

By 9 votes to 6, the International Court of Justice (ICJ) has found Myanmar responsible for genocide against the Rohingya. It also ordered restitution and compensation by 10 votes to 5, with the amount and arrangements for reparation to be decided at a later date.[1]

The first of its kind judgment – since the establishment of the Court 80 years ago – also recognises that the harm did not end when people escaped the attacks. Families remain separated, survivors live with lasting injuries, and many still do not know what happened to relatives. It connects those lived experiences to legal obligations to account for the violence, repair the harm, and protect the Rohingya's future as a community.

Judgment, paras. 330-337, 602, 615-616, 625 and 646(1), (9)-(11)

[1] Six judges did not dispute that Myanmar's security forces committed grave atrocities against the Rohingya, including killings and sexual violence. They, however, disagreed with the majority's assessment of the evidence and its conclusion that an intent to destroy a substantial part of the Rohingya group was the only reasonable inference. They also raised concerns about the application of the standard of proof, the weight given to investigative reports, and the distinction between genocide and other serious international crimes. *See* their opinions at: https://www.icj-cij.org/case/178.

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FAQ

1. Did the Court find Myanmar responsible for committing genocide against the Rohingya?

Yes. The Court found that Myanmar committed genocide against the Rohingya in northern Rakhine State in connection with the 2017 "clearance operations." Its security forces and other State organs committed killings, serious bodily or mental harm, and measures intended to prevent births, with intent to destroy a substantial part of the group under Articles II(a), (b), and (d) of the Genocide Convention. A separate allegation of destructive conditions of life under Article II(c) was not established.

The findings extended far beyond deaths alone. The Court accepted evidence supporting an estimate of at least 10,000 killings, but also examined the injuries, sexual violence, and suffering of those who survived. The killing of approximately 10,000 people (1.2% of the Rohingya population at the time, which could be argued as comparatively low portion of the group) did not rule out genocidal intent. The Court found that the assessment must also consider people subjected to other prohibited acts.

Judgment, paras. 253, 372, 429-430, 468-469, 595 and 646(1).

2. What other violations of the Genocide Convention did the Court find?

Myanmar failed to prevent genocide by individuals acting alongside its security forces (9 votes to 6), failed to punish genocide and other prohibited acts (11 votes to 4), and failed to enact the necessary legislation (14 voted to 1). By 14 votes to 1, the Court rejected the separate claim that Myanmar directly and publicly incited private persons to commit genocide. This does not negate its findings on military hate speech or its duty to investigate and punish potential incitement by private actors.

Judgment, paras. 488, 501-506, 550, 554, 574 and 646(2)-(5).

3. Did Myanmar breach the provisional measures ordered in 2020?

Yes. By 11 votes to 4, the Court found a breach of the duty to preserve evidence, including through destruction of and construction on former Rohingya villages after the 2020 provisional measures order. It did not find breaches of the first two measures on the evidence presented. Myanmar complied with the reporting requirement. The declaration of the evidence preservation breach was considered sufficient relief. That no additional remedy was awarded for that breach is a loss for families trying to learn the facts of loved ones.In examining Myanmar's wider failure to investigate, the Court described the burning and disposal of bodies and the bulldozing and redevelopment of sites—acts that destroyed evidence needed to identify victims and perpetrators and reconstruct what happened.

Judgment, paras. 551-552, 633, 637, 641-645 and 646(12).

4. What did the Court say about genocidal intent and the "only reasonable inference" test?

Genocide requires the intent to destroy a protected group, in whole or in substantial part. Where that intent is inferred from circumstances, it must be the "only reasonable inference" from all the evidence taken together. Other aims can coexist with genocidal intent, and their existence does not automatically defeat the claim of genocide. Here, the Court found that Myanmar's claims or insinuations of counterinsurgency, displacement, and punishment did not provide alternative reasonable explanations sufficient to exclude genocidal intent. The Court, by a 9-6 majority, declared being fully convinced that the only reasonable inference was to destroy part of the Rohingya group, therefore establishing genocidal intent.

The targeting of children was especially significant. The Court reasoned that children are vital to a group's continued existence and that violence against them affects both its immediate survival and its future. It found the targeting of Rohingya children difficult to explain on any basis other than their membership of the group. Genocide does not require perpetrators to kill every member or take every available opportunity to destroy the group.

Judgment, paras. 374-380, 421-422, 434-443 and 450-468.

5. What did the Court say about sexual and gender-based violence?

Rape and other forms of sexual violence caused serious bodily and mental harm to Rohingya of all genders and ages. The Court also considered their lasting physical and psychological effects on reproduction, together with marriage and birth restrictions and other evidence, in finding measures intended to prevent births. Therefore, and for the first time, the Court found that systematic sexual violence was also evidence of genocidal intent. These findings recognise harm to survivors and to the group's capacity to survive across generations.

