

OHCHR call for input on Human Rights and Starvation, with an emphasis on the Palestinian People's Food
Sovereignty
Submission by:
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This submission addresses the legal aspects of the threat(s) to Palestinians' food sovereignty at the behest of Israel's invasion of Gaza.¹ Israel's weaponisation of food and water has, reportedly, induced a famine, which may constitute a violation of international law. International humanitarian law prohibits using starvation as a weapon of war and depriving civilians of objects indispensable for survival, in both international and non-international armed conflicts.² In its Customary IHL study, the ICRC has further recognised this rule as part of customary international law,³ which Israel also adopted in its Manual on the Rules of Warfare (2006), and is reflected in its domestic case law.⁴ Israel's continued effective control over Gaza also imposes human rights obligations,⁵ including with regard to the right to food, as stipulated in Article 11 of ICESCR⁶ or Article 24 (2) and Article 27 (3) of UNCRC,⁷ to which Israel is a party.

In 2015, Palestine acceded to the Rome Statute of the International Criminal Court (ICC)⁸ and referred its situation for investigation. In 2021, it was confirmed that the ICC's jurisdiction extends to the territories occupied by Israel, including Gaza.⁹ The ICC Prosecutor now seeks to charge Israel's prime minister, Benjamin Netanyahu, and defence minister, Yoav Gallant, (as well as three Hamas leaders) with war crimes and crimes against humanity "associated with the use of starvation of civilians as a method of warfare under articles 7 and 8 of the Rome Statute,"¹⁰ including Article 8(2)(b)(xxv) which specifically addresses during international armed conflicts. On 20 May 2024, the ICC Prosecutor filed an application for arrest warrants, which are pending consideration.¹¹ If

¹ Note that it has been affirmed that Israel's military actions in Gaza create two overlapping conflicts: an International Armed Conflict (IAC) between Israel and the state of Palestine, and a Non-International Armed Conflict (NIAC) between Israel and a non-state actor, Hamas, see the Report of the Panel of Experts convened by the ICC Prosecutor, 20 May 2024, <https://www.icc-cpi.int/sites/default/files/2024-05/240520-panel-report-eng.pdf>, para. 13

Note also that Palestinian statehood, while contested, is recognised as of 28 May 2024, by 143 Member States of the United Nations, "UN experts urge all States to recognise State of Palestine." *United Nations Human Rights Office*, 3 June 2024. <https://www.ohchr.org/en/press-releases/2024/06/un-experts-urge-all-states-recognise-state-palestine>

² Art.54 of the 1977 First Additional Protocol to the 1949 Geneva Conventions, applicable in international armed conflicts and Art.14 of the 1977 Second Additional Protocol to the 1949 Geneva Conventions.

³ ICRC Customary IHL database, *Rule 53* <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule53>; *Rule 54* <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule54>

⁴ See Israel, *Rules of Warfare on the Battlefield*, Military Advocate-General's Corps Command, Second Edition, 2006, <<https://ihl-databases.icrc.org/en/national-practice/manual-rules-warfare-2006>> p. 25; Israel, District Court of Jerusalem, *Eichmann case*, Judgment, 12 Dec 1961, < <https://www.internationalcrimesdatabase.org/Case/192/Eichmann/>> paras. 199-201, 244(5)&(7); Israel, High Court of Justice, *Albasyouni case*, Judgment, 30 Jan 2008, <<https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Ahmed%20v.%20Prime%20Minister.pdf>> paras. 13, 15 and 22.

⁵ See, for example, UN General Assembly, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, Note by the Secretary-General**, A/77/328, 14 Sept 2022, <<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coi/opt/2022-10-19/Report-COI-OPT-14Sept2022-EN.pdf>> paras. 19,82

⁶ *International Covenant on Economic, Social and Cultural Rights*, 16 Dec 1966, < <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> >

⁷ *UN Convention on the Rights of the Child*, 20 Nov 1989, < <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>

⁸ ICC, *Information for victims: State of Palestine*, <<https://www.icc-cpi.int/victims/state-palestine#:~:text=On%203%20March%202021%2C%20the,State%20of%20Palestine%20and%20Israel>>

