

Report – Freedom Applications Committee

The Honorary Freedom

To be presented on Thursday, 5th March 2020

*To the Right Honourable The Lord Mayor, Aldermen and Commons
of the City of London in Common Council assembled.*

SUMMARY

This report updates the Court on the deliberations of the Freedom Applications Committee regarding the Honorary Freedom.

Following the passing of a motion at Court of Common Council in January 2019, the Freedom Applications Committee commenced the process which could lead to the removal of the Honorary Freedom awarded to Aung San Suu Kyi in 2017. In accordance with this process, the Freedom Applications Committee considered a way forward and recommended that this Honourable Court resolve to suspend the award made to Aung San Suu Kyi which the Court duly did in its meeting on 12 September 2019.

Subsequent to this decision, the Freedom Applications Committee has remained vigilant of the situation. On the basis of recent developments, the Committee has reconsidered its position and now recommends that the Honorary Freedom should be revoked.

The Committee would like to record its appreciation to Munsur Ali for his work in initiating and pursuing this matter, and thanks to him for assisting the Committee in its deliberations throughout the process.

RECOMMENDATION

It is recommended that the Honorary Freedom awarded to Aung San Suu Kyi in May 2017 be revoked with immediate effect.

MAIN REPORT

Background

1. At the meeting of the Court of Common Council on 12 October 2017, a Motion was considered in relation to the award of the Honorary Freedom. As a consequence of these discussions, the Freedom Applications Committee was instructed to undertake a review of the processes associated with the award of the Honorary Freedom, as well as the introduction of a process by which the Honorary Freedom might be revoked. These procedures were devised and endorsed by the Court of Common Council on Thursday 13 September 2018.

2. Resulting from a Court Question at its meeting in December 2018, the Court of Common Council was given notice that a proposal to commence the process to remove the Honorary Freedom would be put to the Court at its next meeting in January 2019. Arising from the discussion at this meeting, the Motion was carried and consequently the Freedom Applications Committee commenced the process to remove the Honorary Freedom awarded to Aung San Suu Kyi in May 2017.
3. The Motion passed on 10 January 2019 was considered to supersede the first part of the agreed process – initial consideration of the possibility of revocation by the Freedom Applications Committee – and the Committee moved to inform the Honorary Freeman of the proposal to remove the Freedom, together with the reasons for the proposal, and invite their comments on it.
4. At its meeting in March 2019, Common Council was advised that the Freedom Applications Committee had dispatched a letter to the Honorary Freeman informing her of the proposal to revoke the Honorary Freedom and the rationale, inviting her comments on it. The Committee would consider, in due course, the next steps in the process in light of any response received, or none.
5. A reasonable time was allowed for the receipt of any response. After this time, the Freedom Applications Committee was mandated to consider any response together with all relevant considerations and decide whether to proceed.
6. At its meeting on 30 July 2019, and in the absence of any response from the Honorary Freeman, the Freedom Applications Committee further deliberated before deciding on a recommendation to be put to the Court of Common Council, that the Honorary Freedom awarded to Aung San Suu Kyi be suspended.
7. At its meeting on 12 September 2019, the Court of Common Council deliberated the Committee's recommendation and agreed to suspend the Honorary Freedom.

Recent Developments

8. On 11 November 2019, The Gambia, (in its capacity as Chair of the Organisation of Islamic Cooperation Ad Hoc Ministerial Committee on Accountability for Human Rights Violations Against the Rohingya) instituted proceedings against the Republic of the Union of Myanmar before the International Court of Justice, the principal judicial organ of the United Nations, alleging violations of the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention") through "acts adopted, taken and condoned by the Government of Myanmar against members of the Rohingya group".
9. The case was heard in The Hague between the 10 and 12 December 2019, with the delegation of Myanmar led by Aung San Suu Kyi. The initial proceedings against Myanmar contained a request for the indication of provisional measures, seeking to protect the rights of the Rohingya group under the Genocide Convention, and to prevent the aggravation or extension of the dispute pending the final judgment of the Court.

