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Secretary of State for Foreign,
Commonwealth and Development Affairs
c/o Government Legal Department

Our Ref: INT77/7. AHAD/JHAL

BY EMAIL ONLY:

Date: 25 March 2024

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Dear Sir/Madam

Judicial Review Pre-Action Protocol Letter Before Claim

1. We are instructed by our client [REDACTED] to send this letter under the Pre-action Protocol for Judicial Review. This letter relates to the Foreign, Commonwealth and Development Office announcement on 27 January 2024 that it would pause funding to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

Proposed Claimant

2. The proposed claimant is [REDACTED], a British citizen of Palestinian heritage who lives in [REDACTED]. He works as a [REDACTED]. All his family are UNRWA-registered refugees.
3. [REDACTED]'s parents live in Jabalia refugee camp and he is unable to speak to them directly because communications in the camp are so poor. He is very worried for their safety. [REDACTED] last heard news of them from his nephew who lives nearby. He understands that his parents are barely surviving and there is a desperate shortage of food and water. They hardly get a meal a day and water is available for an hour a week. In that time they have to fill all the containers they can find. That is all they have for drinking, cooking and washing for the week. They are completely reliant on UNRWA aid.

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4. Three of [REDACTED]'s brothers and three of his sisters live in the North of Gaza, with their children. Two of his sisters are in the South, also with their children. They are all very short of food and are eating crusts.
5. Several of his family members have been killed or died as a result of the Israeli assault, including his 91-year-old grandmother who was executed by Israeli soldiers during a house occupation, and his three-year-old nephew, who died of malnutrition.
6. The houses of five of his sisters have been bombed and destroyed in Israeli airstrikes. [REDACTED]'s brother-in-law was detained, stripped and beaten by Israeli forces, along with many other Palestinian men, during an Israeli invasion into a UN school.

Proposed Defendant

7. The proposed claimant is the Secretary of State for Foreign, Commonwealth and Development Affairs ("**SSFA**").

Details of the decision being challenged

8. The decision being challenged is the ongoing decision announced by the FCDO on 27 January 2024 to temporarily pause any future funding to UNRWA in response to Israel's allegations that 12 UNRWA staff were involved in the 7 October 2023 attack against Israel (the "**Decision**"), as most recently maintained on 12 March 2024 when it was confirmed that such pause would continue pending the outcome of certain investigations (see paragraph 56 below).

Interested parties

9. The Claimant considers that UNRWA should be an interested party.

Factual Background

UNRWA's role in Gaza

10. UNRWA was first established as a result of UN General Assembly Resolution 302 (IV) of 8 December 1949 with a mandate to serve Palestinian refugees who lost their homes and livelihoods as a result of the conflict with Israel. Specifically, the Resolution

recognised that “*continued assistance for the relief of the Palestine refugees is necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability, and that constructive measures should be undertaken at an early date with a view to the termination of international assistance for relief*”. Since then, UNRWA’s mandate has been extended repeatedly by the General Assembly. For example, Resolution 50/28A of 6 December 1995 to continue to provide humanitarian assistance, as far as practicable, on an emergency basis, and as a temporary measure, to persons in the area who are currently displaced and in serious need of continued assistance as a result of the June 1967 and subsequent hostilities. Most recently, in December 2022 the General Assembly renewed UNRWA’s mandate until June 2026, with overwhelming support from UN Member States (157 in favour, 1 against (Israel) 10 abstentions).¹

11. UNRWA’s mandate has evolved over time, expanding to the provision of emergency services to persons in its area of operations who are currently displaced and in serious need of continued assistance as a result of the 1967 and subsequent hostilities. The mandate has also evolved to accommodate the changing needs and political situation of Palestine refugees, including with respect to protection activities.²
12. UNRWA is the largest humanitarian actor in Gaza.³ It “*plays a stabilising role*” in the region and is “*critical to delivering humanitarian assistance*”.⁴ It has 40,000 staff including 13,000 in Gaza.⁵
13. In general, UNRWA provides humanitarian assistance and contributes to protection of refugees through essential service delivery, primarily in the areas of basic education, primary health care and mental health care, relief and social services, microcredit, and emergency assistance, including in situations of armed conflict, to millions of registered Palestine refugees located within Gaza and its other fields of operation.⁶

¹ [General Assembly Adopts 33 Resolutions Recommended by Its Fourth Committee, Including Renewal of UNRWA Mandate until 30 June 2026 | Meetings Coverage and Press Releases](#)

² [What is the mandate of UNRWA? | UNRWA](#)

³ <https://www.unrwa.org/newsroom/official-statements/unrwa%E2%80%99s-lifesaving-aid-may-end-due-funding-suspension>

⁴ HC Deb, 29 January 2024, c621

⁵ [French diplomat to review UNRWA after claims of staff role in Hamas attack | Gaza | The Guardian](#)

⁶ [What is the mandate of UNRWA? | UNRWA](#)

14. As at 12 January 2024, approximately 1.9 million displaced Palestinians are receiving assistance from UNRWA.⁷ In addition, UNRWA's education programme in Gaza serves nearly 300,000 students.⁸ According to Josep Borrell, chief of EU foreign policy:

*"In Gaza alone 13,000 local [UNRWA] staff, who are themselves victims of the ongoing humanitarian tragedy, are playing a critical role in distributing food, water, and medicine to 1,1 million people suffering from catastrophic hunger and the outbreak of diseases. They are also providing a roof to nearly 1 million displaced people in over 150 emergency shelters and around 23,000 medical consultations per day."*⁹

15. As at 2 March 2024, nearly 1.7 million displaced people are sheltering across emergency shelters (UNRWA and public shelters), informal sites or in close vicinity to UNRWA shelters and distribution sites and within host communities.¹⁰ Between 150-155 UNRWA installations continue to shelter displaced Palestinians.¹¹
16. In every year from 2014 to 2022, at least half of UK aid to the West Bank and Gaza Strip has been delivered through the UNRWA, rather than through local authorities or civil society groups.¹²

The humanitarian situation in Gaza

17. Even before the terrorist attacks by Hamas in Israel on 7 October 2023, the humanitarian situation in Gaza was desperate. On 9 October 2023 UN Secretary General Antonio Guterres said, *"the humanitarian situation [for Palestinians] was extremely dire before these hostilities, now it will deteriorate exponentially."*¹³ The role of UNRWA has long been pivotal in providing support to the population.
18. The 7 October attacks were deplorable. But the political and military reaction of the Israeli state to the atrocities committed against its citizens and residents threatened

⁷<https://www.unrwa.org/resources/reports/unrwa-situation-report-64-situation-gaza-strip-and-west-bank-including-east-Jerusalem>

⁸ <https://www.unrwa.org/activity/education-gaza-strip>

⁹https://www.eeas.europa.eu/eeas/defunding-unrwa-would-be-both-disproportionate-and-dangerous_en

¹⁰<https://www.unrwa.org/resources/reports/unrwa-situation-report-85-situation-gaza-strip-and-west-bank-including-east-Jerusalem>

¹¹<https://www.unrwa.org/resources/reports/unrwa-situation-report-75-situation-gaza-strip-and-west-bank-including-east-Jerusalem>

¹² <https://researchbriefings.files.parliament.uk/documents/CBP-9900/CBP-9900.pdf>, p.3

