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*“If perpetrators are not held accountable for the violence they inflict,
they will continue to commit more violence.”*

**Guide on International Justice
Mechanisms for Humanitarian Actors
working with the Rohingya**

January 2023



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Table of acronyms

SGBV	Sexual and gender-based violence
ICC	International Criminal Court
ICJ	International Court of Justice
IIMM	Independent Investigative Mechanism for Myanmar
LAW	Legal Action Worldwide
NUG	National Unity Government
OTP	Office of the Prosecutor
UJ	Universal Jurisdiction
EJ	Extraterritorial Jurisdiction
UN	United Nations
BGP	Border Guard Police (Myanmar)
MPF	Myanmar Police Force
ECCC	Extraordinary Chambers in the Courts of Cambodia
ICTY	International Criminal Tribunal for the former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
IRMCT	International Residual Mechanism for Criminal Tribunals
BROUK	Burmese Rohingya Organisation (UK)
ASEAN	Association of Southeast Asian Nations
OHCHR	UN Office of the High Commissioner for Human Rights
FFM	UN Independent International Fact-Finding Mission on Myanmar
OIC	Organisation of Islamic Cooperation

About Legal Action Worldwide

Legal Action Worldwide (LAW) is a non-profit human rights organisation led and managed by legal professionals. LAW works with individuals and communities who have suffered grave human rights violations to obtain justice. LAW's Rohingya Crisis programme seeks to ensure meaningful Rohingya participation in the ongoing international justice mechanisms pertaining to their treatment in Myanmar. LAW represents more than 500 Rohingya clients, who are survivors of the 2017 "clearance operations." One of the key pillars of our programme is our Survivor Advocates network who assist and support Rohingya community members, especially survivors of sexual and gender-based violence in the camps, and also provide legal information to the Rohingya about available mechanisms to seek international justice and accountability.

This Guide provides information on the Rohingya crisis and the legal avenues available to Rohingya victims and survivors who want to bring the perpetrators in Myanmar to justice for international crimes committed against their people. The Guide also sets out an overview of the ongoing international justice mechanisms currently focusing on the crimes committed against the Rohingya mainly after 2010. It contains key messages, themes and practical tools to equip humanitarian actors to support the Rohingya and their pursuit for international justice. For ease of reading, the Guide uses a 'Questions and Answers' approach to provide humanitarian actors with clear information and explanations.

The Guide is a living document and will be regularly updated to reflect developments in the ongoing legal cases.

Drawing below: International Court of Justice through the eyes of a Rohingya survivor



Why **this** guide?

“It is so important that all victims and survivors of horrendous crimes committed by the Myanmar military have an opportunity to obtain justice.”

Rohingya female survivor, 24 years old

International justice provides a legal framework to seek accountability for the most serious international crimes, such as genocide, crimes against humanity and war crimes. Accountability is essential for victims and survivors of mass atrocities who do not have access to credible avenues for justice in their home country where impunity prevails and perpetrators remain in authority. International justice provides an avenue to end impunity, establish truth and promote non-recurrence.

The Rohingya refugee crisis is a protracted emergency with currently no possibility for the Rohingya, many of whom are survivors of horrific crimes, to return to their home country of Myanmar in a safe, dignified and voluntary manner. Rohingya survivors regard international justice and accountability as essential to fulfilling their foremost demand for a safe, dignified, and voluntary return. They also find it empowering to hope for justice. Ending the Myanmar military's long-standing impunity is also critically vital to securing a democratic future for Myanmar.

Humanitarian actors operating in the context of the Rohingya response in Cox's Bazar, Bangladesh, can help and support the Rohingya in seeking justice. This Guide has been prepared for them because they are uniquely positioned to improve communities' awareness and understanding of relevant international justice and accountability mechanisms, and direct them towards information, support, and points of contact. Humanitarian actors are also key in listening to and amplifying the voices of the Rohingya, enabling the community to access support and services and to demand justice for the atrocities that they faced in Myanmar.

What is the Rohingya crisis?

Who are the Rohingya?

The Rohingya are a Muslim minority in Myanmar. Despite living in Myanmar for generations, successive laws and State policies on citizenship and legal status have excluded the Rohingya and systematically discriminated against them. They have been stateless since 1982 and are deprived of basic rights, including freedom of movement and religion,¹ and have suffered decades of violence and persecution, deep-rooted in a longstanding narrative that the Rohingya are not “native” to Myanmar and are an existential threat to the Burmese national identity.² The Rohingya have been described “as one of, if not the, most discriminated people in the world” by UN Secretary-General António Guterres.³

Why are Rohingya seeking refuge in Bangladesh?

The Rohingya have fled violence in Myanmar since the 1970s on multiple occasions, including in 1978, 1991- 1992, 2012,^{4,5,6} and most recently during the ‘clearance operations’ in 2016 and 2017 which are explained further in the next section. On each occasion, serious human rights violations, including rape, arbitrary execution/unlawful killings, torture and cruel, inhuman, and degrading treatment and punishment, and the widespread destruction of property, have been documented. This has led to tens and sometimes hundreds of thousands of Rohingya being displaced internally within Rakhine state and fleeing into neighbouring countries, mainly Bangladesh.

Were all Rohingya targeted by the Myanmar military?

Women, children, men, the elderly and individuals with diverse sexual orientation and gender identities were all targeted by the Myanmar military’s clearance operations and subjected to the most horrific acts.⁷

What is the current situation of the Rohingya in Myanmar?

Around 600,000 Rohingya currently reside in the Rakhine state of Myanmar, 148,000 of whom are displaced internally.⁸ Since the February 2021 military coup, the remaining Rohingya in Rakhine have been facing an increase in violence and oppression, including increasing arrests and detentions,⁹ with severe restrictions on their already curbed human rights. After the coup, local authorities reinstated a directive that further restricted the freedom of movement of Rohingya communities living in northern Rakhine and authorised harsher punishments for those trying to flee.¹⁰

The current situation means that the safe, dignified and voluntary return of Rohingya refugees in Bangladesh who fled the clearance operations in Rakhine state in 2016 and 2017 remain impossible.

Key takeaways

The Rohingya have faced institutionalised discrimination and persecution for decades.

They have been arbitrarily deprived of their nationality in Myanmar, resulting in their *de facto* statelessness.

They have been fleeing to Bangladesh since the 1970s to escape the repeated cycles of mass violence in the Rakhine state led by the Myanmar military.

They have been subjected to campaigns of hate, intimidation, violence, and abuse, most recently with the 2017 so-called clearance operations leading to unprecedented levels of violence.

What are the 2017 clearance operations?

On 25th August 2017, the Myanmar military began one of the most devastating and horrific attacks on the Rohingya, which lasted for more than two months and is described by the authorities as clearance operations.¹¹ The violence resulted in the death of an estimated at least 10,000,¹² and the mass exodus of at least 720,000 survivors – half of them children – to escape the violence.¹³

Mass killings

Many Rohingya were killed in indiscriminate shootings by the Myanmar military, who shot assault rifles towards Rohingya villages without making any distinction between armed groups fighters and civilians.¹⁴ Men, women and children were all shot at. Those unable to move quickly were disproportionately affected – often children, pregnant women or those with young children, the elderly and disabled persons. Many were burned to death in their own houses, as Rohingya homes were burnt

using flammable liquids and munition that explodes upon impact.¹⁵ In some cases, targeted killings occurred as Myanmar military soldiers accompanied by the Border Guard Police (BGP), Myanmar Police Force (MPF), or riot police systematically moved from house to house, pulling people out of their homes and executing them, often in front of family members. Extremist ethnic Rakhine working alongside the Myanmar military also targeted and killed victims with long knives.¹⁶

Many specific incidents of massacres speak of the brutality of atrocities committed against the Rohingya.

On 30th August 2017, Myanmar military soldiers surrounded the village of Tula Toli and began burning houses. The soldiers then opened fire directly at a large number of people fleeing towards the river shore. The villagers who made it to the shore were then trapped on one side by the river and the other side by the soldiers. Numerous persons, especially the elderly and children, drowned in the river trying to escape. The remaining hundreds were rounded up by soldiers who separated the men and women. Soldiers then systematically murdered the men and set their bodies on fire, and snatched the children from their mothers and threw them into the river.¹⁷

On 2nd September 2017, ten men from the Inn Dinn village accused of being members of armed groups were executed. Two of them were hacked to death by ethnic Rakhine villagers and the rest were shot by Myanmar military soldiers. All of them were buried in a single grave dug by their own neighbours.¹⁸

Sexual and gender-based violence

Sexual and gender-based violence was committed on a massive scale during the Myanmar military's clearance operations of 2016 and 2017. The UN Independent International Fact-Finding Mission on Myanmar (FFM or Fact-Finding Mission) documented that hundreds of Rohingya women and girls were raped, with 80 per cent of the rapes being gang rapes. The Tatmadaw, or armed forces of Myanmar, was responsible for 82 per cent of these gang rapes.¹⁹

Mass gang rapes were commonly perpetrated in open public spaces, within forested areas near the village or in large houses within the village, often in front of the victims' children and other family members and neighbours.²⁰

Victims were severely injured before and during rape and suffered traumatic injuries to reproductive organs, including from rape with knives and sticks.²¹ Many victims were killed or died from injuries, and survivors suffer severe trauma and face stigma in their community.²²

"They killed my husband, my brother, my uncle. They took me and 50 other women to rape in a school. Only five of us survived. They killed the rest of the women."

