

**APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF  
THE CRIME OF GENOCIDE IN THE GAZA STRIP (SOUTH AFRICA V. ISRAEL)**

**URGENT REQUEST AND APPLICATION FOR THE INDICATION OF ADDITIONAL  
PROVISIONAL MEASURES AND THE MODIFICATION OF THE COURT'S PRIOR  
PROVISIONAL MEASURES DECISIONS PURSUANT TO ARTICLE 41 OF THE STATUTE  
OF THE INTERNATIONAL COURT OF JUSTICE AND ARTICLES 75 AND 76 OF THE  
RULES OF COURT OF THE INTERNATIONAL COURT OF JUSTICE**

INTRODUCTION

1. The Republic of South Africa ('South Africa') is compelled to return to the Court in light of the new facts and changes in the situation in Gaza — particularly the situation of widespread starvation — brought about by the continuing egregious breaches of the Convention on the Prevention and Punishment of the Crime of Genocide ('Genocide Convention') by the State of Israel ('Israel') and its ongoing manifest violations of the provisional measures indicated by this Court on 26 January 2024 (the 'Order').

2. South Africa hereby requests the Court to indicate further provisional measures and/or to modify its provisional measures indicated on 26 January 2024 in the case of the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, pursuant to Article 41 of the Statute of the Court, and Articles 75(1) and (3) and 76(1) of the Rules of Court respectively, in order urgently to ensure the safety and security of 2.3 million Palestinians in Gaza, including over a million children. The request and application are made in light of changes in the situation in Gaza and/or new facts since the Court's Order of 26 January 2024 and since the Court's subsequent decision of 16 February 2024, calling on Israel to comply with its obligations to ensure the "immediate and effective implementation of the provisional measures indicated by the Court in its Order of 26 January 2024" ('Decision').

3. The six provisional measures indicated by the Court against Israel on 26 January 2024 were to protect *inter alia* the "right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III" of the Genocide Convention.<sup>1</sup> They were indicated on the basis of "urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible, before it gives its final decision."<sup>2</sup>

4. On 16 February 2024, the Court determined that the circumstances then prevailing did "not demand the indication of additional provisional measures" pursuant to Article 75(1) of the Rules of Court, on the basis that "the State of Israel remains bound to fully comply with its obligations under the Genocide Convention and with said Order".<sup>3</sup> However, the Court clarified that the obligations binding on Israel pursuant to the Order included the imperative to ensure "the safety and security of the Palestinians in the Gaza Strip".<sup>4</sup> The Court further determined that "the most recent developments in the

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<sup>1</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) Order of 26 January 2024*, (hereafter '*South Africa v. Israel, Order of 26 January 2024*'), p. 18, para. 54.

<sup>2</sup> *South Africa v. Israel, Order of 26 January 2024*, p. 22, para. 74.

<sup>3</sup> *South Africa v. Israel, Decision of the Court on South Africa's request for additional provisional measures of 16 February 2024*.

<sup>4</sup> *Ibid.*

Gaza Strip, and in Rafah in particular, ‘would exponentially increase what is already a humanitarian nightmare with untold regional consequences’, as stated by the United Nations Secretary-General” and that the “perilous situation demands *immediate and effective implementation* of the provisional measures indicated by the Court in its Order of 26 January 2024”.<sup>5</sup>

5. The situation then “perilous” is now so terrifying as to be unspeakable, as described by United Nations humanitarian chiefs,<sup>6</sup> justifying — and indeed demanding — the indication of further provisional measures of protection pursuant to Article 75 of the Rules and modifications of the Court’s prior provisional measures decisions pursuant to Article 76.

#### NEW FACTS AND CHANGES IN THE SITUATION IN GAZA

6. In granting provisional measures, the Court determined that “[a]t present” — on 26 January 2024 — “many Palestinians in the Gaza Strip have no access to the most basic foodstuffs, potable water, electricity, essential medicines or heating”.<sup>7</sup> In making that finding, the Court took notice of statements by United Nations and other humanitarian chiefs, to the effect that: people in Gaza were “facing the highest levels of food insecurity ever recorded” and that “famine [was] around the corner.”<sup>8</sup> They had regard to the fact that “[a]n unprecedented 93% of the population in Gaza [was] facing crisis levels of hunger, with insufficient food and high levels of malnutrition”, with “[a]t least 1 in 4 households . . . facing ‘catastrophic conditions’”, “experiencing an extreme lack of food and starvation and having resorted to selling off their possessions and other extreme measures to afford a simple meal”, and that “[s]tarvation, destitution and death [were] evident.”<sup>9</sup> As noted by the Court, “the view of South Africa”, based on the facts presented in its Application, was that Palestinians in Gaza were at “immediate risk of death by starvation, dehydration and disease as a result of the ongoing siege by Israel, the destruction of Palestinian towns, the insufficient aid being allowed through to the Palestinian population and the impossibility of distributing this limited aid while bombs fall.”<sup>10</sup>

