

Myanmar - Very High Risk/Ongoing Atrocity Crimes

The risks of atrocities remain very high in Myanmar as violence continues in Rakhine state amidst fierce battle between the Tatmadaw and the insurgent Arakan Army (AA). In May, Amnesty International accused the Tatmadaw of committing fresh war crimes in Rakhine using extrajudicial killings, arbitrary arrests, enforced disappearances, and torture against AA insurgents and civilians. It also claimed that some Rohingya Muslims who have remained in Rakhine were also killed during the military's operations against AA rebels. The safe repatriation of Rohingya from Bangladesh has been stalled and access to humanitarian aid to Rohingya villages in Rakhine has been severely restricted due to continuing military operations against AA insurgents.¹

As of 31 May, some 20 civilians have been killed since January, along with 100 AA insurgents and 31 border police based on information provided by the central government. Accordingly, 32 police and 43 civilians have been wounded, with six police officers gone missing since the start of the clashes in January. For its part, the AA claimed that the Tatmadaw suffered 1,114 casualties resulting from more than 100 clashes since the beginning of the year. Although the government claims that there are now 33,000 internally displaced persons in Rakhine as a result of the infighting, civil society groups dispute this with a higher estimate of close to 42,000 IDPs.² Grave threats to Arakanese civilians remain high as the military indiscriminately fire upon villages, schools, and monasteries (where many Arakanese flee) and often leave unexploded ordnance. In mid-June, at least three men and a child were wounded in Mrauk-U Township after a military unit opened fire along a village road. It was the second attack by the military on the same village (the first one was in March when it launched a mortar that resulted in two people being injured).³ Violence in Rakhine is likely to continue as the Tatmadaw and the AA, together with the other armed insurgent groups that compose the Northern Alliance, fail to negotiate a ceasefire agreement.⁴

Against this backdrop, the Tatmadaw refuses to be held accountable for atrocities committed by its troops against the Rohingyas in Rakhine. In fact, it granted an early release of seven soldiers who were jailed for the killing of 10 Rohingya men and boys during the military's clearing operations in August 2017. The soldiers were freed in November 2018 or less than a year after they were sentenced to 10 years in prison.⁵ In contrast, the two Reuters local journalists who reported on the massacre of Rohingyas in Rakhine, were released only in early May after spending 511 days since their arrest in December 2017.⁶

¹ Agence France Presse, "Myanmar unrest hampers UN access to Rohingya villages," Rappler online, 27 April 2019, from https://www.rappler.com/world/regions/south-central-asia/229109-myanmar-unrest-rohingya-bangladesh-un?utm_term=Autofeed&utm_campaign=Echobox&utm_medium=Social&utm_source=Facebook#Echobox=1556553828, accessed on 30 April 2019.

² Nan Lwin, "20 Civilians Killed in Clashes Between Army, AA Since January, Gov't Says," The Irrawaddy online, 31 May 2019, from <https://www.irrawaddy.com/news/burma/20-civilians-killed-clashes-army-aa-since-january-govt-says.html>, accessed on 31 May 2019.

³ Moe Myint, "Civilians Injured, School Shelled in Army Response to Mrauk-U Ambush," The Irrawaddy online, 14 June 2019, from <https://www.irrawaddy.com/news/burma/civilians-injured-school-shelled-army-response-mrauk-u-ambush.html>, accessed on 19 June 2019.

⁴ Nan Lwhin Nhin Pwint, "Army's Tough Stance on 3 Northern Alliance Groups Thwarts Bilateral Deals: AA Chief," The Irrawaddy online, 14 June 2019, from <https://www.irrawaddy.com/news/burma/armys-tough-stance-3-northern-alliance-groups-thwarts-bilateral-deals-aa-chief.html>, accessed on 19 June 2019.

⁵ Shoon Naing and Simon Lewis, "Exclusive: Myanmar soldiers jailed for Rohingya killings freed after less than a year," Reuters online, 27 May 2019, from <https://www.reuters.com/article/us-myanmar-rohingya-soldiers-exclusive-idUSKCN1SX007>, accessed on 19 June 2019.

⁶ Russell Goldman and Mike Ives, "Myanmar Releases Reuters Journalists Jailed for Reporting on Rohingya Crackdown," The New York Times online, 6 May 2019, from <https://www.nytimes.com/2019/05/06/world/asia/myanmar-releases-jailed-reuters-journalists.html>, accessed on 7 May 2019.

