

**Mandate of the Special Rapporteur on the situation of human rights in Myanmar**

REFERENCE:  
UA MMR 2/2019

10 April 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights in Myanmar, pursuant to Human Rights Council resolution 34/22.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the situation in Chin and Rakhine States.

According to the information received:

Since October 2018, there has been escalating conflict between the Arakan Army and the Tatmadaw in Paletwa township in Chin State and central and northern Rakhine State. Reports indicate intensified fighting in recent weeks, which has been having a devastating impact on civilians in these areas.

**Forced displacement**

As a result of the conflict, over 26,000 people have been forcibly displaced in the townships of Paletwa, Buthidaung, Rathedaung, Kyauktaw, Ponnagyun, Mrauk-U and Minbya as of 4 April 2019. In the week of 25 March alone, around 4,000 Rohingyas were displaced in Buthidaung township. However, as a result of access restrictions, the exact number of displaced people is unknown.

Displaced ethnic Rakhine people are sheltering in Buddhist monasteries and villages that are currently outside of conflict areas, and they are receiving some humanitarian assistance by local and national organisations. Rohingya people have also been displaced by the conflict and are staying in schools and with relatives, and they are not receiving any humanitarian assistance. It appears that the Government is not carrying out its responsibility to ensure that displaced people have appropriate accommodation and satisfactory conditions of hygiene, health, safety and nutrition, and without discrimination.

**Humanitarian access restrictions**

On 10 January 2019, the Rakhine State Government issued an order restricting UN and international organization access to Ponnagyun, Kyauktaw, Rathedaung,

Buthidaung and Maungdaw townships, with the exception of food distributions by the Red Cross movement and the World Food Programme. All activities apart from food distribution were stopped as a result.

Humanitarian assistance remains extremely restricted, with agencies presently also having restricted access to Mrauk-U Township and rural areas. This has left at least 95,000 people living in conflict-affected areas with their ability to access livelihoods, healthcare services, education and clean water severely affected and having serious negative impacts on their basic rights. The restrictions have also led to development activities, including livelihood and agricultural support, being suspended, and the ability of farmers to plant rice paddy has been affected by the conflict, such that food security for the future may be impacted.

The lack of humanitarian access means there are few independent observers on the ground who can report on and verify events that occur, and ensure that the Government is complying with its duty to protect civilians. There is also a lack of media access to northern Rakhine, as a result of restrictions in place following the security operations from August 2017, meaning that information about the conflict, which is clearly within the public interest, is difficult to obtain.

### **Curfew**

On 1 April 2019, the Rakhine State Government issued an order instituting a curfew in the townships of Kyauktaw, Ponnagyun, Rathedaung, Mrauk U and Minbya from 9pm to 5am daily. There is no end date to the curfew and it was enforceable from 2 April 2019. Confining people to their homes may further hinder essential livelihood activities for people already suffering the effects of the conflict, and raises further concerns given that there have been reports of abuses committed during nighttime household raids by the military and security forces. As Rohingya civilians already face severe restrictions on their freedom of movement, the curfew is a further exacerbation of this violation of their rights.

### **Arrests of civilians**

On 4 February, 26 people were arrested on suspicion of having connections to the Arakan Army and charged under section 17(1) of the Unlawful Associations Act. Four village administrators in Mrauk-U were arrested in March and also charged under the Unlawful Associations Act. I am concerned that the Unlawful Associations Act, that does not comply with human rights standards, is continuing to be used to target people on the vague ground for association with armed groups. It is unknown if these people are in detention, where they are being held and if they are subject to trials and have access to lawyers.

## **Indiscriminate use of weapons and targeting civilians**

The Tatmadaw has been using helicopters and fighter jets, and firing artillery and shooting guns indiscriminately in civilian areas, as well as targeting civilians. Fighting has occurred between the Tatmadaw and the Arakan Army in civilian areas, including inside villages.

