

Q&A with Payam Akhavan: The Plight of the Rohingya

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Our Editor-in-Chief James Hendry spoke with international legal expert Payam Akhavan to discuss the plight of the Rohingya.

JH: Bob Rae's report as Canada's Special Envoy to Myanmar makes its first recommendation that of listening to the Rohingya people and to allow their voices to guide Canada's response. Given your fundamental concern with people sharing personal stories of values and suffering as a grassroots beginning to a larger peaceful society, does this recommendation appeal to you as a starting point for achieving a settlement of this important world issue?

PA: Without listening to the voice of victims, we easily forget the reality of suffering and why we cannot remain passive in the face of radical evil. I had the pleasure of hosting Bob Rae at McGill University on March 1st and among the audience members were two Rohingya who had driven 8 hours from Kitchener in Ontario to be there. They stood up and told their stories and that brought to life the reality of the situation. Abstractions and statistics will not move us to act. We need to connect with the reality of suffering in order to appreciate the immense responsibility that rests on our shoulders.

JH: The Office of the Prosecutor has sought the approval of the International Criminal Court (ICC) on the issue of jurisdiction to commence an investigation. Rae's report suggests the establishing of an International, Impartial and Independent Mechanism such as the one set up

to deal with allegations of human rights abuses in Syria, at least to gather evidence with States and the United Nations of what happened in Myanmar, for future prosecution in some forum to be determined. Should accountability, impunity and the rule of law be fundamental goals for settlement? Is adding General Soe's name to Canada's "Magnitsky Act" a good start to making individuals accountable at a high level for human rights breaches? Should Canada strengthen its sanctions against arms and military cooperation in Myanmar?

PA: Obviously, there are several priorities that must be addressed, including the immediate need for humanitarian relief among some 700,000 refugees in Bangladesh, and the challenge of their repatriation in conditions of safety and security. But it is difficult to see how it is possible to address the root causes of violence without some form of accountability. There is always a cost-benefit calculus to such extreme violence, and the message must be that it will exact a cost. Even symbolic measures such as targeted sanctions are better than doing nothing at all. But I think the prospect of criminal prosecution, whether through the ICC, or an investigative Mechanism where the ICC has no jurisdiction, is particularly important, because it is a long-term commitment to accountability, and the political fortunes of those in power often changes. Eradicating a culture of impunity requires a long-term view.

JH: How serious is this an issue to demonstrate the ICC's ability to prevent individual impunity from crimes based on serious human rights breaches? Myanmar is not a State Party to the Rome Statute establishing the ICC, and this would limit the Prosecutor's investigation to the crime against humanity of "deportation." Do you think that the Security Council might make a Chapter VII referral?

PA: Given the politics of the Security Council, the prospect of a Chapter VII referral to the ICC is remote, but it is still worth a try. There were two such attempts in regard to Syria, and both were vetoed by Russia, but that itself impressed upon the UN Member States who is standing in the way of accountability. The "deportation" theory in regard to Myanmar of course only covers some, and not all of the crimes, but it is preferable to having no options at all. Absent some dramatic change in the calculation of political interests by influential States, that seems to be the reality of the situation, and we have to exploit the openings for accountability where we can.

JH: Is this a genocide, and if so, what should Canada do specifically?

PA: The UN High Commissioner for Human Rights, the Special Rapporteur on Myanmar and others have suggested that the persecution of the Rohingya may constitute genocide. Whether one agrees or disagrees, there is no doubt that at least it constitutes crimes against humanity. We should not be fixated on the idea that unless a situation doesn't constitute genocide, it is somehow less deserving of our attention. In fact, I don't think there is much of a difference in how Canada should respond if the crime is defined one way or the other.

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Professor Akhavan is Professor of International Law at McGill University and former UN prosecutor at The Hague. He is currently counsel to Bangladesh in the International Criminal Court case concerning the Rohingya. He is author of this year’s CBC Massey Lectures, “In Search of a Better World: A Human Rights Odyssey“, published by the House of Anansi Press.