

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

**URGENT REQUEST FOR THE MODIFICATION AND INDICATION OF PROVISIONAL  
MEASURES PURSUANT TO ARTICLE 41 OF THE STATUTE OF THE INTERNATIONAL  
COURT OF JUSTICE AND ARTICLES 75 AND 76 OF THE RULES OF COURT OF THE  
INTERNATIONAL COURT OF JUSTICE**

I. INTRODUCTION

1. The Republic of South Africa ('South Africa') regrettably finds it necessary to return to the Court to seek an urgent Order from the Court in the case of the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v. Israel*) for the protection of the Palestinian people in Gaza from grave and irreparable violations of their rights, and of South Africa's rights, under the Convention on the Prevention and Punishment of the Crime of Genocide ('Genocide Convention'), as a result of Israel's ongoing military assault on Rafah.

II. OVERVIEW

2. This Request by South Africa asks the Court urgently to indicate further provisional measures and/or to modify its previous provisional measures, pursuant to Article 41 of the Statute of the Court, and Articles 73(1), 74(1), 75(1) and (3) and/or 76(1) of the Rules of Court, on the basis of changes in the situation and/or new facts set out below. South Africa also urges the President of the Court urgently to call on Israel to act in such a way as will enable any Order the Court may make on South Africa's Application to have its appropriate effect, pursuant to Article 74(4).

3. The provisional measures previously indicated by the Court are not capable of "fully address[ing]"<sup>1</sup> the changed circumstances and new facts on which this Request is founded.

4. The situation brought about by the Israeli assault on Rafah, and the extreme risk it poses to humanitarian supplies and basic services into Gaza, to the survival of the Palestinian medical system, and to the very survival of Palestinians in Gaza as a group, is not only an escalation of the prevailing situation, but gives rise to new facts that are causing irreparable harm to the rights of the Palestinian people in Gaza. This amounts to a change in the situation in Gaza since the Court's Order of 28 March 2024, within the meaning of Articles 75(3) and 76(2) of the Rules of the Court.

5. The changed circumstances in Gaza are manifest in at least three key respects overall. First, Rafah is now effectively the last refuge in Gaza for 1.5 million Palestinians from Rafah and those displaced by Israeli action, and the last viable centre in Gaza for habitation, public administration, and the provision of basic public services, including medical care. Second, in seizing control of the Rafah and Kerem Shalom (Karem Abu Salem) crossings, Israel is now in direct, total control of all entry and exit to Gaza, has cut it off from all humanitarian and medical supplies, goods and fuel on which the survival of the population of Gaza depends, and is preventing medical evacuations. Third, the remaining population and medical facilities are at extreme risk, given the recent evidence of evacuation zones being treated as extermination zones, the mass destruction and mass graves at Gaza's other hospitals, and the use by Israel of Artificial Intelligence ('AI') to identify 'kill lists'. All three present the gravest

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<sup>1</sup> *South Africa v. Israel, Provisional Measures, Order of 28 March 2024*, p. 7, para. 23.

and most urgent risk of irreparable prejudice to the rights in issue in the case, and require urgent intervention and investigation.

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

6. The changes in the situation in Gaza brought about by Israel's military assault on Rafah relate to the fact that Rafah is the last population centre in Gaza that has not been substantially destroyed by Israel and as such the last refuge for Palestinians in Gaza.

7. Not only is there nowhere for the 1.5 million displaced people and others in Rafah safely to flee to — so much of Gaza having been reduced to rubble — if Rafah is similarly destroyed there will be little left of Gaza or of the 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 similar to those mounted by Israel against hospitals elsewhere in the Strip would therefore deal a fatal blow to Gaza's already collapsed healthcare system. The two border crossings in Rafah which Israel has seized and currently 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 humanitarians, 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 crippling the delivery of aid to and within Gaza. As the primary humanitarian hub for humanitarian assistance in Gaza, if Rafah falls, so too does Gaza. As stated by a United Nations Relief and Works Agency ('UNRWA') spokesperson from Rafah on 8 May 2024, "the population [of Gaza] is on life support, and that life support is failing".<sup>2</sup> As this Request makes clear, urgent provisional measures are required to ensure the survival of Palestinians in Gaza.

8. Members of the Court will have seen and heard reports of the situation in Gaza. Much additional information could be assembled and put before the Court and will be placed before the Court by South Africa in responding to Israel's latest Report; but the situation changes by the hour and the extreme urgency of this request is such that South Africa believes that a key summary of the facts is sufficient to support its Request. Should the Court require additional information, South Africa will endeavour to provide it as soon as possible.

9. On 6-7 May 2024, Israel began a military incursion into Rafah, where over 1.2 million displaced and terrified Palestinians, including an estimated 600,000 Palestinians under the age of 18, many of them disabled or orphaned, are now under severe and sustained Israeli military attack, with nowhere safe to go.<sup>3</sup> The incursion followed a two-week intensification of Israel's military bombardment of Rafah,<sup>4</sup> to which hundreds of thousands of Palestinians had previously been ordered by Israel to

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<sup>2</sup> "‘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>.

