



ALTSEAN
ALTERNATIVE ASEAN NETWORK ON BURMA
advocacy, capacity-building & strategic interventions for human rights & democracy

BN 2020/2027: 27 Nov 2020

REPORT CARD # 2: BURMA/MYANMAR'S INSUFFICIENT ACTION ON THE ICJ'S PROVISIONAL MEASURES AND COVID-19

- Burma has failed to take effective measures to comply with the Provisional Measures Order issued by the International Court of Justice (ICJ) in relation to its alleged genocidal acts against the Rohingya. The Provisional Measures were ordered on 23 January 2020, with Myanmar due to report progress on 23 June and 23 November 2020.
- Burma's failures—to address the provisional measures and structural discrimination—have increased the vulnerability of ethnic communities.
 - The Tatmadaw destroyed five attack ethnic COVID-19 outposts, and ordered four others shut down, in Karen, Kachin, and Rakhine States.
 - Government-enforced internet blackouts across Rakhine State and website censorship continues to prevent scrutiny and documentation of abuses.
 - Hate speech continues to flourish in Burma, as the government takes no effective measures to stop it.
- Between 23 January and 23 November 2020, there were at least 880 armed clashes in civilian areas or direct attacks on civilians by armed actors in Burma. This is a 70.5% increase over the 516 during the corresponding period (23 Jan–23 Jun) in 2017, *the year of the genocide in question*.
 - These took place across 11 of Burma's 14 States and Regions, as well as the capital territory, and resulted in at least 224 civilians killed and 638 injured.
- Over two million people were disenfranchised in the November 2020 election, and there were at least 20 incidents of election-related violence between August and November.
- The deteriorating situation makes it increasingly urgent for UN members ensure Burma comprehensively implements these measures.

SUMMARY OF ICJ PROVISIONAL MEASURES ORDERED ON 23 JAN 2020

1: Prevent acts constituting genocide

The government must take all measures within its power to prevent the killing of Rohingya people; causing serious bodily or mental harm to them; deliberately inflicting conditions of life that would destroy at least part of the group; and imposing measures intended to prevent births.

2: Prevent other groups from committing or planning to commit acts of genocide

Myanmar must ensure that its military, as well as any other armed units, organizations and individuals under its control, direction or influence, do not commit, conspire to commit, incite, attempt, or be complicit with any acts described above.

3: Preserve evidence

Myanmar must take effective measures to preserve evidence related to the crimes alleged in this case.

4: Document and report

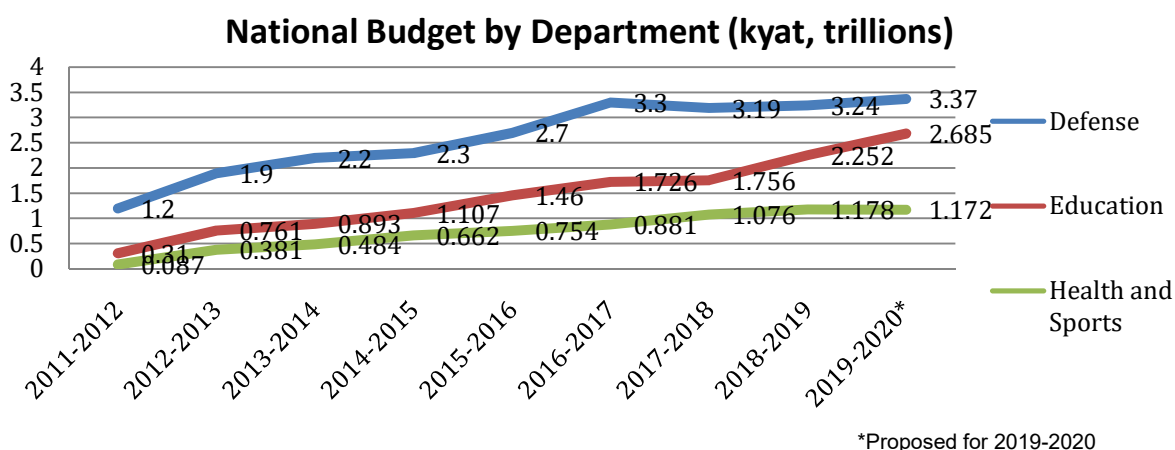
Myanmar must submit regular reports to the Court on efforts to comply with the Order.

