

Rohingya Crisis: A Call for Justice

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Introduction

In 2017, the security forces in Myanmar launched a brutal campaign against the Rohingya minority and has generated massive human rights violations. The heinous campaign of crimes against humanity, genocide and ethnic cleansing drove more than 700,000 refugees into Bangladesh, making one of the largest refugee crises in this century. The targeted and widespread violence against the Rohingya community is considered an internal matter of Myanmar, but the impact is global. Following the military crackdown in 2017, the crisis has destabilized the regional peace and security. The gravity of the crimes should be addressed repeatedly in order to sensitize the international community to bring in a sustainable solution to the crisis. Therefore, the violent acts by Myanmar government, which constitute the crimes against humanity, the acts of genocide and the process of ethnic cleansing, need to be explored accordingly.

Crimes against Humanity

Crimes against humanity are serious inhumane crimes committed by a State or through an organizational policy that transforms these crimes from crimes of exclusive domestic jurisdiction to crimes under international law. The Charter of International Military Tribunal for the Trial of German Major War Criminals, also known as Nuremberg Charter, defined crimes against humanity as:

“Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”¹

If the definition is summarized simply, it can be said that 'Crimes against humanity' refers to the crimes committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. The crimes include: murder, enslavement, extermination, imprisonment, deportation, torture, rape, prosecution on political, racial religious grounds and other inhumane acts. States or Non-state actors can be held responsible for crimes against humanity. It is important to note that crimes against humanity constitutes four elements. The elements are-

1. The acts must be inhumane in nature and character that cause great suffering or serious injury to body or to mental or physical health
2. It must be a part of widespread and systematic attack
3. The crimes must be committed against civilians
4. And finally, it must be committed on one or more discriminatory grounds, including political, racial or religious grounds ²

¹ William A. Schabas and Nadia Bernaz. *Routledge Handbook of International Criminal Law*. New York: Routledge, 2011.

² *ibid*

Genocide

The term genocide was coined by the Polish lawyer R. Lemkin in 1914. The destruction of a group or the intention to destroy entire groups based on national, racial, religious and cultural grounds are not an old phenomenon in the history of mankind. Genocide are recognized as the acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial and religious group. The acts include:

- (1) killing members of the group;
- (2) causing serious bodily or mental harm to members of the group;
- (3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (4) imposing measures intended to prevent births within the group;
- (5) forcibly transferring children of the group to another group;³

Ethnic Cleansing

Since the beginning of 1990, the term 'ethnic cleansing' emerged as the most widely known forms of violence directed against a certain group based on different grounds. Ethnic cleansing is closely associated with genocide, but it is more focused than that. It is concerned on geography and on forced removal of ethnic or related groups from particular areas. Though the term 'ethnic cleansing' is not being used in many international legal instruments, it is a policy carried out by the strong states to change

³ Robert Cryer et al., eds. *An Introduction to International Criminal Law and Procedure*. New York: Cambridge University Press, 2010.

the population map, particularly in the border region. The overlapping between ethnic cleansing and genocide takes place when the forced removal of a particular population from a certain territory leads to the destruction of that community.

The Rohingya Crisis: The Reflections of Crimes against Humanity, Genocide and Ethnic Cleansing

The Rohingya community have long faced a systematic discrimination and persecution in their homeland through a range of policies and practices by the state, which are recognized as crimes against humanity by many international organizations, including Amnesty International.⁴

In 2017, the Myanmar military launched a brutal campaign of ethnic cleansing, crimes against humanity and genocide that drove more than 7,00,000 Rohingya in Bangladesh. Given the nature of the grave crimes, the UN official labelled Myanmar's treatment of its Muslim Rohingya minority as a textbook example of ethnic cleansing.⁵

The Myanmar government has institutionalized discriminatory policies against the Rohingya group through many ways, including the restrictions on marriage, education, family planning, employment, religious choice and freedom of movement. Though the first democratic election in Myanmar was held in 2015 after fifty years of military rule, the shift to a less authoritarian government has not benefited the Rohingya ethnic minority. The 1948 citizenship law of Myanmar was exclusionary from the very

