



### [The Merits of South Africa's International Court of Justice Case Against Israel](#)

In a noteworthy recent development, South Africa has filed a landmark case against Israel at the International Court of Justice (ICJ), alleging that Israel's actions and policies in the Gaza Strip are tantamount to genocide and calling on the ICJ to demand an immediate halt to military operations there. South Africa's 84-page suit details its grave concern with the plight of Palestinian civilians in the Gaza Strip due to Israel's indiscriminate use of force. In it, they reference the array of evidence of crimes against humanity and war crimes being committed including the killing of tens of thousands of Palestinian civilians, a disturbing number of which have been children, the expulsion and displacement of Gaza Strip inhabitants, the destruction of their homes, and the barriers to allowing for food, water, medical, and other humanitarian assistance. The case also outlines how Israel is carrying out other international law violations by attacking sites such as hospitals where the sick and wounded are gathered, in addition to ones containing historic, educational, and religious monuments. In the suit, Israel is accused of both perpetrating actions that constitute genocide and not acting to prevent inflammatory statements that call for genocide. Israel's military campaign in Gaza has driven an estimated 85% of the enclave's population from their homes and forced hundreds of thousands into overcrowded shelters in areas that Israel has nevertheless bombed. As such, South Africa has requested that the ICJ discuss the matter of its case in the coming days and issue an injunction against Israel calling for a ceasefire in the Gaza Strip. They have also petitioned the court to allow Palestinians removed from their homes to return to them and to allow for an independent investigation of Israel's military actions.

Israel usually dismisses international tribunals and court cases against it as supposedly being "unfair and biased," and thus government officials' decision to respond to the charges signals to many that they are concerned. Analysts and legal experts point to how this stance appears to demonstrate that Israel is taking the complaint as a serious challenge to its policies in the Gaza Strip. In fact, there is a sentiment that a real possibility exists that the ICJ will issue an injunction calling on Israel to halt its military operations. Due to this, the Israeli military and State Attorney's Office have begun to make preparations to deal with the complaint. Unlike the International Criminal Court (ICC), whose jurisdiction Israel does not recognize, Israel is a signatory to the 1948 Genocide Convention and is therefore subject to the ICJ and its rulings. Therefore, validations of the claims in the South African ICJ case could result in further diplomatic isolation and sanctions against Israel and Israeli businesses. Additionally, the proceedings in the ICJ can influence those at the ICC. So, if it is determined at the ICJ that Israel is committing acts that constitute genocide, the prosecutor at the ICC may consider taking steps against senior Israeli officials for their involvement.

Observers contend that South Africa's case is significant, as the ICJ is influential in shaping international law and the perceptions of the global community. With their suit, South Africa is arguing that Israel has shown intent to commit crimes against humanity through incendiary statements of senior Israeli figures, including President Isaac Herzog, Prime Minister Benjamin Netanyahu, and Israeli Ministers Bezalel Smotrich, Itamar Ben-Gvir, and Amihai Eliyahu, in conjunction with destructive military actions which align with these. Human rights commentators themselves have also accused Israeli law enforcement officials of failing to act against extreme statements by high-level Israeli officials. The ICJ case has garnered such a level of concern among Israeli officials that an inter-ministerial team has begun preparing a defense against the suit filed by South Africa. Israel's decision to defend

itself, coupled with the fact that it is a signatory to the genocide convention, might leave the country open to further global condemnation if it ultimately loses the case and is deemed to have breached the convention. The first hearings for the ICJ case have been slated for January 11th and 12th. Following these, it is anticipated that the court could take a week or two to issue a decision on the emergency measures requested by South Africa. Whether Israel would comply with any ICJ order to alter its military tactics or not, the mere reputational damage of such a ruling would be substantial. With its request for emergency measures, what South Africa simply seeks in the initial stages of the proceedings is to have the court determine if the acts complained of are capable of falling within the provisions of the genocide convention.

