

# Myanmar: What the US's genocide declaration means for the Rohingya





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## SUMMARY

Since the return of partial democracy in Myanmar in 2010, the Rohingya have been the target of persecution, ethnic cleansing and genocide.

At the time of writing, about 1 million Rohingya are living as refugees in the area around Cox's Bazaar in Bangladesh<sup>1</sup>, having fled military violence in 2017. A further 600,000 who were displaced by ethnic violence in 2012-2013 are held in internal camps in Rakhine state, completely at the mercy of the military authorities<sup>2</sup>. Another 300,000 to 400,000 are scattered across the region, from India to Thailand, with no rights since none of the states will grant them refugee status.

Authorities in Myanmar have been accused of genocide at the International Court of Justice<sup>3</sup>, where the country's former leader, Aung San Suu Kyi, sought to defend the military violence and avoided even mentioning the name of the Rohingya<sup>4</sup>.

Even before the 2021 military coup in Myanmar, the ICJ was sufficiently concerned about the fate of the Rohingya who remain in the country to order the government to show how it intends to protect this "extremely vulnerable"<sup>5</sup> community from the risk of further violence. The coup has effectively prevented any further progress at the ICJ, although the hearings continue.

US policy toward Myanmar has changed

since 2010. Washington was, along with the EU, initially supportive of Suu Kyi and prepared to downplay the persecution of the Rohingya in an attempt to support the claimed process of moving Myanmar toward democracy.

In 2018, however, the State Department started to investigate the events of 2017. This led to the Trump administration declaring them to be an act of ethnic cleansing by the military<sup>6</sup>. On March 21 this year, the Biden administration opted, for the first time, to describe the events as an act of genocide. The reasons for this might include the worsening relations with Russia, a major supporter of the regime in Myanmar, but also the fact that the military junta clearly has no interest in renewing the process of democratic reform.

A side effect has been the marginalization of the older leadership of the National League for Democracy — who, at the very least, shared the military's prejudices against the Rohingya — by a new, overarching opposition grouping that is trying to unify and include all of Myanmar's persecuted minorities. The National Unity Government has even gone so far as to tell the ICJ that it wishes to withdraw some of Suu Kyi's objections to the genocide charge.

Rohingya-advocacy groups have widely welcomed the US shift, not least because it adds further weight to the ongoing ICJ case<sup>7</sup>. Unsurprisingly, the regime in Myanmar



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rejects the genocide designation<sup>8</sup>.

What is not clear at this stage are the practical implications of this. While the US is not a full signatory to the ICJ it aligns with it on most issues, including genocide, so it is feasible that Washington could join the current case against Myanmar at the court. This would certainly add weight to the evidence being presented but the legal process is currently stalled as the military junta now controlling the country refuses to attend or engage with the court.

Equally, the decision by the US cannot lead to any declaration by the UN Security Council because Myanmar will continue to be protected there by Russia and China and their power of veto. However it does make it more likely that the Security Council will discuss the issue and itself use the term “genocide.”

All of this, plus engagement with Rohingya groups, means that, at the very least, there is now a renewed focus on the particular events of 2017-18 and the wider plight of the Rohingya. This in turn might help Bangladesh to negotiate support as it copes with refugees.

Presumably the US declaration also marks a firm departure from its previous policy of shielding Suu Kyi from criticism on the grounds that this might destabilize the democratic process in Myanmar. However, Washington’s declaration explicitly blames only the military for the

genocide, when the policy was shared by it and Suu Kyi’s government.

## CONTEXT

Upon achieving independence from the British in 1948, Burma, as Myanmar was then known, put in place a restrictive set of laws relating to citizenship and nationality. Not only did these seek to exclude those with a parent born outside of the country, or who married an outsider, they also enumerated which of the many ethnic groups were to be treated as full citizens and which had lesser status.

The Rohingya were denied full citizenship but during the period of democratic rule that continued until 1962, and even in the early phase of military rule, until the early 1970s, this had little practical effect. Some representatives from the Rohingya community served on the various political bodies assembled to lend legitimacy to military rule, while the bulk suffered as a result of the economic failings of the Burmese “Road to Socialism.”

At the same time, Burma was embroiled in ethnic and political conflicts, with most of the non-Burmese ethnic groups seeking either independence or greater autonomy<sup>9</sup>.

