

**DODGING ACCOUNTABILITY AND WHITEWASHING CRIMES: TIME FOR
BURMA/MYANMAR INTERNATIONAL INVESTIGATION MECHANISM**

**“I assure you there will be no blaming of anybody, no finger-pointing...”
Rosario Manalo, head of Burma’s latest Commission of Enquiry (CoE) into human
rights violations in Arakan/Rakhine State, 16 August 2018.¹**

Manalo’s words confirmed what most observers already suspected: The CoE is the latest in a long tradition of Burmese sham internal investigations. This latest development underlines the urgent need for a UN-mandated International, Impartial and Independent Mechanism (IIIM) to collect, preserve, and analyze evidence of serious international crimes, and identify perpetrators for future criminal prosecutions in accordance with international law.

❖ **Ongoing military crimes**

In addition to ongoing oppressive conditions in Arakan State, the Tatmadaw continues to act with impunity in Kachin and Shan states where crimes against ethnic nationality civilians go unpunished. In recent months serious crimes perpetrated by the military include:

Rohingya in Arakan State: Living under lockdown

In **August**, following a visit to Arakan State, a Bangladeshi official delegation revealed the ongoing oppressive conditions the Rohingya are enduring in Burma. “The houses of the Muslims were under barricade. The commercial establishments of the Muslims were completely shut. There is no livelihood opportunity for them,” said Habibul Kabir Chowdhury. Another official speaking under condition of anonymity said: “People inside the houses have practically been under house arrest...none of the residents is allowed to go out or nobody is permitted to enter the houses. Aid agencies have been providing food to the people inside the houses.” While a third anonymous official said he “saw mosques burned while the pagodas of the Buddhists were intact,” and that he saw no sustainable livelihood opportunities for returning Rohingya in Maungdaw or Buthidaung.²

Rape, murder and torture of civilians

In **July**, the Tatmadaw tortured, raped and killed six Ta’ang National Liberation Army (TNLA) female medics after LIB 301 ambushed their vehicles, also killing one TNLA soldier. The bodies were discovered with severe wounds on two of the medics’ heads and bodies, as well as signs of mutilation and rape.³ In **April**, a Tatmadaw soldier raped a 73-year old woman and slashed her head and ears to steal her earrings, near Mong Phyak town, eastern Shan State.⁴

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¹ Coconuts Yangon (17 Aug 18) Suu Kyi’s Rakhine enquiry commission says it will not seek accountability for rights abuses

² Radio Free Asia (20 Aug 18) Bangladesh Official: Myanmar is Not Conducive For Rohingya Return

³ Free Burma Rangers (26 July 18) Burma Army Tortures and Kills Six Female Medics, Continues Campaign Against Civilians

⁴ Shan Human Rights Foundation (23 Apr 18) Brutal rape of 73-year-old woman by Burma Army soldier in Mong Phyak highlights vulnerability of women in militarized eastern Shan State

Also in **April**, the Tatmadaw shot dead Mutraw indigenous Karen community leader Saw O Moo, accusing the indigenous rights activist of being a “saboteur”.⁵ In **March**, Tatmadaw troops from IB 23 shot dead two civilians and stole their motorcycle in Kyaukme Township, Shan State.⁶ On the same day, Tatmadaw troops tied up and severely tortured a local farmer accusing him of being a spy. The farmer insisted that he came only to feed his cow but the soldiers “tied his hands behind his back, beat him with a rifle butt, and kicked him all over, till he was bleeding.”⁷ In **January**, Kachin farmers Hpaugan Yaw and Nhkum Naw San went missing after they were last seen being dressed in a KIA uniform by the Tatmadaw. Their bodies were discovered in March with bullet wounds to the head.⁸

Blocking of humanitarian aid

In **April**, the Tatmadaw refused permission to Christian and community leaders to provide humanitarian assistance to Kachin IDPs.⁹ In **May**, the Tatmadaw further blocked aid shipments and denied access to thousands of IDPs stranded in the jungle and conflict zones in Kachin State, including families newly displaced by fresh attacks.¹⁰ Over 7,000 people in Tanai, Injangyang, Mogaung, and Hpakant townships were displaced after fresh violence broke out, with the military reportedly denying access to aid groups to displaced populations in Kamai sub-township and Tanai Township for several weeks.¹¹