The Court found that gang- and mass rape were recurrent features of the "clearance operations," including in at least ten village tracts. It accepted evidence supporting an estimate of at least 1,834 people raped, while recognising that stigma makes the full scale difficult to establish. Women and girls, including pregnant women and children, were targeted, while the record also contained some evidence of sexual violence against men and boys.

Preventing births can involve physical and psychological harm. The Court examined lasting reproductive injuries, pain during intercourse, and sexual dysfunction, alongside trauma, social ostracism, and the breakdown of intimate relationships. It cited LAW's expert assessment of survivors' long-term physical and mental injuries and the effects on their ability and willingness to have children. These findings concern how violence affected people's lives and choices, not simply whether they became infertile.

The finding also concerned State restrictions on family life. In Maungdaw Township, Rohingya faced special permission requirements for marriage and limits on births. One witness recalled having to sign a commitment that she and her husband would have no more than two children. The Court also considered the denial of children's legal registration, which affected access to identity documents, education, travel, and basic services. It assessed these measures together with the sexual violence.

Legally, Article II(d) requires measures intended and objectively capable of preventing births, but it does not require proof of an actual reduction in the birth rate. The additional intent to destroy the group must also be established for genocide. Sexual violence can independently cause serious bodily or mental harm under Article II(b), and its legal significance, as well as survivors' need for care, do not depend on reproductive injury.

Judgment, paras. 254-260, 288, 325-337, 360-371, 418-420 and 615-616.

6. What did the Court say about Myanmar's security or counterterrorism justification?

It rejected it. The Court recognised a geographical and temporal connection between attacks by the Arakan Rohingya Salvation Army (ARSA) and the 2017 "clearance operations." But by a 9-6 majority, the Court found that executions, widespread sexual violence, attacks on children and fleeing civilians, and systematic village burning were inconsistent with genuine counterinsurgency as an alternative explanation. Critically, this finding establishes that military objectives do not exclude genocidal intent. The genocide finding concerned the period around the 2017 operations, and not every operation in 2016-2017 nor every subsequent attack.

Judgment, paras. 443, 451-453 and 595.

7. What evidence and standard of proof did the Court use?

The Court required "fully conclusive" evidence for genocide and other Article III acts, and a high level of certainty for failures to prevent and punish. The Gambia generally bore the burden of proof, and Myanmar had to establish facts supporting its own contentions. Myanmar's non-co-operation could affect the assessment without reversing that burden. The Court assessed survivor testimony, UN investigations, and other evidence independently. It found signed statements collected by Legal Action Worldwide (LAW) generally credible and reliable, while giving additional weight to the more detailed statements collected by the UN Independent Investigative Mechanism for Myanmar (IIMM).

Three Rohingya witnesses represented by LAW and called by The Gambia gave oral evidence about events in Min Gyi, Chut Pyin, and Maung Nu. The Court found their accounts credible and consistent with other evidence. LAW had collected their written statements or affidavits, which their oral testimony corroborated. The judgment also drew on LAW's medical and psychological assessment when examining lasting sexual and reproductive harm. Survivors' accounts therefore contributed both to establishing what happened and to understanding its continuing consequences.

Judgment, paras. 79-80, 88, 95-96, 112, 119-120, 128-131, 257 and 367-368.

8. Is the judgment final and binding? Can Myanmar appeal?

It is binding between The Gambia and Myanmar and cannot be appealed. Limited procedures exist for interpretation or revision on strict statutory grounds, but these are not ordinary appeals. A further reparations phase remains, but neither party may reopen findings already finally decided.

Judgment, para. 625; ICJ Statute, Arts. 59-61.

9. Did the Court order citizenship or other reparations?

It did not order citizenship for all Rohingya, but it did require protection from discrimination and persecution, including discrimination in access to citizenship and freedom of movement. By 10 votes to 5, it ordered safe, voluntary, and dignified return and family reunification; return or replacement of lost or damaged property; searches for disappeared people and dignified recovery and reburial of those killed; physical and psychological rehabilitation; and protection from discrimination and persecution. These measures address harm caused by Myanmar's wrongful acts.

The details are vital for displaced families, many of whom remain in refugee camps in Bangladesh after being deported there in 2017. Return means return to their place of residence in northern Rakhine State, alongside family reunification, and property must be returned or replaced in kind. The order covers searching for the disappeared and helping recover, identify and rebury those killed with dignity and in accordance with Rohingya traditions. The Court expressly linked physical and psychological rehabilitation to the serious harm caused by rape and other sexual violence.

Judgment, paras. 603-604, 615-617 and 646(9).

