



Research Paper

Crime against Humanity: A Case Study of Ethnic Rohingya 2012 – 2017

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ABSTRACT: The crisis happen toward Ethnic Rohingya is not new to the region neither the world at large. It was a continuing historical conflict within Burmese Government 1942 that directly after Japanese invaded Burma. The conflict become the area of interest not only due to the level of atrocities occurred but also one of the recent conflicts widely covered by the media. The violation of human rights continued occurred against ethnic of Rohingya either to woman, children, elderly and man. The conflict become worse when they had been denied their citizenship within their own land. The consequences of the conflict recorded almost 300,000 were displaced by the conflict. They migrate into other countries such as Bangladesh and Malaysia in order to find protection. The paper is investigating whether there is crime against humanity been inflicted towards ethnic Rohingya. The responsibility to protect will be equally examined in the paper. Relevant materials such as book, reports from NGOs, and other humanitarian agencies will be utilized to analyze this issue. The finding and recommendation are expected to pave way for a better solution on this concerned issue.

KEYWORDS: Ethnic Rohingya - Conflicts - Crime Against Humanity – Responsibility to Protect

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I. INTRODUCTION

The conflict occurred in within ethnic Rohingya has become popular issue in the global world today. It first dragged when Japanese invaded Myanmar (previously known as Burma) in 1942. The Burmese Rohingya minority is a Muslim religious minority with about 1.3 million people. They practice a Sufi inflected variation of Sunni Islam. Most of Rohingya lives in refugee camps in the outskirts of Sittwe, the capital of the Burmese Western state of Rakhine which they have share boarders with Bangladesh. According to United Nations, the Rohingyas are one of the most prosecuted minorities in the world. In their country, they live in miserable conditions where they are not allowed to possess land, physically exploited through forced labor and their movement is restricted. Most of Rohingya do not have a state of their own and are subject to racial segregation. The government in Naypyidaw (the capital of Myanmar) denies their citizenship and considers them illegal immigrants from Bangladesh. Since early 2012, as a result of violent outbursts against the Buddhist majorities, attacks against the Rohingyas have increased and hundreds of thousands have been displaced and more than 120,000 have left Myanmar for Malaysia.¹

The submission of paper has shown that the conflict occurred in between 2012 until 2017 against ethnic Rohingyas constitute crime against humanity under International Humanitarian Law. As a result, the paper is examining on how the action lead to crime against humanity and the effect on protected person (Rohingyas) under International Humanitarian Law. It will further investigate the doctrine of responsibility to protect consequences from the crisis.

II. BACKGORUND OF STUDY

The Rohingya are a Muslim ethnic minority residing primarily in Rakhine State, Western Myanmar. In the past decades, the Rohingya are placed frequently subjected to violence by Myanmar Buddhist and Myanmar

¹Sally Schuster De Hart. (n.d.) *The Rohingya refugee crisis: A amongst nations*

Government. The beginning of history conflicts between Rakhine people and Muslims returns to World War II when Muslims were remained loyal to Britain Colonial rulers and other Rakhine people who were supported Japanese invaders. After Myanmar's state gain independence on 1948, the Muslims faced with the various violence from government. Today, the majority of the Rohingya population is living in Northern Rakhine State and are stateless.²

The Rohingya have been subjected to decades of state-sponsored discrimination and persecution. The Rohingya have been stripped of citizenship rights, in particular as a result of the country discrimination 1982 Citizenship Law and its application. The worst part is their civil, political, economic and social rights have been violated.³ The situation of the Rohingya deteriorated significantly after waves of violence erupted between Rakhine Buddhists, Rohingya and other Muslim groups in 2012. Scores were killed and thousands of homes were destroyed resulting in massive displacement. Until 2014, about 120, 000 people⁴ mainly Rohingya continue to live in internally displaced person (IDP) camps and unofficial settlements in where they did not have access to adequate food, medical care and sanitation facilities.

