

DOCUMENTS

Extracts from the Application filed by South Africa in the International Court of Justice seeking institution of proceedings against Israel under the Convention on the Prevention and Punishment of the Crime of Genocide

INTRODUCTION

This Application concerns acts threatened, adopted, condoned, taken and being taken by the Government and military of the State of Israel against the Palestinian people, a distinct national, racial and ethnical group, in the wake of the attacks in Israel on 7 October 2023. South Africa 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. 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 defence to, breaches of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (‘Genocide Convention’ or ‘Convention’),¹ whether as a matter of law or morality. The acts and omissions by Israel complained of by South Africa are genocidal in character because they are intended to bring about the destruction of a substantial part of the Palestinian national, racial and ethnical group, that being the part of the Palestinian group in the Gaza Strip (‘Palestinians in Gaza’). The acts in question include killing Palestinians in Gaza,

causing them serious bodily and mental harm, and inflicting on them conditions of life calculated to bring about their physical destruction. The acts are all attributable to Israel, which has failed to prevent genocide and is committing genocide in manifest violation of the Genocide Convention, and which has also violated and is continuing to violate its other fundamental obligations under the Genocide Convention, including by failing to prevent or punish the direct and public incitement to genocide by senior Israeli officials and others.

South Africa 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. Israel’s acts and omissions in relation to Palestinians violate the Genocide Convention. That is the shared view of numerous other States parties to the Convention, including the State of Palestine itself, which has called on “world leaders” to “take responsibility... to stop the genocide against our people”.² United Nations experts have also repeatedly sounded “the alarm” for over 10 weeks that “[c]onsidering statements made by Israeli political leaders and their allies, accompanied by military action in Gaza and escalation of arrests and killing in the West Bank” there is a “risk of genocide against the Palestinian people”.³ United Nations experts have also expressed their “profound ... concern” about “the failure of the international system to mobilise to prevent genocide” against Palestinians, and have called on the “international community” to “do everything it can to immediately end the risk of genocide against the Palestinian people”.⁴ The Committee on the Elimination of Racial Discrimination (‘CERD’), acting under its ‘early warning and urgent action procedure’, has also called on “*all State parties*” to the Genocide Convention to “fully respect” their “obligation to prevent... genocide”.⁵ This application by South Africa and its request for the indication of provisional measures

fall to be considered in that context and in the light of those calls. It is made against the background of South Africa's foreign policy objective for the attainment of a durable peace between Israel and the State of Palestine, with two States existing side by side within internationally recognised borders, based on those existing on 4 June 1967, prior to the outbreak of the 1967 Arab-Israeli war, in line with all relevant United Nations resolutions and international law.

Repeated statements by Israeli State representatives, including at the highest levels, by the Israeli President, Prime Minister, and Minister of Defence express genocidal intent. That intent is also properly to be inferred from the nature and conduct of Israel's military operation in Gaza, having regard *inter alia* to Israel's failure to provide or ensure essential food, water, medicine, fuel, shelter and other humanitarian assistance for the besieged and blockaded Palestinian people, which has pushed them to the brink of famine. It is also clear from the nature, scope and extent of Israel's military attacks on Gaza, which have involved the sustained bombardment over more than 11 weeks of one of the most densely populated places in the world, forcing the evacuation of 1.9 million people or 85% of the population of Gaza from their homes and herding them into ever smaller areas, without adequate shelter, in which they continue to be attacked, killed and harmed. Israel has now killed in excess of 21,110 named Palestinians, including over 7,729 children — with over 7,780 others missing, presumed dead under the rubble — and has injured over 55,243 other Palestinians, causing them severe bodily and mental harm. Israel has also laid waste to vast areas of Gaza, including entire neighbourhoods, and has damaged or destroyed in excess of 355,000 Palestinian homes, alongside extensive tracts of agricultural land, bakeries, schools, universities, businesses, places of worship, cemeteries, cultural and archaeological sites, municipal and court buildings, and critical infrastructure, including water and sanitation facilities and electricity networks, while pursuing a relentless assault on

the Palestinian medical and healthcare system. Israel has reduced and is continuing to reduce Gaza to rubble, killing, harming and destroying its people, and creating conditions of life calculated to bring about their physical destruction as a group.

Pursuant to Article 74(4) of the Rules of Court, South Africa requests the President of the Court to protect the Palestinian people in Gaza by calling upon Israel immediately to halt all military attacks that constitute or give rise to violations of the Genocide Convention pending the holding of such hearing, so as to enable any order the Court may make on the request for the indication of provisional measures to have its appropriate effects. To that end, the Court should order Israel to cease killing and causing serious mental and bodily harm to Palestinian people in Gaza, to cease the deliberate infliction of conditions of life calculated to bring about their physical destruction as a group, to prevent and punish direct and public incitement to genocide, and to rescind related policies and practices, including regarding the restriction on aid and the issuing of evacuation directives.

JURISDICTION OF THE COURT

South Africa and Israel are both Members of the United Nations and therefore bound by the Statute of the Court, including Article 36 (1), which provides that the Court's jurisdiction "comprises . . . all matters specially provided for . . . in treaties and conventions in force".

South Africa and Israel are also parties to the Genocide Convention.

Article IX of the Genocide Convention provides:

"Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of

any of the parties to the dispute.”

Having regard to the fact that the prohibition of genocide has the character of a peremptory norm and that the obligations under the Convention are owed *erga omnes* and *erga omnes partes*,⁶ Israel has been made fully aware of the grave concerns expressed by the international community, by States Parties to the Genocide Convention, and by South Africa in particular, as to Israel’s failure to cease, prevent and punish the commission of genocide.

THE FACTS

INTRODUCTION

Since 7 October 2023, Israel has engaged in a large-scale military assault by land, air and sea, on the Gaza Strip (‘Gaza’), a narrow strip of land approximately of 365 square kilometres – one of the most densely populated places in the world.⁷ Gaza — home to approximately 2.3 million people, almost half of them children — has been subjected by Israel to what has been described as one of the “heaviest conventional bombing campaigns” in the history of modern warfare.⁸ By 29 October 2023 alone, it was estimated that 6,000 bombs per week had been dropped on the tiny enclave.⁹ In just over two months, Israel’s military attacks had “wreaked more destruction than the razing of Syria’s Aleppo between 2012 and 2016, Ukraine’s Mariupol, or proportionally, the Allied bombing of Germany in World War II.” The destruction wrought by Israel is so extreme that “Gaza is now a different colour from space. It’s a different texture”.

