



Critical Policy Advice for President-Elect Biden: Leading a Global Response on the Rohingya Crisis

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Rohingya refugees watch ICJ proceedings at a restaurant in a refugee camp in Cox's Bazar, Bangladesh. Photo by Allison Joyce/Getty Images.

Introduction

As President, Joe Biden has pledged to pursue a foreign policy based on moral values and cooperation, an approach that prioritizes decency and the protection of human rights. This pledge will be immediately tested by the ongoing repercussions of one of the worst mass atrocities in recent history, the genocide committed by the state of Myanmar against the Rohingya. But there is a way forward. And renewed global engagement can pave the way toward a lasting solution. An immediate first step should be to recognize the crimes against the Rohingya for what they are: crimes against humanity and genocide.

Starting in August 2017, the Myanmar military unleashed a brutal assault that forced more than 700,000 Rohingya people across the border into Bangladesh in a matter of months. As documented by numerous independent reports – including by [Refugees International](#), a [UN Independent International Fact Finding Mission](#), and the State Department's own [report](#) – the assault was marked by systematic killings of civilians, burning of hundreds of villages, and widespread sexual assault. Today, some 1 million Rohingya refugees remain in dire conditions in Bangladesh, while another 600,000 remain at high risk of further atrocities inside Myanmar.

Despite some international pressure – including U.S. targeted sanctions on the commander-in-chief of the Myanmar military Senior General Min Aung Hlaing – and ongoing accountability efforts in international and domestic fora, Myanmar has failed to improve conditions and to address these gravest of crimes. In fact, life for Rohingya in Rakhine state has largely deteriorated, and the prospect of further atrocities has grown worse. Under these conditions, the likelihood of safe, voluntary, dignified, and sustainable returns of Rohingya to their homeland is not realistic in the near future.

Myanmar continues to repudiate international norms and human rights obligations. Recent elections in Myanmar were neither free nor fair and specifically excluded Rohingya from voting or running for office. The government continues to abuse and marginalize ethnic minorities around the country. The Rohingya remain effectively stateless as the Myanmar government, through its flawed [1982 Citizenship Law](#), still denies them citizenship. Rohingya in Rakhine state continue to face restrictions on their freedom of movement and access to medical care and humanitarian aid. This leaves them particularly vulnerable to COVID-19 as Myanmar now faces a sharp increase in cases.

Yet, senior officials in Myanmar have arguably shown at least some interest in the good opinion of the international community and have responded to concerted international pressure. Just before the August 2017 assault, the Myanmar government and military indicated that they were prepared to accept the recommendations of an international commission chaired by former UN Secretary General Kofi Annan and focused on conditions in Rakhine state and the situation of the Rohingya. More recently, the government has engaged international experts in creating a plan for the closure of prison-like camps for internally displaced people (IDPs) as recommended by the Annan Commission. And in December 2019, Myanmar's de facto leader Aung San Suu Kyi traveled to The Hague to defend her country against genocide charges before the International Court of Justice (ICJ).

Some of this was motivated by domestic political calculations – Suu Kyi's visit to the Hague played well ahead of Myanmar's elections – and other steps, like implementation of its camp closure strategy and domestic accountability efforts, are little more than window dressing. But without the international pressure that has been cobbled together—however limited that has been—even these steps would not likely have been taken, and the message of impunity would have been heard more loudly and more clearly by Myanmar's military.

Changing the policies and practices of the state of Myanmar will require a multifaceted approach, one that combines increased international pressure with ongoing diplomatic engagement. For the sake of credibility both with Myanmar and globally, the United States government must speak truthfully about what has happened and be willing to use condemnation and targeted sanctions to demonstrate that the perpetration of egregious crimes comes with serious costs. At the same time, the Biden administration should show a willingness to promote a more cooperative relationship with Myanmar in return for significant and substantial improvements in the treatment of the Rohingya, and a genuine willingness on the part of Myanmar authorities to support accountability for abuses.

The U.S. effort should be led by an official of high-standing who would be responsible for promoting multilateral coordination of measures that include diplomatic engagement with the authorities in Myanmar, further targeted sanctions including on military-owned enterprises, and support for international accountability efforts. On behalf of the U.S. government, the appointee should press for a UN Security Council session on the Rohingya crisis, which should coincide with U.S. recognition that the atrocities committed against the Rohingya amount to crimes against humanity and genocide.

