

# Amnesty International UK

# BRIEFING



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## ARMS EXPORT LICENCES FOR SALES TO ISRAEL (26 MARCH 2024)

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### BACKGROUND

On 07 October 2023, Hamas and other Palestinian armed groups launched an attack in Israel which violated international humanitarian law. The attacks displayed a chilling disregard for life by carrying out mass summary killings, hostage-taking, and launching indiscriminate rocket attacks into Israel. The final death toll from the attack is now thought to be as of 15 December, at least 1,139 people killed, including 36 children, and since 7 October, 432 injured in Israel, according to reports from Israel's social security agency. Some 250 hostages were taken to Gaza, of which 110 have been released; most during the one-week truce in November.

In the months since Hamas' attack, Israeli military action has resulted in the deaths of at least 32,333 Palestinians, including more than 14,000 children, and at least 74,694 are reportedly injured. The real number of fatalities is expected to be much higher, with families struggling to recover the bodies of their loved ones from under the rubble. Over 1.7 million people have been displaced from their homes and more than 70,000 housing units destroyed in Gaza. After a short, negotiated 'humanitarian pause' hostilities resumed on 1 December 2023.

The UN has [stated](#) that Israel's actions may amount to war crimes and that Israeli restrictions on aid [may amount](#) to starvation as a method of war; the International Court of Justice has [stated](#) that Israel's actions plausibly constitute genocide.

In the context of ongoing hostilities Amnesty International is calling for a comprehensive arms embargo on all parties to the conflict in Israel and Gaza and for the UK Government to immediately cease supplying arms and related equipment to Israel, **including suspending all extant individual and open export licenses currently in force**, given the clear risk that the weapons will be used to kill civilians in Gaza and elsewhere.

In the interim, given (i) the absence of a functioning Select Committee on Arms Export Controls (CEAC), and (ii) repeated resumption of significant hostilities in the Occupied Palestinian Territories (OPT) and the identified presence of UK components including in Israeli combat aircraft and military vehicles on the ground; the UK Government should establish an independent review of its arms export policy and licensing decisions to foreign states, where it is unclear that arms sold are being used in violations of international law and for connected purposes.

We are particularly concerned in light of the International Court of Justice ruling to impose provisional measures on Israel to prevent genocide against the Palestinian people. By failing to halt arms exports to Israel we are concerned that the UK is at risk of failing to take action to prevent genocide. Without publication of the relevant legal advice given to the Government, the Minister's assertions on [19 March](#) that the Government is operating under the rule of law provides insufficient reassurance where the matter at stake is the UK's potential complicity in war crimes and possible genocide.

**FOR THE LATEST INFORMATION ON AMNESTY'S RESPONSE TO THE CURRENT CRISIS, SEE OUR [CRISIS IN GAZA, ISRAEL AND THE WIDER OPT](#) PAGE ON OUR WEBSITE**

## SUMMARY

There is a clear risk that arms and military equipment transferred to Israel will be used to facilitate or commit serious violations of international law, including attacks that may amount to war crimes. The UK government should immediately suspend both extant licences for military equipment and technology and the issuing of new licences while Israel continues to carry out widespread serious violations including war crimes, with impunity. Failure to do so risks the UK government breaching its own laws and international obligations and being complicit in grave abuses.

The UK government exploits a loophole, set out in the 2002 “incorporation guidelines”<sup>1</sup>, to arm Israel by supplying components for US-made F-16 and F-35 fighter aircraft, in the full knowledge they’re being used in military action in Gaza where thousands of civilians have already been killed and are expected to continue to be killed, following relentless and indiscriminate Israeli attacks. As detailed in this briefing, Israel’s military conduct in Gaza has repeatedly involved unlawful attacks.

In previous escalations of the conflict, the UK government has acknowledged that a number of UK arms export licences, specifically “incorporation licences” whereby UK components have been sent to third destinations for onward export to Israel, have been used by the Israeli defence and security forces in Gaza. For example, in 2009, the UK government acknowledged<sup>2</sup> that components for F-16 combat aircraft, Apache attack helicopters and a variety of naval systems, had likely been used in Gaza by the IDF. Similarly, in 2014, a UK government [review](#) concluded that export licence for military radar systems, combat aircraft and military vehicles had likely been used.