Full text of the provisional measures appears on pages 23-24 at <https://www.icj-cij.org/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>

The COVID-19 pandemic

Burma's lack of priority for equitable health services—despite its legacy of atrocity crimes, armed conflict and impunity—has intensified the impact of COVID-19. The government has failed to work with civil society organizations and ethnic health groups engaged in crucial responses to the pandemic. Furthermore, the military (Tatmadaw) has directly undermined these groups, including by **destroying at least 5 ethnic health posts** (in Rakhine, Kayin, and Kachin States), and ordering 4 others to shut down.¹

The health budget has never been prioritized, particularly vis-à-vis the defense budget (see graph below). This has translated to an impoverished health system, as noted by the UN in June 2020, “with only one hospital bed per 1,111 people (but only 100 ICU beds for the whole country) and one doctor per 1,162 people.”²



As a result of this, the pandemic is increasingly dangerous in Burma:

- Burma stayed below the radar for several months, with 409 cases as of 21 August.³ Reported cases dramatically rose to 76,414 on 21 November.⁴ Limited testing means the actual extent of the pandemic is unclear.
- Burma had COVID-19 1,695 deaths as of 21 November (2.218% death rate).⁵ By contrast, Singapore's death rate is 0.048%.⁶ That means a person who gets COVID-19 in Burma is **forty-six times more likely to die**.

Elections, hate speech and discrimination

Over two million people were disenfranchised in the November 2020 election. Rohingya people were disenfranchised by mass displacement, by removing them from voter rolls, and by the Union Election Commission (UEC) rejecting the nominations of six Rohingya political candidates. Just weeks before the election, the UEC cancelled voting in half of Rakhine State, as well as parts of five other States/Regions.⁷ Potentially millions of people have been disenfranchised through displacement during previous waves of persecution against ethnic minorities.

¹ Karen Peace and Support Network (KPSN) (Jun 2020) Virus Warfare: Burma Army destruction of Karen community defences against Covid-19; Kachin News Group (24 Jun 2020) Burma Army Destroys KIO COVID-19 Screening Point; Armed Conflict Location & Event Data Project (ACLED) Data Export Tool, available at <https://acleddata.com/data-export-tool/>

² UN Myanmar (Jun 2020) A UN framework for the immediate socio-economic response to COVID-19 in Myanmar.

³ Ministry of Health and Sports (Myanmar) Department of Health, Epidemiological Unit (21 Aug 2020) Coronavirus Disease 2019 (COVID-19) Situation Report -136

⁴ Ministry of Health and Sports (Myanmar) Department of Health, Epidemiological Unit (21 Nov 2020) Coronavirus Disease 2019 (COVID-19) Situation Report -228

⁵ Ministry of Health and Sports (Myanmar) Department of Health, Epidemiological Unit (21 Nov 2020) Coronavirus Disease 2019 (COVID-19) Situation Report -228

⁶ (Singapore) Ministry of Health (25 Nov 2020) 25 November 2020 Daily Report on COVID-19

⁷ Myanmar Times (17 Oct) Voting in over half of Rakhine State cancelled, hitting Arakan party

Hate speech, commonly both an indicator and a driver of atrocity crimes like genocide, was common in 2020. Facebook removed 280,000 items it categorized as hate speech in the second quarter of 2020, compared to 51,000 in the first quarter.⁸ Burma Human Rights Network released a report in November 2020, documenting 39 cases of hate speech and disinformation related to the election, some of which were shared over 2000 times.⁹ The report also notes that while the government uses its laws against discrimination and incitement as tools to protect powerful actors, it did not use them to counter instances of actual hate speech or incitement.

