



UNITED STATES COMMISSION *on* INTERNATIONAL RELIGIOUS FREEDOM

FACTSHEET

May 2022

PURSuing JUSTICE AND ACCOUNTABILITY: NEXT STEPS FOR ROHINGYA COMMUNITY OF BURMA

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On March 21, 2022, Secretary of State Antony J. Blinken [*announced*](#) the Biden Administration had determined that the atrocities committed by the Burmese military, known as the Tatmadaw, against the Rohingya community constitute genocide and crimes against humanity. This determination was based on a factual assessment and legal analysis conducted by the U.S. Department of State, which included reviewing documentation by independent [*sources*](#), as well as the State Department's 2018 [*survey and analysis*](#) of over 1,000 Rohingya refugees in Cox's Bazar, Bangladesh. In the wake of the U.S. government's genocide determination, this factsheet provides an overview of the underlying genocide and crimes against humanity committed by the Tatmadaw against Rohingyas.

As highlighted in [*USCIRF's May 2021 hearing on Ending Genocide - U.S. Government Genocide Determinations and Next Steps*](#), the Rohingya genocide determination is important as it acknowledges the gravity of the crimes committed against Rohingyas and affirms their human rights and dignity. This determination must be followed by increased action to promote justice and accountability. In his speech announcing the genocide determination, Secretary Blinken emphasized the need for truth and accountability in the wake of these mass atrocities. He highlighted three ongoing legal cases that represent an unprecedented use of the international justice system to hold the Burmese government and officials accountable for atrocities committed against Rohingyas. These cases are significant as there has generally been [*impunity*](#) within Burma for these crimes. Some observers have [*argued*](#) this impunity paved the way for the ongoing post-coup violence, which has included increased Tatmadaw persecution of other ethno-religious communities in Burma.

Building on USCIRF's Spotlight on [*Rohingya Genocide Determination and Accountability*](#), this factsheet provides an overview of the current pathways toward justice in the international legal system and highlights actions the U.S. government has taken to support these cases. Further, it reiterates USCIRF's recommendations made in the [*2022 Annual Report*](#) on how the U.S. government can further support justice for Rohingya survivors and pave the way towards meaningful accountability.

Background

The military government of Burma, which lasted from 1962 until 2011, maintained power in part through a divide-and-conquer strategy that pitted Buddhists, Christians, and Muslims against each other. In Rakhine State, this strategy entailed turning ethnic Rakhine against their Rohingya neighbors, a predominantly Muslim ethnic group. Reflecting this strategy, the government in 1982 stripped Rohingyas of citizenship and subsequently allowed violence, discrimination, and human rights abuses against Rohingya Muslims to occur with impunity.

As USCIRF consistently reported in [Annual Reports](#) and other [publications](#), during the period of quasi-democratic government which lasted from 2011 until the military coup on February 1, 2021, conditions for Rohingya and other religious communities continued to deteriorate. Rohingyas continued to be disenfranchised, and the civilian government enabled, and in some instances, furthered intolerance and [violence](#) against them. In August 2017, the Tatmadaw launched a particularly widespread and brutal attack on Rohingyas. The UN Special Rapporteur on the situation of human rights in Myanmar (Burma) [documented](#) instances of Burmese military units involved in indiscriminate killings of civilians, mass rapes, disappearances, arbitrary arrests, looting, and property destruction. The violence resulted in thousands of Rohingya dead, hundreds of thousands internally displaced, and millions dispersed throughout the region. The civilian government, led by the National League for Democracy (NLD), rejected and [denied](#) reported atrocities committed by the military. The February 1, 2021 coup exacerbated conditions and [caused](#) the deterioration of basic human rights, including religious freedom, for all ethnic and religious communities. As of March 2022, there were 155,610 [registered](#) Rohingya refugees and asylum seekers in Malaysia and 926,561 [registered](#) Rohingya refugees in Bangladesh.

In opposition to the military junta, members of the NLD and others have formed the National Unity Government (NUG). The NUG has attempted to unite the non-Tatmadaw-controlled areas of Burma and coordinate the various armed ethnic groups to stand against the military junta. While the NUG has not yet committed to fully embracing an agenda of religious freedom and equality, it has [pledged](#) to undo decades of abuse and disenfranchisement of the Rohingya community. Members of the NUG [issued](#) personal statements of apologies to the community.

