

Myanmar -Very High Risk/Ongoing Atrocity Crimes

The risk of atrocity crimes in Myanmar remain very high/ongoing. More than 500,000 refugees seek shelter in and around Cox's Bazar in Bangladesh, enduring appalling conditions. The humanitarian crisis in Rakhine continues and the UNHCR and other humanitarian agencies face enormous challenges in providing humanitarian assistance to the stateless Rohingya people who fled to Bangladesh to escape the widespread and systematic commission of atrocity crimes by the Myanmar military (Tatmadaw). The much-reduced Rohingya community still inside Rakhine are highly vulnerable to human rights violations, which continue to be committed by the security forces, local militias, and Arakanese nationalists. Despite the overwhelming evidence of atrocity crimes presented by the UN, human rights organizations, and the media, the Myanmar government and military still strongly deny that atrocity crimes were committed against the Rohingya during the Tatmadaw's clearing operations against ARSA militants in August last year and continue to block independent international investigations. Media access to Rakhine remains highly restricted and two local journalists working for Reuters were charged by a Yangon court for violation of the colonial-era Official State Secrets act for their reporting of a massacre perpetrated by the Tatmadaw.¹ The government has signed agreements with the UN on humanitarian assistance for affected communities in Rakhine and the repatriation of Rohingyas from Bangladesh, their safety, access to humanitarian aid, and opportunities for livelihood are not guaranteed.

Despite mounting international pressure for an independent investigation of the atrocity crimes committed against the Rohingya people, the government and the Tatmadaw remain uncooperative and have failed to hold perpetrators accountable. For example, the International Criminal Court's efforts to get Myanmar's response to the petition filed by Bangladesh (a party to the Rome Treaty) for an investigation into atrocity crimes against the Rohingya was rebuffed by NLD government. The government also remains adamant in its refusal to grant a visa to UN Special Rapporteur on Human Rights in Myanmar, Yang-hee Lee, and the three-member panel created by the UN Human Rights Council last year. However, the government welcomed a delegation of the UN Security Council member states into Myanmar, who visited Rakhine following their trip to Bangladesh and met with Suu Kyi and army chief Min Aung Hlaing. The UN Secretary General's Special Envoy to Myanmar, Catherine Shraener Burgener, also met with both civilian and military leaders.

The Myanmar government in June attempted to create its own three-member commission to investigate atrocities in Rakhine to be composed of one foreign and two local experts. But Tatmadaw and military representatives in parliament, along with USDP and Arakanese MPs, strongly opposed the inclusion of a foreign expert in the commission. Army Chief Min Aung Hlaing threatened to take strong action against the civilian government if it pushes through with its plan to appoint a foreign member to the investigative panel.² To date, the body has not been created. Apart from international pressures, the initiative to form its own three-member investigative panel may have also been prompted by a call by local and international religious leaders who met in Yangon in May for the Myanmar government to "take full responsibilities for a thorough and transparent investigation into multiple crimes in Rakhine state and elsewhere" in the country.

¹ Su Myat Mon, "Reuters reporters charged under colonial-era Official Secrets Act," Frontier Myanmar online, 9 July 2018, from <https://frontiermyanmar.net/en/reuters-reporters-charged-under-colonial-era-official-secrets-act>, accessed on 9 July 2018.

² Larry Jagan, "UN envoy averts possible coup in Myanmar," The Bangkok Post online, 23 June 2018, from <https://www.bangkokpost.com/opinion/opinion/1490754/un-envoy-averts-possible-military-coup-in-myanmar>, accessed on 23 June 2018.

Meanwhile, there are signs that progress towards implementing the recommendations of the Rakhine Advisory Commission's (the "Kofi Annan Commission") have stalled. The official responsible for administering the Advisory Board resigned on 10 July due to frustration over what he considered as lack of commitment on the part of the government and the military to fully implement the recommendations of the panel. Kobsak Chutikul, a retired diplomat and former member of the Thai parliament, pointed out that the commission has been "kept on a short leash" by the government and has not achieved much for the last six months. Specifically, he pointed out that the panel has been barred from accepting external funding, its meetings were limited online, and has not been provided with a permanent office in Myanmar. As well, the military has not met with the members of the panel.³ Government officials continued to maintain the fiction that the crisis in Rakhine is an internal matter, that the Tatmadaw committed no violations, and that alleged atrocities committed against the Rohingya were "fake news." Kobsak argued that international efforts in implementing the Kofi Annan commission's recommendation are better served through the UN Secretary General's Special Envoy to Myanmar.⁴ It is clear that there can be no serious progress on this issue until the government acknowledges the reality of the serious atrocity crimes committed by its security forces.

