

## **FOR IMMEDIATE RELEASE**

**Ottawa, January 30, 2024**

### **Arms Exports to Israel Violate Canadian and International Law, Says Canadian and Palestinian Coalition to Federal Government**

On January 28, a coalition of Canadians and Palestinians wrote to Minister of Foreign Affairs Mélanie Joly demanding that the federal government immediately halt all exports and transfers of Canadian military goods and technology to Israel.

The coalition, which consists of Canadian Lawyers for International Human Rights (CLAIHR), Al-Haq - Law in the Service of Man, Ayman Oweida and a confidential Palestinian asylum seeker, argues that the *Export and Import Permits Act* prevents Canada from issuing permits to Canadian companies to export military goods and technology to Israel due to the substantial risk that they could be used to commit serious violations of international law and serious acts of violence against women and children.

The coalition outlines the extensive evidence that Israel has committed and continues to commit such violations and acts in its military operations in Gaza and in the West Bank, including the real and imminent risk that Israel is violating the *Convention on the Prevention and Punishment of Genocide*.

The coalition has put the government on notice that, in these circumstances, issuing export permits for Canadian military goods and technology to Israel violates both Canadian and international law. The coalition has asked for a response from Canada confirming that it has stopped this illegal activity within fourteen days, failing which the coalition will consider its legal options.

“CLAIHR is seeking to hold the Canadian government to its legal obligations, both under international and domestic law, to ensure Canadian arms are not used to commit war crimes and crimes against humanity”, said Henry Off, member of Canadian Lawyers for International Human Rights. “We are calling on Foreign Affairs Minister Joly to comply with the law and halt all military export approvals to Israel.”

“The Israeli military is killing an average of 250 Palestinians per day in Gaza and has deliberately imposed a humanitarian crisis upon the 2.3 million Palestinian residents of Gaza, forcibly displacing 1.7 million people and bringing Gaza to the brink of famine – acts which are intended to destroy the Palestinian people in Gaza as a group” said Shawan Jabarin of Al-Haq - Law in the Service of Man. “Al-Haq is calling on Canada to honour its obligations under international law to stop the provision and transit of military equipment that may foreseeably be used in the commission of these international crimes.”

“As a Canadian, I am shocked that Canada is issuing permits to Canadian companies to export military goods that could be used to breach the fundamental human rights of my family in Gaza,” said Ayman Oweida.

“While Israel violates international law, Canada continues to profit by providing it with military goods and technology to commit those violations. In 2021, Canada exported over \$26-million worth of military goods to Israel but refuses to say whether this continues,” said the confidential asylum seeker.

**Key Excerpts – [Export and Import Permits Act \(R.S.C., 1985, c. E-19\)](#), sections 7.3-7.4**

**Mandatory considerations — export and brokering**

7.3 (1) In deciding whether to issue a permit under subsection 7(1) or 7.1(1) in respect of arms, ammunition, implements or munitions of war, the Minister shall take into consideration whether the goods or technology specified in the application for the permit

(a) would contribute to peace and security or undermine it; and

(b) could be used to commit or facilitate

(i) a serious violation of international humanitarian law,

(ii) a serious violation of international human rights law,

(iii) an act constituting an offence under international conventions or protocols relating to terrorism to which Canada is a party,

(iv) an act constituting an offence under international conventions or protocols relating to transnational organized crime to which Canada is a party, or

(v) serious acts of gender-based violence or serious acts of violence against women and children.

**Substantial risk**

7.4 The Minister shall not issue a permit under subsection 7(1) or 7.1(1) in respect of arms, ammunition, implements or munitions of war if, after considering available mitigating measures, he or she determines that there is a substantial risk that the export or the brokering of the goods or technology specified in the application for the permit would result in any of the negative consequences referred to in subsection 7.3(1).

**About the Letter Signatories**

**Canadian Lawyers for International Human Rights (CLAHR)**, founded in 1992, is a non-governmental organization of lawyers, law students, and legal academics working to promote international human rights within and in connection to Canada;

**Al-Haq - Law in the Services of Man** is an independent Palestinian non-governmental human rights organization established in 1979 in Ramallah, West Bank, to protect and promote human rights and the rule of the law in the Occupied Palestinian Territory;

**Ayman Oweida** is a Palestinian-Canadian currently residing in Québec with family in Gaza, some of whom have been killed in suspected international crimes;

**The confidential applicant** is a Palestinian woman from Gaza who is currently seeking asylum in Canada.

**Attachment: 28 January 2024 Letter to the Canadian Minister of Foreign Affairs from Canadian Lawyers for International Human Rights, Al-Haq - Law in the Service of Man, Ayman Oweida and a confidential applicant**

**For more information and media availabilities for each of the signatories, please contact:**

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28 January 2024

BY EMAIL ONLY

The Hon. Mélanie Joly  
Minister of Foreign Affairs, Canada  
House of Commons  
Ottawa, Ontario K1A 0A6  
[melanie.joly@international.gc.ca](mailto:melanie.joly@international.gc.ca)

Dear Minister Joly,

**Re: Canadian military goods and technology transfers to Israel since 7 October 2023**

We are a coalition of Canadian and Palestinian individuals and entities, including:

Canadian Lawyers for International Human Rights (“CLAHR”), a Canadian non-governmental organization comprised of lawyers, law students and legal academics, among others, working to promote international human rights within and in connection to Canada;

Al-Haq - Law in the Service of Man (“Al-Haq”), an independent Palestinian human rights organization that seeks to promote and defend the rule of law and respect for international humanitarian law and international human rights law, and fight impunity by holding perpetrators accountable, irrespective of their nationality;

Ayman Oweida, a Palestinian-Canadian currently residing in Québec with family in Gaza, some of whom have been killed in suspected international crimes; and

██████████, a 26-year old Palestinian woman from Gaza who is currently seeking asylum in Canada, and whose direct family still resides in Gaza.

On 26 January 2024, in proceedings instituted before the International Court of Justice (ICJ) by South Africa against Israel concerning alleged violations in the Gaza Strip of Israel’s obligations under the Genocide Convention, the ICJ concluded that “the catastrophic humanitarian situation in the Gaza Strip is at serious risk of deteriorating further” and that “there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights” of Palestinians in Gaza under the Convention.<sup>1</sup> The ICJ also recalled that under the Convention, all States Parties, including Canada, must “ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention.”<sup>2</sup> These and other legal obligations, both domestic and international, have profound implications for the transfer of military goods and technology from Canada having Israel as their ultimate destination.

Our concerns relate to the approval of permits for the brokering and exporting of military goods or technology (including arms, ammunition, and implements or munitions of war) that are transferred to Israel, which are then deployed in the Occupied Palestinian Territory, specifically the Gaza Strip and the West Bank, including East Jerusalem.

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<sup>1</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, [Order on the Request for the Indication of Provisional Measures](#), ICJ, 26 January 2024 at paras 72, 74. (“Provisional Measures Order”)

<sup>2</sup> [Provisional Measures Order](#) at para 33.

You and the Canadian government are obliged under domestic and international law to deny such permits where there exists a substantial risk that the goods or technology in question could be used to commit or facilitate a violation of international humanitarian law (“IHL”) or of international human rights law (“IHRL”), or serious acts of violence against women and children. A parallel obligation also exists where there is a substantial risk that any goods or technology exported may be used to commit or facilitate acts or omissions that engage the rights guaranteed under section 7 of the *Canadian Charter of Rights and Freedoms*.

### **Mandatory Review of Export and Brokering Applications under the Export and Import Permits Act (“EIPA”)**

In deciding whether or not to approve a permit in respect of arms, ammunition, implements or munitions of war as Minister responsible for the application and enforcement of the EIPA, you must take into consideration:

- (a) whether the goods or technology specified in the application for the permit would contribute to or undermine peace and security; and
- (b) whether they “could be used” to commit or facilitate a serious violation of IHL or IHRL, or serious acts of violence against women and children.

If you determine that there is a “substantial risk” that the military goods or technology specified in the application for the permit could be used to commit or facilitate a serious violation of IHL or IHRL, or serious acts of violence against women and children, after considering available mitigation measures, you must not issue the permit.<sup>3</sup>

Furthermore, any permit issued to approve the export or brokering of military goods and technology in circumstances where there is a risk that those items could be used to commit or facilitate a serious violation of IHL or IHRL may engage the rights to life, liberty, and security of the person protected under section 7 of the *Charter*. Serious violations of such fundamental rules of international law could never be in accordance with the principles of fundamental justice, nor demonstrably justified in a free and democratic society.

With respect to international legal obligations, as a signatory to both the 1949 Geneva Conventions<sup>4</sup> and the Genocide Convention, Canada has an obligation to prevent the commission of genocide and to ensure respect for the provisions of the Geneva Conventions. Canada’s transfer of military goods and technology to Israel may constitute violations of Canada’s obligations under these Conventions, and may constitute complicity in acts of genocide and grave breaches of the Geneva Conventions.

### **The “Substantial Risk” Posed by Military Goods or Technology Transfers to Israel**

Since 2007, Israel has imposed an air, land and sea blockade on the Gaza Strip, collectively punishing its entire population and earning Gaza the label of the “world’s largest open-air prison”.<sup>5</sup> While Israel’s inflicting of collective punishment on Palestinians has long been an ongoing

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<sup>3</sup> Export and Import Permits Act (R.S.C., 1985, c. E-19), s. 7.3(1) and 7.4.

<sup>4</sup> As implemented into Canadian law through, *inter alia*, *Geneva Conventions Act* ( RSC , 1985, c. G-3).

<sup>5</sup> Human Rights Watch, “[Gaza: Israel’s ‘Open-Air Prison’ at 15](#)”, 14 June 2022.

catastrophe,<sup>6</sup> the current hostilities have brought the scale of punishment to a new level.<sup>7</sup> Shortly after Hamas' attack against Israel on 7 October 2023, Israel announced a "total blockade" on Gaza, preventing the entry of food, water, medicine, fuel, and electricity, and Israel's military operations in Gaza have resulted in tens of thousands of civilian deaths, the widespread destruction of Palestinian infrastructure, and the mass forced displacement of Palestinian civilian populations. These acts, among others, constitute serious violations of IHL and IHRL, and serious acts of violence against women and children. In its application to the ICJ, South Africa qualifies them as genocidal because they are intended to bring about the destruction of the Palestinians in Gaza as part of the broader Palestinian national, racial, and ethnical group.

That Israel's acts and omissions in relation to Palestinians in Gaza violate the Genocide Convention

is the shared view of numerous other States parties to the Convention [...]. United Nations experts have also repeatedly sounded "the alarm" [...] that [...] there is a "risk of genocide against the Palestinian people". [...] The Committee on the Elimination of Racial Discrimination [...] has also called on "all States parties" to the Genocide Convention to "fully respect" their "obligation to prevent... genocide".<sup>8</sup>

Israel's military attacks on Gaza have involved the sustained bombardment of one of the most densely populated places in the world. As of 26 January 2024, 1.7 million people were estimated to be internally displaced. Between 7 October 2023 and 26 January 2024, at least 26,083 Palestinians were killed in Gaza,<sup>9</sup> including 10,000 children.<sup>10</sup> 64,487 Palestinians were injured<sup>11</sup> and around 7,000 persons were missing under the rubble, including 5,000 children and women.<sup>12</sup> As of 23 January 2024, there were well over one million children in shelters at risk of dehydration, starvation, digestive and respiratory diseases, skin diseases, and anemia, and well over 50,000 pregnant women in shelters without water, food and healthcare, with about 180 women giving birth daily in unsafe and inhumane conditions.<sup>13</sup>

Furthermore, as South Africa stated,

Israel has also laid waste to vast areas of Gaza, including entire neighbourhoods, and has damaged or destroyed in excess of 355,000 Palestinian homes, alongside extensive tracts of agricultural land, bakeries, schools, universities, businesses, places of worship, cemeteries, cultural and archaeological sites, municipal and court buildings, and critical infrastructure, including water and sanitation facilities and electricity networks, while pursuing a relentless assault on the Palestinian medical and healthcare system. Israel has

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<sup>6</sup> UN Office for the Coordination of Humanitarian Affairs (UN OCHA), "[Israel's collective punishment of Palestinians illegal and an affront to justice: UN expert](#)", 17 July 2020.

<sup>7</sup> Amnesty International, "[Israel/OPT: Israel must lift illegal and inhumane blockade on Gaza as power plant runs out of fuel](#)", 12 October 2023.

<sup>8</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, [Application instituting proceedings and request for the indication of provisional measures](#), ICJ, 29 December 2023 at para. 3 ("South African Application", references omitted).

<sup>9</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.

<sup>10</sup> Save the Children, "[Gaza: 10,000 Children Killed in Nearly 100 Days of War](#)", 11 January 2024; Palestine Red Crescent Society, [Response Report # 288/2024](#), 23 January 2024.

<sup>11</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.

<sup>12</sup> Palestine Red Crescent Society, [Response Report # 288/2024](#), 23 January 2024.

<sup>13</sup> Palestine Red Crescent Society, [Response Report # 288/2024](#), 23 January 2024; Palestine Red Crescent Society, [Response Report # 283/2024](#), 19 January 2024.

reduced and is continuing to reduce Gaza to rubble, killing, harming and destroying its people, and creating conditions of life calculated to bring about their physical destruction as a group.<sup>14</sup>

These acts constitute serious violations of IHL and IHRL, and serious acts of violence against women and children, as provided by the EIPA.

Other states, such as Italy, have recognized and reportedly met their domestic and international obligations, since 7 October 2023, to halt the transfer of military goods and technology to Israel so as not to “risk [their] weapons being used to commit what could be construed as war crimes”.<sup>15</sup> Where states have not met their obligations, lawsuits in respect of arms transfers to Israel have been filed, namely in the Netherlands, the United Kingdom, and the United States.<sup>16</sup>

In light of the foregoing and for the reasons set out in greater detail in the attached Schedule, we ask you to confirm that you and/or the Canadian government:

- have canceled or suspended all permits (including general permits) to export or broker military goods or technology destined for Israel that were issued or active after 7 October 2023;
- have denied all applications to export or broker military goods or technology destined for Israel that were received or assessed after 7 October 2023;
- will issue no further permits to export or broker military goods or technology destined for Israel and/or where Israel is the end-user until such time as Israel ceases to violate international law as described in the attached Schedule;
- will immediately prevent all transfer of military goods or technology that are assembled in a third state before being transferred to Israel as an end-user until such time as Israel ceases to violate international law as described in the attached Schedule; and
- have removed or will immediately remove Israel from the Automatic Firearms Country Control List.

Please provide a full response, including confirmation of the above, together with a full and detailed explanation of what measures have (or have not) been taken to comply with your legal obligations, as well as detailed information on permits that have been issued for the brokering or exporting of military goods or technology transferred to Israel since 7 October 2023.

Canadians are entitled to transparency from their government on pressing matters of fundamental importance such as this. Given the urgency of the situation, please provide your response within fourteen (14) days.

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<sup>14</sup> South African Application at para 4.

<sup>15</sup> See for example The Times of Israel, “[Italian FM reveals country ceased arms shipments to Israel starting October 7](#)”, 21 January 2024.

<sup>16</sup> Al Jazeera, “[Netherlands accused of war crimes complicity for Israeli military supplies](#)”, 4 December 2023; The Guardian, “[UK government faces legal challenge over arms exports to Israel](#)”, 6 December 2023; Campaign Against Arms Trade, “[Revealed: David Cameron advised continuing arms exports to Israel, accepting Israel has a different interpretation of its International Humanitarian Law obligations](#)”, 19 January 2024; Center for Constitutional Rights, “[Defense for Children International - Palestine v. Biden](#)”.

Thank you in advance for your prompt reply.

Yours truly,



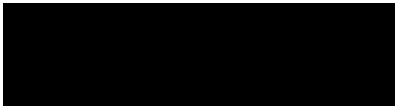
James Yap  
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Encl. (1): Schedule to the 28 January 2024 letter from CLAIHR, Al-Haq, Ayman Oweida and





**SCHEDULE TO THE 28 JANUARY 2024 LETTER FROM CANADIAN  
LAWYERS FOR INTERNATIONAL HUMAN RIGHTS, AL-HAQ - LAW IN THE  
SERVICE OF MAN, AYMAM OWEIDA AND [REDACTED]  
TO THE MINISTER OF FOREIGN AFFAIRS OF CANADA**

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**I. APPLICABLE CANADIAN LAW**

- [1] Canada’s permit regime in respect of the exporting and brokering of military goods and technology is governed by the [Export and Import Permits Act](#) (EIPA). Sections 3(1) and 4.11(1) of the EIPA authorizes the creation of an [Export Control List](#) and a [Brokering Control List](#). As of 28 January 2024, a variety of categories of goods and technology are included in these Lists and section 13 of the EIPA establishes a general prohibition against exporting or transferring such goods or technology without a permit to do so.
- [2] Section 7(1) of the EIPA gives you the power to issue such permits to applicants resident in Canada. Under section 7(1.1) of the EIPA, you may also issue permits generally to all residents of Canada to

export or transfer to any country specified in the permit any goods or technology included in the Export Control List that are specified in the permit. Under section 10(1), you also have the authority to amend, suspend, cancel or reinstate any permit.

- [3] Section 4.1 of the EIPA authorizes the Governor in Council to create an [Automatic Firearms Country Control List](#), enumerating countries to which the Governor in Council considers it appropriate to permit the export of certain classes of firearms, weapons and devices included in the Export Control List. Under section 7(2) of the EIPA, no permit to export such an item may be issued other than for export to the government of a country that is included in the Automatic Firearms Country Control List. As of 28 January 2024, Israel is included in that List.
- [4] On 17 September 2019, Canada became a State Party to the United Nations (UN) Arms Trade Treaty (ATT). The ATT aims, in part, to regulate the international arms trade and minimize the risk of weapons being used to commit atrocities or fuel violence.<sup>1</sup> Article 6(3) of the ATT prohibits the export of weapons in cases where a State “has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.”
- [5] To ensure it is “fully compliant with all its obligations upon accession to the ATT”, Canada amended the EIPA in 2019 to strengthen protections and controls on the transfer of military items and “to incorporate directly into Canadian law the assessment criteria laid out in the ATT”.<sup>2</sup> Consequently, under section 7.3(1)(a) of the EIPA, in deciding whether to issue a permit in respect of arms, ammunition, implements or munitions of war, you are required to consider whether the goods or technology would contribute to peace and security or undermine it. Under section 7.3(1)(b) of the EIPA, you are further required to consider whether the goods or technology could be used to commit or facilitate a serious violation of international humanitarian law (IHL) or international human rights law (IHRL), or serious acts of gender-based violence or serious acts of violence against women and children. Further, under section 7.4 of the EIPA, you may not issue a permit for arms exports or brokering if there is a “substantial risk” of “any of the negative consequences referred to in subsection 7.3(1).”<sup>3</sup>
- [6] The question of permits to broker or export military goods and technology where there is a substantial risk that they may be used to commit or facilitate serious violations of IHL or IHRL also engages the

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<sup>1</sup> [United Nations Arms Trade Treaty](#), 24 December 2014, 3013 UNTS 269 (“ATT”).

<sup>2</sup> Government of Canada, “[Overview of the Arms Trade Treaty regulatory implementation package](#)” 26 August 2019; see also [Bill C-47: an Act to amend the Export and Import Permits Act and the Criminal Code \(amendments permitting the accession to the Arms Trade Treaty and other amendments\)](#), 5 July 2017, no. 42-1-C47-E

<sup>3</sup> EIPA, Section 7.

life, liberty and security of the person interests protected by section 7 of the *Canadian Charter of Rights and Freedoms* (Charter).<sup>4</sup>

## II. APPLICABLE INTERNATIONAL LAW

- [7] Aligning with Canada’s international legal obligations under the ATT, as well as other treaties and customary international law, the EIPA prohibits the export and brokering of military goods or technology if there is a substantial risk that they would be used to commit or facilitate a serious violation of IHL or IHRL, *inter alia*. Any assessment of compliance with the EIPA must therefore be informed by these obligations and by the international legal regimes applicable to the ongoing violence in the Occupied Palestinian Territory (OPT).
- [8] The EIPA is an integral component of Canada's obligation under Article 1 of all four Geneva Conventions “to respect and ensure respect” for IHL.<sup>5</sup> The applicable IHL is principally laid out in the Geneva Conventions, their Additional Protocols,<sup>6</sup> the Hague Conventions<sup>7</sup> and customary international law.<sup>8</sup> The principles of distinction, proportionality and precaution are core principles of IHL.<sup>9</sup>
- a. The principle of distinction requires parties to an armed conflict to differentiate, at all times, between civilians and combatants, and between civilian objects and military objectives.<sup>10</sup> Operations should be strictly limited to military objectives and may not be directed at civilians or civilian objects.
  - b. The principle of proportionality requires that attacks on military objectives should not cause excessive incidental harm to civilians (death, injury, damage to civilian objects) in relation to the concrete and direct military advantage anticipated.<sup>11</sup> Accordingly, before carrying out an attack, belligerents are obliged to conduct sufficient due diligence in order to ensure that the

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<sup>4</sup> [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 91(24), Section 7 (“Charter”).

