

No. 24-704

**IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT**

DEFENSE FOR CHILDREN INTERNATIONAL-PALESTINE; AL-HAQ; AHMED ABU
ARTEMA; MOHAMMED AHMED ABU ROKBEH; MOHAMMAD HERZALLAH; LAILA
ELHADDAD; WAEIL ELBHASSI; BASIM ELKARRA; DR. OMAR EL-NAJJAR; AND
AYMAN NIJIM,

Plaintiffs-Appellants,

v.

JOSEPH BIDEN, JR., President of the United States, ANTONY J. BLINKEN, Secretary
of State, LLOYD JAMES AUSTIN III, Secretary of Defense,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
No. 23-cv-05829

**MOTION PURSUANT TO CIRCUIT RULES 27-12 AND 34-3 TO
EXPEDITE BRIEFING AND HEARING OF APPEAL OF DECISION TO
GRANT MOTION TO DISMISS AND DENY PRELIMINARY
INJUNCTION**

Relief Needed by: February 20, 2024

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INTRODUCTION

Pursuant to Ninth Circuit Rules 27-12 and 34-3, Plaintiffs-Appellants respectfully request that this Court expedite this appeal of the District Court's decision to deny Plaintiffs' preliminary injunction motion and to grant Defendants' motion to dismiss, because it raises an issue for which relief is urgently needed. Plaintiffs – Palestinians in Gaza, Palestinian-Americans in the United States with family members in Gaza, and organizations based in Palestine with staff members in Gaza – seek a reversal of the District Court's decision to deny their preliminary injunction motion and to dismiss their claims that Defendants-Appellees are failing in their legal obligation to prevent, and to not be complicit in, Israel's genocide of their people: Palestinians in Gaza. Good cause exists for expediting this appeal. Every day that passes, hundreds more Palestinians are killed, and Plaintiffs, their staff, and/or their family members face the risk of death, serious bodily and mental harm, and enduring conditions of life calculated to bring about their destruction, including through mass starvation, as a result of Defendants' support of Israel's genocide in Gaza, which includes supplying the weapons to carry it out.

Due to the urgent nature of this appeal, Plaintiffs propose the following expedited briefing and hearing schedule:

Opening Brief: March 7, 2024

Answering Brief: April 5, 2024

Reply Brief: April 23, 2024

Oral Argument: week of May 13 or May 20, 2024

Plaintiffs respectfully request the relief sought in this motion by February 20, 2024.

POSITION OF OPPOSING COUNSEL

On February 9, 2024, counsel for Plaintiffs informed Defendants' counsel that they intended to move for an expedited appeal and proposed the briefing and hearing schedule outlined above, and counsel for Defendants responded that they "take no position on the motion to expedite and won't plan to file any response."

FACTUAL AND PROCEDURAL BACKGROUND

On November 13, 2023, Plaintiffs – Palestinian organizations with staff members in Gaza, Palestinian individuals in Gaza, and Palestinian-American individuals in the United States with family members in Gaza – filed a Complaint alleging that Defendants President Biden, Secretary of State Blinken, and Secretary of Defense Austin were liable for failing to prevent, and for being complicit in, Israel's unfolding genocide of the Palestinian people in Gaza. Compl., *Def. for Children Int'l-Palestine v. Biden*, No. 23-cv-05829-JSW (N.D. Cal. Nov. 13, 2023), ECF No. 1. On November 16, Plaintiffs filed a motion for a preliminary injunction to enjoin Defendants from providing any further support, aid, or any form of assistance to Israel's genocidal acts, in accordance with their legal duty under federal and customary international law to prevent, and not further, genocide. Pls.' Mot. for Prelim. Inj., *Def. for Children Int'l-Palestine*, ECF No. 19. On December 8,

Defendants moved to dismiss the case (Defs.' Mot. to Dismiss, *Def. for Children Int'l-Palestine*, ECF No. 38), which Plaintiffs opposed (ECF No. 44), to which Defendants filed a reply (ECF No. 64), and Plaintiffs filed a sur-reply (ECF No. 66-1).

On January 26, 2024, the District Court held a hearing on both motions. At the hearing, several of the Plaintiffs testified to the risk of and resulting irreparable harm that they were continuing to face daily as a result of Defendants' support of Israel's genocidal acts, and a scholar on genocide and Holocaust studies, Dr. Barry Trachtenberg, testified to the urgent and significant public interest in stopping Defendants' support for this genocide. *Def. for Children Int'l-Palestine v. Biden*, No. 23-cv-05829-JSW, slip op. at 4 (N.D. Cal. Jan. 31, 2024), ECF No. 91; Testimony of Dr. Trachtenberg at Jan. 26, 2024 hearing at 13:00:37, <https://www.uscourts.gov/cameras-courts/defense-children-international-palestine-v-biden>. That same day, the International Court of Justice ("ICJ"), in a case brought by South Africa asserting multiple violations of the Genocide Convention by Israel, issued provisional measures against Israel to prevent further irreparable harm caused by Israel's military assault and total siege on Gaza, based on the ICJ's assessment that Israel's actions plausibly constitute genocide. Pls.' Statement of Recent Decision, *Def. for Children Int'l-Palestine*, ECF No. 87; *see also* Application of Convention on Prevention and Punishment of Crime of Genocide in the Gaza Strip

(*S. Afr. v. Isr.*), Order on Provisional Measures (Jan. 26, 2024), <https://icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>.

