

## SOUTH AFRICA'S CASE AGAINST ISRAEL AT THE ICJ

By  
**Areeba Arif Khan**  
Research Associate

*Centre for Afghanistan, Middle East & Africa (CAMEA), ISSI*

Edited by  
**Amina Khan**

February 9, 2024

*(Views expressed in the brief are those of the author, and do not represent those of ISSI)*



The International Court of Justice (ICJ) held a two-day session on January 11-12, 2024, in The Hague, as South Africa filed a petition against Israel in ICJ under Article IX of the Genocide Convention, contending that Israel “intends to bring about the destruction of a substantial part of the Palestinian national, racial and ethnical group, that being the part of the Palestinian group in the Gaza Strip”.<sup>1</sup> South Africa invoked the 1948 Convention on the Prevention and Punishment of the Crime of Genocide in late December 2023, marking the second recent case of countries not directly embroiled in a dispute presenting genocide allegations before the ICJ. In 2019, The Gambia had brought a similar case against Myanmar for alleged genocide against the Rohingya community.<sup>2</sup> South Africa sought “provisional measures” from the ICJ to halt the alleged genocide, while Israel denied any genocidal intent in Gaza.

### ICJ jurisdiction

<sup>1</sup> South Africa Institutes ICJ Proceedings Against Israel for Genocide Convention Violation, *Lawfare*, January 03, 2024.

<https://www.lawfaremedia.org/article/south-africa-institutes-icj-proceedings-against-israel-for-genocide-convention-violations>

<sup>2</sup> The Gambia brings historic genocide case against Myanmar, International Bar Association’s Human Rights Institute

<https://www.ibanet.org/artgicle/02A82017-63C8-4C20-A9EB-BC9DBFCF26BC>

The ICJ, as the primary judicial organ of the United Nations (UN), operates under a statute specifying that only states can be parties in its cases. Both South Africa and Israel, being signatories to the Genocide Convention of 1948, are now involved in the case initiated by South Africa invoking this Convention.<sup>3</sup> Provisional measures, interim rulings by the ICJ, aim to prevent either party from causing irreparable harm to the main case. Typically, proceedings before the ICJ take years for resolution. In this particular case, South Africa's 84-page submission requested various measures, including the immediate suspension of Israel's military operations in Gaza and refraining from acts falling under the Genocide Convention against the Palestinian people.<sup>4</sup>

### **Genocide Convention of 1948**

The Genocide Convention of 1948 holds historical significance as the first human rights treaty adopted by the UN General Assembly. Stemming from a commitment to prevent atrocities like the Holocaust, South Africa's case is grounded in Article II of the Convention.<sup>5</sup> According to this article, genocide encompasses acts such as killing members of a national, racial, ethnic, or religious group; causing serious bodily and mental harm to the group's members; and deliberately inflicting conditions of life aimed at the group's physical destruction, either wholly or partially.

South Africa has accused Israel of various offenses, including causing hunger, dehydration, and starvation in Gaza by obstructing sufficient humanitarian aid, cutting off essential resources like water, food, fuel, and electricity, and failing to provide shelter or sanitation to Palestinians in Gaza, including the 1.9 million internally displaced individuals. During the proceedings, South Africa highlighted the death toll of 23,000, with 70% of the victims being women and children. Along with this, South Africa also highlighted several statements by Israeli State representatives, including at the highest levels, by the Israeli President, Prime Minister, and Minister of Defence, illustrating a 'genocidal intent'.

### **South Africa's Stance**

To be sure, lawyers representing South Africa heavily relied on statements and comments attributed to Israeli officials and military leaders during the proceedings. Their argument centred on the assertion that one could infer genocidal intent from both the words and actions of these individuals.

---

<sup>3</sup> "A Quick Guide to South Africa's ICJ Case against Israel", *Al Jazeera*, January 11, 2024.

<https://www.aljazeera.com/news/2024/1/11/a-quick-guide-to-south-africas-icj-case-against-israel>

<sup>4</sup> South Africa Is Taking Israel to Court for Genocide in Palestine. What Does It Mean for the War In Gaza?, *The Wire*, January 12, 2024.

<https://thewire.in/world/south-africa-is-taking-israel-to-court-for-genocide-in-palestine-what-does-it-mean-for-the-war-in-gaza>

<sup>5</sup> Ibid.

Additionally, they extensively quoted officials from international bodies such as the UN, the World Health Organization (WHO), and the International Committee of the Red Cross (ICRC).<sup>6</sup> These quotes highlighted the perilous situation faced by civilians throughout Gaza, emphasizing the collapse of the healthcare system as hospitals became battlegrounds. The lawyers stressed that, amid constant bombardment by the Israel Defence Forces, "nowhere is safe in Gaza."

Furthermore, the South African legal team underscored the need to view the current military operations in the broader context of historical events, including the 'Nakba' of 1948, 75 years of 'apartheid', 56 years of occupation, and 16 years of siege. The term 'Nakba,' meaning 'catastrophe' in Arabic, refers to the mass displacement of Palestinians during the 1948 Arab-Israeli war.