BACKGROUND

The Gaza Strip (‘Gaza’)

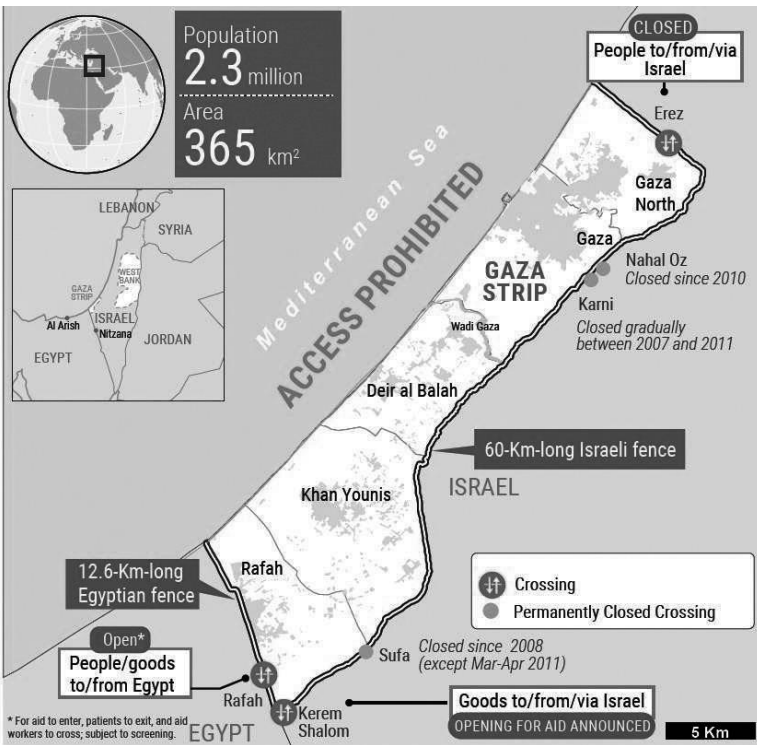
Gaza is a narrow strip of land, bordered to the west by the Mediterranean Sea, to the south by Egypt and to the north and east by Israel. Together with the West Bank, including East Jerusalem,

it is one of the two constituent territories of the occupied Palestinian territory (‘oPt’) — occupied by Israel in 1967 — and of the State of Palestine, recognised by South Africa on 15 February 1995, and accorded non-member observer State status in the United Nations on 29 November 2012.¹⁰

The population of Gaza consists of approximately 2.3 million people, over half of whom are children. 80 per cent of Palestinians in Gaza are refugees — and their descendants — from towns and villages in what is now the State of Israel,¹¹ expelled or forced to flee during the mass displacement of over 750,000 Palestinians or ‘Nakba’ during the establishment of the State of Israel.¹² The Nakba and the mass displacement associated with it therefore features prominently in the history and consciousness of Palestinians in Gaza, as it does for the wider Palestinian people. Palestinians in Gaza form a substantial part of the Palestinian national, racial and ethnical group: they are a prominent part of the group, making up the population of one of the two constituent territories of the State of Palestine. They are also a quantitatively substantial part of the Palestinian population of the State of Palestine under occupation, which counts approximately 5.48 million people.¹³

MAP OF THE GAZA STRIP

Until 2005, Gaza — like the West Bank today — was occupied by Israeli military forces on the ground. However, in 2005, Israel unilaterally ‘disengaged’ from Gaza, dismantling its military bases and relocating Israeli settlers from settlements in Gaza back to Israel and into the occupied West Bank.¹⁴ Notwithstanding its ‘disengagement’, Israel continues to exercise control over the airspace, territorial waters, land crossings, water, electricity, electromagnetic sphere and civilian infrastructure in Gaza,¹⁵ as well as over key governmental functions, such as the management of the Palestinian population registry for Gaza.¹⁶ Given that continuing effective control by Israel over the territory, Gaza is still con-



sidered by the international community to be under belligerent occupation by Israel.¹⁷

Entry and exit by air and sea to Gaza has been prohibited since the early 1990s, with Israel operating only two crossing points – Erez (pedestrian) and Kerem Shalom (goods) – through which Palestinians in Gaza could access the West Bank, including East Jerusalem, for business, trade, healthcare and social and family functions.¹⁸ However, Israel imposed a stringent blockade of Gaza, following Hamas’ electoral victory in 2006 that was followed by inter-Palestinian violence, declaring the entire territory to be a ‘hostile territory’.¹⁹ Existing restrictions on the movement of persons were significantly tightened, with most Palestinians in Gaza being ineligible for permits to travel, leading to prolonged, indefinite separation for many Palestinian families.²⁰ The few who were eligible to travel did “not necessarily receive permits and

almost always encounter[ed] delays and difficulties in the process”.²¹ Between 2008 and 2021, the World Health Organization (‘WHO’) recorded that 839 Palestinians from Gaza had died while waiting for medical permits to leave Gaza for urgent medical treatment.²² The majority of permits were for day labourers and agricultural traders, primarily to undertake low-skilled work in Israel and on Israeli settlements in the West Bank.²³ Between 2007 and 2010, Israel regulated food imports into Gaza in accordance with calories consumed per person, to limit the transfers of food to a ‘humanitarian minimum’, without causing hunger or malnutrition.²⁴ Israel thereafter applied a ‘dual use’ system to imports into Gaza, severely restricting the entry of goods by prohibiting goods considered to be capable of having a dual civilian/military use.²⁵

Israel’s parallel implementation of a wide buffer zone inside Gaza’s eastern border fence (estimated to restrict access to approximately 24 per cent of Gaza) severely impacts internal food supply, by reducing the main agricultural area for farming.²⁶ Israel also made fishing extremely hazardous for Palestinians, who have not had full access to the fishing zone of 20 nautical miles stipulated in the Oslo Accords — interim agreements concluded between the PLO and Israel in the early 1990s. The naval blockade — policed by Israeli forces through the use of force, arrests and the confiscation of fishing equipment — severely reduced the fishing catchment area for Gaza’s fishermen to polluted waters immediately off the coastline, leading to overfishing impacting sustainability.²⁷ As long ago as 2015, the United Nations Conference on Trade and Development (‘UNCTAD’) warned that the restrictive measures imposed by Israel risked Gaza becoming uninhabitable by 2020.²⁸ In 2020, the United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 described the impact of Israel’s blockade on Gaza as having turned Gaza “from a low-income society with modest but growing export ties to the regional and international economy to

an impoverished ghetto with a decimated economy and a collapsing social service system”.²⁹

