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# Transitional Justice to Address Genocide Denial: A Case Study of the Rohingya in Myanmar<sup>1</sup>

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## Abstract

This empirical study examines the potential and the obstacles of transitional justice in addressing the denial of the Rohingya genocide in Myanmar (also known as Burma). It utilizes a qualitative research approach, drawing on relevant scholarship of truth-seeking as a transitional justice mechanism, criminology and international law. Empirical data were collected through in-depth interviews with victims of the Rohingya community and key informants in two separate stages between 2022 and 2023. This study presents an interdisciplinary approach to assess the role of a truth commission – a truth-seeking tool – in confronting Myanmar’s denial of this crime. It suggests that examining amnesties, as well as disarmament, reintegration and rehabilitation programmes for the individual perpetrators within the framework of a truth commission can provide a more nuanced discourse of addressing the decades-long denial of the Rohingya genocide in Myanmar.

**Keywords:** criminology; international law; truth commissions; restorative amnesty; Bangladesh

## Introduction

Myanmar, a Southeast Asian nation, gained independence from British administration on 4 January 1948. It is home to more than 135 unique ethnic communities (Ibrahim 2016). The Rohingya are an ethno-religious community living in Myanmar’s Rakhine State, previously known as Arakan State (Albert and Maizland 2020). The persecution of the Rohingya escalated significantly in the 1960s with the rise of the military rule in Myanmar (Hossain 2021; Human Rights Watch 2018). However, major acts of violence occurred between 1974 and 1978, in 1997 and 2001, and from 2012 to 2017 (Bearak 2017; Hossain 2021). On many occasions, the military or police intervened to stop clashes between the Rohingya

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<sup>1</sup>Declaration: This article includes some primary data from the Rohingya participants that the author has utilized in his research project’s working paper, supported by the East West University Centre for Research and Training (EWUCRT). The data have been analysed in a unique way in this article, leading to different conclusions to some extent.

and Buddhist fanatics, while their actions towards the Rohingya were consistently condemned of violating human rights. Allegedly, most of these incidents included large-scale killings, rape and sexual violence targeting women and girls, severe physical assaults, illegal detentions and pillaging of personal belongings (International Court of Justice 2020; United Nations High Commissioner for Refugees 2019). The villages, mosques, schools, livestock, businesses and villages, inhabited by the Rohingya in certain areas of Rakhine State, were also destroyed by fire (United Nations High Commissioner for Refugees 2019).

The Rohingya experienced a significant surge in violence starting on 25 August 2017, initiated by the Tatmadaw, the official military of Myanmar. As a result, more than 700,000 Rohingya people were compelled to seek refuge in Bangladesh (United Nations High Commissioner for Refugees 2022b). Many of these individuals arrived within the initial three months of the military operations, adding to the existing population of over 300,000 Rohingya who had already sought shelter in under-resourced camps in the Cox's Bazar region, which shares a border with Myanmar (United Nations High Commissioner for Refugees 2022a). A significant number of individuals also sought refuge in other nearby countries in the region, including India, Indonesia, Nepal and Thailand (United Nations High Commissioner for Refugees 2022a). As of 11 February 2022, over 600,000 Rohingya individuals were residing in Myanmar, with around 148,000 of them being displaced and living in villages, camps and displacement sites (Human Rights Watch 2020a; United Nations 2022). It is worth mentioning that the events of violence against the Rohingya, particularly those that occurred in 2017, are still denied by the Myanmar Military Junta (Maizland 2022).<sup>2</sup> See Table 1 for abbreviations and acronyms used in this article.

The International Criminal Court (ICC) launched an investigation into the alleged “crimes against humanity”<sup>3</sup> following the increase of violence in 2017. This investigation specifically focuses on the forced displacement of the Rohingya people from Myanmar to Bangladesh, and other crimes that have occurred within the territory of Bangladesh (International Criminal Court 2018).<sup>4</sup> The Gambia, a country in West Africa, has taken legal action against Myanmar at the International Court of Justice (ICJ) over allegations of “genocide”<sup>5</sup> against the Rohingya (van den Berg 2019).<sup>6</sup>

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<sup>2</sup>The “Myanmar Military Junta” (group of military leaders) – officially called the State Administration Council – retained power from 1962 until 2011. In February 2021, military leaders staged a coup and retook charge after forcing out the elected civilian government. This article primarily refers to the military as the perpetrators of the persecution of the Rohingya in Myanmar. However, it acknowledges that some security force members, paramilitaries and vigilantes also have been alleged to have violated human rights and committed atrocities against the Rohingya.

<sup>3</sup>For the specific definition of “crimes against humanity”, please consult Article 7 of the Rome Statute of the International Criminal Court (last amended 2010) (adopted 17 July 1998, entered into force 1 July 2002) (hereinafter Rome Statute).

<sup>4</sup>Referring to Article 19(3) of the Rome Statute, the ICC Prosecutor argued before the ICC Pre-Trial Chamber I that as “deportation” is one of the elements of the “crimes against humanity” (see art. 7(1)(d) of the Rome Statute), and Bangladesh is a Member State to this Statute, the ICC can exercise its jurisdiction over the situation of Rohingya deportation or their forcible transfer from Myanmar to Bangladesh.

<sup>5</sup>For the specific definition of “genocide”, please consult Article 6 of the Rome Statute.

<sup>6</sup>The Republic of The Gambia – with the support of the 57 members of the Organisation of Islamic Cooperation – filed the Rohingya genocide against Myanmar at the ICJ on the ground of violation of

**Table 1.** List of abbreviations and acronyms used in this article

Abbreviation	Meaning
ACRS	Advisory Commission on Rakhine State
ARSA	Arakan Rohingya Salvation Army
CSR	Civil society representative
DDR	Disarmament, reintegration and rehabilitation
EWUCRT	East West University Centre for Research and Training
FARC	Revolutionary Armed Forces of Colombia
ICC	International Criminal Court
ICJ	International Court of Justice
KI	Key informant
NLD	National League for Democracy
RIC	Rakhine Inquiry Commission
SATRC	South African Truth and Reconciliation Commission
TAAR	Truth, accountability, reparation and reconciliation
TJ	Transitional justice
UN	United Nations

Hossain (2021) suggests in his study that by doing a thorough examination of the historical origins, socio-political factors, and testimonies and witness accounts of the Rohingya refugees residing in Bangladesh, one can adequately evaluate the course of violence against the Rohingya as genocide. In a subsequent study, he highlights the diverse range of actors involved in the commission of genocide and other atrocity crimes against the Rohingya (Hossain 2023). These include military leaders, members of the military and security forces, paramilitaries and vigilantes, all of whom played different roles in carrying out these crimes.

