

Annex: English Translation of Hamas's Response Letter, April 14, 2024

Sunday, April 14, 2024

Dear Mr. Tom Porteous
Deputy Program Director
Human Rights Watch

Subject: Response to questions about the October 7th attack

The [Hamas] movement emphasizes that its struggle is with the Zionist settler occupation project and not with the Jews as Jews. Hence, the struggle is with the existing occupying power, and resistance is the legitimate right of the Palestinian people in the context of international law, which is a framework that all must respect. Hamas is committed to respecting international and human rights law and has agreed without reservation to the Rome Statute of the International Criminal Court. Palestinian resistance and all forms of its struggle are an extension of wars of national liberation, and the Palestinian people's right to use resistance is established under the rules of international legitimacy to end the occupation, become self-determining, and establish the Palestinian state.

The October 7th attack was carried out at specific sites with light military equipment, meaning that much of the violence and destruction were caused by weaponry not owned by Palestinian resistance fighters but by the Israeli military. Many photographs have been published showing destroyed homes, roads torn up by tracked vehicles, holes in walls, and lines of burnt-out and destroyed cars. None of these things relate in any way to the specific action of resistance fighters.

As much as is possible under the circumstances of war, the following are answers to the questions you addressed.

- 1. What was the scope of Hamas's involvement in the October 7th attack? How many Hamas members [participated in the attack]? What was Hamas's role compared to other groups?**

The military wing, the Qassam Brigades, is responsible for military operations. It planned the October 7th attack and initiated its implementation against the Israeli army's Gaza Division, which is responsible for illegally and inhumanely blockading the Gaza Strip and locates itself in and around Israeli settlements and kibbutzim. However, the Gaza Division collapsed within a very short time, and then people rushed out, along with Palestinian groups that were not participating in the military operation, resulting in chaos in the field and, thus, changing the plan to conduct an operation against military targets. Hence, the nature of the operation brought about surprises and variables that were not in the original plans, which resulted in Israel killing and capturing hundreds of Palestinian citizens.

Naturally, the number of participants in the operation was in the hundreds, given that it targeted various locations throughout the length and breadth of military areas and sites adjacent to the Gaza Strip. The outpouring of citizens and other groups makes it difficult to know the precise numbers that participated in the operation.

2. How many “hostages” did Hamas take, how many hostages are alive, how many are civilians, and how do you justify their continued detention?

To begin with, we register our reservation at the term “hostages” because the definition does not even match the definition in the International Convention against the Taking of Hostages—especially since Hamas expressed more than once that it did not insist on holding them. Indeed, in the first days of the Israeli aggression, Hamas declared that it was ready to freely hand over civilian detainees, but Israel refused. Subsequently, Hamas handed over a number of them upon its own initiative, despite Israel's refusal and procrastination. During the recent period, Israel has not allowed an opportunity to conduct a tally of the number of detainees, though Hamas requested an extension of the ceasefire that took place at the end of November in order to complete this tally despite the occupation government's objection.

We have stressed that we do not wish to continue detaining civilians, and negotiations regarding their release were steps decided and agreed upon in the ceasefire negotiations. However, Israel is stalling on this issue, and we are increasingly convinced that their government is deliberately ignoring their circumstances.

In this regard, we affirm that we distinguish between civilians and combatants, in accordance with the provisions and rules of international humanitarian law, i.e., civilians are those who were not in the ranks of the regular or reserve forces during the October 7th attack. We stress our rejection of Israeli attempts to describe most of the detainees as civilians, even those who were detained inside military sites and whom we found to be working for the Israeli army on tasks of a military nature, even if not directly related to combat.

3. How many detainees have died and under what circumstances?

As of March 10th, al-Qassam had announced the death of 70 of the detainees it holds due to the ongoing Israeli bombing of the Gaza Strip. Another number [of fatalities] could be added, which are those who died as a result of famine and lack of health services that our people are also experiencing. We are not able to give an exact number of those alive, killed, or deceased because they are in various locations and with various military groups. We have emphasized the importance of reaching a ceasefire to gather the necessary information about prisoners and recover the bodies of the deceased and those still under the rubble, like thousands of Palestinians. Despite consecutive warnings that indiscriminate and intensive bombing may lead to the killing of more Israeli detainees, the occupation government does not appear concerned with the lives of its citizens and soldiers in Gaza.