7. Palestinians in Gaza are no longer at “immediate *risk* of death by starvation.”<sup>11</sup> At least 15 Palestinian children — including babies — in Gaza have *already* died of starvation in the past week alone, with the actual numbers believed to be much higher.<sup>12</sup> These deaths are “man-made, predictable

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<sup>5</sup> *Ibid.*

<sup>6</sup> United Nations Relief and Works Agency (‘UNRWA’), @UNRWA, Tweet (9:06 pm, February 12, 2024), <https://twitter.com/UNRWA/status/1757119039686553711>; United Nations Office of the High Commissioner for Human Rights (‘UN OHCHR’), *UN High Commissioner for Human Rights Volker Türk on Israeli operation into Rafah*, (12 February 2024), <https://www.ohchr.org/en/statements-and-speeches/2024/02/un-high-commissioner-human-rights-volker-turk-israeli-operation>.

<sup>7</sup> *South Africa v. Israel, Order of 26 January 2024*, p. 22., para. 70.

<sup>8</sup> *Ibid.*, p. 16., para. 47.

<sup>9</sup> *Ibid.*, p. 16., para. 48.

<sup>10</sup> *South Africa v. Israel, Verbatim Record of 11 January 2024*, p. 22, para. 5, as quoted in *South Africa v. Israel, Order of 26 January 2024*, p. 20, para. 63.

<sup>11</sup> *South Africa v. Israel, Verbatim Record of 11 January 2024*, p. 22, para. 5, as quoted in *South Africa v. Israel, Order of 26 January 2024*, p. 20, para. 63 (emphasis added).

<sup>12</sup> United Nations Office for the Coordination of Humanitarian Affairs (‘UN OCHA’), *Hostilities in the Gaza Strip and Israel | Flash Update #131* (4 March 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-131>; United Nations Children’s Fund (‘UNICEF’), *Statement by Adele Khodr, UNICEF Regional Director for the Middle East and North Africa* (3 March 2024), <https://www.unicef.org/press-releases/statement-adele-khodr-unicef-regional-director-middle-east-and-north-africa-0>; UN News, *Gaza: Worst famine fears realised as 10th child reportedly ‘starves to death’* (1 March 2024), <https://news.un.org/en/story/2024/03/1147112>.

and entirely preventable.”<sup>13</sup> It is predicted that they will increase exponentially and not linearly in the absence of a cessation of military activities and a lifting of the blockade.<sup>14</sup>

8. Palestinian children are starving to death as a direct result of the deliberate acts and omissions of Israel — in violation of the Genocide Convention and of the Court’s Order. This includes Israel’s deliberate attempts to cripple the United Nations Relief and Works Agency (‘UNRWA’),<sup>15</sup> on whom the vast majority of besieged, displaced and starving Palestinian men, women, children and babies depend for their survival.<sup>16</sup>

9. Israel has repeatedly used humanitarian aid as a “bargaining chip in negotiations”<sup>17</sup> through its creation of a hostile, inoperable environment for aid agencies. This includes: blocking such aid through obstructions, restrictions and denials;<sup>18</sup> closed crossings;<sup>19</sup> deliberately killing and targeting humanitarian workers;<sup>20</sup> its destruction of Palestinian crops and arable land;<sup>21</sup> its killing of Palestinian livestock;<sup>22</sup> its cutting off the North of Gaza — in particular — from sufficient aid deliveries;<sup>23</sup> its reducing Palestinian men, women and children to eating animal feed, bird seed and leaves, unfit for

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<sup>13</sup> UNRWA, @UNRWA, Tweet (8:25 pm, March 3, 2024), <https://twitter.com/UNRWA/status/1764356343299719303>.

<sup>14</sup> See e.g., United Nations Conference on Trade and Development (‘UNCTAD’), *Preliminary Assessment of the Economic Impact of the Destruction in Gaza and Prospects for Economic Recovery* (31 Jan 2024), [https://unctad.org/system/files/official-document/osginf2024d1\\_en.pdf](https://unctad.org/system/files/official-document/osginf2024d1_en.pdf), pp. 4 and 16.

<sup>15</sup> UNRWA, *Letter from the Commissioner-General to the President of the UN General Assembly* (22 February 2024), <https://www.unrwa.org/newsroom/official-statements/letter-commissioner-general-president-general-assembly>; Israel’s Minister of Foreign Affairs: Israel Katz, @Israel\_katz, Tweet (6:15 pm, February 4, 2024), [https://twitter.com/Israel\\_katz/status/1754176771967029757](https://twitter.com/Israel_katz/status/1754176771967029757).

<sup>16</sup> World Health Organisation, *Regional Director opening remarks at EMRO press briefing* (22 February 2024) <https://www.emro.who.int/media/news/regional-director-opening-remarks-at-emro-press-briefing.html>.

<sup>17</sup> UN OHCHR, *UN experts condemn ‘flour massacre’, urge Israel to end campaign of starvation in Gaza* (5 March 2024), <https://www.ohchr.org/en/press-releases/2024/03/un-experts-condemn-flour-massacre-urge-israel-end-campaign-starvation-gaza>.

