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At the Supreme Court
Sitting as the High Court of Justice

HCJ 2280/24

- 1. Gisha – Legal Center for Freedom of Movement**
- 2. HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
- 3. Physicians for Human Rights – Israel**
- 4. Association for Civil Rights in Israel**
- 5. Adalah – The Legal Center for Arab Minority Rights in Israel**

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The Petitioners

v.

- 1. Israeli Government**
- 2. Prime Minister**
- 3. Minister of Defense**
- 4. Coordinator of Government Activities in the Territories**

Represented by the HCJ Department, State Attorney's Office
29 Salah-a-din Street, Jerusalem
Telephone: 02-6466590; Fax: 02-6466655

The Respondents

Petition for Order *Nisi* and Request for Urgent Hearing

The Honorable Court is hereby requested to issue an *order nisi* which is directed at the Respondents ordering them to appear and show cause;

- a.** Why they would not allow free and swift access without delay of all humanitarian aid, equipment and staff to Gaza, especially to the north of the Strip and to significantly increase the volume of said aid;
- b.** Why they would not act according to their obligations as an occupying power and immediately provide essential humanitarian aid to the civilian population in the Gaza Strip, particularly in the north of the Strip, through the land crossings between Israel and the Gaza Strip.

Preface and Request for Urgent Hearing

1. This petition is directed against Respondents' decisions and policies to impose restrictions on the supply of essential commodities to the civilian population and entry of aid, equipment and humanitarian teams to the Gaza Strip, especially to the north of the Strip, where the humanitarian situation is catastrophic.
2. The civilian population in the Gaza Strip, especially in the north of the Strip, which is subject to aerial attacks by the Israeli army and the dangers of ground combat, is in a state of acute malnutrition, which particularly affects chronic patients, pregnant women and children. As of March 12, 2024, 27 civilians, including 23 children, have reportedly died from malnutrition and dehydration in hospitals in northern Gaza. The aid agencies however estimate that the number of deaths from hunger and dehydration is much higher and it is expected to rise in the absence of immediate supply of food and life-saving humanitarian aid.
3. In addition to the direct impact on the civilian population suffering from lack of food, clean drinking water, hygiene products and other essential supplies for its survival, hospitals throughout Gaza continue dealing with critical shortages of fuel, surgical equipment, anesthetics and other drugs, food, and medical teams, especially in the north of the Strip, where only six hospitals are still partially functioning.
4. The State of Israel controls the number of trucks and the type of equipment and products that enter the Gaza Strip and those making their way to the north of the Strip. There is no dispute that the average daily number of trucks that enter Gaza with food, aid and medicines is significantly lower than the minimum number which is required for the survival of the civilian population and the functioning of the essential facilities.
5. Completely disregarding the law, in the weeks following January 26, 2024 – the day on which the International Court of Justice gave its decision regarding the temporary measures by which the State of Israel is bound including the increase of humanitarian aid entering the Gaza Strip – the daily number of aid trucks entering the Gaza Strip decreased by **one third** compared to the number of trucks which have previously entered the Strip. Their number was insufficient then, and their insufficiency is even more acute now, especially in view of the deteriorating condition of the civilian population in northern Gaza.
6. Obligations are imposed on the State of Israel by virtue of international law, primarily by virtue of the laws of war and the laws of occupation, being the occupying power in the Gaza Strip. Israel does not meet these obligations. On the contrary, the situation on the ground suggests that Israel employs, *inter alia*, collective punishment to a point that may amount to starvation as a method of combat, and violates other rules obligating it to enable swift and uninterrupted supply of the needed humanitarian aid and to even provide the required goods to meet the essential humanitarian needs of the civilian population

such as fuel and electricity, and to refrain from deliberately harming the basic needs of the population.

7. **This petition is submitted in view of the severe harm caused to the civilian population and against the illegal decisions and conduct of the Respondents, and in the framework thereof the Petitioners request the Honorable Court to schedule an urgent hearing on the petition.**

The Grounds for the Petition are as follows:

The Parties

8. Petitioners 1-6 are human rights organizations in Israel whose mission is to protect human rights in Israel and in the occupied territories.
9. Respondent 1 (hereinafter: the **Israeli Government**) is the executive authority of the state of Israel acting pursuant to the Basis Law: the Government.
10. Respondent 2 (hereinafter: the **Prime Minister**) heads the Government and the National Security Committee.
11. Respondent 3 (hereinafter: the **Minister of Defense**) is in charge of the military on behalf of the Israeli Government by virtue of the Basic Law: the Military.
12. Respondent 4 (hereinafter: **COGAT**) is responsible for implementing the policy of the Israeli Government in the West Bank and in the Gaza Strip.

Factual Basis

13. For over five months the civilian population in the Gaza Strip has been under an unprecedented Israeli attack. More than two million Gazan residents, the vast majority of whom are protected persons, are subject to military attacks from the air, sea and land. 75% of the residents of the Strip were forced to flee their homes and are internally displaced in the southern part of Gaza, mostly in the Rafah area. In the limited area of the Strip, no one is safe and there is no hiding place which is not exposed to deadly attacks.
14. Since the beginning of the Israeli attack, over 31,000 people have been reportedly killed. It emerges from these reports that 72% of them are women and children. More than 73 thousand people were injured. In addition, thousands are missing and buried under the rubble. The humanitarian situation throughout the entire Strip is extremely difficult. Children, women, men and the elderly die every day as a result of military attacks, starvation and lack of clean drinking water, acute shortage in medicines and medical services and lack of basic hygienic conditions.
15. The Israeli attack commenced on October 7, 2023 after Hamas and other armed organizations from the Gaza Strip committed a horrific massacre in the communities of the south: more than 1,200 people were murdered, over 250 were abducted, 134 of whom are still held by Hamas and their fate is unknown, many others were injured and thousands were forced to leave their homes. The firing of rockets at the civilian population in Israel which started on that day has continued for many days. After these horrendous events, Israel declared war against Hamas, with the purpose of eliminating the organization. However, it emerges from public statements made by members of the Israeli Government, members of the Knesset and many more, that according to Israel these difficult events justify causing fatal harm to the civilian population in the Strip. As specified below, this position has no basis and is contrary to fundamental principles of international humanitarian law.

16. The unprecedented violence of Hamas and other armed organizations in the Gaza Strip, alongside the fact that they continue to hold Israeli hostages and keep on violating international law is unacceptable. However, the above does not release Israel from its obligations under international law, including the laws of combat and the laws of occupation. In view of the severe condition of the protected population in the Gaza Strip there is no doubt that Israel violates these obligations extensively, continuously and methodically.

The factual situation in the Gaza Strip as presented by the state of Israel

17. Tracking down the exact factual situation is complex, due to the fact that the situation is dynamic and changes rapidly and since the facts as described by the state of Israel (as detailed above) do not coincide with the facts as described by UN agencies and non-governmental organizations operating within the Strip. For the convenience of the discussion, we shall commence with the description that emerges from official publications of the State of Israel and shall thereafter refer to the facts published by the UN agencies and non-governmental organizations operating in the Gaza Strip.
18. The state of Israel provides, through the Coordinator of Government Activities in the Territories, [official information](#) on its behalf about the humanitarian aid which allegedly enters the Gaza Strip. Updates are provided on COGAT's website, through publications to the media, e-mails in wide circulation and so on and so forth. It should already be noted that the information provided in these updates does not always coincide with information provided by international organizations. It emerges from the updated information on the website as of March 14, 2024, that since the beginning of the war 16,850 aid trucks entered the Gaza Strip consisting of: 9,972 food trucks, 1,328 water trucks, 1,341 [trucks with] medical equipment, 2,463 [trucks with] equipment for shelters and the other [trucks with] miscellaneous [goods].
19. On March 13, 2024, a total of 89 trucks entered Gaza consisting of 57 food trucks, one water truck, two trucks with medical equipment, 28 trucks with equipment for shelters, and three trucks with other equipment (see COGAT's website at: <https://govextra.gov.il/cogat/humanitarian-efforts/home>). It should already be noted that before the war [500 trucks](#) entered the Strip every day (this number includes fuel which enters in very small quantities since the beginning of the war (Jacky Hugi, "Israel allowed for the first time the entry of humanitarian aid to Gaza, but according to the UN it is far from enough", *Ha'aretz*, October 21, 2023)).
20. In its various updates, COGAT does not provide segmented information referring separately to the northern part of the Gaza Strip and to its southern part. However, from time to time, specific information concerning the north may be found in its publications. For instance, on March 3, 2024, COGAT updated that "during the last few days, more than 100 trucks entered the north of Gaza" and that 32 packages were air-dropped in the north by Jordan. On March 4, 2024, COGAT updated again that "during the last few days, more than 100 trucks entered the north of Gaza" and that a convoy of 15 trucks was organized to the north, that 50 incubators were transferred to the Strip some to the north, and that a UN mission entered the Kamal Adwan Hospital with fuel. On March 6, 2024,

COGAT updated once again that "during the last few days, more than 100 trucks traveled to the north". On March 7, 2024, COGAT informed that 11 aid trucks traveled to the north and that during the last 24 hours, 26 trucks traveled to the north, all organized by the private sector in the Gaza Strip. On that day COGAT informed that "during the last few days more than 100 trucks traveled to the north."

21. On March 11, 2024 COGAT informed that during the last two weeks more than 150 trucks traveled to the north of the Strip, all organized by the private sector. In addition, 146 aid packages were air-dropped in the north of the Strip by Egypt, Belgium, the United Arab Emirates, France and the United States and from the beginning of the war the foreign countries have air-dropped more than 1,250 aid packages in 30 operations, mostly in the north of the Strip.
22. On that day it was published, that for the first time Israel has provided humanitarian aid to Gaza, directly to the north of the Strip through crossing 96 – an unregulated crossing on the border between Israel and Gaza, near Kibbutz Be'eri. Only 6 trucks have entered. On March 13, 2024, IDF spokesperson informed that "we shall flood the Strip with humanitarian aid". It emerges from the statement that the contemplated flooding is expected to take place only within two months at the very least, by a highly complex construction of a sea pier initiated by the United States. Once the construction is completed, humanitarian aid may be transferred to the north of the Gaza Strip by sea. On March 16, 2024, IDF spokesperson announced that a ship of the "World Central Kitchen", led by the United Arab Emirates, arrived to the maritime space of Gaza carrying food and water which were transferred to 12 trucks intended for distribution in the north of the Strip.
23. A clear picture emerges from the aforesaid: First, the state of Israel does not provide any humanitarian aid to the Strip by itself. All the humanitarian aid that reaches the Strip, including its northern parts, originates from other sources such as foreign countries, international organizations and the private sector in the Gaza Strip. Second, all the parties seeking to transfer aid depend on Israel's consent to do so. Third, other than a single event, no direct aid is provided by the state of Israel to the north of the Gaza Strip, although it is clear that it is the simplest and most effective way to transfer the required aid to the civilian population in the north.

