ROHINGYA JUSTICE, PROTECTION AND REPATRIATION

Amid shifting tides, can the ICJ verdict offer hope to the Rohingyas?



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The long-awaited judgment in The Gambia's case against Myanmar under the Convention on the Prevention and Punishment of the Crime of Genocide is now scheduled to be delivered on November 19. The International Court of Justice's (ICJ) announcement of the date has rekindled hopes of justice among the Rohingyas, one of the world's most persecuted ethnic communities. Bangladesh continues to host more than a million Rohingya refugees, having provided them with shelter for long.

The ICJ judgment comes at a time when the Rohingyas are increasingly losing hope, as the world appears to have forgotten their plight and is seemingly preparing to move on. Recent developments in the Asia-Pacific region and beyond concerning Myanmar suggest a significant shift towards normalising relations with the country's long-isolated military leadership. The junta stands accused of grave human rights violations against its own people, including mass killings, the overthrow of an elected government, and the imprisonment of thousands of political activists.

Even before the February 2021 military coup, Myanmar's military, with the complicity of its civilian government led by now-imprisoned leader Aung San Suu Kyi, had carried out systematic persecution and ethnic cleansing of the Rohingya Muslim minority. These atrocities forced nearly a million Rohingyas to flee to Bangladesh and neighbouring countries. The United Nations has repeatedly condemned Myanmar's military leadership through various resolutions, while the United States and the European Union have imposed sanctions on the country and its military leaders. Only a handful of countries, including China, Russia, and India, have continued to engage with the junta, arguing that a political solution is necessary.

Some recent developments, however, point in a troublingly different direction, particularly since junta chief Min Aung Hlaing staged a widely criticised election and assumed the role of civilian president. He subsequently renewed his diplomatic outreach, visiting several ASEAN member states, including Malaysia, Laos, Thailand, Vietnam, and Cambodia. It is worth recalling that, at their 2025 summit in Kuala Lumpur, ASEAN countries decided against sending an official election observation mission, citing the absence of conditions necessary for free, fair, and inclusive participation.

Hlaing's visit to Malaysia, however, carried particular significance. One apparent focus of the engagement was the repatriation of approximately 200,000 Rohingyas currently living in Malaysia as refugees. Despite objections from the United Nations and several humanitarian organisations to forced repatriation amid continuing insecurity and the absence of a credible rehabilitation plan in Myanmar, Malaysia sent 1,476 Myanmar nationals back by sea in late September, ahead of Hlaing's visit. Malaysia subsequently rolled out the red carpet for Min Aung Hlaing, welcoming him with a guard of honour on October 7, 2026.

Washington's attitude towards Myanmar also appears to be taking a new turn. In September, US Assistant Secretary of State for Intelligence and Research Michael Vance visited Myanmar's capital, Naypyidaw, and met Min Aung Hlaing. It was reportedly the first high-level meeting of its kind since the military seized power. Vance is also said to have held two other meetings with Myanmar officials in Tokyo, one before and another after his visit to Naypyidaw.

According to the BBC, the first indications of a shift in US policy towards Myanmar emerged during President Donald Trump's tariff offensive. After Hlaing received a letter from Trump threatening an additional 40 percent tariff, the junta chief responded rather differently from leaders of other affected countries. He described the move as an "encouraging invitation to continue participating in the extraordinary Economy of the United States".

In another development, reports emerged in late October that Japan had pushed for Myanmar's removal from the Financial Action Task Force's (FATF) blacklist. Japan denied the reports. However, on November 5, a spokesperson for Myanmar's government thanked Japan and a few other countries for "acknowledging Myanmar's current progress", without providing further details.

The latest controversy erupted on October 22, when Mike Waltz, the US Permanent Representative to the United Nations, launched a scathing attack on the ICJ and its ad hoc judge, Navi Pillay, on the social media platform X. He accused Pillay of "tipping the scales on the ICJ's current proceedings on Myanmar, intending to lower the legal threshold for proving genocide so that weakened and false standard can later be weaponised against American and allied soldiers whenever they raise a finger against terrorists that hide behind civilians." He added: "Pillay, we see your agenda and we'll be watching the ICJ's handling of these proceedings very closely. As our actions against the ICC demonstrate, we will not allow globalist, faux-judges to weaponise the law against our troops, undermine our sovereignty, or put American lives at risk."