699 children, were killed, including in those “four highly asymmetrical wars”, as well as other smaller military assaults, with tens of thousands of others injured. A further 214 Palestinians, between Gaza and Israel, in which thousands of Palestinians participated every Friday for over 18 months, demanding that “the blockade imposed on Gaza be lifted and the return of Palestinian refugees” to their homes and villages in Israel.³⁰ On one particularly lethal day alone, Israel killed 60 Palestinian protesters.³¹

The Independent Commission of Inquiry on the protests in the occupied Palestinian territory (‘Commission’) found that there were reasonable grounds to believe that Israeli snipers “intentionally shot” children, knowing them to be children,³² and they also “intentionally shot” health workers and journalists “despite seeing that they were clearly marked as such”.³³ It further found “reasonable grounds to believe” that Israeli snipers shot disabled demonstrators “intentionally, despite seeing that they had visible disabilities” and despite them not presenting an imminent threat.³⁴

REPORT OF THE INDEPENDENT COMMISSION OF INQUIRY
ESTABLISHED PURSUANT TO HUMAN RIGHTS COUNCIL
RESOLUTION S-21/1 (24 JUNE 2015):³⁵

“ the large number of targeted attacks against residential buildings and the fact that such attacks continued throughout the operation, even after the dire impact of these attacks on civilians and civilian objects became apparent, raise concern that the strikes may have constituted military tactics reflective of a broader policy, approved at least tacitly by decision-makers at the highest levels of the Government of Israel . . .
. . . the fact that the Israel Defense Forces did not modify the manner in which they conducted their operations after initial episodes of shelling

resulted in a large number of civilian deaths indicates that their policies governing the use of artillery in densely populated areas may not be in conformity with international humanitarian law.

.....destruction by artillery fire, air strikes and bulldozers may have been adopted as a tactic of war. Some destruction may arguably be the result of the legitimate attempts of the Israel Defense Forces to dismantle tunnels and to protect its soldiers. The concentration of destruction in localities close to the Green Line, in some areas amounting to 100 per cent, and the *systematic way in which these areas were flattened one after the other*, however, raise concerns that such extensive destruction was not required by imperative military necessity. If confirmed, this would constitute a grave breach of article 147 of the Fourth Geneva Convention, which is a war crime. warnings to evacuate were meant to create “sterile combat zones”, and the people remaining in the area would no longer be considered civilians and thus benefit from the protection afforded by their civilian status. For example, the Head of the Doctrine Desk at the Infantry Corps Headquarters, reportedly stated: “... In peacetime security, soldiers stand facing a civilian population, but in wartime, there is no civilian population, just an enemy.” . . .

inferring that anyone remaining in an area that has been the object of a warning is an enemy or a person engaging in “terrorist activity”, or issuing instructions to this effect, contributes to creating an environment conducive to attacks against civilians.

The West Bank (including East Jerusalem).

The West Bank, including East Jerusalem, the larger constituent part of the occupied Palestinian territory, comprises 5,655 km², with a population of 2.9 million Palestinians, is geographically separated from Gaza, and fragmented by Israeli settlements.³⁶

The Oslo Accords divided administrative competences over

three areas of the West Bank (Areas A, B, and C — not including East Jerusalem) between the Palestinian Authority and Israel, the Occupying Power. Area A, comprising 18 per cent of the West Bank is stated to be under the full administrative control of the Palestinian Authority; Area B, comprising 22 per cent of the West Bank is under the administrative control of the Palestinian Authority and the security control of Israel; and Area C, comprising 60 per cent of the West Bank, is under full Israeli administrative and security control.³⁷ In 1967, Israel purportedly annexed occupied East Jerusalem to its territory, and in 1980, it incorporated a provision into its Basic Law claiming Jerusalem ‘united’ as the capital of Israel, a move censured by the United Nations Security Council as “null and void” and to “be rescinded forthwith”.³⁸ Since 1967, Israel has constructed 279 ‘settlements’ for Israeli civilians across the West Bank — including 14 settlements in East Jerusalem — appropriating 750,000 dunums (185,329 acres) of Palestinian land.³⁹ The United Nations Security Council has repeatedly declared that the establishment of such settlements by Israel has “no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace”.⁴⁰ Regardless, the number of Israeli settlers transferred into the West Bank (including East Jerusalem) has increased dramatically from an estimated 247,000 at the time of the Oslo Accords,⁴¹ to over 700,000 in 2023.⁴² The Prosecutor of the International Criminal Court (‘ICC’) has determined that there is “a reasonable basis to believe” that “members of the Israeli authorities have committed war crimes... in relation, inter alia, to the transfer of Israeli civilians into the West Bank.”⁴³

The United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, described the situation in the West Bank as follows:

...There, the Palestinians are subject to a harsh and arbitrary legal

system quite unequal to that enjoyed by the Israeli settlers. Much of the West Bank is off-limits to Palestinians, and they regularly endure significant restrictions on their freedom of movement through closures, roadblocks, and the need for hard-to-obtain travel permits.

Access to the natural resources of the occupied territory, especially to water, is disproportionately allocated to Israel and the settlers. Similarly, the planning system administered by the occupying power for housing and commercial development throughout the West Bank, including East Jerusalem, is deeply discriminatory in favour of settlement construction, while imposing significant barriers on Palestinians, including ongoing land confiscation, home demolitions and the denial of building permits. Israel employs practices that in some cases may amount to the forcible transfer of Palestinians, primarily those living in rural areas, as a means of confiscating land for settlements, military weapons training areas and other uses exclusive to the occupying power that have little or nothing to do with its legitimate security requirements.