<sup>5</sup> [Geneva Convention \(I\) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field \(1949\)](#), 12 August 1949, 75 UNTS 31 (“First Geneva Convention”); [Geneva Convention \(II\) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea \(1949\)](#), 12 August 1949, 75 UNTS 85 (“Second Geneva Convention”); [Geneva Convention relative to the Treatment of Prisoners of War](#), 12 August 1949, 75 UNTS 135 (“Third Geneva Convention”); [Geneva Convention Relative to the Protection of Civilian Persons in Time of War](#), 12 August 1949, 75 UNTS 287 (“Fourth Geneva Convention”).

<sup>6</sup> [Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts](#), 8 June 1977, 1125 UNTS 3 (“Additional Protocol I”); [Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts](#), 8 June 1977, 1125 UNTS 609 (“Additional Protocol II”).

<sup>7</sup> [Hague Convention \(II\) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land](#), 29 July 1899; [Hague Convention \(IV\) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land](#), 18 October 1907.

<sup>8</sup> International Committee of the Red Cross Database, [Customary International Humanitarian Law, Rules](#) (“ICRC, Customary International Humanitarian Law”).

<sup>9</sup> [Additional Protocol I](#), Arts 48, 51, 57; [ICRC, Customary International Humanitarian Law](#), Rules 1, 7, 14 and 15.

<sup>10</sup> [Additional Protocol I](#), Arts 48 and 51; [ICRC, Customary International Humanitarian Law](#), Rules 1 and 7.

<sup>11</sup> [Additional Protocol I](#), Arts 51 and 57; [ICRC, Customary International Humanitarian Law](#), Rule 14.

expected harm to civilians and civilian infrastructure does not outweigh the expected military gain.

- c. The principle of precaution requires that parties take all feasible precautions to avoid and minimize incidental harm to civilians (death, injury, damage to civilian objects).<sup>12</sup>

Stemming from these three principles, deliberate indiscriminate attacks are forbidden under IHL. Attacks are indiscriminate when they fail to adequately distinguish between military objectives and civilians or civilian objects.<sup>13</sup>

- [9] IHRL is concurrently applicable during armed conflicts and is rooted in various customs, principles and treaties such as the *International Covenant on Civil and Political Rights* (ICCPR).<sup>14</sup> Both Canada and Israel are State Parties to the ICCPR, which includes, *inter alia*, protections against arbitrary detention and inhuman treatment. Canada has also incorporated protections relating to serious acts of gender-based violence and serious acts of violence against women and children into section 7.3(b)(v) of the EIPA, further aligning with the principles of IHRL found in the *Convention on the Elimination of All Forms of Discrimination against Women*<sup>15</sup> and the *Convention on the Rights of the Child*.<sup>16</sup>
- [10] Serious violations of IHL and IHRL may constitute war crimes, crimes against humanity and genocide, which are universally prohibited and fall under the purview of international criminal law (ICL). These international crimes were codified in Canadian law in 2002 through the *Crimes Against Humanity and War Crimes Act* (CAHWCA), days before Canada ratified the *Rome Statute of the International Criminal Court* (ICC) (Rome Statute).<sup>17</sup> In 2021, the ICC Pre-Trial Chamber decided that Palestine is a State Party to the Rome Statute and the ICC has jurisdiction over crimes committed in Palestine or by Palestinian nationals in Israel.<sup>18</sup> As stipulated in the CAHWCA and the Rome Statute, international crimes can be committed through several modes of liability, including through complicity and by aiding and abetting the commission of a crime.<sup>19</sup>

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<sup>12</sup> [Additional Protocol I](#), Art 57; [ICRC, Customary International Humanitarian Law](#), Rule 15.

<sup>13</sup> [Additional Protocol I](#), Art 51(4); [ICRC, Customary International Humanitarian Law](#), Rules 11, 12 and 13.

<sup>14</sup> [International Covenant on Civil and Political Rights](#), 16 December 1966, 999 UNTS 171 (“ICCPR”).

<sup>15</sup> [EIPA](#), Section 7.3(b)(v); [United Nations Convention on the Elimination of All Forms of Discrimination Against Women](#), 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) (“CEDAW”).

<sup>16</sup> [United Nations Convention on the Rights of the Child](#), 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

<sup>17</sup> [Crimes Against Humanity and War Crimes Act](#) [Canada], SC 2000, c. 24, 23 October 2000 (“CAHWCA”); [Rome Statute of the International Criminal Court](#), 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002) (“Rome Statute”).

<sup>18</sup> [Decision on the ‘Prosecution request pursuant to article 19\(3\) for a ruling on the Court’s territorial jurisdiction in Palestine’](#), Decision, ICC-01/18-143, 2021. The Chamber also found that the Court’s territorial jurisdiction in the *Situation in Palestine* extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem (at para 118).

<sup>19</sup> See [CAHWCA](#), Section 4(1.1) and 5; See [Rome Statute](#), Arts 25(3) and 28.

[11] Both Canada and Israel are Parties to the *1948 Convention on the Prevention and Punishment of the Crime of Genocide* (Genocide Convention).<sup>20</sup> Parties to the Genocide Convention have a binding international obligation to prevent and punish the crime of genocide. Parties must also use all means reasonably available within their power to prevent the commission of genocide by others.<sup>21</sup> As stated by the International Court of Justice (ICJ) in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, a “State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.”<sup>22</sup>

[12] On 29 December 2023, South Africa filed an application instituting proceedings against Israel before the ICJ concerning alleged violations by Israel of its obligations under the Genocide Convention in relation to Palestinians living in Gaza.<sup>23</sup> On 26 January 2024, the ICJ ruled on the application in favour of South Africa, finding that the legal conditions for the indication for provisional measures were met, including that it was plausible that genocide was being committed in Gaza.<sup>24</sup> The Court concluded that “the catastrophic humanitarian situation in the Gaza Strip is at serious risk of deteriorating further,” and that “there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights” of Palestinians in Gaza under the Genocide Convention.<sup>25</sup> In light of this Order, and due to mass IHL and IHRL violations in Gaza, accompanied by a long list of statements from the highest officials in Israel calling for the destruction of the Palestinians of Gaza in whole or in part, Canada should be on notice that there is a serious risk of genocide in Gaza.<sup>26</sup>

### III. RELEVANT FACTS

[13] The available information in respect of Canada’s exports and brokering of military goods and technology to Israel,<sup>27</sup> when viewed with the overwhelming evidence of Israel’s violations of IHL and IHRL, and serious acts of violence against women and children, demonstrates a substantial risk that Canadian military goods and technology could be used to commit or facilitate these serious violations.

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<sup>20</sup> [Convention on the Prevention and Punishment of the Crime of Genocide](#), 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) (“Genocide Convention”).

<sup>21</sup> [Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Bosnia and Herzegovina v. Serbia and Montenegro\)](#), Judgment, ICJ Reports 2007, at para 430 (“Bosnian Genocide Case”).

<sup>22</sup> [Bosnian Genocide Case](#) at para 431.

<sup>23</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, [Application Instituting Proceedings](#), ICJ, 29 December 2023. (“South African Application”)

<sup>24</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, [Order on the Request for the Indication of Provisional Measures](#), ICJ, 26 January 2024 at para 54. (“Provisional Measures Order”)

<sup>25</sup> [Provisional Measures Order](#) at paras 72, 74.

<sup>26</sup> See Section III(B)(viii) below.

<sup>27</sup> Canadians for Justice and Peace in the Middle East, “[Arming Apartheid: Canada’s Arms Exports to Israel](#)”, April 2022; World Beyond War, “[Canada: Stop Arming Israel](#)”.

**(A) Overview of Israel's Ongoing Violations of International Law**

- [14] The general consensus among international legal scholars is that Israel's pre-7 October 2023 actions and policies in the OPT, including the occupation itself, settlements and the siege of Gaza, constitute violations of IHL and IHRL. Countless reports and investigations from UN bodies and non-governmental organizations have confirmed this and, in March 2021, the Prosecutor of the ICC initiated an investigation into alleged Rome Statute crimes committed in Gaza and the West Bank, including East Jerusalem.<sup>28</sup>
- [15] The prolonged occupation is itself a violation of IHL.<sup>29</sup> In 2022, the UN Independent International Commission of Inquiry found that "there are reasonable grounds to conclude that the Israeli occupation of Palestinian territory is now unlawful under international law owing to its permanence and to actions undertaken by Israel to annex parts of the land *de facto* and *de jure*. Actions by Israel that are intended to create irreversible facts on the ground and expand its control over territory are reflections as well as drivers of its permanent occupation".<sup>30</sup> Israeli Prime Minister Benjamin Netanyahu's recent confirmation that he does not support the creation of a Palestinian state only reaffirms this intention to make the occupation permanent.<sup>31</sup>
- [16] Since 2007, Israel has imposed an air, land and sea blockade on the Gaza Strip, collectively punishing its entire population. The blockade has devastated Gaza's economy, caused widespread destruction and cut off the vast majority of Gazans from the outside world. Even before the current attacks, over one million Gazans did not have enough food for their families, despite receiving humanitarian aid.<sup>32</sup> Moreover, reports as recent as 2019 from the UN Independent International Commission of Inquiry into the mass killings of Palestinian protesters during the 2018 Great March of Return found "reasonable grounds to believe that [Palestinian] demonstrators were shot in violation of their right to life or of the principle of distinction under international humanitarian law. [...] To date, the Government of Israel has consistently failed to meaningfully investigate and prosecute commanders and soldiers for crimes and violations committed against Palestinians or to provide reparation to victims in accordance with international norms."<sup>33</sup>
- [17] Finally, several human rights organizations, including Al-Haq, Amnesty International and Human Rights Watch, have released reports demonstrating that Israel's treatment and policies in relation to

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<sup>28</sup> International Criminal Court, "[Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine](#)", 3 March 2021.

<sup>29</sup> UN General Assembly, 77th Session, "[Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel](#)", 14 September 2022. ("COI Report, 2022")

<sup>30</sup> COI Report, 2022 at para 75. See also [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#), ICJ, General List No. 131, Advisory Opinion, 9 July 2004.

<sup>31</sup> The Guardian, "[Netanyahu defies Biden, insisting there's 'no space' for Palestinian state](#)", 20 January 2024.

<sup>32</sup> Oxfam International, "[Timeline: the humanitarian impact of the Gaza blockade](#)", 2018; see also Human Rights Watch, "[Israel: Starvation Used as Weapon of War in Gaza](#)", 18 December 2023.

<sup>33</sup> UN Human Rights Council, 40th Session, "[Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory](#)", 28 February 2019, at paras 97 and 111. ("COI Report, 2019")



Palestinians in the OPT and Israel amount to the crimes against humanity of apartheid and persecution.<sup>34</sup> This discriminatory system also extends to Palestinian refugees and their descendants residing outside the region. Successive Israeli political leaders have openly declared their intention to sustain this system, underscoring the primary goal of upholding Jewish Israeli dominance through the exclusion, segregation and expulsion of Palestinians.<sup>35</sup> In 2019, the Concluding Observations of the UN Committee on the Elimination of Racial Discrimination drew Israel's attention to the law on "prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid" and accordingly urged Israel "to eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices which severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory".<sup>36</sup>

[18] In a 300-page report, the South African Human Sciences Research Council (HSRC) concluded that:

the three pillars of apartheid in South Africa are all practised by Israel in the occupied Palestinian territory, the pillars being: first, the demarcation of the population of South Africa into racial groups, with superior rights, privileges and services being accorded to one group; second, the segregation of the population into different geographic areas, which were allocated by law to different racial groups, and the restriction of passage by members of any group into the area allocated to other groups; and third, the imposition of a matrix of draconian 'security' laws and policies, employed to suppress any opposition to the regime and to reinforce the system of racial domination, by providing for administrative detention, torture, censorship, banning, and assassination.<sup>37</sup>

[19] In 2022, the UN Special Rapporteur on the situation of human rights in the OPT found that:

There is today in the Palestinian territory occupied by Israel since 1967 a deeply discriminatory dual legal and political system that privileges the 700,000 Israeli Jewish settlers living in the 300 illegal Israeli settlements in East Jerusalem and the West Bank. Living in the same geographic space, but separated by walls, checkpoints, roads and an entrenched military presence, are more than three million Palestinians, who are without rights, living under an oppressive rule of

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<sup>34</sup> Al Haq, "[Israeli Apartheid: Tool of Zionist Settler Colonialism](#)", 21 December 2022; Amnesty International, "[Israel's Apartheid System Against Palestinians: Cruel System of Domination and Crime Against Humanity](#)", 1 February 2022; Human Rights Watch, "[A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution](#)", 27 April 2021; Al Mezan, "[The Gaza Bantustan — Israeli Apartheid in the Gaza Strip](#)", 4 December 2021; B'Tselem, "[A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid](#)", 12 January 2021.

<sup>35</sup> Amnesty International, "[Israel's Apartheid System Against Palestinians: Cruel System of Domination and Crime Against Humanity](#)", 1 February 2022 at p. 267.

<sup>36</sup> CERD Committee, "[Concluding Observations on the Combined Seventeenth to Nineteenth Reports of Israel](#)", 27 January 2020, CERD/C/ISR/CO/17-19 at para 23.

<sup>37</sup> [South African Application](#) at fn 141, citing HSRC, Democracy and Governance Programme, Middle East Project, Occupation, Colonialism, [Apartheid?: A re-assessment of Israel's practices in the occupied Palestinian territories under international law](#), June 2009.

institutional discrimination and without a path to a genuine Palestinian state that the world has long promised is their right.<sup>38</sup>

- [20] Echoing this finding, Yesh Din, an Israeli human rights organization working primarily in the West Bank, conducted a study on the two types of communities in the West Bank, one being Palestinians governed by Jordanian, Palestinian Authority and military law, and the other being Israeli citizens governed by a civilian legal system. It concluded that Palestinians lack the right to equality in every sense, including equality before the law.<sup>39</sup> Other observers have concluded that Israel is committing apartheid in Israel as well as in the OPT.<sup>40</sup> Human Rights Watch and B'Tselem, among others, have concluded that Israeli authorities have deprived millions of their basic rights by virtue of being Palestinian in both the OPT and in Israel.<sup>41</sup>
- [21] Apartheid manifests in different ways in the OPT and Israel proper. In the OPT, inhumane acts in the form of restriction of movement, land expropriation, forcible transfer of populations, denials of residency and nationality, and mass deprivation of civil and due process rights are committed by Israeli authorities.<sup>42</sup> These acts deprive Palestinians of fundamental human rights on a widespread and systematic basis. When committed with the intent to maintain racial domination over Palestinians and systematically oppress them, as the previously quoted reports affirm, they constitute apartheid within the legal definitions of the Rome Statute and the Apartheid Convention.<sup>43</sup>
- [22] Within Israel, the rights of Palestinians who are Israeli citizens are violated in different ways based on their identity. For instance, there is a mass denial of Palestinians' access to or use of land historically confiscated from them, significant barriers to immigration and residency or citizenship, and deprivation of Palestinians' ability to live together with spouses from the OPT.<sup>44</sup> Israel has enacted numerous discriminatory laws, such as the Absentee Property Law, which allow the state to expropriate large amounts of Palestinian-owned land. For instance, most of the land that Bedouins

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<sup>38</sup> UN OHCHR, "[Israel's 55-year occupation of Palestinian Territory is apartheid - UN human rights expert](#)", 25 March 2022.

<sup>39</sup> Michael Sfar, Yesh Din, "[The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion](#)", June 2020 at 41.

<sup>40</sup> Al Mezan, FIDH and Mwatana, "[Israeli Apartheid - The Legacy of the Ongoing Nakba at 75](#)", 16 May 2023; UN OHCHR, "[Israel's 55-year occupation of Palestinian Territory is apartheid - UN human rights expert](#)", 25 March 2022.

<sup>41</sup> Human Rights Watch, "[A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution](#)", 27 April, 2021 at 203; B'Tselem, "[A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid](#)", 12 January 2021 at 1.

<sup>42</sup> Human Rights Watch, "[A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution](#)", 27 April, 2021; B'Tselem, "[A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid](#)", 12 January 2021.

<sup>43</sup> Human Rights Watch, "[A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution](#)", 27 April, 2021 at 203; [Rome Statute](#), Art 7(1)(j); [International Convention on the Suppression and Punishment of the Crime of Apartheid](#), 30 November 1973, A/RES/3068 (XXVIII) (entered into force 18 July 1976).

<sup>44</sup> Human Rights Watch, "[A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution](#)", 27 April, 2021 at 203–204.



used has been expropriated, rendering their communities “unrecognized” and defining their residents as “invaders.”<sup>45</sup>

[23] As a crime against humanity under the Rome Statute, the ICC has jurisdiction to investigate and prosecute Israeli officials involved in the commission of the crime of apartheid in the OPT.<sup>46</sup> The reports noted above indicate, at the very least, a substantial risk that the crime is being committed by Israeli officials in the OPT and the use of Canadian-exported military goods and technology in facilitation of this crime could violate Canada’s domestic and international obligations under the EIPA and ATT, respectively.

***(B) Israel’s Violations of International Law in Gaza since 7 October 2023***

[24] On 7 October 2023, Hamas-led forces launched an attack that killed over 1,100 people, including 695 Israeli civilians, 71 foreigners, and 373 combatants.<sup>47</sup> There is evidence suggesting that during this attack, militants committed serious violations of IHL, which may amount to war crimes and crimes against humanity, including firing thousands of missiles at Israeli population centres.<sup>48</sup> There have also been allegations of sexual and gender-based crimes.<sup>49</sup> About 240 civilians and Israeli soldiers were taken as hostages into Gaza. As of 12 January 2024, Israel believed 136 hostages remained in Gaza.<sup>50</sup>

[25] Since 7 October 2023, Israel has carried out and continues to carry out massive aerial bombardments and ground attacks on Gaza. As of 26 January 2024, over 26,083 people have been killed in Gaza, and over 64,487 have been wounded.<sup>51</sup> Approximately 1.7 million people are internally displaced.<sup>52</sup> The 2.3 million Palestinians residing in Gaza, over a million of whom are children, are extremely vulnerable. Their very existence is at risk. In its Application to the ICJ, South Africa summarizes several reports on the humanitarian situation as follows:

United Nations chiefs and the International Committee of the Red Cross (‘ICRC’) — no strangers to conflict situations — have called what is unfolding in Gaza a “crisis of humanity”. “Humanitarian veterans who have served in war zones and disasters around the world — people who have seen everything — [say] they have seen nothing like what they see today in Gaza” (United Nations Secretary-General). This is “a moral failure” causing “intolerable suffering”

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<sup>45</sup> B’Tselem, “[A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid](#)”, 12 January 2021 at 4.

<sup>46</sup> [Rome Statute](#), Art 7(1)(j).

<sup>47</sup> France 24, “[Israel social security data reveals true picture of Oct 7 deaths](#)”, 15 December 2023: “The final death toll from the attack is now thought to be 695 Israeli civilians, including 36 children, as well as 373 security forces and 71 foreigners, giving a total of 1,139.”

<sup>48</sup> The Critic, “[Israel at war: but where will it end?](#)”, November 2023.

<sup>49</sup> New York Times, “[‘Screams Without Words’: How Hamas Weaponized Sexual Violence on Oct. 7](#)”, 28 December 2023.

<sup>50</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, [Transcript, Hearing of 12 January 2024](#) at para 55.

<sup>51</sup> UN OCHA, “[Hostilities in the Gaza Strip - Reported Impact](#)”, 26 January 2024.

<sup>52</sup> UN OCHA, “[Hostilities in the Gaza Strip - Reported Impact](#)”, 26 January 2024.

