



March 13, 2024

The Rt. Honourable Justin Trudeau
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2
Email: justin.trudeau@parl.gc.ca

The Honourable Chrystia Freeland
Office of the Deputy Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2
Email: chrystia.freeland@parl.gc.ca

The Honourable Mélanie Joly
House of Commons
Ottawa, ON K1A 0A6
Email: melanie.joly@parl.gc.ca

The Honourable Bill Blair
House of Commons
Ottawa, ON K1A 0A6
Email: bill.blair@parl.gc.ca

The Honourable Arif Virani
House of Commons
Ottawa, ON K1A 0A6
Email: arif.virani@parl.gc.ca

The Honourable Ahmed Hussen
House of Commons
Ottawa, ON K1A 0A6
Email: ahmed.hussen@parl.gc.ca

Re: Canada's failure to prevent genocide, per art. 1 of the *Genocide Convention*

Dear Honourable Members:

We write to you as legal counsel to, and on behalf of, Hany Elbatnigi, Tamer Jarada, and Raed Sharif.

By way of background, our client Mr. Elbatnigi is a Canadian citizen of Palestinian origin. He currently resides in Canada. He lived in Gaza from 1952 to 1967 and continued to travel to and from the territory regularly ever since. He was in the Gaza Strip on October 7, 2023, and could not depart after Israel banned people from exiting after it commenced its bombardment. He was subjected to the first seven weeks of Israel's military demolition of Gaza but [managed to escape](#) on November 28, 2023. Mr. Elbatnigi has lost seventy-four members of his extended family as a consequence of the bombardment. His disabled brother and his brother's family remain trapped in Gaza. Despite his efforts, Mr. Elbatnigi has been unable to bring them out of the area.

Our client Mr. Jarada is also a Canadian citizen of Palestinian origin. He too currently resides in Canada. Mr. Jarada was born in Gaza and remained there until he was 25 years old. He arrived in Canada in 2011 as an international student. On October 7, 2023, most of his family resided in Gaza. He applied to bring family to Canada, but to date he has [received no approval from Canadian authorities](#). Since Israel's military assault on Gaza commenced, Mr. Jarada's mother, father, two sisters, two nephews, an uncle and his wife, three cousins, and spouses and children of two of those cousins [have all been killed](#).

Our client Mr. Sharif is also a Canadian citizen of Palestinian origin. He was born in the Jabalia refugee camp in Gaza but has permanently resided in Canada since 2009. Nearly all his family still live in Gaza, where they face relentless bombing from Israel. This includes eight of his siblings (six of whom are married with families of their own), as well as aunts and uncles on both sides of his family. He has lost a number of cousins, including one who was killed in a [direct strike](#) on the family home. On January 12, 2024, Mr. Sharif applied to have his youngest brother, Mohammed (28 years old), join him here in Canada. However, to date he has received no approval from Canadian authorities.

For the reasons outlined below, this letter serves to demand that Canada immediately take all actions within its power to prevent the commission of genocide in Gaza.

The Genocide Convention

As a party to the [1948 Convention on the Prevention and Punishment of the Crime of Genocide](#) ("the *Genocide Convention*"), Canada is [legally obliged](#) to comply with its provisions, including Article 1, which provides:

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish. [emphasis added.]

The November 17, 2023 statement of the International Commission of Jurists

The facts and circumstances surrounding Israel's ongoing military assault on Gaza, many of which were detailed and meticulously documented in South Africa's [Application](#) to the International Court of Justice ("the ICJ"), leave no doubt that there is now a serious risk that Israel is committing genocide within the meaning of Article II of the *Genocide Convention*.

Canada has had ample notice of the risk that Israel was committing genocide against Palestinian people of Gaza. As [stated](#) by the International Commission of Jurists ("the Commission") on November 17, 2023 (approximately five weeks after Israel commenced its current ground operation in Gaza):

The [Commission] is concerned that certain statements by senior officials and politicians in Israel disclose evidence of what may be characterised as intent to destroy Palestinians of the Gaza Strip.

For example, on 9 October, the Israeli Defence Minister Yoav Gallant said, “I have ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel, everything is closed. We are [fighting human animals](#) and we act accordingly.” On 10 October, the head of the Israeli Army’s Coordinator of Government Activities in the Territories (COGAT), Maj. Gen. Ghassan Alian, [addressed](#) a message directly to Gaza residents: “[Human animals](#) must be treated as such. There will be no electricity and no water, there will only be destruction. You wanted hell, you will get hell”. On 13 October, the Israeli Defence Minister said: “Gaza won’t return to what it was before. We will [eliminate](#) everything.”

