

BURMA AND THE ICJ RULING

For the Month of April 2020



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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 Rohingya people of Rakhine State, Burma, have suffered from years of discriminatory legal 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 Force¹ has been examining Burma's compliance with ICJ directives to protect the Rohingya minority from Genocide and to ensure accountability. This April 2020 report is a follow up to our first² and second³ monthly reports. Unfortunately, we must again conclude that the Burmese government and military have largely failed to abide by ICJ provisions.

On January 23, 2020, the International Court of Justice (ICJ) issued four “provisional measures”⁴ directing the government of Burma (Myanmar) to protect the Rohingya minority from the crime of Genocide. The Burmese government is now required to submit an initial report after four months and thereafter at 6-month intervals, detailing efforts to implement these legally binding directives. We expect the Government will be issuing this report in the third week of May.

According to numerous experts⁵, the government of Burma and the Burmese Army have taken the coronavirus pandemic as an opportunity to increase the level of repression, especially against Rohingya and other ethnic communities. The harsh military escalation⁶ noted in March continues throughout April⁷. Given the Rohingya people's extreme lack of access to health care, along with communications blackouts in Rakhine State, mass fatalities look increasingly likely. There are over 160,000 displaced persons in Rakhine State, as well as many other civilians trapped by the military's “Four Cuts” strategies in several ethnic states⁸. 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.⁹



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Positive gestures should be acknowledged. During the New Year's festival this April, the Burmese government did release 24,896 prisoners as a humanitarian gesture due to the health crisis, the largest such release in a decade. However, as noted in an Amnesty International statement¹⁰, non-violent prisoners of conscience were not among those released, sending a signal that political prisoners will continue to be treated more harshly. Burma denies there is a category of political prisoners. Though 800 Rohingya prisoners were released, they were taken by Navy ship to Rakhine State for quarantine, and their fate is not currently known.

Military abuses against Rakhine as well as Rohingya people remains widespread. Footage emerged in early May showing the mid-April torture of Rakhine men aboard a Navy ship¹¹. 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 moribund. Moreover, rather than hold the military to account, State Counsellor Aung San Suu Kyi issued a statement on April 23 praising the military for protecting civilians.¹²

Requirements of the Court

Contrary to Burmese government claims, the ICJ ruling recognizes the Rohingya as a protected class, shielded under the Genocide Convention. Therefore, the ICJ Provisional Measures require prevention of the following:

- (a) Killing members of the (targeted) group;
- (b) Causing serious bodily 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.

As legal scholar John Packer argues¹³, the ICJ has now embraced the Rohingya as a protected class, noting: “The double recognition to ‘group identity’ as well as ‘group-based-suffering’ is of profound significance for the Rohingyas.”

Though the Government of Burma took “note” of the ICJ ruling, some observers¹⁴ remarked that it did not explicitly commit to compliance. It continues to refuse to use the name “Rohingya,” and to deny the legitimacy of the group’s social identity.



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Military Violence and Abuses in April

The Arakan Information Center (AIC)¹⁵ has reported a significant increase in military violence towards civilians, affecting Rohingya and Rakhine neighbors alike. This month found fewer Rohingya casualties than Ethnic Rakhine, but the increasingly brutal military occupation targeted civilians, increased instability and even led to the killing of United Nations personnel.

Collecting samples for Coronavirus testing, Pyae Sone Win Maung was shot and killed on the early evening of April 20th, and his colleague Aung Myo Oo was wounded. Their car with UN markings was fired upon in the vicinity of Ramaung Bridge in Minbya. The Arakan Army stated that they gave First Aid treatment and called the villagers to help. The Burmese government claims that the militia shot the WHO car. The UN has called for an investigation.

In a less well-known incident, an antiseptic solution supply vehicle owned by Yangon based CPS company was fired on by guns the next day in the same area while delivering the spray to the KBZ bank to protect against the COVID19 outbreak. The driver was killed on the spot and his colleague was critically wounded.

