



25 January 2024

Minister of Foreign Affairs

For approval by

26 January 2024

## New Zealand's approach to *South Africa v Israel* – International Court of Justice (ICJ) Genocide Convention case

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**BRIEFING**      Decision Submission

**PURPOSE**      To seek your approval of New Zealand's proposed initial approach to the proceedings instituted by South Africa against Israel under the Genocide Convention at the International Court of Justice.

### Recommended referrals

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Prime Minister	For information by	26 January 2024
Attorney-General	For information by	26 January 2024

### Contact details

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NAME	ROLE	DIVISION	WORK PHONE
s9(2)(g)(ii)	Divisional Manager	Legal Division	s9(2)(a)
s9(2)(g)(ii)	Legal Adviser	Legal Division	s9(2)(a)

## Key points

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- South Africa has filed proceedings at the International Court of Justice (the Court) accusing Israel of genocide in Gaza and requesting that the Court order “provisional measures” (akin to an interim injunction in a domestic court) including Israel’s immediate suspension of military operations in Gaza.
- The first step is for the Court to make a decision on provisional measures, which will take place in the Hague on Friday 26 January (1am Saturday NZT). s6(a), s9(2)(g)(i)

The second phase of the case will address whether Israel’s actions in Gaza since 7 October 2023 constitute genocide. This stage will take much longer, <sup>s9(2)(g)(i)</sup>

- The importance of upholding international law and international humanitarian law has underpinned New Zealand’s response to the Israel-Hamas conflict and has been consistently reiterated in New Zealand’s public messaging, and our engagement with international partners.
- s6(a)

- s9(2)(g)(i)

- s9(2)(f)(iv)

- s9(2)(f)(iv)

- s9(2)(f)(iv)

- With regard to the second more substantive stage of the case, s6(a)

Officials will monitor proceedings and provide further advice as appropriate.

s9(2)(g)(ii)

s9(2)(g)(ii)

for Secretary of Foreign Affairs and Trade

## Recommendations

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It is recommended that you:

- 1 **Note** that the primacy of international law has underpinned New Zealand's position on the Israel-Hamas conflict, and consistent calls for all parties to meet international legal obligations has been a core foundation of our messaging. **Yes / No**
- 2 **Note** that the Court's <sup>s9(2)(g)(i)</sup> judgement on provisional measures in South Africa's case against Israel **s6(a)** **Yes / No**
- 3 s6(a) **Yes / No**
- 4 s6(a) **Yes / No**
- 5 **Refer** a copy of this submission to the Prime Minister and Attorney General. **Yes / No**

Rt Hon Winston Peters  
**Minister of Foreign Affairs and Trade**

Date:        /        /

## Report

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- On 29 December 2023, South Africa instituted proceedings at the International Court of Justice in The Hague accusing Israel of genocide in its war in Gaza.<sup>1</sup> South Africa requested that the Court issue a declaration that Israel is committing genocide in Gaza and order provisional measures (an urgent interim order that applies before the main case begins) requiring Israel to suspend its military operations in Gaza.<sup>2</sup>
- Israel s6(a) defend itself against the allegations. Israel asserted that the Israel Defence Force's actions are in compliance with International Humanitarian Law (IHL) and do not constitute genocide. Israel s6(a) in responding to Hamas, it is exercising its right to defend itself.

### *The first stage: "provisional measures" hearing*

- South Africa and Israel presented their oral arguments to the Court about the provisional measures application on 11 and 12 January 2024.
- The first stage of the case is for the Court to issue a decision on the provisional measures application. The Court will announce its decision in the Hague at 1pm Friday 26 January (1am Saturday 27 January NZT). The second stage of the case, considering whether or not Israel has committed or incited genocide, s9(2)(g)(i)
- s6(a)

s9(2)(g)(i)

- New Zealand's response to the conflict has been underpinned by the primacy of international law and international humanitarian law. s9(2)(g)(i)
- s9(2)(g)(i)

s9(2)(g)(i)

s6(a)

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<sup>1</sup> South Africa alleged that Israel failed to prevent genocide; failed to prosecute public incitement to genocide; and has directly engaged in genocidal acts in Gaza.

<sup>2</sup> Other provisional measures sought are that Israel stop killing and causing serious harm to Palestinians, prevent and punish public incitement of genocide, stop displacing Palestinians and allow humanitarian aid.

- s9(2)(g)(i)

*The second stage: the main case determining whether there is genocide in Gaza*

- s6(a)

- s6(a)

- s6(a)

- s6(a)

- s6(a)

*Other legal accountability measures – the International Criminal Court*

- Whereas the ICJ is responsible for settling disputes between states, the International Criminal Court (ICC) is responsible for investigating and trying individuals accused of the most serious international crimes. The ICC is currently investigating allegations of war crimes, crimes against humanity and potentially genocide arising from or related to the current conflict in Gaza. s6(a)

New Zealand has been publicly supportive of the role of the ICC in investigating possible serious crimes and for responsible individuals to be held criminally accountable.

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s6(a)

<sup>6</sup> In 2021, the ICC [opened an investigation](#) into the Situation in Palestine, which covers war crimes that are alleged to have been committed since 13 June 2014. The Court can consider all crimes committed in Gaza and the West Bank, including East Jerusalem. It can also consider crimes committed by Palestinian nationals (which would include members of Hamas) in Israel.

s6(a), s9(2)(g)(i)

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