

A critical analysis of deportation as crimes against the humanity in the context of Rohingya crisis in Bangladesh.

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Chapter1-Abstract:

The Myanmar government has used deportation as an oppressive instrument against the Rohingya minority, resulting in forced displacement, loss of identity, and significant trauma. As the host country, Bangladesh has faced unprecedented hurdles in dealing with the enormous flood of refugees, but it has also been accused of forced repatriation. The Rohingya Muslim minority in Bangladesh has been subjected to systematic and widespread deportation, resulting in serious human rights violations. This critical analysis investigates deportation as a crime against humanity and its consequences for the afflicted community. This study delves into the legal frameworks surrounding crimes against humanity, focusing on international human rights conventions and the Rome Statute. The analysis demonstrates that the deportation of the Rohingya people constitutes a violation of fundamental human rights, including the right to life, liberty, and security of person, as well as the prohibition of torture and persecution. The article also examines how states, international organizations, and the general public can confront and prevent these crimes. It evaluates the responses of many parties critically, focusing emphasis on the necessity of accountability, justice, and victim support.

Keywords: crimes against the humanity, Rohingya crisis

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List of Abbreviations :

1. ICC : International Criminal Court
2. SPDC : State Peace and Development Council
3. UNHCR : United Nations High Commissioner for Refugees
4. HRW : Human Rights Watch
5. UNSC : United Nations Security Council
6. ARSA : Arakan Rohingya Salvation Army

Table of Cases :

Prosecutor v. Brđanin, (Trial Judgment) IT-99-36-T (1 September 2004) at para. 556

Table of Legislations/treaties :

1. The Rome Statute of 1998
2. Burma Citizenship Law, 1982
3. Emergency Immigration Act 1974
4. The Geneva Conventions of 1949
5. The Refugee Convention 1951
6. Genocide Convention 1948

Chapter 1.1 - Introduction

In Myanmar Rakhine state, the Rohingya ethnic minority has been subjected to persistent and organized acts of violence by their government. In addition, the government of Myanmar has carried out the execution of multiple Rohingyas and forcefully deported them to Bangladesh. However, the government and political leaders'

accusations that they are illegal immigrants cannot be supported in any manner¹. Although the international community and local activist groups urged the government to stop the violence, there was no sign of it ceasing². 2018 saw the start of Myanmar's prosecution by the International Criminal Court, despite the fact that it is not a signatory to the Rome Statute of 1998. A long-lasting solution to this persistent issue can be anticipated as a result of the International Criminal Court's confirmation of its jurisdiction over the forcible repatriation of Rohingyas to Bangladesh, which is seen as a crime against humanity. Bangladesh is a party to the Hague-based court, although Myanmar is not, therefore the deportation's cross-border character was sufficient for jurisdiction.³ For a very long period, the Myanmar government has denied being responsible for crimes against humanity. Since they have been defying their obligation to appear in court alongside the Prosecutor for a very long time, this decision by the ICC will undoubtedly put a lot of pressure on those responsible to appear at the trial and rebut their accusations. In such a context of Rohingya Crisis in Bangladesh the critical research question to be addressed in this article to what extent is the expulsion of Rohingya refugees in Bangladesh during the Rohingya crisis constitute a crime against humanity, and what are the ramifications for international law and accountability mechanisms.⁴ The aim of this study is to determine what legal means may be utilized to hold Myanmar accountable for the crimes against humanity they committed when they deported individuals without their will. The use of force in deportation is a component of crimes against humanity, the ICC prosecutor has conclusively established, according to this study, and this legal conclusion has been translated into an international boundary that can nullify the traditional reach of jurisdiction over states parties to the 1998 Rome Statute. Due to this development, it may also be feasible to accuse Myanmar of other crimes against humanity, including genocide.

