

# BURMA AND THE ICJ RULING

For the Month of June 2020



**BURMA**  
TASK FORCE

  
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Justice For All is an NGO with Consultative Status at the United Nations (DPI),

Justice for All is an Illinois registered nonprofit organization with its main office based in Chicago, with staff and volunteers in Washington DC, New York, Boston, Texas and other locations. The organization, which was incorporated in 1999, grew out of advocacy efforts on the human rights abuses experienced in Bosnia and later Kosovo during the break-up of the former Yugoslavia.

At that time, it was instrumental in shaping the discourse around the 'genocide' debate and campaigned to declare rape as a war crime in international law. Justice for All is funded by a broad range of faith community donors who take a keen interest in the furtherance of human rights both in the United States and outside its shores. Its broad mandate to educate fellow citizens on social justice concerns and provide guidance for action through regular newsletters and extensive media engagement.

The mainly Muslim Rohingya people of Rakhine State, Burma, have suffered from years of discriminatory treatment and wholesale marginalization, mass displacement, mass atrocities and war crimes that in sum amount to genocide. As a program of the human rights advocacy organization Justice for All, Burma Task Force<sup>1</sup> has been examining Burma's compliance with International Court of Justice (ICJ) directives to protect the Rohingya minority from genocide and to ensure accountability. On January 23, 2020, the International Court of Justice (ICJ) issued four "provisional measures"<sup>2</sup> directing the government of Burma (Myanmar) to protect the Rohingya minority from the crime of Genocide.

This slightly shortened June 2020 report is a follow up to our first<sup>3</sup>, second<sup>4</sup> third<sup>5</sup> and fourth<sup>6</sup> monthly reports. Burma's recent response to the Court is said to be based on three general directives issued by the Burmese President's office in mid-April. On May 22, the Burmese government submitted its required report, which was not made public. Justice for All issued a press release at that time, objecting to the secrecy of the process, which seriously undermines accountability. On June 19, civil society groups also called for the report to be made public.<sup>7</sup>

Unfortunately, in agreement with Rohingya organizations<sup>8</sup>, and numerous human rights NGOs<sup>9</sup>, we must again conclude that the Burmese government and military have largely failed to abide by ICJ provisions to end genocide and hold perpetrators accountable.

In a gesture intended to placate the international community, a secret military tribunal found three soldiers guilty of war crimes perpetrated in 2017. The military announced this verdict on June 30, but no details were provided on the perpetrators, their crimes, or sentences. Amnesty International called the lack of transparency on the court martial "alarming."<sup>10</sup>

Justice for All's Burma Task Force agrees. We also deplore the worsening trends already described in previous monitoring reports, notably the almost complete lack of progress in restoring Rohingya rights and the increasing escalation of military attacks in Rakhine State. Put simply, military escalations at the end of June amounted to a breach of the ICJ rulings.



1 JusticeForAll.org andBurmaTaskForce.org

2 [icj-cij.org/files/case-related/178/178-20200123-ORD-01-00-EN.pdf](https://www.icj-cij.org/files/case-related/178/178-20200123-ORD-01-00-EN.pdf)

3 [justiceforall.org/burma-task-force/burma-and-icj-compliance-february-report/](https://justiceforall.org/burma-task-force/burma-and-icj-compliance-february-report/)

4 [justiceforall.org/burma-task-force/rohingya-report-icj-ruling-compliance-in-burma-march-2020/](https://justiceforall.org/burma-task-force/rohingya-report-icj-ruling-compliance-in-burma-march-2020/)

5 [justiceforall.org/burma-task-force/burma-and-icj-compliance-april-report/](https://justiceforall.org/burma-task-force/burma-and-icj-compliance-april-report/)

6 [justiceforall.org/burma-task-force/report-regarding-icj-ruling-compliance-in-burma-for-may/](https://justiceforall.org/burma-task-force/report-regarding-icj-ruling-compliance-in-burma-for-may/)

7 [aa.com.tr/en/asia-pacific/icj-urged-to-make-rohingya-genocide-report-public/1883420?fbclid=IwAR1ElucR5guUMlUK\\_na-OZnQdfnIJ2FicLLnB2JLRkXzFm-XcQNuOK\\_hpUU](https://aa.com.tr/en/asia-pacific/icj-urged-to-make-rohingya-genocide-report-public/1883420?fbclid=IwAR1ElucR5guUMlUK_na-OZnQdfnIJ2FicLLnB2JLRkXzFm-XcQNuOK_hpUU)

