

Myanmar - Very High Risk/Ongoing Atrocity Crimes

Atrocities in Myanmar are continuing as the military launched counter-insurgency operations in Rakhine state following a series of attacks in Buthidaung township by the Arakan Army (AA) that started in December 2018, which intensified further since January this year. Between 4 January to 28 March, the NLD government claimed that a total of 103 clashes occurred between the Tatmadaw and the AA insurgents. Ethnic Arakanese suffered the brunt of the fighting, with 12 fatalities and 20 injured in the last three months even as the central government accused the AA of detaining and killing civilians. Government sources also claimed that there were 27 police officers killed and 20 injured in the fighting, with 58 AA insurgents killed and another eight arrested.ⁱ

The fighting has further complicated the humanitarian crisis in Rakhine following the ARSA attacks in 2016 and 2017 and the subsequent crimes against humanity committed during ‘clearing operations’ by the Tatmadaw, which forced more than 700,000 Rohingyas to flee to Bangladesh. This time, Arakanese and ethnic Chins were forced to flee to Bangladesh as the Tatmadaw conducted clearing operations against AA insurgents. Specifically, some 250 refugees from upper Paletwa region, including sick children, reportedly crossed the border into Bangladesh amidst a week of intensive fighting between the military and AA forces in February.ⁱⁱ Allegedly, the Tatmadaw torched several homes in two Paletwa villages. As of the end of March, the government claimed that there are an estimated 117,000 internally displaced people in Rakhine and Chin states since the fighting began last year.ⁱⁱⁱ

In an effort to discredit the insurgents, the Tatmadaw has tagged the AA as a terrorist group while an NLD government spokesman accused the group of having links with the ARSA, both of which are allegedly operating from Bangladesh.^{iv} Myanmar police and military forces have been rounding up civilians in Rakhine who are considered sympathetic to the Arakanese insurgents even as some civilians have been caught in the crossfire between AA and Tatmadaw forces.^v Since January, the AA claimed that it had killed more than two dozen border police and military forces.^{vi} The Tatmadaw, reportedly using helicopter gunships and jetfighters against the insurgents, fired several missiles and artillery in some villages in northern Rakhine forcing over 260 households to abandon their homes.^{vii}

The deterioration of the security situation in Rakhine has delayed further the planned repatriation of Rohingya refugees from Bangladesh, which has been postponed several times already since the last quarter of 2018. It also caused the postponement of a visit to Rakhine by a team of experts from ASEAN Humanitarian Assistance (AHA) Centre that was tasked to conduct a needs assessment of affected Rohingya and ethnic Arakanese communities and ascertain the readiness of Myanmar to ensure the safe, orderly, and dignified return of refugees from Bangladesh. Meanwhile, Bangladesh advised the UN Security Council in early March that it could no longer accept refugees from Myanmar as it claimed that the crisis over repatriation of hundreds of thousands of Rohingyas had gone “from bad to worse” and urged the body to take “decisive action.”^{viii} The patience of Bangladesh government over the repatriation of Rohingyas to Myanmar is apparently running thin amidst reports that India and Saudi Arabia are also planning to deport a number of Rohingya refugees back to Myanmar. Since January, the influx of some 1,300 Rohingya refugees fearing deportation from India^{ix}, for example, has increased anxiety in Bangladesh as this would cause additional strain on its limited resources in managing over a million Rohingya refugees already in the country.

In an attempt to break the impasse over the Rohingya crisis, Bangladeshi Foreign Minister AK Abdul Momen revived a proposal for the creation of a safe zone inside Rakhine state where repatriated Rohingya refugees could be rehabilitated. Specifically, friends of Myanmar such as India, China, and ASEAN member states would ensure the safety, freedom from fear, and availability of livelihood for Rohingyas in the zone.^x The proposal was first made by Bangladesh Prime Minister Sheikh Hasina in

the UN General Assembly in September 2017 following the ARSA attacks and the military's clearing operations. However, the idea was rejected by Myanmar on the grounds that it infringed its national sovereignty.

