

HUMAN RIGHTS CAMPAIGN

Rohingyas: The victims of 'hidden genocide'

NAUREEN RAHIM
WITH an aim to collect the narratives of atrocity that the Rohingya people started facing after the 25th of August, 2017 in the Northern Rakhine State of Myanmar, a team of young researchers from the Center for the Study of Genocide and Justice (CSGJ) of Liberation War Museum visited Ukhiya, Cox's Bazar on 13-14 October 2017. After visiting a total of eight camp sites, the team collected testimonies of discriminations and atrocities from the Rohingya survivors, victims and eyewitnesses who recently fled violence to Bangladesh.

Based on the field visits to refugee camps, the CSGJ in November published 'The Testimony of

glimpses about the extent of the Rohingya genocide and great human suffering of present time. It is a unique contribution from a research institution to give voices to the voiceless Rohingya population.

One of the objectives of CSGJ's research has been to find out the elements of international crimes if committed and genocidal element if any from the testimonies of Rohingya survivors and victims. It also focuses on legal analysis of those testimonies as per international legal framework on the crime of genocide.

Major findings of this research suggest that Rohingyas are historically and systematically deprived of fundamental human rights under the legal framework of Myanmar. Discrimination and deprivation includes,

crime of genocide such as: (a) mass killing in the way of gunning, slaughtering and burning alive; (b) arbitrary arrest and detention in concentration camps; (c) torture and rape and other forms of sexual violence; (d) killing and burning children; (e) forced displacement of Rohingya population; (f) enforced disappearances of right-conscious Rohingyas; and (h) arson, plundering and destruction of villages as well as religiously significant places.

The following testimony of Rafiq from Charukomba, Rakhine, shows as to how the present atrocities is rendering the possibility of the Rohingya returning to normal lives and livelihoods in the future almost impossible: "We have been forcibly displaced and we are being asked if we burnt our own house down. They

LAW NEWS Our duty to prevent genocide



A Raghu Rai photo of a refugee camp during 1971.

THE 9th of December is globally celebrated as the International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and of the Prevention of this Crime. In September 2015, the United Nations General Assembly established this International Day.

According to UN, the purpose of the Day is "to raise awareness of the Genocide Convention and its role in combating and preventing the crime of genocide, as defined in the Convention, and to commemorate and honour its victims."

In adopting the resolution, without a vote, the 193-member Assembly reiterated the responsibility of each individual State to protect its populations from genocide, which entails the prevention of such a crime, including incitement to it.

The 9th of December is also the anniversary of the adoption of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention"). The Genocide Convention was adopted by the United Nations General Assembly on 9 December 1948. A total of 148 States (including one non-UN Member State) have ratified the Genocide Convention so far. Other 46 UN Member States are pending to do so. In 2018 it will be the 70th anniversary of the Genocide Convention. In lead up to this anniversary, the United Nations Office on Genocide Prevention and the Responsibility to Protect will launch a one year appeal for the universal ratification of the Convention by the end of 2018. The universal ratification would represent a major united commitment of the international community to the eradication of the crime of genocide.

The Genocide Convention (article 2) defines genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group ...", including:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.

The Convention confirms that genocide, whether committed in time of peace or war, is a crime under international law which parties to the Convention undertake "to prevent and to punish" (article 1). The primary responsibility to prevent and stop genocide lies with the State.

Prevention of genocide and responsibility to protect the victims are two important pillars in dealing with the crime of genocide. To prevent genocide and genocidal conflicts, it is decisively important to understand their root causes. While conflict has many causes, genocidal conflict is identity-based. States require assistance from the international community in order to fulfill responsibility to protect. When States manifestly fail to protect their populations from international crimes, the international community must be ready to take action, collectively, in accordance with the United Nations Charter. Intervention only happens when prevention fails. Therefore, prevention is the basis of the principle of the responsibility to protect.

COMPILED BY LAW DESK (SOURCE: UN.ORG).

Historically, Rohingyas have been targeted, persecuted and forced to flee genocidal violence. But the authoritarian regime including the present one of Suu Kyi time and again denies the fact of Rohingya genocide.