Burmese authorities called on Bangladesh to stop providing life saving humanitarian aid to Rohingya refugees in the “no man’s land” between both countries. The first request was made in **February**, only a week following a warning issued by Burmese Maj. Gen. Aung Soe to refugees that they would face “consequences” if they did not vacate the land.¹² The second demand was made in **August**, with Burmese officials offering to arrange their own supply of humanitarian assistance. If Bangladesh agree to do so, it would leave refugees at the mercy of Burmese officials administering essential aid.¹³

Indiscriminate attacks, civilian displacement and human shields

In **April**, Tatmadaw troops launched an offensive against the KIA in Injangyang, forcing about a thousand civilians to leave their homes to nearby Than Phare village.¹⁴ A KIA spokesperson said that the Tatmadaw sent about 2,000 infantry troops, fighter aircraft, and helicopters to combat KIA forces.¹⁵ In **February**, armed clashes between the Tatmadaw and the TNLA caused more than 150 people to flee their homes to Hseni Township to escape shell bombardment.¹⁶ Those who fled said that two military helicopters attacked the villages twice.¹⁷ In **January**, the Tatmadaw announced that it had seized a military outpost and customs gate belonging to the KIA, with at least five civilians killed and many injured in airstrikes.¹⁸ Tatmadaw troops also ordered villagers and miners to come out of their shelters, using them as human shields when walking towards KIA positions in Tanai Township.¹⁹ Around 3,000 civilians were trapped between opposing troops in the battle zone in Tanai because of Tatmadaw checkpoints.²⁰

⁵ The Irrawaddy (09 Apr 18) Tatmadaw Kills Indigenous Karen Community Leader, Local Groups Say; The Irrawaddy (11 Apr 18) Tatmadaw Claims Killed Karen Community Leader Was a Plainclothes Fighter

⁶ Shan Human Rights Foundation (26 Mar 18) Killing and torture of civilians by Burma Army in Kyaukme & Mong Kung townships

⁷ Shan Human Rights Foundation (26 Mar 18) Killing and torture of civilians by Burma Army in Kyaukme & Mong Kung townships

⁸ Fortify Rights (20 Feb 18) Myanmar: Investigate Whereabouts of Two Kachin Civilians Detained by Military; Reuters (11 Mar 18) Myanmar opens murder investigation after men found 'shot' in the head

⁹ UNOCHA (29 Apr 18) Myanmar: New Displacement in Kachin (1 April – 29 April 2018); UCA News (20 Apr 18) Concern grows for displaced Kachins trapped in jungle

¹⁰ World Watch Monitor (15 May 18) Myanmar: 7,000 Kachin displaced as violence escalates; The Guardian (14 May 18) ‘Slow genocide’: Myanmar’s invisible war on the Kachin Christian minority

¹¹ Fortify Rights (12 May 18) Myanmar: Drop Criminal Charges Against Peaceful Anti-War Protesters

¹² Asia Correspondent (21 Feb 18) Burma tells Bangladesh to stop aid to Rohingya in Zero Line; Frontier Myanmar (12 Feb 18) Myanmar minister orders refugees to leave no man’s land between Rakhine and Bangladesh

¹³ Channel News Asia (12 Aug 18) Myanmar asks Bangladesh to stop aid to stranded Rohingya

¹⁴ DVB (27 Apr 18) More Kachin villagers flee as clashes intensify

¹⁵ Reuters (27 Apr 18) Myanmar rebels say clashes with government could displace more people; DVB (27 Apr 18) More Kachin villagers flee as clashes intensify

¹⁶ DVB (07 Feb 18) TNLA clashes with Tatmadaw in Shan State’s Kutkai Township

¹⁷ RFA (06 Feb 18) Fighting Between Ta’ ang and Myanmar Armies Forces Residents to Flee Kutkai

