

Factsheet: International Court of Justice

1. What is the International Court of Justice? What types of cases do they hear?

The [International Court of Justice \(ICJ\)](#) is the main judicial body of the United Nations (UN). Often confused with the International Criminal Court, which addresses *individual* criminal responsibility for international crimes, the ICJ focuses on *state* responsibility and the interpretation of international law.

The ICJ handles two types of [cases](#):

- **Contentious Cases:** These cases involve legal disputes between states that have agreed to submit their disagreements to the ICJ for resolution. This means they have accepted the Court's authority for a specific case or category of cases. Once the ICJ decides on such cases, that decision is legally binding and must be adhered to by the countries involved. Recent cases include *The Gambia v. Myanmar* under the Genocide Convention and *Canada and the Netherlands v. Syrian Arab Republic* under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- **Advisory Opinions:** These are legal opinions issued by the International Court of Justice (ICJ) when specific [UN bodies or specialized agencies](#) seek advice on legal matters. Although these opinions are not legally binding, they hold significant influence due to their origin from the UN's highest court, aiding in the development of and adherence to international law and decision-making. A recent example is the Court's opinion in the "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem," requested by the UN General Assembly.

2. How can Afghanistan be taken to the ICJ? Can victims participate?

All states that are parties to the UN Charter are automatically parties to the [Statute of the International Court of Justice](#), which governs the rules and procedures of the Court. Although Afghanistan has not agreed to the Court's jurisdiction, it can [still be brought before the Court](#) in two ways

- **Special Agreement:** Afghanistan and the opposing state mutually agree to permit the ICJ to resolve their dispute through a special agreement explicitly designed for this purpose.
- **Treaty-based Jurisdiction:** Afghanistan has joined an international treaty stipulating that if the ICJ is designated to resolve any related dispute (without any reservations), then any other country that has signed the same treaty can bring a case against Afghanistan at the ICJ. Afghanistan is a party to two treaties that permit the ICJ to resolve disputes:



(1) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and (2) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

3. What is the case being brought against the Taliban by Australia, Canada, Germany, and the Netherlands?

In [September 2024](#), Australia, Canada, Germany, and the Netherlands formally called upon the Taliban to immediately cease violations of CEDAW. Supported by [25 other countries](#), the initiative aims to hold the Taliban accountable for serious human rights abuses against women and girls since the takeover in August 2021. If the case progresses (see below), it will mark the first time a country is brought before the ICJ solely based on discrimination against women and violations of women's rights.

The potential case falls under the framework of CEDAW, also called the international bill of rights for women. Afghanistan joined CEDAW in 2003. By joining the treaty, states commit to eliminating discrimination against women and ensuring equality for women in all areas of life, including education, employment, health, and family life. The Taliban's system of gender apartheid, which relies on denying rights across all aspects of life for women and girls, blatantly violates Afghanistan's obligations under CEDAW. Taliban leaders have prohibited girls from attending school beyond primary education, from employment, and from being in public without male supervision. New laws introduced in August 2024 ban women from singing, speaking, or reading aloud in public and require them to cover their bodies fully and faces when outside.

As of this writing, no official case has been filed against the Taliban at the ICJ. However, the four states leading this process have indicated that initial steps have been taken to fulfill the requirements of Article 29 of CEDAW, which governs the process for an ICJ dispute under the treaty. Under Article 29, several preliminary steps must be met before a case can be filed, including efforts to resolve the dispute through negotiations and, if that fails, arbitration. If the dispute cannot be resolved after these steps, a case can be submitted to the ICJ six months after the request for arbitration. While it is hoped that a case will progress quickly, the six-month deadline is a minimum, and the submission of a case could take longer. For example, a [similar case against Syria](#) under the Convention against Torture took approximately 36 months from the announcement of initial efforts to the filing of the case.

4. If the ICJ looks at Afghanistan as a state, does this mean that it recognizes or legitimizes the Taliban?

There are [concerns](#) that bringing proceedings against Afghanistan at the ICJ may be used to support the recognition of the Taliban by the international community, including the United

Nations. However, [precedents in other cases](#), particularly the Gambia v. Myanmar case, can help address these concerns.

For example, in the case of The Gambia v. Myanmar, a military coup occurred during the proceedings, leading to a scenario similar to Afghanistan, where de facto authorities, not recognized by the international community, hold power within the country. However, whether recognized or not, whoever is in control of a country must uphold the country's treaty obligations—aka the Taliban, whether recognized or not, must uphold Afghanistan's obligations under CEDAW. As a result, when the ICJ hears cases, it examines the responsibility of the state, regardless of who is in power; as the [President of the ICJ](#) commented in Gambia v. Myanmar, ICJ cases concern “states, not particular governments.”

The Gambia v. Myanmar case was initiated in November 2019, when the country was under quasi-civilian rule, and is currently poised to enter its final stages. Following the 2021 military coup, the military junta has represented the country in various aspects of the proceedings, including arguments during the preliminary objections phase and the submission of written materials to the court. However, it should be noted that these engagements at the court have not influenced state engagement with the military junta or changed their recognized status at the UN – they remain unrecognized and uncredentialed for over four years since the coup.

5. Don't ICJ cases take a long time? How can this case deliver justice for women and girls in Afghanistan in the short term?

While reaching a final decision in an ICJ case can be time-consuming, the act of filing a case and various aspects of the process can establish essential benchmarks in the pursuit of justice and accountability in the short term.

First, filing a case against the Taliban sends a strong message that the world condemns their severe human rights abuses against women and girls in Afghanistan. This goes beyond mere rhetorical condemnations and demonstrates that states are willing to take meaningful action to ensure compliance with these fundamental rights. Such action can also be leveraged beyond the legal sphere to support stronger initiatives by the international community, for example, in the political and diplomatic engagement arenas.

Second, in cases where immediate action is necessary, the ICJ can act promptly and issue binding decisions known as “[provisional measures](#),” which aim to prevent irreparable harm and further damage while a case is pending. These can be requested at the outset (or at any other point in the case) by the states bringing an action, and they can be issued within days or weeks of the case filing date. Such measures have been recently issued, for example, in the genocide cases against Israel and Myanmar, as well as the torture case against Syria. The Court can also order parties to submit regular reports on their progress in ensuring compliance with the orders



as the case proceeds. Although these reports are not publicly available, they provide a means for the Court to monitor the situation.

Finally, the process of a case moving forward continues to advance key accountability priorities even before its final result. Significantly, while victims cannot participate directly in the case, the states bringing the case have an essential opportunity to directly engage and center the leadership of women and girls from Afghanistan in all aspects and steps of the process. In addition, if it moves forward, the various stages of the case will create opportunities to focus on the dire situation of women and girls in Afghanistan and help lay out the situation in the country in ways that could compel more decisive action by other UN bodies and actors. This has been observed, for example, in the South Africa v. Israel case.