The [Commission] is concerned that such statements by officials responsible for Israel’s ongoing military offensive in Gaza, with their expressed emphasis on the siege of the Gaza Strip, on depriving the population of essential needs, on the total destruction and elimination of everything and everyone in the Gaza Strip and on evacuation – taken together with well-documented patterns of reported crimes under international law in Gaza, such as indiscriminate bombardment of densely populated areas, including airstrikes resulting in extensive civilian casualties, attacks on medical units, transports and personnel, refugee camps, evacuation routes, humanitarian corridors and other vital civilian infrastructure, collective punishment and the forced transfer of over one million Palestinians from northern Gaza to the south – disclose evidence sufficient to trigger the duty of each State to take reasonable action to seek to prevent acts of genocide in Gaza.

[...]

The *Genocide Convention* imposes a minimum legal obligation on States to each take reasonable action to contribute toward preventing genocide, a duty that extends extraterritorially and applies regardless of whether any one State’s actions alone are sufficient to prevent genocide. The Court in *Bosnia v. Serbia* held that States with strong political links to the State concerned have a greater duty to use their influence in this regard, as the duty to prevent varies from State to State depending on its:

“capacity to influence effectively the action of persons likely to commit, or already committing, genocide. This capacity itself depends, among other things, on the geographical distance of the State concerned from the scene of the events, and on the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events”.

The Court also held that, “if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent, it is under a duty to make such use of these means as the circumstances permit”. Third State responsibility may be incurred if a State manifestly fails to take all measures that are within its power to prevent acts of genocide, and that might contribute to preventing such acts.

Since this statement by the Commission, Israel’s military assault on Gaza has caused vastly more death and destruction to Gaza’s civilian population and civilian infrastructure.

Moreover, since that time, senior Israeli government officials have continued to make statements that clearly evince the government’s genocidal intent.

The decision of the International Court of Justice in *South Africa v. Israel*

On January 26, 2024, the International Court of Justice [issued an order](#) (“the Order”) in relation to the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v. Israel*) (“the Application”).

The ICJ determined in the Order that it is plausible that Israel’s actions and omissions with respect to its military assault on Gaza violate the *Genocide Convention*.

In particular, the ICJ held at para. 54 of its decision that:

In the Court’s view, the facts and circumstances mentioned above are sufficient to conclude that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible. This is the case with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III, and the right of South Africa to seek Israel’s compliance with the latter’s obligations under the Convention.

The ICJ issued a number of provisional measures in response to South Africa’s genocide against Israel. According to [art. 94\(1\)](#) of the *United Nations Charter*, “Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.” However, since those provisional measures were announced, [Israel has failed to comply](#) with the Order of the ICJ.

Unequivocal evidence of genocidal intent

What is particularly compelling about Israel’s military demolition of Gaza are the numerous and unequivocal statements indicative of genocidal intent by Israeli government and military officials. The [ICJ’s Order](#) noted several examples of plausible genocidal intent by Israeli officials. In addition to the comments by Defence Minister Gallant (noted above), the ICJ observed the following:

52. [...] On 12 October 2023, Mr. Isaac Herzog, President of Israel, stated, referring to Gaza:

“We are working, operating militarily according to rules of international law. Unequivocally. 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. But we are at war. We are at war. We are at war. We are defending our homes. We are protecting our homes. That’s the truth. And when a nation protects its home, it fights. And we will fight until we’ll break their backbone.”

On 13 October 2023, Mr. Israel Katz, then Minister of Energy and Infrastructure of Israel, stated on X (formerly Twitter):

“We will fight the terrorist organization Hamas and destroy it. All the civilian population in [G]aza is ordered to leave immediately. We will win. They will not receive a drop of water or a single battery until they leave the world.”

53. The Court also takes note of a press release of 16 November 2023, issued by 37 Special Rapporteurs, Independent Experts and members of Working Groups part of the Special Procedures of the United Nations Human Rights Council, in which they voiced alarm over “discernibly genocidal and dehumanising rhetoric coming from senior Israeli government officials”. In addition, on 27 October 2023, the United Nations Committee on the Elimination of Racial Discrimination observed that it was “[h]ighly concerned about the sharp increase in racist hate speech and dehumanization directed at Palestinians since 7 October”.

