

NEW FACTS AND CHANGES IN THE SITUATION IN RAFAH

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- 1 Mister President, distinguished Members of the Court, it is a privilege to appear before you, on behalf of the Republic of South Africa.
- 2 My task is to address this Court on the new facts and grave changes in the situation in Rafah, that is fast leading to “the deadliest phase”¹ in this ongoing genocide. Those are the circumstances that compel South Africa to return to the Court to seek urgent further or modified provisional measures against the State of Israel.
- 3 Judges of this Court have recognised that the underlying reason for the Court’s January and March Orders² was that “the very right of existence of the Palestinian population in Gaza . . . is currently at risk of irreparable prejudice” and that “the only effective way of preserving the right of existence of the protected group” is the “function of prevention”.³ South Africa seeks these provisional measures before it is too late for prevention to be possible, let alone effective.
- 4 This Court noted that the situation in Rafah was already “perilous” in its Decision of 16 February 2024. Instead of complying with this Court’s Decisions of January, February and March 2024, Israel has defied this Court by trapping, besieging and bombarding an overcrowded Rafah, exacerbating the security and safety of 1.5 million highly vulnerable Palestinians already at grave risk.
- 5 Mr President, no-one in Gaza is safe because – as the United Nations has repeatedly made clear – *nowhere* in Gaza is safe.⁴ Palestinians were instructed by Israeli evacuation orders to move south *to* Rafah and seek refuge there from the bombardment in the North.⁵ Yet for months, the

¹ Norwegian Refugee Council, *Rafah: An Israeli military offensive will lead to mass atrocities* (6 May 2024), <https://www.nrc.no/news/2024/may/rafah-an-israeli-military-offensive-will-lead-to-mass-atrocities/>.

² *South Africa v Israel, Provisional Measures, Order of 28 March 2024, Declaration of Judge Yusuf* <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-02-en.pdf> at p.2, para. 5.

³ *South Africa v Israel, Provisional Measures, Order of 28 March 2024, Declaration of Judge Yusuf* at p.1, paras 3-4.

⁴ UNRWA @UNRWA Tweet (12:54 pm, 8 May 2024) <https://twitter.com/unrwa/status/1788160494198464612>;

UN OCHA, *UN relief chief: 'No place safe' for civilians in southern Gaza* (7 December 2023) <https://www.unocha.org/news/un-relief-chief-no-place-safe-civilians-southern-gaza>.

⁵ Al Haq, Al Mezan and Palestinian Center for Human Rights, *We reaffirm that there is no safe place in the entire Gaza Strip, from its north to its south* (12 December 2023) <https://reliefweb.int/report/occupied-palestinian-territory/we-reaffirm-there-no-safe-place-entire-gaza-strip-its-north-its-south-enar>.

expanding population scrambling for refuge in Rafah has been explicitly told by Israel that they are *not* safe, and that Israel does not intend for them to be safe. The international community has witnessed Israeli soldiers preparing for the ground invasion of Rafah filming themselves chanting “tear down Rafah”.⁶ Israel’s intention is typified by statements such as that of Israel’s Minister of Finance: Bezalel Smotrich — a member of the Security Cabinet — who has explained: “[T]here are no half measures. Rafah, Deir al-Balah, Nuseirat — *total annihilation*. ‘*You shall blot out the remembrance of Amalek from under heaven*’ — there’s no place under heaven”.⁷ Mr Ngcukaitobi will deal in careful detail with the intention that is so clearly evident in such statements and by Israel’s conduct.

6 Israel has resolutely resisted all international efforts to persuade and cajole it from eventually attacking Rafah. As we contemplate the horror of recent events, and the significance of Rafah for Israel’s ongoing genocide, the reminders of Srebrenica come into view. Rafah’s “prominence in the eyes of both the [Palestinians in Gaza] and the international community”, lies in it being the “most visible of the “safe areas” [in Gaza]”, which has “received significant attention in the international media”.⁸ To paraphrase the International Criminal Tribunal for Yugoslavia, in a decision endorsed by this Court, Israel’s spectacular destruction of Rafah *despite the assurances of the International Community (including this Court)*, and in full glare of the “international media”, is intended by Israel to *serve as a potent example to all Palestinians of their vulnerability and defencelessness in the face of Israeli military forces*, and to be *emblematic of the fate of all Palestinians in Gaza*. That there is “no place under heaven” that they are safe.

