

21 March 2024

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OIA 29038

Tēnā koe

I refer to your email of 21 January 2024 in which you request the following under the Official Information Act 1982 (OIA):

- 1. All ministerial briefings and submissions that contain information relating to South Africa's case against Israel before the ICJ, in the period October 2023 to present.*
- 2. New Zealand's legal position on Israel's right to defend itself in the context of the present conflict, as might be contained in legal advice or other documents.*

On 16 February 2024, the timeframes for responding to your request were extended by an additional 25 working days due to the consultations necessary to make a decision on your request (section 15A(1)(b) of the OIA refers).

The information relevant to part one of your request is attached and is in Annex 1 below. We have withheld some of this information under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 6(b)(i): to protect the passing of information from another government on a confidential basis;
- 9(2)(a) to protect the privacy of natural persons, including that of deceased natural persons;
- 9(2)(f)(iv): maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials; and
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments; and
- 9(2)(g)(ii): to protect officials from improper pressure or harassment.

The document *South Africa v Israel - ICJ Genocide Convention case* is in scope of part one of your request. This information is publicly available on the Ministry of Foreign Affairs and Trade (the Ministry) website via the following link: www.mfat.govt.nz/en/media-and-resources/oia-29012-south-africa-v-israel-icj-case/

Regarding part two of your request, information in scope of this part of your request is withheld in full under the following sections of the OIA:

- 9(2)(g)(i): to protect the free and frank expression of opinions by departments; and
- 9(2)(h): maintains legal professional privilege.

Since the outbreak of the current conflict, the Ministry's advice has been consistently grounded in international law and revolves around four pillars, as follows:

1. The upholding of international law and international humanitarian law;
2. Opposition to the use of terror as a political tool and illegal act;
3. Recognition of the right of a state to defend itself; and
4. The importance of political, not military, solutions.

The Ministry's advice has also drawn from New Zealand's longstanding approach to the Middle East Peace Process, including:

1. Support for a comprehensive and sustainable two-state solution, with secure and recognised borders for both Israel and Palestine (based on 1967 lines);
2. Support for Israel's right to exist in peace and security;
3. Support for the right of the Palestinian people to self-determination; and
4. Recognition that direct negotiations between the parties are the only way to achieve a sustainable agreement, and a call for a return to such negotiations.

The New Zealand Government has consistently stated that while New Zealand recognises Israel's right to defend itself, in doing so Israel must act consistently with obligations under international law, including international humanitarian law. The protection of civilians is paramount. Palestinian civilians cannot be made to pay the price of defeating Hamas.

Please note that it is our policy to proactively release our responses to official information requests where possible. Therefore, our response to your request (with your personal information removed) may be published on the Ministry website: www.mfat.govt.nz/en/about-us/contact-us/official-information-act-responses/

If you have any questions about this decision, you can contact us by email at: DM-ESD@mfat.govt.nz. You have the right to seek an investigation and review by the Ombudsman of this decision by contacting www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa nā



Sarah Corbett
for Acting Secretary of Foreign Affairs and Trade

Annex 1 - Extracts from Situation Reports (Sitrep)

SitRep 63: Israel/Hamas conflict – Monday 8 January

South Africa instituted proceedings under the Genocide Convention at the International Court of Justice (ICJ) on 29 December, alleging Israel's actions in Gaza are "genocidal in character". Unlike the ICC investigation, which covers individuals alleged to have committed international crimes, the ICJ hears cases against states. South Africa has requested the Court issue urgent provisional measures including the suspension of Israel's campaign in Gaza. Initial proceedings are set for 11 and 12 January.

SitRep 64: Israel/Hamas conflict – Thursday 11 January

South Africa instituted proceedings under the Genocide Convention at the International Court of Justice (ICJ) on 29 December, alleging Israel's actions in Gaza are "genocidal in character". Proceedings are scheduled to begin on Thursday NZT. The US has reiterated its position that the claim from South Africa is "without merit".

SitRep 65: Israel/Hamas conflict – Tuesday 16 January

South Africa instituted proceedings under the Genocide Convention at the International Court of Justice (ICJ) on 29 December, alleging Israel's actions in Gaza are "genocidal in character". The Public Hearings on the case took place at the ICJ in The Hague on 11 and 12 January. The Court will now consider the request for provisional measures made by South Africa, **[withheld under section 9(2)(g)(i)]** Alongside suspending military operations in Gaza, other provisional measures sought are that Israel abide by the Genocide Convention, stop killing Palestinians, stop displacing Palestinians and allow humanitarian assistance.