

ICJ Ruling Shows Rohingya Crisis Rights and Wrongs

Landmark initial ruling against Myanmar also raises doubts about UN impartiality and credibility

By [BERTIL LINTNER](#) > JANUARY 24, 2020



Rohingya refugees shout slogans at a protest against a disputed repatriation program at the Unchiprang refugee camp near Teknaf in Bangladesh in November 2018. Photo: AFP/Dibyangshu Sarkar

Given the persistent global publicity and intense lobbying on behalf of persecuted Rohingya refugees, a provisional decision handed down on January 23 against Myanmar by the International Court of Justice (ICJ) in The Hague came as no surprise.

The ICJ, the United Nations' principal judicial organ, ordered Myanmar to take measures to stop killing and harming Rohingyas and to implement "all measures within its power to prevent genocide."

The ruling, likened in reports to a "restraining order", said Myanmar's government must further ensure that its military does not "attempt to commit genocide or conspire to commit genocide." At the same time, ICJ judges underlined in dry legalese that the initial ruling would in no way prejudice the court's dealing with the "merits of the case", meaning it has not yet decided whether or not genocide was committed.

The court did go further than requested by Gambia, the country which has brought the case to the ICJ on behalf of the Organization of Islamic Cooperation (OIC), by ordering Myanmar to report on measures taken to comply with the ruling in four months and thereafter every six months.

The initial ruling will add more international pressure on Myanmar to hold those responsible for alleged crimes against humanity to account, but will also likely cause the nation's leaders to more deeply entrench their position of denial.



International Court of Justice President Abdulqawi Ahmed Yusuf (C) speaks during the provisional ruling against Myanmar, January 23, 2020. Photo: AFP Forum via Netherlands Out/ Robin Van Lonkhuijsen

It will also likely influence already skeptical public perceptions in Myanmar about the impartiality and credibility of UN investigators and bodies. That skepticism has been influenced by various flawed UN assessments and pronouncements related to the Rohingya.

Myanmar's foreign ministry, for its part, responded to the ruling in a January 23 statement that referred to its own Independent Commission of Enquiry (ICOE), headed by former Philippine foreign minister Rosario Manalo. Its report, which was made public on January 21, acknowledges that many civilians had been killed by the Myanmar army during its 2017 "area clearance" operations in Rakhine state, but that there was no "genocidal intent."

The foreign ministry statement also admitted that "war crimes" had been committed, but that "those are now being investigated and prosecuted by Myanmar's national criminal system." The ICOE's report and the foreign ministry's statement thus stand in sharp contrast to findings by the UN's Independent International Fact-Finding Mission on Myanmar (IIFMM), which claims there is a "continued threat of genocide" against the Rohingya.

Almost alone in the international community, Japan's foreign ministry said in a statement on January 22 that it welcomed the Myanmar-appointed enquiry commission's findings and that Japan sees the Myanmar government's positive response to it "as significant progress in Myanmar's own efforts to ensure accountability."

Significantly, the ICJ has no mandate to enforce its instructions and verdicts. That is left to the UN's Security Council, where two of its five permanent members, Russia and China, will almost certainly veto any UN move to take direct punitive action, including impose sanctions, against Myanmar. As such, the ICJ's preliminary ruling may prove to be an empty gesture. Meanwhile, the credibility of the UN's investigators and their assessments is in growing doubt, including among critical journalists and nongovernmental organizations (NGOs) in Myanmar.



Rohingya refugees shout slogans at a protest against a disputed repatriation program at the Unchiprang refugee camp near Teknaf on November 15, 2018. Photo: AFP/ Dibyangshu Sarkar

Those doubts start with the IIFFMM's dubious math. The UN investigative body refers to "close to a million Rohingya refugees in Bangladesh" with another 600,000 Rohingyas remaining in Rakhine state.

According to a UN statement published by UN News on September 16 last year, "the 600,000 mainly-Muslim Rohingyas still in Myanmar 'remain a target' of government efforts to remove them from the country."

But are there really 1.6 million Rohingyas, both in Bangladesh and Myanmar? And why is the UN using the term "mainly Muslim Rohingyas", which seems to imply that there are other Rohingyas as well?

Those are relevant questions considering such UN statements, many clearly missing the nuance of the situation, will have a significant impact on public opinion in Myanmar and how people react to the ICJ's eventual ruling.

When the term "Hindu Rohingyas" appeared in the international media during the refugee crisis in 2017, then referring to Bengali-speaking Hindus among the refugees in Bangladesh, Hindu organizations in Myanmar reacted angrily.

"The term never existed in the history of Hindus in Myanmar", Hla Htun, a Myanmar Hindu leader, told the website The Irrawaddy on October 3, 2017. Hindu organizations in Myanmar have also condemned the killings of Hindus by the insurgent Arakan Rohingya Salvation Army, a Rohingya rebel outfit.

