

HUMAN RIGHTS IN BURMA

HEARING

BEFORE THE

TOM LANTOS HUMAN RIGHTS COMMISSION

HOUSE OF REPRESENTATIVES

ONE HUNDRED AND THIRTEENTH CONGRESS

FIRST SESSION

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HUMAN RIGHTS IN BURMA

THURSDAY, FEBRUARY 28, 2013

HOUSE OF REPRESENTATIVES,
TOM LANTOS HUMAN RIGHTS COMMISSION,
Washington, D.C.

The commission met, pursuant to call, at 1:00 p.m., in Room 334, Cannon House Office Building, Hon. James P. McGovern [co-chairman of the commission] presiding.

Mr. MCGOVERN: I think we are going to begin because it is 1:00. Good afternoon, everyone. I want to thank everyone for being here today for this important hearing on human rights in Burma. I particularly want to thank Shannon Gough of the staff of the Tom Lantos Human Rights Commission for coordinating this hearing, I want to thank our witnesses for continuing to fight for human rights in Burma, and especially Assistant Secretary Michael Posner for his unwavering dedication to human rights throughout his tenure at the Department. This is Shannon Gough's last hearing with us, and I want to thank her for all of her incredible work, and we wish her well, and this is probably Mike Posner's last hearing, and I want to say that it has been a privilege to work with him, and as a United States Congressman I am proud that we have people like Mike serving in our government and in the position that he has had, being an unwavering supporter for human rights, and so we want to thank you for your service.

Burma has been ruled by a brutal military dictatorship for nearly 5 decades. During this time human rights abuses have been frequent, systematic, and widespread. In 1988 an estimated 3,000 protesters were shot and killed, and many more imprisoned for peacefully protesting the military regime's repressive economic and political policies. Almost 2 decades later, protesters again took to the streets after the cost of basic goods rose to untenable levels in 2007.

When as many as 100,000 Burmese monks marched peacefully on behalf of the people, the Burmese Government violently suppressed the demonstrations by shooting at unarmed monks and imprisoning thousands in what became known as the Saffron Revolution.

Remarkable changes have taken place in Burma in the past few years. In November 2010 the Burmese Government held the first election in 20 years. Though touted as not free or fair by President Obama, these elections ushered in the first multi-party parliament in 50 years and marked the beginning of a transition that is still unfolding. In the following months opposition leader Aung San Suu Kyi was released from almost 15 years of house

arrest, and in 2011 many members of the main opposition, the National League for Democracy, and Aung San Suu Kyi were elected to parliament. In addition to Aung San Suu Kyi's release, many other political prisoners have been freed, and the current President Thein Sein has softened a number of laws restricting freedom of expression, association, and assembly in the country since taking office in mid 2011.

In September 2012 Aung San Suu Kyi received the Congressional Medal of Honor at the Capitol. In her acceptance speech she singled out Tom Lantos as one man she would have liked to have met, and I would be remiss if I did not mention the work the late Tom Lantos did to promote freedom and democracy in Burma. Because of his and others' tireless efforts in 2008, the Tom Lantos Block Burmese JADE Act was signed into law and has arguably been a contributing factor in the regime's decision to implement political reforms.

Having noted these reforms and in efforts to reengage, the United States has made several major changes to its policy towards Burma in the last 2 years. In 2011 Secretary Clinton became the first U.S. Secretary of State to visit the country in half a century, and last year President Obama became the first U.S. President to ever visit Burma. Since the parliamentary by-elections in 2012, the U.S. has been gradually easing its economic sanctions on Burma to allow for U.S. investments in the country and recently lifted sanctions on several Burmese banks. Earlier this month the Burmese army was invited for the first time to observe U.S.-led military training exercises in Thailand.

While these reforms should not be easily dismissed, I am particularly concerned by the ongoing serious human rights violations in the country. In a statement released last week by the U.N. Special Rapporteur on Human Rights, on the human rights situation in Burma, the Rapporteur noted, and I quote, there are significant human rights shortcomings that remain unaddressed, unquote, after returning from the country. Reports continue of forced labor, restrictions on freedom of expression and assembly, arbitrary land grabs and forced relocation, impunity for serious violations, and over 200 political prisoners remain in jail.

Egregious abuses continue to be alleged in Kachin State. In direct contravention of the ceasefire, the Burmese army launched airstrikes against the Kachin Independence Army, the KIA, near their headquarters in Laiza last month, killing innocent civilians. The military also stand accused of destroying villages, arbitrary detentions and torture, sexual abuse of women, employment of forced porters, and restricting access to humanitarian aid. The conflict in Kachin State is not an isolated one, and repeated clashes with the military in other parts of Burma, including Shan, Chin, and Kayin States have resulted in displacement of thousands of people. The government of Burma must take immediate steps to hold perpetrators of these abuses accountable.

The situation in Rakhine State is also increasingly dire. After sectarian clashes last year that resulted in the deaths of Rohingya and Rakhine people and the displacement of over 115,000 people, the majority of whom are Rohingya, the government put a number of restrictions on the mobility of people, and there remain limited access to humanitarian aid in Rakhine State. Today many languish in poorly maintained camps vulnerable to starvation

and disease. I am particularly concerned by the increasing number of deaths of Rohingyas in the Indian Ocean, fleeing the country by boat. For decades Rohingyas have endured systematic discrimination and to this day are denied citizenship in Burma. Just last week Deputy Immigration and Population Minister Kyaw Kyaw Win told the Burmese parliament that Rohingyas are not a recognized ethnic minority in Burma, yet with the continued waiving of sanctions, many contend the pressure for the Burmese Government to reform is dwindling. As United States companies proceed to invest in Burma, it is crucial that they ensure their operations do not contribute to human rights violations.

This hearing will analyze the current human rights situation in Burma with a particular focus on the various human rights challenges the United States faces as it reengages with the Burmese Government and potentially the Burmese military. The U.S. Government must ensure its investment and interactions in the country contribute to positive development. The U.S. Government must also continue to insist that the Burmese Government respects human rights and the rule of law.

So having said that, it is now time to hear from our witnesses. I would like to submit into the record any oral testimony along with written testimony provided by the witnesses today. In addition, I would like to submit into the record the written statement of Dr. Wakar Uddin, the Director General of the Arakan Rohingya Union and Maung Tun Khin, president of the Burmese Rohingya Organisation UK, one of 25 member organizations of the Arakan Rohingya Union.

Mr. MCGOVERN: The first witness I would like to welcome is Assistant Secretary Michael Posner in the Bureau of Democracy, Human Rights and Labor at the State Department. Assistant Secretary, you are welcome to start, and we are thrilled to have you here. Thank you.

STATEMENTS OF ASSISTANT SECRETARY MICHAEL POSNER, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR; AND ACTING SPECIAL REPRESENTATIVE AND POLICY COORDINATOR FOR BURMA PATRICK MURPHY, BUREAU FOR EAST ASIAN AND PACIFIC AFFAIRS

STATEMENT OF ASSISTANT SECRETARY MICHAEL POSNER

Mr. POSNER: Thank you very much, Chairman McGovern, and I also want to thank you for your wonderful and steady support over the last 3 1/2 years that I have been in this position and for your lifelong commitment, really, to the issue of human rights. I also want to acknowledge, as you did, the special role that Congressman Lantos played in the Burma debate historically, and it is very fitting that this hearing is before the Lantos Commission.

As you know, the last 18 months have brought a number of changes to Burma, from the release of hundreds of political prisoners to the revision of repressive laws, things that many of us would have thought unthinkable even a couple of years ago. These developments have been a vindication of Aung San Suu Kyi's support for reform, and now

with the tide of reform she helped to put in motion moving forward, she remains a symbol of hope and freedom in Burma.

Today our government is seeking to support both the government and people of Burma as they seize this opportunity for change, but we recognize that here, as elsewhere, change comes slowly and that there will be a long and bumpy road to get there, but as it does move forward, we continue to want to be a long-term partner in this reform process.

Last November President Obama visited Burma and welcomed the progress that is being made, and he urged further action. In the course of his visit, the government of Burma committed to 11 substantial steps to deepen and advance the reform process. So I want to here today talk about four areas where human rights issues are playing themselves out and where progress still needs to be made.

The first relates to political prisoners, which you also made reference to. We are engaged with the government and have been over the last 18 months in an extensive way in reviewing prisoner lists and presenting those lists and having a range of discussions with government officials. Nearly 800 political prisoners have now been released, including most of the high profile dissidents, but the story does not end there. Recently the government formed a Political Prisoner Review Committee which actually held its first meeting earlier this month. The work of the committee is not going to be easy, but its existence is a step forward, and it has the potential not only to deal with the specific cases, the 200 some cases you mentioned, but also to be part of a healing process and a move towards national reconciliation.

We really see three potential benefits from this committee's work. First, it can accurately determine the number of remaining political prisoners and prompt their unconditional release. Secondly, as the committee considers specific cases, it will have an opportunity to identify laws that need to be reformed as part of a broader law reform process. This is not part of the committee's initial mandate, but it can be an important collateral benefit as the society moves forward. And, finally, the committee has the potential to help advance efforts to provide care and facilitate the reintegration of released prisoners. As in any situation where there are long-term detentions, people have a range of economic, psychological, social problems. The committee can help address those, and we stand ready to help.

The second broad area for us is the area of law reform. The Constitution is a foundational document for any society and part of a broader effort to reform and build the rule of law. In the run-up to the 2015 national elections, we see there being an opportunity for the people and government to debate and decide how to address these broader constitutional issues. A range of people within the country have called for changes in the 2008 Constitution. We see this as an appropriate moment to have that discussion. There are a range of other laws. In my written testimony I go through them. The government has begun some of the reform efforts in the labor area, for example, but there is a long list of things where laws need to be reviewed. Many of those laws are a holdover from colonial administration. The government should pay particular attention to laws in the area of media

and electronics, restricting membership in associations, and vaguely defined national security laws. There are broader structural issues. The independence of the judiciary is far from achieved. Lawyers have been disqualified, there isn't yet a single lawyer on the Supreme Court. These are areas where the government and the society need to move forward. The government has taken some steps. It has reintegrated some of those lawyers, restored their licenses, and undertaken to create a formal bar association, an independent bar association which the country has never had. We need to continue to push on those issues.

Third, as you mentioned, the problems in Kachin State, and in the Rakhine State. Many of the country's natural resources are located in ethnic nationality regions, particularly in Kachin State, where war is being waged for both reasons of political autonomy and control over resources. The ongoing fighting has contributed to human rights abuses and social instability. There are estimated tens of thousands of Kachin IDPs, many of them cut off from international humanitarian aid. In our discussions with the government, we really stress the urgent need to grant immediate access for humanitarian organizations to all of those in need. There have been some recent, very recent signs of improvement, recent visits by the ICRC, by the Red Cross, and UNOCHA to begin to provide limited access to deliver the aid that is needed, but we are hopeful that those visits will produce sustained access. We remain concerned, also, and you mentioned it in your opening comments, about the situation in Rakhine State which has resulted in more than 100,000 IDPs since violence erupted last year. Practical interventions to prevent further violence along with training, conflict mediation, dialogue facilitation, community dialogue are all necessary. For right now our immediate approach is to deliver humanitarian aid to reduce the prospect of future violence in the longer term solutions are going to require comprehensive reintegration and reconciliation of both the Rohingya and Rakhine communities.

