

# FUELLING GENOCIDE

*AN ANALYSIS OF SOUTH AFRICA'S COAL EXPORTS TO ISRAEL*



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# EXECUTIVE SUMMARY

## Introduction

Palestine is a land of profound historical, cultural and political significance, situated at the crossroads of Africa, Asia and Europe, and inhabited for millennia by a people whose identity, presence and connection to the land have endured despite sustained efforts at displacement and erasure. Since the early twentieth century and particularly following the events surrounding the establishment of the State of Israel in 1948, the Palestinian people have been subjected to ongoing and violent dispossession, forced displacement and fragmentation, resulting in a protracted condition of exile, military occupation and the systemic denial of fundamental rights.

Today, Palestinians in Gaza, the West Bank including East Jerusalem, and the diaspora remain subject to a regime characterised by severe and discriminatory restrictions on movement, unlawful settlement expansion, resource deprivation and recurring large scale military assaults. This reality has been widely documented as constituting a system of apartheid and, in its most extreme manifestations as we have seen over the past 2 years, conduct amounting to genocide. Against this background, Palestine represents not only a territorial question but a continuing struggle for self-determination, dignity and survival under conditions of prolonged and unlawful domination.

In this context, the question of international responsibility extends beyond the territorial confines of Palestine and Israel, engaging the legal obligations of Third States whose economic, regulatory and political conduct may directly or indirectly provide material support the continuation of the crimes committed by Israel including the crimes of illegal occupation, apartheid and genocide.

Trade, including the export of strategic resources such as coal, forms a critical component of the material infrastructure sustaining Israel's military operations, industrial capacity and systems of control. Where such trade originates from within the jurisdiction of a State that possesses both the legal authority and practical means to regulate and restrict it, that State incurs obligations under both domestic and international law to ensure that its territory is not used as a platform for facilitating or enabling serious violations of international law. It is within this legal and factual framework that the present report is situated, examining the extent to which

South Africa is required to act to prevent the export of coal to Israel and to align its conduct with its constitutional commitments and its binding international obligations. In the case of South Africa, these obligations are not merely international in character. They are entrenched within the Constitution itself, which requires that all exercises of public power, including the regulation of exports, align with the Bill of Rights and binding international law.

South Africa has already demonstrated its commitment to these obligations on the international plane, most notably through its proceedings before the International Court of Justice and its consistent public position in relation to Israel's conduct. These actions are constitutionally significant. However, the Constitution requires coherence between South Africa's international posture and its domestic conduct.

Properly framed, the issue is not whether South Africa may act, but whether it may lawfully fail to act in circumstances where it possesses both knowledge of ongoing international crimes and the means to prevent its own contribution to them. Where the State continues to authorise the export of coal, that regulatory permission itself constitutes the relevant State conduct for purposes of constitutional scrutiny.

Under the International Trade Administration Act (ITAA), the Minister has clear legal power under section 6 to regulate, restrict or prohibit the export of goods in the public interest, and coal falls squarely within the scope of commodities subject to such control. This authority extends to imposing destination specific restrictions, including prohibiting exports to the genocidal Israeli regime. In addition, section 5 confers broad policy directing powers enabling the Minister to issue binding directives that govern how export controls are implemented, including directing that permits be refused, suspended or not processed. Taken together, these provisions establish that the Minister has both the power and the operational means to immediately halt coal exports to the genocidal Israeli regime.

These provisions empower the Minister not only to establish export control measures in principle, but to direct, in binding terms, how such measures are to be applied in practice, including the refusal, suspension or non-processing of export permits for specific goods or destinations. This authority enables the Minister to ensure that no permits are granted, processed or maintained for the export of coal to the genocidal Israeli regime, thereby giving immediate and practical effect to any prohibition or restriction imposed under section 6.

This advisory report provides a comprehensive, factual and legal analysis of South Africa's obligations under domestic and international law in relation to the continued export of coal to Israel amid the ongoing genocide, unlawful military occupation and other crimes against humanity. Coal exports are undertaken by private corporations operating within South Africa's jurisdiction. However, the Government of South Africa bears legal responsibility as the State with regulatory power and practical capacity to prevent such exports. Accordingly, the legal obligation addressed throughout this report is that the State is under a binding duty to employ all available constitutional, statutory and regulatory mechanisms to halt the sale and export of coal to Israel by private corporations where there is evidence that these exports risk contributing to internationally wrongful acts. Failure to do so does not amount to neutrality, but risks placing South Africa in a position of ongoing and unintentional complicity in internationally wrongful acts.

This report was prepared for the South African Boycott, Divestment and Sanctions Coalition (SA BDS Coalition) an affiliate of the global Palestinian BDS National Committee (BNC) and part of a broader international movement advocating accountability for violations of international law committed against the Palestinian people. The SA BDS is a coalition comprising a network of Palestinian solidarity organizations and allied civil society bodies representing a diverse range of groups committed to advancing justice, human rights and equality. In 2005 the BNC issued a global call for boycotts, divestment and sanctions (BDS) against Israel in response to the ongoing international crimes and systematic oppression imposed upon the indigenous Palestinian population since 1948. The BNC represents the broadest coalition of Palestinian civil society bringing together political parties, trade unions, human rights organisations and grassroots movements united in the pursuit of freedom, justice and equality in historic Palestine.

## **Overview**

**Section I** sets out the factual record of South Africa's coal exports to Israel, including export volumes, shipment data, the role of private corporations and the extent of State regulatory control over such trade. **Section II** examines Israel's electricity infrastructure, demonstrating how coal is used within an integrated national grid that services both illegal settlements and military systems, and how electricity distribution operates in a discriminatory manner that

entrenches apartheid and the illegal occupation against Palestinians. **Section III** builds on this by establishing the direct link between South African coal and Israel’s military campaign, including the use of electricity deprivation as a tool of genocide in Gaza and the role of coal in sustaining Israel’s energy-intensive military operations.

**Section IV** establishes the legal and factual basis for corporate complicity in South Africa’s coal trade with Israel. It demonstrates that private exporters and associated actors operate with at least constructive knowledge that their conduct sustains infrastructure integral to Israel’s occupation and genocidal campaign, and that continued supply in these circumstances constitutes assistance to internationally wrongful acts. The section applies the relevant legal frameworks governing complicity, including principles of aiding or assisting, due diligence and corporate accountability under international and domestic law, and shows that such conduct exposes both corporations and their executives to potential civil and criminal liability. It then situates this conduct within the framework advanced by the United Nations Special Rapporteur, describing an “economy of genocide” in which commercial actors form part of a broader system that enables and profits from ongoing international crimes, and identifies South African coal exports as falling squarely within that system.

**Section V** draws on Francesca Albanese’s report *Gaza Genocide: A Collective Crime* to show that the genocide in Gaza is not presented as an isolated act by Israel alone, but as an internationally enabled crime sustained through four intersecting forms of support: diplomatic, military, economic and humanitarian. It sets out the report’s core findings, explains the legal consequences for third States once a credible risk of genocide is established, and emphasises the duties of prevention, non-recognition and non-assistance under the Genocide Convention and the law of State responsibility. The section then applies that framework to the present report, arguing that where knowledge, capacity to act and material contribution are established, ongoing support must cease and precautionary cessation of trade and assistance becomes legally required even before final criminal adjudication.

**Section VI** advances climate justice as an additional and reinforcing basis for urgent State intervention. It argues that South Africa’s coal exports to Israel do not only implicate genocide, occupation and apartheid, but also contribute to environmental destruction and the worsening of the global climate crisis, with disproportionate consequences for climate vulnerable communities in Palestine, South Africa and the broader Global South. The section makes clear

that this climate analysis is supplementary to the report's primary legal case, but functions as an aggravating factor that strengthens the case for immediate cessation of exports.

**Section VII** sets out the Hague Group commitments as concrete measures adopted by States, including South Africa, to implement their obligations under international law. It outlines the agreed actions to prevent trade, financial and supply chain activity from contributing to genocide and other international crimes and demonstrates that South Africa's continued coal exports directly contradict these commitments and the legal duties they reflect.

**Section VIII** provides a detailed analysis of South Africa's obligations under international law. It examines the duties to prevent genocide, to refrain from aiding or assisting internationally wrongful acts and the broader obligations imposed on Third States in respect of Israel's conduct in Palestine. The section then applies these principles to the coal trade, demonstrating that continued exports amount to material support for internationally wrongful acts and place South Africa in breach of its international obligations. It further addresses the position of corporate actors and considers the relevance of the World Trade Organization (WTO) framework in this context.

**Section IX** reviews the evidentiary material submitted by South Africa before the International Court of Justice (ICJ) in the genocide proceedings, situating the State's own findings within the present analysis.

**Section X** provides an analysis of the domestic legal framework requiring South Africa to act. It shows that constitutional duties, read with South Africa's international obligations, bind officials and organs of State in the regulation of trade and exports, that the continued coal trade is unlawful for both State and private actors, and that the relevant statutory mechanisms already permit and require intervention. In particular, the section identifies the International Trade Administration Act as the central operative mechanism through which such intervention must occur, including the Minister's powers under section 6 to prohibit or restrict exports and under section 5 to issue binding policy directives governing the refusal, suspension or non-processing of export permits. The section concludes that the State's ongoing failure to halt exports, despite knowledge of the risks and repeated civil society demands, constitutes a breach of its legal obligations.

**Section XI** sets out the case for the immediate imposition of a coal embargo. It argues that South Africa's continued failure to halt exports cannot be justified where the State has the requisite knowledge, the necessary legal powers and minimal economic constraint. The section uses Colombia's 2025 embargo as a direct comparator to show that a coal embargo is both feasible and lawful, notwithstanding coal's commercial significance, and contrasts this with South Africa's comparatively limited export exposure. It then places the proposed embargo within the wider history of sanctions and trade restrictions used against apartheid South Africa, arguing that comparable measures are both available and necessary in response to genocide, occupation and apartheid in Palestine.

**Section XII** consolidates the report's factual findings and legal analysis to reach a definitive conclusion on South Africa's obligations. It reiterates that, in light of the evidence of genocide, occupation and apartheid, and the legal principles governing complicity, prevention and non-assistance, South Africa is under a binding duty to act. The section emphasises that continued coal exports cannot be characterised as neutral trade but constitute material support to an unlawful situation. It concludes that the State must, through all available legal and regulatory measures, immediately halt such exports in order to comply with its constitutional and international law obligations and to avoid liability for complicity in internationally wrongful acts.

The legal analysis draws on binding international law instruments, including the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and the Rome Statute of the International Criminal Court (Rome Statute). It further relies on relevant orders, judgments and Advisory Opinions of the ICJ, authoritative findings and reports of the United Nations (UN) and the UN Special Rapporteurs, expert legal opinions, credible reports by recognised human rights organisations (such as Amnesty International, Human Rights Watch and B'TSelem etc) and South Africa's domestic legal framework, including the Constitution of the Republic of South Africa (Constitution) and statutes regulating trade, export and judicial precedent.

The central claim of this report is narrow and precise. Given the evidence presented by South Africa at the International Court of Justice (ICJ) and by independent international bodies of grave violations of international law, including acts meeting the elements of genocide, continuing to supply Israel with critical energy resources such as coal, that risks rendering

South Africa (and the corporate exporters) complicit in war crimes and crimes against humanity in Palestine must end, since this risks rendering South Africa (and the corporate exporters) complicit in war crimes and crimes against humanity in Palestine.

This report is presented to the Minister of Trade, Industry and Competition as the authority vested, in terms of the International Trade Administration Act, with the power to regulate and prohibit the export of coal. In the exercise of this authority, the Minister is empowered to ensure that South Africa complies with its domestic and international legal obligations, including by preventing ongoing complicity in Israel's crimes against humanity. In light of the evidence and analysis set out in this report, the Minister is also under a corresponding legal duty to act in a manner that gives effect to those obligations, and to do so as a matter of urgency.

This report is also presented to the Department of International Relations and Cooperation (DIRCO), the Department of Transport, the Department of Forestry, Fisheries and the Environment (DFFE), the Department of Mineral Resources and Energy (MRE), the Department of Justice and Constitutional Development and the Presidency as organs of State that have an interest (or play a role) in the ongoing supply of coal to Israel amidst an ongoing genocide and unlawful occupation or who have the ability to influence State decision-making in line with its legal obligations.

The Government of South Africa must fulfil its constitutional and international legal obligations. The factual evidence provided in this report coupled with an analysis of the applicable legal framework and binding duties compel government to take urgent and immediate action to ensure the cessation of complicity in the ongoing human rights violations taking place in Gaza and the Occupied Palestinian Territories (OPT).

To contextualize the legal analysis, the report includes three annexures of background material. Annexure A ("The Nakba, Zionist Ideology and Gaza") outlines the foundational history of the Palestinian dispossession since 1948, explaining how the Nakba inaugurated a lasting system of ethnic domination and apartheid based on the ideology of Zionism.

Annexure B ("Genocide in Gaza") compiles evidence on Israel's assault on Gaza since October 2023, framing the ongoing siege and bombardment within the definition of genocide (showing, for example, that displacement and destruction are occurring "in circumstances calculated to bring about the physical destruction of Palestinians").

Annexure C (“Ceasefire: No Solution to Genocide, Occupation or Apartheid”) surveys recent ceasefires and demonstrates that past truces or pauses have repeatedly collapsed on account of Israeli breaches – resulting in Israel resuming attacks amounting to war crimes and crimes against humanity – underscoring that no temporary pause has ended the campaign of violence, and nor can we have any expectation that the current ceasefire shall provide anything different. It further records the latest record of Israeli crimes committed against the Palestinian people since the latest ceasefire was brokered in October 2025.

These annexures provide essential historical, factual and legal context for the report’s core arguments and must be read in conjunction with this report.

The Shipping data, export chronology and vessel list were constructed from automatic identification systems (AIS) and port data (e.g., MarineTraffic) and collated into the shipment table contained in Section I. This tracking was made possible by activists and researchers who monitored ship movements and verified coal cargoes, often in real time, using open-source maritime intelligence tools. The data and methodology used to compile this information can be found under Annexure D (“Export and Shipping Report”).

South Africa’s ongoing coal exports to Israel must end, the complicity in genocide, occupation and apartheid must end. The threshold for complicity under international law holds clear. As articulated by the ICJ in the genocide case of *Bosnia and Herzegovina v Serbia and Montenegro*, State responsibility for complicity arises where a State knew, or should have known, that genocide was imminent or occurring and nonetheless provided material aid that had a substantial effect on its commission. This report details how South Africa’s coal trade with Israel amounts to such material aid for an ongoing genocide and unlawful occupation.

The analysis that follows applies both domestic and international law to South Africa’s current conduct in the face of its own findings submitted to the ICJ that establish both genocidal intent and genocidal acts committed by Israel. The report does not suggest that ordinary trade is inherently criminal, but that in the present context – where material support sustains infrastructure actively used to commit war crimes and crimes against humanity – such trade crosses the line from neutrality into legal and moral liability.

At the time of submission of the report, the figures cited relating to the death and destruction in Gaza and the Occupied Palestinian Territories may well have increased in light of Israel's ongoing perpetration of crimes against humanity, including genocide.

## **Disclaimer**

This report is an advocacy-oriented legal and factual analysis based on publicly available information. It does not rely on privileged or classified material. All references to Israel's conduct and other factual claims are drawn from verifiable open sources, including United Nations organizations and bodies, the International Court of Justice, reports of international human rights organisations as well as reputable investigative journalism, expert legal opinions and publicly accessible databases, all of which have been cited as footnotes in this report.

This report does not purport to be exhaustive. It represents a good-faith synthesis of publicly available evidence, international and domestic legal instruments and expert analysis as of the date of writing. The reports cited herein evidencing Israel's crimes against the Palestinian people and Third State obligations must be read and analysed as if specifically incorporated within this report.

The figures and shipment data contained are derived from publicly available sources, industry and market reporting, and datasets accessible at the time of drafting. In certain instances, discrepancies may arise between the figures cited in this report and those held by government authorities or regulatory bodies. Such differences may occur because certain information was not publicly accessible at the time of preparation. The information presented should therefore be understood as the most accurate reconstruction available based on the evidence presently available in the public domain. It is anticipated that the relevant State departments, including departments with access to customs, shipping and export control records, will be able to corroborate and where necessary refine these figures using their own official data and access to information.

This report's purpose is to inform State decision-making, promote compliance with domestic and international obligations and advance public-interest accountability within the bounds of protected political and legal advocacy.

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“Around the world, the rule of law is being replaced by the law of the jungle. We see flagrant violations of international law and brazen disregard for the UN Charter. From Gaza to Ukraine and around the world, the rule of law is being used as an *a la carte* menu. We see States flouting the rule of law with impunity, through the illegal use of force, the targeting of civilian infrastructure, human rights violations and abuses, illegal development of nuclear weapons, unconstitutional changes of government and the denial of life-saving humanitarian aid. These violations set dangerous precedents encouraging other countries to do what they want instead of what they are required to do under international law.”

- Antonio Guterres, United Nations Secretary-General, 26 January 2026

## PREFACE

### Introduction

Since 7 October 2023, Israel has carried out a sustained military campaign against the Palestinian population in Gaza, the consequences and brutality of which have unfolded in full view of the international community and have been widely documented and broadcast in real time. On 29 December 2023, the Republic of South Africa (South Africa) instituted proceedings against Israel before the International Court of Justice (ICJ) under the Convention on the Prevention and Punishment of the Crime of Genocide (1948) (Genocide Convention) alleging that Israel's actions:

*“are genocidal in character because they are intended to bring about the destruction of a substantial part of the Palestinian national, racial and ethnical group, that being the part of the Palestinian group in the Gaza. The acts in question include killing Palestinians in Gaza, causing them serious bodily and mental harm, and inflicting on them conditions of life calculated to bring about their physical destruction. The acts are all attributable to Israel, which has failed to prevent genocide and is committing genocide in manifest violation of the Genocide Convention, and which has also violated and is continuing to violate its other fundamental obligations under the Genocide Convention, including by failing to prevent or punish the direct and public incitement to genocide by senior Israeli officials and others.”<sup>1</sup>*

The ICJ has found that Israel's conduct plausibly constitutes genocide.<sup>2</sup> The evidence provided by South Africa to the ICJ identified a pattern of mass destruction, deliberate targeting of civilians and explicit statements by senior Israeli officials evidencing genocidal intent which

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<sup>1</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v Israel) (hereafter referred to as *South Africa v Israel*), para 1

<sup>2</sup> Order on Provisional Measures of 26 January 2024 in the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v Israel) (hereafter referred to as the 26 January 2024 Provisional Measure Order), 23, para 54: *“In the Court's view, the facts and circumstances mentioned above are sufficient to conclude that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible. This is the case with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III, and the right of South Africa to seek Israel's compliance with the latter's obligations under the Convention.”* <https://www.icj-cij.org/case/192> accessed 5 May 2025.

the Court concluded is capable of causing irreparable harm and that this was a matter of urgency.<sup>3</sup>

Not only is Israel accused of committing a genocide in Palestine, it also unlawfully occupies Palestinian territory<sup>4</sup>, implements a system of apartheid policies<sup>5</sup> and denies the indigenous Palestinian population the rights to self-determination.<sup>6</sup>

These findings are not merely descriptive of events in Gaza but carry direct legal consequences for Third States, including South Africa. Third States are placed under a legal duty to take reasonable steps to prevent and punish genocide and stop the illegal occupation by refraining from providing any form of aid or assistance that may contribute to its commission.<sup>7</sup>

On 9 October 2023, Israel shut off all power lines into Gaza with the former Minister of Defence, Yoav Gallant, declaring: “*We are imposing a complete siege on Gaza. There will be*

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<sup>3</sup> 26 January 2024 Provisional Measure Order para 38: “*South Africa submits that the evidence before the Court “shows incontrovertibly a pattern of conduct and related intention that justifies a plausible claim of genocidal acts”. It alleges, in particular, the commission of the following acts with genocidal intent: killing, causing serious bodily and mental harm, inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, and imposing measures intended to prevent births within the group. According to South Africa, genocidal intent is evident from the way in which Israel’s military attack is being conducted, from the clear pattern of conduct of Israel in Gaza and from the statements made by Israeli officials in relation to the military operation in the Gaza Strip. The Applicant also contends that “[t]he intentional failure of the Government of Israel to condemn, prevent and punish such genocidal incitement constitutes in itself a grave violation of the Genocide Convention”. South Africa stresses that any stated intention by the Respondent to destroy Hamas does not preclude genocidal intent by Israel towards the whole or part of the Palestinian people in Gaza.”. and see para 58: “*In the Court’s view, the facts and circumstances mentioned above are sufficient to conclude that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible. This is the case with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III, and the right of South Africa to seek Israel’s compliance with the latter’s obligations under the Convention.*”*

<sup>4</sup> According to the International Committee of the Red Cross (ICRC): “*under international humanitarian law (IHL), there is occupation when a state exercises an unconsented-to effective control over a territory to which it has no sovereign title. Article 42 of The Hague Regulations of 1907 defines occupation as follows: “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”*” <https://www.icrc.org/en/law-and-policy/occupation> and see ICJ Advisory Opinion (19 July 2024) discussed below.

<sup>5</sup> Amnesty International, *Israel’s Apartheid Against Palestinians*, (January 2022) <https://www.amnestyusa.org/wp-content/uploads/2022/01/Full-Report.pdf> accessed 29 September 2025 and see International Court of Justice, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion) (19 July 2024) General List No 186, (Hereafter referred to as the ICJ Advisory Opinion) <https://www.icj-cij.org/case/186> accessed 14 January 2026.

<sup>6</sup> United Nations, *The Question of Palestine, Right of Self-Determination of the Palestinian People*, (1979), UN Committee on the Exercise of the Inalienable Rights of the Palestinian People affirmed “*the inalienable rights of the Palestinian people to self-determination, including the right of return and the right to national independence and sovereignty in Palestine, in accordance with the Charter of the United Nations*”.

<sup>7</sup> See Dr Irene Pietrapaoli’s report titled *Obligations of Third States and Corporations to Prevent and Punish Genocide in Gaza* (5 June 2024).

*no electricity, no food, no water, no fuel, everything is closed,”* adding that *“We are fighting human animals, and we are acting accordingly.”*<sup>8</sup> Israel then proceeded to commit the most horrific crimes imaginable, live streamed to televisions and cell phones across the world. There exists an overwhelming body of video evidence and reports documenting Israel’s crimes rendering any denial of these crimes untenable.

In September 2025, the Independent International Commission of Inquiry on the Occupied Palestinian Territory (OPT), including East Jerusalem and Israel<sup>9</sup> (UN Commission of Inquiry), concluded that Israel has committed at least four of the five *actus reus*<sup>10</sup> of genocide.<sup>11</sup> The Gaza Ministry of Health has reported that more than 70 000 Palestinians have been killed with the true number likely far higher due to mass graves, missing persons and bodies trapped under rubble.<sup>12</sup> Israel has repeatedly denied the mounting death toll since 7 October 2023, claiming that the figures reported are exaggerated.<sup>13</sup> However, in January 2026, the Israeli Defense Forces (IDF) accepted the death toll confirming that at least 70 000 Palestinians have been killed in Israel’s heavy military assault and bombardment of Gaza.<sup>14</sup> Israel has reportedly violated the October 2025 brokered ‘ceasefire’ at least 1,620 times, killing a minimum of 636 Palestinians, and injuring 1,704.<sup>15</sup> No accurate calculation of the true death toll is possible until

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<sup>8</sup> Al Jazeera, *Israel announces “total” blockade on Gaza* (9 October 2023). <https://www.aljazeera.com/news/2023/10/9/israel-announces-total-blockade-on-gaza> accessed 31 October 2025.

<sup>9</sup> A commission of inquiry established by the United Nations Human Rights Council to investigate alleged violations of international humanitarian law and international human rights law by Israel in those territories.

<sup>10</sup> Actus reus (Latin for "guilty act") refers to the physical act, omission or state of affairs that constitutes the core action of a crime.

<sup>11</sup> UN Independent International Commission of Inquiry ‘*Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide*’ (Conference Room Paper A/HRC/60/CRP.3, 16 September 2025) 71, para 252: “*The Commission concludes on reasonable grounds that the Israeli authorities and Israeli security forces have committed and are continuing to commit the following actus reus of genocide against the Palestinians in the Gaza Strip, namely (i) killing members of the group; (ii) causing serious bodily or mental harm to members of the group; (iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (iv) imposing measures intended to prevent births within the group.*” [a-hrc-60-crp-3.pdf](https://www.unhcr.org/refugees/pdf/a-hrc-60-crp-3.pdf) accessed 18 September 2025.

<sup>12</sup> Ben Reiff, *The Guardian*, *Now that Israel has admitted the Gaza death toll is accurate, don’t let apologists move the goalposts* (3 February 2026) <https://www.theguardian.com/commentisfree/2026/feb/03/israel-gaza-death-toll-accurate-health-ministry> accessed on 4 February 2026

<sup>13</sup> Ehud Amiton ‘*Israel: Hamas Casualty Figures ‘Exaggerated,’ Claims Echoed Uncritically by Media*’ available at <https://tps.co.il/articles/israel-hamas-casualty-figures-exaggerated-claims-echoed-uncritically-by-media/?utm.com>, accessed on 30 January 2026; and see Khaled Elgindy, Eyal Luri-Pardes, Middle East Institute, *Human shields or shielding Israel from Accountability*, (10 May 2024), <https://mei.edu/publication/human-shields-or-shielding-israel-accountability/> accessed on 4 February 2026.

<sup>14</sup> Priyanka Shankar ‘*Israel accepts Gaza’s 70,000 death toll: A record of denialism, lies*’ available at <https://www.aljazeera.com/amp/news/2026/1/30/israel-accepts-gazas-70000-death-toll-a-record-of-denialism-lies>, accessed on 30 January 2026.

<sup>15</sup> Priyanka Shankar ‘*Israel accepts Gaza’s 70,000 death toll: A record of denialism, lies*’ ; and see Al Jazeera, *Israel kills two in Gaza as Palestinians call for Rafah crossing to open* (6 January 2026),

the siege is lifted and independent investigators and journalists gain unrestricted access to Gaza which Israel continues to deny for over 2 years.<sup>16</sup> Tens of thousands of Palestinians have been injured and infrastructure essential to civilian survival has been systematically destroyed, with children facing the brunt of the Israeli genocidal campaign, and with minors making up almost half of the population of Gaza.<sup>17</sup>

This reality was captured in a speech by Tom Fletcher, the Under-Secretary General for Humanitarian Affairs at the United Nations on 24 September 2025, where he highlighted the catastrophic situation of children in Gaza: “*They’ve been bombed, maimed, starved, burned alive, buried in the rubble of their homes, separated from their parents. Denied every ounce of humanity that the rules of war were designed to preserve. Killed while sleeping, playing, queuing for food and water, seeking medical care.*”<sup>18</sup> South Africa has acknowledged this catastrophic reality through its ICJ application.

The ICJ subsequently determined that the rights asserted by South Africa under the Genocide Convention are plausible and that there exists a real and imminent risk of irreparable prejudice to those rights. On 26 January 2024, the Court ordered Israel to take immediate measures to prevent acts falling within the scope of the Convention, to prevent and punish direct and public incitement to genocide, and to ensure the provision of urgently needed humanitarian assistance to the population of Gaza. The Court further recognised that the evidence before it revealed a pattern of widespread destruction, mass civilian casualties and statements by senior Israeli officials capable of supporting an inference of genocidal intent, giving rise to an urgent need for protective measures.<sup>19</sup>

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<https://www.aljazeera.com/news/2026/1/6/israel-kills-two-in-gaza-as-palestinians-call-for-rafah-crossing-to-open> accessed on 11 January 2026. And see Al Jazeera ‘*How many times has Israel violated the Gaza ceasefire? Here are the numbers*’ available at <https://www.aljazeera.com/news/2025/11/11/how-many-times-has-israel-violated-the-gaza-ceasefire-here-are-the-numbers>, accessed on 13 February 2026.

<sup>16</sup> Kat Londsorf, Ailsa Chang, NPR, *Barred from Gaza for 2 years, international journalists are still fighting for access*, (25 November 2025) <https://www.npr.org/2025/11/25/nx-s1-5620604/barred-from-gaza-for-2-years-international-journalists-are-still-fighting-for-access> accessed on 9 February 2026.

<sup>17</sup> NPR, *Children make up nearly half of Gaza's population. Here's what it means for the war* (19 October 2023), <https://www.npr.org/2023/10/19/1206479861/israel-gaza-hamas-children-population-war-palestinians> accessed on 11 January 2026.

<sup>18</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Humanitarian Situation Update #326 | Gaza Strip* (25 September 2025). <https://www.unocha.org/publications/report/occupied-palestinian-territory/humanitarian-situation-update-326-gaza-strip> accessed on 16 December 2025.

<sup>19</sup> 26 January 2024 Provisional Measure Order.

In January 2025, the Hague Group was formed in The Hague, Netherlands, by a group of Global South States seeking to coordinate legal and diplomatic action to enforce international law in relation to Israel’s conduct in the OPT and to support the implementation of international judicial decisions, including proceedings before the ICJ.<sup>20</sup> South Africa sits as a Co-Chair with Colombia for the Hague Group.

On 4 March 2026, the Hague Group met “*against the backdrop of the unprecedented acceleration of Israel’s settlement policy... and the unlawful escalation of military operations in the West Bank, which amounts to de facto annexation of the occupied West Bank and constitutes a direct assault on the territorial contiguity required for the realization of the Palestinian right to self-determination.*”<sup>21</sup>

South Africa issued a joint statement with Colombia reaffirming their commitment to ensure that their trade, financial systems and corporate activities do not contribute to violations of international humanitarian law in Palestine.<sup>22</sup> The statement emphasised the duty of States to review and, where necessary, suspend trade relationships, supply chains and economic activities that risk facilitating war crimes, crimes against humanity or genocide, and called on governments to employ all available regulatory and legal mechanisms to prevent corporate complicity in such acts.

Despite these historic and principled steps and commitments, South Africa has exported approximately 2.99 million tonnes of coal to Israel since October 2023 and continues to do so.<sup>23</sup> These exports are undertaken by private corporations operating within South Africa’s jurisdiction using State-regulated infrastructure, ports, licensing systems and export permissions. The South African State does not itself mine or sell the coal, but it exercises decisive regulatory authority over whether such exports may lawfully occur. Accordingly, the legal responsibility addressed in this report arises from the State’s failure to exercise available legal powers to prevent or suspend exports that risk contributing to internationally wrongful acts. This is in direct contradiction to the Hague Group Statement made on 4 March which

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<sup>20</sup> See Section VII below.

<sup>21</sup> The Hague Group, Co-Chairs’ Statement: *The Hague Group Meeting on Accountability and the Enforcement of International Law in Palestine, The Hague*, (4 March 2026) (Hereafter referred to as the Hague Group, Co-Chair’s Statement, 4 March 2026) [https://dirco.gov.za/wp-content/uploads/2026/03/STATEMENT\\_THG\\_04MARCH%E2%80%9404ENG.pdf](https://dirco.gov.za/wp-content/uploads/2026/03/STATEMENT_THG_04MARCH%E2%80%9404ENG.pdf) accessed on 7 March 2026.

<sup>22</sup> The Hague Group, Co-Chairs’ Statement, 4 March 2026.

<sup>23</sup> See Section I and Annexure D below.

proclaims “*The choice before every government is clear: complicity or compliance. History will judge us not by the speeches we delivered, but by the actions we took.*”

Not only have State officials failed to exercise their authority in compliance with their legal obligations and stated commitments; South African exports to Israel since Colombia imposed a complete coal embargo in August 2025 have increased, making South Africa the number one supplier of coal to Israel. Reuters reported on 16 December 2025 that after Colombia halted coal supplies to Israel, “*South Africa boosted exports by 87% to 474,000 metric tons in the three months to November on an annual basis*”.<sup>24</sup> According to the Israeli Electric Corporation’s 2025 Financial Report, coal accounted for 26.2% of Israel’s electricity generation.<sup>25</sup>

These shipments, facilitated through Transnet and government-issued licenses and permits, supply Israel’s coal-fired plants at Hadera and Ashkelon.<sup>26</sup> These power stations provide electricity to Israel’s military , its installations as well as to illegal settlements in the OPT, further entrenching the illegal occupation in a direct affront to the Palestinians’ right to self-determination.<sup>27</sup> South African coal essentially fuels the ongoing genocide, the illegal occupation in the OPT, and Israel’s settler-colonial project in Palestine.

The ICJ’s Provisional Measure Orders, its July 2024 Advisory Opinion titled *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian*

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<sup>24</sup> Sudarshan Varadhan, Wendell Roelf and Steven Scheer, Reuters, “South Africa boosts coal exports to Israel after Colombia ban” (16 December 2025), <https://www.reuters.com/world/africa/south-africa-boosts-coal-exports-israel-after-colombia-ban-2025-12-16/> accessed on 26 January 2026.

<sup>25</sup> IEC, *Financial Reports For the Nine and Three Months Ended September 30, 2025*, [https://links.sgx.com/FileOpen/The\\_Israel\\_Electric\\_Co-Financial\\_Reports\\_September\\_30\\_2025.ashx?App=Announcement&FileID=869314](https://links.sgx.com/FileOpen/The_Israel_Electric_Co-Financial_Reports_September_30_2025.ashx?App=Announcement&FileID=869314) accessed on 15 March 2026

<sup>26</sup> Centre for Research on Multinational Corporations (SOMO) and Centre for Environmental Rights, *Powering Injustice* (November 2024) (Hereafter referred to as the SOMO, *Powering Injustice*) 28, <https://www.somo.nl/powering-injustice/> accessed 7 June 2025.

<sup>27</sup> SOMO, *Powering Injustice*, 34: “Coal, gas, and renewables, including wind and solar power, are used to generate electricity in Israel. Based on the design of Israel’s electricity grid, as previously described in this report, any electricity generated from these sources can be consumed by illegal settlements. The provision of electricity services to illegal settlements enables them, and the fact that this is done through the national grid reinforces the view expressed by some Israeli lawmakers that the settlements are part of Israel. Insofar as the coal, gas, and renewable energy are derived from trade and investment relations, in the absence of a credible guarantee that they are not used to generate electricity for illegal settlements, the provision of these energy sources may be said to be assisting in “the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory.” And see Section III below.

*Territory*<sup>28</sup>, the UN General Assembly’s September 2024 Resolution calling for the implementation of the above-mentioned Advisory Opinion and for Israel to end its “unlawful presence” in the OPT “without delay”<sup>29</sup>, the Hague Group’s July 2025 and March 2026 commitments<sup>30</sup> and the UN Commission of Inquiry’s September 2025 report confirming that Israel is committing genocide in Palestine, all affirm that it is imperative and urgent that States meet their legal obligations and do everything in their power to stop the genocide and the unlawful occupation.<sup>31</sup> At the very least, States must not aid or assist<sup>32</sup> Israel’s illegal occupation, its apartheid systems, illegal settlements and genocide. This obligation includes a duty to regulate and control private actors within a State’s jurisdiction where their commercial activities provide material assistance to such internationally wrongful acts.<sup>33</sup> By permitting coal exports to Israel, South Africa is providing such aid and assistance, in breach of its binding domestic and international legal obligations.<sup>34</sup> South Africa is fuelling the ongoing genocide.

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<sup>28</sup> International Court of Justice, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion) (19 July 2024) General List No 186, (Hereafter referred to as the ICJ Advisory Opinion) <https://www.icj-cij.org/case/186> accessed 14 January 2026

<sup>29</sup> United Nations General Assembly, *Resolution Adopted by the General Assembly: Advisory opinion of the International Court of Justice on the legal consequences arising from Israel’s policies and practices in the Occupied Palestinian Territory, including East Jerusalem* A/RES/ES-10/24 (10th Emergency Special Session, 19 September 2024) <https://www.refworld.org/legal/resolution/unga/2024/en/148725> accessed 14 January 2026.

<sup>30</sup> Joint Statement by the Hague Group on the Conclusion of the Emergency Conference on Palestine at the Bogotá Conference in Bogotá, Republic of Colombia from 15 to 16 July 2025, Dept of International Relations & Cooperation (South Africa) (16 July 2025) (Hereafter referred to as the Joint Statement by the Hague Group) <https://dirco.gov.za/joint-statement-by-the-hague-group-on-the-conclusion-of-the-emergency-conference-on-palestine-at-the-bogota-conference-in-bogota-republic-of-colombia-from-15-to-16-july-2025/> accessed 13 November 2025; and See the Hague Group, Co-Chair’s Statement of 4 March 2026.

<sup>31</sup> See sections VIII and IX below.

<sup>32</sup> See International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001) (Hereafter referred to as ARSIWA), art 16; and see International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion, 9 July 2004) (Hereafter referred to as the ICJ Wall Opinion), para 159: “Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end. In addition, all the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.”

<sup>33</sup> See Sections IV, VIII and X below.

<sup>34</sup> UN Genocide Report, paras 246 - 250 (Legal Consequences on States and their obligations).

The UN Commission of Inquiry reiterated that the prohibition of genocide is a *jus cogens* norm<sup>35</sup>, creating *erga omnes* obligations owed by all States.<sup>36</sup> This means no State can legally permit or ignore genocide, and all States are obligated to prevent and punish it, regardless of borders, treaties or commercial agreements.<sup>37</sup> The ICJ's Provisional Orders of January, March and May 2024 placed all States on notice of an imminent risk of genocide, triggering the duty to prevent and to refrain from providing aid and assistance to Israel.<sup>38</sup> States are therefore required, even without a specific court order or UN Security Council resolution, to assess their own duties to prevent, punish and not aid or assist the commission of genocide - including by ceasing transfers of items such as coal and arms where there is reason to suspect their use in operations involving genocide.<sup>39</sup>

States are obliged to ensure that corporations operating within their jurisdictions are not involved in trade which may amount to complicity in war crimes and crimes against

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<sup>35</sup> UN Genocide Report, para 8: “*The prohibition of genocide is a peremptory norm of international law (jus cogens), an international legal obligation that is accepted and recognised by the international community of States as a whole and from which no derogation is permitted. The principles underlying the Genocide Convention are recognised by all nations as binding on all States, even without any treaty obligations.*”

<sup>36</sup> UN Genocide Report, para 8: “*In the Barcelona Traction case, the International Court of Justice recognised the erga omnes obligation in preventing and punishing genocide, that is, all States have an obligation to prevent and punish genocide wherever and whenever it occurs or may occur.*”

<sup>37</sup> See Sections IV, VIII and X below.

<sup>38</sup> Irene Pietropaoli, *Obligations of Third States and Corporations to Prevent and Punish Genocide in Gaza* (British Institute of International and Comparative Law, 5 June 2024) (Hereafter referred to as Pietropaoli, *Obligations of Third States*), 2: “*The ICJ clarified in the Bosnia v Serbia case that a State is responsible for complicity if ‘its organs were aware that genocide was about to be committed or was under way, and if the aid and assistance supplied, from the moment they became so aware onwards, to the perpetrators of the criminal acts... enabled or facilitated the commission of the acts.’ As such, the obligation to refrain from being complicit through aid or assistance begins the moment the State becomes aware of the existence of a serious risk that genocide may be committed. The Order issued by the ICJ on 26 January finding ‘a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible’ means that States are now aware of the risk of genocide being committed in Gaza.*” [11-june-2024-obligations-of-third-states-and-corporations-to-prevent-and-punish-genocide-in-gaza-3-1718133118.pdf](#) accessed 28 July 2025. and see UN Genocide Report, paras 246 - 250 (Legal Consequences on States and their obligations).

<sup>39</sup> Pietropaoli, *Obligations of Third States*, 33: “*The duty to ‘ensure respect by others’ under the Geneva Conventions requires all States to do everything reasonably in their power to prevent and stop violations of international humanitarian law by Israel, particularly where a State has influence through its political, military, economic or other relations. The ICJ held in its order on provisional measures in the Ukraine v Russia case that there are several means to fulfil the obligation to prevent genocide including ‘bilateral engagement’. UN experts have called for ‘sanctions on trade, finance, travel, technology or cooperation’. In her report to the Human Rights Council dated 26 March, the Special Rapporteur on the occupied Palestinian territory recommended in addition to an arms embargo on Israel, also ‘other economic and political measures necessary to ensure an immediate and lasting ceasefire and to restore respect for international law, including sanctions’. Maintaining ties through trade and investment, particularly in the defence and security-military sectors, risks contributing to the conditions which the ICJ Order identified as posing a plausible risk of genocide in Gaza, as well as increasing Israel’s capacity for violations of international humanitarian law.*” and see UN Genocide Report, paras 246 - 250 (Legal Consequences on States and their obligations).

humanity.<sup>40</sup> States are under obligation to ensure that these corporations operate in an ethical manner and to ensure that their activities do not aid or assist in international crimes.<sup>41</sup> Where it is found that such trade may constitute complicity or material support in unlawful acts such as genocide or illegal occupation, the State must withdraw or suspend its support for these corporations, which includes the withdrawal of State issued permits or licenses and access to State infrastructure which are required for the complicit trade.

This report proceeds on the legal premise that South Africa's primary obligation is to use all lawful and available mechanisms to prevent private corporations from continuing exports that risk rendering the State complicit in war crimes and crimes against humanity. The continuation of South Africa's coal exports that continues to facilitate genocidal, illegal occupation and apartheid-linked operations in Palestine is inconsistent with the duty to prevent and punish genocide and the duty to ensure that the State does not aid or abet genocide and other international crimes under international law.

In its judgment in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (Bosnia v Serbia)*, the ICJ held that a State may incur responsibility for complicity in genocide where its organs knew or ought to have known that genocide was imminent or ongoing and nonetheless provided assistance, whether material, logistical, political or otherwise, that enabled or facilitated the commission of genocide.<sup>42</sup> This principle, derived from the Genocide Convention and the ICJ's interpretation of it, extends to Third State economic assistance to countries that are committing genocide and crimes against humanity. Accordingly, where a State has knowledge of an unfolding genocide, the continued export of critical commodities such as coal may constitute complicity in the very crimes committed if those exports materially contribute to the maintenance or furtherance of the genocidal enterprise.<sup>43</sup> Where such exports are carried out

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<sup>40</sup> See Sections V, VIII and IV below.

<sup>41</sup> See Section V below.

<sup>42</sup> International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, 26 February 2007 (Hereafter referred to as *Bosnia v Serbia*), paras 430–434 (discussing the standard of due diligence and State responsibility for assistance).

<sup>43</sup> See Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 (Hereafter referred to as the Genocide Convention), arts I and III; see also ARSIWA art 16 and art 41. For the element of material contribution and causation in State facilitation, see 26 January 2024 Provisional Order paras 54–59; and UN Genocide Report paras 245–260.

by private actors but depend upon State authorisation, infrastructure and regulatory approval, the failure of the State to intervene may itself constitute internationally wrongful conduct.

Francesca Albanese, the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian territories occupied since 1967, has emerged as one of the most authoritative legal voices globally on Israel's conduct in Gaza and the West Bank. The Special Rapporteur is an independent expert appointed by the Human Rights Council to follow and report on the human rights situation in the OPT. Included in her tasks is to assess the human rights situation in the OPT, report publicly about it, and work with governments, civil society and others to foster international cooperation to ensure the protection of the human rights of the Palestinian people.<sup>44</sup> Through Albanese's detailed reports to the UN Human Rights Council and General Assembly, she has systematically documented patterns of the illegal occupation, apartheid and genocide while linking it to Third State and corporate complicity. Her reports offer clear legal characterisations backed by evidence and State responsibility frameworks. Her most recent report, *Gaza Genocide: A Collective Crime*, stresses that the nature of *erga omnes* obligations imposes a dual duty on States: a positive obligation "to... bring any unlawful situation to an end through lawful means" and a reciprocal duty not to "render aid or assistance to maintain that situation".<sup>45</sup>

Albanese has named South Africa and Glencore as direct contributors to and complicit in what Albanese has termed the "economy of genocide".<sup>46</sup> This describes a system wherein financial,

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<sup>44</sup> See OHCHR, *Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967* for details about the Mandate of the Special Rapporteur for Palestine. <https://www.ohchr.org/en/special-procedures/sr-palestine> accessed 16 December 2025.

<sup>45</sup> Francesca Albanese, 'Gaza Genocide: A Collective Crime' (Report of the UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, A/HRC/58/CRP) (Hereafter referred to as Albanese, *Gaza Genocide: A Collective Crime*)(20 October 2025) 4, para 6 : "*Obligations erga omnes arising from the serious breach of peremptory norms – the obligation to respect the self-determination of the people, the prohibition of genocide, racial segregation, apartheid and territorial acquisition through force by Israel, including: 8 (i) a positive obligation to, individually<sup>9</sup> and cooperatively, bring any unlawful situation to an end through lawful means; and negative duties to not (ii) recognize as lawful the situation arising from their breach, or (iii) render aid or assistance to maintain that situation.*" <https://www.ohchr.org/en/documents/country-reports/a80492-gaza-genocide-collective-crime-report-special-rapporteur-situation> accessed 31 October 2025.

<sup>46</sup> Francesca Albanese, *From Economy of Occupation to Economy of Genocide* (Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc A/HRC/59/23, 16 June 2025) (Hereafter referred to as Albanese, *From Economy of Occupation to Economy of Genocide*) 6, para 26: "*After October 2023, long-standing systems of control, exploitation and dispossession metamorphosed into economic, technological and political infrastructures mobilized to inflict mass violence and immense destruction. Entities that previously enabled and profited from Palestinian elimination and erasure within the economy of occupation, instead of disengaging are now involved in the economy of genocide.*"; and see para 57 naming South Africa and Glencore as contributors,

commercial and market structures not only tolerate but actively profit from, sustain or incentivize the acts of mass violence, destruction and institutionalized oppression (including genocidal acts currently being committed by Israel).<sup>47</sup> In this framing, genocide is not a random outbreak of violence but is embedded in and enabled by economic systems and commercial relationships which profit from the destruction of Palestinian life.<sup>48</sup> This classification carries not only reputational consequences but also legal liability for both State and corporate actors which Albanese terms a “*joint criminal enterprise*”.<sup>49</sup>

South African companies, their directors as well as government officials involved (particularly those officials who fail to use their authority to prevent such trade) are thereby exposed to criminal and civil accountability under international and domestic law for their participation in the economy of genocide. This includes State officials who, despite possessing legal authority to regulate or halt exports, fail to exercise that authority in circumstances where continued exports foreseeably contribute to international crimes.

The legal authority to halt these exports already exists under South African law. Key statutes – including the International Trade Administration Act 71 of 2002 (ITAC) and the Mineral and Petroleum Resources Development Act 28 of 2002 (among others) – vest the State with extensive regulatory powers, as the custodian of South Africa’s mineral resources, to suspend or revoke trade permissions/permits and impose export restrictions in the public interest or in response to breaches of international law. Read together with South Africa’s obligations under binding international instruments<sup>50</sup> and the South African Constitution, these laws provide a comprehensive legal framework to urgently prohibit coal exports that continue to contribute to international crimes and violate constitutional values.

Immediate action is both possible and long overdue. The failure to act is not a result of legal constraint but of political will, exposing South African officials to potential dereliction of duty

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<https://www.ohchr.org/en/documents/country-reports/ahrc5923-economy-occupation-economy-genocide-report-special-rapporteur> accessed 31 October 2025.

<sup>47</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, see paras 87 – 93 (Conclusions).

<sup>48</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, see paras 87 – 93 (Conclusions).

<sup>49</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, para 91: “*Business continues as usual, but nothing about this system, in which businesses are integral, is neutral. The enduring ideological, political and economic engine of racial capitalism has transformed Israel’s displacement-replacement economy of occupation into an economy of genocide. This is a “joint criminal enterprise”, where the acts of one ultimately contribute to a whole economy that drives, supplies and enables this genocide.*”

<sup>50</sup> See the Genocide Convention, arts I and III; ARSIWA, arts 16–41; The Rome Statute, The World Trade Organizations Security Exceptions (detailed under section VIII) among others.

by failing to take action to prevent and punish genocide amounting to complicity in internationally wrongful acts under both domestic and international law.

South Africa must urgently emulate the global solidarity movement that played a decisive role in dismantling its own apartheid regime through boycotts, divestment and sanctions (BDS). These measures, endorsed by the United Nations and implemented by States across the Global South and North, were instrumental in isolating the apartheid regime in South Africa and enforcing international accountability. Today, while over 70 000 Palestinians have been killed in Gaza amid allegations of genocide, South Africa continues to authorise and facilitate coal exports to Israel.

The continuation of this trade is not only morally indefensible in light of South Africa's Constitutional values, but legally and politically inconsistent with its leading role in the genocide case before the ICJ. To persist in supplying energy resources that foreseeably fuel war crimes and crimes against humanity represents a betrayal of the core principles of justice, human dignity and accountability that define South Africa's constitutional democracy.

### **South African Coal Exports to Israel**

Since October 2023, South Africa has exported roughly 2.99 million metric tonnes of coal to Israel.<sup>51</sup> Israel operates a single, undivided national electricity grid which extends into OPT, including East Jerusalem and the West Bank.<sup>52</sup> This grid supplies electricity to both civilian infrastructure and Israeli military installations, as well as to illegal settlements established in violation of international law.<sup>53</sup>

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<sup>51</sup> See Section I and Annexure D below.

<sup>52</sup> *SOMO, Powering Injustice*, 11: “IEC’s 2023 financial report states that “electricity that is generated by [IEC] and by the private electricity producers, is transferred by [IEC] through its transmission grid. The transmission grid is deployed throughout the State of Israel and the territories that have been subject to its rule since June 1967 (East Jerusalem and the West Bank).” The report further states that “the assets of [IEC] in the field of operation include assets, mainly grids and lines, which are in Judea and Samaria (the West Bank) (including in the territories of the Palestinian Authority).”

<sup>53</sup> *SOMO, Powering Injustice*, 11.

The Israel Electric Corporation (IEC), a State-owned entity, is the principal entity responsible for electricity generation and transmission.<sup>54</sup> Coal, gas and renewables, including wind and solar power, are used to generate electricity in Israel.

The IEC imports coal for combustion at its two primary coal-fired plants: Orot Rabin in Hadera and Rutenberg in Ashkelon.<sup>55</sup> Electricity generated at these facilities powers Israel's military operations, surveillance infrastructure and settler colonies in the OPT, materially contributing to the destruction of Palestinian life and infrastructure in Gaza.

Israel possesses no domestic coal reserves and is entirely reliant on imports to sustain its coal-fired power generation.<sup>56</sup> This structural dependency renders its energy system particularly vulnerable to coordinated international boycotts or embargoes (pressure points which are vital to stopping the ongoing genocide and crimes committed by Israel). In this context, coal exports - especially from South Africa - serve as critical enablers of Israel's capacity to wage war and entrench its unlawful occupation. Coordinated boycotts and embargos can therefore stifle the Israeli war machine and South Africa is obligated to take all action within its power to stop the ongoing genocide and illegal occupation.

South Africa must immediately suspend coal exports to Israel unless it can credibly and verifiably ensure that such exports are not used to supply electricity to the Israeli military, illegal settlements or other infrastructure sustaining the illegal occupation of Palestinian territory.<sup>57</sup> This report argues that this is not possible due to the design of Israel's electricity

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<sup>54</sup> The Israel Electric Corporation Ltd. Financial Reports For The Year Ended December 31, 2024, 9: "*The Company operates, as mentioned, as a single combined, coordinated system that engages in all stages of the electricity chain, from the generation of electricity in the power stations, its transmission, storage, transformation, distribution, to its supply (sale) to consumers. In addition, the Company engages in the establishment of infrastructures that are required for the operations.*" And see Section II below.

<sup>55</sup> SOMO, *Powering Injustice*, 28: "*Israel has two coal-fired power plants, which are both owned by the state-owned Israel Electric Corporation (IEC): the Rutenberg Power Station in Ashkelon, with an installed capacity of 2,250 megawatts (MW); 121 and the Orot Rabin Power Station in Hadera, with an installed capacity of 2,500 MW.*"

<sup>56</sup> SOMO, *Powering Injustice*, 28.

<sup>57</sup> See Dr. Ralph Wilde, *Legal Opinion: Third State and EU Obligations Arising from the International Court of Justice Advisory Opinion on the Occupied Palestinian Territory* (2024) (Hereafter Dr. Wilde, *Expert Legal Opinion*) stating that Third States are prohibited "*from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory*" and that, given the inseparability of Israel's economy from its activities in the OPT, "*all economic and trade dealings with Israel 'concern', one way or another, all or parts of the OPT, and all such dealings 'may' entrench the presence*", requiring therefore "*a complete reciprocal trade...embargo against Israel*"; and see SOMO, *Powering Injustice*, 4, (concluding that "*foreign governments have an obligation to end the supply of fuel to Israel unless they can guarantee it will only be used for non-military purposes*" and that "*states should end the supply of coal to Israel where there is no means of ensuring it does not end up*

grid. In the absence of such assurances - and given the prevailing conditions on the ground as well as the evidence contained in this report - continued exports risk rendering South Africa liable for complicity in grave violations of international law.

This situation calls for urgent legal and regulatory intervention. South Africa possesses both the statutory and constitutional tools to withdraw export authorisations, impose export restrictions and enforce non-assistance obligations when it comes to genocide. Failure of the South African government to act invites scrutiny under international legal mechanisms and undermines the credibility of its stated commitments including its application before the ICJ.

Beyond its contribution to international crimes, South Africa's coal exports to Israel constitute an environmental atrocity, with far-reaching implications for climate justice and intergenerational harm.<sup>58</sup> “*The situation is going from bad to worse,*” according to the UN Environmental Programme's (UNEP) Executive Director in a press release regarding the organization's report titled *Environmental Impact of the Conflict in Gaza*.<sup>59</sup> According to the report, the Israeli assault on Gaza has triggered unprecedented levels of environmental destruction, with long-term consequences for the health and survival of the civilian population.<sup>60</sup> The UNEP's Executive Director warns that if the current trajectory continues, it will leave “*a legacy of environmental destruction that could affect the health and wellbeing of generations of Gaza residents.*”<sup>61</sup>

The ICJ, in its 2025 Advisory Opinion titled *Obligations of States on Climate Change*, affirmed that States have binding obligations under international law to prevent transboundary environmental harm and to regulate fossil fuel exports – the Court confirmed that these

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*supplying electricity to settlements*”, as such supply “*constitutes trade dealings with Israel, which may entrench*” the unlawful situation).

<sup>58</sup> United Nations Environment Programme (UNEP), Press Release, *Environmental damage in Gaza Strip harming human health, threatening long-term food and water security - new UNEP report*, (23 September 2025). <https://www.unep.org/news-and-stories/press-release/environmental-damage-gaza-strip-harming-human-health-threatening> accessed on 17 October 2025. See section VI below.

<sup>59</sup> UNEP, Press Release, *Environmental damage in Gaza Strip harming human health, threatening long-term food and water security - new UNEP report*.

<sup>60</sup> UNEP, Press Release, *Environmental damage in Gaza Strip harming human health, threatening long-term food and water security*; and see UNEP, *Environmental Impact of the Conflict in Gaza* preliminary and secondary assessment reports (June 2024 and September 2025), <https://www.unep.org/resources/report/environmental-impact-escalation-conflict-gaza-strip> accessed 17 October 2025.

<sup>61</sup> UNEP, Press Release, *Environmental damage in Gaza Strip harming human health, threatening long-term food and water security*.

obligations are obligations *erga omnes*.<sup>62</sup> By continuing to supply coal that sustains Israel's military and industrial infrastructure during an unfolding genocide, where there is significant and potentially irreversible destruction to the environment by Israel, South Africa is not only breaching its human rights' obligations, but also failing to comply with its environmental duties under both domestic and international law to ensure that its conduct does not contribute to the destruction of the environment.<sup>63</sup>

The imperative to end complicity in Israel's genocide is being increasingly acknowledged by States and civil societies across the globe. Following the launch by South Africa of the genocide proceedings at the ICJ, many countries (such as Brazil, Spain, Colombia, Ireland, Turkiye, Belgium and most recently in March 2026, Iceland and the Netherlands) have joined the proceedings in support of South Africa.<sup>64</sup>

Following the urgent meeting of the Hague Group on 15 –16 July 2025, Colombia took decisive action by issuing a presidential decree halting all coal exports to Israel without exception, effective 28 August 2025, on the basis that continued trade would violate international law.<sup>65</sup> Colombia is a firm example that a coal embargo is possible through lawful measures. In a similar vein, the Spanish government imposed a formal arms embargo, terminated a major bilateral weapons contract and publicly endorsed calls for Israel's exclusion from international sporting bodies.<sup>66</sup> In March 2026, the Spanish Prime Minister withdrew its Ambassador to Israel in protest against the ongoing genocide committed by Israel and the illegal war launched by Israel against Iran which has destabilized the region.<sup>67</sup> Meanwhile, mass protests and nationwide general strikes in Italy brought the country to a standstill, demanding immediate

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<sup>62</sup> International Court of Justice, *Advisory Opinion on the Obligations of States in respect of Climate Change* (23 July 2025), General List No. 187 (hereafter referred to as the ICJ Climate Opinion), para 440.

<sup>63</sup> See ICJ Climate Opinion, *Paris Agreement* (2015) art 2(1)(a); *UNFCCC* (1992) art 4(1)(f); Constitution of the Republic of South Africa, s 24; *National Environmental Management Act 107 of 1998* ss 2 and 28.

<sup>64</sup> See various Declarations in the ICJ Case accessible at: <https://www.icj-cij.org/case/192> accessed on 30 December 2025. Also see Middle East Eye, *Iceland and Netherlands intervene in ICJ South Africa v. Israel genocide case* (12 March 2026) <https://www.middleeasteye.net/news/iceland-and-netherlands-intervene-icj-south-africa-v-israel-genocide-case> accessed on 15 March 2026.

<sup>65</sup> Republic of Colombia, *Presidential Decree No. 949 of 2025*, Official Gazette No. 53226 of August 28, 2025 (28 August 2025), <https://www.alcaldiabogota.gov.co/sisjur/normas/Normal1.jsp?dt=S&i=190567&utm> accessed on 25 November 2025.

<sup>66</sup> EWN, *Spain cancels major Israel arms deal amid Gaza backlash*, (15 September 2025), <https://www.ewn.co.za/2025/09/15/spain-cancels-major-israel-arms-deal-amid-gaza-backlash> accessed on 27 November 2025; and Al Jazeera, *Spanish PM calls for Israel's ban from sporting events over Gaza genocide*, (15 September 2025), <https://www.aljazeera.com/news/2025/9/15/spanish-pm-calls-for-israels-ban-from-sporting-events-over-gaza-genocide> accessed on 27 November 2025.

<sup>67</sup> Al Jazeera, *Spain removes ambassador from Israel in protest to Iran war, Gaza Genocide*,

cessation of diplomatic and economic ties with Israel.<sup>68</sup> These examples demonstrate that principled, rights-based responses to war crimes and crimes against humanity are both possible and necessary. South Africa, given its historical legacy and its leadership role before the ICJ, must align its conduct with the emerging global consensus to isolate and sanction perpetrators of genocide, illegal occupation and apartheid rather than allowing itself to be complicit in these crimes.

As established in international law, the failure to halt coal exports that materially aid and support internationally wrongful acts - such as genocide, apartheid and unlawful occupation - may result in both civil and criminal liability for State and private actors. The post-World War II *Nuremberg Principles*<sup>69</sup>, subsequent international law jurisprudence such as the *Bosnia v Serbia* judgment and the Rome Statute of the International Criminal Court<sup>70</sup> confirm that individuals and entities may be held criminally liable for supplying the means used to commit internationally recognized war crimes and crimes against humanity. The scope of liability extends to private actors whose material support facilitates the commission of such crimes, as well as to States that knowingly aid or assist in their perpetration.

In the face of mounting global condemnation - by Third States, United Nations bodies, international human rights organisations (including organizations in Israel<sup>71</sup>) and the mass protests and demonstrations of civil society across the globe - South Africa's continued facilitation of coal exports to Israel places it at clear risk of complicity in Israel's crimes. These exports sustain both the military infrastructure used in the destruction of Gaza and the electricity grid that powers illegal settlements across the OPT. In this context, continued coal shipments are not neutral trade transactions, but potential violations of South Africa's

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<sup>68</sup> Ashifa Kassam, The Guardian, *Disruption across Italy as tens of thousands protest against Gaza war*, (22 September 2025) <https://www.theguardian.com/world/2025/sep/22/disruption-across-italy-as-tens-of-thousands-protest-against-gaza-war> accessed 31 October 2025; and see IMEMC News, *European Dockworkers Block Weapons to Israel*, (8 February 2026), <https://imemc.org/article/european-dockworkers-block-weapons-to-israel-israeli-solidarity-action/> accessed on 9 February 2026.

<sup>69</sup> The fundamental principles of international law represented in the Nuremberg Charter and the Judgment are now known as the Nuremberg Principles. These principles established individual criminal responsibility under international law; And see International Law Commission, *Principles of International Law recognized in the Charter of the of the Nuremberg Tribunal and in the Judgment of the Tribunal, with commentaries*, (1950).

<sup>70</sup> See Art 25 of the Rome Statute; see *Bosnia v Serbia*, para 430 – 432.

<sup>71</sup> See B'Tselem Report titled *Our Genocide* (July 2025), [https://www.btselem.org/sites/default/files/publications/202507\\_our\\_genocide\\_eng.pdf](https://www.btselem.org/sites/default/files/publications/202507_our_genocide_eng.pdf) accessed on 14 January 2025.

obligations under international criminal law and its constitutional commitment to uphold human rights and dignity.

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## **I. SOUTH AFRICA'S COAL EXPORTS TO ISRAEL**

1. South Africa's continued export of coal to Israel raises grave legal, moral and political concerns in the context of the ongoing devastation in Gaza and the mounting international evidence of grave breaches of international humanitarian law. Coal is not a neutral commodity when supplied into a military State engaged in sustained large-scale military operations and which has been accused of committing genocide against the indigenous Palestinian population.
2. Electricity generation is a critical component of Israel's settler colonial project and its military, industrial and State infrastructure. The supply of coal directly contributes to the functioning of the systems that sustain Israel's war effort and maintains the unlawful settler colonial enterprise. At the same time, South Africa has positioned itself at the forefront of global legal efforts to hold Israel accountable for violations of international law, including through proceedings before the ICJ and through diplomatic initiatives such as the Hague Group. The continued shipment of coal from South African ports to Israel therefore presents a stark contradiction between South Africa's international legal and political commitments and the material trade flows that continue to sustain Israel's energy system.
3. This section sets out the factual record of those coal exports, including the volume of shipments obtained from SARS data bases and other vessel- and trade-tracking mechanisms. This section also includes mention of the vessels involved and the growing role of South Africa as a principal supplier of coal to Israel following the imposition of coal restrictions by other States.

### **A. Context and Volume of Exports**

4. On 4 March 2026, the Co-Chairs Statement of the Hague Group pledged to cut complicity in Israel's crimes by ensuring that no arms or material support will be sent to Israel, including by preventing the transfer, transit, or carriage of arms, munitions,

military fuel, and dual-use items to Israel - including through export restrictions, port controls, and flag-state responsibilities - in full compliance with international law.<sup>72</sup>

5. However, since October 2023 and December 2025, South Africa has exported approximately 2.99 million tonnes of coal to Israeli ports according to data from the South African Revenue Service (SARS).<sup>73</sup>
6. Coal has historically been one of South Africa's principal export commodities to Israel. Trade data obtained from TradeMap indicates that coal exports to Israel have typically represented between approximately 1% and 3% of South Africa's total coal exports by value.<sup>74</sup> According to Trade Data from S&P Global Commodities, South Africa was the third largest exporter of coal to Israel before Colombia imposed a coal embargo on Israel.<sup>75</sup> South Africa is the world's fifth largest seaborne exporter of coal, accounting for 4.5% of global coal exports in 2023.<sup>76</sup> In terms of volume, South African coal exports through Richards Bay Coal Terminal rose to 52.08 million metric tons in 2024 and to 57.66 million metric tons in 2025, the highest level in four years , following a

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<sup>72</sup> The Hague Group, *Co-Chair's Statement: The Hague Group Meeting on Accountability and the Enforcement of International Law in Palestine – The Hague – 4 March 2026*, (4 March 2026) [https://dirco.gov.za/wp-content/uploads/2026/03/STATEMENT\\_THG\\_04MARCH%E2%80%9494ENG.pdf](https://dirco.gov.za/wp-content/uploads/2026/03/STATEMENT_THG_04MARCH%E2%80%9494ENG.pdf) accessed on 11 March 2026. And see The Hague Group, *Inaugural Joint Statement* (31 January 2025), <https://thehaguegroup.org/meetings-hague-en/> accessed on 4 February 2026

<sup>73</sup> See Export and Shipping Report attached hereto marked Annexure D which sets out the statistics relating to South Africa's coal exports. This Report was prepared by consolidating information accessed from SARS Export Data (Access SARS export data at [https://tools.sars.gov.za/tradestatsportal/data\\_download.aspx](https://tools.sars.gov.za/tradestatsportal/data_download.aspx).) as well as data from TradeMap and ComTrade. And for additional information on the coal trade see: Professor Patrick Bond, *Factsheet - Glencore Coal and South African Exports to Israel*, (SA BDS Coalition) <https://sabdcoalition.org/statements/> accessed 12 November 2025; PassBlue, *Coal From South Africa Keeps Flowing to Israel Despite the ICJ Case*, (21 April 2025) (Hereafter referred to as PassBlue, *Coal From South Africa Keeps Flowing to Israel Despite the ICJ Case* ) <https://passblue.com/2025/04/21/coal-from-south-africa-keeps-flowing-to-israel-despite-the-icj-genocide-case/> accessed 12 November 2025 and see Ilham Rawoot, *New Arab, How South Africa's coal exports fuel Israel's genocide in Gaza*, (30 August 2024) accessed 25 November 2025 <https://www.newarab.com/features/how-south-africas-coal-exports-fuel-israels-genocide-gaza>.

<sup>74</sup> See Annexure D. Data can be accessed from International Trade Centre, '*Trade Map Bilateral Trade Statistics for HS 2701 Coal*' <https://www.trademap.org/> accessed 9 March 2026. Reference for Harmonized System of Trade: [https://www.wcoesarocb.org/wp-content/uploads/2018/07/2.-WCO\\_HS-CLASSIFICATION-HANDBOOK.pdf](https://www.wcoesarocb.org/wp-content/uploads/2018/07/2.-WCO_HS-CLASSIFICATION-HANDBOOK.pdf) Reference for HS 2701: <https://www.wcotradetools.org/en/harmonized-system>

<sup>75</sup> Vaibhav Chakraorty, Sarah Matthews, S&P Global, *Colombian thermal coal miners may opposed proposed export ban to Israel*, (10 June 2024) <https://www.spglobal.com/energy/en/news-research/latest-news/coal/061024-colombian-thermal-coal-miners-may-oppose-proposed-export-ban-to-israel> accessed on 4 February 2026.

<sup>76</sup> The Coal Hub, *South African Coal Exports*, (11 November 2024), <https://thecoalhub.com/south-african-coal-exports.html> accessed 4 February 2026

downturn from the 2017 peak of 76.47 million metric tons.<sup>77</sup> This data demonstrates that coal exports to Israel represent only a very small proportion of South Africa's overall coal export trade and, when viewed against total export volumes, the discontinuation of such exports would be unlikely to have any material impact on South Africa's coal export sector.

7. In the first six months of 2024, Israel imported 1.4 million metric tonnes of coal with Colombia accounting for 855 700 metric tonnes - or 60% of all Israel's coal imports during this period (according to S&P Global Commodities at Sea data).<sup>78</sup> At the time South Africa was recorded to have exported 169 200 metric tonnes in 2024.<sup>79</sup> According to a report in the Mail & Guardian, exports made up approximately 25% of Israel's coal imports for the period between 7 October 2023 to June 2025.<sup>80</sup>
8. This has now increased due to the Colombian coal embargo. As reported by Reuters, South Africa became Israel's primary coal supplier following Colombia's imposition of a total coal embargo in August 2025<sup>81</sup> with Colombian President Gustavo Petro justifying Colombia's decision to restrict coal exports to Israel by stating that "*Colombian coal is used to make bombs to kill Palestinian children*".<sup>82</sup>

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<sup>77</sup> Reuters, *South Africa's Richards Bay coal exports up 11% on rail improvements*, (27 January 2026) <https://www.reuters.com/world/africa/south-africas-richards-bay-coal-exports-up-11-rail-improvements-2026-01-27/?utm> accessed on 9 March 2026

<sup>78</sup> Vaibhav Chakraorty, Sarah Matthews, S&P Global, *Colombian thermal coal miners may opposed proposed export ban to Israel*, (10 June 2024) <https://www.spglobal.com/energy/en/news-research/latest-news/coal/061024-colombian-thermal-coal-miners-may-oppose-proposed-export-ban-to-israel> accessed on 4 February 2026.

<sup>79</sup> Vaibhav Chakraorty, Sarah Matthews, S&P Global, *Colombian thermal coal miners may opposed proposed export ban to Israel*,

<sup>80</sup> Imraan Buccus, Mail & Guardian, *Coal and South Africa's complicity in the genocide in Gaza* (25 June 2025) <https://mg.co.za/thought-leader/2025-06-25-coal-and-south-africas-complicity-in-the-genocide-in-gaza/> accessed on 4 February 2026.

<sup>81</sup> Ethan van Dieman, News24, *SA is now Israel's largest coal supplier following Colombia's ban* (18 December 2025) <https://www.news24.com/business/climate-future/energy/sa-is-now-israels-largest-coal-supplier-following-colombias-ban-20251218-0818> accessed on 9 March 2026.

<sup>82</sup> Olamilekan Okebiorun, Business Insider Africa, *South Africa becomes Israel's top coal supplier after Colombia cuts off shipments*, (16 December 2025) <https://africa.businessinsider.com/local/markets/south-africa-becomes-israels-top-coal-supplier-after-colombia-cuts-off-shipments/w8cc41n> accessed on 4 February 2026

9. South Africa's importance in Israel's coal supply therefore increased significantly, with market reporting indicating that South Africa was expected to supply approximately 55% of Israel's seaborne coal imports in 2025.<sup>83</sup>
10. Reuters reported that South Africa increased its exports by 87% to 474,000 metric tonnes in 3 months ending November 2025 and is on track to send nearly 170,000 tonnes in December 2025 citing shipping and customs data from Kpler, LSEG, DBX Commodities and the SARS.<sup>84</sup>
11. The same Reuters reporting recorded that this increase pushed Israel's total coal imports from South Africa up 20% to 667 442 tonnes in three months, the highest level for any three-month period since February 2017, based on official South African customs figures.<sup>85</sup> According to African Mining Market, South Africa's coal shipments to Israel increased by 1 million tonnes to 1.78 million tonnes.<sup>86</sup>
12. The total coal exports from South Africa to Israel for the period of 2023 - 2025, captured from data from SARS, Kpler, TradeMap and other sources, is set out below. The official data from SARS must be referenced as the main data source to be considered. An Export and Shipping Report has also been attached below as Annexure D containing the publicly available data in relation to South Africa's coal trade with Israel.

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<sup>83</sup> Contemporary reporting and trade breakdown showing coal as the main South African export to Israel and providing percentage shares. GroundUp, '*Call for African Rainbow Minerals to stop selling coal to Israel*' (4 April 2025) <https://groundup.org.za/article/calls-for-african-rainbow-minerals-to-stop-selling-coal-to-israel/?utm> accessed 12 November 2025; PassBlue, *Coal From South Africa Keeps Flowing to Israel Despite the ICJ Case*; and see Reuters December 2025 report confirming South Africa is now the largest exporter of coal to Israel; and see Business Insider Africa, '*South Africa Becomes Israel's Top Coal Supplier After Colombia Cuts Shipments*' (17 December 2025) <https://africa.businessinsider.com/local/markets/south-africa-becomes-israels-top-coal-supplier-after-colombia-cuts-off-shipments/w8cc41n?utm> accessed 9 March 2026

<sup>84</sup> See Sudarshan Varadhan, Wendell Roelf and Steven Scheer, Reuters, *South Africa boosts coal exports to Israel after Colombia ban* (16 December 2025) <https://www.reuters.com/world/africa/south-africa-boosts-coal-exports-israel-after-colombia-ban-2025-12-16/> accessed 14 January 2025; PassBlue, *Coal From South Africa Keeps Flowing to Israel Despite the ICJ Case*; Observatory of Economic Complexity (OEC) dataset for South Africa-Israel trade (OEC) <https://oec.world/en/profile/bilateral-country/zaf/partner/isr> accessed 12 November 2025

<sup>85</sup> Olamilekan Okebiorun, Business Insider Africa, *South Africa becomes Israel's top coal supplier after Colombia cuts off shipment*

<sup>86</sup> African Mining Market, *South Africa's Richards Bay coal exports up 11%* (27 January 2026) <https://africanminingmarket.com/south-africas-richards-bay-coal-exports-up-11/24713/> accessed on 4 February 2026

All figures are expressed in millions of tonnes (Mt).

Period	SARS Database <sup>2</sup>	Trademap <sup>3</sup>	UN Comtrade Database <sup>1</sup>	RBCT Sustainability Report <sup>5,4</sup>	Kpler
2025	1.86	1.86	1.86		
2024	0.72	0.72	0.72	0.72 <sup>5</sup>	0.39
2023	0.54	0.53	0.53	0.67 <sup>4</sup>	0.66

13. From the above table, it is clear that coal exports from South Africa to Israel are thriving despite the United Nations General Assembly having voted for States to “*prevent trade or investment relations that assist in the maintenance of the illegal situation*”<sup>87</sup> in Palestine, the ICJ’s Advisory Opinion confirming Third States’ responsibility “*to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory*”<sup>88</sup>, the Hague Group Commitments<sup>89</sup>, and South Africa’s launching of the ICJ case against Israel under the Genocide Convention.
  
14. Against this clear and unequivocal international mandate, South Africa’s conduct is particularly egregious. Rather than acting in good faith to uphold its international obligations, State officials and corporations operating within its territory have instead exploited the vacuum created by Colombia’s principled and comprehensive coal embargo on Israel, positioning South Africa as a replacement supplier and thereby materially enabling the continuation of an unlawful situation.
  
