

Hamas Committed War Crimes and Crimes Against Humanity in Israel's Southern Communities

Zulat for Equality and Human Rights promotes the protection of the rule of law and democracy and human and civil rights.

On 7 October 2023, as Israel celebrated the Jewish festival of Simchat Torah, Hamas troops launched a murderous attack on communities along the border with Gaza using the terror methods of ISIS. They killed passersby at point blank and butchered youngsters at a music party and whole families in kibbutzim and other localities; they burned to death residents who took refuge in bomb shelters and tortured others prior to slaughtering or kidnapping them; they abducted hundreds of men, women, elderly persons, children, and toddlers and later posted horrific pictures of some of them on social media; many Israelis are missing, and Hamas has not acknowledged holding them or provided any information about their fate.

There isn't a single human right that was not violated in the Hamas attack on the Israel's communities abutting the Gaza Strip. The following addresses some of the heinous war crimes so defined under international law, based on the testimonies of survivors and reports published in the mainstream media and on social media platforms.

Genocide

- Hamas is an Islamic fundamentalist terror organization whose declared intention is to obliterate all the Jews between the Jordan River and the Mediterranean Sea, as stated in its covenant¹ and in countless statements by its clerics and military commanders.
- Hamas's intention to commit genocide emerges crystal-clear from its modus operandi in this attack. Their forces seized dozens of communities and attempted, unsuccessfully, to take over others. Their plan was not to "liberate" territory from Israel and let civilians get away. What they did instead was to go from house to house in every community they seized, killing or attempting to kill all its residents. They set houses on fire to suffocate people who were hiding in bomb shelters and to force those

¹ [Hamas Covenant 1988](#), Yale Law School, 18 August 1988.

trapped inside to come out and then execute them. They shot dead car passengers and joggers who happened to pass by. They massacred youngsters at a music party near Kibbutz Re'im, chased and murdered those who tried to flee the butchery, sabotaged their cars and set them on fire to stop their escape.

- Were it not for the heroic actions of local residents and the security forces that arrived on the scene, they would have all been slaughtered. Had the Hamas troops succeeded in taking over the towns of Sderot or Ofakim (each with a population of 35,000), hundreds would have been massacred there as well.
- Documents seized from Hamas troops and published in the media indeed confirm that the plan was to commit mass murder.²
- The definition of the crime of genocide is contained in international administrative law, in the International Convention on the Prevention and Punishment of the Crime of Genocide (1951),³ and the Rome Convention (1988).⁴ "Genocide" is defined as killing members of a national, ethnical, racial or religious group, causing them serious bodily or mental harm with the intent to and destroy the group in whole or in part. The Geneva Conventions and their attendant protocols do not specifically address "genocide," but they do include the acts covered in the definition of this crime in the aforementioned conventions.

Torture

- According to the testimonies of survivors, as well as horrific video footage Hamas posted on social media, Hamas troops physically, mentally, and sexually abused (and in some cases raped) people they captured at the music party and in the communities they occupied. Wounded people and children were also tortured before they were abducted or murdered.
- As of 1946, when the United Nations General Assembly adopted the principles and resolutions of the Nuremberg Military Tribunal (IMT) constitution,⁵ international law considers torture an international crime, both within the category of crimes against humanity and as a crime in its own right.

² Haaretz editorial staff, [Hamis Planned to Kill and Abduct Civilians, Documents Retrieved From the Deadly Assault Reveal](#), *Haaretz*, 14 October 2023.

³ [Convention on the Prevention and Punishment of the Crime of Genocide](#), *United Nations*, 12 January 1951.

⁴ [Rome Statute of the International Criminal Court](#), *United Nations*, 17 July 1998.

⁵ [Charter of the International Military Tribunal - Annex to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis](#), *United Nations*, 8 August 1945.

- The ban on torture is anchored in Article 5 of the United Nations Declaration on Human Rights (1948), Article 7 of the International Covenant on Civil and Political Rights (1966),⁶ the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984),⁷ as well as in the Geneva Conventions and their attendant protocols.⁸

Deprivation of Liberty and Enforced Disappearance

- Hamas troops kidnapped elderly persons, men, women, people with disabilities, children, and toddlers. The pictures and videos posted on social media and published in the international media of abducted mothers, elderly people, women bleeding in the pant seat area and a naked woman paraded down the streets of Gaza are beyond shocking.
- Hamas is hiding the identity of most of the abductees, their location, their medical condition, and their fate. The number of people missing from the scene of massacres is higher than the number of abductees that Hamas has already admitted to holding and whose pictures it published. This may be due to Hamas's desire not to take responsibility for the fate of some captives due to the severe atrocities that were inflicted on their bodies. Hamas has even threatened to execute abductees.⁹
- The abductees and missing persons are thus defined as victims of deprivation of liberty and enforced disappearance, which are considered war crimes and crimes against humanity under international administrative law. The crime of enforced disappearance is defined in the International Convention for the Protection Against Enforced Disappearance (2006),¹⁰ the UN declaration of 18 December 1992 (A/RES/47/133),¹¹ and the aforementioned Rome Convention, while the ban on deprivation of liberty is also included in the Geneva Conventions and their attendant protocols.¹²

⁶ [International Covenant on Civil and Political Rights](#), *United Nations*, 16 December 1966.

⁷ [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), *United Nations*, 10 December 1984.

⁸ [Rule 90: Torture and Cruel, Inhuman or Degrading Treatment](#), *International Committee of Red Cross*.

⁹ David S. Cloud and Anat Peled, [Israel's Hostage Crisis Deepens With Execution Threat](#), *The Wall Street Journal*, 10 October 2023.

¹⁰ [International Convention for the Protection of All Persons From Enforced Disappearance](#), *United Nations*, 23 December 2010.

¹¹ [Declaration on the Protection of All Persons From Enforced Disappearance](#), *United Nations*, 18 December 1992.

¹² [Rule 99: Deprivation of Liberty](#), *International Committee of Red Cross*.

- As for disappeared people whose fate remains unknown, this is a continuing crime that begins with a person's abduction and does not end until the party responsible for the disappearance releases him or reveals his fate.

According to international law, every country must act to prevent the crimes of genocide, enforced disappearance, and torture - and to prosecute their perpetrators. The same must apply to Hamas! Zulat calls for the immediate release of all the abductees, urges the international community to bring Hamas to justice (international law and the bans on the aforementioned crimes similarly apply to armed organizations), and calls on the State of Israel and the international community to take real steps to prevent such despicable crimes in the Gaza border region or anywhere else.

Author and legal consultant: Adv. Eitay Mack