

What Does the ICJ Ruling Mean for Palestinians?

Three weeks after the court's decision, the Israeli assault on Gaza shows no signs of abating

Interview with Munir Nuseibah



A family searches for their belongings as Israeli attacks continue in Deir Al Balah, a Palestinian town in the central Gaza Strip, 7 February 2024.
Photo: IMAGO / APImages

On Friday, 26 January 2024, the International Court of Justice (ICJ) delivered its verdict on South Africa's request for provisional measures against Israel in line with the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip. Although not recognizing the occurrence of genocide in the Gaza Strip as such, the ICJ called on Israel to act immediately to prevent genocidal acts and inhibit all public incitement to commit genocide. Nevertheless, the court did not order Israel to suspend its military operations in and around Gaza, contrary to the South African request.

In the weeks since the ICJ's verdict, fighting in Gaza has continued and indeed even increased. With the war now in its fifth month, Israeli strikes on Rafah, the last supposedly "safe" place in the territory, represent a further escalation and threaten thousands more deaths on top of the nearly 30,000 registered since 7 October.

Despite the ICJ's reluctance to definitively describe the events in Gaza as a genocide, much of Palestinian civil society feels affirmed by the court's ruling and hopes that it will help build their case that Israeli forces are engaged in genocidal acts.

Against that backdrop, Palestinian scholar Munir Nuseibah spoke with Sari Harb, a programme manager at the Rosa Luxemburg Foundation's Ramallah Office, about what he thinks the ICJ ruling means for the ongoing war in Gaza and Palestinian society more generally.

To start out, can you give us your interpretation of the ICJ's ruling?

The ICJ ruling is quite important and useful. The court ordered Israel to prevent and punish any incitement to commit genocide, and demanded it report on all measures taken. If Israel followed and abided by it, we would be in a much better position.

Equally important is that the allegations made it plausible for the court to consider that Israel may indeed have committed genocide. South Africa provided the court with much evidence, including reports from various United Nations entities. South Africa also shared several speeches and quotes from Israeli officials evidencing genocidal intent.

By and large, it established that Israel had expressed intent to commit genocide and went a very long way in conducting it. Examples include the starvation of the Palestinian people in the Gaza Strip, weaponizing humanitarian aid, and depriving them of medicine, food, water, and energy sources — all of which will ultimately result in further deaths, sicknesses, and pandemics.

Israel has practically ruined the health sector in the Gaza Strip. It has prevented hospitals from functioning, if not demolished them. The health situation at large is utterly in danger, seeing that most people in the Gaza Strip, whether injured or sick, are unable to get any treatment. It has become clear that Israel is not only perpetrating collective punishment, but also in part a genocidal war against an entire civilian population. The court thus issued a provisional measure, take effect immediately, ordering Israel to allow all the needed humanitarian aid and services to enter the Gaza Strip.

Indeed, the court considered the South African claim versus Israel. At this stage, we cannot expect the court to state that Israel is committing genocide. After all, this is only an application requesting the indication of provisional measures. With that said, any instituted proceedings would be based on true facts and true arguments, and this is exactly what the court said: It presented in the decision the facts, arguments, and Israeli officials' quotes as filed by South Africa, and the issues that showcase the genocidal intent. In addition, it presented the deteriorating humanitarian crisis in the Gaza Strip due to Israeli policies.

Therefore, the decision was quite important: It means that Israel must take immediate steps to stop the killing of Palestinians in Gaza, cease the mental and physical harm against them, allow humanitarian aid immediately, and put an end to direct and public genocidal incitement — including the media.

Has Israel adhered to the ICJ's ruling, taking into consideration the ongoing attack on Rafah in southern Gaza?

No. Israel has committed multiple massacres against the civilian population since 26 January. Moreover, the calls for the ethnic cleansing and colonization of the Gaza Strip have continued, contrary to the court's clear orders. Humanitarian aid has not been allowed in adequate quantities.

Moreover, Israel is currently planning a ground invasion of the Rafah area, to which it had already displaced hundreds of thousands of Palestinians from other parts of the Gaza Strip. Rafah is the furthest southern tip of the Gaza Strip, and there are great fears that Israel will try to displace people there to Egypt. But even if it doesn't, Rafah is the most densely populated area in the whole world. Any major military operation is going to result in an enormous humanitarian catastrophe. The international community must act immediately.

What comes next?

The next step is for the court, as per South Africa's request, to create a method for follow-up, so that it does not merely order provisional measure and have us wait for a few years until the case is decided. Basically, this means that Israel must report to the court on all measures taken one month after the ruling, and show whether it has complied with the court's orders.

What can South Africa do with the report?

It will most likely respond to it, and argue that Israel has not complied with its orders. This is important, because the court will then have to seriously consider whether Israel has actually abided by the court's order or not, and can then make new decisions accordingly.

What is equally important is that South Africa will be able to act within other forums of the United Nations. It may seek the intervention of the UN Security Council, which unfortunately is an enabler of Israel due to the US veto. In the General Assembly, South Africa can ask member states to take punitive measures against Israel, one of which would be to freeze Israel's participation in various UN committees.

