



Special Advisory Council for MYANMAR

Disgraceful ICJ decision irresponsible and unnecessary delay to justice

21 February 2022: The hearings concerning The Gambia's case against Myanmar at the International Court of Justice (ICJ) are a dangerous and unnecessary delay to justice that could worsen the situation in Myanmar, says the Special Advisory Council for Myanmar (SAC-M).

The ICJ is hosting public hearings from today in the case brought against Myanmar by The Gambia for alleged breaches of the Genocide Convention. The hearings are taking place with the illegal military junta representing Myanmar before the Court, despite the junta having no legal or democratic legitimacy, and no claim to effective control over the people or territory of Myanmar. No other United Nations (UN) body has accepted the junta as representing Myanmar.

“It is outrageous for the ICJ to proceed with these hearings on the basis of junta representation. The junta is not the government of Myanmar, it does not represent the State of Myanmar, and it is dangerous for the Court to allow it to present itself as such,” said Chris Sidoti of SAC-M. **“The junta leaders orchestrated the genocidal atrocities against the Rohingya – the subject of this case – and are the cause of the current violence and suffering in the country. They are trying to entrench themselves as leaders of Myanmar, including by claiming international recognition. If they succeed, the chances of the Rohingya and all peoples of Myanmar achieving justice where it matters – on the ground in Myanmar – will be severely diminished.”**

The hearings are on the preliminary objections filed by Myanmar in January 2021. Preliminary objections are procedural issues that the Court must adjudicate on before it can proceed to the merits of the case. The National Unity Government of Myanmar (NUG) has communicated to the Court that, as the legitimate government appointed by Myanmar's elected parliamentarians,

it is the proper representative of Myanmar in the case. The NUG has also advised the Court that it withdraws all preliminary objections.

“These hearings, with the junta claiming to represent Myanmar, are a disgrace,” said Yanghee Lee of SAC-M. **“They are also an unnecessary delay in the case. The NUG is the only entity with the authority to represent Myanmar before the Court and it has withdrawn the preliminary objections. Those objections are the focus of these hearings and will require several months of deliberation by the judges. The Court should instead recognise the NUG’s authority, formally dismiss the objections and move swiftly to dealing with the actual substance of the case, the atrocities against the Rohingya people.”**

The ICJ is required to take into account the attitude adopted by the UN General Assembly concerning questions of member states’ recognition and accreditation. Last year, the General Assembly rejected the military junta’s attempts to gain recognition there. The General Assembly continues to recognise the credentials of Myanmar’s Ambassador to the UN, U Kyaw Moe Tun, who the NUG has appointed as acting alternate agent to the ICJ.

“For the ICJ to disavow Myanmar’s representation at the General Assembly and recognise the junta is to go beyond its jurisdiction and politicise the issue. It is a high point in UN dysfunctionality,” said Marzuki Darusman of SAC-M. **“The decision is a total affront to the Myanmar people, including the Rohingya. The Court is simply complicit in the military junta’s violent attempt to seize power over Myanmar and shield itself from justice.”**