

The Coalition for Genocide Response welcomes this Intersessional Meeting on the prevention of genocide, and particularly, the discussion on strengthening national capacities for the prevention of genocide.

States have a duty to prevent genocide. So much is clear. According to the International Court of Justice, this duty is to be triggered when the State ‘learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.’ This means that State must have effective monitoring, analysis and determination mechanisms in place. There should be no question about that. Where States do not have such monitoring, analysis and determination mechanisms, they may easily rely on the argument of the lack of relevant knowledge, and so evade their responsibility to act. This is contrary to the duty to prevent and the spirit of the UN Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention).

As such, states must establish national mechanisms that are mandated to conduct periodic risk assessments. To be able to analyse the risk factors, States must adopt the UN Atrocity Crimes Framework and the JBI’s Compilation of Risk Factors and Legal Norms for the Prevention of Genocide. These frameworks are designed to help States to identify situations that pose a serious risk of genocide. States then must determine the atrocities for what they are and inform their responses, whether diplomatic responses, trade or other.

The UK Government has a long-standing policy to leave the question of genocide determination to the ‘international judicial systems.’ The UK Government argues that ‘international judicial systems,’ rather than politicians, should make a determination of genocide, but the government has no reasonable justification for this policy, apart from its long-standing nature. Genocide has been committed under the watch of successive governments in Cambodia, Bosnia, Rwanda, Darfur (Sudan) and Libya, not to mention the Daesh genocide in Syria and Iraq, or the genocide of the Rohingya Muslims and other religious minorities in Myanmar, or the atrocities against the Uyghurs - yet in the face of all this, the UK Government’s stance remains unchanged.

The lack of a formal mechanism, whether grounded in law or policy, was criticised by the Foreign Affairs Committee (FAC) in its December 2017 report on the situation in the Rakhine state of Myanmar stating that: ‘We are seriously concerned to find that the FCO has not undertaken its own analysis of the situation, nor committed its own expert team to gather evidence. The Minister said that its effort was focused on addressing the humanitarian situation,

but it is unclear why humanitarian support and legal analysis cannot go hand-in-hand.’ No change in the approach followed.

Indeed, currently, the UK Government does not have any formal mechanism for genocide monitoring, analysis and determination and relies on the argument that it is for courts to do so. However, domestically, there is no mechanism to enable UK courts to deal with the question of genocide. While there are international options, the UK Government does not have a strong history of engagement with these judicial systems. Indeed, the UK has never engaged the International Court of Justice on the issue.

To address this long-standing failure, Lord Alton of Liverpool introduced the Genocide Determination Bill, and most recently, the Genocide Amendment to the Trade Bill, that aim to give the power to the High Court to hear cases and make interim determination of genocide. Such a domestic judicial mechanism can help to address the issue of politicisation of genocide determinations, as we have seen in the past in a number of states. It would enable a neutral arbiter to consider the case. Subsequently this determination would be used by the State to inform its responses. This is just one example of a pro-active approach to the issue.

We must bridge the gap between the duties under the Genocide Convention and their realisation. This bridge includes states introducing comprehensive monitoring and assessment mechanisms. This also includes states taking ownership over their genocide determinations and using such a determination to inform their responses.

In a world where genocide still occurs, despite the promises of Never Again, inaction is not an option. We need to ensure that we are equipped to prevent genocide as the cost of allowing it is too great: it is the cost of lives and it is also the cost of our humanity. Thank you for your attention.

Ewelina Ochab, co-founder of the Coalition for Genocide Response