These conditions lie at the core of the genocidal attack on the Rohingya in 2017. The US has now recognized this as such and the challenge is to convert this welcome

**US President Joe Biden speaks about the situation in Myanmar in Washington, DC.**  
AFP



A young girl with dark hair, wearing a dark knit beanie with a fur trim and a dark jacket with a white fur collar, is holding a large white sign. She is looking off to the side with a serious expression. The sign has the text "STOP ROHINGYA GENOCIDE IN BURMA" in large, bold, blue capital letters. In the background, there is a banner with the text "HINGYA" and "E", and a circular logo with the text "BRITISH ROHINGYA" and "BRC" around a map of Myanmar. Other people's legs and feet are visible in the background, suggesting a protest or demonstration.

**STOP  
ROHINGYA  
GENOCIDE  
IN BURMA**

Protesters take part in a demonstration in support to the Rohingya Muslim minority in The Hague during the start of a three-day hearing on Rohingya genocide case at the UN's International Court of Justice. AFP

categorization of the events as a genocide into practical policies.

## RAKHINE AND THE ROHINGYA

The modern state of Rakhine was called Arakan before 1948. From around the year 1000 it came to be populated by two main ethnic groups. The Buddhist Rakhine arrived as part of the wider Burmese absorption of the Irrawaddy region, while the Rohingya had been part of the region when its primary links led north to Bengal and west to India<sup>10</sup>.

The Rohingya had largely adopted Islam in the 9th century. From 1000 until 1836 the region was variously dominated by Bengal or the Burmese Kingdom, but also had periods of relative independence. The first British-Burmese war resulted in it being administratively incorporated into India. British rule had been established across modern-day Burma by the mid-1880s and it was treated as part of India until 1936. From then until independence, Burma became a separate colonial entity.

During the Second World War many ethnic Burmese backed the Japanese in the hope this would lead to independence, while most of the smaller ethnic groups supported the British. In Arakan/Rakhine this resulted in ethnic cleansing, so that by 1945 the two communities had become geographically separate, with the Rohingya mainly living in the north of the province.

In 1947, some Rohingya launched a short-lived revolt, seeking unification with East Pakistan (now Bangladesh) but this was not sustained, unlike almost all the other border wars.

During the 1970s and 1980s the civic rights of the Rohingya were steadily eroded, their land was stolen and there were phases of ethnic expulsion into Bangladesh, where the authorities sought to force the Rohingya back into Burma<sup>11</sup>.

## DEMOCRACY AND THE ROHINGYA

A major democratic revolt across Burma in the late 1980s resulted in the brief establishment of a parliament. The newly formed National League for Democracy rapidly gained the support of the bulk of the ethnically Burmese community, in part due to its alliance with the Buddhist monks and

in part because its leadership had close links with the earlier democratic rulers (to a large extent the dispute between the NLD and the military can be seen as an argument within a very narrow section of the Burmese elite).

Other ethnic groups, including the Rohingya, formed their own parties<sup>12</sup> and most of them cooperated with the NLD at a national level. The exception was the Rohingya, as the NLD opted instead to ally itself with the ethnic Rakhine party, which demanded the removal of the Rohingya from the parliament, as they had no citizenship rights<sup>13</sup>, and their expulsion into Bangladesh.

By the time a limited form of democracy returned in 2010, prejudice against the Rohingya had become a shared feature of the political debate among competing Burmese groups: the Rakhine, the NLD, the Military and the Buddhist Monks. Firstly the remaining civic rights of the Rohingya were further eroded. Secondly it was asserted that the Rohingya had no place in a Buddhist-dominated Myanmar, and the ethnic Rakhine party, and many Monks<sup>14</sup>, advocated ethnic cleansing or genocide. At the core, whatever else these groups might disagree about, their shared attitude toward the Rohingya was consistent<sup>15</sup>.

During 2012-2013 there was substantial violence in Rakhine that ended with many Rohingya fleeing the country or being forced into internal camps. The 2014 census was used as a mechanism to remove the last of their civic rights<sup>16</sup> and during the 2015 election all Muslim minorities in Myanmar experienced the systemic denial of political representation.

The result was that by 2016, despite the pleas of many for restraint, some Rohingya resorted to violence<sup>17</sup>. Isolated attacks by the Arakan Rohingya Salvation Army provoked a massive military response in 2017. By the end of 2018, about 750,000 Rohingya were registered as refugees in Bangladesh<sup>18</sup> and most estimates suggest a further 250,000 were not formally registered. The only Rohingya left in Myanmar were the 600,000 or so in the internal camps<sup>19</sup>.

