

December 20, 2023

Lloyd J. Austin III  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301

Dear Secretary Austin,

The undersigned humanitarian, human rights, and protection of civilians organizations write to express our deep concern regarding civilian harm in U.S.-supported Israeli military operations in Gaza and request urgent steps to protect the more than two million civilians suffering under relentless bombardment and starvation there.

Our organizations have welcomed the prioritization of civilian harm prevention and response under your tenure, and many of us have spent the last several years engaging closely with the Department of Defense regarding the development of the forthcoming Department of Defense Instruction on Civilian Harm (DoD-I), as well as the development and implementation of the Civilian Harm Mitigation and Response Action Plan (CHMR-AP).

We appreciated your recent comments emphasizing the critical importance of protecting civilians and ensuring the free flow of humanitarian aid in Gaza.<sup>1</sup> However, these comments appear detached from the ongoing reality of Israel's operations, which continue to cause devastating levels of civilian harm and destruction and inhibit the provision of life-saving humanitarian aid – all using U.S. support. The result is civilian harm at a massive scale amidst a humanitarian crisis.<sup>2</sup>

To protect civilians in Gaza and live up to the aspirations of the CHMR-AP, administration rhetoric on the protection of civilians must be backed by action and leverage. To that end, we urge you to take the following immediate steps:

**Categorically oppose the targeting of civilians and civilian objects, indiscriminate attacks that fail to distinguish between civilian and military objects, and attacks that cause disproportionate civilian harm; as well as the deprivation of life-saving humanitarian**

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<sup>1</sup> See, e.g., Helene Cooper and Eric Schmitt, "Austin Returns to Israel With a Tougher Message and Lessons Learned," *New York Times*, December 18, 2023 [\[link\]](#); Secretary of Defense Lloyd J. Austin III, "A Time for American Leadership': Remarks by Secretary of Defense Lloyd J. Austin III at the Reagan National Defense Forum (As Delivered)," December 2, 2023 [\[link\]](#).

<sup>2</sup> See: Michelle Nunn, Tjada D'Oyen McKenna, Jan Egeland, Abby Maxman, Jeremy Konyndyk and Janti Soeripto, "We Are No Strangers to Human Suffering, but We've Seen Nothing Like the Siege of Gaza," *New York Times*, December 11, 2023 [\[link\]](#).

**assistance and the use of siege tactics to deprive the civilian population of items indispensable to its survival.** We note with great alarm numerous reports of attacks on civilians and civilian objects, including media reporting detailing the Israeli military’s use of “power targets,” civilian objects such as residential buildings and universities attacked with the stated goal, according to current and former intelligence analysts quoted in the media, of “creat[ing] a shock” that will “lead civilians to put pressure on Hamas.”<sup>3</sup> In recent remarks, President Biden also stated that Israel is engaging in “indiscriminate bombing.”<sup>4</sup> Such practices clearly violate international humanitarian law (IHL) principles that require militaries to distinguish between civilians and combatants and prohibit attacks that cause disproportionate harm to civilians and civilian objects. The U.S. government must unequivocally condemn indiscriminate and disproportionate attacks on civilians or civilian objects in Gaza.

We are also deeply concerned with Israel’s continued restriction of humanitarian assistance and deprivation of the resources essential for survival. International law requires that parties to conflict allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.<sup>5</sup>

**Withhold U.S. assistance, in accordance with U.S. law and policy, that would facilitate violations of international humanitarian law.** As Israel’s largest provider of security assistance and arms, the United States has a responsibility – both as a matter of law and policy – to ensure that U.S. assistance does not contribute to violations of international human rights or international humanitarian law (IHL).<sup>6</sup> The Biden administration’s Conventional Arms Transfer (CAT) policy, which governs all U.S. arms transfers across agencies including the Department of Defense, prohibits the transfer of arms where the United States assesses it is “more likely than not” that the arms will be used to commit or facilitate serious violations of IHL or human rights law.<sup>7</sup> The policy also commits the U.S. government to monitor how and whether U.S.-origin items are used in violation of IHL or human rights. Objective 9 of the CHMR-AP further stipulates that the Department of Defense will incorporate civilian harm risk assessments and “tailored conditionality” into U.S. security cooperation activities.<sup>8</sup>

Consistent implementation of U.S. law with respect to security assistance to Israel should also result in withholding some assistance. Despite well-documented and credible allegations of gross

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<sup>3</sup> Yuval Abraham, “‘A mass assassination factory’: Inside Israel’s calculated bombing of Gaza,” *+972 Magazine and Local Call*, November 30, 2023 [[link](#)].

<sup>4</sup> Remarks by President Biden at a Campaign Reception, *The White House*, December 12, 2023 [[link](#)].

