



A Gambian Perspective on The Gambia v. Myanmar Case on the Crimes of Genocide at the ICJ – Abdoulie Fatty

Logan Cochrane^{1,2} Abdoulie Fatty³

¹ Carleton University, Canada

² Hawassa University, Ethiopia

³ Barrister and Solicitor, The Gambia

The Nokoko journal is committed to a world where people are free from all forms of oppression and exploitation, where respect for individuals' varied differences is maintained, and where everyone can realise their full potentials. NokokoPod is a companion to the journal, covering current African issues. It aims to bring forth new perspectives that broaden, trouble, complicate and enrich current discourses. Edited and annotated versions of the conversations will be made available on the journal website.

This issue of NokokoPod presents a Gambian perspective on the case brought to the International Court of Justice on crimes of genocide against Myanmar by The Gambia. The podcast for this discussion is available on the Nokoko journal website. This conversation took place on January 23rd, with Logan Cochrane in Canada and Abdoulie Fatty in The Gambia. This version of the PDF has been reviewed by Logan Cochrane and Abdoulie Fatty. In addition to the conversation, a set of annotations have been added as footnotes so as to strengthen the value of these publications and enable them to act as a resource for listeners and

readers who want to have additional context and/or find additional resources on the topics discussed.

Logan: Welcome to NokokoPod issue #2 of 2020. Today, we will be talking about the case that The Gambia has raised in the International Court of Justice¹ against Myanmar.² Today is an excellent day to be speaking about this, it being Thursday, January 23rd, because as of today, the court has ordered Myanmar to take preliminary action while the proceedings of the of the case go forth.³ It demanded that Myanmar take action to ensure that the persecution and atrocities are not continued. That is not a result of the case, but that is based on the available evidence that the court was able to give this direction, as of this morning. To speak about this from a perspective from The Gambia, we are joined by Abdoulie Fatty, a barrister of England and Wales and a barrister and solicitor of the Supreme Court of The Gambia. He is a former Senior Magistrate in The Gambia. From 2016 onward, until the present, he has been working in private practice. His legal degrees were obtained from University of York and was called to the Bar of England and Wales. Thank you very much for joining us today.

Abdoulie Fatty: Thank you, Logan. It is a pleasure to be a part of this podcast.

Logan: As we mentioned, today is a really important day in the case proceedings. Before we get to that, could you tell us a little bit about how this case came to be, and specifically about the Justice Minister

1 The International Court of Justice is a United Nations agency that settles disputes between states and provides opinions on international legal issues. The ICJ has a long history, for additional reading see: Jennings (1995), Rosenne (1997), Schulte (2004) and Zimmermann et al (2019), amongst others.

2 Details of the case are available at: <https://www.icj-cij.org/en/case/178>

3 Reporting on the day, at: <https://www.nytimes.com/2020/01/23/world/asia/myanmar-rohingya-genocide.html>

Abubacarr Tambadou?⁴ How have we arrived at having a case in the first place?

Abdoulie Fatty: I think it is the work of fate, perhaps, or some bit of a coincidence. The former Vice President, who is no longer in office, was actually supposed to visit Cox Bazar in Bangladesh.⁵ Unfortunately, he could not. He asked the Justice Minister if he could travel on his behalf. He checked his diary and agreed. That is where this actually began. He went. Probably troubled by the severity of the atrocities that he saw on the ground, and remember that this is somebody that previously worked at the ICTR,⁶ I think his conscience was affected. This was the beginning of Gambia's taking the case to the ICJ against Myanmar.

Logan: For those who have not heard it, the opening remarks made by the Justice Minister Abubacarr Tambadou were really quite powerful and moving and worth a listen.⁷ From there, could you tell us a bit about the legal case itself? The case that The Gambia has brought to the court itself or a summary of what is being brought forth?

Abdoulie Fatty: You have the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.⁸ Both The Gambia and the State of Myanmar are signatories; they are parties to that convention.

4 Abubacarr Tambadou is the Minister of Justice and Attorney General of The Gambia (doing so since 2017). Previous to this position, he worked as a lawyer in the International Criminal Tribunal for Rwanda.