It is clear that the UK’s arms licensing system is not fit for purpose in assessing risk, is riddled with loopholes and is in desperate need of root-and-branch reform. In the meantime, the UK should cease the licensing of arms and security equipment to Israel, including components supplied via third countries, immediately.

## RECOMMENDATIONS TO THE UK GOVERNMENT:

- **Immediately cease the licensing of arms and related equipment to Israel**
- **Establish an independent review** to guarantee UK arms export policy stops breaching our international law obligations
- **Support efforts to re-instate the Committee on Arms Export Controls (CAEC)**, including the necessary procedural changes to incorporate it as a permanent, stand-alone select committee.
- **Withdraw the 2002 “incorporation guidelines”** in order to remove the loophole that allows the UK government to bypass its own legal obligations to prevent the sale of military equipment where there is a clear risk they might be used for serious violations of international law
- **Immediately disclose any legal advice regarding Israel’s compliance with international humanitarian law**
- Press for the UN Security Council to impose a **comprehensive arms embargo** on all parties to the conflict.
- **Support justice and accountability measures concerning human rights violations**, support UN investigations and honour Rome Statute treaty obligations by ensuring the International

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<sup>1</sup> The guidelines allow the UK to supply components to an intermediate country if that country is an ally and has a recognised export control system, even if that country then exports that item to destinations the UK would not approve sales to directly.

<sup>2</sup> See Ministerial answer to question on export licences

<https://publications.parliament.uk/pa/cm200102/cmhansrd/vo020708/text/20708w01.htm#20708w01.html> dpthd0

Criminal Court has all the resources it needs, including for its investigation into the situation in Palestine

## INTERNATIONAL LAW

Under both relevant international and domestic law, the UK is required to prevent the transfer of military equipment and technology, including parts and components, where there is a clear or overriding risk that such equipment and technology might be used to commit or facilitate a serious violation of international humanitarian law or international human rights law.

These binding obligations are contained within Articles 6 and 7 of the International Arms Trade Treaty (ATT) as well as criterion one and two of the UK's Strategic Export Licensing Criteria (SELC). Criterion three and four of the SELC also prohibits the granting of a license when there is a clear risk that the items would, overall, undermine peace and security. International law also prohibits the UK from providing weapons with the knowledge that they would significantly contribute to unlawful attacks.

In the context of the current hostilities, serious violations of international law have been committed by both parties to the conflict some of which amount to war crimes<sup>3</sup>. The UK risks being complicit in and facilitating serious violations of international humanitarian law if it fails to halt arms exports to Israel immediately.

This risk is further heightened by statements of high-level Israeli officials that have sought to hold Gaza's entire population responsible for the 7 October attacks, disregard the principle of distinction and the protected status of civilians and civilian infrastructure, and evacuation orders that have led to mass forced displacement of the civilian population in Gaza and could amount to a war crime.

## UK EXPORT LICENSING CRITERIA

Pursuant to criteria 2(b) of the Strategic Export Licensing Criteria, the UK government must also exercise special caution and vigilance in granting licences to countries where serious violations have been established by the competent bodies of the UN, and certainly such findings of violations are relevant to the determination of 'risk' under international and domestic law.

The UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, has made findings of the use of [excessive force, violations of rights to freedom of association, expression and opinion, rights to privacy, economic, social and cultural rights, forcible deportation of individuals](#) and [entire communities](#) by Israel. In the context of hostilities in Gaza in 2008 and 2009, the United Nations Fact Finding Mission on the Gaza conflict [found](#) Israel carried out collective punishment, disproportionate and indiscriminate attacks resulting in deaths, serious injuries and extensive destruction of civilian infrastructure, and failed to take feasible precautions to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects, and failed to hold those responsible to account.

