INTERNAL DOCUMENT

LINES FOR RESPONSE

9 November 2023

Ongoing conflict in Gaza and Israel

Why isn't Egypt allowing unimpeded access to humanitarian aid?

Amnesty International has consistently called for unimpeded passage of humanitarian relief to Gaza, including through the Rafah border crossing.

The entry of goods into Gaza from the Rafah border crossing remains subject to 2005 agreements between Israel, Egypt and the Palestinian Authority, meaning that Egypt must obtain Israeli approval for the entry of goods into Gaza. The recent opening of the borders was negotiated by the US and Qatari governments to allow some limited humanitarian aid into Gaza and the entry into Egypt of some foreign, dual and Egyptian nationals, and a limited number of injured Palestinians. The 18 October agreement brokered by President Biden allowed limited amounts of humanitarian aid, including food, water and medicine to enter Gaza, most crucially excluding fuel upon the insistence of the Israeli authorities, and subjecting all convoys to inspection by the Israeli authorities.

Egyptian officials have maintained their readiness to ensure the prompt delivery of humanitarian aid to Gaza, accusing Israel of blocking it and of delays due to "not reasonable" requirements to inspect all trucks at the Netzana border crossing, some 100 kilometres away. During a press briefing on 7 November, a spokesperson of the US Department of State confirmed that "three entities involved in controlling access to the border crossing: Israel, Egypt, and Hamas", and that Israel carries out a full inspection of the trucks. As the occupying power, Israel has maintained control over Gaza's borders and a full blockade over Gaza, amounting to collective punishment and a war crime. Israel as the occupying power also has the duty to ensure that the population is provided with necessary supplies, and at a minimum not to arbitrarily obstruct or delay the delivery of desperately needed humanitarian assistance.

Under international law, states have an obligation to allow unimpeded humanitarian aid into neighbouring countries in conflict. In the case of the Rafah border, Egypt's ability to open its border and allow aid in has been subject to formal agreement by the Israeli authorities, as well as the de facto control by Israeli forces over the air and sea and Israel's ability to strike at any part of Gaza at any time.

Moreover, the Israeli military has already struck the Rafah crossing four times, since 9 October, leading to the temporary closure of the border and repair works. On 22 October, the Israeli military apologized for its "accidental" shelling of an Egyptian border surveillance tower, which led to minor injuries among Egyptian border surveillance personnel. Therefore, Israel must guarantee the safe entry of humanitarian aid and refrain from bombing the Rafah border crossing and surrounding areas.

On 6 November, the Rafah border crossing was reopened after its closure on 4 November following Israeli attacks on ambulances heading to the Rafah border crossing, and a convoy of ambulances transporting

Palestinian patients entered Egypt accompanied by the ICRC. The ICRC announced that its convoy carrying humanitarian aid came under fire on 7 November. The crossing was closed again on 9 November.

Amnesty urges the international community to call on Israel and Egypt to allow and facilitate rapid and unimpeded passage of humanitarian aid to civilians in need in Gaza. The international community must also press on the state of Israel to lift the siege of civilians in Gaza and ensure that humanitarian aid (including food and medical supplies) as well as electricity are available without restriction to all residents of Gaza.

An immediate ceasefire is the best way to alleviate the suffering of civilians, save lives, ensure unfettered access for aid to reach civilians in need throughout Gaza.

Why has Amnesty not called for the Rafah border to be open to all civilians wishing to flee the conflict?

Amnesty International is calling on Israel and Egypt to expedite the unimpeded access of humanitarian aid to Gaza, and to allow safe passage for those in need of medical care outside the Gaza Strip.

Any civilian wishing to flee an armed conflict should be allowed to do so in principle. However, Amnesty has serious concerns that any Palestinians who leave the Gaza Strip may find themselves permanently displaced and unable to return. Given growing fears that Israel may be planning to ethnically cleanse Gaza of Palestinians, as well as Palestinians' history of forced displacement and dispossession on a mass scale, making a proactive call for civilians to be allowed to leave Gaza could be construed as condoning the war crimes of unlawful deportation or transfer.

Israeli authorities' repeated orders demanding Palestinian civilians to "evacuate" the northern part of Gaza provide clear evidence that Israel is aiming to forcibly displace the civilian population from these areas in violation of international law.

In recent days media reports have also circulated citing a draft 10- page policy paper prepared by the Israeli intelligence ministry (a small governmental body that produces reports for intelligence agencies, the army and other ministries), suggesting relocating Gaza's civilian population to tent cities in northern Sinai. Similarly, statements from Israeli officials point in the same direction.

We call on the international community to oppose any plan to deport Gaza residents to Egypt, to halt forced displacement of Palestinians and to recognise Palestinian refugees' right to return.

The majority of Gaza's population are descendants of refugees who were displaced or forced to flee their homes during the 1947-49 conflict, in which more than 750,000 Palestinians were forcibly displaced from their towns and villages – referred to by Palestinians as the Nakba. Those who left became refugees in the occupied West Bank, Gaza Strip or neighbouring countries. They were prohibited and are still prohibited from returning to their homes or lands in what is now Israel. Their properties have been confiscated by the state of Israel through discriminatory legislation which is part of the State of Israel's apartheid on all Palestinians whose rights it controls. About 350,000 people, mostly Palestinians, were displaced as a result of the Six-Day war between

Israel and Egypt, Syria and Jordan in June 1967. Israel also prohibits these Palestinians from returning to their homes.

What is Amnesty's view on chants and slogans such as 'From the river to the sea, Palestine will be free.' Is it not anti-Semitic?

