

THE ARAKAN PROJECT

Investigation Commissions to whitewash atrocities?

The need for an independent international investigation mechanism

15 March 2017

On 9 October 2016, a Rohingya armed group¹ accompanied by villagers attacked three border posts, killing nine police personnel and seizing weapons and ammunition in Kye Kan Pyin, Nga Khu Ya (North Maungdaw Township) and Koe Tan Kauk (Rathedaung Township). Security forces immediately launched counter-insurgency operations in North Maungdaw and completely locked down the area, suspending all movement as well as humanitarian access. These clearance operations involved collective reprisals against civilians, committed with total impunity. Gruesome human rights violations were perpetrated by security forces, ranging from arson attacks, summary killings of villagers, gang-rape of women and girls, destruction of property and crops, mass arrests and disappearances. The NLD-led government has mostly denied these allegations of abuses.

To date, three national investigation commissions have been established, with mandates to probe into allegations of human rights violations in Maungdaw. They have yet to submit their final reports.

- a) A **national-level Investigation Commission** established by President's Office Notification No. 89/2016 on 1 December 2016, comprising 13 members and chaired by Vice-President U Myint Swe;²
- b) An **Army Commission** of 5 members headed by Lt-Gen. Aye Win set up on 9 February 2017;³
- c) A **Police Commission** with 5 members led by Brig.-Gen. Win Htun formed by the Ministry of Home Affairs Departmental Inquiry on 11 February 2017⁴.

The Army and Police Commissions are internal investigations, but were established on the request of the national level Investigation Commission⁵ in the wake of the publication of a damning OHCHR flash report (based on 220 interviews with refugees in Bangladesh who had fled from the locked down area)⁶.

¹ The militants identified themselves under the name of Al-Yaqin (or Faith Movement) in several video clips that circulated on social media in October and November 2016.

² President's Office, Notification 89/2016, [Formation of Investigation Commission](#), 1 December 2016.

³ Myanmar Ministry of Information, Tatmadaw Releases reaction to OHCHR report, 9 February 2016.

⁴ The Global New Light of Myanmar -, *Ministry of Home Affairs issues press release*, 12 February 2016.

⁵ Myanmar Ministry of Information, [Investigation Commission writing full report on Maungdaw](#), 19 February 2016.

⁶ UN OHCHR, Report of OHCHR mission to Bangladesh, [Interviews with Rohingyas fleeing from Myanmar since 9 October 2016](#), Flash report dated 3 February 2017.

All of these commissions lack independence, impartiality and credibility, and are extremely unlikely to uncover the truth about what happened, hold perpetrators of abuses accountable, or result in justice or effective remedy for the victims and their families. Previous statements released by the Myint Swe Commission raised serious concerns that the commission will simply reiterate the blanket denial of abuses repeatedly issued by the government. Indeed, its interim report published on 3 January did just that (see below).

1. Composition

The national-level Investigation Commission is chaired by Vice-President U Myint Swe, a former senior military commander, an ex-chief of Military Intelligence and the presidential candidate nominated by the military. Its members include Maj.-Gen. Zaw Win, the current Chief of Police, as well as former and serving government officials. It has only two female members. The composition of this commission, whose members are affiliated to the agencies allegedly responsible for the abuses to be investigated, precludes its independence and impartiality.

Similarly, the Army and Police Commissions are solely composed of military and police personnel respectively, and are tasked with investigating themselves. This is not in line with international standards for such investigations.

2. Competency

The national-level Investigation Commission (Myint Swe Commission) suffers from a glaring lack of professionalism. It does not include forensic or medical experts, nor qualified human rights investigators with the skills required for interacting with victims and witnesses of torture and sexual and gender-based violence, or with vulnerable victims such as children. Villagers complained that they employ prejudiced and insensitive interpreters, without adequate interpretation skills. The Commission does not appear to have any technical capability when it comes to the collection and preservation of forensic and other sensitive data.