Verified through testimony from victims, relatives, friends, local lawmakers, village chairmen, and media, the April report of the Arakan Information Center (AIC) lists 50 civilians killed, 69 injured, 47 arrested, and one woman raped, with a decreasing number of Rohingya among the casualties. However, the AIC director writes us that, "The internet blackout is very much hindering us from collecting the civilian casualty numbers. We believe our data may cover only 60 percent... The local people tell us there are more civilians killed and wounded in off road areas and in villages around Buthedaung and Paletwa that lack communications access."

According to their data, after the Myanmar air force dropped bombs near Minbya village on March 30, one man was reported killed in the village on April 1st. On the same day, families learned that the village chairman Kyaw Mra Sein and his assistant, arrested by Burmese infantry 541 and kept incommunicado since early March, had been killed by Burmese soldiers. On the same day, forty soldiers from LID 66 entered the village of Tha Yet Oak and after searching all villagers, arrested three men and handed them over to the police. Soldiers from LID 66 then also entered nearby Kyauktaw town and started shooting local residents, killing 5 and injuring 7 civilians.

At 7 am on April 3 a man in Letwei village was injured by a shell explosion near his village. The shell is believed to have been fired from infantry base 550 in nearby Ponnaygun. The same day, the wife of Myanmar army officer went to military base 551 and was shot and killed by an army officer. The next morning four villagers were arrested by the military when they were fishing near their village of Thar Zay. Also, in the Ponnaygun area, soldiers entered Kan Htoo village and after searching all the houses arrested five villagers. Since then the families have had no contact with them. At 7 pm Soldiers fired shells and guns into Kyauktaw and five civilians were injured. Despite staying indoors in his home, a 65-year old man was shot in the arm.

On April 5, Burmese soldiers arrested the chairman of the village of Ngwe Taung in the Maungdaw area. Since then he has not appeared in court and there has been no contact with him. The same day in Sar Pyin, five men were arrested by the soldiers based in Toungup, and they have not been heard from since. On April 6, a 57-year old man stepped on the landmine as he was going out to take care of his cattle near the village of Ngasan Baw in the Minbya area. He died on the way to the hospital. Another man was injured and hospitalized. Five women and three men were arrested as they walked to market to sell vegetables in the village of Thea Dann in the same district but were later released.

On April 7, another man, this time in Aung Zayya near Rathedaung, lost his leg in a landmine explosion near his village and died on the spot. At 4 pm a 27-year old man was shot by soldiers when he was riding his boat to another village to pick up his friend. And at Nyaung Chaung IDP camp in Kyauktaw the military confiscated 150 bags of rice distributed by Myanmar government and arrested 14 villagers. The Commander in chief's office confirmed the arrest and claimed that the villagers had given the rice to the Arakan Army in the past.

At 11 PM on April 9th the Burmese army based in Bazu Kine fired shells into San U Dike village and injured four villagers. It was reported that they were not allowed to go to the Ann hospital. On April 12 in Gananmae village, a 55-year old man died from a heart attack caused by artillery blasts fired from the Ponnaygun-based military station. The next day, several other shells fired from Ponnaygun-based infantry 550 landed in the village of Kyauk Seik and on the highway during the busy travel hour of 7 AM. The shells killed 8 civilians¹⁶, including 4 children, and wounded 11 others.

On the same day, Government soldiers shelled and shot into Ponnaygun and injured a young man at his home. The shooting took place the same day when 19 civilians were injured in Kyauk Seik, two miles away.

And on April 16th in Piketay Yat village in Kyauktaw, an artillery shell landed on a house and killed one 14-year old boy and injured a family of three. While working in construction the family's nephew got shot and his Burmese friend also wounded. Myanmar soldiers fired shells and guns into the village from the bridge after a bomb explosion. Local lawmaker U Oo Twan Won reported that six Rohingya Muslims were also injured and treated inside the village instead of at a hospital. Previously on April 8th in Lanmadaw in Kyauktaw, a 17-year old man had been injured by shell fragments that hit his back and arm and was taken to Sittwe hospital.

On April 17 near the town of Lanmadaw, four men were found dead with many gunshot wounds in their bodies and heads. The family believes government soldiers stole money from them and killed them when they went out to buy cattle.