Rohingya female survivor, 32 years old

Widespread arson attacks

At least 392 villages (representing 40% of all settlements) in northern Rakhine were partially or totally destroyed, with a large majority of them (around 80%) burned in the first three weeks of the 2017 clearance operations.²³

Arbitrary mass arrests and disappearances

Numerous Rohingya men and boys were arrested and disappeared during the clearance operations.²⁴ They were usually violently rounded up, with their hands tied or eyes blindfolded before being taken away.²⁵ The anguish of not knowing what happened to those who disappeared remains overwhelming within the Rohingya community.²⁶

Spotlight

Sexual violence in Myanmar against males and individuals with diverse sexual orientation and gender identities

Although less reported, men, boys and “hijra” (transgender, intersex, and third gender) persons have also suffered widespread SGBV.

- The Fact-Finding Mission found that the military used methods of sexualised torture against Rohingya men in their custody, particularly in Buthidaung prison.²⁷
- A study conducted with 495 Rohingya refugees in Bangladesh found that 34.3% of Rohingya men had experienced “sexual abuse, sexual humiliation, or sexual exploitation”.²⁸
- LAW’s 2021 research survey with Rohingya male survivors found that the respondents reported a high level of sexual violence in Myanmar, mainly by members of the military or police, including rape (90.5%) and genital mutilation (90.5%).²⁹
- The ICC’s Pre-Trial Chamber found that during the clearance operations, the Myanmar military used sexual and gender-based violence against women, girls, men, and “hijra” persons.³⁰

“The military took me to a dark place and raped me, and they also burned my penis with a lighter. I still feel pain inside my penis. I can’t walk properly and can’t sit properly.”

Rohingya male survivor

The clearance operations led to the deaths of at least 10,000 Rohingya and the forced displacement of more than 720,000 Rohingya refugees across the border into Bangladesh.

All Rohingya, including infants, children, the elderly, women, and men, were subjected to horrific crimes. The main perpetrators were the Myanmar military, the Myanmar Police Force, and the Border Guard Police.

SGBV was widespread and targeted at women and girls, but men, boys, and transgender and intersex persons were also subjected to it.

What international crimes have been committed against the Rohingya?

The 2018 report of the UN Independent International Fact-Finding Mission on Myanmar (FFM or Fact-Finding Mission) concluded that perpetrators, including senior officials of the Myanmar military, should be investigated and prosecuted for genocide, crimes against humanity, and war crimes against the Rohingya.

What is genocide?

Genocide is the commission of any of the following five categories of physical acts with the intent to destroy a specific national, ethnic, racial, or religious group in whole or in part. The crimes committed by the Myanmar military against the Rohingya during the 2017 clearance operations include the first four of the following five prohibited acts under the definition of genocide:

- 1 Killing;
- 2 Causing serious bodily or mental harm;
- 3 Deliberately inflicting conditions of life calculated to bring about the physical destruction of the group in whole or in part; and
4. Imposing measures intending to prevent births.³¹

In its 2018 report, the Fact-Finding Mission concluded that the Myanmar military carried out these acts of mass killings and rapes with “genocidal intent”, with the following factors referenced in the report: the use of hate narrative, the existence of discriminatory plans and policies; evidence of an organized plan of destruction; and the extreme brutality and scale of the violence.³²

What are crimes against humanity?

Crimes against humanity are acts that are committed knowingly as part of a widespread or systematic attack directed against any civilian population, regardless of its affiliation or identity.³³ These acts include murder, imprisonment, enforced disappearance, torture, rape, sexual slavery and other forms of sexual violence, and persecution, all of which were committed against the Rohingya in Myanmar. In both 2016 and 2017, the crimes against the Rohingya were not a mere aggregate of random

acts but were systematic and widespread in terms of their geographical reach and the large numbers of targeted persons and victims.

For a crime against humanity to be perpetrated, it is not necessary to prove that there is a specific intent (unlike genocide) except for the act of ‘persecution’, which requires discriminatory intent. Under the Rome Statute of the ICC, persecution means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity,³⁴ and that such targeting was done on, for example, national, ethnic, religious, political, gender, racial, cultural, or other grounds.³⁵ The Fact-Finding Mission notes that the Myanmar military and other security forces have played an active role in the system of oppression by adopting or implementing discriminatory policies and practices of the State. Further, the violent acts of rape, murder, and torture against the Rohingya, depriving them of fundamental rights, were committed in the context of a pervasive climate of hatred and contempt toward the Rohingya, with a discriminatory intent on ethnic, religious, and gender grounds, thereby constituting the crime against humanity of persecution.

What are war crimes?

War crimes are serious violations of international humanitarian law committed in the context of an armed conflict.³⁶ War crimes have been committed by the military in Rakhine state since at least August 2017 and include attacking civilians; displacing civilians; pillaging; attacking protected objects; taking hostages; sentencing or execution without due process; murder; torture; cruel treatment; outrages upon personal dignity; and rape, sexual slavery, and sexual violence.

Spotlight

SGBV against Rohingya women and girls in Myanmar indicates genocidal intent

Rape, gang rape and other forms of sexual violence – mostly against women and girls – was endemic against the Rohingya population during the 2017 clearance operations in Myanmar. In its 2018 report, the Fact-Finding Mission concluded on reasonable grounds that SGBV against Rohingya constituted crimes against humanity, war crimes and underlying acts of genocide.

In its 2019 report, the FFM further found that SGBV committed by Myanmar military soldiers against Rohingya women and girls was part of a deliberate, well-planned strategy to “intimidate, terrorise and punish” the Muslim ethnic minority as a tactic of war. The Fact-Finding Mission concluded that sexual violence perpetrated against women and girls during 2017 clearance operations indicated the Myanmar military’s genocidal intent to destroy the Rohingya people.

The various factors noted in this regard were: the utterances of Myanmar officials and others of their clear intent to rape and kill Rohingya; the systematic selection of women and girls of reproductive ages for rape and attacks on pregnant women and babies; the mutilation of and other injuries to their reproductive organs, the physical branding of their bodies by bite marks on their cheeks, necks, breasts and thighs, and so severely injuring victims that they may be unable to have sexual intercourse or to conceive and leaving them concerned that they would no longer be able to have children.³⁷

The treatment of the Rohingya during the clearance operations led by the Myanmar military amounts to the most serious crimes, including crimes against humanity, war crimes, and genocide, that violate international law.

Genocide in the Rohingya context means that the atrocities carried out by the Myanmar military were deliberately targeted at the Rohingya to destroy them as a group.

The Fact-Finding Mission has made a clear recommendation that senior generals of the Myanmar military should be investigated and prosecuted in an international criminal tribunal for those crimes.

Key takeaways

International Court of Justice?

Universal Jurisdiction Principle?

Independent Investigative Mechanism for Myanmar?

International Criminal Court?

What are the avenues for international justice available to the Rohingya?

"I will feel like I have received justice when I return to my country and when the [perpetrators] are punished so that they cannot commit these kinds of crime again."

Rohingya male survivor, 26 years old

The Rohingya are calling for justice and accountability for the crimes committed against them by the Myanmar military, the Myanmar Police Force, and the Border Guard Police.³⁸

Yet, they currently have no credible legal recourse available within Myanmar and therefore are turning to international justice mechanisms to get their voices and demands heard.



INTERNATIONAL CRIMINAL COURT



What is the International Criminal Court (ICC)?

The ICC was established in 2002 by The Rome Statute.³⁹ It is a permanent court based in The Hague, the Netherlands. Its primary mission is to help put an end to impunity for the perpetrators of the most serious crimes of concern to the international community (genocide, war crimes, and crimes against humanity). As such, it is not a substitute for national courts and is only mandated to investigate and try individuals where a country is unable or unwilling to genuinely carry out the investigation and prosecutions.

123 States, including Bangladesh, are States Parties to the Rome Statute and are therefore subject to the jurisdiction of the Court. This means that the crimes committed by nationals of these States Parties, or in the territory of any of these States Parties, can be investigated and tried at the ICC.

Investigations are undertaken and cases are prepared by the ICC's Office of the Prosecutor (OTP), which investigates the conduct of senior military, political, and non-state actors who are most responsible for the crimes.

What is Prosecution?

Generally speaking, prosecution is the process of trying to prove in court that someone is guilty of a crime.⁴⁰ A prosecutor is a lawyer who normally works for governments in courts and is responsible for officially charging someone with a crime and proving that the suspect committed the crime beyond a reasonable doubt.



What is the Office of the Prosecutor at the ICC?

The OTP is an independent organ of the ICC that is headed by a Prosecutor and supported by a staff of prosecutors, investigators and analysts. The Prosecutor's duties include examining situations under the jurisdiction of the Court where international crimes may have been committed and carrying out investigations and prosecutions against the individuals who are allegedly most responsible for those crimes.

The ICC is the world's first permanent court dedicated to prosecuting international crimes. It is the first time in history that an international prosecutor has been given the mandate by States to independently and impartially investigate and prosecute atrocity crimes that allegedly have been or are being committed on their territories or by their nationals. The current Prosecutor is Karim Khan KC (United Kingdom).

How does the ICC work?

Judicial Divisions:



Legal teams involved in the ICC process:



Stages:

A crime occurs



Preliminary Examination

The Prosecutor conducts a preliminary examination in light of important criteria, including availability of sufficient evidence, gravity of crimes, and the interests of justice.



Investigation

In the event that the important criteria are established upon completing a preliminary examination, the Prosecutor opens an investigation. The Prosecutor gathers evidence and identifies suspects.

The Prosecutor requests Pre-Trial judges to issue summons or arrest warrants after gathering and submitting evidence.