8 [facebook.com/groups/29765422240/permalink/10159036492922241/](https://facebook.com/groups/29765422240/permalink/10159036492922241/)

9 [altsean.org/special-reports](https://altsean.org/special-reports)

10 [frontiermyanmar.net/en/myanmar-finds-soldiers-guilty-in-rohingya-atrocities-court-martial/](https://frontiermyanmar.net/en/myanmar-finds-soldiers-guilty-in-rohingya-atrocities-court-martial/)

## Requirements of the Court

The ICJ ruling recognizes the Rohingya as a protected class, shielded under the Genocide Convention. The Court instructed Burma to “take all measures within its power to prevent the commission of all acts of genocide, and in particular:

- a) Killing members of the protected class or group;
- b) Causing serious bodily harm or mental harm to the members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
- d) Imposing measures intended to prevent births within the group.

Though in January the Government of Burma took “note” of the ICJ ruling, some observers have remarked that it did not explicitly commit to full compliance. It continues to refuse to use the name “Rohingya,” and to deny the legitimacy of the group’s social identity.

## Current Trends: War Crimes and the Failure to Maintain Safety in Rakhine State (Arakan)

According to Arakan Information Center (AIC), some analysts had thought that monsoon season might reduce clashes between Arakan Army and the Tatmadaw, but this is not the case. Moreover, the spread of the coronavirus has not slowed the military clearance operations—on the contrary. Previous reports detailed how the government of Burma and the Burmese Army have used the coronavirus pandemic as an opportunity to increase the level of repression, especially against Rohingya and other ethnic communities in Rakhine State.

According to the AIC eight villagers were killed in June, an increase from seven in May. Killing of these civilians can be counted as war-crimes. Arrests<sup>11</sup> and detentions also increased from 53 to 70. The whereabouts of some detainees are unknown, and some may have been killed. The military has also increasingly forced local men to work as porters.

The harsh military escalation<sup>12</sup> against the Arakan Army targets residents of Rakhine State regardless of age or gender. With numerous civilians dying from indiscriminate military attacks as well as landmines, Rakhine State is an extremely dangerous place to live.



<sup>11</sup> [narinjara.com/news/detail/5ef9a52703827232d624ca7e?fbclid=IwAR16Sw5W8j\\_iebZ8XeQgY1xJUdl8PuLcRRPlxGbhSzETuaz4mSChm1NEiIs](https://narinjara.com/news/detail/5ef9a52703827232d624ca7e?fbclid=IwAR16Sw5W8j_iebZ8XeQgY1xJUdl8PuLcRRPlxGbhSzETuaz4mSChm1NEiIs)

<sup>12</sup> [arakan.news/2020/04/aic-confirms-113-children-killed-and.html?fbclid=IwAR3Y-BjoiXBbiHEbid3kxjSbK7LH2u3ndl3L8D8Z95twHOX4PUIRZhRg3Q](https://arakan.news/2020/04/aic-confirms-113-children-killed-and.html?fbclid=IwAR3Y-BjoiXBbiHEbid3kxjSbK7LH2u3ndl3L8D8Z95twHOX4PUIRZhRg3Q)

## Landmines, Guns and Shelling

At least 26 civilians were killed and 104 more were injured in landmine blasts in Myanmar from January and to the end of May, according to the Mine Risk Working Group (MRWG), with most of the casualties reported in Rakhine State.<sup>13</sup>

Mortar shells and snipers have also injured and killed many other civilians. On the morning of June 2, mines exploded near Ponnaygun town on the highway and killed a man riding on the back seat on motorbike. The driver was injured, hospitalized in Ponnaygun and later reported to be under arrest in Sittwe. On the morning of June 5, four Burmese navy boats fired shells into the village at Goke Pi Htaunt and injured a villager, killed a cow, and destroyed several houses. At midnight on June 10th the Navy shelled the village of Amyint Kyaung and killed the 90-year old woman and injured two more villagers. The next day the military shot randomly in and around Ponnaygun after its officers were stabbed in the market at 8 am. The villager who was shot to death was a disabled man.

On June 19th, the bodies of two unidentified men were found near Kyauk Seik village by local residents. They had been shot dead near the highway. The Arakan Army and Myanmar military had been fighting near the village on June 15.

The army was shelling the Rathedaung area and shells landed in the Buddhist temple and wounded a disabled, blind, and deaf IDP refugee. Artillery and small arms fire from a naval vessel in the Mayu River fell in some villages along the waterway, residents said<sup>14</sup>. On June 24, a 45-year old man was shot to death by the Myanmar army when he went for fishing in the brook near village of Kyaung Twan Gone, near Mrauk U. On the morning of June 26, Light Infantry Battalion (LIB) 80 shelled the village of Dar Let Nat Maw West at 8 pm. A 67-year old man died on the spot.

