IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

VOLUME 1

SUBMISSIONS IN SUPPORT OF DEPROSCRIPTION

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SUBMISSIONS IN SUPPORT OF DEPROSCRIPTION

A. INTRODUCTION

1. For more than a century, the British State has been responsible for colonisation, ethnic cleansing and apartheid in Palestine. From the Balfour Declaration of 1917 to the Nakba of 1948 and all the way up to its present complicity in the ongoing genocide of Palestinians in Gaza, the British State has played a critical role in the persecution of the Palestinian people. It has done so pursuant to its enduring policy of Zionism, an ideology that is the root of the violence in historic Palestine.

2. Harakat al-Muqawamah al-Islamiyyah (the Islamic Resistance Movement or '**Hamas**') is an organised resistance movement that exercises the right of the Palestinian people to resist Zionism and the colonisation, occupation, apartheid and, genocide carried out in its name. The legitimacy of the struggle of the Palestinian people for independence, territorial integrity, national unity and liberation from colonial and alien domination and foreign occupation by all available means, including armed struggle, is moral, legitimate and explicitly

enshrined in international law.

3. In accordance with Part II of the Terrorism Act 2000 ('**the 2000 Act**'), Hamas seeks its removal from the list of proscribed organisations in sch.2 to the 2000 Act. The political wing of Hamas was added to that list on 26 November 2021.

4. This application presents the Secretary of State for the Home Department with a historic opportunity to depart from the British State's morally and legally indefensible policy of siding with the Zionist oppressor against the oppressed people of Palestine. As the depravity of the crimes of the Zionist State in historic Palestine reaches unprecedented depths, institutions like the International Court of Justice ('**ICJ**') and International Criminal Court ('**ICC**') are, reluctantly, recognising by name some of those crimes. Similarly, organisations such as Amnesty International and Human Rights Watch ('**HRW**') are now, too, acknowledging the apartheid and genocide imposed upon the Palestinian People. The Secretary of State should join them and concede that its '*little loyal Jewish Ulster*'[1] is a genocidal '*mad dog*'[2] that must be stopped.

5. The continued proscription of Hamas means support for – and complicity in – the unrelenting colonisation of Palestine and crimes against humanity and acts of genocide being perpetrated by the Zionist State. That support and complicity is irreconcilable with the obligations of the British State under both international and domestic law. This deproscription application seeks to remedy that ongoing illegality.

6. In summary, Hamas submits:

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1 As the concept of a Zionist State was referred to by Ronald Storrs in 1937, prior to becoming military governor of Jerusalem. See Appendix 23 Englert ¶41

2 "*Israel must be like a mad dog, too dangerous to bother.*" – Former 'Israeli' Defence Secretary Moshe Dayan.

(1) Its proscription is contrary to the duties of the British State to (a) end genocide, (b) end crimes against humanity, (c) bring to an end the occupation of the occupied Palestinian territory (**'oPt'**), and (d) recognise the Palestinian people as full members of the human family, equal in dignity.

(2) Proscription is incompatible with arts.10, 11 and 14 of the European Convention on Human Rights ('**ECHR**'), because it unlawfully restrict the freedom of speech and assembly of those with whom the British State politically disagrees.

(3) Proscription is not proportionate because Hamas does not pose any threat to Britain or British citizens; it undermines the democratic process by seeking to eliminate from the political process the party which has won the only free and fair election in the oPt; it impedes humanitarian relief efforts; and results in the mass criminalisation of Palestinians.

B. TERMINOLOGY

7. **'Israel':** This application will use anti-Zionist, and generally anti-colonial, terminology. Hamas places 'Israel' in quotation marks, to signal that it is a colonial term, reflective of a racist attempt to impose an ethno-exclusionary State on a pluralistic and ethnically diverse population. Instead, Hamas refers to 'Israel' as the Zionist State, which accurately reflects both reality and its genealogy.

8. **'Terrorism'**: Although this term originally emerged in the French Revolution, it has since morphed into a colonial designation, one used to malign, morally judge, and defame people and organisations, many of whom are more properly characterised as '*freedom fighters*'. The question of whether the Secretary of State should malign and penalise Palestinians as '*terrorists*' sits at the heart of this application for deproscription. Application of the term terrorism has the effect of erasing the history and political context of violence. Violence becomes '*just evil*', coming out of nowhere, rather than being historically situated and (often) a product of preceding structural violence and oppression. Without a history, the State using the term can then claim to be acting in self-defence, erasing its responsibility for helping to create conditions that make such violence more likely. In the case of 'Israel', this means sidestepping its history of settler-colonial expansion and continued occupation, including its obligations towards Gaza as an occupying power.[3]

9. **'Antisemitism'**: Antisemitism is an abhorrent form of racism that must be combated like all other forms of racism. However, the International Holocaust Remembrance Alliance ('**IHRA**') working definition of the term is irredeemably broken and must therefore be rejected. The IHRA working definition is poorly drafted, internally incoherent, hopelessly vague, vulnerable to political abuse, and not fit for purpose.

3 Appendix 27 Gunning ¶21

Indeed, it does not even fulfil the most elementary requirement of a definition, which is to define. The definition states that "*antisemitism is a certain perception of Jews*" but fails to spell out what this perception is. Instead, through the examples it provides, it seeks to suppress political speech by conflating Judaism with Zionism in assuming that all Jews are Zionists and that the Zionist State in its current apartheid form embodies the only viable expression of the right of self-determination of all Jews.

10. Although vacuous, it is not innocuous. Kenneth Stern, the lead author of the definition, has rejected its adoption as a campus hate speech code, arguing that it '*will harm not only pro-Palestinian advocates, but also Jewish students and faculty, and the academy itself*'.[4] Stern successfully urged the American Bar Association not to adopt the definition because it has been used as '*a blunt instrument to label anyone an antisemite*'.[5]

11. As Professor Avi Shlaim explains in his expert report, what the IHRA working definition ***does*** do, with the help of its examples, is shift the focus from real antisemitism to the legitimate and growing phenomenon of anti-Zionism. Distinguishing clearly between antisemitism and anti-Zionism is imperative. Antisemitism should be defined as '*hostility towards Jews because they are Jews*'.[6] Zionism is a nationalist, political ideology that calls for the creation and maintenance of a Jewish State and now supports the continued existence of 'Israel' as such a State.

12. **'Anti-Zionism'**: Anti-Zionism is opposition to the racially exclusive character of the Zionist State and to Israeli policies, particularly its continued occupation of the oPt.

4 Appendix 11 Shlaim ¶70
5 UN urged to reject antisemitism definition over 'misuse' to shield Israel, Guardian, 24 April 2023 https://www.theguardian.com/news/2023/apr/24/un-ihra-antisemitism-definition-israel-criticism
6 Appendix 11 Shlaim ¶72

Antisemitism relates to Jews anywhere in the world; anti-Zionism relates only to the Zionist State and those complicit in perpetuating its existence as a project of settler-colonial apartheid. The IHRA working definition is susceptible – perhaps purposefully – to political abuse because it enables conflation of legitimate anti-Zionism with nefarious antisemitism. Many of the Zionist State's apologists, deliberately and routinely, conflate the two distinct phenomena. To criticise the definition for its vacuity risks missing a central point: its very vagueness confers a political advantage on Zionism. It enables the defenders of 'Israel' to weaponise the definition, especially against left-wing and anti-Zionist opponents, and to portray what in most cases is valid criticism of Israeli behaviour as the vilification of the Zionist State.[7]

7 Appendix 11 Shlaim ¶71-74

C. DOCUMENTS

13. This application is supported by the following documents and expert reports.

Appx	Title	Author
	Hamas	
1	Witness statement	Dr Mousa Abu Marzoook
2	Operation Toofan Al-Aqsa	Dr Mousa Abu Marzoook
3	Document of General Principles and Policies (2017)	Hamas
4	The Islamic Resistance Movement Hamas (2000)	Hamas
5	This is what we struggle for (1990s)	Hamas
6	Hamas Election Manifesto (2005)	Hamas
7	Hamas' Ideology, Aims and Objective (2024)	Dr Azzam Tamimi
8	Hamas's Sources of Legitimacy (2024)	Dr Tristan Dunning
9	The Great March of Return(2024)	Romana Rubeo
	Zionism and Britain's Support for the Zionist State	
10	Zionism as a Maximalist Ideology (2024)	Dr Sami Al-Arian
11	Britain's Relationship with Zionism (2024)	Prof Avi Shlaim
12	The 2021 Decision to Proscribe Hamas (2024)	Prof Avi Shlaim
13	Israel's 'Right to Exist' (2024)	Prof Avi Shlaim
14	Israel's 'Right to Exist' (2024)	Prof John Dugard

	The Conditions of Palestinian Lives in the oPt	
15	The Centrality of Jerusalem and al-Aqsa to the Palestinian Cause (2025)	Dr Osman Latiff
16	Psychological Impact of Palestinian Dispossession & the Normalisation of Zionism in Western Mental Health (2024)	Dr Tarek Younis
17	The Palestinian Prisoners' Movement as Central to the Palestinian Liberation Struggle (2024)	Charlotte Kates
18	The Socio-Economic Conditions of Palestinians on 6 October 2023 (2024)	Amet Oner and Suheda Nur Uzuntas
19	The Siege of Gaza (2025)	Romana Rubeo
20	Media Bias against Palestinians (2025)	Robert Inkalesh
21	Dignity in Islam (2025)	Dr Sheikh Haitham al-Haddad
	Resistance to Settler Colonialism	
22	The Legacy of the Martyr Izz al-Din al-Qassam (2024)	Dr Sami Al-Arian
23	Settler Colonialism, Zionism, and the Genocide in Gaza (2024)	Dr Sai Englert
24	Dispossession Resistance Against Settler Colonialism and Occupation (2024)	Dr Asim Qureshi
25	The Roots of Anti-Colonial Violence (2024)	Dr Asim Qureshi
26	The Lawful Use of Violence by the African National Congress (ANC) Against the Apartheid Regime (2024)	Dr Ismail Vadi
	The Politics of Proscription	
27	The Politics and Effects of Proscription (2025)	Prof Jeroen Gunning
28	The Proscription of the African National Congress and its impact on the right to self-determination in South	Dr Ismail Vadi

	Africa (2024)	
29	The Chilling Effect of Counter-Terrorism Powers on Journalism (2024)	Jonathan Cook
30	Palestine and its Relationship with the Arab World (2025)	Dr Usaama al-Azami
31	Joint Submission to the Foreign & Commonwealth Office (2023)	Prof Jeroen Gunning, Dr Tristan Dunning, Dr Anas Iqtait, Dr Tareq Baconi, Dr Martin Kear, Prof Hamish Maxwell-Stewart, Dr Shannon Brincat & Dr Adel Yousif

D. BACKGROUND

14. The general factual background to the Palestinian struggle is lengthy, spanning as it does more than a hundred years of history. The Secretary of State is invited to consider the abovenamed expert reports, annexed to this application, which deal with the topics below. While we have no doubt that the Secretary of State will read the reports in full, these submissions have incorporated parts of those reports both for ease of reference and to assist in her comprehension of the nature of Hamas; the context in which it was established and continues to operate; and Britain's role in creating and perpetuating the criminal actions of the Zionist State.

15. It is critical to appreciate the roots of the Zionist State as a settler colonial project and how Hamas is simply one of the more recent embodiments of Palestinian resistance to that project, which stretches back to the era of the British mandate. While the historical record, as the pages that follow will detail, is unequivocal on the fact that Zionism is a settler colonial movement and 'Israel' is a settler colonial state, the contemporary political debate is not. Today, despite the presence of nearly 800,000 illegal 'Israeli' settlers – who are recognised as such internationally including by the British government – in the West Bank, East Jerusalem, and the Golan Heights, it is still a regular occurrence to find commentators rejecting the applicability of the label 'settler-colonial' in the 'Israeli' case; a tendency that has intensified in the context of the Zionist State's 2023-2025 genocide in Gaza and the growing international solidarity campaign with the Palestinian people.[8]

16. While this application is not about Operation Toofan Al Aqsa, Hamas is conscious that the Secretary of State may wish to consider the events on and immediately following 7 October 2023 as part of this application. To that end, Dr Mousa Abu

8 Appendix 23 Englert ¶37.

Marzouk, the senior member of Hamas who is bringing this application on the movement's behalf, has prepared a witness statement in which he provides a detailed account of the operation. Additionally, the background section will summarise some of the stated motivations behind the operation and the conditions that existed in the oPt on its eve.

Harakat al-Muqawamah al-Islamiyyah (Hamas)

Foundation and Purpose

17. Hamas is a Palestinian Islamic national liberation and resistance movement that draws its inspiration from the Qur'an and the traditions of the Prophet Muhammad (peace be upon him). Hamas was founded in 1987, following the start of the First Palestinian Intifada, which itself marked the 20th anniversary of the military occupation of the oPt by the Zionist State. Hamas conceives of itself as one of the links in the chain of the struggle against Zionist colonial settlers, going back to the armed resistance by Shaykh Izz ad-Din al-Qassam, the foremost figure responsible for the Great Arab Revolt that erupted in 1936.

18. Hamas' goal is to liberate Palestine by confronting the Zionist project. Its frame of reference is Islam, which determines its principles, objectives and means.

19. Hamas initially operated as a street-level resistance movement, issuing communiqués and organizing demonstrations as a counterpoint to initiatives led by the Palestinian Liberation Organisation ('**PLO**'). This led to low-level violence such as throwing stones and Molotov cocktails, and knife attacks against occupying Israeli soldiers.[9]

20. The First Intifada led to the formation of the operationally independent armed wing,

9 Appendix 08 Dunning ¶12.

the Izz al-Din al-Qassam Brigades ('**Qassam Brigades**') in 1991. The Qassam Brigades is an organised resistance movement which: (a) is commanded by a person responsible for his subordinates, (b) has a fixed distinctive sign recognisable at a distance; (c) is carrying arms openly; and (d) conducts its operations in accordance with the laws and customs of war.

21. The Qassam Brigades was proscribed by the Secretary of State in 2001 during the Al-Aqsa Intifada. Hamas was proscribed in its entirety in 2021. Neither Hamas nor the Qassam Brigades pose any a threat to foreign States. Indeed, there is simply no evidence that they have ever conducted attacks outside of 'Israel' and the oPt.

22. Hamas has a policy of non-interference in the internal matters of foreign States. The decision to proscribe the Qassam Brigades in 2001 appears to have been driven by Britain's response to the attacks in the United States on 11 September 2001, rather than any fundamental changes in the Qassam Brigades' tactics. Indeed, the decision to proscribe the entirety of Hamas in 2021 also appears to have been motivated by political considerations, rather than any changes to the relationship between its political and military wings or its actions.[10]

23. Hamas is often criticised for the content of its founding Charter from August 1988. However, the views, policies and practices of the group have developed significantly since that time. Hamas has published a series of other documents since then, the most recent of which was its Document of General Principles and Policies in 2017.

Oslo Accords and Elections

24. Following its foundational period, the 1990s represented a turning point for Hamas

10 Appendix 27 Gunning ¶¶14 - 15

as it sought to adapt to the geopolitical realities created by the Oslo Accords. The Accords and subsequent addendums provided for limited Palestinian governance in the oPt. The West Bank was divided into Areas A, B and C. This led to the establishment of the Palestinian Authority ('**PA**') in 1994. The PA – dominated by the largest party of the PLO, Fatah, and the figure of Yasser Arafat in particular – assumed notional autonomy over Area A, constituting a mere 17% of the West Bank, the 'sovereignty' of which was routinely violated by Israeli occupation forces. The PA was responsible for administrative matters in Area B, but occupation forces retained security control. Area C – comprising 60% of the West Bank – was exclusively controlled by the Israeli occupation.[11]

25. Hamas, alongside other factions – such as the Popular Front for Liberation of Palestine ('**PFLP**') – and prominent Palestinians, opposed the Oslo Accords on the grounds that there were no provisions for a Palestinian State. Instead, they claimed it would merely facilitate the ongoing expansion of Israeli settlements, and serve to entrench the occupation. Edward Said, for example, labelled the Accords a '*Palestinian Versailles.*'[12]

26. Hamas reaffirmed its commitment to armed resistance, rejecting the Oslo Accords as a betrayal of Palestinian rights. However, internal and external pressures compelled it to consider alternative strategies, including political engagement and international dialogue.

27. The Oslo Accords and subsequent addendums also led to the Palestinian Legislative Elections in 1996. For Hamas, this occasioned internal debate and even the formation of a nascent political party. However, they boycotted the elections on the ground that participation would implicitly validate the Oslo process. The

11 Appendix 08 Dunning ¶19
12 Appendix 08 Dunning ¶21.

movement also had concerns vis-à-vis overall transparency and fairness. Indeed, for much of the Oslo process (1993-2000), the PA worked in close cooperation with occupation forces to repress Hamas. Nonetheless, Hamas refused to let itself be drawn into internecine violence with the PA despite the arrests and torture of many of its cadres.[13]

28. In a memo prepared at the request of Western diplomats in the late 1990s entitled '*This is what we struggle for*', Hamas articulated a more pragmatic stance. While reaffirming its rejection of the Oslo Accords, the memo emphasised the movement's national liberation goals over its Islamic rhetoric. It acknowledged the possibility of a long-term truce (*hudnah*) contingent on the withdrawal of 'Israel' to the pre-1967 war borders. This period highlighted Hamas's growing awareness of the need to balance ideological rigidity with practical political considerations.[14] This pragmatism extended to internal governance, as Hamas sought to consolidate its influence in Palestinian society through grassroots activism and social services.[15]

29. Prior to the eruption of the Al-Aqsa (or Second) Intifada in 2000, Hamas issued another significant memo elaborating its ideological framework and strategic goals. This document reaffirmed Hamas's identity as an Islamic-nationalist movement, framing its struggle as both a religious duty and a nationalist imperative. It emphasised the inseparability of Palestine's liberation from broader Islamic solidarity, linking its mission to the global Muslim community.

30. The conditions of Palestinians prior to the Al Aqsa Intifada was characterised by systematic restrictions, heightened tensions, and persistent human rights violations. These entrenched patterns of Israeli control did not emerge suddenly. Instead, these

13 Appendix 08 Dunning ¶23-24.
14 Baconi, T., 'Hamas Contained: The Rise and Pacification of Palestinian Resistance', Stanford University Press, 2018
15 Roy, S., 'Hamas and Civil Society in Gaza, Engaging the Islamist Social Sector', Princeton University Press (2011)

were the product of decades of occupation following the 1967 war, and the subsequent failure of the Oslo Accords to bring about a viable and equitable resolution. During the late 1990s and early 2000s, Palestinians faced severe limitations on their freedom of movement. Military checkpoints, curfews, and closures fragmented the oPt, disrupting daily life, impeding economic activity, and undermining social cohesion.[16]

31. These oppressive measures contributed significantly to the growing sense among Palestinians that their aspirations for statehood, freedom, and dignity were being thwarted. The breakdown of diplomatic negotiations and the absence of meaningful political progress led to widespread disillusionment, laying the groundwork for renewed rebellion. In September 2000, following Ariel Sharon's inflammatory visit to the Al-Aqsa Masjid compound in East Jerusalem, the frustration and anger erupted into what became known as the Second Intifada. This uprising was not a spontaneous reaction to a single event, but rather the culmination of long-term structural violence, dispossession, and a profound injustice experienced by Palestinians living under Israeli rule.[17]

32. This period also saw the intensification of Hamas's armed resistance, particularly through the use of so-called '*suicide bombs*', or what the movement calls '*martyrdom operations*'. Hamas first utilised the strategy in April 1994 in the Israeli towns of Afula and Khedara, following the massacre at the Ibrahimi Masjid in Hebron, in which Israeli settler Baruch Goldstein and killed 29 Palestinians and injured 125 during morning prayers. After 1995, other groups began to use the same tactics, such as Palestinian Islamic Jihad ('**PIJ**') , as well as more secular groups such as the Al-Aqsa Martyrs Brigade (part of Fatah) and PFLP. As a result, the Al-Aqsa Intifada

16 Appendix 25 Qureshi ¶23
17 Appendix 25 Qureshi ¶25

became known for its use of martyrdom operations.[18]

33. While these tactics garnered international condemnation, they also reinforced Hamas's image as the vanguard of Palestinian resistance, contrasting sharply with the perceived ineffectiveness of the PA. Hamas's reliance on armed struggle did not preclude its exploration of political opportunities, as evidenced by its increasing engagement with Palestinian civil society.

34. Following Israel's unilateral withdrawal from Gaza in August 2005, Hamas began to engage in the internal Palestinian political process, running against the mainstream Fatah party, which dominated the PA. From its seat in Ramallah, the PA exercised a degree of governance over both Areas A and B in the West Bank and the Gaza Strip, albeit limited by the ultimate control of the occupation. Fatah was perceived as corrupt and inefficient and as a subcontractor for Israeli security in the oPt. Hamas, by contrast, had a reputation for probity in public life as well a record of real resistance to the Israeli occupation.[19]

35. Hamas's decision to participate in the 2006 Palestinian Legislative Council elections marked a significant ideological evolution. The Change and Reform List manifesto combined its commitment to resistance with a vision for governance. The document outlined a platform emphasising anti-corruption measures, social justice, and national unity, while reaffirming the inalienability of Palestinian rights.

36. From the outset, despite the US government's overt support for the democratic process, officials stated that in the case of a Hamas victory it would refuse to engage with a government that would turn Gaza into '*Hamastan*.' President Bush's comments to President Mahmoud Abbas in May 2005 suggested that Palestinians

18 Appendix 25 Qureshi ¶26
19 Appendix 12 Shlaim ¶29

would pay a cost if they voted the 'wrong way'. In his words, he was sure Hamas would lose because '*I think Palestinian moms want their children to grow up in peace*'.[20]

37. The elections proceeded with a 77% voter turnout and were deemed to compare '*favorably to international standards*' by a delegation of 84 foreign observers, including former US president Jimmy Carter, former Swedish Prime Minister Carl Bildt, former Albanian President Rexhep Meidani and former Spanish Foreign Minister Ana Palaci. The delegation concluded that the elections were conducted in a fair and free manner and should be considered to reflect the will of the people.[21]

38. While Change and Reform only secured a popular plurality with 44.5% of the vote at a proportional level, the list won 70% of district level seats due to its superior organisation and unity of purpose.[22] By way of comparison, the current Labour Party government won 33.7% of the vote in the 2024 general election and the Conservative Party entered government in 2020, 2015 and 2011 winning 43.6%, 36.9%, and 36.1% of the vote, respectively.

39. Following its surprise election, Change and Reform reached out to other factions, including Fatah, to form a unity government. Fatah rebuffed this offer, wanting the newly elected government to fail. The Hamas victory intensified Palestinian inter-factional power struggles with the outgoing Fatah-led legislature bequeathing the Fatah-led presidency with additional powers, including control of the interior ministry and the security forces. Meanwhile, Fatah-appointed leaders of the security forces and administration publicly refused to work with the incoming administration leading to security chaos. The new government therefore formed an adjunct police force, the Executive Force, to re-establish order in the Gaza Strip.[23]

20 Appendix 19 Rubeo ¶9
21 Appendix 08 Dunning ¶46, Appendix 19 Rubeo ¶10
22 Appendix 08 Dunning ¶47
23 Appendix 08 Dunning ¶54-57

40. Special envoys from the United States, the Russian Federation, the European Union, and the UN Special Coordinator for the Middle East Peace Process ('**the Quartet**') congratulated PA President Abbas and the Palestinian people '*on an electoral process that was free, fair and secure*' and iterated its desire that '*all participants in the democratic process ... would renounce violence and terror, accept Israel's right to exist, and disarm*'. The Quartet issued a second statement four days later affirming that adherence to these conditions would be a prerequisite for '*future assistance to any new government*'.[24]

41. On 19 February 2006, the Israeli government decided to halt the monthly transfer of millions in tax and customs revenues to the PA. The US and the EU followed suit two months later.[25] Despite claiming to support democracy, when the people voted the 'wrong way', 'Israel' and its Western allies imposed diplomatic and economic sanctions to undermine the democratically elected Palestinian government.[26]

42. As former UN Special Coordinator for the Middle East Peace Process Alvaro de Soto observed, the global '*war on terror*' had resulted in an amalgamation of groups like al Qaeda with groups like Hamas that operate within a completely different context, resulting in a stigma attaching to any form of negotiation with them:

> *Until that time, it had been unquestioned UN practice since Dag Hammarskjold to talk to whomever you need to talk to for peace. That could be people from Hamas just like from the other side. … Excluding such important interlocutors can result in prolonging conflict.*[27]

43. In May 2006, the Quartet admitted that its policy of refusing to engage with the new

24 Appendix 19 Rubeo ¶11
25 Appendix 19 Rubeo ¶12
26 Appendix 12 Shlaim ¶30
27 Appendix 27 Gunning ¶24.a

Hamas government was impacting the Palestinians population, particularly in Gaza, and that this could create a humanitarian disaster. The policy approach adopted by foreign donors meant that the narrative grounding had been laid for the imposition of comprehensive siege conditions on Gaza by Israeli authorities. In that narrative, Gaza was, despite housing over 1.4 million people (838,000 of whom were under the age of 18) in 2006, nothing but a '*terror enclave*'. The Israelis were empowered to implement the policies they deemed necessary to solve their '*Gaza problem*'. Though it would not just '*sink into the sea*', as former Israeli Prime Minister Yitzhak Rabin had once wished, Israeli authorities settled to turn the strip into what former British Prime Minister David Cameron subsequently referred to as an '*open air prison*', with a series of wars and siege tactics that ushered in '*16 years of de-development and suppressed human potential.*'[28]

44. In March 2007, Hamas formed a national unity government together with Fatah. This government proposed direct talks with Israel on a long-term ceasefire of twenty or more years. Israel refused to negotiate, plotting instead to drive Hamas out of power.[29]

45. Details of the plot are contained in 'the Palestine Papers', a cache of 1,600 diplomatic documents leaked to Al Jazeera and the Guardian. The papers include the minutes of the quadripartite '*Gaza Security Committee*', which consisted of 'Israel', the United States, Egypt, and Fatah. Its aim was to undermine the national unity government, isolate and weaken Hamas, and prepare Fatah for military confrontation with Hamas. In short, the committee members planned a violent coup d'état to overthrow Hamas.[30] Hamas defended itself from this attempted coup in June 2007 as a result of which the PA collapsed.

28 Appendix 19 Rubeo ¶13
29 Appendix 12 Shlaim ¶31
30 Appendix 12 Shlaim ¶32

46. The Zionist State responded to the incident by closing a number of crossings, including the Karni crossing, specifically built following the signing of the Oslo Accords for the transfer of goods between 'Israel' and the Gaza Strip. The amount of goods entering Gaza decreased by 71%, from an average of 253 truckloads per day in April, to an average of 74 in October.[31]

47. In October 2012, the Israeli Defence Ministry disclosed a 2008 document in court proceedings about the restrictions it imposed on the entry of food into Gaza between 2007 and 2010. The document calculated the minimum number of calories needed by Gaza residents and used this to determine the quantity of food allowed into the Strip. Effectively, this amounted to the use of food as a weapon in its war on the Palestinians. The document reflected the advice offered by an Israeli government adviser Dov Weisglass, to then Israeli Prime Minister Ehud Olmert in 2006: *'It's like a meeting with a dietician. We have to make them much thinner, but not enough to die.'* On 4 November 2008, Israel sealed all border crossings and prevented all humanitarian aid and staff from entering Gaza.[32] As Shlaim writes:

> *Israel reacted by imposing a blockade of the Gaza Strip, which is still in force today after 17 years. The blockade caused the collapse of the economy, high unemployment, acute shortages of water, food, fuel, electricity, and medicines, and horrendous suffering by the overcrowded strip's two million inhabitants. A blockade is a form of collective punishment which is proscribed by international law, yet the international community failed to call Israel to account.*[33]

48. The conflict between the two administrations resulted in the political separation of the West Bank and Gaza Strip, with the former being run by presidential fiat since

31 Appendix 19 Rubeo ¶15
32 Appendix 19 Rubeo ¶16
33 Appendix 12 Shlaim ¶33

2005 and the latter by the Hamas-backed administration since its election in 2006. The conflict deepened Palestinian socio-political fragmentation.[34] As a result of Hamas succeeding in these elections, the PA has refrained from calling for parliamentary elections ever since.

49. Since Hamas was elected by the Palestinian people in 2006, 'Israel' has carried out no less than six military campaigns on the Gaza Strip – in 2006, 2008, 2009, 2012, 2014, and 2021 – prior to its latest genocidal campaign that began in October 2023. During these campaigns, Israel killed over 4000 and injured tens of thousands of Palestinians.[35] Israelis refers to these military assaults as 'mowing the grass', intended and designed to degrade Gazan capabilities and prevent any form of progress.[36] Coupled with the blockade, this has become a deliberate policy of '*de-development*', designed to render Gaza economically and socially unsustainable.[37] During these campaigns, Hamas and other Palestinian resistance groups have been compelled to use armed force in defence against the Israeli aggression.

Difference between the 1988 and 2017 Charters

50. These military campaigns have been possible as a result of the continuing occupation of Gaza by the Zionist State, despite its ostensible withdrawal in 2005. As stated in the July 2024 ICJ ruling, the fact that Gaza's entry and exit points are controlled by 'Israel', that they control the airspace above it, and that they have control of everything that enters or exits Gaza, including basic necessities of human life, means that according to international law, Gaza continues to be occupied.[38]

51. In 2017, Hamas issued a new policy document that represented a further ideological

34 Appendix 08 Dunning ¶61
35 Appendix 19 Rubeo ¶18-19
36 Appendix 19 Rubeo ¶18
37 Appendix 30 A;-Azami ¶36
38 Appendix 30 Al-Azami ¶13

recalibration. Often described as a '*new charter*', the document reflected a more refined and politically astute articulation of the movement's goals. It reaffirmed the indivisibility of Palestine but introduced a conditional acceptance of a Palestinian State along the borders which existed before the 1967 war as a '*national consensus formula*.'

52. There are a number of key differences between the 1988 the 2017 documents:

(1) *Framing the Conflict*. The 1988 Charter framed the conflict as a purely religious struggle, emphasising the Islamic nature of Palestine as a *waqf* and portraying jihad as the only path to liberation. In contrast, the 2017 Charter adopts a more nationalist tone, emphasising Palestinian self-determination and positioning Hamas as part of the broader Palestinian national movement. While retaining Islamic references, the '*new charter*' places greater emphasis on Palestinian unity and political legitimacy. This shift aligns with broader trends in which Hamas increasingly blends its religious identity with pragmatic nationalist strategies.[39]

(2) *Territorial Goals*. The 1988 Charter rejected any compromise on territorial claims, insisting on the liberation of all of historic Palestine as sacred Islamic land. The 2017 Charter introduces conditional flexibility by expressing support for a Palestinian State along the pre-1967 war borders as a '*national consensus formula*', while still rejecting formal recognition of 'Israel'. This shift reflects a pragmatic acknowledgment of political realities while maintaining the ultimate goal of full liberation from settler colonialism.

(3) *Stance on Judaism and Zionism*. The 1988 Charter conflated Zionism with Judaism and cited texts like The Protocols of the Elders of Zion. In contrast,

39 Baconi, T., 'Hamas Contained: The Rise and Pacification of Palestinian Resistance', Stanford University Press, 2018.

the 2017 Charter explicitly distinguishes between Judaism as a religion and Zionism as a political project, framing the conflict as resistance to occupation rather than religious hatred. Article 16 of the 2017 document affirms that Hamas '*does not wage a struggle against the Jews because they are Jewish*' and rejects all forms of discrimination based on religion or ethnicity. Indeed, Hamas founder Sheikh Ahmed Yassin is on record as stating that:

> *We ask for our right… nothing more. We don't hate the Jews and fight them because they are Jews. They are people of religion, and we are people of religion. We love all people of religion. If my brother, who has the same religion and parents as me takes my home and expels me I will fight him… So, when a Jew takes my home and expels me, I will fight him as well. I don't fight the USA, Britain or other countries. I'm at peace with all people. I love all people and wish them well – including the Jews.*[40]

(4) *Engagement with International Norms*. The 1988 Charter dismissed international norms, presenting the conflict as a religious duty that precluded political solutions. The 2017 Charter, however, acknowledges international law and norms, citing the illegality of occupation and emphasising Palestinian self-determination. This change reflects a strategic effort to build broader legitimacy and alignment with narratives of human rights and justice.

(5) *Relationship with the Palestinian National Movement*. In 1988, Hamas distanced itself from the secular PLO, accusing it of abandoning Islamic principles and compromising Palestinian rights. The 2017 Charter takes a more conciliatory tone, recognising the PLO as a national framework and advocating its reform to include Hamas. This reflects the Movement's desire to strengthen its role within the Palestinian political landscape and foster unity

40 Sohaib M (2014) *Unexpected view on Jews from Sheikh Ahmad Yasin*, YouTube, https://www.youtube.com/watch?v=_2eXDd6liG0

Support for the Great March of Return

53. In addition to armed resistance, Hamas has also engaged in non-violent resistance. This has consisted of organising human chains, initiating legal actions, and participating in, supporting and facilitating the Great March of Return, which was a series of weekly peaceful protests that took place between March 2018 and December 2019 at the Gaza perimeter-fence. The protests demanded the right of Palestinian refugees to return to their homes in historic Palestine and for an end to the blockade of Gaza.

54. The protests reached their peak on 14 May 2018, coinciding with the controversial relocation of the US embassy from Tel Aviv to Jerusalem and the 70th anniversary of the Nakba, when Palestinians mark the mass displacement and dispossession following the creation of the Zionist State. On that day alone, Israeli forces killed 59 Palestinians, exemplifying the use of excessive force and live ammunition against protesters who posed no threat.[41] The pattern of targeting journalists and healthcare workers – so emblematic of the Zionist State's genocide in Gaza since October 2023 – was already in place during the killings of Palestinians attending these protests.[42]

55. Although Hamas did not directly organize the protests, it has supported them, which was understood to be a shift in the Movement's position towards support for non-violent resistance:

> *The protest emerged as a civil society-led effort that was given permission, supported, and ultimately managed by a committee comprising the various political parties in Gaza, including Hamas. As a governing authority, Hamas provided much of the infrastructure necessary for the mobilization, such as buses to transport activists. This was a stark departure from the means with which Hamas traditionally challenged the*

41 Appendix 09 Rubeo ¶25
42 Appendix 09 Rubeo ¶34-38

blockade.[43]

56. In a speech from 9 April 2018, the late leader of Hamas' political bureau – Ismail Haniyeh, whom 'Israel' was to assassinate on 31 July 2024 – seemed to be symbolically underscoring this strategy while standing in front of a banner featuring images of international historical figures known for their endorsement of non-violent, popular resistance, such as Martin Luther King Jr. and Mahatma Gandhi. Haniyeh articulated his position on peaceful resistance in a June 2018 article, emphasizing that:

> *If we can secure our rights through peaceful means, this is our preferred path. However, if peaceful efforts fail, our right to resist the occupation by all means, including armed resistance, remains legitimate and recognized.*[44]

57. Contrary to a deceptive narrative that has been propagated for years, Hamas has sued for peace, both long-term and short-term, on numerous occasions during and outside of various incidents of military conflicts, offering the Zionist State both unilateral ceasefires (or *tahdi'ah*) and long-term truces known as *hudnah*. Hamas has also offered to end martyrdom operations if the Israelis were ready to "*stop their attacks on [Palestinian] civilians, end land confiscation and house demolitions, and release the prisoners and detainees.*"[45]

58. The response of the Zionist State to those offers has been to consistently undermine them by carrying out high-level assassinations of Hamas' senior leadership. The evidence demonstrates that it is the Israelis who cannot be considered a partner for peace, not Hamas. *Tahdi'ah*s throughout the Al-Aqsa Intifada were shattered by the assassinations of Hamas leaders Salah Shihadah, Isma'il Abu Shanab, Sheikh

43 Appendix 09 Rubeo ¶ 27
44 Appendix 09 Rubeo ¶29
45 Appendix 07 Tamimi ¶58 - 59

Ahmed Yassin, and Dr Abdel Aziz al-Rantisi. The pattern continues until today with the Zionist State assassinating Ismail Haniyeh on 31 July 2024 in Tehran at a time when he was involved in negotiating a US-brokered deal that would have resulted in an exchange of Israeli and Palestinian prisoners.[46]

59. Hamas has offered a *hudnah* to 'Israel' on numerous occasions since the 1990s. *Hudnah* is recognised in Islamic jurisprudence as a legitimate and binding contract whose objective is to cease fighting with the enemy for an agreed period of time. The truce may be short or long depending on mutual needs or interests. According to Ahmed Yousef, an aide to then Prime Minister Ismail Haniyeh: '*A hudnah extends beyond the Western concept of a cease-fire and obliges the parties to use the period to seek a permanent, nonviolent resolution to their differences.*'[47]

60. *Hudnah* would be different from the Oslo Accords, in which the PLO recognised the Zionist State and its so-called 'right to exist'. Under the terms of *hudnah*, the issue of recognition would not be resolved because Hamas cannot, as a matter of principle, accept that the land the Israelis seized from the Palestinians has become theirs. Hamas takes the view that it has no authority to renounce the right of the Palestinians to return to the lands and the homes from which they were forced out in 1948 or afterwards.

61. However, Hamas can say that under the present circumstances it can regain some of the land lost and secure the release of prisoners in exchange for a cessation of hostilities. This would be similar to the Irish Republic Army ('**IRA**') agreeing to negotiate an end to the conflict in the north of Ireland without recognising British sovereignty over the territory. Irish Catholics continue to hope or dream that one day the whole of Ireland will be united and that British rule will come to an end.

46 Appendix 07 Tamimi ¶60-66
47 Appendix 08 Dunning ¶22

Negotiating an end to violence in the north was never conditioned upon the IRA first renouncing its dream of reuniting Ireland. If it had, then peace would never have prevailed.[48]

62. Once *hudnah* is concluded it is considered sacred and fulfilling its obligations becomes a religious duty. So long as the other side observes it, the Muslim side cannot breach it: doing so is considered a grave sin. As in the case of other international treaties, a *hudnah* is renewable upon the expiry of its term by mutual agreement.[49]

63. The overall long-term *hudnah* proposed by Hamas stipulates as a first condition an Israeli withdrawal to the borders of 4 June 1967, which means a return of all the land occupied by the Israelis as a result of the Six-Day War, including East Jerusalem. Such measure would entail the removal of all Jewish settlers from those areas. In addition, 'Israel' would have to release all Palestinians held in its prisons and detention camps.[50]

64. The ideological trajectory of Hamas from 1987 to 2025 illustrates a complex interplay between its foundational principles and pragmatic adaptations. While its core commitment to Palestinian liberation and Islamic principles has remained constant, the movement has demonstrated a remarkable ability to adapt to changing political, social, and military contexts. This evolution underscores Hamas's dual identity as both a resistance movement and a political actor, a dynamic that continues to shape its role in the Palestinian national struggle.

65. In summary, Hamas is a localised, grassroots resistance movement focused on

48 Appendix 07 Tamimi ¶47
49 Appendix 07 Tamimi ¶50
50 Appendix 07 Tamimi ¶51

Palestinian rights to self-determination and resistance to Israeli occupation. Its legitimacy stems primarily from its resistance to foreign rule. However, for Hamas, the idea of resistance is multifaceted in its scope expanding well beyond armed resistance to encompass symbolic, political, social, and ideological resistance. Hamas alters its resistance strategies according to changes in the political opportunity structure, exigency, response to popular opinion and, to a lesser extent, international pressures.[51]

British support for Zionism

66. The British State has been, and today remains, deeply implicated in the settler-colonial project known as 'Zionism'. The primary function of Zionism and 'Israel' has little to do with Jewish security following the mass murder of Jews in the Holocaust by Nazis and their collaborators across Europe. Instead, Zionism and 'Israel' have cynically manipulated Jewish trauma from the Holocaust to provide a smokescreen for the advancement of US and NATO geostrategic interests in the wider region.

67. From the Balfour Declaration of 1917 and the antisemitism that undergirded it, to Britain's formal – and, as Hamas contends, illegitimate – administration of the so-called 'Palestine Mandate', through to today's staunch support for 'Israel' as it conducts the first live-streamed genocide in history, the modern British State has always been supportive of the violence of Zionism.

68. Theodore Herzl, the founder of the Zionist Organisation, wrote in his 1896 book *The Jewish State*:

> *Here two territories come under consideration, Palestine and Argentina. In both countries important experiments in colonisation have been made, though on the*

51 Appendix 08 Dunning ¶9

mistaken principle of a gradual infiltration of Jews. An infiltration is bound to end badly. It continues till the inevitable moment when the native population feels itself threatened, and forces the Government to stop a further influx of Jews. Immigration is consequently futile unless we have the sovereign right to continue such immigration. The Society of Jews will treat with the present masters of the land, putting itself under the protectorate of the European Powers, if they prove friendly to the plan. ... We should there [in Palestine] form a portion of a rampart of Europe against Asia, an outpost of civilization as opposed to barbarism. We should as a neutral State remain in contact with all Europe, which would have to guarantee our existence.[52]

69. The central tenets of Zionism were clear in these passages of *The Jewish State*. To succeed in its colonial mission and make State building through settlement possible, the Zionist movement had to address two key issues. First, it would need to defeat the indigenous population, who would certainly '*feel [themselves] threatened*'. Second, the Zionists would need to secure the backing of an imperial power, whose interests it would serve in return.[53]

The Balfour Declaration

70. On 2 November 1917, Britain issued the Balfour Declaration in support of a national home for the Jewish people in Palestine. The Balfour Declaration did not recognise the right of the Jewish people to a ***State*** in Palestine. It simply stated that the British Government viewed '*with favour the establishment in Palestine of a home for the Jewish people*' but that this was to be without prejudice to the '*civil and religious rights of existing non-Jewish communities in Palestine*.'[54]

71. The Jewish writer, Arthur Koestler, famously described the Balfour Declaration as

52 Appendix 23 Englert ¶39
53 Appendix 23 Englert ¶40
54 Appendix 14 Dugard ¶21

a statement in which one nation promised to a second nation the country of a third. Britain did not have any moral right to hand over Palestine to the Zionists. Nor did it have any legal right. In fact, there is and was no basis in international law for the newly concocted concept of a '*national home*'. For the Zionists and for their chief supporters in Britain – Arthur Balfour, David Lloyd George and Winston Churchill – the national home was always just a euphemism for a State.[55]

72. In 1917, the area that was later called Palestine, was still under Ottoman rule. Arabs constituted 90% of the population of the country, while Jews constituted 10% and owned only 2% of the land. These are the key, incontrovertible facts. They make clear that the Balfour Declaration was a classic colonial document, one which disregarded the rights and aspirations of the majority of the population of the country. It violated their natural right to national self-determination.[56]

73. Arthur Balfour was a white supremacist. He once argued that Europeans should enjoy greater privileges than Blacks in South Africa by claiming that '*men are not born equal*'. His eponymous declaration granted greater rights to incoming European settlers than to indigenous Palestinians. He did not recognise the Palestinians as a people with legitimate national aspirations, but viewed them as a backward, Oriental, inert mass. In line with this Orientalist mindset, Balfour insisted that Palestinians should not be consulted about the Zionist colonisation project in their homeland.[57]

74. Some have argued that Balfour was motivated not just by imperialism but also antisemitism. In 1905, as Conservative Prime Minister, Balfour introduced the

55 Appendix 11 Shlaim ¶25
56 Appendix 11 Shlaim ¶26
57 Appendix 11 Shlaim ¶27

Aliens Bill, the first anti-immigration piece of legislation in British history. Its purpose was to prevent Jews, who were facing persecution in eastern Europe, from coming to Britain. It may seem contradictory to be both antisemitic and pro-Zionist at the same time, but the contradiction is more apparent than real. It is not irrational for someone who does not like Jews in his or her own country, to want Jews from all over the world to be gathered in one Jewish state. Theodor Herzl had predicted that '*[t]he anti- Semites will become our most loyal friends*'.[58]

75. Balfour knew that his declaration contradicted the principle of national self-determination for the majority of the inhabitants but this did not trouble him. In 1919, he wrote to Lord Curzon: '*Zionism, be it right or wrong, good or bad, is rooted in age-long traditions, in present needs, in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land*'.[59]

76. Balfour also admitted, in 1919, that '*[s]o far as Palestine is concerned, the Powers have made no statement of fact which is not admittedly wrong, and no declaration of policy which, at least in the letter, they have not always intended to violate*'. There can hardly be a more conclusive proof of the duplicity and cynicism of the British ruling class of this period.[60]

77. Another major landmark in Britain's betrayal of the Palestinians involved the mandates system created by the League of Nations. The objective of the mandates system over the former territories of the Ottoman Empire was to provide '*administrative advice and assistance by a Mandatory until such time as they are able to stand alone*'. Britain was officially appointed in 1922 as a Mandatory in control of Palestine with the aim of establishing the Jewish national home in accordance with

58 Appendix 11 Shlaim ¶28-29
59 Appendix 11 Shlaim ¶35
60 Appendix 11 Shlaim ¶ 36

the 1917 Balfour Declaration. This is significant because what had been a mere British promise to a group of Zionists became an international instrument and a binding legal obligation.[61]

78. British rule in Palestine was not only anti-democratic; it was also informed by a distinct undercurrent of racism. Winston Churchill, who served as Colonial Secretary after the war, was one of the most fervent champions of the Zionist cause. In evidence to the Royal Commission of Inquiry, headed by Lord Peel, appointed in 1936 to investigate the causes of unrest in Mandatory Palestine, Churchill said:

> *I do not agree that the dog in a manger has the final right to the manger even though he may have lain there for a very long time. I do not admit that right. I do not admit for instance, that a great wrong has been done to the Red Indians of America or the black people of Australia. I do not admit that a wrong has been done to these people by the fact that a stronger race, a higher- grade race, a more worldly-wise race... has come in and taken their place.*[62]

79. Sir Ronald Storrs, the first British Military Governor of Palestine, for example, explained British support for Zionism in Palestine as the development of a "*little loyal Jewish Ulster in a sea of potentially hostile Arabism.*" The question of the relationship between imperialism, settlement, and repressing indigenous resistance appears once again at the forefront of the contemporary considerations surrounding Zionism. Decades later, the US Secretary of State Alexander M. Haig put it in these terms: "*Israel is the largest American aircraft carrier in the world that cannot be sunk, does not carry even one American soldier, and is located in a critical region for American national security*".[63]

80. On 29 November 1947, the General Assembly of the United Nations voted for the

61 Appendix 11 Shlaim ¶ 37
62 Appendix 11 Shlaim ¶ 42
63 Appendix 23 Englert ¶41

partition of Mandatory Palestine into two states, one Arab and one Jewish. The partition resolution was profoundly unfair to the Arabs: the Jews were less than half of the Arab populations and they owned only seven percent of the land, yet the plan accorded them 55 percent of the territory. The local Arabs, the Arab states, and the Arab League rejected partition as immoral, illegal, and impractical.[64]

81. Instead of helping the UN to resolve the problem, Britain decided to cut its losses, regardless of the consequences, including the inevitability of a civil war. The manner in which the Mandate ended, without an orderly transfer of power to the inhabitants of the country, was the worst blot on Britain's record as the custodian of the '*sacred trust of civilisation*'. Hostility towards the Palestinians was a constant factor in British policy in 1947-1949. In British eyes, a Palestinian state was synonymous with a Mufti state. The Mufti was seen as a renegade who had thrown his lot with Nazi Germany. This was the reason for Britain's refusal to enforce partition and for its decision to leave it to the two sides to fight it out with the aim of aborting the birth of a Palestinian state.[65]

Contemporary British Support for the Zionist State

82. In a plethora of different ways, the British State is currently supporting Israeli apartheid, occupation, and genocide. These include providing arms sales directly to 'Israel'; tolerating the operation of companies, including Israeli companies, which are directly tied to the Zionist State, including Elbit Systems UK Limited; harassing and prosecuting anti-genocide activists such as Palestine Action who are taking direct action against companies like Elbit Systems; abstaining on crucial votes in international bodies; and undermining the rulings of international courts including the ICJ and the ICC.