<sup>3</sup> 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>.

<sup>4</sup> Al-Haq, *Israeli Military Escalates Bombing of Civilian Homes in Rafah Amid Threats of Ground Invasion* (2 May 2024), <https://www.alhaq.org/advocacy/22940.html>; United Nations Office for the Coordination of Humanitarian Affairs ('UN OCHA'), *Hostilities in the Gaza Strip and Israel | Flash Update #159* (29 April 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-159>.

evacuate for their safety.<sup>5</sup> An estimated 100,000 Palestinians in eastern Rafah, many of them already displaced nine times over,<sup>6</sup> were given less than 15 hours to evacuate.<sup>7</sup> Many were simply unable to flee.<sup>8</sup> None have anywhere safe to go.<sup>9</sup> The Court will be aware from media reports of the extreme brutality and indiscriminate nature of Israel's attack on areas of Rafah both within and outside the evacuation zone. Videos posted on social media by Israeli soldiers record them firing directly on areas where tents are pitched by displaced Palestinians.<sup>10</sup>

10. The risk to Palestinians remaining in Rafah is particularly severe. Many, including large numbers of Palestinian children, have been killed or injured already.<sup>11</sup> There is recently-published testimony from Israeli soldiers who have served in Gaza that Israeli soldiers treat evacuation zones as “zones of extermination” in which *all* remaining Palestinians are considered to be legitimate targets.<sup>12</sup> Israel also relies extensively on AI to select its targets and ‘kill lists’.<sup>13</sup>

11. The Israeli assault on Rafah is deliberately inflicting on Palestinians conditions of life calculated to bring about their physical destruction. Al Najjar Hospital — one of the last remaining medical facilities in the entire Rafah Governorate and one of Gaza's largest remaining partially functioning hospitals — is no longer functional.<sup>14</sup> Other hospitals — including one of the last partially functioning maternity hospitals in the whole of Gaza, hitherto handling almost 50 per cent of Gaza's daily births<sup>15</sup> — are severely impacted.<sup>16</sup> This represents a change in the situation and a point of no return for Gaza's already broken health system, which has been systematically destroyed by Israel over

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<sup>5</sup> See, e.g., 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.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-107>.

<sup>6</sup> Médecins Sans Frontières (‘MSF’), @MSF, Tweet (12:26 pm, 9 April 2024), <https://twitter.com/MSF/status/1777644121382961549>.

<sup>7</sup> United Nations News (‘UN News’), *UN pledges to stand with Gazans in Rafah; Guterres says ceasefire opportunity ‘cannot be missed’* (6 May 2024), <https://news.un.org/en/story/2024/05/1149366>; Al Mezan Center for Human Rights (‘Al Mezan’), @AlMezanCenter, Tweet (9:34 am, 7 May 2024), <https://twitter.com/AlMezanCenter/status/1787747925574975972>; Israel Army Radio Galei Tzahal, @GLZRadio, Tweet (11:46 pm, 6 May 2024), <https://twitter.com/GLZRadio/status/1787599731763372287>.

<sup>8</sup> Pauline Ertel, “‘Not possible’: Palestinians too ‘starved’ to leave Rafah”, *Middle East Eye* (8 May 2024), <https://www.middleeasteye.net/news/not-possible-palestinians-starved-unable-leave-rafah-gaza>; HelpAge International, *Attack on Rafah will have dire consequences for older people* (8 May 2024), <https://www.helpage.org/news/attack-on-rafah-will-have-dire-consequences-for-older-people/>.

<sup>9</sup> 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>.

<sup>10</sup> Yinon Magal, @YinonMagal, Tweet (7:17 am, 8 May 2024), <https://twitter.com/YinonMagal/status/1788075713720918031>; Sam Doak, @SamDoak5, Tweet (2:31 pm, 8 May 2024), <https://twitter.com/SamDoak5/status/1788184898395676795>.

<sup>11</sup> 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>.

<sup>12</sup> “Testimony: This is how IDF soldiers shoot anyone who enters the ‘extermination areas’ in the Gaza Strip”, *Haaretz* (31 March 2024), <https://www.haaretz.co.il/news/politics/2024-03-31/ty-article-magazine/.premium/0000018e-9035-d9a4-a7bf-dc7d839e0000>, translation at “Israel Created ‘Kill Zones’ in Gaza. Anyone Who Crosses Into Them Is Shot”, *Haaretz* (31 March 2024), <https://www.haaretz.com/israel-news/2024-03-31/ty-article-magazine/.premium/israel-created-kill-zones-in-gaza-anyone-who-crosses-into-them-is-shot/0000018e-946c-d4de-afee-f46da9ee0000>; “Israeli soldier speaks out on war in Gaza”, *Channel 4 News* (23 April 2024), <https://www.youtube.com/watch?v=Aa-VDAjL8vM> [5:05].