The next day in Ponnaygun, a Buddhist monk was briefly arrested in Mrauk U and brought to the military base in Sittwe and tortured. The military took 200,000 Kyat in money from him. The six other passengers in his car were also arrested and no further information is available about them. On April 19th in Kyauk Seik, Myanmar soldiers from Light Infantry Battalion (LIB) 550 arrested 39 villagers, interrogated and tortured them. The next day 34 villagers were released but five remained in detention in the military base with no charges yet filed.

On April 22, Government soldiers shot and killed a 29-year old man and injured an elderly man in the village of May. The soldiers refused to allow an autopsy for the dead man. On the same day, Burmese military shells and guns killed a woman and wounded a nine year old child in Min Lat Wa, a Paletwa township; also in Paletwa, a shell fired from LIB 289 landed on the building of Myanmar Economic Bank and killed 4 and 9 year old children and a woman; and in Rokewa, a shell landed on a house injuring a woman and her two year old daughter.

On the same day soldiers shot and killed two men as they returned home to Minbya via motorbike; two 14 and 15 year-old boys Rohingya boys are killed, and a woman was wounded by gunshots; and in Naram, a 61 year old man was killed by an army shell fired directly at him. His two legs were completely destroyed, and he died hours later.

On the 25th, a man was shot and killed by soldiers near Ra-Maung bridge after he came back from shopping at the local market. At 11 pm that evening, a local carpenter was shot and killed by Burmese soldiers when he was coming back home to Myang Bwe after hunting for frogs on a farm. He had three daughters.

On April 27th a shell landed on a house in Ketgo Myin, injuring one woman. There was a clash between Arakan Army and the Burmese army on a nearby mountain. As he was returning home by motorbike at 3 pm a man living in Thapyae Gon village was arrested and tortured by LIB 354 in Buthedaung township. He was admitted to Buthedaung hospital.

On April 28 at 4 pm an army shell landed on the restaurant in Mrauk U and injured four people, who were admitted to Mrauk U hospital. In the village of Nat Taung, a 14-year old girl was hit in the neck by a bullet and was taken to Sittwe hospital.

On April 29, another man traveling to Mrauk U to buy motorbike parts. arrested by soldiers from LIB 377 and tortured to death at the military base. The family in Kaik Sin Pyin received the body

from Mrauk U hospital on April 30 after 2 PM. Also, during the early afternoon of April 30th, a man was killed by an explosion in a local backyard in U Daung.

To summarize: during April, a total of 50 Rakhine State residents were killed, with over three quarters being ethnic Rakhine or Mro, and the rest Rohingya. This compares with 42 killings in March and 18 killings in February. In addition, arrests increased to 47 from 36 in March and 13 in February. However, due to the controls on internet and communications as noted above, the Arakan Information Center has been prevented from accessing the region fully, and the actual number of casualties may be significantly higher.

On March 23, the Government had declared the Rakhine-directed Arakan Army (AA) a terrorist organization¹⁷. This doubles down on the existing strategy of using the existence of the ARSA militia as a pretext to repress the Rohingya population. All civilians are at risk.

It should be added that military escalation against neighboring Chin state has also had an impact on those living in Rakhine State. Indiscriminate military violence has spread to Chin state and its border area with Rakhine State. Indeed, as noted in the previous report, on April 1, 2020, the US State Department expressed deep concern regarding “escalating violence in northern Rakhine State and Chin State, where dozens have been killed and thousands have been displaced in recent months... We call on the Government of Burma to allow unhindered humanitarian access and to restore internet access.”¹⁸

The government has not complied. Soon after in Chin State, men from Daw Chaung Wa were trafficked for forced labor (portering) by Myanmar soldiers and have not been seen since early April. On April 5th in Taron Ai a woman and man were arrested for spying, but local residents stated they are just ordinary villagers. On April 8th, jet fighters dropped bombs and fired missiles directly into the village of Nan Chaung. Seven civilians were killed and 7 injured. Some were killed in their burning houses, including two 3-year old boys. On April 29th, a 39-year old Chin ethnic woman with a 2-year old daughter was attacked by five Burmese soldiers, who gang-raped her and then cut her breasts. She has been hospitalized.

In its January decision, the International Court of Justice noted¹⁹ that, at the hearings, the government of Burma had stated that “it cannot be ruled out that disproportionate force was used by members of the Defense Services in some cases in disregard of international humanitarian law, or that they did not distinguish clearly enough between fighters and civilians.”

