

The International Criminal Court (ICC) & Myanmar

Part 2 — The Current Investigation

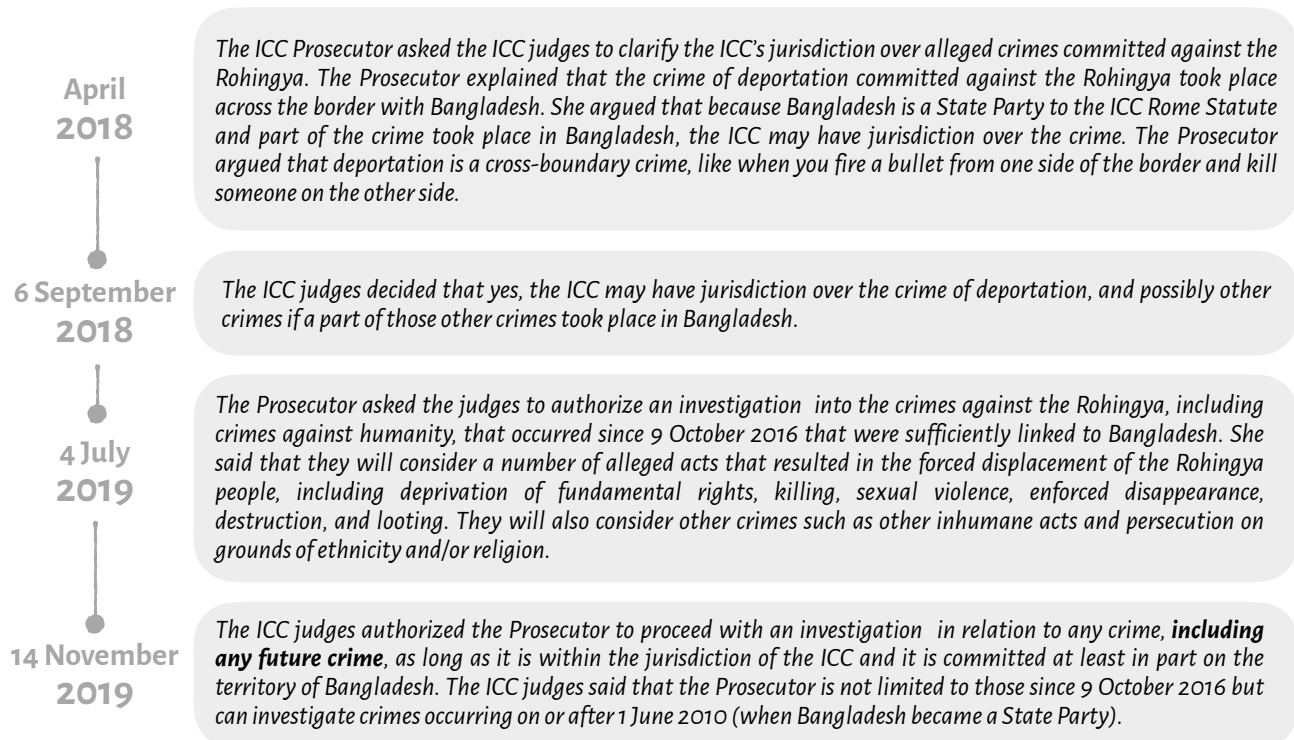
This handout (Part 2) is about the current ICC investigation related to crimes that took place at least in part in Bangladesh. See Part 1 about the other options for the ICC to have jurisdiction in Myanmar, including:

- the possibility of a UN Security Council referral,
- Myanmar becoming a State Party to the ICC, and
- Myanmar lodging a declaration accepting ICC jurisdiction.

Why is the ICC able to conduct the current investigation regarding crimes against the Rohingya?

Myanmar is not a member of the ICC. It has not accepted the Rome Statute, which is the treaty creating the ICC: it is not a “State Party” to that treaty. This means that Myanmar has not accepted the jurisdiction of the ICC.

Bangladesh has been a State Party to the ICC Rome Statute since 2010. It has accepted the jurisdiction of the ICC.



Why is the ICC not investigating other crimes in the rest of Myanmar?

Myanmar is not a member of the ICC. It has not accepted the Rome Statute, which is the treaty creating the ICC: it is not a “State Party” to that treaty. This means that Myanmar has not accepted the jurisdiction of the ICC.

According to the law governing the ICC (the Rome Statute), in the case of crimes committed in a country that is a non-State Party, only the UN Security Council can refer the situation to the ICC. For political reasons, this is not possible at the moment for crimes in the rest of Myanmar. Some Security Council countries, like China, have made it clear that they would veto the referral.

Possible next steps



Once the Prosecutor opens a formal investigation, there is no deadline for finishing it, and it may take several years. The Prosecutor will collect evidence and decide if there is enough evidence to bring a case against one or several perpetrators. If yes, it will apply for one or more arrest warrants. An arrest warrant is a document issued by the judges asking States to arrest the suspect. The arrest warrant might be public or secret (“under seal”). This means that even if there is an arrest warrant, the public might not know about it.

The ICC has no power to arrest people. Only States (governments) can arrest suspects. Myanmar has made it clear that it will not cooperate with the ICC and will not arrest any suspects. If a suspect travels to a country that is a State Party to the ICC, the suspect might get arrested but also might not. It is unlikely that the suspects will take the risk to travel to such countries. **If the suspects are not arrested, there will be no trial.** The ICC does not have any trials without the person accused of the crimes being present. It is therefore very possible that there will never be any trials, unless (or until) the political situation changes drastically.

Possible engagement by civil society

Civil society can:

- Help explain the ICC to the general public – its limitations and benefits.
- Provide information and documentation to the Prosecutor.
- Help victims and witnesses give evidence to the ICC (including via the IIMM), and help make sure they understand the process clearly.
- Think about asking the Prosecutor to make arrest warrants public as a form of accountability of perpetrators (or not!).
- Lobby the ICC to do outreach and provide public information to all Myanmar communities.
- Lobby the ICC Trust Fund for Victims to start assistance programs for Rohingya victims’ communities