5 This is one of the largest refugee settlement areas in the world. The Kutupalong Camp in the Cox Bazar area is home to more than 900,000 Rohingya refugees. See: https://data2.unhcr.org/en/situations/myanmar_refugees

6 ICTR: International Criminal Tribunal for Rwanda

7 Parts of the speech, with some broader context of the case, are presented in this CBC Podcast: <https://www.cbc.ca/radio/ideas/myanmar-the-rohingya-genocide-inside-the-international-court-of-justice-1.5434687>

8 Available at: <https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>

Neither party, neither The Gambia nor Myanmar, have registered any reservations in respect of that actual convention. The Gambia, therefore, believed that as a party, it had a legal, moral and political responsibility to actually act on behalf of the Rohingya,⁹ who perhaps, at the time, could not speak for themselves or could not do this or on their own behalf. Gambia is also member of the Organization of Islamic Cooperation¹⁰ and I think they have been heavily involved in the matter in the background since Gambia expressed an interest in taking this matter to the ICJ. Effectively, the matter before the ICJ, the one actually filed by the Government of The Gambia, is that there are evidences of genocide being perpetrated, systematically, by the State of Myanmar against Rohingya people. The Gambia will seek a remedy on behalf of the Rohingya in order to stop the genocidal intentions being perpetrated by the state and those in the highest office. The case will seek remedy and reparations. Amongst others, this includes that the Rohingya people have been deprived of citizenship rights. Based on compelling evidence, women have been subject to very grotesque forms of sexual violence. With the evidence compounded in its entirety, the Government of The Gambia is telling the ICJ that there is strong evidence, based on fact-finding missions led by the Independent International Fact-Finding Mission on Myanmar (IIFMM),¹¹ credible, compelling and cogent evidence that the Rohingya were being killed, systematically, with a genocidal intention by the State of Myanmar. And, therefore, since Myanmar is a party to the 1948 Genocide Convention, the ICJ has jurisdiction to intervene, to prevent, to stop and to punish the State of Myanmar, if subsequently it is found that the state is culpable. In a nutshell, that is Gambia's case before the ICJ.

9 The Rohingya are an ethnic group living in Myanmar who have been denied citizenship rights since 1982. For additional reading, see: Ullah (2011), Zarni and Cowley (2014), Cheesman (2017) and Mahmood et al (2017), amongst others.

10 The Organization of Islamic Cooperation was founded in 1969 and has 57 member states.

11 See: <https://www.ohchr.org/en/hrbodies/hrc/myanmarffm/pages/index.aspx>

Abdoulie Fatty: However, the case is also symbolic because Gambia is a very small country.¹² It is relatively unknown. And, in the context of international geopolitics and international discourse, it is the last country that one would expect to actually take a leading role in the crusade, of what it is aimed to be, an assault on the conscience of the international community as a whole. This case goes beyond the traditional, normative assumptions and discussions in relation to state obligations under international law. What The Gambia is trying to say is: look at what happened in the Balkans in the early 90s, what happened in Rwanda in 1994, what happened in Darfur around 2003 and 2004 and afterwards. It is no longer the case, and it should no longer be the case, that the international community as a whole plays a bystander role, to be indifferent, to what Gambia believes to be the most palpable human rights abuses, at a genocidal scale, right before the international community, in Myanmar. Perhaps it is to provoke and stir our conscience, as a community of nations. It is about time, that we do not only respond to our obligations in international law, in a purely legal manner, but morally and politically. We need to rise to the challenge, to make sure that in the 21st century the wrongs that are occurring in Myanmar do not only have to be the immediate business of only the people that are affected. All of us among the 149 states that are party to the convention have a legal and moral duty to stand up, to make sure that remedy is sought for the population that is affected. And if I may add, a population, that perhaps, is unable at this juncture, due a lack of resources or otherwise, to make this claim for themselves. One has to understand the nuances and all the intricate complexities and political motivations that are linked to this issue. We can put those to one side and perhaps just look at the leadership role

12 Much of the media coverage has emphasized the small geographic size of The Gambia, such as in: <http://apanews.net/en/pays/gambie/news/in-focus-gambias-cause-to-save-myanmars-boat-people> Gambia is geographically a small nation and has a population of 2.2 million people (see: <https://data.worldbank.org/country/gambia>).

taken by The Gambia for a country that has a population of 2 million and that is so far removed geopolitically from strategic interest of the global powers and is far away in West Africa, yet it is going to the ICJ and telling the US, Canada, Britain, France, Germany, Japan and the rest of the global community that there is a moral, legal and political duty to intervene. That is exactly what Gambia has done. I think it is really commendable.

