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From Persecution to Procrastination: The Ongoing Struggle of Rohingyas

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ABSTRACT

Almost 7 years ago, Rohingya genocide left its horrible impact on humanity. The Rohingya genocide is a series of ongoing persecutions and killings of the Muslim Rohingya people by the Burmese military in Myanmar. It's been almost five years since Gambia approached International Court of Justice against this attack on humanity by Myanmar but still the judgement is pending. The Rohingyas were dispersed to other neighbouring countries and are living there in refugee camps since then. They are facing intensified restrictions on their movement, education and livelihood which is of utmost important for a human being to live with dignity. They are homeless. They are still waiting for the court to deliver its judgement so they can go back to their homes. The genocide against Rohingyas is a gross violation of International law. More than 730,000 Rohingyas fled to precarious, flood-prone camps in Bangladesh, while about 600,000 remain under oppressive rule in Myanmar. Rohingya Muslims are still awaiting justice and protection of their rights seven years after the Myanmar military began a sweeping campaign of massacre, rapes and arson in northern Rakhine State. The proceedings of this case in ICJ should be fast tracked and it should be considered as top most priority. There is need to implement the international law for protecting humanity. The court should consider the point that delayed justice is another torture on the Rohingyas. In this article we will discuss how Rohingyas are subjected to procrastination and what are its ill effects.

Keywords: Justice, Rohingyas, Genocide.

I. INTRODUCTION

Almost 7 years ago, Rohingya genocide left its horrible impact on humanity. The Rohingya genocide is a series of ongoing persecutions and killings of the Muslim Rohingya people by the Burmese military in Myanmar. The United States, United Kingdom, and other countries refer to the events as “ethnic cleansing”³. The crisis forced over a million Rohingyas to flee to other countries. Most fled to Bangladesh, resulting in the creation of the world’s largest refugee

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³ Griffiths, David Wilkinson, James (13 November 2017). “UK says Rohingya crisis ‘looks like ethnic cleansing’”.

camp⁴, while others escaped to India, Thailand, Malaysia, and other parts of South and Southeast Asia, where they continue to face persecution.

The persecution of Rohingya Muslims in Myanmar dates back to the 1970s. Since then, the Rohingya people have been persecuted on a regular basis by the government and Buddhist nationalists. In late 2016, Myanmar's armed forces and police launched a major crackdown against the people in Rakhine State which is located in the country's north western region.



Figure 1 (Source: Internet)

The Burmese military was accused of committing ethnic cleansing and genocide by various United Nations agencies, International Criminal Court officials, human rights groups, journalists, and governments⁵.

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Who are rohingyas and what is their legal status?

The Rohingyas are an ethnic Muslim minority who practice a Sufi-inflected variation of Sunni Islam. There are an estimated 3.5 million Rohingya dispersed worldwide. Before August 2017, the majority of the estimated one million Rohingya in Myanmar residing in Rakhine State, where they accounted for nearly a third of the population. They differ from Myanmar's dominant Buddhist groups ethnically, linguistically, and religiously. Neither the central

⁴ "Myanmar's Rohingya Crisis Enters a Dangerous New Phase", *Crisis Group*.

⁵ "AP finds mass graves, latest evidence of Rohingya genocide in Myanmar", *CBS News*

government of Myanmar nor Rakhine's dominant ethnic Buddhist group, known as the Rakhine, recognize the Rohingya community. Government refuses them to grant citizenship due to which they don't have legal documents regarding their identities. Rohingya's are registered as temporary citizens with white cards which means they have limited citizenship rights but these cards cannot be produced as proof of citizenship.

II. REASON BEHIND THE GENOCIDE

The sentiment of local Rakhine people is often seen as a mix of hatred of Muslims and historical feelings of deprivation in terms of land and opportunities. The feeling of deprivation was formed during British rule. Arakan was an independent kingdom until it was invaded by Burma in 1784 and annexed to British India in 1826 after 40 years of Burmese rule. Under the British, immense numbers of immigrants went from Bengal to Arakan in search of economic opportunities and land. At that time, the wage level in Arakan was much higher than that of Bengal, and seasonal employers in Arakan replaced Arakanese with "Chittagonians." Also, the British encouraged immigration for agricultural purposes and vast arable lands were granted to the newcomers. When the Arakanese who fled Arakan due to oppressive Burmese rule came back to their homeland, the land was no longer theirs⁶. The feeling of deprivation, laced with deep religious and ethnic divisions, erupted into communal violence since times.