3. Methods of work and conduct during field investigations

An attempt at manipulating victims' testimonies was published by state media with a video montage titled 'Fake rape'⁷, followed by a press statement "*Information Committee refutes rumours of rapes*"⁸ released in English on the State Counsellor's website on 26 December. The hostile behaviour of the interpreter pressuring Jamalida, a rape victim from Pyaung Pyit village, to stop talking, his selective and inaccurate translation, interference by spectators and sarcastic comments by commissioners can be observed in just two minutes of video recording. Beyond what she actually said – much of which was ignored by the interpreter – the video footage provided a disgraceful glimpse into the working methods of the Commission: an interview conducted in a public place, with multiple onlookers, and an aggressive style of questioning, with Jamalida's body language clearly indicating her discomfort at the situation. Her picture and personal details exposed in the media constitute serious breaches of confidentiality.

⁷ Zaw Htay's [Facebook page with the video montage](#), 23 December 2016.

⁸ State Counsellor's Office, [Information Committee refutes rumours of rapes](#), 26 December 2016.

The commissioners appeared to have no intention of listening to her testimony – only to want to make her admit that she had not been raped. Such disrespect for the integrity – and dignity – of a woman who had experienced sexual violence is unacceptable.



The lack of professionalism and the absence of any clear methodology raise serious concerns, and could lead to further traumatization and lasting psychological effects on victims and witnesses.

From 10 to 17 February 2017, the Myint Swe Commission carried out another field mission in North Maungdaw to ‘verify allegations of abuses’ included in the OHCHR report. Their third visit took place concurrently with field investigations conducted by the Army and Police Commissions. The various commissions jointly toured several villages. During that period, the Arakan Project field team attempted to document the conduct of these three investigation commissions in six villages of the locked-down area. The proliferation of commissions created confusion among villagers, often unable to distinguish between them. This is itself a problem and raises questions about informed consent.

Villagers complained especially about the manner they were treated by the members from all three commissions during their field inquiries. A general grievance is that the various investigation commissions showed little interest in listening to their testimonies of abuses; some villagers were even rebuffed. Other villagers when questioned preferred for their own safety to reply that they did not know anything or simply denied that any abuses had taken place.

We received a number of reports about these visits to villages, including those listed below.

- *Nga Khu Ya (Myint Swe Commission)*

When the Myint Swe Commission visited **Nga Khu Ya** village on 15 February 2017, a Rohingya man reportedly approached them to tell that one of his relatives was still missing. In return the commissioner asked him whether he had seen or knew the attackers. When he replied that he did not know anything about the attackers, but wanted to inform them about his missing relative, the commissioner walked away and did not take any notes.

- *U Shey Kya (Myint Swe Commission)*

On the same day, the Myint Swe Commission visited **U Shey Kya**. Villagers were assembled in the school compound but were not given any opportunity to talk to the

commissioners. A man nevertheless came forward to inform them that his wife had been raped. One of the commissioners replied: “Where is she? Your wife must come to tell this herself.” The man rushed home to fetch his wife, but, when they arrived back at the school, the commissioners had already left. This villager concluded that the commissioners were not interested in meeting and taking rape victims’ statements.

- **Kyet Yoe Pyin** (three commissions together)

Of particular interest is the report received from **Lu Pan Pyin village of Kyet Yoe Pyin Village Tract**. According to the villagers, the three investigation commissions arrived together in 17 vehicles in the morning of 15 February. Villagers had been gathered in the school ground and commissioners [they believe that they were members of the Myint Swe Commission] asked them a series of questions about rape, burnt houses, etc.



The grave sites in Kyet Yoe Pyin

At some point, they asked whether the villagers knew of any mass graves. The villagers responded that there were two graves near their village – one with four bodies and the other with three bodies. The commissioners and police then went to the spot and ordered villagers to dig up the ground where 4 bodies had been buried. The grave contained the remains of three women (the wife and daughters of Anisur Mustafa who had migrated to Saudi Arabia) and a man named Sukkur, who had been killed following the 9 October attacks and buried in this site by security forces.

The police briefly examined the unearthed corpses and took a series of photographs. They then asked relatives of the deceased what they wanted to do with the dead bodies. Apparently the relatives could not decide, and police then ordered villagers to cover the pit with soil again. They marked

the location of this grave site, as well as the other pit beside it which had not been opened, with a numbered bamboo stick – the number “4” corresponding to the pit with four bodies and the number “3” for the other grave site beside it (see picture above). Villagers also reported that gold jewellery found on the women’s bodies was taken away by police.