<sup>18</sup> Association of International Development Agencies, *Snapshot of Deprivation of Humanitarian Aid in the Gaza Strip* (20 February 2024), <https://aidajerusalem.org/download/snapshot-of-deprivation-of-humanitarian-aid-in-the-gaza-strip/>; UNICEF, *Statement by Adele Khodr, UNICEF Regional Director for the Middle East and North Africa* (3 March 2024), <https://www.unicef.org/press-releases/statement-adele-khodr-unicef-regional-director-middle-east-and-north-africa-0>; UN OCHA, *Statement by Principals of the Inter-Agency Standing Committee “Civilians in Gaza in extreme peril while the world watches on: Ten requirements to avoid an even worse catastrophe”* (21 February 2024), <https://www.ochaopt.org/content/civilians-gaza-extreme-peril-while-world-watches-ten-requirements-avoid-even-worse-catastrophe>.

<sup>19</sup> Amnesty International, *Israel defying ICJ ruling to prevent genocide by failing to allow adequate humanitarian aid to reach Gaza*, (26 February 2024) <https://www.amnesty.org/en/latest/news/2024/02/israel-defying-icj-ruling-to-prevent-genocide-by-failing-to-allow-adequate-humanitarian-aid-to-reach-gaza/>.

<sup>20</sup> Médecins Sans Frontières, *MSF to UN Security Council: The people of Gaza need an immediate ceasefire* (23 February 2024) <https://www.msf.org/za/news-and-resources/press-release/msf-un-security-council-people-gaza-need-immediate-ceasefire>; UNRWA, *UNRWA Situation report #82 on the situation in the Gaza Strip and the West Bank, including East Jerusalem* (26 February 2024) <https://www.unrwa.org/resources/reports/unrwa-situation-report-82-situation-gaza-strip-and-west-bank-including-east-jerusalem>; UNRWA, *UNRWA Situation report #70 on the situation in the Gaza Strip and the West Bank, including East Jerusalem* (29 January 2024) <https://www.unrwa.org/resources/reports/unrwa-situation-report-70-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

<sup>21</sup> United Nations Satellite Centre (‘UNOSAT’), *UNOSAT Gaza Strip Agricultural Damage Assessment - January 2024* (1 February 2024), <https://unosat.org/products/3792>; FAO, *Gaza: Every day, more and more people are on the brink of famine-like conditions* (12 February 2024), <https://www.fao.org/newsroom/detail/gaza-every-day-more-and-more-people-are-on-the-brink-of-famine-like-conditions/en>.

<sup>22</sup> Food and Agriculture Organization of the United Nations (‘FAO’), *Gaza: In a briefing to the UN Security Council, FAO calls for immediate cessation of hostilities and restoration of humanitarian space to eliminate the risk of famine* (27 February 2024) <https://www.fao.org/newsroom/detail/gaza-in-a-briefing-to-the-un-security-council-fao-calls-for-immediate-cessation-of-hostilities-and-restoration-of-humanitarian-space-to-eliminate-the-risk-of-famine/en>.

<sup>23</sup> UNICEF, *Statement by Adele Khodr, UNICEF Regional Director for the Middle East and North Africa* (3 March 2024), <https://www.unicef.org/press-releases/statement-adele-khodr-unicef-regional-director-middle-east-and-north-africa-0>; UN OCHA, *Humanitarian Access Snapshot - Gaza Strip | Mid-February 2024* (21 February 2024) <https://www.ochaopt.org/content/humanitarian-access-snapshot-gaza-strip-mid-february-2024>.

human consumption;<sup>24</sup> and its pattern of attacks on desperate Palestinians as they try to obtain aid from humanitarian convoys, discussed in more detail below. Humanitarian chiefs’ “[w]orst famine fears” have been “realised”.<sup>25</sup> As stated by Medical Aid for Palestinians, “[t]his is the fastest decline in a population's nutrition status ever recorded. That means children are being starved at the fastest rate the world has ever seen.”<sup>26</sup>

10. On 3 March 2023, the United Nations Special Rapporteur on the Right to Food warned that “famine may very well be already occurring” due to Israel “intentionally starving the Palestinian people in Gaza”, and that “the only way to end/prevent this famine is an immediate ceasefire. And the only way to get a ceasefire is to sanction Israel.”<sup>27</sup> On 4 March 2024, the Director-General of the World Health Organization joined calls for a ceasefire following “grim findings” by its visiting staff of “severe levels of malnutrition, children dying of starvation, serious shortages of fuel, food and medical supplies, hospital buildings destroyed” at two hospitals in Northern Gaza.<sup>28</sup>

11. Israel is now massacring desperate, starving Palestinians seeking to obtain food for their slowly-dying children.<sup>29</sup> The so-called ‘flour massacre’ of 29 February 2024<sup>30</sup> — in which 118 Palestinians were killed and a further 760 injured — was the largest such massacre to date.<sup>31</sup> However, it forms part of an escalating pattern of fatal attacks by Israel on the Palestinian people it is deliberately starving, *as they seek to access aid*.<sup>32</sup> This has led a group of United Nations human rights experts to issue a stark

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<sup>24</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel* | Flash update #125 (23 February 2024).