Ongoing International Legal Cases

This section provides an overview of the three international legal cases seeking justice for the Rohingya. The three cases are each distinct legal proceedings at different stages, with unique mandates and focuses. While there is some overlap among these cases, each provides an opportunity for accountability.

1. International Court of Justice (ICJ): In November 2019, The Gambia, on behalf of the Organization of Islamic Cooperation (OIC), [initiated](#) a case at the [ICJ](#) against Burma claiming the country had violated the Genocide Convention in its 2017 crackdown on Rohingyas. The Gambia asked the Court to declare Burma responsible for violations of the Genocide Convention, to order the cessation of such violations, and to order reparations and restitution for the Rohingya victims of the genocide. The Gambia also requested [provisional measures](#) to require Burma to immediately take certain actions to protect Rohingyas, including preventing all genocidal acts and preserving evidence of such acts. The ICJ unanimously granted these provisional measures in January 2020.

The Gambia has received legal support from other countries seeking to uphold the Genocide Convention, including the [Maldives](#). In September 2020, Canada and the Netherlands jointly [intervened](#) in the case, specifically to provide additional legal support and draw attention to crimes related to sexual and gender based violence. Soon after, in October 2020, The Gambia filed its full case on the merits. Burma filed [preliminary objections](#) to the Court's jurisdiction in January 2021, which put a pause on the proceedings on the merits of the case.

Since the February 2021 military coup, the case has continued, with The Gambia responding to Burma's preliminary objections in April 2021. However, an [issue](#) arose regarding the representation of Burma in front of the ICJ, with both the military junta and the NUG claiming this representation. The military junta appointed a panel of senior officials to represent Burma's delegation before the court, while members of the NUG expressed its intention to represent Burma in the proceedings. In February 2022, the NUG [announced](#) it had advised the ICJ that Burma accepts the jurisdiction of the court and withdrew all preliminary objections in the case.

Despite this announcement, the military junta ultimately [appeared](#) before the court at the end of February 2022. The Tatmadaw raised its preliminary

objections, including that the ICJ lacks jurisdiction because the applicant is the OIC (not The Gambia), and only states may be parties before the court. Following these proceedings, the court is currently deliberating and will issue a determination on the preliminary objections. If the objections are dismissed, the case will move forward on the merits to determine whether Burma is responsible for violations of the Genocide Convention. In the meantime, the provisional measures [remain](#) in place and provide a measure of protection to the Rohingya community in Burma.

In June 2020, The Gambia [sought](#) content from Facebook related to the genocide in Burma to assess “responsibility for genocide” in the ICJ proceedings. This request was based on Facebook’s [documented role](#) in propagating hate speech and expression inciting violence against Rohingyas. In September 2021, a U.S. district court [held](#) that Facebook’s parent company, Meta, must disclose materials relating to the incitement of hatred against Rohingyas.

2. **International Criminal Court (ICC):** There is also an ongoing investigation at the [ICC](#) into the Burmese military’s action in Rakhine State. The ICC’s investigation is [focused](#) on individual criminal responsibility, as compared to the ICJ case’s focus on state responsibility. In November 2019, the ICC Pre-Trial Chamber III [authorized](#) the Prosecution to open this investigation. Since Burma is not a [party](#) to the Rome Statute, the treaty that established the ICC, the court’s jurisdiction is limited to certain crimes against humanity. Notably, this includes persecution based on religious and/or ethnic grounds and the forced deportation in 2017 of Rohingya into Bangladesh, an ICC member state, where the crimes were completed. In July 2021, the NUG [filed](#) a communication to the ICC prosecutor calling for expanded jurisdiction and noting its willingness to sign the Rome Statute, which Rohingya survivors have [supported](#). The ICC’s jurisdiction could also be [expanded](#) to investigate all crimes, including genocide and atrocities committed against other ethno-religious communities, through a UN Security Council referral.

The ICC’s investigation remains ongoing. In February 2022, ICC Prosecutor Karim A. Khan [visited](#) Bangladesh to meet with Rohingya refugees for the first time. During the trip, he reaffirmed the court’s commitment to the investigation. He also announced that he was allocating additional resources to the investigative team and seeking to accelerate the collection and analysis of evidence.

