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**LEGAL CHALLENGE TO REMOVE HAMAS FROM
UK LIST OF PROSCRIBED ORGANISATIONS**

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Introduction

1. The Islamic Resistance Movement – Hamas – has instructed lawyers in London to make an application to the Home Secretary under section 4 of the Terrorism Act 2000 to remove its name from the government’s list of proscribed organisations. The application is made by Dr Mousa Abu Marzouk, the Head of International Relations and Legal Office of the Political Bureau of Hamas.
2. The entirety of Hamas was added to the list of proscribed groups on 26 November 2021 by the then Home Secretary Priti Patel. The ‘armed wing’ of Hamas – the al-Qassam Brigades – had been on that list since March 2001.
3. Proscription automatically creates a number of criminal offences in relation to a proscribed group, including being a member; wearing or publishing its symbols or insignia; expressing or inviting support for it; and organising meetings in

support of it. This makes it incredibly difficult to engage in a nuanced discussion about the merits of proscription without risking committing an offence.

4. The present challenge comes in the context of the Israeli genocidal campaign in the occupied Palestinian territory ('oPt').
5. For more than a century, the British State has been responsible for colonisation, ethnic cleansing and apartheid in Palestine. From the Balfour Declaration of 1917 to the Nakba of 1948 and all the way up to its present complicity in the ongoing genocide of Palestinians in Gaza, the British State has played a critical role in the persecution of the Palestinian people. It has done so pursuant to its enduring policy of Zionism, an ideology that is the root of the violence in historic Palestine.
6. The continued proscription of Hamas means support for – and complicity in – the colonisation of Palestine and the crimes against humanity and acts of genocide being perpetrated by the Zionist State. That support and complicity is irreconcilable with the British state's obligations under both international and domestic law.
7. The deproscription application seeks to remedy that ongoing illegality and presents the Home Secretary with a historic opportunity to depart from the British State's morally and legally indefensible policy of siding with the Zionist oppressor against the oppressed people of Palestine.

The Test for Proscription and Deproscription

8. The statutory test to proscribe an organisation is that it is concerned in terrorism. Hamas does not deny that its actions fall within the wide definition of 'terrorism' under the Terrorism Act 2000. Instead, it notes that the definition also covers all groups and organisations around the world that use violence to achieve political objectives, including the Israeli armed forces, the Ukrainian Army and indeed

the British armed forces. Of course, not all such groups are proscribed as ultimately that it is a question of discretion for the Secretary of State.

9. As part of that exercise, the Secretary of State has to consider all the relevant factors at play. These include the nature and scale of the organisation's activities; the specific threat it poses to the UK and to British nationals overseas; the extent of its presence in the UK; and the need to support other countries in the 'global fight against terrorism'. However, the exercise of her discretion also needs to be rational and consistent with other domestic and international obligations.

The Submission

10. The submission consists of a background section, the legal framework and the grounds for deproscription. The background section covers several themes of significance to the Palestinian struggle, highlighting key elements to their experience of Zionist violence and their resistance. It explores the history, politics and changing shape of Hamas over the past four decades; the history of settler colonialism in Palestine and Britain's historic and ongoing complicity with it; as well as the factors cited by Hamas that formed the rationale for the operation on 7 October 2023: the sanctity of the Al-Aqsa mosque, the plight of the Palestinian prisoners, and the normalisation of relations with the Zionist State despite the entrenchment of the occupation, the siege and the apartheid system.
11. Central to the application are two witness statements by Dr Mousa Abu Marzouk. The first statement provides an explanation of the organisation's history and views on a number of issues including its relationship with Britain, antisemitism, Zionism, resistance and a future political settlement. The second statement is a detailed explanation of the events of 7 October 2023, which also addresses the accusations that have been levelled against Hamas that relate to that day. The witness statement details how Hamas sought to achieve specific military objectives during the operation with specific instructions not to target women, children and the elderly. To the extent that any deviation from those instructions

occurred, Hamas is prepared to cooperate with the International Criminal Court and any other neutral third party in an independent and transparent investigation into the events of that day.

