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Myanmar: National efforts to investigate Rakhine State violence are inadequate

National efforts to investigate human rights violations and possible crimes against humanity committed by Myanmar security forces in northern Rakhine State are not independent or credible and are unlikely to deliver justice, truth and reparations for victims and their families. The inability – or unwillingness – of the Myanmar authorities to independently and effectively investigate allegations of serious crimes under international law requires the international community to step-in to ensure accountability and prevent further deterioration of the human rights situation.

Under international law, all victims of human rights violations have the right to an effective remedy. This right extends to immediate family members and includes an obligation on states to investigate allegations of human rights violations promptly, thoroughly and effectively through independent and impartial bodies. Such investigations are needed to clarify what happened, to establish facts and responsibility, to identify measures needed to prevent the reoccurrence of human rights violations, and to facilitate prosecution. Where investigations reveal sufficient and admissible evidence of offences involving human rights violations, States must also ensure that those responsible are brought to justice. The failure to adequately investigate allegations of human rights violations or to bring those responsible to justice could itself constitute a human rights violation.¹

INADEQUATE NATIONAL INVESTIGATION COMMISSIONS

To date, three national commissions have been established to investigate the 9 October 2016 attacks on border police posts by armed groups and the subsequent “clearance operations” conducted by the Myanmar security forces. The security forces have been accused of committing a wide range of human rights violations against the Rohingya population during these operations. However, none of the commissions established by the authorities are independent, impartial, effective or credible.

On 1 December, President Htin Kyaw established the “Investigation Commission” with the mandate to “probe into the background situations that led to violent attacks” that occurred on 9 October and 12 and 13 November as well as “the truth about the incidents, and ... whether existing laws, rules and regulations were observed.”² The commission does not have further terms of reference or rules of procedure and there is no transparency regarding its budgetary or technical resources.

The Investigation Commission’s composition also raises serious concerns. Persons who carry out investigations into human rights violations should be chosen for their demonstrable impartiality and should be independent of the individuals, institutions and agencies implicated in the events being investigated. The Investigation Commission clearly fails in this regard: it is headed by the Vice-President, a former military general who was the military’s nominee for the Presidency and its members include the current Chief of Police and serving government officials.

In addition there are also serious concerns about the Commission’s competency. Amnesty International is not aware of the presence of any experienced human rights investigators, forensic specialists,

¹ See for instance Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8.

² President’s Office Notification 89/2016, Formation of Investigation Commission, 1 December 2016, available at: <http://www.president-office.gov.mm/en/?q=briefing-room/news/2016/12/05/id-6883>

medical experts or staff trained to work with survivors of sexual and other gender based violence or child victims. This lack of experience and skills undermines the work of the Commission and places victims, witnesses and their families at risk of re-traumatization.

The conduct of the Commission during its field visits has also raised serious security, confidentiality and human rights concerns. For an investigation to be impartial and effective, complainants and witnesses must be protected from violence, threats of violence, public exposure (unless with their informed consent) or any form of intimidation. However, Amnesty International is not aware of any mechanisms adopted or practised by the Commission to protect victims, witnesses or their families. The organization has instead received credible reports of villagers in northern Rakhine State being intimidated and harassed prior to and following Commission field trips.

Disturbingly, the Investigation Commission has allowed details of some survivors and eyewitnesses they interviewed – including their names and pictures – to be published by the media. These breaches of confidentiality have exposed individuals to reprisals and the risk of re-traumatization. Amnesty International is aware of two rape survivors whose personal details were published in state media after speaking to the Commission. Video footage of Commission members interviewing one of the women through a translator was later broadcast on state media, and shows an aggressive and inappropriate style of questioning.³ Both women, who spoke to media in December, later fled to Bangladesh fearing for their safety.

Investigators must also be genuinely impartial and must not express or act from preconceptions about the matters they are investigating. In this regard, it is concerning that on 3 January, following a single field trip to Rakhine State lasting just three days, the Commission published an interim report stating that it had found insufficient evidence to take legal action on alleged human rights violations. The interim report, without providing supporting evidence, stated that security forces had acted in accordance with the law. The report also echoed government and state media denials of reported abuses, referring to “fabricated rumours.”⁴

In the report, the Commission based its finding that there was no religious persecution in the region on presence of the “Bengali” population, religious leaders, mosques and religious edifices in the area. Amnesty International notes with concern that the term “Bengali” is a divisive term implying that all Rohingya are not from Myanmar but migrants from Bangladesh.

In addition, the Commission’s report also rejected reports of malnutrition in northern Rakhine State despite the UN having previously recorded emergency levels of malnutrition in these areas based on clearly identified and objective criteria.⁵ The Commission attributed its findings in this regard to the “favourable conditions for fishing and farming”. The publication of the final report of the Commission, initially due on 31 January, has been postponed indefinitely.