On January 31, 2024, the District Court issued its decision, finding that:

the undisputed evidence before this Court comports with the finding of the ICJ and indicates that the current treatment of the Palestinians in the Gaza Strip by the Israeli military may plausibly constitute a genocide in violation of international law. Both the uncontroverted testimony of the Plaintiffs and the expert opinion proffered at the hearing on these motions as well as statements made by various officers of the Israeli government indicate that the ongoing military siege in Gaza is intended to eradicate a whole people and therefore plausibly falls within the international prohibition against genocide.

Def. for Children Int'l-Palestine, slip op. at 4. The court also “implore[d] Defendants to examine the results of their unflagging support of the military siege against the Palestinians in Gaza.” *Id.* at 8.

Nevertheless, the court ruled that “the preferred outcome is inaccessible to this Court,” incorrectly finding that precedent required it to abstain from exercising its jurisdiction to adjudicate Plaintiffs’ legal claims under the political question doctrine. *Id.*

Since January 31, the date the District Court granted Defendants’ motion to dismiss and denied Plaintiffs’ preliminary injunction motion, the death toll in Gaza as a result of Israel’s military assault and siege has increased from “roughly 26,000” (*id.* at 1) to over 28,000; at least 40% of the victims are children. Declaration of

Astha Sharma Pokharel, annexed hereto, (hereinafter “Sharma Pokharel Decl.”), Ex. 1 at 1. Khan Younis, where some of the Plaintiffs’ family members reside, has been under constant attack. *Id.* Since January 31, at least one Plaintiff has learned that an additional family member in Gaza has been killed by an Israeli sniper, and that two additional family members in Gaza have been injured. Sharma Pokharel Decl. ¶ 4. On February 9, 2024, Israel announced that it would launch a ground incursion and offensive into Rafah, where 1.7 million of the 2.2 million Palestinians of Gaza, including some Plaintiffs, as well as many of Plaintiffs’ family members and staff, are taking shelter after they were told to “evacuate” to there for safety. *Id.*, Exs. 1, 2. And, despite the District Court “implor[ing]” Defendants to examine their “unflagging support” for this genocide, Defendants’ support continues. Plaintiffs now seek to expedite this Court’s review of the District Court’s grant of Defendants’ motion to dismiss and its denial of Plaintiffs’ preliminary injunction motion based on its finding that it must abstain from exercising jurisdiction under the political question doctrine to adjudicate whether Defendants have failed in meeting their legal obligation to prevent, and not be complicit in, Israel’s unfolding genocide.

ARGUMENT

Circuit Rule 27-12 allows a party to move for expedited briefing and hearing, which “will be granted upon a showing of good cause.” Under this Rule, “good cause” includes situations in which “in the absence of expedited treatment,

irreparable harm may occur or the appeal may become moot.” Circuit Rule 34-3 requires that any party who believes the case is entitled to priority in scheduling the date of the hearing or submission “on the basis of good cause under 28 U.S.C. § 1657 shall file a motion for expedition with the clerk at the earliest opportunity.” Under 28 U.S.C. § 1657, “the court shall expedite the consideration of . . . any action for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown.” 28 U.S.C. § 1657(a).

Good cause exists to expedite this appeal and to prioritize the hearing. Every day that passes, hundreds of Palestinians are killed as a result of Israel’s military assault and total siege on Gaza, which is made possible by Defendants’ support. The conditions for Palestinians in Gaza, where Plaintiffs, their staff members, or their family members are located, are rapidly deteriorating due to the intentional denial of the basic necessities for life, including food, water and shelter, all while under attack or threat of imminent attack. As the District Court noted, there is “undisputed” and “uncontroverted” evidence that indicates that Israel’s military assault and siege on Gaza “may plausibly constitute a genocide.” *Def. for Children Int’l*, slip op. at 4. The court also noted the Defendants’ “unflagging” support for this “military siege against the Palestinians in Gaza.” *Id.* at 8. Significantly, Defendants did not argue that Plaintiffs would not suffer irreparable harm in opposing Plaintiffs’ preliminary injunction motion in the District Court.

Plaintiffs move this Court to expedite their appeal, which seeks reversal of the District Court's decision that the political question doctrine precludes it from examining Defendants' clear violation of their legal obligations under international and federal law to prevent, and not be complicit in, genocide – a position for which Plaintiffs will argue there exists persuasive authority which the court below failed to consider. As the District Court's order makes clear, *id.* at 8, Defendants have supported and continue to support the gravest and most irreparable of harms to Plaintiffs, their staff, and/or their family members: death caused by Israel's genocidal acts against Palestinian people in Gaza. *See, e.g., Harris v. Bd. of Supervisors*, 366 F.3d 754, 766 (9th Cir. 2004) (holding in context of preliminary injunction motion that “pain, infection, amputation, medical complications, and death” constitute irreparable harm); *Williams v. Chrans*, 50 F.3d 1363, 1364 (7th Cir. 1995) (per curiam) (in an appeal of a denial of a stay of execution, noting that “[i]n this case, as in all death cases, there is no question of irreparable injury.”). If Plaintiffs or their family members are not killed, they are at grave risk of serious bodily or mental harm, including starvation resulting from the siege, an underlying act of genocide which also constitutes irreparable harm. *See, e.g., Banks v. Sec’y of Health & Hum. Servs.*, No. 21-11454, 2021 WL 3138562, at *4 n.5 (11th Cir. July 26, 2021) (appellant granted motion to expedite appeal pursuant to 28 U.S.C. § 1657(a), and district court instructed to expedite consideration of his case in light of

appellant's health condition); *Manrique v. Kolc*, 65 F.4th 1037, 1041 (9th Cir. 2023) (in context of request to stay extradition pending appeal, finding that risks of "contracting a fatal illness or experiencing other serious health declines" as a result of prison conditions in Peru constituted irreparable injury).