12. The appendices to the submission include primary source material from Hamas that provide an insight into the changing nature of the organisation, and its emphasis on building strong governance for the Palestinian people in the course of reclaiming land stolen by the Zionist State.
13. This application has been informed by the expertise of 19 scholars hailing from a range of academic, journalistic, political and cultural backgrounds. These experts have submitted 24 reports that detail that detail the history and context of Palestinian dispossession since the late 1800s until the contemporary moment.
14. The experts include a former judge *ad hoc* of the International Court of Justice, Professor John Dugard; Professor Emeritus at University of Oxford, Avi Shlaim; a member of Nelson Mandela's first government, Dr Ismail Vadi; investigative journalist, Jonathan Cook; and some of the leading authorities on Hamas – Dr Azzam Tamimi, Dr Tristan Dunning, and Professor Jeroen Gunning. The full list of experts and the subjects of their reports is contained at the end of this document.
15. Added to the application is also an earlier joint submission to the UK Foreign, Commonwealth and Development Office to depose Hamas made in November 2023 by a group of leading academic scholars on Hamas, Palestinian politics and the Israeli occupation of Palestine more broadly. Their arguments remain valid and should be considered by the current Home Secretary.

The Grounds

16. Hamas makes three primary grounds for its deproscription. In summary:

- (1) Hamas' proscription is contrary to the duties of the British State to (a) end genocide, (b) end crimes against humanity, (c) bring to an end the occupation of the oPt, and (d) recognise the Palestinian people as full members of the human family, equal in dignity.
- (2) Proscription is incompatible with arts.10, 11 and 14 of the European Convention on Human Rights ('ECHR'), because it unlawfully restricts the freedom of speech and assembly of those with whom the British State politically disagrees, and only of those with whom it disagrees.
- (3) Proscription is not proportionate because Hamas does not pose any threat to Britain or British citizens; it undermines the democratic process by seeking to eliminate from the political process the party which has won the only free and fair election in the oPt; it impedes humanitarian relief efforts; and results in the mass criminalisation of Palestinians.

Ground 1: Proscription is contrary to Britain's obligations under international law to not be complicit in genocide and crimes against humanity and to respect the dignity of the Palestinian people,

17. Hamas is the only effective military force resisting – and seeking to end and prevent – the ongoing acts of genocide and crimes against humanity being committed by the Zionist State against the Palestinians in Gaza. Its continued proscription is purposefully – and in any event practically – inhibiting the efforts of the Palestinian people to use military force to end and prevent those ongoing acts of genocide. Accordingly, that continued proscription breaches Britain's obligation to employ all means reasonably available to them to prevent – and end – the genocide.

18. Moreover, Hamas submits that by continuing to proscribe it, Britain is complicit in the ongoing acts of genocide being committed by the Zionist State against the Palestinians in Gaza. The attempt to inhibit the efforts and effectiveness of the primary substantial military force resisting – and seeking to end and prevent – the ongoing acts of genocide amounts to ‘*some positive action (...) taken to furnish aid or assistance*’ to the Zionist State (i.e. the perpetrators of the acts of genocide).
19. Hamas submits that by continuing to proscribe it, Britain is complicit in the ongoing crimes against humanity of apartheid, persecution, and extermination being committed by the Zionist State against the Palestinian People in the oPt, including the Gaza Strip. The Secretary of State’s effort to inhibit its efforts to resist and prevent those crimes amounts to ‘*aiding, abetting or otherwise assisting*’ the commission of those crimes against humanity by the Zionist State.
20. Furthermore, Britain has an obligation in accordance with the ICJ’s advisory opinion of July 2024 not to render aid or assistance in maintaining the unlawful presence of Israel in the oPt, and to remove all impediments to the exercise of the right of the Palestinian people to self-determination. As the right to self-determination includes the right to use armed resistance, the continued proscription of Hamas amounts to ‘rendering aid and assistance’ to the Zionist State in maintaining its unlawful occupation.
21. Proscription also reflects a failure to accept the Palestinian people as equal members of the human family. The Zionist application of humiliation is fundamental to its colonial nature, not an excess of its military activities. If circumstances for Palestinians are to change, a recognition of their psychological experience of colonial domination is needed, followed swiftly by full justice and accountability. The demand for dignity and equality has and remains central to the struggle of the Palestinian people – by proscribing Hamas, the British government is impeding the Palestinian people’s efforts to use armed resistance to restore their own dignity.

