

The Situation in Myanmar - The Rohingya Crisis

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Historical Context

The Rohingya are an ethnic minority of Muslim Indo-Aryan people who, since 2016, have faced ethnic cleansing and mass persecution in the Buddhist-majority Myanmar in Southeast Asia, specifically in Rakhine State in the northwestern part of the country. The governments of Myanmar and politicians describe the Rohingya as illegal immigrants, as the Rohingya are not recognized as a protected group within Myanmar's constitution. The Rohingya defend against such labels by arguing that they have lived in the area for generations and that Myanmar's treatment of them reflects on all Muslims of Myanmar. The government of Myanmar describes the current situation as an "internal armed conflict" triggered by Rohingya uprisings against the government.

The modern persecution of Rohingya dates as far back as the 1960s when, after the 1962 Burmese Coup, the government passed legislation that denied citizenship to people who failed to prove ancestry before 1823. This disenfranchised many muslim Rohingya, who even though may have had the required length of ancestry, struggled to find the documentation needed to prove it. In 1982, the government enacted the Burmese Nationality Law which denied citizenship and access to essential services. The law is largely viewed as the formalization and legalization of the already rampant discrimination against Rohingya.

The genocide has occurred in two distinct phases. The first phase was a military crackdown from October 2016 to January 2017, and the second continuing from August 2017 to the present. The first crackdown in October 2016 happened after 9 police officers were killed after several armed



men conflicted with them at a border station. The military and local police responded by conducting an operation that consisted of what the Human Rights Watch described as arbitrary arrests, extrajudicial killings, looting, mass rape, and terror against civilians. An estimated 7,000 Rohingya were killed in the first month of attacks. This led to the first group of Rohingya refugees to flee to Bangladesh. The 2017 attack started in response to the Arakan Rohingya Salvation Army - a Rohingya insurgent group- which had assaulted a police station. Armed forces and police then started a second major crackdown against the Rohingya in the Rakhine State. Consisting of much of the same tactics as the first, it had the added effect of Buddhist nationalists who joined in when a mob of 100 attacked an Internally Displaced Persons (IDPs) camp in Dapaing. The government and military increased their operations against the Rohingya after a gunship strafed a Rohingya village, and began what were known as Clearance Operations. These operations consisted of using force and terror to pressure Rohingya to flee the country. Arson attacks against villages were commonplace to destroy villages in an effort to ensure the Rohingya didn't have anywhere to return to. The genocide has created over 1 million Rohingya refugees, with many fleeing to Bangladesh which resulted in the creation of the world's largest refugee camp in Kutupalong. Some of the other countries the Rohingya fled to include: India, Thailand, Malaysia, and other parts of South and Southeast Asia. The influx of Rohingya refugees in receptive countries has stoked anti-refugee sentiment within them, with persecution against them rising outside of Myanmar.

Legal Framework

The primary legal framework involved with this case is *The Convention on the Prevention and Punishment of the Crime of Genocide*. It was adopted by the United Nations General Assembly (UNGA) on December 9, 1948 and entered into force on January 12, 1951 after its ratification by 20



countries. Over 150 countries have ratified it up to the present day, including Myanmar and The Gambia. Article 2 of the *Genocide Convention* defines genocide as:

Article II

In the present Convention, genocide means 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 or mental harm 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.

Article 3 defines the punishable crimes including: genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide. States are obligated to take actions to prevent, punish, and extradite individuals complicit in genocide. The *Genocide Convention* allows for the prosecution of genocide anywhere, regardless of the location of the crime under the principle of universal jurisdiction. All allegations and disputes are processed and reviewed by the ICJ. Individuals, public and private, are responsible for acts of genocide regardless of their official capacity.

The Burmese military was initially accused of breaking the *Genocide Convention* by UN agencies, human rights groups, and International Criminal Court officials. After conducting a fact-finding mission, the UN discovered evidence of wide-scale violations of human rights which included; extrajudicial killings, summary executions, gang rapes; razing of Rohingya villages and property, and infanticides. Myanmar dismissed these findings as “exaggerations.” A study was conducted



in January 2018 which found an estimated 25,000 dead Rohingya and another 18,000 women and girls who had suffered gang rapes or other acts of sexual violence. The same study found that another 116,000 were beaten with 36,000 thrown into fires. Following all of these findings, the ICJ issued an order of provisional measures of protection, ordering the Myanmar government to prevent genocidal acts and provide regular updates on compliance.

Points of Contention

The Rohingya Genocide case raises various points of contention. First, how thoroughly does the situation in Myanmar adhere to the definition of genocide outlined in the *Genocide Convention*? Assuming the Court decides that the atrocities in Myanmar constitute genocide, how should the Court proceed in punishing Myanmar? Additionally, when/how does the International Criminal Court factor in? How well, if at all, does Myanmar's argument of it being an internal armed conflict hold up as a defense? Crucially, how might international principles of human rights, state sovereignty, and accountability for atrocities influence judicial proceedings and potential enforcement mechanisms- do such principles impose responsibilities for proactive measures or impose constraints on intervention? Such questions highlight complex intersectionality of treaty obligations, human rights protections, and state sovereignty in international law.

