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**SOUTH AFRICA'S IMPLEMENTATION AND PROTECTION OF PALESTINIAN
SOLIDARITY RIGHTS ACT (BILL) 2023 – (SA'S IPPSRA CITIZENS ADVOCACY BILL)**

Facilitated by the IPPSRA National Commission

Revised update: March 2023

[ASSENTED:]

[DATE OF COMMENCEMENT:]

THE ACT (BILL)

A solidarity Act in the interests of justice with the oppressed people of Palestine with the purpose of converting political and executive rhetoric into a constructive legal enabling framework; the ultra-right Israeli coalition in government has become a fascist regime intensifying the perpetration of ethnic cleansing and acts of genocide, making it imperative in defending human rights, that the Republic of South Africa intervene with urgent and necessary responsive legislation to be enacted; the cessation of diplomatic relations and the implementation of Boycotts, Trade Divestment and Sanctions as an institutionalised State response; the application of justice through the utilisation of the international criminal law framework, customary universal jurisdictional norms and standards, the Rome Statute concomitant with Lawfare mechanisms against the State of Israel due to its repressive and oppressive apartheid policies and practices, perpetration of war crimes and crimes against humanity; the continued belligerent military occupation by the State of Israel affecting peace initiatives in the Middle East Region; illegal and unlawful expansion of settlements which policies are in contravention of international law and the cantonisation of the occupied Palestinian territories causing excessive harm to the Palestinian people; the State of Israel's continued breaches of international law, the Convention on the Prevention and Punishment of the Crime of Genocide, international covenants on civil and political rights, international convention on the suppression of the crime of apartheid, international humanitarian law, customary international law and maritime conventions by systematically imposing illegal land, air and sea/naval blockades and sieges upon the civilian population of Gaza and in occupied historical Palestine; screening and surveillance of unlawful activities and rendering of military and/or mercenary services in contravention of the Regulation of Foreign Military Assistance Act or the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict, South Africa's Implementation of the International Criminal Court Act and/or other associated laws, including the involvement in terror related activities in contravention of the Anti-Terror and Related Activities Act and money laundering in contravention of the Prevention of Organised Crime Act, establishment of a Boycotts, Trade Divestment, Economic Sanctions and Lawfare Council, enforcement proceedings, imposition of fines to guilty parties and dealing with all other matters incidental and connected thereto.

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A) PRE-AMBLE

Being Mindful of,

Our own history and the geopolitical context and conflict in the Middle East:

WHEREAS, the people of the Republic of South Africa have a deep and painful history of repression and have suffered the worst forms of oppression originating from settler colonialism, racial discrimination and practices that was institutionalised apartheid;

AND WHEREAS ACKNOWLEDGING, our struggle against racism, discriminatory policies and the crime of apartheid deprived us of fundamental human rights which include *inter alia*, the right to life, equality, dignity and freedom;

ACKNOWLEDGING, our fundamental rights are now entrenched in a justiciable Bill of Rights contained in the Constitution of the Republic of South Africa;

ACKNOWLEDGING, our hard fought freedoms necessitate that the people of South Africa have a moral and legal responsibility to unite in solidarity with the people of Palestine and of all Palestinian refugees living in the diaspora, including Israel and in the occupied Palestinian territories (OPT's) in their struggle for life, equality, human dignity and aspirations for freedom;

ACKNOWLEDGING, that peace can only be achieved when justice prevails. The State of Israel's belligerent military occupation since the 1948 Nakba, that is the ethnic cleansing of Palestinians from their homes and land must end and the Palestinian right of self-determination must be realised.

ACKNOWLEDGING, by the Republic of the *inalienable right of return* and land restitution constituting an integral and fundamental right towards achieving a just and lasting peaceful solution;

ACKNOWLEDGING, the State of Israel continues its unlawful conduct perpetrating gross violation of human rights, by policies of belligerent military occupation, settler colonialism, and apartheid in breach of amongst other international prescripts, which include *inter alia*: the Geneva conventions, United Nations Resolutions, International Covenant on Civil and Political Rights, International Convention on the Suppression of the Crime of Apartheid, International Law, International Criminal Law, International Humanitarian Law, Customary International Law, the Rome Statute, the San Remo Manual and/or any such other associated international instruments restricting unlawful naval and sea blockades and advancing international humanitarian law;

ACKNOWLEDGING, the Republic of South Africa has constitutionally imperative international obligations to invoke laws at its avail in order to conform and abide, protect and advance international law, international humanitarian law and customary principles of universal jurisdiction together with such associated *non-derogatory (jus cogens)* peremptory norms and standards;

ACKNOWLEDGING, the United Nations Security Council Resolution (UNSC) 2334, re-affirms amongst its findings that the establishment by the State of Israel of settlements in the Palestinian territories occupied since 1967, including East Jerusalem, have no legal validity and constitutes a flagrant violation under international law and is a major obstacle to the achievement of the two-State solution towards achieving a just, lasting and comprehensive peace;

ACKNOWLEDGING, the importance for the severance of economic ties and trade relations which are inextricably linked to deter the continued sustainability of Israeli settlement expansions in the occupied Palestinian Territories (OPT's) which unlawfully infringe upon the 1967 delineated borders.

ACKNOWLEDGING, the United Nations Economic and Social Commission for West Asia (UN - ESCWA's) historic report (*subsequently retracted under political pressure*) has set two landmark precedents on Palestine, whereby the United Nations agency has established through a scrupulous and rigorous study that Israel has imposed an apartheid regime against the entire Palestinian people;

ACKNOWLEDGING, the UN - ESCWA report finds Boycotts, Divestment and Sanctions as the most effective **advocacy and economic tool** to hold the state of Israel accountable for its crimes against humanity;

ACKNOWLEDGING, Amnesty International's findings that Israel imposes a system of oppression and domination against Palestinians across all areas under its control: in Israel and the Occupied Palestinian Territories (OPTs), and against Palestinian refugees, in order to benefit Jewish Israelis. This amounts to apartheid as prohibited in international law. Laws, policies and practices which are intended to maintain a cruel system of control over Palestinians, have left them fragmented geographically and politically, frequently impoverished, and in a constant state of fear and insecurity.

