

Is South Africa's Rule of Law failing the world?

Genocide charges at the Hague, yet stalled investigations and prosecutions at home

By Paul Hendler and Martin Jansen.

Preface:

Towards the end of 2023 [South Africa submitted a charge of genocide](#) against Israel at the [International Court of Justice \(ICJ\)](#).

This followed the Israeli Defence Force (IDF) assault on Gaza after [the 7 October 2023 breaking out by Palestinian Islamic Jihad and Hamas armed combatants](#), as well as other Palestinians, in response to their entrapment by [the 17-year old Israeli siege of Gaza](#).

From the moment of the first IDF counter-attack, [it was clear that the destruction of life, limb, structures and infrastructure was happening on an industrial scale](#), not witnessed before during the [seven invasions of Gaza between 2006 and 2014](#), as well as the fatal shootings of hundreds of non-violent protestors and the maiming of many more, during the [2018 Great March of Return](#) when young Palestinians in Gaza massed in protest along the fortified fence imprisoning them.

The African National Congress (ANC) government commendably submitted the charge of genocide, to which the ICJ made [a preliminary finding that it was plausible](#). However, both before and subsequently the ANC, while talking *for* the liberation of Palestine has [refrained from supporting the Boycott Divestment Sanctions campaign](#), a non-violent Palestinian-led global campaign to put pressure on Israel to comply with international law, through which to achieve equal civic and national rights for all Palestinians in a democratic state (or states) in historic Palestine.

South African authorities could have investigated and prosecuted South African volunteers to the IDF, as well as enablers of their recruitment, for their participating in the current and past genocidal moments, and other violations of [international humanitarian law](#) (IHL) and [international human rights law](#) (IHRL) (domesticated in local legislation) through attacks on Gaza. Over the past 16 years, the [Palestine Solidarity Alliance](#), the [Palestine Solidarity Campaign Cape Town](#) and the [Media Review Network](#) have submitted substantial evidence (over 900 pages of legal argument corroborated by largely self-incriminating social media posts) about participating in genocide, war crimes and acts violating IHL and IHRL of over 100 South African volunteers for the IDF. These individuals as well as Zionist institutions facilitating their recruitment, likely violated a number of local laws.

- The [Regulation of Foreign Military Assistance Act](#) (RFMAA) requires recruits as well as institutions aiding and abetting the recruiting process

to the IDF to obtain ministerial authorisation, which may not be granted if it would result in the infringement of human rights and fundamental freedoms. Responding to a recent Provision of Access to Information Act (PAIA) request, the state indicated that [no applications for authorisation to serve in the IDF had been received between 2006 and 2023](#).

- Specific acts identified in South Africa's submission of the charge of genocide to the ICJ, as well as [acts identified during two previous attacks on Gaza, namely Operation Cast Lead \(2008/2009\) and Operation Protective Edge \(2014\) fall within the definition of terrorist activity](#) as defined by the [Anti-terrorist and Related Activities Act \(ATRAA\)](#): e.g. systematic and arbitrary use of violence, endangering life of a number of persons, causing serious risks to public health and safety, wanton destruction of economic, social and basic services infrastructure, etc.
- The repetitive and ongoing nature of the recruitment-to-the-IDF process, justifies categorising these activities as organised crime and racketeering as defined by the [Prevention of Organised Crime Act \(POCA\)](#), which combats organised crime primarily through acting against money laundering and gang activities, by *inter alia* creating an obligation to report certain information, criminalising certain activities, and the civil forfeiture of criminal assets that have been used to commit an offence or assets that are the proceeds of unlawful activity.
- Specific individual acts and institutional functions referred to above, likely fall within the definition of crimes dealt with by the International Criminal Court (ICC), set up by the Rome Statute. The [International Criminal Court Act](#) provides a framework to ensure the effective implementation of the Rome Statute of the ICC in South Africa, and that South Africa conforms with its obligations set out in the statute, to implement charges of contravening international law against such persons/institutions, and to take appropriate action, including trying them in South Africa or if that were not possible to cooperate with the ICC to try them.

Serving in the IDF is marketed through a network of local Zionist organisations, linked to Israeli state apparatuses that recruit and place the volunteers in designated IDF units (see diagram on overleaf).



