

PROTECTING A PERSECUTED MINORITY: HUMAN RIGHTS CHALLENGES FOR THE ROHINGYA COMMUNITY

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1. Introduction

The Rohingya, a Muslim minority residing for centuries in Rakhine state in Myanmar, have faced severe human rights violations. The 1982 Citizenship Law of Myanmar made them stateless,² denying them legal identity, access to basic services and protection under domestic law. The “clearance operations” of Myanmar’s military in 2016-2017, which involved mass killings, sexual violence, village destruction, and forced displacements recognized as crimes against humanity and possibly genocide. More than one million Rohingya people fled to Bangladesh³, where they remain in overcrowded refugee camps. They also continued to face rights violations.

Despite the detailed reports by international bodies like Human Rights Watch, UN Fact-Finding Mission, Amnesty International, and scholars like Melanie O’ Brien, the current international actions have not stopped the abuses and violations faced by the Rohingya and created safe conditions for them to return to their homes with dignity. The International Court of Justice (ICJ) and the International Criminal Court (ICC) can hold Myanmar accountable, but these courts alone cannot provide security inside Myanmar, solve statelessness and protect Rohingya rights on the ground. On the other hand, international

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² Elizabeth Rhoads, ‘Citizenship Denied, Deferred and Assumed: A Legal History of Racialized Citizenship in Myanmar’ (2023) 27 *Citizenship Studies* 38–58 <<https://doi.org/10.1080/13621025.2022.2137468>> accessed 12 December 2025.

³ Community Partners International, ‘7 Key Facts About the Rohingya Refugee Crisis in 2025’ (3 September 2025) <<https://cpintl.org/type/impact-story/7-key-facts-about-the-rohingya-refugee-crisis-in-2025>> accessed 12 December 2025.

administration may create concerns about violating Myanmar's sovereignty, as argued by Ralph Wilde.⁴

This paper argues that a combined dual-pillar solution is needed:

- i. International Accountability Mechanism through the ICJ, ICC, and the Independent Investigative Mechanism for Myanmar (IIMM);
- ii. UN-Supervised Transitional Monitoring Body (UNSTMB) in Rakhine state.

Together, these two mechanisms will help to hold Myanmar and individual perpetrators accountable, restore citizenship to the Rohingya, ensure their safe return, and prevent future persecution. This combined mechanism fills the gaps left by current approaches and respects Myanmar's sovereignty while fulfilling the international duty to protect a persecuted minority.

2. Background: Human Rights Violations Against the Rohingya

2.1. Violations in Myanmar

The 1982 Citizenship Law of Myanmar excluded the Rohingya Community from recognized ethnic groups of Myanmar, which made them stateless.⁵ This caused the Rohingya to lose nationality, legal protection, and access to fundamental rights. Rohingya people who are in villages and camps are unable to travel without military permission. This is a clear violation of the right to freedom of movement.⁶ The military of Myanmar conducted a "clearance operation" which involved mass killings, rape, torture, arson, and forced disappearance. Thousands of Rohingya people were killed, and villages were burned. Men and boys in the Rohingya community are forced into labour, portering, and road construction for the military.⁷ Arbitrary arrests and torture remain

⁴ Wilde, Ralph, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (Oxford University Press 2008).

⁵ Elizabeth Rhoads (n 2).

⁶ Human Rights Watch, 'Myanmar: Armies Target Ethnic Rohingya, Rakhine' (12 August 2024) < <https://www.hrw.org/news/2024/08/12/myanmar-armies-target-ethnic-rohingya-rakhine> > accessed 12 December 2025.

⁷ *Ibid.*

common for the Rohingya. They faced severe restrictions to access basic services like healthcare, education, and humanitarian access. Hospitals often refuse treatment, while schools exclude the Rohingya children. Mosques have been destroyed, and religious gatherings are restricted. Rohingya people are arrested for practising and teaching Islam.

2.2. Violations in Bangladesh

Rohingya refugees are placed in Cox's Bazar, Bangladesh, which is the biggest refugee camp in the world. Here, they live in extremely dense settlements with inadequate sanitation, water, and shelter. Movement outside camps is restricted, preventing access to work and education. Human Rights Watch reports increasing violence, extortion, and gender-based abuses within camps.⁸ Also, children have limited access to education. Refugees face barriers in receiving advanced medical treatment. Children are also facing malnutrition. This shows that neither Bangladesh nor Myanmar provide safe conditions for dignified living to the Rohingya.

3. Current Mechanisms and Their Limitations

There are three categories of current mechanisms to protect the Rohingya. Those are Humanitarian assistance, international legal processes, and diplomatic pressure.

3.1. Humanitarian Assistance in Bangladesh

Humanitarian agencies provide essential services in the camps.⁹ However, they ensure survival but do not grant rights, legal status, or safety.