⁴ Amnesty International. "Crimes Against Humanity in Myanmar." *Amnesty International*, May 19, 2019. URL <https://www.amnestyusa.org/our-work/government-relations/advocacy/crimes-against-humanity-in-myanmar/>

⁵ Human Rights Watch. "Crimes Against Rohingya Go Unpunished." *Human Rights Watch*. August 22, 2019. URL <https://www.hrw.org/news/2019/08/22/myanmar-crimes-against-rohingya-go-unpunished>

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beginning. The military junta came in power in 1962 and they introduced a law in 1982 that stripped the Rohingya of the rights of full citizenship. The military junta issued temporary resident identification cards to the Rohingya, which was known as 'White Card'. The possession of white card did not recognize them as citizens, it just provided them with a limited right.⁶ The identification cards excluded Rohingya as one of the 135 national races, fully labeling them as foreigners.

This identification led to a series of violent campaigns. In 1970, the Rohingya people encountered first brutal atrocities from the Myanmar authorities, resulting in widespread displacement. There were many anti-Rohingya propaganda and manipulation from the Buddhist Rakhine population that led to Buddhist-Muslim violence in 2012, making nearly 75,000 Rohingya people leave their places.⁷

The most violent military crackdown against the Rohingya population took place in August 2017. The Myanmar security forces launched a widespread military clearance operation based on the information that the insurgent Arakan Rohingya Salvation Army (ARSA) attacked 30 police posts and killed 12 personnel. The entire campaign was directed against the Rohingya people who largely belonged to the civilian population. The images captured by Satellite revealed that a coordinated attack took place throughout Maungdaw, Buthidaung and Rathedaung townships, including looting and burning of villages, property destructions, and violence against civilians. As

⁶ Elanor Albert and Lindsay Maizlan. "The Rohingya Crisis." *Council on Foreign Relations*, January 23, 2020. URL <https://www.cfr.org/background/rohingya-crisis>

⁷ Nicole Messner *et al.* "Qualitative evidence of crimes against humanity: the August 2017 attacks on the Rohingya in northern Rakhine State, Myanmar." *Confl Health* 13, 41 (2019). <https://doi.org/10.1186/s13031-019-0227-8>

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mentioned earlier, this campaign drove over 7,00,000 refugees in Bangladesh in the Kutupalong and Nayapara refugee settlements. Almost 40 percent of the refugees were under the age of 12.⁸

It is reported that the Myanmar government denied the Rohingya fundamental freedoms and deprived them of access to the basic humanitarian services and sustainable livelihoods. Rohingya couples in the towns of Maungdaw and Buthidaung are only permitted to take not more than two children. They must seek permission from the authorities to marry. Most of the cases, they have to bribe the authorities and share the photos of the bride without any headscarf and the groom with a clean-shaven face, which conflicts with Islamic customs. Additionally, a Rohingya must take approval from the government before traveling outside of their own township. The Rohingya community encounters widespread poverty and lack of employment opportunities. Rohingya people have been facing discrimination mostly on racial and religious ground long before the eruption of the violent conflict.⁹

As discussed earlier, the Myanmar government refused to grant the Rohingya citizenship rights, making them stateless effectively. The lack of citizenship rights introduced many discriminatory grounds. The authorities restricted their freedom of movement and limited their access to healthcare, work opportunities and education for not being the citizens of Myanmar. The stripping of the citizenship rights, thus being stateless group, reflects the experience of Palestinian. In 1948, more than

⁸ ibid

⁹ Elanor Albert and Lindsay Maizlan. "The Rohingya Crisis." *Council on Foreign Relations*, January 23, 2020. URL <https://www.cfr.org/backgrounder/rohingya-crisis>

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700,000 Palestinian Arabs were displaced from their lands by a war that established the Israeli declaration of Independence and triggered one of the largest refugee crises around the world that is not solved yet.¹⁰

Even after 70 years, the world has not witnessed any effective solution to the crisis, leaving many Palestinian stateless up to this date. This is a matter of concern because the fate of Rohingya may meet with the similar consequences in the absence of effective initiatives.