Chapter 2 - Historical Background:

The Rohingyas are a people group having roots in South Asia, have lived in the Rakhine state of modern-day Myanmar since the 8th century when it was an independent kingdom of Arakan⁵. Sadly, the Rohingya community's life in this region over the years was not easy. Instead, they were brutally oppressed in various ways during the authority of several monarchs. They have experienced systemic oppression for many years, including limitations on their daily needs for food and shelter as well as, most significantly, the denial of citizenship. A key moment in the persecution of Rohingya refugees by the Myanmar government was the Emergency Immigration Act 1974, which the central government used to remove Muslims from Arakan and effectively make the Rohingya minority stateless and outsiders in their own country⁶. While all citizens were mandated to carry identity cards, the Rohingyas only received Foreign Registration Cards. The Burmese Military Government launched "Naga Min," also known as "Dragon King," in 1977 to compulsively register citizens and harshly punish illegal immigrants, a significant Rohingya migration had already occurred. Approximately 200,000 Rohingyas were forced to flee their native country and seek refuge in Bangladesh as a result of violence, mass arrests, and persecution. Even though the majority of them later returned as a result of a bilateral agreement, the Myanmar government's treatment of them remained unaltered, and many Muslims returned without documentation and without access to property. When a new Citizenship Law was issued in 1982, recognizing 135 ethnic groups with the exception of the Rohingya Minority, the situation got much worse⁷. Undoubtedly, large numbers of Rohingya people have fled into Bangladesh because they are being denied citizenship. After the Arakan Rohingya Salvation Army allegedly attacked a border post in 2006, a military campaign caused an exodus of 87,000 refugees to Bangladesh. 600,000 Rohingya refugees have escaped

¹ Azeem Ibrahim, *The Rohingyas: Inside Myanmar's Genocide* (2nd, C. Hurst and Co. Ltd., United Kingdom 2018) e.g. 15

² "Rohingya Refugee Crisis Explained" (Rohingya Refugee Crisis Explained, July 13, 2022) <<https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/>> accessed December 5, 2022

³ Rahman MM, 'Rohingya Crisis, Trans-Boundary and Geopolitics: Prospects and Aspects of Bangladesh' (2023) 06 International Journal of Social Science And Human Research

⁴ Al Jazeera, 'Do More to Resolve Rohingya Crisis: Un Envoy in Bangladesh' (Rohingya News | Al Jazeera, 20 December 2021) <<https://www.aljazeera.com/news/2021/12/20/rohingya-crisis-un-envoy-bangladesh>> accessed 31 July 2023

⁵ Al-Mahmood SZ, "Timeline: A Short History of Myanmar's Rohingya Minority" (WSJ, December 23, 2016) <<http://blogs.wsj.com/indiarealtime/2016/12/23/timeline-a-short-history-of-myanmars-rohingya-minority/>> accessed December 22, 2022

⁶ Human Rights Watch, *Burma: The Rohingya Muslims: Ending a Cycle of Exodus?*, 1 September 1996, C809, available at: <https://www.refworld.org/docid/3ae6a84a2.html> [accessed 22 December 2022]

⁷ Burma Citizenship Law, (Pyithu Hluttaw Law No. 4 of 1982).

persecution in response to the August 25, 2017 purported murder of 12 security officials by ARSA, which sparked a massive military crackdown in the Arakan province that resulted in the burning down of villages and the killing of large numbers of Rohingya people under the guide of a "Clearance Operation".¹ Since August 25, 2017, more than 723,000 refugees have crossed into Bangladesh, as of August 15, 2018.

