

Legal Procedure against Biden, Blinken and Austin: Sued for “COMPLICITY” in the Genocide in Gaza

By [Center for Constitutional Rights](#)
Global Research, November 15, 2023
[Center for Constitutional Rights](#)

Region: [Middle East & North Africa, USA](#)
Theme: [Law and Justice](#)
In-depth Report: [PALESTINE](#)

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Introduction

*This case is brought on behalf of Palestinian human rights organizations and individuals to **enforce what is perhaps the most basic and important legal, and moral, obligation in the world - the obligation to prevent genocide, the destruction of a people.***

This duty is enshrined in the 1948 Genocide Convention, to which the United States, Israel and Palestine have all acceded, and it is judicially enforceable as a peremptory norm of customary international law. Plaintiffs seek an order of this Court requiring that the **President of the United States, the Secretary of State, and the Secretary of Defense** adhere to their duty to prevent, and not further, the unfolding genocide of Palestinian people in Gaza. If the legal responsibility to prevent an unfolding genocide is to mean anything - indeed, if the rule of law is to signify anything - courts must have a role and responsibility to enforce these foundational international law principles. The lives of so many more people are at stake.

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DEFENSE FOR CHILDREN
INTERNATIONAL – PALESTINE; AL-
HAQ; AHMED ABU ARTEMA;
MOHAMMED AHMED ABU ROKBEH;
MOHAMMAD HERZALLAH; A.N.;
LAILA ELHADDAD; WAEIL ELBHASSI;
BASIM ELKARRA; and DR. OMAR EL-
NAJJAR

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., *President of the
United States*, ANTONY J. BLINKEN,
Secretary of State, LLOYD JAMES
AUSTIN III, *Secretary of Defense*, in their
official capacities,

Defendants.

Case No.: 3:23-cv-5829

COMPLAINT

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For the past five weeks, the world has watched the Palestinian people of Gaza, half of whom are children, be subjected to an unrelenting and unprecedented bombing campaign

unleashed by the Israeli military - a campaign that is both overwhelming in its destructive scale and seemingly indiscriminate in its devastation of Gazan life, infrastructure and the basic human conditions of livelihood. The bombings have leveled critical civilian infrastructure - approximately a third in northern Gaza alone has been damaged or destroyed - taking in its destruction numerous hospitals, schools and universities, United Nations safe havens as well as all the elementary attributes necessary for the existence of civilian life, including water, fuel, medicine and food.

This military bombardment has killed over 11,000 Palestinian civilians, more than 24,500 of them children, as well as entire families, numerous journalists and UN workers. The number of casualties has not been updated since November 10 following the collapse of services and communications at hospitals in Northern Gaza. The bombardment has left many hundreds or thousands more civilians suffocating and suffering under rubble; it has forced the displacement of approximately 1.6 million persons, including in a manner likely designed to prevent their return to their homes. This bombardment has been accompanied by a total siege of Gaza, depriving Palestinians in Gaza the conditions of life necessary for human survival: food, water, medicine, fuel, and electricity.

This unfolding genocide of the Palestinian people in Gaza has so far been made possible because of the unconditional support given by the named official-capacity defendants in this case, President Joseph Biden, Secretary of State Antony Blinken and Secretary of Defense Lloyd Austin, constituting a breach of U.S. responsibilities under customary international law, as codified in the Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"), Dec. 9, 1948, S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277, to prevent, and not further, genocide.

Genocide, the gravest of crimes under international law, defined in the Genocide Convention and implemented in U.S. domestic law at 18 U.S.C. § 1091 upon ratification, constitutes certain acts "committed with the intent to destroy in whole or in part a national ethnical, racial or religious group as such" by, among other things: (i) killing members of the group, (ii) deliberately inflicting upon the group conditions of life calculated to bring about its physical destruction in whole or in part; and (iii) causing serious bodily or mental harm. For the past 38 days, the world has watched senior Israeli officials use dehumanizing language in connection with their expressed intent to destroy and displace Palestinians in Gaza while imposing an unrelenting siege, and intentionally depriving Palestinians the conditions of life necessary for human survival. The Israeli military has dropped an estimated 25,000 tons of explosives on Palestinians in Gaza - the approximate explosive power of two nuclear bombs.