In short, every day that passes without a resolution of Plaintiffs' claims, they, their staff, or their family members are at risk of death or serious physical and mental harm, as underlying acts of a genocidal campaign supported by Defendants. Therefore, Plaintiffs seek an expedited appeal schedule to urgently review the District Court's decision, based on its application of the political question doctrine, to abstain from examining Defendants' unflagging support of Israel's genocide in violation of their affirmative and clearly established legal obligations to prevent, and to not be complicit in, genocide.

STATUS OF TRANSCRIPT PREPARATION

Plaintiffs ordered the full transcript of the January 26, 2024 hearing on Plaintiffs' motion for a preliminary injunction and Defendants' motion to dismiss on February 6, 2024, and requested that it be delivered within 14 days. The transcript will be provided to this Court as soon as it is available.

CONCLUSION

Plaintiffs respectfully request that the Court grant this motion for an expedited appeal and order the briefing and hearing schedule proposed herein.

Dated: February 12, 2024

Respectfully submitted,

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Counsel for Appellants

*Application for admission forthcoming

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) and Circuit Rule 27-1(1)(d) because it is 8 pages long and contains 1,890 words.

This brief complies with the typeface and type style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionately spaced typeface using Times New Roman 14-point font.

Dated: February 12, 2024

Respectfully submitted,

/s/ Astha Sharma Pokharel

Astha Sharma Pokharel

No. 24-704

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
No. 23-cv-05829

**DECLARATION OF ASTHA SHARMA POKHAREL IN SUPPORT OF
MOTION PURSUANT TO CIRCUIT RULES 27-12 AND 34-3 TO
EXPEDITE BRIEFING AND HEARING OF APPEAL OF DECISION TO
GRANT MOTION TO DISMISS AND DENY PRELIMINARY
INJUNCTION**

I, Astha Sharma Pokharel, do hereby declare and state as follows:

1. I am counsel for Appellants in this action and submit this declaration in support of their motion to expedite briefing and hearing of this appeal.
2. Attached hereto as Exhibit 1 is a correct and true [copy](#) of *Hostilities in the Gaza Strip and Israel” Flash Update # 116*, United Nations Office for the Coordination of Humanitarian Affairs, February 12, 2024.

3. Attached hereto as Exhibit 2 is a correct and true copy of Júlia Ledur and Adam Taylor, *Israel says it will expand operations in Rafah, Gaza's last refuge*, The Washington Post, Feb. 5, 2024.

4. Since the District Court issued its order on January 31, 2024 denying Plaintiffs' motion for a preliminary injunction and granting Defendants' motion to dismiss, I have learned from Plaintiff-Appellant Mohammad Herzallah that his cousin, Maher's, son was killed by an Israeli sniper in Gaza. Maher and his other son have also been injured. Plaintiff Herzallah had testified about Maher during the hearing in the District Court on January 26, 2024, because three of Maher's sons had already been killed by Israel's attacks on Gaza – one in 2009, and the others in October and November 2023. Plaintiff Herzallah considers Maher a brother.

5. On February 9, 2024, Appellants' counsel informed Appellees' counsel that they intended to move for an expedited appeal and proposed the briefing and hearing schedule below, and counsel for Appellees responded that they “take no position on the motion to expedite and won't plan to file any response”:

Opening Brief: March 7, 2024

Answering Brief: April 5, 2024

Reply Brief: April 23, 2024

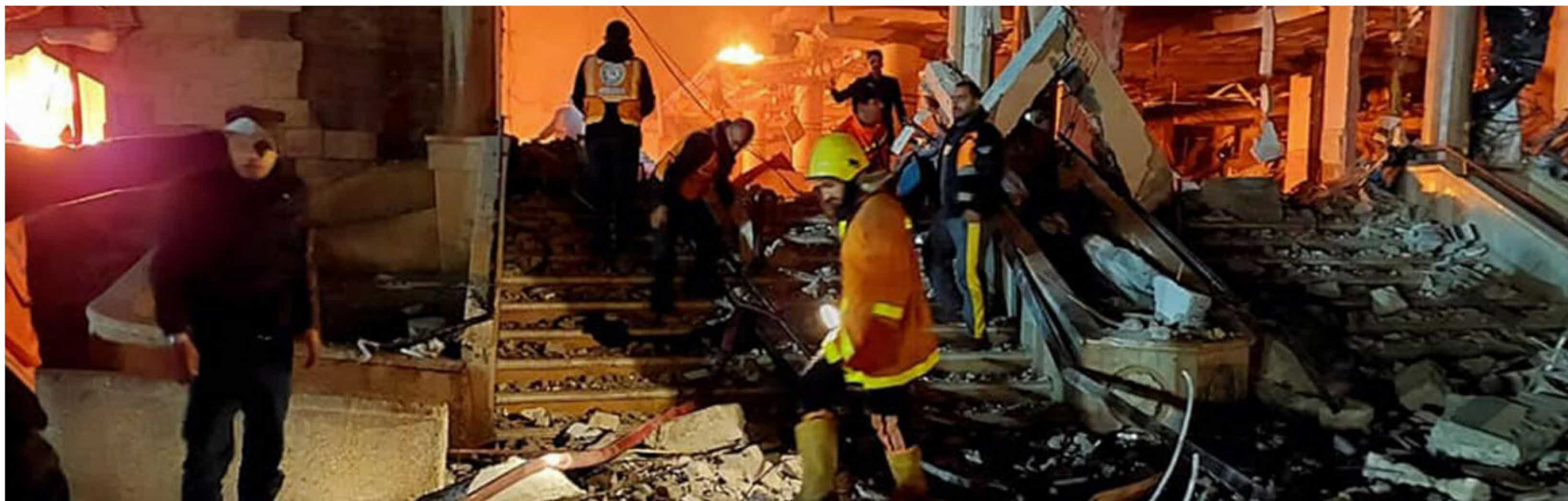
Oral Argument: week of May 13 or May 20, 2024