In response to the growing violence against Muslims, the UN Special Rapporteur on human rights in Myanmar has responded to the growing violence against Muslims by stating that he has received reports of government complicity in some of these violent acts. This engagement includes both overt collusion and support for violent acts as well as direct involvement of some government agencies. But according to Myanmar's recent history, Muslims have been subjected to various forms of violence and discrimination for many years, particularly during the years of 2012 and 2014. These include denial of basic human rights, persecution, deportation, and forced relocation. Extremist Buddhists with government backing and the nation's security services are responsible for these acts of violence. In each of these occurrences, the government of Myanmar has avoided admitting responsibility for the atrocities committed against the Rohingya people and has kept up its campaign of oppression. This is despite widespread condemnation from throughout the world. They also persistently prevented internationally renowned news organizations from entering to collect evidence and denied to cooperate with the ICC on the grounds that they are not a signatory to the Rome Statute². According to Article 5 of the Statute that must be committed in order for the ICC to exercise its jurisdiction were committed in that location, the government of Myanmar could not be brought to the trial since it is not a party to the Statute. A ruling issued by the International Criminal Court on September 6, 2018, says the court has jurisdiction over the alleged deportation of Rohingyas from Myanmar to Bangladesh. As a result of this ruling, this barrier is almost completely removed.

Chapter 3 -Deportation as crime against the humanity

A crime is said to be committed against humanity when it has consequences that extend beyond the victims of the crime and the community in which they live³. In other words, it is an offense against the human race as a whole. Article 7(1)(d) of the Rome Statute states that a crime against humanity occurs when an act is perpetrated as part of a widespread or systematic attack against a civilian population. This includes any acts that are carried out with the intention of killing civilians. It is necessary for there to be multiple commissions of an act in order for it to meet the conditions of a crime against humanity. Additionally, the conduct must have been done in pursuit of either governmental or organizational policy. Article 7 talks in detail about the behaviors that qualify as crimes against humanity and provides a list of those behaviors.

First is murder. Extermination is another form of genocide, and it involves deliberately imposing adverse conditions on a person, such as the restriction of access to food and medication. Extermination was intended to result in the destruction of a portion of a population.⁴ The third form of human trafficking is enslavement, the act of using any or all of the rights associated with ownership over another person. This includes the exercise of such authority in the process of trafficking in humans, particularly women and children.⁵ The fourth violation is known as deportation also known as forcible transfer of population. This term refers to the act of forcibly removing a person or group of people against their will from an area where they are lawfully present. Deportation violates international law because there are no acceptable grounds for doing so. Torture is defined as the intentional infliction of severe bodily or mental pain or suffering on a person in the custody or under the

¹ United Nations High Commissioner for Refugees (UNHCR), "Rohingya Emergency" <<https://www.unhcr.org/rohingya-emergency.html?query=25%20August>> accessed December 22, 2022

² "Rome Statute of the International Criminal Court," adopted at a diplomatic conference in Rome on July 17, 1998.

³ Article 7 (2) (a) Rome Statute

⁴ Article 7 (2) (b) Rome Statute

⁵ Article 7 (2) (c) Rome Statute

control of the accused.¹ The final category consists of any other forms of rape, sexual slavery, forced prostitution, and forced pregnancy are examples of violence. forced sterilization or any other type of sexual abuse with a similar or equal level of severity.

People who are moved against their will, either across borders or within a state, can be charged with deportation of population and have their freedom of movement taken away. In some situations, it may also be called ethnic cleansing. As stated in the Rome Statute's Article 7(2)(d), grounds permitted by international law are mentioned which relates to the fact that international law does allow for some leeway in terms of deporting people from the territory of a state. The Yugoslav Tribunal has, for the most part, focused its attention on both Article 17(1) of Additional Protocol II to the Geneva Conventions of 1949² and Article 49 of Geneva Convention IV Relating to the Protection of Civilians. These articles outline the circumstances under which it is permissible to evacuate civilians during times of war for purposes of military necessity or civilian security. The existence of such justifiable grounds brings with it the obligation that people who were evacuated for such reasons legitimately must be "transferred back to their homes as soon as the hostilities in the area in question have finished," and this obligation comes along with the fact that such grounds exist³.

