



"Crimes Against Humanity and Genocide": The Plight of Rohingya Muslims and Iran's Stance

Majid Bozorgmehri

Ph.D of Imam Khomeini International University, Tehran, Iran (Corresponding author).
bozorg_majid@yahoo.com  0000-0002-2715-8997

Farzaneh Moayedizadeh

Imam Khomeini International University, Tehran, Iran.
Farzanehmiayedi69@gmail.com  0000-0000-0000-0000

Abstract

The Rohingya people are the native inhabitants of Arakan (Rakhine) land in Myanmar and have faced a series of crimes by the Myanmar army and government. Based on the norms and regulations of international and customary international law and the principles of international criminal law and considering the incidents that occurred against the religious minority group of Rohingya Muslims, the continuous violation of human rights and the occurrence of the crime of genocide by the Myanmar government are a matter of fact. There are numerous examples of deliberate actions that illustrate the government's efforts to eradicate the Rohingya community, as well as intentional measures that incur international responsibility for the Myanmar government. Iran has raised three specific stances regarding the Rohingya Muslim crisis.

The major question of the research is to evaluate the occurrence or non-occurrence of violations of international criminal law, the crimes of genocide, and crimes against humanity by the Myanmar army and government against the Muslim minority in Rakhine State. Iran's stance on the issue is one of the priorities in our question.

Based on the principles of international law, the hypothesis emphasizes the occurrence of crimes against humanity and genocide. The purpose of the research is to examine one of the important cases of violation of Muslim rights in today's world that has not been noticed by international legal societies. It attempts to briefly discuss Iranian perspectives on the issue. The analytical-descriptive research method is based on official documents and undeniable facts, especially the documents issued by the International Criminal Court.

Keywords: Myanmar Muslims, Crime of Genocide, Crime Against Humanity, Iran, Humanitarian International Law.

Introduction

Statement of the Problem

The occurrence of bloody internal international conflicts in the last few decades in the world, especially in former Yugoslavia and Rwanda, led to the establishment of two international courts to punish crimes in these territories, and finally, with the adoption of the Rome Statute for the establishment of the ICC, the issue of the prevention and punishment of international crimes such as genocide and crimes against humanity has again been in the focus of the legislative and legal circles of the world community.

The Rohingya people are the native inhabitants of Arakan (Rakhine) land in Myanmar and have faced a series of crimes by the Myanmar army and government. Based on the norms and regulations of international and customary international law and the principles of international criminal law and considering the incidents that occurred against the religious minority group of Rohingya Muslims, the continuous violation of human rights and the occurrence of the crime of genocide by the Myanmar government are a matter of fact. There are numerous examples of deliberate actions, which prove the governmental steps to eliminate the Rohingya group, and deliberate measures, which cause the international responsibility of the Myanmar government.

The major question of the research is to evaluate the occurrence or non-occurrence of violations of international criminal law, the crimes of genocide, and crimes against humanity by the Myanmar army and government against the Muslim minority in Rakhine State. Iran's stance on the issue is one of the priorities in our question.

Based on the principles of international law, the hypothesis emphasizes the occurrence of crimes against humanity and genocide. The purpose of the research is to examine one of the important cases of violation of Muslim rights in today's world that has not been noticed by international legal societies. It attempts to briefly discuss Iranian perspectives on the issue. The analytical-descriptive research method is based on official documents and undeniable facts, especially the documents issued by the International Criminal Court.

Although the Myanmar government is not a member of the International Criminal Court, it is responsible for its behavior and policies in terms of customary international law (or mandatory law). The Court believes that due to the membership of Bangladesh in the Court and the commission of the crime of "forced immigration and

forced deportation of Rohingya Muslims" from Myanmar to Bangladesh, the Court acquires jurisdiction over the actions of the Myanmar government. The purpose of the research is to examine one of the important cases of violation of Muslim rights in today's world that has not been noticed by international legal societies. It tries briefly to discuss Iran's stance on the issue. The analytical-descriptive research method is based on official docs and undeniable facts, especially the documents issued by the International Criminal Court.

Literature Review

Regarding the situation of Rohingya Muslims in Myanmar, several works have previously been published in English, some in Persian.

Mousavi and his colleagues (2014) have taken a more or less brief look at the phenomenon of genocide in international criminal law and committing crimes against Muslims in Myanmar (Mousavi and colleagues, 2015: 7). Mousavi has focused well on the elements of the crime of genocide only in the form of three axes, although the elements of the mentioned crime are more than three (Mousavi, 2014).

Majid Afraz (2016), in a legal note entitled "Investigation and Analysis of the Criminal Responsibility of the Myanmar Government in Relation to the Massacre of Muslims in the Light of International Law," discusses the international responsibility of governments and the international responsibility of the Myanmar government based on customary and imperative international law. (Afraz, 2016: 1).

Kazemi Forushani and his colleagues (2018) discussed the situation of Muslims in Myanmar from the perspective of human rights at the "New Findings of the Humanities and Social Sciences" conference in Budapest (Kazemi Forushani and colleagues, 2018: 60). He emphasizes that the only way to deal with the crimes committed against the Muslims of Myanmar is to enter the Security Council of the UN and request the International Criminal Court to deal with them.

Shorafefi al-Mohaneh (2019) discusses the dimensions of the Rohingya resident rights issue according to the literature of international criminal law. He states that the only way that the International Criminal Court can deal with the violation of the rights of Myanmar Muslims is by resorting to the prohibition of deportation and forced relocation (Almuhana, 2019: 45).

In its summary report (2020), the Global Justice Center raises the issue of the investigation of the International Criminal Court in the

issues of Bangladesh and Myanmar and specifically evaluates the action of the court's prosecutor based on the order confirming the jurisdiction of the court dated November 14, 2019. (Global Justice Center, 2020: 1).