3. **Universal Jurisdiction Case in Argentina:** Also in November 2019, Rohingya human rights organizations [filed](#) a criminal suit in a lower court in Argentina under the principle of universal jurisdiction. The suit alleged genocide and crimes against humanity committed against the Rohingya people. Universal jurisdiction allows prosecution of crimes that are so grave that all nations should have the authority to hold perpetrators accountable, regardless of the perpetrator, victim, or where the crimes occurred.

In July 2021, the lower court [dismissed](#) the case due to concerns regarding overlap with the ongoing ICC investigation. However, Rohingya human rights organizations [appealed](#) the decision, arguing that the case would not duplicate the ICC’s efforts given the ICC’s limited jurisdiction. As part of the appeals process, in August 2021, Rohingya survivors of sexual and gender-based violence [gave](#) testimony remotely from the refugee camps in Cox’s Bazar. This was the first time that Rohingya survivors testified regarding the Tatmadaw’s atrocities in a court of law. In November 2021, the appeals court [overruled](#) the lower court’s decision and [opened](#) a criminal investigation into the Rohingya genocide in Burma. This case is now the [first universal jurisdiction](#) case related to the Rohingya genocide in the world.

U.S. Policy to Support Justice for the Rohingya Community

Secretary Blinken [noted](#) in the genocide determination announcement some of the ways that the U.S. government has directly supported accountability in the Burma context. The United States government has supported the UN investigative mechanisms to collect, preserve, and analyze evidence of the most serious international crimes in Burma. He noted this support has included both information and resources and announced an additional contribution of \$1 million to the [current investigative mechanisms](#). These bodies are important in preserving evidence that can contribute to accountability cases and have been instrumental in providing evidence to the ongoing legal cases. The current mechanisms have collected over 1.5 million items of evidence and information, including “witness testimonies, documents, photographs, videos, geospatial imagery, and open source materials.” Secretary Blinken also noted the U.S. government has shared information with The Gambia in connection with the ICJ case.

The U.S. government has further supported broader efforts to promote justice and accountability. As noted in the [*2021 Report to Congress pursuant to the Elie Wiesel Genocide and Atrocities Prevention Act of 2018*](#), the State Department and U.S. Agency for International Development (USAID) support human rights documentation. This includes funding the [*Global Initiative for Justice, Truth and Reconciliation*](#), a rapid response mechanism that provides transitional justice assistance. The work of this Initiative includes [*support*](#) to Rohingya civil society to document human rights violations and advance accountability and other forms of transitional justice. The report also noted the U.S. government had led strong statements by the UN Security Council, UN Human Rights Council, and [*G7*](#) condemning the military coup and its leaders, many of whom were responsible for the mass atrocities against Rohingyas.

To further support accountability, the U.S. government has also imposed targeted [*sanctions*](#) on the Tatmadaw and military-affiliated cronies and businesses. While the U.S. Department of Treasury issued new sanctions on Burmese officials and entities [*citing*](#) human rights violations in December 2021, most of these sanctions to date have not mentioned religious freedom violations. In addition, the State Department has designated Burma as a Country of Particular Concern (CPC) for egregious, ongoing, and systematic violations of religious freedom since 1999, consistent with USCIRF's recommendations.

Conclusion

The U.S. government's designation of the Rohingya genocide is an important step towards holding the Tatmadaw accountable. As recommended in [*USCIRF's 2022 Annual Report*](#), additional support by the Biden Administration to the ongoing international legal cases, including by intervening in the ICJ case, can further ensure that Rohingya survivors obtain recognition. Accountability measures, alongside other holistic transitional justice processes, can help Rohingya survivors live in dignity and peace. For decades, the Tatmadaw refused recognition of the existence of Rohingya. These efforts toward accountability can help ensure future governments of Burma recognize the history and humanity of Rohingya. Further, these cases can promote accountability for crimes committed against other ethno-religious communities in Burma. Beyond providing justice for Rohingyas and other Burmese communities, these cases can set an important global precedent on the use of the international legal system to hold perpetrators of genocide and other mass atrocities accountable, especially in jurisdictions without a connection to the crimes. To further support accountability, the U.S. government should continue to impose coordinated sanctions on the Tatmadaw and to isolate its sources of revenue, working with regional partners such as Japan and Singapore.



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