¹³ Secretary-General's Remarks To The Press On The Situation In The Middle East (9 October 2023) available at <https://www.un.org/sg/en/content/sg/speeches/2023-10-09/secretary-generals-remarks-the-press-the-situation-the-middle-east>

immediate disaster for Gaza. Indeed, in the immediate aftermath of the 7 October attacks senior Israeli ministers made a number of statements indicating genocidal intent with respect to the population of Gaza. On 9 October 2023, Israeli Minister of Defence Yoav Gallant announced a complete siege on Gaza, saying “[t]here will be no electricity, no food, no water, no fuel. Everything will be closed” and “[w]e are fighting human animals and act accordingly.”¹⁴ He also said “[w]e will change the face of reality in the Gaza Strip decades from now.”¹⁵ On 10 October 2023 Israel’s Major General Rasan Aliyan stated “*Hamas has become ISIS and the residents of Gaza are celebrating. Human animals are treated accordingly, you wanted hell - and you will get hell.*”¹⁶

19. The consequences on the ground in Gaza have been truly catastrophic . Eight UN special rapporteurs published a statement on 16 January 2024 that: “*Currently every single person in Gaza is hungry, a quarter of the population are starving and struggling to find food and drinkable water, and famine is imminent. Pregnant women are not receiving adequate nutrition and healthcare, putting their lives at risk. In addition, all children under five—335,000—are at high risk of severe malnutrition as the risk of famine conditions continues to increase, a whole generation is now in danger of suffering from stunting*”.¹⁷
20. The risk to life and humanitarian wellbeing to those in Gaza is so great that as of 26 January 2024 it was accepted as plausibly constituting genocide by the International Court of Justice (ICJ) (see paragraphs 25 to 27 below). The situation has only deteriorated since.
21. As of 1 March 2024, according to the Ministry of Health in Gaza, at least 30,228 Palestinians have been killed in the Gaza Strip since 7 October 2023, and about 70% of those killed are reported to be women and children.¹⁸

¹⁴ Huffington Post, Israeli Defense Minister Announces Siege On Gaza To Fight ‘Human Animals’ (9 October 2023) available at https://www.huffingtonpost.co.uk/entry/israel-defense-minister-human-animals-gaza-palestine_n_6524220ae4b09f4b8d412e0a#:~:text=Defense%20Minister%20Yoav%20Gallant%20called,continue s%20its%20bombardment%20of%20Gaza.&text=Israel's%20defense%20minister%20on%20Monday,weekend%20as%20%E2%80%9Chuman%20animals.%E2%80%9D

¹⁵ <https://twitter.com/yoavgallant/status/1710732246137676281>

¹⁶ <https://twitter.com/ragipsoylu/status/1711734742767325430>

¹⁷ United Nations, ‘Over one hundred days into the war, Israel destroying Gaza’s food system and weaponizing food, say UN human rights experts’, 16 January 2024: <https://www.ohchr.org/en/press-releases/2024/01/over-one-hundred-days-war-israel-destroying-gazas-food-system-and>

¹⁸ <https://www.unrwa.org/resources/reports/unrwa-situation-report-85-situation-gaza-strip-and-west-bank-including-east-jerusalem>

22. As at 2 March 2024, approximately 1.7 million people (over 75% of the population) have been displaced across the Gaza Strip since 7 October 2023, some multiple times.¹⁹
23. The World Food Programme warns that “*A sharp escalation of the conflict in Gaza has left the entire population of 2.2 million people in 'crisis' or worse levels of acute food insecurity. Child malnutrition is higher than anywhere in the world, with one child in every six under the age of 2 acutely malnourished. Hundreds of thousands of people are crammed into overcrowded shelters and hospitals, with food and water running out.*”²⁰
24. The role of UNRWA in the face of such desperation is pivotal, see paragraphs 10 to 16 above.

ICJ provisional measures

25. On 11 and 12 January 2024, the International Court of Justice (ICJ) heard *South Africa v Israel*, concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (the **Genocide Convention**) in the Gaza Strip.
26. On 26 January 2024, the ICJ issued its preliminary findings and order. The court found that: “*the catastrophic humanitarian situation in the Gaza Strip is at serious risk of deteriorating further*”.²¹
27. The preliminary measures included an instruction to Israel to prevent its military from committing acts which might be considered genocidal, to prevent and punish incitement to genocide and to take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip. These measures are aimed at preventing irreparable damage to the rights of Palestinians.²²

Israel's allegations against UNRWA staff

¹⁹<https://www.unrwa.org/resources/reports/unrwa-situation-report-85-situation-gaza-strip-and-west-bank-including-east-jerusalem>

²⁰<https://www.wfp.org/emergencies/palestine-emergency#:~:text=Hundreds%20of%20thousands%20are%20crammed,Bank%20since%20early%20October%202023.>

²¹ South Africa v Israel, Order of 26 January 2024, para. 72

²² Ibid, paras. 78-80

28. On 18 January 2024, the Israeli Authorities informed UNRWA that 12²³ UNRWA employees were allegedly involved in the attacks on Israel on 7 October 2023.²⁴
29. On 26 January 2024 UNRWA Philippe Lazzarini, UNRWA Commissioner-General, announced that he had terminated the appointments of the 12 members of staff subject of the allegations and launched an investigation:

*“To protect the Agency’s ability to deliver humanitarian assistance, I have taken the decision to immediately terminate the contracts of these staff members and launch an investigation in order to establish the truth without delay. Any UNRWA employee who was involved in acts of terror will be held accountable, including through criminal prosecution.”*²⁵

Withdrawal of funding and a further worsening situation

30. The same day (26 January 2024) the United States, UNRWA’s biggest donor, announced that it was suspending additional funding in light of the allegations.²⁶
31. On 27 January 2024, the FCDO announced its decision to temporarily pause any future funding to UNRWA in response to Israel’s allegations that UNRWA staff were involved in the 7 October 2023 attack against Israel.²⁷
32. UNRWA was due to receive £1 million in funding from the UK for its core operations in March, with an additional £9 million expected for core operations in October 2024. However, this funding was immediately blocked following the FCDO’s announcement. If funding is not resumed, UNRWA faces a loss of around £10 million, constituting at least 62.5% of the total funding expected from the UK in 2024.

²³ One of the members of staff was subsequently confirmed dead.

²⁴ <https://www.unrwa.org/newsroom/official-statements/statement-commissioner-general-unrwa-general-assembly>

²⁵ <https://www.unrwa.org/newsroom/official-statements/serious-allegations-against-unrwa-staff-gaza-strip>

²⁶ [Statement on UNRWA Allegations - United States Department of State](#)

²⁷ <https://www.gov.uk/government/news/statement-on-allegations-about-unrwa-staff-and-7-october-attacks>

33. By the end of 27 January 2024, Australia, Canada, Germany, Italy, the Netherlands, Switzerland, Finland had also suspended funding. The total suspended funding amounted to \$450 million.²⁸
34. Philippe Lazzarini warned the same day that the lifeline provided by UNRWA staff could collapse any time due to lack of funding and that the ICJ's measures could only be effected by working with international partners, especially UNRWA.²⁹
35. On 28 January 2024, the UN Office of Internal Oversight Services (OIOS) launched an investigation into the allegations at the request of the UN Secretary-General.³⁰
36. On 29 January 2024, the EU announced that the European Commission would:

“determine upcoming funding decisions for UNRWA in light of the very serious allegations made on 24 January relating to the involvement of UNRWA staff in the heinous 7 October attacks.

