Executive Summary Of Independent Commission of Enquiry-ICOE

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Executive Summary

Introduction

On 25 August 2017, 30 police outposts and stations and one military battalion headquarters in northern Rakhine State were attacked by an armed group identified as Arakan Rohingya Salvation Army (ARSA). In the following days, subsequent attacks took place against 26 additional police outposts and stations.

Myanmar's Defence Services (Tatmadaw) and the Police Forces, jointly referred to in this report as 'security forces', carried out security operations (so called 'clearance operations') to restore peace and stability in the affected areas.[1] There were armed incidents in approximately 60 locations when Myanmar's Defence Services responded to the 25 August 2017 attacks by ARSA-fighters in more than 30 locations. These actions resulted in casualties, including ARSA-fighters, members of the security forces, and civilians. ARSA attacks and responses by security forces precipitated the mass displacement of people, mostly Muslims, from northern Rakhine State into Bangladesh.

Myanmar's Government established this Independent Commission of Enquiry (ICOE) to investigate the attacks that occurred on 25 August 2017 and thereafter, and the consequences of those attacks that led to the mass displacement of people, with a view to seeking accountability and formulating recommendations on steps to be taken to ensure sustainable peace and development in Rakhine State.

Communal Tension and Seeds of Conflict in Rakhine State

The situation in Rakhine State is highly complex: historically; ethnically; religiously; and demographically. There have been repeated violent clashes over the years, including more recent outbreaks of violence in 2012, 2016 and 2017. It is necessary to understand the historical background and context in order to grasp the root causes of these conflicts, and to search for sustainable solutions.

During the British colonial period, several hundred thousand persons, mostly Muslims, were transferred from the Bengal region of British India into colonial Burma. Most of those who came to Rakhine were laborers. Muslims became more numerous in some areas than ethnic Rakhine persons particularly in northern Rakhine State. Indigenous fears about becoming a demographic, cultural or religious minority increased division and tensions between the two communities.

After Myanmar's independence in 1948, Muslim rebel groups formed in northern Rakhine State. They demanded wider political rights, including claims for autonomy and an independent Muslim state. Since 1942, there have been repeated cycles of inter-communal violence in northern Rakhine State.

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President

- Executive Summary Of Independent Commission of Enquiry-ICOE
- Republic of the Union of Myanmar Office of the President Press Release 12th Waning of Pyatho 1381 ME (21 January 2020)
- Independent Commission of Enquiry hands over final report to President

Vice-President One

- PRC President Mr Xi Jinping departs from Nay Pyi Taw
- VP U Myint Swe presides over 11th private sector development committee meeting
- National Social Protection Committee produces seven decisions at third meeting
- Nay Pyi Taw commemorates International Migrants Day
- Central Committee holds coord meeting as 73rd Union Day draws close

Vice-President Two

- Vice President U Henry Van Thio meets Universal Peace Federation delegation
- VP U Henry Van Thio attends stake-driving ceremony for All Chin Society-Yangon Community Hall
- The Bible Society of Myanmar reopens after major renovations
- National Water Resources Committee HQ begins construction in Yangon
- VP U Henry Van Thio attends closing ceremony of X'mas festival in downtown Yangon

Others

- Message of Greetings sent by President U Win Myint to the International Anti-Corruption Day celebrations
- Report on the current work of the government: political, economic and social development, and the peace process
- Spokesman: No speech made by Acting President U Myint Swe
- Resignation of Mon State Chief Minister approved
- Appointment of Kayah State Security and Border Affairs Minister

Photo Gallery

General Ne Win's Government introduced a new citizenship law in 1982, creating three-types of citizens: "full citizen", "associate citizen" and "naturalized citizen". Many Muslims in northern Rakhine State were not interested in applying for citizenship under Myanmar's laws on citizenship of 1948 and 1982 because they consider themselves as belonging to an ethnic group called 'Rohingya'. 'Rohingya' has not been included in the list of 'national races' since 1948.[2] As a consequence, many Muslims in northern Rakhine State have ended up in statelessness.

Events of Mass Displacement

Bangladesh's war of independence in 1971 caused many Muslims to seek refuge in Rakhine State as well as in northeastern India. Myanmar's Government became concerned at the increase of these 'illegal' immigrants. In 1978, the Government launched the Naga-Min Campaign to identify such 'illegal' immigrants. This move led to mass displacement of nearly 200,000 'illegals' from Myanmar into Bangladesh. Most of these persons later returned to Myanmar based on an agreement between the two Governments.

The next mass displacement of Muslims from northern Rakhine State into Bangladesh, took place in 1991-92. It affected some 250,000 persons and was triggered because of the action taken by the Myanmar Military Government against two targets: a Muslim radical organization called Rohingya Solidarity Organization (RSO) and the 'illegal' immigrants.

