

Policy Brief
**Rohingya Rights,
Accountability, and
Reality in Myanmar**



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**Arakan Rohingya National Organisation
(ARNO)**

Executive Summary

The Myanmar Military (Junta) is attempting to normalise impunity through a controlled electoral process while continuing to deny Rohingya identity, obstruct return, and evade accountability for atrocity crimes. At the same time, the factual governance landscape in Rakhine State has fundamentally shifted. Large areas of the Rohingya homeland are no longer under effective control of the central military authorities, but under the de facto administration of the Arakan Army.

These two realities make past policy assumptions obsolete. Any approach to justice, repatriation, or stability that relies solely on Naypyidaw, or treats the Rohingya crisis as resolved through an “elected government,” is detached from conditions on the ground.

The Convention on the Prevention and Punishment of the Crime of Genocide, remains one of the central legal frameworks for prevention, accountability, and protection. The current political and territorial shifts heighten, rather than diminish, the urgency of international engagement.

Current Political and Territorial Reality

Manufactured Political Legitimacy

The junta’s managed “election” is designed to convert coercive control into constitutionally valid form of control. The process has no legal legitimacy as the junta continues to hold (some) power in violation of the Constitution in force on 1 February 2021. Moreover, the process administered by the junta was neither free nor fair and took place amid exclusion of meaningful opposition, systemic repression, and widespread conflict. The pretended transition from junta to “government” is intended to:

- Claim sovereign normalisation
- Reduce international pressure
- Reframe accountability demands as interference in domestic affairs

This electoral exercise does not remedy past crimes, does not restore Rohingya rights, and does not alter Myanmar’s obligations under international law. Furthermore, normalisation of relations with the junta based on the elections risks entrenching conflict, impunity and genocidal policies in Myanmar.

De Facto Control in Rakhine State

Rakhine State is no longer governed by a single authority. Those remaining in Rakhine State endure highly insecure conditions. In practical terms:

- The Arakan Army exercises effective control over most townships in Rakhine
- The military retains strategic nodes, urban centres, and select corridors
- Rohingya communities remain exposed to abuses, movement restrictions, and insecurity under fragmented authority

This reality fundamentally alters what “safe return,” “State protection,” and “administrative responsibility” mean in practice.

The ICJ Case: Prevention in a Changing Context

The *Gambia v. Myanmar* case before the International Court of Justice (ICJ) concerns State responsibility under the Genocide Convention. Provisional measures already ordered by the Court require Myanmar to prevent further harm and preserve evidence. Despite the provisional measures, it is evident that the junta has not implemented the provisional measures. The junta has continued attacks against Rohingya, destroyed evidence on the ground and refused access to independent investigators as reported by UN Independent Investigative Mechanism for Myanmar (IIMM). The current situation sharpens the following points:

1. A controlled “election” does not cure genocidal acts or negate legal responsibility.
2. Ongoing identity denial and obstruction of return indicate non-compliance with the spirit of the Court’s orders.
3. Fragmented territorial control increases risks to Rohingya civilians, strengthening the prevention rationale of the case.
4. Laudable efforts have been made to engage the International Criminal Court and the Federal Criminal Court of Argentina regarding individual criminal responsibility. These efforts should be continued as well as supported.

The ICJ track must therefore, despite its shortcomings, remain central to diplomatic, legal, and policy engagement. In addition, international actors must begin to address the gross human rights violations and violence the Arakan Army is using to gain a foothold in the Arakan. The international community must remind the Arakan Army that the Rome Statute of the International Criminal Court is applicable in this situation and they can be prosecuted under the Rome Statute.

Sovereignty and Recognition

On 4 January 1948, Burma was admitted to the United Nations Organization and, thereby, recognised by the then Member States of the United Nations according to Burma's then defined territory, permanent population, and effective Government. Rohingya were then and thereafter part of the new State and even had the enjoyment of political rights (notably to participate in elections, including to stand for election) and issuance of relevant documents attesting their genuine and effective connection with Burma as nationals. Subsequently, the Rohingya systematically denied the enjoyment of their civil and human rights and, in 1982, effectively rendered *de jure* Stateless in violation of international law.