ACKNOWLEDGING in March 2021, the Al Haq foundation¹ defending human rights participated in the 46th Regular session of the United Nations (UN) Human Rights Council. In collaboration with Palestinian, regional, and international civil society, AL Haq highlighted Israel's systemic oppression and racism, inherent in its settler colonial and apartheid regime over the Palestinian people as a whole, including those living on both

¹ [Al-Haq Highlights Israel's Apartheid Regime and Calls for Accountability at the 46th Session of the Human Rights Council \(alhaq.org\)](https://alhaq.org)

sides of the Green line, and as refugees and exiles denied their right of return. AL Haq further urged the Council and its Members States to take effective measures to ensure justice and accountability for widespread and systematic human rights violations, including suspected international crimes, committed against the Palestinian people. Al Haq called for the establishment of a fact-finding mission into Israel's apartheid regime and full international co-operation with the International Criminal Court (ICC), to ensure an end to Israel's unlawful culture of impunity.

ACKNOWLEDGING The Centre for Constitutional Rights study² regarding the genocide of the Palestinian people that genocide is defined, not by a particular form of violence, but by general and pervasive violence. Settler colonial regimes are structurally prone to genocide and may indulge in '*genocidal moments*' when they become frustrated by the resistance of a colonized or occupied people. Prominent human rights advocates and scholars have argued that the killings of Palestinians and their forceful expulsion from Mandate Palestine in 1948, the Israeli occupation of the West Bank, East Jerusalem, and Gaza as well as the violence and discrimination directed at Palestinians by the Israeli government have violated a number of human rights protections contained in international human rights, with genocide being among them which is a violation of the Genocide convention under international law.

ACKNOWLEDGING, that Trade Divestments and Sanctions is an important and legitimate advocacy tool in gaining international solidarity towards defeating the crime of institutionalised apartheid against the Palestinian people;

ACKNOWLEDGING, the referrals to the International Criminal Court (ICC) and the numerous international resolutions passed against the State of Israel by the United Nations (UN), the United Nations Human Rights Council (UNHRC) which condemns Israel for both present and past human rights violations, which include the ill treatment and

² [The Genocide of the Palestinian People: An International Law and Human Rights Perspective | Center for Constitutional Rights - 25 August 2016 \(ccrjustice.org\)](https://www.ccrjustice.org/2016/08/25/the-genocide-of-the-palestinian-people-an-international-law-and-human-rights-perspective/)

torture of Palestinian political and child prisoners, the utilisation of arbitrary administrative and military laws against the Palestinian civilian population and children in the West Bank and in the OPT's, which bear close proximity to the former South African apartheid 90 (ninety-day) administrative detention laws without trial;

ACKNOWLEDGING, by the Republic of the United Nations Human Rights Council (UNHRC) having adopted various resolutions at its regular and special session during the period of 2016 and 2017 respectively, against the State of Israel demanding for the protection and respect of fundamental human rights and calling for the protection of Palestinian political prisoners' rights and child prisoners' rights in conflict areas;

ACKNOWLEDGING, by the Republic of the efforts of thousands of political Palestinian prisoners who have periodically embarked on **dignity hunger strikes and advocacy protests** in their struggle for life, equality, human dignity and freedom;

ACKNOWLEDGING the Israeli Prison Services unlawful practices in the relocation of members of the Prisoners Movement Emergency Committee to undisclosed locations in retaliation to its leadership undergoing hunger strikes and/or giving testimony;

ACKNOWLEDGING, court judgments emanating from the International Court of Justice (ICJ), deeming the construction of the separation wall by Israel, further cantonising the occupied Palestinian territories illegal under international law;

ACKNOWLEDGING, South African citizens in their endeavours to break the siege on the Gaza Strip blockaded by the Israeli Naval and Defence Forces have been directly affected by the State of Israel's apartheid, colonial and belligerent occupying practices, which naval blockade continues to be unlawful under international humanitarian law denying access and free passage of essential humanitarian aid, medical supplies, building materials for

reconstruction and development and relief works aid to a besieged Palestinian civilian population living under a permanent land, air and sea blockade since 2007;

ACKNOWLEDGING, the South African Police Services (SAPS) have previously investigated cases under the Republic's *Implementation of the International Criminal Court Act 27 of 2002* against the State of Israel for war crimes perpetrated in Gaza during, '**Operation Cast Lead**' in **2008 to 2009** where banned munitions such as white phosphorous and other lethal munitions: such as dime and nail bombs were unleashed against a predominantly civilian population in densely populated areas in the Gaza Strip causing over at least 1 800 Palestinian civilian deaths;

ACKNOWLEDGING, the Israeli Defence Force (IDF) have orchestrated systematic military operations which have caused fatalities, human injuries and damages to infrastructure and essential services such as hospitals and municipal water works, causing an unsafe and unsustainable environment, making living conditions for the human population detrimental to human health, in wars unleashed by Israel during the period **2008-2009 (Operation Cast lead), 2012 (Operation Pillar of Defence) and 2014 (Operation Protective Edge) and in 2021 (Operation Guardian of the Walls)** on the civilian population of Gaza;

ACKNOWLEDGING, the state of Israel aggressively through its belligerent military occupation continues to impose collective punishment by naval blockades and sieges upon the Palestinian people in Gaza, thereby restricting Palestinian fundamental rights to freedom of movement and association, access to trade, health and education;

ACKNOWLEDGING in contravention of the Geneva conventions and international humanitarian law, the systematic and organised conduct of unlawful blockades and sieges imposed by Israel on Palestinian life in Gaza and the OPT's is detrimental to health and ultimately human survival;

ACKNOWLEDGING, IDF war commanders have been previously investigated by specialised organs state – Directorate of Priority Crimes Investigation (DPCI), South African Police Services (SAPS) for the alleged unlawful kidnap, arrest and detention of a South African citizen and journalist, Gadija Davids who was aboard the Flotilla Humanitarian Aid mission in May 2010;

ACKNOWLEDGING, the war in Gaza, under the auspices ‘**Protective Edge**’ in 2014 also investigated by the SAPS, the scale of devastation and human fatalities ³, injuries and destruction of civilian infrastructure was unprecedented and disproportional. The death toll of 2,251 Palestinians including 1,462 Palestinian civilians, of whom 299 women and 551 were children, and 11,231 Palestinians, including 3,540 women and 3,436 children, were injured of whom 10 per cent suffered permanent disability as a result thereof ⁴;

ACKNOWLEDGING, that the overwhelming evidence against the IDF points to war crimes having been perpetrated during the 2014 war in the Gaza Strip under the auspices of ‘*Operation Protective Edge*’;

ACKNOWLEDGING, the UN and Human Rights Watch reported that 260 Palestinians had been killed, half of them (129) civilians including 66 children and 40 women in the IDF war in Gaza in May 2021, under the auspices of ‘*Operation Guardian of the Walls*’ ⁵.