Pre-Trial

Once the suspect is arrested and in ICC custody, an initial appearance is held during which the Pre-Trial judges confirm the suspect's identity and ensure they understand the charges they are accused of. This is followed by a Confirmation of Charges hearing, during which the Prosecutor, Defence, and Victims' lawyers make submissions. The judges will then decide if there is enough evidence before a case can go to trial.

(The ICC relies on countries to make arrests and transfer suspects to the ICC.)



Trial

The Prosecutor must prove the guilt of the accused beyond a reasonable doubt.

A panel of three trial judges consider all of the evidence presented and decide whether the Prosecution has proven the guilt of the accused. If a person is found guilty, the Trial Chamber then issues a sentence and decision on reparations.

(The Trial Chamber can sentence a person to up to 30 years of imprisonment and, under exceptional circumstances, a life sentence. The death penalty is not allowed.)



Appeals

Both the Prosecution and the Defence have the right to appeal a Trial Chamber's decision on the verdict (decision on guilt or innocence of the accused) and the sentence. The Appeals Chamber determines whether to grant or deny the grounds of appeal, and in the end determines whether the conviction or acquittal should be upheld, amended or reversed. This is the final judgment, unless the Appeals Chamber orders a re-trial before the Trial Chamber.

What is the involvement of the ICC in the context of the Rohingya?

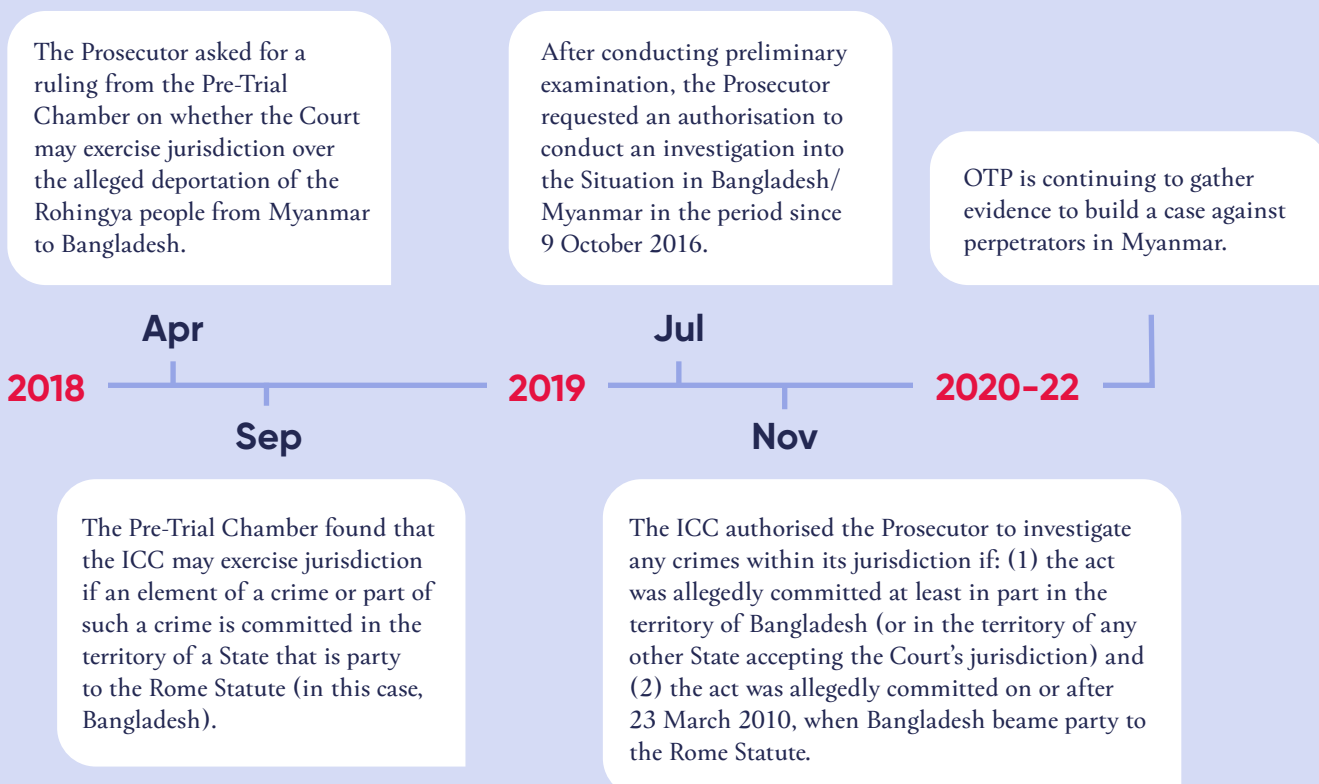
Myanmar has not ratified the Rome Statute. This means that where a Rome Statute crime takes place only on Myanmar's territory, the Office of the Prosecutor (OTP) cannot investigate that crime.

In 2018, the ICC's Pre-Trial Chamber⁴¹ found that it had jurisdiction over potential crimes against the Rohingya where part of the crime took place on the territory of Bangladesh (a State Party to the Rome Statute since 23 March 2010), in particular the crime of deportation, which involved crossing an international border and therefore occurred in part in the territory of Bangladesh.⁴² In 2019, after the OTP applied for authorization to investigate the crimes against humanity of deportation, persecution, and other inhumane acts (in particular, the violation of the Rohingya's right to return to Myanmar), the ICC granted the OTP's request and authorized the investigation.⁴³

Can the ICC expand its scope of investigation in the context of the Rohingya?

After the 2021 military coup d'état in Myanmar, the National Unity Government (NUG) - the Myanmar government in exile⁴⁴ - requested that the ICC extend its jurisdiction to cover all crimes committed in Myanmar.⁴⁵ However, only the government of the State with effective control may make this request of the ICC when that country (State) is not already a party to the Rome Statute. An acceptance of the NUG as the legitimate government of Myanmar, and in turn an acceptance of its declaration which is supported by the Rohingya, would allow the ICC to investigate crimes against the Rohingya and other ethnic groups inside Myanmar, including crimes committed since February 2021, and to extend the current investigation to consider the crime of genocide.

What has been the ICC process to date in the context of the Rohingya?



What happens next?

The OTP is currently gathering evidence as part of its investigation. It will interview witnesses and attempt to build a case file against one or more individual perpetrators for crimes committed against the Rohingya. This may take many years. When enough evidence has been collected, the OTP will request that the Court summon the accused or issue an arrest warrant. It is then up to the States Parties to arrest and transfer a suspect, since the ICC has no standing police force.

How can victims participate in ICC proceedings?

For the purpose of this Guide, victims include victims of international crimes, including children, persons with disabilities, or elderly persons. A victim can also be a person who suffers harm as a result of a crime targeted at another person, such as a family member of someone who has been killed.

At the ICC, victims have the right to make observations and requests at various stages of the proceedings. In the case of the Rohingya, victim submissions have been filed at various stages supporting the OTP's request for jurisdiction and the investigation in the Bangladesh/Myanmar situation.

Victims may also claim reparations if the proceedings lead to a conviction. Measures ordered as reparations can be individual or collective (the latter provided to groups of victims) and may include financial compensation and rehabilitation services such as medical treatment or education. The independent Trust Fund for Victims can help to carry out the ICC's orders of reparations against a convicted person. The Fund can also use the voluntary contributions it receives from States and others to finance projects for the benefit of victims.



More information about victims' participation is available at:
https://www.icc-cpi.int/sites/default/files/itemsDocuments/vprs/abd-al-rahman/VPRS-Victims-booklet_ENG.pdf

INTERNATIONAL COURT OF JUSTICE

What is the International Court of Justice (ICJ)?

The ICJ is the principal judicial organ of the UN. It is based in The Hague. It was established in June 1945 and became operational in April 1946. The ICJ settles - in accordance with international law - legal disputes submitted to it by UN Member States. Only States can bring disputes to the ICJ and can be parties to an ICJ case. The ICJ's jurisdiction covers a broad range of international legal issues, including questions relevant to international human rights law.⁴⁶

What is the involvement of the ICJ in the context of the Rohingya?

On 11 November 2019, The Gambia filed an application at the ICJ, arguing that Myanmar failed to comply with its obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the 'Genocide Convention'), specifically the duty to prevent genocide.