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 12th day of February, 2024, in Oakland, California.

/s/ Astha Sharma Pokharel

Astha Sharma Pokharel

EXHIBIT 1



Increased airstrikes in Rafah have heightened concerns of an escalation in the most southerly city in Gaza, where hundreds of thousands of Palestinians have sought refuge. Buildings on fire in Rafah following an overnight attack. Photo by the Civil Defence, 12 February 2024.

Hostilities in the Gaza Strip and Israel | Flash Update #116

12 Feb 2024

Key points

- Intense Israeli bombardment from air, land and sea continues to be reported across much of the Gaza Strip, resulting in further civilian casualties, displacement, and destruction of civilian infrastructure. Ground operations and heavy fighting between Israeli forces and Palestinian armed groups also continue to be reported, particularly in Khan Younis and Rafah, with reports of Israeli military withdrawal from Gaza city. Increased airstrikes in Rafah have heightened concerns of an escalation in the most southerly city in Gaza, where hundreds of thousands of Palestinians have sought refuge. On 12 February, [Médecins Sans Frontières](#) warned that "Israel's declared ground offensive on Rafah would be catastrophic and must not proceed."
- Between the afternoon of 9 January and 11:00 on 12 February, according to the Ministry of Health (MoH) in Gaza, 393 Palestinians were killed and 525 Palestinians were injured, including 164 killed and 200 injured in the last 24 hours. Between 7 October 2023 and 11:00 on 12 February 2024, at least 28,340 Palestinians were killed in Gaza and 67,984 Palestinians were injured, including at least 12,300 children, according to MoH in Gaza.
- Between the afternoons of 9 and 12 February, two Israeli soldiers were reported killed in Gaza, both on 11 February. As of 12 February, 227 soldiers were killed and 1,326 soldiers were injured in Gaza since the beginning of the ground operation, according to the Israeli military. In addition, over 1,200 Israelis and foreign nationals have been killed in Israel, including 36 children, according to the Israeli authorities, the vast majority on 7 October and in the immediate aftermath.
- On 12 February, two Israeli hostages, aged 60 and 70, were rescued from a building in Rafah in a predawn Israeli forces operation and evacuated to a hospital in Israel, according to the Israeli military. As of 12 February 2024, the Israeli authorities estimate that about 134 Israelis and foreign nationals remain captive in Gaza; these reportedly include fatalities whose bodies are being withheld. During the humanitarian pause (24-30 November), 86 Israeli and 24 foreign national hostages were released.
- On 10 February, the Palestine Red Crescent Society (PRCS) [announced](#) that the bodies of two members of an ambulance crew had been discovered in their destroyed vehicle, which they attributed to Israeli shelling. According to PRCS, 14 PRCS crew members have been killed since the start of the hostilities in the Gaza Strip. The crew had been dispatched on 29 January to rescue a six-year-old girl in Gaza city, the survivor of a strike on her vehicle which killed her five family members. The vehicle with the bodies of the family, including the child, was discovered following the withdrawal of Israeli forces from the area.
- Intense fighting in Khan Younis, particularly near Nasser and Al Amal hospitals, continues to jeopardize the safety of medical staff, the wounded and the sick as well as internally displaced persons (IDPs). On 11 February, PRCS [reported](#) that Israeli forces had raided Al Amal Hospital, detained 18 people, including nine medical and volunteer staff, four wounded persons and five companions, and caused significant damage to medical and logistical equipment. PRCS further alleges that money was taken from the hospital safe as well as from patients and IDPs, and that the operation entailed physical abuse and denial of access to sanitation facilities. Al Amal Hospital continues to contend with acute shortages of fuel and medical supplies and currently has only one operating room functional. Separately on 11 February, PRCS [reported](#) that structural damage had been caused to the main gate of the hospital due to Israeli strikes and that the hospital's remaining vehicle had been rendered out of service. On 12 February, PRCS released [video footage](#) reportedly showing damage inflicted on its ambulance fleet due to Israeli fire.

