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WHAT IF MYANMAR REFUSES TO COMPLY WITH ICJ'S RULING?

By
Joe Cochrane

The recent ruling by the International Court of Justice (ICJ) in The Hague that Myanmar cooperates in a genocide inquiry relating to its Rohingya Muslim group raises huge questions, and a potentially nightmarish scenario for the United Nations and international community if Myanmar does not comply.

The court, in a stern and unanimous ruling on Jan 23 ordered Myanmar's government to take special measures to protect the Rohingya, a stateless group living in the western state of Rakhine who have suffered persecution by the country's Buddhist majority for decades and were subjected to brutal assaults by the military in 2017 that killed thousands and included mass murder, rape, torture and the razing of villages.

Stating that the Rohingya remain in grave peril, the judges ordered measures including protecting them from genocidal acts and other acts of violence, preserving evidence of genocide, and requiring the Myanmar government to report back to the court within four months on the steps it has taken to do so.

The ICJ was acting on an application by Muslim-majority Gambia last November which accused Myanmar's military of committing genocide to wipe out the Rohingya population. More than 780,000 Rohingya fled across the border into neighbouring Bangladesh to escape the onslaught.

The ICJ's order was momentous as it effectively places Myanmar's obligations to protect the Rohingya pursuant to the Genocide Convention under the judicial supervision of the court, said Kingsley Abbott, senior legal

adviser and coordinator of the Global Accountability Initiative of the International Commission of Jurists.

Myanmar is legally bound to comply with the order and periodically report back to the court on the steps it has taken. It will be under significant pressure to meet its international legal obligations as it was made by the highest court in the United Nations system, whose jurisdiction it has already recognised, he said.

But what if Myanmar refuses to comply with the IJCs ruling, which effectively rejected claims by the government of Aung San Suu Kyi that there was no evidence of a genocide?

After all, the country's military rulers chose to remain in isolation for decades rather than abide by the wishes of the international community to open up and move toward civilian rule, and ironically, they kept Suu Kyi, a former pro-democracy leader and Nobel laureate, under house arrest for years.

"Then that becomes an international political question that could go to the [UN] Security Council or General Assembly," said Priya Pillai, an international law specialist and head of the Asia Justice Coalition Secretariat. "It's not in their interests to not comply. It was a unanimous decision by the court."

Under the ruling, Myanmar is required to report back to the court in four months, and again six months later, which will keep its government under pressure for nearly the entire year.

Intense pressure could also come from Myanmar's neighbours, who along with Yangon are members of Asean.

Malaysia released a statement saying the ruling was a step in the right direction.

"The decision reflects the serious concern of the international community on the need to address effectively the plight of the Rohingya and establish accountability and justice in respect to alleged serious human rights violations," it said.

Human Rights Watch said the court's order is crucial for protecting the remaining Rohingya in Rakhine State.

It could take years for the ICJ to make a determination as to whether Myanmar's government and military employed a deliberate policy of genocide, and while there is no deadline for the court to rule, only around 600,000 Rohingya remain in Rakhine State today.

Just hours before the court's globally televised announcement, Yanghee Lee, the departing UN special rapporteur on human rights in Myanmar, held a press conference in Dhaka, Bangladesh, during which she cited accounts by Rohingya

refugees there of killings, torture, dismembering of body parts, slitting of throats and breasts, children being thrown into fires and gang rapes.

Some experts fear the IJC ruling could send Myanmar's military into a rage and prompt it to carry out revenge attacks, or incite Buddhist paramilitary units or other armed groups to do so.

It will be interesting to see how the government will react to this, said Chris Lewa, director of the Arakan Project, which documents the human rights situation of the Rohingya in northern Rakhine State.

While noting that Suu Kyi's government finally acknowledged that serious crimes had taken place but still continues to deny it was genocide, Lewa said it was highly significant the court did not include an expected provision ordering that UN investigators be allowed into Rakhine State to investigate specific crimes by the military and armed proxy groups.

This could enable Myanmar to cover up or gloss over the most heinous atrocities by its military that could be considered genocide, according to analysts.

As the court's jurisdiction only extends to determining state obligations, there must still be parallel criminal investigations and prosecutions to bring to justice those individuals responsible for serious human rights violations, Abbott said.

Myanmar has shown itself to be unwilling and unable to conduct investigations and prosecutions which meet international law and standards at home, thus it is critical that international accountability efforts such as the International Criminal Courts investigation continue unimpeded.

Whether Myanmar allows this is yet another what if question that remains unanswered. - South China Morning Post

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