

Memorandum from Oxfam and Human Rights Watch in Response to NSM-20

Oxfam and Human Rights Watch submit this memorandum in response to NSM-20, which establishes that the United States Departments of State and Defense will receive assurances from countries that receive US military assistance that they use US-origin “defense articles” in compliance with international law and that they have not arbitrarily impeded or delayed US-funded or supported humanitarian assistance during the calendar year 2023. Oxfam, an international humanitarian and development organization, and Human Rights Watch, an international human rights organization, together write to you to demonstrate that any such assurances from the Israeli government, a major recipient of US arms, are not credible, especially in light of the conduct of Israeli forces since the onset of hostilities in October 2023.

Oxfam and Human Rights Watch have observed or documented that the Israeli authorities have carried out indiscriminate and disproportionate attacks in violation of international humanitarian law following the Hamas-led October 7 attacks in Israel, imposed collective punishments on the civilian population, deprived the civilian population of objects indispensable to its survival, and used starvation of civilians as a weapon of war. These are all grave violations of the Fourth Geneva Convention and customary international humanitarian law. The vast majority of Gaza’s population has also been forced to flee their homes, many as a result of Israeli actions that amount to war crimes.

Israeli authorities have also restricted, delayed, and impeded US-origin humanitarian assistance in contravention of US laws and policy. This memorandum addresses instances of apparent and prima facie violations of international law and restrictions on aid based on our firsthand experience or investigations, with supporting information from credible news organizations. Given the widespread insecurity in Gaza and the Israeli government’s restrictions on the entry of foreign investigators, journalists, and aid workers, we believe that the examples we cite here reflect a broader pattern of conduct than is currently being assessed by the US Government.

In November, Human Rights Watch called for states to suspend military assistance and arms sales to Israel as long as its forces commit widespread, systematic abuses against Palestinian civilians with impunity, warning that states that continue to provide arms risk complicity in war crimes. In January, Oxfam joined with 15 international humanitarian and human rights organizations to call for a halt to the transfer of weapons, parts, and ammunition to Israel and Palestinian armed groups where there is a risk that they will be used to commit or facilitate serious violations of international humanitarian or human rights law.

We urge Secretaries Blinken and Austin to consider the likely violations below when determining the credibility of the Israeli government’s assurances in response to NSM-20. Oxfam and Human Rights Watch believe a suspension of arms transfers to Israel is necessary so long as there is an overriding risk that they are being used to commit or facilitate serious violations of international humanitarian and human rights law, and US law and policy.

Violations of International Humanitarian Law

- A. Human Rights Watch documented a strike by Israeli forces on a marked ambulance outside al-Shifa Hospital on November 3, 2023, which reportedly killed 15 people and injured 60.¹ Ambulances are protected civilian objects under international humanitarian law and cannot be targeted when used to treat wounded and sick individuals, both civilian and combatant. Israeli authorities said they intentionally struck the ambulance, contending that it was being used to transport able-bodied fighters. Human Rights Watch investigated these claims and did not find any evidence that the ambulance was being used for military purposes. Furthermore, the high number of civilian casualties caused by the strike suggests that it was unlawfully disproportionate even if the ambulance was being used for military purposes.
- B. Human Rights Watch documented strikes on or near several major hospitals between October 7 and November 7, including the Turkish-Palestinian Friendship Hospital, the Indonesian Hospital, and the International Eye Care Center.² Hospitals enjoy protected status under international humanitarian law, and only lose their protection from attack if used to commit “acts harmful to the enemy,” though warnings, proportionality, and distinction are still required.³ Israel contends that the hospitals were being used by Palestinian fighters and therefore were not protected under international humanitarian law. Human Rights Watch found with respect to the cases it investigated no evidence that would justify depriving the hospitals of their protected status under international humanitarian law.⁴
- C. Human Rights Watch determined based on verified video and witness accounts that Israeli forces used white phosphorus in military operations in Lebanon and Gaza on October 10 and 11, 2023, respectively. White phosphorus, which can be used either for marking, signaling, and obscuring, or as a weapon, has a significant incendiary effect that can severely burn people and set structures, fields, and other civilian objects in the vicinity on fire. The use of white phosphorus in densely populated areas of Gaza violates the requirement under international humanitarian law to take all feasible precautions to avoid civilian injury and loss of life. In Lebanon, the Ministry of Environment has said that at least 6.82 square kilometers of land were burned in attacks by Israeli forces, including as a result of white phosphorus. An investigation by The Washington Post found that the Israeli military used US-supplied white phosphorus munitions in an attack that injured nine civilians and that Amnesty International said should be investigated as a war crime.⁵ Human Rights Watch verified the US origins of the munitions used in this attack.
- D. Human Rights Watch documented two strikes by Israeli forces in southern Lebanon on October 13, which killed one journalist and injured six others, including a US citizen.⁶ According to Human Rights Watch’s investigation, the strikes on October 13 “were apparently deliberate attacks on civilians, which is a war crime.”⁷ Relying on video evidence, expert audio analysis, and witness accounts, Human Rights Watch’s