Some analysts may argue that pursuing a policy that includes strong pressures on Myanmar will be counterproductive, harming Myanmar's population and efforts at democracy while driving Myanmar into the hands of China. But Myanmar's relationship with China is complex, there is wariness about Chinese influence, and the United States is seen by many in Myanmar as a counterbalance. Moreover, pressure need not be as blunt as blanket sanctions, and can be targeted at those who are responsible for abuses. More importantly, an unchanged approach risks bolstering Myanmar's sense of impunity and enabling further abuses, not to mention denying the accountability Rohingya seek as part of their safe return.

In short, a concerted multilateral effort both to engage and pressure Myanmar where needed would greatly enhance the prospects for preventing a repeat of one of the most egregious crimes in recent history and for reaching a long-term solution to the Rohingya refugee crisis.

The Biden Plan

President-elect Biden and his team have said little about their approach toward the Rohingya, but the Biden campaign [stated](#) that “systematic discrimination and atrocities against Myanmar’s Rohingya Muslim minority is abhorrent and undermines peace and stability.” Antony Blinken, President-elect Biden’s close campaign adviser and nominee to be Secretary of State, [tweeted](#) on August 25, 2020 (the three-year mark of the mass expulsion of Rohingya from Myanmar), that “A Biden administration will work tirelessly to support justice for atrocities committed, as well as peace, security, and equal rights for the Rohingya as citizens of Burma.” And as Senator, Vice President-elect Kamala Harris co-sponsored the Burma Human Rights and Freedom Act, a bill calling for further targeted sanctions and support for humanitarian and accountability efforts regarding the Rohingya.

More broadly, President-elect Biden has promised a [new approach to foreign policy](#) that will seek to “restore our moral leadership” and “revitalize our national commitment to advancing human rights and democracy around the world.” President-elect Biden and his team have also shown previous commitments to atrocity prevention. As Vice President, Biden [called](#) genocide prevention “an integral part of our national security apparatus.” The Biden administration is likely to continue in some manner the operation of an

interagency Atrocity Prevention Board that was set up during the Obama-Biden administration and continued as the Atrocity Early Warning Task Force in the Trump administration. Refugees International encourages the continuation of such a body as an important vehicle for ensuring high-level attention and coordination on emerging atrocity threats before they reach the level of a Rohingya crisis. At the same time, addressing the plight of the Rohingya will be essential to the credibility of any human rights and atrocity prevention efforts. There are multiple concrete actions the incoming Biden administration can take to back up the spirit of these commitments.

An Agenda for Action

The Biden administration should take a series of steps to begin addressing the plight of the Rohingya.

Make an Official Genocide Determination

The single, most influential, immediate step that the U.S. government can take to address the long-term plight of the Rohingya is to call the crimes committed what they are: genocide. The Secretary of State has the authority to make a determination expressing the view of the United States that the atrocities perpetrated against the Rohingya by the Myanmar government amount to crimes against humanity and genocide. President-elect Biden's nominated Secretary of State Antony Blinken should do just that as soon as possible. Such a move would not only speak the truth of the matter but would also help to spur much needed international action and attention. Such a determination is supported by a [UN Independent International Fact-Finding Mission](#), and independent groups including the [U.S. Holocaust Memorial Museum](#) and [Refugees International](#). Prominent legal and human rights experts, including former high-level State Department and White House officials – including U.S. Ambassadors-at-Large for War Crimes David Scheffer and Stephen Rapp and former U.S. Ambassador to the UN Samantha Power – have urged a genocide determination, [writing](#):

“[W]e believe the information and assessments produced so far compels the United States, in its capacity as a government and not as a court, to publicly express its view that genocide has been committed and may be continuing against the Rohingya of Myanmar.”

A genocide determination would also be wholly consistent with the findings of the State Department's own [documentation on this critical issue](#).

