

Rt Hon Emily Thornberry MP
Shadow Attorney General
House of Commons
London SW1A 0AA

Our ref: TA/HD/IC-ET161023

Sent by email to: thornberrye@parliament.uk

16 October 2023

Dear Emily Thornberry,

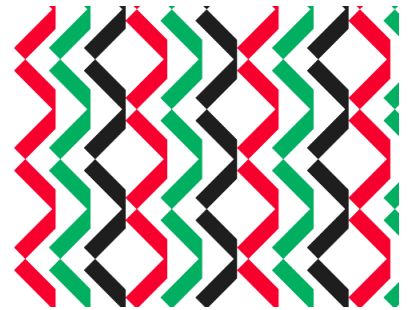
NOTICE OF INTENTION TO PROSECUTE UK OFFICIALS COMPLICIT IN WAR CRIMES

NOTICE OF COMMISSION OF WAR CRIMES AND CRIMES AGAINST HUMANITY BY ISRAEL IN GAZA

Following public statements by senior members of the Labour Party providing unequivocal support for Israeli military action in gaza and failing to condemn Israeli aggression as amounting breaches of international criminal law we put the Labour Party's Leadership on notice that we intend to bring legal proceedings against politicians in the UK and elsewhere where there is evidence that they have aided, abetted or in any other way supported, encouraged or provided material assistance in the commission of a war crime.

In light of the catastrophic situation currently unfolding in Gaza, and clear evidence that Israel has committed war crimes and is on the verge of committing mass atrocity crimes in Gaza, this letter raises and highlights concerning statements from members of the Labour Party expressing complete and unequivocal support for Israel, and for an unconditional right to defence, without demanding that Israel's actions are carried out in full compliance with international law (and particularly in accordance with the principles of proportionality, distinction and precaution for Gazan civilians), and without acknowledging and condemning the war crimes and crimes against humanity already committed against the civilian population in Gaza since 7 October 2023.

This letter is provided to the Labour Party leadership in order to emphasise that under international criminal law and its jurisprudence on individual criminal responsibility, support provided to perpetrators of international crimes can be investigated and prosecuted by the International Criminal Court and third States under the principles of Universal Jurisdiction. This includes support by foreign officials, including from the UK, of Israel's actions when there is demonstrable evidence that international crimes have already been committed and when there is clear evidence that further crimes against civilians will imminently be perpetrated.



This letter is sent by International Centre of Justice for Palestinians (ICJP)¹ - an independent organisation of lawyers, academics and politicians that works to protect the rights of Palestinians. It is sent following our letter to you of 13 October 2023 (copy attached).

We bring to your early attention an arrest warrant issued at Westminster Magistrates Court in London for the arrest of Tzipi Livni, the Former Foreign Minister of Israel for her part in alleged war crimes against civilians in Gaza arising out of the 2009 Israeli military operation named Operation Cast Lead. Lawyers at ICJP acted in those proceedings and we intend to apply the same principles in this case.

- ***Clear evidence and knowledge of international crimes committed and further imminent crimes***

The Labour Party leadership will be aware that actions taken by Israel since 7 October have already been reported as constituting serious breaches of international criminal law, international humanitarian law and international human rights law.

For example, attacks on Gaza not complying with the requirement under international law for proportionality and distinction have indiscriminately killed and injured civilians; including women, children, and the elderly.² Entire residential housing blocks have been levelled to the ground, killing all inside.³ Reports document entire families being killed; with all members of the family – from every generation, young to old, being killed.⁴ And over 724 children have already been killed since 7 October⁵ – in the span of only 7 days. It also includes credible reports on Israel's use of white phosphorus munitions against the civilian population in Gaza – a substance which known to cause burns and risk fire to those who are impacted by it, here the Palestinian civilians.⁶

It is also inescapable that these most recent crimes must be understood within the context of the decades of documented abuses and international crimes committed under Israel's military occupation with impunity and suffered by Palestinian civilians.⁷

With knowledge of the crimes already committed in the days since 7 October, the Labour Party's leadership must understand that this puts it on notice of further international crimes which it can be reasonably assessed will be imminently committed, and support of Israel in these actions would amount to complicity.