In early October 2017, Amnesty International released a report detailing the systematic burning of Rohingya villages (Independent Permanent Human Rights Commission 2018). The report was based on a combination of fire-detection data, satellite imagery, photographs and videos from the ground, and testimonies from the Rohingya themselves. On 18 December 2017, it was reported that 354 villages of the Rohingya people in the Rakhine State of Myanmar had been destroyed, either fully or partially, since 25 August 2017. However, the Myanmar government asserted that the Rohingya were responsible for burning their own villages and attacking the Myanmar security forces (Independent Permanent Human Rights Commission 2018). Not only that, but the government also made deliberate efforts to suppress the evidence to impede investigations into the atrocities committed against the Rohingya (Human Rights Watch 2020b).

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obligations set out in the Convention on the Prevention and Punishment of the Crime of Genocide 1948 (adopted 9 December 1948, entered into force 12 January 1951).

Human Rights Watch (2020a) has revealed that the investigations conducted by the Myanmar government into the 2017 attacks have inadequately addressed the human rights violations committed against the Rohingya. Furthermore, the South China Morning Post (2018) reported on 25 October 2018 that the government declined to cooperate with independent international investigations concerning the purported atrocities inflicted upon the Rohingya people. Similarly, despite claims made by some high-level United Nations (UN) officials, including a UN Fact-Finding Mission, the political leaders of Myanmar have consistently denied any allegations of mass atrocities being committed against the Rohingya people (Head 2019). It thus appears that Myanmar has employed a “denial and defiance” defence to evade international prosecution of those responsible for the genocide and other atrocities committed against the Rohingya people.

As an initial means of securing a robust foothold for transitional justice (TJ) in the face of denials about the genocide and other crimes committed against the Rohingya, it is appropriate to emphasize the specific TJ mechanisms. TJ is conceptualized as an approach of “justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes” (Teitel 2003:69). With TJ’s development, people traditionally speak on its four pillars: truth-seeking, prosecution, reparations and institutional reforms (Jones, Parmentier and Weitekamp 2012; Parmentier 2003; Parmentier and Weitekamp 2007).<sup>7</sup> This article only examines “truth-seeking” as one of the key TJ mechanisms in the context of the alleged denial of genocide against the Rohingya in Myanmar.<sup>8</sup>

### Scrutinizing Scholarship on Criminology and Truth-Seeking

Truth-seeking (also called “truth-telling”) plays a crucial role in establishing the tradition of moral or legal accountability. Typically, it is achieved through truth commissions or trials – for example, the Nuremberg trials (1945–1946) (Elster 1998).<sup>9</sup> As Freeman and Hayner (2003) claim, it promotes the “right to truth” of the victims and their families and the states’ duty to investigate situations of atrocity crimes to provide them with an adequate remedy. Mendeloff (2004:356) argues that it promotes justice, endorses communal and emotional healing, facilitates reconciliation and deters future offences.

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<sup>7</sup>Parmentier developed a model of TJ called TAAR-I, which includes four components – truth, accountability, reparation and reconciliation. Then, Parmentier and Weitekamp added two more components – namely, trauma and trust, in TAAR-I and proposed TAAR-II (trauma – trust – truth – accountability – reparation – reconciliation). At the latest, Jones, Parmentier and Weitekamp modified TAAR-II and formed a new model called TAAR-III. In so doing, they first divided “accountability” into two different factors – “active responsibility” to refer to admission of guilt by the perpetrators, and “imposed obligation” to refer to punishments by courts or external organizations. The second modification was related to a combination of “trust” and “reconciliation”.

<sup>8</sup>Please note that although this article focuses on the persecution of the Rohingya Muslims, the “Kaman” and “Mandalay” – other Muslim communities – have suffered due to the intensification of anti-Muslim sentiments in Myanmar.

<sup>9</sup>Please note that trials are generally discussed under the prosecutions/accountability pillar but as they play a critical role in truth-seeking, this article has referred to them in this section.

Bickford presents official truth commissions and unofficial truth projects as the commonly used mechanisms to investigate the truth about past abuses (Bickford 2007). Hayner (2001) refers to Honduras, Northern Ireland and Rwanda and finds that semi-official and unofficial inquiries help investigate human rights violations. Olsen, Payne, and Reiter (2011) claim that the truth commission – first used in Argentina and arguably made famous in South Africa – is a *sui generis* development of post-conflict societies.<sup>10</sup>

This article focuses on only truth commissions as a tool of truth-seeking, and thus, limited its discussion to this tool only. A truth commission primarily denotes an official (internal and external) body aiming to uncover the truth about past abuses (Teitel 2003). Both Teitel (2003) and Hayner (2001) define it as a temporary body empowered by states to investigate, document and report upon past events of a specified period. Pointedly, irrespective of its critical aspects (Brahm 2007; Lawry-White 2015),<sup>11</sup> it is useful to resolve a dichotomy between truth and justice that has emerged (Hayner 1994; Teitel 2003). Teitel (2003) explains that while criminal trials involve complications concerning offences, offenders and victims, a truth commission is likely to explore broader historical aspects of human rights abuses instead of simply providing judgements in separate cases.<sup>12</sup>

It is pertinent to note what Ignatieff (1996) argues, namely that having a minimum level of democracy in states is a pre-condition for sustaining public truth and debates. Consequently, a truth commission's effectiveness depends on "free access to historical data and free debate about its meaning", and some arrangement of an "apology" and "restitution", as described in the following section (Freeman and Hayner 2003).

