

Accountability in Myanmar

1. What should Myanmar do with respect to allegations of serious human rights violations against the Rohingya?

Myanmar has the duty to investigate, prosecute (file criminal charges) if necessary, and provide remedies and reparations to Rohingya human rights victims.

Right to a remedy. Human rights victims deserve the following remedies:

- Equal and effective access to justice before an independent body. This includes the prosecutor or Union Attorney General's Office (UAGO), courts, and the national human rights institution or the Myanmar National Human Rights Commission in Myanmar.
- Adequate, effective and prompt reparation. Reparation includes monetary compensation for injuries and costs suffered, guarantees of non-repetition, helping victims acquire new skills, law and policy reform, public apology and commemoration.
- Recognition of status before the law. This includes repealing or amending laws and practices that discriminate against the Rohingya and prevent them from fully participating in Myanmar society, such as Myanmar's 1982 Citizenship Law.
- Access to information about the violation and accountability measures. Accountability for widespread serious human rights violations is not limited to seeking criminal liability for individual perpetrators, though it is an important component.

Right to Truth. Victims and their family members have a right to know the causes of the killing and other crimes and learn the truth about the circumstances, location, remains, cause and manner of death of victims. They must be kept informed of the investigation and be protected from physical, economic and mental threats.

Myanmar has the primary responsibility to do all this. However, Myanmar has not done enough to address these issues.

2. Which government institutions are responsible for investigating and prosecuting allegations of serious human rights violations against the Rohingya?

Ad hoc fact-finding commissions

The Government created two bodies to investigate the 2016 and 2017 military “clearance operations” in Rakhine state. In December 2016, the Government established the Maungdaw Investigation Commission to establish facts and identify violations of law concerning the 2016 “clearance operations” in Maungdaw, Rakhine. In May 2018, the Independent Commission of Enquiry (ICOE) was established to investigate the 2017 “clearance operations” in northern Rakhine. Significantly, both bodies have limited powers (only to recommend) and little to no authority or capacity to direct the implementation of their recommendations. Individual members of these bodies have also shown bias and partiality. To date, no one has been held criminally accountable in a civilian court for serious human rights violations based on these two reports.

In January 2020, the ICOE published an executive summary – not the full report – of its findings. It found that war crimes, serious human rights violations, and crimes under Myanmar law may have taken place, warranting prosecution in certain instances. The ICOE denied that the “clearance operations” were a result of a genocidal plan and did not find the attacks against the Rohingya as acts of genocide. It is not clear how the ICOE arrived at this conclusion; the methodology used for the fact-finding was not disclosed. The report is also not publicly available. The ICOE report was reportedly forwarded to the UAGO and the Office of the Judge-Advocate General for further investigation and prosecution.

Myanmar National Human Rights Commission (MNHRC)

The MNHRC is Myanmar’s national human rights institution. A national human rights institution is a government agency that is mandated to monitor the human rights situation in the country and investigate alleged human rights violations.

The MNHRC was established in 2011. Since then, the MNHRC has not done enough to address the alleged human rights violations in Rakhine state. Though it finally opened a branch office in Sittwe, Rakhine this year and has started publishing information more regularly on its activities and the procedure for filing complaints, the MNHRC has denied any human rights violations committed by the Myanmar military against the Rohingya. In its investigation of the Maungdaw attacks in 2016, the MNHRC only examined the involvement of the Arakan Rohingya Salvation Army (ARSA) and labeled Rohingya as “Bengali.” Filing a complaint with the MNHRC is also limited to citizens,

notwithstanding the fact that human rights protection under international law generally applies to all persons regardless of citizenship, and that the very notion of citizenship in Myanmar raises human rights concerns.

Many past and current commissioners of the MNHRC were also formerly with the military, which casts doubt on the impartiality of members.

When serious human rights violations have been committed, the establishment of commissions of inquiry and other similar initiatives are not a substitute for criminal investigations and prosecutions.

Union Attorney General's Office (UAGO) and Military Courts

The UAGO is the civilian ministry tasked to investigate and prosecute perpetrators of crimes under Myanmar law. However, certain provisions of the 2008 Myanmar Constitution and the 1959 Defence Services Act provide that military personnel who commit a serious crime while on active duty must instead be tried in court martial proceedings.

As a result, many members of the Myanmar Armed Forces go through secret court martial proceedings, with little information on whether criminal accountability or mere disciplinary sanction is imposed and under what legal basis. For instance, in July 2020, the military announced that army officials and a soldier were found to have violated the rules of engagement in the killing of 19 Rohingya in Gutar Pyin village in August 2017. Nothing else was disclosed, including any crime charged or the sanction imposed. The military justified minimal disclosure by invoking security reasons and "esprit de corps."

Under international law, anyone accused of committing serious human rights violations should be prosecuted in a civilian court.

3. What has Myanmar done in response to the provisional measures order of the International Court of Justice (ICJ) in January 2020?

The ICJ ordered Myanmar, as a party to the Genocide Convention, to prevent further acts of genocide against the Rohingya within its borders and to preserve relevant evidence. In April and May 2020, the Government instructed all ministries and regional and state governments to refrain from committing prohibited acts under the Genocide Convention. It also instructed these officials and ministries not to spread "hate speech" – without defining what hate speech means – and to preserve evidence and property in parts of northern Rakhine. The ICOE report was also forwarded to the UAGO and the Office of the Judge-Advocate General for further investigation and prosecution.

[For information on the provisional measures order issued by the International Court of Justice, see information sheet on the International Court of Justice.]