¹⁸ DVB (29 Jan 18) Burmese army seizes KIA base near Tanai mines

¹⁹ Kachinland News (29 Jan 18) Breaking News: Local Reports Say Burmese Army Troops Using Civilians As Human Shields

²⁰ Kachinland News (29 Jan 18) Breaking News: Local Reports Say Burmese Army Troops Using Civilians As Human Shields; DVB (29 Jan 18) Burmese army seizes KIA base near Tanai mines

❖ Budget increases for the military

The military has enjoyed annual budget increases with an overall increase of 171.67% between 2011/2012 and 2018/2019. In **January**, the Ministry of Defense (MoD) asked for a budget of more than K1.3 trillion (US\$1 billion) for April-September – an amount higher than the combined total of the health and education budgets.²¹ In **July**, the MoD requested a budget of K3.26 trillion (US\$2.2 billion) for the October 2018-September 2019 fiscal year – a 2.19% increase on 2017. The request was equivalent to 13.07 percent of the annual budget, estimated at nearly K25 trillion (US\$17 billion).²²

	Overall Budget (Kyat, Trillion)	Military Budget (Kyat, Trillion)	% Year to Year Difference	Military % of Overall Budget
2015-2016	K 20.8	K 2.7	+ 17.39%	12.98%
2016-2017	K 23.6	K 3.3	+ 22.22%	13.98%
2017-2018	K 20.6	K 3.19	-3.33%	15.49%
Budget for April-Sept 2018 to cover bridging period to new fiscal year timeframe not available				
2018-2019	K 25	K 3.26	+2.19%	13.07%

❖ Destruction of evidence

A pattern of destroying evidence of rights violations and military crimes has emerged:

In **February**, Human Rights Watch (HRW) published satellite imagery revealing the destruction of Rohingya villages in northern Arakan State. The satellite imagery suggested demolitions were ongoing, with depopulated villages left empty by fleeing Rohingya refugees bulldozed. HRW reported that the initial demolition began in Maungdaw town, Arakan State in November 2017, followed by a pause of approximately one month in December. Destruction then resumed on 7 January 2018 in villages along the coast north and south of Maungdaw town.²³ In response, Aung Tun Thet, now a member of the CoE, said “there’s no desire to get rid of the so-called evidence.”²⁴ In **March**, Amnesty International reported that the Burmese government was building military bases over vacated and torched Rohingya villages, describing it as a land grab on a “dramatic scale”. They said their findings – based on eyewitness testimony and expert analysis of satellite images – made the safe and dignified return of Rohingya refugees a distant prospect.²⁵

❖ Targeting of human rights activists, journalists and whistleblowers

While Burmese officials have destroyed evidence of its own crimes, it has also intimidated, suppressed and arrested human rights activists and journalists who attempt to shed light on rights violations:

Reuters journalists case

Reuters journalists Wa Lone and Kyaw Soe Oo have been in detention charged with violating the Official Secrets Act since 12 December 2017. The reporters – who were investigating military crimes at the Inn Dinn Massacre in Arakan State at the time of their arrest – were officially charged under the Official Secrets Act, and are now facing trial over a potential 14-year prison sentence.²⁶ It has become a landmark case internationally, drawing criticism for its egregious attack on press freedom and intimidation of journalists attempting to report on the crimes of Burmese authorities.

The arrest of peace activists

In **April and May**, peace rallies spread from Kachin State throughout the nation in response to the escalation of military attacks in Kachin state which included targeting of civilians and the IDP crisis. In Myitkyina, Kachin State, more than 3,000 people staged a peaceful peace march, while around 3,000 Kachin youth simultaneously staged a sit-in protest. Peace rallies spread to Rangoon, Mandalay

²¹ The Irrawaddy (17 January 18) Defense Ministry Asks For Budget Increase

²² The Irrawaddy (25 Jul 18) Education Ministry Suspends Construction of 6,000 New Schools

²³ Human Rights Watch (23 Feb 18) Burma: Scores of Rohingya Villages Bulldozed

²⁴ Reuters (26 Feb 18) Bulldozing Rohingya villages was not 'demolition of evidence', Myanmar official says

