

# ICJ can tell states what to do, not enforce

REUTERS, The Hague

In ordering Myanmar yesterday to take immediate measures to prevent atrocities against its Muslim Rohingya minority, the International Court of Justice in The Hague was handing down a binding ruling with no possibility of appeal - and no means of enforcement.

It was exercising its power to ordain provisional measures - a restraining order for states - while it takes its time to considering the broader case in which Gambia alleges that Myanmar's military committed genocide against the Rohingya. That ruling could take years.

The ICJ, also called the World Court, is the highest United Nations legal body, established in 1945 to deal with disputes between states. It should not be confused with the treaty-based International Criminal Court, also in The Hague, which handles war crimes cases against individuals.

The ICJ's 15-judge panel - which has been expanded by an additional judge from each side in the Myanmar case - has historically dealt with border disputes. Increasingly, it also hears cases brought by states accusing others of breaking UN treaty obligations.

The case against Myanmar was brought by the tiny West African nation of Gambia, acting with the support of the 57-member Organisation for Islamic Cooperation (OIC), under the 1948 Genocide Convention. Both countries are among the 150 signatories.

All these nations are obliged not only not to commit genocide, but also to prevent and punish it. The

## Death came hissing

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shoulder blade. Her grandmother, who is also Taslima's aunt, brought her to Cox's Bazar.

Zamila lost her father when she was a child and her mother married another man. So she was raised by her grandmother.

The two -- the grandchild and the grandmother -- trekked through jungles and hills for four days before reaching Cox's Bazar.

Nasir Ahmed, from the same village, narrated the ordeal of carrying his bullet-hit son, Enayetullah, on his shoulder for one day and one night before he entered Bangladesh.

Mohammed Hossain, 75, is the oldest of this lot. He had witnessed persecution of Rohingya population by successive Myanmar regimes before.

"But I've never seen such atrocities in my life. They were shooting at will at people in the village, setting bombs [landmines] near the fence. They wanted to kill all the Rohingya Muslims."

A portion of his one leg was blown off as a landmine exploded while he was crossing the border. All the eleven other members of his family reached safely at the border near the Lambar Beel in Whykang.

"This time they sent the nastiest troops from Yangon. They are shooting people at first sight. People had no option but to flee to save their lives," said Hossain, a resident of Kumirkhali village of Maungdaw.

But it is not only his age that separates him from the rest of the group; he had been a refugee before. When the Myanmar army launched a crackdown on the Rohingya in 1978, some 3,00,000 fled to Bangladesh. He was one of them.

"But I don't like to live the life of a refugee. So after about a year in the Kutupalong camp, I went back to my village," he said.

His village, Kumirkhali, is just a two hours' walk from the Bangladesh-Myanmar border.

"This time, they [troops] started torturing Muslims so severely. They prohibited prayers in local mosques around a year ago. They also shot down the local madrasa, Amirul Ulum Madrasa, three years ago. Later, they imposed restrictions on education of Muslim students one year ago," he said.

His grandson Rafiq Mia was a class five student at the time. He had to quit as the authorities were not allowing Muslim students in the school, he said.

They are not rich, but they do not have much of a problem supporting the family either. They have their own land to grow crops, raise cattle and poultry to raise and rice stock to sustain them throughout the year.

"We did not have any problem other than the army repression. I never wanted to come again as a refugee. My father and my grandfather lived and died there. They have their graves there. But we had no other way but to flee to save our lives," he said.

He could not give any number but said many died while many others were injured.

The family could not bring anything other than what they were wearing. The cash and the ornaments his wife managed to grab before fleeing were gone after the shooting. Yunus thinks the army men stole those before leaving the village.

"I had cows, goats and many sacks full of rice in my house. We had to leave behind everything," he said.

Zamila Khatun, barely 15, was sitting on the bed next to Taslima's. She cannot lie down even when she wants to. The bullet that hit her chest came out through her back, just below her

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top generals -- including the powerful army chief. They also accused one-time democracy icon Suu Kyi and her government of complicity in the atrocities.

According to the Statute of the ICJ, the court has the power to order provisional measures when "irreparable prejudice could be caused to rights which are the subject of judicial proceedings". The court found that the condition of urgency had been met in this case.