ACKNOWLEDGING, on 5 August 2022, Israel launched another attack on Gaza, killing 33 Palestinians, including 9 minors and 3 women, in 3 days. B’Tselem’s investigation found that at least 17 of the people killed, including all the minors and women, were not participating in the hostilities. Another 15 Palestinians, 9 of them minors, were killed by Palestinian rockets or mortars that landed in Gaza. Despite the horrific outcomes of Israel’s

³ Data compiled by the OCHA Protection Cluster, 31 May 2015. For its methodology, see A/HRC/28/80/Add.1, para. 24, footnote 43 - [G1425148.pdf \(un.org\)](#)

⁴ UN A/HRC/29/52, Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, Part V, Principal Findings and Conclusions, paragraph 20, p 6 - [A-HRC-29-52_en.doc \(live.com\)](#)

⁵ [World Report 2022: Israel and Palestine | Human Rights Watch \(hrw.org\)](#)

airstrike policy, the policymakers, legal counsel or troops on the ground are unlikely to be held accountable.⁶

ACKNOWLEDGING, in the Jerusalem area in January 2023, whereby 60 structures were demolished on Israeli Authority orders, whereby 55 Palestinians including 24 minors lost their homes.⁷

ACKNOWLEDGING, the cases already filed with South African Investigative – SAPS DPCI and the National Prosecuting Authority (NPA) of South Africa on 24 February 2022 of South African nationals, citizens and companies complicit in rendering foreign military assistance in contravention of the *Regulation of Foreign Military Assistance Act 15 of 1998* sustaining the crimes of the Israeli apartheid regime in the OPT's and the Gaza Strip including the contravention of the *Promotion of Constitutional Democracy against Terror and Related Activities Act 33 of 2004* and the *Prevention of Organised Crime Act 121 of 1998*;

ACKNOWLEDGING, that the current Israeli fascist regime has intensified its campaign through arming, aiding and abetting settler colonial pogroms through land grab, theft, and destruction of Palestinian property in the occupied Palestinian territories including but not limited to neighbourhoods of East Jerusalem, Sheikh Jarrah, Silwan, Jenin refugee camp, the recent rampage in Huwara village and surrounding villages around the West Bank city of Nablus⁸;

ACKNOWLEDGING, the arming, aiding and abetting of Jewish settlers and sustaining settler colonialism ideology in these areas by the Israeli regime, its security police by the IDF, breeds fertile ground by the ultra - right fascist Israeli regime for the intensification of

⁶ [B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories \(btselem.org\)](https://www.btselem.org/)

⁷ [Demolitions in the Jerusalem area, January 2023: 60 structures demolished on Israeli authorities' orders; 55 Palestinians, including 24 minors, lose their homes \(btselem.org\)](https://www.btselem.org/)

⁸ [Palestine's Huwara should be wiped out: Top Israeli minister | Israel-Palestine conflict News | Al Jazeera](https://www.aljazeera.com/news/2023/1/24/palestine-huwara-should-be-wiped-out-top-israeli-minister/)

pogroms and ethnically cleansing Palestinians from their homes with even the perpetration of genocide.

ACKNOWLEDGING, that it is incumbent upon the people of the Republic of South Africa to unite and strengthen the international resistance (intifada) in solidarity with the Palestinian people in their political emancipation and the right to self-determination and freedom, which can only be achieved through just political and economic liberation, that is a viable and sustainable Palestinian state recognised under international law for all to prosper under peaceful and healthy co-existential conditions;

ACKNOWLEDGING, the provisions of this Act are irrelevant to anti-Semitism or any intent to cause harm towards the people of the Jewish faith or religion, but rather as a *bona fides* act by the Republic to eradicate the wrongful, oppressive, discriminatory and unjust Zionist policies implemented by the State of Israel and to force by means of international pressure the end to genocide and ethnic cleansing, the dismantlement of apartheid, its oppressive racial and ethnic discriminatory policies and to open the way for the creation of a culture of fostering mutual respect, love, tolerance and understanding for all affected by this conflict;

ACKNOWLEDGING, the Republics governing international relations policy is informed by its domestic policy, and *vice versa*, whereby they are mutually reinforcing ⁹;

ACKNOWLEDGING, the Republic remains committed to its founding values of a struggle for a just, humane, equitable, democratic, and free world ¹⁰;

ACKNOWLEDGING, by the Republic of its responsibility to free the people of Palestine from belligerent military occupation, colonialism and apartheid;

⁹ ANC's 53rd Annual Conference ([Resolutions-2012.pdf \(anc1912.org.za\)](#)), CH 6 International Relations, paragraph 2, p 38

¹⁰ Supra (Ibid), paragraph 3

AND WHEREAS ACKNOWLEDGING, the Republic's international relations policy is founded upon a commitment to developing and entrenching democracy, human rights, peace, and security in the world ¹¹;

NOW WHEREFORE, this Act shall undertake the necessary measures of Boycotts, Trade Divestments, and Economic Sanctions (BTDES) as a necessary and prerequisite tool of achieving the dismantlement of the State of Israel's oppressive and racist Zionist ethnic discriminatory practices and apartheid policies against Palestinians;