As a matter of international law, Rohingya remain nationals of contemporary Myanmar notwithstanding the conduct of the previous governments and of the junta. The Rohingya wish fervently to enjoy all our rights including restitution of our property, resumption of our community life in our homelands, and enjoyment of our culture including recognition of our distinct identity. Myanmar is obliged under international law to respect the civil and human rights of Rohingya as well as afford the Rohingya protection under international humanitarian law.

The junta asserts full territorial control and administrative capacity, while large areas of Rakhine State (and of Myanmar as a whole) remain outside its effective control and authority. The junta, therefore, lacks both legal and factual basis for its purported authority as the lawful representative of the State. They should not be afforded any recognition in this regard including diplomatic and procedural courtesies.

Map and Narrative Contradictions Used by Myanmar

In addition to the above, Myanmar's position relies on internally inconsistent narratives that collapse under spatial and factual scrutiny.

Identity and Borders

Myanmar portrays Rohingya as recent migrants from Bangladesh, while historical records, colonial administration data, and long-standing settlement patterns confirm indigenous presence in Arakan predating modern borders.

Demography

Population growth is cited as evidence of illegal migration, yet Myanmar:

- Excluded Rohingya from censuses
- Confined populations through movement restrictions
- Cannot account for the absence of demographic shock indicators associated with mass foreign influx

Security Geography

“Counter-terrorism operations” were the basis of large-scale military operations in the Rakhine, yet:

- Entire villages were destroyed far from alleged militant activity
- Satellite imagery shows systematic, non-tactical destruction
- Civilians were collectively punished regardless of age or gender

Why This Matters for Policy

The Rohingya crisis is not frozen in 2017 – nor any period before or after. It is evolving under new forms of denial and fragmentation. Treating humanitarian assistance, pilot repatriation, or diplomatic re-engagement as substitutes for rights restoration risks entrenching genocide and instability.

Without addressing identity, citizenship, and protection under real governance conditions, any return process will be unsafe and ineffective, and non-durable. Fundamental tenets of international law must be respected from the constitutive elements of sovereignty while applying accepted international frameworks.

Operational Feasibility for Return: Minimum Conditions

Any credible discussion of return must meet the following criteria:

- Voluntary, safe, and dignified return, aligned with international refugee law
- Clarity of de facto authority and civilian control
- Independent monitoring of civilian protection
- Freedom of movement and security of livelihood
- Restoration of civil, political, and citizenship rights
- Unrestricted humanitarian and legal access

Policy Recommendations

To UN Treaty Bodies, UN Special Rapporteurs, and Independent Experts, and all UN Organizations:

- Take all possible steps to stop the on-going genocide
- Enforce the Preliminary Orders of the International Court of Justice in *The Gambia v. Myanmar* case, particularly the preservation of evidence.
- Maintain pressure linked to mass atrocity prevention
- Deny recognition of or engagement with the junta's "elected Government" and treat the "election" as non-curative of ongoing violations
- Demand independent access to Rakhine
- Pressure Myanmar authorities and all actors operating within the Rakhine to unconditionally open humanitarian corridors and allow operations from humanitarian groups in the Rakhine for all people, particularly in Rohingya communities

To States and Regional Actors

- Condition engagement with Myanmar’s putative authorities on concrete, verifiable steps toward Rohingya rights
- Recognise that effective protection requires addressing de facto control realities without legitimising identity denial

To Donors and Humanitarian Agencies

- Prioritise protection monitoring, documenting violations, and community consultation
- Reject repatriation programming that is involuntary and lacks enforceable safety, security and rights guarantees

ARNO’s Role

ARNO offers a rights-based framework grounded in both international legal standards and on-the-ground realities. ARNO can contribute by:

- Representing Rohingya perspectives in diplomatic and legal forums
- Supporting documentation and early-warning reporting
- Advising on reintegration criteria rooted in safety, dignity, and equality
- Participate in discussions and conversations with actors in the Rakhine and Myanmar in order to stop violence and ongoing human rights violations
- Provide substantial and expert input on governance in the Rakhine and throughout Myanmar for the safety of religious and ethnic minority groups

Conclusion

The Myanmar junta’s attempt to convert coercion into legitimacy through the charade of “elections” does not resolve the Rohingya crisis. The fragmentation of authority in Rakhine State further exposes the dangers of superficial solutions.

Justice, prevention, and sustainable peace require confronting identity denial, enforcing international law, and grounding policy and practice in current realities rather than invented political narratives.