The factual situation in the Strip as it emerges from other sources – "there will be no electricity, there will be no food, there will be no fuel"

24. As is known, due to the long blockade imposed by the state of Israel on the Gaza Strip and the long years of occupation preceding it, the humanitarian condition throughout the Gaza Strip was already difficult before the current war. The development of the [Strip's economy](#) encountered difficulties due to Israel's control over the land crossings as well as over the maritime space and aerial space; the limitations imposed on the entry and exit of goods; the limitations imposed on the farming and fishing areas; and the repeated attacks of the Israeli army which sowed destruction and required the investment of many resources in the rehabilitation of buildings and infrastructures (see: *UNCTAD* the United Nations Conference on Trade and Development "The Economic Costs of the Israeli Occupation for the Palestinian People: The Impoverishment of Gaza under Blockade,

2020). Prior to the current war, [80% of the residents of Gaza](#) relied on assistance provided by international organizations. As of mid-2022, 65% of the Gazan residents lived below the poverty line without food security (see: *UNCTAD*, the United Nations Conference on Trade "Developments in the economy of the Occupied Palestinian Territory" September 11, 2023).

25. Most of the goods which entered the Gaza Strip before the war were purchased in Israel and the West Bank and entered Gaza through the Kerem Shalom crossing following a security check. Additional goods entered the Strip through the Salah a-Din crossing on the Egyptian border and in addition, the Strip benefited from local produce, agriculture, fishing, food factories, and more (see: <https://theconversation.com/gaza-has-been-blockaded-for-16-years-heres-what-a-complete-siege-and-invasion-could-mean-for-vital-supplies-215359>). Immediately after the outbreak of the war, the Israeli government resolved to ban the sale of goods from Israel to the Gaza Strip and prevent the supply of electricity, fuel, water and any other goods through the Israeli-Egyptian border. Consequently, the civilian population in Gaza had to rely on the existing stock of goods for its survival and to deal with a growing distress since as a result of the fighting, factories, farming areas, fishing boats, infrastructure, buildings and more were damaged and even if some of them did not sustain physical damage, production could not continue due to other reasons, including the evacuation of hundreds of thousands of residents from their homes, an active state of war, severe shortage of raw materials, Israeli ban on going out to sea or cultivating agricultural areas and the like (See: <https://english.wafa.ps/Pages/Details/140230>).
26. Despite these difficult circumstances, since October 7, 2023, Israel has not only been deploying massive military force in the Gaza Strip which until now claimed the lives of tens of thousands of civilians, but also chose to take a series of additional measures having a direct and critical impact on the entire civilian population in the Gaza Strip. This population undergoes a dehumanization process by Israel and is presented as a legitimate target, to justify the harm caused to it in the framework of the war.
27. Accordingly, for instance, on October 7, 2023 the Minister of Energy and Infrastructures, Israel Katz, [instructed](#) the Electric Company to stop selling electricity to the Gaza Strip, which led to the disconnection of the Strip from electricity, and has adversely affected all areas of life of the local population, including the ability of the hospitals and essential infrastructures throughout the Strip to function (see: Itamar Eichner and Tamar Azulai, The Minister of Energy instructed to stop the supply of electricity to Gaza: "Things will not remain the same" *YNET* October 7, 2023).
28. On October 9, 2023, the Minister of Defense, Yoav [Galant](#), announced that: "A complete siege will be imposed on the Strip. There will be no electricity, there will be no food, there will be no fuel - we are fighting human animals and will act accordingly" (see: Yoav Zeyton, "Galant: "A complete siege will be imposed on the Strip; We are fighting human animals", *YNET* October 9, 2023). And indeed, the State of Israel has already cut off the supply of fuel, [electricity](#) and [water](#) to the Gaza Strip on October 7, 2023, which led to a power outage in the Strip as of October 11, 2024.

29. The Erez crossing designated for the passage of people, which was attacked on October 7, 2024, and the Kerem Shalom crossing designated for the transfer of goods, were completely closed. In addition, between October 10, 2023 and October 20, 2023 the Rafah crossing has not been operating as well apparently due to [Israeli threats and bombardments](#) (see: Lior Ben Ari and Yoav Zeyton, "Report: Egypt closed the Rafah crossing indefinitely after Israeli bombardments, *YNET*, October 10, 2023). The Kerem Shalom crossing resumed operations on December 15, 2023 and since then the humanitarian aid was transferred through it, in addition to the Rafah crossing. The activity of the crossing is disrupted by protesters wishing to prevent the entry of goods into the Gaza Strip as shall be further described in more detail below.
30. The local markets which existed in the Strip before the outbreak of the war have collapsed (recently new small markets have developed which are based on a small amount of goods entering from Rafah and resale of aid). Before the war, Gaza was a [captive market of Israel](#) (see: Elijah Levy, "Eating Israeli Hummus in Gaza, *YNET*, March 9, 2014) - its markets were overwhelmingly based on trade with Israel (see: Georgina McAllister, "Gaza has been blockaded for 16 years - here's what a 'complete siege' and invasion could mean for vital supplies", *The Conversation*, October 16, 2023). According to the data of the Palestinian Central Bureau of Statistics Israel is the source of over 80% of the value of the goods entering the Strip. Notwithstanding this dependency, which is known and recognized by the state of Israel, it instructed to close the crossings and imposed a ban on the purchase in Israel of goods if designated for sale in the Gaza Strip.
31. Due to the siege imposed by Israel, almost no goods enter the private market in the Gaza Strip and the little that enters from Egypt cannot meet the huge deficit. The stock of products which existed in the market has run out, the limited quantity of goods in the markets led to a sharp price increase. The Palestinian Central Bureau of Statistics [reported](#) that as of the end of January the cost of living index has already increased by 66% and the purchasing power of the residents has decreased by 40% (an update for February has not yet been published). At the same time, the reality which was created by the fighting led to a complete paralysis of all branches of the industry and food production in Gaza.
32. Only on October 21, 2023 the Rafah crossing was opened for the passage of humanitarian aid subject to conditions set by Israel and its approval. On October 24, 2023, the [UN agencies have already warned](#) that the volume of incoming aid is a drop in the ocean and is totally insufficient. The agencies called for the opening of the crossings from Israel and for a significant increase of the incoming aid due to the severe shortage created after two weeks of siege, the displacement of thousands of residents to the south and an intense Israeli attack (see: Gabrielle Tétrault-Farber "UN organizations plead for unimpeded Gaza aid 'on our knees'", *Reuters*, October 24, 2023).
33. In retrospect, reality shows that the UN agencies' fear of an unprecedented humanitarian catastrophe was well founded. There is not enough time or space to describe, step by step, the measures taken by Israel which led to the deterioration of the humanitarian situation and which caused the terrible disaster currently taking place in Gaza. We shall therefor focus on the main points.

34. On February 20, 2024, a [summary report](#) on the lack of humanitarian aid was published by AIDA (The Association of International Development Agencies). According to the report, humanitarian aid is the main [lifeline](#) for the civilian population in the Gaza Strip. Therefore, the UN agencies and non-governmental organizations working in the Gaza Strip, have repeatedly warned that if Israel did not allow the opening of crossings and the passage of all the required humanitarian aid, the number of dead and injured as a result of the lack of access to food, water, medicines and other humanitarian equipment, is expected to exceed the number of people killed in the military attacks. The report points at the obstacles piled by Israel encumbering the entry and distribution of aid. According to the report it emerges, *inter alia*, that: Israel's inspection mechanism at the borders prevents and causes long term delays in the passage of aid and other restrictions. Additional inspections are conducted in checkpoints that Israel has set up inside the Strip in which Israel prevents the passage of aid which has already been approved by it and whose transfer has been coordinated in advance. Many trucks are not allowed to enter due to an Israeli claim for dual-use equipment. According to the organizations, this equipment is essential for humanitarian aid and includes water pipes, water quality control kits, candles and special blankets and is not dual-use equipment according to the internationally accepted lists. In addition, the members of the aid missions and the shipments themselves are at risk while traveling in Gaza. Aid workers were killed as a result of sniper fire and the attacks of the Israeli army continue to put them at constant risk. The Israeli bombardments have also caused the destruction of infrastructures and many of the roads were severely damaged. Only 50% of the aid agencies reported that they were able to distribute aid outside of Rafah. Only three agencies can arrive to the city of Gaza and north of the city (see: *AIDA* "Snapshot of Deprivation of Humanitarian Aid in the Gaza Strip", February 20, 2024).
35. It emerges from OCHA's update dated March 15, 2024, referring to the week commencing on March 5th and ending on March 11th that there is a critical need to expand the essential health services to protect the health of the civilian population and mitigate the spread of infectious diseases mainly among the hundreds of thousands of internally displaced people. For this purpose, the amount of vaccinations should be doubled, the supply of medicines should be expanded to allow much greater accessibility to health services, and the availability of laboratory equipment and services and blood products in the hospitals should be ensured. It was also noted that hospitals in the north of the Strip, especially Al-Oda, Al-Ahli, Al-Sahaba and Kamal Adwan, still face critical challenges due to the Israeli attacks and aid limitations. All four hospitals suffer from acute shortage of fuel, equipment and medical staff. Their ability to provide medical assistance decreases alongside a constant increase in the number of wounded and persons suffering from malnutrition and trauma among the civilian population and the medical staff. In addition, there is an urgent need to improve access to clean drinking water and adequate sanitation facilities to prevent the spread of diseases transmitted by drinking water. The update describes the great efforts of the various aid organizations to satisfy the needs of the civilian population. It is however emphasized that notwithstanding the aid that the organizations manage to provide, there is still an acute and dangerous shortage of health services in the Gaza Strip (this report and all other OCHA reports are available on the organization's website at: www.ochaopt.org).

