

### Myanmar - Very High Risk/Ongoing Atrocity Crimes

The risk of atrocity crimes in Myanmar remains very high/ongoing. In 2017-2018, the country's Rohingya population was subjected to widespread and systematic atrocity crimes, likely including the crime of genocide.

The Rohingya population who are still in Rakhine remain very vulnerable to persecution and attacks by the military and nationalist militias remain common, amidst the closure of some Rohingya IDP camps by the government, which started in August.<sup>1</sup> In Bangladesh's Cox's Bazaar, over 700,000 Rohingyas who fled the Tatmadaw's campaign of atrocity crimes last year are still living in dire conditions even as humanitarian agencies and the UNHCR face enormous challenges to meet their needs. The bilateral agreement signed by Bangladesh and Myanmar governments for the initial repatriation of Rohingyas before end of this year has been denounced by refugees, UN officials, and human rights advocates as it failed to guarantee their voluntary, dignified, and safe return to Rakhine. Protests by refugees in Cox's Bazaar forced Bangladesh to postpone the initial repatriation indefinitely.<sup>2</sup> Amidst all these concerns, an internal document of the UN High Commission for Refugees (UNHCR) reportedly said that the refugee agency will not assist the process if returnees are to be interned in camps and if guarantees of the protection of their human rights are not forthcoming.<sup>3</sup> It is imperative that repatriation occur only when the protection of returnee's fundamental human rights can be guaranteed. The government has provided no grounds for hope that rights will be protected and every reason to believe that returnees will face serious rights violations and a high risk of atrocity crimes.

The closure of Rohingya IDP camps in Kyaukpyu, Pauktaw, and Sittwe townships, along with the Kaman Muslim camp in Ramree township, were undertaken by the government not just as part of implementing the Rakhine Advisory Commission's recommendations in 2017 but, importantly, to ease international pressure on Myanmar prior to the opening of the UN General Assembly session in September.<sup>4</sup> The Rohingya IDPs affected by the closure of the camps were not allowed to return to their original residences, which was their preference, and instead will be housed in another village. Accordingly, the displaced Rohingyas have asked the government to provide them jobs, build schools for their children, open a market to do business, and safety for their travel within the state.<sup>5</sup> These demands, however, are unlikely to be met even though Myanmar officials claimed that they are committed to fully implement the advisory commission's recommendations. As such, the camp closures effectively amount to another round of forced displacement.

In September, the UN Fact-Finding Mission (FFM) released its 444-page report, which found the military to have committed atrocities against the Rohingya with 'genocidal intent' and criticized the civilian government for its failure to hold the Tatmadaw accountable for these crimes. It also pointed to the failure of the UN to prevent further atrocity crimes against the Rohingyas following the eruption of violence in Rakhine in 2012. The NLD government and the Tatmadaw continue to deny the

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<sup>1</sup> "Myanmar Authorities Close Another Rohingya IDP Camp in Rakhine State," Radio Free Asia, 20 August 2018, from <https://www.rfa.org/english/news/myanmar/myanmar-authorities-close-another-rohingya-idp-camp-in-rakihine-state-08202018154133.html>, accessed on 15 November 2018.

<sup>2</sup> Muktadir Rashid, "Bangladesh Declines to Start Repatriation of Rohingya amid Protests," The Irrawaddy online, 15 November 2018, from <https://www.irrawaddy.com/news/burma/bangladesh-declines-start-repatriation-rohingya-amid-protests.html>, accessed on 15 November 2018.

<sup>3</sup> Reuters, "UN Will Not Help Myanmar with Long-term Camps for Rohingya: Document," The Irrawaddy online, 14 November 2018, from <https://www.irrawaddy.com/news/burma/un-will-not-help-myanmar-long-term-camps-rohingya-document.html>, accessed on 15 November 2018.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

allegations made in the report and have strenuously resisted all calls for a full investigation and proper accountability. It has denounced efforts by Bangladesh and international community to bring the matter to the International Criminal Court (ICC). Specifically, the Myanmar government disputes the ICC's view that it holds jurisdiction for some crimes of displacement and asserts that the ICC does not have any jurisdiction over the case filed by Bangladesh—a party to the Rome Treaty—following the Rohingya exodus in 2017. In an apparent attempt to counter mounting international pressure, the NLD government in July created its own Independent Commission of Enquiry (ICoE) composed of two foreign and two local members to conduct its own investigation of human rights violations in Rakhine. The ICoE, which was tasked to finish its report in 12 months, contains individuals known to be sympathetic to the government and is unlikely to produce a credible investigation. The commission's credibility has been tarnished by own chair, Ambassador Rosario Manalo, who stated during a press conference in Naypidaw in August said that there would be no finger-pointing or blaming for the crisis in Rakhine.