### Truth Commissions

McEvoy, Dudai, and Lawther (2017) argue that post-conflict or post-transitional societies need to utilize perpetrator-focused TJ mechanisms (but ones that have been crafted with restorative justice emphasis) if they want to uncover the truth of perpetrators' acts (Freeman and Hayner 2003). Accordingly, their criminological views interconnecting perpetrators and TJ tools, particularly "amnesties" and "disarmament, reintegration and rehabilitation" (DDR) programmes, have strong roots in restorative justice (McEvoy et al. 2017:10). Implementing these tools often advances victims' needs because it provides the foundation for a truth commission

<sup>10</sup>After Argentina, the truth commission was largely used as an investigative model in post-apartheid South Africa during the 1990s.

<sup>11</sup>Lawry-White (2015) argues that a truth commission is unable to provide long-term healing for victims. Instead, its processes are likely to traumatize victims further as they are asked about their traumatic experiences and promote impunity. In contrast, Roht-Arriaza (2017) claims that as the investigation processes of a truth commission involve the victims and their families to gather information about their past experiences, it provides healing for them, creating hope for getting official recognition and preventing the recurrence of the violence. Likewise, Brahm (2007) acclaims its processes for creating an avenue of reconciliation of the victims and introducing some victim-centred services, for example, psychological support, emergency help, security and legal aid.

<sup>12</sup>The fundamental activities of a truth commission include gathering statements of the victims and the witnesses, carrying out "thematic research", arranging public hearings, campaigns, and different awareness programmes, and publishing a final report delineating findings and recommendations.

to operate, ultimately allowing the truth of the victims' suffering to be revealed – a truth that may have been denied for years. To clarify, the discussion that follows focuses on the concepts and impetuses of restorative amnesty and DDR programmes, as well as the impact of denialism, which involves denying or justifying an incident.

### *Amnesty*

Amnesties were being used throughout the 20th century, but, in the background, there was a developing sense by those working on international human rights law that, drawing from the experience with the Nuremberg trials, accountability was necessary and “blanket amnesties” (Sarkin 2017)<sup>13</sup> were a barrier to lasting peace (Slye 2002). When the Cold War ended, owing to the inconsistent practice of the states, pressure from victims and civil society groups and hesitance by international organizations like the UN, using blanket amnesties for the international crimes became controversial during the 1990s (Collins 2010; Freeman 2009; Laplante 2008).<sup>14</sup>

Nevertheless, “conditional amnesties” or amnesty-like actions associated with TJ mechanisms, such as truth-seeking and reparations, are still found (Bois-Pedain 2011; McEvoy et al. 2017). For example, McEvoy (2001:331–2) refers to Northern Ireland’s post-conflict context, where peace negotiations were arguably materialized by some form of amnesty being considered in the agreements. He draws upon the same illustration to show amnesty’s importance for creating peace agreements in his later publication, in which he adds the instances of post-conflict transition in Sierra Leone and the 52-year-long conflict in Colombia (McEvoy et al. 2017).

Braithwaite (2002) and Jeffery (2014:176–7) argue that, in some cases, amnesty should be viewed from a restorative justice perspective. For instance, the South African Truth and Reconciliation Commission (SATRC) indicates that amnesty can be considered justice if we do not view justice only from the retributive aspect (South African Truth and Reconciliation Commission 1998). Additionally, for truth recovery, the SATRC emphasizes that “amnesty in return for public and full disclosure . . . suggests a restorative understanding of justice” (South African Truth and Reconciliation Commission 1998:117–18). Critically, Hayner (2001) observes that granting amnesty for politically motivated crimes was the most critical innovation of the SATRC and the most controversial of its powers. It was evident that the “truth-for-amnesty” offer was accepted by those who reasonably feared prosecution (Hayner 2001). Remarkably, the SATRC required “neither an apology nor any sign of remorse” to grant amnesties (Hayner 2001).

In contrast, Braithwaite (2002:153) advocates a “restorative amnesty”, which requires two essential elements – namely, the amnesty must “contribute to ending a war”, and the offenders need to “show public remorse for their crimes and to

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<sup>13</sup>“Blanket amnesty” covers all types of atrocity crimes irrespective of the places and/or times of commission of the crimes.

<sup>14</sup>As “the fight against impunity” gained popularity after the 1970s, amnesties became synonymous with impunity for many human rights activists.

commit to the service of the new nation and its people and repair some of the harm they have done". Notably, while the traditional criminal justice system observes crimes as a violation of the law against the state (or the *populus* of the state or of multiple states), restorative justice contemplates crimes as harms caused to an individual by another, affecting relationships between them and their families and communities (Gude and Papic 2020). Kirkwood and Hamad (2019) suggest that through empowering communities, restorative justice addresses both the perpetrator and the victim's interests. Thus, Braithwaite (2002) and McEvoy et al. (2017) emphasize that an amnesty should be designed to engage the victims, as in the case of the Colombian peace agreement, and their families and communities.<sup>15</sup>

### DDR

DDR programmes are mainly designed to enable societies to reintegrate perpetrators and secure lasting peace through the elimination or demobilization of weapons and/or demobilization of armed groups (Patel, de Greiff, and Waldorf 2009). Many authors have assessed the effectiveness of TJ measures in reducing violence and re-offending (See, e.g. Backer 2010; Dancy 2010; Thoms, Ron, and Paris 2010), but literature on DDR is still underdeveloped. Two significant approaches can be found within criminological desistance literature concerning DDR: "restraint" and "rehabilitation" (Özerdem 2012). "Restraint" stresses self-rehabilitation by the individual ex-combatant/prisoner and does not provide any material assistance for their re-entry into society (Özerdem 2012). Conversely, "rehabilitation" focuses on building relationships between the individual ex-combatant/prisoner and the community and arranges psycho-social support for the former to develop their non-violent attitudes (McSparron 1980:233).

However, it is argued that the primary weakness of DDR programmes is the assumed passivity of the perpetrators (Gormally, Maruna, and McEvoy 2007; McEvoy and Shirlow 2009). As Rolston (2007) explains, DDR programmes often fail to recognize the leadership (or agency) abilities amongst the ex-combatants/prisoners. Hence, McEvoy et al. (2017) suggest that evaluating the effectiveness of both Braithwaite's restorative amnesty and of DDR programmes to "contribute to ending a war" requires providing opportunities to the ex-combatants/prisoners to exercise their leadership (and agency). Accordingly, Parmentier, Vanspauwen, and Weitekamp (2008:347) argue that if the ex-combatants/prisoners participate in the truth recovery processes and share their truth, it may "allow them to gain back the control over their position and their role in the conflict and later also their place in the community".