The violence directed against the Rohingya community was not limited to stripping them of their citizenship rights or barring their access to education, healthcare facilities or work opportunities. The atrocious campaign of 2017 was the reflections of crimes against humanity, genocide and ethnic cleansing. Thousands of Rohingya people were shot to death, many young men were tortured in the detention sites and a large number of old men and women were slaughtered. Many Islamic scholars, including the Imam and Muazzin, were brutally tortured and put behind the bars because of their religious beliefs and practices. The Buddhists and Myanmar security forces took many Rohingya women to camps and other places to assault them sexually. Countless young girls were raped and burnt alive by the security forces during the brutal campaign. The violent treatment committed by the Myanmar government constituted all the crimes included in the definition of crimes against humanity.

¹⁰ Kateryna Kadabashy. "Palestinian refugees: The state of statelessness." Arab News, May 14, 2019. URL <https://www.arabnews.com/node/1497066/middle-east>

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Moreover, the brutal campaign met with all the four elements of the crimes against humanity. First, the acts were inhumane in nature and character which caused great suffering to both mental and physical health of the Rohingya people. Second, it was a widespread and systematic attack against the Muslim Rohingya community. Third, the crimes were committed against Rohingya civilians. Fourth, the violent acts were directed against Rohingya mostly because of their Muslim identity.

Needless to say, the whole act by the Myanmar security force was the complete presentation of a genocidal campaign. The brutal acts included the murder of the Rohingya people, destruction of the lives and properties and annihilation of the entire community.

This ethnic cleansing of the Rohingya population was achieved by this campaign through a systematic and coordinated effort by the Myanmar security forces. The entire effort was made to forcefully remove the Rohingya community from the Rakhine state, pushing Rohingya communities toward starvation by burning local markets and barring access to farmland. Hundreds of Rohingya villages were burnt to ashes in deliberate manner.

It is important to note that crimes against humanity, genocide and ethnic cleansing fall under the jurisdiction of international criminal law. Given the gravity and nature of the crimes, the attention of the international community are required to provide fair judgment to the oppressed ones and find a sustainable solution to the crisis.

The Rohingya Crisis and the International Response

The Rohingya crisis has already exposed how the international mechanism and efforts remain ineffective. As for such genocide, the international community has buried its head in the sand.¹¹

The extent of violence in the Rakhine state has shocked the international community, like the United Nations and European Union, but the response concerning the crisis has been limited to some strong condemnation, failing to put an effective embargo on Myanmar to curb the violence.

When the violence erupted, it was expected that the UN Security Council would take necessary steps such as an arms embargo on Myanmar or surveillance of the conflict areas. But no such effort is in place till date. In fact, in March 2017, China, backed by Russia, blocked a statement by UNSC that was supposed to express humanitarian concerns over the Rohingya crisis. More than a multiple time, Myanmar brushed aside the allegations of genocide, but the international community seemed unresponsive. However, amidst the global pressure, Myanmar signed a bilateral agreement with Bangladesh to ensure a safe and voluntary return of Rohingya refugees, but the repatriation process met with two failed attempts since Myanmar did not share any statement concerning the protection of the Rohingya people before the process began. Also, the process sidestepped the involvement of any third-party.¹²

¹¹ New Age Opinion. "World response to Rohingya crisis so far ineffective." New Age, March 14, 2018. URL <https://www.newagebd.net/article/36768/world-response-to-rohingya-crisis-so-far-ineffective>

¹² ibid

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India's response to the crisis is not satisfactory as the country shares economic ties with Myanmar. India brushed aside the crisis for strengthening a strong trade relation with Myanmar and enabling cooperation on counterinsurgency missions in the North-East India.