Discriminatory policy and policing continues unabated. After a Yangon church service was identified as a source of COVID-19 spread in April, a stream of online comments targeted Christians.¹⁰ The pastor who led the service, David Lah, was sentenced to three months in prison with hard labor.¹¹ A Yangon civil society representative told ALTSEAN-Burma that when the government relaxed restrictions on religious gatherings after the initial wave of the pandemic, it excluded Muslim gatherings (i.e., Muslim gatherings remained forbidden).

According to the Burma Task Force/Justice for All, unequal religious protection in Burma is reflected in the number of unrepaired mosques.¹² The Committee for the Restoration of Destroyed and Prohibited Mosques in Myanmar found 64 destroyed or shuttered mosques and madrassas in 11 States and Regions, with an additional 104 that could not be verified because of ongoing conflict in Rakhine State and elsewhere.¹³

There has also been a spate of election-related violence, with 20 incidents taking place across 8 administrative regions between August and November, including the killing of an MP-elect and 18 abductions/detentions.¹⁴

Continuing violence on the ground

The Tatmadaw continues to commit grievous human rights abuses across the country, despite the Court's order, the COVID-19 pandemic, and calls—from the UN, ethnic armed organizations, and civil society groups across Burma—for a ceasefire to address the pandemic.

Between 23 January and 23 November, there were *at least* 880 armed clashes in civilian areas or direct attacks on civilians by armed actors, across 11 of 14 States and Regions (and in the capital territory) of Burma. These incidents took place in Ayeyarwady Region, Bago Region, Chin State, Kachin State, Kayah State, Kayin State, Mandalay Region, Mon State, Nay Pyi Taw Union Territory, Rakhine State, Sagaing Region, and Shan State.¹⁵ In addition to terrorizing civilians, these incidents threaten to destroy evidence of past atrocity crimes. This is 70.5% higher than the same period in 2017 (516).

Please [click here](#) for a sortable, detailed excel file listing the individual incidents summarized in the table below.

⁸ Al Jazeera (6 Nov 2020) Myanmar polls: Facebook under scrutiny over hate speech

⁹ Burma Human Rights Network (4 Nov 2020) DIGITAL HATE: Free and Fair for Some: Discrimination and Hate Speech in Burma's General Election Campaign.

¹⁰ Al Jazeera (6 Aug 2020) Canadian pastor jailed in Myanmar for defying coronavirus ban

¹¹ Al Jazeera (6 Aug 2020) Canadian pastor jailed in Myanmar for defying coronavirus ban

¹² Burma Task Force (Apr 2020) Burma and the ICJ Ruling For the Month of April 2020

¹³ Burma Task Force (Apr 2020) Burma and the ICJ Ruling For the Month of April 2020

¹⁴ Eleven of the twenty are also captured by the table below. Data comes from Armed Conflict Location & Event Data Project (ACLED) Data Export Tool, available at <https://acleddata.com/data-export-tool/>

¹⁵ Armed Conflict Location & Event Data Project (ACLED) Data Export Tool, available at <https://acleddata.com/data-export-tool/>.

The sub event types from ACLED that are included here are Abduction/forced disappearance, Air/drone strike, Armed clash, Arrests, Attack, Grenade, Looting/property destruction, Sexual violence, and Shelling/missile/artillery attack. The "Abduction/detention" column in the table includes ACLED sub-events categorized as Abduction/forced disappearance and Arrests. The "Property destruction/seizure" column in the table contains exclusively ACLED sub-events categorized as Looting/property destruction.

Conflict data by state/region, 23 Jan–23 Nov2020							
Source: Armed Conflict Location & Event Data Project (ACLED) Data Export Tool							
State/Region	Incidents	Civilian deaths	Civilian injuries	Civilian detention	Civilian torture	Houses destroyed	Civilians displaced
Ayeyarwady (R)	1			42			
Bago (R)	1						
Chin (S)	86	39	60	65	3	115	1200
Kachin (S)	5		2	5			
Kayah (S)	2	1		8			
Kayin (S)	59	6	12	4	3		300
Mandalay (R)	6			2			
Mon (S)	2		1				
Nay Pyi Taw (Union Territory)	2						
Rakhine (S)	519	135	516	676	77	1569	7429
Sagaing (R)	6	1	4	1	1		
Shan (S)	191	42	43	61	25	1	3630
National TOTAL	880	224	638	864	109	1685	12559