⁹ ICC, *Pre-Trial Chamber: Situation In The State Of Palestine*, ICC-01/18, 5 Feb 2021, <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF>, para. 118

¹⁰ Panel of Experts, n(1) para. 22

¹¹ "Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine." ICC, 20 May 2024, <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>>

issued, member states must cooperate, as there is no Head of State immunity under the Rome Statute,¹² to ensure accountability for these crimes.¹³

In December 2023, South Africa brought a case before the ICJ alleging that Israel's actions in Gaza, including the starvation of civilians, breached the Genocide Convention¹⁴. Although, in response to South Africa's claims, Israel acknowledged an incident where IDF soldiers fired at Palestinian civilians collecting aid,¹⁵ it denied any "genocidal intent...to starve the population."¹⁶ BIICL convened a panel of experts to discuss the legal issues raised by the ongoing proceedings.¹⁷ Milanovic explained that the leadership does not need to share specific intent for the state to be held accountable, as the state bears responsibility for the actions of its organs.¹⁸ In its March provisional order, the ICJ cited the UN High Commissioner for Human Rights' statement that Israel's "extensive restrictions" caused famine in Gaza.¹⁹ Thus, the ICJ's provisional measures require Israel "to enable" humanitarian aid access to Gaza,²⁰ emphasizing states' obligations to adhere to international legal standards and ensure essential aid for civilians.²¹

The Court explicitly recognised the "worsening conditions of life ..., in particular, the spread of famine and starvation" when stating that as per Israel's obligations under the Geneva Convention, it must "ensure...the unhindered provision...of...basic services and humanitarian assistance".²² Judge Nolte's Separate Opinion

¹² A principle the ICC Appeals Chamber underscored in the case of Al Bashir. ICC, "Judgment in the Jordan Referral re Al-Bashir Appeal" *The Prosecutor V. Omar Hassan Ahmad Al-Bashir*, 6 May 2019, <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_02593.PDF>

¹³ *Rome Statute of the International Criminal Court*, 17 Jul 1998 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court>> preamble, arts. 86, 87, 93, 98

¹⁴ "South Africa: Application instituting proceedings and request for the indication of provisional measures" *Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide In The Gaza Strip (South Africa V. Israel)*, 29 Dec 2023, <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf>>, paras. 2, 50, 64-70, 114(4); See also "South Africa: Urgent Request And Application For The Indication Of Additional Provisional Measures And The Modification Of The Court's Prior Provisional Measures Decisions Pursuant To Article 41 Of The Statute Of The International Court Of Justice And Articles 75 And 76 Of The Rules Of Court Of The International Court Of Justice" *Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide In The Gaza Strip (South Africa V. Israel)*, 6 Mar. 2024, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240306-wri-01-00-en.pdf> para.23

¹⁵ "Observations Of The State Of Israel On The Request Filed By The Republic Of South Africa On 6 March 2024 For The Indication Of Additional Provisional Measures And/Or The Modification Of Measures Previously Indicated", *Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide In The Gaza Strip (South Africa V. Israel)*, 15 Mar. 2024, <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240315-wri-01-00-en.pdf>> paras. 15-17,

¹⁶ *Ibid.* para. 19

¹⁷ On 9 February 2024, the British Institute of International and Comparative Law convened a panel of experts to discuss legal issues relating to the case between South Africa and Israel before the ICJ. British Institute of International and Comparative Law, *Rapid Response Webinar: Reflections on the South Africa v. Israel Case at the International Court of Justice*, 9 Feb 2024, <<https://www.biicl.org/events/11849/rapid-response-webinar-reflections-on-the-south-africa-v-israel-case-at-the-international-court-of-justice>>.

¹⁸ Event report document: British Institute of International and Comparative Law, 'Reflections on the South Africa v. Israel Case at the International Court of Justice' (9 February 2024), available at <https://www.biicl.org/publications/reflections-on-the-south-africa-v-israel-case-at-the-international-court-of-justice> . p. 11.