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-125>; UN News, *Gazans eating wild plants to survive* (29 February 2024), <https://news.un.org/en/story/2024/02/1147077>; ActionAid, “*People have begun to wish for death*”: *Gazans starve as food aid blocked from entering Rafah, with UN officials warning famine is imminent* (29 February 2024), <https://actionaid.org/news/2024/people-have-begun-wish-death-gazans-starve-food-aid-blocked-entering-rafah-un-officials>.

<sup>25</sup> UN News, *Gaza: Worst famine fears realised as 10th child reportedly ‘starves to death’* (1 March 2024),

<https://news.un.org/en/story/2024/03/1147112>.

<sup>26</sup> Medical Aid for Palestinians, @MedicalAidPal, Tweet (1:59 pm, February 29, 2024), <https://twitter.com/MedicalAidPal/status/1763172220900151317>.

<sup>27</sup> Michael Fakhri, @MichaelFakhri, Tweet (6:30 am, March 3, 2024),

<https://twitter.com/MichaelFakhri/status/1764146409136390191>; see also Prof. Roni Strier, Chairman of the Israeli National Council for Food Security, Facebook post (1 March, 2024) <https://web.facebook.com/rstrier1/posts/pfbid0AEtDgDak6SKpeP3pBa58gbVe1RZxMS3Dqjd6jeTrqd4UTwwFxbR5kM114GV1BKasL>.

<sup>28</sup> Tedros Adhanom Ghebreyesus, @DrTedros, Tweet (4:02 pm, March 1, 2024) <https://twitter.com/DrTedros/status/1764652624492515832>.

<sup>29</sup> UN OHCHR, *UN Human Rights Office strongly deplores killing of at least 112 Palestinians during food aid distribution in Gaza City* (1 March 2024), <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-strongly-deplores-killing-least-112-palestinians-during-food-aid-distribution-gaza-city-enar>; UN OCHA, *Hostilities in the Gaza Strip and Israel* | Flash Update #131 (4 March 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-131>.

<sup>30</sup> UN OHCHR, *UN experts condemn ‘flour massacre’, urge Israel to end campaign of starvation in Gaza* (5 March 2024) <https://www.ohchr.org/en/press-releases/2024/03/un-experts-condemn-flour-massacre-urge-israel-end-campaign-starvation-gaza>; António Guterres, @antonioguterres, Tweet (3:30 am, March 1, 2024), [https://twitter.com/antonioguterres/status/1763391376350212248?t=iPtrcbuXwuWYBcA7EM\\_Bg](https://twitter.com/antonioguterres/status/1763391376350212248?t=iPtrcbuXwuWYBcA7EM_Bg); Philippe Lazzarini, @UNLazzarini, Tweet (5:17 pm, February 29, 2024), <https://twitter.com/UNLazzarini/status/1763237115767169110>.

<sup>31</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel* | Flash Update #131 (4 March 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-131>.

<sup>32</sup> UN OHCHR, *UN Human Rights Office - OPT: UN Human Rights Office strongly deplores killing of at least 112 Palestinians during food aid distribution in Gaza City* (1 March 2024) <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-un-human-rights-office-strongly-deplores-killing-least-112-palestinians-during-food-aid-distribution-gaza-city-enar>; Airwars, *Two weeks under scrutiny: Patterns of harm reported in Gaza following ICJ ruling* (26 February 2024), <https://airwars.org/news/two-weeks-under-scrutiny-patterns-of-harm-reported-in-gaza-following-icj-ruling/>.

warning that “Israel is not respecting its international legal obligations, is not complying with the provisional measures of the International Court of Justice, and is committing atrocity crimes.”<sup>33</sup>

12. The horrific deaths from starvation of Palestinian children, including babies, brought about by Israel’s deliberate acts and omissions in violation of the Genocide Convention and of the Court’s Order — including Israel’s concerted attempts since 26 January 2024 to ensure the defunding of UNRWA<sup>34</sup> and Israel’s attacks on starving Palestinians seeking to access what extremely limited humanitarian assistance Israel permits into Northern Gaza, in particular — constitute a violation of Articles II(a) and (c) of the Genocide Convention, and a breach of Provisional Measures 1, 2 and 4 of the Court’s Order. They also constitute a change in the situation in Gaza for the purposes of Article 76(2) of the Rules of Court and constitute new facts for the purposes of Article 75(3). Faced with a State willingly starving people in open defiance of this Court’s order, they justify — and indeed demand — the urgent indication of additional provisional measures and/or the modification of the Court’s previous decisions concerning provisional measures. As reported by the United Nations Children’s Fund (‘UNICEF’):

