

Myanmar - Very High Risk/Ongoing Atrocity Crimes

Myanmar remains at a very risk for atrocities amidst ongoing armed conflict in Rakhine, Shan, and Kachin states between the Tatmadaw and ethnic armed groups. In Rakhine, over 60,000 civilians have been affected by the fighting between the Arakan Army (AA) insurgents and the Myanmar military, with 82 civilians killed and 126 injured since January this year. Dozens of civilians have also been detained by the Tatmadaw on suspicion of supporting the AA forces.ⁱ Northern Rakhine has been under curfew and internet services have been shut down since June in four townships (Ponnagyun, Kyauktaw, Mrauk-U, and Minbya) while services in the other five other townships (Rathaetaung, Buthitaung, Maungdaw, Myebon, and Paletwa) were restored on 1 September. The shutdown of mobile and internet services in Rakhine and Chin states have severely affected the delivery of humanitarian assistance by relief organisations to internally displaced people affected by the fierce fighting between AA and Tatmadaw forces. Local state officials and international human rights advocates and humanitarian groups have called on the Myanmar government to restore internet services since June in order to effectively respond to the humanitarian crisis in Rakhine.ⁱⁱ As this developed, fighting resumed in September in Shan state between the Tatmadaw and the ethnic armed groups from Ta'ang National Liberation Army (TNLA) and the Restoration Council of Shan State (RCSS) after the Myanmar military's unilateral ceasefire ended on 21 September.ⁱⁱⁱ

Amidst sustained and intense AA attacks on police outposts in Rakhine, state parliamentarians have called on the insurgents and the Tatmadaw to stop the violence and spare both civilians and heritage sites. They also asked the central government to conduct an investigation into civilian casualties.^{iv} On 24 September, the Rakhine State Parliament created an investigative committee composed of parliamentarians, civil society organisations, and state officials that will look into civilian deaths brought about by clashes between the AA and the Tatmadaw.^v Civilians were reportedly killed or injured in the fighting were not involved in combat but were hit by artillery shells in their homes and villages. Local residents in Mibya township claimed that the Tatmadaw used fighter jets to attack AA forces in August on top of constant artillery firing from a military base resulting in civilian displacements in Mrauk-u and Myinba.^{vi} In May, Amnesty International claimed that the Tatmadaw was committing a new round of war crimes in Rakhine as it used air power to attack both AA insurgents and civilians. Meanwhile, some 26 unsolved murder cases in northern Rakhine involving 16 civilians and 10 police officers and village administrators have been reported since December 2018, which occurred outside of the clashes between AA and the Tatmadaw. The two protagonists blamed each other for these unsolved killings.^{vii}

Civilian casualties in landmine explosions in Shan state were reported in September as the Tatmadaw intensified its offensive attacks against TNLA and RCSS forces. Ten civilians have been struck by landmines and three have been killed in the months of August and September in northern Shan state. Frequent fighting between the Tatmadaw and TNLA forces, as well as between TNLA and RCSS, resulted in more civilian casualties in recent months. Local villagers in Kyaukme in Northern Shan State have reported about injuries from landmines and unexploded ordinances. The area is a high-risk place for landmines: in 2018, 123 out of 276 victims of landmine explosions in Myanmar were from Shan state, of which 25 were fatal.^{viii} Both the Tatmadaw and ethnic armed groups are known to use landmines but they refuse to take responsibility for injuries involving civilians.

The continuing violence in Rakhine has contributed to further delays in the repatriation of Rohingya refugees in Bangladesh. More than two years since their exodus from Myanmar, many of the refugees still refuse to voluntarily return to Rakhine in the absence of guarantees for their safety, access to basic services, and sources of livelihood. In August, Myanmar announced that some 3,450 refugees that were processed by Bangladesh were ready for repatriation, but approved the return of only a

handful of those eligible.^{ix} In his address at the UN General Assembly in September, Myanmar's minister at the State Counsellor's office Kyaw Tint Swe said that his country is cooperating with Bangladesh and the UN in the search for "long-term and practical solutions" to bring home over 700,000 Rohingyas back to Rakhine in a "more conducive environment" and relocated under "controlled conditions".^x Meanwhile, some 300 Rohingyas who returned to Rakhine on their own volition reportedly claimed that they still face unfavourable conditions such as persecution and not being able to return to their original villages which were burned down during the August 2017 military crackdown. They are also having difficulties finding jobs to earn a living to support their families. Some of them claimed that very few refugees in Bangladesh were aware of the repatriation option. Specifically, only those in refugee camps 26, 27, and 28 allegedly know about the agreement and that the list of people who wanted to return were drawn only from these camps.^{xi}