15. Israeli publication *Ynet Global* reported that following Colombian President Gustavo Petro’s announcement to halt all coal exports “*the Israeli government quickly sought*

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<sup>87</sup> United Nations, General Assembly 10th Emergency Special Session, Draft Resolution - *Advisory opinion of the ICJ on the legal consequences arising from Israel’s policies and practices in OPT, including East Jerusalem, and from the illegality of Israel’s continued presence in OPT* (A/ES-10/REV.1) (adopted 13 September 2024), [General Assembly 10th Emergency Special Session - Draft resolution \(Revision 1\) - Advisory opinion of the ICJ on the legal consequences arising from Israel’s policies and practices in OPT, including East Jerusalem, and from the illegality of Israel’s continued presence in OPT - \(A/ES-10/L.31/Rev.1\) - Adopted - Question of Palestine](#) accessed on 4 February 2026.

<sup>88</sup> ICJ Advisory Opinion, para 278

<sup>89</sup> See Section VII below.

*alternative suppliers and received positive responses from countries including South Africa and Russia, despite their complex political stances.”<sup>90</sup>*

16. Such opportunistic conduct not only undermines the integrity of South Africa’s professed commitment to international law and human rights but also constitutes a profound moral and legal failure by a State that has itself emerged from a history of international solidarity against illegality and oppression.
17. In 2025, coal shipments from South Africa to Israel are projected to reach their highest levels since 2017, with the country’s share of Israel’s seaborne coal imports expected to rise to more than triple its share in 2024.<sup>91</sup>
18. Glencore, a multinational commodity trading firm, is the principal private actor facilitating coal exports to Israel.<sup>92</sup> The company holds a significant equity stake in the Richards Bay Coal Terminal (RBCT) and relies on South Africa’s state-owned logistics provider, Transnet, for rail and port operations, including the transportation, handling and loading of coal.<sup>93</sup>
19. Glencore manages the marketing and international sale of coal extracted from several joint ventures and partnerships in South Africa. One such partner is African Rainbow Minerals (ARM), which according to its website holds a 20.2% stake in certain Glencore coal assets.<sup>94</sup> Although ARM has publicly denied any direct involvement in coal

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<sup>90</sup> Al Jazeera, *Colombia halts coal exports to Israel amid Gaza genocide* (28 July 2025) <https://www.aljazeera.com/video/quotable/2025/7/28/colombia-halts-coal-exports-to-israel-amid-gaza-genocide?utm> accessed 16 September 2025; Gad Lior, Ynetnews *The countries, companies boycotting Israel and the damage caused* (9 June 2024) <https://www.ynetnews.com/business/article/hyhtol7hr?utm> accessed 16 September 2025.

<sup>91</sup> Olamilekan Okebiorun, Business Insider Africa, *South Africa becomes Israel’s top coal supplier after Colombia cuts off shipment*

<sup>92</sup> Bond, *Factsheet - Glencore Coal and South African Exports to Israel*; and see London Mining Network, *Glencore among companies named in UN report on Israel’s economy of genocide* (10 July 2025), <https://londonminingnetwork.org/2025/07/glencore-among-companies-named-in-un-report-on-israels-economy-of-genocide/> accessed 17 October 2025.

<sup>93</sup> RBCT ownership information and reporting on Glencore’s role in South African coal exports. RBCT, *Who we are - Richards Bay Coal Terminal*, <https://rbct.co.za/who-we-are/?utm> accessed 12 November 2025; BusinessDay, *Glencore bets on Transnet turnaround after impairing R11bn from sa coal business*, (8 August 2024) <https://www.businessday.co.za/bd/companies/mining/2024-08-08-glencore-bets-on-transnet-turnaround-after-impairing-r11bn-from-sa-coal-business/?utm> accessed 12 November 2025.

<sup>94</sup> ARM, ARM Coal : “ARM Coal was formed in July 2006 in partnership with global diversified mining group Xstrata Coal South Africa, who later merged to form Glencore. The joint venture includes an economic interest of 20.2% in certain Glencore Operations in South Africa, Participating Coal Business (PCB)” <https://arm.co.za/arm-coal/> accessed on 4 February 2026.

shipments to Israel, its equity position entitles it to a share of Glencore’s coal revenues, including those derived from exports to Israeli markets.<sup>95</sup> Furthermore, ARM’s 2024 Annual Report admits that a joint venture with Glencore is “governed by a management committee controlled by ARM Coal.” As for exports, ARM brags of its “Access to Glencore SA’s interest and entitlement in the Richards Bay Coal Terminal.”<sup>96</sup>

20. Israel does not produce its own coal.<sup>97</sup> It is entirely dependent on imports to operate its coal-fired power plants and is therefore vulnerable to coordinated boycotts and embargoes.

## **B. South African Coal Exports**

21. Research conducted by the Centre for Research on Multinational Corporations (SOMO) (captured in its report titled *Powering Injustice*) affirms that a State violates its obligations under international law when it supplies energy resources that materially support the maintenance of an unlawful occupation or facilitate genocidal acts.<sup>98</sup> SOMO further concludes that coal exports to Israel must cease where the exporting State cannot reliably ensure that the resulting electricity will not be directed to illegal settlements.<sup>99</sup>
22. Between October 2023 and December 2025, the South African BDS Coalition and researchers assisting the organization have identified at least 17 vessels that loaded coal at Richards Bay and transported at least 2.99 million tonnes of coal to Israel (according to SARS data referenced above and in Annexure D). These shipments were unloaded at the ports of Hadera and Ashkelon in Israel, prompting wide-scale protests and public condemnation at Glencore and the DTIC offices.<sup>100</sup>

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<sup>95</sup> ARM and Glencore partnership statements and press coverage about RBCT shareholding and commercial relationships. ARM, *ARM Coal*, (ARM) <https://arm.co.za/arm-coal/?utm> accessed 12 November 2025; accessed 12 November 2025.

<sup>96</sup> ARM 2024 Annual Report, <https://arm.co.za/wp-content/uploads/2024/10/2024-Integrated-Annual-Report-1.pdf> accessed 12 November 2025.

<sup>97</sup> SOMO, *Powering Injustice*, 4.

<sup>98</sup> SOMO, *Powering Injustice*, 4: finding that foreign governments must “end the supply of fuel to Israel unless they can guarantee it will only be used for non-military purposes” and that States “should end the supply of coal to Israel where there is no means of ensuring it does not end up supplying electricity to settlements,” as such supply constitutes trade dealings that may entrench the unlawful situation.

<sup>99</sup> SOMO, *Powering Injustice*, 4.

<sup>100</sup> See section X: setting out various protest actions by civil society and trade union statements that have demanded an end to South Africa’s coal trade with Israel

23. Despite sustained criticism from civil society organisations and international observers, South Africa has not imposed restrictions on these exports. Notwithstanding South Africa’s own case against Israel before the ICJ, these exports enable Israel’s ongoing crimes: South African coal directly powers Israel’s energy grid, supplying electricity to the Israeli military and illegal settlements in the OPT.<sup>101</sup>
24. As reported by *PassBlue*, on 4 December 2023 the Chinese-built bulk carrier *KSL Salvador* departed Richards Bay carrying South African coal bound for Israel’s Orot Rabin power plant at Hadera.<sup>102</sup> Verified data from MarineTraffic confirms that the vessel berthed at Hadera in the Haifa port complex on 19 January 2024.<sup>103</sup> This voyage coincided with South Africa’s filing of its genocide application against Israel at the ICJ in December 2023 and preceded the Court’s 26 January 2024 Order noting a “plausible risk” of genocide.<sup>104</sup>
25. In January 2025, the Hague Group - a bloc of eight Global South States, including South Africa - issued a joint commitment to bar the entry of ships carrying fuel or weapons destined for the Israeli military.<sup>105</sup> Yet only a few weeks later, the bulk carrier *Cape Friendship* departed South Africa with a coal shipment which subsequently docked in Israel on 9 March 2025.<sup>106</sup> Another vessel the *Algoma Value* has transported coal from RBCT to Israel on three occasions in 2025 despite mounting international condemnation of Israel’s crimes.<sup>107</sup>
26. Despite calls for urgent restrictions of coal exports from South Africa to Israel, these exports have continued unabated. This is reflected in the shipment chronology contained in Annexure D below.

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<sup>101</sup> See Sections II and III below.

<sup>102</sup> See *PassBlue*, *Coal From South Africa Keeps Flowing to Israel Despite the ICJ Case*

<sup>103</sup> See *PassBlue*, *Coal From South Africa Keeps Flowing to Israel Despite the ICJ Case*

<sup>104</sup> *PassBlue*, *Coal From South Africa Keeps Flowing to Israel Despite the ICJ Case*.

<sup>105</sup> The Hague Group, ‘*Inaugural Joint Statement, The Hague Group, January 31, 2025*’ (31 January 2025) <https://www.tni.org/en/article/inaugural-joint-statement?utm> accessed 20 November 2025;

<sup>106</sup> The Hague Group, *Inaugural Joint Statement, The Hague Group, January 31, 2025* (31 January 2025) <https://www.tni.org/en/article/inaugural-joint-statement?utm> accessed 20 November 2025; Damilola Banjo, *PassBlue*, *Coal From South Africa Keeps Flowing to Israel Despite the ICJ Case*.

<sup>107</sup> See GroundUp, *Call for African Rainbow Minerals to stop selling coal to Israel*; Business and Human Rights Centre, *S. Africa: Richards Bay Coal Terminal fueling apartheid and genocide by supplying coal to Israel, group argues*, <https://www.business-humanrights.org/en/latest-news/s-africa-richards-bay-coal-terminal-fueling-apartheid-and-genocide-by-supplying-coal-to-israel-group-argues/> accessed 12 December 2025

### C. Shipment Chronology

27. The tables contained in Annexure D list the various shipments which have carried at least 2.99 million tonnes of coal to Israel since October 2023. The volume of exports is also contained in these tables.
28. The information contained in Annexure D highlights which ships have loaded coal in South Africa and transported it to Israel, despite the clear mandate of international law to stop all trade with Israel which materially supports its ongoing crimes in Palestine. It is based on open-source AIS vessel-tracking and verified port-call data. A methodology of how these shipments were tracked is also contained in Annexure D.
29. The continuation of these shipments, even after South Africa's participation in international efforts such as the Hague Group, underscores a clear dissonance between the State's declared foreign policy and its operational conduct. The persistence of these exports, despite mounting international condemnation and provisional measures from the ICJ as well as the ongoing destruction of life in Gaza, demonstrates not an absence of control but the active participation, or at minimum the acquiescence and dereliction of duty<sup>108</sup> of State organs in failing to regulate and prevent the coal trade with Israel in line with their legal obligations during a period in which Israel stands accused of genocide.
30. South African State organs and related departments and entities are instrumental in enabling the export of coal through the Port of Richards Bay, including shipments ultimately destined for Israel:
  - 30.1. Coal exported through the RBCT is transported from inland coalfields primarily in Mpumalanga and KwaZulu Natal to the port via the dedicated heavy haul coal export railway operated by Transnet Freight Rail.<sup>109</sup>;

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<sup>108</sup> In practical terms, continuing resource trade with a government facing credible allegations of genocide - without due diligence, parliamentary oversight, or human rights impact assessments - can constitute gross negligence or wilful misconduct in circumstances where South Africa is under legal obligation to end its complicity in Israel's crimes. This fits squarely within the scope of dereliction of duty, particularly where officials are aware of the risks but choose not to act.

<sup>109</sup> Transnet Freight Rail, *Company Overview* (TFR, 2025) <https://www.transnetfreightrail.co.za/Website/overview.html?utm> accessed 28 September 2025 and see Richards Bay Coal Terminal (Pty) Ltd, 'Operations' (RBCT) <https://rbct.co.za/operations/> "A cooperative

- 30.2. The Transnet National Ports Authority, as the state-owned harbour authority, manages the port infrastructure at the Port of Richards Bay and is responsible for vessel traffic management and port operations within the harbour.<sup>110</sup>; and
- 30.3. Government departments including the Department of Mineral Resources and Energy, the Department of Trade, Industry and Competition, and the Department of Transport exercise regulatory, licensing and policy-making functions that govern the broader legal framework within which coal extraction, transport and export take place.
31. South Africa’s export framework therefore gives the State considerable practical leverage because RBCT is the country’s principal coal export terminal and publicly reported coal shipments to Israel have departed from Richards Bay<sup>111</sup> and arrived at the ports of Hadera and Ashkelon.<sup>112</sup> The RBCT itself confirms that once coal has been loaded onto a vessel that “*the vessel and its cargo is placed in the hands of Transnet National Ports Authority*”. The National Ports Act confirms that the Authority may “*control the entry, stay, movement and operations of vessels in ports*” and “*regulate the loading, unloading and storage of cargo*”.<sup>113</sup>
32. The RBCT exports coal exclusively<sup>114</sup>, therefore evidence of ships loading coal at the RBCT and then proceeding to the ports of Hadera and Ashkelon is confirmation that South African coal has been sold to Israel.
33. Although, at the time of preparing this report, there was no access to commercial contracts, shipping manifests or classified export permits or licenses, as stated, this report relies on open-source vessel-tracking data and publicly available information

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*relationship exists between RBCT and Transnet Freight Rail (“TFR”), which owns and operates the railway line linking the coal mines to the Port”*

<sup>110</sup> Transnet Port Terminals, *About Us* (TPT, 2025) <https://www.transnetportterminals.net/Website/about-us.html> accessed 28 September 2025. Also see Transnet National Ports Authority, *What We Do*, (TNPA, 2025) <https://www.transnetnationalportsauthority.net/Website/what-we-do.html> accessed 28 September 2025. And see Africa Ports & Ships, *Port of Richards Bay*, <https://africaports.co.za/richards-bay/?utm> accessed on 15 March 2026.

<sup>111</sup> Richards Bay Coal Terminal (Pty) Ltd, ‘*Who We Are*’ (RBCT) <https://rbct.co.za/who-we-are/?utm> accessed 11 March 2026

<sup>112</sup> See PassBlue, ‘*Coal From South Africa Keeps Flowing to Israel Despite the ICJ Genocide Case*’

<sup>113</sup> Richards Bay Coal Terminal (Pty) Ltd, ‘*Operations*’ (RBCT) <https://rbct.co.za/operations/?utm> accessed 11 March 2026 and see National Ports Act 12 of 2005 s 11(1) [https://www.gov.za/sites/default/files/gcis\\_document/201409/a12-051.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a12-051.pdf) accessed on 11 March 2026.

<sup>114</sup> RBCT, *About Us*, <https://rbct.co.za/who-we-are/> accessed on 15 March 2026

including trade data to create the factual chain of coal exports.<sup>115</sup> The methodology used to create this section can be found in Annexure D and in the footnotes cited herein.

34. When viewed collectively, this information demonstrates that coal exports from South Africa to Israel occur through a transport and export system that is materially dependent on State-regulated infrastructure, State owned logistics networks and statutory port authority powers. In circumstances where these exports are publicly traceable and widely reported, the relevant organs of State cannot plausibly claim ignorance of their occurrence. Under both international legal standards and South African jurisprudence, constructive knowledge and reasonable foreseeability are sufficient to trigger duties to prevent complicity. In the present context, continued coal exports to Israel in the face of well documented allegations of genocide and grave international crimes can no longer be characterised as neutral commercial activity but constitute high risk engagements that require immediate regulatory intervention.

#### **D. State Responsibility**

35. Organs of State have a constitutional and statutory duty to act lawfully and in accordance with both local and international legal norms and obligations.<sup>116</sup> The continued facilitation of coal exports that contribute and materially support grave international crimes must be halted immediately.
36. Being the current largest exporter of coal to Israel, South Africa's export volumes demonstrate the scale of its involvement and potential complicity in international war crimes and crimes against humanity.<sup>117</sup>

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<sup>115</sup> See Disclaimer above

<sup>116</sup> See Sections VIII and X below.

<sup>117</sup> Romana Rubeo, Palestine Chronical, *South Africa and Palestine's Struggle: Seven Takeaways from FloodGate Interview with Na'eem Jeenah*, (23 April 2025) (quoting Na'eem Jeenah: '*after Colombia stopped exporting coal to Israel, South Africa is now the largest exporter of coal to Israel*') <https://www.palestinechronicle.com/south-africa-and-palestines-struggle-seven-takeaways-from-floodgate-interview-with-naeem-jeenah/?utm> accessed 30 September 2025 and South African BDS Coalition, *End South Africa's complicity in genocide – Now is the time for Action: Energy Embargo Now!*, (media statement, 19 August 2025) [https://groundup.org.za/media/uploads/documents/250819\\_dtic\\_protest\\_media\\_statement.pdf?utm](https://groundup.org.za/media/uploads/documents/250819_dtic_protest_media_statement.pdf?utm) accessed 18 November 2025 stating that "*in the first half of this year South Africa has been the largest exporter of coal which goes directly into the Israeli electricity grid*".

37. As will be detailed in the below sections, under international and domestic law, the State's responsibility under these circumstances is not limited to refraining from direct participation in unlawful conduct but extends to regulating and controlling the conduct of private actors within its jurisdiction which materially assist the ongoing crimes committed by Israel. Where private corporations export coal using State-regulated infrastructure, licences and permits, and where such exports foreseeably and materially contribute to internationally wrongful acts including genocide, apartheid and unlawful occupation, the State is under a positive legal obligation to utilise all available legal and regulatory mechanisms to halt, suspend or condition those exports. The failure of State officials to exercise these powers, despite knowledge of the serious risk of complicity in international crimes, may itself constitute unlawful conduct engaging both State responsibility and potential individual liability for dereliction of constitutional and international legal duties.
38. Having established the export volumes and principal actors, the next section of this report explains how these energy inputs are integrated into Israel's national electricity system and how that integration entrenches the unlawful occupation through discriminatory access in the OPT.

## **II. ISRAELI ELECTRICITY INFRASTRUCTURE: THE USE OF COAL IN SUSTAINING APARTHEID AND ENERGY DISCRIMINATION AGAINST THE PALESTINIAN PEOPLE**

### **A. The Israeli Electricity Grid**

39. Israel produces electricity using natural gas, coal-fired power and renewable sources, primarily wind and solar. Israel does not produce its own coal but relies on imports for coal-powered generation.<sup>118</sup>
40. South African coal directly contributes to electricity generation that serves illegal Israeli settlements in the OPT and sustains the broader discriminatory regime imposed on the Palestinian population.<sup>119</sup>

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<sup>118</sup> See SOMO, *Powering Injustice*. 3-4

<sup>119</sup> SOMO, *Powering Injustice* and see Dr. Wilde's Expert Legal Opinion on Third State's Obligations when trading with Israel

41. Once extracted from South African mines and transported to the port at Richards Bay for export, the coal is shipped to Israel where it enters the national electricity grid predominantly operated by the IEC.<sup>120</sup> The IEC holds the primary licence for generation, transmission and distribution of electricity within Israel.<sup>121</sup>
42. According to the IEC's Annual Financial Report ending September 2025, electricity generated from coal made up 26.2% of Israel's electricity capacity in 2025 and 33.5% in September 2024.<sup>122</sup> This is an increase from 2022 where coal accounted for 22% of Israel's total electricity generation.<sup>123</sup>
43. Electricity supplied within a national transmission grid cannot be traced from a specific generator to a specific end user once it enters the system. This is because electricity generated by multiple power plants is combined within a single interconnected network and becomes physically indistinguishable as it flows through that grid.<sup>124</sup> Once electricity is injected into the grid, it forms part of a pooled system in which power from all generation sources contributes to a total available supply rather than being delivered as a traceable unit from a specific fuel source to a specific consumer.<sup>125</sup>

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<sup>120</sup> SOMO, *Powering Injustice*, 9: "Electricity generated by coal or gas-fired plants, or by solar or wind farms, enters the national grid and is distributed to end users by the Israel Electric Corporation (IEC), or by private distribution companies using the IEC grid."

<sup>121</sup> SOMO, *Powering Injustice*, 9

<sup>122</sup> IEC, *Financial Reports For the Nine and Three Months Ended September 30, 2025*, [https://links.sgx.com/FileOpen/The\\_Israel\\_Electric\\_Co-Financial\\_Reports\\_September\\_30\\_2025.ashx?App=Announcement&FileID=869314](https://links.sgx.com/FileOpen/The_Israel_Electric_Co-Financial_Reports_September_30_2025.ashx?App=Announcement&FileID=869314) accessed on 15 March 2026

<sup>123</sup> Government of Israel, *Israel's First Biennial Transparency Report and Fourth National Communication Report 2025* (UNFCCC 2025) 13: "Renewables accounted for 9.8% of power generation in 2022, while natural gas accounted for 68% and coal for 22%." [https://unfccc.int/sites/default/files/resource/Israel%27s%20first%20Biennial%20Transparency%20Report%20and%20fourth%20National%20Communication%20Report%202025%20%287%29%20%282%29\\_comp\\_ressed.pdf](https://unfccc.int/sites/default/files/resource/Israel%27s%20first%20Biennial%20Transparency%20Report%20and%20fourth%20National%20Communication%20Report%202025%20%287%29%20%282%29_comp_ressed.pdf) accessed 25 November 2025.

<sup>124</sup> Environmental Science & Technology (American Chemical Society), *Life Cycle Assessment and Grid Electricity: What Do We Know and What Can We Know?* (4 February 2010), "while it is straightforward to measure electricity usage, it is impossible to trace the electricity generated in a given power plant through the transmission and distribution system to a specific electricity consumer." [Life Cycle Assessment and Grid Electricity: What Do We Know and What Can We Know? | Environmental Science & Technology](#) accessed on 18 February 2026, *Life Cycle Assessment and Grid Electricity: What Do We Know and What Can We Know?*, "

<sup>125</sup> GHG Management Institute, *You are not buying green, or really any, electrons!* (7 July 2022) "on a grid it is impossible for a single generator to supply electricity to a specific consumer" and "All that generators and grid operators can do is toss more or less energy onto the grid... and let everyone collectively tap into the resulting electric field." <https://ghginstitute.org/2022/07/07/you-are-not-buying-green-or-really-any-electrons/?utm> accessed on 18 February 2026

44. It is therefore technically impossible to isolate or identify electricity generated from a particular shipment of coal once that electricity has entered a national or singular grid, as all generated electricity becomes part of an integrated and interchangeable supply serving all connected users.<sup>126</sup> In practical terms this means that each additional unit of electricity generated from imported coal increases total system capacity within the grid and supports the functioning of the electricity network as a whole.<sup>127</sup>
45. The Israeli energy balance<sup>128</sup> for 2023 shows that Israel imported 121178 TJ of the total 132377 TJ of the coal used as primary energy in the country. Of this, electrical plants consumed 126518 TJ of coal. This indicates that coal generated electricity in Israel is highly dependent on coal imports.<sup>129</sup>
46. In addition to Israel's structural reliance on imported coal for electricity generation, trade statistics demonstrate that South African coal forms part of a relatively limited bilateral trade flow when measured against South Africa's overall coal export market.
47. According to Trade Map data for exports classified under Harmonized System (HS) code 2701 (coal), South African coal exports to Israel were valued at approximately US\$102,677,000 in 2021, US\$177,236,000 in 2022, US\$78,849,000 in 2023, US\$73,001,000 in 2024 and US\$158,798,000 in 2025.<sup>130</sup> Over this five year period,

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<sup>126</sup> GHG Management Institute, *You are not buying green, or really any, electrons*.

<sup>127</sup> Olivier Corradi, Electricity Maps, *From power markets to reality: Does the marginal power plant really exist?* (24 June 2025) “no one can mark produced electrons to observe where they end up.” [From power markets to reality: Does the marginal power plant really exist? - Electricity Maps](#) accessed on 18 February 2026.

<sup>128</sup> An energy balance is a high-level statistical interpretation of how energy flows through the country

<sup>129</sup> United Nations: Department of Economic and Social Affairs, *Energy Balances*, 2023, p158-159 [https://www.un-ilibrary.org/content/books/9789211546507/read?xmlPath=%2Fdeliver%2Ffulltext%2F9789211546507%2F9789211546507\\_web.pdf&docserverPath=%2Fdocserver%2Ffulltext%2F9789211546507%2F9789211546507\\_web.pdf&flowpaperKey=%247d63aab3787e34375b1&flowpaperS3BaseUrl=https%3A%2F%2Fmedia.un-ilibrary.org%2Fflowpaper](https://www.un-ilibrary.org/content/books/9789211546507/read?xmlPath=%2Fdeliver%2Ffulltext%2F9789211546507%2F9789211546507_web.pdf&docserverPath=%2Fdocserver%2Ffulltext%2F9789211546507%2F9789211546507_web.pdf&flowpaperKey=%247d63aab3787e34375b1&flowpaperS3BaseUrl=https%3A%2F%2Fmedia.un-ilibrary.org%2Fflowpaper) accessed on 8 March 2026. And see IEA, *Understanding and using the Energy Balances*, <https://www.iea.org/commentaries/understanding-and-using-the-energy-balance> accessed on 8 March 2026.

<sup>130</sup> International Trade Centre, *Trade Map: Bilateral Trade Data South Africa Exporting Coal (HS 2701) to Israel* (Trade Map Database) [https://www.trademap.org/Bilateral\\_TS.aspx?nvpm=1%7c710%7c%7c376%7c%7c27%7c%7c%7c4%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1%7c1](https://www.trademap.org/Bilateral_TS.aspx?nvpm=1%7c710%7c%7c376%7c%7c27%7c%7c%7c4%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1%7c1) accessed 9 March 2026.

exports to Israel represented between approximately 1.1% and 3% of South Africa's total HS 2701 coal exports by value.<sup>131</sup>

48. These figures demonstrate that the Israeli market represents a relatively small share of South Africa's coal export portfolio, thereby limiting the potential economic disruption associated with the suspension or restriction of coal exports to Israel but at the same time coal generated electricity in Israel is highly dependent on coal imports from South Africa. This makes the decision to restrict these exports a significant pressure point South Africa can use to pressure Israel to stop the ongoing genocide and crimes against humanity.
49. The IEC constructs, operates and maintains power generation facilities, substations and the full transmission and distribution network serving both Israel and the OPT.<sup>132</sup> According to a 2017 report, Israel's electricity production sector relies significantly on steam units "*especially coal-driven*" and combined cycle units and according to the Powering Past Coal Alliance, coal made up 30% of Israel's electricity production.<sup>133</sup>
50. Reuters records that South Africa has become the largest exporter of coal to Israel since Colombia imposed a complete ban of coal exports in August 2025.<sup>134</sup>
51. Even though coal generated electricity is secondary to electricity generated from natural gas, electricity produced from imported coal still increases the total electricity available within Israel's integrated national grid and reduces pressure on other generation sources,

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<sup>131</sup> World Customs Organization, *Harmonized System Classification Handbook* (WCO 2018) [https://www.wcoesarocb.org/wp-content/uploads/2018/07/2.-WCO\\_HS-CLASSIFICATION-HANDBOOK.pdf](https://www.wcoesarocb.org/wp-content/uploads/2018/07/2.-WCO_HS-CLASSIFICATION-HANDBOOK.pdf) accessed 9 March 2026; and see World Customs Organization, *Harmonized System Heading 2701 – Coal* (WCO Trade Tools) <https://www.wcotradetools.org/en/harmonized-system> accessed 9 March 2026. And See ITC, *Trade Map: Bilateral Trade Data South Africa Exporting Coal*

<sup>132</sup> SOMO, *Powering Injustice*, 11 and see the IEC's website stating: "*IEC is responsible for all elements of the electricity system, including generation, transmission and distribution, and is the dominant and critical provider of the national electricity system in Israel.*" <https://iec-global.com/about-us> accessed 9 January 2026

<sup>133</sup> Dan Weinstock and Meir Elran, *Securing the Electrical System in Israel: Proposing a Grand Strategy*, (Institute for National Security Studies Memorandum No. 165, June 2017), 39 <https://www.inss.org.il/wp-content/uploads/2017/06/memo165.pdf> accessed 30 September 2025; and see Powering Past Coal Alliance, Israel: <https://poweringpastcoal.org/members/israel/> accessed on 4 February 2026.

<sup>134</sup> News25, *SA is now Israel's largest coal supplier, following Colombia's ban* (18 December 2025) [SA is now Israel's largest coal supplier, following Colombia's ban | News24](https://www.news24.com/SA-is-now-Israel-s-largest-coal-supplier-following-Colombia-s-ban) accessed on 2 February 2026.

thereby freeing capacity across the system for all State functions including military and illegal settlement activity.<sup>135</sup>

52. Israel's electricity grid extends to the unlawfully occupied West Bank and East Jerusalem.<sup>136</sup> Electricity generated from coal sustains Israel's military operations, powers illegal settlements and supports the broader system of apartheid and genocide inflicted on the Palestinian people. The Israeli military cannot operate in the manner that it has without a consistent supply of electricity – power is essential to operate the extensive surveillance networks that monitor and control Palestinian movement, including biometric surveillance technology<sup>137</sup>, facial recognition cameras and population databases.<sup>138</sup> Electricity also enables the functioning of military installations, command centres and the infrastructure that protects and sustains illegal settlements.
53. South African coal must not be allowed to contribute to and enable Israel and the IDF's crimes against humanity. The fact that Israel has been accused of committing genocide and that international law recognizes that Israel's illegal occupation must be dismantled as rapidly as possible creates a foreseeable and material risk that the coal is enabling military operations tied to those abuses.<sup>139</sup>
54. Once produced in coal-fired or gas-fired power stations, electricity in Israel is fed into the national grid operated by the IEC which is then distributed by the IEC or by licensed private distributors using the same grid infrastructure.<sup>140</sup>

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<sup>135</sup> Olivier Corradi, Electricity Maps, *From power markets to reality: Does the marginal power plant really exist?* ; *Life Cycle Assessment and Grid Electricity: What Do We Know and What Can We Know?*, “

<sup>135</sup> GHG Management Institute, *You are not buying green, or really any, electrons*

<sup>136</sup> SOMO, *Powering Injustice*, 9.

<sup>137</sup> See Emelie Andersin, Lieber Institute, *Military Use of Biometrics Series – Israel's Use of AI-DSS and Facial Recognition Technology: The Erosion of Civilian Protection in Gaza* (24 October 2025) : “Israel has used the battlefield to actively experiment and use artificial intelligence (AI)-decision support systems (AI-DSS) to compile potential targets, also described as “kill lists.” The Israel Defence Forces (IDF) have established a large-scale facial recognition program at various checkpoints in Gaza. It is reportedly used to conduct mass surveillance and collect biometric data from Palestinians without their knowledge or consent.”

<https://lieber.westpoint.edu/israels-use-ai-dss-facial-recognition-technology-erosion-civilian-protection-gaza/> accessed on 11 March 2026

<sup>138</sup> See Amnesty International, *Israel's Occupation of Palestinian Territory*, <https://www.amnesty.org/en/projects/israels-occupation-of-palestinian-territory/> accessed on 11 March 2026 and see Amnesty International, *Israel/OPT: Israeli authorities are using facial recognition technology to entrench apartheid*, (2 May 2023) <https://www.amnesty.org/en/latest/news/2023/05/israel-opt-israeli-authorities-are-using-facial-recognition-technology-to-entrench-apartheid/> accessed on 11 May 2023.

<sup>139</sup> See Sections IX and X below.

<sup>140</sup> SOMO, *Powering Injustice*, 9.

55. Independent studies, including the SOMO *Powering Injustice* report, show that Israel’s energy network is aligned with its settlement and military policy. The grid is not simply infrastructure for civilian use: its layout and usage reflect demographic and territorial control, with high-capacity lines servicing industrial centres and military-linked facilities adjacent to the Green Line.<sup>141</sup>
56. The electricity infrastructure controlled by Israel in Palestine, particularly in Gaza, functions as a mechanism of control.<sup>142</sup> Israel’s control over access to fuel, spare parts and transmission lines transforms electricity into a political weapon, wielded to punish, reward or coerce Palestinian communities.<sup>143</sup> Palestinians have no control over their own energy sources. These dynamics undermine Palestinian autonomy and render essential infrastructure a key site of domination.<sup>144</sup>
57. The national grid also serves illegal Israeli settlements in the West Bank (including East Jerusalem) and the occupied Syrian Golan Heights, treating these territories operationally as extensions of Israel’s borders even though these settlements are built on OPT. Israeli administrative practice, for example Israeli officials referring to the West Bank and OPT as “*Judea and Samaria*” reinforces that integration.<sup>145</sup>

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<sup>141</sup> SOMO, *Powering Injustice*, 11; Amnesty International, *Israel’s Apartheid Against Palestinians*, (January 2022) <https://www.amnestyusa.org/wp-content/uploads/2022/01/Full-Report.pdf> accessed 29 September 2025 - Report discussing discriminatory infrastructure and resource allocation in Israeli-occupied territories.

<sup>142</sup> See Emelie Andersin, Lieber Institute, *Military Use of Biometrics Series – Israel’s Use of AI-DSS and Facial Recognition Technology: The Erosion of Civilian Protection in Gaza* and see Amnesty International, *Israel/OPT: Israeli authorities are using facial recognition technology to entrench apartheid*,

<sup>143</sup> Amnesty International, *Israel’s Apartheid Against Palestinians*; see Zachary Cuyler, *Power Struggles: Energy as a Weapon of War, Domination and Resistance in Palestine*, (MERIP, 30 January 2025) below.

<sup>144</sup> Zachary Cuyler, *Power Struggles: Energy as a Weapon of War, Domination and Resistance in Palestine*, (MERIP, 30 January 2025): “Israel’s capacity to almost instantaneously cut power to the 2.2 million people living in the Gaza Strip is not unprecedented. It is the result of a century of policy and the construction of a centralized, fossil-fueled, Israeli-controlled energy system. Palestinian energy dependence is integral to Israel’s domination of Palestinian life. It constitutes a key tool for the practices of exploitation, expropriation, siege, colonization and removal to which Palestinians have long been subjected. As Omar Jabary Salamanca has argued, through its control over electricity and other essential services, “the State of Israel is able to create the possibilities for life, but also to induce failure and death.” <https://www.merip.org/2025/01/power-struggles-energy-as-a-weapon-of-war-domination-and-resistance-in-palestine/> accessed 25 November 2025.

<sup>145</sup> SOMO, *Powering Injustice*, 11: “The director of IEC has spoken plainly about the incorporation of settlements into the Israeli national grid while discussing power outages in May 2023: “The outages are the result of poor maintenance of the electric grid, as well as a failure to separate the grid in areas that serve Jewish residents in Judea and Samaria, from the parts situated within the Palestinian Authority. There is just one grid...The residents of Judea and Samaria are no less important than any other resident of the country, and they need to receive a quality power supply in accordance with their needs.””

58. It is also relevant that Israeli energy policy itself anticipates a transition away from coal-fired electricity generation in the near future.<sup>146</sup> Israeli authorities have publicly committed to the phased closure or conversion of coal-fired power stations and the reduction of coal use in electricity generation as part of a broader transition toward natural gas and renewable energy sources.<sup>147</sup> The Israeli government has indicated that coal-based electricity generation is expected to be largely phased out during the present decade.
59. In this context, restrictions on South African coal exports may not have a significant effect on the coal trade industry in South Africa. If Israel’s own national energy strategy calls for the gradual elimination of coal-fired generation, the long-term demand for imported coal would decline regardless of South African policy choices. The economic disruption associated with restricting exports to Israel is therefore structurally limited.<sup>148</sup>

## **B. Discriminatory Allocation and Collective Punishment**

60. Palestinians and settlers are separated in a discriminatory system that benefits and privileges settlers. Palestinians are subjected to a myriad of discriminatory laws, policies and practices, leading to pervasive violation and denial of their human rights.<sup>149</sup> This can be observed through Israel’s operation of the electricity grid in OPT.
61. The extension of Israel’s electricity grid into the OPT (including the West Bank and East Jerusalem), accompanied by the construction of substations and power lines, deepen control over Palestinian territory.<sup>150</sup> These installations are routinely routed through settlement areas while bypassing Palestinian villages, reinforcing entrenched patterns of segregation and exclusion.<sup>151</sup>

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<sup>146</sup> International Energy Agency, *Israel Energy Profile* (IEA) <https://www.iea.org/countries/israel> accessed 9 March 2026 and see State of Israel, *National Action Plan on Climate Change 2022 – 2026*, [https://www.gov.il/BlobFolder/reports/implementation-plan/en/climate\\_change\\_and\\_energy\\_efficiency\\_implementation-plan-en.pdf?utm](https://www.gov.il/BlobFolder/reports/implementation-plan/en/climate_change_and_energy_efficiency_implementation-plan-en.pdf?utm) accessed on 9 March 2026

<sup>147</sup> State of Israel, *National Action Plan on Climate Change 2022 – 2026*

<sup>148</sup> Israel Electricity Authority, *Report on the State of the Electricity Sector 2023/24* [https://www.gov.il/BlobFolder/generalpage/dochmeshek/he/Files\\_doch\\_meshek\\_hashmal\\_2023\\_24\\_en\\_Pua\\_Report.pdf?utm](https://www.gov.il/BlobFolder/generalpage/dochmeshek/he/Files_doch_meshek_hashmal_2023_24_en_Pua_Report.pdf?utm) accessed 9 March 2026

<sup>149</sup> United Nations Human Rights, Office of the High Commissioners report titled *Israel’s discriminatory administration of the occupied West Bank, including East Jerusalem* (7 January 2026), para 98.

<sup>150</sup> See SOMO, *Powering Injustice* and Amnesty International, *Israel’s Apartheid Against Palestinians*

<sup>151</sup> See Amnesty International, *Israel’s Apartheid Against Palestinians*.

62. This integrated energy system has far-reaching legal, political and humanitarian consequences. The same grid that powers Israel's economy, illegal settlements and military forces simultaneously entrench unequal access to electricity across the OPT, turning this very infrastructure into a tool of colonial control and domination.<sup>152</sup>
63. Amnesty International's report titled *Israel's Apartheid Against Palestinians*<sup>153</sup> documents the egregious denial of basic human rights to Palestinians, including the denial of electricity which affects everything from healthcare, communication systems and infrastructure necessary for economic development, including the development of their industrial and agricultural activities and other activities necessary to enjoy their rights to an adequate standard of living, including access to water, food, adequate housing, health and work. The report further documents how illegal Israeli settlements are connected to the electricity grid but Palestinian villages are routinely denied the same access.
64. The political function of electricity is clearly visible in the repeated Israeli bombardment of Gaza's power infrastructure, not just post-October 2023 but since Gaza has been under illegal military siege and occupation starting in 2005.<sup>154</sup> During military assaults, Israel has consistently targeted Gaza's power plant and energy distribution lines, causing near-total blackouts and pushing hospitals, sanitation systems and water facilities to the brink of collapse. These blackouts cannot be characterised as incidental; they form part of a deliberate strategy to intensify humanitarian crises and destabilise life for Palestinians in Gaza.<sup>155</sup>

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<sup>152</sup> SOMO, *Powering Injustice*, 9 - 11.

<sup>153</sup> Amnesty International, *Israel's Apartheid Against Palestinians*

<sup>154</sup> Cuyler, *Power Struggles*: "During fighting between Israel and Hamas in 2008, Israel cut off Gaza's fuel supply entirely, damaged power lines extending into Gaza from both Israel and Egypt and restricted the entry of spare parts required to maintain and repair the power plant. The plant's fuel storage tanks were targeted again in the 2014 assault on Gaza. In 2021's brief war, Israeli authorities restricted the supply of electricity from the IEC to Gaza, and the IDF bombed a recently constructed solar facility. Israel again reduced the flow of fuel into Gaza in late 2021 and 2022, restricting the power plant's ability to generate electricity."

<sup>155</sup> Cuyler, *Power Struggles*: "In the post-October 7 war on Gaza, the denial of energy supplies and targeting of energy infrastructure by Israeli forces occurred as part of a broader campaign to render the strip uninhabitable. If it holds, the current cease-fire will ostensibly require that Israeli authorities allow large quantities of fuel into the strip alongside other aid. But this provision is precisely the problem: Israel will likely retain control over the flow of energy into Gaza, and Palestinians in Gaza will therefore remain dependent and vulnerable to punishing siege tactics. Even if the end of this war brings a return to the two-state formula, rather than formal annexation, it is impossible to imagine meaningful Palestinian statehood under such conditions."

65. However, illegal Israeli settlements in the OPT are routinely connected to the national electricity grid pursuant to government decisions. Even settler outposts that are unlawful under Israel's own legislation are connected, with the Director-General of the Prime Minister's Office describing electricity supply to illegal settlements as a "*basic living condition*".<sup>156</sup> But not for Palestinians.
66. The selective connection of unlawful settlements while denying equivalent access to Palestinian communities violates Israel's obligations under international humanitarian law, particularly Articles 43 and 55 of the Hague Regulations,<sup>157</sup> which require the occupying power to administer the territory for the benefit of the occupied population. By prioritising illegal settlers and failing to meet the needs of the occupied Palestinian population, Israel contravenes its duty to ensure equitable access to essential civilian infrastructure. Israel routinely limits the provision of electricity to Palestinians reflecting a broader policy of entrenched structural discrimination. While Israeli authorities ensure uninterrupted supply to settlers in defiance of international law, Palestinian communities in adjacent areas face frequent power shortages, delayed repairs and restrictions on infrastructure development.<sup>158</sup>
67. Because there is no independent Palestinian electricity grid, unequal energy allocation is systemic. This entrenches a hierarchy of privilege favouring illegal settlers on OPT

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<sup>156</sup> SOMO, *Powering Injustice*, 11: "Even so-called outposts – settlements which are considered illegal under Israeli law – can be connected to the grid as this is a "*basic living condition*" according to Ronen Peretz, Director-General of the Prime Minister's Office."

<sup>157</sup> Regulations Concerning the Laws and Customs of War on Land annexed to the Hague Convention (IV) Respecting the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) 36 Stat 2277, TS 539, arts 43 and 55. Article 43 provides: '*The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.*' Article 55 provides: "*The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties and administer them in accordance with the rules of usufruct.*" See also International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion, 9 July 2004) [2004] ICJ Rep 136 [127] (affirming the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory).

<sup>158</sup> Amnesty International, *Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity* - documenting how Israeli authorities maintain a system of structural discrimination against Palestinians, including the unequal distribution of essential services like electricity. Also see United Nations Human Rights, Office of the High Commissioners Thematic Report, *Israel's discriminatory administration of the occupied West Bank, including East Jerusalem* (7 January 2026) detailing Israel's policies of discrimination and apartheid, <https://www.ohchr.org/sites/default/files/documents/countries/israel/20260105-thematic-report-israel-discrimin.pdf> accessed on 28 January 2026

while maintaining Palestinian dependency on Israeli-controlled electricity as an instrument of economic subjugation, political coercion and territorial fragmentation.

68. In the West Bank, this coercive framework is compounded by administrative fragmentation imposed through occupation-based governance structures. The Palestinian Authority (the governing body in the West Bank) does not control an independent electricity grid and must rely on Israeli approval for purchasing power and developing infrastructure.<sup>159</sup> This structural dependency obstructs Palestinian development and ensures long-term vulnerability.
69. In its 2023 financial report, the IEC confirmed that “*electricity that is generated by the IEC and by the private electricity producers, is transferred by the IEC through its transmission grid. The transmission grid is deployed throughout the State of Israel and the territories that have been subject to its rule since June 1967 (East Jerusalem and the West Bank).*”<sup>160</sup>
70. The forced dependency of Palestinians on the Israeli electricity grid is a lever of control. Israel’s frequent withholding of electricity to Gaza and parts of the West Bank functions as collective punishment, in violation of Article 33 of the Fourth Geneva Convention.<sup>161</sup> Electricity blackouts are repeatedly used to pressure Palestinian authorities and enforce compliance with unlawful occupation policies, including during the ongoing military operations in Gaza.<sup>162</sup>

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<sup>159</sup> Cuyler, *Power Struggles*: “as Adam Hanieh notes, the 1994 Paris Protocol, which regulated the PA’s relationship with Israel, put Israel in “complete control over all external borders.” Israel controlled the importation of fuel destined for Gaza’s power plant and the rest of the occupied territories. According to the World Bank, the terminals where the West Bank and Gaza received fuel lacked storage facilities, rendering “Palestinians dependent on a day-to-day supply from Israeli companies” and therefore extremely vulnerable to fuel cutoffs”.

<sup>160</sup> Israel Electric Corporation, *Annual Report 2023* (2024) 48, [https://s25.q4cdn.com/158866601/files/doc\\_financials/2023/ar/annual-financial-report-and-statements-for-2023-english.pdf](https://s25.q4cdn.com/158866601/files/doc_financials/2023/ar/annual-financial-report-and-statements-for-2023-english.pdf) accessed 30 September 2025.

<sup>161</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Fourth Geneva Convention) art 33: “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Reprisals against protected persons and their property are prohibited.”

<sup>162</sup> See Human Rights Watch, *Israel: Gaza power cut would violate laws of war*, (21 December 2005) <https://www.hrw.org/news/2005/12/21/israel-gaza-power-cut-would-violate-laws-war> accessed 31 October 2025 read with Geneva Convention (IV) Article 33; and see, United Nations Human Rights, Office of the High Commissioners report titled *Israel’s discriminatory administration of the occupied West Bank, including East Jerusalem* (7 January 2026).

71. The IEC's own admissions confirm that the grid's reach is both physical and political: it delivers reliable power to illegal Israeli settlements while large parts of the West Bank and Gaza remain energy deprived. By extending services to illegal settlements, the IEC normalises their permanence and integrates these illegal settlements into Israel's State systems, thereby entrenching the illegal occupation and undermining the Palestinian's right to self-determination.<sup>163</sup>
72. The IEC has been candid about this integration as reported in SOMO's report *Powering Injustice*. Commenting on power outages in May 2023, its director explained: "*The outages are the result of poor maintenance of the electric grid, as well as a failure to separate the grid in areas that serve Jewish residents in Judea and Samaria, from the parts situated within the Palestinian Authority. There is just one grid...The residents of Judea and Samaria are no less important than any other residents of the country, and they need to receive a quality power supply in accordance with their needs.*"<sup>164</sup> The 'residents' in 'Judea and Samaria' are settlers residing unlawfully in the OPT.
73. The IEC's unified grid, spanning both Israel and occupied territory, constitutes a form of 'infrastructural annexation'. It consolidates *de facto* sovereignty over Palestinian lands by making their essential services dependent on Israeli systems. This not only cements the settlements' permanence but also erodes the economic foundations necessary for a future Palestinian state.<sup>165</sup>
74. This deliberate integration of settlers into national utility networks ensures that benefits of citizenship, such as energy security, State maintenance and infrastructure investment, are reserved for one group (Israelis and illegal settlers) while being systematically denied to the occupied Palestinian population, thereby institutionalizing discriminatory treatment. The differential treatment in access to such an essential resource exemplifies how economic and infrastructural control functions as a tool of colonial domination and apartheid.<sup>166</sup>

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<sup>163</sup> See SOMO, *Powering Injustice* and Amnesty International, *Israel's Apartheid Against Palestinians: Cruel system of domination and crime against humanity*.

<sup>164</sup> SOMO, *Powering Injustice*, 11.

<sup>165</sup> SOMO, *Powering Injustice*.

<sup>166</sup> SOMO, *Powering Injustice*. Amnesty International, *Israel's Apartheid Against Palestinians*.

75. The Israeli State treats settlers occupying Palestinian land illegally as ordinary Israeli citizens. As recorded in *Powering Injustice*, one settler captured the mindset in a media interview, stating: “*We ‘settlers’ are Israelis, and we enjoy the democratic support of the country. Some people assert that being outside the Green Line makes us illegitimate. But the fact is that I pay Israeli property taxes, get my electricity from the national grid, use the national health care system and my kids are taught the Israeli school curriculum in school.*”<sup>167</sup>
76. Human rights experts have increasingly recognised ‘energy apartheid’ as part of a broader system of segregation and exclusion that entrenches structural inequality.<sup>168</sup> The discriminatory allocation of power mirrors other segregationist practices such as road and travel restrictions and the denial of access to safe, potable drinking water, sanitation, sewage, refuse disposal, emergency services, medical care, education and land confiscations.<sup>169</sup> Access to electricity is both a symptom and a mechanism of systemic inequality and apartheid, designed to privilege one racial ethnic group while maintaining another in dependency and deprivation in furtherance of a greater plan to ethnically cleanse Palestine of Palestinians.
77. South African coal should not be used to fuel apartheid, or be used in the machinery which further entrenches the illegal occupation.

### **C. Legal Character: Apartheid via Essential Services**

78. The ICJ’s 2024 Advisory Opinion found that Israeli policies in the Palestinian territories constitute systemic discrimination violating the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which prohibits apartheid and racial segregation.<sup>170</sup> Apartheid is internationally recognised as: “*a crime against*

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<sup>167</sup> SOMO, *Powering Injustice*, 11.

<sup>168</sup> See Amnesty International, *Israel’s Apartheid Against Palestinians*.

<sup>169</sup> Amnesty International, *Israel’s Apartheid Against Palestinians* ; and see Zachary Cuyler, Middle East Research and Information Project, *Power Struggles—Energy as a Weapon of War, Domination and Resistance in Palestine* (29 January 2025), <https://www.merip.org/2025/01/power-struggles-energy-as-a-weapon-of-war-domination-and-resistance-in-palestine/> accessed 29 November 2025

<sup>170</sup> ICJ Advisory Opinion, Para 223 - 224: “*the Court concludes that a broad array of legislation adopted and measures taken by Israel in its capacity as an occupying Power treat Palestinians differently on grounds specified by international law. As the Court has noted, this differentiation of treatment cannot be justified with reference to reasonable and objective criteria nor to a legitimate public aim (see paragraphs 196, 205, 213 and 222). Accordingly, the Court is of the view that the régime of comprehensive restrictions imposed by Israel on Palestinians in the Occupied Palestinian Territory constitutes systemic discrimination based on,*

*humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination.”*<sup>171</sup>

79. Apartheid is concretely manifest in the energy sector when Israel provides illegal settlers with electricity from the national grid while they occupy Palestinian land but denies the same resource to the indigenous population.
80. In Amnesty International’s report, *Israel’s Apartheid against Palestinians*, the same conclusion was reached by the human rights group as it documented how Israel’s apartheid manifests in discriminatory access to essential services such as electricity.<sup>172</sup> The report described Israel’s refusal to connect Palestinian communities to the grid, while providing full service to settlements, as part of its system of apartheid and the forcible transfer of Palestinians.<sup>173</sup>
81. On 7 January 2026, The UN Human Rights Office of the High Commissioner released a report titled *Israel’s discriminatory administration of the occupied West Bank, including East Jerusalem*, the report documents how Israel’s “policy of creating, supporting and expanding Israeli settlements has benefitted residents of settlements and “outposts” in the Occupied Palestinian Territory who have been transferred into the territory in violation of article 49 of the Fourth Geneva Convention, at the cost of the rights and freedoms of the local Palestinian population. The Government of Israel has also taken steps to “entrench [its] control of the Occupied Palestinian Territory, notably of East Jerusalem and of Area C of the West Bank,” including through the integration of large parts of the Occupied Palestinian Territory into Israel, which

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*inter alia, race, religion or ethnic origin, in violation of Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD.”... “A number of participants have argued that Israel’s policies and practices in the Occupied Palestinian Territory amount to segregation or apartheid, in breach of Article 3 of CERD”*

<sup>171</sup> International Convention on the Suppression and Punishment of the Crime of Apartheid (ICERD) (adopted 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243, art II. [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10\\_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf) accessed 7 August 2025.

<sup>172</sup> Amnesty International, *Israel’s Apartheid Against Palestinians*.

<sup>173</sup> Amnesty International, *Israel’s Apartheid Against Palestinians*.

*amounts to annexation in violation of the prohibition of the acquisition of territory by force and the violation of Palestinians' right to self-determination.*"<sup>174</sup>

82. The report goes on to make multiple recommendations, one of which being that Israel must *"immediately take steps to repeal all systems of laws, policies and practices that create or perpetuate discrimination against Palestinians in the occupied West Bank, including East Jerusalem, based on race, religion or ethnic origin, and in particular to dismantle all settlements and the associated regime, which have resulted in oppression and domination of the Palestinians that may amount to racial segregation and apartheid, taking into account recommendations made by United Nations human rights mechanisms, including the Committee on the Elimination of Racial Discrimination."*<sup>175</sup>
83. The report further sets out the obligations of Third States under Article 3 of the ICERD which states that: *"State Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction. The prohibition of racial discrimination and apartheid is jus cogens"* and under ARSIWA that *"States shall cooperate to bring to an end through lawful means any serious breach by a State of an obligation arising under a peremptory norm of general international law (jus cogens) .. No State shall recognize as lawful a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law (jus cogens), nor render aid or assistance in maintaining that situation."*<sup>176</sup>
84. Taken together, the analysis shows that South African coal contributes to an energy regime that structurally privileges illegal settlers while denying Palestinians equivalent services. The selective provision of electricity supports a *prima facie* legal claim of discriminatory treatment amounting to apartheid and reinforces the finding that Israel's energy regime functions as a tool of racial domination. South Africa must immediately take measures to end providing material support to Israel's apartheid system.

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<sup>174</sup> United Nations Human Rights, Office of the High Commissioners report, *Israel's discriminatory administration of the occupied West Bank, including East Jerusalem* (7 January 2026), para 4

<sup>175</sup> United Nations Human Rights, Office of the High Commissioners report, *Israel's discriminatory administration of the occupied West Bank, including East Jerusalem* (7 January 2026), Recommendations, b.

<sup>176</sup> United Nations Human Rights, Office of the High Commissioners report, *Israel's discriminatory administration of the occupied West Bank, including East Jerusalem* (7 January 2026), para 88

85. The structural integration described above provides the basis for examining how coal-fired generation of electricity is used operationally to enforce apartheid policies in Palestine. The following section evaluates the evidence linking electricity generation to military and industrial infrastructures used to commit genocide in Palestine.

### III. THE DIRECT USE OF SOUTH AFRICAN COAL IN ISRAEL'S GENOCIDAL MILITARY CAMPAIGN

#### A. Gaza Electricity Deprivation – A Tool of Genocide

86. On 9 October 2023, Israel shut off all IEC powerlines into Gaza as Israel's Minister of Defense, Yoav Gallant, announced: "*We are imposing a complete siege on Gaza. There will be no electricity, no food, no water, no fuel, everything is closed,*" adding that "*We are fighting human animals, and we are acting accordingly.*"<sup>177</sup>
87. Gaza relies on ten IEC power lines and the Gaza Power Plant for electricity<sup>178</sup>; the plant covers only about 17% of demand, while electricity supplied by Israel provides a further 28%, leaving roughly 55% of estimated needs unmet.<sup>179</sup> According to the *World Bank*, as at 29 March 2024 Israel had destroyed or damaged 61.5% of Gaza's electricity distribution network since October 2023.<sup>180</sup>
88. By 11 October 2023, Gaza's power plant had run out of fuel.<sup>181</sup> This resulted in a shutdown of desalination plants, depriving Palestinians in Gaza of water. Fuel shortages have turned hospitals dark, forcing doctors to turn patients away as the lack of fuel has

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<sup>177</sup> Al Jazeera, *Israel announces "total" blockade on Gaza*, (9 October 2023) <https://www.aljazeera.com/news/2023/10/9/israel-announces-total-blockade-on-gaza> accessed 31 October 2025.

<sup>178</sup> See Palestinian Centre for Human Rights, *Gaza on the Brink of Total Collapse: Israeli Occupation Forces Systematically Destroy Electricity Infrastructure and Cut Off Energy Sources* (26 June 2025), <https://pchr.org/gaza-on-the-brink-of-total-collapse-israeli-occupation-forces-systematically-destroy-electricity-infrastructure-and-cut-off-energy-sources/#:~:text=From%20the%20first%20day%20of,the%20Strip%20with%20120%20megawatts>. Accessed on 9 September 2025.

<sup>179</sup> SOMO, *Powering Injustice*, 8 ; and see Human Rights Watch, *Gaza: Widespread Impact of Power Plant Attack*, (10 August 2024), [Gaza: Widespread Impact of Power Plant Attack | Human Rights Watch](https://www.hrw.org/report/2024/08/10/gaza-widespread-impact-of-power-plant-attack) accessed 10 September 2025

<sup>180</sup> World Bank, European Union and United Nations, *Gaza Strip Interim Damage Assessment Summary Note* (29 March 2024) <https://thedocs.worldbank.org/en/doc/14e309cd34e04e40b90eb19afa7b5d15-0280012024/original/Gaza-Interim-Damage-Assessment-032924-Final.pdf> accessed 31 October 2025.

<sup>181</sup> Le Monde (with AP), *Gaza's only power plant shuts down after running out of fuel*, (11 October 2023) [https://www.lemonde.fr/en/international/article/2023/10/11/gaza-power-authority-warns-that-electricity-will-run-out-within-hours\\_6164059\\_4.html](https://www.lemonde.fr/en/international/article/2023/10/11/gaza-power-authority-warns-that-electricity-will-run-out-within-hours_6164059_4.html) accessed 31 October 2025.

rendered most machines and medical devices defunct.<sup>182</sup> The fuel shortages also affected the number of ambulances that could operate.<sup>183</sup>

89. Palestinians in Gaza have been facing over 2 years of genocide, bombardment, displacement and destruction of life while simultaneously being denied access to electricity and essential humanitarian aid required to protect life in Gaza.
90. The IDF has confirmed that Gaza's death toll exceeds 70 000 and this figure does not include Palestinian believed to be buried under the rubble or those who died from starvation, disease or the collapse of Gaza's healthcare system as a result of Israeli attacks.<sup>184</sup> Even as there is an ongoing 'ceasefire' at least 636 Palestinians have been killed and 1704 injured as of March 2026.<sup>185</sup> On the 31st of January 2026, the IOF

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<sup>182</sup> Time, *Gaza's Electricity Crisis Could Turn Hospitals into "Morgues," Red Cross Says*, (11 October 2023) <https://time.com/6322986/gaza-electricity-crisis-hospital-impact/> accessed 31 October 2025.

<sup>183</sup> UN OCHA, *Hostilities in the Gaza Strip and Israel: Flash Update #7*, (13 October 2023) <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-7?utm> accessed 5 October 2025 (noting that since 11 October 2023 Gaza has been under a full electricity blackout after the Gaza Power Plant shut down when its fuel was depleted); UNRWA, *Annual Operational Report 2023* (UNRWA 2024) 41 <https://www.unrwa.org/resources/reports/annual-operational-report-2023> accessed 5 October 2025 (recording that Gaza's power plant ceased operations on 11 October 2023, alongside the shutdown of almost all desalination plants); Human Rights Watch, *Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Life's Basics* (19 December 2024) <https://www.hrw.org/report/2024/12/19/extermination-and-acts-genocide/israel-deliberately-depriving-palestinians-gaza?utm> accessed 5 October 2025 (describing how, after the power plant ran out of fuel on 11 October 2023, Gaza's three main desalination facilities halted operations); Bethan McKernan and Ruth Michaelson, *Gaza hospitals ceasing to function as water and fuel run out*, The Guardian (25 October 2023) <https://www.theguardian.com/world/2023/oct/24/gaza-hospitals-ceasing-to-function-as-water-and-fuel-run-out> accessed 5 October 2025 (reporting doctors forced to turn patients away and operate in the dark as fuel for generators runs out); *Gaza doctors left in the dark as fuel shortages hit hospitals*, Times of Israel (24 August 2024) <https://www.timesofisrael.com/gaza-doctors-left-in-the-dark-as-fuel-shortages-hit-hospitals/?utm> accessed 5 October 2025 (describing hospitals treating patients by phone light, stopping admissions and warning that "the lack of fuel also makes it difficult to operate ambulances"); *Red Crescent says less than half of its emergency vehicles operational in Gaza*, Reuters (21 March 2025) <https://www.reuters.com/world/middle-east/red-crescent-says-less-than-half-its-emergency-vehicles-operational-gaza-2025-03-21/> accessed (3 September 2025) (noting that, because of fuel shortages, fewer than half of the Palestinian Red Crescent's ambulances are functional).

<sup>184</sup> The New Arab, *Israeli military accepts Gaza's death toll exceeding 70 000 for first time* (29 January 2026), <https://www.newarab.com/news/israel-accepts-gaza-death-toll-exceeding-70000-first-time> accessed on 30 January 2026.

<sup>185</sup> UNOCHA, *Humanitarian Situation Update 355, Gaza Strip*, (29 January 2026), <https://www.unocha.org/publications/report/occupied-palestinian-territory/humanitarian-situation-update-355-gaza-strip#:~:text=According%20to%20the%20Ministry%20of,retrieved%20from%20under%20the%20rubble.> accessed 30 January 2026. And see Al Jazeera 'How many times has Israel violated the Gaza ceasefire? Here are the numbers' available at <https://www.aljazeera.com/news/2025/11/11/how-many-times-has-israel-violated-the-gaza-ceasefire-here-are-the-numbers>, accessed on 13 March 2026.

launched airstrikes across the Gaza Strip, killing at least 30 Palestinians (including six children) and wounding many.<sup>186</sup>

91. As reported in the UN Genocide Report, on 9 March 2025, following the announcement of the end of the second ceasefire, Energy Minister Eli Cohen ordered the IEC to immediately stop selling electricity to Gaza power stations.<sup>187</sup> This directive essentially cut off the supply of electricity from Israel to the last power station in Gaza that was still receiving power from the IEC.<sup>188</sup> A UNICEF official in Gaza reported on 10 March 2025 that, due to Israel's decision on Sunday to cut power to the Gaza Strip, 600,000 people who had regained access to drinking water in November 2024 are once again cut off.<sup>189</sup> Similarly, the head manager of the South Gaza Desalination Plant reportedly warned that the cutting of electricity supply could deprive hundreds of thousands of Palestinians in Gaza of clean water.<sup>190</sup>
92. This provision of coal to Israel is in no way 'neutral' but forms part of the lifeblood of Israel's war machine. It keeps the lights on in the very factories that assemble drones and bombs, while Gaza is left in darkness. It sustains the surveillance grids and artificial intelligence systems that decide, by algorithm, who lives and who dies, while Gaza's power lines and people lie in rubble. It fuels the illegal colonies of settlers and powers military infrastructure and checkpoints, while entire Palestinian neighbourhoods and villages are destroyed. By any reasonable measure, this is not trade in a commercial good: it is the delivery of military fuel to a regime engaged in illegal occupation, apartheid and genocide.<sup>191</sup>

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<sup>186</sup> Al Jazeera 'Children among 31 Palestinians killed by Israeli forces across Gaza' (31 January 2026) <https://www.aljazeera.com/news/2026/1/31/israeli-forces-kill-12-palestinians-across-gaza-attacks-reported-in-rafah>, accessed on 1 February 2026.

<sup>187</sup> UN Genocide Report, para 119

<sup>188</sup> The Time of Israel, *Israel announces halt to its supply of power to Gaza, in bid to pressure Hamas* (9 March 2025) <https://www.timesofisrael.com/israel-stops-electricity-supply-to-gaza-in-bid-to-ratchet-up-pressure-on-hamas/> accessed on 30 January 2026

<sup>189</sup> United Nations, *Gaza power cut impacts safe water access for hundred of thousands*, (10 March 2025), <https://news.un.org/en/story/2025/03/1160961> accessed on 30 January 2026.

<sup>190</sup> Al Jazeera, *Updates: UN says 'nothing' entering Gaza due to Israeli blockade*, (10 March 2025) <https://aje.io/oxy9et?update=3569362> accessed 30 January 2026.

<sup>191</sup> SOMO, *Powering Injustice*; Cuyler, *Power Struggles*, (analysing how Israel's centralized, Israeli-controlled energy system functions as an instrument of colonial domination over Palestinians and how blackout and energy denial are weaponised in the current campaign); B'Tselem, *Humanitarian Catastrophe as Policy*, (7 December 2023); [https://www.btselem.org/gaza\\_strip/20231207\\_humanitarian\\_catastrophe\\_as\\_policy](https://www.btselem.org/gaza_strip/20231207_humanitarian_catastrophe_as_policy) accessed 5 October 2025 (arguing that the humanitarian crisis in Gaza, including deliberate deprivation of

## B. South African Coal and the IDF

93. Electricity generation is essential to the functioning of the IDF.<sup>192</sup> Israel primarily uses imported coal for electricity generation at the Orot Rabin and Rutenberg coal-fired power plants, both owned by the IEC.<sup>193</sup> Electricity in Israel is used to power military installations and command centres<sup>194</sup>, weapons manufacturing facilities, drones and tanks<sup>195</sup>, checkpoints and surveillance systems operated by the IDF<sup>196</sup> - including Israel's chilling artificial intelligence systems and algorithms that sort Palestinians by "suspicion level" and determine targeting for drone strikes.<sup>197</sup>
94. Electricity is the invisible backbone of Israel's military machine. Every dimension of its modern warfare apparatus - from command-and-control operations and surveillance centres to artificial intelligence (AI)-driven targeting systems - depends on uninterrupted electrical supply.<sup>198</sup> Israel's own national security assessments identify

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electricity and fuel, is not incidental but the result of deliberate policy, under an overarching regime of occupation and apartheid).

<sup>192</sup> Weinstock and Elran, *Securing the Electrical System in Israel: Proposing a Grand Strategy*, Preface: "It is widely recognized that the electrical system, more than any other infrastructure, is central to the general operational continuity of Israel's economy. Major damage to this system is liable to cause not only significant disruptions to the electricity supply but also to other essential systems and subsequently to the economy, the state, and the functioning of the Israel Defence Forces (IDF)".; Also see Orna Mizrahi, Nurit Gal and Galit Cohen Gal Shani, *We Need a New Concept for the Security of the Electrical System in Israel* (Institute for National Security Studies, 4 June 2024) <https://www.inss.org.il/publication/electricity/> accessed 30 September 2025.

<sup>193</sup> SOMO, *Powering Injustice*, 28.

<sup>194</sup> Israel National News, *Again: Severe power outages at Negev IDF base*, (18 August 2025) <https://www.israelnationalnews.com/news/413475> accessed 30 October 2025.

<sup>195</sup> Israel Defence Forces (IDF), *Green Army*, (Armoured Corps, 2025) <https://www.idf.il/en/mini-sites/our-corps-units-brigades/armored-corps/green-army/> accessed 30 October 2025.

<sup>196</sup> Elbit Systems, *Keeping Soldiers Cool and Energized: Meet Kinetics*, (Elbit Systems Blog, 16 July 2025) <https://www.elbitsystems.com/blog/keeping-soldiers-cool-and-energized-meet-kinetics> accessed 30 October 2025. And see Amnesty International, *Automated Apartheid: How Facial Recognition Fragments, Segregates and Controls Palestinians in the OPT* (2023); See Keren Weitzberg, Privacy International, *Biometrics and Counter-Terrorism: Case Study of Israel/Palestine* (2021) [https://privacyinternational.org/sites/default/files/2021-06/PI%20Counterterrorism%20and%20Biometrics%20Report%20Israel\\_Palestine%20v7.pdf](https://privacyinternational.org/sites/default/files/2021-06/PI%20Counterterrorism%20and%20Biometrics%20Report%20Israel_Palestine%20v7.pdf) accessed on 11 March 2026

<sup>197</sup> Human Rights Watch, *Gaza: Israeli military's digital tools risk civilian harm*, (10 September 2024) <https://www.hrw.org/news/2024/09/10/gaza-israeli-militarys-digital-tools-risk-civilian-harm> accessed 31 October 2025 and see see Amnesty International, *Automated Apartheid: How Facial Recognition Fragments, Segregates and Controls Palestinians in the OPT* (2023);

<sup>198</sup> Sue Surkes, *As war with Hezbollah looms, concerns over vulnerability of power grid generate unease*, The Times of Israel, (25 June 2024) <https://www.timesofisrael.com/as-war-with-hezbollah-looms-concerns-over-vulnerability-of-power-grid-generate-unease/> accessed 15 September 2025; And see Dr. Elai Rettig and Ambassador (ret.) Michael Harari, *The Security of the Israeli Electricity Sector During the Israel-Hamas War* (30 May 2024) <https://besacenter.org/the-security-of-the-israeli-electricity-sector-during-the-israel-hamas-war/> accessed 12 November 2025 and see Orna Mizrahi, *We Need a New Concept for the Security of Electrical Systems in Israel in Emergencies and Routine Times*.

the continuous operation of the power grid as a critical defence priority, with data centres and military communication hubs drawing enormous amounts of energy.<sup>199</sup>

95. According to the Shmuel Neaman Institute in Israel, there is an understanding that the country's national security depends to a large extent on the proper functioning of national infrastructures with the electricity system being particularly sensitive, because “a failure to supply [electricity] due to a malfunction, sabotage, or any other reason could cause the collapse of many civilian and military systems that depend on it”<sup>200</sup> and “The military system's dependence on civilian electricity supply is critical, and could be problematic in emergency situations.”<sup>201</sup>
96. Coal-fired generation, that makes up between 18% - 22% of Israel’s electricity supply, is central to maintaining the Israeli military including their stability, the powering of bases, radar systems and cyber-operations networks<sup>202</sup> that underpin the IDF’s capacity to conduct real-time targeting and battlefield management.<sup>203</sup>

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<sup>199</sup> Shmuel Neaman Institute’s Energy Forum, *Security of energy supply in Israel*, (Machine Translated by Google) <https://www.neaman.org.il/wp-content/uploads/2024/02/Energy-Forum-37-Energy-security-in-Israel.pdf> accessed on 4 February 2026; and see Eric Masanet and Nuo Lei, *How much energy do data centers really use?*, (Aspen Global Change Institute, March 2020) <https://www.agci.org/research-reviews/how-much-energy-do-data-centers-really-use> accessed 31 October 2025.

<sup>200</sup> Shmuel Neaman Institute’s Energy Forum, *Security of energy supply in Israel*, Executive Summary

<sup>201</sup> Shmuel Neaman Institute’s Energy Forum, *Security of energy supply in Israel*, Executive Summary and see pg.6 “And today there is a very important reliance on electricity. Of course, diesel can be kept for generators, but without electricity, all ICT does not work, and without ICT, nothing works, no matter what system we are talking about. This is a concept that is only now beginning to be understood all over the world, especially in security systems. In the past, if there was a power shortage, they would say: It’s okay, work without air conditioning. Today, if there is no air conditioning in the server system, the army is paralyzed. In other words, we have a complete dependence of the emergency systems on the civilian electricity system.”

<sup>202</sup> Begin-Sadat Centre for Strategic Studies, *The Security of the Israeli Electricity Sector During the Israel– Hamas War*, Geo-Energy Insights No. 3 (30 May 2024) <https://besacenter.org/the-security-of-the-israeli-electricity-sector-during-the-israel-hamas-war/> accessed 30 October 2025; see Low Carbon Power, *Electricity in Israel in 2023, Israel Electricity Generation Mix 2023 | Low-Carbon Power Data* accessed on 30 October 2025; See LNRG Technology, *Overview of the Israeli Electricity Market 2024*, (7 August 2024), [Overview of the Israeli electricity market 2024 - LNRG Technology](https://www.lnrg.com/insights/overview-of-the-israeli-electricity-market-2024) accessed on 30 October 2025; and see LNRG Technology, *Overview of the Israeli Electricity Market 2025*, (16 October 2025) [Overview of the Israeli electricity market 2024 - LNRG Technology](https://www.lnrg.com/insights/overview-of-the-israeli-electricity-market-2025) accessed on 23 January 2026; and see Department of Commerce (USA), *Israel Country Commercial Guide*, (6 October 2023), <https://www.trade.gov/country-commercial-guides/israel-energy?utm> accessed on 23 January 2026.

<sup>203</sup> Patrick Kingsley and Issam Adwan, “The machine did it coldly”: Israel used AI to identify 37,000 Hamas target, *The Guardian* (3 April 2024) <https://www.theguardian.com/world/2024/apr/03/israel-gaza-ai-database-hamas-airstrikes> accessed 31 October 2025.

### C. South African Coal Fuels Genocide

97. The crimes committed by the IDF in Gaza have been extensively documented by international organisations, investigative journalists and independent researchers. Investigations conducted by media outlets including Al Jazeera, drawing on satellite imagery, verified video evidence, military data and eyewitness testimony, have revealed patterns of large-scale destruction, attacks on civilian infrastructure and the systematic targeting of residential areas during Israel’s military operations in Gaza.<sup>204</sup> These findings, together with reports from human rights organisations and United Nations experts, demonstrate that the conduct of the war has relied heavily on technologically driven targeting systems and data intensive military infrastructure.
98. Human Rights Watch has identified four targeting tools the Israeli military reportedly uses in its Gaza offensive: a mobile-phone tracking system to monitor Palestinian evacuations in northern Gaza; a program nicknamed “*The Gospel*” that produces lists of buildings and other structures for strikes; a system called “*Lavender*” that scores individuals on suspected links to armed groups to mark them as military targets; and a tool dubbed “*Where’s Daddy?*” that seeks to confirm a target’s presence at a specific location so an attack can be carried out there.<sup>205</sup>
99. Serious concerns have been raised as to whether these digital tools, used to kill Palestinians indiscriminately and which service the IDF and its energy-intensive and tech-driven destruction of Gaza, align with International Humanitarian Law.<sup>206</sup> What is clear, however, is that these systems require a steady power source, part of which is provided by South African coal.<sup>207</sup>

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<sup>204</sup> See Al Jazeera, *What did Al Jazeera’s Investigation into Israeli War Crimes in Gaza reveal?* (3 October 2024) <https://www.aljazeera.com/news/2024/10/3/what-did-al-jazeeras-investigation-into-israeli-war-crimes-in-gaza-reveal> accessed on 15 March 2026.

<sup>205</sup> Human Rights Watch, *Questions and Answers: Israeli Military’s Use of Digital Tools in Gaza*, (10 September 2024) <https://www.hrw.org/news/2024/09/10/questions-and-answers-israeli-militarys-use-digital-tools-gaza> accessed 30 October 2025. And see Ynet News, *The bots struck at dawn: inside the AI systems, drones and algorithms reshaping Israel’s war* (8 March 2026) describing how Israel uses AI in its military <https://www.ynetnews.com/magazine/article/bkhszmjygz> accessed on 9 March 2026.

<sup>206</sup> Human Rights Watch, *Questions and Answers: Israeli Military’s Use of Digital Tools in Gaza*.