¹ <https://www.icjpalastine.com/>

² See, for example, Protection Approaches, Statement on preventing mass atrocity crimes in Israel & in Gaza, 13 October 2023: <https://protectionapproaches.org/news/f/statement-on-preventing-mass-atrocity-crimes-in-israel-in-gaza>

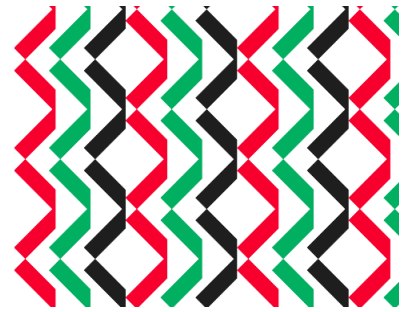
³ See, for example, Israel/OPT: Israel must lift illegal and inhumane blockade on Gaza as power plant runs out of fuel, Amnesty International, 12 October 2023: <https://www.amnesty.org/en/latest/news/2023/10/israel-opt-israel-must-lift-illegal-and-inhumane-blockade-on-gaza-as-power-plant-runs-out-of-fuel/>

⁴ See, for example, In Gaza, entire families destroyed by Israeli bombing: 'My son, my niece and another child are still under the rubble,' Clothilde Mraffko, Le Monde, 12 October 2023: https://www.lemonde.fr/en/international/article/2023/10/12/in-gaza-entire-families-destroyed-by-israeli-bombing-my-son-my-niece-and-another-child-are-still-under-the-rubble_6167251_4.html

⁵ See, Defense for Children International, Palestine, X update, 14 October 2023: <https://x.com/DCIPalestine/status/1713269676057170329?s=20>

⁶ See, for example, Israel: White Phosphorus Used in Gaza, Lebanon Use in Populated Areas Poses Grave Risks to Civilians, Human Rights Watch, 12 October 2023: <https://www.hrw.org/news/2023/10/12/israel-white-phosphorus-used-gaza-lebanon>

⁷ See, for example, Israel's apartheid against Palestinians: Cruel system of domination and crime against humanity, Amnesty International, 1 February 2022, p.266 <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>



Information about Israel's preparatory steps and imminent actions must be viewed in this context. Indeed, on 13 October, Israel issued a directive to 1.2 million people in Gaza to immediately leave their homes in northern Gaza and move south.⁸

If carried out, this order may well amount to both a war crime and a crime against humanity, particularly the crime of forcible transfer and displacement. This is accompanied by reports that Israeli forces and tanks are amassing at Gaza's border for an expected ground invasion on Gaza city which will devastate any civilians in the area.⁹ This is despite pleas from local medical professionals, which have been echoed by the World Health Organisation, that it is impossible to evacuate vulnerable hospital patients from northern Gaza, particularly those on ventilators, and forcing such action would be a death sentence.¹⁰

This also includes knowledge of Israel's actions which, despite already being assessed as severely harming civilians and therefore constituting international crimes, continue and with each new step harm further innocent civilians and constitute further international crimes.

This is most clear with the siege on Gaza. Since Sunday 8 October, Israel has imposed a total siege on Gaza, cutting off its electricity, water and food supplies, and preventing the access of humanitarian aid.¹¹ The withholding of food, water and other basic necessities from civilian populations during international armed conflicts is expressly forbidden under IHL,¹² and amounts to war crimes and crimes against humanity under the Rome Statute of the International Criminal Court (ICC).¹³ Moreover, such action constitutes collective punishment which is "*prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents* under the Geneva Conventions of 1949.¹⁴ It must be remembered that the prohibition against collective punishment is absolute. This has already disproportionately and indiscriminately caused immeasurable harm and suffering to the people of Gaza,¹⁵ such that international crimes could be concluded, and it will cause more.

