

Q&A | FEBRUARY 2025

## Update: The Universal Jurisdiction Case Against Myanmar Officials Argentina Court Issues Arrest Warrants Against 25 Individuals

On 13 February 2025, an Argentine judge, Hon. María Romilda Servini de Cubria, issued arrest warrants for 25 Myanmar military and civilian officials, including Commander-in-Chief Min Aung Hlaing and Deputy Commander-in-Chief Soe Win, for allegedly committing genocide and crimes including aggravated murder, sexual abuse, and torture against the Rohingya. This is the first time that public warrants have been issued in a universal jurisdiction case adjudicating crimes against the Rohingya, representing a significant step towards justice. The case stems from a November 2019 complaint filed in Argentina by Burmese Rohingya Organisation UK (BROUK) alleging genocide and crimes against humanity committed against the Rohingya since 2012, including murder, enforced disappearance, torture, sexual violence, and imprisonment (an earlier Q&A about the case is [here](#)). This effort to provide Rohingya survivors and communities with justice and accountability is notable for having been driven and led entirely by the Rohingya community itself.

Other efforts to deliver accountability for crimes against the Rohingya and other groups are underway at the International Court of Justice (ICJ), the International Criminal Court (ICC), and other national courts outside of Myanmar (Q&As are also available on [the ICJ](#) and [ICC](#) efforts).

The Rohingya in Rakhine State [continue to live in peril](#). In February 2021, the Myanmar military defied the results of democratic elections and [staged a coup](#), throwing the entire country into [conflict](#) and triggering a [humanitarian crisis](#). In Rakhine State, the Arakan Army and military have waged fierce battles [since November 2023](#), with Rohingya and other civilians caught in the crossfire. The military is fomenting intercommunal tensions and [forcibly conscripting Rohingya](#). Both sides have been accused of extrajudicial killings, looting, and arson in [Rohingya-populated areas](#). Rohingya also continue to live under [a degrading system of repression](#), with stringent restrictions on freedom of movement and limited access to humanitarian aid and basic services, such as education and healthcare.

This Q&A provides an update on the case submitted in Argentina, an outline of next steps in the process, and information about other accountability efforts.

### 1. How is it possible that a case involving Myanmar is progressing in Argentina?

The Rohingya case in Argentina is progressing on the basis of universal jurisdiction, a principle founded on the premise that some crimes, such as crimes against humanity, genocide, war crimes, enforced disappearances, and torture, are so heinous that they concern humanity as a whole. While the primary responsibility to investigate such crimes lies with the State on whose territory the crimes were committed, if those States are unable or unwilling to prosecute them, then all States have an interest in holding perpetrators accountable. As a result, any State may exercise “universal jurisdiction” over any individual who is implicated in such crimes, regardless of where the crime has been committed or the nationality of the victims or alleged perpetrators.

To prosecute international crimes under the principle of universal jurisdiction, a State should have adopted legislation recognizing the relevant crimes and authorizing their prosecution. Broadly speaking, [States have done this in two ways](#): ‘pure’ universal jurisdiction, where no connecting link between the alleged crimes, perpetrator, or victims to the prosecuting State is required, or ‘conditional’ universal jurisdiction, where a connecting link, such as the victim’s or perpetrator’s presence or nationality or a compelling national interest, is necessary.

The principle of universal jurisdiction gained strength with [the 1998 arrest of former Chilean leader Pinochet](#) in the United Kingdom based on a universal jurisdiction case filed in Spain. The English magistrates [ordered his extradition](#)

to Spain to stand trial, though he was later released on health grounds.

Argentinian law enshrines the principle of ‘pure’ universal jurisdiction. Article 118 of the [National Constitution of Argentina](#) (National Constitution) expressly entrusts Congress with the enactment of a special law to determine the place where ordinary criminal trials for crimes against *jus cogens*, or mandatory, norms of customary international law committed outside of Argentine territory may be held. Article 5 of [Special Law 26.200/06](#) explicitly grants federal courts criminal jurisdiction over certain crimes enumerated by the Rome Statute, the treaty which established the ICC, including genocide and crimes against humanity.

