



# South Africa's Case Against Israel in the International Court of Justice (ICJ)

January 2024

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# Contents

<b>01</b>	<b>Historical Overview of South Africa-Palestine Relationship</b> 3	<b>07</b>	<b>Defence Legal Arguments</b> 20
<b>02</b>	<b>Historical Overview of Apartheid South Africa and Israel</b> 5	<b>08</b>	<b>ICJ Judges</b> 22
<b>03</b>	<b>Context of South African Case</b> 7	<b>09</b>	<b>Impact of ICJ Case</b> 24
<b>04</b>	<b>South Africa's Legal Team</b> 9	<b>10</b>	<b>ICJ Decision</b> 26
<b>05</b>	<b>South Africa's Legal Arguments</b> 14	*	<b>Footnotes</b> 29
<b>06</b>	<b>Israel's Defence Team</b> 17		

01

[← BACK TO CONTENTS](#)

# Historical Overview of South Africa-Palestine Relationship



## 01

# Historical Overview of South Africa- Palestine Relationship

The African National Congress (ANC) has voiced solidarity with the Palestinian cause since the 1950s and 1960s, as did many African nations.<sup>1</sup> The ANC has long had ties with the Palestine Liberation Organisation (PLO).<sup>2</sup> Former South African President Nelson Mandela met Yasser Arafat two weeks after Mandela’s release from prison in 1990, referring to Arafat as a “comrade in arms”.<sup>3</sup> It has been known that the ANC and PLO traded weapons and resistance tactics with each other.<sup>4</sup>

Mandela also visited Palestine and called for peace between both sides, and famously said that South Africa’s “freedom is incomplete without the freedom of the Palestinians”.<sup>5</sup> During his time in Gaza, Mandela remarked that he felt “at home among compatriots”.<sup>6</sup>

Following South Africa’s first non-apartheid elections in 1994, South Africa established diplomatic relations with Palestine in 1995.<sup>7</sup> South Africa’s solidarity with Palestine is borne from a shared history of apartheid and having their liberation struggle designated as ‘terrorist’ by the international community.<sup>8</sup>

In 2022, the ANC described Israel as an ‘apartheid state’ and called on the government to reduce Israel’s diplomatic presence in South Africa.<sup>9</sup> In November 2023, following the unfolding genocide in Gaza, South Africa recalled its diplomats from Tel Aviv and the Parliament voted to close Israel’s embassy in Pretoria.<sup>10</sup>

The ANC has also reiterated its call for an immediate ceasefire in the assault on Gaza, the opening of corridors so that humanitarian assistance can reach those in dire need as well as the release of hostages and political prisoners.<sup>11</sup>

South Africa is also one of a small number of countries to have diplomatic relations with Hamas.<sup>12</sup> Most recently, in December 2023, a Hamas delegation joined Mandela’s grandson for a march in Pretoria, commemorating 10 years since his death.<sup>13</sup>

02

[← BACK TO CONTENTS](#)

# Historical Overview of Apartheid South Africa and Israel



02

# Historical Overview of Apartheid South Africa and Israel

Apartheid South Africa was the first government to visit Israel after its creation in 1948, and the two regimes maintained close ties.<sup>14</sup> In the 1970s, Defence Minister Shimon Peres was instrumental in creating an alliance that helped keep apartheid afloat while the international community grew increasingly critical and hostile.<sup>15</sup>

Israel supplied apartheid South Africa with military advisors and arms and the armed forces of the two countries trained together.<sup>16</sup> They cooperated in their fights against the ANC and PLO.<sup>17</sup> Israel continued to send weapons and technology to South Africa during the UN arms embargo.<sup>18</sup>

Ten years ago, secret documents revealing that Israel had offered to sell nuclear warheads to apartheid South Africa were uncovered.<sup>19</sup> Israel is currently believed to possess between 80 and 400 nuclear warheads but has never publicly acknowledged this.<sup>20</sup>

03

[← BACK TO CONTENTS](#)