55. As for East Jerusalem, the occupation has increasingly detached it from its traditional national, economic, cultural and family connections with the West Bank because of the wall, the growing ring of settlements and related checkpoints, and the discriminatory permit regime. It is neglected by the municipality in terms of services and infrastructure, the occupation has depleted its economy and the Palestinians have only a small land area on which to build housing.”⁴⁴

The institutionalised regime of discriminatory laws, policies and practices applied by Israel subjects Palestinians to what constitutes an apartheid regime.⁴⁵ Palestinians in the West Bank are contained behind a segregating Wall, subjected to: discriminatory land zoning and planning policies; punitive and administrative house demolitions;⁴⁶ violent Israeli army incursions into Palestinian villages, towns, cities and refugee camps, including in Area

A;⁴⁷ routine violent Israeli raids on their homes; arbitrary arrests and indefinitely renewable administrative detention (internment without trial); and a dual legal system pursuant to which Palestinians are tried under Israeli military legislation in Israeli military courts, without basic protections of international humanitarian and human rights law, while Israeli settlers living in the same territory are subject to a different legal regime, and tried in Israeli civilian courts with full due process.⁴⁸

Palestinians in the West Bank are also subjected to routine violence by Israeli soldiers and armed settlers. Prior to 7 October 2023, between 1 January and 6 October 2023, 199 Palestinians had been killed by Israeli soldiers or settlers in the West Bank and 9,000 more had been injured.⁴⁹ By September 2023, Save the Children had already declared 2023 the deadliest year for Palestinian children in the West Bank since 2005 with at least 38 Palestinian children having been killed.⁵⁰ Since 7 October 2023, a further 295 Palestinians, including 77 children, have been killed by Israeli soldiers and settlers, and a further 3,803, including 576 children, wounded — many seriously.⁵¹ A total of 495 Palestinians have been killed in total in the West Bank, making it “the deadliest year for Palestinians” since 2005.⁵²

GENOCIDAL ACTS COMMITTED AGAINST THE PALESTINIAN PEOPLE

Killing Palestinians in Gaza

Over 21,110 Palestinians are reported to have been killed since Israel began its military assault on Gaza, according to the Palestinian Health Ministry, at least 70 per cent of whom are believed to be women and children.⁵³ An additional estimated 7,780 people, including at least 4,700 women and children, are reported missing, presumed dead under the rubble of destroyed buildings — dying slow deaths — or decomposing in the streets where they were killed.⁵⁴ Israel’s blockage of adequate fuel imports, its destruction of infrastructure and the communication blackouts it

imposes severely hamper rescue attempts. As of 8 December 2023, only one rescue vehicle was reportedly operational in the whole of Gaza, with survivors forced to try to dig for survivors with their bare hands.⁵⁵ The level of Israel's killing is so extensive that bodies are being buried in mass graves, often unidentified.⁵⁶

Israel is said to be dropping 'dumb' (*i.e.*, unguided) bombs on Gaza,⁵⁷ as well as heavy bombs weighing up to 2,000 lbs (900 kgs),⁵⁸ which have a predicted lethal radius "of up to 360m", and are "expected to cause severe injury and damage as far as 800 metres from the point of impact".⁵⁹ This weaponry is being deployed in one of the most densely populated areas in the world, where approximately one in every 100 people has now been killed. Some Israeli strikes on Palestinian homes and refugee camps have killed upwards of 110 Palestinians.⁶⁰ An estimated 1,779 Palestinian families in Gaza have lost multiple family members, and hundreds of multigenerational families have been killed in their entirety, with no remaining survivors — mothers, fathers, children, siblings, grandparents, aunts, cousins — often all killed together.⁶¹ By 7 November 2023, 312 Palestinian families in Gaza had lost over 10 members each.⁶² Numerous Palestinian families have lost upwards of 70 members each.⁶³ The level of mortality in Palestinian families is such that medics in Gaza have had to coin a new acronym: 'WCNSF', meaning 'wounded child, no surviving family'.⁶⁴ For Palestinian children, in particular, "[d]eath is everywhere" and "nowhere is safe".⁶⁵ A total of over 7,729 Palestinian children have been killed in Gaza to date — over 115 Palestinian children in Gaza are killed every day.⁶⁶ It is estimated that more Palestinian children were killed in the first three weeks in Gaza alone (a total of 3,195) than the total number of children killed each year across the world's conflict zones since 2019.⁶⁷ The scale of Palestinian child killings in Gaza is such that United Nations chiefs have described it as "a graveyard for children".⁶⁸ Indeed, the unprecedented rate of Palestinian child casualties has prompted UNICEF's spokesperson to call Israel's attacks on Gaza a "war on

children”. He explained:

“Most crises, they impact children terribly because children are the most vulnerable, but most have about a casualty rate of children of around 20 per cent. This is 40. This is twice as lethal to children as many conflicts we’ve seen in the last 15 or 20 years, and unfortunately that is because of the sheer density of population, the indiscriminate nature, and when we see that there’s been not even lip service to safe zones having water and sanitation for children and young girls. That same disregard for children is being shown in the bombardments. That’s why we see 40 per cent of casualties are children. That’s why it’s a war on children.”⁶⁹

Doctors, journalists, teachers, academics and other professionals are also being killed at wholly unprecedented rates. To date, Israel has killed: over 311 doctors, nurses and other health workers, including doctors and ambulance drivers killed on duty;⁷⁰ 103 journalists, amounting to over one per day,⁷¹ and more than 73 per cent of the total number of journalists and media workers killed globally in 2023;⁷² 40 civil defence workers — responsible for helping to dig victims out of the rubble — killed while on duty; and over 209 teachers and educational staff.⁷³ 144 United Nations employees have also been killed, the “highest number of aid workers killed in UN history in such a short time”.⁷⁴ It is estimated that “it will take years to recover the remains of people from beneath the rubble” and that “the costly, technical process will not result in the identification of each body”.⁷⁵

Causing Serious Bodily and Mental Harm to Palestinians in Gaza

Over 55,243 Palestinians have been wounded in Israel’s military attacks on Gaza since 7 October 2023, the majority of them women and children.⁷⁶ Burns and amputations are typical injuries,⁷⁷ with an estimated 1,000 children having lost one or both legs.⁷⁸ There are reports of Israeli forces using white phosphorus in densely populated areas in Gaza: as the World Health Organiza-

tion describes, even small amounts of white phosphorus can cause deep and severe burns, penetrating even through bone, and capable of reigniting after initial treatment.⁷⁹ There are no functioning hospitals in the North of Gaza, in particular, such that injured persons are reduced to “waiting to die”, unable to seek surgery or medical treatment beyond first aid, dying slow, agonising deaths from their injuries or from resultant infections.⁸⁰