Will these stateless Rohingya peoples, sheltered now in Bangladesh, be able to return to their motherland, Myanmar. PHOTO CSGJ

Sixty on the Crisis of the Rohingyas in Myanmar' as a sequel to Oxfam's 1971 publication titled 'The Testimony of Sixty on the Crisis in Bengal'. In the context of humanitarian crisis and genocide in East Pakistan (now Bangladesh), Oxfam published 'The Testimony of Sixty on the Crisis in Bengal' in order to draw the attention of the global community and gather public opinion in favour of Bangladesh's cause of independence.

The atrocities against Rohingyas is nothing new. Historically, they have been targeted, persecuted and forced to flee genocidal violence. But the authoritarian regime including the present one of Suu Kyi time and again denies the fact of Rohingya genocide. In the words of survivors, witnesses, aid-workers and journalists, the present Testimony of Sixty intends to give a message to the world community that the 'hidden genocide' in Rakhine should widely be investigated into and immediately be stopped, and the world community specially the United Nations and neighbouring countries have significant and crucial roles to work together towards ending the ongoing genocide in Rakhine. All the testimonies, both in the form of statement and photography, give the

among others, the denial of citizenship/national identity, limited access to education and public health service, controlled access to market, limited right to land/property, controlled freedom of religion and association, restriction upon marriage and family, less support from police during and post violence. The differential treatment of Rohingyas as against Burmese populations is well reflected in one testimony of Hamid Hossain who is from Chakaiya, Mundumoron, Myanmar: "Most of the Chairmen (local representatives) were Maghs, hardly any Chairman was from Muslim community. They would meet the government officials every month and receive leaflets stating 'new' rules for the Rohingya Muslims to follow. It was their duty to make sure all Rohingyas were following the rules. The leaflets were also distributed in the locality sometimes. The leaflets were in Burmese language and stated rules about banning them from talking in groups of more than two, restricted movement after 8 PM and banned religious practices like 'namaz' and 'tabliq'."

The research also finds that Myanmar's Military Force, in collaboration with local ultra-nationalists and extremists (specially the Maghs), has been committing international

threatened to kill us if we didn't put our own house on fire. They even took picture of it. After we did so, we are asked to run, and then they fired bullets at us. Fearing for our lives we fled from our homeland and crossed the Teknaf Border."

The important elements of genocide under the UN Genocide Convention are present here. The ongoing atrocities are taking place as a systematic attack on Rohingya people, not because they have been targeted as an individual, but because they are members of a particular group. The group identity is dual here, namely ethnic identity as Rohingya and religious identity as Muslim, and it is sufficient to establish that the Rohingyas are targeted and persecuted because of their group identity. Further, the intent of the perpetrators is to wholly and permanently erase the name 'Rohingya' from the social, cultural and political landscape of Burma's history. All these prove that the atrocities in Rakhine are as brutal as a clear case of genocide under the legal framework of international criminal law.

THE WRITER IS A RESEARCH ASSOCIATE AT THE CENTER FOR THE STUDY OF GENOCIDE AND JUSTICE, LIBERATION WAR MUSEUM.

RIGHTS WATCH

In quest of functional community policing

MOHAMMAD TARIKUL ISLAM
COMMUNITY policing is an approach that permits the police and community to work closely together in order to solve the problems of crime, fear of crime, physical and social disorder and neighborhood falloff. Community policing, a relatively new concept in Bangladesh started as pilot initiative in the early 1990s. Police along with United Nations, NGOs and community based organisations are on frank attempt to bring the community and the police together in resolving problems prevailing at the community level aimed at ensuring social peace and stability. Although community policing does not get momentum across Bangladesh, however given the prevailing

numbers of the members of the Committees formed in each level should not exceed 21. Community members from all walks of the society are to be included in the CPFs. At all levels of community engagement, 33% representation of the women are also ensured and CPF is expected to be run, managed, and funded by the community members. A Community Policing Officer (CPO) coordinates the activities of the CPE. Community policing works as a vehicle to build peace and ensure safety and stability in the society.