Meanwhile, some members of ASEAN have become more vocal in expressing their frustrations with the NLD government for its failure to hold accountable the perpetrators of atrocity crimes against the Rohingya. In particular, Indonesia and Malaysia through their respective representatives to the ASEAN Inter-Governmental Commission on Human Rights (AICHR) have called for a special meeting of the body following the release of the UN fact-finding mission in September. AICHR representatives agreed to hold a special meeting in late November to discuss the FFM's report. For his part, Malaysian Prime Minister Mahathir Mohamad criticised Suu Kyi's indefensible position on the Rohingya issue and has even publicly said that the Malaysian government has 'lost faith' in her leadership. For its part, Singapore as chair of ASEAN this year has also exerted pressure on Suu Kyi to do more to ensure the safe, dignified, and voluntary return of Rohingya refugees. Foreign Minister Dr Vivian Balakrishnan stated that while ASEAN supports the creation of the ICoE, the commission should conduct its inquiry 'impartially, expeditiously, independently - and hold people who are responsible fully accountable'.<sup>6</sup> In the recent summit of leaders in Singapore in November, the ASEAN chairman's statement reiterated this collective position even as it also conveyed to the Myanmar government that the group is ready to support its efforts in fully implementing the recommendations of the Rakhine Advisory Commission.<sup>7</sup> ASEAN also underscored the responsibility of the Myanmar government to ensure the safe, voluntary, and dignified repatriation of the refugees from Bangladesh.

US Vice President Mike Pence, in a bilateral side meeting with Suu Kyi during the ASEAN Summit, strongly expressed Washington's position of holding the military accountable for human rights violations against the Rohingyas. He also expressed concerns about the safety of refugees who will be repatriated to Myanmar and the plight of two local journalists who were convicted under the country's colonial-era secrets act.<sup>8</sup> Suu Kyi however took a defensive position on these issues and reportedly retorted that her government understands Myanmar 'better than any other country does'.<sup>9</sup> In September, a number of US lawmakers called on the Trump administration to seriously consider the Tatmadaw's campaign against the Rohingya as genocide even as they also called for the

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<sup>6</sup> Nirmal Gosh, "Asean will help, but Myanmar has to exercise responsibility on Rohingya issue," The Straits Times, 30 September 2018, from <https://www.straitstimes.com/world/united-states/asean-will-help-but-myanmar-has-to-exercise-responsibility-on-rohingya-issue>, accessed on 1 October 2018.

<sup>7</sup> "Chairman's Statement of the 33<sup>rd</sup> ASEAN Summit, Singapore, 13 November 2018," from [https://asean.org/storage/2018/11/33rd\\_ASEAN\\_Summit\\_Chairman\\_s\\_Statement\\_Final.pdf](https://asean.org/storage/2018/11/33rd_ASEAN_Summit_Chairman_s_Statement_Final.pdf), accessed on 15 November 2018.

<sup>8</sup> Reuters, "Pence tells Aung San Suu Kyi persecution of Rohingya inexcusable," Channel News Asia, 14 November 2018, from <https://www.channelnewsasia.com/news/asia/mike-pence-aung-san-suu-kyi-rohingya-persecution-myanmar-10929286?cid=FBena>, accessed on 14 November 2018.