There have been at least 35 civilians killed since December 2018, including several children. Seven civilians were killed after being hit by an artillery shell in Si Taung Gyi village, Buthidaung Township on 22 March. On 3 April, helicopters dropped bombs over villages in Hpon Nyo Leik village tract, including Handong, Leshiprang and Kitoppara in south Buthidaung, killing at least seven Rohingya villagers and injuring at least 50. Many other civilians, including children, have been injured, including eight civilians in Mrauk-U between 15-22 March. Landmines have been seen by villagers placed outside their villages, and injuries as a result of landmines have been reported.

Clashes in the vicinity of villages has resulted in damage to civilian objects, including people's homes. There have also been reports of looting in villages by soldiers.

These reports demonstrate that the Tatmadaw and the Arakan Army are not systematically taking precautions, ensuring that the effects of armed conflict on civilians are minimised and that civilians and civilian objects are protected at all times.

## **Damage to cultural property**

Fighting between 15-22 March in Mrauk-U has resulted in damage to buildings with significant historical and cultural value and six civilians being injured by gunfire and artillery shells. Bunkers have been dug and troops posted on other religious and cultural sites in Kyauktaw Township. It appears that cultural property is not being respected; destruction or wilful damage to historic and cultural property is prohibited under international humanitarian law.

## **Burning of villages**

On 2 March, 24 Rohingya houses in Kun Taing Nar Yar Gone village were burned and on 4 March, 100 houses were burned in Nga Yan Chaung village, in Buthidaung, allegedly by the Tatmadaw and ethnic Rakhine extremists. On 3 April, houses were burned in Hpon Nyo Leik in Buthidaung. These people are now displaced and with their homes burned they are in an extremely vulnerable position. This comes after there was widespread arson across northern Rakhine

following 25 August 2017, contributing to the forced displacement and deportation of over 700,000 people.

I express grave concern about the targeting of civilians and indiscriminate attacks against civilians; civilians, civilian objects and cultural property in Rakhine State must be protected. I am also seriously concerned about forced displacement of civilians and their safety and security, as well as that of civilians in conflict-affected areas. Restrictions on the full and unfettered access to humanitarian assistance is further of concern. I also express serious concern regarding civilians who have been arrested and may be in arbitrary detention.

The Government of Myanmar is reminded of its obligations to ensure the protection of civilians and civilian objects and humanitarian access to internally displaced persons and other affected communities under international law and humanitarian principles.

While I do not wish to prejudge the accuracy of these allegations, please refer to the Annex on Reference to international human rights law attached to this letter which cites international human rights instruments and standards relevant to these allegations.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. How is the Government ensuring that civilians are protected? Please provide information about precautions taken.
3. How many civilians have been killed and injured during the conflict?
4. How is the Government ensuring that civilian objects are protected?

5. Please provide information about whether all military operations are directed at military objectives, how proportionality is ensured and what precautions are taken.
6. Please provide information about the use of heavy weapons and equipment including artillery and helicopters and how they are used proportionately.
7. Which divisions and brigades of the Tatmadaw are conducting the military operations?
8. How do the restrictions on humanitarian access comply with Myanmar's obligations under international humanitarian law to provide rapid and unfettered access to humanitarian actors?
9. How is the Government ensuring that displaced civilians are receiving humanitarian assistance without any discrimination?
10. As the conflict is affecting livelihoods and agricultural practices, how will the Government ensure that future food security is addressed?
11. Please provide the law that the curfew was enacted under, explain the purpose of the curfew and how the Government will ensure the rights of affected communities are protected.
12. Has the Tatmadaw been planting landmines around villages in northern Rakhine?
13. Please provide information about the charges laid against the 26 people alleged to have been connected to the Arakan Army, including their names, the evidence supporting the charges, whether they are detained, and where, or released on bail, whether proceedings against them have begun and whether they have access to a lawyer.
14. What measures is the Government taking to ensure that objects of historic and cultural significance are not damaged by military operations?

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within

60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Yanghee Lee  
Special Rapporteur on the situation of human rights in Myanmar

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, I would like to draw your Excellency's Government's attention to the following provisions and norms of international law.