(ICRC President). “This is an apocalyptic situation now, because these are the remnants of a nation being driven into a pocket in the south” (Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator at the United Nations). They describe Palestinians in Gaza as “living in utter, deepening horror” as they “continue to be relentlessly bombarded by Israel... suffering death, siege, destruction and deprivation of the most essential human needs such as food, water, lifesaving medical supplies and other essentials on a massive scale”; it is “apocalyptic” (United Nations High Commissioner for Human Rights). “An entire population is besieged and under attack, denied access to the essentials for survival, bombed in their homes, shelters, hospitals and places of worship” (Principals of the United Nations Inter-Agency Standing Committee). Gaza is “the most dangerous place in the world to be a child” (United Nations International Children’s Emergency Fund (UNICEF) Executive Director). “It is a “living hell”, it is “a war of all the superlative, everything is unprecedented” and “[w]e are out of words to describe what is going on” (UNRWA Commissioner-General).<sup>53</sup>

[26] Amidst this humanitarian catastrophe, extensive evidence supports the finding that Israel has committed serious violations of IHL and IHRL amounting to war crimes, crimes against humanity and genocide. Israel’s bombing of Gaza has been assessed as “the most indiscriminate in terms of civilian casualties in recent years.”<sup>54</sup> An analysis conducted by a sociology professor at the Open University of Israel found that, three weeks into the current war, the civilian proportion of total deaths was 61% and represented “unprecedented killing” for Israeli forces in Gaza.<sup>55</sup> This proportion of civilian deaths is also higher than the average in all world conflicts in the second half of the 20th century.<sup>56</sup> Seven weeks into the war, the percentage of civilian casualties appeared to have risen to over 80%: the Israeli military estimated that it had killed between 1,000 and 2,000 Hamas fighters, meanwhile the Palestinian death toll was over 13,000 people.<sup>57</sup> On 21 November 2023, UN Secretary-General

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<sup>53</sup> [South African Application](#) at para 44, *citing* UN, “[Press Conference by Secretary-General António Guterres at United Nations Headquarters](#)”, 6 November 2023; The Times of Israel, “[UN chief says Gaza ‘crisis of humanity’ demands immediate ceasefire](#)”, 6 November 2023; UN, “[Press Conference by Secretary-General António Guterres at United Nations Headquarters](#)”, 22 December 2023; ICRC, “[Gaza: ICRC president calls for the protection of civilians in the face of ‘moral failure’](#)”, 4 December 2023; ICRC, “[Israel and the occupied territories: President of the ICRC arrives in Gaza, calls for the protection of civilians](#)”, 4 December 2023; The Guardian, “[‘Apocalyptic’ conditions in southern Gaza blocking aid, top UN official says](#)”, 5 December 2023; Christiane Amanpour on X, [Interview with UN Relief Chief Martin Griffiths on CNN](#), 22 November 2023; UN OHCHR, [Opening statement by UN High Commissioner for Human Rights Volker Türk at press conference ahead of Human Rights Day](#), 6 December 2023; UN IASC, [Statement by Principals of the Inter-Agency Standing Committee on the situation in Israel and the Occupied Palestinian Territory](#), 5 November 2023; UNICEF, [Statement by UNICEF Executive Director Catherine Russell on the Resumption of Fighting in Gaza](#), 1 December 2023; UNRWA, [Remarks of UNRWA Commissioner-General Philippe Lazzarini at the Global Refugee Forum](#), 13 December 2023; UNRWA, on X, “[We are out of words to describe what is going on. This is a war of all the superlative, everything is unprecedented](#)”, 12 December 2023.

<sup>54</sup> The Guardian, “[Civilians make up 61% of Gaza deaths from airstrikes, Israeli study finds](#)”, 9 December 2023.

<sup>55</sup> Haaretz, “[The Israeli Army Has Dropped the Restraint in Gaza, and the Data Shows Unprecedented Killing](#)”, 9 December 2023; See also The Guardian, “[Civilians make up 61% of Gaza deaths from airstrikes, Israeli study finds](#)”, 9 December 2023.

<sup>56</sup> The Guardian, “[Civilians make up 61% of Gaza deaths from airstrikes, Israeli study finds](#)”. 9 December 2023.

<sup>57</sup> The Guardian, “[IDF messaging suggests Gaza truce unlikely to last much beyond Tuesday](#)”, 26 November 2023.

Antonio Guterres said: “We are witnessing a killing of civilians that is unparalleled and unprecedented in any conflict since I have been Secretary-General.”<sup>58</sup>

[27] These figures are consistent with two investigations conducted by +972 Magazine and Local Call. The first found that Israel was deliberately targeting residential towers in the heart of cities and public buildings such as universities, banks and government offices in order to exert “civil pressure” on Hamas.<sup>59</sup> The second investigation found that bringing the hostages home was not the main priority of the Israeli leadership, who attached greater priority to carrying out a massive bombing campaign.<sup>60</sup> As stated by the Israeli Defence Forces (IDF) Spokesperson when describing the “thousands of tons of munitions” dropped on Gaza, “we’re focused on what causes maximum damage”, not accuracy.<sup>61</sup>

[28] Assessing the scale of this catastrophe also requires considering the absence of safe havens, aid, and relief.<sup>62</sup> Humanitarian organizations have said that the unprecedented conditions in Gaza have rendered their jobs impossible. Save the Children stated that children in Gaza have nowhere safe to go: if they are not killed by the bombardments, they are at serious risk of dying from hunger or disease.<sup>63</sup> Shelter and refugee camps are overwhelmed beyond their capacities and lack basic supplies and resources like food and water, fueling the risk of infection and disease. In November, a UN refugee shelter in central Gaza designed to hold 2,000 people was holding 37,900 displaced people.<sup>64</sup> UNICEF spokesperson James Elder stated that Israel is forcibly evacuating hundreds of thousands of Palestinians to tiny patches of barren land with no water, no toilets, no facilities, no shelter from the cold and no sanitation. He warned that so-called “safe zones” will inevitably become “zones of disease”<sup>65</sup> and there is now evidence of widespread illness that may kill more people than Israel’s bombs.<sup>66</sup> Numerous world

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<sup>58</sup> UN Türkiye, “[Gaza: 'Unprecedented and unparalleled' civilian death toll: Guterres](#)”, 21 November 2023.

<sup>59</sup> +972 Magazine, “[A mass assassination factory: inside Israel’s calculated bombing of Gaza](#)”, 30 November 2023. The investigation by +972 and Local Call is based on conversations with seven current and former members of Israel’s intelligence community — including military intelligence and air force personnel who were involved in Israeli operations in Gaza — in addition to Palestinian testimonies, data and documentation from Gaza, and official statements by the Israeli Defence Forces Spokesperson and other Israeli state institutions.

<sup>60</sup> +972 Magazine, “[‘The hostages weren’t our top priority’: How Israel’s bombing frenzy endangered captives in Gaza](#)”, 17 December 2023.

<sup>61</sup> The Guardian, “[‘We’re focused on maximum damage’: ground offensive into Gaza seems imminent](#)”, 10 October 2023.

<sup>62</sup> Doctors Without Borders, “[No safe place for Gaza's displaced](#)”, 18 December 2022; Save the Children, “[Deaths by starvation and disease may top deaths by bombs as families squeezed into deadly ‘safe zones’ two months into Gaza crisis](#)”, 9 December 2023; UN News, “[Gaza: Nowhere to go, as humanitarian crisis reaches 'dangerous new low'](#)”, 13 October 2023; The Guardian, “[WHO says 'almost impossible' to bring humanitarian aid to people in Gaza](#)”, 2 November 2023.

<sup>63</sup> Save the Children, “[We are failing the Children of Gaza](#)”, 8 December 2023.

<sup>64</sup> UNRWA, “[Situation Report #37 on the situation in the Gaza Strip and the West Bank, including East Jerusalem](#)”, 23 November 2023; See also Al Jazeera, “[How Israel is squeezing 1.8 million Palestinians into an airport-sized area](#)”, 6 December 2023; Vox, “[The “apocalyptic” humanitarian situation in Gaza, captured by one quote](#)”, 6 December 2023.

<sup>65</sup> UNICEF, “[Gaza: The world’s most dangerous place to be a child](#)”, 19 December 2023.

<sup>66</sup> NPR, “[Health workers struggle to prevent an infectious disease 'disaster in waiting' in Gaza](#)”, 26 December 2023.

leaders and human rights organizations have emphasized the unprecedented nature of the humanitarian catastrophe in Gaza.<sup>67</sup>

i) *Collective punishment & starvation*

[29] By imposing a siege on Gaza – withholding virtually all sources of food, water, fuel and electricity – Israel is punishing an entire population for the actions of Hamas. While Israel’s inflicting of collective punishment on Palestinians has long been an ongoing catastrophe,<sup>68</sup> the current hostilities have brought the scale of punishment to a new level.<sup>69</sup> Collective punishment against civilian populations under occupation is expressly forbidden under Article 33 of the Fourth Geneva Convention,<sup>70</sup> which Israel has ratified. Moreover, the prohibition against collective punishment has become an accepted norm of customary IHL.<sup>71</sup>

[30] The Israeli President stated in relation to Palestinians and the 7 October 2023 attacks that it’s “an entire nation out there that is responsible”<sup>72</sup> and the Israeli Heritage Minister echoed that “there is no such thing as uninvolved civilians in Gaza”.<sup>73</sup> Likewise, a former Israeli military officer stated that “there is no population in Gaza, there are 2.5 million terrorists”.<sup>74</sup> These statements are not only evidence of an intent to inflict punishment or sanction on all civilians in Gaza; they also demonstrate a wanton disregard for the fundamental IHL principles of distinction, proportionality and precaution.<sup>75</sup> As noted by the ICC Prosecutor, “[t]here should not be any impediment to humanitarian relief supplies going to children, to women and men, civilians. They are innocent, they have rights under international

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<sup>67</sup> See for example The Guardian, “[Number of Palestinians killed is ‘truly unbearable’, says Spanish PM](#)”, 23 November 2023; Al Jazeera, “[‘Inhumane’: Top Belgium officials criticise Israeli bombing of Gaza](#)”, 10 November 2023; The Guardian, “[US increasingly alone in Israel support as 153 countries vote for ceasefire at UN](#)”, 12 December 2023; NPR, “[Number of journalists killed in Gaza since Oct. 7 attacks called unprecedented loss](#)”, 19 December 2023; Save the Children, “[We are failing the Children of Gaza](#)”, 8 December 2023: “We are running out of words to describe the horror unfolding for Gaza’s children. [...] We have sounded the alarm for weeks and the world has failed to act.”; The Huffington Post, “[Doctor Reveals New Medical Acronym ‘Unique To Gaza’ To Describe Particular War Victim](#)”, 6 November 2023: “Dr Tanya Haj-Hassan said the acronym “which is unique to the Gaza Strip” is WCNSF – wounded child, no surviving family. [...] it is used not infrequently in these last three weeks.[...] the medic said: “Wounded child, no surviving family should not exist as an acronym.”

<sup>68</sup> UN OHCHR, “[Israel’s collective punishment of Palestinians illegal and an affront to justice: UN expert](#)”, 17 July 2020.

<sup>69</sup> Amnesty International, “[Israel/OPT: Israel must lift illegal and inhumane blockade on Gaza as power plant runs out of fuel](#)”, 12 October 2023.

<sup>70</sup> [Fourth Geneva Convention](#); see also [Additional Protocol I](#), Art 75(2)(d).

<sup>71</sup> J-M Henckaerts et al, *Customary International Humanitarian Law, Vol. 1* (Cambridge: Cambridge University Press, 2005) at pp. 372-375, 586-7 and 602-3.

<sup>72</sup> The Guardian, “[The language being used to describe Palestinians is genocidal](#)”, 16 October 2023.

<sup>73</sup> Al Jazeera, “[Genocide in Gaza: A call to urgent global action](#)”, 12 November 2023.

<sup>74</sup> Common dreams, “[Israeli MP Says It Clearly for World to Hear: ‘Erase All of Gaza From the Face of the Earth’](#)”, 1 November 2023.

<sup>75</sup> [Additional Protocol I](#); also recognised as binding customary international law, see [ICRC, Customary International Humanitarian Law](#), Rules 7, 14 and 15.

humanitarian law.”<sup>76</sup> He added that curtailing these rights may give rise to individual criminal responsibility under the Rome Statute.<sup>77</sup>

[31] Following Israel’s halt of its electricity and fuel supply to Gaza on 8 October 2023, Gaza’s sole power plant ran out of fuel on 11 October 2023 and was forced to stop functioning, triggering an immediate black-out.<sup>78</sup> Gaza has been without electricity since, rendering humanitarian operations nearly impossible. Moreover, the food security situation is catastrophic. Although IHL prohibits destroying objects indispensable to the survival of the civilian population,<sup>79</sup> the last functioning flour mill in Gaza was destroyed on 15 November 2023.<sup>80</sup> As of 26 January 2024, 2.2 million people in Gaza were at imminent risk of famine.<sup>81</sup> Approximately 378,000 people had reached “catastrophic levels” of lack of food, starvation, and exhaustion of coping capacities, while some 939,000 people at “emergency levels” of said food insecurity and coping capacities.<sup>82</sup> Bringing humanitarian aid into Gaza has been hindered by Israel on several levels, including: denying missions; impeding approved missions through the provision of unpassable routes, or the imposition of excessive delays at checkpoints or prior to departure; postponing missions due to increasing military activity; and refusal to open checkpoints early.<sup>83</sup> Considering that half of Gaza’s population are children, preventing the free passage of consignments of essential foodstuffs could be a direct violation of the Fourth Geneva Convention.<sup>84</sup>

[32] Using starvation as a method of warfare is also prohibited under IHL.<sup>85</sup> On 20 December 2023, the WFP reported that half of Gaza’s population was in a situation of extreme or severe hunger and 90% of the population regularly went without food for a whole day.<sup>86</sup> On 21 December 2023, the Integrated Food Security Phase Classification (IPC) warned of the very high risk of famine in the Gaza Strip, increasing each day that the current situation of intense hostility and restricted humanitarian access persists or worsens, with more than half a million people facing catastrophic levels of acute food insecurity, the highest level of warning.<sup>87</sup> On 18 December 2023, Human Rights Watch condemned

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<sup>76</sup> Al Jazeera, “[Impeding aid to Gaza could be crime under ICC jurisdiction, says prosecutor](#)”, 29 October 2023.

<sup>77</sup> Al Jazeera, “[Impeding aid to Gaza could be crime under ICC jurisdiction, says prosecutor](#)”, 29 October 2023; see for example [Rome Statute](#), Arts 7(1)(k), 8(2)(a)(ii) and 8(2)(b)(xxv).

<sup>78</sup> UN OCHA, “[Hostilities in the Gaza Strip and Israel Flash Update #5](#)”, 11 October 2023.

<sup>79</sup> [Additional Protocol I](#), Art 54.

<sup>80</sup> UN OCHA, “[Hostilities in the Gaza Strip and Israel Flash Update #40](#)”, 15 November 2023.

<sup>81</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.

<sup>82</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.

<sup>83</sup> UN OCHA, “[Hostilities in the Gaza Strip and Israel Flash Update #103](#)”, 26 January 2024.

<sup>84</sup> [Fourth Geneva Convention](#), Art 23: “*Each High Contracting Party [...] shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.*”

<sup>85</sup> [Additional Protocol I](#), Art 54; ICRC, Customary International Humanitarian Law, Rule 53; [Rome Statute](#), Art 8(2)(b)(xxv).

<sup>86</sup> UN OCHA, “[Hostilities in the Gaza Strip and Israel Flash Update #74](#)”, 20 December 2023.

<sup>87</sup> IPC, “[GAZA STRIP: IPC Acute Food Insecurity November 2023 - February 2024](#)”, 21 December 2023.



Israel for using starvation as a weapon of war and called on world leaders to denounce “this abhorrent war crime”.<sup>88</sup>

ii) *Indiscriminate attacks against civilians*

[33] On 10 November 2023, the UN High Commissioner for Human Rights called for an investigation into Israel’s “indiscriminate bombardment and shelling” in densely populated areas in the Gaza Strip, stating that there were “very serious concerns that these amount to disproportionate attacks in breach of international humanitarian law.”<sup>89</sup> While it is impossible to account for the vast number of indiscriminate attacks against civilians in Gaza, the following serve as illustrative examples of both the lack of military precision and the disproportionate scale of harm to civilians:

- At around 20h20 on 7 October 2023, Israeli forces struck a three-storey residential building in the al-Zeitoun neighborhood of Gaza City, where three generations of the al-Dos family were staying. Fifteen family members were killed in the attack, seven of them children. According to Amnesty International, there was no evidence of military targets in the area at the time of the attack and Israel offered no explanation of the incident.<sup>90</sup>
- On 10 October 2023, an Israeli air strike on a family home killed 12 members of the Hijazi family and four of their neighbors, in Gaza City’s al-Sahaba Street. Three children were among those killed. Amnesty International’s research found no evidence of military targets in the area at the time of the attack.<sup>91</sup>
- Also on 10 October 2023, an Israeli air strike hit a six-storey building in Sheikh Radwan, a district of Gaza City, at 16h30. The strike destroyed the building and killed at least 40 civilians. Amnesty International’s research found that a Hamas member had been residing on one of the floors of the building but was not there at the time of the air strike.<sup>92</sup>
- Two attacks, on 19 and 20 October 2023, killed 46 civilians, including 20 children. Those killed by the Israeli strikes included an 80-year-old woman and a three-month-old baby. The targets were a church building where hundreds of displaced civilians were sheltering in Gaza City and a home in al-Nuseirat refugee camp in central Gaza. Amnesty International investigated these attacks and determined that they were either indiscriminate attacks or direct attacks on civilians or civilian objects.<sup>93</sup>

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<sup>88</sup> Human Rights Watch, “[Israel: Starvation Used as Weapon of War in Gaza](#)”, 18 December 2023; see also Tom Dannenbaum, Just Security, “[The Siege of Gaza and the Starvation War Crime](#)”, 11 October 2023.

<sup>89</sup> UN OCHA, “[Opening remarks by UN High Commissioner for Human Rights Volker Türk on Israel and the OPT at a press conference in Amman, Jordan](#)”, 10 November 2023.

<sup>90</sup> Amnesty International, “[Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza](#)”, 20 October 2023.

<sup>91</sup> Amnesty International, “[Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza](#)”, 20 October 2023.

<sup>92</sup> Amnesty International, “[Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza](#)”, 20 October 2023.

<sup>93</sup> Amnesty International, “[Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza](#)”, 20 October 2023.

- Jabalia refugee camp in northern Gaza was attacked several times, including on 9, 12, 19, 22 and 31 October 2023,<sup>94</sup> 1 November 2023,<sup>95</sup> and 17 December 2023.<sup>96</sup> Jabalia is the largest of the Gaza Strip's eight refugee camps.<sup>97</sup> During the first attack, on 9 October 2023 at 10h30 Israeli air strikes hit a market, killing at least 69 people.<sup>98</sup> While the market street is always one of the busiest commercial areas in northern Gaza, it was especially crowded that day because thousands of people had fled their homes in nearby areas after receiving text messages from the Israeli army.<sup>99</sup> The Israeli military claimed it was targeting a mosque where Hamas members would go. However, Amnesty International found no mosque in the immediate vicinity of the market street after analysing satellite imagery.<sup>100</sup> During the attacks of 31 October-2 November 2023, at least 195 people were killed with more than 100 thought to be missing beneath the rubble and about 777 people injured.<sup>101</sup> Israel claims the attack killed “many Hamas terrorists” including Ibrahim Biari, a commander involved in the 7 October attack.<sup>102</sup> However, it was also “one of the deadliest attacks of the Gaza war.”<sup>103</sup> Given the high number of civilian casualties and large scale of destruction, notably to civilian buildings, the United Nations Office of the Commissioner for Human Rights (OHCHR) voiced “serious concerns that these are disproportionate attacks that could amount to war crimes.”<sup>104</sup> A Wall Street Journal investigation found that, by dropping “multiple large bombs in a tight pattern”, Israel leveled an entire neighborhood block, “leaving deep craters where more than a dozen buildings had stood”.<sup>105</sup> The investigation also found that Israel failed in its responsibility to take all feasible precautions to minimize harm to civilians. Notably: a) Israel did not warn civilians in the area of an imminent airstrike; b) the selection of weapons for the attack (at least two 2,000 pound bombs, the second largest in its arsenal) were not the appropriate choice to avoid unnecessary damage; and c) bringing down entire buildings in aiming to target and destroy tunnels.<sup>106</sup> In terms of proportionality, an international law professor at Rutgers University found

<sup>94</sup> Al Jazeera, “[Israel’s deadly attack on the Jabalia refugee camp: What we know so far](#)” 1 November 2023.

<sup>95</sup> Al Jazeera, “[UN rights office says Israeli attacks on Jabalia could be ‘war crime’](#)”, 2 November 2023.

<sup>96</sup> The Guardian, “[Gaza health ministry: Israeli strikes kill 90 Palestinians in Jabalia refugee camp](#)”, 17 December 2023.

<sup>97</sup> UNRWA, “[Jabalia Camp](#)”, July 2023.