In relation to the Rohingya problem, this forced deportation has been brought about by the establishment of unbearable and coercive conditions, as a result of which Rohingya people have either fled into Bangladesh across the border or have been forced out of their homes while still in the area. With the passing of the fundamentally and consciously discriminatory 1982 Citizenship Law, the Rohingya people became stateless. Bangladesh passed this legislation. Newborn Rohingyas have not received birth certificates or any other type of documentation since 1994, which has led to a situation in which they are nonexistent in the eyes of the Burmese legal system. This is among the situation's most shocking results, and it is among the most shocking things that have occurred as a result. A significant number of Rohingya villagers were forced to flee their homes as a result of the tactic's usage to impose intolerable coercive conditions. These conditions have been created through the widespread denial of citizenship. In addition to cultivating an atmosphere of coercion, the SPDC has resorted to the use of actual physical force in order to uproot entire Rohingya communities and transplant them against their will into the most northern parts of the region.

The Rohingyas are abused because they are a minority. They are forced to work, are raped, are moved against their will, and can't get married. There is no alternative for the hundreds of thousands of Rohingya people who are forced to from their homes in search of relative safety in neighboring states. This is caused by the fact that they do not enjoy basic freedoms, which leads to poverty and frequently death. When taken as a whole, the atrocities committed against the Rohingya minority seem to point to the fact that they were persecuted and this is a crime against humanity and a violation of human rights.

Chapter 4- Responses From the International Community and the ICC

The international convention that was signed in 1951 and is officially referred to as the United Nations Convention Relating to the Status of Refugees (UNHCR) is the one that does the finest job of discussing the rights of refugees on a worldwide basis⁴. It brings together a number of international accords that have, in the past, dealt with issues pertaining to refugees.

¹ Article 7 (2) (d) Rome Statute

² Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims on Non-International Armed Conflicts (Protocol II), entered into force 7 December 1978, 1125 UNTS 609, at art. 17: '1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand...'

³ Prosecutor v. Brđanin, (Trial Judgment) IT-99-36-T (1 September 2004) at para. 556.

⁴ United Nations High Commissioner for Refugees. (2014). US wraps up group resettlement for Myanmar refugees in Thailand. Retrieved from <http://www.unhcr.org/news/latest/2014/1/52e90f8f6/wraps-group-resettlement-myanmar-refugees-thailand.html>

Throughout the entirety of this idea, a significant focus is placed on ensuring that no individual is subjected to persecution on account of their political beliefs or for any other cause. The bulk of the countries that are currently providing sanctuary to Rohingya refugees were not parties to the 1951 Convention when it was drawn up.¹ The Refugee Convention of 1951 has only been signed by two countries in Southeast Asia: Cambodia and the Philippines. The other countries in the region have not done so. Ironically, the physical position of certain nations results in a lesser possibility that they will be received by such nations. This means that these countries do not have an international commitment, as well as a legislative and administrative structure, to deal with concerns connected to refugees.

Despite the fact that it has periodically been brought to the notice of the general public, the abuse of Rohingya people in Myanmar has continued to be a hidden sideshow. Because of this, a terrible system of human trafficking has been allowed to persist, and the Rohingya people, who are currently the most persecuted ethnic group in Asia, have been banned from seeking political refuge overseas². Myanmar is a party to the 1948 Genocide Convention, which means that the country is under the same legal obligation as other signatories to prevent genocide and punish those who are responsible for committing the crime³. The Rohingya people are thus left with no choice except to look for asylum in one of the other neighboring countries.

HRW and the ICC are two examples of international organizations that have ratified multiple international treaties defending human rights. These organizations are both based in different countries⁴. Throughout the majority of world history, crimes such as genocide, war crimes, and crimes against humanity have been perpetrated. The Nanjing Massacre (1937), the Rwandan Genocide (1994), and the brutality against East Timorese (1990s) are all egregious instances of severe cruelty committed against humans. As a result of Southeast Asian countries' refusal to ratify the 1951 Convention, the number of refugee shelters available to Rohingya people in the region has become extremely precarious and the absence of national legal frameworks in the majority of them. These countries decided not to join either the 1951 Refugee Convention or the 1967 Protocol on the grounds that doing so could increase the amount of refugees who enter their country. Instead, they point out that it's possible that doing so would cost their governments a lot of money. Persons who commit crimes against humanity may be prosecuted and punished by the ICC, which was formed by the Rome Statute, regardless of their positions or statuses.

