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The Importance of the Evidence in Myanmar

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What is the correct word to contextualize the acts of Myanmar against the Rohingya population? Is it genocide? [1] Crimes Against Humanity (CAH) under murder, extermination, deportation or forcible transfer? [2] Or ethnic cleansing? [3] Various types of atrocities are often labeled under the crime of genocide (also called crime of the crimes), even when they do not meet the term's legal definition.

The number of Rohingya victims is uncertain: estimates range between 400 and 6,700, but the categorization of the crime depends on the perpetrator's intention rather than on the number of victims. [4] [5] [6] Since August 2017 more than 670,000 Rohingya, lawfully present in Myanmar, have been intentionally deported across the international border into Bangladesh. [7] Genocide, CAH and ethnic cleansing each have a different mens rea. To qualify as genocide, a crime must be committed with a *dolus specialis*, or specific intent to eliminate, an entire group of people based on their ethnicity, nationality, race or religion. [8] International criminal courts and tribunals have confirmed that this list of groups is conclusive.

Absent proof of this specific intent, perpetrators can still be found guilty of CAH or ethnic cleansing. [9] CAH are widespread and systematic attacks knowingly directed against any civilian population, while ethnic cleansing only refers to the expulsion of a group from a particular area, and it has not been defined and recognized as a separate crime under international law. [10] There is no precise definition of this concept or the exact acts to be qualified as ethnic cleansing. [11] Criminal responsibility hinges on proof of intent, which is easier to establish with hard evidence in the form of a confession or a written document. [12] Intent is discerned from direct and circumstantial evidence. [13] The special intent requirement for genocide is particularly hard to establish since it is difficult to prove the perpetrators' reasoning. [14] In the case of the Holocaust, intent was made explicit in Nazi documentation and propaganda. [15] During the Rwandan genocide, in which national radio called for the extermination of the Tutsi ethnic group, propaganda played a similar role. [16] A different scenario played out during the Srebrenica massacre in 1995, because only the International Criminal Tribunal for Former Yugoslavia convicted Ratko Mladić of genocide in Srebrenica. [17] In fact, in 2007 the International Court of Justice exonerated Serbia of direct responsibility for the mass slaughter of Bosnian Muslims at Srebrenica during the 1992-95 Bosnian war, but ruled that it failed to prevent genocide. [18]

“The evidence never lies,” because the legal fact-finder – whether a judge, lay jury or both –

establishes a “formal legal truth,” which may or may not match substantive truth. [19] [20] It does not matter what people say; all that matters is what they can prove at trial.

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