



PROVISIONAL MEASURES CAN
MAKING RULING ON GENOCIDE

REDRAWING GAZA

ISRAEL ON TRIAL AT THE WORLD COURT



On 29 December, South Africa submitted a case against Israel to the International Court of Justice, accusing Israel of genocide of the Palestinian people in Gaza and calling for an immediate ceasefire.

The International Court of Justice (ICJ) and the International Criminal Court (ICC)

The International Court of Justice, also known as the ICJ or the World Court, is the main judicial organ of the United Nations. The Court was established in 1945 to settle legal disputes between UN Member States in accordance with international law and to give advisory opinions on legal questions.

The International Court of Justice differs from the International Criminal Court (ICC), which was established in 2002 to investigate and try individuals charged with the crimes of genocide, war crimes, crimes against humanity, and crimes of aggression.

Some differences between the two courts:

- The ICJ deals with disputes between countries and crimes perpetrated by governments (rather than individuals), while the ICC deals with cases against individuals for war crimes or crimes against humanity.
- The ICJ is one of the United Nations' six principal bodies. The ICC is not a United Nations organisation, but it has a cooperation agreement with the UN and is endorsed by the UN General Assembly.
- The ICJ allows UN Member States to file legal cases against other countries for violating international law, while the ICC internally examines crimes to determine if there is enough evidence to begin a trial.

Accusations of bias:

Both courts have been accused of bias and Eurocentrism. The majority of ICC investigations have been in African countries, which has led to claims of selective justice, bias against Africans, and upholding European colonial power over the Global South. The ICJ has also been accused of bias. A 2005 study showed strong evidence that judges in the ICJ are more likely to vote in the interests of the states that appointed them to the Court. The same study found strong evidence that judges also favour states with similar wealth levels to theirs.

Enforcement:

Neither court has power to enforce their rulings. While ICJ rulings are considered final, the court relies on the UN Security Council to enforce judgements. The ICJ also gives veto power to UN Security Council Permanent Members, which are China, France, Russia, the UK, and the US, which is Israel's strongest ally. The ICC relies on the cooperation of member states to bring individuals to trial.

What South Africa's case could do

- Regardless of the ruling of the Court, South Africa's decision to bring charges to the ICJ against Israel has highlighted solidarity between the Global South and Palestinians, and is a clear statement of international support for Palestine amidst the genocide.
- South Africa's role, with their recent history of struggling against and overcoming colonial violence and apartheid, adds another element of solidarity in submitting this case.
- South Africa is fulfilling its duty to prevent genocide by initiating proceedings against Israel, as a State party to the Genocide Convention.
- The ICJ's provisional measures could put more pressure on Israel's allies not to continue to support its military assault on Gaza.
- The Court's provisional order for Israel to ensure humanitarian aid is able to reach Palestinians in Gaza, could mean countries that cut funding to UNRWA in the immediate aftermath of the ruling are complicit in enabling genocide.
- An ICJ ruling (and trial) adds to the historical record of Israel's crimes against humanity and against the Palestinian people, which could benefit international support for Palestine and encourage countries to politically isolate Israel.
- The ICJ ruling could put pressure on the ICC to include crimes against humanity and the crime of genocide in its ongoing investigation into the situation in Palestine and issue arrest warrants for those suspected of such crimes within Israel's political, military and administrative apparatus .
- If the ICJ rules that Israel is committing genocide, foreign governments such as the UK and the US (which has sent tens of billions of dollars in additional military aid to Israel since 7 October) could be charged with being in violation of the Genocide Convention on the grounds of complicity.

"In reality, you will see that states do fail to comply with legal rulings, but it's still really important that an international institution like the ICJ adjudicates these cases and publicly validates international norms." — Amanda Ghahremani, international criminal lawyer and research fellow at the Human Rights Center at the University of California, Berkeley.

Why Israel's actions have been referred to as 'genocide'

South Africa's case against Israel outlines how Israel's actions in Gaza violate the Convention on the Prevention and Punishment of the Crime of Genocide. South Africa's legal team found that Israel is in violation of 4 out of the 5 acts listed in the Convention that define genocide when committed with "intent to destroy, in whole or in part, a national, ethnic, racial or religious group." These four acts that are listed in the ICJ case are:

- Killing members of a group;
- Causing serious bodily or mental harm to the members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
- Imposing measures intended to prevent births within the group.

The fifth act listed in the Convention on the Prevention and Punishment of the Crime of Genocide, not listed in South Africa's ICJ case, is "forcibly transferring children of the group to another group."

Although this act is not included in South Africa's case, some reports have emerged alleging that Israeli soldiers have abducted Palestinian children and forcibly transferred them out of Gaza.

