

Myanmar's Investigative Commissions: A History of Shielding Abusers

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As the United Nations Human Rights Council debates steps to provide accountability for grave human rights abuses in Myanmar, it is crucial to recognize that the Myanmar government has a long history of creating mechanisms that aimed to dilute or deflect international calls for action rather than to prosecute those responsible. Since violence broke out in Rakhine State in 2012, successive governments have created no fewer than eight commissions to investigate the violence in the state or to make recommendations for resolving the crisis. Not one of them could be considered credible or impartial, and none have led to more than token accountability for serious crimes against the ethnic Rohingya minority.

For there to be any chance of genuine accountability for what Human Rights Watch and others have found to be crimes against humanity, and the Independent International Fact-Finding Mission on Myanmar called possible genocide, this historical record of failed domestic commissions makes clear that the international community cannot rely on mechanisms created by the Myanmar government. Whether or not the UN Security Council refers the situation in Myanmar to the International Criminal Court (ICC) or the ICC acts on its own, the [need to preserve evidence](#) of serious crimes across Myanmar that could one day be used in prosecutions is urgent. It is critical that the Human Rights Council establish an independent international mechanism to collect, consolidate, preserve, and analyze evidence of serious international crimes and international law violations committed in Myanmar and to prepare files to facilitate and expedite fair and independent criminal proceedings in accordance with international legal standards. The hopes of victims of atrocities for justice depend on it.

Investigations after the 2012 Violence in Rakhine State

Sectarian violence erupted in northern Rakhine State in June 2012 leading to a Myanmar government [campaign of ethnic cleansing](#) against the Rohingya population. In response, then-President Thein Sein appointed a 27-member Commission of Inquiry on Sectarian Violence in Rakhine State to “reveal the truth behind the unrest” and “find solutions for communities with different religious beliefs to live together in harmony.”

The commission was not asked to, and did not, identify perpetrators or call for accountability. Instead, it was instructed to (1) investigate the root causes that led to the disturbance of peace and security; (2) verify the extent of loss of life, property and other collateral damage; (3) examine the effort to restore peace and promote law and order; (4) outline means to provide relief and implement resettlement programs; (5) develop short- and long-term strategies to

reconcile differences; (6) establish mutual understanding and promote peaceful coexistence between various religious and ethnic groups; (7) advise on the promotion of the rule of law; and (8) advise on the promotion of social and economic development.

In its [final report](#), issued on July 8, 2013, the commission showed its bias by using the pejorative “Bengalis” and saying those who insisted on using the term “Rohingya” were “fanning the flames of sectarian violence.” The commission called for increased military, police, and immigration presence in Rakhine State to stop what it called “illegal immigration from Bangladesh”; highlighted accusations made by ethnic Rakhine against international humanitarian agencies; and called for all those who wish to be citizens to be required to be fluent in the Burmese language, thereby excluding most Rohingya, who like many ethnic minorities in Myanmar speak an ethnic language.

The victims of the 2012 violence, many of whom six years later remain in internally displaced persons (IDP) camps in Sittwe, the Rakhine State provincial capital, have received no redress and no justice.

Investigations after the October 2016 Violence

In October 2016, major violence again returned to Rakhine State after Rohingya militants attacked three police outposts near Maungdaw in northern Rakhine State. Human Rights Watch and others [documented a systematic campaign of killings, rape and assaults](#) by Myanmar security forces against the Rohingya population, along with the [burning of hundreds of predominantly Rohingya villages](#). In the months that followed, Myanmar established four different domestic mechanisms to investigate the violence. Not one of those mechanisms led to accountability for abuses committed.

State-Level Commission: Rakhine State Investigation Commission

On October 26, 2016, the Rakhine State parliament announced the formation of an [investigation commission](#) made up of 11 regional legislators. The [commission was comprised](#) of six members of the Arakan National Party (ANP), an ethnic Rakhine Buddhist party; two members of the military-backed Union Solidarity Development Party (USDP); one member of the ruling National League for Democracy (NLD); a military appointee; and a legal advisor to the regional parliament, raising concerns about its independence and impartiality. There were no Rohingya on the commission, although Rohingya constitute an estimated one-third of Rakhine State’s population of three million and were the primary targets of abuses.