Rahela Sadat Mousavi Ajaq has also briefly analyzed the category of genocide in Myanmar with the subject of human rights in the "Research Journal of Human Rights" (Sadat Mousavi Ajaq, without date: 36). The focus of her discussion is the conflict between the policies and actions of the Myanmar government and the principles of human rights.

Nozar Shafiei and his colleagues (2018) looked at the general performance of the UN institutions in relation to the genocide crisis in Myanmar and concluded that the UN institutions have only had a recommendatory approach to the issue of crimes against humanity and genocide of the Rohingya people (Shafii, 2018: 142).

"The Association of Physicians for Human Rights" (2019) has documented the incidents and consequences of the 2017 operation against the Muslim people of the region in a report. The report points out a wide range of human rights violations by the Myanmar government (Physicians for Human Rights, 2019: 4–5).

Lucas Alcici and his colleagues (2021) analyze the issue of deportation and displacement of the Rohingya people from the perspectives of international criminal law and international law. According to them, it is only from the point of view of the category of forced displacement that violations of the rights of Rohingya Muslims can be evaluated and proven (Alcici and Colleague, 2021: 116).

Gomez (2020), like Alcici, has made the crime of deportation and forced displacement of Rohingya Muslims by the Myanmar government the focus of his discussion and claims that the Court should redefine the severity of the crime of forced displacement as an example of human rights violations (Gomez, 2020: 188).

Ronan Lee (2019) introduces the Myanmar government's citizenship law as a state crime that can be dealt with by the International Criminal Court (Lee, 2019: 242).

Each of these works has elaborated on some dimensions of the issue. A few works suffer from the weakness of legal discussion, and others lack comprehensive political analysis. The strength of this research is its comprehensive legal and political view, along with updating the data.

1. Conceptual Framework

1-1. Genocide Criminalization: A Historical Perspective

The criminalization of actions against human groups from the point of view of international law was first proposed in 1933 by Raphael Lemkin at the World Conference on the Unification of Criminal Law in Madrid, and these types of actions were interpreted as barbaric crimes. The first international legal document that used the word genocide was the indictment of October 18, 1945, against German criminals at the Nuremberg Tribunal, and so it was included among the crimes against humanity (Rajai Bagh Siyabi, 2011: 163).

In 1948, the General Assembly of the United Nations officially approved the Convention on the Prohibition and Punishment of Genocide, and this document is considered a legal pillar for punishing the crime of genocide in the international arena. With the approval of most governments, it became enforceable as a domestic law. Since the judicial procedure is considered one of the sources of international criminal law, therefore, the procedure of the international courts for the former Yugoslavia and Rwanda is effective for explaining and interpreting these crimes. Article 4 of the Statute of the Yugoslavian Court, Article 2 of the Statute of the Rwandan Court, and Article 6 of the Statute of the International Criminal Court are among the other constituents of the legal element of the crime of genocide. In general, today, genocide is one of the crimes that is part of customary international law and obliges all countries that are not members of related conventions to implement its provisions.

1-2. Genocide

Genocide, the Latin term used in 1944 by Raphael Lemkin to describe the cruel acts of Nazi Germany's criminals against the Jews, is composed of the Greek word "genos," which means nation, class, race, and generation, and the English word "cide," which means to destroy and kill. Lemkin interpreted genocide not only as mass killing through the "destruction of a national or ethnic group," but also through a coordinated plan of various actions in order to destroy the basic foundations of the life of a national group with the aim of destroying the group itself (Rajai Bagh Siyabi, 2010: 163).

From the perspective of international criminal law, genocide includes a series of criminal actions that are usually carried out on a large scale with the intention of destroying all or part of the target

groups (Tayeb, 2005: 70). According to Article 4 of the Statute of the ICC, genocide means any of the following acts that are committed with the intention of destroying all or part of a national, ethnic, racial, or religious group in terms of these titles:

- A. Killing members of a group
- B. Severe damage to the physical or mental health of the members of a group
- C. Deliberately placing a group in inappropriate living conditions that lead to the deterioration of all or part of that group's physical abilities
- D. Imposing measures to prevent births in the group
- E. Forced transfer of children from one group to another.

On the other hand, in the text of Article 2 of the Convention "Prohibition and Punishment of Genocide"¹ approved in 1948, genocide is defined as a set of actions that are similar to the text of Article 4 of the Statute of the International Criminal Court.

This definition of genocide is exactly repeated in paragraph 3 of article 4 of the Statute of the former Yugoslavia, paragraph 2 of article 2 of the Statute of the Rwanda Tribunal, and article 6 of the Statute of the International Criminal Court.

1-3. Crimes Against Humanity

Crimes against humanity are specific acts committed intentionally by a state, or on behalf of a state, as part of a widespread or organized policy, usually against civilians, in times of war or peace. A crime against humanity is different from a war crime because a war crime is usually a single, isolated act committed by soldiers, while a crime against humanity is committed in furtherance of the policy of a government or organization. The violent nature of such acts is considered a gross violation of human rights.

Crime against humanity was first raised as a legal charge at the Nuremberg Trials. Since then, other international tribunals, such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court, as well as domestic courts, have prosecuted crimes against humanity. The legal standards for crimes against humanity

1. The Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), or Genocide Convention, is an international treaty that criminalizes genocide and requires states not to commit it. This convention was the first legal document to codify genocide as a crime and the first human rights treaty that was unanimously approved by the United Nations General Assembly on December 9, 1948 (G.A. Res. 260.1948).

have been formed mainly through the evolution and development of customary international law. Unlike war crimes, crimes against humanity may be committed both during wartime and during peacetime (De Guzman, 2011: 6).

