

South Africa v Israel - ICJ Genocide Convention case

Talking points

- The New Zealand Government is gravely concerned about the impact of this conflict on civilians. The loss of life is appalling and the Government continues to call on regional actors to do all they can to ensure there is no further escalation and support international efforts to bring about the conditions for a permanent ceasefire.
- New Zealand is a long-standing supporter of the international legal system. New Zealand supports the work of the International Court of Justice to settle legal disputes between states, including disputes concerning the Genocide Convention.
- It is up to the ICJ undertake its work impartially and to make complex findings of fact and law. It would be inappropriate for New Zealand to comment on, or pre-judge its decisions, including on very serious allegations such as genocide.
- s9(2)(g)(i) While we are following the case closely, no states have indicated an intention to formally intervene in proceedings as a third party. Decisions about next steps will come after the Court's initial rulings.
- s9(2)(g)(i) New Zealand did not intervene in the ongoing case in the ICJ involving claims of genocide against the Rohingyas in Myanmar. While New Zealand did intervene in Ukraine's case against Russia in the ICJ it was premised on a very different set of facts (Ukraine's case was about Russia's misuse of the Genocide Convention to justify its invasion of Ukraine. This case is a substantive claim that genocide is taking place).

Background

- South Africa instituted proceedings under the Genocide Convention at the ICJ on 29 December 2023, alleging Israel's actions in Gaza are "genocidal in character". South Africa has requested the Court issue:
 - A declaration that Israel is committing genocide in Gaza; and
 - An order suspending Israel's campaign in Gaza, and other provisional measures.¹
- The initial hearing will be on 11 and 12 January. s6(a)
- The Court is expected to take several weeks to decide whether to order provisional measures.

¹ Alongside suspending military operations in Gaza, other provisional measures sought are that Israel abide by the Genocide Convention, stop killing Palestinians, stop displacing Palestinians and allow humanitarian assistance.

- Unlike the International Criminal Court (ICC) investigation into the situation in Palestine, which is concerned with holding *individuals* responsible for war crimes or crimes against humanity to account, the ICJ hears cases between *states*.

New Zealand's interventions in the ICJ:

- New Zealand intervened in the *Ukraine v Russia* ICJ case, in support of Ukraine. The case is distinct on the facts. Ukraine argues that Russia is making false claims about genocide (allegedly committed in Ukraine against Russians) and is erroneously using the Genocide Convention to justify its illegal invasion.
- New Zealand did not intervene in *The Gambia v Myanmar* ICJ case, where The Gambia alleged that Myanmar is committing genocide against the Rohingyas. Canada, Denmark, France and Germany, the Netherlands, the UK and the Maldives intervened to support The Gambia's arguments on 16 November 2023.
- New Zealand will not intervene in the pending Israel-Palestine ICJ advisory opinion, which was requested by the UN General Assembly in December 2022.

s6(a)

MFAT LGL Division
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