

9 January 2024

The Hon Anthony Albanese MP  
Prime Minister

Senator the Hon Penny Wong  
Foreign Minister

The Hon Mark Dreyfus KC, MP  
Attorney-General of Australia

*Via email*

Dear Prime Minister, Minister Wong and Attorney-General,

We are writing to urge the Australian Government to support South Africa's application to the International Court of Justice (ICJ) to protect Palestinians from genocidal actions by the State of Israel, and to ensure Israel's compliance with its obligations under the *Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)*.<sup>1</sup>

In the thirteen weeks since Israel began its military operations against Gaza, it has killed more than 22,000 people, 70% of whom are women and children. Gaza's 2.3 million people have been subject to one of the most intense aerial bombardment campaigns in history, with no area in Gaza safe. In the first month alone, Israel dropped the equivalent of two nuclear bombs on Gaza.<sup>2</sup> Half of Gaza's 2.3 million people are children and young people under the age of 18, making Israel's actions especially egregious. Israel, despite being the Occupying Power in Gaza – which is obligated to provide for the welfare of the protected Palestinians under its control – has withheld, water, food, fuel, electricity, and life-saving humanitarian aid, which has caused catastrophic conditions. These conditions have left the Palestinian population without adequate access to hygiene, sanitation or a functioning health system, which Israel has deliberately targeted and decimated. Palestinians in Gaza are now at serious risk of mass deaths from starvation, dehydration and disease. The UN Secretary-General has warned that “the people of Gaza have reached a breaking point of deprivation and despair. This must end.”<sup>3</sup>

The situation worsens every day and the international community must act to prevent further atrocities. In light of the unfolding atrocities in Gaza, we welcome South Africa's intervention at the ICJ and believe it deserves Australia's full support, as a State Party to the Genocide Convention.

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<sup>1</sup> 'Application Instituting Proceedings and Request for the Indication of Provisional Measures,' (*South Africa v State of Israel*) (International Court of Justice, 29 December 2023) <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>>.

<sup>2</sup> Euro-Med Human Rights Monitor, 'Israel hits Gaza Strip with the equivalent of two nuclear bombs' (2 November 2023) <<https://euromedmonitor.org/en/article/5908/Israel-hits-Gaza-Strip-with-the-equivalent-of-two-nuclear-bombs>>.

<sup>3</sup> UN Secretary General, *Letter to President of the UN Security Council, Report on the Implementation of UN Security Council Resolution 2712* (5 January 2024) (Unpublished).

## **Mass crimes unfolding in Gaza and South Africa's application**

South Africa's application alleges that Israel has "failed to prevent genocide and has failed to prosecute the direct and public incitement to genocide" and "Israel has engaged in, is engaging in and risks further engaging in genocidal acts against the Palestinian people in Gaza." These acts include: (1) the killing of Palestinians in Gaza; (2) causing them serious bodily or mental harm; and (3) deliberately inflicting on Palestinians conditions of life calculated to bring about their physical destruction.

The evidence South Africa provides to support these claims is extensive, and details conditions including: expulsions; mass displacements and large-scale destruction of homes and residential areas; deprivation of access to adequate food and water; deprivation of access to medical care; deprivation of access to adequate shelter, clothes, hygiene and sanitation; the destruction of the life of Palestinian people in Gaza; and imposing measures intended to prevent Palestinian births.

The application also provides substantial evidence of statements of genocidal intent expressed by the Israeli Prime Minister, President of Israel, Israeli Ministers of Defence, National Security, Energy and Infrastructure, Finance, Heritage and Agriculture, and by Israeli army officials, advisors, spokespeople, and soldiers.

## **Request for provisional measures**

While it will take years to obtain a final judgment on the merits of the charge of genocide, South Africa is requesting a series of provisional measures that would apply immediately, and extend for the duration of the application.

These measures include the immediate suspension of Israel's military operations and to protect Palestinian rights from "further, severe and irreparable harm." The application further requests provisional measures aimed at ending the deprivation of access to adequate food and water, humanitarian assistance, and medical supplies, and ending the expulsion and forced displacement of the Palestinian population from their homes.

## **Statement of support for South Africa's application and the ICJ**

As a State Party to the Genocide Convention, Australia has a duty to prevent and punish the crime of genocide wherever it occurs.

South Africa has advanced an urgent and compelling case demonstrating that Israel is currently committing acts of genocide against the Palestinian population in Gaza. We now strongly urge Australia to issue a public statement in support of South Africa's application as has already been done by Malaysia, Turkey, Jordan, Bolivia, and the Organization of Islamic Cooperation. The provisional measures requested by South Africa align with the Australian Government's position, as reflected in statements

calling for a ceasefire to protect civilians, and for unrestricted humanitarian access, and Australia's support for the resolution adopted by the UN General Assembly in December 2023.<sup>4</sup>

Unfortunately, neither these statements nor the General Assembly's resolution, have done anything to restrain Israel's behaviour, which has only become more belligerent. If Australia is serious about bringing a sustainable end to the violence, it should offer its full support to South Africa's application to the ICJ. Australia has enthusiastically supported the role of the ICJ in recent contexts, including by submitting a Declaration of Intervention in support of Ukraine's application against the Russian Federation in the case concerning allegations of genocide under the Convention.<sup>5</sup>

In the event Australia is prepared to issue a statement in support of South Africa's application, its statement should emphasise its respect for the ICJ and demonstrate that it is aware of its own responsibilities under the Genocide Convention to take all reasonable steps to prevent genocide.

If Australia is not currently prepared to issue a public statement of support for South Africa's application, we urge that it nevertheless issue a statement outlining Australia's support for the ICJ and its important role in the peaceful settlement of disputes.<sup>6</sup> We note, Australia's Declaration of Intervention in the case brought by Ukraine against the Russian Federation, Australia reiterated its commitment to the rules-based international order as being critical for maintaining international peace and security. Australia should ensure that this commitment is applied consistently and without discrimination.<sup>7</sup>

### **Do no harm**

Finally, if for some reason Australia chooses not to support South Africa's application, we urge the government to 'do no harm' to the effort to hold Israel accountable, and at the very least refrain from taking any action, including through statements, to oppose or undermine South Africa's efforts to seek stop the genocide unfolding in Gaza.

Israel acts with total impunity. Its egregious actions and continued flagrant violations of international law has denied the Palestinian people their individual and collective rights for decades, and undermined peace and security in the region and internationally. Ending Israel's aggression in Gaza is necessary to save hundreds of thousands of Palestinian lives from bombs, shelling, sniper fire and the threat of famine and disease.

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<sup>4</sup> *Protection of Civilians and Upholding Legal and Humanitarian Obligations* GA Res A/ES-10/L.27, UN Doc A/ES-10/L.27 (10 December 2023).

<sup>5</sup> 'Declaration of Intervention Submitted by the Government of Australia', *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)* (International Court of Justice, 30 September 2023) [5].

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "R. Arraf". The signature is written in a cursive, flowing style.

Rawan Arraf  
Executive Director  
Australian Centre for International Justice