

Myanmar - Very High Risk/Ongoing Atrocity Crimes

Myanmar remains at very high risk for atrocities as violence in Rakhine state continues amidst intensified counter-insurgency operations by the Tatmadaw against the Arakan Army (AA). The protagonists are resorting to illegal arrests, detention, and kidnapping of civilians, as well as the use of landmines which are now reported to be present in four townships in Chin and Rakhine states. Meanwhile, the NLD government remains adamant in denying that genocidal intent or actions have taken place in Rakhine following the ICJ's order for Myanmar to take provisional measures in protecting the Rohingya community from genocide.

Six Rohingyas—two women and four children—were killed and 12 others injured in the first month of 2020 because of shelling and explosions in Rakhine. The Myanmar military and the AA insurgents blamed each other for civilian casualties even as more than 100,000 people have been displaced for the past year since the AA intensified its attacks against government forces in December 2018. The AA has also resorted to kidnapping or detaining civilians, including 16 government employeesⁱ, 18 firefightersⁱⁱ, a local NLD chief, and some local MPs in Rakhine and Chin states suspected of collaborating with the Tatmadaw.ⁱⁱⁱ In separate occasions, it also detained and later released 12 bus^{iv} and 25 ferry passengers^v, and 16 drivers of local ferries to pressure companies to pay taxes in areas controlled by AA to fund its troops and its political wing, the United Arakan League (UAL).^{vi} These atrocities by AA against civilians were apparently aimed at exerting pressure on the government and Tatmadaw to recognise it as a legitimate ethnic armed group, which has been ignored by the NLD and the Myanmar military in the peace and ceasefire negotiations. Accordingly, it is also part of AA's strategy to convince the Tatmadaw for a prisoner exchange as the latter has also detained civilians in Rakhine who were suspected of being sympathisers of the insurgents.^{vii}

Civilians continue to face significant risks in northern Myanmar as encounters between ethnic armed groups and military forces intensify. A landmine monitoring group reported in December that mines had been laid in four additional townships due to ongoing conflict between AA and the Tatmadaw: Paletwa in Chin state and Maungdaw, Kyaukpyu, and Buthidaung in Rakhine.^{viii}

Meanwhile, the safe repatriation of Rohingyas from Bangladesh has not progressed given the escalation of violence in Rakhine. Bangladesh has also started fencing Rohingya camps to restrict the refugees' movements even as the government also imposed blackout on internet access in the camps by confiscating mobile phones and SIM cards.^{ix} The construction of barbed wire fencing in camps is part of Bangladesh's efforts in strengthening border security, particularly in containing the smuggling of drugs across from Myanmar. Myanmar apprehended over 170 Rohingyas aboard a boat in the Adaman Sea in December and were suspected of fleeing refugee camps in Bangladesh. Seventeen were resettled and reunited with their families in Sittwe while another 29 were determined to be from Maungdaw district.^x The remaining boat passengers are still being processed for verification even as a good number of them are believed to be from Bangladesh.

In December 2019, the International Court of Justice (ICJ) heard the case filed by The Gambia against Myanmar in which no less than Aung San Suu Kyi was present to deny that there was any genocidal intent on the part of the military forces against the Rohingyas in Rakhine. While acknowledging that the Myanmar defence forces may have used disproportionate force in the conduct of clearing operations against the Arakan Rohingya Salvation Army (ARSA) militants and civilians in 2017, Suu Kyi said that soldiers who were proven to have committed war crimes will be prosecuted through the country's military justice system. She also claimed that Myanmar has taken significant steps to address the root causes of the conflict in Rakhine between affected communities as part of implementing the recommendations of the Kofi Annan Commission, including measures to build

mutual trust among all communities, access to livelihoods, education and health services, as well as citizenship. Accordingly, she pointed out that these measures do not reflect genocidal intent or acts of genocide.^{xi}

The ICJ largely rejected the Myanmar government's case and demanded that it take four provisional measures in order to comply with the 1948 Genocide Convention: 1) take all measures within its power to prevent commission of all acts within the scope of Article II of the Convention; 2) ensure that the Myanmar military and all groups under its control, direction, or influence do not commit acts under Article II of the Convention, including conspiracy to commit genocide, of direct or public incitement to commit genocide, of attempt to commit genocide, or of complicity of genocide; 3) take effective measures to prevent the destruction and ensure the preservation of evidence related to all allegations of acts within the scope of Article II of the Convention; and 4) submit a report to the Court on all measures taken to give effect to its order within four months, and every six months thereafter, until the Court renders its final decision on the case.^{xii}

In response to the ICJ's order, the NLD government reiterated its denial of genocide and accused some human rights groups of "presenting a distorted picture of the situation in Rakhine", which affected Myanmar's relations with some countries and "hampered [its] ability to lay the foundation for sustainable development in Rakhine."^{xiii}

Recommendations:

The Government of Myanmar should:

1. Fulfil its responsibility to protect vulnerable groups in Rakhine, including the remaining Rohingya community, Arakanese civilians, and other ethnic minority groups affected by ongoing conflict between the Tatmadaw and the AA forces.
2. Take immediate steps to comply in full with the provisional measures ordered by the ICJ.

ASEAN should:

1. Implore Myanmar to comply with the ICJ's provisional order and demand that the government holds perpetrators of war crimes accountable.
2. Demand that Myanmar follows through with its commitment to ensure the safe, voluntary, and dignified repatriation of Rohingya refugees.

The UN should:

1. Increase and enhance support for the protection of refugees.

References

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