### Denialism

As regards framing, presenting and re-presenting the history of human rights abuses by a truth commission, Cohen (2001:103–12) notes that the regimes of past abuses

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<sup>15</sup>The Colombian peace agreement was created between the Colombia government and the Revolutionary Armed Forces of Colombia – FARC (Spanish: *Fuerzas Armadas Revolucionarias de Colombia*) in Havana, Cuba.

usually deny their acts, e.g. torture, killing, rape, disappearances, etc., or try to restructure public perception of such actions. He describes three forms of denial – namely, “nothing happened” denial (or literal denial), “interpretative denial” and “implicatory denial”. “Nothing happened” denial signifies a literal denial of the fact of any abuses, while “interpretative denial” accepts that violations occurred but asserts that the acts were unauthorized, isolated or not committed by a state agent. Remarkably, “implicatory denial” involves claims from state authority that the acts were justified for the protection of national security or other state interests.

Thus, in TJ’s context, a truth commission can play a role in countering these forms of denial by categorizing the past events through social, political and judicial spectrums to establish the factual truth (Cohen 1995). For illustration, first, establishing the truth requires exploring how the past events are socially constructed and recollected (Wilson 2001:36). Then, from the political and judicial aspects, a truth commission may be required to interpret the accountability of the military/paramilitary forces as state accountability (Jamieson and McEvoy 2005). Besides, a truth commission can help the victims collectively know the truth as a “national narrative”, or individual victims know the truth about what happened in their cases and to their loved ones, their villages, etc. (Cohen 1995).

## Research Design and Methodology

### *Methodological Approach and Sampling Design*

For this study, a “qualitative research approach,” which is defined as a process of collecting, analysing and interpreting non-numerical data, has been employed (Mason 2002:62–3). This approach has offered three specific benefits. First, the primary data generated by “in-depth interviews” with participants have allowed the accumulation of participants’ experiences and viewpoints on Myanmar’s Rohingya persecution and the likelihood of undertaking a truth commission to address denial of this phenomenon. Second, the data collected from multiple secondary sources have simplified the logical chain of evidence, allowing the distillation of different episodes of human rights violations and atrocity crimes committed against the Rohingya in Myanmar. Last, this approach has enabled organization of the data and identification of correlated components to assess the usefulness of TJ in the Rohingya case by accentuating relationships between variables and drawing comparisons.

The study’s sample consists of 50 Rohingya participants: 25 males and 25 females, who belong to the Rohingya community and are residing in sub-camp no. 12 of the Kutupalong Refugee camp located in Ukhiya, Cox’s Bazar, Bangladesh. The participants’ age ranges from 18 to 35 years. As of 30 June 2021, this sub-camp was a home to a total of 5443 households or families, according to the United Nations High Commissioner for Refugees (2021). The sample size of this study is 359 households of sub-camp no. 12, which is determined by calculating the minimum number of samples needed to accurately determine proportions.<sup>16</sup>

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<sup>16</sup>Please refer to formula:  $n = [z^2 (p)(1 - p)/c^2]/[1 + (z^2 (p)(1 - p)/c^2 \times N)]$ .



**Table 2.** Information pertaining to key informants

Occupation	Pseudonym	Special focuses of interview
CSR	KI-1	Comparative overview of truth commission's role in the amnesty processes
CSR	KI-2	Rohingya victims' likely reactions to perpetrators' amnesties
Criminology professor	KI-3	Motivations for forming truth commissions
Law professor	KI-4	Persecutions against Rohingya and applicability of the Genocide Convention in their situation
Independent researcher	KI-5	Persecutions against Rohingya and TJ's applicability in their situation

CSR, civil society representative; KI, key informant; TJ, transitional justice.

The “simple random sampling” method was used in this study to choose the participants. First and foremost, every one of the 5443 households was given a distinct number between 0001 and 5443. Afterwards, the “random number table” method was employed to identify 359 households out of the 5443 households in sub-camp no. 12. The 359 households that were selected were then assigned individual numbers, such as 001, 002, . . . , 358, 359. Afterwards, the members of the 359 households were divided into two separate lists based on gender – one for males and one for females. The lists only included individuals classified as “young adults” within the age range of 18 to 35 years (Kogan 1979).<sup>17</sup> A total of 50 participants who fulfilled the criteria were chosen from 5% of the enlisted young adult members of the 359 households, employing the “random number table” technique.

This study sample also includes five key informants: two civil society representatives (CSRs), a law professor, a criminology professor and an independent researcher. Key informants are abbreviated as KIs, and, if singular, he or she is referred to as KI. Table 2 represents the KIs' occupation, special focuses of their interviews and their pseudonyms.

### **Methods of Data Collection and Analysis**

The collection of qualitative data in this study has been conducted in two distinct phases. First, empirical data were gathered in the summer of 2022 through semi-structured interviews conducted via Zoom video conferencing with KIs (Archibald et al. 2019).<sup>18</sup> Second, primary data were collected by conducting “in-depth

<sup>17</sup>In a study conducted by Kogan (1979), participants were classified into three distinct age cohorts: young adults (18–35 years old), middle-aged adults (36–55 years old) and older individuals (over 55 years old). The current study aims to examine the effects of previous instances of human rights violations and atrocities on the ability of young Rohingya adults to reconcile with ongoing TJ initiatives. Hence, it has determined that the age range of “young adults” (18–35 years old) is appropriate for categorizing the Rohingya young adults.

<sup>18</sup>Please note that after the opening question concerning the root causes of the Rohingya crisis, the participants were asked principally about their experiences and observations of undertaking TJ measures –

interviews” with the Rohingya participants throughout the winter of 2023. While interviewing the participants and the KIs, a set of open-ended questions was followed. Considering the specific responses of the participants and KIs, and their individual experiences, they were asked follow-up questions for clarification, which varied from participant to participant. The interviews were conducted in the Rohingya language with the Rohingya participants and in the English language with the KIs, and each interview continued for 45–60 minutes.

All participants and KIs signed consent forms before participating in the interviews. At the beginning of each interview, the objectives, methods, end-use and possible risks of this research were explained to them. “Thematic analysis” was used as a method of coding and studying the transcripts. Pseudonyms of the KIs were used (see Table 1), as well as Rohingya participants being kept anonymous to protect their identities confidential.

