

War on Gaza: How South Africa's Genocide Case Is Challenging the Imperial Order

The World Court to examine whether Israel has breached the Genocide Convention through its ongoing targeting of the Palestinian people

By [Zeenat Adam](#)

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*Amid mounting calls for a comprehensive ceasefire in [Israel's onslaught on Gaza](#), **South Africa has invoked the Genocide Convention and lodged a [case at the International Court of Justice \(ICJ\) in the Hague](#).***

The [application](#), filed last month, delineates **the atrocities perpetrated by Israel in Gaza in the wake of the 7 October operation by Hamas**.

The application, while acknowledging and unequivocally condemning the actions of [Palestinian](#) armed groups on 7 October, emphasises that these acts cannot serve as justification for the crime of genocide.

The South African document notes that the [Genocide Convention](#) states that all parties to the convention have a duty to prevent or punish the crime of genocide, and based on emerging evidence in Gaza, it is South Africa's view that Israel has contravened the convention both by perpetrating genocide and by not acting to prevent genocide, nor punishing incitement to genocide.

It argues that Israel's acts and omissions are genocidal in nature, as it seeks to bring about the destruction of Palestinians as a national, racial or ethnic group.

The application additionally points to the language of the Israeli leadership, which has demonstrated a genocidal intent to eradicate Palestinians. The case draws a distinction between the crime of genocide and other atrocities perpetrated by Israel, including intentional attacks against civilians, religious and educational buildings, historic monuments

and hospitals, among others.

It also differentiates between the crime of genocide and brutalities such as torture, starvation of civilians, and other war crimes and crimes against humanity, including breaches of the [Fourth Geneva Convention](#), which outlines the duty to protect civilians in situations of armed conflict.

While accepting that there is often a close correlation between these acts, the South African case argues that the acts of genocide are distinct, and must be contextualised in the framework of an ongoing [occupation](#) of Palestine over decades.

As early as 30 October, the South African official statements began referring to genocide, which is indicative that preparing the case for genocide may have begun much earlier than December.

Over 400 Israeli citizens have [signed](#) a petition in support of South Africa's application to the ICJ, including Tel Aviv University professor Anat Matar and Israeli peace activist Jonathan Pollak.

Momentous Decision

The momentous decision by the South African government to pursue legal recourse against Israel through the ICJ came amid growing bilateral tensions, as South Africa vehemently condemned Israeli military aggression and drew firm analogies between Israeli policies and the [crime of apartheid](#). South Africa believes it is necessary to pursue legal recourse at the highest level, and if the court finds in its favour, all state parties to the United Nations would be compelled to abide by the ruling.

The director-general of South Africa's Department of International Relations and Cooperation, **Zane Dangor**, said the case would begin with a discussion of "provisional measures" on 11 January.

"We expect that the case will be a long-drawn process, but we have petitioned the court that while the substantive issues are being dealt with, we hold Israel to account to end the issues that we allege are genocidal, and that includes calling for an immediate ceasefire," he told Middle East Eye.

"If the court rules in our favour, this will be binding on all state parties. We will be presenting our case on why we think, based on all the evidence, that the crime of genocide has been perpetrated, including special intent ... We have seen a systemic approach to the attacks in Gaza and the mounting death toll in excess of 20,000 people, mainly non-combatants," Dangor said.

"The crime of genocide does not require that millions of people should be killed," he added. "What it requires is a demonstration that there is intent to destroy a group of people in whole or in part. We looked at the nature in which these crimes are unfolding, and we looked at the evidence emerging from various sources, including special rapporteurs of the Human Rights Council. We will cite various sources that allege that the crime of genocide is being committed. While we will present the facts, our key focus will be on intent."

Intent of genocide has been considered the most difficult to prove in court, but South Africa believes it has a compelling argument, having collated public statements by key figures in Israel, including the president, prime minister and members of the war cabinet. The application additionally seeks to argue that Israel's failure to punish members of civil society and journalists for incitement to genocide represents a duty that Israel has shirked as a state party to the convention.