“Now, the child deaths we feared are here and are likely to rapidly increase unless the war ends and obstacles to humanitarian relief are immediately resolved... The sense of helplessness and despair among parents and doctors in realizing that lifesaving aid, just a few kilometres away, is being kept out of reach, must be as unbearable, but worse still are the anguished cries of those babies slowly perishing under the world’s gaze. *The lives of thousands more babies and children depend on urgent action being taken now.*”<sup>35</sup>

13. “Life is draining out of Gaza at alarming speed.”<sup>36</sup> As stated by UNRWA, “these deaths are man-made, predictable and *entirely preventable*. Gaza has become hell on earth. *When will the world say “enough”?*”<sup>37</sup>

14. Those changes in the situation in Gaza and new facts — which themselves constitute egregious breaches of the Genocide Convention and of the Order, as clarified by the Decision — demand the urgent indication of further provisional measures and the modification of the Court’s previous decisions on provisional measures, notably its Order and Decision.

#### ADDITIONAL MEASURES FOR EXAMINATION BY THE COURT / MODIFICATIONS REQUESTED TO THE COURT’S DECISIONS

15. South Africa respectfully requests the Court urgently to exercise its powers pursuant to Article 41 of the Statute of the Court and Article 75 of the Rules of Court to examine the requirement for additional provisional measures in light of the new facts. South Africa further applies to the Court pursuant to Article 41 of the Statute and Article 76 of the Rules for the Court urgently to modify its prior

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<sup>33</sup> UN OHCHR, *UN experts condemn ‘flour massacre’, urge Israel to end campaign of starvation in Gaza* (5 March 2024) <https://www.ohchr.org/en/press-releases/2024/03/un-experts-condemn-flour-massacre-urge-israel-end-campaign-starvation-gaza>.

<sup>34</sup> UNRWA, *Letter from the Commissioner-General to the President of the UN General Assembly* (22 February 2024), <https://www.unrwa.org/newsroom/official-statements/letter-commissioner-general-president-general-assembly>.

<sup>35</sup> UNICEF, *Statement by Adele Khodr, UNICEF Regional Director for the Middle East and North Africa* (3 March 2024), <https://www.unicef.org/press-releases/statement-adele-khodr-unicef-regional-director-middle-east-and-north-africa-0>, (emphasis added).

<sup>36</sup> Martin Griffiths, @UNReliefChief, Tweet (4:52 pm, February 29, 2024), <https://twitter.com/UNReliefChief/status/1763215562455359648>.

<sup>37</sup> UNRWA, @UNRWA, Tweet, (8:25 pm, March 3, 2024), <https://x.com/unrwa/status/1764356343299719303> (emphasis added).

decisions on provisional measures as set out below. The Court is urged to do so “on the parties presenting their observations on the subject” (Article 76(3)) — without a hearing — given the extreme urgency of the situation.

16. South Africa respectfully requests the Court to modify two provisional measures it has previously ordered in the case, and to indicate additional provisional measures — including to clarify previous provisional measures granted. South Africa submits that this is necessary and essential in light of the exigent circumstances facing Palestinians in Gaza, and to respond to Israel’s continuing violations of and contempt for the Court’s Order and Decision.

17. South Africa requests the indication, clarification and/or modification of the following provisional measures:

1. All participants in the conflict must ensure that all fighting and hostilities come to an immediate halt, and that all hostages and detainees are released immediately.
2. All Parties to the Convention on the Prevention and Punishment of the Crime of Genocide must, forthwith, take all measures necessary to comply with all of their obligations under the Convention on the Prevention and Punishment of the Crime of Genocide.
3. All Parties to the Convention on the Prevention and Punishment of the Crime of Genocide must, forthwith, refrain from any action, and in particular any armed action or support thereof, which might prejudice the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts, or any other rights in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve.
4. The State of Israel shall take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address famine and starvation and the adverse conditions of life faced by Palestinians in Gaza, by:
  - (a) immediately suspending its military operations in Gaza;
  - (b) lifting its blockade of Gaza;
  - (c) rescinding all other existing measures and practices that directly or indirectly have the effect of obstructing the access of Palestinians in Gaza to humanitarian assistance and basic services; and
  - (d) ensuring the provision of adequate and sufficient food, water, fuel, shelter, clothing, hygiene and sanitation requirements, alongside medical assistance, including medical supplies and support.
5. The State of Israel shall submit an open report to the Court on all measures taken to give effect to all provisional measures ordered by the Court to date, within one month as from the date of this Order.

18. The Court has already found the existence of a dispute relating to the interpretation, application or fulfilment of the Genocide Convention, over which it has *prima facie* jurisdiction, that South Africa has standing as a party to the Genocide Convention with “a common interest to ensure the prevention,

suppression and punishment of genocide”,<sup>38</sup> and that there is urgency, and a risk of irreparable prejudice to the rights claimed by South Africa, including “right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III” of the Genocide Convention.<sup>39</sup> There is plainly also a link between such rights and the additional and modified provisional measures now sought.