Crime against humanity does not refer to isolated and scattered incidents by a few people, but it is realized when committing widespread crimes is part of a government's policy. Crime against humanity has a broader concept than genocide. In the crime against humanity, it is not necessary to target a specific group, but in general, a civilian population, including political groups and others, may be the target of these crimes. In a crime against humanity, unlike genocide, the intent of the perpetrator to destroy all or part of the target group is not a condition (Varleh, 1999: 59).

According to Article 7 of the Statute of the ICC, crimes against humanity are defined as the following acts committed in a "widespread" or "organized" attack against a "civilian population" and with "knowledge of that attack":

1. Murder; 2. Suppressing; 3. Being enslaved; 4. Migration or forced displacement of the population; 5. Imprisoning or creating any other form of severe deprivation of physical freedom that is against the fundamental rules of international law. 6. Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, and any kind of sexual violence similar to them; 7. Harassment of any group or any specific gathering for political, racial, national, ethnic, cultural, religious, or sexual reasons (mentioned in paragraph 3) or any action listed in this paragraph or any crime subject to the jurisdiction of the court based on the criteria that are at the level universally recognized as unacceptable by international law; 8. Enforced disappearance (persons); 9. Apartheid; 10. Other similar anti-human acts are done intentionally with the intention of causing great suffering or serious injury to the body or physical or mental health.

2. The General Situation of the Rohingya Muslim Minority

In 1948, the country of Burma (Myanmar) gained its independence, but even before independence, the inhabitants of this land faced the problem of ethnic conflicts. In terms of demographic structure, on the one hand, the majority of the population are Burmese, who make up almost two-thirds of the total, and on the other hand, there are over 144 different ethnic groups, all of which make up another third of Myanmar's population (Ziaur, Rahman, and Jhensanam, Anusara, 2018).

The Muslim area of Arakhin is located in a narrow coastal strip between the western highlands of Arakan and the Bay of Bengal, which is very suitable for agriculture and one of the main rice production points, but the area has great difficulty traveling to other parts of Myanmar, and so it is easier for the people to travel to Bangladesh (Mofazli, 2012: 72).

Arakhin, with an area of about 37,000 square kilometers, shares borders with Bangladesh and India. Muslim people make up the absolute majority of the population of the state, although a minority of Buddhists also live in the same state. The capital of the state is Arakhin, and the city of Sitoh is located in the north. The waterways leading to Arakhine were paved by the arrival of Islam in the region and its adjacent coastal areas in the late 7th century AD by Muslim Arab merchants and sailors, and since then, a large number of Arakhine residents have converted to Islam (Mofazli, 2012: 73). Today, the Rohingya ethnic group is a Muslim population whose historical and ancestral roots and cultural ties are located in the state of Arakan along the borders of Myanmar and Bangladesh (Zarni, Cowley 2014: 682).

The population of Rohingya people was estimated to be over 1 million people before the 2017 developments that led to their deaths and massive displacement (Council on Foreign Relations, 2018).

3. Crimes Against the Rohingya People

Among Myanmar's ethnic minorities, the Rohingya people have been subjected to the violent actions of Buddhist extremists more than other ethnic groups (Shafi'i and Salimi, 2018: 146). In Myanmar, indigenous groups are targeting Muslims, yet the Myanmar government fails to respond to such massacres and has even deprived Muslims of their citizenship rights (Rustai & Arashpour 2015: 73).

The victims of the massacre in Myanmar comprise the 7% Muslim minority of the total population of Myanmar, who have either been displaced from their homes and sought refuge in neighboring countries or have been killed. To date, the UN human rights system has taken significant measures to prevent the continuation of crimes.

3-1. Violence Against the Rohingya

Despite the fact that the Rohingya Muslim people have lived in Myanmar for many centuries, the nationalist extremists in Burma have denied the existence of an identity called Rohingya and called

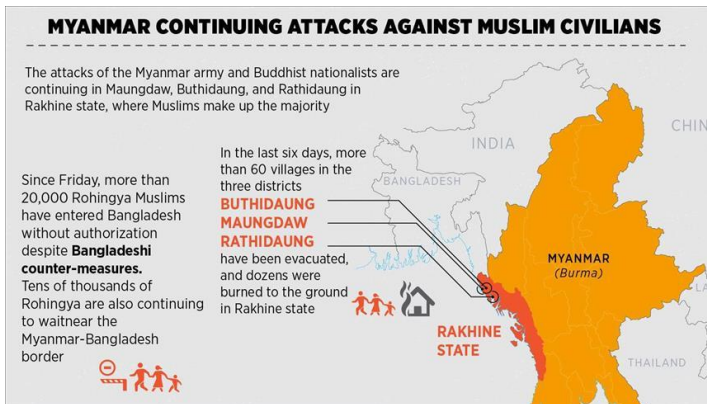
them immigrant groups who have migrated to Myanmar from other lands. Therefore, since the mid-1940s, these people have been continuously insulted, discriminated against, violated, and isolated by military governments.

There are reliable sources that say Rohingya Muslims lived in Rakhine State before the independence of Myanmar from British colonialism in 1948 and even before the colonial era. In fact, Rakhine State in Myanmar was the ancestral home of Rohingya Muslims. However, the extreme nationalist Buddhists strongly oppose this opinion and call the Rohingya people illegal immigrants who migrated from East Bengal to Rakhine during the period of British colonial rule over Burma or after the independence of Burma and Pakistan in 1947–1948 (Chan, Zahn 2005).

Today, the total population of Rohingya Muslims in Rakhine State is more than one million people, most of whom live in three urban areas of Northern Rakhine State and are stateless (Szep, Marshall, 2013). In the 1970s and especially in 1978, during what is called Operation Dragon, more than 300,000 Rohingya were killed, injured, and displaced (Selth, 2018).