On 21 February, state media reported this discovery and stated that the police found that “*the body of the man had one gunshot wound that entered under his left arm and ended in his head, that two of the three women had gunshot wounds in the backbone and suffered fractured spines, whereas the third woman had no visible injuries*”⁹

These findings in Kyet Yoe Pyin suggest the absence of any methodology or capacity to collect and document such evidence. It is concerning that the police did not secure the grave

⁹ Myanmar Ministry of Information, [Four bodies found in Maungtaw](#), 21 February 2017.

site, collect and preserve forensic evidence, including establishing the cause of death. Despite the report on the Ministry of Information website, no information is forthcoming on whether a police case or investigation has been opened. Villagers indicated suspicion that the police may have tampered with evidence.

- ***Dar Gyi Zar (Army Commission)***

On 12 February the Army Commission visited **Dar Gyi Zar**. 28 villagers from four villages (7 men and 3 women from Dar Gyi Zar, Yae Khat Chaung Gwa Son, Thu U Lar and Myaw Taung respectively) had been assembled in the school ground of Dar Gyi Zar. Before the Army commissioners arrived, the local BGP commander warned them not to report anything negative against the security forces.

At the school, the inquiry team first called 'Kabir' (not his real name) selected from Dar Gyi Zar, and interrogated him as to who committed arson. Kabir confirmed that the Army did it. The officer then asked him how they ignited the fire, and Kabir explained that soldiers used rocket launchers. He was then requested to describe a rocket launcher, which Kabir did. The Army officer then commented: "How come that you know so many details about a rocket launcher? You appear to be knowledgeable about weapons. You are surely connected to the attackers!" Kabir was then held aside by several soldiers, while the officer interrogated another villager. An officer then came to Kabir with different weapons, placed them in front of him and asked him to show which one was a rocket launcher. Kabir was scared and replied that he did not know. He then said that he actually did not know who had set houses on fire in his village. Kabir managed to flee from the school. After the Army Commission left, BGP searched for him and visited his house. But Kabir did not return to Dar Gyi Zar. Our monitor was also present at the school during the Army investigation and witnessed the scene with Kabir.

- ***Kyar Gaung Taung (Army Commission)***

According to villagers, a convoy of eight cars arrived in Kyar Gaung Taung in the afternoon of 12 February and the commissioners introduced themselves as being from the Army Commission. They asked to talk to community leaders and four village heads came forward. They described in detail what had happened in the village and the commissioners took notes. They especially raised the issue that the families of those arrested had not received any news about them. The commissioners replied that they would raise the matter with the authorities.

On 16 February, the Rakhine Village Administrator called out 18 names and said that the Township Administrator had issued them with travel authorisations (Form 4) and a permit to visit their relatives detained in Buthidaung Jail, with their travel expenses paid for.

- ***U Shey Kya (Army Commission)***

On 27 February the Army commission visited **U Shey Kya** and talked to 11 villagers, including three rape victims. On the morning of 2 March, a group of soldiers arrived in the village and took away the three rape victims by car as well as the mother of one of them and the village leader. They only informed them that high-ranking military officials wanted to meet them but did not reveal where they were being taken to. The women returned to U Shey Kya in the afternoon on the next day. These women later told us that they had been taken to the Kyein Chaung Army camp, together with other women from Yae Khat Chaung Gwa Son,

for interrogation by military officers. They were repeatedly questioned about the rapes, the killings and arson attacks, the perpetrators and also about the armed group. They were not beaten, nor sexually harassed, but did not receive any food until sunset, when the military finally released them. However, the Army did not drive them back to U Shey Kya and they had to stay overnight in a local house and return on foot the next day.

As in Kyar Gaung Taung, the Army Commission promised 16 relatives of detained villagers to arrange travel permits to visit Buthidaung Jail.