#### THE MODIFICATION AND/OR INDICATION OF ADDITIONAL PROVISIONAL MEASURES IN RELATION TO PLAUSIBLE ALLEGATIONS OF GENOCIDE

19. In *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, the Court noted that in order to satisfy the requirement of Article 76(1) of the Rules for “some change in the situation” that justifies the “revocation or modification” of a decision concerning provisional measures, a two-stage approach must be followed:

“The Court must...first ascertain whether, taking account of the facts now brought to its attention by each of the Parties, there is reason to conclude that the situation which warranted the indication of certain provisional measures...has changed since [the time of the Order]. If that is so, then it will have to consider whether such a change justifies a modification by the Court, as sought by the Parties of otherwise, or the measures previously indicated.”<sup>40</sup>

20. In a subsequent Application in the same case under Article 75(3) of the Rules, based on “new facts”, the Court ruled that “there has been a change in the situation”, and indicated new provisional measures to “supplement those already in force” in order “to address the new situation.”<sup>41</sup>

21. Insofar as there is a difference between the two tests, South Africa asserts that they are both met.

22. South Africa recalls this Court’s remarks in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))* on the *sui generis* nature of provisional measures in the context of plausible allegations of genocide. It held that the obligations on States are amplified by “situation[s]...where no reparation could efface the results of conduct which the Court may rule to have been contrary to international law”.<sup>42</sup> As elaborated upon in a separate opinion by Judge *ad hoc* Lauterpacht:

“In the present proceedings the Court is confronted by a case with a human dimension of a magnitude without precedent in its history. *This case is not to be compared with litigation relating to maritime or territorial limits, nor with assertions of State responsibility for denial of justice, wrongful expropriation or the destruction of an aircraft.* Even such cases as those relating to *South West Africa* and to *Military and Paramilitary Activities in and against Nicaragua*, though involving the fundamental human rights and security of many individuals,

<sup>38</sup> *South Africa v. Israel*, Order of 26 January 2024, p. 12, para. 33.

<sup>39</sup> *South Africa v. Israel*, Order of 26 January 2024, p. 21, para. 66.

<sup>40</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Provisional Measures, Order of 16 July 2013, I.C.J. Reports 2013, p. 234, para. 17.

<sup>41</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Provisional Measures, Order of 22 November 2013, I.C.J. Reports 2013, p. 364, para. 44; p. 367, para. 51.

<sup>42</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993, p. 349, para. 58.

cannot be likened in scale to the *deliberate infliction of death, injury and dreadful personal suffering that has marked* and continues to mark the present conflict in Bosnia-Herzegovina”.<sup>43</sup>

23. What was true then for Bosnian Muslims is tragically true for the Palestinian people today. The “deliberate infliction of death, injury and dreadful personal suffering that has marked and continues to mark the present conflict in” Gaza justifies and indeed demands that the Court indicate provisional measures of protection capable of saving the Palestinian people from further extreme suffering, including further starvation and famine.

24. As Judge Cançado Trindade noted in his separate opinion in the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Order of 18 July 2011, the Court “in indicating provisional measures of protection” in a number of previous cases<sup>44</sup> “most significantly went *beyond the inter-State dimension*, in expressing its concern also for *the human persons (les personnes humaines)* in situations of risk, or vulnerability and adversity”. He stated that, as a consequence:<sup>45</sup>

“... in its Order of 10 January 1986 in the *Frontier Dispute (Burkina Faso/Republic of Mali)* case, the Chamber of the Court asserted the power, ‘independently of the requests submitted by the Parties’, to indicate provisional measures ‘with a view to preventing the aggravation or extension of the dispute whenever it considers that circumstances so require’ (*I.C.J. Reports 1986*, p. 9, para. 18). It can exercise such power, it added, even more so in case of ‘a resort to force which is irreconcilable with the principle of the peaceful settlement of international disputes’, when it can adopt such provisional measures ‘as may conduce to the due administration of justice’ (*ibid.*, p. 9, para. 19). It decided to indicate those measures, comprising the withdrawal by the Parties of their armed forces, as it was of the view that the facts at issue ‘expose the persons and property in the disputed area, as well as the interests of both States within that area, to serious risk of irreparable damage’ (*ibid.*, p. 10, para. 21).”

25. Concern for “the human persons” in Gaza in a “situation of grave risk, vulnerability and adversity” and for their very survival as a group allows the Court to indicate such provisional measures as may conduce to the administration of justice, including a provisional measure for the immediate cessation of military operations in Gaza. Without it, the very “humanitarian and civilizing purpose” of the Genocide Convention — as recalled by the Court in its Order<sup>46</sup> — risks being eviscerated.

26. In this respect, South Africa recalls that by their nature cases raising *erga omnes* obligations concern rights which “transcend the individual rights and obligations of the litigating States, [and so] international law will need to look beyond procedural rules fashioned for purely *inter partes* litigation”, and “proceed beyond weighing the rights and obligations of parties within a closed compartment of individual State self-interest unrelated to the global concerns of humanity as a whole”.<sup>47</sup> Cases involving plausible allegations of genocide by their nature compel such an approach.