China has political, economic and security interests with Myanmar. Russia has some business interest too as Myanmar was the second largest buyer of Russian arms and weapons from Southeast Asia from 2011 to 2016.¹³

In October 2017, the United States only announced the withdrawal of military assistance to Myanmar when the state recognized that the violence against Rohingya constitutes ethnic cleansing.¹⁴ But very recently, United State has declined to declare the campaign a genocide.¹⁵

Israel, a state which gives priority to interests over moral values, has been maintaining a warm relationship with Myanmar. The state allowed its arms companies to sell weapons to Myanmar. However, in the wake of international uproar against Myanmar, the country stopped selling its weaponry. But it remains a matter of concern as to why the Israeli arms companies refuse to reveal the current sale trends.¹⁶

¹³ *ibid*

¹⁴ World without Genocide. "Myanmar- Genocide of the Rohingya." URL <http://worldwithoutgenocide.org/genocides-and-conflicts/myanmar>

¹⁵ Conor Finnegan. "3 years later, US pressed to declare Rohingya crisis 'genocide', hold Myanmar accountable." *Abc NEWS*, August 25, 2020. URL <https://abcnews.go.com/Politics/years-us-pressed-declare-rohingya-crisis-genocide-hold/story?id=72522830>

¹⁶ Charles Dunst. "Israel maintains warm ties with Myanmar, downplaying a human rights controversy". *The Times of Israel*, February 6, 2019. URL <https://www.timesofisrael.com/israel-maintains-warm-ties-with-myanmar-downplaying-a-human-rights-controversy/>



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It is observed that no permanent members of the Security Council are interested to take proper steps against Myanmar to hold the country accountable. There are many reasons as to why the big players are reluctant to take legal actions against Myanmar. All it comes down to a point that the major powers have complex relationship with the Muslim populations.

Major States	Relationship with Muslims	Strategic interests in Myanmar
China	Internal Problem with Uyghur Muslims	● Containment policy against India ● Belt and Road Initiative ● Arms trade ● Natural resources
India	Internal Problem with Kashmiri Muslims	● Containment policy against China ● Natural resources, ● Arms trade ● Countering insurgency and separatist movements in Northeast India
Russia	Internal Problem with Chechen Muslims	● Arms trade ● Natural resources
USA	Residual post-9/11 Islamophobia	● Containment policy against China

Source- Das, Shuva. "The Ineffective International Response to the Rohingya Crisis-A Paradox". *OXPOL*, March 27, 2020.

China, India, Russia and Israel have major problems with the Muslim population - the Uyghur Muslims, Kashmiri Muslims, Chechen Muslim and the Palestinian Muslims respectively. The aforementioned state believes that the Muslim community poses a threat to their territorial integrity, and therefore, the countries have been repressing the Muslim population for a long time. If these countries take any action against Myanmar for the protection of Rohingya community, a series of questions will be raised over the internal policies of these countries concerning the treatment of Muslim population. The 9/11 attack in the USA increased Islamophobia in its society and culture. Therefore, the US government may face domestic backlash if it takes any steps to protect the Rohingya Muslim community.¹⁷

Additionally, Myanmar is a country rich in oil and natural gas. Therefore, this resource rich country has turned into a strategic partner for the big powers. The Rohingya-populated areas are of great importance to China because of its regional integration program- Belt and Road Initiative. India and Russia have strategic interests over gas lines in Myanmar. They have invested in gas exploration and extraction projects in Myanmar. On the other hand, the USA wants to maintain a friendly relationship with Myanmar to contain the influence of China over this region. Like the USA, India is also looking for ways to counter China's dominance in this region as India is largely dependent on Myanmar. Myanmar helps India to maintain stability and ensure security in Northeast India for countering any kind of insurgency movement. Israel's first friend

¹⁷ Shuva Das. "The Ineffective International Response to the Rohingya Crisis-A Paradox". *OXPOL*, March 27, 2020. URL <https://blog.politics.ox.ac.uk/the-ineffective-international-response-to-the-rohingya-crisis-%E2%94%80-a-paradox/>

in Asia was Myanmar. Both countries have shared a strong historical cooperation since the 1950s.¹⁸