4. The conditions of their detention and measures taken to ensure access to water, food, and medical care:

Over months of war, al-Qassam has made major efforts to preserve the lives of its detainees. Medical care was provided for those with chronic diseases, in addition to urgent surgical interventions for some of the injured. Some of this was documented with al-Qassam cameras and subsequently published during the recent period. Furthermore, the testimonies of freed detainees clearly answer the question about the extent of care they received, despite the harsh conditions of war and the need to move them from place to place in fear of their life from the savage Israeli bombardment. In agreement with Qatar and other countries, Hamas also took the initiative to accept proposals for bringing medications into the Gaza Strip for the detainees, according to their needs.

Hamas stresses that the detainees are treated humanely and in accordance with the provisions of the Islamic faith, the rules of international humanitarian law and related conventions.

5. What were the goals of the attack?

The operational goal was to attack the Gaza Division and destroy its defenses. The political objectives were multiple and intended to deal with attempts to erase the Palestinian cause. These objectives included dealing with the criminal Israeli occupation, apartheid, and siege of Gaza, and changes to the status quo in Jerusalem and the spread of settlements in the West Bank and Jerusalem, even though those areas are inalterably Muslim.

In recent years, the Palestinian cause has been subjected to broad pressure that put it at the bottom of international priorities, following the success of Israel's extremist right government in establishing new facts on the ground through attempts to annex and enshrine Israeli hegemony and the US's role in trying to obliterate the Palestinian cause.

We can summarize the political goals as follows:

- Recapture international interest in the Palestinian cause after long years of marginalization, where an Israeli vision prevailed that was based on possible involvement in regional and international projects without resolving the Palestinian issue.
- Emphasize that ignoring the Palestinian people and their rights will not necessarily lead to regional or international security.
- Release Palestinian prisoners and detainees in Israeli prisons, dozens of whom have been detained for decades.
- Lift the blockade on the Gaza Strip, which has exhausted Gazans, prolonged their suffering, turned more than 70% of them into aid recipients, and crushed the economy there.
- Stop all Israeli violations in Jerusalem and halt settlement activity in the West Bank.
- Initiate a possible way to force Israel to comply with all international resolutions regarding the Palestinian cause.

6. How did the plan for the operation envision the treatment of civilians and adherence to international law?

The Qassam Brigades was clear in directing its members and fighters not to target civilians. In a speech in which he announced Operation Al-Aqsa Flood in the first moments of the attack, the commander-in-chief of the Qassam Brigades directed that civilians not be targeted. Hamas's policy, even in negotiations, confirms that it distinguishes between combatants and non-combatants when it made the release of civilians the first step and stage of any future de-escalation agreement.

We also note many cases reported by Hebrew media in which many Israeli civilians who lived through the military attack confirmed that they were not harmed or mistreated by Hamas fighters, who withdrew from civilian homes.

7. Timeline and response of Israeli forces:

Precise operational details are held by the Qassam Brigades, and it is difficult to communicate [with them] prior to a ceasefire to provide coverage of these details. However, the incursions began after a cover fire with multi-range rocket shells, in addition to targeting surveillance cameras throughout the operational areas prior to the engagement of fighters according to the pre-set plan. While details can be included in the course of other replies, it is important to point out that the Israeli army bears great responsibility for the killing of many settlers, as noted in Israel's own reports, either during the targeting of the Spring Festival with planes and artillery shells or the bombing of homes where there were Israeli civilians on suspicion of the possible presence of resistance fighters there, in accordance with Israel's Hannibal Protocol. The above are the testimonies of Israeli survivors and Israeli reports.

8. Extent of adherence to the attack and any deviation from it

The first main attack took place largely according to plan, though we do not deny some possible operational errors, which we cannot at this time determine because the exceptional circumstances of the war make it difficult to conduct investigations into operational behavior.

However, the subsequent stage, in which Gaza residents and armed forces rushed in without coordination with Hamas, led to many mistakes. This operation and everything

arising from it require a thorough examination from our side, but it cannot be done at the moment.