As Refugees International [wrote](#) to the Biden campaign in August 2020:

“the evidence of genocide and crimes against humanity is clear and convincing and has been amply documented. In making such a determination, the United States would help lead the world in holding the state of Myanmar accountable for grave abuses and in preventing further atrocities.”

A genocide determination would bring much needed international scrutiny to Myanmar at a time when abuses against Rohingya and other ethnic minorities continue. It would also help to enhance international accountability efforts, to rally international humanitarian support, and to show solidarity with Bangladesh and other refugee-hosting countries as well as with the Rohingya people. A number of Rohingya civil society organizations have joined a [petition](#) urging the United States to make a genocide determination. As one Rohingya refugee told Refugees International recently, “Our expectation is that Biden will declare with his voice that the Burmese government committed genocide against Rohingya, and we also want his active role to help repatriate the Rohingya safely.”

Lead a Global Effort on the Rohingya

Appoint a High-ranking Official to Coordinate Multilateral Efforts: A genocide determination should be accompanied by the appointment of a high-level Presidential envoy on Myanmar. Such an appointment would send a strong signal about the importance the new administration attaches to this issue and its intention to promote a concerted multilateral engagement to enhance any unilateral efforts to pressure Myanmar to end abuses and create the conditions for the eventual safe and voluntary return of Rohingya to Myanmar. The envoy should have significant experience and stature in global affairs and enjoy the clear backing of the White House.

Host a UN Security Council Session to Address the Plight of the Rohingya: The Biden administration should press for a UN Security Council session to build a multilateral strategy toward addressing the plight of the Rohingya. The United States co-hosted a global donor conference for the Rohingya in October 2020 that played an important role in rallying further humanitarian funding and keeping attention on the issue on the global stage. But the conference did not cover the root causes of the crisis, namely Myanmar's

continued abuses and failure to create conditions conducive for the return of Rohingya refugees. A Security Council session should focus on those root causes and on coordination of concrete actions to address them. Specifically, the session should include discussion of Myanmar's ICJ obligations to prevent genocide, progress (or lack thereof) on Annan Commission recommendations like reforming the 1982 Citizenship Law, and multilateral actions including targeted sanctions and an arms embargo.

Securing concrete action out of a meeting might be difficult, given the veto powers of permanent Security Council Members China and Russia. But the meeting itself would be important as it would raise key issues, publicize concerns, and challenge the stance of China and Russia in vetoing further action. And as Human Rights Watch's Param-Preet Singh has [highlighted](#), only nine members of the council are needed to hold such a formal session, and procedural matters such as the council's agenda are not subject to a veto. The Security Council has not held a formal session on the Rohingya since February 2019. The United States will serve as president of the Security Council in March 2021. That provides a good opportunity to hold such a summit, if not sooner.

Include Rohingya in Global Discussions about their Future: As Refugees International has [reported](#), Rohingya have been too often left out of decisions vital to their lives and futures. Repatriation agreements between Bangladesh, Myanmar, and UN agencies fail to mention or ensure adequate engagement of the Rohingya community. Repatriation attempts, as well as relocation of Rohingya within Bangladesh, have failed to adequately consult and inform Rohingya. The Biden administration should push for better empowerment of Rohingya refugees in the humanitarian response and seek to include Rohingya civil society representatives in global fora, including before the UN Security Council, UN Human Rights Council, and in other deliberative bodies.

Prioritize Rohingya in Bilateral and Regional Diplomacy: U.S. multilateral efforts should be directed at likeminded allies, as well as governments that have not strongly pressed for change and governments that are effectively providing cover to the government of Myanmar. With the governments of the United Kingdom, France and others in the European Union, and Canada and Australia, the United States should urge an increase in targeted sanctions on military officials and military-owned enterprises.

Working with Myanmar's neighbors and the Association of Southeast Asian Nations (ASEAN) will also be important in creating further leverage with Myanmar. While ASEAN governments are not likely to endorse sanctions, they are conscious of the direct impacts of large refugee flows as well as the negative impact of the Rohingya crisis on the

region's international image. Indonesia and Malaysia, in particular, have been vocal about Rohingya concerns and could be enlisted as part of a carefully calibrated multilateral effort. The United States should utilize both bilateral visits from high-ranking officials and key regional summits like the East Asia Summit and U.S.-ASEAN Summits to advance pressure on Myanmar. At the U.S.-ASEAN summit in November 2018, Vice President Pence directly [confronted](#) Aung San Suu Kyi about the treatment of the Rohingya. The Biden administration should take similar opportunities and back them through concerted and well-coordinated actions.