# Context of South African Case



## 03

# Context of South African Case

On 29 December 2023, South Africa asked the International Court of Justice (ICJ) to rule on whether the continuing violence and humanitarian tragedy unfolding in Gaza since 7 October amounts to genocide.<sup>21</sup> Following 7 October, Israel has killed over 25,000 Palestinians in Gaza, the majority of whom are women and children. Israel has also wounded over 62,000 Palestinians and displaced 85 percent of Gaza’s population.<sup>22</sup> 1 in 4 of Gazans are experiencing extreme starvation due to Israel’s blockade on aid entering Gaza and the destruction of bakeries.<sup>23</sup> Israel has also used unlawful weapons such as white phosphorus in civilian areas.<sup>24</sup>

South Africa’s petition came after UN experts had called on the international community to prevent genocide against the Palestinian people in November 2023,<sup>25</sup> a call which was supported by the International Federation for Human Rights,<sup>26</sup> and Jewish Voice for Peace.<sup>27</sup>



04

[← BACK TO CONTENTS](#)

# South Africa's Legal Team



04

# South Africa's Legal Team



## Professor John Dugard

Professor Dugard, who is leading South Africa's legal team, is a former UN special rapporteur on human rights in the occupied Palestinian territories.<sup>28</sup> Professor Dugard, viewed as one of South Africa's foremost international law experts, has experience with the ICJ, having served as an ad hoc judge in 2008.<sup>29</sup>

Dugard has vehemently criticised Israel's actions, saying: "Prime Minister Benjamin Netanyahu, his war cabinet, and many members of the Israeli army are responsible for the commission of war crimes, crimes against humanity and, possibly, the crime of genocide".<sup>30</sup>



## Adila Hassim

Hassim is acting as Senior Counsel for the case. She was admitted to the Johannesburg Society of Advocates, South Africa's largest Bar, in 2003.<sup>31</sup> In the 2000s, Hassim worked for the AIDS Law Project.<sup>32</sup>

In 2015, Hassim represented Sonke Gender Justice and the Treatment Action Campaign in the Silicosis class action lawsuit against 32 mining companies in court.<sup>33</sup> In 2017, Hassim became Lead Counsel in the Life Esidimeni Arbitration, representing Section27 and the 144 mental healthcare patients who died in the scandal.<sup>34</sup>

Hassim co-edited *Health & Democracy: A Guide to Human Rights and Health Law and Policy in Post-apartheid South Africa* (2007) and *The National Health Act: A Guide* (2008).<sup>35</sup>

## South Africa's Legal Team continued...



### **Tembeka Ngcukaitobi**

Ngcukaitobi SC is a South African lawyer and legal scholar, who has been an advocate of the Johannesburg Bar since August 2010.<sup>36</sup> He spent three years as director of the constitutional litigation unit at the Legal Resources Centre, during which time he worked with George Bizos as counsel for the families of the victims of the Marikana massacre.<sup>37</sup>

He has written two books about land dispossession and land reform, *The Land Is Ours* (2018) and *Land Matters* (2021), and he has acted as a judge in the Labour Court, the Land Claims Court, and the High Court of South Africa.<sup>38</sup>



### **Max Du Plessis**

Du Plessis has acted or appeared in leading cases on international law and human rights in the International Court of Justice, the African Commission on Human and Peoples Rights and the SADC Tribunal and has acted as adviser to governments and NGOs on questions of international and international criminal law.<sup>39</sup> He has acted as counsel in South Africa's leading international law cases before the Constitutional Court and Supreme Court of Appeal.<sup>40</sup>

Du Plessis has represented NGOs in South Africa in utilising South Africa's Implementation of the Rome Statute of the International Criminal Court Act in pursuing cases against individuals accused of international crimes in Zimbabwe, Rwanda, and Madagascar.<sup>41</sup> He is also an adjunct professor of international law at the University of Cape Town, and adjunct professor of public law at the Nelson Mandela University.<sup>42</sup>

## South Africa's Legal Team continued...



### **Tshidiso Ramogale**

Ramogale is a South African advocate and Harvard graduate, known for his work in social justice.<sup>43</sup> In 2021 and 2022, Ramogale successfully provided legal counsel to the late South African rapper Kiernan Forbes (AKA) in Forbes' battle with Makhuducom Media.<sup>44</sup>