AND WHEREFORE, the Republic shall ensure that the most egregious crimes perpetrated against Palestinians of genocide, incremental genocide, ethnic cleansing of Palestinians, war crimes perpetrated in Gaza, crimes against humanity constituting the crime of apartheid and torture, terrorism and crimes of aggression in the OPT's shall be thoroughly investigated and prosecuted by South African Authorities within the ambit of the Republic's jurisdiction and compliance to its international legal obligations and the domestic laws of the Republic of South Africa;

AND WHEREFORE, it is acknowledged that Palestinians living in Gaza are enduring intolerable and insufferable living conditions imposed by the State of Israel's systemic policies of settler colonialism and incremental genocide by sustaining adverse living conditions, not limited to environmental degradation, psychological warfare and hazardous water contamination of at least 90 % (ninety percent) of Gaza's water supply, including and related to affecting all other aspects of life: clean sanitation, electricity, education and health;

¹¹ Supra (ibid), paragraph 5

AND WHEREFORE, lawfare mechanisms of holding Israeli war commanders accountable for crimes of genocide, ethnic cleansing, war crimes and crimes against humanity, and crimes of aggression are crimes recognised of the nature *hostis humanis generis*, 'the enemy of all mankind', whereby lawfare mechanisms contemplated hereto, shall be promoted and advanced, but not limited to customary laws on universal jurisdiction and/or including South Africa's *Implementation of the International Criminal Court Act 27 of 2002* derived from the Republic's ratification of the Rome Statute on or about 1 July 2002;

AND WHEREFORE, the gravity of crimes by the IDF constitute 'crimes of aggression' against the aspirations of a viable Palestinian state including war crimes, which have been perpetrated over a civilian population living in the besieged Gaza Strip;¹²

AND WHEREFORE, the state of Israel through the IDF have gravely violated international human rights and humanitarian law in its imposed sieges and permanent naval blockades since 2007;

AND WHEREFORE, this Act shall declare all activities relating to any persons or South African national and/or citizen who serves in the Israeli Defence Force (IDF) unlawful and a criminal offence punishable in terms of this Act, notwithstanding such contravention to any other laws, not limited to the *Regulation of Foreign Military Assistance Act 15 of 1998* and /or *Prohibition of Mercenary Activities Act and Regulation of Certain Activities in*

¹² "Operation Protective Edge, The War Crimes Case Against Israel's Leaders," by [M. Thomas](#) | October 26, 2015 - [Operation Protective Edge - MERIP](#): *Op. cit.* "In the aftermath of Protective Edge, a commission appointed by the UN Human Rights Council examined the available facts (Israel refused to cooperate) and found in many cases that war crimes may have been committed. Several NGOs have documented what they suggest were war crimes; and the chief prosecutor of the International Criminal Court (ICC) has opened a preliminary inquiry into the facts that might support such charges and warrant a formal investigation".

"Two of the core principles of international humanitarian law (or the law of war) are those of **distinction** and **proportionality**. The rule of distinction requires that, to the extent feasible, commanders and soldiers attack only combatants, and protect non-combatants and those who are hors de combat (outside the fight). The rule of proportionality prohibits attacks expected to cause loss of life or injury to civilians or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated".

Country of Armed Conflict Act 27 of 2006 (to be promulgated), and Anti-Terrorist And Related Activities Act”,

AND WHEREFORE, the measures contained in this Act shall have broad ramifications, whereby the Republic recognises that there shall be the periodic cessation as contained in this Act of diplomatic and trade relations by the Republic of South Africa with the State of Israel, until the objective of a free and liberated Palestine is achieved and where there shall be peace, tolerance, mutual respect, understanding, protection and advancement of inalienable fundamental human rights for all persons affected by the conflict;

AND WHEREFORE, specifically recognising and associating the inalienable right of return of displaced inter-generational Palestinians constituting both lawful under international law and the legitimate aspirations of the Palestinian people;

AND WHEREFORE, the Republic recognising the civil and political rights, economic rights and the development of a sustainable environment that is essential for the overall wellbeing of the Palestinian people and future generations;

AND WHEREFORE, the Republic of South Africa has a moral and international legal obligation since defeating the crime of apartheid to lead in the promotion, protection and advancement of international solidarity, to defend just and lawful human rights causes, and to inspire and inculcate the spirit of *‘Ubuntu’* and to strive towards realising the principles enshrined in the Universal Declaration of Human Rights (UN Charter) and the constitution of the Republic of South Africa, entrenching human rights of freedom, equality, dignity, non - racialism, non – sexism, non - discrimination, peace and justice;

AND WHEREFORE, this Act recognising the inalienable universal human rights of the Palestinian people who have through decades of oppression endured the subjugation of their will and aspirations through institutionalised apartheid, colonialism and belligerent military occupation.

BE IT THEREFORE ENACTED by Parliament of the Republic of South Africa as follows –

1. **DEFINITIONS**

In this Act, unless the context indicates otherwise-

- a) **“Boycotts, Divestment and Sanctions or BDS”** shall mean Boycotts, Trade Divestment and Economic Sanctions and/or any other economic resistance tool or practices utilised in solidarity with the people of Palestine aimed at the State of Israel with the purpose of implementing embargoes and/or economic trade sanctions, causing economic and financial harm and/or political unsustainability for the State of Israel to exist in its current political form;
- b) **“Boycotts”** shall mean to include, but not limited to the cessation of all forms of cultural, sporting, religious activities, environmental affairs, water and sanitation management and/or any other professional, vocational, scientific collaboration exchangeable between institutions within the State of Israel and the Republic of South Africa which support the political *status quo*;
- c) **“BTDES&LC”** shall mean the establishment of the Boycotts, Trade Divestment, Economic Sanctions and Lawfare Council;