64 Appendix 11 Shlaim ¶49
65 Appendix 11 Shlaim ¶50-53

83. Even after the decisions from the ICJ and the issuing of arrest warrants by the ICC, Britain has continued to provide logistical support to 'Israel'. Britain's Labour government has ordered over 100 spy flights from its Akrotiri airbase to fly over Gaza since 5 July 2024. The plane used for the missions is the Shadow R1, which is known as an intelligence, surveillance, target acquisition and reconnaissance aircraft. It is suspected that the purpose of these missions is to gather intelligence to be shared with the Zionist State. The British government insists that only information relating to hostage rescue is passed to the Israeli authorities.[66] In December 2024, Prime Minister Keir Starmer visited the airbase and was captured telling troops:

> *The whole world and everyone back at home is relying on you. ... Quite a bit of what goes on here can't necessarily be talked about all of the time. We can't necessarily tell the world what you're doing.*[67]

84. The ongoing proscription of Palestinian resistance groups, including Hamas, is yet another means by which Britain continues to enforce its century-long suppression of Palestinian self-determination.

The Roots of Zionism as a Settler Colonial Project

85. Settler colonialism is a colonial process that aims to build lasting societies made up of metropolitan populations – which is to say settlers – that can control territory, stabilise conquest, and rule over the indigenous peoples it invades, displaces, and dispossesses in the process. All settler colonial societies are structured by a fundamental conflict between themselves and the indigenous people they aim to

66 'Keir Starmer's 100 spy flights over Gaza in support of Israel', Declassified UK, 3 October 2024 https://www.declassifieduk.org/keir-starmers-100-spy-flights-over-gaza-in-support-of-israel/

67 https://x.com/SaulStaniforth/status/1866424827457736956

dispossess, exploit, and/or eliminate.[68]

86. Unlike its deniers today, the settler colonial nature of the Zionist movement was obvious to the Zionist State's founders, not something to be ashamed of or hidden from view. Early Zionists were, by and large, (petit-)bourgeois Europeans of the late 19th and early 20th century to whom colonialism was an acceptable activity, as was the resolving of internal European political, social, or economic problems through the conquest and settlement of land and the dispossession of peoples, across the world.[69]

87. The colonial character of Zionism was repeatedly made obvious, unsurprisingly, as the movement started making settlement a reality on the ground in Palestine. The Zionist organisation set up the Jewish Colonial Trust (1899), for example, to finance settlement. The latter had been a central concern of Herzl's in *The Jewish State*, where he modelled his idea for a 'Jewish Company' – as he named it then – on the activities of Rhodes' British South Africa Company in the Transvaal. The Zionist movement's first collective farms were called *Moshavim* – a word derived from the Hebrew for colony/settlement: *Moshava*. The Jewish community in Palestine before 1948 was referred to as the *Yishuv* – the settlement.[70]

88. Of its founding principles, Revisionist Zionism advocates for 'Territorial Maximalism,' a militant vision for Jewish domination over Eretz Yisrael. This concept encompasses the biblical notion of Greater Israel, including all remaining Palestinian territories, as well as regions of Transjordan (modern-day Jordan), Sinai, and parts of modern-day Lebanon, Syria, and Iraq.[71]

68 Appendix 23 Englert ¶12
69 Appendix 23 Englert ¶38
70 Appendix 23 Englert ¶42
71 Appendix 10 Al-Arian ¶12

89. The ideological roots of this perspective are traced to Ze'ev Jabotinsky, a pivotal figure in Zionist thought, who founded several militant organizations. Emerging from the World War I-era British-aligned Jewish Legion, these groups evolved into increasingly militant factions such as the Hagana and later the Irgun Zvai Leumi (Irgun) as well as the Stern Gang (Lehi). The Irgun and Lehi played a leading role in the ethnic cleansing campaigns of the 1948 Nakba. The Likud party had its origin in these two militant groups.[72]

90. More than a century ago, on 4 November 1923, Jabotinsky, published his article *The Iron Wall*, in which he addressed the question of '*colonizing Palestine*'. In his essay, he explicitly advocated for unyielding violence to achieve Zionist goals, famously stating that Arab resistance could only be overcome by an '*Iron Wall*' of unassailable Jewish military strength as the Arabs would not willingly concede their land. He wrote:

> *Every native population in the world resists colonists as long as it has the slightest hope of being able to rid itself of the danger of being colonized. That is what the Arabs in Palestine are doing and what they will persist in doing as long as there remains a solitary spark of hope that they will be able to prevent the transformation of "Palestine" into the "Land of Israel."*[73]

In July 2023, Prime Minister Netanyahu claimed he was continuing to implement the principles Jabotinsky had set out in the *Iron Wall*.[74]

91. In the same essay, he argued that an agreement with the Palestinian Arabs (then) was impossible. He admitted that the Jews had come to colonise Palestine and noted that history proved that no nation ever accepted being colonised and, therefore,

72 Appendix 10 Al-Arian ¶13
73 Appendix 10 Al-Arian ¶14
[74] Excerpt from PM Netanyahu 's Remarks at the State Memorial Ceremony for Ze'ev Jabotinsky, Prime Minister's Office, 18 July 2023, https://www.gov.il/en/pages/event-ceremony180723

always revolted against the colonisers. He concluded: '*Zionist colonization must either stop, or else proceed regardless of the native population.*'[75]

92. It is also striking, in light of contemporary polemics, to note how long the language of colonisation remained central to the self-presentation of Zionism – and the Zionist State. For example, in 1947 the Jewish National Fund could publish a '*Palestine Picture Book*' aimed at English speaking audiences, which made reference to the '*Jewish colonisation of Palestine*', '*Jewish settlers*', '*Jewish settlement*', and '*colonists*'.[76]

93. The creation of of 'Israel' was accompanied by the expulsion of approximately 750,000 Palestinians from their homes and the destruction of over 500 villages. This mass displacement was not incidental but part of a deliberate strategy to secure a Jewish demographic majority on the land. Zionist leaders, such as David Ben-Gurion, explicitly recognised that the establishment of a Jewish State would necessitate the removal of the indigenous Palestinian population to create a *'land without a people for a people without a land.'*[77]

94. The Nakba represents the foundational act of settler colonial violence in Palestine, setting the stage for subsequent policies of land appropriation, demographic engineering, and settlement expansion. Settler colonialism is a structure, not an event, meaning that the displacement of Palestinians in 1948 was not a one-time occurrence but an ongoing process that continues to this day. Settler colonialism in Palestine operates through both legal frameworks and ideological justifications. The Zionist project has relied heavily on the doctrine of *terra nullius*, the notion that the land was '*empty*' or underutilised, which justified its expropriation by Jewish

75 Appendix 10 Al-Arian ¶15
76 Appendix 23 Englert ¶43
77 Appendix 24 Qureshi ¶49

settlers. This colonial logic is akin to that employed by European settlers in North America and Australia, where indigenous peoples were dispossessed based on the assumption that they did not '*properly*' use the land.[78]

95. Not all European Jews that arrived in a Palestine that was being emptied of its native inhabitants, were willing to engage in the process of dispossession. Consider, for example, the story of Genya and Henryk Kowalski who, having just survived a Nazi concentration camp, arrived in Haifa on a ship:

> *We were shaved, we were naked, we did not cry. We did not know what a crematorium is, they lead you inside, you don't know where you are going. They told us, you see, look at the chimney there with smoke coming out, you are waiting to go inside. I never wanted to tell...In Haifa we got out [of the ship] and they took us to Pardes Katz...There were tents, and it was a hard winter in 1949, there were heavy rains and it was cold, our clothes were soaked, and we cried. So I decided I'm not staying here. The Jewish Agency promised to give us an apartment, we went to them and they gave us a key and we arrived at Jaffa. It was not far from the harbor, it was a house enclosed by a fence. We opened the gate, opened the door and went in and we couldn't believe our eyes...We were in shock. The house was beautiful but we didn't even enter the house because in the yard there was a round table set with plates, and as soon as we saw this...we were frightened. And besides the fear, we could not look, it hurt us, how could people, it reminded us how we had to leave the house and everything behind when the Germans arrived and threw us into the ghetto. And here it was just the same situation, and it was not in us to stay. I did not want to do the same thing that the Germans did. We left, returned the key, and stayed in Nachlat [Yehuda, south of Tel Aviv] where the family lived in a section of an orange depository located in the yard of a local family.*[79]

78 Appendix 24 Qureshi ¶ 50
79 Appendix 24 Qureshi ¶50

96. It is little wonder then that Israel has suppressed memories of the Nakba because, in the words of a former Foreign Minister of 'Israel', Shlomo Ben-Ami, this would be to admit '*that the Jewish state was born in sin*".[80]

Early history of the Palestinian liberation struggle

97. Resistance to dispossession of Palestinian land and properties began as a process well before the Nakba. The Palestinian Arab Revolt of 1936–1939 was the first significant staging-post in the uprising against British colonial rule and the increasing influx of Zionist settlers into Mandatory Palestine. This revolt was largely driven by the displacement and dispossession experienced by the indigenous Arab population, exacerbated by British policies that facilitated Jewish immigration and land acquisition. Such policies significantly altered the demographic and economic landscape, resulting in widespread resentment among Palestinian Arabs.[81]

98. Since his martyrdom in 1935, Izz al-Din al-Qassam — the namesake of Hamas' military wing – has remained an enduring symbol of resistance for Palestinian groups of all political and ideological persuasions. Hamas assertively used al-Qassam's name to claim his legacy as a man who combined religiosity with an unflinching willingness to sacrifice everything for the cause of liberation. Article 7 of Hamas's 1988 Charter affirms this, identifying al-Qassam as the first iteration of '*jihad in confronting the Zionist invasion*', which begins a teleological line leading directly to Hamas. An exploration of the life of Izz al-Din al-Qassam reveals how his activism and eventual armed struggle were driven in direct response to a climate of brutality, colonialism and injustice, circumstances that remain relevant to the present day.[82]

80 Appendix 13 Dugard ¶29. Scars of War, Wounds of Peace: the Israeli- Arab Tragedy (2005) p.48.
81 Appendix 24 Qureshi ¶76
82 Appendix 22 Al-Arian ¶6

99. Al-Qassam arrived in Palestine at a time when the British colonial project to establish a Jewish national home was gaining momentum. The influx of European Jewish settlers and the colonies established by the Zionist movement across the coast and other fertile and strategic regions of Palestine, '*served to ensure control of a territorial springboard for the domination (and ultimately the conquest) of the country.*' The Palestinian people were fully attuned to Britain's machinations, and during al-Qassam's fifteen years in Palestine they watched on as the Jewish population grew more than fivefold, from approximately 57,000 in 1919 to about 320,000 by 1935.[83]

100. Following an eruption of violence between the indigenous Palestinian population and Zionist immigrants in 1929, which became known as the Buraq Uprising, the British inflicted severe punitive measures on the Palestinians, including the execution of three Palestinian activists. This moment fed a sense among al-Qassam and others over the futility of cooperation with the British and the growing necessity of armed resistance to stem the accelerating expansion of the Zionist colonial project, particularly threatening the status of the holy sanctuaries in Jerusalem.[84]

101. The influx of European Jewish settlers, British inertia on the question of self-governance, and escalating tension over Jerusalem's holy sites generated a state of continual unease in the streets of Haifa and beyond. Moreover, the daily indignities of colonial rule, Zionist provocation, economic migration, insufficient housing, and persistent underdevelopment pushed Palestine to the brink. By 1933, Palestinian demonstrations were met by the lethal force of British police while the Yishuv continued to develop the institutions of a nation-state, both overtly in the form of the Jewish Agency and covertly with the paramilitary Haganah and its militant off-shoot Irgun. The British and their Zionist allies had created an intolerable situation

83 Appendix 22 Al-Arian ¶8
84 Appendix 22 Al-Arian ¶13

for the Palestinians, reaching a tipping point by 1935.[85]

102. In October 1935, a Zionist attempt to smuggle a large cache of weapons into Palestine was discovered at the port of Jaffa. This incident triggered mass protests. For al-Qassam and his devoted band of disciples, the situation had reached its logical conclusion, and the decision was made to retreat to the mountains. The objective had crystallised: to end the mandate and force the withdrawal of British colonial authority from Palestine. The means were unequivocal: military struggle until '*victory or martyrdom*.'[86]

103. Following a series of killings in 1936 that caused the government to declare a state of emergency, a general strike swept through the cities of Palestine as a rural insurgency took root. This strike was the most sweeping national strike at that time, spanning more than six months and encompassing various sectors such as transportation and commerce..[87] The Arab Revolt had begun.

104. The Arab Higher Committee, led by notable figures such as Hajj Amin al-Husseini, demanded the cessation of Jewish immigration, prohibition of land sales to Zionists, and the establishment of a representative national government. As the revolt progressed, it escalated into armed resistance, targeting both British administrative structures and Jewish settlements. The British responded with harsh measures, including mass arrests, demolitions, and the execution of suspected rebels. The revolt was suppressed at great cost to the Palestinian Arab community. Approximately 5,000 Palestinians were killed, and thousands more were wounded or imprisoned. The revolt underscored the depth of Palestinian resentment towards their displacement and the collaboration between the British and Zionists.[88]

85 Appendix 22 Al-Arian ¶16
86 Appendix 22 Al-Arian ¶16
87 Appendix 22 Al-Arian ¶21
88 Appendix 24 Qureshi ¶78

105. The repression of the Arab Revolt in 1936-1939 further diminished the population of Palestinian Arabs, reducing the total population of Arab men by 10% who were either killed, wounded, imprisoned or exiled. The British sent a hundred thousand troops and air power to decimate the resistance – all the while Jewish immigration to escape the Nazis doubled – such that the proportion of Jews in Palestine settled from 18% in 1932, to 31% of the country's total population in 1939. The change in demographic gave the Zionists the necessary manpower to carry out the ethnic cleansing of Palestine in 1948: the Nakba. The British army played the central role in ensuring that Palestinian resistance to Zionism was completely demobilised by a brutal system of killing and execution.[89]

106. It has been argued that Palestine was lost not in the late 1940s, as is commonly believed, but in the late 1930s. The argument is that because of the decisive manner in which Britain crushed the Palestinian resistance in the late 1930s, by the time the struggle for Palestine entered the critical phase in 1947, the Jews were prepared for the fight while the Palestinians lacked the means to defend themselves.[90]

Contemporary Context of the Violence

107. The current violence in Palestine is best understood as the logical result of the ethno-supremacist ideology of Zionism. That ideology asserts a '*right*' of Jews to a state in historic Palestine – from the river Jordan to the Mediterranean Sea – ***and*** to exclude gentiles/non-Jews from that State, either completely or as equal citizens. This has produced the following three realities.

108. First, the Zionist State has consistently abused its position as an occupying power

89 Appendix 24 Qureshi ¶78
90 Appendix 11 Shlaim ¶47

in the oPt, in breach of the Fourth Geneva Convention. This was confirmed by the ICJ in its recent Advisory Opinion on *Legal Consequences arising from the Policies and Practices of Israel in the OPT, including East Jerusalem*. The ICJ held at [113] that 'Israel' had been carrying out a settlement policy throughout its occupation of the oPt and at [119] that the transfer of Israeli settlers to the West Bank and East Jerusalem, as well as its maintenance of their presence, is contrary to art.49(6) of the Fourth Geneva Convention.

109. The ICJ made similar findings against 'Israel' on: the confiscation of and requisition of Palestinian land [123]; the exploitation of natural resources in the oPt [133]; the exercise of Israeli jurisdiction in the oPt [141]; the forced displacement of the Palestinian population [147]; the violence against Palestinians by settlers and security forces [154]; the annexation of large parts of the oPt [173]; discriminatory legislation and measures [197, 205, 213, 222, 229]; and the breach of the right of the Palestinian people to self-determination [243]. It explicitly and unambiguously found at [261] that the sustained abuse by 'Israel' of its position as an occupying power rendered its presence in the entirety of the oPt unlawful.

110. In view of the character and importance of the rights and obligations involved, the ICJ held at [279] that ***all States*** are under an obligation not to recognise as legal the situation arising from the unlawful presence of 'Israel' in the oPt; not to render aid or assistance in maintaining the situation; to ensure that any impediments resulting from the illegal presence of 'Israel' in the oPt to the exercise of the Palestinian right to self-determination is brought to an end; and to ensure compliance by 'Israel' with the Fourth Geneva Convention. 'Israel' was required to bring to an end its unlawful presence in the oPt as rapidly as possible and to make reparations for the damage caused.

111. Second, 'Israel' is an apartheid State. It has established an institutionalised regime

in historic Palestine of systemic oppression and domination by one racial group (Jews) over another (Palestinians). As recognised by, amongst others, John Dugard SC;[91] the UN Special Rapporteur on the Situation of Human Rights in the OPT, Michael Lynk;[92] Al-Haq;[93] Amnesty International;[94] B'tselem;[95] Human Rights Watch;[96] that regime meets the definition of the international crime of apartheid (see art.7(2)(h) of the Rome Statute of the ICC). Moreover, in its aforementioned July 2024 *Advisory Opinion*, the ICJ held at [229] that Israeli legislation and measures in the oPt constituted a breach of the prohibition on '*segregation or apartheid*' in art.3 of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 ('**CERD**').

112. Third, in response to the military operation by armed groups on 7 October 2023, the Zionist State launched a genocidal military campaign in the Gaza Strip, as well as drastically increasing its persecution of Palestinians in all of historic Palestine. In the 12th week of that campaign, South Africa instituted proceedings at the ICJ to end the genocide which it recognised 'Israel' was committing against Palestinians in Gaza. On 26 January 2024, the ICJ recognised that there was a plausible case 'Israel' was committing genocide and it granted South Africa's request to indicate provisional measures. It subsequently modified its order on 28 March and 24 May 2024 by indicating further provisional measures.

113. Since the application to the ICJ by South Africa in December 2023, the evidence of

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91 See Appendix 14 John Dugard's report: "When I was UN Special Rapporteur I drew attention in my reports to the Human Rights Council and Third Committee of the General Assembly that Israel's policies and practices in occupied Palestine resembled those of apartheid South Africa." ***[p.5, ¶32]*** See A/HRC/4/17 of 29 January 2007.

92 Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87.

93 Israeli Apartheid: Tool of Zionist Settler Colonialism, 29 November 2022.

94 Israel's apartheid against Palestinians: Cruel system of domination and crime against humanity, 1 February 2022.

95 This Apartheid: A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea, 12 January 2021.

96 A Threshold Crossed: Israeli Authorities and the Crimea of Apartheid and Persecution, 27 April 2021.

the genocide by the Zionist State of Palestinians in Gaza has grown overwhelming and a consensus amongst experts recognising it as such has started to emerge. On 5 December 2024, Amnesty International concluded that the Zionist State *'has committed and is continuing to commit genocide against Palestinians in the occupied Gaza Strip.'*[97] Similarly, on 19 December 2024, Human Rights Watch concluded that *'Israeli authorities have over the past year intentionally inflicted on the Palestinian population in Gaza "conditions of life calculated to bring about its physical destruction in whole or in part."'*.[98] It concluded that this policy meant that 'Israel' was committing the crime against humanity of extermination, and that it breached the Genocide Convention of 1948.

114. On the same day, Médecins Sans Frontières concluded that its *'first-hand observations of the medical and humanitarian catastrophe inflicted on Gaza are consistent with the descriptions provided by an increasing number of legal experts and organizations concluding that genocide is taking place in Gaza.'*[99] Amongst those experts, the UN Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories concluded on 20 September 2024 that the "*policies and practices of Israel during the reporting period are consistent with the characteristics of genocide*".[100]

115. In an interview with Le Monde on 29 October 2024, Amos Goldberg – Professor of Holocaust History at the Department of Jewish History and Contemporary Jewry at the Hebrew University of Jerusalem – reiterated his view, first expressed in April

97 You Feel Like You Are Subhuman': Israel's Genocide Against Palestinians in Gaza, 5 December 2024.
98 Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water, 19 December 2024.
99 Life in the death trap that is Gaza: Israel's war on Gaza is unraveling the fabric of society in the Strip, 19 December 2024.
100 Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, A/79/363, 20 September 2024.

2024, that 'Israel' was committing genocide in Gaza.[101] Omar Bartov, Samuel Pisar Professor of Holocaust and Genocide Studies at Brown University, concluded, following a visit in June 2024 to Ben-Gurion University of the Negev, that '*it was no longer possible to deny that Israel was engaged in systematic war crimes, crimes against humanity and genocidal actions.*'[102] Raz Segal, Associate Professor of Holocaust and Genocide Studies and Endowed Professor in the Study of Modern Genocide at Stockton University, was already unequivocal on 13 October 2023 because '*Israel's genocidal assault on Gaza is quite explicit, open, and unashamed*.[103] There are many, many others.

Operation Toofan Al-Aqsa: Centrality of Masjid Al-Aqsa to Palestinians

116. On 7 October 2023, the Qassam Brigades launched an unprecedented attack from the Gaza Strip into 'Israel'. This marked a moment, albeit brief, where Palestinians reclaimed territories that had been seized from them during the Nakba of 1948. The operation was named *Toofan Al-Aqsa*, with Hamas later attributing its launch in part to the increase in Israeli settlers' incursions into the Al-Aqsa Sanctuary, describing it as an act of '*aggression*' that '*had reached a peak*'.[104]

117. The surprise attacks of 7 October underline the masjid's symbolic importance to the cause of Palestinian liberation. Any threat to its sanctity carries deep political and religious implications, underlying its centrality as a unifying emblem in the Palestinians and a matter of faith. This reality has been consistently evident over the past century, beginning with the British-sponsored colonial project to establish a Jewish national home in Palestine. From the Buraq Uprising of 1929 to Israeli Prime Minister Ariel Sharon's incursion into the Holy Sanctuary, which ignited the second

101 Le Monde, Amos Goldberg: 'What is happening in Gaza is a genocide because Gaza does not exist anymore', 29 October 2024.
102 The Guardian, 'As a former IDF soldier and historian of genocide, I was deeply disturbed by my recent visit to Israel', 13 August 2024.
103 Jewish Currents, 'A Textbook Case of Genocide', 13 October 2023.
104 Appendix 15 Latiff ¶8

Al-Aqsa intifada in 2000. Al-Aqsa has remained at the heart of the Palestinian right for self- determination.[105]

118. Post-1948, various Palestinian factions — secular, leftist, and Islamic — placed Jerusalem at the heart of their struggle. The PLO and Fatah, despite their secular-nationalist leaning, still heavily invoked Jerusalem as the political and cultural capital from their earliest charters. Leftist groups like the PFLP and the Democratic Front for the Liberation of Palestine ('**DFLP**') also integrated Jerusalem's iconography into their liberation strategy.

119. Hamas, recalling the Muslim legacy, had in its founding charter calls for liberating Jerusalem as a religious duty incumbent upon the entire Muslim community. Hamas' new charter (2017) lays similar emphasis on the significance of Jerusalem, stating: '*Not one stone of Jerusalem can be surrendered or relinquished.*' PIJ's armed wing, another resistance faction, is aptly named the Al-Quds (Jerusalem) Brigades.[106] Similarly, the secular-leaning Fatah's armed group is named the Al-Aqsa Martyrs Brigade.

120. In May 2021, the '*Sword of Jerusalem*' (Saif al-Quds) operation commenced following Israeli actions in Sheikh Jarrah in East Jerusalem and illegal incursions into Al-Aqsa during Ramadan. Occupation forces periodically entered the Al-Aqsa Sanctuary using tear gas, stun grenades, and rubber bullets against worshippers.[107]

121. Hamas issued ultimatums demanding Israeli authorities withdraw security forces from Al-Aqsa and halt the evictions in Sheikh Jarrah. When these ultimatums went unmet, Hamas fired a volley of rockets toward Jerusalem — an unusual and high-

105 Appendix 15 Latiff ¶ 9
106 Appendix 15 Latiff ¶41
107 Appendix 15 Latiff ¶43

profile choice of target — on 10 May 2021. The actions delineated that despite nearly two decades of besiegement and bombardment, Jerusalem remained the focal point of the conflict, and the resistance in Gaza was willing to act at the behest of Muslims worldwide to protect it.[108]

122. By October 2023, Jerusalem's climate had become increasingly fraught, shaped by encroaching illegal settlements and the policies of a maximalist Israeli government. Figures such as Itamar Ben-Gvir (National Security Minister) and Bezalel Smotrich were vocal proponents of illegal Jewish settlement expansion over Jerusalem. Their ascendancy erased the prospect for compromise and intensified the environment of control, especially in and around the Al-Aqsa Sanctuary.[109]

Operation Toofan Al-Aqsa: The Palestinian Prisoners

123. On 21 January 2024, Hamas released its official narrative about the events of 7 October. The document stated that the operation, '*targeted the Israeli military sites and sought to arrest the enemy's soldiers to pressure the Israeli authorities to release the thousands of Palestinians held in Israeli jails through a prisoner exchange deal.*' This was consistent with what Hamas leader Saleh Al-Arouri stated in the very early stages of the operation.

124. The centrality of the Palestinian prisoners' movement to the cause of the Palestinian liberation struggle can scarcely be overestimated. Frequently referred to as '*the compass*' or the '*moral authority*' of the Palestinian cause, the prisoners held in Israeli jails – many for lengthy sentences imposed by military courts or under arbitrary administrative detention without charge or trial – are widely regarded as symbols of principled commitment to Palestinian freedom. Indeed, they are political symbols

108 Appendix 15 Latiff ¶44
109 Appendix 15 Latiff ¶45

and protagonists of Palestinian unity. The issue of Palestinian prisoners' is also one that touches Palestinians intimately. Approximately 40% of Palestinian men in the West Bank and Jerusalem have spent some time in Israeli jails and, prior to 2005, equal percentages could be found in Gaza. Nearly every Palestinian family has some experience with imprisonment by Israeli forces, whether a brief detention and interrogation or long-term incarceration. If an immediate family member has not been imprisoned, it is rare to find Palestinians in the West Bank, East Jerusalem, Gaza Strip, and (to some extent) Palestinian citizens of 'Israel', who have not seen an uncle, aunt or cousin detained by the Zionist State.[110]

125. As a result of the political, social and cultural importance of the prisoners, every Palestinian political party and resistance organisation has developed a programme for their liberation. Having served time in Israeli prisons is a distinguished feature of leadership in Palestinian resistance and politics. The most successful and dramatic releases of Palestinian prisoners – particularly those with a long history in armed struggle or key leadership roles in Palestinian resistance organisations – have come through prisoner exchanges with the Palestinian resistance. Indeed, many of the most well-known and spectacular Palestinian resistance operations historically – including many of the airplane hijackings of the late 1960s and early 1970s – were at least in part explicitly motivated by a demand to release Palestinian political prisoners in Israeli jails, or in Western countries' jails allied with the Zionist State and its occupation.[111]

126. Prisoner exchanges have been the most significant mechanism of the Palestinian national movement to free large numbers of Palestinian prisoners, particularly prominent national leaders that the Israeli regime is typically unwilling to free or have been given high sentences, including life and multiple-life sentences. Because

110 Appendix 17 Kates ¶10
111 Appendix 17 Kates ¶11

of the achievements of prisoner exchanges in releasing thousands of prisoners, securing the prisoners of war necessary to complete an exchange has long been a high priority for Palestinian resistance organisations. In total, over 8,000 Palestinian prisoners have been released through exchanges, and the capture of Israeli soldiers has been a high priority for the Palestinian resistance in the past and at present in order to achieve the liberation of additional prisoners.[112] During the November 2023 ceasefire, Hamas released 110 'Israeli' and foreign nationals held in Gaza. This was in exchange for the release of 240 Palestinians held in Israeli jails, of which 107 were children and three-quarters of whom had not been convicted of any crime.

127. So long as the Zionist State and its illegal occupation continue to imprison thousands of Palestinians, many of them jailed without charge or trial, in extreme and inhumane conditions, Palestinian prisoners and their political parties and resistance movements will seek their freedom by all necessary means. The release of the Palestinian prisoners is a consensus position among Palestinians with strong support from all sectors of society, and the Israeli occupation has made clear that a prisoner exchange has been, for many years, the only effective way to ensure the release of significant numbers of them.[113]

Operation Toofan Al-Aqsa: Normalisation

128. Another major driver for the operation was the policy of normalisation between several Arab states and 'Israel', known as the Abraham Accords. While presented as a step toward regional peace, the Accords have contributed to the escalation of violence and the deepening of existing political divides. Prioritising normalisation of relations with the Zionist State only served to further marginalise Palestinians and diminish their leverage in any future negotiations at no cost to the illegal Israeli

112 Appendix 17 Kates ¶45
113 Appendix 17 Kates ¶55

occupiers.[114]

129. The Abraham Accords also emboldened the Israeli government, signalling that notwithstanding countless infractions against international law, the Zionist State could secure normalisation without making any concessions to the Palestinians. In effect, the Accords legitimised the status quo of occupation and weakened the international pressure on 'Israel' to engage in meaningful peace talks. In turn, this fuelled a sense of despair and hopelessness among Palestinians, particularly in the besieged Gaza Strip, where they already faced dire humanitarian conditions, and were now removed from consideration due to the complicity of the Arab rulers.[115]

130. It was in the context of attempting to revive the Palestinian cause that Toofan Al-Aqsa was launched. The late Ismail Haniyeh articulated this in January 2024 in a lengthy speech in Doha. Haniyeh argued that three key developments led to the 7 October offensive:

(1) **The global marginalization of the Palestinian cause**: The international community had largely stopped prioritizing the Palestinian issue. This is evidenced by the lack of international conferences and resolutions, and a decline in discussion about the two-State solution. Haniyeh suggested that the world was beginning to view the Palestinian issue as an internal Israeli matter.

(2) **The rise of an extremist Israeli government:** Haniyeh characterized the incumbent Israeli government as religiously and nationally extremist, prioritizing control over Jerusalem and Al-Aqsa Masjid, the expansion of settlements in the West Bank, and maintaining the blockade of Gaza. He asserted that this government reflected a broader trend of religious and

114 Appendix 30 Al-Azami ¶21
115 Appendix 30 Al-Azami ¶24

national extremism within Israeli society.

(3) **Regional betrayal via normalization:** Haniyeh criticized the normalization of relations between the Zionist State and several Arab states, viewing it as a betrayal of the Palestinian cause. He argued that this normalization accepts 'Israel' as a legitimate State at the expense of Palestinian rights and aspirations. He called this a move towards '*regional peace*' built upon the denial of Palestinian rights.[116]

116 Appendix 30 Al-Azami ¶31

E. LEGAL FRAMEWORK

Part II of the Terrorism Act 2000

131. The Secretary of State may add or remove an organisation from the list of proscribed organisations in sch.2 to the 2000 Act, pursuant to s.3(3). It may be added if the Secretary of State believes it is '*concerned in terrorism*', which is defined in s.3(5) as meaning it:

(1) commits or participates in acts of terrorism;

(2) prepares for terrorism;

(3) promotes or encourages terrorism; or

(4) is otherwise concerned in terrorism.

132. The term '*terrorism*' is defined in s.1 of the 2000 Act as the use or threat of action which:

(1) falls within subsection (2);

(2) is designed to influence a government or an international governmental organisation or to intimidate the public or a section of the public; and

(3) is made for the purpose of advancing a political, religious, racial or ideological cause.

133. Action falls within subsection (2) if it:

(1) involves serious violence against a person;

(2) involves serious damage to property;

(3) endangers a person's life, other than that of the person committing the action;

(4) creates a serious risk to the health or safety of the public or a section of the public; or

(5) is designed seriously to interfere with or seriously to disrupt an electronic system.

134. The Secretary of State's has adopted a policy which sets out factors she will take into account when considering whether to exercise her discretion to proscribe an organisation:
    (1) the nature and scale of an organisation's activities;
    (2) the specific threat that it poses to the UK and to British nationals overseas;
    (3) the extent of the organisation's presence in the UK; and
    (4) the need to support other countries in the '*global fight against terrorism*'.[117]

135. Under s.4(1) of the 2000 Act, an application may be made to the Secretary of State to 'deproscribe' an organisation which has been proscribed under s.3(3) of the 2000 Act (i.e. added to the list of proscribed organisations in sch.2 to the 2000 Act).

136. Under s.4(2) of the 2000 Act, such an application may be made by the organisation itself or by any person affected by the organisation's proscription. In the Standing Committee on the Bill for the 2000 Act in the House of Commons, the Government Minister said that the phrase '*any person affected by the organisation's proscription*' was used – rather than '*directly affected*' – because proscription is a '*heavy issue*' and the process for deproscription should not be '*constraint*'.

137. The Secretary of State has issued, the Proscribed Organisations (Applications for Deproscription etc.) Regulations 2006 ('**the 2006 Regulations'**) pursuant to s.4(3) of the 2000 Act, setting out the relevant procedure.

138. Reg.3 of the 2006 Regulations provides that an application made by an organisation, pursuant to s.4(1)(a) of the 2000 Act, must set out: (a) the name of the organisation to which the application relates; (b) whether the application is being made by the

117 Home Office Policy Paper, Proscribed terrorist groups or organisations, Updated 27 February 2025,.

organisation or by a person affected by the organisation's proscription; and (c) the grounds on which the application is made. In the case of an application made by an organisation, the application must also state: (a) the name and address of the person submitting it; and (b) the position which he holds in the organisation or his authority to act on its behalf.

139. Reg.7 of the 2006 Regulations provides that the Secretary of State must determine an application within a period of 90 days from which it is received. If the application is refused, she must as soon as is practicable inform an applicant and notify them of the procedures for appealing against the refusal to the Proscribed Organisations Appeal Commission ('**POAC**').

140. Under s.5(2) of the 2000 Act, an applicant whose application is refused may appeal to POAC. Under s.5(3), POAC must allow an appeal against a refusal to deproscribe if it considers that the decision '*was flawed when considered in the light of the principles applicable on an application for judicial review.*' This is understood to include points concerning rights under the European Convention on Human Rights ('**ECHR**').

141. The former Independent Reviewer of Terrorism Legislation, David Anderson KC, repeatedly recommended the introduction of time limits for proscription orders, as have his successors, Max Hill KC and the current reviewer, Jonathan Hall KC. However, these recommendations have not been followed and deproscription remains by way of application only. Groups that no longer meet the statutory requirements for proscription continue to be proscribed, which Anderson described as '*an affront to the rule of law*'.

The Crime of Genocide

142. The ICJ has held that the Contracting Parties to the Genocide Convention are bound

not to commit genocide, through the actions of their organs or persons or groups whose acts are attributable to them. This conclusion was also said to apply to the other acts enumerated in art.3 of the Genocide Convention. Thus, if those whose acts are legally attributable to a State commit any of the acts proscribed by art.3, the international responsibility of that State is incurred (see *Bosnia and Herzegovina v. Serbia and Montenegro* at [167]).

Intention and Genocidal Acts

143. Art.2 of the Genocide Convention lists five acts that, when committed with the requisite specific intent to destroy a protected group, in whole or in part, will constitute acts of genocide. Art.2 provides:

> *In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*
>
> *(a) Killing members of the protected group;*
>
> *(b) Causing serious bodily or mental harm to members of the protected group;*
>
> *(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
>
> *(d) Imposing measures intended to prevent births within the protected group;*
>
> *(e) Forcibly transferring children of the group to another protected group.*

144. These acts themselves include mental elements. 'Killing' in paragraph (a) must be intentional, as must '*causing serious bodily or mental harm*' in paragraph (b). The mental elements in paragraphs (c) and (d) are made explicit by the words '*deliberately*' and '*intended*', quite apart from the implications of the words '*inflicting*' and '*imposing*'. Forcible transfer too requires deliberate intentional acts. These acts are thus by their very nature conscious, intentional or volitional (see *Bosnia and Herzegovina v. Serbia and Montenegro* at [186]).

145. In addition to those mental elements, art.2 requires a further mental element. It requires the '*intent to destroy, in whole or in part, … [the protected] group, as such*'. It is not enough to establish, for instance in terms of paragraph (a), that deliberate unlawful killings of members of the group have occurred. The additional intent must also be established and is defined very precisely. It is often referred to as a special or specific intent or *dolus specialis*. The specific intent is also to be distinguished from other reasons or motives the perpetrator may have and care must be taken in finding in the facts a sufficiently clear manifestation of that intent.

146. In Bosnia and Herzegovina v. Serbia and Montenegro, the ICJ cited at [188] the approach of the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia ('**ICTY**') in the Kupreškic et al. case at [636]:

> *… the* mens rea *requirement for persecution is higher than for ordinary crimes against humanity, although lower than for genocide. In this context the Trial Chamber wishes to stress that persecution as a crime against humanity is an offence belonging to the same genus as genocide. Both persecution and genocide are crimes perpetrated against persons that belong to a particular group and who are targeted because of such belonging. (…). While in the case of persecution the discriminatory intent can take multifarious inhumane forms and manifest itself in a plurality of actions including murder, in the case of genocide that intent must be accompanied by the intention to destroy, in whole or in part, the group to which the victims of the genocide belong. Thus, it can be said that, from the viewpoint of* mens rea, *genocide is an extreme and most inhuman form of persecution. To put it differently, when persecution escalates to the extreme form of wilful and deliberate acts designed to destroy a group or part of a group, it can be held that such persecution amounts to genocide.*

147. In Bosnia and Herzegovina v. Serbia and Montenegro, the applicant sought to argue that, in absence of an official statement of aims reflecting the specific intent, this was nevertheless clear from the consistency of practices, showing that the pattern was

of acts committed '*within an organized institutional framework*'. However, the ICJ rejected that broad proposition at [373]. It held that the specific intent to destroy the group, in whole or in part, had to be convincingly shown by reference to particular circumstances. Unless a general plan to that end could be convincingly demonstrated to exist, and for a pattern of conduct to be accepted as evidence of its existence, it would have to be such that it could only point to the existence of such intent.

148. In order to amount to acts of genocide, prohibited acts must be committed on the basis of the victims' membership of a religious, national, racial or ethnic group and because the person belonged, or was perceived to belong by perpetrators, to that group. The definition of a 'protected group' must require a positive identification of the group. Moreover, in order to constitute genocide, the intent must be to destroy at least a substantial part of the particular group. That is demanded by the very nature of the crime of genocide: since the object and purpose of the Genocide Convention as a whole is to prevent the intentional destruction of groups, the part targeted must be significant enough to have an impact on the group as a whole.

149. It is accepted that genocide may be found to have been committed where the intent is to destroy the group within a geographically limited area. In other words, it is not necessary to intend to achieve the complete annihilation of a group from every corner of the globe. The area of the perpetrator's activity and control are to be considered, as should the opportunity available to the perpetrators. In the Krstic case, the ICTY Appeals Chamber noted at [12]:

> *The number of individuals targeted should be evaluated not only in absolute terms, but also in relation to the overall size of the entire group. In addition to the numeric size of the targeted portion, its prominence within the group can be a useful consideration. If a specific part of the group is emblematic of the overall group, or is essential to its survival, that may support a finding that the part qualifies as*

substantial (…)

150. Intentional acts of genocide need not necessarily be carried out by formal agents of the state. In the oPt, settlers function as paramilitaries that support the genocidal intent of the Zionist State in its expansionist and displacement policies.

Complicity in Genocide

151. Art.3(c) of the Genocide Convention prohibits complicity in genocide, which the ICJ has held includes the provision of means to enable or facilitate the commission of the crime and is analogous to the '*aid or assistance*' of a State in the commission of a wrongful act by another State within the meaning of the art.16 of the Articles on State Responsibility (see *Bosnia and Herzegovina v. Serbia and Montenegro* at [419]). The ICJ further held at [421] that the conduct of an organ or a person furnishing aid or assistance to a perpetrator of the crime of genocide cannot be treated as complicity in genocide unless at the least that organ or person acted knowingly, that is to say, in particular, was aware of the specific intent (*dolus specialis*) of the principal perpetrator.

Duty to Prevent Genocide

152. Art.1 of the Genocide Convention imposes on all State Parties the duties to prevent and punish the crime of genocide. These obligations are legally distinct, but closely connected. In *Bosnia and Herzegovina v. Serbia and Montenegro*, the ICJ held:
    (1) The Genocide Convention is not the only international instrument providing for an obligation on the States parties to it to take certain steps to prevent the acts it seeks to prohibit [429];
    (2) The obligation to prevent genocide is one of conduct and not one of result. The obligation of States parties is to employ ***all means reasonably available to them***, so as to prevent genocide so far as possible [430];

(3) States can be held responsible for breaching their obligation to prevent a genocide only if genocide is in fact committed [431]. The Court emphasized two differences between the requirements to be met before a State can be held to have violated the obligation to prevent genocide and those to be satisfied in order for a State to be held responsible for '*complicity in genocide*':

(a) Complicity always requires that some positive action has been taken to furnish aid or assistance to the perpetrators of the genocide, while a violation of the obligation to prevent results from mere failure to adopt and implement suitable measures to prevent genocide from being committed; and

(b) There cannot be a finding of complicity against a State unless at the least its organs were aware that genocide was about to be committed or was under way, and if the aid and assistance supplied, from the moment they became so aware onwards, to the perpetrators of the criminal acts or to those who were on the point of committing them, enabled or facilitated the commission of the acts. In contrast, a State may be found to have violated its obligation to prevent even though it had no certainty, at the time when it should have acted, but failed to do so, that genocide was about to be committed or was under way. For it to incur responsibility on this basis it is enough that the State was aware, or should normally have been aware, of the serious danger that acts of genocide would be committed [432].

The Crime of Genocide in the Rome Statute and the Law of England and Wales

153. Art.6 of the Rome Statute of the ICC lists five acts which, when committed with the requisite specific intent to destroy a national, ethnical, racial or religious group, in whole or in part, will constitute acts of genocide. These mirror the acts of genocide in art.2 of the Genocide Convention.

154. S.51 of the International Criminal Court Act 2001 ('**the 2001 Act**') has made genocide, crimes against humanity and war crimes offences under the law of England and Wales. S.52 of the 2001 Act also criminalises conduct ancillary to such crimes, which is defined in s.55(1) as '*aiding, abetting, counselling or procuring the commission of an offence*', as well as inciting, attempting or conspiring, or assisting an offender.

155. As clarified by s.55(2) of the 2001 Act, the reference to '*aiding, abetting, counselling or procuring*' is to conduct that in relation to an indictable offence would be punishable under s.8 of the Accessories and Abettors Act 1861 ('**the 1861 Act**'). In *R v Calhaem* [1985] QB 808, the Court of Appeal held that '*counsel*' in s.8 of the 1861 Act had no implication of any causal connection between the counselling and the principal offence. The natural meaning of the word did not imply the commission of the offence. Instead, the offence was established if there was counselling and the principal offence was committed by the person counselled acting and not by accident.

156. In *R v Jogee* [2016] UKSC 8, the Supreme Court clarified the law on parasitic accessory liability, which included an analysis of s.8 of the 1861 Act. The provision was said to have had the purpose of simplifying – without changing – the law governing secondary or accessory liability. Leaving aside '*procurement*', the specified modes of involvement cover two types of conduct on the part of a defendant: the provision of assistance and the provision of encouragement. Lord Hughes and Lord Toulson held at [7 – 10] that:

> 7. *(…) accessory liability requires proof of a conduct element accompanied by the necessary mental element. Each element can be stated in terms which sound beguilingly simple, but may not always be easy to apply.*
> 8. *The requisite conduct element is that D2 has encouraged or assisted the commission*

of the offence by D1.

9. *(…) the mental element in assisting or encouraging is an intention to assist or encourage the commission of the crime and this requires knowledge of any existing facts necessary for it to be criminal (…)*
10. *If the crime requires a particular intent, D2 must intend to assist or encourage D1 to act with such intent. D2's intention to assist D1 to commit the offence, and to act with whatever mental element is required of D1, will often be co-extensive on the facts with an intention by D2 that that offence be committed.*

Accessory Liability under the Rome Statute

157. Art.25 of the Rome Statute grants the ICC jurisdiction over natural persons. Such persons are criminally responsible and liable for punishment for a crime within the jurisdiction of the ICC if that person, *inter alia*, for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.

158. In *Prosecutor v. Bemba et al (01/05-01/13-1989-Red)*, ICC Trial Chamber VII analysed the wording on accessorial liability in art.25(3)(c). It concluded at [84 – 98] that:
    (1) Establishing accessorial liability is independent of whether the principal is identified, charged or convicted.
    (2) Accessorial liability implies a lower degree of blameworthiness.
    (3) The accessorial perpetrator does not exercise control such that they could frustrate the commission of the offence – as a co-perpetrator would – but merely contributes to or otherwise assists in an offence committed by the principal perpetrator.
    (4) The terms '*aids*', '*abets*' and '*otherwise assists*' each have separate meanings but all belong to the broader category of assisting in the (attempted) commission of an offence.
    (5) The term '*aiding*' overlaps with '*otherwise assists*' and implies the provision of

practical or material assistance.

(6) The notion of '*abet*' describes the moral or psychological assistance of the accessory to the principal perpetrator, taking the form of encouragement of or even sympathy for the commission of the particular offence. The encouragement or support shown need not be explicit. Under certain circumstances, even the act of being present at the crime scene (or in its vicinity) as a '*silent spectator*' can be construed as tacit approval or encouragement of the crime.

(7) The form of contribution does not require the meeting of any specific, including minimum, threshold.

(8) The contribution of the accessory need not be *conditio sine qua non* to the commission of the principal offence, but the assistance must have furthered, advanced or facilitated the commission of such offence. If the assistance was not causal, the conduct of the perpetrator does not fall within the ambit of art.25(3)(c).

Crimes Against Humanity, including Apartheid

159. Art.7 of the Rome Statute defines – and codified the existing customary norms relating to – crimes against humanity as any of the following acts, when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) murder; (b) extermination; (c) enslavement; (d) deportation or forcible transfer of population; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under

international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) enforced disappearance of persons; (j) the crime of apartheid; and (h) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

160. Apartheid is also illegal under the terms of the International Convention on the Suppression and Punishment of the Crime of Apartheid of 18 July 1976; art.3 of CERD; and by necessary implication from adjacent prohibitions against racism such as that found in art.14 of the ECHR and under the Refugee Convention 1951 and its 1967 Protocol.

Armed Resistance Against Colonialisation and Occupation

161. The right of a people to resist occupation is a basic principle of customary international law and a recognised corollary of the right of self-determination.

162. Art.1(4) of the First Additional Protocol to the Geneva Conventions of 1977 ('**API**') expressly recognises as international armed conflicts '*armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.*'

163. The UN Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960 declared, *inter alia*, that:

    1. *The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.*

2. *All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

164. In its *Advisory Opinion* in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, the ICJ observed at [153] that the wording of the UN Declaration on the Granting of Independence to Colonial Countries and Peoples, deeming colonialism illegal, had a normative character. The ICJ held at [150] that the declaration represented '*a defining moment in the consolidation of State practice on decolonization*.' The ICJ further held at [158] that the right to self-determination under customary international law did not impose a specific implementation mechanism.

165. The nature and scope of the right to self-determination of peoples, including respect for '*the national unity and territorial integrity of a State or country*', were reiterated in the UN Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the UN of 1970. That declaration affirmed that the right of peoples of resistance against the forcible actions of States which deprive them of their exercise of their right to self-determination, as well as their right to seek and receive support in accordance with the principles of the Charter.

166. Moreover, in resolution 2649 (XXV) of 1970, the UN General Assembly affirmed, in the specific context of the peoples of Palestine and southern Africa, the legitimacy of the struggle of peoples under colonial and alien domination recognised as being entitled to the right of self-determination ***to restore to themselves that right by any means at their disposal***. Similarly, in resolution 3070 (XXVIII) of 1973, the UN General Assembly clarified that '*by all available means*' ***included armed struggle***, and called upon all States to offer '*moral, material and any other assistance*' to peoples

struggling for the right of self-determination.

167. As confirmed by the ICJ in its *Advisory Opinion* on *Legal Consequences of the Construction of a Wall in the OPT* at [139], art.51 of the UN Charter recognises the inherent right to self-defence in the case of armed attack by one State against another State. This includes the situation in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as confirmed by art.1(4) of the First Additional Protocol.

168. In its Advisory Opinion in *Legal Consequences of the Construction of a Wall in the OPT*, the ICJ dismissed at [118] the suggestion that the principle of peoples to self-determination did not apply to the Palestinian People. In turn, the Palestinian people have the right, and indeed the duty, to respond to the acts of genocide, war crimes and crimes against humanity committed by the Zionist State against their population in Gaza and elsewhere in the oPt.

169. Art.51(1) of API provides that the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. Art.51(2) supplements this provision by prohibiting the civilian population, as well as individual civilians, from being the '*object of attack*'. Worthy of note, art.51(2) adds that '*[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.*' The ICRC Commentary of 1987 notes in relation to this provision that:

> *… the prohibition covers acts intended to spread terror; there is no doubt that acts of violence related to a state of war almost always give rise to some degree of terror among the population and sometimes also among the armed forces. It also happens that attacks on armed forces are purposely conducted brutally in order to intimidate the enemy soldiers and persuade them to surrender. This is not the sort of terror envisaged here. This provision is intended to prohibit acts of violence the primary purpose of which is*

to spread terror among the civilian population without offering substantial military advantage. It is interesting to note that threats of such acts are also prohibited.

