



Quaker Peace & Legislation Committee

WATCHING BRIEF 24-04: INTERNATIONAL COURT OF JUSTICE CASE AGAINST ISRAEL

As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government, we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.

February 2024

Friends will be aware that the Republic of South Africa has brought to the international Court of Justice (ICJ) a case of genocide against Israel, alleging violations of the Geneva Convention and the 1948 Genocide Convention in its actions in Gaza. It's useful to note that the ICJ ruled that South Africa had the right 'standing' to bring the case to the ICJ under the Genocide Convention, as the allegations concern the international community as a whole (erga omnes). This decision averts future doubt about the legitimacy of South Africa's right to bring the case to the ICJ.

Genocide

Both South Africa and Israel are parties to the Genocide Convention which entered into force on 12 January 1951. It was ratified by Australia on 8 July 1949, currently 130 countries are parties to the Convention. According to its provisions, disputes between parties are sent to the ICJ. Israel argues that since there is no 'dispute' in this case, the Court does not have jurisdiction.

Legally, the definition of genocide requires proof of both action and intent to destroy a protected group in whole or in part. It is usually the 'intent' element which is most difficult to prove.

Genocide comprises 'any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.' (Article 2)

While the ICJ has jurisdiction over countries, the International Criminal Court (ICC) handles disputes or allegations of crimes by individuals. Consequently, the 7 October Hamas terrorist attack on Israel would likely be investigated by the ICC.

Provisional measures, ICJ Order

While cases before the ICJ can take years to reach a judgment, the parties can seek 'interim relief – provisional measures. South Africa asked the ICJ for nine measures.

In its Order of 26 January 2024, the court ordered Israel to undertake the following actions with regards to Palestinians in Gaza. These provisional measures are legally binding on Israel and there is no right of appeal.

Israel must:

1. 'Take all measures within its power' to prevent actions that are prohibited in the Geneva Convention, especially killings, causing serious physical or mental harm, deliberating causing the conditions of life calculated to bring about the physical destruction of the population in whole or in part, and the imposition of measures to prevent births
2. Ensure its military forces do not commit any of these actions
3. Take all measures within its power to prevent and punish direct and public incitement to commit genocide
4. Take immediate and effective measures to enable the provision of humanitarian relief to Gaza
5. Take effective measures to prevent destruction of evidence relating to allegations of acts contradictory to the Geneva Convention
6. Submit a report to the ICJ within one month regarding its actions to implement this Order.

While the ICJ has yet to determine if it has jurisdiction to even hear this case, to order provisional measures it only had to decide it had 'at first glance' (*prima facie*) jurisdiction. It also had to decide whether:

1. There was a link between the actions and the rights covered by the case;
2. The underlying case was at least plausible;
3. There would be irreparable prejudice to the case if measures were not ordered;
4. The matter was urgent

The ICJ determined that these criteria were well met, and so issued its Order of provisional measures.

South Africa's application

South Africa's 84-page application instituting proceedings at the ICJ is available through the ICJ website <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>

Among other allegations, the application cites Israeli statements and chants as clear proof that Israel is planning to destroy Palestinians, thereby proving the 'intent' element of genocide under the Genocide Convention.

One example of such language is reference to an Old Testament story included in the 28 October 2023 speech by Prime Minister Netanyahu which has become a type of rallying cry of the Israeli Defence Force. 'Remember what Amalek did to you. We remember and we fight.'

The story is a command by God to Saul for the retaliatory destruction of an entire group of people, the Amalekites (the Amalekites attacked the Jews as they were recovering from their escape from Egypt). The Torah lists two Amalekites-related mitzvahs or commandments from God undertaken as a religious duty. First, to obliterate the nation of Amalek; and second, to never forget the evil deeds of Amalekites. The Torah also commands Jews to remember the Amalekite's actions. Indeed, each year before the holiday of Purim, Deuteronomy 25:17 is read and remembered by Jews everywhere.