The Commission will review the matter in light of the outcome of the investigation announced by the UN and the actions it will take. The Commission welcomes the information provided by UNRWA as well as the launch of the investigation.

It expects UNRWA to agree to carrying out an audit of the Agency to be conducted by EU appointed independent external experts, reviewing, thereby the pillar assessment, focusing specifically on the control systems needed to prevent the possible involvement of its staff in terrorist activities. It also expects a strengthening of UNRWA's Department of Internal Investigations (DIOS) which is key in this regard.”

Finally, a review of all UNRWA staff should be launched soonest to confirm that they did not participate in the attacks.”³¹

37. The same day (29 January 2024) 21 aid groups, including Oxfam, Save the Children and Action Aid, warned that if UNRWA funding suspensions were not reversed “we may see a complete collapse of the already restricted humanitarian response in Gaza”.³²

²⁸<https://www.unrwa.org/newsroom/official-statements/statement-commissioner-general-unrwa-general-assembly>

²⁹<https://www.unrwa.org/newsroom/official-statements/unrwa%E2%80%99s-lifesaving-aid-may-end-due-funding-suspension>

³⁰<https://www.un.org/sg/en/content/sg/statement/2024-01-28/statement-the-secretary-general-unrwa>

³¹https://civil-protection-humanitarian-aid.ec.europa.eu/news-stories/news/european-commission-statement-unrwa-2024-01-29_en

³²<https://reliefweb.int/report/occupied-palestinian-territory/unrwa-funding-cuts-threaten-palestinian-lives-gaza-and-region-say-ngos>

38. Josep Borrell, the EU's foreign policy chief, warned on 4 February 2024 that the suspended funds amounted to almost half of the agency's expected income in 2024, putting its very existence at risk: *"Should UNRWA cease or limit services, which may be the case as early as the end of February, it would significantly aggravate the ongoing dramatic humanitarian crisis. The lives of hundreds of thousands of Palestinians, not only in Gaza, are at stake"*.³³ This would jeopardise not only its critical humanitarian assistance but also the education of nearly 300,000 Gazan students.
39. On 5 February 2024, the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) reported the influx of thousands of displaced Palestinians into Rafah, including due to intense fighting in Khan Younis, combined with reports of an increase in strikes in Rafah on 4 and 5 February.³⁴
40. On 10 February 2024, the Israeli Prime Minister Benjamin Netanyahu signalled to ground forces that an offensive on Rafah was imminent.³⁵
41. On 12 February 2024, the Palestine Red Crescent Society (PRCS) reported that the Gazan city of Rafah had come under "violent" attack, with a number of deaths reported.³⁶
42. On 14 February 2024, the Knesset Plenum voted to approve in preliminary reading the Bill for Stopping the Activity of the UNRWA, 2023. The bill seeks to prohibit outright any activity by UNRWA on Israeli territory. It will be turned over to the Foreign Affairs and Defense Committee for deliberation.³⁷
43. On an unknown date in February 2024 UNRWA published a report asserting that *"Agency staff members have been subject to threats and coercion by the Israeli authorities while in detention, and pressured to make false statements against the Agency, including that the Agency has affiliations with Hamas and that UNRWA staff members took part in the 7 October 2023 atrocities"*³⁸.

³³https://www.eeas.europa.eu/eeas/defunding-unrwa-would-be-both-disproportionate-and-dangerous_en

³⁴<https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-111enhe>

³⁵<https://abcnews.go.com/ThisWeek/video/netanyahu-detailed-plan-works-evacuating-rafah-107131331>

³⁶<https://www.bbc.co.uk/news/world-middle-east-68269957>

³⁷<https://main.knesset.gov.il/en/news/pressreleases/pages/press15224q.aspx>

³⁸<https://www.reuters.com/world/middle-east/unrwa-report-says-israel-coerced-some-agency-employees-falsely-admit-hamas-links-2024-03-08/>

44. On a further unknown date in February 2024, UNRWA published a page on its website entitled “*UNRWA: CLAIMS VERSUS FACTS*”.³⁹ It responds in detail to the myriad of allegations made against the organisation.

Impact of suspension of funding

45. The suspension of funding has had a profound impact on UNRWA’s operational capabilities in Gaza going forward into the crisis. The FCDO’s decision has barred UNRWA from receiving new funding for the humanitarian response in Gaza, with UK funding consequently disbursed to other UN agencies and partners. UNRWA had previously been among the top recipients of UK funding for this crisis. In addition, the decision to suspend funding has negatively affected UNRWA cashflow in the medium term, undermining its capacity to plan its response for the rest of the year. Currently, UNRWA has no clarity on how to address the cash shortage in the second half of the year, with possible disruption of all operations in all its fields.
46. These operations currently include the provision and distribution of food to over 1.1 million people in Gaza, the provision of shelter to over 1 million people in around 150 emergency shelters, in which UNRWA is also providing medical facilities to over 23,000 people, monitoring the spread of infectious diseases⁴⁰, providing psycho-social support services to around 9,000 people and recreational activities to over 11,000 children.
47. UNRWA’s role in Gaza stretches beyond direct operational assistance. It also plays a direct and “*irreplaceable*”⁴¹ role in supporting other aid organisations, as confirmed by the following:
- a) On 30 January 2024, Bond, the UK network for over 350 NGOs and humanitarian agencies, stated “*UNRWA is the main provider of humanitarian assistance to millions of displaced Palestinians already in desperate need and at risk of famine, as well as millions of people across the Middle East. No other local or international organisation has the same level of reach or can provide the same level of support*”.⁴²;

³⁹ [UNRWA: Claims Versus Facts | UNRWA](#)

⁴⁰ <https://www.unrwa.org/newsroom/official-statements/unrwa-frontlines-managing-health-care-gaza-during-catastrophe>

⁴¹ <https://www.rescue.org/uk/press-release/civilians-are-crisis-gaza-donors-must-restore-funds-unrwa>

⁴² <https://www.bond.org.uk/press-releases/2024/01/bond-statement-on-unrwa/#:~:text=We%20welcome%20the%20steps%20taken,in%20Gaza%20and%20the%20region>

- b) On 1 February 2024, the National Education Union stated: *“UNRWA is the principal humanitarian agency in Gaza, providing lifesaving services and humanitarian assistance to two million people. Withdrawal of the agency from Gaza must be avoided. This would have a catastrophic impact and would particularly affect the lives of children in Gaza, who rely on its services for survival.”*⁴³
 - c) On 5 February 2024, the International Rescue Committee issued a joint statement from a number of humanitarian organisations including Oxfam, Norwegian Refugee Council and Save the Children, stating, *“The plain reality is that UNRWA’s humanitarian role in this crisis is indispensable and cannot remotely be replaced by any other aid organization... Other aid agencies cannot replicate UNRWA’s central role in the humanitarian response in Gaza, and amidst the current crisis many will struggle to even maintain their current operations without UNRWA’s partnership and support.”*⁴⁴
 - d) On 1 March 2024 17 NGOs, including Oxfam, Save the Children and ActionAid, issued a further joint statement: *“Considering the urgency of the situation, if the funding suspensions are not reversed, the risk of a complete collapse of the already restricted humanitarian response resulting in preventable loss of lives in Gaza becomes even more likely.”*⁴⁵
 - e) The humanitarian response in Gaza has been described by the UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Martin Griffiths as *“completely dependent on UNRWA being adequately funded and operational”*⁴⁶.
48. Moreover, if funding to UNRWA is compromised, then so too are its operations in other countries across the Middle East⁴⁷ and with it, its vital contributions to regional stability.