36. The same conclusion emerges from the update concerning the food situation. According to the update, the entire civilian population in the Gaza Strip is facing hunger, although the situation in the north of the Strip is particularly extreme. The aid trucks and packages dropped from the air cannot satisfy the food needs of the population there. In the center and south of the Strip, residents are forced to stand in lines daily for hours in anticipation of food distribution from the aid trucks which manage to enter the Strip. The organizations operating on the ground report of a constant lack of food and insufficient and short-term supply. In Rafah more than one million human beings live in crowded spaces and there is a sharp increase in the number of children suffering from malnutrition. The aid organizations emphasize that equipment that will enable the renewed development and restoration of the local means of food production (which will provide vegetables, fish, meat, dairy, etc.) must be urgently allowed entry and humanitarian corridors should be established that will allow safe and uninterrupted passage of the required aid with the support of the private sector in Gaza. The update also emphasizes in this context that notwithstanding the efforts made by the organizations to provide aid, there is still a severe shortage on the ground. According to the update this shortage is caused by the continuation of the war but also results from the fact that the border crossings are frequently closed, limitations are imposed on the entry of aid and on its safe and efficient distribution.

The situation in the north of the Gaza Strip

37. According to the reports of the different aid organizations, the humanitarian distress, dehydration and hunger keep spreading throughout the Gaza Strip. The residents of the [north of the Strip](#) are however facing the greatest risk, *inter alia*, due to lack of sufficient aid which can meet their basic needs (see: "Hostilities in the Gaza Strip and Israel, Flash Update #131, *OCHA* March 4, 2024). Shortly after the launch of the ground maneuver in Gaza, Israel cut-off the northern part of the Strip from its southern part (see: Yoav Zeyton, "The siege on the city of Gaza is tightening, the goal: a siege which shall suffocate Hamas senior officials" *YNET* November 5, 2023) which has severely harmed the supply of the essential supply and the survival of those who remained in the north.
38. On October 13, 2023, Israel announced the evacuation of the area north of Wadi Gaza and demanded that all residents of the area - over a million people - will leave their homes and move to the southern part of the Strip. At that time Israel has already ignored the UN warnings about the disaster that the evacuation would bring on the residents and insisted on its demand. According to [media reports](#), following the evacuation demand, a mass flee of residents began, some of whom were injured as a result of military attacks (see: *Bethan McKernan and Sufian Taha "Gaza civilians afraid to leave home after bombing of 'safe routes'", The Guardian*, October 15, 2023).
39. **As of today, there is no accurate estimate of the number of residents currently staying in the north of Gaza, but according to different estimates we are concerned with approximately 300,000 people.**
40. Israel's actions made the lives of the protected persons who did not flee the north of Gaza unbearably difficult: The massive bombings wreaked havoc, residential buildings were destroyed, roads and streets became impassable and the infrastructures were destroyed.

The numerous wounded could not be evacuated and in any event the health services have collapsed and the hospitals have hardly functioned. In addition, humanitarian supplies hardly ever reach the north of the Strip and it does not have clean drinking water.

41. According to [various reports](#), due to the famine in northern Gaza, the residents are forced to eat grass or animal feed which is ground into flour and which is also running out. It was also reported that people are forced to dig in the ground in order to reach the pipes buried under it in an attempt to get drinking and bathing water (see: Sana Noor Haq and Rosa Rahimi, "'We are dying slowly:' Palestinians are eating grass and drinking polluted water as famine looms across Gaza", *CNN*, February 1, 2024; Lucy Williamson, Gaza residents surviving off animal feed and rice as food dwindles, *BBC*, February 10, 2024). Water supply is available seldom and irregularly, forcing the residents to drink [contaminated water](#) (Hostilities in the Gaza Strip and Israel - reported impact Day 150, *OCHA*, March 5, 2024) The UN [warned](#) that the rate of children under the age of two who are malnourished in the north has sharply increased during January and reached about 15% - and it is not uncommon for children not to eat for several days. Several UN agencies estimate that about a third of the residents of the northern Gaza Strip suffer from a catastrophic shortage of food (see: "Children's lives threatened by rising malnutrition in the Gaza Strip", *UNICEF*, February 19, 2024).
42. According to OCHA, Israel methodically prevents aid missions from travelling to the north of the Strip and has been recently declining [more than half](#) of the entry requests submitted to it by missions. The vast majority of the missions whose entry was approved by Israel are food missions, while missions seeking to distribute essential aid to hospitals and water, hygiene and sanitation facilities (WASH) were refused. (see: Hostilities in the Gaza Strip and Israel, Flash Update #120, *OCHA*, February 16, 2024). Severe limitations are also imposed by Israel on the [fuel supply](#) to the north of the Strip and as of January, it is estimated that Israel has prevented the passage of 90% of the fuel that the aid organizations wanted to transfer to the Strip (see: "Humanitarian Access Snapshot – Gaza Strip, End – January, 2024", *Reliefweb*, February 5, 2024). The [functioning](#) of hospitals and WASH facilities depends on fuel supply and the fact that Israel does not allow fuel distribution to facilities in the north directly affects the sanitary condition and health services in the north of the Strip (see: "Explainer: Water Supply & Fuel Relationship in The Gaza Strip", *State of Palestine, WASH Cluster*, November 14, 2023).
43. A [document](#) which was published in February emphasizes the critical increase in malnutrition among children, pregnant women and breastfeeding women in Gaza – and the impact that the lack of food and clean water will have on their health. In the north of Gaza, 1 of every 6 children below two years of age suffers from acute malnutrition. Moreover, 90% of these children and 95% of the pregnant and breastfeeding women face acute food shortage and consume two or fewer nutrient-poor food groups daily. Also, families reduce adults' portions to feed the children, with 64% subsisting on only one meal per day (see: "*Nutrition Vulnerability and Situation Analysis/Gaza*", *The Global Nutrition Cluster (GNC)*, Feb 2024). Dr. Mike Ryan, CEO of the emergency program of the World Health Organization [said](#) that hunger and disease are a deadly combination - hungry, weakened and deeply traumatized children are more likely to get sick, and children who are sick, especially with diarrhea, cannot absorb nutrients well (see:

"Children's lives threatened by rising malnutrition in the Gaza Strip", *WHO*, February 19, 2024).

44. It emerges from [OCHA's report](#) dated February 20, 2024, that between January 1, 2024 - February 15, 2024, the aid organizations planned to send 77 missions to provide aid and carry out situation assessments north of the Wadi Gaza; however, the passage of only 12 of said missions was approved by Israel. Three additional missions were only partially approved and the passage of 14 missions was delayed. While the departure of 9 missions was postponed by the aid organizations themselves which supervise and inspect all shipments, Israel has prevented the passage of 39 additional missions (see: *Hostilities in the Gaza Strip and Israel | Flash Update #122, OCHA, February 20, 2024*).
45. On February 5, 2024, Israel [bombed](#) from the sea an aid truck loaded with food before it began its journey to the north of the Strip (see: "Gaza: Northern aid push frustrated as regional tensions rise", *UN News*, February 5, 2024). At that time, the World Food Program - WFP intended to carry out an [organized plan](#) that will allow the daily distribution of food in order to create certainty among the population there and ensure a significant decrease in hunger. The distribution of the aid could not be carried out after one of the trucks was raided by a crowd of hungry people in one incident and the driver of another truck faced gunfire in a another incident. These incidents reflect the absence of a body in charge of public order and the damage which is consequently caused to the civilian population (see: "UN Food Agency pauses deliveries to the North of Gaza", *WFP*, February 5, 2024). In view of the severe difficulty in distributing food, WFP announced that it had to [pause deliveries to the north](#), although it would have serious consequences: further deterioration of the situation and the risk of death from hunger (see: "UN food agency pauses deliveries to the north of Gaza", *Reuters*, February 20, 2024).
46. In a [statement](#) on behalf of WFP dated February 20, 2024 it was said that to avoid disaster a large-scale expansion of the flow of aid to northern Gaza is urgently needed by opening the crossings to the north and additional routes through which food will be supplied to Gaza. It was further stated that Gaza was hanging by a thread and that WFP must be enabled to implement a plan to assist thousands of desperately hungry people. In its statement the organization has also referred to the damage caused as a result of the unstable communication infrastructures and emphasized that security, for aid workers as well as for the people needing it, must be facilitated (see: "UN food agency pauses deliveries to the North of Gaza", *WFP*, February 5, 2024).
47. [OCHA's February situation report](#) highlights the deterioration of the ability to deliver aid to the north of the Strip: the UN aid organizations planned 24 aid missions to northern Gaza during February. Only one quarter of the missions reached their destination. During January, 61 missions were planned and only 10 of them materialized. According to the report, the decrease in the number of planned missions stems from a number of reasons: the incidents in which trucks were attacked (as described above); the inability to secure the personal safety of the members of the aid missions; harassment and intimidations of the agencies' personnel by Israeli soldiers manning checkpoints in the Gaza Strip; the attacks of the convoys by a crowd of hungry people and the military violence in response

(see: "*Humanitarian Access Snapshot - Gaza Strip | End-February 2024*", **OCHA**, March 6, 2024).

48. It emerges from [reports](#) in the Israeli media that on February 25, 2024, Israel transferred for the first time, humanitarian aid through an unregulated crossing near Be'eri. It emerges from the report that political parties are well aware of the fact that humanitarian aid does not reach northern Gaza and that there is a need to transfer goods directly from Israel through crossings in northern Gaza (see for instance: "*To bypass Hamas: for the first time – this is how Israel has entered aid to northern Gaza*", **Ma'ariv Online**, February 25, 2024).
49. On February 27, 2024, the Ministry of Health in Gaza [reported](#) that two babies had died at Kamal Adwan hospital in northern Gaza as a result of malnutrition (see: *Hostilities in the Gaza Strip and Israel, Flash Update #128*, **OCHA**, February 28, 2024). As noted above, as of March 12, 2024, 27 people have [died](#) from malnutrition. According to the Ministry of Health in Gaza, these are only the cases which have reached the hospitals and additional cases may have possibly occurred (see: *Hostilities in the Gaza Strip and Israel, Flash Update #138*, **OCHA**, March 13, 2024).
50. On February 27, 2024 OCHA's director of coordination department, Mr. Ramesh Rajasingham appeared before the Security Council of the UN, following resolution 2417 of 2018 according to which the Security Council should be updated when an armed conflict adversely affects food security and leads to famine. Mr. Rajasingham noted in his opening statement that the situation in the Strip is not at all surprising since the UN agencies have already warned as soon as the war broke out of mass starvation, especially in view of the fact that the Gazan population has already suffered structural poverty as a result of the Israeli blockade over the 16 previous years (see: *Mr. Ramesh Rajasingham updating the Security Council on food security risks in Gaza*, **OCHA**, February 27, 2024).
51. Due to Israel's disregard of said warnings, as of the end of February one quarter of the Gazan population is on the verge of hunger. One sixth of the children under the age of two in northern Gaza suffer from acute malnutrition and the survival of all Gaza Strip residents depends on the aid organizations. According to him, the military attacks and additional Israeli restrictions destroyed the ability to farm the lands in the Strip and produce food therein, damage which according to experts may be irreversible, if no change occurs by May. Several factors put the survival of the civilian population in the Gaza Strip at risk in general and in the north in particular, including, *inter alia*: the prohibition on fishing; the destruction of many animals as a result of which animal source foods became a rare commodity; fatal damage to the agriculture industry preventing the ability to rely on local food sources; [fatal damage](#) to the private industry in Gaza, which does not function, and more. These factors forced the population in Gaza to almost absolutely rely on external aid and led to a reality where the prices of the goods that exist in the local markets has [soared](#) and is almost inaccessible for the majority of the population. Due to the famine, the severe shortage of clean water, and the collapse of the health care system and sanitation systems the risk of diseases and epidemics is growing.
52. Mr. Rajasingham further stated that despite the urgent need to distribute aid, the humanitarian organizations face many obstacles: they are prevented from bringing into

