

ICC JURISDICTION OVER ROHINGYA DEPORTATION BY MYANMAR: A WAY FORWARD TO ENSURE ACCOUNTABILITY

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Abstract

Since the fate of the most disgraced community of the present world i.e. Rohingya refugees is mostly rested on the steps of the world community and concerned international organisations; the ruling of the International Criminal Court (ICC) confirming its jurisdiction over alleged deportations of Rohingya People from Myanmar to Bangladesh as a possible crime against humanity has added a feather to the possibility of durable solution to this long-standing problem. Amid the constant denial of taking liability of crimes against humanity by the Myanmar government, this ruling by the ICC will definitely put an immense pressure upon the culprits to appear before the trial and refute their claims as they denied their obligation to enter into litigation with the Prosecutor from long since. This paper will critically analyse the synopsis and precursors of the ruling set forwarded by the Hague-based court that paved the way for prosecutor to examine the alleged charges against the top leaders of Myanmar military government and to put an end to the deplorable condition of the unprivileged Rohingya refugees. The core concern of this paper is to contend the prospects of ICC's involvement in ensuring accountability regarding the alleged crimes committed against Rohingya people in spite of factors which poses a great challenge to its way of adjudication.

Keywords: Rohingya deportation, Crimes against humanity, ICC jurisdiction, Accountability.

INTRODUCTION

The Rohingyas, a group of people from South Asian origin, have been dwelling in an Independent kingdom of Arakan from 8th Century which is popularly known as Rakhine state of the modern-day Myanmar.¹ The living of Rohingya community in this territory over the years was not smooth unfortunately; rather they were grisly subjected to oppression in different forms

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¹ Timeline: A Short History of Myanmar's Rohingya Minority, *The Wall Street Journal*, Available at: <<https://blogs.wsj.com/indiarealtime/2016/12/23/timeline-a-short-history-of-myanmars-rohingya-minority/>> (accessed on August 20, 2019).

under the reign of different rulers. For decades, they have been subjected to systematic oppressions, including restrictions on their usual movement, daily subsistence and most importantly the denial of citizenship. The persecution on Rohingya refugees by Myanmar government has prolonged dates, starting notably by the central government's step to drive out Muslims of Arakan (habitat of Rohingya people) through the passing of the 1974 Emergency Immigration Act, which stripped the nationality of Rohingya minority and rendered them foreigners in their own country. All citizens were required to carry identity cards (National Registration Certificate), whereas the Rohingyas were given only Foreign Registration Cards.² The large scale of Rohingya exodus had taken place when the Burmese Military Government launched an operation called 'Naga Min' or Dragon King in 1977 to register the citizens and prosecute illegal inhabitants. The mass arrest and prosecution along with violence had compelled around 200,000 Rohingyas to leave their homeland and take shelter in Bangladesh. Despite most of them returned later on by a bilateral agreement, but their condition and differential treatment to them by Myanmar government had remained unchanged and many Muslim had returned undocumented and landless. The situation turned even worse when a new Citizenship Law passed in 1982 recognizing 135 ethnic groups except Rohingya Minority.³ Inarguably, the denial of citizenship to the Rohingyas remains the root cause of mass refugee influx to Bangladesh. In 2006, following an alleged border post attack by Arakan Rohingya Salvation Army (ARSA), a military crackdown resulted in an exodus of 87,000 people to Bangladesh. The number of Rohingya exodus has crossed all the previous records as 600,000 Rohingya refugees have fled persecution following an alleged killing of 12 security officers by ARSA on August 25, 2017 which triggered an immense military crackdown at Arakan province, carried out in the name of 'Clearance Operation' by burning down villages and mass killings of Rohingya people. As of August 15, 2018, over 723,000 refugees have fled to Bangladesh since 25 August 2017.⁴ In all of these incidents, the Myanmar government has escaped from taking liability despite the sheer denunciation from all over the world and continued to persecute Rohingya people. They also continuously denied the entrance of worldwide prominent news agencies to collect evidences as well as also denied to be tried by ICC on the plea that they are not party to Rome

² The Rohingya Muslims: Ending a Cycle of Exodus?, *Human Rights Watch, Burma: 1 September 1996, C809*, available at: <<https://www.refworld.org/docid/3ae6a84a2.html>> (accessed on 7 December 2018).

³ Burma Citizenship Law, (Pyithu Hluttaw Law No. 4 of 1982).

⁴ "Rohingya Emergency," *United Nations High Commissioner for Refugees (UNHCR)*, available at: <<https://www.unhcr.org/rohingya-emergency.html?query=25%20August>> (accessed on 8 December 2018).

Statute. Although the required crimes under Article 5 of the Statute⁵ to attract ICC's jurisdiction are present there, the government of Myanmar could not be brought to the trial since they are not party to this Statute. This barrier has almost been done away as the ICC ruled on September 6, 2018 that the court may exercise its jurisdiction over the alleged deportation of Rohingya people from Myanmar to Bangladesh since the crimes are of trans-boundary nature. This created a clear avenue for the ICC to try alleged officials of Myanmar government and thus put an end to the violence which will ultimately lead to durable solution to the Rohingya problem by holding the offenders accountable. This paper will firstly shed lights on the brief account of the ICC's ruling over the deportation of Rohingya refugees by Myanmar, followed by the discussion of precursors which obligate the ICC to come into plot. Thereafter, the reactions of the two countries i.e. Bangladesh and Myanmar immediately after the ICC ruling will find its place in this paper. The paper in its later part will delve in the discourse of the importance, prospects and challenges of the ICC ruling in ensuring accountability of the accused for committing the crime against humanity on the Rohingya community.

SYNOPSIS OF ICC'S RULING

Inspired by the success of two *ad hoc* tribunals namely the International Criminal Tribunal for the former Yugoslavia (ICTY)⁶ and the International Criminal Tribunal for Rwanda (ICTR)⁷ established by United Nations Security Council (UNSC), the International Criminal Court (ICC) started its journey from 2002 as an international forum intending to complement the existing national judicial systems of the state parties to the Rome Statute in order to try the criminals.⁸ To be exact, the ICC can act as a forum to try the offender of four specific international crimes⁹ in situations where national courts are unwilling or unable to try offenders. The ICC jurisdiction comes to fore when state party refer the situations to the Prosecutor of ICC; or when the UNSC refers the case to the Prosecutor under Chapter VII of UN Charter; or where the

⁵ "Rome Statute of the International Criminal Court," adopted at a diplomatic conference in Rome on July 17, 1998.

⁶ International Criminal Tribunal for the former Yugoslavia (ICTY) was established by UNSC Resolution no. 827 as an international tribunal for the prosecution of persons responsible for serious violations of International Humanitarian Law Committed in the territory of the former Yugoslavia in 1991.

⁷ International Criminal Tribunal for Rwanda (ICTR) was established by UNSC Resolution no. 955 in order to judge responsible persons for the Rwandan genocide and other violations of international law.

⁸ The treaty which established the International Criminal Court (ICC), adopted at a diplomatic conference held in Rome, Italy on July 17, 1998.

⁹ According to Article 5 of the Rome Statute, the ICC can try the following international crimes- (i) Genocide; (ii) Crimes against humanity; (iii) War crime; and (iv) Crime of aggression.