In the meantime, Bangladesh is keen to relocate some 100,000 Rohingya refugees to Bhashan Char beginning mid-April in order to ease overcrowding at Cox's Bazaar. The island, which is 30 kilometers from the mainland and accessible only by vessels, is prone to high tide during cyclone season. The UNHCR stressed that further assessments of feasibility must be conducted prior to any relocation, refugees who choose to relocate to the island must make free and informed decision, and that there should be free movement of refugees between the island and the mainland, as well as access to basic rights and services.^{xi} UN Special Rapporteur on Human Rights in Myanmar, Yang-hee Lee, who visited Bhashan Char in January expressed fears that transferring some refugees to the island could create a "new crisis" as she questioned whether the relocation site is truly inhabitable.^{xii}

International efforts to hold accountable Myanmar's security forces for atrocities committed against the Rohingya people are high on the agenda of the UN and the International Criminal Court (ICC). However, the Tatmadaw remains uncooperative and continues to deny that atrocity crimes were committed by the military. A team from the prosecutor's office of the ICC visited Bangladesh in early March as part of conducting preliminary examination of atrocities committed against the Rohingyas, which could lead to a full investigation once it is established that there is enough evidence to support the calls for prosecuting those responsible for such crimes.^{xiii} For its part, the Organisation of Islamic Cooperation (OIC) adopted a resolution that would move at the International Court of Justice (ICJ) for establishing legal rights for the Rohingya people and addressing the issue of accountability for crimes committed against them.^{xiv} Meanwhile, the UN launched its own inquiry into its conduct in Myanmar for the past decade after the Fact Finding Mission's (FFM) report last year pointed to the organisation's failure to prevent the escalation of violence in Rakhine despite clear warning signs.^{xv} The FFM underscored the lack of coordination and coherent strategy of the UN resident representative in Myanmar in putting human rights protection upfront in dealing with the military and government officials in the country since the eruption of violence in Rakhine in 2012.

Overall, the ongoing atrocities in Rakhine and other conflict areas in Myanmar may be expected to continue as the intensity of fighting between security forces and ethnic armed groups could increase further in the coming months. This stems from the unwillingness of the Tatmadaw and the NLD government to recognise AA insurgents as a legitimate group with which they could negotiate peace. Other ethnic armed organisations such as the Ta'ang National Liberation Army (TNLA), which has an alliance with the AA, has called on the Tatmadaw to end its "war crimes" against Arakanese civilians and warned that other armed insurgent groups could join the AA in its fight against the military.^{xvi}

Recommendations

The government of Myanmar must:

1. Take immediate steps to fulfil its legal obligations by ending the commission of atrocity crimes by security forces and preventing their recurrence.
2. Uphold its primary responsibility to protect vulnerable populations.
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. Cooperate with ASEAN through the AHA Centre for the safe and unhindered access of humanitarian assistance to all affected communities in Rakhine, Shan, and Kachin states.
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.
2. Cooperate with the ICC's preliminary examination of atrocities committed against the Rohingya and ongoing UN investigation on its failure to act in preventing the escalation of conflict in Rakhine since 2012.
3. 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.
4. Employ targeted measures, including sanctions, travel bans 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. Provide adequate and sustained humanitarian assistance to Rohingya, Arakanese, and other Myanmar refugees in Bangladesh from other conflict-affected areas who are in Thailand, as well internally displaced persons in Rakhine, Shan, and Kachin states.
7. Take steps to prepare for the resettlement of displaced Rohingya in Myanmar. This process should be overseen by the UNHCR.
8. Scrutinise the plan of Bangladesh to relocate Rohingya refugees to Bhashar Char island, which may create another humanitarian crisis.
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. Coordinate efforts in shaping an effective regional response with ASEAN.
11. 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.
12. ASEAN should also seriously consider suspending Myanmar's membership if the government continues to take concrete steps in fulfilling its primary responsibility to protect.
13. ASEAN should take seriously the findings of the UN Fact Finding Mission and call on the ICoE to ensure that its findings are impartial, transparent, and independent in holding the perpetrators of atrocity crimes in Rakhine accountable.

ⁱ Htoo Thant, "Ethnic Rakhine hardest hit in clashes," Myanmar Times online, 1 April 2019, from <https://www.mmtimes.com/news/ethnic-rakhine-hardest-hit-clashes.html>, accessed on 1 April 2019.

