

Statement by members of the European Burma Network

18 June 2020

EBN welcomes prospect of continued Argentinian investigation into atrocity crimes against the Rohingya

Members of the European Burma Network (EBN) welcome the prospect of a continued Argentinian investigation into atrocity crimes against the Rohingya under the principle of universal jurisdiction. A recent move by the Federal Appeals Court in Buenos Aires overturned a previous decision not to pursue a case against military and civilian leaders of Burma for their role in atrocities committed against the Rohingya people.

An initiative was launched late last year in Argentina under the principle of universal jurisdiction, but a court of first instance rejected the case in December, arguing that it would duplicate the investigation launched by the International Criminal Court (ICC). The recent decision means that the Argentinian court has to officially approach the ICC for more information about its ongoing investigation before any final decision on whether or not to proceed with the case in Argentina can be made.

Hopefully, a formal request for more information concerning the ICC investigation will clarify that there is little risk of duplication. As Burma is not a state party to the Rome Statute, the ICC does not have jurisdiction to launch an investigation into crimes committed on Burmese territory. However, in a decision in 2018, the ICC ruled that it does have jurisdiction to investigate the case of atrocities against the Rohingya as a part of the alleged criminal conduct had taken place on the territory of a state party. Given that Bangladesh is a state party to the Rome Statute, the ICC was able to launch an investigation in November 2019 into alleged criminal acts that have occurred across the border between the two countries, notably deportation or forcible transfer of population, which constitutes a crime against humanity. Nevertheless, the court's jurisdiction is limited to any crimes that have occurred across the border.

An investigation under the principle of universal jurisdiction, however, would be able to look into atrocity crimes committed against the Rohingya inside Burma, including the alleged killing of hundreds of Rohingya men, women and children in the village of Tula Toli. An investigation would also raise hopes of justice for other victims of the brutal tactics of the Burmese military across the country.

Opening an investigation in Argentina would complement other international initiatives seeking accountability for crimes committed against the people of Burma, not duplicate them. Therefore, we welcome the recent overturning of the previous decision.

All international avenues toward justice and accountability, including universal jurisdiction, are important and welcomed as the Burmese justice system has proven unable to deal with the military's continued impunity for gross human rights violations.

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