Arguably, local organisations like [Sar El](#) (operating through the [SA Zionist Federation](#) [SAZF]) and [Telfed](#) (the SAZF branch in Tel Aviv) have violated the same laws and through racketeering, also violated the POCA. Within the framework of the SAZF there are other agencies actively involved in recruiting and supporting volunteer soldiers. The [Israel Centre](#) has hosted the marketing and recruitment of volunteer soldiers by the [Garin Tzabar](#) programme.

Notwithstanding the considerable body of *prima facie* evidence and legal argument, South Africa's criminal investigation and prosecutorial authorities have failed to take any action. Their stated reasons are that there is insufficient evidence for them to act on, but satisfactorily identifying and assessing evidence requires considerable investigative resources beyond the scope of civil society organisations but well within the capacity of mandated state authorities. The likely reasons the police are stalling on further investigation are Western geopolitical influences as well as local interests that short circuit the organisational mechanisms of the criminal investigation and prosecutorial authorities.

Geopolitical power condenses to influence national policies:

The current genocidal moment is not the first in the long history of the oppression of the Palestinian people by the state of Israel. [The 1948 Nakba](#) was the expulsion of three-quarters of a million Palestinians from over 400 towns and villages in historical Palestine to make way for the establishment of the Jewish state. Israel justified this by referring to the legality of a United Nations General Assembly (UN GA) [partition plan](#), supported by the Western Powers and the then Soviet Union (USSR).

However, the UN GA has no mandate for establishing states and even less so in 1947¹, and consequently the GA resolution provides 'no right for Israel to exist'. [The resolution was advisory](#), to which Palestinian representatives responded with a request to refer the partition plan (which they rejected) to the ICJ. Under the influence of Western powers, the GA did not accede to this request.

During Israel's six-day war of 1967 an additional 300 000 Palestinians living in camps on the West Bank (of the Jordan River) were expelled to Jordan ([an event that came to be called the 'Naksa'](#)), as Israel conquered the rest of historic Palestine including the capture of the Sinai Peninsula, Gaza Strip, West Bank, Old City of Jerusalem, as well as the Golan Heights from Syria.

Since the partition resolution the composition of the UN has changed with many newly independent states joining and bringing with them a broadly anti-colonial and pro-national liberation ethos. The result was many GA resolutions opposed to Israel's policies and practices towards the Palestinian people. Over the same time IHRL developed to the point of outlawing [racial discrimination](#) and [apartheid](#) as a systematic domination and suppression of a racial group. Congruently, in 1975, a GA resolution condemned [Zionism as a form of racism](#), but this was [rescinded during the 1990s](#) with [the support of the Palestine Liberation Organisation](#) (PLO), under pressure from the UN, the United States (US), the European Union and Russia in their mediation of the allegedly Israeli-Palestinian Peace Process (the Oslo Accords) that resulted in the PLO's surrender, giving up its struggle for national liberation and ensured Israel's complete domination and occupation of historic Palestine.

Over the past 20 years the ICJ has made significant rulings that have delegitimised Israel's 1967 occupation of the Palestinian Territories.

- [Its 2004 Advisory](#) regarding Israel's separation barrier on the West Bank ruled that this barrier was contrary to international law because it impedes Palestinians right to self-determination; consolidates illegal settlements; breaches the Fourth Geneva Convention (by requisitioning and destroying properties); hinders access to agriculture, health and educational services and water resources; restricts freedom of movement and choice of residency; and could become permanent.

¹ "On 29 November 1947 the USSR voted in favor of the plan to partition Palestine and create both a Jewish State and an Arab State. Resolution 181 of the UN General Assembly passed with 33 in favor, 13 against, and 10 abstentions, including, notably, Yugoslavia. The USSR ensured "yes" votes by Byelorussia, Ukraine, Poland, and Czechoslovakia, which were necessary since a two-thirds majority was required to pass the resolution. The creation of Jewish State in Palestine required that the United States and its allies, and the Soviet Union and its satellites, vote the same way despite the escalating Cold War. In the emerging bipolar confrontation, the Zionist project could only succeed because the interests of the two superpowers temporarily coincided on this issue." (*Zionism & Moscow's Surprise: The Soviet-Israeli Alliance of 1947-1949* *Moscow's Surprise: The Soviet-Israeli Alliance of 1947-1949*, by Laurent Rucker)