<sup>13</sup> Yuval Abraham, “‘Lavender’: The AI machine directing Israel's bombing spree in Gaza”, +972 *Magazine* (3 April 2024), <https://www.972mag.com/lavender-ai-israeli-army-gaza>. See also Yuval Abraham, “‘A mass assassination factory’: Inside Israel's calculated bombing of Gaza”, +972 *Magazine* (30 November 2023), <https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/>.

<sup>14</sup> Director-General of the World Health Organization (‘WHO’), Tedros Adhanom Ghebreyesus, @DrTedros, Tweet (3:07 pm, 8 May 2024), <https://twitter.com/drtedros/status/1788194015931707403>.

<sup>15</sup> Maggie Fick, “Main maternity hospital in Rafah stops admitting patients (UNFPA statement to Reuters)”, *Reuters* (8 May 2024), <https://www.reuters.com/world/middle-east/main-maternity-hospital-rafah-stops-admitting-patients-2024-05-08/>.

<sup>16</sup> The Glia Project, @Glia\_Intl, Tweet (2:29 pm, 7 May 2024), [https://twitter.com/Glia\\_Intl/status/1787821991585616056](https://twitter.com/Glia_Intl/status/1787821991585616056).

the course of the past seven months,<sup>17</sup> and which would “not be able to cope with a surge in casualties and deaths that a Rafah incursion would cause”.<sup>18</sup>

12. Israel has seized control of both the Rafah and the Kerem Shalom (Karem Abu Salem) crossings in Rafah,<sup>19</sup> thereby taking full and direct control of *all* entry and exit of people and goods to and from the whole of Gaza. It has to date closed both crossings to the movement of goods and people in both directions,<sup>20</sup> blocking the two main arteries for getting life-saving aid to Gaza’s starving population.<sup>21</sup> The failure by Israel to allow in the fuel necessary for sustaining humanitarian operations and facilities such as sewage and water plants is throttling the already crippled humanitarian operation.<sup>22</sup>

13. The United Nations Office for the Coordination of Humanitarian Affairs (‘UN OCHA’) has stated that the mass evacuation ordered by Israel in Rafah “is impossible to carry out safely”.<sup>23</sup> The United Nations Children’s Fund (‘UNICEF’) is warning of “catastrophic risks” in evacuating the 600,000 children estimated to be sheltering there, many of them disabled, orphaned or alone. The evacuation corridors are themselves “likely mined or littered with unexploded ordnance”.<sup>24</sup> Israel’s practice of separating Palestinian men from women and children as they attempt to flee along purported “safe routes” is reminiscent of the genocidal practices at Srebrenica.<sup>25</sup>

14. In any event, there is nowhere for Palestinians in Rafah to go. As of May 2024, approximately 76 per cent of the territory of Gaza is under Israeli evacuation orders,<sup>26</sup> and an estimated two thirds of homes have been damaged or destroyed.<sup>27</sup> Rafah is now the “primary humanitarian hub” of Gaza, and

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<sup>17</sup> UN News, *Gaza: ‘Systematic dismantling of healthcare must end’ says WHO* (6 April 2024),

<https://news.un.org/en/story/2024/04/1148316>; UN OHCHR, *UN Human Rights concerned by pattern of Israeli raids on Gaza medical facilities* (15 February 2024), <https://www.ohchr.org/en/statements-and-speeches/2024/02/un-human-rights-concerned-pattern-israeli-raids-gaza-medical-facilities>.

<sup>18</sup> WHO, *Rafah incursion would substantially increase mortality and morbidity and further weaken an already broken health system* (3 May 2024), <https://www.emro.who.int/media/news/rafah-incursion-would-substantially-increase-mortality-and-morbidity-and-further-weaken-an-already-broken-health-system.html>.

<sup>19</sup> United Nations Web TV (‘UN Web TV’), *Geneva Press Briefing: OCHA, UNICEF, OHCHR, WHO, UN WOMEN* (7 May 2024), <https://webtv.un.org/en/asset/k1g/k1g9eajpmk> [1:50].

<sup>20</sup> UNICEF, *Statement by UNICEF Executive Director Catherine Russell on military operations and border closures in Rafah, Gaza* (9 May 2024), <https://www.unicef.org/press-releases/statement-unicef-executive-director-catherine-russell-military-operations-and-border>; World Food Program (‘WFP’) Country Director for Palestine, Matthew Hollingworth, @mfjhollingworth, Tweet (3:55 pm, 9 May 2024), <https://twitter.com/mfjhollingworth/status/1788568532470333905>.

<sup>21</sup> UN Web TV, *Geneva Press Briefing: OCHA, UNICEF, OHCHR, WHO, UN WOMEN* (7 May 2024), <https://webtv.un.org/en/asset/k1g/k1g9eajpmk> [2:00]; UN Web TV, *Andrea De Domenico (OCHA) on the situation in Gaza - Press Conference* (7 May 2024), <https://webtv.un.org/en/asset/k1p/k1pmwvx3cu>.

<sup>22</sup> UN News, *Uncertainty in Gaza amplified by closure of key border crossings* (7 May 2024), <https://news.un.org/en/story/2024/05/1149401>; UN News, *Patients in Rafah ‘afraid to seek services’*, *WHO reports* (7 May 2024), <https://news.un.org/en/story/2024/05/1149451>.