<sup>9</sup> Ibid.

release of two local journalists in Myanmar.<sup>10</sup> The call from the lawmakers came in the aftermath of a US State Department report on the military's attacks against the Rohingyas, which was quietly released in September and stopped short of calling the crime as genocide.<sup>11</sup>

In the meantime, the European Union (EU) is reportedly considering lifting all trade preferences for Myanmar's exports in response to human rights violations in the country. This came in the aftermath of a trip by an EU delegation's visit to Myanmar in October to investigate whether the Tatmadaw were continuing to commit atrocities against the Rohingyas, as well as ethnic groups in Kachin and Shan states.<sup>12</sup> In October, Switzerland joined the EU in imposing asset freeze and travel ban on high-ranking military officials in Myanmar for human rights violations, which took effect in June.<sup>13</sup>

The UN General Assembly has also increased pressure on the government. In November, the General Assembly's third committee, which addresses human rights, adopted a resolution strongly critical of Myanmar. The Resolution condemned grave violations of human rights by the armed forces of Myanmar and called for action to ensure that those responsible are held legally accountable. In a strong signal of mounting international concern, a large majority of 142 states supported the resolution. Only 9 states, including Myanmar voted against.

Elsewhere in the country, the peace process between the government and ethnic armed organisations continue to falter as the Tatmadaw derails peace talks. Specifically, the military staged attacks against the rebels and civilians in Shan and Kachin states in September. Some 200 civilians were displaced Shan state as the Tatmadaw engaged the Ta'ang National Liberation Army (TNLA). Two civilians were abducted by military forces from their homes in Kachin state were charged under the Unlawful Assembly Act, while seven civilians were detained by the Tatmadaw in Shan state after two soldiers went missing.<sup>14</sup> Meanwhile, armed ethnic groups that were signatories to the National Ceasefire Agreement (NCA) concluded a summit meeting with the government in mid-October and agreed on a set of guidelines for further discussion on key peace issues. Specifically, they agreed to meet again in November to discuss the process of forming a unified military and the Tatmadaw's insistence that ethnic armed groups will never seek secession from the Union. These issues have been stumbling blocks to peace negotiations for over a year.<sup>15</sup>

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<sup>10</sup> Reuters, "Lawmakers Urge US to Call Myanmar's Rohingya Campaign Genocide," The Irrawaddy online, 27 September 2018, from <https://www.irrawaddy.com/news/lawmakers-urge-us-call-myanmars-rohingya-campaign-genocid.html>, accessed on 27 September 2018.

<sup>11</sup> See "Documentation of Atrocities in Northern Rakhine State," US State Department online, 24 September 2018, from <https://www.state.gov/j/drl/rls/286063.htm>, accessed on 26 September 2018.

<sup>12</sup> Emmanuel Scimia, "EU looking to target Myanmar for Rohingya abuses," The Asia Times online, 10 November 2018, from <http://www.atimes.com/article/eu-looking-to-target-myanmar-for-rohingya-abuses/>, accessed on 14 November 2018.

<sup>13</sup> "Switzerland Joins EU in Sanctioning Myanmar's Military Generals," The Irrawaddy online, 18 October 2018, from <https://www.irrawaddy.com/news/burma/switzerland-joins-eu-in-sanctioning-myanmars-military-generals.html>, accessed on 19 October 2018.

<sup>14</sup> "Burma/Myanmar: Ongoing attacks against civilians and faltering peace process," Altsean-Burma online, 18 October 2018, from <http://altsean.org/Ongoing%20Attacks%20Factsheet.pdf>, accessed on 15 November 2018. See also Lawi Weng, "TNLA, Tatmadaw Engage in Two Days of Clashes Near Muse," The Irrawaddy online, 1 October 2018, from <https://www.irrawaddy.com/news/burma/tnla-tatmadaw-engage-two-days-clashes-near-muse.html>, accessed on 16 November 2018.

<sup>15</sup> Nyein Nyein, "Gov't, EAOs Agree Guidelines for Further Discussion of Key Peace Stumbling Blocks," The Irrawaddy online, 16 October 2018, from <https://www.irrawaddy.com/news/burma/govt-eaos-agree-guidelines-discussion-key-peace-stumbling-blocks.html>, accessed on 16 November 2018.

