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## **Forced Displacement in Gaza and the Right of Return**

### **Background paper<sup>1</sup>**

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This background paper provides a basis and framework for understanding the forced displacement occurring in Gaza as a result of the current Israeli assault. In addition to the devastating death toll (current Israeli assault over 9,000 fatalities in Gaza), the destruction of infrastructure, the denial of access to basic necessities, and the displacement of over one million people - over half of the population of Gaza, equivalent to half the population of Namibia - the evacuation orders issued by the Israeli army, coupled with rhetoric around a “second Nakba” constitute forced displacement and may amount to crimes against humanity and war crimes. The term “Nakba” refers to the destruction of Palestine and the permanent forced displacement and dispossession of Palestinians from the 1940s until today.

The majority of the inhabitants of Gaza (approximately 80%) are Palestinian refugees forced to flee as a result of the 1948 Arab-Israeli War - the original Nakba - and have been prevented from returning, in violation of international law. The displacement and denial did not end in 1948, rather Israel has [continued](#) to displace Palestinians, both internally and externally through military attacks, deportation, destruction of homes, among other means.

In the context of the current forced displacement imposed on the people of Gaza, Israel must allow access to safety inside Israel and the rest of occupied Palestine.

## **The Gaza context**

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1. Since 1967, the Gaza Strip and West Bank have been under Israeli military occupation. Military occupation under international law is intended to be temporary, and the Occupying Power should in no way alter the status of the Occupied Territory. In 2016, the UN Security Council in Resolution 2234 condemned “all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, *inter alia*, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and

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<sup>1</sup> This paper was written by Dr. Jinan Bastaki, Associate Professor of International Law, and Visiting Associate Professor, New York University Abu Dhabi, with input from members of an *ad hoc* working group set up after 7 October 2023 to monitor and address the ongoing ethnic cleansing primarily in the Gaza Strip but also in the West Bank. Members of the group work for Arab Renaissance for Democracy and Development ([ardd-jo.org](http://ardd-jo.org)), the Community Action Center (Al Quds University), and Al Mezan Center for Human Rights, whilst others participate in their personal capacity.



relevant resolutions.” Prolonged occupation has entrenched apartheid practices and denied Palestinians’ recognized right to self-determination.

2. Israel began to build illegal settlements in Gaza in the 1970s, which resulted in a total of twenty-one settlements in Gaza alone. In 2005, Israel withdrew the settlers and dismantled settlements from the Gaza Strip. In 2006, elections held in the presence of international observers in the West Bank and the Gaza Strip yielded a victory for Hamas. In 2007, Hamas took control of Gaza, and Israel imposed a sea, air, and land blockade and closure on the whole of Gaza.
3. While there were previous restrictions imposed by the Israeli occupation, the comprehensive post-2007 blockade intensified these restrictions, and enforced strict and arbitrary limits on the number and categories of people and goods allowed through Israeli-controlled crossings. For example, between 2007-2010, Israel had banned basic products [including](#) coriander, paper, toys, and chocolate. It currently has an extensive ban over goods it considers to be ‘dual-use’, which far exceeds international standards. The Egyptian authorities also imposed restrictions on the movement and access of people and goods at Rafah, the Gaza-Egypt border crossing.
4. In addition to the restrictions, since 2007, Israel has launched six large-scale military offensives o Gaza, in 2008/9, 2012, 2014, 2021, 2022, and 2023. The [vast majority](#) of those killed and injured have been civilians, including children. Moreover, Israel has caused extensive damage to civilian infrastructure in Gaza, including electricity, water and sewage facilities, rendering them unusable. Fluctuating [restrictions](#) on building material have either outright prevented or severely [delayed](#) reconstruction.
5. While the Gaza Strip is just 41km (25 miles) long and 10km wide, there are 2.2 million people living there as of 2023, around [half](#) of whom are children. Some [1.7 million](#) are Palestine Refugees registered with the UN Relief and Works Agency (UNRWA). These refugees were first displaced in 1948, during the First Arab-Israeli War, and have their original homes and lands inside what is now Israel. Some have been displaced for a second time due to the 1967 Six Day War. They have been denied their right to return since 1948. Moreover, the population of Gaza has suffered massive internal displacement due to recurring military assaults.
6. As a [result](#) of the blockade and repeated, devastating military attacks, more than half of Gaza’s just over 2 million people live in poverty, and nearly [80 per cent](#) of the youth are unemployed. Food security in Gaza has deteriorated with [65 per cent](#) of people in the Gaza Strip being food insecure and dependent on international assistance. Around [96 per cent](#) of water in Gaza is unfit for consumption. Electricity was available up to an average of [13 hours](#) per day as of July 2023.

