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## From Conflict to Courtroom: Human Rights of Palestinians on Trial

The Israeli-Palestinian dispute, which has been simmering for a while, has now reached its boiling point. It has taken an ugly turn, leaving scars on the face of humanity. As the two distinct groups seek self-determination within their shared territory, hostilities between Israelis and Palestinians have pushed them into a vicious cycle of bloodshed, expulsion, and disdain. The complicated conflict, firmly rooted in disagreement that stems from historical claims to national identity, serves as a trigger for severe human rights abuses.

These human rights violations are in contempt of several international human rights instruments, such as the Convention on the Prevention and Punishment of the Crime of Genocide. But first of all, it is violative of the Universal Declaration of Human Rights (UDHR), which serves as the bedrock of all human rights. Adopted in the aftermath of World War II, the declaration grants to all human beings, fundamental rights and freedoms, regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status in accordance to Article II. The UDHR enshrines core principles such as the right to life, liberty, and security of persons under Article III. Under Article V, freedom from torture and cruel, inhuman, or degrading treatment is provided and the right to a fair trial is given under Article X. Each of these principles holds immense significance in the context of the Israeli-Palestinian conflict, which bears testament to the horrors levelled by both sides.

Due to the severity of the atrocities committed, South Africa instituted a case against Israel on December 29, 2023, before the International Court of Justice (ICJ), the principal judicial organ

of the United Nations.<sup>1</sup> This case alleges violations of the Palestinian people's human rights under the Genocide Convention.<sup>2</sup> Through this matter, South Africa makes an attempt to hold Israel accountable for the atrocities it is perpetrating in the occupied Palestinian territories. The South Africa vs. Israel case raises pertinent questions about the commitment of the international community to implementing as well as safeguarding the core principles of human rights in the complex conflict.

In light of the attacks in Israel, South Africa took the stand that no act of aggression at any level can justify the acts of genocide committed by Israel against the Palestinian people.<sup>3</sup> The act of aggression referred to here is the deadly assault by Hamas, a pro-Palestinian militant group, on Israel on October 7, 2023.<sup>4</sup> In retaliation for the attack, Israel carried out what can be called the siege of the Gaza Strip and the exodus of Palestinians from their homes. It has been alleged that retaliation was not in self-defence but an act with a genocidal intent to eliminate the Palestinian identity. The emphasis here is not on the purpose behind the hostilities but on the targeted assaults directed towards the civilians, in violation of the humanitarian laws as well as the laws of human rights.

Under Article II, the Genocide Convention defines genocide as acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical

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<sup>1</sup> Dr Ewelina U. Ochab, *South Africa Taking Israel To The International Court Of Justice*, FORBES (Dec. 31, 2023), <https://www.forbes.com/sites/ewelinaochab/2023/12/31/south-africa-taking-isreal-to-the-international-court-of-justice/?sh=463f13d89db4>.

<sup>2</sup> Luciano Pezzano, *The Obligation to Prevent Genocide in South Africa v. Israel: Finally a Duty with Global Scope?*, EJIL: TALK! (Jan. 4, 2024), <https://www.ejiltalk.org/the-obligation-to-prevent-genocide-in-south-africa-v-israel-finally-a-duty-with-global-scope/>

<sup>3</sup> Ellen Ioanes & Nicole Narea, *South Africa's genocide case against Israel, explained*, VOX (Dec. 31, 2023), <https://www.vox.com/world-politics/24019720/south-africa-israel-genocide-case-gaza-hamas-palestinians>

<sup>4</sup> *Hamas's October 7 Attack: Visualizing the Data*, CSIS | CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (Dec. 19, 2023), <https://www.csis.org/analysis/hamass-october-7-attack-visualizing-data>

destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.<sup>5</sup> Israel's actions not only violate these provisions but several others of the convention, suggesting that their actions can be termed as genocide under the given definition. The Israeli military operations in Gaza have led to the deaths and forceful flight of the Palestinians; the saddest part being that they have nowhere to go since Palestine is their home. Israel's blockade of Gaza has created a situation of life or death for the inhabitants by not allowing the bare minimum essentials for survival. It is deliberately inflicting such conditions on the residents that it is bound to bring about the physical destruction of the ethnic group. The most striking aspect of the genocide is that it is being perpetrated by a group that has endured genocide and has been a victim of immense torture.

In the latest development in the case, following Nicaragua's action, Colombia has now filed a declaration for intervention under Article 63 of the ICJ statute.<sup>6</sup> South Africa had requested the court to indicate provisional measures in accordance with Article 41, for which proof of genocide being committed by Israel is not required.<sup>7</sup> In the order passed on January 26, 2024, the ICJ has asked Israel to cease all military operations in or against Gaza. Further, it should also take steps to prevent the violation of the provisions of the Genocide Convention, along with providing access to the essentials necessary for survival. The court has also mandated Israel to not only implement these measures but also to submit a report of how far they have been enforced.

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<sup>5</sup> By Raffi Berg, *What is South Africa's genocide case against Israel at the ICJ?*, BBC (Jan. 30, 2024), <https://www.bbc.com/news/world-middle-east-67922346>

<sup>6</sup> *Colombia seeks to join Gaza genocide case against Israel at ICJ*, AL JAZEERA (Apr. 5, 2024), <https://www.aljazeera.com/news/2024/4/5/colombia-seeks-to-join-gaza-genocide-case-against-israel-at-icj>

<sup>7</sup> *The Republic of South Africa institutes proceedings against the State of Israel and requests the Court to indicate provisional measures (No. 2023/77) - occupied Palestinian territory*, RELIEFWEB (Dec. 29, 2023), <https://reliefweb.int/report/occupied-palestinian-territory/republic-south-africa-institutes-proceedings-against-state-israel-and-requests-court-indicate-provisional-measures-no-202377>

The final ruling may take years, but an immediate halt to the atrocities on the innocent people of Palestine is required. Martin Luther King Jr. has said, “Injustice anywhere is a threat to justice everywhere.” The line of systematic oppression needs to be broken to silence the cacophony of hostilities and the cries of misery. Every small step taken now will have an enormous impact on the future, shaping the destiny of Palestine and the world.

**Author Details:**

Stiti Pragnya Padhy, 8<sup>th</sup> Semester, B.B.A. LL.B.(International Law), KIIT School of Law