Accumulation of Resentment and Grievances

Muslims in Rakhine State have long nurtured grievances due to political, economic and social discrimination and marginalization. But grievances are not only among Muslims. Ethnic Rakhines – predominantly Buddhists - also feel discrimination and unfairness vis-à-vis Muslims, for example, because of greater international attention and UN/Western aid given to Muslims and not to them. Rakhines also feel that they have been neglected by the Central Government. Such factors increased tensions and mutual enmity – two basic ingredients in the repeated communal conflicts in northern Rakhine State.

Inter-Communal Violence of 2012

The 2012 communal violence in northern Rakhine State was triggered by a case of an alleged rape, robbery and murder of a young Rakhine woman by three young Muslim men in May 2012. This incident led to the retaliatory killing of ten Muslim bus passengers by an enraged Rakhine Buddhist mob. Anger was incited in both communities, and violence quickly spread to many towns and villages, not only in Rakhine State but also in Yangon and Mandalay Regions, leading to widespread inter-communal violence, killings and burning of houses.

This situation caused the displacement of over 120,000 persons, mostly Muslims from central Rakhine, who are still living in internally displaced persons (IDP) camps. The 2012 conflict proved to be a 'tipping-point' for the conflicts that subsequently occurred in Rakhine State.

President U Thein Sein established the Inquiry Commission on Sectarian Violence in Rakhine State in 2012 with the mandate to investigate the incident and report on the causes of the crisis.[3]

Advisory Commission on Rakhine State (Kofi Annan's Commission)

Soon after taking office in April 2016, the newly installed National League for Democracy (NLD) Government, led by Daw Aung San Suu Kyi established the Advisory Commission on Rakhine State, headed by former UN Secretary-General Kofi Annan. The Commission was tasked to examine the complex challenges facing Rakhine State and to propose responses to those challenges. Its final report - submitted on 25 August 2017 - contained 88 recommendations.[4]

Attacks of 2016

An organized Muslim armed group called Harakah al-Yaquin ('HaY') later known as ARSA, launched attacks on the headquarters and two outposts and stations of the Border Guard Police in northern Rakhine State on 9 October 2016. These attacks caught the Myanmar Government and security forces by surprise, not only because they targeted multiple facilities of the security forces in a coordinated manner, but also because the armed group successfully mobilized large numbers of local Muslims as ARSA-fighters. The armed group set fire to houses and attacked local civilians, stealing weapons and ammunitions.

On 12-13 November 2016, there were further armed attacks on Myanmar's security forces during ARSA's operations. The same armed group proudly claimed responsibility for these violent acts. To counter the attacks, Myanmar's Defence Services conducted security operations to search for and capture ARSA-fighters and prevent further attacks. However, the security situation in northern Rakhine State deteriorated further, mainly due to ARSA's spreading influence. These attacks turned out to be a prelude to what occurred in August 2017. They represent the start of the internal armed conflict between ARSA and Myanmar's Defence Services.

2016 Investigation Commission on Maungdaw

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Myanmar's Government established the Investigation Commission on Maungdaw – a township in northern Rakhine State bordering on Bangladesh - led by Myanmar's Vice President U Myint Swe, to investigate the background of the October and November 2016 attacks, find the truth and make recommendations to avoid future incidents. The Commission submitted its final report with 48 recommendations in August 2017.[5]

Attacks of 2017

Less than one year after the attacks of October 2016, ARSA staged another highly coordinated series of attacks, early in the morning of 25 August 2017, deploying massive numbers on 30 police outposts and stations and one military battalion headquarters. Myanmar's Police Force estimated that the total number of people who participated was over 9,000 thus being able to launch attacks on a much larger scale than in October 2016, and in a wider geographical area. ARSA-fighters also destroyed eight bridges on important public transportation routes. In the following days, there were continuous attacks by ARSA against an additional 26 police outposts and stations in northern Rakhine States. There were further attacks against Myanmar's security forces during their subsequent security operations. Myanmar's Police Force estimated that over 14,000 ARSA-fighters, collaborators and mobs were involved, greatly outnumbering Myanmar's security forces in northern Rakhine State. ARSA's attacks and the ensuing fighting led to widespread violence and chaos in northern Rakhine State. There was state of intense internal armed conflict or civil war between ARSA and Myanmar's Defence Services.

Response by Myanmar's Defence Services

The Office of the President of the Republic of the Union of Myanmar authorized the designation of the conflict area – that is, the Townships of Buthidaung, Maungdaw and Rathedaung- as "military operations areas", and granted Myanmar's Defence Services and Police Force, the authority to conduct the necessary security operations ('clearance operations') in these areas. Meanwhile Myanmar's Central Committee for Counter Terrorism declared ARSA as a terrorist group in accordance with the national Counter-Terrorism Law.