⁸ See, Fear, confusion as Israel issues evacuation order for northern Gaza, Al Jazeera, 13 October 2023: <https://www.aljazeera.com/news/2023/10/13/fear-confusion-as-israel-issues-evacuation-order-for-northern-gaza#:~:text=Israel%27s%20order%20for%201.1%20million,seventh%20day%20of%20Israel%27s%20bombardment>

⁹ Tanks seen moving in southern Israel as military orders Gaza evacuation, The Guardian, 13 October 2023: <https://www.theguardian.com/world/video/2023/oct/13/tanks-southern-israel-military-orders-gaza-evacuation-video>

¹⁰ Moving severely ill people in Gaza amounts to 'death sentence', WHO says, Reuters, 13 October 2023: [https://www.reuters.com/world/middle-east/moving-severely-ill-people-gaza-amounts-death-sentence-who-2023-10-13/#:~:text=GENEVA%2C%20Oct%2013%20\(Reuters\),relocate%20south%20within%2024%20hours](https://www.reuters.com/world/middle-east/moving-severely-ill-people-gaza-amounts-death-sentence-who-2023-10-13/#:~:text=GENEVA%2C%20Oct%2013%20(Reuters),relocate%20south%20within%2024%20hours).

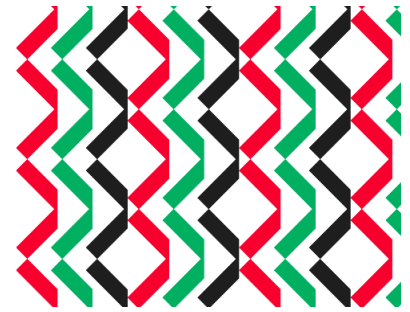
¹¹ Yoav Gallant, Israel's Defence Minister, said "I have ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel, everything is closed," and "We are fighting human animals and we are acting accordingly": https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/

¹² Article 33 of the Fourth Geneva Convention provides that "*No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.*" https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-33#:~:text=12%20August%201949,-_Article%2033%20%2D%20Individual%20responsibility%2C%20collective%20penalties%2C%20pillage%2C%20reprisals,Pillage%20is%20prohibited. The ICRC commentary of 1958 provides that collective punishment refers to "*penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity, for acts that these persons have not committed*" and rendered without regard to due process of law: See: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-33/commentary/1958?activeTab=undefined>

¹³ For example, "Extermination" is defined as "the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population". It is a crime against humanity when committed "as part of a widespread or systematic attack directed against any civilian population" (Article 7 (2) (b)).

¹⁴ See Article 75 of Additional Protocol I to the Geneva Conventions of 1949: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-75>

¹⁵ LPHR statement on new sustained military action in Gaza/Israel, Lawyers for Palestinian Human Rights, 10 October 2023: <https://lphr.org.uk/latest-news/lphr-statement-on-new-sustained-military-action-in-gaza-israel-2/>



Israel's siege on Gaza may amount to the war crimes and crime against humanity of intentionally using starvation of civilians as a method of warfare – including wilfully impeding relief supplies. The ICC has jurisdiction to prosecute such war crimes when they are committed as part of a plan or policy or as part of a large-scale commission of such crimes which would appear to be the case here.¹⁶ Israel's intentional withholding of food and medicine from the people of Gaza may also amount to the crime against humanity of 'extermination' under the Rome Statute.¹⁷

At the same time, Israel has continued to bombard Gaza with massive and indiscriminate airstrikes, destroying thousands of civilian homes, and killing over 2,383 people.¹⁸ Conducting further bombardment of the same nature will do the same, and constitute further international crimes which the international community could have predicted and therefore would be on notice.

Prominent voices and authorities of international law have confirmed this dire reality, and have strongly warned of the implications of Israel's actions under international law. For example, the UN Special Rapporteur on the Occupied Palestinian Territory, Francesca Albanese, clearly warned of the consequences of Israel's continued actions, stating: "*Palestinians are in grave danger of mass ethnic cleansing*" and that "*there is a grave danger that what we are witnessing may be a repeat of the 1948 Nakba, and the 1967 Naksa, yet on a larger scale. The international community must do everything to stop this from happening again.*"¹⁹

- **Statements from the Labour Party**

Yet, Labour's own statements have failed to clearly acknowledge and condemn the crimes committed against the civilian population in Gaza since 7 October 2023, and have instead expressed near-unconditional support for Israel's actions which have led to these crimes, which could be understood as tacit endorsement.

It is unacceptable that since the start of the current hostilities, the Labour Party leadership has publicly and repeatedly expressed its complete and unequivocal support for Israel, not least by stating that Israel has an unconditional right to defend itself.²⁰

¹⁶ Article 8 (1) and Article 8 (2) (b) (xxv) of the Rome Statute of the International Criminal Court.