At the same time, the United States should emphasize the importance of humane responses to refugee flows stemming from Myanmar's treatment of the Rohingya. At least [2,400 refugees](#) are believed to have been stranded at sea in 2020, with countries including Malaysia and Thailand [refusing](#) to allow them to disembark safely despite international obligations and regional commitments under the Bali Process. U.S.-ASEAN engagement during the Obama-Biden administration helped to address a 2015 Rohingya boat crisis and prompt new ASEAN [commitments](#) to safe disembarkation of those stranded at sea. Renewed U.S. engagement is needed to urge ASEAN countries to better coordinate and refrain from "push-backs" of boats full of refugees. Such demands would be more credible with improved U.S. policies toward refugees and asylum seekers, such as an expansion of the U.S. refugee resettlement program, as [pledged](#) by President-elect Biden during the presidential campaign. Such expansion should include resettlement opportunities for Rohingya refugees.

Of course, China will remain both a profound general challenge to U.S. foreign policy and a specific one to addressing the plight of the Rohingya. At the same time, as Biden's team has recognized, China will remain an important partner to address some of the largest problems facing the world today, from climate change to pandemics to atrocity prevention. For its part, China has an interest in security and influence in Myanmar and Bangladesh as it pursues its economic Belt and Road Initiative, in part dependent on access to the Indian Ocean via a deep-sea port and oil and gas pipelines in Rakhine state. China has also sought to be a mediator working behind the scenes with Myanmar and Bangladesh to promote Rohingya repatriation, though with limited results. Engaging China will not be simple, but this mutual interest could present opportunities for positive engagement on the fate of the Rohingya.

Other countries with trade and development interests, including India and Japan, will also be important for the United States to engage on Myanmar and the Rohingya.

Demand Due Diligence in International Development Efforts: International Financial Institutions (IFIs) and individual countries like Japan are providing significant development funding to Myanmar. In 2020, the World Bank [announced](#) \$460 million in credits to upgrade electricity power generation and improve health services. But increased development funding amid ongoing abuses must come with increased due diligence, particularly in Rakhine state, where development risks reinforcing the effects of apartheid and ethnic cleansing. A \$100 million proposed World Bank project in 2019 raised many [concerns](#) including how the project could be equitable and inclusive while systematic discrimination, movement restrictions, and other ongoing human rights violations persist. Any such project should not move forward until prevailing discriminatory laws, policies, and practices are addressed. The United States must use its influence within IFIs and with bilateral partners like Japan to ensure that funds provided to Myanmar face the appropriate due diligence.

Take Concrete Bilateral Action to Pressure Myanmar

The United States should prioritize work with allies toward coordinated multilateral efforts but must also be prepared to lead by example with its own measures. Among the tools available to pressure Myanmar to create conditions safe for the Rohingya and other ethnic minorities are targeted sanctions, withholding of military assistance, and withdrawal of trade preferences.

Sanction Senior Military officials and Military-owned Enterprises: The United States has already placed visa and financial [sanctions](#) on nine Myanmar military officers including Senior General Min Aung Hlaing, as well as two military units for their involvement in attacks on Rohingya civilians. These have provided important messages to Myanmar's leadership. However, many more individuals have been identified for responsibility for gross abuses against the Rohingya both in public [reports](#) by human rights groups and by the [UN Independent Fact-finding Mission](#). Failure by the authorities to change course and to hold individuals accountable should lead to the United States placing further sanctions on Myanmar officials through the Global Magnitsky Human Rights Accountability Act, which authorizes the President to impose economic sanctions and deny entry into the United States to any foreign person identified as engaging in human rights abuses or corruption.