Logan: If I may, and you can correct me if I am wrong, I think that this is a historic case because the accused is the state itself, as opposed to individuals. Do you have any reflections on how that changes the proceedings of the case itself?

Abdoulie Fatty: I do not want to make a mistake here, but I think there are individual investigations being undertaken. I am not sure if final conclusions or reports have been submitted in relation to the jurisdiction of the ICC in respect of individual accountability. However, in this case, as you said and I agree entirely, that this is really important because what Gambia is seeking is the accountability of the state. It is really an important milestone, an important step in the pursuit of accountability of state responsibility and state obligations under international law. As far as the case at the ICJ is concerned, substantive arguments and submissions will be made before the court. The provisional measures ordered or imposed on the state of Myanmar does not in any way conclude that the court believes that Myanmar is guilty of genocide. However, for the court to actually impose these provisional measures means that the court would have been satisfied based on the evidence adduced so far before the court that it is of a reasonable belief that there is a case that the state of Myanmar is committing or is there is a risk of it imminently committing acts of genocide, and therefore it is reasonable for the court to intervene and impose restrictions, and order mandatory obligations on the State in terms of ensuring that the military and the police cease

what they are doing, to make sure that evidence collected in relation to genocidal acts are preserved, and effectively complying with the order of the court. But, again, the Security Council has to intervene under Article 41 of the court statute.

Logan: I believe this morning the presiding judge over the case, to build on your remarks there, said that the Rohingya are at "serious risk of genocide" and that these preliminary measures are calling for Myanmar to "take all measures within its power" to prevent all acts that are prohibited under the 1948 Genocide Convention.¹³ As you said, the judge is making an indication here that the evidence is quite serious and that the proceedings will present some strong challenges for the state of Myanmar. As our focus is not actually about the atrocities themselves, but more on the perspective from where you sit and the perspective of the people of Gambia and its government and so on, could you share your reflections on how this case is being talked about by the public and by local media in the Gambia? In so doing, could you reflect on the fact that there is a potential for negative repercussions. For a country that, as you said, is geographically quite far and has relatively minimal direct connections with the conflict or the states involved. There could be negative consequences of sticking your foot out and standing up for justice. How are the people in the media speaking about the case?

Abdoulie Fatty: Before I answer the question, again, the provisional measures are really significant because the evidence suggests that hundreds of thousands of Rohingya are at threat of genocide, that women are exposed to extreme forms of sexual abuse, and therefore these provisional measures are mandatory to ensure, if complied with by the state of Myanmar, that those do not continue. To answer your question, in relation to the Gambian perspective, you will be amazed that it is mixed in

¹³ Statement available at: <https://www.icj-cij.org/files/case-related/178/178-20200123-PRE-01-00-EN.pdf>

the Gambia. This is a really important step taken by the Government of The Gambia, taking the state of Myanmar to the ICJ. However, the recognition that Minister Abubacarr has received, in the international community, particularly in the West, I do not think we have the same enthusiasm for it in the Gambia, and perhaps there are reasons for that. Now and again, especially when the Attorney General Abubacarr Tambadou spoke really compellingly before the ICJ, it was widely reported in The Gambia. But, other than that I think the reports have been very sporadic, and sometimes less enthusiastic. Culturally, you have to understand, the majority of the Gambians do not have even the remotest idea or relative connectivity emotionally to what is actually happening at the ICJ. A great number of the Gambian population live in rural areas. I do not think they really understand the rationale or the context.

Abdoulie Fatty: I am guessing that it is a small minority of the population, around the urban areas, perhaps the educated elite, who know exactly what is going on with The Gambia's case at the ICJ. Even within that demography, you will find split assessments of this issue. Firstly, Gambia went through, from 1994 to January 2017, a really autocratic and brutal dictatorship.¹⁴ There is an ongoing Truth, Reconciliation and Reparations Commission, a TRRC.¹⁵ Testimonies are startling the Gambian population. Some of the things that are being revealed at the TRRC are things that, in the past, we assumed were just rumours; really brutal, grotesque, systematic, human rights abuse by the state and the state security apparatus against the citizens of The Gambia. The person responsible for that, the former president Yahya Jammeh, a really brutal dictator, is in Equatorial Guinea. Gambians do not believe that the Attorney

14 Yahya Jammeh was the leader of The Gambia from 1994 until 2017. He is accused of serious crimes and currently resides in exile. See, for example, links at <https://www.hrw.org/tag/yahya-jammeh>.