¹ <https://www.hrw.org/news/2023/11/07/gaza-israeli-ambulance-strike-apparently-unlawful>

² <https://www.hrw.org/news/2023/11/14/gaza-unlawful-israeli-hospital-strikes-worsen-health-crisis>

³ <https://www.hrw.org/news/2023/11/14/gaza-unlawful-israeli-hospital-strikes-worsen-health-crisis>

⁴ <https://www.hrw.org/news/2023/11/14/gaza-unlawful-israeli-hospital-strikes-worsen-health-crisis>

⁵ <https://www.washingtonpost.com/investigations/2023/12/11/israel-us-white-phosphorus-lebanon/>;

⁶ <https://www.hrw.org/news/2023/12/07/israel-strikes-journalists-lebanon-apparently-deliberate>

⁷ <https://www.hrw.org/news/2023/12/07/israel-strikes-journalists-lebanon-apparently-deliberate>

investigation found that the group was visible to the cameras of a nearby unmanned aerial vehicle (UAV) that was most likely Israeli, within line of sight of five Israeli surveillance towers, and most likely targeted by at least one munition fired from the main gun of a tank from an Israeli military position approximately 1.5 kilometers southeast. Human Rights Watch's investigation found that the Israeli military knew or should have known that the group of people they were firing on were civilians.

- E. Human Rights Watch documented a strike by Israeli forces on a family in a car in southern Lebanon on November 5 that killed three girls, ages 10, 12 and 14, and their grandmother.⁸ Human Rights Watch found no evidence of a military target in the vicinity of the car that was struck, which only contained fleeing civilians. According to Human Rights Watch, the attack on the car showed “reckless disregard by the Israeli military for its obligation to distinguish between civilian and military objects and a significant failure to take adequate safeguards to prevent civilian deaths.”⁹
- F. An Oxfam analysis has found that a significant portion of its water, sanitation, and hygiene (WASH) infrastructure that Oxfam and its WASH partners installed or rehabilitated over the period of 2017-2023 has been damaged or destroyed by Israeli bombardment, rendering much of it inoperable. The locations of this infrastructure were deconflicted through the appropriate channels in order to ensure that Israel was aware of and could avoid damaging facilities that provide essential services to civilians in Gaza. Targeting humanitarian infrastructure is a violation of the principle of distinction, which requires Israel to distinguish between civilian objects and military targets, as well as the principle of precaution, which requires Israel to take all feasible measures to avoid incidental damage to civilian infrastructure.
- G. Human Rights Watch and Oxfam believe that Israeli forces' use of explosive weapons with wide-area effects in populated areas of Gaza raises significant concerns over Israel's compliance with the international humanitarian law principles of distinction and proportionality. As of mid-December, reports indicate that around half of all munitions dropped on Gaza were unguided “dumb bombs.”¹⁰ Israel routinely uses 2,000-pound bombs on densely populated areas in Gaza. According to The Washington Post, Israeli forces dropped over 22,000 US-origin munitions on Gaza during the first 45 days of the hostilities.¹¹ The United States has reportedly transferred at least 5,000 2,000-pound “dumb bombs” to Israel since October 7.¹²