- d) **“Companies”** shall mean all types of juristic persons or entities, enterprises, multinational corporations including arms manufacturers, associations, partnerships, sole proprietorships, with either its registered offices or principal place of business situated within the Republic of South Africa;
- e) **“Crimes against humanity”** shall mean the proscribed conduct defined in *the Implementation International Criminal Act 27 of 2002, SCHEDULE 1 PART 2: CRIMES AGAINST HUMANITY*;
- f) **“Educational exchanges and/or collaboration”** shall mean all kinds of academic fellowships, academic collaboration, with tertiary, artisan, trade or further education training (FET) institutions both in the State of Israel and in the occupied Palestinian Territories (OPT’s) whereby the State of Israel exerts either direct control and/or exercises undue political influence in the funding, operation and management of such institutions;
- g) **“Financial institutions”**, shall mean banking and financial institutions including any other economic means by virtue of the flow of money and financial transactions through the global financial system and economic activity that shall be affected by the implementation of this Act.
- h) **“Imposed restrictions”**, shall mean the denial of the inalienable right to freedom of association, freedom of movement, access to free trade, the creation of adverse conditions impacting on food, water and energy security, violating fundamental rights to social and environmental justice, unsafe sanitary and environmental conditions detrimental to human health, access to public health and education services;

- i) **“Lawfare”** shall mean the utilisation of legitimate policy tools constituting legal mechanisms and principles of customary universal jurisdiction invoked against present and former Israeli state leaders, military commanders who either hold political, executive and/or military office with command line responsibility capable of being held justiciable accountable for the most egregious and abominable crimes perpetrated against Palestinian civilians and human rights activists for crimes constituting genocide, ethnic cleansing, war crimes and crimes against humanity akin to the crime of apartheid and torture and crimes of aggression and terrorism that are perpetrated with impunity;

- j) **“PAJA”** shall mean the Promotion to Administrative Justice Act 3 of 2000;

- k) **“Persons”** shall mean either natural or juristic persons including multi-national corporations, enterprises and/or arms manufacturers within which the Republic is able to exercise competent jurisdiction in implementation of this Act ;

- l) **“Siege”** shall mean imposed restrictions and/or any other imposed economic and trade impediments by the occupying force of Israel on aid including, *but not limited* to fishing restrictions in the Gaza Strip, blockades to entry of food security, agricultural produce, medical supplies, protective security equipment, building materials and/or any other essential humanitarian aid in contravention of the Geneva Conventions which is detrimental to the overall health and well - being of the occupied Palestinian people;

- m) **“Sectors of industry”** shall mean the affected sectors in the Republic of coming into operation of this Act to include but not limited to health, education, engineering and technology to be expanded upon by the **BTDES&LC**;

- n) **“the Courts”** shall mean the special court/s convened and/or the High Court of South Africa as a court of competent jurisdiction within the Republic of South Africa unless otherwise indicated;
- o) **“the Criminal Procedure Act”** shall mean the *Criminal Procedure Act 51 of 1977*;
- p) **“the crime of Apartheid”** shall mean proscribed racial and/or cultural discriminatory conduct which is institutionalised falling within the ambit of body of crimes constituting crimes against humanity, which is defined in *the Implementation International Criminal Act 27 of 2002, SCHEDULE 1 PART 2: CRIMES AGAINST HUMANITY*;
- q) **“the crime of Genocide”** shall mean the proscribed conduct defined in the *Implementation of the International Criminal Court Act 27 of 2002, SCHEDULE 1 PART 1: GENOCIDE*;
- r) **“the crime of Aggression”** shall mean for the purpose of the Rome Statute, the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.
- s) **“the Diplomatic Immunity and Privileges Act”** shall mean the *Diplomatic Immunity and Privileges Act 37 of 2001*;
- t) **“the Foreign Military Assistance Act”**¹³ shall mean the *Foreign Military Assistance Act 15 of 1998*; OR

¹³ Cf. *Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006*

- u) **“the International Criminal Court Act”** shall mean South Africa’s *Implementation of the International Criminal Court Act 27 of 2002*;
- v) **“the Anti-Terrorist And Related Activities Act”**, shall mean the *Protection of Constitutional Democracy Against Terrorist And Related Activities Act 33 of 2004*
- w) **“the Prevention of Organised Crime Act”**, shall mean the *Prevention of Organised Crime Act 121 of 1998* in respect of property that is either owned or controlled by, or on behalf of an entity involved in terrorist related activities.
- x) **“the Minister”** shall mean the Minister of International Relations and Co-operation duly appointed by the President of the Republic of South Africa in performing his official functions, duties and responsibilities, unless otherwise indicated;
- y) **“the Minister of Safety and Security”** shall mean the said Minister duly appointed by the President of the Republic of South Africa in performing his official functions, duties and responsibilities;
- z) **“the Minister of Co-operative Governance and Co-operation”** shall mean the said Minister duly appointed by the President of the Republic of South Africa in performing his official functions, duties and responsibilities

- aa) **“the Minister of Justice and Constitutional Development”** shall mean the said Minister duly appointed by the President of the Republic of South Africa in performing his official functions, duties and responsibilities;

- bb) **“the Minister of Trade and Industry”** shall mean the said Minister duly appointed by the President of the Republic of South Africa in performing his official functions and responsibilities;

- cc) **“the Minister of Home Affairs”** shall mean the said Minister duly appointed by the President of the Republic of South Africa in performing his official functions, duties and responsibilities;
- dd) **“the NPA”** shall mean the National Prosecuting Authority of South Africa including the office of the National Director of Public Prosecutions (NDPP) and its specialised organs of state mandated by the National Prosecuting Authority Act 32 of 1998 and/or by any other applicable laws of the Republic in performing its prosecutorial functions, duties and responsibilities;
- ee) **“the Occupied Palestinian Territories (OPT’s)”** shall mean the Gaza strip under military and naval siege, blockaded by land, air, and sea imposed by the Israel Defence Force (IDF), and the Palestinian territories annexed and/or confiscated by expansion of Israeli settlements through its settlements policy held illegal under international law with regard to UN Security Council Resolution 2334 (2016) usurping land in contravention of the 1967 delineated borders;
- ff) **“the Police Commissioner”** shall mean the duly appointed South African Police Commissioner of the South African Police Services in performing his respective functions, duties and responsibilities in safety and security;
- gg) **“the Prohibition of Mercenary Activities Act”** shall mean the *Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006*;
- hh) **“the Rome Statute”** shall mean South Africa’s signatory to the international treaty or convention and its ratification thereof and enforcement thereof on 1 July 2002, in ascribing to the principles of the charter of holding war criminals accountable under principles of codified universal jurisdiction for the most egregious proscribed crimes of genocide, war crimes, crimes against humanity and crimes of aggression;

