



MAY 2020

# **ASSESSMENT OF THE BURMESE RESPONSE TO THE ICJ PROVISIONAL MEASURES**

ARAKAN ROHINGYA NATIONAL  
ORGANISATION (ARNO)

---

## TABLE OF CONTENTS

<a href="#">1. Introduction</a> .....	2
<a href="#">2. Background</a> .....	4
<a href="#">3. “Progress”</a> .....	5
<a href="#">a) Prevent the commission of all acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide</a> .....	5
<a href="#">b) ...ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in point (1) above, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide;</a> .....	7
<a href="#">c) Shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide;</a> .....	8



# Assessment of the Burmese response to the ICJ Provisional Measures

## 1. INTRODUCTION

This report examines the ongoing situation in the Arakan<sup>1</sup> state of Burma from the time the International Court of Justice (ICJ) ordered provisional measures in the case of *The Gambia v. Myanmar*. The Arakan Rohingya National Organisation (ARNO) maintains that genocide has continued despite the January 23, 2020 provisional orders from the international court.

There are two issues that are currently operating in the background of this provisional order that deserve preliminary attention. The first is the vote on constitutional amendments which took place in March 2020 and the second is the COVID 19 pandemic.

In March 2020 the National League for Democracy (NLD) proposed amendments to the 2008 Constitution. The 2008 Constitution currently requires more than 75 percent of parliament to pass a constitutional amendment while giving the military 25 percent of the seats which in turn would allow the Tatmadaw (military) to veto any proposed constitutional amendments. The proposed NLD amendments sought to reduce the required number from 75 percent to two –thirds majority and would gradually reduce the Tatmadaw representation from 25 percent to 5 percent by the year 2030. These amendments were rejected.<sup>2</sup> The Tatmadaw continues to retain its power in the name of “national security.”<sup>3</sup>

Many people across the globe are facing a stressful and challenging time. This is especially true for people who live in conflict areas, particularly those who reside in the Arakan. COVID 19 has presented new challenges and exacerbated old ones in Burma. Burma first made claims that it had no cases of COVID 19

---

<sup>1</sup> This is referred to as the Rakhine state in the international community.

<sup>2</sup> Gabrielle Wast, “Myanmar parliament rejects constitutional amendment to reduce military political power” The Jurist, March 12, 2020, <https://www.jurist.org/news/2020/03/myanmar-parliament-rejects-constitutional-amendment-to-reduce-military-political-power/>

<sup>3</sup> Bertil Lintner, “Covid- 19 restores Myanmar military’s lost powers” Asia Times, April 2, 2020, <https://asiatimes.com/2020/04/covid-19-restores-myanmar-militarys-lost-powers/>



although it shares a border with India, Thailand, and China.<sup>4</sup> As of May 14, 2020 the country has reported 6 COVID 19 related deaths. Other countries are assisting Burma's potential increase of COVID 19 cases by sending equipment and supplies.<sup>5</sup> In the meantime, Burma has been assisting other countries with the pandemic – recently it sent medical gowns to the United Kingdom.<sup>6</sup> Regardless of the international cooperation, the conflict in the Arakan between the Arakan Army (AA) and the Tatmadaw continues, although the AA has announced a unilateral ceasefire in order to help their people with the pandemic.<sup>7</sup> The military has not accepted any ceasefire terms in the Arakan, Kachin, and Chin states. This topic was discussed by the UN Security Council in a closed door meeting with UN envoy for Myanmar, Christine Burgener on May 14, 2020.

Thousands of Rohingya people who are displaced are forced to reside in concentration camps and at any time can become victims of COVID 19.<sup>8</sup> There is a lack of continued access to meaningful medical care in the Arakan. Recently, a member of the World Health Organization was shot while collecting samples to test for COVID<sup>9</sup> which points to the hostile environment the Tatmadaw has created. The Tatmadaw, however, released 800 Rohingya people from prison and transported them from Yangon to Arakan where

---

<sup>4</sup> Andrew Nachemson, "Fears of coronavirus catastrophe as Myanmar reports first death" Al Jazeera, April 1, 2020, <https://www.aljazeera.com/news/2020/04/fears-coronavirus-catastrophe-myanmar-reports-death-200401073723812.html>

<sup>5</sup> The Tribune, "COVID-19: SpiceJet operates freighter flight carrying medical supplies from Delhi to Myanmar" April 21, 2020, <https://www.tribuneindia.com/news/nation/covid-19-spicejet-operates-freighter-flight-carrying-medical-supplies-from-delhi-to-myanmar-74157>