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<sup>43</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Provisional Measures, Order of 13 September 1993, *I.C.J. Reports 1993*, Separate Opinion of Judge *ad hoc* Lauterpacht, p. 408, para. 2 (emphasis added).

<sup>44</sup> *Case concerning the Frontier Dispute (Burkina Faso v. Republic of Mali)*, Order of 10 January 1986, *I.C.J. Reports 1986*; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Order of 15 March 1996, *I.C.J. Reports 1996*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Order of 1 July 2000, *I.C.J. Reports 2000*.

<sup>45</sup> *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)* Order of 18 July 2011, *I.C.J. Reports 2011*, Separate opinion of Judge Cançado Trindade p. 591, para. 74.

<sup>46</sup> *South Africa v. Israel*, Provisional Measures, Order of 26 January 2024, p. 21, para. 65.

<sup>47</sup> *Gabcikovo-Nagymaros Project (Hungary v. Slovakia)* Judgment *I.C.J. Reports 1997*, p 118 (Separate Opinion of Vice-President Weeramantry).



## THE URGENT NEED FOR ADDITIONAL / MODIFIED PROVISIONAL MEASURES

27. The new facts and/or change in situation in Gaza demand additional and/or modified provisional measures. The demand could not be starker, having regard to the magnitude and gravity of the situation facing the Palestinian people in Gaza. Israel has knowingly and deliberately continued to act in defiance of the Order. In addition to causing the death by starvation of Palestinian children in babies, Israel has also continued to kill approximately 4,548 Palestinian men, women and children since 26 January 2024, and to wound a further 7,556, bringing the grim totals to 30,631 killed and 72,043 injured.<sup>48</sup> An unknown number of bodies remain buried under the rubble. 1.7 million Palestinians remain displaced<sup>49</sup> — many of them permanently, Israel having damaged or destroyed approximately 60 per cent of the housing stock in Gaza.<sup>50</sup> Approximately 1.4 million people are squeezed into Rafah — which Israel has stated it intends to attack imminently. Israel’s destruction of the Palestinian healthcare system has also continued apace, with ongoing, repeated attacks on hospitals, healthcare, ambulances and medics.<sup>51</sup> Israel has also continued to conduct widespread attacks on schools, mosques, businesses and entire villages and areas.<sup>52</sup> In sum, Israel has not changed its conduct materially or at all pursuant to the Order – it has instead doubled-down on its genocidal aims and acts.

28. Israel has thus shown contempt for the Court and its Order in what it has done. It has also done so in what it has said: alongside seeking to argue that the Court has not in fact imposed any requirements on Israel’s military operations additional to those by which Israel claimed to already be abiding, senior Israeli officials have poured scorn on the Court and its Order. They have called the Court’s failure to reject South Africa’s claim “a mark of disgrace that will not be erased for generations” (Israeli Prime Minister)<sup>53</sup> and a “blood libel that undermines the very values on which this court was established” (Israeli President);<sup>54</sup> and have asserted that “decisions that endanger the continued existence of the state

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<sup>48</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 150* (5 March 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-150>; UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 111* (26 January 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-111>.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> United Nations, UN News Global Perspective Human Stories, *Gaza: UN health agency warns over continuing attacks on healthcare* (9 February 2024), <https://news.un.org/en/story/2024/02/1146387>; World Health Organization, *OPT Emergency Situation Report* (20 February 2023), [https://www.emro.who.int/images/stories/Sitrep\\_-\\_issue\\_23.pdf](https://www.emro.who.int/images/stories/Sitrep_-_issue_23.pdf).

<sup>52</sup> Education Cluster, Save the Children, UNICEF, *Verification of damages to schools based on proximity to damaged sites - Gaza, Occupied Palestinian Territory* (10 February 2024), <https://reliefweb.int/report/occupied-palestinian-territory/verification-damages-schools-based-proximity-damaged-sites-gaza-occupied-palestinian-territory-10-february-2024>; UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 142* (26 February 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-142>; UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 111* (26 January 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-111>; UN OHCHR, *Widespread destruction by Israeli Defence Forces of civilian infrastructure in Gaza* (8 February 2024), <https://www.ohchr.org/en/press-releases/2024/02/widespread-destruction-israeli-defence-forces-civilian-infrastructure-gaza>; UNCTAD, *Preliminary Assessment of the Economic Impact of the Destruction in Gaza and Prospects for Economic Recovery* (31 Jan 2024), [https://unctad.org/system/files/official-document/osginf2024d1\\_en.pdf](https://unctad.org/system/files/official-document/osginf2024d1_en.pdf).

<sup>53</sup> Israel Prime Minister’s Office (Hebrew), Prime Minister Netanyahu in reference to the decision of the International Court of Justice in The Hague (26 January 2024), <https://www.gov.il/he/departments/news/spoke-hague260124>; PM Sam Sokol, “Failure to throw out genocide claims a ‘mark of disgrace’ on ICJ, Netanyahu declares”, *The Times of Israel* (26 January 2024), <https://www.timesofisrael.com/failure-to-throw-out-genocide-claims-a-mark-of-disgrace-on-icj-netanyahu-declares/>.