### **Sarah Pudifin-Jones**

Pudifin-Jones is a legal advocate and Cambridge University graduate who has appeared in the Constitutional Court, the Supreme Court of Appeal, the Competition Appeal Court, High Courts around the country as well as various regulatory tribunals.<sup>45</sup> Sarah is also the co-editor of the first book in South African law on Class Action litigation.<sup>46</sup>



### **Lerato Zikalala**

Zikalala was called to the Bar in 2016 where she conducts a practice in public and private law, specializing in constitutional and administrative law.<sup>47</sup>

## South Africa's Legal Team continued...



### Blinne Ni Ghralaigh

Ni Ghralaigh is an Irish lawyer providing external counsel to South Africa's legal team.<sup>48</sup> She was a legal observer on the Bloody Sunday Inquiry and was called to the Bar of England and Wales in 2005.<sup>49</sup> She was vice chair of the Bar Human Rights Committee from 2014 to 2019. In 2016, she was a visiting fellow at Harvard Law School.<sup>50</sup>

In 2015, Ní Ghrálaigh worked on the Croatia–Serbia genocide case at the International Court of Justice on behalf of Croatia.<sup>51</sup> In 2017, she secured an acquittal for activists Sam Walton and Dan Woodhouse, who had been arrested for attempting to disarm Typhoon jets they believed were bound for Saudi Arabia to be used to bomb Yemen.<sup>52</sup>

Ní Ghrálaigh went on to work on the Colston Four trial regarding the toppling of the Colston statue by four protesters in Bristol in 2020, representing Rhian Graham.<sup>53</sup> The jury acquitted the protesters in January 2022, and The Times named Ní Ghrálaigh Lawyer of the Week.<sup>54</sup> She has previously been to the Gaza strip on a legal fact-finding in the aftermath of Operation Cast Lead in 2009.<sup>55</sup>



### Vaughan Lowe

Lowe is a British lawyer also providing external counsel. He has had cases in the International Court of Justice, the ECJ, the ECHR, the ITLOS, the Iran-US Claims Tribunal, ad hoc Arbitral Tribunals and courts in England and Hong Kong, among others.<sup>56</sup>

He has also sat as an arbitrator in tribunals addressing the boundaries between Trinidad and Barbados, and between Croatia and Slovenia.<sup>57</sup> He has sat as an ad hoc judge on the European Court of Human Rights and served as the UK-nominated judge on the European Nuclear Energy Tribunal.<sup>58</sup>

Among his more notable cases as counsel are: in the ICJ, the Antarctic Whaling case (for Japan), the Romania v Ukraine, Peru v Chile and Nicaragua v Colombia maritime boundary cases (for Romania, Peru, Nicaragua), the Palestinian Wall case (for Palestine), the Avena (Interpretation) case (for the USA), the Kosovo case (for Cyprus), the Timor-Leste v Australia case concerning certain documents (for Timor-Leste), and the Bolivia v Chile case concerning the obligation to negotiate access to the Pacific Ocean (for Bolivia).<sup>59</sup>

05

[← BACK TO CONTENTS](#)

# South Africa's Legal Arguments



# South Africa's Legal Arguments

In its 84-page submission to the ICJ, South Africa argues that Israel is violating its obligations under the 1948 Geneva Conventions on the prevention and punishment of genocide.<sup>60</sup> The application, brought under Article IX of the Genocide Convention, states that Israel “intend[s] 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>61</sup>

Adila Hassim argues that it’s not necessary for the court to come to a final sentence on the genocide allegations now, but that it could conclude that at least some of Israel’s actions fall within the definition of the convention, and thus, intervene.<sup>62</sup>

South Africa alleges that the state of Israel has failed to prevent genocide, failed to prosecute public incitement to genocide, and has directly engaged in genocidal acts in Gaza.<sup>63</sup> South Africa’s legal team alleged five main “genocidal acts” committed by Israel against Palestinians in Gaza, including “the mass killing of Palestinians,” the “infliction of serious mental and bodily harm,” “expulsion and forced displacement,” “assault on Gaza’s healthcare system, which renders life unsustainable,” and the imposition of “measures intended to prevent births within the group.”<sup>64</sup>