The extreme levels of bombardment and lack of any safe areas are also causing severe mental trauma in the Palestinian population in Gaza.⁸¹ Even before the latest onslaught, Palestinians in Gaza suffered severe trauma from prior attacks: 80 per cent of Palestinian children experienced higher levels of emotional distress, demonstrating bedwetting (79 per cent) and reactive mutism (59 per cent), and engaging in self-harm (59 per cent), and suicidal thoughts (55 per cent).⁸² Eleven weeks of relentless bombardment, displacement and loss will necessarily have led to a further increase in those figures, particularly for the estimated tens of thousands of Palestinian children who have lost at least one parent, and those who are the sole surviving members of their families.⁸³ For the families who remain intact or partially intact, “it’s about doing everything you can so your child doesn’t realise that you’ve lost control”.⁸⁴

It is already known that “[r]epeated exposure to conflict and violence, including witnessing and experiencing housing demolition, combined with Israel’s siege of Gaza since 2007” is “associated with high levels of psychological distress among Palestinians”.⁸⁵ Indeed, the United Nations Security Council in Resolution 2712 (2023) expressed its “deep concern that the disruption of access to education has a dramatic impact on children, and that conflict has lifelong effects on their physical and mental health”.⁸⁶ That disruption and its “dramatic impact” on children must be considered, in particular, in the context of the number of Palestinian students and educators who have been killed (4,037 and 209 respectively), and wounded (estimated at 7,259),⁸⁷ and the number

of Palestinian schools having been damaged or destroyed (352, or 74 per cent of the schools in the whole of Gaza).⁸⁸ Medical professionals assess that “[t]he health effects on all Palestinian children, women, men, older people, people with disabilities, and people of marginalised identities are immense”.⁸⁹ An Emergency Coordinator for Médecins sans Frontières interviewed on her return from five weeks in Gaza described:

“[I]t’s even worse in reality than it looks. It’s - the amount of suffering is just something... incomparable. It’s really unbearable. I’m speechless when I try and think of the future of this children. It’s generations of children who will be handicapped, who will be traumatized. The very children in our mental health program are telling us that they would rather die than continue living in Gaza now.”⁹⁰

Alongside its military campaign, Israel has engaged in the dehumanisation, and cruel, inhuman and degrading treatment of members Palestinians in Gaza. Large numbers of Palestinian civilians, including children, have reportedly been arrested, blindfolded, forced to undress and remain outside in the cold weather, before being forced on to trucks and taken to unknown locations.⁹¹ Medics and first responders, in particular, have been repeatedly detained by Israeli forces, with many being detained incommunicado at unknown locations.⁹² Videos published by Israeli media on Christmas Day appeared to show hundreds of Palestinians, rounded up inside Al Yarmouk football stadium in Gaza City, “including children, older people and persons with disabilities, being forced to strip to their underwear in degrading conditions”.⁹³ Many Palestinian detainees who have been released report having been subjected to torture and ill-treatment, including the deprivation of food, water, shelter and access to toilets;⁹⁴ the United Nations Office for the Coordination of Humanitarian Affairs (‘OCHA’) reports “*video footage showing bruises and burns on the ... bodies*” of detainees.⁹⁵ Images of mutilated and burned

corpses — alongside videos of armed attacks by Israeli soldiers — billed as ‘exclusive content from the Gaza Strip’, are reportedly circulated in Israel via a social media ‘Telegram’ channel called ‘72 Virgins - Uncensored’.⁹⁶

Mass expulsion from homes and displacement of Palestinians in Gaza

It is estimated that over 1.9 million Palestinians out of Gaza’s population of 2.3 million people approximately 85 per cent of the population — have been forced from their homes.⁹⁷ There is nowhere safe for them to flee to, those who cannot leave or refuse to be displaced have been killed or are at extreme risk of being killed in their homes.

Israel is repeatedly issuing ‘evacuation orders’ demanding that Palestinian civilians in certain areas of Gaza leave their homes for other areas. The first such order, issued on 13 October 2023 demanded that the 1.1 million Palestinians living or otherwise present in the North of Gaza, including Gaza City, move to the South of Gaza within a 24-hour window.⁹⁸ The International Committee of the Red Cross warned that the evacuation directive, impacting approximately 36 per cent of Gaza’s territory - combined with the complete siege of Gaza — was not compatible with international humanitarian law.⁹⁹ The World Health Organization warned that it “could be tantamount to a death sentence” for hospital patients.¹⁰⁰ The evacuation was, however, maintained and has been reissued on a number of occasions, including on 28 October 2023,¹⁰¹ ahead of the Israeli announcement of ground operations in northern Gaza, and again thereafter. Israel has also issued more specific evacuation notices, ordering people in certain parts of Gaza City to evacuate to other parts.¹⁰² Many of those who are unwilling or unable to evacuate are then bombed in their homes.¹⁰³

Palestinians are not safe, even in those “small ... slivers”: as United Nations chiefs keep reiterating. “No place is safe”,¹⁰⁴ there

is “nowhere safe to go”.¹⁰⁵ The Director of UNRWA Affairs in Gaza has pleaded that “[p]eople in Gaza are people ... they are not pieces on a checkerboard - many have already been displaced several times. The Israeli Army just orders people to move into areas where there are ongoing airstrikes”.¹⁰⁶ This is creating terror.¹⁰⁷ The increased population density as a result of the evacuation ‘orders’ is also rendering Israeli strikes ever more lethal. On Christmas Eve itself, the Israeli army bombed Al Maghazi Refugee Camp in the Middle Area — an area to which tens of thousands of Palestinians had fled from the North — killing an estimated 86 people, including many women and children, and injuring many others.¹⁰⁸ A spokesperson for the OHCHR stated that they were “gravely concerned” that “this latest intense bombardment comes after Israeli forces ordered residents from the south of Wadi Gaza to move to Middle Gaza”.¹⁰⁹

For many Palestinians, the forced evacuation from their homes is necessarily permanent. Israel has now damaged or destroyed an estimated 355,000 Palestinian homes — amounting to 60 per cent of the entire housing stock in Gaza. The extent of the destruction in the North of Gaza, in particular, has rendered it largely unliveable, with the destruction in the South reaching a similar level. As noted by the Special Rapporteur on the human rights of internally displaced persons, “Gaza’s housing and civilian infrastructure have been razed to the ground, frustrating any realistic prospects for displaced Gazans to return home, repeating a long history of mass forced displacement of Palestinians by Israel”.¹¹⁰ The forced displacements in Gaza are genocidal, in that they are taking place in circumstances calculated to bring about the physical destruction of Palestinians in Gaza.¹¹¹