⁴³ <https://neu.org.uk/latest/international-news/unrwa-and-withdrawal-agency-gaza>

⁴⁴ <https://www.rescue.org/uk/press-release/civilians-are-crisis-gaza-donors-must-restore-funds-unrwa>

⁴⁶ <https://press.un.org/en/2024/sc15575.doc.htm>

⁴⁷ <https://neu.org.uk/latest/international-news/unrwa-and-withdrawal-agency-gaza>

Other institutions and countries reinstitute funding to UNRWA (and yet further deterioration of the situation in Gaza)

49. On 28 February 2024 the EU confirmed that its funding to UNRWA would continue. EU Representative Sven Kühn von Burgsdorff said: *"UNRWA's contribution to the lives of Palestine refugees remains indispensable and its role in maintaining stability in this extremely complex and challenging region is undisputed...The Agency's financial situation remains critical and additional support from a wider donor community is urgently needed to prevent any interruptions in its services."*⁴⁸
50. On 29 February 2024 Israeli troops fired on crowds of Palestinians gathered to collect flour in the south-west of Gaza City on 29 February, killing at least 112 people and injuring some 760.⁴⁹
51. On 1 March 2024 Nicaragua filed a case at the ICJ against Germany for giving financial and military aid to Israel and for defunding UNRWA, on the grounds that: *"by sending military equipment and now defunding UNRWA which provides essential support to the civilian population, Germany is facilitating the commission of genocide"*.⁵⁰
52. On 4 March 2024 Phillippe Lazzarini addressed a meeting of UN General Assembly delegates on UNRWA's predicament. He pointed out that no further information had been provided to him by Israeli authorities in respect of the allegations against UNRWA staff since 18 January 2024. He warned that *"UNRWA has no capacity to absorb financial shocks"* and *"the fate of the Agency, and the millions of people who depend on it, hang in the balance."* He also warned that UNRWA was *"facing a deliberate and concerted campaign to undermine its operations, and ultimately end them"*: *"Part of this campaign involves inundating donors with misinformation designed to foster distrust and tarnish the reputation of the Agency. More blatant, is the Israeli Prime Minister openly stating that UNRWA will not be a part of post-war Gaza"*.⁵¹ As noted at paragraph 29 above, UNRWA has published a detailed response to the disinformation about its role and activities in February 2024, such is its concern about the attacks on the agency and its vital functions.

⁴⁸ <https://www.unrwa.org/newsroom/news-releases/european-union-contributes-eur-82-million-unrwa-2023>

⁴⁹ <https://www.ohchr.org/en/press-releases/2024/03/un-experts-condemn-flour-massacre-urge-israel-end-campaign-starvation-gaza>

⁵⁰ <https://www.icj-cij.org/sites/default/files/case-related/193/193-20240301-pre-01-00-en.pdf>

⁵¹ <https://www.unrwa.org/newsroom/official-statements/statement-commissioner-general-unrwa-general-assembly>

53. On 8 March 2024, the Canadian Government announced that it would lift the temporary suspension of funding to UNRWA. Its press released explained (emphasis added):

“UNRWA plays a vital role in Gaza, providing humanitarian assistance to more than 2 million people, in addition to its crucial activities supporting 4 million people in the rest of the region. Other organizations also rely on UNRWA's experience and infrastructure to deliver humanitarian aid to Gaza.

Following allegations that some UNRWA personnel were involved in the heinous terrorist attacks carried out by Hamas against Israel on October 7, 2023, the UN has established several important processes to review the allegations and reinforce zero tolerance for terror within the UN, including UNRWA. Canada has reviewed the interim report of the UN Office of Internal Oversight Services (OIOS) on this issue and awaits with interest the final report. Canada welcomes the ongoing independent review of UNRWA, which is led by Catherine Colonna, and plans to review the report evaluating UNRWA's neutrality mechanisms. In parallel with these investigative processes, UNRWA took immediate steps to strengthen monitoring, accountability and transparency.

Canada is determined to ensure, within UNRWA, full accountability, decisive action and the implementation of necessary reforms. It will work with other donor countries, the UN and UNRWA to ensure that the recommendations from both the OIOS investigation and the independent review are fully implemented. Canada expects UNRWA to fulfill its obligations and respect the United Nations value of neutrality, as this is a fundamental part of its mandate.”⁵²

54. Canada's Minister of International Development, Ahmed Hussen, said “*Since the horrific terrorist attack perpetrated by Hamas on October 7, Canada has focused its decisions on the protection of civilians. The Israeli and Palestinian people have the fundamental right to live in peace, with dignity and security and without fear. As a government, we have a responsibility to ensure that Canadians have confidence in the organizations we support. This is why we have taken prudent steps to allow for a necessary investigation to take place. Given the ongoing rigorous investigative processes, efforts by UNRWA to respond to serious allegations made against certain members of its staff – including the implementation of internal measures to improve monitoring and to increase accountability – as well as the catastrophic humanitarian situation in Gaza, Canada is resuming its funding to UNRWA so that more can be done to meet the urgent needs of Palestinian civilians. Canada will continue to take allegations against certain UNRWA*

⁵²<https://www.canada.ca/fr/affaires-mondiales/nouvelles/2024/03/le-canada-annonce-une-aide-soutenue-a-la-population-de-gaza.html>

personnel very seriously and work closely with UNRWA and the UN to seek accountability and implement reforms.”⁵³ (emphasis added)

55. On 9 March 2024 the Swedish Government announced that it had decided to issue a disbursement of SEK 200 million⁵⁴ to UNRWA “*in light of the acute humanitarian situation in Gaza and UNRWA’s new undertakings within the framework of a conditional statement assurance to Sweden*”. Its press release stated as follows (emphasis added):

“UNRWA has agreed to allow independent auditing, strengthen internal supervision and enable additional staff controls. Sweden has now received bilateral confirmation of these undertakings from UNRWA, similar to the agreement entered into with the European Commission.

Sweden’s continued support is conditional on the measures set out in the statement of assurance. Sweden will receive the same information that that the European Commission receives concerning the progress UNRWA makes on controls, independent auditing, enhanced supervision and external reviews of staff. In addition, Sweden’s funding will be protected if there is suspicion or confirmation of risk, in line with the agreement with the European Commission.

“The humanitarian situation in Gaza is devastating and the needs are acute. We have already increased humanitarian support and are now issuing an initial disbursement to UNRWA following its written assurances directly to Sweden concerning increased transparency and stricter procedures. We will monitor closely to ensure UNRWA follows through on what it has promised,” says Minister for International Development Cooperation and Foreign Trade Johan Forssell.

“In this acute situation, where needs among the civilian population are huge, the foremost priority is saving lives. UNRWA is the organisation that is best positioned to help vulnerable Palestinians. They have agreed to strict demands on controls, which enables Sweden to resume disbursements. We will continue to monitor UNRWA and analyse the organisation’s unique position,” says Gudrun Brunegård,” aid policy spokesperson for the Christian Democrats.

“The humanitarian situation in Gaza is very difficult. UNRWA is in need of reform, but right now the priority is for Sweden’s humanitarian support to reach those who need it most,” says Joar Forssell, foreign policy spokesperson for the Liberal Party.

