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October 20, 2023

Mr. Karim Khan, Prosecutor
Office of the Prosecutor
International Criminal Court
Oude Waalsdorperweg 10
The Hague, The Netherlands

URGENT: Israel's Unfolding Genocide and U.S. Complicity Against the Palestinian People

Dear Prosecutor Khan,

There is a plausible and credible case, based on powerful factual evidence, that Israel is attempting to commit, if not actively committing, the crime of genocide in the occupied Palestinian territory, and specifically against the Palestinian people in the Gaza Strip. Enclosed is a legal brief assessing Israel's unfolding crime of genocide of the Palestinian people and presenting a reasonable basis to include complicity by United States officials as part of your investigation into it.

As you know, genocide is the gravest of crimes under international law, consisting of specific actions – such as killing or deliberately inflicting conditions of life calculated to bring about the destruction of the group in whole or in part – taken with the intention of destroying, in whole or in part, the group targeted, including on ethnic or national grounds.

In the context of the ongoing investigation into crimes in the Situation of Palestine, a State party to the ICC, your office is empowered to investigate crimes taking place on the territory of Palestine regardless of the nationality of the perpetrator (art. 12(2)(a)) or by a national of a State party (art. 12(2)(b)). To assist your investigation into crimes being committed on the territory of Palestine in Gaza, we set forth the factual and legal basis to conclude that a reasonable basis exists to investigate the crime of genocide being committed against the Palestinian population in Gaza, under article 6 and article 12(2)(b) of the Rome Statute, by killing, causing serious bodily or mental harm, and deliberately inflicting on the group conditions of life calculated to bring about its destruction in whole or in part.

We further identify special conduct (statements and actions) by Israeli officials, including but not limited to Prime Minister Netanyahu, Defense Minister Yoav Gallant, Energy Minister Israel Katz, Major General Ghassan Alian, and President Isaac Herzog, and United States officials, including but not limited to President Joseph Biden, Secretary of State Antony Blinken, and Secretary of Defense Llyod Austin, that warrants their investigation for committing, ordering, facilitating, directly and publicly inciting, and/or contributing to the commission or attempted commission of the genocide by a group acting with a common purpose, under article 25 of the Rome Statute.

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We recall you have the power to apply to the Pre-Trial Chamber for the issuance of arrest warrants when there are reasonable grounds to believe that a suspect bears responsibility for crimes within the jurisdiction of the Court, including war crimes, crimes against humanity and genocide, and *inter alia*, to prevent the person from continuing with the commission. *See* Rome Statute, article 58.

Israel, the United States, and indeed, all States, must immediately comply with their obligations under the Genocide Convention regarding prevention and the prohibition on commission of and complicity in genocide, independent of any liability their officials could face at the International Criminal Court. As you often speak of the importance of complementarity and an interlocking international system, we encourage you also to remind States of their obligations under the Genocide Convention, and indeed, all international laws, including the Fourth Geneva Convention.

Thank you in advance for your immediate attention to this correspondence.

Sincerely,



Maria C. LaHood
Deputy Legal Director
Center for Constitutional Rights

Encl.

cc: Ms. Silvia Fernández de Gurmendi, President of the Assembly of States Parties
Ms. Nazhat Shameem Khan, Deputy Prosecutor