15 TRRC: Truth, Reconciliation and Reparations Commission. This is an independent institution in The Gambia that is investigating human rights violations committed during the leadership of Yahya Jammeh. See <http://www.trrc.gm/>.

General or the Gambian government as a whole are taking very strong steps or efforts to ensure that Jammeh is accountable for his atrocities. This could be at the ICC or at any level. Gambians sometimes see this as an irony. While the Attorney General is championing human rights for the Rohingya people, who The Gambia does not have anything in common with geographically, apart from the Rohingya being Muslim and The Gambia being predominantly Muslim, that is perhaps the only thing that the Rohingya and The Gambia have in common. Perhaps one can understand why a lot of people here, while they to some extent believe that what the Attorney General or what the government of the people of The Gambia is doing in terms of taking this case to the ICJ is quite noble, at the same time there is this argument that charity begins at home. Equally, the same effort internationally that The Gambia has generated in trying to pursue justice for the Rohingya people, there seems to be an absence of the same energy and enthusiasm by The Gambia government on behalf of victims of human rights abuses and violations in The Gambia. To really reinforce this point, sometime around July, August or September of last year, some individuals, members of the military and the police intervention force testified before the TRRC and admitted to taking part in murdering civilians, people who were considered to be political opponents of the Jammeh regime. These are people who had been in custody for a couple of years, and legally I believe there was no legal basis for their continuous detention. It was argued that it was important that they remain in custody, however, the Attorney General sanctioned their release.¹⁶ As a result, you can find some Gambians are bemused and perplexed by the idea that while Gambia is pursuing justice for the

¹⁶ The release of prisoners began in 2017, see:

<https://www.aljazeera.com/news/2017/02/president-adama-barrow-orders-release-171-prisoners-170220063108170.html> but the cases that raised serious concern related to confessed murdered go without punishment, see: https://www.washingtonpost.com/world/africa/gambia-reels-as-it-watches-hit-men-confess-to-murder--and-then-walk-free/2019/08/23/0a6729f6-c37e-11e9-8bf7-cde2d9e09055_story.html

Rohingya, back home it looks like the state, to some extent, is failing victims of really serious human rights abuses and violations. It is a mixed bag in The Gambia and reporting of the case is not as prominent as you would find internationally.

Logan: You could probably build on those contradictions in that, maybe not at the present moment, but certainly injustices of recent history, not only within Gambia, but also in the region, which Gambians and their government would know much more about and be connected to in a much more direct way. Those cases are not being brought forth in various forms of judicial processes. Yet, there is one that is geographically quite far that is.

Abdoulie Fatty: There are some Gambian writers and commentators, perhaps their assessment of the whole situation is a bit unfair to the Attorney General, but there are assumptions that perhaps the Attorney General, in doing all of this, is basking in the international glory of what he is doing. Post Rwanda and Darfur, the international community, especially the West, sometimes want to see African leaders who take the moral high stand because it makes them feel better. Some people are saying that the Attorney General, because of his experience from the ICTR, the Rwandan tribunal, that perhaps he is setting himself up for a really prominent and lucrative position within the UN or within one of the other international agencies. This is said in the context that he is taking this leading role, putting himself in the limelight as a crusader and a custodian of the moral values and virtues, from this small country, on behalf of the Rohingya. Whether that assumption is just and fair is another debate. Nonetheless, that is one of the narratives by some Gambian intellectuals, that perhaps there is an element of a personal benefit to all of this by the Attorney General. However, that does not diminish the really strong stand, morally, that The Gambia has taken. What is important in all of this is that over the last two weeks something really important is

emerging in this country. The former president has released an audio, speaking to members of his party, telling them that he is coming back to The Gambia and even suggesting that he is coming back as a normal citizen and may even one day rule this country. A lot of Gambians are appalled by that and there are a lot of Gambians in fear. At the Legal Year opening ceremony, held on Sunday, five days ago, the Attorney General, in his statement, said that if Jammeh were to ever return to The Gambia, he will be arrested and charged with very serious crimes of offenses that he allegedly committed.¹⁷ In the meantime, members of his party, people are still loyal, and you have thousands of people, regardless of the revelations before the TRRC who are still loyal to the former president dictator. You have other parts of the population calling for the incumbent president to resign. You have these really conflicting and competing positions. In the middle of all of this, Jammeh has come to the fore of our political conversation.

