



**Letter of Notification and Referral**

**Presented by ICAI (HOKOK)**

**Before the International Criminal Court**

**Office of the Prosecutor**

**The Hague, Holland**

**ICAI HOKOK REFERRAL OF THE SITUATION IN GAZA,  
PALESTINE TO THE OFFICE OF THE PROSECUTOR OF  
INTERNATIONAL CRIMINAL COURT**

### **About HOKOK**

HOKOK IS REGISTERED INTERNATIONALLY (North America, the Middle East, Europe, and Latin America) and is registered and affiliated with the United Nations (ESCWA).

HOKOK's petition is pending for Consultative Status with the United Economic and Social Council (ECOSOC), based in Geneva, Switzerland and (HOKOK) is member of the international coalition for the International Criminal Court.

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# ICAI HOKOK REFERAL OF THE SITUATION IN GAZA, PALESTINE TO THE OFFICE OF THE PROSECUTOR OF INTERNATIONAL CRIMINAL COURT

## **Application, Submission and Complaint**

ICAI (HOKOK), on behalf of its affiliates and the International Community

*Against*

- 1. Prime Minister, Ehud OLMERT.**
- 2. Defense Minister Ehud BARAK.**
- 3. Deputy Defense Minister Matan VILNAI.**
- 4. Minister of Internal Security Avraham DICHTER.**
- 5. Armed Forces Chief of Staff Gabi ASHKENZI.**

The above enumerated individuals are jointly and severally liable for the Crimes committed in Gaza by their Government.

And each has been shown by investigation to be a co-conspirator.

The Government of Israel is liable for all the crimes committed against the residents of Gaza as detailed below and in the attached Appendix.

**Acting** under its by-laws and with the unanimous approval of the Board of Directors, HOKOK, *the International Coalition against Impunity, headquartered in Beirut, Lebanon*, hereby refers to the Prosecutor of the International Criminal Court the situation prevailing in Gaza, Palestine since 2005; ICAI (HOKOK) calls for the arrest of the perpetrators of the continuing crimes against Gaza, and a trial in the International Criminal Court before it is too late to stop a region wide blood bath.

**Affirming** that ICAI HOKOK is a member of the *International Coalition for the International Criminal Court*;

**Taking note** of the existence of agreements referred to in Article 98-2 of the Rome Statute and that under the Rome Statute, individuals or organizations may submit to the Prosecutor information on crimes within the jurisdiction of the Court (“*communications*”) and that the Prosecutor shall analyze the information to determine whether there is a basis to launch an Investigation;

**Acting** under the Rome Statute and procedures established for International Nongovernmental Organizations by the Office of the Prosecutor of the International Criminal Court;

**Taking note** of numerous testimonies, media and open source reports, as well as HOKOK’s own International Inquiry, on violations by Israel of international humanitarian law, war crimes, crimes against humanity, and elements of genocide in Gaza;

**Determining** that the situation in Gaza continues to constitute a threat to the lives of 1.5 million Palestinians, as well as a threat to international peace and security;

**Hereby refers** the situation in Gaza to the Prosecutor of the International Criminal Court;

**Mindful** that The ICC Statute expressly stipulates that the Court may travel in order to try a case near the site where the crimes were committed; Petitioners respectfully request that the Case of Israeli crimes in Gaza be heard in Gaza.

## **Jurisdiction**

**Petitioner Notes** that the ICC *Temporal jurisdiction requirement* of the Rome Statute of 1 July 2002 is satisfied. Moreover, Petitioner ICAI HOKOK avers that the *Subject-matter jurisdiction*: based on allegations of crimes against humanity, war crimes, elements of genocide, which constitute the most serious international crimes, and given the number of victims in Gaza of Israel's crimes, that the Jurisdictional standard of the Rome Statue is met.

## **Statement of the Case**

Since the beginning of the occupation of Gaza, but increasingly since 2005, Israel has conducted an unrelenting policy of collective punishment against the more than one and one-half million residents of Gaza in flagrant violation of international legal norms.

As the occupying power, Israel has illegally enforced a blockage of Gaza, cutting off life-sustaining food, medicines, oil and necessities as well as foreign humanitarian aid. In addition, media and aid workers continue to be barred.

