

# ISSUE BRIEF

No. 4816 | FEBRUARY 2, 2018

## Resetting U.S. Policy Toward Burma

*Olivia Enos*

The Senate Foreign Relations Committee will soon consider critical legislation to reshape Burma policy in light of current threats to continued political transformation in the country. It is a welcome initiative. If properly crafted, the Burma Human Rights and Freedom Act<sup>1</sup> has the potential to reset U.S. policy toward Burma and bolster the current response to the Rohingya crisis.

Burma has no doubt experienced significant political changes in recent years, starting with the largely flawed 2010 elections, and the still flawed, but substantially better, elections in 2015 that brought Aung San Suu Kyi and the National League for Democracy to power.<sup>2</sup> The 2015 elections, while not perfect, were a promising development that seemed to signal that Burma was on a path toward substantive political change. The elections and a number of other indicators led to the decision by the Obama Administration to lift sanctions on Burma in October 2016.<sup>3</sup>

Warmer relations between the U.S. and Burma under the Obama Administration were appropriate, but the near complete unwinding of the sanctions regime was too much, too soon. The lifting of sanctions sacrificed much-needed leverage over the political reform process at the precise moment when

Burma had the best prospects for achieving peace and political transformation.<sup>4</sup> The sweeping removal of sanctions, including on military personnel and military-linked enterprises, disadvantaged the forces of peaceful, democratic change. It did nothing to curb the power of the military—a stakeholder in the Burmese political system that already enjoyed control, which it wielded with impunity.

Given the emergence of elected civilian government in Burma, it would not be appropriate to reinstitute the U.S. sanctions program that developed over the course of 20 years under more dire circumstances. The U.S. should instead consider careful implementation of measures aimed at the Burmese military, its impunity, and the continuing obstacle it poses to political reform.

Nothing better highlights the need to reformulate U.S. policy toward Burma than the tragedy of the Rohingya crisis. At the root of the crisis is the Burmese military's strong grip on power and ability to operate with impunity. Violence carried out by the Burmese military in response to alleged attacks carried out by the Arakan Rohingya Salvation Army far exceeded any justified response. The Burmese military's systematic campaign of violence, including murder, burning villages, and violence against women and children, resulted in the displacement of an estimated 688,000 Rohingya since August 2017.<sup>5</sup> The U.N. is now calling the Burmese military's activities ethnic cleansing, and other human rights groups believe it may even constitute genocide.<sup>6</sup>

Congress should craft legislation that addresses the abuses at the heart of the Rohingya crisis. Any legislation should include robust provisions for a comprehensive humanitarian response and lay out a

---

This paper, in its entirety, can be found at  
<http://report.heritage.org/ib4816>

**The Heritage Foundation**  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 546-4400 | [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

holistic policy toward Burma that communicates U.S. support for the civilian government and the political reform process.

## Current Efforts to Reset U.S. Policy Toward Burma

Congress has historically taken the lead in crafting U.S. policy toward Burma. Sanctions in accordance with the 1997 Cohen–Feinstein amendment, the Burmese Freedom and Democracy Act of 2003, and the Tom Lantos Block Burmese JADE<sup>7</sup> Act of 2008 established the contours of U.S. sanctions against Burma for the past 20 years.<sup>8</sup>

The proposed Burma Human Rights and Freedom Act is intended to update the sanctions regime, take into account the recent Rohingya crisis, and remedy the Obama Administration’s mistake of prematurely removing sanctions.

