



“AN OCEAN OF MISERY”

THE ROHINGYA REFUGEE CRISIS



SENATE | SÉNAT
CANADA

Interim Report of the Standing Senate Committee
on Human Rights

The Honourable Wanda Elaine Thomas Bernard, Chair
The Honourable Salma Ataullahjan, Deputy Chair
The Honourable Jane Cordy, Deputy Chair

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THE COMMITTEE MEMBERSHIP



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Wanda Thomas Bernard
Chair



The Honourable
Salma Ataullahjan
Deputy Chair



The Honourable
Jane Cordy
Deputy Chair

The Honourable Senators



Yvonne Boyer



Patrick Brazeau



Nancy Hartling



Thanh Hai Ngo



Kim Pate



Donald Neil Plett

Ex-officio members of the committee:

The Honourable Senator Peter Harder, P.C. (or Diane Bellemare) (or Grant Mitchell);
Larry Smith (or Yonah Martin); Joseph Day (or Terry Mercer); Yuen Pau Woo (or Raymonde Saint-Germain)

Other Senators who have participated in the study:

The Honourable Senators Andreychuk, Coyle, Forest-Niesing, Martin, and Simons

Parliamentary Information and Research Services, Library of Parliament:

Erin Shaw, Jean-Philippe Duguay, and Alexandra Smith, Analysts

Senate Committees Directorate:

Barbara Reynolds, Clerk of the Committee
Elda Donnelly, Administrative Assistant

Senate Communications Directorate:

Síofra McAllister, Communications Officer, Committees



ORDER OF REFERENCE

Extract from the *Journals of the Senate* of Thursday, September 20, 2018:

The Honourable Senator Ataullahjan moved, for the Honourable Senator Bernard, seconded by the Honourable Senator MacDonald:

That the Standing Senate Committee on Human Rights be authorized to examine and monitor issues relating to human rights and, inter alia, to review the machinery of government dealing with Canada's international and national human rights obligations;

That the papers and evidence received and taken and work accomplished by the committee on this subject since the beginning of the First Session of the Forty-second Parliament be referred to the committee; and

That the committee submit its final report to the Senate no later than September 30, 2019.

The question being put on the motion, it was adopted.

Richard Denis

Clerk of the Senate

INTRODUCTION

On 25 August 2017, the stateless ethnic and religious minority population in Myanmar (Burma) known as the Rohingya began fleeing the country to escape targeted violent attacks by Myanmar Government authorities. These attacks have since been recognized as genocide by the Parliament of Canada.¹ Persecuted for their ethnic and religious identity, the Rohingya escaped to Bangladesh with the hope of finding safe refuge, food, medical aid and humanity.

Given the gravity of the circumstances facing the Rohingya, the Standing Senate Committee on Human Rights (the committee) began monitoring the crisis in September 2017.² Since then, the committee has held a number of meetings on the issue, most recently a series of meetings in October and November 2018.³

The committee is deeply concerned by the ongoing struggles and precarious future of the Rohingya population both in Myanmar and the refugee camps in Bangladesh. In this regard, the committee felt compelled to table a short report with recommendations to the Government of Canada. The committee recalls that when asked by the Honourable Bob Rae, Special Envoy of the Prime Minister to Myanmar what message he would like to convey to the Prime Minister, one of the estimated 921,000⁴ Rohingya refugees in Bangladesh said simply:

"Tell him we're human."⁵



1. House of Commons, *Debates*, 1st Session, 42nd Parliament, 20 September 2018, p. 21650; Senate of Canada, *Debates*, 1st Session, 42nd Parliament, 2 October 2018, p. 6386.
2. Standing Senate Committee on Human Rights, *Evidence*, 42nd Parliament, 1st Session [RIDR, *Evidence*], 27 September 2017; and RIDR, *Evidence*, 2 October 2017.
3. RIDR, *Evidence*, 31 October 2018; RIDR, *Evidence*, 7 November 2018; and RIDR, *Evidence*, 21 November 2018.
4. World Health Organization, "Bangladesh: Weekly Situation Report #52," 22 November 2018.
5. RIDR, *Evidence*, 6 June 2018 (Hon. Bob Rae, P.C., C.C., O.Ont., Q.C., Special Envoy of the Prime Minister to Myanmar).