On June 27, near Sa Nyan village in Maybon township, a woman lost her leg in a mine blast when she went into a nearby stream to collect crabs<sup>15</sup>. At 9.20 am on the 29th, a 54 -year old man was shot by machine gun fire from the base near Nat Taung village when he was going by canoe to a neighboring village to pick up his wife.

As the situation worsened at the month's end, news reports noted four people were killed, including a baby, and four others were injured in incidents of artillery shelling within 48 hours inside three townships of Rakhine State. Affected areas are identified as Dalet Netmaw village under Ann township, Pridaung Muslim village under Buthidaung township and Kyauk Twin Gon village under Mrauk-U township.<sup>16</sup>

## Military Escalation

During the last week of June, at least 10,000 Rohingya and Rakhine civilians fled from over 40 villages in the Kyauktan area of Rakhine State, Burma. A local administrator had issued an evacuation order warning of military "clearance operations." The military claimed that it was only conducting "counter-insurgency operations." UNHCR and OCHA said in a joint statement on Tuesday the order to evacuate had been followed by shooting and shelling. This "clearance operation" clearly breaches the ICJ directives.

<sup>13</sup> [irrawaddy.com/news/burma/twenty-six-killed-100-injured-land-mines-myanmar-since-january-says-report.html](http://irrawaddy.com/news/burma/twenty-six-killed-100-injured-land-mines-myanmar-since-january-says-report.html)

<sup>14</sup> [dmediag.com/news/1636-rt-d-ro-vgrs?fbclid=IwAR1UK75demLG3WD6dlO3eGvmWam5TgODtjFie53RuJS3s6iY6OhKeY7zCi](http://dmediag.com/news/1636-rt-d-ro-vgrs?fbclid=IwAR1UK75demLG3WD6dlO3eGvmWam5TgODtjFie53RuJS3s6iY6OhKeY7zCi)

<sup>15</sup> [arakan.news/2020/06/a-womans-leg-was-completely-cut-off-by.html?fbclid=IwAR2W3XkzI7UvBxx7Bmq-IVV7Hv7OVGC2LtgWNqLjsTxt7s3s3\\_4aryNFB7E](http://arakan.news/2020/06/a-womans-leg-was-completely-cut-off-by.html?fbclid=IwAR2W3XkzI7UvBxx7Bmq-IVV7Hv7OVGC2LtgWNqLjsTxt7s3s3_4aryNFB7E)

<sup>16</sup> [narinjara.com/news/detail/5ef716c603827232d624ca74?fbclid=IwAR1R17jskeujIEJBTJqX1ZR36TJfBHtJAFjtDjeIrtX1l-12Qog0Q981ucU](http://narinjara.com/news/detail/5ef716c603827232d624ca74?fbclid=IwAR1R17jskeujIEJBTJqX1ZR36TJfBHtJAFjtDjeIrtX1l-12Qog0Q981ucU)

The clearance operations were halted after British, Australian, Canadian and US embassies strongly objected.<sup>17</sup>

According to UN statements, already 80,000 people have been displaced by ongoing fighting between Burmese military and the Arakan Army which represents the Rakhine Buddhist communities. This includes 14,575 civilians displaced in Rathedaung alone. Local lawmakers estimate the number of homeless in the area could soon reach 45,000.<sup>18</sup>

UN Resident Coordinator in Bangladesh Mia Seppo has called for a stop to the escalations. “This asymmetrical fighting is taking a heavy toll on the civilian population. There have been burning of Rakhine villages, which echo the tactics used against Rohingya communities in 2016 and 2017,” the top UN official in Bangladesh said.<sup>19</sup>

Twenty-one international humanitarian organizations working in Myanmar also issued a statement urging the military and the Arakan Army to stop further escalation of the conflict in Rakhine State, with humanitarian group signers including Save the Children, World Vision, CARE International, Action Aid Myanmar, the Danish Refugee Council, the Norwegian Refugee Council, International Rescue Committee, Lutheran World Federation, Oxfam, Mercy Corps and Plan International.<sup>20</sup>



Access to journalists and humanitarian agencies has long been severely restricted, and an internet shutdown has in parts of Rakhine and Chin states since June 2019. While COVID 19 contagion steadily increases, this mass displacement increases risk of hunger and mass fatalities. Moreover, the rainy season has begun.