²⁵ Amnesty International (12 Mar 18) Myanmar: Military land grab as security forces build bases on torched Rohingya villages

²⁶ Reuters (09 Jul 18) Myanmar court files secrets act charges against Reuters reporters

and Bago throughout May. Security forces responded to protests with violent force, using batons to break up the protests.²⁷ Numerous participants were arrested and charged under Article 19 of the Peaceful Assembly and Procession Law stipulating authorities must be notified of protests. Three human rights defenders faced charges of defamation from the Tatmadaw for speeches given at the rallies. In total, approximately 50 human rights defenders were arrested, charged and/or convicted for their peace activism. **In January**, a Karenni/Kayah State court sentenced five Karenni men to a 20-day prison sentence for violating the Peaceful Assembly Law. The men were arrested on 22 December for organizing a protest in Loikaw, northern Karenni State after three Karenni National Progressive Party soldiers and a civilian were executed by Tatmadaw troops.²⁸

Conviction of former child soldier

In **March**, former child soldier Aung Ko Htwe was sentenced to two years imprisonment with hard labor – the maximum sentence allowable – for contravening section 505(b) of Burma’s Penal Code. He was ruled to have said statements intended to cause “fear or alarm to the public” in an interview he gave to Radio Free Asia about his forced conscription into the Tatmadaw as a minor.

❖ A long tradition of “investigative whitewashing”

2018 COMMISSION OF ENQUIRY: ACCOUNTABILITY OR “SHAM” INVESTIGATION?	
Biased & inappropriate members of the inquiry	<p>CoE Chair, Rosario Manalo, has been criticized for playing the "go along to get along" game, with more interest in playing politics than protecting rights.²⁹ Said in August 2018 that “there will be no blaming of anybody, no finger-pointing” as part of the CoE.³⁰</p> <p>Japanese member of the CoE, Kenzo Oshima, said in August 2018 that the commission has been brought in to “bring in more balance, set the record straight” against existing narratives shaped by many “too one-sided” reports.³¹</p> <p>Aung Tun Thet said “there’s no desire to get rid of the so-called evidence” when responding to February 2018 reports that Rohingya villages were bulldozed to eliminate evidence of rights abuses.³² In March 2018 he said “there is no ethnic cleansing or genocide” when responding to a UN report implicating Burmese officials in genocide.³³ In April 2018 he admitted that “tortures happened” to the Rohingya but that “it’s not my concern” if it amounted to ethnic cleansing or war crimes. He also said repatriating Rohingya demonstrates “there was no intention of ethnic cleansing.”³⁴</p>
Long track record of dubious internal investigations absolving the military of wrongdoing	<p>In 2017 alone there were three investigations carried out into military rights violations in Arakan State:</p> <p>Feb 17: The Police Departmental Inquiry led by Brig Gen. Win Htun was formed by the Ministry of Home Affairs. No conclusive final report was published.³⁵</p> <p>Feb 17: A Military Inquiry Board led by Lt. Gen. Aye Win was formed by the Tatmadaw. The Board concluded in May 2017 that a UN report alleging military rights abuses was “totally wrong”.³⁶</p> <p>Oct 17: Another internal inquiry launched by the Tatmadaw to investigate August 2017 violence in Maungdaw concluded in November 17 that there were “no deaths of innocent people” and all security forces “strictly abided by orders”.³⁷</p>

²⁷ Reuters (12 May 18) Myanmar riot police break up anti-war protest in Yangon
²⁸ The Irrawaddy (15 Jan 18) 5 Karenni Men Sentenced Under Peaceful Assembly Law
²⁹ UCA News (1 Aug 18) Cover-up claim over Myanmar’s new Rohingya abuse probe
³⁰ Coconuts Yangon (17 Aug 18) Suu Kyi’s Rakhine Enquiry Commission says will not seek accountability for rights abuses
³¹ Coconuts Yangon (17 Aug 18) Suu Kyi’s Rakhine Enquiry Commission says will not seek accountability for rights abuses
³² Reuters (26 Feb 18) Bulldozing Rohingya villages was not 'demolition of evidence', Myanmar official says
³³ New York Times (14 Mar 18) Myanmar Rejects U.N. Findings: 'No Ethnic Cleansing or Genocide in Our Country'
³⁴ The Daily Star (20 Apr 18) 'Not my concern'
³⁵ The Arakan Project (15 Mar 17) Investigation Commissions to whitewash atrocities?
³⁶ Human Rights Watch (24 May 17) Burma: Army Investigation Denies Atrocities
³⁷ Tatmadaw True News Information Team (13 Nov 17) [Facebook post](#)

