

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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Myanmar: Grave, systematic human rights violations against Rohingya people

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).

LRWC is gravely concerned about the escalation of widespread and systematic violence and human rights violations against Rohingya people in Myanmar. Human rights violations against the Rohingya are well known to have persisted for many years. In September 2017, the UN High Commissioner for Human Rights and UN Secretary General referred to the escalation of violence by police, military and security forces against the Rohingya since 25 August 2017 as "ethnic cleansing."¹ In 2014, the UN Special Rapporteur on Myanmar stated that the abuses "may constitute crimes against humanity as defined under the *Rome Statute of the International Criminal Court*."² International non-governmental organizations have been raising the alarm about possible crimes against humanity and ethnic cleansing against the Rohingya people in Myanmar since 2013.³ Since 2015, some legal analyses have suggested the possible intention of Myanmar authorities to destroy the Rohingya people in Rakhine State.⁴ LRWC is deeply

¹ Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, "Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries," Opening Statement, Human Rights Council 36th session, 11 September 2017, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041>; Press Conference by Secretary-General António Guterres at United Nations Headquarters, 13 September 2017, available at:

<https://www.un.org/press/en/2017/sgsm18676.doc.htm>.

² UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, 2 April 2014, A/HRC/25/64, at para 51, available at:

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-64_en.doc.

³ See e.g. Human Rights Watch, "All You Can Do is Pray": Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State, April 22, 2013 <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>.

⁴ Matthew Smith, Director of Fortify Rights, "Myanmar's Attempt to Destroy Rohingya Muslims," *TIME*, Oct 23, 2017, available at: <http://time.com/4994524/myanmar-rohingya-fortify-rights-genocide/>. In 2015, Fortify Rights commissioned a legal analysis as to whether the persecution Rohingya fit the definition of genocide in the *Genocide Convention*, with particular reference to the requirement of intention to destroy Rohingya in Rakhine State. See Fortify Rights, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, *Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis*, October 2015, http://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October_2015.pdf;

concerned about the plight of Rohingya refugees fleeing to Bangladesh, Thailand, India and Malaysia, none of which have ratified the UN Refugee Convention.⁵ There is alarm about urgent need to ensure and protect the rights and wellbeing of refugees, including children, women and men in Bangladesh, India, Thailand and Malaysia, and worry about the possibility of Rohingya being involuntarily returned to conditions of indefinite detention, torture or ill-treatment in Myanmar in violation of customary international law (CIL).⁶

LRWC supports the appointment of the Honourable Bob Rae as Canada's Special Envoy to Myanmar with a mandate to:

- engage in diplomatic efforts to “reinforce the urgent need to resolve the humanitarian and security crisis in Myanmar;”
- “address the situation affecting vulnerable populations, including the Rohingya Muslim community, other religious and ethnic minorities, and women and girls,” and,
- “advise the Prime Minister on how Canada can best support efforts to respond to the needs of those affected and displaced by the recent violence.”⁷

All investigations, efforts and recommendations of Mr. Rae, Canada and all other States must be guided by international human rights law and informed by the root causes of violations and by the historical, regional and legal contexts.

For several years, human rights organizations including LRWC, have engaged in advocacy seeking an end to the widespread and grave human rights abuses by security, police and armed forces against Rohingya and other minority peoples in Myanmar. In response to the dramatic escalation of violence against Rohingya people since 25 August 2017, LRWC has called for the immediate adoption of the recommendations in the Advisory Commission on Rakhine State and unimpeded access by the UN Independent, International Fact-Finding Mission (IFFM). LRWC has made statements to the United Nations (UN) Human Rights Council (HRC) and written letters to the Myanmar government and other governments including Canada.⁸

⁵ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>. Of ASEAN states, only Philippines and Cambodia have ratified this treaty.