170. In her *Declaration* supplementing the July 2024 *Advisory Opinion* of the ICJ, Judge Charlesworth expressly affirmed - in the specific context of the Zionist' State's occupation of the oPt – at [23] that '*under customary international law, the population in the occupied territory does not owe allegiance to the occupying power [and] is not precluded from using force in accordance with international law to resist the occupation*'.

171. It follows that Palestinians living under occupation are entitled - i.e. as a matter of *jus ad bellum* - to use armed force to resist that occupation. Whether any particular incident in the exercise of such armed force is lawful – i.e. as a matter of *jus in bello* – will depend upon its compliance with the relevant rules and requirements of international humanitarian law ('**IHL**').

172. Insofar as such armed force is targeted at military objectives, as that term is defined by art.52(2) of AP1, it is lawful as a matter of international law (i.e. both *jus ad bellum* and *jus in bello* or IHL). Insofar as such force is targeted at civilians or civilian objects – or makes no attempt to distinguish between civilian and military objectives – it is unlawful because it is contrary to the principle of distinction.

Application of International Legal Obligations in Domestic Law

173. In *R v Lyons* [2003] 1 AC 976, Lord Hoffman held at [27] that "*there is a strong presumption in favour of interpreting English law (whether common law or statute) in a way which does not place the United Kingdom in breach of an international obligation.*" See also Lord Goff in *Attorney General v Guardian Newspapers Ltd (No 2)* [1990] 1 AC 109 at [283].

Freedom of Expression

174. The ECtHR has described the freedom of expression protected by art.10 of the ECHR as constituting '*one of the essential foundations of [democratic society], one of the basic conditions for its progress and for the development of every man*' (see *Handyside v the United Kingdom* (1979 – 80) 1 EHRR 737 at [49]). Moreover, it has emphasised on several occasions that art.10 is applicable not only to '*information*' or '*ideas*' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of pluralism, tolerance and broadmindedness without which there is no '*democratic society*' (see *Observer and Guardian v the United Kingdom* (1992) 14 EHRR 153 at [59]).

175. '*Political*' speech attracts particularly strong protection. In *R (Carlile) v SSHD* [2014] UKSC 60, Lady Hale held at [91] that the rights protected by art.10 were '*hugely important*' and that '*[f]reedom of speech, and particularly political speech, is the foundation of any democracy*'. Lord Sumption further held at [13] that it was well-established that '*the more important the right, the more difficult it will be to justify any interference with it*' and that, for this purpose, '*freedom of expression has always been treated as one of the core rights protected by the Convention.*'

176. In approaching art.10 of the ECHR, Strasbourg prescribes a three-step approach. First, it considers whether there has been an interference with the exercise of the right to freedom of expression, and the forms of interference. The fact that the evidence underlying an applicant's conviction consisted solely of forms of expression has led the Court to find an interference. Indeed, as a result of offences such as s.12 of the 2000 Act, as held in *R v Choudry* [2018] EWCA Crim 21 at [66], it is uncontroversial that proscription – and thus deproscription – decisions amount to an interference with the rights under art.10 because it limits the rights of an

individual to express themselves in a way that amounts to an invitation of support for a proscribed organisation.

177. Second, the ECtHR will analyse whether the interference, if established, was '*prescribed by law*'; whether it '*pursued one of the legitimate aims*' within the meaning of art.10(2); and whether it was '*necessary in a democratic society*'. In *Choudry* at [68], the Court of Appeal noted that offences under ss.11 – 13 of the 2000 Act followed proscription of an organisation in accordance with the process laid down in legislation (i.e. Part II of the 2000 Act). The Crown argued, and the Court accepted at [69], that the offences in Part II were essential to the proscription process because they were the means by which proscription was put into effect.

178. The legitimate aims of interference with the right of freedom of expression are exhaustively set out in art.10(2) of the ECHR: i.e. in the interests of national security, territorial integrity or public safety; for the prevention of disorder or crime; for the protection of health or morals; for the protection of the reputation or rights of others; for preventing the disclosure of information received in confidence; or for maintaining the authority and impartiality of the judiciary. At this stage of the examination, the ECtHR may find that an interference does not serve to advance the legitimate aim relied upon (see *Bayev v Russia* (2018) EHRR 10 at [83]).

179. The principles for assessing the necessity of an interference with freedom of expression are well established. In *Stoll v Switzerland* (2008) 47 EHRR 59 at [101], Strasbourg held:

> *The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. (…)*
>
> *The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the*

supervision is limited to ascertaining whether the Respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient' ... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ...

180. Third, and finally, the ECtHR will examine whether the exercise of the right of freedom of expression interferes with other rights safeguarded by the ECHR and the Protocols thereto. If appropriate, Strasbourg will consider whether the national authorities struck a proper balance between protection of the right to freedom of expression and other rights and rights or values guaranteed by the ECHR.

Freedom of Assembly

181. Art.11 of the ECHR guarantees the right to freedom of peaceful assembly and to freedom of association with others. This right has also been referred to by Strasbourg as a fundamental right in a democratic society and, like the right to freedom of expression, as one of the foundations of such a society. In light of that importance, the ECtHR has consistently held that the right should not be interpreted restrictively (see *Navalnyy v Russia* (2020) 70 EHRR 16 at [98]).

182. The right to freedom of peaceful assembly comprises negative and positive obligations on the part of governments. They must not only refrain from applying unreasonable indirect restrictions on the right to assemble peacefully but also safeguard that right. The ECtHR has recognised that authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of citizens. However, the duty implies a wide

discretion in the choice of the means to be used (see *Giuliani and Gaggio v Italy* (2012) 54 EHRR 10 at [251]).

183. The right to freedom of assembly can be subject to restrictions in accordance with art.11(2) of the ECHR. An interference does not need to amount to an outright ban but can consist of various other measures taken by the authorities. Interference must be taken to encompass any restrictive measures taken against an applicant in connection with their expressive conduct (see *Kudrevicius v Lithuania* (2016) 62 EHRR 34 at [100]).

184. The term 'restrictions' in art.11(2) must be interpreted as including both measures taken before or during a gathering and those taken afterwards. For instance, a prior ban can have a chilling effect on the persons who intend to participate in a rally and thus amount to an interference, even if the rally subsequently proceeds without hindrance by the authorities (see *Baczkowski v Poland* (2009) 48 EHRR 19 at [66] – [68]).

185. As with art.10 of the ECHR, interference with the right to freedom of peaceful assembly will constitute a breach of art.11 unless it is '*prescribed by law*', pursues one or more legitimate aims under art.11(2), and is '*necessary in a democratic society*' for the achievement of the aim(s) in question. Irrespective of whether the ECtHR accepts that the authorities have pursued a legitimate aim or rejects the aims put forward by the government, it may examine a complaint under art.18 that the measures in question had pursued an ulterior purpose, such as political persecution (as a sole purpose or in addition to a legitimate one). In the majority of cases Strasbourg found that the allegations under art.18 raised no separate issue in relation to the complaints examined under art.11. However, if such allegations represent a fundamental aspect of the case, it may examine them separately (see at *Navalnyy* at [164]).

Right to Enjoyment of Rights of the Convention without Discrimination

186. Art.14 of the ECHR enshrines the right not to be discriminated against in '*the enjoyment of the rights and freedoms set out in the Convention*'. In other words, art.14 does not prohibit discrimination as such, but only discrimination in the enjoyment of the rights and freedoms set out in the ECHR. The ECtHR has repeatedly clarified that the ancillary nature of art.14 does not mean that the applicability of the right is dependent on the existence of a violation of a substantive provision. Instead, art.14 extends to those additional rights, falling within the general scope of any article of the Convention. It is necessary and sufficient for the facts of any case to fall '*within the ambit*' of one or more of the provisions (see *Carson v United Kingdom* (2010) 51 EHRR 13).

187. In *Virabyan v Armenia* (2012), the Strasbourg Court held that:

> *Political pluralism, which implies a peaceful co-existence of a diversity of political opinions and movements, is of particular importance for the survival of a democratic society based on the rule of law, and acts of violence committed by agents of the State which are intended to suppress, eliminate or discourage political dissent or to punish those who hold or voice a dissenting political opinion pose a special threat to the ideals and values of such society.*

188. In determining whether the applicant's rights under art.14 had been violated in conjunction with art.3, the Court's task was to establish whether or not political motives were a causal factor in the applicant's ill-treatment.

Right to Free Elections

189. Art.3 of Protocol No 1 to the ECHR ('A3P1') states:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

190. According to the Preamble to the ECHR, fundamental human rights and freedoms are best maintained by 'an effective political democracy'. Since it enshrines a characteristic principle of democracy, Article 3 of Protocol No. 1 is accordingly of prime importance in the Convention system. (*Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, § 47).

191. The ECtHR has found a number of violations of A3P1 on account of the disproportionate nature of sanctions imposed on MPs after their parties had been dissolved for undermining territorial integrity and the unity of the State, or to preserve the secular nature of the political system.

192. The Court has also stressed the need to afford sufficient safeguards against arbitrariness in the framework of the procedures of the domestic authorities, including the need to provide sufficient reasons. In *Political Party "Patria" and Others v. the Republic of Moldova, 2020*, the disqualification of a party three days before parliamentary elections on account of the alleged use of undeclared foreign funds was found to be arbitrary on account of the lack of sufficient procedural safeguards.

193. Cases concerning the banning of political parties on account of the incompatibility of their manifestos with democratic principles are usually examined under art.11 of the Convention. A3P1 is then regarded only as secondary and as not raising a separate issue (*Refah Partisi (the Welfare Party) and Others v Turkey* (2003); *Linkov v the Czech Republic* (2006); *Parti nationaliste basque – Organisation régionale d'Iparralde v France* (2007)).

F. GROUNDS FOR DEPROSCRIPTION

Preliminary Submission on Discretion in Proscription/Deproscription Decisions

194. Hamas submits that the decision to proscribe – and deproscribe – any organisation under the 2000 Act is discretionary. The only strict requirement is for the Secretary of State to '*believe*' that the organisation is '*concerned in terrorism*' (see s.3(4) of the 2000 Act). But since the definition of '*terrorism*' in the 2000 Act is so wide, it could apply to effectively any group publicly supportive of the use of violence to achieve political objectives.

195. Indeed, in 2012 the Independent Reviewer of Terrorism Legislation expressed his concerns with the breadth of the UK definition of '*terrorism*'. After referring to the Court of Appeal judgment in *R v Gul* [2012] EWCA Crim 280, he noted:

> *The Government might be reluctant to surrender the right to treat its opponents in foreign theatres of war (or even students who post videos of their exploits) as terrorists. The issue is however of broader relevance, since the current law allows members of any nationalist or separatist group to be turned into terrorists by virtue of their participation in a lawful armed conflict, however great the provocation and however odious the regime which they have attacked.*

196. For example, any individual expressing support for the use of military force by Ukraine to resist the invasion by Russian forces would be '*concerned in terrorism*' under the 2000 Act. This is because that resistance is an action which '*involves the use of firearms or explosives*' and is made to advance the '*political … or ideological cause*' of ending that invasion (see ss.1(1) and 1(3) of the 2000 Act). And those supporting such resistance are thus '*promoting or encouraging terrorism*' and thus '*concerned in terrorism*' (see ss.3(5)(c) and 3(4) of the 2000 Act). Similarly, the definition would apply to support for the use of military force by the Zionist State in the oPt. Even on

its own publicly pronounced objectives, its military operations in the Gaza Strip since 7 October 2023 seek to advance the political or ideological cause of '*eliminating Hamas*'. However, neither the military wing nor the governments of the Ukraine nor of the Zionist State have been proscribed.

197. It must follow that any such proscription decision is discretionary because the decision to apply the definition '*terrorism*' in the 2000 Act to the use of violence by certain groups to achieve certain political objectives is not an automatic consequence of the use or threat of actions which meets that definition. In effect, the Secretary of State could '*believe*' any armed group – whether that be a State or non-State group – is '*concerned in terrorism*' because armed force will ***always*** involve the use of firearms or explosives and be employed to achieve a political (or religious, racial or ideological) cause. Accordingly, the decision to proscribe (and thus deproscribe) any group – and not others – is discretionary and not determined by whether the Secretary of State believes any such group is '*concerned in terrorism*'.

OBJ

OBJ

Ground 1: Hamas's Continued Proscription is Contrary to Britain's Obligations under International Law.

(i) *Obligation to Prevent and To Not Be Complicit in Genocide*

198. Hamas submits that by continuing to proscribe it, Britain is in breach of its duty to employ all means reasonably available to them to prevent – and end – the genocide of the Palestinians in Gaza. Hamas is the only effective military force resisting – and seeking to end and prevent – the ongoing acts of genocide being committed by the Zionist State against the Palestinians in Gaza. Their (continued) proscription is purposefully – and in any event practically – inhibiting their efforts to use military force to prevent those ongoing acts of genocide. Accordingly, that continued proscription breaches Britain's obligation to employ all means reasonably available to them to prevent – and end – the genocide.

199. Moreover, Hamas submits that by continuing to proscribe it, Britain is complicit in the ongoing acts of genocide being committed by the Zionist State against the Palestinians in Gaza. The attempt to inhibit the efforts and effectiveness of the only substantial military force resisting – and seeking to end and prevent – the ongoing acts of genocide amounts to '*some positive action (…) taken to furnish aid or assistance*' to the Zionist State (i.e. the perpetrators of the acts of genocide).

200. As set out in the background section above, the Secretary of State has been and is aware that acts of genocide are and have been underway in Gaza, and she will be aware that the continued proscription of Hamas enables the commission of those acts of genocide.

(ii) *Obligation To Not Be Complicit in Crimes Against Humanity*

201. Hamas submits that by continuing to proscribe it, Britain is complicit in the ongoing crimes against humanity being committed by the Zionist State against the Palestinian People in the oPt, including the Gaza Strip.

202. As noted above, the Zionist State is committing the Crime of Apartheid, which is defined as a crime against humanity in art.7(2)(h) of the Rome Statute of the ICC, and thus – by way of s.51 of the 2001 Act – in domestic law.

203. Furthermore, as the ICC arrest warrants for Netanyahu and Gallant set out, there are reasonable grounds to believe that the Zionist State is (also) committing the crimes against humanity of extermination and persecution. The more recent Report of the Independent International Commission of Inquiry on the oPt, including East Jerusalem, and Israel of 11 September 2024 made concrete findings, including that(¶89):

> *… Israel has implemented a concerted policy to destroy the health-care system of Gaza. Israeli security forces have deliberately killed, wounded, arrested, detained, mistreated and tortured medical personnel and targeted medical vehicles, constituting the war crimes of wilful killing and mistreatment and the crime against humanity of extermination.*

204. Hamas is the only effective military force resisting – and seeking to end and prevent – the ongoing crimes against humanity being committed by the Zionist State in the oPt, including the Gaza Strip since 7 October 2023. Its continued proscription by the Secretary of State is purposefully inhibiting their efforts to resist, end and prevent those ongoing crimes against humanity. The Secretary of State's effort to inhibit those efforts and their effectiveness amounts to *'aiding, abetting or otherwise assisting'* the commission of those crimes against humanity by the Zionist State.

(iii) *Obligation to Bring an End to the Unlawful Occupation of the oPt*

205. In its July 2024 *Advisory Opinion*, the ICJ held at [279] that, in view of the character and importance of the rights and obligations involved, ***all States*** are under an obligation not to recognise as legal the situation arising from the unlawful presence of 'Israel' in the oPt; not to render aid or assistance in maintaining the situation; to ensure that any impediments resulting from the illegal presence of 'Israel' in the oPt to the exercise of the Palestinian right to self-determination is brought to an end; and to ensure compliance by 'Israel' with the Fourth Geneva Convention. 'Israel' was required to bring to an end its unlawful presence in the oPt as rapidly as possible and to make reparations for the damage caused. Britain is thus under an obligation: (a) not to render aid or assistance in maintaining the unlawful presence of 'Israel' in the oPt; and (b) to bring to an end any impediments resulting from that presence on the exercise of the right of the Palestinian people to self-determination.

206. Hamas submits that the right to self-determination includes the right to use armed resistance to repel belligerent occupation, including by organized resistance movements such as Hamas. The (continued) proscription of Hamas by the Secretary of State seeks to frustrate that lawful and legitimate armed resistance. Hamas submits that its (continued) proscription by the Secretary of State amounts to 'rendering aid and assistance' to the Zionist State in maintaining the unlawful situation in the oPt, in breach of the obligations of Britain as enumerated in the recent ICJ *Advisory Opinion*.

(iv) <u>*Obligation to Respect the Dignity of the Palestinian People*</u>

207. Both the preambles to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights emphasize that '*recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world*'. Hamas

submits that their proscription reflects a failure – in breach of these conventions – to accept the Palestinian people as equal members of the human family.

208. For Palestinians impacted by prolonged conflict, the effects are not limited to immediate survival but include severe psychological distress. Forced displacement, continuous exposure to violence, and the loss of social, cultural, and economic stability contribute to widespread trauma and chronic insecurity, which public health efforts often overlook. The advancement of settlers in the colonial project involves a process of ethnic cleansing which violently disassociates a people from their land; a dehumanising strategy hindering basic needs of community and belonging.[118]

209. The Zionist application of humiliation is fundamental to its colonial nature, not an excess of its military activities. This is important because Israelis have argued their actions are dynamically related to those of Palestinians. Their logic offers that incessant military detention, degrading checkpoint searches, bombardments and house demolitions are all unfortunate but legitimate actions needed to secure Israel's post-1967 security. But drawing on early Palestinian testimony paints a different picture: that dehumanisation has been the mainstay of the Zionist project since its establishment.

210. Recent studies have explored the psychological harms associated with the Israeli use of humiliation as a systemic strategy of domination. In 2011, a study on mental suffering surveyed a sample of 1,778 Palestinians across the West Bank, Gaza and Jerusalem. They found significant exposure to political violence between 1987 and 2011. During this time, 78% of Palestinians had their homes raided by Israeli military forces, while 74% witnessed acts of humiliation carried out by either Israeli

118 Appendix 16 Younis ¶22

or Palestinian military or police. Sixty-two percent experienced verbal abuse firs thand. More than half (56%) reported being fired upon, 43% had been physically attacked (hit or kicked) by soldiers or police, and 26% of men had been detained as political prisoners. Additionally, 44% suffered material losses, such as the destruction or confiscation of their homes or land by the Israeli government. Movement restrictions were also a significant issue, with 68% of respondents in the West Bank stating they were unable to access medical care at some point due to obstacles such as checkpoints, barrier walls, or curfews. The study affirms that feeling '*broken or destroyed*' was distinct from traditional mental health measures, consistently reliable, and experienced more commonly than depression or trauma-related stress across genders and regions.[119]

211. The experience of Palestinian dispossession, under a system of humiliation and control, has continued for at least three generations, from before the Nakba until today. Life under a system of humiliation and colonial domination paints a grim picture for everyday life. The process of dehumanisation is deeply impactful on mental health; this has been the central message from luminaries like Victor Frankl, a psychiatrist who survived the Holocaust and shared his experiences in vivid detail. The experiences of Frankl are known. However, this same recognition has not been afforded to Palestinians. If circumstances for Palestinians are to change, a recognition of their psychological experience of colonial domination is needed, followed swiftly by full justice and accountability.[120]

212. The demand for dignity and equality has and remains central to the struggle of the Palestinian People, including the contribution to that struggle by Hamas. In 2018, Ismail Haniyeh said in a public speech in Gaza that '*the steadfastness of our people in*

119 Appendix 16 Younis ¶27
120 Appendix 16 Younis ¶35

Gaza is a testament to their commitment to dignity and resistance despite unbearable conditions.'

213. Similarly, in 2024, Khaled Meshal emphasized in a speech in Doha that '*our fight is not just for land; it is for the dignity and freedom of our people*.' Following the martyrdom of Yahya Sinwar in October 2024, another senior official, Basem Naim, explained how '*Hamas is a liberation movement led by people looking for freedom and dignity. This cannot be eliminated*.' When asked whether the actions of the Zionist State following the Al Aqsa Flood Operation meant that it had been a complete disaster, Mr Naim's was illustrative:

> *You can say this only in one case; if the Palestinians were living in their own state, independent state, free in a dignified life – but you have to remember that the Palestinians are suffering an occupation for 76 years, that between 2000 and 2023, 20,000 Palestinians killed, the Gazans were suffering a suffocating siege for more than 17 years, and the Israelis were declaring publicly their plans to annex the West Bank, to Judaise Jerusalem, to expel the Palestinians ...*[121]

214. Palestinian leaders from across the political spectrum have shared this view. Former member of the Executive Committee of the PLO, Hanan Ashrawi, concluded her speech at the World Conference against Racism in Durban in 2001 by stating, '*I ask you also not to succumb, but to maintain and enhance the struggle for dignity, equality, freedom, and justice as an act of collective affirmation on behalf of humanity as a whole.*'[122] When France's parliament passed a non-binding resolution in favour of recognising Palestinian statehood in 2014, Ashrawi expressed her '*gratitude to the members of the French parliament for adopting a resolution on the side of justice and human dignity.*'[123]

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121 Hamas ready for Gaza ceasefire 'immediately' - but claims Israel has put forward no 'serious proposals' in months, Sky News, 14 November 2024, https://news.sky.com/story/hamas-ready-for-gaza-ceasefire-immediately-but-claims-israel-has-put-forward-no-serious-proposals-in-months-13254181

122 World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerances, Durban (South Africa), Address by Hanan Ashrawi, 28 August 2001 https://www.i-p-o.org/palestine-ashrawi.htm

123 French MPs recognise Palestine as state, Al Jazeera English, 2 December 2014 https://www.aljazeera.com/news/2014/12/2/french-mps-recognise-palestine-as-state

215. Indeed, other anti-colonial resistance movements have similarly justified their reliance on armed struggle as a means of restoring their dignity. Nelson Mandela famously proclaimed, from the dock, during the Rivonia trial in 1964 that *'we fight against two features which are the hallmarks of African life in South Africa and which are entrenched by legislation which we seek to have repealed. These features are poverty and lack of human dignity.'* In doing so, he used 'dignity' to rationalise the shift to armed struggle as a method to oppose the indignity of apartheid. Patrice Lumumba similarly wrote in a letter from Thysville Prison in 1960 that *'without dignity there is no liberty, without justice there is no dignity, and without independence there are no free men.'*

216. The list of examples of such declarations is as long as the list of colonial crimes which peoples all over the world resisted. And the Zionist State is and remains - more than anything - a colonial project in historic Palestine.

217. Hamas's struggle for the liberation of the oPt from the illegal Zionist occupation by all available means, is legitimate, enshrined in international law, and seeks only to restore the Palestinian people as equal members of the human family. The Secretary of State should recognise that legitimacy and deproscribe Hamas.

Ground 2: Hamas's Continued Proscription is Contrary to the ECHR.

218. Hamas submits that its (continued) proscription is contrary to the Secretary of State's obligation to ensure its decisions are consistent with her obligations under s.6 of the Human Rights Act 1998 ('**the 1998 Act**').

(i) *Freedom of Expression*

219. Hamas submits that its (continued) proscription by the Secretary of State amounts to an interference with the freedom of expression of those who support (a) the right to self-determination of the Palestinian People; (b) the use of armed struggle pursuant to that right by Hamas; and (c) the use of armed struggle by Hamas to resist the acts of genocide, crimes against humanity, and illegal occupation by the Zionist State. Indeed, as a result of the offences set out in ss.11 to 13 of the 2000 Act, and as held in *Choudry* at [66], it is uncontroversial that proscription – and thus deproscription – decisions amount to an interference with the rights under art.10 of the ECHR because, *inter alia*, they limit the rights of an individual to express themselves in a way that amounts to an invitation of support for a proscribed organisation, such as Hamas.

220. Hamas submits that this interference is neither pursuant to one of the '*legitimate aims*' within the meaning of art.10(2) nor '*necessary in a democratic society*'. It is denied that any activities of Hamas – whether that be their armed struggle or its non-violent activities – affect the (legitimate) interests of national security nor territorial integrity nor public safety of Britain. Similarly, absent its proscription, none of the activities of Hamas could possibly affect disorder or crime in Britain.

221. Hamas has never extended its military operations outside the territory of historic Palestine. This is notwithstanding the significant levels of political, military and financial support provided by the Governments of Britain and the United States to

the Zionist State, which enabled it to conduct its genocidal campaign in Gaza. Hamas does not have a presence in Britain and does not pose any threat to its national security nor to its nationals overseas save for the threat that extends to all individuals taking part in genocide, Apartheid and illegal belligerent occupation.

222. Instead, Hamas submits that the proscription decision in 2021 pursued explicitly political objectives by a politically compromised Secretary of State. As detailed by Professor Avi Shlaim in his expert report, Priti Patel:

> *… needed no prompting to do Israel's bidding. In August 2017, as Secretary of State for International Development, she went on a freelance trip to Israel accompanied by Lord Polak, president of Conservative Friends of Israel (CFI). She had previously served as an officer for the CFI's Parliamentary group between 2011 and 2014. While pretending to be on a private holiday, Ms Patel held a series of secret meetings with high-ranking Israeli officials, including the then Prime Minister Benjamin Netanyahu, the then Director-General of the Israeli Ministry of Foreign Affairs Yuval Rotem, and the former Israeli permanent representative to the United Nations Gilad Erdan. The meeting with Erdan was particularly significant given he went on to head anti-BDS efforts in Israel. Upon her return she asked her officials to explore the possibility of diverting some of the foreign aid budget to enable the Israeli army to carry out humanitarian work. This was intended for the military field hospital she had visited on her trip in the occupied Golan Heights. She was fired by Theresa May for lying about the nature and purpose of her visit.*[124]

223. The announcement of the proscription of the entirety of Hamas was a sudden departure from the position of the government that there was a '*clear distinction between Hamas's political and military wings*' (James Brokenshire, Minister for Security in June 2020) and that they were '*supportive of Hamas-Fatah reconciliation attempts*' (Lord Ahmad, Minister of State for the Middle East in February 2021). The contrary

124 Appendix 12 Shlaim ¶20

view that the distinction was '*artificial*' was announced in a speech by Ms Patel to the Heritage Foundation in Washington DC on 19 November 2021.[125]

224. The speech conflated Hamas with extremism and antisemitism and explained the proscription decision would criminalise waving a Hamas flag, which Ms Patel asserted was '*an act that is bound to make Jewish people and the community feel unsafe.*' Her speech implied that allowing support for the '*extremism*' of Hamas would '*erode the rock of security*' '*upon which freedom sits*'. The press release which publicised the speech and the decision suggested proscription made it '*difficult for extremists to operate*' and followed advice from the 'Proscription Review Group'. However, as transpired in the Parliamentary debate that followed, a full impact assessment was never produced.

225. Hamas disagrees with Ms Patel's characterisation of the movement as antisemitic and extremist. As noted above, Hamas is an organised resistance movement which exercises the right of the Palestinian people to resist the Zionist State. The Secretary of State is directed to the expert reports by Professor Avi Shlaim and Dr Azzam Tamimi to understand the false nature of the accusation of antisemitism. But regardless of their inaccuracy, those accusations are, on any view, ***political opinions*** propagated by supporters of the Zionist State. These opinions are premised on equating anti-Zionism with antisemitism. In other words, rather than engage with the political arguments which anti-Zionist political actors – such as Hamas – and their supporters make, the supporters of the Zionist State vacuously claim their opponents are bigots. The proscription of Hamas simply uses the criminal law to enforce that political rhetorical tactic.

125 Appendix 12 Shlaim ¶13

226. Since political objectives are not – and for obvious reasons – amongst the exhaustive list of '*legitimate aims*' in art.10(2), it could not then – and cannot now – be relied upon by the Secretary of State to justify the aforementioned interference with art.10(1). Accordingly, Hamas submits that this interference is – and if its application were refused would be – in breach of art.10 of the ECHR.

227. The interference is also not '*necessary in a democratic society*' because the Secretary of State herself supports armed struggle in other (similar) contexts. It cannot rationally be claimed that interference in freedom of speech in support of armed struggle is '*necessary*' only when the Secretary of State does not support it. In any event, it cannot be '*necessary in a democratic society*' to interfere in speech in support of the struggle of peoples under colonial and alien domination to restore to themselves their right of self-determination by any means at their disposal, including armed struggle, when that position is recognised in international law.

228. People in Britain must be free to speak about Hamas and its struggle to restore to the Palestinian People the right of self-determination.

229. Yet, rather than allow freedom of speech in this regard, police have in recent months embarked on a campaign of political intimidation and persecution of journalists, academics, peace activists and students over their perceived support for Hamas. '*Operation Incessantness*' has resulted in journalists and activists such as Majid Freeman, Richard Barnard, Asa Wistanley, Sarah Wilkinson, Richard Medhurst and Craig Murray having been arrested and harassed over their coverage of the Israeli genocide in Gaza.

230. The fact that the police are targeting prominent anti-Zionist Jews such as Tony Greenstein and Professor Haim Bresheth for their critical views of the actions of the Zionist State in Gaza sends a chilling message to journalists, among others: police

are ready to arrest and charge even experts on the conflict, should they dissent too strongly from British foreign policy.

231. Thus far there has been a lack of clarity from the police about why they are arresting journalists or raiding their homes, and confiscating the tools needed for them to do their journalism. In itself, that is deeply concerning. But from what we do know – from the targeting of activists and academics under s.12 of the 2000 Act – police are using the loosest definition possible of '*encouraging support*' under the 2000 Act. That interpretation of the law, fails to take account of the duty of journalists, in a healthy democracy, to keep the public informed, and present them with countervailing, contentious and heterodox views.[126]

232. As investigative journalist Jonathan Cook notes:

> *I now find myself in a situation where, for the first time in my 36-year professional career, I am no longer sure what by law I can write or say in my capacity as a journalist on an issue of major international importance. I now live with the fear that, by writing critically about events in Gaza, I risk a dawn raid by counter-terrorism police on my home in front of my children, the confiscation of the electronic devices I rely on for my work, and my possible arrest, leading potentially to terrorism charges being laid against me.*[127] *(…)*
>
> *Because I and other journalists have little information to understand how the police have arrived at their decisions, or on what basis they will seek to justify them before the courts, we have no way of assessing how we can avoid a similar fate ourselves. Whether by design or not, the police's approach leaves journalists uncertain of what is considered lawful commentary. That is intimidatory and bound to maximise the chilling effect on free speech and press freedoms.*[128] *(…)*

126 Appendix 29 Cook ¶44
127 Appendix 29 Cook ¶12
128 Appendix 29 Cook ¶45

Given the expansive interpretation of these laws by the police, journalists find themselves in a particularly invidious, and dangerous, position should they try to draw attention to lawful actions by Hamas or discuss the legality of the group's actions. This poses a major limitation on the ability of journalists to freely report on and discuss some of the most urgent and consequential developments in international affairs, or to reflect on Britain's involvement in those developments.[129] *(…)*

Israel's prime minister is currently facing an arrest warrant from the International Criminal Court for perpetrating crimes against humanity in Gaza, while its sister court, the International Court of Justice, is investigating Israel for the crime of genocide. Britain is aiding Israel's actions in Gaza. At a time like this, the British media needs to be hosting a full and vigorous discussion about these developments, which are of the most pressing significance imaginable, both internationally and domestically. The current chilling effect of Section 12, and the police's expansive interpretation of it, therefore become a form of complicity in any crimes Israel may be found guilty of.[130]

(ii) *Freedom of Assembly*

233. Since the start of the genocide by the Zionist State in the Gaza Strip in October 2023, there have been repeated (mass) public demonstrations on the streets of Britain.

234. Hamas submits that its (continued) proscription by the Secretary of State also amounts to an interference with the freedom of peaceful assembly and to freedom of association with others of those who attend public demonstrations and who support (a) the right to self-determination of the Palestinian People; (b) the use of armed struggle pursuant to that right by Hamas; and (c) the use of armed struggle by Hamas to resist the genocide, Apartheid and illegal occupation by the Zionist State. As with art.10 of the ECHR, it should be uncontroversial that proscription –

129 Appendix 29 Cook ¶53
130 Appendix 29 Cook ¶56

and thus deproscription – decisions amount to an interference with the rights under art.11 because, *inter alia*, it limits the rights of an individual to express themselves during a public demonstration in a way that amounts to an invitation of support for a proscribed organisation.

235. Hamas repeats *mutatis mutandis* its submissions on art.10 that interference as a result of (continued) deproscription is neither pursuant to one of the 'legitimate aims' nor 'necessary in a democratic society'.

(iii) Right to Enjoyment of Convention Rights without Discrimination

236. For the reasons set out above, the facts surrounding the proscription of Hamas means it falls '*within the ambit*' of art.10 and art.11 of the ECHR. In other words, regardless of the breach of those rights which Hamas has set out above, the proscription of Hamas falls within the general scope of those rights, particularly when considering the view in *Choudry* at [66] about the manner in which proscription is given effect.

237. In addition, the proscription of Hamas also falls within the ambit of art.9 of the ECHR because many of those who support the right to self-determination of the Palestinian People and the use of armed struggle pursuant to that right by Hamas due so as part of a coherent and sincerely held philosophical conviction (see *Arrowsmith v United Kingdom* (1981) 3 EHRR 218 at [69]).

238. As noted above, the right to use armed struggle by people under colonial and alien domination – including belligerent occupation – to restore their right to self-determination is recognised in international law. In circumstances which align with its politics and policies, the government of Britain has supported – and even praised and celebrated – the exercise of the right of such armed struggle.

239. The decision to proscribe Hamas because it exercises the right of armed struggle of the Palestinian People vis-à-vis the Zionist State amounts to differential treatment on account of political opinion. In other words, because Ms Patel was an avid supporter of the Zionist State, she sought to use the power of the government of the UK – including the monopoly on violence – to restrict the rights of those with whom she politically disagrees; i.e. those who politically dissent. Indeed, the rights of those supportive of the use of armed force by the Zionist State – even where such force is genocidal – remain unaffected. That differential treatment is politically motivated and thus in breach of art.14 of the ECHR. Further, as held in *Virabyan*, such suppression of political dissent is a threat to the peaceful co-existence of a diversity of political opinions. Hamas submits that deproscription would remedy that breach and remove that threat.

Ground 3: Proscription is Disproportionate

240. The proscription of Hamas is disproportionate in light of the following considerations.

(i) *Lack of Threat to Britain*

241. Hamas has never extended its military operations outside the territory of historic Palestine. This is notwithstanding the significant levels of political, military and financial support provided by the Governments of Britain and the United States to the Zionist State, which have enabled its ability to implement an apartheid structure, entrench the illegal occupation, carry out war crimes, and conduct its genocidal campaign in Gaza. Hamas does not have a presence in Britain and does not pose any threat to its national security nor to its nationals overseas, save for the threat that extends to all individuals, irrespective of nationality, who participate in genocide, apartheid and illegal belligerent occupation.

242. A Commons Library Research Briefing prepared at the time of the proscription debate noted that '*Hamas [Izz ed-Din al-Qassam Brigade] has not directly attacked UK or Western interests*' and '*Hamas IDQ has not operated outside Israel and the Occupied Territories and has no overt representation in the UK'*. Although it added that '*Hamas's political wing is represented by charitable organisations which raise and remit funds for welfare purposes'*, the charitable organisations in question appear to be independent from Hamas and have been allowed to continue operating by the Charity Commission, which scrutinises such links.[131]

(ii) *Quartet's Pre-conditions to Engagement*

243. Hamas notes that the Secretary of State may consider the parameters set by the special envoys from the Quartet as part of their previous diplomatic efforts. Those

131 Appendix 31 Joint Submission ¶7.1

efforts were welcomed by the UN Security Council on 12 March 2002. Following the 2006 elections of the PLC, the Quartet issued a statement which noted that it:

> *was inevitable that future assistance to any new Government would be reviewed by donors against that Government's commitment to the principles of non-violence, recognition of Israel, and acceptance of previous agreements and obligations, including the Road Map.*

244. Hamas submits that those parameters cannot diminish the right of the Palestinian people to self-determination and to restore to themselves that right by any means at their disposal, including armed resistance against belligerent occupation of the oPt by the Zionist State.

(iii) *Armed Resistance*

245. As has been set out in detail, the right to armed struggle is enshrined in international law. With respect to any alleged breaches of IHL carried out by Hamas on 7 October 2023 or otherwise, as has been made clear by the UN Special Rapporteur Francesca Albanese, an illegitimate act of resistance does not delegitimise the resistance itself[132]

246. Moreover, the Zionist State has never subscribed to non-violence nor accepted it as a principle for settlement of the '*question of Palestine*'. Instead, as has been set out in the background section and the respective expert reports filed alongside this application, their approach has been one of violence, expulsion, expropriation, occupation, apartheid and, genocide. Unless non-violence is agreed upon by both sides, it cannot reasonably be considered a principle for settlement nor one which

132 'An illegitimate act of resistance doesn't delegitimize the resistance itself' UN special rapporteur tells i24NEWS, i24NEWS, 14 December 2023 https://www.i24news.tv/en/news/israel-at-war/1702542816-an-illegitimate-act-of-resistance-doesn-t-delegitimize-the-resistance-itself-un-special-rapporteur-tells-i24news

either the Quartet or the British State can impose through imposition of the criminal law upon only one side.

(iv) *Non-recognition of 'Israel'*

247. An insistence that Hamas recognises Israel's '*right to exist*' is an unreasonable demand. The right of a State to exist is not a concept recognised by international law. It is not recognised in any treaty, in customary international law or in legal literature.[133] The assertion by 'Israel' that it has such a right '*is simply a political appeal designed to justify the morality and legality of Israel's creation and existence as a State.*'[134] This is clear from its Declaration of Independence of 14 May 1948 in which its Provisional Council of State justified its assertion of the Zionists State's independence and existence as a State on *inter alia* the Balfour Declaration of 1917, the Mandate of the League of Nations, and General Assembly Resolution 181(II)), all of which have been challenged on legal grounds since 1948.[135]

248. As Professor Dugard explains:

> *That there is no right to exist as a State is demonstrated by the fact that a State may be recognized as a State by some States but not by others. Consequently, it is a State for those States that recognize it but not for States that do not recognize it. Palestine, for instance is recognized as a State by 146 States but its statehood is disputed by those States that do not recognize it. So too with Kosovo that is recognized by some 100 States. Neither of these States is a member of the United Nations which has refused to admit them to membership.... Entities that wish to become recognized as States often make declarations of their claim to statehood. Rhodesia made such a claim when it unilaterally declared independence in 1965. But this claim of the right to exist was denied by the United Kingdom and the United Nations. So too Tibet. It claims the right to exist as a State but this is denied by China and the international community*

133 Appendix 14 Dugard ¶13
134 Appendix 14 Dugard ¶18
135 Appendix 14 Dugard ¶18-19

accepts this. Other entities that claim to be States are Kurdistan and Catalonia but they make no claim to a right to exist as States.[136]

249. Recognition of Israeli statehood is a matter of legitimate debate and contention and a refusal to recognise it should not attract any adverse consequences including disengagement and proscription.[137]

250. The legitimacy of the Zionist State and its "*right to exist*" is debated in the light of both the debate over the lawfulness of its creation and subsequent developments relating to the lawfulness of the occupation of Palestine, the denial of the Palestinians' right of self-determination, Israeli apartheid, and most recently of accusations of genocide levelled at 'Israel' before the ICJ. It is argued that today Israel would not be recognized as a State because of its denial of self-determination to the indigenous population in the same way that Rhodesia was denied recognition as a State. Questions are asked as to why the United Nations, whose Charter proclaims the right of self-determination, did not apply the same standards to the admission of the Zionist State to the United Nations that it was later to apply to Rhodesia when it called on States not to recognise Rhodesia.[138]

251. During the Apartheid era in South Africa, arguments were raised that South Africa should no longer be recognised as a State and should be expelled from the United Nations. Although South Africa was not expelled from membership of the United Nations, the credentials of the South African government were not accepted and it was denied the right to participate in the work of the General Assembly. In effect, this meant that many States believed that South African no longer had the right to exist as a State because of its policy of Apartheid. The same argument is made in

136 Appendix 14 Dugard ¶15, 17
137 Appendix 14 Dugard ¶2
138 Appendix 14 Dugard ¶30-31

respect of the Zionist State. This argument is based on the principle that States should not recognize as lawful a situation created by the serious breach of peremptory norms of international law, such as genocide and crimes against humanity such as Apartheid and extermination.[139]

252. Moreover, the issue of recognition of the '*right to exist*' of the Zionist State has been '*politicised and manipulated since 1967 to smear and marginalise those who refuse to do so an antisemitic, not just Hamas but even ordinary British citizens resident in the UK.*' As Professor Shlaim explains, it was first enunciated by Menachem Begum on becoming Prime Minister in 1970 to deflect against mounting criticism of the illegal occupation.[140]

253. In fact, it is the Zionist State that has not only never recognised Palestine but unambiguously asserts that it will never recognise any Palestinian State. In early 2024, Prime Minister Netanyahu reiterated his opposition to such a State, as it would undermine Israeli security and reward Palestinians for the 7 October operation.[141] On 18 July 2024, the Knesset overwhelmingly voted to reject the establishment of a Palestinian state, even as part of a negotiated settlement. The resolution passed 68:9 with the only opposition coming from the Arab-majority Ra'am and Hadash-Ta'al parties. The resolution stated: *'[t]he Knesset of Israel firmly opposes the establishment of a Palestinian state west of Jordan. The establishment of a Palestinian state in the heart of the Land of Israel will pose an existential danger to the State of Israel and its citizens, perpetuate the Israeli-Palestinian conflict and destabilize the region.*'[142] As with non-violence, recognition of the '*right to exist*' of the Zionist State cannot reasonably be considered

139 Appendix 14 Dugard ¶34-35
140 Appendix 13 Shlaim ¶13-14, ¶18.
141 'Netanyahu rejects Palestinian statehood', Al Jazeera English, 19 January 2024
142 ' Knesset votes overwhelmingly against Palestinian statehood, days before PM's US trip', The Times of Israel, 18 July 2024

a pre-condition for settlement, nor one which the British State can impose through means of the criminal law upon one side.

(v) Rejection of Previous Agreements

254. Finally, in as much as the acceptance of previous agreements and obligations refers to the Oslo Accords, both the Zionist State and the PLO have rejected that framework. The Zionist State has rejected permanent settlement on the basis of UN Security Council resolutions 242 and 383, which prohibits the admissibility of the acquisition of territory by war. It has already annexed East Jerusalem, and the plans unveiled by Prime Minister Netanyahu and US President Trump in January 2020 envisage annexation of additional parts of the oPt, including the existing settlements in the West Bank and the whole of the Jordan Valley. In response, in May 2020, the PA began implementing its announcement to end all agreements and understandings with the Zionist State.

255. Indeed, even the self-styled 'mandate of the Office of the Quartet' now appears to be limited merely to '*increase[ing] Palestinian economic and institutional development and empowerment, as a support towards achieving a two-state solution.*' It has become completely irrelevant.

256. If anything, history has vindicated the critics of the Oslo Accords. Their opposition was primarily based on the lack of provisions for a Palestinian State and concerns that it would merely facilitate the ongoing expansion of Israeli settlements, and serve to entrench the occupation.[143] In November 2024, Israeli Finance Minister Bezalel Smotrich ordered preparations to begin for the annexation of the West Bank, a move that the new US administration seems ready to support.[144]

143 Appendix 08 Dunning ¶21.
144 'Far-right Israeli minister orders preparations for West Bank annexation', Al Jazeera English, 11 Nov. 2024.

257. Nevertheless, Hamas remains open to pragmatic solutions that would in essence result in the reality of two States living in peace. Dr Mousa Abu Marzook reiterates in his witness statement a proposal set out in the movement's 2017 Policy:

> *... without compromising its rejection of the Zionist State and without relinquishing any Palestinian rights, Hamas considers the establishment of a fully sovereign and independent Palestinian state, with Jerusalem as its capital along the ceasefire line of the 4th of June 1967, with the return of the refugees and the displaced to their homes from which they were expelled, to be a formula of national consensus. Hamas has on numerous occasions for over two decades proposed a hudnah or long-term truce on this basis.*[145]

For context, the Republic of Ireland maintained a claim on Northern Ireland until 1998.[146]

(vi) <u>*Undermining Democracy*</u>

258. One effect of the prolonged Israeli occupation of the oPt in general, and Gaza in particular, has been to deliberately stifle and prevent the emergence of viable Palestinian democratic processes and institutions. Though barriers – primarily those imposed by the Zionist State and its allies – remain to the full realisation of Palestinian statehood, Palestine is a legally recognised state. In particular, Palestine has observer status at the UN, and is a signatory to the Rome Statute of the ICC.

259. Hamas submits that its proscription is inconsistent with recognition of the democratic wishes of the Palestinian people. As noted above, Hamas won the 2006 legislative elections in the oPt, receiving 44.5% of the vote and 74 of the 132 seats, from a 77% turnout; elections that were deemed to compare favourably to international standards by a delegation of foreign observers. Once Hamas started winning elections in this way, it became anti-democratic and contrary to the British State's positive obligations under art.10 and art.3 of Protocol 1 to the ECHR to

145 Witness Statement of Dr Mousa Abu Marzouk, Para 36
146 Appendix 31 Joint Submission ¶7.7

proscribe it, regardless of its views on the organisation. To the extent that any Palestinian organisation has a claim to do so, Hamas exercises sovereignty over the occupied Palestinian territory of Gaza, albeit that sovereignty is substantially frustrated by the illegal occupation, and since October 2023, the genocide.

260. Voting for Hamas constitutes support for it and if a Palestinian were to vote and politically campaign for Hamas in any future election they would thereby commit a criminal offence as a result of the current proscription. It follows that the proscription is contributing to a process by which potentially the entire population of Gaza is criminalised by virtue of any democratic support for Hamas. Amongst the potential consequences might be that asylum seekers from Gaza could be unfairly excluded from refugee status under Article 1F of the 1951 Refugee Convention.

261. That Hamas' proscription in 2021 was even condemned by its rivals in the PA as '*a retrograde and one-sided step'* that '*complicated Palestinian unity efforts and undermined Palestinian democracy*' underscores how Patel's unilateral move was completely out of step with the political mood. [147]

(vii) Preventing a Political Solution

262. The ongoing proscription of Hamas also creates obstacles for pursuing a political solution, favouring military '*solutions*' or indefinite suppression and surveillance, as opposed to a policy of engagement. This is based on a false perception that '*terrorists*' – and in particular '*religious terrorists*' – are inherently intransigent and incapable of change. Transition to a political process is hindered by the terrorism label, as talking with terrorists is a taboo.[148]

147 Appendix 27 Gunning ¶25
148 Appendix 27 Gunning ¶24

263. As noted by Dr Ismail Vadi, who served as a Member of Parliament for the African National Congress ('**ANC**') between 1994 and 2010, the proscription of the ANC was a critical juncture in South Africa's history of resistance against apartheid. Whilst intended to marginalise and dismantle the organisation, this repressive measure inadvertently bolstered the ANC's determination, catalysing a shift towards armed resistance and cultivating domestic and international solidarity.[149]

264. As the apartheid regime faltered under escalating domestic resistance, economic decline, armed resistance, and diplomatic pressure, the unbanning of the ANC in 1990 represented a momentous shift from resistance to a process of reconciliation. This underscored the failure of repression to maintain an unjust system and emphasised the necessity of inclusive dialogue in achieving peace and justice. This transition marked the beginning of a negotiated settlement that culminated in the 1994 democratic elections and the establishment of a constitutional democracy committed to equality, human dignity and fundamental human rights.[150]

265. Nelson Mandela, the leader of the armed wing of the ANC, later became the first post-apartheid President of South Africa and the ANC continues to be the ruling party today. In a similar vein, Sinn Fein received the highest number of first preference votes in the most recent elections in Ireland, both north and south of the border. Sinn Fein leader Martin McGuinness, who was known for his previous activities in the Provisional IRA, was elected both to Westminster and then later served in a number of ministerial positions in the Northern Ireland Assembly election.[151] Despite its profound opposition to Sinn Féin and the IRA, the British State eventually engaged in dialogue, considering among other things, the grievances that had led them to engage in acts of political violence.[152] The start of

149 Appendix 28 Vadi ¶100
150 Appendix 28 Vadi ¶102
151 Appendix 31 Joint Submission ¶ 4.7
152 Appendix 30 Al-Azami ¶34

talks with and the legitimation of Sinn Fein may have contributed to the end of violence by opening an alternative way to change for the republicans and by strengthening the factions favouring talks.[153]

266. Former UK Prime Minister and Special Envoy to the Middle East, Tony Blair, who was instrumental in instigating the international boycott of Hamas following its electoral success, belatedly admitted that this was a mistake and a missed opportunity, a point echoed more recently by former Head of Middle East Policy for the UK Mission to the United Nations, Carne Ross.[154]

153 Appendix 31 Joint Submission ¶4.9
154 Appendix 8 Dunning ¶59

(viii) Impeding Humanitarian Relief Efforts

267. Proscription further impedes humanitarian aid by labelling as 'terrorism' anything that can be seen as supporting a group that has been labelled 'terrorist'. Under domestic law, the proscription of Hamas in its entirety creates a series of criminal offences, including arranging a private meeting with members of the groups and providing any material benefit, even indirectly (which could include paying local taxes and utilities or carrying out humanitarian work, if this is seen as indirectly benefiting Hamas). According to Dr Ben Saul, an advisor to the United Nations and the Challis Professor of International Law at the University of Sydney, commenting on the Australian proscription of Hamas in its entirety , which is similar to Britain's, "The Australian law is saying that anyone who provides support, funding, training or assistance to the Hamas public administration, even… to help civilians in Gaza, is breaking Australian counterterrorism laws." Similarly, Alyn Smyth (SNP MP) noted in the UK parliamentary debate [on Hamas's proscription] that

> "*You cannot get anything done – you cannot get aid delivered, you cannot have a medical project, you cannot have a civil society dialogue – without Hamas's active involvement one way or another*".

