

MEDIA BRIEF

International Court of Justice (ICJ) Preliminary Hearings 11 and 12 January 2024

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On 11 and 12 January 2024, the International Court of Justice (ICJ) —the judicial organ of the United Nations—will hold public hearings in its seat in The Hague with regards to the [proceedings](#) instituted by South Africa against Israel on 29 December 2023 (*Proceedings against Israel concerning alleged violations by Israel of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention”) in relation to Palestinians in the Gaza Strip*).

The public hearings focus on South Africa's request for **provisional measures (Art 41-1 of the ICJ Statute)** which notably aim to protect from “further severe and irreparable harm” to the rights of the Palestinian people under the Genocide Convention. The application also aims at recognizing Israel violates its obligations under the Genocide Convention (in the more lengthy process).

Among the requested provisional measures is for Israel to “**cease its military operations**” in and against Gaza and “abstain from engaging in genocidal acts” as delineated in Article II of the Genocide Convention. This encompasses stopping the killing and the “inflicting of serious mental and bodily harm” on the Palestinian people in Gaza, “**discontinuing the intentional imposition of conditions of life** designed to result in their physical destruction as a group”. Additionally, South Africa seeks measures asking Israel to prevent and punish direct and public incitement to genocide.

TIMELINE

- On 29 December, South Africa filed an [application](#) instituting proceedings against Israel under the Genocide Convention.
- The ICJ will hold [public hearings](#) on 11 and 12 January 2024, during which South Africa and Israel will each present their oral arguments. **They will take place from 10:00 to 13:00 CET and livestreamed on UN TV (<https://webtv.un.org/en>)**.

- The ICJ could issue provisional measures by the end of January, possibly as early as within two weeks. Under Article 74 of the Rules of the Court, “[a] request for indication of provisional measures shall have priority over all other cases”. Regardless of whether the Court will rule in favor of provisional measures, the case will proceed.
- Contentious cases at the ICJ span several years. The legal process involves various stages, including written pleadings, oral hearings, and the deliberation and delivery of the judgment.

THE APPLICATION AND WHAT IS AT STAKE

- **The urgency of provisional measures:** Since the application was submitted by South Africa on 29 December, the need for preliminary measure to prevent large human suffering and loss, forced starvation and danger on Palestine life as a whole, is even more acute as the genocide continues, and now that the most of northern Gaza has been destroyed or otherwise rendered inhabitable, and the majority of the population is facing relentless bombardments and restrictions in the south. Mass displacement of Gaza’s Palestinian population is taking place. **Overview of the genocidal acts committed by Israel are outlined from paragraph 43 of South Africa’s application.**
- Significantly, at this stage, the Court **does not have to prove** there is a breach of the Genocide Convention but to determine “whether the circumstances require the indication of provisional measures for the protection of rights under this instrument, as **“found to be plausible”**” (see para 137 of the application).
- There is **no justification for the commission of genocide** and the breach of the Genocide Convention, including through the invocation of the “right to self-defence”. The perpetrator’s specific intention to destroy a group [makes the justification for defensive forces inconceivable](#), and “cannot comprise retaliatory or punitive action. For this reason, no State or individual can ever be permitted to justify genocide in the name of self-defence.”
- The crime of genocide is not only about killing, which is among the five acts committed with the intention of destroying all or party of a group. It is also important to note that **collective punishment** is also strictly prohibited under international law.
- South Africa, in its application, reminds that it is important to place the genocidal acts **within the context** of “Israel’s conduct towards Palestinians during its 75-year long apartheid, its 56-year-long belligerent occupation of Palestinian territory and 16-year long blockade of Gaza” (para 2.), although the application focuses on genocidal acts committed against Palestinians in Gaza since October 2023.
- South Africa reminds that it “is acutely aware of the particular weight of responsibility in initiating proceedings, against Israel for violations of the Genocide Convention. However,

South Africa is also acutely aware of its own obligation — as a State party to the Genocide Convention — to prevent genocide”. (para 3)