Meanwhile, the repatriation of the Rohingya people who fled to Bangladesh following the military's clearing operations in 2017 remain uncertain as the Myanmar government's commitment to their safe, dignified, and voluntary return remains in doubt. Bangladesh and Myanmar have traded blame over the stalled efforts in repatriating over 740,000 Muslim Rohingya back to Rakhine, with the former accusing the latter of being reluctant to take back the refugees despite a bilateral agreement signed in November 2017 and an MOU signed by Myanmar with the UN High Commission for Refugees and the UN Development Program in June 2018. For their part, Myanmar officials claimed that Bangladesh failed to hand over completed forms signed by Rohingya refugees, which stipulate that the repatriation must be voluntary and that they (Rohingyas) would submit to Myanmar laws.⁷ These conditions however are unacceptable to the refugees as Myanmar refuses to guarantee that they would be granted citizenship or any legitimate status that would ensure their freedom of movement within the country, as well as access to livelihood and other basic services after repatriation. Most likely, returning Rohingya people will be placed in camps or resettled in restricted areas in Rakhine with limited movement with no access to livelihood and basic services. They are also vulnerable to threats from Buddhist nationalists, local militias, and the military even as they will also be caught in the crossfire between the Tatmadaw and AA insurgents in Rakhine.

Thus far, ASEAN has been unable to act effectively in persuading Myanmar to stop the atrocities being committed by the Tatmadaw in Rakhine. While the ASEAN Humanitarian Assistance (AHA) Centre has been tasked by ASEAN leaders to undertake a needs assessment survey of affected communities in Rakhine in relation to the planned repatriation process, its preliminary report was criticised by human rights organisations and Rohingya refugee communities for failing to address the atrocities committed by the military and the concerns of those who will be repatriated.⁸

During the 34th ASEAN Summit in Bangkok on 22-23 June, foreign ministers sought a clear timeframe from both Bangladesh and Myanmar for the repatriation of Rohingya refugees.⁹ For his part, Malaysian Foreign Minister Saifuddin Abdullah stressed that the perpetrators of atrocities against the Rohingyas must be brought to justice even as he pointed out that their repatriation from Bangladesh must include grant of citizenship in Myanmar.¹⁰ In its Chairman's Statement issued at the end of the Summit Meeting in Bangkok, ASEAN: 1) reaffirmed its continuing support in providing humanitarian assistance to Myanmar, facilitating the repatriation process, and promoting sustainable development in Rakhine; 2) recognised the work of the ASEAN Humanitarian Assistance (AHA) Centre in undertaking a preliminary needs assessment in connection with the repatriation of refugees; 3) expressed support for Myanmar's commitment to ensure the safe, voluntary, and dignified repatriation of refugees; 4) encouraged the government of Myanmar to fully implement the remaining recommendations of the Kofi Annan Commission on Rakhine; and) 5) expressed its expectation that the Independent Commission of Enquiry (ICoE) established by the Myanmar government would seek accountability by

⁷ "Bangladesh, Myanmar Trade Blame over Stalled Rohingya Repatriation," BenarNews online, 10 June 2019, from <https://www.benarnews.org/english/news/bengali/rohingya-concerns-06102019171520.html>, accessed on 10 June 2019.

⁸ Leong Wai Kit, "AHA Centre defends leaked report on Rohingya refugees," Channel News Asia online, 10 June 2019, from <https://www.channelnewsasia.com/news/asia/aaha-centre-defends-leaked-report-on-rohingya-refugees-11613142>, accessed on 19 June 2019.

⁹ "ASEAN foreign ministers seek time frame for return of Rohingya," Kyodo News (English) online, 22 June 2019, from <https://english.kyodonews.net/news/2019/06/cbf10cb092e6-update1-asean-foreign-ministers-seek-time-frame-for-return-of-rohingya.html>, accessed on 23 June 2019.