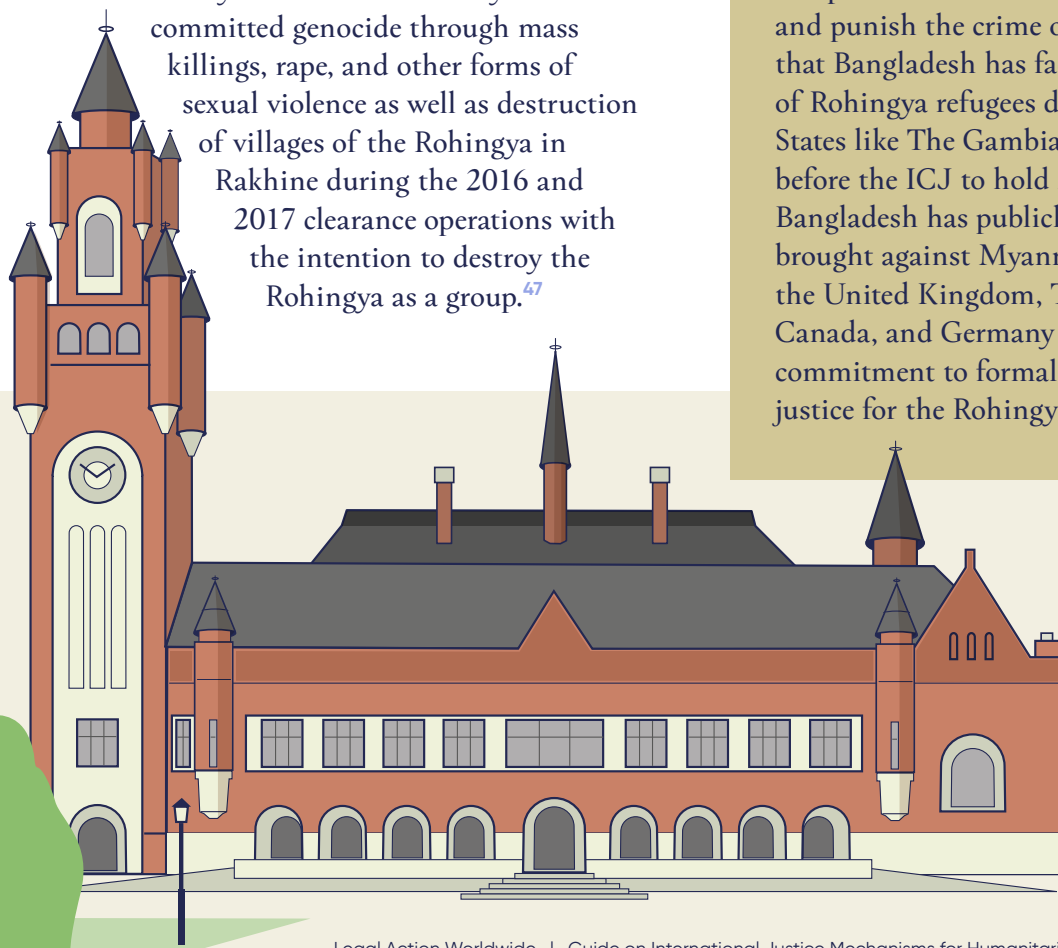
The Gambia alleges that the Myanmar military and Myanmar's other security forces committed genocide through mass killings, rape, and other forms of sexual violence as well as destruction of villages of the Rohingya in Rakhine during the 2016 and 2017 clearance operations with the intention to destroy the Rohingya as a group.⁴⁷

The Gambia v. Myanmar case before the ICJ is not a criminal case against individual perpetrators within the Myanmar military who committed the heinous crimes; it is a "state to state" dispute between two parties to the Genocide Convention. It is also separate from the ongoing ICC investigation.

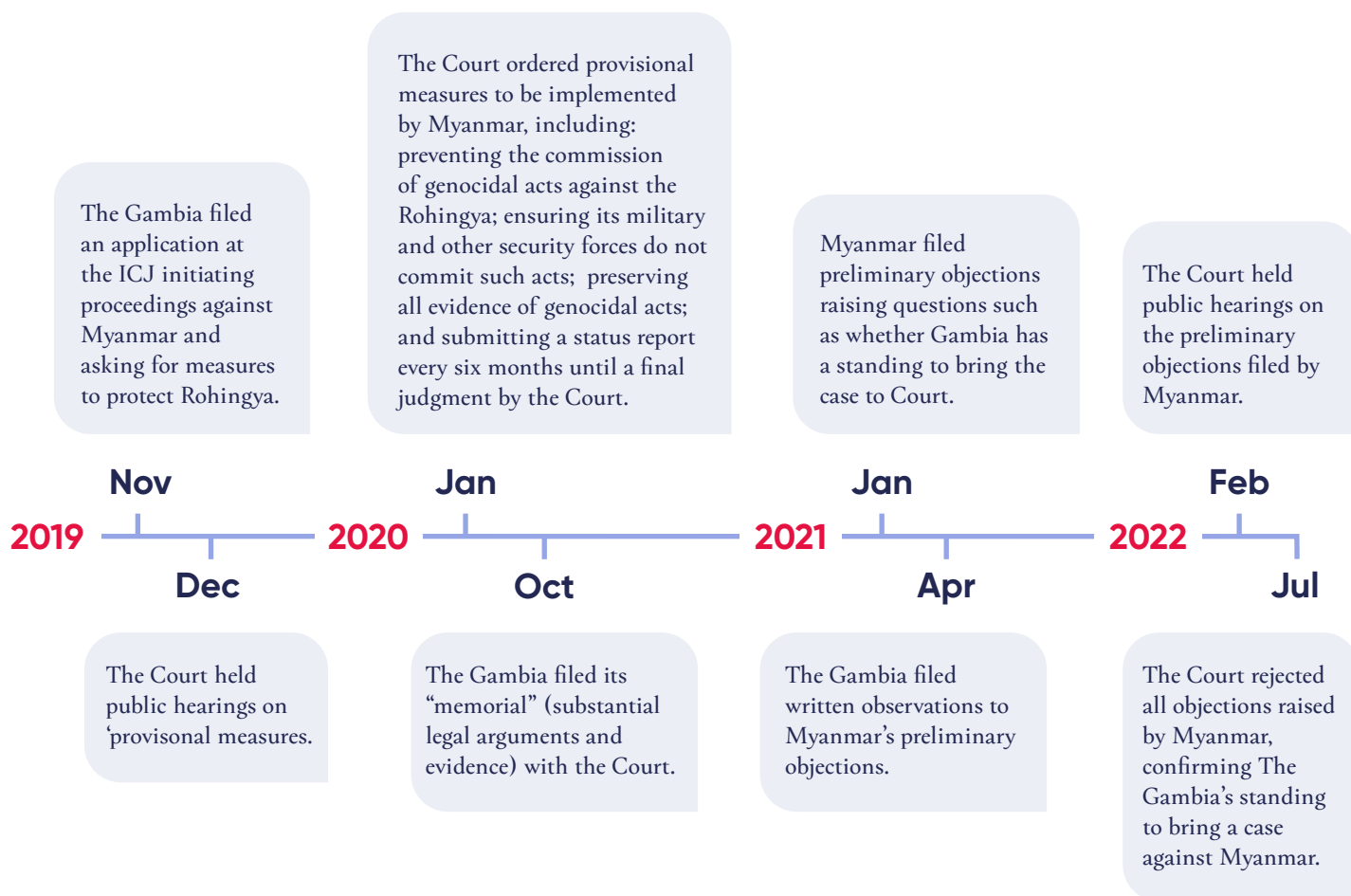
Why did The Gambia bring a case against Myanmar?

The Gambia, the smallest country in the African subcontinent, took an unprecedented step in bringing the case against Myanmar in 2019. The Gambia's application marked the first time that a State with no direct connection to the alleged crimes invoked the ICJ's jurisdiction to seek redress for genocidal acts suffered by the people of another State.

The Gambia obtained support from 27 Organization of Islamic Cooperation (OIC) countries in instituting the proceedings before the ICJ. Each State Party to the Genocide Convention has a common interest in asserting compliance with the obligation to prevent and punish the crime of genocide. The fact that Bangladesh has faced the largest influx of Rohingya refugees does not preclude other States like The Gambia from bringing a case before the ICJ to hold Myanmar to account. Bangladesh has publicly supported the case brought against Myanmar. The Maldives, the United Kingdom, The Netherlands, Canada, and Germany have also stated their commitment to formally intervene to support justice for the Rohingya in this case.



What has been the ICJ process to date in the context of the Rohingya?



What happens next?

As the Court has now rejected Myanmar's objections, this case will now move forward to the merits stage. Myanmar has a deadline of **August 2023** to submit its response to The Gambia's October 2020 submission arguing Myanmar has breached its obligations under the Genocide Convention. After August 2023, the Court may request further information from parties if required, and thereafter, oral hearings on the merits of the case will take place.

Spotlight

Has the ICJ dealt with any Genocide Convention violation case in the past?

Bosnia and Herzegovina v. Serbia and Montenegro

On 20 March 1993, the Republic of Bosnia and Herzegovina instituted proceedings before the ICJ against the Federal Republic of Yugoslavia in respect of a dispute concerning alleged violations of the Genocide Convention. Specifically, Bosnia and Herzegovina alleged that Serbia contravened the Convention by committing genocide against Bosnia's Muslim population.⁴⁹

Bosnia and Herzegovina v. Serbia and Montenegro is a landmark case, with the ICJ ruling for the first time on genocide and finding that the 1995 massacre of about 8,000 Bosnian Muslims in Srebrenica was genocide, as it considered the question of Serbia's state responsibility. The ICJ also ruled that a State, and not only individuals, can be found responsible for genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, or complicity in genocide.⁵⁰

Yet, the case also demonstrates the lengthy process that comes with bringing a case of genocide before the ICJ, as the Court only reached a decision nearly 15 years later, in 2007, and the need for ongoing support and communication with victims. It is noteworthy that despite the legal recognition of the 'genocide' of the Bosnian Muslims, the ICJ did not accord any monetary compensation to Bosnia and Herzegovina based on lack of a causal nexus between the failure by Serbia to comply with its obligation to prevent genocide and the death of 7000 men in Srebrenica.

What are the possible outcomes if an ICJ decision is made against Myanmar?

The Gambia has asked the ICJ to declare that Myanmar must: (1) cease ongoing genocidal acts and fully respect its obligations under the Genocide Convention; (2) ensure that those responsible for genocide are held to account before a competent tribunal; and (3) provide reparations to Rohingya victims of genocidal acts, including "allowing the safe and dignified return" of those who have been forcibly displaced and "respect for their full citizenship and human rights and protection against discrimination, persecution and other related acts." The Gambia has also asked that Myanmar offer assurances and guarantees that it won't repeat its violations of the Genocide Convention.⁴⁸

All UN Member States are bound by ICJ decisions and in case of non-compliance, the UN Security Council can take appropriate measures.