the Gaza Strip sufficient aid, all the more so aid that will prevent hunger and malnutrition from spreading; the aid shipments are adversely affected by refusals, delays, burdensome inspection procedures, denial of access, barriers and more; confrontations with a starving crowd; collapse of order enforcement mechanisms; restrictions on communication; supply routes which were destroyed as a result of the war; security risks which have already led to the death of 161 workers of aid organizations. According to him, in order to correct the current situation, among other things, all possible entry points should be used to secure the safety of the aid workers and all means of communications should be facilitated.

53. On February 28, 2024, the Ministry of Defense of the United Arab Emirates [reported](#) of a joint operation with Egypt to airdrop aid, food and medical equipment to northern Gaza. In the days which followed, aid was airdropped by the [United States](#), Egypt, Jordan and others on several additional occasions (see: Missy Ryan, "*As Gaza crisis intensifies, U.S. conducts first airdrop of aid*", *The Washington Post*, March 2, 2024). The airdrops continue to this day. Naturally, substantial aid cannot be provided by way of airdrops, all the more so when crowds of hungry people in need of food on a regular basis, are in a state of a continuing uncertainty concerning their ability to get food for themselves and their family members. Moreover, at least five were killed and an unknown number of persons were injured in aid airdrop when a parachute has apparently failed to open (see: Jason Burke, *Five killed and 10 injured in Gaza aid airdrop when parachute fails to open*, *The Guardian*, March 8, 2024).
54. The severe famine in northern Gaza led to additional tragic events. On February 29, 2024, a food mission organized by local businessmen arrived at Al Rashid street southwest of Gaza City. The convoy was secured by the Israeli army which opened fire when a crowd of starving people gathered around the trucks hoping to get food for themselves and for their families. 118 people were [killed](#) in the disaster and hundreds were injured. According to Israel, the majority of the casualties occurred as a result of people being crushed on the ground and only a small minority was shot by the Israeli soldiers. On the other hand, the aid organizations claim that many gunshot victims were evacuated to Shifa hospital and that the Israeli army is responsible for the deadly incident. On March 2-3, additional people were reportedly killed and injured in northern Gaza while looking for food and essential aid (see: *Hostilities in the Gaza Strip and Israel Flash Update #131*, *OCHA*, 4.3.2024).
55. On March 2, 2024, the UN Security Council [issued](#) a statement regarding the deadly violence against individuals in need of humanitarian aid. The Council called on the parties to respect international law, to refrain from depriving the civilian population of basic services and to protect in every way the civilian population and civilian infrastructures. In this context, the Council expressed grave concern over the estimates from the Integrated Food Security Phase Classification ([IPC](#)) that all the residents of Gaza would face alarming levels of acute food insecurity (see: Security Council Press Statement on Incident Surrounding Humanitarian Assistance Convoy in Gaza Strip, March 2, 2024).
56. The Council urged Israel to keep its border crossings open for humanitarian aid to enter the Strip; to facilitate the opening of additional crossings to meet humanitarian needs at

scale, and to support the rapid and safe delivery of relief items to people throughout the Gaza Strip.

57. On March 3, 2024, WFP intended to resume its activities and transfer [14 trucks](#) to northern Gaza. The trucks went on their way, but the Israeli army prevented their passage at the checkpoint in Wadi Gaza and sent them back after a 3 hour delay. When the trucks were travelling back to the south of the Strip they stopped by a large crowd of hungry people that looted the food, taking around 200 tons, from the trucks. (see: "*food deliveries to northern Gaza face further setbacks*" *WFP*, March 5, 2024). In addition, on March 3, 2024, 6 tons of food were airdropped in the north of the Gaza Strip following cooperation between the World Food Program and the Jordanian government. Deputy Director of the World Food Program, Mr. Karl Skau referred to the air operations and emphasized that **food airdrops will not avert famine and cannot replace delivery of food by land to northern Gaza. He stated that airdrops should be regarded as the last resort and a massive relief operation requires more entry points into Gaza, including from the north.**
58. On March 3, 2024, a [statement was issued](#) by UNICEF Regional Director for the Middle East and North Africa, Ms. Adele Khodr according to which humanitarian aid agencies must be allowed to reverse the humanitarian crisis, prevent famine, and save children's lives. For this purpose the agencies need free access from all possible crossings, including direct entry points to northern Gaza; security assurances and unimpeded passage to distribute aid, at scale, across Gaza, with no denials, delays and access impediments (see: "*Statement by Adele Khodr, UNICEF Regional Director for the Middle East and North Africa – Malnourished babies in Gaza slowly perishing under the world's gaze*", *UNICEF*, March 3, 2024).
59. On March 4, 2024, a mission on behalf of the World Health Organization managed to visit the Kamal Adwan and Al-Awad hospitals in northern Gaza bringing with it 9,500 liters of fuel, food and a limited amount of medical equipment. Following the visit, the organization's Director-General, [Tedros Adhanom Ghebreyesus](#), said that missions on behalf of the organization were not allowed to enter northern Gaza since October. According to him, the equipment that the mission managed to bring in with it was insignificant and was only a fraction of the urgent lifesaving needs. In addition, the CEO referred to the increasing number of malnutrition cases, child mortality as a result of hunger, destruction and damage to hospital buildings, and as aforesaid, the severe shortage of fuel, food, medicine and medical equipment.
60. On March 6, 2024, statements made by Jamie McGoldrick, the UN's Humanitarian Coordinator for the Occupied Palestinian Territory, were [posted](#) on the UN website after a two day visit to the Gaza Strip. Mr. McGoldrick said that hunger has reached catastrophic levels and that children were starving to death. According to him, **in order to solve the starvation problem in northern Gaza, a plan should be established allowing the passage of 300 aid trucks every day.** The coordinator referred to the humanitarian airdrops and emphasized that road transport remained the most effective way to get the volume of urgently needed aid to those who needed it: one truck can carry between 20-30 tons, about 10 times the amount of one aircraft conducting an aid drop.

In addition, the Coordinator noted that there is an acute need to open more crossing points to bring in the required aid and ensure safe access of aid to different areas in the Strip, including to northern Gaza (see: "*Gaza: 'Children are dying from hunger', says UN aid coordinator*", *UN NEWS*, March 6, 2024).

61. A post on [WFP's Twitter dated March 11, 2024](#), stated that the malnutrition crisis in Gaza was accelerating at an unprecedented pace due to an alarming shortage of food, drinking water and health services. It was further stated that the situation increases the risk of long-term health effects and that it most severely affects women and children 90% of whom do not eat a varied diet.
62. [As of March 12, 2024](#), only 12 hospitals - 6 in the north and 6 in the south - are partially functional due to the severe shortage of equipment and medical staff. This shortage critically harms the health system's ability to meet the needs of the civilian population, including a large number of children, women and people with chronic illnesses. Health facilities throughout Gaza, especially in the north, face a severe shortage harming their ability to provide essential medical care. Said shortage includes medicines, fuel which is essential for the hospitals' operations, clean water, surgical equipment, anesthetic drugs, and food supply for both patients and medical staff. The shortage has reached critical levels, forcing medical staff to perform surgeries without anesthesia and pain killers (see: *Hostilities in the Gaza Strip and Israel, Flash Update #137, OCHA*, March 12, 2024).
63. In recent weeks, while the humanitarian crisis in Gaza has been escalating, the aid organizations encounter a new obstacle. As of January 24, 2024, aid trucks which pass the inspections and the bureaucratic coordination, and arrive during the crossing's operating hours to ensure their entry into the Strip, are confronted by protests of right-wing organizations and families of hostages against the delivery of humanitarian aid to Gaza. According to them the purpose of the protests is to exert pressure for the release of the hostages. As part of the protests, dozens of right-wing activists block the crossing, sometimes hermetically. Although it is a small group of protesters, and although the purpose of the action is not to protest against the policies of the government and the army, but rather to thwart military activity in wartime, the police avoid interrupting right-wing activists from blocking the crossing. According to media publications, the policy stems from the directives of the Minister of National Security. The activists are supported by members of the security cabinet, the entry of trucks is prevented or delayed and the volume of humanitarian aid entering the Strip, which anyway is not close to meeting the needs of the population in view of the unprecedented crisis, has been significantly reduced (Amos Harel, "*Blinken canceled a visit to Kerem Shalom because Israel did not commit to prevent a demonstration on the ground*", *Ha'aretz* February 8, 2024). Only due to international pressure the army was instructed to enforce public order at the crossing, and the GOC of the Southern Command issued an order to close the area. Since then, the protest has also been extended to the Ashdod port where right-wing activists prevent the trucks from leaving the port, or from travelling to the Nitsana crossing, and do not allow the trucks to reach the crossing.
64. There is no dispute that a number of tools are available to the enforcement authorities in Israel enabling them to deal, had they wanted to, with dozens of activists, thwarting on a daily basis, for weeks, the implementation of a government resolution. The lack of

enforcement raises the concern that this protest constitutes another obstacle in addition to the array of obstacles comprising the aid policy to Gaza since the October 7th, and that the prevention of humanitarian aid is regarded by certain parties as forming part of Israel's war strategy.