Increasingly aggressive threats from officials, culminating in February in the deputy defense minister Matan Vilnai's infamous remark about creating a "shoah", or Holocaust, in Gaza, has been matched by Israeli measures. The Israeli military bombed Gaza's electricity plant in June 2006, and has been incrementally cutting fuel supplies ever since. In January, Mr Vilnai argued that Israel should cut off "all responsibility" for Gaza and two months later Israel signed a deal with Egypt for it to build a power station for Gaza in Sinai.

Israel's Prime Minister Olmert, for example, has declared that Gazans should not be allowed to "live normal lives"; Avi Dichter believes punishment should be inflicted "irrespective of the cost to the Palestinians"; Meir Sheerit has urged that Israel should "decide on a neighborhood in Gaza and level it".

Petitioners argue and present witness testimony and voluminous documentation in the **Appendix** of its submission to support the conclusion that International Customary Law, Treaty Law, International Humanitarian Law, including the Rome Statute, continue to be flagrantly and egregiously breached by Israel as it continues its siege of Gaza's population and continues to commit Crimes against Humanity, War Crimes, and elements of Genocide in Gaza.

In aid of the Office of the Prosecutor of the International Criminal Court, Petitioners ICAI HOKOK outlines below the provisions of the Rome Statute, reflective of international law applicable to this Submission and Complaint, which Petitioners aver Israel continues to violate in Gaza.

### *Israel continues to commit Crimes against Humanity*

Israeli Crimes against Humanity in Gaza includes three distinct actions in violation of Article 7 of the ICC Statute:

1. *Israel actions have been committed "as part of a widespread or systematic attack".* The Israeli Article 7 attacks have not been limited solely to its military definition, but also include laws and administrative measures such as the deportation or forcible transfer of a population.
2. *The Israeli attacks have been directed "against any civilian population" (Art 7) that has been intentionally targeted.* The presence of a few fighters among the civilian population is not sufficient to deprive the latter of its civilian character.
3. *The Israeli crimes must have been committed "pursuant to or in furtherance of a State or organizational policy".* Therefore, perpetrators of crimes against humanity may be agents of the State, settlers, colonists or persons acting under its orders, such as death squads and targeted assassination units. This has been the case in Gaza.

## *Specific Israel actions that constitute Crimes against Humanity in Gaza*

Article 7 (1) of the Statute lists eleven categories of acts likely to constitute crimes against humanity. Article 7 (2) defines several of these acts, are considered to be crimes against humanity when committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack".

All have been committed by Israel in Gaza.

1. **Murder.**
2. **Extermination.** Article 7 (2) (b) specifies that: "‘extermination’ includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population."
3. **Deportation or forcible transfer of population.** Article 7 (2) (d) specifies that: "'deportation or forcible transfer of population'. Means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."
4. **Imprisonment or other severe deprivation of physical liberty** in violation of fundamental rules of international law.
5. **Torture.** Article 7 (2) (e) specifies that: "'torture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions."

6. **The "persecution" of any identifiable group** or collectivity on political, racial, national, ethnic, cultural, religious, or gender grounds, or other grounds universally recognized as impermissible under international law, in connection with any crime within the jurisdiction of the Court. Article 7 (2) (g) specifies that: "'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity"
7. **Apartheid.** Article 7 (2) (h) specifies that: "'The crime of apartheid' means inhumane acts of a character similar to those [...] committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime."
8. **Enforced disappearance of persons.** Article 7 (2) (i) specifies that the 'enforced disappearance of persons' means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."
9. **Other inhumane acts of a similar character** intentionally causing great suffering, or serious injury to body or to mental or physical health.

## *War crimes committed by Israel in Gaza*

The first lines of Article 8 of the Rome Statute explicitly state:

"The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes."

War crimes committed within the context of an international conflict Article 8 (2) of the ICC Statute distinguish two categories of war crimes, both of which have been committed by Israel in Gaza.