Can foreign domestic courts examine the situation of the Rohingya?

Yes. It is possible for foreign domestic courts to provide an avenue for justice to the Rohingya based on universal jurisdiction/extraterritorial jurisdiction principles that have developed under international law.

UNIVERSAL JURISDICTION

What is Universal Jurisdiction (UJ)?

UJ refers to the principle that a domestic court may, in some circumstances, prosecute individuals for serious crimes under international law – such as genocide, crimes against humanity, war crimes, or torture – irrespective of where the crimes were committed or the nationality of the victim or perpetrator.

The underlying rationale for UJ is that some crimes are so serious in nature that they harm the international community or international order itself, which individual States have a responsibility to protect no matter where they happened, who committed them or who suffered.

Do States have a legal obligation to utilize UJ to hold perpetrators of serious international crimes accountable?

No, States have no legal obligation unless they have adopted an enabling legislation that incorporates international crimes, and the obligations to prosecute these crimes, into domestic law. As such, the term ‘universal jurisdiction’ denotes the right—although not an obligation—to prosecute these international crimes.⁵¹

Is it necessary for the accused to be present in the State for a UJ case to be initiated?

While few domestic laws like those of Germany permit UJ to be utilized to initiate criminal proceedings/prosecution even if the perpetrators or the victims are not present in the territory, this is rarely invoked.

It is common for UJ cases to be initiated when the accused is present on the territory of the prosecuting State. For instance, in June 2021, the Swiss courts found former Liberian warlord Alieu Kosiah guilty of war crimes, including ordering the murder, torture, and rape of civilians during the first Liberian civil war, in a successful universal jurisdiction trial.⁵² Kosiah had been living in Switzerland since 1999 at the time of his arrest in 2014.⁵³

Which State has utilized UJ to bring perpetrators of international crimes against the Rohingya to justice?

Argentina

Argentina is the first country where the courts have opened an investigation into the Rohingya genocide in Myanmar under the principle of UJ.

In November 2019, a petition was filed by the Burmese Rohingya Organisation UK (BROUK) requesting for the Argentinian courts to open an investigation into the role of Myanmar's civilian and military leaders in committing genocide and crimes against humanity against the Rohingya. Investigations are currently ongoing, and Rohingya victims of the crimes are expected to assist with the investigations by providing testimony to the Argentinian criminal courts.⁵⁴

Is there any State within the ASEAN region where a UJ case can be initiated to bring perpetrators of international crimes against the Rohingya to justice?

Indonesia

In September 2022, a petition was filed with Indonesia's Constitutional Court for a review of a domestic human rights law. Should the petition be accepted, and the domestic law amended to allow a case to be brought against non-citizens, Indonesia could potentially be the first Association of Southeast Asian Nations (ASEAN) country to adopt the principle of universal jurisdiction that would allow human rights violations in Myanmar to be investigated.⁵⁵

"My grandparents were forced to flee Myanmar in the 1990s, and I was born a refugee in the camps in Bangladesh. We were repatriated in the 2000s. In 2017, I became a refugee again and fled to the same refugee camp. How many times will this go on?"

Rohingya male survivor, 35 years old

"Influential people help reach our voices to ICC and ICJ. There are educated people among us too. If we had the opportunity, if we could afford the travel cost, our own people could participate in the court and present our demands in person."

Rohingya female survivor, 17 years old

EXTRATERRITORIAL JURISDICTION

What is Extraterritorial Jurisdiction? (EJ)

Distinct from UJ, EJ is utilized by national courts when there is a link between the prosecuting State and the crime, despite the crime taking place outside its territory. For instance, EJ may be exercised where a perpetrator is a national of the prosecuting State, but he/she has committed the crime abroad, or when activities of a prosecuting State's corporate entity has violated international law in conducting its economic activities overseas.

Spotlight

How are other communities who faced genocide seeking justice?

In the past, societies affected by genocide and crimes against humanity have pursued a range of international justice avenues to provide justice, truth, and redress for victims, and to hold perpetrators accountable. These avenues include international criminal tribunals that are set up by the UN Security Council, UJ/EJ cases in foreign national courts, or domestic/hybrid court proceedings in the victims' home country in post-conflict situations to address legacies of extreme violence and hatred.

Bosnia

Affected Community and timeline of events:

Massacre of Bosnian Muslims in Srebrenica in 1995 as well as the ethnic cleansing of Bosnian Muslims during the Bosnian War from 1992-95. The events in Srebrenica resulted in the killing of more than 8,000 Bosnian Muslim men and boys.

Perpetrators:

Army of Republika Srpska/ Bosnian Serb Army.

Justice and accountability mechanism:

International:

- The International Criminal Tribunal for the former Yugoslavia (ICTY) decided in 2001 that the Srebrenica massacre was genocide. The ICTY was dissolved in 2017 but its residual functions were transferred to the International Residual Mechanism for Criminal Tribunals (IRMCT).
- The ICTY and IRMCT have indicted a total of 161 persons and delivered five convictions of genocide between 2001 and 2021 in the context of the Srebrenica massacres.⁵⁹
- The Bosnia Genocide Case was filed before the International Court of Justice (ICJ) in 1993. In 2007 the ICJ issued its decision and concurred with the ICTY's finding of the Srebrenica massacre as genocide. However, the Court found, although not unanimously, that Serbia was neither directly responsible for the Srebrenica genocide nor complicit in it, but it did rule that Serbia had committed a breach of the Genocide Convention by failing to prevent the genocide from occurring and for not cooperating with the ICTY in punishing the perpetrators of the genocide.⁶⁰
- During the late 1990s, German courts handed down custodial sentences to several individuals who were found guilty by German courts for participating in genocide in Bosnia. A prominent conviction was of Nikola Jorgic by a German court.⁶¹ In the late 1990s, his appeal to the European Court of Human Rights was dismissed in 2007 after his conviction was upheld.
- Some cases have also been tried and transferred to National courts in Bosnia and Herzegovina.⁶²

Affected Community and timeline of events:

Systematic killing of ethnic Darfuri people from 2003 in the conflict (ongoing) in Western Sudan. The United Nations estimated that up to 2013 more than 300,000 people had been killed in the genocide.

Perpetrators:

Khartoum government forces and rebel militia groups.

Justice and accountability mechanism:

International:

- There is an ongoing investigation at the International Criminal Court (ICC). Although Sudan is not a party to the Rome Statute, the situation in Darfur was referred to the ICC by the UN Security Council in 2005.
- 7 warrants of arrest have been issued by the ICC, including for former President Al Bashir Omar, who is currently imprisoned in Sudan.
- There is currently 1 trial ongoing at the ICC against an Arab Janjaweed militia leader for war crimes and crimes against humanity (not genocide). This began in 2022.⁶³

Domestic:

- There are plans to create a Special Court for Darfur to try suspects of war crimes and crimes against humanity.⁶⁴

Darfur

Affected Community and timeline of events:

Systematic persecution and killing of Cambodians, including minority ethnic Cham and Vietnamese in Cambodia. It resulted in the deaths of 1.5 to 2 million people, nearly a quarter of Cambodia's population.

Perpetrators:

Khmer Rouge (ruling party between 1975-79).

Justice and accountability mechanism:

Hybrid:

- The Extraordinary Chambers in the Courts of Cambodia (ECCC) was created by the Cambodian government in partnership with the United Nations.
- The Court's findings have been accompanied by reparation projects, implemented by civil society groups and designed to specifically recognise the experiences of the Cham and Vietnamese minorities. These have included a 'community media project' which explored the Cham people's experiences under the regime through film and multimedia, a 'voices from ethnic minorities' mobile exhibition which detailed the harms perpetrated against both groups, and a 'legal and civic education' project designed to support ethnic Vietnamese victims in understanding their legal rights.
- In 2022, the Court pronounced its final judgment.⁶⁵

Cambodia

Rwanda

Affected Community and timeline of events:

Planned campaign of mass extermination of Tutsi and moderate Hutu communities during the civil war in Rwanda in 1994 killing between 500,000 to 662,000 Tutsi.

Perpetrators:

Hutu-led government (led by Théoneste Bagosora) and other Hutu armed and militia groups, as well as civilian extremists.

Justice and accountability mechanism:

International:

- The International Criminal Tribunal for Rwanda (ICTR) was established by the UN Security Council in 1994 and convicted 61 individuals. It closed in 2016 and its residual functions were transferred to the International Residual Mechanism for Criminal Tribunals (IRMCT).⁵⁶
- The ICTR's 1998 conviction of Jean-Paul Akayesu – the Hutu mayor of the town Taba – was the first conviction of genocide by an international ad hoc tribunal.⁵⁷

Domestic:

- Genocide trials were held in domestic courts from 1996.
- A new law in 2001 established the Gacaca Courts, which closed in 2012. The use of Gacaca Courts (traditional communal courts) in Rwanda is said to have promoted and fostered reconciliation by allowing participation of affected communities through truth-telling, encouraging offenders to confess, to express public apology, and to offer reparations, aiding the rebuilding of the relationship between the perpetrators and survivors.⁵⁸

What is the Independent Investigative Mechanism for Myanmar (IIMM)?

The Independent Investigative Mechanism for Myanmar (IIMM) is a UN entity. It was established by the UN Human Rights Council in September 2018 and is based in Geneva (Switzerland).

The IIMM's mandate is to collect, preserve, and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011.

