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**International Court
of Justice**

THE HAGUE

**Cour internationale
de Justice**

LA HAYE

YEAR 2024

Public sitting

held on Thursday 16 May 2024, at 3 p.m., at the Peace Palace,

President Salam presiding,

*in the case concerning Application of the Convention on the Prevention
and Punishment of the Crime of Genocide in the Gaza Strip
(South Africa v. Israel)*

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le jeudi 16 mai 2024, à 15 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

*en l'affaire relative à l'Application de la convention pour la prévention
et la répression du crime de génocide dans la bande de Gaza
(Afrique du Sud c. Israël)*

COMPTE RENDU

Present: President Salam
 Vice-President Sebutinde
 Judges Abraham
 Yusuf
 Xue
 Bhandari
 Iwasawa
 Nolte
 Charlesworth
 Brant
 Gómez Robledo
 Cleveland
 Aurescu
 Tladi
 Judge *ad hoc* Barak

 Registrar Gautier

Présents : M. Salam, président
M^{me} Sebutinde, vice-présidente
MM. Abraham
Yusuf
M^{me} Xue
MM. Bhandari
Iwasawa
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
MM. Aurescu
Tladi, juges
M. Barak, juge *ad hoc*

M. Gautier, greffier

The Government of the Republic of South Africa is represented by:

HE Mr Vusimuzi Madonsela, Ambassador of the Republic of South Africa to the Kingdom of the Netherlands,

Mr Cornelius Scholtz, Legal Counsellor, Embassy of the Republic of South Africa in the Kingdom of the Netherlands,

as Co-Agents;

Ms Nokukhanya Jele, Special Adviser to the President of the Republic of South Africa,

Mr Zane Dangor, Director-General of the Department of International Relations and Cooperation of the Republic of South Africa,

as National Authorities;

Mr John Dugard, SC, Advocate of the High Court of South Africa, Emeritus Professor, Leiden University, Emeritus Professor, University of the Witwatersrand, former member of the International Law Commission, member of the Institut de droit international,

Mr Vaughan Lowe, KC, Barrister, Emeritus Professor, University of Oxford, member of the Institut de droit international, Essex Court Chambers, member of the Bar of England and Wales,

Mr Max du Plessis, SC, Advocate of the High Court of South Africa, Ubunye Chambers, member of the Society of Advocates of KwaZulu-Natal; Barrister, Doughty Street Chambers, member of the Bar of England and Wales, Professor Adjunct, Nelson Mandela University and University of Cape Town,

Mr Tembeka Ngcukaitobi, SC, Advocate of the High Court of South Africa, Duma Nokwe Group, Fountain Chambers, member of the Johannesburg Society of Advocates and the Pan African Bar Association of South Africa,

Ms Adila Hassim, SC, Advocate of the High Court of South Africa, Thulamela Chambers, member of the Johannesburg Society of Advocates,

Ms Blinne Ní Ghrálaigh, KC, Barrister, Matrix Chambers, member of the Bars of Ireland, Northern Ireland, and England and Wales,

as Counsel and Advocates;

Mr Peter Harris, Partner, Harris Nupen Molebatsi Attorneys, Johannesburg,

Ms Tshегоfatso Monnana-Motaung, Senior Associate, Harris Nupen Molebatsi Attorneys, Johannesburg,

Ms Sarah Pudifin-Jones, Advocate of the High Court of South Africa, Ubunye Chambers, member of the Society of Advocates of KwaZulu Natal,

Ms Lerato Zikalala, Advocate of the High Court of South Africa, Group 621 Chambers, member of the Johannesburg Society of Advocates,

Le Gouvernement de la République sud-africaine est représenté par :

S. Exc. M. Vusimuzi Madonsela, ambassadeur de la République sud-africaine auprès du Royaume des Pays-Bas,

M. Cornelius Scholtz, conseiller juridique, ambassade de la République sud-africaine au Royaume des Pays-Bas,

comme coagents ;

M^{me} Nokukhanya Jele, conseillère spéciale auprès du président de la République sud-africaine,

M. Zane Dangor, directeur général du département des relations internationales et de la coopération de la République sud-africaine,

comme représentants de l'État ;

M. John Dugard, SC, avocat de la Haute Cour d'Afrique du Sud, professeur émérite à l'Université de Leyde, professeur émérite à l'Université de Witwatersrand, ancien membre de la Commission du droit international, membre de l'Institut de droit international,

M. Vaughan Lowe, KC, *barrister*, professeur émérite à l'Université d'Oxford, membre de l'Institut de droit international, Essex Court Chambers, membre du barreau d'Angleterre et du pays de Galles,

M. Max du Plessis, SC, avocat de la Haute Cour d'Afrique du Sud, Ubunye Chambers, membre de la Society of Advocates of KwaZulu-Natal, *barrister*, Doughty Street Chambers, membre du barreau d'Angleterre et du pays de Galles, professeur auxiliaire à l'Université Nelson Mandela et à l'Université du Cap,

M. Tembeka Ngcukaitobi, SC, avocat de la Haute Cour d'Afrique du Sud, Duma Nokwe Group, Fountain Chambers, membre de la Johannesburg Society of Advocates et de la Pan African Bar Association of South Africa,

M^{me} Adila Hassim, SC, avocate de la Haute Cour d'Afrique du Sud, Thulamela Chambers, membre de la Johannesburg Society of Advocates,

M^{me} Blinne Ní Ghrálaigh, KC, *barrister*, Matrix Chambers, membre du barreau d'Irlande, du barreau d'Irlande du Nord et du barreau d'Angleterre et du Pays de Galles,

comme conseils et avocats ;

M. Peter Harris, associé, cabinet Harris Nupen Molebatsi Attorneys, Johannesburg,

M^{me} Tshegofatso Monnana-Motaung, collaboratrice senior, cabinet Harris Nupen Molebatsi Attorneys, Johannesburg,

M^{me} Sarah Pudifin-Jones, avocate de la Haute Cour d'Afrique du Sud, Ubunye Chambers, membre de la Society of Advocates of KwaZulu Natal,

M^{me} Lerato Zikalala, avocate de la Haute Cour d'Afrique du Sud, Group 621 Chambers, membre de la Johannesburg Society of Advocates,

Mr Tshidiso Ramogale, Advocate of the High Court of South Africa, Group 621 Chambers, member of the Johannesburg Society of Advocates and the Pan African Bar Association of South Africa,

as Counsel;

Mr Jaymion Hendricks, State Law Adviser (International Law), Department of International Relations and Cooperation of the Republic of South Africa,

as Assistant Counsel;

Ms Rebecca Brown,

Ms Susan Power,

Ms Helena Van Roosbroeck,

Mr Christopher Gevers,

Ms Sanya Samtani,

as Advisers;

Mr Raji Sourani, Director, Palestinian Centre for Human Rights,

Mr Issam Younis, Director, Al-Mezan,

Mr Ahmed Abofoul, Researcher, Al-Haq,

as Members of the Delegation;

Ms Juanique Bowman,

Ms Ietje Dugard-Barbas,

as Assistants to the Delegation.

The Government of the State of Israel is represented by:

Mr Gilad Noam, Deputy Attorney General for International Law, Ministry of Justice of the State of Israel,

Ms Tamar Kaplan Tourgeman, Acting Legal Adviser of the Ministry of Foreign Affairs of the State of Israel,

as Co-Agents;

Ms Avigail Frisch Ben Avraham, Legal Adviser, Embassy of the State of Israel in the Kingdom of the Netherlands,

as Deputy Agent.

M. Tshidiso Ramogale, avocat de la Haute Cour d’Afrique du Sud, Group 621 Chambers, membre de la Johannesburg Society of Advocates et de la Pan African Bar Association of South Africa,

comme conseils ;

M. Jaymion Hendricks, conseiller juridique de l’État (droit international), département des relations internationales et de la coopération de la République sud-africaine,

comme conseil adjoint ;

M^{me} Rebecca Brown,

M^{me} Susan Power,

M^{me} Helena Van Roosbroeck,

M. Christopher Gevers,

M^{me} Sanya Samtani,

comme conseillers ;

M. Raji Sourani, directeur, Centre palestinien pour les droits de l’homme,

M. Issam Younis, directeur, Al-Mezan,

M. Ahmed Abofoul, chargé de recherches, Al-Haq,

comme membres de la délégation ;

M^{me} Juanique Bowman,

M^{me} Ietje Dugard-Barbas,

comme assistantes de la délégation.

Le Gouvernement de l’État d’Israël est représenté par :

M. Gilad Noam, *Attorney General* adjoint chargé du droit international, ministère de la justice de l’État d’Israël,

M^{me} Tamar Kaplan Tourgeman, conseillère juridique par interim du ministère des affaires étrangères de l’État d’Israël,

comme coagents ;

M^{me} Avigail Frisch Ben Avraham, conseillère juridique, ambassade de l’État d’Israël au Royaume des Pays-Bas,

comme agente adjointe.

The PRESIDENT: Please be seated. The sitting is open.

The Court meets this afternoon and will meet tomorrow morning to hear the oral observations of the Parties on the Request submitted by the Republic of South Africa on 10 May 2024 for the indication of additional provisional measures and the modification of previous provisional measures in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.

For reasons made known to me, Judge Tomka is unable to be present on the Bench for the duration of these hearings.

*

I shall now recall the principal steps of the procedure in the present case.

On 29 December 2023, the Government of South Africa filed in the Registry of the Court an Application instituting proceedings against the State of Israel, alleging violations by the latter of its obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, to which I shall refer as the “Genocide Convention”. In particular, South Africa contended that Israel, in conducting military operations in and against Gaza in the wake of the attack in Israel by Hamas on 7 October 2023, has breached and continues to breach its obligations under the Genocide Convention. To found the jurisdiction of the Court, South Africa invokes Article 36, paragraph 1, of the Statute of the Court and Article IX of the Genocide Convention.

The Application contained a Request for the indication of provisional measures, pursuant to Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court. In its Order of 26 January 2024, the Court indicated various provisional measures addressed to Israel.

By a letter dated 12 February 2024, South Africa submitted to the Court what it referred to as an “Urgent Request for additional measures under Article 75, paragraph 1, of the Rules of Court” in connection with certain developing circumstances in Rafah. By a letter from the Registrar dated 16 February 2024, the Parties were informed that the provisional measures indicated by the Court in its Order of 26 January 2024 were applicable throughout the Gaza Strip, including in Rafah, and that the recent developments did not therefore demand the indication of additional provisional measures.

The Court also emphasized that Israel remained bound to fully comply with its obligations under the Genocide Convention and with the said Order, including by ensuring the safety and security of the Palestinians in the Gaza Strip.

On 6 March 2024, South Africa filed a further Request for the indication of additional provisional measures and/or the modification of measures previously indicated by the Court in its Order of 26 January 2024, based on the alleged change in the situation in Gaza since the indication of the first set of provisional measures. In its Order of 28 March 2024, the Court found that exceptionally grave recent developments — including the desperate level of food insecurity in the Gaza Strip and the fact that famine was setting in — constituted a change in the situation within the meaning of Article 76 of the Rules. The Court concluded that the provisional measures indicated in the Order of 26 January 2024 did not fully address the consequences arising from this change in the situation, thus justifying the modification of those measures. In the operative clause, the Court reaffirmed the provisional measures indicated in its Order of 26 January 2024 and indicated additional measures. The Court indicates that the State of Israel shall, in view of the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation, take all necessary and effective measures to ensure, without delay, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance to Palestinians throughout Gaza, and ensure with immediate effect that its military does not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza as a protected group under the Convention on Genocide.

Today's hearing concerns the urgent Request filed by South Africa on 10 May 2024 for the indication of additional provisional measures and the modification of provisional measures previously prescribed by the Court in the case.

The Registrar will now read out the passage from the Request specifying the provisional measures which the Government of South Africa is asking the Court to indicate. You have the floor, Mr Registrar.

The REGISTRAR: Thank you, Mr President. I quote:

- “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.”

The PRESIDENT: I thank the Registrar. Immediately after the filing of the Request for the indication of additional provisional measures and the modification of previous provisional measures, the Registrar transmitted an original copy thereof to the Government of Israel.

According to Article 74, paragraph 1, of the Rules of Court, a request for the indication of provisional measures shall have priority over all other cases. Paragraph 2 of the same article states that the Court shall proceed to a decision on the request as a matter of urgency. This imperative must, however, be balanced with the need to fix a date of oral proceedings in such a way as to afford the parties an opportunity to be represented at the hearings. Consequently, the Parties were informed that the date for the opening of the oral proceedings, during which they could present their observations on the Applicant’s Request, had been fixed for Thursday 16 May 2024, at 3 p.m.

I would now like to welcome the delegations of South Africa and Israel, and I note the presence before the Court of the Agents and counsel of both Parties. This afternoon, the Court will hear the single round of oral argument of South Africa, which has submitted the Request for the indication and modification of provisional measures. It will hear Israel tomorrow morning at 10 a.m. For the purposes of the single round of oral argument, each Party will have available to it a two-hour sitting.

In this first sitting, South Africa may, if required, avail itself of a short extension beyond 5 p.m. today, in view of the time taken up by these introductory remarks.

Before I give the floor to the Agent of South Africa, I wish to draw the Parties’ attention to Practice Direction XI, which states as follows:

“In the oral pleadings on requests for the indication of provisional measures parties should limit themselves to what is relevant to the criteria for the indication of provisional measures as stipulated in the Statute, Rules and jurisprudence of the Court.

They should not enter into the merits of the case beyond what is strictly necessary for that purpose.”

I now give the floor to the Agent of South Africa, His Excellency Mr Vusimuzi Madonsela. You have the floor, Excellency.

Mr MADONSELA:

1. Mr President, distinguished Members of the Court, it is an honour and a privilege for me to appear before you on behalf of the Republic of South Africa. I wish to thank the Court for setting this matter down for an oral hearing on the earliest possible date, recognizing the extreme urgency of its circumstances.

2. Since its initial Application, South Africa found itself compelled to return to this Court, both in February and March 2024, to request the indication of additional provisional measures to prevent Israel’s persistent acts of genocide against the Palestinian people in Gaza. Sadly, South Africa is yet again compelled to return to this Court, in recognition of its obligations under the Genocide Convention, due to the continuing annihilation of the Palestinian people, with over 35,000 now killed and most of Gaza reduced to rubble.

3. Despite the short notice of this oral hearing, South Africa has travelled here today to do what it can to urgently stop the ongoing genocide — the gravity of the attacks requiring urgent and speedy proceedings to preserve the rights of the Palestinian people — a commitment which South Africa takes seriously.

4. Israel is escalating its attacks on Palestinians in Gaza, and in so doing is wilfully breaching the binding Orders of this Court. Israel similarly breaches the binding resolutions of the United Nations Security Council, erroneously believing from the lack of counter-measures by the international community that it is exempt from having to respect international law. This institutionalized impunity has led Israel to engage in this genocide, which has shocked the conscience of humanity.

5. South Africa is mindful that the present genocide operates in denial of the Palestinian people’s inalienable right to self-determination and collective right to return to their homes in Palestine. This genocide takes place within the context of the ongoing Nakba — the 76th anniversary of which was celebrated yesterday — the continued forced displacement of the Palestinian people,

the erasure of Palestinian presence in Palestine and replacement with colonial settlers — a criminal process entrenched and maintained by 76 years of apartheid and 56 years of illegal belligerent occupation. Undoubtedly, the ongoing scenes of Palestinians being forced to repeatedly flee for their lives is not only reminiscent of the Nakba of 1948 — it is a continuation of it.

6. Seven months ago, South Africa could not have imagined that Gaza would now be mostly wiped off the map. It could not foresee that every family, every neighbourhood, every class of students, every workplace, would be pulled apart, killed, maimed, displaced, malnourished or starved. South Africa had hoped — when we last appeared before this Court — to halt this genocidal process — to preserve Palestine and its people. Instead, Israel’s genocide has continued apace and has just reached a new and horrific stage.

