

HUMAN RIGHTS IN ASIA: REVIEW OF 2019

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MYANMAR

Republic of the Union of Myanmar

Head of state and government: **Win Myint**

The military committed serious human rights violations, including war crimes, in Kachin, Rakhine, and Shan States. The government made no progress in creating conditions conducive to the safe, dignified, and voluntary return of the 740,000 Rohingya women, men, and children who fled to Bangladesh beginning in August 2017. Rohingya who remained in Rakhine State lived under a system amounting to apartheid. Restrictions on the rights to freedom of expression, association, and peaceful assembly continued. Authorities continued to arbitrarily arrest and detain human rights defenders and other peaceful activists. Impunity persisted for perpetrators of human rights violations and crimes under international law.

Background

The military retained significant economic and political power. In February, the National League for Democracy (NLD)-led government announced a new committee tasked with drafting amendments to the 2008 Constitution; however, there was no progress by the end of the year. The floundering nationwide peace process remained at a standstill. On 27 September Myanmar ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

Internal armed conflict

From January there was a major escalation in fighting in Rakhine State between the Myanmar military and the Arakan Army, an ethnic Rakhine armed group. The military committed serious violations against civilians, including unlawful attacks, arbitrary arrests, torture and other ill-treatment, enforced disappearances, extrajudicial executions, and forced labour. Many of them constituted war crimes.¹ The Arakan Army was also responsible for abuses, including arbitrary deprivation of liberty, and threats and intimidation of civilians. In June, the authorities shut down the internet in nine conflict-affected regions in Rakhine and Chin States, raising serious concern for the safety of civilians.² Although the shutdown was partially lifted in some areas in late August, others remained offline by the end of the year.

Civilians also bore the brunt of ongoing conflict in northern Shan State.³ The military was responsible for war crimes and other serious violations, including arbitrary arrests, incommunicado detention on military bases, torture and other ill-treatment, and unlawful attacks. Ethnic armed groups committed serious abuses against civilians, including abductions, torture and other ill-treatment, forced labour, and extortion. In August fighting increased sharply after three armed groups attacked military installations and other locations. The escalation led to new displacement of civilians and serious violations by all sides.⁴ Although there was no significant fighting in Kachin State, civilians were subjected to arbitrary arrests and torture and other ill-treatment at the hands of the military.

The situation of the Rohingya

Crimes against humanity continued against the estimated 600,000 Rohingya still living in Rakhine State. Their rights to equality, a nationality, freedom of movement, and access to adequate healthcare, education, and work opportunities were

routinely violated. Seven years after they were forced from their homes, some 128,000 people – mostly Rohingya – remained confined to squalid detention camps within Rakhine State, reliant on humanitarian assistance for their survival.

The government failed to take meaningful action to create conditions conducive for the return of the hundreds of thousands of Rohingya who fled Myanmar from 2017 and during previous waves of violence. Despite government claims, there was no progress in implementing the recommendations of the Advisory Commission on Rakhine State. The authorities severely restricted access for humanitarian workers and independent journalists.

Displacement and humanitarian access

Tens of thousands of civilians were displaced as a result of conflict. In Rakhine State, fighting between the military and the Arakan Army forced more than 30,000 people to flee their homes. In northern Shan State, fighting displaced several thousand people. Many were displaced multiple times, often for short periods, affecting their access to livelihoods and their short and long-term food security. Older people were specifically impacted by conflict and displacement, in particular with regard to their rights to healthcare and to livelihoods.⁵ The authorities – both civilian and military – continued to impose restrictions on humanitarian access throughout the country.

