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Frequently Asked Questions

Rohingya Genocide International Court of Justice Merits Hearings

From 12–29 January 2026, the International Court of Justice ("ICJ") in The Hague will be holding the public merits hearing in the case of The Gambia v. Myanmar, concerning the alleged breach of the Genocide Convention by Myanmar against the Rohingya minority.

The following FAQ addresses key questions with regards to the upcoming hearing.

Background

The Gambia instituted proceedings against Myanmar before the ICJ on 11 November 2019, alleging that the Republic of the Union of Myanmar breached its obligations under the Genocide Convention (1948) through widespread and systematic atrocities against the Rohingya population in Rakhine State. The Gambia, a State party to the Genocide Convention, asserts that the Myanmar military's 2017 "clearance operations" involved killings, serious bodily and mental harm, conditions of life calculated to bring about the physical destruction of the Rohingya, and measures intended to prevent births within the group, with genocidal intent, engaging Myanmar's treaty obligations to prevent and punish genocide.

In January 2020, the ICJ indicated provisional measures, requiring Myanmar to take all measures within its power to prevent genocidal acts and preserve evidence, and to report periodically to the Court. Further, in July 2022, the ICJ unanimously rejected Myanmar's preliminary objections, holding that The Gambia had jurisdiction under Article IX of the Genocide Convention.

In late 2023 and throughout 2023–24, 11 states intervened under Article 63 of the ICJ Statute to make submissions on the interpretation of the Genocide Convention, reflecting broader interest in the legal questions at issue. The intervening states are Canada, Denmark, France, Germany, the Netherlands, the United Kingdom (joint intervention), the Maldives, Slovenia, the Democratic Republic of Congo, Belgium, and Ireland. These interventions have been admitted by the Court.

The written pleadings submitted by the parties to the case have remained under seal so far and are expected to be made public at the conclusion of the hearings.

FAQs

1. **What will happen during the merits hearings in 2026?**

   The merits hearings are scheduled from 12 to 29 January 2026.

   Both parties, The Gambia and Myanmar, will present their oral arguments on the substance of the dispute, including facts, evidence, and legal interpretation over the first two weeks, followed by a round of replies by each party during the third week.

   Survivors of the 2017 "clearance operations" in Myanmar ("witnesses") will be testifying in closed chambers during the hearing, which is a rare occurrence for the ICJ, as it is designed to decide disputes between states. Myanmar will be able to cross-examine these witnesses. Myanmar may also call its own witnesses. Further, expert witnesses are also expected to be presented by the parties.

   LAW represents all the Rohingya witnesses who will be testifying before the Court. We have been working with them for the last seven years and will be traveling with them to The Hague.

2. **Is it common for witnesses to testify at the ICJ?**

   No, in inter-state cases, it is not common practice for the ICJ to hear from witnesses or survivors, even in closed sessions. The Court is designed to decide disputes between states, not to hear individual testimony, though it is more common for experts to be heard. There are only some rare exceptions, such as in Croatia v. Serbia (2015).

3. **Why is it important for witnesses to testify in this case?**

   It is critical for the Court to hear directly from the Rohingya witnesses, as several testimonies by the Rohingya that have been submitted before the Court have been contested by Myanmar as lacking credibility. The in-person witness examination before the Court will be significant to establishing the reliability of the witness' statements.

   The testimonies of the witnesses before the Court will hold symbolic significance for the Rohingya community in confronting the Myanmar military *junta* directly, which to date has obscured evidence, destroyed Rohingya villages, advanced bogus repatriation initiatives, and outright denied the commission of atrocities.

4. **When will the court issue its final judgment on the Rohingya genocide case?**

   The judgement is expected within six months after the hearing concludes, although it may take up to one year for a judgment to be issued.