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The use of the term 'clearance operations' (*nae myay shin lin yeh* in Myanmar) means to clear the area of weapons, mines, and terrorists with a view to restoring peace and stability in the affected areas. It refers to operations against insurgents or terrorists who have intruded into and attacked a designated area.

Myanmar's Defence Services and Police Force were deployed to defend against the ARSA's attacks for a period of approximately two weeks (25 August to 5 September 2017). The ICOE's estimate is that the scale of the deployment ranged from 3,000 to 3,500 in the frontline, while 1,000 to 1,500 were in support roles.[6] This deployment was seriously outnumbered by the ARSA-fighters and mobs mobilized in the actual frontline. Myanmar's Defence Services did not anticipate that ARSA would have such a large number of collaborators in the attacks. The unexpected uprising by ARSA and other Muslims shocked the regular troops, especially those at the frontline. Myanmar's security forces did not know how to react to the massive numbers of ARSA-fighters and armed civilians. In responding to this national emergency, discretionary actions were taken in the field, in rapidly changing situations on the ground, by soldiers and their immediate commanders deployed at the village level.

The ICOE also found that the unfolding events during the security operations were multi-faceted, involving at least six different types of actions and moves: 1) attacks on Myanmar's Defence Services, Police Force, and some non-Muslim local villages by ARSA and mobilized Muslim fighters; 2) Myanmar's security forces counter-operations against ARSA, its collaborators and mobs; 3) Myanmar's security forces search-and-arrest operations; 4) Myanmar's security forces protection of local villagers; 5) spontaneous or forced evacuations; and 6) voluntary mobilization of organized civilians (vigilantes) during the events.

Casualties and Damages

There are very significant inconsistencies in the victimization figures provided by different actors. According to the data provided by the Government to the ICOE, human fatalities were 376 ARSA members, 2 members of Myanmar's Defence Services, 11 Police personnel, 2 Government officials, and 133 civilians with 181 missing. More than 40,000 houses were destroyed and over 410,000 persons, mostly Muslims, fled into Bangladesh. Some civilians in the most affected areas, Muslims included, have remained in Rakhine State.

ARSA's Activities

In early 1948, a 700-member strong so-called Mujahidin insurgent group began to demand that the Buthidaung and Maungdaw areas be designated as a Muslim State and carried out activities in pursuit of this goal. Successive armed groups were formed to advance this.

The Aqa Mul Mujahidin (AMM) was formed in Pakistan in 2015 and assigned *Hafiz Tohar (Atta Ula)* as its military affairs chief. It is alleged that *Hafiz Tohar* attended terrorist trainings with the Taliban in Pakistan and received financial assistance from organizations in Middle Eastern countries. He entered Maungdaw Township in Rakhine State, and provided terrorist training to radical local youths.

Hafiz Tohar led the attacks in October 2016 and August 2017. ARSA's objectives were most likely to draw renewed global attention to the challenges facing Muslims in northern Rakhine State, by that seeking to have members of the international community recognize a 'Rohingya' group in Rakhine State and to refer to it as 'Rohingya', and to assert international

hiding in the village. In Maung Nu (Buthidaung Township), witness accounts put the number of killed between 100 to 200 persons, where most if not all victims were unarmed civilians who were deliberately killed. Most accounts put the number of killed in Gu Dar Pyin as 19 persons with both Muslims and ethnic national witnesses stating that the deaths occurred in the course of fighting between Myanmar's Defence Services and ARSA-fighters.

Interviews with witnesses about the four village locations of Alai Than Kyaw, Myin Lut, Inn Din, and Chein Kharli/Koe Than Kauk described how clashes between Myanmar's security forces and ARSA-fighters caused multiple casualties, but there was no credible account to confirm whether, and how many, civilians were included in the casualties. None of the witnesses mentioned mass killing in the rest of the locations (Kyauk Pandu, wards 3, 4, and 5 of Maungdaw Township, Southern Maungdaw and Northern Maungdaw) although some of the witnesses referred to casualties among ARSA-fighters and Myanmar's security personnel during clashes.

Rape

There were no credible statements on allegations of gang rape committed by Myanmar's security forces. Although some interviewees mentioned rape cases, these were all second-hand information heard from someone else. Additionally, some female witnesses noted that they were searched by male Myanmar's Defence Services personnel as a part of the operations. This behavior may amount to constitute sexual violence.

Property Destruction

Arson was observed in all 13 locations. The most serious was Min Gyi/Tula Toli, where no village structures were left standing after the security operations. Other locations where large numbers of houses were burned include Chut Pyin, where a large proportion of Muslim houses were burned down, in Gu Dar Pyin where around 300 houses were burned, half the houses in Mawtular village, and Inn Din Muslim village. Many witnesses stated that those houses and other structures were deliberately set on fire by Myanmar's security forces personnel and even by local ethnic nationals (local vigilantes). It was also noted that witnesses stated that ARSA-fighters themselves torched their own houses and other Muslims' houses. Interviewees' information suggests that most destroyed village structures were burned down after ARSA-fighters and Muslim residents left. The ECVT (Yangon) also found some cases in which Myanmar's security personnel did not take actions to prevent acts of property destruction by local ethnic nationals.