Ground 2: Proscription breaches Freedom of Expression and Assembly rights and is applied in a Discriminatory Manner

22. Hamas submits that that its continued proscription by the Secretary of State amounts to an interference with the freedom of expression of those who support (a) the right to self-determination of the Palestinian people; (b) the use of armed struggle pursuant to that right by Hamas; and (c) the use of armed struggle by Hamas to resist the acts of genocide, crimes against humanity, and illegal occupation by the Zionist State.
23. Hamas submits that this interference is neither pursuant to one of the '*legitimate aims*' within the meaning of art.10(2) nor '*necessary in a democratic society*'. It is denied that any activities of Hamas – whether that be its armed struggle or its non-violent activities – affect the (legitimate) interests of national security nor territorial integrity nor public safety of Britain. Similarly, absent its proscription, none of the activities of Hamas could possibly affect disorder or crime in Britain.
24. Hamas has never extended its military operations outside the territory of historic Palestine. This is despite the significant levels of support provided by the Governments of Britain and the United States to the Zionist State, which enabled it to conduct its genocidal campaign in Gaza. Hamas does not have a presence in Britain and does not pose any threat to its national security nor to its nationals overseas save for the threat that extends to all individuals taking part in genocide, apartheid and illegal belligerent occupation.
25. Instead, Hamas submits that the proscription decision in 2021 pursued explicitly political objectives by a politically compromised Secretary of State, Priti Patel. Her decision to proscribe Hamas in its entirety on the basis that the distinction between its political and military wings was '*artificial*' was a sudden departure from the position of the government that there was a '*clear distinction between Hamas's political and military wings*' (James Brokenshire, Minister for

Security in June 2020) and that it was '*supportive of Hamas-Fatah reconciliation attempts*' (Lord Ahmad, Minister of State for the Middle East in February 2021).

26. People in Britain must be free to speak about Hamas and its struggle to restore to the Palestinian people the right to self-determination.
27. Rather than allow freedom of speech, police have embarked on a campaign of political intimidation and persecution of journalists, academics, peace activists and students over their perceived support for Hamas.
28. Furthermore, the decision to proscribe Hamas because it exercises the right of armed struggle of the Palestinian people vis-à-vis the Zionist State amounts to differential treatment on account of political opinion. In other words, because Ms Patel is an avid supporter of the Zionist State, she sought to use the power of the government of the UK – including the monopoly on violence – to restrict the rights of those with whom she politically disagrees. Indeed, the rights of those supportive of the use of armed force by the Zionist State – even where such force is genocidal – remain unaffected. That differential treatment is politically motivated and thus in breach of art.14 of the ECHR.

Ground 3: Proscription is Disproportionate

29. **Threat to Britain:** Hamas does not operate – and never has operated – outside of the territory of historical Palestine. It has no presence in the UK and it poses no threat to the UK or British nationals overseas (except for the threat that extends to all individuals, irrespective of nationality, who participate in genocide, apartheid and illegal belligerent occupation). The Commons Library Research Briefing prepared at the time of the proscription debate noted that '*Hamas [Izz ed-Din al-Qassam Brigade] has not directly attacked UK or Western interests*' and '*Hamas IDQ has not operated outside Israel and the Occupied Territories and has no overt representation in the UK*'.

30. **Israel's 'right to exist':** The parameters set by the special envoys of the Quartet in 2006 – commitment to non-violence, recognition of Israel's 'right to exist', and acceptance of previous agreements – cannot diminish the right of the Palestinian people to self-determination and to restore to themselves that right by any means at their disposal, including armed resistance against belligerent occupation of the oPt by the Zionist State. Armed struggle against occupation and racist regimes is enshrined in international law. In any event, the Zionist State has never subscribed to non-violence or accepted it as a principle for settlement.
31. There is no lawful 'right to exist' under international law and recognition of Israeli statehood is a matter of legitimate debate and contention. The assertion by the Zionist State that it has such a right is simply a political appeal designed to justify the morality and legality of its creation and existence as a State.
32. Indeed, it is the Zionist State that has not only never recognised Palestine but unambiguously asserts that it will never recognise any Palestinian State. On 18 July 2024, the Knesset overwhelmingly voted to reject the establishment of a Palestinian state, even as part of a negotiated settlement. As with non-violence, recognition of the '*right to exist*' of the Zionist State cannot reasonably be considered a pre-condition for settlement, nor one which the British State can impose through means of the criminal law upon one side.
33. **Undermining Democracy:** Proscription also serves to undermine the democratic wishes of the Palestinian people who voted Hamas into power in 2006 in what were unequivocally recognised as 'free and fair elections'. Once Hamas started winning elections in this way, it became anti-democratic and contrary to the British State's obligations under art.10 and art.3 of Protocol 1 to the ECHR to proscribe it, regardless of its views on the organisation.
34. Voting for Hamas constitutes support for it and if a Palestinian were to vote and politically campaign for Hamas in any future election they would thereby

commit a criminal offence as a result of the current proscription. It follows that the proscription is contributing to a process by which potentially the entire population of Gaza is at risk of potential criminalisation by virtue of any democratic support for Hamas.