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<sup>3</sup> For example refer to Amnesty International's report dated 20/11/23 <https://www.amnesty.org/en/latest/news/2023/11/israel-opt-nowhere-safe-in-gaza-unlawful-israeli-strikes-illustrate-callous-disregard-for-palestinian-lives/> or see our full briefing [here](#)

In the context of the current hostilities, there is a clear and overriding risk that UK-licensed military equipment could be used to commit or facilitate a serious violation of international law, including unlawful attacks that may amount to war crimes.

## PARLIAMENTARY SCRUTINY

The Committee on Arms Export Controls (CEAC) was established to mirror the UK's arms export licensing. It should be re-convened immediately.

The consequences of a lack of parliamentary oversight over arms export licensing decisions in terms of global security, conflict and instability are still being felt to this day, not only for the Middle East and North Africa region, but also on the global stage. Against this backdrop, Amnesty International notes with dismay that the Committee on Arms Export Controls (CEAC), which has been instrumental in highlighting the deficiencies of UK arms export policy to Israel and other foreign states, has been dormant for well over a year. The Government reiterated its support for such scrutiny, on 12 December Minister for Trade Greg Hands said " The Government stand strongly in support of the scrutiny of defence exports. We have always been supportive of there being such a regime."<sup>4</sup>

We urge the Chairs of the relevant constituent select committees, including the Foreign Affairs Committee (FAC), to reconstitute the CAEC immediately and to conduct a formal enquiry into UK arms export licences to Israel (in light of the current crisis), and more broadly into the end use of arms sold to foreign states where there are clear risks that such arms may be used in violations of international law. Longer term, we repeat our calls for the CEAC to be established on a permanent footing, as a dedicated stand-alone Select Committee to ensure it has the adequate resources, capacity and status to provide meaningful oversight and scrutiny of the Government's arms export control policy.

## UK GOVERNMENT'S POSITION

On [20 November 2023](#) when at least 12,000 Palestinians were known to have been killed by Israel's bombardment of Gaza, the Secretary of State, Grant Shapps, was asked what assessment his Department had made of the potential impact of UK arms to Israel on (i) civilian deaths and (ii) compliance with international humanitarian law in Gaza. He stated that *"All export licence applications are assessed on a case-by-case basis against the strategic export licence criteria. This Government will not use any export licences to any destination where applications are not consistent with the criteria."* When pressed by Kim Johnson MP, why arms sales to Israel had not been suspended, he stated that UK defence exports to Israel are *"relatively small—just £42 million last year"*.

On [30 November 2023](#), the Secretary of State for Business and Trade, Kemi Badenoch was asked whether she had made an assessment of the potential merits of revoking arms export licenses to Israel, and if she could identify which arms export licences are currently in force for end use by the Israeli defence and security forces. The Minister stated *"Export licences are kept under careful and continual review as standard, and we are able to amend licences or refuse new licence applications if they are inconsistent with the strategic export licensing criteria"* but refused to provide details of current export licences. She said *"last year we granted 114 standard individual export licences for military goods valued at £42 million to Israel."*

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<sup>4</sup> <https://hansard.parliament.uk/Commons/2023-12-12/debates/BF12F435-8E9A-44B0-AA34-ADA9D01616E0/ArmsExportLicencesIsrael>

The Minister refused to answer a question regarding UK complicity in the commission of violations of complicity in international humanitarian law (asked by Steven Bonnar MP), adding *“the implication that the UK is complicit is really not the sort of thing we would expect from a British Member of Parliament in this House. I completely disagree with the premise of the hon. Gentleman’s question.”*

During Topical Questions when pressed by Joanna Cherry MP on the importance of transparency, and providing information regarding arms export licences to Israel to the House, the Minister stated:

*“I believe there is a quarterly register that may contain some of the information the hon. and learned Member is asking for, but I am not able or going to list every single export decision that has been made by the export control joint unit. I will see what I can do to get her a fuller answer, but she will know that this is a very sensitive issue. I have a quasi-judicial role, and I must be seen to be impartial at all times. I will do what I can to provide the information she wants, but I do not have a list to provide her with this morning, and certainly not on the Floor of the House.”*