7. Israel has sought to hide its crimes through the weaponization of international humanitarian law. It pretends that the civilians it ruthlessly kills — through its 2,000-lb bombs, through its targeted airstrikes, through its artificial intelligence systems, through its executions — are “human shields”. This whitewashing of Israel’s genocide misses the key and fundamental element — that of the massive and still-mounting evidence of Israel’s genocidal intent — documents and videos of Israeli parliamentarians and military leaders, calling for the destruction of the Palestinian people in Gaza, incitement by Israeli civil society and leading public Israeli figures, all collectively supporting the genocide and its continuation.

8. Israel continues to show utter contempt for Palestinian life, operating with impunity. South Africa has no other option than to, once again, seek protection in the halls of justice for the fundamental right of the Palestinian people to their existence.

9. Although this present application was triggered by the unfolding horrific situation in Rafah, Israel’s genocidal onslaught across Gaza has intensified over the past few days, also warranting the attention of this Court. With that, Mr President, I respectfully wish to request you to invite Professor Vaughan Lowe to set out South Africa’s substantive legal arguments. I thank you.

The PRESIDENT: I thank the Agent of South Africa for his statement. I now invite Professor Vaughan Lowe to take the floor. You have the floor, Sir.

Mr LOWE: Thank you, Sir.

INTRODUCTION

1. Mr President, Members of the Court: it is a privilege to appear before you, and an honour to have been entrusted with the presentation of this part of South Africa's submissions.

2. This is not a routine case — it is not even a routine case on the use of force or on international humanitarian law. South Africa is here because the Palestinian people are facing genocide in Gaza, and your previous Orders have not succeeded in protecting them against that.

3. The Court held in January that the Palestinians have a legal right to protection against genocide, and that South Africa had shown that there was a real and imminent risk to the irreparable violation of that right¹. The Court issued an Order because it considered it necessary to protect the Palestinian people against genocide. It issued a further Order in March.

4. But whether because of a lack of clarity as to precisely what the Orders require or because Israel chooses to ignore them, they have not been effective. The United Nations has a framework, including the Security Council and the General Assembly, for addressing international disputes: but this part has not worked well in this case. South Africa respectfully asks the Court to reassert its authority and its role in this framework.

5. South Africa has considered the technical legal requirements for provisional measures — a change in the situation and so on — and will address them. But the essential point is that the Court has the power to act to ensure that its previous Orders and its eventual judgment will not be worthless and that the Palestinian people will be protected, and that it needs to exercise that power now.

6. Israel's action is directed against the Palestinian people throughout Gaza and the West Bank. South Africa's request was initially focused on Rafah, because of the imminent prospect of death and suffering on a massive scale resulting from Israel's attack. Since that request was made, it has become increasingly clear that Israel's actions in Rafah are part of the endgame in which Gaza is utterly destroyed as an area capable of human habitation. This is the last step in the destruction of Gaza and its Palestinian people. It was Rafah that brought South Africa to the Court: but it is all

¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, paras. 61, 74, 86.

Palestinians, as a national, ethnical and racial group, who need the protection from genocide that the Court can order.

7. We have heard expressions of outrage that anyone could accuse Israel of acting in this way. We have heard assurances that Israel was doing everything in its power to avoid civilian deaths as it exercised its claimed “right of self-defence”. We have heard boasts that Israel’s army is the most moral army in history. We have heard denials that there is famine in Gaza. For months people, particularly in the west, have appeared unwilling to accept that the accusations are true. How could people who look like us and sound like us possibly engage in anything like genocide? But the evidence has to be faced.

8. My colleagues will take you to that evidence, including evidence of continued bombings, attacks on people in so-called “safe areas” to which they have been directed by Israel, attacks on aid convoys, and of mass graves and the horrors of which the corpses speak. There is no credible argument that this catastrophe is not real.

9. The Court has already found a real and imminent risk of the violation of the rights of the Palestinian people to protection against genocide. The Court is aware of the statements of the United Nations Secretary-General, of the President of the United States, of heads of State and foreign ministers from around the world, and of the heads of international aid agencies.

10. They, and the personal accounts and the news footage that emerges from Gaza, tell a consistent story, of unimaginable horror; and it continues as we speak. Most of Gaza has been razed. The survivors who are from time to time allowed to “return to their homes” are returning to rubble, with no homes, no running water or electricity or sewage or other working infrastructure, and with the few possessions that they have managed to carry with them on carts or cars as they are pushed from one so-called safe area to the next. If the Court does not act now, the possibility of rebuilding a viable Palestinian society in Gaza will be destroyed, at least for the lifetime of those who survive the current horrors of Gaza.

11. The details are not always easy to verify because Israel continues to bar independent investigators and journalists from entering Gaza; and over 100 journalists who were in Gaza have

been killed since the Israeli attacks began². But Israel cannot block investigations by independent investigators and then say that the Court cannot proceed because there is insufficient evidence against it. The Court has to deal with this case on the basis of its appraisal of the best evidence available to it.

12. Israel may again invoke its claimed “right of self-defence”. But it does not address three glaringly obvious points. First, the right of self-defence does not give a State a licence to use unlimited violence. No right of self-defence can ever extend to a right to inflict massive, indiscriminate violence and starvation collectively on an entire people. Second, nothing — not self-defence or anything else — can ever justify genocide. The prohibition on genocide is absolute, a peremptory norm of international law. Third, the Court ruled in 2004 that there is no right of self-defence by an occupying State against the territory that it occupies³.

13. The key point today is that Israel’s declared aim of wiping Gaza from the map is about to be realized. Further, evidence of appalling crimes and atrocities is literally being destroyed and bulldozed, in effect wiping the slate clean for those who have committed these crimes and making a mockery of justice. The Court is not powerless, and South Africa submits, with respect, that it must do something to assert not only its own authority but the authority of international law.

14. South Africa submits that in order to secure the entry and distribution of food and humanitarian supplies, and to save lives, a halt to Israeli military operations across Gaza is essential. The overwhelming weight of opinion among States and international organizations is the same. A halt to military operations in Gaza is necessary to comply with the previous Orders that the Court has already imposed.

15. If Israel continues to deny that its bombing and shelling and military incursions and blocking of roads and entry points, and its other military operations in Gaza, are preventing the fulfilment of the Court’s Orders, the Court needs to spell it out explicitly for Israel — and for the benefit of any other States that are still providing aid or assistance to Israel in its campaign to eradicate Palestine.

² Committee to Protect Journalists, *Journalist casualties in the Israel-Gaza war* (15 May 2024), <https://cpj.org/2024/05/journalist-casualties-in-the-israel-gaza-conflict/>.

³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 194, para. 139.

16. These points will be developed by South Africa's counsel. First, John Dugard will explain the jurisdictional and other preconditions to the exercise of the Court's power to order provisional measures and demonstrate that they are met. Second, Max du Plessis will set out the recent events that have necessitated South Africa's return to the Court, and particularly those concerning Rafah. Then Adila Hassim will explain the scale and imminence of the risk facing Palestinians in Gaza. After that Tembeka Ngcukaitobi will show that Israel's actions have a pattern and an explicit purpose that clearly indicates that the aim is to eradicate Palestine. Finally, Blinne Ní Ghrálaigh will explain the remedies that South Africa seeks. The Agent will return to read out South Africa's prayer for relief.

17. That, Mr President, Members of the Court, concludes my part of this submission. I thank you for your attention and ask that you now call on Professor Dugard.

The PRESIDENT: I thank Professor Vaughan Lowe for his statement. I now give the floor to Professor John Dugard. You have the floor, Sir.

Mr DUGARD:

JURISDICTION AND THE MODIFICATION OF PROVISIONAL MEASURES

1. Mr President, distinguished Members of the Court, it is a privilege to appear before you on behalf of the Republic of South Africa. In my speech today I will briefly address the subject of jurisdiction and then examine the circumstances that give rise to our request for further provisional measures.

2. In its Order of 26 January of this year, the Court found that the Applicant had prima facie established the existence of a dispute between it and the Respondent relating to the application of the Genocide Convention and that the Court had jurisdiction in terms of Article IX of the Genocide Convention⁴. In its Order of 28 March 2024, the Court found that there was no reason to revisit this decision⁵. It is submitted that this conclusion remains valid for the present proceedings.

⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, paras. 28, 31.

⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024, para. 24.

3. The Court also found that Palestinians in the Gaza Strip have a plausible right to be protected from acts of genocide and that South Africa had the right to seek compliance with this obligation⁶. Again, the Court declared that this finding need not be revisited in its decision of 28 March 2024⁷. Again, it is submitted that this conclusion remains valid: the Court has found that South Africa has advanced a plausible genocide claim.

4. On 26 January 2024, the Court found that the situation in Gaza was one that required urgent attention and that there was a risk of irreparable prejudice⁸. This was confirmed in the Order of 28 March 2024⁹, and it is a situation that continues today. Indeed, it is further heightened now in the context of Israel's brutal attacks on Rafah and subsequent intensified bombing across the north and middle areas of Gaza¹⁰.

5. Mr President, on the basis of the above findings, the Court ordered a number of provisional measures on 26 January 2024. On 28 March 2024, the Court found that the circumstances of the situation had changed in terms of Article 76 of the Rules of Court as a result of the risk of famine and ordered three more provisional measures against Israel¹¹.

6. Today, Mr President, South Africa approaches the Court for new provisional measures to ensure that the rights in issue in the proceedings, including the right of Palestinians to be protected from acts of genocide, will be protected.

⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, para. 54.

⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, para. 25.

⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, para. 73.

⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, para. 40.

¹⁰ UN Global Perspective Human Stories, Gaza: 80,000 displaced from Rafah as Israeli bombardment intensifies, say UN aid teams (9 May 2024), <https://news.un.org/en/story/2024/05/1149531>; UN, Global Perspective Human Stories, Rafah exodus reaches 360,000 as UN underscores \$2.8 billion aid appeal for Gaza, West Bank (13 May 2024), <https://news.un.org/en/story/2024/05/1149651>.

¹¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, para. 21.

7. The Rules of Court allow the Court to order new provisional measures when “new facts” are established¹², or there has been “some change in the situation” which justifies modification of the existing orders¹³.

8. It is of course impossible to provide an absolute definition of “new facts” or “change in the situation” as it is necessary to have regard to the situation in each and every case. Decisions of the Court involving provisional measures have dealt with a change in the situation arising from new facts in completely different circumstances. Cases have dealt with matters of life and death¹⁴, territorial change¹⁵ and freedom of movement¹⁶. Each case depends upon its own set of facts and whether these facts have so altered the situation that new provisional measures are justified on the part of the Court. In issuing its March Order, the Court considered that “developments” since January 2024, which it found to be “exceptionally grave”, constituted “a change in the situation within the meaning of Article 76 of the Rules of Court”¹⁷. It also found that the previous provisional measures that it had indicated did not “fully address the consequences arising from the changes in the situation”, and this led the Court to order further provisional measures¹⁸. The changes in the situation since March 2024 are in many ways graver still. They, too, justify the indication of further provisional measures.

9. On 26 January 2024, this Court found that there was a “catastrophic humanitarian situation in the Gaza Strip” which was at “serious risk of deteriorating further before the Court renders its final judgment”¹⁹ and this warranted provisional measures. On 28 March 2024, the Court found that “the

¹² Rules of Court (1978), Art. 75 (3).

¹³ Rules of Court (1978), Art. 76 (1).

¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993, pp. 325, 343, 349-350.

¹⁵ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Provisional Measures, Order of 22 November 2013, I.C.J. Reports 2013, p. 354.

¹⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Provisional Measures, Order of 22 February 2023, p. 14, paras. 28-30.

¹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024, paras. 22 and 23.

¹⁸ *Ibid.*, para. 23.

¹⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, para. 72.

catastrophic living conditions of the Palestinians in the Gaza Strip have deteriorated further, in particular in view of the prolonged and widespread deprivation of food and other basic necessities”²⁰.

10. Mr President, Members of the Court, it is difficult to imagine that the situation could get worse. But unfortunately it has. In the early days of the Gaza war, Israel forced Palestinians to relocate to the south, to the Rafah Governorate — 1.5 million people were crammed into this inhospitable area in the Rafah Governorate which appeared to offer safety from Israel’s bombing, artillery fire and the brutality of its forces, influenced by genocidal incitement by its leaders²¹. World leaders warned that an assault on Gaza, and in particular on Rafah, resulting in the forced and arbitrary evacuation of the already displaced Palestinians to even less hospitable parts of Gaza without adequate food, water, shelter and hospitals would have disastrous consequences²². The Director-General of the World Health Organization declared that a military incursion into Rafah “will plunge the crisis into unprecedented levels of humanitarian need. A ceasefire is urgently needed for the sake of humanity.”²³

11. Israel, Mr President, has not heeded this warning. It has not even fulfilled its own undertaking not to embark on an assault on Rafah without a proper evacuation plan²⁴. Instead, it has gone ahead and embarked on an attack on Rafah. The Rafah Governorate has been bombed, subjected to artillery fire and ground incursions²⁵. The Rafah Crossing is closed and the Kerem Shalom crossing is mostly disabled²⁶.

²⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024, para. 18.

²¹ United Nations, Palestine, 450,000 Gazans now uprooted from Rafah as Israeli bombardment continues (15 May 2024), <https://palestine.un.org/en/268727-450000-gazans-now-uprooted-rafah-israeli-bombardment-continues>.

²² “World reacts to Israel’s Rafah evacuation order”, Al Jazeera (6 May 2024), <https://www.aljazeera.com/news/2024/5/6/world-reacts-to-israels-rafah-evacuation-order>.

²³ Director-General of the WHO, Tedros Adhanom Ghebreyesus, @ Dr Tedros, Tweet (6.23 pm, 6 May 2024), <https://twitter.com/DrTedros/status/1787518675836195224>.

²⁴ Prime Minister of Israel, @IsraeliPM, Tweet (4:40 pm, 9 February 2024), <https://twitter.com/IsraeliPM/status/1755979954448150530?lang=en>.

²⁵ UN OHCHR, Israel’s Rafah invasion must stop now, say UN experts (10 May 2024), <https://www.ohchr.org/en/press-releases/2024/05/israels-rafah-invasion-must-stop-now-say-un-experts>.

²⁶ UNRWA, UNRWA Situation Report #107 on the Situation in the Gaza Strip and the West Bank, Including East Jerusalem (14 May 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-107-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

12. Mr President, my colleagues will provide you with a full account of Israel's genocidal acts in the Gaza Strip. It is my task to briefly indicate the "new facts" required by Article 75 (3) and the "change in the situation" required by Article 76 (1).

13. Mr President, this application for further provisional measures is prompted by Israel's assault on Rafah. It is this assault that constitutes the new facts, the change in circumstances. Rafah is the "last refuge" in Gaza for 1.5 million Palestinians, the majority of whom have been forcibly displaced from north and central Gaza²⁷. Rafah is the last viable part of Gaza for habitation, public administration, the provision of basic services and medical care. Israel has now commenced its long-threatened assault on Rafah. It has ordered the evacuation of Palestinians in Rafah to the barren sand dunes of Al Mawasi²⁸. It has closed critical border crossings to humanitarian aid, medical supplies, goods and fuel upon which the population of Rafah depends²⁹. Displacement, famine and suffering are now the lot of the Palestinian group³⁰. Israel's actions are in violation of fundamental rules of humanitarian law. In addition, they provide evidence of the crime of genocide in terms of Article II (a), (b), (c) and (d) of the Genocide Convention. Mr President, Members of the Court, this attack is the final blow that is intended to destroy the Palestinian group in Gaza. That this is the intention of this final operation will be made clear by Mr Ngcukaitobi.

14. Mr President, since South Africa filed the present Application for provisional measures, Israel has intensified its offensive in north and central Gaza³¹. In these circumstances, we have requested the Court to issue a provisional measure that orders Israel to cease its military activities throughout Gaza and to withdraw from the territory. Such an order alone can bring an end to Israel's genocide in Gaza³². That the Court has the power to order such a provisional measure is clear. The

²⁷ United Nations, Meetings Coverage and Press Releases, Bureau of Committee on Palestinian People's Rights Warns against Israeli Military Offensive into Rafah (14 February 2024), <https://press.un.org/en/2024/gapal1461.doc.htm>.

