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A Crack in the 75-Year-Old Wall of Impunity: South Africa's Court Challenge of Israeli Genocide



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1948 was a year of tragic irony.

That year saw the adoption of both the Universal Declaration of Human Rights and the UN Convention on the Prevention and Punishment of the Crime of Genocide, together promising a world in which human rights would be protected by the rule of law. That same year, South Africa adopted apartheid and Israeli forces carried out the Nakba, the violent mass dispossession of hundreds of thousands of Palestinians. Both systems relied on western colonial support.

In short, the modern international human rights movement was born into a world of racialized colonial contradictions. Seventy-five years later, the world is watching in horror as Israel has continued the Nakba through its months-long, systematic ethnic purge of Gaza — again with the complicity of powerful western governments led by the United States.

The horrors of the original Nakba were met with decades of absolute impunity for Israel, feeding further violence. But this time, three decades since the overthrow of apartheid in South Africa, the post-apartheid “Rainbow Nation” is taking the lead in challenging Israel’s genocidal assault.

On December 29, South Africa became the first country to file an application to the UN’s high judicial arm, the International Court of Justice, instituting genocide proceedings against Israel for “acts threatened, adopted, condoned, taken, and being taken by the Government and military of the State of Israel against the Palestinian people.”

In wrenching and horrifying detail, South Africa’s 84-page document describes a litany of Israeli actions as “genocidal in character, as they are committed with the requisite specific intent... to destroy Palestinians in Gaza as a part of the broader Palestinian national, racial, and ethnical group.”

A Horrifying Civilian Toll in Gaza and the West Bank

2023 was the bloodiest year in the Palestinian territories since the destruction of historic Palestine and the founding of the state of Israel.

In the first half of the year, Israeli assaults on Palestinians in the West Bank had already reached a fever pitch, with successive waves of mass arrests, settler pogroms, and military attacks against Palestinian towns and refugee camps, including the ethnic cleansing of entire villages. At the same time, millions of civilians in Gaza were suffering unbearable hardship under a 17-year-long Israel-imposed siege.

On October 7, Gaza-based militants launched a devastating attack on Israeli military and civilian targets and seized more than 200 military personnel and civilian hostages. In an appalling act of mass collective punishment, Israel immediately cut off all food, water, medicine, fuel, and electricity to the 2.3 million Palestinian civilians trapped in Gaza. Then it began a relentless campaign of annihilation through massive bombing and missile strikes followed by a ground-level invasion that brought shocking reports of massacres, extrajudicial executions, torture, beatings, and mass civilian detentions.

More than 22,000 civilians and counting have since been killed in Gaza, the overwhelming majority children and women — along with record numbers of journalists and more UN

aid workers than in any other conflict situation. Thousands more are still trapped under the rubble, dead or dying from untreated injuries, and now more are dying from rampant diseases caused by Israel's denial of clean water and medical care, even as the Israeli military assault continues. Eighty-five percent of all Gazans have been forced from their homes. And now Israeli-imposed starvation is taking hold.

The Legal Standard for Genocide

Genocide analysts and human rights lawyers, activists, specialists around the globe — no strangers to human cruelty — have been shocked by both the savagery of Israel's acts and by the brazen public declarations of genocidal intent by Israeli leaders. Hundreds of these experts have sounded the genocide alarm in Gaza, noting the point-by-point alignment between Israel's actions and its officials' stated intent on the one hand, and the prohibitions enumerated in UN Genocide Convention on the other.

The South African application “unequivocally condemns all violations of international law by all parties, including the direct targeting of Israeli civilians and other nationals and hostage-taking by Hamas and other Palestinian armed groups.” But it reminds the Court: “No armed attack on a State's territory, no matter how serious — even an attack involving atrocity crimes — can, however, provide any possible justification for, or defense to, breaches of the [Genocide Convention] whether as a matter of law or morality.”

Unlike many aspects of international law, the definition of genocide is quite straightforward. To qualify as genocide or attempted genocide, two things are required. First, the specific intent of the perpetrator to destroy all or part of an identified national, ethnical, racial, or religious group. Second, commission of at least one of five specified acts designed to make that happen.