<sup>23</sup> UN OCHA, *Today’s top news: Occupied Palestinian Territory, Yemen, Eastern Africa, Haiti, Myanmar, Ukraine* (6 May 2024), <https://www.unocha.org/news/todays-top-news-occupied-palestinian-territory-yemen-eastern-africa-haiti-myanmar-ukraine>

<sup>24</sup> 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>.

<sup>25</sup> Al-Haq, Al Mezan, and the Palestinian Centre for Human Rights (‘PCHR’), *Open Letter: States Must Urgently Intervene to Stop a ‘Srebrenica’ Massacre in Rafah and Enforce a Ceasefire* (7 May 2024), <https://pchgaza.org/en/open-letter-states-must-urgently-intervene-to-stop-a-srebrenica-massacre-in-rafah-and-enforce-a-ceasefire/>; Sean Mathews, “Israel planning ring of checkpoints to prevent men from fleeing Rafah, source says”, *Middle East Eye* (29 April 2024), <https://www.middleeasteye.net/news/exclusive-israel-planning-ring-checkpoints-prevent-men-fleeing-rafah>.

<sup>26</sup> 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>.

<sup>27</sup> United Nations Office of the High Commissioner for Human Rights (‘UN OHCHR’), *Gaza: UN experts deplore use of purported AI to commit ‘domicide’ in Gaza, call for reparative approach to rebuilding* (15 April 2024), <https://www.ohchr.org/en/press-releases/2024/04/gaza-un-experts-deplore-use-purported-ai-commit-domicide-gaza-call>.

the only remaining area capable of “host[ing] the mass displacement of over one million people”,<sup>28</sup> albeit in conditions of extreme deprivation.<sup>29</sup> It requires urgent protection.<sup>30</sup>

15. Israel has directed Palestinians in Rafah to flee to the so-called Al Mawasi ‘humanitarian area’ in the Khan Younis Governorate, which has already been largely reduced to “rubble and dirt” by Israel, with unexploded ordnance posing extreme risks to displaced people.<sup>31</sup> Al Mawasi itself consists in significant part of an uninhabitable sand dune,<sup>32</sup> “lacking safety and essential services”<sup>33</sup> and “full of insect-borne diseases, with people living crowded in tents and outdoors”.<sup>34</sup> The camp has itself been repeatedly bombed by Israel,<sup>35</sup> and Palestinian children sheltering there have been shot in the head as they attempted to forage for food.<sup>36</sup>

16. The current situation and the risks that Israel’s military assault on Rafah pose to the very survival of Palestinians in Gaza as a group do not represent a mere escalation of the already extreme pre-existing situation before the Court on 12 February 2024 when the Court issued its previous decision relating to the threat of a military offensive against Rafah.<sup>37</sup> In attacking Rafah, Israel is attacking the “last refuge”<sup>38</sup> in Gaza, and the only remaining area of the Strip which has not yet been substantially destroyed by Israel. With Rafah’s destruction, the destruction of Gaza itself will be complete.

17. New evidence of Israeli atrocities across Gaza is emerging, illustrating the extreme risk facing Rafah’s population and hospitals as a result of Israel’s military incursion. They include what United

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<sup>28</sup> 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>. See also UN Geneva, *UN Geneva Press Briefing* (3 May 2024), <https://www.ungeneva.org/en/news-media/press-briefing/2024/05/un-geneva-press-briefing>.

<sup>29</sup> UN OCHA, *Secretary-General’s press encounter on Gaza* (30 April 2024), <https://www.ochaopt.org/content/secretary-generals-press-encounter-gaza-0>.

<sup>30</sup> “‘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>.

<sup>31</sup> UN News, *Global Perspective Human Stories, UN pledges to stand with Gazans in Rafah; Guterres says ceasefire opportunity ‘cannot be missed’* (6 May 2024), <https://news.un.org/en/story/2024/05/1149366>; UN OCHA, *Khan Younis following the withdrawal of Israeli troops* (11 April 2024), <https://www.ochaopt.org/content/khan-younis-following-withdrawal-israeli-troops>; Director-General of the WHO, Tedros Adhanom Ghebreyesus, @DrTedros, Tweet (10:28 pm, 11 April 2024), <https://twitter.com/DrTedros/status/1778520394716377489>.

<sup>32</sup> United Nations Relief and Works Agency for Palestine Refugees (‘UNRWA’), @UNRWA, Tweet (11:54 am, 8 May 2024), <https://twitter.com/unrwa/status/1788160494198464612>; 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>.

<sup>33</sup> UN OCHA, *Today’s top news: Occupied Palestinian Territory, Yemen, Eastern Africa, Haiti, Myanmar, Ukraine* (6 May 2024), <https://www.unocha.org/news/todays-top-news-occupied-palestinian-territory-yemen-eastern-africa-haiti-myanmar-ukraine>.

<sup>34</sup> 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>.