7 South Africa has made clear in its Request on 10 May that not only is there nowhere for the 1.5 million displaced people and others in Rafah to safely flee — so much of Gaza having been reduced to rubble. If Rafah is similarly destroyed there will be little left of Gaza or prospects for the survival of Palestinian life in the territory. Rafah is where Gaza’s largest still-partially functioning hospitals are situated: attacks on Rafah’s hospitals akin to those mounted by Israel against hospitals elsewhere in the Strip would therefore deal a fatal blow to Gaza’s already collapsed healthcare system.

⁶ Clash Report, @clashreport (1:35pm, 7 May 2024), <https://twitter.com/clashreport/status/1787808379701743752>; Hamivrakom, @mivrakom, Telegram Post (6 May 2024), <https://t.me/mivrakom/171438>.

⁷ “Israel’s Far-right Minister Smotrich Calls for ‘No Half Measures’ in the ‘Total Annihilation’ of Gaza”, *Haaretz* (30 April 2024), <https://www.haaretz.com/israel-news/2024-04-30/ty-article/.premium/smotrich-calls-for-no-half-measures-in-the-total-annihilation-of-gaza/0000018f-2f4c-d9c3-abcf-7f7d25460000>.

⁸ ICTY, Appeals Chamber, *Prosecutor v. Radislav Krstic*, Case No. IT-98-33-A, Appeal Judgment (19 April 2004), pp. 5-6, para. 16.

- 8 And at the same time as these assaults, aid is being throttled. That throttling is done defiantly and deliberately. This Court ordered on 28 March 2024 that, “in conformity with its obligations under the [Genocide Convention] . . . and in view of the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation”, Israel was to “take all necessary and effective measures to *ensure*, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance . . .” That included an express order that Israel increase the capacity and number of land crossing points and maintaining them open for as long as necessary”.⁹ Israel was also ordered to “*ensure* with immediate effect that its military does not... prevent [...] through any action, the delivery of urgently needed humanitarian assistance”.¹⁰
- 9 Why was that order so critical? Because the two border crossings in Rafah which Israel has seized and shut down are the main entry points for life-saving humanitarian aid and other goods entering Gaza, and for the entry and exit of people, including humanitarian workers, medics, medical evacuees and Palestinians fleeing the conflict. Israel’s seizure of those crossings places Israel in control of all access to and from Gaza. Its current closure of the crossings has served to seal Gaza hermetically from the outside world, further torpedoing the delivery of aid to and within Gaza. As the primary humanitarian hub for assistance in Gaza, if Rafah falls, so too does Gaza.¹¹
- 10 Deliberately herding 1.5 million Palestinians into Rafah and then carrying out a full-scale bombardment while sealing off entry and exit for lifesaving aid to an already devastated population, exposing them to famine and human suffering,¹² leaves only one inference: *of genocidal intent*.

⁹ *South Africa v. Israel, Provisional Measures, Order of 28 March 2024*, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-00-en.pdf> p. 13, para. 51(2)(a).

¹⁰ *South Africa v. Israel, Provisional Measures, Order of 28 March 2024*, p. 13, para. 51(2)(b).

¹¹ “‘They fear what’s coming’: How Israel’s Rafah escalation is affecting civilians and the aid response (Interview with UNRWA’s Director of Planning, Sam Rose)”, *The New Humanitarian* (8 May 2024), <https://www.thenewhumanitarian.org/interview/2024/05/08/israel-rafah-escalation-civilian-aid-response>.

¹² European Union, *Gaza: Statement by the High Representative on Israel’s operation in Rafah* (15 May 2024) https://www.eeas.europa.eu/eeas/gaza-statement-high-representative-israel-s-operation-rafah_en?

RAFAH AS PLACE OF “REFUGE”

- 11 I turn now to consider the topic of Rafah as a supposed place of refuge. Ten days ago, Rafah was described as the “last refuge”¹³ for over 1.5 million Palestinians in Gaza.¹⁴ It was the only remaining area of the Strip which had not yet been substantially destroyed by Israeli attacks: the population centre in a besieged enclave. Over the past seven months, hundreds of thousands of Palestinians were ordered by Israel to evacuate to Rafah for their safety,¹⁵ some forcibly displaced for the ninth time.¹⁶ Desperate, terrified, and “clinging to life by a thread”¹⁷ these Palestinians have sought shelter, often in makeshift tents or “under sheets of scrap plastic”,¹⁸ in the tiny and densely-crowded city of Rafah hoping against hope to stay alive in the ongoing Israeli bombardment and attack. A “city of children”,¹⁹ Rafah became home to some 600,000 Palestinian children and babies, many of them orphaned or disabled by Israel.²⁰ Recall that they join the staggering reality – according to UN Women – that among the dead in Gaza are “an estimated 6,000 mothers, leaving 19,000 children orphaned”.²¹
- 12 In addition to being the population centre, Rafah is the “primary humanitarian hub” of Gaza,²² and the only remaining area of the beleaguered Strip with the infrastructure and resources to host