   Based on precedents in similar contentious ICJ merits cases (e.g., Bosnia and Herzegovina v. Serbia and Montenegro took about 9 months from hearings to judgment; Croatia v. Serbia took 11 months), the time from the end of the merits hearing to a final judgment usually ranges from 6 to 12 months.

5. **What are the elements to prove a breach of the Genocide Convention at the ICJ?**

In order to establish a breach of the 1948 Genocide Convention, the Court must be satisfied that the following two elements were committed:

First, the physical element (*actus reus*) requires committing one of five specific acts against members of a particular national, ethnical, racial, or religious group such as: killings; causing serious bodily and mental harm; deliberately inflicting conditions of life calculated to bring about physical destruction of the group in whole or part; measures intended to prevent births within the group; and/or forcibly transferring children from the group to another group.

Second, the mental element (*dolus specialis*) requires proving a "specific intent" to physically or biologically destroy that group, in whole or in part. Based on existing jurisprudence, the ICJ requires a "fully conclusive" standard of proof where genocidal intent must be the "only reasonable inference" drawn from the evidence.

A state is held responsible for the breach of the Genocide Convention if its military or any other state organs or agents commit these acts with the requisite intent, or if it fails in its obligation to prevent or punish the crime of genocide.

6. **What will happen if Myanmar is found responsible for breach of the Genocide Convention?**

Should the Court determine that genocide was committed against the Rohingya and that the genocidal acts are attributable to Myanmar, its state organs, or agents, the Court could order Myanmar to:

(i) Cease the commission of its internationally wrongful acts under the Genocide Convention and fully respect its obligations thereunder.

(ii) Ensure that individual perpetrators are punished by competent domestic or international courts.

(iii) Ensure reparations for the Rohingya victims and provide guarantees of non-repetition. This may include allowing and facilitating the safe and dignified return of displaced Rohingya, respecting their full citizenship and human rights, and protecting against discrimination and persecution.

(iv) Other guarantees of non-repetition and measures of satisfaction could also be ordered, such as legal and institutional reforms, training of state officials, formal acknowledgment of responsibility, apologies, memorialisation, or truth-seeking measures, insofar as these are necessary to remedy the breach. It could also require cooperation with international and humanitarian bodies, preservation and disclosure of evidence, reporting on compliance, and reparations – including collective forms such as rehabilitation, community reconstruction, restitution of property, and educational or cultural restoration for the Rohingya community – consistent with the law of state responsibility. The Court may further order compensation as reparations, owed inter-state but intended for the collective benefit of the Rohingya.

Note: The case before the ICJ is not a criminal case; hence no individual will be held "guilty" in a criminal sense.

7. **Could the ICJ order repatriation of the Rohingya back to Myanmar? Is it likely that this will happen?**

Yes, the Court may affirm the Rohingya's right to return, under conditions of safety, dignity, voluntariness, and protection of rights. However, the current conditions in Rakhine State, including ongoing conflict between the Myanmar military and the Arakan Army and grave human rights violations being committed against the Rohingya, do not meet these standards.

The principle of *non-refoulement* therefore continues to apply. This means that states, including Bangladesh, are prohibited from returning individuals to any territory where they face serious threats of persecution, torture, or threats to their life and dignity.

Therefore, even with a favorable judgement by the ICJ, the return of the over one million Rohingya living in Bangladesh is uncertain. Nonetheless, such a decision can allow the international community including member states to increase pressure on Myanmar, to meet the necessary conditions for return.

8. Will the Rohingya receive their Myanmar citizenship if the ICJ orders it?

Not necessarily, as the ICJ cannot directly ensure that a country issues citizenship; that is generally a matter within the domestic jurisdiction of a state.

Nevertheless, the ICJ's order stating that the Rohingya have the right to return to their home country in a safe, dignified, and voluntary manner with citizenship, will provide the international community with a stronger legal foundation to increase pressure on the Myanmar government to restore their citizenship. It will also provide the necessary legal benchmark for the government-in-exile (the National Unity Government), and other potential governing entities in Rakhine State, to formulate any future repatriation plans with due respect for Rohingya rights, including the restoration of citizenship.

