



حكمة – مركز من أجل القانون الدولي وحقوق الانسان
Hikmah – Center for International Law and Human Rights
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11 May 2024

Mr. Karim Khan KC
Prosecutor, International Criminal Court
P.O. Box 19519
2500 CM The Hague
The Netherlands

Dear Sir,

Re: Israel's War on Gaza / October 2023 – Present

”אנו פועלים באינטנסיביות ובעצימות. פני עזה השתנו.”
תומר בר, מפקד חיל האוויר של ישראל, 16 בנובמבר 2023.

Juliane E. Barnes et al, “Early U.S. and Israeli Intelligence Says Palestinian Group Caused Hospital Blast”, *New York Times*, 18 October 2023.

Jeremy Scahill, “Joe Biden Wants You To Believe He Is Opposed to Genocide in Gaza”, *The Intercept*, 17 January 2024.

1. On 7 October 2023 Israel launched a war against Gaza that is neither justified nor legal. Israel's conduct falls under the International Criminal Court's (ICC) jurisdiction.¹ Israel committed genocide, crimes against humanity, and war crimes in violation of articles 6, 7, and 8 of the ICC's Statute. The human death toll that Israel inflicted upon Palestinians in Gaza is staggering. Its material and cultural devastation are insurmountable. The intent expressed by Israel's senior political, military, and societal leaders to commit these crimes is indisputable.
2. In Early November 2023 U.N. Secretary General Mr. Antonio Guterres described Gaza as a 'graveyard for children'. The killing rate by Israel was exceptional and unprecedented. Comparatively, Israel significantly exceeded in its premeditated targeting, killing and destruction other military performances.² It was genocide and additional international criminality perpetrated by Israel in plain sight.

¹ 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.

² See Lauren Leatherby, “Gaza Civilians, Under Israeli Barrage, Are Being Killed at Historic Pace”, *New York Times*, 25 November 2023; 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 Stret Journal*, 30 December 2023; Julia Frankel, “Israel's military

3. On 29 December 2023 South Africa filed an application against Israel before the International Court of Justice seeking to deter Israel from continuing to violate the 1951 Convention on the Prevention and Punishment of the Crime of Genocide. On 26 January 2024 the Court ordered provisional measures directed at Israel to refrain from committing 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.”³ On 28 March 2024 the ICJ issued another provisional measure relating to providing humanitarian assistance while confirming its earlier one.⁴ Israel failed to uphold both.⁵ On 10 May 2024 South Africa filed a motion for another provisional measure pertaining to Israel’s conduct in the area of Rafah, in Gaza.⁶

4. On 13 November 2023 the Center for Constitutional Rights filed a lawsuit before a U.S. Federal Court against President Biden, Secretary of State Blinken, and Secretary of Defense Lloyd for their failure to prevent and complicity in the crime of genocide that Israel has been executing. The Federal judge rejected the case on 31 January 2024 on jurisdictional grounds but concluded that the commission of genocide by Israel was plausible. The Court determined that:

There are rare cases in which the preferred outcome is inaccessible to the Court. This is one of those cases...as the ICJ found it, it is plausible that Israel’s conduct amounts to genocide. This Court implores Defendants to examine the result of their unflinching support of the military siege against the Palestinians in Gaza.⁷

5. UN experts called on 16 November 2023 to prevent genocide against Palestinians in Gaza given the phenomenal death toll and destruction among civilians and civilian infrastructure. On 25 March 2024 the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 found that Israel committed genocide in Gaza.⁸

6. Israel’s onslaught on Gaza was not halted despite legal challenges, sharp UN statements and reporting, NGO monitoring, and global protesting. Main reason being the United States staunch military support and diplomatic backing at the U.N. Security Council.

7. On 3 March 2021 the previous Prosecutor Ms. Fatou Bensouda issued a statement regarding launching an investigation into the Palestine situation. You were sworn in as the ICC’s Prosecutor on 16 June 2021. Between the date of your election as a Prosecutor (12 February 2021), and the beginning of your tenure in June 2021, British Prime Minister Boris Johnson wrote on 9 April 2021 to a political group in Britain, Conservative Friends of Israel, making legal assertions contrary to the findings and conclusions of the ICC with respect to its jurisdiction over

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.

³ *South Africa v. Israel*, Application of the Convention on the Prevention of the Crime of Genocide in the Gaza Strip, Order on Preliminary Measures, 26 January 2024, para.78.

⁴ *South Africa v. Israel*, Application of the Convention on the Prevention of the Crime of Genocide in the Gaza Strip, ICJ’s Additional Provisional Measures, 28 March 2024.

⁵ Euro – Med Human Rights Monitor, Fifteen Days After ICJ Ruling, Israel’s genocide in Gaza Strip continues on the same scale, 11 February 2024; Euro – Med Human Rights Monitor, Two Months After the International Court of Justice’s Ruling on Gaza: Escalation in Genocide and Absence of Accountability, March 2024; Amnesty International, Israel Defying ICJ Ruling to Prevent Genocide by Failing to Allow Adequate Humanitarian Aid to Reach Gaza, 26 February 2024; Human Rights Watch, Israel Not Complying with World Court Order in Genocide Case, 26 February 2024.