²⁸ United Nations, Meetings Coverage and Press Releases, Daily Press Briefing by the Office of the Spokesperson for the Secretary-General (14 May 2024), <https://press.un.org/en/2024/db240514.doc.htm>.

²⁹ World Food Programme, Gaza updates: WFP responds to hunger crisis as Rafah incursion cuts access to warehouse (15 May 2024), <https://www.wfp.org/stories/gaza-updates-wfp-responds-hunger-crisis-rafah-incursion-cuts-access-warehouse>.

³⁰ "Israel's Rafah invasion may be south Gaza's famine 'tipping point'", The New Arab (8 May 2024), <https://www.newarab.com/news/israel-rafah-attack-may-be-south-gaza-famine-tipping-point>.

³¹ UN OHCHR, Urgent call for ceasefire and release of hostages (12 May 2024), <https://www.ohchr.org/en/statements/2024/05/urgent-call-ceasefire-and-release-hostages>.

³² UN News, Global Perspective Human Stories, Gaza: As exodus from Rafah continues, UN urges reopening of aid lines (10 May 2024), <https://news.un.org/en/story/2024/05/1149591>.

Court has stated that in terms of Article 75 (2) of the Rules of Court, “it has the power, under its Statute, when a request for provisional measures has been made to indicate [provisional] measures that are, in whole or in part, other than those requested”³³. Mr President, Members of the Court, this concludes my speech. I thank you for your attention.

The PRESIDENT: I thank Professor John Dugard for his statement. I now give the floor to Professor Max du Plessis. You have the floor, Sir.

Mr DU PLESSIS:

NEW FACTS AND CHANGES IN THE SITUATION IN RAFAH

1. Mr President, distinguished Members of the Court, it is a privilege to appear before you on behalf of South Africa.

2. My task is to address this Court on the new facts and the grave changes in the situation in Rafah that are fast leading to “the deadliest phase”³⁴ 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 Israel.

3. Judges of this Court have recognized that the underlying reason for the Court’s January and March Orders³⁵ was that “the very right of existence of the Palestinian population of 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 through the “function of prevention”³⁶. 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

³³ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 229, para. 79.

³⁴ 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/>.

³⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, declaration of Judge Yusuf, p. 2, para. 5.

³⁶ *Ibid.*, p. 1, paras. 3-4.

March 2024, Israel has defied this Court by trapping, besieging and bombarding an overcrowded Rafah, exacerbating the security and the safety of 1.5 million highly vulnerable Palestinians.

5. Mr President, no one in Gaza is safe because — as the United Nations has repeatedly made clear — *nowhere* in Gaza is safe³⁷. Palestinians were instructed by Israeli evacuation orders to move south *to* Rafah and seek refuge there from the bombardment in the north³⁸. Yet for months, the 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”³⁹. Israel’s intention is typified by statements such as that of Israel’s Minister of Finance, Mr 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*”⁴⁰. 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 assault, the reminders, regrettably, 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*”⁴¹. 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*

³⁷ UNRWA @UNRWA Tweet (12:54 p.m., 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>.

³⁸ 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>.

³⁹ Clash Report, @clashreport (1:35 p.m., 7 May 2024), <https://twitter.com/clashreport/status/1787808379701743752>; Hamivrakom, @mivrakom, Telegram Post (6 May 2024), <https://t.me/mivrakom/171438>.

⁴⁰ “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-abc-f7f7d25460000> (emphasis added).

⁴¹ ICTY, Appeals Chamber, *Prosecutor v. Radislav Krstic*, Case No. IT-98-33-A, Appeal Judgment (19 April 2004), pp. 5-6, para. 16.

the international community (including this Court), and in the full glare of the “international media”, is intended by Israel to *serve as a potent example to all Palestinians of their vulnerability and their defencelessness in the face of Israeli military forces*, and to be *emblematic of the fate* of all Palestinians in Gaza. To use Mr Smotrich’s words, that there is “no place under heaven” that they are safe.

7. South Africa has made clear in its Request of 10 May 2024 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 — but that 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 crippled healthcare system.

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 “[t]ake 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 “increas[e] the capacity and number of land crossing points and maintain[] them open for as long as necessary”⁴². Israel was also ordered to “[e]nsure with immediate effect that its military does not . . . prevent[], through any action, the delivery of urgently needed humanitarian assistance”⁴³.

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 trying to flee the conflict. Israel’s seizure of those crossings places Israel

⁴² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, p. 13, para. 51 (2) (a) (emphasis added).

⁴³ *Ibid.*, p. 13, para. 51 (2) (b) (emphasis added).

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 Gaza⁴⁴.

10. Deliberately herding 1.5 million Palestinians into Rafah and then carrying out a full-scale bombardment while sealing off entry and exit for life-saving aid to an already devastated population, while exposing them to famine and human suffering⁴⁵, leaves only one inference, regrettably, and that is of *genocidal intent*.

Rafah as a 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”⁴⁶ for Palestinians in Gaza⁴⁷. It was the only remaining area of the Strip which had not yet been substantially destroyed by Israeli attacks. Over the past seven months, hundreds of thousands of Palestinians were ordered by Israel to evacuate *to* Rafah for their safety⁴⁸, some forcibly being displaced for the ninth time⁴⁹. Desperate, terrified and “clinging to life by a thread”⁵⁰, these Palestinians have sought shelter, often in makeshift tents or “under sheets of scrap plastic”⁵¹, in the tiny and densely crowded city of Rafah, hoping against hope to stay alive in

⁴⁴ “‘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>.

⁴⁵ 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?

⁴⁶ 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/>.

⁴⁷ 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>.

⁴⁸ 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#>.

⁴⁹ Médecins Sans Frontières (“MSF”), @MSF, Tweet (12:26 p.m., 9 April 2024), <https://twitter.com/MSF/status/1777644121382961549>.

⁵⁰ 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/>.

⁵¹ 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>.

the ongoing Israeli bombardment. A “city of children”⁵², Rafah has become home to some 600,000 Palestinian children and babies, many of them orphaned or disabled by Israel⁵³. 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”⁵⁴.

12. In addition to being the population centre, Rafah is the “primary humanitarian hub” of Gaza⁵⁵, as I have said, and the only remaining area of the beleaguered Strip with the infrastructure and the resources to host the over one million displaced Palestinians⁵⁶ — albeit in a situation that has been described by the United Nations as a “pressure cooker of despair”⁵⁷.

The evacuation orders out of Rafah

13. But Rafah, your Excellencies, is no “refuge”, it is no safe place.

14. On 6 May 2024, Israeli forces ordered around 100,000 Palestinians to evacuate the eastern portion of Rafah. Many were simply unable to flee⁵⁸: “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 just not possible⁵⁹. Even for those who are able to leave, they have nowhere left to go⁶⁰.

⁵² 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>.

⁵³ 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>.

⁵⁴ 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>.

⁵⁵ 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>.

⁵⁶ *Ibid.*

⁵⁷ 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>.

⁵⁸ “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=vb8zQsA7jgw> [4:00].

⁵⁹ 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>.

⁶⁰ 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>.

15. Yet again, Israel's use of evacuation orders and designation of "humanitarian zones" are purely performative — they endanger rather than protect civilian life⁶¹. So-called "humanitarian zones" are not safe. The zones are policed by the same Israeli forces who have attacked Palestinians in their homes, in makeshift tents⁶², in public markets⁶³, schools⁶⁴ and playgrounds⁶⁵, in agricultural greenhouses⁶⁶, while waiting for aid⁶⁷, by aid⁶⁸ dropping from the sky, while attempting to return to their homes⁶⁹, despite waving white flags⁷⁰, and, above all else, while sheltering in and seeking treatment from hospitals⁷¹.

⁶¹ Forensic Architecture @ForensicArchi Tweet (7:50 p.m., 14 May 2024) <https://twitter.com/ForensicArchi/status/1790439607667986532>.

⁶² 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>.

⁶³ 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>.

⁶⁴ *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>.

⁶⁵ 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>.

⁶⁶ 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>.

⁶⁷ 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>.

⁶⁸ "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.

⁶⁹ 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>.

⁷⁰ Younis Tirawi, @ytirawi, Tweet (27 March 2024, 9:28 p.m.), <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>.

⁷¹ Forensic Architecture @ForensicArchi Tweet (7:50 p.m., 14 May 2024), <https://twitter.com/ForensicArchi/status/1790439607667986532>.

The attacks

16. Rafah as a place of refuge or safety remains a cruel distortion for another reason, your Excellencies. For months Israel threatened to invade Rafah, leading the UN Secretary-General to warn that an assault on Rafah would be “a political calamity” and “a humanitarian nightmare”, which was also, of course, highlighted by this Court in its decision of 16 February 2024⁷². We are before this Court urgently because Palestinians are now having to live out that nightmare.

17. On 7 May 2024, just *15 hours* after the evacuation orders were issued, Israel commenced a severe and sustained military assault on Rafah, which is ongoing, and it has intensified in the intervening period until today, killing and injuring Palestinians, and destroying their makeshift homes and the remaining infrastructure necessary to sustain life in Gaza, including all aid and medical infrastructure in its path⁷³. Israel deliberately attacked the very shelters to which it directed Palestinians to flee⁷⁴.

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 attacks⁷⁵. The overwhelming majority have no means to flee other than on foot. “There is nothing humanitarian about these ‘humanitarian’ zones.”⁷⁶

19. Then, on 11 May 2024, 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, that approximately 20 per cent of Gaza’s population have been displaced yet again in the past week

⁷² António Guterres, @antonioguterres, Tweet (4:50 p.m., 7 May 2024), <https://twitter.com/antonioguterres/status/1787872714717294647>.

⁷³ Forensic Architecture @ForensicArchi Tweet (7:50 p.m., 14 May 2024), <https://twitter.com/ForensicArchi/status/1790439607667986532>.

⁷⁴ 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>.

⁷⁵ 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/>.

⁷⁶ 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>.

alone⁷⁷. By 10 May 2024, an estimated 110,000 people had fled Rafah⁷⁸; by yesterday, 15 May, this number had increased to around 600,000 according to the United Nations⁷⁹. 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, Your Excellencies, 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 crossings⁸⁰, taking total control of *all* entry and exit of people and goods into Gaza as a whole⁸¹, “chok[ing] off” the “two main arteries” for getting life-saving aid to Gaza’s starving population⁸². And in so doing, it has plunged Gaza into “unprecedented levels of humanitarian need”⁸³, even as compared with the catastrophic levels of the previous seven months⁸⁴ that led this Court to conclude that “famine was setting in” back in March 2024⁸⁵.

21. The closure of the crossings means that Palestinians — starving in a “full blown”⁸⁶, man-made famine — are now further deprived of food, where Israel’s attacks have systematically

⁷⁷ 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>.

⁷⁸ 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.

⁷⁹ UN News, *Gaza: 600,000 displaced from Rafah* (15 May 2024), <https://news.un.org/en/story/2024/05/1149756>.

⁸⁰ UN Web TV, *Geneva Press Briefing: OCHA, UNICEF, OHCHR, WHO, UN WOMEN* (7 May 2024), <https://webtv.un.org/en/asset/k1g/k1g9eajpmk> [2:28].

⁸¹ Scott Anderson, Director of UNRWA Affairs for Gaza @GazaUNRWA, Tweet (2:08 p.m., 8 May 2024), <https://twitter.com/GazaUNRWA/status/1788179227281334712>.

⁸² UN Web TV, *Geneva Press Briefing: OCHA, UNICEF, OHCHR, WHO, UN WOMEN* (7 May 2024), <https://webtv.un.org/en/asset/k1g/k1g9eajpmk> [2:28].

⁸³ Director-General of the World Health Organization, Tedros Adhanom Ghebreyesus, @DrTedros, Tweet (5:23 p.m., 6 May 2024), <https://twitter.com/DrTedros/status/1787518675836195224>.

⁸⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, p. 8, para. 30.

⁸⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, p. 7, para. 21.

⁸⁶ NBC, “Full-blown famine” in northern Gaza, says World Food Programme executive director Cindy McCain, <https://www.youtube.com/watch?v=r7QWply967Q>, [1:15].

decimated food production systems throughout Gaza⁸⁷. It means that fuel cannot get in to run incubators and life-saving machinery in hospitals⁸⁸, water pumps and wells⁸⁹. It means that people — including the chronically sick and injured — cannot get out of Gaza; and vital aid cannot get into Gaza⁹⁰ and thus poses an overwhelmingly grave threat, not only to the Palestinian people, but also to United Nations personnel and aid workers trying to bring some desperately-needed relief⁹¹.

22. Despite Israel's announcements that it would open Kerem Shalom on 8 May 2024, on 10 May, the United Nations reported that no supplies were passing through any crossings in southern Gaza⁹². As of 15 May 2024, the Rafah Crossing remains closed, and there is a continued lack of safe and logistically viable access to the Kerem Shalom crossing⁹³. The crisis could not be more urgent.

23. And 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 over a million people are predicted to face catastrophe (IPC phase 5) food insecurity levels through July 2024, which is just around the corner⁹⁴. Bakeries have been forced to shut down because they do not have fuel⁹⁵; ongoing attacks in Rafah have rendered humanitarian warehouses inaccessible. And responders providing food aid will run out of food supplies within the coming days⁹⁶.

⁸⁷ 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/>.

⁸⁸ 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>.

⁸⁹ 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>.

⁹⁰ 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/>.

⁹¹ 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>.

⁹² UNRWA, *Gaza: Supplies and Dispatch tracking* (10 May 2024), <http://gazadashboard.unrwa.org>.

⁹³ 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>.

⁹⁴ 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>.

⁹⁵ 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>.

⁹⁶ 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>.

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 no longer functional⁹⁷. 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 down⁹⁸.

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 births⁹⁹. It has already been forced to stop admitting patients¹⁰⁰ and medics warn that, “without a doubt”, “every single one” of the 45 babies in the neonatal intensive care unit and the special intensive care unit “will die” if the hospital is occupied¹⁰¹.

26. And then on 13 May 2024, 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 for the more than one million people sheltering in Rafah and its closure will mean the complete collapse of what was the limping healthcare system in Rafah¹⁰².

⁹⁷ Director-General of the WHO, Tedros Adhanom Ghebreyesus, @DrTedros, Tweet (2:07 p.m., 8 May 2024), <https://twitter.com/drtedros/status/1788194015931707403>.

⁹⁸ 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].

⁹⁹ 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 p.m., 7 May 2024), <https://twitter.com/UNRWA/status/1787816026496737589>.

¹⁰⁰ 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/>.

¹⁰¹ The Glia Project, @Glia_Intl, Tweet (2:29 p.m., 7 May 2024), https://twitter.com/Glia_Intl/status/1787821991585616056.

¹⁰² 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>.

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"¹⁰³. With Rafah's destruction — ongoing as South Africa speaks to this Court today — 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 that Ms Ní Ghrálaigh will speak to. The necessity could not be starker, the magnitude and the gravity of the situation facing the Palestinian people in Gaza now exemplified in Rafah. South Africa has thus been motivated to come urgently to this Court to prevent the destruction of the final Palestinian Governorate of Gaza — with its homes, its hospitals, its schools, its libraries, its businesses, its shelters, its mosques — to which Israel has not yet laid complete waste. And South Africa 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"¹⁰⁴. 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 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 Dr Hassim will outline this along with the crippling effects of Rafah now on harrowing display across the Gaza Strip as a whole. I thank you, Mr President.

The PRESIDENT: I thank Professor Max du Plessis for his statement. I now give the floor to Ms Adila Hassim. You have the floor, Madam.

¹⁰³ 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].

¹⁰⁴ 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>.

Ms HASSIM:

FACTS: GAZA

1. Mr President, Members of the Court, it is a privilege to appear again before you on behalf of South Africa. But it is also tragic that we are back here, four months after this Court first ordered provisional measures in this case against the State of Israel. South Africa is compelled to appear before you with this urgent request for provisional measures in circumstances where the “alarm . . . sounded by the Court”¹⁰⁵ on 28 March 2024 that “[a]ll the indicators of genocidal activities are flashing red in Gaza” — and in Rafah in particular — is sounding louder than ever before.