17 [youtube.com/watch?v=TlLaIVr2-Ec&feature=youtu.be&fbclid=IwAR3bOmaei51IUNIXEfV5cLgaglLuZ6r5IDZAwdeJpIDMynz72M8gEkQrVlw](https://www.youtube.com/watch?v=TlLaIVr2-Ec&feature=youtu.be&fbclid=IwAR3bOmaei51IUNIXEfV5cLgaglLuZ6r5IDZAwdeJpIDMynz72M8gEkQrVlw)

18 [arakan.news/2020/06/arakan-army-says-it-killed-30-myanmar\\_53.html?fbclid=IwAR0iWPgMbwqBxgweSulrJL17iWwlqrLtjM0REog9rkKjo\\_JoxoIJKgXk3Bg](https://arakan.news/2020/06/arakan-army-says-it-killed-30-myanmar_53.html?fbclid=IwAR0iWPgMbwqBxgweSulrJL17iWwlqrLtjM0REog9rkKjo_JoxoIJKgXk3Bg)

19 [thedailystar.net/country/news/uns-mia-seppo-calls-end-conflict-myanmars-rakhine-1923001](https://thedailystar.net/country/news/uns-mia-seppo-calls-end-conflict-myanmars-rakhine-1923001)

20 [irrawaddy.com/news/burma/humanitarians-join-un-ambassadors-calling-ceasefire-myanmars-rakhine-state.html](https://irrawaddy.com/news/burma/humanitarians-join-un-ambassadors-calling-ceasefire-myanmars-rakhine-state.html)

## Landgrabs and Displacement

According to the Arakan Rohingya Union (ARU) July 2, 2020 report to the Organization of Islamic Cooperation (OIC), “On June 22, 2020, over 40 Buddhist Rakhine IDPs have reportedly moved into Nazir village, a major Rohingya area in Sittwe Township that was overrun by Buddhist Rakhine mobs and Burmese police during the 2012 and 2014 violence against Rohingya. The Buddhist Rakhine IDPs have been reportedly settling in Nazir village through assistance from the locals Rakhine residence in Sittwe and the Arakan/Rakhine State Government officials, according to sources on the ground. This move was the latest wave of Buddhist Rakhine IDPs settling on Rohingya’s properties in Nazir village. Since January 2020, over 800 Buddhist Rakhine IDPs from various townships were reportedly relocated to Nazir village by the Rakhine State Government.

Almost the entire Nazir village is currently occupied by local Buddhist Rakhine IDPs and residents in Sittwe, and some still moving in to fill in the last remaining properties of Rohingya in the village.<sup>21</sup>”

The report also suggests that the Aung Mingalar area in Sittwe may be at risk of mass displacement of almost 5,000 Rohingya, especially in the Molwi Yekkwet, Kyaugyi Lan, Aung Mingalar, Kongdan, Kathay quarters. Approximately 3,000 Rohingya residents of Nazir village are already living in IDP camps in Sittwe.



## Access to Food, Health, Education and Religious Rights

Increased food shortages in Aung Mingalar area are an ongoing humanitarian concern this year.

ARU<sup>22</sup> also reported that, “The State Government is no longer providing relief supplies to Rohingya in Aung Mingalar. When asked for humanitarian assistance, the State officials have reportedly told the Rohingya community leaders in Aung Mingalar that distribution of relief supplies will be resumed if Rohingya residents from Aung Mingalar choose to vacate their quarters and join the IDPs in the camps.”

News reports indicated that residents were fleeing hunger as well as military attack: a total of 431 Mingalardon villagers in Ann Township fled following the clashes on June 13, said chairman of the Chin University Students in Rakhine State (CUSR) Salai Tun Hla Kyaw was quoted as saying, “Villagers were short on food as the Tatmadaw [military] blockaded the area. The villagers are staying at Mya Theintan Monastery in Dallat village-tract. As the Tatmadaw is implementing a ‘four-cut’ strategy, their food ran out and they left their village,” he said.<sup>23</sup>

<sup>21</sup> For more information, please contact [dg@rohingyaunion.org](mailto:dg@rohingyaunion.org)

<sup>22</sup> [rohingyaunion.org/](http://rohingyaunion.org/)

<sup>23</sup> [irrawaddy.com/news/burma/hungry-villagers-flee-fighting-myanmars-rakhine.html](http://irrawaddy.com/news/burma/hungry-villagers-flee-fighting-myanmars-rakhine.html)