65. It emerges from all of the above that the situation in northern Gaza requires a drastic change in the policy of the state of Israel and the removal of the restrictions imposed by it. The difficulty in providing aid to northern Gaza does not arise solely from the bureaucratic difficulties imposed by Israel while refusing to enable passage of aid missions. The unprecedented attack on the Gaza Strip has sown havoc and destruction throughout the Strip and especially in the north. Consequently, many roads were completely destroyed and the access roads are disturbed and difficult to pass. The Israeli army did not stop fighting in the north and therefore the aid missions are also exposed to attacks, as has already happened. It is clear that in this state of affairs, poses an immediate threat to the life of the hundreds of thousands of residents remaining in northern Gaza who are protected persons and need assistance, either as a result of military attacks, famine, dehydration and the absence of functional health systems which can provide essential medical care.
66. **Although Israel claims that it does not limit the volume of aid to the north of the Strip (or at all) or encumber its delivery, the facts say otherwise.**
67. Every day which passes without an immediate solution to the distress of the residents in the north can mark the difference between life and death and any delay is an unbearable torture and exacerbates the suffering of the population which already suffers from extreme malnutrition, famine and very poor health.

The proceedings pending before the International Court of Justice (ICJ)

68. On December 29, 2023, the Republic of South Africa submitted an application to the International Court of Justice (ICJ) to institute proceedings regarding alleged violations of Israel's obligations under the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip.
69. The parties' arguments were heard before the court on January 12 and 13. On January 26, 2024, the ICJ published legally binding provisional measures in which Israel was ordered to take all measures to prevent the commission of all acts in the framework of Article II of the Genocide Convention to ensure that Israeli military forces will not perform any of the acts listed in the Article; that Israel will take measures to prevent and punish those who engaged in direct and public incitement to commit genocide against Palestinian people; that Israel will provide the civilian population with basic services, including humanitarian aid, to address the difficult living conditions in Gaza. As stated in paragraph 86(4) of the decision:

"The State of Israel shall 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"

As is known, this temporary relief was given with the consent of the Honorable Justice Barak on behalf of the State of Israel.

70. It should be noted that in the framework of the above procedures, the state did not deny the applicability of the Convention on the Prevention of Genocide and the applicability of the international humanitarian law to its actions. However, its actions make it clear that it does not meet its obligations and does not comply with the provisional orders by which it is bound according to the decision of the International Court of Justice, especially with respect to the provision of humanitarian aid and especially in northern Gaza.
71. On March 6, 2024, the Republic of South Africa submitted another application to the Court of Justice requesting its intervention in view of the deteriorating humanitarian condition in Gaza. In this context, new facts regarding the condition of the civilian population were emphasized, including in northern Gaza, in view of the significant deterioration in the situation since the decision of the Court had been given, based, *inter alia*, on deaths as a result of starvation and dehydration. When the above application was submitted these were not merely concerns or warnings, but rather, as described above, an unprecedented humanitarian crisis which claims victims on a daily basis and puts the civilian population in an existential risk.
72. According to additional reports of [international organizations](#), during the weeks which have passed since the decision of the Court dated January 26, 2024, instead of increasing the humanitarian aid, Israel reduced the number of aid trucks which were allowed access to Gaza, especially to northern Gaza, to which an even smaller number of aid trucks were allowed access (see: "*Israel Not Complying with World Court Order in Genocide Case*", *HRW*, February 26, 2024).

Exhaustion of remedies

73. Some of the petitioners, Adalah - the Legal Center for the Rights of the Arab Minority In Israel, Physicians for Human Rights - Israel, Gisha - Center for maintaining the right to move and HaMoked - Center for Defence of the individual, have already addressed, on October 12, 2023, the Minister of Defense, the Minister of Energy, the Coordinator of Government Activities in the Territories and the Attorney General following the decision to stop the supply of electricity, fuel and water to the Gaza Strip. In their letter the Petitioners warned of the dangerous consequences of cutting off water and electricity supply to Gaza and preventing the passage of fuel. It was *inter alia* noted that consequently the health services and the hospitals' ability to function will be critically harmed, irreparable damage will be caused to patients, the water pumping system will be shut down and access to clean drinking water shall not be possible, food supply and humanitarian aid shall be adversely affected as well as the ability to treat waste water. It was emphasized that the actions carried out by Israel were contrary to its obligation to comply with international law and uphold its undertaking before this Honorable Court, and that it should immediately allow the supply of water, electricity and fuel. The letter remained unanswered and as the organizations have predicted the humanitarian situation has rapidly deteriorated.

The organizations' letter dated October 12, 2023 is attached and marked as Appendix **P/1**.

74. On February 11, 2024, Petitioner 5, the Association for Civil Rights (ACRI), addressed the Prime Minister, the Minister of Defense, and Ministers members of the cabinet regarding Israel's obligations towards the protected population in the Gaza Strip. The letter has described in detail the difficult situation of the population and emphasized that this situation is the direct result of Israel's violations of international law. Israel was required to "act immediately to fulfill its obligations according to international law. It must increase the incoming humanitarian aid and provide for the needs of the protected persons in Gaza. Meanwhile, it must facilitate the safe return of residents to their homes in areas in which the fighting is no longer intense; provide suitable housing solutions for those whose homes were damaged and for those who cannot return to their homes at this time due to the fighting; provide clean drinking water, sufficient food, electricity, medicines, warm clothing, and anything which is required for the survival of the population; ensure that the aid reaches all residents; and see to that every protected person has access to medical treatment." Said letter remained unanswered and the reality shows that the Respondents have completely disregarded its content and have even acted in a manner which has exacerbated the situation.

ACRI's letter dated February 11, 2024 is attached and marked as Appendix **P/2**.

75. On February 20, 2024, the Petitioners wrote to the Prime Minister, the Minister of Defense and the Coordinator of Government Activities in the Territories demanding that Israel satisfy all the needs of the civilian population in northern Gaza according to its obligations under international law. The letter noted that although the situation of the civilian population throughout the Strip was extremely grim, the situation of the residents in the north was the grimmest due to the fact that Israel was taking various measures which adversely affected the supply of aid to the north. The Respondents were required "to act immediately to satisfy all the essential needs of the civilian population in northern Gaza and to see to that [Israel] would immediately cease harming, disrupting, delaying and preventing the passage of humanitarian aid convoys to northern Gaza." This letter has also remained unanswered.

The organizations' letter dated February 20, 2024 is attached and marked **P/3**.

76. Hence, the Respondents have disregarded Petitioners' letters for over five months while continuing to act in a manner leading to the current unprecedented humanitarian crisis in the Gaza Strip. Hence this Petition.

The legal argument

77. The factual picture arising from the different sources described above is unequivocal. The humanitarian situation in Gaza is catastrophic and the harm caused to the civilian population, especially women and children, is unprecedented. The lives of the residents of the Gaza Strip, particularly the residents who remained in the north – whether because they were unable to leave or because they preferred to stay in their homes – is at risk at all times. The state of Israel **does not provide and even prevents the provision** of

sufficient and appropriate humanitarian aid **and does not enable** international organizations to do so. Therefore, the residents suffer from starvation, dehydration, poor hygienic conditions, sanitary neglect and lack of medical or other services.

78. Given the reality described above, Israel blatantly violates its obligations under international law which impose obligations by virtue of several branches of law: alongside the applicability of the laws of war, the laws of occupation continue to apply to the state of Israel being the occupying power in the Gaza Strip. In addition Israel is also subject to human rights law. It should be noted that these laws apply and bind all parties to the war, even if the other party violates them.

The source of the obligations of the state of Israel

79. The state of Israel does not deny its obligations according to the laws of war, as stated by it in the past before this Honorable Court (see for instance H CJ 4764/04 **Physicians for Human Rights et al. v. Commander of the Military Forces in Gaza** (May 30, 2004), H CJ 201/09 **Physicians for Human Rights et al. v. The Prime Minister** (January 19, 2009) and more) and as has been recently declared by it before the International Court of Justice. At the same time, the situation described in detail in the factual chapter, leaves no room for doubt that the Respondents do not fulfill their above obligations, as shall be specified in detail below. Unlike previous cases, the fighting in Gaza which commenced on October 7, 2024 is unprecedented in scope. The severe suffering of the civilian population, the number of victims and the scale of the destruction of civilian facilities and homes is beyond imagination. The suffering of the civilian population is clear and keeps intensifying with the prevention and lack of sufficient humanitarian aid to meet its minimal needs.
80. For the avoidance of doubt, Respondents' obligations also stem from the laws of belligerent occupation. This body of law imposes on the Respondents additional obligations, Israel being an occupying power, including positive obligations towards the residents of the Strip. These obligations, which will be described in detail in this chapter, are also blatantly violated by the Respondents. In addition, the state of Israel has obligations by virtue of human rights law, Israeli law and the judgments of this honorable court.
81. As is known, the state of Israel controls the land crossings to and from Gaza. This was the situation before the outbreak of the war in October and this is the situation now – despite all the changes on the ground. In addition, there is no dispute that Israel also controls the airspace and the territorial water of Gaza and practically controls all major aspects of life in Gaza, and even more so these days, in which states wishing to bring in humanitarian aid to Gaza, *inter alia* by the airdrop of aid packages, need to obtain Israel's approval to do so. The above also applies to Israel's control over the sea and the current efforts to facilitate the entry of aid – again, subject to Israel's approval which controls the sea – by ships from the sea.
82. The continuing control, *inter alia*, of the crossings to and from Gaza and of many other areas of life of the residents of Gaza, which has intensified at this time, **imposes on Israel obligations towards the residents of Gaza by virtue of the laws of occupation**

forming part of the international humanitarian law, in connection with human rights which are affected by its control. This is the accepted position of the human rights organizations, international organizations including the UN and the European Union, the different UN agencies and many scholars and experts.

See in this regard: the control index report, pp. 47-49; Sari Bashi and Kenneth Man "Control and responsibility: The legal status of the Gaza Strip after the 'disengagement'" *Hamishpat* 14, 35 (2010); Tristan Ferraro, *Determining the beginning and end of an occupation under international Humanitarian Law*, 94 INT'L REV. RED CROSS 133, 157-158 (2012), the [report](#) of the Independent UN Committee on the Occupied Territories dated September 5, 2023, the General Assembly [Report](#) dated December 17, 2021, the European Union [Report](#) dated March 23, 2018 and more.