More examples were provided by the South African legal team in their Application Instituting Proceedings before the ICJ. Those [include \(but are not limited to\) the following](#):

On 28 October 2023, as Israeli forces prepared their land invasion of Gaza, the Prime Minister invoked the Biblical story of the total destruction of Amalek by the Israelites, stating: “you must remember what Amalek has done to you, says our Holy Bible. And we do remember”. The Prime Minister referred again to Amalek in the letter sent on 3 November 2023 to Israeli soldiers and officers. The relevant biblical passage reads as follows: “Now go, attack Amalek, and proscribe all that belongs to him. Spare no one, but kill alike men and women, infants and sucklings, oxen and sheep, camels and asses”.

Israeli Minister of Agriculture: On 11 November 2023, Avi Dichter in a television interview recalled the Nakba of 1948, in which over 80 percent of the Palestinian

population of the new Israeli State was forced from or fled their homes, stating that “[w]e are now actually rolling out the Gaza Nakba”.

Israeli soldiers in uniform have been filmed on 5 December 2023 dancing, chanting and singing “May their village burn, May Gaza be erased”; and, two days later, on a separate occasion inside Gaza on 7 December 2023, dancing, singing and chanting, “we know our motto: there are no uninvolved civilians” and “to wipe off the seed of Amalek”.

On February 9, 2024, Israeli Prime Minister Benjamin Netanyahu ordered the Israeli military to prepare to [evacuate civilians from Rafah](#) ahead of an anticipated, large-scale ground assault. Over half of Gaza’s population of 2.3 million people have been forced to shelter in Rafah after being pushed out from northern areas of Gaza by Israeli attacks. Most people in Rafah are living in tents made of plastic sheeting, next to pools of sewage. They have nowhere to “evacuate” other than be forced into the Sinai in Egypt. This prompted Amnesty International to issue a statement on X (formerly Twitter) that:

A ground operation in #Rafah, which is under intense bombardment, will also have a disastrous impact on the entire humanitarian aid system in #Gaza which is already overwhelmed and struggling to provide support to a population facing the real and imminent risk of genocide.

Canada is flouting its obligation to prevent genocide in Gaza

Considering the above, there can be no question that Canada’s obligation to prevent genocide in Gaza has been triggered. Canada has been warned repeatedly of the risk of genocide in Gaza and reminded of its obligations, including by way of letters from Canadian lawyers submitted to the Prime Minister and the Minister of Foreign Affairs (among others) on [November 16](#) and [23](#), 2023.

The duty to prevent genocide, as outlined under Article 1 of the *Genocide Convention*, is engaged when there is a reasonable likelihood that the crime of genocide is imminent or in the process of being committed. Therefore, there is not a need for certainty that genocide is actively being committed, rather the obligation to prevent extends to situations where there is a credible and foreseeable risk of genocide.

Moreover, the law is clear that Canada cannot satisfy its obligation through inaction. Rather, it must act assertively, using whatever tools are at its disposal to prevent genocide.

To our knowledge, Canada has taken no action to date to fulfill its obligation to prevent genocide in Gaza. Notably, Canada has:

- [Not confirmed the cancellation of permits for all arms exports to Israel](#), including parts of arms or military equipment whether sent directly to Israel or through third party states;

- [Issued no warnings to Canadians serving in the Israeli military](#) about the risk and potential punishment for participating in war crimes or possible genocide;
- [Not withdrawn JFT2 \(Canadian Special Forces\) from Israel](#), and has not appropriately clarified the role that this force is playing in Israel;
- [Not suspended the Canada-Israel Strategic Partnership](#), which includes military-to-military cooperation between the two states;
- [Continued to fund Israel's state-owned arms industry](#) by purchasing tens of millions of dollars in missiles; and
- [Allowed the continuation of charitable status](#) for Canadian organizations that contribute funds, whether directly or indirectly, to the Israeli government or other agencies that promote the agenda of Israel's government in Canada.

Particularly notable is Canada's increase in arms exports to Israel at a time when Israel has faced charges of systematic war crimes and genocide. During the first two months of Israel's campaign in Gaza, the value of approved permits for Canadian arms exports to Israel reached a record amount of \$28.5 million.

