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GENOCIDE ALERT AND PREVENTION MECHANISM

Case Study: Myanmar



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Genocide and Crimes Against Humanity Alert and Prevention Mechanism

Case Study: Myanmar

The Srebrenica Memorial Center

Established by decision of the High Representative for Bosnia and Herzegovina in 2000, the Srebrenica Memorial (full name: Srebrenica-Potočari Memorial and Cemetery for the Victims of the 1995 Genocide) is a place of remembrance for the victims of the 1995 Srebrenica genocide. The Memorial Center is dedicated to the preservation of history and to confronting the forces of ignorance and hatred which make genocide possible.

About the Project

The Srebrenica Memorial Center began implementing the project "Truth, Dialogue, Future" in late 2020 with the support of the Government of the United Kingdom. The project aims to strengthen the capacities of the Memorial Center in areas such as memorialization, archiving, education, public outreach, institutional networking, and internationalization. Truth-telling, dialogue, and confronting violent extremism are central aspects of the project's design. Through research, publications, and development in key areas of its mission, the Memorial Center strives to assume a leading role in education about, and prevention of, radical hatred in the region—especially as it relates to genocide, war crimes, and confronting the past. To this end, the project focuses on the development of crucial capacities, including the collection, archiving, and presentation of research, as well as the building of fruitful and long-lasting partnerships with other institutions around the globe.

The Genocide Alert and Prevention Mechanism (GAPM) is an important activity within the project, which aims to identify narratives and patterns of action with the potential to lead to violence. The GAPM entails a series of reports, written by the Memorial Center's team of expert researchers, which focus on situations of mounting violence around the world which exhibit significant potential to escalate into genocide. These reports are strictly fact-based, relying on available evidence, independent journalism, and the findings of esteemed international entities working to expose and prevent the violation of human rights. The Memorial Center views the responsibility to use the experience of the Srebrenica genocide as well as its developing research capacities to raise awareness about situations of escalating violence as an important aspect of protecting the legacy of Srebrenica. With these reports, the Memorial Center endeavors to apply the expertise gained through our collective experiences in Srebrenica to alert the international community to egregious violations of human rights and circumstances where there is an imminent risk of genocide. By ensuring that the horrors which transpired in Srebrenica are never experienced again anywhere in the world, we honor the victims of the Srebrenica genocide and help to fulfil the most fundamental collective responsibility of the human race.



EXECUTIVE SUMMARY

This report focuses on the persecution of the Rohingya minority in Myanmar, with particular attention to the so-called “clearance operations” committed by Tatmadaw forces in 2017 in the Rakhine State. The culmination of decades of violence and oppression against the Rohingya people, these highly coordinated operations involved extreme violence and numerous atrocities on the part of the Tatmadaw.

The prevention of genocide and mass atrocities is both an internationally binding legal obligation and a universal moral responsibility. In establishing the case for intervention to prevent future atrocities, this report (1) identifies the *violations of international law* which provide legal grounds for intervention; (2) assesses the *likelihood of the future escalation* of violence in order to demonstrate the exigency of prevention; and (3) recommends possible *measures* for intervention and prevention.


The conclusions of this report which pertain to international law can only be provisional, pending further investigation by accredited legal institutions. However, the preliminary findings of this research suggest a high probability that various **crimes against humanity** and **war crimes** have been and continue to be perpetrated by the Tatmadaw regime against Myanmar civilians. These include but are not limited to mass murder, sexual violence, forced disappearance, and forced displacement.

In regard to **genocide**, legal justification must necessarily be established by the competent judicial authorities. However, based on relevant scholarship and historical experience, this report finds substantial evidence to conclude that the violence committed against the Rohingya minority in Myanmar may already constitute genocide, or may come to do so in the near future. The underlying and persistent social and political circumstances in the country strongly suggest that without preventative international intervention, the violence against the Rohingya is likely to continue to escalate.

Based on this assessment, this report concludes that there is sufficient legal basis for international intervention in Myanmar. The lessons of history, including that of the Srebrenica genocide, further substantiate the urgent imperative to take action to prevent the further victimization and genocide of the Rohingya people.

As such, the preliminary **recommendations** of the Genocide Alert and Prevention Mechanism are as follows:

- The international community must **exert pressure** on the Myanmar government in to grant unfettered access to the country for media and humanitarian organizations.
- A sustainable program for **voluntary repatriation** of Rohingya refugees must be implemented to ensure their safe return and equal protection under national law.

- 
- The **investigation and prosecution** of the crimes committed in Myanmar must be earnestly pursued by international legal bodies.

LEGAL FRAMEWORK AND MASS ATROCITY PREVENTION

The prevention of genocide and mass atrocities is not only a legal obligation binding on all states, but a collective moral responsibility shared by all of humanity. The obligation of states to intervene to prevent genocide, war crimes, and crimes against humanity is firmly established under the customary rules of international law as well as in numerous international treaties. Based on relevant jurisprudence, the Genocide Alert and Prevention Mechanism relies on the following definitions in substantiating the legal grounds for intervention in the case of genocide and mass atrocities:

War Crimes


War Crimes are defined as Grave breaches of the Geneva Convention and include any of the following offences committed in armed conflict against persons or property protected under the Convention's provisions:

- a) Willful killing
- b) Torture or inhuman treatment, including biological experiments;
- c) Willfully causing great suffering, or serious injury to body or health;
- d) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- e) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- f) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- g) Unlawful deportation or transfer or unlawful confinement;
- h) Taking of hostages;
- i) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.