BROUK’s case is not the first case in Argentina under the principle of universal jurisdiction. Argentina, in part due to its history of [holding the Argentine military accountable for human rights abuses](#) committed in the 1970s and 1980s, continues leading justice and accountability efforts for human rights abuses committed elsewhere in the world.

Argentina has heard cases for [genocide and crimes against humanity committed in Spain](#) during the Franco regime and for persecution against the [Falun Gong movement](#) in China. In 2014, a case was heard against [Israeli authorities for genocide and crimes against humanity in the Gaza Strip](#) and in 2018 a case was heard against [Saudi Arabia’s Prince Mohammed bin Salman for crimes against humanity committed in Yemen](#). In June 2023, a [complaint](#) was filed in Argentina alleging crimes against humanity committed against victims in Venezuela perceived to be linked to the government’s political opposition, and a federal court in Argentina [ordered the arrest](#) on 23 September 2024 of Venezuela’s President Maduro and Interior Minister Cabello in connection with the case. In [April 2024](#), a Ukrainian man [filed a case](#) alleging torture by Russian occupying forces. Finally, an Argentine court reopened an investigation in July 2024 after a complaint was filed alleging genocide and crimes against humanity against [Uyghurs in China](#).

## 2. What is the history and current status of the case?

In November 2019, BROUK, with the [support of other human rights organizations](#) including Grandmothers of the Plaza de Mayo and the Fundación Servicio Paz y Justicia, filed a case under universal jurisdiction before a federal criminal court concerning genocide and crimes against humanity committed against the Rohingya. In July 2021, the court [rejected the case](#), holding that an Argentinian court was not the appropriate forum considering that the Office of the Prosecutor (OTP) of the ICC was already looking into these crimes. BROUK filed an appeal, arguing that due to jurisdictional limitations, the ICC was only investigating potential crimes that took place partly or fully in Bangladesh, as Bangladesh is an ICC member and Myanmar is not (see Question 9 below).

In August 2021, the Federal Appeals Court [heard the testimony](#) of a Rohingya woman who appeared remotely before the court to speak about her experience of sexual and gender-based violence during the “clearance operations” of 2017. In November 2021, the court, citing the ICC’s limited scope of investigation and the gravity of the facts alleged by witnesses, [launched a criminal investigation](#) against Myanmar’s military as well as civilian officials.

In June 2023, lead plaintiffs BROUK, with [the contribution of Legal Action Worldwide](#), facilitated the in-person testimony of survivors who had experienced atrocities, including sexual violence. This proceeding allowed victims to participate directly in court proceedings and build the evidence base for a future trial. At the same time, the in-person hearings were critical to allow both the Argentinian judge and prosecutor direct contact with victims from the region, thereby reinforcing the pertinence of the universal jurisdiction principle. The Court also [sent a request to Facebook](#) to share information in relation to the impact of social media in disseminating hate speech against Rohingya, which led to the “clearance operations.”

The investigation in Argentina has been supported by the Independent Investigative Mechanism for Myanmar (IIMM), established by the United Nations (UN) to gather and preserve evidence on human rights violations in Myanmar. The IIMM does not try cases, but its case files and evidence collection can be shared to assist in the prosecutions of individuals in national, regional, or international criminal proceedings. The IIMM has shared relevant information and evidence with the Argentinian authorities, as well as with the ICC and ICJ, provided that the sources of the information have [given their consent](#). In April 2022, the head of the IIMM and members of his team visited Argentina.

In December 2023, BROUK, Tun Khin (BROUK’s President) and six Rohingya female survivors of the 2017 cleansing operations, as petitioners in the case, [asked the judge in a 107-page document](#) to issue arrest warrants for seven

military officials. On 28 June 2024, Argentine federal prosecutor Guillermo F. Marijuán [requested the arrest, international capture, and questioning](#) of 25 current and former Myanmar military and civilian government officials, independently deciding to add additional individuals, including Daw Aung San Suu Kyi and President Htin Kyaw. BROUK did not present any evidence against Aung San Suu Kyi or Htin Kyaw and, following the Prosecutor's request, formally asked the court to consider whether issuing arrest warrants against them would serve the interests of justice given the current post-coup political climate. Federal judge Hon. María Romilda Servini de Cubria granted in full the Prosecutor's request on 13 February 2025 for 25 Myanmar officials, including Commander-in-Chief Min Aung Hlaing and Deputy Commander-in-Chief Soe Win, as well as for Aung San Suu Kyi and Htin Kyaw.

