

Presentación del fiscal federal Guillermo Marijuán

Solicitan la captura internacional de un expresidente, una exconsejera de Estado y de 23 funcionarios y militares de Myanmar por genocidio y crímenes de lesa humanidad cometidos en ese país

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El pedido de la fiscalía abarca hechos de los que fue víctima la comunidad musulmana rohingya entre 2012 y 2018, y particularmente las “Operaciones de limpieza” étnica en el Estado de Rakhine de 2017. La causa fue abierta en función del principio de jurisdicción universal, que estipula que los tribunales nacionales -en algunos casos concretos- tienen jurisdicción frente a delitos contra el derecho de gentes cometidos en otros países.

The head of the National Federal Criminal and Correctional Prosecutor's Office No. 9, Guillermo Marijuán, requested last Friday the international arrest - with the corresponding registration of the Interpol red notices - of the former president of Myanmar Htin Kyaw, the former State Counsellor - Nobel Peace Prize in 1991 - Aung San Suu Kyi and 23 officials and military officers of her government for crimes of genocide and against humanity perpetrated against members of the The Rohingya Muslim community.

The investigation was carried out in application of the principle of universal jurisdiction for this type of crime provided for in the National Constitution and in the international treaties on human rights to which our country is a party.

In addition to the former president and the former State Counsellor, the arrest warrant reaches the following officials: the commander-in-chief of the Defence Services since 2013, Min Aung Hlaing; the deputy commander-in-chief of the Defence Services from 2013, Soe Win; the Chief of Staff of the Armed Forces in 2016 and former Minister of Defense, Mya Tun Oo; the Commander-in-Chief of the Air Force from 2013 to 2018, Khin Aung Myint; the commander of the Special Operations Office No. 3 between 2015 and January 2018, Aung Kyaw Zaw; the commander of the Western Regional Command during the clean-up operations from 2016 to 2017, Maung Maung Soe; the Deputy Commander of the Western Region during the clean-up operations, Sunny Ohn; the commander of the Regional Operations Command, based in Sittwe, Hla Myint Soe; the head of the Operation Control Command (OCC) No. 5, Aung Zeya; the head of the Operation Control Command (OCC) No. 15, Khin Maung Soe; the Commander of the 33rd LID Battalion, Aung Aung; the commander of the LID 99 Battalion, Than Oo; the commander of the LIB 564 Battalion, Kyaw Zwa; the Staff Sergeant of the 564th Battalion, Ba Kyaw; the deputy commander of the LIB 551 Battalion, Ya Zaw; the commander of the LIB 552 Battalion, Major Thein Aung; the Minister of the Interior, Kyaw Swe; Brigadier General Aung Win Oo, in charge of control of Myanmar's police forces; the chief of the Border Police or BGP at the time of the operations, Brigadier General Thura San Lwin; the deputy director of the Superintendent of Prisons of Buthidaung prison, Chan Aye Kyaw; the deputy superintendent of Buthidaung prison, Chit Ko Ko; the administrator of the Chut Pyin village, Aung San Mya; police officer Shaw Shaw/Kyaw Shay.

The case began on November 13, 2019, with the complaint filed before the Buenos Aires Federal Court by the president of the civil society "Burmese Rohingya Organization UK" (BROUK), Maung Tun Khin, who, invoking the principle of universal jurisdiction, requested that the crimes against humanity that would have been committed be investigated, at least from 2012 to 2018 inclusive, against the Rohingya community in the territory of the Republic of the Union of Myanmar. In this regard, it indicated that the State policies carried out during that period had involved systematic practices of discrimination and human rights violations, with the consequent commission of crimes contemplated in the Rome Statute.

On December 29, 2021, prosecutor Marijuán issued a request for investigation. In the promotion of the criminal action, it individualized the possible defendants, delimited the object of the process and proposed a series of evidentiary measures in order to initiate the investigation. The production of these proceedings has now allowed it to move forward with the international arrest warrant for the accused, in order to summon them to testify.