Abdoulie Fatty: What many Gambians are saying is that there is more than sufficient evidence that what Jammeh has done hits the threshold for the jurisdiction of the ICC to be invoked. This is in terms of systematic oppression of political dissidents, the killing of people, systematically, to silence them for his political gain, and the really brutal offenses of a sexual nature that he carried out against several women. The debate at the moment is the reason why Jammeh continues to release these audios and to provoke the Gambian people (this may be a way to remain relevant in our political discourse). The Attorney General, with vigor and enthusiasm, is trying to consolidate international efforts and resources to push this case at the ICJ to make sure that Aung San Suu

¹⁷ For some reporting on the ceremony, see: <https://www.voicegambia.com/2020/01/20/legal-fraternity-hails-growing-independence-of-gambian-judiciary/>

Kyi¹⁸ and people at the helm of power in Myanmar are accountable as a state. At the same time, as there is more than sufficient evidence on the ground in The Gambia, why could not the Attorney General have taken the same step to make sure that efforts are made to seek Jammeh's capture, or removal from Equatorial Guinea, to face criminal accountability for what he has done? While this milestone and really historic action by the Government of The Gambia is generating really serious international applaud, much closer to home, sentiments are more divided, and on occasions with serious justification in relation to what they perceive to be the Attorney General's inability, or lack of strong effort, to ensure that Jammeh is accountable for his crimes against Gambian people.

Logan: Moving forward, and potentially months or years down the line, do you think that this case could turn into a positive narrative not only for The Gambia, but potentially for other countries? Much reporting on this case has emphasized the small size, geographic and population, of The Gambia. I think the Vice President described the country as "a small country with a big voice."¹⁹ There has been this narrative that new voices are entering into this international conversation. It is no longer the permanent members of the Security Council, anyone can raise these cases. That has theoretically always been the case, but maybe this could be one of those moments where the way things work change, as a result of the actions of The Gambia.

Abdoulie Fatty: Absolutely. I think out of all of this, that is a strong positive. Had the ICJ refused to order provisional measures, then the narrative could have been that the same status quo remains. It would have been the norm that the highest court, for political reasons or otherwise,

¹⁸ Aung San Suu Kyi has been a leader in Myanmar since 2016. For her non-violent efforts to introduce democratic reform in Myanmar, she was awarded the Nobel Peace Prize in 1991, amongst many accolades. She has defended the state of Myanmar at the ICJ.

¹⁹ As reported: <https://www.theguardian.com/world/2019/nov/11/gambia-rohingya-genocide-myanmar-un-court>

always shy away from the bold or assertive decisions. That could have had negative consequences. The fact that the ICJ ordered these provisional measures, I think, in the long term, would have a serious effect on the way states view their roles within the international community. Namely, in terms of their obligations under international law. In that respect, I think this may have a snowball effect and rightly so, because fundamentally this is a significant victory for international human rights law. This is important for international law as a whole, but also international criminal justice. Generally, what would happen, as you alluded to, would be that the permanent members, for one reason or the other and after a bit of lobbying, would raise this. However, in this case, this is not coming from Nigeria or South Africa or Brazil or Iran. This is coming from a country with a population of less than 2 million, a small country in West Africa. Perhaps this has awoken the conscience of the international community. Hence, it is having this really positive reception. Going forward, if a similar situation were to occur, you may have a country in another part of Africa or have one of the ASEAN²⁰ countries or somewhere else in another part of the world, not directly connected or directly affected by what is happening on the ground. They may say: Gambia set a precedent. It should no longer be the case that we say the atrocities or a genocide that is occurring is not anywhere near our borders and therefore we will take this passive bystander role. Going forward, I think this will really have serious consequences on the way states assess and view their obligations, not from a legal point of view, but from a moral point of view. I think, morally speaking, this is a victory not only for The Gambia, but it is a victory for international human rights, a right precedent going forward.

Logan: Another example of that may be that in the past we may have thought that, as you said, the lobbying of countries that have greater power in the international system, that they need to be leaders

²⁰ ASEAN: Association of Southeast Asian Nations. It has ten member states.

in taking action in order for justice to be pursued. I think regardless of the outcome of this case, just based on what we have seen thus far, we potentially have broadened and deepened the potential observers for international justice and the protection of human rights around the world.