STATES OBLIGATIONS AND CURRENT STANCE

- Every State has an obligation to “take measures to prevent” but also to “punish the crime of genocide, including by enacting relevant legislation and punishing perpetrators. (para 139 and 141 of the UNGA [resolution](#) adopted of the 2005 World Summit Outcome).
- All states that aid and abet Israel in its commission of genocidal acts may be held accountable for complicity (see below on the U.S case).
- In the past, the ICJ has made clear that the obligations under the Genocide Convention are of an “*erga omnes*” nature ie., all States have an obligation to prevent and to stop genocide wherever it occurs.
- **ICJ decisions are binding:** States have an obligation to accept the Court’s verdict and recommendations. South Africa and Israel are both Members of the United Nations and therefore bound by the ICJ Statute, including Article 36 (1), which provides that the Court’s jurisdiction “comprises...all matters specially provided for...in treaties and conventions in force”. (para 8)
- As of 9 January 2024, the states signatories to the Genocide convention that have publicly communicated their **support** to the South Africa application are: the Organization of Islamic Cooperation (OIC, consisting of 57 Member States), Bolivia, Malaysia, Jordan, Turkey, Venezuela, Nicaragua, the Maldives, Pakistan, Namibia, while Belgian Deputy Prime Minister [indicated](#) supporting action at the ICJ.

THE U.S LAWSUIT AGAINST JOE BIDEN

- The ICJ hearings come just before a federal court, in Oakland California in the US will hear the arguments, on **26 January 2024**, in a [case](#) brought up by Human Rights organizations and Palestinian individuals against U.S. President Biden, Secretary of State Blinken and Secretary of Defense Austin (Defence for Children International - Palestine vs. Biden) for failure to prevent and complicity in Israel’s genocide.
- The plaintiffs are seeking an emergency injunction to end U.S. diplomatic and military support to Israel.
- Declarations and other briefs filed with the court since the case was filed on 17 November 2023 show broad-based and expert support. Renowned legal scholars and historians submitted declarations in support of the plaintiffs. 77 legal and civil society

organizations from across the globe filed an [Amicus](#) Brief in support of the lawsuit. The amici assert, among other things, that the U.S. failure to uphold its obligations result in an erosion of international law norms.

- Although the ICJ case and the U.S. lawsuit are not directly connected, the South Africa filing lends credence to the genocide claim. U.S. government lawyers will have to contend with the legality of ongoing financial and military assistance to Israel very soon after an ICJ hearing and possibly after provisional measures are issued.

IMPORTANT STAKEHOLDERS

- The [South Africa legal team](#) is led by Professor John Dugard, renowned international lawyer who also served as UN Special Rapporteur on Human Rights in the Occupied Palestinian Territory. Professor Dugard heads a team of South African legal experts and scholars, which includes Adila Hassim, Tembeka Ngcukaitobi, and Max du Plessis. The team is further strengthened by the participation of South African lawyers Tshidiso Ramogale, Sarah Pudifin-Jones, and Lerato Zikalala, along with the expertise of British barrister Vaughan Lowe and Irish barrister Blinne Ni Ghralaigh.
- **Israel** will be represented by British lawyer [Malcolm Shaw](#). The Israeli government has formulated and implemented a [legal and diplomatic strategy](#) to exert pressure on the Court, discouraging it from initiating proceedings.
- **ICJ Judges:** The ICJ consists of [15 judges](#) who are elected by the United Nations General Assembly and the Security Council serve nine-year terms.
- **Ad Hoc Judges:** under the ICJ Statute (Article 31), if a state does not have a judge of its nationality already serving on the bench, it has the option to select an ad hoc judge specifically for their case. South Africa named Justice Dikgang Moseneke, former Deputy Chief Justice of South Africa, as their *ad hoc* judge. Israel named [Aharon Barak](#), former Chief Justice of the Israeli Supreme Court. Important to note that [During Barak's tenure](#), the Israeli Supreme Court declined to acknowledge the ICJ ruling in the advisory opinion which declared the apartheid wall constructed by Israel in the occupied West Bank as illegal.

USEFUL DOCUMENTS AND RESOURCES

- [South Africa's application](#)
- Presentation with [Breakdown](#) and Summary of the 84-page Application of South Africa
- CCR Case Page - [DCI-P v Biden](#)
- Database of 500+ statements of incitement to genocide by Israelis - [Law 4 Palestine](#)
- Lawyers for Palestinian Human Rights (LPHR) [legal briefing](#) on the Genocide Convention case brought by South Africa against Israel

MEDIA CONTACTS

The following people can be contacted for further inquiries and interviews.

- Al Mezan delegation present in The Hague (via advocacy@mezan.org)
- Al-Haq's team (including in The Hague) (via media@alhaq.org)
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