10. Will survivors receive compensation, and if so, when?

By 10 votes to 5, the Court ordered compensation for damage not made good by restitution but set no amount or payment date. Myanmar must report to the Court by 19 November 2028 on restitution measures adopted and, where full restitution is materially impossible, the amount and arrangements for compensation. The Court will then determine further procedure after hearing the parties. The decision reserving that process also passed 10 votes to 5. The two-year deadline is for the report, not completed payments.

Judgment, paras. 621-625 and 646(10)-(11).

11. What does the judgment mean concretely for the Rohingya community?

It recognises over nine years of the Rohingya's brave fight for justice. It formally establishes Myanmar's responsibility and its duty to provide remedies to the Rohingya as a group and as individuals. The Gambia may seek those remedies for their benefit, not compensation for itself. The judgment provides a binding basis for demands for return, rehabilitation, restored property, and compensation. It does not itself deliver services, make conditions safe or create an individual claims application process. The implementation and the further reparations phase remain essential.

The Court recognised the anguish of people who witnessed relatives' deaths, escaped violence, or still do not know where loved ones are. It also examined the burning of homes, the dangers of flight and prolonged life in refugee camps without the possibility of return. Displacement alone is not automatically an act of genocide, but these circumstances, assessed together, caused serious mental harm to a very significant number of Rohingya. This gives legal recognition to suffering that persists long after the attacks. In ordering Myanmar to facilitate the Rohingya's safe, voluntary, and dignified return, the Court is addressing one of the Rohingya community's key concerns and puts more pressure on Myanmar and other states to make this a reality.

Judgment, paras. 328-337, 589-590, 610, 615, and 621-625.

12. Does the judgment strengthen the right to return? Can refugees be forced to return?

It expressly requires Myanmar to allow and facilitate return to the places of residence of Rohingya displaced by its wrongful acts, whether within Myanmar or abroad. Return must be safe, voluntary, and dignified. The judgment cannot therefore be used to justify forced repatriation or treated as a finding that conditions are already safe. It places an obligation on Myanmar to enable return, not on refugees themselves to return.

The Court found that burning and razing Rohingya villages, followed by construction and the resettlement of non-Rohingya communities, communicated that those displaced had nothing to return to. The return order must be read alongside the duties concerning property, family reunification and protection from persecution and discrimination. Allowing people across a border is not, by itself, the full remedy the Court ordered.

Judgment, paras. 413-415, 615-617 and 646(9).

13. What must Myanmar do following the judgment?

Myanmar must enact legislation fully implementing the Convention (14 votes to 1); immediately and effectively investigate persons reasonably suspected of prohibited acts and, where warranted, prosecute and punish them (13 votes to 2); provide assurances and guarantees against repetition (9 votes to 6); deliver restitution and compensation; and submit its reparations report. The two-year reporting period does not suspend these duties. The Court did not find genocide to be on-going, but Myanmar's duties to prevent and punish genocide continue for acts in relation to the 2017 "clearance operations."

The guarantees against repetition address concrete concerns. The Court pointed to Myanmar's continuing denial of the harms, its failure to investigate and punish, the absence of remedies, and the structural exclusion of Rohingya. It identified possible additional safeguards such as legal and institutional reform, security-force training and effective civilian control, while leaving the choice of additional means to Myanmar.

Judgment, paras. 595-596, 602-604, 625 and 646(6)-(11).

14. Who will monitor compliance?

The Court retains a role through the reparations report and subsequent proceedings. The judgment does not create a new independent monitoring body. Crucially, the six-monthly reports required by the 2020 provisional measures order end with this judgment. The Gambia can pursue compliance as the applicant. UN bodies, other States and civil society can scrutinise implementation within their respective roles but are not appointed judicial enforcement authorities by this judgment.

Judgment, paras. 625, 643 and 646.

15. What happens if Myanmar ignores the Court?

Non-compliance does not cancel the obligations. Under Article 94(2) of the UN Charter, The Gambia may approach the Security Council, which may recommend or decide measures to give effect to the judgment. Action is not automatic and is subject to the Council's procedures, including the five permanent members' veto (Russia, China, United States, United Kingdom, and France). The ICJ has no police force, so practical implementation also depends on diplomatic and other lawful pressure.

Judgment, para. 646; UN Charter, Arts. 27 and 94.

16. What obligations do other States parties to the Genocide Convention have?

Their existing duties continue: prevent and punish genocide, enact effective legislation, and refrain from prohibited conduct, including complicity. Prevention requires using reasonably available means when a State knows or should know of a serious risk of genocide; the measures required depend on its capacity to influence events. A prior judgment is not needed to trigger that duty. This judgment does not impose an identical sanctions package or a universal duty on every State to prosecute every suspect. It does, however, provide a solid basis for states and NGOs to initiate legal action to enforce Myanmar and third state obligations – whether civil or criminal (for example, through universal jurisdiction prosecutions).

Judgment, paras. 478-479, 487, and 626; Genocide Convention, Arts. I and III-VI.