The Government has allocated SEK 400 million to UNRWA for 2024. Today’s decision concerns an initial disbursement of SEK 200 million. Additional disbursements will be issued this year as UNRWA makes progress on the measures to which it has agreed in order to strengthen internal supervision and controls.”⁵⁵

⁵³<https://www.canada.ca/fr/affaires-mondiales/nouvelles/2024/03/le-canada-annonce-une-aide-soutenue-a-la-population-de-gaza.html>

⁵⁴ Equivalent of \$19.5m or £15m

⁵⁵<https://www.government.se/press-releases/2024/03/government-issues-disbursement-of-sek-200-million-to-unrwa-following-new-agreement-on-stricter-controls/>

The UK maintains/continues the Decision

56. On 12 March 2024 the UK's Foreign Minister Andrew Mitchell informed MPs that funding would not be resumed pending the report of the OIOS and the interim report from Catherine Colonna, the former French Foreign Minister. We assume this is a reference to the final report (as opposed to the interim report which the UK should have available to it), **please confirm**. He said: "*The view we take is that when we have seen those, we very much hope we will have the reassurance to recommence funding. That is also the position of the US, Germany, Australia, Italy, Finland, the Netherlands and Switzerland.*"⁵⁶
57. On 13 March 2024, the US Department of State announced that the US was preparing for the pause on funding UNRWA to be made permanent, despite President Biden insisting that its humanitarian work was indispensable.⁵⁷
58. On 16 March 2024, it was reported that Prime Minister Netanyahu had approved Israel's military plans to attack Rafah.
59. On 20 March 2024 the interim report of the independent panel was presented to the UN Secretary-General Antonio Guterres. The report found that: "*UNRWA has in place a significant number of mechanisms and procedures to ensure compliance with the Humanitarian Principle of neutrality, and the group has also identified critical areas that still need to be addressed... The review group will now develop concrete and realistic recommendations on how to address these critical areas to strengthen and improve the agency... The final version will be presented on 20 April and will be made public.*"⁵⁸

Legal Framework

The statutory framework for the provision of development and humanitarian assistance

60. The International Development Act 2002 ("**IDA**") provides the main legal basis for the provision of development and humanitarian assistance abroad.

⁵⁶<https://hansard.parliament.uk/Commons/2024-03-12/debates/D4C7041F-DDEC-468C-8912-144B36637CFE/ForeignCommonwealthAndDevelopmentOffice>

⁵⁷ [Statement on UNRWA Allegations - United States Department of State](#)

⁵⁸ <https://news.un.org/en/story/2024/03/1147796>

61. S.1(1) IDA enables that the Minister may provide development assistance if he/she is satisfied that the provision of the assistance is likely to contribute to a reduction in poverty.
62. Under s.3(1) the Secretary of State may provide any person or body with assistance for the purpose of alleviating the effects of a natural or man-made disaster or other emergency on the population of one or more countries outside the United Kingdom.
63. S. 6 provides for a number of ways in which financial assistance may be provided, including by way of a grant. S.8 IDA empowers the Minister to enter into arrangements to secure that such assistance is provided, which may include making payments to persons who provide facilities in pursuance of the arrangements (subject to Treasury approvals, s.7).

Policy framework

64. The UK government's strategy for international development (May 2022)⁵⁹ (**"the IDS"**) sets out four clear priorities, including, to: *"provide life-saving humanitarian assistance and work to prevent the worst forms of human suffering, prioritising our funding and being a global leader in driving a more effective international response to humanitarian crises."* It also provides, in material part, that (emphasis added):

"18. The UK is a global leader in driving more effective approaches to crises. We have led international efforts to strengthen crisis solutions and reduce humanitarian need..."

"20. With our network of allies and partners and through our efforts across the globe, we will focus on three priorities:

- *prioritising humanitarian assistance to people in greatest need and providing them with what they need the most to recover from crises*
- *protecting the people most at risk, including from conflict-related sexual violence and barriers to humanitarian assistance*
- *preventing and anticipating future shocks and building resilience in long-running crises by tackling the underlying drivers of crises, instability and extreme food insecurity*

"21. We will prioritise people in greatest need and provide principled humanitarian assistance at times of crisis, as we have through our commitments this year of £286 million to support over 4.4 million Afghans, the £220 million in UK

⁵⁹ [The UK government's strategy for international development - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/111111/uk-international-development-strategy-2022.pdf)

humanitarian aid we have provided so far for the Ukrainian people in the face of Russia's invasion, and our ongoing multi-year support to crises in Africa."

65. The UK Humanitarian Framework⁶⁰ sets out how the FCDO aims to achieve the IDS, providing, *inter alia*, one of the three main objectives is to: "*Prioritise humanitarian assistance to people in greatest need and provide them with what they need the most to recover from crises*". It also states, in particular that (emphasis in the original):

"Prioritise

12. We will work with all our partners to prioritise people in greatest need and provide principled humanitarian assistance at times of crisis...

Protect

13. Our focus will be on protecting the most at risk in situations of conflict and crisis, including civilians, refugees, internally displaced people (IDPs), women and girls, and people with disabilities. We will work to improve humanitarian access and protection of civilians, including through our efforts at the UN Security Council (UNSC). We will also ensure broader security efforts do not hinder humanitarian action, as we did with other UNSC members in protecting humanitarian assistance in Afghanistan from sanctions...

Manage risk

23. We recognise that humanitarian crises and conflict settings are inherently risky, and that in specific cases, a higher risk exposure to deliver humanitarian priorities will be necessary. We will manage these risks through investing in understanding these dynamic contexts, assessing our risks and returns, investing in our own systems, measuring outcomes, understanding our partners and through patient diplomacy and adaptive programming. We will manage risks of SEAH, fraud and corruption robustly, showing zero tolerance for inaction or mishandling."

The availability of judicial review in the exercise of decisions touching on foreign relations

66. The exercise of discretion of the SSFA in accordance with the statute notwithstanding its foreign policy dimension remains reviewable if it can be shown that decisions are irrational or contrary to legitimate expectation or other judicial review principles: *R (Abbasi) v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1598 §106[iii]; *R (Sandiford) v Secretary of State for Foreign and Commonwealth Affairs* [2014] UKSC 44, §§54-55, 65.

⁶⁰ [UK humanitarian framework - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674442/UK-humanitarian-framework.pdf)

67. Even in cases involving national security, foreign relations and allocation of resources it remains the constitutional duty of the court to ensure that the decision is lawful (R (Hoareau) v Secretary of State for Foreign and Commonwealth Affairs [2020] EWCA Civ 1010, §155)..
68. Decision making in an area that concerns life or death implications requires more objective justification at common law given the nature of the issues at stake (see R (Bugdaycay) v Secretary of State for the Home Department [1987] AC 514, §531; R v Lord Saville of Newdigate ex parte A [2000] 1 WLR 1855, §37; R (Rogers) Swindon NHS Primary Care Trust [2006] 1 WLR 2649, §56; R (Sandiford) v Secretary of State for Foreign and Commonwealth Affairs [2014] UKSC 44, §66).
69. In that respect, relevant matters involving customary international law enhance the requirement for anxious scrutiny (see paragraphs 70 to 81 below). Those matters include:
- a) Common Article 1 of the Geneva Conventions;
 - b) Provisional findings and order of the ICJ in South Africa v Israel;
 - c) Other observations by international humanitarian law experts.

