



حكمة – مركز من أجل القانون الدولي وحقوق الانسان

**Hikmah – Center for International Law and Human Rights**

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18 February 2024

Ms. Gali Baharav Miara  
Attorney General  
29 Salah El-Din Street  
Occupied East Jerusalem

Re: Operation Swords of Iron as a Violation of International Law

”זאת מלחמה ארוכה. אנחנו כבר ביום השישי. אנחנו אחרי אלפי פצצות, 6000 פצצות שהוטלו בעזה... אתם מכירים את חיל האוויר, אתם מכירים את צבא ההגנה לישראל, אף אחד לא מגביל אותנו.”  
תומר בר, מפקד חיל האוויר בצה”ל, אוקטובר 2023.

”עכשיו זו עת למלחמה – עזה לא תיראה אותו דבר.”  
הרצי הלוי, רמטכ”ל צה”ל, 12 באוקטובר 2023.

”יותר מ-10 אלף חימושים הוטלו על עזה.”  
יואב גלנט, שר הביטחון של ישראל, 1 בנובמבר 2023.

”פעם אחר פעם, 'כולל בשומר החומות', דיברה המערכת הצבאית על כך שכאשר יראה האויב את הנזק שנגרם לו, יכיר בתבוסתו ויירתע מחידוש האש”

עפר שלח, ”מי שיברח מהתמרון, לא ינצח”, המכון למחקרי ביטחון לאומי, 12 באוגוסט 2021.

1. The objective of this letter is to draw your attention to serious violations of international law committed by Israel during operation Swords of Iron in Gaza that renders it illegal and the potential judicial consequences emanating from them. The crimes in question are the most heinous recognized by international law and fall under the jurisdiction of the International Criminal Court’s Statute that binds Israel’s operation in Gaza<sup>1</sup>: genocide, crimes against humanity, and war crimes. Given the history of Israeli judicial authorities in such matters that will be outlined below, it is not requested that Israeli authorities investigate and prosecute senior Israeli political and military officials, even if this is its obligation under the applicable law. Rather, the aim is to inform you of the serious risk of arrest, investigation, and prosecution that would face Israeli officials under various international law frameworks.
2. On 7 October 2023 the Israeli government declared a war against Gaza under the operational title Swords of Iron.<sup>2</sup> During the first month of Israel’s war more than 11,000

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<sup>1</sup> ICC-01/18 Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’, 5 February 2021. See articles 6, 7, and 8 of the Rome Statute.

<sup>2</sup> Israel’s war against Gaza was launched pursuant to a military operation from the occupied and besieged enclave against the Gaza Division of Israel’s military that enforces Gaza’s occupation and continuous blockade. The operation from Gaza captured Israeli military personnel and some civilians who are being held safely in Gaza for the purpose of freeing Palestinian prisoners imprisoned in Israeli jails as part of its ongoing brutal occupation. Some of the Israeli captives were killed by the Israeli bombardment of Gaza. Similarly, there are strong indications that most of the civilians killed in Israel immediately after 7 October 2023 were targeted by the Israeli military in their panicked response to the operation from Gaza. It is not clear whether a genuine investigation of this conduct of the Israeli military will be carried out. The Israeli military is known for failing to carry out credible investigations: Haaretz Editorial, “Israel’s Military is Drowning in Cover – Up Culture”, *Haaretz*, 6 February 2020; Haaretz Editorial, “You Can’t Expect Anyone to Trust the IDF’s Own Investigation of Itself”, *Haaretz*, 13 May 2022. Since 1967 Israel carried out severe human rights violations in East Jerusalem, West Bank, and Gaza with total impunity that included mass killings, systematic torture, forced displacement, collective arbitrary arrests, and indiscriminate administrative detentions. Its prolonged occupation has been deemed illegal. Gaza was predicted as uninhabitable by 2020. Israel as a country is an apartheid state in the entirety of historic Palestine. See: OHCHR, Commission of Inquiry Finds that the Israeli occupation is unlawful under international law, 20 October 2022; Hazem Balousha & Miriam Berger, “The U.N. once predicted Gaza would be ‘uninhabitable’ by 2020. Two million people still live there”, *Washington Post*, 2 January 2020; Human Rights Watch, A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution, 27 April 2021; Amnesty International, Israel’s apartheid against Palestinians: a cruel system of domination and a crime against humanity, 1 February 2022; Tareq Baconi, Hamas Contained: The Rise and Pacification of Palestinian Resistance (Stanford University Press, 2018); Sara Roy, Unsilencing Gaza: Reflections on Resistance (Pluto Press, 2021). Further, it should be noted that Zionism’s and subsequently Israel’s official and declared policy has been to use civilian settlements to realize military and other geopolitical, including demographic, objectives. These and other policies credibly attach to Zionism and Israel abhorrent coloniality that inherently produces racism. Indeed, the Palestinians form Zionism’s and Israel’s existential dilemma resulting in perpetual material suppression and cultural denial to compensate for the lack of justification for a right to sovereignty in Palestine.