## Mass Killings of Palestinians

The “first genocidal act is the mass killing of Palestinians in Gaza”, Hassim said, showing the court pictures of mass graves where bodies were buried, “often unidentified”.<sup>65</sup> She said Israel has deployed highly destructive 2000-pound bombs in parts of Gaza it had declared safe.<sup>66</sup> More than 1,800 families have lost multiple family members, while some families do not have any survivors left, Hassim said. No one has been spared, not babies nor children, she added.<sup>67</sup>

## Bodily and Mental Harm

The second genocidal act, Hassim said, “is Israel’s infliction of serious mental and bodily harm,” on the people in Gaza.<sup>68</sup> Over 60,000 people have been wounded, most of them women and children. Hassim cited the arrest of large numbers of Palestinians, including children, who were undressed and loaded onto trucks going to unknown locations.<sup>69</sup> “The suffering of the Palestinian people, physical and mental, is undeniable,” she said.<sup>70</sup>

## Forced Displacement and Food Blockade

Hassim said Israel has deliberately imposed conditions that cannot sustain life and are calculated to bring about the destruction of Gaza through forced displacement of the population.<sup>71</sup> Hassim said thousands of families have been displaced multiple times, with half a million having no homes to return to.<sup>72</sup> She cited how Israel gave entire hospitals orders to evacuate within 24 hours with no assistance in moving the injured or medical supplies.<sup>73</sup> It did the same with large parts of northern Gaza, where more than one million people were asked to move at short notice.<sup>74</sup> “The order itself was genocidal,” Hassim said.<sup>75</sup>

Hassim added that Israel has also blockaded food and water from the Gaza Strip, causing widespread hunger, and removed the ability to distribute what is available by restricting the movement of aid workers.<sup>76</sup>

Israel, Hassim added, has also deliberately imposed conditions denying Palestinians in Gaza adequate shelter, clothes, bedding and other critical non-food items.<sup>77</sup> She said there is no safe water to drink, clean and cook, and that disease cases, including diarrhoea, are soaring.<sup>78</sup> She said more Palestinians may die from hunger and disease, yet the siege continues.<sup>79</sup>

## South Africa's Legal Arguments continued...

### Destruction of the Healthcare System

The fourth genocidal action, Hassim said, is Israel's military assault on Gaza's healthcare system that renders life there unsustainable.<sup>80</sup> Gaza's healthcare was already crippled by years of attack by Israel, she said, and now, it is simply unable to cope with the sheer number of injured people who need life-saving treatment.<sup>81</sup>

### Preventing Palestinian Births

Lastly, Hassim added, Israel is blocking life-saving treatment needed to deliver babies.<sup>82</sup> This, she added, amounts to preventing births in Gaza, and is an act of genocide.<sup>83</sup> Hassim also cited Reem Alsalem, UN special rapporteur on violence against women and girls, who had earlier warned that the "reproductive violence inflicted by Israel on Palestinian women, newborn babies infants and children ... could be qualified as acts of genocide".<sup>84</sup>



06

[← BACK TO CONTENTS](#)

# Israel's Defence Team



06

# Israel's Defence Team



## Malcolm Shaw

Israel has chosen British lawyer Malcolm Shaw to represent it at the ICJ.<sup>85</sup> Shaw is considered one of the world's leading experts on international law and has appeared before the ICJ in the past.<sup>86</sup> He has “developed an international reputation for advising on territorial disputes; law of the sea; state succession; state immunity; recognition of foreign governments and states; human rights; self-determination, international arbitration and international organizations”.<sup>87</sup>

He has also advised various governments, including the UK, Ukraine, and Serbia.<sup>88</sup> Apart from the ICJ, Shaw has previously been involved in cases at the European Court of Human Rights and the European Court of Justice.<sup>89</sup>



## Tal Becker

Becker was born in Paris to Moroccan-Australian parents.<sup>90</sup> He is the legal adviser of the Israeli Ministry of Foreign Affairs and a veteran member of successive Israeli peace negotiation teams.<sup>91</sup> He played an instrumental role in negotiating and drafting the recent peace and normalization agreements between Israel and the UAE, Bahrain, Morocco, and Sudan.<sup>92</sup>

## Israel's Defence Team continued...



### **Omri Sender**

Sender is Israel's deputy attorney general for international affairs.<sup>93</sup>