Abdoulie Fatty: Absolutely. It is really incredible. One cannot over emphasize the importance of what Gambia has done. I do not think this will have any serious effect on the way that the global powers work, the usual suspects. However, for relatively smaller countries, countries with less strategic and less geopolitical influence and importance in global international matters, they may look at the actions of The Gambia and perhaps this may even set precedent for countries in the Global South, particularly those in sub-Saharan Africa or in Asia, the relatively smaller countries that have similar political limitations like the Gambia. They may say, you know what, let us form something; a club, an informal club, where we share data when we believe there are atrocities at a genocidal scale done in pursuit of justice for people who perhaps are unable to do it for themselves. You may have these smaller countries coming together, pooling their resources together, looking at how Gambia's has done it, and probably even seeking assistance in the way Gambia has approached the issue, and filing cases at the ICJ on behalf of other countries. In terms of the way this has occurred in the past, I think there will be a shift and this will perhaps create that momentum. Other states may think that if Gambia can do it, we can do it, too. For smaller countries, I think this is really significant. I would not be surprised if another smaller country, in the near future, decides to take a bold step and emulate what Gambia has done. It would no longer be the case where these smaller countries have to lobby or wait for the usual, bigger powers to take on the mantle of leadership in relation to genocide and other international crimes. Smaller countries will say, you know what, where we believe that there is evidence then we will take the moral high stand and seek remedy. That will continue to push the boundaries of this normative

customary practice of *jus cogens*²¹ and ensuring that we create a more peaceful, a more human rights friendly world. I know I am being too optimistic.

Logan: Sometimes optimism is a good thing.

Abdoulie Fatty: It is a good thing. It is better to be optimistic than to be a doomsayer.

Logan: Maybe it is worth noting a scholar based in Canada, Bonny Ibhawoh, and his 2018 book, *Human Rights in Africa*,²² traces some of the ups and downs, the progress and the challenges, that human rights have encountered across the continent. This may be one of those instances where 5, 10 or 20 years down the line has changed the way we engage with human rights, particularly about who can raise the case. And, potentially, and this is yet to be seen, about against whom cases could be raised. It could be. I think optimism in this case is something we should be hopeful for.

Abdoulie Fatty: Absolutely. I agree entirely. Generally, when it comes to state accountability and state obligations under international law, traditionally, in the past, it would have been the case that perhaps the number one argument that Myanmar would have made at the ICJ would have been that Gambia is not directly affected by what is happening and therefore making this legal argument about jurisdiction, notwithstanding that both are parties to the 1948 Genocide Convention. Now

²¹ “*Jus cogens* (or *ius cogens*) is a latin phrase that literally means “compelling law.” It designates norms from which no derogation is permitted by way of particular agreements. It stems from the idea already known in Roman law that certain legal rules cannot be contracted out, given the fundamental values they uphold. Most states and authors agree that *jus cogens* exists in international law.” Anne Lagerwell.

<https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0124.xml>

²² Ibhawoh (2018).

there is this customary practice that pushes the doctrine even further. I agree entirely. In 10, 15 or 20 years from now, I am guessing that in the international discourse and narrative, and while we try to strengthen human rights, especially in regions that are troubled, I am guessing we will refer to this as a really important milestone in pursuit of global accountability in terms of state obligations. Perhaps my optimism is not misplaced.

Logan: We can hope that the optimism is not misplaced and that this is this is one of those moments where we see a shift. As you look at the case, and your country is at the center of it and playing a leadership role in moving it forward, what are you watching for both in the case itself, but also for the citizens of The Gambia and how they engage with it?

Abdoulie Fatty: Firstly, in terms of when the matter formally concludes, I hope that the ICJ finds against the state of Myanmar because I think that there is strong evidence, there is really strong evidence both by the independent international fact finding mission and by the independent investigative mechanism for Myanmar. I believe there is credible evidence against the state of Myanmar. If that were the case, considering that this was not filed even by Bangladesh, but filed by a state so far away, in terms of precedent and in terms of really expounding the realms of international law and international justice, I think that will be a fantastic outcome. I am looking for an outcome that is positive, in terms of Gambia's application because it will be far reaching. As we have discussed, in terms of motivating other smaller countries to follow suit.

