



Canada's obligation to hold Myanmar accountable for genocide: Pass Senate Motion 476

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Briefing Note

(summarized for delivery at the press conference)

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Why is Motion 476 important and urgent?

Canada currently has an opportunity to fulfil its international law obligation to seek accountability of Myanmar for its ongoing genocide against Rohingya people. Canadian Senators have only a few days before Parliament rises later this month to pass a non-partisan motion* urging the Government of Canada to pursue the matter before the International Court of Justice (ICJ) under Article IX of the Genocide Convention. Passing this motion will demonstrate that Canada stands firmly united in taking strong action against this genocide. If passed within the next few days there remains an opportunity to pass a similar motion in the House of Commons.

Canada's leadership to date

In October 2017, the Prime Minister sent a Special Envoy, Hon. Bob Rae, to Bangladesh on a fact finding mission to assess reports of massive atrocity crimes against Rohingya Muslims that were leading to the exodus of hundreds of thousands of Rohingya people into Bangladesh. Bob Rae's April 2018 report² provided several recommendations including humanitarian assistance to Rohingya refugees and creation of an international, impartial and independent mechanism (IIIM) to gather and preserve evidence of atrocity crimes that will be useable in future in international courts.

Canada took a non-partisan stand in September 2018 when the House of Commons adopted a unanimous resolution calling the situation of the Rohingya a "genocide."³ Canada was the first country to do so.

* On 11 April 2019, Hon. Marilou McPhedran made the following Motion No. 476:

That the Senate urge the Government of Canada without further delay to invoke the Genocide Convention and specifically to engage with like-minded States to pursue the matter before the International Court of Justice in order to hold Myanmar to its obligations and to seek provisional measures and ultimately reparations for the Rohingya people;

That the Senate urge Canada to exert pressure on Myanmar to allow for unobstructed access to Rakhine State by independent monitors in order to investigate the international crimes committed and to afford protection to remaining Rohingya;

That the Senate urge the Government of Canada to continue to assist the Government of Bangladesh through multilateral aid in addressing the humanitarian needs of the Rohingya refugees, with particular focus on the needs of women and children, including education; and

That a message be sent to the House of Commons requesting that house to unite with the Senate for the above purpose.

UN Human Rights Council: Fact Finding Mission and IIIM for preservation of evidence

In March 2017, the UN Human Rights Council launched an Independent International Fact Finding Mission (FFM) on Myanmar. Myanmar's military and civilian authorities refused to cooperate with the FFM or to provide the FFM or other UN officials with access to Myanmar. Its 24 August 2018 report⁴ confirmed systematic, severe, widespread, and brutal human rights violations by officials in Myanmar, including war crimes, crimes against humanity against Rohingya, Shan and Kachin peoples, and genocide against the Rohingya people. The FFM found evidence that Myanmar authorities at the highest level have contributed directly to genocide and other atrocity crimes, have blocked all independent investigations, and have overseen the destruction of evidence.

Bob Rae's report also added Canada's reputation and weight to the international advocacy that led the UN Human Rights Council to adopt in September 2019 an IIIM to gather and preserve evidence of genocide and other atrocity crimes that will be useable in impartial and independent tribunal.⁵ While progress has been made towards creation of the IIIM, it is not yet in operation, and there is no international tribunal available for submission of the evidence. The FFM's Chairperson, Mr. Marzuki Darusman, said on 14 May 2019 that Myanmar has failed to take sufficient steps to protect human rights or to address the forcible exile of more than a million Rohingya civilians. He said simply, "The situation is at a total standstill."⁶

The International Criminal Court has taken a step, but not on genocide

Myanmar has not ratified the Rome Statute of the International Criminal Court (ICC). This means that only the UN Security Council can refer the situation to the ICC. However, in September 2018 the ICC did accept jurisdiction over the crime of deportation of Rohingya people to Bangladesh, based on the fact that the deportations have taken place partly in Bangladesh, which is a State Party to the Rome Statute. The ICC Prosecutor started her investigation in Bangladesh in early March.

This investigation covers only the crime of deportation of hundreds of thousands of Rohingya people into Bangladesh. However, the investigation does not cover war crimes, crimes against humanity, or genocide taking place within Myanmar.

UN Security Council inaction

The UN Security Council has failed to take action. Despite considerable advocacy from States and civil society organizations, all efforts to persuade the Security Council to refer the matter to the ICC have failed. On 6 November 2018, the Security Council considered the situation in Myanmar and managed to prevent China's veto⁷ only by resorting to a weaker, non-binding Statement⁸ that avoids the terms "ethnic cleansing," "crimes against humanity," "war crimes" or "genocide." Instead, the unanimous Statement "strongly" condemns the "violence" and expresses "grave concern over reports of human rights violations and abuses." Given China's veto power, the Security Council is highly unlikely to take up recommendations of referrals to the ICC or the creation of an adhoc court similar to the tribunals set up to address atrocity crimes in the former Yugoslavia, Rwanda and Sierra Leone.