Deprivation of access to adequate food and water to Palestinians in Gaza

On 9 October 2023, Israel declared a “complete siege” on Gaza, allowing no electricity, no food, no water and no fuel to enter the

strip.¹¹² Although the siege has been partially alleviated since then, with some aid trucks being permitted in since 21 October 2023, this remains wholly insufficient, and well below the pre-October 2023 average of approximately 500 trucks per day.¹¹³ Moreover, fuel imports — permitted since 21 November 2023 — are “well below the minimum requirements for essential humanitarian operations”,¹¹⁴ meaning that such limited humanitarian aid as is being allowed in cannot easily be moved around Gaza away from entry points.¹¹⁵

Israel has now pushed the Palestinian population in Gaza to the brink of famine, with international agencies warning that “the risk of famine is real” (World Food Programme or ‘WFP’) and that it is “increasing each day” (IPC).¹¹⁶ Most of the Palestinian people in Gaza are now *starving*, with levels of starvation rising daily.¹¹⁷ The World Health Organization warns that “[h]unger is ravaging Gaza”.¹¹⁸ As the United Nations Secretary-General has stated, “[f]our out of five of the hungriest people anywhere in the world are in Gaza”,¹¹⁹ with Palestinians in Gaza facing the highest levels of acute food insecurity ever classified by the IPC.¹²⁰ UNRWA’s Commissioner-General describes “[d]esperate, hungry and terrified” people, who are now “stopping aid trucks, taking the food, and eating it right away.”¹²¹ The World Health Organization has stated that “[a]n unprecedented 93% of the population in Gaza is facing crisis levels of hunger, with insufficient food and high levels of malnutrition”. They say that “[a]t least 1 in 4 households are 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”.

The conditions created by the siege are exacerbated by Israel’s continuing strikes on Gaza, including on its bakeries, water facilities and last remaining operating mill, and its razing of agricultural lands, crops, orchards and greenhouses.¹²²

Water is also severely depleted. Israel continues to cut off piped water for the North of Gaza,¹²³ and the North’s water de-

salination plant is non-functioning.¹²⁴ From 15 October 2023, Israel began piping a small amount of water to the South, in part to “push the civilian population to the southern [part of the] Strip”.¹²⁵ The damage from Israeli airstrikes and shelling has also rendered most of the water system inoperable.¹²⁶ The World Food Programme has reported that there is only 1.5 to 1.8 litres of clean water available per person per day, for all uses (drinking, washing, food preparation, sanitation and hygiene).¹²⁷ This is far below the ‘emergency threshold’ of 15 litres per day for “war or famine-like conditions”, or the ‘survival threshold’ of 3 litres per day.¹²⁸

Experts are now predicting that more Palestinians in Gaza may die from starvation and disease than airstrikes,¹²⁹ and yet Israel is intensifying its bombing campaign, precluding the effective delivery of humanitarian assistance to Palestinians. It is clear that Israel is through its actions and policies in Gaza, deliberately inflicting on Palestinians conditions of life calculated to bring about their destruction.¹³⁰

Deprivation of adequate medical assistance to Palestinians in Gaza Since early December 2023, Israeli army attacks on Palestinian hospitals have only increased. The Israeli army has continued to attack and besiege hospitals and healthcare centres; to deprive them of electricity and fuel crucial to maintain effective functioning and equipment; to obstruct them from receiving medical supplies, food and water; to force their evacuations and closure; and effectively to destroy them.

There have now been more than 238 attacks on ‘healthcare’ in Gaza, in which over 61 hospitals and other healthcare facilities have been damaged or destroyed.¹³¹ Only 13 out of 36 hospitals and 18 out of 72 healthcare centres are still even functioning — some of them barely — despite the overwhelming number of people injured in Israeli attacks.¹³²

In addition to the war wounded, there are hundreds of thousands of Palestinians in Gaza who still need routine medical care

for conditions such as high blood pressure, cardiovascular disease or diabetes.¹³³ Thousands of Palestinians in Gaza are also in need of urgent care for kidney disease and cancer, and an estimated 130 premature babies are dependent on incubators for survival at any given time.¹³⁴ Many of them are now unable to receive medical assistance. UNICEF warns that “[w]omen, children and newborns in Gaza are disproportionately bearing the burden of the escalation of hostilities in the occupied Palestinian territory, both as casualties and in reduced access to health services”.¹³⁵ Older persons and persons with disabilities lack essential medication, and are at higher risk of communicable diseases, malnutrition and death.¹³⁶ Pregnant women are also particularly vulnerable.

Experts are beginning to warn that the numbers of Palestinians dying as a result of disease and hunger, could *already* be outstripping violent deaths caused by Israeli army assaults.¹³⁷ There have already been over 360,000 documented cases of communicable diseases reported in UNRWA shelters alone, brought on or exacerbated by unsanitary conditions, hunger and lack of clean water, with the actual numbers believed to be considerably higher.¹³⁸

Destruction of Palestinian life in Gaza

Across Gaza, Israel has targeted the infrastructure and foundations of Palestinian life, deliberately creating conditions of life calculated to bring about the physical destruction of Palestinian people. In addition to the attacks previously cited on homes, neighbourhoods, hospitals, water systems, agricultural lands, bakeries and mills, Israel has also targeted the foundational civil system in Gaza. Israel has targeted the Palace of Justice,¹³⁹ — the main Palestinian court building in Gaza — housing the Palestinian Supreme Court, the Constitutional Court, the Court of Appeal, the Court of First Instance, the Administrative Court and the Magistrates’ Court, as well as an archive of court records and other historical files. Israel has also significantly damaged the Palestinian Legislative Council complex.¹⁴⁰ It has targeted Gaza

City's Central Archive building, containing thousands of historical documents and national records dating back over 100 years, and forming an essential archive of Palestinian history, as well as more modern records for Gaza City's urban development.¹⁴¹