Other news reports indicate that 80 villagers, mainly children and the elderly, remained without food. On June 28, Arakan News reported that 3,000 residents were critically facing shortage of foods, and some are starving in Nat Maw, Dar Let North, Dar Let South, Dar Let Ah Let, and Ah Let villages.” Rakhine, Chin and Rohinya are affected by blockades: “All roads are blocked. We cannot go to Ann. When we go to Zu Kaing by boats, the soldiers shot the boats, arrested the villagers, and confiscated foods. We are starving now.”<sup>24</sup>

In a sign of the socially and politically disruptive effect of the military escalation in Rakhine State, at least sixty ward and village administrators in Rakhine State’s Myebon Township have resigned.<sup>25</sup>

## COVID, Communications, Children

Since Burma confirmed its first case in late March, the government has used aggressive quarantining to curb the spread of coronavirus, along with a strict stay-at-home order, and legal actions against those who break laws. The government banned gatherings of more than five people until May 15 and extended<sup>26</sup> the ban to mid-June. Along with neighboring Thailand, Burma seems to have been relatively fortunate so far, given uneven enforcement of social distancing in crowded cities. But while main outbreaks have been mainly in the suburbs of Yangon, as far as we know, access to medical care in Rakhine State continues to be severely limited, a potential disaster.

Given the increasingly difficult conditions imposed on Rakhine State and the resulting lack of access to any outside organizations or journalists, in the coming months numerous Rohingya may fall ill, lack treatment for Coronavirus, and even access to food, and the outside world might not even know. Rohingya leaders and NGOs including Human Rights Watch<sup>27</sup> have called for an end to internet bans during the global Coronavirus crisis. On April 15th, 26 international humanitarian groups called for an end to such bans.<sup>28</sup>

As noted previously, the Burmese military blockade and internet blackout in Rakhine State may also be intended to prevent collection of evidence as well as to hide ongoing human rights abuses of the local population.

June 21 marked the first anniversary of the shutdown of all mobile internet access in Myanmar’s Rakhine and Chin States. This is the longest internet shutdown in the world. A report released on that day and endorsed by 110 organizations stated that, “Approximately 1.4 million people in eight townships in those States are suffering from the ongoing violation of their economic, social, cultural, developmental, political, and civil rights. The Myanmar government has claimed the shutdown is for national security. However, there has been no evidence that the decision has reduced the ongoing conflict.”<sup>29</sup>

On June 22, Ramree area youth leader Myo Min Tun was arrested and charged with illegal gathering for his protests to reopen the internet in Rakhine and Chin States. Two more leaders of a local CSO in Kyaukphyu, Nay Toe Khine and Min Zaw Aung were arrested for the same reason.

24 [arakan.news/2020/06/3000-out-of-8000-lockdown-villagers-are.html?fbclid=IwAR0XZSyysBC43RpiZNM4gD6VI-AOXgTgMfnxqLweeQPOW4FOkuuuV6gEpw](https://arakan.news/2020/06/3000-out-of-8000-lockdown-villagers-are.html?fbclid=IwAR0XZSyysBC43RpiZNM4gD6VI-AOXgTgMfnxqLweeQPOW4FOkuuuV6gEpw)

25 [irrawaddy.com/news/burma/local-officials-resign-en-masse-myanmars-conflict-torn-rakhine-state.html](https://irrawaddy.com/news/burma/local-officials-resign-en-masse-myanmars-conflict-torn-rakhine-state.html)

26 [irrawaddy.com/specials/myanmar-covid-19/myanmar-extends-ban-mass-gathering-june-15.html](https://irrawaddy.com/specials/myanmar-covid-19/myanmar-extends-ban-mass-gathering-june-15.html)

27 [hrw.org/news/2020/03/31/end-internet-shutdowns-manage-covid-19#](https://hrw.org/news/2020/03/31/end-internet-shutdowns-manage-covid-19#)

28 [savethechildren.org/us/about-us/media-and-news/2020-press-releases/life-saving-access-to-mobile-telecommunication-data-in-myanmar-bangladesh](https://savethechildren.org/us/about-us/media-and-news/2020-press-releases/life-saving-access-to-mobile-telecommunication-data-in-myanmar-bangladesh)

29 [progressivevoicemyanmar.org/2020/06/21/civil-society-marks-1-year-of-worlds-longest-internet-shutdown/?fbclid=IwARIDTtSpNThxwEnQl-9BQnBaOgd8RGnmqczhXXLRIZH6Knea-mjvK84Q2s](https://progressivevoicemyanmar.org/2020/06/21/civil-society-marks-1-year-of-worlds-longest-internet-shutdown/?fbclid=IwARIDTtSpNThxwEnQl-9BQnBaOgd8RGnmqczhXXLRIZH6Knea-mjvK84Q2s)

Also on June 22, Save the Children warned that during the armed conflict in central Rakhine State violence against children has been on a sharp rise. The number of children killed or maimed in the violence rose six-fold in the first three months of this year compared to the previous three months.