### **Galit Raguam**

Raguam is the acting director of the international justice division at Israel's Justice Ministry.<sup>94</sup>



### **Christopher Staker**

Staker is an international lawyer previously on the criminal tribunal for the former Yugoslavia.<sup>95</sup>

07

[← BACK TO CONTENTS](#)

# Defence Legal Arguments



# Defence Legal Arguments

Israel argued that it has a right to defend itself under international law in response to Hamas's attacks on 7 October 2023.<sup>96</sup> However, this right does not apply to occupied territory, such as Gaza.<sup>97</sup>

Israel's legal team has also argued that any interim measure ordering Israel to cease military operations in Gaza would "deny Israel its ability to meet its obligations to the defence of its citizens, to the hostages and to over 110,000 internally displaced Israelis unable to safely return to their homes," according to Israel's legal team.<sup>98</sup>

Israel also said its alleged genocidal intent to be "totally lacking" and based only on "random assertions."<sup>99</sup> Talking about alleged examples of breaches of the genocide convention cited by South Africa's legal team, Shaw said: "Some of the comments that South Africa have shown us are clearly rhetorical, made in the immediate aftermath of an event which severely traumatised Israel and

which cannot be seen as demanding genocide, [and] expressed anguish and the necessity to restore control over Israel's own territory under severe threat and safety to its citizens".<sup>100</sup>

Sender said Israel had gone to "extraordinary efforts" to improve the humanitarian situation in Gaza only to be hampered by Hamas.<sup>101</sup> It is unclear what efforts he is referring to considering the ongoing blockade of Gaza imposed by Israel that has prevented food, water, medical supplies, and fuel from entering Gaza.<sup>102</sup> Staker continued by claiming that Israel had facilitated humanitarian aid.<sup>103</sup>

Raguam said: "Hospitals have not been bombed. Rather the IDF sent soldiers to search and dismantle military infrastructure, reducing damage and disruption".<sup>104</sup> This statement has been widely debunked, as damage to hospitals has been widely documented by various humanitarian organisations and media outlets.<sup>105</sup>

08

[← BACK TO CONTENTS](#)

# ICJ Judges



# ICJ Judges

The ICJ is composed of 15 judges elected by the UN General Assembly and Security Council for nine-year terms.<sup>106</sup>

Under ICJ rules, a country that is party to a case and does not have a judge of its nationality on the bench can nominate a judge, which is the case for both Israel and South Africa.<sup>107</sup>

South Africa has appointed Dikgang Moseneke, the country's former deputy chief justice with a distinguished legal and academic career in South Africa and abroad.<sup>108</sup>

Israel picked Aharon Barak, former president of the country's Supreme Court. Barak has voiced support for Israel's war on Gaza, claiming the military offensive was not in violation of humanitarian law.<sup>109</sup> He also defended Israel's decision to build

a separation wall through the occupied West Bank, following a 2004 ruling by the ICJ declaring it illegal.<sup>110</sup>

The other 15 judges of the court are from different countries. Joan Donoghue, from the US, is the president of the court, and Russia's Kirill Gevorgian is vice-president.<sup>111</sup>

The other judges include: Somalia's Abdulqawi Yusuf, Uganda's Julia Sebutinde, Morocco's Mohamed Bennouna, China's Xue Hangin, Slovakia's Peter Tomka, France's Ronny Abraham, Brazil's Leonardo Nemer Caldeira Brant, India's Dalveer Bhandari, Jamaica's Patrick Lipton Robinson, Australia's Hilary Charlesworth, Lebanon's Nawaf Salam, Japan's Yuji Iwasawa, and Germany's Georg Nolte.<sup>112</sup>

09

[← BACK TO CONTENTS](#)

# Impact of ICJ Case





# Impact of ICJ Case

For Palestinians and the Global South, the ICJ case is not just about Palestine, but a test of the credibility of the entire international legal system.<sup>113</sup> However, even if the court might find grounds for granting those provisional measures, the direct impact would probably be limited given that the ICJ lacks any sort of enforcement power.<sup>114</sup> The same court issued an order for the removal of the Israeli barrier in the occupied West Bank.<sup>115</sup> The barrier remains 20 years on.<sup>116</sup>