These acts and omissions have jeopardized the physical and psychological security of Palestinian-Canadians who were in Gaza at the time of Israel's military assault – some of whom remain there to this day. These acts and omissions have also denied those same Palestinian-Canadians equal protection and benefit before and under the law. This has occurred even as Israel has abjectly failed to comply with the provisional measures ordered by the ICJ on January 26, 2024.

Even worse, on the day that the ICJ issued its Order, [Canada suspended its provision of funding](#) to the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA"). It did so on the basis of wholly unsubstantiated allegations from Israel – the state that stands plausibly accused of genocide – that a mere 12 of the approximately 13,000 UNRWA staff in Gaza were somehow involved in the attacks on Israel by Palestinian militants on October 7, 2023.

As is well known by Canada's government, hundreds of thousands of Palestinian refugees are critically dependent on UNRWA's humanitarian assistance. On March 6, 2024, UN News [reported](#) that at least 20 Palestinian children in Gaza succumbed to starvation due to a lack of food entering the Gaza Strip. In the aftermath of the devastating funding suspensions of UNRWA, UNRWA chief Philippe Lazzarini stated, "UNRWA is the primary humanitarian agency in Gaza, with over 2 million people depending on it for their sheer survival. Many are hungry as the clock is ticking towards a looming famine. The Agency runs shelters for over 1 million people and provides food and primary healthcare even at the height of the hostilities." Despite Canada having announced a restoration of funding to UNRWA on March 8, 2024, by withdrawing funding for UNRWA at such a dire moment, Canada effectively endorsed the genocidal objectives of the State of Israel.

Most recently, the humanitarian crisis has resulted in a horrific incident on February 29, 2024, which involved the [massacre by Israeli armed forces](#) of dozens of Palestinians waiting for food assistance. Yet even this prompted no meaningful action by Canada.

Demand for action

On behalf of our clients, we hereby demand that Canada immediately take all actions within its power to prevent the commission of genocide in Gaza, including, without limitation, the following:

1. Impose a complete ban on the sale and delivery of arms and other military equipment to Israel;
2. Impose a complete ban on the importation into Canada of arms and other military equipment made in Israel or by an Israel-based manufacturer;
3. Suspend Canada's military cooperation with Israel, including (but not limited to) under the Canada-Israel Strategic Partnership;
4. Ban the importation into Canada of all products made in Israel's illegal West Bank settlements;
5. Impose economic and travel sanctions on all Ministers in the cabinet of Israeli Prime Minister Benjamin Netanyahu and on all officers in the Israeli armed forces;
6. Enforce the policy of the Canada Revenue Agency by eliminating charitable status for all Canadian organizations that contribute funds, whether directly or indirectly, to benefit Israel's armed forces;
7. Enforce the *Foreign Enlistment Act* by prosecuting individuals and organizations recruiting Canadians for engagements with Israel's armed forces, and prohibit Canadian citizens and permanent residents from serving in Israel's armed forces;
8. Recall Canada's Ambassador to Israel; and
9. Withdraw the letter that Canada submitted to the ICJ opposing the Court's assertion of jurisdiction over a request for an advisory opinion as to the legality of Israel's occupation and annexation of the occupied Palestinian territory.

Further, we hereby request that you confirm to us in writing, and no later than April 3, 2024, that the Canadian government has instituted the measures identified above. Written confirmation can be sent to us via mail to the Coalition for Canadian Accountability in Gaza at 5700 Yonge Street, Suite 200, Toronto, ON, M2M 4K2, or via e-mail to info@ccagaza.ca.

If we do not receive such written confirmation by April 3, 2024, then we will thereafter commence legal proceedings against Canada in a Canadian court of competent jurisdiction, seeking, among other things, declarations that Canada has violated the *Charter* rights of Palestinian-Canadians in Gaza and has ignored its obligations under Article I of the *Genocide Convention*. In that proceeding, our clients may also seek such injunctive relief as is necessary to ensure Canada's immediate compliance with its obligations under the *Genocide Convention*.

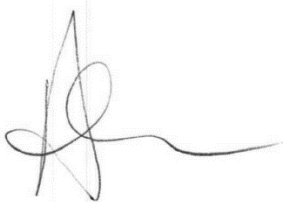
Yours truly,



Faisal Bhabha
Legal Centre for Palestine



Yavar Hameed
Hameed Law



Dimitri Lascaris
A. Dimitri Lascaris Law Professional Corporation



Shane Martinez
International Centre of Justice for Palestinians (ICJP) – Canada



Asaf Rashid