



The Rt Hon Rishi Sunak MP  
10 Downing Street  
London SW1A 2AA

4 April 2024

Dear Prime Minister

### **Open Letter from lawyers dated 3 April 2024**

On 3 April 2024, you received an open letter signed by more than 600 lawyers (“the Letter”), demanding that the Government take certain measures targeting Israel. We, who are also UK-based or qualified lawyers and legal academics, are extremely concerned by the inaccuracy of the facts and law in the Letter. We address a few of these errors below. Further analysis will doubtless follow.

#### **The Provisional Measures Orders of the ICJ**

The Letter repeatedly claims that the International Court of Justice (ICJ) concluded, through its first Provisional Measures Order, that there was a plausible risk of genocide in Gaza. This is incorrect.

The Court’s ability to issue a provisional measures order depends on a finding that the rights asserted by the party seeking the order are at least plausible. It is of course plausible that Palestinians in the Gaza Strip have rights to be protected from acts of genocide. Thus, it is the *rights* of the Palestinians in the Gaza Strip that were determined to be plausible, and *not* the alleged commission of genocide against them.<sup>1</sup>

Crucially, the Court unambiguously confirmed in the same Order that it had not been called upon “to establish the existence of breaches of obligations under the Genocide Convention” and that it could not make any definitive findings of fact at this stage.<sup>2</sup> Contrary to South Africa’s request, the Court did not demand that Israel cease its military operation in Gaza in either the first or the second Provisional Measures Order.

Moreover, the Letter claims wrongly that legal obligations on the UK flow from the wording of the Provisional Measures Orders, even though these are legally binding only on the parties to the proceedings, *i.e.*, Israel and South Africa. The Letter then goes one step further than the

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ICJ by suggesting that the UK has an obligation to seek the imposition of a permanent ceasefire to prevent the commission of genocide. Such an obligation cannot flow from Orders that are not binding on the UK and do not impose a ceasefire, and nor can it flow from the Convention itself in the absence of any breach by Israel.

#### Other inaccuracies and omissions

The letter relies heavily on casualty figures provided by the Hamas-run, Gaza Ministry of Health. These figures do not distinguish between combatants and non-combatants, do not specify casualties caused by Palestinian fire (including errant rockets and direct fire on Palestinian civilians), and appear to have been fabricated, both in the overall totals and in the breakdown of men, women and children, according to several recent statistical analyses.<sup>3</sup>

The casualty figures contained in the Letter also do not separate out the 13,000 combatants Israel claims it has eliminated during the operation.<sup>4</sup> The UN Secretary General reported that in armed conflicts in urban areas in 2021, 89% of the casualties were civilians, i.e. there were on average of 8 civilian casualties for every combatant casualty.<sup>5</sup> By contrast, in the Gaza Strip the ratio of civilians killed (by any fire, including Palestinian) to combatants killed appears to be closer to 1.5:1 even if the Gaza Ministry total is accepted. This contradicts the claim that the allegation of genocide is supported by the high number of civilian casualties.

The Letter barely mentions the mostly civilian, Israeli hostages taken by Hamas and affiliated terrorist organisations, and fails to mention that returning the remaining hostages and destroying Hamas are the goals of the current military operation. It also makes no reference to over 1,200 mostly civilian Israelis tortured, raped and murdered on 7 October 2023, or the statements by Hamas leaders vowing to repeat the 7 October attacks “again and again”.<sup>6</sup> Failing to mention these crucial elements ignores the legal basis for the Israeli military operation, including Israel’s right to self-defence.

#### The United Kingdom’s obligations under international law

The UK is not obliged to take and should not take any of the specific measures recommended in the Letter:

##### (1) Immediate and permanent ceasefire

Demanding an immediate and permanent ceasefire at this time would undermine current negotiations between Israel, the US, Qatar, Egypt and Hamas to secure the release of hostages and a temporary ceasefire. Disrupting this precarious negotiation would be liable to increase the suffering of civilians and prolong the war.

##### (2) Resuming funding to UNRWA with immediate effect

The Letter does not mention the current investigations into UNRWA's alleged complicity in terrorism, which is the reason for suspending this funding. The UK should await the outcome of these investigations before deciding on future funding.

(3) Imposing sanctions on individuals and entities in Israel

There is no justification for imposing sanctions on individuals or entities without any findings or evidence of serious misconduct by them.

(4) Suspending sales of weapons to Israel

There is no justification for suspending the sale of weapons to Israel without evidence of systematic violation by Israel of international law.

(5) Suspending the 2030 Roadmap for bilateral relations with Israel

There is no reason to suspend the 2030 Roadmap for bilateral relations with Israel. Continuing the 2030 Roadmap would not constitute a breach of the UK's obligations under the Genocide Convention in the absence of any breach of that Convention.

Yours sincerely

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<sup>1</sup> Provisional Measures Order of 26 January 2024, para. 54.

<sup>2</sup> Provisional Measures Order of 26 January 2024, para. 62.

<sup>3</sup> <https://www.tabletmag.com/sections/news/articles/how-gaza-health-ministry-fakes-casualty-numbers#>; <https://fathomjournal.org/statistically-impossible-a-critical-analysis-of-hamass-women-and-children-casualty-figures/>; <https://www.washingtoninstitute.org/policy-analysis/gaza-fatality-data-has-become-completely-unreliable>; <https://www.washingtoninstitute.org/policy-analysis/how-hamas-manipulates-gaza-fatality-numbers-examining-male-undercount-and-other>; <https://www.telegraph.co.uk/global-health/terror-and-security/unrwa-staff-death-toll-gaza-israel-hamas-war-data/>; <https://elderofziyon.blogspot.com/2024/03/more-evidence-that-gaza-death.html>

<sup>4</sup> <https://www.idf.il/en/mini-sites/hamas-israel-war-24/briefings-by-idf-spokesperson-rear-admiral-daniel-hagari/february-24-press-briefings/press-briefing-by-idf-spokesperson-rear-admiral-daniel-hagari-february-29th-2024/>.

<sup>5</sup> UN Doc S/2022/381, [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S\\_2022\\_381.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2022_381.pdf), para. 12.

<sup>6</sup> <https://www.youtube.com/watch?v=BJNccvNJtGk>; <https://www.jpost.com/arab-israeli-conflict/article-771199>; <https://www.msnbc.com/morning-joe/watch/hamas-official-vows-to-repeat-attacks-on-israel-again-and-again-until-it-s-destroyed-196930629782>; <https://nypost.com/2023/11/01/news/hamas-official-vows-to-repeat-israel-attacks-again-and-again-until-its-destroyed/>.