- [In January 2024](#) it ruled that Israel was plausibly committing or enabling genocide in Gaza and ordered Israel to cease these practices/omissions forthwith.
- [In May 2024](#) it ruled additional measures be taken by Israel, namely to halt its intended attack on Rafah (in the Gaza Strip) and keep open the Rafah crossing (between Egypt and Gaza) for humanitarian aid.
- [In July 2024](#) (in response to a request from the GA) the court also ruled on the legal consequences of Israel's occupation of the Palestinian Territories, finding this occupation to be illegal and involving systemic discrimination between the legal and governance treatment of Israeli settlers and occupied Palestinians. The court required Israel to dismantle settlements, evacuate settlers, provide reparations and allow refugees from the Naksa to return to their original places of residence.

Notwithstanding the growing delegitimisation of its actions in the Palestinian territories, Israel continues to ignore the ICJ rulings, intensifying its genocidal actions on Palestinians to ensure maximum casualties in Gaza – unlike populations in [war-torn Sudan](#) and [Ukraine](#) the Palestinians are trapped by the IDF and they have no safe havens to run to when Israeli ordnance rains down on them causing death and destruction. The ICJ rulings are significant in that they delegitimise Israel's explanations that its actions are existential and defensive, but the court has no power to enforce its rulings, which devolves to member states of the UN.

Despite Israel's defiance, South Africa and the Western powers have done nothing to enforce these ICJ rulings and required measures, as they would have done to countries not favoured by the West (e.g. [Russia, China, Iran, North Korea, Cuba and Venezuela](#)). This is notwithstanding South Africa's commitment to the rule of law: despite Israel's atrocities over decades and the SA government and ruling party's claim to support the liberation of Palestine the ANC government failed to sanction coal and diamonds trading, impose an arms embargo, end diplomatic relations and investigate and prosecute South African citizens for violating local and international law through volunteering for and serving in the IDF.

The reason for the ANC government's inertia could be its fear of repercussions from Israeli allies (the US, United Kingdom and Germany) and their possible threat of economic sanctions. The presence of the Israel-friendly Democratic Alliance (DA) in the Government of National Unity (GNU) brings the big business influence of South African Zionists to bear on foreign policies as well as in respect of local law enforcement. Against this pressure the ANC could seek solidarity defence from US and European citizens and state partners like Brazil, China and Russia (BRICS founders). But this type of popular inter-governmental solidarity could be undermined given the make-up of the GNU dominated by an ANC/DA coalition.



DA lawmakers in Israel, 2017. SOURCE: ymlp.com

In 2017 then DA parliamentary leader, Mmusi Maimane, as well as senior DA lawmaker Michael Bagraim (a former chairman and president of the South African Jewish Board of Deputies, an affiliate of the SAZF), did a solidarity visit to Israel. In the same year the Education Department of the DA-controlled Western Cape province weighed in on the side of the [Zionist Herzlia School to punish a Cape Town school deputy principal who publicly protested Israel's policies](#) at his school. Two years later the same department [participated in a Zionist-organised study tour of Israel](#).



WCED official with IDF soldiers in Jerusalem. SOURCE: [Voice of Cape](#), originally from Facebook.

Impact on local criminal investigations and prosecutions:

Detailed incriminating evidence (in the form of pictures and media posts) of violation of local and international law was collated for four separate charges submitted to the National Prosecuting Authority (NPA) over a 14-year period.

- The first was the '[Gaza Docket](#)' in respect of 70 South African nationals who participated in the 2008/2009 'Operation Cast Lead' destruction of Gaza.
- In 2014 a charge was laid against one South African volunteer who was literally the IDF's recruitment poster boy, and who had publicly boasted about his exploits in the IDF to Palestinian protestors outside parliament (based also on eyewitness evidence).
- In 2022 a full dossier, 'The SA Zionist Terrorism Corridor Probe' (in respect of some 13 individuals and four organisations) was submitted.
- In 2024 this 'Probe' was expanded to cover the charge of genocide in respect of a further six local suspects as well as 10 responsible Israeli state and IDF military command and control officials.