Besides, this research uses scholarly books and papers, reports by governmental and non-governmental organizations, news articles and information presented on websites. It also considers the statements of victims, eyewitnesses and Rohingya camp visitors, recorded by news television/YouTube channels, representing the victims’ greater voice. The statements have been thoroughly examined for their appropriateness, and their application in confirming or rejecting a specific set of hypotheses has been assessed.

## Data Analysis and Discussion of Findings

This section presents and analyses the data collected empirically and from secondary sources. It primarily examines particularly those data that seem useful in designing and implementing a truth commission to address the decades-long denial of genocide against the Rohingya community. The data analysis is aligned with the discussion of findings, which are presented under three themes: motivations for forming a truth commission, uncovering truth and combatting denialism through restorative amnesty, and prospects of implementing DDR programmes for perpetrators.

### *Motivations for Forming a Truth Commission*

Establishing a truth commission is often paralleled with “doing nothing at all” to address human rights abuses (Aciru 2017). It is, however, undeniable that it complements other TJ tools (Andrews 2016). Concerning the Rohingya persecution, since the 2017 wave of violence, notwithstanding the presence of over a million Rohingya in the refugee camps in Bangladesh, the Myanmar Military Junta have resolutely denied the commission of atrocity crimes against them (Pennington 2018). This denial and the manifest failures of two formerly created “commissions” – namely, the Rakhine Inquiry Commission (RIC) (Republic of the Union of Myanmar 2013)<sup>19</sup>

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mainly, a truth commission involving amnesty and DDR programmes, and reparations emphasizing elements of victims’ classification and needs – to address the Rohingya persecution in Myanmar.

<sup>19</sup>The RIC was created through a Presidential Executive Order on 17 August 2012. Its main purpose was to “discover root causes of communal violence and provide recommendations for the prevention of recurrence of violence”.

and the Advisory Commission on Rakhine State (Advisory Commission on Rakhine State 2017)<sup>20</sup> in 2012 and 2016, respectively – have shaped the motivation to recover the truth about violations against the Rohingya (Southwick 2014).<sup>21</sup>

In this study, Table 3 presents the Rohingya participants' emotional impacts ranging from negative to positive about the importance of establishing the truth of atrocities that happened against the Rohingya in Myanmar.

According to the data presented in Table 3, an estimated 48.0% of the participants (26.0% + 22.0%) were reluctant to share their personal experiences of atrocities with the wider public. On the contrary, an overwhelming majority of participants, amounting to 74.0% (46.0% + 28.0%), conveyed their intention to inform the global community regarding the true nature of the atrocities. A Rohingya man, aged 23 years, who fled to Bangladesh subsequent to the largest violence that erupted on 25 August 2017, detailed the distressing ordeals he and his family endured in Myanmar:

Due to the military attack, we were compelled to escape from Myanmar after 25 August 2017. I trust that the United Nations and other countries will become aware of the truth of the violence perpetrated against us and take measures to safeguard our rights, uphold justice, ensure equality and promote peace.

This statement provides a clear account of the deliberate persecution faced by the Rohingya community, including the relentless violence, loss of life and unimaginable suffering that compelled them to escape Myanmar and seek safety elsewhere. A 19-year-old Rohingya male, who entered Bangladesh in September 2017, recounted:

Our village's young people were killed and burned by the Myanmar military. Since Myanmar is our home, I struggled to manage my emotions in Bangladesh. The Myanmar Military's atrocities stayed with me. Over time, I am forgetting those traumatic events and returning to normalcy.

The testimonies provided by the respondents above not only describe the various forms of oppression experienced by the Rohingya in Myanmar, but also shed light on their journey to Bangladesh. They also serve the purpose of where the Rohingya

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<sup>20</sup>After the National League for Democracy (NLD) – led by Aung San Suu Kyi – won 2015's election, the first civilian government since 1962 formed the Advisory Commission on Rakhine State (ACRS) in September 2016. The ACRS, chaired by former UN Secretary General Kofi Annan, published its final report on 24 August 2017 – a few hours before the 2017 wave of violence.

<sup>21</sup>The RIC recommended granting "citizenship" to the Rohingya as a priority to address the violence against them. The ACRS advocated for reviewing the 1982 Citizenship Law to reconsider the relationship between citizenship and ethnicity in Myanmar. The RIC subjectively referred to the Rohingya as "Bengalis", which questions its neutrality. The worthiness of the ACRS was rejected as it overlooked the investigative aspect of the Rohingya persecution. The selection of commissioners in both the Commissions was also criticized for not including any Rohingya representative.

**Table 3.** Establishing the truth about atrocities against the Rohingya ( $n = 50$ )

	It would not make me feel better at all	It would not make me feel better	It would make me feel better	It would make me feel much better	I don't know
If I could tell the “general public” what I went through during the atrocities	26.0% (M = 8, F = 5)	22.0% (M = 7, F = 4)	18.0% (M = 5, F = 4)	16.0% (M = 4, F = 4)	18.0% (M = 1, F = 8)
If I could learn the reasons why those who led me to suffer did so (Parmentier, Rauschenbach, and Weitekamp 2014)	0.0%	6.0% (M = 1, F = 2)	54.0% (M = 14, F = 13)	36.0% (M = 10, F = 8)	4.0% (M = 0, F = 2)
If I could only find out what happened to my relatives and friends who are still missing (Parmentier et al. 2014)	0.0%	2.0% (M = 0, F = 1)	64.0% (M = 15, F = 17)	32.0% (M = 10, F = 6)	2.0% (M = 0, F = 1)
If the truth about all the facts and events of the atrocities would be known to the “international community” (Parmentier et al. 2014)	4.0% (M = 1, F = 1)	12.0% (M = 4, F = 2)	46.0% (M = 12, F = 11)	28.0% (M = 7, F = 7)	10.0% (M = 1, F = 4)
If the international community could learn the reasons why those who led us to suffer did so	0.0%	6.0% (M = 1, F = 2)	58.0% (M = 15, F = 14)	32.0% (M = 9, F = 7)	4.0% (M = 0, F = 2)
If our sufferings throughout the atrocities would be investigated and revealed by Myanmar	22.0% (M = 6, F = 5)	30.0% (M = 7, F = 8)	30.0% (M = 8, F = 7)	8.0% (M = 2, F = 2)	10.0% (M = 2, F = 3)
If our sufferings throughout the atrocities would be investigated and revealed by the international community	4.0% (M = 2, F = 0)	6.0% (M = 2, F = 1)	60.0% (M = 14, F = 16)	26.0% (M = 7, F = 6)	4.0% (M = 0, F = 2)

M, male; F, female.