- IDPs across Gaza continue to face deteriorating humanitarian conditions amid acute shortages of shelter, clean water, food and medicine. As of 5 February, UNRWA estimates that some 75 per cent of Gaza's population (1.7 million out of 2.3 million people) are displaced, the majority situated in Rafah governorate where humanitarian operations are now based. On 10 February, the Israeli military reportedly destroyed the western perimeter wall of a school in Khan Younis hosting some 700 IDPs and forced them to evacuate, according to [UNRWA](#). On 10 February, four displaced people in Nasser Hospital were allegedly shot and killed in the hospital's courtyard. On 11 February, two Palestinians were reportedly shot and killed in front of the gate of Nasser Hospital. Meanwhile, reports indicate that several fatalities have been lying on the ground around the hospital, for several days, and have been unreachable due to continued attacks in the hospital's vicinity.
- Between 1 January and 12 February, humanitarian partners planned 77 missions to deliver aid and undertake assessments to areas to the north of Wadi Gaza. Of these, 12 were facilitated by the Israeli authorities, three were partially facilitated, 14 were impeded, 39 were denied access, and nine were postponed by the agencies themselves. Facilitated missions primarily involved food distribution, while the access of missions to support critical hospitals and facilities providing water, hygiene and sanitation (WASH) services remained among those overwhelmingly denied. During the same period, there were 189 planned missions to areas assessed as necessitating coordination to the south of Wadi Gaza. Of these, 107 were facilitated, two were partially facilitated, 18 were initially facilitated but then impeded, 48 were denied access, and 14 were postponed internally. Missions to areas not requiring coordination south of Wadi Gaza are not included in these statistics.

Hostilities and casualties (Gaza Strip)

- On 10 February, at about 8:00, one Palestinian fisherman was reportedly killed off the coast of Deir al Balah. This reportedly marks at least the third incident of fishers being shot in Gaza over the past week, and the first reported such incident in Deir al Balah.
- The following are among the deadliest incidents reported between 8 and 11 February:
 - On 8 February, at about midnight, five Palestinians, including two women, two children and one man, were reportedly killed, when a nursery was hit in a strike on a residential square in Deir al Balah governorate.
 - On 9 February, at about 23:00, six Palestinians, including two women and three children, were reportedly killed, when a residential building near the Awad towers in eastern Rafah, was struck.
 - On 10 February, at about midnight, at least 11 Palestinians were reportedly killed, when a residential building in An Naser neighbourhood in northern Rafah, was struck.
 - On 10 February, at about 2:00, four Palestinians, including a university professor, her husband and their two children, were reportedly killed, when a residential building in northern Rafah, was struck.
 - On 10 February, at about 5:00, seven Palestinians were reportedly killed, and others were injured, when a residential building in An Naser neighbourhood, in northern Rafah, was struck.
 - On 10 February, at about 15:00, 12 Palestinians, including children, were reportedly killed, and tens of others injured, when a residential building in Ash Shoka Town in eastern Rafah, was struck.
 - On 10 February, at about 16:00, at least four Palestinians were reportedly killed, and several others injured, when a residential building in Deir al Balah was struck.
 - On 10 February, at about 15:30, three police officers were reportedly killed, and several others injured, when a police vehicle in the Brazilian neighbourhood of Rafah was struck.

West Bank Updates

- On 10 February 2024, a 17-year-old Palestinian child was shot and killed by Israeli soldiers while driving between Qattana and Biddu villages northwest of Jerusalem. According to local sources and eyewitnesses, the incident occurred as two Palestinians from Biddu village were on their way back from a picnic when an Israeli military jeep, stationed at the security road adjacent to the Barrier, reportedly opened fire on the moving car. The second passenger sustained injuries.
- On 11 February 2024, a 16-year-old Palestinian child was shot and injured by Israeli forces after allegedly attempting to stab an Israeli Border Police officer in Al Wad Street in the Old City of Jerusalem. The Israeli forces subsequently deployed heavy forces and reportedly blocked entrances to the Old City of Jerusalem. According to the lawyer of the injured child's family, the child was arrested and transferred to an Israeli hospital.
- On 7 February, during an Israeli military operation in Nur Shams refugee camp, two residential buildings sustained severe damage and were rendered uninhabitable, resulting in the displacement of five families comprising 30 people, including eight children. Initial field information indicates that about 30 additional houses sustained minor to moderate damage during the operation.

Funding

- As of 12 February, Member States have disbursed [\\$886.8 million](#) against the [updated Flash Appeal](#) launched by the UN and its partners to implement its response plan in support of 2.2 million people in the Gaza Strip and 500,000 people in the West Bank. This constitutes 72 per cent of the \$1.2 billion requested to cover humanitarian needs through the end of March 2023.

- Private donations are collected through the [Humanitarian Fund](#). A private foundation in Australia has donated \$2.2 million. Since 7 October, the Humanitarian Fund has disbursed about \$55 million.

HUMANITARIAN NEEDS AND RESPONSES: 5-12 February

Health

Needs:

- High need for primary health services in informal shelters hosting IDPs.
- The high number of surgeries and procedures has led to increased demand for anaesthetic and analgesic medications which are in short supply.
- There is a need to increase routine immunization coverage and conduct catch-up campaign.
- Provision of medication for non-communicable diseases and psychotropics is needed.
- There is a need to reduce overcrowding in maternity hospitals.
- The continued siege around some hospitals is greatly affecting their case management capacity.
- Laboratory equipment and reagents are needed to support diagnostics.
- Blood and blood products in hospitals are needed for emergencies and medical procedures to ensure that patients receive timely and necessary transfusions.

Response:

- On average, partners are reaching about 450,000 people in need of various health services.
- Ongoing disease surveillance at all health facilities to ensure early diagnosis and treatment of cases as well as early detection of any potential outbreak.
- Planning to open stabilization centres for acute malnutrition cases with medical complications. One will be at Tal as Sultan and another likely in one of the field hospitals.
- 12 Emergency Medical Teams (EMTs) were deployed, assisting more than 16,000 patients.
- A weekly average of nearly 300,000 primary health care consultations was reported by partners.

