

Chasing Justice

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By: Ghuna Bdiwi

The International Criminal Court's Assembly of States Parties 2019 (ASP) at The Hague is only a few days away. While I look forward to the new experience at The Hague, I continue to consider how the Hague can bring justice to the people of my country, Syria.

At the ASP, state parties typically convene every year to discuss matters that are related to the maintenance of the international criminal justice system and how to take the court to adulthood stage. Since 2016, one of the most prominent and problematic cases brought forward to the ICC is the case of vicious crimes committed by Myanmar officials against the Rohingya, a Muslim minority group. The case is highly contested among scholars and practitioners in the field; thoughts are broadly divided among the three main debates: Do crimes against the Rohingya constitute genocide? Is there evidence of crimes of forced deportation, persecution and other inhuman acts that amount to crimes against humanity? How best to use the Rohingya case as a legal precedent for future cases?

My sense is that the Rohingya debate will undoubtedly continue to be central to the meetings of the ASP 2019, especially in light of the ICC Prosecutor decision of 14 November 2019 regarding the Myanmar/Bangladesh situation. Simultaneously, on 11 of November 2019, the state of Gambia filed a case against the government of Myanmar regarding the Rohingya Genocide at the International Court of Justice (ICJ). Meanwhile, the Syrian situation is still flagging a big criminal justice question mark – how can we bring justice to victims of heinous crimes in Syria?

Regarding the criminal justice situation in Syria, in summary, while there is advancement in universal jurisdiction cases brought forward in Europe, the dire humanitarian situation continues during the ongoing war. Moreover, human rights violations have escalated to crimes against humanity and war crimes, while the ICC remains in a deadlock position to hold accountable perpetrators of these crimes. Many scholars and practitioners predict that the Rohingya case will assist in the chase for justice in Syria, and lawyers are willing to use the case of crimes against the Rohingya as a legal precedent for crimes committed in Syria. There are many published analyses and brainstorm sessions conducted to assess if the Rohingya case may help the ICC to claim jurisdiction over crimes committed against nearly one million Syrians who have been forcibly deported to Jordan. I believe that the opportunity addressed by Gambia aimed at determining how we can utilize the ICJ as another avenue to bring justice to Syrian victims.

I would like to provide a brief overview of what we know so far about the Syrian situation. In 2011, many Syrian people revolted against the authoritarian government, in order to demand essential human rights in Syria. Their demands where simplified to include freedom, equality and justice. Many of the responses to these demands amounted to war crimes and crimes against humanity, including the infliction of torture, imprisonment, murder, extensive destruction and appropriation of properties, as well as widespread, systematic and indiscriminate targeting of civilians, schools and hospitals. As a result, civilians found themselves forced to flee the country, in order to find a safe haven in neighbouring countries, such as Jordan, Lebanon and Turkey. Over one million Syrians have been forcibly deported to Jordan – a country located along the southern region of Syria. The fact that Jordan is a state party to the ICC has sparked lawyers at the Guernica Centre for International Justice to build upon a similar case in accordance with the Myanmar decision. Therefore, in March 2019, the lawyers submitted an Article 15 Communication to the Office of the Prosecutor of the International Criminal Court contending that the ICC must begin an investigation in relation to the forced deportation of Syrian civilians to Jordan.

According to the Rome Statute of the International Criminal Court, Articles 11, 12, 13, 14 and 15, the court will have jurisdiction only if one of the following three conditions apply: (1) the conduct occurs within the territory of an ICC member state, or where the individual committing the conduct is a national of an ICC member state; (2) a non-ICC member state has voluntarily given the ICC jurisdiction (i.e. referred the situation to the ICC); or, (3) the United Nations Security Council has referred a situation to the ICC. Since Syria has not ratified the Rome Statute of the ICC, the court does not have jurisdiction over crimes committed in Syria or crimes committed by Syrian citizens. Also, for many reasons, it is unlikely that the Syrian government will refer the situation to the ICC, and the UN Security Council seems unable or unwilling to refer the crimes in Syria to the ICC.

While adjudicating the Syria case at the ICC seemed, at one point, impossible, the Rohingya precedent has presented a glimpse of hope for many Syrians. The Rohingya faced a military campaign of mass murder, rape, persecution and violent forced deportation to Bangladesh. Despite

the fact that Myanmar is not a member state to the Rome Statute of the ICC, Bangladesh has been a member since June 2010. The Pre-Trial Chamber III of the ICC, on 14 November 2019, issued a decision pursuant to Article 15 of the Statute on the authorization of an investigation into the 'Situation in Bangladesh/Myanmar', deciding in its conclusion that:

[I]n the light of the foregoing, the Chamber is of the view that acts of deportation initiated in a State not Party to the Statute (through expulsion or other coercive acts) and completed in a State Party to the Statute (by virtue of victims crossing the border to a State) fall within the parameters of article 12(2)(a) of the Statute. It follows that, in the circumstances identified in the Request, the Court has jurisdiction over the alleged deportation of members of the Rohingya people from Myanmar to Bangladesh, provided that such allegations are established to the required threshold.

Last week, 13 November 2019, far from the ICC, The Gambia filed a case against the Myanmar government to the International Court of Justice, regarding the Rohingya Genocide. This instance is said to be the first time where the ICJ has investigated a case of genocide without relying on the findings of other tribunals, and I think it might present another precedent that Syrians can use to bring justice to victims.

Nevertheless, we should not forget that crimes of genocide are very difficult to prove, and many scholars will argue that, except for the case of the Yazidis, the Syrian situation does not amount to genocide. But still, there is a faint chance that Syrians can advocate in front of the ICJ, with reference to the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). As some argue, torture is "the signature crime" in Syria. Since 2004, Syria has been a signatory of the CAT. The CAT prohibits acts of torture in any territory under its jurisdiction, regardless of the political situation of the state. Article 30 of the treaty declares:

Any dispute between two or more States Parties concerning the interpretation or application of this Convention, which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

Accordingly, any state can refer a case to the ICJ, alleging acts of torture against civilians. We need to note, however, that the ICJ is not a criminal court; rather it is a UN court that deals with disputes among states. Despite this distinction, by pursing this option, the benefit that could be achieved is that the ICJ will present an opportunity for an authoritative body to expose evidence of torture. Such an option could also put pressure on the international community to compel the Syrian government to allow access to its detention centres to investigate and documents the situation.

The ASP will be a great opportunity for those who work in international criminal justice to examine these two possibilities, namely the ICC and the ICJ, and discuss further possibilities that can facilitate justice for victims of vicious crimes in Syria; vicious crimes that have been, to this point, immune to

any form of accountability.

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