The Human Rights Center of Ireland, in its 2010 report, states that due to the evidence of the crime of deportation or forced transfer, the first mass migration of the Rohingya people that attracted the attention of the international community was the mass migration from North Arakan state to the newly independent state of Bangladesh. It was in 1978, during which about 220,000 Rohingya people were displaced on the border of Bangladesh (Irish Center for Human Rights 2010: 91).

In 1982, the Myanmar government removed the Rohingya people from the circle of citizenship by enacting the Citizenship Law, and they became stateless. According to the mentioned citizenship law, original citizenship is considered only for people who have the possibility of proving their origin and residence before 1842.



Source: (Fatih Hafiz, 2017)

Map (1): Attacks Against Muslim Civilians (31 August 2017)

The regulations were formulated in such a way that the Rohingyas are practically unable to provide acceptable documents to prove their Burmese citizenship, so they are not recognized as one of the national races of Burma (Shafiei & Salimi, 2018: 146). By referring to the state of statelessness, the government deprived Muslims of an important part of human rights regulations and discriminatory measures against them, such as forced labor, preventing employment in government centers, collecting taxes for the birth of every Muslim baby, expropriating property and preventing them from owning land in Myanmar, being deprived of health and educational services, being prevented from university education, non-issuance of identity cards and passports, and enforced migration (Shafiei & Salimi, 2018: 147).

These limitations can be categorized into five topics:

- 1- Denial of citizenship and citizenship rights: In 1982, a law was passed that revoked the citizenship rights of the Rohingya Muslim majority in Burma. According to the law, about 135 ethnic groups out of 144 ethnic groups in Myanmar were granted citizenship, but 9 ethnic groups, including the Rohingya (4% of the country's population), who are Muslims, were denied the right to citizenship (Martin & others, 2017: 12).
- 2- Deprivation of the right to participate in the elections and representation in the parliament: In 2015, the then president of Myanmar, "Thein Sein," banned and canceled the temporary identification cards (white cards) that were in the possession of a large number of Rohingya and allowed them to vote in the elections. Therefore, the Election Commission did not allow the

Rohingyas to participate in the 2015 parliamentary elections.

- 3- Deprivation of the right to study and work in governmental centers.
- 4- Movement restrictions: Rohingyas in rural areas are not allowed to move from one village to another without the permission of local authorities.
- 5- Restrictions on marriage and prohibition of changing religion through marriage: In 2015, the Myanmar Parliament approved the "Race and Religion Protection Law," which was probably aimed at the Burmese Muslim population, especially the Rohingya. The aforementioned regulations prohibited religious marriages and conversion to Islam through a marriage contract without the government's permission (Martin and others, 2017: 12).

The policy of changing the use of lands and villages to model villages throughout Burma and intensifying the militarization of these areas has led to an increase in the confiscation of Rohingya Muslim lands (Rustaei and Arashpour, 2015: 57). The increase in the militarization of North Arakan State since 1994 made the necessity of a land confiscation policy legal for the construction and maintenance of military facilities. Rohingya refugees are often forced to participate in the construction of military facilities and even adjust the cultivation of their farms to the needs of the Burmese military (International Federation of Human Rights 2000: 23-24).

The second massive migration of Rohingya people to Bangladesh took place between May and March 1992. (Human Rights Watch 1996: 12).

In 2003, the United Nations General Assembly passed a resolution on the human rights situation in Myanmar, which for the first time mentioned several international conventions, including the Convention on the Prohibition and Punishment of Genocide and the 1949 Geneva Conventions. The resolution expressed concern about the systematic violation of human rights in Myanmar. Since 1991, the United Nations General Assembly has passed several resolutions regarding civilians, children, and armed conflicts and has expressed concern about the human rights situation in Myanmar (Omid Zamani, 2017: 93-95).

The special rapporteur of the United Nations, Rajsoomer Lallah, in his January 2000 report pointed to the factors that led to the mass exodus of Rohingya Muslims from Burma, which are

- 1- Not having citizenship and not enjoying national rights;
- 2- Restrictions on movement and travel;

- 3- Forced labor and forced labor for the army;
- 4- Forcible cutting of food, extortion, and arbitrary collection of taxes;
- 5- Confiscation of land or obligation to relocate residence;
- 6- Creation of deliberate restrictions on food distribution in parallel with high prices (Lallah 2000: 14).

In a 2012 report, Genocide Watch classified Myanmar as one of the countries at high risk of genocide due to violence and other crimes committed against the Rohingya (Sentinel Project, 2013).

Since the violence of 2012, more than 140,000 people have been displaced in camps in Rakhine State, the majority of whom are Rohingya Muslims. The United Nations has considered approximately 36,000 Rohingya Muslims and other Muslim communities in Rakhine State to be really vulnerable and in need of immediate humanitarian assistance (United Nations Office for the Coordination of Humanitarian Affairs 2013: 3-4).

According to the report of another special rapporteur of the UN Human Rights Council, Paulo Sergio Pinheiro, in many areas where ethnic minorities live, forced displacement has been a part of their living conditions. Therefore, in June 2012, widespread violence against the Rohingya Muslims began, which caused the third wave of their escape from their place of residence in Arakan state. According to the report by Human Rights Watch, 77 people were killed and 109 were injured following the beginning of riots and violence in various cities of Rakhine State in June. 4,822 houses and 17 mosques were burned down (Human Rights Watch 2013: 21).

In 2017, the High Commissioner for Human Rights mentioned the conditions governing Rakhine State as a form of "ethnic cleansing" (UN Office of the High Commissioner for Human Rights, 2017). A human rights institution announced that it has collected more than 80 statements from Rohingya men and women who witnessed ethnic cleansing operations in 40 villages in northern Rakhine State. In these testimonials, it was mentioned that the agents of the Myanmar military forces have killed civilians, including infants and children. As per the report, military forces burned men alive and killed women and children both at close range and from a distance. Survivors from some villages recounted soldiers tearing women's clothes, committing rape, and beheading the victims (Shafi'i & Salimi, 2018: 149).