Crimes Against Humanity

Article 7 of the Rome Statute defines crimes against humanity as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- a) Murder;
- b) Extermination;
- c) Enslavement;
- d) Deportation or forcible transfer of population;

- 
- e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - f) Torture;
 - g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - i) Enforced disappearance of persons;
 - j) The crime of apartheid;
 - k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Genocide

Article II of the Convention on the Prevention and Punishment of Genocide defines genocide as:


... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to 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;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.

Intervention and Prevention in Cases of Genocide and Mass Atrocities

The duty to prevent genocide is unequivocally expressed in Article I of the Genocide Convention. Moreover, the obligations enshrined by the Convention are obligations *erga omnes*, meaning that each state is bound by them. Hence, each state is legally obligated to prevent and punish genocide, regardless of where the crime occurs and without reservations.¹ The duty to prevent crimes against humanity is ensured by the duty to prevent certain acts, torture for instance, which would amount to crimes against humanity when committed as part of a widespread and systematic attack.

¹ ICJ, *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*. Preliminary Objections. 11 July 1996. Para 31.



Additionally, given that all states are obligated to abide by international humanitarian law, preventing and punishing war crimes is likewise a duty.²

These duties and responsibilities are explicitly outlined in the 2005 World Summit Outcome. R2P obligates all states to prevent atrocities as well as their incitement, through proper and necessary means. The primary responsibility rests with states themselves to prevent atrocity crimes on their own territories, however, the international community also has a responsibility to uphold these obligations when individual states prove unable or unwilling. The first recourse of intervening parties should be pacific means, but should such means prove inadequate, the United Nations Security Council (UNSC) may authorise other forms of collective action, including armed intervention, to protect populations from atrocities.

While international law provides explicit criteria for the classification and prosecution of known violations, it cannot speculate as to the potential of conflicts to escalate, including into genocide. For this reason, in identifying grounds for international intervention and prevention, it is necessary to consult the collective knowledge gained from the historical study of violence. The exigent scholarship leaves no doubt that genocide and mass atrocities are by no means spontaneous phenomena but are rather the culmination of historical processes. By studying the patterns in which political violence unfolds, scholars and researchers have been able to identify early warning signs, including the political, social, and economic conditions which are conducive to violence.³

Genocide scholar, Gregory S. Stanton, theorizes ten distinct stages of genocide, as well as preventative measure which can be taken by domestic and international actors at each stage. Based on this framework, the following means of prevention are identified in this report, corresponding to the scope of the intervention required.

Early Stages: Preventing Division


The earliest warning signs of genocide involve the galvanization of identity grievances and the sowing of hatred and intolerance among groups. At this stage, preventative measures include **Institutional Development, Combatting Language and Symbols of Hatred, Empowering Marginalized Groups.**

Intermediate Stages: Preventing Mobilization

With divisions and hostility firmly embedded in the social fabric, perpetrators of genocide proceed to lay the structural groundwork for genocide. At this stage, preventative measures include **Supporting Moderate and Opposition Actors, Hindering Militarization of Aggressors** and **Prosecuting Incitement and Conspiracy.**

²See, for example, UN Human Rights Council. "Report on prevention of Genocide." A/HRC/41/24. 24 June 2019.

³ See for example, Maureen S. Heibert, *Constructing Genocide and Mass Violence* (New York: Routledge, 2017).



Late Stages: Preventing Violence

Once the violation of the victim groups' basic human rights has become systematized, violence against them can only be expected to intensify. In the late stages of genocide, war crimes and crimes against humanity are being perpetrated. The extermination of the victim group is an imminent threat or may already be underway, and preventive measures should be enacted immediately and swiftly by the international community. All of the following measures, however, must be enacted in accordance with international law: **Mobilizing International Structures, Providing Humanitarian and Military Assistance, Establishing and Defending International Safe Areas** and, ultimately, **Armed Intervention**.

VIOLENCE AGAINST THE ROHINGYA IN MYANMAR

Since gaining independence from British colonial rule in 1938, Myanmar⁴ has struggled with military rule, ethnic conflict, poverty, and isolation. A succession of coups d'état and military juntas, each preceded by anti-government protests and constitutional changes, have shaped the history of Myanmar since 1962. From the time of the country's first multiparty election in 2016 up until the most recent coup d'état in 2021,⁵ Myanmar was jointly ruled by the Tatmadaw and the National League for Democracy (NLD) under the leadership of Aung San Suu Kyi. The turbulent political history of Myanmar has compromised its transition to democracy. Furthermore, the succession of military regimes has exacerbated ethnic conflicts and ongoing violence in the country, due to the vast discrimination and infringements on the rights of ethnic minorities and the suppression of ethnic autonomy.

Although a country of cultural and ethnic diversity, two-thirds of the population of Myanmar are ethnic Burmese, or Bamar, who undeniably enjoy a privileged position in society, given that they hold the majority of civilian and military positions. The remaining one-third of the population is comprised of other ethnic minorities who have faced large scale systemic discrimination and human rights abuses for generations.