Israel has damaged and destroyed numerous centres of Palestinian learning and culture, including: the Al Zafar Dmari Mosque and Center for Manuscripts and Ancient Documents;¹⁴² the Orthodox Cultural Centre; the Al Qarara Cultural Museum; the Gaza Centre for Culture and Arts; the Arab Social Cultural Centre; the Hakawi Society for Culture and Arts; and the Rafah Museum — Gaza's newly opened museum of Palestinian heritage, housing hundreds of cultural and archaeological artefacts. Israel's attacks have destroyed Gaza's ancient history: eight sites have been damaged or destroyed, including the ancient port of Gaza (known as 'Anthedon Harbour' or 'Al Balakhiya') — the archaeological site of a 2,000-year-old Roman cemetery listed on both the Islamic Heritage List and the tentative UNESCO World Heritage List.¹⁴³ Israel has also destroyed Gaza City's 'Old City', including its 146-year-old historic houses, mosques, churches, markets and schools. It has also destroyed Gaza's more recent history of more hopeful times, including the Rashad al-Shawa Cultural Center — site of a historic meeting between United States President Bill Clinton and Palestinian President Yasser Arafat 25 years ago — and an important cultural hub for Palestinians in Gaza, with its theatre, library and event space.¹⁴⁴ And Israel is destroying Gaza's future academic and cultural potential: alongside the 352 Palestinian schools it has damaged or destroyed,¹⁴⁵ the 4,037 students and 209 teachers and educational staff it has killed, alongside the other 7,259 students and 619 teachers it has injured.¹⁴⁶

Imposing measures intended to prevent Palestinian births

As set out above, Israel's actions are impacting Palestinian women and children in Gaza especially severely, with 70 per cent of those killed estimated to be women and children. Two mothers

are estimated to be killed every hour in Gaza. Over 7,729 children were estimated to have been killed by 11 December 2023 alone,¹⁴⁷ and at least 4,700 other women and children are reported missing, believed to be buried under the rubble.¹⁴⁸ There are multiple eye-witness accounts of pregnant women being killed by Israeli soldiers, including while trying to access healthcare.¹⁴⁹

An ever-increasing number of Palestinian babies in Gaza are reportedly dying from entirely preventable causes, brought about by Israel's actions: newborns up to three months old are dying of diarrhoea, hypothermia, and other preventable causes. Without essential equipment and medical support, premature and underweight babies have little to no chance of survival.¹⁵⁰ Palestinian newborn babies have died due to the lack of fuel to supply hospital generators;¹⁵¹ others have been found decomposing in their hospital cots, medical staff taking care of them having been forced by Israel to evacuate.

By 22 November 2023 the United Nations Special Rapporteur on violence against women and girls, its causes and consequences, has expressly warned that:

“[T]he reproductive violence inflicted by Israel on Palestinian women, newborn babies, infants, and children could be qualified as... *acts of genocide under Article 2 of the Convention on the Prevention of Genocide* ... including “imposing measures intended to prevent births within a group”. She stressed that “States must prevent and punish such acts in accordance with their responsibilities under the Genocide Convention.”¹⁵²

EXPRESSIONS OF GENOCIDAL INTENT AGAINST THE PALESTINIAN PEOPLE BY ISRAELI STATE OFFICIALS AND OTHERS

Evidence of Israeli State officials' specific intent (*'dolus specialis'*) to commit and persist in committing genocidal acts or to fail to prevent them has been significant and overt since October

2023. Those statements of intent — when combined with the level of killing, maiming, displacement and destruction on the ground, together with the siege — evidence an unfolding and continuing genocide. They include statements by the following individuals in the positions of the highest responsibility:

Prime Minister of Israel: On 7 October 2023, in a televised address by the Government Press Office, Prime Minister Benjamin Netanyahu promised to “operate forcefully everywhere”.¹⁵³ On 13 October 2023, he confirmed that “[w]e are striking our enemies with unprecedented might . . .”.¹⁵⁴ On 15 October 2023, when Israeli airstrikes had already killed over 2,670 Palestinians, including 724 children,¹⁵⁵ the Prime Minister stated that Israeli soldiers “understand the scope of the mission” and stand ready “to defeat the bloodthirsty monsters who have risen against [Israel] to destroy us”.¹⁵⁶

President of Israel: On 12 October 2023, President Isaac Herzog made clear that Israel was not distinguishing between militants and civilians in Gaza, stating in a press conference to foreign media — in relation Palestinians in Gaza, over one million of whom are children: “It’s an entire nation out there that is responsible.

Israeli Minister of Defence: On 9 October 2023, Defence Minister Yoav Gallant in an Israeli Army ‘situation update’ advised that Israel was “imposing a complete siege on Gaza. No electricity, no food, no water, no fuel. Everything is closed. We are fighting human animals and we are acting accordingly.”¹⁵⁷ He also informed troops on the Gaza border that he had “released all the restraints”,¹⁵⁸ stating in terms that: “Gaza won’t return to what it was before. We will eliminate everything. If it doesn’t take one day, it will take a week. It will take weeks or even months, we will reach all places.”¹⁵⁹ He further announced that Israel was moving to “a full- scale response” and that he had “removed every restriction” on Israeli forces.¹⁶⁰

Israeli Minister for National Security: On 10 November 2023, Itamar Ben-Gvir clarified the government’s position in a televised address, stating: “[t]o be clear, when we say that Hamas should be destroyed, it also means those who celebrate, those who support, and those who hand out candy — they’re all terrorists, and they should also be destroyed.”¹⁶¹

THE CLAIMS OF SOUTH AFRICA

Based on the above, as well as the further evidence to be presented over the course of these proceedings, South Africa considers that the conduct of Israel — through its State organs, State agents, and other persons and entities acting on its instructions or under its direction, control or influence — in relation to Palestinians in Gaza, is in violation of its obligations under the Genocide Convention, including Articles I, III, IV, V and VI, read in conjunction with Article II. Those violations of the Genocide Convention include, but are not limited to:

- (a) failing to prevent genocide in violation of Article I;
- (b) committing genocide in violation of Article III (a);
- (c) conspiring to commit genocide in violation of Article III (b);
- (d) direct and public incitement to commit genocide in violation of Article III (c);
- (e) attempting to commit genocide in violation of Article III (d);
- (f) complicity in genocide in violation of Article III (e);
- (g) failing to punish genocide, conspiracy to commit genocide, direct and public incitement to genocide, attempted genocide and complicity in genocide, in violation of Articles I, III, IV and VI;
- (h) failing to enact the necessary legislation to give effect to the provisions of the Genocide Convention and to provide effective penalties for persons guilty of genocide, conspiracy to commit genocide, incitement to genocide, attempted genocide, and complicity in genocide, in violation of Article V; and

(i) failing to allow and/or directly or indirectly impeding the investigation by competent international bodies or fact-finding missions of genocidal acts committed against Palestinians in Gaza, including those Palestinians removed by Israeli State agents or forces to Israel, as a necessary and corollary obligation pursuant to Articles I, III, IV, V and VI.