It was accordingly stated by the Red Cross organization while referring to the functional approach as it concerns the occupation in Gaza:

"The ICRC considers, however, that in some specific and rather exceptional cases - in particular when foreign forces withdraw from occupied territory (or parts thereof) but retain key elements of authority or other important governmental functions usually performed by an occupying power - the law of occupation may continue to apply within the territorial and functional limits of such competencies. **Indeed, despite the lack of the physical presence of foreign forces in the territory concerned, the retained authority may amount to effective control for the purposes of the law of occupation and entail the continued application of the relevant provisions of this body of norms.** This is referred to as the "functional approach" to the application of occupation law. This test will apply to the extent that the foreign forces still exercise, within all or part of the territory, governmental functions acquired when the occupation was undoubtedly established and ongoing.

The functional approach described above allows a more precise delineation of the legal framework applicable to situations in which it is difficult to determine, with certainty, whether an occupation has ended or not... **In such situations, it is important to take into account the extent of authority retained by the foreign forces rather than to focus exclusively on the means by which it actually is exercised. It should also be recognized that, in these circumstances, the geographical contiguity between belligerents States could facilitate the remote exercise of effective control.** For instance, it may permit an occupying power that has relocated its troops outside the territory to reassert its full authority in a reasonable manner short period of time. The continued application of the relevant provisions of the law of occupation is all the more important in this scenario as these were specifically designed to regulate the sharing of authority - and the resulting assignment of responsibilities – between the belligerent states concerned."

ICRC, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts Report 12 (2015)

83. According to this approach the state is at least responsible in the areas which are under its control. In the case at hand, by virtue of Israel's control over the crossings and the movement of people and goods, obligations are imposed on it by virtue of the laws of

occupation constituting part of the international humanitarian law, towards the residents of Gaza.

84. Moreover, as held in H CJ 102/82 **Tsemel v. Minister of Defense**, the laws of occupation apply whenever a potential is created for the exercise of governmental powers in the territory "irrespective of the temporary nature of the presence in the area or the intention to establish only a temporary military government therein...". The tightened control of the Israeli army throughout the territories of the Gaza Strip, and especially in the north, the large military presence in the Gaza Strip, and in addition, decisions such as withholding food, electricity, water and fuel, leave no room for doubt that Israel has the effective control over the territory, that duties are imposed on it being an occupying power and that the survival of the civilian population depends on its actions.
85. In H CJ 9132/07 **Al-Basyouni v. The Prime Minister** (January 30, 2008), the court held that the situation in the Gaza Strip was dynamic and changing. The current factual situation and the scope of the effective control of the army in the area, which includes the exercise of control of a governmental nature, leave no room for doubt that the state is obligated to act according to the duties imposed on it by virtue of the laws of belligerent occupation and that the conditions set forth in Regulation 42 of the Hague Regulations, 1907 undoubtedly apply.
86. It emerges from the judgment of the International Criminal Tribunal for the former Yugoslavia (ICTY) that the approach which was adopted is that the laws of occupation should be given a functional interpretation to protect persons who find themselves under the control of a foreign power and to ensure that duties and powers are imposed on the foreign power according to international law. Hence it was held that in order to provide civilians with the protection afforded by the Fourth Geneva Convention the term "in the hands of" (as stated in Article 4 of the Geneva Convention) should be interpreted to mean that it applies to residents who find themselves under the control of a foreign power (a power of which they are not citizens), even if it is an intermediate period in which the foreign power does not exercise effective control over the territory, to ensure that the civilians have at least the same rights to which they are entitled once occupation is established. As was held in *Naletilic*:

"The Chamber accepts this to mean that the application of the law of occupation as it effects "individuals" as civilians protected under Geneva Convention IV does not require that the occupying power have actual authority. For the purposes of those individuals' rights, a state of occupation exists upon their falling into "the hands of the occupying power." Otherwise civilians would be left, during an intermediate period, with less protection than that attached to them once occupation is established.

Consequently, the Chamber will have recourse to different legal tests to determine whether the law of occupation applies, depending on whether it is dealing with individuals or with property and others matters."

Prosecutor v. Mladen Naletilic (Trial Judgment), IT-98-34-T (Mar. 31 March, 2003), para. 221-222).

87. The laws of belligerent occupation impose on the Respondents the obligation to avoid harming the civilian population in the Gaza Strip, alongside a **positive obligation to provide for its humanitarian needs and to maintain public order and civil life** (see HCJ 4764/04 **Physicians for Human Rights et al. v. Commander of the IDF Forces in Gaza**, IsrSC 598(5) 385, 393 (2004)).
88. Moreover, alongside these laws the state is also subject to human rights law. As held by the International Court of Justice, human rights law continues to apply during an armed conflict and the relation between the specific norms depends on the circumstances (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Rep. 136 §§ 102-112*). The Turkel Commission which was established to examine the maritime incident of May 31, 2020 has also referred to this issue and noted that complementary relations exist between the human rights laws and the laws of war. The same also arises from the ruling of this court (see HCJ 769/02 **Public Committee against Torture v. the Government of Israel**, IsrSC 62(1) 507 (2006), paragraph 19 of the judgment of the then President Barak).
89. Hence, the laws of war, the law of occupation, and human rights law apply to the actions of the Respondents and the military, and as will be specified below, they do not meet their obligations under these laws, and especially their obligations to facilitate prompt and sufficient humanitarian aid; to act to provide this aid which is essential for the survival of the civil population; and to protect the civilian population from harm and to particularly protect its most fundamental rights to life and health.

The duty to protect the civilian population and allow free passage of humanitarian aid

90. Article 23 of the Fourth Geneva Convention, constituting part of the international customary law, imposes on a party to combat the obligation to allow **free passage** of all medical supplies and hospital needs, as well as all necessary food supplies, clothing, and medicines especially for children under 15 years of age, pregnant women and women giving birth:

"Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases... The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make such permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers. Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed".

91. Article 70(2) of the First Protocol adds to this obligation and provides that the parties to an armed conflict shall permit the rapid and unimpeded passage of all humanitarian aid consignments, equipment and personnel, even if such aid is intended for the civilian population of the opponent. Article 70(4) further adds that "the parties to the conflict shall protect relief consignments facilitate their rapid distribution."

92. A similar provision is entrenched in Article 18(2) of the Second Protocol of the Geneva Convention on the Protection of Victims of Non-international Armed Conflicts and in any event, the provision in Article 70 of the Additional Protocol constitutes a customary provision, which states (in Rule 55) that:

"The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control."

93. It should be noted that according to the two protocols of the Geneva Conventions, the agreement of the parties to the conflict is required for the purpose of facilitating the entry of humanitarian aid – and in the event of a non-international conflict, the consent of the state is required. According to the commentary to the customary rules, while this demand does not form part of the current practice, organizations must obtain consent to enable them to act and provide aid in a war zone. However, states must not arbitrarily decline such requests. Moreover, if the civilian population faces possible starvation, a party to the conflict is obligated to agree to allow the prompt and uninterrupted passage of the humanitarian aid. It should be emphasized that according to reports in the media, the authorities in Gaza, including Hamas and the Palestinian Authority, do not object to the provision of humanitarian aid to the civilian population, but rather the opposite is true. The entry of humanitarian aid and equipment is prevented as a result of the state's decision which is illegal under the circumstances and is contrary to its obligations.

Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (International Committee of the Red Cross ed. pp. 193-200, Cambridge University Press 2005).

94. As noted by the Red Cross back in 1995, each side to the conflict is obligated:

"to accept, under the conditions prescribed by international humanitarian law, impartial humanitarian relief operations for the civilian population when it lacks supplies essential to its survival."

(26th International Conference of the Red Cross and Red Crescent, Res. II (cited in Vol. II, Ch. 17, § 533)).

95. There is no and there can be no dispute that the civilian population in the Gaza Strip, especially in the north, is suffering from a severe lack of food, clean water, medicines and more which are essential for its survival. Extensive cases of malnutrition, famine and death resulting therefrom obligate the state of Israel to immediately allow the passage of the humanitarian aid which is required. Israel must not continue to delay or prevent the entry of aid, its shipment to the north or its distribution to the residents, and it must not attack the aid trucks or the starving residents raiding the convoys.
96. In view of the extremely dire humanitarian situation Israel's allegations that humanitarian aid and equipment were looted as a justification for limiting the supply should be totally rejected. The crowds' attacks of the aid trucks are a manifestation of the terrible distress that the civilian population of the Strip, and particularly of its northern parts, is dealing with. Tens of thousands of hungry people live in uncertainty of food supply. They cannot know when they will be able to eat their next meal and worse than that, whether they will

be able to feed their children. These circumstances intensify Israel's obligation to facilitate the passage of a more significant number of aid trucks to the north of the Strip.

97. The arguments concerning military needs cannot justify in the case at hand the continuing harm. The humanitarian catastrophe in the Gaza Strip has not developed on its own but has rather intensified over the days and weeks during which Israel harmed the civilian population. A military need can affect the manner in which the aid or the supervision of its distribution are routed to prevent it from reaching the enemy's armed forces. The civilian population in the Strip can and should be provided with essential humanitarian aid, but the state of Israel has refrained from doing so and thwarted possible aid although it was aware of the harsh consequences thereof. In its actions Israel has breached its obligation to protect the civilian population and to enable it to receive humanitarian aid.
98. Beyond these obligations which are imposed on Israel as a party to an armed conflict, being an occupying power, a **positive obligation** is imposed on Israel to satisfy the humanitarian needs of the population under its control, furnish humanitarian aid and maintain the public order and civil life in the area.
99. Accordingly, pursuant to Article 43 of the Hague Regulations respecting the Laws of War on Land, 1907, Israel is obligated to enable the civilian population to conduct civil life. The obligation to protect the dignity of the local residents was established in Article 27 of the Fourth Geneva Convention (1949).
100. Article 55 of the Fourth Geneva Convention imposes the obligation "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate".
101. Article 59 of the Fourth Geneva Convention adds further that if the population – in whole or in part – of an occupied territory is inadequately supplied:

"The Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal. Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.
All Contracting Parties shall permit the free passage of these consignments and **shall guarantee their protection.**

However, a Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power."