<sup>35</sup> Forensic Architecture, *Humanitarian Violence: Israel’s Abuse of Preventative Measures in its 2023-2024 Genocidal Military Campaign in the Occupied Gaza Strip* (7 March 2024), [https://content.forensic-architecture.org/wp-content/uploads/2024/03/Humanitarian-Violence\\_Report\\_FA.pdf](https://content.forensic-architecture.org/wp-content/uploads/2024/03/Humanitarian-Violence_Report_FA.pdf), pp. 57-64.

<sup>36</sup> UNICEF, *When a Nightmare becomes a Reality* (7 May 2024), <https://www.unicef.org.uk/press-releases/when-a-nightmare-becomes-the-reality/>.

<sup>37</sup> *South Africa v. Israel, Press Release: Decision of the Court on South Africa’s Request for Additional Provisional Measures of 16 February 2024*, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240216-pre-01-00-en.pdf>, p. 1.

<sup>38</sup> 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/>; “Why is Israel forcing the evacuation of part of Rafah, Gaza’s last refuge?”, *Al Jazeera* (6 May 2024), <https://www.aljazeera.com/news/2024/5/6/why-is-israel-forcing-the-evacuation-of-part-of-rafah-gazas-last-refuge>.



Nations experts describe as the “horrif[ic] . . . details emerging from mass graves recently unearthed in the Gaza Strip. Over 390 bodies have been discovered at Nasser and Al Shifa hospitals, including of women and children, with many reportedly showing signs of torture and summary executions, and potential instances of people buried alive”.<sup>39</sup> By preventing international observers, fact-finders and the international press from entering Gaza, Israel is preventing the effective collection and preservation of this evidence.<sup>40</sup> Without it, Israel’s many acts of genocide and other crimes and breaches of international law of the utmost gravity are likely to remain not only unpunished but unrecorded and unacknowledged.

18. Israel is conducting a brutal military attack on the sole remaining refuge for the people of Gaza, whom it is simultaneously subjecting to a humanitarian aid blockade.<sup>41</sup> Against that backdrop, as stated by the Director-General of the World Health Organization, Israel’s military incursion into Rafah “will plunge the crisis into unprecedented levels of humanitarian need. A ceasefire is urgently needed for the sake of humanity”.<sup>42</sup> It is urgently needed to prevent further violations of the Genocide Convention and to ensure the implementation of the Court’s previous Orders in this case, which Israel continues to ignore and violate. The need for the urgent cessation of military operations throughout Gaza could not be more evident and is repeatedly affirmed by States, the United Nations Secretary General and international organisations.

19. Israel’s military assault and operation are killing the Palestinian people of Gaza, while Israel is simultaneously starving them, and deliberately denying them humanitarian aid and the basic necessities of life. Those who have survived so are facing imminent death now, and an Order from the Court is needed to ensure their survival.

#### IV. ADDITIONAL PROVISIONAL MEASURES / MODIFICATIONS REQUESTED TO THE COURT’S DECISIONS

20. South Africa respectfully requests the Court urgently to exercise its powers pursuant to Article 41 of the Statute of the Court and Articles 73, 74, 75 and/or 76 of the Rules of Court to examine the requirement for additional or amended provisional measures in light of the change in the situation and/or new facts.

21. South Africa submits that this is extremely urgent, necessary and essential in light of the desperate circumstances facing Palestinians in Gaza, and particularly in Rafah, as a result of Israel’s continuing violations of the Genocide Convention and of this Court’s Orders.

22. Israel’s conduct has been contemptuous of the Court and of international law. The provisional measures indicated by the Court to date have been ignored and violated. Israel has instead chosen to escalate the humanitarian catastrophe through total military onslaught.

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<sup>39</sup> UN OHCHR, *Onslaught of violence against women and children in Gaza unacceptable: UN experts* (6 May 2024), <https://www.ohchr.org/en/press-releases/2024/05/onslaught-violence-against-women-and-children-gaza-unacceptable-un-experts>.

<sup>40</sup> See, e.g., UN Web TV, *Geneva Press Briefing: OCHA, UNICEF, OHCHR, WHO, UN WOMEN* (7 May 2024), <https://webtv.un.org/en/asset/k1g/k1g9eajpmk> [42:30 – 48:30].

<sup>41</sup> Director-General of the WHO, Tedros Adhanom Ghebreyesus, @DrTedros, Tweet (9:34 pm, 30 April 2024), <https://twitter.com/DrTedros/status/1785392276409028998>.

<sup>42</sup> Director-General of the WHO, Tedros Adhanom Ghebreyesus, @DrTedros, Tweet (6:23 pm, 6 May 2024), <https://twitter.com/DrTedros/status/1787518675836195224>.

23. The onslaught on the Palestinians in Gaza is of a nature that can only be intended to result in the genocidal destruction of that group. There is a real and present risk not only of the continuing and further deliberate commission of violations of the Genocide Convention, but also of the destruction of the evidence of those violations and the effective erasure of the possibility of bringing those responsible to justice.