Beyond problems with the commission’s composition, members demonstrated a lack of impartiality. U Tun Hla Sein, a USDP commissioner from Rakhine State, [stated that one of the purposes of the commission](#) was “to help indigenous people who fled the clashes.” The phrase “indigenous people” is commonly used to refer exclusively to ethnic Rakhine, effectively excluding the Rohingya.

The commission submitted its final report to the Rakhine State legislature in two months, on December 26, 2016. [The report](#) focused on the attacks on the police posts, finding that those attacks and subsequent clashes were “pre-planned” and calling for tighter security “at schools and in ethnic Rakhine villages where Buddhists live, as well as along security patrol routes beside the Naf River which separates Myanmar and Bangladesh.”

The report did not identify any perpetrators of abuses on either side, nor did it make any findings that could be used to promote accountability mechanisms.

National Commission: Investigation Commission on Maungdaw in Rakhine State

On December 1, 2016, the national government announced the [creation of a committee](#) to investigate the situation in Rakhine State, including “whether outside allegations made in connection to area clearance operations undertaken by security personnel are true,” and to report by January 31, 2017. The 13-member commission was headed by Vice-President Myint Swe, a former intelligence officer, and its composition and mandate raised serious doubts that it would conduct a thorough and impartial investigation into alleged abuses.

Human Rights Watch and others found that the commission [used investigative methods](#) that produced incomplete, inaccurate, and false information. According to [reports](#) by local groups, witness accounts, and [publicly released footage](#), the commission’s investigators badgered villagers, argued with them, told them what not to say, [accused them of lying](#), and interviewed victims – including rape survivors – in large groups where confidentiality was not provided.

The committee’s [interim report](#), released on January 3, 2017, dismissed allegations of rape, rejected evidence of serious abuses and religious persecution, and said there were no cases of malnutrition—contrary to the findings of the UN and others. Although the commission was intended to produce a final report on January 31, [publication was delayed](#) “to wait for” the report commissioned by the UN Office of the High Commissioner for Human Rights (OHCHR).

Three days later, on February 3, OHCHR issued a “[flash report](#)” on the violence in Maungdaw Township that documented widespread rape and other sexual violence, extrajudicial executions, assault, arbitrary detention, enforced disappearances and other abuses. The report concluded that the government security force attacks against the Rohingya “very likely” amounted to crimes against humanity.

The commission’s final report, a summary of which was issued on August 6, 2017, rejected the findings of the OHCHR flash report in their entirety, finding that there was “[no possible evidence](#) indicating any crime against humanity or any act of ethnic cleansing in support of allegations by the United Nations Office of the High Commissioner for Human Rights (OHCHR).” Myint Swe, the head of the commission, said that accusations of genocide and ethnic cleansing were part of a smear campaign by “external forces.”

Military Investigation

Following the OHCHR flash report, the Myanmar [military announced](#) that it was setting up a team to investigate whether soldiers [operated “within the framework of law”](#) and “to ensure that security forces stay away from using excessive force and committing human rights violations.” In a statement it reaffirmed that “legal action will be taken against anyone who breaks any of the directives.”

The army team, led by Lt. Gen. Aye Win, announced its findings on May 23, 2017, stating that its investigation had uncovered no wrongdoing except in two minor incidents. The army investigation team claimed to have interviewed approximately 2,875 villagers in 29 villages in Rakhine State’s Maungdaw Township from February 10 to March 4, 2017. The team said it recorded the testimonies of 408 villagers and interviewed more than 200 soldiers and members of the border guard police. To have interviewed that many villagers the team would have had to interview at least 125 people each day it was in Rakhine State.

The army investigation reported finding two cases of abuse. One involved the theft of a motorbike, for which a soldier was sentenced to one year in jail and received a fine. The other involved military personnel who beat villagers for allegedly not helping to extinguish a fire, for which one officer was “penalized and warned” and two soldiers were sentenced to a year in jail. The investigation team also concluded that the allegations against the army in the OHCHR flash report were either “totally wrong” or “found to be untrue due to false accusations and exaggerations.”