Despite widespread condemnation from around the world, the Myanmar government has avoided accepting responsibility and has kept the Rohingya people in poverty. They also steadfastly objected to the entry of renowned international news organizations to gather evidence, and they objected to being prosecuted by the ICC on the grounds that they are not signatories to the Rome Statute. Myanmar's government could not be brought to trial because it is not parties to the Rome Statute, even if the crimes required under Article 5 of the Rome Statute to invoke the jurisdiction of ICC occurred there⁵.

To improve Myanmar's human rights record, the separation between the executive and judicial arms of government must be strengthened. Even though the country is not party to the Rome Statute, perpetrators do not automatically escape punishment for their crimes. The Rome Statute's Articles 13(b)⁶ and (c) allow the ICC to exercise its jurisdiction against non-Party States. About 13(c)⁷, the ICC Prosecutor may launch their own inquiry as long as information from parties or organizations with a stake in the case, such the UNHCR, might be

¹ "The 1951 Refugee Convention" <<https://www.unhcr.org/1951-refugee-convention.html>> accessed December 25, 2022

² United Nations High Commissioner for Refugees. (2016). Myanmar. Year-end Report. Retrieved from <http://reporting.unhcr.org/node/2541?y=2016#year>

³ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 09 December 1948) General Assembly resolution 260 A (III)

⁴ Ullah, A. K. M. A. (2013). Irregular migrants, human rights and securitization in Malaysia: A policy analysis. In C. Tazreiter (ed.), *Globalization and social transformation in the Asia-Pacific: The Australian and Malaysian experience* (pp. 270-295). London, England: Palgrave Macmillan

⁵ ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT e.g. 1998 s Article 5

⁶ Article 13 (b) Rome Statute

⁷ Article 13 (c) Rome Statute

submitted. The United Nations Security Council (UNSC) has the authority to refer the situation in Myanmar to the ICC in accordance with Article 13(b) of the Rome Statute. Similar events occurred in Darfur in the Sudan and Libya, none of which are party to the Rome Statute (Prevent Genocide International, 2000; Ullah, 2014)¹. However, this endeavor to seek justice for the Rohingyas through the ICC must not be vetoed by China, the United States, Russia, France, and the United Kingdom. It not only needs political involvement from other UNSC Members. The international community might take this long-term legal alternative into consideration to put an end to the Rohingyas' agony.

On November 14, 2019, the Pre-Trial Chamber III of the International Criminal Court gave the Prosecutor permission to investigate the alleged crimes within the ICC's jurisdiction in the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar². This means that the Prosecutor can now investigate the alleged crimes within the ICC's jurisdiction in the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar. The ICC Pre-Trial Chamber III consists of three judges: Olga Herrera Carbuca, who is in charge, Robert Fremr, and Geoffrey Henderson. This authorization comes in response to a request made by the Prosecutor on July 4, 2019, to launch an investigation into allegations that crimes falling under the jurisdiction of the International Criminal Court were committed against the Rohingya people of Myanmar³.