Extortion, killing and maiming are the top three abuses impacting children in central Rakhine. Severe under-reporting of violations against children continues to be a huge challenge especially in “whole areas including northern Rakhine and southern Chin States remain largely sealed off to independent observers.”<sup>30</sup>

Between January-March this year in central Rakhine State alone, Save the Children reported 18 children killed and 71 children physically injured or maimed, in comparison to 3 killed and 12 injured children between October-December 2019.

Another long-established problem is the systematic denial of education to Rohingya children, especially in Rakhine State<sup>31</sup>. There has been no change in Burmese policies regarding educational access. The virus has further curtailed educational services. The Government of Burma has also failed to restore other rights to the Rohingya people, including freedom of religion.



In our April report, we described how unequal religious protection is reflected in the hurdles to repair and reconstruction of damaged mosques in Burma. We also detailed how Muslims in the Mandalay area were arrested<sup>32</sup> for gathering for prayers and sentenced to three months' imprisonment under the Natural Disaster Management Law's Article 30(a). But Buddhists<sup>33</sup> and Christians arrested for more dramatic flouting of current social distancing rules were not jailed. Political Will in Burma

Military abuses remain widespread against Rakhine as well as Rohingya people. However, while such abuses may be condemned by the civilian government, there has been no legal reform restoring rights to the Rohingya people, and the peace process with other ethnic groups is

30 [savethechildren.net/news/myanmar-conflict-leads-six-fold-increase-killing-and-maiming-children-first-three-months-year](https://savethechildren.net/news/myanmar-conflict-leads-six-fold-increase-killing-and-maiming-children-first-three-months-year)

31 [aljazeera.com/indepth/features/2014/08/myanmar-rohingya-deprived-education-201484105134827695.html](https://aljazeera.com/indepth/features/2014/08/myanmar-rohingya-deprived-education-201484105134827695.html)

32 [irrawaddy.com/news/burma/myanmar-muslims-jailed-covid-19-rules-breach.html](https://irrawaddy.com/news/burma/myanmar-muslims-jailed-covid-19-rules-breach.html)

33 [irrawaddy.com/opinion/commentary/apparently-myanmar-govts-covid-19-rules-dont-apply-yangon-chief-minister.html](https://irrawaddy.com/opinion/commentary/apparently-myanmar-govts-covid-19-rules-dont-apply-yangon-chief-minister.html)

moribund. On March 23, the Government had declared the Rakhine-directed Arakan Army (AA) a terrorist organization.<sup>34</sup> This policy doubles down on the existing strategy of using the existence of the ARSA militia as a pretext to repress the Rohingya population.

After the UN Secretary General called for a global ceasefire in all nations for the duration of the health crisis, numerous ethnic armed organizations agreed to lay down their arms, but the Burmese military continues killing innocent civilians<sup>35</sup>. All civilians are at risk.

At the end of May, the Asia NGO Network on National Human Rights Institutes (ANNI) and the 21 Myanmar-based human rights organizations said in a joint statement<sup>36</sup> that the Myanmar National Human Rights commissioners, who were appointed in January, were unwilling to act on abuses. They stated, “The inaction of the MNHCR is a clear indication that it has neither the political will, nor sufficient independence to adequately protect the rights of people in Myanmar.”

A May 2020 report by the Congressional Research Services<sup>37</sup> notes that under Burma’s 2008 constitution, the Commander-in-Chief of Defense Services “controls the security forces that make arrests. In part as a result, people in Burma continue to be arrested and convicted for their political activities. The President, however, can direct that pending cases be dropped, as well as grant pardons and amnesties once people have been convicted.” But the NLD Government will not act. It is true that in late May the Parliament reduced the military budget for the first time<sup>38</sup> since Suu Kyi came into office. But her coming to power was marked by a dramatic increase in its budgeting. And the military is not reliant on the civilian government, as it derives income from many industries that comprise a significant part of the Burmese economy, licit and illicit.

