

## Myanmar: implement “provisional measures” order of the International Court of Justice without delay

The International Commission of Jurists welcomes today’s Order of the International Court of Justice (Court) in the case of [The Gambia v Myanmar](#) indicating provisional measures to protect the rights of the persecuted Rohingya minority under the Genocide Convention and calls on Myanmar to implement the Order without delay.

“The Order is a significant step towards justice for the Rohingya as it imposes specific, legally-binding, obligations on Myanmar to take critical steps to protect their rights under the Genocide Convention,” said Sam Zarifi, Secretary General of the International Commission of Jurists, currently in Yangon, Myanmar. “It is now incumbent on the whole international community, including States, civil society and UN agencies, to urge and assist Myanmar to fulfil its obligations under the Order.”

In its Order, delivered orally, the Court found it had *prima facie* jurisdiction over the case and indicated a series of provisional measures, including that Myanmar must:

- take all measures within its power to prevent the commission of all acts within the scope of the definition of genocide set out in Article II of the Genocide Convention;
- ensure that its military as well as any irregular armed units which may be directed or supported by it, and any organizations or persons which may be subject to its control, direction or influence do not commit acts of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, or complicity in genocide;
- take effective measures to prevent the destruction and ensure the preservation of any evidence related to allegations of acts within the scope of Article II of the Genocide Convention; and
- submit a report to the Court on all measures taken to give effect to the Order within four months as from the date of the Order and thereafter every six months until a final decision on the case is rendered by the Court. Every report will be communicated to the Gambia which will then have the opportunity to submit to the Court its comments thereon.

[Provisional measures](#) are orders the Court has the power to 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, in this case the rights of the Rohingya.

A hearing on the merits of the case will be heard at a later date.

The role of the Court is to settle disputes submitted to it by States in accordance with international law - its role does not extend to determining the criminal responsibility of individuals for perpetrating serious human rights violations.

“As Myanmar is unwilling and unable to conduct investigations and, where appropriate, prosecutions of serious human rights violations domestically which meet international law and standards, the various processes underway around the world directed towards criminal accountability- including the investigation of the International Criminal Court - remain necessary and urgent,” added Zarifi.

In 2018, the International Commission of Jurists issued a [baseline study](#) of the obstacles to accountability for serious human rights violations in Myanmar identifying “systematic impunity” within the country as a result of the “lack of accountability of perpetrators of human rights violations; lack of access to effective remedies and reparation for victims; and ongoing challenges with the independence and accountability of justice actors.”

International processes underway around the world directed at criminal accountability for serious human rights violations in the Myanmar situation include:

- On 14 November 2019, the [International Criminal Court commenced an](#) investigation into those crimes which were partially committed inside the territory of Bangladesh, a State Party to the Rome Statute.
- In September 2018, the UN Human Rights Council established a [Independent Investigative Mechanism for Myanmar](#) (IIMM), which is mandated to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses committed in Myanmar since 2011.
- In November 2019, a Rohingya activist, Tun Khin, [filed a criminal complaint in](#) Argentina under its “[Universal Jurisdiction](#)” law.

## **Background**

On 11 November 2019, the Republic of The Gambia filed an “Application Instituting Proceedings and Request for Provisional Measures” at the International Court of Justice against the Republic of the Union of Myanmar for the latter’s alleged violations of its obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”).

The Gambia also requested the Court to indicate 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.”

Myanmar ratified the Genocide Convention in 1956.

Article II of the Genocide Convention defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

On 10-12 December 2019, the Court held hearings for the request for provisional measures.

The Gambia’s Application relied on the findings of the [UN Human Rights Council’s Independent International Fact-Finding Mission \(IFFM\)](#) on Myanmar, established in 2017.

It released a series of comprehensive reports, including in 2018, recommending further investigation for possible war crimes, crimes against humanity and genocide.

## **Contacts**

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