We are also concerned about the spread of anti-Muslim sentiments from Rakhine State but in other parts of the country as well. We are concerned about reports of human rights, of religious freedom violations in ethnic nationality regions, including reports of sexual violence, use of churches as military bases, and coercive religious conversions in Chin State.

The fourth and final area for us, and it is also something you mentioned, is the relationship of the political economy to a rights respecting democracy. President Thein Sein has pledged to do business differently, but for decades there has been economic mismanagement which has driven Burma to become the poorest country in Southeast Asia. We are committed to supporting the reform efforts. In 2012 we broadly authorized new investments in Burma for the first time in 15 years. My colleague Patrick will talk about that. But we are mindful of the fact that military-owned enterprises continue to dominate the scene. We have made it clear that military-owned enterprises will not benefit from our opening. U.S. companies are not authorized to make payment to the military to provide security, but we understand that in many places the military has been a primary driver of the worst human rights violations.

Some have argued that our reporting requirements are too onerous and discourage investment. Others argue that they are too permissive. We have tried to -- we have also

heard from some American companies that, for example, our reporting requirements which were just noted in the Federal Register last week are a good thing, and we are going to introduce those and implement them this summer. Our intention is to strike the right balance, guarding against an economic free-for-all that would funnel investment to the military and companies connected with them while incentivizing responsible investment.

Let me just close by saying that, having visited Burma four times and seen the evolution, I am optimistic because I am optimistic about the Burmese people. There is a pent-up demand for reform for people to live in dignity. People want economic opportunity and a job, and they also want a stake in their country's political future, and I think as we look to 2015, the United States has a very important role reinforcing those agents of change and encouraging the reform process to continue rather than to stall. So I appreciate your efforts and thanks for the time.

Mr. MCGOVERN: We will now hear from Acting Special Representative and Policy Coordinator for Burma, Patrick Murphy, of the Bureau for East Asian and Pacific Affairs, and who is a Red Sox fan, but we won't tell Joe Crowley.

STATEMENT OF PATRICK MURPHY, ACTING SPECIAL REPRESENTATIVE

Mr. MURPHY: Thank you very much, Mr. Chairman. I really appreciate your invitation and the interest that you and your colleagues have in Burma that has been sustained for many years. Congress has really been instrumental in shaping our Burma policy and has in fact been a very valued partner of this administration in implementing a principled engagement with Burma. This has yielded an unprecedented transition in a country that until recently was characterized by 50 years of intractable authoritarian rule. Let me, too, add to my colleague's observation that it is an honor to appear before a commission named for the late Congressman Lantos, who really was one of the strongest advocates for human rights and democracy in Burma, and I had the privilege of collaborating with him in the 1990s on these efforts. So thank you also for the other members of the Commission who have had a sustained interest in Burma, including Representative Crowley, who has had the opportunity to travel there and see Burma firsthand.

Mr. Chairman, we have entered truly a new era of relations between Burma and the United States. Over the past 2 years President Thein Sein's government has undertaken an unexpected but ambitious agenda of reform. For over 2 decades the United States and the international community labored for the freedom of pro-democracy leader Aung San Suu Kyi and many political prisoners. Now she and others from her previously banned National League for Democracy serve in parliament, and former prisoners of conscience play a central role in the transition to democracy. Her remarkable visit to Washington last September to receive the Congressional Gold Medal, which you mentioned, Mr. Chairman, was a ceremony that included one of Burma's most senior government ministers. This ceremony spoke not only of her extraordinary courage and journey but also of unwavering U.S. support for the aspirations of the Burmese people in pursuing democracy and basic human rights.

The Burmese Government has taken other significant steps. Parliament has established worker rights, the government has relaxed media censorship, outlawed forced labor, and taken steps to eliminate child soldiers. These measures respond directly to our long-standing concerns, and Burmese authorities have welcomed and pursued international advice and assistance each step of the way. The U.S. Government, in partnership with Congress, has responded to these reforms to recognize and encourage further progress. We elevated our diplomatic ties by exchanging ambassadors. We reestablished a U.S. aid mission in Rangoon. With recent congressional legislation, we have supported the reengagement of the World Bank, the Asian Development Bank, and the IMF to address widespread poverty. We also modified our sanctions regime, transitioning to a more calibrated approach that allows U.S. business and nongovernmental organizations to apply their high standards in bringing responsible investment and American ingenuity to the reform effort.

In November 2012 President Obama became the first sitting U.S. President to visit Burma. He affirmed U.S. support for democracy and freedom and emphasized the centrality of human rights to our bilateral relationship. Recognizing progress there, he also expressed our unwavering support for the aspirations of all the people of Burma. However, as the President very clearly expressed, we are not under any illusion that this transition is complete. Burma is at the beginning of a very arduous and difficult journey. The country has faced internal conflict since independence right after World War II. Burma has suffered a half century of military rule and fallen far behind even the poorest of its neighbors. We have before us, however, an historic opportunity to help Burma solidify its progress and strengthen the hand of those seeking further reform so that the process becomes irreversible.

Indeed, President Obama's visit to Burma catalyzed further reform. The Burmese Government committed to international standards on human rights, good governance, nonproliferation, transparency, and trafficking in persons. Many of these commitments have already yielded positive results, including improved international humanitarian access to conflict areas, dialogue with armed ethnic groups, and greater freedom of association. Nonetheless, we will express a strong and consistent voice where progress has yet to be achieved. Burma must deepen efforts to fully respect human rights and internal conflict, address constitutional deficiencies, broaden a top-down reform process to embrace the participation of women, ethnic minorities, and rural Burmese, promote religious tolerance, improve social services, address land rights, and meet international standards on transparency and anticorruption. This is a very long list. These efforts require significant international support and vigilance, and we maintain strong coordination with our partners in Rangoon, at the United Nations, and in capitals around the world. One of Burma's most significant challenges is achieving the national unity that has eluded the country since independence. Preliminary ceasefires with armed groups have yet to address underlying political grievances. Burma faces ongoing conflict in its northern Kachin State following the collapse of an uneasy peace. An uptick in violence between the Burmese army and the Kachin Independence Army was accompanied by very disturbing reports of human rights abuses. We have pressed for humanitarian access to displaced populations and for a dialogue aimed at achieving peace. While positive signs of such access and dialogue are

emerging, both sides must overcome deep mistrust and understand that conflict brings unacceptable suffering and indeed threatens the country's opportunity for a new beginning.

We have heard from my colleague about the situation in Rakhine State. Here, too, national unity is unresolved with communal violence at stake. Widespread poverty has threatened livelihoods, including for ethnic Rakhines, induced a sense of insecurity and exacerbated tensions. There is no excuse, however, for violence or the persecution of the stateless Rohingya. Dire conditions here in Rakhine State and in neighboring Bangladesh have caused many Rohingya to flee often by sea, a very perilous and frequently fatal undertaking. The central government of Burma has taken steps to restore basic security and appointed an investigative commission aimed at longer term solutions. These steps are a departure from the practices of the former regime, but nonetheless, we urge reconciliation, full protection of all rights, including citizenship, and efforts to maintain security. We also continue to press the government to facilitate humanitarian access to displaced populations. To do anything less than these steps could also threaten Burma's broader reform process.

Mr. Chairman and members of the Commission, these kind of challenges speak to our need to remain calibrated. Although we have eased sanctions and pursued normalized relations to support reform, we have maintained underlying authorities as an insurance policy against backsliding. We continue to target those who interfere with the transition, abuse human rights, and perpetuate military trade with North Korea. In addition we seek to ensure that private investment from the United States and elsewhere in Burma complements rather than contradicts reform.

A quick word about the armed forces in Burma. They must improve their record on human rights and relinquish inordinate influence on the economy. We encourage through our easing these steps by not yet applying our easing to military-owned companies. We nonetheless hear from a range of Burmese stakeholders inside the country who urge us to engage the armed forces to build support for the reform agenda. In line with U.S. law and in consultation with Congress, we will promote reformist values within the Burmese Armed Forces that are consistent with a professional military subordinate to civilian authority. This is essential to seeing reform succeed. Deeper engagement, however, will require a severing of military ties with North Korea and a firm commitment to the principles of democracy.

Mr. Chairman, in the past Burma's military regime met these challenges with brutal force and repression. The reform efforts of the current government, however, offer an opportunity for a broad range of Burmese in and out of government and indeed even from among the exile community throughout the world to participate in a process that shows promise for improving rights, transitioning to full democracy, and achieving genuine national unity.

Finally, let me offer, Mr. Chairman, that assistance from the international community is critical for the success of this process, and our policy seeks to ensure that reform becomes irreversible. Burma also faces a number of significant milestones over the next couple of years that are closely linked to the success of reform. Next year Burma will assume its first rotation as ASEAN chair, a prominent leadership role in tackling complex

regional issues and engaging the Pacific powers. Also next year Burma will undertake its first census in decades, the results of which will shape its political and economic landscape for years to come, and in 2015 the government and the country has its first opportunity in the post-military regime era to hold multi-party national elections that adhere to international standards. We will continue to support Burma in these and other efforts, and in doing so will continue to elevate human rights as a central component of our bilateral relationship. We deeply appreciate the strong partners we have found within Congress on the range of issues related to Burma, and we look forward to continuing this very important partnership.

Mr. Chairman, I have been associated with our Burma policy for 15 years. I have lived in the country for 3 years. I truly recognize an unprecedented opportunity for change. With that, I would be happy to join my close collaborator, Assistant Secretary Posner, in answering any questions from the Commission.

Thank you.

Mr. MCGOVERN: Well, thank you very much. I want to thank you both, and before we go to questions, I want to acknowledge two of my colleagues who arrived here, Congressman Joe Crowley from New York, who has been a leader on these issues as well as Congressman Trent Franks from Arizona. I would like to yield at this point to either of them or both of them if they have any opening remarks. Mr. Crowley?

Mr. CROWLEY: Thank you, Mr. Chairman. I will be brief. I would like to note for the record that I am a Mets fan, and I thought that shot was really egregious, that you would even suggest that I would care about the Boston Red Sox. Sorry, Mr. Murphy. I give you half a credit because your last name is Murphy, so it is okay.

But thank you, Mr. Chairman, for organizing today's hearing. It may have been already said by you and others, but it is also appropriate that we hold this hearing today because Tom Lantos was such a champion on behalf of the people of Burma, and so having this hearing today is not only good for human rights, but it sustains the wishes of the founder of this commission, of this caucus. We were lucky enough to have Aung San Suu Kyi here nearly 6 months ago. Her efforts have been an inspiration to me and so many others around the world. I was privileged enough to host her in my own district back home in Queens, and I deeply value her friendship. Her visit was special not just for me but for I think the entire Congress. We are heartened at many of the positive changes that have been made in Burma. The release of political prisoners, the relaxation of rules on peaceful assembly, and the relative freedom of the parliament are good steps forward.