During their ministerial meeting in Bangkok in August, ASEAN foreign ministers reiterated their call on Myanmar and Bangladesh to ensure the safe, voluntary, and dignified repatriation of Rohingya refugees. A delegation of representatives from the ASEAN Secretariat, which included the ASEAN Humanitarian Assistance Centre, visited Cox's Bazaar in July and held a dialogue with refugees. However, Malaysian Foreign Minister Saifuddin Abdullah pointed out that due to trust deficit, the Rohingya refugees remain reluctant to voluntarily return to Myanmar.^{xii}

In Bangladesh, Rohingya refugees are also facing persecution amidst growing frustration on the part of the government in Dhaka over the stalled implementation of the repatriation agreement with Myanmar. In early September, the Bangladesh government imposed a ban on mobile services in Rohingya camps following an outbreak of violence for weeks in Cox's Bazaar. The ban was part of a crackdown on criminal activities in the camps involving Rohingya refugees. The local police claimed that some 600 cases of drug trafficking, murders, robberies, gang fighting, and family feuds were filed against the refugees since their arrival in August 2017.^{xiii} At least 44 Rohingyas were killed by Bangladesh security forces over the past two years many of whom were allegedly involved in methamphetamine trafficking. In 2019 alone, 39 Rohingyas were killed in gunfights with security forces in Bangladesh.^{xiv} A UN official expressed concern over the crackdown against the Rohingya refugees as this could push them to engage further in criminal activities, violence, and extremism as a consequence of their isolation and persecution.^{xv} The Dhaka government also banned two humanitarian aid agencies from operating in the Bangladesh for allegedly instigating the refugees not to participate in the repatriation to Myanmar.^{xvi}

Accountability for atrocities committed against the Rohingya people and other ethnic minorities in Myanmar remain elusive despite efforts by the UN to put pressure on the NLD government to cooperate with the international community in holding accountable the perpetrators of atrocity crimes in Rakhine, Shan, and Kachin states. To date, the NLD government still refuses to allow the UN's investigative panels and special rapporteur on human rights to visit the country even as it also asserts that the International Criminal Court has no jurisdiction over Myanmar.

In August, the UN Independent International Fact-Finding Mission (IIFFM) on Myanmar released its second and third reports on the Tatmadaw's economic and business interests and its use of sexual violence against vulnerable groups and minorities, respectively. The second report identified foreign investors and local businesses in Myanmar who are engaged in the military's economic activities in the country, including arms trade, which enable the Tatmadaw to continue committing atrocities against the Rohingya and other ethnic minority groups. The IIFFM called for targeted sanctions against the Tatmadaw and its senior officials, as well as its business conglomerates. These sanctions must be accompanied by a comprehensive arms embargo against Myanmar.^{xvii} The third report accused the Tatmadaw forces of widespread and severe use of sexual violence against the Rohingya, Shan, and

Kachin minorities, which accordingly demonstrates genocidal intent and warrants persecution for war crimes and crimes against humanity.^{xviii} In September, a group of UN special rapporteurs denounced the Tatmadaw's use of torture against some 50 Arakanese men and boys who were held incommunicado leading to the death of 15 men who were killed due to their alleged association with the Arakan Army.^{xix}

In a resolution adopted by the UN Human Rights Council in late September, an independent international mechanism will be set up "to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes."^{xx} The Council also extended the term of the IFFM on Myanmar until the international mechanism has been set up. The resolution was adopted by 35 votes in favour and 7 abstentions, with three countries—Burundi, China, and the Philippines—opposing it.^{xxi}