<sup>207</sup> The Jerusalem Post, *Israel may find itself without electricity in wartime*, The Jerusalem Post (1 November 2025) <https://www.jpost.com/israel-news/article-872337> accessed 2 November 2025 and see United Nations Regional Information Centre for Western Europe, *Artificial Intelligence: How Much Energy Does AI Use?* (7 April 2025): “Large-scale AI deployments pose several environmental concerns. Most AI servers are stored in data centres, which produce electronic waste and can contain toxic chemicals, such as mercury

100. Data-centre clusters that host AI tools like *The Gospel* and *Lavender* are energy-intensive facilities<sup>208</sup>; without steady current from the national grid, such systems would not be able to operate.<sup>209</sup> Similarly, industrial-military complexes in zones such as Tefen and Sderot rely on continuous electrical feed for weapons manufacturing, drone calibration and surveillance hardware testing.<sup>210</sup>
101. Tefen and Sderot, which house weapons manufacturers like Elbit Systems, depend partly on coal-generated electricity.<sup>211</sup> Even as Israel continues its systematic deprivation of electricity, water, medicine and fuel to Gaza, it ensures uninterrupted energy supply to its own military and industrial infrastructure – a supply facilitated in part by coal imported from South Africa.<sup>212</sup>
102. These military infrastructure and AI tech systems do not run on air but require a steady power source.<sup>213</sup> In this context, South African coal is not merely a commercial export - it is a material contribution to the functioning of Israel's war economy, sustaining the power that drives its military command, targeting and weapons-production infrastructure. The electricity used to power the IDF, is thus used to commit the crimes of apartheid, illegal occupation and genocide.

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*and lead. Data centres consume vast amounts of electricity, creating greenhouse gas emissions.”*

<https://unric.org/en/artificial-intelligence-how-much-energy-does-ai-use/> accessed on 9 March 2026

<sup>208</sup> Eric Masanet and Nuo Lei, Aspen Global Change Institute, *How much energy do data centers really use?*, (March 2020) <https://www.agci.org/research-reviews/how-much-energy-do-data-centers-really-use> accessed 31 October 2025 and see Anna Ahronheim, The Jerusalem Post, *By securing the AI grid, Israel can go from Start-Up Nation to Energy Guardian* (30 September 2025) <https://www.jpost.com/defense-and-tech/article-869063> accessed 9 January 2026

<sup>209</sup> Masanet and Lei, *How much energy do data centers really use?*; and see Shmuel Neaman Institute's Energy Forum, *Security of energy supply in Israel*, Executive Summary.

<sup>210</sup> Dean Shmuel Elma, *Reshef Technologies wins large Defense Ministry fuse order* (23 June 2024) confirming a 'defense' company in Sderot that manufactures components for the Israeli military: <https://en.globes.co.il/en/article-reshef-technologies-wins-large-defense-ministry-fuse-order-1001482182?utm.com> accessed on 4 February 2026 and see IVC Data and Insights confirming that Elbit Systems main operations are in Sderot [https://www.ivc-online.com/Google-Card?id=2FCA67EA-1F7A-E111-AC59-00155D32A403#:~:text=\(ELSEC\)%20is%20a%20wholly%20Downed%20Israeli%20subsidiary%20of%20Elbit%20Systems.%20Located%20in%20Sderot%2C%20Israel](https://www.ivc-online.com/Google-Card?id=2FCA67EA-1F7A-E111-AC59-00155D32A403#:~:text=(ELSEC)%20is%20a%20wholly%20Downed%20Israeli%20subsidiary%20of%20Elbit%20Systems.%20Located%20in%20Sderot%2C%20Israel). accessed on 4 February 2026

<sup>211</sup> Surkes, *As war with Hezbollah looms, concerns over vulnerability of power grid generate unease* and see SOMO, *Powering Injustice*

<sup>212</sup> Ihsaan Haffejee, *Call for African Rainbow Minerals to stop selling coal to Israel*, GroundUp (4 April 2025) <https://groundup.org.za/article/calls-for-african-rainbow-minerals-to-stop-selling-coal-to-israel/> accessed 31 October 2025; and see PassBlue, *Coal From South Africa Keeps Flowing to Israel Despite the ICJ Case* ; and see OCHA, *Electricity in the Gaza Strip*, <https://www.ochaopt.org/page/gaza-strip-electricity-supply> accessed 9 January 2026.

<sup>213</sup> See UNRIC, *Artificial intelligence: How much energy does AI use?*

## IV. CORPORATE COMPLICITY, ENERGY TRADE AND THE ECONOMY OF GENOCIDE – SOUTH AFRICA IN THE SPOTLIGHT

### A. Liability for private actors

103. In the OPT, after decades of documented human rights violations and international crimes, recent judicial findings - including the ICJ's provisional measures<sup>214</sup> and the International Criminal Court's (ICC) applications for, and issuance of, arrest warrants against Israeli officials<sup>215</sup>, including Benjamin Netanyahu, - have made it legally untenable to claim that State or corporate involvement in the structures or operations of the Israeli government and the illegal occupation are neutral.<sup>216</sup> Such involvement is, in practice, intrinsically linked to breaches of *jus cogens* norms and the commission of international crimes.<sup>217</sup>
104. International energy and mining companies have played a decisive role in sustaining Israel's assault on Gaza by maintaining the fuel and coal supplies that power its national grid<sup>218</sup> - an infrastructure that privileges illegal settlements<sup>219</sup> while depriving Palestinians of consistent access to electricity or fuel and pushing Gaza's essential services to collapse. Maintaining economic relations with Israel legitimize and sustain the Israeli apartheid regime and illegal occupation.<sup>220</sup>

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<sup>214</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v Israel)* (Order on Provisional Measures, 19 July 2024) <https://www.icj-cij.org/case/192/provisional-measures> accessed 4 November 2025.

<sup>215</sup> International Criminal Court, Pre-Trial Chamber I, *Situation in the State of Palestine: Decision on arrest warrants for Benjamin Netanyahu and Yoav Gallant*, (press release, 21 November 2024) <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges> accessed 4 November 2025.

<sup>216</sup> See Dr. Ralph Wilde's Expert Legal Opinion detailed below.

<sup>217</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, para 18: "In the occupied Palestinian territory, building on decades of documented human rights violations and crimes, recent judicial developments leave no room for doubt that corporate engagement with any component of the occupation is connected with violations of *jus cogens* norms and international crimes." And see Expert Legal Opinion by Dr. Ralph Wilde discussed below.

<sup>218</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, para 18, 87 - 93 and see SOMO, *Powering Injustice*, and Dr Wilde's Expert Legal Opinion below.

<sup>219</sup> See SOMO, *Powering Injustice*; Cuyler, *Power Struggles*.

<sup>220</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, paras 87 – 93; And see Dr. Ralph Wilde, *Illegality of Israel's presence in the Palestinian Gaza Strip and West Bank, including East Jerusalem, in the light of the 2024 Occupied Palestinian Territory Advisory Opinion of the International Court of Justice, and consequences for third States and the European Union*, (legal opinion, 1 December 2024).

105. Since October 2023 Israel has cut nearly all electricity to Gaza.<sup>221</sup> In the absence of fuel and power critical infrastructure including water pumping systems, hospitals and transportation has faced near total collapse<sup>222</sup>; sewage overflow has triggered a resurgence of polio<sup>223</sup> and essential desalination facilities have been forced to shut down.<sup>224</sup> Such actions violate Israel's obligations under international law which include the prohibition of the starvation of civilians<sup>225</sup> and attacks on objects indispensable to their survival.<sup>226</sup>
106. Over 200 colonies and illegal outposts have been established on occupied Palestinian territory, sustained through direct corporate involvement.<sup>227</sup> These companies facilitate Israel's displacement and replacement of the Indigenous Palestinian population within the occupied territory by providing Israel with the machinery and resources it requires to do so.<sup>228</sup> Between November 2023 and October 2024, Israel set up 57 new settlements and outposts in the OPT, and companies – both Israeli and foreign – supplied the machinery, raw materials and logistics to enable this expansion.<sup>229</sup>
107. The establishment and maintenance of these settlements is not merely a matter of territorial expansion but forms part of an integrated system of illegal occupation and colonization sustained through globalised supply chains. Corporate participation in the provision of energy, raw materials, transport and industrial inputs therefore constitutes

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<sup>221</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, paras 48, 54 - 57.

<sup>222</sup> See Annexure A below.

<sup>223</sup> Samer Abuzerr, East Mediterranean Health Journal, *et al*, *Resurgence of polio during Gaza conflict*, (2025) 31(2), 136–137 <https://www.emro.who.int/emhj-volume-31-2025/volume-31-issue-2/resurgence-of-polio-during-gaza-conflict.html> accessed 20 November 2025.

<sup>224</sup> Médecins Sans Frontières, *Water Is Being Used as a Weapon of War in Gaza*, (17 October 2023) <https://www.doctorswithoutborders.org/latest/water-being-used-weapon-war-gaza> accessed 25 November 2025; UN Office for the Coordination of Humanitarian Affairs (OCHA), *Electricity in the Gaza Strip*, (factsheet, 2025) <https://www.ochaopt.org/page/gaza-strip-electricity-supply> accessed 4 November 2025.

<sup>225</sup> International Committee of the Red Cross, *Customary International Humanitarian Law Database*, Rule 53 [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule53](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule53) accessed 25 November 2025; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (Additional Protocol I) art 54; Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 8(2)(b)(xxv) – international law confirming that starvation is a war crime.

<sup>226</sup> Department of International Relations and Cooperation (South Africa), *The Humanitarian Catastrophe in Gaza* (20 October 2023) <https://dirco.gov.za/the-humanitarian-catastrophe-in-gaza/> accessed 25 November 2025.

<sup>227</sup> Albanese, *From Economy of Occupation to Economy of Genocide*.

<sup>228</sup> Albanese, *From Economy of Occupation to Economy of Genocide*.

<sup>229</sup> Office of the UN High Commissioner for Human Rights, Business and Human Rights Database on Business Enterprises and Settlements <https://www.ohchr.org/en/business/bhr-database> accessed 4 November 2025.

a material component of the infrastructure that enables both the physical expansion of settlements and their long-term viability.<sup>230</sup>

108. Energy supply sits at the centre of this corporate-enabled infrastructure. Without a consistent and scalable fuel source, the operation of electricity generation facilities, military installations and settlement industries cannot be sustained. The export of thermal coal to Israel must therefore be understood not as a neutral commercial transaction but as a strategic input into the broader system described above
109. Switzerland-based Glencore is the primary exporter of coal to Israel. Glencore offers no apologies or rationale for the fuelling of genocide and illegal occupation in Palestine. In May 2024, at Glencore’s Annual General Meeting in Switzerland, a shareholder asked “*if you’re conducting human rights assessments on the use of the coal you’re exporting to Israel to ensure that you’re not liable*”, Board Chairman Kalidas Madhavpeddi replied “*The company supplies to many countries around the world and it’s almost impossible to tell you the answer to your question.*” The shareholder followed up, “*So you don’t check how the coal is being used?*” and Madhavpeddi replied: “*Coal is used in power generation, that’s simple.*”<sup>231</sup>
110. The legal significance of coal exports becomes apparent when considered against the functional role of electricity within Israel’s military and settlement architecture. As detailed in the above sections, electricity is a key ingredient required for the operation of the energy-intensive IDF, including the operation of their military bases, AI-war tools, surveillance technologies and is used to power illegal Israeli settlements in the OPT which further entrench the unlawful occupation.
111. In this context, the supply of coal that is used in electricity generation forms part of the value chain that enables illegal military and settlement activity. Where corporate actors continue to supply such inputs in circumstances of widely documented and ongoing violations of international law, questions of legal responsibility and corporate governance necessarily arise.

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<sup>230</sup> Albanese, *From Economy of Occupation to Economy of Genocide*.

<sup>231</sup> London Mining Network, Glencore: showing improvement in self-presentation (10 June 2024), [Glencore: showing improvement in self-presentation - London Mining Network](#) accessed on 4 February 2026.

112. The concept of Corporate Citizenship has been captured in the *King IV* and *King V* reports for corporate governance in South Africa which notes that corporations have a corporate citizenship status and as a result, corporations have rights, responsibilities and obligations which are owed to society and the natural environment.<sup>232</sup>
113. These governance standards are not abstract ethical aspirations but form part of an emerging normative framework against which the conduct of multinational corporations is assessed. They provide the bridge between corporate decision making and broader societal and legal consequences, particularly in high-risk operating environments.
114. It is not contended that companies such as Glencore possess direct genocidal intent. Rather, the legal exposure of corporate actors arises where, in the face of overwhelming public knowledge and international legal warnings, they fail to exercise heightened due diligence in high-risk contexts.
115. Glencore's knowledge of the legal and reputational risks associated with coal exports to Israel must be assessed in the light of recent enforcement measures taken by other major coal-exporting States. In 2025, the Government of Colombia imposed a complete prohibition on coal exports to Israel and took the further step of directing its navy to intercept vessels transporting coal to Israeli ports.<sup>233</sup> The Colombian President publicly stated that coal shipments had continued despite the announced prohibition in 2024 and attributed this to corporate pressure and internal resistance within the export chain.<sup>234</sup>
116. These developments, widely reported and directed at the same global coal supply market in which Glencore operates, placed multinational coal exporters on clear notice that

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<sup>232</sup> Institute of Directors in Southern Africa, *King IV Report on Corporate Governance for South Africa 2016* (IoDSA 2016), p.29 noting that organizations/corporations are integral parts of society, giving them corporate citizenship status. This status confers rights, responsibilities and obligations on the organizations towards society and the natural environment on which society depends.

<sup>233</sup> Business and Human Rights Centre, *Colombia: President Gustavo Petro orders navy to block coal shipments to Israel, alleging that shipments have continued despite ban, including due to corporate pressure*, (25 July 2025), [Colombia: President Gustavo Petro orders navy to block coal shipments to Israel, alleging that shipments have continued despite ban, including due to corporate pressure - Business and Human Rights Centre](#) accessed on 18 February 2026.

<sup>234</sup> Business and Human Rights Centre, *Colombia: President Gustavo Petro orders navy to block coal shipments to Israel, alleging that shipments have continued despite ban, including due to corporate pressure*,

continued coal supply to Israel is being treated by at least one exporting State as legally and morally impermissible.<sup>235</sup>

117. The credibility of Glencore’s responsible conduct and compliance must be assessed against its recent admissions and judicial findings in multiple jurisdictions. In May 2022, Glencore entities entered guilty pleas in the United States in relation to both foreign bribery and market manipulation schemes, admitting to sustained and systemic misconduct across several continents.<sup>236</sup>
118. These admissions included participation in a multi-year scheme to manipulate fuel oil benchmark prices at major United States shipping ports and the payment of bribes to public officials in numerous jurisdictions in order to secure commercial advantages.<sup>237</sup> Judicial findings in the United Kingdom similarly characterised the conduct as widespread and endemic within the company’s trading operations, underscoring persistent governance and compliance failures rather than isolated misconduct.<sup>238</sup>
119. Regulatory and prosecutorial authorities in Europe have likewise confirmed serious compliance failures connected to Glencore’s acquisition of mining interests in the Democratic Republic of Congo, finding that the company failed to take necessary measures to prevent bribery.<sup>239</sup> These findings and admissions are not relied upon to establish propensity but to demonstrate that Glencore operates within a documented

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<sup>235</sup> Business and Human Rights Centre, *Colombia: President Gustavo Petro orders navy to block coal shipments to Israel, alleging that shipments have continued despite ban, including due to corporate pressure*,

<sup>236</sup> US Department of Justice, *Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes*, (24 May 2022), [Office of Public Affairs | Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes | United States Department of Justice](#) accessed on 18 February 2026

<sup>237</sup> US Department of Justice, *Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes*

<sup>238</sup> *The Serious Fraud Office v Glencore Energy UK Ltd*, Sentencing Remarks of Mr Justice Fraser, Southwark Crown Court, 3 November 2022, para 2. <https://www.judiciary.uk/wp-content/uploads/2022/11/Sentencing-Remarks-Glencore.pdf?utm> — Southwark Crown Court where the Court described “*corporate corruption on a widespread scale*” and that the corruption “*was endemic amongst traders on that particular desk*”.

<sup>239</sup> Netherlands Public Prosecution Service. *Glencore bribery investigation concluded with summary penalty order in Switzerland; Dutch prosecutor dismisses case* (5 May 2024), where the Investigation concerned “*possible bribery of high-ranking officials in the Democratic Republic of the Congo.*” and “*The Swiss Public Prosecutor’s Office imposed this summary penalty order because Glencore International AG failed to take the necessary measures to prevent bribery in the acquisition of mining licenses in Congo through the purchase of shares in two mining companies in 2011..*” <https://www.prosecutionservice.nl/latest/news/2024/08/05/glencore-bribery-investigation-concluded-with-summary-penalty-order-in-switzerland-dutch-prosecutor-dismisses-case?utm> accessed on 18 February 2026.

history of serious compliance breaches and governance failures across multiple jurisdictions.

120. In such circumstances, where a corporation with such a record continues to operate within high-risk conflict affected supply chains, the threshold for due diligence, transparency and good-faith compliance must be correspondingly elevated.<sup>240</sup> It is no longer tenable for sophisticated commodity traders operating within that market to contend that the legal risks associated with supplying coal to Israel's electricity sector remain uncertain or unforeseeable.<sup>241</sup> At a minimum, the measures taken by Colombia demonstrate that the risk of contributing to internationally wrongful acts through coal exports to Israel has crystallised into a matter of express governmental concern, thereby heightening the standard of due diligence expected of corporations continuing to participate in this trade.<sup>242</sup>
121. The issue for determination is therefore not one of intent alone, but of knowledge, foreseeability and the adequacy of corporate responses to publicly and legally documented risks.
122. The UN Guiding Principles on Business and Human Rights<sup>243</sup> (UNGPs) provide guidance to businesses to avoid causing or contributing to human rights abuses and to terminate relationships where risks are grave and persistent.<sup>244</sup> Even though these principles do not constitute binding international law and do not, in themselves, impose directly enforceable legal obligations on corporations, they nevertheless represent the

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<sup>240</sup> *The Serious Fraud Office v Glencore Energy UK Ltd*, Sentencing Remarks of Mr Justice Fraser, Southwark Crown Court, 3 November 2022. <https://www.judiciary.uk/wp-content/uploads/2022/11/Sentencing-Remarks-Glencore.pdf?utm> footnotes 237 – 239 accessed on 5 March 2026

<sup>241</sup> Business and Human Rights Centre, *Colombia: President Gustavo Petro orders navy to block coal shipments to Israel, alleging that shipments have continued despite ban, including due to corporate pressure*,

<sup>242</sup> Business and Human Rights Centre, *Colombia: President Gustavo Petro orders navy to block coal shipments to Israel, alleging that shipments have continued despite ban, including due to corporate pressure*,

<sup>243</sup> UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (21 March 2011) UN Doc A/HRC/17/31 (Hereafter referred to as 'UNGPs') [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf) accessed 17 July 2025.

<sup>244</sup> UNGPs, The UN Guiding Principles on Business and Human Rights impose a responsibility on businesses to avoid causing or contributing to human rights harms and to address them when they occur. Para 13(a) requires businesses to "*seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts*," and para 19 which states businesses should "*consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so*" where leverage is lacking and impacts are grave.

most authoritative globally endorsed framework governing corporate responsibility in relation to human rights risks and have been unanimously endorsed by the United Nations Human Rights Council.<sup>245</sup> Their normative force lies in their widespread acceptance as the operative standard for assessing reasonable corporate conduct and due diligence in high-risk operating environments.<sup>246</sup>

123. The UNGPs provide that business enterprises are expected to avoid causing or contributing to adverse human rights impacts and to address such impacts where they occur, including where impacts are directly linked to their operations through business relationships.<sup>247</sup> Where corporations voluntarily commit themselves to compliance with the UNGP framework and related human rights due diligence standards, those commitments become relevant to the assessment of foreseeability, reasonableness and the adequacy of corporate responses to known risks.<sup>248</sup> In contexts characterised by widespread and well documented allegations of grave international crimes, a failure to implement effective preventive measures may therefore indicate substantively inadequate due diligence rather than mere procedural imperfection.<sup>249</sup>
124. The UNGPs explicitly state that “*Some operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human*

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<sup>245</sup> UN Human Rights Council Resolution 17/4, The Human Rights Council “*endorses the Guiding Principles on Business and Human Rights*” <https://undocs.org/A/HRC/RES/17/4> accessed on 18 February 2026

<sup>246</sup> UNGPs, Principle 11 stating that the responsibility to respect human rights is a “*global standard of expected conduct for all business enterprises wherever they operate.*”

<sup>247</sup> UNGPs, Principle 13, Businesses should “*avoid causing or contributing to adverse human rights impacts*” and they must address impacts “*directly linked to their operations, products or services by their business relationships.*” And see UNGPs, Principle 17 on Human Rights Due Dilligence: “*In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence: (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations; (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise’s operations and operating context evolve.*”

<sup>248</sup> UNGPs, Principle 11, Commentary, “*The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.*”

<sup>249</sup> UNGPs, Principle 17(c) confirming that human rights due diligence should be “ongoing” recognising that risks “may change over time”.

*rights abuses committed by other actors*". In complex operating contexts, "*business enterprises should ensure that they do not exacerbate the situation.*"<sup>250</sup>

125. This responsibility-based framework aligns with established principles of negligence and duty of care recognised across common law systems. Where an entity undertakes to supply essential resources or services in circumstances giving rise to foreseeable risks of harm to third parties, it assumes a responsibility to exercise reasonable care so as not to exacerbate that harm.<sup>251</sup> The provision of material resources into a context marked by credible allegations of serious international law violations may therefore give rise to heightened responsibilities of due diligence and risk mitigation grounded in ordinary principles of foreseeability and reasonable conduct.<sup>252</sup>
126. South Africa's own position within the global business and human rights framework reinforces this standard. South Africa has played a leading role in the ongoing United Nations process toward a legally binding instrument on business and human rights and has consistently advocated for stronger accountability mechanisms across corporate value chains.<sup>253</sup> Domestic legislation similarly recognises extended duties of care and remediation responsibilities in respect of harm arising from commercial activity, reflecting a broader commitment to ensuring that business operations do not contribute to serious harm within or beyond national borders.<sup>254</sup>

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<sup>250</sup> SOMO, *Powering Injustice*, 33

<sup>251</sup> See *Minister van Polisie v Ewels* (1975 (3) SA 590 (A)): "*There will be liability... in respect of an omission where there is a legal duty in the circumstances to act.*"; *Minister of Safety and Security v Van Duivenboden* [2002] ZASCA 133: "*A negligent omission is unlawful ... if it occurs in circumstances that the law regards as sufficient to give rise to a legal duty to avoid negligently causing harm.*"; and see *Loureiro and Others v iMvula Quality Protection (Pty) Ltd* [2014] ZACC 4; and see *Chartaprops 16 (Pty) Ltd and Another v Silberman* [2008] ZASCA 115; *Cape Empowerment Trust Ltd v Fisher Hoffman Sithole*; and see *Companies Act 71 of 2008*, s 76(3)(a)–(c)

<sup>252</sup> See UNGPs, *Trustees for the Time Being of Two Oceans Aquarium Trust v Kantey & Templer (Pty) Ltd* [2005] ZASCA 109: "*wrongfulness depends on the existence of a legal duty not to act negligently. The imposition of such a legal duty is a matter for judicial determination involving criteria of public or legal policy 9 consistent with constitutional norms.*"; and see *Loureiro and Others v iMvula Quality Protection (Pty) Ltd* [2014] ZACC 4

<sup>253</sup> UN General Assembly Resolution adopted by the Human Rights Council A/HRC/RES/26/9 (14 July 2016): "*Bearing in mind the approval of the Guiding Principles on Business and Human Rights by the Human Rights Council in its resolution 17/4*"; "*Decides to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights; whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises*" and "*In favour: ... South Africa*".

<sup>254</sup> See *Companies Act*; *National Environmental Management Act*; *Rome Statute Act* amongst others.

127. The *King Reports on Corporate Governance for South Africa* is South Africa's leading corporate governance code that sets out voluntary but widely accepted principles and best practices to promote ethical leadership, accountability, transparency and responsible corporate citizenship by organisations.<sup>255</sup>
128. *King IV* Principle 13 requires corporations to be governed in compliance with all applicable laws and adopted, non-binding rules, codes and standards in a way that supports the organization being ethical and a good corporate citizen.<sup>256</sup> Principle 1 of *King V*, released in 2025, states that the governing body of a corporation must lead ethically which includes acting beyond mere legal compliance.<sup>257</sup>
129. The characteristics and values set out in *King V* include that members of the governing body of the corporation must act with integrity which entails acting ethically; act with competence which entails acting with due skill, care and diligence, and taking reasonable steps to become informed about matters for decision making; to act responsibly which entails anticipating, preventing or otherwise mitigating the negative impacts and outcomes of the organisation's activities and outputs on the resources and relationships it uses and affects, and on its economic, social and environmental context; and to act with fairness which entails taking responsibility for the organizations actual and reasonably expected impact and outcomes on the natural environment, society and future generations.<sup>258</sup>
130. These corporate governance expectations reinforce the proposition that corporate boards and directors cannot confine their oversight to narrow financial or operational considerations where the foreseeable consequences of corporate activity extend to severe human rights and environmental harms.

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<sup>255</sup> King V, Foundational Concepts 2025, "For the purposes of King V, corporate governance is defined as follows: The exercise of ethical and effective leadership by the governing body towards the realisation of the following governance outcomes for the organisation within its economic, social and environmental context", [King V Foundational Concepts.pdf](#) accessed on 19 February 2026 and see *Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company Limited and Others* (7655/05 , 7655/05) [2006] ZAGPHC 47; 2006 (5) SA 333 (W) (15 May 2006), para 16.7: "Practising sound corporate governance is essential for the well-being of a company .... To this end the corporate community within South Africa has widely and almost uniformly accepted the findings and recommendations of the King Committee on Corporate Governance".

<sup>256</sup> King IV, Principle 13

<sup>257</sup> King V, Principle 1

<sup>258</sup> King V, Principle 1, Characteristics and Values

131. The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct<sup>259</sup> specifically states:

*“States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:*

*1) Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*

*2) Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*

*3) Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.*

*4) Have a publicly available policy commitment to respect human rights.*

*5) Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts; and*

*6) Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.”*

132. The above frameworks affirm that corporations are required to ensure their conduct, whether directly or indirectly, negatively affect human rights. While some companies may claim that they lack visibility into the end-use of their commodities, the integration of Israel’s energy infrastructure into its military and occupation apparatus renders such ignorance objectively implausible. To guard against overreach, however, this report calls not for blanket criminal attribution, but for principled, proportionate and urgent regulatory and legal review consistent with international legal norms and obligations.

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<sup>259</sup> OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, <https://doi.org/10.1787/81f92357-en> accessed on 10 January 2026

This entails the immediate suspension of coal trade with Israel until it can be proven that South African coal does not contribute to grave violations of international human rights law and does not render South Africa complicit in genocide, illegal occupation and apartheid.

133. Corporations must exercise ongoing oversight and monitoring of how the direct and indirect consequences of the organisation's activities and outputs affect its standing as a responsible corporate citizen over time. This should include ensuring measures and targets areas including safeguarding of human rights and the environment.<sup>260</sup> Where there is a risk or suspicion of corporate complicity in international war crimes, the conduct which may bear this risk must be halted immediately and any criminal activity must be investigated by State authorities.
134. This duty of ongoing monitoring and response aligns with the preventative orientation of both international criminal law and South African statutory law, which emphasise early intervention where there is a risk of serious harm.<sup>261</sup>
135. Where preventative measures are not taken, corporate exposure may extend beyond reputational or regulatory consequences to potential civil and criminal liability.<sup>262</sup> Corporations are bound by both domestic and international legal duties to ensure that their business operations do not contribute to or facilitate violations of international law.
136. The UNGPs state: "*As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. Typically, civil actions can also be based on an enterprise's alleged contribution to a harm, although these may not be framed in human rights terms. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.*"<sup>263</sup>

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<sup>260</sup> King V, Principle 2

<sup>261</sup> See Bosnia v Serbia, para 431, Rome Statute of the International Criminal Court and South Africa's Rome Statute Act.

<sup>262</sup> See South Africa's Rome Statute Act.

<sup>263</sup> UNGPs, p5

137. In circumstances where companies supply goods, logistics or financing to entities engaged in the commission of crimes against humanity, their conduct gives rise to potential derivative liability under the doctrines of aiding and abetting and accessory responsibility.<sup>264</sup> The principle is well established in customary international law and reflected in Article 25(3)(c) of the Rome Statute, which criminalises knowingly providing practical assistance or support that has a substantial effect on the commission of crimes within the court’s jurisdiction.<sup>265</sup> South Africa has domesticated the Rome Statute making the provisions of the Rome Statute domestic law in the country.
138. You are also referred to section VIII, subsection A below, and specifically *A(vii) Individual and Corporate Responsibility for Complicity in International Crimes* which expands on the complicity of corporations and individuals as well as State responsibility in this regard.
139. South Africa’s domestic legal framework reinforces corporate obligations to act ethically and to prevent foreseeable harm arising from commercial activity. Section 28 of the National Environmental Management Act 107 of 1998 (NEMA) imposes a positive statutory duty on “every person” who causes, has caused or may cause significant pollution or degradation of the environment to take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, insofar as such harm cannot reasonably be avoided or stopped, to minimise and rectify it.<sup>266</sup>
140. This duty is framed broadly and has been interpreted by South African courts as imposing a proactive and continuing obligation extending beyond direct operational conduct to include reasonably foreseeable downstream consequences of commercial activity and supply.<sup>267</sup> Read together with directors’ duties under sections 76(3) and

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<sup>264</sup> UN Office of the High Commissioner for Human Rights, *Accountability and Remedy Project: Improving Accountability and Access to Remedy for Business Involvement in Human Rights Abuses* (2020) <https://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project> accessed 25 November 2025 - The OHCHR’s Accountability Resource Guide (2020) explains this concept directly: Business enterprises may be held liable under domestic or international law if they are found to have aided or abetted the commission of crimes under international law by others, such as states or armed groups.

<sup>265</sup> Rome Statute, art 25(3)(c) : “*A person shall be criminally responsible... if that person... for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission*”.

<sup>266</sup> National Environmental Management Act 107 of 1998, s 28. And see section X below.

<sup>267</sup> See various King Reports and see *Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company Limited and Others* (7655/05 , 7655/05) [2006] ZAGPHC 47; 2006 (5) SA 333 (W) (15 May 2006)

76(4) of the *Companies Act* 71 of 2008, and the corporate governance standards set out in *King IV* and *King V*, international jurisprudence, the OECD Guidelines, corporate actors are required to conduct value-chain due diligence proportionate to the risk profile of their operations and markets. Such due diligence includes buyer verification, licensing checks, contractual compliance, audit rights and sanctions screening, where appropriate. Wilful blindness to the end-use of products - particularly where risks are patent and amount to complicity in genocide - may constitute a breach of both statutory and fiduciary obligations.<sup>268</sup>

141. With regards to the Board of Directors and their responsibilities, the King Report (March 2002) states the following:

*“The Board is the focal point of the corporate governance system. It is ultimately accountable and responsible for the performance and affairs of the company...”*<sup>269</sup>

142. The King Committee stressed that one of the characteristics of good corporate governance is social responsibility. The Committee stated as follows:

*“A well-managed company will be aware of, and respond to, social issues, placing a high priority on ethical standards. A good corporate citizen is increasingly seen as one that is non-discriminatory, non-exploitative, and responsible with regard to environmental and human rights issues.”*<sup>270</sup>

143. Under South African law, corporations operating in environmentally sensitive contexts are not insulated by formal regulatory compliance or secrecy. In *Company Secretary of ArcelorMittal South Africa v Vaal Environmental Justice Alliance 2015 (1) SA 515 (SCA)* the Supreme Court of Appeal held that access to environmental information is

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<sup>268</sup> National Environmental Management Act 107 of 1998, s 28 (creating a duty of care requiring “every person” who causes, has caused or may cause significant pollution or degradation to take reasonable measures to prevent, minimise or rectify such harm, including impacts that are reasonably foreseeable); Companies Act 71 of 2008, ss 76(3)(b), 76(4)(a) (requiring directors to exercise powers and perform functions with reasonable care, skill and diligence, and in the best interests of the company); Institute of Directors in Southern Africa, *King IV Report on Corporate Governance for South Africa* (IoDSA 2016) Principles 1, 4 and 13 (requiring responsible corporate citizenship, stakeholder-impact diligence and supply-chain/third-party risk governance as integral components of corporate oversight).

<sup>269</sup> See *King Report* March 2002

<sup>270</sup> See *King Report* March 2002 page 12 paragraph 18.7 and see *Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company Limited and Others* (7655/05, 7655/05) [2006] ZAGPHC 47; 2006 (5) SA 333 (W) (15 May 2006)

integral to the exercise of constitutional environmental rights and affirmed that there is no room for secrecy where corporate activities pose environmental risks.<sup>271</sup> The Court recognised the role of civil society in monitoring industrial impacts and endorsed a model of collaborative environmental governance, in which private actors must operate transparently and in good faith. Proper discharge of corporate governance duties in such contexts therefore requires proactive disclosure of relevant environmental information and engagement with affected stakeholders.

144. As confirmed in *Arcellormittal*, the Constitution imposes horizontal duties on private entities through the Bill of Rights. Section 8(2) provides that rights bind natural and juristic persons when applicable<sup>272</sup>, and section 24 guarantees everyone the right to an environment that is not harmful to health or well-being.<sup>273</sup> Section 7 of the Companies Act states that its purpose is to promote compliance with the Bill of Rights as provided for in the Constitution, in the application of company law.
145. Corporations whose exports materially sustain internationally wrongful acts act inconsistently with the constitutional imperative to respect, protect, promote and fulfil fundamental rights and values as set out in the Bill of Rights, these include the importance of respecting and protecting the rights to life, human dignity and equality. Even if the violations of these rights are taking place abroad - when they are materially linked to the conduct and operations of corporations in South Africa, these corporations risk liability under both international and domestic law.
146. Furthermore, section 24N(8) of NEMA provides that: "*notwithstanding the Companies Act or the Close Corporations Act, the directors of a company or members of a close corporation are jointly and severally liable for any negative impact on the environment, whether advertently or inadvertently caused by the company or close corporation which they represent, including damage, degradation or pollution.*"<sup>274</sup> As will be detailed

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<sup>271</sup> *ArcelorMittal South Africa v Vaal Environmental Justice Alliance 2015 (1) SA 515 (SCA)*

<sup>272</sup> Constitution, s 8(2): "A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right".

<sup>273</sup> Constitution, s 24.(a) & (b)(i): "Everyone has the right - (a) to an environment that is not harmful to their health or wellbeing; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—(i) prevent pollution and ecological degradation";

<sup>274</sup> 24N(8) of NEMA

below under section VI, the IDF's operations (directly fuelled by South African coal supplied by multinational corporations acting within South Africa) have been devastating to the environment and human life in Palestine and for future generations living in Gaza, those who are responsible for contributing or materially aiding the destruction must be stopped and held accountable under applicable laws in South Africa, including under the Implementation of the Rome Statute Act.

147. In the present context, energy and mining companies exporting coal to Israel act with at least constructive knowledge that such commodities sustain infrastructure integral to the illegal occupation and genocide of the Palestinian people in Gaza. Continued commercial supply under these circumstances, without enhanced due diligence or withdrawal constitute assistance to internationally wrongful acts and expose companies to civil and criminal liability under South African law and international criminal law.

## **B. The Economy of Genocide**

148. Groundbreaking reports by the United Nations Special Rapporteur on the Palestinian Territories, Francesca Albanese, provides an urgent and damning indictment of the global infrastructure that underpins and profits from Israel's genocidal campaign. Her findings underscore that complicity in Israel's energy trade - whether by States or corporations - cannot be divorced from accountability<sup>275</sup>, placing South Africa's continued coal exports squarely within a framework of legal responsibility for aiding and sustaining the Israeli apartheid and genocidal campaign.
149. In the June 2025 report titled *From Economy of Occupation to Economy of Genocide*, the Special Rapporteur highlights the grave complicity of corporate actors (directly naming Glencore and South Africa), including those in the extractive and energy sectors:

*“While political leaders and governments shirk their obligations, far too many corporate entities have profited from Israel's economy of illegal occupation, apartheid and now, genocide... ending it will not happen without holding the private sector*

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<sup>275</sup> Rory McCarthy, *UN report lists companies complicit in Israel's "genocide": who are they?*, (Al Jazeera, 1 July 2025) <https://www.aljazeera.com/news/2025/7/1/un-report-lists-companies-complicit-in-israels-genocide-who-are-they> accessed 4 November 2025.

*accountable, including its executives. International law recognizes varying degrees of responsibility – each requiring scrutiny and accountability, particularly in this case, where a people’s self-determination and very existence are at stake. This is a necessary step to end the genocide and dismantle the global system that has allowed it.*”<sup>276</sup>

150. The Special Rapporteur identified the energy sector as central to sustaining both the economy of occupation and the transition into a full-fledged economy of genocide, noting “*Reliant on fuel and coal imports, Israel maintains an integrated energy infrastructure serving both Israel and the occupied Palestinian territory, seamlessly powering illegal settlers while controlling and obstructing Palestinian access.*”<sup>277</sup>
151. These statements bear direct relevance to South African coal exports and this report as the Special Rapporteur stresses that “*Commercial endeavours enabling and profiting from the obliteration of innocent people’s lives must cease...*”<sup>278</sup>
152. Glencore was specifically cited for shipments from South Africa accounting for 15 per cent of Israeli coal imports in 2023 and continuing in 2024.<sup>279</sup> This constitutes a stark indictment of South Africa’s role as a coal supplier and demands urgent action from government and regulators to address and terminate this involvement.
153. Furthermore, in 2025, South Africa became the leading exporter of coal to Israel when Colombia took the principled stance by fulfilling their legal obligations by imposing a complete embargo on coal exports to Israel. It appears as though South Africa has taken the opportunity to increase its exports despite Israel being accused of committing genocide in Palestine.
154. South African coal is not a benign energy input - it directly supports an integrated military-civilian infrastructure that is enabling ethnic cleansing and other grave violations of international law, sustained both by the corporations that profit from it and the State infrastructure that facilitates it.

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<sup>276</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, Summary, para 57 directly naming South Africa and Glencore.

<sup>277</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, paras 53–57.

<sup>278</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, paras 4, 56–57.

<sup>279</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, para 57.

155. According to Albanese, companies maintaining relationships with Israel may incur liability for the following<sup>280</sup>:
- 155.1. a violation of the Palestinian right to self-determination;
  - 155.2. annexation of Palestinian territory, maintenance of an unlawful occupation and therefore the crime of aggression and associated human rights violations;
  - 155.3. crimes of apartheid and genocide, and
  - 155.4. other ancillary crimes and violations.
156. According to Albanese's report, Glencore and its partners, are now and have been operating within what the UN mandate classifies as the economies of occupation and genocide.
157. As further explained in Albanese's report, corporate entities have a long history of aiding Israel's pursuit of Palestinian dispossession and displacement, especially after 1967. The corporate sector has and continues to materially contribute to this endeavour<sup>281</sup> by providing Israel with the weapons and machinery required to destroy homes, schools, hospitals, places of leisure and worship, livelihoods and productive assets such as olive groves and orchards, to segregate and control communities and restrict access to natural resources.<sup>282</sup> By helping to militarize and incentivize illegal Israeli presence in the OPT, corporate actors have contributed to the creation and maintenance of the conditions for Palestinian ethnic cleansing.
158. Coal exports fall squarely within this category. The coal that generates the electricity used to power illegal settlements and military infrastructure on OPT is part of the same economy of dispossession, ethnic cleansing and now genocide.
159. Under both international and domestic law, including the Guiding Principles on Business and Human Rights and customary international law, South Africa and

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<sup>280</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, para 20.

<sup>281</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, paras 1-4, 22-28, 46-51.

<sup>282</sup> Albanese, *From Economy of Occupation to Economy of Genocide*

corporate entities within its jurisdiction are obliged to prevent complicity in genocide through material trade support. As Albanese states:

*“Today, the Guiding Principles on Business and Human Rights set out the normative framework for States’ and corporate entities’ compliance with international law. States have the primary obligation to prevent, investigate, punish and remedy human rights abuses by third parties, and may breach their obligations if they fail to do so. The Guiding Principles crystallize the human rights standards applicable to corporate conduct which apply regardless of whether states uphold their primary obligations. International humanitarian law and criminal law also confer specific obligations and liabilities on private actors, with domestic jurisdictions primarily responsible for enforcement.”*<sup>283</sup>

160. These are not mere policy exhortations, but authoritative legal characterisations from UN mechanisms created to protect fundamental human rights. South African coal, exported knowingly into the machinery of ethnic cleansing, is no longer simply a commodity. In substance, it functions as contraband of war, fuelling an unfolding genocide in violation of the Genocide Convention, UN Charter, international criminal and humanitarian law and the constitutional values upon which South Africa claims to stand for.
161. The Provisional Measure Orders and Advisory Opinions of the ICJ, the ICC’s arrest warrants for Benjamin Netanyahu and Yoav Gallant for war crimes, the United Nations Human Rights Council’s (UNHRC) Genocide Report as well as South Africa’s own political stance together place on both government and corporate entities a *prima facie* responsibility not to initiate, maintain or expand trade and financial dealings that sustain Israel’s internationally wrongful acts, and to withdraw totally and unconditionally from such dealings which are ongoing.
162. South Africa has been explicitly identified as a State whose resources are directly feeding the Israeli genocide and illegal occupation.<sup>284</sup> This is not the language of

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<sup>283</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, para 16.

<sup>284</sup> Albanese, *From Economy of Occupation to Economy of Genocide*, para 57.

advocacy groups or political opponents; it is a legal assessment by UN mandate-holders and international courts and tribunals as to the nature and consequences of such conduct.

163. Given the heightened international legal findings, provisional measures and multiple UN reports identifying the use of imported energy in acts of genocide and apartheid, the burden of justification shifts to corporate actors engaged in high-risk trade – particularly in fungible commodities like coal. They must demonstrate that they have taken active steps to ensure non-complicity, including conducting enhanced due diligence, seeking end-user declarations, auditing downstream usage and invoking *force majeure* or exit clauses where continued trade sustains grave breaches of international law. In the absence of such steps, liability arises not merely for what is known, but for what ought reasonably to have been known.<sup>285</sup>
164. The South African government has a duty to ensure that these corporations are operating ethically and not profiting from the destruction of the Palestinian people.
165. The legal position articulated by Dr. Ralph Wilde in his expert legal opinion submitted to the ICJ titled *Illegality of Israel's presence in the Palestinian Gaza Strip and West Bank, including East Jerusalem, in the light of the 2024 Occupied Palestinian Territory Advisory Opinion of the International Court of Justice, and consequences for third States and the European Union*<sup>286</sup> confirms that Third States must not recognise, assist or in any manner enable Israel's illegal presence in the OPT.<sup>287</sup>
166. Dr Wilde argues that this is not a discretionary political posture, but a binding obligation of international law. Once a presence is found to be unlawful in its very existence any material trade finance or services that sustain that presence risk constituting assistance

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<sup>285</sup> See generally *Guiding Principles on Business and Human Rights*, Principles 7, 17, 19 and 24; OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2023), Ch IV–V; UN Working Group on Business and Human Rights, *Guidance on Heightened Human Rights Due Diligence for Business in Conflict-Affected Areas* (2020); ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001) Art 16, UN Doc A/56/10; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v Israel)* (Provisional Measures Orders) [2024] ICJ Rep; *Prosecutor v Furundžija* ICTY-95-17/1-T (10 December 1998) para 249; *Prosecutor v Blaškić* ICTY-95-14-T (3 March 2000) paras 283–307 and *Bosnia v Serbia*.

<sup>286</sup> Dr. Wilde, *Illegality of Israel's presence in the Palestinian Gaza Strip and West Bank, including East Jerusalem, in the light of the 2024 Occupied Palestinian Territory Advisory Opinion of the International Court of Justice, and consequences for third States and the European Union*, (legal opinion, 1 December 2024). (Hereafter referred to as Dr. Wilde, *Expert Legal Opinion on illegality of Israel's presence in the OPT*)

<sup>287</sup> Dr. Wilde, *Expert Legal Opinion on illegality of Israel's presence in the OPT*, para 104-105.

to an internationally wrongful act and may attract State responsibility and other legal consequences.<sup>288</sup> To continue exporting coal to Israel is to knowingly operate within the ‘economy of genocide’ and to be complicit in international crimes.

167. This is not rhetorical flourish - it is a legal category that brings with it consequences of liability and eventual sanction. Every additional shipment out of Richards Bay deepens South Africa’s entanglement in this system. Coal is no longer an ordinary export: it has become the currency of mass atrocity committed by Israel. The longer South Africa permits its trade to Israel, the more it undermines both its international standing and its own claim to a constitutional order built on fundamental human rights such as human dignity, equality and freedom.

### **C. Comparators: Divestment Precedent**

168. The urgency of corporate accountability in the context of atrocity crimes has been recognised internationally. When private actors fail to exercise due diligence or continue materially supporting operations linked to human rights violations, they risk legal, reputational and financial consequences.<sup>289</sup>
169. South African coal exporters now face a comparable reckoning: continued participation in the supply chain powering Israel’s illegal occupation and attacks on Gaza exposes them to the same legal and ethical scrutiny as global peers who have acted decisively to disengage from complicity.
170. Comparative practice shows an emerging consensus that continued corporate involvement in atrocity-linked supply chains – whether in arms, finance or energy – engages duties of non-assistance and demands urgent ethical and legal scrutiny, followed by disengagement where risks cannot be mitigated.
171. In 2025, Colombia’s coal export relationship with Israel became a high-profile example of State driven disengagement from a genocidal and war crimes linked energy supply chain, with the President of Colombia explicitly framing coal as a strategic input whose continued supply could amount to material support for the genocide that must be halted.

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<sup>288</sup> Dr. Wilde, *Expert Legal Opinion on illegality of Israel’s presence in the OPT*, paras 109-114.

<sup>289</sup> Albanese, *From Economy of Occupation to Economy of Genocide*; United Nations, *Guiding Principles on Business and Human Rights* (2011).

Building on Decree 1047 of 2024 issued by Colombia's Ministry of Commerce Industry and Tourism which imposed an immediate prohibition on coal exports to Israel subject to defined exceptions, President Gustavo Petro publicly escalated enforcement in 2025 amid allegations that shipments had continued in practice through loopholes, internal deception and corporate pressure, ordering that the Colombian Navy block any coal shipments destined for Israel and warning that not a single ton should leave for that market.<sup>290</sup>

172. In August 2024 Namibia revoked permission previously granted to the German-owned cargo vessel *MV Kathrin* to dock at the Port of Walvis Bay because the ship was suspected of carrying explosive military materials bound for Israel.<sup>291</sup> Namibian authorities blocked the ship “because it contained explosive material destined for Israel,” with Justice Minister Yvonne Dausab explicitly linking the action to Namibia's international obligations not to support or be complicit in war crimes, crimes against humanity, genocide or unlawful occupation.<sup>292</sup>
173. Another example is Norway's largest pension fund, KLP, who set a precedent in 2025 by divesting from two companies supplying weapons to Israel's military.<sup>293</sup> KLP

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<sup>290</sup> EY, *Colombia Prohibits Coal Exports to Israel*, (26 August 2024), [Colombia prohibits coal exports to Israel | EY - Global](#) accessed on 23 February 2026 ; and see Business and Human Rights Centre, *Colombia: President Gustavo Petro orders navy to block coal shipments to Israel, alleging that shipments have continued despite ban, including due to corporate pressure*, (25 July 2025), <https://www.business-humanrights.org/en/latest-news/colombian-president-gustavo-petro-orders-navy-to-block-coal-shipments-to-israel-alleging-that-shipments-have-continued-despite-ban-including-due-to-corporate-pressure/?utm> accessed on 23 February 2026; and see Reuters, *Colombia's Petro threatens to alter Glencore contract over Israel coal exports*, (23 July 2025), [Colombia's Petro threatens to alter Glencore contract over Israel coal exports | Reuters](#) accessed on 23 February 2026

<sup>291</sup> See AA, *Namibia revokes docking permission for vessel carrying military cargo to Israel*, (29 August 2024) <https://www.aa.com.tr/en/middle-east/namibia-revokes-docking-permission-for-vessel-carrying-military-cargo-to-israel/3315767?utm> accessed on 23 February 2026; and see European Legal Support Centre, *Emergency motion against the delivery of explosives carried by the German ship MV Kathrin to Israel*, (30 October 2024), [Emergency motion against the delivery of explosives carried by the German ship MV Kathrin to Israel - The European Legal Support Center \(ELSC\) %](#) accessed on 23 February 2026

<sup>292</sup> The Jerusalem Post, *Namibia blocks vessel suspected of carrying 'explosive material destined for Israel*, (28 August 2024). [Namibia denies docking to ship with military cargo for Israel | The Jerusalem Post](#) accessed on 23 February 2026; and see German Practice in International Law, *Namibia Denies Port Access to German-Owned Vessel Carrying Military Equipment to Israel*, (29 August 2024) [Namibia Denies Port Access to German-Owned Vessel Carrying Military Equipment to Israel - GPIL - German Practice in International Law](#) accessed on 23 February 2026; and see

<sup>293</sup> Al Jazeera, *Norwegian pension fund divests from companies selling to Israeli military*, (30 June 2025) <https://www.aljazeera.com/news/2025/6/30/norwegian-pension-fund-divests-from-companies-selling-to-israeli-military> accessed 4 November 2025.

announced it had “*decided to exclude the companies Oshkosh Corporation and ThyssenKrupp due to their sales of weapons to the Israeli military*”.<sup>294</sup>

174. This move followed United Nations warnings that arms vendors to Israel “*risk becoming complicit in serious violations of human rights and humanitarian law*”.<sup>295</sup> KLP found that the firms had not met their duty of care: they “*failed to document the necessary due diligence in relation to their potential complicity in violations of humanitarian law*,”<sup>296</sup> warranting their exclusion from KLP’s investment universe.
175. The divestment underscored that businesses must face exclusion from responsible investment frameworks if they cannot ensure their products are not used to perpetrate war crimes. KLP’s decision demonstrates how commercial and fiduciary actors are already responding to their legal obligations. The duty of non-assistance in an unlawful situation requires the practical withdrawal of materially supportive relationships. Divestment and operational cessation are therefore lawful and proportionate measures that reflect not merely reputational caution, but the legal imperative for States and corporate actors to avoid facilitating an illegal presence and associated international crimes.
176. In February 2024, the Japanese Itochu Corporation announced that it would terminate its memorandum of understanding with Israel’s defence manufacturer Elbit Systems, explicitly citing the ICJ’s provisional measures order in *South Africa v Israel* and its own human rights due diligence obligations. Itochu’s Chief Financial Officer confirmed that the cooperation agreement would end before its scheduled expiry because continuation was no longer appropriate in light of the ICJ ruling and associated legal risk. The announcement was widely reported as one of the clearest examples of a major multinational corporation disengaging from Israeli defence-linked trade directly in response to international judicial developments.<sup>297</sup>

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<sup>294</sup> KLP, Decision document on exclusion (23/30 June 2025) <https://www.klp.no/en/press-room/klp-excludes-two-weapons-manufacturers> accessed 4 November 2025.

<sup>295</sup> KLP, Decision document on exclusion

<sup>296</sup> KLP, Decision document on exclusion

<sup>297</sup> The Jerusalem Post, *Japan's Itochu to end cooperation with Israel's Elbit amid Gaza war*, 5 February 2024, [Japan's Itochu to end cooperation with Israel's Elbit amid Gaza war | The Jerusalem Post](#) accessed on 26 February 2026.

177. Even prior to October 2023, corporations have taken an ethical stance against the ongoing war crimes committed by Israel. In July 2021, and repeatedly cited during subsequent escalations in Gaza, Ben & Jerry’s announced that it would cease selling its products in the Israeli-occupied West Bank and East Jerusalem, stating that continued sales in settlements were “inconsistent with our values.”<sup>298</sup>
178. South Africa’s own legal and policy positions provide compelling support for such measures. The South African government has officially compared Israeli policies in Palestine to the crimes of apartheid and genocide, and it has engaged international legal mechanisms accordingly. The State cannot credibly permit corporate actors under its jurisdiction to continue supplying commodities that sustain those very crimes. It must adopt and enforce measures to ensure that corporations operating within South Africa’s jurisdiction adhere to international business and corporate guideline standards and international law by halting trade that sustains apartheid, illegal occupation or genocide, and by regulating, conditioning or prohibiting exports where serious risks of complicity arise.

## V. GAZA GENOCIDE: A COLLECTIVE CRIME

### A. Overview of Findings

179. Francesca Albanese’s October 2025 report “*Gaza Genocide: A Collective Crime*”<sup>299</sup> underscores that Israel’s assault on Gaza is intentionally and systematically supported by other States, making it an “*internationally enabled*” genocide.<sup>300</sup> The report emphasizes that Gaza’s devastation is the product of a “*regime of settler-colonial apartheid*” backed by powerful allies.<sup>301</sup> Colonial narratives that dehumanize Palestinians have justified this violence, while Western governments repeatedly parrot Israeli propaganda to legitimize the attacks on Palestinian civilians. Albanese frames

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<sup>298</sup> Ben & Jerry’s, *Ben & Jerry’s Will End the Sale of Our Ice Cream in the Occupied Palestinian Territory*, (2021) [Ben & Jerry’s Will End Sales of Our Ice Cream in the Occupied Palestinian Territory | Ben & Jerry’s](#) accessed on 23 February 2026.

<sup>299</sup> Francesca Albanese, UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, *Gaza Genocide: A Collective Crime*, UN Doc A/80/492 (2025) (Hereafter referred to as Albanese, *Gaza Genocide: A Collective Crime*).

<sup>300</sup> Albanese, *Gaza Genocide: A Collective Crime*, paras 1- 18.

<sup>301</sup> Albanese, *Gaza Genocide: A Collective Crime*, paras 1-3, 67.

the genocide as a collective crime abetted by four intersecting types of support – diplomatic, military, economic and humanitarian – each of which she describes as indispensable to sustaining Israel’s campaign.<sup>302</sup>

180. Albanese stresses that international law binds all States by peremptory (*jus cogens*) norms.<sup>303</sup> States have a positive obligation to bring any unlawful situation (such as unlawful occupation or genocide) to an end through lawful means and a negative duty to refrain from recognizing or assisting in maintaining that situation.<sup>304</sup> Albanese recalls the precedent of sanctions against apartheid South Africa, Rhodesia and other colonial regimes, noting that the same measures (boycotts, divestment, sanctions) “*can be enforced to secure justice and self-determination*”.<sup>305</sup> She warns that States’ failure to apply these measures to Israel – despite clear legal findings and orders from international courts and UN mechanisms – exposes a “*flagrant double standard*”.<sup>306</sup>
181. While the ICJ has found a plausible risk of genocide, a final determination remains pending. The legal arguments in Albanese’s report rely on the duty to prevent and not assist genocide once credible risk is established, not on definitive findings.<sup>307</sup> It further accepts that any claim of complicity must be grounded in specific knowledge and a demonstrable contribution or effect.<sup>308</sup>
182. The evidence assembled herein – including Israel’s integration of imported energy into its military infrastructure and the entrenchment of the unlawful occupation through its electrical infrastructure, the ICJ’s provisional findings and the UN Special Rapporteur’s reports – cumulatively satisfies the threshold for urgent, precautionary cessation of support, even if the ultimate criminal adjudication remains forthcoming. South Africa has also assembled and submitted damning evidence in relation to its case at the ICJ against Israel.

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<sup>302</sup> Albanese, *Gaza Genocide: A Collective Crime*, see sections A – D.

<sup>303</sup> Albanese, *Gaza Genocide: A Collective Crime*, paras 6(a) – (d)

<sup>304</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 6(b)(i)–(iii).

<sup>305</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 4, 16, 74.

<sup>306</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 4.

<sup>307</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 6(a) – (d)

<sup>308</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 12-14.

## B. Channels of State Support

183. Albanese's findings reinforce that Third States are not neutral bystanders but active-duty bearers whose conduct must conform to the strict obligations under international law governing genocide, apartheid and the prohibition of aid or assistance to internationally wrongful acts.<sup>309</sup>
184. Article I of the Genocide Convention imposes on every State the dual obligations to prevent and punish genocide and Article III expressly criminalizes complicity.<sup>310</sup> As the International Court of Justice confirmed in *Bosnia v Serbia*<sup>311</sup>, that duty to prevent arises the moment a State knows, or should have known, of a serious risk of genocide.<sup>312</sup> Given the Court's finding in *South Africa v Israel* that such a risk exists in Gaza, all States are now on notice and must employ all means reasonably available to them to prevent and not facilitate the commission of genocide.
185. Albanese's report affirms that all States bear an immediate, non-discretionary obligation to act decisively to prevent and cease any form of support - direct or indirect - that could contribute to the ongoing genocide.<sup>313</sup>
186. Albanese further affirms that States are bound by the rule codified in Articles 40 and 41 of the Articles on Responsibility of States for Internationally Wrongful Acts<sup>314</sup> (ARSIWA): no State may recognize as lawful a situation created by a serious breach of a peremptory norm of international law, nor render aid or assistance in maintaining that situation.<sup>315</sup> This duty of non-recognition and non-assistance applies not only to overt military or political support, but also to economic, financial and trade relations that sustain the machinery of genocide, unlawful occupation and apartheid. The report confirms that Third States are under legal duty not to render aid or assistance - whether through trade, investment or supply chains - that sustains Israel's genocidal assault.<sup>316</sup>

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<sup>309</sup> Albanese, *Gaza Genocide: A Collective Crime*, paras 1–3, 6(a)–(c).

<sup>310</sup> Genocide Convention, arts 1, 3(e).

<sup>311</sup> *Bosnia v Serbia* (Judgment) (2007) ICJ Rep 43.

<sup>312</sup> *Bosnia v Serbia*, paras 430–431.

<sup>313</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 67 - 70.

<sup>314</sup> Albanese, *Gaza Genocide: A Collective Crime*, see Section on Legal Framework.

<sup>315</sup> ARSIWA, arts 40–41.

<sup>316</sup> Albanese, *Gaza Genocide: A Collective Crime*, see Sections A – D and 67-70

Continuing ordinary commercial relations, she concludes, constitutes a form of recognition and aid that international law strictly prohibits and Third States must do more to prevent the ongoing genocide and illegal occupation.<sup>317</sup>

### C. Economic Complicity

187. Albanese directly addresses economic trade and resource transfers as channels of complicity. The report confirms the transfer of resources, technology or knowledge which sustains illegal occupation, apartheid or genocide is a form of complicity engaging the responsibility of the transferring State.<sup>318</sup> Fuel, energy, financial assistance and logistical support are all listed as examples of material assistance that enable the ongoing crimes.<sup>319</sup> She emphasizes that Third States whose exports or trade relations materially enable Israel's operations in Gaza are providing aid and assistance to the commission of genocide and apartheid.<sup>320</sup>
188. In consequence, States must immediately review, suspend and, where necessary, terminate trade and investment relations that contribute to or normalize Israel's actions. For States maintaining commodity exports - such as coal, energy or transport logistics - the duty is unequivocal: such flows cannot lawfully continue once the State is on notice of the serious risk of aiding genocide.<sup>321</sup>
189. Albanese grounds these findings in additional binding instruments. Common Article 1 of the Geneva Conventions requires all States to "*respect and ensure respect*" for

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<sup>317</sup> Albanese, *Gaza Genocide: A Collective Crime*, see Section D and 67 - 70.

<sup>318</sup> Albanese, *Gaza Genocide: A Collective Crime*, see Section D and 67 - 70.

<sup>319</sup> Albanese, *Gaza Genocide: A Collective Crime*, paras 56, 63, 65–66, 67 - 70; Sections A-D

<sup>320</sup> Albanese, *Gaza Genocide: A Collective Crime*, paras 3, 55–56, 67 - 70 Sections A-D.

<sup>321</sup> Albanese, *Gaza Genocide: A Collective Crime*, see Conclusions 67 - 70.

international humanitarian law.<sup>322</sup> The Apartheid Convention<sup>323</sup> (Articles I - IV) and the Rome Statute prohibit institutionalized regimes of racial oppression and domination.<sup>324</sup>

190. Albanese concludes that Israel's control over the Palestinian people constitutes apartheid, reinforcing States' duties of non-recognition and cooperation to bring it to an end.<sup>325</sup> The use of force to sustain the illegal occupation or annexation of Palestinian land violates Article 2(4) of the UN Charter<sup>326</sup>, rendering any assistance - economic or otherwise - contrary to peremptory international law.
191. Albanese also recalls that international trade and investment law does not override peremptory norms. Under Article 53 of the Vienna Convention on the Law of Treaties<sup>327</sup>

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<sup>322</sup> Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, art 1 (Common art 1: obligation to respect and ensure respect for the Conventions in all circumstances).

<sup>323</sup> International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243, Arts II–III. Article II states: “*For the purpose of the present Convention, the term ‘the crime of apartheid’, which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:* (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person; (b) The imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part; (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country... (d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos... (e) Exploitation of the labour of the members of a racial group or groups... (f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.”

Art III states: “*International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State who commit, participate in, directly incite or conspire in the commission of the crime of apartheid, or directly abet, encourage or co-operate in the commission of the crime of apartheid.*”

<sup>324</sup> Rome Statute, (crime of apartheid as inhumane acts committed in the context of an institutionalised regime of systematic oppression and domination).

<sup>325</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 68.

<sup>326</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, Art 2(4): ‘*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*’

<sup>327</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Art 53: ‘*A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.*’; and see Albanese, *Gaza Genocide: A Collective Crime*, para 8(c).

Thus, bilateral trade or investment agreements that sustain or protect commerce connected to genocide or apartheid cannot lawfully be invoked.

(Vienna Convention), treaties conflicting with *jus cogens* norms are void. Thus, bilateral trade or investment agreements that sustain or protect commerce connected to genocide or apartheid cannot lawfully be invoked.

192. She notes that exceptions under World Trade Organization *GATT Articles* such as *XXI(c)*<sup>328</sup> and *GATS Article XIV*<sup>329</sup> *bis* allow States to suspend trade obligations to meet their UN Charter and human-rights duties. Similarly, “security” or “essential interests” clauses in free-trade or investment treaties permit suspension of cooperation to comply with international law.<sup>330</sup> Economic measures aimed at preventing or responding to genocide are therefore not only permissible but required where necessary to discharge States’ higher-order obligations under *jus cogens* norms.
193. The report extends responsibility to corporate and financial actors. States must regulate businesses within their jurisdiction to ensure they do not facilitate or profit from the commission of international crimes.<sup>331</sup>
194. The UN Guiding Principles on Business and Human Rights reinforce that companies have an independent responsibility to avoid causing or contributing to human-rights abuses and that States must ensure accountability where corporate conduct sustains unlawful operations. Governments must adopt legislation prohibiting public or private entities from exporting, investing or supplying goods and services that could enable Israel’s military campaign or which continue to entrench the unlawful occupation

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<sup>328</sup> General Agreement on Tariffs and Trade (adopted 30 October 1947, entered into force 1 January 1948) 55 UNTS 194, Art XXI(c): “Nothing in this Agreement shall be construed: (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.”

<sup>329</sup> General Agreement on Trade in Services (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 183, Art XIV: “Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:  
(a) necessary to protect public morals or to maintain public order;  
(b) necessary to protect human, animal or plant life or health;  
(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement ...”

<sup>330</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 8(c).

<sup>331</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 8(e): “Prosecution and Punishment: under the Geneva Conventions and customary international law, all States have the obligation to prosecute and punish genocide, crimes against humanity, war crimes and torture, regardless of their connection to the crime. Third States also have obligations to hold third parties, including corporations, to account for human rights and other violations of international law in their domestic courts.”

infrastructure. Albanese's reports confirm that indirect participation through resource provision, financing, insurance, logistics and technology transfer can amount to complicity in genocide and other crimes.<sup>332</sup>

195. In terms of enforcement, Albanese highlights that the Arms Trade Treaty<sup>333</sup> bars transfers where the exporting State has knowledge that the arms or related materials would be used to commit genocide, crimes against humanity or war crimes.<sup>334</sup> She links this to the broader obligation under ARSIWA Article 16, which prohibits knowingly assisting in the commission of an internationally wrongful act.<sup>335</sup>
196. By analogy, economic and trade cooperation that enables genocide, apartheid, illegal occupation or aggression against civilians engages the same prohibition when States export commodities, finance or services knowing, or being required to know, that these materially support such acts. Albanese underlines that lawful countermeasures – including the suspension of trade, financial relations and diplomatic cooperation – are necessary to induce compliance and end the breach of international law by Israel.<sup>336</sup>
197. Albanese concludes that the Gaza genocide is not an isolated episode but “*a collective crime sustained by the complicity of influential Third States.*”<sup>337</sup> She warns that “*at this critical juncture, Third States must immediately suspend and review all military, diplomatic and economic relations with Israel, since any continued engagement risks aiding Israel’s crimes.*”<sup>338</sup>

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<sup>332</sup> Albanese, *Gaza Genocide: A Collective Crime*, Sections A – D.

<sup>333</sup> Arms Trade Treaty (adopted 2 April 2013, entered into force 24 December 2014) UNTS vol 3013, 52295, Art 6, which provides: “*A State Party shall not authorize any transfer of conventional arms... if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions... or other war crimes as defined by international agreements to which it is a Party.*”

<sup>334</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 41.

<sup>335</sup> ARSIWA. art16 prohibiting a State from aiding or assisting in the commission of an internationally wrongful acts with knowledge of the circumstances.

<sup>336</sup> ARSIWA art 54, affirming the permissibility of lawful countermeasures by non-injured States in response to serious breaches of peremptory norms. Art 54: “*This chapter is without prejudice to the right of any State, entitled under article 48, to invoke the responsibility of another State, to take lawful measures against the responsible State to ensure cessation of the breach and reparation.*”

<sup>337</sup> Albanese, *Gaza Genocide: A Collective Crime*, Summary, paras 67 – 70.

<sup>338</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 68.

198. Her legal conclusion is categorical: States that persist in ordinary trade or investment with Israel, while aware of the ICJ's findings and the ongoing pattern of genocidal acts, are in breach of their obligations to prevent genocide, to ensure respect for international law and to abstain from assisting the maintenance of an unlawful situation.<sup>339</sup>
199. This interpretation leaves no margin of discretion. Once genocide is credibly determined or even seriously risked, States must deploy all means reasonably available to stop it and to ensure that no support is provided - including the suspension of commercial exchanges that materially sustain the perpetrators. Economic continuity under such conditions is not neutrality; it is unlawful and complicit assistance.
200. Albanese's analysis affirms that South Africa's ongoing export of coal to Israel is incompatible with, and would on this analysis, amount to a breach of its *erga omnes* obligations under the Genocide Convention, ARSIWA, Common Article 1 of the Geneva Conventions and customary international law.<sup>340</sup>
201. Albanese specifically identifies South Africa<sup>341</sup> among the States whose continued supply of energy resources and raw materials has materially supported Israel's military capacity and the maintenance of its assault on Gaza. Her report concludes that such trade constitutes economic assistance which, in the current context, sustains the commission of genocide and breaches the duty of non-assistance incumbent upon all States.
202. The report thus calls for urgent accountability: States and corporations must immediately cease support for the illegal occupation and genocide or face legal and political consequences if they do not. In Albanese's words, international complicity cannot be ignored: "*The world now stands on a knife-edge between the collapse of the international rule of law and hope for renewal. Renewal is only possible if complicity is confronted, responsibilities are met and justice is upheld.*"<sup>342</sup>

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<sup>339</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 66 - 70.

<sup>340</sup> Albanese, *Gaza Genocide: A Collective Crime*, paras 67-70.

<sup>341</sup> Albanese, *Gaza Genocide: A Collective Crime*, paras 65.

<sup>342</sup> Albanese, *Gaza Genocide: A Collective Crime*, Summary.

203. South Africa must heed this call by immediately suspending or terminating coal exports to Israel and aligning its trade, regulatory and foreign-policy practice with the obligations it has invoked before international courts.

## **VI. CLIMATE JUSTICE: THE INTERSECTION OF PROFIT, GENOCIDE AND CLIMATE DESTRUCTION**

204. The export of South African coal to Israel is not only a breach of domestic and international law; it is an environmental atrocity and a direct affront to the principles of climate justice. The very ships that carry coal from Richards Bay to the ports of Hadera and Ashkelon do not merely support Israel's genocidal campaign in Gaza; they materially contribute to a global climate crisis, whose impact transcends borders and generations.<sup>343</sup> This exacerbates harm to climate-vulnerable communities in the Global South, including Palestinians and poor and working-class South Africans, who have contributed least to historic emissions.

205. While international environmental law continues to evolve, the ICJ's 2025 Climate Opinion<sup>344</sup> (findings described below) represents a landmark step in this development. It remains true that issues of causation and State responsibility for extraterritorial greenhouse gas emissions are novel and complex in law. This report's inclusion of emission estimates and climate damage is intended to supplement – not substitute – the primary legal arguments grounded in the prohibition of genocide, illegal occupation and apartheid.

206. These climate findings serve as aggravating factors and reinforce the urgency of ending coal exports from a moral and ecological standpoint, particularly given South Africa's constitutional obligations under Section 24<sup>345</sup> and its commitments under the Paris

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<sup>343</sup> United Nations Environment Programme, *Responding to Disasters and Conflict - Gaza Environmental Assessment* (UNEP, June 2024) <https://www.unep.org/news-and-stories/press-release/gaza-conflict-has-caused-major-environmental-damage-un-says> accessed 12 November 2025.

<sup>344</sup> ICJ, *Obligations of States in Respect of Climate Change*, (Advisory Opinion) (23 July 2025) General List No. 187 (ICJ Climate Opinion)

<sup>345</sup> Section 24 of the South African Constitution enshrines the right to a healthy environment, stating everyone has the right to an environment not harmful to their health or well-being, and the right to have it protected for present and future generations through measures preventing pollution, promoting conservation and ensuring sustainable development alongside economic growth. This places a positive duty on the state and individuals to take reasonable legislative and other steps to protect the environment, influencing government policy, law-making, and business practices.

Agreement.<sup>346</sup> These findings also invoke climate justice principles of intergenerational equity and “common but differentiated responsibilities,” underscoring that no State (even in the Global South) can legitimately invoke its development needs to justify exports that fuel genocidal violence and climate harm abroad.<sup>347</sup> This does not create strict liability under current international law but strengthens the case for regulatory and ethical divestment in coal trade.

### A. South Africa’s Environmental and Climate Justice Framework

207. South Africa’s constitutional and statutory environmental framework treats decisions that enable foreseeable, significant harm to the environment and planet as justiciable. Section 24 of the Constitution guarantees everyone the right to an environment not harmful to health or well-being<sup>348</sup>, while section 2 of the NEMA entrenches the preventative, precautionary and polluter-pays principles.<sup>349</sup> Read with section 28’s duty of care<sup>350</sup>, the State cannot lawfully, by policy inaction or by logistical support, allow exports that foreseeably worsen transboundary climate harm or local air-quality degradation, particularly where the harms fall most heavily on already vulnerable communities and future generations.<sup>351</sup>

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<sup>346</sup> United Nations Climate Change, The Paris Agreement, *The Paris Agreement is a legally binding international treaty on climate change. It was adopted by 195 Parties at the UN Climate Change Conference (COP21) in Paris, France, on 12 December 2015. It entered into force on 4 November 2016.* <https://unfccc.int/process-and-meetings/the-paris-agreement> accessed on 10 January 2026.

<sup>347</sup> United Nations Framework Convention on Climate Change 1992, Article 3(1) - States should protect the climate “for the benefit of present and future generations” on the basis of equity and common but differentiated responsibilities.

<sup>348</sup> S24 of the Constitution: *Everyone has the right— (a) to an environment that is not harmful to their health or wellbeing; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that— (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.*

<sup>349</sup> National Environmental Management Act 107 of 1998 (Hereafter referred to as NEMA) s2,

<sup>350</sup> NEMA, s28: Duty of care and remediation of environmental damage.

<sup>351</sup> Constitution, s 24; National Environmental Management Act 107 of 1998 ss 2, 28; *Fuel Retailers Association of SA (Pty) Ltd v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC) 45–47 and 102: “The importance of the protection of the environment cannot be gainsaid. Its protection is vital to the enjoyment of the other rights contained in the Bill of Rights; indeed, it is vital to life itself. It must therefore be protected for the benefit of the present and future generations. The present generation holds the earth in trust for the next generation. This trusteeship position carries with it the responsibility to look after the environment.”

208. The National Environmental Management: Air Quality Act 39 of 2004 requires ambient-air protection through standards and licensing<sup>352</sup>; while point-source licences attach to emitters, even upstream decisions (such as the export of coal) that materially enable unlawful or excessive emissions are subject to the same preventative principles that bind environmental administration under NEMA.<sup>353</sup> Reasonable measures therefore include risk-based due diligence on high-risk destinations and conditioning access to State infrastructure upon compliance undertakings aligned with air-quality laws<sup>354</sup>, human-rights safeguards and South Africa’s climate commitments.
209. The Climate Change Act 22 of 2024<sup>355</sup> gives legal force to South Africa’s mitigation obligations through sectoral emission targets and carbon budgeting, and it mandates that executive actions align with its climate obligations.<sup>356</sup> Export and logistics decisions that expand combustion-related emissions abroad, while frustrating domestic transition objectives, are decisions “in respect of” climate response and must be rationally justified against these statutory duties.<sup>357</sup> Permitting coal exports that fuel a genocidal war economy abroad, while presenting decarbonisation at home as a “just transition”, is irreconcilable with the Act’s requirement that climate action advance equity and protect vulnerable communities. The Preamble of the Climate Change Act states: “*anthropogenic climate change represents an urgent threat to human societies and the planet and requires an effective, progressive and incremental response*”.<sup>358</sup>

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<sup>352</sup> National Environmental Management: Air Quality Act 39 of 2004

<sup>353</sup> Air Quality Act, Preamble and S2: “*The object of this Act is- (a) to protect the environment by providing reasonable measures for- (i) the protection and enhancement of the quality of air in the Republic; (ii) the prevention of air pollution and ecological degradation; and (iii) securing ecologically sustainable development while promoting justifiable economic and social development; and (b) generally to give effect to section 24(b) of the Constitution in order to enhance the quality of ambient air for the sake of securing an environment that is not harmful to the health and well-being of people.*”

<sup>354</sup> Air Quality Act 39 of 2004; National Environmental Management Act 107 of 1998 s 2(4)(a)(viii); *Earthlife Africa Johannesburg v Minister of Environmental Affairs* [2017] 2 All SA 519 (GP) 80.