Common Article 1

70. Under Common Article 1 to the four 1949 Geneva Conventions the High Contracting Parties undertake to “*respect and to ensure respect for the present Convention in all circumstances.*” Those present circumstances include that Israel is undeniably an Occupying Power in Gaza to which the obligations of the Fourth Geneva Convention applies including the obligations of other Contracting States “*to take measures necessary for the suppression of all acts*” contrary to that Convention.
71. The ICJ confirmed in Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment of 27 June 1986, I.C.J. Reports 1986 §220, that the obligation referred to in common Article 1 forms part of customary international law: “*The Court considers that there is an obligation on the United States Government, in the terms of Article 1 of the Geneva Conventions, to “respect” the Conventions and even “to ensure respect” for them “in all circumstances”, since such an obligation does not derive only from the Conventions themselves, but from*

the general principles of humanitarian law to which the Conventions merely give specific expression.”

72. In Keyu v SSFCO [2015] UKSC 69 Lord Mance held (with all other Justices in agreement) that “*Common law judges on any view retain the power and duty to consider how far customary international law on any point fits with domestic constitutional principles and understandings.....CIL, once established, can and should shape the common law, whenever it can do so consistently with domestic constitutional principles, statutory law and common law rules which the courts can themselves sensibly adapt without it being, for example, necessary to invite Parliamentary intervention or consideration.*” (§§146, 150). This stands as an important up to date affirmation of Trendtex Trading v Central Bank of Nigeria [1977] QB 529, 553. Values that accord with Blackstone’s description of “*the law of nations*” must be adopted into this country’s common law, “*without which it must cease to be part of the civilised world*” (Bk 4, Ch. 5, pp 66-67).

The Convention on Genocide

73. Under Article I of the Genocide Convention the UK has a duty to prevent acts of genocide. Genocide is defined in Article II as:

“any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;*
- (b) Causing serious bodily or mental harm to members of the group;*
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) Imposing measures intended to prevent births within the group;*
- (e) Forcibly transferring children of the group to another group”.*

74. In applying Article I of the Genocide Convention, there is no requirement to prove actual knowledge of genocide or that there has been the commission of genocide by an offending State. The duty to prevent is engaged where the State is merely “aware” of a “serious danger” that genocide might occur (per the judgment of the ICJ in (Bosnia and Herzegovina v Serbia and Montenegro (26 February 2007) at §432). In Bosnia (2007), the ICJ held at §431 that:

“This obviously does not mean that the obligation to prevent genocide only comes in to being when perpetration of genocide commences; that would be absurd, since the whole point of the obligation is to prevent, or attempt to prevent, the occurrence of the act. In fact, a State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (dolus specialis), it is under a duty to make such use of these means as the circumstances permit”.

75. Further, for the UK to breach its duty to prevent, it does not need to be proven that the UK could have prevented the genocide or that its failure to act was causatively linked to the commission of genocide. It is sufficient that it had the means to contribute to this goal and that it manifestly refrained from using them (*Bosnia* (2007), §§430, 438).
76. The duty to prevent continues to exist as long as acts of genocide continue to be committed or when there is a real risk of such acts being committed. Further, the duty requires the UK not just to prevent genocide in its strictest sense, but also all acts listed under Article III of the Convention, which includes attempts to commit genocide (*Bosnia* 2007, §§166–167, 431, 461). Those acts are: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; and (e) Complicity in genocide. Genocide can be defined as an attempt: *Bosnia* (2007) §§430-432 and 437-438.

Provisional findings and order of the International Court of Justice in *South Africa v Israel*

77. The ICJ’s order in *South Africa v Israel* on 26 January 2024 included:
 - a) Israel must, in accordance with its obligations under the Genocide Convention and in relation to Palestinians in Gaza, “*take all measures within its power*” to prevent the commission of acts prohibited in the Convention, in particular killings, causing serious physical or mental harm, the deliberate infliction of conditions of life calculated to bring about the physical destruction of the population in whole or in part, and the imposition of measures intended to prevent births;
 - b) Israel must ensure that its military forces do not commit any of the acts above;
 - c) Israel must take all measures within its power to prevent and punish direct and public incitement to commit genocide;

- d) Israel must take immediate and effective measures to enable the provision of humanitarian relief to Gaza;
- e) Israel must take effective measures to prevent destruction of evidence relating to allegations of acts contrary to the Genocide Convention;
- f) Israel must submit a report to the Court within one month regarding the measures it has taken to give effect to the Order.

78. The Court also found that the underlying case – that Israel is responsible for violations of the Genocide Convention in respect of its actions taken in Gaza – was at least plausible.

Observations by international humanitarian law experts

79. On 27 January 2024 Francesca Albanese, UN Special Rapporteur on the Occupied Palestinian Territories said: *“The day after @ICJ concluded that Israel is plausibly committing Genocide in Gaza, some states decided to defund UNRWA, collectively punishing millions of Palestinians at the most critical time, and most likely violating their obligations under the Genocide Convention.”*⁶¹

80. On 30 January 2024 international human rights lawyer Francis Boyle published an article warning that countries abruptly cutting off UNRWA funds were in violation of Article 2(c) of the Genocide Convention: *“Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.”*⁶²

81. On 31 January 2024 the Lemkin Institute for Genocide Prevention issued the following statement:

“The Lemkin Institute for Genocide Prevention is deeply concerned by the decision of a coalition of several nations – the United States and Germany, in concert with Australia, Austria, Canada, Estonia, Finland, France, Iceland, Italy, Japan, the Netherlands, Romania, Switzerland, and the United Kingdom – to suspend funding to the United Nations Relief and Works Agency (UNRWA). This is a serious escalation of the crisis in Gaza and follows the International Court of Justice’s (ICJ) first ruling in Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), which many hoped

⁶¹ <https://twitter.com/FranceskaAlbs/status/1751332704056930475>

⁶² <https://www.aa.com.tr/en/middle-east/countries-cutting-unrwa-funding-directly-violating-genocide-convention-veteran-lawyer/3122947>

would slow the genocide. Further, it represents a shift by several countries from potential complicity in genocide to direct involvement in engineered famine. It is an attack on what remains of personal security, liberty, health, and dignity in Palestine.”⁶³

“If no reversal is forthcoming, we condemn the decision to defund UNRWA, and in doing so, we join a growing consensus of practitioners of international law and scholars of genocide in pointing out that this action is tantamount to increased participation in the on-going genocide of Palestinians in Gaza and constitutes both a violation of the ICJ’s recent ruling and of the participating nations’ responsibilities under the Convention on the Prevention and Punishment of the Crime of Genocide (‘the Genocide Convention’).”