Despite sustained international pressure on Myanmar, ASEAN remains ineffective in holding accountable an errant member for failing to uphold its primary responsibility to protect the Rohingya and other vulnerable groups in the country. In fact, Myanmar has succeeded in undermining attempts within ASEAN to forge an effective regional response to the crisis in Rakhine. ASEAN's role has been limited to extending humanitarian assistance to affected communities in Rakhine even as it could only issue formal statements encouraging Myanmar ensure the safe, voluntary, and dignified repatriation of Rohingyas from Bangladesh. While ASEAN officially stated over the last two years that it supports holding the perpetrators of atrocity crimes in Myanmar accountable, this is limited only to the Independent Commission of Enquiry (ICoE) created by the NLD government in August 2018 but whose final report has yet to be submitted. ASEAN has not issued any statement supporting the findings and recommendations of the IFFM's three reports thus far. For his part, Malaysian Prime Minister Mahathir Mohamad denounced the UN's inability to act and prevent further atrocities against the Rohingya people in Myanmar even as he called out the NLD government's unwillingness to resolve the crisis.^{xxii} He also pointed out the Rohingya were victims of genocide and that the more that refugees stay in camps in Bangladesh, the more desperate their situation becomes.^{xxiii}

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, in the aftermath of the Arakan Army attacks since the beginning of this year.
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 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. Lift the ban on mobile and internet services in conflict-affected areas of Rakhine and Chin states to enable humanitarian aid organisations and affected communities to communicate and provide necessary information for effective delivery of relief goods and humanitarian assistance to IDPs.
10. 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. Encourage the government of Bangladesh it to respect and protect the human rights of refugees amidst attempts by its security forces to crackdown on rising criminal activities in Cox's Bazaar involving some members of the Rohingya community. The government should also lift the ban on the use of mobile services in refugee camps.
2. Support efforts to ensure that atrocity crimes in Myanmar 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 fulfill 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 consider with abundance of caution the plan of Bangladesh to relocate Rohingya refugees to Bhashar Char island, which may create another humanitarian crisis as the area is prone to cyclone and high tide.
10. 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.
11. Coordinate efforts in shaping an effective regional response with ASEAN.
12. 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.
13. 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.
14. 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.
15. 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.

Notes

ⁱ Nyein Nyein, "Civilians in Myanmar's Conflict-Torn Rakhine State Left to Fend for Themselves," The Irrawaddy online, 11 October 2019, from <https://www.irrawaddy.com/specials/civilians-myanmars-conflict-torn-rakhine-state-left-fend.html>, accessed on 14 October 2019.

ⁱⁱ "Internet cut-off affects IDPs," BNI Multimedia Group online, 2 July 2019, from <https://www.bnionline.net/en/news/internet-cut-affects-idps>, accessed on 2 July 2019.

ⁱⁱⁱ Lawi Weng, "Renewed Fighting in Shan and Rakhine as Myanmar Military Lets Ceasefire Expire," The Irrawaddy online, 24 September 2019, from <https://www.irrawaddy.com/news/burma/renewed-fighting-shan-rakhine-myanmar-military-lets-ceasefire-expire.html>, accessed on 25 September 2019.

^{iv} Min Aung Khine, "Rakhine State Lawmakers Urge Myanmar Army, AA: Spare Civilian Areas, Heritage Sites," The Irrawaddy online, 25 September 2019, from <https://www.irrawaddy.com/news/burma/rakhine-state-lawmakers-urge-myanmar-army-aa-spare-civilian-areas-heritage-sites.html>, accessed on 27 September 2019.

^v Min Aung Khine, "Rakhine State Parliament Votes to Investigate Civilian Deaths in AA-Myanmar Army Clashes," The Irrawaddy online, 24 September 2019, from <https://www.irrawaddy.com/news/burma/rakhine->

[state-parliament-votes-investigate-civilian-deaths-aa-myanmar-army-clashes.html](#), accessed on 25 September 2019.

^{vi} Nyein Nyein, “Civilians in Myanmar’s Conflict-Torn Rakhine State Left to Fend for Themselves,” The Irrawaddy online, 11 October 2019, *ibid*.

^{vii} Moe Moe, “26 Murders in Rakhine Still Unsolved; Myanmar Military and AA Trade Blame,” The Irrawaddy online, 30 September 2019, from <https://www.irrawaddy.com/news/burma/26-murders-rakhine-still-unsolved-myanmar-military-aa-trade-blame.html>, accessed on 14 October 2019.

