



# Special Advisory Council for MYANMAR

## ICJ Judgement on Preliminary Objections Welcome, But Court Must Rectify Myanmar's Representation and More States Must Intervene in the Case

23 July, 2022

The Special Advisory Council for Myanmar (SAC-M) welcomes the judgement delivered by the International Court of Justice (ICJ) but calls on the Court to immediately rectify Myanmar's representation before the Court and on United Nations (UN) Member States to meet their obligations under the Genocide Convention and intervene in the case.

The ICJ delivered its judgement on Friday on the preliminary objections raised by Myanmar in January 2021 in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar). All preliminary objections were rejected by the judges.

**"Rohingya are waiting for justice,"** said Yanghee Lee of SAC-M. **"It is so important that this case, seeking to determine Myanmar's responsibility for genocide against the Rohingya, goes ahead. We welcome the Court's decision in finding both that it has jurisdiction in the case and that the application itself is admissible."**

The hearings on the preliminary objections took place in February this year, despite the National Unity Government of Myanmar (NUG) having already withdrawn them. The Court permitted the illegal Myanmar military junta to represent Myanmar during the hearings and argue for the preliminary objections. Representatives of the junta were present at the Court on Friday to hear delivery of the Judgement.

The Court provided no explanation for its decision to allow the junta to represent Myanmar either during the hearings in February or as part of Friday's Judgement. Ad hoc judge Claus Kress, appointed to the case by Myanmar, expressed the view that the Judgement's failure to state the reasons leading the Court act upon the junta's efforts to change Myanmar's representation in the case as less than satisfactory.

**"The judges are right to reject the preliminary objections, but they were wrong to have chosen to engage with military junta,"** said Chris Sidoti of SAC-M. **"The junta is not the legitimate representative of Myanmar, it has not been recognised by the UN and it does not have effective control on the ground in Myanmar. The Court must rectify Myanmar's representation as it proceeds now to the merits of the case."**



[info@specialadvisorycouncil.org](mailto:info@specialadvisorycouncil.org)



[www.specialadvisorycouncil.org](http://www.specialadvisorycouncil.org)



@SpecialCouncil



# Special Advisory Council for MYANMAR

The military junta tried and failed to seize power over Myanmar in a coup eighteen months ago. It has been losing what territorial and administrative control it did have since then to the democratic resistance. In an attempt to crush the resistance, the military is committing mass atrocities against civilians and employing many of the tactics it used in the genocidal attacks on the Rohingya, including indiscriminate killing, summary execution, rape, torture and arson. Rohingya refugees that were forced into Bangladesh by the military cannot begin to return to Myanmar under such conditions.

Besides the ICJ, no other UN body has accepted the junta as representing Myanmar. Last year, the General Assembly rejected the military junta's attempts to gain recognition there. However, UN Member States have been slow to grant formal recognition to the NUG, reflecting a broader, ongoing failure of the people of Myanmar on the part of the international community.

**"In the words of the Court, the higher purpose of the Genocide Convention is the protection of a people against the blatant and shameful breach of the Convention by another State party. So why have more States not intervened in the case at the ICJ?"** Marzuki Darusman of SAC-M asked. **"Rohingya are being gravely let down by the inertia of those Member States that fail to act. What is more, that failure directly emboldens the junta to continue repeating its crimes across the country, as it is now. It is a shameful dereliction of duty of the highest order."**

SAC-M calls on all UN Member States to formally recognise the NUG, for those that are party to the Genocide Convention to intervene in The Gambia's case at the ICJ and, for those that are members of either the Security Council or party to the Rome Statute, refer the situation in Myanmar to the International Criminal Court.