The act would appropriate \$104 million in humanitarian assistance, prohibit U.S.–Burmese military-to-military training indefinitely, re-instate import restriction on jade and rubies from Burma, review Burma’s eligibility to receive Generalized System of Preferences trade status, and institute a visa ban and

economic sanctions against known perpetrators of violence against Rohingya, among other things.<sup>9</sup>

The bill specifically names Senior General Min Aung Hlaing, Major General Maung Maung Soe, and Major General Khin Maung Soe, and includes “any senior official of the military or security forces of Burma for which there are credible allegations that the official has aided, participated, or is otherwise implicated in gross human rights abuses in Burma, including sexual and ethnic-or gender-based violence” as candidates for the Specially Designated Nationals (SDN) list.<sup>10</sup>

While the bill was prompted by the ongoing Rohingya crisis,<sup>11</sup> it lays out a comprehensive statement of Burma policy with application beyond the immediate crisis. To ensure the bill’s effectiveness in serving this policy, a few modifications should be made.

## Resetting U.S. Policy Toward Burma

The Burma Human Rights and Freedom Act should:

- **Broaden sanctions.**

1. S. 2060, To promote democracy and human rights in Burma, and for other purposes, 115th Cong., 1st Sess., November 2, 2017, <https://www.congress.gov/115/bills/s2060/BILLS-115s2060is.pdf> (accessed February 1, 2018).
2. The Carter Center, *Observing Myanmar’s 2015 General Elections: Final Report*, 2015, [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/myanmar-2015-final.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/myanmar-2015-final.pdf) (accessed February 1, 2018).
3. Barack Obama, “Termination of Emergency with Respect to the Actions and Policies of the Government of Burma,” Executive Order No. 13742, October 7, 2016, [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/burma\\_eo\\_termination.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/burma_eo_termination.pdf) (accessed February 1, 2018), and news release, “Treasury Implements Termination of Burma Sanctions Program,” U.S. Department of the Treasury, October 7, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0569.aspx> (accessed February 1, 2018).
4. Olivia Enos and Hunter Marston, “It’s Time for the U.S. to Pressure Burma on Human Rights—Once Again,” *The Washington Post*, July 18, 2017, [https://www.washingtonpost.com/news/democracy-post/wp/2017/07/18/its-time-for-the-u-s-to-pressure-burma-on-human-rights-once-again/?utm\\_term=.4efdb4fb388e](https://www.washingtonpost.com/news/democracy-post/wp/2017/07/18/its-time-for-the-u-s-to-pressure-burma-on-human-rights-once-again/?utm_term=.4efdb4fb388e) (accessed February 1, 2018).
5. International Organization for Migration, “Rohingya Displacement,” last updated January 27, 2018, <https://data.humdata.org/event/rohingya-displacement> (accessed January 28, 2018).
6. United States Holocaust Memorial Museum and Fortify Rights, “*They Tried to Kill Us All: Atrocity Crimes against Rohingya Muslims in Rakhine State, Myanmar*,” November 15, 2017, [http://www.fortifyrights.org/downloads/THEY\\_TRIED\\_TO\\_KILL\\_US\\_ALL\\_Atrocity\\_Crimes\\_against\\_Rohingya\\_Muslims\\_Nov\\_2017.pdf](http://www.fortifyrights.org/downloads/THEY_TRIED_TO_KILL_US_ALL_Atrocity_Crimes_against_Rohingya_Muslims_Nov_2017.pdf) (accessed on February 1, 2018), and Amnesty International, *Caged Without a Roof: Apartheid in Myanmar’s Rakhine State*, November 21, 2017, <https://www.amnesty.org/en/documents/asa16/7484/2017/en/> (accessed on February 1, 2018).
7. JADE stands for “Junta’s Anti-Democratic Efforts.”
8. Burmese Freedom and Democracy Act of 2003, Public Law 108–61, and Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008, Public Law 110–286.
9. S. 2060, To Promote Democracy and Human Rights in Burma, and for Other Purposes, 115th Cong., 1st Sess., November 2, 2017, <https://www.congress.gov/115/bills/s2060/BILLS-115s2060is.pdf> (accessed February 1, 2018).
10. *Ibid.*
11. John McCain, “McCain, Cardin, Durbin, Rubio & Young Introduce Bill to Impose Sanctions on Burmese Officials for Rohingya Atrocities,” November 2, 2017, <https://www.mccain.senate.gov/public/index.cfm/2017/11/mccain-cardin-durbin-rubio-young-introduce-bill-to-impose-sanctions-on-burmese-officials-for-rohingya-atrocities> (accessed February 2, 2018).