Intentional Deprivation of Services Critical for the Survival of the Population

- A. On October 9, 2023, Yoav Gallant, Israel's Minister of Defense, stated, “We are imposing a complete siege on [Gaza]. No electricity, no food, no water, no fuel – everything is closed. We are fighting human animals, and we act accordingly.”¹³ That

⁸ <https://www.hrw.org/news/2023/11/14/lebanon-israeli-strike-apparent-war-crime>

⁹ <https://www.hrw.org/news/2023/11/14/lebanon-israeli-strike-apparent-war-crime>

¹⁰ <https://www.washingtonpost.com/national-security/2023/12/14/israel-unguided-dumb-bombs-gaza/>

¹¹ <https://www.washingtonpost.com/national-security/2023/12/14/israel-unguided-dumb-bombs-gaza/>;

<https://www.washingtonpost.com/national-security/2023/12/09/us-weapons-israel-gaza/>

¹² <https://www.nytimes.com/2023/12/21/world/middleeast/israel-gaza-bomb-investigation.html>

¹³ <https://twitter.com/yoavgallant/status/1711335592942875097>

evening, Israeli authorities cut off all water entering Gaza through the three Mekorot pipelines. On the day of the Hamas-led attacks on Israel, October 7, Israel cut the electricity that it supplies to Gaza, which is the main source of electricity in the enclave.¹⁴ As of March 19, Israeli authorities continued to block electricity to Gaza. Israel has also largely continued to block the entry of fuel to Gaza since then. The only power plant in Gaza ran out of fuel reserves by October 11.¹⁵ In the absence of electricity, water and wastewater facilities in Gaza became inoperable once there was no fuel available to operate diesel generators. According to the Office for the Coordination of Humanitarian Affairs, as of February 16, water production in Gaza stood at just 5.7% of what it was before the current hostilities.¹⁶ The lack of potable water, as well the damage and destruction of sewage and wastewater infrastructure,¹⁷ has led to the outbreak of diseases, including Hepatitis A and diarrhea,¹⁸ as well as cases of severe dehydration.¹⁹ The lack of water for cleaning, as well as the breakdown of sanitation infrastructure and resulting contamination of the environment, has also been a major cause of disease outbreaks. International humanitarian law requires Israel, as the occupying power in Gaza, to ensure that the basic needs of the civilian population are provided for. This is a positive obligation that requires Israel to also protect Palestinians' right to water and take "deliberate, concrete, and targeted" measures to ensure the full realization of these rights. Depriving a population from access to water amounts to collective punishment of the civilian population, a war crime. The right to water, which includes the right to safe and clean drinking water and sanitation, is also human right, and is derived from the right to life²⁰ and the right to an adequate standard of living.²¹

Arbitrary Denial and Restrictions of Humanitarian Aid

- A. Following the Hamas-led attacks in Israel on October 7, Oxfam documented that the Israeli government has systematically restricted humanitarian aid and entry and exit of commercial goods to Gaza.²² On October 9, Israel imposed a "total siege" on Gaza, restricting all imports of humanitarian and commercial goods. For the next 12 days, Israel closed all of Gaza's access points and repeatedly bombed the Rafah border crossing with Egypt.²³ On October 21, Israel allowed a mere 20 truckloads of humanitarian aid to pass

¹⁴ <https://www.ochaopt.org/page/gaza-strip-electricity-supply>

¹⁵ <https://edition.cnn.com/2023/10/11/middleeast/gaza-power-plant-shuts-down-intl/index.html>

¹⁶ <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-120>

¹⁷ <https://www.arij.org/latest/explainer-water-supply-fuel-relationship-in-the-gaza-strip/>

¹⁸ <https://www.emro.who.int/media/news/risk-of-disease-spread-soars-in-gaza-as-health-facilities-water-and-sanitation-systems-disrupted.html>