The short catch-phrase, 'Remember what Amalek did to you' is cited by the South African application as inciting genocide. Some experts consider that many Israelis interpret the rallying cry as a message from the top Israeli leadership to fight in the name of God, to follow mitzvahs in the Torah.

Australia

When asked about the ICJ ruling, PM Albanese said Australia was 'not party to the process. We've made very clear our position, which is that every human life matters, whether it be Israeli or Palestinian.' (Al-Khouri, ABC News). Greens leader Adam Bandt has called on the Government to 'stop backing Israel's actions in the Gaza Strip and pressure the Israeli government to end the occupation' (SBS News).

Various human rights groups in Australia are calling on the Australian Government to undertake various actions, including:

- Acknowledge the ruling of the ICJ

- Immediately review its economic ties to Israel and impose targeted sanctions
- Suspend all defence industry partnerships and impose a two-way arms embargo – including the exportation of arms and arms components to Israel which are diverted through other countries
- Ensure that any Australian citizens serving with the Israeli Defence Forces are investigated in Australia for the commission of international crimes
- Support the investigation at the ICJ.

Friends may wish to use this information, including the resources below, to: engage on this matter with their local MP or Senator; or other opportunities to call on the Government to:

- act in support of the ICJ provisional measures
- call on Israel to act on the ICJ Order

QPLC will monitor the ICJ and keep Friends informed.

Resources

Aljazeera. *ICJ hears South Africa's genocide case against Israel over Gaza war*. 11 January 2024. <https://www.aljazeera.com/news/2024/1/11/icj-hears-south-africas-genocide-case-against-israel-over-gaza-war>

Al-Khouri, Chantelle. *Human rights groups say Australian government must act after ICJ ruling on allegation against Israel*. ABC News. 27 January 2024. <https://www.abc.net.au/news/2024-01-27/australian-government-put-on-notice-icj-ruling-israel-gaza-war/103397122>

Altein, Boruch. *Who were Amalek and the Amalekites?* Chabad.org. https://www.chabad.org/library/article_cdo/aid/3942715/jewish/Who-Were-Amalek-and-the-Amalekites.htm

Australian Centre for International Justice. *Prevent genocide in Gaza and act to implement ICJ ruling that Israel's actions in Gaza are a plausible genocide*. 27 January 2024. <https://acij.org.au/media-release-australia-has-a-duty-to-prevent-genocide-in-gaza-and-act-to-implement-icj-ruling-that-israels-actions-in-gaza-are-a-plausible-genocide/>

Coghill, Arianna. *As it formally accuses Israel of Genocide, South Africa Condemns Netanyahu's Amalek reference*. Mother Jones. 11 January 2024. <https://www.motherjones.com/politics/2024/01/south-africa-israel-amalek-netanyahu/>

International Criminal Court website. <https://www.icc-cpi.int/>
International Court of Justice website. <https://www.icj-cij.org/home>

Goldenberg, Tia. *Palestinians become central to South Africa's genocide case*. Associated Press. 18 January 2024 <https://apnews.com/article/israel-palestinians-south-africa-genocide-hate-speech-97a9e4a84a3a6bebeddfb80f8a030724>

Israeli Government Ministry of Foreign Affairs. *Statement by PM Netanyahu*. 28 October 2023. <https://www.gov.il/en/departments/news/statement-by-pm-netanyahu-28-oct-2023>

National Public Radio (USA). *Netanyahu's references to violent biblical passages raise alarm among critics*. 7 November 2023. <https://www.npr.org/2023/11/07/1211133201/netanyahus-references-to-violent-biblical-passages-raise-alarm-among-critics>

Sagoo, Rashmin. *South Africa's genocide case against Israel: The International Court of Justice explained*. Chatham House. 29 January 2024. Primary resource <https://www.chathamhouse.org/2024/01/south-africas-genocide-case-against-israel-international-court-justice-explained>

SBS News. *Government responds to International Court's Gaza ruling as Greens call for more action*. 27 January 2024. <https://www.sbs.com.au/news/article/government-responds-to-international-courts-gaza-ruling-as-greens-call-for-more-action/6j528sq8r>