

Re: Practices of UN Aid Agencies in Gaza Breach IHL and Aid Israel's War Objectives

Date: 20 December 2023

His Excellency Mr. Antonio Guterres;
Secretary- General
United Nation
New York, NY 10017

Your Excellency;

As hunger and thirst have become a reality for millions of Palestinians in the Gaza Strip, the undersigned Palestinian organizations write to raise their serious concerns regarding the amount of aid entering Gaza, its distribution, and consequences of the deference shown by UN agencies to Israel's unlawful restriction of humanitarian relief.

The Fourth Geneva Convention Relative to the Protection of Civilians in Time of War (1949), applicable in the context of Israel's relentless bombardment and ground invasion of Gaza, defends a right of access to, and relief for, all persons protected by its provisions. Pursuant to Article 4, those living in occupied territories are expressly included in the category of protected persons. If all or part of a population of an occupied territory is inadequately supplied, Article 59 requires Israel, as the occupying power, to agree to have relief operations carried out on behalf of this population and shall "facilitate them by all the means at its disposal". Israel's legal obligation to facilitate, rather than impede, relief is further emphasized in Article 70.2 of the First Additional Protocol (1977) which states outright that the "rapid and unimpeded passage of all relief consignments, equipment and personnel" shall be allowed and facilitated.

The importance of the right of access has led to its categorization as a legally binding norm now enshrined in Rules 55 and 56 of customary IHL. It is both a duty and responsibility entrusted to relief organizations, which are tasked with providing aid and the obligation to protect the populations they are assisting by virtue of their very presence on the ground. IHL also confers a right of initiative which entitles impartial humanitarian agencies to offer their services and act in the absence of law and rights. The Geneva Conventions forbids parties to the conflict to refuse such services if and when they are necessary.

UN humanitarian agencies –such as UNICEF, UNRWA, and the WHO– are governed by the fundamental principles of humanity, impartiality, neutrality, and independence. It is the respect for these principles, which derive from the Geneva Conventions and are central to IHL, that grants humanitarian organizations their right to be present in the field and the authority to act in the best interests of civilians and protected persons in times of armed conflict. However, through its extensive coordination with Israel regarding the delivery and distribution of aid, and subsequent compliance with unlawful restrictions, UN agencies have failed to act with independence. In doing so, they have jeopardized humanity.

Despite IHL's highly developed and comprehensive framework, and the binding legal obligation upon Israel to act in accordance with the rights enshrined therein, less than ten percent of the required aid is entering Gaza. On the 7th of December, just 69 trucks transporting humanitarian supplies and 61,000 liters of fuel were allowed to enter from Egypt – a fraction of the average of 500 truckloads that entered Gaza every working day prior to the 7th of October. Due to the intensity of Israel's assault on Gaza, combined with its complete blockade, channeling all aid through a single crossing at Rafah (which is routinely attacked by Israeli forces) is not a workable solution.

While current efforts at opening the Karem Abu Salem crossing are welcomed, they are insufficient. All crossings, especially Erez, are necessary to ensure that central and northern Gaza and its people are not abandoned. Forcing the opening of entry points spanning the entirety of Gaza would also immediately resolve the problem of stranded trucks and staff, which is only further challenging humanitarian assistance efforts.

Allowing northern Gaza (including Gaza City) be excluded from life-saving aid has devastating consequences for the many Palestinians that remain trapped under the rubble; are under siege at Kamal Adwan hospital; were physically unable to make the journey south; or are stranded and injured at the Indonesian hospital and Al Shifa, to name just two of the medical facilities without fuel or supplies. Less immediately apparent are the additional, far more insidious, consequences of Israel's tight control over the distribution of humanitarian relief. In their effort to annex Gaza and forcibly displace its residents, the IDF has divided the territory – a division it enforces with indiscriminate violence, even during the humanitarian pause between the 24th-30th of November. Aware of the natural pulling effect of humanitarian aid, Israel has been emptying the territory of its residents and forcing its internally displaced people to rapidly diminishing zones of the enclave. However, it is the UN that is ultimately responsible for the success of this operation. It has abandoned its duties under IHL by not just acting in accordance with a policy that amounts to the international crime of forced displacement, but by also providing the motivation to move south in the hopes of accessing much-needed aid that they cannot find elsewhere.

General security concerns and military necessity –both of which have failed to be substantiated– have been cited as the basis for restricting humanitarian assistance. The UN has done little to question this narrative, nor has it taken any tangible steps to pressure Israel to abide by its legal obligations as an Occupying Power. By failing to enforce their right of access and initiative, Israel has decided the terms and content of any humanitarian relief entering Gaza. These are decisions in which Israel should have no role, let alone the power to dictate with almost no opposition.

Humanitarian agencies abiding by the rules of an Occupying Power or party to the hostilities, rather than the laws and customs of IHL, sets a dangerous precedent that future armed conflicts are bound to repeat if not quickly rectified. Aside from averting the future risks emanating from an abandonment of guiding humanitarian principles, the continued presence of relief agencies and international staff in a conflict zone ensures that international crimes will not be committed without eyewitnesses and events will not go undocumented.

Providing humanitarian aid in accordance with the aforementioned IHL provisions and principles, is both a legal obligation and a moral imperative of UN agencies. To prevent further loss of life from: injuries that cannot be treated due to lack of medical supplies; forced displacement to zones where there is no chance for survival; thirst and starvation; and rapidly spreading diseases resulting from unsanitary conditions specifically designed by Israel to further eradicate Gaza's population, the UN must do more. It must ensure that IHL is not just referenced to, but strictly upheld. It must pursue a plan for aid distribution that is not dependent on the approval of Israeli authorities and reaches all those in need. The UN must also maintain International Staff inside of Gaza. It must provide relief for the people of Gaza.

Yours Sincerely,

Bisan Center for Research and Development

Women's Centre for Legal Aid and Counselling

Palestinian Human Rights Organizations Council

- Addameer Prisoners Support and Human Rights Association
- Al-Haq

- Hurriyat- Center for Defence of Civil Liberties and Human Rights
- Jerusalem Center for Legal Aid and Human Rights
- Al Mezan Center for Human Rights
- Aldameer Association for Human Rights
- Defence for Children International - Palestine
- The Palestinian Centre for Human Rights
- Muwatin Institute for Democracy and Human Rights (Observer)
- Independent Commission for Human Rights (Observer)

Palestinian NonGovernmental Organizations Network (PNGO)

Human Rights and Democracy Media Center “SHAMS”

Sharek Youth Forum

Women’s Studies Center

Arab World Democracy and Electoral Monitor (Al- Marsad)

Union of Agricultural work Committees (UAWC)

The Center for the Defense of Liberties “Hurriyat”

The Palestinian Initiative for the Promotion of Global Dialogue and Democracy- MIFTAH

The Civil Commission for the Independence of Judiciary and Rule of Law (ISTIQLAL)

FILISTINIYAT

PYALARA

Palestinian Working Woman Society for Development (PWWSD)

Aman Coalition

The Palestinian Center for Development and Media Freedoms (MADA)

Teacher Creativity Center

Alrowwad Cultural and Arts Society

Health Work Committees

Mothers School Society

Palestinian Medical Relief Society

The Palestine Institute for Public Diplomacy (PIPD)