2. This is because Israel has defied every single provisional measure indicated by this Court in its Orders of 26 January 2024 and 28 March 2024 and its decision of 16 February. As I stand before you today, Palestinians in Gaza are not safe. They are not secure. They are still being subjected to an ongoing and intensifying genocide at the hands of Israel. Their future hangs in the balance.

3. Mr du Plessis explained in his address the assault unfolding in Rafah — the last area in Gaza in which Palestinian life can meaningfully be sustained. The assault on Rafah, which has triggered this application, is inextricably linked to the ongoing genocidal conduct being committed *across* Gaza.

Gaza — generally

4. Mr President, I place before the Court again a map of Gaza.

5. I remind the Court that Gaza is a narrow strip of land of approximately 365 sq km. It is just 6 km wide. The length, from top to bottom is just 44 km — which is about the distance between this Court and Schiphol Airport. In South African terms, this is even less than the distance between Johannesburg and Pretoria.

6. Rafah lies in the south of Gaza with an area of approximately 60 sq km. This time last year, Rafah was home to around 275,000 Palestinians¹⁰⁶. As a result of Israel’s onslaught and its

¹⁰⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, declaration of Judge Yusuf, para. 12.

¹⁰⁶ Al Mezan Center for Human Rights, *Israeli Military Escalates Bombing of Civilian Homes in Rafah Amid Threats of Ground Invasion* (2 May 2024), <https://www.mezan.org/en/post/46427/Israeli-Military-Escalates-Bombing-of-Civilian-Homes-in-Rafah-Amid-Threats-of-Ground-Invasion%C2%A0>.

evacuation orders covering more than *three quarters* of Gaza's total territory¹⁰⁷, 1.2 million *additional* Palestinians fled *into* Rafah, under order of Israel, as a place of last refuge¹⁰⁸.

7. Now, Israel has issued *further* evacuation orders, directing Palestinians to leave Rafah. In just the past week, 600,000 Palestinians have been forced to flee from Rafah¹⁰⁹, but with nowhere to go. There is a total collapse of infrastructure, of sanitation, of water, of food supply: in short, the conditions necessary to sustain life for the 2.3 million Palestinians in Gaza¹¹⁰.

8. The picture on the screen shows Palestinians last month, starting to return to their homes after Israel's withdrawal of its occupation of Khan Younis. As we can all see, there is nothing left¹¹¹.

9. Israel's most recent actions in Rafah, bring its "coordinated plan . . . aimed at the destruction of the essential foundations of [Palestinian] life"¹¹² in Gaza — into horrifying focus.

10. We are in the final stages of that "coordinated plan", where the "different actions" of Israel — to use Lemkin's terminology — the systematic "disintegration of the political, and social institutions and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives"¹¹³ of Palestinians — have led to the present precipice. Israel has the power over each and every Palestinian man, woman and child in Gaza, to determine if they live or how they die. History warns us what happens next. We cannot simply stand by, waiting for that to happen again.

Overview

11. It is not possible to recount every story of every Palestinian who is suffering at the hands of Israel's relentless genocidal campaign. Indeed, this Court has held in *Bosnian Genocide* that

¹⁰⁷ 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>.

¹⁰⁸ 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>.

¹⁰⁹ UN, *Gaza: 600,000 displaced from Rafah* (15 May 2024), <https://news.un.org/en/story/2024/05/1149756>.

¹¹⁰ Oxfam, *Epidemic risk rising as Rafah invasion compounds lethal cocktail of over-crowding, sewage and hunger* (13 May 2024), <https://www.oxfam.org/en/press-releases/epidemic-risk-rising-rafah-invasion-compounds-lethal-cocktail-over-crowding-sewage>.

¹¹¹ Save the Children, *Gaza: Aid Workers Find Ghost Town and Children Living amid Rubble in Khan Younis* (25 April 2024), <https://www.savethechildren.org.uk/news/media-centre/press-releases/gaza-khan-younis-ghost-town-children-living-among-rubble>.

¹¹² Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (1944), p. 79.

¹¹³ *Ibid*, p. 79.

“it [is] sufficient to examine those facts that would illuminate the question of intent, or illustrate the claim by the Applicant of a pattern of acts committed against members of the group, such as to lead to an inference from such pattern of the existence of a specific intent”¹¹⁴.

12. In these submissions, I show that Israel’s genocidal acts against Palestinians in Rafah form part of a *continuing, escalating* pattern of conduct *across Gaza* that provides “persuasive and consistent evidence”¹¹⁵ of Israel’s genocidal conduct. In light of these new facts, South Africa seeks an order from the Court — the *only* order — that will clearly protect what is left of Palestinian life in Gaza. It seeks an *explicit* order that Israel “cease its military activities” *not only* in Rafah but *throughout* Gaza.

The facts

13. Turning then to the genocidal acts: in my remaining time before you, I will highlight the following features of the genocidal campaign by Israel:

- (1) First, Israel has continued to *kill Palestinians in Gaza*, including women and children, at an alarming rate.
- (2) Second, as a result of Israel’s onslaught, Palestinians in Gaza are facing what the Under-Secretary-General of the United Nations has described as the “worst humanitarian crisis” he has seen for more than 50 years¹¹⁶.
- (3) Third, Israel’s systematic targeting and bombardment of hospitals and medical facilities, and its throttling of humanitarian aid, has pushed Gaza’s *medical system to collapse*;
- (4) Fourth, Israel’s direct attack and siege of Gaza’s biggest hospitals has led to the uncovering of *mass graves* evidencing *Israeli massacres* of Palestinians seeking shelter and medical treatment;
- (5) Finally, most recently, Israel has intensified its attacks in the north while pressing on with its Rafah offensive leaving displaced Palestinians *nowhere safe to go*.

14. I will take these in turn.

¹¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 143, para. 242.

¹¹⁵ *Ibid.*

¹¹⁶ Statement by Under-Secretary-General for Humanitarian Affairs on *Sky News*, 14 February 2024: “‘Gaza is worst humanitarian crisis I have seen in 50 years’, top UN official says”, *Sky News* (14 February 2024), <https://news.sky.com/story/gaza-is-worst-humanitarian-crisis-i-have-seen-in-50-years-top-un-official-tells-sky-news-13071666>.

First feature: Israel's relentless killing of Palestinians in Gaza

15. Since South Africa appeared before the Court on 11 January 2024, at least 11,500 Palestinians have been directly killed by Israel¹¹⁷. The majority of these casualties are women and children in an enclave where nearly 50 per cent of the population are children¹¹⁸.

16. This onslaught has occurred despite the binding Orders issued by this Court, and the binding Security Council resolution on 25 March 2024 demanding “an immediate ceasefire for the month of Ramadan”¹¹⁹. In fact, as UNICEF pointed out, a “double-digit” number of children were killed *within hours* of that resolution¹²⁰. Two mothers¹²¹ and four children¹²² are killed every hour.

17. UNRWA head, Philippe Lazzarini says there are “[n]o words left that can do any justice to the people of Gaza”¹²³. The numbers of dead and injured defy comprehension: at least 35,000 Palestinians killed and 79,000 Palestinians injured, with 10,000 more reportedly missing or under rubble¹²⁴; up to 1.7 million displaced, most multiple times¹²⁵; and more than 70 per cent of all housing stock in Gaza, and more than 80 per cent in parts of the northern region, damaged or destroyed¹²⁶.

¹¹⁷ UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 220* (13 May 2024) <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-220>; UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 96* (11 January 2024) <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-96>.

¹¹⁸ *Gaza's Silent Killings: The destruction of the healthcare system and the struggle for survival in Rafah* (29 April 2024) at p. 10, https://www.msf.org/sites/default/files/2024-04/MSF-GazaSilentKillings-Full%20Report_ENG_April%202023.pdf. UN, *Daily Press Briefing by the Office of the Spokesperson for the Secretary-General* (13 May 2024), <https://press.un.org/en/2024/db240513.doc.htm>.

¹¹⁹ UN Security Council, *The situation in the Middle East, including the Palestine Question*, S/RES/2728 (2024).

¹²⁰ UN, *Gaza: 'Double-digit' number of children reported killed overnight* (26 March 2024), <https://news.un.org/en/story/2024/03/1147966>.

¹²¹ International Rescue Committee, *Pregnant women and mothers in Gaza are fighting to keep themselves and their babies alive amidst healthcare collapse, the IRC warns* (2 April 2024), <https://www.rescue.org/press-release/pregnant-women-and-mothers-gaza-are-fighting-keep-themselves-and-their-babies-alive>

¹²² Palestine — Central Bureau of Statistics (4 April 2024), https://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_PalChildDay2024E.pdf (cited in OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #150* (5 April 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-150>

¹²³ Philippe Lazzarini, @UNLazzarini, Tweet (8:11 pm, 12 May 2024), <https://twitter.com/UNLazzarini/status/1789720036900323609>.

¹²⁴ 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>.

¹²⁵ UNRWA, *Situation Report for #107 on the situation in the Gaza Strip and the West Bank, including East Jerusalem* (14 May 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-107-situation-gaza-strip-and-west-bank-including-east-jerusalem>.

¹²⁶ UN News, *UN rights expert condemns 'systematic' war-time mass destruction of homes* (5 March 2024), <https://news.un.org/en/story/2024/03/1147272>.

Second feature: humanitarian catastrophe

18. Israel’s “coordinated plan” in Gaza has resulted in a humanitarian crisis — the crisis that this Court warned about in January, February and in March. What Palestinians in Gaza face has been described as “apocalyptic levels of pain and injustice . . . given that food and other vital aid cannot get in and people — including the chronically sick and injured — cannot get out”¹²⁷.

19. These “apocalyptic”¹²⁸ conditions look set to worsen: with Israel’s ongoing attacks on the north, middle and south, with “full-blown famine” in the north, “moving its way south”¹²⁹, and where Israel’s blockade on food, fuel and medical supplies continues.

20. Gaza’s children have suffered particularly severely. More than 14,000¹³⁰ have been killed; thousands more have been injured or lost family members, while an estimated 17,000 children are unaccompanied or separated¹³¹. Nearly all of Gaza’s children have been exposed to traumatic experiences, the consequences of which will last a lifetime.

21. Make no mistake: these conditions are a *direct* result of Israel’s military onslaught on the besieged enclave, with full knowledge of the destructive consequences of this humanitarian crisis¹³².

22. In these circumstances, the thwarting of humanitarian aid cannot be seen as anything but the deliberate snuffing-out of Palestinian lives: starvation to the point of famine, obstructing aid in the face of famine, and killing of at least 200 aid workers. For the Court’s previous Orders to be effective, for the provision of humanitarian aid urgently and at scale, Israel has to be ordered to stop its military offensive.

¹²⁷ CARE International, *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>.

¹²⁸ *Ibid.*

¹²⁹ NBC, ‘Full-blown famine’ in northern Gaza, says World Food Programme executive director Cindy McCain, <https://www.youtube.com/watch?v=r7QWply967Q>, [1:15].

¹³⁰ 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>.

¹³¹ UNICEF, *Stories of loss and grief: At least 17,000 children are estimated to be unaccompanied or separated from their parents in the Gaza Strip* (2 February 2024), <https://www.unicef.org/press-releases/stories-loss-and-grief-least-17000-children-are-estimated-be-unaccompanied-or>.

¹³² United Nations News, *Addressing Kuwait City Conference, Secretary-General Repeats ‘World’s Call’ for Immediate Humanitarian Ceasefire in Gaza, Release of All Hostages* (12 May 2024) <https://press.un.org/en/2024/sgsm22222.doc.htm>.

Third feature: Israel's systematic bombardment of hospitals and medical facilities, and its throttling of humanitarian aid, has pushed Gaza's medical system to the brink of collapse

23. Israel's offensive on Rafah, has further reduced access to healthcare in an already decimated health system¹³³. Only two out of 36 hospitals are located within the so-called "humanitarian area" designated by Israel¹³⁴.

24. In just six days, between 6 and 12 May 2024, Médecins Sans Frontières recorded that it was forced to suspend its life-sustaining activities at Al-Shaboura clinic, hand over its activities at Al-Emirati hospital, and was forced to close its activities in Rafah Indonesian field hospital as it could not guarantee the security and safety of patients and staff with the ongoing offensive¹³⁵.

25. The assault on healthcare within Rafah is the culmination of a pattern of attacks on healthcare services in Gaza¹³⁶, through which the main hospitals across Gaza have completely stopped functioning¹³⁷.

26. After Israel's military seized the Rafah and Kerem Shalom crossings last week, and prohibited the importation of life-giving fuel to hospitals, on 13 May 2024, the European Gaza hospital completely ran out of fuel and experienced a total blackout¹³⁸. Without fuel, hospitals cannot sustain incubators, respirators and life-saving machinery¹³⁹.

27. Healthcare in Gaza is crippled by shortages of food, fuel, oxygen, medicines and anaesthetics¹⁴⁰. The obstetric and maternity health system in Gaza is virtually non-existent, and every

¹³³ MSF, 'Strikes, raids and incursions: Seven months of relentless attacks on healthcare in Palestine' (14 May 2024), <https://www.msf.org/strikes-raids-and-incursions-seven-months-relentless-attacks-healthcare-palestine>.

¹³⁴ WHO, *oPt Emergency Situation Update* (8 May 2024), https://www.emro.who.int/images/stories/Sitrep_-_issue_30.pdf.

¹³⁵ Médecins Sans Frontières (MSF), Another hospital in Gaza forced to close amid intensified Israeli offensive in Rafah (14 May 2024) <https://www.msf.org/another-hospital-gaza-forced-close-amid-intensified-israeli-offensive-rafah>.

¹³⁶ *Ibid.*; 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>.

¹³⁷ World Health Organization (WHO) @WHO, Tweet (6:10 pm, 6 April 2024), <https://twitter.com/WHO/status/1776658706744082924>.

¹³⁸ MAP UK, *Medical Aid for Palestinians (MAP) Update on the hospital situation in Gaza: 13 May 2024, 12:40* <https://reliefweb.int/report/occupied-palestinian-territory/medical-aid-palestinians-map-update-hospital-situation-gaza-13-may-2024-1240>.

¹³⁹ 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>.

¹⁴⁰ MSF, The near impossible task of getting lifesaving supplies into Gaza (2 May 2024), <https://www.msf.org/near-impossible-task-getting-lifesaving-supplies-gaza>; Gisha, *Gaza Now: Current facts and figures* (15 April 2024), <https://gisha.org/en/the-humanitarian-catastrophe-in-gaza-facts-and-figures/>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #156* (22 April 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-156>.

functioning medical facility is overwhelmed with patients¹⁴¹. Babies continue to die of malnutrition and starvation¹⁴².

28. Nor is there any escape: medical evacuations are impossible¹⁴³. Israel has seized control of all entry and exit points into and out of Gaza, trapping an already suffering population and inflicting conditions of life calculated to bring about Palestinians' physical and biological destruction in clear violation of Article II (c) of the Genocide Convention.

Fourth feature: the uncovering of mass graves demonstrating evidence of Israeli massacres of Palestinians seeking shelter and treatment

29. In its targeted attacks on hospitals, Israel has killed hundreds of civilians, including doctors and medical staff, turning centres built for healing into mass graves full of the decomposing bodies of men, women and children¹⁴⁴.

30. On 10 April, a UN inspection team reported that Khan Younis was reduced to "rubble and dirt"¹⁴⁵, and returnees discovered ghastly scenes of unearthed mass graves containing the massacred bodies of the elderly, women, children and men at Al Nasser hospital¹⁴⁶. Blue scrubs reportedly still clothed the dead bodies of medical staff; many were decapitated¹⁴⁷. Three hundred and twenty-four decomposing bodies were discovered, many stripped and handcuffed — of these only 42 were identified¹⁴⁸. Another 30 bodies were discovered in two mass graves in Al Shifa hospital, with only

¹⁴¹ International Rescue Committee, *The collapse of Gaza's health system* (updated 6 May 2024) <https://www.rescue.org/article/collapse-gazas-health-system>.

¹⁴² MSF, *Gaza's Silent Killings* (29 April 2024), https://www.msf.org/sites/default/files/2024-04/MSF-GazaSilentKillings-Full%20Report_ENG_April%202023.pdf.