Additionally, the Chamber heard the opinions of many claimed victims, either directly or on their behalf, about this proposal. According to the ICC, victims have unanimously expressed their desire for an investigation to be conducted by the Court. Furthermore, a lot of the victims who were consulted "believe that only justice and accountability can ensure that the perceived circle of violence and abuse comes to an end." During this entire process, the Chamber acknowledged all of the persons and organizations that assisted, directed, and counseled claimed victims. They came to the conclusion that the Court has the ability to exert jurisdiction over crimes when at least some of the criminal activity occurred on the territory of a State Party. Bangladesh became a party to the ICC in 2010, but Myanmar has not yet joined the organization. Following a review of the information that was made available, they reached the opinion that there is a reasonable basis to infer that acts of violence may have been committed against the Rohingya population in a widespread or systematic manner. These acts of violence include deportation across the border between Myanmar and Bangladesh as well as persecution on the basis of ethnicity and/or religion against the Rohingya population. The Chamber had come to the conclusion that the situation clearly meets the criteria for being considered serious after taking into consideration the magnitude of the alleged offenses and the number of victims allegedly implicated. As a consequence of the allegedly coercive conduct, about 600,000 to one million Rohingya had to flee their homes in Myanmar and take refuge in the neighboring country of Bangladesh, according to the supplementary materials. After taking into account the perspectives of the victims, Chamber arrived at the decree that there are no compelling ground to suspect that an investigation into the matter would not be in the best interests of the pursuit of justice. This verdict was arrived at after consulting with the prosecutor, who shared our opinion. Therefore, Pre-Chamber III authorized an investigation into any crime, including any future crime, so long as the following conditions are met: the crime falls within the jurisdiction of the Court; the crime was allegedly committed at least in part on the territory of Bangladesh, or on the territory of any other State Party or State accepting the ICC's jurisdiction; the crime is sufficiently linked to the circumstance as described in the Rome Statute.

Chapter 5 - Conclusion

The activities of Myanmar's security forces demonstrate that they are targeting the Rohingya as a group due to the religious and racial characteristics that they share. As a direct consequence of this, this is a blatant violation of international law.⁴ It is possible that a large-scale attack with premeditation was carried out against the Rohingya civilian population in the northern region of Rakhine State. They have already been subjected to decades of systematic, collective, and obviously discriminatory treatment that has resulted in the denial of their human rights and the severe limitation of those rights. This encompasses their rights to nationality, freedom of giving opinion, conscience, and religion, freedom of movement, education, and health care, as well as a reasonable quality of living for themselves and their families, and a minimum acceptable standard of life. As a

¹ "Darfur, Sudan" (International Criminal Court) <<https://www.icc-cpi.int/darfur>> accessed December 23, 2022

² "ICC Judges Authorise Opening of an Investigation into the Situation in Bangladesh/Myanmar" (International Criminal Court, November 14, 2019) <<https://www.icc-cpi.int/news/icc-judges-authorise-opening-investigation-situation-bangladesh/myanmar>> accessed December 25, 2022

³ "Rohingya Deportation: War Crimes Prosecutor Seeks to Open Probe" (The Daily Star, April 10, 2018) <<https://www.thedailystar.net/backpage/rohingya-deportation-war-crimes-prosecutor-seeks-open-probe-1561123>> accessed December 24, 2022

⁴ United Nations High Commissioner for Refugees (UNHCR), "Rohingya Emergency" <<https://www.unhcr.org/rohingya-emergency.html?query=25%20August>> accessed December 22, 2022

result of this circumstance, it is abundantly evident that there have been widespread violent attacks on communities throughout the course of the last few months. These attacks have resulted in death, destruction, looting, rape and other forms of torture. They have also caused tens of thousands of people to be forced to flee, while others have been kept in their villages and denied access to humanitarian aid, which has resulted in thousands of people starving to death. The conflict between the Rohingya people and the government of Myanmar is thus a violation of human rights and a crime against humanity.¹ Overall, foreign nations, particularly those in Southeast Asia, must exert pressure on the Myanmar government to put an end to the crimes committed against the Rohingya and to put in place the conditions necessary for their safe and voluntary return. The Rohingya can only feel safe and comfortable enough to go home in this way. Refugees can finally go back to their homes in safety. However, I would advise against discussing repatriations at this time because there are continuous attacks against Rohingya people in Myanmar, and they have legitimate reason to worry about being punished while those responsible continue to get away with it.

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