- ii) **“the SAPS”** shall mean the South African Police Services including its specialised investigative organs of state, such as the Directorate of Priority Crimes Investigation (DPCI) mandated in terms of the *South African Police Service Act 68 of 1995* and/or any other applicable laws of the Republic in performing its investigative functions, duties and responsibilities;

- jj) **“UN - ESCWA”** shall mean the United Nations Economic and Social Commission for West Asia;

- kk) **“War crimes”** shall mean the constitution of proscribed crimes defined in the *Implementation of the International Criminal Court Act 27 of 2002, SCHEDULE 1 PART 3: WAR CRIMES.*

2. THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA AND DELEGATION OF POWERS TO THE MINISTER

- 1) The President of the Republic of South Africa shall upon coming into **force and effect** of this Act, where necessary delegate such powers to the Minister of International Relations and Co-operation (‘the Minister’) and the President shall accordingly notify in writing the relevant authorities of the State of Israel of –
 - a) The Republic’s obligation to institutionalise boycotts, trade divestment and economic sanctions against the State of Israel and its associated enterprises and related entities;
 - b) The periodic cessation of diplomatic, trade and economic relations with the State of Israel within a period to be determined upon recommendations of the Boycotts, Trade Divestment, Economic Sanctions and Lawfare Council (BTDES&LC);

- c) The Republic's intention to investigate and prosecute Israeli war criminals and terror related activities in accordance with –
 - i) Available lawfare mechanisms in law;
 - ii) The Republic's international criminal and customary law obligations entailing, but not limited to *inter alia*: customary universal jurisdiction, the Rome Statute, the Implementation of the International Criminal Court Act;
 - iii) The Anti-Terrorist And Related Activities Act *and* the Prevention of Organised Crime Act;
 - iv) The Republic's domestic Criminal Procedure Act and criminal justice system;
 - v) With such obligations imposed by the Constitution of the Republic of South Africa and/or
 - vi) By any other law of the Republic.

3. PRESIDENT'S NOTIFICATION TO THE POLICE COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICES (SAPS) AND THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS (NDPP)

- 1) The President of the Republic of South Africa in conjunction with the Minister, shall accordingly notify the Police Commissioner of the South African Police Services and the National Director of Public Prosecutions of matters relating and incidental to –
 - a) The implementation of this Act;
 - b) The functions and duties of the requisite investigative and prosecutorial authorities of the Republic to be performed;
 - c) The co-operation to be rendered to the investigative and prosecutorial authorities for the carrying out of their respective functions, duties and responsibilities in accordance with the provisions of this Act;
 - d) And/or any other Act where applicable.

4. CO-OPERATIVE GOVERNANCE BETWEEN THE MINISTER OF SAFETY AND SECURITY AND THE MINISTER OF HOME AFFAIRS

1) The Minister of Safety and Security shall together with the Minister of Home Affairs through their respective national departments mutually co-operate in establishing a special task unit acting under the powers of this Act, exercise the necessary authority to –

- a) Alert border control and immigration authorities of the force and effect of this Act;
- b) Implement a sustainable plan of action or strategy thereby giving force and effect to this Act;
- c) Conduct the necessary security and immigration control surveillance of all persons within the Republic's competent jurisdiction travelling to and arriving from the State of Israel;
- d) Conduct focused surveillance, reconnaissance, screening of alleged suspects and/or carry out such investigative and enforcement powers of arrest –
 - i) Upon suspects and by any such persons who are South African citizens and/or nationals contravening the provisions of the **Foreign Military Assistance Act, OR;**
 - ii) **The Prohibition of Mercenary Activities Act** (if promulgated) where applicable;
 - iii) Upon persons and financial institutions as defined involved in terrorism related activities as defined in contravening **the Anti-Terrorist And Related Activities Act;**
 - iv) Upon persons and financial institutions as defined contravening the **Prevention of Organised Crime Act;**
 - v) And/or by any other law where applicable.

- e) Conduct focused surveillance, reconnaissance, screening of alleged suspects and/or carry out such investigative and enforcement powers of arrest –
- i) In relation to South African citizens and/or nationals travelling to the State of Israel to serve in the armed forces of the Israeli Defence Force (IDF)-
 - ii) And/or serving in any other Israeli Defence Force military unit or military command structure;
 - iii) And/or in the Israeli Security Police Forces;
 - iv) And/or in the intelligence agency of the State of Israel.

2) Notwithstanding the aforesaid, *section 4 (1)* and its sub-provisions shall apply -

- i. To all persons within the Republics jurisdiction, who are protecting and advancing the *status quo* of belligerent military occupation, including but not limited to the perpetration of war crimes, crimes against humanity akin to apartheid and torture, crimes of aggression and settler colonial practises which are unlawful under international law and international humanitarian law;
- ii. To all persons and financial institutions involved in terror related activities and money laundering; and
- iii. Such persons who serve to advance the perpetration of crimes by the state of Israel through its security and armed forces against Palestinians living under belligerent military occupation.

5. INVESTIGATION AND ENFORCEMENT

The requisite authorities of the South African Police Services and the National Prosecuting Authority and its specialised organs of state, being namely the Directorate of Priority Crimes Investigation Unit ('DIPCI') of the South African Police Services and the Directorate of Priority Crimes Litigation Unit ('PCLU') of the National Director of Public Prosecutions, shall exercise their competent powers and responsibilities which are prescribed in this Act, and/or in any other Act of the Republic, in enforcing the provisions of this Act, which shall entail, *inter alia*-

- 1) **Investigations** falling within the competency of this Act and the Implementation of the International Criminal Court Act and/or under customary principles of universal jurisdiction and/or in terms of lawfare mechanisms and/or under *the Anti-Terror and Related Activities Act, the Prevention of Organised Crime Act* or any other law -
 - a) For alleged crimes perpetrated by such persons, or
 - b) By such persons under whose authority the conduct manifested by such state officials within the Israeli State Security apparatus and Israeli Defence Force for executing upon systemic policies constituting genocide, or incremental genocide, ethnic cleansing, war crimes and crimes against humanity akin to apartheid and torture, crimes of aggression and settler colonial practices;
 - c) An/or by such persons under whose authority the conduct manifested by such state officials within the Israeli State Security apparatus and Israeli Defence Force for executing upon systemic policies involved in money laundering and terror related activities.