<sup>98</sup> Amnesty International, “[Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza](#)”, 20 October 2023.

<sup>99</sup> Amnesty International, “[Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza](#)”, 20 October 2023.

<sup>100</sup> Amnesty International, “[Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza](#)”, 20 October 2023.

<sup>101</sup> Al Jazeera, “[UN rights office says Israeli attacks on Jabalia could be ‘war crime’](#)”, 2 November 2023.

<sup>102</sup> Al Jazeera, “[UN rights office says Israeli attacks on Jabalia could be ‘war crime’](#)”, 2 November 2023.

<sup>103</sup> Wall Street Journal, “[How an Israeli Airstrike on a Hamas Commander Also Killed Scores of Civilians](#)”, 28 December 2023.

<sup>104</sup> Al Jazeera, “[UN rights office says Israeli attacks on Jabalia could be ‘war crime’](#)”, 2 November 2023.

<sup>105</sup> Wall Street Journal, “[How an Israeli Airstrike on a Hamas Commander Also Killed Scores of Civilians](#)”, 28 December 2023.

<sup>106</sup> Wall Street Journal, “[How an Israeli Airstrike on a Hamas Commander Also Killed Scores of Civilians](#)”, 28 December 2023.

that killing Biari provided at best a moderate military advantage and could not justify the attack on Jabalia. He said: “To justify this much [foreseeable] civilian harm, you would expect some kind of game-changer that would make a decisive impact on the course of the war.”<sup>107</sup>

- On 24-25 December 2023, an Israeli airstrike was launched on Maghazi refugee camp, one of the most densely populated areas in the middle of the Gaza Strip.<sup>108</sup> At least 70 people were killed, including a two-week old baby. The strikes began hours before midnight and continued into Christmas Day.<sup>109</sup> The bombs fell on homes and buildings, destroying neighbourhoods and infrastructure, such as roads leading in and out of the refugee camps.<sup>110</sup> The Bureij refugee camp, located closeby, was also attacked on the same day, bringing the total deaths to over 130, with mostly women and children being killed.<sup>111</sup> Israel later claimed the attack on Maghazi refugee camp was a mistake due to using "incorrect munition".<sup>112</sup> However, the camp had suffered previous strikes, including on 5 November 2023, when more than 50 people were killed.<sup>113</sup>
- On 4 January 2024, Israeli airstrikes targeted a designated “humanitarian zone” near Al-Mawasi, killing 14 people, mostly children under 10 years old.<sup>114</sup> Israeli authorities had ordered civilians to evacuate to this zone for their safety. This was not the first time Israeli forces attacked an area designated as a safe zone.<sup>115</sup> Save the Children warned that after issuing “evacuation orders” directing civilians to Khan Younis, Rafah and Al-Mawasi, Israel attacked all three areas with airstrikes, killing and injuring numerous civilians, including children.<sup>116</sup> A New York Times investigation found that Israel used 2,000 pound-bombs, one of the most destructive munitions in western military arsenals, in areas it had designated safe for civilians at least 200 times.<sup>117</sup> As expressed by Save the Children’s Country Director for the occupied Palestinian territory: “there is nowhere safe in Gaza. But under International Humanitarian Law, there should be. [...] These relocation orders offer nothing more than a smokescreen of safety. If people stay, they are killed. If they move, they are killed. People are facing the ‘choice’ of one death sentence or another.”<sup>118</sup>

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<sup>107</sup> Wall Street Journal, “[How an Israeli Airstrike on a Hamas Commander Also Killed Scores of Civilians](#)”, 28 December 2023.

<sup>108</sup> Al Jazeera, “[‘Massacre’ as Israel steps up Gaza bombardment for Christmas](#)”, 25 December 2023.

<sup>109</sup> Al Jazeera, “[‘Massacre’ as Israel steps up Gaza bombardment for Christmas](#)”, 25 December 2023.

<sup>110</sup> Al Jazeera, “[‘Massacre’ as Israel steps up Gaza bombardment for Christmas](#)”, 25 December 2023.

<sup>111</sup> Evening Standard, “[Israeli military ‘regrets harm’ after more than 100 killed in refugee camp strikes](#)”, 29 December 2023.

<sup>112</sup> SkyNews, “[Israel admits airstrike that killed 86 people at Gaza refugee camp was ‘regrettable mistake’](#)”, 29 December 2023.

<sup>113</sup> Al Jazeera, “[Palestinians flee massacre as Israel bombs al-Maghazi refugee camp](#)”, 6 November 2023.

<sup>114</sup> Save the Children, “[No Safe Place in Gaza: 14 Killed, Mostly Children, by Israeli Airstrikes](#)”, 4 January 2024.

<sup>115</sup> SkyNews, “[Israel said Gazans could flee to this neighbourhood - then it was hit](#)”, 22 December 2023.

<sup>116</sup> Save the Children, “[No Safe Place in Gaza: 14 Killed, Mostly Children, by Israeli Airstrikes](#)”, 4 January 2024.

<sup>117</sup> New York Times, “[Visual Evidence Shows Israel Dropped 2,000-Pound Bombs Where It Ordered Gaza’s Civilians to Move for Safety](#)”, 22 December 2023.

<sup>118</sup> Save the Children, “[No Safe Place in Gaza: 14 Killed, Mostly Children, by Israeli Airstrikes](#)”, 4 January 2024.



iii) *Direct attacks on hospitals and humanitarian relief personnel*

- [34] Under IHL, heightened protection is granted to hospitals and medical units, as well as to humanitarian relief personnel and objects. While certain incidents of hospital misuse, e.g., using a hospital to gain a military advantage or to shield military objectives from attack, can remove the hospital's protection under IHL, there is a presumption of civilian status for hospitals until proven otherwise.<sup>119</sup> The attacker bears the burden of proving that the hospital being attacked was being misused to commit "acts harmful to the enemy".<sup>120</sup> Attacking a hospital that is being properly used to care for the wounded, sick, infirm and maternity cases is a war crime.<sup>121</sup> All parties to a conflict must respect and protect civilian hospitals.<sup>122</sup>
- [35] In Gaza, Israel has targeted hospitals and medical units with such frequency that, on 12 December 2023, the World Health Organization (WHO) issued a plea for the hospitals in the south to be spared.<sup>123</sup> At the time, there was one partially functional hospital in the north of Gaza, which ceased to be functional as of 21 December 2023 due to a lack of fuel, staff and supplies.<sup>124</sup> Of the 36 hospitals that operated in Gaza prior to 7 October, only 14 partially functional ones are left, with seven in the north and seven in the south<sup>125</sup> Al-Awda hospital, one of the last functioning hospitals in the north of Gaza, was turned into a barracks by Israeli forces on 19 December 2023.<sup>126</sup> In doing so, the Israeli forces detained more than 240 people, including 80 hospital staff, 40 patients, and 120 displaced people.<sup>127</sup> They also arrested the director of the facility, Dr. Ahmed Muhanna.<sup>128</sup> Also on 19 December 2023, Israeli forces raided Ahli Arab Hospital in Gaza City, destroying a wall at its front entrance and detaining most of its staff.<sup>129</sup>
- [36] As noted above, in order for these attacks to be legal, Israel has to prove that the hospitals were actively being used to commit acts harmful to it. Accordingly, during a briefing on 27 October 2023, Israel claimed that five hospital buildings in Gaza were directly involved in Hamas activities. It claimed that the hospitals had access to underground tunnels that were used by Hamas in attacking Israel.<sup>130</sup> The briefing was held before Israel sent troops into Al-Shifa hospital,<sup>131</sup> the largest medical facility in the

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<sup>119</sup> [Fourth Geneva Convention](#), Arts 18-19.

<sup>120</sup> [Fourth Geneva Convention](#), Arts 18-19 and 23; [Additional Protocol I](#), Arts 12-13.

<sup>121</sup> [Rome Statute](#), Art 8(2)(b)(ix); see also [Fourth Geneva Convention](#), Art 18.

<sup>122</sup> [Fourth Geneva Convention](#), Art 18; [Additional Protocol I](#), Art 12.

<sup>123</sup> Reuters, "[WHO official pleas for Gaza's southern hospitals to be spared](#)", 12 December 2023.

<sup>124</sup> Reuters, "[Northern Gaza no longer has a functional hospital, WHO says](#)", 21 December 2023.

<sup>125</sup> UN OCHA, "[Hostilities in the Gaza Strip and Israel Flash Update #103](#)", 26 January 2024.

<sup>126</sup> Aljazeera, "[Israeli attack on residential area in south Gaza kills at least 29 people](#)", 19 December 2023.

<sup>127</sup> Aljazeera, "[Israeli attack on residential area in south Gaza kills at least 29 people](#)", 19 December 2023; ActionAid, "[ActionAid calls for the immediate release of doctors in Gaza, after the manager of a hospital run by its partner Al-Awda is arrested](#)", 19 December 2023.

<sup>128</sup> ActionAid, "[ActionAid calls for the immediate release of doctors in Gaza, after the manager of a hospital run by its partner Al-Awda is arrested](#)", 19 December 2023.

<sup>129</sup> Aljazeera, "[Israeli attack on residential area in south Gaza kills at least 29 people](#)", 19 December 2023.

<sup>130</sup> Wall Street Journal, "[The case of al-Shifa: Investigating the assault on Gaza's largest hospital](#)", 21 December 2023.

<sup>131</sup> Wall Street Journal, "[The case of al-Shifa: Investigating the assault on Gaza's largest hospital](#)", 21 December 2023.

Gaza Strip, and after there had been a large-scale public outcry over the bombing of Al Ahli Arab Hospital on 17 October 2023.<sup>132</sup> While Israel denied attacking Al Ahli Arab Hospital, it has since raided and rendered non-functional more than two dozen Gazan hospitals.<sup>133</sup> Even if Israel were capable of proving its claims that five hospitals in Gaza were being misused by Hamas to commit harmful acts against it, this would not justify any of the attacks on the other hospitals. According to an investigation by Forensic Architecture, Israel has been subjecting hospitals in Gaza to “a pattern of intimidation, direct targeting, siege, and occupation” since 7 October 2023.<sup>134</sup> Similarly, Human Rights Watch has stated that “[t]he Israeli military’s repeated, apparently unlawful attacks on medical facilities, personnel, and transport are further destroying the Gaza Strip’s healthcare system and should be investigated as war crimes”.<sup>135</sup>

[37] Moreover, an investigation by the Wall Street Journal found that Israel falls short of meeting its burden to prove that Hamas had been using the hospitals for military purposes. Notably: a) there was no immediate evidence of military use by Hamas; b) none of the five hospitals appeared to be connected to the tunnel network; and c) the tunnels may not even be accessible from the hospital wards.<sup>136</sup> Israel’s targeted attack on Al-Shifa hospital was unprecedented in modern times. Al-Shifa was Gaza’s most advanced and best-equipped hospital, and it was housing hundreds of sick and dying patients, and thousands of displaced people.<sup>137</sup> The attack caused the hospital’s operations to collapse: fuel and supplies ran out and ambulances could no longer operate. Doctors were forced to dig a mass grave for 180 people and four premature babies died as a result of the raid.<sup>138</sup>

[38] Beyond direct attacks on hospitals, there are also reports that Israel has bombed ambulances,<sup>139</sup> with approximately 122 ambulances having been damaged by 26 January 2024.<sup>140</sup> There are reports that Israel has also fired at humanitarian aid convoys,<sup>141</sup> 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

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<sup>132</sup> CNBC, “[Global outcry over Gaza hospital blast–500 lives lost in deadliest single incident](#)”, 18 October 2023.

<sup>133</sup> Al Jazeera, “[‘Hospitals are not battlegrounds’: World reacts to Israel’s al-Shifa raid](#)”, 25 November 2023; Al Jazeera, “[Israeli forces raid Gaza’s Kamal Adwan Hospital after days of strikes](#)” 12 December 2023; Jacobin, “[As Israel Besieges al-Awda Hospital, War Crimes in Gaza Have Become Unremarkable](#)”, 13 December 2023.

<sup>134</sup> Forensic Architecture, [Destruction of Medical Infrastructure in Gaza investigation](#), 20 December 2023.

<sup>135</sup> Human Rights Watch, “[Gaza: Unlawful Israeli Hospital Strikes Worsen Health Crisis](#)”, 14 November 2023.

<sup>136</sup> Wall Street Journal, “[The case of al-Shifa: Investigating the assault on Gaza’s largest hospital](#)”, 21 December 2023.

<sup>137</sup> Wall Street Journal, “[The case of al-Shifa: Investigating the assault on Gaza’s largest hospital](#)”, 21 December 2023.

<sup>138</sup> Wall Street Journal, “[The case of al-Shifa: Investigating the assault on Gaza’s largest hospital](#)”, 21 December 2023.

<sup>139</sup> Politico, “[Israel bombs ambulance convoy near Gaza’s largest hospital](#)”, 4 November 2023; CBC, “[Health-care and relief workers killed in Gaza as humanitarian groups navigate full blockade](#)” 11 October 2023; The Guardian, “[Palestinian Red Crescent workers killed after blast hits Deir al-Balah in Gaza – video report](#)”, 11 January 2024.

<sup>140</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.

<sup>141</sup> NBC News, “[Israel accused of firing on Gaza aid convoy as military pushes south](#)”, 30 December 2023; WHO, “[WHO calls for protection of humanitarian space in Gaza following serious incidents in high-risk mission to transfer patients, deliver health supplies](#)”, 12 December 2023; Al Jazeera “[Red Cross ‘deeply troubled’ as aid convoy attacked in Gaza City](#)”, 8 November 2023.

them for terror links.<sup>142</sup> By killing health professionals, Israel is significantly worsening the humanitarian crisis in Gaza. Every time doctors get killed, the medical programs they lead likely also come to an end and the patients they might have helped or saved are directly affected.<sup>143</sup> These killings exacerbate the dysfunction of a medical system that has already been brought to its knees by the blockade imposed by Israel on the movement of goods and people in and out of the Gaza Strip following Hamas' takeover in 2007, and the escalating hostilities.

[39] On 12 December 2023, the WHO adopted a resolution calling for “immediate, sustained and unimpeded passage of humanitarian relief, including the access of medical personnel.”<sup>144</sup> The previous day, WHO's aid truck had been shot at by the Israeli military and some of the medical staff taking part in its mission had been detained, harassed, strip searched, beaten and/or otherwise degraded.<sup>145</sup> On 25 December 2023, WHO called for a ceasefire, expressing extreme concern over the “ever-increasing scale of needs caused by the carnage”, with injured patients having to choose between risking death or accepting the amputation of their limbs due to the shortage of medical supplies.<sup>146</sup> Human Rights Watch called on Israel to end its attacks on hospitals, noting that it had provided no evidence that would justify depriving hospitals and ambulances of their protected status under IHL.<sup>147</sup> It also called for the repeated Israeli attacks on medical facilities, personnel and transport to be investigated as war crimes.<sup>148</sup>

[40] As of 26 January 2024, the following humanitarian relief casualties were reported: 154 UN staff killed, including 152 UNRWA staff and one person working for WHO.<sup>149</sup> Overall, 337 health workers have been killed.<sup>150</sup> UNRWA spokeswoman Juliette Touma said that UN staff can be killed at any time: “They are killed in the north, the middle and the south, men and women, some at home, some at displacement shelters, some bringing refugees to the shelters,” adding that one staff member was killed while waiting in line for bread, and another was killed at home with his wife and eight children.<sup>151</sup> Intentionally targeting UN staff is a war crime under the Rome Statute.<sup>152</sup>

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<sup>142</sup> CNN, “[Doctors accuse Israeli troops of desecrating bodies and shooting civilians at hospital Israel says was Hamas ‘command center’](#)”, 27 December 2023.

<sup>143</sup> NPR, “[Doctors are among the many dead in Gaza. These are their stories](#)”, 16 November 2023.

<sup>144</sup> UN News, “[WHO’s Executive Board adopts resolution on access for life-saving aid into Gaza and respect for laws of war](#)”, 10 December 2023.

<sup>145</sup> WHO, “[WHO calls for protection of humanitarian space in Gaza following serious incidents in high-risk mission to transfer patients, deliver health supplies](#)”, 12 December 2023.

<sup>146</sup> The Independent, “[Israel’s onslaught on Gaza leading to ‘carnage’ as health system disintegrates, WHO warns](#)”, 26 December 2023.

<sup>147</sup> Human Rights Watch, “[Gaza: Unlawful Israeli Hospital Strikes Worsen Health Crisis](#)”, 14 November 2023.

<sup>148</sup> Human Rights Watch, “[Gaza: Unlawful Israeli Hospital Strikes Worsen Health Crisis](#)”, 14 November 2023.

<sup>149</sup> UN Office for the Coordination of Humanitarian Affairs (UN OCHA), [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.

<sup>150</sup> UN Office for the Coordination of Humanitarian Affairs (UN OCHA), [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.

<sup>151</sup> New York Times, “[U.N. Says Israel-Gaza War Is Deadliest Ever for Its Personnel](#)”, 6 November 2023.

<sup>152</sup> [Rome Statute](#), Art 8(2)(b)(iii).

iv) *Executions and other wilful killings*

- [41] Wilful killing and summary executions of protected persons constitute serious violations of IHL and IHRL, and may amount to war crimes and crimes against humanity.<sup>153</sup> Since the Israeli ground invasion of Gaza began on 27 October 2023, there have been numerous documented reports of IDF soldiers shooting or executing civilians and other protected persons. For example, on 17 December 2023, two Christian Palestinian women were shot dead by IDF snipers inside the Holy Family Parish church compound in Gaza. The killings were condemned by the Pope. It was reported by the Latin Patriarchate of Jerusalem that “[t]hey were shot in cold blood inside the premises of the parish, where there are no belligerents.”<sup>154</sup>
- [42] On 20 December 2023, the UN Office of the High Commissioner on Human Rights reported that it received allegations that IDF soldiers summarily killed at least 11 unarmed Palestinian men in front of their family members in the Al Remal neighbourhood in Gaza on 19 December 2023.<sup>155</sup> Human rights groups and Al Jazeera later received footage and witness accounts of the executions, alleging that 19 men were killed by Israeli forces.<sup>156</sup>
- [43] This report followed earlier allegations of deliberate killings of civilians by the IDF.<sup>157</sup> Muhammad Shehada, of the Euro-Mediterranean Human Rights Monitor in Copenhagen, reported that his organisation believes there is a pattern of “systematic” killing taking place in Gaza.<sup>158</sup> This pattern was further exemplified on 15 December 2023 when an IDF soldier killed three Israeli hostages after they revealed themselves shirtless and waving a white flag to show that they posed no threat. Roy Yellen of Israeli human rights organization B’Tselem commented that “[i]t’s heartbreaking but it’s not surprising ... We have documented over the years countless incidents of people who clearly surrendered and who were still shot.”<sup>159</sup>
- [44] One example of a Palestinian being shot by an Israeli sniper despite waving a white flag was caught on camera by the British broadcaster ITV news.<sup>160</sup> On 23 January 2024, a group of five men were walking slowly in Khan Younis - a designated safe zone - with their hands up and with one of them waving a white flag. The ITV journalist went to interview them and Ramzi Abu Sahloul explained that they were trying to reach his mother and brother to escort them out of harm’s way. He said: “Nowhere is safe in Gaza. Everywhere you find the Israeli Army. They shoot at us at home, in any building and

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<sup>153</sup> [Fourth Geneva Convention](#), Art 147; See also [ICC, Elements of Crimes \(2002\)](#), Arts 8(2)(a)(i) and 8(2)(c)(i).

<sup>154</sup> CNN, “[Pope speaks out after IDF sniper kills two women inside Gaza church, per Catholic authorities](#)”, 18 December 2023.

<sup>155</sup> UN OHCHR OPT, News Release, “[Unlawful killings in Gaza City](#)”, 20 December 2023.

<sup>156</sup> Al Jazeera, “[Palestinians accuse Israeli forces of executing 19 civilians in Gaza](#)”, 20 January 2024.

<sup>157</sup> UN OHCHR OPT, News Release, “[Unlawful killings in Gaza City](#)”, 20 December 2023.

<sup>158</sup> Al Jazeera, “[Palestinians accuse Israeli forces of executing 19 civilians in Gaza](#)”, 20 January 2024.

<sup>159</sup> Associated Press, “[In Israel’s killing of 3 hostages, some see the same excessive force directed at Palestinians](#)”, 18 December 2023.

<sup>160</sup> ITV News, “[ITV News witnesses man in group waving white flag shot dead in Gaza](#)”, 23 January 2024.

in the street.”<sup>161</sup> Moments after the interview, a sniper shot him in the chest and he died. While the video footage captured by ITV news sparked outrage,<sup>162</sup> it was nothing new in Gaza.