¹⁹ <https://www.aljazeera.com/news/2024/2/28/children-die-of-malnutrition-in-gaza-hospitals-health-ministry#:~:text=Six%20children%20have%20died%20from,the%20ministry%20said%20on%20Wednesday.>

²⁰ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

²¹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

²² <https://www.oxfam.org/en/press-releases/starvation-weapon-war-being-used-against-gaza-civilians-oxfam>

²³ <https://abcnews.go.com/International/live-updates/israel-gaza-hamas/rafah-border-crossing-endured-4-bombings-from-israel-egypt-says-104043522?id=103804516>

through the Rafah Crossing and reach the population of Gaza. In contrast, prior to the onset of hostilities the population of Gaza relied on an average of 500 truckloads of food, water, medicine, and other essential items every single day.

- B. Once Israel opened the Rafah Crossing—and eventually the Kerem Shalom Crossing—Israel erected an arbitrary and unnecessarily complex inspection process and sharply restricted the flow of humanitarian aid into Gaza.²⁴ This inspection scheme has resulted in mass congestion and long queues (sometimes as long as 2,000 trucks). On average, it takes 20 days for humanitarian trucks to travel from the inspection point at Al Arish to Gaza.²⁵
- C. Based on Oxfam’s analysis, Israel’s inspection process further restricts humanitarian aid through labeling some humanitarian items as “dual use,” items which have both a civilian and military purpose. Oxfam’s attempt to import items such as water bladders, tap-stand kits, microbiological water testing kits and chemical water quality testing kits were denied access by Israeli authorities. None of these items, as well as many other restricted items, are considered “dual use” under the Wassenaar Arrangement or any other international “dual use” standard. The arbitrariness of these rejected items is further demonstrated by the fact that some items are allowed in on some days, and then denied on other days. When a single item aboard a humanitarian convoy is deemed “dual use” by Israeli authorities, often the truck is forced to exit the queue, reload the truck, and then enter the inspection line again—which can take 20 days.²⁶
- D. The lack of fuel that has been allowed into the Gaza Strip, in the context of the electricity cutoff, has rendered nearly all of Gaza’s water infrastructure useless. Since November, people in northern Gaza have not had access to potable water, while people in southern Gaza, as of March, only have an average of two liters of water per day. The lack of water has led to significant increases in cases of disease and illnesses, including diarrhea and Hepatitis A, as well as dehydration.²⁷
- E. This arbitrary process results in severe restrictions on the volume of humanitarian aid reaching the population of Gaza. Oxfam found that from October 8 to October 25—when the Rafah Crossing was opened—only 2% of food shipments reached Gaza as compared to the level of imports before October 7.²⁸
- F. Though the volume of humanitarian aid entering Gaza has increased since October, Oxfam and Human Rights Watch have found that it has still fallen well below the quantities of aid necessary to address the humanitarian crisis there. From October 9 to January 31, an average of 95 truckloads of humanitarian aid entered Gaza per day, which

²⁴ <https://www.oxfamamerica.org/explore/research-publications/inflicting-unprecedented-suffering-and-destruction-seven-ways-the-government-of-israel-is-deliberately-blocking-andor-undermining-the-international-humanitarian-response-in-the-gaza-strip/>

²⁵ <https://www.oxfamamerica.org/explore/research-publications/inflicting-unprecedented-suffering-and-destruction-seven-ways-the-government-of-israel-is-deliberately-blocking-andor-undermining-the-international-humanitarian-response-in-the-gaza-strip/>

²⁶ <https://www.oxfamamerica.org/explore/research-publications/inflicting-unprecedented-suffering-and-destruction-seven-ways-the-government-of-israel-is-deliberately-blocking-andor-undermining-the-international-humanitarian-response-in-the-gaza-strip/>; <https://www.hrw.org/news/2023/11/16/israeli-authorities-cutting-water-leading-public-health-crisis-gaza>

²⁷ <https://www.hrw.org/news/2023/10/24/israels-unlawful-blockade-gaza-sparks-womens-rights-crisis>