Looting

Numerous witnesses observed looting committed mostly by local ethnic nationals who stole valuable goods, food, cattle, motorbikes and cars left behind by Muslims. Some lootings were committed by Myanmar security personnel, but these were fewer than those committed by civilians. However, witnesses recounted several occasions of dereliction of duty or omission of action on the part of Myanmar's security forces personnel who did not intervene to prevent looting even when they were capable of doing so.

Torture

Some witnesses recalled seeing Myanmar's Defence Services personnel beat Muslim villagers for the purpose of intimidating them to make them follow orders, such as forcing them to move to a specific place of the village as ordered.

Forced Displacement

ECVT (Yangon) found few credible witness statements to indicate that Myanmar's Defence Services or Myanmar's Police Force directly forced or expelled the Muslim population to leave for Bangladesh. The dominant motivation and reason for their departure to Bangladesh was fear of violence, caused by ARSA's initial attacks and ensuing clashes between ARSA-fighters and Myanmar's security forces. At the same time, the findings of the ECVT (Yangon) indicate that the violent events, such as mass killing and property destruction, physically deprived the villagers of homes and the means that they had to rely on to live, which also contributed to their decision to leave for Bangladesh. In some cases, such as at Alai Than Kyaw beach, witnesses observed government officials and Myanmar's security forces personnel appeal to the departing Muslims not to leave for Bangladesh, but their efforts were unsuccessful.

ECVT (Nay Pyi Taw)

The ECVT (NPT) conducted interviews with a total of 298 witnesses between January and December 2019, consisting of 249 villagers and 49 security officers (29 members of Myanmar's Defence Services and 20 Police officers). Of the interviewed villagers, Muslims were the largest number and others were Rakhine, Hindus, Daingnet, Thet, Mro, Bama, and Mramagyi.

The 298 statements suggest that ARSA's attacks were well-planned and organized. It appears that they had two objectives: (a) to take arms and ammunitions from police outposts and stations to strengthen its fighting capacity, and (b) to create a massive exodus of Muslims to Bangladesh in efforts to draw sympathy and aid from the international community. For this purpose, ARSA extensively mobilized Muslim villagers to join its activities through mawlawis, making it difficult for the religious Muslims villagers to deny. ARSA killed village administrators perceived to be informants and those who opposed ARSA's uprising. ARSA succeeded in mobilizing thousands of Muslim villagers to attack police outposts and stations and ethnic villages.

ARSA set fire to houses to trigger the massive outflow from northern Rakhine State. Muslims were encouraged to burn their houses and flee to Bangladesh where it was suggested that they could access international aid and seek refuge in third countries. The houses of members of ethnic minorities were also burned to force them to flee.

Statements also indicated that there was a massacre of Hindus by ARSA and some Hindu women were taken to Bangladesh, forced to convert to Islam and marry ARSA members.

The statements also referred to the severe sufferings of other ethnic communities such as Mro, Daingnet and Thet who were killed by ARSA.

Limitations

The clashes between the Arakan Army (AA) and Myanmar's Defence Services in Rakhine State, which started in January 2019 have constrained the collection of evidence by the ICOE. This on-going internal armed conflict has included, for example, an attack by AA on a ferry carrying government troops and civilians, between Sittwe and Buthidaung in Rakhine State in December 2019.

The ICOE has expressed appreciation to the Bangladesh Government for receiving its Advance Team in Cox's Bazar for the purposes of preparing interviewing by the dispatch of ICOE's ECVT in camps in Cox's Bazar. On 28 November, Bangladesh agreed in principle to allow the ECVT to conduct such interviews and to provide security arrangements. However, it stated that the ICOE must make all logistical arrangements itself, including finding neutral

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interview venues. When the ICOE requested assistance from the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) through the Myanmar Government, the responses received were that such a request must be addressed to the Government of Bangladesh which holds authority over and responsibility for the management of the camps. On 5 December 2019, the ICOE requested Bangladesh to reconsider and allow the ECVT to use interview rooms on the premises of Camps-in-Charge at Cox's Bazar. On 8 January 2020, ICOE received a response letter from the Bangladesh to say that it has decided to assist the ECVT in finding suitable interview space, provided certain issues are adequately addressed. However, ICOE is unable at this moment to send an ECVT team to Bangladesh, just days before the submission of its report to the President.