Rohingya living outside displacement camps also face similarly sever restrictions on their freedom of movement. They had been given limitation on their access to livelihoods, healthcare, food and education. While in Central Rakhine State, Rohingya are not allowed in the main towns and they are also able to travel to the other Muslim villages only by water way. Prior to the October 2017 attacks, Rohingya movement was subject to a different system such as permission for travel and restrictions that were strictly enforced by Myanmar Government including military and Boarder Guard Police.⁵ Discrimination against ethnic Rohingya also takes place in the context of practicing the religion or belief in Myanmar. Advocacy of hatred against Muslims by Buddhists extremist groups has largely gone unaddressed and unchallenged. Attacks on Muslims communities in many parts of Myanmar have caused deaths, injuries and destruction of property in between 2012 until 2014.⁶ It seems that the rules related to the property confiscation, restrictions on freedom and their expel using the violence is widespread and systematic. The discriminatory actions lead to torture which is considered as the intentional action and severe deprivation of fundamental human rights of a group or population due to those group special identity and it considered as contrary to the norms of International Law.⁷ Given the history of several decades of discrimination and violence against the Rohingya and unresolved issue in Myanmar, it was evident that at any moment there was an excuse to flare up of violence and riots in Rakhine State. In 2012, the violence against Rohingya was intensified. According to Human Rights Watch report, by the beginning of the riots and violence in the different cities of Rakhine state, hundreds of people were dead and wounded and thousands of homes and mosques were burned. The report estimated that these violence's have caused thousand Muslims, as well as these violence's have been led to mass arrests hundreds of people of Rohingya.⁸

In response to the expanding violence against Muslim, the United Nation Special Rapporteur on the situation of human rights in Myanmar, has stated that he has received the reports about government involvement in some of these violence's. This involvement is included the direct involvement of some of the government departments or tacit collusion and support of violence actions. However, Myanmar contemporary history shows that the Muslims of this country for many years especially during the period in between 2012 until 2014 are exposed to the types of violence and discrimination, including deprivation of fundamental human rights, persecution, deportation and forcible transfer. These violence's are applied by the country security forces and extremists Buddhist who are involved with the government support.

III. CRIME AGAINST HUMANITY UNDER INTERNATIONAL HUMANITARIAN LAW

International Humanitarian Law is a set of rules defining the conduct and responsibility of belligerent nations, neutral nations and individual engaged in warfare, in relation to each other and protected persons.⁹ The International Committee Red Cross defined IHL as a set of rules which seek for humanitarian reasons and to limit the effect of armed conflict. It protects persons who are not or are no longer participating in the hostilities

² Szep, Jason, Marshall, Andrew R.C. (2013). *Myanmar Minister Backs Two-Child Policy for Rohingya Minority*

³ Amnesty International. (2004). *Rohingya Fundamental Rights*

⁴ UN Office for the Coordination of Humanitarian Affairs (OCHA), *Myanmar* (2016)

⁵ *The Boarder Guard Police established in 2014 after the disbandment of NaSaKa, the military force who incharged for abusing against the Rohingya population in Northern Rakhine State*

⁶ Tomas Ojea Quintana. (n.d.). *Massacre in Central Burma*

⁷ Ibid

⁸ Human Rights Watch. (2013)

⁹ A.A. Bouvier. (2012). *International Humanitarian Law and the Law of Armed Conflict*

and restricts the means and methods of warfare. The law applies only once a conflict has begun and then equally to all sides regardless of who started the fighting.¹⁰

IHL applies to all situation of an armed conflict. Armed conflict exists whenever there is a resort to armed forces between states or protracted armed violence between groups within state. IHL apply from the initiation of such conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached. Until that moment, IHL continues to apply in the whole territory of the warring state or under the control of a party whether or not actual combat takes place there.¹¹Hence, armed conflict exists in the conflict of action between Government Myanmar against ethnic of Rohingya as the violence been inflicted towards Rohingyas. Laws of armed conflict are meant to be protected and not be violated by either state or individual. However, since violations of IHL are inevitable, the law has to put in place certain mechanisms to ensure respect and protection of the victims of armed conflict. In the light of this issue, IHL has criminalized certain violations such as serious and grave breaches of the Geneva Conventions and the Additional Protocol. Such serious violations of the law of war include war crimes, crime against humanity, genocide and war of aggression. These crimes can be committed by both a state and individual which could results to a state or individual responsibility in the event of persecution for the commission of the crime. The submission will only discuss about the crime against humanity.