## Legal Hurdles and Political Will—Burma and the International Community

Regarding political will, three Myanmar military officers were found guilty by a court martial investigating mass atrocities. The rare action against military members came as Myanmar faces charges of genocide at the United Nations’ top court over a brutal 2017 crackdown against the Rohingya. Rights groups have accused Burmese security forces of committing atrocities in various villages, including Gu Dar Pyin, where at least five mass graves have been found. After initially denials the allegations, the military started court martial proceedings in September, admitting a “weakness in following instructions” in the village<sup>39</sup>. However, the secret tribunal fails to hold higher up officers responsible in any way and raises more questions than it answers.

If the Burmese Government would be sincere about restoring Rohingya rights in compliance with the ICJ ruling, it would enact laws against hate crimes against Rohingya and other minorities. On 18 June, 16-year-old Ko Ko Zaw was stabbed to death by a local monk at the Aung Myay Gone Village monastery. Using a sword, the monk attacked four young Muslims who were helping to move a car stuck in sand. He used anti-Rohingya language and racist language against them, calling them “Kalar.” The Burma Human Rights Network observed that in the absence of hate crimes laws that the burden of response falls on locals NGOs.<sup>40</sup>

34 [tinyurl.com/sexusec](https://tinyurl.com/sexusec)

35 [mmtimes.com/news/tatmadaw-rejects-call-ceasefire-during-pandemic.html](https://mmtimes.com/news/tatmadaw-rejects-call-ceasefire-during-pandemic.html)

36 [irrawaddy.com/news/burma/myanmar-human-rights-commission-fails-stop-abuses-ngos.html](https://irrawaddy.com/news/burma/myanmar-human-rights-commission-fails-stop-abuses-ngos.html)

37 [crsreports.congress.gov/product/pdf/R/R44804](https://crsreports.congress.gov/product/pdf/R/R44804)

38 [irrawaddy.com/news/burma/myanmar-parliament-slashes-militarys-budget-first-time.html?fbclid=IwAR0ZvJCxUkweIsluae2xERJvKOC2maAAtLlkvvdQsEIMF-ITMc7wjE652I](https://irrawaddy.com/news/burma/myanmar-parliament-slashes-militarys-budget-first-time.html?fbclid=IwAR0ZvJCxUkweIsluae2xERJvKOC2maAAtLlkvvdQsEIMF-ITMc7wjE652I)

39 [frontiermyanmar.net/en/myanmar-finds-soldiers-guilty-in-rohingya-atrocities-court-martial/](https://frontiermyanmar.net/en/myanmar-finds-soldiers-guilty-in-rohingya-atrocities-court-martial/)

40 [bhrn.org.uk/en/press-release/1124-bhrn-urges-burmese-government-to-enact-a-law-to-stop-hate-crimes-against-muslims.html?fbclid=IwAR3XgxTB82A4RJOMKw98D9qFHp9M5iwaSf\\_jY1QAWrGUEYSqSVJ7miBjQp8](https://bhrn.org.uk/en/press-release/1124-bhrn-urges-burmese-government-to-enact-a-law-to-stop-hate-crimes-against-muslims.html?fbclid=IwAR3XgxTB82A4RJOMKw98D9qFHp9M5iwaSf_jY1QAWrGUEYSqSVJ7miBjQp8)

Inspired by the Black Lives Movement in the USA, local young Rohingya organized an “I am not Kalar” campaign against Burmese racist terminology, and Rakhine youth organized “Rakhine Youth Matter” on Facebook. The efforts were not embraced by the wider public.<sup>41</sup>

Regarding Facebook, lawyers bringing the case before the ICJ have asked a U.S. district court to order Facebook to release hate-filled posts and communications of the country’s military and police. Though it took several years, Facebook eventually responded to NGO pressure and took down sites that regularly incited violence, but removal criteria is unclear and many activists have also found their sites removed. Facebook should share all requested data with the court. Access to the original postings should help determine responsibility for massacres and mass atrocities.<sup>42</sup> However, the Burmese Tatmadaw military remains financially independent from the civilian government. Given the ongoing pressure on civil society, and considering the government’s ongoing failure to reform the 2008 Constitution, which supports and protects military power in policymaking, it is unlikely we will see a rollback of discriminatory laws (Race and Religion, 1982 Citizenship Laws), or a restoration of Rohingya rights. Without these positive changes, the government of Burma will not fulfill its international legal obligations.

Despite new levels of caution<sup>43</sup> from the World Bank regarding its engagement in Burma, the Burmese government recently signaled its interest<sup>44</sup> in obtaining from them 200 million dollars’ worth of loans for agricultural development. At the same time, on May 22 Myanmar’s Union Parliament approved a proposal to seek US\$700 million in loans from the International Monetary Fund (IMF) to plug budget deficits resulting from increased spending on economic recovery, social security and health sector improvements due to the COVID-19 pandemic. It remains unclear what governance and human rights conditions will be imposed, if any.