Police Investigation

On February 12, 2017, the [Ministry of Home Affairs announced](#) that a team of five high-ranking police officials would investigate allegations of abuses. Police Adjutant-General Chairman Brig.-Gen. Win Tun headed the enquiry, joined by Brig.-Gen. Nay Win, Col. Nay Tun, Lt.-Col. Maung Maung Lwin and Col. Khin Maung Aye. According to the announcement, the ministry instructed the police force to follow “international standards” and to complete its mission “in accordance with the Criminal Codes and police manual.” The statement said that if the departmental enquiry found that members of the police force had violated human rights then they would be charged under Police Disciplinary Law. To our knowledge the results of this investigation have not been publicly released.

Investigations after the August 25, 2017 Violence

As the recent report of the UN Fact-Finding Mission on Myanmar documents in detail, following coordinated attacks by the militant Arakan Rohingya Salvation Army (ARSA) on military and police outposts on August 25, 2017, the Myanmar military engaged in a campaign of ethnic cleansing against the Rohingya population, committing crimes against humanity and possible genocide. Myanmar’s own investigations into the violence once again appear to have been intended to relieve or deflect pressure for international investigations rather than to advance justice and accountability.

Military Investigation

On September 28, 2017, the UN Security Council held its first public meeting on the crisis, in which [UN Secretary-General Antonio Guterres](#) spoke of the need to ensure accountability for abuses.

On October 13, the Myanmar [military announced](#) that an investigation committee led by Lt. Gen. Aye Win would conduct an investigation into actions by soldiers in Rakhine State after the August militant attacks. Military commander in chief Sr. Gen. Min Aung Hlaing stated that the panel would examine whether soldiers followed the military Code of Conduct and whether they “exactly followed the command” during the operations.

The committee issued a report a month later, on November 13, that fully exonerated the military of abuses. The army investigation team said that it interviewed 3,217 villagers between October 13 to November 7, 2017, collecting 804 witness accounts. Those interviewed reportedly included those whom the committee referred to derogatorily as “Bengalis.” There is no indication that the investigators conducted any interviews in Bangladesh, where hundreds of thousands of Rohingya have fled because of security force operations.

The committee [report concluded](#) that the military acted in accordance with “orders and directives of superior bodies, especially the rules of engagement [ROE] in connection with the rights of self-defence and in discharging duties during the armed conflicts and anti-terrorist operations.” It summarily rejected allegations of rape and other sexual and gender-based violence, looting, destruction of homes and mosques, and indiscriminate killing of Rohingya villagers fleeing their homes. Without basis the report blamed ARSA for setting fire to Rohingya villages, forcing people to flee to Bangladesh, and denied that security forces deployed “heavy weapons” in its operations, such as grenades and “launchers.”

Multi-National Commissions to Provide Recommendations on Rakhine State

The Myanmar government has also created two multi-national bodies to provide recommendations on long-term solutions to the problems in Rakhine State. While these bodies were not mandated with investigating human rights abuses, they demonstrate that even bodies created with the participation of respected international figures can be and have been used by the Myanmar government to deflect criticism and prevent real change.

Advisory Commission on Rakhine State (“Annan Commission”)

In September 2016, State Counsellor Aung San Suu Kyi created the Advisory Commission on Rakhine State, to “examine the complex challenges facing Rakhine State and to propose answers to those challenges.” The commission was chaired by the late former UN secretary-general Kofi Annan and included two additional international members and six domestic members.

Annan took steps to ensure that the commission had a strong mandate – including the ability to fundraise independently, travel unencumbered throughout Rakhine State and Myanmar and have staff based within the country. On August 24, 2017, after over 150 consultations and meetings, the commission presented its final report at a press conference in Yangon. It included 88 recommendations on issues including citizenship for the Rohingya, freedom of movement and education, and spelled out how these should be implemented.

Since the issuance of the commission’s final recommendations, the Myanmar government has repeatedly asserted that it has implemented all but a few of those recommendations. Little has changed on the ground, however, and the government has not addressed the most fundamental questions relating to citizenship and freedom of movement for the Rohingya in Rakhine State, and access for independent monitors and journalists.