In a 56-page report on the conflicts in Myanmar, Human Rights Watch states that Myanmar's security forces did not protect Muslims against Buddhists and even launched a violent military

campaign against the Muslim population. The report clearly states that the Myanmar authorities are directly responsible for the crimes against the Rohingya Muslim minority, including mass killings, rape, forced arrests, and the burning of residential and commercial areas of the Rohingya minority. The report adds that satellite images show that at least 288 Rohingya villages were destroyed from August to November 2017 (Human Wacht, 2017).

The United Nations High Commissioner for Human Rights, Zeid Ra'ad Hussain, stated during the detailed report he published in 2017 about the crimes committed against the Rohingya Muslim minority, and at the 36th session of the Human Rights Council that the organized violence against the Rohingya minority in Myanmar is a clear example. It is a racial settlement (Shafi'i & Salimi, 2018: 150).

On March 13, 2018, Adama Ding, the UN advisor on the prevention of genocide, reported that based on the information received, the Myanmar government plans to get rid of the Rohingya Muslims in Rakhine State and possibly even destroy them, if this is proven, it is considered a crime against humanity and a form of genocide (Shafi'i & Salimi, 1398: 152).

On August 25, 2017, the Myanmar government started a cleansing operation against the entire Rohingya population (Report of the Independent International Fact-Finding Mission on Myanmar, 2018: Paras 32-33). As a result of this operation, nearly 725,000 Rohingya fled from Rakhine to Bangladesh until mid-August 2018 (Report of the Independent International Fact-Finding Mission on Myanmar, 2018: Paras 32-33). The operations included rape and sexual assault of women, burning villages, killing, depriving civilian women of food and water, and preventing medicine from reaching the victims (Almuhana, 2019: 48).

The Myanmar government has legalized its security operations against the Rohingya, claiming that these operations were of a counter-terrorist nature against the Arakan Rohingya Salvation Army. Referring to paragraph 2 of Article 12 on September 6, 2018, the Hague Court confirmed its jurisdiction to review the case as one of the parties to the lawsuit, Bangladesh, is a member of the court (Decision on the Prosecution's Request, 2018: para. 72).

The Prosecutor of the ICC has made several statements about the Rohingya crisis, first relying on international law, such as the violation of the Rohingya's right to return to Myanmar, which is a customary international law. This principle guarantees the right of displaced people to return safely to their place of residence (Request for Authorization of an Investigation Pursuant to Article 15, 2019:

paras. 71 & 75).

The court prosecutor believes that if the crimes of war against the officials of the Myanmar government are predicted, it does not warrant legal action, and it is a conceivable issue regarding the occurrence of crimes against humanity (Almuhana, 2019: 66). Actions such as taking children from their mothers and throwing them into the river or the fire area during forced migration are examples of crimes against humanity (Request for Authorization of an Investigation Pursuant to Article 15, 2019: Supra Note 12).

On November 14, 2019, the Third Trial Chamber of the International Criminal Court issued a ruling on the authorization of an investigation into the situation in Bangladesh/Myanmar (ICC. No. ICC-01/19, 2019).

According to this ruling, the prosecutor's office has the authority to investigate the occurrence of the alleged crimes. The subject of the petition is the commission of war crimes against the Rohingya people during their deportation from the Republic of the Union of Myanmar to the People's Republic of Bangladesh. They have been charged with a crime against humanity.

The prosecutor's innovative interpretation of the crime against humanity in the case of forced deportation allowed the court to react to the crimes committed against members of the Rohingya. In the judgment of September 6, 2018, Trial Chamber 1, significant findings are made regarding the elements of the crime of forced deportation, most of which are confirmed in the final judgment of November 14, 2019 (ICC. No. ICC-RoC46(3)-01/18, 2018).

Through its review in 2019, the Court's division held that "persecution" and "other inhumane acts" were crimes that could fall within the court's jurisdiction in the Rohingya case. According to Article 7 (1)(h) of the statute of the court, the persecution of any group or group due to discriminatory behavior committed in connection with any other crime under the jurisdiction of the court is a crime against humanity (Bazzar, 2022: 52).

On the other hand, on November 11, 2019, the Gambian government, with the support of 57 countries of the Organization of Islamic Cooperation and on behalf of the Rohingya Muslims, filed a lawsuit against the Myanmar government in the International Criminal Court against the Myanmar government's action of committing the crime of genocide. He complained about the ethnic-religious minority group of Muslims in Myanmar (Danish Shahraki & Mardani, 2018: 51).

According to international jurisprudence, if ethnic cleansing has

the intention of genocide, it can include some prohibited acts listed in Article 2 of the Genocide Convention. Also, if the forced transfer of the population is accompanied by conditions that lead to the total or partial death of the transferred population and the intention to destroy the group can be proven, it is considered genocide. Considering that the actions of the Myanmar government to cleanse the Rohingya Muslims have been carried out with the aim of extermination, this includes killing members of the group, inflicting serious physical or mental injuries, creating restrictions on reproduction, and deliberately imposing conditions that lead to the physical destruction of the group. In fact, genocide is the most serious crime taking place in Burma. (Danesh Shahraki & Mardani, 2018: 52).

Of the five examples of the crime of genocide, which are explicitly explained in Article 2 of the 1948 Convention on the Punishment and Prevention of the Crime of Genocide, the first four acts include intentional killing, harming the soul and body of the victims, imposing difficult living conditions in such a way as to destroy the physical destruction of all or part of the group, and preventing the birth of the group, which have been committed by the Burmese rulers in the ethnic cleansing operation of the Rohingya Muslims (Zarni & Alice 2014: 129).

