

The Case for Genocide

By Chris Hedges – January 2024

The International Court of Justice may be all that stands between the Palestinians in Gaza and genocide.

The exhaustive 84-page brief submitted by South Africa to the International Court of Justice (ICJ) charging Israel with genocide is hard to refute. Israel's campaign of indiscriminate killing, wholesale destruction of infrastructure, including housing, hospitals and water treatment plants, along with its use of starvation as a weapon, accompanied by genocidal rhetoric from its political and military leaders who speak of destroying Gaza and ethnically cleansing the 2.3 million Palestinians, makes a strong case against Israel for genocide.

Israel's smearing of South Africa as "the legal arm" of Hamas exemplifies the bankruptcy of its defense, a smear replicated by those who claim that demonstrations held to call for a ceasefire and protect Palestinian human rights are "anti-Semitic." Israel, its genocide live streamed to the world, has no substantial counter argument.

But that does not mean the judges on the court will rule in South Africa's favour. The pressure the U.S. will bring – Secretary of State Antony Blinken has called the South African charges "meritless" - on the judges, drawn from the member states of the U.N., will be intense.

A ruling of genocide is a stain that Israel - which weaponizes the Holocaust to justify its brutalization of the Palestinians - would find hard to remove. It would undercut Israel's insistence that Jews are eternal victims. It would shatter the justification for Israel's indiscriminate killing of unarmed Palestinians and construction of the world's largest open air prison in Gaza, along with the occupation of the West Bank and East Jerusalem. It would sweep away the immunity to criticism enjoyed by the Israel lobby and its Zionist supporters in the U.S., who have successfully equated criticisms of the "Jewish State" and support for Palestinian rights with anti-Semitism.

Over 23,700 Palestinians, including over 10,000 children, have been killed in Gaza since Oct. 7, when Hamas and other resistance fighters breached the security barriers around Gaza. Some 1,200 people were killed – there is strong evidence that some of the victims were killed by Israeli tank crews and helicopter pilots that intentionally targeted the some 200 hostages along with their captors. Thousands more Palestinians are missing, presumed buried under the rubble. Israeli attacks have left over 60,000 Palestinians wounded and maimed, the majority of them women and children. Thousands more Palestinian civilians, including children, have been arrested, blindfolded, numbered, beaten, forced to strip to their underwear, loaded onto trucks and transported to unknown locations.

A ruling by the court could be years away. But South Africa is asking for provisional measures that would demand Israel cease its military assault – in essence a permanent ceasefire. This decision could come within two or three weeks. It is a decision that is not based on the final ruling by the court, but on the merits of the case brought by South Africa. The court would not, by demanding Israel end its hostilities in Gaza, define the Israeli campaign in Gaza as genocide. It would confirm that there is the possibility of genocide, what the South African lawyers call acts that are “genocidal in character.”

The case will not be determined by the documentation of specific crimes, even those defined as war crimes. It will be determined by genocidal intent - the intent to eradicate in whole or in part, a national, ethnic, racial or religious group – as defined in the Genocide Convention.

These acts collectively include the targeting of refugee camps and other densely packed civilian areas with 2,000-pound bombs, the blocking of humanitarian aid, the destruction of the health care system and its effects on children and pregnant women - the U.N. estimates there are around 50,000 pregnant women in Gaza, and that more than 160 babies are delivered every day - as well as repeated genocidal statements by leading Israeli politicians and generals.

Prime Minister Benjamin Netanyahu equated Gaza with Amalek, a nation hostile to the Israelites in the Bible, and cited the Biblical injunction to kill every Amalek man, woman, child or animal. Defence Minister Yoav Gallant called Palestinians “human animals.” Israeli President Isaac Herzog stated, as the South African lawyers told the court, that everybody in Gaza is responsible for what happened on Oct. 7 because they voted for Hamas, although half the population in Gaza are children who are too young to vote. But even if the entire population of Gaza did vote for Hamas this does not make them a legitimate military target. They are still, under the rules of war, civilians, and entitled to protection. They are also entitled under international law to resist their occupation via armed struggle.