At the same time, this is a hearing about human rights in Burma, and as my good friend and the co-chairman, Mr. McGovern, has said before, the Human Rights Commission is a place to talk about human rights. So I would like to express some of my serious concerns about the human rights issues that still exist in Burma. I am deeply worried about some of the ongoing conflicts. For one, I am very concerned about ongoing violence between ethnic groups like the Kachin and the military. We have had far too many years of

war in Burma, and I very much hope it can come to an end soon. We don't need another decade of war, but I am worried that that is what we will be looking at. Also I am concerned at the violence in the Arakan State. I have no illusions about the difficulty of addressing this particular issue, but I believe to my core that all human beings deserve human rights, and that includes each and every person in Arakan State.

Lastly, I very much hope that we can continue to see the release of political prisoners. They all need to be released so that they can participate in the furtherance of democracy in their country. I am glad there has been progress made in that direction, and I hope that progress will yield even more results in the near future. I believe, like many of the witnesses, it is too soon to declare victory in Burma. If these three issues can be addressed, however, I believe we will be much closer to where the world hopes Burma to be, and I believe we will be much closer to a situation where all the people of Burma have a chance to realize the dream of a free, democratic, and multi-ethnic Nation. And with that, Mr. Chairman, I will yield back.

Mr. MCGOVERN: Thank you very much. Mr. Franks.

Mr. FRANKS: Well, thank you, Mr. Chairman. Thank all of you for being here. Mr. Chairman, I appreciate your holding this very important and timely hearing on human rights in Burma. As many of you in this room well know, ethnic and religious minorities at this time, especially Christian minorities in particular, face some of the most severe of their persecutions in Burma, and we need to see serious political dialogue within the framework of a robust peace process to resolve the ongoing conflict toward Burma's ethnic and religious groups. And, Mr. Chairman, for the sake of time, I will ask that my full statement be submitted for the record, and I will give a condensed statement here that will take only a few moments.

I am going to start if it is all right, sir, with just the realization that personal stories of many of the ethnic and religious minorities in Burma are horrifying, and they bring this to reality. Sometimes we keep this in sort of the theoretic realm and sometimes it is important to share certain stories that make it all real to us, and so I will just share one that I believe is revealing of greater dynamics within Burma and of course the ongoing violence in the ethnic regions.

A grandmother sat alone in a church near Burma's Kachin-China border last spring and silently waited for the notoriously brutal Burma army to raid her village. Other Kachin villagers fled once they heard that the Burma army was approaching, but this grandmother was left behind. Her only protection was the sanctuary of the church, and when the Burma army finally came to the village, they showed no mercy toward the 48-year-old grandmother. Over a period of 3 days she was violently beaten with rifle butts, stabbed with knives, stripped naked and gang raped. Another Kachin man who was captured while caring for his paralyzed wife was brought back to the village, and as he lay in the church with his hands and legs tied he witnessed with horror this attack on this helpless woman, this vulnerable grandmother. The victims in the village church were left semi-conscious, and the grandmother later suffered mental health problems of a severe nature. After reports

of the torture were released, a spokesman from the Kachin Women's Association stated, quote, if the Burmese military -- quote, the Burmese military can rape and kill ethnic women with impunity, close quote.

Burma's deeply flawed 2008 Constitution, Mr. Chairman, grants the Burma army sweeping authority to commit atrocities against ethnic minorities and furthers the ethnic tensions. Reform within Burma cannot occur, in my judgment, without substantial constitutional reform measures. I have the privilege of chairing the House Judiciary Committee's Constitution Subcommittee, and I believe strongly in the importance of constitutional protections to ensure fundamental freedoms and to provide protection to its people. Burma's current Constitution does neither, and in fact works directly against many of its people. Article 20, which grants the army authority over civilians in jurisdictions to safeguard, quote, unity, essentially provides carte blanche justification for the Burma army's regular attacks against the civilian population in ethnic areas, and I think all of us could see a situation where Burma could revert to war and military rule unless the Constitution immediately addresses the underlying reasons for this ethnic conflict.

Burma has a long road ahead, and the U.S. must continue to advocate for the full inclusion of vulnerable ethnic and religious groups within Burmese society and the political process. With our developing relationship with Burma, specific reform agenda items should be on the table, including the cessation of violence against the Chin, the Kachin and Rohingya and other ethnic and religious minority groups. As the U.S. continues to work closely with the Burmese Government, Mr. Chairman, on these reforms, we must ensure that legitimate ethnic and democracy leaders are included in those negotiations. A comprehensive and effective dialogue on the overall situation in Burma cannot be conducted without these leaders. Burma desperately needs democratic systems that will guarantee democracy, human rights, rule of law, independence of judiciary, and ethnic minority rights. Moreover, the U.S. must be careful to take no action that could be interpreted as an endorsement of any misconduct or human rights lapses by the Burmese Government, particularly while the Burmese Government is still dominated by the current and former military leaders with such a very brutal past.

Mr. Chairman, true peace and progress in Burma can be achieved by nothing less than the complete cessation of violence toward its ethnic and religious minorities, and with that I would thank you, Mr. Chairman, and yield back.

Mr. MCGOVERN: Well, thank you very much. I want to thank both my colleagues. Let me just ask you a few questions, but as you can see, I mean, we all continue to be very concerned about the human rights situation. We continue to be concerned about the behavior of the security forces and the military, and we understand that this is a moment of opportunity for the government of Burma to, you know, to move forward, but we also want to make sure that it is clear to the administration that many of us up here also want to make it clear to the government of Burma that if, in fact, reforms do not move forward, if things slide backwards, then, you know, then our relaxation of restrictions and sanctions comes to a halt as well. You know, when it comes to human rights we are not a cheap date, when it comes to human rights we are going to be vigilant, we are going to be strong, we are

going to be consistent and, you know, so that there will be no offering of military training or other assistance to the military unless there are major reforms, that things right now continue to be unacceptable.

Let me ask a question, maybe Assistant Secretary Posner, you can tackle this one. With regard to the recent draft reporting requirements issued by the State Department for U.S. companies, what, if any, consequences or penalties will companies face if they provide incomplete or inaccurate information? And what if they fail to report at all? Are the consequences limited to monetary fines or would a failure to comply with general license 17 also implicate whether an investor may legally continue to do business in Burma? And also what, if any, review will the State Department conduct of information withheld from investors' public reports? Will there be any consideration of whether inappropriate exemptions are claimed?

Mr. POSNER: Thanks. There are a number of questions in there. Let me just first of all say that the reporting requirements we call for responsible investment will go into effect this spring. First reports will be due in June. They require companies to report on any investments over \$500,000 and to talk about human rights, environmental, and anticorruption due diligence procedures. This is a first of its kind, and our expectation is that the act of reporting, the act of making that information available is going to encourage and push companies to both look at their own operations and to put due diligence procedures into place. There is no coercive authority, as you put it, or as you implied, but I think that this is going to be a first step to put companies on notice the U.S. Government is paying attention to these issues, we have expectations, and I think a number of companies already have come to us and said we want to figure out how to do this in a responsible way. It is a first step, and it ought to be viewed that way. It will not solve all of the problems we are trying to address.

The second thing I would say about it is that these reporting requirements are going to be effective only if we are able to get other governments to join with us. One of the things I did while I was in Burma last week was to meet with a number of like-minded governments, and to date there isn't a single government that we have talked to that is going to follow suit. The European Parliament is discussing this, we have had some preliminary discussions, but I think this needs to be something that international companies across the board are doing. So my answer to you would be this is a first step, it is something that is unprecedented in the way we are operating. I think a number of companies realize that we are serious about it. We will wait and see what kind of reports we get, and if it is not sufficient and it doesn't change the environment or the behavior, then we have to look at the next steps.

Mr. MCGOVERN: I appreciate that, and I think the concern that some of us have is that there is not enough teeth in it, you know, and my hope is that everybody will comply and do the right thing, but, you know, I am just trying to think of history, and some businesses, you know, do the right thing; some don't. What we want them to do is encourage progress and reform, you know, and there ought to be a consequence for somebody that comes in there, you know, and is not a good player. So I would –

Let me ask Mr. Murphy, Assistant Secretary Fernandez was photographed this week shaking hands with a Burmese business leader who is on this SDN list, the specially designated nationals list that are owned by military cronies who were identified as such in State Department cables. How is the State Department coordinating across bureaus and offices to ensure that one strategic objective, and that is the promotion of U.S. investment in Burma, does not undermine our overall foreign policy objective of reducing human rights abuses and promoting stability and reform in Burma, and more specifically, how can the empowerment and enrichment of people who are known to be corrupt and associated with military abuses promote our foreign policy goals in Burma?

Mr. MURPHY: Well, thank you, Mr. Chairman, and first I can assure you that this is a whole of government approach, both within the State Department and across a wide range of agencies who bring to bear great expertise to lend to the reform effort there in Burma. There are good actors in Burma and there are actors who are a challenge, and as a result we have a process managed by our Treasury Department Office of Foreign Assets Control to target individuals and entities who thwart reform, perpetuate abuses, and continue these bad practices of the past. However, we want to encourage change behavior, and much like former generals shed their uniforms and put on civilian attire, and they have taken on a new role and are leading this reform, we think the same needs to be the case for economic managers. It is really a handful of cronies who have controlled the economy. They are not going to go away. We will target them, they won't benefit from our easing, but they in fact need to change their behavior so that all of Burma and all of its people can benefit.

I think what was most important about Assistant Secretary Fernandez's visit to Burma was not a photograph, to be honest. It was his message. His message was that Burmese economic operators need to address corruption, need to apply international standards of transparency, and need to conduct the economy in a way that helps and doesn't contradict reform, and that is the way forward. I am not blind to the fact that cronies have contributed to the military regime practices in the past, but I am also hopeful they can change their behavior, much like many generals have done.

Mr. MCGOVERN: There is an old saying a picture is worth a thousand words and sometimes, you know, I think -- you know, and again I think this is a delicate time, and, you know, and photographs and meetings and, you know, send signals that, you know, that people view in a certain way. Again, I think if human rights is going to be the central part of our policy here, I think we need to be very vigilant of who, you know, we are shaking hands with and who we are being photographed with.

But let me ask another question for either one of you. I mean, it goes back to this issue of the military which, you know, is of great concern. I mean, you know, a fundamental reform necessary to future peace and stability in Burma is the total restructuring of the military, and I think both of you have talked about the challenges there. There needs to be civilian control of the military, which continues to rebuke President Thein Sein in areas such as the Kachin State. I guess what are we doing? How can the United

States Government help ensure military reform will take place in a transparent and a fair and a democratic manner, and what are the benchmarks that the government of Burma must meet in terms of military reform before the United States will begin offering training and other assistance to its military? And, you know, I had mentioned this to Assistant Secretary Posner before about some in the Burmese military being invited to observe some U.S. military operations, and there is some concern about what that signal was, but I mean, I think, I want to make sure that the Burmese army understands that there are certain things that have to happen before we are going to do anything that is going to be anything near, you know, a relationship, and are there lessons learned from other countries that could be applied to military reform in Burma, and, you know, in your opinion what is the best way to encourage the Burmese military to reform and go forward?