268. Even prior to 7 October 2023 approximately 80% of Gazans were dependant on humanitarian aid, much of which stems from UN bodies, such as the United Nations Relief Works Association for Palestinians in the Near East ('**UNRWA**'). Proscription unnecessarily complicates the UK's relations with international organisations operating in Gaza such as UNRWA, but also the World Bank, UNOPS, and OCHA. Hamas's affiliation with highly regarded NGOs, employment of Hamas members in UNRWA and other humanitarian organisations, and contributions of aid organisations such as the UNDP, the World Food Programme, USAID, Save the Children, Médecins sans Frontières, Medical Aid for Palestine, to Hamas-affiliated

charities or zakat committees renders the blanket terrorist designation of Hamas deeply destructive for Gazan civil society and their dependents.[155]

269. Illustrating the legal implication of proscription for charities, in April 2023 the UK Treasury's Office of Financial Sanctions Implementation sent a letter to Muslim charities, asking '*to supply details of all payments made in Gaza since 31 December 2020'*, including '*any payments such as local authority charges, taxes, utilities, and services including water supply, waste services, telephone or broadband payments*'. The letter explained that the law prohibits anyone:

> *… from making available funds to or for the benefit of an organisation designated under the 2019 Regulations… This can include any payments to a designated organisation or entities owned or controlled by it, or to entities independent of that organisation but where payments will be for its benefit… As a charity with operations in the OPT, potentially in Gaza, it is your responsibility to ensure you are compliant with financial sanctions obligations*.

270. Charities were thus already facing the prospect of increased costs for carrying out humanitarian work in Gaza as they had to seek '*legal advice to ensure they properly fulfil their responsibilities*' or risk '*face sanctions under counter-terrorism regulations*'. Proscription has rendered humanitarian aid to Gaza potentially open to criminal charges because all humanitarian organisations had to work with Hamas as the *de facto* government of Gaza. If Hamas continues to play a role in Gaza post-ceasefire, it will potentially criminalise humanitarian aid and reconstruction in the future.[156]

271. Since 7 October 2023, Israel has used the spurious accusation of supporting terrorism to criminalise and shutdown UNRWA, the main UN agency supporting

155 Appendix 27 Gunning ¶26

156 Appendix 27 Gunning ¶26.a

Palestinian refugees, with devastating humanitarian consequences for ordinary Palestinians. Aid groups have accused Israel of '*systematic*' attacks on civilians and NGOs working in Gaza. Jan Egeland, head of the Norwegian Refugee Council, has noted that '*Israel has now killed more aid workers in Gaza than all other armies, militias, and terrorists in all other wars combined*'. Combined with Israel's policy of effectively starving Gaza's population by only allowing in a fraction of the truckloads of humanitarian aid required to keep the population alive as well as deliberately depriving Gazans of water, the continued proscription of Hamas is likely to hinder not only the humanitarian effort to keep Gaza's population alive but the enormous task of reconstruction that will be needed for Gaza to become inhabitable again.[157]

(ix) Mass Criminalisation

272. The proscription of the entirety of Hamas ignores the ubiquity of the government's role in the everyday lives of their constituents. Hamas runs the public services in Gaza: the bureaucracy, the schools, the hospitals, the firefighters, the civilian police, even the street sweepers and garbage collectors. The *de facto* Hamas administration pays their salaries. The public sector – i.e., the Hamas-led government and the PA – account for approximately 37% of Gaza's workforce. Given Gaza's high unemployment rate, an exponentially larger percentage of the population is also dependent on these salaries. The proscription of Hamas raises key questions about whether these individuals, or anyone who supports members of the public service (for example, a family member in the UK providing financial support through remittances), or is dependent on them, is potentially guilty of terrorism-related offences. Hamas collects taxes. Does a business paying import tariffs to the Hamas government potentially constitute acquiring funds for a terrorist organisation (as the letter from the UK Treasury to UK charities potentially suggests)? Hamas

157 Appendix 27 Gunning ¶26.c

provides social services. Are beneficiaries of these guilty of association? To date the British government has not indicated how it would reconcile such inconsistencies.[158]

273. Remittances from the Palestinian diaspora constitute a key element of the Palestinian economy. According to the World Bank, personal remittances accounted for 17% of GDP in Gaza and the West Bank in 2020. Those who send remittances to their families to help ameliorate the debilitating economic situation in Gaza risk being found guilty of terrorism-related offences because the remittances will have to be sent to a territory controlled by Hamas. If anyone in the family is affiliated with Hamas or the civil service, however indirectly, a remittance could be interpreted as financing terrorism. With around 30-40% of Palestinians supporting Hamas in popular surveys and the boundaries of membership being deeply blurred, such a scenario is likely.[159]

274. It is this type of mass criminalisation that leads to genocide. In its judgment justifying the imposition of provisional measures against the Zionist State of 26 January 2024, the ICJ quoted Israeli President Isaac Herzog, whose words seem to evidence the genocidal intent underlying the justification for the targeting of civilians and the civilian infrastructure: Palestinians support for Hamas:

> *... It is an entire nation out there that is responsible. It is not true this rhetoric about civilians not aware, not involved. It is absolutely not true. They could have risen up. They could have fought against that evil regime which took over Gaza in a coup d'état.*

158 Appendix 31 Joint Submission ¶5.5
159 Appendix 31 Joint Submission ¶6.3

G. CONCLUSION

275. Zionism is and always has been a staggering affront to Palestinian dignity, and Hamas is a natural and logical part of the response to it. If Hamas did not exist, Palestinians would invent it.

276. Britain has obligations under international law, outlined above, to prevent and end genocide, occupation and Apartheid. In breach of those obligations, Britain has continued its longstanding support for Zionism and the Zionist State. This application presents a historic opportunity to depart from that tradition and choose the right side of history. The deproscription of Hamas is a concrete step which the Secretary of State can take to start to apply pressure on the Zionist State to cease its genocidal violence, end its occupation, and dismantle its Apartheid regime.

277. The designation of the entirety of Hamas has helped to curtail progress towards peace as it marginalised a key actor to the conflict, prevented any chance of meaningful dialogue with the de facto authorities on the ground, highlighted the hypocrisy of the West regarding democracy and human rights, and overall contributed to the pressure-cooker conditions that led to the explosion of violence on 7 October 2023.

278. The blanket design effectively disenfranchises large sections of the Palestinian population, immiserates the lives of those who rely on the civil administration to survive and impedes the ability of aid organisations to coordinate with local authorities to deliver much needed humanitarian relief.

279. Proscribing Hamas elides the multi-faceted nature of the movement and the important social and political roles it plays. As the de facto rulers of the Gaza Strip, the proscription of the movement has provided Israel with near carte blanche

support to target almost the entirety of the Gaza Strip, facilitated the criminalisation of the civil administration and other organisations in the enclave that need to deal with it, such as UNRWA, and jeopardised the work these collectively do in trying to stem the humanitarian crisis.[160]

280. But even if the Secretary of State continues British support for the Zionist State, it should stop criminalising the open discussion of and support for the right to self-determination of the Palestinian People and the use of armed struggle pursuant to that right by Hamas. The censoring of views and information with which the Secretary of State disagrees runs against all notions of the rights to free speech and freedom of assembly. Indeed, using the criminal law to silence those on the other side of a political debate is an affront to self-professed British values of individual liberty and the rule of law.

281. For all the reasons set out above, the Secretary of State is invited to reverse course and deproscribe Hamas.

8 April 2025

Franck Magennis	**Fahad Ansari**	**Daniel Grütters**
Garden Court Chambers	**Riverway Law**	**One Pump Court Chambers**

[160] Appendix 8 Dunning ¶66-68

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

WITNESS STATEMENT OF DR MOUSA ABU MARZOUK

I, **MOUSA ABU MARZOUK, resident in Doha, Qatar, and the Head of International Relations and Legal Office in the Political Bureau of the Islamic Resistance Movement - 'Hamas', MAKE THIS STATEMENT in support of the application by the organisation for its deproscription.**

1. I am the Head of International Relations and Legal Office of the Political Bureau of the Islamic Resistance Movement - 'Hamas'. I was one of the founders of the movement in 1987 during the Intifada and have held various senior positions in the movement since then.

2. My parents were forced to flee from Yibna during the Nakba in 1948. Due to the severe violence perpetrated by the colonising Zionist soldiers, my hometown was transformed into a depopulated Palestinian town whose ruins are located southeast of the modern city of 'Yavne'.

3. I was born on February 9th, 1951 in a refugee camp in Rafah, Occupied Palestine. I have and will never relinquish my right to return to the town from which my parents were deliberately ethnically cleansed by Zionists, colonisers who viewed and still view me and my family as a racial threat because we are not Jewish.

4. I am an engineer by profession. I obtained a BSc from Helwan University before travelling to the United States where I obtained a MSc in construction management from Colorado State University, and then a PhD in Industrial Engineering.

5. I am submitting this application on behalf of Hamas for its deproscription from the British government's list of proscribed terrorist groups. Despite the British state

being the architect of our suffering through its collaboration with the Zionist project for over a century, I am inviting you to reverse that policy today.

6. We furthermore intend that the application will damage the standing and credibility of Zionism as an ideology, and the Zionists who still somehow openly identify with it. We hope that the current crisis of Zionism, substantially precipitated by the actions of Hamas' military wing and other groups on 7th October 2023, can be transformed into a terminal crisis.

HAMAS AND BRITAIN

7. Hamas is not a terrorist group. It is a Palestinian Islamic liberation and resistance movement whose goal is to liberate Palestine and confront the Zionist project. Its frame of reference is Islam, which determines its principles, objectives and means. We also look outwards to draw inspiration from the glorious tradition of all those peoples and groups who have resisted colonialism, occupation and imperialism in the name of justice, dignity, and human equality. The British government's decision to proscribe Hamas is an unjust one that is symptomatic of its unwavering support for Zionism, apartheid, occupation and ethnic cleansing in Palestine for over a century.

8. Hamas does not and never has posed a threat to Britain, despite the latter's ongoing complicity in the genocide of our people. It is perhaps out of colonial guilt that Britain fears that one day, those it oppresses will strike back against the sponsors of the Zionist entity. Britain should have no such fear. Throughout its almost four decades of existence, Hamas has only ever carried out its operations within the territory of historic Palestine. It has never carried out an operation outside of Palestine even when other Palestinian resistance groups have done so. That is our policy, and you have no reason to doubt its centrality to our strategy. We are unlike the Zionists for whom the entire world is a battlefield as they carry out assassination attempts of Hamas leaders in Iran, Lebanon, and the UAE, even attempting an assassination in Jordan, a nation with whom the Zionist entity has signed a peace and security agreement. Hamas has never carried out an operation outside of the borders of Palestine.

9. Hamas does not target British citizens either in the UK or anywhere else. However, if a British citizen were to enter Palestine and join the armed forces of the Zionist entity or illegally occupy land stolen from the indigenous Palestinian population – a colonial settlement – they would put themselves at risk of being targeted, not because of their British nationality, but because of their commission of war crimes and the crime against humanity of apartheid, and their participation in the ongoing genocide.

10. Hamas does not have a presence in Britain. It does not have an office in the country, any members resident there, or any publications. However, I have noticed from social media over the past 15 months that an increasing number of people living in

Britain have become more sympathetic towards Hamas and our liberation struggle as a result of the brutal reality of Zionism being exposed through the first live-streamed genocide in history. This is reflective of the natural disposition of the British people towards justice: they are waking up to the myriad ways that they have been deliberately misled about Hamas for many years by politicians and the mainstream media. It is alarming that so many journalists, activists and students are being criminalised by the British state for simply expressing support for a movement that is protecting its people from genocide.

11. We are concerned at the lack of respect for freedom of speech in Britain as a result of its long standing policy of support for Zionism. It seems that Britain is so insecure about the Zionist account of reality that it is not willing to even allow opposing views to be ventilated lest the house of cards upon which it has rested its integrity comes crashing down at the first engagement with the truth. The truth is that the "land without a people" always had people: Palestinians exist, we are not inferior to other peoples, and like all humans, we cannot and will not live without dignity.

IMPACT OF PROSCRIPTION

12. Hamas is by far and away the most effective military force resisting – and seeking to end and prevent – the ongoing acts of genocide being committed by the Zionist State against the Palestinians in Gaza. We believe that by maintaining its ban on Hamas, the British state continues to be in breach of its obligations under international law to employ all means reasonably available to it to prevent – and end – the genocide of our people. Not content with supplying arms, military intelligence and diplomatic support to the Zionist soldiers murdering us, you tie our hands behind our back when we try to resist, and muffle and criminalise those who would cry out in solidarity with our struggle.

13. In fact, by continuing to proscribe Hamas, the British state is complicit in the ongoing acts of genocide by inhibiting the effort and effectiveness of the last line of defence between the Palestinians in Gaza and the genocidal war machine that is the Zionist entity.

14. Under international law, 'Israel', as an occupying power, does not have a right to self-defence. Hamas, on the other hand, as an organised resistance movement representing the Palestinian people, has the right to use armed resistance to repel belligerent occupation in its exercise of its right to self-determination. Britain, by maintaining its proscription of Hamas, continues to render aid and assistance to the Zionist entity in maintaining its unlawful occupation, with all of the racial segregation, apartheid and ethnic cleansing that this occupation entails. This is contrary to Britain's obligations as enumerated recently by the International Court of Justice.

ANTISEMITISM

15. We reject any allegations that we are antisemitic or that we target Jewish people. I appreciate that there is a level of controversy surrounding some of the wording of our founding Charter. This was drafted without consultation with the senior leadership who were either in prison or in exile at the time. Hamas has published a series of other documents since then, culminating in our Document of General Principles and Policies of 2017, all of which expressly distinguish between Jews and Zionists. I have incorporated parts of that policy within this witness statement as continuing to reflect the positions of the movement.

16. Our struggle is not against Jewish people because of their religion but against the Zionists who occupy Palestine. Yet, it is the Zionists who constantly identify Judaism and the Jewish people with their own colonial project and illegal entity. We acknowledge and appreciate the solidarity shown to our people and our struggle by many Jewish people around the world including within 'Israel', whose stance against Zionism exposes the dangerous lie that conflates Judaism with Zionism.

17. We are particularly appalled by the weaponisation of antisemitism to attempt to silence those standing against apartheid, occupation and genocide. The Zionist entity and its supporters have completely undermined the struggle against genuine antisemitism by manipulating the term to protect the Zionist entity from criticism and censure. Over the past year, Zionists have accused numerous officials and institutions of being antisemitic including the UN Special Rapporteur Francesca Albanese, the UN General Secretary Antonio Guterres, UNRWA, the ICJ, the ICC, the government of South Africa, the Irish Taoiseach Simon Harris, and the President of Ireland Michael D. Higgins. In the process, Zionists have debased and degraded the important definition of 'antisemitism' until it means almost nothing. Zionists, many of them not Jewish, have deliberately fashioned an utterly warped definition of antisemitism, and they consciously wield it to shield Zionism and 'Israel' from entirely legitimate criticism. At a time when actual antisemitism is on the rise, this shameless 'crying wolf' is a staggeringly irresponsible and dangerous policy to pursue. It diminishes our ability to combat antisemitism when and where it does actually arise.

18. The Zionist project is a racist, aggressive, colonial and expansionist endeavour based on seizing the property of others; it is hostile to the Palestinian people and to their aspiration for freedom, liberation, return and self-determination. The 'Israeli' entity is the plaything of the Zionist project and its foremost base of aggression. 'Israel' is a military outpost, an "unsinkable aircraft carrier", maintained by the US and staffed by an army of conscripts. Zionism is an ideology that is the root of all violence in Palestine and that violence will continue until Zionism is systematically dismantled.

19. Hamas rejects the persecution of any human being or the undermining of his or her rights on national, religious or sectarian grounds. The Palestinian people have always stood against oppression, injustice, and the committing of massacres against

civilians regardless of who commit them. Based on our religious and moral values, we clearly stated our rejection to what the Jews were exposed to by the Nazi Germany. Hamas is of the view that the 'Jewish problem', antisemitism and the persecution of the Jews are phenomena fundamentally linked to European history and not to the history of the Arabs and the Muslims or to their heritage. The Arab and Islamic environment was an example of co-existence, cultural interaction and religious freedoms. The current conflict is caused by the Zionist aggressive behaviour and its alliance with the western colonial powers; therefore, we reject the exploitation of the Jewish suffering in Europe to justify the oppression against our people in Palestine. The Zionist movement, which was able with the help of Western powers to occupy Palestine, is the most dangerous form of settler colonialism. That form has already been defeated and eradicated from much of the world, and must similarly be defeated and eradicated from Palestine.

20. The Zionist project does not target the Palestinian people alone; it is the enemy of the Arab and Islamic Ummah posing a grave threat to its security and interests. It is also hostile to the Ummah's aspirations for unity, renaissance and liberation and has been the major source of its troubles. The Zionist project also poses a danger to international security and peace and to mankind and its interests and stability. For its entire existence, 'Israel' has been in a state of constant war with other countries in the region. Zionism is a savage, expansionist, racial supremacist project that should have never been supported. It is time for that project to be abandoned and replaced, ideally with a single, democratic state of Palestine in which people of all faiths are treated as equal in humanity, rights and dignity.

JERUSALEM AND THE AL-AQSA MOSQUE

21. Jerusalem is the capital of Palestine. Its religious, historic and civilisational status is fundamental to the Arabs, Muslims and the world at large. Its Islamic and Christian holy places belong exclusively to the Palestinian people and to the Arab and Islamic Ummah. Not one stone of Jerusalem can be surrendered or relinquished. The measures undertaken by the occupiers in Jerusalem, such as Judaization, settlement building, and establishing facts on the ground are fundamentally null and void.

22. The blessed Al-Aqsa Mosque belongs exclusively to our people and our Ummah, and the occupation has no right to it whatsoever. The occupation's plots, measures and attempts to Judaize Al-Aqsa and divide it are null, void and illegitimate. Hamas views itself as a protector of Al-Aqsa against the frequent violations of its sanctity by the Zionist entity.

PRISONERS

23. It is a tragic reality that almost every Palestinian household has a family member being detained in an Israeli prison. Since 1967, over 800,000 Palestinians, including children, have been incarcerated by the Zionist military. The thousands of Palestinian political prisoners or hostages currently languishing in Zionist prisons where they

are routinely tortured, raped and mistreated, include hundreds of women and children, many of whom are subject to administrative detention which can be renewed indefinitely.

24. The release of the Palestinian prisoners is a consensus position among Palestinians with strong support from all sectors of society. Where appeals to the international community to release our prisoners have fallen on deaf ears, our experience has demonstrated that the most effective method of liberating our prisoners is through the prisoner exchange process.

RESISTANCE AND LIBERATION

25. The liberation of Palestine is the duty of the Palestinian people in particular and the duty of the Arab and Islamic Ummah in general. It is also a humanitarian obligation as necessitated by the dictates of truth and justice. The agencies working for Palestine, whether national, Arab, Islamic or humanitarian, complement each other and are harmonious and not in conflict with each other.

26. Resisting the occupation with all means and methods is a legitimate right guaranteed by divine laws and by international norms and laws. At the heart of these lies the norms regulating armed resistance, which Hamas regards as the most viable strategic choice for protecting the principles and the rights of the Palestinian people. Like all forms of settler colonialism, Zionism will concede nothing without a credible military threat.

27. Hamas has a history of both armed and unarmed resistance. The latter was manifested in its support and facilitation of initiatives like the Great March of Return and Hamas' involvement in parliamentary elections. Unfortunately, such initiatives were only met with further military assaults by the Zionist entity and genocidal sanctions imposed by the Western world to penalise the Palestinian people for exercising their democratic right to choose a government of their choice.

28. Hamas rejects any attempt to undermine the resistance and its armed struggle. It also affirms the right of our people to develop the means and mechanisms of resistance. Managing resistance, in terms of escalation or de-escalation, or in terms of diversifying the means and methods, is an integral part of the process of managing the conflict and should not be at the expense of the principle of resistance.

29. On the morning of October 7th, 2023, the Izz ad-Din al-Qassam Brigades executed a military manoeuvre targeting the Gaza Division of Israel's Southern Command. Much has been said and written about the operation, but there has been little coverage in the English-speaking word about the intended nature of the operation as articulated by the movement itself in its various written statements and interviews over the past 17 months. I have prepared a separate witness statement focussing on the operation. Suffice to say here that the instructions given to our elite forces – our Nukhba – were to kill and capture Zionist soldiers and not to target women, children

and the elderly. To the extent that any individual crimes were allegedly committed by our soldiers, we have internal mechanisms for investigating and disciplining them. Unlike the Zionist entity, we take justice and accountability very seriously, and to that extent, we remain, as always, prepared to cooperate with any international investigations and inquiries into the operation, even if 'Israel' refuses to do so.

HAMAS AND POLITICAL SOLUTIONS

30. The Palestinian struggle is not just for land; it is for the dignity and freedom of our people. The dignity and rights of all people who live in Palestine must be the foundation for any just solution to the conflict

31. We consider the following to be null and void: the Balfour Declaration, the British Mandate for Palestine, the UN Palestine Partition Resolution, and whatever resolutions and measures that derive from them or are similar to them. The establishment of 'Israel' is a profound historical mistake, one that contravenes the inalienable rights of the Palestinian people and goes against their will and the will of the Ummah; it is also in violation of human rights that are guaranteed by international conventions, foremost among them is the right to self-determination.

32. Hamas affirms that the Oslo Accords and their addenda contravene the governing rules of international law in that they generate commitments that violate the inalienable rights of the Palestinian people. Therefore, the Movement rejects these agreements and all that flows from them, such as the obligations that are detrimental to the interests of our people, especially security coordination (which in effect is collaboration with the Zionist occupation).

33. Hamas rejects all the agreements, initiatives and settlement projects that are aimed at undermining the Palestinian cause and the rights of our Palestinian people. In this regard, any stance, initiative or political programme must not in any way violate these rights and should not contravene them or contradict them.

34. We will never recognise the legitimacy of the Zionist entity or its "right to exist", a concept that does not have any basis under international law. It is you and the Zionist entity that continue to deny our people's right to exist. Whatever has befallen the land of Palestine in terms of occupation, settlement building, Judaization or changes to its features or falsification of facts is illegitimate.

35. Hamas believes that no part of the land of Palestine shall be compromised or conceded, irrespective of the causes, the circumstances and the pressures and no matter how long the occupation lasts. Hamas rejects any alternative to the full and complete liberation of Palestine, from the river to the sea.

36. However, without compromising its rejection of the Zionist entity and without relinquishing any Palestinian rights, Hamas considers the establishment of a fully sovereign and independent Palestinian state, with Jerusalem as its capital along the

ceasefire line of the 4th of June 1967, with the return of the refugees and the displaced to their homes from which they were expelled, to be a formula of national consensus. Hamas has on numerous occasions for over two decades proposed a *hudnah* or long-term truce on this basis. Its goodwill has been abused by the Zionists, who have assassinated members of its leadership to undermine such efforts.

37. Hamas stresses that transgression against the Palestinian people, usurping their land and banishing them from their homeland cannot be called 'peace'. Any so-called agreement reached on this basis will not lead to peace. Resistance and jihad for the liberation of Palestine will remain a legitimate right, a duty and an honour for all the sons and daughters of our people and our Ummah.

38. Following the humiliating Zionist military collapse on October 7th, 2023, and because its response has been an intensification of its incremental genocide, 'Israel' has clearly become a pariah state. What seemed solid and durable about the Zionist presence in Palestine has been fundamentally changed and rendered plastic. The entire political and institutional framework in Palestine and the wider region is in a state of flux, and Zionism is in a profound and deepening crisis, having experienced a sudden plummet in its reputation. Jewish people in the diaspora, young and old, are increasingly and loudly turning their back on Zionism. In that rapidly evolving situation, Hamas is committed to bold new solutions and resolutions to the struggle against Zionism, including options that seemed impossible prior to October 2023

THE PALESTINIAN POLITICAL SYSTEM

39. A real state of Palestine is a state that has been liberated. There is no alternative to a fully sovereign Palestinian State on the entire national Palestinian soil, with Jerusalem as its capital.

40. Hamas believes in, and adheres to, managing its Palestinian relations on the basis of pluralism, democracy, national partnership, acceptance of the other and the adoption of dialogue. The aim is to bolster the unity of ranks and joint action for the purpose of accomplishing national goals and fulfilling the aspirations of the Palestinian people.

41. The PLO is a national framework for the Palestinian people inside and outside of Palestine. It should therefore be preserved, developed and rebuilt on democratic foundations so as to secure the participation of all the constituents and forces of the Palestinian people, in a manner that safeguards Palestinian rights.

42. Hamas stresses the necessity of building Palestinian national institutions on sound democratic principles, foremost among them are free and fair elections. Such a process should be on the basis of national partnership and in accordance with a clear programme and strategy that adhere to the rights, including the right of resistance, and which fulfil the aspirations of the Palestinian people.

CONCLUSION

43. It seems that the actions of the Palestinian resistance on October 7th have precipitated a profound crisis within Zionism. Inshallah, it proves to be a terminal crisis, one that leads to a process of dismantling Israeli apartheid and replacing it with a system based on the values of tolerance, mutual recognition, and love grounded in acknowledging and meeting human need.

44. Contrary to Israeli Defence Minister Yoav Gallant's explicitly genocidal contention, Hamas and the wider Palestinian resistance are not "human animals." We are full humans, whom Zionism has explicitly, repeatedly, and for more than a century, deliberately treated as sub-human. For almost two decades, 'Israel' has herded millions of Palestinians into a concentration camp called 'the Gaza strip' and told us we are worthless. For Hamas and other Palestinian resistance groups to have driven bulldozers through, flown paragliders over, dug tunnels under, and generally found ingenious ways to breach the frontiers of that prison is a testament to Palestinian dignity, and to human dignity more generally.

45. Unsurprisingly, the British state continues to side with the genocidal Zionist coloniser, while proscribing organisations like ours that strive to assert Palestinian dignity. Hamas is a resistance movement that – similar to every people who have fought to assert their dignity in the face of European and north American colonial capitalism – will liberate our colonised Palestinian people despite, not because of, the British government.

46. I invite the British state to now depart from this oppressive policy and be on the right side of history by deproscribing our movement.

I believe that the facts stated in this witness statement are true.

SIGNED: 

DATE: 26-3-2025

MOUSA ABU MARZOUK

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

WITNESS STATEMENT OF DR MOUSA ABU MARZOUK

ON OPERATION TOOFAN AL-AQSA

I, **MOUSA ABU MARZOUK, resident in Doha, Qatar, and the Head of International Relations and Legal Office in the Political Bureau of the Islamic Resistance Movement - 'Hamas', MAKE THIS STATEMENT in support of the application by the organisation for its deproscription.**

1. On the morning of October 7th, 2023, the Izz ad-Din al-Qassam Brigades executed a military manoeuvre targeting the Gaza Division of Israel's Southern Command.

2. On January 21st, 2024, we released an 18-page document entitled 'Our Narrative – Operation al-Aqsa Flood'. This constituted the movement's official narrative about the events of October 7th, 2023. Despite the document being published in both Arabic and English and widely distributed, the mainstream Western media chose not to publish or discuss it and instead decided to continue to propagate Zionist lies and propaganda surrounding the operation as a means of enabling the continuing genocide of the Palestinian people.

3. What follows should be viewed as a commentary on that document which I will refer to as Hamas Narrative Document ('HND'). Excerpts from that narrative will appear below as embedded paragraphs and can be distinguished by their appearing in bold and italics. I am conscious that the same anti-Palestinian racism that allowed many in the West to believe that our people would behead, burn and bake babies, glorify Hitler and Daesh simultaneously, and engage in mass and systematic rape, will prejudice your ability to accept the veracity of what I will say. We have therefore taken the time and effort to corroborate the account below with reports from the print and broadcast media. I trust that this will help you read this account without your judgment being clouded by any inherent anti-Palestinian racism.

WHY OPERATION TOOFAN AL-AQSA?

4. Section 1 of the HND refers to the reasons why the Toofan Al Aqsa operation happened at all. Gaza is a region where more than 70% of the residents are refugees from the 1948 Nakba – the Catastrophe. That Catastrophe, where 57% of the indigenous residents of Palestine were expelled and over 500 Palestinian villages destroyed, was soon followed by the Israeli occupation of the rest of Palestine in 1967. Since 2007, siege conditions have been imposed on Gaza for seventeen gruelling years, where Palestinians have endured five destructive wars within a broader Israeli policy of 'mowing the lawn.' According to 'official figures' cited in section 1 of the HND, between January 2000 and September 2023, 11,299 Palestinians were killed, with a further 156,768 injured, at the hands of the Israeli occupation.[1]

5. Our leaders have repeatedly referred to the causative factors that led to Toofan Al Aqsa. Our former leader, the martyr Ismail Haniyeh, who was martyred by the Zionist entity in Tehran on July 31st, 2024, spoke at a conference in January 2024 in Doha and mentioned three primary factors. The first, was the general erasure of the Palestinian cause from the consideration of much of the world. The second, was the unique extremism of the current Zionist government that has created a permissive environment for settler attacks in the West Bank, openly celebrated the torture of Palestinians in Israeli prisons, agitated for the destruction of Al-Aqsa Mosque, and hosted ministers who have publicly flirted with expulsion plans and the erasure of Palestine from the map of the Middle East. The third factor he mentioned was the normalisation trajectory initiated by the Abraham Accords. Normalisation provided additional legitimacy to the Zionist entity, and in so doing, also meant the effective normalisation of Palestinian suffering.[2]

6. It is important to understand that the October 7th offensive was a pre-emptive one, executed once we had acquired intelligence that Israeli forces were planning to attack Palestinian resistance groups. As early as October 12th, the martyr Saleh al-Arouri, the ex-deputy head of Hamas who was martyred by the Zionist entity in Beirut on January 2nd, 2024, mentioned this when he said, "*we carried out a pre-emptive strike. We had information that there were arrangements to come after the holidays for a surprise attack against us. And for that reason, we carried out this pre-emptive attack on the Gaza Division.*"[3] Likewise, Abu Ubaidah, military spokesperson for the Qassam brigades, has referred to operation Toofan Al-Aqsa, as one which "*shook the Zionist enemy and changed the face of the region… [it was an operation] in which we struck the enemy with a*

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[1] Section 1.3 of the HND

[2] كلمة رئيس المكتب السياسي لحركة حماس إسماعيل هنية أمام مؤتمر غزة طوفان الأقصى ودور الأمة ["Speech of Head of Hamas' Political Bureau Ismail Haniyeh in front of the conference: Gaza – Al-Aqsa Flood and the role of the Ummah"], *YouTube*, uploaded by Al Jazeera Arabic, (January 9, 2024), (4:06), https://youtu.be/LlmUxKx37c8?feature=shared&t=246

[3] نائب رئيس المكتب السياسي لحركة حماس للجزيرة: هذه معركة متقدمة على طريق حرية شعبنا ["Deputy Head of Hamas' Political Bureau to Al-Jazeera: This is a significant battle on the road to our people's freedom"], *YouTube*, uploaded by Al Jazeera Arabic, (October 12, 2023), (7:06), https://www.youtube.com/watch?v=LAqZA0GDe1M&rco=1 – comments from this statement are later referenced as SAN (Saleh al-Arouri Narrative)

massive pre-emptive strike after its planning for a major strike against the resistance in Gaza, with all its resistance factions, had reached its final stages."[4] A Channel 12 investigation also revealed that on October 1st, 2023, the head of Shin Bet presented a plan for a "broad campaign" against Hamas in which Hamas leaders, including Yahya Sinwar and Muhammad al-Deif, should be assassinated.[5]

7. ***The Israeli violations and brutality were documented by many UN organizations international human rights groups including Amnesty International and Human Rights Watch, and even documented by Israeli human rights groups. However, these reports and testimonies were ignored and the Israeli occupation is yet to be held accountable. For example, on Oct 29, 2021, Israel's Ambassador the UN Gilad Erdan insulted the UN system by tearing up a report for the UN Human Rights Council during an address at the General Assembly and threw it in a dustbin before leaving the podium. Yet, he was appointed in the following year – 2022 – to the post of vice-president of the UN General Assembly.***

8. ***The US administration and its western allies have always been treating Israel as a state above the law; they provide it with the needed cover to maintain prolonging the occupation and cracking down the Palestinian people and also allowing 'Israel' to exploit such situation to expropriate further Palestinian lands and to Judaize their sanctities and holy sites. Despite the fact that the UN had issued more than 900 resolutions over the past 75 years in favor of the Palestinian people, 'Israel' rejected to abide by any of these resolutions, and the US VETO was always present at the UN Security Council to prevent any condemnation to 'Israel's' policies and violations. That's why we see the US and other western countries complicit and partners to the Israeli occupation in its crimes and in the continued suffering of the Palestinian people.***

9. ***As for "the peaceful settlement process" ... the Oslo Accords signed in 1993 with the Palestine Liberation Organization (PLO) stipulated the establishment of a Palestinian independent state in the West Bank and the Gaza Strip... 'Israel' systematically destroyed every possibility to establish the Palestinian state through a wide campaign of settlements' construction and Judaization of the Palestinian lands in the occupied West Bank and Jerusalem. The backers of the peace process after 30 years realized that they have reached an impasse and that such process had catastrophic results on the Palestinian people.***[6]

10. In 1988, as chairman of the PLO, Yasir Arafat broke with the philosophy of armed resistance initially articulated by Fatah as the "sole, inevitable, unavoidable, and

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[4] كلمة الناطق العسكري باسم كتائب القسام أبو عبيدة في الذكرى الأولى لمعركة طوفان الأقصى
["Speech of the military spokesman of the Qassam Brigades Abu Ubaidah on the first anniversary of the Al Aqsa Flood battle"], *YouTube,* uploaded by أخبار - العربي,October 7, 2024, https://www.youtube.com/watch?v=Ap3LqUgo79s

[5] https://x.com/talhaahmad967/status/1860785858212659248

[6] Sections 1.4 – 1.6 of HND

indispensable means in the battle of liberation."[7] That break coincided with the expression of willingness to concede 78% of the land which had been lost in 1948 and accept a state comprised of Gaza and the West Bank with East Jerusalem as its capital. By the time the Oslo Accords were signed in 1993, Arafat's 1988 condemnation of terrorism had become a complete renunciation of violence, with Arafat writing to Yitzhak Rabin that the signing of the Accords would inaugurate "a new epoch of peaceful coexistence, free from violence and all other acts which endanger peace and stability."[8] The Accords meant the unilateral recognition of 'Israel' without iron-clad commitments to Palestinian statehood, and that the Palestinian Authority would enforce security for the Zionist entity. Thirty years later, approximately 40% of the entire West Bank is under the direct control of Zionist settlements according to B'Tselem[9], and more than 4,000 hectares of land have been designated Israeli state land.[10] Hamas' refusal to participate in this Oslo process – this 'peaceful settlement process' – has constantly been invoked in order not to recognise the movement.

11. ***The people in Gaza in 2018 also initiated the Great March of Return demonstrations to peacefully protest the Israeli blockade, their misery humanitarian conditions and to demand their right-to-return. However, the Israeli occupation forces responded to these protests with brutal force by which 360 Palestinians were killed, and 19,000 others were injured including over 5,000 children in a matter of months.***[11]

12. On numerous occasions we attempted to pursue the path of non-violent resistance, but this only served as a means of entrenching the occupation and perpetuating the Israeli violence against our people. Following the 'Sword of Jerusalem' battle in 2021 battle, the martyr Yahya Sinwar gave an interview to Hind Hassan of Vice News, in which he discussed these efforts. "*We know that we don't want war or fighting because it costs lives, and our people deserve peace. For long periods of time, we've tried peaceful resistance. We expected that the international community, free people and international organizations, would stop the occupation from committing crimes and massacring our people. Unfortunately, the world stood by and watched as the occupation war machine killed our young people*." Yahya Sinwar was then asked about alleged war crimes committed by Hamas through the indiscriminate firing of its rockets into Israel. He responded, "*Israel- which possesses a complete arsenal of weaponry, state-of-the-art equipment and aircrafts – intentionally bombs and kills our children and women. And they do that on*

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[7] Yezid Sayigh, Armed Struggle and the Search for State: Palestinian National Movement, 1949–1993 (Oxford: Oxford University Press, 1997), 212

[8] "Israel recognises PLO, which renounces violence", *UPI Archives*, (9 September 1993), https://www.upi.com/Archives/1993/09/09/Israel-recognizes-PLO-which-renounces-violence/4937747547200/

[9] "Settlements", *B'Tselem*, (11 November 2017), https://shorturl.at/ZCe1K

[10] "Israel's largest land seizure since Oslo Accords deals fresh blow to Palestinian statehood", *France 24*, (26 March 2024), https://www.france24.com/en/middle-east/20240326-israel-s-largest-land-seizure-since-oslo-accords-deals-fresh-blow-to-palestinian-statehood

[11] Section 1.2 of HND

purpose. You can't compare that to those who resist and defend themselves with weapons that look primitive in comparison. If we had the capabilities to launch precision missiles that targeted military targets, we wouldn't have used the rockets that we did. We are forced to defend our people with what we have and this is what we have. What are we supposed to do? Should we raise the white flag? That's not going to happen. Does the world expect us to be well-behaved victims while we're getting killed? For us to be slaughtered without making a noise? That's impossible. We decided to defend our people with whatever weapons we have."[12]

13. ***The Israeli officials confirmed at several occasions their absolute rejection to the establishment of a Palestinian state. Just one month before Operation Al-Aqsa Flood, Israeli Prime Minister Benjamin Netanyahu presented a map of a so-called "New Middle East," depicting 'Israel' stretching from the Jordan River to the Mediterranean Sea including the West Bank and Gaza[13]. The entire world at that – UN General Assembly's – podium were silent towards his speech full of arrogance and ignorance towards the rights of the Palestinian people.***[14]

14. Toofan Al-Aqsa must be understood as being carried out within a prolonged context, where an untenable situation was expected to indefinitely perdure: two million lives within Gaza, with little prospects or hope; the relentless air, sea and land blockade on the Gaza strip; the advent of an extreme Zionist government openly flirting with expulsion plans; increased incursions on the sanctity of Al-Aqsa Mosque; thousands of Palestinians held without charge in Israeli prisons under administrative attention; settler attacks, the increasing growth of settlements, and the destruction of Palestinian property in the Occupied West Bank; and all without any means – with all means having been tried and tested – to resolve the situation peacefully. At the UN, there is the American veto. Inside of occupied Palestine, there are military courts and administrative detention. Palestinians who protest are kneecapped and killed by Zionist snipers.

15. ***Proceeding from the above, Operation Al-Aqsa Flood on Oct. 7 was a necessary step and a normal response to confront all Israeli conspiracies against the Palestinian people and their cause. It was a defensive act in the frame of getting rid of the Israeli occupation, reclaiming the Palestinians rights and on the way for liberation and independence like all peoples around the world did.***[15]

16. Speaking in December 2023 and reflecting on the decision to engage in armed resistance against the Zionist occupation, military spokesperson for the Izz al-Din al-Qassam Brigades Abu Ubaidah had the following to say, placing our struggle against

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[12] "How Hamas' Leader in Gaza Reacted to the Ceasefire", YouTube, uploaded by VICE News, (June 2, 2021), (1:39), https://www.youtube.com/watch?v=1Px6AyVjw2A

[13] "Israel – Prime Minister Addresses United Nations General Debate, 78th Session", *YouTube*, uploaded by United Nations, (September 22, 2003), (10:57), https://www.youtube.com/watch?v=Atag74u01AM&t=30s

[14] Section 1.6 of HND

[15] Section 1.7. of HND

Zionist occupation within a series of anti-occupation struggles within recent history: "*We never for a single day desired war and destruction. It would have been better that the Zionists of the West and the East acknowledge the rights of our people and end the occupation. But they preferred [instead] to buy time for the interests of the criminal occupation, so that they [the Israelis] could obliterate our people, and erase our cause. But, as a people possessing truth, a cause and a message, and as a faithful resistance responsible for acquiring our rights, we persisted in preparing and fighting, because rights are not taken back except by force, and because all the peoples of the earth who have been occupied gained their freedom through blood, severed body parts and fighting. And there is in Vietnam, Afghanistan, South Africa, Iraq, Algeria, Lebanon and many other countries ample proof of that.*"[16] There is no distinction between our struggle and those struggles which were opposed by the West at the time but whose legitimacy was confirmed by history.

17. ***After 75 years of relentless occupation and suffering, and after failing all initiatives for liberation and return to our people, and also after the disastrous results of the so-called peace process, what did the world expect from the Palestinian people to do…***

18. ***What was expected from the Palestinian people after all of that? To keep waiting and to keep counting on the helpless UN! Or to take the initiative in defending the Palestinian people, lands, rights and sanctities; knowing that the defense act is a right enshrined in international laws, norms and conventions.***[17]

19. At 07:47 on 7 October 2023, the Commander of the Izz ad-Din al-Qassam Brigades Abu Khaled Muhammad al-Deif, announced the beginning of operation Toofan Al-Aqsa: "*In light of these ongoing crimes, and in light of the rampages of the occupation and its disregard of international laws and resolutions, and in light of the American and Western support [for the Zionist entity], and the global silence [as relates to our cause], we have decided to put a stop to all of this with the aid of Allah, so that the enemy may understand that the time where they could run riot without any consequence has come to an end. We announce the beginning of operation Toofan Al-Aqsa.*"[18]

TOWARDS A TRANSPARENT INTERNATIONAL INVESTIGATION

20. ***Palestine is a member-state of the International Criminal Court (ICC) and it acceded to its Rome Statute in 2015. When Palestine asked for investigation into Israeli war crimes committed on its territories, it was faced by Israeli intransigence and***

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[16] كلمة للناطق العسكري باسم كتائب القسام أبو عبيدة ["Statement of the military spokesman of the Qassam Brigades Abu Ubaidah"], *YouTube*, uploaded by Aljazeera Mubasher, (December 28, 2023), (2:40), https://www.youtube.com/live/qD9tOiiTxF4

[17] Section 1.7 of HND

[18] خطاب قائد هيئة أركان القسام محمد الضيف (7 أكتوبر) ["Address of Qassam Chief of Staff Muhammad al-Deif (October 7th)"], Ezzedeen Al Qassam Brigades, October 7, 2023, https://www.alqassam.ps/arabic/videos/index/2796 ; also see 'محمد الضيف: أطلقنا خلال نصف ساعة ٥ آلاف صاروخ تجاه مستوطنات ومدن العدو' Muhammad Al-Deif: Within half an hour, we fired 5,000 missiles towards enemy settlements and cities' published by Al Jazeera Arabic https://youtu.be/-cxL5_Nw1l0?si=EBBJKOAimNELXs1i

rejection, and threats to punish the Palestinians for the request to ICC. It is also unfortunate to mention that there were great powers, which claim to be holding values of justice, completely sided with the occupation narrative and stood against the Palestinian moves in the international justice system. These powers want to keep 'Israel' as a state above the law and to ensure it escapes liability and accountability.

21. ***We urge these countries, especially the US administration, Germany, Canada and the UK, if they are meant for justice to prevail as they claim, they are ought to announce their support to the course of the investigation in all crimes committed in occupied Palestine to give full support for the international courts to effectively do their job.***

22. ***Despite having doubts from these countries to stand by justice, we still urge the ICC Prosecutor and his team to immediately and urgently come to occupied Palestine to look into the crimes and violations committed there, rather than merely observing the situation remotely or being subject to the Israeli restrictions***[19]

23. Perhaps the most extensive study yet published on the events of October 7th, 2023, was carried out by the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and 'Israel'.[20] It therefore serves to remark briefly on some aspects of that report, as is relevant to any discussions about the events of the day.

24. From the limitations mentioned by the Commission of their investigation, was the persistent refusal of Israeli officials to cooperate. The Commission notes that they sent four requests for information to 'Israel' as well as six requests for access to 'Israel' and the Occupied Palestinian Territory, all of which received no response. Investigators were forced then, to work remotely, unable to visit sites where attacks were recorded to have taken place.[21] Furthermore, the Israeli Ministry of Justice actively barred medical professionals who had treated the survivors of the October 7th operation from speaking to the Commission's investigators. The Foreign Ministry spokesperson Lior Haiat called the Commission "an anti-Israeli and antisemitic body" and called those chosen to head it – Navanethem Pillay (South Africa), Miloon Kothari (India) and Chris Sidoti (Australia) – "famous antisemitic and anti-Israeli people".[22]

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[19] Section 3.1 – 3.3 of HND: 'Towards a transparent international investigation'

[20] Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (2024). *Detailed findings on attacks out on and after 7 October 2023 in Israel.* https://www.un.org/unispal/wp-content/uploads/2024/06/a-hrc-56-crp-3.pdf - (referred to later as UNR – UN Report)

[21] Paragraph 2 of UNR

[22] Ghert-Zand, R. (2024) "Israel forbids doctors from speaking to UN group investigating Oct. 7 atrocities", *The Times of Israel*, 16 January https://www.timesofisrael.com/government-forbids-doctors-from-speaking-to-un-group-investigating-oct-7-atrocities/

25. Similar closed-door policies are in place as pertains to press access to the Gaza Strip. The Foreign Press Association in Jerusalem, an independent Israeli organisation which represents members of the international media[23], brought a petition to 'Israel's' Supreme Court to allow independent access for journalists to report from Gaza, which the Court rejected in January 2024.[24] A July 2024 open letter signed by more than 70 media and civil society organisations including the Associated Press, the BBC, CNN, The New York Times and the Washington Post called for 'Israel' to allow journalists independent access to Gaza.[25] This is whilst within Gaza, as of November 8th 2024, at least 137 journalists and media workers have been killed.[26] Though reporting from Gaza *since* October 7th may not necessarily concern investigating the events *of* October 7th, these facts speak to a consistent attitude of non-compliance when it comes to independent investigations and verification of facts – a reality that at least provides motive for pause. As a Haaretz editorial had it recently: "Why Is Israel Afraid to Allow Foreign Journalists in Gaza? What's It Hiding?"[27]

26. Whilst Israeli authorities have obstructed independent investigatory access to sites where attacks are alleged to have taken place on October 7th, it has at the same time facilitated highly publicised visits for celebrities and social personalities to those same locations. Music executive Scooter Braun visited Kibbutz Be'eri in late December,[28] singer Montana Tucker visited Kfar Aza at around the same time[29], and actress Debra Messing visited Southern 'Israel' and even entered Gaza where she was interviewed by Douglas Murray[30]. All these trips were, according to the Jewish

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[23] Sherwood, H. (2023) "'Hugely frustrating': international media seek to overcome Gaza ban", *The Guardian*, 12 December https://www.theguardian.com/world/2023/dec/12/hugely-frustrating-international-media-seek-to-overcome-gaza-ban

[24] "Statement by the Foreign Press Association regarding Supreme Court decision", *The Foreign Press Association*, January 9, 2024 https://foreignpressassociation.online/2024/01/10/statement-by-the-foreign-press-association-regarding-supreme-court-decision-january-9-2024/

[25] "Media organizations urge Israel to open access to Gaza", *Committee to Protect Journalists*, July 11, 2024 https://cpj.org/2024/07/media-organizations-urge-israel-to-open-access-to-gaza/#full-letter-below

[26] "Journalist casualties in the Israel-Gaza war, *Committee to Protect Journalists*, December 17, 2024 https://cpj.org/2024/11/journalist-casualties-in-the-israel-gaza-conflict/#:~:text=137%20journalists%20and%20media%20workers%20were%20confirmed%20killed%3A%20129%20Palestinian,2%20journalists%20were%20reported%20missing

[27] "Why is Israel Afraid to Allow Foreign Journalists in Gaza? What's It Hiding?", *Haaretz*, September 11, 2024 https://www.haaretz.com/opinion/editorial/2024-09-11/ty-article-opinion/israel-must-allow-foreign-journalists-to-report-from-gaza/00000191-dd73-dd31-a9bd-ff779bf20000

[28] Braun, Scooter [@scooterbraun]. Photo of Scooter Braun's trip to Kibbutz Be'eri. *Instagram*, 18, December 2023, https://www.instagram.com/p/C1ArJjiSVMB/?utm_source=ig_embed&ig_rid=51f253e6-7f16-4d1e-a899-776a57eb86b3

[29] Tucker, Montana [@montanatucker]. Photos of Tucker's trip to Kfar Aza. *Instagram*, 18, December 2023, https://www.instagram.com/montanatucker/p/C1AWj-SMxCu/?img_index=6

[30] "Debra Messing Faces Fresh Backlash", *Newsweek*, December 20, 2023 https://www.newsweek.com/debra-messing-fresh-gaza-backlash-1854129

Chronicle, 'part of a broad effort to bring people with major audiences to Israel.'[31] American entrepreneur Elon Musk also visited Kfar Aza with Israeli Prime Minister Benjamin Netanyahu where he was shown, amongst other things, a baby's cot filled with spent bullets.[32] An investigation by a Turkish disinformation centre has suggested that these bullets were planted, belonging to a weapon not possessed by the Palestinian resistance.[33]

27. In similar vein, the Israeli Occupation Forces (IOF) have held private screenings at various locations across the world. Prepared for limited foreign and domestic audiences, – particularly politicians, diplomats and journalists – the 43-minute film gathers footage of alleged atrocities committed on October 7th. The private screenings, as CBC's Evan Dyer has it, are "part of Israel's effort to convince outsiders that its war in Gaza is justified."[34] Like the celebrities who visited 'Israel', attendees were expected to "bear witness", but also, as journalist Owen Jones put it, "make the PR case for Israel's onslaught against Gaza."[35] According to Dyer, the privately screened footage has not been widely disseminated because either "victims' family members [had] not agreed to it, or because of Jewish traditions about respect for the dead." That notwithstanding, where access was denied for the UN Commission's investigators, it was provided for celebrities, journalists and politicians where there were political and narrative gains to be made for the Zionist entity.

