

# South Africa's Genocide Case Against Israel

## Why In News

- **Two days of public hearings** in South Africa's genocide case **against Israel will start at the International Court of Justice (ICJ)** on Thursday, as pro-Palestine campaigners hope the World Court might halt Israel's devastating military campaign in Gaza.



- The case, filed by South Africa, sets a precedent as the first at the ICJ relating to the siege on the **Gaza Strip, where more than 23,000 people** have been killed since October 7, nearly 10,000 of them children.

## International Court Of Justice

- **ICJ is the principal judicial organ** of the United Nations that settles legal disputes between States in accordance with international law.
- It is not a criminal court, and it does not try individuals. That is the role of the International Criminal Court (ICC). Both courts are in The **Hague, the Netherlands**.
- The **ICJ cannot automatically decide** all cases involving breaches of international law. It can only decide cases that are brought before it by States that consent to its jurisdiction.
- This consent can be expressed in different ways. In this case, the consent stems from an article in the **Genocide Convention that states** that disputes between

parties relating to the interpretation, application, or fulfilment of the Convention, including disputes relating to the responsibility of a State for genocide, shall be submitted to the ICJ at the request of any of the parties to the dispute.

- Both **South Africa and Israel** are parties to the Convention.



## Genocide Convention

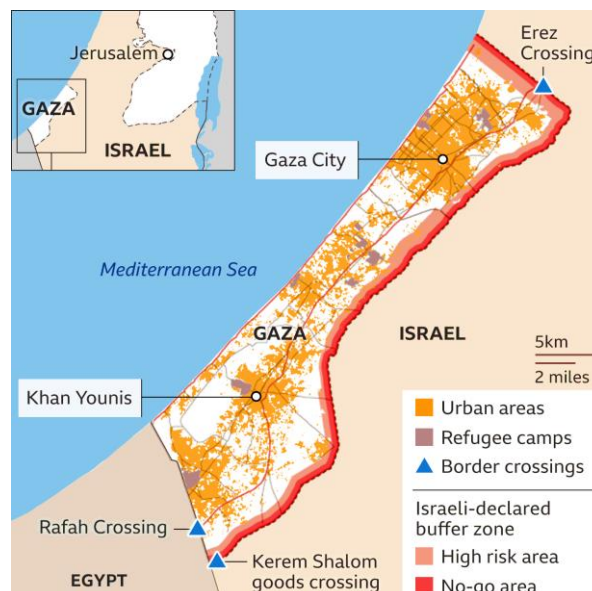
- **Convention on the Prevention and Punishment** of the Crime of Genocide is an international human rights treaty that codified the crime of genocide for the first time.
- The Genocide Convention was the **first human rights treaty** adopted by the UN General Assembly on December 9, 1948, and has been in effect since January 12, 1951.



- The **Convention defines genocide as five acts** — (i) killing members of a group; (ii) causing serious bodily or mental harm; (iii) inflicting on the group conditions of life calculated to bring about their physical destruction; (iv) imposing measures intended to prevent births within a group; and (v) forcibly transferring children of the group to another group — committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.
- There are, **therefore, two elements**: the physical acts; and the specific intent “to destroy, in whole or in part” a specific group. Committing these acts, however widespread, is not enough to make a claim of genocide.
- The specific intent to destroy (*dolus specialis*) is what **distinguishes genocide from war crimes**, ethnic cleansing, and crimes against humanity.
- Also, the **commission of war crimes, ethnic cleansing**, and crimes against humanity do not provide an avenue for States to approach the ICJ because the court does not have automatic jurisdiction over those crimes.

## South Africa’s Case Against Israel

- **South Africa alleges** that Israel has committed **several of these acts**, and that the **evidence of Israeli State officials’** specific intent (*dolus specialis*) to commit and persist in committing genocidal acts or to **fail to prevent** them has been significant and overt since October 2023.
- This, when **combined with the level of killing**, maiming, displacement and destruction on the ground, together with the siege “evidence an unfolding and continuing genocide”.



- South Africa has set out nine pages of statements by senior Israeli Officials, including its President, Prime Minister, and Ministers, to show the existence of specific intent. Also, South Africa states, **Israel has failed to prevent genocide** and to prosecute the direct and public incitement to genocide, and that it “has engaged in, is engaging in and risks **further engaging in genocidal acts** against the **Palestinian people in Gaza**”.



- South Africa argues that **urgent relief is necessary to protect against further, severe, and irreparable harm** to the rights of the Palestinian people which continue to be violated, and to prevent any aggravation or extension of the dispute.
- Accordingly, it has asked the court to order **Israel to immediately suspend all military operations in Gaza**; abide by its obligations under the Convention to prevent genocide; desist from expulsion and forced displacement, the deprivation of access to adequate food and water, access to humanitarian assistance, medical supplies and assistance, and the destruction of Palestinian life in Gaza.
- It wants Israel to report on the measures taken to **implement the court's order, and to refrain from acts** which might aggravate the dispute.

## How Does ICJ Decide Cases

- **ICJ is composed of 15 judges appointed for nine-year terms** through separate, simultaneous elections at the United Nations General Assembly (UNGA) and the UN Security Council.
- Any country can propose **candidates but no two judges must come from one country**. At the moment, the bench includes judges from all parts of the world including France, Slovakia, Somalia and India.
- To appoint a president and vice president, the judges **hold a secret ballot**. **President Joan E Donoghue** of the United States leads the ICJ presently alongside Vice President Kirill Gevorgian of Russia. Both of their terms expire in February.

### Judges at the International Court of Justice

The ICJ, also known as the World Court, is the highest United Nations legal body. The court, comprising 15 judges, will evaluate South Africa's case - whether Israel's military operation in Gaza amounts to an act of genocide under the UN convention.



- **ICJ judges ought to be impartial** and not act as extensions of their countries.
- In the past though, judges have voted in line with their countries' politics. In 2022, when the bench voted in favour of the decision to order Russia out of Ukraine, judges from Russia and China were the only two who voted against the decision.
- **Israel and South Africa can appoint one "ad hoc" judge** each to join the bench since neither is represented. **Aharon Barak**, a former Supreme Court chief justice and Holocaust survivor, is Israel's choice. Barak was accused of "legitimising" Israeli occupation of Palestine during his stint at the top court. South Africa has appointed **Dikgang Moseneke**, a former deputy chief justice.