35. **Preventing a Political Solution:** The ongoing proscription of Hamas also creates obstacles for pursuing a political solution, favouring military '*solutions*' or indefinite suppression and surveillance, as opposed to a policy of engagement. This is based on a false perception that '*terrorists*' are somehow inherently intransigent and incapable of change. Transition to a political process is hindered by the terrorism label, as talking with terrorists is a taboo.
36. As noted by Dr Ismail Vadi, who served as a Member of Parliament for the African National Congress ('ANC') between 1994 and 2010, the proscription of the ANC was a critical juncture in South Africa's history of resistance against apartheid. Whilst intended to marginalise and dismantle the organisation, the repressive measure bolstered the ANC's determination, catalysing a shift towards armed resistance and cultivating domestic and international solidarity.
37. As the apartheid regime faltered under escalating domestic resistance, economic decline, armed resistance, and diplomatic pressure, the unbanning of the ANC in 1990 represented a momentous shift from resistance to a process of reconciliation. This underscored the failure of repression to maintain an unjust system and emphasised the necessity of inclusive dialogue in achieving peace and justice. This transition marked the beginning of a negotiated settlement that culminated in the 1994 democratic elections and the establishment of a constitutional democracy committed to equality, human dignity and fundamental human rights.
38. In a similar vein, Sinn Féin received the highest number of first preference votes in the most recent elections in Ireland, both north and south of the border. Sinn

Féin leader Martin McGuinness, who was known for his previous activities in the Provisional IRA, was elected both to Westminster and then later served in a number of ministerial positions in the Northern Ireland Assembly election. Despite its profound opposition to Sinn Féin and the IRA, the British State eventually engaged in dialogue, considering among other things, the grievances that had led them to engage in acts of political violence. The start of talks with and the legitimisation of Sinn Féin may have contributed to the end of violence by opening an alternative way to change for the republicans and by strengthening the factions favouring talks.

39. Former UK Prime Minister and Special Envoy to the Middle East, Tony Blair, who was instrumental in instigating the international boycott of Hamas following its electoral success, belatedly admitted that this was a mistake and a missed opportunity, a point echoed more recently by former Head of Middle East Policy for the UK Mission to the United Nations, Carne Ross.
40. **Impeding Humanitarian Aid:** Proscription also impedes humanitarian aid by labelling as 'terrorism' anything that can be seen as supporting a group that has been labelled 'terrorist'. Under domestic law, the proscription of Hamas in its entirety creates a series of criminal offences, including arranging a private meeting with members of the groups and providing any material benefit, even indirectly (which could include paying local taxes and utilities or carrying out humanitarian work, if this is seen as indirectly benefiting Hamas).
41. Charities are facing the prospect of increased costs for carrying out humanitarian work in Gaza as they had to seek '*legal advice to ensure they properly fulfil their responsibilities*' or risk '*face sanctions under counter-terrorism regulations*'. Proscription has rendered humanitarian aid to Gaza potentially open to criminal charges because all humanitarian organisations had to work with Hamas as the *de facto* government of Gaza. If Hamas continues to play a role in Gaza post-ceasefire, it might criminalise humanitarian aid and reconstruction in the future.

42. **Mass Criminalisation:** The proscription of the entirety of Hamas ignores the ubiquity of the government's role in the everyday lives of their constituents. Hamas runs the public services in Gaza: the bureaucracy, the schools, the hospitals, the firefighters, the civilian police, even the street sweepers and garbage collectors. The *de facto* Hamas administration pays their salaries. The public sector – i.e., the Hamas-led government and the PA – account for approximately 37% of Gaza's workforce. Given Gaza's high unemployment rate, an exponentially larger percentage of the population is also dependent on these salaries. The proscription of Hamas raises key questions about whether these individuals, or anyone who supports members of the public service (for example, a family member in the UK providing financial support through remittances), or is dependent on them, is potentially guilty of terrorism-related offences.
43. It is this type of mass criminalisation that leads to genocide. In its judgment justifying the imposition of provisional measures against the Zionist State of 26 January 2024, the ICJ quoted Israeli President Isaac Herzog, whose words seem to evidence the genocidal intent underlying the justification for the targeting of civilians and the civilian infrastructure: Palestinians support for Hamas:

... It is an entire nation out there that is responsible. It is not true this rhetoric about civilians not aware, not involved. It is absolutely not true. They could have risen up. They could have fought against that evil regime which took over Gaza in a coup d'état.