The South African Police Services (SAPS) has a special unit to investigate actions which could violate international law and so-called terrorism-legislation: the [Directorate for Priority Crimes Investigation](#) (also known as The Hawks). In the NPA the [Priority Crimes Litigation Unit](#) (PCLU), which reports to the [National Director of Public Prosecutions](#) (NDPP), decides whether there is a *prima facie* case that warrants arrest and charging in a court of law. Yet the different approaches taken towards volunteers to the IDF and those who expressed sympathy for the Islamic State in Syria (ISIS) suggests that priority crimes by South Africans are neither investigated nor prosecuted 'without fear or favour'.

[In 2016 the SAPS arrested Brandon-Lee Thulsie and Tony-Lee Thulsie, just 11 months after they were first investigated for alleged recruitment to ISIS](#): there was reportedly evidence of them chatting with an ISIS network (in 2015) and with a US Federal Bureau of Investigation (FBI) agent (posing as ISIS) (in 2016). The Hawks conducted investigations [in collaboration with the FBI](#). The Thulsies were charged for researching and preparing to carry out terrorist attacks in South Africa, against US, UK, French, Russian and Jewish interests and people. As part of a plea-bargain they were found guilty of selected charges (while the state dropped numerous other charges) and sentenced to five and eight years respectively, in which their awaiting trial incarceration of more than five years was taken into account.

The Thulsie case was a '[sting operation](#)' whereby an undercover FBI agent provoked the suspects into crossing red lines that made them targets for investigation. This contrasts with the lack of action over nine years since the charges were laid (in 2014) against the South African volunteer who unlike the Thulsies *actively participated* in an organised attack on civilians in Gaza (the 2014 Operation Protective Edge).

Initially an investigating officer informed the complainant who had laid the charge that there was insufficient evidence but that they had not interviewed the individual, that there were powerful interests that did not want this case investigated and that the complainant would be putting herself at risk.

A few years later more evidence was submitted on behalf of the complainant resulting in the NDPP overturning a provincial decision not to pursue the case (not even minimally through investigation) – the NDPP required further investigation.

Several years on, the NDPP informed the complainant’s attorney of record that the provincial director of public prosecutions had reported again on the matter and decided still not to prosecute. The NDPP still had the prerogative to override this decision. But by August 2024 the NDPP still had to make a decision whether or not to pursue the case.

The following table shows the complainant actions and the NPA response over time. Between the juncture at which the NDPP requested the provincial director to review his decision and the reporting of this to the complainant, 43 months had elapsed.

Time elapsed	Date	Our action	NPA response
4 to 5 months	29 July 2014	Complainant lays charge at Cape Town Central (Caledon police station) – case no: 176/8/2014, referred to Milnerton police station	
8 months	November 2014		SAPS Organised Crime unit officer informs complainant that there is insufficient evidence to proceed to a prosecution
40 months	04 August 2015	Complainant submits further documentation to relevant organs of state relating to this contravention of the Regulation of Foreign Military Assistance Act (RFMAA)	
16 months	10 April 2018		Director of Public Prosecutions Western Cape (DPP WC) declined to prosecute because small prospect of success
	20 September 2018	Complainant applies to the NPA for an internal review of the DPP WC decision.	
22 months	01 July 2019		NDPP reviews decision of DPP WC and requests further investigation
	20 January 2020 – 26 November 2021	On four occasions complainant’s attorney queried the delay in response	Consequent NDPP responses included reference to the need for a military expert to review the charges, with evidence, submitted, but the NDPP did not explain reasons for the delay, simply stating – and restating - that she was awaiting the outcome of further investigations.
3 to 4 months	26 November 2021		Military expert appointed
	01 December 2021	Complainant’s attorney corresponds with military expert and provides him access to all the necessary data files	
	02 December 2021	Complainant’s attorney provides military expert with additional files that contain information about Palestinian political and child prisoners	
	11 March 2022		PCLU corresponds with complainant attorney that they received the military expert opinion
18 months	06 June 2022		PCLU corresponds with complainant attorney that several key people associated with this case had either resigned or retired, contributing to the delay in a decision
	07 June 2022		PCLU corresponds with complainant that they received the report of further investigations from the DPP WC.
9 months	16 November 2023	On five occasions complainant’s attorney queried when the DPP WC’s report and decision as well as that of the NDPP PCLU would be made known.	The PCLU responded twice acknowledging receipt of the queries
120 months (10 years)	5 August 2024		DPP WC declines to prosecute because of insufficient evidence, but final decision in the hands of the NDPP and PCLU No decision yet received from NDPP PCLU

Timeline of submissions to and responses from the Hawks and the PCLU. SOURCE: Self-constructed from project team.