The term crime against humanity refers to the crime that does not only affect its victims and their immediate community alone, but it is an offence against the entire humanity. According to Rome Statute, crime against humanity means any acts which committed as part of widespread or systematic attack directed against any civilian populations with knowledge of the attack constitutes a crime against humanity. The meaning attached to the phrase attack directed against any civilian population means a course of conduct involving multiple commission of the acts against any civilian population.¹²The widespread in this context refers to the scale of the offences or quantity of victims while systematic attack refers to a pattern or methodical plan. However, it is not requirement that the plan be formally adopted as a policy of state.¹³Refer to the conflict happened in Myanmar during the period of 2012, the attack continued be launched towards the population of Rohingya. It's been conducted in systematic way by the government agent and was widespread to the Rohingya population. Violence between Rakhine Buddhists and Rohingya Muslims left casualties on both sides resulted in a state sanctioned attack against Rohingya and other Muslims in 13 of 17 township in Rakhine State. The 2012 violence led to the mass displacement of Rohingya survivors to dozens of camps in eight townships in Rakhine State. The Myanmar Government have knowledge that the attack constitute crime against humanity. They not only ignored the warning signs of mass violence and atrocities but also created and perpetuated an environment for mass violence and atrocities including fostering long standing discrimination against the Rohingya population.

For an act to satisfy the requirements of crime against humanity, there must be multiple commission and it must be done in furtherance of either state or organizational policy. The Rome Statute listed the acts that meet the requirements as crime against humanity. First is murder. Second is extermination which cover the intentional infliction of conditions of life like deprivation of access to food and medicine and it was calculated as destruction of part of a population.¹⁴Third is enslavement which shall mean the exercise of any or all the powers attaching to the right of ownership over persons includes exercise of such power in the course of trafficking in persons particularly women and children.¹⁵Fourth is deportation or forcible transfer of population which shall mean forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without any grounds permitted under International Law.¹⁶Fifth is torture which shall mean the intentional infliction of severe pain or suffering, whether physical or mental upon a person in the custody or under control of the accused.¹⁷Last is any other actions like rape, sexual slavery, enforce prostitution, forced pregnancy. Enforced sterilization or any other form of sexual violence of comparable gravity.

The attacks by Myanmar security forces against Rohingya civilians in Maungdaw Township during the clearance operations from October to December 2016 and since August 2017 appear to constitute crimes against

¹⁰Advisory Service. (2004). *What is IHL*

¹¹Muhammad Naqib Ishan. (2015). *International Humanitarian Law*

¹²Article 7 (2) (a) Rome Statute

¹³*Prosecutor v Akayesu, ICTR Trial Chamber*

¹⁴Article 7 (2) (b) Rome Statute

¹⁵Article 7 (2) (c) Rome Statute

¹⁶Article 7 (2) (d) Rome Statute

¹⁷Article 7 (2) (e) Rome Statute

humanity. The International Criminal Court has affirmed that crime against humanity are attacks either widespread or systematic. Only the attack must be widespread or systematic not the individual acts of the perpetrators. Relevant factors to consider in determining whether an attack is widespread or systematic include the means, methods, resources and result of the attack as well as the consequences of the attack. Widespread attacks are generally massive frequent carried out collectively against many people. An attack takes place over time and across geographical space may also be considered as widespread.

Overall, the actions or attacks committed by Myanmar Government against Rohingyas ethnic satisfied the above requirements of crime against humanity. It is crystal clear that they have committed one of the grave breaches under International Humanitarian Law. Grave breaches under Geneva Convention and Additional Protocols are recognized as a serious violation under IHL which require efforts from state to ensure its repression. A violation of laws of armed conflict is a criminal offense. Thus, if individuals act as agent of state and they commit some violations of law, the state will be responsible for the crime. If individuals who act in their individual capacity and breached the laws, they are bear the responsibility of such breached as individuals.

IV. EFFECT OF THE CRISIS TOWARDS ROHINGYAS

The violent events take place on 2012 as well as in 1978, 1992, 2001 and 2009 can be attributed to the discrimination against ethnic of Rohingya in Myanmar. The discrimination covers the social, political and economic system. This system creates such direct violence against Rohingya. The 1982 Citizenship Law's discriminatory effects are also become the major issue. The main effect is that the Rohingya most of whom lack citizenship in Myanmar have been rendered stateless and they did not get any kind of protection of the state. The human rights effect from this law is towards the Rohingya inside the Myanmar and those living abroad as refugees. Within Myanmar, the systematic discrimination exists and rendered the Rohingya stateless and the status as stateless population within their own land acts as validation for further discrimination by the state and citizens.¹⁸ At least hundreds of thousands of Rohingyas have been physically displaced over the past 25 years, both internally and outside the Rohingya.¹⁹ Internally, not only has communal violence displaced Rohingyas, but state policy, practice and participation have accounted for internal displacement as well. At least 115, 000 Rohingyas are still in camps away from their homes.²⁰