9. The number of Hamas members killed in the operation

Gathering statistics on the number of martyrs who died in the operation is not feasible currently, especially since the Israeli army has not disclosed the count of martyrs and prisoners in its custody who participated in the operation. In addition, the Israeli army detained hundreds of citizens who crossed the border fence in the first hours after the operation and considered them participants and members of the Qassam Brigades, which we completely and totally deny.

Meanwhile, the Israeli side can be required to disclose the real data about the prisoners detained in the operation, stressing that it distinguish between combatants and civilians who crossed the border fence after the operation began.

10. Investigations we have begun

The established policy of Hamas and its military wing is always to conduct comprehensive and transparent investigations into the errors, violations, or gaps that are part of any operation. However, the exceptional nature of this battle, Israel's attack of the entire Gaza Strip, and the involvement of Hamas and its leaders and fighters in combatting this brutal war, make it very difficult at this time to conduct internal investigations, though it should emphasized that all the information obtained from Israeli detainees will be handled seriously, including any complaints of abuses. Hamas is committed to conducting any required investigations at the first available opportunity, and it will take any required steps regarding any violation proven against any of its members.

11. Information on the presence of civilian objects

Of course, the operational focus was on attacking military targets associated with the Gaza Division, Shin Bet, and the occupation army's intelligence forces. However, some sites that were attacked were located inside Israeli kibbutzim and settlements that contain civilian facilities, which indicates Israel's use of these civilian objects as human shields. Nevertheless, they were not the primary target of the attack, and in

this regard, we question the narrative Israel has propagated about the attack and its allegations about the killing of civilians and the targeting of civilian facilities—especially after Israeli allegations that have been promoted to prove that Hamas intentionally attacked civilians have been proven false in many cases. Furthermore, there are civilian targets closer to the Gaza Strip, but the Qassam Brigades did not head in their direction. If the Qassam Brigades had intended to attack civilians, they would have included them in the attack, but they did not. In addition, the Qassam Brigades launched several attacks within the Occupied Palestinian Territory in 2014, all of which were against Israeli army positions. This is evidence of al-Qassam’s military doctrine not to target civilians.

12. Our view of civilian women and men over 18

It should be clarified that the reference to the occupation army’s recruitment process came in the context of the participation of many civilians in confronting the Qassam Brigades’ forces during the operation. This reference includes knowledge of the background situation in the occupying state, but under no circumstances does it mean that we consider all civilians as military personnel or place them on an equal footing. We adopt the definition of combatants and civilians provided in international humanitarian law and relevant conventions. We also stress what we have previously mentioned: in the framework of the current negotiations, we offer great flexibility regarding the release of civilians, while the process we are discussing in detail relates to soldiers.

13. Precision weapons

The reference to a lack of precision or guided weapons comes in the context of explaining the circumstances that led to injuring civilians during the attacks by Hamas and resistance [groups]. Shelling operations target military sites but, in the absence of guided missiles that can be directed specifically towards the target, the measurement process is approximate. In this regard, some attacks may lead to wounding Israelis in attempts to bomb military sites. This is unintended collateral damage, and the military apparatus takes all the precautions within its capabilities to comply with relevant rules and principles.

14. Cooperation with the International Criminal Court

Hamas has been explicit about its intention to cooperate with any international investigation of events in the Palestinian territories and the Israeli aggression against the Gaza Strip. In this vein, Hamas emphasizes its readiness to cooperate with any international actor to examine any conduct suspected of being a violation of international law and international humanitarian law. We are also ready to respond to any inquiries or accusations in this regard.

Hamas has agreed with the complaint before the International Criminal Court and confirmed its readiness to cooperate with an independent and serious international investigation. For its part, Israel has refused any cooperation with the International Criminal Court and is fighting the application of international law. Hamas stresses that anyone who wants to go before the International Criminal Court must accept the rules of the dispute, in particular the Court's decision of February 5, 2021, ruling that Palestine is a state with sovereign jurisdiction over the West Bank, Gaza, and East Jerusalem. Every state and entity must be subject to the same rule of law, in accordance with the principle of one law for all.

Sincere regards,

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