As indicated above, a letter responding to a PAIA request recorded that no application had been received by the authorities from any volunteers for service in the IDF, as required by law, meaning that this individual had clearly violated the RFMAA.

Yet PCLU officials, in discussion with the legal representative of the complainant, have argued that there was nothing untoward of South African citizens serving in the armed forces of a foreign state. During [a SABC interview](#) in October 2023, Zeev Krengel (of the SAZF and its affiliate the SA Jewish Board of Deputies) referred to SA citizens serving in the British armed forces and wanted to know why there was therefore any issue with SA citizens serving in the IDF. During July 2023 [a delegation of Zionists met privately with the National Commissioner of Police and his top official over lunch](#). The same Zeev Krengel was present at the lunch meeting. Local Zionists have access to the Hawks (and potentially the PCLU), enabling them to lobby to influence decision-making favourable to a foreign state, Israel.



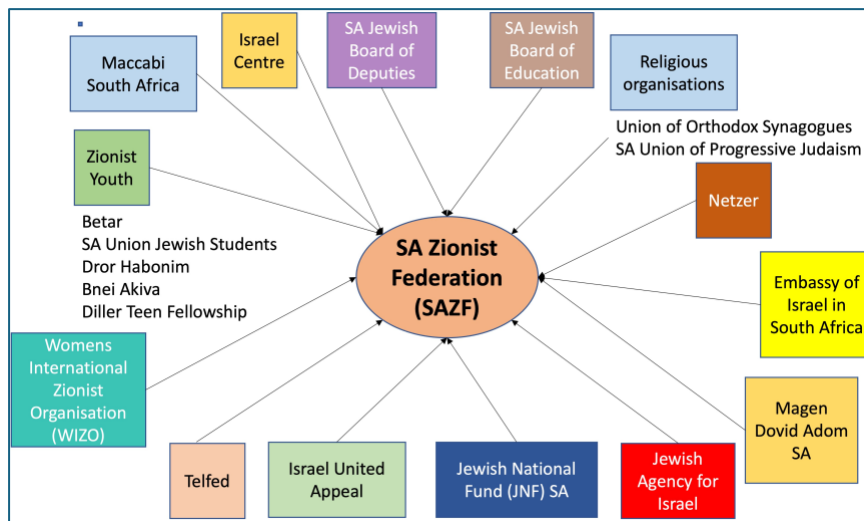
Local crime investigators, under instructions or pressure from the Israel lobby and US intelligence, could weaponise laws like the ATRAA (Antiterrorism Act) against a certain category of people (like the Thulsie’s) but apply neither the ATRAA nor the RFMAA in respect of IDF volunteers.

Conclusion:

The inconsistent treatment of citizens suspected of ISIS sympathies on the one hand, and on the other hand Zionists who publicly communicate their felonies, strongly suggests that the Hawks and the PCLU are influenced by outside

political pressures. The previous ANC government's trying to limit its antagonism of the West and today, the strongly pro-Zionist elements of the current GNU, provides the context.

Within the country there is the SAZF, lobbying for the interests of the state of Israel. Over time it has embedded itself in South Africa's Jewish communities (see following diagram) and wards off critique of Israel and Zionism as 'antisemitic'.



Spider diagram of the SAZF affiliates: SOURCE: self-constructed from SAZF and other affiliate websites

Despite South Africa's successful genocide case against Israel at the ICJ and Israel's defiance of the court's ruling – continuing with daily massacres of Gaza's civilian population, its scorched earth policy of destroying all necessary infrastructure for life (all hospitals, schools, homes, roads, fresh water supply) and blockading food, water, fuel and life-saving equipment and medication there - its economic relations with Israel have remained largely unaffected. In 2022, [South Africa](#) exported \$385M worth of goods to [Israel](#). The main products exported from [South Africa](#) to [Israel](#) were [Coal Briquettes](#) (\$185M), [Diamonds](#) (\$93.5M), and [Grapes](#) (\$16.9M).