The IIMM is also mandated to prepare case files and share them with national, regional or international courts in order to initiate or facilitate fair and independent criminal proceedings against individuals who have allegedly committed serious international crimes and violations of international law in Myanmar. It can also cooperate with non-criminal proceedings.⁶⁶

What is the goal of the IIMM?

The IIMM's goal is to facilitate justice and accountability by collecting, preserving and analysing evidence for use in future prosecutions of those responsible, whether that be in a national or an international court.

Gathering and recording information while it is still “fresh” – i.e., as soon as possible after the event – increases its evidential value in proceedings that may occur many years after the event.

The purpose underlying the IIMM's work is to ensure that evidence and testimonies from survivors and witnesses can be collected before it is forgotten, lost or destroyed. Their goal is to ensure that stories that can provide evidence for the serious crimes committed in Myanmar are not forgotten and can be used to help bring perpetrators to justice.⁶⁷

How is the IIMM different from other entities working on Myanmar?

Several UN entities, including the UN Special Rapporteur on the situation of human rights in Myanmar and the UN Office of the High Commissioner for Human Rights (OHCHR), examine human rights violations in Myanmar more broadly. These entities prepare reports for States and, often, for the public at large. By contrast, the Mechanism's function is to prepare confidential case files for use in criminal proceedings.

The IIMM is not a court or a tribunal that can hold trials. It is also not a prosecutor's office. But it has been established to work closely with international, regional, or national courts that are currently hearing or may in the future hear criminal proceedings against perpetrators of serious international crimes committed in Myanmar. It is already sharing evidence with the Prosecutor of the International Criminal Court and the parties to The Gambia vs. Myanmar case before the International Court of Justice.⁶⁸

What information is the IIMM collecting?

The IIMM continues to investigate and analyse crimes against Rohingya, particularly in relation to the clearance operations of 2016 and 2017 in Rakhine state, as well as crimes against all people in Myanmar, including since the February 2021 military coup.

With the easing of COVID-19 restrictions, the IIMM team have redoubled efforts to gather testimonial evidence and carry out in-person interviews in Bangladesh and other countries.

To date, the IIMM has collected information and evidence from 200 sources, processed 20 million information items, and prepared 71 evidentiary and analytical packages to be shared with investigative and judicial authorities.⁶⁹ In August 2022, the IIMM reported that crimes against humanity in Myanmar were escalating, with women and children severely impacted.⁷⁰

"Among my 41 family members, 16 people were killed, and I need justice for that. The necessary actions should be taken against the criminals according to law. They should be punished for the oppression they subjected us to. If they need to be hanged to death, they should be hanged to death."

Rohingya male survivor, 47 years old

"They killed my husband in Rakhine. I am ready to go anywhere to get justice for him. I am a young girl. The Military damaged my eyes. Now I am disable and a widow. I don't deserve this. They should compensate me for my entire life. They should feed me for life."

Rohingya female survivor, 22 years old

"It would be justice if Myanmar government agrees to accept us with equal rights and citizenship status. It wouldn't be good if we don't have freedom of movement there after being repatriated. Our future wouldn't be better if we are repatriated there in a way that we would need to live with fear and concerns."

Rohingya female survivor, 18 years old

"If I had a fight with someone who attacked me with a knife, and I got an injury. If I say I would retaliate by cutting his hand or leg, it would be revenge. It would be justice if he is forced to compensate what he did to me or support me with my daily necessities."

Rohingya male survivor, 47 years old

"If 135 other ethnic groups can live in Myanmar harmoniously, why can't we, Rohingyas, also be given equal rights to citizenship and considered as Burmese?"




Rohingya male survivor, 41 years old

"After repatriation, we must be under the umbrella of international security bodies for as long as we are not safe. If we return there without security and safety, we might be annihilated soon after we go back."

Rohingya female survivor, 33 years old

Summary table

INTERNATIONAL JUSTICE MECHANISMS

Mechanism	Key features	Scope of examination in the Rohingya Context	Current status	More info
 <p>International Criminal Court (ICC)</p>	<ul style="list-style-type: none"> • Independent permanent criminal court • Can only act on a matter within its jurisdiction when a national court is unable or unwilling to carry out a prosecution itself • Mandated to prosecute the most responsible individuals, mainly high-ranking officials • Jurisdiction on crime of genocide, crimes against humanity, and war crimes • Victims have a right to participate in proceedings • The ICC relies on the cooperation of States: <ul style="list-style-type: none"> - Prosecutor can only conduct an investigation where the relevant State allows it onto their territory - Reliant on States to implement the arrest warrants that it issues 	<p>Crimes related to the deportation of Rohingya from Rakhine state in Myanmar (which is not party to the Rome Statute of the ICC) across the border into Bangladesh (which has ratified the Rome Statute.)</p> <p>Timeline: On or after 1 June 2010, encompassing the 2016 and 2017 waves of violence in the Rakhine state.</p>	<p>An investigation by the Office of the Prosecutor of the International Criminal Court OTP is currently in progress in Cox's Bazar.</p> <p>In February 2022, the ICC Prosecutor, Karim Khan, visited Cox's Bazar and highlighted that the investigations should now enter a phase of 'accelerated action'.</p>	<p>www.icc-cpi.int/bangladesh-myanmar</p> <p>www.icc-cpi.int/about/how-the-court-works</p>
 <p>International Court of Justice (ICJ)</p>	<ul style="list-style-type: none"> • UN permanent court • Inter-state dispute mechanism so it cannot prosecute individuals • Has jurisdiction over disputes in relation to treaties that States have signed and ratified • Does not have a prosecutor able to initiate proceedings; only States can institute proceedings • Victims cannot directly participate • An ICJ order or judgment is binding on the States party to the case and cannot be appealed; it can only be enforced by adoption of a UN Security Council resolution 	<p>Breach of 'Genocide Convention' that includes Myanmar's duty to prevent and punish the and prevent crime of genocide.</p> <p>Timeline: The Gambia's case against Myanmar focuses on clearance operations during 2016 and 2017.</p>	<p>The ICJ has rejected all objections that were raised by Myanmar and decided to hear the case on the merits, i.e., substantive arguments.</p> <p>In August 2023, Myanmar will submit its counter-memorial in response to the memorial submitted by The Gambia in 2020 which argued that Myanmar has breached the Genocide Convention.</p>	<p>www.icj-cij.org/en/case/178</p> <p>www.icj-cij.org/en/how-the-court-works</p>
 <p>Independent Investigative Mechanism for Myanmar (IIMM)</p>	<ul style="list-style-type: none"> • UN mechanism, not a court or a tribunal • Acts as "justice enabler" by collecting, sharing, and preserving evidence of international crimes in Myanmar to be used in current and future national and international proceedings • Using the evidence it gathers, prepares case files which could be used by national, regional or international courts to bring those responsible for serious crimes in Myanmar to account • Closely cooperates with the Prosecutor of the ICC and shares materials relevant to the ICJ case with both The Gambia and Myanmar 	<p>The IIMM is collecting and analysing evidence about crimes against the Rohingya during 2016 and 2017 clearance operations.</p> <p>The IIMM is also actively collecting evidence into what is currently happening inside Myanmar especially since the 2021 coup.</p>	<p>With the easing of COVID-19 restrictions, the IIMM has redoubled efforts to gather testimonial evidence and carry out in-person interviews with Rohingya in Bangladesh to prepare signed witness statements that can be used by courts or tribunals.</p>	<p>https://iimm.un.org/</p> <p>https://www.facebook.com/MyanmarMechanism</p> <p>To share confidential information:</p> <p>Signal: +41 76 691 12 08</p> <p>or send encrypted email from Protonmail to contact@myanmar-mechanism.org</p>
<p>Universal Jurisdiction (UJ) Principle</p>	<ul style="list-style-type: none"> • Allows a State to try crimes against humanity, war crimes, torture and genocide committed outside its territory • Often used by victims or diaspora communities located on the territory of States • Requires States to adopt appropriate legislation • Cases are resource-intensive and involve complex investigation • Cases require careful consideration and resources for safeguarding the demands of survivors, witnesses, and their families 	<p>The Burmese Rohingya Organisation UK (BROUK) petitioned the Argentinian courts to investigate the role of Myanmar's political and military leaders in genocide and crimes against humanity against the Rohingya.</p> <p>It is possible that additional cases will be filed in other countries under the principle of universal jurisdiction in an effort to bring the perpetrators of crimes against the Rohingya to account.</p>	<p>In Argentina, an investigation is underway. It could take a long time (potentially years) for the investigation to be completed.</p>	<p>https://trialinternational.org/wp-content/uploads/2022/03/TRIAL_International_UJAR-2022.pdf</p>

How can you support the Rohingya and their quest for international justice?

As a service provider or humanitarian actor, you can help the Rohingya in getting the information and support they need to access international justice.

You can:

- help provide information about legal avenues for international justice that are available to them and help dispel any rumours/misconceptions.
- direct them towards legal organisations like LAW to get advice and discuss the options available to them for contributing to or participating in the ongoing international justice mechanisms.
- get in touch with LAW to find out more about contributing to existing proceedings or help us increase legal avenues for international justice for the Rohingya.
- support existing community-led initiatives, such as the “Shanti Mohila” and the “Survivor Advocates” Network to effectively engage with survivors and attend to their needs arising from the continuing impact of the experiences in Myanmar.
- account for trauma as a factor of vulnerability in providing services.
- provide adapted, safe, and appropriate services for male, female, and hijra survivors of sexual violence, ensuring that they are able to speak freely about past SGBV experiences in Myanmar and disclose their continuing needs.
- speak out about the need for international justice for the Rohingya and share evidence of your programmes or services in national, regional and global fora.
- inform people about the work of the IIMM and share information about its mandate and how to contact them with information.
- support local, national, regional and global campaigns for international justice for the Rohingya survivors and victims. For example, you can attend events and partner with human rights organisations to speak on the issue.