Observations by NGOs

82. On 27 January 2024 Patrick Watt, chief executive of Christian Aid, wrote on social media: *“Allegations against individuals working for UNRWA, however serious, cannot justify collective punishment of Palestinian people through the withdrawal of aid. The UK govt has got this call badly wrong.”*⁶⁴

83. On 29 January 2024 Amnesty International warned:

*“It is deeply shocking – indeed inhumane – that several governments have taken decisions that will cause further suffering to two million Palestinians, who are already facing the risk of genocide and an engineered famine just days after the International Court of Justice ruling concluded that the survival of Palestinians in Gaza is at risk. It is particularly appalling that such action has been taken over allegations concerning 12 employees out of UNRWA’s entire staff of 30,000,” said Agnès Callamard, Amnesty International’s Secretary General.*⁶⁵

84. The same day (29 January 2024), Save the Children warned: *“As aid organisations, we are deeply concerned and outraged that some of the largest donors have united to suspend funding for the United Nations Relief and Works Agency (UNRWA), the main aid provider for millions of Palestinians in Gaza and the region. This comes amid a rapidly worsening humanitarian catastrophe in Gaza.”*⁶⁶

⁶³<https://www.lemkinstitute.com/statements-new-page/statement-on-recent-threats-to-unrwa-and-the-shift-between-potential-complicity-and-direct-involvement-in-the-crime-of-genocide-against-palestinians-by-several-nations>

⁶⁴<https://twitter.com/WattPatrick/status/1751282142812807373>

⁶⁵<https://www.amnesty.org/en/latest/news/2024/01/israel-opt-states-must-reverse-cruel-decision-to-withdraw-unrwa-funding/>

⁶⁶<https://www.savethechildren.net/news/unrwa-funding-cuts-threaten-palestinian-lives-gaza-and-region-say-ngos>

85. The suspension of funding by donor states will impact life-saving assistance for over two million civilians, over half of whom are children, who rely on UNRWA aid in Gaza. The population faces starvation, looming famine and an outbreak of disease under Israel's continued indiscriminate bombardment and deliberate deprivation of aid in Gaza.
86. On 30 January 2024 the Quakers also called on the Government to reinstate funding to UNRWA, warning that the decision *"could once again put the UK at serious risk of complicity in genocidal acts"*⁶⁷.
87. The same day (30 January 2024), the International Federation for Human Rights (FIDH) issued the following statements:
- Yosra Frawes, Head of FIDH's North Africa and Middle East Desk: *"The suspension of funds to UNRWA equals to potentially condemning millions of Palestinian refugees to die of hunger and disease. This is complicity manifest to the ongoing genocide, and a totally baffling contravening of the ICJ's decision"*.
 - Diana Alzeer, Vice-President of FIDH and representative of Al-Haq, one of FIDH member organisations in Palestine: *"Suspending funds to UNRWA, which are key to Palestinian refugees in general but now more than ever essential for the population in Gaza, means allowing this genocide to continue. Palestinians have been asking states for accountability actions for years, we didn't see them act so swiftly, we didn't see most of them act at all at the serious crimes committed against the civilian population in Gaza"*.⁶⁸
88. On 31 January 2024, Age International wrote to MPs asking them to press the UK Government to (inter alia): *"Reverse its pause on funding to UNRWA. This suspension contradicts the UK's commitment "to getting humanitarian aid to the people in Gaza who desperately need it."*⁶⁹
89. On 6 February 2024, the Palestinian Return Centre wrote to the SSF and Scottish First Minister expressing deep concern and disappointment at the decision to pause funding:

⁶⁷<https://www.quaker.org.uk/news-and-events/news/uk-must-take-urgent-action-after-icj-genocide-ruling-quakers-say>

⁶⁸<https://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/countries-that-suspend-funds-to-unrwa-are-fueling-the-ongoing#>

⁶⁹<https://www.ageinternational.org.uk/news-stories/news/statement-on-unrwa-gaza-funding-pause/>

*“UNRWA has played a vital role in providing essential services, including education, healthcare, and humanitarian assistance, to Palestinian refugees for decades. By defunding this agency, we risk jeopardizing the well-being of vulnerable populations who heavily depend on these services for their survival. The decision to withdraw support may lead to a humanitarian crisis, impacting the lives of millions who are already facing immense challenges”*⁷⁰

90. On 18 March 2024 the Integrated Food Security Phase Classification (IPC) system warned that famine in the Gaza Strip was imminent as *“1.1 million people, half of Gaza, experience catastrophic food insecurity”*.⁷¹
91. The International Rescue Committee (IRC) commented that since its creation in 2004, the IPC system had never declared famine in the Middle East, adding that the impending famine was *“an entirely man-made and preventable crisis”*.⁷² David Miliband, President of the IRC, repeated these observations on CNN on 20 March 2024.

Grounds of Challenge

Ground 1: irrationality

92. It is evident from the above factual summary that Israel has not taken steps to facilitate humanitarian assistance in compliance with the ICJ ruling and in terms of its obligations as an Occupying Power⁷³ in Gaza. In fact, it has escalated its military actions in Gaza, while taking steps to undermine UNRWA’s ability to deliver humanitarian assistance.
93. Meanwhile, the suspension of approximately 50% of UNRWA’s funds⁷⁴ has exacerbated or will exacerbate the impact of those actions on Gazans in need of that assistance.

⁷⁰<https://prc.org.uk/en/post/4608/in-letter-to-uk-foreign-secretary-scottish-first-minister-prc-expresses-dismay-at-decision-to-defund-palestine-refugee-agency>

⁷¹ <https://www.ipcinfo.org/ipcinfo-website/alerts-archive/issue-97/en/>

⁷²<https://www.rescue.org/press-release/famine-imminent-northern-gaza-children-are-being-starved-israels-blockade-and>

⁷³ Per Lord Cameron on 12 March 2024: <https://hansard.parliament.uk/lords/2024-03-12/debates/9A72BCFC-FE5F-4279-BD14-D3BEDC5F2E6B/GazaHumanitarianAid>, Column 1913

⁷⁴ According to UN Watch, the total suspended funds as at 30 January 2024 amounted to roughly \$865 million or 75% of the agency’s \$1.16 billion budget: <https://unwatch.org/updated-list-of-countries-suspending-unwra-funding/>. Since then the EU, Sweden and Canada have resumed funding, which would bring the total suspended funds closer to 50%.

94. In that sense, the suspension of funding of UNRWA by Member States is an issue of grave importance requiring the most anxious of scrutiny.
95. First, as explained below, it involves potential complicity in Israel's apparent breach of the Genocide Convention and Common Article 1 of the Fourth Geneva Convention; and likewise potential failure of the UK to comply with its own duties under customary international law to ensure respect for the Conventions.
96. Second, and in any event, at the very least:
- a) The horrendous situation in Gaza, and the breaches of the Fourth Geneva Convention reported there, means that the utmost anxious scrutiny is required of the Decision, including the decision to maintain the pause of funding as at 12 March 2024;
 - b) The Decision has to be scrutinised by reference to the FCDO's IDS and International Humanitarian Framework which commits the UK to work with its partners, which include UNRWA, to prioritise people in greatest need and provide principled humanitarian assistance at times of crisis, whilst managing risk. This is not a case of fraud or corruption by any partner, nor is there inaction and nor is the humanitarian assistance being mishandled (see paragraphs 64 to 65 above).
97. While there is a basis for the Defendant to be concerned of the allegations against a small number of UNRWA's over 30,000 employees⁷⁵ who were alleged to have been associated with terrorist attacks, at the very least, the decision to continue to pause funding is irrational, given:
- a) UNRWA is the only effective means to deliver adequate humanitarian relief into Gaza at the present juncture;
 - b) UNRWA took immediate action in response to Israel's allegations by terminating the contracts of the individual staff members the subject of the allegations and asking for a transparent independent investigation by OIOS;
 - c) Israel has provided no further information to UNRWA in relation to the allegations since 18 January 2024;