⁶ IRIN, Bangladesh resists greater UNHCR role in Rohingya crisis, 23 October 2017, available at: <http://www.irinnews.org/news/2017/10/23/bangladesh-resists-greater-unhcr-role-rohingya-crisis>; Amnesty International, Myanmar / Bangladesh: Rohingya refugees must not be forced home to abuse and discrimination, 4 October 2017, available at: <https://www.amnesty.org/en/latest/news/2017/10/myanmar-bangladesh-rohingya-refugees-must-not-be-forced-home-to-abuses-and-discrimination/>; Human Rights Watch, India Can't Mistreat Refugees By Not Signing Refugee Convention: Customary International Law Prohibits Returning Rohingya to Burma, 24 September 2017, available at: <https://www.hrw.org/news/2017/09/24/india-cant-mistreat-refugees-not-signing-refugee-convention>; Amnesty International, Thailand is failing to fulfill its obligation to protect refugees," September 2017, available at <https://www.amnesty.org/en/latest/news/2017/09/refugees-in-thailand-forcibly-returned-to-danger/>; Audrey Gaughran, Amnesty International's Director of Global Issues, "Rohingya Fleeing Myanmar Face Difficulties in Thailand," *The Diplomat*, 29 September 2017, available at: <https://thediplomat.com/2017/09/rohingya-fleeing-myanmar-face-difficulties-in-thailand/>; Josh Hong, Rohingya issue shines spotlight on Malaysia's refugee policies, *Asia Times*, 26 September 2017, available at: <http://www.atimes.com/rohingya-issue-shines-spotlight-malaysias-refugee-policies/>.

⁷ Justin Trudeau, Prime Minister of Canada, Prime Minister appoints the Honourable Bob Rae as Special Envoy to Myanmar, 23 October 2017, <https://pm.gc.ca/eng/news/2017/10/23/prime-minister-appoints-honourable-bob-rae-special-envoy-myanmar>.

⁸ LRWC's interventions relevant to Myanmar's abuses against Rohingya people include:

- LRWC and International Bar Association's Human Rights Institute, "Myanmar: All States Must Use Diplomatic Means to Urge Government of Myanmar to End Humanitarian Crisis," Oral Statement to the 36th Session of the UN Human Rights Council, 19 September 2017, available at: <https://www.lrwc.org/myanmar-all-states-must-use-diplomatic-means-to-urge-government-of-myanmar-to-end-humanitarian-crisis-oral-statement->

Myanmar's refusal to allow access to the FFM is part of a longstanding pattern of failure by Myanmar to allow independent monitoring of human rights violations in Myanmar. Instead, there is a pattern of judicial harassment of human rights defenders and journalists reporting human rights violations. LRWC⁹ and other international human rights monitors have called upon the Myanmar government to halt all harassment of human rights defenders including human rights monitors and journalists and to adhere to the UN *Declaration on Human Rights Defenders*.¹⁰ Systematic judicial harassment of defenders is compounded by corruption within Myanmar's justice system.

LRWC recommends all States to urge government and military leaders of Myanmar to:

- allow access for all necessary humanitarian aid for Rohingya people in Myanmar;
- facilitate all necessary humanitarian assistance to Rohingya people who have fled to Bangladesh and other neighbouring countries until such time as the refugees can safely and voluntarily return to Myanmar;
- immediately cease all military action and the use of force against Rohingya people and

[to-the-36th-session-of-the-un-human-rights-council/](#);