Please do:

share messages and ask for international justice and accountability for the Rohingya on key international days/ moments including:

International Women's Day
(8 March)

World Refugee Day
(20 June)

International Day in Support of Victim of Torture
(26 June)

World Day for International Justice
(17 July)

Rohingya Genocide Remembrance Day
(25 August)

World Children's Day
(20 November)

16 Days of Activism against Gender-Based Violence
(25 November – 10 December)

Genocide Prevention Day
(9 December)

Human Rights Day
(10 December)

Key messages:

We encourage you to share suggested messages to raise awareness of the situation of the Rohingya and their quest for justice.

Below are examples of messages that can be tailored by using relevant statistics and data:

Why international justice for the Rohingya matters

- Perpetrators of all international crimes against Rohingya should be held accountable. Justice for victims can contribute to an inclusive & sustainable future in Myanmar.
- No justice means no freedom for Rohingya adults and children inside and outside Myanmar.
- There is no healing for Rohingya survivors without justice.
- Justice is key for the safe, dignified, and voluntary return of Rohingya to Myanmar. Returning home is not an option while perpetrators are still in power.

What will it take to secure justice for the Rohingya?

- Resources and political commitments must drive concrete action for Rohingya.
- All avenues must be pursued to ensure justice for Rohingya victims and survivors.
- Rohingya survivors' voices must be heard loud and clear. Justice must be centred around them.

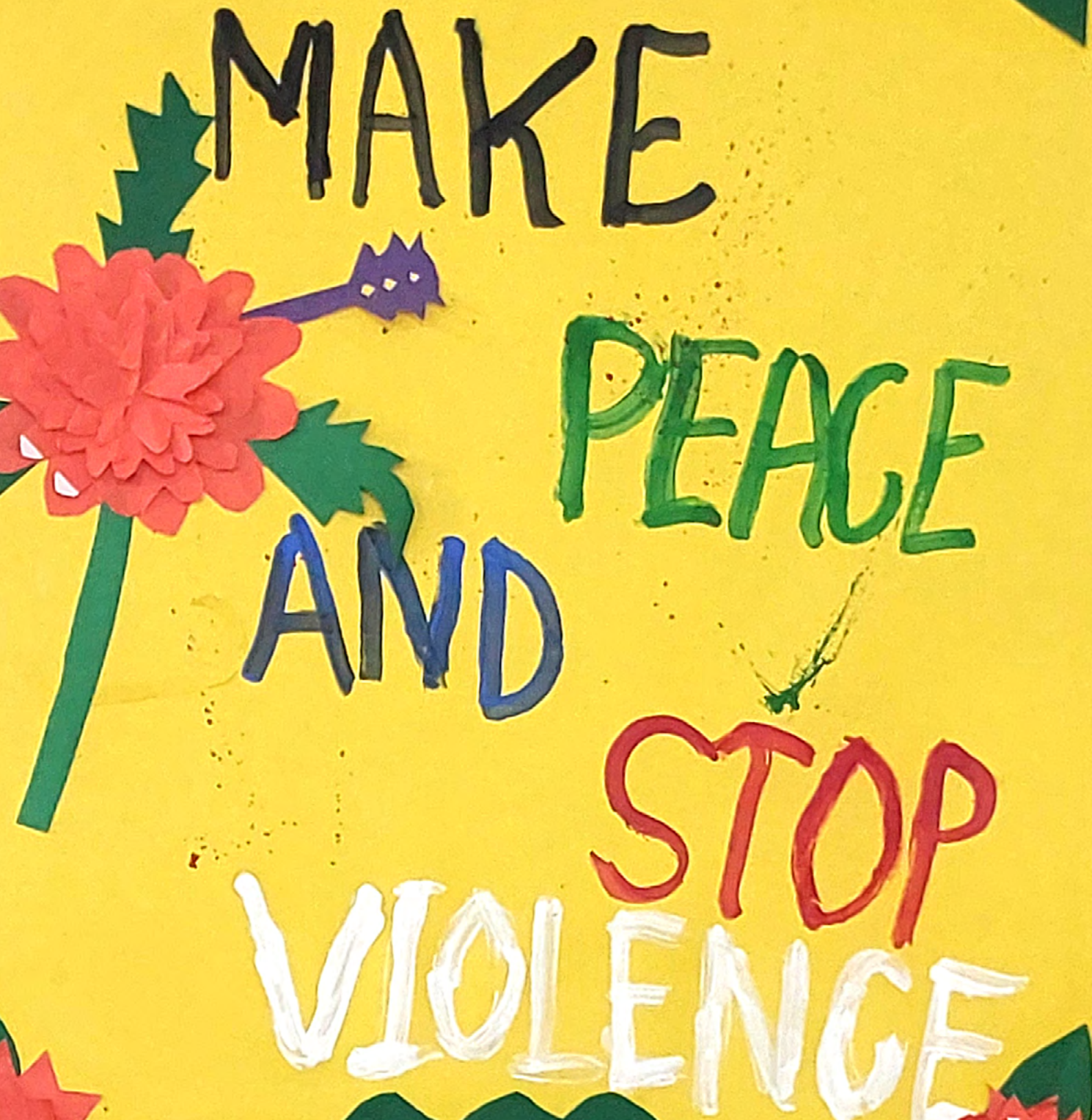
References:

If using the digital version of this guide, please click on the blue reference number to return to the page.

- 1 Fortify Rights, Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar (February 2014), <https://www.fortifyrights.org/mya-inv-rep-2014-02-25/>.
- 2 U.N. Human Rights Council, Report of the independent international fact-finding mission on Myanmar, A/HRC/39/64, 12 September 2018, paras. 25, 73, https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf [hereinafter “2018 Brief FFM Report”].
- 3 António Guterres, Opening remarks at press encounter with President of the World Bank, Jim Yong Kim, 2 July 2018, <https://www.un.org/sg/en/content/sg/speeches/2018-07-02/remarks-press-encounter-world-bank-president-jim-kim>.
- 4 In 1978, General Ne Win’s military junta launched the infamous military operation ‘Nagamin’ (Operation Dragon King) to purge Burma’s Rakhine state of foreigners. Nagamin resulted in 200,000 Rohingya fleeing into neighbouring Bangladesh with reports of widespread army brutality, rape, and murder. It is noteworthy that within three years of the mass return of the Rohingya to Myanmar who had fled in 1978, the 1982 Citizenship Law was promulgated; see U.N. Commission on Human Rights, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, E/CN.4/1993/3, 1993, paras. 132, 236, <https://digitallibrary.un.org/record/159740?ln=en#record-files-collapse-header>; Human Rights Watch, Burma/Bangladesh: Burmese Refugees in Bangladesh – Historical Background, <https://www.hrw.org/reports/2000/burma/burm005-01.htm>.
- 5 U.N. Commission on Human Rights, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, E/CN.4/1993/37, 1993, paras. 31, 76, 132, 235-36, <https://digitallibrary.un.org/record/159740?ln=en#record-files-collapse-header>.
- 6 IRIN, Myanmar’s Rohingya Crisis (16 November 2012), <https://www.refworld.org/docid/50bf11d32.html>.
- 7 U.N. Human Rights Council, Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, A/HRC/39/CRP.2, 17 September 2018, paras. 749-53, https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.pdf [hereinafter “Detailed FFM Report”].
- 8 UNHCR News, Young people in Myanmar’s Rakhine State tackle ethnic divisions (23 March 2022), <https://www.unhcr.org/news/stories/2022/3/623992014/young-people-myanmars-rakhine-state-tackle-ethnic-divisions.html>.
- 9 U.N. Human Rights Council, Report of the Independent Investigative Mechanism for Myanmar, A/HRC/51/4, 12 July 2022, para. 21, <https://iimm.un.org/wp-content/uploads/2022/08/A-HRC-51-4-E.pdf>.
- 10 Al-Jazeera, Myanmar’s military coup prolongs misery for Rohingya in Rakhine (6 January 2022), <https://www.aljazeera.com/news/2022/1/6/rohingya-myanmar-restrictions-on-freedom-of-movement>.
- 11 Detailed FFM Report, supra note 7, at paras. 749-53.
- 12 U.N.S.C. Meetings Coverage, Head of Human Rights Fact-Finding Mission on Myanmar Urges Security Council to Ensure Accountability for Serious Violations against Rohingya, SC/13552 (24 October 2018), <https://press.un.org/en/2018/sc13552.doc.htm>; see also Detailed FFM Report, supra note 7, at paras. 1008, 1275, 1395, 1482.
- 13 2018 Brief FFM Report, supra note 2, at para. 33; see also Detailed FFM Report, supra note 7, at paras. 751, 1174, 1366, 1404, 1489.
- 14 Detailed FFM Report, supra note 7, at paras. 752, 882, 884.
- 15 Detailed FFM Report, supra note 7, at paras. 890, 905.
- 16 Detailed FFM Report, supra note 7, at para. 893.
- 17 Human Rights Watch, Massacre by the River: Burmese Army Crimes against Humanity in Tula Toli (19 December 2017), <https://www.hrw.org/report/2017/12/19/massacre-river/burmese-army-crimes-against-humanity-tula-toli>.
- 18 Reuters, Massacre in Myanmar: A Reuters Special Report (8 February 2018), <https://www.reuters.com/investigates/special-report/myanmar-rakhine-events/>.
- 19 U.N. Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, A/HRC/42/CRP.4, 22 August 2019, para. 14, https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/sexualviolence/A_HRC_CRP_4.pdf [hereinafter “2019 FFM Report on SGBV”].
- 20 2019 FFM Report on SGBV, supra note 19, at paras. 14, 74.
- 21 2019 FFM Report on SGBV, supra note 19, at para. 75.
- 22 2018 Brief FFM Report, supra note 2, at para. 38.
- 23 2018 Brief FFM Report, supra note 2, at para. 42.
- 24 Detailed FFM Report, supra note 7, at paras. 883, 1493.
- 25 Fortify Rights, “They Tried to Kill Us All”: Atrocity Crimes against Rohingya Muslims in Rakhine State, Myanmar (15 November 2017), https://www.fortifyrights.org/downloads/THEY_TRIED_TO_KILL_US_ALL_Atrocity_Crimes_against_Rohingya_Muslims_Nov_2017.pdf.
- 26 Detailed FFM Report, supra note 7, at para. 958.
- 27 Detailed FFM Report, supra note 7, at paras. 669, 1105.
- 28 A. Riley, Y. Akther, M. Noor, R. Ali, C. Welton-Mitchell, “Systematic Human Rights Violations, Traumatic Events, Daily Stressors and Mental Health of Rohingya Refugees in Bangladesh,” *Conflict and Health*, Vol. 14, Art. No. 60, August 20, 2020, <https://doi.org/10.1186/s13031-020-00306-9>.
- 29 Between April and October 2021, LAW conducted a survey to better understand the experiences of Rohingya male and hijra survivors of SGBV living in refugee camps in Cox’s Bazar, Bangladesh, and their concerns in seeking essential medical, psychosocial, and legal services. 61 Rohingya individuals (42 men, 19 hijra) located across the camps in Cox’s Bazar were interviewed.
- 30 Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/ Republic of the Union of Myanmar, ICC-01/19, 14 November 2019, paras. 84-6, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_06955.PDF.
- 31 Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, Art. 6 [hereinafter “Rome Statute”]; Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277, Art. II.
- 32 2019 FFM Report on SGBV, supra note 19, at paras. 72, 95-9.
- 33 Rome Statute, supra note 31, at Art. 7(1).
- 34 Rome Statute, supra note 31, at Art. 7(2)(g).
- 35 Rome Statute, supra note 31, at Art. 7(1)(h).