17. What responsibilities do the 11 intervening States now have?

They retain the same Convention duties as other States parties. Under Article 63(2) of the ICJ Statute, the Convention's interpretation in the judgment is also binding on States that intervened. Intervention does not make them parties to the dispute, guarantors of Myanmar's compliance or liable to pay its reparations. They can however support implementation through diplomacy, assistance to survivors, and lawful accountability measures, but the judgment does not assign them a separate enforcement mandate.

Judgment, paras. 32-42 and 646; ICJ Statute, Art. 63.

18. Must States reconsider diplomatic relations, arms transfers, trade, investment, or financial support?

States must assess whether their conduct meets existing prevention and non-complicity duties in light of the judgment and current risks. This may require restricting particular support in some instances. The judgment itself orders no blanket embargo, trade ban, or severance of diplomatic relations. Regardless, these are measures that should be considered to ensure compliance. For states party to the Arms Trade Treaty, Article 6(3) prohibits covered transfers where they know the arms would be used for genocide or other listed crimes, and Article 7 adds export-risk assessment duties. Applicable legal tests must guide each decision.

Judgment, paras. 478-479; Genocide Convention, Art. III(e); Arms Trade Treaty, Arts. 6-7.

19. Will individual perpetrators now be prosecuted? How does the ICJ differ from the ICC or national courts?

The fight for accountability, including criminal accountability, must continue to ensure holistic justice for the Rohingya. The ICJ decides State responsibility, and it does not convict individuals or issue arrest warrants. Only the International Criminal Court (ICC) or national courts have jurisdiction to investigate and prosecute individuals for international crimes. This decision confirmed Myanmar's legal obligation toinvestigate persons reasonably suspected of prohibited genocidal acts and, if warranted, prosecute and punish them. If Myanmar continues to be unable and unwilling to do so, the International Criminal Court (ICC) should its attempts to investigate and prosecute those Myanmar officials most responsible for persecuting and deporting the Rohingya to Bangladesh. National courts can also address individual criminal responsibility through universal or extraterritorial jurisdiction, subject to their own rules of evidence and procedure. LAW's status as a civil party in the Rohingya universal jurisdiction case in Argentina is an example of one such case that will be reinforced by the ICJ's ruling in that it also alleges the Myanmar military committed genocide. That said, the judgment neither automatically triggers prosecutions nor establishes any person's criminal guilt.

The Court found no systematic investigation of military crimes during the 2017 events, including the role of military commanders. It also cited the IIMM's conclusion that there had been no credible investigations of sexual and gender-based crimes. Myanmar's obligation therefore requires genuine scrutiny of those potentially responsible, including commanders, rather than reliance on the limited proceedings already conducted.

Judgment, paras. 295, 513-525, 548-554, 596 and 646(7); ICJ Statute, Art. 34(1).

20. What does the judgment mean for other genocide cases?

The judgment clarifies how genocidal intent can coexist with other alleged aims (including counter-insurgency or military objectives), how survivor and investigative evidence is assessed, and how a State may seek reparations for a protected group without being directly injured (9 votes to 6). These are important reference points for future cases, not automatic answers: each case requires its own jurisdictional basis and evidence. The judgment binds the parties in this case, with the specific interpretive effect for interveners explained above.

The judgment also explains why genocide cannot be understood only by counting deaths. Physical or biological destruction remains the legal framework, but serious mental harm and other listed acts can threaten a group's continued existence without killing its individual members. The Court did not create a separate offence of cultural destruction, but it explained how the Convention's existing acts protect the survival of the group as a group.

Crucially, for the first time, the Court held a State responsible for genocide involving widespread sexual violence, finding that such violence caused serious bodily and mental harm and contributed to measures intended to prevent births within the Rohingya group. This watershed moment for international law will undoubtedly be referred to in any future genocide case involving allegations of such violence.

Judgment, paras. 79-131, 289-293, 443, 589-590, 624 and 646(13); ICJ Statute, Arts. 59 and 63.



LAW
Legal Action Worldwide

Frequently asked questions: Understanding THE ICJ Judgement in The Gambia v. Myanmar

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Legal Action Worldwide (LAW) is an independent, non-profit organisation comprised of human rights lawyers and jurists working in fragile and conflict-affected areas in the Middle East, Africa, Europe, and Asia. LAW works to bring justice to individuals and communities that have experienced grave human rights violations and abuses, with a particular focus on gender equality and gender-based violence. Since 2018, LAW's Rohingya Crisis programme based in Cox's Bazar is working to advance survivor-centred international justice and accountability for the serious international crimes committed against the Rohingya in Myanmar

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Funded by the European Union

In partnership with Canada

This publication was funded by the European Union and Canada. Its contents are the sole responsibility of Legal Action Worldwide and do not necessarily reflect the views of the European Union and Canada