¹⁰ Agence France Presse, "Malaysia rattles Asean summit, demands 'justice' for Rohingya," The New Straits Times online, 22 June 2019, from <https://www.nst.com.my/news/nation/2019/06/498302/malaysia-rattles-asean-summit-demands-justice-rohingya>, accessed 23 June 2019.

carrying out independent and impartial investigation into alleged human rights violations and related issues.”¹¹

Due to dismal conditions in Bangladesh, a number of Rohingya refugees are desperate to go out to sea by boat into Indonesia, Thailand, and Malaysia, risking their lives if not falling victim to human traffickers. Thai navy officials reported on 12 June that some 65 Rohingya Muslims were shipwrecked and stranded in southern Thailand¹² while Malaysian authorities in April were on the lookout for some 200 Rohingya refugees on boats after a number of children and men aged 14 to 30 were detained after landing in a beach in the state of Perlis.¹³ The number of Rohingya refugee boats crossing the Andaman Sea from Rakhine and Bangladesh usually increases before the start of the monsoon season in June. Since December 2018, the flurry of Rohingya exodus by boat into Indonesia, Malaysia, and Thailand has reached the same level as that in 2015.

Overall, communal tensions in Myanmar may be expected to increase further as Buddhist nationalists continue to incite violence against Muslim communities even as the government ordered the arrest of a leading nationalist monk. During the Ramadan period, a number of Buddhist nationalists forced the shutdown of three Ramadan worship sites in Yangon even though these had permits.¹⁴ Meanwhile, some 300 followers of nationalist monk Wirathu staged a protest rally in Yangon denouncing an arrest order from the court against him on sedition charges.¹⁵ Wirathu, who has been in hiding following the arrest order, will be tried in absentia. The government’s crackdown against the nationalist monk is unlikely to restrain his group’s attacks on Muslims in the country as the military recently donated 30 million kyats (or USD 19,600) to his foundation (formerly known as MaBaTha). A Tatmadaw spokesman said that the donation was a “necessity” and in support of Buddhism, while defending the group’s “intention” to protect race and religion.¹⁶

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, especially the Rohingya and Arakanese civilians in Rakhine.
3. Take tangible steps to implement the recommendations of the Advisory Committee on Rakhine State, chaired by Kofi Annan.

¹¹ Chairman’s Statement Of The 34th Asean Summit Bangkok, 23 June 2019 Advancing Partnership For Sustainability, paragraphs 42-43, from <https://www.asean2019.go.th/en/news/chairmans-statement-of-the-34th-asean-summit-bangkok-23-june-2019-advancing-partnership-for-sustainability/>, accessed on 23 June 2019.

¹² Associated Press, “Human trafficking suspected as 65 Rohingya Muslims are found shipwrecked in south Thailand,” The Japan Times online, 12 June 2019, from <https://www.japantimes.co.jp/news/2019/06/12/asia-pacific/human-trafficking-suspected-65-rohingya-muslims-found-shipwrecked-south-thailand/#.XQm8pMgzaUk>, accessed on 19 June 2019.

¹³ Reuters, “KL looking out for boats after Rohingya found on beach,” The Straits Times online, 9 April 2019, from <https://www.straitstimes.com/asia/se-asia/kl-looking-out-for-boats-after-rohingya-found-on-beach>, accessed on 19 June 2019.

¹⁴ Htet Kaung Lin, “Buddhist Nationalists Force Shut Down of Three Ramadan Worship Sites in Yangon,” The Irrawaddy online, 16 May 2019, from <https://www.irrawaddy.com/news/burma/buddhist-nationalists-force-shut-three-ramadan-worship-sites-yangon.html>, accessed on 19 May 2019.

¹⁵ Zaw Naing Oo, “Hardline Myanmar monk’s supporters protest arrest warrant,” Reuters online, 30 May 2019, from <https://www.reuters.com/article/us-myanmar-buddhist-idUSKCN1T0151>, accessed on 19 June 2019.

¹⁶ Htet Naing Zaw, “Ma Ba Tha Is a Necessity – Military,” The Irrawaddy online, 19 June 2019, from <https://www.irrawaddy.com/news/burma/ma-ba-tha-necessity-military.html>, accessed on 20 June 2019.

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 as required by international law especially in the aftermath of the AA attacks in Rakhine.
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. Ensure that all policies and practices are guided primarily by concerns for the protection of fundamental human rights.
2. 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.
3. Support 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.
4. 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.
5. 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.
6. Suspend all military aid and training programs with the Myanmar armed forces.
7. 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.
8. Take steps to prepare for the resettlement of displaced Rohingya in Myanmar. This process should be overseen by the UNHCR.
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 use 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 fail 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 call on the ICoE to ensure that its findings are impartial, transparent, and independent in holding the perpetrators of atrocity crimes in Rakhine 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.