However, on April 29th, in her final statement²⁰ as UN Special Rapporteur for Burma, Yanghee Lee stated that “calls for a ceasefire, including by the Arakan Army, have gone unheeded. Instead, the Tatmadaw is inflicting immense suffering on the ethnic communities in Rakhine and China.... The Tatmadaw is systematically violating the most fundamental principles of international humanitarian law and human rights. Its conduct against the civilian population of Rakhine and Chin States may amount to war crimes and crimes against humanity.”



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Communications Control and Crowded Camps

In her final statement, Yanghee Lee also said that despite a mobile internet shutdown since June 2019, and recent terrorism charges against journalists creating fear and hampering reporting, she continued to receive information from people on the ground: “I repeat my call to fully lift the mobile internet shutdown and to allow the media to operate freely in order to report on these critical issues.... I also call on the United Nations to step up its efforts to protect civilians in Rakhine and Chin and ensure that there is not another systemic failure like in 2017.”

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 countless Rohingya may lack treatment for Coronavirus, and even access to food. Because of ongoing conflict, displacement, internet bans, the people of Rakhine State face a COVID catastrophe²¹. Add to these challenges, Burma’s refusal to allow Rohingya access to healthcare, and it becomes clear that their survival is at stake. While the enormous refugee camps in Bangladesh face similar dangers²², these camps are at least served by international humanitarian agencies. In Northern Rakhine State and adjoining Chin State, starvation conditions have been exacerbated by restrictions on freedom of movement imposed by the military. There is almost no access to humanitarian aid or medical care.

Burma has 6.1 doctors per 10,000 people, falling short of the World Health Organization’s recommended minimum. In rural and conflict-affected areas like Rakhine State the availability of health personnel drops steeply; according to a March 30th Human Rights Watch report, “one Rakhine State township has only one doctor per 83,000 people, or 0.12 per 10,000. With just one laboratory in the country that can process COVID-19 tests and enough kits to test only 1,700 people at present, Myanmar is ill-equipped to handle the growing caseload that has overwhelmed health systems elsewhere. The government has yet to designate a hospital in Rakhine State for the handling of coronavirus cases.”²³

Rohingya leaders and NGOs including Human Rights Watch²⁴ 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.²⁵

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.

Access to Food, Health, Education and Religious Rights

The violence of the military occupation and the increasing instability of Burma’s Rakhine State has resulted in a dismaying level of food insecurity. Because of harsh government policies of restricted access, large multinational programs²⁶ such as World Health Organization in Yangon are not able to reach many displaced Rohingya populations, especially in Northern Rakhine State.

Another long-established aspect of the Rohingya genocide is the systematic denial of education to Rohingya children, especially in Rakhine State²⁷. There has been no change in Burmese policies. Only in recent months has the right to basic education been recognized for Rohingya refugee children in Bangladesh²⁸ though schools will be shut for the duration of the health crisis.

Current concerns focus on issues of basic survival. The Government of Burma has failed to restore other rights to the Rohingya people. The protection of law must extend to all people, without fear or favor. Unfortunately, all too often, the law is distorted to put Rohingya, and Muslims in general,

at disadvantage. This includes laws for social distancing.

At the end of April Myanmar had had 176 confirmed coronavirus cases with six deaths, though actual figures are unknown in the absence of widespread testing. The government banned gatherings of more than five people until May 15 to curb the spread of coronavirus.

On April 10th twelve Muslims in the Mandalay area were arrested²⁹ for gathering for prayers and sentenced to three months' imprisonment under the Natural Disaster Management Law's Article 30(a). They were sent to Obo prison. However, according to the same report, the authorities were "seeking legal advice from the courts to charge the organizers of an early April funeral of an elderly Buddhist monk of Sinphyu village in Yebyu Township, attended by over 200 residents. No arrested had been made.



In Yangon, the two Christian pastors and their followers who held a religious gathering during the lockdown have been facing charges since April 14. David Lah, a known Islamophobe, denied that the virus could infect believing Christians, but got infected along with over 20 others from his gathering. With links to the current Vice President, Pastor Lah has not been arrested. Human Rights Watch suggested high fines rather than arrests³⁰. But it is clear to us that in the case of Muslims, arrests are more likely, putting their lives at great risk in crowded Burmese jails.

