

Myanmar: Rakhine State crisis demands full government commitment to protecting human rights of all

The Government of Myanmar must do everything in its power to respect and protect human rights during military operations in northern Rakhine State that have reportedly resulted in widespread unlawful killing and the displacement of more than 200,000 people in response to attacks attributed to the Arakan Rohingya Solidarity Army (ARSA), said the International Commission of Jurists (ICJ) today.

The ICJ called on Myanmar's government to act as swiftly as possible to address the root causes of violence, discrimination and under-development in Rakhine, as identified by the government's own Advisory Commission chaired by former United Nations Secretary General Kofi Annan.

It is also calling for enhanced engagement by the international community in efforts to effectively address the situation, and to take measures to ensure that security operations in Rakhine State, and throughout the country, especially at the moment in Shan and Kachin States, are conducted in accordance with international human rights standards.

The military operations follow attacks by ARSA on August 25 on police posts and a military base in which at least 12 police, military and government officials were killed, along with a large number of attackers (according to government figures).

"The attacks attributed to ARSA constitute serious crimes for which individual perpetrators should be brought to account through fair trials conducted in accordance with international standards," said Sam Zarifi, ICJ's Secretary General.

"But 'clearance operations' carried out by the Tatmadaw (Myanmar's military) in an unlawful manner, and allegations of serious human rights violations, many amounting to crimes under international law, are on an entirely different scale and cannot be justified in the name of security or countering terrorism. These allegations must be promptly investigated in light of the Tatmadaw's decades-long record of grave human rights violations and impunity throughout Myanmar," he added.

"The Tatmadaw is responsible for the conduct of security operations in Rakhine as in other parts of the country, but the entire government remains responsible for upholding its international legal obligations to protect the rights of everyone living in Rakhine State - including the Rohingya Muslim communities that constitute the overwhelming majority of the population in the areas most affected by the violence," Zarifi said.

"We also urge the State Counsellor Aung San Suu Kyi to use her immense electoral popularity and moral stature to push for full respect for human rights for the Rohingya as well as all others in Rakhine State."

In the wake of the attacks on 25 August, the military launched what it has termed as a "clearance operation," and the government announced that parts of northern Rakhine State have been designated as a "military operations area."

These terms are not clearly prescribed in Myanmar's laws, but in practice seem to be used to grant the military authority to ignore legal protections afforded under the country's constitution and international standards.

"Whatever descriptive cover may be used to describe security operations, they must scrupulously respect international standards on the use of force." Zarifi said.

"Myanmar's government has the right, indeed the obligation, to protect all people in its jurisdiction from attacks by armed groups, but it must do so in conformity with international law. Experience from around the world has shown that greater respect for rule of law and human rights is the most effective response to terrorism," he added.

This was unfortunately not the case following the arrests and detentions carried out during the military operations that followed attacks in October 2016. Many of these arrests appear arbitrary and unlawful, detainees were not given access to legal counsel, and deaths in custody have not been properly investigated.

Similar violations by the military have been documented recently in Shan and Kachin States.

Government authorities must ensure that arrest and detention in the context of the current operations in Rakhine State be conducted in accordance with national and international law, and respect the rights to liberty, freedom from arbitrary detention and a fair trial.

The most effective way for the government to respond to allegations of abuse by the security forces both in Rakhine and elsewhere in the country would be to take well-founded allegations seriously, and ensure that they are promptly, impartially and thoroughly investigated and those responsibility are brought to justice.

It is an unfortunate fact that investigations and prosecutions of human rights violations are rarely undertaken in regular courts. National laws shield security forces from public criminal prosecutions, often by using military or special police courts.

Zarifi further said: "Ending the military's impunity would establish much needed confidence in the government's commitment to upholding the rule of law."

"One immediate way to illustrate this commitment would be to cooperate with the UN Fact Finding Mission, which the ICJ and other organizations called for earlier in the year, to investigate allegations of human rights violations and abuses in Myanmar."

"There are paths forward for the government to both respond to allegations of rights violations, and to show its commitment to finding solutions to the unacceptable state of affairs in Rakhine State."

The ICJ urged cooperation with the UN Fact Finding Mission as a good first step toward addressing impunity.

It indicated that many of the longer-term solutions are mapped out in the final report of the government's own Advisory Commission on Rakhine, which has recommended a sensible and concrete set of measures to begin to address the systemic discrimination and unfair socio-economic policies that have adversely affected the entire population of Rakhine State.

The ICJ called on key players in the international community to help resolve the crisis in Rakhine.

As an immediate matter, the UN Human Rights Council should address the human rights situation through a Resolution at its upcoming session, calling for an end to unlawful killings and humanitarian access.

Myanmar's neighbors, particularly Bangladesh, should extend protection to refugees escaping the violence in Rakhine and facilitate humanitarian assistance, and if required they should receive assistance from the international community.

The Association of Southeast Asian Nations (ASEAN) must provide humanitarian assistance, especially for refugees and asylum seekers, and work with Myanmar's government toward resolving this long-term regional crisis. The United Nations

Security Council, especially China as Myanmar's neighbour and one of its largest trading partners, should heed recent exhortations by the UN's Secretary General to help stop the crisis from escalating further.

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