¹³ Save the Children, *Save the Children warns of deadly consequences for children following new relocation orders for families in Rafah* (6 May 2024), <https://www.savethechildren.org.uk/news/media-centre/press-releases/save-the-children-warns-of-deadly-consequences-for-children-foll>; Norwegian Refugee Council, *Rafah: An Israeli military offensive will lead to mass atrocities* (6 May 2024), <https://www.nrc.no/news/2024/may/rafah-an-israeli-military-offensive-will-lead-to-mass-atrocities/>.

¹⁴ Mercy Corps, *Catastrophe Imminent for 1.5 Million Gazans as Rafah Evacuation Orders Begin* (6 May 2024), <https://europe.mercycorps.org/en-gb/press-room/releases/rafah-evacuation-order>.

¹⁵ UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #60* (5 December 2023), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-60>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #107* (31 January 2024), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-107-enhe#>.

¹⁶ Médecins Sans Frontières (‘MSF’), @MSF, Tweet (12:26 pm, 9 April 2024), <https://twitter.com/MSF/status/1777644121382961549>.

¹⁷ CARE Australia, *Gaza: Military offensive on Rafah a ‘cruel and heart-breaking blow’* (7 May 2024), <https://www.care.org.au/media/media-releases/gaza-military-offensive-on-rafah-a-cruel-and-heart-breaking-blow/>.

¹⁸ UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #158* (26 April 2024), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-158>.

¹⁹ United Nations Children’s Fund (‘UNICEF’), *There is ‘nowhere safe to go’ for the 600,000 children of Rafah, warns UNICEF* (6 May 2024), <https://www.unicef.org/press-releases/there-nowhere-safe-go-600000-children-rafah-warns-unicef>.

²⁰ United Nations Women (‘UN Women’), *Intensified military operations will bring increased death and despair for Rafah’s 700,000 women and girls* (7 May 2024), <https://www.unwomen.org/en/news-stories/press-release/2024/05/intensified-military-operations-will-bring-increased-death-and-despair-for-rafahs-700000-women-and-girls>.

²¹ UN Women, *Six months into the war on Gaza, over 10,000 women have been killed, among them an estimated 6,000 mothers, leaving 19,000 children orphaned* (16 April 2024), <https://www.unwomen.org/en/news-stories/press-release/2024/04/six-months-into-the-war-on-gaza-over-10000-women-have-been-killed>.

²² UN OHCHR, *Israel/occupied Palestinian Territory: Rafah threat is inhumane, says UN Human Rights Chief* (6 May 2024), <https://www.ohchr.org/en/statements-and-speeches/2024/05/israeloccupied-palestinian-territory-rafah-threat-inhumane-says-un>

the over one million displaced Palestinians²³ — albeit in a situation described by the UN as a “pressure cooker of despair”.²⁴

THE EVACUATION ORDERS OUT OF RAFAH

- 13 But Rafah as “refuge” or safe place is a lie.
- 14 On 6 May 2024, Israeli forces ordered around 100,000 Palestinians to evacuate the eastern portion of Rafah. Many were simply unable to flee:²⁵ “children and elderly [people] are so starved that they can barely walk”. They cannot just relocate to another area, to so-called ‘safe zones’. It is not possible.²⁶ Even for those who are able to leave, they have nowhere left to go.²⁷
- 15 Yet again, Israel’s use of evacuation orders and designation of “humanitarian zones” are purely performative -- they endanger rather than protect civilian life.²⁸ So-called “humanitarian zones” are not safe, precisely because nowhere in Gaza is safe. The zones are policed by the same Israeli forces who have attacked Palestinians in their homes, in make-shift tents,²⁹ in public markets,³⁰

²³ UN OHCHR, *Israel/Occupied Palestinian Territory: Rafah threat is inhumane, says UN Human Rights Chief* (6 May 2024), <https://www.ohchr.org/en/statements-and-speeches/2024/05/israeloccupied-palestinian-territory-rafah-threat-inhumane-says-un>.

