

It has been more than two years since “clearance operations” by Myanmar’s security forces, the Tatmadaw, forced more than 700,000 Rohingya across the border to neighbouring Bangladesh.

During this time, the UN Security Council has remained silent on the plight of Rohingya, with China and Russia working to keep it off the council’s agenda.

Read more: [Explainer: why the UN has found Myanmar’s military committed genocide against the Rohingya](#)

[But at the UN General Assembly last month](#) , The Gambia announced it would take the Myanmar government to the International Court of Justice for the genocide of the Rohingya.

Vice-President Isatou Touray said The Gambia is:

a small country with a big voice on matters of human rights on the continent and beyond. [...] The Gambia is ready to lead the concerted efforts for taking the Rohingya issue to the International Court of Justice on behalf of the Organisation of Islamic Cooperation and we are calling on all stakeholders to support this process.

Myanmar might finally be held accountable, but defending the Rohingya from genocide shouldn’t just be left to the global Islamic community. They need to be joined by countries with an interest in reducing the sexual and gender based violence at the core of [the Tatmadaw’s genocidal campaign](#)

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Otherwise, these important issues may not be sufficiently included in the case due to regional religious politics.

Sexual and gender violence

Last year, a Human Rights Council Fact-Finding Mission [report](#) detailed serious breaches of international humanitarian and human rights law by members of the Tatmadaw, including killing, rape, torture, arson and forced displacement.

The report also detailed how the Myanmar government, as a whole, was responsible for perpetrating these crimes, and should be held to account.

‘An OIC film on the Rohingya issue, a continuing tragedy of human rights violations and unimaginable humanitarian suffering’

In an [additional report](#) released in August this year, the fact-finding mission found sexual and gender based violence was:

part of a deliberate, well-planned strategy to intimidate, terrorise and punish a civilian population.

[The sheer volume](#) of pregnant women in the refugee camps was one early indicator of the extent to which sexual violence was used against women and girls. But the mission [also found](#) it was used against men, boys and trans people.

In their view, acts of sexual and gender based violence were [committed as genocide](#) .

Read more: [***'They shot my two daughters in front of me': Rohingya tell heartbreaking stories of loss and forced migration***](#)

In general, the UN Security Council has recognised the use of sexual violence as genocide, but they haven't tied it to the crisis in Myanmar.

The council has passed nine resolutions on [women, peace and security](#). Among other things, these resolutions call for the protection of women and girls, [men and boys](#) from conflict-related sexual violence, and urge countries to end to impunity for these crimes.

So, it is of the utmost importance that the sexual- and gender-based violence used in the genocide is accounted for in any International Court of Justice (ICJ) case.

How can the ICJ help?

The ICJ adjudicates between states, not individuals. Although individuals commit genocidal acts, under the [Genocide Convention of 1948](#), states also have responsibility for preventing and punishing the crime of genocide.

Myanmar signed the UN's [Genocide Convention in 1957](#), which contains an article giving the ICJ jurisdiction if another state thinks they've breached their obligations.

This means once the case comes before the court, it can make rulings within a matter of days that would be binding on the government of Myanmar, the Security Council, or both. What's more, it can begin almost immediately and can have immediate effect inside Myanmar.

Read more: [**Citizens of nowhere: one million Rohingya still without rights, status or justice**](#)

This could make a big difference for Rohingya still inside Myanmar who are [experiencing the](#)

[ongoing genocide](#)

An ICJ case could also serve as a way to recognise and remedy the [collective harm](#) of the sexual- and gender-based violence, not just the harm experienced by individuals.

International efforts

The Gambia has called on other countries to join it in taking a case against Myanmar to the ICJ. [Canadian civil society](#) and parliamentarians have been working to convince their government to bring such a case for more than a year. Importantly, a case from Canada against Myanmar would include sexual- and gender-based violence.

And there are a range of reasons why Canada would step forward in support of The Gambia's case. Taking such action would align with Canada's foreign policy objectives, such as those on human rights and women, peace and security.

Read more: [***World must act to end the violence against Rohingya in Myanmar***](#)

Canada is also campaigning for a seat on the UN Security Council, but they have stiff competition from Ireland and Norway.

Taking Myanmar to the ICJ would show Canada is a strong international actor, able to work for the good of global peace and security, navigating the full set of challenges posed by the permanent members of the Security Council.

But other countries can – and should – support The Gambia's case and ensure the [inclusion of sexual and gender-based violence](#) in a range of ways.

ICJ cases are usually long and costly. Interested countries could offer financial assistance for The Gambia's case. They can also join the case as co-applicants in support of The Gambia's leadership.

Read more: [*Rohingya: killings should remind all nations of their responsibility to protect victims of mass atrocity crimes*](#)

Lastly, once the case is lodged, the court allows other countries to intervene. Countries unwilling to come forward as co-applicants could ensure gendered and sexual violence issues are included by making just such an intervention.

At the Security Council later this month, UN Member States will have the opportunity to participate in the annual open debate on women, peace and security.

By then, someone must surely be able to stand up and say:

we stand with The Gambia, we will take the government of Myanmar to the International Court of Justice, to hold them to account for the sexual and gender based violence they perpetrated as genocide against the Rohingya.

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Myanmar might finally be held accountable for genocide, but the court case must recognise sexual violence

Written by Susan Hutchinson, PhD Candidate, Australian National University

Read more <http://theconversation.com/myanmar-might-finally-be-held-accountable-for-genocide-but-the-court-case-must-recognise-sexual-violence-124693>