<sup>355</sup> The Climate Change Act 22 of 2024

<sup>356</sup> Climate Change Act: Preamble: “*the Republic - (a) has a role to play in the global effort to reduce the greenhouse gas emissions identified by the international community as the primary drivers of anthropogenic climate change, and for which the implementation of appropriate mitigation responses is urgently required (b) is especially vulnerable to those impacts of climate change which require urgent and appropriate adaptation responses; and (c) has made international commitments and obligations, including to communicate and implement an effective nationally determined climate change response, encompassing mitigation and adaptation actions, that represents the Republic’s fair contribution to the global climate change response*”

<sup>357</sup> Climate Change Act 22 of 2024 (GG 23 July 2024) Section 1 (definition of “just transition”) and Section 4 (alignment of policies with climate obligations); Department of Forestry, Fisheries and the Environment, *Climate Change Bill: Explanatory Memorandum* (2023) 7–9.

<sup>358</sup> Climate Change Act, Preamble

210. International climate law establishes clear outer limits. The United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement require Parties to pursue the temperature goal and progressively strengthen NDCs (Paris Agreement, Arts 2(1)(a) and 4).<sup>359</sup> The ICJ’s Climate Change Advisory Opinion of 23 July 2025 clarifies that States have binding obligations of due diligence to prevent significant climate harm and to regulate private actors accordingly - failure to act can incur State responsibility.<sup>360</sup> These duties sit alongside the classic prevention rule of transboundary harm. South Africa’s climate-relevant trade decisions must therefore be coherent with these obligations.<sup>361</sup>
211. Furthermore, Additional Protocol I to the Geneva Conventions states: “1. *In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited*”; “2. *It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering*”; and “3. *It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.*”<sup>362</sup>
212. Israel’s conduct in Gaza has resulted in catastrophic environmental destruction including the obliteration of agricultural land, contamination of water sources, widespread toxic debris from bombarded urban areas and the systematic devastation of the territory’s natural and built environment on a scale that raises profound concerns under these prohibitions of international humanitarian law.
213. Article 8(2)(b)(iv) of the Rome Statute criminalises intentionally launching an attack in the knowledge that it will cause widespread long term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct

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<sup>359</sup> United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 and Paris Agreement under the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) UNTS No. 54113, Arts 2(1)(a) and 4

<sup>360</sup> ICJ Climate Opinion, see paras 88 – 161 dealing with States obligations in respect of Climate Change.

<sup>361</sup> United Nations Framework Convention on Climate Change (1992) 1771 UNTS 107 arts 2–4; Paris Agreement (2015) UN Doc FCCC/CP/2015/10/Add.1 arts 2, 4.

<sup>362</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977. Part III : Methods and means of warfare -- Combatant and prisoner-of-war status - Section I -- Methods and means of warfare, Art 35.1 -3

overall military advantage anticipated.<sup>363</sup> South Africa must ensure that its coal is not used to sustain these crimes.

## **B. Genocide and Emission Accounting**

214. Since the genocide began in October 2023, an estimated 2.99 million tonnes of South African coal have been exported to Israel.<sup>364</sup> Coal combustion is widely recognised as one of the most environmentally destructive forms of energy production, releasing large quantities of carbon dioxide and toxic air pollutants that contribute to climate change, severe air pollution and significant human health impacts.<sup>365</sup>

215. According to Climate Rights International, coal is the largest single source of the greenhouse gas emissions that are driving the climate crisis.<sup>366</sup> Coal mining and combustion has been linked with serious human rights abuses around the world, including the rights to life, health, water and a safe, clean and healthy environment.<sup>367</sup>

*“The combustion of coal is a major contributor to air pollution, which kills millions of people annually. Coal-fired power plants emit particulate matter, sulfur dioxide, nitrogen oxides, heavy metals, and other air pollutants that contribute to increased risks of respiratory and lung diseases, cancer, heart disease, and neurological impacts. Children, pregnant people, people with disabilities, and older people are particularly vulnerable to developing coal-related health problems.”<sup>368</sup>*

216. The environmental destruction caused by Israeli bombardments of Gaza, Lebanon and surrounding countries far exceeds the environmental destruction just caused by coal combustion. The UNEP in June 2024 described the situation in Gaza as causing

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<sup>363</sup> *Rome Statute, art 8(2)(b)(iv)*

<sup>364</sup> See Section I above.

<sup>365</sup> Climate Rights International, *Coal is the largest single source of the greenhouse gas emissions that are driving the climate crisis*, [Coal - Climate Rights International](#) accessed on 4 February 2026

<sup>366</sup> Climate Rights International, *Coal is the largest single source of the greenhouse gas emissions that are driving the climate crisis*,

<sup>367</sup> Climate Rights International, *Coal is the largest single source of the greenhouse gas emissions that are driving the climate crisis*

<sup>368</sup> Climate Rights International, *Coal is the largest single source of the greenhouse gas emissions that are driving the climate crisis*

“unprecedented” environmental damage<sup>369</sup>, with over 39 million tonnes of toxic debris at the time, mass contamination of water and soil, collapse of wastewater systems.<sup>370</sup>

217. On 23 September 2025, the UNEP reported that some of the damage caused by Israel’s bombardment could take decades to repair.<sup>371</sup> The report’s key findings included that the water crisis in Gaza has contributed to a surge in infectious diseases, that much of Gaza’s vegetation has been destroyed and that Gaza has lost 97 percent of its tree crops, 95 per cent of its shrubland and 82 per cent of its annual crops at a time where over 500 000 people in Gaza are facing famine conditions, with about 1 million others in a food emergency.<sup>372</sup> The report further recorded that 78 per cent of Gaza’s buildings have been damaged or destroyed and this has generated 61 million tonnes of debris of which 15% could be at relatively high risk of contamination with asbestos, industrial waste or heavy metals.<sup>373</sup>
218. The conclusion of both reports is that Gaza may become uninhabitable not only due to military violence but due to long-term ecological collapse, turning Gaza into an environmental sacrifice zone in violation of basic principles of environmental justice.<sup>374</sup>
219. According to a study cited in *The Guardian* in May 2025<sup>375</sup>, the long-term climate cost of Israel’s war in Gaza, including demolition, debris removal and reconstruction, may exceed 31 million tonnes of CO<sub>2</sub> equivalent (tCO<sub>2</sub>e). The study attributes over 99% of the 1.89 million tonnes of CO<sub>2</sub> generated between October 2023 and January 2025 directly to Israeli aerial bombardment, ground invasions and military logistics.<sup>376</sup> The

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<sup>369</sup> UNEP, Press Release, *Damage to Gaza causing new risks to human health and long-term recovery - new UNEP assessment* (18 June 2024), <https://www.unep.org/news-and-stories/press-release/damage-gaza-causing-new-risks-human-health-and-long-term-recovery> accessed on 20 October 2025

<sup>370</sup> UNEP, Press Release, *Damage to Gaza causing new risks to human health and long-term recovery - new UNEP assessment*

<sup>371</sup> UNEP, Press Release, *Environmental damage in Gaza Strip harming human health, threatening long-term food and water security - new UNEP report*, (23 September 2025) <https://www.unep.org/news-and-stories/press-release/environmental-damage-gaza-strip-harming-human-health-threatening> accessed on 30 October 2025

<sup>372</sup> UNEP, Press Release, *Environmental damage in Gaza Strip harming human health, threatening long-term food and water security - new UNEP report*,

<sup>373</sup> UNEP, Press Release, *Environmental damage in Gaza Strip harming human health, threatening long-term food and water security - new UNEP report*,

<sup>374</sup> UNEP, Press Release, *Environmental damage in Gaza Strip harming human health, threatening long-term food and water security - new UNEP report*

<sup>375</sup> Nina Lakhani, *The Guardian*, *Carbon footprint of Israel’s war on Gaza exceeds that of many entire countries* (30 May 2025) <https://www.theguardian.com/world/2025/may/30/carbon-footprint-of-israels-war-on-gaza-exceeds-that-of-many-entire-countries> accessed on 30 October 2025

<sup>376</sup> Nina Lakhani, *The Guardian*, *Carbon footprint of Israel’s war on Gaza exceeds that of many entire countries*

Guardian report states that “*the carbon footprint of the first 15 months of Israel’s war on Gaza will be greater than the annual planet-warming emissions of a hundred individual countries, exacerbating the global climate emergency on top of the huge civilian death toll.*”<sup>377</sup>

220. Israel’s fossil-fuel-dependent war effort, powered in part by South African coal, violates international humanitarian law and contributes to climate harm contrary to the Paris Agreement, the UNFCCC and the ICJ’s 2025 Climate Opinion, which affirmed that States must prevent significant transboundary environmental damage - including from military and fossil-fuel operations. It also deepens global climate injustice by allocating scarce atmospheric space to military destruction rather than development and adaptation needs in the Global South.
221. South Africa, as a founding member of the Just Energy Transition Partnership (JETP) and a litigant before the ICJ in the genocide case against Israel, cannot continue to export coal to a regime engaged in mass atrocity, environmental destruction and ecocide in Gaza. Such conduct violates Section 24 of the South African Constitution, which guarantees everyone the right to an environment not harmful to their health or well-being and thus places the Republic in violation of both domestic environmental law and international legal obligations. It also undermines South Africa’s claim to climate leadership and fair-share advocacy in international negotiations, weakening calls for climate finance, loss and damage and a just transition for its own people.
222. To continue exporting coal to Israel is not only to assist genocide but to actively contribute to irreversible planetary harm taking place in Gaza. South Africa has a constitutional and international duty to ensure that its natural resources are not used to violate fundamental human rights or to accelerate environmental degradation through genocide. The intersection of fossil fuel exports, illegal military occupation and irreversible climate damage must be addressed not only through policy shifts, but through urgent legally binding prohibitions on all coal shipments to Israel. To continue this trade is to stand complicit in both genocide and ecocide, and to sacrifice the rights of present and future generations for short-term profit.

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<sup>377</sup> Nina Lakhani, The Guardian, *Carbon footprint of Israel’s war on Gaza exceeds that of many entire countries*

### C. ICJ Advisory Opinion on Climate Change

223. The ICJ’s Advisory Opinion on the Obligations of States in respect of Climate Change, (ICJ Climate Opinion) further clarifies States’ duties to prevent, mitigate and remedy climate harm under international law, including human rights law.<sup>378</sup>
224. In its opinion, the ICJ advised that:
- 224.1. States have binding obligations under international law to prevent significant harm to the environment, and that international human rights law and climate change law informs each other and State obligations<sup>379</sup>;
- 224.2. The degradation of the climate system and of other parts of the environment impairs the enjoyment of a range of rights protected by human rights law<sup>380</sup>;
- 224.3. Anthropogenic greenhouse gas (GHG) emissions, including those arising from coal combustion, is a dominant cause of climate change and trigger the duty to prevent transboundary environmental harm<sup>381</sup>;
- 224.4. States must exercise due diligence in both mitigation and adaptation measures, and that the due diligence standard is stringent<sup>382</sup>; and

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<sup>378</sup> ICJ Climate Opinion, para 331: “*The Court notes that States have obligations under international human rights law to respect, protect and ensure the enjoyment of human rights of individuals and peoples. Human rights are focused on the protection of individuals and peoples and are not limited to specific fields of activity.*”

<sup>379</sup> ICJ Climate Opinion, para 404: “*The Court is of the view that international human rights law, the climate change treaties and other relevant environmental treaties, as well as the relevant obligations under customary international law, inform each other (see paragraphs 309-315). States must therefore take their obligations under international human rights law into account when implementing their obligations under the climate change treaties and other relevant environmental treaties and under customary international law, just as they must take their obligations under the climate change treaties and other relevant environmental treaties and under customary international law into account when implementing their human rights obligations.*” ; Conclusions, B. (a): “*States have a duty to prevent significant harm to the environment by acting with due diligence and to use all means at their disposal to prevent activities carried out within their jurisdiction or control from causing significant harm to the climate system and other parts of the environment, in accordance with their common but differentiated responsibilities and respective capabilities;*”

<sup>380</sup> ICJ Climate Opinion, para 375.

<sup>381</sup> ICJ Climate Opinion, paras 54–57, 268: “*the Court considers that the climate change treaties establish stringent obligations upon States to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions.*”

<sup>382</sup> ICJ Climate Opinion, paras 282: “*As far as climate change is concerned, such appropriate rules and measures include, but are not limited to, regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary for the prevention of significant*

- 224.5. Obligations are *erga omnes*, owed to all States and future generations, reinforcing the duty to cooperate to prevent climate catastrophe.<sup>383</sup>
225. Israel’s ongoing military actions in Gaza, its fossil-fuel-dependent war effort and the facilitation of South African coal exports to Israel raise serious legal concerns under humanitarian and human rights law and, in line with the ICJ Climate Opinion, may also contribute to global climate harm that engages international legal responsibility.<sup>384</sup>
226. The ICJ, in its opinion, specifically stated that State obligations in respect of Climate Change are *erga omnes* in nature: “*all States have a common interest in the protection of global environmental commons like the atmosphere and the high seas. Consequently, States’ obligations pertaining to the protection of the climate system and other parts of the environment from anthropogenic GHG emissions, in particular the obligation to prevent significant transboundary harm under customary international law, are obligations erga omnes.*”<sup>385</sup>
227. The Court specifically recognized that fossil-fuel-intensive operations that foreseeably exacerbate global warming can engage State responsibility if they result in significant environmental harm.<sup>386</sup>
228. Israel’s current military campaign in Gaza has direct and indirect climate consequences, which intersect with South Africa’s obligations under international law.
229. Israel’s energy-intensive military operations are heavily dependent on imported fossil fuels, including South African coal exports via Richards Bay, which contribute to GHG

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*harm to the climate system. Adaptation measures reduce the risk of significant harm occurring and are therefore also relevant for assessing whether a State is fulfilling its customary obligations with due diligence. These rules and measures must regulate the conduct of public and private operators within the States’ jurisdiction or control and be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation.”* And para 349: “The Court considers that the term “activities” in Article 194 [of UNCLOS], paragraph 2, encompasses activities which produce GHG emissions. *The standard of due diligence to be applied when complying with the obligation under Article 194, paragraph 2, is stringent*”.

<sup>383</sup> ICJ Climate Opinion, para 440: “*The Court observes that certain rules of international law relating to global common goods, such as the climate system, may produce erga omnes obligations*” “Conclusions.

<sup>384</sup> ICJ Climate Opinion, para 337: “*The environment is the foundation for human life, upon which the health and well-being of both present and future generations depend (see Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), p. 241, para. 29). The Court thus considers that the protection of the environment is a precondition for the enjoyment of human rights, whose promotion is one of the purposes of the United Nations as set out in Article 1, paragraph 3, of the Charter.*”

<sup>385</sup> ICJ Climate Opinion, para 440.

<sup>386</sup> ICJ Climate Opinion, see C. Legal consequences arising from wrongful acts, paras 444 - 457.

emissions and global warming. By enabling the continued export of coal to Israel, South Africa facilitates emissions that aggravate the global climate crisis and regional environmental degradation.

230. The deliberate or reckless targeting of civilian infrastructure, including power plants, water treatment facilities and agriculture, produces severe environmental damage, including<sup>387</sup>:
- 230.1. Release of toxic pollutants into air and groundwater;
  - 230.2. Loss of carbon sinks due to the destruction of vegetation and coastal zones; and
  - 230.3. Long-term land and water contamination, hindering climate resilience and increasing the vulnerability of affected communities to climate shocks.
231. These impacts align with the ICJ's finding that states must prevent significant harm to the environment, including harm with transboundary and global consequences.
232. Gaza's population is already climate-vulnerable, facing water scarcity, heat stress and coastal degradation. Military-induced destruction exacerbates this vulnerability, creating a compound humanitarian and climate crisis, contrary to States' obligations to safeguard the rights of present and future generations.
233. South Africa not only has a moral and legal duty to prevent genocide, but also a climate duty to prevent significant harm to the environment and to future generations. Halting coal exports to Israel may therefore represent a necessary step toward compliance with the Genocide Convention, the UNFCCC, the Paris Agreement and South Africa's obligations under customary international environmental law.
234. Failure to act is itself consequential. States which permit or facilitate trade and services that sustain Israel's unlawful occupation risk breaching their own international obligations. For South Africa this means that continuing to enable coal exports to Israel

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<sup>387</sup> See UNEP, Press Release, *Environmental damage in Gaza Strip harming human health, threatening long-term food and water security - new UNEP report* and see Benjamin Neimark, Science Direct, *Israel-Gaza conflict carbon emissions exceeded 30 million tons* (11 March 2026), <https://www.sciencedirect.com/science/article/pii/S2590332226000497> accessed on 15 March 2026.

or to allow corporate actors to profit from such trade is incompatible with its obligations under international law and its domestic constitutional commitments.

235. The legally coherent response is immediate cessation of all material assistance that sustains the illegal presence and a program of regulatory and enforcement measures to ensure compliance not only because Israel is committing a genocide, but also because the bombs dropped on Gaza are causing an environmental disaster that will reverberate across borders and generations.
236. The intersection of humanitarian law, genocide prevention and climate law strengthens the argument for South Africa to immediately suspend coal exports to Israel.

## VII. THE HAGUE GROUP COMMITMENTS

237. Colombia and South Africa, as Co-Chairs of The Hague Group, hosted an emergency ministerial meeting on Palestine at the Ministry of Foreign Affairs in Bogotá, Colombia, on 15–16 July 2025.<sup>388</sup> The emergency meeting was convened in response to Israel’s ongoing and escalating violations of international law in the OPT, including the crime of genocide and focused on coordinated legal and diplomatic measures to bring those violations to an end.
238. The resulting Joint Statement by the Hague Group set out a series of coordinated national actions designed to operationalise existing international law obligations through concrete domestic implementation measures.<sup>389</sup>
239. In that communiqué, The Hague Group Member States announced that, subject to their domestic legal and legislative frameworks, they committed to<sup>390</sup>:
- 239.1. Prevent the provision or transfer of arms, munitions, military fuel, related military equipment, and dual-use items to Israel, as appropriate, to ensure that our industry does

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<sup>388</sup> The Hague Group, *States announce unprecedented measures to halt the Gaza genocide at Bogotá conference*, <https://thehaguegroup.org/meetings-bogota-cn/> accessed 4 November 2025.

<sup>389</sup> The Hague Group, *Joint Statement by the Hague Group on the Conclusion of the Emergency Conference on Palestine at the Bogotá Conference in Bogotá, Republic of Colombia from 15 to 16 July 2025*, Dept of International Relations & Cooperation (South Africa) (16 July 2025) (Hereafter referred to as the Joint Statement by the Hague Group) <https://dirco.gov.za/joint-statement-by-the-hague-group-on-the-conclusion-of-the-emergency-conference-on-palestine-at-the-bogota-conference-in-bogota-republic-of-colombia-from-15-to-16-july-2025/> accessed 13 November 2025.

<sup>390</sup> Joint Statement by the Hague Group.

not contribute the tools to enable or facilitate genocide, war crimes, crimes against humanity and other violations of international law.

- 239.2. Prevent the transit, docking and servicing of vessels at any port, if applicable, within our territorial jurisdiction, while being fully compliant with applicable international law, including the United Nations Convention on the Law of the Sea (UNCLOS), in all cases where there is a clear risk of the vessel being used to carry arms, munitions, military fuel, related military equipment and dual-use items to Israel, to ensure that our territorial waters and ports do not serve as conduits for activities that enable or facilitate genocide, war crimes, crimes against humanity and other violations of international law.
- 239.3. Prevent the carriage of arms, munitions, military fuel, related military equipment and dual-use items to Israel on vessels bearing our flag, while being fully compliant with applicable international law, including the United Nations Convention on the Law of the Sea (UNCLOS), ensuring full accountability, including de-flagging, for non-compliance with this prohibition, not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the OPT.
- 239.4. Commence an urgent review of all public contracts, in order to prevent public institutions and public funds, where applicable, from supporting Israel's illegal occupation of the Palestinian Territory which may entrench its unlawful presence in the territory, to ensure that our nationals, companies and entities under our jurisdiction, as well as our authorities, do not act in any way that would entail recognition or provide aid or assistance in maintaining the situation created by Israel's illegal presence in the OPT.
- 239.5. Comply with our obligations to ensure accountability for the most serious crimes under international law through robust, impartial and independent investigations and prosecutions at national or international levels, in compliance with our obligation to ensure justice for all victims and the prevention of future crimes.
- 239.6. Support universal jurisdiction mandates, as and where applicable in our legal constitutional frameworks and judiciaries, to ensure justice for all victims and the prevention of future crimes in the OPT.

240. Taken together, these collective commitments provide South Africa with both a clear political mandate and a persuasive interpretive precedent to impose export controls and measures on coal exports that materially sustain Israel's military operations and illegal occupation.
241. Yet, despite its leadership role as a member of the Hague Group, South Africa has taken no steps to end its coal exports to Israel - shipments that directly sustain the unlawful occupation, apartheid and the commission of genocide in Palestine. This inaction places South Africa in manifest tension with the Hague Group commitments it helped draft and champion.
242. In March 2026, members of the Hague Group reaffirmed and strengthened these commitments through additional diplomatic coordination and public statements emphasising that the obligations reflected in the July 2025 communiqué are not merely political expressions of solidarity but operational measures grounded in existing international law.<sup>391</sup>
243. The Group reiterated that States must ensure that economic activity, trade relationships, financial systems and supply chains within their jurisdiction do not contribute, directly or indirectly, to the commission of genocide, war crimes, crimes against humanity or other serious violations of international law in the OPT.<sup>392</sup>
244. In the face of the continued absence of accountability for Israel's unlawful actions, Third State members presented concrete measures, drawn from third-party State legal obligations which include that Third States are to:
- 244.1. Ensure accountability – There must be no safe haven for perpetrators of genocide, war crimes, crimes against humanity, and the crime of aggression;
- 244.2. To enforce the non-recognition of illegal settlements; and
- 244.3. To cut complicity – no arms or material support.

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<sup>391</sup> See The Hague Group, Co-Chairs' Statement, 4 March 2026

<sup>392</sup> The Hague Group, Co-Chairs' Statement, 4 March 2026

245. These statements emphasised that the duty of States extends beyond arms transfers and includes the broader obligation to prevent corporate conduct that materially supports or facilitates the infrastructure enabling such crimes.
246. In particular, the Hague Group emphasised that States must prevent the transfer, transit, or carriage of arms, munitions, military, fuel, and dual-use items to Israel - including through export restrictions, port controls, and flag-state responsibilities - in full compliance with international law. Conduct urgent reviews of public procurement and contracts to ensure that no public institution or public funds sustain Israel's unlawful occupation.
247. These reaffirmed commitments reflect well established principles of international law concerning the responsibility of States to ensure that activities within their jurisdiction do not aid or assist internationally wrongful acts.<sup>393</sup> A State incurs international responsibility where it knowingly aids or assists another State in the commission of an internationally wrongful act, including where assistance is provided through economic or material support that has a substantial effect on the commission of the unlawful conduct. The duty to prevent genocide and other grave breaches of international law further requires States to employ all means reasonably available to them to prevent their own territory, infrastructure, corporations or economic systems from contributing to such acts.<sup>394</sup>
248. Within this framework, the continued export of coal from South Africa to Israel assumes particular legal significance. Coal is not an abstract commodity but a strategic energy resource that forms part of the electricity and industrial systems sustaining Israel's economic and military capacity. Where a State possesses clear regulatory authority over the export of such resources and where credible evidence exists that those resources contribute to the continuation of internationally wrongful acts, international law requires the State to take reasonable measures to prevent that contribution.
249. Accordingly, the Hague Group commitments do more than provide political support for regulatory action; they reinforce and clarify the legal obligations already binding upon

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<sup>393</sup> See Sections VIII and X below.

<sup>394</sup> See Sections VIII and X below.

South Africa under international law. By co-chairing the Hague Group and endorsing the measures set out in its statements, South Africa acknowledged the necessity of preventing economic activities within its jurisdiction from sustaining Israel's unlawful conduct in the OPT. The continued authorisation of coal exports to Israel therefore sits in direct tension not only with South Africa's broader international legal obligations, but also with the very commitments it helped formulate and promote within the Hague Group.

250. That failure does not simply reflect a policy gap; it engages specific obligations under both international and domestic law, which are detailed in the legal framework that follows, including the duties of prevention, non-assistance and good-faith implementation of the very measures South Africa has urged upon other States.

## VIII. SOUTH AFRICA'S LEGAL OBLIGATIONS UNDER INTERNATIONAL LAW

### A. Legal Framework

#### A(i) Constitutional and Domestic Incorporation of International Law

251. The government of South Africa, as the custodian of the mineral resources in the country,<sup>395</sup> must act in accordance with its legal obligations. South Africa's legal framework imposes binding international, constitutional and statutory obligations on the State and its government to punish, prevent acts of genocide committed by other

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<sup>395</sup> Mineral and Petroleum Resources Development Act No.28 of 2002, Preamble "*Acknowledging that South Africa's mineral and petroleum resources belong to the nation and that the State is the custodian thereof; Affirming the State's obligation to protect the environment for the benefit of present and future generations, to ensure ecologically sustainable development of mineral and petroleum resources and to promote economic and social development... Considering the State's obligation under the Constitution to take legislative and other measures to redress the results of past racial discrimination*"; section 2 "*Objects of Act The objects of this Act are to— (a) recognise the internationally accepted right of the State to exercise sovereignty over all the mineral and petroleum resources within the Republic; (b) give effect to the principle of the State's custodianship of the nation's mineral and petroleum resources*"; and section 3(2): "*As the custodian of the nation's mineral and petroleum resources, the State, acting through the Minister, may— (a) grant, issue, refuse, control, administer and manage any reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right and production right*".

States and to refrain from and remedy complicity in gross human rights violations, including apartheid, unlawful occupation and genocide.<sup>396</sup>

252. These obligations arise not only because international treaties and customary international law dictate so, but because South Africa's constitutional principles integrate international law and fundamental human rights into South Africa's domestic legal order.<sup>397</sup>
253. Section 232 of South Africa's Constitution confirms that "*Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament*" and Section 233 requires courts to "*prefer any reasonable interpretation of legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law*".<sup>398</sup>
254. This constitutional incorporation of international law establishes that South Africa's obligations under international legal instruments and customary norms are not merely persuasive but form part of the binding domestic legal framework governing the State's conduct.
255. Both treaty and customary international law bind the State. In *S v Makwanyane*, the Constitutional Court declared that the Constitution's reference to international law includes both binding and non-binding international law when it comes to the interpretation of the Constitution.<sup>399</sup>

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<sup>396</sup> In *S v Basson* 2005 (1) SA 171(CC), at para 37 the Constitutional Court held that: "*International law obliges the State to punish crimes against humanity and war crimes. It is also clear that the practice of apartheid constituted crimes against humanity and ... war crimes.*" And see domesticated legislation - Rome Statute Act and Geneva Conventions Act discussed below.

<sup>397</sup> *S v Ephraim and Others* (SS70/2021) [2025] ZAGPJHC 410 (Hereafter referred to as *S v Ephraim*), para 46: "*In considering s232 of the Constitution the Constitutional Court in Basson, as per the judgment of Sachs J, confirmed that the rules of humanitarian law constitute an integral part of customary international law in that it applies and has 'to be observed by all states whether or not they have ratified the Conventions that contain them because they constitute intransgressible principles of international customary law'*"

<sup>398</sup> Constitution, s232 and s233.

<sup>399</sup> *S v Makwanyane* 1995 (3) SA 391 (CC) (Hereafter referred to as *S v Makwanyane*) para 35: "*Customary international law and the ratification and accession to international agreements is dealt with in section 231 of the Constitution which sets the requirements for such law to be binding within South Africa. In the context of section 35(1), public international law would include non-binding as well as binding law. They may both be used under the section as tools of interpretation. International agreements and customary international law accordingly provide a framework within which Chapter Three can be evaluated and understood, and for that purpose, decisions of tribunals dealing with comparable instruments, such as the United Nations Committee on Human Rights, the Inter-American Commission on Human Rights, the Inter-*

256. Similarly, the Bill of Rights binds the State and corporations *where applicable* and South African courts have recognised that rights may be enforced against corporations through statutory interpretation and the development of the common law.<sup>400</sup> Companies may not treat human rights obligations as voluntary under South Africa's constitutional framework.<sup>401</sup> South African courts are open to applying international human-rights norms in interpreting domestic law, and may order that corporations conform to international standards via their statutory duties and common-law obligations.<sup>402</sup> Furthermore, the Constitutional Court has confirmed that crimes against humanity under customary international law can be prosecuted directly under the Constitution.<sup>403</sup>
257. It is under this framework that this section must be understood. Accordingly, the international obligations analysed below do not operate merely at the level of foreign relations or abstract principle, but form part of the legal framework governing South African State conduct and the regulation of private actors within its jurisdiction.

A(ii) Law on Internationally Wrongful Acts and Peremptory Norms of International Law

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*American Court of Human Rights, the European Commission on Human Rights, and the European Court of Human Rights, and in appropriate cases, reports of specialised agencies such as the International Labour Organisation may provide guidance as to the correct interpretation of particular provisions of Chapter Three”.*

<sup>400</sup> See *Khumalo and Others v Holomisa* 2002 (5) SA 401 (CC) confirming that Constitutional Rights can be applied to private actors; also see *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) confirming that the Courts have a positive duty to develop the common law where necessary; See *Maphongo v Aengus Lifestyle Properties* 2012 3 SA 531 (CC) where the Court stated that the way in which human rights are fulfilled and enforced is through the State's legal ability to regulate the activities of private/juristic persons; see *Governing Body of the Juma Masjid Primary School v Essay* NO 2011 8 BCLR 761 (CC) which affirmed that juristic persons at least have a negative duty to refrain from committing conduct that contributes to human rights violations; see *Daniels v Scribante* 2017 4 SA 341 (CC) which insinuates that juristic persons may have positive obligations to fulfil human rights and see *AB v Pridwin Preparatory School* 2020 ZACC 12 which echoed *Daniels* in that the Bill of Rights may impose positive obligations on private/juristic persons but it is fact-specific.

<sup>401</sup> S2 of the Constitution confirms that the Constitution is the Supreme Law of the Republic; S8(1)-(2) confirms that the Constitution is applicable to juristic entities; S7(a) of the Companies Act 71 of 2008 states: “*The purposes of this Act are to (a) promote compliance with the Bill of Rights as provided for in the Constitution, in the application of company law.*”

<sup>402</sup> S39(1)(b) of the Constitution confirms that courts must consider international law when interpreting the Bill of Rights. Also see S231, 232 and 233 of the Constitution.

<sup>403</sup> *S v Ephraim*, para 47: “*The finding of the Constitutional Court in the matter of Basson, confirmed that crimes against humanity under customary international law can be prosecuted directly under s232 of the Constitution.*”

258. The term ‘Internationally Wrongful Acts’ is defined in the ILC’s Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). Article 2 sets out the Elements of an internationally wrongful act of a state as follows:

*“There is an internationally wrongful act of a State when conduct consisting of an action or omission: a) is attributable to the State under international law; and b) constitutes a breach of an international obligation of the State.”*<sup>404</sup>

259. Article 4 of ARSIWA makes it clear that the actions of any State organ are treated as actions of the State itself under international law. This applies regardless of whether the organ performs legislative, executive, judicial or any other function and regardless of where it sits within the structure of government. It also does not matter what form the organ takes. Any person or entity that is recognised as a State organ under that country’s own domestic law will be regarded as part of the State for the purposes of international responsibility.<sup>405</sup>

260. Chapter III of ARSIWA deals with serious breaches of obligations under peremptory norms of general international law. Article 40 confirms that a breach of a peremptory norm or obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.<sup>406</sup> The Vienna Convention on the Law of Treaties 1969 (Vienna Convention) defines a peremptory norm of general international law as a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted.<sup>407</sup>

261. Draft Conclusion 23 of the International Law Commission’s 2022 conclusions on peremptory norms confirms that certain prohibitions have attained the status of *jus cogens* in contemporary international law. While the Commission emphasises that the list is non-exhaustive, it recognises as widely accepted peremptory norms the

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<sup>404</sup> The governing instrument is the Articles on Responsibility of States for Internationally Wrongful Acts (“ARSIWA”), adopted by the International Law Commission in 2001 and taken note of by the UN General Assembly (A/RES/56/83). Although not a treaty, the Articles are widely accepted as reflecting customary international law and have repeatedly been relied upon by the International Court of Justice. See art 2, art 4 and art 12. Also see the Nuremberg Principles (1950).

<sup>405</sup> ARSIWA art 4(1) – (2).

<sup>406</sup> ARSIWA art 40(2)

<sup>407</sup> Vienna Convention , art 53.

prohibitions of aggression, genocide, crimes against humanity, apartheid and racial discrimination among others.<sup>408</sup>

262. These norms are regarded as hierarchically superior rules of international law accepted and recognised by the international community as norms from which no derogation is permitted and which may be modified only by subsequent norms of the same peremptory character.<sup>409</sup> As such, all States are bound by them irrespective of consent and are precluded from acting in any manner that would recognise as lawful, assist or maintain situations created in violation of these foundational obligations of the international legal order.<sup>410</sup> Correlatively, States are under positive duties to act in accordance with international law to bring such situations to an end.

A(iii) The Prohibition of Genocide and the Duty to Prevent, Punish and Not Be Complicit

263. The Genocide Convention establishes genocide as a crime under international law and expressly criminalises not only the commission of genocide, but also complicity in its perpetration.<sup>411</sup>
264. In its Order of 26 January 2024, the ICJ concluded that there was a *plausible* risk that Israel was committing acts of genocide against the Palestinian population in Gaza<sup>412</sup> - a

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<sup>408</sup> International Law Commission, *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries* (2022) UN Doc A/77/10, Draft Conclusion 23 and commentary [https://legal.un.org/ilc/reports/2022/english/a\\_77\\_10\\_advance.pdf?utm](https://legal.un.org/ilc/reports/2022/english/a_77_10_advance.pdf?utm) accessed 23 February 2026

<sup>409</sup> See *Johnson et al v Kotek et al*, Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit (US Supreme Court, 2024) at page 21 “No derogation” means no compromise of the right. See *Black’s Law Dictionary*, 10th ed. (“derogation” is the destruction of a right). No derogation is a higher standard of review than strict scrutiny. Unlike strict scrutiny, no derogation means that there is no balancing of interests between the individual and the state. Unless the government relies on another superseding jus cogens norm, no interest of government can possibly overcome an individual’s absolute right to refuse without negative consequences. The no derogation standard fits perfectly with the history of the Nuremberg Trials” [https://www.supremecourt.gov/DocketPDF/24/24-173/322395/20240813193006226\\_Johnson%20v%20Kotek%20Petition.pdf](https://www.supremecourt.gov/DocketPDF/24/24-173/322395/20240813193006226_Johnson%20v%20Kotek%20Petition.pdf) accessed on 15 March 2026; and see ICRC, *Derogations* [https://casebook.icrc.org/a\\_to\\_z/glossary/derogations](https://casebook.icrc.org/a_to_z/glossary/derogations) accessed on 15 March 2026

<sup>410</sup> International Law Commission, *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries* (2022) ; and see ARSIWA.

<sup>411</sup> Genocide Convention, art I and III. Art III(e) Explicitly criminalises complicity in genocide as a punishable act under international law. Also see Art 25(3)(c) of the Rome Statute.

<sup>412</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, Order on Request for the Indication of Provisional Measures (26 January 2024) ICJ Rep, para 54: “The Court considers that the facts and circumstances mentioned above are sufficient to conclude that at least some of the rights claimed by South Africa and for which it is seeking protection are

threshold that triggers States' duties to prevent and punish the crime itself as well as to refrain from complicity in genocide.<sup>413</sup>

265. The Court's finding is of decisive legal significance as it activates the duty of all State Parties to the Genocide Convention to employ all means reasonably available to them to prevent the commission of genocide and to ensure that their conduct does not contribute to its perpetration.<sup>414</sup>

266. The Court accordingly issued binding provisional measures directing Israel to prevent the commission of genocidal acts and protect the rights of Palestinians under the Genocide Convention.<sup>415</sup> These findings and obligations were reaffirmed in subsequent ICJ orders issued on 28 March and 24 May 2024. The reaffirmation of these provisional measures across multiple orders underscores the continuing and escalating nature of the risk identified by the ICJ, reinforcing the immediacy of the duties imposed on all States to act in accordance with their obligations under international law.

267. In its orders of 26 January 2024 and 28 March 2024, the ICJ's binding provisional measures directed Israel to take all measures within its power to prevent the commission of all acts within the scope of Article II of the Genocide Convention, in particular, Israel was ordered to<sup>416</sup>:

267.1. Prevent acts of genocide;

267.2. Ensure its military does not commit genocidal acts;

267.3. Prevent and punish direct incitement to genocide;

267.4. Allow humanitarian aid into Gaza; and

267.5. Preserve evidence relating to alleged genocidal acts.

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*plausible. This is the case with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related rights under the Genocide Convention."*

<sup>413</sup> See *Bosnia v Serbia*, para 430 – 432.

<sup>414</sup> See *Bosnia v Serbia*, para 430 – 432.

<sup>415</sup> See ICJ Provisional Measures Orders dated 26 January 2024, 28 March 2024 and 28 May 2024.

<sup>416</sup> See ICJ Provisional Measures Order dated 26 January 2024, para 86(1) – (6); and Provisional Measures Order dated 28 March 2024, para 54(1) – (3)

268. These measures are binding under Article 41 of the ICJ Statute<sup>417</sup> and carry legal consequences for all Third States in relation to their own conduct.<sup>418</sup> As such, they place all States - including South Africa - on notice of the real and imminent risk of genocide in Gaza, eliminating any claim of plausible deniability.<sup>419</sup> This notice extends not only to governments but also to corporate actors whose conduct may materially support the ongoing atrocities even where they had no intention to aid or maintain such crimes or human rights abuses.<sup>420</sup> That notice is legally decisive because it fixes knowledge of the

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<sup>417</sup> Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) art 41: “*The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.*”; According to the Court’s settled jurisprudence, “*After interpreting Article 41, the Court found that such orders [referring to Provisional Orders] did have binding effect*”.

Also see *LaGrand (Germany v United States of America)* [2001] ICJ Rep 466, where the ICJ stated at para 109: “*In short, it is clear that none of the sources of interpretation referred to in the relevant Articles of the Vienna Convention on the Law of Treaties, including the preparatory work, contradict the conclusions drawn from the terms of Article 41 read in their context and in the light of the object and purpose of the Statute. Thus, the Court has reached the conclusion that orders on provisional measures under Article 41 have binding effect.*”

<sup>418</sup> See Pietropaoli, Expert Legal Opinion, Obligations of Third States and Corporations to Prevent and Punish Genocide in Gaza, Executive Summary: “*The obligation of Third States to comply with the ICJ Order flow directly from the Genocide Convention. Article I of the Convention requires States to undertake ‘to prevent and to punish genocide’. Under the Genocide Convention, all States have a negative obligation not to commit or be complicit in genocide and positive obligations to prevent and to punish genocide.*”

<sup>419</sup> *Bosnia v Serbia*, paras 430–431: “*A State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect ... it is under a duty to make such use of these means as the circumstances permit.*”

<sup>420</sup> See Pietropaoli, p 13: “*The International Criminal Tribunal for Rwanda (ICTR) in the Akayesu case concluded: ‘anyone who knowing of another’s criminal purpose, voluntarily aids him or her in it, can be convicted of complicity even though he regretted the outcome of the offence.’*”; p 14: “*Corporations and their managers, directors, or other leaders could be held directly liable for the commission of acts of genocide, as well as war crimes and crimes against humanity. Article VI of the Genocide Convention specifies that ‘persons’ may be held liable for genocidal acts – which include individual businessmen or corporate managers as natural persons and may include corporations as legal persons.*”; And see OHCHR, *Human Rights Due Diligence: An Interpretive Guide* setting out the Due Diligence standards for corporation in respect of the Guiding Principles on Business and Human Rights, [https://www.ohchr.org/documents/publications/hr.pub.12.2\\_en.pdf](https://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf), accessed on 9 February 2026, see Principle 18 and commentary on p. 7-9: “*In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: (a) Draw on internal and/or independent external human rights expertise; (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.*”; *Prosecutor v Furundžija (ICTY Trial Chamber) IT-95-17/1-T* (10 December 1998) para 245: “*it is not necessary for the accomplice to share the mens rea of the perpetrator, in the sense of positive intention to commit the crime. Instead, the clear requirement in the vast majority of the cases is for the accomplice to have knowledge that his actions will assist the perpetrator in the commission of the crime.*” And see *Prosecutor v Brđanin (ICTY Trial Chamber) IT-99-36-T* (1 September 2004) para 272: “*It is not necessary that the aider and abettor has knowledge of the precise crime that was intended or that was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually perpetrated.*” And see *Bosnia v Serbia*, paras 430–431.

relevant circumstances and sharpens the State's duty to ensure that its own conduct, and conduct within its jurisdiction, does not contribute to the continuation of the risk identified by the Court.

A(iv) Duty of Non-Recognition, Non-Assistance and Due Diligence

269. South Africa's duties are relevant to all forms of material, financial or logistical support that may facilitate the commission or continuation of genocide, irrespective of whether such support is provided directly by the State or indirectly through private actors operating under its jurisdiction.<sup>421</sup>
270. As State Parties to the Genocide Convention, both Israel and South Africa are obligated not only to refrain from committing and not be complicit in genocide, but also to exercise due diligence to actively prevent and punish it.<sup>422</sup> The ICJ in *Bosnia v Serbia* confirmed that the duty to prevent genocide is one of conduct requiring States to deploy all means reasonably available to them, including the regulation or suspension of trade and resource transfers, where such measures may contribute to preventing or mitigating the commission of genocide.<sup>423</sup> In South Africa's case, this includes the use of available legal and regulatory measures where trade or resource transfers foreseeably contribute to the continuation or aggravation of the risk. In South Africa's case, this includes the use of available legal and regulatory measures where trade or resource transfers foreseeably contribute to the continuation or aggravation of the risk.<sup>424</sup>
271. To fulfil these obligations, South Africa must either terminate or strictly condition any form of support, including trade, where evidence brings to light that such trade is contributing to genocide and crimes against humanity. It must also ensure that individuals or entities within its jurisdiction who materially assist in genocide are investigated and prosecuted under Article III(e), which explicitly criminalises

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<sup>421</sup> See SOMO, *Powering Injustice*, ICJ Advisory Opinion, Dr. Wilde's Expert Legal Opinion, Pietrapaoli, *Obligations of Third States and Corporations*, Albanese, *Gaza Genocide: A Collective Crime and From the Economy of Occupation to the Economy of Genocide*.

<sup>422</sup> South Africa acceded on 10 December 1998; Israel ratified on 9 March 1950. Both are State Parties and bound by the Convention's provisions, including Articles I, III, IV and IX and see *Bosnia v Serbia*.

<sup>423</sup> *Bosnia v Serbia*, para 430 - 431

<sup>424</sup> *Bosnia v Serbia*, para 430 - 431. The ICJ held that a State's duty to prevent genocide under Article I of the Genocide Convention includes the obligation to "employ all means reasonably available to them" to prevent genocide and to withhold aid or assistance that may facilitate its commission.

complicity in genocide.<sup>425</sup> In circumstances where a State has actual or constructive knowledge that its exports are capable of sustaining the commission of genocide, the failure to regulate, suspend or terminate such exports itself may constitute a breach of the duty to prevent and a form of impermissible assistance under international law.<sup>426</sup>

272. The prohibition against assisting another State in the commission of internationally wrongful acts is a firmly established principle of customary international law. It is codified in ARSIWA. Article 16 provides that a State which aids or assists another State in committing a wrongful act incurs international responsibility if it does so with knowledge of the circumstances and if the act would be wrongful had it been committed by the assisting State itself.<sup>427</sup>
273. Where the wrongful act constitutes a serious breach of a peremptory norm, such as genocide, apartheid or the forcible transfer and displacement of civilians, Article 41(2) of ARSIWA imposes a heightened duty not to render aid or assistance in maintaining the unlawful situation.<sup>428</sup> The obligation arising under Article 41(2) is both immediate and non-derogable<sup>429</sup>
274. This rule has been affirmed by the ICJ, including in its 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (The ICJ Wall Opinion) and reiterated in its July 2024 Advisory Opinion *'Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory (OPT), including East Jerusalem.'* The Court found that Israel's

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<sup>425</sup> Genocide Convention, art III(e): “*The following acts shall be punishable: Complicity in genocide*”.

<sup>426</sup> *Bosnia v Serbia*, para 431: “*A State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.*”

<sup>427</sup> ARSIWA art 16 and commentary. Art 16: “*Aid or assistance in the commission of an internationally wrongful act : A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.*”

<sup>428</sup> ARSIWA, arts 40–41. Art 41(2): “*No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.*” ; International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001) 112 (introductory commentary to ch III): “*Chapter III deals with the particular consequences of a serious breach of an obligation arising under a peremptory norm of general international law.*” ; and see ICJ Wall Opinion, para 159 which confirms that “*given the character and the importance of the rights and obligations involved, the ICJ is of the view that all States are under an obligation not to recognize the illegal situation [In Palestine]...They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction.*”

<sup>429</sup> Vienna Convention, art 53

presence in the occupied Palestinian territory unlawful and also found Israel in violation of peremptory norms of international law.<sup>430</sup> In its opinion, the Court unanimously held that all States are under an obligation not to recognise the illegal situation created by Israel's construction of the *wall*, and not to render aid or assistance in its maintenance.<sup>431</sup>

A(v) International Obligations with respect to Human Rights and Extraterritorial Duties

275. These international legal obligations include binding human rights treaties, notably the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>432</sup>, to which South Africa is a State Party.
276. Article 2(1) of the ICESCR obliges States to take steps, individually and through international cooperation, toward the full realisation of the rights protected in the Covenant, *including through the adoption of legislative measures*.<sup>433</sup> South Africa has a duty to protect rights such as the right to life, human dignity, healthcare as contained in the ICESCR.<sup>434</sup> That duty is engaged where conduct within South Africa's jurisdiction foreseeably contributes to the impairment of those rights abroad.
277. Not only does South Africa have positive duties to promote rights abroad, but also a negative obligation to refrain from conduct that interferes with or undermines socio-economic rights in other States.<sup>435</sup>

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<sup>430</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep 136.

<sup>431</sup> ICJ Wall Advisory Opinion, paras 159–160. “*The Court accordingly finds that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction.*”

<sup>432</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (Hereafter referred to as ICESCR).

<sup>433</sup> ICESCR art 2(1): “*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*”

<sup>434</sup> United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted 16 December 1966, entered into force 3 January 1976 (South Africa ratified 12 January 2015), art 6–12 (recognising rights including work, social security, family life, education, health and an adequate standard of living); as a ratified treaty ICESCR is legally binding on South Africa under international law (obligations to respect, protect and fulfil socio-economic rights) including the right to health and an adequate standard of living which underpin the constitutional rights to life, dignity and access to health care and related socio-economic rights

<sup>435</sup> ICESCR, General Comment No. 14 (2000) para 39: “*States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law. To comply with their international obligations in*

278. The humanitarian catastrophe in Gaza including the mass destruction of housing, healthcare facilities, water and electricity infrastructure implicates a range of Covenant-protected rights such as the right to life, human dignity, an adequate standard of living (including food, water and shelter), the right to health and the right to education.<sup>436</sup> In circumstances where the provision of energy resources materially enables, maintains or supports the continuation of conditions that undermine these rights, the exporting State must take immediate steps to prevent its resources from contributing to such violations, failing which it risks breaching its own treaty obligations under international human rights law.
279. South Africa's human rights obligations are not confined to the formal boundaries of its territory where there is a sufficiently direct and foreseeable connection between conduct within its jurisdiction and the deprivation of protected rights abroad.

A(vi) Duties Arising from Israel's Unlawful Occupation

280. An authoritative restatement of these obligations is found in the ICJ's Advisory Opinion in which the Court concluded that Israel's continued presence in the OPT is unlawful and entails multiple ongoing breaches of peremptory norms of general international law. The Court identified, inter alia, violations of the prohibition on the acquisition of territory by force, the right of the Palestinian people to self-determination, and the prohibition of racial discrimination and apartheid, each of which engages obligations *erga omnes* and, in their peremptory character, triggers heightened duties of non-recognition, non-assistance and co-operation on the part of all States. The Advisory Opinion thus confirms that the legal consequences of Israel's conduct are not confined to bilateral relations but extend to the international community as a whole, requiring Third States to ensure that their conduct does not contribute to the maintenance of the unlawful situation.

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*relation to article 12, States parties must respect the enjoyment of the right to health in other countries, and must refrain from any action that interferes, directly or indirectly, with the enjoyment of the right to health in other countries."*

<sup>436</sup> See ICESCR, arts 11, 12, 13.

281. The duties of Third States have been articulated by Dr. Wilde in his expert opinion, In practical terms, States have 3 legal duties to suppress Israel's violations of international law in maintaining its presence in the OPT:
- 281.1. Firstly, States have a positive duty to bring Israel's illegal presence in the OPT to an end, through both individual and joint, co-operative, means, and a related obligation to co-operate with the UN to put into effect any modalities promulgated by the General Assembly and the Security Council to ensure the end of Israel's presence in the OPT and the full realization of the Palestinian right to self-determination.<sup>437</sup>;
- 281.2. A negative duty not to recognize as lawful the existence and continuation of Israel's illegal presence in the OPT.<sup>438</sup> ; and
- 281.3. A negative duty not to aid or assist in the maintenance of Israel's illegal presence in the OPT.<sup>439</sup>
282. For the purposes of this report, it is important to distinguish, following Dr Wilde's analysis, the special obligations that arise from the particular nature of Israel's unlawful presence in the OPT, particularly the negative duty not to aid or assist in Israel's illegal presence.
283. This distinction is essential because it confirms that, in the OPT context, the threshold for unlawfulness is not limited to intentional facilitation.
284. Dr. Wilde explains that this specific obligation is not merely the generally applicable rule that a State incurs responsibility if it aids or assists another State in the commission of an internationally wrongful act with the intention of facilitating that act. Rather, because the obligations breached by Israel are of a peremptory and *erga omnes* character, a *distinct and heightened duty* arises: a duty not to provide any form of aid or assistance that would enable the continuation of Israel's unlawful presence in the OPT, and this applies regardless of whether the assisting State intends to facilitate the

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<sup>437</sup> Dr. Wilde, *Expert Legal Opinion on illegality of Israel's presence in the OPT* para 79(1).

<sup>438</sup> Dr. Wilde, *Expert Legal Opinion on illegality of Israel's presence in the OPT* para 79(2).

<sup>439</sup> Dr. Wilde, *Expert Legal Opinion on illegality of Israel's presence in the OPT* para 79(3).

illegality or not. What matters is the *effect* of the assistance, not the purpose or intention behind it.<sup>440</sup>

#### A(vii) Individual and Corporate Responsibility for Complicity in International Crimes

285. Since the Nuremberg Tribunals, complicity in international war crimes has been codified in international law.<sup>441</sup> The Nuremberg Judgment confirms that: “*Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provision of international law be enforced.*”<sup>442</sup>
286. Article IV of the Genocide Convention affirms that no official capacity shields perpetrators of genocide from responsibility. It provides that persons committing genocide “*shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.*”<sup>443</sup> This provision reflects the settled principle that both State officials and individuals responsible for the conduct of corporations may incur responsibility where their conduct contributes to genocide or where, having means likely to have a deterrent effect, they fail to make such use of those means as the circumstances permit.<sup>444</sup> It is the obligation of Third States to ensure that neither public policy nor commercial practice enables such crimes.
287. Where States and corporations fail to comply with these legal obligations, international law may impose individual criminal responsibility on those responsible for materially contributing to international crimes.<sup>445</sup> It follows that States are under a legal duty to investigate potential complicity in international crimes where there is evidence that trade conduct breaches international duties not to aid or assist international crimes or shields any individual or entity contributing to genocidal acts, as doing so would directly

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<sup>440</sup> See Dr. Wilde, *Expert Legal Opinion on illegality of Israel’s presence in the OPT*, section 6: Consequence of existential illegality for third States and the EU (1): Legal duties to suppress Israel’s violations of international law in maintaining its presence in the OPT

<sup>441</sup> See Sub-section E below and Nuremberg Principles.

<sup>442</sup> International Military Tribunal (Nuremberg), Judgment of 30 September 1946, in *Trial of the Major War Criminals before the International Military Tribunal*, Vol 22 (1947) 466

<sup>443</sup> Genocide Convention, art IV.

<sup>444</sup> See *Bosnia v Serbia*, para 430 - 432

<sup>445</sup> *Prosecutor v Karadžić*, (ICTY, Trial Judgment, 24 March 2016) paras 582-584.

undermine the State's obligation to ensure accountability and prevent and punish the crimes of genocide.<sup>446</sup>

288. States have a duty under common article 1 of the Geneva Conventions, to ensure respect for the convention by other States and non-State Parties, according to the ICRC and in line with the ICJ jurisprudence.<sup>447</sup>
289. The ICRC framework for private businesses in conflict articulates that the obligation of States to ensure that people within their jurisdiction respect IHL and that those responsible for grave breaches are brought to justice is not limited to members of armed forces.<sup>448</sup> Therefore, States must ensure that individuals and corporations within their jurisdiction do not commit, facilitate or benefit from grave breaches of international humanitarian law.<sup>449</sup> These obligations extend to private persons, including the management and personnel of private businesses.<sup>450</sup> International treaties require States to ensure that war crimes, including grave breaches of the Geneva Conventions, for instance, are enacted as criminal offences in their national laws.<sup>451</sup> States must have the legislation to investigate and, where warranted, prosecute individuals and corporation who commit such crimes.<sup>452</sup> Civil liability claims must also be made possible in national jurisdictions, and in line with the ICRC, liability can extend to companies that invest in

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<sup>446</sup> Genocide Convention, Arts I - III

<sup>447</sup> Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, common art 1; Also see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14 <https://www.icj-cij.org/case/70> accessed on 15 March 2026; and see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136,

<sup>448</sup> International Committee of the Red Cross, *Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under IHL* (ICRC 2006) 28 <file:///C:/Users/sirha/Downloads/543048595E265015C125723A003766EB-ICRC-Dec2006.pdf> accessed on 15 March 2026; And see International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (ICRC 2019) <https://www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts> accessed on 15 March 2026

<sup>449</sup> ARSIWA art 16; ICRC, *Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under IHL*

<sup>450</sup> *Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under IHL*

<sup>451</sup> Geneva Convention (I) arts 49–50; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949) 75 UNTS 85, arts 50–51; Geneva Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949) 75 UNTS 135, arts 129–130; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949) 75 UNTS 287, arts 146–147.

<sup>452</sup> Geneva Conventions I – IV, and see Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 25 and 28.

or provide financial services to a government, or other company that is involved in violations.<sup>453</sup>

290. This section is important to the analysis of Third State obligations because it bridges State responsibility and private commercial conduct. It makes clear that the regulation of corporate activity is not collateral to South Africa's obligations but part of their implementation.

#### A(viii) Maritime Obligations and the Regulation of Trade Through Territorial Jurisdiction

291. On 11 March 2025, ASCOMARE (International Law of the Sea Association) published a legal opinion to clarify the rights and obligations of States concerning activities conducted by vessels flying their flag or operating within their waters, particularly in cases involving serious violations of human rights or breaches of peremptory norms of international law.<sup>454</sup> The analysis in the opinion focused on the regime of innocent passage and the due diligence obligations of flag States under international law. This opinion is relevant because coal exports are operationalised through maritime transport, meaning that the legal duties of coastal and port States become directly engaged where shipping activity risks contributing to serious breaches of international law.
292. The opinion concluded that the United Nations Convention on the Law of the Sea (UNCLOS) grants coastal States both the right and, in specific circumstances, the obligation to interrupt or suspend the passage of foreign vessels through their territorial sea when such vessels violate international human rights law or peremptory norms.<sup>455</sup>
293. ASCOMARE concluded that this right is triggered when a vessel engages in activities prejudicial to the peace, good order or security of the coastal State. Such activities may

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<sup>453</sup> ICRC *Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under*; UNGPs, and see Section IV above.

<sup>454</sup> ASCOMARE, Legal Opinion: *Request for a Legal Opinion on the Regime of Innocent Passage and the Due Diligence Obligations of Flag States under the International Law of the Sea*, (11 March 2025) (Hereafter referred to as ASCOMARE, Legal Opinion) [https://bdsmovement.net/sites/default/files/2025-03/ASCOMARE%20Legal%20Opinion%20\\_%20Innocent%20Passage%20and%20Due%20Diligence.pdf](https://bdsmovement.net/sites/default/files/2025-03/ASCOMARE%20Legal%20Opinion%20_%20Innocent%20Passage%20and%20Due%20Diligence.pdf) accessed on 4 February 2026

<sup>455</sup> ASCOMARE, Legal Opinion, para 153 - 154

include aiding or facilitating violations of human rights obligations or peremptory norms, as reflected in the UN Charter and outlined in Article 19(2)(a) of UNCLOS.<sup>456</sup>

294. The opinion further concluded that:

294.1. Breaches of other UNCLOS provisions or broader international obligations under Article 19(1) may also warrant intervention. Coastal states may exercise criminal enforcement jurisdiction over vessels engaging in innocent passage, especially when failure to act could result in their international responsibility or disrupt their peace or diplomatic relations with other States (Article 27(1)(a) and (b))<sup>457</sup>;

294.2. A combined reading of Articles 19 and 301 of UNCLOS, along with principles derived from the UN Charter, ARSIWA, and relevant case law, may impose a duty on coastal States to prevent further violations of international law by a vessel. This duty arises particularly when a vessel violates peremptory norms or aids other States in committing such violations, especially if the coastal State's inaction would render it responsible under international law<sup>458</sup>;

294.3. In particular, where treaty obligations reflect *jus cogens* norms or align with fundamental international principles, coastal States may have the obligation to suspend or redirect a vessel's passage to prevent violations of binding international law. This includes prohibitions on complicity in genocide or apartheid, as enshrined in the Genocide and Apartheid Conventions<sup>459</sup>;

294.4. In other cases, the coastal State's right to suspend passage must be viewed in light of its broader legal obligations. For instance, a coastal State may need to act to prevent arms transfers, including transit, that would violate Article 6 of the ATT, especially if inaction would amount to a breach of its duties<sup>460</sup>;

294.5. Excluding the specific regime applicable to warships and government vessels used for non-commercial purposes, the right and duty to suspend or interrupt the passage include

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<sup>456</sup> ASCOMARE, Legal Opinion, para 155

<sup>457</sup> ASCOMARE, Legal Opinion, para 155

<sup>458</sup> ASCOMARE, Legal Opinion, para 156

<sup>459</sup> ASCOMARE, Legal Opinion, para 157

<sup>460</sup> ASCOMARE, Legal Opinion, para 157

implementing “necessary” enforcement measures to prevent non-innocent passage through the territorial sea. These measures may involve stopping or boarding the vessel, redirecting its passage, ordering it to leave the territorial sea, or using proportionate force, subject to the constraints of UNCLOS and broader international law<sup>461</sup>; and

- 294.6. The relevant provisions of UNCLOS governing the innocent passage regime are widely considered to reflect customary international law and are thus binding on States that are not parties to UNCLOS.<sup>462</sup>

#### A(ix) Synthesis of South Africa’s Binding Legal Obligations

295. The foregoing principles establish that where serious breaches of peremptory norms such as genocide are alleged and judicially recognised as plausibly occurring, international law imposes clear obligations on all States not to recognise, aid or assist in the maintenance of the unlawful situation. In light of South Africa’s application before the ICJ and the resultant binding provisional measures issued by that Court, South Africa is placed on notice of the risk of genocide and the corresponding duties of prevention and non-assistance. These obligations require the State to ensure that neither its own conduct nor that of corporate entities operating within its jurisdiction contributes to the continuation of internationally wrongful acts. South Africa must take all reasonable measures within its power to prevent any contribution to the ongoing crimes committed. A failure to do so is capable of itself constituting an internationally wrongful act.

#### **B. South Africa’s Knowledge of Ongoing Crimes and the Triggering of its International Obligations**

296. South Africa’s submissions to the ICJ in *South Africa v Israel* set out extensive factual and legal evidence alleging that Israel’s conduct in Gaza constitutes genocide, war crimes and crimes against humanity.<sup>463</sup> The application, filed on 29 December 2023, relied on Articles II and III of the Genocide Convention<sup>464</sup>, citing mass killings,

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<sup>461</sup> ASCOMARE, Legal Opinion, para 160

<sup>462</sup> ASCOMARE, Legal Opinion, para 161

<sup>463</sup> See Evidence Dossiers submitted by South Africa to the UNSC under section X below.

<sup>464</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 (Genocide Convention), arts II–III.

destruction of civilian infrastructure, displacement and official statements indicating genocidal intent as the basis for Israel’s alleged violations.<sup>465</sup>

297. By instituting these proceedings, South Africa formally acknowledged, at the highest level of international adjudication, the existence of a serious risk of genocide and other grave breaches of international law, thereby triggering corresponding duties of prevention and non-complicity under international law.<sup>466</sup>
298. South Africa’s submission was accompanied by detailed evidentiary dossiers delivered to the UN Security Council (see Section IX below). These submissions are now integral to the international legal assessment of whether Israel’s actions constitute genocide. These evidentiary submissions, including public statements made by public office bearers<sup>467</sup>, demonstrate that South Africa possesses actual knowledge of the factual circumstances giving rise to the risk of genocide and related international crimes, thereby eliminating any possibility that continuous material support could be characterised as inadvertent or uninformed.
299. In addition, South Africa’s knowledge is not confined to its pleadings before the ICJ. It is reinforced by its participation in coordinated multilateral initiatives, including commitments undertaken within the framework of the Hague Group, which has explicitly recognised the gravity of the situation in Gaza and the legal obligations of third States to respond to serious breaches of peremptory norms of international law by Israel. These commitments underscore that South Africa is not merely aware of the alleged violations but has aligned itself with collective international efforts aimed at

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<sup>465</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, (South Africa v Israel) *Application Instituting Proceedings against Israel*, (29 December 2023) ICJ General List No 192 (Hereafter referred to as South Africa v Israel), paras 1–9, 33–50, 52–59, 101–106, 124–138. “Israel has engaged in, is engaging in and risks further engaging in genocidal acts against the Palestinian people in Gaza.” (para 4) and “The acts in question include killing Palestinians in Gaza, causing them serious bodily and mental harm, and inflicting on them conditions of life calculated to bring about their physical destruction. The acts are all attributable to Israel, which has failed to prevent genocide and is committing genocide in manifest violation of the Genocide Convention, and which has also violated and is continuing to violate its other fundamental obligations under the Genocide Convention, including by failing to prevent or punish the direct and public incitement to genocide by senior Israeli officials and others” (para 1).

<sup>466</sup> See Genocide Convention and Rome Statute, and see conclusions in *Bosnia v Serbia* from para 430 onwards.

<sup>467</sup> See from paras 554 below for statements by President Ramaphosa, DIRCO and others.

ensuring accountability and preventing further harm, thereby deepening the legal consequences of any continued engagement that may facilitate such conduct.

300. Furthermore, senior South African government officials, across multiple departments and in official capacities, have repeatedly issued public statements condemning Israel's conduct as unlawful and characterising Israel's actions as genocide and other grave international crimes, as set out below. These statements constitute formal expressions of State knowledge and position, attributable to South Africa under international law, and further confirm that the State is fully apprised of the nature, scale and unlawfulness of the conduct in question. In these circumstances, any ongoing authorisation or tolerance of conduct that materially supports Israel's capacity to sustain its operations must be assessed against this clear and unequivocal baseline of knowledge.

### **C. Israel's International Wrongful Acts in Palestine**

#### C(i) The Unlawfulness of Israel's Continued Presence in Palestinian Territory

301. Israel's continued presence in OPT (including Gaza, the West Bank and East Jerusalem) is, by authoritative legal analysis, unlawful in and of itself.<sup>468</sup> This illegality stems from violations of the right to self-determination of the Palestinian people and the prohibition on the use of force (*jus ad bellum*) under the UN Charter.<sup>469</sup>
302. The unlawfulness of this presence arises from the structural denial of Palestinian self-determination and the sustained exercise of control over territory acquired and

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<sup>468</sup> See ICJ Advisory Opinion wherein the Court stated at para 267: "*With regard to the Court's finding that Israel's continued presence in the Occupied Palestinian Territory is illegal, the Court considers that such presence constitutes a wrongful act entailing its international responsibility. It is a wrongful act of a continuing character which has been brought about by Israel's violations, through its policies and practices, of the prohibition on the acquisition of territory by force and the right to self-determination of the Palestinian people.*"

<sup>469</sup> United Nations Charter, art 2(4): "*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state...*"; also see, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion, 9 July 2004) [2004] ICJ Rep 136 (hereafter referred to as the ICJ Wall Opinion), para 88: "*The Court also notes that the principle of self-determination of peoples has been enshrined in the United Nations Charter and reaffirmed by the General Assembly in resolution 2625 (XXV) cited above, pursuant to which "Every State has the duty to refrain from any forcible action which deprives peoples referred to [in that resolution] . . . of their right to self-determination."* Article 1 common to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights reaffirms the right of all peoples to self-determination, and lays upon the States parties the obligation to promote the realization of that right and to respect it, in conformity with the provisions of the United Nations Charter."

maintained in violation of peremptory norms of international law which has been ongoing for decades. This is known as an illegal or unlawful occupation and it must come to an immediate end.<sup>470</sup>

303. In July 2024, the ICJ issued an Advisory Opinion concluding that Israel's illegal military occupation of Palestinian territory, including the West Bank, Gaza and East Jerusalem, is unlawful under international law.<sup>471</sup> The Court confirmed that the prolonged occupation violates the Palestinian people's right to self-determination and contravenes core principles of international humanitarian and human rights law.<sup>472</sup>
304. Dr. Wilde's expert legal opinion affirms that Israel's unlawful presence is not merely a question of isolated unlawful actions but reflects a fundamental and structural violation of international law. According to Dr. Wilde, Israel's prolonged presence in the OPT is inherently unlawful.<sup>473</sup>
305. Dr. Wilde explains that Israel's continued presence in the OPT entails a strict legal obligation to withdraw - an obligation grounded in the prohibition on the use of force and the right of self-determination.<sup>474</sup> This duty has been endorsed by the ICJ, which stated that such withdrawal must occur "*as rapidly as possible*" underscoring that the occupation is unlawful and cannot be prolonged under international law.<sup>475</sup>
306. Dr. Wilde records that the General Assembly, in its Resolution of 13 September 2024, implementing the ICJ's Advisory Opinion of July 2024, called for Israel to end its

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<sup>470</sup> ICJ Advisory Opinion, para 86, defining the establishment of an occupation: "[U]nder customary international law as reflected . . . in Article 42 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 . . . , territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised." (I.C.J. Reports 2004 (I), p. 167, para. 78; see also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 229, para. 172.)" and see para 266 confirming that the occupation is unlawful in the ICJ's opinion.

<sup>471</sup> ICJ Advisory Opinion, paras 261–262, 266. "*The sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel's presence in the Occupied Palestinian Territory unlawful.*" (para 261) and "*The Court has also found ... that the continued presence of Israel in the Occupied Palestinian Territory is illegal.*" (para 266).

<sup>472</sup> ICJ Advisory Opinion, paras 261 - 266.

<sup>473</sup> Dr. Wilde, *Expert Legal Opinion on illegality of Israel's presence in the OPT*, Executive Summary,

<sup>474</sup> See Dr. Wilde, *Expert Legal Opinion on illegality of Israel's presence in the OPT*, Executive Summary: Primary Consequence of illegality for Israel: requirement of immediate withdrawal.

<sup>475</sup> ICJ Advisory Opinion, para 267.

“unlawful presence” in the OPT “without delay” and, in any event, “no later than 12 months” from the date of adoption.<sup>476</sup> This reflects the Assembly’s clear view that, on the basis of the ICJ’s findings, Israel’s presence in the OPT was already unlawful at that moment, thereby necessitating its immediate termination as urgently as possible.

307. Dr. Wilde continues by noting that the General Assembly then expressly “demands” that Israel comply without delay with all its legal obligations under international law, including as stipulated by the ICJ, by, inter alia:

(a) Withdrawing all its military forces from the Occupied Palestinian Territory, including its airspace and maritime space.<sup>477</sup>

308. Israel’s continued refusal to comply with the binding obligations identified by the ICJ and repeatedly affirmed by the General Assembly places it in the position of a persistent delinquent State under international law, operating in sustained breach of peremptory norms and of duties *erga omnes*. Its ongoing non-performance of these obligations reinforces its status as a State engaged in serious, continuous and aggravated violations of fundamental international legal duties and humanitarian law. The persistence of these breaches heightens the responsibility of Third States to ensure that their own conduct does not contribute to or legitimise the continuation of such violations.

309. South Africa must act on its legal obligations to refrain from recognition or assistance and to cooperate in bringing the unlawful situation to an end. International humanitarian law further reinforces the prohibition on supporting the colonisation of occupied territory.

310. Article 49(6) of the Fourth Geneva Convention unequivocally prohibits an occupying power from transferring parts of its own civilian population into the territory it occupies.<sup>478</sup>

311. Israel’s illegal settlement expansion in the OPT constitutes a flagrant and ongoing violation of Article 49(6) of the Fourth Geneva Convention. As noted above, Israel’s

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<sup>476</sup> Dr. Wilde, *Expert Legal Opinion on illegality of Israel’s presence in the OPT*, para 40

<sup>477</sup> Dr. Wilde, *Expert Legal Opinion on illegality of Israel’s presence in the OPT*, para 40

<sup>478</sup> Geneva Convention (IV) art 49(6): “*The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.*”

occupation is widely and clearly recognised under international law as unlawful and devoid of legal effect and is thus devoid of legal defence.<sup>479</sup>

312. The establishment of civilian settlements in occupied land is prosecutable as a war crime under international criminal law.<sup>480</sup> Third States, for their part, are obligated by Common Article 1 of the Geneva Conventions to “ensure respect” for the Conventions<sup>481</sup>, which entails not aiding or abetting violations of international law, such as Article 49(6), and the obligation to take whatever reasonable action they can to bring the unlawful situation to an end. Israel’s powering of illegal settlements in the OPT is a clear violation of the above Articles.

### C(iii) Summary of the Legal Consequences of Israel’s Conduct for Third States

313. The legal position is not contestable. Israel’s continued presence in the OPT has been authoritatively declared unlawful by the ICJ, which held that Israel’s presence is unlawful and that it is under “an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible.”<sup>482</sup>
314. The Court further confirmed that all States are under an obligation not to recognize as lawful the situation arising from the unlawful presence and “not to render aid or assistance in maintaining the situation created by Israel’s illegal presence in the Occupied Palestinian Territory.”<sup>483</sup>
315. Furthermore, where conduct plausibly amounts to genocide, the obligations are heightened further: the ICJ has confirmed that the duty to prevent genocide is one of

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<sup>479</sup> Dr. Wilde, *Expert Legal Opinion on illegality of Israel’s presence in the OPT*

<sup>480</sup> UN Security Council Resolution 2334 (23 December 2016) para 1: “Reaffirms that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace;” ; Rome Statute of the International Criminal Court, art 8(2)(b)(viii) classifies the following as a war crime: “The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.”

<sup>481</sup> Geneva Conventions of 1949, Common art 1: “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.”

<sup>482</sup> ICJ Advisory Opinion, para 267 - 268

<sup>483</sup> ICJ Advisory Opinion, para 273 - 279

conduct, requiring States to employ all means reasonably available to them to prevent the commission of genocide so far as possible.<sup>484</sup>

316. These duties reflect the established consequences of serious breaches of peremptory norms of international law, which require that States shall cooperate and take all reasonable measures to bring to an end through lawful means any serious breach and that no State shall recognize as lawful a situation created by a serious breach nor render aid or assistance in maintaining that situation.<sup>485</sup> The obligations of cooperation, non-recognition and non-assistance operate together and reinforce one another.
317. Where a State fail to exercise its duties but instead contributes to the ongoing crimes, it may incur responsibility for complicity under international law.

#### C(iv) Legal Consequences as a Result of Israel's Crimes Against Children

318. The Convention on the Rights of the Child (CRC)<sup>486</sup>, to which both South Africa and Israel are parties, imposes specific obligations relevant to the humanitarian crisis and welfare of children in Gaza. Almost half of Gaza's population are children.
319. Article 3 affirms that "*in all actions concerning children, the best interests of the child shall be a primary consideration.*"<sup>487</sup> Under Article 6, every child has the inherent right to life, survival and development<sup>488</sup>, while Article 38(1) further obliges States Parties to respect and ensure respect for international humanitarian law as it applies to children in armed conflicts.<sup>489</sup>
320. Israel's genocidal conduct violates duties owed under the CRC, including the duty to protect the rights to life, health, education and protection from violence. While the primary duty bearer for these violations is the perpetrating State, Israel, all States Parties

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<sup>484</sup> *Bosnia v Serbia*, paras 430 - 432

<sup>485</sup> ARSIWA, art 16, 40 and 41

<sup>486</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (Hereafter referred to as CRC).

<sup>487</sup> CRC, art 3(1): "*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*"

<sup>488</sup> CRC, art 6(1) - (2): (1): "*States Parties recognize that every child has the inherent right to life.*" and (2): "*States Parties shall ensure to the maximum extent possible the survival and development of the child*".

<sup>489</sup> CRC, arts 6(1)–(2), 38(1): "*States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.*"

to the CRC have a responsibility to cooperate to ensure that children are protected from such grave harm.<sup>490</sup>

321. The CRC does not expressly articulate a freestanding prohibition on assisting another State in violating children's rights. However, when interpreted in accordance with general principles of treaty interpretation and read together with international humanitarian law and the law of State responsibility, such a prohibition arises as a necessary corollary of States Parties' obligations.<sup>491</sup>
322. These obligations entail that no State may contribute to, or facilitate violent crimes committed against children, including discrimination and apartheid, indiscriminate bombardment, the denial of life-sustaining resources and collective punishment - particularly where such acts plausibly amount to genocide.
323. Article 6 obliges States to ensure, to the maximum extent possible, the survival and development of the child<sup>492</sup>, while Article 38 requires States Parties to "respect and ensure respect" for rules of international humanitarian law relevant to children in armed conflict.<sup>493</sup> Although Article 38 refers to rules of IHL "applicable to them", contemporary interpretation of parallel language in Common Article 1 of the Geneva Conventions confirms that the obligation to "ensure respect" extends beyond a State's own conduct to include a duty not to aid or assist violations by other States where there is a clear and foreseeable risk that such assistance will contribute to unlawful acts.<sup>494</sup>

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<sup>490</sup> CRC, art 4: "*States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.*"

<sup>491</sup> Vienna Convention on the Law of Treaties, art 31(3)(c) confirming that Treaty interpretation must take into account "*any relevant rules of international law applicable in the relations between the parties*".