Mr. POSNER: So a couple of things on that. This comes back to one of the issues that Congressman Crowley mentioned in his opening statement, the really crisis situation in Kachin. I think we have to start by being honest in our exchanges, both privately and publicly, when the military commits abuses, as they have in Kachin, especially since December when for the first time in a long time they used military helicopters and jets to attack Kachin Independence Army positions, and where there has been a heavy toll on women and children who have been abused. We need to say that strongly, we need to push as we did when we were there last week for humanitarian access. One of the ways to mitigate the damage and bad behavior is for there to be neutral parties on the scene. They both help provide humanitarian support, food, and medicine and the like, but they also provide witnesses and make it more difficult for those abuses to occur. We have a crisis in Kachin, and it is critical that we stay the course and make our views known and really push for that kind of humanitarian assistance. As I said, we just began last week to see the first convoy from the ICRC and also from OCHA going up there, but that needs to be expanded greatly, both for international organizations and for Burmese humanitarian organizations.

The second thing I would say is that we need to be clear when our military engages it is engaged in the context of trying to send clear signals about the importance of human rights. I mentioned that we had a first-ever human rights dialogue in October in Naypyidaw. We had with us a general from PACOM, General Wiercinski, who spoke in very eloquent terms about the U.S. military's commitment to civilian control of the military, command and control procedures, training, accountability, accountability for abuses. He was there not in promoting a mil-mil exchange or a particular kind of a training exercise. He was there and very deliberately as first engagement was part of a human rights dialogue, and the message was heard loud and clear by a whole row of generals, Burmese generals who were sitting in the audience. We had a separate meeting with the Deputy Minister of Defense to which he invited me, and that was again the message.

So I think the second thing for us is we ought to engage, we ought to engage first and foremost from principles of human rights, and as the relationship evolves, I think we have to recognize that the Burmese military has operated outside of a professional structure for a long time and they need to have greater exposure to our military, but we need to be careful how we do it, and we need to calibrate our engagement in a way that recognizes that they also need to step up and change some of their practices.

Mr. MCGOVERN: Mr. Murphy, do you have anything to add?

Mr. MURPHY: Yeah, thank you, Mr. Chairman. I think I would just emphasize for 50 years the Burmese military controlled every aspect of government, every ministry, every local level government office, every embassy abroad. So this is a transition that is very, very substantial to get the military out of a lot of these roles, and not to mention the economy, which I alluded to over -- previously. We are, I think, sometime away from training. Although we can envision with the pace and scope of reform someday hopefully we might be able to get there, we are some distance from that. In the interim, I would agree with my colleague that it is all about exposure. The Burmese Tatmadaw, the armed forces, have had no exposure to peacekeeping, to humanitarian assistance, to playing a proper role of an armed forces subordinate to civilian rule, so we do need to be creative to ensure as we hear from many voices inside the country who plead with us to please expose them to these kind of practices so that they don't continue operating in a vacuum and perpetuating the bad practices of the past.

Mr. MCGOVERN: I have just one final question. Going back to the Tom Lantos Burmese Block JADE Act, you know, under that act the administration has the duty to add people to specially designated, to the specially designated nationals list as new information comes in about human rights abuses, and several credible human rights organizations have put out reports about serious rights abuses committed by Burmese military officials including by Chief Lieutenant General Mee En Soe and Northern Commander Brigadier General Tun Tun Naung in Kachin State in the past few years, and yet these individuals continue to remain off the SDN list even though they have appeared on Australian, U.K., and EU sanctions lists in the past, and early last year former Secretary Clinton said that the SDN list is due for an update and yet no individual names have been added to the list since 2010. By failing to update the SDN list when new information exists about rights abuses, isn't the administration kind of in violation of the JADE Act and if not, I am curious to know why.

Mr. MURPHY: We think that the SDN list remains an important tool, Mr. Chairman, and since we readjusted the criteria last year to take into account the reform process so that we could be calibrated going ahead, in other words target those who obstruct reform, perpetuate human rights abuses, and continue military trade with North Korea. We want this tool to be part of our calibrated approach, so in fact we have named several entities to the list, again Treasury Department's Office of Foreign Assets Control is the primary mechanism here, but we have also removed a couple of names because of course we are trying to encourage changed behavior. I think in the case of individuals, where there can be documented evidence, our Treasury Department, our administration would like to hear that. These cases need to be very well documented. Information is hard to come by. There are plenty of allegations of abuse, but to build a case, really what is a legal case, I think our Treasury Department would tell us we need good information, and I think we would welcome that.

Mr. MCGOVERN: I appreciate that. The two individuals I mentioned I mentioned

because a number of human rights organizations believe that there is credible evidence, and I just would encourage you to kind of look into this if you would because I do think it is important to maintain that list and to make sure it is current because I think just as it is -- just as when people, you know, change, you want to have an opportunity to get off the list, when people are still misbehaving, you know, and not respecting people's rights, that ought to be a consequence, and so I would just encourage you to look at those two individuals.

Having said that, let me yield to my colleague Mr. Crowley if he has any questions.

Mr. CROWLEY: Thank you, Mr. Chairman. Kind of, maybe not for an immediate answer, but I was kind of piggybacking on that. In terms of what Mr. Franks was speaking about, that particular incident, are you hearing similar stories of abuse, sexual abuse, of violence, and have you been able to substantiate them as well? Just put that in the back and maybe think about that for a moment.

Mr. POSNER: You are talking about in the ethnic areas?

Mr. CROWLEY: Yes.

Mr. POSNER: Absolutely.

Mr. CROWLEY: Severely as what he was speaking about, that is what the army has been doing?

Mr. POSNER: Yeah. I mean, we met with a number of Kachin activists, for example, including some people from the churches, and they described a range of things. Churches being used as military bases, people being abused, women in particular being abused.

Mr. CROWLEY: And the army denying it?

Mr. POSNER: The army denies it. I mean, I can't -- we did not, I did not meet this time with the Ministry of Defense, but in general the army would say that, you know, those things haven't happened.

Mr. CROWLEY: Any back channeling of acknowledgment?

Mr. POSNER: Yeah. You know, one of the things that was interesting, when we had the -- I have done a lot of human rights dialogues with a lot of different countries, and in many cases you feel that these discussions are scripted. We had very frank discussions in October with a wide range of people, including military, and we were not shy about expressing our concerns about exactly these sorts of things, and we got past the level of generality, and we did not have a blanket denial. We had a very serious discussion about where they are, what they need to do, and the fact that these things are going on, and they are systematic. It has certainly been our position and will continue to be.

Mr. CROWLEY: My understanding is as a result of President Obama's trip to Rangoon, a number of commitments were made on the human rights level. Could you let us know where things stand right now with respect to the Burmese Government's response or commitment to those pledges?

Mr. POSNER: Sure. As I mentioned earlier in my opening statement, there were 11 commitments made. We were particularly focused on four or five of them in the visit I just took. One relates to release of political prisoners. You mentioned it as well. And they have released approximately 800 political prisoners. We still have a list that has more than 200 people on it. But more importantly, we have said to the government we can't just keep going back and back with lists. There needs to be a process that the Burmese own. And what they have done is to create a committee which has eight government officials and eight from outside of government, essentially people who are themselves political prisoners, including some longtime political prisoners.

They held their first meeting last Saturday. And our hope is that that process will both lead to more unconditional releases. It will also provide a place to have a conversation. A number of the people still on the list are from the ethnic areas, some of whom have probably engaged in some of the violence that has gone on. But this can be then part of a reconciliation process.

It is also a way to look at law reform, because some of the people are held in prison under laws that probably more than likely need to be reformed. That is not in the mandate of the committee, but we think it is a useful byproduct. And then there are a range of issues relating to reintegrating former prisoners into the system. They have all sorts of issues. So that is one issue. There really has been a dedicated effort on our part and it has been matched by a serious discussion with the government on prisoners.

The second issue is access for the Red Cross. The Red Cross went into its first prison several months ago and had unlimited access without constraints. They have now got a commitment from the government that they are going to be allowed into 36 prisons and labor camps and they are gearing up to do that. They had the first humanitarian convoy also go into the Kachin conflicted area again last week. So our hope is that that access is extended both to them and to OCHA, the U.N. agency that deals with humanitarian affairs, as well as private voluntary organizations that provide humanitarian assistance. So that is the third area, access and dealing with the humanitarian crisis in the conflict areas.

The fourth area we focused on is the creation of an Office of the U.N. High Commissioner for Human Rights. The government has made a commitment to do it. While we were there, representatives of the Office of the High Commissioner were in Burma. They had discussions with the government. Those discussions are ongoing. We pressed hard and we continue to be told that those commitments will be honored and that that is underway. There is still some issues to work out, but I think it is also a very positive sign.

The last thing which Patrick mentioned which I think is also critical and it goes to this issue of the role of the military in the economy, the role of the cronies, we pressed for a

greater openness and transparency. We have an open government initiative which was initiated by President Obama. To be honest, this is an early stage of a discussion about what does transparency in government look like, but I think if we are going to encourage Burma to be a modern economy and a modern democracy, they have got to open up their process. So part of what we are also trying to do, law reform, range of things we are doing, we are trying to create a more open society based on the rule of law and transparency.

But we are moving on all 11 of those commitments and they are at various stages. I have just given you five of the 11, but that is the general sense of where we are.

Mr. CROWLEY: Thank you, Mr. Secretary. Mr. Chairman, I have a couple more questions if I could. In terms of the conflict in the Kachin region, Kachin State, is there anything that our President, our government can do, to pressure the Burmese Government and their military to bring about a real ceasefire and to end the conflict, or are we looking at another decade of war and violence in that region?

Mr. POSNER: I don't want to predict how long it is going to take, but I would say, and this is what we said to people both in the government and to people outside, it is very hard to achieve a meaningful sustainable peace when people are still shooting at each other, when people, innocent women and children are being raped and killed. So the first thing is to try to diffuse the conflict, to try to create an environment where you have a ceasefire and where you have humanitarian assistance. I think the humanitarian access point is so important because it provides confidence building on both sides. It also deals with the urgency of the moment where you have tens of thousands of people who are essentially in a very compromised position.

So step one, get the access for the humanitarian. Step two, create a ceasefire, even if it is tenuous, and then begin in the longer stage to begin to talk about a more permanent political solution. But we are a ways off from that, honestly. I think it is really critical that we deal with the urgent piece right now because a lot of people are suffering.

Mr. CROWLEY: I know Patrick feels as though I am neglecting him. I am not going to ask him to respond to my last because it in part pertains to his position. The JADE Act that I was honored to work with Mr. Lantos on included a provision that created the position of the special envoy in Burma. However, that position has not been filled since Ambassador Mitchell was appointed ambassador. Patrick Murphy is now serving as interim envoy. I believe that the focused attention of the envoy is a good ideal while reforms are still fragile and while much progress is still to be made.

Does the administration have plans to make Patrick's position permanent? He should act as though he is not here right now when we are talking about him.

Let me also say despite my concerns and reservations about the advancement of human rights, I do appreciate Mr. Murphy's enthusiasm for the possibilities of change in Burma, and I don't want to diminish that either. So I thought it was important to state that.

But, Mr. Secretary, if you could respond.

Mr. POSNER: Sure. I don't think there is -- I know there is some internal discussion but no final decision. But one thing I would say is that we are in a somewhat different position than we were even a year ago because we have for the first time in, what, 30 years an ambassador there. And we have a really outstanding ambassador. Derrick Mitchell is as good a colleague as I have worked with anywhere in the world. This agenda that we are talking about today is his agenda.