- Current legislation defines targets for sanctioning too narrowly. Congress should at least update the broader sanctioning authorities in the JADE Act. For example, the JADE Act enables the U.S. government to sanction entities like the military-linked conglomerates Myanmar Economic Corporation and Myanmar Economic Holdings Limited.<sup>12</sup> The new legislation should do the same.
- Legislation should direct the Treasury Department to use all available tools to hold the Burmese military to account. In addition to placing individuals and entities on the SDN list, anti-money-laundering and counterterrorism sanctions can be applied. Global Magnitsky authorities can also be used to target individuals on human rights and corruption grounds.<sup>13</sup> Current legislation specifies only SDN authorities.
- Congress should require the State Department to issue a report every six months identifying key entities or individuals in Burma who are either directly responsible for human rights abuses or who enable them, including atrocities committed against Rohingya. This will serve as a useful benchmark against which to measure the executive branch's response.
- Just as sanctions should include a clear "on-ramp," or directive, for designating individuals and entities for their role in atrocities, there should be an equally clear "off-ramp." The Burma Human Rights and Freedom Act already lays out criterion under which sanctions could be removed. This is essential to any effective sanctions regime.
- **Remove exceptions in the legislation that permit military-to-military engagement with Burma.** Congress should make clear that the U.S.

will not engage in any military exchanges, training programs, or assistance for the foreseeable future. The U.S. has little to gain from engaging the Burmese military. The bill under consideration in the Senate conditions engagement with the Burmese military on significant progress in abiding by international human rights standards and other factors. However, the bill makes an exception for military engagement outlined and permitted in the 2015 National Defense Authorization Act. Given the military's demonstrated role in atrocities against Rohingya, and its track record of abuse and impunity against other ethnic and religious minorities in the country, until the Burmese military truly makes progress, Congress should avoid engaging with the Tatmadaw entirely. The proposed legislation helpfully already outlines the criteria for evaluating any change.

- **Lead in the organization of international support for humanitarian assistance.** The U.S. should continue to lead as the primary provider of humanitarian assistance to address the Rohingya crisis. The \$104 million in proposed funding in the Burma Human Rights and Freedom Act falls short of what humanitarian agencies say is necessary.<sup>14</sup> The U.S. should work with humanitarian agencies to ensure efficient allocation of resources and take the lead in ensuring that basic needs of refugees and internally displaced persons in both Burma and Bangladesh are met.

## Conclusion

The Rohingya crisis is an unfortunate reminder that the U.S. needs to re-examine its policy toward Burma. The country is not the complete success story that many had anticipated, but the political transformation that took place was substantive, and offers hope that Burma could move once more toward meaningful political reform. The Trump Administration should act quickly to develop a sanc-

---

12. Askin Gump Strauss Hauer & Feld LLP, "International Trade Alert - Burma," October 11, 2016, <https://www.akingump.com/images/content/5/1/v2/51609/Burma-Sanctions-Lifted-Political-and-Reputational-Risks-Remain.pdf> (accessed February 1, 2018).

13. Donald J. Trump, "Executive Order Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," December 21, 2017, <https://www.whitehouse.gov/presidential-actions/executive-order-blocking-property-persons-involved-serious-human-rights-abuse-corruption/> (accessed February 1, 2018).

14. U.N. Office for the Coordination of Humanitarian Affairs, "Rohingya Refugee Crisis," <https://www.unocha.org/rohingya-refugee-crisis> (accessed February 1, 2018).

tions program that is responsive to the needs of the current political climate in Burma. Congress can do much to help shepherd Burma back onto the path of democratic reform.

—*Olivia Enos is a Policy Analyst in the Asian Studies Center, of the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, at The Heritage Foundation.*