people have been killed in Gaza.<sup>3</sup> Children, women, teachers, doctors, poets, academics, and journalists were targeted and brutalized systematically, intentionally, and on a colossal scale. UNICEF declared on 24 October 2023, 18 days into Israel's assault against Gaza, that 2,360 children have been killed and 5,364 have been injured. 400 children killed or injured on a daily basis.<sup>4</sup>

3. United Nations Secretary General described Gaza as a “graveyard for children” stating:  
Hundreds of girls and boys are being injured every day. More journalists have been killed over a four-week period than in any conflict in at least three decades. More United Nations aid workers have been killed than in any comparable period in the history of our organization.”<sup>5</sup>
4. UN experts called on 16 November 2023 to prevent genocide against the Palestinian people noting the high number of casualties and the mass forcible transfer:

Grave violations committed by Israel against Palestinians in the aftermath of 7 October, particularly in Gaza, point to a genocide in the making, UN experts said today. They illustrated evidence of increasing genocidal incitement, overt intent to “destroy the Palestinian people under occupation”, loud calls for a ‘second Nakba’ in Gaza and the rest of the occupied Palestinian territory, and the use of powerful weaponry with inherently indiscriminate impacts, resulting in a colossal death toll and destruction of life-sustaining infrastructure.

“Many of us already raised the alarm about the risk of genocide in Gaza,” the experts said. “We are deeply disturbed by the failure of governments to heed our call and to achieve an immediate ceasefire. We are also profoundly concerned about the support of certain governments for Israel's strategy of warfare against the besieged population of Gaza, and the failure of the international system to mobilise to prevent genocide,” they said.

The bombardment and siege of Gaza have reportedly killed over 11,000 people, injured more than 27,000 and displaced 1.6 million persons since 7 October 2023, while thousands are still under the rubble. Of those killed, about 41 per cent are children and 25 percent are women. On average, one child is killed and two are injured every 10 minutes during the war, turning Gaza into a “graveyard for children,” according to the UN Secretary-General. Almost 200 medics, 102 UN

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<sup>3</sup> Ruby Mellen et al, “Gaza reports more than 11,100 killed. That’s one out of every 200 people.”, *Washington Post*, 13 November 2023.

<sup>4</sup> UNICEF, Child Casualties in Gaza a “growing stain on our collective conscience”, 24 October 2024.

<sup>5</sup> UN Press Release, Gaza ‘Becoming a Graveyard for Children’, Warns UN Secretary-General, Calling for Humanitarian Ceasefire, 6 November 2023. It seems that the UN Secretary General was conducting a diplomatic balancing act leading him unjustifiably to not declare Israel’s conduct illegal that warrant an immediate cessation of Israel’s military performance. Compare with OHCHR, UN experts call on international community to prevent genocide against the Palestinian people”, 16 November 2023.

staff, 41 journalists, frontline and human rights defenders, have also been killed, while dozens of families over five generations have been wiped out.<sup>6</sup>

5. By the time of writing this letter the number of casualties in Gaza reached more than 27,000 dead and 66,000 injured the vast majority of them are civilians.<sup>7</sup> About 85% of Gaza population, nearly 1.9 million persons have been forcibly displaced.<sup>8</sup>
6. The dominant view in Israel has been to call for, celebrate, and justify the mass killings in Gaza by senior political and military officials, dominant public figures, and ordinary citizens. Some tried to challenge the disturbing numbers of the dead by a self-deceiving scientific methodology.<sup>9</sup> In the United States there are those who rationalized the mass murder that is genocide.<sup>10</sup>
7. International media outlets have indicated the large-scale destruction that Israel's war produced in Gaza, without achieving any of its declared objectives other than the destruction of communities as well as civilian, cultural, educational, and religious locations.<sup>11</sup>
8. On 29 December 2023 South Africa initiated a noble and rare measure in international relations by filing an application before the International Court of Justice requesting the Court to order provisional measures to "protect against further, severe and irreparable harm to the rights of the Palestinian people under the Genocide Convention" and "to ensure

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<sup>6</sup> OHCHR, UN experts call on international community to prevent genocide against the Palestinian people", 16 November 2023. See also Amnesty International, "Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza", 20 October 2023. See also Richard Falk, "In Gaza, the West is Enabling the Most Transparent Genocide in Human History", *Common Dreams*, 17 January 2024.

<sup>7</sup> See Lauren Leatherby, "Gaza Civilians, Under Israeli Barrage, Are Being Killed at Historic Pace", *New York Times*, 25 November 2023; "In 133 days only, 28775 martyred, 68552 injured in Gaza", *Al-Mayadeen English*, 16 February 2024.