10. A Special Meeting of the Freedom Applications Committee was convened on 19 December 2019 to consider the proceedings at the ICJ and to assess any implications for the Honorary Freedom awarded to Aung San Suu Kyi. The Committee was of the view that Aung San Suu Kyi's testimony at the ICJ had raised further concerns and could be considered additional relevant evidence sufficient to inform a further decision.
11. The recommendation in September 2019 to suspend rather than revoke the Honorary Freedom was based in part on an allegation of lack of opportunity provided to Aung San Suu Kyi to speak publicly about the events in Myanmar. The Committee acknowledged that her testimony in The Hague had given her that international platform. During her statements to the Court, Aung San Suu Kyi acknowledged that there may have been a disproportionate use of force used by Defence Services and in some cases a disregard of international humanitarian law. She expressed regret that those members of the Myanmar Defence forces found guilty of offences against Rohingya had later been pardoned.
12. The Committee then deliberated its position with regard to the suspended Honorary Freedom and whether to make a further recommendation to the Court of Common Council.
13. The Committee noted that the previous arguments expressed in favour of revocation remained but agreed that the basis of the discussion had changed following Aung San Suu Kyi's leadership of Myanmar's delegation to the ICJ. Based on this personal involvement, and in the continued absence of any response to the City Corporation's correspondence from either the Embassy of Myanmar in London or the State Counsellor's Office, it was felt the case for revocation had strengthened.
14. However, after carefully considering the evidence of the ICJ proceedings and developments since the last Court of Common Council vote, it was agreed that it was not the Committee's will to make a recommendation ahead of any verdict from the ICJ as to do so could be said to pre-empt their decision.

Current Position

15. On 23 January 2020, the ICJ released its initial judgment ruling that provisional measures were required to protect the Rohingya group in Myanmar. The measures are legally binding and compel Myanmar to take effective actions on which they are required to report periodically to the ICJ. The full judgment of the ICJ can be accessed at <https://www.icj-cij.org/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>.
16. Key findings of the ICJ include the following:
 - The ruling made clear that, at this stage, it was not for the Court to pass judgment as to whether genocide had taken place but rather, in order to decide whether provisional measures were necessary, the Court was required to rule on whether acts are capable of falling within the provisions of the Genocide Convention. In the Court's view, at least some of the acts alleged by The Gambia were capable of falling within the provisions of the Convention." (**Paragraph 30**)

- According to The Gambia, not only have the Rohingya been subjected to genocidal acts in the recent past, but there is a grave danger of further such acts because the Government of Myanmar continues to harbour genocidal intent and to commit crimes against members of the Rohingya group. The Gambia thus argues that the Rohingya remaining in Myanmar face grave threats to their existence, placing them in urgent need of protection. **(Paragraph 67)**
 - Myanmar stressed the challenges it is facing, inter alia, in ending an ongoing “internal armed conflict” with the Arakan Army in Rakhine State. It warns that the indication of provisional measures by the Court might reignite internal armed conflict” with the Arakan Rohingya Salvation Army, and undermine its current efforts towards reconciliation. **(Paragraph 68)**
 - The Court was of the opinion that the Rohingya in Myanmar “remain extremely vulnerable.” **(Paragraph 72)**
 - The ruling noted the commitment made by Myanmar during the oral proceedings that it is currently engaged in repatriation initiatives to facilitate the return of Rohingya refugees and its desire “to promote ethnic reconciliation, peace and stability in Rakhine State, and to make its military accountable for violations of international humanitarian and human rights law.” However, the Court held that “these steps do not appear sufficient in themselves to remove the possibility that acts causing irreparable prejudice to the rights invoked by The Gambia for the protection of the Rohingya in Myanmar could occur.” In particular, the Court highlighted that Myanmar has not set out measures aimed specifically at recognising the right of the Rohingya to exist as a protected group under the Genocide Convention. **(Paragraph 73)**
 - The ruling held that despite the presence of an ongoing internal conflict in Rakhine and the consequent security measures in place, Myanmar remains under the obligations imposed on it by the Genocide Convention. In the Court’s assessment, there remains the existence of “a real and imminent risk of irreparable prejudice to the rights protected under the Convention.” **(Paragraph 74)**
17. The case will now proceed to allow a determination on whether genocide has taken place. The Gambia has until July 2020 to submit its case and Myanmar will then have until January 2021 to lodge its response. The ICJ’s final decision therefore will not be known for some time.
18. Separately, the Independent Commission of Enquiry (ICOE) has also reported. The ICOE was established by the President of Myanmar to investigate the Rakhine allegations. It was chaired by a former Deputy Foreign Minister from the Philippines, with three other members, including a former Under Secretary-General of the United Nations from Japan. The Myanmar Government has published the Executive Summary of ICOE's Final Report which was submitted to the President of Myanmar on 20 January 2020. This can be accessed via the following link <https://www.president-office.gov.mm/en/?q=briefing-room/news/2020/01/21/id-9838>.