Freedom of expression, association, and peaceful assembly

Authorities continued to arrest and imprison people for peacefully exercising their human rights, including political activists, media workers and human rights defenders. The military targeted political activists and critics in criminal cases. In August filmmaker Min Htin Ko Ko Gyi was sentenced to one year in prison. He had been arrested in April and charged for criticizing the military's role in politics on social media.⁶ In April and May, seven young people were arrested and charged for satirical performances criticizing the military. Six were subsequently sentenced to between one and a half and two and a half years in prison. All seven were facing further charges by the end of the year.⁷

The authorities used broad and vaguely worded laws to stifle dissent and restrict the rights to freedom of expression, association and peaceful assembly. They included Section 66(d) the Telecommunications Act, the Privacy Law, the Peaceful Assembly and Peaceful Procession Law, and Penal Code provisions. Despite its overwhelming parliamentary majority, the NLD-led administration failed to review or amend laws that restricted these rights.

In May, Reuters journalists Wa Lone and Kyaw Soe Oo were released as part of a mass prisoner amnesty.⁸ The pair had been sentenced to seven years in prison for reporting on atrocities against Rohingya in Rakhine State. Despite these releases, journalists continued to face arbitrary arrest, prosecution and harassment in connection with their work.

Impunity

Impunity persisted for serious human rights violations and abuses, including crimes under international law. The government refused to cooperate with international investigative mechanisms. The Independent Commission of Enquiry, established by the government to probe abuses in Rakhine State from August 2017, lacked competence, independence, and impartiality. The commission's final report, due in late August, was postponed until January 2020. In February the military announced the creation of an "Investigative Court" to examine allegations of violations and abuses in Rakhine State. The court, which would involve members of the military investigating military violations, was clearly not independent nor impartial. Investigations into ongoing violations and abuses in other parts of the country were rare, and suspected perpetrators were seldom held to account.

Despite the lack of justice in Myanmar, the UN Security Council failed to refer the situation to the International Criminal Court (ICC).

International scrutiny

Myanmar denied access to the UN Special Rapporteur on the situation of human rights in Myanmar for a second year. In September the UN Fact-Finding Mission (FFM) on Myanmar presented its final report on serious and ongoing violations.

The government rejected the report – and other FFM reports published during the year – asserting that they were unfounded and without evidence.

In May, the UN published the findings of an internal review of its operations in Myanmar since 2011, concluding that there were “systemic failures” within the UN system.⁹ The report made several recommendations for improved communication and cooperation; however, there was no public reporting on implementation.

In November, the ICC officially opened an investigation into the forcible deportation of Rohingya from Myanmar and other related crimes, where one or more elements occurred in the territory of Bangladesh. In July and December the US government imposed sanctions against Senior General Min Aung Hlaing, commander-in chief of the Myanmar military, and three other military officials, in connection with their role in atrocities against the Rohingya.

The Independent Investigative Mechanism for Myanmar, mandated to collect and preserve evidence of serious crimes and prepare files for criminal prosecutions, became operational in September. In November, the Gambian government filed a lawsuit against Myanmar for genocide at the International Court of Justice (ICJ). At a court hearing on provisional measures in December, a delegation led by Aung San Suu Kyi rejected accusations that the country had breached its obligations under the Genocide Convention.

¹ “No one can protect us”: War crimes and other abuses in Myanmar’s Rakhine State (ASA 16/0417/2019 29 May).

² Myanmar: End internet shut down in Rakhine, Chin States (ASA 16/0604/2019, 25 June).

³ “Caught in the middle”: Abuses against civilians amid conflict in Myanmar’s northern Shan State (ASA 16/1142/2019, 24 October).

⁴ Myanmar: Civilians at risk in northern Shan State fighting (ASA 16/0975/2019, 3 September).

⁵ “Fleeing my whole life”: Older people’s experience of conflict and displacement in Myanmar (ASA 16/0446/2019, 18 June).

⁶ Filmmaker sentenced to one year in prison for Facebook post (news story, 29 August).

⁷ Satire performers who mocked military face prison in “appalling” conviction (news story, 30 October).

⁸ Genuine press freedom must follow release of Reuters journalists (news story, 7 May).

⁹ Joint open letter to the UN Secretary General on the inquiry into UN operations in Myanmar (ASA16/1003/2019, 5 September).