3.2. International Legal Processes

⁸ Human Rights Watch, 'Bangladesh: Spiraling Violence Against Rohingya Refugees' (13 July 2023) <<https://www.hrw.org/news/2023/07/13/bangladesh-spiraling-violence-against-rohingya-refugees>> accessed 12 December 2025.

⁹ European Commission, 'EU Boosts Humanitarian Aid in Bangladesh, Myanmar and for the Rohingya Refugee Crisis' (3 March 2025) <https://civil-protection-humanitarian-aid.ec.europa.eu/news-stories/news/eu-boosts-humanitarian-aid-bangladesh-myanmar-and-rohingya-refugee-crisis-2025-03-03_en> accessed 20 December 2025.

ICJ: The Gambia v. Myanmar seeks to establish state responsibility. But they cannot reform discriminatory citizenship laws.¹⁰

ICC: The ICC is investigating crimes linked to deportation. But the jurisdiction is limited.

IIMM: The already established IIMM by the UN preserves evidence for future prosecutions¹¹. But has no mandate to protect civilians and monitor the conditions.

These mechanisms promote justice but do not provide immediate protection or rights restoration.

3.3. Diplomatic Pressure

UN resolutions, sanctions, and calls for repatriation have not prevented ongoing abuses or improved safety in Rakhine state.

3.4. Overall limitation

These current mechanisms address documentation, humanitarian survival, and accountability, but fail to address on-the-ground security in Myanmar, statelessness, or the conditions needed for a safe and dignified return. This critical gap requires a new combined approach.

4. Literature Review

Academic literature captures the historical, political and socio- legal dimensions of the Rohingya crisis. Scholars such as Melanie O'Brien and Gerhard Hofstadter have recognized the 2017 events as genocide,¹² while others have detailed the long-term patterns of ethnic identity construction and discrimination. These works and reports from Human Rights Watch and UN bodies provide detailed evidence of the crisis, but no existing scholarship proposes a mechanism that simultaneously

¹⁰ *International Court of Justice, Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Case No 178) (ICJ).

¹¹ Independent Investigative Mechanism for Myanmar, 'Home' <<https://iimm.un.org/en>> accessed 20 December 2025.

¹² Melanie O'Brien and Gerhard Hoffstaedter, "'There We Are Nothing, Here We Are Nothing!'"—The Enduring Effects of the Rohingya Genocide' (2020) 9 *Social Sciences* 209 <<https://ideas.repec.org/a/gam/jscscx/v9y2020i11p209-d445934.html>> accessed 20 December 2025.

ensures international accountability and is enforceable on the ground, which is a gap this paper addresses.

5. The Combined Dual-pillar Mechanism (Proposal)

5.1. *The Justification for the Combined Dual-pillar Approach*

The combined dual-pillar approach is justified by both the Responsibility to Protect (R2P) and Myanmar's obligations under international law, especially the 1948 Genocide Convention. R2P, adopted by the UN in 2005, states that states have the responsibility to protect their populations, and if they fail, the international community must step in.¹³ However, as Anne Orford argues, R2P can be used to justify external control through humanitarian language¹⁴. This proposal responds to that concern by designing a UN-supervised transitional monitoring body with a five-year sunset clause. In this way, the proposal also addresses the similar concern of Ralph Wilde's warning about "Colonialism Redux".¹⁵

Legally, the proposal is grounded in binding international obligations. Myanmar is a party to the 1948 Genocide Convention, even though Myanmar maintains reservations to Articles VI and VII of the Genocide Convention to limit certain types of international oversight;¹⁶ these do not exempt the state from its primary, binding obligation under Article I to prevent genocide. Myanmar also signed the 1949 Geneva Conventions,¹⁷ including common article 3, which requires the humane treatment of civilians and the prevention of serious harm. Additionally,

¹³ UN Office on Genocide Prevention and the Responsibility to Protect, 'About the Responsibility to Protect' <<https://www.un.org/en/genocide-prevention/responsibility-protect/about>> accessed 20 December 2025.

¹⁴ Anne Orford, *International Law and the Responsibility to Protect* (Cambridge University Press 2011).

¹⁵ Wilde, Ralph, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (Oxford University Press 2008).

¹⁶ International Committee of the Red Cross, 'Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948: Myanmar' <<https://ihl-databases.icrc.org/en/ihl-treaties/genocide-conv-1948/state-parties/mm>> accessed 20 December 2025.

¹⁷ Raphael Lemkin, 'Genocide' (1946) 26 (291) *International Review of the Red Cross* 399 <<https://internationalreview.icrc.org/sites/default/files/S0020860400071084a.pdf>> accessed 20 December 2025.

mass displacement of Rohingya refugees to neighbouring states constitutes a serious threat to international peace and security under Article 39 of the UN Charter,¹⁸ allowing the Security Council to adopt measures not involving the use of armed force under Article 41.¹⁹ Together, these legal frameworks provide a basis for international accountability and on-ground protection in Myanmar.

