

Government of Myanmar's Behaviour: Crime Against Humanity

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On Monday 11 September 2017, Zeid Ra'ad Al Hussein, one of the UN high-ranked officials, ranted at United Nations Human Rights Council (OHCHR), Geneva, condemning the behaviour of the government of Myanmar as "brutal security operation" against the people of Rohingya which was disproportionate to the operation of Rohingya insurgents took place in August 2017.

Hussein demanded from the government of Myanmar to bring its cruel military operation to a halt against the defenceless people of Rohingya.[i] The military operation in Rohingya hitherto has been condemned, on several occasions, by the UN and Amnesty International. On 5 September 2017, António Guterres, the secretary-General of the UN, demanded from the government of Myanmar to desist from its violence against Rohingya people.

According to the report of the UN, more than 313,000 people have been forced to flee from Myanmar to Bangladesh to date. António Guterres announced that this violence can destabilise the region.[ii] About 400,000 of Muslim ethnic minority in western Myanmar are exposed to the hazard of ethnic cleansing. The government of Myanmar has blocked the route of food, water, medicine, and first aid to Rohingya. Amnesty International declared those behaviours, against Rohingya Muslim minority, against the freedom of religion and the freedom of belief. According to the report of Amnesty International, rape, forced labour, arbitrary arrests, torture, and recruitment of child soldiers took place in the process of ethnic cleansing, and the government of Myanmar deliberately has refused from the help and assistance of Muslims in Rohingya.[iii] All the actions took place against the Muslims of Rohingya, by the government of Myanmar, are against the fundamental principles of international law.

Although the problem of discrimination against the minority of Muslim population in Rohingya is not a new problem, the situation of the region, especially after the attack of Rohingya insurgents on the police of Burma in October 2016 has deteriorated. In that attack 9 policemen were killed. The security forces of Burma responded those attacks with clearance operation and have impeded the interference of all humanitarian organisations in the region. Again, on 25 August 2017, when insurgents of Rohingya attacked 24 security sites and killed 12 policemen, the police of Myanmar arranged wider attacks against all the defenceless civilians of Rohingya, rather than separating between ordinary people and Rohingya insurgents.

No report of execution hitherto has been rendered. But it has been reported that the courts of Burma are issuing repeatedly the order of execution. Although the issuance of the orders

is contrary to the order of the parliament of Burma in October 2016 according to which 1950 Emergency Provisions Act has been repealed, the courts, drawing upon other rules yet in force, are trying to issue more execution orders. Apart from executions by the orders of the courts, according to unofficial statistics, 3000 people have been killed to date.[iv] Soldiers and security forces of Burma shoot randomly at civilian people, rape women, set fire to villages, arrest the people arbitrarily and torture them.

Although the government of Burma has not been signed and ratified hitherto many crucial documents of human rights including *Rome Statue of the International Criminal Court* and *International Covenant on Civil and Political Rights (CCPR)*, Burma was one of 48 states that voted in favour of Universal Declaration of Human Rights in 1948. In addition to these, according to the judgment of the International Court of Justice (ICJ) in 2006, in Case Concerning Armed Activities on the Territory of the Congo, genocide is the infringement of peremptory norms (*jus cogens*).[v] Next year the ICJ suggested in the same case that the phrase "... Genocide ... is a crime under international law ..." in article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) means that the rule of the prevention of genocide is a customary rule of international law. It is worth noting that CPPCG in 1948 has been adopted by the general assembly of the UN and became in force on 12 January 1951. CPPCG embraces an international recognised definition of genocide expressed in article 2 thereof. According to article 2 of CPPCG:

"...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily harm, or harm to mental health, to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group."

Some jurists maintain that the actions of the government of Myanmar constitutes the infringement of the sections a, b, c of CPPCG, article 2. They suggest that the "intent to destroy" in states, i.e.mental element (*mens rea*), means the policy of destruction which is seen in the acts of the government of Burma against its Muslim minorities in Rohingya.

Whereas the verification of the "intent to destroy" is pretty difficult, and none of the Burmese officials has expressed explicitly their intention to destroy the Muslims of Rohingya, it can be asserted that the act of the government of Burma is "crime against humanity".