2) **Prosecutions** falling within the competency of this Act, the Criminal Procedure Act and the Implementation of the International Criminal Court Act and/or under customary principles of universal jurisdiction and/or Lawfare and/or, the Anti-Terror Related Activities Act, the Prevention of Organised Crime Act or under any other law

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- a) For alleged crimes perpetrated by such persons, or
 - b) By those persons under whose authority the conduct manifested by such state officials within the Israeli State apparatus and Israeli Defence Force for executing upon systemic policies constituting genocide or incremental genocide, ethnic cleansing, war crimes and crimes against humanity akin to apartheid and torture, crimes of aggression and settler colonial practices;
 - d) An/or by such persons under whose authority the conduct manifested by such state officials within the Israeli State Security apparatus and Israeli Defence Force for executing upon systemic policies involved in money laundering terror related activities.
- 3) The requisite courts acting within their jurisdictional competency shall adjudicate on such matters to be prosecuted and/or as contemplated in the International Criminal Court Act and/or the Anti-Terror Related Activities Act unless otherwise indicated and/or where a special court of competent jurisdiction equivalent to a high court of the Republic may be established by the Minister of Justice and Constitutional Development;

- 4) **Notwithstanding any other law, the special Court to be established, alternatively the High Court shall have the following powers concomitant with its powers of inherent jurisdiction upon application and/or institution of legal proceedings-**
- a) To interdict any form of trade and/or such commercial activities by South African and foreign based companies, multinational corporations within the Courts jurisdiction from trading with commercial entities in Israel;
 - b) To set aside any commercial trade agreements with the State of Israel which are concluded contrary to the purport of this Act;
 - c) To set aside any cultural, sporting, religious and/or other collaborative boycotting activity as defined which is contrary to the purport of the Act;
 - d) To review any bilateral or regional trade agreement which may be in contravention of the purport of this Act;
 - e) To review any decision of the National Director of Public Prosecutions not to prosecute alleged war criminals and/or persons implicated in terms of the provisions of this Act;
 - f) To review any decision and/or on upon any other grounds in terms of administrative justice in PAJA or any other law of the Republic;
 - g) To issue provisional warrants of arrest for accused persons in pursuit of investigations as the court may direct and/or deem necessary;
 - h) To interdict accused persons from leaving the Republic pending an investigation as contemplated in the Act; and
 - i) To interdict the activities of juristic entities in furtherance of the purport of this Act.
- 5) The Minister of Safety and Security and the Minister of Justice and Constitutional Development must promulgate the necessary regulations where necessary, in

order for the relevant authorities and courts to perform its functions and duties herein.

6. THE MINISTER OF TRADE AND INDUSTRY AND HIS DUTIES RELATED TO BOYCOTTS, TRADE DIVESTMENT AND ECONOMIC SANCTIONS

- 1) The Minister of Trade and Industry shall be vested with powers together with the Minister as provided for in the Act, whereby the delegated and/or assigned powers shall be conferred to the Department of Trade and Industry in carrying out all functions, duties and responsibilities relating to-
 - a) The implementation of boycotts where applicable;
 - b) Trade divestment, and
 - c) Economic sanctions against the State of Israel.

- 2) The Department of Trade and Industry shall be conferred with the implementation of boycotts, trade divestment and economic sanctions extending beyond any existing trade restrictions and regulations in the Republic pertaining to the labelling of goods and/or products imported from the State of Israel which originate from the occupied Palestinian territories.

7. BOYCOTTS, TRADE DIVESTMENT, ECONOMIC SANCTIONS AND LAWFARE COUNCIL (BTDES&LC)

The Minister shall be authorised to establish a Boycotts, Trade Divestment, Economic Sanctions and Lawfare Council to be constituted within *120 (One Hundred and Twenty)* days or by any such extended period to be determined by the Minister calculated from the date of enforcement of this Act -

- 1) Consisting of at least 15 (*Fifteen*) members that are proportionally representative from Government across various state ministries and departments which are affected by this Act, that is including, *but not limited to* determination from time to time by the Minister, the Ministry of Trade and Industry, the Ministry of Safety and Security, the Ministry of Justice and Constitutional Development, the Ministry of Co-operative Governance, the Ministry of Environmental Affairs, the Ministry of Water and Sanitation, the Ministry of Defence and the Ministry of Arts and Culture;
- 2) Consisting of at least 15 (*Fifteen*) members proportionally representative from civil society, non - governmental organisations (NGO's) including Palestinian and Rights based solidarity organisations, economists, and members of commercial standing operating within the private sector;
- 3) Consisting of at least 5 (*Five*) members from the attorneys and advocates profession practising in the fields of constitutional law, human rights, international trade law, international law, international humanitarian law, international criminal law, universal jurisdiction and/or Lawfare of not less than 10 (ten) years professional experience whereby they shall exercise their functions together with members described in *section 7(1) and 7(2) respectively*;
- 4) To constitute a Boycotts, Trade Divestments and Economic Sanctions and Lawfare Council –
 - a) To advise, inform and give opinion of prevailing lawfare mechanisms and conditions and its applicability in implementation of this Act;
 - b) To advise and inform upon the impact with regard to cessation of diplomatic and political relations;
 - c) To advise and inform on the revocation, cancellation and/or cessation of regional, bilateral and/or plurilateral trade and economic agreements between the Republic and the State of Israel;