The situation has also deteriorated in other parts of the country. The military sustained its assault operations against ethnic armed organizations in Kachin and Shan states which began in the first quarter of the year, resulting in the forcible displacement of civilians in these areas. Some 20,000 people have been displaced since January this year, bringing the UN estimate of internally displaced persons to over 100,000 in both states since hostilities erupted following the breakdown of the peace agreement between the Tatmadaw and the Karen Independence Army (KIO) in 2011. An army unit of the Tatmadaw accused of being responsible for atrocities committed in Rakhine last year has been redeployed in Kachin.⁵ Fighting between the military and several ethnic armed organizations in northern Myanmar have intensified over the last three months, which killed several Tatmadaw troops and armed rebels from the Northern Alliance (composed of Kachin Independence Army (KIA), Ta'ang National Liberation Army (TNLA), Arakan Army (AA), and the Myanmar National Democratic Alliance Army (MNDAA)),⁶ including TNLA's six women civilian medics who were allegedly killed by military forces while in captivity.⁷

Overall, the very high risk of atrocities in Myanmar is likely to continue as the military and its militias remain unaccountable for human rights violations in Rakhine as well as in Kachin, and Shan states. Implementation of the recommendations of the Rakhine Advisory Commission is unlikely in the foreseeable future. In Shan and Kachin states, the military's intensified operations are expected to continue as ethnic armed organizations in these areas refuse to sign the National Ceasefire Agreement (NCA). Signing the NCA is a precondition set by both the government and the military for these armed organizations to join the Panglong 21 peace talks. The Panglong 21 peace dialogue aims to end ethnic armed rebellion. However, the Tatmadaw insists that any peace agreement must be in accordance with the 2008 Constitution written by the military. In fact, in the third Panglong 21 dialogue in mid-

³ Poppy McPherson and Shaun Naing, "Exclusive: Citing lack of progress, secretary to Myanmar's Rohingya panel quits," Reuters Online, 21 July 2018, from <https://www.reuters.com/article/us-myanmar-rohingya-panel-exclusive/exclusive-citing-lack-of-progress-secretary-to-myanmars-rohingya-panel-quits-idUSKBN1KA2IB>, accessed on 22 July 2018.

⁴ Ibid.

⁵ Agence France Presse, "Kachin civilians flee Myanmar's 'forgotten war'," France24 Online, 18 May 2018, from http://m.france24.com/en/20180518-kachin-civilians-flee-myanmars-forgotten-war?ref=tw_i, accessed on 18 May 2018.

⁶ Lawi Weng, "Clashes escalate across the country," The Irrawaddy online, 16 May 2018, from <https://www.irrawaddy.com/news/clashes-escalate-across-country.html>, accessed on 18 May 2018.

⁷ Lawi Weng, "Tatmadaw Denies Killing 6 Female TNLA Medics While In Captivity," The Irrawaddy online, 20 July 2018, from <https://www.irrawaddy.com/news/burma/tatmadaw-denies-killing-6-female-tnla-medics-captivity.html>, accessed on 24 July 2018.

July, army chief Min Aung Hlaing asserted that it is only the military that truly represents the people of Myanmar, including all ethnic nationalities. This signifies the Tatmadaw's unyielding position that ending ethnic armed rebellion in the country should be negotiated under its own terms, which clearly undermines the NLD's peace initiative.

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 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. Provide full and unfettered access to the UN-mandated fact-finding mission to conduct an independent investigation of atrocity crimes;
6. Ensure immediate, safe, and unhindered access of humanitarian assistance to all affected communities in Rakhine, Shan, and Kachin states as required by international law.
7. 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.
8. 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. 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.
4. Suspend all military aid and training programs with the Myanmar armed forces.

5. 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.
6. Take steps to prepare for the resettlement of displaced Rohingya in Myanmar. This process should be overseen by the UNHCR.
7. 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.
8. Coordinate efforts in shaping an effective regional response with ASEAN.
9. 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.
10. ASEAN should seriously consider suspending Myanmar's membership if the government continues to take measures to fulfil its legal, political, and moral obligations.
11. 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.