Measures to Establish Accountability

The Myanmar Government has publicly stated that it is not opposed to accountability for any wrong doing related to the large outflow of displaced persons to Bangladesh in 2017. The State Counsellor as Agent for Myanmar in the application that The Gambia has brought against Myanmar at the International Court of Justice, stated before the Court "*Accountability through domestic criminal justice is the norm. Only if domestic accountability fails, may international justice come into play*".

Myanmar's Defence Services conducted an internal investigation from 20 December 2017 to 2 January 2018 to investigate the attacks that took place on 25 August 2017 and the subsequent consequences to ascertain whether security troops conducted the military operations in accordance with their duty assignments. This resulted in several personnel being found guilty, dismissed from Myanmar's Defence Services, and each sentenced to imprisonment for 10 years with hard labour i.e. Inn Din Village Case. They were however, later given a military pardon as regards the prison sentence.

Myanmar's Defence Services proceeded to establish a Military Court of Inquiry[8] on 18 March 2019 which is supported by a Legal Advisory Team, to further investigate incidents related to the attacks which occurred in Buthidaung-Maungdaw area of northern Rakhine State. The Court of Inquiry is established under Rule 176 of the Defence Services Rules and complements the on-going national investigation process in accordance with the military justice system pursuant to Section 20 of the Constitution of the Republic of the Union of Myanmar (2008).

The Court of Inquiry has so far conducted investigations in Buthidaung and Maungdaw Townships and found that there are grounds to believe that the soldiers did not fully comply with the military instructions in some of the incidents at Gu Dar Pyin village in August 2017. A Court-martial against the accused military personnel is on-going when this report is being written.

Principal Observations of the ICOE

Wide Gaps in the Narratives

There is remarkable polarization, or wide gaps, in the narratives of international reports, on the one hand, and Myanmar's national accounts, on the other. Restrictions to access encountered by international organizations may be one reason for such gaps, because these constraints left international actors with little choice but to rely heavily on refugee interviews in Bangladesh for facts and information, leading to possible limitations of their findings.

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It is imperative for national and international accountability that due diligence and quality control is exercised in fact-finding, evaluation, and public pronouncements. Furthermore, conclusions or findings, to be credible, must be posited within the proper context and comprehensive understanding of the complex situation on the ground, including the historical and political background which often goes back to British colonial rule.

Allegations of Human Rights Violations, 'Ethnic Cleansing', 'Genocide'

International human rights organisations within the United Nations and non-governmental organizations (NGO) have raised allegations of serious human rights violations, war crimes, even the possibility of 'ethnic cleansing'[9] and 'genocide' perpetrated by Myanmar's Defence Services. Myanmar has denied the sweeping allegations. The State Counsellor has acknowledged that war crimes may have occurred in northern Rakhine State in 2017, and if there is proof of such crimes, it is a matter for Myanmar's military justice system to investigate and prosecute according to the 2008 Constitution of Myanmar.

The allegations of violations contained in United Nations and NGO reports rely almost exclusively on interview statements made by refugees residing in the camps in Cox's Bazar in Bangladesh, as recounted in the report of the United Nations Independent International Fact-Finding Mission on Myanmar (IIFFMM). The veracity of these potential witness statements must necessarily be scrutinized and evaluated, including through normal practices of due process and contradistinction. Such testing has yet to take place.

According to the evidence gathered by the ICOE, war crimes and serious human rights violations may have occurred in the form of disproportionate use of force by some members of Myanmar's Defence Services and Police Force in the course of the internal armed conflict against ARSA. This must be further investigated, verified, and thereafter prosecuted by Myanmar's national legal processes, in particular its military justice system.

The finding of possible war crimes and serious human rights violations makes it clear that there are inherent institutional weaknesses in both Government and Myanmar's security forces. Such institutional weaknesses can never justify counter-operations that go beyond military necessity, breach the principle of distinction between fighters and civilians, or otherwise violate international criminal law. Such weaknesses do not account for the findings of probable war crimes revealed by the ECVT's investigations. It is reasonable to conclude that some members of Myanmar's Defence Services and the Police Force intentionally killed or displaced civilians, mostly Muslims, during the internal armed conflict in northern Rakhine State in 2017.

The ICOE has not found any evidence suggesting that these killings or acts of displacement were committed pursuant to an intent or plan to destroy the Muslim or any other community in northern Rakhine State. There is insufficient evidence to argue, much less conclude, that the crimes committed were undertaken with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, or with any other requisite mental state for the international crime of genocide. The ECVT findings reveal no indication of a pattern of conduct from which one could reasonably conclude that the acts were committed with genocidal intent.

Rather, the evidence collected and analysed by the ICOE suggests that the actions and reactions were triggered by individual fear, enmity, and historical grievances rather than by a plan, design or order. Myanmar's security forces were caught by surprise and responded haphazardly to restore order in response to coordinated ARSA attacks. The ICOE's investigations have yet to find any orders, directions or instructions to target a specific group.