28. Without direct independent access to investigate what took place, a type of monopoly exists in the hands of the Zionist entity in relation to which information becomes publicly accessible, and thereafter available to be examined by third parties. The Commission expressed a general concern about a lack of forensic evidence collection at the Shura camp where bodies were brought for identification. It refers to, but does not reference, a report in an Israeli news publication which details that there was only one CT scanner in the Shura camp, an 'integral' piece of medical equipment for determining the cause of death.[36] It mentions as well that religious volunteer groups like Unit 360 and ZAKA were deployed as first responders on the day – "units who were not trained or equipped to manage large, complex crime

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[31] Hajdenberg, J. (2023) "Celebs and influencers have headed to Israel to 'bear witness'", *Pittsburgh Jewish Chronicle*, 21 December, https://jewishchronicle.timesofisrael.com/celebs-and-influencers-have-headed-to-israel-to-bear-witness/

[32] Richard, L. (2023). "Elon Musk, Benjamin Netanyahu tour horrors of October 7th massacre in Israel", *Fox Business*, 27 November, https://www.foxbusiness.com/politics/elon-musk-benjamin-netanyahu-tour-horrors-october-7th-massacre-israel

[33] "Bullets Found in Israeli Baby's Crib Shown to Elon Musk Were Fabricated", *TMJ News Network*, November 30, 2023, https://tmj.news/bullets-found-in-israeli-babys-crib-shown-to-elon-musk-were-fabricated/

[34] Dyer, E. (2023). "Israeli officials show unseen video from October 7 attack", *CBC News*, 2 November, https://www.cbc.ca/news/politics/israel-hamas-gaza-palestinian-1.7016989

[35] "I Watched The Hamas Massacre Film. Here Are My Thoughts.", *YouTube*, uploaded by Owen Jones, November 17, 2023, (1:10) https://www.youtube.com/watch?app=desktop&v=mc5iG3DX7ho

[36] Paragraph 234 of UNR

scenes and may have also tainted, or even tampered with, evidence."[37] And, as the Commission alludes to, ZAKA regional head Yossi Landau, *with the privileged access he was provided to attack locations*, proceeded to feed highly exaggerated and fabricated accounts to the media of a foetus cut from its mother's stomach, and "two piles of ten children each…tied to the back, burned to death."[38] In a climate where independent verification of information was persistently obstructed, tales not too dissimilar were repeated in the UK and in the White House, and carried by numerous media organisations across the world.

29. In substantiating their findings, the UN Commission report makes copious reference to video evidence seen by investigators. This includes – but is not limited to – CCTV footage, dashcam footage, social media posts, and GoPro footage taken from the bodies of dead Palestinian fighters. This footage is not referenced. We believe that the UN Commission, similar to Al-Jazeera's Investigations Unit which contributed to the network's October 7th documentary, relied heavily on footage obtained from the 'South First Responders' Telegram Channel.

30. What has been mentioned above concerning the monopoly over the source material which exists becomes particularly relevant as relates to third party efforts to reconstruct/understand the events of the day. One can easily imagine that there is, from all the Go Pros found on the bodies of dead fighters, all the CCTV cameras in Southern Occupied Palestine, and all dashcams which might have captured scenes, thousands of hours of footage. The public has access to but a few hours of footage – Al-Jazeera's Investigations Unit having viewed only about seven hours of it[39]. The most heavily relied on source of that limited material is the South First Responders channel, which belongs to an Israeli emergency response group that explicitly states that its intention was to upload content from the day which shows that the intention of Hamas fighters was to massacre innocent civilians, and *not, as Hamas have claimed, to attack military targets*.

31. In the context of the refusal to comply with any international investigations, to allow for independent journalistic assessments, to allow access to alleged attack sites, or to be truly transparent with primary source data, it should be recognised that researchers are necessarily making conclusions about October 7th based only on what non-compliant and biased Israeli authorities have released to the public. In other words, precisely because independent and transparent enquiries have been obstructed at every turn, most of what can be used publicly to unpack the events of

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[37] Paragraph 235 of UNR

[38] "Sanders, R and Al Jazeera Investigative Unit (2024), "October 7: Forensic analysis shows Hamas abuses, many false Israeli claims", Al Jazeera, 21 March (36:50) https://www.aljazeera.com/news/2024/3/21/october-7-forensic-analysis-shows-hamas-abuses-many-false-israeli-claims ; see also Winstanley, A. (2024) "Israeli source of "executed children" lie admits story was untrue", *The Electronic Intifada,* 27 March, https://electronicintifada.net/blogs/asa-winstanley/israeli-source-executed-children-lie-admits-story-was-untrue

[39] "October 7 Al Jazeera Investigations", YouTube, uploaded by Al Jazeera English, March 20, 2024, (1:12) https://www.youtube.com/watch?v=_0atzea-mPY&t=914s

October 7th is content which has been specifically selected to perform a narrative function in favour of the Israelis.

32. We are confident that any fair and independent inquiries will prove the truth of our narrative and will prove the scale of lies and misleading information in the Israeli side.[40]

33. I reiterate the Hamas position that we remain prepared and willing to carry out its own internal investigation into any alleged crimes committed by any of its members and hold them to account if the allegations are proven against them. It is impossible however to have such accountability measures in place while we are defending our people against genocide. Hamas also remains prepared, as it always has been, to fully cooperate with the ICC and any other independent inquiry, even if the Zionist entity refuses to do so.

THE EVENTS OF OPERATION TOOFAN AL-AQSA AND RESPONSES TO THE ISRAELI ALLEGATIONS

34. ***Operation Al-Aqsa Flood on Oct. 7 targeted the Israeli military sites and sought to arrest the enemy's soldiers to pressure on the Israeli authorities to release the thousands of Palestinians held in Israeli jails through a prisoner exchange deal. Therefore, the operation focused on destroying the Israeli army's Gaza Division, the Israeli military sites stationed near the Israeli settlements around Gaza.***[41]

35. As our leaders have stated publicly, and I reiterate now, Toofan Al-Aqsa was first and foremost an Izz ad-Din al-Qassam Brigades operation. For example, the martyr Saleh Al-Arouri said, "*As for the attack that took place on Saturday morning, it was an organised, regimental operation*." The purpose of the operation was to target the military positions of the Gaza Division – that component of the Israeli Southern Command concerned with maintaining the siege on the Gaza Strip. Fighters were to overrun these locations and attempt to take military prisoners who could later be exchanged for the thousands of Palestinians being held in Israeli prisons. As the day progressed, and it became known within Gaza not just that an attack was taking place, but also that the Israeli army in the surrounding areas of the Gaza strip had been annihilated, other armed factions and civilians began to emerge from Gaza. A situation of general chaos ensued – unplanned for – where many civilians were killed. The following paragraphs will expand on the basic components of this narrative.

36. That the operation was launched and led by the Izz ad-Din al-Qassam Brigades is hardly controversial. Though there has been a joint operations room bringing together Qassam and other Palestinian resistance factions active in its current form

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40 Section 2.10 of HND

41 Section 2.1 of HND

since 2018[42], that has not meant all military operations from Gaza require complete cooperation from all factions. For instance, in mid-2022, Palestinian Islamic Jihad (PIJ) responded to Israeli bombing in Gaza which killed at least 49 Palestinians by firing rockets at 'Israel', whereas Hamas remained out of the fighting.[43] As relates to October 7th then, PIJ deputy general secretary Dr Muhammad Al-Hindi has stated clearly that the PIJ were surprised by the attack, but made the earnest decision to participate as soon as it had begun. "*On the 6th of October, our guys were celebrating – celebrating [the anniversary of] our founding. Effectively the whole movement was… walking in the streets… marching… until the early hours of the morning. And after a few hours, they were surprised, as the whole world was surprised with Toofan Al-Aqsa. They had no choice, given that the Islamic Jihad Movement is a resistance movement, except to participate in the defense of the Palestinian people… The whole movement – its leaders and members – was surprised, and did not expect [the attack to happen].*"[44]

37. Not only was it – and for clarification's purposes, what is meant here is the strategized and planned for operation – a Hamas operation, but those called to take part in the operation were specifically Qassam's elite forces: Al-Nukhba.[45] When observing the footage from the day, one thing to look for is anything that took place on the day, from whomever came out of Gaza. It has largely been assumed that all video footage has been of Qassam members, and conclusions about the October 7th operation have been made with this assumption. Another image entirely emerges if an attempt is made to consider specifically what the Qassam-planned operation was, and to see whether evidence that substantiates it could be found, even from the limited and intentionally selected source data that is publicly accessible. That operation is what would be expected to be determined by the orders of central command and which required extensive planning. This was executed but followed by a state of general chaos as others – resistance groups as well as armed and unarmed civilians – began to cross the occupation fence into Southern Occupied Palestine. Taking this into account, which has hardly been done in the English language, changes completely how one receives much of the October 7th footage, as will be shown further below. It cannot be understated how crucial this is. Finally, as some have suggested, that it was an elite forces operation means it remains conceivable that individuals bearing Hamas apparel (but not from the elite forces assigned to the operation, or indeed, not at all officially Qassam members) emerged

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[42] Ragad, A. Irvine-Brown R. Garman, B. (2023) "How Hamas built a force to attack Israel on 7 October", *BBC News*, 27 November 2023, https://www.bbc.co.uk/news/world-middle-east-67480680

[43] Al Tahhan, Z. Humaid, M. (2022) "Six major developments that shaped 2022 for Palestinians", *Al Jazeera,* 26 December, https://www.aljazeera.com/news/2022/12/26/six-major-developments-that-shaped-2022-for-palestinians

[44] هكذا تُفكّر حركة "الجـ ـهاد الإسـ ـلامي" | د. محمد الهندي | جسر بودكاست ["This is how Islamic Jihad thinks – Dr Muhammad Al-Hindi – Jisr Podcast"], *YouTube*, uploaded by SamaQuds, September 5, 2024, (3:06) https://www.youtube.com/watch?v=YTh4wpfhJWc&t=4449s

[45] Shehada, M. (2024) "How Palestinians look back on 7 October a year later", *New Arab*, 10 October https://www.newarab.com/analysis/how-palestinians-look-back-7-october-year-later

from the Gaza Strip and carried out actions that were *not* determined by the explicit strategy outlined by Qassam leadership.

38. Though public training drills have been taking place for some time[46], the actual details of the October 7th offensive were kept secret from most Qassam members until the morning of the operation. The Qassam Brigades operate completely independently of the Political Bureau and make their own decisions on all aspects of military operations, including the timing and the nature of any such operations. This was also recently explained at a conference in Nouakchott, Mauritania, by Hamas political leader Osama Hamdan when he revealed details concerning the unveiling of the operation. "*When the commanders decided to carry out this operation, they kept the matter secret from their soldiers and only told them about it a few hours beforehand. There were about 1,400 Mujahidin called forward who were expected to cross the separation fence, and they were given the choice to go ahead, or be granted an excuse [to sit out] for whomever had an excuse. The leadership surprised them with this decision and called them forth suddenly. Every human being has things which keep them busy in this world. These [fighters] were given a choice, [yet]1,400, and not even one of them stayed back. For that reason, our enemy must know who they are fighting. They are fighting a people who do not see victory except with Allah, nor do they put they trust in anything but Allah's might and power.*"[47]

39. What were the instructions given that morning? As we stated in the HND, the attack was designed to specifically target the Gaza Division of 'Israel's' Southern Command. Saleh al-Arouri speaking to Al Jazeera on October 12th, 2023 had the following to say: "T*he instructions for it [the operation] from the commanders of Qassam to the brothers that took part in the offensive operation on the Gaza Division… the Gaza Division, this military division which is present in the Gaza envelope, and which is responsible for all the crimes against our people in Gaza. It is responsible for the siege on Gaza, the bombing of Gaza, assassinations and incursions*."[48] On the following day, in a pre-recorded English press conference published on our Telegram channel, senior Hamas leaders Dr Basim Naim and Ghazi Hamad similarly said that "*the operation targeted only military bases and compounds that were suffocating the people of Gaza for more than seventeen years.*"[49]

40. The 143rd Fire Fox Division, known to most as the Gaza Division, is a division of the Israeli army subordinated to its Southern Command. It was set up in 1987 following the beginning of the First Intifada and was tasked with controlling key Gazan cities such as Rafah and Khan Yunis. In 1994, the Division relocated within Israeli

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[46] El Deeb, S. Biesekcer, M. (2023) "Hamas practiced in plain sight, posting video of mock attack weeks before border breach", *AP*, 13 October https://apnews.com/article/israel-palestinian-war-hamas-attack-border-wall-aa0b0f5f3613b6c6882cf37168e8e8ed

[47] أسامة حمدان يكشف تفاصيل جديدة عن معركة طوفان الأقصى ["Osama Hamdan reveals new details about the Al-Aqsa Flood Battle"], *YouTube*, uploaded by Aljazeera Mubasher, October 29, 2024, (1:07), https://www.youtube.com/watch?v=VeX52BEzVPA

[48] (6:43) of SAN

[49] Sharjeel, U. [@Sharjeel Usmani]. (October 13, 2023). "Hamas's 18-min long pre-recorded press conference (in English) totally blacked out by media." *Twitter* https://x.com/sharjeelusmani/status/1712850671945265461

settlements in Gaza. Then, in 2005, following the unilateral Israeli withdrawal from the Gaza Strip, the Division settled in several bases around the borders of Gaza.[50] The Gaza Division is then, that part of the Israeli army which is responsible for all the 'operations' carried out by the IOF in Gaza: the 'mowing the lawn' operations, the siege conditions, the bombings and the assassinations. It is one of the most, if not the most, detested unit of the IOF by the Palestinian people As has been noted by some, much of the euphoria many Palestinians feel when they remember the October 7th operation has to do precisely with the victory achieved over this division of the Israeli army which has been responsible for so much of their suffering. As journalist Muhammad Shehada has said: "In that sense, two 7 Octobers have since emerged; one that Israel and its supporters see as "pure evil", which focuses on the killing and kidnapping of civilians, and another that Palestinians voice support for; an attack on military targets that broke Israel's image of invincibility."[51] On October 7th, its bases were overrun, and high-ranking soldiers like the Commander of the Division's Southern Brigade, Col. Asaf Hamimi were captured.[52] By attacking the Gaza Division, Qassam fighters were to capture *military* prisoners from that division to be used in future negotiations to free the thousands of Palestinians being held in Israeli prisons. And this is, broadly speaking, precisely what the martyr Al-Arouri says took place: "*It was not from the plan of Qassam even [to capture civilian] prisoners… Qassam military youth took army [personnel] as prisoners and returned to Gaza.*"

41. This brings to light the centrality of the plight of Palestinian prisoners to the planning of the October 7th operation. The martyr Yahya Sinwar, who was himself freed from captivity in 2011 following a trade deal for Zionist soldier Gilad Shalit, in an interview given to Francesca Borri in 2018, described the case of Palestinian prisoners as not "*just a political issue… [but] a moral issue.*" He continued: "*…your readers probably believe that if you are in jail, you are a terrorist, or somehow an outlaw. A car thief. No. We all get arrested, sooner or later. But literally – all of us. Take a look at Military Order 101. Without authorization, it's a crime even to wave a flag, or be more than ten (people) in a room for tea, chatting about politics. Perhaps you are just chatting about Trump, but you can be sentenced up to 10 years. Somehow, it's a rite of passage. It's our coming of age. Because if there is something we are united by, something that makes us all equal – all Palestinians – it's prison. And for me it is a moral obligation: I will try more than my best to free those who are still inside.*"[53]

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[50] تعرف على "فرقة غزة" التابعة لجيش الاحتلال الإسرائيلي ["Find out about the Gaza Division of the Israeli Occupation Army"], *YouTube*, uploaded by Al Jazeera Arabic, October 8, 2023, https://www.youtube.com/watch?v=w2qTwzzWyn4&t=1s

[51] 'How Hamas caught Israel by surprise and risked its future', *The New Arab*, 12 October 2023, https://www.newarab.com/analysis/how-hamas-caught-israel-surprise-and-risked-its-future

[52] القسام تبث مقطعا يطرح تساؤلا بشأن مصير قائد اللواء الجنوبي في فرقة غزة ["Qassam broadcasts a clip that raises questions about the fate of the leader of the Southern Brigade in the Gaza Division"], *YouTube*, uploaded by Al Jazeera Arabic, May 23, 2024, https://www.youtube.com/watch?v=-RRqbFt-Qs0

[53] Borri, F. (2018) "Sinwar: 'It's time for a change, end the siege'", *Ynet*, 10 May https://www.ynetnews.com/articles/0,7340,L-5364286,00.html

42. In that interview, Borri responded by saying that "*[i]n some way, you achieved more through kidnappings than through rockets… like Gilad Shalit's.*" Sinwar replied: "*Gilad Shalit wasn't a hostage; he was a war prisoner. You see why we rarely speak with journalists? A soldier gets killed, and you publish a photo of him on the beach, and your readers think we shot him in Tel Aviv. No. That guy wasn't killed while wearing Bermuda shorts and carrying a surfboard, but while wearing uniform and carrying an M16, and firing on us.*" Though speaking in 2018, these quotes ought to be noted for the impact that they have in unpacking the thinking behind our October 7th operation. Faced with an unsustainable situation of thousands of Palestinians in Israeli prisons, and no means – as our leaders have pointed out before and after Toofan Al-Aqsa – of freeing them, an offensive was launched with the intention of capturing soldiers from the Israeli Gaza Division that could be used to secure an exchange. Such an exchange, as negotiations since Oct 7th, 2023, have demonstrated, prioritises the thousands of women and children being kept in Israeli prisons, many under administrative detention. There are realms of evidence produced by the UN and Palestinian, international, and even Israeli NGOs, about the torture and abuse, physical and sexual, of Palestinian prisoners in Israeli jails. Children and women are not spared. The Palestinian people celebrated the release of our hostages during the one-week ceasefire in November 2023. It is reflective of the deep anti-Palestinian racism and hatred within Western governments that they did not share our happiness to see hundreds of our women and children freed from the Zionist prisons.

43. What might be said about the taking of civilian prisoners? As indicated above, many other resistance factions aside from the Qassam Brigades, as well as armed and unarmed civilians, crossed the occupation fence into Southern Occupied Palestine. The situation is complicated from an investigatory perspective by the fact that Qassam and non-Qassam elements were active during some of the same time periods. As official military pronouncements make clear, Qassam squads operated outside of Gaza from 06.30 on October 7th into subsequent days. The spokespeople for both the Mujahideen Brigades and the al-Aqsa Martys' Brigades announced early on Saturday morning that their members were participating on the ground – at 08:19 and 08:30 respectively.[54] What this led to was a situation where, as is shown in much of the video evidence from the day, members of different factions, or indeed Gazan civilians and resistance members, often appearing together at the same time and in the same locations. Appreciating this is crucial.

44. Though the martyr Saleh Al-Arouri was adamant that the plan of Qassam was to take military prisoners, he did not deny that civilians were captured on the day. "*There were civilians captured – general people entered, took people and brought them back to Gaza. That was not the intention of Hamas…*"[55] In another interview from December 2nd 2023, Al-Arouri clarified that "*the female and child prisoners were not targeted as an*

[54] Paragraphs 246 and 248 of UNR

[55] (12:15) of SAN

objective, but arrived in Gaza in exceptional circumstances."[56]Some of the most widely circulated images from October 7th of Israelis being captured, did not, as is apparent from video footage, take place at the hands of Qassam soldiers – like that of Noa Argamani.[57] In cell phone footage recorded and shared online, what appears to be a group of foreign workers are being driven in the back of a truck towards the Gaza Strip. In this clip, the cameraman identifies himself as belonging to the Ansar Brigades – a Fatah affiliated armed group in Gaza. Like Noa, Amit Soussana, who was filmed in a widely circulated clip resisting capture, was quite clearly not captured by Qassam squads. This is particularly so in the case of many children and elderly taken. A notable case is that of Avital Aldajem from Kibbutz Holit who was shown in a clip broadcast on Al-Jazeera being released by Qassam members along with two children.[58] The broadcaster mentions, as the clip is shown, that they were apprehended during clashes, and then let go. In a Hebrew interview, Avital recalls being given "clothes to cover myself, out of respect."[59]

45. In the immediate aftermath of Toofan Al Aqsa, when it became evident that a number of prisoners had been taken by other groups and ordinary people, we made rigorous attempts to locate all of the prisoners. In the very first week, Qassam offered to unilaterally release all civilian prisoners. Unfortunately, due to the ceaseless Israeli bombing campaign, our attempts to locate the prisoners in that period was severely hampered. It is for this reason that in those early days, the Qassam military pronouncements were unable to confirm the exact number of those brought back into Gaza. As the Qassam forces began to locate and accounted for the hostages, despite the severity of the Israeli aerial bombardment, they offered to release elderly hostages like Yocheved Lifshitz unconditionally, yet Israel refused.[60] During the one-week November ceasefire, women, children and elderly being held in Gaza were exchanged for Palestinian women and children held in Israeli prisons – an arrangement that is only fair. As relates to those who remain, Al-Arouri explained: "*…Those women and children that we had we have already exchanged, and if there are some*

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[56] صالح العاروري للجزيرة: لا تبادل حتى انتهاء العدوان ووقف شامل لإطلاق النار ["Saleh al-Arouri to Al-Jazeera: No exchange until the end of the aggression and a total ceasefire"], *YouTube*, uploaded by Al Jazeera Arabic, December 2, 2023, (1:07) – referred to later as SAPI (Saleh al-Arouri prisoner interview) https://www.youtube.com/watch?v=e5njcWNWejw

[57] Sanchez, R. Da Silva, C. Pinson, S. (2023) "Noa Argamani became the face of the Nova music festival hostages", NBC News, 19 December https://www.nbcnews.com/news/world/noa-argamani-israel-hamas-hostages-nova-music-festival-rcna129792. "The information indicates that she may not have been seized by Hamas militants at all, and instead may have been taken by another group of men who followed trained Hamas fighters out of the blockaded Palestinian enclave into Israel."

[58] مستوطنة إسرائيلية تروي تفاصيل إفراج كتائب القسام عنها وعن طفليها ["Israeli settler narrates details about her and her two children being released by Qassam"], YouTube, uploaded by Syria Stream, October 13, 2023, (0:58), https://www.youtube.com/watch?v=ej0yh40w3NY&t=4s

[59] مستوطنة إسرائيلية تروي تفاصيل إفراج كتائب القسام عنها وعن طفليها ["Israeli settler narrates details about her and her two children being released by Qassam"], YouTube, uploaded by Syria Stream, October 13, 2023, (0:58), https://www.youtube.com/watch?v=ej0yh40w3NY&t=4s

[60] Barnea, N. (2024) "סינוואר נכנס, לא התייחסתי אליו" | האזינו ליוכקה ליפשיץ בשיחה עם נחום ברנע ["Sinwar came in, I didn't pay attention to him": Listen to Yochka Lifshitz in conversation with Nahum Barnea"], 24 September, https://www.ynet.co.il/news/article/ryoa9z1rr

[outlying] cases, we don't know about them and have not been able to reach them. Those who remain as prisoners in Gaza are soldiers, and they are also civilian men who served in the occupation army."[61] He insisted at that time - and rightly so - that there will be no exchange of this group of prisoners until there is an end to the Zionist assault on Gaza.

46. Until now, the most detailed exposition from within our movement as to the details of the October 7th offensive comes from a video message recorded by Qassam military spokesperson Abu Ubaidah.[62] In that message from the 12th of October, he describes in depth the various tactics and strategies that were employed in preparation for, and in execution of, the Toofan Al-Aqsa operation, in addition to mentioning many sites that were attacked. For two years since the 2021 'Sword of Jerusalem' battle, he explains how the impression was purposefully given that the Qassam Brigades were no longer interested in any military confrontation with the Israelis. Doing so was difficult: the movement took the decision not to engage alongside the PIJ in 2022, ignored several violations in the West Bank, Jerusalem and Al-Aqsa, and also concluded a deal to halt border protests just a week beforehand.[63] Just six days before the launching of Toofan Al-Aqsa, Israeli National Security Adviser Tzachi Hanegbi said in a radio interview that "*Hamas is very, very restrained and understands the implications of further defiance*." According to the New York Times, an Israeli intelligence briefing from the week before the attack about the most urgent threats to the country's defences '*barely mentioned*' *Hamas, who were deemed to be* '*deterred*.'[64] That same article makes mention of alleged calls monitored by Israeli intelligence agents of Hamas operatives which gave the impression that they sought to avoid another war with Israel so soon after the damaging 2021 conflagration. Abu Ubaidah remarked, that "*the enemy's inability to read the resistance's intentions is one of the most significant signs of its failure*."[65]

47. Any cross-border operation necessarily required breaching the separation wall that had been erected around the Gaza Strip. In December 2021, the Israelis completed a new 65km long barrier to the wall stretching the length of the 'Israel'-Gaza border after three and a half years of work. Costing $1.1 billion to build, the barrier included a sensor equipped underground wall, a six-meter high above ground fence, barriers at sea with monitoring equipment to detect incursions from water, remote controlled

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[61] SAPI at 1:32

[62] بو عبيدة: معركتنا الحالية ابتدأت من حيث انتهت عملية سيف القدس ["Abu Ubaidah: The present battle began when operation Sword of Jerusalem ended"], YouTube, uploaded by Al Jazeera Arabic, October 12, 2023 https://www.youtube.com/watch?v=68OxwRUhyw4 (referred to as Abu Ubaidah Speech ('AUS'))

[63] Pacchiani, G. (2023) "Gazans abort border riots as Israel reopens crossing in reported Egypt-brokered deal", *The Times of Israel*, 28 September https://www.timesofisrael.com/gazans-abort-border-riots-as-israel-reopens-crossing-in-reported-egypt-brokered-deal/

[64] Kingsley, P. Bergman, Ronen (2023) "How Israel's Feared Security Services Failed to Stop Hamas's Attack", The New York Times, 10 October, https://www.nytimes.com/2023/10/10/world/middleeast/israel-gaza-security-failure.html

[65] AUS at 15:43

weapons systems and an array of cameras that cover the entire territory of the Gaza. Israeli officials had boasted proudly about the additions. Brig. Gen. Eran Ofir, the head of the border barrier project in the Defense Ministry, called it "one of the most complex projects the defense establishment has ever built."[66] Netanyahu even posted on Twitter about the moment, calling the day the underground wall was completed "historic."[67]

48. The wall alongside the passive posture adopted by Hamas publicly created a sense of security for Israeli security officials. Residents of Southern Occupied Palestine like journalist Amir Tibon report that combat forces of about 20 people stationed at each community began to be redeployed to protect settlement projects in the West Bank after the completion of the underground wall.[68] Just two days before the attack, two commando companies – more than 100 soldiers – were reportedly moved to the West Bank, reflecting the belief that Hamas were not a threat.[69] A tweet later deleted from Netanyahu's account stated that "*the assessment of the entire security echelon, including the head of military intelligence and the head of Shin Bet, was that Hamas was deterred and was seeking an arrangement*."[70] The deception held until the morning of October the 7th. As Gen Ziv, former head of the IOF's Operations Division has stated, despite reported intelligence to the contrary,[71] the impression was that "*Hamas wouldn't attack, wouldn't dare, and that even if so, they are not capable. We went to sleep on the 6th thinking there's a cat over there and we woke up on the 7th and there's a tiger*."[72]

49. In breaching the wall, Abu Ubaidah spoke about what he referred to as a 'Blackout Plan', which would allow Qassam's ground forces to operate beyond detection from 'Israel's' surveillance systems. That plan required immense study of the field and

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[66] Kubovich, Y. (2021) "Israel Completes Vast, Billion-dollar Gaza Barrier", Haaretz, 7 December, https://www.haaretz.com/israel-news/2021-12-07/ty-article/.premium/israel-completes-vast-billion-dollar-gaza-barrier/0000017f-ee2c-d4cd-af7f-ef7c25d40000

[67] Netanyahu, B. [@netanyahu]. [December 7, 2021]. "This is a historic day. Today the underground barrier that blocks Hamas' tunnel weapons was inaugurated." Twitter. https://x.com/netanyahu/status/1468205941845807106

[68] Rubin, S. Morris, L. (2023) "How Hamas broke through Israel's border defenses during Oct. 7 attack", *The Washington Post*, 27 October https://www.washingtonpost.com/world/2023/10/27/hamas-attack-israel-october-7-hostages/

[69] Fabian, E. (2023) "2 commando companies said diverted from Gaza border to West Bank days before Oct. 7", *The Times of Israel*, 5 December https://www.timesofisrael.com/2-commando-companies-said-diverted-from-gaza-border-to-west-bank-days-before-oct-7/

[70] Kershner, I. (2023) "Netanyahu Apologizes After Blaming Security Chiefs for Failure in Hamas Attack",*The New York Times*, October 29 https://www.nytimes.com/2023/10/29/world/middleeast/netanyahu-apologizes-hamas-attack.html

[71] Goldman, A. Bergman, R. (2023) "Israel Knew Hamas's Attack Plan More Than a Year Ago", *The New York Times*, 30, November https://www.nytimes.com/2023/11/30/world/middleeast/israel-hamas-attack-intelligence.html

[72] Cuddy, A. (2024) "Six hours at hands of Hamas – new accounts reveal how Israeli base fell on 7 October", *BBC News*, 4 October https://www.bbc.co.uk/news/articles/cg7825rk8j9o

Israeli defence architecture. Reference is made in the speech to the use of cyber-attacks, as well as air cover provided by the firing of rockets. According to news reports, the Israeli border surveillance system was almost entirely reliant on cameras, sensors and remotely operated machine guns. Qassam operatives used aerial drones to attack cellular towers that transmitted signals to and from the surveillance system – scenes recorded by cameras mounted on Qassam drones and later shared online. Under the cover of iron dome explosions, Qassam snipers shot out cameras along the border, whilst more than 100 remotely operated drones took out watchtowers. As a result, Israeli soldiers stationed in control rooms did not receive alarms that the separation wall had been breached and could not watch video showing what was happening on the ground. In addition, leaders of the Gaza Division were clustered together in a singular location at its HQ (Re'im military base). Once that was overrun, and most of the Division's senior officers were either killed, injured or taken prisoner, there was an almost complete breakdown in communications and chain of command. Few grasped the full breadth of what was happening until hours later. Only at 08.06 did the IOF report a "combined attack", and it took until 08.25 for a "state of alert for war" to be declared.[73] With relatively elementary techniques and weaponry, Qassam had succeeded at effectively blinding 'Israel's' Gaza Division. They timed their attack to a morning where according to some reports, because of the Jewish holiday of Simchat Torah, about 1,500 soldiers in the area were away[74]. Eyal Hulata, Israeli's national security adviser from 2021-23, provided a damning assessment: "*They were able to trick our collection, our analysis, our conclusions and our strategic understanding*."[75] In a video taken from a Qassam GoPro, a fighter shouts enthusiastically as his squad travels in a Toyota truck through Southern Occupied Palestine after breaking through the wall: "*It will take them an hour to figure out what is going on!... They need twenty million years to realize what has happened!*"[76]

50. According to that same military pronouncement from the 12th of October, the Toofan Al-Aqsa operation attacked all fifteen military sites of the Gaza Division. The Gaza Division is comprised of two territorial brigades, each comprising of seven sites which were all targeted. As listed by Abu Ubaidah, the 7643rd Northern Brigade (Gefen) is comprised of the Yiftah Brigades base and its affiliated sites: the Coastal, Erez and Sixteen sites. There is also the Nahal Oz Brigades base and its affiliated sites: Paga and Alumim. The 6643rd Southern Brigade (Katif) is comprised of the Kisufim Brigades base and its affiliated sites: Maris and Mivtachim. There is also the Amitai Brigades base with its affiliated sites: Kerem Shalom, Sufa and Netzarim. These are all in addition to Re'im military base which is the HQ for the Gaza Division. Mention is also made of attacks on targets beyond the Gaza Division in

[73] Rubin and Morris (note 72) and Bergman and Kingsley (note 75).

[74] Goldman A. et al (2023) "Where Was the Israeli Military?", The New York Times, 30 December https://www.nytimes.com/2023/12/30/world/middleeast/israeli-military-hamas-failures.html

[75] Bergman, R. Mazzetti, M. Abi-Habib, Maria (2023), "How Years of Israeli Failures on Hamas Led to a Devastating Attack", *The New York Times,* 29 October https://www.nytimes.com/2023/10/29/world/middleeast/israel-intelligence-hamas-attack.html

[76] https://t.me/Ayita_14/4

Southern Occupied Palestine, which included Mishmar HaNegev logistical support base, Urim SIGNIT base which houses the intelligence unit 8200, Yad Mordechai base, and Tze'elim base which is the HQ of the Sinai reserve division.[77] Again, much of this has been verified by Western media. Documents allegedly recovered by the IOF in Gaza, and reviewed by the New York Times, record that plans for the October 7th offensive included 'striking 46 positions staffed by the Israeli military division that guards the border…'[78] The following sections of this report will seek to sketch the nature of the offensives in some of these locations. It is reiterated, that a fully extensive and thorough assessment of what took place at all these locations will require precisely the type of transparent and independent investigation that has until this moment been obstructed. What can be discerned however, even at a distance, are the contours of a military operation intended to attack and overrun military targets.

51. Re'im base was the regional command-and-control centre and functioned as the HQ for the Southern Command's Gaza Division. According to some reports, drone and surveillance operators were concentrated in this location. Once it was attacked, as Israeli tech journalist Assaf Gilead has said, everyone who should have been calling in drones was dead.[79] The dismantling was quite comprehensive. As Lt. Col. Alon Eviatar has remarked, there was a "*complete destruction" of "communications systems, their antennas, even the systems that activated the sensors on the fence itself.*" The attack is a notable one for multiple reasons. Firstly, that Qassam fighters were able to overcome the regional command-and-control centre with quite simple weaponry is worth taking note of – particularly as it came up against highly appraised and expensive Israeli security technology. As Audrey Kurth Cronin, director of the Carnegie Mellon Institute for Security and Technology has said: "*Israeli tech is extremely admired around the world… This is an old-fashioned attack with hang gliders, motorbikes, bulldozers, explosives… Hamas has been quite creative and innovative*." Secondly, Qassam's military media released videos taken by their fighters who participated in the attack[80]. That footage shows a force riding along a road and passing a Hebrew road sign which points towards the base. The clip shows gun battles that take place, followed by still shots of dead Israeli soldiers. Quite crucially, the clip finishes with scenes of a large group of Qassam fighters walking back in the direction of Gaza. During this shot, the fighter bearing the camera says the following: "*Now, our forces are walking back from Re'im to the Gaza Strip. These are our soldiers who inflicted heavy losses on our enemy. They killed who they killed and took as booty what they took*." It is an emphatic moment, which speaks to the nature of the task they were

[77] AUS at 10:02

[78] Bergman, R. Rasgon, A. Kingsley, P. (2024) "Secret Documents Show Hamas Tried to Persuade Iran to Join Its Oct. 7 Attack", *The New York Times*, 12 October, https://www.nytimes.com/2024/10/12/world/middleeast/hamas-israel-war.html

[79] Cheslow, D. (2023) "Israel and the West reckon with a high-tech failure", Politico, 10 October https://www.politico.com/news/2023/10/10/israel-hamas-technology-failure-00120667

[80] https://www.alqassam.ps/arabic/videos/index/2815; see also شاهد| القسام تقتحم قاعدة رعيم مقر قيادة فرقة غزة الإسرائيلية ["Watch: Qassam storm Reim base, HQ of the Israeli Gaza Division"], *YouTube*, uploaded by AlJazeera Arabic, October 8, 2023, https://www.youtube.com/watch?v=BtrsAqr4-ZY

given, and the highly disciplined and clinical way that task was carried out. Thirdly, many high-ranking Israeli military personnel were killed at this location. They include (and are not limited to) Col Roi Levy (head of the IDF Multidomain Unit, also known as the "Ghost Unit") and Lit. Col. Sahar Zion Makhlouf (commander of Israel's 481st Battalion, Teleprocessing Corps). Makhlouf was pictured dead in the video released by Qassam.[81] Others such as Maj. Ido Yehoshua, Company Commander in the Israeli Air Force's Shaldag Unit[82], and Cpt. Rom Shlomi, commander of the Reconnaissance Department in the Shaldag Unit, were also killed here.

52. Nahal Oz base is located less than a kilometre from the Gaza border. Based on what has been publicised, Nahal Oz is the site of the largest number of Israeli military casualties (66), with most of these soldiers from the 13th Battalion of the Golani Brigade or surveillance troops from Unit 414 of the Combat Intelligence Collections Corps. Squad commanders in the Golani Brigade Staff Sgt. Nehoray Levi Atimay and Staff Sgt. Dor Lazimi are from those killed at this location on October 7th. Video released by Qassam of the offensive[83] shows a complex and multifaceted assault on the base. Drones (some with heat detectors) and aerial projectiles are used to dismantle defences on walls, as charges are blown on the separation fence. As gun battles rage, there are grenades thrown by ground troops, whilst drones drop projectiles from the sky onto fighting Israeli forces. The cameras from the aerial drones show the large size of the base, with different quarters and plentiful military vehicles. As the fighting rages, a voice cries out: "*These are the sons of Qassam! These are the sons of Sheikh Ahmed Yassin! These are the sons of the Palestinian people taking back that which called the Gaza envelope – all of it is our lands brothers!*" There are copious scenes of dead Israeli soldiers. A number of prisoners are taken from this location. From them, rather famously, are five soldiers who are thought to have been working as observers in the base: Liri Albag, Karina Ariev, Agam Berger, Daniela Gilboa and Naama Levy. They were pictured being captured at the base, whilst cell phone footage later placed them inside of an Israeli military vehicle taken into the Gaza Strip.[84] The Nahal Oz offensive is notable too because its proximity to the Gaza Strip meant that many non-Qassam elements (from other factions, and Palestinian civilians) ended up at the base throughout the course of the day. For instance, in a famous clip where Nimrod Cohen was captured on active duty from an Israeli tank,

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[81] Abu Hatab, B. (2023) "Commander's Death Marks Turning Point in Gaza Conflict", *Watan News*, 8 October https://www.watanserb.com/en/2023/10/08/commanders-death-marks-turning-point-in-gaza-conflict/

[82] Avivit Misnikov (2023) "נשארתי לבד באמצע חודש שישי, כשהלכת לי דווקא ביום ההולדת שלי"
["I was left alone in the middle of the month of Hune, when you left on my birthday"], Channel 12, 12 October https://www-mako-co-il.translate.goog/news-military/6361323ddea5a810/Article-5aeb7d2bde32b81026.htm?_x_tr_sl=iw&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp

[83] https://www.alqassam.ps/arabic/videos/index/2799; see also مشاهد من اقتحام "كتائب القسام" موقع "ناحل عوز" العسكري ["Scenes of the Qassam Brigades storming Nahal Oz military site"], *YouTube*, uploaded by AlJazeera Arabic, October 11, 2023

[84] Bunkall, A. (2024) "Video showing bloodied Israeli female soldiers captured by Hamas released", *Sky News,* 23 May, https://news.sky.com/story/video-showing-bloodied-israeli-female-soldiers-captured-by-hamas-released-13141636

many Palestinians[85] can be seen crowding around the tank[86]. That notwithstanding, the basic operation – infiltrate, take over, capture and return – can be deduced from the footage.

53. The attack on the Erez Crossing base too was recorded, with footage of the attack uploaded by Qassam's military media[87]. That footage shows charges being set to pierce the large wall of the base. There are firefights, and many dead Israeli soldiers are shown. An Israeli flag inside of a building is ripped from a window and thrown to the ground. In GoPro footage from the attack released by Israeli channels, a Qassam fighter is shot and injured. He is then approached by another fighter who encourages him to recite the Islamic testimony of faith and takes the camera. Soon after, the second fighter is also shot in the fighting at the base and is heard taking his final breaths. Eventually Qassam gained temporary control of the base. Later, a bulldozer would smash through the breach created at this area in the fence, creating one of the most widely circulated images from October 7th.[88] From the Israeli soldiers killed in this location are Staff Sgt. Daniel Moshe Danino (Golani), Staff Sgt. Roey Weiser, Staff Sgt. Max Rabinov, and Staff Sgt. Or Mirzrahi.

54. Paga (Magen Be'eri) base is a military position a few hundred metres east of the Gazan fence. Many have remarked, that keeping so many military installations so close to the Gazan fence was one of the biggest strategic failures of the Israelis. According to a Haaretz article, twelve soldiers were killed in the attack on this location, including Lit. Dekel Suisa, Sgt. First Class Itamar Ben-Yehuda and Sgt. Yakir Levi[89]. In a Qassam video of the attack[90], there are number of dead soldiers' bodies filmed following gun battles, as well as many military vehicles. At the end of the clip, one of the fighters speaks to the camera with a helmet in his hands: "*We want this video to reach the entire world. God willing, this is the helmet of a solider. We went into every corner and with our pure feet, we stepped into every single hiding place. There were no men*

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[85] https://t.me/TheOctober7/16

[86] تفجير واقتحام مواقع العدو شرق خانيونس وأسر عدد من الجنود ["Blowing up and storming enemy sites east of Khan Yunis and capturing a number of soldiers."], *Ezzedeen AlQassam Brigades*, October 7, 2023, https://www.alqassam.ps/arabic/videos/index/2802

[87] القسام يقتحم موقع إيرز شمال قطاع غزة ["Qassam storm Erez Site North of the Gaza Strip"], *Ezzedeen Al Qassam Brigades*, October 7, 2023, https://www.alqassam.ps/arabic/videos/index/2807
; see also كتائب القسام تقتحم موقع إيرز العسكري شمال قطاع غزة وتقتل عددا من الجنود ["Qassam Brigades storm Erez Military Site North of the Gaza Strip and kill a number of soldiers."], *YouTube*, uploaded by Al Jazeera Arabic, October 7, 2023, https://www.youtube.com/watch?v=nrjOp8rIOTM

[88] Beaule, V. (2023) "A detailed look at how Hamas secretly crossed into Israel", *ABC News*, 12 October https://abcnews.go.com/International/detailed-hamas-secretly-crossed-israel/story?id=103917182

[89] Kubovich, Y. Peleg, B. (2023) "Shortly Before the Hamas Attack This Warning Arrived. What Happened at the Paga Outpost?", 27 December https://www.haaretz.com/israel-news/2023-12-27/ty-article-magazine/.premium/shortly-before-the-hamas-attack-this-warning-arrived-what-happened-at-the-paga-outpost/0000018c-a631-dc33-a78c-bfb9f5360000

[90] اقتحام القسام لموقع "فجة" العسكري والإجهاز على من فيه ["Storming Paga military site and finishing off those inside"], Ezzedeen AlQassam Brigades, October 9, 2023, https://www.alqassam.ps/arabic/videos/index/2830

to fight us." Human Rights investigator Chriss Cobb Smith referred to Qassam's breaching of the perimeter and killing of such many soldiers as "staggering."[91]

55. Urim SIGNIT Base is located about 10 miles inside of Israeli territory and so is much deeper than the other locations heretofore discussed. It is 'Israel's' most important intelligence gathering installation, and it collaborates closely with the Mossad.[92] Lt. Col. Alon Eviatar, member of the reserves and former officer in Israel's 8200 elite intelligence unit, has described it as "*the largest and most significant intelligence base in Israel, one of the country's greatest assets… It was a top priority for them [Qassam].*" Upon arriving at the base, reports have it that the Qassam unit detonated an explosive at the entrance to the underground bunker which synthesised data from across the world.[93] Though it's not known publicly what information precisely might have been accessed/seized, Abu Obaidah would summarise what was achieved at Urim in an operational update given on October the 8th: "*…a number of our Mujahidin were able to safely retreat from Urim base which houses the intelligence unit 8200, after completing their objectives there and killing a large number of enemy forces.*"[94]

56. The base at Sufa is notable as it was mentioned by Abu Ubaidah, whilst at the same time the corresponding footage of the attack was released through Israeli channels[95]. Not only that, but there are multiple angles of this offensive, shown on Israeli television, which show a Qassam squad engaged in firefights on roads, and inside of the base itself. As the fighting ensues, fighters are seen taking rifles from dead Israeli soldiers, radio comms are overheard with calls being made for additional ammunition, and at one stage a Qassam fighter shouts that more than 10 Israeli soldiers have been killed. From those killed are Sgt. Gali Roi Shakotai, Staff Sgt, Ofire Melman, Sgt. Segev Schawartz, and Capt. Eyal Klein.

57. In extended GoPro footage broadcast in a report on Israeli Television, a young man from Gaza, Ahmed Sufian, takes part in an offensive on a site which leads to him killing two soldiers and seizing a Tavor rifle. Though the dead soldiers are cut out of the version of this broadcast viewed for this report, the Tavor rifle seized is produced by Israel Weapons Industries whose website states the arm was produced 'in close cooperation with the Israeli Defence Forces.'[96] It is the 'primary assault rifle' for all IOF infantry units and special forces. Throughout the offensive, Ahmad shouts

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[91] "October 7 Al Jazeera Investigations", *YouTube*, uploaded by Al Jazeera English, March 20, 2024, (13:56) https://www.youtube.com/watch?v=_0atzea-mPY&t=914s -

[92] Hager, N. (2010) "Israel's omniscient ears", *Le Monde diplomatique*, September https://mondediplo.com/2010/09/04israelbase

[93] Rubin and Morris (n 72)

[94] كلمة صوتية للناطق العسكري باسم القسام ["Audio speech of the Qassam Military Spokesman"], Ezzedeen AlQassam Brigades, October 8, 2023, https://www.alqassam.ps/arabic/videos/index/2824

[95] https://t.me/c/2214663483/99

[96] IWI Tavor Assault Rifle", IWI – Small Arms https://iwi.net/iwi-tavor-rifle/

euphorically about liberating the lands of Palestine: "*These are our lands! I'm strolling through them! And what comes next is the liberation of Palestine*!" After the firefight in which the soldiers are killed, he turns the camera around to show his face and says the following: "*[My name is] Ahmad Sufian Ibrahim Abu Hadda Abu Islam. I'm 24 years old. Here I've seized from them a Tavor rifle, and so far I've killed two of their soldiers. And with this morning, with this great achievement, we ask Allah for a clear triumph, and we ask Allah for a great victory, and we ask Allah to grant us martyrdom after [we have] dealt heavy losses to the enemy. And this is the least we can offer for the sake of our religion, to give aid to our Prophet, and to give support to our Aqsa. Peace be upon you.*"[97] Ahmed, 24 years old, would have been born on the cusp of the first Intifada, and will have lived virtually all of his sentient life under Israeli siege. At the end of the broadcasted clip, he is shot and killed.