For the purpose of this Statute, 'war crimes' means: Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons or property protected under Geneva Conventions and all of which have been committed by Israel in Gaza:

- I. Willful killing;
- II. Torture or inhuman treatment, including biological experiments;
- III. Willfully causing great suffering, or serious injury to body or
- IV. health;
- V. Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
- VI. Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- VII. Willfully depriving a prisoner of war or other protected person
- VIII. of the rights of fair and regular trial;
- IX. Unlawful deportation or transfer or unlawful confinement;

The Court is also competent to try "other serious violations of the laws and customs applicable in international armed conflict" [...], namely, any of the following acts intentionally directing attacks:

- [...] against the civilian population as such or against individual civilians not taking direct part in hostilities;
- [...] against civilian objects, that is, objects which are not military objectives;
- Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission [...].
- Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

As well as:

- Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion;
- Making improper use of a flag of truce, or of the flag or of the military insignia and uniform of the enemy or of the United Nations [...];
- The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies [...];
- Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical [...] treatment [...];
- Declaring that no quarter will be given;
- Destroying [...] the enemy's property [...];
- Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent service before the commencement of the war;

- Pillaging a town or place, even when taken by assault;
- Employing poison or poisoned weapons;
- Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- Employing bullets which expand or flatten easily in the human body [...];
- Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering [...];
- Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions.

## ***War crimes committed by Israeli in Gaza within the context of an internal conflict***

Article 8 of the Statute lists specific categories of war crimes that may be committed within the context of an internal conflict. All have been committed by Israel in Gaza and are enumerated and discussed in the Appendix to Petitioners Submission.

1. "Violations of article 3 common to the four Geneva Conventions of 12 August 1949 committed against persons taking no active part in the hostilities (civilians, wounded soldiers, prisoners, and those who have laid down their arms): [...] murder [...], mutilation, cruel treatment and torture; committing outrages upon personal dignity, in particular humiliating and degrading treatment; taking of hostages; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all Judicial guarantees which are generally recognized as indispensable."

2."Intentionally directing attacks against the civilian population [...], against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission [...]; [...] against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals [...]; pillaging a town or place, even when taken by assault; committing rape [...] or any other form of sexual violence;

3. Acts committed by Israel in Gaza that are traditionally considered as war crimes in the contexts of internal conflicts as enumerated in the Rome Statute:

"Killing or wounding treacherously a combatant adversary; declaring that no quarter will be given; subjecting persons [...] to physical mutilation or to medical or scientific experiments [...]; destroying or seizing the property of an adversary [...]."

**Summary of Appendix Testimony to be presented by scores of observers, experts and eye witnesses in Gaza to the Office of the Prosecutor of the International Criminal Court.**

In addition to the flagrant violations of International Customary Law, Treaty law and specifically the provisions of the Rome Statute Israel continues to perpetrate the following international crimes in Gaza:

- Israel's continuing blockade of the Gaza Strip, a measure that is depriving its population of food, fuel, and basic services, and constitutes a form of collective punishment.
- The latest measures, a complete closure of all Gaza border crossings since November 5, are part of an ongoing policy that has prevented the normal flow of goods and people in and out of Gaza since January 2006. It has contributed to a humanitarian crisis, deepened poverty and ruined the economy.

According to a senior relief official at the United Nations, Deputy Secretary-General John Holmes, at the beginning of 2008 Gaza has faced “a serious humanitarian crisis.” United Nations Secretary General Ban Ki-moon has repeatedly condemned Israeli violence against civilians living in Gaza. Addressing the Security Council recently, he condemned Israeli indiscriminate bombardment of Gaza Strip residential areas. He said that Israel has made "disproportionate and excessive use of force against civilians. While recognizing Israel's right to defend itself, I condemn the disproportionate and excessive use of force that has killed and injured so many civilians, including children," Ban said. "I call on Israel to cease such attacks."

- Israel's blockade of the Gaza Strip, an occupied territory under the Fourth Geneva Convention, constitutes collective punishment in violation of the laws of war.

In Gaza, hundreds have been killed. Homes, greenhouses, bridges, water and sewerage treatment plants and electricity generators have been destroyed in the latest acts of Israeli genocide sadistically code-named ‘operation Summer Rain, which began on 27 June 2006. Israel continues its brutal air strikes on the Gaze Strip on a nearly daily basis.

Violations of the laws of war by one party to a conflict do not justify violations by the other. As such, illegal attacks by Palestinian armed groups do not justify an illegal Israeli response.