<sup>492</sup> CRC, arts 6(1)–(2).

<sup>493</sup> CRC, arts 38(1) and 38(4)

<sup>494</sup> Geneva Convention (IV), art 1: "*The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances*"; and see ICJ Wall Advisory Opinion, para 158: "*All States are under an obligation not to recognise the illegal situation... and not to render aid or assistance in maintaining the situation created by such construction.*"

324. Read consistently with Articles 16 and 41 of the Articles on State Responsibility<sup>495</sup>, and the duty to prevent genocide recognised by the International Court of Justice<sup>496</sup>, States Parties are therefore required not only to refrain from directly violating children’s rights, but also to abstain from conduct that materially contributes to, facilitates or sustains serious violations against children wherever they occur.

#### **D. Third State Obligations to Prevent Complicit Trade**

325. Article III(e) of the Genocide Convention prohibits complicity in genocide.<sup>497</sup> Complicity arises where a State, aware of a serious risk of genocide, provides aid or assistance that has a substantial effect on, and thereby facilitates, its commission.<sup>498</sup> ICJ jurisprudence confirms that this includes acts of aiding or assisting in the commission of the crime even when the assisting State does not itself share the principal perpetrator’s genocidal intent, provided it knows of the serious risk and continues to facilitate the crime.<sup>499</sup>

326. Article 16 of ARSIWA provides that:

*“A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:*

*(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and*

*(b) The act would be internationally wrongful if committed by that State.”<sup>500</sup>*

327. The ICJ in *Bosnia v Serbia* clarified that the obligation to prevent genocide is one of conduct and not one of result. States are required to employ all means reasonably available to them so as to prevent genocide so far as possible, and responsibility arises

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<sup>495</sup> ARSIWA, art 16 which confirms that a State which aids or assists another State in the commission of an internationally wrongful act is internationally responsible if it does so with knowledge of the circumstances; and art 41 which states that no State shall recognise as lawful a situation created by a serious breach... nor render aid or assistance in maintaining that situation.

<sup>496</sup> *Bosnia v Serbia*, paras 430 – 431.

<sup>497</sup> Genocide Convention, art 3(e).

<sup>498</sup> *Bosnia v Serbia*, para 432.

<sup>499</sup> *Bosnia v Serbia*, para 432. ILC, *Articles on Responsibility of States for Internationally Wrongful Acts*, arts 16, 40–41.

<sup>500</sup> ARSIWA, art 16.

where a State manifestly fails to take measures within its power that might have contributed to preventing the genocide.<sup>501</sup>

328. Genocide is the gravest of crimes a State can commit which is why Article I of the Genocide Convention clearly imposes a duty on all State Parties to prevent genocide, which arises the moment a State knows or should know of a serious risk of genocide.<sup>502</sup> This duty arises irrespective of geographical proximity and applies to all States capable of influencing the situation through their political, economic or commercial relations.
329. Furthermore, as the principal judicial organ of the United Nations, the ICJ's advisory opinions, while not formally binding, are regarded as authoritative statements of international law and carry significant legal and moral weight. The Court's findings reinforce the consensus that Israel's illegal occupation of the OPT constitutes an ongoing and serious breach of peremptory norms, with direct implications for the conduct of Third States.
330. Third States are required to align their conduct with the Court's interpretation of international law and must ensure that their trade and diplomatic relations do not undermine or contradict these legal determinations.<sup>503</sup>
331. If a Third State fails to comply with these obligations, it does not become "guilty" in a criminal sense before the ICJ but it may incur international responsibility for an internationally wrongful act including for rendering aid or assistance in maintaining a serious breach of peremptory norms and for failing to cooperate to bring that breach to an end.<sup>504</sup> In practical terms, non-compliance exposes a State such as South Africa to intensified diplomatic isolation and lawful countermeasures by other States acting to

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<sup>501</sup> *Bosnia v Serbia*, para 430.

<sup>502</sup> *Bosnia v Serbia*, para 431

<sup>503</sup> In its opinion, the ICJ confirmed that Third States have a legal obligation not to recognise Israel's unlawful military and settler presence in the OPT. Applying Articles 40 and 41 of ARSIWA in the OPT context, the ICJ indicated that Third States must "*abstain from entering into economic or trade dealings with Israel [...] which may entrench its unlawful presence in the territory*" and must further "*take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory.*" The ICJ, went on further to recognize that Third States have a positive obligation "*to ensure compliance by Israel with international humanitarian law as embodied in that Convention.*"

<sup>504</sup> ICJ Advisory Opinion, para 278

vindicate obligations owed to the international community as a whole including restrictions on trade cooperation and investment with implicated State entities.<sup>505</sup>

332. It also creates a clear litigation pathway: other State parties could seek to invoke South Africa's responsibility under the Genocide Convention where jurisdictional requirements are met and the factual threshold for knowledge, assistance or failure to prevent is established, noting that the duty to prevent is one of conduct requiring States to employ all means reasonably available to them under a due diligence standard and that even where material sanctions are not ordered, the Court has recognised that a declaration of breach can constitute appropriate satisfaction with significant reputational and political consequences.<sup>506</sup> In the same manner that South Africa took Israel to the ICJ for its genocide, so can South Africa be taken to the ICJ for complicity in genocide and other internationally wrongful acts committed by the perpetrating State.
333. Where an ICJ judgment is made binding on a party State, the United Nations Charter contemplates recourse to the Security Council in the event of non-compliance, although the Council's response remains discretionary and political.<sup>507</sup> Finally, findings by the ICJ and other United Nations bodies that South Africa facilitated an illegal situation or contributed to genocide risk direct consequences for accountable officials, including sustained international scrutiny, targeted measures by foreign States, domestic legal challenges to permitting and procurement decisions and potential exposure to criminal investigation where individual conduct meets the applicable thresholds for international crimes under domestic or international fora.<sup>508</sup>
334. As the ICJ held in the *Bosnia v Serbia* judgement,<sup>509</sup> States are not required to guarantee success, but they must employ all means reasonably available to them to influence the perpetrating State and avert the crime, in proportion to their capacity to do so.<sup>510</sup>

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<sup>505</sup> ARSIWA arts 40, 41 and 48

<sup>506</sup> *Bosnia v Serbia*, paras 430 to 432 and 463

<sup>507</sup> Charter of the United Nations, art 94: "1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party. 2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."

<sup>508</sup> Genocide Convention, arts I, III(e) and IX.

<sup>509</sup> *Bosnia v Serbia*, para 430 - 431.

<sup>510</sup> *Bosnia v Serbia*, para 430 - 431.

335. The findings of the UN Special Rapporteur, Francesca Albanese, provide further authoritative clarification of Third States' duties under international law in the context of the ongoing genocide in Gaza.
336. In *Gaza Genocide: A Collective Crime*, Albanese affirms that Israel's genocidal campaign is being enabled by both direct and indirect economic, military and logistical assistance from Third States. This includes the provision of coal and other strategic commodities that facilitate the continuation of mass atrocities.<sup>511</sup>
337. Albanese reiterates that States must neither recognise nor provide aid or assistance that helps maintain a situation created by a serious breach of a peremptory norm of international law, such as genocide or apartheid.<sup>512</sup> Her report, *From the Economy of Occupation to the Economy of Genocide* further supports the proposition that economic relations and strategic commodities (such as coal) constitute such assistance.<sup>513</sup> The identification of coal as an enabling factor underscores the direct relevance of energy exports to the assessment of State responsibility for assistance in internationally wrongful acts.
338. Albanese grounds these findings in binding legal instruments including the Geneva Conventions, the Rome Statute, the Apartheid Convention and Article 2(4) of the UN Charter, and further affirms that the Vienna Convention on the Law of Treaties (Article 53) renders void any treaty or agreement that conflicts with a peremptory norm of international law, and therefore cannot be relied upon to justify or shield arrangements that facilitate genocide, apartheid or illegal occupation. Accordingly, no bilateral or commercial agreement may lawfully be invoked to justify continued trade that

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<sup>511</sup> Albanese, *Gaza Genocide: A Collective Crime*, Summary, paras 1, 40–41, 55–63. Para 1 states: “Without the direct participation, aid and assistance of other States, the prolonged unlawful Israeli occupation of the Palestinian territory, which has now escalated into a full fledged genocide, could not have been sustained. The military, political and economic support of some Third States and the unwillingness to hold Israel accountable has enabled Israel to embed its regime of settler-colonial apartheid in the occupied Palestinian territory (oPt), with more colonies, home demolitions, restrictions on movement and loss and erasure of Palestinian life. Since October 2023, Israel has escalated its violence to an unprecedented level.”

<sup>512</sup> Albanese, *Gaza Genocide: A Collective Crime*, para 6: “International law imposes a range of obligations on all States to respect, prevent and bring an end to violations whenever they occur. In the context of the OPT, the most relevant are (a) Direct obligations all States owe to the Palestinian people - especially the obligations to respect their right to self-determination and freedom from apartheid and genocide; (b) Obligations *erga omnes* arising from the serious breach of peremptory norms .. (i) a positive obligation to individually and cooperatively, bring any unlawful situation to an end through lawful means...”

<sup>513</sup> Albanese, *From the Economy of Occupation to the Economy of Genocide*, para 57

materially contributes to the maintenance of a situation created by serious breaches of peremptory norms

339. Albanese's analysis confirms that certain areas of international law specify the means available to States and the *opinio juris*<sup>514</sup> regarding expected actions, which are relevant to assessing Third State compliance with their obligations. These obligations include:
- 339.1. That international law provides for the use of force in narrowly defined circumstances, including collective self-defence upon request, action authorised by the Security Council and, in exceptional cases, measures adopted under the United for Peace framework<sup>515</sup>;
- 339.2. The obligations arising from the Arms Trade Treaty, which prohibits arms transfers where the supplying State knows or should know that the weapons will be used to commit international crimes and further requires rigorous risk assessments to prevent transfers where there is a substantial risk of serious violations of international humanitarian or human rights law<sup>516</sup>;
- 339.3. States may adopt trade restrictions or embargoes in accordance with WTO trade frameworks and other trade instruments where necessary to fulfil obligations relating to international peace and security including peremptory norms, and that similar clauses in bilateral trade and investment agreements permit human rights-based limitations on commerce<sup>517</sup>;

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<sup>514</sup> Cornell Law School, defines *Opinio juris* as: "a shortened form of the Latin phrase "*opinio juris sive necessitatis*," which means "an opinion of law or necessity." In customary international law, *opinio juris* is the second element necessary to establish a legally binding custom. *Opinio juris* denotes a subjective obligation, in that a state perceives itself to be bound by the law in question. The International Court of Justice outlined the standard for customary international law in ICJ Statute, Article 38(1)(b) which requires that the custom be "a general practice accepted as law." The general practice requirement refers to state practice or actions, while the accepted as law aspect refers to *opinio juris*, the belief that the actions are required by law." [https://www.law.cornell.edu/wex/opinio\\_juris\\_\(international\\_law\)](https://www.law.cornell.edu/wex/opinio_juris_(international_law)) accessed on 10 January 2026

<sup>515</sup> Albanese, *Gaza Genocide: A Collective Crime*, 5-6, 8(a)

<sup>516</sup> Albanese, *Gaza Genocide: A Collective Crime*, 8(b)

<sup>517</sup> Albanese, *Gaza Genocide: A Collective Crime*, 8(c)

- 339.4. States may deny safe passage to vessels engaged in activities that are inconsistent with international law and that risk rendering the coastal State complicit in grave breaches<sup>518</sup>;
- 339.5. Finally, the universal obligation to investigate, prosecute and punish genocide, crimes against humanity, war crimes and torture, as well as the duty to ensure accountability for corporations and other private actors implicated in such violations under domestic law.<sup>519</sup>
340. Taken together, these obligations confirm that States possess both the legal authority and the legal duty to adopt restrictive trade and regulatory measures where necessary to prevent and punish international crimes as well as to prevent complicity.

**E. South Africa and Corporations are Aiding and Abetting Israel in the Commission of Internationally Wrongful Acts including Genocide**

E(i). Israel's Internationally Wrongful Acts including Genocide are Embedded Within its Broader State Apparatus, and Thus Cannot be Separated Meaningfully from its Governance – Trade with Israel is Not Neutral Trade

341. In South Africa, where corporations have been made aware of the ongoing atrocities, through for example, civil society action, public protests and widespread calls directed at the corporations for accountability and human rights assessments, as well as through credible news and journalist reporting on the situation in Gaza, the UN findings and South Africa's own ICJ case against Israel, they must take necessary steps to immediately cease and prevent any complicity in these crimes that may occur from their commercial conduct.<sup>520</sup> The widespread and sustained notice is relevant to both actual and constructive knowledge.

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<sup>518</sup> Albanese, *Gaza Genocide: A Collective Crime*, 8(d) and see ASCOMARE, Expert Legal Opinion

<sup>519</sup> Albanese, *Gaza Genocide: A Collective Crime*, 8(e)

<sup>520</sup> See OHCHR, *Human Rights Due Diligence: An Interpretive Guide*, p.14 referring to the commentary on UNGP on Business and Human Rights, Principle 19: “As the commentary to Guiding Principle 19 explains, “where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact”. Where it contributes or may contribute to such an impact, it should similarly take action to cease or prevent the contribution, and also use its leverage to mitigate any remaining impact (by other parties involved) to the greatest extent possible. In this context, “leverage” means the ability to effect change in the wrongful practices of the party that is causing or contributing to the impact”. See *Bosnia v Serbia* paras 430 – 432.

342. Israel’s actions are more than just a legal breach - it represents a settler-colonial project sustained through decades-long systemic dispossession and abhorrent violence which continues unabated while being fuelled in part by South African coal.<sup>521</sup>
343. These developments reinforce why Third States cannot treat economic engagement with Israel as neutral. Security Council resolution 2334 (2016) expressly “*calls upon all States ... to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967.*”<sup>522</sup> The urgency of this resolution is amplified by the ICJ’s Order of 26 January 2024 confirming that since October 2023 “*at least some of the rights asserted by South Africa under the Genocide Convention are plausible*” and that those plausible rights include “*the right of the Palestinians in Gaza to be protected from acts of genocide*” and South Africa’s right to seek Israel’s compliance.<sup>523</sup> Economic relations that foreseeably sustain the unlawful situation therefore cease to be ordinary trade and acquire direct legal significance.
344. In this context, the ongoing expansion and entrenchment of the illegal settlement enterprise, alongside mass displacement and coercive conditions in the West Bank, underscores that continued trade and energy inputs that foreseeably sustain the unlawful situation, including the powering of illegal settlements, materially increases the risk of contribution to serious internationally wrongful conduct and undermines the duty to ensure respect for international law.<sup>524</sup>

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<sup>521</sup> Refer to Annexures A – C below.

<sup>522</sup> UN Security Council Res 2334 (23 December 2016) UN Doc S/RES/2334 (2016), <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf> accessed 23 February 2026: This Resolution “1. Reaffirms that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace; 2. Reiterates its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard; 3. Underlines that it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations; 4. Stresses that the cessation of all Israeli settlement activities is essential for salvaging the two-State solution, and calls for affirmative steps to be taken immediately to reverse the negative trends on the ground that are imperilling the two-State solution; 5. Calls upon all States, bearing in mind paragraph 1 of this resolution, to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967; 6. Calls for immediate steps to prevent all acts of violence against civilians, including acts of terror, as well as all acts of provocation and destruction, calls for accountability in this regard, and calls for compliance with obligations under international law for the strengthening of ongoing efforts to combat terrorism, including through existing security coordination, and to clearly condemn all acts of terrorism;”

<sup>523</sup> ICJ Provisional Measures Order, 26 January 2024

<sup>524</sup> ICJ Wall Advisory Opinion, para 159

345. The severity of these crimes, and their scale, has prompted growing condemnation by international bodies. As mentioned, in September 2024, both the UN General Assembly and a coalition of UN experts reaffirmed that Third States must cease all economic relations benefiting Israel’s unlawful occupation in light of the ICJ’s Advisory Opinion.<sup>525</sup>
346. Israel’s unlawful occupation is not a discrete or isolated military operation but is deeply embedded within its broader State apparatus - encompassing its defence infrastructure, economy, governance and settler enterprise.<sup>526</sup> As such, it is impossible to disentangle “occupation-related” activity from the ordinary functions of the Israeli state. This structural integration is legally decisive because it means that support directed at ostensibly civilian systems may nonetheless sustain the capacity of the State to maintain the unlawful situation and associated international crimes.<sup>527</sup>
347. Israel’s electricity grid is a clear example of that fact as the grid cannot be separated from the ongoing illegal occupation and genocide.<sup>528</sup> This structural integration means that trade relations such as coal exports to Israel is not “neutral” but rather that each shipment of coal to Israel materially supports the illegal occupation and system of apartheid imposed on the Palestinian population.<sup>529</sup>
348. No serious argument can be sustained that South African coal is legally irrelevant to the commission or maintenance of Israel’s internationally wrongful acts. Israel implements systems of racial segregation, forced displacement and territorial colonisation, and the energy infrastructure that sustains those systems cannot be treated as detached from

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<sup>525</sup> UN General Assembly Resolution ES-10/24 (19 September 2024) paras 4(b)–(d): “4. *Calls upon all States: (b) To cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel so long as serious violations of international humanitarian law and international human rights law persist; (c) To ensure that business enterprises domiciled under their jurisdiction or control cease all activities in the Occupied Palestinian Territory that support the illegal settlement enterprise or otherwise contribute to the maintenance of the occupation; (d) To comply with their obligations under international law, including international humanitarian law and international human rights law, and not to recognize as lawful the illegal situation resulting from Israel’s occupation of the Palestinian territory, and not to render aid or assistance in maintaining the situation.*”

<sup>526</sup> Dr. Wilde, *Expert Legal Opinion on illegality of Israel’s presence in the OPT*, 2 - 5. See Amnesty International, *Israel’s Apartheid Against Palestinians*

<sup>527</sup> SOMO, *Powering Injustice*

<sup>528</sup> SOMO, *Powering Injustice*

<sup>529</sup> See sections II – III above; and SOMO, *Powering Injustice*.

them. South Africa must not continue to fuel the ongoing apartheid and colonisation of Palestinian land.<sup>530</sup>

349. The relevant inquiry is not whether a particular shipment can be traced to a specific unlawful act but whether the supply foreseeably sustains the infrastructure through which the unlawful situation is maintained. The information contained in this report (See Section I – III above) provides clear evidence of the role of South African coal in Israeli apartheid, illegal occupation and genocide.
350. Once placed on such notice, including the binding provisional measures issued by the ICJ, a State cannot lawfully maintain commercial or economic relations that have a foreseeable and substantial effect in sustaining the capacity of the perpetrating State to continue the alleged internationally wrongful conduct. In that context, the continued supply of coal to Israel constitutes a knowing and material contribution to the infrastructure through which the unlawful conduct is maintained.
351. The duty of non-assistance therefore extends beyond direct military or logistical support and encompasses economic and material contributions that sustain the operational capacity of the offending State.<sup>531</sup> In this case, South African coal contributes to Israel's capacity to carry out international crimes.<sup>532</sup> South Africa is accordingly required to take positive regulatory steps, including the control and prohibition of coal exports, to prevent domestic actors from contributing to the continuation of these internationally wrongful acts.

E(ii). South Africa and Corporations Must Stop Supplying Coal to Israel which Assist in the Commission of Internationally Wrongful Acts including Genocide (To be read with Sections IV – VII above)

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<sup>530</sup> See ICJ Advisory Opinion, SOMO, *Powering Injustice*

<sup>531</sup> See ICJ Advisory Opinion, ICJ Wall Advisory Opinion, Rome Statute; *Bosnia v Serbia*, Albanese, *From the Economy of Occupation to the Economy of Genocide*.

<sup>532</sup> See Albanese, *From the Economy of Occupation to the Economy of Genocide*. And see Sections I – III above.

352. The continued export of coal that enables or sustains a genocidal assault in Gaza constitutes a breach of the Genocide Convention's foundational obligations, particularly South Africa's duty "*prevent and to punish*" under Article I read with Article IV.<sup>533</sup>
353. South Africa's duty is to actively withdraw support and cooperate in ending the breach, as required by Articles 41(1) and (2) of ARSIWA.<sup>534</sup> These obligations have a direct bearing on the commercial conduct of corporations because commercial relations that materially support a regime engaged in genocide, apartheid and illegal occupation directly undermine the obligations of the State. This includes the duty to review, suspend or terminate trade relationships where such relationships risk entrenching or prolonging the unlawful situation in Palestine or amounting to aid or assistance in international wrongful acts. Corporations must be made to adhere to international law.
354. Compliance is not discretionary. South Africa's failure to use its legislative and executive organs to prevent private actors from supplying coal to Israel is a clear breach of its obligations under international law, as preventing the coal trade is a reasonable means to put pressure on Israel to end the unlawful occupation and genocide.
355. In light of ASCOMARE's conclusions, read with the Hague Group Commitments, South Africa has an obligation not only to refrain from exporting resources that enable violations of peremptory norms, but also to actively prevent foreign vessels from entering its ports to load coal or other commodities where there is a foreseeable risk that such cargo will be used to sustain illegal activities. This obligation links the duty of non-assistance to concrete measures, including the denial of port services, the suspension of loading operations and the imposition of conditions designed to prevent complicity.
356. When foreign-flagged ships seek to dock, load coal and transport it to Israel or territories under unlawful occupation, South Africa must exercise its rights under UNCLOS to deny port access or suspend port operations. This is especially urgent when the shipment may foreseeably contribute to the maintenance of internationally wrongful acts, such as

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<sup>533</sup> Genocide Convention, art I and IV. art I: "*The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.*" and art IV: "*Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.*"

<sup>534</sup> ARSIWA, art 41(1)–(2). (1): *States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.* (2): *No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.*

genocide, apartheid or the annexation of occupied land. In such cases, the use of South African territory, infrastructure and resources for loading operations would render the State complicit, and in violation of its due diligence obligations and its obligations to prevent and punish genocide.

357. Where fuel, including coal-based energy, is knowingly supplied to power a State engaged in the commission of grave crimes against children and civilians, the conduct of the exporting State becomes incompatible with the broader corpus of international law designed to protect civilian populations, including children in Palestine. The continued enabling of such systems constitutes not only a legal failure but a profound moral indictment, particularly in circumstances where children are killed with impunity.
358. In this context, the State bears a duty to regulate and restrain corporate actors that provide the material means through which such destruction is carried out.
359. As set out in Francesca Albanese's reports, the various forms of State complicity include, but are not limited to, the export of arms, ammunition, raw materials such as coal, AI-enabled targeting or surveillance and fuel essential to military operations.<sup>535</sup>
360. Recent trade data indicates that South Africa has become the leading coal supplier to Israel despite the ICJ's findings on the unlawfulness of Israel's presence in the OPT.<sup>536</sup> This position has emerged, at least in part, following the complete coal embargo imposed by Colombia in August 2025 and persists notwithstanding the Hague Group commitments as recent as March 2026 (see section VII above). In circumstances where the commodity supplied constitutes a core energy input sustaining electricity generation, industrial infrastructure and military logistics, such trade cannot plausibly be characterised as commercially neutral.<sup>537</sup>
361. Under international law, the responsibility of a State is not confined to its direct acts: it extends to conduct within its jurisdiction where the State fails to regulate, prevent or restrain corporate activity that foreseeably contributes to serious internationally wrongful acts, including grave breaches of international humanitarian law and acts

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<sup>535</sup> Albanese, *From the Economy of Occupation to the Economy of Genocide, and Gaza Genocide: A Collective Crime*.

<sup>536</sup> See section I above

<sup>537</sup> See sections II – III above.

amounting to genocide.<sup>538</sup> The obligation not to aid or assist in the commission of an internationally wrongful act applies equally where assistance is channelled through private actors operating under a State's regulatory authority. Accordingly, the duties of non-assistance, due diligence<sup>539</sup> and prevention require South Africa to ensure that corporations domiciled, incorporated or operating within its jurisdiction do not export energy commodities that materially sustain an unlawful occupation, illegal settlements or conduct plausibly constituting genocide.

362. If South African based corporations knowingly continue to export the raw materials that power the infrastructure of a State accused of genocide and continuing to commit grave acts of collective punishment, siege and deprivation, South Africa breaches its duty to respect and protect human rights by failing to ensure that corporate conduct within its jurisdiction does not contribute to those crimes.<sup>540</sup> As custodian of South Africa's mineral resources, the State must ensure that no entities within its jurisdiction are permitted to breach international law obligations and that no South African coal is used in the maintenance of genocide, illegal occupation and apartheid.<sup>541</sup>
363. Should corporations fail or refuse to adhere to international law, the regulation of private actors by the State becomes necessary because State responsibility may arise not only from direct export decisions, but also from a failure to exercise due diligence over conduct within the State's jurisdiction that facilitates serious international crimes.

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<sup>538</sup> See ARSIWA, UNGPs, *Bosnia v Serbia*

<sup>539</sup> See Max Planck Encyclopedias of International Law, *Due Diligence*, 2022: “*Due diligence has traditionally been invoked (and still is) in situations where it establishes the legal responsibility of a State in connection with the behaviour of private actors that cannot be attributed directly to the State. The obligation of due diligence in these cases stems from a State's exclusive power over certain areas and entities. International law does not expect a State to prevent all private action under its control and jurisdiction that causes harm to others, but lays down an obligation for the State to take appropriate steps to ensure that private persons will not cause such harm. These are for States obligations of conduct, that is, obligations to endeavour to reach the result set out in the obligation. A breach of these obligations consists not in failing to achieve the desired result but in failing to take the necessary, diligent steps towards that end.*”  
<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1034> accessed on 26 February 2026

<sup>540</sup> See section IV above.

<sup>541</sup> Mineral and Petroleum Resources Development Act No.28 of 2002, section 2 “*Objects of Act The objects of this Act are to— (a) recognise the internationally accepted right of the State to exercise sovereignty over all the mineral and petroleum resources within the Republic; (b) give effect to the principle of the State's custodianship of the nation's mineral and petroleum resources*”; and section 3(2): “*As the custodian of the nation's mineral and petroleum resources, the State, acting through the Minister, may— (a) grant, issue, refuse, control, administer and manage any reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right and production right*”.

364. The ICESCR has stressed that States must ensure that corporations or actors within their jurisdiction do not facilitate rights violations abroad.<sup>542</sup> Specifically that: “*States parties must also take the necessary steps to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction. These obligations extend to any business entity over which a State party may exercise influence, whether they are incorporated under the State party’s laws, or have their statutory seat, central administration or principal place of business on the national territory.*”<sup>543</sup>
365. South Africa’s coal exports, insofar as they materially support the destruction of lives, livelihoods and basic services, are incompatible with this obligation. To comply with the ICESCR and its international obligations as set out in this report, South Africa must suspend trade practices that foreseeably obstruct the enjoyment of socio-economic rights in Gaza and actively support efforts to restore access to essential services.
366. South Africa’s human-rights treaty obligations reinforce the imperative that it not be complicit through policies or trade that supports the denial of an entire civilian population’s fundamental and socio-economic rights.
367. Private actors and corporations contribute to the commission and maintenance of international crimes where they supply goods, services, finance, logistics, technology or energy inputs that sustain a State’s capacity to carry out the unlawful conduct.<sup>544</sup> In the present context, corporate involvement is relevant not because corporations are the primary perpetrators, but because their commercial conduct materially enables and sustains the systems through which unlawful occupation, apartheid and genocidal acts are implemented by Israel.<sup>545</sup>

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<sup>542</sup> ICESCR, General Comment No. 24 (2017) paras 26–28. Para 26: “*States parties should ensure that they do not obstruct another State party from complying with its obligations under the Covenant. This requires that they refrain from conduct which nullifies or impairs the enjoyment and exercise of economic, social and cultural rights extraterritorially. This includes conduct by corporations over which they can exercise control that may result in nullifying or impairing the enjoyment of Covenant rights extraterritorially.*” Para 28: “*Accordingly, States parties must take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially where the absence of such regulation may facilitate the occurrence of human rights abuses. Such steps include legislative, administrative, investigative and judicial measures. The Committee has observed that without such measures, the rights enshrined in the Covenant can be rendered meaningless.*”

<sup>543</sup> ICESCR, General Comment No. 24 (2017) para 27.

<sup>544</sup> Albanese, *From the Economy of Occupation to the Economy of Genocide*.

<sup>545</sup> Albanese, *From the Economy of Occupation to the Economy of Genocide* ; and see Dr. Wilde’s Expert Legal Opinion and Petrapaoli, *Obligations of Third States and Corporations*.

368. This is particularly the case where the commodity supplied is an energy input or enabling resource, because energy underpins the operation of Israel's military infrastructure, security systems, military logistics, detention and surveillance architectures and furthermore supports the unlawful occupation of Palestine. Israel's military has already killed over 70 000 Palestinians in Gaza, the most vulnerable of whom are children.
369. South Africa is under a positive legal obligation to refrain from conduct that aids or assists in the commission of internationally wrongful acts, including the illegal settlement enterprise in the OPT. These duties apply equally to omissions, meaning that a failure to prevent the use of South African ports, licensing systems and export infrastructure may amount to unlawful facilitation where the risk and destination are clear.
370. Accordingly:
- 370.1. South Africa (and corporations within its jurisdiction) must refrain from actions that would help sustain the illegal settlements or facilitate the demographic engineering of occupied Palestine.<sup>546</sup> South Africa is in breach of international law as the State may not lawfully provide resources, including energy commodities like coal, that aid in entrenching Israel's settler presence or infrastructure in the OPT;
- 370.2. Continued coal exports that bolster the energy needs of illegal settlements or the military forces protecting them constitute material support to violations of the Fourth Geneva Convention and other binding international law instruments.<sup>547</sup> South Africa must use all lawful means to bring such breaches to an end, including by ceasing

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<sup>546</sup> See the ICJ *Wall* Advisory Opinion paras 159–160, 163. Particularly, para 159: “Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end. In addition, all the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.”

<sup>547</sup> Refer to Section II – III above; Albanese, *From the Economy of Occupation to the Economy of Genocide* ; SOMO, *Powering Injustice* ; Dr. Ralph Wilde's Expert Legal Opinion.

economic or material assistance that is complicit in the maintenance of the illegal situation - South Africa must also ensure that foreign vessels are not allowed to dock in South Africa and load coal where there is a reasonable suspicion that these shipments are destined for Israel<sup>548</sup>; and

370.3. To comply with its legal obligations, South Africa must ensure that its coal exports are not powering the transfer of civilian populations, the construction of illegal settlements or the permanent alteration of the occupied territory.<sup>549</sup> South Africa can do this through the legal authority it has as set out in existing legislation. The evidence provided above already sets out how South African coal powers the illegal occupation and how it is impossible to separate ordinary commercial conduct with the infrastructure of Israel used in the oppression of the Palestinian people. South African coal which directly supports this infrastructure must immediately be withdrawn.

**F. South Africa is Breaching its Duty Under International Law – South Africa Risks Liability for being Complicit in Illegal Occupation, Apartheid and Genocide**

371. Under international law, there is no excuse, justification or defence for continued trade that sustains conduct amounting to genocide, apartheid, ethnic cleansing and illegal occupation.

372. Having established South Africa's duties under international law, the existence of internationally wrongful acts including genocide and unlawful occupation, and the material assistance provided through coal exports, it follows that the continued authorisation and facilitation of such exports implicate South Africa in ongoing breach of its obligations of non-assistance, prevention and cooperation under international law. This section addresses the legal consequences that arise once knowledge, capacity to act and material contribution are established on the factual and legal record set out above.

373. In the present context, the export of raw materials, such as coal, that foreseeably propel or prolong Israel's commission of grave breaches of international law in Palestine must

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<sup>548</sup> Geneva Conventions IV, ARSIWA, Genocide Convention, Rome Statute, ICJ Advisory Opinion, *South Africa v Israel*, Provisional Measure Orders.

<sup>549</sup> Geneva Conventions IV, ARSIWA, Genocide Convention, Rome Statute, ICJ Advisory Opinion

immediately come to an end or potentially face consequences under customary international law and treaty obligations.

374. The combination of Israel's persistent non-compliance with binding international obligations and perpetration on international crimes including the ongoing genocide, the unlawful occupation and systematic dispossession of Palestinians of their land, the system of apartheid imposed on the Palestinian people triggers South Africa's duties of non-recognition, non-assistance and cooperation to bring the unlawful situation to an end.<sup>550</sup> The material contribution of South African coal to Israel's infrastructure and military constitutes a form of assistance and complicity in the maintenance of an unlawful situation that international law requires to be terminated. The information provided within this report ensures that the State and officials that have the power and obligation to prevent complicity are well informed of their material contribution and failure to act.
375. The specific duties of the State under international law as highlighted in Dr. Wilde's expert opinion in relation to Israel's illegal occupation and associated international crimes must be actioned.<sup>551</sup> A failure to uphold these duties in light of having knowledge of the continuing genocide and ethnic cleansing in Gaza constitutes complicity.<sup>552</sup>
376. The legal findings set out by the ICJ, the United Nations, the expert legal opinions and reports confirm that ordinary commercial conduct becomes unlawful once that conduct/trade materially supports and aids international crimes. The State has been on notice of the risk of genocide being committed since January 2024 yet it continues such trade which materially sustains the commission of that crime. Albanese's legal analysis and conclusions in her reports *From the Economy of Occupation to the Economy of Genocide* and *Gaza Genocide: A Collective Crime* reinforce binding obligations arising under ICJ jurisprudence and customary international law in the context of the Genocide in Palestine. South Africa must act to terminate all trade materially assisting international crimes committed by Israel without delay.

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<sup>550</sup> See *Bosnia v Serbia*, *South Africa v Israel* ICJ Provisional Measures and the UN Genocide Report

<sup>551</sup> Dr. Wilde, *Expert Legal Opinion on illegality of Israel's presence in the OPT* paras 72–73, 95, 99–104, 110–113, 116, 142. See Section VIII above.

<sup>552</sup> See *Serbia v Bosnia*, Rome Statute

377. Since 1945, international criminal law has developed a firm principle: complicity in atrocity crimes is punishable regardless of rank, proximity or formal status. The *Nuremberg Tribunal*<sup>553</sup> held that business leaders and financiers could be held individually liable where their actions materially supported war crimes and extermination.<sup>554</sup> The Nuremberg Principles, which emerged from the Nuremberg Tribunal and its judgments and were formulated by the International Law Commission in 1950, codify individual criminal responsibility and complicity for international crimes.<sup>555</sup>
378. The Nuremberg Principles state the following:
- 378.1. Principle 1: Any person who commits a crime under international law is responsible therefore and liable to punishment.<sup>556</sup>
- 378.2. Principle 2: The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.<sup>557</sup>

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<sup>553</sup> See International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal* (Nuremberg 1947) and see *Prosecutor v Furundžija* (Judgment) ICTY Trial Chamber IT 95 17 1 T (10 December 1998) and Rome Statute, art 25.

<sup>554</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, Vol 1* (1947) see *Prosecutor v Furundžija* (Judgment) ICTY Trial Chamber IT 95 17 1 T (10 December 1998) and Rome Statute, art 25.

<sup>555</sup> International Law Commission, *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal with Commentaries*, Yearbook of the International Law Commission, Vol. II (1950) (Hereafter referred to as the Principles of International Law - Nuremberg Principles)

<sup>556</sup> Principles of International Law - Nuremberg Principles, Principle 1, see pg 374, para 98: “*This principle is based on the first paragraph of article 6 of the Charter of the Nürnberg Tribunal which established the competence of the Tribunal to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the crimes defined in sub-paragraphs (a), (b) and (c) of article 6. The text of the Charter declared punishable only persons " acting in the interests of the European Axis countries " but, as a matter of course, Principle I is now formulated in general terms.*”; para 99: “*The general rule underlying Principle I is that international law may impose duties on individuals directly without any interposition of internal law. The findings of the Tribunal were very definite on the question whether rules of international law may apply to individuals. " That international law imposes duties and liabilities upon individuals as well as upon States ", said the judgment of the Tribunal, " has long been recognized " It added: " Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provision of international law be enforced.*”

<sup>557</sup> Principles of International Law - Nuremberg Principles, Principle 2, see para 100: “*This principle is a corollary to Principle I. Once it is admitted that individuals are responsible for crimes under international law, it is obvious that they are not relieved from their international responsibility by the fact that their acts are not held to be crimes under the law of any particular country.*”

- 378.3. Principle 3: The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve them from responsibility under international law.<sup>558</sup>
- 378.4. Principle 6(b): War Crimes: Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.<sup>559</sup>
- 378.5. Principle 6(c): Crimes against humanity: Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connexion with any crime against peace or any war crime.<sup>560</sup>
- 378.6. Principle 7: Complicity in the commission of a- crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.<sup>561</sup>
379. These principles have been confirmed in subsequent international law jurisprudence, the most pertinent being the ICJ's Judgment in *Bosnia v Serbia*.<sup>562</sup>
380. These precedents underscore that the duty to prevent genocide is not confined to governments; it extends to corporate actors and private entities that supply the means

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<sup>558</sup> Principles of International Law - Nuremberg Principles, Principle 3, see para 103: "*This principle is based on article 7 of the Charter of the Nürnberg Tribunal. According to the Charter and the judgment, the fact that an individual acted as Head of State or responsible government official did not relieve him from international responsibility. " The principle of international law which, under certain circumstances, protects the representatives of a State ", said the Tribunal, " cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment .... "*"

<sup>559</sup> Principles of International Law - Nuremberg Principles, Principle 6(b)

<sup>560</sup> Principles of International Law - Nuremberg Principles, Principle 6(c)

<sup>561</sup> Principles of International Law - Nuremberg Principles, Principle 7

<sup>562</sup> See the ICJ Judgment in *Bosnia v Serbia*. Also see subsequent tribunals following Nuremberg, including the International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda, have confirmed that logistical or financial actors who knowingly contribute to atrocities may bear equal culpability to direct perpetrators. See ICTY, *Prosecutor v Tadić* IT-94-1-A (15 July 1999) and ICTR, *Prosecutor v Musema* ICTR-96-13-A (16 November 2001)

through which mass atrocity crimes and war crimes are committed. Those who knowingly and materially provide the tools or resources that sustain such crimes are not neutral traders but potential enablers of international crimes including apartheid and genocide. The failure to prevent material aid or support for a State accused of committing genocide may incur responsibility under international and domestic law. The National Prosecuting Authority in South Africa should investigate the possible involvement of State officials and corporate actors in aiding and abetting international crimes.

381. This understanding is reinforced by the fact that the prohibition against genocide constitutes a *jus cogens* norm - a peremptory rule of international law from which no derogation is permitted.<sup>563</sup> The ICJ has consistently affirmed that obligations to prevent and punish genocide are *erga omnes* in nature, owed to the international community as a whole.<sup>564</sup>
382. These obligations include ensuring that non-state actors, including corporations operating within a State's jurisdiction, are not materially contributing to ongoing atrocities and the violations of peremptory norms. The legal imperative to take action carries heightened weight where the genocide is active and well-documented, and has been live-streamed to devices all over the world, and where the enabling conduct has foreseeable consequences.
383. The duty is not abstract. It is immediate, enforceable and rooted in the highest order of international law.
384. Finally, the Constitutional Court in *Glenister*<sup>565</sup>, has been clear on State obligations in terms of the Bill of Rights and international law:

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<sup>563</sup> A *Jus Cogen* norm is defined in art 53 of the Vienna Convention: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

<sup>564</sup> An 'Erga Omnes' obligation was defined in the ICJ case: *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)*, ICJ Reports 197 where the Court stated: "In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*." Erga Omnes obligations include the prohibition of genocide, slavery and racial discrimination.

<sup>565</sup> *Glenister v President of the Republic of South Africa and Others (No 2)* 2011 (3) SA 347 (CC)

At para 97: “*Our Constitution reveals a clear determination to ensure that the Constitution and South African law are interpreted to comply with international law, in particular international human rights law.*”; and

At para 189: “*The obligations in these Conventions are clear and they are unequivocal. They impose on the Republic the duty in international law to create an anti-corruption unit that has the necessary independence [Comparatively in this context, the duty to prevent and punish, and not aid, assist or be complicit in genocide, apartheid or illegal occupation.]. That duty exists not only in the international sphere, and is enforceable not only there. Our Constitution appropriates the obligation for itself, and draws it deeply into its heart, by requiring the state to fulfil it in the domestic sphere.*”<sup>566</sup>

385. This legal reality places South Africa at a crossroads: either to uphold its obligations under international criminal, humanitarian and human rights law, or to risk complicity in the gravest international crimes that Israel is alleged to be committing and has been accused of committing for decades. These obligations take precedence over all inconsistent norms or agreements, including commercial arrangements, a point with direct implications for the analysis that follows under international trade law.

### **G. Evidentiary Material Before the Government of South Africa**

386. Evidentiary material already before the Government of South Africa, including evidence placed by South Africa itself compiled and submitted by South Africa to organs of the United Nations Security Council and other international fora, establishes a serious and plausible case that Israel is committing acts of genocide and other grave international crimes in Gaza. These proceedings, and the evidence underpinning them, concern not only isolated acts but a broader unlawful situation characterised by systematic violence, destruction and displacement across the OPT.
387. This report itself places extensive evidentiary material before the Government. Sections I to III above set out the factual and material role of South African coal in sustaining Israel’s electricity generation, industrial capacity and wider infrastructure, and sections

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<sup>566</sup> *Glenister v President of the Republic of South Africa and Others (No 2)* 2011 (3) SA 347 (CC) paras 189, 97.

IV – VII explain why such trade cannot be treated as commercially neutral in the context of apartheid, illegal occupation and genocide.

388. This broader unlawful situation is not confined to Gaza but is equally reflected in the continued expansion and consolidation of Israeli control in the occupied West Bank. In January 2026 alone, OCHA recorded that “694 Palestinians, including about 350 children, were displaced, affecting nine villages and herding communities” due to settler attacks and access restrictions, including “600 displaced from Ras Ein al ‘Auja Bedouin community”, with OCHA noting that January 2026 was among the highest monthly displacement levels since October 2023 and that displacement in that single month exceeded the total for all of 2024.<sup>567</sup> At the level of formal State policy, Israel’s cabinet has also approved and retroactively regularised additional settlements in the occupied West Bank, including decisions reported in December 2025 granting legal status to 19 settlements and outposts.<sup>568</sup>
389. The consequences of this ongoing genocidal conduct and unlawful occupation, forming part of a single broader unlawful situation, are borne most acutely by children. The ongoing assault on Gaza has had devastating effects on children, who make up nearly half of the territory’s population.<sup>569</sup> Tens of thousands of children have been killed, maimed, traumatised or displaced and denied access to essential needs such as food, shelter and medical care.<sup>570</sup> This is further corroborated by the evidentiary material referred to in Annexure B.
390. The scale and character of these crimes are not incidental but reflect a pattern of conduct that gravely endangers the survival of an entire generation and raises the most serious

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<sup>567</sup> United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory, ‘Humanitarian Situation Update 356. West Bank’ (5 February 2026) under the heading ‘Displacement due to Settler Violence’ <https://www.ochaopt.org/content/humanitarian-situation-update-356-west-bank?utm> accessed 23 February 2026

<sup>568</sup> Reuters, *Israel gives legal status to 19 West Bank settlements, media reports* (12 December 2025) <https://www.reuters.com/world/middle-east/israel-gives-legal-status-19-west-bank-settlements-media-reports-2025-12-12/?utm> accessed 23 February 2026

<sup>569</sup> NPR, *Children make up nearly half of Gaza's population. Here's what it means for the war* (19 October 2023), <https://www.npr.org/2023/10/19/1206479861/israel-gaza-hamas-children-population-war-palestinians> accessed on 11 January 2026.

<sup>570</sup> UNICEF, “*Cold, sick and traumatized*” - *the ongoing nightmare for children in Gaza*, (20 December 2024) <https://www.unicef.org/press-releases/cold-sick-and-traumatized-ongoing-nightmare-children-gaza> accessed 26 November 2025 and see UNICEF, *During Gaza’s Ceasefire, Children Keep Being Killed* (13 January 2026), <https://www.unicef.org/press-releases/during-gazas-ceasefire-children-keep-being-killed> accessed on 30 January 2026.

concerns under international human rights law, including international criminal law and the prohibition on collective punishment and the protection owed to children in armed conflict. (Refer to Annexure B for further information on the ongoing genocide being committed by Israel.)

391. In the context of Gaza, the above principles apply directly. The widespread and ongoing killing, maiming and deprivation experienced by children and innocent civilians has reached catastrophic proportions, far exceeding any justification or defence under international law.
392. In September 2025, Save the Children reported the following<sup>571</sup>:
  - 392.1. At least one Palestinian child has been killed every hour on average by Israeli forces in Gaza over nearly 23 months of war, with the number of children killed now surpassing 20 000;
  - 392.2. About 2% of Gaza's child population have been killed since October 2023;
  - 392.3. At least 1009 of the children killed were under the age of one, with nearly half (450) of these babies born and killed during the war;
  - 392.4. At least 42011 children have been injured and at least 21000 children left permanently disabled;
  - 392.5. The lives of surviving children are at risk daily;
  - 392.6. Over a million people (half of whom are children) are facing catastrophic hunger, the worst-case IPC Phase 5 - at least 132000 children aged under five face risk of death from acute malnutrition, at least 135 children have already starved to death;
  - 392.7. Israel has damaged 97% of schools and 94% of hospitals, and children are seven times more likely to die from blast injuries than adults as their bodies are more vulnerable to trauma.

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<sup>571</sup> Save the Children, *Gaza: 20000 children killed in 23 months of war - more than one child killed every hour* (6 September 2026), <https://www.savethechildren.net/news/gaza-20000-children-killed-23-months-war-more-one-child-killed-every-hour> accessed on 30 January 2026.

393. In the words of James Baldwin: “*The children are always ours, every single one of them, all over the globe; and I am beginning to suspect that whoever is incapable of recognizing this may be incapable of morality*”. Where children are starved, bombed and deprived of the most basic conditions of life on a genocidal scale, the failure to recognise their shared humanity becomes a failure of law as much as of conscience. The deliberate or sustained exposure of children to such conditions strips away any claim to neutrality or indifference. It demands recognition, and with that recognition comes obligation: to act, to prevent and to refuse participation in the systems that make such destruction possible.
394. On 16 September 2025, the UN Commission of Inquiry concluded that Israel is committing genocide in Gaza, identifying four of the five acts constituting the crime<sup>572</sup>:
- 394.1. The crime of killing members of the group;
- 394.2. The crime of causing serious bodily or mental harm to members of the group;
- 394.3. The crime of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
- 394.4. The crime of imposing measures intended to prevent births within the group.
395. On 22 August 2025, the Integrated Food Security Phase Classification (IPC) has confirmed that there is a famine in Gaza.<sup>573</sup> In response thereto, the UN Secretary General stated: “*This is not a mystery – it is a man-made disaster [by Israel (own emphasis)], a moral indictment and a failure of humanity itself. Famine is not only about food, it is the collapse of the systems needed for human survival. People are starving. Children are dying. And those with the duty to act are failing. As the occupying power, Israel has unequivocal obligations under international law – including the duty of ensuring food and medical supplies of the population. We cannot allow this situation to*

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<sup>572</sup> Office of the UN High Commissioner for Human Rights, *‘Israel has committed genocide in the Gaza Strip, UN Commission finds’* (press release, 16 September 2025); Independent International Commission of Inquiry on the Occupied Palestinian Territory, *Legal Analysis of the Conduct of Israel in Gaza* (Conference Room Paper A/HRC/60/CRP.3, 16 September 2025).

<sup>573</sup> IPC, *Famine Review Committee: Gaza Strip August 2025*, (August 2025), [IPC Famine Review Committee Report Gaza Aug2025.pdf](#) accessed on 23 February 2026.

*continue with impunity*”<sup>574</sup> - a position which directly reinforces the obligation on third States, including South Africa, to take steps to prevent and not contribute to the continuation of these conditions.

396. This evidentiary record is further reinforced by the most recent report by the UN Special Rapporteur, Francesca Albanese, titled *Torture and Genocide*<sup>575</sup> which finds that Israel has deployed a system of torture, both custodial and non-custodial, that operates as an integral component of the ongoing genocide. The report documents how mass displacement, siege, starvation, destruction of infrastructure and sustained violence are not discrete acts but form part of a coordinated regime designed to inflict severe physical and psychological harm on Palestinians as a group.<sup>576</sup>
397. The report concludes that the cumulative effect of these measures has transformed the OPT into a “torturous environment” in which the destruction of the conditions of life functions as a method of collective punishment and group destruction. This evidence is directly relevant to the present report, as it confirms that the harm inflicted is systematic, foreseeable and ongoing, thereby reinforcing the obligation on States, including South Africa, to act to prevent further complicity in the maintenance of these conditions.
398. The evidentiary material set out above must be read together with the broader body of evidence contained in this report. In particular, Sections I to III provide detailed factual material on the role of South African coal in sustaining Israel’s energy, industrial and military infrastructure, while Sections IV to VI set out the applicable international legal framework governing State responsibility, including the duties of prevention, non-assistance and due diligence. Read as a whole, this report places the Government of South Africa on clear and unequivocal notice of the existence of a serious risk of genocide and other grave internationally wrongful acts, and the factual realities and

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<sup>574</sup> United Nations, *Secretary General – on Famine in Gaza*, (22 August 2025), [Secretary-General - on famine in Gaza | Secretary-General](#) accessed on 23 February 2026

<sup>575</sup> Francesca Albanese, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967: Torture and genocide* (UN Human Rights Council, 61st session, UN Doc A/HRC/61/71, 19 February 2026) <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session61/advance-version/a-hrc-61-71-auv.pdf> accessed on 21 March 2026.

<sup>576</sup> Albanese, *Torture and genocide*

legal consequences arising from the ongoing genocide, unlawful occupation and apartheid regime violations.

## H. World Trade Organization Framework

399. In light of South Africa's obligations under international criminal and humanitarian law as well its domestic legal framework (set out under section IX below), concerns have been raised about whether targeted trade measures - such as suspending coal exports to Israel - would violate obligations under the World Trade Organization (WTO) framework. This section addresses those concerns and shows that South Africa's proposed action is not only WTO-compatible but legally compelled in the face of credible genocide findings.
400. Both the General Agreement on Tariffs and Trade<sup>577</sup> (GATT) and WTO jurisprudence provide security and public interest exceptions that allow States to depart from standard trade rules in times of armed conflict or humanitarian crisis. Both Israel and South Africa are members of the WTO and so these provisions apply to both States.<sup>578</sup> Additionally, where WTO provisions conflict with peremptory norms of international law, such as the duty to prevent genocide, the latter prevails.<sup>579</sup> South Africa's position is thus firmly supported under WTO law and broader international legal architecture.
401. Parliamentary and public commentary has suggested that suspending coal exports to Israel would violate WTO principles of non-discrimination. This is incorrect. The WTO framework expressly accommodates targeted trade measures in circumstances involving genocide, war or other serious breaches of international law.
402. While the WTO ordinarily prohibits unilateral trade restrictions outside multilateral processes, its own framework contains critical exceptions. Article XXI(b)(iii) of GATT

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<sup>577</sup> General Agreement on Tariffs and Trade 1994, in Marrakesh Agreement Establishing the World Trade Organization, annex 1A (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 190.

<sup>578</sup> South Africa has been a member of the World Trade Organization (WTO) since its establishment on 1 January 1995 and was a contracting party to the General Agreement on Tariffs and Trade (GATT) 1947. Israel became a WTO member on 21 April 1995. See World Trade Organization, 'Members and Observers' [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) accessed 26 November 2025.

<sup>579</sup> Vienna Convention on the Law of Treaties, art 53: "*A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law*" and art 64: "*If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.*"

provides that nothing in the agreement prevents a member from taking any action “*in time of war or other emergency in international relations*,”<sup>580</sup> a provision increasingly invoked in the context of grave humanitarian crises.

403. The ongoing risk of genocide, combined with the ICJ’s provisional measures and South Africa’s legal obligations under *jus cogens* norms, satisfies this threshold. Furthermore, as per the Vienna Convention (Article 53), any treaty that conflicts with a peremptory norm is void.<sup>581</sup> Trade in goods materially sustaining genocide, apartheid or illegal occupation cannot be shielded by WTO obligations. Therefore, the recommended cessation of coal exports is legally defensible within the exceptional legal framework created in response to war crimes.
404. Moreover, WTO law may not even cover Israel’s use of coal in occupied Palestinian territory. GATT Article XXVI(5)(a) provides that trade provisions do not apply to parts of territories not internationally recognised as belonging to the exporting country.<sup>582</sup> A study in 2013 concluded that trade sanctions against Israel could be justified: either by holding that GATT excludes “illegal settlements,” or by invoking Article XX/XXI exceptions in light of international law.<sup>583</sup>
405. On 25 September 2024, in response to a parliamentary question<sup>584</sup>, the Minister of the Department of Trade, Industry and Competition, Parks Tau, stated that, absent United Nations-mandated multilateral sanctions, unilateral trade restrictions by one WTO

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<sup>580</sup> GATT, XXI (b) (iii): “*Nothing in this Agreement shall be construed to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests ... taken in time of war or other emergency in international relations*”.

<sup>581</sup> Vienna Convention, art 53: “*A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law...*”

<sup>582</sup> Tom Moerenhout, *The Obligation to Withhold from Trading in Order Not to Recognize and Assist Settlements and their Economic Activity in Occupied Territories* (2013) [https://www.eccpalestine.org/wp-content/uploads/2015/02/IHLS\\_Moerenhout-Final-1.pdf](https://www.eccpalestine.org/wp-content/uploads/2015/02/IHLS_Moerenhout-Final-1.pdf) accessed on 28 December 2025

<sup>583</sup> Tom Moerenhout, *The Obligation to Withhold from Trading in Order Not to Recognize and Assist Settlements and their Economic Activity in Occupied Territories* (2013)

<sup>584</sup> “*Whether, in light of the Republic being the first nation to have taken Israel to the International Court of Justice for genocide against Palestine, his department will heed the mounting calls from social justice activists to stop trading coal with Israel; if not, what is the position in this regard; if so, what are the relevant details? (2) Whether his department intends to take further steps to extend economic sanctions against Israel; if not, what is the position in this regard; if so, what are the relevant details?*” (Question No. 257 for Written Reply by Adv S. Salie to the Minister of Trade, Industry and Competition, National Assembly, South Africa, NW371E) <https://www.thedtic.gov.za/wp-content/uploads/PQ-257.pdf> accessed 11 November 2025.

member against another “*would violate the WTO principle of non-discrimination.*”<sup>585</sup>

As explained above, that position misstates the law.

406. WTO rules contain express exceptions that allow for unilateral measures in situations of grave international concern, including genocide and other threats to international peace and security.
407. Several WTO provisions permit exceptions to the principle of non-discrimination. GATT Article XX allows measures “*necessary to protect human, animal or plant life or health,*”<sup>586</sup> and to secure compliance with laws not inconsistent with the Agreement.<sup>587</sup>
408. These exceptions further provide that: “*nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (a) necessary to protect public morals.*”<sup>588</sup>
409. In addition, Article XXI (Security Exceptions) allows any action a Member “*considers necessary*” for the protection of its essential national security interests, including restrictions on goods supplying a military establishment.<sup>589</sup>
410. Furthermore, Article 53 of the Vienna Convention allows for treaties and agreements to be voided in circumstances where they conflict with a peremptory norm of international

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<sup>585</sup> “*Both South Africa and Israel are members of the WTO. Sanctions applied by one member against another, in the absence of multilateral sanctions by the United Nations, would violate the WTO principle of non-discrimination and would open the country to legal challenge. ... South Africa and Israel do not have a bilateral trade agreement. Trade between the two countries is governed by WTO principles.*” (Reply by the Minister of Trade, Industry and Competition to Question No. 257, National Assembly, South Africa) <https://www.thedtic.gov.za/wp-content/uploads/PQ-257.pdf> accessed 11 November 2025.

<sup>586</sup> GATT art XX: “*Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:*

*(a) necessary to protect public morals;*

*(b) necessary to protect human, animal or plant life or health;..*”

<sup>587</sup> GATT art XX.

<sup>588</sup> GATT art XX, para (a); also see Presidential Decree 1047 by Colombia, specifically citing these exceptions as reason to prevent coal exports to Israel.

<sup>589</sup> GATT art XXI(b)(ii): Security Exceptions: *Nothing in this Agreement shall be construed: (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests: (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment..*”

law.<sup>590</sup> Accordingly, WTO obligations cannot override South Africa’s binding international obligations to prevent genocide.

411. The WTO’s security exceptions also allow compliance with obligations under the United Nations Charter. The security exceptions “*do not prevent a State trading under the WTO Framework from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security*”.<sup>591</sup>
412. These exceptions empower South Africa to align its trade policy with its international legal obligations, including the duty to prevent and not be complicit in genocide.
413. South African coal supplies Israel’s national grid and, by extension, its military and illegal settlements, during an ongoing ‘plausible’ genocide. Selective suspension of coal exports in these circumstances is a lawful WTO-consistent measure and security exception rather than a discriminatory act.
414. In addition to the comments by Minister Tau, other Ministerial rhetoric that “*there is no greater sacrifice beyond the ICJ case*”<sup>592</sup> fails to reflect the State’s duty to take all measures within its power to prevent genocide.
415. Litigation at the ICJ alone does not discharge South Africa’s obligation under the Genocide Convention. The duty to prevent genocide requires states to take all reasonable measures within their power, which must include the adoption of trade restrictions. Moreover, the Provisional Measures issued by the ICJ in *South Africa v Israel* have placed South Africa on clear notice of a serious risk of genocide. This elevates the urgency of the matter and reinforces the need for immediate, concrete action to avoid potential complicity.

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<sup>590</sup> Vienna Convention, art 53.

<sup>591</sup> GATT art XXI(c): “*Nothing in this Agreement shall be construed: (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security*”

<sup>592</sup> In June 2025, the Minister of Electricity and Energy, Dr. Kgosientsho Ramokgopa, was questioned about the ongoing trade of coal between South Africa and Israel at the Energy Summit. The Minister’s response was: “*We are the only country that has taken the asymmetrical war in the Israeli–Palestinian conflict to the International Court of Justice. We have done it at great cost to our own interest because we stand for the principles of justice and human rights. So, we have done it. There is no greater sacrifice that can be made beyond what we have done.*” (June 2025). The video of the Electricity Minister’s response can be found on the South African BDS Coalitions’ [Instagram](#) page.

416. As a practical legal pathway, South Africa can rely on existing domestic export control mechanisms to implement a targeted coal suspension in a WTO-compatible manner. The WTO obligations do not categorically forbid a coal embargo. South Africa could defend any embargo under WTO law (national security or public morals exceptions) or even argue WTO rules do not apply to coal tied to an unlawful occupation.
417. Through statutes such as ITAA, the State departments can lawfully suspend or deny export permits for coal shipments to Israel.<sup>593</sup>
418. These mechanisms are already used to restrict trade in sensitive tariff lines and in contexts involving treaty compliance - including arms exports, dual-use technologies and health and medical related goods. Their application to prevent complicity in genocide is both lawful and consistent with existing trade policy practice as will be detailed further in the sections below.
419. In conclusion, the WTO does not operate as a barrier to principled trade restrictions. When properly framed under Articles XX and XXI, a targeted embargo on coal exports aimed at preventing complicity in genocide falls squarely within the recognised legal exceptions to non-discrimination. International law not only permits but requires such action in the face of atrocity crimes.
420. The WTO framework expressly provides for exceptions in times of war, emergency or threats to international peace, and recognises Members' discretion to uphold their essential security interests.
421. Where international and constitutional law impose a duty to prevent genocide and to avoid contributing to serious breaches of peremptory norms, the selective suspension of coal exports is not only WTO-compatible - it is a lawful and necessary expression of South Africa's most fundamental legal commitments.

## **I. SUMMARY AND CONCLUSION**

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<sup>593</sup> See sections 5 and 6 of the International Trade Administration Act (2002) – discussed below.

422. In summary, the foregoing analysis of South Africa’s international legal obligations, read together with the established factual record, gives rise to the following conclusions:
- 422.1. South Africa is bound, under international law, to prevent and punish the crime of genocide, including through the adoption of all measures reasonably available to it to avert the commission of such acts<sup>594</sup>;
- 422.2. South Africa is further bound by peremptory norms of international law, including the prohibitions on genocide, apartheid, and illegal occupation, which give rise to obligations not to recognise, not to aid or assist, and to cooperate to bring such unlawful situations to an end,<sup>595</sup>;
- 422.3. These obligations extend to conduct within South Africa’s jurisdiction, including the regulation of private actors, and require the State to ensure that corporations do not directly or indirectly contribute to internationally wrongful acts;
- 422.4. Notwithstanding these obligations, South Africa has not prohibited, by statute, regulation or otherwise, private actors from supplying Israel with coal – even in circumstances where evidence shows that South African coal fuels genocide and entrenches Israel’s unlawful occupation of the OPT<sup>596</sup>;
- 422.5. The evidentiary record demonstrates that South African coal continues to supply Israel’s energy needs, thereby materially sustaining the infrastructure, military capacity, and technological systems through which Israel maintains its genocidal stranglehold over Gaza and its violent occupation in the OPT;
- 422.6. In light of this factual nexus, South Africa’s failure to regulate and prohibit such exports constitutes aid or assistance in the commission of internationally wrongful acts, including genocide, apartheid, and the maintenance of an unlawful occupation;

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<sup>594</sup> Genocide Convention, Arts I – III

<sup>595</sup> Genocide Convention, Arts I – III and see *Bosnia v Serbia*

<sup>596</sup> See Sections I – III ; SOMO, *Powering Injustice*

- 422.7. Accordingly, South Africa is in breach of its international legal obligations, including its duty to prevent genocide and its obligation not to render aid or assistance to serious breaches of peremptory norms;
- 422.8. As a result, South Africa has breached its duty not to aid or assist in genocide by not prohibiting private actors from supplying Israel with coal by statute or law<sup>597</sup>;
- 422.9. The breach has and continues to contribute to the genocide of the Palestinians as well as to the maintenance of the illegal occupation amounting to complicity in these crimes<sup>598</sup>;
- 422.10. South Africa is therefore required, as a matter of urgency, to adopt all lawful and reasonable measures to prohibit the export of coal to Israel and to ensure that private actors within its jurisdiction are prevented from contributing to the continuation of these internationally wrongful acts..<sup>599</sup>
423. Failures by South Africa and its officials to prevent trade that materially supports illegal occupation, apartheid and genocide, including decisions relating to the regulation of the coal trade with Israel, must be subject to scrutiny. Urgent action must be taken to prevent complicity in light of South Africa's international law obligations. In terms of Article IV<sup>600</sup>, South Africa's obligations extend to ensuring that private actors, such as Glencore and its executives, do not through their decisions and trade materially support or enable Israel to carry out or sustain its genocidal campaign and illegal occupation.

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<sup>597</sup> See *Bosnia v Serbia*, paras 430 onwards;

<sup>598</sup> See SOMO, *Powering Injustice*, ICJ Advisory Opinion, Dr. Wilde's Expert Legal Opinion, Pietrapaoli, *Obligations of Third States and Corporations*, Albanese, *Gaza Genocide: A Collective Crime and From the Economy of Occupation to the Economy of Genocide*; and see sections II – III above.

<sup>599</sup> See *Bosnia v Serbia*

<sup>600</sup> Genocide Convention, art IV: "*Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals*". Art III(e) includes complicity in genocide as a crime.

## **IX. EVIDENCE DOSSIERS COMPILED AND SUBMITTED BY SOUTH AFRICA TO ORGANS OF THE UNITED NATIONS SECURITY COUNCIL IN RESPECT OF SOUTH AFRICA'S GENOCIDE CASE AGAINST ISRAEL**

424. .South Africa has placed before the international community, including the United Nations Security Council, three public evidence dossiers that underpin its litigation against Israel which in themselves inform Third State obligations under the Genocide Convention.
425. The first, *Public Dossier of Evidence Relating to Intent and Incitement to Commit Genocide* (S/2024/419, 29 May 2024), was transmitted to the President of the UN Security Council and relates to Israel's intent and incitement to commit genocide against the Palestinians in Gaza. It presents direct and circumstantial evidence of genocidal intent, citing official statements and conduct demonstrating Israel's continuing and systematic breaches of the Genocide Convention and of the ICJ's Provisional Measures Orders of 26 January, 28 March and 24 May 2024.<sup>601</sup>
426. The second, *Public Dossier of Openly Available Evidence on Acts of Genocide as at 4 February 2025* (S/2025/130, transmitted 27 February 2025), compiles public-domain material establishing the commission of genocidal acts, including killing, starvation and deprivation of essential infrastructure. It was expressly submitted "*with a view to making the international community, including third States that are party to the Genocide Convention, aware of the key factual material that is in the public domain, and which provides clear evidence of Israel's continuous and systematic breaches of the Genocide Convention, and of the provisional measures ordered by the International Court of Justice ('Court' or 'ICJ') on 26 January 2024; 28 March 2024; and 24 May 2024.*"<sup>602</sup>

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<sup>601</sup> United Nations Security Council, Letter dated 29 May 2024 from the Permanent Representative of South Africa to the United Nations addressed to the President of the Security Council (S/2024/419, 29 May 2024). <https://digitallibrary.un.org/record/4052440?v=pdf> accessed 18 September 2025.

<sup>602</sup> United Nations Security Council, Letter dated 27 February 2025 from the Permanent Representative of South Africa to the United Nations addressed to the President of the Security Council (S/2025/130, 27 February 2025). [https://www.un.org/unispal/wp-content/uploads/2025/03/n2505528\\_reduced.pdf](https://www.un.org/unispal/wp-content/uploads/2025/03/n2505528_reduced.pdf) accessed 18 September 2025. See para 1.

427. The third, *Public Dossier Relating to Exacerbated Acts of Starvation, Weaponisation of Aid and Further Expressions of Genocidal Intent* (September 2025), focuses on starvation as a deliberate method of genocide, documenting “*appalling developments*” occurring “*in complete defiance*” of the ICJ’s orders.<sup>603</sup> This dossier is clear in its call for Third States to take action using all means available to stop the genocide: “*States have been aware of the existence of a serious risk of genocide and under a duty to use all means reasonably available to prevent it. This serious risk has been confirmed by just about every United Nations body as well as numerous independent agencies.*”<sup>604</sup> South Africa’s own position therefore calls upon the government to use whatever measures possible to prevent further atrocities.
428. Collectively, these dossiers affirm three principles of direct relevance to South Africa’s coal exports:
- 428.1. The prohibition of genocide is *jus cogens* and gives rise to *erga omnes* and *erga omnes partes* obligations<sup>605</sup>;
- 428.2. All States must refrain from aiding or abetting breaches of peremptory norms<sup>606</sup>;
- 428.3. Business entities must be held fully accountable for complicity,<sup>607</sup> and
- 428.4. States must take urgent and decisive steps to ensure that Israel ends its military campaign and withdraws fully from Gaza.<sup>608</sup>
429. Energy and fuel are central to the factual matrix presented in Dossier II, which cites the deprivation of food, water, electricity and fuel as conditions of life calculated to destroy

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<sup>603</sup> Letter from South Africa: Public dossier relating to the State of Israel’s exacerbated acts of starvation, weaponisation of aid and further expressions of genocidal intent against the Palestinians in Gaza (S/2025/560/REV.1) - *Public Dossier Relating to Exacerbated Acts of Starvation, Weaponisation of Aid and Further Expressions of Genocidal Intent* (September 2025) – focuses on starvation as a deliberate method of genocide, documenting “*appalling developments*” occurring “*in complete defiance*” of the ICJ’s orders, and urging all States to “*take all measures within [their] power immediately*” to prevent further atrocities. See para 1 – 2, <https://www.un.org/unispal/document/letter-from-south-africa-public-dossier-relating-to-the-state-of-israels-exacerbated-acts-of-starvation-weaponisation-of-aid-and-further-expressions-of-genocidal-intent-against-the-palestin/> accessed 10 November 2025.

<sup>604</sup> Dossier III, para 76.

<sup>605</sup> Evidence Dossier I, para 4, Evidence Dossier III, para 140 - 147

<sup>606</sup> Rome Statute; and see Dossier III, para 140.

<sup>607</sup> Evidence Dossier III, para 143(h)

<sup>608</sup> Evidence Dossier III, para 146

the civilian population.<sup>609</sup> Where a State is aware of a serious risk of genocide, the continued export of energy commodities that materially enable that destruction constitutes “aid and assistance” within the meaning of Article 16 of ARSIWA.<sup>610</sup>

430. Dossier III further records the UN-mandated Famine Review Committee’s confirmation of famine and underscores that all States must ‘*take all measures within [their] power immediately.*’<sup>611</sup>
431. Noted in Dossier III is Professors Tom Dannenbaum and Alex de Waal’s appeal: “*States with any leverage at all over the Israeli government must use that leverage now to bring this abomination to an end. To delay further does not bear contemplating. Time has run out.*”<sup>612</sup>
432. Furthermore, recorded in Evidence Dossier III, the following is stated: “*States and the Security Council must take urgent and decisive steps to ensure that Israel ends its military campaign and withdraws fully from Gaza; allows humanitarian aid, at scale, to enter Gaza unimpeded; and to ensure that Israel is given no military or other assistance that would facilitate its ongoing destruction of Gaza and the West Bank, including East Jerusalem, and the Palestinian people whose land it is*”<sup>613</sup>

and

“*Now is the time for urgent action by all states, collectively and individually, to protect the peremptory norms of international law and the foundational purpose of the United Nations Charter.*”<sup>614</sup>

433. As will be detailed in the next section, the DTIC can use the mechanisms available to it under the International Trade and Administration Act (ITAA) to ensure that South Africa heeds its own call for urgent action. Coal exports are State-facilitated through

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<sup>609</sup> *Public Dossier of Openly Available Evidence on the State of Israel’s Acts of Genocide against the Palestinians in Gaza as at 4 February 2025 (S/2025/130, annex) (Section III details the lack of food, water, electricity and fuel) (Dossier II)*

<sup>610</sup> ILC, *Articles on Responsibility of States for Internationally Wrongful Acts*, art 16 (aid or assistance); see also 26 January 2024 Provisional Measures Order and related ICJ advisory opinions and Dr. Wilde and Pietropoli’s expert opinions on the duties and obligations of Third States.

<sup>611</sup> Dossier III, Footnote 24.

<sup>612</sup> Dossier III, para 5

<sup>613</sup> Dossier III, para 146

<sup>614</sup> Dossier III, para 147

licensing, rail and port allocations, their suspension or prohibition falls squarely within the government's duty to prevent and not to be complicit in genocide.

434. The time for symbolic condemnation has passed. For South Africa, a State Party to the Genocide Convention and custodian of its own coal-export infrastructure, "using leverage" means exercising direct control over trade, ports and licensing - the most immediate and lawful tools available to halt complicity in genocide. Dossier III reiterates that, given the scale of evidence and the ICJ's orders, "*all other States ... must ... take all measures within [their] power immediately.*"<sup>615</sup>
435. The dossiers present a cumulative record of genocidal intent, acts of genocide by Israel which seek to bring about the total destruction of the Palestinian people and starvation policy by Israel in "complete defiance" of the ICJ orders.<sup>616</sup> Continued energy exports through State platforms would place South Africa at odds with the very record it has marshalled and circulated to the Security Council. Immediate suspension aligns trade practice with our litigation posture and the ICJ-grounded precautionary duty to prevent genocide.

## **X. SOUTH AFRICA'S DOMESTIC LEGAL FRAMEWORK AND THE IMPERATIVE TO TAKE ACTION TO PREVENT GENOCIDE, ILLEGAL OCCUPATION AND APARTHEID**

### **A. South African Officials and Organs of the State are Constitutionally Obligated to Follow International Law**

#### A(i). South African Officials and Organs of the State Are Obligated to Follow the Constitution

436. South Africa's constitutional democracy is grounded in the values of human dignity, equality and the advancement of human rights and freedoms - not only domestically, but also in its conduct on the international stage.<sup>617</sup> That constitutional position is

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<sup>615</sup> Dossier III, Footnote 24

<sup>616</sup> Dossier para 26 (Israel's defiance of ICJ orders and continued deprivation of fuel and electricity)

<sup>617</sup> Constitution, s1(a): "*The Republic of South Africa is one, sovereign, democratic state founded on the following values:(a) Human dignity, the achievement of equality and the advancement of human rights and freedoms... (c) Supremacy of the constitution and the rule of law.*"; *Glenister v President of the Republic of South Africa and Others* [2011] ZACC 6, 2011 (3) SA 347 (CC) paras 189, 192 and 194: "*The obligations in these Conventions are clear and they are unequivocal. They impose on the Republic the duty in international*

important in the present context because South Africa has already taken significant steps internationally, including instituting proceedings before the ICJ, that are consistent with its constitutional values and international obligations. It follows therefore that those same commitments must now be given effect through the lawful exercise of South Africa's own statutory powers, in particular its powers over export control and trade regulation.