But by referring to "mainly-Muslim Rohingyas", the UN effectively makes the Rohingyas into an ethnic minority rather than a religious community, which Buddhists as well as Hindus in Myanmar would argue that they are.

Local journalists who have visited the refugee camps in Bangladesh also assert that the Hindus they met there do not consider themselves Rohingya. As for the number of Rohingyas, the Israeli scholar and former diplomat Moshe Yegar states in his comprehensive 1972 study, *The Muslims of Burma*, that the number of Rohingyas in the northern part of what's now Rakhine state, where most of them live, is "approximately 300,000."

Rohingya refugee camps in Bangladesh

Over 720,000 Rohingya Muslims* have fled into Bangladesh since violence started on August 25, 2017

Major camp populations

As of October 31

Kutupalong expansion site
Makeshift camps
603,975 refugees

Hakimpara, Jamtoli, Moynarghona
102,611

Kutupalong Refugee camp
17,943

Chakmarkul
12,285

Shamlapur
10,997

Unchiprang
22,233

BANGLADESH

Alikhali
9,578

Leda
33,651

Nayapara Refugee camp
26,999

Nayapara
41,263

Jadimura
14,344

Villages destroyed by fires Aug 25-Dec 2, 2017 based on analysis of satellite data by Human Rights Watch

RAKHINE

MYANMAR

*Joined about 300,000 who fled earlier violence in Myanmar



2 km

Source: UN/ReliefWeb/OCHA/Inter Sector Coordination Group

© AFP

Andrew Simpson, a professor of linguistics at the University of Southern California, writes in his 2007 study *Language and Identity in Asia* that “a particular variety of the Chittagonian dialect of Bengali” is spoken among “the Muslim population [in Rakhine], numbering in the hundreds of thousands.”

No one, except for some Rohingya groups in exile, claimed there were more than a million Rohingyas before the present crisis began. If the UN’s 1.6 million estimate is correct, it would mean that the Rohingyas made up more than half the population of Rakhine state, which in 2014 stood at slightly less than 3.2 million, before the crisis began.

Using the same UN estimate, the Rohingyas would be more numerous than major ethnic minorities such as the Kachin, Chin, Kayah, Palaung, Pa-O and Wa, ranking third behind only the Shan and Kayin. That, of course, is impossible and even UN representatives are reported as admitting in private that the figures are inflated. But they are still being used by the UN and thus quoted extensively by the international media.

The lack of fundamental knowledge and insight into Myanmar’s ethnic and religious conflicts has been best demonstrated by Sri Lankan lawyer Radhika Coomaraswamy, one of the IIFMM’s members. In a June 22, 2018 paper, the Coomaraswamy claimed that “after independence, general Aung San called the Panglong Conference, where the new government negotiated with ethnic minorities, including the Rohingya, to create the Union of Burma.”



A Rohingya girl grieves outside of a UNHCR tent in Bangladesh in a file photo. Photo: AFP

Of course, the Panglong conference was held in February 1947, almost a year before Burma's independence from Britain on January 4, 1948—by which time Aung San had already been assassinated. And there are no historical accounts indicating that Rohingyas were represented at Panglong.

In another paper, dated May 14, 2018, she asserted that “every state” had the right to secede from the Union of Myanmar (then Burma) under the 1947 constitution, and that right could be exercised in 1957. In fact, only the Shan and Karenni (Kayah) states had that right, and it could be exercised ten years after independence, so in 1958, not 1957.

While these errors may be brushed aside as insignificant and minor details, they are bound to be perceived differently in Myanmar and could cause further polarization in the nation's already deeply divided society.

Therein lies the main danger of the ICJ's preliminary ruling.

Neutral observers in the commercial capital of Yangon expressed fears even before the ICJ's ruling that a UN verdict against Myanmar could unleash a new wave of “revenge” violence, with those targeted Muslims in general, not just Rohingya in the three remote townships of Rakhine state.

That is a potential scenario given the rise of extreme Burman-Buddhist nationalist movements in recent years, many of which see Muslims as an existential threat to the nation's Buddhist character.

But whatever happens next, the ICJ's January 23 ruling is just the beginning of a long and cumbersome legal process that will likely take years until a final verdict on the genocide charges is reached.

But one thing is certain: after the UN's latest blow to Myanmar's international standing and prestige, the possibility of any large-scale repatriation of Rohingya refugees from Bangladesh to Myanmar is likely now more remote than ever.

[Asia Times Financial](#) is now live. Linking accurate news, insightful analysis and local knowledge with the ATF China Bond 50 Index, the world's first benchmark cross sector Chinese Bond Indices. [Read ATF now.](#)

TAGGED: [genocide](#), [International Court of Justice](#), [Myanmar](#), [Rohingya Refugee Crisis](#).

Source: <https://asiatimes.com/2020/01/icj-ruling-shows-rohingya-crisis-rights-and-wrongs/>