The humanitarian situation in Gaza is now critical as the borders remain closed. Food distribution by the United Nations to 750,000 people—half of Gaza's population remains severely disrupted.

Gaza's main power station needs over 21 million liters of industrial diesel before it can restart power production, according to the relief agency. Gaza is currently suffering widespread power shortages with power cuts of up to 16 hours a day. On average 650,000 people—over a third of the population—are without power at any one time amid rolling power cuts throughout the territory.

The fuel and power shortages have disrupted the pumping of water from 80 percent of Gaza water wells according to the UN Office for the Coordination of Humanitarian Affairs (OCHA). Twenty percent of the population has access to water for six hours five times a week. Forty percent have access to water four days a week, and the remaining 40 percent have water for just three days a week.

During much of 2008 insufficient wheat grain has entered Gaza, prompting Gaza's largest flour mill al-Philistiniya to close, according to OCHA. A lack of cooking gas has closed 28 out of 47 pita-bread bakeries in Gaza, and bread is being rationed. There are no bakeries in production in Rafah in the south of Gaza.

The latest closures have compounded the already severe effects of a longer term blockade imposed in June 2007. Over the last year, this policy has deepened poverty in Gaza and cut its industrial production by over 90 percent, according to the World Bank. The Palestinian Federation of Industries estimates that as a result of import restrictions and the inability to export, only 23 of the 3,900 industries in Gaza are operating, six of which produce wheat flour, one clothing, and the remainder food processing.

These restrictions are impacting a population that is already among the poorest in the world. Close to 70 percent of the population lives in deep poverty, according to the UN relief agency, UNRWA. (The agency defines deep poverty as a family of six persons or more living on income of less than US\$467 per month.) Egypt has been complicit in the blockade by keeping its borders with Gaza closed for much of the past year, in cooperation with the Israeli government.

Israel made a commitment in June to ease some of these restrictions – but the movement of goods into Gaza and people in and out the territory remains a fraction of what it was when borders were last opened for free trade. October's imports represented only 21 percent of the December 2005 level (13,430 truckloads), that is prior to the Palestinian Legislative Council elections, and 26 percent of the May 2007 level, immediately before the Hamas takeover of the Gaza Strip, according to OCHA. Exports from Gaza are not allowed.

The Israeli government have prevented over 800 students from leaving the territory to study abroad. Restrictions on freedom of movement for the large majority of the population remain in place, preventing their access to work, healthcare, and family outside of Gaza.

Even though Israel withdrew its permanent military forces and settlers in 2005, it remains an occupying power in Gaza under international law because it continues to exercise effective day-to-day control over key aspects of life in Gaza. Under the Fourth Geneva Convention, Israel is obliged to ensure the provision of food and medical supplies to the civilian population to the fullest extent possible.

Israel refuses to lift restrictions on the flow into Gaza of food, medicines, and other supplies essential for the well-being of the civilian population and to cease measures that amount to collective punishment of the civilian population, including disruptions to the electricity supply and fuel cuts. Nor has Israel respected the right to freedom of movement, especially for those who need to travel for reasons of health or education.

For the above reasons, Petitioners urge the Office of the Prosecution of the International Criminal Court to initiate and open Proceedings in the Situation of Israeli violations of International Law in Gaza.

For the above reasons, ICAI HOKOK, submits the Gaza Situation to the Office of the Prosecution of the International Criminal Court, The Hague, Holland.

Respectfully submitted,

ICAI HOKOK by its President **May El Khansa**

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## **CAMPAIGNS**

FREE GAZA: [www.freegaza.org/](http://www.freegaza.org/)

POPULAR COMMITTEE AGAINST SIEGE: <http://www.freegaza.ps/>

## **BLOGS**

From Gaza With Love: <http://fromgaza.blogspot.com/>

Gaza Strip: the Untold Story: <http://www.gazatoday.blogspot.com/>

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ICAI HOKOK wishes to express its appreciation to Ms. **Ann El Khoury**, a researcher and PhD Candidate from Sydney, Australia ([peoplesgeography.com](http://peoplesgeography.com)) for her work in preparing the above Bibliography.