¹⁹ ICJ, *Order of 28 March 2024: Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide In The Gaza Strip (South Africa V. Israel)*, 28 Mar 2024, <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-00-en.pdf>> para.34

²⁰ Provisional Measure 4 in ICJ, *ibid*; *Order of 26 January 2024: Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide In The Gaza Strip (South Africa V. Israel)*, 26 Jan 2024, <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>> ; *Order of 24 May 2024: Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide In The Gaza Strip (South Africa V. Israel)*, 24 Mar 2024, <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf>>

²¹ Art. 23 of Geneva Convention IV requires each High Contract Party to allow free passage of all consignments intended for the civilians of the other party; Art. 70 of API requires parties to a conflict to allow the rapid and unimpeded passage of essential goods and aid for the civilian population. Also, Art. 55 of Geneva Convention IV places a duty on occupying power to "ensur[e] the food and medical supplies of the population," to the fullest extent of the means available to it.

²² ICJ, n(19) para. 45

suggests that Israel's actions pose a “plausible risk” of violating the Genocide Convention.²³ As Joan Donoghue, previous ICJ President, clarified, the Court “didn’t decide that the claim of genocide was plausible” but affirmed, “Palestinians had a plausible right to be protected from genocide”.²⁴ In our event, Milanovic noted that the “combination” of the high number of civilian casualties and statements by Israeli officials led the Court to conclude that some rights alleged by South Africa are “plausible”.²⁵ Notably, the UN Human Rights Council stated that Israeli officials' statements show intent to instrumentalize basic necessities to hold Gaza’s population “hostage to political and military objectives.”²⁶ Despite this, Israel has initiated military operations in Rafah, seized control of crossings, targeted protected zones, and threatened aid access.²⁷ UN Special Rapporteur Francesca Albanese further identified conditions, including starvation, blocking of aid, and attacks against UNRWA, as possible genocide.²⁸ Milanovic observed that allegations against UNRWA may not conform with the provisional measure to curb incitement to genocide and provide humanitarian assistance.²⁹ In the same event, Gaeta also noted the ICJ’s request for Israel to enable aid access suggests deprivation of such aid could “lead... to the destruction of [Gaza’s] population,” thus, potentially falling “under the definition of genocide”.³⁰

Based on our findings, we urge the Special Rapporteur to consider:

1. calling for respect of international law, including the rules prohibiting the use of starvation as a weapon of war;
2. calling for respect of the ICJ’s provisional measures;
3. calling for accountability, including through individual criminal responsibility, which should entail the prosecution of alleged perpetrators of international crimes, including the war crime of starvation at the domestic level as well as cooperation with the execution of the arrest warrants, if issued.

²³ “Separate Opinion Of Judge Nolte” *Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide In The Gaza Strip (South Africa V. Israel)*, 28 March 2024, <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-04-en.pdf>> para. 6

²⁴ Joan Donoghue, *BBC Hardtalk Interview*, 26 Apr 2024, < <https://www.bbc.co.uk/news/av/world-middle-east-68906919>>

²⁵ BIICL, n(18) p. 3

²⁶ UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, A/HRC/56/26, 27 May 2024, < <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2Fhrbodies%2Fhrcouncil%2Fsessions-regular%2Fsession56%2Fa-hrc-56-26-auv.docx&wdOrigin=BROWSELINK>> para. 53

²⁷ “South Africa: Urgent Request For The Modification And Indication Of Provisional Measures Pursuant To Article 41 Of The Statute Of The International Court Of Justice And Articles 75 And 76 Of The Rules Of Court Of The International Court Of Justice” *Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide In The Gaza Strip (South Africa V. Israel)*, 10 May 2024, <<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240510-wri-01-00-en.pdf>> paras. 7, 12, 15,18, 19

²⁸ Art. 2(c), *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 Dec 1948, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-prevention-and-punishment-crime-genocide#:~:text=%28c%29%20Deliberately%20inflicting%20on%20the%20group%20conditions%20of,transferring%20child ren%20of%20the%20group%20to%20another%20group.>; Albanese, Francesca, *Anatomy of a Genocide: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/HRC/55/73, UN Human Rights Council, 25 Marc 2024, <https://reliefweb.int/report/occupied-palestinian-territory/anatomy-genocide-report-special-rapporteur-situation-human-rights-palestinian-territories-occupied-1967-francesca-albanese-ahrc5573-advance-unedited-version>, p.9-11

²⁹ BIICL, n(18) p.3

³⁰ Ibid, p.13