⁶ *South Africa v. Israel*, Application of the Convention on the Prevention of the Crime of Genocide in the Gaza Strip, Urgent Request for the Indication of Additional Provisional Measures and Modification of Previous Provisional Measures, 10 May 2024.

⁷ Case No. 23-cv-05829-JSW, *Defense for Children International – Palestine et al v. Joseph R. Biden et al*, Order Granting Motion to Dismiss and Denying Motion for Preliminary Injunction, 31 January 2024, p.8.

⁸ Anatomy of Genocide, Report by the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, 25 March 2024.

Israel's actions. We drew your attention to the grave problematic nature of Prime Minister Johnson's conduct in a letter dated 24 July 2021. Johnson's pronouncements contravene the ICC's conclusions and the Prosecutor's obligation to pursue his mandate independently and impartially. According to the British Prime Minister at the time:

We oppose the ICC's investigation into war crimes in Palestine. We do not accept that the ICC has jurisdiction in this instance, given that Israel is not a party to the Statute of Rome and Palestine is not a sovereign state. This investigation gives the impression of being a partial and prejudicial attack on a friend and ally of the UK's.

8. Since your appointment as Prosecutor at the ICC, no progress has been made regarding the declaration issued by your predecessor to investigate crimes under the ICC's jurisdiction with respect to the Palestine situation. Further, it seems that your performance concerning the current devastation of Gaza has not been in accordance with the expected diligence and was again subjected to blunt diplomatic and political pressures should any action be taken regarding Israel's demonstrated gross violations of international criminal law.
9. G7 diplomats requested the ICC's Prosecutor to delay his purported work that may contain arrests warrants,⁹ while American politicians adamantly intimidated the Prosecutor.¹⁰
10. Article 41(1) of the ICC's Statute and regulation 13 of the Office of the Prosecutor's Regulations proclaim the Prosecutor's obligations to act impartially and independently. Members of the Office of the Prosecutor shall not "seek or act on instructions from any external source". According to Rule 5(b) of the ICC's Rules of Procedure and Evidence, the purpose of the Prosecutor's solemn declaration before commencing his function is to secure independence and impartiality honorably:

I solemnly undertake that I will perform my duties and exercise my powers as Prosecutor of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions.
11. Contrary to news in the international media shortly after 7 October 2023, there is a good reason to believe that Israeli military censorship prevents publishing that at least most of the Israeli civilians who died during the day were killed as a result of the Israeli military's conduct and shooting. The Israeli captives are held safely, while some of them have been killed as a result of Israel's indiscriminate and savage bombardment of Gaza. It seems that the main target of the operation launched from Gaza was IDF's Gaza Division that maintains Gaza as an occupied and enclaved area.¹¹

⁹ Patrick Wintour et al, "ICC urged to delay possible war crimes charges against Israel and Hamas", *The Guardian*, 29 April 2024.

¹⁰ Jacob Magid, "Republican senators warn ICC: Target Israel, and we will target you", *Times of Israel*, 6 May 2024; Andrew Solender, "House GOP Drafts ICC Sanctions as 'precaution'", *Axios*, 7 May 2024. See also Editorial, "The International Criminal Court and Israel", *Wall Street Journal*, 26 April 2024; Barak Ravid, "Israel Tells U.S. it will Punish Palestinian Authority if ICC Issues Warrants", *Axios*, 1 May 2024; "Israel, US said working to prevent ICC arrest warrant against Netanyahu", *Times of Israel*, 28 April 2024.

¹¹ Gaza is part of Israel's prolonged 1967 military occupation, together with East Jerusalem and the West Bank that is considered illegal given its duration. See Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022 (A/77/328). These areas remain under this status also after the formation of the Palestinian Authority on small parts of the West Bank after the 1993 Oslo Accords and following Israel's unilateral disengagement from Gaza in 2005. Israel maintains effective control over the lives and rights of Palestinians living in those territories. See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136; Shane Darcy & John Reynolds, "An Enduring Occupation: The Status of the Gaza Strip from the Perspective of International Humanitarian Law", 15(2) *Journal of Conflict and Security Law*, pp.211-243 (2010); Gisha, *Disengaged Occupiers: The Legal Status of Gaza*, January 2007; United Nations, *Living Conditions in Gaza 'more and more wretched' over past decade*, UN finds, 11 July 2017; Hazem Balousha and Miriam Berger, "The U.N. once predicted Gaza would be 'uninhabitable' by 2020. Two million people still live there", *Washington Post*, 2 January 2020.

12. It did not emerge out of the blue to disrupt anyone’s “way of life”, certainly not in an apartheid state such as Israel.¹² This operation is a result of decades of Israel’s grave international law violations that include political assassinations, mass killings, systematic torture, orchestrated violence, collective arbitrary arrests and administrative detentions, land confiscations, home demolitions, lack of sovereignty, and Israeli judicial impunity.¹³

Respectfully,

A handwritten signature in black ink, appearing to read 'Marwan Dalal', with a stylized flourish at the end.

Marwan Dalal
Executive Director

¹² See Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crime of Apartheid*, 27 April 2021; Amnesty International, *Israel’s Apartheid: A Cruel System of Domination and a Crime Against Humanity*, 1 February 2022.

¹³ See Baruch Kimmerling, *Politicide: Ariel Sharon’s War Against the Palestinians* (Verso: 2003); reports of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967 from 2002 to present