Since violation erupted continue erupted in Myanmar, Rohingya refugees flee into Bangladesh in search for safety. Unfortunately, the Bangladeshi Government has strengthened its long standing and unlawful policy of closing the boarder and pushing back those trying to across. The exact number of new arrivals is impossible to determine as they have not been formally registered by the government or any international agency. But according to United Nations Office for the Coordination of Humanitarian Affairs, at least 27, 000 people arrived between 9 October and 11 December.²¹ In Bangladesh, the constant risk of arrest and deportation has forced newly arrived Rohingya refugees into hiding. They did not only suffer from the atrocities happened in Myanmar but also, they suffered in across borders. They are large living in extremely poor conditions without adequate access to food, health care and other basic services as the government has provided limited aid to the new arrival, apparently in order to avoid creating conditions that would lead to even more refugees arriving.

Rohingyas also had suffered the violations of human rights as they had been restricted from many rights such as right to work, education and freedom. As consequences from the crime against humanity towards Rohingyas, many of them become victims. For example, in the issue of murder. Myanmar Army soldiers slit throats, burned victims alive, including infants and children, and beat civilians to death. State security forces opened fire on men, women, and children from land and helicopter gunships at close range and at a distance, killing untold numbers.²² Survivors from some villages also reported how soldiers slashed women's breasts, hacked bodies to pieces, and beheaded victims.²³ The brutality with which the killings unfolded is alarming, as is the apparent coordination that would be necessary for these crimes to occur in similar manners across several areas in northern Rakhine State and over a span of several months.²⁴ In addition to the climate of fear created by mass killings, rapes, and other violations against Rohingya, Myanmar Army soldiers purposefully destroyed dozens of mosques and the homes of tens of thousands of civilians, razing entire villages.

¹⁸ *The Equal Right Trust*

¹⁹ *Human Rights Watch*

²⁰ *UN Central Emergency Response Fund. (2012).*

²¹ *OCHA, Asia and the Pacific: Weekly Regional Humanitarian Snapshot. (2016)*

²² *Fortify Rights, Policies of Persecution: Ending Abusive State Policies against Rohingya Muslims in Myanmar. (2014)*

²³ *Ibid*

²⁴ *Ibid*

As overall, there are serious concerns about the crimes which are happening in Northern Rakhine State of Myanmar against the Rohingya ethnic minority and to end the Rohingya community suffering and protect of them is necessary an immediate and effective measure. The responsibility to protect against Rohingya must be done immediately. This is because despite of the crimes against humanity against the Rohingya, the Myanmar's government has clearly failed to support them and this failure was obvious at least in violence in June 2012.

V. RESPONSIBILITY TO PROTECT

The doctrine of responsibility to protect agreed upon by UN General Assembly in the 2005 World Summit. The doctrine consists three pillars. One is the state carries the primary responsibility for protecting populations from crime against humanity. Second is the international community has a responsibility to encourage an assist states in fulfilling the responsibility. Third is the international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from crime against humanity. If a state fails to protect its populations, the international community must be prepared to take collective action to protect the populations.²⁵This doctrine applies to the crisis happened within Myanmar Government as the crime against humanity been committed by them towards Rohingyas ethnic and clearly showed that the government is failing to protect them.

The doctrine of responsibility to protect also can be described as the principle of humanitarian intervention by state party or third party. The question about the sovereignty of the states will always become a debate on whether States have unconditional sovereignty over their affairs or whether the international community has the right to intervene in a country for humanitarian purposes. The reason is because when there is an intervention from third party, the default state will make a claim about their sovereignty and the other party did not have any right to intervene about their state affairs. However, in this situation the term of sovereignty must be understood by all states. Sovereignty not only gave a State the right to control its affairs, it also conferred on the State primary responsibility for protecting the people within its borders. It proposed that when a State fails to protect its people either through lack of ability or a lack of willingness the responsibility shifts to the broader international community. It means the responsibility to protect lies on the third party or international community in order to prevent the continuing of the wrongful act without need to be considered as breach the sovereignty of the default state.