### 3. What specific crimes and individuals are being investigated?

The case filed by BROUK called for Argentinian courts to investigate and prosecute senior military and civilian leadership, as well as direct perpetrators in Myanmar, for genocide and crimes against humanity against the Rohingya in Rakhine State.

The prosecutor's 109-page arrest warrant request alleges genocide and crimes against humanity, pointing to a Myanmar government and military strategy aimed at altering the ethnic composition of Rakhine State by [eliminating or reducing the influence of Muslims](#). The systematic discrimination against and deplorable living conditions of the Rohingya, which reached a critical point in 2017 when clearance operations began for the purpose of eliminating the Rohingya from Myanmar, is highlighted.

Four of the five genocidal acts enumerated in Article 6 of the ICC's Rome Statute are alleged: killing of members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, and imposing measures intended to prevent births within the group. Intent to destroy the Rohingya, which is a necessary element of the crime of genocide, appears to be inferred from the isolation of, harassment of, and discrimination against the Rohingya.

The petition alleges that the Myanmar government and military authorities committed or were complicit in, among other offenses, mass and indiscriminate killings through the application of cruel and inhumane methods, gang rape of women and children, and the [almost total destruction of towns and villages through arson](#). These acts, repressive policies, and the cruel sanctions applied in case of non-compliance subjected members of the group to systematic discrimination, restricted their freedom of movement and expression, and violated their economic, social, and cultural rights. As a result, Rohingya were forced to seek refuge in Bangladesh, which today houses almost [a million Rohingya](#). Measures intended to prevent births are alleged based on numerous accounts of forced birth control and governmental restrictions on the number of children.

With respect to crimes against humanity, the petition alleges that from June 2012 through 2018 the Myanmar government and military authorities knowingly committed crimes against humanity as part of an institutionalized "widespread or systematic" attempt to oppress and dominate the Rohingya, motivated by racial and religious hatred. The petition specifically alleges the [following crimes against humanity](#):

- **Slavery: unpaid forced labor of men, including minors, in subhuman conditions and with torture and severe physical abuse for non-compliance.**
- **Imprisonment and severe deprivation of liberty: arbitrary arrest and torture, coercion, and sexual abuse in detention.**
- **Torture: common use by security forces of torture to obtain information or as a form of punishment.**
- **Sexual violence: sexual abuse against women, girls, and men, including rapes, gang rapes, and physical mutilation sometimes resulting in death.**
- **Forced disappearance of persons: before and during clearance operations, the disappearance of numerous victims with their whereabouts still unknown.**

Based on this accumulated evidence, the petition requested the arrest and international capture of the alleged

perpetrators for purposes of providing statements before the Argentinian court.

## 4. What law is the court applying?

The Court is applying Argentina's Penal Code in combination with [Special Law 26,200/06](#), the "Rome Statute Implementation Act," which implements the provisions of the ICC's Rome Statute. The Special Law states that conduct "described in Articles 6, 7, 8 and 70 of the Rome Statute and all those offenses and crimes that hereinafter fall under the jurisdiction of the International Criminal Court shall be punishable for the Argentine Republic" and that "Federal Courts with criminal jurisdiction" shall be the competent courts to exercise jurisdiction (Articles 2 and 5). The relevant Rome Statute Articles include the crimes of genocide, war crimes, crimes against humanity, and obstruction of justice.

The case is progressing before the National Federal Criminal and Correctional Court No. 1, applying the Penal Code, the "Código Procesal Penal de la Nación" (CPPN). Persons offended by a "publicly actionable offense" have the right to become a special plaintiff (or querellante) in a criminal proceeding under the CPPN. Associations may also become special plaintiffs where "crimes against humanity or serious violations of human rights" are investigated, so long as the association's purpose is "directly related to the defense of the rights that are considered to have been violated" (CPPN Article 82bis).