The ICJ is a separate entity from the International Criminal Court (ICC), the latter of which is already investigating alleged war crimes committed by both Israel and Hamas in the aftermath of the October 7th attacks. The ICC is mainly set up to examine and prosecute individuals at the highest level who are accused of planning and directing war crimes. At the ICJ on the other hand, any country can put forth charges under the genocide convention – as South Africa has done against Israel – with both being signatories to it. As a result, South Africa's case represents one of the few available avenues for an international body to make a clear statement about Israel's military actions in Gaza. The ICJ deals with legal disputes between states, and has the authority to deliberate on certain issues such as genocide by way of established international covenants. There are also foreign policy implications to try and hold Israel accountable on this type of platform, as the ICJ is an esteemed institution with prestige on the international stage. The 1948 Genocide Convention itself was the first human rights treaty adopted by the United Nations General Assembly and highlighted the international community's commitment to never again allow for the type of heinous atrocities that took place during World War II. The convention places the obligation on state entities to take measures to prevent and punish genocidal actions.

In the contents of the full ICJ suit, South Africa details many specific examples of what it outlines as “direct and public incitement to commit genocide by Israeli state officials.” These include threats to make Gaza permanently uninhabitable, derogatory references to Palestinians, and calls to resettle Palestinians outside of Gaza. The South African petition also points out how impartial United Nations experts themselves have repeatedly sounded the alarm in the preceding months over statements made by Israeli political leaders accompanied by military actions in both Gaza and the West Bank. Furthermore, the 84-page document delves into the destructive scale of the Israeli military assault on Gaza, which has been described as one of the “heaviest conventional bombing campaigns” in the history of modern warfare. The report discusses the hardship and danger that civilians in Gaza have faced, as they have fled their homes to supposed “safe zones” according to Israel, only to be subjected to further bombardment in those areas as well. Importantly, the comprehensive document also highlights the grave humanitarian situation in Gaza, including the disproportionate and troubling impact it has had on children in the besieged enclave.

Even prior to the South Africa ICJ case filing, Israel has already been under growing international condemnation regarding its military operations in Gaza. This has included both widespread global protests and diplomatic pressure. Over the course of recent months, pro-Palestinian protests have emerged all over the world in response to Israel's actions. Observers say that the current wave of protests in support of Palestinians represent some of the largest historically in the United States and around the world. According to estimates, there have been thousands of solidarity protests in the United States alone which have involved hundreds of thousands of people across the country. Similarly to the South Africa ICJ case, demands for an end to Israeli hostilities in Gaza have become a major rallying cry at these protests, as have accusations of genocide against the Palestinian people. The current prevalence of pro-Palestinian protests has drawn an even wider coalition than the significant ones which took place in the aftermath of the outbreak of violence between Israel and Hamas in May of 2021.

With regards to diplomatic pressure on Israel in response to its actions in Gaza, the United States itself has even tried to convince Israel to scale back its military operations. In the face of mounting evidence of Israeli human rights violations, U.S. officials including Secretary of State Antony Blinken have become more outspoken about the need to protect Palestinian civilians. Despite supposed assurances from Israel that it would do so, Blinken and others have alluded to the gap between the alleged intent and the actual results. Thus, many human rights advocates have called on U.S. officials to more forcefully demand that Israel curtail its destructive military

operations and use the threat of withholding or setting conditions on massive amounts of increasingly-criticized American military aid.

While the ICJ case will not reach a final judgement anytime soon, most anticipate that the court will likely rule within weeks on South Africa's request for interim orders on the immediate suspension of Israeli military operations in Gaza following the scheduled upcoming hearings on January 11th and January 12th. Ultimately, regardless of outcome and potential concrete actions taken from the prospective ruling, the filing of the ICJ case itself on the global stage marks a significant moment in human rights advocacy and diplomacy – particularly considering the backdrop of growing international condemnation and concern about Israel's military actions in Gaza.