Nonetheless, if the court ruled that the ongoing situation is genocidal, it would theoretically force all signatories of the convention to confront their own obligations to cease complicity with an operation.<sup>117</sup>

The credibility of the ICJ is also at stake.<sup>118</sup> If the ICJ finds Israel’s defence persuasive and rejects the petition, the court will have cowered to Western favouritism.<sup>119</sup> If the court grants South Africa the requested measures, and they then remain unimplemented, the convention will appear simply as an advisory statement, rather than an enduring commitment.<sup>120</sup>

Regardless of the outcomes of the case, the ICJ case has emboldened support for Palestine worldwide, especially for advocates labelling Israel’s attacks on Gaza a genocide.<sup>121</sup> Other countries have also voiced support for South Africa’s case, including members of the Organisation of Islamic Countries, Malaysia, Turkey, Jordan, the Maldives, Namibia, Pakistan, members of the Arab League, Colombia, and Brazil.<sup>122</sup>

## Germany’s Intervention

Germany said it would intervene in the proceedings on Israel’s behalf, saying there was “no basis whatsoever” for an accusation of genocide against Israel.<sup>123</sup> A government spokesperson said: “The German government decisively and expressly rejects the accusation of genocide brought against Israel before the international court of justice”.<sup>124</sup> He continued, “In light of German history and the crimes against humanity of the Shoah, the German government is particularly committed to the (UN) genocide convention,” signed in 1948 in the wake of the Holocaust.<sup>125</sup>

Under the court’s rules, if Germany files a declaration of intervention in the case, it would be able to make legal arguments on behalf of Israel.<sup>126</sup>

## Namibia’s Response to Germany

Namibia has criticised Germany’s “shocking decision” to support Israel in the genocide case at the ICJ brought by South Africa.<sup>127</sup> “Germany has chosen to defend in the ICJ the genocidal and gruesome acts of the Israeli government against innocent civilians in Gaza and the occupied Palestinian Territories,” the president of Namibia, Hage Geingob, said in a statement on social media platform, X.<sup>128</sup>

The statement reminded Germany that it committed the first genocide of the 20th century in Namibia between 1904 and 1908, in which tens of thousands of Namibians died in inhumane and brutal conditions.<sup>129</sup> Namibia’s president said: “Germany cannot morally express commitment to the United Nations Convention against genocide, including atonement for the genocide in Namibia, whilst supporting the equivalent of a holocaust and genocide in Gaza”.<sup>130</sup>

10

[← BACK TO CONTENTS](#)

# ICJ Decision



# ICJ Decision

On 26 January 2024, the ICJ determined that there is a case for Israel to face trial for genocide, and that some provisional measures requested by South Africa must be implemented.<sup>131</sup> Overall, the case delivered mixed results. Whilst the ICJ ruled in favour of South Africa having a plausible case against Israel, and granted several provisional measures to alleviate Gaza's suffering, the Court did not rule in favour of a ceasefire or call for a suspension of Israel's attacks on Gaza.<sup>132</sup>

## Jurisdiction

In order for the case to be eligible legally, the court had to determine that it has prima facie jurisdiction to rule on the question of genocide in Gaza.<sup>133</sup> Ultimately, the ICJ determined that there is a "dispute" between South Africa and Israel, establishing that the court does have jurisdiction to rule on the case of Israel's genocide in Gaza.<sup>134</sup> The Court also ruled that it has jurisdiction under the Genocide Convention to open a case on the question of Israel's genocide in Gaza.<sup>135</sup>

The Court further ruled that South Africa has the legal right to bring this case against Israel, under the obligations of States' parties to the Genocide Convention, whereby States' have an obligation to prevent genocide elsewhere.<sup>136</sup> Combined, these decisions determined that the ICJ does have jurisdiction to rule on the question of Israel's genocide in Gaza.<sup>137</sup>

## Plausibility of Genocide Taking Place

The ICJ ruled that there had been sufficient devastation, displacement, trauma, and killing in Gaza to plausibly constitute a genocide, and that senior Israeli officials had made dehumanising statements which could be considered intent to commit genocide.<sup>138</sup>