^{viii} Lawi Weng, “Mortar Blast Hits Two Civilians in Myanmar’s Shan State,” The Irrawaddy online, 8 October 2019, from <https://www.irrawaddy.com/news/burma/mortar-blast-hits-two-civilians-myanmars-shan-state.html>, accessed on 14 October 2019.

^{ix} Hannah Beech, “Massacred at Home, in Misery Abroad, 730,000 Rohingya Are Mired in Hopelessness,” The New York Times online, 22 August 2019, from https://www.nytimes.com/2019/08/22/world/asia/rohingya-myanmar-repatriation.html?te=1&nl=morning-briefing&emc=edit_MBAE_p_20190822§ion=topNews?campaign_id=7&instance_id=11836&segment_id=16407&user_id=478dcda303f9d2aafbec4098f04c24b0®i_id=62112622tion=topNews&login=email&auth=login-email, accessed on 23 August 2019.

^x Ted Anthony, “Myanmar: Repatriate Rohingya to ‘more conducive environment’” The Associated Press online, 29 September 2019, from <https://apnews.com/084f7aa4a2be49a1a2ec10ead176ab3f>, accessed on 16 October 2019.

^{xi} Min Thein Aung, “Rohingya Refugees Who Returned to Myanmar on Their Own Say They Still Face Hardship,” Radio Free Asia (RFA) online, 10 October 2019, from <https://www.rfa.org/english/news/myanmar/rohingya-refugees-who-returned-on-their-own-10112019170843.html>, accessed on 12 October 2019.

^{xii} Dian Septiari, “ASEAN urges Myanmar to ensure security in Rakhine,” The Jakarta Post online, 4 August 2019, from <https://www.thejakartapost.com/news/2019/08/04/asean-urges-myanmar-to-ensure-security-in-rakhine.html# =>, accessed on 5 August 2019.

^{xiii} “Bangladesh bans mobile phone access in Rohingya camps,” Asian Correspondent online, September 2019, from <https://asiancorrespondent.com/2019/09/bangladesh-bans-mobile-phone-access-in-rohingya-camps/>, accessed on 3 September 2019.

^{xiv} Muktadir Rashid, “39 Rohingya Killed in ‘Gunfights’ With Bangladeshi Authorities in 2019,” The Irrawaddy online, 23 September 2019, from <https://www.irrawaddy.com/news/asia/39-rohingya-killed-gunfights-bangladeshi-authorities-2019.html>, accessed on 24 September 2019.

^{xv} “Bangladesh bans mobile phone access in Rohingya camps,” *ibid*.

^{xvi} Agence France Presse, “Bangladesh bans two aid agencies from Rohingya refugee camps,” Frontier Myanmar online, 5 September 2019, from <https://frontiermyanmar.net/en/bangladesh-bans-two-aid-agencies-from-rohingya-refugee-camps>, accessed on 5 September 2019.

^{xvii} See “The economic interests of the Myanmar military,” Independent International Fact-Finding Mission on Myanmar, 5 August 2019, A/HRC/42/CRP.3.

^{xviii} Associated Press, “UN report condemns sexual violence by Myanmar military,” Inquirer.net, 23 August 2019, from <https://newsinfo.inquirer.net/1156699/un-report-condemns-sexual-violence-by-myanmar-military>, accessed on 23 August 2019.

^{xix} “UN experts decry torture of Rakhine men and boys held incommunicado by Myanmar’s military,” UN News online, 3 September 2019, from <https://news.un.org/en/story/2019/09/1045442>, accessed on 4 September 2019.

^{xx} “Human Rights Council adopts 10 resolutions and one Presidential statement,” United Nations Human Rights Council, 28 September 2019, from <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23652&LangID=E>, accessed on 01 October 2019.

^{xxi} *Ibid*.

^{xxii} Joseph Raj, “At UN, Dr M blasts international community over continued inaction on Rohingya crisis,” Malay Mail online, 25 September 2019, from <https://www.malaymail.com/news/malaysia/2019/09/25/at-un-dr-m-blasts-un-over-continued-inaction-on-rohingya-crisis/1793964>, accessed on 1 October 2019.

^{xxiii} *Ibid*.