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Accountability and justice for the Rohingya

by Kate MacSweeney

On 11 November 2019, the Gambia formally submitted its case at the International Court of Justice against the government of Myanmar for failing in its obligation to prevent and punish the perpetration of the crime of genocide against the Rohingya people.

The Rohingya, a Muslim ethnic minority group from Rakhine State in Myanmar, have been the target of indiscriminate killings, rape and sexual violence, arbitrary detention, torture, beatings, and forced displacement by Myanmar security forces since late 2016.

A UN Human Rights Council-mandated Independent International Fact-Finding Mission on Myanmar released a report in September 2019, that concluded that Myanmar “continues to harbor genocidal intent” towards the Rohingya.

The ICJ case is one among a number of judicial forums hearing cases involving the long-suffering Rohingya. Two others include a case at the International Criminal Court that has reached the investigation stage, as well as a case in an Argentinian court under that country’s universal jurisdiction legislation.

1) International Court of Justice

As relied upon in the Gambia’s application to the ICJ, the facts of the crimes have been extensively documented by independent investigations conducted under the auspices of the United Nations and corroborated by international human rights organizations and other credible sources. These have included reports and statements by the UN Special Rapporteur on the situation of human rights in Myanmar, the UN Special Advisor on the Prevention of Genocide, the UN Human Rights Council’s Independent International Fact-Finding Mission on Myanmar, the UN Special Rapporteur on Freedom of Religion or Belief, the UN Deputy High Commissioner for Human Rights, the UN Committee on

the Elimination of Discrimination Against Women, UNOSAT, as well as Amnesty International, Human Rights Watch and many other civil society organizations.

The accumulation of these sources of information and evidence helps make international judicial remedies more feasible.

Filing the case on behalf of the 57-members of the Organization of Islamic Cooperation (OIC), The Gambia is asking the Court to order measures against Myanmar to cease all ongoing internationally accepted wrongful acts, ensure that persons responsible for the abuses are tried and punished, provide reparations to the victims, guarantee safe and voluntary repatriation, and to provide assurance and guarantees of non- repetition. The ICJ held public hearings on the matter from 10 to 12 December 2019, at the Peace Palace in The Hague.

2) Argentina's universal jurisdiction

On 14 November 2019, some Latin American human rights groups instituted proceedings in Argentinian tribunals under the principle of universal jurisdiction. This marks the first time since the beginning of the genocide that a case has been made directly against Nobel Laureate Aung Suu Kyi, as well as several other top Myanmar officials. However, the current prospect of Suu Kyi either visiting or being extradited to Argentina is unlikely, and so the potential of any such trial occurring remains unclear.

3) International Criminal Court

Several days after Gambia filed the ICJ suit, the International Criminal Court authorized the opening of an investigation into the situation in Bangladesh and Myanmar following an earlier request from the Office of the Prosecutor. In reaching this decision, the Court heard from many of the alleged victims as well as others speaking on their behalf.

Myanmar is not a party to the Rome Statute of the International Criminal Court. However, the Court ruled last year that it did have jurisdiction regarding the crime against humanity of deportation with reference to the Rohingya fleeing to Bangladesh, which is a State Party of the ICC.

While the political and legal challenges faced by those attempting to provide justice for the Rohingya has at times seemed insurmountable, momentum has been growing over the last few months to end impunity for the atrocities committed against this group .

At an NGO side event December 5 2019 at the Assembly of States Parties to the International Criminal Court, a number of speakers pointed to the ethnic violence that is also prevalent in other parts of Myanmar. The Rohingya are only the worst victims in a state where discrimination and internal repression are quite ingrained. Tun Khin, a Rohingya activist who has worked to get the Argentina case to court said "We don't want revenge on the government. We just want our communities to live in peace. Now

we can see the wheels of justice finally starting to turn. It feels like peace might be getting closer.”