This led to Gambia bringing a charge of genocide against authorities in Myanmar at the International Court of Justice. Reflecting the consensus that existed between the NLD and the military, Suu Kyi was prepared not only to deny the charges during court



hearings<sup>20</sup> but persisted in her refusal to even call the Rohingya by their name<sup>21</sup>.

## THE US RESPONSE

The response of the US to Myanmar while under military rule has been intermittent. George W. Bush added the country to his “Axis of Evil” list but this had little practical effect. The religious persecution of the Rohingya was noted<sup>22</sup> but, again, had little practical effect.

Between 2010 and 2017, the goal of the Obama administration can be described as seeking to constrain Chinese influence and to offer as much support to the NLD as was practical<sup>23</sup>. This meant downplaying the violence against the Rohingya and accepting Suu Kyi’s lack of willingness even to use the community’s name. In doing this the US was scarcely alone, as bodies such as the EU and the UN also tended to accept the NLD’s view of the constraints it faced<sup>24</sup>. The 2018 genocide, and the NLD’s willingness to defend it, shattered some of these illusions<sup>25</sup>.

## GAMBIA’S GENOCIDE CASE

The events of 2018 led Gambia to bring a charge of genocide against Myanmar at the ICJ<sup>26</sup>. Genocide is particularly hard to prove in court because part of the test is whether there was prior knowledge of it and a deliberate intent to carry it out<sup>27</sup> by those in charge. The result was that the ICJ issued a preliminary ruling in 2019 that highlighted a risk of genocide to those Rohingya who are still in Myanmar and required that the regime explain how it intended to protect them<sup>28</sup>. This was important, not so much as an indicator of how the court would treat the 2017-18 events but more because it clearly signaled that any further violence against the Rohingya would be treated, *prima facie*, as genocide.

While the 2021 military coup largely ended even the veneer of Myanmar’s co-operation with the court, it has had some important consequences. With Suu Kyi once again under house arrest, the old leadership of the NLD has become marginalized. The democratic opposition is now organized as the National Unity Government, which is actively seeking to forge closer links with persecuted ethnic groups. That the same generals who led the 2017 genocide in Rakhine are now persecuting the wider

opposition makes it easier for the latter to seek cross-community interaction.

The NUG has also indicated it wishes to withdraw some of Suu Kyi’s objections to the genocide charge.

In this context, the US decision to shift its categorization of the violence against the Rohingya from ethnic cleansing to genocide<sup>29</sup> fits into the international and domestic consensus that the situation of the Rohingya needs to be resolved. Clearly, practical progress is not going to be easy as China and Russia will protect Myanmar at the UN and Myanmar’s military rulers have no intention of offering civic rights to anyone.

However, it marks the end of an uneasy, and often unarticulated, view that in some way the fate of the Rohingya was less important as long as Myanmar could be seen to be moving toward democracy.

## IMPLICATIONS OF THE US DECISION

In many ways, the US decision to describe the persecution of the Rohingya as a genocide is the single biggest shift in Western policy toward Burma/Myanmar since the country gained its independence from the UK in 1948.

### Foreign policy and Burma/Myanmar

At that time the new regime broke all ties with the UK — even declining to retain sterling until the currency stabilized — and, unlike many former British colonies, did not join the Commonwealth<sup>30</sup>. However, in the 1950s it played an important role, along with India, in setting up the non-aligned movement of states that wished to maintain some distance from both the Soviet Union and the US.

The military regime downgraded these links but, despite their notionally socialist ideology, also maintained some distance from the Soviets and the Chinese, in the case of the latter as much due to historical enmity as political differences. If there was a consistent foreign policy, it was one of denying any other state the means to influence domestic Burmese politics.

As time passed the regime remained neutral during the Sino-Soviet split and turned increasingly to North Korea for weaponry, in exchange for food<sup>31</sup>. The advantage of this North Korean link was that they made no demands in terms of using technical



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**Bangladesh Border Guard (BGB) attempts to clear Rohingya Muslim refugees off a road near Balukhali refugee camp near the Bangladesh district of Ukhiya in 2017. AFP**

assistance as a means to retain some control over advanced weapons<sup>32</sup>. It might also have included a desire to acquire nuclear weapons but in general there is little evidence that the Burmese army was able to use the advanced weaponry it acquired. The bulk of its forces remained a conscript infantry whose expertise was in the suppression of unrest and low-intensity border conflicts.