Challenges and Gaps:

- Increased insecurity in Rafah is greatly affecting response activities.
- There is a need to strengthen referral mechanisms between hospitals.
- The influx of IDPs migrating to Rafah has overwhelmed the available bed capacities in hospitals, leading to insufficient capacity to meet the healthcare needs of the population.
- The high insecurity and limited access to health facilities in the northern and middle governorates continue to present major challenges to partners' response activities.
- Persisting siege of hospitals remains a major challenge.
- Referring patients outside of Gaza remains a challenge, as the waiting list continues to grow.
- Partner operations continue to be negatively affected by the displacement of staff, social stresses and telecommunication challenges.
- Limited access to proper WASH facilities is hindering prevention.

Shelter and Non-Food Items (NFI)

Needs:

- Some 1.7 million people are need of shelter and NFI assistance, including 900,000 people reached with partial shelter and NFI assistance.
- Urgent needs are tents, sealing-off kits (SOKs) and NFIs, including bedding, kitchen sets, and winter clothing.
- Technical assistance is required to improve self-built shelters and spontaneous/informal sites. Also see [Shelter Cluster snapshot](#), as of 7 February.

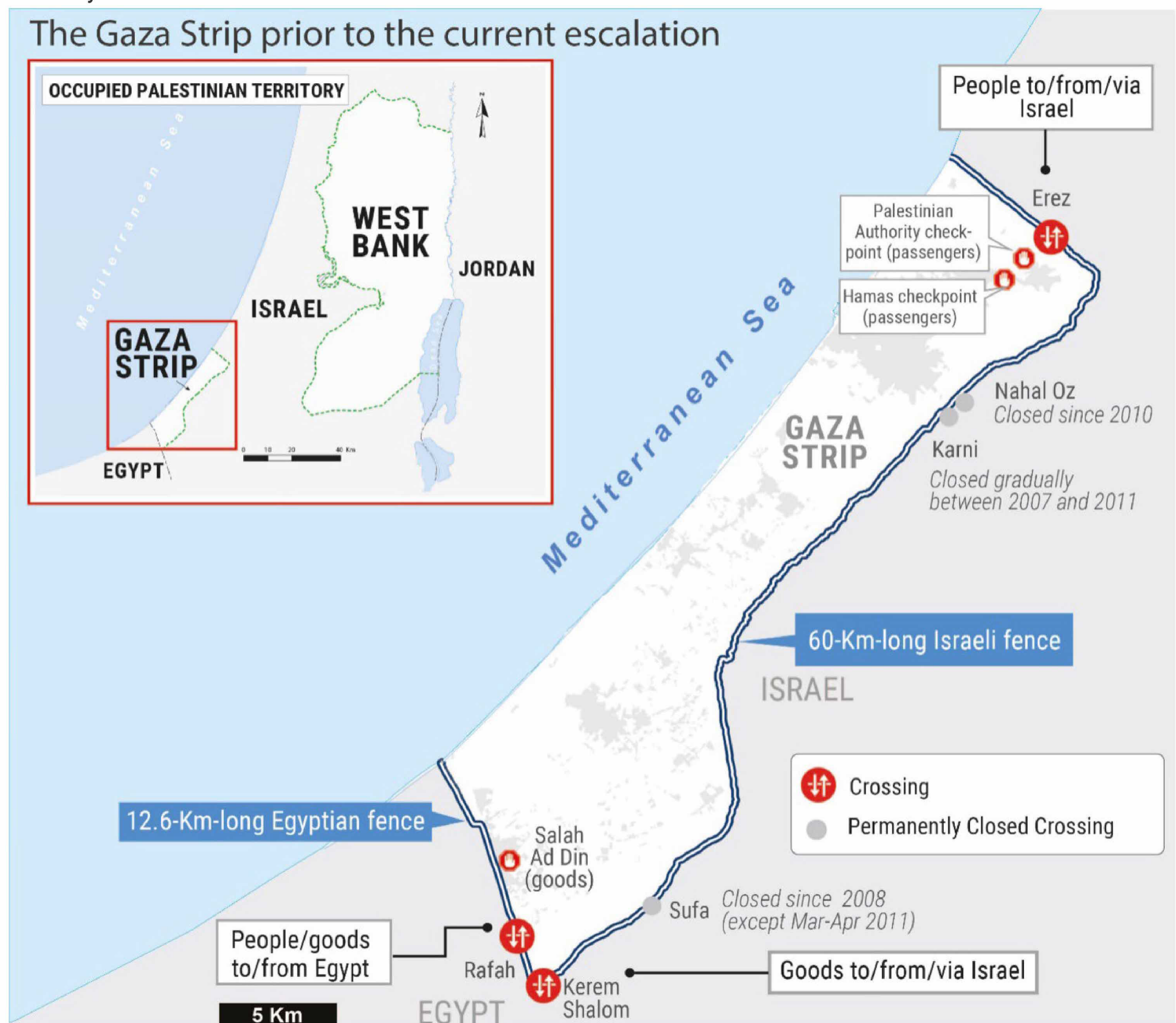
Response:

- A total of 26 partners are actively providing assistance. Partial assistance means that although a household has received some shelter and NFI items, not all their needs have been met. SOKs can be used to consolidate makeshift shelters or to protect damaged housing to facilitate return where possible.
- Some 28,000 tents, 7,600 SOKs, and 35,000 NFI kits are currently in the pipeline.
- The vast majority of assistance is currently provided in-kind; cash will be pursued further when market conditions allow.
- Further details in the [Cluster response strategy](#) and website dashboard.