- LRWC, "Myanmar: Immediately Bring End to Human Rights Abuses against Rohingya People," Letter to President U Htin Kyaw, with a copy directed to the Minister of State Aung San Suu Kyi, 13 September 2017, available at <https://www.lrwc.org/myanmar-immediately-bring-end-to-human-rights-abuses-against-rohingya-people-letter/>
- LRWC, "Southeast Asia: Systematic violations of the internationally protected rights of Rohingya and other migrants is costing lives and must be stopped, Statement, 26 May 2017, available at <https://www.lrwc.org/southeast-asia-systematic-violations-of-the-internationally-protected-rights-of-rohingya-and-other-migrants-is-costing-lives-and-must-be-stopped/>
- Lawyers for Lawyers and LRWC, Myanmar: Ensure Independent Legal Profession and Remedy Threats and Attacks Against Lawyers | Joint Oral Statement to the 35th Session of the UN Human Rights Council, 15 June 2017, available at: <https://www.lrwc.org/oral-statement-interactive-dialogue-with-the-special-rapporteur-on-myanmar-joint-oral-statement-to-the-35th-session-of-the-un-human-rights-council/>
- International Commission of Jurists, International Bar Association's Human Rights Institute and Lawyers' Rights Watch Canada, Myanmar: Need for an International Commission of Inquiry, and an Independent, Self-Governing Legal Profession | Joint Oral Statement to the 34th Session of the UN Human Rights Council, 13 March 2017, available at: <https://www.lrwc.org/myanmar-need-for-an-international-commission-of-inquiry-and-an-independent-self-governing-legal-profession-joint-oral-statement-to-the-34th-session-of-the-un-human-rights-council/>
- LRWC, "Burma: Immediately Investigate and Remedy Murder of Lawyer U Ko Ni," Letter, 3 February 2017, available at: <https://www.lrwc.org/burma-immediately-investigate-and-remedy-murder-of-lawyer-u-ko-ni-letter/>
- LRWC, Southeast Asia: Human Rights Crisis Involving Rohingya People and Other Migrants in the Indian Ocean, Letter to the Government of Canada, 15 June 2017, available at: <https://www.lrwc.org/burma-human-rights-crisis-involving-rohingya-people-and-other-migrants-in-the-indian-ocean-letter-2/>
- LRWC, "Southeast Asia: Systematic violations of the internationally protected rights of Rohingya and other migrants is costing lives and must be stopped", Statement, 26 May 2015, available at <http://www.lrwc.org/?p=9116>

⁹ See e.g. LRWC and Lawyers for Lawyers, Oral Statement to 25th Session of UN Human Rights Council: Concerns about the independence of lawyers in Myanmar | Statement, 17 March 2014, available at: <https://www.lrwc.org/oral-statement-to-25th-session-of-un-human-rights-council-concerns-about-the-independence-of-lawyers-in-myanmar-statement/>

¹⁰ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly (UN Declaration on Human Rights Defenders)*, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html>. The *Declaration*, while not in itself a binding instrument, is based on human rights standards enshrined in other international instruments that are legally binding, including the ICCPR. The *Declaration* was adopted by consensus of the General Assembly and thus represents a unanimous commitment by States to its implementation.

against their dwellings, property and communities;

- ensure the provision of necessities of food, water, medical care, housing and transportation to all Rohingya people in Myanmar negatively impacted by the military action;
- immediately adopt the recommendations of the Advisory Commission on Rakhine State;
- immediately and fully cooperate with the FFM, and grant FFM members and staff full, unrestricted and unmonitored access to all areas of Myanmar and all interlocutors, pursuant to the UN Human Rights Council Resolutions on the situation of human rights in Myanmar dated 22 March 2017¹¹ and the Extension of the mandate of the independent international fact-finding mission on Myanmar, dated 27 September 2017;¹² and,
- uphold the *Universal Declaration of Human Rights*,¹³ all multilateral human rights treaty obligations, and customary international law.

In addition, LRWC recommends that Canada urge Bangladesh, India, Malaysia, and Thailand to:

- ensure the safety of Rohingya refugees;
- ensure that refugees are not returned involuntarily to Myanmar to the likelihood of harm to life, liberty, security of the person or the risk of torture;
- adhere to international human rights law in the treatment of Rohingya refugees.

¹¹ UN Human Rights Council, Resolution on the situation of human rights in Myanmar, A/HRC/34/L.8/Rev.1, 22 March 2017, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/L.8/Rev.1

¹² UN Human Rights Council, Extension of the mandate of the independent international fact-finding mission on Myanmar, A/HRC/36/L.31/Rev.1, 27 September 2017, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/L.31/Rev.1

¹³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html>.