THE RELIEF SOUGHT

111. While reserving the right to revise, supplement or amend this Application, and subject to the presentation to the Court of the relevant evidence and legal arguments, South Africa respectfully requests the Court to adjudge and declare:

(1) that the Republic of South Africa and the State of Israel each have a duty to act in accordance with their obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the members of the Palestinian group, to take all reasonable measures within their power to prevent genocide; and

(2) that the State of Israel:

(a) has breached and continues to breach its obligations under the Genocide Convention, in particular the obligations provided under Article I, read in conjunction with Article II, and Articles III (a), III (b), III (c), III (d), III (e), IV, V and VI;

(b) must cease forthwith any acts and measures in breach of those obligations, including such acts or measures which would be capable of killing or continuing to kill Palestinians, or causing or continuing to cause serious bodily or mental harm to Palestinians or deliberately inflicting on their group, or continuing to inflict on their group, conditions of life calculated to bring about its physical destruction in whole or in part, and fully respect its obligations under the Genocide Convention, in particular the obligations provided under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI;

(c) must ensure that persons committing genocide, conspiring to commit genocide, directly and publicly inciting genocide,

attempting to commit genocide and complicit in genocide contrary to Articles I, III (a), III (b), III (c), III (d) and III (e) are punished by a competent national or international tribunal, as required by Articles I, IV, V and VI;

(d) to that end and in furtherance of those obligations arising under Articles I, IV, V and VI, must collect and conserve evidence and ensure, allow and/or not inhibit directly or indirectly the collection and conservation of evidence of genocidal acts committed against Palestinians in Gaza, including such members of the group displaced from Gaza;

(e) must perform the obligations of reparation in the interest of Palestinian victims, including but not limited to allowing the safe and dignified return of forcibly displaced and/or abducted Palestinians to their homes, respect for their full human rights and protection against further discrimination, persecution, and other related acts, and provide for the reconstruction of what it has destroyed in Gaza, consistent with the obligation to prevent genocide under Article I; and

(f) must offer assurances and guarantees of non-repetition of violations of the Genocide Convention, in particular the obligations provided under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI.

REQUEST FOR PROVISIONAL MEASURES

In accordance with Article 41 of the Statute of the Court, and Articles 73, 74 and 75 of the Rules of Court, South Africa requests that the Court indicate provisional measures. In light of the nature of the rights in issue, as well as the ongoing, extreme and irreparable harm being suffered by Palestinians in Gaza, South Africa requests that the Court address this request as a matter of extreme urgency.

This Application describes an exceptionally brutal military campaign by Israel in Gaza, which is extensive and ongoing, and which Israel intends to intensify further still.¹⁶²

Israel has engaged in and failed to prevent or to punish acts and measures which are genocidal, constituting flagrant violations of Israel's obligations under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI of the Genocide Convention. As further evidenced in the materials set out in the application, the acts of genocide in question in breach of Articles II (a), II (b), II (c) and II (d), in particular, that collectively target the Palestinians in Gaza include, *inter alia*:

- (1) **killings of Palestinians in Gaza**, including a large proportion of women and children — estimated to account for around 70 per cent of the more than 21,110 fatalities — some of whom appear to have been summarily executed;
- (2) **causing serious mental and bodily harm to Palestinians in Gaza**, including through maiming, psychological trauma, and inhuman and degrading treatment;
causing the forced evacuation and displacement of around 85 per cent of Palestinians in Gaza — including children, the elderly and infirm, and the sick and wounded as well as causing the large scale destruction of Palestinian homes, villages, refugee camps, towns and entire areas in Gaza, precluding the return of a significant proportion of the Palestinian people to their homes;
- (3) **causing widespread hunger, dehydration and starvation to besieged Palestinians in Gaza**, through the impeding of sufficient humanitarian assistance, the cutting off of sufficient water, food, fuel and electricity, and the destruction of bakeries, mills, agricultural lands and other methods of production and sustenance;
- (4) **failing to provide and restricting the provision of adequate shelter, clothes, hygiene or sanitation to Palestinians in Gaza**, including the 1.9 million internally displaced people, compelled by Israel's actions to live in dangerous situations of squalor, alongside the routine targeting and destruction of places of shelter and the killing and wounding of those sheltering, including women, children, the disabled and the elderly;

(5) **failing to provide for or to ensure the provision for the medical needs of Palestinians in Gaza**, including those medical needs created by other genocidal acts causing serious bodily harm, including through directly attacking Palestinian hospitals, ambulances and other healthcare facilities in Gaza, killing Palestinian doctors, medics and nurses, including the most qualified medics in Gaza, and destroying and disabling Gaza's medical system; and **destroying Palestinian life in Gaza**, through the destruction of Gaza's universities, schools, courts, public buildings, public records, stores, libraries, churches, mosques, roads, infrastructure, utilities and other facilities necessary to the sustained life of Palestinians in Gaza as a group, alongside the killing of entire family groups — erasing entire oral histories in Gaza and the killing of prominent and distinguished members of society.

(6) **Imposing measures intended to prevent Palestinian births in Gaza**, through the reproductive violence inflicted on Palestinian women, newborn babies, infants, and children.

Provisional measures are necessary in this case to protect against further, severe and irreparable harm to the rights of the Palestinian people under the Genocide Convention, which continue to be violated with impunity. South Africa requests that the Court indicate provisional measures to protect and preserve those rights as well as its own rights under the Convention, and to prevent any aggravation or extension of the dispute, pending the determination of the merits of the issues raised by the Application.

South Africa notes that there are other related matters that do not directly engage obligations under the Genocide Convention and are therefore not properly within the Court's jurisdiction in this case, including the urgent return of Israeli and other hostages. South Africa considers that the provisional measures requested are nevertheless consistent with and capable of assisting towards the progression and resolution of those matters.

NOTES

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