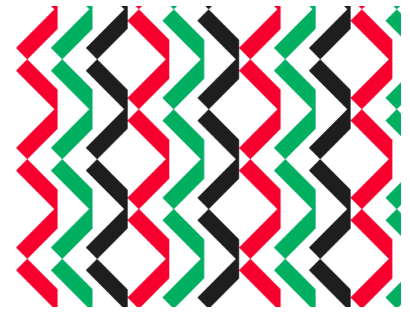
¹⁷ "Extermination" is defined as "the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population". It is a crime against humanity when committed "as part of a widespread or systematic attack directed against any civilian population" (Article 7 (2) (b)). Not also Article 8(2)(b)(xxv), the war crime of starvation, prohibits intentionally using starvation of civilians as a method of warfare.

¹⁸ Gaza and West Bank death toll reaches 2,383 Palestinians – ministry, Reuters, 15 October 2023:

<https://www.reuters.com/world/middle-east/gaza-west-bank-death-toll-reaches-2383-palestinians-ministry-2023-10-15/>

¹⁹ UN expert warns of new instance of mass ethnic cleansing of Palestinians, calls for immediate ceasefire, 14 October 2023, UN Office of the High Commissioner for Human Rights: <https://www.ohchr.org/en/press-releases/2023/10/un-expert-warns-new-instance-mass-ethnic-cleansing-palestinians-calls>

²⁰ On 11 October 2023, Sir Keir Starmer was asked on LBC whether the siege was appropriate, including cutting off power and water. He stated: "I think Israel does have that right. Is it an ongoing situation. Obviously everything should be done within international law, but I don't want to step away from the sort of core principles that Israel has a right to defend herself and Hamas bears responsibility for these terrorist acts". See: <https://www.youtube.com/watch?v=PKhR5oRuC-s>
Later the same day, on BBC *Newsnight*, Emily Thornberry was asked "Do you think cutting off food, water and electricity is within international law?" She answered, "I think that Israel has an absolute right to defend itself against terrorists". See: <https://x.com/BBCNewsnight/status/1712401412120879271?s=20>



While statements made over the past three days by members of the Labour leadership have referred to international law, these statements have been equivocal. They have nominally called for compliance with international law yet failed to call for obvious and concrete actions which would ensure such compliance.

Moreover, while all the statements made by Labour's leadership have expressed deep concern with the Jewish community in the UK, not a single statement has expressed any concern with the Palestinian or Muslim communities in the UK. ICJP is in contact with a large and growing number of Palestinian victims of Israeli war crimes. These include Palestinians in the UK who have lost one or more members of their families in Gaza, or who have lost contact with their families. Others have had their homes bombed and destroyed.

The Labour Party expressions of concern and outreach towards only the Israeli and/or Jewish communities in the UK and not the Palestinian and/or Muslim communities may well amount to unlawful discrimination under the Equalities Act 2010 on the basis of race or religion, both of which are protected characteristics under the Act.

- Failure to call for a ceasefire or condemn Israeli war crimes

We note with extreme concern that the leadership of the Labour Party has failed to call for a ceasefire or condemn war crimes being perpetrated by Israel. This is despite the knowledge that Israel is on the precipice of killing potentially thousands more Palestinians, and potentially expelling over a million people, or over half of the population of Gaza. Such an act would amount to mass forcible transfer, a war crime and a crime against humanity under international law.

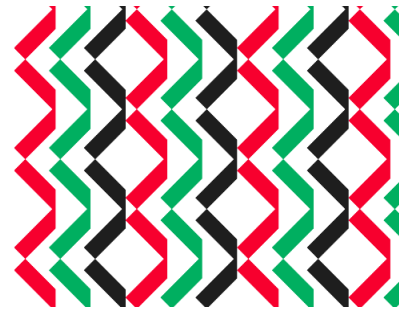
We reserve the right to draw adverse inferences from the lack of a call for a ceasefire and the failure to condemn Israeli attacks as war crimes, when we ask the court to consider whether or not comments made by politicians' amount to encouragement of war crimes, particularly when they make reference to equivocal adherence to international law by Israel.

- ***Support for international crimes: Individual criminal responsibility***

With information and evidence that international crimes have already been committed against Palestinian civilians since 7 October (and within the context of historical abuses, crimes and oppression), and clear evidence that this pattern will continue in the immediate future, this letter is intended to place you on notice that individuals providing support to the actions of the Israeli Government under circumstances in which war crimes and crimes against humanity are imminent, are likely to incur individual criminal liability and may be prosecuted at the ICC, domestic courts or other tribunals.