Challenges and Gaps:

- Slow entry of items into Gaza due to limited aid trucks and bureaucratic processes complicating procurement.
- Rising prices of shelter materials in surrounding markets, including high freight rates and shipping costs.
- Need to restore commercial imports and re-establish local markets to relieve pressure on in-kind provision.
- Restrictions/denial of key shelter items including timber, hand tools, and cooking stoves.
- Lack of security and access to IDP locations, including logistical challenges such as lack of fuel and rising social tensions because of the limited quantity of aid available in comparison to the huge outstanding needs.
- Unplanned sites and lack of adequate tools leading to water damage to makeshift shelters and tents, and recurrent displacement resulting in loss and need for re-distribution of assistance.

Protection against sexual abuse and exploitation (PSEA) remains a cross-cutting priority for all clusters. The SAWA helpline, reachable at 121 and through WhatsApp at +972 59-4040121 (East Jerusalem at 1-800-500-121), operates 24/7. This toll-free number is widely disseminated across all areas of intervention to report cases of SEA and to facilitate emergency counselling and referrals for affected communities to access life-saving services. The PSEA Network monitors calls daily and will increase the number of counsellors if necessary.



* Asterisks indicate that a figure, sentence, or section has been rectified, added, or retracted after the initial publication of this update.

EXHIBIT 2

WORLD Middle East War In Ukraine Africa Americas Asia Europe

Rafah was Gaza's last refuge. The overcrowded city is now a target.

By [Júlia Ledur](#), [Adam Taylor](#) and [Jennifer Hassan](#)

Updated February 12, 2024 at 8:58 a.m. EST | Published February 2, 2024 at 7:42 p.m. EST

Rafah, a small city in southern Gaza on the border with Egypt, was one of the last places of refuge during Israel's [war in Gaza](#), quintupling in population as displaced people from the northern parts of the strip sought safety.

That city is now a target, with Israeli forces [carrying out deadly strikes](#) in Rafah early Monday local time and Israeli government spokesman Eylon Levy saying that forces "are now approaching a ground offensive in Rafah." Allies have expressed concerns about military operations there; hours before the strikes, [President Biden](#) had pressed Israeli Prime Minister Benjamin Netanyahu not to move ahead without a plan to protect civilians, according to a senior administration official briefing reporters on the condition of anonymity under White House rules.

Israel's military said it [rescued two hostages](#) from Rafah while carrying out a wave of strikes, which Gaza's Health Ministry [said](#) killed at least 67 people.

Gazans reported heavy bombardment in the city, where an estimated 1.4 million Palestinians — more than half of the Strip's total population — are sheltering. Many are sick or on the verge of famine, and [aid groups say](#) families are sleeping on streets and eating grass to survive.

"The loss of life we face if Israel goes down into Gaza is huge," said Bob Kitchen, vice president for emergencies at the International Rescue Committee, a humanitarian relief organization operating in Gaza.

Israeli officials say the focus on Rafah is needed to complete its task of destroying Hamas, the Palestinian group that controls Gaza, after the group's devastating Oct. 7 attack on Israel.

Almost 9 in 10 Palestinians in Gaza have been displaced

The population of Rafah has swelled to "at least" 1.4 million people, Juliette Touma, director of communications for the U.N. agency for Palestinian affairs, UNRWA, wrote in a message. "This is five times the population pre-war," Touma said of Rafah, whose population was estimated at 280,000 before Oct. 7.

Israeli officials have not specified what their plans for Rafah look like. The country's military has already conducted strikes in the area, including an airstrike that hit near the Kuwaiti hospital in the city in December that killed at least 18 people, [according to hospital staff](#).