For decades, the Tatmadaw and ethnic armed organizations have taken part in protracted armed conflicts.⁶ Fighting has mostly occurred along external border areas of the country, including in the Rakhine, Kachin, and Shan States.⁷ In addition to ethnic conflict, Myanmar has seen an increase in Buddhist radicalism and a growth in anti-Muslim rhetoric and sentiment in recent years, which has led to increased violence between Buddhists and Muslims. In Myanmar 87.9% of the population are Buddhist, 6.2% are Christian, and 4.3% are Muslim. The largest ethnic group, the Bamar, are predominantly Buddhist. This Bamar-Buddhist majority is the main base of support for the

⁴In 1989, the new military regime changed the country's name from the Union of Burma to the Union of Myanmar to signify a more inclusive state. Maizland, Lindsay, "Myanmar's Troubled History: Coups, Military Rules, and Ethnic Conflict," *Council on Foreign Relations*, February 10 2021, <https://www.cfr.org/backgrounder/myanmar-history-coup-military-rule-ethnic-conflict-rohingya>.

¹¹ Following general elections which NLD won by a landslide, the Tatmadaw seized power on February 1. Goldman, Russell, "Myanmar's Coup and Violence, Explained," *The New York Times*, 14 May 2021, <https://www.nytimes.com/article/myanmar-news-protests-coup.html>.

⁶ In 2017, it was estimated that approximately 11 of 330 townships in Myanmar were affected by conflict and tensions between EAOs and the government. See "Myanmar – State of Conflict and Violence", *Asia Foundation*. 2017. Available at: <https://asiafoundation.org/wp-content/uploads/2017/10/Myanmar-TStateofConflictandViolence.pdf>.

⁷Maizland, Lindsay, "Myanmar's Troubled History: Coups, Military Rules, and Ethnic Conflict," *Council on Foreign Relations*, 10 February 2021, <https://www.cfr.org/backgrounder/myanmar-history-coup-military-rule-ethnic-conflict-rohingya>.



Tatmadaw. Due to their outsized political influence, resentment against this group has been growing among minorities.

The Rohingya

The Rohingya people are a minority group living in Rakhine state in western Myanmar. The majority of Rohingya practice a variant of Sufi Islam, while a small number practice Hinduism. Because the government of Myanmar does not recognize the Rohingya as a distinct ethnic group, they are considered a “stateless entity” and lack the legal protections afforded by the government to other recognized groups. Within Myanmar society, Rohingya are widely regarded as refugees from nearby countries such as Bangladesh, Indonesia, Thailand, Cambodia, and Laos. For this reason, they are generally conceptualized as lying ‘outside the political community,’ and face strong hostility in the country. According to the United Nations, they are “the most persecuted minority in the world.”⁸

During the British colonization of Myanmar (then Burma) between 1837 and 1937, there was significant migration of workers from India and Bangladesh to Myanmar. After Myanmar gained independence in 1948, the government declared this migration illegal, and the Rohingya population was denied the formal status of citizenship and its accompanying protections. A new citizenship law was passed in 1982, however it also did not include Rohingya on the list of 135 ethnic groups in the country.

State violence against the Rohingya began in the 1970s, when the Burmese army launched a brutal campaign across Rohingya-inhabited territories, forcing the Rohingya to flee Myanmar, after which many migrated to predominantly Buddhist Bengali villages.⁹

In June 2012, reports of the alleged rape of a Rakhine woman by a group of Muslim men sparked a wave of violent clashes between the Rakhine and Rohingya ethnic groups. Nearly 75,000 people, mostly Rohingya, were displaced in the course of this violence, and many of those displaced are still being held in detention camps. Following several months of relative dormancy, the violence reignited in October, spreading to a wider geographical area and displacing an additional 35,000 people. It is estimated that during this displacement, more than 200,000 Rohingya fled oppression, persecution, and discrimination, seeking refuge in Bangladesh, where they are also seen as illegal migrants.¹⁰


In October 2016, coordinated militant attacks along Myanmar’s border with Bangladesh resulted in the deaths of nine border policemen. Over the next three months,¹¹ Tatmadaw forces, carried out a violent campaign against the Rohingya

⁸ UN Human Rights Council. “Human Rights Council opens special session on the situation of human rights of the Rohingya and other minorities in Rakhine State in Myanmar,” UN Human Rights Council Office of the High Commissioner, 5 December, 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22491&LangID=E>

⁹ Mahmood, Syed S, Emily Wroe, Arlan Fuller, Jennifer Leaning, “The Rohingya people of Myanmar: health, human rights, and identity,” *The Lancet*, Vol. 389, Issue 10081. 2017. Pages 1841-1850. Available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)00646-2/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)00646-2/fulltext).

¹⁰ “Myanmar’s Rohingya Crisis.” *The New Humanitarian*, 16 November 2012. Available at <https://www.thenewhumanitarian.org/news/2012/11/16/myanmar-s-rohingya-crisis>.