Along with such political and identity reasons, there were some security reason too which was used as an excuse by the Myanmar. In August 2017, a small band of Rohingya known as Rohingya Salvation Army (ARSA) carried out an attack in Myanmar. After which the government declared it a terrorist organisation which led to military retaliation against the entire Rohingya population, producing the fastest refugee movement since the 1994 Rwandan genocide. Over 675,000 Rohingya fled the country in just three months, seeking safety in Bangladesh. They joined 300,000 refugees who had fled in earlier waves of ethnic violence, and thousands are still crossing the border each day.

III. ROLE OF OTHER COUNTRIES IN THE MATTER

This mass killing of rohingya community sought the attention of all countries over the world. United States of America, United Kingdoms and many other countries referred it as "ethnic cleansing". The matter was criticised by many countries as the crime against humanity. The UN fact-finding mission recommended that the Security Council impose an arms embargo and other sanctions on Myanmar and top military officials. On 3 February 2017, the Office of the United

⁶ Aya Chen, "The Development of a Muslim Enclave in Arakah (Rakhine) State of Burma (Myanmar)."

Nations High Commissioner for Human Rights (OHCHR) released a report based on interviews with more than 200 Rohingya refugees, which said that the abuses included gang-rape, mass killing, and killing children.

UNICEF has been on the ground in the refugee camps in Bangladesh from day one, and is still there for every Rohingya refugee child who needs clean water, health care, protection, nutritious food and education and many other international organisation which worked for the welfare of rohingya community. Meanwhile, many countries, including the United States, Canada, Norway, and South Korea, as well as international donors, have upped their humanitarian assistance. Advocacy groups including Human Rights Watch, Amnesty International, the Arakan Project, and Fortify Rights continue to appeal for international pressure on Myanmar's government⁷.

In November 2019, Gambia, on behalf of the fifty-seven-nation Organization of Islamic Cooperation, filed the first international lawsuit against Myanmar at the International Court of Justice, accusing the country of violating the UN Genocide Convention. Both Gambia and Myanmar are parties to the genocide convention. Gambia, which ratified the Genocide Convention in 1978, brought the case under Article 9 of the convention, which allows for disputes between parties "relating to the responsibility of a State for genocide" and related acts to be submitted to the ICJ. The case is known as *Gambia v. Myanmar* case.

IV. ROLE OF INTERNATIONAL COURT OF JUSTICE SO FAR

When it comes to Myanmar, and the plight of its Rohingya people in particular, the international community has consistently failed to adequately respond when faced with serious risks, or even the actual commission of, mass atrocities. The words "prevention" and "never again" ring hollow when the world's most powerful, including the United Nations Security Council, did little as a genocide against the Rohingya was unfolding in Myanmar's Rakhine State.

No nation dared to initiate legal action at the International Court of Justice (ICJ) for more than two years since 2017's escalation of state violence against the Rohingya. Ultimately, it was the smallest country in mainland Africa – Gambia – that filed a case at the ICJ in November 2019. Gambia accused Myanmar of violating the Genocide Convention and requested the Court to issue provisional measures in order "to protect against further, irreparable harm to the rights of the Rohingya group," in its application. Two months later, the ICJ ordered Myanmar to *prevent genocidal acts generally, to specifically ensure military and police forces do not commit*

⁷Council on foreign relations, the Rohingya crisis, *Eleanor Albert and Lindsay Maizland*, *cfr.org*.

genocidal acts, to preserve all evidence of genocidal acts, and to report back to the court on compliance with these measures.

The first required report was submitted by Myanmar to the ICJ on May 23. The report was not made public and was not shared privately with outside parties, including the Security Council. While the ICJ is not required to share the report, it is at least an option for Security Council members to make such a request – collectively or individually – to the ICJ. Importantly, 13 of the 15 current members of the Security Council are also parties to the Genocide Convention, and therefore have dual obligations to prevent and punish acts of genocide committed against the Rohingya. Examining the first report submitted in May and the subsequent reports due every six months, would allow Council members to monitor compliance with the provisional measures and ensure that Myanmar is doing everything in its power to protect the Rohingya⁸. The preliminary objections were filed by Myanmar’s civilian government just before it was overthrown in a military coup in February 2021, and argue that the court does not have the jurisdiction to hear the case. Among other things, Myanmar is attempting to have the case thrown out on the grounds that that The Gambia was acting as a proxy for the Organization of Islamic Cooperation, and that the court can only hear cases between nations.