The United States has been obligated, from the time it learned of the specter of a genocide of the Palestinian people, to exercise its clear and considerable influence on Israel to prevent this grave crime from unfolding. The President and the Secretaries of State and Defense have not only been failing to uphold the country's obligation to prevent a genocide, but have enabled the conditions for its development by providing unconditional military and diplomatic support - disavowing any constraint or "red lines" on Israel's military campaign even in the face of numerous Israeli governmental statements reflecting a genocidal intent. Defendants have refused to even initiate internal processes to assess whether there is a genocide unfolding in Gaza, or to monitor how U.S. weapons are used there.

The attacks by Hamas on October 7, including unlawful direct attacks against civilians, killed approximately 1,200 civilians and soldiers, and led to the taking of approximately 240 civilian hostages and military captives who are still held in Gaza. Targeting civilians violates international law. Still, under foundational legal principles that Plaintiffs invoke, even attacks that result in atrocity crimes can never justify, as a matter of law or morality, the form of lethal collective punishment and destruction against the Palestinian population that is unfolding, nor do those attacks obviate the United States' corresponding duty to prevent its continuation.

Plaintiffs Defense for Children International - Palestine ("DCIP") and Al-Haq (collectively "Organizational Plaintiffs") are Palestinian nongovernmental human rights organizations dedicated to preserving and promoting the human rights of Palestinian people across the Occupied Palestinian Territory, including Gaza. They are joined by individual Plaintiffs Ahmed Abu Artema, Mohammed Ahmed Abu Rokbeh and Dr. Omar Al-Najjar, each of whom reside in Gaza and have surviving family members there, where they have been subjected to a suffocating siege, coupled with near-continuous Israeli bombardment that killed six members of Mr. Abu Artema's family, including his son, five members of Dr. Al-Najjar's family and ten members of Mr. Abu Rokbeh's family and displaced them all. They are also joined by Plaintiffs Mohammad Herzallah, A.N., Laila Elhaddad, Waeil Elbhassi, and Bassim Elkarra: all are U.S. citizens of Palestinian origin and current residents of the United States, who have family members that have been subjected to repeated Israeli bombing strikes, have fled their homes in search of elusive safety to escape the bombing and who remain precariously vulnerable to Israel's continuous bombardment, and its continued withholding of critical life-supporting necessities including water, food, fuel and electricity.

Collectively, the Palestinian Organizational Plaintiffs and Individual Plaintiffs bring this action pursuant to the Court's federal question jurisdiction to hear claims brought under customary international law as part of federal common law, against the federal official-capacity defendants. Plaintiffs seek declaratory relief and an injunction requiring the United States to fulfill its international law duty to prevent and cease being complicit - through unconditional financial and diplomatic support - in the unfolding genocide in Gaza.

Evidence of Israeli government officials' specific intent to undertake and persist in undertaking such genocidal acts is significant and overt, and sits on top of a longer history of Israeli dispossession and killing of Palestinians in Gaza as well as the West Bank. This evidence pronounced by senior Israeli officials, including the Prime Minister, the President and the Minister of Defense, belies any legitimate claim to "self-defense." Indeed, this evidence - that Israel also fails to distinguish between a civilian population and armed groups - reflects the kind of dehumanizing and totalizing rhetoric that genocide scholars and historians, including those opining in this action, recognize typically precede, accompany and continue to fuel genocidal acts. It is designed to characterize victims as deserving of destruction, humiliation and dispossession and correspondingly unworthy of elementary principles of humanity and foundational principles of international law.

Those statements of intent - when combined with the total siege, destruction, and killing on the ground - reveal evidence of an unfolding crime of genocide. The statements, more thoroughly described below, include: On October 7, Prime Minister Benjamin Netanyahu ordered 2.2 million Palestinians in Gaza to "get out now" as "[Israel] will be everywhere and

with all our might.” Two days later, the Israeli Defense Minister announced, “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.” The next day, the Israeli Major General who heads the Coordinator of Government Activities in the Territories (“COGAT”) echoed him, stating, “Human animals must be treated as such. There will be no electricity and no water [in Gaza], there will only be destruction. You wanted hell, you will get hell.” On October 10, the Israel Defense Forces spokesperson announced dropping “hundreds of tons of bombs,” as “the emphasis is on damage and not on accuracy.”