²⁴ UN News, *Global Perspective Human Stories, Rafah a ‘pressure cooker of despair’ in Gaza; US ambassador to UN stresses vital role of UNRWA* (2 February 2024), <https://news.un.org/en/story/2024/02/1146157>.

²⁵ “Palestinians flee to Khan Younis and Deir el-Balah after Israel orders Rafah evacuation”, *Al Jazeera* (7 May 2024), <https://www.youtube.com/watch?v=vb8zQsA7jqw> [4:00].

²⁶ Pauline Ertel “‘Not possible’: Palestinians too ‘starved’ to leave Rafah (Interview with Alexandra Saieh, head of humanitarian policy from Save the Children)”, *Middle East Eye* (8 May 2024), <https://www.middleeasteye.net/news/not-possible-palestinians-starved-unable-leave-rafah-gaza>.

²⁷ UNICEF, *There is ‘nowhere safe to go’ for the 600,000 children of Rafah, warns UNICEF* (6 May 2024), <https://www.unicef.org/press-releases/there-nowhere-safe-go-600000-children-rafah-warns-unicef>.

²⁸ Forensic Architecture @ForensicArchi Tweet (7:50 pm, 14 May 2024) <https://twitter.com/ForensicArchi/status/1790439607667986532>

²⁹ UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #148* (29 March 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-148>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #149* (3 April 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-149>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #152* (12 April 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-152>

³⁰ UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #152* (12 April 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-152>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #153* (15 April 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-153>.

schools,³¹ and playgrounds,³² in agricultural greenhouses,³³ while waiting for aid,³⁴ by aid,³⁵ while attempting to return home,³⁶ despite waving white flags,³⁷ and, above all else, while sheltering in and seeking treatment from hospitals.³⁸

THE ATTACKS

- 16 Rafah as a place of refuge or safety remains a lie for another reason. For months Israel threatened to invade Rafah, leading the UN Secretary-General to warn that an assault on Rafah would be “a strategic mistake”, “a political calamity” and notably “a humanitarian nightmare”, which was also highlighted by this Court in its Decision of 16 February 2024.³⁹ We are before this Court urgently because Palestinians are now living that nightmare.
- 17 On 7 May, just *15 hours* after the evacuation orders were issued, Israel commenced a severe and sustained military assault on Rafah, which is ongoing and has intensified in the intervening period, killing and injuring Palestinians, and destroying their makeshift homes and the remaining

³¹ UNRWA Situation Report #102 on the situation in the Gaza Strip and the West Bank, including East Jerusalem (19 April 2024) <https://www.unrwa.org/resources/reports/unrwa-situation-report-102-situation-gaza-strip-and-west-bank-including-east-jerusalem>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #153* (15 April 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-153>; UNRWA Situation Report #101 on the situation in the Gaza Strip and the West Bank, including East Jerusalem (16 April 2024) <https://www.unrwa.org/resources/reports/unrwa-situation-report-101-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

³² UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #155* (19 April 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-155>.

³³ UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #148* (29 March 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-148>.

³⁴ UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #146* (25 March 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-146>; UN Rights in Occupied Palestinian Territory, *Attacks on the Humanitarian aid distribution system* (22 March 2024) <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-attacks-humanitarian-aid-distribution-system-enar>.

³⁵ “Palestinian boy who survived airstrike dies during food aid drop”, *The Guardian* (17 April 2024), https://www.theguardian.com/world/2024/apr/17/gazan-boy-who-survived-airstrike-dies-during-food-aid-drop?CMP=share_btn_url.

³⁶ OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #153* (15 April 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-153>.

³⁷ Younis Tirawi, @ytirawi, Tweet (March 27, 2024, 9:28pm), <https://twitter.com/ytirawi/status/1773069606644551734>; “Gaza white flag shooting: ITV News analyses how the incident unfolded frame-by-frame”, *ITV News* (18 April 2024), <https://www.itv.com/news/2024-02-09/gaza-white-flag-shooting-itv-news-analyses-how-the-incident-unfolded>.