Referral to International Court of Justice (ICJ) under the Genocide Convention Article IX

In the absence of cooperation by Myanmar and every Permanent Member of the Security Council (including China) there is no possibility of a referral to the ICC regarding the full range of atrocity crimes, including genocide, committed by Myanmar and its authorities. Other measures must be urgently pursued, including referral of the matter to the ICJ under Article IX of the Genocide Convention. The Organization of Islamic Cooperation (OIC) in March 2019 decided to proceed with plans to take Myanmar to the ICJ under the Genocide Convention Article IX.⁹ However, no concrete action has been taken.

Canada has a unique opportunity to lead the way in the growing interest in taking the matter to the ICJ. Support by all Parliamentarians in the House of Commons and Senate of Canada would provide impetus for Canada to take immediate action.

Canada is legally obligated to act

International law is clear that prevention and accountability for the crime of genocide is the concern of the international community as a whole and that when genocide occurs in any State, it is the duty of all other States to ensure prevention and accountability of perpetrators.¹⁰ This means Canada has an international obligation to seek accountability for genocide. Prevention of ongoing genocide requires prompt action to call an immediate halt to Myanmar's impunity.

To ensure that Canada takes all possible measures to comply with its international obligations, the Senate must now take immediate, non-partisan action to ensure the passage of Motion No. 476 without further delay and to seek cooperation of the House of Commons to pass a similar resolution.

I conclude with the words of a Rohingya peace worker living in Bangladesh who was able to travel to the UN Human Rights Council in March 2019 to plead for action from the international community. Lawyers' Rights Watch Canada worked with other civil society organizations and the UN Special Rapporteur on the Situation of Human Rights in Myanmar to provide her with an opportunity to address the Human Rights Council. Here are her words:¹¹

Salam alaikum. My name is Hamida Khatun, I come from Buthidaung in Burma. I am Rohingya. I had to memorise my speech today because, like many Rohingya women, I cannot read or write. I was denied an education. In August 2017 I fled Burma to Bangladesh when my village was attacked. My Rohingya brothers and sisters were killed. My husband and mother were killed. I am the only Rohingya woman that could leave Bangladesh to tell you what happened to hundreds of thousands of us. I am here on behalf of Shanti Mohila, a group of Rohingya women who also fled the violence who have come together to raise our voices. The name Shanti Mohila means peace women and we want peace in Myanmar. I have three requests of the international community: First: Justice including compensation; Second: To return home in safety and security including citizenship; Third: Access to education.

Will Canadian senators now act unanimously to respond to her plea by passing Motion 476?

Endnote references

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² Hon. Bob Rae, "Tell them we're human" What Canada and the world can do about the Rohingya crisis, https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/response_conflict-reponse_conflits/crisis-crisis/rep_sem-rap_esm.aspx?lang=eng.

³ Canada's response to the Rohingya crisis in Myanmar and Bangladesh, Government of Canada, n.d., at https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/response_conflict-reponse_conflits/crisis-crisis/myanmar.aspx?lang=eng

⁴ UN Human Rights Council, Report of the Independent International Fact-Finding Mission on Myanmar, A/HRC/39/64, 24 August 2018, para 50, 93 at:

<https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>

⁵ Hon Bob Rae, "Tell them we're human" What Canada and the world can do about the Rohingya crisis, Government of Canada, https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/response_conflict-reponse_conflits/crisis-crisis/rep_sem-rap_esm.aspx?lang=eng.

⁶ Myanmar has not done enough to resolve the nation's internal-conflicts or protect human rights, including those of over a million ethnic Rohingya civilians who have been forced into exile, according to FFM Chairperson Marzuki Darusman, UN News, 14 May 2019, at: <https://news.un.org/en/story/2019/05/1038501>

⁷ Edith M. Lederer, The Associated Press, UN condemns violence against Rohingyas after China opposes stronger resolution, CTV, 6 November 2017, available at: <http://www.ctvnews.ca/world/un-condemns-violence-against-rohingyas-after-china-opposes-stronger-resolution-1.3665933>

⁸ Sebastiano Cardi, President, United Nations Security Council, Presidential Statement S/PRST/2017/22, 6 November 2017, available at: <http://www.un.org/press/en/2017/sc13055.doc.htm> (scroll down).

⁹ Michael A Becker, The Situation of the Rohingya: Is there a role for the International Court of Justice?, EJIL: Talk!, 14 November 2018, at <https://www.ejiltalk.org/the-situation-of-the-rohingya-is-there-a-role-for-the-international-court-of-justice/>

¹⁰ International Court of Justice, Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Judgment, 26 February 2007

¹¹ Myanmar: Oral Statement to 40th Session of the UN Human Rights Council: Statement of Rohingya peace advocate, Hamida Khatun, Joint Statement of LRWC and ISHR, 11 March 2019, at <https://www.lrwc.org/myanmar-oral-statement-to-40th-session-of-the-un-human-rights-council-statement-of-rohingya-peace-advocate-hamida-khatun-joint-statement-of-lrwc-and-ishr/>