<sup>5</sup> Customary Rule 55.

<sup>6</sup> See: John Ramming Chappell, Annie Shiel, Seth Binder, Elias Yousif, Bill Monahan, and Amanda Klasing, “Law and Policy Guide to US Arms Transfers to Israel,” *Just Security*, November 8, 2023 [[link](#)].

<sup>7</sup> The White House, Memorandum on United States Conventional Arms Transfer Policy (NSM-18), February 23, 2023 [[link](#)].

<sup>8</sup> U.S. Department of Defense, Civilian Harm Mitigation and Response Action Plan, August 25, 2022 [[link](#)].

violations of human rights by units of Israeli security forces, no unit has ever been restricted from receiving U.S. security assistance as required by the Leahy Law. Section 620I of the Foreign Assistance Act additionally prohibits U.S. security assistance to any country where the government “prohibits or otherwise restricts, directly or indirectly, the transport or delivery of United States humanitarian assistance.”

We have been deeply concerned by U.S. officials’ repeated claims that there are “no conditions” and “no red lines” applied to U.S. assistance to Israel, as well as statements that the United States is not assessing Israeli compliance with IHL. Conditions ensuring compliance with IHL and human rights, including the facilitation of humanitarian assistance, should be the baseline of all U.S. assistance to any country. Continuous monitoring of possible IHL violations in Israeli operations is also critical for good-faith implementation of the CAT Policy and CHMR-AP, including to inform risk assessments and determinations regarding the “more likely than not” standard. We also note that under the “more likely than not” standard, a formal legal assessment should not be necessary to withhold arms transfers on the basis of the CAT Policy; a *prima facie* review of Israel’s conduct and the resulting impact, as noted above, speaks plainly to the risks of future violations and devastating harm.

**Refrain from transferring explosive weapons to Israel for use in Gaza and emphasize adherence to U.S. commitments made on the use of explosive weapons in populated areas.**

In recognition of the devastating harm caused by explosive weapons when used in populated areas, in November 2022 the United States and 82 other states, including most NATO allies, endorsed the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas (EWIPA).<sup>9</sup> In signing this Declaration, the United States vowed to implement policies and practices designed to limit civilian harm caused by the use of explosive weapons in populated areas, as well as to pursue implementation of the Declaration by other states. Israel has consistently used explosive weapons in densely populated Gaza, resulting in extensive – and foreseeable – civilian harm and widespread destruction. In line with the United States’ commitments under the EWIPA Declaration, we urge the Administration to refrain from transferring explosive weapons for use in Gaza, one of the most densely populated areas on earth.

**Reject forcible displacement and the use of so-called “safe zones.”** Civilians in Gaza are protected persons under IHL and must be protected from harm regardless of whether or not they reside in a unilaterally designated “safe zone.” Israel has repeatedly attacked areas designated as “safe zones”, with high numbers of civilian casualties as a result, and has, in effect, rendered other areas apparent “free fire” zones where force is used without distinction between civilian

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<sup>9</sup> Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas, 2022 [[link](#)].

and military targets. Furthermore, Israel’s designation of “safe zones” and subsequent evacuation orders have resulted in the forcible displacement of upwards of 1.7 million civilians, many of whom have been displaced multiple times in the past several weeks and are now residing in dangerously overcrowded, overwhelmed, and under-resourced shelters in the south. Evacuation warnings do not absolve militaries of their obligations to protect civilians under IHL. Civilians who decide to stay for whatever reason — including many who may be unable to evacuate, such as the elderly, disabled, or sick or wounded — cannot be forced to evacuate and cannot be targeted. We ask you to explicitly reject, and withhold any U.S. support for, the establishment of “safe zones” or policies and military practices that continue the forced displacement of civilians under the prevailing conditions.<sup>10</sup>

The Department’s response to the devastating harm in Gaza has failed to live up to – and actively undermined – the commitments set by the CHMR-AP and related administration efforts. To save civilian lives and prevent further U.S. complicity in staggering civilian death and destruction, we urge you to immediately take these steps.

Signed,

Airwars  
Amnesty International USA  
Anera  
Center for Civilians in Conflict (CIVIC)  
Humanity & Inclusion  
Human Rights Watch  
InterAction  
Médecins Sans Frontières/Doctors Without Borders USA  
Norwegian Refugee Council USA  
Oxfam America  
PAX  
Refugees International  
Save the Children US  
Zomia Center

Cc:

Antony J. Blinken, U.S. Secretary of State  
Jake Sullivan, U.S. National Security Advisor

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<sup>10</sup> See: Press Release from 10 Humanitarian Organizations, “Pauses, Corridors, and Safe Zones in Gaza: Rhetoric vs. Reality,” ReliefWeb, November 22, 2023 [[link](#)].