102. Article 69 of the first protocol adds to the above obligations the obligation to ensure the supply of clothing, bedding, means of shelter and other supplies which are essential for the survival of the civilian population of the occupied territory.
103. The actions of the Israeli army are in clear contrast to these provisions. Israel does indeed convey its consent to the aid programs and imposes the blame on the aid agencies, but as specified in detail in the factual part, it encumbers their implementation and deliberately delays the entry of adequate quantities of aid into the Strip, and particularly to the north of the Strip.
104. And note well. The state does not fulfill its obligation when it allows the provision of partial or immaterial aid. Accordingly, for instance, Israel, which controls the airspace of the Gaza Strip, has authorized various countries to distribute food by way of airdrops. These operations received extensive media coverage and Israel took pride of them, but as described in the factual part, this is a drop in the ocean that does not meet the needs of the civilian population. Moreover, it is a dangerous distribution method, as unfortunately became clear from the tragic incident of March 8, 2024, in which five residents were killed and ten were injured after airdrop aid parachutes failed to open.
105. **It emerges from all of the above that Israel violates not only its obligations as an occupying power, but also its obligations as a party to the hostilities since it prevents the aid organizations from independently providing the humanitarian aid which is required for the survival of the residents in the north of the Strip.** The state of Israel [is not allowed](#) to prevent shipments of humanitarian aid to the north of the Strip, it is not allowed to delay such shipments and it certainly is not allowed to cause them damage. It must ensure safe passage for the humanitarian aid organizations and the aid trucks carrying supplies and equipment. Its obligation to maintain public order means that it must also facilitate the distribution of food and other aid in a way securing the safety of the aid teams and the population in need of such aid.

Breaching the obligation to enable access of humanitarian aid organizations

106. The additional protocols of the Geneva Conventions (Article 71 of the first protocol and Article 18 of the second protocol) as well as the international customary law entrench the obligation to enable the relief personnel to fulfill their duties, including, *inter alia*, the obligation to secure their freedom of movement and protect them. Rule 56 of the customary rules provides as follows:

The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in case of imperative military necessity may their movements be temporarily restricted.
107. The obligation to enable the freedom of movement of the humanitarian aid organizations is a direct result of the obligation to provide access to civilians in need and the prohibition on the deliberate prevention of humanitarian aid (see Rule 55 above).

108. As aforesaid, even if the Respondents argue that preventing the humanitarian aid is meant to serve military needs, it does not provide legal justification, particularly in view of the impact of these steps on the civilian population. According to the ICRC, a military need can be argued only in extremely irregular cases and for the purpose of facilitating humanitarian access rather than to prevent it. The restrictions may only be imposed temporarily and should be limited to a restricted geographic area and should not prevent the movement of the humanitarian personnel:

the military necessity argument can be invoked in exceptional circumstances in order to regulate—but not prohibit—humanitarian access, and can only temporarily and geographically restrict the freedom of movement of humanitarian personnel.

“ICRC Q&A and Lexicon on Humanitarian Access” (2014) 96 International Review of the Red Cross, 359 in page 364.

109. As specified in the factual section, the Israeli military has limited the freedom of movement of the humanitarian aid organizations to northern Gaza throughout the war so far in different ways: prohibiting the entry of the missions to northern Gaza, delaying the missions in the checkpoints and rerouting them back to where they came from, attacking and harming aid trucks, destroying roads and infrastructures, harming and attacking aid personnel resulting in the death of aid personnel, harming and attacking those seeking aid, avoiding facilitating humanitarian access and more. In view of all of the above, it is clear that the Respondents have also breached their obligation to enable access to the humanitarian aid organizations.

Breaching the obligation for humane treatment

110. Article 27 of the Fourth Geneva Convention which applies in time of war as well as in a state of occupation provides that the parties to a conflict and an occupying power must at all times treat protected persons humanely:

Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity

111. As noted in the convention's commentary, this is a key article forming the basis of the convention. The obligation to treat the civilian population humanely is also entrenched in Article 75(1) of the first additional protocol, Article 3 which is common to the Geneva Conventions and Article 4 of the second additional protocol which also constitutes part of international customary law. As stated in the [commentary](#) from 1958, the phrase "respect for person" must be understood in its widest sense and include all the rights of the individual which are inseparable from a human being. It includes the right to physical, moral and intellectual integrity. The obligation to "treat humanely" protected persons which applies in all circumstances and at all times should also be understood in its most general sense as applying to all aspects of a man's life.

112. This obligation is imposed on the state which also has the effective control on the supply of the essential commodities such as food, clean drinking water and medical equipment, to the protected population. Taking measures which prevent the provision of these essentials, as a result of which the right to dignity and humane treatment and the ability of the civilian population to maintain a minimum standard of living are substantially harmed, constitute a breach of these basic obligations. In view of the facts specified in the first part of the Petition, it seems that there is no room for dispute that the Respondents do not treat with respect and in a humane manner the protected population in the Gaza Strip and particularly in northern Gaza and therefore are also in breach of their above obligations.

Breaching the prohibition on collective punishment

113. Article 32 of the Fourth Geneva Convention states that the parties must not take any measure that could cause physical suffering to the protected population.

114. Regulation 50 of the Hague Regulations prohibits collective punishment and provides that:

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

115. Similarly, Article 33 of the Fourth Geneva Convention establishes the principle according to which "every person shall be punished for their own crime". Article 75(2) of the first additional protocol of the Geneva Conventions also states that:

The following acts are and shall remain prohibited at any time and in any place whatever, whether committed by civilian or by military agents...

(d) Collective punishments.

116. Respondents' conduct is contrary to international law, amounting to collective punishment of over two million people living in Gaza, and the tens of thousands remaining in their homes in the north. The infrastructures in the Gaza Strip were destroyed and essential services are not functioning. An entire population which is not involved in combat suffers immensely on a daily basis and the situation is only deteriorating.

117. Moreover, the Respondents want to use the Palestinian residents, harming their most essential needs and **leaving them in a state of famine**, in order to pressure the Hamas government to take certain actions. The residents of Gaza are 'captives' and Respondents' above conduct puts the civilian population in danger and denies it the "humanitarian minimum" while the Respondents are obligated to avoid harming it.

Breaching the prohibition on the starvation of the civilian population

118. According to the information specified in the factual section, there is no room for doubt that the population in the Gaza Strip, especially in the north, suffers from severe hunger,

dehydration and thirst. Due to the severe mass starvation and the desire of the population to survive and in view of the uncertainty regarding the supply of aid, civilians are forced to raid aid trucks, even if it may lead to and does lead to the loss of their lives.

119. This situation was created as a result of Israel's policy which for months has prevented the entry of humanitarian aid, or at least the entry of sufficient humanitarian aid, which will meet the most essential and basic needs of the civilian population in the Gaza Strip and especially in the north. As specified in detail in the factual part, warnings to that effect were issued by the UN aid agencies in real time, but were disregarded by the state of Israel.

120. In practice, the decisions of the Respondents or anyone on their behalf to prevent the supply of water, food, fuel and at the same time to prevent and delay humanitarian aid to civilians, or at least to allow the entry of insufficient amount of aid, may amount to deliberately harming the civilian population and depriving it of the essential needs for its survival. The current situation, where people are dying from malnutrition and dehydration in northern Gaza constitutes a violation of Israel's obligations which may be considered a war crime.

121. Article 54 of the first additional protocol to the Geneva Convention, which constitutes part of the international customary law, prohibits to starve the civilian population and to cause damage to objects which are essential for its survival:

1. Starvation of civilians as a method of warfare is prohibited.
2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population...

122. This prohibition is also stipulated in Article 14 of the second additional protocol to the Geneva Convention, which applies to non-international armed conflicts. Rule 53 of the customary rules provides as follows:

The use of starvation of the civilian population as a method of warfare is prohibited.

123. The commentary of Article 54(1) of the first additional protocol notes that the use of starvation as a method of warfare means:

"To provoke it deliberately, causing the population to suffer hunger, particularly by depriving it of its sources of food or of supplies. It is clear that activities conducted for this purpose would be incompatible with the general principle of protecting the population..."

124. Article 8(2)(b)(xxv) of the Rome Statute states that Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Fourth Geneva Convention constitutes a **war crime**.

125. Starvation may also be considered a crime of genocide according to the Convention on the Prevention and Punishment of the Crime of Genocide, since said crime is defined in Article 2 of the Convention as:

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

126. Therefore it is also prohibited to attack, destroy, remove, or put out of use essential objects for the survival of the civilian population, such as food products, farmlands used for creating food products, crops, livestock, drinking water supply and facilities, and irrigation plants.
127. As described in detail in the factual section, the Respondents withhold food by various means from the civilian population mainly in northern Gaza: most of the agricultural lands were destroyed, people lost their source of livelihood, the fishermen cannot fish, factories were attacked and destroyed, the Respondents prevent the entry of raw materials including flour in sufficient quantities. All of the above leave no room for doubt that the civilian population was denied its food supply sources. Moreover, the state of Israel was fully aware of the limited local means of production, the poverty rate, the lack of resources and the dire economic situation in the Strip. In view of the above, it had to immediately, as soon as the war broke out, see to that the civilian population is provided with sufficient food and clean water. Instead, Israel destroyed all the means of production and supply of food and water and prevented the entry and distribution of food in the Gaza Strip and especially in northern Gaza in different ways.
128. According to various statements made by senior officials of the state authorities, the hunger in the Gaza Strip and the prevention of sufficient aid trucks from entering the Strip also forms part of Israel's policy in the framework of the attempt to release the Israeli hostages. According to this approach, holding on to northern Gaza by the military and in fact putting it under siege is intended to be used as a bargaining chip in the negotiations for the release of the hostages (see for example: Yaniv Kobowitz Security officials: "Publicizing the intention to bring in aid from the north of the Strip harms negotiations with Hamas - senior officials of the defense system criticized the publication of the unilateral decision, and estimated that now it will not be possible to use the move as a bargaining chip in the negotiations for a hostage deal with Hamas", Ha'aretz, February 28, 2024).
129. Public statements of different government officials, such as the Minister of Defense Galant who stated, as specified in the factual section, that food will not enter the Strip, are indicative of prohibited political motives. In view of the above there is a concern that the starvation of the civilian population is used as a method of warfare despite the fact that it is prohibited and constitutes a war crime. Even without these statements, it is clear that Israel knew that its actions would lead to mass starvation and was even warned by different bodies immediately at the outbreak of the war of a rapid deterioration which would lead to this disaster. Therefore, it is clear that even if the intent of starvation cannot be proven, Israel has consciously disregarded the possibility of a mass starvation and fails to take the necessary measures which are required to meet the immediate needs of the population.