So to me, the important thing is that we have a presence on these issues, that we have a sustained commitment to pursuing these issues as a priority, and I am very confident that Ambassador Mitchell and the front line is doing that every day in his tenure in Rangoon. Patrick has been also a fantastic colleague and I think we are now in the process of really trying to figure out going forward what is the right constellation.

But the important thing is from the President on down this has been something that has occupied a huge amount of a attention. I was with Secretary Clinton a year ago in December when she went. Patrick was there. We have not neglected Burma. We have put a lot of time and attention, and I feel really proud of what we have accomplished. We have a long way to go, we are at the beginning of a long road, but there is no doubt that the human rights agenda has been front and center as we deal with this country.

Mr. CROWLEY: I would just say that I don't want to be misinterpreted as to suggesting that I believe or that even the Commission believes that there has been neglect of Burma. I don't think there has been, not at the high level that Secretary Clinton's visit and both the President's visit as well. It is more I think from our vantage point or view in helping to craft the legislation that we did that for a reason, was to give you more resource and more on the ground intelligence to this particular issue which is multifaceted as well. And, believe me, I know that Ambassador Mitchell is doing a great job and he cut his teeth in many respects as the special envoy. So that is why we asked that question, not to be interpreted at all, because Patrick is on the ground anyway, so it is not from that position I take that point. But thank you.

Mr. MURPHY: If I could, Mr. Crowley, and I think I can be appropriately neutral because I am a career senior Foreign Service officer and eventually with some new responsibilities on other issues. I will defer to the White House, of course --

Mr. CROWLEY: Good move.

Mr. MURPHY: Specifically on answering your question. But what I can offer, of course the JADE Act mandate was issued in a different era. We have increased our personnel at Embassy Rangoon. Within the State Department we have increased our personnel working exclusively on Burma. And, as I mentioned earlier, this is a whole of government approach. I can tell you from personal experience back when I was the Burma desk officer in the 1990s, there was really just about one person who would travel to Burma or attend events related to Burma, and that was the desk officer. Now we have a

multitudinous array of agencies, of experts who are focused on this effort, and I think it is achieving good results, because we have as a government, as a country, lots to bring to the effort. And as Secretary Posner referred with an Ambassador in Rangoon. You know, a good portion of the action has shifted there appropriately inside the country. So circumstances have evolved a bit.

Mr. CROWLEY: Can I just add to that? I appreciate all of that, and if the family of prisoners or victims of violence or people who are suffering in these regions have access to high level individuals within the State Department and to the embassy, that is all well and good. I think to some degree having a special envoy who may be not as tied down in many respects in terms of formality as an Ambassador may be, may be able to do even more aggressive acts. And that is the point I am making in terms of that suggestion. I know that Ambassador Mitchell was incredibly aggressive as the special envoy, so that is why I offered that suggestion.

Mr. MCGOVERN: We thank you both not only for being here today, but for your work on this issue in particular. I think that we are like-minded and I appreciate your help and your assistance to try to move Burma forward, and I know that both of you, like all of us, care deeply about human rights. And I want to echo what my colleague said about that. I don't want to diminish anybody's optimism that Burma is moving forward or can continue to move forward, we want that to happen, but there is a tendency sometimes as we try to aggressively pursue economic relations and military relations to sometimes shortchange human rights. I am not saying this applies to you, but I am looking over kind of a history of our involvement with other countries in the world, and we don't want that to happen here, because really for Burma to move forward, I think you will agree with me, that human rights has to be at the center. It is an absolute must. And I know both of you feel like we do that we need to continue to focus attention on human rights, we need to continue to point out who the human rights abusers are, we need to reward and pat on the back those who are changing in a positive way, but human rights has to be at the center. So we are cautiously optimistic, but we will continue to meet on this issue. And there will be other hearings in the future on this, just to kind of get a sense of where we are.

I will just finally say again to my friend Mike Posner, thank you for your incredible service to our country and to the cause of human rights. You have been an incredible asset to this Commission, but I think to the Congress in general, and we are going to miss you, and good luck. Thank you very much.

We are now going to call our next panel; Ms. Ah Noh, Deputy Coordinator, Kachin Women's Association of Thailand; Mr. Marco Simons, Legal Director, EarthRights International; Mr. Tom Malinowski, Washington Director for Human Rights Watch; Ms. Jennifer Quigley, Executive Director, U.S. Campaign for Burma; and the Honorable Tom Andrews, President, United to End Genocide.

STATEMENTS OF AH NOH, DEPUTY COORDINATOR, KACHIN WOMEN'S ASSOCIATION OF THAILAND; MARCO SIMONS, LEGAL DIRECTOR, EARTHRIGHTS INTERNATIONAL; TOM MALINOWSKI, WASHINGTON

**DIRECTOR FOR HUMAN RIGHTS WATCH; JENNIFER QUIGLEY,
EXECUTIVE DIRECTOR, U.S. CAMPAIGN FOR BURMA; AND THE HON. TOM
ANDREWS, PRESIDENT, UNITED TO END GENOCIDE**

Mr. MCGOVERN: All right. Ms. Ah Noh, we will begin with you. We want to make sure you get the microphone on. Welcome, and we are honored to have you here.

STATEMENT OF AH NOH

Ms. AH NOH: Thank you. I would like to say thank you to the Tom Lantos Human Rights Commission for inviting me to testify today. I am from Myitkyina, the capital of Kachin State, home of the Kachin people and most of the Christian minority of Burma.

In June, 2011, the Burmese Army broke a 17-year long ceasefire with the Kachin Independence Army, also called KIA. Since then, troops from over 140 Burmese battalions have launched violence Kachin State and Northern Shan State, and they used heavy artillery and also aircraft. Over 100,000 people have been dislocated, including my 78-year-old grandmother who spent her earlier life fleeing the civil war and is once again homeless.

Last month, I was in the Kachin town of Laiza on the border with China, a town where 20,000 civilians live, including over 10,000 displaced villagers who have been denied refuge in China. On January 14, shells landed in a residential area of Laiza and killed three villagers and injured four people, including two children.

The Burmese Army has deliberately tortured, kidnapped and killed civilians and used Thai soldiers, burned down all villages and churches, and they also committed widespread sexual violence in Kachin and other ethnic areas. Since June 2011, my organization has documented the rape of 64 women and girls in 17 townships in Kachin State committed by 14 Burmese battalions. Among these, there were many cases of gang rape. About half of the victims were also killed. Burmese soldiers told villagers that they have been ordered to rape women.

The fighting and human rights abuses have caused much displacement. 364 villages are now partially or completely deserted. About 66,000 internally displaced people, also called IDP, are taken shelter in the KIA controlled area. And they are receiving hardly any aid from the international community because the Burmese Government has refused to allow humanitarian access to this area.

Last October, international aid to the IDP camp addressed only 4 percent of the food needs. Most aid is being provided by community based organizations who are struggling to keep up with growing needs. There is a lack of food, a lack of proper sanitation, spread of disease and not enough medical supplies. In the first 3 weeks of January, 2013, in Laiza alone 10 babies died of diarrhea.

There is total impunity for these human rights abuses, and Burma's new government has passed no legislative or institutional reform to address or prevent such crimes. Even the

Myanmar National Human Rights Commission publicly declared that it would not investigate any crimes committed in ethnic areas.

To address this growing humanitarian crisis and these horrible human rights abuses, the U.S. must change its policy in Burma. First, we ask that you allocate U.S. aid money to community based organizations providing assistance to IDP in KIA controlled areas. They are the only group with sustained access to vulnerable communities in Kachin.

Second, the U.S. should publicly call for a U.N. led commission of inquiry to investigate crimes against humanity and war crimes that have taken place in Kachin State and throughout Burma. Without this, human rights violations will continue because there are no consequences for the perpetrators.

Third, the U.S. should be an independent party in the peace negotiations between the Burmese Government and KIA. And even though the KIA and Burmese Government have met formally 10 times, the Burmese Government continued to make promises of ceasefire and humanitarian access that they do not enforce. So we therefore need an independent third party to be a monitor and guarantor for these negotiations.

Finally, the U.S. must maintain existing sanctions against Burma and renew any sanctions that will expire. The U.S. had previously declared that for sanctions to be lifted, Burma has to release all political prisoners and stop hostility and seek true political settlements in ethnic areas. This target has not been met, so sanctions must remain in place.

Thank you for your attention and support for the people of Burma.

Mr. MCGOVERN: Thank you very much for your testimony.

[The statement of Ms. Ah Noh follows:]

Testimony by S Hkawng Naw of the Kachin Women's Association Thailand to the US Congress

Date: 28 February, 2013

Good afternoon.

Firstly I would like to say thank you to the Tom Lantos Human Rights Commission for inviting me to testify today.

I am from Myitkyina, the capital of Kachin State, home of the Kachin people and most of the Christian minority of Burma. In June 2011, the Burmese Army broke a 17-year long ceasefire with the Kachin Independence Army (the KIA). Since then, troops from over 140 Burmese battalions have launched a massive operation in Kachin state and Northern Shan state, using heavy artillery and aircraft. Over 100,000 people have been displaced, including my 78-year-old grandmother, who spent her earlier life fleeing the civil war, and is once again homeless.

Last month I was in the Kachin town of Laiza, on the border with China, a town where 20,000 civilians live, including over 10,000 displaced villagers who have been denied refuge in China. Laiza is also where the KIA headquarters is based. While I was in Laiza, I could hear heavy shelling every day. Like everyone else, I was

terrified that a bomb would drop on me. On January 14, shells landed in a residential area of Laiza, killing three villagers, and injuring four people, including two children.

Attacks against civilians are a deliberate part of the Burmese army's strategy to cut off support for the resistance groups in ethnic areas. The Burmese army has deliberately tortured and killed civilians including children as young as 9 years old, burned down villages and churches, captured civilians as sexual slaves and porters, and committed widespread sexual violence in Kachin and other ethnic areas. Since June 2011, my organization has documented the rape of 64 women and girls in seventeen townships in Kachin state, committed by Burmese troops from fourteen battalions. Among these, there were many cases of gang-rape. About half of these victims were also killed, including a 14-year-old girl who was raped and killed in front of her parents. Burmese soldiers told villagers that they had been ordered to rape women. Both the Burmese army and the KIA are also laying landmines, and we know that the Burmese army has used civilians for demining.

The fighting and human rights abuses have caused large-scale displacement. 364 villages are now partially or completely deserted. About 66,000 internally displaced people are taking shelter in KIA-controlled areas along the China-Burma border, receiving hardly any aid from the international community, because the Burmese government has refused to allow international humanitarian organizations to access these areas. According to a survey by my organization last October, international aid reaching the IDP camps has totaled only 4% of the food need. Most aid is being provided by community-based organizations, who are struggling to keep up with growing numbers of IDPs and worsening conditions in the camps. There is a lack of food, lack of proper sanitation, spread of disease such as TB and diarrhea, and not enough medical supplies or care. In the first three weeks of January 2013 in Laiza alone, ten babies died of diarrhea.