Article 9 of the CPPCG⁹ gives the ICJ jurisdiction over disputes between states about “the interpretation, application or fulfilment” of the convention. Whether this provision encompasses charges that a state has actually committed genocide has been a matter of some dispute over the years. The court concluded in previous cases that parties to the CPPCG “are bound not to commit genocide, through the actions of their organs or persons or groups whose acts are attributable to them.” This conclusion applies both to the crime of genocide itself, which is defined in art. 2 of the CPPCG, and to the four other punishable acts listed in art. 3, namely conspiracy, attempt, direct and public incitement, and complicity. Replying to the argument that international law does not recognize the concept of state crimes, the court said that it was ruling on issues of state responsibility, not state criminality, referring to what it calls “duality of responsibility¹²”. However, international Court of Justice does not have any machinery to force its decisions on the parties.

In the present matter during hearings in February, a lawyer for The Gambia called on the judges to “reject Myanmar’s meritless preliminary objections and proceed to adjudicate the merits of

⁸The rohingya genocide and the ICJ, the role of international community, *Nadira Kourt, James Crawford, The International Law Commission’s Articles on State Responsibility: Introduction, Text and Commentaries (Cambridge: Cambridge University Press), 2002.*

⁹ The Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) adopted on 9 December, 1948.

this dispute.” As it happens, the merits of the case have been clouded by the political struggle that has unfolded in Myanmar since the military coup, particularly, the question of who has the right to represent Myanmar at the hearings. While the military junta assumed the right to represent Myanmar at the ICJ, the opposition National Unity Government (NUG) asserts that it is the legitimate representative of the country. To this end, in January, the NUG officially recognized the ICJ’s jurisdiction, pledged to withdraw all of the preliminary objections, and promised to cooperate with the proceedings¹⁰.

In its ruling, the court unanimously rejected Myanmar’s objections, and rejected one by a vote of 15 to 1. The order affirmed that “the applicant in this case is the Gambia”; that “a dispute relating to the interpretation, application and fulfilment of the Genocide Convention existed between the parties at the time of the filing of the application by the Gambia”; and that “the Gambia, as a state party to the Genocide Convention, has standing to invoke the responsibility of Myanmar for the alleged breaches of its obligations under Articles I, III, IV and V of the Convention.”

However, prosecutors at the ICC are investigating crimes committed against the Rohingya who were forced to flee to Bangladesh. The rohingya genocide matter is still pending in the court and Rohingya Muslims are still awaiting justice and protection.

V. HOW THE DELAYED JUSTICE AFFECTING LIVES OF ROHINGYAS?

It is a famous saying that Justice delayed is justice denied. It can be also be seen in the present case where rohingyas are living homeless in other countries. The large number of rohingyas are living in Bangladesh and other neighbouring countries like India and Thailand. They are living an uncertain life, without any hope of returning back to their homes in near future. There is scarcity of funds for managing the refugee camps. Rohingya do not have access to education, health care services and a dignified livelihood. They are more vulnerable to crimes in foreign nations. The countries where they had took shelter are unable to provide them all the facilities which is necessary for a human being. Especially, in Bangladesh which is passing through revolutions and political turmoil right now.

The delayed judgement is another torture on rohingyas. They have their eyes on the ICJ to deliver its judgement so they can return back to their homes. The past role of International Court of Justice and other countries in this matter makes it difficult to believe that the justice is possible in near future.

¹⁰ ICJ to Rule on Myanmar’s Objections in Rohingya Genocide Case, *Sebastian Strangio*.

VI. CONCLUSION

The genocide against rohingyas is a gross violation of International law. More than 730,000 Rohingya fled to precarious, flood-prone camps in Bangladesh, while about 600,000 remain under oppressive rule in Myanmar. Rohingya Muslims are still awaiting justice and protection of their rights seven years after the Myanmar, military began a sweeping campaign of massacre, rapes and arson in northern Rakhine State. The proceedings of this case in ICJ should be fast tracked and it should be considered as top most priority. There is need to implement the international law for protecting humanity. The court should consider the point that delayed justice is another torture on the rohingyas.