Note: Analysing the data above considers the variables associated with different levels of participants' emotional impact, ranging from “negative” (“It would not make me feel better at all” + “It would not make me feel better”) to “positive” (“It would make me feel better” + “It would make me feel much better”). Please also note that the questions and options of responses referred to this table are inspired from Parmentier et al. (2014).

specifically lived in the Rakhine region which can be vital in case the issue of repatriation is raised in future.

A notable result is seen in Table 3 that a considerable number of participants, i.e. 54.0% and 58.0%, respectively, expressed an urge to understand the reasons behind the atrocities they experienced in Myanmar. Additionally, they also expressed a strong interest in raising awareness among the international community about these reasons. A 25-year-old Rohingya man expressed:

The reason for our forced displacement by the Myanmar government was solely due to our identity as Muslims. We are thankful to the international

community and Bangladesh. We hope that international organizations will continue to assist us on a larger scale in repatriating to our homeland, Myanmar, while also ensuring our rights are protected.

This statement suggests that the Rohingya people were specifically targeted because of their religious affiliation as Muslims and their practice of Islam. This can be seen as a prejudice against the fundamental concept of human rights, which states that all human beings are entitled to these rights simply by virtue of being human.

Remarkably, among all the participants, only one person seemed uninterested in finding out what happened to their missing loved ones. On the other hand, a significant majority of participants, totalling 96.0% (64.0% + 32.0%), showed a strong desire to discover the truth regarding the whereabouts of their missing loved ones. A 19-year-old Rohingya woman narrated:

Military forces kidnapped and tortured my paternal uncle. He never returned. The Myanmar government's atrocities are beyond description, yet we want our loved ones back.

Similar to this participant, it is crucial that other Rohingya individuals who have suffered the loss of their loved ones are provided with accurate information regarding the actions taken, the events that occurred, and the current whereabouts of their family members.

In terms of investigating the atrocities against the Rohingya, according to Table 3, a combined total of 52.0% (22.0% + 30.0%) of the participants expressed reservations of investigating the human rights violations suffered by the Rohingya domestically by Myanmar. However, only 10% (4.0% + 6.0%) of the participants have expressed reservations for an investigation with the support of the international community. Most of the participants, i.e. 60.0% + 26.0% = 86%, indicate a preference for seeking the truth about the human rights abuses through international help rather than relying on domestic efforts.

When the truths are not immediately collected, recorded and preserved, people tend to forget what happened during the time of atrocity (McIntosh 2020). Since there has been no record of the true incidents that happened in Myanmar, it is likely that people might be forgetting about what happened to them, especially the current generation of Rohingya children who are now growing up in the refugee camp of Bangladesh.

The investigative body can seek truth primarily through the sharing of the stories of actual victims and survivors of atrocities. The information it collects should be useful in determining why a specific victim community is being targeted. As a result, it is critical that the truth be gathered from the first generation of victims so that subsequent generations are aware of the tyranny that led to their life as refugees and may voice their demands for justice. In the case of the Rohingya, their religion, in addition to their ethnicity, played an important role in Myanmar's persecution of them. In fact, the reason for the persecution is critical to ensuring that, even if the Rohingya are returned to Myanmar in the future, there are no chances of recurrence

because the state's pattern of action could help the international community to foresee the danger of such persecution.

### *Uncovering Truth and Combatting Denialism*

Writing prior to the latest *coup d'état* in Myanmar, Higgins (2018) found that the two major political authorities – namely, the Tatmadaw and the National League for Democracy (NLD) – seemed reluctant to undertake any TJ measures for addressing the Rohingya crisis. Here the question of including “amnesty” in a truth commission arises in order to understand if it is a pragmatic approach to deal with the Tatmadaw, who are the alleged perpetrators of the Rohingya persecution.

In Myanmar, “blanket amnesty” was incorporated in its Constitution in 2008 and granted to all leaders of the military government.<sup>22</sup> Although granting blanket amnesty – which in that case, also seemed “self-amnesty” – is illegitimate under international law, this practice shows that amnesty is not entirely abrupt for Myanmar (Reuters 2016). However, regarding the Rohingya persecution, KI-1 questioned the application of amnesty, stating as follows:

What motivates the Myanmar military to come forward if there is an amnesty? They will be shamed publicly, their families will know that they were involved in terrible acts, and there is no credible threat to them.

As noted above, however, there are two partly opposing approaches to amnesty. While Braithwaite's restorative amnesty requires the perpetrators to show public remorse for their crimes and repair some of the harm they have caused, the SATRC's truth-for-amnesty overlooked this requirement, rather focused more on truth recovery (Braithwaite 2002:203; Hayner 2001). Hayner (2001) argues that one of the reasons for the SATRC's success in recovering truth concerning politically motivated crimes is that most of the perpetrators, who applied for amnesty, had already been arrested and imprisoned. Consequently, they already had a credible threat of prosecution. However, this is not the case with Myanmar's military. Therefore, KI-3 of this study relayed the following:

If the perpetrators come forth with public and full disclosure of the truth, they should not be unaccompanied by formal trials. Because if we consider the atrocities committed against the Rohingya, giving an amnesty in exchange for information would be an effortless way out and would not lead to justice.

Here, it is important to note what Olsen, Payne, and Reiter (2010:997) argue: “Trials and amnesties together contribute to improvements in human rights and democracies with or without truth commissions.” Yet, Teitel (2003) contends that trials comprise complications concerning crimes, perpetrators and victims, and thus, we should think about truth commissions to uncover the truth about past abuses rather than invoking trials as the only solution.

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<sup>22</sup>Section 445 of Myanmar's Constitution of 2008 “prohibits legal proceedings being brought against members of the previous military dictatorships that ruled Myanmar”.