[45] On 12 November 2023, an Israeli sniper shot dead a Palestinian woman who was holding hands with her grandson and he was waving a white flag.<sup>163</sup> They were with a group of people trying to flee from al-Rimal neighbourhood to a so-called “safe zone” in the south.<sup>164</sup> She instantly fell to the ground, leaving her four-year-old grandson running for cover and ending up separated from his parents.<sup>165</sup> Due to the lack of safety in the region, he still has not been able to reunite with his parents.<sup>166</sup>

[46] On 24 January 2024, two brothers were killed in Khan Younis by an Israeli sniper in front of their parents and other family members.<sup>167</sup> The youngest was 14 years old and he was holding a white flag.<sup>168</sup> He was reportedly shot three times.<sup>169</sup> His 20-year-old brother rushed to rescue him and he was also fatally shot by Israeli forces. The boy was leading members of his family who were trying to evacuate after receiving orders from the Israeli army to head towards Al-Mawasi.<sup>170</sup> Euro-Mediterranean Human Rights Monitor documented the incident and issued the following statement: “The Israeli army forces continue to intentionally target civilians and carry out premeditated murders and arbitrary extrajudicial executions, along with their massive attack in the west of Khan Yunis, south of the Gaza Strip, and as part of their ongoing genocide.”<sup>171</sup>

[47] Direct attacks on civilians, including journalists, who are not taking direct part in hostilities constitute a grave breach of the Geneva Conventions and Additional Protocol I, and also amount to war crimes under the ICC Rome Statute.<sup>172</sup> According to the Committee to Protect Journalists (CPJ), the “Israel-Gaza war is the most dangerous situation for journalists we have ever seen”. The CPJ expressed particular concern about a pattern of targeting journalists and their families by the Israeli military, giving as examples a case where a journalist was killed while clearly wearing press insignia in a

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<sup>161</sup> ITV News, “[Moment innocent civilian brandishing white flag in Gaza 'safe zone' is shot dead in the street](#)”, 25 January 2024.

<sup>162</sup> ITV News, “[‘It’s a war crime’: ITV News' Gaza clip sparks outrage from charities, US officials and Westminster](#)”, 25 January 2024.

<sup>163</sup> CNN, “[She was fleeing with her grandson, who was holding a white flag. Then she was shot](#)”, 26 January 2024.

<sup>164</sup> Middle East Eye, “[Exclusive: Gaza grandmother gunned down by Israeli sniper as child waved white flag](#)”, 10 January 2024.

<sup>165</sup> CNN, “[She was fleeing with her grandson, who was holding a white flag. Then she was shot](#)”, 26 January 2024; Middle East Eye, “[Exclusive: Gaza grandmother gunned down by Israeli sniper as child waved white flag](#)”, 10 January 2024.

<sup>166</sup> CNN, “[She was fleeing with her grandson, who was holding a white flag. Then she was shot](#)”, 26 January 2024.

<sup>167</sup> Middle East Eye, “[Rights monitor denounces Israeli execution of two brothers in Khan Younis](#)”, 26 January 2024.

<sup>168</sup> Middle East Eye, “[Rights monitor denounces Israeli execution of two brothers in Khan Younis](#)”, 26 January 2024.

<sup>169</sup> UN OCHA, “[Hostilities in the Gaza Strip and Israel Flash Update #103](#)”, 26 January 2024.

<sup>170</sup> Middle East Eye, “[Rights monitor denounces Israeli execution of two brothers in Khan Younis](#)”, 26 January 2024.

<sup>171</sup> Middle East Eye, “[Rights monitor denounces Israeli execution of two brothers in Khan Younis](#)”, 26 January 2024.

<sup>172</sup> [Additional Protocol I](#), Article 48, 51(2) and 52(1); [Rome Statute](#), Art 8(2)(b).



location where no fighting was taking place and at least two other cases where journalists reported receiving threats from Israeli officials and IDF officers before their family members were killed.<sup>173</sup> As of 26 January 2024, a total of 119 journalists have been killed in Gaza.<sup>174</sup>

v) *Intentionally directing attacks against civilian objects and prohibited destruction of property*

[48] Under IHL, any destruction of real or personal property belonging individually or collectively to private persons, the State, other public authorities, or social or cooperative organizations is prohibited where not justified by military necessity and carried out unlawfully and wantonly.<sup>175</sup> Similarly, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship that constitute the cultural or spiritual heritage of peoples.<sup>176</sup> When intentionally directed, these acts of destruction constitute war crimes under the Rome Statute.<sup>177</sup>

[49] According to a journalistic investigation, Israel is bombing so-called “power targets,” defined as “private residences as well as public buildings, infrastructure, and high-rise blocks,” actions “mainly intended to harm Palestinian civil society” and to “create a shock.”<sup>178</sup> By 12 December 2023, the war had damaged or destroyed 77% of health facilities, 72% of municipal services such as parks, courts and libraries, 68% of telecommunications infrastructure and 76% of commercial sites, including the almost complete destruction of the industrial zone in the north. More than half of all roads had been damaged or destroyed.<sup>179</sup> Israel’s extensive targeting of civilian objects, including educational, historic, cultural and religious facilities, read together with the documentation of the goal of this targeting being to impact civilian morale, is clear evidence of war crimes. This targeting, clearly evidenced below, goes directly against article 53 of the Fourth Geneva Convention and article 8 of the Rome Statute.

*Civilian property*

[50] On 4 December 2023, Human Rights Watch found, through satellite imagery, that Israel has razed orchards, farmland and greenhouses in northern Gaza, compounding concerns of dire food insecurity and loss of livelihood.<sup>180</sup>

[51] As of 26 January 2024, over 60% of the housing in Gaza has been damaged or destroyed.<sup>181</sup> This amounts to over 70,000 housing units being destroyed, and over 290,000 housing units being

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<sup>173</sup> Committee to Protect Journalists, “[Israel-Gaza war takes record toll on journalists](#)”, 21 December 2023.

<sup>174</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.

<sup>175</sup> [Fourth Geneva Convention](#), Art 53; [Rome Statute](#), Art 8(2)(a)(iv).

<sup>176</sup> [Additional Protocol I](#), Art 53.

<sup>177</sup> [Rome Statute](#), Arts 8(2)(a)(iv) and 8(2)(b)(ii).

<sup>178</sup> +972 Magazine, “[A mass assassination factory: inside Israel’s calculated bombing of Gaza](#)”, 30 November 2023.

<sup>179</sup> Wall Street Journal, “[The Ruined Landscape of Gaza After Nearly Three Months of Bombing](#)”, 30 December 2023.

<sup>180</sup> Human Rights Watch on X, “[NEW: Satellite imagery reviewed by HRW shows that orchards, greenhouses and farmland in northern Gaza have been razed since the beginning of Israel’s ground invasion, compounding concerns of dire food insecurity and loss of livelihood](#)”, 4 December 2023.

<sup>181</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.

damaged.<sup>182</sup> Findings through the use of satellite imagery showed 47% to 59% damage between 7 October and 22 November 2023 in northern Gaza, 47-58% damage in Gaza City, 11-16% in Deir al-Balah, 10-15% in Khan Younis and 7-11% in Rafah, the area closest to the border with Egypt.<sup>183</sup> By mid-December, Israel had dropped 29,000 bombs, munitions and shells on the strip. Israeli forces have also blown up at least 56 residential buildings in a single neighbourhood, which a senior Israeli officer recorded as “Shujaiya neighbourhood gone”.<sup>184</sup>

#### *Places of education*

[52] As of 26 January 2024, at least 378 education facilities had been destroyed or partially destroyed by Israeli forces.<sup>185</sup> Israel has targeted every one of Gaza’s four universities, including the Islamic University of Gaza, the first higher education institution in the Gaza Strip.<sup>186</sup> On 17 January 2024, Al-Israa University campus was destroyed in a controlled explosion, giving rise to the inference that there was no concrete and direct military advantage anticipated.<sup>187</sup>

#### *Places of Worship*

[53] As of 26 January 2024, Israel has damaged at least 161 mosques and 3 churches.<sup>188</sup> Some sources estimate that the destruction has affected about 318 religious sites.<sup>189</sup> On 8 December 2023, the Israeli army bombed the Grand Omari Mosque, Gaza’s largest and oldest mosque<sup>190</sup>, originally a fifth-century Byzantine church, a landmark of Gaza’s history, architecture and cultural heritage, and a place of worship. Israeli shelling has also damaged the Church of Saint Porphyrius, founded in 425 AD and

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<sup>182</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.

<sup>183</sup> The Guardian, “[Widespread destruction in Gaza puts concept of ‘domicide’ in focus](#)”, 7 December 2023.

<sup>184</sup> The New Arab, “[Israeli forces blow up dozens of residential buildings in Gaza’s Shujaiya neighborhood](#)”, 21 December 2023.

<sup>185</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024. *See also* The Guardian, “[Widespread destruction in Gaza puts concept of ‘domicide’ in focus](#)”, 7 December 2023; The New Arab, “[‘Destroying justice and law’: Israel demolishes main Gaza courthouse and dozens of government buildings](#)”, 5 December 2023.

<sup>186</sup> Los Angeles Times, “[Opinion: When libraries like Gaza’s are destroyed, what’s lost is far more than books](#)”, 12 December 2023; The New Arab, “[‘Destroying justice and law’: Israel demolishes main Gaza courthouse and dozens of government buildings](#)”, 5 December 2023.

<sup>187</sup> Middle East Monitor, “[Israel blows up another university in Gaza](#)”, 18 January 2024; Al Jazeera, “[Journalist questions bombing of Gaza university](#)”, 19 January 2024; Birzeit University on X, “[Birzeit University condemns the brutal assault and bombing of @Al-Israa University campus by the Israeli occupation south of #Gaza city, this occurred after seventy days of the occupation occupying the campus; turning it into their base , and military barracks for their forces](#)”, 18 January 2024.

<sup>188</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024..

<sup>189</sup> Made up of 115 mosques completely destroyed, 200 mosques partially destroyed and 3 churches targeted. [South African Application](#) at para 92; Palestine Red Crescent Society, “[Palestine Red Crescent Society Response Report As of Saturday, October 7th 2023, 6:00 PM Until Sunday, December 24th 2023, 24:00 AM](#)”, 24 December 2023.

<sup>190</sup> Al Jazeera, “[A ‘cultural genocide’: Which of Gaza’s heritage sites have been destroyed?](#)”, 14 January 2024; Louis Fishman on X, “[In addition to the severe humanitarian crisis, the mass death of civilians now comes the destruction of historical sites. This was a Mamluk mosque built on the site of other previous mosques and a Church, an architectural historic gem. Now in ruins.](#)” 8 December 2023.

believed to be the third oldest church in the world — alongside two other churches that have sustained direct Israeli fire.<sup>191</sup>

*Historic monuments, cultural and public buildings and works of art*

[54] Sites of historical, cultural and public importance have also been destroyed or damaged by Israeli forces,<sup>192</sup> including the Gaza Justice Palace and the Palestinian Legislative Council complex.<sup>193</sup>

[55] Israel has targeted Gaza City’s Central Archive building, containing thousands of historical documents and national records dating back over 100 years, and forming an essential archive of Palestinian history and contemporary life.<sup>194</sup> Israel has left Gaza City’s main public library in ruins<sup>195</sup> and has damaged or destroyed countless bookshops, publishing houses and libraries.<sup>196</sup> Israeli forces have also targeted and destroyed cultural symbols and works of art, including at least two prominent statues in the West Bank, in Tulkarem and Jenin respectively.<sup>197</sup>

vi) *Mass displacement of the civilian population*

[56] The unlawful deportation or transfer of civilians constitutes a grave breach of IHL, as well as a war crime and crime against humanity under the Rome Statute.<sup>198</sup> An exception to this prohibition of displacement is the transfer of civilians for their own security or when there are imperative military reasons.<sup>199</sup> Importantly, in order for the evacuations to be lawful, all possible measures must be taken to ensure that the civilians being transferred have proper accommodation, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that family members are not separated.<sup>200</sup>

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<sup>191</sup> Business Insider, “[Photos show Gaza's Church of Saint Porphyrius, one of the oldest churches in the world, after the complex was damaged by Israeli airstrikes](#)”, 24 October 2023.

<sup>192</sup> Al Jazeera, “[A ‘cultural genocide’: Which of Gaza’s heritage sites have been destroyed?’](#)”, 14 January 2024.

<sup>193</sup> The Guardian, “[Widespread destruction in Gaza puts concept of ‘domicide’ in focus](#)”, 7 December 2023; The New Arab, “[Destroying justice and law: Israel demolishes main Gaza courthouse and dozens of government buildings](#)”, 5 December 2023.

<sup>194</sup> International Council on Archives, “[Statement of the International Council on Archives on the Destruction of the Central Archives of the Municipality of Gaza](#)”, 13 December 2023.

<sup>195</sup> The Washington Post, “[Gazans mourn loss of their libraries: Cultural beacons and communal spaces](#)”, 1 December 2023.

<sup>196</sup> Los Angeles Times, “[Opinion: When libraries like Gaza’s are destroyed, what’s lost is far more than books](#)”, 12 December 2023.

<sup>197</sup> The Times of Israel, “[IDF bulldozes monuments for Yasser Arafat in West Bank’s Tulkarem refugee camp](#)”, 14 November 2023; The Independent, “[The Palestinian women battling to preserve their culture amid deadly attacks in West Bank](#)”, 9 December 2023; Hyperallergic, “[Israeli Forces Remove West Bank Sculpture Commemorating 2002 Massacre](#)”, 1 November 2023.

<sup>198</sup> [Fourth Geneva Convention](#), Art 147. See also [Additional Protocol I](#), Art 85(4)(a); ICRC, Customary International Humanitarian Law, Rule 129; [Rome Statute](#), Art 8(2)(b)(viii).

<sup>199</sup> [Fourth Geneva Convention](#), Art 49, second paragraph; [Additional Protocol II](#), Art 17(1).

<sup>200</sup> [Fourth Geneva Convention](#), Art 49, third paragraph.



[57] Israel's evacuation orders are not conducted in accordance with IHL and the corresponding displacements are therefore unlawful. First, as has been seen, there is nowhere in Gaza that is safe.<sup>201</sup> Israel cannot claim that the transfer of civilians is for their own security when it continuously attacks the very places it designates as safe zones.<sup>202</sup> Israel has also launched airstrikes killing civilians travelling along the roads it had designated as "safe routes".<sup>203</sup> For the civilians who make it to the designated areas alive and survive the bombings, there is a shortage of food, water, health and conditions of hygiene.<sup>204</sup> Sending civilians to a zone that is not equipped with the basic necessities for their survival and subsistence cannot be considered as protecting civilians, especially when the state ordering the evacuations is also preventing the aid from being provided.<sup>205</sup> As noted by Human Rights Watch, "alerting civilians to flee, when there's no safe place to go and no way to get there safely, neither suffices nor actually protects them."<sup>206</sup>

[58] By way of example, Maghazi is Gaza's smallest refugee camp and ordinarily houses 30,000 people. This number had increased to approximately 100,000 people by the end of December 2023, due to the forced internal displacement of Palestinians fleeing relentless bombardment in other parts of Gaza.<sup>207</sup> As noted earlier, Maghazi refugee camp was bombed several times, with the biggest attack occurring on 25 December 2023.<sup>208</sup> The only bakery in the camp was destroyed by Israeli air raids on 26 October 2023. The camp has no water and the water wells are inoperational due to Israel's blockade on fuel. There is mounting waste, spread of diseases such as smallpox and scabies, and the prospect of starvation.<sup>209</sup>

[59] Israel's evacuation orders are also often impossible to comply with, and the manner in which these orders are carried out may give rise to the inference of an intent to cause terror among the civilian

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<sup>201</sup> Al Jazeera, "[Israel asks Palestinians to evacuate, but is any place safe in Gaza?](#)", 4 December 2023.

<sup>202</sup> New York Times, "[Visual Evidence Shows Israel Dropped 2,000-Pound Bombs Where It Ordered Gaza's Civilians to Move for Safety](#)", 22 December 2023; Save the Children, "[No Safe Place in Gaza: 14 Killed, Mostly Children, by Israeli Airstrikes](#)," 4 January 2024; CNN, "[Israel struck some areas it directed civilians to in Gaza, CNN analysis shows](#)", 21 December 2023; Reuters, "[Israel orders Gazans to flee, bombs where it sends them](#)", 4 December 2023.

<sup>203</sup> NYT, "[Thousands flee Northern Gaza as Israeli evacuation order stirs panic](#)," 13 October 2023; The Guardian, "[Gaza civilians afraid to leave home after bombing of 'safe routes'](#)", 15 October 2023.

<sup>204</sup> Doctors Without Borders, "[No safe place for Gaza's displaced](#)", 18 December 2022; Save the Children, "[Deaths by starvation and disease may top deaths by bombs as families squeezed into deadly 'safe zones' two months into Gaza crisis](#)", 9 December 2023; UN News, "[Gaza: Nowhere to go, as humanitarian crisis reaches 'dangerous new low'](#)", 13 October 2023. The Guardian, "[WHO says 'almost impossible' to bring humanitarian aid to people in Gaza](#)", 2 November 2023.

<sup>205</sup> US News, "[Aid Groups Scramble to Help as Israel-Hamas War Intensifies and Gaza Blockade Complicates Efforts](#)", 10 October 2023; The Guardian, "[WHO says 'almost impossible' to bring aid into Gaza](#)", 2 November 2023; Voice of America, "[WHO: Lifesaving Aid Not Reaching Millions of People Caught in Health Emergencies](#)", 11 January 2024;

<sup>206</sup> Human Rights Watch, "[Why Israel's Gaza Evacuation Order is So Alarming](#)", 16 October 2023.

<sup>207</sup> Al Jazeera, "['Piles of body parts': Gaza's Maghazi residents find families 'in pieces'](#)", 28 December 2023; Al Jazeera, "['We are facing a disaster', Mayor of Gaza's Maghazi camp warns](#)", 9 November 2023.

<sup>208</sup> Al Jazeera, "['Massacre' as Israel steps up Gaza bombardment for Christmas](#)", 25 December 2023.

<sup>209</sup> Al Jazeera, "['We are facing a disaster', Mayor of Gaza's Maghazi camp warns](#)", 9 November 2023.

population.<sup>210</sup> On 13 October 2023, Israel ordered the evacuation of more than one million Palestinians from the northern Gaza Strip, giving them a mere 24 hours notice.<sup>211</sup> The UN and Amnesty International called on Israel to rescind this “impossible” ultimatum.<sup>212</sup> Even an Israeli army spokesperson admitted that the order could not be implemented in one day.<sup>213</sup>

[60] A similar impossible choice was offered by Israel’s repeated evacuation orders directed at 22 hospitals treating more than 2,000 patients in northern Gaza, including critically ill patients, newborns in incubators and women with pregnancy complications. The WHO had warned in October 2023 that the forced displacement of patients and health workers would only further worsen the humanitarian and public health catastrophe in Gaza.<sup>214</sup> The International Committee of the Red Cross (ICRC), which only issues public statements in cases where violations are major and repeated, stated that the evacuation orders issued by Israel are not compatible with international law.<sup>215</sup> By 26 January 2024, more than 75% of Gaza’s 2.3 million people were internally displaced,<sup>216</sup> with many having had to flee three or four times.<sup>217</sup>

[61] Finally, under IHL evacuations must be temporary. Article 49 of the Fourth Geneva Convention states that persons evacuated “shall be transferred back to their homes as soon as hostilities in the area in question have ceased.”<sup>218</sup> Israel is rendering the right of return practically impossible in Gaza.<sup>219</sup> At least 500,000 displaced Palestinians have no home to return to.<sup>220</sup> Israel’s attacks have rendered over 70,000 residential units uninhabitable and damaged another 290,000 residences.<sup>221</sup> The degree of destruction in Gaza surpasses that of the razing of Syria’s Aleppo between 2012 and 2016, Ukraine’s

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<sup>210</sup> [Additional Protocol I](#), Art 52(1). See The Guardian, “[Israeli grid maps make life in Gaza ‘macabre game of Battleships’, say aid workers](#)”, 2 December 2023.