Gambia: The Beam of Light for Rohingya Community

Despite the ineffective international response, the Rohingya community saw the beam of hope when Gambia lodged a 45-page application with the International Court of Justice (ICJ) against Myanmar in November 2019. Gambia, a small state of West Africa, called for emergency steps to be taken against the Myanmar government and its security force, until the launch of a fuller investigation.¹⁹

The country accused Myanmar with the breach of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Both the countries are parties to the Genocide Convention.²⁰ However, being the smallest country of mainland Africa, Gambia has set an example of south-south solidarity concerning human rights violations. Gambia's approach showed the world that even a small country can use international instruments to promote and protect human rights beyond its continent.

The international community did not take sustainable steps to deter Myanmar until Gambia decided to opt for this landmark judgment.

In January 2020, the court's initial ruling ordered Myanmar to take necessary steps for the protection of the Rohingya community.

¹⁸ *ibid*

¹⁹ BBC News. "Myanmar Rohingya: What you need to know about the crisis." *BBC*, January 23, 2020. URL <https://www.bbc.com/news/world-asia-41566561>

²⁰ Katja Creutz. *International Responses to the Rohingya Crisis in Myanmar*. FIIA Briefing Paper, May 2020.

ICJ can rule on disputes between states, but the International Criminal Court (ICC) can investigate the cases of crimes against humanity and war crimes against individuals. The body approved a full investigation into the case of the Rohingya in Myanmar. Even though Myanmar is not a member of the court, ICC still has the jurisdiction in the case because Bangladesh, which hosts more than one million Rohingya refugees, is a member of ICC.

However, Aung San Suu Kyi, Myanmar state counsellor, denied all the allegations of genocide and defended her country's military. She denied any kind of genocidal intent on the part of the military. Referring to the crackdown as an 'internal conflict', she shared that Myanmar's military responded to an attack by armed level groups called Arakan Rohingya Salvation Army (ARSA). Surprisingly, she did not use the term 'Rohingya' in her speech.²¹ This clearly showed that she did not want to recognize the rights and existence of this minority group that has been persecuted for years in Myanmar.

Conclusion

Crimes against humanity, genocide and ethnic cleansing have taken place in Myanmar for a long time against the persecuted Rohingya population. Hundreds of thousands of Rohingya are still there in Myanmar who cannot move freely. They continue to face widespread abuse and lack of access to education and healthcare facilities, not to mention arbitrary inhumane treatments and abuse. In those regions, access for

²¹ Anealla Safdar and Usaid Siddiqui. "ICJ speech: Suu Kyi fails to use 'Rohingya' to describe minority." *Al Jazeera*, December 13, 2019. URL <https://www.aljazeera.com/news/2019/12/13/icj-speech-suu-kyi-fails-to-use-rohingya-to-describe-minority>

humanitarian aid has been limited. At the same time, the access of media and human rights experts are strictly denied.²²

The most-preferred solution to the Rohingya crisis is the safe, voluntary and dignified return of the refugees back to Myanmar. Though Bangladesh and Myanmar signed a bilateral agreement on the return and repatriation of the Rohingya, the process met with failure twice because Rohingya refugees are not willing to go back until they are promised with safety and security by the Myanmar government. Given the current development, the repatriation of Rohingya to Myanmar is a dim prospect. However, it is important to note that Bangladesh, being the eight most populated country in the world, provided shelter to more than one million refugees till date. It will be challenging for the country to host a large number of refugees until the repatriation process takes place. For now, the international community must step forward to ease the burden of Bangladesh and work hand in hand to facilitate the process of repatriation. At the same time, necessary steps must be made to hold Myanmar accountable in order to deter further crimes and promote confidence among the Rohingya community for the possibility of dignified return.

²² Daniel Sullivan. Report on "5 Key priorities to address the Rohingya Crisis". *Refugees International*. August 22, 2018. URL <https://www.refugeesinternational.org/reports/2018/8/22/5-key-priorities-to-address-the-rohingya-crisis>

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