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ASIA JUSTICE COALITION WELCOMES HISTORIC JUDGMENT IN *THE GAMBIA V. MYANMAR* GENOCIDE CASE

Asia Justice Coalition (AJC) welcomes the landmark judgment in *The Gambia* v. *Myanmar* at the International Court of Justice (ICJ or the Court), finding the Republic of the Union of Myanmar committed genocide against the Rohingya in northern Rakhine State in 2016-2017 in violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention or the Convention). This judgment is the first verdict by an international court holding a State responsible for the commission of genocide under the Genocide Convention. AJC calls upon all States to immediately recognise and give effect to the ICJ judgment and the legal consequences that flow from it.

Finding the Rohingya, who have been stigmatized for decades, to be a protected group within the Genocide Convention, the Court held that the Myanmar security forces breached the Genocide Convention by carrying out prohibited acts, including killing, causing serious bodily or mental harm, and imposing measures intended to prevent births against the Rohingya under articles 2(a), (b), and (d) of the Convention.

The Court inferred genocidal intent by assessing the general context of violence and the commission of other culpable acts, the selective targeting of the Rohingya, the perpetration of acts that violate the foundation of the Rohingya community, and the systematic nature and scale of attacks against the Rohingya. Further, the Court held that genocidal intent may co-exist with other aims and rejected Myanmar's arguments that the other goals of counter-insurgency, forced displacement, and punishment precluded a finding of genocidal intent.

AJC welcomes the Court's assessment and decision on the pervasive sexual and reproductive violence committed against the Rohingya by Myanmar security forces – both as material acts of genocide and constituting evidence of genocidal intent.

The ICJ held in addition that Myanmar failed to prevent genocide. It held that a State must act when it is made aware, or should normally have been aware, of the serious danger that acts of genocide would be committed, and responsibility would be attached when it manifestly failed to take all measures to prevent genocide that were within its power. This importantly clarifies the duty of Third States in the discharge of their *erga omnes partes* obligation to prevent genocide under the Convention.

The Court also held Myanmar failed to investigate, prosecute, and punish persons who had committed genocide. It further held Myanmar to be in breach of the obligation to adopt necessary legislation under Article V of the Genocide Convention and its 2020 provisional measures order concerning prevention and the preservation of evidence. The Court, however,

did not find Myanmar directly and publicly incited genocide against the Rohingya by private actors.

The ICJ called upon Myanmar to undertake a prompt, thorough, effective, independent, and impartial investigation with fair trial guarantees and prosecute and punish alleged perpetrators, including superior officers. It further ordered Myanmar to enact effective genocide legislation and provide reparations through a series of restitution measures, including allowing and facilitating the safe, voluntary, and dignified return of the Rohingya; restoration of property; search and reburial of the disappeared with dignity; physical and psychological rehabilitation; and the protection of the Rohingya from discrimination and persecution. Myanmar must submit a compliance report to the ICJ regarding restitution and compensation measures within two years, and the Court will then adjudicate upon compensation for the harms not remedied through restitution in future proceedings.

Under the ICJ Statute and United Nations Charter, the judgment of the Court is final, without appeal, and is binding on the parties.

States must take immediate action to give effect to the judgment, including stopping contributions, aid, or assistance to Myanmar in any way that may facilitate further exacerbation of the situation of the Rohingya in violation of the judgment, including arms and weapons, jet fuel, and dual-use technology transfer. States must also end their military, economic, and financial support to Myanmar security forces-linked entities and stop facilitating and contributing to projects that would foreclose the return of the Rohingya to Rakhine State. States also have a legal obligation of *non-refoulement* towards those of the community that seek refuge.

AJC wishes to recognise and thank The Gambia for its leadership in instituting proceedings at the ICJ that have led to this judgment. We also appreciate the pro-active role of the 11 intervening States in joining the fight against impunity and for furthering the interpretation and application of the Genocide Convention.

AJC recognises that this is just the beginning and not the end of the fight for justice and accountability for the Rohingya. This judgment is nevertheless a testament to the resolve and tireless efforts of the Rohingya community and their representatives to end impunity in Myanmar and secure justice for the Rohingya.

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