

By Jeremy Scahill

From [The Intercept](#) | Original Article

South Africa laid out a meticulous case detailing Israel's genocidal intent. The U.S. supported it all.

"South Africa has recognized the ongoing Nakba against the Palestinian people."

With those words, Vusimuzi Madonsela, South Africa's ambassador to the Netherlands, opened his government's historic suit at the International Court of Justice in The Hague, Netherlands, charging the state of Israel with multiple violations of the Genocide Convention during its three-month siege of Gaza.

South Africa, a nation whose population suffered for decades under an apartheid regime backed by the U.S., has embarked on its historic effort to prosecute Israel for its genocidal war against the people of Gaza. Its 84-page [filing Opens in a new tab](#) at the ICJ is a harrowing document. In meticulous detail, it offers an overview of a murderous campaign waged against a civilian population under the fraudulent cover of "self-defense." It lays out the horrifying scope of Israel's destruction in Gaza of human life, civilian infrastructure, history, and culture, and paints a devastating picture of the grave conditions faced by those Palestinians who have managed to survive.

The charges describe "an exceptionally brutal military campaign by Israel in Gaza, which is extensive and ongoing, and which Israel intends to intensify further still," South Africa's lawyers argued. "Israel has engaged in and failed to prevent or to punish acts and measures which are genocidal, constituting flagrant violations of Israel's obligations" under the Genocide Convention.

South Africa's filing cites scores of genocidal statements made by Israeli government and

military officials, lawmakers, and former officials describing Israel's intentions in Gaza since October 7. It spans some nine pages. It is difficult to imagine an honest argument that the sum of these statements — including Israel Prime Minister Benjamin Netanyahu invoking the biblical tale of the Israelites' collective killing of the men, women, children, and livestock of Amalek — do not constitute an announcement of genocidal intent.

Yet that is precisely what U.S. officials want the public to believe. "Yes, I read the indictment," said National Security Council spokesperson Adm. John Kirby. "We find it without merit. We find it counterproductive. And I'll leave it there."

If we lived in a just society, one which was governed by a rule of law applied evenly and fairly to all nations, U.S. officials would be appearing in international war crimes tribunals alongside the Israeli leaders whose criminal actions they are facilitating in every measurable manner. But that will never happen. Since the end of World War II, the U.S. government has operated as an emperor on matters of international law, issuing edicts about who can and cannot be held accountable for the gravest of crimes. There is even a law, known as the [Hague Invasion Act](#) [Opens in a new tab](#)

, that authorizes the U.S. president to use force to liberate any American or allied personnel brought before an international court on war crimes charges.

On matters related to Israel, the U.S. has functioned as its rogue defender as a matter of bipartisan orthodoxy, [vetoing or blocking](#) [Opens in a new tab](#) any and all efforts — often supported by the vast majority of the world's nations — to hold Israel responsible for its crimes against the Palestinians.

U.S. Secretary of State Antony Blinken, during his latest visit with the gangsters in Tel Aviv, Israel, on Tuesday, continued his monthslong kabuki performance, simultaneously playing the role of a dedicated propagandist and facilitator of Israel's rampage and that of an observer who hopes that Israel might consider killing a few less civilians and letting in more humanitarian aid. "We're working urgently to forge a path toward lasting peace and security in this region," Blinken said as he stood alongside Israel's president. "We believe the submission against Israel to the International Court of Justice distracts the world from all of these important efforts. And moreover, the charge of genocide is meritless."

It has become a macabre ritual for Blinken to feign sorrow for the dead children of Gaza while simultaneously circumventing Congress to [expedite](#) [Opens in a new tab](#) the "emergency"

shipment of weapons to a government whose public officials and lawmakers have spent the past three months openly declaring their intent to annihilate Gaza as a Palestinian territory.

As Israel's war of annihilation against the people of Gaza enters its fourth month, the Biden administration has cemented its legacy as the mass-murder campaign's chief political and military sponsor. No amount of empty platitudes offered by Blinken and other senior U.S. officials for the civilians of Gaza will wipe the blood from the administration's hands.