- d) To conduct a risk analysis and to advise and inform upon the historical, current and projected arms and munitions trade between South African based companies, whereby –
 - i) Such arms manufacturers are wholly owned and/or majority owned in the Republic, or
 - j) Such international arms manufacturers through subsidiaries are wholly owned and/or majority owned in the Republic;
 - ii) Multinational enterprises are operating within the Republic conducting arms and munitions trade with the State of Israel;
- e) To assess and minimise the economic impacts caused to the Republic and to communicate and periodically inform upon findings of the work of this Council to both the Minister and international trade organisations like the World Trade Organisation (WTO) and international body institutions such as the United Nations (UN) through the office of the Secretary General of the UN accordingly;
- f) To assess and minimise the impacts on the financial trade system of financial institutions implicated and acting in contravention of the purport of the Act;
- g) To advise and inform on the risk analysis for the implementation of state institutionalised boycotts as defined;
- h) The carrying out of an economic risk analysis and to provide for suitable alternative international commercial trade and regional partners;
- i) To assist in regularising the provisions of this Act and assist with the implementation of the cessation of economic and divestment trade relations against the State of Israel;
- j) Create and ensure a constitutionally enabling environment to harness, promote and advance co-operative governance between various Ministries and Departments through the Ministry of Co-operative Governance where necessary and to harness overall efficiency in giving effect to the provisions of this Act;

- k) Assist and to co-operate with the Minister of Home Affairs and/or acting under the delegated authority of the aforesaid Minister, to assist the Department of Home Affairs for the facilitation of the necessary regulations for the lifting of restrictions and visa travel requirements for Palestinians travelling from the OPTs to enter the borders of the Republic of South Africa; and
 - l) To assist and prepare where necessary transitional regulations in conjunction with the Minister.
- 5) The recommendations of the Boycotts, Trade Divestment, Economic Sanctions and Lawfare Council (BTDES&LC) together with such reports and findings described above shall be periodically to be determined, be reported to the said Minister for implementation.

8. THE FAIR ADMINISTRATION OF JUSTICE

- 1) Any party whose rights are affected by State institutions as contemplated hereto shall be –
- a) Afforded just administrative action;
 - b) Afforded administrative rights which are procedurally fair;
 - c) Consistent with administrative rights contained in the constitution of the Republic of South Africa;
 - d) Provided with written reasons;
 - e) In accordance with the provisions contained in the *Promotion to Administrative Justice Act 3 of 2000*; or
 - f) With any other law of the Republic.

9. PROMULGATION OF REGULATIONS

The Minister shall promulgate regulations to give force and effect to the provisions of this act, whereby -

- 1) These regulations shall be promulgated no later than *120 (One Hundred and Twenty)* days of coming into force and effect of this Act;
- 2) The object and purpose of the preamble shall necessitate for the expeditious execution of the provisions of this Act.

10. OFFENCES AND PENALTIES

Any persons who contravene any provisions hereto, notwithstanding any other laws of the Republic shall be found guilty of a criminal offence punishable with-

- 1) A fine for a natural person of not less than *R 100 000-00 (One Hundred Thousand Rand)* and/or imprisonment of *3 (Three) years*;
- 2) A juristic person of a fine of not less than *R 300 000-00 (Three Hundred Thousand Rands)* and/or imprisonment of its incumbent directors and /or office bearers of *3 (Three) years*;
- 3) Arms manufacturers found guilty shall be imposed with a fine to be determined by the Minister and such arms manufacturing license/s shall be consequently revoked with immediate effect;
- 4) Financial institutions as defined found guilty shall be imposed with a penalty fine and/or other such penalty imposition to be determined by the Minister;

- 5) The aforesaid penalties and fines exclude where such persons are found guilty in breach of the *Implementation of the International Criminal Court Act*, the *Anti-Terrorism and Related Activities Act* and/or the *Prevention of Organised Crime Act* and/or any other law of the Republic of South Africa. .
- 6) The aforesaid penalties may be amended from time to time by the Minister by means of publication in the Government Gazette after consultation with the Boycotts, Trade Divestments, Economic Sanctions and Lawfare Council **(BTDES&LC)**;
- 7) Companies, juristic persons, businesses enterprises, and/or multinational corporations who are found guilty of breaching the provisions of this Act, by trading and/or by any other means of commercially associated transactions or otherwise in contravention of this Act, with the State of Israel shall be-
 - a) Suspended for a period of one (1) year and/or;
 - b) Interdicted from trading and/or conducting such business activities with the State of Israel or in the OPT's, where such companies are either operating within the Republic, or have its principal place of business or its registered office within the Republic.
- 8) Notwithstanding the above provisions, sporting, cultural, religious and educational activities, environmental, water and sanitation management, academic or scientific collaboration and/or exchanges in all sectors of industry based upon the recommendations of the Boycotts, Divestment, Sanctions and Lawfare Council promulgated by the Minister as defined boycott activities, shall be required to cease within the prescribed period to be determined.

11. TRANSITIONARY REGULATIONS

- 1) The Minister shall in consultation with the BTDES&LC in section 7(4)(k), draft regulations relating to –
 - a) Any matter which is required or permitted in terms of the Act to be prescribed;
 - b) Implement any transitional regulations required in order to give effect to this Act,
and
 - c) Any other matter, incidental or otherwise which may be necessary for the application of the Act.

12. CO-OPERATIVE GOVERNANCE

- 1) The implementation of this Act shall fall within the exclusive capacity of the Minister, but in so far as other Ministries are affected -
 - a) The Minister shall exercise his functions and duties in the spirit of co-operative and inter-ministerial governance together with the assistance and guidance of the Minister of Co-operative Governance and Co-operation;
 - b) Carry out his responsibilities after mutual consultation with the various Ministries in whose area of scope and competence such functions and duties may fall, and
 - c) Subject to the provisions of enforcement in *section 5* where applicable.

13. DIPLOMATIC IMMUNITY AND PRIVILEGES

- 1) The provisions of the Diplomatic Immunities and Privileges Act shall-
 - a) Not apply to any state officials from the State of Israel whereby jurisdictional requirements are met for the investigation and/or prosecution of such state officials for crimes contemplated hereto, and
 - b) Which falls within the ambit of the *South Africa's Implementation of the International Criminal Court Act 27 of 2002* and South Africa's obligations under customary universal jurisdiction and the provisions contained in this Act.

14. SHORT TITLE OF THE ACT

This Act shall be also known as *South Africa's Implementation and Protection of Palestinian Solidarity Rights Act (Bill) 2023 ('SA's IPPSRA CITIZENS ADVOCACY BILL')* and shall come into operation on a date fixed by the President of the Republic of South Africa by proclamation in the Government Gazette.