THE ROHINGYA

The Rohingya have been a persecuted group since Myanmar gained independence from the United Kingdom in 1948. Myanmar has never recognized the Rohingya as citizens, even though they have been residing in what is now Rakhine State in the western part of the country for at least 600 years.⁶ The most recent events are not the first time that actions of the Myanmar state authorities have led to a mass exodus of the Rohingya:

- In 1977, 200,000 Rohingya fled the country after a new military government endeavoured to “screen out” foreigners prior to a national census, ultimately leading to forcible evictions as well as widespread brutality, sexual violence and murder.⁷
- In 1992, 250,000 Rohingya refugees fled the Myanmar government’s crackdown on the 8-8-88 Uprising, which was characterized by “massive human rights violations... including extrajudicial executions, torture [and] forced labour.”⁸

The ongoing persecution of the Rohingya is fuelled by state-sanctioned hate speech and widespread prejudice against the minority population.⁹ Genocide and crimes against humanity are terms that have been used by many witnesses who appeared before the committee to illustrate the horrors perpetrated against the Rohingya by the state authorities of Myanmar.



6. Historical accounts vary; 600 years is a conservative estimate for the Rohingya’s presence in the region. Human Rights Watch [HRW], “[II. Historical Background](#),” *Burma/Bangladesh – Burmese Refugees in Bangladesh: Still No Durable Solution*, May 2000.

7. HRW (2000).

8. Amnesty International, *Myanmar/Bangladesh: Rohingyas – The Search for Safety*, September 1997, p. 1.

9. RIDR, *Evidence*, 7 November 2018 (Yasmin Ullah, President, Rohingya Human Rights Network).

THE CRISIS: SURVIVING MYANMAR AND BANGLADESH

The most recent exodus of 730,000 Rohingya from Myanmar is the largest in the country's history. Since late August 2017, the majority of the Rohingya population that were residing in Rakhine State have escaped to Bangladesh. And, as violence against the remaining Rohingya in Myanmar persists, the number of refugees in Bangladesh continues to rise.

Bangladesh: A Safe Refuge?

Already a country facing its own challenges, Bangladesh has been hosting Rohingya refugees since 1977. The majority of the nearly one million Rohingya refugees in Bangladesh are concentrated in Cox's Bazar, one of the country's poorest and most densely populated areas. The various refugee camps in Cox's Bazar, known as Kutupalong, "constitute the largest refugee camp in the world."¹⁰ The committee acknowledges the efforts of the Government of Bangladesh and those living in Cox's Bazar to accommodate the Rohingya refugees.

Nevertheless, one witness poignantly described Kutupalong as "an ocean of misery."¹¹ Sanitation, food, shelter, access to education and medical services are limited at best. Extreme weather conditions are a persistent threat. Gender-based violence including sexual violence, human trafficking, drug use and radicalization are prevalent.¹² Moreover, dire conditions in the camps are compounded by the significant trauma that refugees have endured. Many arrived with severe injuries and/or are traumatized from witnessing the perpetration of mass atrocities. Thousands of women and girls already trying to cope with the effects of sexual violence at the hands of Myanmar military forces are now facing pregnancy or have given birth as a result of those sexual assaults.¹³ According to Yasmin Ullah, President of the Rohingya Human Rights Network,

“Rohingya mothers are equipped with very little to survive. Yet the only thing they have put their lives on the line to defend is the hope that their children would live better lives.”¹⁴

Rohingya women are faced with multiple human rights violations; many women have been tortured and raped, and forced to bear children as a result. There is limited access to maternal health and the access that is available is often unsafe due to the absence of Rohingya doctors. Within refugee camps, pregnant Rohingya women are left without access to healthcare after 6:00 p.m. even if they go into labour.¹⁵