At the end of February, 18 villagers from Kyar Gaung Taung and 16 from U Shey Kya were taken to Maungdaw town where they had to stay overnight and pay 3,000 Kyat. The authorities arranged transport to Buthidaung. We talked to two women whose sons, both children aged 14 and 16 respectively, had been arrested and were detained in Buthidaung Jail. The jail visit was very brief. They were able to meet their sons for no more than 10 minutes, and found them in poor health. They did not say whether they had been tortured.

- ***Kyar Gaung Taung (Police Commission)***

On 20 February, the Police Commission visited **Kyar Gaung Taung**. The villagers believe that it was the Police Commission because the main officer was from the police, but the team did not introduce themselves and they were also accompanied by a military officer.

The villagers gathered at the school, where they told the commissioners about a mass grave holding the bodies of three people, Abdus Salam and two youths from Yae Khat Chaung Gwa Son who were found in Abdus Salam's house, tied up and then burnt alive by the Army. The police said that they were expecting a medical staff-person to join them, but he never arrived. The police did not express further interest and did not examine the grave site.

Later in February (date unknown), Army and Police reportedly called the village leader and Abdus Slam's wife and ordered them to sign a written document that they had died of illness.

- ***Yae Khat Chaung Gwa Son (Police Commission)***

On 3 March 2017, the Police Commission accompanied by an Army officer went to **Yae Khat Chaung Gwa Son**. They were shown a pit where villagers had buried the three dead bodies of Mohammed Kashem, his wife and son-in-law, shot from a helicopter gunship on 12 November. They had buried them on the ground of Kashem's burnt house. The police instructed the villagers to dig up the site and unearth the dead bodies. They examined the human remains, took pictures and ordered the villagers to bury them again. Reportedly they told villagers that they did not find evidence of gunshots and Kashem's daughter had to sign a document. Villagers did not know whether this was a declaration that her parents and husband had died of natural causes.



The grave site in Yae Khat Chaung Gwa Son

4. Threats, intimidation and fear

Villagers have been threatened and intimidated before, during and after commission field visits.

Reports that village leaders had to sign written statements that security forces had acted lawfully have emerged since October. Before official visits, including by the commissions, local authorities often warned villagers against reporting any wrong-doings by security forces. Despite this, a number of villagers dared to risk coming forward to testify to these commissions.

Apart from the case of Dar Gyi Zar mentioned above with the Army Commission, we did not receive other reports of witnesses directly intimidated during the commissions' field trips.

However, after the commissions had left, local authorities summoned several witnesses and victims, and searched for them, raising fear and concern over possible reprisals. As of 15 March, we have not received reports of villagers arrested for talking to the various commissions. Nevertheless fear instilled by such threats has forced some to flee for their safety.

A villager from Myaw Taung told us,

“We can't even tell them what happened to us and mention who did all the burning, killing and looting. We need security after we speak to such commissions. We must be assured that authorities will not arrest us after talking to them. Otherwise, no matter how many commissions would be formed, no result will ever come out.”

The lack of victim and witness protection mechanisms is another major failing of the various investigation commissions to date.

+++

In addition to the composition and lack of independence of the commissions, the Arakan Project has documented a number of shortcomings in their working methods, which have undermined the collection of evidence, placed victims and witnesses at risk of reprisals and created a climate of fear and confusion in northern Rakhine State. They include:

- **Lack of confidentiality**
- **Inappropriate and aggressive questioning of victims**
- **Threats and intimidation of villagers**
- **Manipulation and misrepresentation of victim testimonies**
- **Lack of transparency and communication about investigating authority**
- **Concerns about collection and preservation of evidence**

The Arakan Project is seriously concerned that these commissions will not be able to establish the facts, or deliver justice to the Rohingya people of Rakhine State who so desperately want their stories to be heard.

5. Reporting standards

On 3 January 2017, the Myint Swe Commission released an **interim report**, after a single field visit of just 3 days in the affected area from 11 to 13 December 2016.

Its findings on alleged atrocities perpetrated by security forces were summarized in two paragraphs. The Commission concluded that the mere presence of the ‘Bengali’ population and of mosques and Muslim clerics proves ‘that there was no genocide or religious persecution in the region’. As for alleged human rights violations, it assessed that there was ‘insufficient evidence’ to substantiate claims of rape and to take legal action. It also stated that arson, illegal arrests and torture were being investigated.