Conclusion

44. Zionism is and always has been a staggering affront to Palestinian dignity, and Hamas is a natural and logical part of the response to it. If Hamas did not exist today, Palestinians would invent it.

45. Britain has obligations under international law, outlined above, to prevent and end genocide, occupation and apartheid. In breach of those obligations, Britain has continued its longstanding support for Zionism and the Zionist State. This application presents a historic opportunity to depart from that tradition and choose the right side of history. The deproscription of Hamas is a concrete step which the Secretary of State can take to start to apply pressure on the Zionist State to cease its genocidal violence, end its occupation, and dismantle its apartheid regime.
46. The designation of the entirety of Hamas has helped to curtail progress towards peace as it marginalised a key actor to the conflict, prevented any chance of meaningful dialogue with the de facto authorities on the ground, highlighted the hypocrisy of the West regarding democracy and human rights, and overall contributed to the pressure-cooker conditions that led to the explosion of violence on 7 October 2023.
47. But even if the Secretary of State continues British support for the Zionist State, she should stop criminalising the open discussion of and support for the right to self-determination of the Palestinian people and the use of armed struggle pursuant to that right by Hamas. The censoring of views and information with which the Secretary of State disagrees runs against all notions of the rights to free speech and freedom of assembly. Indeed, using the criminal law to silence those on the other side of a political debate is an affront to self-professed British values of individual liberty and the rule of law.
48. For all the reasons set out above, the Secretary of State is invited to reverse course and deproscribe Hamas.

LIST OF ANNEXES

Appx .	Title	Author
Hamas		
1	Witness statement	Dr Mousa Abu Marzook
2	Toofan Al-Aqsa	Dr Mousa Abu Marzook
3	Document of General Principles and Policies (2017)	Hamas
4	The Islamic Resistance Movement Hamas (2000)	Hamas
5	This is what we struggle for (1999)	Hamas
6	Hamas Election Manifesto (2006)	Hamas
7	Hamas' Ideology, Aims and Objective	Dr Azzam Tamimi
8	Hamas's Sources of Legitimacy	Dr Tristan Dunning
9	The Great March of Return	Romana Rubeo
Zionism and Britain's Support for the Zionist entity		
10	Zionism as a Maximalist Ideology	Prof Sami Al-Arian
11	Britain's Relationship with Zionism	Prof Avi Shlaim
12	The 2021 Decision to Proscribe Hamas	Prof Avi Shlaim
13	Israel's 'Right to Exist'	Prof Avi Shlaim
14	Israel's 'Right to Exist'	Prof John Dugard
The Conditions of Palestinian Lives in the OPT		
15	The Centrality of Jerusalem and al-Aqsa to the Palestinian Cause	Dr Osman Latiff
16	Psychological Impact of Palestinian Dispossession & the Normalisation of Zionism in Western Mental Health	Dr Tarek Younis
17	The Palestinian Prisoners' Movement as Central to the Palestinian Liberation Struggle	Charlotte Kates

18	The Socio-Economic Conditions of Palestinians on 6 October 2023	Amet Oner and Suheda Nur Uzuntas
19	The Siege of Gaza	Romana Rubeo
20	Media Bias against Palestinians	Robert Inkalesh
21	Dignity in Islam	Dr Sheikh Haitham al-Haddad
Resistance to Settler Colonialism		
22	The Legacy of the Martyr Izz al-Din al-Qassam	Prof Sami Al-Arian
23	Settler Colonialism, Zionism, and the Genocide in Gaza	Dr Sai Englert
24	Dispossession Resistance Against Settler Colonialism and Occupation	Dr Asim Qureshi
25	The Roots of Anti-Colonial Violence	Dr Asim Qureshi
26	The Lawful Use of Violence by the African National Congress (ANC) Against the Apartheid Regime	Dr Ismail Vadi
The Politics of Proscription		
27	The Politics and Effects of Proscription	Prof Jeroen Gunning
28	The Proscription of the African National Congress and its impact on the right to self-determination in South Africa	Dr Ismail Vadi
29	The Chilling Effect of Counter-Terrorism Powers on Journalism	Jonathan Cook
30	Palestine and its Relationship with the Arab World	Dr Usaama al-Azami
31	Joint Submission to the Foreign & Commonwealth Office	Prof Jeroen Gunning, Dr Tristan Dunning, Dr Anas Iqtait, Dr Tareq Baconi, Dr Martin Kear, Prof Hamish Maxwell-Stewart, Dr Shannon Brincat & Dr Adel Yousif