In the present case, BROUK, Tun Khin, and six Rohingya female survivors of the 2017 cleansing operations have been granted the role of special plaintiffs. In this capacity, they have triggered most of the investigative measures in the case, including requesting arrest warrants in December 2023 which led to the Prosecutor's request in June 2024.

## 5. What is the status of the case in Argentina?

Under the applicable law where this case is being conducted, the CPPN, there are two phases: an investigative stage and, if there is sufficient evidence collected in the investigative stage, a trial stage.

In the investigative stage, the judge conducts the investigation or may delegate such authority to the prosecutor, and there is no requirement for the presence of an accused or defense counsel (CPPN Article 196). During this stage, the judge, or prosecutor if such power has been delegated by the judge, can summon witnesses, request reports, and undertake other investigatory acts (Article 212). The prosecutor may also, as in this case, present evidence and request the arrest of alleged perpetrators so that they may make statements before the court (CPPN Article 294).

During this stage, the accused person may not testify but may give a personal statement and propose investigatory actions through his defense, but these will only be carried out when the judge considers them to be pertinent and useful (CPPN Article 199). Defense counsel may advise and assist the accused, monitor the proceedings, propose investigative measures, file exceptions, and challenge decisions in certain instances. When the judge deems the investigation to be complete, the prosecuting parties (the Public Prosecutor's Office and the plaintiffs) may request further investigatory actions, propose the dismissal of the case, or request the elevation of the case to trial (CPPN Article 347). The defense may oppose the elevation to trial. The judge, in her sole discretion, may elevate the case to the trial phase.

Currently, the case against Myanmar officials for crimes against the Rohingya is still in the investigation stage and has not yet been elevated to trial.

## 6. What happens if the case goes to trial?

Should the case proceed to trial, the trial phase is generally conducted by a court composed of three judges and has two stages: preliminary acts and debate. Preliminary acts include enabling the parties to examine documents and objects related to the case, to offer evidence, and to raise [pertinent](#) challenges.

In the debate stage, the attendance and representation of the defendant is required and there is no possibility of a trial in absentia. The defendant has the opportunity to give a statement but is not required to do so, while also having the right to question witnesses through his defense counsel. The parties enjoy other rights, including participating in evidence-taking and opposing the admissibility of evidence considered illegitimate. The [court may also order](#), on its own or at the request of a party, the receipt of new evidence.

The Court's assessment of evidence and standard for conviction is ruled by the principle of "*sana crítica*," which has been translated as "sound judgment," "judgment based on admissible evidence," or "[sound judicial discretion](#)." *Sana crítica* can be understood as "[a system for evaluating the weight of evidence according to the rules of logic and experience](#)."

## 7. What are the next steps in the case?

Based on the Judge's order, Argentina can issue arrest warrants and request that Interpol issue [Red Notices](#). [Interpol Red Notices](#) are requests to law enforcement worldwide to locate and provisionally arrest a person pending extradition, surrender, or similar legal action. In its December 2023 request, [BROUK also asked](#) that the Association of Southeast Asian Nations, the European Union, the African Union, the Organization of Islamic Cooperation, and States such as the United States, the United Kingdom, and Canada be notified about the arrest warrants.

If those subject to warrants are arrested, a process to extradite the accused to provide statements in the case could be initiated. If the judge determines that evidence gathered during the [investigative stage](#) (CPPN Book II), including these statements, is considered sufficient to complete the investigative stage, then the judge will request the opinion of the prosecutor and the plaintiff(s) about whether the investigation is complete and the case should proceed to trial or be closed. If their opinion is to proceed to trial, then the defense can oppose the opinion and request dismissal of the case. The judge makes the final decision, and if the case is sent to trial, this decision is thereafter unappealable (CPPN Articles 346-353). The judge may also determine after taking statements that there is still insufficient evidence to elevate to trial. In addition, the judge may elevate the case with regard to certain crimes, victims, and accused persons, while continuing the investigative stage regarding others.