The prosecutor assessed that "satellite images and first-hand accounts corroborate the widespread and systematic practice of deliberate and selective destruction, mainly by fire, in Rohingya-populated areas" in three districts during the so-called "Clearance Operations" of 2017.

"National unity" vs. "negative otherness"

The prosecutor's opinion develops the contemporary history of Myanmar, the former British colony known as Burma, and the discrimination and serious human rights violations suffered by the Rohingya Muslim minority since its independence in 1948, since "government policies, with the aim of achieving 'national unity', were aimed - from those beginnings - at the Rohingya Muslim minority, such as that 'negative otherness', which violated the socio-political, cultural and religious system of that country. In this way, the processes of national organization were initiated in which, in order to obtain nationality in Myanmar, each individual had to prove his or her membership in that country. Accreditation itself was very difficult for the entire population due to the lack of documentation and, in the case of the Rohingya, practically impossible," the presentation described.

He added that this resulted in the Rohingya being "considered foreigners by the Myanmar government" and "illegal immigrants", so "the military and government authorities adopted all kinds of measures to harass them", which included "numerous restrictions, which restricted all the rights and guarantees that human beings should enjoy". These limitations included the rights to education, health, decent employment, private property, worship, religion and also life.

The subject of the judicial process covers the events that occurred between 2012 and 2018, when - according to the opinion - in that context "the government of Myanmar encouraged Bangladeshi Buddhists to settle in Rakhine State, facilitating their migratory status and a possible path to citizenship", within the framework of policies that were part of the Border Areas and National Races Development Project. "In return, the Rohingya were consistently denied citizenship and were not recognized as one of the 'national races,' which led to them facing numerous restrictions and obstacles," the prosecutor said.

"The government's strategy appeared to respond to the objective of altering the ethnic composition of Rakhine State, eliminating or reducing the influence of Muslims. Thus, most Buddhists were settling in Maungdaw, where originally the population was made up almost entirely of Rohingya Muslims," the ruling said.

He explained that "the situation reached a critical point of chaos and tension on August 25, 2017, the date on which the so-called 'clearance operations' began, which - as their name indicates - were aimed at completely eliminating the Rohingya from the territory of Myanmar", so "the consequences were devastating".

"Men – including minors – were forced by the security forces to perform forced labour for endless hours and in inhumane conditions, without receiving any remuneration for these tasks. Approximately 30 to 50 people were selected daily for forced labour and many did not return."

Prosecutor Marijuán stressed that "satellite images and first-hand accounts corroborate the widespread and systematic practice of deliberate and selective destruction, mainly by fire, in areas populated by the Rohingya" in three districts. He explained that "at least 392 villages (40 per cent of all settlements in northern Rakhine) were totally or partially destroyed, including at least 37,700 individual buildings" and that "more than 70 per cent of the villages were located in Maungdaw, where the majority of the Rohingya lived".

About 80 percent of homes were burned in the first three weeks of operations, and a sizable proportion after the end date of "cleanup operations," he said. The data described in the opinion were taken in part from the report prepared on September 12, 2018 by the United Nations Independent International Fact-Finding Mission on Myanmar. That document, the evidence presented by the complainants, the testimonies of survivors received in the investigation and the different analytical reports provided by the UN Independent Investigation Mechanism for Myanmar make up part of the evidence on which the prosecution based the accusations and the international arrest warrant for the accused persons.

In this context, he said that the deaths from these actions "would have been more than 10,000" and pointed out that "although it is difficult to specify figures, this Prosecutor's Office has lists of specific victims, identified from the accounts of witnesses, with an indication of the date of death, the way in which they were killed and, in many cases, who were the perpetrators."

Genocide

In the opinion, the prosecutor described the facts under the figure of genocide contemplated in Article 6 of the Rome Statute - approved by Law 25,390 and implemented by Law 26,200 - and pointed out in this regard that he has gathered elements to prove four of the five behaviors that make it up, such as the killing of members of the group, serious injury to the physical and mental integrity of its members, the intentional subjection of the group to conditions of existence that will lead to its physical destruction, in whole or in part, and measures aimed at preventing births in its womb.