Lack of positive compliance measures

On 23 January 2020, the International Court of Justice issued provisional measures to Burma. The measures had two purposes: (1) to stop the country from doing anything genocidal; and (2) to stop the country from doing anything to affect the outcome of The Gambia's case against Burma for potentially violating the Genocide Convention. The Court ordered Burma to report on its progress after four months (i.e. 23 May 2020), and every six months after that (i.e. 23 Nov 2020, 23 May 2021, etc.). Burma has not made its reports to the ICJ, or any of the reports' contents, public.

Burma has failed to take effective measures to address the situation in Rakhine State, halt its longstanding practices of violence against ethnic minorities, or change its generally discriminatory environment which continues to permit hate speech and violence.

President Win Myint has issued three statements in response to the provisional measures order: (1) a statement calling for the military not to commit genocide; (2) a statement calling for the military to not destroy evidence in Rakhine State; and (3) a statement condemning hate speech. There has been no visible enforcement or clarity about how implement the directives as a matter of policy.

These statements were not accompanied by efforts to abolish, amend or replace legislation to ensure compliance with the provisional measures or the Genocide Convention itself. The International Commission of Jurists and the former Special Rapporteur on the Situation of Human Rights in Myanmar have listed several laws that should be amended to address these conditions, including the 1982 Citizenship Law, the 2015 Race and Religion laws, and constitutional provisions that effectively guarantee military impunity.¹⁶

¹⁶ International Commission of Jurists (22 May 2020) Myanmar: Government must do far more to comply with International Court Justice's order on protection of Rohingya population; Myanmar Times (22 May 2020) Myanmar made "no progress" in resolving plight of Rakhine Muslims, Yanghee Lee says.

Burma's compliance with ICJ Provisional Measures Order	
Positive Statements	Negative Actions
<ul style="list-style-type: none"> • Presidential Directive on compliance with the Genocide Convention¹⁷ • Presidential Directive on preservation of evidence in Rakhine State¹⁸ • Presidential Directive on anti-hate speech activities¹⁹ 	<ul style="list-style-type: none"> • At least 875 incidents of violence targeting or affecting civilians across 11 of Burma's 14 States and Regions²⁰ Tatmadaw forces destroyed ethnic health outposts set up for COVID-19 in Rakhine, Kachin, and Kayin States, and ordered others to be shut. • Government-mandated internet blackouts across Rakhine and Chin States, affecting approximately one million people²¹ Internet blackouts began in June 2019 in Ponnagyun, Myauk-U, Kyauktaw, and Minbya Townships. In February 2020, the blackouts were extended to Maungdaw, Buthidaung, Rathedaung, Myebon, and Paletwa Townships. Only 2G services were reinstated, meaning internet access remains effectively blocked.²² • Independent news sources blocked²³ In late March 2020, phone service providers in Burma were ordered to block access to websites the government accuses of spreading fake news about COVID-19. The list allegedly contains 230 websites, including several ethnic news media outlets, at least two of which are in Rakhine State.²⁴

¹⁷ Republic of the Union of Myanmar, Office of the President (8 Apr 2020) Directive No. 1/2020

¹⁸ Republic of the Union of Myanmar, Office of the President (8 Apr 2020) Directive No. 2/2020

¹⁹ Republic of the Union of Myanmar, Office of the President (20 Apr 2020) Directive No. 3/2020

²⁰ Armed Conflict Location & Event Data Project (ACLED) Data Export Tool, available at <https://acleddata.com/data-export-tool/>

²¹ Human Rights Watch (5 Feb 2020) Myanmar Again Cuts Rakhine State's Internet

²² Myanmar Times (3 Aug 2020) Telenor says internet restrictions continue in Rakhine, Chin

²³ (9 Sep 2020) Telenor Blocking of websites in Myanmar (Updated 9 September 2020)

²⁴ Id.; Myanmar Times (31 Mar 2020) Telenor follows Myanmar orders to block alleged 'fake news' sites