Palestinian families run from the site of an Israeli airstrike on a residential building west of the Nasser Hospital in Khan Younis, southern Gaza, on Jan. 11, 2024. Photo: Ahmad Salem/Bloomberg via Getty Images

A trial of Israel for genocide, if the judges at the ICJ decide the case has merit, could take years. But South Africa has also argued that the court should issue emergency provisional measures to protect the Palestinians of Gaza against ongoing attacks, citing voluminous evidence that Israel is engaged in ongoing violations of the Genocide Convention. "Israel has engaged in, is engaging in and risks further engaging in genocidal acts against the Palestinian people in Gaza," South Africa argued in its suit. The ICJ should order Israel to "immediately suspend its military operations in and against Gaza." Based on previous cases, such orders could be issued within weeks.

South African lawyer Adila Hassim charged that Israel has engaged in a “systematic pattern of conduct from which genocide can be inferred.” She said that Israel had subjected the people of Gaza to “one of the heaviest conventional bombing campaigns in the history of modern warfare” by sea, land, and air. “The level of Israel’s killing is so extensive that nowhere is safe in Gaza,” she added. “Israel has killed an unparalleled and unprecedented number of civilians with the full knowledge of how many lives each bomb will take. The devastation is intended to and has laid waste to Gaza.”

Beyond the citations of the vast civilian deaths and injuries caused by Israel in Gaza, South Africa’s lawyers argued effectively that Israel’s initial “evacuation” orders were in and of themselves genocidal, demanding the immediate flight of a million people, including patients in hospitals. Hassim cited U.N. statistics indicating that Israel has forced the displacement of 85 percent of Palestinians in Gaza. The order issued by Israel on October 13, which called for more than a million Palestinians to flee their homes and hospitals, was itself genocidal, she said.

Hassim presented evidence of Israel’s alleged specific violations of Articles 2A, 2B, 2C, and 2D of the [Genocide Convention Opens in a new tab](#), which prohibit the killing, maiming, and destruction of the way of life and ability to give birth of any racial, ethnic, or religious group, simply for being members of that group. “All of these acts individually and collectively form a calculated pattern of conduct by Israel indicating a genocidal intent,” Hassim said.

Beyond the clearly genocidal actions taken by Israel, Tembeka Ngcukaitobi, another lawyer for South Africa, addressed the issue of genocidal intent. “What state would admit to a genocidal intent?” Ngcukaitobi asked. The distinctive feature of this case has not been the silence of Israel, he argued, but the repetition of genocidal speech throughout every sphere of Israeli society, led by its prime minister, president, minister of defense, and other senior officials.

Ngcukaitobi played video of statements by Netanyahu and other senior officials and observed that one “extraordinary” element to Israel’s war against Gaza is that Israeli officials and leaders have systematically and publicly declared their desire to eliminate Palestinians from Gaza.

Ngcukaitobi said the statement by Netanyahu early in the war, invoking the biblical tale of the destruction of Amalek by the Israelites, was embraced by Israeli soldiers on the ground in

“directing their actions and objectives.” “You must remember what Amalek has done to you, says our holy Bible,” Netanyahu said. “And we do remember.” The verse from the Book of 1 Samuel describes a command from God to Israel: “Now go, attack the Amalekites and totally destroy all that belongs to them. Do not spare them; put to death men and women, children and infants, cattle and sheep, camels and donkeys.”

The statements from Israeli officials as evidence of genocidal intent have been widely reported. But having them recited and at times played on video in an international war crimes court makes clear that Netanyahu and other officials felt comfortable uttering such shocking statements believing that they would never be held accountable. Indeed, Israel is well aware that the U.S. has already preemptively dismissed the veracity of South Africa’s charges.

John Dugard, a South African lawyer and former U.N. Special Rapporteur on the Human Rights Situation in the Occupied Palestinian Territories, presented South Africa’s argument for legal jurisdiction. “What more evidence could be required?” Dugard asked. “It is precisely because of a situation of this kind affecting the international community as a whole” that the ICJ has jurisdiction to provisionally order a halt to suspected genocidal actions.

“What is happening in Gaza now is not correctly framed as a simple conflict between two parties,” argued another South African lawyer, Max du Plessis. Du Plessis presented the legal argument that the ICJ must issue provisional orders to Israel to halt its operations on the basis of suspicion that genocide may be occurring in Gaza, which is the standard under the court’s mandate. He said that the ICJ must issue provisional measures to halt Israel’s attacks against Gaza on the basis that Israel may eventually be convicted of genocide and that failure to stop it now would represent a grave breach of the rights of the Palestinians still alive.