In this sense, it indicated that it has been proven that:

- "In the Republic of Myanmar, a plan was carried out to destroy all or part of the members of the Rohingya ethnic group, which included serious injuries to the physical and mental integrity of that people, generated by the numerous human rights restrictions imposed on them.

- "The cruelty of the sanctions applied in case of non-compliance with these restrictions implied the subjection of the members of the group to conditions of precarious existence, who did not have access to the health system, education, decent work, freedom of movement, etc., forcing them to seek refuge in the neighboring country of Bangladesh. which today houses almost a million victims of these crimes."
- "Numerous testimonies account for the birth control that was imposed on the victims, who expressed that in order to get married they had to request authorization from the authorities of the village in which they resided, committing themselves not to have more than two children, receiving sanctions in case of not complying with it."

The prosecutor stated that "this set of acts was part of an institutionalized regime of widespread and systematic oppression and domination of the government authorities, both civilian and military, over the Rohingya, with motives of racial and religious hatred, which had devastating consequences for this community."

Crimes against humanity

On the other hand, the prosecutor charged the conducts provided for throughout the eleven paragraphs of Article 7 of the Rome Statute, which fall within the framework of crimes against humanity when they are committed "as part of a widespread or systematic attack against a civilian population and with knowledge of said attack."

In this regard, he explained that "the acts committed by the government and military authorities of Myanmar in the period between June 2012 and 2018 against the Rohingya community, fit into the vast majority of the behaviors included in the definition of crimes against humanity." He pointed out that those crimes were slavery; imprisonment or other serious deprivation of physical liberty in violation of fundamental norms of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other sexual abuse of comparable gravity; and the forced disappearance of persons.

In this regard, it specified with respect to each of these crimes:

- **Slavery:** "Men – including minors – were forced by the security forces to perform forced labour for endless hours and in inhumane conditions, without receiving any remuneration for these tasks. Approximately 30 to 50 people were selected daily for forced labour and many did not return. If they refused to do so, they could be victims of torment and severe pressure on their physical integrity."
- **Imprisonment and severe deprivation of liberty:** "It has been proven that Buthidaung prison housed numerous members of the persecuted community, arrested without any judicial warrant or legal justification and without recognition of the inherent human guarantees, in accordance with the principles enshrined in current international law. In

such conditions of confinement, the illegally detained were subjected to torture and coercion, including sexual abuse."

- **Torture:** "It was a common practice by members of the security forces, with the aim of obtaining information from the victims or as a form of punishment."
- **Sexual violence:** "The forces that came on behalf of the State, systematically incurred in sexual abuse against women, girls and men in the most aberrant ways, such as gang rapes followed by death, mutilation of sexual organs, among other forms."
- **Forced disappearance of persons:** "Numerous victims stated that before and during the clean-up operations, several of their relatives and acquaintances had been captured by members of the Armed Forces, and their fate and current whereabouts are still unknown today."

The prosecutor stated that "this set of acts was part of an institutionalized regime of widespread and systematic oppression and domination of the government authorities, both civilian and military, over the Rohingya, with motives of racial and religious hatred, which had devastating consequences for this community."

Finally, he concluded: "The foregoing summarizes the essence of the case at hand and underscores the importance of exhausting all available avenues to pursue, prosecute and punish those responsible, through the use of the institutional tools that the legal system grants us. This, in order to guarantee the victims of these crimes the right to truth, justice and comprehensive reparation and that these aberrant acts do not go unpunished."

EN ESTA NOTA:

Tags

crímenes de lesa humanidad genocidio Guillermo Maríjuan principio de jurisdicción universal

Notas relacionadas

La Cámara Federal porteña ordenó investigar la denuncia sobre crímenes de lesa humanidad en Myanmar
29.11.2021 en [Fiscalías](#)

+ VER TODAS