There is total impunity for these human rights abuses, and Burma's new government has passed no legislative or institutional reforms to address or prevent these crimes. Even the Myanmar National Human Rights Commission, established in September 2011, has publicly declared that it would not investigate any crimes committed in the ethnic areas.

To address this growing humanitarian crisis and end these terrible human rights abuses, the US must change its policy in Burma.

First, we ask that you allocate US aid money to community based organizations providing assistance to internally displaced persons in KIA-controlled areas, who are the only groups with sustained access to vulnerable communities in Kachin.

Second, the US should publicly call for the establishment of a UN-led Commission of Inquiry to investigate crimes against humanity and war crimes taking place in Kachin State and throughout Burma. Without this, human rights violations will continue because there are no consequences for the perpetrators.

Third, the US should act as an independent third party in the peace negotiations between the Burmese government and the KIA. Even though the KIA and Burmese government have met formally 10 times, the Burmese government continues to make promises of ceasefires and humanitarian access that they do not enforce. We therefore need an independent third party to be an ombudsperson, monitor, and guarantor for these negotiations.

Finally, the US must maintain existing sanctions against Burma and renew any sanctions that will expire. The United States had previously declared that for sanctions to be lifted, Burma had to release all political prisoners, and stop hostilities and seek true political settlements in ethnic areas. These benchmarks have not been met, so sanctions must remain in place.

I am also submitting for your reference a copy of *Kachin Women's Association Thailand's* most recent report, published this week, titled "*State Terror in the Kachin Hills*", outlining attacks against civilians committed by the Burmese Army.

Thank you

Mr. MCGOVERN: Mr. Simons.

STATEMENT OF MARCO SIMONS

Mr. SIMONS: Thank you, Mr. Chairman. I would like to address business-related human rights issues in Burma.

Since investment sanctions were lifted last year, American multinationals such as General Electric have already invested in Burma while U.S. oil super majors are anticipating upcoming auctions of oil and gas blocks.

A strong economy is vital for the well-being of the Burmese people, but unfortunately investment in Burma has often been associated with conflict and human rights abuses. One major concern is displacement of local communities through the arbitrary confiscation of land for business use. In the past few years, the government has increased the pace of land confiscation and weakened the legal framework protecting small farmers. The majority of the Burmese people rely on rural farmland for their livelihoods, but in recent years private companies have taken upwards of two million acres of farmland, typically with inadequate compensation or no compensation at all.

This trend is likely to be exacerbated by the new legal framework for land. Under the 2008 Constitution, all land is ultimately owned by the state and three laws passed last year as part of the legal reform process, the farmland law, the vacant, fallow and virgin land law, and the foreign investment law, make it easier for the government to confiscate land and hand it over to private companies, including foreign investors. And challenges to land confiscations can only be brought to the same administrative committees that likely ordered the confiscations in the first place. They cannot be brought to the courts.

Major drivers of land confiscation include plantation agriculture, hydropower dams and natural resource extraction, including oil, gas and mining. The Letpadaung copper mine near Monywa in central Burma illustrates how land confiscation for foreign investment can become a flashpoint for conflict. The mine is operated by a Chinese company, and local communities have strongly opposed plans to expand the mine due to concerns for land confiscation and environmental contamination. Last November 29th, security forces led a violent attack on protest camps at the mine, severely injuring nearly 50 protestors. Many victims were Buddhist monks who suffered severe burns, and groups have reported the use of white phosphorus incendiary weapons. Unfortunately, the Monywa incident is not unique. Just yesterday The New York Times reported on a violent clash over land confiscation by a private company in a town in the Irrawaddy Delta.

Oil and gas projects, especially those involving the construction of pipelines, have also led to land conflicts as well as severe human rights abuses. In the 1990s, Total and the U.S. oil company Unocal, which is now Chevron, built the Yadano gas pipeline in southern Burma relying on military units for security. Victims of forced labor, rape, torture and murder by pipeline security forces sued Unocal in U.S. courts in a major human rights lawsuit. Now similar abuses, including severe and widespread forced labor, have been

documented on the new Shwe oil and gas pipelines which run from the shores of Rakhine State through Shan State all the way to China, including zones of conflicts with the Kachin Independence Army. These oil and gas projects also involve partnerships with the State oil company, MOGE, which operates with little transparency. Billions of dollars in revenues from MOGE projects remain missing from official government accounts. These problems should serve as a warning to U.S. oil companies considering investment in Burma.

The State Department's new reporting requirements for responsible investment in Burma are a good start, but they do suffer from weaknesses. Investors must disclose some basic information about land acquisition, payments to the Burmese Government, and policies on human rights issues, but, as the chairman recognized, there are no specific measures for enforcement of the reporting requirements and corporations can unilaterally designate material as confidential.

Secretary Posner mentioned that the reporting requirements are weakened somewhat by the fact that they only apply to U.S. companies and we have been unable to get our allies to apply similar requirements. But one solution to this problem would be to apply the reporting requirements to all companies listed on U.S. stock exchanges. Unfortunately, the administration rejected this approach early on.

Thus, Congress should continue to hold hearings on the impact of investment in Burma and should maintain and strengthen laws that allow accountability in U.S. courts for human rights abuses in Burma, such as the alien tort statute.

Finally, I would like to touch upon the role of international financial institutions, especially the World Bank, which resumed lending to Burma last year. Unfortunately, the first major loan project to Burma, the Community Driven Development Project, has already been the subject of a civil society complaint to the bank for lack of adequate consultation.

The project also lacks an adequate land compensation and resettlement framework. Project documents suggest that land may be acquired through, quote-unquote, voluntary land donations. This is an alarming term because for many years the Burmese military regime referred to forced labor as "voluntary labor." Thus, we urge Congress to use its oversight over the World Bank as well as the Asian Development Bank to require the U.S. executive director to support comprehensive engagement and consultation in loans to Burma and to support reform of the land law framework in Burma. In short, despite progress on some human rights issues, business related abuses, especially in the context of land confiscation, remain a serious problem in Burma.

Thank you.

Mr. MCGOVERN: Thank you very much.

[The statement of Mr. Simons follows:]

Testimony of Marco Simons in Front of the Tom Lantos Human Rights Commission:

Business and Human Rights in Burma (Myanmar)

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Business and Human Rights in Burma (Myanmar)

Testimony of Marco Simons¹

Tom Lantos Human Rights Commission

February 28, 2013

Chairman McGovern, Chairman Wolf, and members of this Commission, thank you for inviting me to testify on this important and timely topic.

Overview

This submission describes the emerging landscape as U.S. businesses reengage in Burma and identifies specific human rights concerns associated with current and prospective corporate activities in Burma (Myanmar). A number of companies, including General Electric, have already invested in Burma, and U.S. oil supermajors are considering participation in upcoming auctions for oil blocks. Increased foreign investment has already been

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linked to large-scale displacement of local communities and loss of traditional livelihoods in Burma. The legal framework for land rights is inadequate to protect the fundamental human rights of those whose homes and fields stand in the way of economic development; indeed, it facilitates arbitrary and inadequately compensated alienation of land. Moreover, violence and gross human rights abuses continue to occur in association with natural resource development projects, as at the Letpadaung Copper Mine at Monywa, and in Shan State along the Shwe Gas Pipeline corridor.

Having decided that public disclosure, rather than regulation, is a more appropriate tool to address the human rights and environmental concerns associated with Western investment in Burma, the U.S. Government has proposed Reporting Requirements for Responsible Investment in Burma that are expected to take effect prior to April 2013. While they may assist government and civil society to monitor the human rights implications of the relaxation of U.S. sanctions on Burma, these Reporting Requirements have a number of troubling weaknesses that may allow serious human rights risks to avoid detection. Moreover, while the U.S. is now allowing the World Bank and the Asian Development Bank to extend loans to Burma, such projects are already being met with complaints over lack of transparency and consultation.

I. Background

A. Brief History of Business and Human Rights Issues in Burma

Once one of Southeast Asia's wealthiest nations, Burma dramatically deteriorated over fifty years under military rule, leaving a country that is now riddled with poverty, corruption, and serious human rights violations.² Despite the recent progress in political and economic affairs, the new civilian government remains beholden to the military, which continues to engage in human rights abuses with impunity.

Under the military junta that exercised absolute power in Burma until recently, many forms of economic development were closely linked to armed conflict and human rights abuses. Security forces in Burma – often in conflict zones, which have the highest concentrations of natural resources and fertile land in the country – have a long history of committing acts of brutal repression in the course of securing areas for extractive operations and agribusiness. As ERI's testimony will show, this pattern, which includes most prominently abuses such as land confiscation, forced labor, arbitrary detention, torture, and killings, continues under the present regime.

The Yadana pipeline project, which carries natural gas from the Andaman Sea across southeastern Burma to Thailand, has been Burma's largest source of export revenue for over fifteen years and is emblematic of the business and human rights link in the Burmese context. During the construction of the Yadana pipeline, Burmese security forces working on behalf of Unocal, a U.S. oil company now owned by Chevron, and Total S.A. committed a variety of egregious human rights violations against local villagers. These abuses included forcible relocation of villages to make way for pipeline facilities or to clear out populations believed to support rebel armed groups; conscription of villagers into forced labor for construction of the pipeline and associated facilities, and multiple incidents of rape, torture, and murder.³ These abuses were the subject of the groundbreaking *Doe v. Unocal* lawsuit in the United States. And although the intensity of human rights abuses abated after the construction of the pipeline was complete, ERI's researchers have continued to observe violations of fundamental rights by military forces associated with the companies and the pipeline.⁴

Similar abuses have long been reported in association with jade and ruby mining – historically also a major source of export revenue. Military authorities and mining companies together have been accused of running the gem mines under deplorable conditions, reportedly including rampant land confiscation, extortion, forced labor, child labor, environmental degradation, and hazardous working conditions.⁵ Burma's regime continues to tightly

² Burma, FREEDOM HOUSE, <http://www.freedomhouse.org/report/freedom-world/2013/burma>.

³ See generally ERI & SOUTHEAST ASIAN INFORMATION NETWORK, TOTAL DENIAL: A REPORT ON THE YADANA PIPELINE PROJECT IN BURMA (July 1996); ERI, TOTAL DENIAL CONTINUES: EARTH RIGHTS ABUSES ALONG THE YADANA AND YETAGUN PIPELINES IN BURMA (Dec. 2003).

⁴ See ERI, ENERGY INSECURITY: HOW TOTAL, CHEVRON, AND PTTEP CONTRIBUTE TO HUMAN RIGHTS VIOLATIONS, FINANCIAL SECRECY, AND NUCLEAR PROLIFERATION IN BURMA (MYANMAR) 9-13 (July 2010).

⁵ See generally 8808 FOR BURMA, BLOOD JADE: BURMESE GEMSTONES AND THE BEIJING GAMES (2008), at <http://www.burmalibrary.org/docs5/bloodjade-red.pdf>.

control the gemstone industry and reap significant revenues from it.⁶ Moreover, control over jade-producing areas may be an important factor in the continued violence in Kachin State.⁷ In the last years of the military regime, land confiscation for large-scale agricultural concessions increased in pace.