9. What would be the legal consequences of the judgement in The Gambia v. Myanmar, for international law and for other cases?

A positive judgment in this case would be a landmark ruling, as third-party states (in this case The Gambia) have never previously sought to hold other states accountable for breach of the Genocide Convention. This would reinforce the notion that seeking state responsibility for breach of the Genocide Convention is a shared international duty.

The proceedings also offer a vital opportunity to evolve the strict standards of genocidal intent. Multiple intervening states have argued that genocidal intent, since it is rarely articulated explicitly, can be inferred from "circumstantial evidence," and that the "scope" and "severity" of a perpetrator's conduct are significant methods of inference, noting that the threshold for inferring such intent must not be so high as to be practically unattainable.[1] Few states have also argued that the intent to destroy a group can coexist with other objectives, e.g., the pursuit of a military object, and that this does not necessarily rule out the genocidal intent.[2]

[1] E.g., UK, France, Germany, Netherlands, Canada, Denmark. Joint declaration of intervention of Canada, Denmark, France, Germany, the Netherlands and the United Kingdom
[2] E.g., Belgium, Declaration of Intervention: Belgium and Ireland, Declaration of intervention of Ireland.

Further, the Court is also expected to clarify how forced displacement, sexual and gender-based violence (SGBV), and crimes against children serve as holistic evidence of an intent to destroy a protected group. See LAW's reports on the impact of Genocide on Rohingya children and the systematic use of sexual violence by the Myanmar security forces.

All of the above could set a critical legal benchmark for other genocide contexts.

10. Would this be the first-ever case of Genocide to be recognized?

If the Court finds Myanmar responsible for committing genocide, this would be the first-ever positive decision on state responsibility for genocide.

It is important to note that, in 2007, the ICJ ruled in Bosnia v. Serbia that genocide was indeed committed against the Bosniak Muslims in Srebrenica and that Serbia failed to prevent and punish genocide, but ruled that Serbia was not responsible for committing genocide as the acts of those involved in the violence could not be attributable to the state.

11. What will happen if Myanmar is not found in breach of the Genocide Convention?

The decision may go in favour of Myanmar, if the Court finds that the events primarily during the 2017 "clearance operations" did not constitute genocide, or that the acts committed during the "clearance operations" cannot be attributed to Myanmar, its state agents, or organs.

Such a negative decision will set back the fight for justice for the Rohingya who have faced institutional oppression, dehumanization, and organized state violence for decades because of their identity – and not merely been forcibly displaced due to an armed conflict. Additionally, a negative decision will endorse the Myanmar *junta's* impunity amid sham elections, not only vis-à-vis the Rohingya, but also with regards to other past and ongoing atrocities against civilians the across country.

Note: A negative ruling can take several forms and may only be partially adverse as was the case in Bosnia v. Serbia (2007). Such an outcome would not necessarily be without legal or practical significance and is likely to contain findings, legal reasoning, and factual determinations that can be used constructively to further the Rohingya's rights and challenge the Myanmar *junta's* impunity and legitimacy.

12. Are the ICJ's decisions binding? Who is responsible for enforcing the ICJ's orders and how will they do so?

Even in the case of a positive outcome, the enforcement of any ICJ judgement is a challenge. While ICJ rulings are legally binding, the Court itself has no direct means to ensure compliance.

If Myanmar does not comply with the decision, The Gambia, under Article 94(2) of the UN Charter, has recourse to the Security Council which may then make recommendations or decide upon measures to be taken to give effect to the judgment, such as sanctions. The enforcement of such measures would require agreement among the P-5. Therefore, the probability of seeing any enforceable measures against Myanmar to enforce compliance with the decision is quite low.

Regardless, the positive decision can be leveraged for stronger UN General Assembly resolutions to enforce arms embargos, encourage member states' compliance, and for promoting reparations.