The Convention states that genocide, the conspiracy to commit genocide, direct and public incitement to commit genocide, attempts to commit genocide, and complicity in genocide are all punishable crimes.



Previous examples of genocide cases being brought to the ICJ

In 2019, Gambia filed a case to the International Court of Justice against Myanmar for genocide against the Rohingya people.

In November 2023, Canada, France, the UK, Germany, Denmark, and the Netherlands filed a declaration to join the genocide case against Myanmar at the ICJ. The UK has been accused of double standards in their support of the Rohingya people and their disregard of Palestinians who have been made victims of the same crime.

Although the UK is not supporting South Africa in their claim against Israel, one of the arguments they used to support Gambia in their case against Myanmar was the involvement of children. The UK argued that the violence against children in Myanmar requires less proof of intent compared to violence against adults.

However, as of 11 January, Israel forces are reported to have killed more than 10,000 children in only 96 days. That means over 42% of the people killed have been children. More than 10 children per day, on average, have lost one or both of their legs from Israeli airstrikes and more than 1,000 children in Gaza have had one or both legs amputated since the beginning of Israel's military assault. Because of Israel's direct attacks on hospitals and the healthcare system in Gaza, many of these amputations have been done without anaesthesia.

"The suffering of children in this [...] is unimaginable and even more so because it is unnecessary and completely avoidable. This suffering, the killing and maiming of children is condemned as a grave violation against children, and perpetrators must be held to account."

– Jason Lee, Save the Children's Country Director for the occupied Palestinian territory

Despite evidence that Israel is committing 4 of the 6 grave violations of children's rights outlined in a resolution on children and armed conflict adopted by the UN Security Council in 1999, the UK has yet to give their support to South Africa in their case against Israel 1999, the UK has chosen not to support South Africa's case against Israel.

As of 9 January 2024, the legal proceedings against Myanmar are still ongoing.

Role of the Global South in pushing this case forward

While the UK, US and other governments in the Global North have refused to lend their support to South Africa's case against Israel, a number of countries in the Global South have joined the case in support of the Palestinian people.

Countries that support holding Israel accountable for their crimes through this case submission include:

- Jordan
- Bolivia (the first Latin American country to back the case)
- Malaysia
- Turkey
- Namibia
- The Maldives
- Pakistan
- Colombia
- Brazil
- Venezuela

The regional bodies of the Arab League and the Organisation of Islamic Countries (which includes Saudi Arabia, Iran, Pakistan, and Morocco) have also supported South Africa's case.

Support for this case has come from the Global South, because many countries have similar histories of struggle against western imperialism and colonialism.

South Africa's case against Israel, and the Global North's lack of support for it, highlights the extent to which international law and human rights are not applied to everyone. In reality, these human rights bodies and international legal frameworks have been used as a tool to further imperialist interests and colonial policies instead of ensuring justice for all.

Initial ruling

On 26 January, four weeks after South Africa submitted their case against Israel, the International Court of Justice made an initial ruling. The final decision is expected to take years.

Most notably, the ruling did not call for an immediate ceasefire in Gaza, or any suspension of Israel's attacks. This was South Africa's first and most important requested provisional measure. However, the ruling stated that Israel's genocide of Gaza is plausible, which gives the case a legal basis to proceed.

The Court also ordered the following:

- For Israel to take all measures to prevent genocide and genocidal acts against Palestinians
- For Israel to ensure that their military does not commit any genocidal acts
- For Israel to prevent and punish public incitement of genocide against Palestinians
- For Israel to ensure that humanitarian aid is able to reach Palestinians in Gaza
- For Israel to ensure that evidence related to the allegations of genocide are preserved
- For the release of Israeli hostages held in Gaza
- For Israel to submit a report to the ICJ in one month showing its compliance with these orders

in 2022, the ICJ ordered Russia to suspend its military operations in Ukraine in response to allegations of genocide, under the Convention on the Prevention and Punishment of the Crime of Genocide.

Without a ceasefire in Gaza, it is hard to see how the ICJ's orders can be implemented. Israel has been destroying residential blocks, hospitals, schools, and even targeting tents sheltering people who have lost their homes. A ceasefire is essential in order to prevent and punish genocide or complicity in it.

The ICJ's provisional measures come at a time when there are more internet blackouts in Gaza and declining mainstream media engagement with what's happening on the ground. Less connection between Gaza and the outside world, gives Israel further opportunity to continue committing genocidal acts with impunity.

"Even if the ICJ had ordered a ceasefire, it seems unlikely Israel would have abided by the ruling. That said, by failing to call for an end to the hostilities, the ICJ has no doubt left many Palestinians expecting only more brutality in the days and weeks to come." – Danylo Hawaleshka for Al Jazeera