## Israel’s responsibilities as Occupying Power

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7. Despite withdrawing in 2005, Israel continues to maintain the status of Occupying Power. Article 42 of the 1907 Hague Regulations states that a “territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”

- Since Israel “still exercises key elements of authority over the strip, including over its borders... [Israel] continues to be bound by certain obligations under the law of occupation
8. that are commensurate with the degree to which it exercises control over it,” [\\_according](#) to the ICRC.
  9. Article 55 of the Fourth Geneva Convention (GCIV) states that, “the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.”
  10. Sieges may be employed to isolate enemy forces; however, they may not be used against civilians, and starvation of the civilian population is prohibited (Article 54(1) First Additional Protocol (API); Article 14, Second Additional Protocol (APII)).
  11. Article 50 of the annexed Hague Regulations provides that “[n]o general penalty, pecuniary or otherwise, can be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.” Art. 4 (b) of AP II prohibits collective punishment for “[a]ll persons who do not take a direct part or who have ceased to take part in hostilities.” The prohibition of collective punishment is [\\_considered](#) part of customary international law, binding all parties, and imposing collective punishment is considered a war crime.
  12. While Article 27 of GCIV permits the Occupying Power to take measures of control and security, these must always be proportional. Humane treatment of the population is unconditional.
  13. GCIV Art. 49 categorically prohibits the occupying power from transferring or deporting the population of occupied territories or transferring parts of its own civilian population into the territory it occupies. Customary international law [\\_affirms](#) that parties to both international and non-international armed conflict should not deport, forcibly transfer, or order the “displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.” Under the Rome Statute of the International Criminal Court, “the deportation or transfer [by the Occupying Power] of all or parts of the population of the occupied territory within or outside this territory” constitutes a war crime. While evacuation of civilians may be permitted for the limited reasons cited, GCIV further specifies that it may not involve displacement outside the occupied territory. Furthermore, the ICRC’s Rule 129(B) affirms that “State practice ... underlines the duty of parties to a conflict to prevent displacement caused by their own acts, at least those acts which are prohibited in and of themselves (e.g., terrorizing the civilian population or carrying out indiscriminate attacks).”
  14. During armed hostilities, all parties must respect the laws of war, including the principle of distinction, necessity, and proportionality.
  15. Beyond its responsibilities as Occupying Power, Israel must refrain from [\\_enforcing](#) Apartheid practices and committing other crimes against humanity.

## Current forced displacement and war crimes

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16. On 7 October, in response to an operation carried out by Palestinian armed groups, Israel began bombing the Gaza Strip from the air, land and sea in what appears to be a retaliatory attack against the civilian population—a practice routinely employed by the Israeli military in Gaza, Jenin, and throughout the occupied Palestinian territory.
17. On 9 October, Israeli Defense Minister Yoav Gallant [ordered](#) a “complete siege” of Gaza, cutting electricity and blocking fuel and food from entering the territory, intensifying the already strangling blockade. Israel has also periodically [shut down](#) landlines, cellular and internet service, cutting off the Gaza Strip completely. All crossings between Gaza and Israel remain closed, with only a few trucks carrying food, water and medical supplies being allowed in from Rafah. The roads in Gaza have been severely damaged by Israeli air strikes, making it even more difficult to move.
18. Against this backdrop, on 13 October, the Israeli army gave people in northern Gaza and Gaza city – some 1 million persons – 24 hours to “evacuate” to the south of the Gaza Strip, including several hospitals. According to [Amnesty International](#), this “cannot be considered an effective warning and may amount to forced displacement of the civilian population, a violation of international humanitarian law.” These evacuation orders have been condemned by several [NGOs](#), [UN experts](#), [human rights organizations](#), and [State actors](#). As of 27 October, some 1.4 million people in Gaza were internally displaced, with around 657,000 sheltering in 150 UNRWA facilities in increasingly difficult conditions. Francesca Albanese, the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has [stated](#) that “Israel has already carried out mass ethnic cleansing of Palestinians under the fog of war.” Israel has also placed conditions upon the entry of humanitarian aid and [where](#) it may be distributed (the South), “effectively turning humanitarian aid into a form of blackmailing residents into leaving.”
19. On 21 October, the Israeli army dropped leaflets on northern Gaza ordering residents’ immediate “evacuation” and that “anyone who chooses not to leave from the north of the [Gaza] Strip to south of Wadi Gaza may be determined an accomplice in a terrorist organization”. This is evidence of collective punishment, since it is treating civilians who choose to stay in their homes, are dependent on hospital care or are unable to leave, as combatants, in clear violation of humanitarian law.
20. On 24 October, a [document](#) leaked from Israeli Intelligence Minister Gila Gamliel detailed that a durable post-war solution for Gaza has to include the transfer of Palestinians to Sinai, Egypt. Israeli officials have been openly [calling](#) for a “second Nakba”, making explicit the intent to forcibly and permanently displace the Palestinian population in Gaza. On October 17, Israeli think tank Misgav Institute for National Security and Zionist Strategy [published](#) a paper urging the Israeli government to take advantage of the “unique and rare opportunity to evacuate the whole Gaza Strip.” It has also been reported that Israeli Prime Minister Benjamin Netanyahu has tried to convince EU leaders to [pressure](#) Egypt into accepting Palestinian refugees from Gaza.
21. Such acts are tantamount to forced displacement and may even be considered ethnic cleansing, which is [defined](#) as “a purposeful policy designed by one ethnic or religious