Provisional measures are steps to take aimed at preventing further harm and comes as the first step in the legal case.

Judge Yusuf said that "the court was of the opinion that the Rohingya in Myanmar remain extremely vulnerable" and needed to be protected from further bloodshed.

Thousands are suspected to have been killed in the crackdown and refugees brought widespread reports of rape and arson by Myanmar's military and local militias.

In its application to the court, the Gambia requested six provisional measures requiring Myanmar to act "with immediate effect" to prevent further genocide of the Rohingya group and to take steps not to destroy or render inaccessible any evidence already described in the application.

The Gambia also urged both sides not to take any action which might aggravate the dispute or render it more difficult to resolve, and to provide a report to the court on implementing such measures.

The Gambia later also requested Myanmar cooperate with United Nations bodies that seek to investigate the alleged acts.

Judge Yusuf said the court was not constrained to ordering the measures requested by the Gambia and that it had the power to order additional measures, reported Al Jazeera.

"This is a historic day today, not just for international law, for

Yusuf further said that, in ordering provisional measures in this case, it was not necessary to decide on the question of the presence of genocidal intent, as claimed by Myanmar.

The court ordered Myanmar should take all measures within its power to prevent the commission of all acts within the scope of article two of the Genocide Convention. It particularly cited clause one - killing members of the group, clause two - causing serious bodily or mental harm to members of the group, clause three - deliberately inflicting on the group conditions of life calculated to bring about its destruction in whole or in part, and clause four - imposing measures intended to prevent births within the group.

Myanmar must further ensure that its military does not commit genocide or attempts to commit genocide or conspires to commit genocide. Myanmar was also ordered to prevent the destruction of evidence and to ensure the preservation of evidence related to the alleged genocide.

Judge Yusuf also said the court was not satisfied with Myanmar's own efforts "to facilitate the return of Rohingya refugees present in Bangladesh, to promote ethnic reconciliation, peace and stability in Rakhine State, and to make its military accountable for violations of international humanitarian and human rights law".

The court ordered Myanmar to report back within four months, and then every six months after that, reported AFP.

Gambian justice minister Abubacarr Tambadou hailed the court's decision to uphold his country's case, which was supported by the 57-nation Organisation for Islamic Cooperation, Canada and the Netherlands.

"This is a historic day today, not just for international law, for

the international community, but especially for the Rohingya," he told reporters outside the court.

Nobel peace laureate Suu Kyi -- who was widely criticised for her defence of the same military that once locked her up for years -- said yesterday that some Rohingya refugees may have "exaggerated" the extent of the abuses.

The international justice system may not yet be equipped to filter out misleading information before shadows of incrimination are cast over entire nations and governments," she wrote in an opinion piece in the Financial Times published ahead of the ruling.

Suu Kyi also said Myanmar should have time to act on the results of an internal investigation by the country, which this week admitted war crimes may have been committed but ruled out genocide.

The military dodged questions in the capital Naypyidaw yesterday morning, with a spokesman telling reporters it would simply "follow the instructions of the government".

Legal experts have applauded the court's decision. Reed Brody, commissioner at the International Commission of Jurists, said to Al Jazeera: "This is a great day for the hundreds of thousands of Rohingya who have been displaced, killed and raped. The UN's highest court has recognised their suffering."

Brody added: "There is still a long way to go before this order becomes reality and we see actual improvements in the lives of the Rohingya, but today this persecuted people will have a first taste of justice. This is further a stunning rebuke of Aung San Suu Kyi, especially after she went personally to The Hague to defend the actions of the Myanmar military. There will now be huge pressure on the government to comply with the court's ruling."

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Brody says the fact that the decision was unanimous will give additional weight to the court's measures.

According to Gleider Hernandez, professor at Catholic University of Leuven, the ICJ has made clear that it intends to supervise the implementation of the judgement. He said "Though not unprecedented, the regularity with which Myanmar had to submit reports is striking."

Rights groups also hailed the ICJ ruling while calling on the international community to put pressure on Suu Kyi and Myanmar.

