

Gambia's genocide case against Myanmar shows that smaller countries can also help balance the scales of international justice

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After years of intense persecution, the Rohingya minority population in Myanmar finally had their calls for help answered in [a landmark judgment](#) earlier this year by the International Court of Justice (ICJ), which ordered the government to take immediate measures to prevent further acts of genocide.

The fact that the complainant was Gambia, mainland Africa's smallest country, 11,000 kilometres away on the western Atlantic coast, has set an important precedent for south-south solidarity against human rights violations.

"The ICJ ruling sends a very strong message that even small countries can use international instruments as leverage to promote human rights, not only in the continent but globally," says Dr Ismaila Ceesay, senior lecturer in political science at the University of the Gambia.

The 'Gambia v Myanmar' case marks the first time that a country without any direct connection to the alleged crimes has used the fact that it is party to the Genocide Convention to bring a case before the United Nations' top court in The Hague. Until that point, international sanctions had so far failed to deter Myanmar's Buddhist-majority army (known as the Tatmadaw) from [waging ethnic cleansing campaigns](#) against the Muslim-minority Rohingyas in Rakhine State.

In 2017, thousands of Rohingyas were killed, subjected to widespread rape and the destruction of villages. Nearly a million have since fled to [refugee camps in neighbouring Bangladesh](#).

A UN report concluded last year that the targeted and widespread violence against the Rohingyas constituted ["acts of genocide"](#) and that the Myanmar government bore "state responsibility".

It also warned that the half a million Rohingyas remaining in Myanmar still "face systematic persecution and live under the threat of genocide". Myanmar's government, headed by Aung San Suu Kyi, [continues to deny these findings](#).

It will be some years before the ICJ makes a final ruling on Gambia's genocide allegation. However, in the interim it has ordered Myanmar's government to take emergency measures to protect the Rohingya and report to the ICJ on a six-monthly basis on its related actions. The first report is due at the end of May.

Rohingya activists welcomed the development as a significant step forward. Speaking to *Equal Times* in response to the ICJ ruling, Tun Khin, president of the Burma Rohingya Organisation UK (BROUK), says : "For many decades we have been facing genocide, many media have been covering what is happening to our people, but the international community has not been putting enough

pressure on Myanmar.

“This one little country has had a huge impact. This is very encouraging, giving motivation to the victims,” says Tun Khin, who lives in exile in the UK.

Fatou Jagne, west Africa director of the human rights NGO Article 19, believes the intervention is a game-changer : “It’s a bold step. It changes the whole narrative that generally states will complain, but politically it’s very difficult for a state to hold another state to account.

“It’s unprecedented because it reveals that we should not close our eyes when things are happening and say : ‘We cannot do anything, it’s happening far away,’” adds the Gambian human rights campaigner.

An unlikely intervention

Gambia’s unlikely intervention came about through a series of circumstances. The Organisation of Islamic Cooperation (OIC) had been looking for a way to stand up for the Rohingyas and sponsored Gambia out of its 57 members to lead on the case. “Gambia was seen as the right country to do it. It was important that it was a democratic country with relatively clean hands,” says Reed Brody, legal counsel for Human Rights Watch.

Gambia’s Attorney General Abubacarr Tambadou, who spent more than a decade prosecuting cases from Rwanda’s 1994 genocide, had already expressed a personal commitment to the case.

Tambadou, who is also the justice minister, visited Rohingya refugees in Cox’s Bazar, Bangladesh, [as part of an OIC delegation in 2018](#).

“He saw very similar patterns [to Rwanda] with what was happening in Myanmar and decided he was going to take this up,” says Brody, who is working with victims of Gambia’s former regime to bring ex-dictator Yahya Jammeh to justice.

It is also symbolic that Gambia is itself going through [a transitional justice process](#) to create a historical record of human rights abuses perpetrated during Jammeh’s 22-year regime, which ended with his exile to Equatorial Guinea in January 2017.

Since January 2019, the national Truth, Reconciliation and Reparations Commission (TRRC) has been hearing harrowing cases of widespread forced disappearances, extrajudicial killings, torture and sexual violence.