B. Imposition and Relaxation of Sanctions

In the wake of the 1988 repression and over the following twenty-two years, the U.S. Government imposed, enlarged, and reauthorized a mosaic of interlocking economic sanctions on Burma by legislation, Executive Order, and regulation. Together, these sanctions effectively blocked all new investment in the country; prevented Americans from importing a variety of Burmese goods and natural resources; froze the assets of Burmese individuals who were involved in human rights abuses, corruption, or armed conflict; and prohibited the provision of financial services to Burma.⁸ Other Western nations and political entities followed suit, enacting crippling but less far-reaching sanctions regimes.⁹

In the aftermath of the 2011-12 political transition, the sanctions regimes changed rapidly. Encouraged by the perceived success of parliamentary elections, the European Union, Canada, Australia, and Switzerland announced that they would suspend most sanctions against Burma in April 2012,¹⁰ leaving in place only an arms embargo.

The United States, with its more comprehensive sanctions architecture, began to ease sanctions a few months later. In May 2012, President Obama continued for one year the state of emergency with respect to Burma that activates the Executive's powers under the International Emergency Economic Powers Act (IEEPA) – the statutory basis for the investment and financial transactions sanctions.¹¹ In July 2012, the U.S. Government announced broad waivers to allow new investments and financial services, except with respect to entities associated with the military and other Burmese armed groups, or with persons on the sanctions list. Simultaneously, it proposed a new requirement for new investors to report extensively on human rights, environmental, and other policies and procedures, as well as on their security arrangements and their payments

⁶ See U.S. State Dept., *2009 Human Rights Report: Burma*, at <http://www.state.gov/j/drl/rls/hrrpt/2009/eap/135987.htm> (child labor in ruby mining); Dan McDougall, *The curse of the blood rubies: Inside Burma's brutal gem trade*, DAILY MAIL, Sept. 18, 2010, available at <http://www.dailymail.co.uk/home/moslive/article-1312382/The-curse-blood-rubies-Inside-Burmas-brutal-gem-trade.html> (forced labor and corruption in rubies trade).

⁷ See, e.g., *More displaced as Kachin war intensifies*, KACHINLAND NEWS, Aug. 22, 2012, at <http://kachinlandnews.com/?p=22202> (Kachin communities flee Burmese Army march on Hpakan jade mining area); Zin Linn, *Burma Must End War In Kachin State To Show Empathy For Refugees – Op Ed*, EURASIA REVIEW, Sept. 3, 2012, at <http://www.eurasiareview.com/03092012-burma-must-end-war-in-kachin-state-so-show-empathy-for-refugees-op-ed/> (heavy fighting around jade mines).

⁸ See Michael F. Martin, *U.S. Sanctions on Burma* 1-3, CONGRESSIONAL RESEARCH SERVICE, Oct. 19, 2012

⁹ For an overview of international sanctions regimes, see BURMA INDEPENDENCE ADVOCATES, BURMA SANCTIONS REGIME: THE HALF FULL GLASS AND HUMANITARIAN MYTH 10-11, 18-19 (2011), at <http://www.burmaadvocates.org/Burma%20Sanctions%20Assessment.pdf>.

¹⁰ See *Australia softens sanctions on Myanmar; UK favors suspension*, CNN, Apr. 18, 2012, at <http://www.cnn.com/2012/04/16/world/asia/myanmar-australia-sanctions/>; *EU agrees to suspend most Burma sanctions*, BBC, Apr. 23, 2012, at <http://www.bbc.co.uk/news/world-asia-17813656>; *Most trade sanctions against Myanmar lifted*, SWISS BROADCASTING CORPORATION, Apr. 26, 2012, at http://www.swissinfo.ch/eng/politics/foreign_affairs/Most_trade_sanctions_against_Myanmar_lifted.html?cid=32557826; *Canada suspending Burma sanctions*, CANADIAN BROADCASTING CORPORATION, Apr. 24, 2012, at <http://www.cbc.ca/news/politics/story/2012/04/24/burma-canada-sanctions.html>.

¹¹ President Barack Obama, *Notice – Continuation of the National Emergency with Respect to Burma*, May 17, 2012, at <http://www.whitehouse.gov/the-press-office/2012/05/17/notice-continuation-national-emergency-respect-burma>.

to the Burmese Government.¹² In August 2012, Congress voted to reauthorize the import ban for three years; three months later, President Obama announced a waiver of that ban for all goods except Burmese rubies and jade.¹³

C. Key Features of U.S. Economic Reengagement in Burma

With the relaxation of economic sanctions and the eagerness of the new regime to open the economy to foreign investment, many predicted a “gold rush” of Western companies rushing in to exploit Burma’s untapped markets and rich natural resources, an expectation that has been, in some ways, justified.¹⁴ However, Burma’s rampant corruption, crumbling infrastructure, and practically nonexistent banking and legal architecture have given pause to many investors – in particular, to U.S. companies.¹⁵

That said, a number of major U.S. firms have already jumped at the opportunity to invest. General Electric became the first major U.S. company to invest in Burma, opening an office in Yangon and signing deals involving aviation, health care, and energy within months of the easing of sanctions.¹⁶ Both PepsiCo and Coca Cola are competing to bottle and market soft drinks to consumers in Burma.¹⁷ Western telecommunications companies are eyeing the Burmese market,¹⁸ raising questions of privacy and electronic surveillance similar to those that have dogged companies operating in China.

The U.S. Government is seeking to promote U.S. investments in Burma; at the time of this writing, a government delegation including Assistant Secretary of State José Fernandez was accompanying dozens of U.S. business executives in Burma to assist them with securing lucrative contracts. The Assistant Secretary’s visit has underlined some of the particular risks of investment in Burma at this time; he has already been photographed shaking the hand of a Burmese business leader who is currently on the U.S. sanctions list.¹⁹ Moreover, his visit coincided with the removal of four Burmese banks from the sanctions list, two of which are owned by Burmese businessmen who have been identified by the U.S. government as cronies of the former military regime.²⁰

¹² U.S. Dep’t of the Treasury, Office of Foreign Assets Control, *Release of Executive Order Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma; Burma Designations; Release of Burma General Licenses*, July 11, 2012, at <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120711.aspx>.

¹³ *Congress reauthorizes import ban on Myanmar*, REUTERS, Aug. 2, 2012, at <http://www.reuters.com/article/2012/08/02/us-usa-myanmar-sanctions-idUSBRE8710YC20120802>; *U.S. eases import ban on Myanmar ahead of Obama trip*, REUTERS, Nov. 16, 2012, at <http://www.reuters.com/article/2012/11/16/us-usa-myanmar-imports-idUSBRE8AF1E120121116>.

¹⁴ See, e.g., Nirmal Ghosh, *Gold rush to Burma as country opens up*, JAKARTA POST, Feb. 1, 2012, at <http://www.thejakartapost.com/news/2012/02/01/gold-rush-burma-country-opens.html>; Eric Rosenkranz, *The Myanmar gold rush is on*, THE NATION, Aug. 11, 2012, at <http://www.nationmultimedia.com/opinion/The-Myanmar-gold-rush-is-on-30188060.html>.

¹⁵ See, e.g., Erika Kinetz, *Eased Myanmar sanctions no gold rush for U.S. firms*, AP, Nov. 22, 2012, at <http://news.yahoo.com/eased-myanmar-sanctions-no-gold-rush-us-firms-014944723--finance.html>; see also Joshua Kurlantzick, *Why Investors Should Tread Warily in Myanmar*, BLOOMBERG BUSINESSWEEK, Nov. 18, 2012, at <http://www.businessweek.com/articles/2012-11-18/why-investors-should-tread-warily-in-myanmar#p2>.

¹⁶ See Kathy Chu, *GE Sets Sights on Myanmar*, WALL STREET JOURNAL, Jan. 17, 2013, at <http://online.wsj.com/article/SB10001424127887323468604578248602074102308.html>.

¹⁷ See *PepsiCo to sign Myanmar bottling deal as rivalry with Coke grows*, REUTERS, Nov. 13, 2013, at <http://www.reuters.com/article/2012/11/13/us-pepsico-myanmar-idUSBRE8AC09A20121113>.

¹⁸ 4 telecoms firms eye Myanmar, MYANMAR BUSINESS NETWORK, Jan. 23, 2013, at <http://www.myanmar-business.org/2013/01/4-telecom-firms-eye-myanmar.html>.

¹⁹ See Erica Kinetz, *US caught in awkward embrace of Myanmar 'crony'*, AP, Feb. 25, 2013, at <http://www.usnews.com/news/world/articles/2013/02/25/us-caught-in-awkward-embrace-of-myanmar-crony>.

²⁰ See Aung Hla Tun, *U.S. gives banking green light to Myanmar tycoons*, REUTERS, Feb. 25, 2013, at <http://www.reuters.com/article/2013/02/25/myanmar-usa-banks-idUSL1N0BP0GI20130225?rpc=401>.

Burma is also making great efforts to attract Western oil companies to bid for offshore and onshore oil blocks. A planned 2012 bidding round for offshore oil blocks was delayed at the last minute because of concerns from Western firms about transparency – particularly the continued involvement of the Myanmar Oil and Gas Enterprise (MOGE), which has been widely identified with the formerly military regime and is notorious for corruption.²¹ There are, however, reports of more interest from U.S. supermajors Chevron, Exxon Mobil, and Conoco Phillips in an upcoming onshore round, scheduled for March 2013.²²

II. Emerging Business and Human and Rights Concerns in Burma

The past decade in Burma has seen large-scale confiscation of land from small farmers in Burma for agricultural and natural resource extraction projects. Unfortunately, the pace of confiscation appears to be continuing unabated under the current government, and may accelerate due to a new legal framework that offers fewer protections than before, as well as increasing foreign investment. At the same time, conflicts arising out of land use, especially natural resource extraction projects, are increasing, and have resulted in violent abuses in several high-profile cases.

A forthcoming report by the Karen Human Rights Group provides extensive documentation on a wide range of economic development projects – notably, extractive, infrastructure, and plantation agriculture projects – in eastern Burma. The report concludes that such projects are frequently carried out unilaterally, without consultation or information disclosure; are often associated with militarization at project sites; have limited benefits for local communities; and cause widespread displacement. Local communities commonly suffer serious additional human rights impacts, including forced labor, environmental degradation, physical threats and arbitrary detention, and destruction of livelihoods. And their ability to deter these impacts is compromised by the paucity of information on projects, legal barriers to redress, threats of violence, and the lingering effects of past trauma.²³

These trends should serve as a warning to U.S. and other investors considering projects that involve the use of large areas of land, especially in rural areas.

A. Land Confiscation in Burma

1. Recent trends in land confiscation

Burma remains a mostly rural country, in which the majority of the population relies on small farms for their livelihoods. Unfortunately, landlessness has been on the rise for years, and the pace of land confiscation may be increasing.

The importance of small farmers²⁴ in Burma is difficult to overstate. According to the Land Research Action Network:

[N]early three-fourths of the population or about 40 million people – live in rural areas and rely on farmland and forests for their daily needs and livelihoods. Agriculture (including livestock and fisheries) contributes

²¹ See William Boot, *MOGE-Linked Contractor Co-Hosts Energy Ministry Oil Conference*, THE IRRAWADDY, Feb. 23, 2013, at <http://www.irrawaddy.org/archives/27562>.

