

SUBMISSION OF CRIMINAL COMPLAINTS AGAINST ONE BENJAMIN RATTLE

INTRODUCTION

[1] The Palestine Solidarity Campaign of South Africa (registration Number: 213-594 NPO) (“the PSC”), is a non-profit organisation. It was registered with the Department of Social Development in terms of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997) on 14 August 2018. In terms of its Constitution, the PSC is a Voluntary Association.

[2] The PSC has taken note of an online petition inviting members of the public to sign the petition which calls on the Minister of International Relations and Cooperation, Dr Naledi Pandor, MP, to take steps mentioned in the petition against two persons who are believed to be South Africans.¹ One of the persons mentioned in the online petition is a person by the name of Benjamin Rattle who, according to the online petition, “has been on the ground in Gaza as a member of the IDF’s notorious Golani Brigade from October 2023 until now, committing genocide for Israel.”²

¹ Online petition: <https://www.change.org/p/call-on-minister-pandor-to-ensure-the-prosecution-of-south-africans-in-the-israeli-army>.

² See online petition.

[3] As of 1 April 2024, 1204 people have signed the online petition which is in the public domain and may be accessed by any member of the public.³ The PSC does not know who initiated the petition.

[4] For the reasons set out herein, the PSC wishes to lodge two criminal complaints against one, Benjamin Rattle (“Rattle”) who may be the same person referred to in the online petition. Rattle is believed to be a South African citizen, ordinarily resident at both Hermanus and Kenilworth, Western Cape, South Africa, but whose full and further names and details are unknown to the complainants.

BACKGROUND

[5] We understand that Rattle has an Instagram account under the username “benjamin_rattle.” According to Wikipedia:

“Instagram is an photo and video sharing social networking service owned by Meta Platforms. It allows users to upload media that can be edited with filters, be organized by hashtags, and be associated with a location via geographical tagging. Posts can be shared publicly or with preapproved followers.”⁴

³ See online petition for the number of signatures. The organisers of the petition are hoping 1500 will sign the post. That is the next goal of the petition.

⁴ See post by Kevin Systrom and Mike Krieger on Wikipedia for further information. Accessed 25 March 2024 at 18h37.

[6] Rattle posts regularly on Instagram. The posts suggest that Rattle is serving in the IDF as either a volunteer or a member of the IDF and that he may be on active duty in the Gaza Strip ("Gaza") in occupied Palestine and that he is proud of his role in the IDF.

[7] The PSC received from various sources and has in its possession copies of thirteen (13) of the Instagram posts which we have attached, hereto, numbered "1" – "13."

1. post dated 21 December 2023;
2. post dated 24 November 2023;
3. post dated 24 November 2023;
4. post dated 19 November 2023;
5. post dated 17 November 2023;
6. post dated 27 October 2023;
7. post dated 20 October 2023;
8. post dated 16 June 2023;
9. post dated 19 February 2023;
10. post dated 27 January 2023;
11. post dated 27 January 2023;
12. undated post with caption "Perfect way to finish phase one of training";
13. undated post with caption "Perfect way to finish phase one of training".

- [8] Although we are not able to come to any definitive conclusions about the posts and are not personally able to identify Rattle from the copied posts, we believe that the person ringed in red on the copied posts may be Rattle.
- [9] We do not have the capability to do a positive identification which must be done by the appropriate entities within South Africa.
- [10] The copied posts show a person, believed to be Rattle in a uniform which is of the type worn by IDF soldiers.
- [11] Some of the posts suggest that Rattle serves or has served in Gaza.
- [12] If the person in the copies of the Instagram posts attached hereto is Rattle, then that person appears to have breached two laws of South Africa and for that reason we are submitting these criminal complaints to the appropriate authorities in South Africa for urgent consideration and investigation and, if necessary, prosecution. We do so, because the laws of South Africa must be obeyed by all South African nationals and those residing in South Africa and because the Rule of Law demands that all people in South Africa must have an understanding of South Africa's laws and must feel bound by the laws.

COMPLAINT 1 - Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002)

[13] The IDF is engaged in alleged violations, in Gaza, of obligations which the State of Israel ("Israel") has under the Convention on the Prevention and Punishment of the Crime of Genocide ("the Genocide Convention").

[14] The Al Jazeera news channel provides extensive coverage of the war in Gaza under the caption "Genocide in Gaza" on a daily basis and also depicts graphically the deaths and the massive destruction of Gaza.