“We have this slogan ‘Never Again’, so using Gambia to set an example to show the world that we are moving again from dictatorship and human rights violations to promoting human rights, not only here, but outside of the country, I think that’s symbolic on the part of the OIC and the Gambia,” says Ceesay. He adds that south-south cooperation also benefits from “perceived legitimacy” in comparison to intervention by Western nations that can be viewed as having an agenda.

Jagne believes that a “collective experience of oppression” also contributed to public support to take up the fight on behalf of the Rohingya. During the Jammeh regime, international intervention was limited.

“For 22 years people were sympathising with us, other countries received refugees and hosted discussions to get Gambians to mobilise, but there were important times when I think if we had had countries who seized a human rights body to say ‘what is happening in the Gambia is of concern to us’ that could have triggered some action,” says Jagne,

who has assisted the cases of many victims who fled over the border to exile in Senegal, where she is based.

International and regional help did come in the end, when Jammeh refused to step down after he was defeated by Adama Barrow in the December 2016 national election. Regional bloc ECOWAS was instrumental in negotiating Jammeh's ultimately peaceful departure. This intervention was supported by a multi-national peacekeeping force - ECOMIG - which remained in place to provide stability during the first three years of Gambia's political transition to democracy.

"People helped us in the end. If we were left on our own, we would have faced a very challenging situation. I believe this is still something people remember and why there was public support when the Myanmar case came up," adds Jagne.

A PR strategy ?

However, the country's democratic transition is not without its controversies and some victims of the former regime feel the government's case against Myanmar is hypocritical.

There is a growing feeling among victims and their families who are impatient for justice that the truth commission process is leaning too far towards reconciliation. Tensions among victims heightened last year when justice minister Tambadou agreed to release four Junglers - Jammeh's paramilitary hit squad who killed and tortured on his orders - in return for their testifying at the TRRC. The commission will make recommendations for prosecution at the end of the two-year hearings, but victims saw Tambadou's deal as [a grave betrayal](#).

"We cannot deny the atrocities happening in Myanmar and the need to put an end to them as soon as possible, however, many victims and civil society actors cannot help but feel like it is a PR strategy by the government and the minister of justice, who depend on international donors," says Nana-Jo Ndow, director of ANEKED, an organisation for the victims of forced disappearances under the Jammeh regime.

Tambadou has stated the country does not currently have the capacity to try the Junglers, but Ndow argues : "The government, with political will, filed a complaint against Myanmar at the ICJ. It can do the same in Gambia for perpetrators of human rights violations."

Meanwhile in Myanmar, the situation for Rohingyas is getting worse since the provisional measures were enforced, reports Tun Khin, speaking in March after a recent trip to Bangladesh to meet with refugees.

Civilians are caught up in [ongoing outbreaks of violence in Rakhine State](#) between the separatist Arakan Army and the Tatmadaw. "At least 20 Rohingyas have been killed under the pretext that the military are fighting the Arakan Army. Rohingyas are being arrested when they try to leave Arakan (Rakhine) State. They are denied access to medical care and livelihoods," he says.

So far, the government does not appear to be upholding the ICJ ruling, he adds. "We are all really glad to have the provisional measures. But to get stronger justice we need the international community, especially the big countries, to come up and support Gambia," says Tun Khin.

Tun Khin reiterated growing international calls for the UN Security Council to refer Myanmar to the International Criminal Court (ICC). Last month the UN's special rapporteur on the human rights situation in Myanmar, Yanghee Lee, also urged the UN Security Council to establish an international tribunal to ["adjudicate the crimes against humanity"](#), saying it was no longer enough for the international community to simply monitor grave abuses happening there.

Other countries, spurred by Gambia's intervention, have joined the fight against the persecution of the Rohingya in Myanmar, including the Netherlands, Canada, the Maldives and Germany. Tun Khin, on behalf of BROUK, has also filed a complaint against Myanmar in Argentina.

At a time when wealthier nations appear to be taking less responsibility for intervening against human rights abuses by other nations, there is a growing need for similar interventions of solidarity, believes Brody.

"We live in an age of impunity. Governments today, in general, do not face the kinds of costs for atrocities that they did 20 years ago. That is because the bigger countries that traditionally enforced international norms are just not doing that job anymore. Increasingly, it's going to be individual countries or smaller countries that do that," he says.

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