Further, the United States should impose targeted sanctions on military-owned enterprises, including the Myanmar Economic Corporation (MEC) and Myanmar Economic Holdings Limited (MEHL). As [reported](#) in a special report of the UN Independent Fact-

finding Mission, these entities “are owned and influenced by senior Tatmadaw [Myanmar Army] leaders, including the Commander-in-Chief Senior General Min Aung Hlaing and the Deputy Commander-in-Chief Vice Senior General Soe Win, responsible for gross violations of international human rights law and serious violations of international humanitarian law.” The Mission further found that, “At least 45 companies and organizations provided the Tatmadaw with USD 6.15 million in financial donations that were solicited in September 2017 by senior Tatmadaw leadership in support of the “clearance operations” that began in August 2017 against the Rohingya in northern Rakhine.”

Withhold military-to-military cooperation with Myanmar: The United States currently restricts engagement between the U.S. and Myanmar militaries including the trading of weapons and training. However, under the Obama-Biden administration, trainings and meetings were resumed and there will be arguments to increase such relations once again in the hopes of influencing Myanmar. Until Myanmar shows good-faith progress in addressing impunity and halting further gross human rights abuses, the United States should continue to withhold security assistance and military-to-military cooperation. This should include restrictions on trainings, participation in joint exercises like the regional Cobra-Gold exercises, and visits by high-level Myanmar military officials to the United States.

Withdraw Myanmar’s eligibility under the Generalized Systems of Preferences (GSP) program: Myanmar is still eligible for trade benefits with the United States under the General Systems of Preferences (GSP). The Biden administration should make clear that eligibility for such preferences will be suspended until Myanmar has taken steps to hold perpetrators of atrocities accountable and to create conditions conducive to the safe return of Rohingya refugees. This would send a signal both to Myanmar and to allies that maintain trade preference programs with Myanmar. For example, the EU warned just ahead of Myanmar’s November elections that its “Everything But Arms” scheme, which grants poor countries access to EU markets without tariffs or quotas for everything except weapons, may be at risk. The United States should coordinate with the EU to leverage such economic benefits toward more constructive policies by Myanmar toward the Rohingya.

Such actions should be coordinated, to the extent possible, with partner governments and calibrated with Myanmar’s demonstrated willingness or unwillingness to end abuses and take good-faith actions to improve conditions in Rakhine state and with respect to other ethnic minorities.

Pledge Support for International Accountability Efforts

The United States should support ongoing international accountability efforts including before the ICJ and the International Criminal Court (ICC). The Gambia's genocide case against Myanmar at the ICJ has already been [supported](#) by the 57-member Organization of Islamic Cooperation, and Canada and the Netherlands have [expressed](#) their intent to intervene in the case. In the immediate term, the United States should draw attention to the provisional measures of the ICJ requiring Myanmar to take steps to prevent genocide and refrain from destruction of evidence. This could be done through Security Council attention to the progress reports required by the ICJ of Myanmar every six months, whether through their publication or open discussion at a session of the Council. The first such report during a Biden administration will be due in May 2021.

Similarly, the United States should support the referral of the situation in Myanmar to the ICC. While the United States is not a member of the ICC and holds significant domestic reservations regarding its jurisdiction over U.S. citizens, U.S. cooperation with the court and tacit approval of a Security Council ICC referral are not without precedent. The United States abstained from a vote that referred the case of Darfur to the ICC and has cooperated in the past in supplying information and evidence against those who are responsible for atrocity crimes. As a first step, President-elect Biden should lift the ill-advised [sanctions](#) imposed by the Trump administration on ICC-prosecutors and return to a more cooperative and productive working relationship with the ICC. As the Obama-Biden administration recognized, ongoing domestic concerns with ICC jurisdiction should not preclude cooperation in holding accountable those committing the worst of crimes internationally.

International justice mechanisms will be slow, but even more so without the support of the United States. In the interim, the United States should continue to support the [UN Independent Investigative Mechanism for Myanmar](#) (IIMM) in its mandate to collect evidence and prepare files for future accountability efforts. More fundamentally, President-elect Biden's fulfilment of his [pledge](#) to rejoin the UN Human Rights Council – the body that established the UN Independent Fact-Finding Mission and the IIMM – will enable further attention and support for accountability efforts.

Finally, current [efforts](#) at accountability within Myanmar should be recognized for their lack of transparency, impartiality, and independence, and rejected by the United States and allies.