¹¹ UN Human Rights, OHCHR, “Devastating cruelty against Rohingya children, women and men detailed in UN human rights report.” 3 February 2017. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21142>.



population, which consisted of: mass killings of civilians, including children and infants, gang-rapes, arbitrary detention under inhumane conditions, torture, forced disappearance, wanton destruction of property, and the deliberate destruction of food and food sources.¹² Additionally, these brutal attacks caused an estimated 66,000 Rohingya to flee their homes. Characterized by the Tatmadaw regime as collective punishment¹³, these atrocities undoubtedly constitute ethnic cleansing as well as numerous violations of international law.¹⁴

“Cleansing Operations” in the Rakhine State

In August of 2017, the Tatmadaw launched a series of so-called “clearance operations” in the Rakhine State. The culmination of decades of violence and oppression against the Rohingya people,¹⁵ these highly coordinated operations involved extreme violence and numerous atrocities on the part of the Tatmadaw forces, which this report will consider in the context of international law.

In the run-up to the violence, ethnic tensions in Myanmar were significantly heightened due to increasingly oppressive measures imposed on the Rohingya by the Myanmar government, as well as the blatantly anti-Rohingya sentiments being disseminated by politicians and national media outlets. Reports on the activities of the Arakan Rohingya Salvation Army (ARSA)¹⁶ were especially inflammatory and used to justify the government's military build-up near Rohingya territory, as well as the arming of ethnic Rakhine civilians in preparation for the coming assault.¹⁷

On August 25th of 2017, the ARSA launched a coordinated attack on thirty border police outposts in northern Rakhine, resulting in the deaths of twelve security personnel. The militants who participated in the attack, many of whom were untrained civilians, were sparsely armed with poor quality and even semi-improvised weapons.¹⁸

The Myanmar government immediately declared the ARSA a terrorist organization,¹⁹ and launched a retaliatory military assault comprised of “clearance operations” in Rohingya villages of the Rakhine State. Between August 25th and September 24th, this violent campaign resulted in approximately 6,700 deaths, of which at least 730 are believed to have been children under the age of five killed by government forces.²⁰

¹² UN Human Rights, OHCHR. “Report of the OHCHR Mission to Bangladesh: Interviews with Rohingyas fleeing from Myanmar since 9 October 2016.” 3 February 2017. Available at: <https://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>.

¹³ Amnesty International, “Bangladesh pushes back Rohingya refugees amid collective punishment in Myanmar.” 24 November 2016. <https://www.amnesty.org/en/latest/news/2016/11/bangladesh-pushes-back-rohingya-refugees-amid-collective-punishment-in-myanmar/>.

¹⁴ UN Human Rights, OHCHR. “Report of the OHCHR Mission to Bangladesh: Interviews with Rohingyas fleeing from Myanmar since 9 October 2016.” 3 February 2017. See also “Myanmar wants ethnic cleansing of Rohingya - UN official”. *BBC News*. 24 November 2016. Available at <https://www.bbc.com/news/world-asia-38091816>.

¹⁵ See, for example, UN Human Rights Council. A/HRC/39/CRP.2. Paras. 622-623 and paras. 1302-1341.


¹⁶ ARSA is an insurgent group who has been active in Rakhine State since 2013. The group has been linked to Islamist terrorist organisations but the group denies any such ties. They claim to act on the behalf of the Rohingya and their mission is to protect the Rohingya from the government, by all means necessary.

¹⁷ UN Human Rights Council. A/HRC/39/CRP.2. Para. 753.

¹⁸ UN Human Rights Council. A/HRC/39/CRP.2. Para. 750.

¹⁹ The Republic of the Union of Myanmar Anti-terrorism Central Committee. Order No. 1/2017. Archived from the National Reconciliation and Peace Center. Available at <https://web.archive.org/web/20180213022345/http://www.statecounsellor.gov.mm/nrpcen/node/124>

²⁰ *ibid*.



As the terror and violence in the Rakhine State escalated, more than 700,000 Rohingya were forced to flee to neighbouring Bangladesh.²¹ This massive movement of people alerted the international community to the scale of the violence taking place in the Rakhine State. Due to pervasive state censorship and limited international access to the area, the majority of the evidence substantiating these events was documented in Bangladesh. The numerous interviews and eye-witness testimonies collected by these international institutions and journalists provide a gruesome vignette of the severity of the violence unleashed on the Rohingya people of the Rakhine State by the Myanmar government.

Mass Murder

Following a fifteen-month investigation, the United Nations Independent International Fact-Finding Mission on Myanmar found that Tatmadaw forces carried out mass killings in the areas of Min Gyi (Tula Toli), Maung Nu, ChutPyin, and GudarPyin, as well as in villages located in the Koe Tan Kauk tract. In some instances, men and boys were executed separately from women and girls, who were often detained, raped, and sexually abused before being killed or severely injured. In addition to shootings, stabbings, and fatal beatings, Tatmadaw forces routinely set fire to Rohingya houses after ensuring that the inhabitants were trapped inside and unable to escape.²² Following these indiscriminate killings, the bodies of the victims were transported in military vehicles to be burned or deposited in mass graves.