437. In this context, the Minister of Trade, Industry and Competition is vested, in terms of the applicable statutory framework governing export control and international trade, with the authority to regulate, restrict and prohibit the export of goods, including coal. While the scope and operation of these powers are addressed more fully below, it is sufficient for present purposes to emphasise that these are not abstract or dormant competencies. They are constitutionally constrained public powers which must be exercised lawfully, rationally and in a manner consistent with the Constitution and South Africa's binding international obligations. Where the State has knowledge of a serious risk that permitted exports may contribute to grave breaches of international law, the failure to consider and, where appropriate, to exercise these powers engages constitutional scrutiny under the principle of legality and the State's obligations in terms of section 7(2) of the Constitution.
438. The Constitution does not exclude foreign policy, trade and related executive functions from constitutional scrutiny, although courts have recognised that a degree of deference is owed to the State in these domains. All exercises of public power, including those undertaken in the regulation of exports, energy policy and international trade, remain subject to the supremacy of the Constitution and the principle of legality.<sup>618</sup> The

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*law... That duty exists not only in the international sphere, and is enforceable not only there. Our Constitution appropriates the obligation for itself, and draws it deeply into its heart, by requiring the state to fulfil it in the domestic sphere.”; “And it is here where the courts’ obligation to consider international law when interpreting the Bill of Rights is of pivotal importance. Section 39(1)(b) states that when interpreting the Bill of Rights a court —must consider international law. The impact of this provision in the present case is clear, and direct. What reasonable measures does our Constitution require the state to take in order to protect and fulfil the rights in the Bill of Rights? That question must be answered in part by considering international law. And international law, through the inter-locking grid of conventions, agreements and protocols...unequivocally obliges South Africa”.*

<sup>618</sup> Constitution, s2; In *Affordable Medicines Trust v Minister of Health* 2006 (3) SA 247 (CC), the Constitutional Court stated at para 49: “*The exercise of public power must comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law*”; *Fedsure Life Assurance Ltd & Others v Greater Johannesburg Transitional Metropolitan Council & Others* 1999 (1) SA 374 (CC) para 58: “*It seems central to the conception of our constitutional order that the Legislature and Executive in*

Constitution therefore imposes a clear and binding obligation on all branches of government to ensure that State action aligns with both the Bill of Rights and South Africa's binding international legal commitments.<sup>619</sup> Decisions taken within the spheres of trade, energy regulation and resource export must therefore be assessed against constitutional obligations, rights and founding values in the same manner as any other exercise of public power and cannot be insulated from constitutional scrutiny by being characterised as matters of foreign or trade policy.<sup>620</sup> Properly understood, the issue is therefore not whether government may depart from its existing foreign policy position, but whether it may lawfully fail or refuse to use available domestic powers in a manner consistent with that position and with the Constitution.

439. The Courts are empowered to make decisions to declare any law or conduct inconsistent with the Constitution invalid. Section 172 states that: “(1) *When deciding a constitutional matter within its power, a court (a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and (b) may make any order that is just and equitable.*”<sup>621</sup> The Constitutional Court has further emphasized the fundamental constitutional importance of the principle of legality, which requires invalid administrative action to be declared unlawful.<sup>622</sup>
440. The Constitution, in particular the Bill of Rights, binds all arms of government and applies to every exercise of public power, including decisions taken in the regulation of

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*every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. At least in this sense, then, the principle of legality is implied within the terms of the interim Constitution.”; Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others (CCT31/99) [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC) (25 February 2000) at para 17: “the rule of law is one of the foundational values of the Constitution.” And at para 19: “Consistent with this, section 44(4) of the Constitution provides that in the exercise of its legislative authority Parliament must act in accordance with, and within the limits of, the Constitution. The same applies to members of the Cabinet who are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions. They too are required to act in accordance with the Constitution.”*

<sup>619</sup> *Pharmaceutical Manufacturers*, para 20: “The exercise of all public power must comply with the Constitution which is the supreme law, and the doctrine of legality which is part of that law.”

<sup>620</sup> *Pharmaceutical Manufacturers*, para 44: “I cannot accept this contention which treats the common law as a body of law separate and distinct from the Constitution. There are not two systems of law, each dealing with the same subject matter, each having similar requirements, each operating in its own field with its own highest court. There is only one system of law. It is shaped by the Constitution which is the supreme law, and all law, including the common law, derives its force from the Constitution and is subject to constitutional control.”

<sup>621</sup> Constitution, s172

<sup>622</sup> *Bengwenyama-Ya-Maswazi Community v Genorah Resources (Pty) Ltd and Others* 2011 (4) SA 113 (CC) para 84

exports, energy policy, foreign relations and international trade.<sup>623</sup> In the present context, the relevant State conduct is not the physical export of coal itself but the authorisation, licensing, facilitation and continued permission granted to private actors to extract, market and export coal to Israel, together with the failure to impose lawful restrictions where there is knowledge of a clear risk that such exports may risk contributing to grave violations of international law.<sup>624</sup>

441. These regulatory decisions and omissions constitute exercises of public power and must therefore be evaluated under the Constitution. Where State action or inaction enables private conduct that contributes to gross human rights violations abroad, including genocide and apartheid, such conduct falls within the scope of constitutional scrutiny and must comply with South Africa's supreme law and binding international obligations.<sup>625</sup>
442. The Bill of Rights in South Africa's Constitution is the cornerstone of the Republic's democratic order<sup>626</sup> - it enshrines the fundamental rights and values that the post-apartheid State is committed to uphold. Section 1 affirms human dignity, the achievement of equality and the advancement of human rights and freedoms as foundational values of the democratic state.<sup>627</sup> Section 2 declares that the Constitution is the supreme law of the Republic, and any law or conduct inconsistent with it is invalid.<sup>628</sup> These provisions are not abstract statements of principle. They govern the lawfulness of executive and administrative conduct in precisely the kind of decisions under consideration here.

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<sup>623</sup> Constitution, s 2 & s 8: "*The Bill of Rights binds the legislature, the executive, the judiciary and all organs of state.*"

<sup>624</sup> Constitution, s7(2) requires the State not only to refrain from infringing rights but also to take positive steps to protect them.

<sup>625</sup> See *Carmichele, Grootboom, Pharmaceutical Manufacturers, Glenister* and various sections of the Constitution including s7 and s8. Also, see earlier sections in this report setting out the impugned conduct of private corporations.

<sup>626</sup> Constitution, s 7(1): "*This Bill of Rights is a cornerstone of democracy in South Africa.*"

<sup>627</sup> Constitution, s 1(a): "*Founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms.*"

<sup>628</sup> Constitution, s 2: "*The Constitution is the supreme law of the Republic.*"

443. The Bill of Rights applies to “*all law*” and binds “*the legislature, the executive, the judiciary and all organs of state*”.<sup>629</sup> This binding effect necessarily applies to decisions in foreign relations and international economic policy, which are exercises of public power that are subject to constitutional scrutiny. This includes foreign relations and economic decisions made by the State.<sup>630</sup> In this section, that proposition should be understood not as a repetition of the general supremacy principle but as the specific constitutional basis on which export control decisions, trade permissions and related executive choices are brought within the discipline of the Bill of Rights.
444. South African officials and Organs of State are constitutionally obliged to act consistently with the Bill of Rights even when their conduct occurs in relation to foreign policy or international trade. This follows from the positive obligation in section 7(2), which requires the State to respect, protect, promote and fulfil all rights, and which regulates the conduct of the South African State itself, irrespective of whether the effects of that conduct occur within or beyond South Africa.
445. The Constitutional Court has affirmed this in *Kaunda v President of the Republic of South Africa* where it stated: “*as a general principle, however, our Bill of Rights binds the government even when it acts outside of South Africa, subject to the consideration that such application must not constitute an infringement of the sovereignty of another state.*”<sup>631</sup>
446. This overarching constitutional principle has direct implications for the issue at hand: State conduct that materially aids and enables gross human-rights violations abroad is inconsistent with the Constitution’s foundational values of life, dignity and equality and is therefore *prima facie* unconstitutional, because the constitutional inquiry is concerned with the permissibility of South African State conduct, not the territorial location of the victims that suffer as a result of that conduct. The relevant question is thus whether the

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<sup>629</sup> Constitution, s 8(1): “*The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.*”

<sup>630</sup> *Glenister*, paras 190 - 191

<sup>631</sup> *Kaunda and Others v President of the Republic of South Africa* (CCT 23/04) [2004] ZACC 5; 2005 (4) SA 235 (CC); 2004 (10) BCLR 1009 (CC); 2005 (1) SACR 111 (CC) (4 August 2004) (Hereafter referred to as *Kaunda*), para 229

State, with knowledge of the consequences, may lawfully continue to authorise conduct that foreseeably contributes to the violation of constitutional obligations.

447. The argument made out in this report is that South Africa, as a State founded on the repudiation of apartheid's anti-life and anti-human practices cannot, in good conscience or law, assist another regime in inflicting apartheid or genocide on a civilian population. Doing so fundamentally contradicts the founding values in section 1 and South Africa's constitutional break from its apartheid past.
448. This does not require government to abandon its existing international posture. On the contrary, it requires government to complete it. South Africa has already acted in a manner consistent with constitutional principle by publicly condemning the atrocities and by approaching the ICJ. The missed step, on the present case made out in this report, is the domestic use of available legal powers to ensure that South African law and the exercise of public power are brought into line with that same constitutional and foreign policy approach.
449. This heightened obligation to act is reflected in the words of Nelson Mandela when he stated: "*We know all too well that our freedom is incomplete without the freedom of the Palestinians*".<sup>632</sup>
450. The Palestinian people are entitled, under international law and the values reflected in the Constitution, to the protection of their fundamental rights, including the right to self-determination, the right to life, the right to dignity, the right to equality and freedom from discrimination, and the right to be free from torture and cruel, inhuman or degrading treatment or punishment. The ongoing denial of these rights underscores the urgency of State action consistent with these binding legal protections.
451. South Africa knows all too well the generational devastation wrought by apartheid: the destruction of family life, the entrenchment of racial domination, the denial of dignity,

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<sup>632</sup> Middle East Eye, *Nelson Mandela and Palestine, In his own words*, <https://www.middleeasteye.net/news/nelson-mandela-30-years-palestine> accessed on 9 February 2026.

the dispossession of land, the systemic dehumanisation of an entire people and the lasting social, economic and psychological harm inflicted across generations. South Africa also knows, from its own struggle for liberation, that international law, international solidarity, sanctions and other forms of external pressure were not abstract gestures but vital instruments in resisting and dismantling the apartheid system. Our history gives particular constitutional and moral weight to the obligation on South Africa not only to condemn apartheid and related atrocities abroad, but to act decisively, lawfully and urgently to ensure that its own conduct does not aid or assist in crimes against humanity perpetrated by Israel against the Palestinian people.

452. State conduct that aids apartheid, illegal occupation and genocide is fundamentally at odds with the “*spirit, purport and objects*” of the Bill of Rights and the historical fight of South Africans against these oppressive systems.<sup>633</sup> The Constitutional Court has confirmed that State action which facilitates or contributes to a violation of fundamental rights is not constitutionally permissible.<sup>634</sup>
453. In *Carmichele*, the Constitutional Court stressed that the Bill of Rights “*obliges the state to respect, protect, promote and fulfil these rights*”<sup>635</sup> and that courts and Organs of State must develop and apply all law in line with the “*spirit, purport and objects of the Bill of Rights*”.<sup>636</sup> The Court further stated that “*It follows that there is a duty imposed on the state and all of its organs not to perform any act that infringes these rights. In some circumstances there would also be a positive component which obliges the state and its organs to provide appropriate protection to everyone through laws and structures designed to afford such protection.*”<sup>637</sup>
454. The Constitutional Court in *Kaunda* affirmed that “*The advancement of human rights and freedoms is central to the Constitution itself. It is a thread that runs throughout the Constitution and informs the manner in which government is required to exercise its*

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<sup>633</sup> Constitution, s 39(2): “*When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights*”.

<sup>634</sup> *Mohamed v President of the Republic of South Africa* 2001 (3) SA 893 (CC), See para 38.

<sup>635</sup> *Carmichele*, para 33 and 44.

<sup>636</sup> *Carmichele*, para 33.

<sup>637</sup> *Carmichele*, para 44.

powers.”<sup>638</sup> That observation is especially important in relation to export control and trade powers, which are often described as policy laden but remain legally bounded by the Constitution.

455. Because the Constitution is supreme, any statutory or policy basis for coal exports must be interpreted, and where necessary limited, to ensure that it does not authorise conduct inconsistent with constitutional rights and values such as life, dignity and equality.<sup>639</sup> The *supremacy* clause in section 2 requires that export-related legislation and executive action be read consistently with the Bill of Rights and invalidated or restricted where they facilitate rights violations.<sup>640</sup> The constitutional defect arises from the State’s own authorisation of such conduct, and the State cannot rely on legislation or executive discretion to justify conduct that foreseeably contributes to a violation of the rights contained in the Constitution or that breaches peremptory norms of international law.<sup>641</sup> Where such inconsistency arises, constitutional supremacy requires that the impugned conduct be curtailed or terminated irrespective of commercial or diplomatic considerations.<sup>642</sup>
456. The Bill of Rights does not merely restrain the State from directly inflicting harm but also prohibits State conduct which enables others to do so where said State conduct is a necessary condition for the violation.<sup>643</sup> This includes situations where State licensing, authorisation, regulation or omissions materially contribute to foreseeable rights infringements including war crimes and genocide. The State’s powers over policing, prosecution, immigration and trade must not be exercised in ways that expose people to violations of their fundamental rights. This principle must apply equally to export-control decisions where State authorisation is essential to the resulting harm.

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<sup>638</sup> *Kaunda*, para 66

<sup>639</sup> See *Kaunda*, at para 221: “Our Constitution ..asserts as a foundational value the need to protect and promote human rights. This value informs all the obligations and powers conferred by the Constitution upon the state. The importance of that foundational value is to be understood in the context of a growing international consensus that the promotion and protection of human rights is part of the responsibility of both the global community and individual states, and that there is a need to take steps to ensure that those fundamental human rights recognised in international law are not infringed or impaired.”

<sup>640</sup> Constitution, S2.

<sup>641</sup> *Pharmaceutical Manufacturers Association*, para 44: “There is only one system of law. It is shaped by the Constitution which is the supreme law, and all law, including the common law, derives its force from the Constitution and is subject to constitutional control.”

<sup>642</sup> Constitution, s2 and s 17 ; *Affordable Medicines*: “The exercise of public power must comply with the Constitution, which is the supreme law”.

<sup>643</sup> See *Glenister and Carmichelle*.

A(ii) The Right to Life Must Be Protected

457. In the context of an ongoing genocide and ethnic cleansing campaign where over 70000 Palestinians have been murdered<sup>644</sup>, South African courts have affirmed that the right to life and dignity are the most important of all human rights. These rights constitute the highest constitutional values guiding all State action, including conduct with extraterritorial effects.
458. Section 11 of the Constitution confirms that “*every person shall have the right to life*”.<sup>645</sup> In *S v Makwanyane* the Constitutional Court referred to the right to life and right to dignity, holding that: “*The rights to life and dignity are the most important of all human rights, and the source of all other personal rights.... By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others. And this must be demonstrated by the State in everything that it does,..*”<sup>646</sup>

and further that

*“The right to life is, in one sense, antecedent to all the other rights in the Constitution. Without life in the sense of existence, it would not be possible to exercise rights or to be the bearer of them. But the right to life was included in the Constitution not simply to enshrine the right to existence. It is not life as mere organic matter that the Constitution cherishes, but the right to human life: the right to live as a human being, to be part of a broader community, to share in the experience of humanity.”*<sup>647</sup>

459. The Court’s reasoning extends logically to situations where State conduct, in this case the facilitation of coal exports from South Africa to Israel, foreseeably contributes to the loss of life or destruction of dignity, whether directly or indirectly, because the Constitution regulates the conduct of the South African State itself, rather than

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<sup>644</sup> The New Arab, *Israeli military accepts Gaza’s death toll exceeding 70000 for first time*.

<sup>645</sup> Constitution, s11.

<sup>646</sup> *S v Makwanyane*, para 144

<sup>647</sup> *S v Makwanyane*, para 326.

conferring direct extraterritorial rights on foreign persons. The constitutional inquiry therefore centres on whether the State may continue to exercise public power or fail to act in a manner that prevents any contribution to the loss of life once placed on notice of that risk.

460. On the case made out in this report, genocide in Palestine is not a speculative or future risk but an ongoing reality perpetrated by Israel, and the continued authorisation and facilitation of coal exports therefore raises precisely that constitutional question. Where the State has been placed on notice that South African coal materially contributes to the infrastructure sustaining Israel's genocidal assault on Gaza and the killing of over 70 000 Palestinians, it cannot lawfully continue to permit such exports as though they are constitutionally neutral. South Africa's coal exports to Israel must cease, at the very least until Israel has ended its genocidal conduct and fully withdrawn from Palestinian territory ending the illegal occupation.<sup>648</sup>
461. The Constitutional Court further underscored that international and comparative human rights law assists in interpreting the rights contained in the Bill of Rights.<sup>649</sup> The Court has drawn on global standards to give domestic content to fundamental values.<sup>650</sup> This jurisprudential approach requires that domestic rights be understood within the broader universal framework that outlaws genocide, apartheid, illegal occupation, war crimes and crimes against humanity, and their facilitation. International law is not aspirational. It is legally binding and State actors may not disregard it without violating the Constitution itself.
462. Section 11 provides in unqualified terms that "everyone has the right to life".<sup>651</sup> As demonstrated in *S v Makwanyane*, the right to life is one of the most important of all

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<sup>648</sup> New Arab, *Israeli military accepts Gaza's death toll exceeding 70000 for first time*.

<sup>649</sup> *S v Makwanyane*, para 35: "Customary international law and the ratification and accession to international agreements is dealt with in section 231 of the Constitution which sets the requirements for such law to be binding within South Africa. In the context of section 35(1), public international law would include non-binding as well as binding law."

<sup>650</sup> *S v Makwanyane*, para 35: "International agreements and customary international law accordingly provide a framework within which Chapter Three can be evaluated and understood, and for that purpose, decisions of tribunals dealing with comparable instruments, such as the United Nations Committee on Human Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Commission on Human Rights, and the European Court of Human Rights, and in appropriate cases, reports of specialised agencies such as the International Labour Organisation may provide guidance as to the correct interpretation of particular provisions of Chapter Three."

<sup>651</sup> Constitution, s 11.

human rights and the source of all other personal rights – thus forming the moral bedrock of the South African legal order. While this right is primarily guaranteed within South Africa’s jurisdiction, it elevates life as a supreme constitutional value that constrains how the South African State may exercise its powers, thereby requiring the highest constitutional vigilance in its protection. This constraint is especially important where the State is asked to decide whether it will continue to permit the export of a strategic commodity in circumstances where there is a detailed and widely documented case that the commodity helps sustain genocide and crimes against humanity.

463. The right to life is also recognized in Article 3 of the Universal Declaration on Human Rights.<sup>652</sup> It is enshrined in human rights treaties, included in Article 6 of the ICCPR, which provides that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life” and in Article 6 of the Convention on the Rights of the Child, which recognizes that “every child has the inherent right to life”.<sup>653</sup>
464. In practical effect, South Africa must not only refrain from taking life arbitrarily within its own jurisdiction but must also refrain from providing the means used in the violation of this right through State authorisation or facilitation of conduct that foreseeably results in loss of life elsewhere.<sup>654</sup>
465. In *Mohamed v President of the Republic of South Africa*<sup>655</sup>, the Court held that the State violated rights to life and dignity by handing a suspect to a foreign jurisdiction without assurances against the death penalty.<sup>656</sup> The Court stated in its judgment:

*“These cases are consistent with the weight that our Constitution gives to the spirit, purport and objects of the Bill of Rights and the positive obligation that it imposes on*

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<sup>652</sup> Universal Declaration of Human Rights: “Everyone has the right to life, liberty and the security of person”. <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf> accessed on 9 February 2026

<sup>653</sup> See International Covenant on Civil and Political Rights, Art 6; and see Convention on the Rights of the Child, Art 6.

<sup>654</sup> *S v Makwanyane*, paras 144, 262:

<sup>655</sup> *Mohamed and Another v President of the Republic of South Africa and Others* 2001 (3) SA 893 (CC).

<sup>656</sup> *Mohamed* para 59: “For the South African government to cooperate with a foreign government to secure the removal of a fugitive from South Africa to a country of which the fugitive is not a national and with which he has no connection other than that he is to be put on trial for his life there, is contrary to the underlying values of our Constitution. It is inconsistent with the government’s obligation to protect the right to life of everyone in South Africa, and it ignores the commitment implicit in the Constitution that South Africa will not be party to the imposition of cruel, inhuman or degrading punishment..”

*the state to protect, promote and fulfil the rights in the Bill of Rights. For the South African government to cooperate with a foreign government to secure the removal of a fugitive from South Africa to a country of which the fugitive is not a national and with which he has no connection other than that he is to be put on trial for his life there, is contrary to the underlying values of our Constitution. It is inconsistent with the government's obligation to protect the right to life of everyone in South Africa, and it ignores the commitment implicit in the Constitution that South Africa will not be party to the imposition of cruel, inhuman or degrading punishment.”*<sup>657</sup>

466. This articulation by the Constitutional Court extends to prohibiting the State from facilitating capital punishment or extra-judicial killings, even indirectly.<sup>658</sup> If South Africa knowingly supplies resources that support or facilitate mass killings of civilians through heavy bombardment and creating conditions of life which will lead to the destruction of the Palestinian people in Gaza, it would be abdicating its constitutional duty to safeguard life. In doing so, South Africa also risks liability for complicity in international war crimes and crimes against humanity, including genocide, illegal occupation and apartheid.
467. The constitutional commitment to the sanctity of human life cannot be reconciled with State conduct that knowingly contributes to mass death beyond South Africa's borders but must embody a commitment that human life is sacrosanct, a commitment that must guide State conduct internally as well as the effects it has externally.
468. The Constitution in its post-amble declares that there is a need for *ubuntu*. The concept of “ubuntu” permeates the Constitution generally, particularly Chapter Three which embodies the entrenched fundamental human rights. It carries the ideas of humanness, social justice and fairness.<sup>659</sup> These foundational values must inform the interpretation of all State power and reinforces the constitutional imperative that public authority be exercised in a manner consistent with the preservation of human life and dignity.
469. In *S v Makwanyane*, the Constitutional Court, referring to the values of *ubuntu* stated: “*the outstanding feature of ubuntu in a community sense is the value it puts on life and*

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<sup>657</sup> *Mohamed*, para 59.

<sup>658</sup> *Mohamed*, para 59, 68.

<sup>659</sup> *S v Makwanyane*, para 237.

*human dignity. The dominant theme of the culture is that the life of another person is at least as valuable as one's own. Respect for the dignity of every person is integral to this concept. During violent conflicts, distraught members of society decry the loss of ubuntu. Thus heinous crimes are the antithesis of ubuntu. Treatment that is cruel, inhuman or degrading is bereft of ubuntu.*"<sup>660</sup>

470. Because South African coal powers military operations causing industrial-scale civilian death, the conduct of the State to permit these exports stands in direct contradiction of the duty of the State's obligation to "respect, protect promote and fulfil" the rights in the Bill of Rights, which in this context includes a positive duty to take reasonable steps to prevent foreseeable loss of life where State conduct is a foreseeable contributory factor.<sup>661</sup>
471. Allowing coal to flow to a regime accused of genocide and committing apartheid is incompatible with constitutional obligations and reflects State inaction that is constitutionally impermissible. Section 7(2) duties do not end at South Africa's borders; not because the Bill of Rights applies directly to all persons globally, but because the Constitution continues to regulate the conduct of the South African State wherever it acts. To honour Section 11, the government must cease any conduct that aids in the taking of life, even indirectly, and act to preserve life – which in this context means halting coal exports to an apparatus of mass violence and embracing the values of the Constitution and *ubuntu*.<sup>662</sup>
472. The Constitutional Court in *Mohamed* invoked Justice Brandeis' dictum in *Olmstead v United States* that "*in a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously... Government is the potent omnipresent teacher. For good or for ill it teaches the whole people by its example . . . If the government becomes a lawbreaker it breeds contempt for the law. It invites every man to become a law unto himself. It invites anarchy.*"<sup>663</sup>

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<sup>660</sup> *S v Makwanyane*, para 255.

<sup>661</sup> *Mohamed*, para 59.

<sup>662</sup> *Mohamed*, para 68 – 69; *S v Makwanyane*, para 237.

<sup>663</sup> *Mohamed*, para 69

473. South Africa cannot disregard constitutional and international legal duties without corroding the legitimacy of the constitutional order itself. For the State to continue exporting coal to Israel despite knowledge of the ongoing atrocities committed constitutes participation in illegality and sets a constitutional example that law may be subordinated to expediency. This is an outcome that the Constitution does not tolerate.

A(iii) The Right to Equality and the Right to Human Dignity

474. The Right to Equality and the Right to Human Dignity are central to the constitutional analysis in the context of an ongoing genocide. Section 9 of the Constitution guarantees everyone the right to equal protection and benefit of the law, and it proscribes unfair discrimination<sup>664</sup> – a clear repudiation of apartheid’s ethos of racial segregation and inequality.<sup>665</sup>

475. Section 10 guarantees that “*Everyone has inherent dignity and the right to have their dignity respected and protected.*”<sup>666</sup> Even where this right does not apply directly to foreign persons outside South Africa’s territory, it remains a foundational constitutional value that the South African State may not undermine through conduct that supports systematic dehumanisation abroad, in circumstances where its resources contribute to such crimes.

476. These two rights (equality and dignity) are foundational to South Africa’s constitutional order; indeed, Section 1 of the Constitution elevates human dignity and the achievement of equality as core values of the State.<sup>667</sup> It is difficult to imagine violations more antithetical to these values than apartheid and genocide: these crimes, by definition, entail the systematic denial of fundamental rights through the destruction or brutal

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<sup>664</sup> Constitution, s 9: “*Everyone is equal before the law and has the right to equal protection and benefit of the law.*”

<sup>665</sup> *S v Makwanyane*, Constitutional court stated: “*The emphasis I place on the right to life is, in part, influenced by the recent experiences of our people in this country. The history of the past decades has been such that the value of life and human dignity have been demeaned. Political, social and other factors created a climate of violence resulting in a culture of retaliation and vengeance. In the process, respect for life and for the inherent dignity of every person became the main casualties. The State has been part of this degeneration, not only because of its role in the conflicts of the past, but also by retaining punishments which did not testify to a high regard for the dignity of the person and the value of every human life.*”

<sup>666</sup> Constitution, s 10: “*Everyone has inherent dignity and the right to have their dignity respected and protected.*”

<sup>667</sup> Constitution, s 1(a): “*The Republic ... is founded on the values of human dignity [and] the achievement of equality.*”

subjugation of the civilian population in Palestine and constitute the ultimate affront to human dignity. As such, any South African support for such practices is constitutionally indefensible.

477. The Constitutional Court has tied these rights together, emphasising that the protection of dignity and equality is central to breaking with South Africa's apartheid past and that State action which implicitly accepts racial hierarchy or the expendability of certain lives cannot be constitutionally justified.<sup>668</sup> This reasoning applies equally to foreign-relations and trade decisions that support racial domination abroad.
478. South Africa's history under apartheid has ingrained in its law and ethos the understanding that such institutionalised dehumanisation must never again be supported or tolerated.<sup>669</sup>
479. Consequently, South Africa's Constitution does not permit the State to aid or abet a foreign power's racially discriminatory, colonial or genocidal practices. To do so would make a mockery of the Bill of Rights, effectively endorsing the notion that some lives are less worthy, desecrating the intrinsic worth of the human person that the right to dignity and values of *ubuntu* affirm.
480. The Constitutional Court in *Carmichele*, held that both the Constitution and the Bill of Rights require the State and its organs "*not to perform any act that infringes*" entrenched rights<sup>670</sup>, and, crucially, to take reasonable positive steps to protect those rights from

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<sup>668</sup> *S v Makwanyane*, para 262: "*The Constitution commits us to a future founded on the recognition of ..human rights.*"

<sup>669</sup> *S v Makwanyane*, para 262: "*Constitutions seek to articulate, with differing degrees of intensity and detail, the shared aspirations of a nation; the values which bind its people, and which discipline its government and its national institutions; the basic premises upon which judicial, legislative and executive power is to be wielded; the constitutional limits and the conditions upon which that power is to be exercised; the national ethos which defines and regulates that exercise; and the moral and ethical direction which that nation has identified for its future. In some countries, the Constitution only formalizes, in a legal instrument, a historical consensus of values and aspirations evolved incrementally from a stable and unbroken past to accommodate the needs of the future. The South African Constitution is different: it retains from the past only what is defensible and represents a decisive break from, and a ringing rejection of, that part of the past which is disgracefully racist, authoritarian, insular, and repressive and a vigorous identification of and commitment to a democratic, universalistic, caring and aspirationally egalitarian ethos, expressly articulated in the Constitution. The contrast between the past which it repudiates and the future to which it seeks to commit the nation is stark and dramatic. The past institutionalized and legitimized racism. The Constitution expresses in its preamble the need for a "new order .. in which there is equality between ... people of all races".*"

<sup>670</sup> *Carmichele*, para 44 "*The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.*" *It follows that there is a duty imposed on the state and all of its organs not*

violation by others.<sup>671</sup> This logic applies with equal force to South Africa's external conduct: there is no principled basis on which duties enshrined in the Constitution should evaporate at the water's edge.<sup>672</sup> The exercise of trade and regulatory authority must therefore be evaluated through the same constitutional lens as any other form of State conduct capable of affecting constitutional rights.

481. In concrete terms, South Africa's continuing coal trade with Israel, in circumstances where Israel oppresses Palestinians through apartheid, illegal occupation, genocide, forced starvation and ethnic cleansing, places the South African government in the position of materially assisting gross human-rights abuses that assault the very concepts of equality and dignity. International and domestic constitutional law demand that South Africa act in a manner that respects the equal worth of all human beings and affirms the dignity of the oppressed. Cutting off support to an apartheid and genocide perpetrator is not merely a foreign policy preference but a constitutional imperative flowing from the foundational commitment to human rights as enshrined in the Bill of Rights.<sup>673</sup>

A(iv) South Africa's has a Constitutional Duty to Respect, Protect, Promote and Fulfil Rights - Not Facilitate Human Rights Violations

482. Section 7(2) of the Constitution, as noted, imposes a duty on the State to "*respect, protect, promote and fulfil*" the rights in the Bill of Rights.<sup>674</sup> This clause has been interpreted by our courts to require the State not only to refrain from infringing rights, but also to take positive measures to secure those rights against harm by third parties.<sup>675</sup>

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*to perform any act that infringes these rights. In some circumstances there would also be a positive component which obliges the state and its organs to provide appropriate protection to everyone through laws and structures designed to afford such protection."*

<sup>671</sup> Carmichele, para 44 - 49.

<sup>672</sup> Kaunda, para 228: "*It does not follow, however, that when our government acts outside of South Africa it does so untrammelled by the provisions of our Bill of Rights. There is nothing in our Constitution that suggests that, in so far as it relates to the powers afforded and the obligations imposed by the Constitution upon the executive, the supremacy of the Constitution stops at the borders of South Africa. Indeed, the contrary is the case. The executive is bound by the four corners of the Constitution. It has no power other than those that are acknowledged by or flow from the Constitution. It is accordingly obliged to act consistently with the obligations imposed upon it by the Bill of Rights wherever it may act.*"

<sup>673</sup> See Constitution, s 1(a): "*The Republic of South Africa is one, sovereign, democratic state founded on ... human dignity, the achievement of equality and the advancement of human rights and freedoms.*"

<sup>674</sup> Constitution, s 7(2).

<sup>675</sup> Carmichele, paras 44-45.

483. In *Carmichele* the Constitutional Court affirmed that the State can be held liable for failing to protect individuals from violent crime by a private actor when it was reasonable to do so – underscoring that *inaction* in the face of known threats to fundamental rights can violate Section 7(2).<sup>676</sup>
484. Section 7(2) affirms that the government must take reasonable steps to prevent South African resources from being used in a manner that foreseeably undermines constitutional rights and values, even beyond our borders, particularly where officials are aware and informed of such risk.<sup>677</sup> The question is not whether South Africa is the primary perpetrator but whether, with knowledge of the risk, South Africa is obliged to take measures, including halting exports, to avoid contributing to internationally wrongful acts and violating the Constitution.
485. The Constitutional Court in *Glenister* held that Section 7(2) must be read in tandem with international law obligations, and that it effectively requires the State to implement reasonable and effective measures to combat abuses that threaten constitutional rights<sup>678</sup> – in that case, corruption, and by extension here, complicity in war crimes, apartheid, illegal occupation, ethnic cleansing and genocide. The Court in this case held that “[o]ur Constitution reveals a clear determination to ensure that the Constitution and South African law are interpreted to comply with international law, in particular international human-rights law.”<sup>679</sup>
486. The above analysis indicates that South Africa in protecting the rights enshrined in the Bill of Rights, must act positively to do so. It is not sufficient for the State to sit back and fail to act against the threats to the constitutional rights, particularly in circumstances where South African resources are being used to commit or facilitate international crimes. The above jurisprudence supports the conclusion that South Africa must actively prevent its exports from contributing to foreseeable rights violations abroad especially when it has detailed knowledge of that risk. The remaining question

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<sup>676</sup> *Carmichele*, paras 62–63, referring to the duty of the State to protect women from sexual and gender-based violence.

<sup>677</sup> *Glenister*, paras 189, 194–205. 36: “The State must implement reasonable and effective measures to combat corruption ... in order to protect constitutional rights.”

<sup>678</sup> *Glenister*, paras 194–205

<sup>679</sup> *Glenister*, paras 97–98, 105

is therefore whether continued authorisation of such exports can be reconciled with these constitutional duties.

487. If South Africa knows that its coal is enabling violations of the most basic rights of the Palestinian population, then Section 7(2) obliges the State to act to prevent this outcome. Continuing ‘business as usual’ in the face of such knowledge cannot be justified.
488. The Constitution demands a proactive stance: South Africa must use the tools at its disposal, including trade controls, sanctions or other lawful measures, to protect human rights, rather than allow its territory or resources to be misused in a manner that facilitates genocide and crimes against humanity abroad. This is not a call for extraordinary or novel power. It is a call for the ordinary powers already vested in government, particularly the powers vested in the Minister of the DTIC, to be exercised consistently with the Constitution.
489. The Constitutional Court has applied this logic in the context of international crimes. In *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre*<sup>680</sup> (“SALC”) the Court held that, in relation to alleged crimes against humanity committed in Zimbabwe, “*The alleged acts of torture were perpetrated in Zimbabwe, by and against Zimbabwean nationals. None of the perpetrators is present in South Africa. However, the duty to combat torture travels beyond the borders of Zimbabwe. Torture, as a crime against humanity, is listed in schedule 1 to the ICC Act and forms part of the category of crimes in which all states have an interest under customary international law.*”<sup>681</sup>
490. The duty on State organs, in that case the South African Police Service (SAPS), the Court stated “*Our international law commitments to investigate crimes against humanity, including torture, must be discharged through our law-enforcement agencies.*”<sup>682</sup> indicating that the SAPS did not have just a power, but also a duty to investigate those allegations, and that this duty arises from the Constitution read with international law. This confirms that constitutional obligations extend to preventing and

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<sup>680</sup> *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre (SALC)* 2015 (1) SA 315 (CC) (Hereafter referred to as *SALC*).

<sup>681</sup> *SALC*, para 49.

<sup>682</sup> *SALC*, para 50.

responding to international crimes even when the conduct in question occurs beyond South Africa's borders.

491. Comparatively, where South Africa's legal system is confronted with credible evidence of international crimes, the South African government is obliged to use their domestic powers to prevent and respond to those crimes, not to stand aside and definitely not facilitate them.<sup>683</sup> Read together, constitutional law jurisprudence affirms that once the State is aware of a real risk of international crimes, the continued exercise of discretionary powers in a manner that enables such crimes becomes constitutionally impermissible, and the same reasoning applies to export-control and trade authorities with knowledge that South African coal is materially assisting crimes against humanity: their powers crystallise into constitutional duties because the Constitution prohibits the State from acting inconsistently with its foundational values and international-law commitments. It is within this constitutional framework that the obligation to comply with international law must now be considered.

A(v). The Constitution Integrates and Requires Compliance with International Law

492. The constitutional obligations of South African Officials and Organs of State assume heightened legal significance where State conduct risks facilitating or contributing to international crimes including genocide, apartheid and other grave breaches of international humanitarian and criminal law. Sections 39(1)(b), 232 and 233 of the Constitution require that domestic law be interpreted and applied consistently with international law and incorporate binding international obligations into South African law.<sup>684</sup>

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<sup>683</sup> *Glenister*, para 189.

<sup>684</sup> Constitution, s 39(1)(b): "*When interpreting the Bill of Rights, a court... must consider international law.*"; s233: "*Section 233... enjoins every court to prefer any reasonable interpretation of legislation that is consistent with international law.*" And see *Southern Africa Litigation Centre v Minister of Justice And Constitutional Development and Others* (27740/2015) [2015] ZAGPPHC 402; 2016 (1) SACR 161 (GP); 2015 (5) SA 1 (GP); [2015] 3 All SA 505 (GP); 2015 (9) BCLR 1108 (GP) (24 June 2015) and *Law Society of South Africa and Others v President of the Republic of South Africa and Others* (CCT67/18) [2018] ZACC 51; 2019 (3) BCLR 329 (CC); 2019 (3) SA 30 (CC) (11 December 2018).

493. The Constitutional Court has affirmed that South Africa's legal order must be construed to comply with international law and that the State bears positive duties to respect protect promote and fulfil fundamental rights.<sup>685</sup> Where credible risks of grave international crimes arise the State is under a corresponding obligation to ensure that its conduct including trade and export regulation does not result in complicity in violations of peremptory norms of international law.<sup>686</sup> The Constitutional court has also affirmed that international law is not foreign to our legal system but forms an integral part of constitutional interpretation and statutory compliance.<sup>687</sup>

494. South African law must be interpreted consistently with international law wherever possible. The Court has stated:

*“Our Constitution reveals a clear determination to ensure that the Constitution and South African law are interpreted to comply with international law, in particular international human rights law. Firstly, section 233 requires legislation to be interpreted in compliance with international law; secondly, section 39(1)(b) requires courts, when interpreting the Bill of Rights, to consider international law; finally, section 37(4)(b)(i) requires legislation that derogates from the Bill of Rights to be - consistent with the Republic's obligations under international law applicable to states of emergency. These provisions of our Constitution demonstrate that international law has a special place in our law which is carefully defined by the Constitution.”*<sup>688</sup>

495. The interpretive mandate under section 39(1)(b) obliges courts to consider international law when interpreting the Bill of Rights.<sup>689</sup> Section 233 of the Constitution further directs courts to prefer interpretations of statutes that are consistent with international law where reasonably possible.<sup>690</sup>

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<sup>685</sup> *S v Makwanyane* 1995 (3) SA 391 (CC) para 34 - 35

<sup>686</sup> *Bosnia v Serbia*, paras 430 - 432

<sup>687</sup> Constitution s35 and *S v Makwanyane*, para 34: “*In interpreting the provisions of this Chapter a court of law shall promote the values which underlie an open and democratic society based on freedom and equality and shall, where applicable, have regard to public international law applicable to the protection of the rights entrenched in this Chapter, and may have regard to comparable foreign case law.*”

<sup>688</sup> *Glenister*, para 97, 189.

<sup>689</sup> Constitution, s 39(1)(b): “*When interpreting the Bill of Rights, a court... must consider international law.*”

<sup>690</sup> Constitution, s 233: “*When interpreting any legislation, every court must prefer any reasonable interpretation... that is consistent with international law.*”

496. Taken together, these provisions constitutionally entrench South Africa’s obligation to harmonise domestic law with international legal prohibitions including those against genocide and apartheid.<sup>691</sup>
497. The Constitution explicitly integrates international law into domestic law. Section 39(1)(b) instructs that when interpreting the Bill of Rights, courts “*must consider international law.*”<sup>692</sup> This provision ensures that South Africa’s human-rights obligations and the regulation of State conduct are informed by and harmonized with the country’s commitments under international law – including treaties like the Genocide Convention and peremptory norms such as the prohibition of apartheid and genocide.
498. In *Glenister*, the Constitutional Court relied on Section 39(1)(b) to import South Africa’s treaty obligations into the content of the State’s duties under Section 7(2).<sup>693</sup> In the Court’s view the Constitution mandates alignment of State conduct with international human-rights and humanitarian law standards.<sup>694</sup>
499. Section 232 of the Constitution provides that customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.<sup>695</sup> The prohibitions against genocide, apartheid and complicity in such crimes are not only treaty-based but have the character of customary international law as *jus cogens*<sup>696</sup> and are therefore directly applicable within South Africa’s domestic legal framework. The duty of non-assistance in genocide, as a norm of customary international law, is binding

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<sup>691</sup> *Glenister*, para 97: “Our Constitution reveals a clear determination to ensure that the Constitution and South African law are interpreted to comply with international law, in particular international human rights law.”

<sup>692</sup> Constitution s 39(1)(b): “When interpreting the Bill of Rights, a court, tribunal or forum - must consider international law”

<sup>693</sup> *Glenister*, paras 201–205. 201: “The point we make is this. It is possible to determine the content of the obligation section 7(2) imposes on the state without taking international law into account. But section 39(1)(b) makes it constitutionally obligatory that we should.”

<sup>694</sup> *Glenister*, para 97 and 189: “Our Constitution reveals a clear determination to ensure that the Constitution and South African law are interpreted to comply with international law.” and “Section 7(2) ... requires the state to respect, protect, promote and fulfil the rights in the Bill of Rights.”

<sup>695</sup> Constitution s 232: ““Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.”

<sup>696</sup> See generally ILC, *Draft Conclusions on Peremptory Norms of General International Law (jus cogens)* (2022); *Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002, Sch 1* (domestic incorporation of genocide and apartheid) and *International Law Commission, Draft Code of Crimes Against the Peace and Security of Mankind (1996)*, stating genocide & apartheid are *jus cogens*.

on South Africa as a matter of constitutional law. Export practices that materially assist a regime committing genocide, apartheid and illegal occupation cannot survive constitutional scrutiny and any State policy or practice that conflicts with that duty is unlawful. Domestic authorities are therefore required to exercise their statutory and executive powers in a manner consistent with these binding norms.

500. The combined effect of Sections 39(1)(b) and 232 is that South Africa cannot ignore its international obligations when formulating or executing policy: the Constitution requires fidelity to international law. This constitutional architecture ensures that international law is not optional or advisory but structurally embedded into the validity of State conduct. Accordingly, the government's continued facilitation of the export of coal to Israel, in defiance of international norms of non-assistance to grave breaches, violates South African Constitutional law because it involves the State acting inconsistently with binding international legal norms incorporated into domestic law.
501. A court interpreting the Bill of Rights should read fundamental rights like the right to life, dignity and equality in light of international legal principles that forbid contributing to war crimes. As demonstrated, South Africa's own constitutional framework incorporates the global duties of prevention and accountability: it requires the State to honour those duties in the exercise of its own powers and it renders any failure to do so justiciable under our Constitution. Consequently, the legality of State participation in international commerce must be assessed against international criminal law obligations. In sum, the supremacy of the Constitution, grounded in respect for international law and universal human rights, means that South Africa's complicity in fuelling atrocities abroad is not only a foreign policy misstep, but a direct breach of our highest law.
502. The Constitution binds all branches of government to act in accordance with fundamental rights and international law obligations, leaving no lawful basis on which the State may justify the ongoing coal exports to Israel. The rights to life and dignity entrenched in our Constitution operate as foundational constitutional values that prohibit South African State conduct from facilitating mass killing or the egregious denial of human worth. The right to equality prohibits sustaining a system of apartheid or persecution based on race, ethnicity or religious superiority. Section 7(2) imposes an active duty to protect people from such atrocities, rather than facilitate them.

Section 39(1)(b) and Section 232 ensure that the international norms requiring non-assistance and prevention of these crimes are part of South African law.

503. The above constitutional analysis and international law converges to demonstrate that continued exports in the present circumstances cannot be reconciled with South Africa's constitution. They also demonstrate that the next legally coherent step is the use of available domestic powers to ensure that South Africa's internal legal conduct matches the position it has already adopted internationally.

## **B. South African Officials and Corporations are Breaking the Law**

### B(i). It is a Violation of Domestic Law to Assist a State in the Commission of Internationally Wrongful Acts including Genocide, Illegal Occupation and Apartheid

504. South Africa's commitment to international law is not merely aspirational or rhetorical - it has been given direct legal force through the domestication of key international instruments. The Constitutional Court has stated that for an international agreement to be incorporated into our domestic law under section 231(4), our Constitution requires, in addition to the resolution of Parliament approving the agreement, further national legislation incorporating it into domestic law.<sup>697</sup> This domestic incorporation is particularly significant in the present context because it ensures that prohibitions against genocide, war crimes and crimes against humanity are enforceable within South Africa against persons and entities within its jurisdiction.
505. South Africa's Parliament has enacted legislation that incorporates several core international treaties addressing crimes against humanity, including genocide, war crimes, crimes against humanity, torture and other grave breaches of the Geneva Conventions as will be described below. The Constitutional Court has confirmed that: *"the consequence of incorporation of an international agreement into our domestic law under section 231(4) is that the agreement becomes law in the Republic. It is implicit, if not explicit, from the scheme of section 231, that an international agreement that becomes law in our country enjoys the same status as any other legislation."*<sup>698</sup>

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<sup>697</sup> *Glenister*, para 99.

<sup>698</sup> *Glenister*, para 100.

506. These statutes establish criminal liability for both individual and corporate actors, reinforce the principles of non-assistance in internationally recognised wrongful acts including prohibitions of *jus cogens* norms and provide mechanisms for accountability where international enforcement may be unavailable. These provisions, read with the Constitution and international law, demand that South African law affirms and operationalises the global duty to prevent and punish international crimes, making it unlawful for any person or entity within the Republic to aid, abet or otherwise facilitate such acts - including through economic, diplomatic or logistical support.
507. The Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 (Rome Statute Act) has domesticated the Rome Statute which criminalises genocide and war crimes including complicity in such acts.<sup>699</sup>
508. The opening lines of the Rome Statute Act set out the purpose of the Act is: “*To provide for a framework to ensure the effective implementation of the Rome Statute of the International Criminal Court in South Africa; to ensure that South Africa conforms with its obligations set out in the Statute; to provide for the crime of genocide, crimes against humanity and war crimes; to provide for the prosecution in South African courts of persons accused of having committed the said crimes in South Africa and beyond the borders of South Africa in certain circumstances; to provide for the arrest of persons accused of having committed the said crimes and their surrender to the said Court in certain circumstances; to provide for co-operation by South Africa with the said Court; and to provide for matters connected therewith.*”<sup>700</sup>
509. Article 25(3)(c) of the Rome Statute is incorporated and expressly prohibits complicity in the crime which includes aiding, abetting or otherwise assisting in the commission of international crimes.<sup>701</sup> The Act further adopts the Genocide Convention’s definition of genocide.<sup>702</sup>

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<sup>699</sup> *Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 (South Africa)* (Hereafter referred to as the Rome Statute Act); also see Schedule 1: Crimes.

<sup>700</sup> *Rome Statute Act*

<sup>701</sup> *Rome Statute Act*, see Annexure incorporating the Rome Statute.

<sup>702</sup> *Rome Statute Act*, See Schedule 1, Part 1, Genocide: ‘*Genocide*’ means any of the following conduct committed with 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 harm or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in

510. The Rome Statute Act empowers South African courts to prosecute any person, including corporate executives and directors, business leaders and State Officials, who knowingly contribute to the commission of international crimes.
511. Individual criminal responsibility under international law extends beyond the battlefield to those who aid, abet or facilitate atrocities - whether by supplying weapons, funding or enabling crimes against humanity through the provision of resources. Through the domestication of the Rome Statute, South Africa's legal framework ensures that economic actors cannot hide behind corporate veils or geographic distance when involved in war crimes, crimes against humanity or genocide.
512. In an era where businesses increasingly operate in conflict zones (as detailed in Francesca Albanese's report, *From the Economy of Occupation to the Economy of Genocide*) this statute affirms South Africa's commitment to ensuring that profit cannot be a shield against justice. It is up to South Africa's government to ensure that such crimes are investigated and prosecuted, even in circumstances where the perpetrators may not have the direct intention to commit international war crimes and crimes against humanity. It must be noted that the point in the present report is not merely punitive. It is also preventive. The existence of this domestic criminal framework reinforces the need for executive authorities to act before continued trade gives rise to further liability and further harm.
513. The legal basis for such liability is further established in international criminal law jurisprudence. The ruling in the ICTY case *Furundžija*<sup>703</sup>, affirmed that it is not necessary for an accomplice to share the *mens rea* (intention) of the perpetrator, in the sense of positive intention to commit the crime. Instead, the clear requirement is for the accomplice to have knowledge that his actions will assist the perpetrator in the commission of the crime.<sup>704</sup> Moreover, it was held that: "*it is not necessary that the aider and abettor should know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will probably be*

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*whole or in part; (d) imposing measures intended to prevent births within the group; or (e) forcibly transferring children of the group to another group.*

<sup>703</sup> ICTY, *Prosecutor v Furundžija*, IT-95-17/1-T (10 December 1998) para 245. And see Nuremberg Principles.

<sup>704</sup> ICTY, para 245.

*committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor.*<sup>705</sup>

514. Corporate actors who enable atrocity crimes by facilitating the means of commission cannot be said to be passive bystanders. In the case of Palestine, corporations have full knowledge that Israel is imposing an illegal occupation and plausible genocide on the Palestinian people. South African law, by incorporating the Rome Statute, makes complicity prosecutable at home where international mechanisms cannot act. Should corporations and the decision makers choose to abandon their duties to prevent violations of human rights abroad, including risking complicity in war crimes and crimes against humanity, the South African government must proceed with criminal investigations to ensure that any continued breaches are stopped with the utmost urgency.
515. In addition to the Rome Statute Act, South Africa has enacted other legislation specifically criminalising other international crimes.
516. The Prevention and Combating of Torture of Persons Act 13 of 2013 prohibits direct and indirect involvement in torture and provides for extraterritorial jurisdiction.<sup>706</sup> The Object Clause of this Act specifically states that its purpose is “*to give effect to the Republic’s obligations concerning torture in the Convention, - in particular, the recognition that the equal and inalienable rights of all persons are the foundation of freedom, dignity, justice and peace in the world.*”<sup>707</sup>
517. Similarly, the Implementation of the Geneva Conventions Act 8 of 2012 incorporates the 1949 Geneva Conventions and their 1977 Additional Protocols I and II into domestic law. Section 5 criminalises grave breaches such as wilful killing, torture and inhuman

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<sup>705</sup> ICTY, para 246.

<sup>706</sup> Prevention and Combating of Torture of Persons Act 13 of 2013 (South Africa) S3-4 dealing with acts which constitute torture (S3) and offences and penalties (S4).

<sup>707</sup> Prevention and Combating of Torture Act, s2(1)(a)-(c)

treatment<sup>708</sup>; Sections 6 and 7 enable prosecution in South African courts regardless of where the offence was committed or the nationality of the perpetrator.<sup>709</sup>

518. Finally, section 8(2) explicitly provides that the Bill of Rights may bind natural or juristic persons “to the extent that, and in the manner required by the nature of the right and the nature of any duty imposed by the right”.<sup>710</sup> The Constitutional Court has interpreted this provision to allow for the State to take positive measures to respect, protect, promote and fulfil the rights in the Bill of Rights as long as they fall within the range of possible conduct that a reasonable decision-maker in the circumstances may adopt. Accordingly, constitutional duties may arise not only on the State but also for private actors where the nature of those duties, rights and values demand such horizontal application under domestic and international law. In circumstances where the conduct of State or corporate actors clearly aids or facilitates international crimes, including genocide or unlawful occupation, these provisions impose a corresponding duty on the State to take positive steps to prevent, regulate and, where necessary, halt such conduct.<sup>711</sup>

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<sup>708</sup> *Implementation of the Geneva Conventions Act 8 of 2012* (Hereafter referred to as the Geneva Conventions Act) S 5. S5:”5. (1) Any person who, whether within or outside the Republic, commits a grave breach of the Conventions, is guilty of an offence.”

<sup>709</sup> *Geneva Conventions Act*, S6(2): “(2) Any person, whether within or outside the borders of the Republic, who fails to act when under a duty to do so in order to prevent the commission of a grave breach contemplated in section 5(1) or an offence contemplated in section 5(3) or (4) by any other person, is guilty of an offence.” S7(1): ”Any court in the Republic may try a person for any offence under this Act in the same manner as if the offence had been committed in the area of jurisdiction of that court, notwithstanding that the act or omission to which the charge relates was committed outside the Republic.” (3): “Whenever this Act is enforced outside the Republic, any finding, sentence, penalty, fine or order made, pronounced or imposed in terms of its provisions is as valid and effectual, and must be carried into effect, as if it had been made, pronounced or imposed in the Republic.” (4): “Nothing in this Act must be construed as precluding the prosecution of any person accused of having committed a breach under customary international law before this Act took effect.”

<sup>710</sup> Constitution, s 8(2): “A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.”

<sup>711</sup> For instance, in *Barkhuizen v Napier* 2007 (5) SA 323 (CC) it was held that all contractual terms must be tested against constitutional rights values: courts “must employ [the Constitution’s] values to strike down the unacceptable excesses of ‘freedom of contract’”. Thus, contractual clauses which infringe fundamental rights may be invalidated or read down. The same application can be made in respect of conduct which breaches *jus cogens* norms. Also see: See *Khumalo and Others v Holomisa* 2002 (5) SA 401 (CC) confirming that Constitutional Rights can be applied to private actors; also see *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) confirming that the Courts have a positive duty to develop the common law where necessary. In *Maphongo v Aengus Lifestyle Properties* 2012 3 SA 531 (CC) the Court stated that the way in which human rights are fulfilled and enforced is through the state’s legal ability to regulate the activities of private/juristic persons; see *Governing Body of the Juma Masjid Primary School v Essay* NO 2011 8 BCLR 761 (CC) which stated that juristic persons at least have a negative duty to refrain from committing conduct that contributes to human rights violations; see *Daniels v Scribante* 2017 4 SA 341 (CC) which insinuates that juristic persons may have positive obligations to fulfil human rights and *AB v Pridwin Preparatory*

519. Collectively, these statutes and the Constitution impose a categorical duty on South African authorities to refrain from conduct that facilitates genocide, war crimes or apartheid and to use its authority and all reasonably legal means to prevent any grave breaches of international humanitarian and criminal law by corporations acting within its jurisdiction.<sup>712</sup> Continued coal exports to Israel - amid credible findings of such crimes - violate both domestic and international obligations and should result in criminal liability for those who refuse to stop providing material aid which maintains these crimes through the export or facilitation of exports of coal. This statutory framework therefore forms the domestic legal bridge between the constitutional analysis above and the operative regulatory measures addressed below.

B(ii). Israel is Committing Internationally Wrongful Acts Including Genocide

520. At the time of writing and submission of this report, Israel is and continues to engage in internationally wrongful conduct. There are countless reports that detail the brutal and inhuman crimes committed by Israel against the Palestinian people.

521. Below is a short list of reports detailing the abhorrent crimes against humanity committed by Israel over the decades as well as reports which dictate the Third State obligations in respect of said crimes:

521.1. Amnesty International: *Israel's Apartheid Against Palestinians, Israel's Occupation of Palestinian Territory, Automated Apartheid and You Feel Like You are Subhuman: Israel's Genocide Against Palestinians in Gaza*;

521.2. Human Rights Watch: *Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories*

521.3. B'Tselem Report titled *Our Genocide*;

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*School 2020 ZACC 12* which echoed *Daniels* in that the Bill of Rights may impose positive obligations on private/juristic persons but it is fact-specific.

<sup>712</sup> See *Glenister*, and see *Grootboom*.

- 521.4. UN Commission of Inquiries report titled *Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide*
- 521.5. Francesca Albanese's reports *Anatomy of a Genocide ; From the Economy of Occupation to the Economy of Genocide; Gaza Genocide: A Collective Crime;*
- 521.6. The ICJ's July 2024 Advisory Opinion on the legal consequences of Israel's unlawful occupation.
- 521.7. The Lancet, *Counting the Dead in Gaza: difficult but essential;*
- 521.8. SOMO, *Powering Injustice;*
- 521.9. Dr. Ralph Wilde, *Expert Legal Opinion: Illegality of Israel's presence in the Palestinian Gaza Strip and West Bank, including East Jerusalem, in the light of the 2024 Occupied Palestinian Territory Advisory Opinion of the International Court of Justice, and consequences for third States and the European Union;*
- 521.10. Expert legal opinion by Dr Irene Pietropaoli, *Obligations of Third States and Corporations to Prevent and Punish Genocide in Gaza*
- 521.11. UNEP: Environmental Impact Assessments of the Conflict in Gaza;
- 521.12. The Lancet, *Violent and non-violent death tolls for the Gaza conflict: new primary evidence from a population-representative field survey*, published on 18 February 2026, this report states that more than 75,000 people were killed in the first 16 months of the two-year war in Gaza, at least 25,000 more than the death toll announced by local authorities at the time.
- 521.13. Various Reports published by Euro-Med Human Rights Monitor which can be accessed at the following link: <https://euromedmonitor.org/en/category/32/Treatment-of-civilians-during-armed-conflicts>
522. There are also three Evidence Dossiers submitted by the South Africa to the UN Security Council on Israel's genocidal conduct (See Section IX above).

523. The above list is not exhaustive. It is extensively and credibly documented that Israel has and continues to commit the crimes of genocide, illegal occupation, apartheid, forced starvations, rape and sexual violence, torture, and continues to subject Palestinians to cruel, inhumane and degrading treatment in both Gaza and the occupied territory. You are referred to annexures A, B and C below which provide the full context under which this report is written.
524. The scale of the destruction inflicted on Gaza's civilian population is unprecedented in its documentation and global dissemination. Images and video footage of the effects of sustained bombardment, siege and displacement have been broadcast and live streamed to millions across the world, while journalists, humanitarian organisations and United Nations bodies have produced extensive contemporaneous reporting from the ground detailing the humanitarian collapse and widespread civilian harm. This evidentiary record is not speculative or remote: it is continuous, widely verified and forms part of a growing body of international documentation concerning Israel's conduct in Gaza and the broader OPT.
525. South Africa's extensive Evidence Dossiers before the UN Security Council set out the factual and legal basis for its allegations of genocidal conduct. These submissions, grounded in documented incidents, expert analysis and international reporting, place the South Africa beyond any position of uncertainty. The government is fully apprised of the nature scale and consequences of Israel's actions and is legally required to act in a manner consistent with that knowledge and with its constitutional and international obligations.
526. The above-mentioned reports, South Africa's Evidence Dossiers as well as Annexures A, B and C below provide *prima facie* proof of Israel's conduct in Gaza and Palestine for almost 8 decades. South African coal materially supports these crimes by providing Israel with the resources it needs to commit these crimes. The significance of this evidence is not only that it supports the international law case. It is also provides domestic decision makers a documented and rational basis on which to exercise statutory powers, including powers under the ITAA, in a constitutionally and administratively defensible manner.

B(iii) Private Actors or Corporations Must Be Stopped from Supplying Coal to Israel which Assists, Aids or Abets in the Commission of Internationally Wrongful Acts including Genocide (To Be Read with Section IV above)

527. Both the State and private sector must respect fundamental human and socio-economic rights and constitutional values including the rights to life, dignity, equality and environmental rights, when making business and regulatory decisions. Constitutional accountability extends beyond the State to private entities whose conduct aids in gross human rights violations, particularly where such conduct is enabled or regulated by South African law.<sup>713</sup> This subsection addresses the governance-facing character of coal supply, namely that coal, supplied by corporations, is not supplied into a vacuum but into core State infrastructure that sustains the illegal occupation, apartheid and genocide in Gaza.
528. The Companies Act 71 of 2008 (Companies Act) provides a statutory foundation for this proposition. Section 7(a) lists as a central purpose of the Company's Act is "*to promote compliance with the Bill of Rights as provided for in the Constitution, in the application of company law.*"<sup>714</sup> Reference to the Bill of Rights in the Companies Act makes the interpretation of the Act impossible to do without reference to the fundamental rights and values enshrined in the Constitution.
529. Employment and labour law precedent invokes constitutional values like dignity and equality in relation to private employers.<sup>715</sup> Precedents have established that private employers, including corporations, must uphold constitutional values such as dignity and equality in the workplace. This statutory shift is amplified by section 5 of the Companies Act, which requires that the Act "*must be interpreted and applied in a manner that gives effect to the purposes set out in section 7.*"<sup>716</sup>

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<sup>713</sup> Constitution, s8

<sup>714</sup> Companies Act 71 of 2008, s7, *The purpose of this Act is to—(a) promote compliance with the Bill of Rights as provided for in the Constitution in the application of company law;*

<sup>715</sup> See *NEHAWU v University of Cape Town* 2003 (3) SA 1 (CC), para 41: "*The declared purpose of the LRA is to advance economic development, social justice, labour peace and the democratization of the workplace.*" *This is to be achieved by fulfilling its primary objects which includes giving effect to section 23 of the Constitution. It lays down the parameters of its interpretation by enjoining those responsible for its application to interpret it in compliance with the Constitution and South Africa's international obligations..*"

<sup>716</sup> Companies Act, s5(1): "*This Act must be interpreted and applied in a manner that gives effect to the purposes set out in section 7.*"

530. South Africa's company law jurisprudence and international law reinforce that constitutional values shape not only State conduct but also the normative obligations of private corporations, particularly where their activities have serious human-rights impacts, even where those impacts occur beyond South Africa's borders as a result of corporate activity originating within South Africa.<sup>717</sup>
531. In litigation concerning environmental harm, the Courts have required mining and industrial corporations to justify their operations against constitutional environmental-rights values and international obligations.<sup>718</sup> While Constitutional Court precedent is still emerging, these decisions underscore that companies in South Africa face an evolving duty to "consider fundamental constitutional values" in their conduct.<sup>719</sup> This evolution confirms that corporate conduct cannot be insulated from constitutional scrutiny where it impacts rights.
532. South Africa is a party to key human rights instruments such as the ICESCR, which mandates that States take steps to promote the full realisation of socio-economic rights. Furthermore, the UN Guiding Principles on Business and Human Rights<sup>720</sup>, affirm that

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<sup>717</sup> See *Khumalo and Others v Holomisa* 2002 (5) SA 401 (CC) confirming that Constitutional Rights can be applied to private actors; also see *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) confirming that the Courts have a positive duty to develop the common law where necessary. In *Maphongo v Aengus Lifestyle Properties* 2012 3 SA 531 (CC) the Court stated that the way in which human rights are fulfilled and enforced is through the state's legal ability to regulate the activities of private/juristic persons; see *Governing Body of the Juma Masjid Primary School v Essay NO* 2011 8 BCLR 761 (CC) which stated that juristic persons at least have a negative duty to refrain from committing conduct that contributes to human rights violations; see *Daniels v Scribante* 2017 4 SA 341 (CC) which insinuates that juristic persons may have positive obligations to fulfil human rights and *AB v Pridwin Preparatory School* 2020 ZACC 12 which echoed *Daniels* in that the Bill of Rights may impose positive obligations on private/juristic persons but it is fact-specific.

<sup>718</sup> *Fuel Retailers Association of SA v Director-General Environmental Management* 2007 (6) SA 4 (CC), para 102: "The protection of environmental rights is a constitutional imperative binding upon public and private actors."

<sup>719</sup> See *Khumalo and Others v Holomisa* 2002 (5) SA 401 (CC) confirming that Constitutional Rights can be applied to private actors; also see *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) confirming that the Courts have a positive duty to develop the common law where necessary. In *Maphongo v Aengus Lifestyle Properties* 2012 3 SA 531 (CC) the Court stated that the way in which human rights are fulfilled and enforced is through the state's legal ability to regulate the activities of private/juristic persons; see *Governing Body of the Juma Masjid Primary School v Essay NO* 2011 8 BCLR 761 (CC) which stated that juristic persons at least have a negative duty to refrain from committing conduct that contributes to human rights violations; see *Daniels v Scribante* 2017 4 SA 341 (CC) which insinuates that juristic persons may have positive obligations to fulfil human rights and *AB v Pridwin Preparatory School* 2020 ZACC 12 which echoed *Daniels* in that the Bill of Rights may impose positive obligations on private/juristic persons but it is fact-specific.

<sup>720</sup> UNOHCHR, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", which were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The Special Representative annexed the Guiding Principles to his final report to the Human Rights Council

*“States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”*<sup>721</sup>

533. These obligations apply whether the violations of human rights occur within South Africa or abroad, facilitated from within South Africa, for example through the supply of South African coal, facilitated by the State, that materially supports unlawful occupation and acts amounting to genocide.
534. All these provisions converge on a single point: South Africa is legally obligated to cease its support, even indirect, for activities that amount to genocide, war crimes, crimes against humanity, including illegal occupation or apartheid. Furthermore, South Africa must ensure that all corporations acting within its jurisdiction do not engage in activities which directly or indirectly contribute to grave international crimes. As detailed in this report, South Africa provides support to Israel’s crimes by facilitating the transfer of coal to Israel through its regulation of the industry.
535. Just as South Africa benefited from international solidarity and sanctions during its struggle against apartheid, it must now extend the same principled legal stance in its own conduct by taking legal measures and action to stop the coal trade that is fuelling genocide.
536. The binding nature of international law on South Africa, coupled with its constitutional commitments create a compelling legal imperative to act. It is incumbent on the government to use available statutory measures to ensure that South African coal is not used in the commission of crimes against humanity, including the crimes of genocide, apartheid and illegal occupation.

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*(A/HRC/17/31), which also includes an introduction to the Guiding Principles and an overview of the process that led to their development. The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011”*

[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)  
accessed on 12 January 2025.

<sup>721</sup> Guiding Principles on BHR, Foundational Principle 1.

537. The government's failure to do so not only undermine South Africa's moral standing but exposes the State to liability – both internationally and locally – for aiding and abetting grave breaches of international law through constitutionally impermissible State conduct and the unlawful authorisation of trade practices that facilitate such breaches.

**C. South African Officials and Organs of the State are Obligated to Use Legal Measures Available to Halt Private Actors or Corporations from Supplying Coal to Israel**

C(i). Legal Measures Available To Prevent Corporations from Supplying Coal to Israel

538. To ensure compliance by South Africa with its constitutional and international law obligations, existing statutory powers, especially under the International Trade Administration Act 2002 (ITAA), enable the Minister of the Department of Trade, Industry and Competition (DTIC) to take lawful action to prohibit or control coal exports to Israel by notice in the Government Gazette, including through a prohibitions on exports or policy directives.<sup>722</sup> These powers are not speculative or extraordinary - they are embedded in ordinary legislative instruments that have historically been used to address crises or assert national interests.<sup>723</sup>
539. In the face of serious allegations, credible findings of genocide and other reports of grave breaches of international law, including the binding provisional measures indicated by the ICJ in South Africa's Genocide Convention proceedings, these statutes create clear legal authority and a strong, arguable basis to adopt reasonable measures within South Africa's powers.<sup>724</sup>
540. These powers have been deployed in analogous circumstances, such as during the COVID-19 pandemic, demonstrating both the State's capacity and established precedent to regulate or prohibit exports through the ITAA's section 6 mechanism and export permit controls. That national emergency during the COVID-19 pandemic motivated a number of measures including export restrictions on PPE, medicines and

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<sup>722</sup> International Trade Administration Act 2002 (ITAA), s5 and s6

<sup>723</sup> See *SA Metal Group (Proprietary) Limited v International Trade Administration Commission and Another* (267/2016) [2017] ZASCA 14

<sup>724</sup> *South Africa v Israel*, Provisional Order Measure (26 January 2026)

sanitisers enacted under the ITAA through amendments to the Export Control Regulations.<sup>725</sup>

541. The COVID-19 Export Control Regulation published on 27 March 2020 (Govt Notice R.424)<sup>726</sup> was made by the Minister of the DTIC under section 6 of the ITAA as an amendment to the standing Export Control Regulations at the time. Those regulations restricted and controlled the export of essential goods to protect public health by requiring export permits for listed goods.
542. It was not a regulation made under the Disaster Management Act (DMA) as the source of the export-control power, rather, the COVID-19 Export Control Regulation was made under the ITAA and expressly linked its duration to the national state of disaster declared under the DMA. This regulation did not require a separate parliamentary approval process to be published and take effect beyond publication in the Gazette as subordinate legislation under the ITAA, although it remained reviewable under constitutional and administrative law principles. The DMA state of disaster served as an explicit temporal trigger or context for the measure's operation, but the empowering provision for export controls was the ITAA.<sup>727</sup>
543. Comparatively, the need to comply with international law and domestic law in light of binding ICJ provisional measures and South Africa's constitutional framework for giving effect to international law, and amidst an ongoing genocide and illegal occupation - the policy context for urgent action by South Africa regarding the coal trade is clear.<sup>728</sup>
544. The below section provides an analysis of the South African legal framework available to the government to impose an embargo on coal trade with Israel. The term 'embargo' does not mean that South Africa must enact new legislation; it means the Executive

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<sup>725</sup> COVID-19 Export Control Regulation 2020 (SA) GN R.424 GG 43103 (27 March 2020)

<sup>726</sup> COVID-19 Export Control Regulation 2020 (SA) GN R.424 GG 43103 (27 March 2020); and see Export Control Regulations, GN R.92, Government Gazette 35007, 10 February 2012 (export control framework under the ITAA published by the Minister under s6).

<sup>727</sup> COVID-19 Export Control Regulation 2020 (SA) GN R.424 GG 43103 (27 March 2020)

<sup>728</sup> GN R.424, Government Gazette 43177, 27 March 2020 (expressly issued "acting under" s 6 of the ITAA and expressly linked to the duration of the national state of disaster declared under s 27(2) of the Disaster Management Act); and see *Pharmaceutical Manufacturers*, confirming that legality and rationality as minimum constitutional requirements for all exercises of public power.

must lawfully exercise existing statutory power through associated administrative steps. South Africa is already empowered by existing statute to do so.<sup>729</sup>

545. Several statutory mechanisms can be invoked to implement a lawful energy embargo on Israel, but the mechanisms differ in strength: the ITAA is the primary export-prohibition tool; customs and ports law operate mainly as enforcement and operational levers; mining law is supplementary and compliance-driven rather than an export-embargo instrument. The mechanisms available to the State are as follows:

545.1. The ITAA grants the Minister of the DTIC authority (under Sections 5 and 6) to regulate, prohibit or subject exports to permit controls by notice in the Gazette.<sup>730</sup> Section 5 of the ITAA empowers the Minister to issue trade policy statements or directives.<sup>731</sup> Section 5 has previously been used by the Minister to implement trade directives on exports.<sup>732</sup>

545.2. Section 6(1)(c) and (d) of the ITAA expressly authorises the Minister of the DTIC to (i) prohibit the export of goods of a specified class or kind, or (ii) require that such goods may be exported only under permit and subject to permit conditions, by notice in the Gazette.<sup>733</sup> Section 6(2) of the Act provides that goods may be classified according to their destination (including immediate or final destination).<sup>734</sup>

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<sup>729</sup> ITAA, s5 and s6 ; and see *Democratic Alliance v President of South Africa and Others* (CCT 122/11) [2012] ZACC 24; 2013 (1) SA 248 (CC) (executive decisions must be rational in both process and outcome)

<sup>730</sup> International Trade Administration Act 71 of 2002, S5: Trade Policy Statements and Directives: “*The Minister may, by notice in the Gazette and in accordance with the procedures and requirements established by the Constitution or any other relevant law, issue Trade Policy Statements and Directives.*” S6: Minister’s Power to Regulate Imports and Exports: “(1) *The Minister may, by notice in the Gazette, provide that no goods of a specified class or kind, or no goods other than specified class or kind, (c) may be exported from the Republic; (d): exported from the Republic, except under the authority of and in accordance with the conditions stated in a permit issued by the Commission. (3): A notice issued in terms of this section applies to any person who at the time of... the export of a particular goods from the Republic - (a) owns those goods; (b) carries the risk of those goods*”. ; And see *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* (CCT 59/09) [2010] ZACC 6; 2012 (4) SA 618 (CC); 2010 (5) BCLR 457 (CC); 72 SATC 135 (9 March 2010 where the Constitutional Court stated at para 32: “*The Act clothes the Minister with far-reaching authority in relation to trade policy. It includes the power to issue, subject to the Constitution and the law, trade policy statements or directives and the power to regulate imports and exports.*”

<sup>731</sup> ITAA, s5

<sup>732</sup> *SA Metal Group (Proprietary) Limited v International Trade Administration Commission and Another* (267/2016) [2017] ZASCA 14

<sup>733</sup> ITAA, s6

<sup>734</sup> ITAA, s6(2)

- 545.3. Section 7 of the ITAA establishes the International Trade Administration Commission (ITAC). ITAC is obliged to carry out the functions assigned to it in terms of the Act or by the Minister or that arise out of an obligation of the Republic in terms of a trade agreement.<sup>735</sup> In terms of section 7(2), ITAC is subject to any trade policy statement or directive issued by the Minister in terms of section 5 and any notice issued by the Minister in terms of section 6.<sup>736</sup>
- 545.4. In this context, the Minister has the statutory authority to prohibit coal exports destined for Israel or to place coal exports under a destination-conditioned permit regime. These Trade Policy Directives or Export Control Regulations are legally binding on ITAC (ITAC is subject to ministerial directives under section 5 and to notices under section 6), ensuring executive control over export regimes subject to constitutional and administrative-law constraints. The restriction is typically implemented by publishing a Gazette notice and/or amending the Export Control Regulations schedules (GN R.92 of 2012, as amended), with enforcement through ITAC permit decisions and SARS customs clearance.<sup>737</sup>
- 545.5. Section 5 and 6 of the ITAA must be exercised consistently with the Constitution and other applicable law. The ITAA may lawfully be used to give effect to national policy objectives and international law obligations where rationally connected and properly evidenced. Accordingly, a coal export restriction can be framed as a measure adopted to discharge international obligations and protect constitutional values, provided the measure is lawful, rational and procedurally defensible.<sup>738</sup>

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<sup>735</sup> SA Metal Group (Proprietary) Limited v International Trade Administration Commission and Another (267/2016) [2017] ZASCA 14

<sup>736</sup> SA Metal Group (Proprietary) Limited v International Trade Administration Commission and Another (267/2016) [2017] ZASCA 14 and section 7(2) of the ITAA: “*The Commission— (a) is independent and subject only to— (i) the Constitution and the law; (ii) any Trade Policy Statement or Directive issued by the Minister in terms of section 5; and (iii) any notice issued by the Minister in terms of section 6; and (b) must be impartial and must perform its functions without fear, favour or prejudice.*”

<sup>737</sup> ITAA, s6(1)(c): “*The Minister may, by notice in the Gazette, prescribe that no goods of a specified class or kind, or no goods other than goods of a specified class or kind, may be - (c) exported from the Republic.*” ITAA, S6(2): “*For the purposes of subsection (1) goods may be classified according to - (b) their immediate or final destination; (c) the channels along which they are transported; (e) the purposes for which they are intended to be used; (g) the use of non-renewable natural resources in their production, and their life-cycle impact on the natural environment; or (h) any other classification methods determined by the Minister.*”

<sup>738</sup> During the COVID-19 pandemic, this very power was used. On 27 March 2020, the Minister promulgated Export Control Regulations requiring permits for the export of certain goods, citing national emergency concerns (Gazette 43160, GN R424).