24. In view of the extreme urgency of the situation, South Africa requests that the Court consider this Request without a hearing, insofar as that would be capable of expediting a determination within a week, by 17 May 2024. However, if the Court considers that it cannot accede to South Africa's request for an Order without a hearing, the Court is respectfully requested urgently to schedule an oral hearing for South Africa's Request to be heard on or before 17 May 2024, in accordance with Article 74(1), (2), and (3) of its Rules.

25. Specifically, South Africa requests that the Court indicate the following provisional measures:

1. The State of Israel shall immediately withdraw and cease its military offensive in the Rafah Governorate.

2. The State of Israel shall immediately take all effective measures to ensure and facilitate the unimpeded access to Gaza of United Nations and other officials engaged in the provision of humanitarian aid and assistance to the population of Gaza, as well as fact-finding missions, internationally mandated bodies or officials, investigators, and journalists, in order to assess and record conditions on the ground in Gaza and enable the effective preservation and retention of evidence, and shall ensure that its military does not act to prevent such access, provision, preservation or retention.

3. The State of Israel shall submit an open report to the Court: (a) on all measures taken to give effect to these provisional measures within one week as from the date of this Order; and (b) on all measures taken to give effect to all previous provisional measures indicated by the Court within one month as from the date of this Order.

26. South Africa also requests that the Court reaffirm and seek urgent compliance by Israel with the provisional measures ordered by the Court on 26 January and 28 March 2024. In particular, South Africa requests that the Court urgently reaffirm the application to the Rafah and Kerem Shalom (Karem Abu Salem) crossings of provisional measure 4 of its 26 January 2024 Order and provisional measures 2(a) and (b) of its 28 March 2024 Order, as requiring the immediate relinquishment by Israel of its control of those two crossings and its cessation of any further impediments (i) to the entry and egress of persons, including medical, United Nations and other humanitarian personnel and medical evacuees, and of urgently-needed humanitarian assistance, and (ii) to the provision of goods and services necessary to address the adverse conditions of life faced by Palestinians in Gaza and to sustain their survival. South Africa remains firmly of the view that the necessary condition for the effective implementation of the Court's provisional measures is a permanent ceasefire in Gaza.

27. Moreover and importantly, South Africa requests that, pending the consideration of its Request by the Court, the President of the Court exercise his power under Article 74(4) of the Rules of the Court to call upon Israel to act in such a way as will enable any Order the Court may make on South Africa's request for additional and/or modified provisional measures to have its appropriate effects in achieving the immediate cessation of Israel's military assaults on Rafah and withdrawal from the Governorate,

and the immediate provision of humanitarian aid and medical and other evacuations, in full cooperation with the United Nations and other established humanitarian organisations, pending the determination of this request.

28. In light of Israel’s ongoing non-compliance with the provisional measures previously indicated by this Court, South Africa requests that in making that call, the President clarify and confirm those Orders, including the conditions he considers are required to give them “full effect”.<sup>43</sup>

#### V. THE CONDITIONS FOR THE INDICATION OF ADDITIONAL / MODIFIED PROVISIONAL MEASURES

29. The Court has already determined the existence of a dispute relating to the interpretation, application or fulfilment of the Genocide Convention, over which it has *prima facie* jurisdiction pursuant to Article IX of the Genocide Convention, and that South Africa has standing as a party to the Genocide Convention with “a common interest to ensure the prevention, suppression and punishment of genocide”.<sup>44</sup> It has also repeatedly found “that the current situation before it” entailed a continued and further risk of “irreparable prejudice to the plausible rights claimed by South Africa” — “the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts mentioned in Article III”.<sup>45</sup>

30. The change in the situation in Gaza and/or new facts in Rafah as set out above demand additional and/or modified provisional measures. There is also an urgent and 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 resulting from Israel’s closure of the Rafah and Kerem Shalom (Karem Abu Salem) crossings, which is seriously impeding the delivery and provision of life-saving humanitarian aid, basic services and medical assistance across Gaza.

31. Despite repeated Orders by the Court, Israel has not changed its conduct. It has doubled down on its genocidal aims and acts, including by invading Rafah. Members of the Israeli Ministerial Committee on National Security Affairs (‘Security Cabinet’) and the War Cabinet have continued their genocidal rhetoric. By way of example:

— **Israeli Prime Minister:** Benjamin Netanyahu — a member of both the War Cabinet and Security Cabinet — has described Israel’s war aims as being “to ensure that *Gaza* will never again constitute a threat to Israel” (emphasis added).<sup>46</sup> He describes Israel’s objective as being to “achieve total victory”,<sup>47</sup> underscoring that “no force in the world will stop us”.<sup>48</sup>

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<sup>43</sup> *South Africa v. Israel*, Order of 28 March 2024, Declaration of President Salam, p. 2, para. 11.

<sup>44</sup> *South Africa v. Israel*, Provisional Measures, Order of 26 January 2024, p. 12, paras. 31, 33. See also *South Africa v. Israel*, Order of 28 March 2024, p. 7, para. 24.