Testimonies collected by the UN Fact-Finding Mission and Médecins Sans Frontières affirm the most common methods of murder used by the Tatmadaw, as well as the indiscriminate killing of civilians and young children.²³

*"Soldiers separated the groups into men and women. The men were all in one group, and were killed. Men who were not shot dead, who were struggling or severely injured, were killed with a knife."*²⁴

*"Soldiers used rifle butts to beat my brother on the head and I saw his brains come out. I saw people being killed with long knives. The soldiers were also spraying bullets and many people were injured and killed. Our village was full of dead bodies. I saw dozens of people killed. First, they shot the people and then if they were still alive and the body was moving they used a machete to slaughter across the throat."*²⁵

*"They killed my husband and children. Around 60 people died in this attack. Many people were slaughtered. After this, the military put them in a big hole in the ground."*²⁶

²¹ Médecins Sans Frontières, *"No one was left": Death and Violence Against the Rohingya in Rakhine State, Myanmar*. March 2018. Available at <https://www.msf.org/myanmarbangladesh-'no-one-was-left'-death-and-violence-against-rohingya>


²² UN Human Rights Council. *Report of the independent international fact-finding mission on Myanmar*. A/HRC/39/64. September 2018. Paras. 36-37. For a detailed account, see UN Human Rights Council. A/HRC/39/CRP.2. Paras. 756-882.

²³ Médecins Sans Frontières, *"No one was left": Death and Violence Against the Rohingya in Rakhine State, Myanmar*. March 2018. See also UN Human Rights Council. A/HRC/39/CRP.2.

²⁴ UN Human Rights Council. A/HRC/39/CRP.2. Para. 767.

²⁵ UN Human Rights Council. A/HRC/39/CRP.2. Para. 785.

²⁶ Female from Sain Dee Prang/SeinNyinPya, Buthidaung Township, 26 November 2017



These accounts testify to the extreme and indiscriminate nature of the violence enacted against Rohingya civilians in the Rakhine State. Notably, although the Rohingya were killed regardless of age or gender, these testimonies also demonstrate gender-specific patterns of violence: males and females were routinely separated from one another before being killed, with the latter often subjected to sexual violence before execution.²⁷

Sexual Violence

According to the reports of the United Nations Fact-Finding Mission and Médecins Sans Frontières, rape and other forms of sexual violence were perpetrated on a massive scale by Tatmadaw soldiers across the northern Rakhine State. Testimonies indicate that in addition to being accompanied by threats of death and abusive language, rapes often took place in public settings in front of the victims' families and local communities. In addition to the practice of gang rape, where a single victim was sexually assaulted by multiple perpetrators simultaneously, these practices were designed to maximize the humiliation, trauma, and future stigma of the victim. In many cases, women and girls were abducted and detained in military and police compounds, where they were repeatedly raped and subjected to conditions tantamount to sexual slavery. Many victims of sexual violence suffered serious bodily injuries from this brutal and prolonged sexual abuse, which sometimes involved use of items such as knives and sticks as penetrative instruments of rape. Even when the victims were not immediately killed by their perpetrators following assault, many died from injuries sustained from sexual violence, while others suffered permanent mutilation and irreversible damage to their reproductive organs.²⁸

The following first-hand accounts of sexual violence have been documented in the reports of the Fact-Finding Mission of the United Nations and Médecins Sans Frontières:


*"The torture started more than three months ago. The military came in one group each time, with around 80-100 men. When they came they wouldn't say anything. They didn't talk but just took gold and some girls. They would shoot elderly women. The girls were raped, we saw it. First they pressed their breasts, and they cut their clothes to search for money. After that they raped them in front of everyone. They often took the beautiful girls away from the village, we don't know where. Some were released or managed to escape. We don't know what happens to those that manage to survive because they are ashamed and afraid. Maybe some of the girls are here too but they don't talk about it. They don't want to share their stories because if they get into an argument, people will use the rape to shame them, to use it against them. They are unmarried and poor and it is difficult to get married after you are raped."*²⁹

"Three military men came to the house. They told my husband to stay in the house; there was no need to go to the mosque. They threatened him by holding

²⁷ *Ibid.*

²⁸ UN Human Rights Council. A/HRC/39/64. September 2018. Paras. 47-48. For a detailed account, see UN Human Rights Council. A/HRC/39/CRP.2. Paras. 756-882.

²⁹ Female from Buthidaung Township, 22 October 2017.



*a knife against his throat and I was scared they would kill him. They told me to lie down. They opened my blouse and they raped me in front of my husband, my children and my parents. They stayed in the house almost five hours. One raped me, it took one hour. Then the second, it took half an hour. The third one raped me for one and a half hours. I couldn't open my eyes."*³⁰

These and other testimonies demonstrate the brutality and pervasiveness of sexual violence against Rohingya women and girls in the course of the "clearance operations" conducting by Myanmar forces in 2017.³¹ However, due to the shame and stigma associated with sexual violence, the true extent of these atrocities is undoubtedly far greater than currently known.