Presumably, Waltz was reacting to Navi Pillay's comments on Gaza genocide after winning the Nobel Peace Prize. He wrote, "The Nobel Committee has disgraced itself by awarding the Peace Prize to Pillay. What a shameful choice to 'honour' someone who represents an 'international community' with a leftist, globalist, antisemitic agenda."

The recent electoral success of Democrats in the United States, however, offers some grounds for optimism. It is worth remembering that the US State Department was among the first major government institutions to formally determine that Myanmar had committed genocide against the Rohingya. On March 21, 2022, following what it described as a rigorous factual and legal analysis, the then US Secretary of State formally determined that members of the Burmese military had committed genocide and crimes against humanity against the Rohingya. Since the Holocaust, the United States had made only seven other such determinations, making this the eighth. That determination has not, to date, been rescinded or revised.

One would therefore hope that Waltz's public criticism of the ICJ reflects neither a fundamental reversal of Washington's established position on Myanmar nor a rejection of international justice, but rather the Trump administration's broader hostility towards international judicial institutions.

Since the February 2021 military coup, a new dimension has emerged in the question of Myanmar's culpability. The ousted political leadership, including Aung San Suu Kyi and her supporters, has itself become a target of military brutality. Against this backdrop, some Western governments appear increasingly inclined to downplay or obscure the role played by Suu Kyi and her civilian administration in the persecution of the Rohingyas. The ICJ proceedings and the forthcoming judgment offer an opportunity to establish greater legal clarity and ensure that responsibility for the atrocities is not obscured by subsequent political developments.

Ultimately, the ICJ judgment should help clarify Myanmar's legal responsibility for the alleged genocide. But the most important question is what it will mean for the Rohingyas themselves. Will it bring them closer to justice, secure their rights, create conditions for safe, voluntary and dignified repatriation, and offer them a future free from persecution? The international community must ensure that the judgment translates into meaningful action and that the Rohingyas are not once again abandoned to the shifting political interests of powerful states.



The warming of relations between ASEAN leaders and Myanmar's junta chief, Min Aung Hlaing, appears troubling in the context of justice for the Rohingya genocide. FILE PHOTO: AFP

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Rohingya rights cannot remain on hold until repatriation



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Bangladesh is right to insist that Myanmar must resolve the Rohingya crisis. But that proposition cannot answer the question: how should refugees be protected while they remain here? On October 27, Bangladesh again told the United Nations that prolonged displacement cannot become a permanent solution. The warning should also prompt an examination of our own approach—a temporary refuge must not become a place where rights are indefinitely postponed.

Prime Minister Tarique Rahman's five-point proposal at the UN on September 23 rightly linked repatriation with security, humanitarian assistance, accountability and regional cooperation. These commitments deserve support. Their credibility, however, depends on implementation rather than repetition. With more than 12 lakh Rohingya in Bangladesh, the challenge is no longer simply accommodating an emergency. It is governing prolonged displacement without allowing either refugees or host communities to bear the consequences of international failure.

The first requirement is honesty about return. UNHCR continues to assess conditions in Rakhine State as unsuitable for sustainable repatriation. Bangladesh's October 27 statement itself acknowledged continuing abuses by both Myanmar's military and the Arakan Army. A roadmap must therefore address who can guarantee protection on the ground, not merely who can sign an agreement. Moving people across a border is not a durable solution if they return to violence, exclusion and confinement. The underlying problem is not simply a population on the wrong side of a border; it is a community deprived of secure membership in its own country. Repatriation that restores location without restoring rights risks preparing the ground for another exodus.

This is why protection during displacement and repatriation must be pursued together. Treating education, lawful livelihoods, or legal safeguards as obstacles to eventual return creates a false choice. A person does not become more capable of rebuilding a life in Myanmar by spending years without adequate schooling, skills, or security in Bangladesh. Nor does deprivation turn an unsafe destination into a safe one. Voluntary return cannot credibly be promoted by making refuge unbearable.