- group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.” In 1994, the UN General Assembly adopted resolution 49/196 condemning ethnic cleansing, which includes, “disappearances, destruction of houses, forced and illegal evictions, detentions and other acts or threats of violence *aimed at forcing individuals to leave their homes.*” The ICTY ([para. 526](#)) saw that deliberate destruction of civilian homes can be indicative of intent to permanently displace civilians.
22. While Egypt has [rejected](#) resettlement to Gaza, the US has [reportedly](#) proposed economic incentives for Egypt to accept refugees from Gaza, triggering questions of complicity. Meanwhile, Israel has continued to demand the evacuation of people from the North, including from hospitals, which has been [condemned](#) by the World Health Organization. This still leaves the potential for mass displacement from Northern Gaza to the South, where Israel may further prevent Palestinians from returning to their homes.
  23. While this catastrophe is unfolding in the Gaza Strip, the situation in the West Bank, including East Jerusalem, demonstrates that Palestinians are not safe anywhere. Attacks leading to forced displacement of Palestinians have intensified across all of occupied Palestine since 7<sup>th</sup> October 2023. According to [UN-OCHA](#), 115 Palestinians have been killed in the West Bank between 7-29 October 2023, including 33 children.
  24. While all eyes are on Gaza, there is [another](#) mass displacement underway: nearly 2,000 Palestinians have been displaced by settler violence since 2022, 43% since 7<sup>th</sup> October 2023. In 15 herding communities across the West Bank, at least 98 households comprising 828 people, including 313 children, have been displaced since 7<sup>th</sup> October.
  25. Rising settler violence supported by the Israeli army and state authorities is driving Palestinian families away from their homes: the most recent [example](#) is the [displacement](#) of the entire population of the Zanuta village in the South Hebron hills, due to settlers attacking and terrorizing families.
  26. This indicates a concerted Israeli effort to displace Palestinians across occupied Palestine - not only in Gaza - which makes it even more urgent for the international community to act now to put an end to this ongoing catastrophe.

## The Right of Return

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27. The right of return is established in customary international law. The majority of states have allowed the repatriation of displaced persons, and those that have not have always sought to justify their actions by citing a state of emergency or other such reasons to avoid their obligations.<sup>2</sup> Both the Hague Regulations annexed to the 1907 Hague Convention Respecting the Laws and Customs of War on Land and the 1949 Geneva Civilians Convention provide for the right of return of displaced persons to their homes following the cessation of hostilities. Furthermore, the right is affirmed in the Universal Declaration of Human Rights (Article 13 (2)), as well as various binding international instruments – for example, Article 12 (4) of the International Covenant on Civil and Political Rights (ICCPR),

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<sup>2</sup> Vic Ullom, “Voluntary Repatriation of Refugees and Customary International Law,” *Denv. J. Int’l L. & Pol’y* 29 (2000): 144.



and Article 5(d)(ii) of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

28. With regards to Palestinian refugees more specifically, UN General Assembly resolution 194 (III) states,

The refugees wishing to return to their homes and live at peace with their neighbours *should be permitted to do so* at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.

29. Concerning the displacement of those during the 1967 Six Day War, the UN Security Council passed resolution 237 (1967) calling upon the government of Israel “to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities.”

30. Israel is ordering over one million civilians in Gaza to relocate to the South. However, the closest border crossing is the Erez crossing. If Israel wants to ensure the safety of civilians in Gaza, it needs to allow safe access for them into Israel. Indeed, the denial of the right of return of Palestinian refugees is a symptom of underlying structural conditions of protracted military occupation, settler colonialism and its apartheid regime. Around 80% of the population of Gaza are recognized refugees. They should be enabled access to Israel and the Occupied West Bank, if the refugees so choose.

## Recommendations

The international community must urge Israel to:

31. Immediately and completely cease all hostilities.
32. Immediately revoke all ‘evacuation’ orders and allow the unhindered and safe return of all internally displaced Palestinians to their homes.
33. Allow the immediate, continuous, sufficient, and unhindered provision of essential goods and services to civilians in all areas of the Gaza Strip, including but not limited to water, food, medical supplies, fuel, and electricity.
34. Allow the immediate, full, sustained, safe, and unhindered humanitarian access for UNRWA and other UN humanitarian agencies and their implementing partners, the ICRC and all other humanitarian organizations, and to urgently establish a mechanism to ensure the protection of the Palestinian civilian population, in accordance with international law and the relevant United Nations resolutions
35. Uphold international law, including IHL and human rights, violations and ongoing impunity for which are one of the key drivers of the current disaster.
36. End the protracted military occupation and siege, dismantle the apartheid regime, and enable the return of refugees to their homes within Israel and the Occupied Palestinian Territories.