The South African lawyers, who compared Israel’s crimes with those carried out by the apartheid regime in South Africa, showed the court a video of Israeli soldiers celebrating and calling for the death of Palestinians – they sang as they danced “There are no uninvolved civilians” - as evidence that genocidal intent descends from the top to the bottom of the Israeli war machine and political system. They provided the court with photos of mass graves where bodies were buried “often unidentified.” No one – including newborns – was spared, the South African lawyer Adila Hassim, Senior Counsel, explained to the court.

The South African lawyers told the court the “first genocidal act is mass killing of Palestinians in Gaza.” The second genocidal act, they stated, is the serious bodily or mental harm inflicted on Palestinians in Gaza in violation of Article 2B of the Genocide Convention. Tembeka Ngcukaitobi, another lawyer and legal scholar representing South Africa, argued that “Israel’s political leaders, military

commanders and persons holding official positions have systematically and in explicit terms declared their genocidal intent.”

Lior Haiat, spokesperson for the Israeli Ministry of Foreign Affairs, called Thursday’s three hour hearing one of the “greatest shows of hypocrisy in history, compounded by a series of false and baseless claims.” He accused South Africa of seeking to allow Hamas to return to Israel to “commit war crimes.”

Israeli jurists, in their response on Friday, called the South African charges “unfounded, “absurd” and amounting to “libel.” Israel’s legal team said it had – despite U.N. reports of widespread starvation and infectious diseases from a breakdown in sanitation and shortage of clean water – not impeded humanitarian assistance. Israel defended attacks on hospitals, calling them “Hamas command centers.” It told the court it was acting in self-defense. “The inevitable fatalities and human suffering of any conflict is not of itself a pattern of conduct that plausibly shows genocidal intent,” said Christopher Staker, a barrister for Israel.

Israeli leaders accuse Hamas with carrying out genocide, although legally if you are the victims of genocide you are not permitted to commit genocide. Hamas is also not a state. It is not, therefore, a party to the Genocide Convention. The Hague, for this reason, has no jurisdiction over the organization. Israel also claims the Palestinians are warned to evacuate areas that will come under attack and provided with “safe areas,” although as the South African lawyers documented, “safe areas” are routinely bombed by Israel with numerous civilian casualties.

Israel and the Biden administration intend to prevent any temporary injunction by the court, not because the court can force Israel to halt its military assaults, but because of the optics, which are already disastrous. The ICJ’s ruling depends on the Security Council for enforcement – which given the veto power by the U.S., renders any ruling against Israel moot. The second objective of the Biden administration is to make sure Israel is not found guilty of committing genocide. It will be unrelenting in this campaign, heavily pressuring the governments that have jurists on the court not to find Israel guilty. Russia and China, who have jurists in The Hague, are battling their own charges of genocide and may decide it is not in their interests to find Israel guilty.

The Biden administration is playing a very cynical game. It insists it is trying to halt what, by its own admission, is Israel’s indiscriminate bombing of Palestinians, while bypassing Congress to speed up the supply of weapons to Israel, including “dumb” bombs. It insists it wants the fighting in Gaza to end while it vetoes ceasefire resolutions at the U.N. It insists it upholds the rule of law while it subverts the legal mechanism that can halt the genocide.

Cynicism pervades every word Biden and Blinken utter. This cynicism extends to us. Our revulsion for Donald Trump, the Biden White House believes, will

impel us to keep Biden in office. On any other issue this might be the case. But it cannot be the case with genocide.

Genocide is not a political problem. It is a moral one. We cannot, no matter what the cost, support those who commit or are accomplices to genocide. Genocide is the crime of all crimes. It is the purest expression of evil. We must stand unequivocally with Palestinians and the jurists from South Africa. We must demand justice. We must hold Biden accountable for the genocide in Gaza.