

Critical analysis of the dissenting opinion of Justice Julia Sebutinde: South Africa v Israel



History

Her Excellency Justice Julia Sebutinde [Judge of the International Court of Justice] was born in Kiwafu Village, Entebbe, Uganda on February 28, 1954. She commenced her legal journey at Makerere University where she graduated with a Bachelor of Laws degree in 1977. She obtained the Diploma in Legal Practice from the Law Development Center in Kampala in 1978, and in 1990, she enrolled at the University of Edinburgh for her Master of Laws, where she graduated in 1991. In 2009, in recognition of her body of work and contribution to international justice, she was awarded an honorary Doctor of Laws by the University of Edinburgh.

Previous Judicial and Legal Positions

Justice Julia Sebutinde was appointed Judge of the High Court of Uganda from 1996 to 2011. Prior to this appointment, she served as a principal State Attorney and Principal Parliamentary Counsel, under the Ministry of Justice and Constitutional Affairs, Uganda from 1978 to 1990.

Justice Julia Sebutinde, in the capacity of High Court Judge chaired three commissions of inquiry including; the Judicial Commission of Inquiry into Corruption in the Uganda Police Force (1999-2000), the Judicial Commission of Inquiry into mismanagement in the Uganda People's Defence Forces (2001); Chairperson, and the Judicial Commission of Inquiry into Corruption in the Uganda Revenue Authority (URA) (2002). She is popular for having conducted these inquiries transparently, ensuring that local newspapers gave daily accounts of events, while holding the implicated officials accountable. Additionally, Justice Julia Sebutinde chaired the Technology Planning Committee of the Uganda Judiciary between 1998 and 2002.

Internationally, she was appointed judge of the Special Court for Sierra Leone (SCSL) (2005-2011) and Presiding Judge of Trial Chamber II of the SCSL (2007-2008, 2010-2011), handling several high-profile war crime trials including the Prosecutor v Charles Ghankay Taylor.

Her Rise to the International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. The seat of the Court is at the Peace Palace in The Hague (Netherlands). The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States; and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system.

In the 2011 International Court of Justice (ICJ) Judges election, Justice Julia Sebutinde was one of eight candidates that was elected to fill the five vacant judicial seats, having received an absolute majority of votes in both the UN Security Council and the UN General Assembly. She has since served as a member of the Court effective 6th February 2012. She was elected for a second term at the ICJ in March 2021 and subsequently elected to the position of Vice President of the ICJ on 6th February 2024. She becomes the first African woman to have been elected to the position of Vice President of the ICJ.

The Case of South Africa v Israel

Among Justice Julia Sebutinde's notable works at the ICJ is her most recent ruling in the case of *South Africa v Israel* which drew massive international criticism thus bringing her name back into the global media spotlight.

Briefly, on 29th December 2023, the Republic of South Africa filed a lawsuit against the State of Israel to the International Court of Justice with claims that Israel has been breaching the principles laid in the UN Convention on the Prevention and Punishment of the Crime of Genocide (then simply cited as the 'Genocide Convention'), which both nations are signatories to. This suit follows a series of events between Palestine and Israel, wherein South Africa sought to implicate Israel for its apparent 'acts of genocide' demonstrated by Israel's conduct towards Palestinians during its 75-year-long apartheid, its 56-year-long belligerent occupation of Palestinian territory, its 16-year-long blockade of Gaza. South Africa's claims also extended to the most recent Israeli-launched Operation "Swords of Iron" which was a counterattack to the infamous Harakat al Muqawana al-Islamiya (Hamas) "Al-Aqsa Flood" on 7th October 2023 where thousands of Israelites were killed, women were raped, babies slaughtered and hundreds were taken hostage. As a result, Israel launched an operation to defend its population against the Hamas and also rescue the hostages. Israel launched targeted attacks in areas of the Gaza strip where the Hamas were stationed.

South Africa (under the *pendente lite* rule of International Law – which allows states that have not been wronged to hold other states accountable for their international obligations) filed a case in the International Court of Justice against Israel seeking provisional measures for violation of international obligations under the Genocide Convention. South Africa argued that Israel's Prime Minister, politicians and key officials had made utterances that incited the Israeli army to annihilate the people of Palestine. South Africa also submitted that failure to check the statements of these officials indicated an acquiescence to the intention to kill the people of Palestine.

Israel, on the other hand, contended that it was merely exercising its right to defend its people against the Hamas terrorists and rescue hostages. The case brought by Israel was for provisional measures for Israel to comply with in its present military operation, in accordance with Article 41 of the ICJ Statute. Provisional measures are issued by the court when it is of the view that there may exist rights and obligations which ought to be preserved pending hearing and determination of the main suit.

The provisional measures sought included; preventing any act of genocide, ensuring that its military does not commit any such acts, preventing and punishing direct and public genocide incitement, enabling access to basic services and humanitarian assistance, preserving any evidence related to the Genocide Convention, and submitting a report addressing all measures taken to give effect to the Court's Order in a month's time.