¹⁴³ 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>; "Patients and medics flee major Rafah hospital" *Reuters* (7 May 2024) <https://www.reuters.com/world/middle-east/patients-medics-flee-major-rafah-hospital-2024-05-07/>.

¹⁴⁴ United Nations, *Global Perspective News Stories, Gaza: 'Systematic dismantling of healthcare must end' says WHO* (6 April 2024), <https://news.un.org/en/story/2024/04/1148316>.

¹⁴⁵ Director-General of the World Health Organization, Tedros Adhanom Ghebreyesus, @DrTedros, Tweet (9:28 pm, April 11, 2024), <https://twitter.com/DrTedros/status/1778520394716377489>.

¹⁴⁶ "Uncovering of mass grave at Gaza's Nasser Hospital: What you need to know" *Al Jazeera* (24 April 2024) <https://www.aljazeera.com/news/2024/4/24/uncovering-of-mass-grave-at-gazas-nasser-hospital-what-you-need-to-know>.

¹⁴⁷ "War on Gaza: Hundreds of bodies unearthed in Khan Younis hospital mass graves", *Middle East Eye* (21 April 2024), <https://www.middleeasteye.net/news/hundreds-bodies-unearthed-nasser-hospital-mass-graves>; Palestine Online, @OnlinePalEng, Tweet (7:36 am, April 22, 2024), <https://twitter.com/OnlinePalEng/status/1782297382702489641>.

¹⁴⁸ UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #157* (24 April 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-157>; UN Global News Perspective Stories, *Mass graves in Gaza show victims' hands were tied, says UN rights office* (23 April 2024), <https://news.un.org/en/story/2024/04/1148876>.

12 bodies identified¹⁴⁹, prompting the UN Secretary-General to call for the immediate access of independent investigators¹⁵⁰. These bodies included women and children, with many reportedly showing signs of torture and summary executions¹⁵¹.

31. The recent discovery of multiple “mass graves”, Israel’s ongoing chokehold on information coming out of Gaza, and complete refusal to allow independent investigators in, means that we will not know how many Palestinians have been killed by Israel’s military campaign for some time, if at all. And only if the evidence is not obliterated by Israel’s ongoing military operations in what Commissioner Volker Turk describes as the “prevailing climate of impunity”¹⁵². It is for this reason that South Africa seeks an order requiring Israel to facilitate the unimpeded access into Gaza of fact-finding missions, officials, investigators and journalists.

Fifth feature: Israel has intensified its attacks in the north while pressing on with its Rafah offensive leaving displaced Palestinians nowhere safe to go, obliterating their right to return.

32. During the past week, while our eyes and attention were drawn to the horrific acts unfolding in Rafah, Israeli tanks rolled again into northern Gaza — an area that Israel reported that it had “cleared” many months ago. On 11 May 2024, Israel issued evacuation orders over 22 neighbourhoods in Jabaliya in northern Gaza. At least 100,000 people in the north have been forced to flee their devastated homes¹⁵³.

33. The same day of the evacuation orders, Israel began a relentless assault on northern Gaza, killing Palestinian families in their homes¹⁵⁴ and children near the Tawbah Mosque within the Jabaliya refugee camp¹⁵⁵. Journalists report that they have “no idea about the number of people killed

¹⁴⁹ UN Global News Perspective Stories, *Mass graves in Gaza show victims’ hands were tied, says UN rights office* (23 April 2024), <https://news.un.org/en/story/2024/04/1148876>.

¹⁵⁰ António Guterres, @antonioguterres, Tweet (8:44 pm, 30 April 2024), <https://twitter.com/antonio-guterres/status/1785394742391402660>.

¹⁵¹ 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>.

¹⁵² UN OHCHR, *UN Human Rights Chief deplores harrowing killings of children and women in Rafah* (23 April 2024) <https://www.ohchr.org/en/press-releases/2024/04/un-human-rights-chief-deplores-harrowing-killings-children-and-women-rafah>.

¹⁵³ 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-16557>.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

in North Gaza for the past day as medics are unable to move due to the heavy bombing. Many people are still trapped under the rubble, waiting for rescue but no one is able to move under the rains of bombs”¹⁵⁶.

34. As I stand before you, Mr President, it continues. On 14 and 15 May 2024 — just yesterday and the day before yesterday — the Israeli military issued two new sets of evacuation orders for all or part of 19 neighbourhoods in northern Gaza¹⁵⁷, displacing even more Palestinians in search of safety.

Disinformation

35. Mr President, these are the credible facts. Israel will no doubt *once again* deny and cast aspersions on the information presented by South Africa and provided by the United Nations and other international actors — including those this Court itself has relied on. It will do so while continuing to systematically attack all independent sources of information about what is taking place in Gaza, and refuse international investigators and journalists entry into Gaza.

36. Having denied access to Gaza and attempted to discredit all other sources of information, Israel is then free to portray a picture of Gaza radically at odds with all other accounts¹⁵⁸. Just yesterday the Prime Minister’s office proclaimed that “[t]he humanitarian catastrophe that has been spoken of has not been realized, nor will it”¹⁵⁹. A bald denial of the findings of UN experts and other independent agencies, such as the Integrated Food Security Phase Classification Global Initiative (IPC). As this Court pointed out, the IPC is a “global partnership of organizations including, *inter alia*, the World Food Programme, the Food and Agriculture Organization of the United Nations and the World Health Organization”¹⁶⁰.

¹⁵⁶ حسام شبات @HossamShabat, Tweet (3:57 am, 12 May 2024) <https://twitter.com/HossamShabat/status/1789475047326851530>.

¹⁵⁷ 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>.

¹⁵⁸ Jeremy Scahill, “Netanyahu’s war on truth”, *The Intercept* (7 February 2024), <https://theintercept.com/2024/02/07/gaza-israel-netanyahu-propaganda-lies-palestinians/>.

¹⁵⁹ <https://www.gov.il/en/pages/spoke-protection150524>.

¹⁶⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, para. 19.

37. Ultimately, Israel says only what suits them, only if and when it suits them— notwithstanding the facts on the ground that have been presented here today. Despite the Court providing Israel with an opportunity to respond to South Africa’s current request, Israel has failed to submit a response.

Conclusion

38. In conclusion, Mr President, Members of the Court, the risks to the people of Gaza are imminent, irreparable and rapidly increasing. This risk gives rise to the necessity for the remedy that we seek in this application: a remedy that will end Israel’s genocidal campaign against Palestinians in Gaza.

39. All of what I have described must stop. Israel must be stopped. South Africa is before you again today to respectfully ask the Court to invoke its powers under Article 75 (2) of the Rules of the Court to order a remedy that will stop Israel.

40. Mr President, that concludes my submissions on the genocidal conduct. I thank you for your patient attention, and I ask that you call Mr Ngcukaitobi to the podium to address the Court on genocidal intent. Thank you.

The PRESIDENT: I thank Ms Hassim for her statement. I now give the floor to Mr Tembeka Ngcukaitobi. You have the floor, Sir.

Mr NGCUKAITOBI:

GENOCIDAL INTENT

1. Mr President and Members of the Court, it is a privilege to appear on behalf of South Africa. Today’s request for the indication of further provisional measures and/or the modification of the existing provisional measures has been triggered by the military assault of Israel on Rafah, which began on 6 and 7 May 2024 and has intensified and escalated since. As shown by Mr du Plessis and Ms Hassim, the military attack is genocidal in its pattern. I shall demonstrate that it is also consistent with the explicit, stated and continuing genocidal intent of the State of Israel.

2. Firstly, to the *knowledge* of Israel, Rafah is the “last refuge” of Gaza¹⁶¹, the only remaining area in the Gaza Strip which has not been substantially destroyed by Israel¹⁶², the only area that can host displaced people¹⁶³, the only remaining centre of humanitarian aid and the host to one of the few remaining large hospitals across the entirety of Gaza¹⁶⁴. Rafah is the last stage of the “total annihilation” of Palestinian life. Without Rafah, the possibility to rebuild and reconstruct Palestinian life will be lost forever. For Palestinians to continue to exist as a protected group under the Genocide Convention, they need a place from which to rebuild. As we stand here today, Rafah is that place. The last stand.

3. Secondly, Israel also *knows* of explicit warnings about the genocidal consequences of an attack in Rafah:

- 3.1. On 6 May 2024, the Director General of the World Health Organization warned that “a full military incursion into Rafah will plunge the crisis into unprecedented levels of humanitarian need”¹⁶⁵.
- 3.2. On 8 May 2024, two days after the military attack had begun, he stressed that one of the three hospitals in Rafah, Al-Najjar, was “no longer functioning due to the ongoing hostilities in its vicinity and the military operation in Rafah”. Since the border was closed, the United Nations was prevented from bringing fuel, without which “all humanitarian operations [would] stop”¹⁶⁶.

¹⁶¹ 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).

¹⁶² 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>.

¹⁶³ *Ibid.*

¹⁶⁴ World Health Organization, *Patients in Rafah “afraid to seek services”, WHO reports* (7 May 2024), <https://news.un.org/en/story/2024/05/1149451>.

¹⁶⁵ Tedros Adhanom Ghebreyesus @DrTedros, (6:23 p.m., 6 May 2024), <https://twitter.com/DrTedros/status/>.

¹⁶⁶ Tedros Adhanom Ghebreyesus @DrTedros, (3:07p.m., 8 May 2024), <https://twitter.com/DrTedros/status/>.

3.3. Martin Griffiths, the United Nations Relief Chief, has rung alarm bells. He has warned that “the simplest truth is that a ground operation in Rafah will be nothing short of a tragedy beyond words. *No humanitarian plan can counter that.* The rest is detail.”¹⁶⁷

4. Palestinians do not need any more diplomatic gesturing; no more abstract words; no more vacuous condemnations and denunciations of Israel’s actions. There is no more time to spare. It is simply now or never. Israel has *knowledge* of the pronouncements I have cited above. After all, each of them was made publicly.

5. Thirdly, the State of Israel knows of the decisions of this Court, which bear on it as a State party to the Genocide Convention directly and require of it to respect its obligations under the Convention and the moral and legal authority of this Court.

6. The decision of this Court on 26 January 2024 noted that the “civilian population in the Gaza Strip [is] extremely vulnerable”¹⁶⁸ and that “the catastrophic humanitarian situation in the Gaza Strip is at *serious risk* of deteriorating further before the Court renders its final judgment”¹⁶⁹. Bearing this in mind, the Court recognized that “the military operation conducted by Israel after 7 October 2023 has resulted, *inter alia*, in tens of thousands of deaths and injuries and the destruction of homes, schools, medical facilities and other vital infrastructure, as well as displacement on a massive scale”¹⁷⁰. In light of this situation, Israel was ordered to ensure with *immediate effect* that its military does not commit any acts that fall within Article II of the Genocide Convention.

7. One of the measures indicated expressly required of Israel to “take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip”¹⁷¹.

8. In the decision of 16 February 2024, this Court was compelled to “demand” that Israel *immediately* and *effectively* implements the Court’s Order of 26 January 2024. This Court cautioned

¹⁶⁷ UN OCHA, Martin Griffiths, “UN relief chief: A ground operation in Rafah will be nothing short of a tragedy beyond words” (30 April 2024), <https://www.unocha.org/news/un-relief-chief-ground-operation-rafah-will-be-nothing-short-tragedy-beyond-words>.

¹⁶⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, para. 70.

¹⁶⁹ *Ibid.*, para. 72; emphasis added.

¹⁷⁰ *Ibid.*, para. 70.

¹⁷¹ *Ibid.*, para. 79.

that the “most recent developments in the Gaza Strip, and *in Rafah in particular*, ‘would exponentially increase what is already a humanitarian nightmare with untold regional consequences’”¹⁷².

9. In the Order of 28 March 2024, this Court observed “with regret” the existence of “exceptionally grave” circumstances¹⁷³ since its Order of 26 January 2024 and its decision of 16 February 2024 that “the catastrophic living conditions of the Palestinians in the Gaza Strip have *deteriorated further*, in particular in view of the prolonged and widespread deprivation of food and other basic necessities to which the Palestinians in the Gaza Strip have been subjected”¹⁷⁴. The Court issued its Orders, clearly highlighting the “worsening conditions of life faced by Palestinians in Gaza”¹⁷⁵. Israel was ordered to ensure “with immediate effect” that its military “through any action” does not commit acts which violate the rights of Palestinians under the Genocide Convention¹⁷⁶.

10. So far, Mr President, what I have said is not inference. Not imputation. It is *direct knowledge* which bears on the State of Israel, its political leaders and the members of its army. They *know* about Rafah and its centrality to the sustenance of Palestinian life at the present moment. They know the views of the organs of the United Nations about the consequences of a military attack on Rafah. They know what this Court has ordered on each of the three occasions I have referenced.

11. Yet, Israel’s leaders have continued to incite genocide and to express their own genocidal intent. In doing so, not only has Israel ignored its obligations as a State party to the Genocide Convention, it has also treated this Court with contempt and threatened the rule of law.

12. Let me demonstrate this.

13. Members of the Israeli Ministerial Committee on National Security Affairs (“Security Cabinet”) and the War Cabinet have simply continued with incitement to genocide.

¹⁷² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, decision of 16 February 2024; emphasis added.

¹⁷³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, *Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, para. 22.

¹⁷⁴ *Ibid.*, paras. 18, 30; emphasis added.

¹⁷⁵ *Ibid.*, para. 45.

¹⁷⁶ *Ibid.*

- (a) The Israeli Prime Minister: Benjamin Netanyahu — who is a member of the War Cabinet and Security Cabinet — has gone beyond any reference to Hamas alone. Instead, he has described Israel’s aims in the military assault as being “to ensure that *Gaza* will never again constitute a threat to Israel”¹⁷⁷. He describes Israel’s objective as being to “achieve total victory”¹⁷⁸, underscoring that “no force in the world will stop us”¹⁷⁹; “we will stand alone”, emphasizing that “[Israel] will fight with [its] fingernails”¹⁸⁰.
- (b) The Israeli Minister of Defence: Yoav Gallant — a member of both the War Cabinet and the Security Cabinet — has made clear that Israel is “*taking apart* neighbourhood after neighbourhood”¹⁸¹ and “will reach every location” in Gaza¹⁸².
- (c) The Israeli Minister of Finance: Bezael Smotrich — a member of the Security Cabinet — has asserted in terms: “[T]here are no half measures. Rafah, Deir al-Balah, Nuseirat — *total annihilation*.”¹⁸³ He goes on to say: “We are negotiating with the ones that should not have existed for a long time.”¹⁸⁴

14. For Israeli members of Cabinet, it is as if there is no Court Order which binds them.

15. They are not the only ones, regrettably. In an interview broadcast on Israeli television on 3 May 2024, the Vice Chair of the international arm of the Likud Party (the party to which the Israeli Prime Minister belongs) stated: “I think we needed to invade Rafah yesterday. To go in and to get

¹⁷⁷ 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); Benjamin Netanyahu, Tweet (7:37 pm, 30 April 2024), <https://twitter.com/netanyahu/status/1785362914519519597>.

¹⁷⁸ 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>.

¹⁷⁹ Ahmed Asmar, “‘No force in the world’ to stop Israel from invading Rafah, Netanyahu says” (Anadolu Agency), 9 April 2024 <https://www.aa.com.tr/en/middle-east/-no-force-in-the-world-to-stop-israel-from-invading-rafah-netanyahu-says/3187405>.

¹⁸⁰ Rob Corp “Israel orders more evacuation as Rafah fighting intensifies”, *BBC* (12 May 2024) <https://www.bbc.com/news/articles/cer3mr09vzxo>.

¹⁸¹ “Gallant: ‘We will not end this war without eliminating Hamas’”, *HM News* (3 March 2024), <https://hm-news.co.il/451577/>.

¹⁸² “Action In Rafah Soon? Galant In Gaza: ‘We Reach Everywhere’”, *Now 14* (13 March 2024), <https://www.now14.co.il/פעולה-ברפיח-בקרוב/>.

¹⁸³ “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>.