Based on the ICOE's findings, in responding to the ARSA attacks, individual members of Myanmar's Defence Services and Police Force, and vigilantes used disproportionate or excessive force – without genocidal intent – and, in the course of doing so, have likely committed killings and acts of displacement against civilians amounting to war crimes and serious human rights violations. The ICOE also found that there were some cases where individual members of Myanmar's Defence Services were derelict in their duty to protect villagers and their homes. The incidents in the 13 areas contained in the main report will require more comprehensive investigations by the Myanmar authorities and Myanmar's Defence Services.

Disproportionate or Excessive Use of Force

ARSA's attacks on 25 August 2017 and the security operations in response resulted in chaotic crossfire situations on the ground. Serious crimes - such as mass killing and destruction of homes in villages - were committed by multiple actors: ARSA-fighters, members of security forces, vigilantes and mobs. ARSA abducted, tortured and killed innocent local villagers and set fire to village houses as they fled from the counter-operations, as Myanmar's security forces have claimed. However, according to statements collected by the ICOE, many civilians were killed by members of Myanmar's security forces, directly or collaterally during the security operations; and many village houses were burned down by members of the security forces and local vigilantes during and after the security operations. The ICOE has also found that members of Myanmar's security forces failed in several instances to prevent village destruction, and thus came to abet the demolition of property. The ICOE observes that there may be cases for which the perpetrators need to be investigated and brought to justice.

Mass Displacement of Muslims

This is not the first time that a mass outflow of Muslims from northern Rakhine State to the Bangladesh has occurred. As analysed in Chapter VI of the main report, these outflows have happened several times in the past for various reasons. It has almost become a natural protection instinct in some families in Maungdaw and Buthidaung Townships to flee across the River Naf into Bangladesh when cycles of communal violence recur. This time the size of the population involved was much larger than before. Why such a large outflow occurred this time is a question for which the ICOE finds no easy or fully satisfactory answer or explanations.

Based on the evidence gathered, the ICOE finds no credible statements to prove that Myanmar's security forces directly or intentionally forced the Muslim population to leave northern Rakhine State for Bangladesh. The dominant motivation was fear of violence, caused by ARSA's initial attacks and the ensuing battles between ARSA-fighters and Myanmar's security forces.

Internally Displaced Persons

There have been about 18 camps for internally displaced persons (IDPs) in Rakhine State since the 2012 incident referred to above, inhabited by approximately 120,000 IDPs, mostly Muslims. At the time of completion of this Executive Summary, three of the camps have reportedly been closed and a fourth is in the process of being closed. It is important to close these camps and to reintegrate the IDPs into society.

The Myanmar Government has worked with Professor Walter Kaelin, (a former Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons) to develop Myanmar's 'National Strategy on Resettlement of Internally

Displaced Persons (IDPs) and Closure of IDP Camps'. The National Strategy was officially announced on 19 November 2019. It is important that the public is given information on practical steps that are taken to close the remaining IDP camps

It is not well known that there are about 10,000 Muslims and members of ethnic groups displaced by the 2017 conflict who are still based in northern Rakhine State. Most of them are living in houses left behind by persons who are refugees in Cox's Bazar or with friends and family. The lives of these persons are in limbo. They do not have regular access to healthcare, education and livelihood. It is imperative that the Government takes concerted action to restore their normal lives by providing financial and other necessary assistance, including allowing them to go back to their original villages. Such efforts will also encourage the repatriation process.

Lack of Social Cohesion or Unity

The grievances and issues that each community has *vis-à-vis* the other have reduced mutual trust, understanding and harmonious interaction. Such conditions have increased tension and mutual enmity, two basic factors for the repeated communal violence in northern Rakhine State. In order to prevent the recurrence of violence in the future, interactions between the Muslim and Rakhine (Buddhist) communities should be encouraged. Local government officials are key players in promoting and encouraging social cohesion or unity and should be equipped with enhanced skills and knowledge about inter-cultural competence, social cohesion, facilitation and mediation. They should collaborate with civil society organizations currently working in northern Rakhine State.

Quality Control in Conflict-Related Fact-Finding

One important lesson the ICOE has learned is that interviewees cannot always be expected to recall the whole truth. In a situation of armed conflict, there is a risk that both victims and non-victim interviewees could be pressured or influenced by someone else. It is important for the interviewers to wholeheartedly seek the truth from the interviewees, and to thoroughly cross-check the statements against other credible information. Whether or not an interviewee will tell the truth depends on several delicate factors, including who conducts the interview, how knowledgeable and professional he or she is. It is also important for all investigative bodies to ensure quality control to the extent possible, including genuine, respectful, responsible engagement and support by the affected State and communities. A good contextual understanding of the conflict area, peoples and history is indispensable to quality control.

