

The International Court of Justice

What is the International Court of Justice?

The International Court of Justice (ICJ) is the highest court of the United Nations. It was established in 1945.

It has two roles, to:

1. settle legal disputes between countries in accordance with international law; and
2. give advisory opinions on legal matters upon request.

Importantly, unlike the International Criminal Court, the ICJ is *not* a criminal court that investigates and prosecutes individuals.

What is The Gambia v Myanmar case about?

On 11 November 2019, The Gambia filed a case before the International Court of Justice (ICJ) saying it had a dispute with Myanmar. Specifically, the Gambia argued that Myanmar violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). Myanmar has been a party to the Genocide Convention since 1956.

The Gambia alleged that Myanmar has violated its various obligations under the Genocide Convention by:

- committing genocide;
- conspiracy to commit genocide;
- direct and public incitement to commit genocide;
- attempting to commit genocide;
- complicity in genocide;
- failing to prevent genocide;
- failing to punish genocide; and
- failing to enact the necessary legislation to give effect to the provisions of the Convention.

On 2 September 2020, Canada and the Netherlands expressed their joint intention to take part in the case, saying they considered it their "obligation to support these efforts which are of concern to all of humanity." They also said they would pay special attention to crimes related to sexual and gender-based violence, including rape.

This is what is known at the "merits" part of the case.

What is the "provisional measures" part of the case about?

At the same time The Gambia filed its case against Myanmar, it also requested the Court to put in place provisional measures "*in light of the nature of the rights at issue, as well as the ongoing, severe and irreparable harm being suffered by members of the Rohingya group.*"

Provisional measures are orders the Court can make aimed at preserving the rights of the Parties to a case pending the final decision of the court in order to avoid irreparable damage to the rights which are the subject of the dispute.

The hearing on provisional measures took place between 10 and 12 December 2019. The Gambia's legal team was led by Abubacarr Marie Tambaou and Myanmar's team was led by Aung San Suu Kyi.

After arguments on both sides, the Court granted the request for provisional measures on 23 January 2020 requested by The Gambia. The Court ordered Myanmar to submit periodic reports showing what it did to comply with the order. The full list of provisional measures is set out in the Annex to this document.

What is the "report" that Myanmar has to submit under the fourth provisional measure?

The Court ordered Myanmar to submit a report within four months setting out the steps it has taken to comply with the provisional measures order.

The first report was filed on 22 May 2020, however its contents have not been revealed to the public. The Gambia has the opportunity to reply to each report.

How long will the case take?

Taking into account past cases it is anticipated that the merits part of the case could take up to 4-5 years from when the case started in November 2019.

Does Myanmar have to follow what the Court orders?

Yes. Judgments of the ICJ are binding on the parties to the dispute. If they are not implemented, then the other party can raise the matter at the United Nations Security Council.

How does the case help the Rohingya?

It is significant that, through ordering provisional measures and requiring Myanmar to report on what it has done to implement them, the treatment of the Rohingya is now under the supervision of the Court in a public legal proceeding.

Hopefully Myanmar will take steps to comply with the provisional measures order which, if they do, should offer more protection to the Rohingya.

The proceeding should have a deterrent effect on potential perpetrators.

The merits part of the case will also require a hearing where the suffering of the Rohingya will be laid out in front of the judges. [Empowering?]

If The Gambia is successful in the merits part of the case, [recognition, assist with international pressure, frame in terms of remedies and reparations]...

The Court may also order Myanmar to undertake broad legal and other reforms in the country which will benefit the Rohingya.

Annex

Provisional Measures Order of 23 January 2020

THE COURT,
Indicates the following provisional measures:

(1) Unanimously,

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

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

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

(3) Unanimously,

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

(4) Unanimously,

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