<sup>8</sup> Ishaan Tharoor, "Israel presides over a new Palestinian catastrophe", *Washington Post*, 13 November 2023; Mai Khaled et al, "How the loss of entire families is ravaging the social fabric of Gaza", *Financial Times*, 13 December 2023.

<sup>9</sup> Linda Daya, "20,000 Dead and Counting: The Battle Over Verifying Gaza's Death Toll", *Haaretz*, 26 December 2023.

<sup>10</sup> See, for example, Dennis Ross, "What Israel Must Do", *Foreign Affairs*, 11 October 2023; Dennis Ross, "I Might Have Once Favored a Cease Fire with Hamas, but Not Now", *New York Times*, 27 October 2023. This position mirrors American President Joe Biden's approach throughout Israel's genocidal campaign against Gaza, together with his advisers Jake Sullivan and Anthony Blinken as well as US foreign policy influencers such as Robert Satloff, and Kenneth Pollack. U.S Secretary of Defense Lloyd Austen stated on 2 December 2023 that civilians in Gaza are the center of gravity of the ongoing conflict. See Phil Stewart, "Civilians are 'center of gravity' in Gaza war: US defense secretary", *Reuters*, 3 December 2023. Ross amplifies the American diplomat who is committed to Israel ideologically.

<sup>11</sup> See Tamara Qiblawi et al, "'Not seen since Vietnam': Israel dropped hundreds of 2,000- pound bombs on Gaza, analysis show", *CNN*, 22 December 2023; Evan Hill et al, "Israel has waged one of this century's most destructive wars in Gaza", *Washington Post*, 23 December 2023; Jared Malsin et al, "The Ruined Landscape of Gaza After Nearly Three Months of Bombing", *Wall Street Journal*, 30 December 2023; Julia Frankel, "Israel's military campaign seen as among the most destructive in recent history, experts say", *Associated Press*, 11 January 2024; Danielle Palumbo et al, "At least half of Gaza's buildings damaged or destroyed, new analysis shows", *BBC*, 30 January 2024.

Israel's compliance with its obligations under the Genocide Convention not to engage in genocide, and to prevent and to punish genocide".<sup>12</sup>

9. Contrary to its tradition of not cooperating with international courts, United Nations commissions of inquiry, and United Nations Special Rapporteurs, Israel elected this time to participate in the proceedings before the International Court of Justice and appointed a judge on its behalf as part of the Court's deliberations.<sup>13</sup>
10. Following two days of public hearings on 11 and 12 January 2024, the Court delivered its order on preliminary measures instructing Israel to refrain from violating the Genocide Convention by ceasing to commit the following acts "(a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group."<sup>14</sup>
11. The lauded Center for Constitutional Rights filed a lawsuit in the United States against the President of the United States, the American Secretary of State, and the Secretary of Defense for their complicity in Israel's perpetration of genocide against Palestinians in Gaza. Although the case was dismissed on jurisdictional grounds, the presiding Federal Judge concluded that Israel's assault against Gaza is a plausible case of genocide.<sup>15</sup>
12. In addition to persistently avoiding cooperation with international mechanisms of accountability for its international crimes, Israel has either failed to generate local paths for genuine investigation and redress or instituted them to circumvent applicable international standards.
13. From late 2008 until the current military campaign, Israel launched several military operations that resulted each time with significant death toll and destruction in Gaza.<sup>16</sup> The

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<sup>12</sup> South Africa v. Israel, Application Instituting Proceedings before the International Court of Justice, 29 December 2023. Israel's close ties to apartheid South Africa have never been condemned by the Israeli government, public figures, and academics. See Chris McGreal, "Brothers in arms – Israel's secret pact with Pretoria", *The Guardian*, 7 February 2006; Chris McGreal, "Revealed: how Israel offered to sell South Africa nuclear weapons", *The Guardian*, 24 May 2010; Amir Oren, "The Secrets Behind Israel's Strategic Alliance with Apartheid South Africa", *Haaretz*, 11 December 2013.

<sup>13</sup> Lazar Berman et al, "Israel tasks ex-Supreme Court chief Aharon Barak to serve at Hague genocide hearings" *Times of Israel*, 7 January 2023.

<sup>14</sup> South Africa v. Israel, Application Instituting Proceedings before the International Court of Justice, Order on Preliminary Measures, 26 January 2024, para.78.

<sup>15</sup> Center for Constitutional Rights, U.S. Court Concludes Israel's Assault on Gaza is Plausible Case of Genocide, 31 January 2024.