13. Are there other means and legal avenues to hold Myanmar military accountable for its crimes?

Yes, there are legal avenues other than the proceedings before the ICJ that are actively being pursued to ensure accountability for the crimes committed against the Rohingya, focusing on individual criminal responsibility rather than state responsibility.

Under the principle of universal jurisdiction, the Argentinian federal court has issued 25 arrest warrants against Myanmar government and military officials, and others are encouraged to open similar domestic investigations. LAW supported seven witnesses, including survivors of sexual and gender-based violence, to testify during the investigative hearings in the Argentinian case.

Simultaneously, the International Criminal Court (ICC) is actively seeking an arrest warrant for Myanmar's seniormost military leader, Min Aung Hlaing. A public decision on this request is awaited. The UN Independent Investigative Mechanism for Myanmar ("IIMM") has been documenting evidence that is already being used for the active cases, and can be used for future trials and cases.

Beyond criminal law, creative civil pathways are also being utilized, including lawsuits against social media platforms for fueling hate speech and domestic litigation, such as in South Africa, to ban arms exports to the *junta*.

14. How will the ICJ verdict impact the Rohingya?

The ICJ verdict will have a profound impact on the Rohingya, serving as either a historic triumph or a blow to their pursuit of justice.

A positive outcome would provide the first legal recognition of the genocide, offering long-overdue validation for a community that has faced decades of state denial of its very existence and of the atrocities committed against its vast majority, amid victim-blaming. Beyond its immense symbolic value and the hope it would provide for refugees, such a judgment would establish a vital legal foundation for future restitution and reparation efforts.

A negative outcome would be seen as an affront to international law that would severely damage Rohingya morale, further jeopardize their precarious status, and legitimize the Myanmar military's impunity for past and ongoing atrocities.

Regardless of the verdict, the push for accountability will continue through alternative legal avenues to ensure the military's crimes do not go unpunished, including avenues for individual criminal responsibility.

15. If Myanmar ignores the ICJ's decision, what will it mean for the Rohingya and the people of Myanmar?

Even if the Myanmar *junta* ignores the ICJ ruling, the decision can still provide a critical legal and moral foundation for accountability.

As noted, under Article 94(2) of the UN Charter, if Myanmar fails to comply with the ICJ judgement, The Gambia can refer Myanmar's non-compliance to the UN Security Council for implementation and to enforce compliance. The Security Council has never successfully enforced an ICJ judgment under this article, however, largely due to political considerations and the veto.

Nevertheless, the UN General Assembly can use the judgment to pass stronger resolutions[3] and call upon member states for action including to enforce and expand sanctions against the *junta*, promote the right to reparations for victims of genocide.[4]

Furthermore, because Myanmar seeks regional legitimacy, groups like ASEAN states could use the ICJ's positive judgment as diplomatic leverage to demand democratic reforms and accountability. Ultimately, Myanmar's non-compliance could serve as a powerful advocacy tool for civil society to push for democracy, fair elections, and the release of political detainees.

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[3] Notably, the ICJ's Chagos Islands Advisory Opinion (2019) led to a UNGA resolution (voted for by 116 member states) demanding that the UK withdraw its colonial administration from the area. This in turn paved way for an agreement between the UK and Mauritius for the Chagossian population to be resettled into the islands, and a multimillion-dollar trust fund was agreed to be set up. *Note*: As of December 2025, the Committee on Elimination of Racial Discrimination (CERD) has indicated concern that the UK-Mauritius agreement insufficiently centers the Chagossian people as right-holders including preventing their exercise of cultural rights and return to specific ancestral lands.

[4] See more information on the Myanmar Victims' Trust Fund initiative here: Roundtable Summary: Paving the way for accountability, truth, and reconciliation: a trust fund for victims of atrocity crimes in Myanmar – Legal Action Worldwide.