

## INTRODUCTION

**Vaughan Lowe KC**

1. Mr President, Members of the Court: it is a privilege to appear before you, and an honour to have been entrusted with the presentation of this part of South Africa's request.
2. This is not a routine case – not even a routine case on the use of force or on international humanitarian law. South Africa is here because the Palestinian people are facing genocide in Gaza, and your previous Orders have not succeeded in protecting them against that.
3. The Court held in January that the Palestinians have a legal right to protection against genocide, and that South Africa had shown that there was a real and imminent risk to the irreparable violation of that right.<sup>1</sup> The Court issued an Order because it was necessary to protect the Palestinian people against genocide. It issued a further Order in March.
4. Whether because of a lack of clarity as to precisely what the Orders require or because Israel chooses to ignore them, they have not been effective. The UN has a framework, including the Security Council and the General Assembly, for addressing international disputes: but this part of it has not worked well. South Africa respectfully asks the Court to reassert its authority and its role in this framework.
5. South Africa has considered the technical requirements for provisional measures – a change in the situation and so on – and will address them. But the essential point is that the Court has the power to act to ensure that its previous Orders and its eventual judgment will not be worthless and that the Palestinian people will be protected; and it needs to exercise that power now.

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<sup>1</sup> *South Africa v Israel*, Order of 26 January 2024, paras 61, 74, 86.

6. Israel's action is directed against the Palestinian people throughout Gaza and the West Bank. South Africa's request was initially focused on Rafah, because of the imminent prospect of death and suffering on a massive scale resulting from Israel's attack. Since the request was made it has become increasingly clear that Israel's actions in Rafah are part of the endgame in which Gaza is utterly destroyed as an area capable of human habitation. This is the last step in the destruction of Gaza and its Palestinian people. It was Rafah that brought South Africa to the Court: but it is all Palestinians, as a national, ethnical and racial group, who need the protection from genocide that the Court can order.
7. We have heard expressions of outrage that anyone could accuse Israel of acting in this way. We've heard assurances that Israel was doing everything in its power to avoid civilian deaths as it exercised its claimed 'right of self-defence'. We've heard boasts that Israel's army is the most moral army in history. We've heard denials that there is famine in Gaza. For months people, particularly in the west, have appeared unwilling to accept that the accusations are true. How could people who look like us and sound like us possibly engage in anything like genocide? But the evidence has to be faced.
8. My colleagues will take you to that evidence, including evidence of continuing bombings, attacks on people in 'safe areas' to which they have been directed by Israel, attacks on aid convoys, of mass graves and the horrors of which those corpses speak. There is no credible argument that this catastrophe is not real.
9. The Court has already found a real and imminent risk to the violation of the right of the Palestinian people to protection against genocide. The Court is aware of the statements of the UN Secretary-General, of the President of the United States, of heads of State and foreign ministers from around the world, and of the heads of international aid agencies.
10. They, and the personal accounts and the news footage that emerge from Gaza, tell a consistent story, of unimaginable horror; and it continues as we speak. Most of Gaza has been razed. The survivors who are from time to time allowed to 'return to their homes' are returning to rubble, with no homes, no water or electricity or sewage or other working infrastructure, and with the few possessions that they have managed to

carry with them on carts or cars as they are pushed from one so-called safe place to the next. If the Court does not act now, the possibility of rebuilding a viable Palestinian society in Gaza will be destroyed, at least for the lifetime of those who survive the horrors of Gaza.

11. The details are not always easy to verify because Israel continues to bar independent investigators and journalists from entering Gaza; and over 100 journalists who were in Gaza have been killed since Israeli attacks began.<sup>2</sup> Israel cannot block independent investigations and then say that there is insufficient evidence against it. The Court has to deal with this case on the basis of its appraisal of the best evidence available to it.
12. Israel may again invoke its claimed ‘right of self-defence’. But it does not address three glaringly obvious points. First, the right of self-defence does not give a State the right to use unlimited violence. No right of self-defence can ever extend to a right to inflict massive, indiscriminate violence and starvation collectively on an entire group. Second, nothing – not self-defence or anything else – can ever justify genocide. The prohibition on genocide is absolute, a peremptory norm of international law. Third, the Court ruled in 2004 that there is no right of self-defence by an occupying State against the territory that it occupies.<sup>3</sup>
13. The key point today is that Israel’s declared aim of wiping Gaza from the map is about to be realized. Further, evidence of appalling crimes and atrocities is literally being destroyed and bulldozed, in effect wiping the slate clean for those who have committed these crimes and making a mockery of justice. The Court is not powerless: it must, with respect, do something to assert not only its own authority but the authority of international law.
14. South Africa submits that in order to secure the entry and distribution of food and humanitarian supplies, and to save lives, a halt to Israeli military operations across Gaza is essential. The overwhelming weight of opinion among States and international

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<sup>2</sup> Committee to Protect Journalists, *Journalist casualties in the Israel-Gaza war* (15 May 2024), <https://cpj.org/2024/05/journalist-casualties-in-the-israel-gaza-conflict/>.

<sup>3</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I. C. J. Reports 2004, p. 136, at para. 139

organizations is the same. A halt to military operations in Gaza is necessary to comply with the previous Orders that the Court has already imposed.

15. If Israel continues to deny that its bombing and shelling and military incursions and blocking of roads and entry points, and its other military operations in Gaza, are preventing the fulfilment of the Court's Orders, the Court needs to spell it out explicitly for Israel – and for the benefit of any other States that are still providing aid or assistance to Israel in its campaign to eradicate Palestine.
16. These points will be developed by South Africa's counsel. First, John Dugard will explain that the jurisdictional and other preconditions to the exercise of the Court's power to order provisional measures are met. Second, Max du Plessis will set out the recent events that have necessitated South Africa's return to the Court, and particularly those concerning Rafah. Then Adila Hassim will explain the scale and imminence of the risk facing Palestinians in Gaza. After that Tembeka Ngcukaitobi will show that Israel's actions have a pattern and an explicit purpose that clearly indicates that the aim is to eradicate Palestine. Finally, Blinne Ni Ghralaigh will explain the remedies that South Africa seeks. The Agent will return to read out SA's prayer for relief.
17. That, Mr President, Members of the Court, concludes my part of this submission. I thank you for your attention and ask that you call on Professor Dugard.