On October 12, when the in northern Gaza to “evacuate” to southern Gaza within 24 hours, the Minister of Energy and Infrastructure said, “Humanitarian aid to Gaza? No electrical switch will be turned on, no water hydrant will be opened and no fuel truck will enter until the Israeli abductees are returned home.” He later said “They will not receive a drop of water or a single battery until they leave the world.” On October 13, Israeli President Isaac Herzog announced: “It is an entire nation out there that is responsible. It is not true this rhetoric about civilians not being aware, not involved. It’s absolutely not true.” Israeli Defense Minister Gallant stated: “Gaza won’t return to what it was before. We will eliminate everything.” On October 15, as Israeli airstrikes killed over 2,670 Palestinian civilians, including 724 children, Prime Minister Netanyahu stated that Israeli soldiers “understand the scope of the mission” and stand ready “to defeat the bloodthirsty monsters who have risen against [Israel] to destroy us.”

On October 29, as the number of people killed by Israel in Gaza rose to 8,000, Prime Minister Netanyahu invoked the story of Amalek in the Bible to justify Israel’s assault on Gaza, stating, “You must remember what Amalek has done to you, says our Holy Bible, and we do remember, and we are fighting.” In the Bible, God commands the extermination of Amalekite men, women, children, and animals, and this commandment has been described by one scholar as “divinely mandated genocide.”

Immediately after the Hamas attacks and the launch of the Israeli assault on Gaza, President Biden offered “unwavering” support for Israel’s military campaign, which he and administration officials have consistently repeated even as mass civilian casualties escalated, Gaza was sealed and basic necessities for life cut, alongside Israeli genocidal rhetoric. On October 15, for example, Secretary of State Blinken unconditionally pronounced that “We will stand with [Israel] today, tomorrow, and every day, and we’re doing that in word and also in deed.” U.S. National Security Council Coordinator John Kirby has repeatedly and publicly proclaimed that there would be no “red lines” to American moral, political or military support to Israel. That support also came by repeatedly UN resolutions calling for a ceasefire in Gaza, ignoring warnings from UN experts of a “grave risk of genocide” on the Palestinian people in Gaza, the high-profile resignation of the director of the New York office of the United Nations High Commissioner of Human Rights who described what is happening in Gaza as a “textbook case of genocide,” and the resignation of a senior State Department official who acknowledged that U.S. weapons were being used to “massacre civilians in Gaza.”

That U.S. support also takes significant material form. Since October 7, the United States has provided Israel with expedited and military financial assistance, equipment, and

personnel to support and further its assault on Gaza, which comes on top of access to the existing stockpile of U.S. weapons already in Israel, estimated to be worth up to \$4.4 billion. U.S. munitions and equipment are being delivered on a near daily basis. The combat aircraft and munitions killing Palestinians in the Gaza Strip are predominantly American-made and Israel's ability to use U.S. military assistance funding to purchase weapons from Israeli companies means that U.S.-funded Israeli weapons are also killing Palestinians in Gaza. And Defendants intend to provide even more military assistance: since October 7, they have requested from Congress \$14.1 billion to support Israel's military, and have approved the sale of \$320 million worth of military equipment to Israel to manufacture precision bomb kits.

After War II and the horror of the Holocaust, the United States was among the world's leaders in developing universal norms designed to protect civilians and peoples from being targeted because of their ethnicity, nationality, race or religion. Despite having condemned other genocidal campaigns, including by intervening in proceedings in the International Court of Justice to affirm the customary international law obligation to prevent genocide, the United States has now chosen to set aside those norms - and the international humanitarian order they were designed to preserve - while the Israeli government is undertaking genocidal acts that have already killed more than 11,000 Palestinians in Gaza, forcibly displaced hundreds of thousands, and produced such deprivation and suffering in Gaza that it is functionally uninhabitable.

The Court must hold these United States Defendants, including the President of the United States, to their obligations under the law to prevent the unfolding crime of genocide, and cease providing support for it. In the face of continuing death and destruction of their people, these Plaintiffs and the 2.2 million Palestinians they stand for, half of whom are children, have no other choice but to seek the relief of law from this court.

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