Economic linkages are also reflected in military cooperation between Israel and South Africa:

- [The Israeli Galil rifle has been produced under licence in South Africa under the previous regime](#) and this practice continued under the ANC government – [it was the weapon of choice by the SAPS in their massacring of 34 mine workers at Marikana in 2012](#).
- Jeff Halper's '[War against the People](#)' noted that Israel's Israel Aerospace Industries sold its Gabriel (sea skimming anti-ship) missiles to, *inter alia*, South Africa.

The ANC government's reneging on its international legal obligations could reflect Zionist influence-positioning *vis-a-vis* the South African state. Rowan Polovin, of the SAZF, in [rebuking President Ramaphosa](#) for his 'betrayal' of the South African Jewish community, referred to the frequent dealings that the SAZF had had with Ramaphosa to the extent of introducing him to future business prospects. (This was in the wake of 7 October 2023, shortly after the ANC government's public statement about Israeli *apartheid* and genocide in Gaza).

Israeli intelligence activities in the country exemplify the audacity of Israel's interference in the legitimate functioning of the South African state. In 2015 an Al Jazeera series of publications, termed the Palestine Papers, [reported](#) that an undercover Israeli intelligence involvement in South Africa resulted in the [theft of military blueprints](#), that in 2009 Israeli intelligence attempted to influence the South African government's policies towards the Goldstone Report (regarding Israeli crimes during Operation Cast Lead), and in 2012 threatened sabotage of South Africa's financial system if the state did not criminalise activities of the local BDS movement.

Zionist influence extends beyond the executive branch, public administration departments and the police, reaching even into the judiciary: in 2022 the Zionist-inclined South African Holocaust and Genocide Centre through being an *amicus curiae* (friend of the court) influenced an erroneous Constitutional Court ruling that censored [an anti-Zionist speech by the then international relations officer of the Congress of South African Trade Unions](#).

How the ANC government's executive branch came to be wedded to central Zionist myths - like Israel's right to exist - is illustrated by the close relationship it has had - and presumably continues to have - with a South African arms and weapons entrepreneur, Ivor Ichikowitz, [an avowed Zionist supporter of Israel](#). He has [developed close relationships with the ANC](#) even to the extent of providing a free airline flight service (in his private jet) to both then Presidents Mandela and Zuma.

As South Africans we take a principled position against the South African state accommodating the state of Israel. Instead, the South African state's policy should be to put an immediate end to Israel's genocide of the native Palestinians and support the end of Zionist *apartheid* like happened in the case of South Africa during the 1970's and 1980's through widespread sanctions and boycotts, ensuring the isolation of Apartheid South Africa in all spheres of life.

The government will not take the initiative but will concede to doing so if sufficient power is exercised as broadly as possible that this is what a large majority of South Africans demand. To get the GNU to make this happen we will need to conscientize communities as well as the broader public about the history and ongoing genocide of Palestinians by Israel. Mobilising and organising for this starts now with the campaign to investigate violations of the law and to prosecute those illegally recruiting for - and being recruited by - the IDF.

The SA Government and state agencies must:

- Prosecute all those South Africans and Zionist institutions who have and continue to serve in the IDF in support of the genocide and prop up the racist Israeli regime.
- Demonstrate to us, that it acts in line with the SA Constitution, its Bill of Rights, the Genocide Convention, the *Apartheid* Convention, and the Statute of Rome, by leading the enforcement of wide-ranging sanctions and boycotts against Israel.
- Demonstrate that economics benefitting established local economic interests as well as the transnational capitalist class, do not matter more than the freedom and lives of Palestinian people and oppressed people of the world.

The local government elections of 2026 provide a milestone against which to measure our progress towards achieving the articulation of these demands in our body politic, by looking at the parties' and individual councillors' policies with respect to Israel and historic Palestine.

Hendler and Jansen are both longstanding members of the Palestine Solidarity Campaign (PSC) Cape Town.