545.6. The Minister of Transport, under the National Ports Act 12 of 2005, is empowered to issue written directions to the ports authority to perform or not perform an act within its powers where necessary to safeguard national security, promote national strategic/economic interests, or discharge an international obligation.<sup>739</sup> Effectively, the Minister may withhold permits, licenses or port access to any vessel whose activities are deemed harmful to South African security interests or in breach of international obligations.<sup>740</sup> The ports authority may, with ministerial approval, make port rules including grounds on which access to a port may be refused and measures to maintain security and good order.<sup>741</sup> Accordingly, once coal exports to Israel are prohibited or made permit-controlled under the ITAA, port-operational decisions (including port access and associated services) can be aligned to enforce the lawfulness of that restriction<sup>742</sup>;

545.7. The Minister of Mineral Resources and Energy is authorised under the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) to impose and enforce conditions on mining and permits, including suspensions or terminations in cases of unlawful or unethical conduct under section 47.<sup>743</sup> The Preamble of the MPRDA acknowledges custodianship and constitutional objectives of the State, while section 3 affirms custodianship.<sup>744</sup> However, the MPRDA is not the primary statute for imposing an export embargo; export prohibitions are most directly under the ITAA, while the MPRDA mechanisms are supplementary (for example, by ensuring that mining-right holders comply with “any other relevant law”).<sup>745</sup>

545.8. The Preamble of the MPRDA *acknowledges* that “*South Africa’s mineral and petroleum resources belong to the nation and that the State is the custodian thereof*”, it further *affirms* that “*the State’s obligation is to protect the environment for the benefit of the present and future generations*” and it further *considers* the State’s “*obligation*

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<sup>739</sup> National Ports Act 12 of 2005, s79: “(1) *The Minister may, in writing, direct the Authority to perform a specified act within the Authority’s power or not to perform a specified act, if such direction is necessary- (a) to safeguard the national security of the Republic; (b) to promote the national, strategic or economic interests of the Republic; or (c) to discharge an international obligation of the Republic.*”

<sup>740</sup> National Ports Act 12 of 2005, s79; Also see S80 providing grounds on which access to a port may be refused ; and see ASCOMARE Expert Legal Opinion.

<sup>741</sup> National Ports Act, s80

<sup>742</sup> National Ports Act 12 of 2005.

<sup>743</sup> Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA), S 47, S25.

<sup>744</sup> MPRDA, s3

<sup>745</sup> MPRDA, s25

*under the Constitution to take legislative and other measures to redress the results of past racial discrimination”.*<sup>746</sup>

545.9. The Preamble itself imposes more than a discretionary regulatory function - it embeds an affirmative constitutional obligation on the Minister to intervene when mineral exploitation implicates fundamental rights or, in this case, international crimes. The MPRDA’s language makes clear that mineral resources are not private commodities to be exploited without regard for their end use; they are national assets held in custodianship for the people of South Africa. Mineral resources are to be regulated in the public interest and within Constitutional constraints. If coal exports are prohibited or made permit-controlled under the ITAA, and if mining-right holders or exports fail to comply with those lawful restrictions, the Minister may rely on the MPRDA’s compliance tools (including conditions of mining rights and section 47 processes) where statutory grounds are met.<sup>747</sup>

545.10. Section 3(1) of the MPRDA designates the State as custodian of mineral resources, obligating it to manage them in the public interest<sup>748</sup>, while section 3(2) provides the Minister with broad powers as custodian of the States resources.<sup>749</sup> Section 47 allows the Minister to impose conditions on mining operations or permits and to suspend or cancel such permits where the holder is involved in unlawful or unethical activities or fails to comply with applicable laws and regulations.<sup>750</sup> This custodial function reinforces the obligation to ensure South African minerals are not used to facilitate or sustain human rights abuses abroad or environmental destruction. The State's decision to facilitate the trade of coal from our land to Israel is indirectly making ordinary South Africans complicit in a crime that they are not invested in nor would ever be interested

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<sup>746</sup> MPRDA, Preamble

<sup>747</sup> MPRDA, s3, s25, s47; NEMA, s24O; Constitution s2, s7, s39(2). And see *Begwanyamama and Earthlife Africa*.

<sup>748</sup> MPRDA, S3: “(1) Mineral and petroleum resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans.”

<sup>749</sup> MPRDA, S3(2): *As the custodian of the nation's mineral and petroleum resources, the State, acting through the Minister, may grant, issue, refuse, control, administer and manage any reconnaissance 35 permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance (b) permit, exploration right and production right*

<sup>750</sup> MPRDA. S47: “(1) Subject to subsections (2), (3) and (4), the Minister may cancel or suspend any reconnaissance permission, prospecting right, mining right, mining permit or retention permit if the holder thereof - (a) is conducting any reconnaissance, prospecting or mining operation in contravention of this Act; (b) breaches any material term or condition of such right, permit or permission; (c) is contravening the approved environmental management programme; or (d) has submitted inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this Act.”

in committing. It is against our public interest to facilitate this genocide through the use of our mineral resources.

545.11. The Constitutional Court has affirmed that resource governance under the MPRDA is constitutionally inflected and must be understood against the Constitution's foundational values and its framework for redressing inequality in access to natural resources.<sup>751</sup> In *Bengwenyama*, the Court explained that resource governance must serve broad and fundamental Constitutional values including equity, dignity and environmental protection.<sup>752</sup> These principles reinforce that executive decisions on mineral-resource governance and trade should be taken with a defensible constitutional rationale and record, particularly where exports have well documented extra-territorial human rights implications.

546. Taken together, these legislative frameworks provide a clear primary power under the ITAA and supporting enforcement levers to suspend or prohibit coal and exports to Israel.<sup>753</sup> These powers operate within South Africa's constitutional framework, which declares the Constitution supreme and binds all organs of state to respect, protect, promote and fulfil the rights in the Bill of Rights.<sup>754</sup> The exercise of export control powers must be consistent with sections 2 and 7(2) of the Constitution and interpreted in light of section 39(2).<sup>755</sup>

547. South Africa's international legal obligations further reinforce the lawful basis for such measures.<sup>756</sup> South Africa is a State Party to the Convention on the Prevention and Punishment of the Crime of Genocide, which imposes a duty to prevent genocide, and to the Rome Statute of the International Criminal Court, which has been domestically incorporated through the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002, creating binding obligations in respect of genocide,

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<sup>751</sup> *Bengwenyama Minerals (Pty) Ltd v Genorah Resources (Pty) Ltd* 2011 (4) SA 113 (CC), para 75: "It is one of the objects of the Act to give effect to the environmental rights protected in section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development. In terms of section 17(1)(c) of the Act the Minister must grant a prospecting right if, amongst other requirements, the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment."

<sup>752</sup> *Bengwenyama Minerals (Pty) Ltd v Genorah Resources*, para 3.

<sup>753</sup> ITAA, s5 and s6.

<sup>754</sup> Constitution, s2 and s7.

<sup>755</sup> Constitution, s39.

<sup>756</sup> Constitution, s231-233.

crimes against humanity and war crimes within South African law.<sup>757</sup> In addition, orders on provisional measures issued by the ICJ in proceedings instituted by South Africa are binding under international law and form part of the matrix of legal obligations relevant to the State's conduct.<sup>758</sup> Under sections 231 to 233 of the Constitution, international agreements and customary international law inform and bind domestic interpretation and conduct.<sup>759</sup>

548. Accordingly, when read together with the Constitutional Court's jurisprudence affirming that all exercises of public power must be lawful and rational, the government possesses not only clear legal authority under domestic statute but a strong, arguable constitutional and international-law obligation to consider and adopt reasonable measures within its powers to avoid complicity in or facilitation of serious international crimes.<sup>760</sup>
549. The most straightforward and effective mechanism the South African government can use is in the hands of the DTIC.<sup>761</sup> In practice this means the Minister (through the DTIC and ITAC) already has authority to halt coal exports to Israel – by issuing a Gazette notice amending export control regulations and listing coal (specifically coal exports to Israel) as restricted. The Minister used precisely this power during the COVID crisis and other commercial instances.<sup>762</sup>
550. Likewise, today the Minister could, as a matter of urgency as the context demands, publish export regulations classifying coal shipments to Israel (as a final destination) as

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<sup>757</sup> Genocide Convention, *Bosnia v Serbia*.

<sup>758</sup> *South Africa v Israel*, Provisional Measures Order of 26 January 2024; and see *LaGrand* (Germany v United States of America) ICJ case confirming that provisional measures are legally binding.

<sup>759</sup> Constitution, s231-233, *Glenister*

<sup>760</sup> *Glenister, Carmichelle, Pharmaceutical Manufacturers, Mohamed, DA v President of RSA*

<sup>761</sup> ITAA s 6(1)(c)–(d).

<sup>762</sup> Department of Trade, Industry and Competition (South Africa), Export Control Regulations (GN R 424 in GG 43148, 27 March 2020) (issued under s 6 of the International Trade Administration Act 71 of 2002).: “COVID -19 EXPORT CONTROL REGULATION: I, Ebrahim Patel in my capacity as Minister responsible for Trade, Industry and Competition and acting under the powers vested in me by Section 6 of the International Trade Administration Act, 2002 (Act 71 of 2002) hereby amend the Regulations promulgated in Government Gazette No. 35007, Notice No. R. 92 dated 10 February 2012 as set out in the Schedule hereto. This amendment will come into operation on the date of publication hereof in the Government Gazette and shall remain in operation for the duration of the national state of disaster declared by the Minister of Cooperative Governance and Traditional Affairs in Government Notice No. 313 of Government Gazette No. 43096 on 15 March 2020 in terms of Section 27(2) of the Disaster Management Act, 2002 (Act 57 of 2002).”

prohibited or requiring permits with destination-based conditions, and provide the duration for such prohibition to persist until Israel ends the genocide and its illegal occupation of Palestine. Such an order, being statutorily authorized, would be lawful.<sup>763</sup>

**D. South Africa's Failure to Meet its Legal Obligations and Failure to Respond to Calls from Civil Society**

551. The South African government and its ministerial departments have been repeatedly and formally apprised of its international and domestic obligations. Between July 2024 and August 2025, the South African BDS Coalition issued a series of letters addressed to the Presidency, the Department of Mineral Resources and Energy, the Department of Transport, the Department of Trade, Industry and Competition and the Department of International Relations and Cooperation.
552. The August 2025 communication called for urgent meetings to discuss immediate and coordinated measures to halt South Africa's coal exports to Israel and to ensure compliance with the binding obligations arising under the Genocide Convention, the Rome Statute Act and the International Convention on the Suppression and Punishment of the Crime of Apartheid.
553. The letters detailed the scale of coal shipments at the time, the involvement of South African and multinational corporations and the legal mechanisms available to prevent further complicity. They further emphasised that South Africa's continued trade in energy resources with Israel not only undermines South Africa's international standing at the ICJ but constitutes a breach of its duties to prevent, punish and not assist genocide leading to potential complicity in war crimes and crimes against humanity.
554. These appeals were echoed across multiple ministries and reiterated through follow up letters, attempted direct engagements and escalating protest action as Israel's genocidal campaign intensified, leaving no doubt that the government has been consistently informed of the factual and legal realities underpinning its obligations but failed to take action to prevent complicity. The cumulative effect is a pattern of official neglect

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<sup>763</sup> ITTA, s6 and see *Pharmaceutical Manufacturers*.

despite sustained warning, advocacy and knowledge of the atrocities committed by Israel and the role coal has played.

555. Civil society organisations and workers' unions in South Africa have increasingly joined global calls for concrete measures to be taken against Israel in response to the ongoing genocide in Gaza and the broader system of apartheid imposed on the Palestinian people. These calls have included demands for educational, sporting and cultural boycotts, as well as calls for the investigation and prosecution of South African citizens who have participated in the IDF in breach of South African law.
556. Within this broader movement for accountability and isolation of the Israeli state, a central and recurring demand has been for the South African government to immediately halt coal exports to Israel, on the basis that such exports materially sustain the genocide, illegal occupation and Israel's military operations. Some examples of civil society action include:

D(i) South Africa's Energy Embargo Campaign:

- 556.1. Protests at the DTIC head offices including the formal submission of memoranda;
- 556.2. Protests at Glencore's head offices demanding an end to the company's complicity in genocide;
- 556.3. Protests at RBCT and Durban ports noising that South Africa's coal "*is directly amplifying the genocide in Gaza*,"<sup>764</sup>;
- 556.4. COSATU's 22 August 2024 statement backing demands by civil society that coal giant Glencore stop sending coal to Israel, warning that "*fuelling apartheid and genocide is a crime*"<sup>765</sup>;
- 556.5. On 11 January 2024, the National Union of Metal Workers South Africa (NUMSA) issued a statement in support of South Africa's ICJ case against Israel and called for President Ramaphosa to take action against the Apartheid State: "*We..demand that*

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<sup>764</sup> Haffejee, Ground Up, *Call for African Rainbow Minerals to stop selling coal to Israel*.

<sup>765</sup> Congress of South African Trade Unions (COSATU), '*Dockworkers and Coal Export Protests in Solidarity with Palestine*' (press release, October 2025) <https://mediadon.co.za/cosatuu-supports-the-call-on-glencore-to-stop-sending-coal-to-israel-fuelling-apartheid-and-genocide-is-a-crime/> accessed 10 November 2025.

*President Cyril Ramaphosa must stop moving at a snail's pace in implementing the majority decision of the South African parliament to close the Israeli embassy and fire its ambassador for good. We must cut all trade ties with the racist, Zionist apartheid Israel regime which is backward and primitive and is in the process of eliminating Palestinians through ethnic cleansing.”*<sup>766</sup>

556.6. On 28 November 2024, NUMSA similarly urged the government to cut diplomatic ties and impose sanctions on “*Apartheid Israel,*” effectively calling for an end to trade with the apartheid State<sup>767</sup>;

556.7. The South African Federation of Trade Unions (SAFTU) has reiterated these demands: its end-of-year 2024 communique lamented that Minister Parks Tau was defending coal exports to Israel, “*contradicting the global call for trade restrictions against apartheid states*”<sup>768</sup>;

556.8. In September 2025 SAFTU again called for a workers’ boycott of Israeli goods, declaring that dockers and other transport workers must “*refuse to handle any goods ... linked in any way to Israel*”<sup>769</sup>. These union resolutions – echoing global labour solidarity – demand government to make its policy coherent with South Africa’s moral and legal stance.

556.9. The South African Transport and Allied Workers Union (SATAWU) showed its support for Palestine in a statement in January 2024 where it chose to “*categorically place on record and reiterate its unequivocal solidarity with the people of Palestine*” and confirmed that “*our conviction as a revolutionary trade union is to ensure that the virus of apartheid and neocolonialism ceases to replicate itself subtly in developed countries and aggressively in the Global South. When we talk about subtle and*

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<sup>766</sup> Polity, *NUMSA wishes the South African legal team which is fighting for justice for Palestinians at the ICJ all the best!*, (Statement by NUMSA General Secretary) (11 January 2024), <https://www.polity.org.za/article/numsa-wishes-the-south-african-legal-team-which-is-fighting-for-justice-for-palestinians-at-the-icj-all-the-best-2024-01-11> accessed on 8 March 2026

<sup>767</sup> NUMSA, *NUMSA continues to demand that the South African government must impose sanctions on Apartheid Israel*, (28 November 2024) <https://numsa.org.za/wp-content/uploads/2024/11/edited-NUMSA-continues-to-demand-that-the-South-African-government-must-impose-sanctions-on-Apartheid-Israel.pdf> accessed 10 November 2025

<sup>768</sup> SAFTU, *End of Year Statement - 2024* (30 December 2024) <https://saftu.org.za/archives/8716> accessed on 10 November 2025

<sup>769</sup> SAFTU, *SAFTU Welcomes UN Report Confirming Genocide in Gaza* (17 September 2025) <https://saftu.org.za/archives/9061> accessed on 10 November 2025.

*aggressive forms of oppression, we mean that, on one hand, suppression has been normalised through democratic and legislative processes, and on the other hand, subjugation is imposed through acts of violence and genocide such as the case in Palestine.”*

556.10. The General Industries Workers Union of South Africa (GIWUSA) has linked worker solidarity with Palestine voicing opposition to coal exports that fuel genocide. On 18 October 2023 GIWUSA issued a media statement calling for a “National Day of Action” against Israel’s campaign in Gaza<sup>770</sup>;

556.11. On 21 August 2025 GIWUSA President, Mametlwe Sebei, publicly called for an end to South African coal exports to Israel, arguing that continued trade undermines South Africa’s stated opposition to genocide and sustains Israel’s electricity grid and military infrastructure.<sup>771</sup> Addressing protests and public campaigns against coal shipments to Israel, Sebei stated that South Africa cannot simultaneously pursue proceedings against Israel before the ICJ while continuing to supply coal that helps power Israel’s industrial and military complex. GIWUSA further supported calls for a comprehensive embargo on coal exports to Israel as part of a broader national campaign demanding that South African resources not be used to sustain the ongoing destruction in Gaza.<sup>772</sup>

556.12. As reported in *PassBlue* in April 2025, the spokesperson for the National Union of Mineworkers (NUM) Livhuwani Mammburu called on all mining companies to consider the implications of their continued business with Israel, particularly in light of the mass killings and civilian casualties, mostly consisting of women and children, inflicted by the IDF operations in Gaza and to halt coal exports to Israel: “*The NUM’s*

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<sup>770</sup> GIWUSA, Media Statement, *A Call for a national day of action - in protest against Israeli carnage in Gaza and solidarity with Palestine*, (18 October 2023) <https://www.workersinpalestine.org/news/general-industries-workers-union-of-south-africa> accessed on 10 November 2025

<sup>771</sup> Mametlwe Sebei quoted in “*South Africans protest coal shipments to Israel, demand embargo*”, *Anadolu Agency* (21 August 2025) <https://www.aa.com.tr/en/africa/south-africans-protest-coal-shipments-to-israel-demand-embargo/3665890> accessed on 7 March 2026

<sup>772</sup> AA, *South Africans protest coal shipments to Israel, demand embargo*. And see, Steven Adamah, *Med Africa Times*, *South Africans Demand Halt to Coal Exports to Israel Over Gaza War*, (25 August 2025) [South Africans Demand Halt to Coal Exports to Israel Over Gaza War – Medafrica Times](https://www.medafrica.com/news/south-africans-demand-halt-to-coal-exports-to-israel-over-gaza-war) accessed on 7 March 2023

*impassioned call to halt coal exports to Israel mirrors a growing and increasingly vocal sentiment within South Africa”.*<sup>773</sup>

556.13. Most recently, on 27 January 2026, the National Union of Public Service and Allied Workers (NUPSAW) in the Eastern Cape expressed its outrage and total rejection of reports that an Israeli delegation has been granted access to Mthatha General Hospital and Nelson Mandela Academic Hospital.<sup>774</sup> NUPSAW stated: “*Let it be stated without hesitation or diplomacy: There can be no normalisation, cooperation, or partnership with an apartheid regime.*”

D(ii) Alignment with calls for a Global Energy and Arms Embargo:

557. South Africa’s workers align with global worker sentiment towards the genocidal apartheid regime and the dockworkers attempts to block Israel-bound cargo:

557.1. In July 2025, Greek port workers (ENEDEP union, Piraeus) publicly refused to unload the *Ever Golden*, a container ship carrying military-grade steel to Israel<sup>775</sup>;

557.2. In June 2025, CGT dockworkers at Fos-sur-Mer (France) similarly refused to load crates of machine-gun parts for Israel<sup>776</sup>;

557.3. Swedish dockers announced in January 2025 a blockade of all military cargo to Israel during the Gaza war<sup>777</sup>;

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<sup>773</sup> Damilola Banjo, PassBlue, *Coal From South Africa Keeps Flowing to Israel Despite the ICJ Genocide Case*, (21 April 2026) accessed on 8 March 2026.

<sup>774</sup> NUPSAW, *Eastern Cape condemns Israeli presence in public hospitals and rejects any collaboration with apartheid Israel*, (27 January 2026) <https://nupsaw.org.za/index.php/2026/01/27/nupsaw-eastern-cape-condemns-israeli-presence-in-public-hospitals-and-rejects-any-collaboration-with-apartheid-israel/> accessed on 7 March 2026

<sup>775</sup> Oscar Ricket, Middle East Eye, *Greek dock workers will refuse to unload Israel's 'murderous cargo'* (15 July 2025) <https://www.middleeasteye.net/news/greek-dock-workers-will-refuse-unload-ship-carrying-military-grade-steel-israel/> accessed 10 November 2025.

<sup>776</sup> BHRC, *France: Dockworkers at Marseille port block Israel-bound shipment of machine gun components made by co. Eurolinks in protest of "ongoing genocide"*, (5 January 2025) <https://www.business-humanrights.org/en/latest-news/france-dockworkers-at-marseille-port-block-israel-bound-shipment-of-machine-gun-components-made-by-co-eurolinks-in-protest-of-ongoing-genocide/> accessed 10 November 2025.

<sup>777</sup> Business and Human Rights Centre, *Sweden: Dockworkers Union announces blockade of all military trade with Israel*, (14 January 2025) <https://www.business-humanrights.org/en/latest-news/sweden-dockworkers-union-announces-blockade-of-all-military-trade-with-israel/> accessed on 15 November 2025

- 557.4. Moroccan unions heeded calls in April 2025 to boycott a Maersk vessel carrying suspected F-35 parts to Israel<sup>778</sup>;
- 557.5. In Spain, Barcelona’s port stevedores’ union (OEPB) vowed “*not to load or unload military materials onto any ship bound for Israel or another warzone*”<sup>779</sup>;
- 557.6. Even in the United States, ILWU Local 10 (San Francisco) unanimously passed an International Workers Day (1 May 2024) motion declaring that “*the ILWU will refuse to handle military cargo to Israel*” and will honour picket lines against the Gaza war<sup>780</sup>;
- 557.7. Italian labour groups similarly mobilized for Gaza. On 22 September 2025, grassroots unions including Unione Sindacale di Base (USB), Confederazione Unitaria di Base (CUB) and Sindacato Generale di Base (SGB) called a one-day general strike to protest Italy’s complicity in the Gaza war, shutting down ports in Genoa, Livorno, Trieste and Venice.<sup>781</sup> Tens of thousands of workers struck and rallied nationwide (in at least 75 cities) under the slogan “*Let’s Block Everything,*” explicitly demanding an end to arms and other shipments to Israel.<sup>782</sup> In Genoa and Livorno in particular, dockers blocked port entrances to prevent Israeli-linked cargo from moving, effectively halting transfers they said were bound for Israel’s military effort.<sup>783</sup>

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<sup>778</sup> Business and Human Rights Centre, *Morocco: Union calls on port workers to boycott Maersk cargo ship reportedly transporting F-35 fighter jet components to Israel during ‘genocidal war’ on Gaza* (15 April 2025) <https://www.business-humanrights.org/en/latest-news/morocco-port-workers-union-calls-for-workers-to-boycott-maersk-cargo-ship-reportedly-transporting-spares-parts-for-f-35-fighter-jets-to-israel-during-genocidal-war-on-gaza/> accessed on 15 November 2025

<sup>779</sup> Business and Human Rights Centre, *Spain: Barcelona dockworkers union vows not to load weapons for Israel or any conflict zone amid increased direct action against the bombardment of Gaza*, (7 November 2023) <https://www.business-humanrights.org/fr/derni%C3%A8res-actualit%C3%A9s/spain-barcelona-dockworkers-union-vows-not-to-load-weapons-for-israel-or-any-conflict-zone-amid-increased-direct-action-against-the-bombardment-of-gaza/> accessed on 15 November 2025

<sup>780</sup> The Internationalist, *Bay Area ILWU Local 10 calls for Labour to boycott of arms to Israel*, (May 2024) <https://www.internationalist.org/ilwu-local-10-calls-for-labor-boycott-arms-to-israel-2405.html> accessed on 15 November 2025.

<sup>781</sup> Tasnima Uddin, Jacobin, *The Making of Italy’s Pro-Palestine General Strike*, (16 October 2025) <https://jacobin.com/2025/10/italy-general-strike-palestine-labor> accessed on 30 November 2025.

<sup>782</sup> Kassam, *Disruption across Italy as tens of thousands protest against Gaza war*, ; Rebel News Ireland, *Block Everything: Workers’ Strikes and Palestine Solidarity in Italy*, (25 September 2025) <https://rebelnews.ie/2025/09/25/block-everything-workers-strikes-and-palestine-solidarity-in-italy/> accessed on 30 November 2025.

<sup>783</sup> World Socialist Website, *Dockworkers in Genoa and Livorno block Israeli arms shipment, as mass protests denounce genocide in Gaza*, (30 September 2025) <https://www.wsws.org/en/articles/2025/10/01/ltqa-o01.html> accessed pm 30 November 2025.

- 557.8. On 6 February 2026, dockworkers across at least 21 Mediterranean ports co-ordinated walkouts to protest the use of civilian ports for military purposes and arms shipments, and against what unions describe as the emergence of a “war economy” in Europe. Participating unions mobilised under the slogan “Dockworkers do not work for war.”<sup>784</sup> Actions occurred in Greek ports such as Piraeus and Elefsina; Spain’s Basque region at Bilbao and Pasaia; Mersin, Turkey; ports across France and Germany, including Marseille, Bremen and Hamburg; and 12 Italian cities.<sup>785</sup>
558. These large-scale labour actions highlight the urgent and desperate need to shutdown access to critical transport and port facilities where exports are linked to Israel and the genocide it has been committing in solidarity with the Palestinian people as they fight to survive the Israeli genocide and colonization project. Trade unions and worker movements have long stood as living expressions of collective democracy in action, giving ordinary working people a structured voice in economic and political systems that too often privilege wealth and power over dignity and survival. The widespread condemnation for Israel’s actions by unions across the globe demonstrates a growing consensus within organised labour that workers’ collective power must be used to oppose injustice and to demand that trade and economic relations reflect the values of human dignity, justice and solidarity with oppressed peoples, particularly when States fail in their obligations to protect against and punish crimes, such as genocide and illegal occupation.

D(iii) Calls for Education, Sporting and Cultural Boycotts:

559. South African higher education institutions and student bodies increasingly aligned themselves with calls for academic boycott and disengagement from Israeli institutions:

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<sup>784</sup> London School of Economics and Political Science, Prateek Dhabhai, *Mediterranean dockworkers are striking to protest against war*, (3 March 2026), <https://blogs.lse.ac.uk/businessreview/2026/03/03/mediterranean-dockworkers-are-striking-to-protest-against-war/> accessed on 7 March 2026.

<sup>785</sup> Prateek Dhabhai, *Mediterranean dockworkers are striking to protest against war*

- 559.1. On 14 December 2023, the University of Fort Hare Council stated that it “*cannot stand silent as we witness the unfolding genocide*” and expressly committed itself not to pursue “*any institutional links with Israeli institutions*”.<sup>786</sup>
- 559.2. In May 2024, students at Wits joined global university students in demanding full disclosure of the university’s relations with Israeli and Israel aligned institutions and called for divestment.<sup>787</sup>
- 559.3. On 24 June 2024, UCT adopted a resolution that “*no UCT academic may enter into relations, or continue relations with*” research groups affiliated to the IDF or the broader Israeli military establishment.<sup>788</sup>
- 559.4. Shortly thereafter, the University of the Western Cape announced that it would “*fully disengage from Israeli academic institutions*” and would advocate nationally for South African universities to adopt full academic disengagement from Israel.<sup>789</sup>
560. Calls for a sporting boycott likewise intensified in 2024. On 26 July 2024, the Department of Sport, Arts and Culture condemned Israel’s participation in the Paris Olympics and declared that, as with apartheid South Africa, “*there can be No Normal Sport with an Abnormal Society*”.<sup>790</sup> Three days later, on 29 July 2024, South African Jews for a Free Palestine endorsed the demand that Israel be banned from “*the Olympics, FIFA and all international sporting bodies*”, stating that “*There must be no normal sport for an abnormal, genocidal, apartheid Israel.*”<sup>791</sup>

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<sup>786</sup> University of Fort Hare, *UFH Council Statement on the Situation in Palestine* (14 December 2023), [UFH-Council-Statement-on-the-situation-in-Palestine-SIGNED-14-Dec-2023.pdf](#) accessed on 7 March 2026

<sup>787</sup> Thando Maeko, Mail & Guardian ‘*Wits students call on university to divest from Israel*’ (7 May 2024) [Wits students call on university to divest from Israel – The Mail & Guardian](#) accessed on 7 May 2026

<sup>788</sup> University of Cape Town, ‘*UCT Council adopts two Senate resolutions on Gaza conflict*’ (24 June 2024) [UCT Council adopts two Senate resolutions on Gaza conflict | UCT News](#) accessed on 7 March 2026.

<sup>789</sup> University of the Western Cape, ‘*University of the Western Cape Announce Immediate Academic Disengagement from Israeli Institutions*’ (28 June 2024) [University of the Western Cape Announce Immedi... | UWC](#) accessed on 7 March 2026.

<sup>790</sup> Department of Sport, Arts and Culture, ‘*Sports Arts and Culture on participation of Israel in Paris 2024 Olympics*’ (26 July 2024) [Sports Arts and Culture on participation of Israel in Paris 2024 Olympics | South African Government](#) accessed on 7 March 2026.

<sup>791</sup> South African Jews for a Free Palestine, ‘*South African Jews for a Free Palestine Demands Banning Israel from the Olympics*’ (29 July 2024) [South African Jews for a Free Palestine Demands Banning Israel from the Olympics - South African Jews for a Free Palestine](#) accessed on 7 March 2026.

561. These interventions reflect a clear South African call that sporting institutions, like trade institutions, should not be used to normalise or shield grave international wrongdoing.
562. On the cultural front, South African boycott calls also became more explicit. In November 2024, the Documentary Filmmakers Association of South Africa called on local and international media, film and cultural institutions to “*cut cultural, diplomatic, and economic relations with Israel*” and stated that “*we demand urgent international intervention to protect journalists and filmmakers, address the humanitarian crisis and bring an end to impunity for these grave violations.*” The Association further stressed that documentary filmmakers have a duty to bear witness and that South African cultural institutions should take a stand against complicity in the assault on Gaza.<sup>792</sup>
563. These cultural boycott demands reinforced the same underlying principle animating the coal embargo campaign, namely that South African institutions (public or private) should not continue ordinary relations with a state accused of genocide and apartheid.
564. Parallel to these boycott calls, there have also been direct demands that South African citizens who joined or served with the IDF be investigated and prosecuted. On 18 December 2023, DIRCO warned that any South African wishing to render foreign military assistance in Israel required prior approval from the NCACC and stated unequivocally that “*any person joining the IDF without the necessary permission of the NCACC is breaking the law and can be prosecuted.*”<sup>793</sup> On 13 March 2024, Former Minister Naledi Pandor publicly warned South Africans fighting alongside or in the IDF that: “*When you come home, we are going to arrest you.*”<sup>794</sup>

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<sup>792</sup> Lesego Chepape, Mail & Guardian *South African filmmakers call for cultural boycott against Israel* (14 November 2024), [South African filmmakers call for cultural boycott against Israel – The Mail & Guardian](#) accessed on 7 March 2026 ; Documentary Filmmakers Association of South Africa, ‘*Press Statement by DFA: The War on Palestine*’ [Press Statement by the Documentary Filmmakers Association of South Africa \(DFA\) on the war on Palestine. - Documentary Filmmakers' Association](#) accessed on 7 March 2026

<sup>793</sup> Department of International Relations and Cooperation, ‘*South African nationals to avoid joining foreign armed forces which may contribute to the violation of domestic and international law*’ (18 December 2023) [South African nationals to avoid joining foreign armed forces which may contribute to the violation of domestic and international law - DIRCO](#) accessed on 7 February 2026;

<sup>794</sup> Gerald Imray, Associated Press ‘*South Africa’s foreign minister says citizens fighting with Israeli forces in Gaza will be arrested*’ (13 March 2024), [South Africa's foreign minister says citizens fighting with Israeli forces in Gaza will be arrested | AP News](#) accessed on 7 March 2026.

D(iv) International Sanctions and Boycotts Resulting in the Downfall of Apartheid South Africa:

565. The international response to apartheid South Africa provides one of the clearest historical precedents of how sustained international condemnation, sanctions and coordinated boycott measures can be deployed to isolate and dismantle a regime engaged in systematic racial oppression and crimes under international law.
566. Addressing the delegation at People’s Congress for the Hague Group on 7 March 2026, Zwelinzima Vavi (SAFTU) stated: *“For us, the issue of an energy embargo is not abstract. South Africa lived through decades in which the apartheid regime depended on international trade, energy flows, finance and diplomatic protection to survive. The apartheid state would not have collapsed as it did without the global boycott, divestment and sanctions movement. Workers across the world refused to handle apartheid cargo. Ports were blocked. Banks withdrew financing. Energy supplies were disrupted.”*
567. Over several decades, the United Nations, international organisations, States, trade unions, universities, sporting bodies and civil society movements adopted progressively stronger measures aimed at delegitimising, isolating and economically constraining the apartheid State. These measures ranged from diplomatic censure and arms embargoes to economic sanctions, oil restrictions and sweeping cultural, sporting and academic boycotts. Collectively, these actions transformed South Africa into a pariah state and exerted mounting political, economic and moral pressure that contributed significantly to the eventual dismantling of the apartheid system.
568. Some notable international actions include:
- 568.1. The UN Security Council, in its first action on South Africa, adopted Resolution 134 in April 1960 deploring the policies and actions of the South African government in the wake of the killing of 69 peaceful African protesters in Sharpeville by the police on 21 March.<sup>795</sup> The Council called upon the government to abandon its policies of apartheid and racial discrimination;

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<sup>795</sup> United Nations South Africa, *The UN: Partner in the Struggle against Apartheid*, <https://southafrica.un.org/en/about/about-the-un?utm> accessed on 7 March 2026.

- 568.2. UN General Assembly Resolution 1761 of 6 November 1962, requested Member States to separately or collectively, take concrete coercive steps including breaking diplomatic relations, closing ports to South African vessels, prohibiting their own ships from entering South African ports, boycotting South African goods, refraining from exporting goods including arms and ammunition, and refusing landing and passage facilities to South African aircraft<sup>796</sup>;
- 568.3. The General Assembly, in Resolution 1899 (XVIII) on the question of Namibia, urged all States to refrain from supplying petroleum to South Africa (13 November 1963)<sup>797</sup>;
- 568.4. The IOC barred South Africa from Olympic participation because of apartheid and the South African Olympic Committee was formally expelled in 1970<sup>798</sup>;
- 568.5. In Resolution 31/6 of 26 October 1976, adopted after the Soweto uprisings, the General Assembly called for a far more severe response and pressed for comprehensive mandatory sanctions against South Africa.<sup>799</sup> This resolution also intensified support for implementing the arms embargo and for expanding pressure across multiple sectors.
- 568.6. In Resolution 418 of November 1977, the Security Council determined that South Africa's acquisition of arms constituted a threat to the maintenance of international peace and security and imposed a mandatory arms embargo.<sup>800</sup> States were required to cease supplying arms, ammunition, military vehicles and equipment, paramilitary police equipment, spare parts and related production assistance;

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<sup>796</sup> UNHCR, *The policies of apartheid of the Government of the Republic of South Africa*,

<sup>797</sup> United Nations, Resolution 181 (1963). Resolution of 7 August 1963 [S/53860  
<https://docs.un.org/en/S/RES/181%281963%29?>

<sup>798</sup> The Olympics, *Find Out Why South Africa Was Barred From the Olympics for 32 Years*, (26 July 2018),  
<https://www.olympics.com/en/news/why-south-africa-barred-from-the-olympics-apartheid?utm> accessed on 7 March 2026

<sup>799</sup> UN Resolution 31/6 of 26 October 1976, *Policies of the apartheid Government of South Africa*,  
<https://docs.un.org/en/A/RES/31/6?utm> accessed on 7 March 2026

<sup>800</sup> UN Digital Library, *Resolution 418 (1977) / adopted by the Security Council at its 2046th meeting, on 4 November 1977*, <https://digitallibrary.un.org/record/66633?ln=en&utm> accessed on 7 March 2026

- 568.7. In Resolution 558 of 13 December 1984, the Security Council reaffirmed Resolution 418 and asked all states to refrain from importing arms, ammunition and military vehicles produced in South Africa<sup>801</sup>;
- 568.8. In Resolution 569, the Security Council condemned the apartheid system, the mass arrests, detentions and murders committed by Pretoria, and then urged states to adopt a broad package of measures. These included no new loans to South Africa, no new investment, an embargo on the sale of computer equipment to the police and armed forces, a ban on new contracts in the nuclear field, an effective oil embargo and action to prevent cultural and sporting support for apartheid.<sup>802</sup>
- 568.9. The International Convention against Apartheid in Sports, adopted in Resolution 40/64 on 10 December 1985, required states parties to take steps against sporting contacts with apartheid South Africa. It entrenched the principle that athletic engagement with apartheid was not neutral and should be legally restricted.<sup>803</sup>
- 568.10. The Commonwealth of Nations, which included the United Kingdom, Canada, Australia, India and numerous African and Caribbean states, adopted a coordinated programme of sanctions through the 1985 Nassau Accord and subsequent Commonwealth decisions. These measures included bans on new government loans to South Africa, restrictions on new investments, prohibitions on imports of key South African commodities such as coal, iron and steel and the suspension of air links. The Commonwealth also encouraged broader diplomatic and economic isolation of the apartheid regime as part of a collective effort to pressure South Africa to dismantle apartheid.<sup>804</sup>
- 568.11. The United States promulgation of the Comprehensive Anti-Apartheid Act of 1986 was the strongest national sanctions law adopted by a major Western power. The Act prohibited loans, new investments and a range of other transactions with South Africa

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<sup>801</sup> United Nations, *Resolution 558 (1984) of 13 December 1984*, <https://docs.un.org/en/S/RES/558%281984%29?utm> accessed on 7 March 2026

<sup>802</sup> United Nations, Security Council Resolution 569 of 26 July 1985, <https://docs.un.org/en/S/RES/569%281985%29?utm> accessed on 7 March 2026

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<sup>804</sup> Commonwealth Secretariat, *The Nassau Accord on South Africa* (21 October 1985) <https://pmtranscripts.pmc.gov.au/sites/default/files/original/00006766.pdf?utm> accessed on 8 March 2026

including the restrictions on the import of key South African commodities including coal, iron, steel, uranium and agricultural products.<sup>805</sup>

569. These measures demonstrate that even in circumstances where comprehensive and universally enforced United Nations sanctions are difficult to secure, sustained international pressure through a combination of UN resolutions, coordinated State action and widespread civil society boycotts can exert decisive influence on regimes engaged in grave violations of international law. The global campaign against apartheid, including economic sanctions, arms embargoes, diplomatic isolation and cultural, sporting and academic boycotts, significantly contributed to the weakening and eventual dismantling of the apartheid system.
570. The historical experience of apartheid in South Africa serves as a powerful blueprint for the South African government and Third States to fulfil their obligations under international law and to refrain from aiding or assisting serious breaches of peremptory norms. South Africa must take lawful countermeasures, including sanctions and trade restrictions, to do everything in its power to pressure Israel to stop the genocide and its unlawful occupation of Palestine.

## **XI. THE CASE FOR AN IMMEDIATE COAL EMBARGO**

571. Despite all the dictates of international and constitutional law, and possessing the knowledge and all necessary legislative powers, inclusive of calls from local and global civil society, South Africa has failed to prevent the export of its coal to Israel.
572. By contrast, Colombia imposed a total coal embargo in August 2025 through Presidential Decree<sup>806</sup>, explicitly citing coal as being used in fuelling Israel's war in Gaza. Coal is Colombia's second most valuable export. In 2023, Colombia shipped nearly \$447 million worth of coal to Israel, accounting for 5% of total exports and nearly

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<sup>805</sup> Comprehensive Anti-Apartheid Act (1986), <https://www.cia.gov/readingroom/docs/CIA-RDP87B00858R000600890003-0.pdf?utm> accessed on 7 March 2026

<sup>806</sup> Yieh News 'Colombia bans coal exports to Israel to prevent contribution to Gaza conflict' (3 September 2025) <https://www.yieh.com/en/News/colombia-bans-coal-exports-to-israel-to-prevent-contribution-to-gaza-conflict/156581> accessed 8 December 2025.

half of Israel's coal imports.<sup>807</sup> Coal comprised 90% of Colombia's exports to Israel<sup>808</sup>, Despite this, Colombia was still able to take a principled stance against genocide.

573. Colombia's stance exposes South Africa's failure to comply with its legal obligations, despite having far less economic exposure.<sup>809</sup> South Africa's coal exports to Israel comprise of approximately 1-3% of its total coal exports.<sup>810</sup> There is no reason why South Africa or the responsible corporations cannot take immediate measures to divert these exports to other countries and markets not accused of having committed the gravest of international crimes.
574. South Africa possesses actual and constructive knowledge of the ongoing genocide and related atrocity crimes being committed against the Palestinian people.<sup>811</sup> This is not merely inferred from media reporting or general diplomatic awareness but is established by South Africa's own legal position as applicant in the ICJ case *South Africa v. Israel*, wherein South Africa has formally alleged and provided evidence to the effect that it believes that Israel is committing acts that constitute genocide.<sup>812</sup>
575. Any claims that "no legal framework" exists to restrict such trade are demonstrably false: as shown above, existing statutes and precedent empower various Ministers to impose immediate export control regulations without new legislation or international authorisation as demonstrated during the COVID-19 Pandemic. Failure to act is not due to legislative gaps, but political reluctance.
576. Assertions that ICJ orders or Hague Group commitments are insufficient legal grounds is also incorrect.<sup>813</sup> The Genocide Convention is domesticated by South African law, The Rome Statute Act and the ICJ's Provisional Measures (26 January, 28 March and 24 May 2024) create binding obligations to prevent genocide and to cease any form of

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<sup>807</sup> Business Insider Africa, *South Africa becomes Israel's top coal supplier after Colombia cuts off shipments* (16 December 2025)

<sup>808</sup> Ernest Young, Tax Alerts '*Colombia prohibits coal exports to Israel*' (26 August 2024 [https://www.ey.com/en\\_gl/technical/tax-alerts/colombia-prohibits-coal-exports-to-israel](https://www.ey.com/en_gl/technical/tax-alerts/colombia-prohibits-coal-exports-to-israel), accessed 8 December 2025)

<sup>809</sup> See Section I above.

<sup>810</sup> See Section II above.

<sup>811</sup> See Section II, III, IV above and Annexures A – C below.

<sup>812</sup> See Section IX above.

<sup>813</sup> See PassBlue, *Coal From South Africa Keeps Flowing to Israel Despite the ICJ Case* where anonymous government officials were interviewed

assistance to its commission. Furthermore, Constitutional Court jurisprudence affirms that both binding and non-binding international law is law in the Republic unless it does not align with Constitutional provisions. The mechanisms available under the ITAA can be used to prevent complicity in genocide and crimes against humanity.

577. South Africa’s political posture has demanded action of itself. The Minister of the Department of International Relations and Cooperation, Ronald Lamola, stated on 17 September 2025, “*the need for international action has never been more urgent - all States must fulfil their solemn obligations under the Genocide Convention.*”<sup>814</sup>
578. Furthermore, on 30 January 2026, DIRCO issued a statement<sup>815</sup> reporting the declaration of the Charge d’Affaires of the Israeli Embassy as persona non grata due to the Israeli Embassy’s ‘unacceptable violations of diplomatic norms and practices.’ The Chairperson of the Portfolio Committee on International Relations and Cooperation specifically mentioned that “*this decision is in line with a long taken resolution by Parliament on matters of historical injustices unleashed by Israel on Palestine since 1948.*”<sup>816</sup>
579. President Ramaphosa has repeatedly condemned Israel’s genocide, including at the 80th UN General Assembly in September 2025, where he declared that “*all states, including Israel, must comply with our collective obligations under international law*”<sup>817</sup> and further on 14 October 2025, when he reaffirmed that South Africa “*remains resolutely committed to using every available legal and diplomatic avenue to protect the people of Palestine.*”<sup>818</sup>

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<sup>814</sup> Ministry of Justice and Correctional Services (South Africa), ‘*South Africa calls on all States to take action to halt the genocide in Gaza*’ (press release, 17 September 2025) <https://dirco.gov.za/south-africa-calls-on-all-states-to-take-action-to-halt-the-genocide-in-gaza/> accessed 10 November 2025.

<sup>815</sup> The Parliamentary Communication Services on behalf of the Chairperson of the Portfolio Committee on International Relations and Cooperation, Mr Supra Mahumapelo ‘*Media Statement: IR Committee Chairperson Supports Dirco’s Decision Declaring Israel’s Ambassador Persona Non Grata*’ 30 January 2026 available at <https://www.parliament.gov.za/press-releases/media-statement-ir-committee-chairperson-supports-dircos-decision-declaring-israels-ambassador-persona-non-grata>, accessed on 30 January 2026.

<sup>816</sup> Parliament of the Republic of South Africa, *Media Statement*, (30 January 2026)

<sup>817</sup> The Presidency, *Statement by His Excellency President Cyril Ramaphosa during the High-Level on Two-State Solution, UN General Assembly, New York, USA*, (22 September 2025), <https://www.thepresidency.gov.za/statement-his-excellency-president-cyril-ramaphosa-during-high-level-two-state-solution-un-general> accessed 15 November 2025.

<sup>818</sup> The Presidency, *President Ramaphosa Responses to Questions for Oral Reply in the National Council of Provinces (NCOP), Parliament, Cape Town* (14 October 2025), <https://www.thepresidency.gov.za/node/9443> accessed 5 December 2025.

580. In January 2024, President Ramaphosa used his weekly newsletter to affirm South Africa's support for the Palestinian struggle: *"As a nation that fought and defeated apartheid, we have a particular obligation to stand up for justice and fundamental human rights for all people, everywhere. It is this obligation that informed our application to the International Court of Justice (ICJ) to halt the violence unleashed by Israel on the Gaza Strip,"*<sup>819</sup>

581. Most recently, on 18 February 2026, President Ramaphosa presented his State of the Nation Address to Parliament where he stated the following<sup>820</sup>:

*"Today, we must realise these aspirations in a world that is rapidly changing. A world in which narrow self-interest has replaced the common good. A world in which trade is used as an instrument of coercion. A world in which might is right and the powerful impose themselves on the weak. To navigate this new world, we must draw on our strength as a nation. Our strength comes from our values. The values of dignity and equality, of non-racialism and non-sexism, diversity and of the inherent worth of every person."*

*"In a world where powerful nations often assert their dominance and influence over less powerful states, our country's commitment to sovereignty and self-determination is sacrosanct. It is not negotiable."*

*"South Africa remains a clear and consistent voice for international law, for justice and for human rights."*

*"We cannot consider ourselves free for as long as the people of Palestine, Cuba, Sudan, Western Sahara and elsewhere suffer occupation, oppression and war."*

582. Yet after nearly two-and-a-half years of genocide and ethnic cleansing, the coal shipments continue to flow to Israel through state-managed infrastructure which in no

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<sup>819</sup> South African Government News Agency, *South Africa bears moral duty to act against genocide* (29 January 2024) <https://www.sanews.gov.za/south-africa/south-africa-bears-moral-duty-act-against-genocide>, accessed 8 December 2025.

<sup>820</sup> State of the Nation Address by President Cyril Ramaphosa (12 February 2026), <https://www.thepresidency.gov.za/state-nation-address-president-cyril-ramaphosa-1> accessed on 24 February 2026.

uncertainty continues to fuel an ongoing genocide, illegal occupation and apartheid.<sup>821</sup> This is a contradiction that erodes both credibility and the moral authority of South Africa's stance on genocide and fundamental human rights.

583. To quote Zwelinzima Vavi (SAFTU) at the People's Congress of the Hague Group to End the Nakba: *"But we must also speak honestly about the role of states. One of the most disturbing realities today is the level of double standards displayed by governments across the world — including governments that publicly claim to support the Palestinian cause. Many governments condemn Israel rhetorically at international forums. Some vote for resolutions at the United Nations. Yet at the same time their economies continue to trade with Israeli-linked supply chains, including in energy, minerals, technology and finance."*
584. If the government's commitments are genuine, President Ramaphosa and his cabinet must exercise their executive authority and take urgent and immediate action to suspend and prevent South African coal from being used in the commission of international crimes and meet their domestic and international legal obligations.<sup>822</sup>
585. The Minister of the DTIC must impose targeted export control regulations, and where necessary policy directives, conditions and prohibitions on coal exports where the final destination of South African coal is Israel. The DTIC and DMRE wield operative levers to prevent ongoing complicity. DIRCO through its ICJ-derived knowledge should inform these departments to assert those levers. The current institutional paralysis demands resolution through a coordinated and lawful intervention, not institutional buck-passing.
586. The State fully owns the critical infrastructure (Transnet SOC, including TNPA etc)<sup>823</sup>, to order a moratorium on coal shipments at State ports and State resources if it chooses. Control over this logistical infrastructure gives the State practical control over the export flow of coal. Furthermore, the legal opinion by ASCOMARE and the mechanisms

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<sup>821</sup> See Sections I-III above.

<sup>822</sup> Constitution, s85(2) provides: "(2) The President exercises the executive authority, together with the other members of the Cabinet, by— (a) implementing national legislation except where the Constitution or an Act of Parliament provides otherwise; (b) developing and implementing national policy; . . . (e) performing any other executive function provided for in the Constitution or in national legislation."

<sup>823</sup> Transnet SOC Ltd, *Annual Report 2023/24* p 16: "Transnet, a state-owned company (SOC)"

contained in the National Ports Act confirm that coastal States have both the right and the obligation to interrupt or suspend the passage of vessels through their territorial sea when such vessels violate international human rights law, peremptory norms of international law or national interests.<sup>824</sup>

587. In its custodial role, South Africa has the power to regulate, restrict or suspend the extraction and export of mineral resources where it is necessary to uphold constitutional values or comply with international law.
588. This authority, combined with South Africa's ownership and control of the logistics chain, confers the lawful capacity to suspend coal exports that contribute to international crimes or to impose targeted conditions and restrictions where exports risk rendering South Africa or private actors within its jurisdiction complicit under international or domestic law.
589. Any concerns about potential lawsuits<sup>825</sup> are speculative and do not outweigh government's duty to prevent complicity in genocide, war crimes and apartheid.
590. Should corporate objections to export regulations surface, it is those corporations that must proceed to challenge the regulations in court. So long as the Ministers of the various Departments act lawfully and rationally, there is no reason to fear corporate backlash.
591. Colombia's coal measures demonstrate that tailored executive instruments - including a destination-specific coal embargo - are administratively feasible. Furthermore, South African coal exports to Israel are not significant, making up approximately 1-3% of South Africa's global coal exports.
592. South Africa's constitutional framework does not permit private actors to shelter behind the pretext of economic neutrality when their operations foreseeably sustain international crimes - they cannot plausibly deny possessing constructive or actual knowledge of the consequences of their participation in the ongoing illegal occupation and genocide of the Palestinian people.

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<sup>824</sup> See ASCOMARE, Legal Opinion, para 153 – 161, National Ports Act.

<sup>825</sup> See PassBlue, *Coal From South Africa Keeps Flowing to Israel Despite the ICJ Case*

593. The Bill of Rights, read with section 8(2) of the Constitution, binds corporations where the nature of the right and the duty it imposes justify such application. The principle of legality entails that constitutional and international legal norms constrain both State and corporate conduct particularly where *jus cogens* and *erga omnes* obligations are implicated. In this context corporate action cannot compel or induce the State to disregard duties of non-recognition, non-assistance and cooperation with respect to serious violations of international law nor can corporate entities claim insulation from constitutional scrutiny when their activities materially implicate such norms.
594. Constitutional principles that South African law imposes both vertical and horizontal duties, especially where the operations of juristic persons materially impact constitutionally protected rights and values. As such, permitting corporate actors to continue coal exports to Israel who is, at the very least, plausibly committing genocide and factually imposing an unlawful occupation is legally and constitutionally indefensible. The failure to take action is not an administrative lapse - it is a violation of binding public duties grounded in the Constitution and international law.
595. Companies have proactive legal duties in relation to transparency, risk mitigation and responsible conduct.<sup>826</sup> Corporate actors are obliged to disclose information necessary for the protection of constitutional rights.<sup>827</sup> South Africa's jurisprudence, read with the evidence in this report, is significant in contexts where corporate activities materially affect constitutionally protected interests. By necessary implication, where a corporation's commercial operations contribute to or exacerbate grave international crimes - including conduct that may intersect with international environmental crimes - It is up to the State to ensure that no legal obligations are violated within its territory.
596. If restrictions on coal exports to Israel are implemented via proper regulation and statutory mechanisms, companies would have to comply. Based on the legal framework set out above it is assumed that South African courts would uphold regulations that

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<sup>826</sup> See *Company Secretary of ArcelorMittal South Africa v Vaal Environmental Justice Alliance* 2015 (1) SA 515 (SCA) paras 36–38. And see sections IV, V, VIII and IX above.

<sup>827</sup> *ArcelorMittal*, para 82: “Corporations operating within our borders, whether local or international, must be left in no doubt that in relation to the environment in circumstances such as those under discussion, there is no room for secrecy and that constitutional values will be enforced”.

pursue a legitimate public and constitutional interest and fall within statutory bounds. Rights (even of business) can be curtailed by duly enacted law and regulations.

597. The necessity to prevent genocide and protect life is undeniably justifiable. There exists no fundamental or constitutional right to unrestricted trade. The regulation of imports and exports lie squarely within the discretion of the State, which may lawfully impose trade restrictions or prohibitions in pursuit of legitimate objectives including national security, public interest, protection of human rights and compliance with constitutional and international obligations.
598. Under both South African and international law, export prohibitions during periods of conflict or humanitarian emergency are lawful. The World Trade Organization framework permits such measures in wartime or international crises as explained above.<sup>828</sup> The ICC's arrest warrants for Prime Minister Netanyahu and former Defence Minister Gallant, upheld in 2025, reinforce that Israel's conduct amounts to ongoing international war crimes.<sup>829</sup>
599. The government cannot knowingly continue coal exports to Israel which is under investigation for genocide and war crimes. These exports in this context are not neutral - they materially enable internationally condemned conduct including entrenching an illegal occupation and colonization project.<sup>830</sup>
600. Furthermore, South Africa must not supply a State where its own Prime Minister and officials declare their intention to commit genocide, ethnically cleanse and colonize Gaza:

*“The Jews shall rule over their enemies - this is not just a verse in the scroll, it is the reality we are building here on the ground. Gaza will be Jewish, because only this will*

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<sup>828</sup> See World Trade Organization, *General Agreement on Tariffs and Trade* 1994 art XXI(b)(iii) (“security exceptions”).

<sup>829</sup> International Criminal Court, 'Situation in the State of Palestine: Warrant of Arrest for Benjamin Netanyahu and Yoav Gallant' (ICC-01/18-123, 13 August 2025)

<sup>830</sup> See Amira Haas, Haaretz, *In Area C, Faster Demolitions Clear the Way for Jewish Expansion*, (23 February 2026) reporting that Israeli authorities granted only 66 building permits to Palestinians in the occupied West Bank over an 11-year period, while illegal settlers were given 22000 permits. <https://www.haaretz.com/israel-news/2026-02-23/ty-article/.premium/in-area-c-faster-demolitions-clear-the-way-for-jewish-expansion/0000019c-84d9-d666-afbe-fcdbcfc40000> accessed on 24 February 2026.

*ensure true victory and security for the people of Israel.*”<sup>831</sup> – lawmaker Limor Son Har-Melech on 19 February 2026

*“We need the army to enter Rafah, yes when they are fasting when they are tired, when they are weak... The Ramadan fast is the best time to kill them.”*<sup>832</sup> – Almog Cohen, Israeli Knesset Member on 26 March 2024

*“We are imposing a complete siege on Gaza. There will be no electricity, no food, no water, no fuel, everything will be closed. We are fighting human animals, and we are acting accordingly.”*<sup>833</sup> and *“Gaza won’t return to what it was before. We will eliminate everything. If it doesn’t take one day, it will take a week. It will take weeks or even months, we will reach all places”*<sup>834</sup> – Yoav Gallant, Former Israeli Defence Minister on 9 October 2023 and 10 October respectively

*“This is now the opportunity to coordinate an immigration project. A project to encourage the migration of Gaza residents, to countries around the world unmistakably.”*<sup>835</sup> – Itamar Ben Gvir, Former Israeli Minister of National Security

601. If not these statements that feed into the genocidal rhetoric of the Israeli State, then the ICJ’s Provisional Measures, the UN Genocide Report and South Africa’s ICJ submissions have placed enough knowledge before the State to accept that Israel is and continues with its ethnic cleansing and genocide of the Palestinians. Article I of the Genocide Convention makes clear that the duty to prevent arises whenever any “serious

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<sup>831</sup> Yoav Zitun, Elisha Ben Kim, Ynet News, *Watch: Right-wing activists, lawmaker cross into Gaza to push resettlement*, (20 February 2026) <https://www.ynetnews.com/article/rjlj00obrdzg> accessed on 24 February 2026.

<sup>832</sup> Middle East Monitor, *The Ramadan is the best time to kill them. They’re weak and tired.*, (26 March 2024) <https://www.middleeastmonitor.com/20240326-the-ramadan-is-the-best-time-to-kill-them-theyre-weak-and-tired/> accessed on 24 February 2026.

<sup>833</sup> Euro-Med Human Rights Monitor, *Amid global silence, Israel’s statements and aid blockade confirm intent to continue genocide*, (4 March 2025), <https://euromedmonitor.org/en/article/6637/Amid-global-silence.-Israel%E2%80%99s-statements-and-aid-blockade-confirm-intent-to-continue-genocide> accessed on 24 February 2026

<sup>834</sup> Al-Haq, *Statement by Israeli Officials, Soldiers, and Civil Society on Genocide*, (10 January 2024), <https://www.alhaq.org/advocacy/22498.html> accessed on 24 February 2026

<sup>835</sup> Al-Haq, *Statement by Israeli Officials, Soldiers, and Civil Society on Genocide*.

risk” of genocide exists.<sup>836</sup> South Africa’s obligations to halt aid and prevent genocide are now (and have been since January 2024) immediate and non-discretionary.<sup>837</sup>

602. Under the ICJ’s 2024 Advisory Opinion on the OPT, all States must refuse recognition of Israel’s unlawful occupation, refrain from assistance that sustains it and cooperate to bring it to an end.<sup>838</sup> Articles 16 and 41 of ARSIWA impose corresponding duties to neither aid nor recognise situations arising from serious breaches of peremptory norms.<sup>839</sup> Non-assistance includes halting the provision of critical energy resources to a regime engaged in systemic violations.
603. Francesca Albanese has stressed that all Third States must take unambiguous steps at this critical juncture to immediately suspend and review all military, diplomatic and

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<sup>836</sup> See *Bosnia v Serbia*, ICJ Provisional Measures Orders in *South Africa v Israel*

<sup>837</sup> The mineral trade, specifically coal, is not subject to nearly as much scrutiny and regulation as is the arms industry in SA despite having a substantial impact in the maintenance of the IDF and the unlawful occupation. Without power, Israel’s war machine fails. South Africa must have the resolve to regulate the coal industry as stringently as is the arms industry with the National Conventional Arms Control Act. This act, in conjunction with International Law, paved the way for the case of the Trustees of the Southern Africa Human Rights Litigation Centre Trust v Chairperson of the National Conventional Arms Control Committee and others (032872/2022), or simply the Myanmar case. The High Court ordered in terms of the NCAC Act that an arms export license cannot be permitted where the recipient State has experienced an unconstitutional change of government or is suspected of having committed a crime against humanity, war crime or genocide.

<sup>838</sup> ICJ, Advisory Opinion, paras 274: “*The Court observes that the obligations violated by Israel include certain obligations erga omnes. As the Court indicated in the Barcelona Traction case, such obligations are by their very nature “the concern of all States” and “[i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection” (Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain), Second Phase, Judgment, I.C.J. Reports 1970, p. 32, para. 33). Among the obligations erga omnes violated by Israel are the obligation to respect the right of the Palestinian people to self-determination and the obligation arising from the prohibition of the use of force to acquire territory as well as certain of its obligations under international humanitarian law and international human rights law.*” and 278: “*Taking note of the resolutions of the Security Council and General Assembly, the Court is of the view that Member States are under an obligation not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations and to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967. The Court considers that the duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory encompasses, inter alia, the obligation to abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory; to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory; to abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory; and to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory (see Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, pp. 55-56, paras. 122, 125-127).*”

<sup>839</sup> ARSIWA, arts 16, 41.

economic relations and support with Israel,<sup>840</sup> particularly in circumstances where continued engagement risks aiding Israel's crimes.

604. If President Ramaphosa's words hold true then South Africa, as a litigant before the ICJ and custodian of international law, must not continue supplying resources to a State that defies the very laws designed to prevent crimes such as genocide and apartheid. The dissonance between South Africa's legal advocacy and trade conduct undermines its credibility and more seriously, has risked its complicity in the most heinous of international crimes. To maintain its role as a defender of international law, South Africa must take action to align its economic conduct with its legal obligations as rapidly as possible.
605. The State's failure to meaningfully engage with and act on consistent findings and recommendations issued across the United Nations system is not a mere diplomatic lapse. It is legally consequential conduct because the UN system is one of the primary institutional mechanisms through which international obligations are articulated, clarified and operationalised. Where UN bodies, acting within their mandates, repeatedly identify grave breaches of international law and spell out the due diligence steps States must take, a State that ignores those outputs exposes itself to findings of breach, responsibility and complicity, undermining the rules-based order the State has undertaken to support.<sup>841</sup>
606. In light of the evidence presented and legal analysis provided, it is clear that South Africa is constitutionally and statutorily bound to act to do everything in its power to stop the genocide, and at the very least to ensure that it does not aid and abet international crimes against humanity. Halting the export of coal to Israel in the face of overwhelming evidence of these crimes would demonstrate that the government is upholding the Constitution and the international instruments it has ratified. Law morality and history now converge on a single imperative: to end complicity and enforce

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<sup>840</sup> Albanese, *From the Economy of Occupation to the Economy of Genocide and Gaza Genocide: A Collective Crime*.

<sup>841</sup> See National Commissioner of Police v Southern African Human Rights Litigation Centre & another [2014] ZACC 30; 2015 (1) SA 315 (CC) paras 37 to 40, para 37: "Along with torture, the international crimes of piracy, slave-trading, war crimes, crimes against humanity, genocide and apartheid require states, even in the absence of binding international-treaty law, to suppress such conduct because "all states have an interest as they violate values that constitute the foundation of the world public order"".

accountability. Anything less signals tolerance for atrocity and weakens the rule of law that South Africa claims to uphold.

## XII. CONCLUSION

607. On 21 March 1960, apartheid police opened fire on unarmed protestors in the township of Sharpeville, killing 69 individuals who had gathered peacefully to oppose the oppressive pass laws and apartheid system imposed by the white nationalist party.<sup>842</sup> The Sharpeville Massacre shocked global conscience and marked a decisive turning point in the international community's posture towards South Africa's apartheid regime.
608. In its aftermath, exiled leaders of the African National Congress (ANC) and Pan Africanist Congress (PAC) intensified diplomatic efforts to mobilise global opposition to apartheid. These efforts bore fruit: South Africa was expelled from the Commonwealth in 1961<sup>843</sup>; the United Nations General Assembly called for sanctions in 1962<sup>844</sup>; and in 1977, the UN Security Council adopted Resolution 418, imposing a mandatory arms embargo under Chapter VII of the UN Charter.<sup>845</sup> This was followed by a series of voluntary and unilateral sanctions by States - including oil embargoes, cultural and academic boycotts, and restrictions on trade and investment that collectively intensified the regime's international isolation.
609. Today over 70 000 Palestinians – mostly women, children and the elderly – have been killed in a horrific two-and-a-half-year genocide on Gaza. The scale of devastation surpasses the darkest chapters of modern history. Every conceivable crime has been committed by Israel and the IDF. And yet, rather than isolating the perpetrators, South Africa continues to load coal at Richards Bay - directly fuelling Israel's military infrastructure by providing it with the power it needs to commit its crimes.

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<sup>842</sup> South African History Online, *The Sharpeville Massacre - 21 March 1960* (updated 10 August 2025), <https://sahistory.org.za/article/sharpeville-massacre-21-march-1960> accessed on 26 February 2025

<sup>843</sup> Anti-Apartheid Movement Archives, *South Africa Out of the Commonwealth What Now?*, <https://www.aamarchives.org/archive/history/1960s/60s05-south-africa-out-of-the-commonwealth-what-now.html> accessed on 7 March 2026.

<sup>844</sup> UNHCR, *The policies of apartheid of the Government of the Republic of South Africa*, [The policies of apartheid of the Government of the Republic of South Africa | Refworld](#) accessed on 7 March 2026.

<sup>845</sup> United Nations Digital Library, *Resolution 418 (1977) / adopted by the Security Council at its 2046th meeting, on 4 November 1977*, [Resolution 418 \(1977\) /](#) accessed on 7 March 2026.

610. Israel's system of military control and technological warfare operates through an extensive and highly energy dependent infrastructure. The Israeli military and security apparatus deploy a wide range of advanced technologies including artificial intelligence assisted targeting systems mass digital surveillance tools, drone fleets, precision guided weapons, cyber intelligence platforms, biometric monitoring systems and large scale data processing centres that analyse vast quantities of information relating to the Palestinian population. These systems underpin Israel's ability to monitor movements, identify targets, conduct remote surveillance and carry out coordinated strikes.
611. The operation of such technologies is inherently electricity intensive. High performance computing environments, data centres, communications networks, military command systems and defence manufacturing facilities require continuous and stable electrical supply in order to function. Israel is widely regarded as possessing one of the most technologically advanced military sectors in the world with a defence industry that produces sophisticated weapons systems, autonomous platforms and surveillance technologies that are frequently tested and refined through operations in the occupied Palestinian territory.
612. Yet the functioning of this technological architecture of control and warfare ultimately depends upon uninterrupted electrical power. Without sustained electricity generation the digital infrastructure that enables surveillance targeting weapons development and military operations could not operate at scale. The energy system that powers Israel's national grid therefore forms a critical underlying component of the technological apparatus through which military operations against Palestinians are conducted.
613. South Africa's continued facilitation of coal exports to Israel to fuel its energy system implicates it not only in the material support of a genocidal campaign, but also in a broader failure of legal and ethical consistency. While publicly condemning apartheid, illegal occupation, genocide and war crimes, the State permits diplomatic representation from an apartheid regime and has, to date, failed to initiate prosecution against South African nationals serving in the Israeli military - despite clear legal prohibitions under domestic and international law.

614. South African coal is not just another export commodity but a material contributor to a genocidal war economy, from the Orot Rabin and Rutenberg power stations to AI-powered surveillance and weapons systems, this coal powers a military machine that has levelled hospitals, schools and homes. South Africa cannot litigate genocide at the ICJ in good conscience while supplying Israel with the raw materials needed to carry out its genocide. This is not merely policy inconsistency - it is complicity.
615. It is incumbent on the Minister of Trade, Industry and Competition to immediately revoke all permits and export authorisations to Israeli-linked consignees using all available legal mechanisms. Port authorities and customs must suspend clearances for all consignments bound for Israeli use. Most importantly, the Minister must use his authority under sections 5 and 6 of the ITAA to restrict any future coal exports to Israel as a matter of urgency as a mechanism to ensure that South Africa meets its constitutional and international legal obligations.
616. The mass protests that have erupted across South Africa as civil society organisations, grassroots movements and ordinary citizens indicates the rise in collective defiance against the country's continued export of coal to Israel. Led by a broad coalition of activists, trade unions, student groups and solidarity organisations, demonstrators staged coordinated actions in August 2025 at the Department of Trade, Industry and Competition (DTIC) offices in Pretoria, Durban, and Cape Town. Chanting "No coal for genocide," they delivered a formal memorandum to Minister Parks Tau demanding an immediate end to the complicit trade (to which no response has been received to date). The mobilisation has only intensified, with actions outside Glencore's Johannesburg headquarters and protest blockades at the Richards Bay port - clear signals that public outrage is not subsiding but intensifying.
617. These protests are neither symbolic nor episodic- they form part of a sustained and deeply principled mobilisation rooted in South Africa's own history of anti-apartheid resistance. The message from these activists is unequivocal: South Africa cannot simultaneously present itself as a litigant before the ICJ in the genocide case against Israel while supplying the very fossil fuel that sustains the machinery of illegal occupation and annihilation. The moral contradiction is untenable. South Africans across sectors are demanding accountability from both State and corporate actors who

enable apartheid, illegal occupation and genocide. Their resolve is clear: the coal trade must end - not just as a matter of foreign policy, but as a matter of historical justice, legal coherence and solidarity with the Palestinian people's right to liberation and self-determination and their fight against the fascist ideology of Zionism.

618. In this context, it is important to reference that on 6 June 1994, South Africa ratified the African Charter on Human and Peoples' Rights.<sup>846</sup> The Preamble of the Charter declares that members are:

*“Conscious of their duty to achieve the liberation of Africa, the peoples which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, **Zionism** and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, colour, sex, religion or political opinions.”<sup>847</sup>*

619. To continue supplying coal to Israel is a betrayal of South Africa's historical and moral identity. Zionism, as it manifests through Israel's system of apartheid and settler-colonial domination over the Palestinian people, mirrors the very structures of racial supremacy and land dispossession that defined South Africa's own past. The coal trade, rooted in extractivist logics that have long exploited the Global South for profit, now links South Africa's mineral wealth to a project of ethnic cleansing and territorial erasure. A State built on anti-colonial resistance cannot justify supplying the raw materials that uphold modern colonial conquest. South Africa's foreign policy must move beyond symbolic gestures and strong words - it must confront the material flows that sustain apartheid and break decisively with any role in a global economy that commodifies land, life and liberation.
620. The conclusion is clear: the coal trade with Israel must end. Not only because it is politically indefensible and morally repugnant, but because it is legally prohibited.

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<sup>846</sup> African Commission on Human and Peoples' Rights, *State Parties to the African Charter*, <https://achpr.au.int/en/states> accessed on 7 March 2026.

<sup>847</sup> African Union, *African Charter on Human and Peoples' Rights* (1981), [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf) accessed on 7 March 2026.

South Africa is bound by its Constitution, its treaties, its public policy and its people's history of resistance against colonialism and apartheid.

When future generations ask what we did as genocide was powered by our resources, the answer must be action - not silence, not complicity.

## **Annexure A: The 1948 Nakba, Zionist Ideology and Gaza**

The violent Israeli genocide in Palestine is not the result of the events of 7 October 2023. It is rooted in brutal colonisation and systematic dispossession of the indigenous Palestinian people.<sup>848</sup> Prior to the late 19<sup>th</sup> century, Palestine was a multi-ethnic land with a majority Arab Palestinian population living under Ottoman rule.<sup>849</sup>

### **Zionism**

The rise of the Zionist movement in the late 1800's, spearheaded by figures like Theodor Herzl, called for the creation of a 'Jewish state' in historic Palestine.<sup>850</sup> Herzl was clear that this movement was to be a colonial enterprise and would settle Jews in Palestine by removing its indigenous population.<sup>851</sup> This would of necessity include the displacement of the Palestinian

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<sup>848</sup> Human Rights Watch, "*Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water*" (19 December 2024) <https://www.hrw.org/report/2024/12/19/extermination-and-acts-genocide/israel-deliberately-depriving-palestinians-gaza?utm> accessed on 26 February 2026

<sup>849</sup> Encyclopaedia Britannica, "History of Palestine" <https://www.britannica.com/topic/history-of-Palestine?utm> ; Also see Rashid Khalidi, *Palestinian Identity* (Columbia University Press) accessed on 26 February 2026

<sup>850</sup> Israel Education Center, "The Jewish State by Theodor Herzl, 1896" <https://israeled.org/herzl-the-jewish-question/?utm> accessed on 26 February 2026

<sup>851</sup> Theodor Herzl, letter to Cecil Rhodes (11 January 1902): In it he wrote: "*You are being invited to help make history. It doesn't involve Africa, but a piece of Asia Minor; not Englishmen but Jews... How, then, do I happen to turn to you since this is an out-of-the-way matter for you? How indeed? Because it is something*

people from their land and homes.<sup>852</sup> Zionism is a European colonial ideology that attempts to redefine Judaism as a nationalist identity anchored to exclusive territorial claims based on ethnic and religious supremacy.<sup>853</sup>

During World War 1, the British, through the Balfour Declaration in 1917<sup>854</sup>, pledged the formation of a Jewish homeland in Palestine, a country where Jews at the time comprised barely 10% of the population.<sup>855</sup>

Following the period of the British Mandate, waves of Jewish immigration, land confiscation and settler colonial expansion saw Jewish populations increase in Palestine.<sup>856</sup> In 1947 the United Nations allocated 56% of Palestinian land for the formation of a Jewish state.<sup>857</sup> At the time Jewish land ownership was roughly 6-7%.<sup>858</sup> What followed was the violent large-scale

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*colonial.” And “How, then, do I happen to turn to you, since this is an out-of-the-way matter for you? How indeed? Because it is something colonial., and because it presupposes an understanding of a development that requires 20 to 30 years...[Y]ou, Mr. Rhodes, are a visionary politician or a practical visionary... I want you to... put the stamp of your authority on the Zionist plan and to make the following declaration to a few people who swear by you: I, Rhodes have examined this plan and found it correct and practicable. It is a plan full of culture, excellent for the group of people for whom it is directly designed, and quite good for England, for Greater Britain...” See Salim Vally, *South Africa’s solidarity with the Palestinian Struggle*, <https://herri.org.za/11/salim-vally/> accessed on 9 March 2026; and see PalCit, Quotations <https://palcit.net/article-676-i-want-you-to-put-the-stamp-of-your-authority-on-the-zionist-plan> accessed 9 March 2026.*

<sup>852</sup> Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oneworld Publications 2006), <https://yplus.ps/wp-content/uploads/2021/01/Pappe-Ilan-The-Ethnic-Cleansing-of-Palestine.pdf>

<sup>853</sup> See Salim Vally, *South Africa’s solidarity with the Palestinian Struggle*, and see Rashid Khalidi, *The Hundred Years’ War on Palestine: A History of Settler Colonialism and Resistance*, 16 – 19, [https://www.kalamullah.com/Books/The\\_Hundred\\_Years\\_War\\_on\\_Palestine\\_-\\_Rashid\\_Khalidi.pdf](https://www.kalamullah.com/Books/The_Hundred_Years_War_on_Palestine_-_Rashid_Khalidi.pdf).