ⁱⁱ Moe Myint, "Hundreds of Arakanese, Chin Flee to Bangladesh as Army, AA Clash in Paletwa," The Irrawaddy online, 6 February 2019, from <https://www.irrawaddy.com/news/hundreds-arakanese-chin-flee-bangladesh-army-aa-clash-paletwa.html>, accessed on 6 February 2019.

ⁱⁱⁱ Htoo Thant, *ibid.*

- ^{iv} “Urgent Political Action Needed to Solve Rakhine’s Problems,” The Irrawaddy online, 13 March 2019, from <https://www.irrawaddy.com/opinion/editorial/urgent-political-action-needed-solve-rakhines-problems.html>, accessed on 13 March 2019.
- ^v Reuters, “Myanmar soldiers hunt Rakhine insurgents; 6 wounded, The Bangkok Post online, 19 March 2019, from [https://www.bangkokpost.com/news/asean/1647432/myanmar-soldiers-hunt-rakhine-insurgents-6-wounded\[21/03/2019](https://www.bangkokpost.com/news/asean/1647432/myanmar-soldiers-hunt-rakhine-insurgents-6-wounded[21/03/2019), accessed on 19 March 2019.
- ^{vi} Moe Myint, “Fresh Arakan Army Attack Kills Nine Police in Rakhine,” The Irrawaddy online, 10 March 2019, from <https://www.irrawaddy.com/news/burma/fresh-arakan-army-attack-kills-nine-police-rakhine.html>, accessed on 10 March 2019.
- ^{vii} Ming Aung Khine, “Entire Villages Flee as Military Launches Air Strikes on AA,” The Irrawaddy online, 15 March 2019, from <https://www.irrawaddy.com/news/burma/entire-villages-flee-military-launches-air-strikes-aa.html>, accessed on 15 March 2019.
- ^{viii} Agence France Presse, “Bangladesh tells UN it will no longer take in Myanmar refugees,” Frontier Myanmar online, 1 March 2019, from <https://frontiermyanmar.net/en/bangladesh-tells-un-it-will-no-longer-take-in-myanmar-refugees>, accessed on 1 March 2019.
- ^{ix} Agence France Presse, “Rohingya exodus from India to Bangladesh hits 1,300: official,” Frontier Myanmar online, 16 January 2019, from <https://frontiermyanmar.net/en/rohingya-exodus-from-india-to-bangladesh-hits-1300-official>, accessed on 16 January 2019.
- ^x Soumya Bandyopadhyay, “Dhaka urges Delhi to help create safe zone for Rohingyas,” Prothom Alo Bangladesh online, 9 February 2019, from <https://en.prothomalo.com/bangladesh/news/190927/Bangladesh-gives-India-new-proposal-on-Rohingya>, accessed on 17 February 2019.
- ^{xi} “Rohingya relocation to Bhasan Char to start by mid-April,” Dhaka Tribune online, 3 March 2019, from <https://www.dhakatribune.com/bangladesh/rohingya-crisis/2019/03/03/rohingya-relocation-to-bhasan-char-to-start-by-mid-april>, accessed on 5 March 2019.
- ^{xii} Poppy McPherson, “Exclusive: UN draws up plans to 'facilitate' Rohingya relocation to island,” Reuters online, 23 March 2019, from https://www.reuters.com/article/us-myanmar-rohingya-bangladesh-exclusive/exclusive-u-n-draws-up-plans-to-facilitate-rohingya-relocation-to-island-idUSKCN1R40FG?fbclid=IwAR1HQdOvrMMLH_3Us3269sqsFmCfhOeX1HBB43SvrHntjTq5LIZOQ39JU, accessed on 23 March 2019.
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- ^{xiv} Ibid.
- ^{xv} Emanuel Stokes and Hannah-Ellis Petersen, “Rohingya crisis: UN investigates its 'dysfunctional' conduct in Myanmar,” The Guardian online, 27 February 2019, from <https://www.theguardian.com/world/2019/feb/27/un-investigates-conduct-myanmar-rohingya>, accessed on 6 March 2019.
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