## 8. What are the roles of plaintiffs and survivors from Myanmar in these proceedings?

As discussed in question 4 above, BROUK and Tun Khin, along [with others](#) who represent the Rohingya community, have certain rights as special plaintiffs, including to request that the Court pronounce substantive judicial decisions, such as regarding reparations. The plaintiffs may also propose investigative measures, offer evidence, examine documents and proceedings, and be heard before certain judicial decisions are finalized, such as a dismissal of the criminal action or the release of the accused (CPPN Article 80). During the debate stage of the trial, once the evidence has been received, the plaintiffs have the right to argue the evidence and propose accusations and defenses (CPPN Article 393). A plaintiff may also initiate a civil action arising from the crime in the criminal proceeding, constituting itself as a civil plaintiff (CPPN Article 87).

The case in Argentina has been driven by the initiative and drive of the Rohingya community itself, which has taken on the challenge of seeking justice and reparations for genocide victims and survivors. To ensure that the Rohingya community and survivors are front and center, the special plaintiffs are committed to centering victims and their needs in the case. This includes ensuring that survivors, especially women, are able to engage directly with the Argentinian court and its processes, with a view to empowering them and elevating their voices. The direct testimony that witnesses provided to the court in June 2023 regarding sexual and gender-based violence is an example of this commitment. During that testimony, the Court provided security guarantees to witnesses as well as psychological support (through CODESEDH, a non-governmental organization specializing in this area). Logistical challenges, which included double translation from Rohingya to English and then from English to Spanish, were also addressed.

## 9. What are other efforts underway to pursue justice and accountability for crimes against the Rohingya and other groups in Myanmar?

There are two major pathways to justice and accountability for the crimes committed against the Rohingya: (1) holding the state of Myanmar responsible; and (2) holding individuals who planned, participated in, or sanctioned crimes criminally responsible. These efforts are complementary to each other. Due to the current nationwide conflict and structural and practical barriers, the domestic courts of Myanmar are not at present an option for accountability efforts.

Concerning Myanmar's responsibility as a State, [The Gambia's lawsuit](#) under the Genocide Convention continues at

the ICJ. On 22 July 2022, the Court [upheld The Gambia's standing](#) to bring a case against Myanmar for breaching provisions of the Genocide Convention. Currently, written pleadings are being completed before the Court hears the case on the merits. By an Order dated 16 October 2023, the ICJ [authorized the submission](#) of a Reply by The Gambia and a Rejoinder by Myanmar, and fixed 16 May 2024 and 16 December 2024 as the respective time limits for the filing of those written pleadings. The Gambia duly filed its Reply. On 15 November 2023, Canada, Denmark, France, Germany, the Netherlands, and the United Kingdom ([jointly](#)) and the [Maldives](#) filed declarations of intervention under Article 63 of the Statute of the Court. [By an Order dated 3 July 2024](#), the ICJ accepted the declarations of intervention filed by these States, allowing them to submit written observations in the proceedings. [Slovenia](#) and [Ireland](#) have also declared their intention to intervene in the case.

The ICC OTP continues its investigation of the situation in [Bangladesh/Myanmar](#). On 14 November 2019, the [ICC authorized the OTP](#) to investigate certain alleged international crimes occurring during a wave of violence in Rakhine State in 2016 and 2017, including forced deportation. While the acts relevant to the deportations occurred on the territory of Myanmar, which is not a party to the Rome Statute, the [OTP argued](#) that the ICC “may nonetheless exercise jurisdiction” since “an essential legal element of the crime — crossing an international border — occurred on the territory of a State which is a party to the Rome Statute (Bangladesh)”. While granting authorization, the Court noted that the Prosecutor is not restricted “to the persons or groups identified in the Request” or “to the incidents identified in the Request.” It also [authorized the OTP](#) to investigate crimes committed “after 1 June 2010, the date of entry into force of the Statute for Bangladesh” as well as crimes that may have been committed before, but continued after this date.

