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A Call for Justice and Action for Myanmar

One year after the PPT Judgment on the genocide

September 2017 – September 2018

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1. The judgment of the Permanent Peoples' Tribunal on Myanmar: genocide, war crimes and crimes against humanity

One year ago, on 22 September 2017, the Permanent Peoples' Tribunal on Myanmar, after hearing persuasive witness and expert testimony at its session held in Kuala Lumpur, found that war crimes, crimes against humanity and genocide are being committed in Myanmar¹. In recognition that its findings have continuing and ever heightened applicability, the University of Malaya Faculty of Law is now publishing that judgment, soon to be followed in Burmese, Bengali and Rohingya languages, to ensure access by the most affected communities. This was the first and until today the only quasi-judicial judgment that genocide is being carried out against the Rohingya and that other serious and hateful crimes are committed against the other groups currently suffering persecution from the Myanmar State.

The Permanent Peoples' Tribunal on Myanmar met at the height of the latest and most intense offensive against the Rohingya, launched on 25 August 2017 by the armed forces of Myanmar in conjunction with local militia, bringing decades-long assaults and repression to an unprecedented level. Its deliberations were suspended to listen to the speech of State Counsellor Aung San Su Kyi to the Yangon diplomatic corps denying any persecution, a speech that was incorporated into the proceedings of the Tribunal as the defence statement and rationale, falsely attempting to justify the unfolding events as a response to the relatively low-level assaults launched by militants on military border posts.

The Tribunal viewed the situation of the Rohingya through a wider lens, responding also to requests from the Kachin community and from other Muslims in Myanmar to rule on their persecution. It found that war crimes had been and were still being committed against the Kachin; and that all three groups were being subjected to crimes against humanity and genocidal intent by the State of Myanmar. In the year since the PPT on Myanmar's judgment, all these crimes have continued and indeed have escalated, as also against other groups, notably the Shan and Ta'ang.

2. Other voices of denunciation, protest and succour

The world's press, researchers and humanitarian agencies have provided report after report amplifying the well-founded judgment of the Tribunal that genocidal intent against the Rohingya had already been signalled back in 1978 and was called out ever more strongly in a number of serious academic and legal reports examining the repeated pogroms of 2002, 2012 and 2016. All those warnings were disregarded by the majority of the international community, and the genocidal process continued to wreak its dreadful course.

However, in the face of the mass exodus of 2017, following calculated state-planned military escalation, the reality could no longer be denied, even though many still refuse to call it by its name, and powerful institutions refuse to take action.

The government of Bangladesh, itself a densely populated country, vulnerable to extreme climate events, has opened its doors and dug into its limited resources to help support nearly one million Rohingya refugees, but the conditions in the camps are known to all as impossible

¹ <http://permanentpeoplestribunal.org/wp-content/uploads/2017/11/PPT-on-Myanmar-Judgment-FINAL.pdf>

to endure for the long term. World leader after world leader have visited the camps expressing distress and sorrow, but failing to meet even the basic humanitarian needs of the refugees. Most recently, on 27 August, the UN Independent Fact Finding Mission found “that crimes against humanity have been committed in Kachin, Rakhine and Shan States, principally by the Tatmadaw” and called for “the investigation and prosecution [...] so that a competent court can determine their liability for genocide in relation to the situation in Rakhine State”

The Permanent People’s Tribunal expresses its full endorsement of the UN Fact Finding Mission’s work.

3. The Quest for Justice : Recent Steps (Backwards and Forwards)

These and other efforts to bring justice to the victims of the continuing Myanmar nightmare and to end impunity have been met by the government’s arrogant and naked denials and attempts to silence critics, to the point of convicting two journalists for daring to investigate just a single one of the massacres.

The Permanent People’s Tribunal calls upon the international community for action, now. The facts are known. We cannot accept that another genocide is being carried out under the eyes of the world in the internet age when no one can once more say: “I did not know, I did not see.”

A referral to the International Criminal Court (ICC) is the minimum judicial response for ensuring appropriate accountability of the perpetrators and those responsible for the atrocities committed in Myanmar. In this context, important steps forward were taken in the decision by Pre Trial Chamber I on 6 September that the Court may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh even though Myanmar is not a party of the ICC Rome Statute, and in the subsequent decision of the Prosecutor to open a Preliminary Investigation.

However, deportation is only one of the many crimes committed by the State of Myanmar on the Rohingya. In the absence of any hope for a Security Council referral for genocide and crimes against humanity, we support the proposal by Michelle Bachelet, the UN’s newly appointed High Commissioner for Human Rights, for action to be taken by the UN General Assembly at its 2018 session.

4. A call for action for Myanmar

As these belated decisions by the official bodies mandated by the UN begin to wend their slow course towards possible judicial rulings, it remains ever more important to continue to expand the mobilisation of consciences and to come up with feasible solutions to the crisis before it is too late. As we approach the 70th anniversary of the Universal Declaration of Human Rights, “Never again” cannot be an empty slogan behind which there is only the total subjection of international obligatory law to the weight of strictly political and unequal power.

The PPT reiterates its call for action for Myanmar, and propose an international initiative to chart a program to press for approve a minimum set of recommendations for immediate implementation, including: a realistic plan of voluntary, safe and dignified return for the Rohingya to their ancestral homeland, guaranteed through an international protection mechanism, based on the recognition and guarantee of their full rights to citizenship as nationals

of Myanmar; as well as appropriate accountability of the perpetrators and those responsible for the atrocities committed.

Such international initiative could be targeted to a meeting in Rome, where the ICC was approved 20 years ago, early in December 2018, in close coincidence with the 70th anniversary of the UN Declaration and of the approval of the genocide Convention.

We see such an initiative as a way towards building an international, coordinated movement of the people based on an understanding of a fundamental diagnosis: the tragic situation in Myanmar illustrates starkly what is happening at this moment in history, not only in this place but in so many other corners of the world: the enormous difficulty, and often the failure, of international law to protect individuals from serious violation, by the State, of the peoples' rights to life, livelihood and human dignity and the necessity of a vigilant and active international public opinion capable of undertaking the struggle for the respect of fundamental human rights.

Rome, 21 September 2018

Philippe Texier, President
Helen Jarvis, Vice-president
Nello Rossi, Vice-president
Gianni Tognoni, Secretary general

On the behalf of the panel of judges, session in Kuala Lumpur, Malaysia (18-22 September 2017)

Daniel Feierstein, Chair of the panel of Judges
Gill Boehringer, Judge