Abdoulie Fatty: In terms of Gambia, it is incredibly satisfying that a country that only five years ago expressed to the ICC its intention to withdraw from the Rome Statute,²³ a country that was almost becoming

²³ Rome Statute of the International Criminal Court (ICC) was an agreement that founded the ICC.

a pariah state, even within the subregion and the region. Within ECO-WAS,²⁴ Jammeh was isolated. Within the AU²⁵ as well, never mind the relationship with the international community. Fast forward to five years later, The Gambia disregarded that request to withdraw from the Rome Statute. This country, for 22 years, was headed by a really brutal autocrat who had no respect for human rights, had no respect for the rule of law, and had no respect for political discourse and dissent. A leader that completely disregarded international law and international organizations like the UN. You fast forward to 2018 when this all began, you now have the same country under a different leadership taking this international leadership position at the highest UN office in respect of state obligations, championing human rights for people so far away. For people that they relatively do not have anything in common with, apart from religion. It is trying to invoke that moral principle, that there is a moral duty and an obligation on all of the 149 member states, and the Security Council, for that matter, to rise to the challenge and ensure that never again, as Kofi Annan said many, many years ago does not operate in a vacuum.²⁶ Post Rwanda and post Srebrenica and post Darfur, you look at all of this that remains a scar on the collective conscience of all of us, especially those in the Global South, who are normally at the receiving end of these atrocities, the parallels could not be more different. From a really brutal, pariah head of state, by and large that had attorney generals who were just dancing to his tune, to now when we have a government and an attorney general (albeit accusations of self-indulgence or seeking prominent positions for himself, unless one comes with really compelling evidences for those assumptions, I am not going to labour myself too much on those) leading this case. As a Gambian, when I saw him speak at the

²⁴ Economic Community of West African States (ECOWAS). It has 15 member states.

²⁵ African Union (AU). It has 55 member states. It was preceded by the Organization of African Unity (OAU), which was established in 1963. The AU was launched in 2002.

²⁶ See: <https://www.un.org/press/en/1999/19991216.sgs7263.doc.html>

ICJ I was really proud of my country. Just five years ago, when I returned to the Gambia from the UK after so many years, I never thought in my lifetime that anything remotely like this was ever going to be possible, because I believed at the time that Jammeh was still going to be in power and he was still going to be the continuation of serious human rights violations in this country. But not only that, you look at our own context, in ECOWAS or within the African Union and being a leader. When Gambians went to the polls and removed that really autocratic regime from power through the ballot box, not through civil war, the country did not disintegrate into any civil conflict or anything like that. A one-day vote and the results went out in 24 hours, or slightly more than that, and Jammeh was voted out. For places like Zimbabwe and places like Cameroon, maybe it was a catalyst. Maybe they said, we can do this, we can remove a dictator through the ballot box rather than resort to violence. In the same way, Gambia is now championing human rights at the ICJ on behalf of the Rohingya against Myanmar. I would not be surprised, and it would not be too speculative to say, that within ECOWAS and within the AU, the smaller countries will look at this and say, you know what, perhaps the time has come for African states to take a more leadership position or role in the international human rights debate, discourse and human rights work in general. I would not be surprised if this serves as a catalyst, as a springboard, to motivate other African countries to follow suit in the future. More likely than not, this kind of action will occur in the Global South, rather than in the West. I believe that this is a really positive outcome. One that will have really positive implications on the way we view our obligation as a state and the way we view ourselves, as individuals in the Global South, in terms of our responses to really serious, gut wrenching human rights violations.

Logan: If we can end on another thread of optimism: it could also be the case that there are unintended directions that emerge. I am thinking specifically about the domestic contradictions that you raised earlier.

It could be the case that as the Minister gains more media attention and The Gambia has come to stand for justice and is getting global recognition for that, there may be more questions asked in the domestic civil society about issues of justice that you raised earlier. This may be an opening of new directions domestically as well.