<sup>6</sup> Rowena Mason and Dan Sabbagh, "Plane with PPE from Turkey has landed in UK, minister confirms" The Guardian, April 22, 2020, <https://www.theguardian.com/world/2020/apr/22/delayed-plane-carrying-ppe-from-turkey-lands-in-uk-coronavirus>

<sup>7</sup> San Wansai, "Burma Army's Mindset: No to Unilateral Ceasefire" BNI, April 4, 2020, <https://www.bnionline.net/en/news/burma-armys-mindset-no-unilateral-ceasefire>

<sup>8</sup> Kayleigh Long, "In Myanmar's Rakhine state, conflict and internet blackout mar COVID-19 response" Devex, April 6, 2020, <https://www.devex.com/news/in-myanmar-s-rakhine-state-conflict-and-internet-blackout-mar-covid-19-response-96930>

<sup>9</sup> Al Jazeera, "Attack on WHO vehicle that killed Myanmar driver condemned" April 21, 2020, <https://www.aljazeera.com/news/2020/04/attack-vehicle-killed-myanmar-driver-condemned-200422011858564.html>



they will now be placed under “quarantine.”<sup>10</sup> Many in the international community applauded this measure, which ARNO agrees is better than life in prison for no legal reason. However, the Rohingya who have been brought back have been placed in makeshift camps and will be unable to follow basic World Health Organization guidelines issued for the pandemic, specifically social distancing measures.

The continued battle for power between the Tatmadaw and the NLD has continued to keep a volatile situation in place because of the inability of both political groups to pave a path forward consistent with Burma’s international human rights obligations, particularly towards indigenous and minority groups. However, it should be noted that the NLD has not expressed a different position from the Tatmadaw with regard to the Rohingya. This is proven by Aung San Suu Kyi’s performance at the ICJ proceedings in December 2019. The international community must lead in brokering a deal between the Tatmadaw and the NLD in order for state sponsored genocide to stop against the Rohingya and all indigenous and minority groups within Burma.

## 2. BACKGROUND

On January 23, 2020, the ICJ unanimously ordered Burma to fulfill four provisional measures prior to the next hearing, originally set for May 2020. The ordered measures were:

1. Prevent the commission of all acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide;
2. Shall in “relation to the members of the Rohingya group in its territory, ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in point (1) above, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide;
3. Shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide;

---

<sup>10</sup> The Strait Times, “Coronavirus: Myanmar ships 800 freed Rohingya prisoners back to Rakhine” April 20, 2020, <https://www.straitstimes.com/asia/se-asia/coronavirus-myanmar-ships-800-freed-rohingya-prisoners-back-to-rakhine>



4. Shall submit a report to the Court on all measures taken to give effect to this Order within four months...<sup>11</sup>

In its Order the ICJ stated that it viewed the Rohingya who remain in Burma “extremely vulnerable.”<sup>12</sup> The Ministry of Foreign Affairs for Myanmar rejected the ICJ’s ruling.<sup>13</sup> ARNO concludes that Myanmar has the power to stop genocide against the Rohingya peoples under the Convention on the Prevention and Punishment of the Crime of Genocide and is continuing to fail in its obligations to do so.

### 3. “PROGRESS”

#### a) Prevent the commission of all acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide

For the Rohingya people in Burma, the same conditions that existed in the Arakan have not changed since the order for provisional measures. The Rohingya people still have little to no access to medicine. Rohingya people are still limited in their freedom of movement with several thousand people in concentration camps and who lack access to appropriate food<sup>14</sup> and water. For those that are not in the camps, the land is untenable. It is riddled with landmines presenting a danger to villagers and to those who may farm. Education is not an option. Marriage and child birth is restricted and the laws that are keeping such restrictions in place are still enforced. There are reports that Rohingya villages are being razed to the ground by the Tatmadaw.

---

<sup>11</sup> *The Gambia vs. Myanmar*, para 86

<sup>12</sup> *Ibid*, para 72

<sup>13</sup> BBC News, “Myanmar Rohingya: Government rejects ICJ ruling” January 23, 2020, <https://www.bbc.com/news/world-asia-51229796>

<sup>14</sup> ARNO has sent an official communication to the newly appointed UN Special Rapporteur on the Right to Food, Michael Fakhri, in April 2020. ARNO hopes the Special Rapporteur will be able to assist the Rohingya to adequately address the food insecurity issues facing our people in Burma.



The internet remains shut down within the Arakan, giving no access to information for people who reside there. Any transgressions of international criminal law will continue to remain in the darkness. Governments such as Myanmar take the position that internet restrictions are to protect people from spreading fake news thereby reducing violence. In reality, Myanmar uses the internet shutdown as a cloak to disguise its institutionalized genocide against the Rohingya and other indigenous groups. For members of the Rohingya refugees and the diaspora, the inability to connect with loved ones adds to the stresses of the life and homes they were forced to leave behind.