Based on conclusive evidence and relying on the Genocide Convention, the Rohingya people have been victims of gradual genocide operations since 1978. According to "William Schabas," we are dealing with an area where the term genocide can be used. When we see that actions are taken to prevent birth, people's identity is denied, and their right to live is denied, these are all warning signs that show using the word genocide is not inappropriate (Al Jazeera 2012).

4. Iran`s Stance on the Issue

Iran has raised three specific stances regarding the Rohingya Muslim crisis: First, it is the duty of the international community, especially the United Nations, to confront these types of humanitarian rights violations, which have the nature of crimes against humanity. Second, to protest against the double policy and double standards of the Western countries, which have remained silent regarding this type of crime against the Rohingya people. The third stance announced by Iran is Iran's readiness to send immediate humanitarian aid to the Muslim group and invite Islamic countries to participate in this action.

Ex-Iranian Foreign Minister Mohammad Javad Zarif has constantly warned about the continuation of the ongoing crackdown on Rohingya Muslims in Myanmar, urging the international community and the United Nations in particular to take swift action to end the crisis. In a letter to UN Secretary General António Guterres published on Friday, September 8, 2017, Zarif warned, “It is expected that the United Nations act swiftly and undertake all necessary measures toward addressing international concerns about the deteriorating situation in Myanmar.” He added that UN support for deescalating the violence, ensuring the dispatch of humanitarian assistance to the people in need, and finding a sustainable solution to the crisis is essential, and the body must act immediately (Defence.pk, 2017).

The ex-Iranian foreign minister has also pointed to his previous January letter to the UN chief about the violence against the Rohingya Muslims and once again drew attention to the “alarming situation” of the Rohingya Muslim community in Myanmar¹ (Defence.pk, 2017).

Iranian Vice President Massoumeh Ebtekar also slammed the international silence on crimes against Rohingya Muslims in Myanmar, “Double standards are the most prevalent challenge that human rights advocacy faces today. Why silence before crimes against Rohingya Muslims?” (Ebtekar, 2017) Her post was in response to Myanmar’s de facto leader, Aung San Suu Kyi, who claimed on Wednesday that “a huge iceberg of misinformation” was spreading about violence in western parts of the country.

It should be noted that Iran's assistance to the Rohingya Muslims has a longer history. Mahmoud Safari, the Consul General of Iran at Hyderabad on August 3, 2012 delivered a check for the sum of Rs. 65,000 to the Confederation of Voluntary Organizations (COVA), which works with UNHRC, that would help the refugees. Safari, addressing the Rohingya Muslim refugees, strongly condemned the persecution of Muslims in Myanmar.

Expressing deep regret for the failure of the world to react appropriately to the genocide of Myanmar's Muslims in Rakhine State, Iranian official urged the international community to condemn the genocide in its strongest sense and come forward for the help of the victims.

1. In the letter addressed to Guterres on January 6, 2017, Zarif demanded international action to stop rights violations against the Rohingya Muslims in Myanmar, saying the plight of the Rohingya has caused international concern.

He also urged the government of Myanmar to find a fair and just solution to the current unrest, which includes a permanent solution for the hundreds of thousands of stateless Rohingya that live in makeshift refugee camps. Safari assured them of all possible assistance.

Speaking on the occasion, Musfa Fazlulrehman, Spokesperson of Myanmar Refugees, appreciated Iran's solidarity with the Rohingya Muslims and thanked for the help extended by the government of Iran as a priority (IRNA, 2012).

Conclusion

From the perspective of international law documents and literature, including mandatory and customary law, numerous related conventions, and the provisions of the International Criminal Court Statute, the tragedies that occurred in Myanmar are examples of the crimes of genocide and crimes against humanity.

In this regard, the undeniable activities of the Myanmar government in ethnic cleansing against the Rohingya minority have a significant connection with the issues of genocide and crimes against humanity in customary international law and international criminal law. Ethnic cleansing is the organized, forced removal of ethnic, racial, or religious groups from a certain territory by a more powerful group.

Considering that Myanmar is not a member of the court, the International Criminal Court can deal with this issue in all aspects if the Security Council refers to it. However, since the Security Council in today's conditions does not apply the necessary sensitivity to human rights issues in the world, especially Muslims, or does not consider it an example of the situation jeopardizing international peace, it is not possible to pursue the issue through the Security Council for the time being.

Since 2019, the International Criminal Court has tried to declare the actions of the Myanmar government against the Rohingya Muslims as example of a crime against humanity, with a new interpretation of the issue of deportation and forced migration and citing Bangladesh's membership in the court.

In the current situation, while the Security Council will not enter the fight due to its political considerations, it is the duty of the Organization of Islamic Cooperation and its member countries to seriously raise and follow up on the issue with international institutions, especially the Human Rights Council, and at the same time with innovative methods such as sanctioning Myanmar

regarding the non-realization of the rights of Muslims.

Iran's main effort is to align, first of all, the international community and then the Islamic countries to prevent these types of crimes against the Rohingya Muslim people.