[15] Francesca Albanese, in her report, "Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese" states that more than 30000 Palestinians have been killed, including more than 13000 children. More than 12000 are presumed dead and 71000 have been injured. The report concludes that "there are reasonable grounds to believe that the threshold indicating Israel's commission of genocide is met. One of the key findings is that Israel's executive and military leadership and soldiers have intentionally

distorted jus in bello principles, subverting their protective functions, in an attempt to legitimize genocidal violence against the Palestinian people.”⁵

[16] By serving in the IDF and engaging in military action in Gaza, on behalf of Israel, Rattle appears to have contravened the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002) (“The Rome Statute Act”) and appears to have engaged in the crime of genocide and crimes against humanity, directly or indirectly or by common purpose or by association or under orders given by the IDF.

[17] In filing these criminal complaints, we do not state that Rattle is guilty, rather we state that Rattle appears to have contravened the Rome Statute Act and that his conduct must be investigated, based on his own Instagram posts.

[18] Although the online petition referred to herein was created on or about 12 March 2024 already, Rattle has not taken any steps whatsoever to refute the allegations made against him, as far as we are aware.

⁵Anatomy of a Genocide – Report of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 to Human Rights Council – Advance unedited version (A/HRC/55/73) March 24, 2024. See summary on page 1 of the report.

[19] According to its Long Title, the Rome Statute Act provides “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 cooperation by South Africa with the said Court; and to provide for matters connected therewith.”

[20] The Preamble reminds us that—

“ throughout the history of human-kind, millions of children, women and men have suffered as a result of atrocities which constitute the crimes of genocide, crimes against humanity, war crimes and the crime of aggression in terms of international law;*

** the Republic of South Africa, with its own history of atrocities, has, since 1994, become an integral and accepted member of the community of nations;*

** the Republic of South Africa is committed to—*

** bringing persons who commit such atrocities to justice, either in a court of law of the Republic in terms of its domestic laws where possible, pursuant to its international obligations to do so when the*

Republic became party to the Rome Statute of the International Criminal Court, or in the event of the national prosecuting authority of the Republic declining or being unable to do so, in line with the principle of complementarity as contemplated in the Statute, in the International Criminal Court, created by and functioning in terms of the said Statute; and

** carrying out its other obligations in terms of the said Statute;”*

[21] South Africa was an active supporter of the adoption of the Rome Statute of the International Criminal Court (“the Rome Statute”) during the negotiations and deliberations on the Rome Statute at the meetings of States facilitated by the United Nations which culminated in the adoption of the Rome Statute and the establishment of the International Criminal Court (“the ICC”).

[22] A South African representative served on the Bureau of the International Criminal Court which was the administrative body which coordinated the discussions on the Rome Statute at the United Nations, prior to its adoption by the States Parties to the Rome Statute.

[23] South Africa was one of the countries which signed the Rome Statute and soon after its coming into force, the South African Parliament passed the Rome Statute Act which was assented to by the President on 12 June 2002 and came into force (commenced) on 16 August 2002.

[24] It is particularly noteworthy that the Rome Statute Act commenced within 6 weeks of the Rome Statute itself coming into force on 1 July 2002.

[25] A few years ago, South Africa did consider withdrawing from the Rome Statute but did not do so.

[26] South Africa takes its obligations in terms of the international instruments which it is a party to and its obligations in terms of the Constitution and the Bill of Rights very seriously.

[27] The objects of the Rome Statute Act are set out in section 3 which states:

“3. Objects of Act—*The objects of this Act are—*

- (a) *to create a framework to ensure that the Statute is effectively implemented in the Republic;*
- (b) *to ensure that anything done in terms of this Act conforms with the obligations of the Republic in terms of the Statute;*
- (c) *to provide for the crime of genocide, crimes against humanity and war crimes;*
- (d) *to enable, as far as possible and in accordance with the principle of complementarity as referred to in Article 1 of the Statute, the national prosecuting authority of the Republic to prosecute and the High Courts of the Republic to adjudicate in cases brought against any*

- person accused of having committed a crime in the Republic and beyond the borders of the Republic in certain circumstances; and*
- (e) *in the event of the national prosecuting authority declining or being unable to prosecute a person as contemplated in paragraph (d), to enable the Republic to cooperate with the Court in the investigation and prosecution of persons accused of having committed crimes or offences referred to in the Statute, and in particular to—*
- (i) enable the Court to make requests for assistance;*
 - (ii) provide mechanisms for the surrender to the Court of persons accused of having committed a crime referred to in the Statute;*
 - (ii) enable the Court to sit in the Republic; and*
 - (iv) enforce any sentence imposed or order made by the Court.”*

[28] South African courts have jurisdiction to try persons who have committed crimes in terms of the Rome Statute Act by virtue of sections 4 and 5 which read:

“4. Jurisdiction of South African courts in respect of crimes.—

- (1) *Despite anything to the contrary in any other law of the Republic, any person who commits a crime, is guilty of an offence and is liable on conviction to a fine or imprisonment, including imprisonment for life, or such imprisonment without the option of a fine, or both a fine and such imprisonment.*

- (2) *Despite any other law to the contrary, including customary and conventional international law, the fact that a person—*
- (a) *is or was a head of State or government, a member of a government or parliament, an elected representative or a government official; or*
 - (b) *being a member of a security service or armed force, was under a legal obligation to obey a manifestly unlawful order of a government or superior, is neither—*
 - (i) *a defence to a crime; nor*
 - (ii) *a ground for any possible reduction of sentence once a person has been convicted of a crime.*
- (3) *In order to secure the jurisdiction of a South African court for purposes of this Chapter, any person who commits a crime contemplated in subsection (1) outside the territory of the Republic, is deemed to have committed that crime in the territory of the Republic if—*
- (a) *that person is a South African citizen; or*
 - (b) *that person is not a South African citizen but is ordinarily resident in the Republic; or*
 - (c) *that person, after the commission of the crime, is present in the territory of the Republic; or*
 - (d) *that person has committed the said crime against a South African citizen or against a person who is ordinarily resident in the Republic.*

5. Institution of prosecutions in South African courts.—

- (1) *No prosecution may be instituted against a person accused of having committed a crime without the consent of the National Director.*
- (2) *No prosecution may be instituted against a person accused of having committed a crime if the crime in question is alleged to have been committed before the commencement of the Statute.*
- (3) *The National Director must, when reaching a decision on whether to institute a prosecution contemplated in this section, give recognition to the obligation that the Republic, in the first instance and in line with the principle of complementarity as contemplated in Article 1 of the Statute, has jurisdiction and the responsibility to prosecute persons accused of having committed a crime.*
- (4) *The Cabinet member responsible for the administration of justice must, in consultation with the Chief Justice of South Africa and after consultation with the National Director and, in writing, designate an appropriate High Court in which to conduct a prosecution against any person accused of having committed a crime.*
- (5) *If the National Director, for any reason, declines to prosecute a person under this section, he or she must provide the Central Authority with the full reasons for his or her decision and the Central Authority must forward that decision, together with the reasons, to the Registrar of the Court.*

(6) *A decision by the National Director not to prosecute a person under this section does not preclude the prosecution of that person in the Court.”*

[29] Schedule 1 to The Rome Statute Act defines various crimes, including the crime of *genocide*, *a crime against humanity* and *war crimes* as follows:

“**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 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.

Part 2: Crimes against humanity:

1. “**A crime against humanity**” means any of the following conduct when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;

- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity;
- (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in item 3, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this item or any crime within the jurisdiction of the Court;
- (i) enforced disappearance of persons;
- (j) the crime of apartheid; or
- (k) other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

Part 3: War crimes:

“War crimes” mean any of the following:

- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following conduct against persons or property protected under the provisions of the relevant Geneva Conventions:

- (i) Wilful killing;
 - (ii) torture or inhuman treatment, including biological experiments;
 - (iii) wilfully causing great suffering, or serious injury to body or health;
 - (iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) compelling a prisoner of war or other protected persons to serve in the forces of a hostile power;
 - (vi) wilfully depriving a prisoner of war or other protected persons of the rights of fair and regular trial;
 - (vii) unlawful deportation or transfer or unlawful confinement; or
 - (viii) taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following conduct:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in the hostilities;
 - (ii) intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

- (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (v) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) killing or wounding a combatant who, having laid down his or her arms or having no longer means of defence, has surrendered at discretion;
- (vii) making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) 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;
- (ix) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (x) subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xi) killing or wounding treacherously individuals belonging to the hostile nation or army;
 - (xii) declaring that no quarter will be given;
 - (xiii) destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - (xiv) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (xv) compelling the nationals of the hostile party to take part in the operations of war directed against their own country,

even if they were in the belligerent's service before the commencement of the war;

- (xvi) pillaging a town or place, even when taken by assault;
- (xvii) employing poison or poisoned weapons;
- (xviii) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to the Statute by an amendment in accordance with the relevant provisions set out in Articles 121 and 123 of the Statute;
- (xxi) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxii) committing rape, sexual slavery, enforced prostitution, forced pregnancy as defined in paragraph (f) of item 2 of Part 2, enforced sterilisation, or any other form of sexual

violence also constituting a grave breach of the Geneva Conventions;

