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## THE CONCLUDING STAGE OF *THE GAMBIA V MYANMAR* GENOCIDE CASE BEFORE THE INTERNATIONAL COURT OF JUSTICE

Six years ago, in 2019, The Gambia instituted proceedings against Myanmar at the International Court of Justice (“ICJ”/“Court”), alleging violations of the 1948 Genocide Convention against the Rohingya, an ethnic and religious minority group in Rakhine State. After three weeks of merits proceedings in which both parties presented arguments and evidence, the Court entered its deliberative stage last week, with a final judgment awaited.

In January 2020, the [Court unanimously ordered provisional measures](#), directing Myanmar, amongst other obligations, to prevent the commission of genocidal acts, preserve evidence, and submit compliance reports every six months, which have [recently been made public](#). Subsequently, in July 2022, the [Court rejected Myanmar’s preliminary objections](#) and, by fifteen votes to one, affirmed its jurisdiction to hear the application. The underlying allegations concern the 2016-17 ‘clearance operations’ carried out by the Myanmar military against the Rohingya.

This marks the first time a non-injured State has brought a case under the Genocide Convention, seeking to establish state responsibility of Myanmar under international law under the Genocide Convention. It could become the first time that the ICJ holds a state liable under state responsibility for the commission of genocide, instead of *only* for a failure to prevent and punish it. A ruling in this case will likely influence other Genocide Convention matters before the Court. If The Gambia’s claims are accepted by the Court, it will also be the first ICJ judgment linking sexual and gender-based violence, including reproductive violence, to genocide.

At a time when the international community remains largely inactive and the United Nations Security Council is deadlocked, the case brought by The Gambia - [supported by 11 intervening States](#) - demonstrates a clear political willingness to end impunity in Myanmar and to pursue justice and accountability for the Rohingya.

In its submissions, The Gambia relied on the reports of the United Nations Fact-Finding Mission, the International Investigative Mechanism for Myanmar, satellite imagery, and the findings of international human rights organizations to corroborate and impress upon the judges the factual circumstances that in their view constitute the genocide of the Rohingya in northern Rakhine State. During the proceedings, Myanmar challenged the relevance and probative value of the reports relied on by The Gambia.

The Gambia provided evidence to demonstrate that the atrocities inflicted upon the Rohingya were widespread, systematically planned, and executed by Myanmar through its military. These attacks on and across villages in north Rakhine State were not random, isolated, or accidental, but carefully coordinated and calibrated, and in The Gambia’s view, committed with

genocidal intent to destroy the Rohingya Muslims as a group, in whole or in part. Such a genocidal intent, according to The Gambia, must be deduced from the pattern of conduct, using indicators identified by the Court in *Croatia v. Serbia* (2015), namely scale, nature, gravity, and specific targeting of a protected group. Consequently, The Gambia submitted that the only reasonable inference is that Myanmar acted with the intent to destroy the Rohingya as a group.

The pervasive pattern of sexual and gender-based violence perpetrated by the Myanmar military during the ‘clearance operations’ against Rohingya, including pregnant women and children, was also highlighted as evidence of genocidal acts through sexual and reproductive violence.

The Gambia contextualised the ‘clearance operations’ against the setting of decades-long persecution of the Rohingya, often facilitated by discriminatory laws and policies, especially those depriving them of nationality and citizenship. This systematic oppression was further compounded by state-sanctioned hate directed at the Rohingya and impunity enjoyed by Myanmar officials and military. Drawing on the IIMM’s analysis, The Gambia alleged that the Myanmar military intentionally produced, promoted, and disseminated anti-Rohingya hate speech on social-media platforms, particularly Facebook, which enjoyed widespread reach across Myanmar at the time of the attacks against Rohingya and in the years leading up to those attacks. In the backdrop of ‘clearance operations’, such propaganda dehumanized, incited hatred, and heightened animosity against the Rohingya. Moreover, The Gambia contended that Myanmar’s blatant breach of the ICJ’s provisional measures order, especially its failure to prevent genocide, and its active destruction of evidence, demonstrate a clear contempt for international law.

Myanmar defended its alleged actions as ‘counterterrorism operations’ undertaken with the intent to defeat or suppress the Arakan Rohingya Salvation Army (ARSA). *A contrario*, The Gambia, through its expert witness, rejected such a line of defense, characterizing such measures as excessive, unjust, and deliberately orchestrated with an aim to destroy the Rohingya group.

The participation of the members of the Rohingya community, including those who travelled from Cox’s Bazar refugee camps in Bangladesh, rendered the proceedings more inclusive and representative. We welcome the closed-door examination of the Rohingya witnesses by the Court, which sought to strengthen the reliability of the evidence presented by The Gambia. Their courage to testify despite the personal risks involved is testament to their resolve to present their truth to the Court.

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