³⁸ Forensic Architecture @ForensicArchi Tweet (7:50 pm, 14 May 2024) <https://twitter.com/ForensicArchi/status/1790439607667986532>;

³⁹ António Guterres, @antonioguterres, Tweet (4:50 pm, 7 May 2024), <https://twitter.com/antonioguterres/status/1787872714717294647>.

infrastructure necessary to sustain life in Gaza, including all aid and medical infrastructure in its path.⁴⁰ Israel deliberately attacked the very shelters to which it directed Palestinians to flee.⁴¹

18 So Palestinian families in Gaza are left to make an impossible choice: either they stay, trapped and likely killed alongside their loved ones in Rafah, or they head out into the few bits of remaining land in Gaza, now filling up with tents and shacks built of bits of wood and nylon, and vulnerable to attacks.⁴² The overwhelming majority have no means to flee other than on foot. “There is nothing humanitarian about these “humanitarian” zones.”⁴³

19 On 11 May, the Israeli military issued a new round of evacuation orders affecting some 34 neighbourhoods in eastern Rafah and North Gaza. UN agencies estimate in total, approximately 20 per cent of Gaza’s population have been displaced yet again in the past week alone.⁴⁴ By 10 May, an estimated 110,000 people had fled Rafah;⁴⁵ by 15 May, this number had increased to around 600,000 according to the UN.⁴⁶ All the while, and now by these actions, Israel’s genocide of Palestinians continues -- through military attacks and man-made starvation – and while mocking this Court’s provisional measures of protecting the rights of Palestinians under the Genocide Convention.

CROSSINGS AND AID

20 A critical part of Israel’s defiance of this Court’s orders comes in relation to aid and food itself. Israel has seized control of both the Rafah and the Kerem Shalom crossings,⁴⁷ taking total control of *all* entry and exit of people and goods into Gaza as a whole,⁴⁸ “chok[ing] off” the “two main

⁴⁰ Forensic Architecture @ForensicArchi Tweet (7:50 pm, 14 May 2024)

<https://twitter.com/ForensicArchi/status/1790439607667986532>.

⁴¹ UN OCHA, Hostilities in the Gaza Strip and Israel | Flash Update #165 (13 May 2024),

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-165>.

⁴² Islamic Relief, *Chaos and panic in Rafah as malnourished infants, people in wheelchairs and injured patients among those ordered to leave*, (11 May 2024), <https://islamic-relief.org/news/chaos-and-panic-in-rafah-as-malnourished-infants-people-in-wheelchairs-and-injured-patients-among-those-ordered-to-leave/>.

⁴³ Save the Children, *Gaza: Families fleeing Rafah say they are being ‘killed slowly’ as they are forced to move again* (14 May 2024) <https://www.savethechildren.net/news/gaza-families-fleeing-rafah-say-they-are-being-killed-slowly-forced-move-again>.

⁴⁴ UN OCHA, Hostilities in the Gaza Strip and Israel | Flash Update #165 (13 May 2024),

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-165>.

⁴⁵ ACAPS, *Briefing note – Palestine Gaza: Operations in Rafah* (11 May 2024)

https://www.acaps.org/fileadmin/Data_Product/Main_media/20240511_ACAPS_briefing_note_Palestine_Operations_in_Rafah_Gaza.pdf.

⁴⁶ UN News, *Gaza: 600,000 displaced from Rafah*, (15 May 2024),

<https://news.un.org/en/story/2024/05/1149756>.

⁴⁷ UN Web TV, *Geneva Press Briefing: OCHA, UNICEF, OHCHR, WHO, UN WOMEN* (7 May 2024),

<https://webtv.un.org/en/asset/k1q/k1q9eajpmk> [2:28].

⁴⁸ Scott Anderson, Director of UNRWA Affairs for Gaza @GazaUNRWA, Tweet (2:08 pm, 8 May 2024),

<https://twitter.com/GazaUNRWA/status/1788179227281334712>.

arteries” for getting life-saving aid to Gaza’s starving population.⁴⁹ In so doing, it has plunged Gaza into “unprecedented levels of humanitarian need”,⁵⁰ even as compared with the catastrophic levels of the previous seven months⁵¹ that led this Court to conclude “famine was setting in” back in March 2024.⁵²