Myanmar is part of the Association of Southeast Asian Nations but is relatively isolated within it, not least because the refugee crises triggered by the fleeing Rohingya have placed substantial burdens on fellow members Bangladesh, Malaysia and Indonesia<sup>33</sup>. As is often the case among groups of former colonies, the ASEAN historically has been unwilling to criticize the internal politics of member states. Equally, the organization has been very cautious in its interactions with China<sup>34</sup>, and Beijing's clear backing of Myanmar has muted most criticism.

President George W. Bush added Myanmar to his "Axis of Evil" list in the aftermath of the 9/11 attacks on the US in 2001. A combination of authoritarian rule, links with North Korea and a botched response to Cyclone Nargis<sup>35</sup> in 2008 meant that the US remained concerned about developments in Myanmar<sup>36</sup> but with limited means through which to influence them<sup>37</sup>.

Upon the return of a limited form of

democracy in the country, the US adopted a policy that essentially involved trying to limit China's influence, encouraging the regime to break its links with North Korea<sup>38</sup>, and supporting what was seen as a slow transition to a genuine democracy<sup>39</sup>. The last of these fitted a wider international view that the process of moving from dictatorship to democracy often involved compromise, not least in terms of addressing historical human rights abuses and defending the rights of persecuted minorities.

This view was widely shared across US, UK and EU engagement with Myanmar but has several flaws. Firstly, it is not always feasible or desirable to set aside ongoing human rights abuses<sup>40</sup>. Secondly, while it was displaying caution the regime was nonetheless becoming increasingly dependent on China. Thirdly, limited democracies can be very comfortable for the established elite — and, as noted, the dispute between the NLD and the military was essentially a contest within the traditional Burmese elite — who might find that such an arrangement buttresses their personal power and, in many instances, their economic power.

The US decision to describe the events of 2017 as a genocide cuts across all this equivocation<sup>41</sup>. Predictably, the regime responded by insisting there was no genocide<sup>42</sup> and it will rely on Russia and



China to back it at the UN. However, at the very least it indicates that the US will not deal with the generals directly involved in the genocide, who are the current rulers following the 2021 coup, if and when Myanmar returns to democracy. This clarity of viewpoint allows the US to expect similar commitments from the EU, and also to expect that the ASEAN will now respond to the military rule in Myanmar<sup>43</sup>.

## IMPLICATIONS WITHIN MYANMAR

As noted, one welcome development is that the pro-democracy movement, the National Unity Government, represents a break from the NLD in generational terms and wider attitudes. Many NLD activists are involved in the NUG but there is now a serious attempt being made to build an opposition across ethnic lines, whereas the old NLD was an essentially a Burmese ethnic party.

If there is a clear lesson to be learned from the 2010-2021 period in Myanmar it is that basing a democracy on a flawed constitution<sup>44</sup>, removing citizenship from persecuted groups, excluding Muslims from the democratic process, and engaging in ongoing ethnic cleansing activities, leading to genocide, is not a stable foundation on which to build.

During this period there were regular elections — which, apart from those in Rakhine were mostly seen as being fair — and a steady opening up of the economy but all the gains were swiftly swept away when the military decided it wanted to reassert direct control over the country and ensure the new wealth flowed into its own bank accounts.

This strongly suggests that it is essential for the international community to work with the NUG, both as a way forward and to encourage it to maintain its current non-sectarian approach.

## IMPLICATIONS FOR THE ROHINGYA

In 2016, it was possible to write a book that described the Rohingya as “unknown” and perhaps the most under-acknowledged persecuted community on the planet<sup>45</sup>. Now, their plight is at least known to the wider world.

At the moment, the Rohingya community is broadly split into three sections. The bulk,

perhaps around 1.1 million, are in refugee camps in Cox’s Bazaar in Bangladesh.

Authorities in the country are struggling with the implications of this, trying to ensure the refugees do not enter the domestic labor force, and looking to relocate them, if at all possible.

About 600,000, mostly elderly, still live in Rakhine State in the internal camps they were forced to enter in 2013. It was the threat to this community in particular that led the ICJ to issue its 2020 ruling demanding urgent action to protect them from the Myanmar authorities<sup>46</sup>. A further 400,000 Rohingya are scattered across India, Indonesia, Malaysia and Thailand, plus some in Pakistan and Saudi Arabia. They have no refugee status and are mostly dispersed among the local labor forces.

The legitimate demands of the Rohingya are for citizenship in Myanmar and a return to Rakhine. The obvious problem is that this was hard enough to arrange safely before the 2021 military coup and is impossible now.