South Africa's petition to the ICJ is filled with clear and horrifically compelling examples, identifying Israeli actions that match at least three of the five acts that constitute genocide when linked to specific intent. Those include killing members of the group, causing serious physical or mental harm to members of the group, and, perhaps most indicative of genocidal purpose, creating “conditions of life calculated to bring about their physical destruction.” As South Africa documents, Israel has shown the world, at levels unprecedented in the 21st century, what those conditions look like.

For specific intent, South Africa points to dozens of statements made by Israeli leaders, including the President, Prime Minister, and other cabinet officials, and as well as Knesset members, military commanders, and more.

Accustomed to decades of U.S.-backed impunity, Israeli officials have been emboldened, describing openly their intent to carry out “another Nakba,” to wipe out all of Gaza, to deny any distinction between civilians and combatants, to raze Gaza to the ground, to reduce it to rubble, and to bury Palestinians alive, among many other similar statements.

Their deliberately dehumanizing language includes descriptions of Palestinians as animals, sub-human, Nazis, a cancer, insects, vermin — all language designed to justify wiping out all or part of the group. Prime Minister Netanyahu went so far as to invoke a Biblical verse on the Amalek, commanding that the “entire population be wiped out, that none be spared, men, women, children, suckling babies, and livestock.”

The U.S. May Also Be Complicit in Israel’s Genocide

The petition to the ICJ is sharply focused on Israel’s violations of the Genocide Convention. It does not deal with the complicity of other governments, most significantly of course the role of the United States in funding, arming, and shielding Israel as it carries out its genocidal acts.

But the active role of the United States in the Israeli onslaught, while hardly surprising, has been especially shocking. As a State Party to the Genocide Convention, the U.S. is obliged to act to prevent or stop genocide. Instead, we have seen the United States not only failing in its obligations of prevention, but instead actively providing economic, military, intelligence, and diplomatic support to Israel while it is engaged in its mass atrocities in Gaza.

As such, this is not merely a case of U.S. inaction in the face of genocide (itself a breach of its legal obligations) but also a case of direct complicity — which is a distinct crime under the Genocide Convention. The Center for Constitutional Rights, on behalf of Palestinian human rights organizations and individual Palestinians and Palestinian-Americans, has filed a suit in U.S. federal court in California focused on U.S. complicity in Israel’s acts of genocide.

South Africa’s Genocide Complaint is a Rallying Cry for Civil Society

In a situation such as this, framed by shocking Western complicity on one side and a massive failure of international institutions fed by U.S. pressure on the other, South Africa’s initiative at the ICJ may hold significance beyond the Court’s ultimate decision.

This case comes in the context of the extraordinary mobilization of protests, petitions, sit-ins, occupations, civil disobedience, boycotts, and so much more by human rights defenders, Jewish activists, faith-based organizations, labor unions, and broad-based movements across the United States and around the world.

As such, this move puts South Africa, and potentially the ICJ itself, on the side of the global mobilization for a ceasefire, for human rights, and for accountability. One of the most important values of this ICJ petition may therefore be in its use as an instrument for escalating global civil society mobilizations demanding their governments abide by the obligations imposed on all parties to the Genocide Convention.

Predictably, Israel has already rejected the legitimacy of the case before the Court. Confident that the U.S. and its allies will not allow Israel to be held accountable, the Israeli government is defiantly continuing its bloody assault on Gaza (as well as the West Bank). If Israel and its Western collaborators are once again successful in blocking justice, the first victims will be the Palestinian people. Then the credibility of international law itself may be lost as collateral damage.

But South Africa's ICJ action has opened a crack in a 75-year-old wall of impunity through which a light of hope has begun to shine. If global protests can seize the moment to turn that crack into a wider portal towards justice, we may just see the beginnings of real accountability for perpetrators, redress for victims, and attention to the long-neglected root causes of violence: settler-colonialism, occupation, inequality, and apartheid.

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