¹⁸⁴ *Ibid.*

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.”¹⁸⁵

16. Taking their cue from the politicians the Israeli army officials have followed suit in entrenching the incitement to genocide and showing their contempt for this Court¹⁸⁶.

(a) The Israeli army Chief of Staff: Lieutenant General Herzl Halevi stated — following the Israeli army’s siege and destruction of Al Shifa hospital in March 2024: “Here is the realization of an impressive strategy. There is a very, very important message here, a hospital is not a safe place”¹⁸⁷. He described the operation as a “very high achievement”¹⁸⁸. That is notwithstanding eye-witness reports of hundreds of civilians having been killed by Israeli troops in the hospital, including patients shot dead in their hospital beds¹⁸⁹. Mass graves and hundreds of Palestinian bodies were found following the withdrawal of the Israeli army from Al Shifa hospital, including bodies with cannulas in their arms, some with their limbs tied¹⁹⁰.

17. Brigadier General David Bar Kalifa, Commander of the 36th Armoured Division of the Israeli army issued a letter to Israeli soldiers about to deploy in Gaza, exhorting them to continue the killing of Palestinians: “What has been will be no more! We shall go out to it in war, we shall pulverize every accursed plot of land from which it came, we shall destroy it and the memory of it.”¹⁹¹

¹⁸⁵ “Ofira and Levison”, *Channel 12* (3 May 2024), https://www.mako.co.il/mako-vod-keshet/ofira_levinson-2024/VOD-3cc2a2319283f81027.htm, archived at <https://zionism.observer/storage/documentation/355/video//bpq1yyxvWfRQTXwf9LtiHGVjq0HXziceLeOP91fp.mp4>.

¹⁸⁶ Application and Request for the indication of provisional measures of South Africa, 29 December 2023, p. 60, para. 101, and p. 65, para. 103; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, pp. 17-18, para. 52.

¹⁸⁷ Kann News, @kann_news, Tweet (4:55 pm, 30 March 2024), https://twitter.com/kann_news/status/1774118267734434074.

¹⁸⁸ *Ibid.*

¹⁸⁹ “Gaza’s seventh mass grave discovered at al-Shifa Hospital”, *Al Jazeera* (9 May 2024) <https://www.aljazeera.com/program/newsfeed/2024/5/9/gazas-seventh-mass-grave-discovered-at-al-shifa-hospital>.

¹⁹⁰ UN News, *Mass graves in Gaza show victims’ hands were tied, says UN rights office* (23 April 2024), <https://news.un.org/en/story/2024/04/1148876>; “One man’s search for his father in mass graves at Gaza’s Al Shifa hospital”, *NPR* (April 18, 2024), <https://www.npr.org/2024/04/18/1245654891/one-mans-search-for-his-father-in-mass-graves-at-gazas-al-shifa-hospital>.

¹⁹¹ “The Divisioner’s letter to the fighters: “The enemy who asked for hell, will receive hell”, *Ynet* (29 October 2023), <https://www.ynet.co.il/news/article/b1tj8tozt>; partial translation available at Uri Misgav, “Opinion | Israel, Beware: In War, Apocalyptic Jewish Ultra-nationalists Are in a State of Ecstasy”, *Haaretz* (2 November 2023), <https://www.haaretz.com/opinion/2023-11-02/ty-article-opinion/premium/israel-beware-nationalist-haredis-are-in-a-state-of-ecstasy/0000018b-8c23-d7a8-afcf-aea34fd90000> (emphasis added).

18. Brigadier Kalifa has faced no investigations, nor has he been relieved of his command. This is despite the explicit Order of this Court for investigations into cases of incitement to genocide. Brigadier Kalifa was in fact promoted to the rank of major and the head of the Israeli army personnel division¹⁹².

19. Similarly, when 130 senior officers in the Israeli army penned a letter calling on Israel's War Cabinet to "not allow humanitarian supplies and the operation of hospitals within Gaza", they were not charged with incitement or prosecuted¹⁹³. One of the officers would later be named as involved in the killing of World Central Kitchen workers¹⁹⁴.

20. Genocidal rhetoric is not punished but rewarded by the Israeli Government.

21. On 6 March 2024, reservist First Sergeant Yachin — a veteran from the April 1948 Deir Yasin massacre of at least 250 Palestinians¹⁹⁵ — was rewarded with a certificate of thanks and commendation by the Israeli President for his "motivational speeches" he gave to Israeli soldiers as they prepared for the ground invasion of Gaza in October 2023. In at least one of those speeches, he had said: "Erase the memory of them. Erase them, their families, mothers and children. These animals can no longer live."¹⁹⁶

22. In his speech at the award ceremony, Israeli President Herzog told the senior reservists, including Ezra Yachin, that: "you have been a tremendous personal example for generations of Israeli citizens and the whole world and I want to on behalf of all the Israeli people to say to you, 'Thank you'"¹⁹⁷.

¹⁹² Emanuel Fabian, "IDF appoints new intel chief, promotes 4 other generals, despite far-right opposition", *Times of Israel* (2 May 2024), <https://www.timesofisrael.com/idf-appoints-new-intel-chief-promotes-4-other-generals-despite-far-right-opposition/>.

¹⁹³ See Commanders and Reserve Fighters Forum, *The Officer's letter: continue until victory* (22 January 2024), <https://hamefakdim-bemiluim.org/מכתב-הקצינים/>.

¹⁹⁴ World Central Kitchen, *7 WCK team members killed in Gaza* (2 April 2024), <https://wck.org/news/gaza-team-update>; "Top IDF commander in aid strike wanted to block humanitarian supplies into Gaza", *The Telegraph* (11 April 2024), <https://www.telegraph.co.uk/global-health/terror-and-security/israel-hamas-war-gaza-idf-aid-strike-world-central-kitchen/>.

¹⁹⁵ United Nations, *The Question of Palestine, United Nations Palestine Commission — Attack on Deir Yassin (9 April 1948) — Letter from United Kingdom* (20 April 1948), <https://www.un.org/unispal/document/auto-insert-211346/>.

¹⁹⁶ Application and Request for the indication of provisional measures of South Africa, p. 64, para. 102.

¹⁹⁷ Isaac Herzog, @Isaac_Herzog, Tweet (6 March 2024), https://twitter.com/Isaac_Herzog/status/1765378196449501227.

23. In their destruction of Rafah, Israeli soldiers deployed to Gaza continue to invoke the Prime Minister's speeches which are themselves genocidal. In case what I have said is not clear enough, let us hear them in their own words. [*Audiovisual material presented.*]

24. The destruction of Gaza and Palestinian life is understood by commanders and soldiers as the video shows. An Israeli soldier from the 9203rd battalion commented as follows on photographs and footage he posted online of Palestinian homes and neighbourhoods in Khan Younis completely destroyed by the Israeli army: "This year we were honoured to fulfil the command of the *annihilation of Amalek*"¹⁹⁸ and "may we finish the job"¹⁹⁹.

25. Such language continues to be widespread, alongside calls by Israeli soldiers on the ground "to conquer Gaza", "to flatten Gaza", "to erase Gaza"²⁰⁰, "to destroy Gaza . . . [and a]fter that, Ramallah also"²⁰¹. Israeli soldiers serving in Gaza continue to openly call for the "deaths to Arabs"²⁰², declaring "may you burn alive"²⁰³, that "Gaza is burning"²⁰⁴, that "we'll burn your mother"²⁰⁵ and that "[a]ll of Sajaiya will burn in flames"²⁰⁶.

26. The aims of Israel is to do no less than what its own Minister of Finance has stated, and that is to ensure "total annihilation"²⁰⁷ of Palestinians "that will erase the memory of Amalek". He has also called for Rafah to be "completely conquered and the sooner the better"²⁰⁸.

¹⁹⁸ Liran Ben Sushan, Facebook (24 March 2024), <https://www.facebook.com/reel/948173186471996>.

¹⁹⁹ Liran Ben Sushan, Facebook (24 March 2024), <https://www.facebook.com/liran.benshushan.5/posts/pfbid02Rj3E1t2o8DxdV3yHwDjtDNng1P7MsjDpgwK67g1sxinC6Fhh4FBWjZ5qbLNdnLW71>; translation at Younis Tirawi, @ytirawi, Tweet (1:33 pm, 27 March 2024), <https://twitter.com/ytirawi/status/1772965195683336261>.

²⁰⁰ Younis Tirawi, @ytirawi, Tweet (5:49 pm, 25 March 2024), <https://twitter.com/ytirawi/status/1772304727457317039>.

²⁰¹ Hamzah Saadah, @Hamzah_1948 (11:02 am, 10 March 2024), https://twitter.com/hamzah_1948/status/1766781731196072086.

²⁰² Younis Tirawi, @ytirawi, Tweet (9:27 pm, 14 March 2024), <https://twitter.com/ytirawi/status/1768388440876306830>.

²⁰³ Younis Tirawi, @ytirawi, Tweet (2 March 2024), <https://twitter.com/ytirawi/status/1763708375626359153>.

²⁰⁴ *Ibid.*

²⁰⁵ Younis Tirawi, @ytirawi, Tweet (27 March 2024), <https://twitter.com/ytirawi/status/1772964772629111095>.

²⁰⁶ *Ibid.*

²⁰⁷ "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-half-measures-in-the-total-annihilation-of-gaza/0000018f-2f4c-d9c3-abc3-7f7d25460000>.

²⁰⁸ Jason Burke and Malak A Tantesh "More than 100 000 flee Rafah as Israel steps up strikes, says UN", *The Guardian*, 9 May 2024 <https://www.theguardian.com/world/article/2024/may/09/more-than-100000-flee-rafah-israel-steps-up-strikes-says-un>.

27. Israel's genocidal intent continues to receive support and endorsement at the Knesset. As Tali Gotlieb, a member of the Knesset and the Prime Minister's party, has stated:

“To attack Rafah as we attacked in the northern Strip . . . Unlike the responder, intentionally not specifically addressing but rather the entire Rafah system. To attack mercilessly from the air. Instead of turning an eye to the Hague court, turn an eye to the people of Israel.”²⁰⁹

28. Public statements such as this show that even members of the Israeli Parliament are fully aware of the Orders of this Court, but have continued to openly incite genocide, without censure.

29. Such sentiments are also widely expressed across Israeli society. Many Israelis — including Israelis living in illegal settlements in the West Bank — have actioned statements by government officials calling for the denial of aid to Gaza²¹⁰, by destroying food aid on its way, including setting trucks on fire, putting sugar in tanks and destroying the food itself²¹¹. Israeli public officials — including singers inciting to genocide in Gaza — have had their incitement rewarded. One singer who popularized and adapted to Israel's current military operations in Gaza the racist Israeli football chant “May Your Village Burn”²¹², changed it to “may Gaza be erased”²¹³ and sang it to Israeli soldiers in live performances²¹⁴, was presented with a certificate of appreciation for his “work for the IDF soldiers during the war” by the Deputy Speaker of the Knesset, hosted by Israel's Minister for Social Equality and the Advancement of Women²¹⁵.

²⁰⁹ Younis Tirawi, @ytirawi, Tweet (9:25 pm, 10 May 2024) <https://twitter.com/ytirawi/status/1789013854602592486> (translation) and Tally Gotliv, @tallygotliv, Tweet, (6:02pm, 10 May 2024) <https://twitter.com/TallyGotliv/status/1788962952176976231> (original link).

²¹⁰ Israel Minister of Economy and Industry Nir Barkat, @NirBarkat, Tweet (7.36 p.m., 5 February 2024), <https://twitter.com/NirBarkat/status/1754574757171790041>; Itamar Ben-Gvir, @itamarbengvir, Tweet (2.37 p.m., 29 February 2024), <https://twitter.com/itamarbengvir/status/1763196768458604583>; 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>; Application and Request for the indication of provisional measures of South Africa, pp. 60-61, paras. 101-102

²¹¹ “Palestinian truckers fear for safety after aid convoy for Gaza wrecked” *Reuters* (14 May 2024) <https://www.reuters.com/world/middle-east/palestinian-truckers-fear-safety-after-aid-convoy-gaza-wrecked-2024-05-14/>.

²¹² See “Peretz sings may your village burn 2”, *OfekCenter* (26 November 2023), <https://www.youtube.com/watch?v=xcH2o4c5KZY>; “Peretz sings may your village burn”, *OfekCenter* (26 November 2024), <https://www.youtube.com/watch?v=YQXF-3nTK0M>.

²¹³ “Peretz sings may your village burn 2”, *OfekCenter* (26 November 2023), <https://www.youtube.com/watch?v=xcH2o4c5KZY>. See also “The Patriots with Yinon Magal | 10.03.2024 | The full program” (10 March 2024), *Now 14*, https://www.youtube.com/watch?v=yYBi_P2JzX8. Translated at Middle East Eye, @MiddleEastEye, Tweet (5.28 a.m., 14 March 2024), <https://twitter.com/MiddleEastEye/status/1768147176461316336> (emphasis added).

²¹⁴ See e.g. “Ishmacha Hatani: the moving tribute of the singer Kobi Peretz to the fighters in the south”, *Now 14* (26 November 2023), <https://www.now14.co.il/הפילין-מצוות-הפילין-10.03.2024>; See “Peretz sings may your village burn 2”, *OfekCenter* (26 November 2023), <https://www.youtube.com/watch?v=xcH2o4c5KZY>.

²¹⁵ “After the embarrassing incident: the deputy speaker of the Knesset in a surprising tribute to Kobi Peretz”, *Now14* (6 March 2024), <https://www.now14.co.il/לאחר-התקרית-המביכה-סגן-יור-הכנסת-במהלך-הפילין>.

30. Another singer referenced by South Africa before this Court in the January 2024 application for his call to “[e]rase Gaza” and to “not leave a single person there”²¹⁶, has similarly been rewarded²¹⁷. Both were brought to the attention of Israeli authorities in South Africa’s Application and pleadings before this Court²¹⁸. Neither of them — nor any of the other Israeli officials and civilians inciting to genocide against the Palestinians — have been prosecuted, much less punished²¹⁹.

31. The genocidal acts described in South Africa’s Application were foreseen and foreseeable from the onset. Israel’s intent was always to destroy Palestinian life and to wipe them off the face of the Earth. Rafah is the final stand — without Rafah, there is no more Palestinian life in Gaza to speak of; no more Palestinian identity and no possibility of reconstruction.

32. Mr President, the rule of law can only survive through the Orders of this Court. If the rule of law is to have any meaning, let it be today and with this case. It is no longer enough to order unhindered access to humanitarian aid, when it is in fact the military operation in Gaza that is preventing it; it is no longer enough to encourage compliance with the peremptory precepts of the Genocide Convention when Israel’s deliberate contempt for the international rule of law has been so plain and so public.

33. Mr President, it is now my honour to call upon Ms Blinne Ní Ghrálaigh to address the Court on the remedies we ask for and why this Court can and should grant the orders that we seek.

The PRESIDENT: I thank Mr Ngcukaitobi for his statement. J’appelle à présent M^{me} Blinne Ní Ghrálaigh à la barre. Vous avez la parole, Madame.

²¹⁶ Interview with Eyal Golan on Now 14, 15 October 2023: Now 14, @Now14Israel, Tweet (1.24 p.m., 15 October 2023), <https://twitter.com/Now14Israel/status/1713531211300167928>; “Israeli soldiers sing while demolishing homes in Gaza”, Middle East Eye (2 January 2024) <https://www.youtube.com/shorts/YioIU7WwpUQ>.

²¹⁷ Gil mishali, @gilmishali, Tweet (12:33 p.m., 16 April 2024), <https://twitter.com/gilmishali/status/1780197723821461880>; “Eyal Golan received an award ‘on behalf of the Knesset’ for his contribution in the ‘Iron Swords’ war”, Mako (16 April 2024), <https://www.mako.co.il/music-news/Article-5b0c2d0e4b6ee81026.htm>.

²¹⁸ Application and Request for the indication of provisional measures of South Africa, p. 65. para. 103; CR 2024/1, p. 36, para. 22 (Ngcukaitobi).

²¹⁹ Letter from Adalah of 8 April 2024: Adalah, *Opening an investigation for inciting the destruction of a people* (8 April 2024), https://www.adalah.org/uploads/uploads/incitement_genocide_080424.pdf.

