

Myanmar: Government must do far more to comply with International Court Justice's order on protection of Rohingya population

In order to comply substantially with the International Court of Justice's provisional measures Order in the case of *Gambia v. Myanmar*, Myanmar should carry out legal reforms and cooperate with international accountability processes, said the International Commission of Jurists today.

The Gambia has accused Myanmar of violations of the 1948 Genocide Convention in respect of its treatment of Rohingya population, characterized by acts of widespread killing and displacement of the population.

The call comes as Myanmar is scheduled to report on "all measures taken" to give effect to the [provisional measures Order \(Order\)](#) issued by the Court on 23 January 2020.

"Myanmar has not taken 'all measures within its power' to prevent acts of genocide until it implements comprehensive legal and constitutional reforms," said Sam Zarifi, Secretary General of the International Commission of Jurists. "Accountability lies at the heart of prevention, and so long as the Tatmadaw remains unaccountable to the civilian authorities the cycle of impunity for criminal atrocities within the country will continue."

Since the Order, Myanmar has taken a limited number of steps linked to its compliance with the Order, including issuing three Presidential Directives encouraging [anti-hate speech activities](#), and ordering [compliance with the Genocide Convention](#) and the [preservation of evidence](#) of human rights and related violations in Rakhine.

[Myanmar has also asserted](#) that the findings of the Government-commissioned Independent Commission of Inquiry (ICOE), which made selective admissions including that war crimes may have been committed during the 2017 "clearance operations" in Rakhine, have been transmitted to the Attorney General and the Commander-in-Chief of the Tatmadaw and that action would be taken "in conformity with military justice procedures if there is credible evidence of any commission of offence by members of the Tatmadaw."

However, the Government has yet to amend or repeal key laws that facilitate discrimination against the Rohingya, including the 1982 Citizenship Law, 2015 Race and Religion Protection Laws and 2014 Myanmar National Human Rights Commission Law. On 6 May 2020, the International Commission of Jurists published [a report](#) on the killing of a journalist, Ko Par Gyi, in September 2014, which condemned the fundamentally flawed "military justice procedures" used to address allegations of serious human rights violations. The report highlighted the many deficiencies in ensuring to accountability for serious human rights violations in Myanmar under its prevailing legal framework, including:

- that several provisions of national laws facilitate impunity for serious human rights violations by soldiers against civilians, shield security forces from public criminal prosecutions and deny victims and their families of the right to truth about violations;
- investigations into unlawful killings routinely lack the independence, impartiality and effectiveness necessary to establish the truth and to provide accountability and redress; and
- the rights of victims and their families are rarely respected, including the right to access information concerning the violations and accountability processes, and the right to remedies and reparations.

The UN Human Rights Council has established an Independent Investigative Mechanism to look at allegations of genocide, crimes against humanity and other atrocities in Myanmar, but the government has failed to extend its cooperation with the mechanism.

"Myanmar's inability to prevent serious human rights violations under the existing legal framework underscores the need for it to cooperate with international justice processes, including the UN's Independent Investigative Mechanism for Myanmar - and for the UN Security Council to refer the situation to the International Criminal Court," added Zarifi.

Background

On 11 November 2019, the Republic of The Gambia filed an "Application Instituting Proceedings and Request for Provisional Measures" at the International Court of Justice against the Republic of the Union of Myanmar for the latter's alleged violation of its obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention").

The Gambia also requested the Court to indicate provisional measures "in light of the nature of the rights at issue, as well as the ongoing, severe and irreparable harm being suffered by members of the Rohingya group."

On 10-12 December 2019, the Court held hearings for the request for provisional measures. The Gambia's Application relied on the findings of the [UN Human Rights Council's Independent International Fact-Finding Mission \(IFFM\)](#) on Myanmar, established in 2017.

The IFFM released a series of comprehensive reports, including in 2018, recommending further investigation for possible war crimes, crimes against humanity and genocide.

On 23 January 2020, the International Court of Justice indicated a series of provisional measures, including that Myanmar must:

- take all measures within its power to prevent the commission of all acts within the scope of the definition of genocide set out in Article II of the Genocide Convention;
- ensure that its military as well as any irregular armed units which may be directed or supported by it, and any organizations or persons which may be subject to its control, direction or influence do not commit acts of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, or complicity in genocide;
- take effective measures to prevent the destruction and ensure the preservation of any evidence related to allegations of acts within the scope of Article II of the Genocide Convention; and
- submit a report to the Court on all measures taken to give effect to the Order within four months as from the date of the Order and thereafter every six months until a final decision on the case is rendered by the Court. Every report will be communicated to the Gambia which will then have the opportunity to submit to the Court its comments thereon.

Myanmar ratified the Genocide Convention in 1956.

Article II of the Genocide Convention defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily 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;
- (e) Forcibly transferring children of the group to another group.

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