Abdoulie Fatty: You have raised a very important point. Even though that may not have been the intended aim of Gambia notwithstanding, I believe that the more exposure that The Gambia gets in terms of the publicity of this matter and the more respect and accolades that the Attorney General gathers as this case progresses (as Tambadou receives glowing remarks from all over the world) and in the event that the ICJ actually finds in favor of The Gambia against Myanmar, it would be a perfect outcome. That would create, I would speculate, a certain level of political leverage that the Attorney General may capitalize upon to get countries that assisted The Gambia and expert organizations that assisted The Gambia in pursuit of justice on behalf of the people of Myanmar (e.g. organizations like the Global Center for Justice). With this international prominence that has been generated by this case, this is a golden opportunity, even though that may not have been the primary objective. But secondarily, The Gambia may capitalize on the opportunities that this will present as a way or as a means of getting the level of international support that it requires to get Jammeh to account. He is based in a country that is headed by a dictator, so he is not going to be easily handed over to any organization. However, with pressure from France and some other countries, the UN and the US, the bigger regional powers could force them to do so. This action by The Gambia can only amplify its status and its position and its influence internationally. If it is properly managed and properly utilized, then I will assume that it may be a means to getting Jammeh to account, with the help and assistance of the more influential countries. Again, they would have looked at what Gambia has done and achieved. And again, it may be a guilt of

conscience. After all this has been done, and the ICJ finds against Myanmar, and the same Attorney General goes to these people and says: we have done it for the Rohingya, but, now closer to home, I want your help to seek justice, not for the Rohingya, but for the people of the Gambia, who for 22 years endured the most brutal human rights atrocities. Therefore, because of what The Gambia would have achieved at the ICJ, politically and morally, it may be difficult for these countries and these organizations to turn a blind eye because they would feel they are really under a moral obligation to repay the excellent work that Gambia has done by filing in favor of the Rohingya and against Myanmar. This may, in the end, really play out in strong interests of The Gambia, even though at the moment, as I said earlier, a lot of people see it as a mixed bag.

Logan: I would like to thank you. I appreciate all of your explanations and elaboration on many different aspects of this case. The whole world is watching. We look forward to seeing justice upheld in that case and we also are optimistic that it will have some of those unintended consequences of bringing justice home to the Gambia as well.

Abdoulie Fatty: Absolutely. I hope so. My final remark would be: this doctrine of the responsibility to protect, after Rwanda, after the Balkans, after Darfur, I think it is high time that this doctrine of the responsibility to protect, which perhaps you can argue is now a customary norm, I hope it is embraced. I hope it is strengthened. I hope that universally, it becomes a really strong yardstick and benchmark in terms of how states assess their responsibilities in terms of human rights obligations. In terms of my own small country's contribution in the face of international human rights and international justice, I could not be more proud of what we have done thus far and what we achieved today. While I await the final conclusion at the ICJ, I am optimistic. The Rohingya deserve justice. I think the hundreds of thousands in Bangladesh should return home, be given full citizenship rights, and enjoy the basic decent human

rights under international law that many of us enjoy in several parts of the world. International human rights and the indivisibility of human rights should not be about isolated incidents, rather it should be all of our business. I am happy that my country emerged from a dictatorship, is transitioning into a democracy, and is holding itself as a beacon of hope for international human rights. I am proud. I am happy. I hope that justice for the Rohingyas would not deviate the Gambia government's commitment to the people of The Gambia in the not too distant future.

Logan: Thank you very much.

Abdoulie Fatty: Thank you, Logan. Thanks a lot. Thank you.

References

- Cheesman, N. (2017). How in Myanmar “national races” came to surpass citizenship and exclude Rohingya. *Journal of Contemporary Asia*, 47(3), 461-483.
- Ibhawoh, B. (2018). *Human rights in Africa*. Cambridge University Press.
- Jennings, R. Y. (1995). The International Court of Justice after fifty years. *American Journal of International Law*, 89(3), 493-505.
- Mahmood, S. S., Wroe, E., Fuller, A., and Leaning, J. (2017). The Rohingya people of Myanmar: health, human rights, and identity. *The Lancet*, 389(10081), 1841-1850.
- Rosenne, S. (1997). *The law and practice of the International Court, 1920-1996*. Brill Nijhoff.
- Schulte, C. (2004). *Compliance with decisions of the International Court of Justice* (p. 413). Oxford: Oxford University Press.
- Ullah, A. A. (2011). Rohingya refugees to Bangladesh: Historical exclusions and contemporary marginalization. *Journal of Immigrant & Refugee Studies*, 9(2), 139-161.

Zarni, M. and Cowley, A. (2014). The slow-burning genocide of Myanmar's Rohingya. *Pac. Rim L. & Pol'y J.*, 23, 683.

Zimmermann, A., Tams, C. J., Oellers-Frahm, K. and Tomuschat, C. (Eds.). (2019). *The Statute of the International Court of justice: A commentary*. Oxford University Press.