(xxiii) utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions; or

(xxvi) conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following conduct committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) taking of hostages; or
 - (iv) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.
- (d) Paragraph (c) of this Part applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following conduct:
- (i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the

- distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (v) pillaging a town or place, even when taken by assault;
 - (vi) committing rape, sexual slavery, enforced prostitution, forced pregnancy as defined in paragraph (f) of item 2 of Part 2, enforced sterilisation and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;
 - (vii) conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities;

- (viii) ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (ix) killing or wounding treacherously a combatant adversary;
- (x) declaring that no quarter will be given;
- (xi) subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, which cause death to or seriously endanger the health of such person or persons; or
- (xii) destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

(f) Paragraph (e) of this Part applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is a protracted armed conflict between governmental authorities and organised armed groups or between such groups.”

[30] On 29 December 2023, South Africa instituted proceedings in the International Court of Justice (“the ICJ”) against the State of Israel, concerning alleged violations in the Gaza Strip of obligations under the Convention on the Prevention and Punishment of *the Crime of Genocide* in the following terms:

“(2) *that the State of Israel:*

- (a) *has breached and continues to breach its obligations under the Genocide Convention, in particular the obligations provided under Article I, read in conjunction with Article II, and Articles III (a), III (b), III (c), III (d), III (e), IV, V and VI;*
- (b) *must cease forthwith any acts and measures in breach of those obligations, including such acts or measures which would be capable of killing or continuing to kill Palestinians, or causing or continuing to cause serious bodily or mental harm to Palestinians or deliberately inflicting on their group, or continuing to inflict on their group, conditions of life calculated to bring about its physical destruction in whole or in part, and fully respect its obligations under the Genocide Convention, in particular the obligations provided under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI;*
- (c) *must ensure that persons committing genocide, conspiring to commit genocide, directly and publicly inciting genocide,*

- attempting to commit genocide and complicit in genocide contrary to Articles I, III (a), III (b), III (c), III (d) and III (e) are punished by a competent national or international tribunal, as required by Articles I, IV, V and VI;*
- (d) to that end and in furtherance of those obligations arising under Articles I, IV, V and VI, must collect and conserve evidence and ensure, allow and/or not inhibit directly or indirectly the collection and conservation of evidence of genocidal acts committed against Palestinians in Gaza, including such members of the group displaced from Gaza;*
- (e) must perform the obligations of reparation in the interest of Palestinian victims, including but not limited to allowing the safe and dignified return of forcibly displaced and/or abducted Palestinians to their homes, respect for their full human rights and protection against further discrimination, persecution, and other related acts, and provide for the reconstruction of what it has destroyed in Gaza, consistent with the obligation to prevent genocide under Article I; and*
- (f) must offer assurances and guarantees of non-repetition of violations of the Genocide Convention, in particular the obligations provided under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI.”*

[31] On the 26 January 2024, the ICJ stated at paragraph 54 of order that:

“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. (our emphasis) 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.”

[32] The ICJ ordered Israel to take certain provisional measures and to report on those measures to the ICJ within one month of its Order.

[33] It is important to note that although the ICJ did not specifically state that Israel had breached its obligations under the Genocide Convention, it in effect suggests that *prima facie* Israel has done so.

[34] Rattle has posted pictures with captions of himself on Instagram which strongly suggest that he is on active duty with the IDF in the Gaza Strip. If the Instagram posts are authentic, they may constitute *prima facie* evidence that Rattle has participated in conduct which may “plausibly” be crimes prohibited by the Rome Statute Act. These may be the crimes of genocide, crimes against humanity and war crimes which must be investigated fully.

COMPLAINT 2 - Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998)

[35] The Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998) (“the RFMAA”) regulates the rendering of foreign military assistance by South African juristic persons, citizens, persons permanently resident within the Republic and foreign citizens rendering such assistance from within the borders of the Republic; and to provide for matters connected therewith.

[36] The RFMAA applies to all South African citizens and permanent residents and foreign residents who are within South Africa and prohibits such persons from rendering foreign military assistance, except as provided for in section 3 which states:

“3. Rendering of foreign military assistance prohibited. —No person may within the Republic or elsewhere—

(a) offer to render any foreign military assistance to any state or organ of state, group of persons or other entity or person unless he or she has been granted authorisation to offer such assistance in terms of section 4;

(b) render any foreign military assistance to any state or organ of state, group of persons or other entity or person unless such assistance

is rendered in accordance with an agreement approved in terms of section 5.”