<sup>854</sup> Balfour Declaration 1917: “Dear Lord Rothschild, I have much pleasure in conveying to you, on behalf of His Majesty’s Government, the following declaration of sympathy with Jewish Zionist aspirations which has been submitted to, and approved by, the Cabinet: “His Majesty’s Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.” I should be grateful if you would bring this declaration to the knowledge of the Zionist Federation. Yours sincerely, Arthur James Balfour” [https://avalon.law.yale.edu/20th\\_century/balfour.asp](https://avalon.law.yale.edu/20th_century/balfour.asp).

<sup>855</sup> See United Nations, *The Question of Palestine, The Origins and Evolution of the Palestine Problem, part I: 1917-1947*: “What the political concept of a Jewish State in Palestine needed to give it reality was to transfer people to Palestine. The religious and spiritual solidarity of the Jews in the Diaspora with the Holy Land had survived over the centuries. Despite the anti-Semitism in Europe, only small groups had emigrated to Palestine to settle in Palestine for purely religious sentiments. They numbered perhaps 50,000 at the end of the nineteenth century, and personified, or symbolized, the Jewish link to Palestine which was, in essence, spiritual. The Zionists drew on this ancient spiritual potential to build a political movement. A stirring slogan was spread abroad: “A land without people for a people without land” ignoring the fact that the Palestinians themselves, well over half a million at the turn of the century, lived in Palestine, that it was their home.” <https://www.un.org/unispal/document/auto-insert-199840/>

<sup>856</sup> Rashid Khalidi, *The Hundred Years’ War on Palestine* (Metropolitan Books 2020)

<sup>857</sup> United Nations General Assembly Resolution 181 (II), *Future Government of Palestine* (29 November 1947)

<sup>858</sup> United Nations, *The Origins and Evolution of the Palestine Problem* (1990)

murder, ethnic cleansing and displacement of Palestinians from their land, what has become known historically as the infamous ‘Nakba’, the catastrophe!<sup>859</sup>

1948 marks the beginning of the Zionist state of Israel<sup>860</sup> which is recognised by B'Tselem, Israel's largest human rights NGO, as a regime of ethnic superiority and "*Jewish supremacy*".<sup>861</sup> After the 1967 war, Israel illegally occupied the West Bank, Gaza Strip and East Jerusalem.<sup>862</sup> The life of Palestinian people is sheer hell on earth; they face illegal and violent military occupation, settlement expansion, apartheid discriminatory laws inside 1948 Israel, violent land and housing dispossession through growing Jewish settlements in the West Bank and a 19 year siege of the Gaza strip.<sup>863</sup> Gaza has since been referred to as the largest open-air prison in the world. Since October 2023, Gaza has become the largest open air death camp the world has known.

Israel has never declared its borders and the Zionist-colonial project to create ‘Greater Israel’ appears to be well on track. For roughly 2 and half years, Israel's bombing campaign has largely been directed against civilians, mainly women and children.<sup>864</sup> The Zionist project appears to be entering a new and final phase. According to leading Israeli government officials the Palestinian people are no better than ‘animals’, to be ethnically cleansed; if not displaced then murdered.<sup>865</sup>

This is a plan for a greater Israel, the search for a ‘Final Solution’ aimed at the extermination of the Palestinians as a people and the ethnic cleansing of their homeland. At the United

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<sup>859</sup> United Nations, The Question of Palestine: About the Nakba, <https://www.un.org/unispal/about-the-nakba/>

<sup>860</sup> United Nations General Assembly Resolution 273 (III) admitting Israel to the United Nations (11 May 1949) <https://digitallibrary.un.org/record/210373?ln=en&v=pdf>

<sup>861</sup> B'Tselem, *A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid* (January 2021) [https://www.btselem.org/publications/fulltext/202101\\_this\\_is\\_apartheid](https://www.btselem.org/publications/fulltext/202101_this_is_apartheid)

<sup>862</sup> See Michael Lynk, *Conceived in the Law: The Legal Foundations of Resolution 242*: “UN Security Council Resolution 242 endorsed the “inadmissibility of the acquisition of territory by war” and called for “withdrawal of Israeli armed forces from territories occupied” in the June 1967 war”

[https://palquest.palestine-studies.org/sites/default/files/Conceived\\_in\\_Law\\_The\\_Legal\\_Foundations\\_of\\_Resolution\\_242-Michael\\_Lynk.pdf](https://palquest.palestine-studies.org/sites/default/files/Conceived_in_Law_The_Legal_Foundations_of_Resolution_242-Michael_Lynk.pdf)

<sup>863</sup> See Amnesty International, *Israel's Apartheid Against Palestinians* (2022) and Rashid Khalidi, *The Hundred Years' War on Palestine* (Metropolitan Books 2020) and see United Nations Office for the Co-ordination of Humanitarian Affairs: Gaza Strip | The humanitarian impact of 15 years of the blockade - June 2022 <https://www.ochaopt.org/content/gaza-strip-humanitarian-impact-15-years-blockade-june-2022>

<sup>864</sup> See Annexure B below.

<sup>865</sup> See Al-Haq, Statements by Israeli Officials, Soldiers and Civil Society on Genocide, <https://www.alhaq.org/advocacy/22498.html> and <https://www.alhaq.org/cache/uploads/download/2024/01/10/official-translation-of-statements-informal-translations-final-list-1704917626.pdf>

Nations General Assembly in September 2023, Israeli Prime Minister Benjamin Netanyahu presented a map depicting a “New Middle East” that did not include a Palestinian state.<sup>866</sup> What we are witnessing is a sustained genocide and a move to create a Greater Israel devoid of Palestinians. These maps included all of historic Palestine, the Sinai Peninsula, Syria’s Golan Heights, Jordan, Lebanon, other parts of Syria and Egypt, and even parts of Iraq and Saudi Arabia.

While both Netanyahu and President Donald Trump dream of resettling Palestinians outside of Israel, they are delusional. Palestinians have a deep attachment to their land, commitment to the right of return to their homes and ‘sumud’ (resilience) to resist Zionist settler-colonialism that has and will not disappear.

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<sup>866</sup> Al Jazeera, *Palestinians must not have veto over Arab-Israel deals, Netanyahu tells UN* (22 September 2023) <https://www.aljazeera.com/news/2023/9/22/palestinians-must-not-have-veto-over-arab-israel-deals-netanyahu-tells-un>

## Annexure B: Genocide in Gaza

Since 7 October 2023, Israel has engaged in a large-scale military assault by land, air and sea, on the Gaza strip, a narrow strip of land approximately of 365 square kilometres – one of the most densely populated places in the world<sup>867</sup>. Gaza – home to approximately 2.3 million people, almost half of them children – has been subjected by Israel to what has been described as one of the ‘heaviest conventional bombing campaigns’ in the history of modern warfare. Once referred to as the ‘largest open air prison’ Israel has turned Gaza into a concentration camp.<sup>868</sup>

By 29 October 2023 alone, it was estimated that 6 000 bombs per week had been dropped on the tiny enclave<sup>869</sup>. In just over two months, by December 2023, Israel’s military attacks had wreaked more destruction than the razing of Syria’s Aleppo between 2012 and 2016, Ukraine’s Mariupol, or proportionally, the Allied bombing of Germany in World War II.<sup>870</sup> As of May 2025, Israel had dropped 100,000 tons of explosives on the Gaza Strip.<sup>871</sup> The power of the bombs dropped are so strong that the total explosive force amounts to about 6 times that of the bomb dropped on Hiroshima.<sup>872</sup> The destruction wrought by Israel is so extreme that Gaza is now a different colour from space. It is a different texture.<sup>873</sup>

According to the Gaza Health Ministry over 70 000 Palestinians are reported to have been killed since Israel began its military assault are believed to be women and children.<sup>874</sup> An additional estimated 11 000 people are reported missing, presumed dead under the rubble of destroyed buildings, decomposing in the streets where they were killed or completely

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<sup>867</sup> *Application Instituting Proceedings in South Africa v Israel (International Court of Justice, 28 December 2023)* <https://api.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf?utm.com> para 18.

<sup>868</sup> *South Africa v Israel*, para 18.

<sup>869</sup> *South Africa v Israel*, para 18.

<sup>870</sup> *South Africa v Israel*, para 18.

<sup>871</sup> Middle East Monitor ‘*Israel dropped 100,000 tons of explosives over Gaza, wiped out 2,200 families: Media office*’ available at <https://www.middleeastmonitor.com/20250508-israel-dropped-100000-tons-of-explosives-over-gaza-wiped-out-2200-families-media-office/?utm.com>, accessed on 2 February 2026.

<sup>872</sup> *Supra* note 562 para 106.

<sup>873</sup> *Supra* note 562.

<sup>874</sup> Prianka Shankar, Al Jazeera, *Israel accepts Gaza’s 70,000 death toll: A record of denialism, lies*, (30 January 2026) <https://www.aljazeera.com/news/2026/1/30/israel-accepts-gazas-70000-death-toll-a-record-of-denialism-lies> accessed on 10 March 2026. And see N Crawford, *The Human Toll of the Gaza War: Direct and Indirect Death from 7 October 2023 to 3 October 2025* (Costs of War Project, Watson Institute 7 October 2025) [https://costsofwar.watson.brown.edu/sites/default/files/2025-10/Human-Toll-in-Gaza\\_Costs-of-War\\_Crawford\\_7-October-2025.pdf?utm](https://costsofwar.watson.brown.edu/sites/default/files/2025-10/Human-Toll-in-Gaza_Costs-of-War_Crawford_7-October-2025.pdf?utm) accessed 13 November 2025

obliterated or evaporated as a result of the sheer force of the explosions.<sup>875</sup> Israel has repeatedly disputed this figure, claiming exaggeration and falling back on a commonly-used scapegoat by saying Hamas was involved (in this case, in the death toll count).<sup>876</sup> However, in January 2026, the IOF accepted the death toll of 70 000, likely because the facts have become difficult to deny.<sup>877</sup>

Palestinian families in Gaza have lost multiple family members. Hundreds of multigenerational families have been killed in their entirety, with no remaining survivors – mothers, fathers, children, siblings, grandparents, aunts, cousins – often all killed together. Gaza also has the highest amount of orphans in the world. According to a report from October 2025, UNICEF has stated 2,596 children had lost both parents, and a further 53,724 children had lost either their father (47,804) or mother (5,920).<sup>878</sup> The level of mortality in Palestinian families is such that medics in Gaza have had to coin a new acronym: “WCNSF” meaning ‘wounded child, no surviving family’.<sup>879</sup>

For Palestinian children in particular, death is everywhere and nowhere is safe. Over 20 000 children in Gaza have been killed to date, with an average of 28 children murdered per day.<sup>880</sup> It is estimated that more Palestinian children were killed in the first three weeks in Gaza alone

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<sup>875</sup> UNOCHA, *Hostilities in the Gaza Strip and Israel | Flash Update #160 [EN/AR/HE]*, [Hostilities in the Gaza Strip and Israel | Flash Update #160 \[EN/AR/HE\] | OCHA](#)

<sup>876</sup> Ehud Amiton ‘*Israel: Hamas Casualty Figures ‘Exaggerated,’ Claims Echoed Uncritically by Media*’ available at <https://tps.co.il/articles/israel-hamas-casualty-figures-exaggerated-claims-echoed-uncritically-by-media/?utm.com>, accessed on 30 January 2026.

<sup>877</sup> Priyanka Shankar ‘*Israel accepts Gaza’s 70,000 death toll: A record of denialism, lies*’ available at <https://www.aljazeera.com/amp/news/2026/1/30/israel-accepts-gazas-70000-death-toll-a-record-of-denialism-lies>, accessed on 30 January 2026.

<sup>878</sup> The Guardian, *No family, no stability, no social fabric: the anguish of Gaza’s wounded orphans* (10 October 2025), <https://www.theguardian.com/world/2025/oct/10/no-family-stability-social-fabric-harm-inflicted-gaza-children-incalculable> accessed on 10 March 2025 and see UNICEF, *UNICEF: Two years of hellish war have devastated Gaza’s children* (8 October 2025) <https://www.un.org/unispal/document/unicef-statement-08oct25/> accessed on 10 March 2025

<sup>879</sup> Doctors Without Borders ‘*The most dangerous place in the world to be a child*’ available at <https://www.doctorswithoutborders.org/latest/most-dangerous-place-world-be-child>, accessed on 2 February 2026.

<sup>880</sup> Al Jazeera ‘*Israel kills an average 28 Palestinian children daily in Gaza*’ available at <https://www.aljazeera.com/news/2025/8/5/a-graveyard-average-28-palestinian-children-being-killed-daily-in-gaza>, accessed on 2 February 2026.

(a total of 3 195) than the total number of children killed each year across the world's conflict zones since 2019.<sup>881</sup> UNICEF has called Israel's attacks on Gaza a "war on children".<sup>882</sup>

Over 170 000 Palestinians have been seriously wounded in Israel's military attacks as reported by the Gaza Ministry of Health.<sup>883</sup> Burns and amputations are typical injuries, with an estimated 21 00 children having been permanently disabled as reported by the UN Committee on the Rights of Persons with Disabilities.<sup>884</sup> Gaza has the highest record of child amputees in the world.<sup>885</sup> As confirmed in the UNHRC's Commission of Inquiry report,<sup>886</sup> "some children, including toddlers, were shot in the head by snipers"<sup>887</sup> and "there is a clear pattern of conduct since 7 October 2023 showing that the Israeli security forces directly targeted children in different circumstances with the intention to kill them"<sup>888</sup> ; "among the child victims were a one-and-a-half-year-old girl who suffered from a single shot to the chest while she was in her mother's arms".<sup>889</sup>

There are further reports of the IDF using white phosphorus (an illegal weapon of war) in densely populated areas in Gaza:<sup>890</sup> as the World Health Organization describes, even small amounts of white phosphorus can cause deep and severe burns, penetrating even through bone, and capable of reigniting after initial treatment.<sup>891</sup> The use of high-grade military artillery,

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<sup>881</sup> Supra note 562 para 48.

<sup>882</sup> UNICEF 'Shoeless, starving, and nowhere to go: The brutal logic imposed on Gaza's children' available at <https://www.unicef.org/press-releases/shoeless-starving-and-nowhere-go-brutal-logic-imposed-gazas-children>, accessed on 2 February 2026.

<sup>883</sup> Oren Liebermann and Ibrahim Dahman 'Israeli military reportedly acknowledges 70,000 killed in Gaza after previously casting doubt on health ministry's count' available at <https://edition.cnn.com/2026/01/30/middleeast/israeli-military-gaza-killed-numbers-intl>, accessed on 2 February 2026.

<sup>884</sup> Al Jazeera 'Israeli attacks disabled 21,000 Palestinian children in Gaza war, UN says' available at <https://www.aljazeera.com/news/2025/9/3/israeli-attacks-disabled-21000-palestinian-children-in-gaza-war-un-says>, accessed on 2 February 2026.

<sup>885</sup> UNRWA 'UNRWA Commissioner-General on Gaza: Gaza is now home to the highest number of child amputees per capita worldwide' available at <https://www.unrwa.org/topics/unrwa-commissioner-general-gaza-gaza-now-home-highest-number-child-amputees-capita-worldwide>, accessed on 2 February 2026.

<sup>886</sup> UN Commission of Inquiry Conference Room Paper (A/HRC/60/CRP.3). *Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide* (2025).

<sup>887</sup> Ibid para 28.

<sup>888</sup> Ibid para 218.

<sup>889</sup> Ibid para 30.

<sup>890</sup> Human Rights Watch 'Israel: White Phosphorus Used in Gaza, Lebanon' available at <https://www.hrw.org/news/2023/10/12/israel-white-phosphorus-used-gaza-lebanon>, accessed on 2 February 2026.

<sup>891</sup> WHO 'White phosphorus' available at <https://www.who.int/news-room/fact-sheets/detail/white-phosphorus#:~:text=Remove%20the%20patient%20from%20exposure,cold%20water%20to%20prevent%20ignition,> accessed on 2 February 2026.

artificial intelligence, drones and 2000 bombs against a helpless population with nowhere to go is unconscionable.<sup>892</sup> According to an Al Jazeera investigation Israel uses US-supplied thermal and thermobaric munitions burning at 3,500C which have left no trace of nearly 3,000 Palestinians.<sup>893</sup>

Following the complete and apocalyptic destruction, there are no functioning hospitals in Gaza, such that injured persons are reduced to “waiting to die” suffering from injuries caused by Israel’s incessant bombing or disease caused by the conditions of siege.<sup>894</sup> Palestinians are unable to seek surgery or life-saving medical treatment, dying slow, agonising deaths from their injuries or from resultant infections.<sup>895</sup> The UN Genocide report outlined that “On 23 November 2023, Oxfam reported that newborns up to three months old were dying of hypothermia, dehydration and infection as mothers had little to no medical support and were living in appalling conditions without water, sanitation, heat or food”.<sup>896</sup>

It is estimated that over 90 percent of the population have been forced from their homes.<sup>897</sup> There is nowhere safe for them to flee to with borders across the enclave being closed and controlled by Israel, while it continues its bombing campaign, even in so-called ‘designated safe zones’ and tented refugee camps. Along apparent ‘safe routes’ the UNHRC states “..*the commission found that the Israeli security forces had clear knowledge of the presence of Palestinian civilians along the evacuation routes and within safe areas but nevertheless they*

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<sup>892</sup> See UN, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel – Advance unedited version (A/HRC/56/26) (UN Genocide Report) <https://www.un.org/unispal/document/coi-report-a-hrc-56-26-27may24/>

<sup>893</sup> Al Jazeera, *Israel used weapons in Gaza that made thousands of Palestinians evaporate*, (10 February 2026)

<sup>894</sup> See Al Haq, *The Systematic Destruction of Gaza’s Healthcare System: A Pattern of Genocide, covering the period of 7 October 2023 – 31 December 2024*.

[https://www.alhaq.org/cached\\_uploads/download/2025/01/23/destruction-of-gaza-healthcare-system-one-page-view-1737653644.pdf](https://www.alhaq.org/cached_uploads/download/2025/01/23/destruction-of-gaza-healthcare-system-one-page-view-1737653644.pdf) and see UN, *Injured patients ‘waiting to die’ in northern Gaza as last hospital shuts down, amid rising ‘catastrophic’ hunger levels*, (21 December 2023)

<https://news.un.org/en/story/2023/12/1145017>

<sup>895</sup> Al Haq, *The Systematic Destruction of Gaza’s Healthcare System: A Pattern of Genocide, covering the period of 7 October 2023 – 31 December 2024*.

<sup>896</sup> UNHRC, *Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide* (16 September 2026)

<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session60/advance-version/a-hrc-60-crp-3.pdf>

<sup>897</sup> The Guardian, *About 90% of people in Gaza displaced since war began, says UN agency* (3 July 2024)

<https://www.theguardian.com/world/article/2024/jul/03/about-90-of-people-in-gaza-displaced-since-war-began-says-un-agency>

*shot at and killed civilians, some of whom (including children) were holding makeshift white flags”.*<sup>898</sup>

For many Palestinians, the forced evacuation from their homes is necessarily permanent. Israel has now damaged or destroyed over 90% of Palestinian homes and infrastructure.<sup>899</sup> The extent of the destruction has rendered the entire Gaza Strip unliveable. The forced displacements and complete destruction of Gaza is genocidal, in that it is taking place in circumstances calculated to bring about the physical destruction of Palestinians in Gaza, which has been confirmed by the United Nations.<sup>900</sup>

On 9 October 2023, Israel declared a “complete siege on Gaza, allowing no electricity, no food, no water and no fuel to enter the strip.” As a result, the Integrated Food Security Phase Classification in August 2025 declared that Palestinians are facing level 5 acute malnutrition with the UN stating that famine has been “irrefutably” confirmed.<sup>901</sup>

These conditions created by the illegal siege on Gaza are exacerbated by Israel’s continuing strikes and denial of life saving humanitarian aid being allowed into the strip despite the October ceasefire agreement.<sup>902</sup> Palestinians have continuously been killed while trying to obtain lifesaving aid and food. In August 2025 the UN stated that between 27 May 2025 and 1 August 2025 at least 1,373 Palestinians were killed while seeking food; 859 in the vicinity of the controversial Gaza Humanitarian Foundation (GHF) sites and 514 along the routes of food convoys.<sup>903</sup>

The deliberate infliction of starvation as a weapon of war forms part of Israel’s broader genocidal strategy of creating conditions of life calculated to bring about the physical

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<sup>898</sup> UN Genocide Report, para 28

<sup>899</sup> IRC, *Crisis in Gaza: What to know and how to help*, (23 October 2025) <https://www.rescue.org/crisis-in-gaza> accessed on 10 March 2026

<sup>900</sup> UN Genocide Report confirming that Israel has committed at least 4 of the 5 acts of genocide.

<sup>901</sup> UN, The Question of Palestine, *Gaza: Famine “irrefutably” confirmed, UN humanitarian unite in plea for aid access – OCHA, OHCHR, WFP and WHO* (22 August 2025) <https://www.un.org/unispal/document/ocha-ohchr-wfp-who-press-briefing-22aug25/> accessed on 10 March 2026

<sup>902</sup> Muram Humaid, Al Jazeera, *How US-Israel war on Iran deepens Gaza crisis*, (9 March 2026) <https://www.aljazeera.com/features/2026/3/9/how-us-israel-war-on-iran-deepens-gaza-crisis> accessed on 10 March 2026

<sup>903</sup> UN, *Gaza: Nearly 1,400 Palestinians killed while seeking food, as UN warns airdrops are no solution*, (1 August 2025) <https://news.un.org/en/story/2025/08/1165552> accessed on 10 March 2026

destruction of Palestinians in Gaza.<sup>904</sup> According to the Palestinian Ministry of Health, at least 432 Palestinians have starved to death including 146 children.<sup>905</sup> The UN's Genocide Report states "*Israel's use of starvation as a method of war through the total siege on the Gaza Strip has had devastating impacts on children as well, resulting in starvation, alarmingly high risks of outbreak of diseases such as cholera and chronic diarrhoea and significant excess mortality.*"<sup>906</sup>

Israel's military assault has also been an attack on Gaza's medical healthcare system, indispensable to the life and survival of the Palestinians. According to Medical Aid for Palestine (MAP), at least 1,722 healthcare workers have been killed with an average of more than two killed every day between 7 October 2023 and 6 October 2025.<sup>907</sup> The Israeli army has directly targeted hospitals in Gaza including ambulances, medical convoys and first responders. There are no fully functioning hospitals left in Gaza.

Minister Ronald Lamola, Minister of International Relations and Cooperation reported and confirmed on the 10<sup>th</sup> September 2025 to the Meeting of the Joint Portfolio Committee on International Relations and Cooperation and the Portfolio Committee on Justice and Constitutional Development that what we were witnessing in Gaza was 'medicide':

*Archbishop Makgoba made the following observation in a Timeslive opinion piece dated 4 September 2025, "In April 2024, Dr Tlaleng Mofokeng — the South African medical doctor serving as the UN Special Rapporteur on the Right to Health — warned the Human Rights Council that the health system in Gaza had been "completely obliterated" and that the right to health had been "decimated at every level". By October 2024, she had introduced a new term for what she was witnessing — 'medicide': the use of military force and state policy to*

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<sup>904</sup> See Section IX above and Evidence Dossier III submitted to the ICJ in *South Africa v Israel*, <https://www.un.org/unispal/document/letter-from-south-africa-public-dossier-relating-to-the-state-of-israels-exacerbated-acts-of-starvation-weaponisation-of-aid-and-further-expressions-of-genocidal-intent-against-the-palestin/> accessed 10 March 2026

<sup>905</sup> See Alia Chughtai, Al Jazeera, *Israel starving Gaza: 440 dead from starvation, including 147 children*, (18 August 2025) <https://www.aljazeera.com/news/2025/8/18/israel-starving-gaza-hundreds-of-deaths-including-many-children> accessed 10 March 2026

<sup>906</sup> See UN Genocide Report, para 132

<sup>907</sup> ReliefWeb, *Two healthcare workers killed every day on average during Israel's genocide in Gaza* (6 October 2025) <https://reliefweb.int/report/occupied-palestinian-territory/two-healthcare-workers-killed-every-day-average-during-israels-genocide-gaza> accessed on 10 March 2026

*systematically destroy access to medical care. In June 2025, she declared that the right to health in Gaza had become ‘virtually non-existent’.*

Not only has Israel undertaken a genocidal campaign against the Palestinians, it attempts to hide the truth by directly targeting journalists on the ground in Gaza who are reporting on Israel’s war crimes. According to a UN report on 1 December 2025, over 260 journalists have been murdered in Gaza.<sup>908</sup> More journalists have been killed in Gaza than in both world wars, the Vietnam War, the wars in Yugoslavia and the United States war in Afghanistan combined.<sup>909</sup>

Across Gaza, Israel has targeted the infrastructure and foundations of Palestinian life, deliberately creating conditions of life calculated to bring about the physical destruction and ethnic cleansing of the Palestinian people.<sup>910</sup> In addition to the attacks on homes, neighbourhoods, hospitals, water systems and agricultural lands, Israel has also destroyed Gaza City’s Central Archive building, containing thousands of historical documents and national records dating back over 100 years, and forming an essential archive of Palestinian history.<sup>911</sup> Israel has also committed what Palestinian scholar, Karma Nabulsi has termed ‘scholasticide’ by targeting and destroying schools as well as all of Gaza’s four universities, erasing campuses

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<sup>908</sup> UN, *In the Occupied Palestinian Territory, journalism is ‘both a battleground and a lifeline’* (1 December 2026) <https://news.un.org/en/story/2025/12/1166481> accessed on 10 March 2026 Al Jazeera, *Israel is deliberately targeting journalists in Gaza: Experts*, (23 September 2024) <https://www.aljazeera.com/news/2024/9/23/israel-is-deliberately-targeting-journalists-in-gaza-experts> accessed on 10 March 2026 and see International Federation of Journalists, *Israel: Two years of killing journalists and controlling the narrative in Gaza* (7 October 2025) <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/israel-two-years-of-killing-journalists-and-controlling-the-narrative-in-gaza> accessed on 10 March 2026.

<sup>909</sup> UN, “*Gaza has become the Deadliest Conflict Ever for Journalists*” UN Special Rapporteur Irene Khan – *Press Briefing* (15 September 2025) <https://www.un.org/unispal/document/press-briefing-irene-khan-15sep25/> accessed on 10 March 2026 ; Al Jazeera, *Israel is deliberately targeting journalists in Gaza: Experts*, (23 September 2024) <https://www.aljazeera.com/news/2024/9/23/israel-is-deliberately-targeting-journalists-in-gaza-experts> accessed on 10 March 2026 and see International Federation of Journalists, *Israel: Two years of killing journalists and controlling the narrative in Gaza* (7 October 2025) <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/israel-two-years-of-killing-journalists-and-controlling-the-narrative-in-gaza> accessed on 10 March 2026.

<sup>910</sup> See Evidence Dossiers under Section IX above and UN Genocide Report.

<sup>911</sup> AA, *Israel destroyed Central Archives of Gaza City’: Head of Gaza municipality* (29 November 2023) <https://www.aa.com.tr/en/middle-east/-israel-destroyed-central-archives-of-gaza-city-head-of-gaza-municipality/3068555> and see International Council of Archives, *Statement of the International Council on Archives on the Destruction of the Central Archives of the Municipality of Gaza* (13 December 2023) <https://www.ica.org/statement-of-the-international-council-on-archives-on-the-destruction-of-the-central-archives-of-the-municipality-of-gaza/> accessed on 10 March 2026

for the education of future generations.<sup>912</sup> Over 658,000 children in Gaza have had no schooling for 2 years.<sup>913</sup>

Israel has also damaged or destroyed an estimated 200 Muslim and Christian religious sites, demolishing the places where Palestinians have worshipped for generations.<sup>914</sup> This includes having damaged or destroyed the Church of Saint Prophyrius, founded in 425 AD and believed to be the third oldest church in the world.<sup>915</sup>

Israel's defiance of international law continues unabated, despite rulings from the ICJ, confirmation of genocide by the UN, global protests and mounting evidence. It acts with brazen impunity, shielded by complicit governments and allies, as the world watches a genocide unfold in real time - unpunished and unchecked.

In a harrowing peer reviewed analysis published in January 2025, researchers estimated that 64,260 Palestinians had already died from traumatic injury in Gaza between 7 October 2023 and 30 June 2024, substantially higher than the official toll for that period, and concluded that the traumatic injury death toll had likely exceeded 70,000 by October 2024.<sup>916</sup> By 11 June 2025, the Gaza Ministry of Health reported 55,104 deaths overall, while cautioning that many further victims remained missing under rubble or otherwise unrecovered.<sup>917</sup> A later population representative household survey published in Lancet Global Health in February 2026 estimated 75,200 violent deaths between 7 October 2023 and 5 January 2025, together with 16,300 non-violent deaths, including 8,540 excess deaths above pre conflict projections.<sup>918</sup> That study

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<sup>912</sup> UNICEF, *After Two Years of War: Gaza's Education System on the Brink of Collapse*, (4 November 2025) <https://www.unicef.org/sop/stories/after-two-years-war-gazas-education-system-brink-collapse> accessed on 10 March 2026.

<sup>913</sup> UNICEF, *After Two Years of War: Gaza's Education System on the Brink of Collapse* and see The Guardian, <https://www.theguardian.com/world/2009/jan/10/gaza-schools>

<sup>914</sup> Al Jazeera, *A 'cultural genocide': Which of Gaza's heritage sites have been destroyed?* (14 January 2024) <https://www.aljazeera.com/news/2024/1/14/a-cultural-genocide-which-of-gazas-heritage-sites-have-been-destroyed> accessed on 10 March 2026

<sup>915</sup> Vatican News, *Churches condemn air strike on Greek Orthodox building in Gaza* (20 October 2023) <https://www.vaticannews.va/en/church/news/2023-10/churches-condemn-air-strike-on-greek-orthodox-building-in-gaza.html> accessed on 10 March 2026

<sup>916</sup> NIH, *Traumatic injury mortality in the Gaza Strip from Oct 7, 2023, to June 30, 2024: a capture-recapture analysis* (9 January 2025) [Traumatic injury mortality in the Gaza Strip from Oct 7, 2023, to June 30, 2024: a capture-recapture analysis - PubMed](#) accessed on 10 March 2026

<sup>917</sup> AP, *More than 55,000 Palestinians have been killed in the Israel-Hamas war, Gaza health officials say* (11 June 2025) [More than 55,000 Palestinians have been killed in the Israel-Hamas war, Gaza health officials say | The Associated Press](#) accessed on 10 March 2026

<sup>918</sup> NIH, *Violent and non-violent death tolls for the Gaza conflict: new primary evidence from a population-representative field survey* (18 February 2026) [Violent and non-violent death tolls for the Gaza conflict: new primary evidence from a population-representative field survey - PubMed](#) accessed on 10 March 2026

found that 56.2% of violent deaths were among women, children and older people, amounting to approximately 42,200 deaths.<sup>919</sup> The earlier Lancet correspondence suggesting that Gaza's death toll could eventually reach 186,000 was not a measured death count, but a projection intended to illustrate the potentially vast scale of indirect mortality arising from bombardment, starvation, disease, destruction of healthcare and infrastructural collapse.<sup>920</sup>

What this information demonstrates is that the projected death toll in Gaza is higher than most Western media reports, with the majority of victims being women and children. Until Israel allows independent investigators and journalists into Gaza, stops its bombardment and allows unfettered lifesaving aid into Gaza, the death toll will only increase. The Gaza genocide is not only an incident of mass killing but is a slow genocide driven by starvation, dehydration and infrastructural purposeful destruction including water and electricity facilities.

It is in this context that any continuation of coal exports from South Africa to Israel cannot be regarded as neutral trade, but as a direct contribution to conditions calculated to destroy the Palestinian people in whole or in part. South Africa's coal trade with Israel must be re-assessed and immediately suspended. The question before the South African government is no longer whether these facts are true or not, they have been documented and affirmed by the ICJ, ICC, UN and every credible international humanitarian organization – the question is whether South Africa will continue to provide material resources that sustains the genocide and ethnic cleansing of Palestine.

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<sup>919</sup> The Guardian, 'Gaza death toll far higher than reported, Lancet study says' (19 February 2026) <https://www.theguardian.com/world/2026/feb/19/gaza-death-toll-higher-than-reported-lancet-study> accessed on 10 March 2026

<sup>920</sup> NIH, *Counting the dead in Gaza: difficult but essential* (5 July 2024) [Counting the dead in Gaza: difficult but essential - PubMed](#) accessed on 10 March 2026.

## **Annexure C: Ceasefire: No Solution to Genocide, Occupation or Apartheid**

To begin, I quote from the letter from the State of Palestine to the addressed to the UN Secretary-General, the President of the UN General Assembly and the President of the Security Council dated 2 February 2026<sup>921</sup>:

*The situation in Gaza remains dire as Israel, the occupying Power, persists with its breaches of the ceasefire and all tenets of international law, massacring more Palestinian civilians and further destroying this small area of our country that has turned into a wasteland of rubble and desolation.*

*On Saturday, 31 January, Israeli occupying forces targeted several civilian areas in Gaza, massacring at least 31 Palestinians, including women and children. In one attack, Israeli war planes struck a tent sheltering displaced people in Mawasi, killing 7 Palestinians, including 3 children, while in another attack on a building in Gaza City, Israeli occupying forces killed 5 Palestinians, including another 3 children, in addition to other strikes across the territory and the killing of 43 other Palestinians, including children and 3 more journalists, in the span of two weeks, from 14 to 28 January.*

*Once again, hospitals in Gaza have become the gruesome sites of mass fatalities, of dismembered bodies, burnt flesh and grieving families, as those wounded in Israeli assaults were brought in by emergency services – 31 men, women and children whose lives could not be saved and dozens of other critically injured victims now struggling to survive in hospitals where medical supplies remain depleted.*

*What kind of a ceasefire allows for the slaughter of civilians? What kind of a ceasefire allows for over a thousand violations – military attacks, killings and executions, of humanitarian aid, desecration of cemeteries – without a single consequence? What kind of a ceasefire allows the aggressor to run rampant while condemning the oppressed to perpetual suffering and loss?*

*Since the ceasefire agreement came into effect over three months ago, Israel has killed at least 509 Palestinians and wounded over 1,405 other children, women and men.*

The tragic reality since 7 October 2023 has demonstrated that ceasefires offer no guarantee of ending the Israeli violence and oppression against the Palestinian people.<sup>922</sup> While international

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<sup>921</sup> United Nations, The Question of Palestine, Letter from the State of Palestine (2 February 2026) <https://www.un.org/unispal/document/letter-from-the-state-of-palestine-calling-for-permanent-ceasefire-end-to-occupation-and-implementation-of-the-two-state-solution-a-es-10-1054-s-2026-73/> accessed 10 March 2026

<sup>922</sup> Human Rights Watch, 'Gaza: Ceasefire No Substitute for Action on Aid, Justice' (9 October 2025) <https://www.hrw.org/news/2025/10/09/gaza-ceasefire-no-substitute-action-aid-justice> accessed 11 November 2025.

calls for a permanent humanitarian ceasefire were mounting, Israeli leaders vowed to continue the war unabated.<sup>923</sup> Even when truces have been reached, they have been short-lived and marred by Israeli violations – mere pauses in an ongoing campaign of destruction, illegal occupation and apartheid rule over Palestinians.

Early ceasefire efforts in Gaza were limited to brief pauses for hostage exchanges. A first truce in late November 2023 allowed a few days of calm and the entry of humanitarian aid, but Israel indicated it was only a tactical pause.<sup>924</sup> Indeed, Israeli forces resumed relentless bombardment as soon as the hostage deal lapsed, dashing hopes that the ceasefire would hold.<sup>925</sup> Over the subsequent months, Israel periodically agreed to temporary halts – only to break them. A ceasefire and prisoner exchange on 19 January 2025 was shattered when the Israeli army resumed its assault on Gaza on 18 March, violating the agreement and imposing a full siege on the Gaza strip, not allowing food, water or medicine into the enclave.<sup>926</sup> Each time, the pattern has been the same: Israel treats the “ceasefire” not as a step towards peace but as intervals before launching the next offensive.

The latest ceasefire, the ‘Trump-Netanyahu’ peace deal – brokered in October 2025 after two years of fighting – underscores how fragile and one-sided these deals have been. The outstanding element of this peace deal is that the Palestinian resistance has not been an integral participant in the deal.<sup>927</sup> The deal was imposed on them which is clear by the lack of Palestinian representation in the so-called ‘Board of Peace’.

The ‘ceasefires’ have played out as often described: Palestinian resistance ceases, and Israel fires. Bibi Netanyahu admitted to dropping 153 tons of bombs on Gaza on 19 October 2025

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<sup>923</sup> PBS News ‘No end to war in Gaza in sight despite growing calls for a cease-fire’ available at <https://www.pbs.org/newshour/world/no-end-to-war-in-gaza-in-sight-despite-growing-calls-for-a-cease-fire#:~:text=Biden%20and%20Netanyahu%20hold%20first,Miller%2C%20Julia%20Frankel%2C%20Associated%20Press>, accessed on 13 February 2026.

<sup>924</sup> Al Jazeera, ‘Gaza truce deal: What have Hamas, Israel and Qatar said?’ (22 November 2023) <https://www.aljazeera.com/news/2023/11/22/israel-hamas-deal-on-temporary-ceasefire-in-gaza-all-you-need-to-know> accessed 11 November 2025

<sup>925</sup> Reuters, ‘Israel–Hamas war: The hostage deal and ceasefire’ (22 November 2023) <https://www.reuters.com/world/middle-east/israelhamas-war-hostage-deal-ceasefire-gaza-2023-11-22/> accessed 11 November 2025; Reuters, ‘Scores reported killed in Gaza as fighting shatters Israel–Hamas truce’ (1 December 2023) <https://www.reuters.com/world/middle-east/gaza-negotiators-try-get-israel-hamas-agree-extend-truce-again-2023-12-01/> accessed 11 November 2025

<sup>926</sup> Al Jazeera, ‘At least 404 killed as Israel unleashes strikes on Gaza, breaking ceasefire’ (18 March 2025) <https://www.aljazeera.com/news/2025/3/18/israel-launches-gaza-assault-killing-hundreds-and-shattering-ceasefire> accessed 11 November 2025.

<sup>927</sup> Council on Foreign Relations, ‘A Guide to the Gaza Peace Deal’ (29 October 2025) <https://www.cfr.org/article/guide-trumps-twenty-point-gaza-peace-deal> accessed 11 November 2025.

alone, in what amounts to an admission of violating a ceasefire agreement.<sup>928</sup> Just weeks into the US-sponsored agreement, which came into effect on 10 October 2025, the Gaza government media office reported 80 Israeli ceasefire violations, resulting in 97 Palestinians killed and 230 others injured.<sup>929</sup> By February 2026, Israel violated this so-called ceasefire at least 1,620 times.<sup>930</sup> At least 601 Palestinians have been murdered since, with 1,607 injured.<sup>931</sup> These numbers have likely increased at the time of conclusion of this report. Designating the term ‘ceasefire’ to the ongoing genocide since October 2025 feeds into Israel’s intention of placating the general public, as well as into President Donald Trump’s desire to be viewed as a peacekeeper.

The ‘ceasefire’ proclaimed to halt what many observers, including international jurists, call a two-year-long genocide in Gaza. Yet from the outset, Israel failed to honour key terms. It had promised to significantly increase humanitarian relief to Gaza’s besieged population, but almost immediately cut the agreed number of aid trucks by half.<sup>932</sup> The United Nations confirmed that Israel’s military liaison (COGAT) informed them that only 300 trucks per day would be let in – just 50% of the 600 trucks Israel had committed to under the truce.<sup>933</sup> In practice, even less aid flowed: rights monitors report that only 173 relief trucks entered Gaza, out of roughly 1,800 expected during the first days of the ceasefire.<sup>934</sup> At the same time, Israeli officials insisted no fuel or additional supplies would be allowed, undermining the humanitarian objectives of the ceasefire.

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<sup>928</sup> Anadolu Agency, *'Israeli premier says 153 tons of bombs dropped on Gaza, admits breach of ceasefire deal'* (20 October 2025) <https://www.aa.com.tr/en/middle-east/israeli-premier-says-153-tons-of-bombs-dropped-on-gaza-admits-breach-of-ceasefire-deal/3722145> accessed 11 November 2025..

<sup>929</sup> Al Jazeera, *'Has the Gaza ceasefire been broken?'* (20 October 2025) <https://www.aljazeera.com/news/2025/10/20/has-the-gaza-ceasefire-been-broken> accessed 11 November 2025..

<sup>930</sup> Al Jazeera *'How many times has Israel violated the Gaza ceasefire? Here are the numbers'* available at <https://www.aljazeera.com/news/2025/11/11/how-many-times-has-israel-violated-the-gaza-ceasefire-here-are-the-numbers>, accessed on 13 February 2026.

<sup>931</sup> Ibid.

<sup>932</sup> United Nations OCHA, *'Israel told UN it would allow only 300 of 600 agreed trucks of aid per day into Gaza'* (situation update, 16 October 2025) <https://www.unocha.org/media-centre/gaza-humanitarian-aid-trucks-16-october-2025> accessed 11 November 2025

<sup>933</sup> ibid

<sup>934</sup> Anadolu Agency, *'173 aid trucks enter Gaza under ceasefire deal, local authorities say'* (13 October 2025) <https://www.aa.com.tr/en/middle-east/173-aid-trucks-enter-gaza-under-ceasefire-deal-local-authorities-say/3715741> accessed 11 November 2025.

From 10 October 2025 to 10 February 2026, only 31,178 trucks entered Gaza out of 72,000 (averaging 260 trucks per day). That is only 43 percent of the trucks allocated.<sup>935</sup> When one thinks of aid being delivered, one would hope or assume that this aid would be nutritious or at least filling, but reports indicate that Israel is consistently allowing items like snacks, chocolate, crisps and soft drinks into Gaza, but blocking nutritious food items, such as meat, dairy and vegetables.<sup>936</sup> This is another action that depicts the control that Israel and its representatives have over the lives of Palestinians. Aside from control, it is another tactic used to try and weaken the Palestinian population. On 30 December 2025, Israel imposed a new regulation which banned 37 international NGOs from operating in Gaza and the West Bank.<sup>937</sup> This is another systematic tactic, adding onto the many others, that make life difficult for Palestinians in their homeland.

Most alarmingly, Israeli forces have not stopped the killing. According to the Gaza Centre for Human Rights, the Israeli military committed at least 36 violations of the truce in the first week alone – including air strikes, artillery shelling and gunfire across Gaza<sup>938</sup>. These attacks killed several Palestinian civilians and wounded many others, often as people returned to inspect their war-torn homes. In one incident, Israeli drones struck a group of civilians in Gaza City’s Shuja’iyya neighbourhood, killing five people on the morning of 14 October 2025, despite the ceasefire being in effect.<sup>939</sup> At the time of writing, the number of violations has risen to 1,620 with 601 deaths reported.<sup>940</sup> Just two days before the Rafah border was set to reopen, Israel attacked and killed at least 31 Palestinians on 31 January 2026.<sup>941</sup> Israel has not shown a genuine attempt to stop, so it is up to the international community to exert such an overwhelming pressure that this apartheid genocidal state has no choice but to halt its actions.

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<sup>935</sup> Op cit note 9.

<sup>936</sup> Ibid.

<sup>937</sup> The Office of the United Nations High Commissioner for Human Rights ‘Israel: Ban on 37 aid groups makes life unbearable for genocide survivors in Palestine, say UN experts’ available at <https://www.ohchr.org/en/press-releases/2026/01/israel-ban-37-aid-groups-makes-life-unbearable-genocide-survivors-palestine>, accessed on 13 February 2026.

<sup>938</sup> Middle East Monitor, 'Rights group reports 36 Israeli ceasefire violations in Gaza since ceasefire' (16 October 2025) <https://www.middleeastmonitor.com/20251016-rights-group-reports-36-israeli-ceasefire-violations-in-gaza-since-ceasefire/> accessed 11 November 2025

<sup>939</sup> Al Jazeera, 'Gaza ceasefire tested as Israeli forces kill five Palestinians' (14 October 2025) <https://www.aljazeera.com/news/2025/10/14/gaza-ceasefire-tested-as-israeli-forces-kill-five-palestinians> accessed 11 November 2025

<sup>940</sup> Op cit note 9.

<sup>941</sup> Ibid.

The destruction of Gaza remains overwhelming and the suffering continues. Entire neighbourhoods lie in rubble from the prior onslaught, and thousands of families find nothing left of their homes. It has heartbreakingly become far too common to encounter the experiences of Gazans returning to what was their home, searching through the rubble for the remains of their loved ones.<sup>942</sup> What is clear is that the slowing-down of bombing has not reversed the humanitarian catastrophe; it merely froze it in place. Civilians trying to recover belongings from the wreckage are met with Israeli gunfire and drone attacks. Basic necessities are still scarce due to Israel's tight siege and most of Gaza's residents remain refugees in their own land – huddling in overcrowded shelters, mourning the death and loss of tens of thousands of loved ones. A ceasefire may have silenced some of the bombs for now, but it has not ended the climate of fear and insecurity that Palestinians endure.

Crucially, while Gaza grabbed world headlines, Israel never ceased its violence in the occupied West Bank, nor on other fronts<sup>943</sup>. In the West Bank, there was no ceasefire to begin with – and Israeli forces alongside settler militias continue to intensify their deadly crackdown under the cover of the 'Gaza war'. Since 7 October 2023, Israel has killed over 1,000 Palestinians in the West Bank<sup>944</sup>. This surge of killings – described by Al Jazeera as unfolding while the world was “distracted” by Gaza – accompanied near-daily army raids on refugee camps and violent settler attacks on Palestinian villages. Israeli settlers, often backed by soldiers, have stormed towns, burned homes and crops and terrorized residents in an effort to drive Palestinians off their land.<sup>945</sup>

Displacement in the West Bank is at the highest it's been since October 2023, with settler violence being the key reason for this.<sup>946</sup> Israel's actions and views towards Palestinians

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<sup>942</sup> Wafaa Shurfa and Samy Magdy 'A father in Gaza searches for his family's bones in the rubble of their home' available at <https://www.independent.co.uk/news/gaza-city-israeli-gaza-hamas-haifa-b2917956.html>, accessed on 15 February 2026.

<sup>943</sup> UN Office for the Coordination of Humanitarian Affairs, *Humanitarian Situation Update 33/3 – West Bank* (2025) <https://www.unocha.org/publications/report/occupied-palestinian-territory/humanitarian-situation-update-333-west-bank> accessed 11 November 2025

<sup>944</sup> Al Jazeera, 'Israel has killed 1,000 Palestinians in the West Bank since October 7, 2023' (1 July 2025) <https://www.aljazeera.com/news/2025/7/1/israel-has-killed-1000-palestinians-in-the-west-bank-since-october-7-2023> accessed 11 November 2025.

<sup>945</sup> Marium Ali 'Mapping the rise in Israeli settler attacks across the occupied West Bank' available at <https://www.aljazeera.com/news/2025/10/14/mapping-the-rise-in-israeli-settler-attacks-across-the-occupied-west-bank#:~:text=An%20armed%20settler%20stands%20near,Oct%20202514%20Oct%202025>, accessed on 15 February 2026.

<sup>946</sup> Al Jazeera 'Settler violence stokes peak West Bank displacement since October 2023: UN' available at <https://www.aljazeera.com/news/2026/2/6/settler-violence-stokes-peak-west-bank-displacement-since-october-2023->

enables settler violence, with the Israeli army as a supporter and enforcer of this violence.<sup>947</sup> Since January 2026, 700 Palestinians have been displaced from the West Bank.<sup>948</sup> The government does not even try to hide its intentions to annex the West Bank, either. In February 2026, the Israeli government approved a proposal to register large areas of the occupied West Bank as “state property” for the first time since the illegal Israeli occupation of the territory began in 1967.<sup>949</sup> In reference to this proposal, far-right Finance Minister Bezalel Smotrich stated that “we are continuing the settlement revolution to control all our lands.” This is ethnic cleansing, and not only is it not showing any signs of stopping, but rather the opposite - it is consistently on the rise.

Far-right ministers in Israel’s government openly encourage these actions as a means to expand Jewish settlement. Bezalel Smotrich, in charge of a ‘Settlement Administration’, has been accelerating land confiscation and pushing de facto annexation of the West Bank. Under Smotrich’s watch in 2024, Israel seized more Palestinian land in the West Bank than in any year in the past two decades<sup>950</sup>. Thus, even at the height of a Gaza ceasefire, Palestinians in the West Bank remain under fire, facing extrajudicial killings and an ever-deepening unlawful occupation.

Why have these ceasefires failed to stop the wider “genocidal” campaign and decades-old system of oppression? A large part of the answer lies in the ideology and agenda of Israel’s current government. Top Israeli officials have unabashedly described the war on Gaza in exterminationist terms. Finance Minister Smotrich stated bluntly that the war “*will not end until...Gaza is cleansed of Hamas and hundreds of thousands of Gazans are on their way out...to other countries.*”<sup>951</sup> In other words, he envisions mass deportation of Gaza’s people as

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[un#:~:text=January's%20displacement%20numbers%20are%20particularly,Affairs%20\(OCHA\)%20on%20Thursday.](#), accessed on 15 February 2026.

<sup>947</sup> UN Human Rights in Occupied Palestinian Territory ‘Israeli settlers, supported by the army, forcibly displaced Palestinian communities from the Jordan Valley in the occupied West Bank’ available at <https://www.un.org/unispal/document/israeli-settlers-supported-by-the-army-forcibly-displaced-palestinian-communities-from-the-jordan-valley-in-the-occupied-west-bank/>, accessed on 15 February 2026.

<sup>948</sup> Op cit note 26.

<sup>949</sup> Al Jazeera ‘Israel approves proposal to register West Bank lands as ‘state property’’ available at <https://www.aljazeera.com/news/2026/2/15/israel-approves-proposal-to-register-west-bank-lands-as-state-property>, accessed on 15 February 2026.

<sup>950</sup> The Guardian, ‘Israel has approved “largest West Bank land grab in 30 years”, watchdog says’ (4 July 2024) <https://www.theguardian.com/world/article/2024/jul/04/israel-has-approved-largest-west-bank-land-grab-in-30-years-watchdog-says> accessed 11 November 2025.

<sup>951</sup> Al Jazeera (2024–2025 analysis) quoting Bezalel Smotrich on Gaza displacement and settlement expansion; see also *The Guardian* and *International Crisis Group* reporting on Smotrich’s rhetoric and annexation plans (2024–2025).

a war aim. Smotrich declared that Israel’s victory requires driving out a significant portion of Gaza’s 2.3 million residents – a plan that amounts to ethnic cleansing.<sup>952</sup> He voiced this at a rally in the occupied West Bank, and claimed this goal was the “*consensus of the Israeli coalition*”<sup>953</sup>. After some countries officially recognised Palestine as an official state, National Security Minister Itamar Ben-Gvir, another extremist and far-right Israeli Minister called for the annexation of the West Bank.<sup>954</sup>

Such rhetoric aligns disturbingly with the actions observed on the ground (mass displacement and destruction of civilian areas). Ben-Gvir has also explicitly advocated for cruelty over humanitarian aid. In May 2025, Ben-Gvir boasted that Israel had U.S. backing to “*open the gates of hell on Gaza*”<sup>955</sup>. He urged a “*decisive attack to crush [Hamas] and encourage migration from the Gaza Strip, rather than bringing aid into the territory.*”<sup>956</sup>

These are open calls to forcibly expel Gaza’s population under the guise of war, instead of permitting relief for them – effectively endorsing the removal of Palestinians *en masse*. Such statements are not offhand slips; they reflect the core policies of a Zionist government dominated by ultranationalists who see the current war as an opportunity to realize maximalist goals.

When a senior figure in the Israeli government like Ben-Gvir asserts Jewish supremacy – effectively saying Palestinian freedom of movement or life is secondary – it validates that apartheid reality in the eyes of the world. This is the mindset at the helm of Israel’s government during this genocide, rhetoric which is largely supported by the majority of Israeli society. Genocidal rhetoric from leaders like Ben-Gvir and Smotrich is not only hateful talk; it signals intent. It helps explain why Israeli forces are barely restrained by ceasefires and clearly not committed to a lasting peace.

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<sup>952</sup> Jeremy Sharon ‘Smotrich says Gaza to be ‘totally destroyed,’ population ‘concentrated’ in small area’ available at <https://www.timesofisrael.com/smotrich-says-gaza-to-be-totally-destroyed-population-concentrated-in-small-area/>, accessed on 15 February 2026.

<sup>953</sup> Nouraldein Ghanem ‘Smotrich says 2025 is the year Israel will impose ‘sovereignty’ on the West Bank’ available at <https://www.trtworld.com/article/18231051>, accessed on 15 February 2026.

<sup>954</sup> Keshet Neev ‘Right-wing ministers call for West Bank annexation after countries recognize Palestine’ available at <https://www.jpost.com/israel-news/article-868283>, accessed on 15 February 2026.

<sup>955</sup> Middle East Monitor ‘Ben-Gvir: We got US support to open gates of hell on Gaza’ available at <https://www.middleeastmonitor.com/20250513-ben-gvir-we-got-us-support-to-open-gates-of-hell-on-gaza/>, accessed on 15 February 2026.

<sup>956</sup> Ibid.

In such an environment, a negotiated truce on paper, or a ‘Board of Peace’ which includes no input from Palestinians cannot override the on-the-ground push to annihilate or uproot the Palestinian people. Every ceasefire thus far has been treated by Israel’s leaders as a chance to regroup and then “*finish the job*”<sup>957</sup> – not as a step toward ending the siege, illegal occupation or apartheid policies that underlie the conflict – but rather to complete the ethnic cleansing and genocide of the Palestinian people.

The experiences of the past two years make it painfully clear that a ceasefire will not guarantee an end to the nightmare for Palestinians. Each pause in fighting has been tenuous and accompanied by continuing injustice from Israel. Genocide is not halted by a brief truce if the perpetrator is intent on continuing it when convenient. Illegal occupation is not reversed by a temporary halt in airstrikes. An entrenched system of apartheid will not dismantle itself merely because of diplomatic pressure to stop bombing for a few days. Israel’s actions since 7 October 2023 – from repeatedly breaching ceasefires, to killing civilians during supposed ‘pauses’, to accelerating land grabs and settlement expansion – all demonstrate that nothing fundamental changes for Palestinians when a ceasefire is declared.

The siege of Gaza remains in place; the blockade and chokehold on 2.3 million people continues. The settler militias in the West Bank continue to terrorize and Israeli soldiers continue to shoot to kill with impunity. The world must not be lulled into complacency by the word “ceasefire”. Peace is not merely the absence of active combat. For the Palestinian people, true peace would mean an end to the conditions of genocide, illegal occupation and apartheid that have been imposed on them as well as the enforcement of their right to self-determination and the right to return to the land that belongs to them. So long as those conditions persist, a ceasefire is no more than a brief intermission in an ongoing catastrophe.

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<sup>957</sup> Andrew Roth ‘Netanyahu vows to ‘finish job’ in Gaza during UN speech as delegates walk out’ available at <https://www.theguardian.com/world/2025/sep/26/benjamin-netanyahu-un-speech-gaza>, accessed on 15 February 2026.

# Annexure D : Export and Shipping Report

## Tables

### Shiplist

Including mystery shipments:

Vessel Name	IMO	Load Port	Departure	Discharge Port	Arrival	DWT (KT)	Ship Manager	Ship Flag
Navios Mars	9747950	Richards Bay	23/02/2026	Hadera, Israel	ETA: 26/03/2026 *en-route as of 15/03/2026	181.259	Navios Technical Management SA	Malta
Gortynia	9702584	Richards Bay	18/01/2026	Hadera, Israel	15/02/2026	182.608	Eastern Mediterranean Maritime	Malta
Cape Miron	9545168	Richards Bay	12/12/2025	Hadera, Israel	19/01/2026	180.274	XT Management Ltd	Liberia
Genco Tiberius	9331555	Richards Bay	12/11/2025	Ashkelon, Israel Hadera, Israel	17/12/2025	175.874	Genco Ship Management	Marshall Islands
**Seafighter	9686326	Richards Bay	12/10/2025			181.068	Thenamaris	Malta
Navios Felix	9756743	Richards Bay	28/09/2025	Hadera, Israel	30/10/2025	181.221	Navios Shipmanagement	Panama
Ernandin	9353620	Richards Bay	29/08/2025	Ashkelon, Israel	01/10/2025	174.205	Navilands Bulker Management	Liberia
Algoma Value	7926148	Richards Bay	24/07/2025	Ashkelon, Israel	27/08/2025	75.569	CSL Americas	Marshall Islands
CSL Metis	7926162	Richards Bay	20/06/2025	Ashkelon, Israel	28/07/2025	69.304	CSL Americas	Bahamas
Fortune	9737838	Richards Bay	14/05/2025	Hadera, Israel	17/06/2025	182.620	Eastern Mediterranean Maritime	Malta
Algoma Value	7926148	Richards Bay	18/05/2025	Ashkelon, Israel	18/06/2025	75.569	CSL Americas	Marshall Islands
CSL Metis	7926162	Richards Bay	03/04/2025	Ashkelon, Israel	07/05/2025	69.304	CSL Americas	Bahamas
Schinousa	9662409	Richards Bay	11/03/2025	Hadera, Israel	19/05/2025	176.247	Minerva Dry Inc	Liberia
Algoma Value	7926148	Richards Bay	28/02/2025	Ashkelon, Israel	06/04/2025	75.569	CSL Americas	Marshall Islands
Cape Friendship *Mai Yang (since 01/02/2025)	9327736	Richards Bay	06/01/2025	Hadera, Israel	11/02/2025	185.879	FML Ship Management *LORTHEMAR SHIPPING CO LTD (since 21/02/2025)	Marshall Islands *Panama (since 01/02/2025)
**Seamelody	9785964	Richards Bay	09/11/2024	Israel	-	82.031	Thenamaris	Malta
**Seastrength	9589671	Richards Bay	17/10/2024	Hadera, Israel	-	81.134	Thenamaris	Malta
**Seabulk	9936927	Richards Bay	18/10/2024	Hadera, Israel	ETA: 13/11/2024	81.996	Thenamaris	Malta
Zea	9628087	Richards Bay	03/10/2024	Hadera, Israel	01/11/2024	81.434	Eastern Mediterranean Maritime	Malta
**Sea Commander / Sea Fighter	9799783	Richards Bay	16/09/2024	Hadera, Israel	ETA: 15/10/2024	81.856	Eastern Mediterranean Maritime	Liberia
Navios Felix	9756743	Richards Bay	11/08/2024	Hadera, Israel	24/09/2024	181.221	Navios Shipmanagement	Panama
KSL Seattle *Mineral Axel (since 01/03/2026)	9683245	Richards Bay	20/01/2024	Hadera, Israel	01/04/2024	181.015	Golden Ocean *BOCIMAR INTERNATIONAL NV	Hong Kong *Belgium (since 01/03/2026)
KSL Salvador *Mineral Kevin (since 01/11/2025)	9683271	Richards Bay	04/12/2023	Hadera, Israel	19/01/2024	180.958	Golden Ocean *Equasis still lists owner as Golden Ocean as of 12/03/2026 despite Golden Ocean's acquisition by CMB.TECH	Hong Kong *Belgium (since 01/11/2025)
Golden Cumulus *Mineral Cumulus (since 01/02/2026)	9717400	Richards Bay	25/10/2023	Hadera, Israel	03/12/2023	180.499	Golden Ocean *CMB.TECH NV (since 02/02/2026)	Marshall Islands *Belgium (since 01/02/2026)

\*Changes to ship name, management and ownership since time of voyage  
\*\*Delivery could not be definitively confirmed

## Excluding mystery shipments:

Vessel Name	IMO	Load Port	Departure	Discharge Port	Departure	DWT (KT)	Ship Manager	Ship Flag
Navios Mars	9747950	Richards Bay				181.259		
Gortynia	9702584	Richards Bay	18/01/2026	Hadera, Israel	15/02/2026	182.608	Eastern Mediterranean Maritime	Malta
Cape Miron	9545168	Richards Bay	12/12/2025	Hadera, Israel	19/01/2026	180.274	XT Management Ltd	Liberia
Genco Tiberius	9331555	Richards Bay	12/11/2025	Ashkelon, Israel Hadera, Israel	17/12/2025	175.874	Genco Ship Management	Marshall Islands
Navios Felix	9756743	Richards Bay	28/09/2025	Hadera, Israel	30/10/2025	181.221	Navios Shipmanagement	Panama
Ernandin	9353620	Richards Bay	29/08/2025	Ashkelon, Israel	01/10/2025	174.205	Navilands Bulker Management	Liberia
Algoma Value	7926148	Richards Bay	24/07/2025	Ashkelon, Israel	27/08/2025	75.569	CSL Americas	Marshall Islands
CSL Metis	7926162	Richards Bay	20/06/2025	Ashkelon, Israel	28/07/2025	69.304	CSL Americas	Bahamas
Fortune	9737838	Richards Bay	14/05/2025	Hadera, Israel	17/06/2025	182.620	Eastern Mediterranean Maritime	Malta
Algoma Value	7926148	Richards Bay	18/05/2025	Ashkelon, Israel	18/06/2025	75.569	CSL Americas	Marshall Islands
CSL Metis	7926162	Richards Bay	03/04/2025	Ashkelon, Israel	07/05/2025	69.304	CSL Americas	Bahamas
Schinousa	9662409	Richards Bay	11/03/2025	Hadera, Israel	19/05/2025	176.247	Minerva Dry Inc	Liberia
Algoma Value	7926148	Richards Bay	28/02/2025	Ashkelon, Israel	06/04/2025	75.569	CSL Americas	Marshall Islands
Cape Friendship *Mai Yang (since 01/02/2025)	9327736	Richards Bay	06/01/2025	Hadera, Israel	11/02/2025	185.879	FML Ship Management *LORTHEMAR SHIPPING CO LTD (since 21/02/2025)	Marshall Islands *Panama (since 01/02/2025)
Zea	9628087	Richards Bay	03/10/2024	Hadera, Israel	01/11/2024	81.434	Eastern Mediterranean Maritime	Malta
Navios Felix	9756743	Richards Bay	11/08/2024	Hadera, Israel	24/09/2024	181.221	Navios Shipmanagement	Panama
KSL Seattle *Mineral Axel (since 01/03/2026)	9683245	Richards Bay	20/01/2024	Hadera, Israel	01/04/2024	181.015	Golden Ocean *BOCIMAR INTERNATIONAL NV (since 10/03/2026)	Hong Kong *Belgium (since 01/03/2026)
KSL Salvador *Mineral Kevin (since 01/11/2025)	9683271	Richards Bay	04/12/2023	Hadera, Israel	19/01/2024	180.958	Golden Ocean *Equasis still lists owner as Golden Ocean as of 12/03/2026 despite Golden Ocean's acquisition by CMB.TECH	Hong Kong *Belgium (since 01/11/2025)
Golden Cumulus *Mineral Cumulus (since 01/02/2026)	9717400	Richards Bay	25/10/2023	Hadera, Israel	03/12/2023	180.499	Golden Ocean *CMB.TECH NV (since 02/02/2026)	Marshall Islands *Belgium (since 01/02/2026)

\*Changes to ship name, management and ownership since time of voyage

# Total SA Coal Exports

All figures are expressed in millions of tonnes (Mt).

Period	AXS Marine <sup>1,4,6</sup> (Seaborne)	Kpler <sup>3,6</sup> (Seaborne)	RBCT <sup>2,5</sup> (Terminal Only)	Trademap <sup>8</sup>	SARS <sup>7</sup> (Maritime, Road, Rail)
2025	64.6 <sup>6</sup>	60.96 <sup>6</sup>	57.66 <sup>5</sup>	72.12 <sup>8</sup>	71.91 <sup>7</sup>
2024	62.1 <sup>4,6</sup>	58.13 <sup>6</sup>	52.08 <sup>2</sup>	71.54 <sup>8</sup>	70.92 <sup>7</sup>
2023	60.8 <sup>1</sup>	60 <sup>3</sup>	47.21 <sup>2</sup>	73.81 <sup>8</sup>	73.80 <sup>7</sup>

## Reference List:

- [1]: The Coal Hub. South African Coal Exports. Available at <https://thecoalhub.com/south-african-coal-exports.html>
- [2]: Mining Weekly. Richards Bay Coal Terminal 2024 exports extend beyond 52-million tons. Available at <https://www.miningweekly.com/article/richards-bay-coal-terminal-2024-exports-extend-beyond-52-million-tons-2025-01-24>
- [3]: Mysteel. South Africa's 2024 coal exports down 3.4% YoY. Available at <https://www.mysteel.net/news/5076084-south-africas-2024-coal-exports-down-34-yoy>
- [4]: Cluster Collaboration. Coal Ports and Sea Routes 2024-2027: Indonesia and China are Leading Players. Available at <https://www.clustercollaboration.eu/content/coal-ports-and-sea-routes-2024-2027-indonesia-and-china-are-leading-players>
- [5]: Mysteel. South Africa's Coal Exports Rise 1.3% in 2025. Available at <https://www.mysteel.net/analysis/5113098-south-africas-coal-exports-rise-13-in-2025>
- [6]: APBI-ICMA. South African Thermal Coal Exports Gain Momentum Amid India's Sponge Iron Boom. Available at <https://apbi-icma.org/media-article/south-african-thermal-coal-exports-gain-momentum-amid-india-s-sponge-iron-boom>
- [7]: South African Revenue Service (SARS). Trade Statistics Portal. Figures represent the aggregate of all exports classified under HS Code 2701, including Anthracite; Bituminous coal; Other coal; and Briquettes, ovoids and similar solid fuels manufactured from coal. Data extracted on 12 March 2026 from [https://tools.sars.gov.za/tradestatsportal/data\\_download.aspx](https://tools.sars.gov.za/tradestatsportal/data_download.aspx)
- [8]: <https://www.trademap.org/Index.aspx>

# Total SA Coal Exports to Israel

All figures are expressed in millions of tonnes (Mt).

Period	SARS Database <sup>2</sup>	Trademap <sup>3</sup>	UN Comtrade Database <sup>1</sup>	RBCT Sustainability Report <sup>5,4</sup>	Kpler
2025	1.86	1.86	1.86		
2024	0.72	0.72	0.72	0.72 <sup>5</sup>	0.39
2023	0.54	0.53	0.53	0.67 <sup>4</sup>	0.66

## Reference List:

- [1]: United Nations Comtrade Database. Figures represent annual South Africa exports to Israel classified under HS Code 2701. Data extracted on 12 March 2026 from <https://comtradeplus.un.org/>
- [2]: South African Revenue Service (SARS). Trade Statistics Portal. Figures represent the aggregate of all South African exports classified under HS Code 2701 to Israel, including Anthracite; Bituminous coal; Other coal; and Briquettes, ovoids and similar solid fuels manufactured from coal. Data extracted on 12 March 2026 from [https://tools.sars.gov.za/tradestatsportal/data\\_download.aspx](https://tools.sars.gov.za/tradestatsportal/data_download.aspx)
- [3]: <https://www.trademap.org/Index.aspx>
- [4]: RBCT. 2023 Sustainable Development Report Available at [https://cop-report.unglobalcompact.org/COPViewer/2023?responseId=R\\_23ULDqhG1yIzFwU](https://cop-report.unglobalcompact.org/COPViewer/2023?responseId=R_23ULDqhG1yIzFwU)
- [5]: RBCT. 2024 Sustainable Development Report Available at <https://rbct.co.za/wp-content/uploads/2025/07/SD-report-final-low-1.pdf>

# Methodology

## Introduction

This methodology outlines our approach to identifying vessels responsible for the transport of coal from Richards Bay Coal Terminal to Israel's Orot Rabin and Rutenberg power plants. The vessel identification process can be divided into three distinct stages: verification of coal loading at Richards Bay; reconstruction of vessel transit paths; confirmation of the unloading of coal at specialized coal terminals in Hadera and Ashkelon.

## Data Sources

Vesselfinder served as our primary source for vessel AIS data, including crew-reported ETAs, algorithmically-derived portcall events (Arrival/Departure), as well as geospatial coordinates. We also relied on MarineTraffic for supplementary berth terminal and loading status data at both the Richards Bay Coal Terminal and ports in Israel. Kpler, satellite imagery from Copernicus Browser, and research conducted by Palestinian Youth Movement were also used to cross-reference our findings.

Data was also extracted from the South African Revenue Services database to confirm the amount of coal exported to Israel, this information was cross-referenced with information received from other sources such as Kpler, PYM etc.

## 1. Coal Loading Verification

We began our process by scanning every ship that departed Richards Bay using Vesselfinder. This way, we were able to ensure that no ships were overlooked. From there we applied three filters to narrow down the set and ensure that it only included ships which loaded coal.

**Vessel Type:** The set was narrowed to include only Bulk Carriers, which are standard for coal transport. Other ship types such as container ships and tankers were excluded from the set.

**Cargo Identification:** Only ships that docked at and departed from Richards Bay Coal Terminal (Berths 301 to 306) were included. Since the terminal exclusively handles coal exports, this served as a proxy for cargo identification.

Loading Status: Where possible, we were able to confirm that the ships loaded cargo at the port using MarineTraffic.

## 2. Reconstructing the Transit Path

Each ship that left Richards Bay was monitored on Vesselfinder and its voyage path reconstructed. This made it possible to identify which ships carried their cargo to the Hadera or Ashkelon, the two main ports responsible for handling Israeli coal imports. During our analysis, it was discovered that ships rarely set their final destination immediately after departure, instead broadcasting their destination as the next waypoint. Based on our findings the following three transit profiles were identified.

**Direct Transit:** The first group consisted of ships which immediately either set their destination to Hadera or Ashkelon upon departing Richards Bay.

**Gibraltar Waypoint:** A second group involved ships which set their destination to Gibraltar for bunkering, then updated their position to an Israeli ports after passing the Strait of Gibraltar.

**Las Palmas Waypoint:** A particular ship stopped at Las Palmas after leaving Richards Bay. Loading condition data from MarineTraffic confirmed that the ship retained its cargo. The terminal that the ship docked at, Oryx Iberia, is specialized for bunkering and offloading of oil and gas, and lacks the necessary equipment for coal discharge. Based on this information we concluded that the ship stopped for bunkering operations. It then set its destination to Israel.

## 3. Coal Unloading Verification

Final delivery of coal to Israel was confirmed by vessel arrival at the Israeli ports of Hadera and Ashkelon. These are the two primary coal discharge ports in Israel, and are situated adjacent to the Orot Rabin (Hadera) and Rutenberg (Ashkelon) power stations.

Portcall events from Vesselfinder confirmed which ships arrived at either of the two ports. For further verification that ships had docked for the purpose of unloading coal, we relied on AIS position data, which indicated the particular terminals utilized. Where available, load condition data made it possible to verify that ships had unloaded their cargo.

# Mystery Ships

Our research suggests the following four ships may have transported coal from Richards Bay Coal Terminal to Israel between October and December 2024. Definitive confirmation was complicated by gaps and irregularities in the vessels' reporting records, particularly at the final stage of their voyage.

Vessel Name	IMO	DWT (KT)	Ship Manager	Ship Flag
Seastrength	9589671	81.134	Thenamaris	Malta
Seamelody	9785964	82.031	Thenamaris	Malta
Seabulk	9936927	81.996	Thenamaris	Malta
Sea Commander / Sea Fighter	9799783	81.856	Eastern Mediterranean Maritime	Liberia

## Coal Loading Confirmation

AIS voyage and position data confirmed that all four vessels had docked at specialized coal loading berths at the Richards Bay Coal Terminal (RBCT). After departing Richards Bay, all four proceeded to their next destination, Gibraltar. During both arrival and departure at Gibraltar, MarineTraffic indicated that the ships were laden with cargo. From this we were able to infer that the ships loaded coal in Richards Bay and remained laden in their journey across the Mediterranean before turning off their transponders.

## Destination Analysis

After leaving Gibraltar, two ships, Sea Commander and Seabulk, broadcast their next destination as Hadera. Seabulk later changed its destination to Damietta before turning off its AIS transponder. Sea Commander maintained its destination as Hadera while never officially confirming its arrival. The other two vessels, Seamelody and Sea Commander, initially set their destination to Damietta upon departing Gibraltar.

By analysing AIS position data we were able to confirm that all four ships had bypassed Damietta, including those expected at this destination. AIS position data showed all four ships moving toward the Israeli coast before and after turning their transponder off.

Gibraltar was the last confirmed destination before ships went dark. By the time the ships reappeared at another port, Marinetraffic indicated that the ships were “In Ballast”, confirming that they had unloaded their cargo.

### Data Reconciliation

Year	SARS Database [12]	Trademap [13]	UN Comtrade	RBCT Sustainability Report	Kpler	PYM
2024	0.72	0.72	0.61	0.72 [1]	0.39	0.40

Palestinian Youth Movement and Kpler only identified three shipments to Israel in 2024, Zea, Navios Felix, and KSL Seattle. none of which included the four mystery shipments we identified. This could explain the discrepancy between figures of total South African coal exports to Israel in 2024 provided by PYM and Kpler, with those of SARS, Trademap, Comtrade, and RBCT Sustainability Report.

### Analysis of Historical Shipments:

It was found that two of the four ships, Seamelody and Sea Commander, had made historical coal shipments to Israel.

Vessel Name	IMO	Load Port	Departure	Discharge Port	Arrival	DWT (KT)
Sea Commander /Sea Fighter	9799783	Taman, Russian Federation	02/08/2023	Hadera, Israel	23/08/2023	81.856

Vessel Name	IMO	Load Port	Departure	Discharge Port	Arrival	DWT (KT)	Cargo (KT)
Seamelody	9785964	Puerto Bolivar, Colombia	01/02/2024	Ashdod, Israel	27/03/2024	82.031	79.708 *DIAN
Seamelody	9785964	Puerto Bolivar, Colombia	29/11/2023	Hadera, Israel	Letter: 04/01/2024	82.031	70.193 *DIAN