## **Recommendations**

### **The government of Myanmar must:**

1. Take immediate steps to fulfil its legal obligations by ending atrocity crimes by security forces and preventing their recurrence.
2. Uphold its primary responsibility to protect vulnerable populations, especially the Rohingyas in and displaced from Rakhine, and civilians in Shan and Kachin states, from atrocity crimes.
3. Take tangible steps to implement the recommendations of the Advisory Committee on Rakhine State, chaired by Kofi Annan.
4. Ensure the full and prompt investigation of allegations of atrocity crimes, including sexual and gender-based violence, and take urgent steps to ensure legal accountability.
5. Ensure that the work of the ICoE in investigating the human rights violations in Rakhine are truly independent, impartial, and transparent.
6. Provide full and unfettered access to the UN-mandated fact-finding mission to conduct an independent investigation of atrocity crimes;
7. Ensure immediate, safe, and unhindered access of humanitarian assistance to all affected communities in Rakhine, Shan, and Kachin states as required by international humanitarian law.
8. Lift restrictions on journalists and access to and reporting of information with respect to affected communities in Rakhine, Shan, and Kachin states, and immediately cease the prosecution of journalists that report on the perpetration of atrocity crimes.
9. End systematic discrimination against the Rohingya by, amongst other things, immediately repealing the Protection of Race and Religion laws and the 1982 Citizenship Law.

### **The international community should:**

1. Support efforts to ensure that atrocity crimes are properly investigated, evidence collected, and alleged perpetrators held accountable for violations of international humanitarian and human rights law. Specifically, the UN Security Council should refer the matter to the International Criminal Court. Should that proposal not succeed, the UN General Assembly should establish an investigatory mechanism.
2. Utilize diplomatic means to demand that the Myanmar government and Tatmadaw fulfil their obligations to prevent atrocity crimes, grant humanitarian access, protect vulnerable populations, cooperate with the United Nations, and hold perpetrators accountable.
3. Support efforts to bring the perpetrators of atrocity crimes against the Rohingyas and other ethnic groups in Myanmar to justice through the International Criminal Court and other avenues that may be available, based on the findings of the UN Fact Finding Mission and the Special Rapporteur on Human Rights in Myanmar.
4. Employ targeted measures, including sanctions, travel bans, and investment freezes, and the withdrawal of cooperative arrangements, against institutions and individuals thought responsible for atrocity crimes, until legal accountability is achieved.
5. Suspend all military aid and training programs with the Myanmar armed forces.
6. Place an embargo on the sale of arms and ammunition to Myanmar.
7. Provide adequate and sustained humanitarian assistance to Rohingya refugees in Bangladesh and refugees from other conflict-affected areas who are in Thailand, as well internally displaced persons in Rakhine, Shan, and Kachin states.

8. Take steps to prepare for the safe and dignified resettlement of displaced Rohingya in Myanmar. This process should be overseen by the UNHCR and should include guarantees that the human rights of Rohingyans will be full protected and mechanisms to ensure that their full protection.
9. Carefully review development programming to ensure that it does not in any way reward or support the government's actions in Rakhine or support programs connected to individuals and institutions responsible for the commission of atrocity crimes.
10. ASEAN should take a more pro-active stance by using its diplomatic mechanisms to influence the Myanmar government, taking steps to ensure protection of all civilians in conflict-affected areas and humanitarian access in these areas, and strongly encourage Myanmar to commit implement the Rakhine Advisory Commission's recommendations in full.
11. ASEAN should take steps to ensure that the work of the ICoE in investigating the human rights violations in Rakhine are truly independent, impartial, and transparent. In particular it should provide guidance on what 'independent, impartial, and transparent' means and monitor and report on the ICoE's compliance.
12. ASEAN should seriously consider suspending Myanmar's membership if the government continues to take concrete steps in fulfilling its primary responsibility to protect, including holding accountable the perpetrators of human rights violations in Rakhine and other conflict areas in Myanmar and ensuring the safe, dignified, and voluntary repatriation of refugees.
13. ASEAN should take seriously the findings of the UN Fact Finding Mission and take steps to ensure that the perpetrators of atrocity crimes in Rakhine are held accountable.
14. Civil Society actors should continue to raise international awareness about the commission of atrocity crimes and advocate for accountability, humanitarian protection, and atrocity prevention in Myanmar.