Refusal to cooperate with existing inquiries	<p>The Burmese government refused to cooperate with the UN's Human Rights Council Independent International Fact-Finding Mission on Myanmar established in March 2017, banning members from entering Burma to investigate rights abuses.</p> <p>Since July 2017, the Burmese government has also refused to cooperate with Special Rapporteur on the situation of human rights in Myanmar Yanghee Lee after it objected to her end-of-mission statement, also barring her from entering the country.³⁸</p>
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As merely the latest in a long line of flawed internal investigations tasked with investigating military rights violations, the CoE established in July was immediately met with widespread skepticism. Initially, the lack of details provided about the commission – with its remit, powers, and timeframe given to complete its report still unclear – suggested it's yet another attempt to evade international accountability. More recently, the appointment of biased and inappropriate members – as well as statements made undermining the integrity of the CoE's purpose – have further dashed hopes that this may represent a legitimate attempt at achieving accountability over rights violations.

In addition to the CoE and investigations held during 2017, the government of Burma initiated four high-level investigations on Arakan state between 2012 – 2016 which were denounced as flawed and biased. These investigations cleared security forces of wrongdoing and failed to address the fundamental need for civilian protection:

- **August 2012** Commission on Sectarian Violence in Rakhine State. Independent reports of human rights violations against the Rohingya were dismissed by then-President Thein Sein as part of a “smear campaign” against his government.³⁹
- **February 2014** Inquiry Commission for Doo-Chee-Yar-Tan incident and related events. The Commission claimed there was no evidence to support a UN statement that 48 Rohingya civilians were killed in January 2014, instead blaming the villagers for the death of a police officer.⁴⁰
- **October 2016** State-level Committee on violence in Maungdaw. Committee Chair Aung Win notably told media that it was impossible that soldiers had raped Rohingya women because “they are very dirty... They are not attractive.”⁴¹
- **December 2016** Investigation Commission on violence in Maungdaw. The Commission's January and August 2017 reports concluded it could not confirm cases of rape, torture, and killings in Arakan State. Commission Chair Vice-President Myint Swe told reporters: “There is no possibility of crimes against humanity, no evidence of ethnic cleansing.”⁴²

**“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.”**

Kobsak Chutikul, Retired Thai diplomat who quit the Myanmar advisory panel, August 2018⁴³

³⁸ OHCHR (20 Dec 17) Myanmar refuses access to UN Special Rapporteur

³⁹ AFP (19 July 13) Myanmar Leader Says Ethnic Cleansing Claims are “Smear Campaign”

⁴⁰ DVB (11 Mar 14) Duchira Dan commission slams UN, media; denies massacre; Mizzima News (12 Mar 14) Panel recommends citizenship for eligible Muslims in Rakhine State; RFA (11 Mar 14) Myanmar Panel Rejects Claims of Rohingya Killings, Recommends Citizenship; Irrawaddy (11 Mar 14) Govt Investigation Dismisses Allegations of Rohingya Killings

⁴¹ BBC (07 Nov 16) Muslim civilians killed by Burmese army; The New York Times (13 Nov 17) Violence escalates between Myanmar forces and Rohingya

⁴² Global New Light of Myanmar (04 Jan 17) Interim Report of the Investigation Commission on Maungdaw; Human Rights Watch (7 Aug 17) Burma: National Commission Denies Atrocities

⁴³ Washington Post (21 Aug 18) A year after the assault on the Rohingya, Myanmar's generals are unapologetic