Concerning the Rohingya situation, KI-2 acknowledged a potential compromise, describing the circumstances as follows:

As long as the Rohingya victims live as refugees in Bangladesh, they would want the truth to be told and the offenders to be accountable. They would also want their livelihoods and homeland back. If an amnesty couples with these benefits and a public expression of the military's regret for their crimes, I can envision a scenario in which some concessions with regard to amnesty would be accepted.

Likewise, in their respective studies, Thoms et al. (2010) and Olsen et al. (2010) observed the effects of TJ measures on national and political atmospheres. They offered that combining trials and amnesties creates a relatively positive impact on establishing traumatic truths in divided societies and meeting victims' needs in part.

Hossain (2021:216–17) finds that “the total number of the Rohingyas killed during the ongoing genocide [i.e. 2017 wave of violence] has never been precisely determined, [while] the government currently blames the Rohingyas for burning their own villages and for having attacked the Myanmar security forces”. The government also justified the military operations as “counter-terrorism” measures and blocked both national and international media from reporting the violence against the Rohingya (Bashar 2019; International Crisis Group 2017). Therefore, a truth commission can establish a “national narrative” concerning what happened to the Rohingya and their villages.

From the interviews and supporting research, three primary findings emerge. First, the perpetrators of the Rohingya persecution do not have any credible threat of prosecution at present. Second, there needs to be a combination of programmes of amnesties and criminal trials associated with any truth commission, and, last, the amnesties should be restorative, requiring not only recovery of truth but also a demonstration of public remorse for the crimes and reparations for some of the harms the perpetrators caused to the Rohingya victims.

Regarding the first issue, doing nothing to address the Rohingya genocide appears to be the obvious choice for Myanmar's military as they are the ones who would possibly be held accountable. From the other two findings, it can be concluded that the likelihood of a truth commission's effectiveness, especially from the victims' perspective, would depend on its approach to striking a balance between restorative amnesties and the prosecution of perpetrators.

Analysis of the interviews and research also highlights different forms of denial operating within the context of the Rohingya persecution. Efforts to justify and rationalize the military's violent operations against the Rohingya as counter-terrorism responses to attacks on security outposts by Arakan Rohingya Salvation Army (ARSA) – a Rohingya insurgent group – amount to an “implicatory denial” (International Crisis Group 2017). By contrast, evidence tampering and systematic intimidation of witnesses and journalists to obstruct reporting of the actual causalities and damage of the military operations reflect an effort to engage publicly in “literal denial”. Accordingly, it may be concluded that both Cohen's

(2001:103–12) concepts of “implicatory” and “literal” denial of facts are present in the case of the 2017 wave of violence against the Rohingya. Both forms of denial may be addressed by a truth commission.

### *Prospects of Implementing DDR Programmes for Perpetrators*

Two new trends of the current conditions in Myanmar can help us envisage the prospects of DDR programmes in the country. First, in the days and weeks following the coup in 2021, there has been a monumental change in the tide of support for the Rohingya. It is not just that people who were previously indifferent started to care, but that people who actively were taking anti-Rohingya positions and refusing to use the term Rohingya are now backing the Rohingya (Hözl 2021). KI-3 also states that:

While doing my recent research,<sup>23</sup> I have observed that a democracy re-achieving movement is continuing after the coup on both online and offline platforms. And there is a virtual solidarity among young people, especially Twitter users, of Myanmar’s local [majority Buddhist and ethnic] communities and the Rohingya group.

This suggests that the broader underlying attitudes of the majority Buddhists and other ethnic groups about the Rohingya might change in due course.

Second, as per KI-5’s observation, many Myanmar people now demand that the military should fall under the civilian government’s control. She explains that:

As Myanmar military’s weapons have coupled with money, they have become a formidable power. So, Myanmar people now desire democracy and want the military to fall.

In this situation and as suggested by reports of military defectors attesting to crimes against the Rohingya (Attwood, Aung, and Henschke 2022), if democracy is established in Myanmar, it is likely that some people from Myanmar would come forward to participate in the truth commission’s processes and unveil the truth about the Rohingya persecution. DDR programmes also would help demolish military weapons, demobilize armed groups, and enable all combatants to restore their place in the community – perhaps – through the criminological desistance-focused “rehabilitation” approach (Patel et al. 2009).

Considering that Myanmar’s recent coup has intensified its ethnic conflicts (International Crisis Group 2022), it can be acknowledged that even if a truth commission exclusively for the Rohingya could be established, its reconciliatory role would be greater if it positions the military on one side and others (the Rohingya with ethnic minorities and potentially now also pro-democracy actors) on the other. However, unlike other contests where DDR is imposed after a singular fight between two sides, a significant issue with DDR in Myanmar is whether it would only apply to Rakhine State or it would take a broader bite out of the military.

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<sup>23</sup>KI-3 has been researching the impacts of the recent military coup in Myanmar on the Rohingya crisis.



## Conclusions and Discussion

The data analysis and findings of this study clearly indicate that a truth commission has the potential to play a vital role in collecting and revealing the truth about the Rohingya genocide. This study is the initial attempt to explore how criminological viewpoints may be utilized in the establishment of a truth commission specifically focused on the Rohingya situation. The analysis has focused on truth-seeking, particularly through truth commissions, by examining scholarly research that connects relevant criminological perspectives with truth-seeking. It has realized that there are relatively limited studies and approaches in this regard.

This study focuses exclusively on the applicability of truth commissions in the Rohingya situation, rather than providing a comprehensive analysis of all critical aspects of truth commissions. From the intersection between truth commission and criminological perspectives, it stands out that truth is uncovered mostly through perpetrators' confessions, while the processes engage victims who often serve as witnesses. Hence, the amnesty scheme plays a significant role in motivating perpetrators to come forward and reveal information about their violent actions. In this study, all five KIs oppose providing blanket amnesty to the perpetrators of the Rohingya persecution. Concurrently, considering existing uncertainties involving the Rohingya crisis, they suggest that amnesty may be part of the negotiations for peace and uncovering truth about the past. Their proposition complements the criminological premise of "restorative amnesty". This article also demonstrates that participation of the perpetrators and the victims in the truth commission's amnesty programme can help the Rohingya deal with historical denialism since the truth commission would unveil how military operations against the Rohingya have "historically" and "socially" been constructed.