Under Article 25 of the Rome Statute, individual criminal responsibility attaches not only to the direct perpetrators of crimes but also to those who aid, abet or otherwise assist in the commission of a crime within the jurisdiction of the ICC.²¹

²¹ ICC Rome Statute, Article 25 (3) (c).



It is not required that an individual who provides support to the commission of a crime is either located in the territory over which the ICC has jurisdiction or for the support to be given in this territory to bear responsibility for aiding, abetting and assisting these crimes and to be investigated or prosecuted. Nor does the ICC recognise an individual's official capacity as a protection against such scrutiny, with the ICC Appeals Chamber having found that there is no head of state immunity under customary international law in regards to international courts.²²

Such support and assistance raises the risk of being complicit in the commission of war crimes and crimes against humanity. Labour's leadership should be aware that international criminal tribunals have previously examined the responsibility of those who have substantially contributed to a crime by providing encouragement and moral support to the perpetrators, and where the perpetrator is aware of this support.²³

We therefore remind you that the investigation into the Situation in Palestine is currently ongoing at the ICC, and that therefore the ICC has jurisdiction over any Rome Statute crime committed in the Occupied Palestinian Territory, including Gaza. The principle of universal jurisdiction is also applicable, including the ability to seek review of such complicity under the UK's legislation – as was done when an arrest warrant was issued for Tzipi Livni for her part in alleged war crimes arising out Israel's assault on civilians in Gaza.

- ***Requested action***

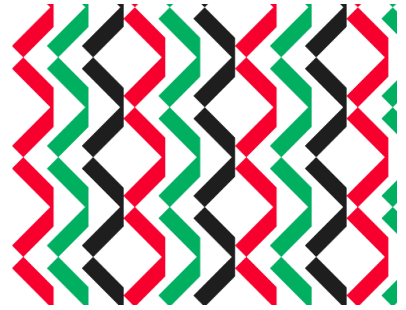
Under the grave and deteriorating circumstances, with the imminent risk of threat of mass atrocities taking place, the Labour Party leadership must now:

- 1) Call for an immediate ceasefire to prevent further loss of life;
- 2) Call for Israel to immediately rescind its illegal and impossible order for Gazans to evacuate Northern Gaza;
- 3) Call for an immediate end to the siege of Gaza and allow access of humanitarian aid to Gaza;
- 4) Press the Government to take immediate action to safeguard civilians in Gaza;
- 5) Issue a public statement condemning Israeli breaches of international law;
- 6) Insist Israel complies unequivocally with international law; and
- 7) Ask each member of the Labour Party who has encouraged the commission of war crimes and crimes against humanity in Gaza to rescind their statements in public.

We are placing you on notice that ICJP is now gathering evidence of the complicity of UK politicians in Israel's ongoing and potential future crimes in Gaza, and any public statements that you or your shadow cabinet members make will be interpreted in this context.

²² Al-Bashir Case: ICC Appeals Chamber confirms Jordan's non-cooperation but reverses the decision referring it to the ASP and UNSC, ICC Press Release, 6 May 2019 (<https://www.icc-cpi.int/news/al-bashir-case-icc-appeals-chamber-confirms-jordans-non-cooperation-reverses-decision#:~:text=It%20concluded%20that%20there%20is,%C3%A0%2Dvis%20an%20international%20court.>)

²³ See, for example, ICTY, Prosecutor v. Brđanin, Appeal Judgment, IT-99-36-A, 3 April 2007, para. 277; Prosecutor v. Bemba et al., Judgment Pursuant to Article 74 of the Statute, ICC-01/05-01/13-1989-Red, 19 October 2016.



We have passed a copy of this letter to Scotland Yard's War Crimes Unit who have recently requested information and evidence in relation to terrorism and war crimes in the region. We will continue to assist them with gathering evidence in relation to the contents of this letter.

We reserve our rights to proceed to apply for a private arrest warrant for politicians complicit in war crimes without further notice.

Yours sincerely

ICJP

The International Centre of Justice for Palestinians

Crispin Blunt MP - Director

Tayab Ali – Director