



Karen Peace Support Network

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The ruling on provisional measures by the International Court of Justice

In January 2020 the government and military were dealt a major blow at the International Court of Justice. The ICJ ruled that a case on genocide should go ahead, and that even before the case happens, Burma must take immediate action to prevent ongoing genocide against the Rohingya. It is the first time that the military face a trial in an international court for their crimes.

The International Court of Justice (ICJ) was established by the United Nations to arbitrate (makes decisions on) disputes between countries. Sometimes it is nicknamed the World Court.

The ICJ does not hold individuals to account or hold trials like the International Criminal Court. It only makes judgements on disputes between countries.

The Genocide Convention obliges states which have signed it to take action to prevent genocide, and to take action to hold those responsible for genocide to account.

The Gambia has brought a case to the International Court of Justice to say that although Burma is a signatory to the Genocide Convention, with regard to the Rohingya, it has not taken action to prevent genocide or hold those responsible to account, so it is breaking its obligations under international law.

At court Aung San Suu Kyi and her lawyers tried to argue that there was no case to answer, and the ICJ should not agree to go ahead with the case. She lost. The ICJ has agreed that there is a case to answer, and so a case to decide whether or not genocide has happened in Burma will go ahead. The ICJ moves very slowly though. The first hearings in the Court many not happen for many months, and the case could go on for years.

Because the ICJ moves so slowly, and because the UN Fact-Finding Mission reported that there is an 'ongoing genocide', and that the Burmese government and military are destroying evidence of what they did, The Gambia ask for what is called provisional measures.

Provisional measures mean that The Gambia is saying we cannot wait years for a court ruling on genocide when the problem, the crimes are still happening now. Too many people will suffer while we wait for the court to make its ruling. So while we are waiting, the government of Burma should take action now, even before the court case starts, to stop the ongoing genocide.

Aung San Suu Kyi and her lawyers argued that there was no genocide and no need for provisional measures. She lost. The ICJ agreed that even though it is not making a ruling yet on whether or not genocide is happening, the situation appears bad enough to order Burma to take immediate action now.

Rulings by the ICJ are legally binding. That means that under international law Burma has to do this. However, the ICJ is not like the International Criminal Court. It does not have powers to enforce its rulings. If a UN member ignored the ruling of the ICJ then the UN Security Council can be asked to

take action to pressure that country to follow the ruling. Aung San Suu Kyi may be thinking she can ignore the ruling because China and Russia will veto a resolution to punish Burma for not following the ruling.

Individual countries or groups like the EU can also take action, applying diplomatic pressure or sanctions. And the UN General Assembly can pass a resolution but again they have no legal power. Generally, it is thought that only with a lot of international pressure will Aung San Suu Kyi follow the ruling.

This is the ruling on four provisional measures that Burma now has to follow.

THE COURT,

Indicates the following provisional measures:

(1) Unanimously,

The Republic of the Union of Myanmar shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the members of the Rohingya group in its territory, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to the members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
- (d) imposing measures intended to prevent births within the group;

(2) Unanimously,

The Republic of the Union of Myanmar shall, in relation to the members of the Rohingya group in its territory, ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in point (1) above, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide;

(3) Unanimously,

The Republic of the Union of Myanmar shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide;

(4) Unanimously,

The Republic of the Union of Myanmar shall submit a report to the Court on all measures taken to give effect to this Order within four months, as from the date of this Order, and thereafter every six months, until a final decision on the case is rendered by the Court.