Unequal religious protection is reflected in the hurdles to repair and reconstruction of damaged mosques in Burma. The Committee for the Restoration of Destroyed and Prohibited Mosques in Myanmar, which was formed in October 2019, has drawn up an initial list of 64 destroyed or shuttered mosques and madrassas in 11 states and regions that it says should be allowed to be rebuilt or re-opened. Most buildings were the victims of anti-Muslim violence. According to an April 13th news report in the Burmese newspaper Frontier³¹, "the committee had actually identified 170 structures, "but we could only verify the 64 because we have difficulties accessing states like Rakhine where there are still conflicts happening." Local governments create complicated bureaucratic hurdles to prevent repair. In some cases, the work must be approved by the local Sangha, or Buddhist monks' council. In other cases, local state or central governments may be involved in the approval process, but the Ministry of Religious Affairs could shed no light on the issue. According to the report, it is unclear if any mosque had been approved for the last sixty years.

Legal Hurdles and Political Will

At the end of her term in office, UN Special Rapporteur Yanghee Lee observed that despite the many negative developments, Suu Kyi does still have the power to make legal and legislative reforms if she wishes³². But according to Legal Aid Network³³, though Aung San Suu Kyi has been in some sort of political office since 2012 she has “never initiated or exerted efforts to produce a national law in a way that the essence of international humanitarian law (Geneva Convention)—the protection of civilians and of prisoners of war, but not limited to — can be implemented empirically.”³⁴

The ICJ decision may have strengthened her hand in negotiations with her military partners. However, the Burmese Tatmadaw military remains financially independent from the civilian government. Tatmadaw funding flows from military-run industries, not from elected officials. While accountability remains a major challenge, so will compliance with the ICJ.

The Burma Campaign UK has recently added to its list 31 more international corporations that do business with the Burmese military³⁵, and while Chinese and other Asian companies are “more deeply” complicit, European companies are quite numerous.



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Despite pressure from civil society in Burma and international rights organizations, the Burmese government continues to choose repression over reform. Despite the recent amnesty of prisoners, 50 political prisoners remain in jail while 400 are awaiting trial outside prison and 137 are still facing trial inside prison³⁶. In advance of World Press Freedom Day on May 3, Reporters Without

Borders reported a continued deterioration of Suu Kyi’s record regarding freedom of speech and assembly and Maung Saungkha of the free expression organization Athan was quoted agreeing that, “In a time like this, it is undeniable that the condition of press freedom in Myanmar has been deteriorating annually.”³⁷

Given this 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.

Conclusion

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. Each month we will continue to communicate the urgency of the ongoing genocide of this minority population. This April report has detailed the troubling escalation of military abuses in Rakhine and Chin states. This pattern of military abuse against civilians includes an increased impact on children, according to the Special Rapporteur for Children and Armed Conflict³⁸. But it is not only the military leaders that are at fault. A lack of political will has led to a deep level of impunity for perpetrators of mass atrocities. No rights have been restored to the Rohingya minority. Speech and other basic freedoms continue to erode.

Internet and phone access remain restricted in much of Rakhine State. Communication is key during all crisis situations, and the rising health crisis will test the Government of Burma. It will soon become clear by their actions whether the authorities will grant legal protection and access to emergency services to the Rohingya, or if they will further isolate and marginalize them. As UN Secretary General Antonio Guterres stated on April 23, as he launched a 22-page report on COVID and human rights³⁹, the pandemic is far more than a public health emergency. It is a human, economic and social crisis that is fast becoming a human rights crisis. As the report advises, "Governments need to be accountable to the people they are seeking to protect. A free press and civil society organizations operating within an open civic space are vital components of the pandemic response and need to be nurtured ... steps need to be taken urgently to expand Internet services for the poor and those at most risk, whilst avoiding Internet shut-downs....Parties to conflict must facilitate rapid, safe and unimpeded access of humanitarian assistance, including for IDPs, refugees and other vulnerable groups, and allow humanitarian personnel to cross borders to provide essential support in a conflict situation."⁴⁰

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