## Conclusion

What has the Burmese government promised in its secret report to the International Court of Justice? Its response is thought to be based on 3 statements that President Win Myint has issued in response to the provisional measures order: (1) a statement calling for the military not to commit genocide; (2) a statement calling for the military to not destroy evidence in Rakhine State; and (3) a statement condemning hate speech. Human rights organizations point out that there is a lack of clarity concerning implementation as a matter of policy, and that there has been no visible example of enforcement so far. The Burmese government has withheld access to United Nations experts and rejected the findings of the UN Fact Finding Mission in 2019. Burma has even failed to act on the findings of its own ICOE investigation.

On June 30, at the 44th UN Human Rights Council meeting in Geneva, the UN High Commissioner for Human Rights urged the Burmese government to cooperate with international judicial processes to punish the perpetrators of genocide and pointed out the findings of the Kofi Annan Rakhine Commission of Inquiry, casting doubt on the legitimacy of current investigations.<sup>45</sup>

In a legal brief<sup>46</sup> coinciding with Burma’s May 22 response, the US Holocaust Memorial Museum analyzed Burma’s responsibilities to the court in addressing and mitigating risk factors for genocide.

41 [myanmarmix.com/en/articles/why-myanmar-is-rejecting-the-kalar-campaign](https://myanmarmix.com/en/articles/why-myanmar-is-rejecting-the-kalar-campaign)

42 [reuters.com/article/us-myanmar-rohingya-world-court-idUSKBN23H2E3?fbclid=IwAR0iXzVE3qU63AkFmMhs00AyS-Vr1xi87zG5U3fr\\_VPILqHp3DDSr\\_bTr20](https://reuters.com/article/us-myanmar-rohingya-world-court-idUSKBN23H2E3?fbclid=IwAR0iXzVE3qU63AkFmMhs00AyS-Vr1xi87zG5U3fr_VPILqHp3DDSr_bTr20)

43 [documents.worldbank.org/curated/en/110961589818564510/pdf/Myanmar-Country-Partnership-Framework-for-the-Period-of-FY20-FY23.pdf](https://documents.worldbank.org/curated/en/110961589818564510/pdf/Myanmar-Country-Partnership-Framework-for-the-Period-of-FY20-FY23.pdf)

44 [irrawaddy.com/specials/myanmar-covid-19/myanmar-borrow-200-million-world-bank-assist-farmers.html](https://irrawaddy.com/specials/myanmar-covid-19/myanmar-borrow-200-million-world-bank-assist-farmers.html)

45 [ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26018&LangID=E](https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26018&LangID=E)

46 [ushmm.org/m/pdfs/Practical\\_Prevention\\_-\\_Legal\\_Brief.pdf](https://ushmm.org/m/pdfs/Practical_Prevention_-_Legal_Brief.pdf)

The Museum highlighted 8 risk factors for Rohingya genocide that still exist in Burma today:

1. Systematic denial or revocation of the right to citizenship.
2. Systematic denial of the right to participate in public affairs.
3. Systematic denial or severe restrictions of the right to freedom of movement.
4. Systematic denial or severe restriction of access to health care.
5. Systematic expropriation or destruction of property.
6. Systematic killing of members of a protected group, enforced disappearances, and targeting.
7. Systematic use of rape and sexual violence.
8. Use of members of a protected group in forced labor.

Burma Task Force agrees that “for the Government of Myanmar to uphold its Genocide Convention obligations, it must ensure independent credible investigations into past allegations of genocide” and mass atrocities. We agree with numerous human rights experts that there can be no compliance with the spirit of the ICJ findings without rescinding Burma’s Electronic Transactions Act of 2004; the so-called Right to Peaceful Assembly and Peaceful Procession Act of 2011; the Telecommunications Law of 2013; the Printing and Publications Act of 2014; the Media Act of 2014; and the four so-called “Race and Religion Protection Laws” of 2015 (the Interfaith Marriage Law, the Monogamy Law, the Population Control Law, and the Religious Conversion Law), the Official Secrets Act of 1923; and various sections of the Penal Code (Sections 124A, 130B, 141-147, 153A, 295A, 298, 503, 405, 505(b), 505(c), and 509).

Burma has a long way to go to comply with the ICJ rulings. This report is produced by Burma Task Force, a program of Justice for All, an NGO that has been advocating for Rohingya rights since 2012. This June 2020 report has described recent examples of injuries, killings, hate crimes, military escalation, rights restriction and abuse.

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