Bangladesh, a poor country with enough domestic problems of its own, is in a difficult position. It has a long history of forcibly returning Rohingya refugees, in part because it does not wish to legitimize the actions of the authorities in Myanmar. However, it is also doing its best to offer education and provide health services to the refugees.

## CIVIC STATUS

Regardless of where the Rohingya are currently located, a number of issues need to be a part of any discussions with Myanmar’s National Unity Government. Such talks are something to which they seem amenable.

Firstly, the Rohingya name must be accepted and used. There is no justification for pandering to the views of the older leadership of the NLD that the Rohingya are “Bengalis.” Usage of the community’s proper name on a consistent basis is a more powerful statement than might initially appear to be the case.

Linked to this, any discussion with the NUG must be on the basis of removing all restrictions on the citizenship of the Rohingya that were introduced over the past five decades. The evidence that emerged during 2021 suggests that playing down the rights of the Rohingya is not a means through which to bring about a democratic



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and inclusive Myanmar. In addition, all land seized from the Rohingya since 2010 — in other words during the country's democratic period — must be returned.

In combination these actions will be a challenge for the Myanmar authorities, not least because they will have to address 60 years of carefully curated prejudice, but they nevertheless form the basis for a secure settlement.

## **WITHIN MYANMAR**

As noted, the ICJ has identified the predominantly elderly community of Rohingya, who were unable to flee and remain in Rakhine, as being particularly at risk. Any interaction with Myanmar's military authorities will be difficult but, ideally, the UN should regain control over the camps the Rohingya were forced into.

A restating of the ICJ's warning to Myanmar's government would be very valuable. The court made it clear that any violence against the residents of the camps would clearly cross the threshold set for the determination of genocide, as there would be no room for ambiguity about the extent to which it was being carried out as a deliberate act of state policy.

A clear statement of intent from the US about bringing charges of genocide, and assigning judicial and criminal justice assets to this task, would also help to protect this vulnerable subgroup of Rohingya. The generals currently in control of Myanmar might have no plans to visit the US or the EU any time soon but they do travel to other ASEAN countries and need external connections through which to launder their wealth.

## **BANGLADESH**

The Rohingya have a pressing need for their formal status to be established. Bangladesh's concerns are understandable as they fear having to cope with a permanent refugee population that adds to the demands on their state. However, the Rohingya have no desire to remain in Bangladesh indefinitely so the key is to ensure adequate support is provided for now and that efforts are made to enable them to work. It is also important to resist attempts by the Bangladeshi authorities to relocate the refugee camps. Again, the US can exert a disproportionately large level of

influence when other bodies, such as the UN's Refugee Agency, might struggle to be heard.

## **AT THE ICJ**

In some ways the existing case brought by Gambia before the ICJ accusing authorities in Myanmar of genocide against the Rohingya has stalled as a result of the military coup in February 2021. However, the court is still gathering information that could inform a future judgment, and in the meantime it seems its clear ruling in 2020 has had at least some effect in protecting the Rohingya who remain in Myanmar.

The ICJ is the only feasible route to a genocide ruling because China and Russia will veto any attempt to achieve this through the mechanisms of the UN Security Council. The US could bring its own case, on the basis of its own recent report on the subject<sup>47</sup>, or throw its weight behind Gambia's case. Either option would give the case a higher international profile.

More importantly, perhaps, it would add weight to the threat that those who are eventually found guilty of genocidal actions will face proper justice. In the former Yugoslavia the process to achieve a similar outcome has been slow, even with the eventual co-operation of Bosnia, Croatia and Serbia, but effective and many of those found guilty of war crimes or ethnic cleansing are now serving lengthy prison sentences

## **POLITICAL CHANGE**

The return of democratic rule in Myanmar is a precondition to resolving the plight of the Rohingya. The new NUG opposition does not share the military's prejudices and so is not against opening the door to reconciliation and resettlement. However, prejudice against the Rohingya has been carefully cultivated for more than 70 years<sup>48</sup> so a reconciliation will not happen by accident. An important part of any engagement with the NUG has to be based around the rights of the Rohingya.

As is the case in so many other situations, the US has the moral and practical influence to make a real difference where other entities and organizations can do little more than raise concerns. Equally, Washington can force the EU to end the equivocation over the issue that has been such a depressing feature of the block's interaction with Myanmar for the past decade<sup>49</sup>.



***The return of democratic rule in Myanmar is a precondition to resolving the plight of the Rohingya.***

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