International Courts

Cases have been brought against Myanmar before the International Criminal Court and International Court of Justice based predominantly on the reports by the United Nations Independent International Fact-finding Mission on Myanmar (UNIIFFMM), which, as discussed above, has relied extensively on factual propositions from persons in Cox's Bazar in Bangladesh and circumstantial evidence. It is unfortunate that the group of actors who has brought these cases before international courts has shown minimal interest in Myanmar's domestic processes and, in a way, prejudged the ICOE itself, a national special investigative mechanism tasked with addressing accountability for the events that took place in northern Rakhine State from 25 August 2017.

Competition between national accountability efforts and international justice – or the perception of such competition – should be avoided at all costs. Sound factual analysis, in pursuit of the truth, and due process should not be sacrificed to satisfy the impatient desire

of some actors to externalize accountability processes. A failure to balance this impatience may have wider repercussions on the global legal order.

Conclusion

The ICOE concludes, on the basis of the information available to it and of the investigations carried out in northern Rakhine State and elsewhere, that war crimes, serious human rights violations, and violations of domestic law took place during the security operations between 25 August and 5 September 2017. Although these serious crimes and violations were committed by multiple actors, there are reasonable grounds to believe that members of Myanmar's security forces were involved. ARSA's initial attacks – drawing on a very large number of mobilized villagers - provoked the response by Myanmar's security forces. This resulted in disproportionate use of force during the internal armed conflict. The killing of innocent villagers and destruction of their homes were committed by some members of the Myanmar's security forces during the internal armed conflict.

The allegations regarding genocidal intent on the part of members of Myanmar's Defence Services have not been substantiated.

The Myanmar Government and Myanmar's Defence Services must continue their respective investigations, taking into account the ECVTs' findings.

Recommendations

Recommendation 1: Myanmar's Office of the Judge Advocate General must expeditiously conduct the necessary investigations and seek accountability for responsible military personnel throughout the Chain of Command, based on facts, evidence and information found in ICOE's report.

Recommendation 2: The Myanmar Government must enhance its current judicial and investigation mechanisms by: providing adequate resources to strengthen Myanmar's criminal justice system; actively promoting equal rights treatment in order to affect accountability for non-military personnel and civilians involved in crimes and human rights abuses; and by consulting experts on appropriate transitional justice measures in Myanmar beyond criminal justice.

Recommendation 3: The Myanmar Government must ensure access to prosecution and judicial remedies including appropriate complaint mechanisms, for members of all communities in northern Rakhine State.

Recommendation 4: All relevant public agencies, including Myanmar's security forces, must take cognizance of the institutional lessons learned from the August 2017 incidents. Necessary institutional reforms should be undertaken to prevent the recurrence of human rights violations.

Recommendation 5: The Myanmar Government, Myanmar's Defence Services and Myanmar's Police Force must review the design and implementation of their counter-terrorism policies to ensure that villagers enjoy protection under the law. This could be facilitated by international collaboration to implement reforms of relevant institutions and policies to meet international standards.

Recommendation 6: The Myanmar Government and Myanmar's Defence Services must enhance and further strengthen education and training for military and

police personnel on Human Rights, International Humanitarian Law, International Criminal Law, and Rules of Engagement (RoE). International help may be sought where appropriate, to enhance this capacity development.

Recommendation 7: The Myanmar Government should establish a system of community policing whereby the residents participate and play a role in maintaining order and security.

Recommendation 8: The Myanmar Government, Myanmar's Defence Services and Myanmar's Police Force must strengthen border security and control on land and sea especially in the northern border areas of Rakhine State.

Recommendation 9: The Myanmar Government must undertake a vigorous approach to actively address all forms of hate speech - particularly when directed at ethnic or religious minorities – including by encouraging towns to take proactive initiatives.

Recommendation 10: The Myanmar Government must undertake every effort to promote social cohesion and unity, inter-communal understanding and reconciliation, supported by civil society, religious institutions, the business community and international organizations.

Recommendation 11: Trainings on intercultural competence, social cohesion and unity, facilitation and mediation must be provided to Government officials who are assigned to multi-cultural areas like Rakhine State.

Recommendation 12: The Myanmar Government and international donors must provide necessary assistance to Rakhines, Muslims and other ethnic minorities who were displaced by the 2017 conflict.

Recommendations 13: The Myanmar Government must immediately accelerate its implementation of the 'National Strategy on Resettlement of Internally Displaced Persons (IDPs) and Closure of IDP Camps', resulting in the successful reintegration of the IDPs into society.

Recommendations 14: The Myanmar Government must publicize the arrangements it has made for repatriation, resettlement and development. This should include practical information on livelihood opportunities, basic needs and security for returnees.