19. The ICOE made a series of 22 recommendations on steps to be taken to ensure sustainable peace and development in Rakhine State. It found that war crimes, serious human rights violations, violations of domestic law, and disproportionate use of force took place during security operations between 25 August and 5 September 2017 and “there are reasonable grounds to believe that members of Myanmar’s security forces were involved.” The ICOE report also concluded that allegations regarding genocidal intent on the part of members of Myanmar’s Defence Services have not been substantiated.
20. Aung San Suu Kyi contributed an article to the 23 January 2020 edition of the Financial Times, acknowledging both investigations and arguing that Myanmar should be given time to deliver justice on the war crimes committed. The article can be accessed here: <https://www.ft.com/content/dcc9bee6-3d03-11ea-b84f-a62c46f39bc2>
21. At its meeting on 20 February 2020, the Freedom Applications Committee considered the conclusions of both the ICJ and ICOE before considering its position with regard to the suspended Honorary Freedom and whether to make a further recommendation to the Court of Common Council.
22. The Freedom Application Committee noted that the ICJ was heavily critical of Myanmar, its judgment concluding that there is a real and imminent risk of irreparable prejudice to [the rights of the Rohingya people], and that the steps which Myanmar claimed to have taken in response do not appear sufficient in themselves to remove this possibility.
23. The Committee acknowledged that the findings of both bodies did not reveal personal involvement on the part of Aung San Suu Kyi in the events that had taken place. On this basis, the argument that the Honorary Freedom was awarded in a personal capacity and should continue to be considered so still had merit.
24. However, as a result of Aung San Suu Kyi’s leadership of the Myanmar delegation to the ICJ, it was more difficult for her to be seen as separate from the events in Rakhine State. There is also the continued absence of any contact with the City Corporation in response to the letters from the Chairman of the Freedom Applications Committee. Therefore, the arguments in favour of suspension or not taking action based on an unclear association with and a lack of opportunity to speak out against those events has diminished.
25. Arising from the Committee’s deliberations at and following its meeting on 20 February 2020, it was agreed that the Committee should recommend to the next meeting of the Court of Common Council that the Honorary Freedom awarded to Aung San Suu Kyi be revoked.
26. The Committee recognised that it was open to the Court of Common Council to decide to endorse the recommendation and revoke the Honorary Freedom, defer the recommendation pending more information (such as further judgment from the ICJ), or take no action.

Conclusions

27. The Freedom Applications Committee has actively monitored the situation in Myanmar and discussed the Honorary Freedom at Committee meetings since November 2017, also receiving multiple briefings from the Remembrancer.
28. The Committee, making every effort to consider the case in the context within its complex circumstances and the intricate background behind them, discharged the process by which an Honorary Freedom might be removed as closely as possible in the circumstances of the case.
29. Arising from the Committee's deliberations, the Committee agreed, having discussed the matter at length and acknowledged the valid points raised by Members of the Court of Common Council, that it should recommend to the Court of Common Council in September 2019 that the Honorary Freedom be suspended.
30. Since that time, the Committee has agreed that there was additional relevant evidence sufficient to inform a further decision on the suspended Honorary Freedom.
31. After considering this additional evidence and developments since September 2019 and reviewing the arguments for and against action at each stage of the process, the Committee reached a view that it should recommend to the Court of Common Council that the Honorary Freedom should be revoked.
32. The fact that the ICJ has not yet pronounced on the question of whether genocide has taken place does not appear in point in assessing the question of revocation. Genocide is a matter of technical definition but the factual circumstances which have exercised this honourable Court have now been extensively documented. Nor is the outcome of the provisional measures or of domestic accountability processes relevant because the issue bearing on revocation is what has already occurred and not what amelioration may arise in the future. In ruling in favour of provisional measures, the ICJ has acknowledged the seriousness of events that have taken place in Myanmar since 2017. The separate report from the ICOE only serves to reinforce their findings of past misdeeds and further strengthens the case now for revocation.
33. The Freedom Applications Committee therefore recommends that the Honorary Freedom awarded to Aung San Suu Kyi be revoked with immediate effect.

All of which we subject to the judgement of this Honourable

DATED this 26th day of February 2020.

SIGNED on behalf of the Committee.

Alderman Sir David Wootton
Chairman, Freedom Applications Committee