As a human rights organization, Amnesty International calls on states to fulfil their obligation to take effective steps to tackle racism and any manifestation of prejudice, intolerance, discrimination and hostility towards targeted groups, including antisemitism, in accordance with international law.

Jewish people and people perceived to be Jewish are to be distinguished and not conflated with the Israeli authorities and their policies or the violation of Palestinians' rights, such assumptions are a form of antisemitism. Therefore, criticism of Israel's policies and expression advocating for Palestinians' rights must not be automatically considered antisemitic.

This particular chant has been used since the 1960s by many different groups in many different contexts. For some it is seen as a slogan to demand equal rights for Palestinians wherever they are located. Some groups have described it as a call for Palestinians to be free from the oppression of apartheid, which Palestinians are subjected to whether in the West Bank and Gaza, in Israel proper, or as refugees who are denied the right to return. For others , it represents a call for Israel's destruction.

The chant is widely seen by Palestinians and many others as a call for freedom for all Palestinians that recognizes the fragmentation of the Palestinian people between the West Bank, Gaza, Israel and the diaspora. The assumption that calling for freedom for Palestinians necessitates the destruction of the state of Israel is a manipulation of this phrase.

The phrase "between the river to the sea" has also been used by Israeli political parties and Zionist groups such as the Likud 1977 founding charter which states: "Between the sea and the Jordan there will only be Israeli sovereignty." There are also multiple examples of current and former Israeli government officials making claims of sovereignty that fail to acknowledge the presence and rights of Palestinians such as by sharing maps that do not recognize the Occupied Palestinian Territories.

The right to freedom of expression extends to expression which shocks, offends and disturbs. Amnesty International advocates for any restriction on freedom of expression to be the least intrusive means and to be established by law. The organization does not normally express an opinion on whether specific statements or expressions amount to prohibited advocacy of hatred, the organisation calls on states to fulfil their obligations under international human rights law and take concrete actions to counter stereotypes and eradicate discrimination.

Last year Amnesty criticized Ukrainian forces in relation to military tactics - notably positioning themselves in some instances near civilians who were put in harm's way, even though Russia was

clearly the aggressor. Why are you now criticising Israel when it is clear that Hamas have based themselves in civilian areas, just as you accused Ukraine forces of doing?.

International humanitarian law requires parties to a conflict to take feasible precautions to protect civilians under their control against the effects of attacks. This includes avoiding locating, to the extent feasible, military objectives within or near densely populated areas. This rule, like all rules of international humanitarian law governing the conduct of hostilities, applies to all parties in all types of armed conflict – regardless of whether the conflict was brought about by an act of aggression by one of the parties.

In the case of Ukraine, we conducted extensive research, including on-the-ground investigation, several months after the beginning of Russia's full-scale invasion and found that in several instances Ukrainian forces may have failed to take feasible precautions to protect civilians under their control. Specifically, our research found that in some cases they had located soldiers and military equipment next to civilians and had launched strikes from populated civilian areas. We reached this conclusion after having conducted field research in sites where we documented co-location of military objects with civilians and civilian objects in situations where there appeared to be alternative locations nearby from which Ukraine's armed forces could conduct military operations in a manner that would have posed less danger to civilians, although we were unable to confirm their feasibility with the Ukraine military.

In the case of Hamas and other armed groups in Gaza, one of the most densely populated places in the world, we have not yet been able to conduct similar field research (because we are denied access to Gaza by Israel, the occupying power). In past conflicts in Gaza, we have found evidence that Hamas and other armed groups endangered Palestinian civilians by failing to take feasible precautions in the conduct of their military activities to protect civilians under their control from the effects of attacks, notably by firing rockets from residential areas and storing weapons, explosives and ammunition in them. And we have called on them to stop doing so. A recent example is the .

In any event, even when the defending party violates international humanitarian law by failing to take feasible precautions in defense, the attacking party remains bound by the rules of IHL, including the prohibition of indiscriminate and disproportionate attacks, and the obligation to take all feasible precautions to minimize harm to civilians and civilian objects. Nothing can justify carrying out indiscriminate and other unlawful attacks which kill and injure civilians.

We had a similar approach in the context of the war in Ukraine, following Russia's full-scale invasion. The criticism of tactics by Ukrainian forces, published in August 2022, came six months into the war after repeated on-the-ground research trips to investigate violations, which we observed and repeatedly acknowledged were overwhelmingly committed by Russian forces. The output on Ukrainian military positioning reflected our commitment to remaining impartial, though notably it was one output in a much wider body of documentation, as Amnesty has published dozens of reports, press releases, and other outputs, based on the evidence we collected, and these compellingly exposed war crimes and other violations of international humanitarian law by Russian forces in particular, including related to unlawful strikes.

But isn't Hamas using civilians as human shields?

International humanitarian law expressly prohibits the use of human shields, that is utilizing the presence of civilians or other protected persons (such as prisoners of war) to render certain areas immune from military operations. Use of human shields is a war crime.

According to the International Committee of the Red Cross' authoritative Customary International Humanitarian Law study, "the use of human shields requires an intentional co-location of military objectives and civilians or persons *hors de combat* with the specific intent of trying to prevent the targeting of those military objectives." Because of the difficulty of proving intent, examples of shielding that have been condemned as such have generally involved cases where civilians (or PoWs) were taken to military objectives in order to shield them from attack. Amnesty has also considered cases where soldiers/fighters have taken over a home or other civilian building and then forced the civilians to remain there to constitute shielding.

At this point in the cases we have investigated we have not found evidence to indicate the use of human shields in the ongoing fighting in Gaza.

Under international humanitarian law even if "human shields" are being used, the attacking party must comply with its obligations, including with regard to taking feasible precautions and the prohibition of indiscriminate and disproportionate attacks.