- 21 The closure of the crossings means that Palestinians – starving in a “full blown”⁵³ man-made, famine – are further deprived of food, where Israel’s attacks have systematically decimated food production systems throughout Gaza.⁵⁴ It means that fuel cannot get in to run incubators and life-saving machinery in hospitals,⁵⁵ water pumps and wells.⁵⁶ It means that people – including the chronically sick and injured – cannot get out of Gaza; and vital aid cannot get in.⁵⁷ This poses a grave threat, not only to the Palestinian people, but also to United Nations personnel and aid workers trying to bring some relief.⁵⁸
- 22 Despite Israel’s announcement that it would re-open Kerem Shalom on 8 May, on 10 May, the UN reported that no supplies were passing through any crossings in southern Gaza.⁵⁹ As of 15 May, the Rafah crossing remains closed, and there is a continued lack of safe and logistically viable access to the Kerem Shalom crossing.⁶⁰ The crisis could not be more urgent.
- 23 That is so where Israel’s assaults on Rafah, and the closure of these critical crossings, are aggravating the famine-like conditions across Gaza, where 1.1 million people are projected to face Catastrophe (IPC Phase 5) food insecurity levels through July 2024.⁶¹ Bakeries have been

⁴⁹ UN Web TV, *Geneva Press Briefing: OCHA, UNICEF, OHCHR, WHO, UN WOMEN* (7 May 2024), <https://webtv.un.org/en/asset/k1g/k1q9eajpmk> [2:28].

⁵⁰ Director-General of the World Health Organization, Tedros Adhanom Ghebreyesus, @DrTedros, Tweet (5:23 pm, 6 May 2024), <https://twitter.com/DrTedros/status/1787518675836195224>.

⁵¹ *South Africa v Israel*, Order of 28 March 2024, p. 8, para. 30.

⁵² *South Africa v Israel*, Order of 28 March 2024, p. 7, para. 21.

⁵³ NBC, ‘Full-blown famine’ in northern Gaza, says World Food Programme executive director Cindy McCain, <https://www.youtube.com/watch?v=r7QWply967Q>, [1:15].

⁵⁴ Nilo Tabrizy, Imogen Piper and Miriam Berger “Israel’s offensive is destroying Gaza’s ability to grow its own food”, *The Washington Post*, (3 May 2024)

<https://www.washingtonpost.com/investigations/interactive/2024/gaza-israel-agriculture-food-fisheries/>.

⁵⁵ UN News, *Gaza: As exodus from Rafah continues, UN urges reopening of aid lines* (10 May 2024), <https://news.un.org/en/story/2024/05/1149591>.

⁵⁶ UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash update #162* (6 May 2024)

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-162>.

⁵⁷ CARE, *Statement from CARE International Secretary General Sofia Sprechmann Sineiro on Rafah Ground Offensive* (10 May 2024), <https://www.care.org.au/media/media-releases/statement-from-care-international-secretary-general-sofia-sprechmann-sineiro-on-rafah-ground-offensive/>.

⁵⁸ CARE, *An attack on Rafah is unconscionable: Statement from CARE International’s Secretary-General Sofia Sprechmann Sineiro* (10 May 2024), <https://www.care-international.org/news/attack-rafah-unconscionable-statement-care-internationals-secretary-general-sofia-sprechmann>.

⁵⁹ UNRWA, *Gaza: Supplies and Dispatch tracking* (10 May 2024), <http://gazadashboard.unrwa.org>.

⁶⁰ UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #166* (15 May 2024)

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-166>.

⁶¹ UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #163* (8 May 2024)

<https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-163>.

forced to shut down because they do not have fuel;⁶² ongoing attacks in Rafah have rendered humanitarian warehouses inaccessible. Responders providing food aid will run out of food supplies within days.⁶³

DESTRUCTION OF HOSPITALS

- 24 In addition to killing and harming Palestinians, the Israeli assault on Rafah has deliberately inflicted on them conditions of life calculated to bring about their physical and biological destruction. This is starkly illustrated through Israel’s destruction of Rafah’s hospitals. Due to the ongoing hostilities in its vicinity and the military operation in Rafah, the Al-Najjar Hospital — the main medical facility in the entire Rafah Governorate and one of Gaza’s largest remaining partially functioning hospitals — is now no longer functional.⁶⁴ It was a lifeline for 200 dialysis patients per day whom the World Health Organization previously warned “would die” if the hospital were to shut down.⁶⁵
- 25 Fears for the Al Emirati hospital are also particularly acute. This is one of the last partially functioning maternity hospitals in the whole of Gaza, which was until recently handling almost half of Gaza’s daily total of 180 births.⁶⁶ It has already been forced to stop admitting patients.⁶⁷ Medics warn that, “without a doubt”, “every single one” of the 45 babies in the neonatal intensive care unit and special intensive care unit “will die” if the hospital is occupied.⁶⁸
- 26 On 13 May, medical staff at the Kuwaiti Hospital in Rafah received an evacuation order from Israeli forces. As one of the last remaining hospitals in Rafah, it had only around 16 beds available

⁶² UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #164* (10 May 2024) <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-164>.