The Government of Bangladesh appears hopeful that Rohingya refugees will remain on a strictly short-term basis and is, therefore, resisting long-term solutions to the myriad of critical issues in the camps. Furthermore, the Government has expressed its intention to facilitate the refugees' repatriation to Myanmar as soon as possible. In the words of the High Commissioner of Bangladesh to Canada:

“...too much emphasis on education and the livelihood of the forcibly displaced Myanmar nationals in Bangladesh at this stage might work as a pull factor. The problem originates in Myanmar and the ultimate solution is their sustainable return to Myanmar.”¹⁶

10. RIDR, *Evidence*, 31 October 2018 (Payam Akhavan, Professor, International Law, McGill University).

11. Ibid (Bobiash and Raiss Tinmaung, Director, Overseas Projects, Rohingya Human Rights Network).

12. Ibid (Bobiash and Tinmaung).

13. Ibid (Akhavan); UN News, "For Rohingya refugees, imminent surge in births is traumatic legacy of sexual violence – special report," 11 May 2018.

14. RIDR, *Evidence*, 7 November 2018 (Ullah).

15. Ibid.

16. RIDR, *Evidence*, 7 November 2018.





In search of a short-term solution, the Government of Bangladesh came to an agreement with Myanmar Government authorities to repatriate Rohingya refugees in mid-November 2018. However, after the refugees staged protests and refused to return to Myanmar, Bangladesh put its repatriation plans on hold.

Bangladesh has insisted that it would not force any refugees to unwillingly return to Myanmar. Such action would constitute a violation of the international legal principle of non-refoulement.¹⁷ Nevertheless, the possibility of forced repatriation has instilled fear in many refugees having only recently fled the brutality and terror of Myanmar authorities. Consequently, escapes from refugee camps and at least one attempted suicide have been reported.¹⁸

The High Commissioner of Bangladesh informed the committee that his government has received assurances from Myanmar that Rohingya refugees will be able to return safely. These assurances, however, were met with much scepticism from the committee and witnesses who appeared before it.

Ongoing Repression in Myanmar

The situation for the Rohingya in Myanmar continues to be precarious. An estimated 530,000 Rohingya remain in Rakhine State, including more than 125,000 in camps for internally displaced persons.¹⁹ Raïss Tinmaung, the Director of Overseas Projects at Rohingya Human Rights Network, told the committee that Rohingya villages that have survived the Myanmar military onslaughts "are under constant surveillance, and the atmosphere of fear prevails everywhere."²⁰ The Rohingya population in Myanmar continues to be denied basic human rights, including equal access to education and healthcare, freedom of movement within the country, and, perhaps most fundamentally, citizenship.²¹ Even Myanmar citizens advocating for or reporting on the lack of rights for the Rohingya are being targeted and silenced by the state. Matthew Smith, CEO of Fortify Rights, reported that Myanmar is currently one of the world's most dangerous places for human rights defenders and journalists.²²

17. Ibid (Mizanur Rahman, High Commissioner, High Commission for the People's Republic of Bangladesh and John Packer, Director, Human Rights Research and Education Centre, University of Ottawa).

18. International Crisis Group, *"Bangladesh-Myanmar: The Danger of Forced Rohingya Repatriation,"* Crisis Group Asia Briefing N°153, 12 November 2018, p. 1.

19. RIDR, *Evidence*, 21 November 2018 (Jean-Nicolas Beuze, UNHCR Representative in Canada, United Nations High Commissioner for Refugees).

