

LEGAL STRUGGLE OF ROHINGYA MUSLIMS

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Gambia, the smallest country in continental Africa, took an unprecedented step, in the realm of international justice and filed a lawsuit at the International Court of Justice (ICJ) accusing Myanmar of committing genocide against the minority Rohingya Muslim community.

The ICJ is not a criminal court, but a dispute mechanism among UN member states. There are three available global justice mechanisms to hold Myanmar accountable for its international state crimes, specifically against the Rohingya people; these include The International Court of Justice (ICJ), The International Criminal Court (ICC) and The Principle of Universal Jurisdictions in Argentina, where the national judiciary recognizes and honors the principle.

The ICC is responsible for trialing war crimes, crimes against humanity, crimes of genocide and crimes of aggression.

In this case, given that Myanmar is not a party to the Rome Statute, the ICC cannot prosecute crimes committed in Myanmar. However, as a UN member, the United Nations Security Council (UNSC) could take responsibility to refer Myanmar to the ICC. This is unlikely to happen given that China and Russia have been successful in shielding Myanmar in the UNSC by repeatedly blocking all motions of an investigation, prioritizing business and trade relations.

As an alternative pathway, a pre-trial chamber decision was made, enabling the ICC to launch an investigation based on the argument that, part of the crime of forced displacement was conducted in Bangladesh, where ICC jurisdiction is recognized. However, no claims to investigate the crime of genocide have been made to date.

The ICC's official statement, dated Nov. 14 on Myanmar's alleged crimes, declares the criminal



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court's authorization to begin "investigation in relation to any crime, including any future crime, as long as: a) it is within the jurisdiction of the Court, b) it is allegedly committed at least in part on the territory of Bangladesh, or on the territory of any other State accepting the ICC jurisdiction, c) it is sufficiently linked to the situation as described in the present decision, and d) it was allegedly committed on or after the date of entry into force of the Rome Statute for Bangladesh or other relevant State Party." Bangladesh ratified the Rome statute in 2010.

Such legal endeavors tend to drag on for years before the court reaches its final ruling and cost millions of dollars. However, in due course, Gambia is seeking the court's 'immediate' interventions to protect the remaining Rohingya population, estimated by the UN at 600,000, trapped inside the barbed-wired Internally Displaced Camps and in "vast open prisons" in Western Myanmar.

The ICJ has powers to issue immediate measures to counter Myanmar's continuing violations of its treaty obligations pertaining to the Genocide Convention.

In instituting Gambia vs. the Union of the Republic of Myanmar, Gambia asks the court to rule, definitively on whether Myanmar commissioned the crime of genocide, that is, the intentional destruction, not simply the mass killings of the Rohingya people as a distinct ethnic and religious group, in whole or in part.

Additionally, it seeks to stop Myanmar from destroying physical evidence of its genocidal crimes, including mass graves, charred or bulldozed villages and human remains. Based on satellite imagery, the UN Fact-Finding Mission established that Myanmar destroyed thousands of residential, religious and commercial buildings in nearly 400 villages while having violently driven nearly 900,000 women, infants, children, men and elderly Rohingyas in one of the two largest exoduses of Myanmar in peacetime in 2016 and 2017. Subsequently, Myanmar has bulldozed many of the burned villages, erected

new buildings such as army and police barracks, while re-claiming all abandoned Rohingya land and villages as "state properties."

Concretely, Gambia's legal challenge echoes the genocide findings of the United Nations Independent International Fact-Finding Missions and the UN Special Rapporteur on Human Rights in Myanmar.

The report of the Independent International Fact-Finding Mission on Myanmar set up by the United Nations Human Rights Council in September 2019, found that Myanmar failed to perform its obligations to prevent, investigate and punish genocide. It also said that Myanmar should be held responsible in international legal forums for alleged genocide against the Rohingya, a majority Muslim ethnic group that has long faced persecution in Buddhist-majority Myanmar. Myanmar rejected the report, saying the international community was making "false allegations".

This report, and the previous judgment of the ICJ in Bosnia's case against Serbia, rendered in 2007, should help the Gambians to establish their case should help the Gambian to prove the factual aspects of the case.

Although on factual grounds the majority of the ICJ judges did not hold Serbia and Bosnia liable for the crime of genocide (except for the massacre of more than 7,000 men and boys at Srebrenica in July 1995), it nonetheless recognized that a state could commit the crime of genocide. And the ICJ held that an unequivocal "obligation to prevent the commission of the crime of genocide is imposed by the Genocide Convention on any State party which, in a given situation, has it in its power to contribute to restraining in any degree the commission of genocide. In the lawsuit filed by the Gambia, it is difficult to see Myanmar to have fulfilled this obligation.

If convicted, under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, Myanmar may face punishment, including sanctions.

Bangladeshi Foreign Minister AK Abdul Momen praised Gambia for its move. Since Aug. 25, 2017, nearly 24,000 Rohingya Muslims have been killed, More than 34,000 thrown into fires, 115,000 homes burned down, and 18,000 women and girls raped by Myanmar's army and police according to a report by the Ontario International Development Agency (OIDA). According to Amnesty International, more than 750,000 Rohingya refugees crossed into Bangladesh, pushing the number of persecuted people in Bangladesh above 1.2 million.

In 1994, bystanders to genocide as the Hutu government of Rwanda and its extremist allies succeeded in almost exterminating the country's Tutsi minority, murdering some 8000 Tutsi and politically moderate Hutu every day for 100 days. It was the fastest, most efficient killing spree of the twentieth century. As the terror in Rwanda unfolded, US President Bill Clinton had shown virtually no interest in stopping the genocide, and his Administration had stood by as the death toll rose into the hundreds of thousands.

A few years later, horrific details of the genocide and the world's failure to stop it emerged. During a visit to Rwanda, Clinton issued what would later be known as the "Clinton apology," he spoke to the crowd assembled on the tarmac at Kigali Airport, "We come here today partly in recognition of the fact that we in the United States and the world community did not do as much as we could have and should have done to try to limit what occurred" in Rwanda.

The world waited for a chilling narrative of countless missed opportunities to mitigate a colossal genocide in Rwanda, almost 1 million people had been murdered in cold blood!

How much longer should the Rohingya wait for the world to come to their full aid! The 600,000 Rohingyas trapped inside Myanmar and the Rohingya genocide survivors who are now languishing in subhuman conditions in Bangladesh and Malaysia!

While Little Gambia takes Myanmar to ICJ, where are the "super powers" of the world!