58. On the 7th, and in the days following the launching of operation Toofan Al-Aqsa, Qassam military media would release videos of 11 separate operations: Re'im military base, Ayn Habshur, an armoured support site belonging to Kissuim Battalion East of Khan Yunis, Nahal Oz, Amitai, Paga, Zikim, Erez, Be'eri, Kfar Azah and Kerem Abu Salem. Those clips, in general, show the intended operation in practice: commandoes leave Gaza, they attack sites, and then they return to Gaza after taking prisoners. Uploaded by Qassam as reflecting the operation they claim to have carried out, that content must be taken seriously when attempting to study the events of October 7th. There are more locations mentioned than video evidence for, and there are likewise many locations for which publicly accessible information is scarce. Hence, of course, truly transparent investigation becomes necessary.

59. In 1994, Hamas leader Dr Abdel Aziz al-Rantisi published four principles relevant to Palestinian resistance on an early website belonging to the movement. The second of those principles referred to the condition of material asymmetry which existed, and still does, between Palestinian fighters and the Israeli army. Miri Eisin, a former senior intelligence officer in the IOF, spoke about Hamas utilising, on October 7th, 'military tactics to carry out a terror attack.' For her, 'their success wasn't tech; it was preparation.'[98] In line with what the martyr Rantisi said, we agree that preparation and strategizing was necessary to overcome the Israeli army's billion-dollar defences. However, we say that our fighters utilised military tactics not to carry out a 'terror attack', but to carry out a military operation. It is that operation, where the wall besieging the Palestinians came down, and the Gaza division was routed *despite* the asymmetry between the two sides, indeed that David and Goliath moment, that most outside the Anglosphere remember the Toofan Al-Aqsa operation for. It was a day that vindicated for many the strategy of armed resistance. The Oslo Peace Process had led to political stalemate and expansion of settlements, whilst Qassam commandoes were storming bases tens of kilometres inside of Occupied Palestine. On October 7th, 2024, Abu Ubaidah would appear again to describe what the Palestinian resistance sees as the success of that day: "*…a year after the most*

[97] https://t.me/c/2214663483/85

[98] Rubin and Morris (note 72)

professional and successful commando operation in modern times, thanks to God, which targeted a criminal enemy military division that is reinforced with all combat and intelligence systems…"[99]

60. ***Maybe some faults happened during Operation Al-Aqsa Flood's implementation due to the rapid collapse of the Israeli security and military system, and the chaos caused along the border areas with Gaza.***[100]

61. There remains an outstanding question about just how it was the case that so many non-Qassam Palestinians were able to leave the Gaza Strip on October 7th. Senior Hamas leaders, such as Khalid Mesh'al, have said that the expectation was that fighting against the Gaza Division would have taken a lot longer and been much more devastating for Qassam commandoes than it was.[101] Indeed, sources within the movement have stated that Qassam members were told that accepting to participate in the offensive should be on the basis that they would not expect to return. "*The surprise*", Al-Arouri explained, "*was that this bloated army which is only good at committing crimes with planes, artillery and tanks… collapsed much quicker than the commanders of Qassam ever expected. The anticipation was the battle would last many hours. [Yet] the Division collapsed in an exceptionally short period of time – like three hours. The Division had been completely taken over, including the headquarters of its commanders, and all the soldiers were either killed, captured as prisoners, or fleeing – wandering aimlessly, leaving the military bases, settlements and kibbutzim [behind]… When the Gaza Division collapsed in unexpectedly quick fashion, and the people in Gaza realised that the borders were open and that the army in the band had been defeated, many civilians, youth and armed people entered [from Gaza]. There was some chaos in clashes that took place, other than that which was planned… the Israeli army collapsed and did not fulfil its obligations either to protect itself, or to protect the civilians. So, civilians ended up in an open area, several armed people entered [from Gaza], and a number of civilians were killed.*"[102] When we speak of a state of 'chaos' ensuing on the day, the allusion is to this security vacuum which was simply not anticipated.

62. In many instances, those who came through the border did so in line with the general euphoria of the moment. The siege wall had come down, and there was for the first time an opportunity to step into lands our people see as belonging to them following the mass-displacement of the 1948 Nakba. On the day, social media videos

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[99] كلمة الناطق العسكري باسم كتائب القسام أبو عبيدة في الذكرى الأولى لمعركة طوفان الأقصى
["Speech of the military spokesman of the Qassam Brigades Abu Ubaidah on the first anniversary of the Al Aqsa Flood battle"], *YouTube*, uploaded by أخبار - العربي, October 7, 2024, (1:48) https://www.youtube.com/watch?v=Ap3LqUgo79s

[100] Section 3.3 of HND

[101] خالد مشعل: فرقة غزة الإسرائيلية انهارت ["Khalid Mesh'al: The Israeli Gaza Division Collapsed"], YouTube, uploaded by Ammar Taqi, January 18, 2024, https://youtu.be/wIY1SDJFMTk?si=yv-Z7Ua2ZAIoxLtu – Mesh'al states, that "the surprise was that the Gaza Division collapsed in three hours."

[102] (7:47) of SAN

went viral of a group of Palestinians running euphorically through a farm shouting '*Bananas… Our Bananas!*"[103] In another viral clip posted to the Instagram account of Muhammad Fayq, an elderly Gazan man called Abu Sufyan walks through a breach in the siege wall, as he smiles and is cheered by onlookers.[104]

63. By tracking the apparel worn in various clips from the day, one recognises that there were numerous affiliated and non-affiliated armed and non-armed Palestinians recorded at several sites in Southern Occupied Palestine. In one clip, at the outskirts of what appears to be a military site, there are several soldiers' dead bodies scattered. At a certain point, a man in non-military gear approaches one of the soldiers' bodies bearing a knife, at which point he is told by a Qassam member not to mutilate the dead body in line with Islamic teachings which prohibit post-humous mutilation.[105] In another notable clip, an Israeli soldier is held up in a watchtower along the border of the Gaza Strip. A large crowd of Palestinians surrounds the tower, whilst the man filming the scene screams at the crowd to leave the matter to fighters from the PIJ and Qassam.[106] In a third case, Qassam fighters are seen surrounded by many Gazan civilians. There are at least two dead Zionist soldiers whose bodies are seen on the floor by a vehicle. The man filming, unidentified, shouts to the crowd: "*Brothers! Do not desecrate the bodies.*"[107] These are a few instances, but many scenes from the day show Qassam, as well as members from other Palestinian resistance factions, attempting to retain control of a situation that quite clearly got out of hand. CCTV footage shared by Israeli channels has Qassam presence, as well as non-Qassam Palestinian presence, at multiple locations, including Kibbtuz Be'eri and the Nova Music Festival.

64. Especially when attempting to determine responsibility and intent, these are aspects of the October 7th offensive which must be seriously considered. Actions of non-affiliated armed Palestinians cannot be expected to be subject to the same strategies or rules of engagement that was relevant to the planned operation executed by Qassam. Still, there are scenes such as that filmed by journalist Muthanna al-Najjar, who is affiliated with Saudi Al-Hadath news channel. That clip shows a child being apprehended by a Palestinian man in civilian stripes on a busy road – though the exact location is not clear. Al-Najjar tells the man: "*he [the child] is from the young… do not harm them… act with wisdom when dealing with these… this is a child – maybe about 10 years old.*"[108] Images circulated of the Bibas family – Mother Shiras, and two children

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[103] [@Mostafa1awad], "أبو إلياس سايب الدنيا والصواريخ والأسرى ورايح يجيب موز من غلاف غزة عشان زوجته، الرجل لما يحب بجد", *Twitter*, October 9, 2023, https://x.com/mostafa1awad/status/1711321005749051496

[104] [@alemadia], "خلك من أبو سفيان .."، *Twitter*, October 9, 2023, https://x.com/alemadia/status/1711393828715024576

[105] https://t.me/TheOctober7/174

[106] https://t.me/palestinianatrocities/112

[107] https://t.me/palestinianatrocities/260

[108] https://t.me/palestinianatrocities/105

Bibas and Kfir – show those Palestinians involved in capturing them bearing arms, but not wearing the recognisable apparel of any Palestinian resistance faction. The man filming shouts that "*nobody should harm her… let it be known that we have humanity. Cover her! Cover her!... She has children with her.*"[109]

65. In a widely circulated image, an elderly Israeli woman posed in her home next to a PIJ fighter who had placed his weapon in across her chest. The lady would later describe their encounter in a media interview: "*I said to him do not talk to me because I do not understand what you are saying in Arabic, and I speak Hebrew poorly. I told him I am from Argentina, and I speak Spanish. He told me 'how from Argentina?' I said to him 'Do you watch football?' Then he replied 'yes, I love football.' I told him I am from the place Messi is from. He replied 'Messi! I love Messi.' He grabbed my arm from here and gave me the gun. He put the gun down and I pointed with my hand like this, and he took a picture with me. Well, then, he left. Now I hope that he knows that I mentioned him and that I survived because of him. I would like to ask him about my two grandchildren who are there. I pray that God will send him to them because they are two young men like gold.*"[110]

66. The above cases are important for digesting the full image of what took place, even at the hands of non-Qassam Palestinians. Al-Arouri would say, that "*[o]ur Mujahideen do not target civilians, and it's impossible that they carried out the crimes the occupation speaks about [like] rape, killing children, and killing civilians… We do not say that civilians were not killed, but 100% it was not from the plan of Qassam to touch civilians, or to kill them. It was not from the plan of Qassam even [to capture civilian] prisoners… Qassam military youth took army [personnel] as prisoners and returned to Gaza. There were civilians captured – general people entered, took people and brought them back to Gaza. That was not the intention of Hamas…*"[111]

67. Many analysts and commentators have effectively described two types of action/ attack on the day, without stopping to consider what explains it. Above, Miri Eisin is quoted as speaking about military tactics that were used to carry out a terror attack. In similar vein, Shimrit Meir, a former senior adviser in the previous Israeli government, has said that there "*was a unique mixture of state-of-the-art, disciplined planning, combined with… barbarism and brutality.*" Her comments are quoted in Washington Post article and describe what '*began as a highly organized stealth attack, using drone technology to overtake Israeli military observation points' as soon devolving into 'a bloody and chaotic rampage*.'[112] Yet the basic narrative forwarded by Hamas leaders like Al-Arouri explains in basic terms this apparent distinction. This has always been our position and is supported by independent commentators. There was the military

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[109] https://t.me/palestinianatrocities/107

[110] [@SuppressedNws], "The story behind an iconic picture:", *Twitter*, September 30, 2024, https://x.com/SuppressedNws/status/1840659865175302187

[111] (11:28) of SAN

[112] Rubin, s. Dadouch, S. Hendrix, S. (2023) "How Hamas's carefully planned Israel attack devolved into a chaotic rampage", *The Washington Post*, October 16, https://www.washingtonpost.com/world/2023/10/16/hamas-attack-israel/

operation, planned for and executed by the Qassam Brigades, and then everything else, not planned for, which occurred due to an unanticipated collapse of the Israeli army.

68. ***Avoiding harm to civilians, especially children, women and elderly people is a religious and moral commitment by all the Al-Qassam Brigades' fighters. We reiterate that the Palestinian resistance was fully disciplined and committed to the Islamic values during the operation and that the Palestinian fighters only targeted the occupation soldiers and those who carried weapons against our people. In the meantime, the Palestinian fighters were keen to avoid harming civilians despite the fact that the resistance does not possess precise weapons…***[113]

69. A consistent problem when discussing Palestinian resistance is the distance that exists between the vernaculars of East and West. To speak in detail of a relationship with Allah is foreign enough, let alone to do so in Arabic whilst engaged in armed conflict with an entity that positions itself as an extension of Western interests. It is important to understand the significance of religious observance within an organisation like Qassam. Our leadership makes copious reference to this aspect of resistance fighters' personalities, but the weight of these allusions, is often lost not just in linguistic, but also in cultural, translation. We encourage researchers interested in Palestinian armed resistance to explore this further.

70. That reference is crucial, because the rhetoric of Qassam members and leadership is filled with religious references that external onlookers, irrespective of their personal appraisals of them, should assume hold immense weight for our members. Asked what distinguishes the soldier from the Qassam Brigades in a 2015 interview recorded just prior to the pre-dawn meal in the month of Ramadan, one of our Qassam fighters offered the following response: "*The soldier in the Qassam Brigades… they are firstly men: men who are not distracted by trade or selling from the remembrance of Allah*[114]*. Men from the Truthful, who were cultivated whilst their homes were the mosques, with them being either from those praying, kneeling, or fighting in Jihad. Their homes were not cafes and clubs, singing, engaged in folly and being obsessed with money… They were able to, with God's favour, reach behind enemy lines because they were alive with their belief that they grew up with, alive with their faith, alive by their remembrance of God, alive by their fasting [and] their recitation of the Quran*."[115] The speech of our soldiers often embed verses from the Quran which they will have memorised, or statements of the Prophet Muhammad ((ﷺ and his companions that will have been learnt during the years of their education. In what follows these preliminary remarks should be kept in mind, particularly as relates to the language from publicly accessible instructions given to fighters, and the language employed between fighters themselves. Hamas

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[113] Section 3.2 of HND

[114] Quran. 24:37

[115] الجزيرة مباشر تشارك مقاتلي كتائب القسام السحور ["Al-Jazeera Mubasher share the pre-dawn meal with the fighters of the Qassam Brigades"], *YouTube*, uploaded by Aljazeera Mubasher, July 3, 2015, (10:18), https://www.youtube.com/watch?v=bM6wccyO6mo

leaders' reference to the Islamic values of their fighters should not be considered superfluous. Observance of the commandments of Allah and the teachings of our prophet (ﷺ) supersede our own whims and desires, both individually and as a movement. It is for that reason that allegations of beheading babies, systematic rape, and other unbelievably exaggerated crimes that go against the teachings of our religion, hold no basis. We do not care for this world and strive for the Hereafter. If we were to gain statehood in this world at the expense of the eternal home in the Hereafter, then we have indeed lost the greatest struggle.

71. In his speech announcing the launching of the Toofan Al-Aqsa operation, Qassam commander Muhammad al-Deif gave the following orders: "*O righteous Mujahidin. This is your day to make this criminal enemy understand that their time is up. 'Kill them wherever you find them and expel them from where they expelled you.*[116]*' Do not kill elderly and children yet remove this filth from your land and holy places. Fight, and the angels will fight with you in succession, Allah will reinforce you with angels swooping, and Allah will fulfil His promise to you: 'we made it Our duty to help the believers.*'[117]"[118] The highly rhetorical nature, particularly of public addresses in Arabic, is often interpreted as inherently more violent and barbaric. Yet such style, embellishing speech with poetic allusions and embedded Quranic references, is understood within the linguistic climate as being an expected mark of eloquence. The allusion in the above order not to kill elderly and children, will have been understood as an allusion to the advice given by the first Caliph of Islam Abu Bakr to those soldiers that conquered the Levant region during his rulership. It is subtle in that address, but is still an allusion that carries considerable weight for the accultured listener. What was understood by this may be inferred from how the comments were presented by Saleh Al-Arouri in his Al-Jazeera remarks: "*…We have the military plan of the Qassam Brigades, which is as was announced by the brother Abu Khaled Muhammad al-Deif in the first hour when he came out with his official pronouncement and said: "We are going to fight the Israeli army." And he gave the mujahidin official instructions before they went out, and after they went out*[124]*. He said do not kill a woman, or the young, or the old – and this is a recording which exists. These were the instructions [given to] our youth.*"[119]

72. In a video widely circulated from the day, from within a house in Southern Occupied Palestine, a member of the Qassam Brigades stands before an elderly woman lying on a bed in front of a younger woman some have speculated is her granddaughter. Looking into the camera, the fighter says that "*[t]his scene is a manifestation of the Prophet's ((ﷺ advice to us – we, Muslim Mujaahidoon – that we do not kill a woman, or a child, or an elderly person, or a worshipper in their monastery. We carried out [today] the*

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[116] Quran 2:191

[117] Quran 30:47

[118] محمد الضيف: أطلقنا خلال نصف ساعة ٥ آلاف صاروخ تجاه مستوطنات ومدن العدو ["Muhammad al-Deif: We fired, in half an hour, 5,000 rockets in the direction of the cities and settlements of the enemy."], YouTube, uploaded by AlJazeera Arabic, October 7, (2:27), https://www.youtube.com/watch?v=-cxL5_Nw1l0

[119] (10:43) of SAN

will of the Messenger of Allah, may the peace and blessings of Allah be upon him. We killed the fighters, and we spared the women and the children."[120]

73. Hamas leaders have often referred to public source materials they say indicate their members acting in line with their rules of engagement. Ismail Haniyeh referred in an official address, a week after the Toofan Al-Aqsa operation, to the footage of Avital Aldajem being released with two children. He said, that "f*or a long time, Hamas has emphasised that it does not target civilians. It does not target the elderly or the young, despite what the Zionist enemy does. Hamas is a daughter of these people. It is from the tree of this firmly rooted prophetic community (Ummah). It is a national movement for liberation, which belongs to these values… and belongs to this culture.*"[121]

74. Widely circulated as well, was an interview given to Hebrew media of an Israeli women speaking of her experience with Hamas fighters. She says that she informed the fighters that she had two children with her. Describing what took place, she said: "*They look around, then one says to me in English, 'Don't worry, I'm a Muslim, we will not hurt you.' It caught me by surprise. On the other hand, it took a lot of pressure off me… One of them sees bananas on the counter, and he asks, 'May I eat one?' and I say, 'Yes you can.'" The interviewer then asked her about her children, to which she replied: "The older was a more stressed, the youngest didn't really care she was busy with her tablet. What did scare them a little was the guns. They consulted each other… at the beginning. They spoke in Arabic, and my son asks me 'are they thinking about how to apologize?' I told him probably not [smiles]. They stayed at my place for about two hours. By the end of those two hours, one of them closes the door, and they leave… That's it.*"[122]

75. ***As attested by many, the Hamas Movement dealt in a positive and kind manner with all civilians who have been held in Gaza, and sought from the earliest days of the aggression to release them, and that's what happened during the week-long humanitarian truce where those civilians were released in exchange of releasing Palestinian women and children from Israeli jails.***[123]

76. As mentioned previously, Hamas in Gaza initially offered to unilaterally release 85-year-old Yocheved Lifshitz once she was located in Gaza. In the footage of her eventual release, Lifshitz is seen turning back, shaking hands with one of the Hamas guards, and saying Shalom – a Jewish greeting of peace. When questioned by media as to why she did so, she said that it was "because they treated us very nicely." She

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[120] [@SuppressedNws], "A video released by Hamas on October 7th showing how they treated women and children…", April 25, 2024, https://x.com/SuppressedNws/status/1783436509175058537

[121] خطاب رئيس المكتب السياسي لحركة حماس إسماعيل هنية في اليوم السابع لحرب الإبادة على غزة ["Speech of the head of the political bureau of Hamas Ismail Haniyeh on the seventh day of the genocidal war against Gaza"], *Palestinian Islamic Resistance Movement*, October 10, 2023, https://hamasinfo.info/?p=2176

[122] [@RaHmaAad321], Channel 12 interview, September 30, 2024, https://x.com/RaHmaAd321/status/1840798591339597942; see also "Israeli woman speaks of experience with Hamas fighters", *YouTube*, uploaded by Middle East Eye, October 10, 2023, https://www.youtube.com/watch?v=rD7NI0tGbp8

[123] Section 2.3 of HND

continued: "*When we arrived there, they first of all told us that they believed in the Quran, and they wouldn't hurt us and that they would provide us with the same conditions that they have in the tunnels… they took care of all our needs I'll give them credit for that. They were very courteous. They made sure we were clean, that we ate. We ate the same food they did – pitas with cream cheese, melted cheese, cucumbers. That was a meal for an entire day.*"[124] This October interview was significant, because it was the first time any Israelis held in Gaza had appeared in front of media cameras to speak about their experiences. The interview was received as a PR disaster for the Israelis, with Israeli PR experts calling the decision to put Lifshitz in front of cameras a "mistake." Israel Hayom columnist Eddie Rothstein commented that "[t]he truth is, you don't need to be a PR expert to know you can't have a press conference like this on live TV."[125] Ynet columnist Ran Boker called the statement a 'blunderous move', as it served 'to humanize a terrorist organisation.'[126] Notably, none of the critics questioned the veracity of her account and almost begrudged her for not having been mistreated by our fighters.

77. Following the Lifshitz interview, Israeli authorities reportedly moved to monitor very closely press access given to those released during the negotiations. Israeli news Channel 12 reported that authorities arranged for a special media process for the prisoners post-release. That report alleges that though "*there will be no ban on media interviews… they are expected to receive close supervision, and they will be instructed on what to tell the media and what not.*"[127] This reflects similar trends previously mentioned earlier, relating to Israeli monopolies over source information/press access, and how public source researchers are necessarily making conclusions based on controlled slices of information.

78. There are, despite this, some cases worth mentioning. From an objective perspective, this context is worth considering particularly as relates to later statements made post-release by Israelis that will be mentioned below. Many have been vocal in their criticism of the conditions of their detention, and some have claimed that their 'positive' comments/stances about Hamas' treatment of them were given under duress. If it is to be admitted as conceivable that these comments in praise of their good treatment were offered under duress, then it ought to be deemed equally conceivable that testimonies given later criticising their treatment may also have been influenced. In any case, the cases to be mentioned refer largely to primary

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[124] "Israeli hostage speaks after being freed from captivity", *YouTube Shorts*, uploaded by TRT World, October 24, 2023, https://www.youtube.com/shorts/egabZZL7s4s

[125] "Lifshitz press conference panned as disastrous for Israel, PR win for Hamas", *The Times of Israel*, October 24, 2023, https://www.timesofisrael.com/liveblog_entry/lifshitz-press-conference-panned-as-disastrous-for-israel-pr-win-for-hamas/

[126] Boker, R. (2023). "Why did Israel allow a public diplomacy disaster?", *Ynet News*, October 24, 2023 https://www.ynetnews.com/article/hjrapxbga

[127] "Released hostages forced into media silence as Israel tightens control on interviews", *The New Arab*, November 25, 2023, https://www.newarab.com/news/narrative-control-israel-forces-hostages-media-silence

source materials which ought at least to be considered in good faith, as it is consistent with how Qassam has treated other prisoners such as Gilad Shalit.

79. During the November ceasefire, where exchanges took place for Palestinian women and children kept in Israeli prisons, Qassam media released several videos which stunned many onlookers. In that footage, after weeks of reports about the horrific way Israelis were being treated in Gaza, Israelis were seen smiling, shaking hands, laughing, and waving as they were handed to workers from the Red Cross. Mia Schem for instance appeared in one such video saying that "*people were very good, very kind to me… Food good, and the kindness, everything good.*"[128] She had appeared weeks earlier in a video released by Qassam following an operation carried out on an injury she sustained during the process of her being transferred to Gaza. In it she says that "*they took care of me, cured me, and gave me medicine.*"[129] In another notable moment from this series of videos, a Hamas member speaks to Israeli teen Itay Regev, 19, from outside of the Red Cross van. Asked whether he is happy, Itay Regev replies with *chaim sheli* – a term of endearment approximately translating to 'my life'. The two then share a handshake before waving their goodbyes.[130] This period of releases also saw some stories which had been widely circulated turn out to be false. Sara Netanyahu, the wife of the Israeli PM, wrote a letter to Jill Biden in which she made references to one of the 'kidnapped' women being pregnant.[131] She alleged that the woman, reported to be 35-year-old Natwari Mulkan[132], gave birth in captivity, though the lady's mother would later confirm in a Thai Newspaper that her daughter was not even pregnant.[133]

80. Chen and Agam Goldstein-Almog, taken from Kfar Azza, spoke together in an interview on Israel Channel 12 about their experiences in Gaza. They mention requesting to be kept together: "And indeed, we stayed together, which surprised me. At first, I had an image in my head that I would be shackled in prison…" Chen

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[128] https://x.com/MarioNawfal/status/1730357629480731076; see also تسليم الدفعة السابعة من المحتجزين الصهاينة (30 نوفمبر 2023) ["Handing over the seventh group of Zionist prisoners (30 November 2023)"], *Ezzedeen AlQassam Brigades*, December 1, 2023, https://alqassam.ps/arabic/videos/index/2956

[129] مجاهدو القسام يقدمون الرعاية الطبية لإحدى الأسيرات في غزة ["The Mujahidin of Qassam provide medical care for one of the female prisoners in Gaza"], *Ezzedeen AlQassam Brigades*, October 28, 2023, https://www.alqassam.ps/arabic/videos/index/2861

[130] [@AliAbunimah], "Quite a dialogue between Hamas soldiers and Israeli teen Itai Regev…", *Twitter*, November 30, 2023, https://x.com/AliAbunimah/status/1730024032437715090?s=20; see also تسليم الدفعة السادسة من المحتجزين الصهاينة (29 نوفمبر 2023) ["Handing over the sixth group of Zionist prisoners (29 November 2023)"], *Ezzedeen AlQassam Brigades*, November 30, 2023, https://alqassam.ps/arabic/videos/index/2954

[131] "Hostage gave birth in Gaza captivity, Netanyahu's office confirms", *The Times of Israel*, November 15, 2023, https://www.timesofisrael.com/hostage-gave-birth-in-gaza-captivity-netanyahus-office-confirms/

[132] Reynolds, J. (2023) "Pictured: Hamas hostage who 'gave birth to a baby' while she was being held in Gaza by the terrorist killers", *Mail Online,* November 18, https://www.dailymail.co.uk/news/article-12765141/Pictured-Hamas-hostage-gave-birth-baby-held-Gaza-terrorist-killers.html

[133] "Mother of Thai Hostage held by Hamas denies reports her daughter gave birth while in custody", *Matichon Online*, November 21, 2023 https://www.matichon.co.th/region/news_4293121

mentioned being offered to be taken to the salon, and both would engage in exercise. Agam mentions that when she did so, they said "it was very important that I did this." "Then," Chen added, "a young man from them did arm wrestling with me, but he brought a towel… Because it's forbidden for them to touch us." Agam explained: "For them, women are sacred. Women are like queens."[134] Agam would later mention at a MuniWorld Expo in Tel Aviv that she was hurt by how some Israelis responded to her comments. Those responses included 'too bad you returned', or 'you had it easy in captivity.'[135]

81. Danielle Aloni, released during the November one-week ceasefire agreement, wrote a letter in Hebrew the day before she was released, thanking those who took care of her and her 5-year-old daughter Emilia whilst she was in Gaza. The written Hebrew version of that letter was photographed and published by Qassam's military media, the full text of which is translated in what follows:

"*To the generals who have accompanied me in recent weeks, it seems we will part ways tomorrow, but I thank you from the bottom of my heart for your extraordinary humanity shown towards my daughter, Emilia. You were like parents to her, inviting her into your rooms whenever she desired. She acknowledges feeling like all of you are her friends, not just friends, but truly beloved and good. Thank you thank you, for the many hours you spent as caregivers. Thank you for being patient with her and showering her with sweets, fruits, and everything available even when it was not. Children should not be in captivity, but thanks to you and other kind people we met along the way, my daughter felt like a queen in Gaza. In general, she acknowledges feeling like the centre of the world. She hasn't met anyone on our long journey, from the rank and file to the leadership, who didn't treat her with gentleness, affection, and love. I will forever be a prisoner of gratitude because she did not leave here with a lifelong psychological trauma. I will remember your kind behaviour, granted here despite the difficult situation you were dealing with yourselves and the severe losses you suffered here in Gaza. I wish in this world we could truly be good friends. I wish you all health and well-being… Health and love to you and your families' children. Many thanks. Danielle and Emilia*"[136]

82. As relates to foreigners (non-Israelis) captured, the Hamas leadership has always stated that the movement had no problem with them and sought to have them released at the earliest possible time. Roongarun Wichanguen, the Thai sister of a released prisoner, commented on her brother's experience in Gaza. "*His face was very*

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[134] "Video: released Israeli women say Hamas treated them like 'queens'", *The Skwawkbox*, January 1, 2024, https://skwawkbox.org/2024/01/13/video-released-israeli-women-say-hamas-treated-them-like-queens/

[135] "'Too Bad You Returned': Freed Israeli Teen Hostage Says She Received 'Horrific, Negative' Comments", *Haaretz*, June 10, 2024 https://www.haaretz.com/israel-news/2024-06-10/ty-article/.premium/too-bad-you-returned-freed-israeli-hostage-says-shes-received-negative-comments/00000190-0151-da02-a1dc-fd5b38f00000

[136] "'From Danielle and Emilia' – Freed Israeli Woman Thanks Qassam Brigades", *The Palestine Chronicle*, November 27, 2023, https://www.palestinechronicle.com/from-danielle-and-emilia-freed-israeli-woman-thanks-qassam-brigades/; see also "Hamas Posts Israeli Mother's Letter Expressing Thanks For 'Many Hours You Spent As Caregivers'", *Outlook India*, November 28, 2023, https://www.outlookindia.com/international/israeli-mother-s-letter-to-hamas-thank-you-for-the-many-hours-you-spent-as-caregivers--news-333449

happy, and he seemed okay. He said that he was not tortured, or assaulted, and had been fed good food. He was taken care of very well. It looks like he just stayed in a house, not a tunnel."[137]

83. Lerpong Sayed, the leading Thai hostage negotiator, revealed in an interview with Sky News' Asia correspondent Cordelia Lynch more details about the conditions the Thai prisoners were kept in. He said, that "[t]hey have all told their families they were well taken care of, well looked after, given shelter, clothes, food and water, and given mental support." When asked by Lynch whether he thought the Israeli hostages were being treated any different from the Thai hostages, he replied: "*No, I think Hamas kept the same standard because they follow Islamic Law, especially protecting children… On every negotiation they confirmed to us that the Thais were captured as war prisoners and would always be treated according to the Quran and Islamic Law, so I was confident Hamas would take care of the Thai workers. And you could see in the workers who were released. They had good interactions with Hamas.*"[138] His response finds some corroboration in various other testimonies where similar remarks are made.

84. Hamas strives to follow the teachings of the Qur'an and the Prophet Muhammad (ﷺ) in all of its actions including the treatment of captives. We are commanded to be kind to our prisoners to the extent that we must prioritise them over ourselves when it comes to feeding and clothing them. We are prohibited from abusing and torturing them. Rape and sexual violence is unthinkable. It is difficult to understand how people are prepared to believe that our elite disciplined forces could participate in depraved acts of sexual violence while participating in the greatest battle of their lives, knowing they may not live to see another day; yet when given the opportunity with captives in their homes for weeks and months, they did not do so, even as the Zionist soldiers raped and tortured our men, women and children in their prisons. Instead, released female prisoners have spoken about how our soldiers would arm-wrestle with them using towels as it was forbidden for them to touch them, how for them, women are sacred, "like Queens". One released prisoner has even alleged that the only reason she was not raped during her 54 days of detention was because her captor's wife was in the house and has resorted to claiming she was 'raped' "with his eyes".

85. On the contrary, where there have been incidents of mistreatment of prisoners, we have been quick to intervene and investigate. For example, on 12 August 2024, Abu Ubaidah announced that that "[i]n two separate incidents, two [Hamas] soldiers assigned to guard enemy prisoners fired at a male Zionist prisoner, killing him immediately, and also injured two female prisoners critically." He added that Hamas had formed a committee to investigate the shootings and that efforts were underway

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[137] [@Shack_Rat], "The statement made by the sister of one of the released Thai Hostages…", *Twitter*, November 25, 2023, https://x.com/shack_rat/status/1728511374144201161?s=46

[138] Lynch, C. (2023) "Thai Hostage negotiator thanks Iran for support – and says Hamas justified in taking captives", *Sky News*, 29 November, https://news.sky.com/story/thai-hostage-negotiator-thanks-iran-for-support-and-says-hamas-justified-in-taking-captives-13018272

to save the lives of the two injured prisoners.[139] On 15 August 2024, Abu Ubaidah confirmed that an internal investigation had taken place during the course of which it emerged that the guard in question had acted in revenge upon hearing news that two of his children had been murdered in an Israeli massacre.[140] While we understand the emotions of the Hamas soldiers in question and ultimately hold the Zionist entity responsible for the suffering and danger its prisoners are exposed to, the soldiers' actions are inconsistent with the teachings of our religion. As Abu Ubaidah himself made clear in his statement at the time, "the incident does not represent our ethics and the teachings of our religion in dealing with prisoners."

86. ***…In addition, if there was any case of targeting civilians; it happened accidently and in the course of the confrontation with the occupation forces…***[141]

87. ***It is also a matter of fact that a number of Israeli settlers in settlements around Gaza were armed and clashed with Palestinian fighters on Oct. 7. Those settlers were registered as civilians while the fact is they were armed men fighting alongside the Israeli army.***[142]

88. ***When speaking about Israeli civilians, it must be known that conscription applies to all Israelis above the age of 18 – males who served 32 months of military service and females who served 24 months – where all can carry and use arms. This is based on the Israeli security theory of an "armed people" which turned the Israeli entity into "an army with a country attached."***[143]

89. As part of the October 7th operation, Qassam squads were sent to various kibbutzim and took up positions likewise on roads. The first publicly articulated goal of entering kibbutzim, was to clash with the defensive units at each of these locations. The other, relevant as well to the positions taken up on roads, was to form a barrier of interference, preventing Israeli reinforcements from reaching Qassam forces engaged in clashes at the military sites of the Gaza Division. Inasmuch as these are publicly declared aims, they ought to be taken seriously as they provide a logic

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[139] أبو عبيدة: مجندان مكلفان بحراسة أسرى العدو قتلا أسيرا وأصابا أسيرتين ' Abu Ubaida: Two recruits assigned to guard enemy prisoners killed a prisoner and wounded two female prisoners', Al Jazeera Arabic, August 12th, 2024 https://www.aljazeera.net/amp/news/2024/8/12/%D8%B9%D8%A7%D8%AC%D9%84-%D8%A3%D8%A8%D9%88-%D8%B9%D8%A8%D9%8A%D8%AF%D8%A9-%D9%85%D8%AC%D9%86%D8%AF%D8%A7%D9%86-%D9%85%D9%83%D9%84%D9%81%D8%A7%D9%86-%D8%A8%D8%AD%D8%B1%D8%A7%D8%B3%D8%A9

[140] أبو عبيدة يكشف نتائج التحقيق في مقتل أسير إسرائيلي على يد حارسه [' Abu Obeida reveals the results of the investigation into the killing of an Israeli prisoner by his guard'], Al Jazeera Arabic, 15 August 2024 https://www.aljazeera.net/amp/news/2024/8/15/%D8%B9%D8%A7%D8%AC%D9%84-%D8%A3%D8%A8%D9%88-%D8%B9%D8%A8%D9%8A%D8%AF%D8%A9-%D8%A8%D8%B9%D8%AF-%D8%A7%D9%84%D8%AA%D8%AD%D9%82%D9%8A%D9%82-%D9%81%D9%8A-%D9%85%D9%82%D8%AA%D9%84

[141] Section 2.2 of HND

[142] Section 2.5 of HND

[143] Section 2.6 of HND

behind sending forces to these locations that is consistent with the broader goals of the military operation. The kibbutzim and roads are also worth studying closely, as most, if not all, problematic scenes of 'civilian' deaths occur either on roads or kibbutzim.

90. In the military pronouncement where Abu Ubaidah mentioned the various sites that were attacked as part of the October 7th operation, he refers to "attacking the defensive units of all the kibbutzim in the first line of the Gaza Division – they are twenty-two in number." Pronouncements over the next couple of days would provide updates to clashes taking place at these locations, and footage released even by Qassam military media would confirm the presence of their fighters at various kibbutzim. A Washington Post report states that as soon as Qassam fighters entered kibbutz Kissufim, they went straight to the house of the community's head of security – a fact that indicates both planning and intentionality. Shai Asher, a 50-year-old member of the armed security squad in Kissufim has stated, citing conversations with residents, that this was a 'pattern repeated in other communities.'[144]

91. That there are defensive assets at various kibbutzim is not controversial. As previously mentioned, combat forces stationed at kibbutzim were allegedly cut down in size due to the sense of security created by newer border defences, but remained present.[145] Though not located in the South, the Clore Center for the Performing Arts features a playlist of videos on its YouTube Channel with interviews of the defence units of various kibbutzim from the Northern borders of 'Israel', including Kfar Giladi and Manara.[146] Ben Guido, member of the Misgav Am rapid response unit, spoke about Kibbutz Misgav Am itself being "founded initially as means of defending the border."[147] From October 7th, there is recorded GoPro footage of Qassam fighters being shot and killed by guards at various kibbutzim. A fighter is shot and killed at Kibbutz Sufa who recites the Islamic testimony of faith before dying, and another is killed by the Community Guard in Kibbutz Kerem Shalom. Ahmad Sufian, previously discussed in this report, was likewise shot and killed in clashes at the gate of a kibbutz in Southern Occupied Palestine.

92. Since October 7th, many media interviews and articles have been published detailing the roles played by the armed responders at various sites. Imri Bunim has described the role that the rapid response team played at Kibbutz Re'im.[148] Gil Buyum,

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144 Rubin and Morris (note 72)

145 "Local defense units", *YouTube Playlist*, uploaded by Clore Center for the Performing Arts, https://www.youtube.com/playlist?list=PL0Cjkj0qZHpc_9-A6jZlM_OgOezpYidRI

146 "Local defense units", *YouTube Playlist*, uploaded by Clore Center for the Performing Arts, https://www.youtube.com/playlist?list=PL0Cjkj0qZHpc_9-A6jZlM_OgOezpYidRI

147 Local defense unit Kibbutz Misgav Am", *YouTube*, uploaded by Clore Center for the Performing Arts, December 19, 2023https://www.youtube.com/watch?v=NzCW7FW-6UQ

148 Levy, U. (2023) ""At That Moment I Realized We Would Win": How a Rapid Responder Defended His Kibbutz From Hamas Infiltrators", *Davar*, October 23 https://en.davar1.co.il/458161/

member of Kibbutz Be'eri's local security team, was reportedly killed after taking up a weapon to fight once the attack had begun. He was retroactively recognised as a fallen soldier with the rank of warrant officer in the reserves.[149] Israel's official X account has lauded the efforts of Inbal Lieberman, head of security at Nir-Am[150]. The IDSF website (Israel's Defense and Security Forum) records the role played by the Kibbutz Response team at Kibbutz Zikim under the title 'Stories of Valor.'[151]

93. What are these kibbutzim? According to Professor Chuck Freilich, Israeli Deputy National Security Advisor from 2000-2005, kibbutzim in their early days fulfilled a defence function: wherever they could be established would determine and hold 'Israel's' border. Nahal Oz for instance was established explicitly as a military settlement. Per the Jewish National Fund, Nahal Oz was to "supply the IDF with soldiers", but also "to become a civilian center and serve as the first line of defense against potential future Arab invasions while providing a base of operations and resources for military forces operating in the peripheral regions."[152] During the 1950s and 60s, many kibbutzim were founded by an IOF group called Nahal on the borders of land seized by 'Israel'. In the Six-Day war, where 800 Israeli soldiers were killed, 200 of them were from kibbutzim, at a time where their inhabitants were only about 4.5% of the overall population. Though emphasis is often placed on the socialist character[153] of many kibbutzim across 'Israel', their defence functions according to historian Tom Segev were the most crucial role they played. For him, "[t]he most important service the kibbutzim provided to the Jewish national struggle was military, not economic or social. They were guardians of Zionist land, and their patterns of settlement would to a great extent determine the country's borders."[154] For many displaced Palestinians in Gaza, kibbutzim are not benign socialist enclaves, but quintessential settlements designed to establish settler control over stolen land.

94. The dynamics established by this history are relevant. In 1956, the head of security at Kibbutz Nahal Oz, 21-year-old Roi Rotberg, was killed by a Palestinian gunman in a nearby wheatfield. The IOF chief of staff Moshe Dayan, in a speech that has been

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[149] "Gil, Inbar Buyum, 55 & 22: Father and son set out to protect kibbutz", *The Times of Israel,* January 3, 2024, https://www.timesofisrael.com/gil-inbar-buyum-55-22-father-and-son-set-out-to-protect-kibbutz/

[150] [@Israel], "This young woman who was the head of Kibbutz Nir-Am security, quickly gathered all the women and children to safe spaces…", *Twitter,* October 10, 2023, https://x.com/Israel/status/1711680382813245813?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1711680382813245813%7Ctwgr%5E7e8f02409be0c74ff619c9616ba55938ee047702%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fvoz.us%2Fen%2Fworld%2F231011%2F6304%2Fheroes-of-israel-armed-members-of-several-kibbutzim-managed-to-fight-off-terrorists.html

[151] "The alertness of the kibbutz's first-response team resulted in the terrorists' elimination", *Israel's Defense & Security Forum,* October 7, 2023 https://idsf.org.il/en/stories-of-valor/resulted-in-the-terrorists-elimination/

[152] "Nahal Oz A Mighty Stream", Western Negev Tribute, Keren Kayemeth LeIsrael-Jewish National Fund, https://westernnegevtribute.kkl-jnf.org/?community=kibbutz-nahal-oz

[153] "What Is A Kibbutz? – 19 April. 2018", YouTube, uploaded by ILTV Israel News, 19 April, 2018, https://www.youtube.com/watch?v=ies2R__4c58

[154] Segev, Tom. *One Palestine, Complete: Jews and Arabs under the British Mandate*. Metropolitan Books, 2000, p. 252

dubbed the 'defining speech of Zionism', was moved to eulogise Rotberg: "*Yesterday with daybreak, Roi was murdered. The quiet of a spring morning blinded him, and he did not see the stalkers of his soul on the furrow. Let us not hurl blame at the murderers. Why should we complain of their hatred for us? Eight years have they sat in the refugee camps of Gaza, and seen, with their own eyes, how we have made a homeland of the soil and the villages where they and their forebears once dwelt…*" By 2023, Gazans had spent 75 years in refugee camps. Dayan's speech emphasised the responsibilities that the "generation of settlement" had to collectively contribute to the defence and maintenance of the Zionist project due to the inevitability of Palestinian armed resistance. "*Our children shall not have lives to bear if we do not dig shelters; and without the barbed wire fence and the machine gun, we shall not pave a path nor drill for water*."[155]

95. The 'People's Army' model emerged as the post '48 profile of the IOF was being negotiated. Heads of the kibbutz movement demanded the formation of 'an army of the people, working people with pioneering and volunteering values who would combine the values of the legacy of the Haganah and the Palmach, and the settlement heritage.' Israel Galil, prominent leader within the movement, argued that "*the worker, Zionist, pioneer, socialist must be close to weapons, as long as there are weapons in the world… We must be involved in military service and in the systems connected to military service, because it is our obligation and duty of trust to ourselves, a duty of trust to the people, and to the state…*"[156] Though these debates took place in the early 50s, the 'one people' idea remains palpable in Israeli society, as does the centrality of the armed forces. Compulsory military service provides a source of social cohesion, 'above even religion.'[157] As Professor Amichai Cohen has written for The Israel Democracy Institute, the army acted as a 'melting pot for the heterogenous society of a country based on immigration from the four corners of the earth.'[158] By it, a sense of belonging and duty to the homeland is established. Many of the country's top officials have served as active soldiers: Netanyahu is a veteran of the special forces, whilst Yair Lapid has previously been embroiled in political controversy attempting to prove his own military experience.[159] The impression of ever-present existential threats to the 'only Jewish state' means that having a large number of trained reservists through mandatory conscription, all of whom are expected to be ready to

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[155] Ginsburg, M. (2016) "When Moshe Dayan delivered the defining speech of Zionism", The Times of Israel, April 28, https://www.timesofisrael.com/when-moshe-dayan-delivered-the-defining-speech-of-zionism/

[156] Drory, Zeev. "Societal Values: Impact on Israel Security—The Kibbutz Movement as a Mobilized Elite." *Israel Studies*, vol. 19, no. 1, 2014, pp. 166–88

[157] Císcar, J. "Israel and the role of war and the Army in its society: A 3,000 year- relationship", *Universidad de Navarra*, https://www.unav.edu/en/web/global-affairs/detalle/-/blogs/israel-and-the-role-of-war-and-the-army-in-its-society-a-3-000-year-relationship-3

[158] Cohen, A, (2024) "Back to the People's Army", *The Israel Democracy Institute*, May 31, https://en.idi.org.il/articles/54408

[159] "Unravelling the Web of Lies: Yair Lapid's Hypocrisy and Contradictory Military Service Claims", Yeshiva World News, November 11, 2024, https://www.theyeshivaworld.com/news/general/2331898/unraveling-the-web-of-lies-yair-lapids-hypocrisy-and-contradictory-military-service-claims.html

defend the country should the occasion require it, performs a practical defence function.