Israel, he charged, has “subjected the Palestinian people to an oppressive and prolonged violation of their rights to self-determination for more than half a century. Those violations occur in a world where Israel has for years regarded itself as beyond and above the law.”

Irish lawyer Blinne Ní Ghrálaigh, also representing South Africa, offered a brutal description of the extent of ongoing human suffering and destruction, declaring bluntly that “huge swathes of Gaza ... are being wiped from the map.” Each day, she said, citing [figures](#) [Opens in a new tab](#) from Save the Children, 10 Palestinian children will have one or more limbs amputated, often without anesthesia; more mass graves will be dug, cemeteries bombed, and bodies exhumed. People

will be bombed in places they have been told to evacuate to; whole families will be obliterated.

The ICJ has historically issued provisional orders to nations, including Russia and Serbia, to halt past military operations, she pointed out. “This is occurring in Gaza on a much more intensive scale [against] a besieged, trapped, terrified population that has nowhere safe to go,” she said.

“Israel continues to deny that it is responsible for the humanitarian crisis it has created, even as Gaza starves,” Ní Ghrálaigh said, warning the ICJ judges that a failure to order a provisional halt to Israel’s attacks against Gaza would be grave. “The very reputation of international law, its ability and willingness to bind and to protect all peoples equally, hangs in the balance.”

In an impassioned closing to her argument, she declared, “Despite the horror of the genocide against the Palestinian people being livestreamed from Gaza to our mobile phones, computers, and TV screens — the first genocide in history where its victims are broadcasting their own destruction in real time in the desperate, so far vain, hope that the world might do something — Gaza represents nothing short of a moral failure.”



Palestinians gather at the Nelson Mandela Square in Ramallah, West Bank, to demonstrate in support of the genocide case filed by South Africa against Israel at the International Court of Justice on Jan. 10, 2024. Photo: Issam Rimawi/Anadolu via Getty Images

Israel, which has accused South Africa of “blood libel,” will present its defense on Friday. The final lawyer in South Africa’s line-up, Vaughan Lowe, was tasked with anticipating Israel’s likely arguments. The veteran British barrister preemptively addressed Israel’s attempt to shift focus to Hamas and October 7: This case concerns Israel’s attacks in Gaza, he said. “Hamas is not a state and cannot be a party to the Genocide Convention.” There are other legal processes to be taken against Hamas and other actors, he said.

Lowe dismissed Israel’s claims to be acting in “self-defense” and cited U.N. rulings that Gaza remains an occupied territory because of the substantial control Israel continues to wield over its land, air, sea, and access to basic life necessities. “No matter how monstrous or appalling an attack or provocation, genocide is never a permitted response,” Lowe said. “Every use of force, whether in self-defense or enforcing an occupation or policing operations, must stay within the limits set by international law.”

Arguing, too, for the ICJ to order an immediate halt to Israel’s attacks against Gaza, Lowe said, “If any military operation — no matter how carefully it’s carried out — is carried out pursuant to an intention to destroy a people, in whole or in part, it violates the Genocide Convention and it must stop.” Israel cannot sidestep rulings of the court, he said, by simply unilaterally declaring that it is following international law, citing “Israel’s apparent inability to see that it has done anything wrong in grinding Gaza and its people into the dust.”

Madonsela, South Africa’s ambassador to the Netherlands, closed the hearing by reading South Africa’s demands for the ICJ to order a halt to Israel’s attacks on Gaza. “South Africa has come to this court to prevent genocide,” he said. He asked the court to provisionally order Israel to halt its military operations in Gaza and to preserve evidence for a potential future trial.

While the U.S is not named in South Africa’s case, it has openly and enthusiastically supported and armed Israel’s campaign and should be viewed as an unnamed co-conspirator to Israel’s actions. While the ICJ proceedings may do nothing to halt Israel’s murderous rampage in Gaza, a ruling in South Africa’s favor would increase pressure on countries across the world to make their positions clear. It would also serve as an important test of whether nations, namely U.S. allies in Europe, believe in upholding international laws and conventions or whether they

accept the U.S. as the ultimate overlord enforcing its own set of unevenly applied rules.