While the commission’s work and report received considerable praise, the government has used them to deflect criticism and calls for genuine action. When asked about the commission in July 2017, presidential spokesperson Zaw Htay, who is also director-general of Aung San Suu Kyi’s State Counsellor’s Office, said, “Whenever there is an accusation from the international community, we say we are taking action in line with the recommendations of the Kofi Annan commission. [The commission is serving as a shield for us.](#)”

Advisory Board for the Committee for Implementation of the Recommendations on Rakhine State

In late 2017, the government announced the establishment of an “advisory committee” to make recommendations to the government on the implementation of the recommendations of the Annan Commission. On December 14, 2017, the [government announced](#) that the commission would be headed by Dr. Surakiart Sathirathai, a veteran Thai diplomat, and would include four other international members and five domestic members. The board was not tasked with investigating human rights abuses or ensuring accountability but was instead to focus on advising the domestic commission set up to implement the recommendations of the Annan Commission.

The board’s credibility was quickly called into question. [Bill Richardson](#), a former US ambassador to the UN who was one of the board’s international members, resigned from the board during its first round of meetings in January 2018, denouncing it as a “whitewash.” [Kobsak Chutikul](#), a Thai politician and diplomat who served a secretary for the board, quit in July, asserting that the board had been kept on a “short leash” and expressing his concern that the board’s existence was “going to divert attention from the issues, give a false impression that things are being done.” He said that Myanmar government officials simply “defended the line ... which is always that, ‘This is an internal matter, we are handling it, we haven’t done anything wrong, this is a false narrative.’”

On August 16, 2018, the Advisory Board submitted its final report to the government and was

disbanded.

The New Commission of Inquiry

The Myanmar government announced its most recent mechanism on May 31, 2018 in apparent response to the increased possibility of international action.

On April 9, the prosecutor of the International Criminal Court asked the court to rule on whether it may exercise jurisdiction over the alleged deportation of Rohingya from Myanmar to Bangladesh. Although Myanmar is not a party to the ICC statute, Bangladesh is a party. ICC judges have since [confirmed the court's jurisdiction](#) over the crime of deportation and possibly other crimes whose elements occurred in Bangladesh. The Myanmar [government responded](#) by dismissing the court's interpretation, rejecting the ICC's jurisdiction and denying that anyone had been deported.

In May 2018, members of the UN Security Council visited Bangladesh and Myanmar and called on the Myanmar government to conduct a transparent investigation into abuses in Rakhine State.

On May 31, the government announced that it would be forming an "independent" Commission of Inquiry with one "international personality." Two months later, [it announced](#) that it had formed instead a four-member committee to be led by a former Philippine ambassador, Rosario Manalo, together with Japanese diplomat Kenzo Oshima and Myanmar officials Aung Tun Thet and Mya Thein. The Myanmar government's own descriptions of the commission make clear that the primary purpose of the commission is to deflect pressure from the international community.

On August 29, [presidential spokesperson Zaw Htay](#) stated that the Independent Commission of Enquiry had been formed to "respond to false allegations made by the UN Agencies and other international communities."

Little information has been provided on the terms of reference for the commission, which is not due to report to the Myanmar government until August 2019. While the commission stated that it was committed "[to ensure that the rule of law prevails, seek accountability and promote reconciliation](#)," the actual terms of reference have never been made public. Manalo, the commission's chair, has [made clear](#) that she has little interest in pursuing accountability, stating at the commission's initial press conference:

I assure you there will be no blaming of anybody, no finger pointing of anybody because we don't achieve anything by doing that.... It is not a diplomatic approach to be finger pointing. No saying "you are accountable!" That is not looking for peace.

The composition of the commission raises serious concerns about its credibility and impartiality. The key Myanmar member is Col. Aung Tun Thet, who has made repeated statements demonstrating his bias. Aung Tun Thet is the chief coordinator of the Union Enterprise for Humanitarian, Relief and Development (UEHRD), which is leading the reconstruction of northern Rakhine State. In response to concerns that the bulldozing of villages was destroying many potential sites of evidence, he responded that there was “[no desire to get rid of so-called evidence](#).” He also said, in March 2018, that Myanmar has a “[clear conscience](#),” and that “there is no such thing in our country, in our society, as ethnic cleansing, and no genocide.”

Aung Tun Thet was also a member of the 2016 national investigation commission that, as discussed above, rejected the findings of the OHCHR Flash Report in their entirety.

As Thai diplomat [Kobsak Chitukul](#), who resigned in frustration from the government’s previous advisory board, put it, “This just goes on and on. Next year it will be another commission, another board. It is all for show – there is nothing real. It is a hoax.”