Humanitarian intervention and the responsibility to protect share the consequence that sovereignty is not absolute. However, the responsibility to protect shifts away from state-centered motivations to the interests of victims by focusing not on the right of states to intervene but on a responsibility to protect populations at risk. In addition, it introduces a new way of looking at the essence of sovereignty, moving away from issues of control and emphasizing responsibility to one's own citizens and the wider international community. Responsibility to protect is an attempt to ensure that the international community never again fails to prevent the continuing of the wrongful act. However, this doctrine is being impeded by continuing debate and concern over its legal status, and most significantly its effect on international law regarding the use of force.

In November 2016, UN General Assembly adopted a resolution regarding Myanmar. The assembly expressed its serious concern regarding to the situation in Rakhine State.²⁶It also called for action need to be taken by Myanmar Government in relation to the arbitrarily detained person, return of individuals to their original communities and the restitution of their property. The government accepted the General Assembly's call but it undermined its approval by protesting the use of word "Rohingya" in the resolution. According to Myanmar Government, they already exercising its primary responsibility to protect its citizens. However, there is possibility of ethnic cleansing is taking place in Myanmar and Myanmar is manifestly failing to protect its populations. Thus, the international community must be prepared to take collective action to protect populations.²⁷

The crisis occurred towards Rohingyas has been described in different ways. It is certainly more than a matter of nationality and discrimination, statelessness and displacement. All this issue must be read together in the application of the crime towards Rohingya. the combination of persecutory discrimination and statelessness includes and leads to forcible displacement is consider as crime against humanity and it was implicating the doctrine of responsibility to protect. Primary responsibility rests with the Myanmar government to protect those whose right to a nationality the country has long denied, but its regional neighbors have legal and humanitarian obligations towards Rohingya, as does the international community. The Rohingya problem begins at home and could well end there with enough political will. Failing that, as has been the case since June 2012 if not decades,

²⁵ *Office of the Special Adviser on the Prevention of Genocide, The Responsibility to Protect*

²⁶ *UN General Assembly voices concern for Myanmar's Muslims. (2012).*

²⁷ *Office of the Special Adviser on the Prevention of Genocide, The Responsibility to Protect*

regional countries and the wider world should act to address the displacement and statelessness, and to stop the violence and violations.

VI. CONCLUSION

Evidence collected by Amnesty International suggests that Myanmar security forces have deliberately targeted Rohingya civilian populations in the aftermath of the 9 October attacks. The military response to the actions of Rohingya militants have not satisfied the standards of necessity and proportionality, either on the use of force or other measures, as required by international law. The security forces have carried out operations that clearly targeted individuals with no known links to militants, instead of than investigating attacks and arresting individuals linked by evidence to acts of violence. Furthermore, they have failed to use proportional force against those using or threatening the use of force. Women, men, children, whole families and entire villages have been attacked and abused. The actions of Myanmar security forces clear intent to target Rohingya collectively on the basis of their ethnicity and religion. As such, this clearly amounts to violation of international law.

Based on the evidence available to Amnesty International, the organization is deeply concerned that there may have been a widespread, as well as systematic attack, against the civilian population of the Rohingya community in northern Rakhine State. They have already been subjected, for decades, to systematic denial and severe restrictions on their human rights on a collective and clearly discriminatory basis, including on the rights to nationality, to freedom of thought, conscience and religion, to freedom of movement and subsequently the rights to education, access to healthcare and to an adequate standard of living. Within this context, there has clearly been large-scale, violent attacks on villages in the past few months involving death, destruction and looting, rape and other forms of torture, forcing tens of thousands to flee while confining others to their villages and the denial of access to humanitarian aid bringing thousands to the starvation. Thus, the crime against humanity exists in the crisis of ethnic Rohingya and Myanmar Government.

As overall, other governments, including those in Southeast Asia, must press the Government of Myanmar to end and remedy atrocities against Rohingya and create an environment that will eventually facilitate safe and voluntary returns of those displaced. Refugees have a right to return. However, discussions now of repatriations are premature as Rohingya are still under attack in Myanmar and face well-founded fears of persecution, while perpetrators still enjoy complete impunity.

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