

**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 ADDITIONAL MEASURES UNDER ARTICLE 75(1) OF THE
RULES OF COURT OF THE INTERNATIONAL COURT OF JUSTICE**

1. By way of an order dated 26 January 2024, the International Court of Justice ('ICJ') indicated six provisional measures against Israel (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Order of 26 January 2024* or 'Order'). In making the Order, the Court ruled that there "is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible, before it gives its final decision".¹ Such rights included the "right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III" of the Convention on the Prevention and Punishment of the Crime of Genocide ('Genocide Convention').²

2. There has since been a significant development in the situation in Gaza requiring the Court's urgent attention. On Friday 9 February 2024, the Office of the Prime Minister of the State of Israel issued the following announcement:

"It is impossible to achieve the goal of the war of eliminating Hamas by leaving four Hamas battalions in Rafah. On the contrary, it is clear that intense activity in Rafah requires that civilians evacuate the areas of combat. Therefore, Prime Minister Benjamin Netanyahu has ordered the IDF and the security establishment to submit to the Cabinet a combined plan for evacuating the population and destroying the battalions."³

3. Despite strong denunciation by the international community, including by some of Israel's closest allies, the Israeli Prime Minister reiterated in an interview broadcast on Sunday 11 February 2024 that: "[v]ictory is within reach. We're going to do it. We're going to get the remaining Hamas terrorist battalions in Rafah, which is the last bastion, but we're going to do it".⁴ Thereafter, on Sunday evening, Rafah was subjected to an intense, unprecedented Israeli military assault, with an ongoing threat of yet further intensification of the assault — including by way of an Israeli ground invasion.⁵

4. Rafah, normally home to 280,000 Palestinians, currently houses — primarily in makeshift tents — more than half of Gaza's population, estimated at approximately 1.4 million people, approximately half of them children.⁶ They fled to Rafah, pursuant to Israeli military evacuation orders, from homes and areas that have been largely destroyed by Israel.⁷ As the International Committee of the Red Cross has made clear, there is "no option" for the evacuation of the Palestinian population in Rafah as "there is nowhere else for the people to go".⁸

5. The United Nations Secretary-General has stated unequivocally that a large-scale military assault against Rafah "would exponentially increase what is already a humanitarian nightmare with untold regional consequences".⁹ The United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has starkly warned that "[t]he risk of a massacre of unparalleled scale looms on the horizon".¹⁰ UNICEF has urgently highlighted the "need" for "Gaza's last remaining hospitals, shelters, markets and water systems" — which are in Rafah — "to stay functional", underscoring that "[w]ithout them, hunger and disease will skyrocket, taking more child lives".¹¹ The Commissioner-General of UNRWA, referring to the "growing panic in Rafah", has made clear that "[a]ny large-scale military operation among this population can only lead to an additional layer of endless tragedy that's unfolding",¹² reiterating that "a military offensive in the middle of these

completely exposed, vulnerable people” is “a recipe for disaster” to the extent that he is “almost becoming wordless”, not “know[ing] how to describe this”.¹³ UN OCHA has pleaded that “we must do everything possible within our power to avoid” the “large-scale loss of civilian lives” to which “intensified hostilities in Rafah . . . could lead”.¹⁴

6. NGOs operating on the ground, such as the Norwegian Refugee Council and Save the Children, have also raised the alarm that “[n]o war can be allowed in a gigantic refugee camp”.¹⁵ Warning of a “bloodbath”,¹⁶ they have emphasised that “[e]xpanded hostilities in Rafah could collapse the humanitarian response”,¹⁷ and that “what happens next” would “be beyond our worst nightmares”.¹⁸

7. The Republic of South Africa is gravely concerned that the unprecedented military offensive against Rafah, as announced by the State of Israel, has already led to and will result in further large-scale killing, harm and destruction in serious and irreparable breach both of the Genocide Convention and of the Court’s Order of 26 January 2024. Accordingly, and having regard to the situation of extreme emergency, the Republic of South Africa respectfully requests that the Court exceptionally consider exercising its power under Article 75(1) of the Rules of Court. Article 75(1) provides that:

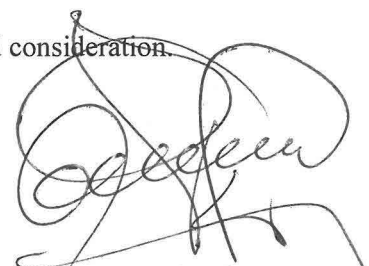
“The Court may at any time decide to examine *proprio motu* whether the circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties.”

8. The Court retains full discretion to exercise this power in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, without any hearing or submissions by parties, and should do so, pursuant to the precedent case of *LaGrand (Germany v. United States of America)*,¹⁹ given the extreme urgency of the situation and the imminent risk of harm. As stated by the Court in *LaGrand*, the Court “may, in the event of extreme urgency, proceed without holding oral hearings” to order provisional measures,²⁰ and “it is for the Court to decide in each case if, in the light of the particular circumstances of the case, it should make use of the said power”.²¹

9. In *LaGrand*, the Court exercised its Article 75(1) power in a situation of extreme urgency affecting one individual. Here there is a situation of extreme urgency affecting an estimated 1.4 million vulnerable Palestinians in Rafah, at least half of them children. They are at serious risk of irreparable harm to their right to be protected from acts of genocide contrary to Articles II and II of the Genocide Convention, by a State which has already been found by this Court to be acting in plausible breach of its obligations under that Convention.

10. South Africa thus respectfully calls upon the Court to consider as a matter of the greatest urgency whether the developing circumstances in Rafah require that it exercise its power under Article 75(1) of the Rules of Court to prevent further imminent breach of the rights of Palestinians in Gaza. South Africa also reserves its own rights to take further action in respect of the situation.