"Today's decision sends a message to Myanmar's senior officials: the world will not tolerate their atrocities," Amnesty International's Regional Director Nicholas Bequelin said.

Although ICJ rulings are final and binding, countries have occasionally flouted them, and the court has no formal mechanism to enforce them.

However the "significance... shouldn't be written off," said Cecily Rose, assistant professor in international law at Leiden University in the Netherlands.

"The court's orders and judgments tend to carry relatively great authority or legitimacy. Even though the situation in Myanmar is highly political and fragile, international law still plays a role by informing decision-making among international actors," she told AFP.

Param-Preet Singh, associate international justice director at Human Rights Watch, hailed the ruling as a landmark step.

"The ICJ order to Myanmar to take concrete steps to prevent the genocide of the Rohingya is a landmark step to stop further atrocities against one of the world's most persecuted people," he said.

"Concerned governments and UN bodies should now weigh in to ensure that the order is enforced as the genocide case moves forward."

## Justice is partially served

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all to escape an unending discrimination, bordering on torture in Myanmar.

Meanwhile, those who remained in Rakhine State -- home to majority of the Rohingya population -- continued to suffer due to sectarian violence or military brutality.

All this time, there was little global effort to hold accountable the perpetrators of this violence against Rohingyas.

Now, for the first time, there's something: the World Court.

In a historic ruling, the International Court of Justice in The Hague, also called the World Court, yesterday ordered Myanmar to take emergency measures to protect the remaining 600,000 Rohingyas in Myanmar against genocidal acts.

The Court also ordered Myanmar military or other forces to not do anything which may harm the Rohingyas physically or mentally and asked the country to not destroy any evidence of crimes against the Rohingyas.

During a military crackdown since August 2017, some 750,000 Rohingyas fled Myanmar, seeking refuge in Bangladesh.

"It has been decades of impunity. That is what is being questioned right now," said Yasmin Ullah, a Rohingya activist studying in Canada, adding that the impunity had spanned from the highest to the lowest levels.

The story was published on September 3, 2017.

## ROHINGYA CRISIS



## Protect Rohingyas from genocide

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Myanmar follows this ruling. If the Myanmar authorities -- both the civilian government and the military -- fail to end their genocidal practices, the world must be ready to take action," said Tun Khin.

"So far, the UNSC has put politics over people's lives when it comes to the Rohingya... Instead it has been up to a small country like the Gambia to show moral leadership. This shameful has to end."

Nay San Lwin, media coordinator of the Free Rohingya Coalition (FRC), a global platform for the ethnic group, said, "Justice is partially served. We know that there is a long road ahead."

Khin Mung, Bangladesh coordinator of the FRC, who fled the 2017 military crackdown in Northern Maungdaw of Rakhine to Bangladesh, said he could study only up to class ten there.

"I had a dream of studying law and working for Rohingya rights. That dream remains unfulfilled. I had to rely on fishing for my survival back in Maungdaw," he told The Daily Star from a refugee camp in Cox's Bazar.

Following the ICJ ruling, Rohingyas have expressed hope that the Myanmar government will amend its law to grant them citizenship, which was denied to them in 1982.

"This ruling will also lead to sustainable repatriation of the Rohingyas to Rakhine," another refugee, Khin Maung, 24, said.

Meanwhile, Rohingyas and locals

in Cox's Bazar offered special prayers at different mosques in the refugee camps after the ICJ verdict, reports our correspondent in Cox's Bazar.

Some Rohingyas arranged large projectors in some points of Kutupalong to livestream the ICJ decision.

"We are happy with the verdict. But we demand proper implementation of it," said Sayeed Ullah, general secretary of the Arakan Rohingya Society for Humanity.

Abu Taher and Mohammad Lulu Majhi of Balukhali refugee camp in Ukhia said while accountability measures go on, there should be efforts for sustainable repatriation of the Rohingyas with citizenship.

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## ROAD TO THE HAGUE

### LAWSUIT AT ICJ

On Nov 11, 2019 Gambia files a lawsuit at ICJ, accusing Myanmar of genocide

On Nov 14, ICC approves a full investigation into Rohingya persecution

On Dec 8, Suu Kyi travels to The Hague to lead Myanmar's defence at ICJ