References:

- 36 Rome Statute, *supra* note 31, at Art. 8.
- 37 2019 FFM Report on SGBV, *supra* note 19, at paras. 2, 68, 72, 95-9.
- 38 Detailed FFM Report, *supra* note 7, at para. 1521.
- 39 The Rome Statute is an international treaty that established the ICC. It was adopted at a diplomatic conference in Rome, Italy on 17 July 1998 and it entered into force on 1 July 2002.
- 40 Oxford Learner's Dictionaries, Prosecution, https://www.oxfordlearnersdictionaries.com/definition/american_english/prosecution.
- 41 The Pre-Trial Chamber is comprised of three judges. One of its functions is to grant or deny the OTP permission to initiate an investigation. It makes a preliminary determination as to whether the case falls within the jurisdiction of the Court without prejudice, however, to subsequent determinations in respect of jurisdiction and admissibility.
- 42 ICC Press Release, ICC Pre-Trial Chamber I rules that the Court may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh (6 September 2018), <https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-rules-court-may-exercise-jurisdiction-over-alleged-deportation>.
- 43 ICC Press Release, ICC judges authorise opening of an investigation into the situation in Bangladesh/Myanmar (14 November 2019), <https://www.icc-cpi.int/news/icc-judges-authorise-opening-investigation-situation-bangladesh/myanmar>.
- 44 NUG was formed by a group of elected policy makers ousted in the coup in Myanmar; see Al-Jazeera, Who represents Myanmar? UN faces credentials pressure at assembly (16 September 2022), <https://www.aljazeera.com/news/2022/9/16/who-represents-myanmar-un-faces-credentials-pressure-at-assembly>.
- 45 Twitter Post, National Unity Government Myanmar (20 August 2021), <https://twitter.com/NUGMyanmar/status/1428739347717648389>.
- 46 ICJ, Background on the ICJ, <https://www.icj-cij.org/en/court>.
- 47 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gambia v. Myanmar), Application Instituting Proceedings and Request Provisional Measures, 11 November 2019, <https://www.icj-cij.org/public/files/case-related/178/178-20191111-APP-01-00-EN.pdf> [hereinafter "Gambia v. Myanmar"].
- 48 Gambia v. Myanmar, *supra* note 47, at para. 112.
- 49 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Overview of the Case, <https://www.icj-cij.org/en/case/91>.
- 50 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Overview of the Case, <https://www.icj-cij.org/en/case/91>.
- 51 Asia Justice Coalition, Universal Criminal Jurisdiction Scoping Paper (March 2021), p. 3, https://www.asiajusticecoalition.org/_files/ugd/811bc6_4c6c67c3617145b1a98067342a29964b.pdf?index=true.
- 52 JusticeInfo.Net, Switzerland: Kosiah Convicted In First Universal Jurisdiction Trial (21 June 2021), <https://www.justiceinfo.net/en/78920-switzerland-kosiah-convicted-first-universal-jurisdiction-trial.html>.
- 53 Human Rights Watch, Q&A: Swiss Trial for Liberia Atrocities: Universal Jurisdiction Paves Path for Justice (12 February 2021), <https://www.hrw.org/news/2021/02/12/qa-swiss-trial-liberia-atrocities-universal-jurisdiction-paves-path-justice>.
- 54 BROUK, Historic Decision by Argentinian Courts to Take Up Genocide Case Against Myanmar (28 November 2021), <https://www.brouk.org.uk/historic-decision-by-argentinian-courts-to-take-up-genocide-case-against-myanmar/>.
- 55 Joint Press Release, Unprecedented Case Brought Against Myanmar Junta in Indonesia (6 September 2022), <https://the-world-is-watching.org/wp-content/uploads/2022/09/Press-Release-CC-Petition-V2-Fin.pdf>.
- 56 U.N. ICTR, Key Figures of Cases, <https://unictr.irmct.org/en/cases/key-figures-cases>.
- 57 Prosecutor v. Akayesu, Judgment, Case No. ICTR-96-4, 2 Sept. 1998, http://hrlibrary.umn.edu/instreet/ICTR/AKAYESU_ICTR-96-4/Judgment_ICTR-96-4-T.html; The ICC is yet to hold any trial for the crime of genocide. The ICC has issued two arrest warrants against Omar al-Bashir, a Sudanese former military officer and president of Sudan, for his role in a campaign of mass killing, rape, and pillage against civilians in Darfur. He is the first person to be charged by the ICC for the crime of genocide; however, the warrant against him has not yet been enforced and he still remains at-large.
- 58 Human Rights Watch, Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts (31 May 2011), <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts>.
- 59 U.N. ICTY, Key Figures of the Cases, <https://www.icty.org/sid/24>; Balkan Transitional Justice, Srebrenica Convictions: 700 Years of Jail Time, Five Life Sentences (8 July 2021), <https://balkaninsight.com/2021/07/08/srebrenica-convictions-700-years-of-jail-time-five-life-sentences/>.
- 60 Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, <https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>.
- 61 Press Release (Translated), Federal High Court of Germany makes basic ruling on genocide (30 April 1999), <http://www.preventgenocide.org/punish/GermanFederalCourt.htm>.
- 62 See e.g. U.N. ICTY Press Release, Court of Bosnia and Herzegovina renders first judgement in a case transferred by the Tribunal (14 November 2006), <https://www.icty.org/en/press/court-bosnia-and-herzegovina-renders-first-judgement-case-transferred-tribunal>.
- 63 ICC Situation in Darfur, Sudan, Background Information, <https://www.icc-cpi.int/darfur>.
- 64 Sudan Tribune, Sudan, armed groups agree to establish special court for Darfur Crimes (20 January 2020), <https://archive.ph/20200124212103/https://sudantribune.com/spip.php?article68873>; Dabanga, Breakthrough on Darfur in Sudan peace negotiations (21 January 2020), <https://web.archive.org/web/20200121185015/https://www.dabangasudan.org/en/all-news/article/breakthrough-on-darfur-in-sudan-peace-negotiations>.
- 65 U.N. News, Cambodia: UN-backed tribunal ends with conviction upheld for last living Khmer Rouge leader (22 September 2022), <https://news.un.org/en/story/2022/09/1127521>.
- 66 IIMM, Mandate and establishment, <https://iimm.un.org/mandate-and-establishment/>.
- 67 IIMM, Mandate and establishment, <https://iimm.un.org/mandate-and-establishment/>.
- 68 IIMM, Mandate and establishment, <https://iimm.un.org/mandate-and-establishment/>.
- 69 IIMM Bulletin, Message from the Head of the Mechanism (7 October 2022), <https://reliefweb.int/report/myanmar/independent-investigative-mechanism-myanmar-bulletin-issue-7-october-2022-enmy>.
- 70 IIMM Press Release, Evidence of crimes against humanity in Myanmar escalate, with women and children severely impacted, according to Myanmar Mechanism Annual Report (9 August 2022), <https://iimm.un.org/press-release-evidence-of-crimes-against-humanity-in-myanmar-escalate-with-women-and-children-severely-impacted-according-to-myanmar-mechanism-annual-report/>.



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