an end any such violations of the law by other parties (ICRC Commentaries).<sup>85</sup> That is further to the UK's obligation to search for and bring before its courts those alleged to have committed grave breaches of the Geneva Conventions (GCIV, Art 146). As a State party to the Genocide Convention, the UK Government is also required to act to prevent genocide where there is a risk of genocide occurring.<sup>86</sup>

Pursuant to those obligations, we call upon the UK Government urgently to exert its influence to secure a ceasefire in Gaza and the West Bank, and to ensure the urgent and adequate provision of food, fuel, medicine and other humanitarian assistance to Gaza, and the unconditional restoration of water and electricity; the protection of medical facilities; and the facilitation of safe passage for the critically ill and those requiring treatment abroad.

We call on the Government to use its best endeavours to secure the urgent return of the hostages.

We also call on the Government immediately to halt the export of weapons from the UK to Israel, given the clear risk that they might be used to commit serious violations of international humanitarian law in breach of the UK's domestic Strategic Export Licensing Criteria,<sup>87</sup> including its obligations under the Arms Trade Treaty.<sup>88</sup>

We recall that UK nationals responsible for aiding and abetting international crimes, as well as those committing them as primary perpetrators, are liable for prosecution in the UK pursuant to the Geneva Conventions Act 1957 and the International Criminal Court Act 2001, as are foreign nationals for breaches of the Geneva Conventions Act 1957. UK nationals would similarly be liable for prosecution before the ICC.

To prevent further bloodshed and suffering in the region, we further urge the British Government, together with the wider international community, to act urgently pursuant to the UN Charter, Art 1,<sup>89</sup> to ensure that the fundamental rights – including the human rights – of both Israelis and Palestinians are upheld, and to work towards a just, lasting and sustainable peaceful settlement for all those in the region, including those in the now devastated Gaza Strip.

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<sup>85</sup> See, e.g., ICRC, Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, *Commentary Of 2016*, Chapter I: General Provisions, [Article 1: Respect for the Convention](#), Section E.3, paras 153-173.

<sup>86</sup> [Convention on the Prevention and Punishment of the Crime of Genocide](#), 9 December 1948, 78 UNTS 277.

<sup>87</sup> See House of Commons Research Briefing, [UK amends its criteria for arms exports](#), No. 9494 (15 July 2022).

<sup>88</sup> [Arms Trade Treaty](#), 02 April 2013, 8 UNTS 3013, Art 6(3).

<sup>89</sup> [Charter of the United Nations, and Statute of the International Court of Justice](#) (ICP).