According to the Appeals Chamber of the International Criminal Tribunal for Rwanda:

"Genocide requires proof of an intent to destroy, in whole or in part, a national, ethnical, racial or religious group; this is not required by extermination as a crime against humanity. Extermination as a crime against humanity requires proof that the crime was committed as a part of a widespread or systematic

attack against a civilian population, which proof is not required in the case of genocide.”[vi]

Crime against humanity is also, according to reliable international documents, an infringement of international peremptory norms [vii] and, it goes without saying that, its exercise hurts the conscience of international community. Crime against humanity is a part of general customary international law and the language of international documents shows that this crime has a particular situation in international law. In its report of the situation of Myanmar in 2016/2017, Amnesty International, has used two times the term “crime against humanity” and attributed it, probably, to the government of Myanmar. According to the report:

“The response collectively punished the entire Rohingya community in northern Rakhine State and the conduct of the security forces may have amounted to crimes against humanity.”[viii]

Of course the date of the issuance of the report was the time in which the number of the dead had not yet been increased. With every passing day, by increasing actions of the government of Myanmar against international law, the opinion which adheres the thought that the government of Burma is committing crime against humanity is more amplified. An impartial bystander cannot disavow that “ethnic cleansing” in Burma is in process at the moment.

Grisly news attained from Rohingya discovers the depth of the crimes against Muslim minority population of Myanmar. The orchestrated irregular attacks by some radical elements backed by security forces against the people of Rohingya has culminated in losing lives of a considerable number of Muslims and has exacerbated the record of Myanmar in discrimination, injustice, and hopelessness. This exacerbation arouses the feelings of the people of the world, against the government of Myanmar, irrespective of their religion or nationality. In case of not paying attention to the organised widespread infringement of fundamental rights of Muslims of Rohingya, extremism increases and violation spreads even beyond the borders of Myanmar and destabilises the whole region. Expelling people from their own homeland and forcing them to emigrate from their own country cannot solve such a deep-rooted crisis. The government of Myanmar has to take the prolonged anxieties of its Muslim minorities and their plight into consideration and observe their rights effectively and recognise them like other Burmese civilians, protecting them against violation and discrimination.

International community, especially Muslim countries, expect from the government of Myanmar to bring current violations against the Muslim minorities of Rohingya to a halt, and provide their access to humanitarian aids with no limitation. It is also necessary for the government of Myanmar to bring the suspects to trial and take all necessary steps to prevent recurring such events. Unfortunately, no logical response, to this minimum demand of international community, has been received. It is also expected that the UN act as soon as possible and perform all necessary actions to obviate the anxieties of international community about the exacerbating situation of Burma. The protection of the UN from decreasing violence, and gaining assurance from rendering humanitarian aids and assistance to the people in need and finding a sustainable solution for such a crisis seems necessary and the UN must act as soon as possible.

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Notes

[i]

<https://www.theguardian.com/world/2017/sep/11/un-myanmars-treatment-of-rohingya-textbook-example-of-ethnic-cleansing>

[ii]

<https://www.theguardian.com/world/2017/sep/05/more-than-120000-rohingya-flee-myanmar-violence-un-says>

[iii] <https://www.amnesty.org/en/countries/asia-and-the-pacific/myanmar/report-myanmar/>

[iv]

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwjYuaaP-J3WAhVhG5oKHWVeAsEQqUMILTAB&url=https%3A%2F%2Fwww.theguardian.com%2Fworld%2F2017%2Fsep%2F11%2Fun-myanmars-treatment-of-rohingya-textbook-example-of-ethnic-cleansing&usq=AFQjCNH1aeVUf3yUqoUHcBAuj8FJHRouCw>

[v] Case Concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application, 3 February 2006, para. 64.

[vi] Prosecutor v. Musema (Case No. ICTR-96-13-A), Judgment, 16 November 2001, para. 363. Also: Prosecutor v. Kajelijeli (Case No. ICTR-98-44A-T), Judgment and Sentence, 1 December 2003, para. 751.

[vii] The 1993 International Tribunal For the Former Yugoslavia and the 1994 International Tribunal for Rwanda statutes include the Statute of the International Tribunal for the Former Yugoslavia, U.N. SCOR, 48th Sess., 3217th mtg., at 1, U.N. Doc. S/RES/827 (1993) and the Statute for the International Tribunal for Rwanda, U.N. SCOR, 49th Sess., 3453rd mtg., at 1, U.N. Doc. S/RES/955 (1994), and address Genocide, Crimes Against Humanity, and War Crimes. The 1996 Code of Crimes includes these three crimes plus Aggression. See Draft Code of Crimes Against Peace and Security of Mankind: Titles and Articles on the Draft Code of Crimes Against Peace and Security of Mankind adopted by the International Law Commission on its Forty-Eighth Session, U.N. GAOR, 51st Sess., U.N. Doc. A/CN.4L.532 (1996), revised by U.N. Doc. A/CN.4L.532/Corr.1 and U.N. Doc. A/CN.4L.532/Corr.3; Crimes Against U.N. Personnel, in M. CHERIF BASSIOUNI, INTERNATIONAL CRIMINAL LAW CONVENTIONS (1997 in print) [hereinafter BASSIOUNI, ICL CONVENTIONS].

[viii] <https://www.amnesty.org/en/countries/asia-and-the-pacific/myanmar/report-myanmar/>

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