<sup>211</sup> Washington Post, “[Israel orders 1 million Gazans to evacuate; U.N. says that’s impossible](#)”, 13 October 2023; Amnesty International, “[Israel/OPT: Israel must immediately rescind its ‘impossible’ ultimatum over northern Gaza](#)”, 13 October 2023. See also OCHA “[Hostilities in the Gaza Strip and Israel Flash Update #100](#)”, 24 January 2024: *On 23 January, the Israeli military issued new evacuation orders via social media...to an estimated 425,000 internally displaced people seeking shelter in 24 schools and other institutions. The affected area includes Nasser Hospital (475 bed capacity), Al Amal Hospital (100 beds) and the Jordanian Hospital (50 beds), representing almost 20 per cent of the remaining partially functioning hospitals across the Gaza Strip.*

<sup>212</sup> Washington Post, “[Israel orders 1 million Gazans to evacuate; U.N. says that’s impossible](#)”, 13 October 2023; Amnesty International, “[Israel/OPT: Israel must immediately rescind its ‘impossible’ ultimatum over northern Gaza](#)”, 13 October 2023.

<sup>213</sup> Amnesty International, “[Israel/OPT: Israel must immediately rescind its ‘impossible’ ultimatum over northern Gaza](#)”, 13 October 2023.

<sup>214</sup> WHO, “[Evacuation orders by Israel to hospitals in northern Gaza are a death sentence for the sick and injured](#)”, 14 October 2023.

<sup>215</sup> ICRC, “[Israel and the occupied territories: Evacuation order of Gaza triggers catastrophic humanitarian consequences](#)”, 13 October 2023.

<sup>216</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.

<sup>217</sup> Al Jazeera, “[Tens of thousands forced to flee again as Israel expands Gaza offensive](#)”, 29 December 2023.

<sup>218</sup> [Fourth Geneva Convention](#), Art 49.

<sup>219</sup> Al Jazeera, “[‘The war is not over’: Israel blocks Palestinians’ return to northern Gaza](#)”, 24 November 2023.

<sup>220</sup> The Guardian, “[The numbers that reveal the extent of the destruction in Gaza](#)”, 8 January 2024; UN OCHA, “[Hostilities in the Gaza Strip and Israel | Flash Update #84](#)”, 5 January 2024.

<sup>221</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.

Mariupol or, proportionally, the Allied bombing of Germany in World War II.<sup>222</sup> Even in cases where a Palestinian family's home has not been destroyed or severely damaged, the lack of surrounding infrastructure likely renders the area uninhabitable. As noted earlier, the majority of hospitals in Gaza have been rendered inoperable.<sup>223</sup> Gaza's education system has also been severely compromised, with 90% of all school buildings having sustained significant damage and 100% of Gaza's 625,000 students having no access to education.<sup>224</sup>

vii) *Ethnic cleansing*

[62] As noted above, despite Israel's claims of displacing Palestinians for their own safety, it has offered them no security, as required by IHL. The question then arises whether the civilian population is being displaced for another reason. Ethnic cleansing has been defined as an attempt to change the demographic composition of a territory. This can be achieved through a combination of prohibited acts, including the deportation of the civilian population, attacks against civilians, murder, extermination and imprisonment.<sup>225</sup>

[63] As early as 14 October 2023, the UN Special Rapporteur on the situation of human rights in the OPT warned that Palestinians are in grave danger of mass ethnic cleansing.<sup>226</sup> A leaked Israeli government document, dated 13 October 2023, recommends that Gaza's 2.3 million people should be evacuated to Egypt's Sinai Peninsula. The document was prepared by an Israeli government research agency and, once revealed, Israel stated that it was a "concept paper" and not policy. Nonetheless, it has fueled fears that the government's overall objective is the ethnic cleansing of Palestinians.<sup>227</sup> Any forcible deportation, transfer or evacuation of Palestinians, to Egypt or elsewhere, would be a war crime.<sup>228</sup>

[64] Israeli human rights activist Ofer Neiman has warned that the forced displacement of Palestinians from the north to the south of the Gaza Strip is the "first step of ethnic cleansing", with the second step consisting of deporting Palestinians to the Sinai Peninsula in Egypt.<sup>229</sup> While calls for the ethnic cleansing of Palestinians in Gaza are getting louder within Israel,<sup>230</sup> the UN and human rights groups

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<sup>222</sup> Associated Press, "[Israel's military campaign in Gaza seen as among the most destructive in recent history, experts say](#)", 11 January 2024.

<sup>223</sup> The Guardian, "[The numbers that reveal the extent of the destruction in Gaza](#)", 8 January 2024; Human Rights Watch, "[Most of Gaza's Population Remains Displaced and in Harm's Way](#)", 20 December 2023.

<sup>224</sup> UN OCHA, [Hostilities in the Gaza Strip - Reported Impact](#), 26 January 2024.; Associated Press, "[Israel's military campaign in Gaza seen as among the most destructive in recent history, experts say](#)", 11 January 2024; Human Rights Watch, "[Most of Gaza's Population Remains Displaced and in Harm's Way](#)", 20 December 2023.

<sup>225</sup> [ICRC, Customary International Humanitarian Law](#), Rule 129; UN Office on Genocide Prevention and the Responsibility to Protect, "[Ethnic Cleansing](#)".

<sup>226</sup> UN OHCHR, "[UN expert warns of new instance of mass ethnic cleansing of Palestinians, calls for immediate ceasefire](#)", 14 October 2023.

<sup>227</sup> CBC, "[Leaked document fuels concern Israel plans to push Palestinians from Gaza into Egypt](#)", 1 November 2023; +972 Magazine, "[Expel all Palestinians from Gaza, recommends Israeli gov't ministry](#)", 30 October 2023.

<sup>228</sup> [Fourth Geneva Convention](#), Art 49; [Rome Statute](#), Art 8(2)(b)(viii).

<sup>229</sup> Anadolu (AA), "[Displacement of Gazans 1st step in 'ethnic cleansing': Israeli activist](#)", 11 December 2023.

<sup>230</sup> Washington Post, "[Israeli calls for Gaza's ethnic cleansing are only getting louder](#)", 5 January 2024; Al Jazeera, "[Biden under pressure to act amid new fears of 'ethnic cleansing' in Gaza](#)", 2 January 2024.

have warned that the war crime of forced displacement could lead to ethnic cleansing.<sup>231</sup> Even the United States has rejected any Israeli plans for the forced displacement of Palestinians.<sup>232</sup>

[65] Dr. Ghassan Abu-Sittah is an award-winning surgeon who worked in Gaza during the current hostilities, at both the al-Shifa and al-Ahli Baptist hospitals.<sup>233</sup> He is also a member of Scholars Against the War on Palestine.<sup>234</sup> He believes that the repeated forced displacement of Gazans is part of a larger ethnic cleansing plan:

In order to create a self-sustaining catastrophe, you dismantle those parts of life that make life manageable in a place like Gaza. And so you go after the water desalination plants, you dismantle the sewage system, you destroy over 200 schools, you carpet bomb the universities, and you go after the bakeries. And you then destroy the health system while wounding 40,000. And so once the war is over, there are epidemics, there is infectious disease, and people sit and watch their wounded loved ones die in front of their eyes so that they voluntarily leave Gaza. And the war continues, after the bullets and bombs stop, in fulfilling its objective: which is to empty Gaza of its inhabitants.<sup>235</sup>

[66] Dr. Abu-Sittah's analysis of what is happening in Gaza is supported by the statement from Israeli Heritage Minister Amichai Eliyahu that Israel "must find ways for Gazans that are more painful than death".<sup>236</sup> Eliyahu argued for breaking the morale of Palestinians and causing them pain, through destroying homes, breaking their national dream and displacement, so they would "be left with no option but to immigrate to other countries".<sup>237</sup>

[67] The conditions Israel has imposed on Gaza have had haunting effects even on those who were in the region for a short time. Canadian surgeon Yasser Khan worked in Gaza for seven days, tending to children whose eyes were shattered in bomb blasts. He saw "unprecedented" suffering and had to remove ten eyeballs during his time there, including from children as young as two.<sup>238</sup> Dr. Seema Jilani, an American doctor who has been to numerous conflict zones, worked in Gaza for two weeks with the International Rescue Committee. She said: "I've seen a lot, and I never compare conflicts, but that's got to be the most nightmarish thing I've ever seen. And the most, one of the most, inhumane and cruel things I'll ever see."<sup>239</sup> Deborah Harrington, an obstetrician who worked with the British charity Medical Aid for Palestinians said: "I can't get out of my mind – a child came in alive, literally

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<sup>231</sup> Reuters, "[UN aid chief calls anew for Gaza ceasefire, urges UN action to end war](#)", 12 January 2024; Al Haq *et al*, "[Urgent action is needed to stop the forced displacement and transfer of Palestinians within Gaza and prevent mass deportation to Egypt](#)", 27 November 2023.

<sup>232</sup> Sarajevo Times, "[Jordan and the US reject the forced Displacement of Gaza Residents](#)", 7 January 2024.

<sup>233</sup> Al Jazeera, "[A genocidal war': Surgeon says Israel strategically destroying Gaza health](#)", 20 November 2023.

<sup>234</sup> [Scholars Against the War on Palestine](#).

<sup>235</sup> Al Jazeera, Center Stage interview with Dr. Ghassan Abu Sitta, "[It's a war on children](#)" 16 December 2023 at 9:37.

<sup>236</sup> PressTV, "[Israeli minister calls for 'more painful ways than death' for Palestinians](#)", 6 January 2024.

<sup>237</sup> PressTV, "[Israeli minister calls for 'more painful ways than death' for Palestinians](#)", 6 January 2024.

<sup>238</sup> CBC, "[In a Gaza hospital, a Canadian surgeon tended to children whose eyes were shattered in bomb blasts](#)", 16 January 2024.

<sup>239</sup> NPR, "[This American is one of the few allowed into Gaza. This is the horror she saw](#)", 11 January 2024.

burnt to the bone [...]. Their face was just charcoal, and they were alive and talking. And we had no morphine. I won't be able to wipe that memory."<sup>240</sup>

[68] Acts of ethnic cleansing are often carried out in line with an intention to eradicate a particular ethnic group and create an ethnically homogenous state.<sup>241</sup> In that respect, ethnic cleansing can be a stepping stone to committing genocide.

viii) *Genocide*

[69] There is a substantial risk that genocide is currently taking place against the Palestinian population in Gaza that triggers Canada's obligations to prevent genocide under the Genocide Convention. On 15 October 2023, experts and more than 800 international law and genocide scholars characterized Israel's military assault as giving rise to "a serious risk of genocide being committed in the Gaza Strip".<sup>242</sup> Joining the growing consensus on this issue is Canadian academic William Schabas, widely recognized as one of the world's leading legal authorities on genocide, who has since provided a legal opinion on this question in the context of litigation in the United States alleging that US officials have breached their duty to act to prevent genocide.<sup>243</sup> Hundreds of civil society organizations and several states have characterized Israel's assault on Gaza as giving rise to a serious risk of, or amounting to an unfolding, genocide.<sup>244</sup> South Africa has filed an application instituting proceedings against Israel before the ICJ alleging that Israel is engaging in genocidal acts in Gaza.

[70] In a near-unanimous decision on 26 January 2024, the ICJ found that the facts and circumstances laid out by South Africa are sufficient to conclude that genocidal acts being carried out against the Palestinian population of Gaza are plausible.<sup>245</sup> In its Order, the Court relied on statements of Israeli officials that could plausibly be read as implying the specific requisite intent to commit genocide.<sup>246</sup>

[71] Acts that may qualify as genocide, when performed with the requisite special intent, include killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or

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<sup>240</sup> BBC, "['Deep concern' for patients and staff at Gaza's al-Aqsa hospital](#)", 11 January 2024.

<sup>241</sup> See Global Studies Quarterly, "[In the Shadow of Genocide: Ethnicity, Ethnic Cleansing, and International Order](#)", Volume 1, Issue 4, December 2021; The Wiener Holocaust Library, "[The Stages of Genocide](#)".

<sup>242</sup> Third World Approaches to International Law (TWAIL) Review, "[Public Statement: Scholars Warn of Potential Genocide in Gaza](#)", 15 October 2023.

<sup>243</sup> *Defense for Children International – Palestine et al v. Biden et al.*, US District Court for N.D. Cal., Case No. 23-cv-05829, [Declaration of William A. Schabas](#), 9 November 2023.

<sup>244</sup> *Opinio Juris*, "[Public Statement: Scholars Warn of Potential Genocide in Gaza](#)", 15 October 2023; International Commission of Jurists, "[Gaza/Palestine: States have a Duty to Prevent Genocide](#)", 17 November 2023; International Centre of Justice for Palestinians, "[Foreign Office notified of 'serious risk of genocide' in Gaza by International Centre of Justice for Palestinians](#)", 22 November, 2023; Euro-Med Monitor, "[Euro-Med Monitor to UN: Recognise Israel's actions in Gaza as genocide](#)", 22 November 2023; "[Statement of Scholars in Holocaust and Genocide Studies on Mass Violence in Israel and Palestine since 7 October](#)", 9 December 2023.

<sup>245</sup> [Provisional Measures Order](#) at paras 54-55.

<sup>246</sup> [Provisional Measures Order](#) at paras 51-53.



in part, and imposing measures intended to prevent births within the group.<sup>247</sup> In its ICJ application,<sup>248</sup> South Africa relies on several of the reports cited throughout this Schedule to claim that Israel is:

(1) **killing Palestinians in Gaza**, including a large proportion of women and children — estimated to account for around 70 per cent of the more than 21,110 fatalities — some of whom appear to have been summarily executed;<sup>249</sup>

(2) **causing serious mental and bodily harm to Palestinians in Gaza**, including through maiming, psychological trauma, and inhuman and degrading treatment;<sup>250</sup>

(3) **causing the forced evacuation and displacement of around 85 per cent of Palestinians in Gaza** — including children, the elderly and infirm, and the sick and wounded — as well as causing the large scale destruction of Palestinian homes, villages, refugee camps, towns and entire areas in Gaza, precluding the return of a significant proportion of the Palestinian people to their homes;<sup>251</sup>

(4) **causing widespread hunger, dehydration and starvation to besieged Palestinians in Gaza**, through the impeding of sufficient humanitarian assistance, the cutting off of sufficient water, food, fuel and electricity, and the destruction of bakeries, mills, agricultural lands and other methods of production and sustenance;<sup>252</sup>

(5) **failing to provide and restricting the provision of adequate shelter, clothes, hygiene or sanitation to Palestinians in Gaza**, including the 1.9 million internally displaced people, compelled by Israel's actions to live in dangerous situations of squalor, alongside the routine targeting and destruction of places of shelter and the killing and wounding of those sheltering, including women, children, the disabled and the elderly;<sup>253</sup>

(6) **failing to provide for or to ensure the provision for the medical needs of Palestinians in Gaza**, including those medical needs created by other genocidal acts causing serious bodily harm, including through directly attacking Palestinian hospitals, ambulances and other healthcare facilities in Gaza, killing Palestinian doctors, medics and nurses, including the most qualified medics in Gaza, and destroying and disabling Gaza's medical system;<sup>254</sup>

(7) **destroying Palestinian life in Gaza**, through the destruction of Gaza's universities, schools, courts, public buildings, public records, stores, libraries, churches, mosques, roads, infrastructure, utilities and other facilities necessary to the sustained life of Palestinians in Gaza as a group, alongside the killing of entire family groups — erasing entire oral histories in Gaza — and the killing of prominent and distinguished members of society;<sup>255</sup>

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<sup>247</sup> [Genocide Convention](#), Art 2.

<sup>248</sup> [South African Application](#) at para 114.

<sup>249</sup> [South African Application](#) at paras 45-50.

<sup>250</sup> [South African Application](#) at paras 51-54.

<sup>251</sup> [South African Application](#) at paras 55-60.

<sup>252</sup> [South African Application](#) at paras 61-70.

<sup>253</sup> [South African Application](#) at paras 71-75.

<sup>254</sup> [South African Application](#) at paras 76-87.

<sup>255</sup> [South African Application](#) at paras 88-94.

(8) **Imposing measures intended to prevent Palestinian births in Gaza**, through reproductive violence inflicted on Palestinian women, newborn babies, infants, and children.<sup>256</sup>

[72] There is also a growing plethora of statements by Israeli state officials, some of which were relied on by the ICJ in its Provisional Measures Order, demonstrating a specific intent to destroy Palestinians in Gaza as a part of the broader Palestinian national, racial and ethnical group.<sup>257</sup> As South Africa has indicated, “those statements of intent -- when combined with the level of killing, maiming, displacement and destruction on the ground, together with the siege -- evidence an unfolding and continuing genocide.”<sup>258</sup> Various members of the Knesset, including Prime Minister Netanyahu, and Israeli military leaders have made statements framing the hostilities as between humans and animals or good and evil.<sup>259</sup> Political and military leaders, and members of the IDF have also violated the distinction between combatants and civilians in both words and deeds.<sup>260</sup> Finally, some Israeli leaders

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<sup>256</sup> [South African Application](#) at paras 95-100.

<sup>257</sup> [Provisional Measures Order](#) at paras 51-53.

<sup>258</sup> [South African Application](#) at para 101.

<sup>259</sup> “Now we all have one common goal - erasing the Gaza Strip from the face of the earth” [Nissim Vaturi](#), 7 October 2023; “We will change the face of reality in the Gaza Strip decades from now” [Israeli Defence Minister](#), 7 October 2023; “Right now, one goal: Nakba! A Nakba that will overshadow the Nakba of ‘48. Nakba in Gaza and Nakba to anyone who dares to join!” [Ariel Kallner](#), 8 October 2023; “Shooting powerful missiles without limit. Not flattening a neighbourhood. Crushing and flattening Gaza ... with penetrating bombs. Without mercy! Without mercy!” [Revital Gotliv](#), 9 October 2023; “ Hamas has become ISIS and the residents of Gaza are celebrating. Human animals are treated accordingly, you wanted hell - and you will get hell” [Major General Ghassan Alian, Coordinator of Government Activities in the Territories](#), 10 October 2023; [Prime Minister Benjamin Netanyahu](#) said: “This is a struggle between the children of light and the children of darkness, between humanity and the law of the jungle” 16 October 2023; On another occasion, he referenced scripture, stating “You must remember what Amalek has done to you, says our Holy Bible” See NPR, “[Netanyahu's references to violent biblical passages raise alarm among critics](#)”, 7 November 2023; [Tali Gottlieb](#) said: “Without hunger and thirst among the Gazan population, we will not be able to recruit collaborators, we will not be able to recruit intelligence, we will not be able to bribe people, with food, drink, medicine, in order to obtain intelligence, and we know that finding the abductees is a supreme and super important goal alongside the goals of fighting”, 23 October 2023; [Moshe Saada](#) said: “As it is clear to everyone today, that the right wing is right in the matter of politics, in the matter of Palestinians [...] you go everywhere and they tell you to destroy them [...] it is clear that you have to destroy all the Gazans”, 3 January 2024; Muhammad Shehada, the [Israeli Communications Minister](#) said: “We certainly need to encourage immigration, so that there is as little pressure as possible inside the Gaza Strip from people who yes, at the moment they’re uninvolved but they’re not exactly lovers of Israel and they educate their children to [embrace] terror. And we’d like to see - and we’ve talked about this in government meetings. [...] We should encourage voluntary migration, and we should compel them until they say they want it.” When asked how such encouragement happens, the Minister answered “[t]he war does what it does”, 10 January 2024.