<sup>45</sup> *South Africa v. Israel*, Order of 28 March, p. 7, paras. 25-26, p. 10, para. 40; *South Africa v. Israel*, Order of 26 January 2024, p. 18, para. 54, p. 22, para. 74.

<sup>46</sup> Israel Prime Minister’s Office, *PM Netanyahu at the IDF Induction Base at Tel Hashomer, met with IDF recruits slated to be fighters at crossings and field observers in the various sectors* (9 April 2024), <https://www.gov.il/en/departments/news/event-idf090424> (emphasis added); Israel Ministry of Foreign Affairs, *Statement by Prime Minister Benjamin Netanyahu* (30 April 2024), <https://www.gov.il/en/pages/statement-by-pm-netanyahu-30-apr-2024>.

<sup>47</sup> Israel Prime Minister’s Office, *PM Netanyahu attended a reading of the Book of Esther with commanders and soldiers from the various crossings, from the Military Police Erez Battalion* (25 March 2024), <https://www.gov.il/en/departments/news/event-purim240324>.

<sup>48</sup> Israel Prime Minister’s Office, *PM Netanyahu at the IDF Induction Base at Tel Hashomer, met with IDF recruits slated to be fighters at crossings and field observers in the various sectors* (9 April 2024), <https://www.gov.il/en/departments/news/event-idf090424>.



— **Israeli Minister of Defence:** Yoav Gallant — a member of both the War Cabinet and Security Cabinet — has made clear that Israel is “*taking apart* neighbourhood after neighbourhood”<sup>49</sup> and “will reach every location” in Gaza.<sup>50</sup>

— **Israeli Minister of Finance:** Bezalel Smotrich — a member of the Security Cabinet — has asserted in terms: “[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”.<sup>51</sup>

32. In an interview broadcast on Israeli television on 3 May 2024, the Vice Chair of the international arm of the Likud Party (the Party of the Israeli Prime Minister) stated: “I think we needed to invade Rafah yesterday. To go in and to get them . . . There are no uninvolved . . . [We] need to go in and kill and kill and kill . . . we need to kill them before they kill us”.<sup>52</sup> On 7 May 2024, Israeli soldiers preparing for the ground invasion of Rafah filmed themselves chanting “tear down Rafah”.<sup>53</sup> The view as expressed by the Israeli President on 12 October 2023 and cited by this Court in its January Order<sup>54</sup> that there are no innocent or “not involved” civilians in Gaza is widespread,<sup>55</sup> as is the call — including by senior military commanders — for the restriction of humanitarian assistance to Gaza.<sup>56</sup>

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<sup>49</sup> “Gallant: ‘We will not end this war without eliminating Hamas’”, *HM News* (3 March 2024), <https://hm-news.co.il/451577/>.

<sup>50</sup> “Action In Rafah Soon? Galant In Gaza: ‘We Reach Everywhere’”, *Now 14* (13 March 2024), <https://www.now14.co.il/פעולה-ברפיח-בקרוב/>.

<sup>51</sup> “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-abc3-7f7d25460000>.

<sup>52</sup> “Ofira and Levison”, *Channel 12* (3 May 2024), [https://www.mako.co.il/mako-vod-keshet/ofira\\_levinson-2024/VOD-3cc2a2319283f81027.htm](https://www.mako.co.il/mako-vod-keshet/ofira_levinson-2024/VOD-3cc2a2319283f81027.htm), archived at B.M., @ireallyhateyou, Tweet (4:50 pm, 6 May 2024), <https://twitter.com/ireallyhateyou/status/1787495113578491967>.

<sup>53</sup> 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>.

<sup>54</sup> *South Africa v. Israel*, Order of 26 January 2024, p. 17, para. 52.

<sup>55</sup> See, e.g., Minister of Finance (Security Cabinet member), Bezalel Smotrich at GLZ, @GLZRadio, Tweet (8:49 am, 15 April 2024), <https://twitter.com/GLZRadio/status/1779764062433284213>, translation at B.M., @ireallyhateyou, Tweet (12:37 pm, 21 April 2024), <https://twitter.com/ireallyhateyou/status/1781995666593456397>; Minister of Agricultural and Rural Development (Security Cabinet member), Avi Dichter, @avidichter, Tweet (6:20 am, 8 April 2024), <https://twitter.com/avidichter/status/1777189787348177000>; Minister of Economy and Industry, Nir Barkat at “Israeli minister calls strike on aid workers ‘a mistake’ and ‘part of war’”, *MSNBC* (4 April 2024), <https://www.msnbc.com/morning-joe/watch/israeli-minister-calls-strike-on-aid-workers-a-mistake-and-part-of-war-208304709616> [15:00-19:00]. See, e.g., “Seven with Ayala Hasson”, *Kan News* (13 February 2024), <https://www.kan.org.il/content/kan/kan-actual/p-11039/703794/> [36:30]-[37:30]. Subtitles at Middle East Eye, @MiddleEastEye, Tweet (6:29 am, 15 February 2024), <https://twitter.com/MiddleEastEye/status/1758000584135962846>; “Emily and the Professor - Yuval Elbasha and Emily Amrusi”, *Kan Reshet Bet* (1 March 2023), <https://www.kan.org.il/player?itemId=714031&playerType=Radio> [12:30], translation at B.M., @ireallyhateyou, Tweet (3:47 am, 5 March 2024), <https://twitter.com/ireallyhateyou/status/1764845142802940216>.