<sup>54</sup> Ministry of Foreign Affairs, President Herzog addresses ICJ Ruling (28 January 2024), <https://www.gov.il/en/departments/news/president-herzog-addresses-icj-ruling-28-jan-2024>.

of Israel should not be obeyed, and we must continue crushing the enemy until absolute victory” (Minister for National Security).<sup>55</sup>

29. Having regard to the clear and deliberate acts, omissions and statements by Israel, South Africa submits that it is necessary to do more than to reiterate that “the State of Israel remains bound to fully comply with its obligations under the Genocide Convention and with the... Order”.<sup>56</sup>

30. Consequently, South Africa respectfully asks the Court to accede to its request that the Court indicate further provisional measures in these proceedings, including to clarify those provisional measures the Court has already ordered. Further and additionally, South Africa applies for the modification of the above provisional measures already indicated by the Court in its Order. Given the urgency of the situation facing the Palestinian people in Gaza, South Africa seeks a determination of its request and application *without a hearing*. Insofar as the Court were to require a hearing, the Court would be respectfully requested to consider this application as also having been made pursuant to Article 73.

## CONCLUSION

31. As stated by the United Nations High Commissioner for Human Rights, “[t]here appear to be no bounds to — no words to capture — the horrors that are unfolding before our eyes in Gaza.”<sup>57</sup> Against the background of those horrors, the United Nations Secretary-General has again reiterated his “call for an immediate humanitarian ceasefire and the unconditional release of all hostages”.<sup>58</sup>

32. The extreme gravity of the situation facing Palestinian men, women, children and babies, and the existential risk the Palestinian people in Gaza as a part of the Palestinian national or ethnic group face as a result of Israel’s genocidal military campaign demands further action by the Court. To this end, the Court is reminded of the application for additional provisional measures made by Bosnia in 1993 in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))* case. The written application entreated:

“Make no mistake about it: This will be the last opportunity that this Court shall have to save both the people and State of Bosnia and Herzegovina from extermination and annihilation by means of genocide by the Respondent. God will record your response to our Request for the rest of eternity.”<sup>59</sup>

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<sup>55</sup> Paz Abuhatzirah, "Ben Gvir on the court's decision: "Hague Shmague, they continue with the hypocrisy and the persecution of the Jewish people"", 0404 (26 January 2024), <https://www.0404.co.il/?p=954729>.

<sup>56</sup> See, *South Africa v. Israel, Decision of the Court on South Africa’s request for additional provisional measures of 16 February 2024*.

<sup>57</sup> United Nations, @UN, Tweet (7:12 pm, February 29, 2024) <https://twitter.com/UN/status/1763250853366857813>.

<sup>58</sup> UN News, *Statement attributable to the Spokesperson for the Secretary-General - on Gaza* (29 February 2024), <https://www.un.org/sg/en/content/sg/statement/2024-02-29/statement-attributable-the-spokesperson-for-the-secretary-general-gaza>. See also: See, “Hammas says it will abide by any ICJ ceasefire order if Israel reciprocates” *Reuters* (25 January 2024), <https://www.reuters.com/world/middle-east/hamas-says-it-will-abide-by-any-icj-ceasefire-order-if-israel-reciprocates-2024-01-25/>.

<sup>59</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Provisional Measures, Request for the Indication of Provisional Measures of Protection submitted by the Government of the Republic of Bosnia and Herzegovina filed on 27 July 1993*, p. 55.

33. South Africa fears that this Application may be the last opportunity that *this* Court shall have to save the Palestinian people in Gaza already dying of starvation, and now “one step” from famine.<sup>60</sup>

34. In the *Bosnian Genocide* case, the Court declined to order the additional provisional measures requested on 27 July 1993.<sup>61</sup> Within two years, approximately 7,336 Bosnians in the so-called ‘safe area’ of Srebrenica had been slaughtered, in what this Court retrospectively determined to have been a genocide.<sup>62</sup> Here, South Africa respectfully calls on this Court to act again *now* — before it is too late — to do what is within its power to save Palestinians in Gaza from genocidal starvation.

The Hague, 6 March 2024

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<sup>60</sup> UN OCHA, *Mr. Ramesh Rajasingham updating the Security Council on food security risks in Gaza* (27 February 2024) <https://www.ochaopt.org/content/mr-ramesh-rajasingham-updating-security-council-food-security-risks-gaza>.

<sup>61</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 325.

<sup>62</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 238, para. 471(5); p. 162, para. 289, citing International Criminal Tribunal for the Former Yugoslavia (‘ICTY’), Trial Chamber, *Prosecutor v. Krstic*, Case No. IT-98-33-T, Judgment (2 August 2001), paras. 426-427 and ICTY, Trial Chamber I, *Prosecutor v. Blagojevic*, Case No. IT-02-60-T, Judgment (17 January 2005), para. 643.