⁷⁵ <https://www.unrwa.org/careers/working-unrwa>

- d) The humanitarian crisis in Gaza has continued to grow in a catastrophic fashion and is on the brink of worsening with the impending Rafah offensive;
 - e) While no doubt keeping the matter under review, other states have resumed UNRWA funding, citing reasons based on the needs of Palestinian civilians and that UNRWA has acted robustly in the face of the allegations. In particular:
 - (i) Other states have been satisfied by the UN's interim report. **Please confirm** whether the UK has received the report, and if so, why this did not sufficiently address the FCDO's concerns;
 - (ii) Other states have sought and obtained bilateral assurances or commitments in order to resume funding. **Please confirm** whether the UK has considered obtaining such assurances or has sought such assurances. If not, please explain why not. See further paragraphs 98(a) and 103(f) below.
 - f) Neither at the time of the original decision to pause funding on 27 January 2024, or in response to allies and EU states resuming funding on 12 March 2024, has the Defendant provided proper or adequate reasons to justify an ongoing decision that has such life or death and other profound humanitarian consequences (see further Ground 2 below).
98. Further, the consideration of whether the Decision, as most recently maintained on 12 March 2024, risks breaching the UK's obligations under customary international law to respect and to ensure respect for the Fourth Geneva Convention in all circumstances is material to the assessment of its rationality. In particular:
- a) The ICJ has ordered Israel to (1) take all measures within its power to prevent the commission of acts prohibited in the Genocide Convention, including the deliberate infliction of conditions of life calculated to bring about the physical destruction of the population in whole or in part; and (2) take immediate and effective measures to enable the provision of humanitarian relief to Gaza;
 - b) UNRWA is the only effective means by which Israel can enable the provision of humanitarian relief;
 - c) Rather than enabling UNRWA to provide such relief, Israel has taken a number of steps to (1) inflict conditions of life calculated to bring about physical destruction of the population of Gaza, including by intensifying its military operations, by bombing humanitarian aid convoys and by otherwise preventing the passage of

- humanitarian aid to the point where a man-made famine has arisen; and/or (2) undermine UNRWA's integrity and its ability to provide humanitarian aid;
- d) The Decision further undermines UNRWA's ability to continue its humanitarian work. Combined with equivalent decisions by the other States, it may jeopardise UNRWA's future viability; and
 - e) The consequences for Palestinians in Gaza should UNRWA cease operations due to lack of funding would be catastrophic.

Ground 2: Failure to take into account relevant considerations and/or to undertake adequate inquiries and/or lack of reasons

99. As confirmation of the above Ground of irrationality, but also in its own right, the Secretary of State has:

- a) pending confirmation, to the best of our client's knowledge, failed to make necessary inquiries into whether bilateral assurances and/or other reports available address the concerns giving rise to the Decision. See further requests below; and/or
- b) failed to give any and/or adequate reasons for a decision that given its consequences requires greater transparency and candour. As set out above (and addressed below), at this time the Secretary of State has not given reasons for the ongoing Decision to pause funding, and, critically, the decision that such pause should be maintained despite the steps taken by UNRWA to address concerns, and the deepening catastrophe in Gaza.

Alternative dispute resolution

100. Our client would be willing to engage in alternative dispute resolution and we would be happy to consider any proposals in this regard.

What the Defendant is expected to do

101. The Defendant is invited to withdraw the Decision and reinstate funding to UNRWA.

Proposed Reply Date

102. Due to the urgency of this matter, we propose that Tuesday 2 April 2024 is a reasonable date by which a full response must be provided, failing which our client will consider issuing judicial review proceedings.

Information and pre-action disclosure

103. Please provide all documentation pertaining to:

- a) The current funding arrangements with UNRWA, including any memoranda of understanding;
- b) The criteria and evidence on which the Decision was based;
- c) The aims that the Decision is intended to achieve;
- d) Any assessment of the impact of the Decision on the population of Gaza;
- e) Any assessment of why the interim report prepared by the UN, referred to at paragraphs 56 and 59 above, was not a sufficient basis (or part of a sufficient basis) upon which to lift the pause of funding;
- f) Any assessment of why bilateral assurances should or should not be sought from UNRWA and/or an assessment of why such bilateral assurances were not a sufficient basis (or part of a sufficient basic) upon which to lift the pause of funding;
- g) Any review of the original decision since it was made, including with regard to the decision publicly communicated on 12 March 2024 to maintain the funding pause pending publication of the OIOS report and the independent report ordered by Philippe Lazzarini; and
- h) Any assessment or criteria which are to be applied to the above mentioned reports to decide whether or not to lift the funding pause.

104. Please confirm:

- a) The aims and objectives of the Decision and the decision to maintain the pause of 12 March 2024;
- b) The criteria on which the Decision and the 12 March 2024 decision to maintain were based, including whether the following were taken into account:
 - (i) The humanitarian situation in Gaza;
 - (ii) The risk that Decision – including as maintained - will render UNRWA unable to continue providing humanitarian assistance;

- (iii) The impact of the Decision on Palestinian civilians;
 - (iv) Whether the Decision may place the UK in breach of its obligations under the Geneva Conventions;
 - (v) Whether the UK has received the interim OIOS Report and why this was not deemed sufficient justification to lift the pause;
 - (vi) Whether the UK has sought and, if so, received bilateral assurances from UNRWA or other commitments to meet its concerns. If not, please explain why not.
- c) The evidence on which the Decision was based and continues to be maintained;
- d) The steps taken to assess the credibility and reliability of the evidence provided by Israel as to the allegations against UNRWA, including in light of:
 - (i) The timing of the allegations, which were made when the ICJ order in South Africa v Israel was pending and a matter of days before it was issued;
 - (ii) The fact that one of the UNRWA staff members identified in the report was reportedly dead;
 - (iii) UNRWA's response and the interim report of the UN;
- e) The steps taken to assess the – ongoing - impact of the Decision on:
 - (i) Palestinian civilians currently supported by UNRWA and, in particular, Palestinian children;
 - (ii) UNRWA staff in Gaza;
 - (iii) Refugees sheltering in UNRWA buildings; and
 - (iv) Relief organisations in Gaza working with and/or supported by UNRWA;
- f) The steps taken to mitigate the impact;
- g) Whether funding to agencies other than UNRWA delivering aid to Gaza has been increased to meet the shortfall in supply as a result of the Decision;
- h) The arrangements under which funding was provided to UNRWA prior to the Decision, including whether funding was granted under a contractual arrangement, memorandum of understanding, or otherwise;
- i) The specific impact on UNRWA's finances to date and its prospective impact, including:
 - (i) Whether any monies due to be paid since the Decision have been actively withheld;
 - (ii) The date by which monies are next due to be paid;

- (iii) Any deadlines by which the Decision would need to be reversed in order to preserve future payments that were due before the Decision.
- j) The basis upon which it was decided not to renew funding pending publication of the OIOS final report and the independent report ordered by Philippe Lazzarini, including:
 - (i) What details the Defendant had of the investigations to date;
 - (ii) The timeline for completion of investigations;
 - (iii) What other safeguards the Defendant considered obtaining from UNRWA in order to (temporarily) lift the suspension of funding without having to delay awaiting the completion of the investigation.

We await your response by 2 April 2024.

Yours faithfully

A handwritten signature in black ink, appearing to read "Bindmans", written in a cursive, stylized script.

Bindmans LLP