References

- Afraz, Majid (2016). Investigation and analysis of the criminal liability of the Myanmar government in relation to the massacre of Muslims in the light of international law. *Dohbanan Justice*, (20), 2016, 1-4 /<https://didad.ir/tag>. Accessible on 24th July 2020.
- Alcici, Lucas and Pipia, Saba (2020). Displacement of the Rohingya Before the ICJ and the ICC: Same Conduct, Different Crimes in International Law? *ASIA-PACIFIC JOURNAL OF INTERNATIONAL HUMANITARIAN LAW* Oct. 2021: 116-141. Accessible on 20th July 2021.
- Al Jazeera (2012, December 9). *The Hidden Genocide*. Available from: <http://www.aljazeera.com/programmes/aljazeerainvestigate/s/2012/12/2012125122215836351.html>. Accessible on 14th January 2021.
- Almuhana, Sharefah A. (2019). The International Criminal Court (ICC) and the Rohingya Crisis Jurisdiction and Future Perspectives. *Kilaw Journal*, 7(28), - Rabi'ul-Akhir - Jumadal-Awwal 1441- Dec. 2019: 45-87. Accessible on 24th July 2020.
- Bazzar, Vahid (2022). Identification of Elements of the Crime against Humanity of Deportation into the Situation in Bangladesh/Myanmar. *Journal of International Criminal Law*. (3), 48-53. Accessible on 22nd December 2021.
- Chan, Aye; Zan, Shw U. (2005). *Influx Virus - The illegal Muslims in Arakan*. Available from: <http://www.networkmyanmar.org/images/stories/PDF15/Influx-Virus.pdf>. Accessible on 24th July 2020.
- Council on Foreign Relations (2018). *Understanding Myanmar*. Available at: <https://www.cfr.org/background/understanding-myanmar>. Accessible on 04th July 2022.
- Danesh Shahraki, Mohammad Reza and Nader Mardani (2018). The Legal Nature of the Crimes Committed against the Forgotten Muslims of Myanmar. *Two Scientific Quarterly Journals of Islamic Human Rights Studies*, 8(16), 39-55. Accessible on 14th January 2019.
- Decision on the "Prosecution's Request, supra note 13, at 42 para. 72. Accessible on 24th July 2020.
- Defence.pk (2017). *Iran FM urges swift UN action on Rohingya crisis*. Sep 8, <https://pdf.defence.pk/threads/iran-fm-urges-swift>

- un-action-on-rohingya-crisis.516685/
- De Guzman, Margaret M., Crimes Against Humanity (January 21, 2011). RESEARCH HANDBOOK ON INTERNATIONAL CRIMINAL LAW, Bartram S. Brown, ed., Edgar Elgar Publishing, 2011, Temple University Legal Studies Research Paper No. 2010-9, Available at SSRN: <https://ssrn.com/abstract=1745183>
- Ebtekar (2017). Twitter account on Friday 8 Sep. <http://www.presstv.com/Detail/2017/...res-Rohingya-Muslims-letter-Massoumeh-Ebtekar>
- Fatih Hafiz, Mehmet (2017). *INFOGRAPHIC-Myanmar continuing operations against Muslim civilians* [31.08.2017], Anadolu Agency, the AA News Broadcasting System (HAS) <https://www.aa.com.tr/en/asia-pacific/infographic-myanmar-continuing-operations-against-muslim-civilians/898138>. Accessible on 26th July 2021.
- IRNA (2012). *Iran offers cash assistance to Rohingya Muslim refugees in Hyderabad*. News and Press Release, 3 Aug 2012, NewsCode: 80258795. <https://reliefweb.int/report/india/iran-offers-cash-assistance-rohingya-muslim-refugees-hyderabad>
- G.A., Resolution 260 (III). Convention on the Prevention and Punishment of the Crime of Genocide (PDF). United Nations Audiovisual Library of International Law..https://legal.un.org/avl/pdf/ha/cppcg/cppcg_ph_e.pdf. This convention entered into force on January 12, 1951, and has 152 member countries (CPPCG. 1948). Accessible on 24th July 2020.
- Global Justice Center (2020). *Q&A: The International Criminal Court Investigation into the Situation in Bangladesh/Myanmar*. FACTSHEET | JULY 2020, Global Justice Center: human rights through rule of law: 1-4. www.globaljusticecenter.net. Accessible on 13th January 2020
- Gomez (2020). THE INTERNATIONAL CRIMINAL COURT'S DECISION ON THE ROHINGYA CRISIS: THE NEED FOR A CRITICAL REDEFINITION OF TRANS-BORDER JURISDICTION TO ADDRESS HUMAN RIGHTS, California Western International Law Journal, Vol. 50, No. 1 [2020], Art. 7: 177-204. Accessible on 14th January 2021
- Human Rights Watch (2013). *All you can do is pray: Crimes against humanity and ethnic cleansing of Rohingya Muslims in Burma's Arakan state*. 1-165. http://www.hrw.org/sites/default/files/reports/burma0413.webwcover_0.pdf. Accessible on 10th January 2019.
- Human Rights Watch (1996). *The Rohingya Muslims: Ending a Cycle of Exodus*. Available from:

- <http://www.hrw.org/en/reports/1996/09/01/rohingyamuslims-ending-cycle-exodus>]. Accessible on 14th January 2021.
- ICC. No. ICC-RoC46(3)-01/18 (2018). Pre-Trial Chamber, 6 September 2019 Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute". Accessible on 14th January 2009.
- ICC. No. ICC-01/19 (2019). Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Pre-Trial Chamber, 14 November 2019. Accessible on 14th January 2021.
- International Federation of Human Rights (2000). *Burma: Repression, Discrimination and Ethnic Cleansing in Arakan*. Available from: <http://www.fidh.org/IMG/pdf/arakbirm.pdf>. Accessible on 14th December 2022.
- Irish Center for Human Rights (2010). *Crimes against Humanity in Western Burma: The Situation of the Rohingyas*. National University of Ireland, Galway, 153 p. Available from: http://burmaactionireland.org/images/uploads/ICHR_Rohingya_Report_2010.pdf. Accessible on 14th January 2022.
- Kazemi Forushani, Hossein and Akbari, Narges (2018). Introduction to the situation of Muslims in Myanmar from the perspective of human rights and international criminal law, the second conference on new findings of humanities and social sciences, *Budapest, Hungary*, 59-80, [www.http://2Hsconf.com](http://www.2Hsconf.com). Accessible on 14th July 2021.
- Lallah, Rajsoomer (2000). *Question of the violation of human rights and fundamental freedoms in any part of the world*. UN Economic and Social Council, Situation of human rights in Myanmar, E/CN.4/2000/38. Accessible on 12th January 2020.
- Lee, Ronan (2019). Myanmar's Citizenship Law as State Crime: A Case for the International Criminal Court. *Source: State Crime Journal*, 8(2), 241-279 Published by: Pluto Journals, Stable URL: <https://www.jstor.org/stable/10.13169/statecrime.8.2.0241>. Accessible on 14th January 2021.
- Martin, Michael F. Margesson, Rhoda and Vaughn, Bruce (2017). *The Rohingya Crises in Bangladesh and Burma*. Congressional Research Service, 7-5700, www.crs.gov, November 8, 2017. Available at: <https://fas.org/sgp/crs/row/R45016.pdf>. Accessible on 04th January 2019.
- Mousavi, Seyed Ali and Alavi, Seyed Hassan (2014). Genocide in international criminal law with application to the genocide of Myanmar Muslims. *two quarterly legal discourses, fourth year*, (7), spring and summer 2014: 5-44. Accessible on 11th January