<sup>260</sup> The [Israeli President](#) has stated 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. [...] and we will fight until we break their backbone.”, 13 October 2023. On October 15, 2023, the [President of Israel](#) also stated “we will uproot evil so that there will be good for the entire region and the world.” The Israeli President is one of many Israelis to have [handwritten ‘messages’ on bombs to be dropped on Gaza](#). The [Israeli Heritage Minister](#) commented that “there is no such thing as uninvolved civilians in Gaza” and that the “northern Strip has no right to exist”, adding that anyone waving a Palestinian or

are explicitly advocating for denying Palestinian civilians access to essential resources<sup>261</sup> and calling for the ethnic cleansing of all Palestinians from Gaza.<sup>262</sup> Such statements, considered with the evidence

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Hamas flag “*shouldn’t continue living on the face of the earth.*”, 5 November 2023. The [Heritage Minister](#) also posted online that “*North Gaza is more beautiful than ever. Blowing up everything is amazing. When finished, we will hand over the lands of Gaza to soldiers & settlers who lived in Gush Katif*”; “*I don’t care about Gaza. I literally don’t care. For all I care they can go out and swim in the sea. I want to see dead bodies of terrorists around Gaza*”, [Israeli Women’s Advancement Minister](#), 19 December 2023. Similarly, former Israeli military officer at Israel’s elite intelligence Unit 8200 [Eliyahu Yossian stated that](#) “*there is no population in Gaza, there are 2.5 million terrorists - there is no meaning to give them warning missiles.*”, 30 October 2023; Maj. Gen. (ret.) Giora Eiland, former head of the Israeli National Security Council, Strategic Planning Branch of the IDF, and adviser to the Defence Minister, describing the Israeli order to cut off water and electricity to Gaza, [wrote](#): “*This is what Israel has begun to do — we cut the supply of energy, water and diesel to the Strip [...] But it’s not enough. In order to make the siege effective, we have to prevent others from giving assistance to Gaza [...] The people should be told that they have two choices; to stay and to starve, or to leave.*” Eiland has repeatedly asserted the benefits for Israel of the creation of a humanitarian crisis in Gaza, [stating that](#) “*Israel has no interest in the Gaza Strip being rehabilitated and this is an important point that needs to be made clear to the Americans*”. He has [indicated that water should be targeted](#). “[*Water*] comes from wells with salt water unfit for consumption. They have water treatment plants, Israel should hit those plants. When the entire world says we have gone insane and this is a humanitarian disaster — we will say, it’s not an end, it’s a means.”, October-November 2023; an Israeli military spokesperson commented: “*the emphasis is on damage and not on accuracy.*”, 10 October 2023. Israeli army reservist Ezra Yachin, 95, reportedly called up for reserve duty [to “boost morale”](#) amongst Israeli troops, was [broadcast on social media stating](#): “*Be triumphant and finish them off and don’t leave anyone behind. Erase the memory of them. Erase them, their families, mothers and children. These animals can no longer live[...] Every Jew with a weapon should go out and kill them. If you have an Arab neighbour, don’t wait, go to his home and shoot him [...] We want to invade, not like before, we want to enter and destroy what’s in front of us, and destroy houses, then destroy the one after it. With all of our forces, complete destruction, enter and destroy. As you can see, we will witness things we’ve never dreamed of. Let them drop bombs on them and erase them.*” 8 October 2023; “*We are not taking any chances,*” said Amir Avivi, former Deputy commander of the Gaza Division of Israel’s military. “*When our soldiers are manoeuvring we are doing this with massive artillery, with 50 aeroplanes overhead destroying anything that moves.*”, 29 October 2023; See FT, “[The tactics behind Israel’s ground offensive](#)”. Israeli military officer tells troops “*The happiest month of my life as long as I live over 40 years... the land is ours. The whole country! All of it! Including Gaza! Including Lebanon! The whole promised land!*”. See [video](#); Israeli soldiers in uniform [filmed dancing and singing](#): “*May their village burn, May Gaza be erased*”, 5 December 2023; and, two days later, on a separate occasion inside Gaza, [dancing, singing and chanting](#), “*we know our motto: there are no uninvolved civilians*” and “*to wipe off the seed of Amalek*”, 7 December 2023; [Lieutenant colonel in the Israeli reserves](#) calls for the killing of 2 million people in Gaza, calling them “cockroaches”, 10 December 2023; [Oren Schindler, IDF Lieutenant Colonel stated](#) “...when they look at Shujaiya, they’ll see there’s nothing... only sand... In my opinion they will not be able to return here for at least 100 years” 16-17 January 2024.

<sup>261</sup> “*We are imposing a complete siege on [Gaza]. No electricity, no food, no water, no fuel – everything is closed. We are fighting human animals, and we act accordingly*”, [Israeli Defence Minister](#), 9 October 2023. He also informed troops on the Gaza border that he had “[released all the restraints](#)”, stating 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.” He further announced that Israel was moving to “a full-scale response” and that he had “removed every restriction” on Israeli forces. “*Humanitarian aid to Gaza? No electrical switch will be turned on, no water hydrant will be opened and no fuel truck will enter until the Israeli abductees are returned home*”, [Israeli Energy Minister](#), 12 October 2023; “*the only thing that needs to enter Gaza are hundreds of tons of explosives from the Air Force, not an ounce of humanitarian aid*”, [Israeli Minister of National Security](#), 17 October 2023. “[*w*]e need to deal a blow that hasn’t been seen in 50 years and take down Gaza”, [Israel Minister of Finance](#), 8 October 2023.

<sup>262</sup> “*Right now, one goal: Nakba! A Nakba that will overshadow the Nakba of 48*”, [Ariel Kallner](#), 7 October 2023. On 11 November 2023, the Agriculture Minister and member of the Israeli security cabinet stated that: “*We are now rolling out the Gaza Nakba*”, Haaretz, “[We’re rolling out Nakba 2023, Israeli Minister says on northern Gaza Strip evacuation](#)”, 12 November 2023. When a leaked document from the Israeli Intelligence Ministry recommended the



of mass violations of IHL and IHRL, give rise, at the very least, to a substantial risk that genocidal intent is present.

[73] As Canada has recognized in its joint declaration of intervention in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, genocidal intent can also be inferred using circumstantial evidence; in other words, it is the facts on the ground, including the nature and extent of the attacks, in addition to these genocidal statements, that give rise to the inference of the specific requisite intent.<sup>263</sup> The intent is therefore also properly inferred from the nature and conduct of Israel's military operation in Gaza, including targeting civilians, failing to distinguish military targets and failing to provide or ensure essential food, water, medicine, fuel, shelter and other humanitarian assistance for the besieged and blockaded Palestinian people.<sup>264</sup>

[74] After finding that South Africa's claim that Israel is failing to prevent genocide in Gaza is plausible, the ICJ made several provisional measures orders. Among them, the ICJ ordered Israel to ensure that its military does not commit any genocidal acts and to implement immediate and effective measures to enable the provision of basic services and humanitarian assistance.<sup>265</sup> The ICJ also recalled that under the Convention, all States Parties, which includes Canada, must "ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention."<sup>266</sup>

[75] The ICJ's findings have profound implications for the export of military goods from Canada having Israel as their ultimate destination. With this unequivocal indication of a risk of genocide, Canada's potential complicity by supplying military goods and technology to Israel could give rise to violations of the Genocide Convention.

ix) *Serious Violence Against Women and Children*

[76] Under EIPA section 7.3(1)(b)(v), you are further required to consider whether the military goods or technology specified in the application for the permit could be used to commit or facilitate serious acts of gender-based violence or violence against women and children.

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forcible and permanent transfer of the Gaza Strip's 2.2 million Palestinian residents to Egypt's Sinai Peninsula, the Former Head of the Israeli National Security Council [wrote](#) in an opinion piece: "*Israel needs to create a humanitarian crisis in Gaza, compelling tens of thousands or even hundreds of thousands to seek refuge in Egypt or the Gulf... Israel needs to demand [that, first] The entire population of Gaza will either move to Egypt or move to the Gulf*"; 12 October 2023; The [Heritage Minister has said](#) that Palestinians "*can go to Ireland or deserts, the monsters in Gaza should find a solution by themselves*", 5 November 2023.

<sup>263</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, ICJ, [Joint declaration of intervention of Canada, Denmark, France, Germany, the Netherlands and the United Kingdom](#), 15 November 2023 at para 49.

<sup>264</sup> [South African Application](#) at para 4.

<sup>265</sup> [Provisional Measures Order](#) at para 86.

<sup>266</sup> [Provisional Measures Order](#) at para 33.

[77] Israel's indiscriminate bombardment of Gaza has caused and continues to cause disproportionate harm to women and children.<sup>267</sup> UN Secretary-General Guterres has called Gaza a "graveyard for children"<sup>268</sup> and UNICEF Spokesperson James Elder has stated that Gaza "is the most dangerous place in the world to be a child."<sup>269</sup> Women and children make up the majority of the casualties in Gaza, accounting for two-thirds of the dead and injured.<sup>270</sup> As indicated by South Africa in its application to the ICJ, two mothers are estimated to be killed every hour in Gaza.<sup>271</sup> Over 10,000 Palestinian children have been killed in Gaza to date<sup>272</sup> and over 115 Palestinian children in Gaza are killed every day.<sup>273</sup>

[78] Massive levels of displacement, collapsing water and electricity supplies as well as critically restricted access to food and medicines also render women and children at heightened vulnerability to disease and death.<sup>274</sup> Cases of diarrhea in children under five years of age have increased 2,000% since hostilities began, a strong indication that child health in the Gaza Strip is fast deteriorating, with 90% of children under two years suffering from "severe food poverty".<sup>275</sup> According to the WHO, "[m]alnutrition increases the risk of children dying from illnesses like diarrhoea, pneumonia and measles, especially in a setting where they lack access to life-saving health services. Even if the child survives, wasting can have life-long impacts as it stunts growth and impairs cognitive development..."<sup>276</sup>

[79] As of 21 January 2024, there were an estimated 52,000 pregnant women in Gaza, with more than 180 giving birth every day.<sup>277</sup> Many of them were likely to experience pregnancy-related complications and do not have access to adequate medical care.<sup>278</sup> Israel is blocking the delivery of life-saving aid,

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<sup>267</sup> UN OHCHR, "[Women bearing the brunt of Israel-Gaza conflict: UN expert](#)", 20 November 2023

<sup>268</sup> UN Türkiye, "[Guterres: 'Gaza is becoming a graveyard for children'](#)", 7 November 2023.

<sup>269</sup> UNICEF, "[UNICEF Geneva Palais briefing note - Gaza: The world's most dangerous place to be a child](#)", 19 December 2023.

<sup>270</sup> UN, "[Two Thirds of Gaza War Dead Are Women and Children, Briefers Say, as Security Council Debates Their Plight](#)", 22 November 2023; UN Women, "[Two mothers killed each hour in Gaza conflict: UN Women](#)", 19 January 2024.

<sup>271</sup> [South African Application](#) at para 95; UN Women, "[Two mothers killed each hour in Gaza conflict: UN Women](#)", 19 January 2024.

<sup>272</sup> Save the Children, "[Gaza: 10,000 Children killed in nearly 100 days of war](#)", 11 January 2024.

<sup>273</sup> UN OCHA, Hostilities in the Gaza Strip and Israel - reported impact | Day 73 (19 December 2023)

<sup>274</sup> World Health Organization, "[Women and newborns bearing the brunt of the conflict in Gaza, UN agencies warn](#)" 3 November 2023; The Conversation, "[Gaza's next tragedy: Disease risk spreads amid overcrowded shelters, dirty water and breakdown of basic sanitation](#)", 21 November 2023.

<sup>275</sup> UNICEF, "[Intensifying conflict, malnutrition and disease in the Gaza Strip creates a deadly cycle that threatens over 1.1 million children](#)", 5 January 2024; see also [South African Application](#) at paras 68-75.

<sup>276</sup> WHO, "[Lethal combination of hunger and disease to lead to more deaths in Gaza](#)", 21 December 2023; For an explanation on the spread of disease in Gaza, see Krystal Moussally, "[Antimicrobial resistance in the ongoing Gaza war: a silent threat](#)", 402 (2023) *The Lancet* 10416.

<sup>277</sup> New York Times, "[Gaza's women are bearing brunt of war's toll, aid groups say](#)", 21 January 2024; WHO, "[Women and newborns bearing the brunt of the conflict in Gaza, UN agencies warn](#)", 3 November 2023.

<sup>278</sup> WHO, "[Women and newborns bearing the brunt of the conflict in Gaza, UN agencies warn](#)", 3 November 2023; see also [South African Application](#) at para 67.

including essential medical kits for delivering babies.<sup>279</sup> Pregnant women are also being subjected to caesareans without anaesthetics<sup>280</sup> and an estimated 130 premature babies are dependent on incubators for survival at any given time.<sup>281</sup> Miscarriages in Gaza have increased by 300% and women are also facing alarming rates of severe infections due to Israel's blockade of supplies and water.<sup>282</sup>

[80] Palestinian mothers and children have also been killed in maternity and children's hospitals by Israeli bombardments.<sup>283</sup> As stated by South Africa, "[s]ome have been victims of Israeli attacks multiple times over, like 12-year old Dina Abu Mohsen — interviewed by UNICEF after losing her parents, two siblings and her leg in an Israeli strike on her home — she was then killed herself when the Israeli army shelled the hospital where she was being treated."<sup>284</sup> An increasing number of Palestinian babies in Gaza are reportedly dying from preventable causes brought on by the blockade and humanitarian situation,<sup>285</sup> including as a direct result of Israel cutting off electricity and fuel to hospitals,<sup>286</sup> and from forced evacuations.<sup>287</sup>

[81] The UN Special Rapporteur on violence against women and girls, its causes and consequences, warned that the reproductive violence inflicted by Israel on Palestinian women, newborn babies, infants and children could constitute violations of several international human rights treaties, including the right to life under Article 6 of the ICCPR.<sup>288</sup> The Special Rapporteur "expressed alarm at the genocidal and dehumanising rhetoric about the Palestinian people, including women and children, by top Israeli Government officials and public figures calling them 'children of darkness'".<sup>289</sup> South Africa's oral arguments before the ICJ on 11 January 2024 echoed these claims, stating that the acts committed by

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<sup>279</sup> Associated Press News, "[Cumbersome process and 'arbitrary' Israeli inspections slow aid delivery into Gaza, US senators say](#)", 6 January 2024. Of these 180 women, the WHO warns that 15 per cent are likely to experience pregnancy or birth-related complications and need additional medical care. WHO, "[Women and newborns bearing the brunt of the conflict in Gaza, UN agencies warn](#)", 3 November 2023.

<sup>280</sup> UN, "[Interview: 5,500 women in Gaza set to give birth 'in race against death'](#)", 7 November 2023.

<sup>281</sup> WHO, "[oPt Emergency Situation Update Issue 16](#)", 7 December 2023.

<sup>282</sup> Jezebel, "[Miscarriages in Gaza Have Increased 300% Under Israeli Bombing](#)", 17 January 2024.

<sup>283</sup> UN OCHA, "[Hostilities in the Gaza Strip and Israel | Flash Update #55](#)", 30 November 2023 and [#66](#)", 11 December 2023.

<sup>284</sup> [South African Application](#) at para 80, citing UNICEF on X, "[Yesterday, we shared Dina's story. We're devastated to learn that she was killed at Nasser Hospital on Sunday, 17 December 2023. The killing of children must stop. Now](#)", 18 December, 2023.

<sup>285</sup> Oxfam, "[Babies dying from preventable causes in besieged Gaza](#)", 23 November 2023.

<sup>286</sup> Including five premature babies and 40 Intensive Care Unit and kidney patients at Al Shifa hospital. UN OCHA, "[Hostilities in the Gaza Strip and Israel | Flash Update #42](#)", 17 November 2023, and [#44](#)", 19 November 2023.

<sup>287</sup> Including at least four babies in Al Nasr hospital, who were found decomposing weeks later in their hospital beds. UN OCHA, "[Hostilities in the Gaza Strip and Israel | Flash Update #55](#)", 30 November 2023; Human Rights Watch, "[Birth and Death Intertwined in Gaza Strip: Maternity Care Facilities Gravely Affected by Strikes, Blockade](#)", 1 December 2023.

<sup>288</sup> UN OHCHR, "[Women bearing the brunt of Israel-Gaza conflict: UN expert](#)", 20 November 2023.

<sup>289</sup> [South African Application](#) at para 108, citing UN OHCHR, "[Women bearing the brunt of Israel-Gaza conflict: UN expert](#)", 20 November 2023.

Israel fall under the fourth category of genocidal acts in Article II(d) of the Genocide Convention: “imposing measures intended to prevent births within a group”.<sup>290</sup>

[82] Israel’s actions since 7 October 2023 have caused an unprecedented level of violence against women and children. There is clearly a substantial risk that any Canadian military goods or technology transferred to Israel could be used to commit or facilitate this violence.

***(C) Israel’s Other Violations of International Law in the OPT since 7 October 2023***

[83] The flagrant violations of IHRL, IHL and ICL committed by Israel since 7 October 2023 are not restricted to Gaza. While global attention has been focused on the unprecedented humanitarian disaster unfolding there, Israeli authorities have escalated the use of violence and repression in the occupied West Bank, including East Jerusalem, which had already reached peak levels in 2023 prior to the 7 October Hamas attack.<sup>291</sup> On 18 September 2023, Save the Children declared 2023 the deadliest year for Palestinian children in the West Bank since 2005, with an average of more than one Palestinian child killed per week.<sup>292</sup>

[84] Since 7 October 2023, military violence against Palestinians in the West Bank has accelerated, including the use of disproportionate and unnecessary force by Israeli security forces, and the exponential increase in attacks by armed settlers. In addition, Israel has imposed “severe and systematic restrictions on the movement of Palestinians”.<sup>293</sup> It has added further roadblocks, closed off main roads to Palestinians and erected flying checkpoints. These measures are arbitrary and discriminatory in nature, have resulted in Palestinians’ inability to access basic services, and have contributed to food shortages and increased prices.<sup>294</sup> B’Tselem has documented the fact that, since the war in Gaza began, Israel has ramped up its efforts to drive Palestinian communities and single-family farms out of their homes and land, cynically exploiting the war to promote its political agenda of taking over more land in the occupied West Bank.<sup>295</sup>

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<sup>290</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, [Transcript, Hearing of 11 January 2024](#), p. 29 at paras 33-35.

<sup>291</sup> Between January 1 and October 6, 2023, Israeli security forces killed more Palestinians in the West Bank – 192, including 40 children – than in any other year since 2005, when the United Nations began systematically recording fatalities. Human Rights Watch, “[While a Fire Rages in Gaza, the West Bank Smolders](#)”, 22 November, 2023.

<sup>292</sup> Save the Children, “[2023 marks deadliest year on record for children in the occupied West Bank | Save the Children International](#)”, 18 September 2023.

<sup>293</sup> OHCHR “[UN report: Türk warns of rapidly deteriorating human rights situation in the West Bank, calls for end to violence](#)”, 28 December 2023.

<sup>294</sup> UN OHCHR, “[Flash report on the human rights situation in the occupied West Bank including East Jerusalem, 7 October - 20 November 2023](#)”, 27 December, 2023.

<sup>295</sup> B’Tselem, “[Under cover of Gaza war, settlers working to fulfill state goal of Judaizing Area C](#)”, 19 October 2023.

i) *Extrajudicial Killings and Attacks by Settlers*

- [85] Between 7 October and 26 January 2024, a total of 361 Palestinians including 92 children, have been killed in the occupied West Bank including East Jerusalem.<sup>296</sup> Of these, 351 were killed by Israeli forces, 8 by Israeli settlers, including 1 child, and two by either soldiers or settlers.<sup>297</sup> In the same time period, 4,358 Palestinians including at least 657 children were injured: 4,223 by the security forces, 114 by settlers, and 21 by either soldiers or settlers. Approximately 33% of these injuries were caused by live ammunition, as compared with only 9% in the first nine months of 2023.<sup>298</sup>
- [86] B'Tselem has warned that the frequency and intensity of state-backed settler violence against Palestinians has risen since the war in Gaza began, with soldiers and police officers fully supporting assailants and often participating in the attacks. Under the cover of war, it notes, settlers are carrying out such assaults virtually unchecked, with no one trying to stop them before, during or after the fact.<sup>299</sup> The head of the Shin Bet, Israel's internal security service, has warned that settler violence could contribute to the West Bank "erupting" and hurting Israel's war in Gaza. The United States has repeatedly urged Israel to rein in settler violence in the West Bank, lest it become another front in this war.<sup>300</sup>
- [87] Between 7 October and 26 January 2024, the UN has recorded 460 Israeli settler attacks against Palestinians resulting in 45 Palestinian casualties, 359 incidents of damage to Palestinian property and 56 incidents of both casualties and damage to property. Firearms were used in one third of these attacks, including shootings and threats of shootings, and in nearly half, Israeli forces were either accompanying or were reported to have been seen supporting the attackers.<sup>301</sup> With Israel's National Security Minister recently announcing the purchase of as many as 24,000 US-made M-16 assault rifles to arm settlers, we can expect settler violence in the West Bank will only intensify under cover of the war on Gaza.<sup>302</sup>
- [88] In addition to attacks against Palestinians, the WHO has documented 319 "health attacks" in the West Bank and Jerusalem between 7 October 2023 and 11 January 2024, which include attacks on health

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<sup>296</sup> UN OCHA, "[Hostilities in the Gaza Strip and Israel Flash Update #103](#)", 26 January 2024.

<sup>297</sup> UN OHCHR, "[Flash report on the human rights situation in the occupied West Bank including East Jerusalem, 7 October - 20 November 2023](#)", 27 December, 2023; UN OCHA, "[Hostilities in the Gaza Strip and Israel Flash Update #103](#)", 26 January 2024.

<sup>298</sup> UN OCHA, "[Hostilities in the Gaza Strip and Israel Flash Update #103](#)", 26 January 2024.

<sup>299</sup> B'Tselem, "[Under cover of Gaza war, settlers working to fulfill state goal of Judaizing Area C](#)", 19 October 2023; as of 27 December 2023, only 2 settlers were under arrest (administrative detention) for involvement in attacks. UN OHCHR, "[Flash report on the human rights situation in the occupied West Bank including East Jerusalem, 7 October - 20 November 2023](#)", 27 December, 2023.