In 2014, during Israel’s 30-day military offensive in Gaza codenamed Operation Protective Edge, former international development secretary and current FCDO Minister of State, **Andrew Mitchell** warned that the “enormous number of innocent people” caught up in the then military incursion, “will have effects not just in this generation but down the generations, and that is what has poisoned the well of opinion and goodwill in the Middle East”. When asked whether he supported an arms embargo at the time, he said **“I would have thought there is a strong case that weapons getting into this conflict are minimised as much as possible, and I think it is right that an embargo should be considered.”**

#### **QUESTIONS TO THE MINISTER:**

1. Given the abundant credible evidence of war crimes and crimes against humanity committed by Israel, will the UK government cease the licensing of arms and security equipment to Israel or otherwise disclose any legal advice to Parliament received regarding Israel’s compliance with international humanitarian law?
2. Will the Government share with Parliament meaningful information setting out how and why the Government has concluded the “clear risk” threshold hasn’t been met with regard to serious violations of both International Humanitarian and International Human Rights law, in the face of overwhelming publicly available information that appears to contradict the Government’s conclusions thus far?
3. Will the government identify which arms export licences currently in force (including any open licences), are for end-use by the Israeli defence and security forces?
4. Of the 114 standard individual export licences for military goods, can the Minister detail the classification and description of the goods, the stated end use and the licence type, including direct transfers and those via third countries?
5. Will the Foreign Secretary commit to conducting legal analysis in order to establish whether parties to the current conflict, including Israel who the UK has a defence export relationship with, have committed war crimes and other breaches of international humanitarian law and international law?
6. Does the Foreign Secretary agree that effective parliamentary scrutiny is essential to hold the Government to account and protect the UK against breaching international obligations? As such will he support reconvening the CEAC as a matter of urgency and establishing a fully independent review of UK export policy and licensing decisions to Israel and other foreign states where there are clear risks arms sold may be used in violation of international law?

7. Has the UK assessed whether UK components are being used in attacks in other parts of the Occupied Palestinian Territories, given the use of fighter jets in Jenin where approximately 65 Palestinian children have been killed by Israel Security Forces since 07 October?
8. Will the Government disclose to Parliament whether licences for weapons or components for use by Israel, for example components for combat aircraft, have been reviewed or amended since 7 October 2023 and the full details of those specific export licenses that risk being used by Israel in the current conflict?
9. Given evidence of war crimes and crimes against humanity committed by Israel, including the crime of apartheid, will the UK government cease the licensing of arms and security equipment to Israel?
10. Can the government set out how the UK's defence export relationship with Israel is consistent with the strategic export licensing criteria?

## **BACKGROUND: CONSEQUENCES OF A SYSTEM OF APARTHEID AS DEFINED BY INTERNATIONAL LAW**

In February 2022 Amnesty International published a [report](#) concluding that Israel is committing the crime against humanity of apartheid against all Palestinians. The report was the result of more than four years of research and analysis. Other international, Israeli and Palestinian organisations have previously drawn similar conclusions, including [Human Rights Watch](#), [B'Tselem](#), [Yesh Din](#), [Al Mezan](#), [Al Haq](#), and others, as have several<sup>5</sup>.

Apartheid is defined as any inhuman or inhuman act perpetuated in the context of an institutionalized regime of systematic oppression and domination by one racial group over another, with the intention to maintain that system. Apartheid is a crime against humanity under international law and can be understood as an advanced form of racial discrimination. Inhuman/inhumane acts include unlawful killing and serious injury, torture, forcible transfer, persecution, and the denial of basic rights and freedoms.

If Israel continues to face no concrete consequences from allies such as the UK for its continued and brazen, serious breaches of international law, it is not just the prospects for peace, security and access to justice and human rights for both Palestinian and Israeli citizens that are damaged, but the international rules-based system itself.

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<sup>5</sup> See for example [op-ed from former Israeli Attorney General Michael Ben-Yair](#); [op-ed from former Israeli Environment Minister Yossi Sarid](#); [op-ed by former Israeli Education Minister Shulamit Aloni](#); remarks by former Israeli Ambassador to South Africa Alon Liel to a [Jerusalem conference in 2013](#)