Destruction and Displacement

Deliberate and systematic destruction of infrastructure and personal property in Rohingya populated territories—usually by arson—was another widespread tactic employed by Tatmadaw forces in the course of their "clearance operations." According to known statistics, 392 villages across three separate townships were wholly or partially destroyed during the violence in August and September of 2017, amounting to roughly 40% of all settlements in northern Rakhine. Homes were the most frequent targets of this destruction; however, schools, mosques, marketplaces, and livestock were also commonly decimated.³² As one woman describes in her testimony for the UN Fact-Finding Report:

*"It was late in the afternoon when I became conscious. I awoke because small flames were dropping from the roof onto my body. I was the only one who survived in that room. I could barely move but I realised I was going to burn to death. Although my baby was dead, I held him close to my heart, but I could not bring his body with me. I escaped through a small door in the kitchen, which was unlocked."*³³

In interviews with Médecins Sans Frontières, Rohingya refugees also reported similar experiences:

*"The military is burning houses and mosques. [...] They burned my house with my infant child in it. I don't know if there are still people in my village."*³⁴

*"We left the village two days later because the army started burning the houses in our village. We left when we saw them arriving, I saw them torching the houses. Everyone from my village left, some took their animals. All the villages we saw on the way to the sea were burning."*³⁵

³⁰ Female from KwanseBaung/Kwan Thi Pin, Maungdaw Township, 22 October 2017.


³¹ UN Human Rights Council. A/HRC/39/64. Paras. 620-621. See also, for instance, UN Human Rights Council. A/HRC/39/CRP.2., Paras. 773-774, 784, 816, 828, 850.

³² UN Human Rights Council. A/HRC/39/64. Para. 42.

³³ UN Human Rights Council. A/HRC/39/CRP.2. Para. 772.

³⁴ Female from Buthidaung township, 21 October 2017.

³⁵ Female, 26 years old, from Ludang Para/Wa Ra Kyun, Buthidaung Township, 10 September 2017, All testimonies are from Médecins Sans Frontières, "No one was left": *Death and Violence Against the Rohingya in Rakhine State, Myanmar*.



Although the Myanmar military and non-Muslim Rakhine population accused the Rohingya and the ARSA of setting their own homes on fire, it is evidently reported that the perpetrators of the burning of Rohingya villages are the Tatmadaw and the Buddhist Rakhine population.³⁶ In addition to the wanton destruction of property by fire, surviving structures and vegetation were bulldozed, causing dozens of Rohingya villages to vanish. Appropriation of the vacated land by other ethnic groups followed the burning. The scale of the arson and the subsequent designation of the land to non-Rohingya communities suggests at least deliberate and systematic mass displacement.³⁷

Forced disappearance

The UN Fact-Finding Mission as well as Médecins Sans Frontières reported that forced disappearance was *operandi* of the Tatmadaw against the Rohingya. On several occasions, numerous men and boys were rounded up, marched into the forest or taken away in military vehicles, not to be heard or seen since. Women, too, were reported as being abducted from their homes.

The following are testimonies describing forced disappearances during the 2017 “clearance operation”. They are all first-hand accounts.

“The soldiers came to my house and took my daughter away. I do not know what happened to her. I saw soldiers taking quite a lot of beautiful girls when we were fleeing.”³⁸

“People that were arrested were taken to jail and they never came back, we never know what happened to them. Were they killed or imprisoned, I don’t know.”³⁹

Myanmar Today

Today, the Rohingya people of Myanmar remain separated from their homes, their families, and their livelihoods, with little hope that their situation will improve. Of the more than 250,000 Rohingya that remained in Myanmar, at least 100,000 are detained in government run detention camps, many of whom have been suffering under these inhumane and degrading conditions for the past eight years. In April 2017, the government of Myanmar announced it would begin closing these detention centers; however, the persistence of systematic discrimination and persecution in the country continues to prevent Rohingya people from returning to their homes, rebuilding their lives, and participating as equal citizens in Myanmar society.⁴⁰


³⁶ Head, Jonathan, “Rohingya crisis: Seeing through the official story in Myanmar.” BBC News. 11 September 2017. Available at <https://www.bbc.com/news/world-asia-41222210>. See also Human Rights Watch. “Burma: Army Report Whitewashes Ethnic Cleansing”. 14 November 2017. Available at <https://www.hrw.org/news/2017/11/14/burma-army-report-whitewashes-ethnic-cleansing>.

³⁷ UN Human Rights Council. A/HRC/39/64. Para. 42. See also Head, Jonathan, “Rohingya crisis: Villages destroyed for government facilities..” BBC News. 10 September 2019. Available at <https://www.bbc.com/news/world-asia-49596113>.

³⁸ UN Human Rights Council. A/HRC/39/CRP.2. Para. 826.

³⁹ *Ibid.* Male, 22 years old, from Tula Toli/Min GyiYwa, Maungdaw Township, 20 September 2017.

⁴⁰ Human Rights Watch, “Myanmar: Mass Detention of Rohingya in Squalid Camps.” 8 October 2020. Available at <https://www.hrw.org/news/2020/10/08/myanmar-mass-detention-rohingya-squalid-camps>.



Research by the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) shows that 89,564 people were internally displaced to 180 locations within the Rakhine State between January 2019 and 7 September 2020. Local civil society groups indicate that the actual number of displacements is likely to be higher, as villagers have fled to areas that are now only nominally under government control.