<sup>56</sup> See, e.g., Commanders and Reserve Fighters Forum, *The Officer’s letter: continue until victory* (22 January 2024), <https://hamefakdim-bemiluim.org/פכתב-הקצינים/>; Minister without portfolio (War Cabinet and Security Cabinet member) Benny Gantz and Minister without portfolio (Security Cabinet member, War Cabinet observer) Gadi Eisenkot at “The surprising proposal of Gantz and Eisenkot: to limit the humanitarian aid that enters the Gaza Strip”, *Mako* (31 January 2024), [https://www.mako.co.il/news-military/2024\\_q1/Article-b29cf0b90806d81026.htm](https://www.mako.co.il/news-military/2024_q1/Article-b29cf0b90806d81026.htm); Minister of Finance (Security Cabinet member) Bezalel Smotrich at Bezalel Smotrich, @bezalelsm, Tweet (6:35 pm, 6 February 2024), <https://twitter.com/bezalelsm/status/1754921677253742973>; Minister of National Security (Security Cabinet member) Itamar Ben-Gvir at Itamar Ben-Gvir, @itamarbengvir, Tweet (2:37 pm, 29 February 2024), <https://twitter.com/itamarbengvir/status/1763196768458604583>; Minister of Heritage, Amichai Eliyahu at “Minister Amichai Eliyahu: ‘We see how the conception put us in a coma’”, *Channel 14* (30 January 2024), <https://www.youtube.com/watch?v=XFqe43jFJR8>; Minister for Social Equality and Advancement of the Status of Women, May Golan at May Golan, @GolanMay, Tweet (6:33 pm, 20 March 2024), <https://twitter.com/GolanMay/status/1770504012523045031>; MK Limor Son Har-Melech at Limor Son Har-Melech,

33. South Africa considers that it is imperative for the Court to do more than to reiterate that “the State of Israel remains bound to fully comply with its obligations under the Genocide Convention and with the . . . Order[s]”.<sup>57</sup> As the overwhelming evidence demonstrates, the very manner in which Israel is pursuing its military operations in Rafah, and elsewhere in Gaza, is itself genocidal. It must be ordered to stop.

#### CONCLUSION

34. As stated by the United Nations Secretary General on 7 May 2024, “[w]e are at a decisive moment for the Palestinian and Israeli people and for the fate of the entire region”.<sup>58</sup> In this moment, South Africa respectfully asks the Court to accede to its request to indicate further and/or modified provisional measures in these proceedings, and to clarify those provisional measures the Court has already ordered. The extreme gravity of the situation facing Palestinian men, women and children in Rafah, and the existential risk that the Palestinian people in Gaza as a part of the Palestinian national, racial and ethnical group face, demands further action by the Court. In the words of the spokesperson for UNICEF, “[w]e have pleaded and implored countless times; we do so once more. For the children of Rafah. We need a ceasefire, now.”<sup>59</sup>

The Hague, 10 May 2024

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@limor\_sonhrmelh, Tweet (1:26 pm, January 28, 2024), [https://twitter.com/limor\\_sonhrmelh/status/1751597625407569991](https://twitter.com/limor_sonhrmelh/status/1751597625407569991); MK Revital Gottlieb at Revital Gottlieb, @TallyGotliv, Tweet (3:37 pm, 5 March 2024), <https://twitter.com/TallyGotliv/status/1765021428997390641>; Revital Gottlieb, @TallyGotliv, Tweet (8:11 pm, 7 March 2024), <https://twitter.com/TallyGotliv/status/1765817663786299444>; See also *South Africa v. Israel, Application of 29 December 2023*, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>, pp. 60-62, paras. 101-102; Israel Ministry of Foreign Affairs, *Statement by PM Netanyahu* (18 October 2023), <https://www.gov.il/en/departments/news/pm-netanyahu-statement-18-oct-2023>.

<sup>57</sup> *South Africa v. Israel, Decision of the Court on South Africa’s request for additional provisional measures of 16 February 2024*, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240216-pre-01-00-en.pdf>, p. 1.

<sup>58</sup> UN Secretary General, *Secretary-General’s remarks to the press on the Middle East* (7 May 2024), <https://www.un.org/sg/en/content/sg/speeches/2024-05-07/secretary-generals-remarks-the-press-the-middle-east>.

<sup>59</sup> UNICEF, *When a nightmare becomes the reality* (7 May 2024), <https://www.unicef.org/press-releases/when-nightmare-becomes-reality>. See also Philippe Lazzarini, @UNLazzarini, Tweet (12:15 pm, 6 May 2024), <https://twitter.com/UNLazzarini/status/1787425918769594828>; UN Women, *Intensified military operations will bring increased death and despair for Rafah’s 700,000 women and girls* (6 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>.