South Africa's presentation also highlighted a remark by Israeli Prime Minister Benjamin Netanyahu, referencing the Biblical story of Amalek. In the Hebrew Bible, Amalek is portrayed as an arch-enemy and rival of the Israelites, and there is a perceived duty for the Israelites to eliminate the Amalekites. This reference was used by South Africa to indicate "genocidal intent," suggesting that Israeli soldiers use it to justify the killing of civilians in Gaza.

### Israel's Stance

In its presentation on January 12, 2024, Israel rejected any notion of 'genocidal intent' in its ongoing campaign, asserting that its actions were legitimate and aligned with international law norms. The core of the Israeli argument was based on the right to self-defence. Israel contended that its operations in Gaza were not intended to harm the population but rather aimed at protecting them. The focus of these operations, according to Israel, was solely against Hamas and its affiliated groups to eliminate their capacity to threaten Israel.

Israel's representative questioned the use of the term 'genocide' in the context of 'a war that Israel did not initiate'. They dismissed the allegation that remarks attributed to Israel's Prime Minister or Defence Minister indicated any genocidal intent, asserting that routine rhetoric had been taken out of context in South Africa's presentation. Israel accused South Africa of relying on statistics provided by Hamas regarding casualties and placed blame on Hamas for using civilians as human shields to maximize harm to the civilian population.<sup>7</sup> Israel argued that unintended civilian casualties during the pursuit of lawful military objectives did not indicate genocidal intent.

---

<sup>6</sup> Public hearings to be held on Thursday 11 and Friday 12 January 2024, **International Court of Justice**. <https://www.icj-cij.org/index.php/node/203397>

<sup>7</sup> Ibid.

## Why South Africa took the case to ICJ

South Africa's long-standing support for the Palestinian cause has deep historical roots; the African National Congress (ANC), South Africa's ruling party, has maintained a historical connection with the people of Gaza and Palestine, as well as with Palestinian liberation movements. This historical relationship plays a significant role in South Africa taking the lead in bringing Israel to the International Court of Justice.<sup>8</sup>

The ANC, formerly a banned liberation movement, played a pivotal role in the armed struggle against the racially discriminatory white apartheid regime in South Africa and Palestine extended full support to ANC's struggle. There is a parallel drawn by the ANC between its historical struggle and the current situation of the Palestinians. Former South African President Nelson Mandela, a key figure in the anti-apartheid movement, shared a close friendship with former Palestinian leader Yasser Arafat. Mandela famously stated that South Africa's freedom would not be complete until the Palestinians achieved their freedom, underscoring the interconnectedness of these historical struggles.

## ICJ Ruling

On January 26, 2024, after two weeks of initial hearings, the International Court of Justice issued a landmark ruling demanding that Israel undertake all necessary measures to prevent acts falling within the purview of the Genocide Convention. While the Court did not go so far as to grant South Africa's plea for an immediate ceasefire in Gaza, it directed Israel to permit the entry of basic services and humanitarian aid into the Palestinian territory. The interim ruling, deemed to impose binding international legal obligations, mandates that Israel report to the Court within a month on the actions taken to ensure compliance. The ICJ's decision takes into account statements by senior Israeli officials, such as Defence Minister Yoav Gallant's directive for a "complete siege" of Gaza and his characterization of the conflict as a battle against "human animals."

Whether Israel will choose to abide by the ruling is debatable since the Court does not have any enforcement powers, raising questions about Israel's compliance.<sup>9</sup> South Africa wants the United Nations Security Council to outline measures that it will take to enforce an International Court of

---

<sup>8</sup> How South Africa's anti-apartheid struggle and Palestinian resistance are linked, *The New Arab*, January 12, 2024.

<https://www.newarab.com/news/explainer-how-s-africa-palestinian-struggles-are-linked>

<sup>9</sup> What enforcement power does the International Court of Justice have in South Africa's genocide case against Israel?, *The Conversation*, January 13, 2024.

<https://theconversation.com/what-enforcement-power-does-the-international-court-of-justice-have-in-south-africas-genocide-case-against-israel-220523>

Justice's interim ruling against Israel as it seeks to sustain international pressure to bring an end to hostilities in the Gaza Strip. While the UN Security Council has the authority to take measures; the effectiveness of such actions is subject to the veto power held by permanent members. Despite the rulings of the Court Israel continued its military offensive and hundreds more Palestinians have been killed, bringing the total number of Palestinian deaths in the war to more than 26,700 according to the latest figures.<sup>10</sup>

## Conclusion

South Africa's filing with ICJ has already made a significant impact, drawing attention not only within Israel but also on the international stage. The case serves as a reminder of the potential consequences for Israel's standing, prompting a reconsideration of its response to the recent Hamas attack. As the ICJ proceedings unfold, there is an opportunity for international law, particularly international humanitarian law, to establish a common framework for assessing such issues. However, the effectiveness of the ICJ hinges on maintaining credibility within the bounds of state consent. Moreover, the situation in Gaza calls for unified international pressure on Israel to cease its actions, stressing the urgent need for an immediate ceasefire by all parties involved to alleviate the unprecedented suffering of civilians in Gaza.

---

<sup>10</sup> South Africa says Israel is already ignoring UN court ruling ordering it to prevent deaths in Gaza, *The Arab News*, January 31, 2024.  
<https://www.arabnews.pk/node/2451676/world>