Reports gathered by Amnesty International suggest that Myanmar troops burned villages and buildings in the Kyauktaw municipality as recently as September 2020, injuring and displacing civilians.⁴¹ As of October 2020, Human Rights Watch has estimated that about 130,000 ethnic minorities, mostly Rohingya, were currently detained in Rakhine detention camps under the supervision of a group called "closed outdoor facilities." Additionally, since the most recent military coup in February 2021, there has been mounting concerns about the worsening of the human rights situation among the general population, especially for Rohingya Muslims.

Since December 2020, the Bangladesh government has moved nearly 20,000 Rohingya refugees to Bhasan Char, a remote silt island in the Bay of Bengal. With the monsoon season approaching, refugees and humanitarian workers alike fear that inadequate storm and flood protection could put those on the island at serious risk. The Bangladesh government has touted Bhasan Char as a solution to the severe overcrowding in the refugee camps in Cox's Bazar, where nearly one million Rohingya refugees are currently displaced. However, despite plans to relocate 100,000 refugees to the island, the government has been slow to address these problems. In fact, recent reports suggest that Bangladesh authorities are increasingly cracking down on refugees who try to leave the island or speak out about worsening conditions.⁴²

Likelihood of Escalation


The situation in Myanmar is already well beyond the early stages of conflict. However, given previous patterns of escalation and the current social, political, and economic situation in the country, it exhibits enormous potential to intensify further and spill over into other regions of Myanmar or other countries in the region.

The Rohingya who remain in the Rakhine State continue to face oppression and violence on a massive scale. For those who fled to Bangladesh, the outlook also remains grim. As of the time of this report's publication, no adequate or durable solution to the crisis faced by these groups has emerged. On both sides of the border, this crisis continues to escalate and promises to pose an even greater threat to peace and security, not just domestically, but across the region.⁴³

⁴¹ Amnesty International "Myanmar: Villages burned, civilians injured and killed as Rakhine State conflict escalates." 12 October 2020. Available at <https://www.amnesty.org/en/latest/press-release/2020/10/myanmar-villages-burned-civilians-injured-rakhine-state-conflict/>.

⁴² Human Rights Watch. "An Island Jail in the Middle of the Sea: Bangladesh's Relocation of Rohingya Refugees to Bhasan Char." 7 June 2021. Available at <https://www.hrw.org/report/2021/06/07/island-jail-middle-sea/bangladeshs-relocation-rohingya-refugees-bhasan-char>.

⁴³ International Crisis Group. "Myanmar: Humanitarian Crisis and Armed Escalation." 28 January 2019. Available at <https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-humanitarian-crisis-and-armed-escalation>. See also Hassan, Lila. "'Serious Threats' Ahead: Human Rights Experts Voice Concern for Rohingya Muslims in Myanmar Following Military Coup." *Frontline*. 2 February 2021. Available at <https://www.pbs.org/wgbh/frontline/article/human-rights-experts-concern-rohingya-muslims-myanmar-january-31-military-coup/>.



The already discernable culture of impunity and denial within the Myanmar state is another factor which gives cause for serious concern. To date, none of the crimes committed in Myanmar have been persecuted, and neither groups nor individual perpetrators have been held accountable. Furthermore, the government repeatedly and categorically denies both past and ongoing violence. In addition to being one of the ten stages of genocide, denial is one the surest indicators of continued and renewed violence. So long as past and current atrocities are not denounced as legal or moral violations, future atrocities are not prohibited, and ethnic minorities – not only in the Rakhine State but the states of Kachin and Shan as well— remain in grave danger.

PREVENTION AND INTERVENTION

Left unchecked,⁴⁴ the crisis in Rakhine State has escalated at an alarming rate. In order to prevent further escalation and ease the plight of Rohingya still living under dire conditions, foreign intervention is urgently necessary. The Myanmar government has grossly failed in its responsibilities and duties under international law to protect its citizens⁴⁵, and despite the exigent need to prevent violence and secure peace the international community has also failed to uphold its responsibility to protect vulnerable populations from atrocities.


Legal Grounds for Intervention

Based on current international law and relevant jurisprudence, this report identifies the following potential legal violations in the case of Myanmar which furnish grounds for intervention as well as further investigation and prosecution:

- **War crimes:** In their violent campaigns against the Rohingya minority, the Tatmadaw have demonstrated their willingness to disregard principles of international humanitarian law and international customary laws of war, namely distinction, necessity, proportionality, and precaution. Furthermore, first-hand accounts suggest that the following war crimes are being committed in Rakhine State and may be found punishable under international law: murder, mutilation, cruel treatment, torture, outrages upon personal dignity, attacking the civilian population, attacking protected objects, pillaging, rape and sexual violence, and displacement of civilians.
- **Crimes against humanity:** There is substantial evidence that the atrocities committed by Tatmadaw forces in August and September of 2017 were part of a widespread and systematic military operation. For this reason, in the course of legal investigation by relevant international bodies, the following crimes against the Rohingya are likely to be deemed Crimes Against Humanity: murder, extermination, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, rape and sexual violence,

⁴⁴ The situation in Myanmar, hereunder the persecution of the Rohingya, is far from unfamiliar to the external world. In fact, in his book *The Rohingya's – Inside Myanmar's Hidden Genocide*, Azeem Ibrahim elaborately documented the situation in Myanmar, and recommended, *inter alia*, that the world needed to focus on the dire situation in Myanmar: "Unless Myanmar's rulers change policy, there is a serious risk of destabilising the entire region as well as of outright genocide." (p. 147) See Ibrahim, Azeem. *The Rohingya's – Inside Myanmar's Hidden Genocide*. Hurst & Co. London. 2016.