This does not mean the ICJ has definitively determined that a genocide is taking place in Gaza – this can only be determined through a full and thorough court case, probably lasting years – but that there is sufficient preliminary evidence for provisional measures to be granted and the case to be taken forwards.<sup>139</sup>

## Provisional Measures

The ICJ determined that there is a sufficient "link" between the legal rights of Palestinians that require protection in Gaza, and the provisional measures requested by South Africa.<sup>140</sup>

The Court also found that there is enough "urgency" and potential for "irreparable harm" because of the humanitarian situation in Gaza for the ICJ to order some provisional measures.<sup>141</sup> However, the Court ruled that these provisional measures do not have to match those requested by South Africa.<sup>142</sup>

The ICJ ordered the following provisional measures:

1. By 15 votes to 2: Israel shall take all measures within its power to prevent genocidal attacks against Palestinians.<sup>143</sup> Dissenting judges were Israel's Barak and Uganda's Sebutinde.<sup>144</sup>
2. By 15 votes to 2: Israel shall ensure that its army does not commit any genocidal acts.<sup>145</sup> Dissenting judges were Israel's Barak and Uganda's Sebutinde.<sup>146</sup>
3. By 16 votes to 1: Israel will prevent and punish public incitement to commit genocide against Palestinians.<sup>147</sup> Dissenting judge was Uganda's Sebutinde.<sup>148</sup>
4. By 16 votes to 1: Israel will ensure the provision of urgent services and humanitarian aid to Gaza.<sup>149</sup> Dissenting judge was Uganda's Sebutinde.<sup>150</sup>

## ICJ Decision continued...

5. By 15 votes to 2: Israel will ensure the preservation of evidence related to allegations of genocide.<sup>151</sup> Dissenting judges were Israel's Barak and Uganda's Sebutinde.<sup>152</sup>
6. By 15 votes to 2: Israel will submit a report to the court in one month demonstrating its compliance with these orders.<sup>153</sup> Dissenting judges were Israel's Barak and Uganda's Sebutinde.<sup>154</sup>

## Ceasefire

Despite the provisional measures outlined, many consider that the case has not been entirely successful, as the Court did not call for a ceasefire or for Israel to cease hostilities,<sup>155</sup> as it did for the Russian invasion of Ukraine.<sup>156</sup> This means that Israel does not have to stop attacking Gaza, but just do so in a way that the Court does not consider to constitute genocide.<sup>157</sup>

## Other Limitations of the Decision

The Court ignored the historical context and conditions which gave rise to 7 October, beginning the narrative of events in Gaza from Hamas' attacks,<sup>158</sup> not Israel's blockade of the Gaza strip for over 15 years.<sup>159</sup>

# Footnotes

- 1-3 ‘South Africa’s support for the Palestinian cause has deep roots’ *The Economist* (11 January 2024) available at <https://www.economist.com/middle-east-and-africa/2024/01/11/south-africas-support-for-the-palestinian-cause-has-deep-roots>
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- 6 ‘Unpack the past: Mandela, the keffiyeh and South Africa’s Palestine embrace’ (5 December 2023) available at <https://www.aljazeera.com/features/2023/12/5/unpack-the-past-mandela-the-keffiyeh-and-south-africas-palestine-embrace>
- 7-8 ‘South Africa’s support for the Palestinian cause has deep roots’ *The Economist*
- 9-10 ‘South Africa lawmakers vote to suspend Israel ties, close embassy’ *Al Jazeera* (21 November 2023) available at <https://www.aljazeera.com/news/2023/11/21/south-african-parliament-votes-for-motion-calling-to-close-israeli-embassy>
- 11 ‘Altruism, opportunism or both: What pushed South Africa to ICJ over Gaza?’ *Al Jazeera*
- 12-13 ‘South Africa’s support for the Palestinian cause has deep roots’ *The Economist*
- 14-17 ‘Explainer: How South Africa’s anti-apartheid struggle and Palestinian resistance are linked’ *The New Arab*
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- 28-30 ‘Who are the judges and lawyers in South Africa, Israel showdown at ICJ?’ TRTAfrika (11 January 2024) available at <https://www.trtafrika.com/insight/who-are-the-judges-and-lawyers-in-south-africa-israel-showdown-at-icj-16613195>

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