⁶³ UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #163* (8 May 2024) <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-163>; World Food Programme, *Palestine Emergency Response External Situation Report #19* (9 May 2024), <https://reliefweb.int/report/occupied-palestinian-territory/wfp-palestine-emergency-response-external-situation-report-19-9-may-2024>.

⁶⁴ Director-General of the WHO, Tedros Adhanom Ghebreyesus, @DrTedros, Tweet (2:07 pm, 8 May 2024), <https://twitter.com/drtedros/status/1788194015931707403>.

⁶⁵ UN Web TV, *Geneva Press Briefing: OCHA, UNICEF, OHCHR, WHO, UN WOMEN* (7 May 2024), <https://webtv.un.org/en/asset/k1g/k1g9eajpmk> [19:20].

⁶⁶ Maggie Fick, *Main Maternity Hospital in Rafah stops admitting patients* (8 May 2024). <https://www.reuters.com/world/middle-east/main-maternity-hospital-rafah-stops-admitting-patients-2024-05-08/>; UNRWA, @UNRWA, Tweet (2:05 pm, 7 May 2024), <https://twitter.com/UNRWA/status/1787816026496737589>.

⁶⁷ Maggie Fick, “Main Maternity Hospital in Rafah stops admitting patients” *Reuters* (8 May 2024). <https://www.reuters.com/world/middle-east/main-maternity-hospital-rafah-stops-admitting-patients-2024-05-08/>.

⁶⁸ The Glia Project, @Glia_Intl, Tweet (2:29 pm, 7 May 2024), https://twitter.com/Glia_Intl/status/1787821991585616056.

for the more than one million people sheltering in Rafah. Its closure will mean the complete collapse of the limping healthcare system in Rafah.⁶⁹

CONCLUSION

27 Mr President, allow me to conclude. Israel’s ground incursion into Rafah has been described by the United Nations as “one of the darkest mornings in this seven-month nightmare”.⁷⁰ With Rafah’s destruction – ongoing as South Africa addresses this Court – the destruction of Gaza itself will be complete.

28 The change in the situation in Gaza and the new facts in Rafah that I have described demand the provisional measures Ms Ní Ghrálaigh will speak to. The necessity could not be starker, the magnitude and gravity of the situation facing the Palestinian people in Gaza now exemplified in Rafah. South Africa has been motivated to come urgently to this Court to prevent the destruction of the final Palestinian Governorate of Gaza – with its hospitals, schools, libraries, businesses, shelters and mosques – to which Israel has not yet laid complete waste. It has come as quickly as possible to the Court to ensure that the exhausted Palestinian men, women and children who have sought refuge in Rafah are protected from a “bloodbath”.⁷¹ And it has sought urgent protective relief because of the now pressing need to ensure the survival of the Palestinian people in Gaza as a group and their protection from further harm, starvation, disease and death by Israel’s closure of the Rafah and Kerem Shalom crossings, fatally impacting the so desperately needed delivery and provision of life-saving humanitarian aid, basic services and medical assistance across Gaza.

29 But Israel’s genocidal acts in Rafah, Mr President, and distinguished members of the Court, cannot be understood without appreciating the overall genocidal context in which Israel’s Rafah operation is embedded. My colleague Ms Hassim will outline this along with the crippling effects of Rafah now on harrowing display across the Gaza Strip as a whole.

⁶⁹ Medical Aid for Palestinians, *Update on the hospital situation in Gaza* (13 May 2024), <https://reliefweb.int/report/occupied-palestinian-territory/medical-aid-palestinians-map-update-hospital-situation-gaza-13-may-2024-1240>.

⁷⁰ UN Web TV, *Geneva Press Briefing: OCHA, UNICEF, OHCHR, WHO, UN WOMEN* (7 May 2024), <https://webtv.un.org/en/asset/k1g/k1g9eajpmk> [2:38].

⁷¹ WHO, *Rafah incursion would substantially increase mortality and morbidity and further weaken an already broken health system* (3 May 2024), <https://www.who.int/news/item/03-05-2024-rafah-incursion-would-substantially-increase-mortality-and-morbidity-and-further-weaken-an-already-broken-health-system>.