<sup>300</sup> The Intercept, "[Different tactics, same war: the perils of treating Israel's West Bank offensive as separate from Gaza](#)", 17 November 2023.

<sup>301</sup> UN OCHA, "[Hostilities in the Gaza Strip and Israel Flash Update #103](#)", 26 January 2024.

<sup>302</sup> The Jerusalem Post, "[As Israel fights in Gaza, settlers wage war on West Bank Palestinians](#)", 9 November 2023; CNN, "[Israelis are arming up in the aftermath of Hamas' attack. Some are worried it is playing to the far right's vision for the country](#)", 14 November 2023.

facilities (35), mobile clinics (10) and ambulances (216).<sup>303</sup> These attacks have included detaining health staff and ambulances and preventing ambulances from accessing the wounded.<sup>304</sup>

[89] Israeli forces have also carried out military raids and airstrikes on refugee camps in the West Bank. On 9 November 2023, Jenin refugee camp was bombed for the second time with heavy artillery and airstrikes, killing at least 14 Palestinians.<sup>305</sup> The frequency of incursions into the camp has also increased dramatically since 7 October 2023, from every two to three weeks to every two or three days, and they are often accompanied by bulldozers that destroy roads and infrastructure.<sup>306</sup> On 26 December 2023, multiple raids and bombings on the Nur Shams refugee camp in Tulkarem killed six Palestinians who bled to death because ambulances could not reach them promptly.<sup>307</sup>

*ii) Arbitrary Detention*

[90] Furthermore, as of January 2024, the total number of Palestinian administrative detainees held without trial has soared to 3,291, not including 661 “unlawful combatants” who are detained according to the Israeli military.<sup>308</sup> These figures do not include “security” prisoners and “security” detainees, which make up an additional 2,114 and 2,534 Palestinians, respectively. Palestinians are routinely detained for hurling stones at Israeli forces or for participating in demonstrations and marches. The president of the Palestinian Prisoners Society notes that “[o]n a daily basis, Palestinian cities, villages and camps are raided, during which dozens are arrested. The raids include sabotage operations, house searches, and detainees being assaulted during the arrest operations and [Israeli security forces] transporting them to investigation and detention centers”.<sup>309</sup> There are widespread reports of abuse of detainees by Israeli forces, and several Palestinian detainees have died in Israeli custody since 7 October 2023.<sup>310</sup>

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<sup>303</sup> WHO, “[oPt Emergency Situation Update Issue 20](#)”, 11 January 2024.

<sup>304</sup> [South African Application](#) at para 38; WHO, [oPt Emergency Situation Update Issue 16](#), 7 December 2023.

<sup>305</sup> [South African Application](#) at para 38; UN OHCHR, “[Gaza: UN experts call on international community to prevent genocide against the Palestinian people](#)”, 16 November 2023.

<sup>306</sup> CBC, “[Israel’s military has turned its sights on Jenin refugee camp following deadly Hamas attacks](#)”, 16 December 2023.

<sup>307</sup> Al Jazeera, “[Bombed, then stabbed: West Bank doctors recall horrors of refugee camp raid](#)”, 29 December 2023.

<sup>308</sup> As of November 2023, the data also includes Palestinians who are residents of the Gaza Strip and are held pursuant to Israel’s Incarceration of Unlawful Combatants Law, 5762-2002. Unlawful combatant – a category which does not exist in international law – is defined in Israeli law as “a person who has participated either directly or indirectly in hostile acts against the State of Israel or is a member of a force perpetrating hostile acts against the State of Israel, where the conditions prescribed in Article 4 of the Third Geneva Convention of 12th August 1949 with respect to prisoners-of-war and granting prisoner-of-war status in international humanitarian law, do not apply to them”. HaMoked (Centre for the Defence of the Individual), “[8,600 “Security” Inmates Are Held in Prisons inside Israel](#)”, 30 November 2023.

<sup>309</sup> Al Jazeera, “[Occupied West Bank faces growing Israeli aggression amid Gaza war](#)”, 8 December 2023.

<sup>310</sup> Al Jazeera, “[“He threw up blood”: Palestinian detainees face abuse in Israeli custody](#)”, 1 November 2023; UN OCHA, “[OPT: Dramatic rise in detention of Palestinians across occupied West Bank](#)”, 1 December 2023.



iii) *Forced Displacement in the West Bank*

[91] Since 7 October 2023 and as of 26 January 2024, at least 198 Palestinian households from at least 15 herding/Bedouin communities, comprising 1,208 people including 586 children, have been displaced amid settler violence and access restrictions.<sup>311</sup> In addition, a total of 1,343 Palestinians including 602 children have been displaced due to:

- Demolition of their homes in East Jerusalem and Area C of the West Bank due to lack of Israeli-issued building permits, which are almost impossible to obtain. There has been a 27% increase in the monthly average number of displacements per month since 7 October, compared with the first nine months of 2023;<sup>312</sup>
- Demolition on punitive grounds. The number of homes punitively demolished since October 7, 2023 is the same as the total number of homes demolished in the first nine months of 2023.<sup>313</sup> Punitive home demolitions are a form of collective punishment and, as such, illegal under international law.<sup>314</sup> The practice has even led some to call for a newly defined crime against humanity of “domicide”, signifying the deliberate and systematic destruction of homes and basic infrastructure;<sup>315</sup>
- Destruction of residential structures during other operations carried out by Israeli forces across the West Bank. About 95% of those displaced in this category lived in Jenin, Nur Shams and Tulkarm Refugee Camps, which represents 82% of all displacement due to the destruction of homes during Israeli military operations since January 2023.<sup>316</sup>

[92] In many cases, Palestinians are ordered under threat by both settlers and soldiers to leave their homes and lands by a specified time. B’Tselem observes these actions are part of Israel’s well-known, longstanding policy to make life so miserable for Palestinian communities in the West Bank that the residents leave, seemingly of their own accord, with Israel proceeding to take over the land and use it to expand settlements.<sup>317</sup> Evictions of Palestinians from their homes in Israel and the OPT in favour of Jewish Israeli families are also commonplace, and these measures of forced displacement accompany the widespread establishment of Jewish Israeli settlements in the OPT.<sup>318</sup>

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<sup>311</sup> UN OCHA, “[Hostilities in the Gaza Strip and Israel Flash Update #103](#)”, 26 January 2024.

<sup>312</sup> UN OCHA, “[Hostilities in the Gaza Strip and Israel Flash Update #67](#)”, 12 December 2023; UN OCHA, “[Hostilities in the Gaza Strip and Israel Flash Update #103](#)”, 26 January 2024.

<sup>313</sup> UN OCHA, “[Hostilities in the Gaza Strip and Israel Flash Update #103](#)”, 26 January 2024.

<sup>314</sup> UN OCHA, “[Hostilities in the Gaza Strip and Israel | Flash Update #65](#)”, 11 December 2023.

<sup>315</sup> Netta Ahituv, Haaretz, “[Amid Israeli Destruction in Gaza, a New Crime Against Humanity Emerges: Domicide](#)”, 4 January 2024.

<sup>316</sup> UN OCHA, “[Hostilities in the Gaza Strip and Israel Flash Update #103](#)”, 26 January 2024.

<sup>317</sup> B’Tselem, “[Under cover of Gaza war, settlers working to fulfill state goal of Judaizing Area C](#)”, 19 October 2023.

<sup>318</sup> Amnesty International Report 2022/23, “[The State of the World’s Human Rights](#)”, 27 March 2023.

*(D) Transfer of Canadian Military Goods and Technology*

*i) Canada's Export and Brokering of Military Goods and Technology to Israel*

[93] Following the strengthening of the EIPA in December 2018 in preparation for Canada's accession to the ATT, the annual value of Canada's arms exports to Israel has only grown, with 2021 and 2022 being the second-highest (\$27,861,256) and third-highest (\$21,329,783) years on record, respectively.<sup>319</sup> This is despite findings in 2019 and 2022 by United Nations Commissions of Inquiries that Israel has committed and is continuing to commit serious violations of IHRL and IHL.<sup>320</sup>

[94] Notwithstanding these clear warning signs, Canada has continued to approve export and brokering permit applications for military goods and technology transfers to Israel.

[95] The Canadian government releases little information on the specific military goods and technology transferred to Israel, including a concerning lack of transparency in the precise timing of those transfers, the quantity of non-full systems exports and any assessments under the EIPA of their end-use.

[96] However, we do know that Canada authorized exports of over \$21 million in military goods and technology to Israel in 2022, including over \$3 million categorized as bombs, torpedoes, rockets, missiles, other explosives and associated components (Category 2-4).<sup>321</sup> In 2022, Canada also issued brokering permits for over \$2 million in military goods, including under the categories of smooth-bore weapons, weapons or armament, accessories and associated components (Category 2-2); aircraft, lighter-than-air vehicles, unmanned airborne vehicles, aero-engines and aircraft equipment, and associated components (Category 2-10); and armoured or protective equipment and constructions and associated components (Category 2-13).<sup>322</sup> In 2020 and 2021, Canada exported over \$19 million and \$27 million in military goods to Israel respectively.<sup>323</sup>

[97] These three years reflect Canada's highest annual values for arms exports to Israel since 1987.<sup>324</sup> A significant percentage of Canada's recent military exports to Israel are categorized as explosives and related components (Category 2-4). Other major categories of exports are apparently related to Israel's space program and aerospace goods for military end-use, with more than half (over \$14 million) the

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<sup>319</sup> Global Affairs Canada, [2021 Exports of Military Goods](#); Global Affairs Canada, [2022 Exports of Military Goods](#). These values are constant CAD.

<sup>320</sup> [COI Report, 2019](#); [COI Report, 2022](#).

<sup>321</sup> Global Affairs Canada, [2022 Exports of Military Goods](#). The full listing of categories can be found at Government of Canada, "[A Guide to Canada's Export Control List](#)", January 2023.

<sup>322</sup> Global Affairs Canada, [2022 Exports of Military Goods](#).

<sup>323</sup> Global Affairs Canada, [2020 Exports of Military Goods](#); Global Affairs Canada, [2021 Exports of Military Goods](#). These values are constant CAD.

<sup>324</sup> Michael Bueckert, Canadians for Justice and Peace in the Middle East, [Arming Apartheid: Canada's Arms Exports to Israel](#), April 2022.

2022 value of exports falling under the categories of aircraft, lighter-than-air vehicles, unmanned airborne vehicles, aero-engines and aircraft equipment, related equipment and components, specially designed or modified for military use (Category 2-10); and electronic equipment, military spacecraft and components (Category 2-11).<sup>325</sup>

[98] In 2022, Israel was the top non-U.S. destination for utilized (315) and issued (199) export permits for military goods and technology by number of permits. Since 2016, when Canada started reporting permit denials by proposed recipients, it has not denied any export permits to Israel.<sup>326</sup>

ii) *Specific Items Transferred*

[99] Although the Canadian government does not provide detailed information regarding the content of transferred military goods and technology, it does identify specific categories of exported items. The descriptions of certain categories strongly suggest that the goods transferred to Israel are intended for potentially destructive or lethal purposes. Notably, in 2021 and 2022, Canada exported military goods and technology to Israel that encompassed items falling under the following classifications:<sup>327</sup>

- Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (0.50 inches) or less and accessories, and specially designed components therefore;
- Bombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories, and specially designed components therefore;
- Fire control, and related alerting and warning equipment, and related systems, test and alignment and countermeasure equipment, specially designed for military use, and specially designed components and accessories therefore;
- Ground vehicles and components;
- Vessels of war (surface or underwater), special naval equipment, accessories, components and other surface vessels;
- “Aircraft”, “lighter-than-air vehicles”, “unmanned aerial vehicles” (“UAVs”), aero-engines and “aircraft” equipment, related equipment, and components, specially designed or modified for military use;
- Electronic equipment, “spacecraft” and components, not specified elsewhere on the Munitions List;
- Armoured or protective equipment, constructions and components;

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<sup>325</sup> Global Affairs Canada, [2022 Exports of Military Goods](#); Michael Bueckert, Canadians for Justice and Peace in the Middle East, [Arming Apartheid: Canada’s Arms Exports to Israel](#), April 2022.

<sup>326</sup> Global Affairs Canada, [2015 Exports of Military Goods](#); Global Affairs Canada, [2016 Exports of Military Goods](#); Global Affairs Canada, [2017 Exports of Military Goods](#); Global Affairs Canada, [2018 Exports of Military Goods](#); Global Affairs Canada, [2019 Exports of Military Goods](#); Global Affairs Canada, [2020 Exports of Military Goods](#); Global Affairs Canada, [2021 Exports of Military Goods](#).

<sup>327</sup> Global Affairs Canada, [2022 Exports of Military Goods](#); Global Affairs Canada, [2021 Exports of Military Goods](#).

- “Specialised equipment for military training” or for simulating military scenarios, simulators specially designed for training in the use of any firearm or weapon specified by 2-1. or 2-2., and specially designed components and accessories therefore;
- Imaging or countermeasure equipment, specially designed for military use, and specially designed components and accessories therefore;
- Forgings, castings and other unfinished products, specially designed for items specified by other military-related goods;
- “Production” equipment and components;
- “Software”; and
- “Technology”

[100] Moreover, a 2018 inquiry resulted in the release of 19 applications for export permits in respect of military goods and technology destined for Israel.<sup>328</sup> Accordingly, with no reported denials of export permits, the hundreds of utilized export permits for military goods and technology destined to Israel since 2018 very likely included the following:<sup>329</sup>

**Applicant Company:** Viasystems Toronto

**Consignees:** Elbit Systems (Israel’s largest military and arms company) and ARTEM Technologies, which facilitates shipping and delivery to Israel

**Military goods and/or technology:** Bare printed circuit boards that will be installed by the consignee into military electrical components, thermal imaging observation systems, display systems for F-15 aircrafts, display systems for V-22 aircrafts, Elbit’s radio communication systems, and several redacted items

**Applicant Company:** Viasystems Toronto Inc

**Consignee:** ARTEM Technologies Ltd.

**Military goods and/or technology:** Bare printed circuit boards for thermal cameras, bare printed circuit boards for display in F-15 aircraft, bare printed circuit boards for display in V-22 aircraft, bare printed circuit boards for use in software-defined radios (SDR) for ground forces, bare printed circuit boards for use in SDR for ground forces

**Applicant Company:** CMC Electronics

**Consignee:** Elbit Systems

**Military goods and/or technology:** CMA-9000 flight management system

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<sup>328</sup> Extracted from [records released by the Senate Standing Committee on Foreign Affairs and International Development in 2018](#); See also Figure 2 extracted in Project Ploughshares, “[Fanning the Flames: The grave risk of Canada’s arms exports to Israel](#)”, January 2024.

<sup>329</sup> Extracted from [records released by the Senate Standing Committee on Foreign Affairs and International Development in 2018](#); See also Figure 2 extracted in Project Ploughshares, “[Fanning the Flames: The grave risk of Canada’s arms exports to Israel](#)”, January 2024.

**Applicant Company:** Inkas

**Military goods and/or technology:** Military trucks to be used within the vicinity of Israel (International 7400 Truck 4x4).

[101] Viasystems Toronto sought export authorization to transfer military-use circuit boards for the display systems in Israel's F-15 aircraft, which, among other functions, provide information to track and destroy targets.<sup>330</sup> Israel's F-15 aircraft have reportedly been used to bomb numerous targets in Gaza since 7 October 2023.<sup>331</sup> There are a reported 84 F-15 aircraft in service in Israel.<sup>332</sup>

[102] Moreover, Lockheed Martin, one of the world's largest arms producer,<sup>333</sup> manufactures multiple weapon systems, including the F-35 Joint Strike Fighter. Since the late 1990s, at least 110 Canadian-based suppliers have been awarded contracts for the F-35 program valued in excess of C\$3.8-billion.<sup>334</sup> An April 2018 study commissioned by Lockheed Martin stated that "there is \$2.3 million USD [approximately C\$3.1-million] worth of Canadian components on every F-35 jet manufactured"<sup>335</sup> The F-35 is currently being used in Israel's assault in Gaza and has been described by US Lt. Gen. Michael Schmidt, Program executive officer for the F-35, as having an "absolutely outstanding" performance in its war to eliminate Hamas, with high rates of aircraft able to carry out their missions.<sup>336</sup> US Undersecretary of Defense for Acquisition and Sustainment Bill LaPlante stated that "Israel has 35 of its 39 F-35s operating and carrying out missions".<sup>337</sup> Canadian suppliers have manufactured segments of the F-35's airframe and a host of internal components. Mississauga-based Cyclone Manufacturing builds precision parts for Lockheed Martin F-35s<sup>338</sup> and Magellan, in Winnipeg, manufactures "flight critical assemblies" for them.<sup>339</sup> Magellan's Kitchener facility was awarded a multi-year contract in 2022 from Lockheed Martin for complex machined titanium components for all three variants of the F-35.<sup>340</sup>

[103] Despite Canada's assertion that it has fully integrated its obligations under the ATT into Canadian law *via* the EIPA,<sup>341</sup> existing trade agreements between the United States and Canada result in certain

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<sup>330</sup> U.S. Air Force, [F-15 Eagle](#); Breaking Defense, "[Israel formally requests 25 F-15 EX from the US: Sources](#)", 19 January 2023.

<sup>331</sup> Business Insider, "[The 3 US-made fighter jets Israel is using in its air war over Gaza](#)", 6 January 2024.

<sup>332</sup> Aeroflap, "[Meet the Israeli fighter jets that are bombing Gaza](#)", 10 October 2023.

<sup>333</sup> Statista, [Largest arms-producing and military services companies worldwide in 2022, by arms sale](#).

<sup>334</sup> Project Ploughshares, "[Fanning the Flames: The grave risk of Canada's arms exports to Israel](#)", January 2024, p. 7.

<sup>335</sup> Lockheed Martin, "[Study of Economic Impact in Canada](#)", April 2018.

<sup>336</sup> Defense News, "[US quickly updated Israeli F-35s after Hamas attack, officials say](#)", 13 December 2023.

<sup>337</sup> Defense News, "[US quickly updated Israeli F-35s after Hamas attack, officials say](#)", 13 December 2023.

<sup>338</sup> Canadian Manufacturing, "[Mississauga's Cyclone Manufacturing Launches \\$65M expansion project](#)", 9 August 2017.

<sup>339</sup> Magellan Aerospace, "[Magellan Aerospace Signs Agreement with BAE Systems for F-35 Aircraft Assemblies](#)", 9 December 2022.

<sup>340</sup> Magellan Aerospace, "[Magellan Aerospace Signs Multi-Year F-35 Lightning II Contract](#)", 22 November 2022.

<sup>341</sup> Global Affairs Canada, [Overview of the Arms Trade Treaty regulatory implementation package](#).

exemptions.<sup>342</sup> These exemptions mean that the safeguards provided by the EIPA do not extend to all military goods and technology that are initially transferred to the United States before being sent to Israel. The extent to which Canadian components are being filtered through the United States to Israel is unknown and unreported.<sup>343</sup>

[104] Nonetheless, over the past three years, Canada has transferred the highest annual values of arms to Israel since 1987 and there is no evidence of Canada denying any permits for brokering or exporting military goods and technology destined for Israel. A reasonable inference can therefore be drawn that Canada has not denied or suspended any such permit in light of Israel's ongoing military operations in Gaza since 7 October 2023. The above examples, which constitute only a portion of Canadian military goods and technology exported to Israel, indicate a clear connection to Israel's military operations in Gaza. Considering Israel's persistent and systemic violations of IHRL and IHL, and the perpetration of serious acts of violence against women and children, there exists a substantial risk that Canadian military goods and technology exports are contributing to or facilitating these violations, especially since 7 October 2023.

#### **IV. CONCLUSION**

[105] For the reasons above, it is clear that there is a substantial risk that arms exports from Canada to Israel could be used to commit or facilitate serious violations of IHRL and/or IHL, and/or serious acts of violence against women and children in Gaza.

[106] Thus, the further issuance or leaving in effect of export and brokering permits to transfer military goods and technology to Israel would engage Section 7 of the Charter and put Canada in violation of the EIPA and its international obligations under article 7 of the ATT. Such actions would also constitute violations of Canada's other obligations under international law including, in particular, article 1 of the Genocide Convention, requiring Parties to make efforts to prevent genocide where there is a serious risk of its occurrence.

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<sup>342</sup> Project Ploughshares, "[Fanning the Flames: The grave risk of Canada's arms exports to Israel](#)", January 2024.

<sup>343</sup> Project Ploughshares, "[Fanning the Flames: The grave risk of Canada's arms exports to Israel](#)", January 2024.