Maintain Humanitarian Support for Rohingya

The United States has led the world with some [\\$1.2 billion](#) in humanitarian assistance to the Rohingya in Myanmar and refugee-hosting countries since August 2017. The Trump administration co-hosted a global donor conference for the Rohingya in October 2020, which is helping to secure further support. But the humanitarian needs are unlikely to decrease in the near term, especially if Myanmar continues its recalcitrance in addressing the root causes of the crisis.

The Joint Response Plan for the Rohingya in Bangladesh for 2020 estimated a need for \$1.06 billion in humanitarian assistance. Only 55 percent of that requirement had been fulfilled as of the end of October 2020, the last available [update](#). The Humanitarian Response Plan in Myanmar for 2020 (covering Rohingya and other groups in need of humanitarian assistance) was only two-thirds fulfilled according to the last available [update](#) at the end of December 2020. Pre-existing needs have been exacerbated by the coronavirus pandemic, which is [surging](#) in Myanmar and continues to threaten the densely populated camps in Bangladesh. Underlying weak health infrastructure in Rakhine state and in the camps in Bangladesh and ongoing discrimination and movement restrictions in Myanmar put displaced Rohingya at particular risk.

In 2020, the United States provided nearly \$85 million in [humanitarian assistance](#) to Myanmar, including nearly \$11 million toward fighting COVID-19. This [aid](#) provides essential food assistance, shelter, and healthcare to nearly 1 million people in need in Myanmar, including some 120,000 Rohingya IDPs in Rakhine state. Yet, too often, humanitarians are unable to deliver this aid to populations who need it. Even as the United States ramps up multilateral efforts to change Myanmar's policies, it must also maintain humanitarian support and demands for humanitarian access to 600,000 Rohingya who remain in Rakhine state, as well as to distressed populations in other parts of the country.

Challenges in Bangladesh

The root causes of the Rohingya crisis and any sustainable solution lie in Myanmar, but 860,000 Rohingya refugees are also facing challenges that need to be addressed in Bangladesh. Bangladesh has done much to help the Rohingya who fled into the country. But the Bangladeshi government has also pursued negative policies that must not be ignored. Perhaps most concerning, in December 2020, Bangladesh began moving Rohingya refugees to Bhasan Char, an isolated island in the Bay of Bengal. This move came without UN requested protection and feasibility assessments and amid multiple questions from humanitarians and refugees about the safety and voluntariness of such moves. The United States must refrain from supporting Bangladesh's movement of Rohingya to Bhasan Char island until the safety and sustainability of such a move is confirmed by an independent UN review and Rohingya refugees are adequately informed to make voluntary decisions about moving. Until that time, the United States should demand that no further transfers should take place and that any refugees who are on the island involuntarily be allowed to return to the main camps.

Bangladesh has also been constructing barbed wire fencing around the camps and created bureaucratic challenges to humanitarian access. Rather than pursuing these harmful policies, Bangladesh should work toward providing freedom of movement, education, and livelihood opportunities to refugees. A pilot program to provide education to refugees in Bangladesh camps should be resumed and expanded. More generally, the United States should work with Bangladesh and humanitarian agencies to better inform and engage Rohingya refugees about decisions essential to their lives and futures. For more on this, see Refugees International's report: [A Voice in Their Future: The Need to Empower Rohingya Refugees in Bangladesh](#).

In short, while Bangladesh deserves great credit for hosting Rohingya refugees, the United States must not accept problematic policies that are unnecessarily making life more difficult for refugees and, ultimately, making them less prepared for safe and sustainable return in the future.

Conclusion

The genocide committed against the Rohingya is one of the most egregious mass atrocities in the modern era. Not only do justice and the conditions to return home continue to evade the Rohingya people, but those still in Myanmar continue to live under the high risk of further atrocities. The Biden administration has an opportunity to change the trajectory of this suffering and to avoid another chapter of tragedy. Immediate steps are readily available to broadcast a sense of urgency to the world and to kickstart the hard work of rallying a more adequate global response. How the Biden administration responds to the egregious case of the Rohingya will send a signal as to how it will respond to other would-be atrocities.