11. I have the honour to assure the Court of my highest esteem and consideration.



The Hague, 12 February 2024

¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order of 26 January 2024, p. 22, para. 74.

² *Ibid.*, p. 18, para. 54.

³ Israel Prime Minister's Office, *A message from the Prime Minister's Office regarding an operation in Rafah* (9 February 2024), <https://www.gov.il/he/departments/news/spoke-rafah090224>. See also: Prime Minister of Israel, @IsraeliPM, Tweet (3:40 pm, February 9, 2024), <https://twitter.com/IsraeliPM/status/1755979954448150530>;

⁴ Netanyahu: Securing hostages' release and eliminating Hamas 'not mutually exclusive', ABC News (11 February 2024), <https://abcnews.go.com/International/netanyahu-this-week-interview/story?id=107130717> and <https://abcnews.go.com/ThisWeek/video/1-1-prime-minister-benjamin-netanyahu-107138466>; Netanyahu insists on Rafah offensive as warnings mount", BBC News (11 February 2024), <https://www.bbc.com/news/world-middle-east-68266335>.

⁵ Prime Minister of Israel, @IsraeliPM, Tweet (9:07 pm, February 7, 2024), <https://twitter.com/IsraeliPM/status/1755337559452910021>.

⁶ UN News, *Nine killed in direct hit on UNRWA shelter in Gaza* (24 January 2024), <https://news.un.org/en/story/2024/01/1145837>; UNICEF, *Statement by UNICEF Executive Director Catherine Russell on Rafah, Gaza* (9 February 2024), <https://www.unicef.org/press-releases/statement-unicef-executive-director-catherine-russell-rafah-gaza>.

⁷ 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>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #115* (9 February 2024), <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-115>.

⁸ "ICRC speaks to Isa Soares amid growing concerns for civilians in Rafah", CNN (11 February 2024), <https://edition.cnn.com/videos/world/2024/02/09/exp-rafah-gaza-icrc-mhanna-live-020902pseg1-cnni-world.cnn>.

⁹ United Nations Secretary-General, "Peace can achieve wonders that wars never will" | Secretary-General's remarks to the General Assembly on 2024 priorities (7 February 2024), <https://unsdg.un.org/latest/announcements/peace-can-achieve-wonders-wars-never-will-secretary-generals-remarks-general>.

¹⁰ Francesca Albanese, @FranceskaAlbs, Tweet (11:03 am, February 9, 2024), <https://twitter.com/FranceskaAlbs/status/1755910377353699819>.

¹¹ UNICEF, *Statement by UNICEF Executive Director Catherine Russell on Rafah, Gaza* (9 February 2024), <https://www.unicef.org/press-releases/statement-unicef-executive-director-catherine-russell-rafah-gaza>.

¹² Statement of Commissioner-General of UNRWA: "Israeli ops in Rafah would add to 'endless tragedy' in Gaza: UN agency", *France24* (9 February 2024), <https://www.france24.com/en/live-news/20240209-israeli-ops-in-rafah-would-add-to-endless-tragedy-in-gaza-un-agency>.

¹³ Statement of Commissioner-General of UNRWA: James Shotter, "Benjamin Netanyahu dismisses US and UN pleas for Israel not to attack Rafah", *Financial Times* (9 February 2024), <https://www.ft.com/content/83ec1189-567c-4eed-bfc8-9c1a7095a9bc>.

¹⁴ UN News, *War crimes fears over Israeli ground invasion of Rafah* (6 February 2024), <https://news.un.org/en/story/2024/02/1146242>.

¹⁵ Jan Egeland, @NRC_Egeland, Tweet (12:24 pm, February 8, 2024), https://twitter.com/NRC_Egeland/status/1755568219488715204.

¹⁶ Statement of the Secretary-General of the Norwegian Refugee Council: Jan Egeland, @NRC_Egeland, Tweet (10:49 am, February 8, 2024), https://twitter.com/NRC_Egeland/status/1755544309216989393.

¹⁷ Norwegian Refugee Council, *Gaza: Israel's military operation in Rafah would be fatal for displaced civilians and humanitarian aid* (8 February 2024), <https://www.nrc.no/news/2024/february/gaza-israels-military-operation-in-rafah-would-be-fatal-for-displaced-civilians-and-humanitarian-aid/>. See also CARE, *CARE Statement on the Grave Humanitarian Consequences of a Military Operation in Rafah* (9 February 2024), <https://www.care.org/news-and-stories/press-releases/care-statement-on-the-grave-humanitarian-consequences-of-a-military-operation-in-rafah/>; Action Aid, *Intensifying attacks in Rafah would have disastrous consequences, ActionAid warns, as people resort to eating grass amid desperate conditions in overcrowded shelters* (9 February 2024), <https://actionaid.org/news/2024/intensifying-attacks-rafah-would-have-disastrous-consequences-actionaid-warns-people>; Al-Mezan, @AlMezanCenter, Tweet (4:28 pm, February 9, 2024), <https://twitter.com/AlMezanCenter/status/1755991969023615191>.

¹⁸ Statement of Save the Children's Country Director: Save the Children, *Majority of Gaza's Children Now Trapped in Land Area Less Than a Fifth of Enclave's Total Land Mass as Israeli Military Expands into Rafah* (8 February 2024), <https://www.savethechildren.org.uk/news/media-centre/press-releases/majority-of-gaza-children-now-trapped-in-rafah>.

¹⁹ *LaGrand (Germany v. United States of America)*, Provisional Measures, Order of 3 March 1999, I. C. J. Reports 1999, p. 9.

²⁰ *Ibid.*, p. 14, para. 21.

²¹ *Ibid.*