“foreign military assistance” as defined in the Act, “means military services or military-related services, or any attempt, encouragement, incitement or solicitation to render such services, in the form of—

- (a) military assistance to a party to the armed conflict by means of—
 - (i) advice or training;
 - (ii) personnel, financial, logistical, intelligence or operational support;
 - (iii) personnel recruitment;
 - (iv) medical or para-medical services; or
 - (v) procurement of equipment;
- (b) security services for the protection of individuals involved in armed conflict or their property;
- (c) any action aimed at overthrowing a government or undermining the constitutional order, sovereignty or territorial integrity of a state;
- (d) any other action that has the result of furthering the military interests of a party to the armed conflict, (our emphasis) but not humanitarian or civilian activities aimed at relieving the plight of civilians in an area of armed conflict;”

[37] If the Instagram posts referred to above, are authentic, they may constitute *prima facie* evidence or plausibly suggest that “Rattle” is either a full-time

member of or a volunteer in the IDF and that he is rendering military assistance as defined in the RFMAA, more specifically para (d) of the definition of *foreign military assistance*. It appears doubtful that the person in the Instagram posts who may be Rattle has obtained the necessary authorisation or approval contemplated in section 3 of the RFMAA given that the State Security Agency of South Africa appears to be unaware of applications from individuals who have requested permission to serve in the IDF.⁶ The Minister in the Presidency responsible for State Security stated that the State Security Agency was aware of South Africans who were participating in the war *[in Gaza]* “without sanction”, thus indicating that a number of South Africans are participating in the IDF without authorisation.⁷

[38] If the Instagram posts are authentic then Rattle may have contravened section 3 of the RFMAA and is guilty of an offence in accordance with section 8 which states:

“8. Offences and penalties.—

(1) *Any person who contravenes any provision of section 2 or 3, or fails to comply with a condition with regard to any authorisation or approval granted in terms of section 4 or 5,*

⁶ <https://www.middleeasteye.net/news/war-gaza-will-south-africa-prosecute-citizens-fighting-for-israel>

⁷ <https://www.businesslive.co.za/bd/national/2023-11-09-south-africans-fighting-in-hamas-israel-war-will-be-prosecuted-sa-says/>

shall be guilty of an offence and liable on conviction to a fine or to imprisonment or to both such fine and imprisonment.

(2) The court convicting any person of an offence under this Act may declare any armament, weapon, vehicle, uniform, equipment or other property or object in respect of which the offence was committed or which was used for, in or in connection with the commission of the offence. to be forfeited to the State.”

[39] We submit these criminal complaints against Rattle to the National Director of Public Prosecutions, the South African Police Service, to the Minister of Justice and Correctional Services and the Minister of Police in their capacities as the executive authorities which exercise oversight over the National Director of Public Prosecutions and the South African Police Service respectively. We also submit the criminal complaint to the Portfolio Committee on Justice and Correctional Services in Parliament, because that committee also exercises oversight functions over the national executive.

[40] The International Criminal Court appears to be unable, at this stage, to prosecute the various allegations made against the State of Israel, because they are still investigating the crimes which fall within their jurisdiction. However, that does not preclude the National Director of Public Prosecutions from prosecuting Rattle, and the South African Police

Service from investigating the contraventions of the Rome Statute Act and the RFMAA, if the copied posts do constitute *prima facie* proof of the commission of offences.

[41] We urge the authorities to whom we have submitted these criminal complaints to investigate and, if necessary, prosecute Rattle without delay in the interests of justice, worldwide, and in support of the global efforts by people, governments and countries all over the world and the United Nations to end the genocide, crimes against humanity and war crimes being perpetrated against the people of Palestine.

SUBMITTED BY THE PALESTINE SOLIDARITY CAMPAIGN OF SOUTH AFRICA

SIGNED AT PINELANDS ON THIS 5th DAY OF APRIL 2024.



UME CHIKTE

FOR AND ON BEHALF OF THE PALESTINE SOLIDARITY CAMPAIGN OF SOUTH AFRICA

Contact person: Usuf Chikte
0828779522
umec@sun.ac.za

To:

1. Adv Shamila Batohi
The National Director of Public prosecutions
c/o Adv Nicolette Bell
The Director of Prosecutions
115 Buitengracht Street
Cape Town
2. Gen SF Masemola
The National Commissioner of Police
9th Floor
120 Plein Street
Cape Town
3. The Honourable Mr Ronald Lamola, MP
Minister of Justice and Correctional Services
5th Floor
120 Plein Street
Cape Town
4. The Honourable Gen Bheki Cele, MP
Minister of Police
9th Floor
120 Plein Street
Cape Town.
5. The Honourable Mr Gratitude Magwanishe, MP
The Chairperson: The Portfolio Committee on Justice and Correctional
Services
Parliament
Cape Town