Recommendation 15: The Myanmar Government must re-examine the processes involved in the issuance of the National Verification Card (NVC) and its consequences. Effective implementation and coordination among ministries are required.

Recommendation 16: The Myanmar Government, Myanmar's Defence Services and Myanmar's Police Force must take measures to remove various restrictions that interrupt the smooth flow of goods, services and people including restrictions on the freedom of movement, unofficial fees payment, and sustainable livelihoods.

Recommendation 17: The Myanmar Government must focus on sustainable development in Rakhine State. This should include improvement of basic infrastructure such as transport and power supply as well as job creation. More

private sector investment including Foreign Direct Investment (FDI) should also be encouraged. The SMEs sector, particularly local resource-based cluster industries, should also be encouraged.

Recommendation 18: The Myanmar Government must actively pursue the empowerment of women and girls in all communities. Women entrepreneurship in all communities must be encouraged and promoted with resources.

Recommendation 19: The Myanmar Government must review the education sector in northern Rakhine State including formal, non-formal education and vocational training focusing on inclusion, diversity and the use of online and offline learning. This principle of equitable access is essential to the delivery of education, health and all other essential services.

Recommendation 20: The Myanmar Government must strengthen Universal Health Coverage (UHC), particularly at the village level in northern Rakhine State.

Recommendation 21: The Myanmar Government must establish an independent monitoring and evaluation mechanism, which is a formal entity, consisting of members from local think-tanks and civil society representatives from all communities in northern Rakhine State, to review implementation and evaluation of each recommendation contained herein. The President should receive reports from the mechanism twice a year and make them public.

Recommendation 22: The international community should be encouraged to form an informal group 'Friends of Myanmar on Rakhine State' to provide financial contributions or in kind through appropriate mechanisms.

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1 The term 'clearance operations' refers to counter-insurgency operations and counter-terrorism operations against insurgents or terrorists who have intruded and attacked a designated area. It means to clear the insurgents and terrorists from the specific area.

2 The term 'national races' is found in Chapter I, Section 3 of the Constitution of the Republic of the Union of Myanmar (2008). The concept of 'national races' is embedded in Myanmar's legislation since 1948. Section 3 of the 1982 Citizenship Law attributed the 'national races' to eight specific groups.

3 The Inquiry Commission consisted of 25 members from different religions and ethnicities.

4 The Committee for Implementation of the Recommendations on Rakhine State ("Implementation Committee") was formed on 12 September 2017 to implement the recommendations of the Kofi Annan Commission and Investigation Commission on Maungdaw. The Implementation Committee is led by Dr. Win Myat Aye, Union Minister for Social Welfare, Relief and Resettlement.
In order to provide external perspectives and advices to the Implementation Committee, the Advisory Board was formed on 14 December 2017. It was led by Dr. Surakiart Sathirathai, former Deputy Prime Minister of Thailand with 5 eminent personalities from home and abroad. Its Final Report was submitted to the Myanmar Government on 17 August 2018

5 The Investigation Commission of Maungdaw (2016) held 9 meetings and conducted 3 investigative visits, from December 2016 till February 2017. In order to investigate further the contentions contained in the OHCHR 'Flash' report, the Commission revisited 20 villages where human rights abuses were alleged to have occurred.

6 The estimation was made in the following way. According to the internal report of Myanmar's Defence Services, 25 infantry battalions were deployed as main operation units. If we presume that around 150 officers and soldiers belong to each infantry battalion, 25 infantry battalions should technically amount to 3,750. Normally two companies, which consist of 80 to 100 soldiers, of one battalion are sent to the actual frontline. This can lead us to estimate the minimum manpower of those infantry battalions in the frontline of 2,000. But, this estimate does not include other military units, police forces and logistical supports. Taking those lacking factors into consideration, ICOE assumes that the total number of soldiers deployed during the security operations ranges from 3,000 to 3,500 in the frontline while 1,000 to 1,500 were in support.

7 International Crisis Group, "Myanmar: A New Muslim Insurgency in Rakhine State" Asia Report No. 283 (15

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December 2016); Advocate General Office of Myanmar's Defence Services "On Arakan Rohingya Salvation Army" (unpublished internal report in 2017); Col (Res.) Dr. Raphael G. Bouchnik-Chen "Myanmar: The Dark Side of the Rohingya Muslim Minority" in the web-site of The Begin-Sadat Center for Strategic Studies (October 9, 2018) (https://besacenter.org/perspectives-papers/myanmar-dark-side-rohingya-muslim-minority/).

8 The Military Court of Inquiry is led by Major-General Myat Kyaw with 2 members to further investigate incidents related to the terrorist attacks which occurred in Buthidaung-Maungdaw region of Rakhine State.

9 'Ethnic cleansing' – not a legal term – is a heinous practice seen, for example, in Bosnia-Herzegovina during 1992-1995

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