²⁸ <https://www.oxfam.org/en/press-releases/starvation-weapon-war-being-used-against-gaza-civilians-oxfam>

is well below the 500 truckloads of goods entering Gaza per day prior to the onset of hostilities.²⁹ Crucially, in the month following the International Court of Justice’s preliminary measures, ordering Israel to “take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip,” the amount of humanitarian convoys entering Gaza actually decreased by 30%.³⁰ Human Rights Watch concluded that “[t]he Israeli government has simply ignored the court’s ruling, and in some ways even intensified its repression, including further blocking lifesaving aid.”³¹

- G. The siege is preventing sufficient medicine from entering Gaza and disrupting the refrigeration needed for medication, including insulin.³²
- H. The Israeli authorities have systematically prevented aid from reaching the roughly 300,000 Palestinians who remain in northern Gaza, where the threat of starvation is most acute. During the month of December, around 70% of planned humanitarian missions to northern Gaza were completed. However, from January 1 to February 12, over half of the planned humanitarian aid missions to northern Gaza were obstructed by Israeli authorities. These restrictions included: failures to guarantee safe passage (failure to deconflict); failure to open additional routes to northern Gaza; excessive delays; and outright denial of access by the Israeli military.³³
- I. After a meeting between President Biden and Prime Minister Netanyahu in January, the Israeli government agreed to allow a large shipment of US-funded food aid to enter Gaza from the Israeli port city of Ashdod. This shipment, which contains 90,000 metric tons of flour and other food items, is enough to feed roughly 1.5 million people for five months.³⁴ However, despite the agreement, Israeli Finance Minister Bezalel Smotrich announced that he was blocking this aid from entering Gaza, stating that the shipment will not proceed as long as the recipient is UNRWA. The Israeli authorities have obstructed the delivery of this US-funded food aid for months.³⁵
- J. Due to the foregoing reasons, Oxfam and Human Rights Watch have both concluded that the Israeli government is using starvation of civilians as a weapon of war in Gaza, which is a war crime.³⁶ In restricting humanitarian access, Israeli authorities are deliberately depriving Palestinian civilians in Gaza of desperately needed aid, including US aid. International humanitarian law prohibits parties to a conflict from deliberately causing “the population to suffer hunger, particularly by depriving it of its sources of food or of

²⁹ <https://www.cnn.com/2024/02/11/middleeast/why-only-a-trickle-of-aid-is-getting-into-gaza-mime-intl/index.html>

³⁰ <https://time.com/6835166/human-rights-watch-israel-gaza-aid/>

³¹ <https://www.hrw.org/news/2024/02/26/israel-not-complying-world-court-order-genocide-case>

³² <https://www.hrw.org/news/2023/12/15/gaza-blockade-puts-people-diabetes-risk>

³³ <https://www.oxfamamerica.org/explore/research-publications/inflicting-unprecedented-suffering-and-destruction-seven-ways-the-government-of-israel-is-deliberately-blocking-and-or-undermining-the-international-humanitarian-response-in-the-gaza-strip/>

³⁴ https://www.timesofisrael.com/liveblog_entry/2-weeks-since-new-framework-okayed-for-sending-flour-to-gaza-us-shipment-still-stalled-official/ https://www.timesofisrael.com/liveblog_entry/2-weeks-since-new-framework-okayed-for-sending-flour-to-gaza-us-shipment-still-stalled-official/

³⁵ <https://www.axios.com/2024/02/13/israel-gaza-flour-shipment;>
<https://www.nytimes.com/2024/02/29/opinion/gaza-israel-palestinians-starvation.html>

³⁶ <https://www.oxfam.org/en/press-releases/starvation-weapon-war-being-used-against-gaza-civilians-oxfam;>
<https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza>

supplies.”³⁷ As the occupying power, Israel is obligated to provide for the welfare of the occupied population and ensure that the humanitarian needs of Gaza’s population are met. Virtually the entire population of Gaza is now at risk of famine and mass starvation, which is directly attributable to its military operations in violation of international law and the denial of humanitarian access.

³⁷ <https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza>