

# Myanmar Rohingya Genocide Case

July 26, 2022

**In news**– Recently, the International Court of Justice (ICJ) has rejected Myanmar's objections to a genocide case over its treatment of the Muslim Rohingya minority, paving the way for the case to be heard in full.

## What is Rohingya Genocide?

- Myanmar's military launched what it called a clearance campaign in Rakhine state in 2017 in the aftermath of an attack by a Rohingya insurgent group.
- **The Rohingya genocide is a series of ongoing persecutions and killings of the Muslim Rohingya people by the Burmese military.**
- **The genocide has consisted of two phases to date:** the first was a military crackdown that occurred from October 2016 to January 2017, and the second has been occurring since August 2017.
- More than 700,000 Rohingya fled into neighbouring Bangladesh and Myanmar security forces have been accused of mass rapes, killings and torching thousands of Rohingya homes.

## Its case at ICJ-

- Amid international outrage at the treatment of the Rohingya, Gambia filed the case with the world court in November 2019, alleging that Myanmar is breaching the genocide convention.
- The Gambia, a predominantly Muslim country, is backed by the 57-member Organisation for Islamic Cooperation (OIC).
- In 2019, lawyers representing Gambia at the ICJ outlined their allegations of genocide by showing judges maps,

satellite images and graphic photos of the military campaign.

- That led the court to order Myanmar to do all it can to prevent genocide against the Rohingya. The interim ruling was intended to protect the minority while the case is decided in The Hague, a process likely to take years
- The ICJ's ruling sets the stage for court hearings, airing evidence of atrocities against the Rohingya that human rights groups and a UN probe say amount to breaches of the 1948 Genocide Convention.
- The ruling of the ICJ is binding on Myanmar, and cannot be appealed. However, no means are available to the court to enforce it.
- **So far, only three cases of genocide worldwide have been recognised since World War II:** Cambodia (the late 1970s), Rwanda (1994), and Srebrenica, Bosnia (1995).

### **What is Genocide Convention-1948?**

- The **Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)** is an instrument of international law that codified for the first time the crime of genocide.
- **The Genocide Convention was the first human rights treaty adopted by the General Assembly of the United Nations on 9 December 1948** and signified the international community's commitment to 'never again' **after the atrocities committed during the Second World War.**
- According to the Convention, genocide is a crime that can take place both in time of war as well as in time of peace.
- The definition of the crime of genocide, as set out in the Convention, has been widely adopted at both national and international levels, including in the 1998 Rome Statute of the International Criminal Court (ICC).

- As per the convention, **to constitute genocide, there must be a proven intent** on the part of perpetrators to physically destroy a national, ethnical, racial or religious group.
- **Cultural destruction does not suffice, nor does an intention to simply disperse a group.**

International Court of Justice (ICJ)	International Criminal Court (ICC)
--------------------------------------	------------------------------------

- The ICJ, sometimes known as the **World Court**, is **one of the six principal organs of the United Nations**.
- **It settles disputes between states** in accordance with international law and gives advisory opinions on international legal issues.
- It is the **only international court that adjudicates general disputes between countries**, with its rulings and opinions serving as primary sources of international law.
- It **was established in 1945** and is located in the Hague, Netherlands.
- The ICJ is the **successor of the Permanent Court of International Justice (PCIJ)**, which was established in 1920 by the League of Nations.
- After the Second World War, both the League and the PCIJ were replaced by the United Nations and ICJ, respectively.
- **All member states of the UN are party to the ICJ Statute** and may initiate contentious cases; however, advisory proceedings may only be submitted by certain UN organs and agencies.
- **U.N. member states can bring claims of treaty violations against others to the ICJ** when those treaties stipulate that the court is the appropriate venue to settle the breaches
- The court **has 15 judges elected to nine-year terms by the U.N. General Assembly** and the Security Council.
- These organs vote simultaneously but separately.
- In order to be elected, a candidate must receive an absolute majority of the votes in both bodies.
- Non-UN members may also become parties to the court's statute.
- Once a state is a party to the court's statute, it is entitled to participate in cases before the court.
- However, being a party to the statute does not automatically give the court jurisdiction over disputes involving those parties.
  - **The issue of jurisdiction is considered in the three types of ICJ cases:** contentious issues, incidental jurisdiction, and advisory opinions.

- **ICC is an international organisation which investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community:** genocide, war crimes, crimes against humanity and the crime of aggression.
  - As a **court of last resort, it seeks to complement, not replace, national Courts**.
  - Hence it exercises its jurisdiction only when certain conditions are met, such as when national courts are unwilling or unable to prosecute criminals or when the UNSC or individual states refer situations to the Court.
- **Governed by an international treaty called the Rome Statute**, the ICC is the world's first permanent international criminal court.
  - It began **functioning on 1 July 2002**.
  - States which become party to the Rome Statute become member states of the ICC.
  - **India has neither signed nor ratified the Rome Statute ('Statute')** of the International Criminal Court ('ICC').
- It is **composed of eighteen judges elected to nine year terms** and not re-elected for further terms.

**Further reading:** <https://journalsofindia.com/rohingya-muslims/>