Hate speech and propaganda has continued even after the ICJ order. The military labels the Rohingya as “foreigners” to create support among Burmese people and justify their power in order to handle “national security threats.” The upcoming election cycle will also generate hate speech against the Rohingya, possibly leading to more communal violence.<sup>15</sup> The Tatmadaw now has the ability to conduct more “clearance operations” while they seek and destroy who they deem as terrorists in the Arakan.

Burma has continued to drag its feet with regards to repatriation. It has done nothing to prepare the Arakan for the return of the Rohingya people. As mentioned above, the AA has called for a unilateral ceasefire, but the Tatmadaw refuses to acknowledge it and continues to fight. Myanmar has continued its ill-conceived idea of providing the Rohingya “National Verification Cards” and requesting that Rohingya peoples erase their identity in order to come back home. There is no evidence that Burma has even considered – let alone – started – changes in the laws that are needed. This would *at a minimum* require the repeal of the 1982 Citizenship Law. The ability for Rohingya people to obtain their Burmese citizenship is critical to stopping the genocide. Without it, the Rohingya people remain ghosts in their homeland, with no access to rights and no ability to live with dignity. While the Government of Myanmar has not made any significant changes in line with the provisional orders, the United Nations High Commissioner for Refugees has extended the Memorandum of Understanding with the Government of Myanmar to repatriate refugees, *without any input from the Rohingya people*.

---

<sup>15</sup> Hunter Marston, “Stirring hatreds ahead of Myanmar’s elections” the interpreter, March 4, 2020, <https://www.lowyinstitute.org/the-interpreter/stirring-hatreds-ahead-myanmar-elections>



If anyone was searching for more proof of the poor conditions in the Arakan, one should only look at the refugees that continue to flee, however they can, from Burma in unsafe, unsanitary, and deadly conditions. The first reported group of Rohingya refugees was found in a trawler which had been at sea for 2 months. The trawler was turned away from Malaysia and accepted by Bangladesh.<sup>16</sup> The next incident around April 26<sup>th</sup> involves 2 boats and approximately 500 people who were at sea that were eventually able to dock in Bangladesh. ASEAN countries have made both international and regional commitments under the United Nations Transnational Organization Crime Convention and accompanying Palermo Protocols as well as the ASEAN Convention against Trafficking in Persons to stop trafficking in persons wherever possible.

Recently, the International Association of Genocide Scholars passed a resolution declaring the acts committed against the Rohingya genocide and crimes against humanity.<sup>17</sup> As time wears on, the Government of Myanmar has done nothing to prevent genocide against the Rohingya people.

- b) ...ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in point (1) above, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide;**

The internal armed conflict between the Tatmadaw and the AA continues and puts the Rohingya people, already afraid and starving, right in the middle.<sup>18</sup> Burma has now strategically labeled the AA a “terrorist” group. Those who were present at the ICJ proceeding will recall that Myanmar was

---

<sup>16</sup> MSF, “Rohingya refugees left to starve at sea” April 22, 2020, <https://www.msf.org/rohingya-refugees-left-starve-sea>

<sup>17</sup> International Association of Genocide Scholars, “Resolution to Declare the Rohingya Persecution a Crime of Genocide and Crimes Against Humanity” (April 21, 2020), <https://genocidescholars.org/wp-content/uploads/2020/04/IAGS-Rohingya-Resolution.pdf>

<sup>18</sup> Network Media Group, “Some of the Villagers Arrested Army Released” April 22, 2020, <https://www.bnionline.net/en/news/some-villagers-arrested-army-released>





opposed to provisional measures as it would upset attempts at reconciliation in a fragile environment. As history has already proven in Burma, labeling groups “terrorists” allows for a greater commission of state sponsored crimes to take place. These purges are often euphemistically named “land clearance operations” (more appropriately - genocidal purges). In 2017 when ARSA<sup>19</sup> allegedly attacked 15 Tatmadaw members, the Tatmadaw responded with a campaign of murder, burnings, lootings, sexual violence, and the destruction of homes. Many bodies were dumped in mass graves which to date; Burma has not provided any information to allow the Rohingya to bury their dead according to their respective customs.<sup>20</sup>

In reality, continuing the conflict in the Arakan is convenient for the Tatmadaw and likely for the entire government of Myanmar. The longer the conflict wears on, the less likely it will be for United Nations to do any meaningful work to bring Rohingya people back to their ancestral homelands. It also makes any repatriation campaign difficult. In addition, the conflict allows the Tatmadaw and the State Councilor to continue business dealings on ancestral Rohingya land.<sup>21</sup> Current billion dollar projects include the Kaladan project (seaports) and an oil pipeline from the Bay of Bengal to China.<sup>22</sup>

**c) Shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide;**

---

<sup>19</sup> See Kaladan Press News, “Analysis – Suspicious inconsistencies in Burma Army report of recent “ARSA attack” in northern Maungdaw” April 25, 2020, <https://kaladanpress.org/index.php/commentary/106-kpn/5196-analysis-suspicious-inconsistencies-in-burma-army-report-of-recent-%E2%80%99Carsa-attack%E2%80%9D-in-northern-maungdaw.html>

<sup>20</sup> There are several different religions among the Rohingya people, each with their appropriate burial customs.