96. There is no doubt that armed individuals, who would not have been registered as soldiers but who will have had military training as reservists, participated in clashes with Palestinians on October 7th. In instances where these individuals were killed, they would have been registered as civilians, 'while the fact is they were armed men fighting alongside the Israeli army.'[160] Inbal Lieberman, head of security at Kibbutz Nir-Am, is reported to have distributed weapons amongst twelve of her neighbours to stave off attackers on the day.[161] There is even video evidence of armed Israelis fighting side-by-side with Israeli security personnel, like in Ofakim. Due to the breakdown in Israeli military communication on the morning, and the absence of the military, the New York Times has reported that 'some of the Israeli counterattack took place' through 'soldiers or civilian volunteers – including retired generals in their 60s – rushing to the region and doing what they could.' It also states that 'sometimes, the [Israeli] commandoes joined forces with volunteers without body armour who had rushed into the fray…' It adds that some of these volunteer squads were involved in going from house to house.[162] An investigation into October 7th published in Hebrew newspaper Yedioth Ahronoth mentions that '*[c]ivilians, soldiers and officers, police and Shin Bet personnel leaped into battle arenas at their own initiative; they acquired weapons, received partial information, engaged in complex warfare, and sometimes gave their lives*.'[163]

97. Leaders within the Islamic Resistance Movement like Abu Ubaidah and Saleh al-Arouri have stated that the intention behind entering the kibbutzim in Southern Occupied Palestine, was to clash with the defensive units therein. One of the Qassam fighters who participated in the operation was interviewed by TRT Arabic. In the interview, he detailed his role as one of the support forces for the Western battalion of Qassam's elite forces – the Nukhba. In the interview, he recalls receiving instructions for his responsibilities at 09.30 and proceeding thereafter through a breach in the Gaza fence with a group of other fighters. "As soon as we entered the settlement" he says, "*they told us that we should not strike the face, that we should not shoot women, and that we must not shoot children. [We were told that] if you find any soldier*

[160] Section 2.5 of the HND

[161] Duro, I. (2023) "Heroes of Israel: Armed members of several kibbutzim managed to fight off terrorists", Voz, October 11, https://voz.us/en/world/231011/6304/heroes-of-israel-armed-members-of-several-kibbutzim-managed-to-fight-off-terrorists.html

[162] Kingsley, P. Bergman, R. (2023) "The Secrets Hamas Knew About Israel's Military", The New York Times, October 13, 2023, https://www.nytimes.com/2023/10/13/world/middleeast/hamas-israel-attack-gaza.html

[163] "The First Hours of Black Sabbath * 7 Days", *Yedioth Ahronoth*, https://w.ynet.co.il/yediot/7-days/time-of-darkness

and he fights with you, fight with him and kill him. If he does not fight with you, take him as a prisoner. Take the largest possible number of prisoners."[164]

98. With the above in mind, there are some significant engagements that took place within kibbutzim. In a clip taken from a Facebook livestream on the day, Qassam soldiers stand behind the camera in front of the family of Noam Elyakim and Dikla Arava. The father, Dikla Arava, has been shot and has a makeshift tourniquet around his leg. The soldiers, who identify themselves as being from the Qassam Brigades, apologise to the family for accidentally shooting and wounding the father. One of them attempts to do so in broken English: "If I know he is here, I not shoot him." He then reverts to Arabic: "If I had known he was in the room, I would not have shot him." As the family struggles to understand what is being communicated, a third voice adds in Arabic: "We thought there was army."[165]

99. In other footage taken from a bodycam, a Qassam fighter can be seen walking around in an Israeli residential area. He shouts in English "Hello! Anybody here? I will not shoot." He then says in Arabic "Al-Qassam Brigades do not shoot civilians." As the clip continues, he begins to speak with another fighter that is with him. He tells him, "Do not shoot civilians holed up inside."[166]

100. As relates to roads, the UN report states that 'Hamas armed wing and other Palestinian militants laid ambushes on key roads leading from areas of Israel near the Gaza border (known as 'the Gaza envelope or in Hebrew Otef Aza), and targeted arriving Israeli security forces.' The strategic utility of attacks on these locations is quite clear: blocking clear highway intersections meant that soldiers travelling by road, already frustrated by breakdowns in communications, would run into firefights whilst attempting to move between towns and bases in Southern Occupied Palestine.[167] A Haaretz article mentions Israeli police coming to a similar conclusion: '…police believe that Hamas planned to control the highways and prevent the army and first responders from reacting.'[168] Many of these roadblocks were on the crucial Road 232. That key road joins many major kibbutzim and bases throughout the Gaza envelope beginning at Kerem Shalom Crossing, and passing through locations like

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[164] مقابلة حصرية مع أحد مقاومي القسام.. يروي تفاصيل عن الاشتباكات خلال معركة طوفان الأقصى في 7 أكتوبر ["Exclusive interview with one of the Qassam Fighters... he narrates detailed about the clashed during the Al Aqsa Flood Battle on October 7"], *YouTube*, uploaded by TRT Arabic, October 8, 2024, https://www.youtube.com/watch?app=desktop&v=vPkZlvBgRwE

[165] {@Ayita_14], "Fighters apologize to a family for shooting and wounding the father because they though they were soldiers…", *Twitter*, August 31, 2024, https://x.com/Ayita_14/status/1829859860373975073

[166] [@Ayita_14], "Do not shoot civilians holed up inside", *Twitter*, August 31, 2024, https://x.com/Ayita_14/status/1829859291278278874

[167]Goldman A. et al (2023) "Where Was the Israeli Military?", The New York Times, 30 December https://www.nytimes.com/2023/12/30/world/middleeast/israeli-military-hamas-failures.html

[168] Peleg, B. Rozovsky, L. (2024) "For Israelis Fleeing Hamas on October 7, Highways Turned Into Death Traps", *Haaretz*, April 17, https://www.haaretz.com/israel-news/2024-04-17/ty-article-magazine/.premium/for-israelis-fleeing-hamas-on-october-7-highways-turned-into-death-traps/0000018e-e196-d052-a78f-e5d690780000

Re'im, Be'eri and Kfar Aza. In these roadblocks, and the fighting there, there are reported instances of Israeli security personnel being targeted, like four from the 551st Battalion and six members of the police's Yama anti-terror unit who were killed at Sha'ar Hanegev junction. There are also cases of individuals like Inbar Guyum, discharged medic from the Sayeret Golani commando unit who drove back onto the highway to reinforce a position at a kibbutz and is thought to have been killed whilst on the journey.

101. Hamas is against the targeting of civilians. This has always been our position. In a BBC interview from October 2024, Khalil Hayya, deputy chairman of Hamas' political bureau, was asked about this issue and responded: "*We ordered our resistance fighters on the seventh of October not to target civilians, women and children. The objective was the occupation soldiers, who were always killing, bombing, and destroying in Gaza. We don't endorse harming civilians. On the ground there were certainly personal mistakes and actions. The fighters may have felt that their lives were in danger.*"[169]

102. Part of what complicated that arena, was the fact that whilst armoured personnel carriers and other clearly military marked cars were scarcely used on the day, military personnel and others who sought to engage in the fighting did take part in travelling between Israeli towns to counter the Gazan offensive. Reinforcements often organised themselves sporadically. Brothers Master Sgt. (res.) Noam and Sgt. First Class Yishay Slotki, who were in active military service in Beersheba, reportedly raced down to Kibbutz Alumim where they were killed in the fighting. Precisely determining targets was sometimes difficult.

103. There are though other instances which give the impression that Qassam fighters tried to distinguish between army personnel and civilians. In one clip – and it should be noted that the Qassam apparel in this specific clip is not clear – a soldier walks up to a car with an Israeli woman is sat in the back. She appears to be injured. He asks her whether she is army. Her response is not seen or heard in the clip, but it is assumed that she somehow responded in the negative. This is as the man then turns around to another and says "No, it's haram, nobody shoot her."[170] In another instance, an Arab bus driver named Suheib Abu Amer Razeem is questioned by Qassam soldiers close to the site of the Nova Music Festival. In the footage, he is asked repeatedly "Where are the soldiers?" Thereafter, Suheib was taken to Kibbutz Be'eri where he was killed after IOF commander Brig. Gen. Barak Hiram ordered that two tank shells be fired at the house where he was being kept. His family reports being told by Israeli police to "go ask Hamas", when they attempted to track down his whereabouts.[171]

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[169] "Watch: Jeremy Bowen presses Hamas deputy leader on 7 October attacks", BBC News, October 3, 2024, https://www.bbc.co.uk/news/videos/cdd4rpv5jp0o

[170] [@Ayita_14], "No body shoot her", *Twitter,* August 31, 2024, https://x.com/Ayita_14/status/1829859459637956849

[171] "Suhaib Abu Amer Razeem, 22: Minibus driver from East Jerusalem", *The Times of Israel*, October 19, 2023, https://www.timesofisrael.com/suhaib-razeem-22-driver-from-east-jerusalem-killed-near-gaza/

104. While much has been made about what occurred at the Nova Music Festival, it was never the intention of Qassam to target the festival which took place near Kibbutz Re'im. Qassam squads did attack Re'im military base, and held positions on the road in and around the location of the festival but they had no idea the festival was even taking place. This is again supported by later reports by the media. According to a Haaretz report[172], senior Israeli security officials estimate that Hamas officials did not have advance knowledge that the Nova Music Festival would be taking place. The festival itself was initially planned for Thursday and Friday and was only extended to the Saturday on the Tuesday of that week at the organiser's request. Also, the arrival of fighters to the festival was from Road 232 and not from the direction of the border, suggesting too that it was not an intended target. A Guardian investigation likewise has it, that the Nova rave was 'not among the initial targets.'[173]

105. Command responsibility in the case of the music festival is important. The festival was held in very close proximity to Gaza – so close that Lt. Col. Sahar Fogel, Gaza Division operations officer, had opposed the festival taking place so close to Gaza as it was a "needless security risk."[174] Though the security concern was rocket fire and not an incursion, that proximity meant that when the separation fence around Gaza came down, the Nova Festival was a location visited by many affiliated and non-affiliated armed Palestinians. In one notable clip from dashcam footage from 09.23 that morning, a man wearing a red t-shirt, with no body armour or recognisable insignia/military apparel shoots at an injured man from point blank range who was on the ground behind a car. At the end of this first clip, a man in full Qassam apparel appears.[175] In later footage from 12.12 that afternoon, the dead body is in the same place as a new group (non-Qassam) arrives to loot that location.[176] There is quite clearly no order at this point. The sequence of events implies the presence of multiple elements at the same time, in an area where according to multiple reports, Qassam leadership did not anticipate there would be an active music festival taking place.

106. ***Other Israeli testimonies confirmed that the Israeli army raids and soldiers' operations killed many Israeli captives and their captors. The Israeli occupation***

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[172] Breiner, J. (2023) "Israeli Security Establishment: Hamas Likely Didn't Have Advance Knowledge of Nova Festival", *Haaretz*, November 18, https://www.haaretz.com/israel-news/2023-11-18/ty-article/.premium/israeli-security-establishment-hamas-likely-didnt-have-prior-knowledge-of-nova-festival/0000018b-e2ee-d168-a3ef-f7fe8ca20000

[173] Burke, J. (2023) "A deadly cascade: how secret Hamas attack were passed down at last minute", *The Guardian*, November 7, https://www.theguardian.com/world/2023/nov/07/secret-hamas-attack-orders-israel-gaza-7-october

[174] HauserTov, M. (2023) " 'Needless Security Risk': Israeli Army Approved Nova Festival Despite Senior Officer's Alarm", Haaretz, December 25, https://www.haaretz.com/israel-news/2023-12-25/ty-article/.premium/idf-allowed-rave-later-attacked-by-hamas-despite-key-officers-concern/0000018c-9d78-ddc3-a1bf-bf7edca30000

[175] https://t.me/southfirstresponders/8

[176] https://t.me/southfirstresponders/5

army bombed the houses in the Israeli settlements where Palestinian fighters and Israelis were inside in a clear application of the Israeli army notorious "Hannibal Directive" which clearly says that "better a dead civilian hostage or soldier than taken alive" to avoid engaging in a prisoners swap with the Palestinian resistance.[177]

107. The Hannibal Directive is an IOF protocol designed to prevent the capture of Israeli soldiers by enemy forces. Introduced in 1986 following the abductions of IOF soldiers in Lebanon and subsequent prisoner exchanges, the directive is named after the Carthaginian general Hannibal Barca who committed suicide by drinking poison to avoid being captured by the Romans after a defeat in the Battle of Zama. Typically, the existence and application of the directive has been kept a secretive matter, regarded, understandably, as controversial. The full text of the directive has never been published, and Israeli military censorship forbade any discussion of the subject in the press until 2003.

108. Just as its referenced in the HND, there are many earlier references within the movement to the use/application of the Hannibal Directive on October 7th. In a poignant reference, on the day following the launching of operation Toofan Al-Aqsa, Abu Ubaidah mentioned that "…our Mujahidin have confirmed instances of the enemy killing a number of their [own] prisoners after the Mujahidin managed to capture them."[178] In the interview given by Saleh al-Arouri on October 12th, the doctrine would be named explicitly: "*Another point which I want to be made clear. The Israeli army has a doctrine they refer to as Hannibal. What Hannibal means, is that if hostages are taken, or prisoners end up with the enemy, then the Israeli army has the right to systematically kill the hostages and prisoners, along with those who have taken them prisoner. And this doctrine was practiced.*"[179]

109. An Investigative article by Ronen Bergman and Yoav Zitun in Yedioth Ahronoth on the October 7th offensive revealed that by midday, Israel's Southern Command still 'did not understand what Hamas' goals were, where their forces were deployed and how they operate, the control of intersections, the concurrent attacks on posts and on civilian settlements.' What they could see though were videos of hostages being taken, at which point the IOF 'decided to return to a version of the Hannibal Directive.' The article states, that 'at midday of October 7th, the IDF instructed all its fighting units to perform the Hannibal Directive in practice, although it did so without stating that name explicitly.' The instructions were to stop 'at any cost' Hamas operatives from returning to Gaza. Soldiers from Israeli elite units reportedly examined the area only between the Gaza Envelope settlements and the Gaza Strip and found approximately 70 vehicles that had been hit by fire from helicopter gunship, a UAV or a tank. By the end of the day, drone squadron 161 alone

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[177] Section 2.4 of HND

[178] كلمة صوتية للناطق العسكري باسم القسام ["Audio speech of the military spokesman of Qassam"], *Ezzedeen AlQassam Brigades*, October 8, 2023, https://www.alqassam.ps/arabic/videos/index/2824

[179] (9:56) of SAN

"performed no fewer than 110 attacks on some 1,000 targets, most of which were inside Israel."[180] Other reports add that breakdowns in communications meant that Israeli military personnel relied on informal channels like WhatsApp groups to learn the locations of Palestinian fighters on the day.

110. Some Israelis who survived the directive have discussed its implementation, corroborating what Abu Ubaidah mentioned on October 8th, and what investigations have since revealed. Shani Goren, 29-year-old resident of Kibbutz Nir Oz, spoke to Israeli Channel 12 about an Israeli combat helicopter's high-calibre bullets killing all the Palestinians in the car with her, along with a fellow Nir Oz resident Efrat Katz. Sharon Cunio who survived the same attack, lambasted Netanyahu and his war cabinet for, amongst other things, "the helicopter that shot at us on the way to Gaza."[181] Likewise, there are instances of Israeli soldiers admitting to executing the directive. In an interview with Israeli Channel 13, Capt. Bar Zonshein discusses how he fired tank shells at vehicles driving towards Gaza near Kisufim – about two kilometres from the Gaza fence. He says that he thought a pile of people he witnessed in a Toyota were fellow soldiers, and that he decided to open fire. "…I decide that this is the right decision, that it's better to stop the abduction and that they not be taken."[182]

111. In a particularly notable incident, as reported in Electronic Intifada, the commander of the national rescue unit of the Israeli army's Home Front Command, Col. Golan Vach, told a story to media about Hamas fighters executing eight babies in single house in Kibbutz Be'eri. "They were concentrated there, and they killed them and they burned them." Brig. Gen. Barak Hiram told Israeli Channel 12 on October 26th that Palestinian fighters had tied up and executed 10 civilians in the kibbutz, eight of them children. Yet according to the two survivors (Yasmin Porat and Hadas Dagan) from the Cohen resident in Be'eri, none of those killed in this location were babies or toddlers. Yasmin Porat, one of the civilians who survived from this location explained instead how Israeli tank shells were fired into the house, killing all the other residents. "They eliminated everyone, including the hostages. Because there was very, very heavy crossfire… I was freed at approximately 5:30pm. The fighting apparently ended at 8.30pm. After insane crossfire, two tank shells were shot into the house."[183]

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[180] Winstanley, A. (2024) "Israeli HQ ordered troops to shoot Israeli captives on 7 October", The Electronic Intifada, 20 January, https://electronicintifada.net/blogs/asa-winstanley/israeli-hq-ordered-troops-shoot-israeli-captives-7-october#translation

[181] Sheen, D. Abunimah, A. (2024) "Released captive tells how Israeli fire killed kibbutz resident", *The Electronic Intifada*, 12 March, https://electronicintifada.net/content/released-captive-tells-how-israeli-fire-killed-kibbutz-resident/45121

[182] Ofir, J. (2024) "Another Israeli soldier admits to implementing the 'Hannibal Directive' on October 7", *Mondoweiss,* March 26, https://mondoweiss.net/2024/03/another-israeli-soldier-admits-to-implementing-the-hannibal-directive-on-october-7/

[183] Abunimah, A. Sheen, D. (2023) "Israeli general killed Israelis on 7 October then lied about it", *The Electronic Intifada*, 24 December, https://electronicintifada.net/content/released-captive-tells-how-israeli-fire-killed-kibbutz-resident/45121

112. Famously, the initial 1,400 number given for the number of Israeli deaths was adjusted down to 1,200. As Israeli government spokesperson Mark Regev – currently on trial in Australia for genocide advocacy[184] - explained, "…we had the number at 1,400 casualties and now we've revised that down to 1,200 because we understood that we'd overestimated, we made a mistake. There were actually bodies that were so badly burnt we thought that they were ours, in the end apparently, they were Hamas terrorists."[185] Our narrative document picks up on this point stating that '*the occupation authorities revised the number of their killed soldiers and civilians from 1,400 to 1,200, after finding that 200-burnt corpses had belonged to the Palestinian fighters who were killed and mixed with Israeli corpses. This means that the one who killed the fighters is the one who killed the Israelis, knowing that only the Israeli army possesses military planes that killed, burned and destroyed Israeli areas on Oct 7.*'[186] There is more than enough motive to at least question how many (likely) hundreds of deaths on the day, and how much destruction to vehicles and properties, were in fact because of Israeli artillery fire.

113. ***The brutal killing of civilians is a systematic approach of the Israeli entity, and one of the means to humiliate the Palestinian people. The mass killing of Palestinians in Gaza is clear evidence of such an approach.*** **[187]**

114. ***The suggestion that Palestinian fighters committed rape against Israeli women was fully denied by the Hamas Movement. A report by the Mondoweiss news website on Dec. 1, 2023, among others, said there is a lack of any evidence of "mass rape" allegedly perpetrated by Hamas members on Oct. 7 and that Israel used such allegation "to fuel the genocide in Gaza."***

115. ***It is a well-known fact that the Israeli official narrative had always sought to demonize the Palestinian resistance, while also legalizing its brutal aggression on Gaza***[188]

116. On a phone call to US President Joe Biden, Netanyahu said that "they [Hamas] took dozens of children, bound them up, burned them, and executed them."[189] Israeli journalist Yishai Cohen had an interview with an IOF officer that was, according to

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[184] Fink, R. (2024) "Australian-Israeli Former Diplomat Mark Regev Under Trial for Genocide Advocacy", *Haaretz*, 22 October, https://www.haaretz.com/world-news/2024-10-22/ty-article/.premium/australian-israeli-former-diplomat-mark-regev-under-trial-for-genocide-advocacy/00000192-b4e6-d006-a5b3-feee3fa30000

[185] " 'That was a mistake': Mehdi challenges Israeli adviser Mark Regev on false Israeli claims", *YouTube*, uploaded by MSNBC, November 16, 2023, (6:37), https://www.youtube.com/watch?v=HD-yRuTasHU

[186] Section 2.4 of the HND

[187] Section 2.7 of the HND

[188] Section 2.4 of the HND

[189] "PM Netanyahu to the US President Joe Biden: "We've never seen such savagery in the history of the State. They're even worse than ISIS and we need to treat them as such.", *Government of Israel Prime Minister's Office*, October 10, 2023, https://www.gov.il/en/pages/spoke-biden101023

him, offered by the IOF spokesperson. In that interview, it was claimed that a row of murdered babies were found, hung on a laundry line. Though the interview was soon deleted, he mentioned in a tweet that the IOF officer still insisted on the accuracy of the story.[190] Eli Beer, head of Ihud Hatzalah claimed to have seen a pregnant woman who had the baby cut from her stomach, stabbed and burnt in the oven, after which she herself was shot in front of the rest of her family.[191] These comments specifically were offered at a summit for the Republican Jewish Coalition in the United States – the country which is the primary funder and facilitator of the Zionist entity's aggression on Gaza.

117. This atrocity propaganda was exploited to provide legitimacy for the Israeli genocide in Gaza, with the damage already done when eventually, and inevitably, such narratives were rebutted. It is indicative of the demonisation of the Palestinian people that such narrative space even exists where such tales could be narrated *and believed* – that one might be immediately prepared to entertain the idea that the Jew-hating Arab chose to give his life for the luxury of cutting off and playing with an Israeli woman's breast, as if that is even anatomically possible.[192]

118. This entire annex reflects aspects of the October 7th operation that receive little emphasis in the English media. Rarely are there discussions about the nature of the operation. Rarely is the legitimacy of Palestinian resistance fighters utilising armed resistance acknowledged – a reality which renders even the targeting of military objectives 'terrorism.' When all the information concerning the day is taken seriously, it becomes impossible to say that what took place was a wanton pogrom designed to kill as many Jews as possible. Faced with a situation that was simply impossible to sustain indefinitely, against an occupation which could not be checked by any peaceful means, an operation was planned, prepared for, and executed, which attempted to retrieve the rights owed to the Palestinian people. Without denying that there were unfortunate occurrences on the day, a future *truly transparent and independent* investigation must review *all* possibly available source information and take seriously the command structure relating to the operation, the numerous actors who eventually participated, articulated laws of engagement, and the numerous

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[190] Shehada, M. [@muhammadshehad2] "An IDF officer claimed he saw a "row of murdered [Israeli] babies hung on a laundry line" on Oct 7. The interviewer, Yishai Cohen, now says the story is FAKE & deleted it." Twitter, November 29, 2023, https://x.com/muhammadshehad2/status/1729933220538429449

[191] Video: "Eli Beer on Hamas: 'These bastards put babies in an oven'", *Mail Online*, https://www.dailymail.co.uk/video/news/video-3049131/Eli-Beer-Hamas-bastards-babies-oven.html

[192] Yingst. T [@TreyYingst], Video: "WARNING GRAPHIC DESCRIPTION", *Twitter*, October 23, 2023, https://x.com/TreyYingst/status/1716491152247890035. Fox News' Chief Foreign Correspondent Trey Yingst spoke with Moshe Melayev who described what he claimed had befallen an Israeli family: "They killed the husband first, they took his eyes out – I saw the body by myself – they took the eyes out, and they cut the breasts of the woman, and they cut the leg of the girl. That's the family that I saw with my own eyes."; see also Lazaroff, T. (2023) "'Israeli female soldiers shot in crotch, vagina, breasts on October 7'", *The Jerusalem Post*, 6 December, https://www.jpost.com/israel-news/article-776654; [@nirbhaysirohi] "Truth of Hamas. Jewish woman tells investigators that she saw Hamas terrorists gang rape a Jewish woman and then cutting off her breast. They went on to play with the breast, while the woman was convulsing in pain." *Twitter*, December 5, 2023, https://x.com/nirbhaysirohi/status/1731896206756847953/video/1

military objectives identified, selected and attacked. When all of that is taken into consideration, there emerges an image of an operation which justice-loving people all over will celebrate for its ingenuity, valor and tactical excellence – that the Israeli Gaza Division, responsible for the siege, was dismantled by the besieged, in a few short hours on that glorious Saturday morning.

I believe that the facts stated in this witness statement are true.

SIGNED:

DATE: 26-3-2025

DR MOUSA ABU MARZOUK

APPENDIX 03

A DOCUMENT OF GENERAL PRINCIPLES
HAMAS

In the Name of Allah Most Gracious Most Merciful

Praise be to Allah, the Lord of all worlds. May the peace and blessings of Allah be upon Muhammad, the Master of Messengers and the Leader of the mujahidin, and upon his household and all his companions.

Preamble:

Palestine is the land of the Arab Palestinian people, from it they originate, to it they adhere and belong, and about it they reach out and communicate.

Palestine is a land whose status has been elevated by Islam, a faith that holds it in high esteem, that breathes through it its spirit and just values and that lays the foundation for the doctrine of defending and protecting it.

Palestine is the cause of a people who have been let down by a world that fails to secure their rights and restore to them what has been usurped from them, a people whose land continues to suffer one of the worst types of occupation in this world.

Palestine is a land that was seized by a racist, anti-human and colonial Zionist project that was founded on a false promise (the Balfour Declaration), on recognition of a usurping entity and on imposing a fait
accompli by force.

Palestine symbolizes the resistance that shall continue until liberation is accomplished, until the return is fulfilled and until a fully sovereign state is established with Jerusalem as its capital.

Palestine is the true partnership among Palestinians of all affiliations for the sublime objective of liberation.

Palestine is the spirit of the Ummah and its central cause; it is the soul of humanity and its living conscience.

This document is the product of deep deliberations that led us to a strong consensus. As a movement, we agree about both the theory and the practice of the vision that is outlined in the pages that follow. It is a vision that stands on solid grounds and on well-established principles. This document unveils the goals, the milestones and the way in which national unity can be enforced. It also establishes our common

understanding of the Palestinian cause, the working principles which we use to further it, and the limits of flexibility used to interpret it.

The Movement:

1. The Islamic Resistance Movement "Hamas" is a Palestinian Islamic national liberation and resistance movement. Its goal is to liberate Palestine and confront the Zionist project. Its frame of reference is Islam, which determines its principles, objectives and means.

The Land of Palestine:

2. Palestine, which extends from the River Jordan in the east to the Mediterranean in the west and from Ras Al-Naqurah in the north to Umm Al-Rashrash in the south, is an integral territorial unit. It is the land and the home of the Palestinian people. The expulsion and banishment of the Palestinian people from their land and the establishment of the Zionist entity therein do not annul the right of the Palestinian people to their entire land and do not entrench any rights therein for the usurping Zionist entity.

3. Palestine is an Arab Islamic land. It is a blessed sacred land that has a special place in the heart of every Arab and every Muslim.

The Palestinian People:

4. The Palestinians are the Arabs who lived in Palestine until 1947, irrespective of whether they were expelled from it, or stayed in it; and every person that was born to an Arab Palestinian father after that date, whether inside or outside Palestine, is a Palestinian.

5. The Palestinian identity is authentic and timeless; it is passed from generation to generation. The catastrophes that have befallen the Palestinian people, as a consequence of the Zionist occupation and its policy of displacement, cannot erase the identity of the Palestinian people nor can they negate it. A Palestinian shall not lose his or her national identity or rights by acquiring a second nationality.

6. The Palestinian people are one people, made up of all Palestinians, inside and outside of Palestine, irrespective of their religion, culture or political affiliation.

Islam and Palestine:

7. Palestine is at the heart of the Arab and Islamic Ummah and enjoys a special status. Within Palestine there exists Jerusalem, whose precincts are blessed by Allah. Palestine is the Holy Land, which Allah has blessed for humanity. It is the Muslims' first Qiblah and the destination of the journey performed at night by Prophet Muhammad, peace be upon him. It is the location from where he ascended to the

upper heavens. It is the birthplace of Jesus Christ, peace be upon him. Its soil contains the remains of thousands of Prophets, Companions and Mujahidin. It is the land of people who are determined to defend the truth – within Jerusalem and its surroundings – who are not deterred or intimidated by those who oppose them and by those who betray them, and they will continue their mission until the Promise of Allah is fulfilled.

8. By virtue of its justly balanced middle way and moderate spirit, Islam – for Hamas - provides a comprehensive way of life and an order that is fit for purpose at all times and in all places. Islam is a religion of peace and tolerance. It provides an umbrella for the followers of other creeds and religions who can practice their beliefs in security and safety. Hamas also believes that Palestine has always been and will always be a model of coexistence, tolerance and civilizational innovation.

9. Hamas believes that the message of Islam upholds the values of truth, justice, freedom and dignity and prohibits all forms of injustice and incriminates oppressors irrespective of their religion, race, gender or nationality. Islam is against all forms of religious, ethnic or sectarian extremism and bigotry. It is the religion that inculcates in its followers the value of standing up to aggression and of supporting the oppressed; it motivates them to give generously and make sacrifices in defence of their dignity, their land, their peoples and their holy places.

Jerusalem:

10. Jerusalem is the capital of Palestine. Its religious, historic and civilizational status is fundamental to the Arabs, Muslims and the world at large. Its Islamic and Christian holy places belong exclusively to the Palestinian people and to the Arab and Islamic Ummah. Not one stone of Jerusalem can be surrendered or relinquished. The measures undertaken by the occupiers in Jerusalem, such as Judaization, settlement building, and establishing facts on the ground are fundamentally null and void.

11. The blessed Al-Aqsa Mosque belongs exclusively to our people and our Ummah, and the occupation has no right to it whatsoever. The occupation's plots, measures and attempts to judaize Al-Aqsa and divide it are null, void and illegitimate.

The Refugees and the Right of Return:

12. The Palestinian cause in its essence is a cause of an occupied land and a displaced people. The right of the Palestinian refugees and the displaced to return to their homes from which they were banished or were banned from returning to – whether in the lands occupied in 1948 or in 1967 (that is the whole of Palestine), is a natural right, both individual and collective. This right is confirmed by all divine laws as well as by the basic principles of human rights and international law. It is an inalienable right and cannot be dispensed with by any party, whether Palestinian, Arab or international.

13. Hamas rejects all attempts to erase the rights of the refugees, including the attempts to settle them outside Palestine and through the projects of the alternative homeland. Compensation to the Palestinian refugees for the harm they have suffered as a consequence of banishing them and occupying their land is an absolute right that goes hand in hand with their right to return. They are to receive compensation upon their return and this does not negate or diminish their right to return.

The Zionist Project:

14. The Zionist project is a racist, aggressive, colonial and expansionist project based on seizing the properties of others; it is hostile to the Palestinian people and to their aspiration for freedom, liberation, return and self-determination. The Israeli entity is the plaything of the Zionist project and its base of aggression.

15. The Zionist project does not target the Palestinian people alone; it is the enemy of the Arab and Islamic Ummah posing a grave threat to its security and interests. It is also hostile to the Ummah's aspirations for unity, renaissance and liberation and has been the major source of its troubles. The Zionist project also poses a danger to international security and peace and to mankind and its interests and stability.

16. Hamas affirms that its conflict is with the Zionist project not with the Jews because of their religion. Hamas does not wage a struggle against the Jews because they are Jewish but wages a struggle against the Zionists who occupy Palestine. Yet, it is the Zionists who constantly identify Judaism and the Jews with their own colonial project and illegal entity.

17. Hamas rejects the persecution of any human being or the undermining of his or her rights on nationalist, religious or sectarian grounds. Hamas is of the view that the Jewish problem, anti-Semitism and the persecution of the Jews are phenomena fundamentally linked to European history and not to the history of the Arabs and the Muslims or to their heritage. The Zionist movement, which was able with the help of Western powers to occupy Palestine, is the most dangerous form of settlement occupation which has already disappeared from much of the world and must disappear from Palestine.

The Position Toward Occupation and Political Solutions:

18. The following are considered null and void: the Balfour Declaration, the British Mandate Document, the UN Palestine Partition Resolution, and whatever resolutions and measures that derive from them or are similar to them. The establishment of "Israel" is entirely illegal and contravenes the inalienable rights of the Palestinian people and goes against their will and the will of the Ummah; it is also in violation of human rights that are guaranteed by international conventions, foremost among them is the right to self-determination.

19. There shall be no recognition of the legitimacy of the Zionist entity. Whatever has befallen the land of Palestine in terms of occupation, settlement building, Judaization or changes to its features or falsification of facts is illegitimate. Rights never lapse.

20. Hamas believes that no part of the land of Palestine shall be compromised or conceded, irrespective of the causes, the circumstances and the pressures and no matter how long the occupation lasts. Hamas rejects any alternative to the full and complete liberation of Palestine, from the river to the sea. However, without compromising its rejection of the Zionist entity and without relinquishing any Palestinian rights, Hamas considers the establishment of a fully sovereign and independent Palestinian state, with Jerusalem as its capital along the lines of the 4th of June 1967, with the return of the refugees and the displaced to their homes from which they were expelled, to be a formula of national consensus.

21. Hamas affirms that the Oslo Accords and their addenda contravene the governing rules of international law in that they generate commitments that violate the inalienable rights of the Palestinian people. Therefore, the Movement rejects these agreements and all that flows from them, such as the obligations that are detrimental to the interests of our people, especially security coordination (collaboration).

22. Hamas rejects all the agreements, initiatives and settlement projects that are aimed at undermining the Palestinian cause and the rights of our Palestinian people. In this regard, any stance, initiative or political programme must not in any way violate these rights and should not contravene them or contradict them.

23. Hamas stresses that transgression against the Palestinian people, usurping their land and banishing them from their homeland cannot be called peace. Any settlements reached on this basis will not lead to peace. Resistance and jihad for the liberation of Palestine will remain a legitimate right, a duty and an honour for all the sons and daughters of our people and our Ummah.

Resistance and Liberation:

24. The liberation of Palestine is the duty of the Palestinian people in particular and the duty of the Arab and Islamic Ummah in general. It is also a humanitarian obligation as necessitated by the dictates of truth and justice. The agencies working for Palestine, whether national, Arab, Islamic or humanitarian, complement each other and are harmonious and not in conflict with each other.

25. Resisting the occupation with all means and methods is a legitimate right guaranteed by divine laws and by international norms and laws. At the heart of these lies armed resistance, which is regarded as the strategic choice for protecting the principles and the rights of the Palestinian people.

26. Hamas rejects any attempt to undermine the resistance and its arms. It also affirms the right of our people to develop the means and mechanisms of resistance.

Managing resistance, in terms of escalation or de-escalation, or in terms of diversifying the means and methods, is an integral part of the process of managing the conflict and should not be at the expense of the principle of resistance.

The Palestinian Political System:

27. A real state of Palestine is a state that has been liberated. There is no alternative to a fully sovereign Palestinian State on the entire national Palestinian soil, with Jerusalem as its capital.

28. Hamas believes in, and adheres to, managing its Palestinian relations on the basis of pluralism, democracy, national partnership, acceptance of the other and the adoption of dialogue. The aim is to bolster the unity of ranks and joint action for the purpose of accomplishing national goals and fulfilling the aspirations of the Palestinian people.

29. The PLO is a national framework for the Palestinian people inside and outside of Palestine. It should therefore be preserved, developed and rebuilt on democratic foundations so as to secure the participation of all the constituents and forces of the Palestinian people, in a manner that safeguards Palestinian rights.

30. Hamas stresses the necessity of building Palestinian national institutions on sound democratic principles, foremost among them are free and fair elections. Such process should be on the basis of national partnership and in accordance with a clear programme and a clear strategy that adhere to the rights, including the right of resistance, and which fulfil the aspirations of the Palestinian people.

31. Hamas affirms that the role of the Palestinian Authority should be to serve the Palestinian people and safeguard their security, their rights and their national project.

32. Hamas stresses the necessity of maintaining the independence of Palestinian national decision-making. Outside forces should not be allowed to intervene. At the same time, Hamas affirms the responsibility of the Arabs and the Muslims and their duty and role in the liberation of Palestine from Zionist occupation.

33. Palestinian society is enriched by its prominent personalities, figures, dignitaries, civil society institutions, and youth, students, trade unionist and women's groups who together work for the achievement of national goals and societal building, pursue resistance, and achieve liberation.

34. The role of Palestinian women is fundamental in the process of building the present and the future, just as it has always been in the process of making Palestinian history. It is a pivotal role in the project of resistance, liberation and building the political system.

The Arab and Islamic Ummah:

35. Hamas believes that the Palestinian issue is the central cause for the Arab and Islamic Ummah.

36. Hamas believes in the unity of the Ummah with all its diverse constituents and is aware of the need to avoid anything that could fragment the Ummah and undermine its unity.

37. Hamas believes in cooperating with all states that support the rights of the Palestinian people. It opposes intervention in the internal affairs of any country. It also refuses to be drawn into disputes and conflicts that take place among different countries. Hamas adopts the policy of opening up to different states in the world, especially the Arab and Islamic states. It endeavours to establish balanced relations on the basis of combining the requirements of the Palestinian cause and the Palestinian people's interests on the one hand with the interests of the Ummah, its renaissance and its security on the other.

The Humanitarian and International Aspect:

38. The Palestinian issue is one that has major humanitarian and international dimensions. Supporting and backing this cause is a humanitarian and civilizational task that is required by the prerequisites of truth, justice and common humanitarian values.

39. From a legal and humanitarian perspective, the liberation of Palestine is a legitimate activity, it is an act of self-defence, and it is the expression of the natural right of all peoples to self-determination.

40. In its relations with world nations and peoples, Hamas believes in the values of cooperation, justice, freedom and respect of the will of the people.

41. Hamas welcomes the stances of states, organisations and institutions that support the rights of the Palestinian people. It salutes the free peoples of the world who support the Palestinian cause. At the same time, it denounces the support granted by any party to the Zionist entity or the attempts to cover up its crimes and aggression against the Palestinians and calls for the prosecution of Zionist war criminals.

42. Hamas rejects the attempts to impose hegemony on the Arab and Islamic Ummah just as it rejects the attempts to impose hegemony on the rest of the world's nations and peoples. Hamas also condemns all forms of colonialism, occupation, discrimination, oppression and aggression in the world.

May 2017

Appendix 04

(Memo prepared by Hamas Political Bureau in 2000 just before the eruption of the second Intifada)

The Islamic Resistance Movement (Hamas)

First: Definition

The Islamic Resistance Movement (Hamas) is a Palestinian Islamic struggle (*mujahidah*) movement whose supreme frame of reference is Islam and whose goal is the liberation of Palestine.

Second: Phases of evolution and development

A- The Movement's historic roots: (1946-1967)

Hamas is considered the "the intellectual and dynamic extension of Jama'at Al-Ikhwan Al-Muslimin (Muslim Brotherhood) in Palestine whose foundations were laid in the 1930s and 1940s when Ikhwan branches were founded in Yaffa, Haifa, Jerusalem and Gaza. Upon the increase in the number of the branches, the group organized a conference for the branches of the Ikhwan in Palestine which convened in the city of Jerusalem from 29 to 30 March 1946 with the aim of unifying and coordinating the efforts of the branches to confront the Zionist project. The second conference convened in Haifa in October 1947 when the conferees announced "the determination of the Ikhwan to defend their country with all means and their readiness to cooperate with all the national associations to serve this purpose." The role of the Ikhwan reached its zenith in Palestine during the participation of the brigades of the Ikhwan volunteers from Egypt, Syria, Jordan and Iraq in the battles that raged against the Zionist gangs on the even of the Nakbah (catastrophe). The group continued its political and social activity in the wake of the Nakbah; one of its most significant accomplishment was foiling the project to re-settle the refugees in the north of Sinai in 1955 and mounting a number of operations, particularly from within the Gaza Strip, across the borders against the Zionist enemy just before 1956.

B- The phase of preparation for launching the movement's project (1967-1980)

The 1967 defeat and the consequent occupation of the West Bank, the Gaza Strip and other Arab lands, namely Sinai and the Golan Heights, had numerous repercussions vis-à-vis the Palestinian issue. The most important repercussions were:

1. The role of Arab governments in as far as the Palestinian issue was concerned shrunk in favour of the popular role, which assumed the form of military resistance against occupation.

2. The role of the Palestinian people in confronting the occupation was bolstered and deepened; the entire people, with all their resources and factions, ended up in direct contact with the occupation in the West Bank and the Gaza Strip. Pursuant to that reality the movement had to face up to new challenges at the level of thought and practice.

3. A comprehensive reappraisal of all the intellectual and political trends during that phase opened the way for the launch of the resistance programme and for the Islamic awakening across the Arab and Islamic regions as an expression of the need of the peoples of the Ummah (pan-Islamic community), including the Palestinian people, to search for their historic identity and cultural affiliation in light of the vacuum and shock caused by the devastating 1967 defeat.

In the shade of these developments, the Palestinian Ikhwan inside the homeland and in the Diaspora proceeded along two paths:

The first path: Participating in direct military action against the Zionist occupation along the front that was available at the time, namely the Jordan River front. The Ikhwan operated from what was known at the time as the "camps of the sheikhs" that were existed under the umbrella of the Fatah movement from 1968 to 1970. The activity came to an end as a result of the Black September events. Ikhwan volunteers from Egypt, Syria, Jordan, Yemen, the Gulf countries and other places contributed to the experience.

The second path: Establishing the organizational infrastructure for a jihadi (struggle) project against the Zionist occupation in Palestine in particular and to confront the Zionist project in general.

To accomplish these objectives the Ikhwan undertook to work in the following fields:

1. Arouse the enthusiasm of the members of the Ikhwan to work in the field of Da'wah (calling people to Islam) and social reform.

2. Attract the youth, especially university graduates, to join the ranks of the Ikhwan. The group did indeed benefit from the opportunities made available to Palestinian students to pursue their university education abroad in attracting educated cadres who later on provided the solid foundation as well as the leadership of the movement.

3. Vitalize the process of building mosques in Palestine considering that they constitute a principal source of influence in society.

4. Establish numerous charitable and social institutions; these included Al-Mujamma' Al-Islami (The Islamic Centre) and Al-Jam'iyah Al-Islamiyah (The Islamic Society) in the Gaza Strip and a number of Zakat committees and charitable foundations in the West Bank.

5. Move within the Palestinian people inside Palestine and in the Diaspora with the aim of attracting support and membership, encouraging work for the Palestinian

cause in confrontation of the Zionist project and reasserting the Islamic dimension of the conflict.

6. Construct frameworks and institutions to support the Palestinian people inside Palestine and founding a number of platforms for Palestinian student activism in the various arenas and around the world. The movement succeeded during that phase in building a solid organization foundation supported by an institutional edifice that geographically extended across the West Bank and the Gaza Strip. It was able too to restore some aspects of Islamic observance in the public sphere inside Palestine.

C- The Founding Phase (1980-1987)

This is the phase that witnessed, in interdependence, a continuation of the process of construction on the one hand and joining the activities of the national resistance campaign on the other. During this phase, the movement sought to strike a balance between, on the one hand, horizontal expansion and attracting members and on the other hand vertical expansion in terms of attending to education and reinforcing specialization within the organization and forming the appropriate apparatuses to provide for the needs of the phase of open resistance against occupation, the phase during which the "Hamas" comprehensive project of jihad was crystallized intellectually and organizationally. Some of the most significant stations that mark this phase are as follows:

1. The emergence of the Islamic student action through the creation of Islamic blocs inside the universities of the occupied land and in some Arab and Western countries.

2. Expanding the construction of mosques and affirming their roles in da'wah, guidance and social change.

3. Preparing for the launch of military action against occupation. Some of the movement's early military formations were uncovered and disbanded, especially the military organization led by Sheikh Ahmad Yassin in 1984.

4. Proceeding in the direction of grassroots resistance action and mobilizing the internal ranks of the movement toward the same objective. This was expressed in terms of what was called the 'mosque revolutions' of 1981, 1982 and 1983. The mobilization reached its zenith with the martyrdom of Jawad Abu Sulmiyah and Sa'ib Dhahab at Birzeit University in 1986. Numerous confrontations took place at the Islamic University afterwards. The Israelis cordoned the university more than once wounding and detained many of its students.

5. Forming the specialized apparatuses within the movement such as the one called the "Munazzamat Al-Jihad wa Al-Da'wah" (MAJD), which constituted the movements security apparatus in 1985, and such as the military apparatus called "Al-Mujahidun Al-Filastiniyun" in 1987, which undertook direct action against the occupation and its collaborators.

6. During this phase the movement worked under a number of banners or names including Al-Ittijah Al-Islami, Al-Haraka Al-Islamiyah and others.

7. Outside Palestine, the movement and its Diaspora branches continued their efforts to complete the building and founding of the movement's project of confronting the Zionist enemy in full harmony and in complementation with the efforts of the movement inside Palestine. The effort outside Palestine focused on the following:

a- building student, intellectual and social platforms;

b- developing and diversifying charitable work so as to support the Palestinian people on the inside and help them remain steadfast;

c- completing the project's vision and its general plans and formations;

d- setting up the action committees and apparatuses needed by the project in the various fields; and

e- encouraging Islamic and national movements in the Arab and Islamic worlds to include in their priorities working for the Palestinian issue and confronting the Zionist threat.

The movement succeeded during this phase in achieving a marked increase in its membership. Most of the new recruits happened to be intellectuals and university students. It also managed to render Islamic observance a cultural norm within Palestinian society whereas it was quote rare in the 1970s and early 1980s. The movement was also able to form a powerful security apparatus thanks to the soundness of its organizational structure and the profound sense of belonging to it by its members. All of these factors contributed positively to enhancing the speed at which the Hamas project came to fruition in the Palestinian arena.

D- The Phase of the Launch (1987-1994)

This is the phase in which the project of the Islamic Resistance Movement (Hamas) was launched consequent to a preparation that extended over several phases. The proclamation of the project was first made in a communiqué issued in November 1987 and distributed among the masses to warn against the danger posed by the collaborators and expose the methods used by the enemy to trap Palestinian individuals into collaboration. However, the date that acquired special symbolism was the 14th of December 1987. It was considered the day the movement was created and was associated with the eruption of the first Intifada. In fact, the communiqué was not intended to declare the birth of the movement because it had already been in existence and had already been active in the field. What it did, however, was to mark the day on which the masses were informed about the existence of the movement and about the activation of its role in confronting the occupation. The communiqué signalled the start of a phase in which priorities had to be rearranged and to settle for good the dispute about which comes first liberation or change in favour of the former. Resisting occupation became the basic programme of the movement without contradiction whatsoever with the programme of da'wah and the efforts pertaining to social change; it signaled a new phase in which the movement moved to the fore in the expanse field of resistance.

Some of the most significant stations that mark this phase are as follows:

1. The movement played a leading role in triggering the Intifada; it was the first organization to interact with the events and its interaction was the most intense; and it was the most capable organization to lead and mobilize.

2. During this phase, the movement ran the activities of the Intifada independently of the PLO factions that functioned under the banner of United National Command.

3. The movement played a principal role in developing the Intifada from a popular format to qualitative forms of resistance ranging from the kidnapping of soldiers to the war of knives and finally the martyrdom operations. The peak was in 1993 when the movement's military wing "Martyr Izziddin al-Qassam Brigades" carried out 20 military operations in which 32 Israeli soldiers or Jewish settlers were killed.

4. The movement was subjected during this phase to several mass-detention campaigns the biggest of which was in 1989 when Sheikh Ahmad Yassin and the leadership of the movement were detained. Major blows were repeatedly dealt to the movement in 1990 and 1991. However, the movement was able every time to surpass the crisis, rearrange its ranks and learn from the experience.

5. The major blows dealt to the movement were associated with military operations involving the killing or kidnapping of a number of Israeli occupation troops. The 1989 blow was associated with the kidnap and killing of Israeli soldiers Ilan Sa'adon and Avi Sasportas while the 1990 blow followed the Yaffa launch operation in which martyr Marwan Al-Zayigh and struggler Ashraf Al-Ba'luji killed three Zionists. One of the biggest blows dealt to the movement was the deportation of nearly 400 movement leaders and cadres to Marj Al-Zuhur in South Lebanon. The background to this was the capture and killing of Israeli officer Nissim Toledano. The movement's deportees were able to turn their deportation into a political and media protest and a heroic feat so much so that the enemy was forced to return them to Palestine.

6. The movement rejected what went on of open or secret negotiations between the Zionist side and the PLO and expressed its position through communiqués, statements and other forms of political expression. At the time, preparations were being made on the ground for concluding the Oslo Accords. The deportation came within that context.

During that phase, the movement assumed a leading position in resistance and military action. It greatly expanded its membership and gained considerable respect in many Arab capitals. This represented the start of the movement's external relations. That phase proved the soundness, effectiveness and correctness of the measures and development phases of the movement's project, whose effectiveness, continuation and ability to overcome crises, with the Grace of Allah, were guaranteed.

E- The Post-Oslo Phase (1994-2000)

This is the phase in which the movement stood in the face of the tide of peaceful political settlement with the Zionist enemy in the aftermath of the conclusion of the Oslo Accords on 13 September 1993. The movement emerged as the main armed faction to continue the resistance and the jihad against the Zionist occupation, a task

for which it made enormous sacrifices offering scores of martyrs and hundreds of prisoners and detainees. The campaign against the movement peaked in 1996 in the form of an alliance among local, regional and international powers as expressed by the Sharm Al-Sheikh Summit – or what was called then the war on terrorism summit – convened in the aftermath of the revenge attacks carried out by the movement in retaliation for the assassination of martyr Engineer Yahya Ayyash. Despite the measures adopted to undermine the movement and suppress its resistance, the movement was able to come out of that crisis much stronger and much more effective both militarily and politically. Subsequent events vindicated the movement and proved its credibility of its position vis-à-vis Oslo and the philosophy of a peaceful settlement to the conflict in the region. The movement proved capable of adapting to political and security changes, both internally and externally, in a manner that preserved the movement's jihad project and its political and social programmes.

Conclusion:

Since it started, the Hamas project passed through different circumstances and several phases. At every phase since the Haifa conference of 1947, it was absolutely clear that the Zionist project was absolutely and radically contradictory to our religious beliefs and national interests; it was both necessary and inevitable to clash with it, to do all that is possible to confront it and to provide for the proper circumstances for eliminating it. Subjective and objective circumstances prevented the Hamas project from materializing on the ground for some time. But when the right conditions became available, the project started rebuilding itself, putting up its structure and crystallizing its plans and policies. On 8 December 1987, the day on which the first Intifada erupted, was the day the Hamas movement was launched officially and practically. Its first communiqué was issued on 14 December 1987 to proclaim to the public the emergence of the movement having attained full growth of its structure and clarity of its vision about its role in confronting the Zionist occupation.

Third: The Conflict with the Zionist Project in the Thinking of Hamas

Hamas considers the conflict with the Zionist project a civilizational and existential conflict that cannot be ended without eliminating its cause, which is the establishment of the racist colonial Zionist entity in the land of Palestine.

The movement's view of the Zionist project is based on the following parameters:

1. The Zionist project represents the convergence of Western colonial interests in the region with the interests of the Zionist movement and its ambitions in the land of Palestine, which are often justified in the name of ideological myths espoused by Jewish and Christian Zionists.

2. The Zionist entity is a colonial settlement entity that is based on the idea of uprooting the Palestinian people and driving them away from their land by force to replace them with settlers using all means of terrorism.

3. The Zionist project is an expansionist one; it seeks to impose its hegemony on the entire region and control its resources. As such, it represents a real danger not only to Palestine but also to the entire Arab and Muslim world.

4. This project does not accept coexistence with others; it is dominated by the inclination toward hegemony and imposing control over others to serve the interests of the Zionist Movement in the region and the entire world. Therefore, it would be futile to seek to make peace or reach a settlement with it.