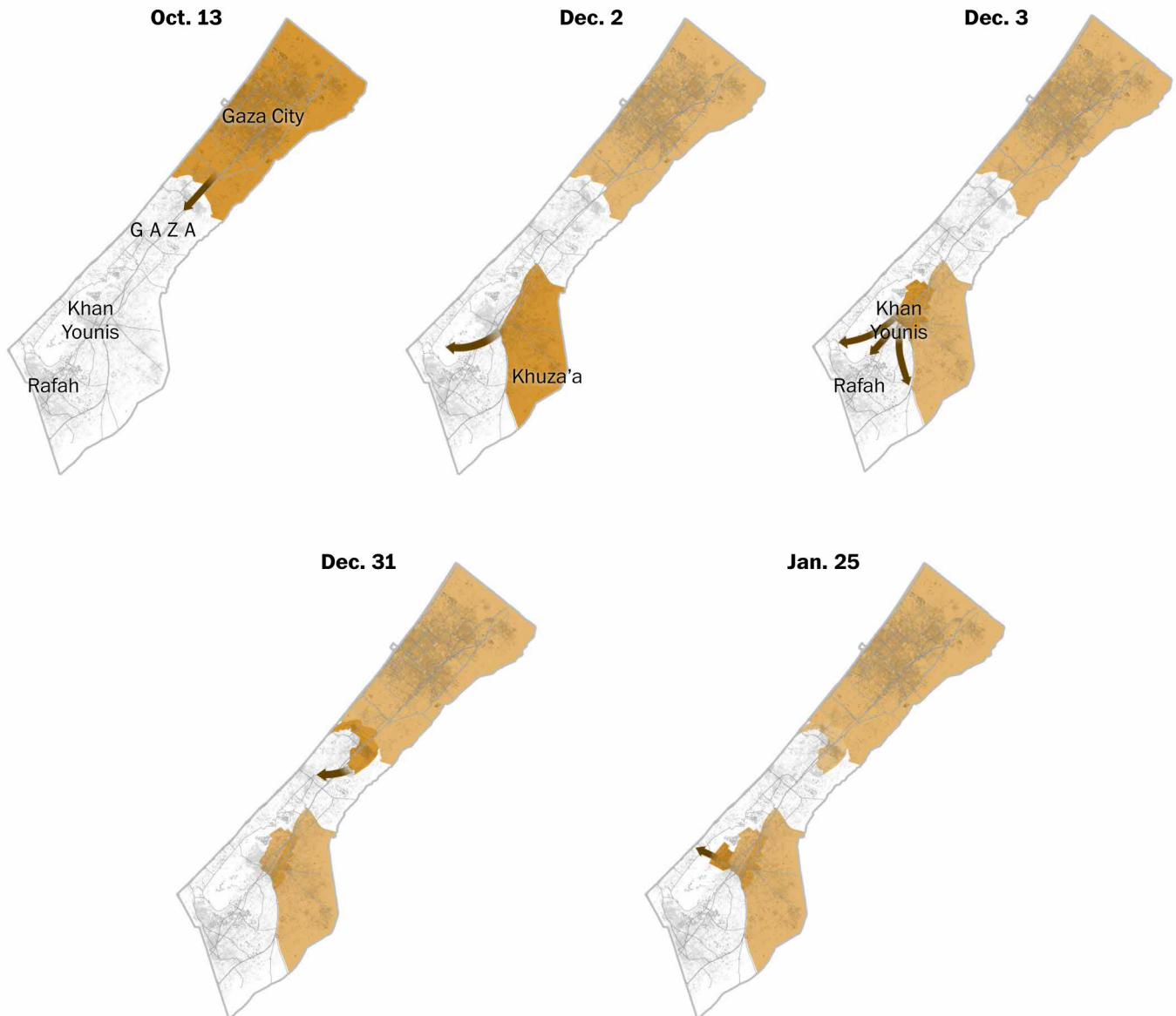
The war in Gaza has drastically reshaped the demographics of the strip. Almost 9 in 10 people living in Gaza are now displaced, according to U.N. estimates, while World Health Organization Director General Tedros Adhanom Ghebreyesus said on Wednesday that "over 100,000 Gazans are either dead, injured, or missing and presumed dead."

Before Oct. 7, the most populated portion of the strip was Gaza City in the north.

- On Oct. 13, six days after the Hamas-led assault on Israel that began the war, Israel ordered the evacuation of more than 1 million people living in the areas above the Wadi Gaza wetlands. Many took refuge in Gaza's second-largest city, Khan Younis, in the south.
- At the start of December, Israeli authorities ordered Palestinians in Khan Younis to move to new areas as Israel's forces conducted military operations in the city.
- More than half of Gaza's total population is thought to now be in Rafah, where many were "living in makeshift structures, tents or out in the open," said Jens Laerke, a spokesman for the U.N. Office for the Coordination of Humanitarian Affairs (OCHA), adding that the city had become a "pressure cooker of despair."

Timeline of evacuation calls

■ Area under evacuation ■ Previously under evacuation



A mounting humanitarian crisis in Rafah

For those facing bombardment in the enclave, leaving Rafah is not a straightforward process. The area is home to the Rafah crossing, which joins the southern edge of the [Gaza Strip](#) to Egypt's northern Sinai region, and Egypt is [determined to avoid an exodus of Palestinian refugees](#), with concerns for the political and security repercussions.

The crossing — the only link from Gaza that Israel does not directly control — is open, but exits has been restricted to people who are able to secure spots on lists from embassies evacuating their nationals and affiliates, and people able to pay expensive fees to travel companies that facilitate movement across the border.

Humanitarian groups have warned that the amount of aid crossing the Rafah border is nowhere near enough to meet the needs of an increasingly desperate population.

"People in Gaza risk dying of hunger just miles from trucks filled with food," Cindy McCain, head of the World Food Program, [said last month in an appeal for new action](#) to allow more trucks to enter Gaza.

One Palestinian aid worker, who spoke on the condition of anonymity as he was not authorized to speak publicly, wrote in a message that the widespread use of tents reminded him of stories his grandfather told him about the living conditions for refugees after the 1948 Israeli-Arab war. The tents, which can be up to 200 square feet in size, would house an entire family or two, the aid worker said.

Winter temperatures have added to the misery. “With this cold and rainy weather, the tent is the last place anyone would want to be in!” they wrote.

Sanitary precautions have broken down amid the overcrowding. “Thousands and thousands of people are sharing individual toilets,” Kitchen said, adding that IRC workers in Rafah had seen “queues of four to five hours” to use the bathrooms. Open defecation and urination create public health risks.

“We’re already seeing massive reports of acute watery diarrhea, which I think, if tested, would be proven to be cholera,” Kitchen said.

The humanitarian crisis is compounded by a political one, as at least 10 Western governments have suspended funding to UNRWA, the chief logistical force for aid in Gaza. The decision to halt funding came after Israel shared a dossier that alleged more than a dozen UNRWA employees had been involved in the Oct. 7 attacks on Israel and alleged widespread support for Hamas and other militant groups within the organization.

CORRECTION

A previous version of this article incorrectly said Israeli Defense Minister Yoav Gallant posted his remarks about Rafah on X, formerly Twitter, on Friday. He posted on Thursday.

Niha Masih, Karen DeYoung and Rachel Pannett contributed to this report.