<sup>21</sup> Eleanor Albert and Lindsay Maizland, “The Rohingya Crisis” Council on Foreign Relations, January 23, 2020, <https://www.cfr.org/background/rohingya-crisis>

<sup>22</sup> Steve Sanford, “Myanmar’s Arakan Army is Recruiting and Training to Fight Government” October 16, 2019, <https://www.voanews.com/east-asia-pacific/myanmars-arakan-army-recruiting-and-training-fight-government>



The ICJ did not outline measures of how evidence should be preserved.<sup>23</sup> As noted above, the victims of the 2017 genocidal purges have not been identified or given an appropriate burial. The location of these mass graves and exhumation of the bodies will be a critical step in identifying manner and causes of death. Myanmar is likely to identify the evidence from its “International” Commission of Enquiry (ICOE) as the evidence it obtained to prove genocide was not perpetrated. ARNO has previously reported on why the ICOE is a farce.<sup>24</sup>

It is important to note that accountability measures for the genocide purges of 2017, and all the genocidal purges before that are lacking. The ICOE’s website is a stark reminder of the continued dehumanization the Rohingya people face. The website asked for submissions (which closed in 2019) to be submitted in English, Burmese, and “Bengali.” A serious Commission committed to finding the truth would not begin its proceedings with state sponsored racist propaganda. This image was taken on April 22, 2020:

The ICOE welcomes the early submissions of these evidences and data in any of the following languages:

English; Myanmar; Rakhine; and Bengali.

The deadline for submission had been extended from 31-1-2019 to 31-5-2019.



The Rohingya language is known as “Rohingya Zaban.” If Burma had been serious about accountability measures, it would have made every effort to make the environment free of hate speech so that the

<sup>23</sup> ARNO believes that a critical amount of evidence resides with Facebook. ARNO has contacted Facebook, Inc. based in the United States and asked them to please submit or freeze the evidence posted on Facebook. To date, ARNO has not received a response, but remains hopeful of Facebook’s cooperation, given the widespread knowledge of the platforms utilization starting in 2012.

<sup>24</sup> ARNO, “Myanmar launches report riddled with untruths” January 16, 2020, <https://www.rohingya.org/press-release-myanmar-launches-report-riddled-with-untruths/>



Rohingya could meaningfully participate. However, as Burma has made clear, it has no intent of letting the Rohingya obtain justice.

Another place that Myanmar's brazen attempts at erasing Rohingya identity can be found on the United Nations Myanmar Information Management Unit (MIMU) website. This website collects data regarding Myanmar in order to assess and determine humanitarian and development needs in the country. In 2019 ARNO wrote an open letter to Mr. Knut Osby asking him to remove an extremely derogatory, racist, and dehumanizing term that was placed on the MIMU maps.<sup>25</sup> To date, those terms have not been removed. Further, MIMU has also been blindly inputting data that Burma provides without acknowledging or correcting the fact that all Rohingya villages are being deleted from existence and renamed with Burmese names as if to indicate the Rohingya never had an existence in the Arakan.

Given the complete disregard for the Rohingya and the ongoing genocide, ARNO is requesting that the international community create a Truth and Clarification Commission to allow the Rohingya history and narratives of all victims and survivors of genocide and crimes against humanity have the opportunity to record their testimony as our identities have been erased and propaganda has replaced our history in order to benefit the perpetrator.

ARNO further asks the international community to increase pressure to so that realistic and tangible solutions are provided to stop the Rohingya genocide so that another generation of Rohingya people can live. Furthermore, there should be no solutions to the Rohingya repatriation without appropriate Rohingya representation and meaningful engagement by the Rohingya people in the process.



For more information please  
email to:

[info@rohingya.org](mailto:info@rohingya.org)

---

<sup>25</sup> ARNO, "Demanding the removal of racist term "Ku Lar" from UN's official Myanmar's maps of Northern Rakhine State" May 2, 2019, <https://www.rohingya.org/demanding-the-removal-of-racist-term-ku-lar-from-uns-official-myanmar-maps-of-northern-rakhine-state/>