Ms NÍ GHRÁLAIGH:

URGENCY, RISK, PREJUDICE AND REMEDIES

Introduction

1. Monsieur le président, Mesdames et Messieurs les juges, c'est un grand honneur pour moi de paraître à nouveau devant la Cour de la part de l'Afrique du Sud, même si je ne peux que regretter les circonstances tragiques et extrêmement graves qui m'y amènent.

2. En effet, aujourd'hui, soit près de cinq mois après votre première ordonnance en indication de mesures conservatoires, la bande de Gaza est presque entièrement rasée. Jour après jour, encerclé de toute part, son peuple palestinien — hommes, femmes, enfants, des familles entières —, soumis à la campagne militaire génocidaire de l'État d'Israël, est massacré, terrorisé, affamé et traumatisé à jamais. Au vu des développements dramatiques en cours sur le terrain à Gaza, l'Afrique du Sud se voit ainsi dans l'obligation de solliciter à nouveau votre précieuse intervention et vous implore de modifier ou d'indiquer des nouvelles mesures conservatoires, notamment, et de manière explicite, une cessation immédiate des opérations militaires israéliennes à Rafah et partout ailleurs dans le territoire, aux fins de sauvegarder et de prévenir un anéantissement total de ce qui reste de la bande de Gaza, de la Palestine et de son peuple.

3. Mr President, Members of the Court, there is an urgent need for further or modified, explicit and specific provisional measures to protect the Palestinians in Gaza from the irreparable prejudice caused by Israel's continuing violations of the Genocide Convention and of this Court's Orders, including an express order for the immediate cessation of Israel's military operations in Rafah and across the whole of the Gaza Strip.

- (i) The change in circumstances and new facts demand it.
- (ii) The extreme risks of irreparable prejudice require it.
- (iii) Israel's approach to the Court's previous Orders renders it imperatively urgent.
- (iv) The Court has the power to do it.
- (v) And our shared humanity compels it.

4. Turning to each of those five propositions in turn.

I. The change in the situation amounting to new facts demands the indication of further or modified, explicit and specific provisional measures

5. When South Africa appeared before you on 11 January, urgently requesting then an order for the cessation of Israel’s military operations, humanitarians were already “out of words”²²⁰ to describe the situation in Gaza. Today, they say there are “[n]o words . . . left that can do any justice to the people of Gaza”²²¹. Tens of thousands of Palestinians have since been killed or injured²²², including one child killed or wounded every 10 minutes since Israel’s military operations began²²³, including an almost incomprehensible number of child amputees²²⁴.

6. Since March 2024, in particular, hundreds and thousands of Palestinians — particularly the young, elderly and vulnerable — are dying or at risk of dying of communicable diseases and infections that are running rife due to the rising temperatures, in ever-more crowded living conditions amidst mountains of waste, fly and mosquito infestations, and raw sewage flowing in the bombed-out streets²²⁵. Since the Court’s last Order, entire hospitals, places of learning and healing — including Al Shifa hospital, older than the State of Israel itself²²⁶ — have been destroyed and turned

²²⁰ UN Newsroom, Gaza Humanitarian Update UNICEF WHO (19 December 2023), <https://www.unognewsroom.org/teleprompter/en/1991/gaza-humanitarian-update-unicef-who-19-december-2023>.

²²¹ Phillipe Lazzarini, @UNLazzarini, Tweet (8:12pm, 12 May 2024), <https://twitter.com/UNLazzarini/status/1789720036900323609>.

²²² 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>.

²²³ UN OHCHR, *UN Human Rights Chief deplores harrowing killings of children and women in Rafah* (23 April 2024), <https://www.ohchr.org/en/press-releases/2024/04/un-human-rights-chief-deplores-harrowing-killings-children-and-women-rafah/>.

²²⁴ Save the Children, *Gaza: Injured Children Struggling To Recover Amid Decimated Health System After Witnessing Horrific Scenes* (1 May 2024), <https://www.savethechildren.net/news/gaza-injured-children-struggling-recover-amid-decimated-health-system-after-witnessing-horrific>. See also UNICEF Senior Emergency Coordinator Hamish Young, UN Geneva, *Press Conferences | OCHA , UNHCR , UNICEF , WHO, WIPO, WMO* (10 May 2024), <https://www.unognewsroom.org/teleprompter/en/2169/un-geneva-press-briefing-10-may-2024/6546> [10:29]-[10:54].

²²⁵ “U.S. medical volunteers in Rafah hospital say they’ve never seen a worse health crisis”, *NPR* (10 May 2024), <https://www.npr.org/sections/goatsandsoda/2024/05/10/1250490688/rafa-hospital-gaza-israel-war-middle-east>; UN OCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #158* (26 April 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-158>; Oxfam, *Epidemic risk rising as Rafah invasion compounds lethal cocktail of over-crowding, sewage and hunger* (13 May 2024), <https://www.oxfam.org/en/press-releases/epidemic-risk-rising-rafah-invasion-compounds-lethal-cocktail-over-crowding-sewage>; UNICEF Senior Emergency Coordinator Hamish Young, UN Geneva, *Press Conferences | OCHA , UNHCR , UNICEF , WHO, WIPO, WMO* (10 May 2024), <https://www.unognewsroom.org/teleprompter/en/2169/un-geneva-press-briefing-10-may-2024/6546> [9:56]-[10:02]; “Gazans struggle with heat, garbage, insect swarms”, *France24* (29 April 2024), <https://www.france24.com/en/live-news/20240429-gazans-struggle-with-heat-garbage-insect-swarms>.

²²⁶ “Why is Gaza’s al-Shifa hospital at the heart of Israel’s war?”, *Al Jazeera* (8 November 2023), <https://www.aljazeera.com/news/2023/11/8/why-is-gazas-al-shifa-hospital-at-the-heart-of-israels-war>.

into sites of horror and mass death²²⁷. Gaza's devoted and steadfast doctors and medics have been killed and buried in mass graves, alongside the patients they risked — and ultimately gave — their lives to care for²²⁸. The same fate now awaits Rafah's remaining hospitals, doctors and medics.

7. Israel's attack on Rafah, its attempt to control all of Gaza's borders, followed by attacks on the north and middle areas in recent days²²⁹ — which are of an unprecedented violence, even amid the horrors of the past seven months — herald a “turning point” beyond which “there is no going back”²³⁰, which is reflected in what UNRWA calls “[a] new level of desperation” in Gaza²³¹. As this Court has heard, this is in effect the endgame for Gaza and for its Palestinian people, “unfolding under the world's watch”²³². This may well be “the last chance”²³³ for the Court to act to ensure their survival.

²²⁷ 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>; “One man's search for his father in mass graves at Gaza's Al Shifa hospital”, *NPR* (18 April 2024), <https://www.npr.org/2024/04/18/1245654891/one-mans-search-for-his-father-in-mass-graves-at-gazas-al-shifa-hospital>; UN News, *Mass graves in Gaza show victims' hands were tied, says UN rights office* (23 April 2024), <https://news.un.org/en/story/2024/04/1148876>; “Gaza Authorities Say More Bodies Were Discovered in Mass Grave”, *The New York Times* (25 April 2024), <https://www.nytimes.com/2024/04/25/world/middleeast/gaza-mass-grave-nasser-hospital.html>.

²²⁸ *Ibid.*

²²⁹ UNICEF, *Statement by UNICEF Regional Director for the Middle East and North Africa, Adele Khodr, on intensifying hostilities in Rafah and North Gaza* (14 May 2024), <https://www.unicef.org/lac/en/press-releases/statement-unicef-regional-director-middle-east-north-africa-intensifying-hostilities-gaza>; 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>; 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>.

²³⁰ UNRWA, @UNRWA, Tweet (10:36 am, 12 May 2024), <https://twitter.com/UNRWA/status/1789575485611024411>.

²³¹ UNRWA, @UNRWA, Tweet (11:25 am, 13 May 2024), <https://twitter.com/UNRWA/status/1789950182852800858>.

²³² *Ibid.*

²³³ UNICEF, *When a nightmare becomes the reality* (7 May 2024), <https://www.unicef.org/press-releases/when-nightmare-becomes-reality>.

II. The extreme risks of irreparable prejudice demand the indication of further or modified, explicit and specific provisional measures

8. The situation in Gaza could not be more urgent, as reflected in the increase in Palestinian fatalities and injuries since the Court's last Order²³⁴ and the spreading famine and disease²³⁵. "[A]cts susceptible of causing irreparable prejudice can [plainly] 'occur at any moment' before the Court makes a final decision on th[is] case"²³⁶, demanding the indication of further or modified, explicit, specific provisional measures to protect the rights found by this Court to be plausible. In Rafah, in particular, in addition to the widespread risk of violent death and injury facing the terrified population of displaced Palestinians, as the Court has heard, dialysis patients and premature babies face immediate risk of death²³⁷. Some 1.2 million Palestinians will be deprived of access to healthcare if its hospitals are rendered "inoperable"²³⁸. The level of destruction that Israel has caused across Gaza and is now wreaking on Rafah threatens the very survival of future Palestinian generations in Gaza.

9. Recent evidence from a former Israeli reservist active in Gaza indicates that soldiers on the ground treat Israeli-ordered "evacuation areas" — such as those recently ordered for significant parts of Rafah and northern Gaza²³⁹ — as 'extermination zones' wherein orders to "shoot and kill"

²³⁴ UN OCHA, *Hostilities in the Gaza Strip and Israel - reported impact | Day 222* (15 May 2024), <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-222>. See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, para. 39.

²³⁵ NBC News, *Meet the Press NOW* (3 May 2024), https://www.youtube.com/watch?v=H_dRkOQBIRm [6:28-6:32]; 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>. See *South Africa v. Israel, Provisional Measures, Order of 28 March 2024*, para. 31.

²³⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 24, para. 65; *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022*, pp. 226-227, para. 66; originally from *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1169, para. 90.

²³⁷ "25 Preterm Babies in a Rafah Hospital Face Immediate Risk of Dying Amid Israeli Incursion", *Jezebel* (13 May 2024), <https://www.jezebel.com/25-preterm-babies-in-a-rafah-hospital-face-immediate-risk-of-dying-amid-israeli-invasion#>; 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>.

²³⁸ UN News, *Patients in Rafah 'afraid to seek services', WHO reports* (7 May 2024), <https://news.un.org/en/story/2024/05/1149451>.

²³⁹ 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>. See Emanuel (Mannie) Fabian, @manniefabian, Tweet (1:59 pm, 15 May 2024), <https://twitter.com/manniefabian/status/1790713721989292450>.

Palestinians are made on the basis of their location alone²⁴⁰. This in itself demonstrates the extreme risk to the right of the Palestinians in Gaza not to be subjected to acts of genocide, as does the decision by Israel to deploy 2,000-lb so-called “dumb bombs” in ever more densely populated areas in the stated “interest of saving more expensive armaments”²⁴¹. The routine, repeated authorization of the killing in one strike of “hundreds” of Palestinian civilians — men, women, children, babies, the elderly and infirm — in order to kill a single individual, believed to be a senior Hamas commander is yet further evidence of that risk²⁴². So, too, are the repeated and routine authorizations for tens of Palestinians to be killed when Israel is bombing so-called “low-level” targets, so apparently “low level” as to be nicknamed “garbage targets”²⁴³.

10. It is also now clear that Israel is heavily relying on artificial intelligence in identifying which Palestinians in Gaza are to live and to die: one such system appears to function as a form of “target machine” generating so-called “kill lists” of Palestinians²⁴⁴, selected for execution on bases as tenuous as being in a WhatsApp group with another identified target²⁴⁵; another is the chillingly named “Where’s Daddy?” surveillance and tracking system, specifically intended to target those marked for execution when they are at home with their families²⁴⁶. The mounting evidence is that Israel’s very interpretation of its rules of engagement and of the application of fundamental concepts of international humanitarian law — including distinction, proportionality, necessity and the very

²⁴⁰ “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].

²⁴¹ 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/>.

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*; “Israel Defence Forces’ response to claims about use of ‘Lavender’ AI database in Gaza”, *The Guardian* (3 April 2024), <https://www.theguardian.com/world/2024/apr/03/israel-defence-forces-response-to-claims-about-use-of-lavender-ai-database-in-gaza>; 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>; “‘A mass assassination factory’: Inside Israel’s calculated bombing of Gaza”, *+972 Magazine* (30 November 2024), <https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/>.

²⁴⁵ 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/>.

²⁴⁶ *Ibid.*

concepts of safe zones and warnings — is in fact itself genocidal²⁴⁷, placing Palestinians at particular extreme risk.

III. Israel’s contempt and wilful disregard of the Court’s Orders highlight the urgent need for further or modified provisional measures in the most explicit terms

11. In refusing Israel’s request to reject South Africa’s claim²⁴⁸ and in indicating nine provisional measures against Israel, the Court found that Israel’s conduct in Gaza gave rise to a “real and imminent risk that irreparable prejudice would be caused to th[e] rights”²⁴⁹ of the Palestinians in Gaza to be protected from violations of the Genocide Convention — a risk which is now even more acute.

12. The Court’s Orders “create[d] international legal obligations”²⁵⁰ binding on Israel to change its conduct in Gaza. The Court made clear in February that those obligations require Israel to “ensure . . . the *safety and security* of the Palestinians in the Gaza Strip”²⁵¹. Israel manifestly cannot ensure the safety and security of the Palestinian population in Gaza while besieging, bombing, starving, torturing and executing them. In its March Order, the Court took “note” of United Nations assessments that “the catastrophic humanitarian situation can only be addressed if the military operations in the Gaza Strip are suspended”²⁵².

13. Yet, Israel has ratcheted up its genocidal military campaign, entering Rafah, the last refuge for so many displaced Palestinians in Gaza. Israel has in parallel reportedly justified its continuing military operations on the asserted basis that “[t]here is *no order forbidding us from doing something*

²⁴⁷ UN OHCHR, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967: Anatomy of a Genocide* (25 March 2024), UN doc. A/HRC/55/73, <https://www.ohchr.org/en/documents/country-reports/ahrc5573-report-special-rapporteur-situation-human-rights-palestinian>.

²⁴⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, *Provisional Measures, Order of 26 January 2024*, para. 32.

²⁴⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, *Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, para. 27.

²⁵⁰ *Ibid.*, para. 48.

²⁵¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, decision of the Court on South Africa’s request for additional provisional measures of 16 February 2024 (emphasis added).

²⁵² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, *Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, para. 36.

*we are doing today, and the fighting will continue as usual*²⁵³. Indeed, Israel has gone so far as to claim the Court's Orders are a "significant success" on the grounds that the Court "rejected South Africa's central request to stop the fighting in Gaza"²⁵⁴.

14. The Court's reluctance to date to order "directly and explicitly"²⁵⁵ that Israel cease its military operations in Gaza in order to give effect to the provisional measures indicated by the Court — relying instead on necessary implication — has cynically been used by Israel as cover for its conduct. Israel continues to kill and harm Palestinians in Gaza, in violation of the Court's Orders, while its soldiers and political leaders alike continue to publicly express clear genocidal intent towards them. It is self-evident that the provisional measures indicated in the Court's previous Orders "do not fully address the consequences arising from the changes in the situation" that now pertain²⁵⁶. The severity of the situation involving "horrific human suffering"²⁵⁷ mandates that the Court make explicit that which was implicit in its previous Orders, and that it now order Israel to cease its military operations in unequivocal, express terms. Nothing else will suffice.

15. In its March Order, in light of what the Court found to be "the worsening conditions of life faced by Palestinians in Gaza"²⁵⁸, the Court placed a heightened obligation on Israel not only to

²⁵³ "Israel won't announce non-compliance with ICJ orders, experts believe", *Ynet* (27 January 2024), <https://www.ynetnews.com/article/hjtue7fq>, originally quoted in: "The more moderate language of Netanyahu in English, and the assessment: Israel will not declare non-compliance with the orders", *Ynet* (26 January 2024), <https://www.ynet.co.il/news/article/hkhwt11q6> (emphasis added). UN Web TV, *The Situation in the Middle East, including the Palestinian Question - Security Council, 9540th meeting* (31 January 2024), <https://webtv.un.org/en/asset/k1z/k1zd06a6b1> [02:19:07].