Bangladesh's legal position requires equal clarity. The country is not party to the 1951 Refugee Convention or its 1967 Protocol, and UNHCR identifies the absence of national legislation specifically governing refugee and asylum affairs. Yet this is not an absence of legal obligations. Article 31 of our Constitution extends protection of law beyond citizens to other persons within Bangladesh. Article 32 protects life and personal liberty. The government's description of Rohingya as "Forcibly Displaced Myanmar Nationals" cannot erase protections that attach to persons rather than nationality.

The High Court has already demonstrated the practical importance of this distinction. In RMMRU v Government of Bangladesh, decided on May 31, 2017, it examined the continued imprisonment of a Rohingya man after his sentence had expired. The court found his detention unlawful, addressed protection against return to persecution or torture, and ordered his release with arrangements for accommodation through cooperation with UNHCR. The judgment's lesson remains urgent: uncertainty over someone's future does not justify denying lawful protection in the present.

Nevertheless, the Foreigners Act, 1946 remains a central legal instrument. Its concern is regulating foreigners' entry, presence and departure, with extensive executive powers over residence and movement. It is not a comprehensive refugee protection framework. Administrative discretion may facilitate emergency shelter, but it cannot provide the clarity, consistency, and enforceable remedies needed for displacement lasting years. Refugees should not have to depend on exceptional intervention whenever routine administration fails them.

Bangladesh should therefore enact a protection framework specifying lawful status, documentation, safeguards against forced return, access to justice, and procedures for reviewing detention and movement restrictions. It should provide effective remedies against abuse and accessible complaints mechanisms. Accession to the refugee and statelessness conventions also warrants serious consideration. But protection cannot wait for those decisions. Recognising enforceable rights during refuge does not, by itself, confer Bangladeshi citizenship or require permanent settlement. That distinction should be explained rather than obscured.



A group of Rohingya refugees walk across a bridge in Chattogram in December 2020. More than a million Rohingyas continue to live in Bangladesh, far from home and uncertain of their future. PHOTO: RAJIB RAIHAN

International responsibility must be equally concrete. The UN's revised 2026 appeal sought $710.5 million, 26 percent less than the previous year, to meet minimum lifesaving needs among Rohingya refugees and local host communities. A smaller appeal should not be mistaken for a smaller crisis. When humanitarian priorities are compressed to fit shrinking resources, unmet needs do not vanish. They are transferred to families, aid workers, and the communities sharing already stretched services. Wealthier states cannot praise Bangladesh's generosity while allowing the means of sustaining it to erode.

Predictable funding should support education, healthcare, protection and carefully designed livelihood opportunities. Bangladesh should enable such programmes with safeguards for local workers and consultation with host communities. Donors should finance services and infrastructure that benefit both populations. They should also expand resettlement and other lawful pathways for vulnerable refugees. These efforts distribute the costs of protection more fairly while a durable solution remains unavailable. None of this relieves Myanmar of its responsibilities.

Security concerns require seriousness without collective suspicion. Armed groups, trafficking networks, and extortion must be addressed through targeted policing, credible investigation, and prosecution. Refugees must be able to report threats without exposing themselves to retaliation or arbitrary treatment. Women and children need confidential reporting and effective protection. Host communities deserve safety and responsive public services. Security policy fails when it treats an entire displaced population as the problem while leaving those exploiting its vulnerability beyond accountability.

Repatriation diplomacy, meanwhile, should be judged against verifiable conditions: citizenship rights, freedom of movement, access to homes and livelihoods, humanitarian access, and independent monitoring after return. Rohingya representatives, including women, must participate in defining those conditions. Their consent cannot be reduced to signatures on forms. International accountability remains indispensable, but legal proceedings and diplomatic conferences cannot substitute for protection where people actually live.

The government should translate its international proposals into a public implementation plan, identifying responsibilities, funding commitments, and measurable safeguards. Parliament should address the domestic protection gap. Courts should enforce existing constitutional guarantees without treating statelessness as a reason for administrative indifference. International partners should commit resources over several years rather than repeatedly waiting for services to approach collapse.

Bangladesh cannot restore the citizenship Myanmar has denied the Rohingya. It can, however, ensure that statelessness does not become rightlessness within its own territory. Our strongest demand for justice abroad will be one accompanied by enforceable protection at home. The objective must remain safe and voluntary return. Until that becomes possible, protection on the ground cannot be provisional.