In addition, the report refuted cases of malnutrition on the ground of ‘favourable conditions for fishing and farming’, contradicting UN data, collected through sound methodologies. UNOCHA issued a press release on 13 December that 10,800 beneficiaries of nutrition treatment, including 3,400 severely malnourished children, prior to 9 October, were denied humanitarian access in northern Rakhine State¹⁰.

Moreover, the Commission report used the controversial term ‘Bengali’ to refer to the Rohingya, despite the fact that the State Counsellor had instructed government officials in 2016 to use the terminology ‘Muslim community in Rakhine State’.

The Commission conducted a second 3-day field trip to Maungdaw from 6 to 8 January 2017 but the submission of its final report, due on 31 January, was postponed without a set deadline to allow more time to examine new human rights allegations¹¹, anticipating the release of the OHCHR flash report on 3 February 2017.

Thereafter, the Commission carried out a third field mission in Maungdaw between 10 and 17 February 2017 and plans to conduct further investigations in Bangladesh in March¹². A field visit to Bangladesh raises serious concerns with regard to refugee protection. In view of the Commission’s conduct in Myanmar, it will require voluntariness, informed consent and confidentiality from interviewees. Moreover, there is a risk of reprisals against their family members in northern Rakhine State.

Meanwhile, on 28 February 2017, the Myanmar military organised a rare press conference in Nay Pyi Taw and General Mya Tun Oo, Chief of General Staff, declared that ‘villagers told military investigators they did not know about any abuses’¹³.

¹⁰ OCHA Update - [Humanitarian situation in the northern part of Rakhine State, Myanmar](#), 13 December 2016

¹¹ President’s Office, [Rakhine Investigation Commission asks for more time due to new human rights allegations](#), 30 January 2017.

¹² President’s Office, Maugtauw Region Investigation Commission, [Press release](#), 24 February 2017.

¹³ Reuters, [Myanmar army defends operation against Rohingya, denies reports of abuses](#), 28 February 2017.

CONCLUSION

The OHCHR report released on 3 February documented grave human rights violations committed against the Rohingyas during ‘clearance operations’ since 9 October 2016 and concluded that these abuses could ‘very likely’ amount to crimes against humanity.

In only one instance the government took action, after video footage of police beating Rohingya villagers during a raid in Koe Tan Kauk appeared online at the end of December 2016. Three police involved in the beatings and filming of the video were only sentenced to two months in police detention and three senior police officers were demoted for failing to enforce discipline¹⁴. No one has been criminally investigated or prosecuted in connection with human rights violations. A Rohingya man arrested for involvement in the border post attack in Koe Tan Kauk on 9 October was sentenced to death on 13 February 2017¹⁵.

The UN Special Rapporteur on the situation of human rights in Myanmar, Ms. Yanghee Lee, as well as the UN High Commissioner for Human Rights, Prince Zeid Ra’ad al-Hussein, have called for an international Commission of Inquiry on the ground that the Government of Myanmar has failed to conduct a credible investigation and take any effective action to hold perpetrators to account.

It should be noted that the mandate of the Advisory Commission on Rakhine State chaired by former UN Secretary-General Kofi Annan established in August 2016 does not include investigating human rights violations and is limited to “providing recommendations to the Government of Myanmar on measures for finding lasting solutions to the complex and delicate issues in Rakhine state”¹⁶.

The call for a Commission of Inquiry or other similar international investigation mechanism is also supported by national and international human rights organisations, including Amnesty International and Human Rights Watch, as well as by the Arakan Project.

¹⁴ AFP in “Frontier Myanmar”, [Police in Rohingya abuse video get reprimand, ‘didn’t intend to harm’](#), 8 February 2017.

¹⁵ President’s Office, [Sittway Court gives death sentence to culprit involved in Kotankauk outpost attack](#), 14 February 2017. Note that while the death penalty remains part of the legal framework in Myanmar, there have been no executions in the country since the late 1980s.

¹⁶ Advisory Commission on Rakhine State, [Mandate of the Commission](#).