5.2. Pillar One: The International Accountability Mechanism (The Judicial Pillar)

This pillar establishes the necessary legal foundation by pursuing both state and individual accountability.

5.2.1. State Responsibility: The ICJ

The case of *The Gambia v. Myanmar* before the International Court of Justice (ICJ) is based on the 1948 Genocide Convention.²⁰ This allows the court to hear cases about a state's responsibility for genocide. While the Genocide Convention explains what counts as genocide, the law on state responsibility makes it possible to hold Myanmar, as a state, responsible for the actions of its military. As of January 2026, the ICJ has started public hearings on the merits of the case.²¹ This is an important step, because the case has moved beyond temporary measures to deciding whether Myanmar has broken its duties under international law. If the Court rules against Myanmar, the decision will require it to change its laws and practices and end the discrimination that allows genocide to occur.

5.2.2. Individual Responsibility: ICC and IIMM

Individual perpetrators should also be liable for the crimes against the Rohingya. The International Criminal Court (ICC) holds individuals accountable, sending a warning to those who commit crimes. The UN's

¹⁸ UN Charter art 39.

¹⁹ UN Charter art 41.

²⁰ *The Gambia v. Myanmar*, ICJ <<https://www.icj-cij.org/case/178>> accessed 2 January 2026.

²¹ *ibid*

Independent Investigative Mechanism for Myanmar (IIMM)²² supports this by collecting and preserving evidence of serious crimes.

Hence, this judicial pillar holds Myanmar responsible as a state and targets individuals who commit the crimes. This legal foundation supports the next pillar.

5.3. *Pillar Two: UN-Supervised Transitional Monitoring Body (The Protection Pillar)*

The temporary UNSTMB established in Rakhine state fills the gap in on-the-ground security, dignified return, and rights restoration that judicial processes cannot. Because of the failure of Myanmar to protect its population, the international community must implement protective measures in a sovereignty-respecting manner.

The Mandate: Avoiding Colonial Overreach, following Wilde's critique,²³ the UNSTMB's mandate must be clear, narrow and strictly limited to three core protective functions:

- i. Monitoring security conditions and troop movements
- ii. Verifying restoration of fundamental rights
- iii. Coordinating safe, voluntary and dignified repatriation

The UNSTMB must not govern the political and economic affairs of Myanmar. This ensures the protection without undermining Myanmar's sovereignty.

5.4. *The UNSTMB Sunset Clause and Transition*

A five-year sunset clause for the UNSMB prevents a long-term international presence, serving as a safeguard against 'colonialism and trusteeship redux'. Upon the expiration, it will transition to a permanent monitoring framework focused on oversight, composed of:

- i. A UN special representative for Myanmar

²²Independent Investigative Mechanism for Myanmar, 'Home' <<https://iimm.un.org/en>> accessed 2 January 2026.

²³ Wilde, Ralph, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (Oxford University Press 2008).

- ii. Local Oversight Committees and Formal Rohingya Representation (including leaders from the community)

This transition ensures sustainable, locally driven protection.

6. How the Combined Dual-pillar Mechanism Solves Core Problems

These pillars complement each other: The judicial pillar creates legal pressure, accountability, and obligations for reform, while the monitoring pillar ensures those obligations are implemented on the ground. Together, they support the restoration of Rohingya citizenship; monitor and enforce rights protection; create safe conditions for return; prevent renewed persecution; and break the long cycle of statelessness and violence and hold Myanmar and perpetrators accountable. This combined mechanism is realistic, lawful, and sovereign-respecting.

7. Limitations

However, the proposal also has some important limitations. Most UN-based actions remain vulnerable to political constraints, particularly the use of veto power in the Security Council, which may limit enforcement and implementation. Especially China and Russia use their Veto power to protect Myanmar.²⁴

8. Conclusion

The Rohingya crisis is caused by statelessness, persecution and structural discrimination. Existing international responses are not enough to solve the Rohingya crisis. This paper suggests a practical, legally grounded and ethically sophisticated model: a combined dual-pillar mechanism with international judicial accountability with a temporary, critically designed UNSTMB. This approach ensures protection, rights restoration, safe return, and long-term stability while respecting Myanmar's sovereignty. If implemented, this mechanism is expected to end one of the world's most protracted human rights crises.

²⁴ Sebastian Strangio, 'China, Russia Again Veto UN Statement on Myanmar Conflict' *The Diplomat* (30 May 2022) <<https://thediplomat.com/2022/05/china-russia-again-veto-un-statement-on-myanmar-conflict/>> accessed 2 January 2026