Almost in anticipation of an urgent ICJ ruling on the provisional measures, Israel recently began the withdrawal of [five brigades](#) from Gaza – an apparent shift in its military tactics to be more targeted than the carpet bombing that has flattened most of the Gaza Strip over the last three months.

'Criminally Complicit'

In its response to South Africa's ICJ application, [Israel said it would](#) appear before the court to "dispel South Africa's absurd blood libel". Government spokesperson **Eylon Levy**, armed with combative language, described South Africa as "fighting pro-bono for anti-Jewish racists" and of being "criminally complicit with Hamas's campaign of genocide".

It is expected that Israel's defence will rest on the argument of the right to defend itself, [antisemitism](#), and counter-claims of genocidal intent by Hamas, which would be much more difficult to prove.

In the meantime, Israel is gearing up for a global [public relations](#) response to the case by instructing its diplomatic missions to issue statements against South Africa's claims, arguing that the Israeli military is operating in Gaza in accordance with international law. It is expected that Israel will seek to persuade the court to reject the request for an injunction.

The [US](#) has come out, unsurprisingly, as a staunch ally of Israel, with White House National Security Council spokesperson [John Kirby](#) asserting:

"We find this submission meritless, counterproductive, and completely without any basis in fact whatsoever."

This statement likely stems not only from the Biden administration's absolute support for Israel, but also from a defensive perspective, as the court proceedings may lay bare the complicity of other states, including the US, to the genocide, by enabling Israel through rhetoric and the supply of arms.

South Africa's bold move, though coming from a moral high ground, may irk global powers such as the US, resulting in strained relations and potentially punitive consequences. This is not the first time the current South African administration has veered against American hegemony, having taken a [non-aligned position](#) vis-a-vis Ukraine and strengthening its relations with [Russia](#).

South Africa seems to be persistent in pushing the power boundaries and championing the Global South, calling the imperial and often supremacist states to order, invoking the very international laws they profess to embody and reinforcing multilateral institutions that have been paralysed by power plays.

Strong Support

Europe appears divided on the matter, as most countries expressed support for Israel during its offensive in Gaza, while [France](#) recently stated that it [would abide](#) by the court's decisions.

Several countries and organisations have expressed [strong support](#) for South Africa's legal move, including Malaysia, [Turkey](#), [Jordan](#) and the Organisation of Islamic Cooperation.

South Africa has amassed a [formidable legal team](#) led by **John Dugard**, professor emeritus of the University of the Witwatersrand. He has served as a UN special rapporteur on the human rights situation in Palestine and chaired two commissions of inquiry into Israel's violations of international law. He is well versed on the proceedings of the ICJ, having previously served as an ad hoc judge.

Other lawyers on the case include **Tembeka Ngcukaitobi**, a specialist in constitutional law; **Max du Plessis**, who has advised on cases before the International Criminal Court (ICC); **Adila Hassim**, an expert on human rights and constitutional law; and [Blinne Ni Ghralaigh](#), who previously worked on the Bloody Sunday inquiry.

Lawyer [Alan Dershowitz](#), who was reportedly being considered to lead Israel's team, has been removed. Instead Israel has appointed former Supreme Court president and Holocaust survivor, [Aharon Barak](#) as their judge ad hoc.

American human rights lawyer **Francis Boyle**, who argued and won Bosnia's case for genocide, stated on [Democracy Now](#) that he is certain South Africa will win the case, given the meticulous application and the expectation that the legal team will present sound and validated evidence to the court.

Should South Africa succeed in its application and the court find in its favour, it is expected that the provisional measure of a ceasefire will be incumbent on all parties, pending further measures that may include an independent investigation. In the long term, should the court find Israel guilty of genocide, the UN Security Council may be expected to pass a resolution to establish a tribunal similar to Yugoslavia or Rwanda.

There has been a level of frustration with the slow progress of the ICC in addressing cases against Israeli actors. A favourable decision for South Africa at the ICJ may allow the ICC to act more swiftly.

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Zeenat Adam is a former diplomat and an independent international relations strategist based in Johannesburg, South Africa.

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