20. RIDR, *Evidence*, 31 October 2018 (Tinmaung).

21. RIDR, *Evidence*, 21 November 2018 (Matthew Smith, Chief Executive Officer, Fortify Rights).

22. Ibid.

HOLDING PERPETRATORS ACCOUNTABLE

Witnesses emphasized that perpetrators of crimes recognized under international criminal and humanitarian law against the Rohingya must be held accountable. Payam Akhavan, Professor of International Law at McGill University told the committee that “the only realistic basis for any accountability” is through the International Criminal Court (ICC).²³ Myanmar is not a state party to the ICC, so the court cannot exercise its jurisdiction regarding crimes committed within Myanmar unless the United Nations (UN) Security Council refers the crimes to the ICC.²⁴ However, a Security Council referral would need the support of China, which holds the power of veto and shares a close relationship with Myanmar. To date, China has refused to condemn the violence against the Rohingya.²⁵

Bangladesh, on the other hand, is a state party to the ICC. On 9 April 2018 the Office of the Prosecutor of the ICC made a request to the ICC to determine whether the court “may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh.”²⁶ Deportation committed as part of an attack against civilians is considered a crime against humanity in the Rome Statute of the ICC.²⁷ On 6 September 2018, ICC judges ruled that the court has jurisdiction because the deportation partly occurred on Bangladeshi territory.²⁸ The ICC subsequently opened a preliminary examination on 18 September 2018.²⁹ Professor Akhavan recognized the limitations inherent in ICC proceedings, but emphasized that “some measure of justice, however inadequate, is essential for the healing of the victims.”³⁰

Matthew Smith, CEO and co-founder of Fortify Rights, proposed that in addition to an ICC referral, the UN Security Council could establish an ad hoc tribunal mandated to investigate and try crimes perpetrated against the Rohingya. The Security Council has created such tribunals in the past, including ad hoc full UN tribunals (the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda) as well as hybrid UN-local country courts (the Special Court for Sierra Leone, the Special Tribunal for Lebanon, and the Extraordinary Chambers in the Courts of Cambodia). He noted, however, that because Myanmar would likely not cooperate in a hybrid tribunal, at this time “a fully controlled UN tribunal... would naturally be the most plausible option, barring, of course, substantial political changes in Myanmar.”³¹

23. RIDR, *Evidence*, 31 October 2018 (Akhavan).

24. *Rome Statute of the International Criminal Court*, Article 13.

25. RIDR, *Evidence*, 21 November 2018 (Smith); K. S. Venkatachalam, “Can China Solve the Rohingya Crisis?”, *The Diplomat*, 2 December 2017.

26. International Criminal Court, *Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute*, 9 April 2018.

27. *Rome Statute of the International Criminal Court*, Article 7(1)(d).

28. RIDR, *Evidence*, 31 October 2018 (Akhavan); International Criminal Court, *Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute,”* 6 September 2018.

29. RIDR, *Evidence*, 31 October 2018 (Bobiash and Akhavan).

30. *Ibid* (Akhavan).

31. RIDR, *Evidence*, 21 November 2018 (Smith).



RECOMMENDATIONS

The committee recognizes the Government of Canada's efforts to respond to the Rohingya refugee crisis. In particular, the committee notes the Government of Canada's Strategy to Respond to the Rohingya Crisis in Myanmar, which dedicates \$300 million over three years to alleviate the suffering of the Rohingya.³² Numerous witnesses informed the committee, however, that more must be done to protect the Rohingya and hold the Myanmar government perpetrators to account. Based on evidence presented to the committee, it makes the following recommendations to the Government of Canada:

1. The committee recommends that the Government of Canada increase its efforts to engage Canadians on the Rohingya refugee crisis. It should consider additional funding for Canadian civil society organizations that advocate for the human rights of the Rohingya and those that operate in Bangladesh and Myanmar.
2. The committee recommends that Global Affairs Canada continue to support the Government of Bangladesh, through international aid agencies, in its efforts to address the humanitarian needs of the Rohingya refugees in its territory, with attention paid particularly to the needs of women and girls. Global Affairs Canada must also work with its international partners to ensure that the rights of the Rohingya are respected in all countries.
3. The committee recommends that Global Affairs Canada engage with the Government of Bangladesh to ensure that any repatriation of the Rohingya is done only when it is safe, voluntary and dignified, in accordance with international law. In the meantime, Global Affairs Canada should work with the Government of Bangladesh and international aid agencies to find long-term solutions for Rohingya refugees, with particular attention on educational and vocational opportunities.
4. The committee recommends that Global Affairs Canada enhance pressure on the Government of Myanmar to cease all persecution of the Rohingya, allow unfettered access to humanitarian actors and to grant the Rohingya citizenship.
5. The committee recommends that the Government of Canada continue to engage with United Nations member states to ensure that the United Nations Security Council refers the situation in Myanmar to the International Criminal Court or establishes an ad hoc tribunal to ensure that the perpetrators are held accountable for their crimes.

32. Ibid (Bobiash).

WITNESSES

WEDNESDAY, SEPTEMBER 27, 2017

Anwar Arkani, President, Rohingya Association of Canada

Ahmed Ramadan, Outreach Coordinator, Justice for All – Burmese Task Force

His Excellency Mizanur Rahman, High Commissioner, High Commission for the People's Republic of Bangladesh

Nayem Uddin Ahmed, Minister, High Commission for the People's Republic of Bangladesh

Alex Neve, Secretary General, Amnesty International Canada

Farida Deif, Canada Director, Human Rights Watch

Kevin Malseed, Program Manager, Burma, Inter Pares

MONDAY, OCTOBER 2, 2017

Zaw Wai Kyaw, Founding President and Coordinator, Canadian Burma Ethnic Nationalities Organization

Pri Lwan, Secretary, Canadian Burma Ethnic Nationalities Organization

Matthew Smith, Co-founder and Chief Executive Officer, Fortify Rights

Donald Bobiash, Assistant Deputy Minister, Asia Pacific, Global Affairs Canada

Ian Burchett, Director General, Southeast Asia, Global Affairs Canada

Stephen Salewicz, Director General, International Humanitarian Assistance, Global Affairs Canada

Robert McDougall, Executive Director, South Asia, Global Affairs Canada

François Lafrenière, Director, Myanmar and Philippines Development, Global Affairs Canada

Jean-Nicolas Beuze, UNHCR, Representative in Canada, United Nations High Commissioner for Refugees

WEDNESDAY, JUNE 6, 2018

The Honourable Bob Rae, P.C., Special Envoy of the Prime Minister to Myanmar, As an individual

WEDNESDAY, OCTOBER 31, 2018

Donald Bobiash, Assistant Deputy Minister, Asia Pacific, Global Affairs Canada

Gillian Frost, Executive Director, South Asia Division, Global Affairs Canada

Rosaline Kwan, Executive Director, Southeast Asia, APEC and ASEAN, Global Affairs Canada

Stephen Salewicz, Director General, International Humanitarian Assistance, Global Affairs Canada

François Lafrenière, Director, Myanmar and Philippines Development, Global Affairs Canada

Raïss Tinmaung, Director, Overseas Projects, Rohingya Human Rights Network

Fareed Khan, Director, Advocacy and Media Relations, Rohingya Human Rights Network

Payam Akhavan, Professor, International Law, McGill University, As an individual

WEDNESDAY, NOVEMBER 7, 2018

His Excellency Mizanur Rahman, High Commissioner, High Commission for the People's Republic of Bangladesh

Miah Md. Mainul Kabir, Counsellor, High Commission for the People's Republic of Bangladesh

Md. Shakhawat Hossain, Counsellor, Passport and Visa Wing, High Commission for the People's Republic of Bangladesh

Yasmin Ullah, President, Rohingya Human Rights Network

John Packer, Director, Human Rights Research and Education Centre, University of Ottawa, As an individual

WEDNESDAY, NOVEMBER 21, 2018

Matthew Smith, Chief Executive Officer, Fortify Rights

Jean-Nicolas Beuze, UNHCR Representative in Canada, United Nations High Commissioner for Refugees

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