There could also be calls for sanctions, which is very important. Sanctions are the most important peaceful method to end human rights violations, war crimes, and crimes against humanity. The alternative would be war: countries attacking the state conducting a genocide and using force to end it. I believe this is not a viable option.

Therefore, the most suitable peaceful method would be sanctions. These may include boycotts preventing Israeli ships from docking in their ports, preventing Israeli airplanes from flying over their territory, and the like. All of that is possible, and it can influence Israel. Palestinians have been calling on states to intervene diplomatically and apply sanctions for years. Unfortunately, this has not happened due to the West's complicity. With its high moral standing globally, I believe that South Africa can help break through this wall of impunity.

Does the ICJ ruling present an opportunity to end the ongoing war? What kind of impact does it have on Palestinians now?

Some Palestinians were disappointed because they were hoping for the court to implement a ceasefire. This could be due to not knowing how international law functions.

Some Palestinians thought, "Okay, the world court is deliberating on the issue. It will ultimately take a decision, the war will stop, our children will be safe." That is what we all wanted. Unfortunately, that is not the way things work in international law.

The court issued its ruling, yet the fact remains that Israel cannot comply with the order while continuing its war in the same way. It cannot attack Palestinian towns, villages, and refugee camps in the Gaza Strip if it is to abide by the court decision. That said, Israel decided to ignore the provisional measures. Netanyahu, as well as other officials, had already expressed that they would not comply with the court's ruling several times before it was issued.

At the end of the day, the very basic needs and rights of our people are at stake. We are talking about the right to life, the right to be free from torture. We must continue struggling, yet we must keep in mind that the support of the Western countries, most notably the US, the UK, and Germany, is allowing the war to continue.

What implications does the ruling have for Palestinian society and Palestinian solidarity movements?

Now that the Israeli violations have been legally documented, the Palestinian side can show that the genocide is continuing. Our role is to submit this information to South Africa, and work together on steps to be taken after the one-month period and Israel's response.

Furthermore, there is much we can do diplomatically. Palestinian entities such as the Ministry of Foreign Affairs, official bodies, and every one of our ambassadors should be very active in showing the facts and reality of what is going on, and demanding an intervention as soon as possible. Time is running out, and every day we lose many precious lives in the Gaza Strip.

Palestinian civil society must also continue its advocacy as we prepare ourselves for the next step, which is the UN Security Council and the General Assembly. From my point of view, we need to prepare for the General Assembly and decide what to expect from it. We are at a time in history where condemnation or criticism alone are not enough. What we need is action and sanctions.

Does the ICJ investigation only include Israel's actions, or does it also look at other countries' military support?

The UN Convention on the Prevention and Punishment of the Crime of Genocide goes past placing obligations on states accused of conducting genocide, but also creates additional requirements, not only to avoid complicity, but also to ensure the prevention of genocide.

This entails multiple responsibilities. Initially, it forbids states from being complicit with genocide. If it appears that a certain state is at least plausibly committing genocide, then it must be placed under serious and critical scrutiny — one cannot just send the country weapons and money and shield it from the international community. If you do, you are complicit.

This is where I would say the US, the UK, and Germany are now. In the past, Germany set an excellent example of learning from the Holocaust by stressing “Never again” and applying fundamental changes to its state and society to ensure that no such atrocity could happen again. Now, I am shocked to see that Germany is again complicit in a genocide. I think Germans should carefully think about this and consider why their system failed. Why is the German system preventing freedom of speech pertaining to Palestinians, or shutting down protests against an ongoing war? What has allowed this complicity to continue?

I know that if you ask any German, “Are all human beings equal?”, they would say yes. But why is this not reflected in German policy? Is it because Germany doesn't know the facts? That is certainly not true. Germany, like every other country in the world, has access to all the reports issued by the UN. The question that Germans must ask themselves, then, is what is wrong with Germany's policies?

What is your interpretation of the suspension of UNRWA funding by the US, Germany, and other Western countries?

I'm sure the timing of the decision to suspend UNRWA funding is related to the IJC ruling. It is very unlikely that Israel coincidentally decided to make the claim that 12 Palestinian employees contributed to the attack on 7 October right after the court's decision.

Israel has been trying to defund UNRWA for ages now. They managed to convince Donald Trump to defund UNRWA, which he did even without all these accusations about Hamas. They simply “decided” that UNRWA was no longer useful, and that Palestinians should not be considered refugees anymore.

For the sake of argument, even if we are to take the Israeli claims as fact, what will that mean? There are hundreds of thousands of UNRWA employees in five different countries and various regions. Why would the action of 12 of them get the whole UN agency defunded? How is that proportional?

I am cynical about the way Western countries have reacted, and I think it's very dangerous at a time when Palestinians are starving in the Gaza Strip. Ninety-three percent of Palestinians are facing hunger due to the Israeli siege and military operations. Meanwhile, these Western countries decide to make things worse.



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