⁴⁵ UN Human Rights, OHCHR, "Myanmar's Rohingya Persecuted, Living under Threat of Genocide, UN Experts Say." 16 September 2019. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24991&LangID=E>.



persecution, enforced disappearance, and other inhumane acts causing great suffering, or serious injury to body or to mental or physical health.

In terms of **genocide**, legal justification must necessarily be established by the competent judicial authorities. However, this report finds substantial evidence to conclude that the violence committed against the Rohingya minority in Myanmar may already constitute genocide, or may come to do so in the near future.

CONCLUSION AND RECOMMENDATIONS

The atrocious nature of the 2017 “clearance operation,” as well as the overall systematic oppression, discrimination, and persecution of the Rohingya people likely constitutes grave violations of international law. As such, the conclusion of this report is that international intervention is legally justified, and of urgent necessity in order to prevent the future escalation of violence. The findings of this report which pertain to international criminal and humanitarian law can only offer provisional guidance, as the ultimate authority on these matters is solely the jurisdiction of the qualified international judiciary bodies. However, based on preliminary assessments and pending further investigation by the appropriate legal authorities, the findings of this report suggest a high probability that gross violations of international law may have been committed by the Myanmar military against the Rohingya people in Rakhine State during the 2017 “clearance operation.”

This report substantiates the findings of international investigative bodies in regard to the recent and ongoing experiences of the Rohingya who have remained in Myanmar. The practices and policies of the Tatmadaw regime, which have been presented in this report, include mass murder, sexual violence, displacement, and indeterminate detention under inhumane conditions.⁴⁶ The repetitive and cyclical nature of extreme violence in Myanmar⁴⁷, as well as enduring political and social circumstances conducive to the escalation of violence, suggests that the already victimized Rohingya people remain vulnerable to even greater risks.⁴⁸ Furthermore, the failure of the Myanmar authorities to prevent these mass atrocities, despite the obligation to do so which has been established by numerous binding conventions and treaties,⁴⁹ compounds our assessment and preserves the culture of impunity which pervades the Myanmar military establishment.⁵⁰

Based on these findings, and as part of the Srebrenica Memorial Center Genocide Alert and Prevention Mechanism, this report offers the following **recommendations**:

- The international community must **exert pressure** on the Myanmar government in to grant unfettered access to the country for media and humanitarian

⁴⁶ Human Rights Watch, “‘An Open Prison Without End’ Myanmar’s Mass Detention of Rohingya in Rakhine State.” October 8 2020. Available at <https://www.hrw.org/report/2020/10/08/open-prison-without-end/myanmars-mass-detention-rohingya-rakhine-state>.

⁴⁷ Amnesty International, “Myanmar: Villages burned, civilians injured and killed as Rakhine State conflict escalates,” 12 October 2020. Available at <https://www.amnesty.org/en/latest/news/2020/10/myanmar-villages-burned-civilians-injured-rakhine-state-conflict/>.

⁴⁸ Hassan, Lila. “‘Serious Threats’ Ahead: Human Rights Experts Voice Concern for Rohingya Muslims in Myanmar Following Military Coup.” *Frontline*. 2 February 2021. Available at <https://www.pbs.org/wgbh/frontline/article/human-rights-experts-concern-rohingya-muslims-myanmar-january-31-military-coup/>.

⁴⁹ ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia V. Myanmar)*. Request for the Indication of Provisional Measures. 23 January 2020. Para 86.

⁵⁰ UN Human Rights Council. A/HRC/39/CRP.2. Paras. 1380-1384.



organizations. In addition to ensuring the impartial **delivery of aid** to all those in need, the **continuous monitoring** of the situation in the country is of vital importance to the prevention of future atrocities.

- A program of **repatriation**, including sustainable solutions for a safe, dignified, and voluntary return of Rohingya refugees should be established and respected by all sides. Such repatriation includes, but is not limited to, ensuring the **protection of returnees** against further human rights violations, persecution, discrimination, and violence.⁵¹
- The **investigation and prosecution** of the crimes committed in Myanmar must be earnestly pursued by international legal bodies such as the International Criminal Court in order to **end impunity** and to hold responsible those who have violated international law criminally responsible. All parties to the conflict should be held accountable for crimes committed not only in Rakhine but in other territories that have experienced violence, such as the states of Kachin and Shan.

Should economic sanctions and diplomatic solutions continue to have little to no mitigating effect on the continuation of violence, other forms of collective action, including armed intervention, should be considered. Any such measures should be carried out wholly within the confines of international law, with the necessary authorization from the UN Security Council. In the event that such an intervention is undertaken, it must include long-term plans and provisions for ensuring sustainable peace.

⁵¹ See, for instance, Mauer, Peter, President of *President of the International Committee of the Red Cross*, "Rakhine: Returns must be safe, dignified and voluntary" 2 June 2018. Available at <https://www.icrc.org/en/document/rakhine-returns-safe>.