<sup>16</sup> OCHA produced the following statistics: Operation Cast Lead (27 December 2008 – 18 January 2009, 1385 killed, 5300 injured); operation Pillar of Defense (14 – 21 November 2012, 168 killed, 1064 injured); operation Protective Edge (8 July - 26 August 2014, 2251 killed, 11231 injured); and operation Guardian of the Walls (10 – 21 May 2021, 261 killed, 2211 injured). Israeli forces have repressed Palestinian demonstrators in Gaza known as "Marches of Return" with severe lethal gunfire and absolute impunity. See Report of the Independent UN Commission of Inquiry on the 2018 Protests in the OPT, 28 February 2019. Israeli Supreme Court failed to amend the military's rules of engagement during these protests (HCJ 3003/18, Judgement, 24 May 2018). Similarly, the same court rejected a strategic petition requesting an investigation into grave violations of international law by the Israeli military in Gaza

Israeli authorities willfully failed to carry out any investigation and prosecution regarding the perpetrated international crimes, while international investigations underscored them. Further, there are clear indications and evidence in the Israeli public sphere that demonstrate willful targeting of civilians by the Israeli military as a tactic and strategy.<sup>17</sup> It is not surprising therefore that Israeli officials have been facing the wrath of international legal activism in other countries.<sup>18</sup>

14. The International Criminal Court through its Prosecutor Mr. Karim Khan has jurisdiction over the crimes that Israel has perpetrated in Gaza: genocide, crimes against humanity, and war crimes. Despite his troubling and questionable performance in the Palestinian setting,<sup>19</sup> Mr. Khan can still demonstrate that international criminal law matters. Another option to seek justice and accountability is by pursuing complaints and lawsuits against Israeli officials in other national jurisdictions that apply the principle of universal jurisdiction.<sup>20</sup>
15. Although I am certain that you are aware of the relevant command structure responsible for committing the grave international crimes in Gaza, I nevertheless would like to display it for you for the purpose of clarity and cordiality:

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entailing the killing of civilians and destruction of civilian property (HCJ 3292/07, Judgement, 8 December 2011). Israel's most noted and sole commission of inquiry that related to Palestinian victims is the Kahan commission that investigated Israel's involvement in the massacres in the Palestinian refugee camps Sabra and Shatila in 1982 Lebanon perpetrated by its trained and financed Lebanese proxy. It found no knowledge or direct responsibility on the part of senior Israeli political and military officials, imposing only recommended administrative measures against few of them. Evidence to the contrary of the commission's findings are available. See, for example, Edward Walsh, "Key Israeli Officer Testifies in Probe", *Washington Post*, 7 November 1982; William Farrell, "Israeli Inquiry is Told Sharon Aide Knew of Massacre", *New York Times*, 12 November 1982.

<sup>17</sup> See Amos Harel, "Plans to Use Disproportionate Force Next War", *Haaretz*, 5 October 2008; Gabi Siboni, "Disproportionate Force: Israel's Concept of Response in Light of the Second Lebanon War", 74 INSS (October 2008); Yagil Henkin, "'A High Price for our Blood' Israel's Security Paradigms, from Reprisal Operations until Operation Protective Edge", 15 *Dado Center Journal*, pp.17-41 (2018); Amir Oren, "This is How Barak Proposed to Sharon to Deceive the World", *Haaretz*, 3 October 2014 (Hebrew). See also Baruch Kimberling, *Politicide: Ariel Sharon's War Against the Palestinians* (Verso, 2003); Edward Said, "Permission to Narrate", 6(3) *London Review of Books* (February 1984).

<sup>18</sup> See Anshel Pfeffer, "Prosecuting Israeli Officials Could Take Years, but the ICC's Chilling Effect Will Be Immediate", *Haaretz*, 7 February 2021; Ian Black, "Ehud Olmert could face war crimes arrest if he visits UK", *The Guardian*, 27 October 2009; Ian Black et al, "British court issued Gaza arrest warrant for former Israeli minister Tzipi Livni", *The Guardian*, 14 December 2009; Ian Black et al, "Ehud Barak faces war crimes arrest threat during UK visit", *The Guardian*, 29 September 2009; Ben Quinn, "Former Israeli minister Tzipi Livni to visit UK after change in arrest law", *The Guardian*, 4 October 2011.

<sup>19</sup> Triestino Mariniello "The ICC's Prosecutor's Double Standards in Time of an Unfolding Genocide", *OpinioJuris*, 3 January 2024.

<sup>20</sup> See Amnesty International, *Universal Jurisdiction, A preliminary survey of legislation around the world – 2012 update*; Amnesty International, *Universal Jurisdiction: The challenges for police and prosecuting authorities*, June 2007.

Benjamin Netanyahu  
Prime Minister



Gen. Yaron Finkelman  
Commander of Southern  
Command, IDF



Herzi Halevi  
Chief of General  
Staff, IDF



Tomer Bar  
Air Force commander  
IDF



Ronen Bar  
Head of ISA (on the left)



Respectfully,

A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher but appears to be the name of the signatory.

Marwan Dalal

Executive Director