5. The Zionist entity constitutes and effective colonial means of breaking the geographic contiguity among the Arab countries in Asia and Africa; it is simply aimed at thwarting any renaissance project in the region. It does, thus, seek to accomplish the colonial goals of obstructing the project of Arab and Islamic unity.

Fourth: Hamas vision of Liberation

Hamas believes that the battle for the total liberation of Palestine from the Sea to the River will not succeed unless the efforts in three main circles are intertwined. These are:

a- The Palestinian Circle: This is the spearhead in the battle of liberation; its role is summed up in maintaining the jihad and the resistance, continuing to adhere to the national rights and invariables and keeping the flame of jihad on so as to keep the issue alive within a national program whose basis is resistance and the existential antagonism of occupation until such time when the two other circles are ready.

b- The Arab Circle: Since the Zionist project poses a danger to the entire Arab Ummah, and in view of what Palestine represents in terms of ideological and nationalist dimensions, the role of the Arab Circle in liberation is fundamental and central; the Arab Ummah constitutes the potential force upon which the task of liberation depends.

c- The Islamic Circle: In as much as the Palestinian issue is an Arab issue it is Islamic too; it is of concern to every Muslim on the face of the earth because it is an Islamic endowment land that embraces within it the first of the two Qiblas and the third most important mosque which the Prophet peace be upon him visited during his night journey to the Upper Heavens. All Muslims, both as individuals as well as communities, shoulder the duty of contributing with whatever they afford to the task of liberating Palestine. The Islamic Ummah is considered the strategic depth and the reserve to which the Palestinian people and the Arab Ummah will resort in their endeavor to liberate Palestine and remove the Zionist entity from it.

Fifth: Military Action in Hamas Program

Military action in the Hamas project constitutes the strategic means for the liberation of Palestine and confronting the Zionist project; it is the sole guarantee for the continuation of the conflict and for preoccupying the Zionist entity so as to thwart its expansionism outside Palestine. The movement considers military action the real expression of the legitimacy of rejecting the occupation and resisting its existence on

Palestinian soil. This legitimacy derives from Divine religions, international norms and human history.

Military action within the movement is subject to fixed policies; the most important of these are:

1- The conflict with the Zionists is not linked to their religious affiliation but because they occupy our land, desecrate our shrines and violate our people.

2- Resistance, with all its forms, is aimed at ending the occupation and will not stop until it is defeated and ended.

3- Hamas military action is confined to the land of Palestine whether that occupied in 1948 or occupied in 1967.

4- With its military action, the movement does not target civilian Zionists; it only target Zionist military targets. Civilians may, however, be inadvertently hit or may be targeted only in retaliation for the enemy's targeting of Palestinian civilians.

Sixth: Political Action in Hamas Program

In addition to its military program, the movement possesses a political program that is based on mobilizing the resources of the Palestinian people and the Arab and Islamic Ummah and dedicating them to ending the Zionist project and establishing an Arab Islamic state in the whole of Palestine. It is in the light of this that the movement determines its policies and stances vis-à-vis the various issues different developments. The following are some of Hamas most important policies:

A) Hamas stance toward the Palestinian forces and factions:

1- The movement believes in a national unity based on preserving the national invariables; such national unity is an important underpinning of steadfastness and liberation.

2- Hamas believes that the arena of Palestinian national action is spacious enough for all visions and opinions concerning resistance against the Zionist project .

3- Emanating from the desire to give priority to common denominators and common grounds, Hamas seeks to cooperate and coordinate with all the forces, factions and organizations working in the Palestinian arena.

4- Hamas seeks to bolster joint national action. It believes that any formula for joint Palestinian national action must be based on the commitment to work for the liberation of Palestine and the commitment not to recognize the Zionist enemy or grant it the right to exist on any part of Palestine.

5- No matter how much difference exists in view points or in opinions as to how to do things in the arena of national action, Hamas believes that no one has the right under any circumstances to use weapons or resort to violence to settle disputes or impose views or opinions within the Palestinian arena. It is for this reason that the movement has always exercised self-restraint toward the repressive measures taken

against it at certain times. It has been motivated to persevere by the desire to save the Palestinian blood and to serve the supreme Palestinian interest.

6- The movement believes in the necessity of combining all the efforts in the Palestinian arena in order to establish a wholesome Palestinian society that enjoys freedom, equality and political pluralism within the framework of the basic identity and the sublime values of the Palestinian society and the Arab and Islamic Ummah.

B) Hamas position toward the peaceful settlement

1- The movement has repeatedly affirmed that it is not against the principle of peace; but the peace it seeks is that which restores to the Palestinian people their rights and guarantee their independence and sovereignty over their entire land. Such peace can only be accomplished in the shade of strength and steadfastness not in the shade of weakness and capitulation.

2- The movement considers the agreements concluded between the occupation and certain Palestinian parties to be rejected concessions and comprises over the national rights of the Palestinian people and the rights of the Ummah to its holy places.

3- The movement believes that the settlement agreements grant the enemy the right to exist, bestow legitimacy on the its occupation of Palestine and gives it the opportunity to expand and extend by virtue of cultural, economic and political normalization programs with the Arab and Islamic countries; as such they constitute a real danger to the presence and future of the Arab and Islamic Ummah.

Because of the aforementioned reasons as well as other considerations, the movement has rejected the settlement plans and what emanated from them such as the agreement concluded at Oslo, Wye River, Sharm Al-Sheikh and other places. The movement considers all these projects and accords to be attempts to liquidate the Palestinian issue, deny the Palestinian people the right to claim their legitimate rights in their lands and holy places, deny the refugees the right to return to their homes and deny the Palestinians the right to resort to legitimate means to regain their rights. Additionally, they are aimed at denying the majority of the Palestinian people the right to live on their soil and in their homeland. These accords have led to diverting the conflict from the right direction and have had a negative impact on the relations among the various Palestinian forces and factions.

C) Hamas External Relations

1- Hamas believes that disagreement over political developments does not bar it from communicating and cooperating with any party that is prepared to support the steadfastness and resistance of our people against the oppressive occupation.

2- Hamas does not concern itself with the internal affairs of the other countries and does not interfere in their domestic policies.

3- Hamas seeks to encourage Arab and Islamic governments to resolve their disputes and unite their positions toward pan-Arab or pan-Islamic causes. The movement

refuses to take sides in disputes standing by one party against the other and refuses to join any particular political axis against another.

4- Hamas believes in Arab and Islamic unity and would support any endeavor in this regard.

5- Hamas demands all Arab and Islamic governments, parties and forces to perform their duty of supporting the cause of our people and in assisting them in their steadfastness and confrontation of the Zionist occupation. It calls on them to facilitate the activity of Hamas and help it undertake its mission.

6- Hamas believes in the importance of establishing close ties with the Ummah's various Islamic and nationalist forces and movements. It had in fact been doing exactly that by means of an extensive network of close relations with the aim of mobilizing the efforts of the Ummah in confronting the Zionist project which is hostile to the Ummah.

7- Hamas believes in the importance of dialogue with world governments and international forces and parties irrespective of their faith, nationality or political system. Hamas does not object to cooperating with any party in the world in the service of our people's just cause and as part of the endeavor to secure their legitimate rights.

8- Hamas does not declare hostility against anyone on the basis of religious belief or racial roots; nor does it oppose any country or organization so long as it does not practice injustice against our people or support the Zionist occupation in its aggression against our people.

9- Hamas is keen on confining to Palestine the arena of confrontation with the Zionist occupation; it would not want to extend the battlefield to any other arena.

10- Hamas seeks to persuade governments and international organizations or institutions to stand by the just cause of our people and to condemn the repressive measures adopted by the occupation in contravention of the principles of international law and the values of human rights. The objective is to form an international public opinion that would pressure the Zionist entity so as to end its oppressive occupation of our land.

D) Hamas position toward members of the other Divine religions

Hamas believes that Islam is the religion of unity, equality, tolerance and freedom. It is a movement with humane and civilizational dimensions; it does not adopt a hostile position against anyone except those who initiate hostility against the Ummah. Hamas believes that living in the shade of Islam is the ideal climate for coexistence among affiliates of the Divine religions; history provides the best testimony to this fact. The movement seeks guidance from the Qur'anic verse that says "There is no compulsion in religion;" and the Qur'anic verse that says " Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loves those who are just."

Emanating from these values, Hamas respects the rights of other faith communities. As for the Christians living in Palestine, Hamas considers them to be partners who share the homeland and who have been subjected to the same oppressive measures to which their Muslim brothers have been subjected at the hands of the occupation authorities; they have participated in confronting the occupation and in opposing its racist policies; and they are an inseparable part of the Palestinian people with full rights and full responsibilities.

Hamas Political Bureau

June, 2000

Appendix 05

This is what we struggle for

(Memo prepared by Hamas Political Bureau in the late 1990s upon the request of Western diplomats in the Jordanian capital Amman)

The Islamic Resistance Movement (Hamas) is a Palestinian national liberation movement that struggles for the liberation of the Palestinian occupied territories and for the recognition of Palestinian legitimate rights. Although it came into existence soon after the eruption of the first Palestinian intifadah (uprising) in December 1987 as an expression of the Palestinian people's anger against the continuation of Israeli occupation of Palestinian land and persecution of the Palestinian people, Hamas' roots extend much deeper in history.

The movement's motivation for struggle has been expressed by its founder and leader Sheikh Ahmad Yassin: "the movement struggles against Israel because it is the aggressing, usurping and oppressing state that hoists the rifle in the face of our sons and daughters day and night."

Hamas considers itself an extension of an old tradition that goes back to the early twentieth century struggle against British and Zionist colonialism in Palestine. The fundamentals from which Hamas derives its legitimacy are mirrored in the very name it chose for itself. Its Islamism means that it derives its guiding principles from the doctrines and values of Islam. In other words, Islam is Hamas' ideological frame of reference. It is from the values of Islam that the movement seeks inspiration in its mobilisation effort and in compensating for the huge difference in material resources between the Palestinian people and their supporters on the one hand and Israel and its supporters on the other.

The prospect of the movement initiating, or accepting, dialogue with Israel is non-existent at present because of the skewed balance of power between the Palestinians and the Israelis. In Sheikh Yassin's own words: "There can be no dialogue between a party that is strong and oppressive and another that is weak and oppressed. There can be no dialogue except after the end of oppression."

The forms of resistance adopted by Hamas stem from the same justifications upon which the national Palestinian resistance movement based its struggle for more than a quarter of a century. At least the first ten articles of the Palestinian National Charter are completely compatible with Hamas' discourse as elaborated in its own Charter and in other declarations. Furthermore, the same justifications for resistance had, prior to the emergence of Hamas in December 1987, been recognised, or endorsed, by a variety of

regional and international bodies such as the Arab League, the Islamic Conference Organisation, the Non-Aligned Movement and the United Nations. The recognition that the Israeli occupation of the West Bank and Gaza in 1967 is illegal can be clearly read in UN Security Council Resolutions 242 and 338.

In spite of the initiation of peace negotiations and eventually the signing of the Oslo accords between the PLO and Israel, Hamas continued its struggle having recognized the failure of the peace process to bring about an end to occupation. Hamas believes that the majority of the Palestinian people has come to the same conclusion and is therefore discontent with the path taken by the PLO to create peace with Israel.

Oslo defenders claimed for months following its signing that it would bring an end to occupation and that, therefore, the Palestinians needed no longer exercise armed struggle against the Israelis. But eight years after Oslo, the following are the dividends of peace:

1. The territories occupied in 1967 are still occupied.
2. Like never before, the West Bank and Gaza have been carved, mutilated and turned into isolated islets of human concentrations, or cantons, administered on behalf of the Israelis by the PA.
3. Existing Jewish settlements continued to expand and new ones have been erected.
4. Jerusalem is being expanded and de-Arabised.
5. Large areas of land have been confiscated to allow for the construction of by-passes for the exclusive use of Jewish motorists and especially settlers who illegally live on confiscated Arab land.
6. Thousands of Palestinians continue to be detained in Israeli prisons.
7. Various forms of collective punishment continue to be adopted including the demolition of homes, the closure of entire areas and the enforcement of economic blockades, the destruction of Palestinian infrastructure and the uprooting of trees and crops.
8. The economic situation is much worse than ever before.

In other words, the peace process has not improved the conditions of Palestinians under occupation and does not seem to promise any better future. The claim that armed struggle was no longer necessary (it should be noted here that no one within the Palestinian camp claimed it was illegal) has therefore been refuted by reality, giving credence to the argument of Hamas (which is no different from the argument adopted before Oslo by the nationalist movement as a whole and that continues to be adopted by a score of Palestinian factions opposed to Oslo) that armed struggle is the only real means of liberation.

In spite of the overwhelming militant image it has in the minds of many people in the West, Hamas is not a mere military faction. It is a political, cultural and social grass

root organisation that has a separate military wing specialised in armed struggle against Israeli occupation. Apart from this clandestine military wing, all other sections within Hamas function through overt public platforms. The military wing has its own leadership and recruiting mechanism.

Hamas social and educational activities in the Occupied Territories have become so entrenched within the Palestinian community that neither the Israelis nor their peace partners in the Palestinian Authority have been able to extricate. The fact of the matter is that Hamas, contrary to Israeli assessment, acts as an infrastructure to the numerous cultural, educational and social institutions in Gaza and the West Bank that render invaluable and irreplaceable services to the public. In other words, it is Hamas that gives life to these institutions and not the reverse. The Israelis have repeatedly told the PA to close them down. The PA has tried but failed. A crackdown on these institutions amounts to a declaration of war not against Hamas but against the Palestinian community as a whole.

Contrary to the experience of most other Palestinian factions during the seventies, Hamas armed struggle emanates from Palestine and is restricted to its territory, to what Hamas considers to be the legitimate battlefield. By limiting its armed struggle to resisting occupation, the movement has successfully averted Israeli attempts to drag it to a battle outside Palestine. The assassination attempt on the life of Khalid Mish'al, Hamas political head, was clearly intended to embroil the movement in a war of attrition outside Palestine; a battle Hamas has continuously tried to avoid. Adhering to this position on the part of Hamas has made it rather difficult for the Israelis and their allies, especially in the USA, to convince the world's public opinion that Hamas is a terrorist group. By all standards, Hamas is a national liberation movement whose military effort is directed solely and exclusively at the foreign occupiers.

Hamas' military wing, the Brigades of Martyr 'Izziddin Al-Qassam, have planned and carried out a number of martyrdom operations that are usually described in the Western media as suicide operations. These operations are in principle directed against military targets. Targeting civilians is considered an aberration from Hamas' fundamental position of hitting only military targets; they represent an exception necessitated by the Israeli insistence on targeting Palestinian civilians and by Israel's refusal to agree to an understanding prohibiting the killing of civilians on both sides; an understanding comparable to the one reached between Israel and Hezbollah in southern Lebanon. It is worth recalling that the first martyrdom operation came in response to the massacre of Muslim worshippers as they kneeled in prayer in Al-Masjid al-Ibrahimi at dawn on the fifteenth day of the fasting holy month of Ramadan (25 February 1994).

Sheikh Yassin, who repeatedly offered the Israelis a truce that has always been rejected by the Israelis, explains that Hamas does not endorse the killing of civilians,

but that it is sometimes the only option it has if it is to respond to the murdering of Palestinian civilians and the cold-blooded assassination of Palestinian activists.

Notwithstanding its disagreement with the PLO and the Palestinian Authority (PA), Hamas considers all Palestinians to be victims of Israeli occupation and therefore would not be drawn into inter-Palestinian factional strife. Hamas firmly believes that many of those who at one stage had some hope in Oslo, including a large segment of Yassir Arafat's own Fatah faction, have been disillusioned, have realized the futility of the exercise, and have realized that they have no option but to resume the struggle until the occupation is brought to an end.

Hamas considers all peoples of the world potential friends and supporters of the Palestinian people in their legitimate struggle for freedom, one that will alone guarantee the accomplishment of peace. Hamas believes that permanent peace is possible only if founded on justice and equal human dignity.

Hamas is aware of the fact that the balance of power in the world today is not in its favor, but does also realize that this has always been the case whenever an oppressed people started their long-term struggle for freedom from foreign occupation and tyranny. It is therefore our firm belief that eventually the Israelis will come to terms with reality and realize that they have no option but to deliver the Palestinian people from the servitude imposed on them by an occupation that violates all known international conventions and declarations including the various UN Security Council resolutions on this issue.

Hamas would be willing to consider a cease-fire agreement with the Israelis upon their agreement to end their occupation of all the territories occupied in the aftermath of the six-day war in 1967. This would entail the cessation of all hostilities on the part of Hamas in exchange, on the part of Israel, for:

1. the withdrawal of Israeli occupation troops from the West Bank and Gaza Strip;

2. the evacuation of all Jewish settlements illegally erected and populated by Jewish immigrants on Palestinian lands seized by force in both the West Bank and Gaza; and

3. recognizing the right of the Palestinian people to self-determination.

Hamas does recognize the importance of the international community in bringing about such a settlement and therefore extends its hand, in good faith and appreciation, to all such governments and communities that may be willing to take part in this process for the benefit of humanity and in accomplishment of a peace based on justice.

However, Hamas would enter into negotiations about the details of the settlement only once the Israelis have agreed to the aforementioned terms that are aimed at bringing about a full withdrawal from all the territories occupied in 1967.

Appendix 06

(Hamas Election Manifesto
for the Legislative Elections held on 25 January 2006)

In the name of Allah Most Gracious Most Merciful

Change and Reform List

"I only desire (your) betterment to the best of my power; and my success (in my task) can only come from Allah. In Him I trust, and unto Him I look."

(Hud: Verse 88)

Election Manifesto

For the elections of the Palestinian Legislative Council

2006

Islam is the solution
A hand builds and a hand resists
Yes to protecting the program of resistance
Yes to the freedom of the prisoners
Yes to rebuilding what occupation has destroyed
Yes to change and yes to reform

Introduction

Emanating from the belief that we stand at one of Islam's greatest fronts; in fulfillment of our responsibility toward our struggling people and their sacred and just cause; stemming from our duty to contribute to reforming the Palestinian reality so as to ease the suffering of our valiant people, bolster their steadfastness and protect them from the ills of corruption; and in the hope of reinforcing national unity and bolstering internal Palestinian ranks, we have taken the decision to participate in the Palestinian legislative elections of 2006.

The Change and Reform List believes that its participation in the legislative elections at this time and in the shade of the reality endured by the Palestinian cause falls within the framework of the comprehensive program for the liberation of Palestine, the return of the Palestinian people to their lands and homes and the establishment of the Palestinian independent state with Jerusalem its capital. This participation is intended to be an act of support for the program of resistance and Intifada which our have happily resorted to as a strategic option to end the occupation.

The Change and Reform List seeks to build an advanced Palestinian civil society that is based on political pluralism and the alternation of power and seeks to direct the Palestinian political system and its political reform program in a manner that would accomplish the national rights of the Palestinian people while bearing in mind the existence of the heavy, detested and oppressive occupation in our land and people and taking into consideration its overt interventions in every single detail of Palestinian life.

Our List's program is hereby submitted as a gesture of loyalty to our forbearing masses who see in this approach a wholesome alternative, who consider the Hamas movement to its hope for a better future and who see in this list an honest leadership for a better tomorrow God-willing.

The Almighty Allahs says: "Verily, this is My Way leading straight: follow it; follow not (other) paths: they will scatter you about from His (great) Path; thus does He command you, that you may be righteous." (Al-An'am; verse 153)

First: Our Invariables

Our List (The Change and Reform List) adopts a number of invariables that stem from the Islamic frame of reference. We believe these invariables to be unanimously agreed upon not only by our Palestinian people but also by our Arab and Islamic Ummah. These invariables are:

1. Islam and civilizational achievements constitute our frame of reference and way of life with all its political, economic, social and legal dimensions.

2. Historic Palestine is part of the Arab and Islamic land; it is the right of the Palestinian people that never vanishes with the progression of time and no military or alleged legal procedures alter this fact.

3. The Palestinian people are united in a single unit wherever they may be living and are an inseparable part of the Arab and Islamic Ummah. [Verily, this Ummah (Brotherhood) of yours is a single Ummah, and I am your Lord and Cherisher: therefore serve Me (and no other).] (Al-Anbiya'; verse 92)

4. Our Palestinian people are still living through the phase of national liberation; they have the right to endeavor to regain their rights and end the occupation using all available means including armed resistance. We must dedicate all our resources to support the steadfastness of our people and provide it with all the necessary means

of defeating the occupation and establishing the independent Palestinian state with Jerusalem as its capital.

5. All the Palestinian refugees and deportees have right to return to their lands and properties. The right to self-determination and all our national rights are considered inalienable rights; they are fixed and cannot be compromised by any political concessions.

6. Full adherence to out people's inalterable and genuine rights in the land, Jerusalem, the holy places, water, borders and a fully sovereign Palestinian state with Jerusalem as its capital.

7. Reinforcing and protecting national Palestinian unity is one of the priorities of national Palestinian action.

8. The issue of the prisoners and the detainees tops the list of the priorities of Palestinian action.

Second: In Domestic Policy

At the level of the domestic policy that governs Palestinian political life with all its dimensions we aspire to accomplish the following priorities which we consider a guarantee for a future that befits the struggle and sacrifices of our people and that would bolster their steadfastness in pursuit of comprehensive liberation and the aspired reform:

1. Preserving national Palestinian invariables and resisting any attempt to compromise them or concede them.

2. Preserving the Palestinian presence in Jerusalem and supporting it politically, economically, socially and culturally; resisting the enemy's attempts to judaize Jerusalem; and protecting the Islamic and Christian Palestinian holy cites from Zionist desecration.

3. Political liberties, pluralism, the freedom to form political parties, resorting for arbitration to the ballot boxes and the peaceful alternation of power are considered the best framework for regulating Palestinian political activity and the guarantee for reform, combating corruption and building an advanced Palestinian civil society.

4. Deepening the ropes of national unity, adopting dialogue and resorting to logic in addressing internal disputes and prohibiting fighting and all forms of the use of force or the threat to use it within the domestic framework.

5. Establish respect for public liberties (the freedom of expression, press freedom, the freedom of assembly, the freedom of movement, the freedom of work, etc.) as the living reality of the Palestinian people.

6. Palestinian blood is one of the taboos within Palestinian society; dialogue is the only acceptable method for resolving internal Palestinian disputes.

7. Prohibiting political detention and rejecting the confiscation of the right to express an opinion.

8. Protecting the institutions of civil society and vitalizing their role in development and in monitoring and inspection.

9. Correcting and rationalizing the role of the security agencies in protecting the security of the citizen, putting an end to erroneous and arbitrary practices, guaranteeing the liberties of citizens, protecting private and public properties and

subjecting the practices of these agencies to the control and accountability of the Palestinian Legislative Council (PLC).

10. Security collaboration, or the so-called security coordination, with the occupation is a crime against the homeland and against religion; it should be severely punishable.

11. Protecting the resistance and vitalizing its role in resisting the occupation and accomplishing the mission of liberation.

12. Building the decent Palestinian human being who is proud of his or her religion, land, freedom and dignity and who is willing to sacrifice the precious and the dear in the Cause of Allah.

13. Vitalizing resistance against the construction of the Apartheid wall of separation until it is brought down; all available means should be employed including international institutions and courts of justice.

14. Guaranteeing the rights of minorities and respecting them in all fields on the basis of equal citizenship rights.

15. Public funds, of all types, are the property of the Palestinian people and should be used in financing comprehensive Palestinian development in a geographically fair manner that would serve social justice away from abuse, extravagance, looting, corruption and embezzlement.

16. The prisoners, the wounded and the martyrs are the symbol of Palestinian sacrifice; caring for them and their families and seeking the release of the prisoners top the priorities in our national agenda.

17. Raising the efficiency of the institutions that specialize in supporting the prisoners and their families and the families of the martyrs and the wounded. The prisoner and the martyr will be treated as if they were still in employment and will be paid a stipend equivalent to the salary they would receive from employment in the civil service.

18. Preserving Palestinian Islamic and Christian endowments, protecting them from aggression and manipulation and developing them in a manner that would conform to the moral and material value of these endowments that are spread across the whole of Palestine.

19. Renovating the relationship between the PLO and the Palestinian National Authority (PNA) in a manner that should serve the national Palestinian objectives and respect the relevant fields of specialization.

Third: In External Relations

1. Consolidate relations with the Arab and Islamic world in all fields for being the strategic depth of Palestine and opening up to the rest of the world countries.

2. Revitalize the role of the Arab and Islamic masses in supporting the resistance of our people against occupation and in rejecting normalization with it.

3. Reject racial, territorial or sectarian claims that seek to divide the Ummah.

4. Establish balanced political relations with the family of nations in a manner that would guarantee an active participation in the international community, preserve the unity of the Ummah and (achieve) its advancement, protect the rights (of the Ummah) and its causes, foremost of which is the Palestinian cause, and deter any aggression it.

5. Emphasize at all international levels in all world forums the illegitimacy of the occupation and all that comes out of it.

6. Consider occupation to be the ugliest form of terrorism and resisting it with all means a right that is guaranteed by Divine religions and internal law.

7. Call on all the good peoples and powers in the world to join together in an alliance to establish a just world peace that is based on ridding the world of all forms of occupation and of the remnants of colonialism and preventing foreign intervention in peoples' internal affairs.

8. Restore respect for the Palestinian rights in Arab and international circles, especially the right to be free from occupation, the right of the refugees to return home and the right to establish a fully sovereign Palestinian state and to press for the issuance of resolutions and positions that support these rights.

9. Call on the international community to contribute effectively to supporting the rebuilding of towns and villages and to provide them with the necessary infrastructure.

10. Reject conditional grants that are only given in exchange for compromising our national invariables and seek earnestly to find honorable alternatives.

Fourth: In Administrative Reform and Fighting Corruption

1. Eliminate all forms of corruption, consider it a main contributing factor to weakening the internal Palestinian front and to undermining the foundations of national unity and pursue the investigation into administrative and financial corruption in prelude to referring the culprits to the courts of law.

2. Enhance transparency, monitoring, auditing and accountability in dealing with matters pertaining to the budget in all of its phases (planning, preparation, discussion, endorsement and implementation.)

3. Modernizing administrative rules and systems in a manner that would enhance the efficiency of administrative departments so as to contribute to providing services with ease and comfort at all levels.

4. Implement the concepts of decentralization, the delegation of authority and sharing in the process of decision-making.

5. Reformulate the policy of employment in the civil service in a manner that would guarantee equal opportunities for all the children of the Palestinian people on the basis of qualifications and fight resorting to nepotism, partisan favoritism and red tape in appointments and promotions in all government departments and public agencies.

6. Form a national parliamentary committee to inspect the dispensing of Palestinian endowment funds, both Islamic and Christian, in order to guarantee proper conduct and enable to accomplish its goals.

7. Fight slackness in government performance and the wastage of public funds and endeavor to bolster the sense of responsibility at all levels of employment. (Each of you is a shepherd [guardian] and each of you is responsible for his flock – as stated in a Prophetic *hadith*).

8. Adopting the policy of "where have you acquired this from?" in order to call to account those employed in the civil service.

Fifth: In Legislative Policy and Judicial Reform

1. Establish Islamic Shari'ah as the main source of legislation in Palestine.

2. Emphasize the separation among the three powers: the legislative, the executive and the judiciary.

3. Revitalize the role of the Constitutional Court.

4. Seek to enact legislations that would take into consideration the specificity of the values and heritage of the Palestinian people.

5. Establish a judicial training institute.

6. Restructure the Supreme Judicial Council so that its members are elected from among the judges of Palestine on the basis of qualifications and experience with no consideration for political or social factionalism or personal interests.

7. Enact laws aimed at vitalizing judiciary inspection so as to achieve effective auditing within the judiciary at all levels.

8. Enact laws that would bar the politicization of the General Prosecution and would ensure the observance of the parameters of qualification, inspection, review and accountability.

9. Amend the law pertaining to civil and commercial trials and the law of penal procedures so as to prevent the prolonging of court procedures, limit the number of adjourned cases and determine an upper time limit for each type of cases and for the period of adjournment.

10. Reinforce democracy and shura in the various fields and positions and achieve effective participation.

11. Put an end to the encroachment of any government on the constitution through the issuing of temporary laws or repetitive amendments or by delaying the implementation of laws or other forms of abuses.

12. Confront any legislations or agreement with the enemy that contravene the rights of our Palestinian people.

Sixth: In Public Liberties and Citizen Rights

1. Implement the principle that citizens are equal before the law and that they are equal in rights and duties.

2. Provide each citizen with security and with protection for his or her life and properties; no citizen should be subjected to arbitrary detention or torture or revenge.

3. End the intervention of the security agencies in the issuing of licenses for publications, research centres and public opinion polling institutions and stop their intervention in employment.

4. Reinforce the culture of dialogue and respect for all opinions that do not contradict the people's faith or their civilizational heritage and construct an information policy that is based on the principles of freedom of thought and expression, fairness and accommodation of diversity, pluralism and the right to choose.

5. Protect the rights of special categories (the prisoners and their families, the families of the martyrs, women, children, the disabled and the poor.)

6. Provide care for media institutions and guarantee the right of journalists to acquire information and to publish it.

7. Protect the freedom to form trade unions, preserve the independence of the trade unions and avoid all forms of hegemony.

8. Recognize political forces, encourage them and benefit from their role and support the various institutions of civil society.

9. Adopt the principle of equal opportunities and appointing the right person to the right position.

Seventh: In Educational Policy

Since education is the foundation for building the generation that is capable of sketching the future of the homeland and accomplishing the dream of freedom, liberation and independence, our List will seek to do the following:

1. Observe the foundations on which the philosophy of education in Palestine is based. These include the principle that Islam is a comprehensive system that attends to all aspects of life and that dignifies the human being striking a balance between individual rights and community rights.

2. Implement the rules pertaining to mandatory education and expand secondary education in both branches the vocational and the academic.

3. Develop the curricula and schooling methods in conformity with the philosophy and objectives of education in Palestine and according to the needs of the age.

4. Pay attention to the humanities and focus on languages especially the Arabic language at various levels.

5. Establish the ethics of the teaching profession, respect the rights of the teachers and develop their skills.

6. Enact legislations aimed at protecting the teaching and academic process in universities and higher education institutions from abuse, moodiness and favoritism.

7. Establish and develop institutions that specialize in providing care to the talented, high achievers and those with extraordinary capabilities.

8. Develop the foundations of higher education and support scientific research including the establishment of the Palestinian Scientific Research Centre.

9. Stop the use of school facilities for more than one term per day and increase the number of schools.

10. Reduce the number of pupils per class and the number of pupils per teacher at all levels of education especially in the elementary level.

11. Encourage the formation of student unions and provide them with support and with the appropriate climate so as to play their aspired role and so as for schools and universities to remain bastions of national action.

12. Provide all schools with sporting and cultural facilities as well as with laboratories and computers.

13. Provide schools across the homeland with the various specialties by attracting migrant Palestinian talents and training those who live inside the homeland.

14. Encourage scouting activities and internal tourism and include them in the educational requirements especially as part of the curriculum of national education.

15. Encourage private educational institutions at all levels (pre-university) because of the savings they contribute to the state budget and the competition they provoke within the educational sector as a whole.

16. Permit the licensing of quality non-profit private universities so as to encourage competition which in turn contributes to enhancing qualifications and to keeping our students at home with substantial savings to our economy.

17. Attend to vocational, technical and agricultural education and training.

18. Develop the educational strategies so as to focus on qualification and shun all forms of favoritism in employment. The quality of those graduating from the educational system will be considered first and foremost.

19. Support Needy University Students Fund and develop its mechanisms so as to have a higher level of transparency and objectivity and deliver aim to those who deserve it.

Eighth: In the Subject of Admonition and Guidance

1. Improve the efficiency of preachers and religious guides, equate their status with that of their peers in other ministries, provide them with rewarding incentives and formulate the rules and guidelines that achieve fairness.

2. End all forms of security intervention in this apparatus, enable the working scholars to perform their roles and end the policy of exclusion.

3. Review the Law of Admonition and Guidance so as to provide those who have the knowledge and the qualifications to perform their religious and national duties.

4. Care for the mosques, build more of them and reinvigorate their missionary and educational role in society.

5. Attend to the issues pertaining to *hajj* and *umrah* (pilgrimage) in order to enable pilgrims to perform their rituals with ease and comfort.

Ninth: In Social Policy

1. Support the correct foundation and cohesion of the Palestinian family so as to constitute the solid foundation that preserves our social values and moral ethics.

2. Establish social solidarity and encourage and expand the existing Social Protection Network so as to guarantee the social and political stability of both the family and the society and bolster the elements of steadfastness.

3. Provide social services (education, health and social security) and other public services to all citizens without discrimination, favoritism or partisanship.

4. Unify the pension system so as to achieve equality and fairness among pensioners.

5. With regard to Personal Status Law and Shari'ah Courts:

- There is a need to enact a single law derived from Shari'ah texts and from the recognized jurisprudential schools and to opt for what suits best the needs of the Palestinian Muslim society in the modern era.
- Enact legislations pertaining to the Shari'ah courts of various levels so as to be implemented in a unified manner (in Jerusalem, the West Bank and the Gaza Strip) including the laws of endowment, inheritance and non-Muslim sects.

- Seek a reasonable representation of the Shari'ah courts in the Palestinian Constitutional Court.

6. Preserve the social fabric of the Palestinian people and public morality, guarantee that social invariables are not violated and prevent any measures or legislations that may undermine them.

7. Support the social institutions that care for the various sections of society such as women, children, orphans, the poor and those with special needs.

8. Develop educational and vocational training centres and institutions to care for the prisoners when still in captivity and then when freed so as to integrate them into society and enable them to contribute to the development of the homeland.

9. Provide comprehensive educational and health care to the families of the martyrs and prisoners and all the needy segments of society.

10. Revitalize, organize and develop the zakat committeese.

11. Combat poverty by pursuing justice in wealth distribution and encourage charitable associations and lift restrictions that may impede their activities.

12. Develop systems of social security so as to help eliminate poverty and maintain social harmony in the Palestinian society.

13. Combat narcotics and intoxicants and all forms of corruption through education, awareness programs and exercising the law.

14. Support the institutions that care for the handicapped and those with special needs and develop programs to facilitate their integration into society.

15. Adopt a clear policy that would care for the human element inside the various departments by means of developing the human labor force and achieve job security and psychological stability for the workers.

16. Revitalize reconciliation committees and support them financially for they play an important role in resolving disputes among members of the community and in restoring climates of amicability and harmony among feuding parties.

Tenth: In Cultural and Media Policy

By virtue of the significant role played by cultural institutions and the media in forming the convictions and thoughts of citizens and hence the identity of the Ummah, our List will pursue the following:

1. Establish the media policy on the principles of the freedoms of thought and expression and on the value of honesty.

2. Immune the citizens, especially growing up young people, against corruption, Westernization and intellectual invasion and combat cultural normalization.

3. Facilitate the tasks of journalists and the mass media and guarantee the right of the masses to learn the truth.

4. End the intervention of the security agencies in the issuing of licenses for publications, research centres and public opinion polling institutions.

5. Elevate the level of public knowledge and awareness of rights, duties, responsibilities and their consequences.

6. Revitalize the public sector media and liberate them from factionalism and bolstering professionalism and transparency in their programs.

7. Found a public foundation, and encourage the founding of private ones, to specialize in Palestinian heritage, modern history and holy places.

8. Direct the official media to contribute to the advancement of Palestinian society and bolster its steadfastness. These media will be turned into pulpits expressing in truth the struggle of the Palestinian people and the nobility of their cause. They will be encouraged to provide a spacious platform for politicians, thinkers and journalists to raise the issues freely but without infringing on the national invariables.

Eleventh: In the Questions of Women, Children and the Family

1. Protection and Care for children emphasizing their right to proper bringing up, nutrition, physical and psychological care, guidance and education.

2. The Palestinian woman is a partner in jihad and resistance as well as in building and development.

3. Guarantee women rights and accomplish the legislative framework for supporting them and endeavor to enable women to contribute in social, economic and political development.

4. Shield women with Islamic education and through making them aware of their legitimate rights and affirm the woman's independent personality that is based on chastity, decency and observance.

5. Revitalize the role of voluntary and construction women institutions which are a significant section of civil society.

6. Establish units in the countryside to teach women the weaving of carpets and mats, spinning and other such crafts to provide the rural women with job opportunities.

7. Encourage utilizing women resources in the public sphere and highlight the role of women in building the society.

8. Support the stability of the family by means of:

- developing legislations specific to the working woman with the aim of achieving family stability and generational protection;
- showing solidarity with the families whose houses are demolished or whose children are detained or pursued;
- providing appropriate health clinics and hospitals so as to render health care to the family and attend to all the needs of maternity and childhood;
- protecting women from all forms of abuse and exploitation that demean them or treat them as if they were bodies and nothing else as happens in advertising or as in the case of embroiling them in illicit activities.

Twelfth: In the issues of the youth

1. Expand the founding of youth institutions and develop those of them that already exist so as to guarantee building a wholesome youth personality and to encourage dialogue among the youth.

2. Support sports and cultural clubs, put an end to interventions in their affairs and combat negative phenomena within them.

3. Support and encourage the talented and the innovative among the youth in various fields and provide them with job opportunities each in his or her field.

4. Provide care for the youth and immunize them against corruption and immorality.

5. Provide the youth, especially university graduate, with honorable and appropriate job opportunities.

6. Enhance the participation of the youth in political, social and cultural activities and in constructive arts.

7. Support the various sports teams so as to take part in local, Arab, Islamic and international tournaments and endeavor to construct sports halls and playgrounds to serve these ends.

Thirteenth: In Housing Policy

1. Allocate certain public property lands for the establishment of residential complexes and villages to distribute them among low earning citizens especially those whose homes were demolished or impoverished families and the families of martyrs and detainees.

2. Ease the problem of housing for low earners and ease the problem of crowding in housing especially inside the Gaza Strip and in some areas within the West Bank.

3. Encourage the construction of functional housing complexes that are annexed to public service institutions such as schools, hospitals, universities and other general facilities.

4. The equitable distribution of charitable housing premises so as to encourage benefactors to continue funding such projects.

5. Activate the construction sector by means of providing funding housing projects and public buildings projects in order to speedily contribute to:

- Solving the problem of unemployment among the Palestinians who used to be employed in Israel, especially that most of them possess experience and talents in construction;
- Reduce the rental bill the government pays for the buildings it occupies and consequently alleviate some of the burden borne by the budget and divert the resources to other priorities;
- Develop social services by means of providing new premises or expanding existing ones especially in the sectors of education and healthcare.

6. Provide housing for junior civil servants and low earners at cost price or with interest free loans, encourage housing contracts and remedying cases of insolvency.

7. Adopt structural and regional plans for Palestinian towns and villages.

Fourteenth: In Health Policy

1. Reform the health insurance system and make it available to all citizens starting with the poor who are in more need.

2. Set a time plan for achieving medical sufficiency in all fields so as to prevent the expenditure of public funds on treatment abroad.

3. Expand the services of primary healthcare and public health centres to facilitate medical treatment and ease the burden on citizens in villages and small towns.

4. Develop public health services so as to surpass in quality the services provided by the private sector.

5. Draw the necessary plans to expand the construction of fully integrated hospitals depending on the needs of various regions.

6. Achieve a balance in specializations and expertise in hospitals and an equitable distribution of qualified personnel and equipment in all regions.

7. Provide rewarding incentives to doctors, nurses and other workers in the health sector who work in rural areas as well as to those with rare specializations in the health sector.

8. Encourage private and specialized health services.

9. Elevate the standard of the health sector (doctors, pharmacists, nurses and health administrators) to meet the needs and requirements of the Palestinian society.

10. Provide the appropriate health facilities to care for the wounded and the handicapped who were hit along the path of Palestinian jihad without discrimination among various segments of the Palestinian people.

11. Provide the free and appropriate healthcare to the families of the martyrs, the wounded, the invalids and the captives.

12. Endeavor to provide a clean environment by means of developing the culture of public cleanliness, planting trees along the roads and in public parks and encouraging private and public gardening.

13. Protect the environment and stop Palestinian environmental deterioration in coordination with international agencies and resist the continuing environmental pollution of the Palestinian lands as a result of the practices undertaken by the occupation and by Zionist settlements and expose these practices at the international level.

14. Maintain the Gaza coast so as to remain clean, pleasant and suitable for summer vacationing and tourism, stop infringements on it such as refuse dumping and prevent environmental pollution emanating from the pumping of household and industrial drainage into the sea.

15. Follow up the studies that have been prepared for the purpose of getting rid of the environmental disaster that emanated from the existence of treatment pools to the north of the Gaza Strip, allocate new land to increase the number of "refuse dumping sites" in the Gaza Strip and the West Bank and establish projects to make use of the refuse.

Fifteenth: In Agricultural Policy

1. Develop the agricultural sector and animal resources in the direction of achieving food security for the Palestinian people in prelude to accomplishing a surplus in production for export purposes.

2. Endeavor to categorize lands in Palestine, determine their agricultural uses such as for growing citruses, grains, fruits, etc., and enacting the necessary legislations for developing them.

3. Restructure and revitalize the farmers union across all the provinces so as to contribute to implementing the agricultural policies that are aimed at advancing this important sector.

4. Endeavor to adopt an agricultural loaning system to replace the interest-based system and encourage in-kind agricultural loaning.

5. Endeavor to bolster coordination among the concerned agencies within the agricultural sector with regard to policy making, production, manufacture and marketing and seek to open up Arab and international markets for Palestinian agricultural produce as part of the available preferential treatment agreements.

6. Adopt the approach of comprehensive rural development as a framework for agricultural development by means of providing the necessary infrastructure for agricultural projects.

7. Encourage the establishment of food processing projects so as to make use of leftovers; and develop the quality of locally produced seeds, insecticides and fertilizers.

8. Attend to the fisheries industry and protect the rights of fishermen.

9. Regulate the import, marketing and use of insecticides and agricultural or veterinary medications; rationalize the use of chemical fertilizers; and provide agricultural guidance services.

10. Encourage the reclaim of lands and support farming and irrigating them.

11. Endeavor to develop animal resources and bridge the gap between demand and supply.

12. Monitor the performance of the "Costal Water" Authority so as to serve the best interests of the homeland and the citizens.

Sixteenth: In Economic, Fiscal and Monetary Policy

The Almighty Allah says: "Those who, when they spend, are not extravagant and not niggardly, but hold a just (balance) between those (extremes)." (Al-Furqan; verse 67)

The Almighty also says: "Allah will deprive usury of all blessing, but will give increase for deeds of charity; for He loves not creatures ungrateful and wicked." (Al-Baqarah; verse 67)

1. Achieve economic and monetary independence and disengage with the Zionist entity and its economy and currency by ending the subordination to it and seeking to issue a Palestinian currency.

2. Review economic and fiscal legislations and regulations.

3. Provide the appropriate legal and procedural environment to encourage investment and enact additional and vital economic laws such as the law of preventing monopoly and the law of customs.

4. Endeavor to establish a "resisting economy" and encourage self-dependency; shun extravagance and abuse; and avoid unproductive projects or those that damage social and moral matrices such as nightclubs, gambling parlors, etc.

5. Thoroughly considered distribution of projects and expanding their geographic and human zones so as to protect them and lessen the likelihood of action by the enemy aimed at striking these projects or imposing siege or sanctions.

6. Reconsider the international economic agreements taking into consideration the special circumstances of the Palestinian economy. The following are among the most important agreements that will be reviewed:

- Paris economic agreement
- Free trade agreement with the United States of America
- Partnership agreement with the European Union
- Economic cooperation agreements with Egypt and Jordan

7. Develop economic and trade relations with the Arab and Islamic world through the conclusion of preferential trade agreements that would contribute to the development of Palestinian economy and assist it in ending its subordination to the Israeli economy.

8. Formulate economic policies (fiscal, monetary, operational, commercial, industrial and agricultural) that seek (during the term of the PLC which lasts four years) to accomplish balanced economic development, bolster local resources, protect vulnerable groups, preserve social solidarity, stabilize prices and wages, combat poverty, reduce unemployment, keep inflation under control, achieve economic growth and improve individual standard of living.

9. Develop the infrastructure so as to meet the requirements of the industrial and agricultural and public services sectors; concentrate on training and qualifying the Palestinian labor force so as to fulfill the needs of the Palestinian market and consequently solve the problem of dependence on the Israeli market for employment.

10. Protect public properties and assets and utilize them in a manner that would bring general benefit to current and future generations. This requires the implementation of an ambitious program of fiscal and administrative reform in PNA agencies and departments and the use of international aid in the best possible way so as to accomplish the objectives of comprehensive development away from extravagance and misappropriation and would as a result achieve social justice.

11. Review the prices of gas and other petroleum products and of electricity, telephone and water so as to alleviate the burden borne by citizens.

12. Attend to Palestinian production sectors through the implementation of the recommendations of serious scientific studies especially those that seek to develop the internal resources of the Palestinian economy.

13. Develop the Palestinian trade and customs policy so as to suit the developmental posture of the Palestinian economy and the objectives of Palestinian foreign trade.

14. Reformulate the income tax law so as for tax to become 'ascending' and therefore ease the burden on low earners; and amend indirect taxation in the Palestinian economy and reduce the value added tax so as to correspond to the Palestinian growth level.

Seventeenth: In Questions pertaining to Labor and Laborers

1. Respect, develop and encourage the activities of trade unions and specialized professional associations.

2. Setting a minimum wage limit for the various labor sectors so as to guarantee an acceptable standard of decent living.

3. Implement a serious national plan to deal with the phenomenon of unemployment. The plan should rely on developing the local resources of the Palestinian economy and the appropriate use of funds (whether local or through international aid).

4. Disseminate labor culture and awareness of rights and duties among all workers in the various sectors using different legitimate means and methods.

5. Include workers in all sectors in the comprehensive health insurance system.

6. Develop the law of labor and laborers so as to guarantee the rights of laborers including their right to form and join trade unionist activity and in a manner that would dispense justice to all workers in the various production sectors.

7. Link workers' wages and salaries to the inflation index.

Eighteenth: Transport and Passages

1. Rehabilitate all the roads across the homeland in accordance with modern specifications.

2. Construct new roads among towns and villages; citizens prejudiced reserve the right to be compensated.

3. Affirm the importance of active and free communication between the West Bank and the Gaza Strip.

4. Open free passages between Palestine and Egypt and between Palestine and Jordan and reject any degree of foreign intervention in these passages.

5. Endeavor to open the port and the airport so as to contribute to the development of the Palestinian economy and serve the facilitate communication among the children of the one people inside and outside.

Conclusion

The blessed Al-Aqsa Intifada has created new facts on the ground that rendered the Oslo program a thing of the past and different parties, including the Zionist occupation, have already spoken about "burying Oslo." Our people today are more united, more aware and more invincible. Hamas is approaching the elections having, with the help of Allah and in cooperation with all the honorable ones, reinforced the method of resistance and engraved it in the minds, hearts and souls of our people.

Brothers and sisters the voters,

This is our manifesto which we submit to you. We share your ambition and place our hand in yours. We do not claim to create miracles and we do not possess a magic stick.

However, together we aim and proceed toward achieving our national project along the path toward our greater goals: a single, free and guided Ummah.

Brothers and sisters the voters,

The responsibility is mutual and righteous deeds are raised and blessed by the Almighty Allah.

Our approach relies on trustworthy and qualified representatives who pledge sincerity to Allah and loyalty to Him, to the people and to the cause. So, rest assured that they will fulfill their promises and prove to be truthful to their slogans.

Brothers and sisters the voters,

When you stand before the ballot box, remember your responsibility when you meet the Almighty Allah. You are entrusted with your vote in choosing your representative to the Legislative Council. When this representative speaks and discusses issues pertaining to religion, to the homeland and to future he or she acts on your behalf. So, make sure you make the right choice through which you aim to please your Lord and your Prophet peace be upon him. "Truly the best of persons for you to employ is the (one) who is strong and trusty."

Yes, make the right choice for your happiness and the happiness of your people, God-willing.

"Islam is the Solution"

This is our path toward change and reform

Our program is our means to rebuild the society that has been destroyed by occupation and to protect its resistance

Our program is our course toward bolstering Islamic-national unity along the path of full liberation

Our program is the program of the entire people and the entire homeland

[And say: "Work (righteousness): soon will Allah observe your work, and His Messenger, and the Believers: soon will you be brought back to the Knower of what is hidden and what is open: then will He show you the truth of all that you did.]

(Al-Tawbah; verse 105)

Brothers and sisters the voters,

Your vote is a trust, so testify nothing but the truth