An effective institutional set up is necessary for an effective and expanded response of community policing. As part of effort to attain dynamic community policing, increasing strategic partnerships and engagement

with local civil society organisations has the potential to strengthen the quality and increase the scope of community policing efforts at the grassroots level. Formation of community level committee attracting dedicated and honest members of the society and interaction between policy and community on regular interval is must. Equipment facility, regular training programme and engagement of non-political, qualified and honest person having good reputation across level are essential to the success of community policing. Civil society, therefore, should come forward to consider expanding, and better coordinating, concept of community policing as well as support for and monitoring of community policing functions.

THE WRITER IS AN ASSISTANT PROFESSOR, DEPARTMENT OF GOVERNMENT AND POLITICS, JAHANGIRNAGAR UNIVERSITY.



JUDGMENT REVIEW

CATHERINE MASUD CASE A landmark compensation suit

TAQBIR HUDA
ON 3 December 2017, the High Court Division (HCD) awarded Tareque Masud's family Tk 4.6 crores in damages against the bus owners, the bus driver and one insurance company. The case was originally filed by Catherine Masud before the Motor Accidents Claims Tribunal, Manikganj, under section 128 of the Motor Vehicles Ordinance 1983 (MVO) claiming damages for herself, her minor son and Tareque Masud's mother. The plaintiffs, who were represented by Dr. Kamal Hossain and Barrister Sarah Hossain, then made an application under Article 110 of the Constitution which allows cases to be transferred from subordinate courts to the HCD under certain circumstances. Recognising the 'general public importance' and potential to set a significant legal precedent, Justice Naima Haider on behalf of the HCD accepted the transfer petition in 2014 (67 DLR 527), after which the case came before Justice Zinat Ara's court for hearing in March 2016.

This case is immensely significant not only given the rarity of tort litigation in Bangladesh but also because it sets a precedent for imposing liability on a group of people who have long enjoyed absolute impunity. The MVO was enacted almost three and a half decades ago to provide a speedy system through which victims of motor vehicle accidents would be able to sue not only the negligent drivers but also the vehicle owners (e.g. bus owners who employ unqualified drivers to run unfit buses in the first place) and their insurers. Even though Bangladesh has one of the highest rates of road fatalities in the world, victims or their families hardly, if ever, sue for compensation, be it under the MVO or other applicable laws.

In a press statement, Catherine Masud, stated that "this case is a 'ground-breaking attempt' to bring the long-neglected MVO (and tort law in general) to public notice so that in the future, road crash victims and their families may have a means to be legally compensated for their losses."

Earlier this year, the driver of the bus, Jamir, was already convicted under section 304 of the Penal Code by the Manikganj Additional District and Sessions Court for 'reckless driving and causing death due to negligence'. As such this case also clearly illustrates an oft-forgotten aspect of our legal system that victims of negligence need not choose between putting the wrongdoer behind

Tk 25,000 for medical expenses, while the mother was awarded Tk 10 lakh for her loss of dependency.

Crucially, the insurance company Reliance Insurance was liable to only pay Tk 80,000, of which only Tk 20,000 is for loss of life, Tk 50,000 for damage to property and Tk 10,000 for serious injury. It is appalling that insurance policy under our Insurance Act, 2010 and

Of the compensation, bus driver Jamir Hossain will have to pay Tk 30 lakh, its insurer Reliance Insurance Tk 80,000 and the three bus owners Tk 4.30 crore.

Insurance Rules, 1958 limits the insurance company's third party risk to such abysmal amounts and also happen to value the loss of life two and a half times less than damage to property. As such, while this case is indeed a milestone for tort law and vicarious liability of bus owners in Bangladesh, it is important to remember that the insurance company was able to get away largely unscathed.

This case is a victory not only for Tareque Masud's family but for the long unheard victims of reckless driving who will hopefully feel empowered enough now to sue responsible parties for compensation they may rightfully deserve.

THE WRITER IS RESEARCH OFFICER AT BANGLADESH INSTITUTE OF LAW AND INTERNATIONAL AFFAIRS (BILIA)



Tareque Masud