On November 27, 2024, the ICC Prosecutor Karim Khan announced that he has filed an application for a warrant of arrest for Senior General Min Aung Hlaing, with other arrest warrant requests potentially to follow. ICC judges have yet to rule on the application according to available information.

Absent a Security Council referral, [request from a party to the Rome Statute](#), or voluntary request by Myanmar authorities, the ICC is unable to investigate crimes committed by the Myanmar military in Rakhine State where no part of the crime was committed in Bangladesh.

Other universal jurisdiction processes also have been initiated. The organization Fortify Rights and 16 individuals from Myanmar filed a complaint before the Federal Public Prosecutor General of Germany in January 2023. The complaint called for the Prosecutor to initiate a case in Germany against senior Myanmar military generals and others for atrocity crimes including genocide, war crimes, and crimes against humanity. The complaint provided detailed evidence, including interviews with more than 1,000 survivors, and called for the Prosecutor to conduct an investigation into the Rohingya genocide between 2016 and 2017, as well as into crimes against other civilians since the February 2021 coup. Germany follows what may be classified as ‘pure’ universal jurisdiction, but prosecutors have discretion regarding whether to open a case where there is no connection to Germany. In November 2023, the German Federal Public Prosecutor General [declined to open an investigation](#), in part due to a lack of suspects in Germany.

In April 2023, the Indonesian Constitutional Court [rejected a case](#) to hold the Myanmar military accountable for crimes against the Rohingya. Petitioners [Marzuki Darusman](#), [Muhammad Busyro Muqoddas](#), and the Alliance of the Independent Journalists had argued that the provision in Indonesia’s [Human Rights Court Law](#) that limited universal jurisdiction cases to those perpetrated “by an Indonesian citizen” be declared unconstitutional. However, the Constitutional Court rejected this argument.

In the UK, the [Counter Terrorism Command](#) of the UK Metropolitan Police has opened what are known as [structural investigations](#) for each of the situations under investigation by the ICC, which includes Bangladesh/Myanmar. These investigations are not limited to specific alleged suspects or crimes and can lay the groundwork for future cases.

The Myanmar Accountability Project filed a case in March 2022 with the prosecutor’s office in Turkey to hold the military leadership accountable for their widespread use of torture. The case has been filed on behalf of victims who were tortured in the Yay Kyi Ai military interrogation center in Yangon’s Mingaladon Township. The Turkish authorities have [yet to rule](#) in the case.

In October 2023, five Chin victims and their families filed a joint criminal complaint regarding post-coup crimes

in Myanmar committed against the Chin ethnic group before the National Prosecution Services in the Philippines, requesting that Filipino prosecutors open a war crimes investigation into [ten members of the military's administration](#) that seized power in February 2021, including Senior General Min Aung Hlaing. The complaint accuses the military of murdering civilians, mutilating bodies, burning hundreds of houses, destroying churches, and using aid as a weapon of war in Chin State. The charges primarily involve violations of the 2009 "[Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity](#)" or Republic Act (RA) No. 9851, which enables the Philippines to prosecute "serious crimes of concern to the international community" such as genocide, crimes against humanity, and war crimes since the Philippines is not an ICC member. According to available information, the petition was declined but the plaintiffs plan to appeal.

## **10. Does the Argentina case not duplicate what these other courts are doing?**

The case in Argentina covers a wider scope of crimes than the ICC investigation, as it is not limited to crimes committed against the Rohingya for which some part occurred in Bangladesh. The Argentinian judiciary has [maintained a dialogue](#) with the ICC to ensure that its universal jurisdiction case complements, and does not duplicate, the ICC investigation in Bangladesh/Myanmar.

Based on available information, the Argentina case also differs from other recent universal jurisdiction cases in terms of the victims' identity, as well as the timing, location, and scope of crimes. In addition, as the first Myanmar universal jurisdiction case, the Argentina case is at a more advanced stage (investigation) than the others.

The ICJ case is wholly different in character as it deals with State responsibility for crimes, while the Argentinian court and the ICC investigation deal with criminal responsibility of individuals.