Issues and Findings

Issues

In order to determine whether provisional measures ought to have been issued in this case, Justice Julia Sebutinde considered the following issues;

- i. Whether the court has prima facie jurisdiction to entertain the alleged dispute between the parties
- ii. Whether the rights asserted by South Africa are plausible and have a link with the requested measures
- iii. Whether the situation is urgent and presents a risk of irreparable prejudice to the rights asserted

Findings

The Judge found that South Africa had not proved on the face of it (prima facie) that Israel's actions had genocidal intent. Article II of the Genocide Convention requires the existence of the 'intent to destroy, in whole or in part, a national, ethnic, racial or religious group'. South Africa complained that Israel's actions amounted to killing Palestinians in Gaza, causing bodily or mental harm to Palestinians in Gaza, deliberately inflicting upon the Palestinians in Gaza conditions of life calculated to bring physical destruction of the group. However, to demonstrate genocidal intent, South Africa referred to the "systematic manner" of Israel's operations in Gaza and comments containing genocidal rhetoric by Israeli politicians and officials who had gone unpunished. Israel on the other hand argued that it carried out targeted attacks and sent out leaflets and radio communication to warn the civilians in the affected areas.

In finding that there was no genocidal intent, Justice Julia Sebutinde pointed out that the war was started by the Hamas and not Israel. Any allusion to genocidal intent is negated by the targeted attacks, warnings sent out to civilians and the aiding of access to humanitarian assistance.

Justice Sebutinde also held that there is no link between the asserted rights and the provisional measures requested by South Africa. The first and second provisional measures sought were that Israel ceases its military operations in Gaza. The Judge, however, found this to be unrealistic as it was a military response targeted at attacks by the Hamas and other armed forces acting in the Gaza. The Israeli military operations, in her view, were not aimed at the civilian populace, but the Hamas and were well within the acceptable bounds of international humanitarian law.

The third measure was found to be redundant as it would only apply to Israel and simply reiterate its already existent obligation to prevent genocide.

Regarding the fourth measure which required Israel to refrain from actions South Africa considered to be linked to its international obligation to prevent genocide, the Judge found that this measure would unilaterally require Israel to stop hostilities with the Hamas. However, in the absence of genocidal intent, then all that is left is compliance with IHL (the law of war) obligations.

However, there was no prima facie proof that the expulsion of civilians from Gaza was intended to bring upon them physical destruction.

Likewise, the deprivation of access to necessary humanitarian would only amount to genocide if it was done with the required intent to wipe out Palestinians (which is not the case).

It was also held by Justice Sebutinde that there is no evidentiary basis for concluding that Israel was engaged in destroying evidence indicating that it was taking part in genocidal activities against the people of Palestine. She held that requiring Israel to allow fact-finding missions in Gaza appears to go beyond its obligations under the Genocide Convention. Moreover, a similar request was rejected by the court in the case of *Canada & Netherlands v. Syrian Arab Republic* (2023).

In regard to the eighth and ninth measures which also required Israel to prevent any action which may aggravate or extend the existing dispute and also provide information on compliance by the parties, the Judge found this to be one-sided. Since South Africa is not a party to the conflict, issuing such a provisional measure would require Israel only to cease military operations against the Hamas and infringe upon its right to defend itself against aggression.

Justice Julia Sebutinde then concluded that she was not convinced that the rights asserted by South Africa were plausible under the Genocide Convention. She accordingly voted against all the provisional measures sought by South Africa.

Fulfillment of Prophecy and Conclusion



Justice Julia Sebutinde's Dissent and its Fulfillment of Prophecy

Justice Julia Sebutinde's dissenting opinion not only reflected the complexities of the Israel-Palestine conflict but also aligned with a prophecy made by Prophet Elvis Mbonye on 2nd January 2024 where he foretold how Uganda would face significant and intense international scrutiny, focus, and pressure resulting from an indictment or legal proceedings surrounding international courts. Unarguably, 25 days later, Uganda became the song on everyone's lips across the globe, following Justice Julia Sebutinde's dissent in the South Africa v Israel case, attracting widespread condemnation. The said international media and political pressure forced the Ugandan Ministry of Foreign Affairs to release a statement reaffirming its support for South Africa's position which was also the collective position of NAM and G77 summits held in Kampala in mid-January 2024, and thereby distancing itself from Justice Julia Sebutinde's vote as being the position of the Government of the Republic of Uganda.

It is also worth noting that as far back as 3rd January 2023, Prophet Elvis Mbonye prophesied the current Israel war with specific context to Iran, and called for intercession for Israel by the masses in attendance of that prophetic meeting. It is no secret that Iran is a key patron of the Palestinian militant organisation-Hamas, and has since publicly declared its support for Hamas in the current Israel war. It would appear that beyond the political tension and the lopsided media coverage of this war, there is a Godly perspective to it.

Therefore, while Justice Julia Sebutinde's well-reasoned dissenting opinion might have been founded on the law, it equally aligns with God's will for Israel to be preserved as communicated by Prophet Elvis Mbonye in early 2023.

It is no wonder that Justice Julia Sebutinde, despite her seemingly 'unpopular' ruling, instead received a promotion on 6th February 2024 to the position of ICJ Vice-president.

Prophet Elvis Mbonye, a man of God currently based in Kampala-Uganda, is popularly known for consistently and accurately traversing the highest echelons of power within the global political, social and economic spaces of power through his uncanny prophetic ability, which has often left many dumbfounded.

Conclusion

The implication of the interplay between prophetic insight and politics, diplomacy and judicial functions serves as a credible reminder to us that God's counsel is still available and relevant even in the present-day affairs of governance through the office of the Prophet. The alignment of Justice Julia Sebutinde's legal position in this case with the abovementioned prophecies reinforces the centrality of the prophetic function in offering spiritual discernment and guidance to nations, governments and world leaders in order to solve complex geopolitical issues.