Israel's breach of its obligations and undertakings according to the Al-Basyouni ruling and the judgments of this court

130. Respondents' conduct also constitutes a violation of the judgments of this court and Respondents' undertakings. In HCJ 9132/07 **Al-Basyouni v. The Prime Minister** (reported in Nevo, January 30, 2008) (hereinafter: **Al-Basyouni**) which discussed the cabinet decision of 2007 to limit the fuel and electricity supply to the Gaza Strip, it was held that the obligation which is imposed on Israel:

is derived from the essential humanitarian needs of the residents of the Gaza Strip. The respondents must fulfill the obligations imposed upon them by international humanitarian law, and in this framework they must allow the supply to Gaza only of goods necessary in order to maintain essential humanitarian needs of the civilian population. (paragraph 11 of the judgment).

and thereafter:

The respondents do not by any means dispute the existence of humanitarian obligations incumbent upon them, which obligate the State of Israel to allow the passage of essential humanitarian goods to the Gaza Strip, and to avoid intentionally harming humanitarian facilities. (Paragraph 15 of the judgment).

131. As described above in detail, Respondents' decisions to prevent the entry of humanitarian aid and their conduct on the ground constitute prevention of supply of goods "necessary in order to maintain essential humanitarian needs of the civilian population". The consequences of this conduct are notable, with reports of dozens of deaths and immense suffering, particularly of children suffering acute malnutrition.
132. And note well. in HCJ 4258/08 **Gisha v. Minister of Defense** (June 5, 2008) which was submitted after the judgment in **Al-Basyouni**, the court has reiterated that in view of the fact that Israel controls the crossings to the Strip, **it cannot deliberately refrain from transferring essential commodities to the Gaza Strip and that it must do whatever it can to fulfill its obligations as established in Al-Basyouni**. As described in the factual section, Israel does not allow, deliberately, the acquisition of aid supplies in its territory, the opening of direct crossing points to northern Gaza, free passage of goods through Ashdod port and more. Instead, it supports flashy projects such as airdrops which put human life at risk and whose effectiveness compared to transporting aid by trucks is very small, and the construction and development of a sea route, whose cost is enormous, its effectiveness is questionable and in any event, many weeks will pass before aid may be provided therefrom. As the aid agencies have repeatedly warned, the situation in Gaza deteriorates every day and immediate aid is needed urgently and immediately. Projects such as those promoted by Israel are intended to throw dust in the eyes of the entire world and to avoid its duties, also according to the judgments of this Honorable Court.
133. In another judgment, the Supreme Court reiterated that in view of its control over the crossings, Israel is obliged to allow the residents of the Gaza Strip access to the services which are essential for maintaining a reasonable and humane standard of living, including

their economic needs. It was so held in HCJ 1169/09, **The Legal Forum for the Land of Israel v. the Prime Minister** (June 15, 2009):

Although the Gaza Strip is currently controlled by the Hamas movement which was declared a terror organization, **residents live there who need essential services for maintaining a reasonable quality and humane standard of living. Israel must assist facilitating the provision of essential needs to the local population, without which they shall not receive any help.** These essential services may also include permits for providing the necessary funds to pay salaries, **constituting minimal means of subsistence for them and their families... the innocent public living in the Gaza Strip cannot remain disconnected from basic means of subsistence and lines of supply which are required for living in a dignified manner...**" (Paragraph 21).

134. The Supreme Court acknowledged that the question of whether the provisions of the third chapter of The Hague Regulations of 1907 or the provisions of the Fourth Geneva Convention of 1949 apply to a specific territory is decided according to a **set of factual data**. Accordingly, it should be examined whether the factual conditions giving rise to the applicability of the provisions of international law concerning belligerent occupation were created (HCJ 102/82 **Tsemel v. Minister of Defense**, IsrSC 37(3) 365). Moreover, in HCJ 201/09 **Physicians for Human Rights v. the Prime Minister et al.** (January 19, 2009 the court has acknowledged that "**the situation described in Al-Basyouni above is also dynamic and changing**".
135. The current reality is totally different. This reality in which active combat takes place in Gaza and in which the Respondents are in control of what is provided to the protected persons, particularly in northern Gaza, intensifies Israel's obligations towards the protected persons. The reality today is that the civilian population in the Gaza Strip depends on Respondents' decisions at least not to prevent the entry of aid, equipment and humanitarian teams in a sufficient manner which will enable it to survive. Respondents' decisions lead to a situation in which the civilian population suffers from malnutrition and starvation causing the death of many people, particularly children, which is the most vulnerable population. Therefore, the Respondents should be ordered to transfer the requested aid without any further delay.

Human Rights Law

136. In view of Israel's control over the border crossings between the Gaza Strip and its territory and due to its current control over many aspects of life of Gaza residents, it is obligated by virtue of both international law and Israeli law, to honor and protect said human rights which are affected by its control.
137. Preventing aid and humanitarian supplies from entering the Strip and piling up different obstacles causing the civilian population starvation, malnutrition, dehydration, lack of medical and other services and the spread of sanitary hazards, constitute a brazen violation of the most basic human rights of the civilian population, including the right to

life, the right to bodily integrity, the right to health and the right to a minimal existence with dignity.

138. The right to life is a basic fundamental right, afforded to every person. This right is entrenched in section 2 of the Basic Law: Human Dignity and Liberty which provides that "One should not violate the life, body, or dignity of a human being as such." Section 4 of this basic law provides further that: "Every human being is entitled to protection of his life, body and dignity."
139. This court has reiterated in its judgments the duty of the state, including all of its branches, to respect the right of every person to life and dignity while said right includes at least the minimum which is required for humane existence – sufficient food, shelter, and basic level health services:

"A person's dignity includes... protecting the minimum of human existence... a homeless person living on the streets is a person whose dignity as a human being has been compromised; a hungry person is a person whose dignity as a human being has been compromised; a person who does not have access to elementary medical care is a person whose dignity as a human being has been compromised; a person who is forced to live in degrading material conditions is a person whose dignity as a human being has been compromised ..." (HCJ 366/03 **Association for Commitment to Peace and Social Justice et al. v. Minister of Finance**, IsrSC 60(3) 464).

The right to a minimum dignified human existence is at the heart and core of human dignity. A life of starvation and homelessness and a constant search for help are not dignified life..." (HCJ 10662/04 **Salah Hassan v. National Insurance Institute**, IsrSC 65(1), 782).

140. Moreover:

"Receiving essential health services on the most basic level which are required to protect a person's life and health is a derivative of the right to human dignity, as such, and of the constitutional right to life and bodily integrity entrenched in the Basic Law: Human Dignity and Liberty (Sections 2 and 4 of the Law). Every person is vested with this right... it is clear that the right to health is one of the basic and essential human rights. This right has an effect which cannot be overstated on a person's existence, their life and the quality of their life. Harming a person's health may be irreversible and its consequences for said person and the reality of their life may be devastating (Gross, page 438). It seems that there is no dispute that access to medical care, alongside the right to shelter and food is at the core of the right to dignified existence" (HCJ 1105/06 **Kav La-Oved v. Minister of Social Service**).

141. In addition to the Israeli law, international human rights law obligates Israel to protect the basic human rights of the residents of Gaza like any other human being. Article 6 of the

International Covenant on Civil and Political Rights (1966), a convention which was signed and ratified by the state of Israel, entrenches and protects the right to life and stipulates that **every human being has a natural right to life** and no person should be deprived of their life arbitrarily. Article 1B provides that **in no event may a people be deprived of its means of subsistence**. Article 7 of the Covenant states that a person shall not be treated in a cruel, inhuman or degrading manner.

142. Article 3 of the Universal Declaration of Human Rights which was adopted by the United Nations in 1948 and also constitutes part of the international customary law, also entrenches the right of every person to life and personal security. Article 25 of the Declaration provides that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care". The Article provides further that mothers and girls are entitled to special care and assistance.
143. The basic rights of the civilian population are also entrenched in the International Covenant on Economic and Social Rights (1966) which was also signed and ratified by the state of Israel. Article 11A of the Covenant entrenches the right of every person to an adequate standard of living for them and their family, including adequate food, clothing and housing and Article 11B establishes the **basic right of every person to be free from hunger and the obligation of the States Parties to the Covenant to the measures which shall secure this right**.
144. Article 12 of the Covenant entrenches the obligation to protect the right to health and the obligation of the States Parties to create adequate conditions which shall ensure to all health services and medical care in the event of illness. General comment number 14 from 2000 of the Committee on Economic, Social and Cultural Rights stated that the States Parties have a positive obligation **to facilitate physical access to health services**.

General Comment No.14, 'The Right to The Highest Attainable Standard of Health' Committee on Economic, Social, and Cultural Rights), 2000

[http://www.unhchr.ch/tbs/doc.nsf/\)symbol/E.C.12.2000.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/)symbol/E.C.12.2000.4.En?OpenDocument)

General Comment No. 14 specifically states:

"States should refrain from... limiting access to health services as a punitive measure, e.g. during armed conflicts in violation of international humanitarian law"

145. The Convention on the Rights of the Child (1989) which was signed and ratified by Israel and which specifically refers to children being a particularly sensitive and vulnerable group, establishes the obligation to particularly ensure that the children are provided with protection and care (Article 2) and that all required measures are taken by the States Parties to protect the rights specified in the Convention (Article 5). The above applies to the natural right of every child to life, survival and development (Article 6), their right to life in conditions which ensure dignity (Article 23), the right to enjoy health at the attainable highest level while the state is obligated to ensure that the child is not deprived

of access to health and rehabilitation services (Article 24). The same Article establishes **the obligation of the states to diminish child and infant mortality, to ensure the provision of essential medical assistance to all children, to combat illnesses and malnutrition, to ensure pre-natal and post-natal health services to all mothers and to provide adequate and nourishing food and clean drinking water.** Article 38 of the Convention stipulates that the states undertake to respect the rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child and that in accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, **States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict** (Article 38).

146. The facts specified in the first part of the Petition leave no room for doubt that the state of Israel does not comply with its obligations according to the human rights laws. The difficulties imposed by it on the provision of humanitarian aid critically violate the basic human rights of the protected population in the Strip and particularly the rights of children in northern Gaza including their right to life. The fact that children died and continue to die in northern Gaza from starvation should have shaken the Respondents, the public in Israel and the world at large to their foundations. Instead, the Respondents did nothing to change their ways and continue to trample on the basic human rights of the Gaza residents including the children. It is clear that if the death of these children in agony did not cause the Respondents to fulfill their obligations under international law, only the intervention of this Honorable Court, shall be able to do so and shall lead to the immediate provision of humanitarian aid in such volume which shall answer all the needs of the civilian population and prevent the certain death of children and other residents.

In view of all of the above, the Honorable Court is requested to issue an *order nisi* as requested, to schedule an urgent hearing in the Petition and upon receiving Respondents' response to make the order absolute.

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