- 2020.
- Omid Zamani, Mohsen (2008). The situation of human rights in Myanmar and how to refer it to the Security Council. *International Studies Quarterly*, (2), 91-104. Accessible on 14th January 2021.
- Physicians for Human Rights (2019). *Rohingya Disabled by Myanmar Authorities. Targeted Violence", Shot While Fleeing, June 2019: 1-85*. Accessible on 14th January 2021.
- Rajai Bagh Siyabi, Mehdi (2010). Genocide crime in Bahrain and legal solutions to deal with it. *Political Science Quarterly*, 14th year. No.55. Accessible on 03th January 2019.
- Prosecution's request for a ruling on jurisdiction, supra note 12, at 6., Request for authorization of an investigation pursuant to article 15, (2019). ICCOTP, 4 July 2019, https://www.icc-cpi.int/CourtRecords/CR2019_03510. PDF. Accessible on 14th January 2021.
- Report of the independent international fact-finding mission on Myanmar (2018). OHCHR, 12 September 2018 at 8, paras. 32-33. https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf. Accessible on 14th January 2021
- Request for authorization of an investigation pursuant to article 15, ICC-OTP, 4 July 2019, at 40 para, 75 and 71 para. 139 https://www.icc-cpi.int/CourtRecords/CR2019_03510.PDF. Accessible on 10th July 2020.
- Rezni, Maung (2012). Buddhist Nazism in Myanmar: Genocide and Institutional Racism against Rohingya Muslims. *translated by Javad Taheri, Western Travel Magazine*, (118-119), 125-132. Accessible on 14th January 2021.
- Rustai, Alireza and Alireza Arashpour (2015). Ethnic cleansing of Myanmar Muslims; crime against humanity or genocide? *Criminal law research*, 4th year, 15th issue, summer 2015, 45-73. Accessible on 19th January 2019.
- Sadat Mousavi Ajag, Rahela (Without date). Human Rights and Facing Genocide in Myanmar. *Human Rights Research Journal*, 35-47. Accessible on 09th January 2020.
- Selth, Andrew (2018). Myanmar Armed Forces and the Rohingya crisis, PEACEWORKS No. 140 Available at: <https://www.usip.org/sites/default/files/2018-08/pw140-myanmars-armed-forces-and-the-rohingya-crisis.pdf>. Accessible on 14th January 2021.
- The Sentinel Project (2013). The Sentinel Project for the Prevention of Genocide-Burma. Canada: The Sentinel Project. <https://thesentinelproject.org/>

- Shafiei, Nozer and Salimi Roya (2018). Explaining the performance of the United Nations regarding the genocide in Myanmar. *Islamic World Political Research Quarterly*, 9th year, 1st issue, spring 2018: 141-163. Accessible on 14th November 2020.
- Szep, Jason; Marshall, Andrew R.C. (2013). *Myanmar Minister Backs, Two-child Policy for Rohingya Minority*, Reuters. <http://www.reuters.com/article/2013/06/11/us-myanmarrohingyaidUSBRE95A04B20130611>. Accessible on 14 January 2021.
- Tayeb, Alireza (2005). *"Genocide" Political and Economic Information*. Tehran, No. 94.
- The Sentinel Project (2013). *The Sentinel Project for the Prevention of Genocide-Burma*. Canada: The Sentinel Project. <https://thesentinelproject.org/> Accessible on 12th January 2018.
- United Nations High Commissioner for Human Rights, Opening Statement in Human Rights Council 36th session. 11 September 2017. Video available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E>. Accessible on 14th January 2021.
- United Nations Office for the Coordination of Humanitarian Affairs (2013). *Humanitarian Bulletin: Myanmar*. Available from: <http://reliefweb.int/sites/reliefweb.int/files/resources/Myanmar%20Humanitarian%20Bulletin%20June%202013.pdf>. Accessible on 14th January 2021.
- Varleh, Gerhard (1999). Crimes against humanity in contemporary international law translated by Amir Saed Vakil. *International Law Magazine*, Year 25, (39). Accessible on 10th January 2018.
- Ziaur, Rahman and Jhensanam, Anusara (2018). Rohingya crisis: identity of Rohingya Muslim in Myanmar. *International Research Journal*, 7(12), 12-16, December (2018) available at: www.isca.in. Accessible on 11th January 2020.
- Zarni, Maung and Cowley, Alice (2014). The Slow-Burning Genocide of Myanmar's Rohingya. *Pacific Rim Law & Policy Journal*, 23(3), 682-752. Available from: http://www.academia.edu/7787141/Compilation_2014_Pacific_Rim_Law_and_Policy_Journal_Association_THE_SLOW-BURNING_GENOCIDE_OF_MYANMARS_ROHINGYA. Accessible on 14th January 2020.