A crucial point that arises in this article is that given the numerous ethnic conflicts across Myanmar after the recent coup, traditional DDR seems very unlikely or at very least a late/last step. Thus, regarding any future truth commission, it can be concluded that if the truth commission utilizes restorative amnesties, broader TJ initiatives, potentially (and ideally) also encompassing DDR programmes affiliated with criminological desistance-focused rehabilitation approach, would need to be employed.

Another crucial point is that the likelihood of victims' participation in a truth commission process would depend on a substantive balance between restorative amnesty and the prosecution of perpetrators. Conversely, perpetrators are driven to take benefit of restorative amnesty if they have a credible threat of prosecution, which is missing in Myanmar's case. Hence, this article suggests that simply waiting to turn the tide against the military rule is the laziest response to help Myanmar regain its democracy, which is the precursor to building peace and undertaking TJ measures for the Rohingya. Instead, civil society organizations, regional and international actors, and third-party states should continue to demand acknowledgment of the truth.<sup>24</sup> This act should be accompanied by insistence that

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<sup>24</sup>To be more specific, regional (e.g. Association of Southeast Asian Nations) and international (e.g. the UN) actors and third-party states – especially neighbouring states like Bangladesh – should begin implementing gradual strategies to build understanding and a solid foundation of TJ in Myanmar.

accountability be placed on the international and regional measures' agenda for all levels of the Tatmadaw.

Additionally, “national consultation” involving local leaders from the Rohingya group, and all other ethnic groups of Myanmar should be the basis of the truth commission to demonstrate its legitimacy among the mass public (United Nations 2010). It will allow the Rohingya and the broader (including Rakhine) Buddhist community to express their concerns so that the goal of the Rohingya's reconciliation and co-existence with local communities can be achieved. From the restorative justice perspective, their participation in the truth commission is particularly important to the perpetrators' repair of their relationship with the local communities, including under any DDR programme.

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## Translated Abstracts

### Abstracto

Este estudio empírico examina el potencial y los obstáculos de la justicia transicional para abordar la negación del genocidio rohingya en Myanmar (también conocido como Birmania). Utiliza un enfoque de investigación cualitativa, basándose en estudios relevantes sobre la búsqueda de la verdad como mecanismo de justicia transicional, la criminología y el derecho internacional. Se recopilieron datos empíricos a través de entrevistas en profundidad con víctimas de la comunidad rohingya e informantes clave en dos etapas separadas entre 2022 y 2023. Este estudio presenta un enfoque interdisciplinario para evaluar el papel de la comisión de la verdad, una herramienta de búsqueda de la verdad, para enfrentar la crisis de Myanmar y la negación de este crimen. Sugiere que examinar las amnistías, así como los programas de desarme, reintegración y rehabilitación para los perpetradores individuales en el marco de una comisión de la verdad, puede proporcionar discursos más matizados para abordar la negación durante décadas del genocidio rohingya en Myanmar.

**Palabras clave:** criminología; derecho internacional; comisiones de la verdad; amnistía restaurativa; Bangladesh

### Abstrait

Cette étude empirique examine le potentiel et les obstacles de la justice transitionnelle dans la lutte contre le déni du génocide des Rohingyas au Myanmar (également connu sous le nom de Birmanie). Il utilise une approche de recherche qualitative, s'appuyant sur des connaissances pertinentes en matière de recherche de la vérité en tant que mécanisme de justice transitionnelle, de criminologie et de droit international. Des données empiriques ont été collectées au cours d'entretiens approfondis avec des victimes de la communauté Rohingya et des informateurs clés au cours de deux étapes distinctes entre 2022 et 2023. Cette étude présente une approche interdisciplinaire pour évaluer le rôle de la Commission Vérité – un outil de recherche de la vérité – face aux problèmes du Myanmar. la négation de ce crime. Il suggère que l'examen des amnisties, ainsi que des programmes de désarmement, de réintégration et de réhabilitation pour les auteurs individuels dans le cadre d'une commission vérité, peut fournir un discours plus nuancé sur le déni du génocide des Rohingyas au Myanmar qui dure depuis des décennies.

**Mots-clés:** criminologie; droit international; commissions vérité; amnistie réparatrice; Bangladesh

### 抽象的

这项实证研究探讨了过渡时期司法在打击否认缅甸罗辛亚种族灭绝的行为方面的潜力和障碍。它采用定性研究方法，利用寻求真相的相关知识作为过渡司法、犯罪学和国际法的机制。经验数据是通过在 2022 年至 2023 年的两个不同阶段对罗辛亚社区受害者和关键知情人进行深入访谈而收集的。这项研究提出了一种跨学科方法来评估真相委员会（一个寻求真相的工具）在缅甸面临的问题上的作用。问题。否认这一罪行。它表明，作为真相委员会的一部分，审查大赦以及针对个别肇事者的解除武装、重返社会和康复计划，可以为否认缅甸已持续数十年的罗辛亚种族灭绝提供更细致的叙述。

**关键词：** 犯罪学；国际法；真相委员会；恢复性大赦；孟加拉国

### خلاصة

للروهي نج في ميانمار (المعروفة أيضا باسم بورما). ويستخدم نهج البحث النوعي، بالاعتماد على المعرفة ذات الصلة في البحث عن الحقيقة كإداة للانتقالية وعلم الجريمة والقانون الدولي. تم جمع البيانات التجريبية من خلال مقابلات متعمقة مع الضحايا من مجتمع الروهينجا والمخبرين الرئيسيين خلال مرحلتين منفصلتين بين عامي 2022 و 2023. وتقدم هذه الدراسة نهجا متعدد التخصصات لتقوية دور لجنة الحقيقة - أداة للبحث عن الحقيقة - في مواجهة ميانمار. إنكار هذه الجريمة. ويشير التقرير إلى أن دراسة حالات العنف، وكذلك برامج نزع السلاح وإعادة الإدماج وإعادة التأهيل للجنة الأفراد كجزء من لجنة الحقيقة، يمكن أن توفر رواية أكثر دقة حول إنكار الإبادة الجماعية للروهي نج في ميانمار والتي استمرت لعقود من الزمن.

**الكلمات:** المفتاحية: علم الجريمة؛ القانون؛ الدولي؛ لجنة الحقيقة؛ العنف المتصلحي؛ بنغلاديش

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