I recall that during armed conflict, international humanitarian law applies alongside international human rights law. Under the principle of distinction, the parties to the conflict must at all times distinguish between civilians and combatants (fighters) and between civilian objects and military objectives. Attacks may therefore only be directed against combatants (fighters) and never against civilians (Customary IHL rules 1 and 7). Parties to the conflict have a duty to avoid or minimize the infliction of incidental death, injury and destruction on persons or objects protected against direct attack. In the conduct of hostilities, constant care shall be taken to spare the civilian population, civilians and civilian objects (Customary IHL rule 15). Under the principle of proportionality, it is prohibited to launch an attack that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated (Customary IHL rule 14).

I further recall that direct attacks against civilians and indiscriminate attacks are absolutely prohibited and so are acts or threats of violence the primary purpose of which is to spread terror among the civilian population (Customary IHL rules 1 and 2).

I further recall that under international human rights law, the right to life is a non-derogable right which forms part of customary international law (see for example the Universal Declaration of Human Rights article 3). The prohibition of the arbitrary deprivation of life is a rule of jus cogens. This right protects individuals against killings by security forces. It is a violation of the right to life when State officials deliberately kill a person when it is not strictly necessary to protect life. The State is responsible for violations committed by non-State actors operating in support or as agents of State authorities.

I further recall Common article 3 of the Geneva Conventions prohibits "violence to life and person, in particular murder of all kinds" of civilians and persons hors de combat. A person hors de combat is anyone who is in the power of an opposing party; who is defenseless because of unconsciousness or injury; or who clearly expresses an intention to surrender (Customary IHL rule 47).

I further recall that international human rights law enshrines the right to liberty and security of the person and to freedom from arbitrary arrest and detention (see for example the Universal Declaration of Human Rights article 3). The State is obliged to ensure that people arrested or detained are informed of the reasons for arrest or detention,

and are brought before a court promptly, regardless of whether this right of challenge is exercised or not. Freedom from arbitrary detention is a rule of customary international law and it cannot be limited or derogated from. An arrest or detention violates international human rights law if it is unlawful, meaning that is not imposed on such grounds and in accordance with such procedure as are established by law, or is otherwise arbitrary in the sense of being inappropriate, unjust, unreasonable or unnecessary in the circumstances.

Arbitrary deprivation of liberty is also prohibited under common article 3 of the Geneva Conventions. Detention of civilians or other protected persons, other than for reasons and in circumstances permitted by international law, is considered unlawful confinement. Under international humanitarian law, humane treatment of persons implies freedom from arbitrary deprivation of liberty and comparable protection of procedural rights.

It is a violation of international humanitarian law for a party to a non-international armed conflict to order the displacement of the civilian population, in whole or in part, unless an evacuation is required to protect the security of the civilians involved or because of imperative military reasons (Customary IHL rule 129B). This displacement includes forced transfer caused by physical force or violence. Parties to a conflict also have a duty to ensure respect for their obligations under international law so as to prevent displacement caused by their own acts. Unlawful transfer, deportation or displacement of civilians in non-international armed conflicts can constitute a war crime or crime against humanity.

The party responsible for the transfer must ensure, to the greatest practicable extent, proper accommodation for the protected persons and “satisfactory conditions of hygiene, health, safety and nutrition”. Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.

It is a violation of international humanitarian law if a party to the armed conflict, in the context of and associated with the conflict: attacks civilian objects, unless and for such time as they are military objectives; appropriates a town or village’s property for personal use; or fails to respect the property of displaced persons, including failing to protect against destruction or the arbitrary and illegal appropriation, occupation or use of property or possessions left behind (Customary IHL rules 10, 52, 133). Such violations may constitute war crimes.

Under customary international humanitarian law, parties to armed conflicts are required to allow and facilitate rapid and unimpeded humanitarian relief for civilians in need, and are in breach when they impede access of humanitarian relief to civilians; arbitrarily deny consent to enable humanitarian relief operations; or restrict freedom of



movement of humanitarian relief personnel, other than temporarily when it is required by imperative military necessity (Customary IHL rules 55 and 56).