On 3 February, the UN Office of the High Commissioner on Human Rights (OHCHR) published a damning “flash report” concerning human rights violations against Rohingya since the October attacks.⁶ The report concluded that abuses likely amounted to crimes against humanity. Amid increased international attention in the wake of the publication of the report, two internal commissions – one military and one police – were established to investigate possible wrongdoing. According to state media, both commissions were established at the request of the Investigation Commission.

Both commissions have the mandate to establish whether the military or the police have committed illegal actions “including violations of human rights” during the “clearance operations”. The army commission is composed solely of members of the military and the police commission will be conducted by an internal departmental enquiry composed solely of police personnel. In Myanmar, the police remain under the direct control of the military. These commissions – which would essentially

³ Footage and translations on file with Amnesty International.

⁴ Interim Report of the Investigation Commission on Maungtwaw, 3 January 2017, available at: <http://www.statecounselor.gov.mm/en/node/581>

⁵ See World Food Programme (WFP), *WFP Myanmar - Rakhine Operational Brief, May 2016*, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/wfpMYA_RakhineOB_May16.pdf

⁶ OHCHR, *Report of OHCHR mission to Bangladesh, Interviews with Rohingyas fleeing from Myanmar since 9 October 2016*, 3 February 2017, available at: <http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>

have suspected perpetrating institutions investigate themselves – are clearly neither independent nor capable of being impartial.

Even where there is clear evidence of human rights violations, security forces have failed to take effective action to hold perpetrators to account. According to media reports, three police officers were sentenced to two months in police detention after video footage of police officers beating Rohingya detainees during a security sweep was posted online in December. An internal investigation found they had violated police procedures. At least three other senior police officers were also demoted.⁷ No criminal proceedings are known to have been initiated against these individuals.

Finally, Amnesty International notes the establishment of the Rakhine State Advisory Commission led by Mr. Kofi Annan, but stresses that it is not mandated to investigate human rights violations, and is limited to making recommendations to secure “peace and prosperity” in Rakhine State.

NEED FOR AN INDEPENDENT INTERNATIONAL INVESTIGATION

The primary responsibility for investigating and remedying human rights violations lies with the state under whose jurisdiction the violations reportedly occurred. It is manifestly clear that Myanmar has failed to uphold this responsibility. The various commissions established by the authorities lack the expertise, independence and impartiality necessary to conduct a credible investigation into alleged abuses. This position is supported by the UN Special Adviser on the Prevention of Genocide, who has stated that the Investigation Commission “is not a credible option to undertake the new investigation.”⁸

Amnesty International considers that the gravity of the reported violations in Rakhine State and the government’s ongoing failure to independently and effectively investigate them justifies the establishment of a UN-mandated independent international investigation into human rights violations committed in Rakhine State since 9 October. Investigators should be tasked with establishing the facts concerning alleged human rights violations, determining whether they constitute crimes against humanity, identifying the causes and alleged perpetrators, and making recommendations on the next steps needed to prevent impunity and ensure justice for victims. Failure to adequately investigate credible reports of grave human rights violations would send a message that security forces can commit crimes with impunity, contribute to further deterioration of the human rights situation in Rakhine State, and undermine efforts to tackle the root causes of violence and instability in the region.

BACKGROUND

On 9 October 2016, alleged Rohingya armed groups attacked border police outposts in Myanmar’s northern Rakhine State, killing nine border police and seizing weapons and ammunition. Security forces responded by launching a major security operation, conducting “clearance operations” and sealing the area, effectively barring humanitarian organizations, media and independent human rights monitors from entering.

Since then, Amnesty International and others have documented wide-ranging human rights violations against the Rohingya by the Myanmar military and other security forces. These include indiscriminate attacks and unlawful killings of civilians, torture and other ill-treatment, including rape and other sexual and gender-based violence, enforced disappearances, arbitrary arrests and mass destruction of Rohingya buildings and other property. These violations have also been extensively documented by OHCHR. Both Amnesty International and OHCHR have concluded that these violations appear to form part of a widespread and systematic attack against the Rohingya population in northern Rakhine State and may amount to crimes against humanity.

⁷ AFP (Agence France-Presse), “Police in Rohingya abuse video get reprimand, ‘didn’t intend to harm’”, 8 February 2017.

⁸ Statement by Adama Dieng, *United Nations Special Adviser on the Prevention of Genocide following OHCHR’s report on the situation in northern Rakhine State*, Myanmar, 6 February 2017, available at: http://www.un.org/en/genocideprevention/documents/20170206%20Statement_Myanmar_reaction%20to%20OHCHR%20report_Final.pdf