²⁵⁴ Israel Hayom, @IsraelHayomHeb, Tweet (1:53 pm, 26 January 2024), <https://twitter.com/IsraelHayomHeb/status/1750864617436258393>. See also "Israel is satisfied: 'The best decision we could have made', South Africa celebrates: 'This is a decisive victory'", *Ynet* (26 January 2024), <https://www.ynet.co.il/news/article/sk9lwnzqa>. See also Deputy Director General of the Israeli Ministry of Foreign Affairs, Lior Haiat, @LiorHaiat, Tweet (11:09 pm, 28 March 2024), <https://twitter.com/liorhaiat/status/1773472467169796243>.

²⁵⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, joint declaration of Judges Xue, Brant, Gómez Robledo and Tladi, para. 1. See also declaration of Judge Charlesworth, para. 7.

²⁵⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, p. 7, para. 23.

²⁵⁷ UN, Meetings Coverage and Press Releases, *Addressing Kuwait City Conference, Secretary-General Repeats "World's Call" for Immediate Humanitarian Ceasefire in Gaza, Release of All Hostages* (12 May 2024), <https://press.un.org/en/2024/sgsm22222.doc.htm>.

²⁵⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, para. 45.

“enable” the provision of humanitarian assistance, but to “ensure” it²⁵⁹. In light of Israel’s abject failure to even meet the lower threshold of *enabling* aid, and the ever-“worsening conditions of life faced by Palestinians in Gaza”²⁶⁰ following Israel’s seizure of the Rafah Crossing, the Court must at least modify its provisional measures in order to leave no doubt as to what is required of Israel and to give full effect to its previous provisional measures. As the World Food Programme has made clear, “the United Nations and its partners have the means to scale up aid to all 2.2 million people in Gaza, but only if a *humanitarian ceasefire* happens”²⁶¹.

16. Further, given Israel’s manifest failure to ensure the preservation of evidence in Gaza, the recent — repeated — grim discoveries of “mass graves” and what the United Nations has called “the prevailing climate of impunity”²⁶² in Israel, Israel must be ordered to “immediately take all effective measures to ensure” the access of persons able to investigate ongoing atrocities. This measure is critical not just to preserving the rights of Palestinians and South Africa in these proceedings, or indeed to the Court’s ability to exercise its own judicial functions appropriately: rather, as a spokesperson for the United Nations Office of the High Commissioner for Human Rights recently stated:

“these violations should not get forgotten about. They need to be recorded, they need to be reported, widely by the media. They need to result in pressure from member states that do have leverage over the parties to the conflict, to bring such violations to an end. They need to be recorded . . . so that investigations do take place, and ultimately there is accountability and the cycle of impunity does not continue over and over and over again.”²⁶³

²⁵⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024, joint declaration of Judges Xue, Brant, Gómez Robledo and Tladi, para. 2.

²⁶⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024, para. 45.

²⁶¹ UN News, *Gaza: 600,000 displaced from Rafah* (15 May 2024), <https://news.un.org/en/story/2024/05/1149756> (emphasis added).

²⁶² UN OHCHR, *UN Human Rights Chief deplures harrowing killings of children and women in Rafah* (23 April 2024), <https://www.ohchr.org/en/press-releases/2024/04/un-human-rights-chief-deplures-harrowing-killings-children-and-women-rafah>.

²⁶³ UN OHCHR, *Geneva Press Briefing: OCHA, UNICEF, OHCHR, WHO, UN WOMEN* (7 May 2024), <https://webtv.un.org/en/asset/k1g/k1g9eajpmk> [44:00]-[44:31].

IV. The Court has the power to make an explicit order for Israel to cease its military operations in Rafah and in Gaza more broadly and to withdraw from the Gaza Strip

17. The Court is empowered — and indeed compelled, given the prevailing “catastrophic”²⁶⁴ situation in Gaza — to order an express end to Israel’s military activities. That is the *only* measure now capable of preventing irreparable prejudice to the fundamental rights in issue and of ensuring compliance with the Court’s Orders. The fact that such an Order would be directed at Israel alone is no bar to the Court ordering it. That is for at least three reasons.

18. One, Article 41 of the Court’s Statute empowers the Court to indicate *any* provisional measures that “ought to be taken to preserve the respective rights of either party”, “if it considers that the circumstances so require”. Article 41 does not require reciprocity: there is no need for an order to be made against both parties.

19. Two, the Genocide Convention itself is no bar to a one-sided cessation order. On the contrary, the absolute prohibition on genocide applies in both non-international armed conflicts — as indeed the terrible examples of Rwanda and Darfur make clear — just as in international armed conflicts between two States. It applies where only one belligerent is a party to the Genocide Convention, just as it applies where all of them are. It applies regardless of any claims of self-defence, which can never constitute a justification for genocide. And indeed it applies in peace just as much as in war²⁶⁵. That is because the prohibition on genocide is focused on the absolute inalienable right of groups of *peoples* to be protected from genocide, no matter the underlying circumstances or putative justifications.

20. It “makes no sense whatsoever”²⁶⁶ to suggest that the Court could not order a State party to the Genocide Convention to suspend its military operations against a non-State actor in order to prevent genocide, unless the non-State actor was itself disarmed. Indeed, it would be contrary to the

²⁶⁴ ThisWeek, @ThisWeekABC, Tweet (4:42 p.m., 12 May 2024), <https://twitter.com/ThisWeekABC/status/1789667423567650987>. See also United Nations, The Question of Palestine, “*The war in Gaza has become a moral stain on the conscience of our collective humanity*” says UN Deputy Emergency Relief Coordinator (13 May 2024), <https://www.un.org/unispal/document/asg-13may24/>.

²⁶⁵ Genocide Convention, Art. I.

²⁶⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024, declaration of Judge Yusuf, p. 2, para. 8.

very objectives of the Genocide Convention, which the Court described over seventy years ago as having been “adopted for a purely humanitarian and civilizing purpose”²⁶⁷.

21. It would similarly be nonsensical if, in a claim under the Genocide Convention, the Court could order one party to cease its military operations when that party was *not* even alleged to be committing genocide (as in *Ukraine v. Russian Federation*) — but could not here, when the Court has itself determined a real and imminent risk to the right of a national, racial or ethnic group not to be subjected to acts of genocide.

22. The evidence before the Court indicates that the extent of the “carnage”²⁶⁸ in Gaza is of a much greater magnitude than that that pertained in *Ukraine v. Russian Federation*²⁶⁹. Indeed, the “carnage” in Gaza “is of an order which exceeds by far the necessities of war and the limits imposed by the laws of war”²⁷⁰. As stated by the United Nations High Commissioner for Human Rights, what Israel is doing is “beyond warfare”²⁷¹. Not only is the Court *empowered* to call for it to end, it is duty-bound to do so²⁷².

23. Third, the fact that the United Nations Security Council could itself order a cessation of hostilities in Gaza is no bar to the Court’s exercise of its own powers in this regard. Notably, the distinct and vital role the Court was intended to play in preventing genocide was — pointedly — foreshadowed by the United States delegation to the negotiations leading to the very creation of the Genocide Convention. The United States delegate commented that:

“If cases of genocide were brought before the Security Council, the whole question of the veto would be involved . . . States might try to avoid submitting their disputes to the International Court of Justice, where they would be settled on purely

²⁶⁷ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

²⁶⁸ United Nations Geneva, @UNGeneva, Tweet (2:01 p.m., 29 February 2024), <https://twitter.com/UNGeneva/status/1763172558256406837>.

²⁶⁹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 228, para. 75.

²⁷⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, declaration of Judge Yusuf, p. 2, para. 5.

²⁷¹ UN OHCHR, *UN Human Rights Chief deploras harrowing killings of children and women in Rafah* (23 April 2024), <https://www.ohchr.org/en/press-releases/2024/04/un-human-rights-chief-deploras-harrowing-killings-children-and-women-rafah>.

²⁷² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024*, declaration of Judge Yusuf, p. 2, para. 5.

legal grounds, and might instead submit them to the Security Council, where they would be settled on political grounds”²⁷³.

24. In circumstances such as this, where the veto power has been wielded to such devastating effect against the Palestinian people, the indispensable role of the Court in ensuring the universal application of the Genocide Convention, its prohibitions and its protections, to all peoples equally, cannot be overstated.

25. As noted by the Court in indicating provisional measures in March, the Security Council’s then operative ceasefire resolution “[d]emand[ed] an immediate ceasefire for the month of Ramadan respected by all parties leading to a lasting sustainable ceasefire”²⁷⁴. As underscored by the President of the Court, the March provisional measures could “*only* take full effect” if the ceasefire was respected²⁷⁵. No such resolution is in place: the Court must itself therefore create the circumstances necessary for its provisional measures to take full effect: it must order Israel to cease its military operations.

V. Our shared humanity compels the indication of further or modified explicit provisional measures

26. As recently stated by the United Nations Assistant Secretary-General for Humanitarian Affairs, “[t]he war in Gaza” has “entered yet another horrifying phase”. Gaza is now a “hellscape for millions trapped under incessant bombardment”, where those who have escaped death and injury “now risk losing their lives because of a lack of food, safe water, medicine and healthcare”. Gaza has, in her words, become “a moral stain on the conscience of our collective humanity”²⁷⁶.

27. I conclude with a slide. It reports an account of a doctor’s recent experience in a hospital in Gaza following his departure from the Strip. He says this, describing one of the patients there:

“[T]here was the man in his 50s, forgotten in a room, having had both legs amputated. He had lost his kids, his grandkids, his home . . . and he’s alone in the corner of this dark hospital, maggots going out of his wounds and he was screaming: ‘The worms are eating me alive please help me.’ That was just one just one out of . . . I don’t

²⁷³ Hiram Abtahi and Philippa Webb, *The Genocide Convention: The Travaux Préparatoires* (Martinus Nijhoff 2008) p. 1739 (document A/C.6/SR.101).

²⁷⁴ UNSC res. 2728 (2024), *The situation in the Middle East, Including the Palestinian question*, S/Res/2728, <https://digitallibrary.un.org/record/4042189?v=pdf>.

²⁷⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the modification of the Order of 26 January 2024 indicating provisional measures, Order of 28 March 2024, declaration of President Salam, p. 2, para. 11 (emphasis added).

²⁷⁶ 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>.

know, I just stopped counting. But those are the people I still think of because they're still there."²⁷⁷

28. That sums up what Gaza is today. Its people severely wounded, with life-altering disabling injuries, bereaved of their entire families, homeless, alone, trapped, without electricity or even basic healthcare. Seven months later, after two Orders from this Court, they are still there, enduring this horror. They are crying out for help. An order for an immediate cessation of Israel's military operations in Gaza is now their only hope. "Enough is enough"²⁷⁸.

29. South Africa cannot but reiterate its respectful and humble call on this Court to do what is in its power to do, what the drafters of the Genocide Convention called on it to do, what our shared humanity compels it to do. To listen to that desperate cry for help from Gaza, and to order Israel to withdraw from Gaza and to cease fire.

Conclusion

30. Monsieur le président, Mesdames et Messieurs les juges, je vous remercie de votre bienveillante attention et je vous invite à demander à l'agent de l'Afrique du Sud de prendre le podium pour lire ses requêtes.

The PRESIDENT: I thank Ms Ní Ghrálaigh for her statement. I now give the floor back to Ambassador Madonsela. You have the floor, Excellency.

Mr MADONSELA:

FINAL SUBMISSIONS

1. Mr President, distinguished Members of the Court, it is my honour to deliver to Your Excellencies the final provisional measures that South Africa requests from this Court.

2. The exponential gravity of the situation in Gaza has already demanded that South Africa return to this Court on four consecutive occasions calling for provisional measures to stop the destruction of Gaza on a scale not witnessed since World War II²⁷⁹ and epitomized by the most

²⁷⁷ Dr Sam Attar in Fergal Keane, "The US doctor who cannot forget what he saw in Gaza", *BBC* (28 April 2024), <https://www.bbc.com/news/world-middle-east-68915529>.

²⁷⁸ UNRWA, @UNRWA, Tweet (3:11 p.m., 11 May 2024), <https://twitter.com/UNRWA/status/1789282267791028316>.

²⁷⁹ EU foreign policy chief Josep Borrell compares Gaza destruction with German cities in WWII, *Euronews*, @euronews, Tweet (10.00 a.m., 24 April 2024), <https://twitter.com/euronews/status/1783043421977874784>.

unbearable human suffering²⁸⁰. Wilfully ignoring the previous provisional measures, Israel is acting with complete impunity in Gaza, escalating hostilities in a final wave of apocalyptic destruction²⁸¹, from which there is no return.

3. There is a danger which stems from a form of amnesia and denial by former colonial powers in relation to the crimes associated with colonial violence perpetrated against indigenous peoples. This includes the denial of genocide. This denial is clearly at play in Palestine. Israel is a settler colonial apartheid régime and the current Government is now being accused of engaging in genocide. This accusation is not being levelled at any people based on their ethnicity, nationality or confessional preference. Rather, it is being levelled at those political and military leaders who have dehumanized the Palestinian people through genocidal rhetoric as “human animals”, encouraging their killing and destruction²⁸². It is levelled against a State whose leaders are openly calling for a “second Nakba” shielded by international impunity²⁸³, which has enabled the perpetuation of decades of generational violence and systematic oppression against the Palestinian people to maintain the domination and the expansion of the settler colonial State.

“As a matter of extreme urgency, South Africa, as a State Party to the Convention on the Prevention and Punishment of the Crime of Genocide respectfully requests the Court to indicate the following provisional measures — the text of which has been amended to reflect the ever-increasing gravity of the situation. South Africa respectfully requests the Court to order the State of Israel, as a State party to the Genocide Convention and as a party to these proceedings, to:

- (1) immediately, and further to its obligations under the Court’s previous Orders of 26 January 2024 and 28 March 2024, cease its military operations in the Gaza Strip, including in the Rafah Governorate, and withdraw from the Rafah Crossing and immediately, totally and unconditionally withdraw the Israeli army from the entirety of the Gaza Strip.
- (2) immediately, and further to its obligations under provisional measure 4 of the Court’s 26 January 2024 Order and provisional measures 2 (a) and 2 (b) of the Court’s 28 March 2024 Order, take all effective measures to ensure and facilitate

²⁸⁰ United Nations, Palestine, *Guterres urges Israel, Hamas “to show political courage” and secure ceasefire* (8 May 2024), <https://palestine.un.org/en/268015-guterres-urges-israel-hamas-%E2%80%98-show-political-courage%E2%80%99-and-secure-ceasefire>.

²⁸¹ UNDP at EU, @UNDPEU, Tweet (9.15 a.m., 15 May 2024), <https://twitter.com/UNDPEU/status/1790642123156357348>.

²⁸² Application and Request for provisional measures of South Africa, p. 60, para. 101; p. 62, para. 102.

²⁸³ Ariel Kallner, @ArielKallner, Tweet (10.29 p.m., 7 October 2023), <https://twitter.com/ArielKallner/status/1710769363119141268>, translated in *The New Arab*: “Erase Gaza’: How genocidal rhetoric became normalised in Israel”, *The New Arab* (30 November 2023), <https://www.newarab.com/analysis/erase-gaza-how-genocidal-rhetoric-normalised-israel>. See also Application and Request for provisional measures of South Africa, p. 62, para. 101.

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 and/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 ensure that its military does not act to prevent such access, provision, preservation or retention;

- (3) 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.”

4. Mr President, distinguished Members of the Court, this concludes South Africa’s pleading.

I thank you for your kind attention. I also thank the Registry, its staff and the interpreters for their invaluable assistance. Finally, my thanks also go to the South African team. Thank you very much.

The PRESIDENT: I thank the Agent of South Africa, whose statement brings to an end the single round of oral argument of South Africa, as well as this afternoon’s sitting. The Court will meet again tomorrow, Friday 17 May 2024, at 10 a.m., to hear the State of Israel present its single round of oral argument.

The sitting is adjourned.

The Court rose at 5.20 p.m.