²² See *Myanmar welcomes Western oil giants*, MYANMAR BUSINESS NETWORK, Feb. 2, 2013, at <http://www.myanmar-business.org/2013/02/myanmar-welcomes-western-oil-giants.html>.

²³ KAREN HUMAN RIGHTS GROUP, *DISFRANCHISING DEVELOPMENT: LAND CONFLICTS AND COLLECTIVE ACTION IN EASTERN MYANMAR* (forthcoming).

²⁴ In Burma, small farms are considered to be those that do not exceed 10 acres; this definition is complicated, however, by the situation of farmers who practice shifting cultivation, who may range over larger areas of land, as well as widespread use of common resource land. See Land Core Group of the Food Security Working Group, *The Role of Land Tenure Security for Smallholder Farmers in National Development* 1 (2012).

about one-third of the country's gross domestic product (GDP) and 15 percent of total export earnings, and employs over 60 percent of the nation's labour force (2008-09 government data).²⁵

For example, in six villages that will be relocated to make way for the Dawei Special Economic Zone, about 6,000 out of 10,000 villagers are farmers. Most of the remainder work on local plantations. Locals have traditionally been able to provide for most of their food, water, and housing needs from the land and rivers; as one villager put it, "There is no other place like our village... I am very concerned that we cannot access such a place elsewhere."²⁶

Support for small farmers can promote equitable social development, help to resolve conflict, protect food security, improve gender equality, and encourage sustainable agricultural practices.²⁷ Research by the Food and Agriculture Organization (FAO) has found, for example, that small farmers invest more in their land when they have secure land rights, and that small farmers in general produce more food than mono-crop plantations.²⁸ Moreover, land disputes are often traceable to insecure tenure, and have the potential to derail progress towards a lasting peace in the ethnic minority states of Burma.²⁹ Rampant land confiscation and landlessness, by contrast, have been associated with malnutrition and food insecurity.³⁰

Rural landlessness has been on the increase in Burma for a variety of reasons, including civil war, indebtedness, and outright land grabbing. As of 2012, nearly one quarter of Burma's farmers were estimated to be landless – a fraction that reached more than half in some areas.³¹ Moreover, in many areas the average plot size has shrunk to under 5 acres, which is below subsistence level.³²

A key driver of land loss has been the reallocation of farmers' land for economic development projects. Reports of land grabbing fill the newspapers in Burma, and the total amount of farmed land turned over to private entrepreneurs in recent years has reached between 1.5 and 2 million acres.³³ While land confiscation is common in a number of sectors, at least one important factor has been the Ministry of Agriculture and Irrigation's 30-year Master Plan for the Agriculture Sector (2000-01 to 2030-31), which aims to convert 10 million acres of "wasteland" for private industrial agricultural production.³⁴ Overall, it is estimated that 28 million acres of "arable land" could eventually be turned over to investors.³⁵ Moreover, the anticipation of high prices has already led to cases in which wealthy business interests have bought up large tracts of land in hopes of getting

²⁵ Land Research Action Network, *Land Not For Sale in Myanmar* (Oct. 12, 2012), at <http://www.landaction.org/spip.php?article666>.

²⁶ Thukha Thakin, *Dawei Development Project is Creating the Negative Impacts of Land Confiscation, Changing Lifestyles, and Lack of Livelihoods for Local People East and West of Dawei* 144-45, in EARTHRIGHTS INTERNATIONAL, *WHERE THE CHANGE HAS YET TO REACH: EXPOSING ONGOING EARTH RIGHTS ABUSES IN BURMA (MYANMAR)* (2012).

²⁷ Land Core Group 2012, *supra* note 24, at 2.

²⁸ FAO, *Land Tenure and Rural Development*, 3 FAO LAND TENURE SERIES ¶ 2.1 (2002); Land Core Group 2012, *supra* note 24, at 2.

²⁹ Land Core Group 2012, *supra* note 24, at 4-5.

³⁰ See, e.g., TRANSNATIONAL INSTITUTE, *FINANCING DISPOSSESSION: CHINA'S OPIUM SUBSTITUTION PROGRAMME IN NORTHERN BURMA* 35 (Feb. 2012).

³¹ Land Research Action Network 2012, *supra* note 25.

³² *Id.*

³³ See DISPLACEMENT SOLUTIONS, *MYANMAR AT THE HLP CROSSROADS: PROPOSALS FOR BUILDING AN IMPROVED HOUSING, LAND AND PROPERTY RIGHTS FRAMEWORK THAT PROTECTS THE PEOPLE AND SUPPORTS SUSTAINABLE ECONOMIC DEVELOPMENT* 5-6 (Oct. 2012); Land Research Action Network 2012, *supra* note 25. The majority of this land has not been developed for the purposes for which it was originally granted, and in some cases farmers have been allowed to remain on the land as before. However, the promised flood of investment is now leading some entrepreneurs to reassert their ownership rights and expel their tenants in preparation for expansion. See, e.g., *Burmese land ownership a work in progress*, MIZZIMA NEWS (Aug. 23, 2012), at <http://www.mizzima.com/news/inside-burma/7829-burmese-land-ownership-a-work-in-progress.html>.

³⁴ Land Research Action Network 2012, *supra* note 25.

³⁵ DISPLACEMENT SOLUTIONS 2012, *supra* note 33, at 7.

compensation from the government when that land is confiscated, thereby distorting prices and making land unaffordable for locals.³⁶

The areas that have been hardest hit by large-scale land confiscations have been ethnic minority states such as Kachin State and Shan State, as well as Tenasserim Region, which is populated mainly by ethnic Karen, Tavoyan, and Mon peoples. Over a million acres of land in Tenasserim have been transferred to developers, while the largest increases in recent years have been in Kachin State and northern Shan State, both conflict zones where China has financed private enterprise schemes to replace opium cultivation.³⁷

2. Causes of land confiscation

Displacement of small farmers has occurred primarily for the following types of economic activity: commercial agriculture, oil and gas, and Special Economic Zones (SEZs).

Commercial agriculture

In recent years, more land has been taken from communities for large-scale agricultural plantations than for any other commercial activity. As a result, land in some areas has become a speculative commodity, and powerful politicians, landowners, and entrepreneurs bribe land registry officials or use powerful connections to register occupied land or obtain concessions in their name in hopes of being bought out by the government, or receiving investment to develop the land.³⁸

Few farmers in Burma have formal title to their land, and all land in the country has long been owned by the state. In order to allow large-scale agricultural development, the government simply allocates land to companies. Under the laws governing these concessions, the land is supposed to be cultivated within a few years, but in many cases it is simply taken; one group has estimated that only 20-30% of these concessions are actually under cultivation.³⁹

In Tenasserim Region, the Burmese Government has promoted palm oil production, leading to the transfer of over 1 million acres of farmland to private investors – most notably the Yuzana Company, owned by Htay Myint, who is subject to U.S. sanctions.⁴⁰ The large-scale conversion of land to palm oil plantations has led to the widespread clearing of forests on which communities rely; in many cases, the land has not even been used for plantations but rather has been clearcut for timber sales.⁴¹ PTT, the Thai energy company, has recently announced plans to develop a 100,000 hectare plantation in Tenasserim.⁴²

Kachin and Northern Shan State have seen the highest growth rate of land grabbing in recent years.⁴³ This trend is fueled largely by China's opium substitution program, in which the Chinese government provides various forms of financial and administrative benefits to Chinese businesses that establish monocrop plantations in border areas that have traditionally been key locations for poppy cultivation.⁴⁴

³⁶ *Id.* at 9.

³⁷ Land Research Action Network 2012, *supra* note 25.

³⁸ *See, e.g.*, TNI 2012, *supra* note 30, at 61 (describing loss of community forest to well connected private investor who was able to receive land concession despite informal demarcation of traditional territory).

³⁹ Land Research Action Network 2012, *supra* note 25.

⁴⁰ Land Research Action Network 2012, *supra* note 25; *Tracking the Tycoons*, THE IRRAWADDY (Sept. 2008), at http://www2.irrawaddy.org/article.php?art_id=14151&page=5;

⁴¹ Land Research Action Network 2012, *supra* note 25; TNI 2012, *supra* note 30, at 35.

⁴² *PTT buying up palm oil farms*, DAWEI PROJECT, June 1, 2012, at <http://daweiproject.blogspot.com/2012/06/ptt-buying-up-palm-oil-farms.html>.

⁴³ *Id.*

⁴⁴ *See* TNI 2012, *supra* note 30, at 22-23. While China ostensibly provides this support in order to fight the drug trade, it reaps the benefits of increased imports of Chinese-grown rubber, an important strategic commodity. *Id.* at 28.

These developments have turned the uplands of Kachin and Northern Shan States into a “rubber belt,” with over 100,000 acres planned in 2010-11 – nearly all financed by the Chinese opium substitution program.⁴⁵ Much of this acreage constitutes confiscated land that previously was used by villagers; as described in greater detail below, the legal architecture of land tenure makes *taungya* (shifting cultivation) land that is an important part of uplands agriculture in these areas particularly vulnerable.

In addition to rubber, two Burmese companies with rumored Chinese financial backing – Yuzana and Jadeland – received concessions of approximately 200,000 hectares total to grow cassava and other crops in Hugawng Valley Tiger Reserve, leading to environmental damage, conflicts with local villagers and the confiscation of 1,450 hectares of village land by mid-2010.⁴⁶ The transfer of so much land to Chinese-backed business interests – both in government-controlled and ceasefire areas – has caused widespread loss of farmland, decreased the available amount of land for traditional swidden agriculture, reduced average farm plot sizes, and decreased food security in the affected provinces, where rates of landlessness now reach 50 percent and more in many townships.⁴⁷

To date, most agricultural concessions have been granted to Burmese companies. As described below, however, the new foreign investment laws allow greater participation of foreign companies in large-scale commercial agriculture, and will likely increase the pace of land confiscations.

Oil and gas projects

Pipeline construction in Burma has historically been associated with serious human rights abuses – including forced displacement – and the pattern continues along the route of the Shwe pipelines, which are currently under construction.⁴⁸ The Shwe Oil and Gas Project is a major energy development linking the Shwe natural gas fields in the Bay of Bengal off southwestern Burma with Yunnan Province in China. Comprising two parallel pipelines – one to carry natural gas and the other to carry crude oil from a new port facility on Madaya Island – the project crosses the entirety of Burma, including environmentally sensitive areas and conflict zones in Northern Shan State.⁴⁹

Displacement along the Shwe pipelines began in 2010 at the latest. Villagers on Madaya and Ramree Islands and other areas of Kyauk Phyu Township in Rakhine State reported that their land, including subsistence farming plots, had been confiscated by Daewoo International and China National Petroleum Corporation (the principle foreign investors in the pipelines), and by Asia World Company Ltd. (a Burmese contractor and construction company that is closely linked to the former military regime) to build onshore facilities for the Shwe Gas Project.⁵⁰ Many people have no warning that the government is planning to take their land, or hear about it only second-hand, until the order arrives for them to clear out. Villagers elsewhere in Arakan State have word that they too will be displaced; compensation has been inconsistent at best and non-existent at worst.⁵¹

This pattern has been replicated along the entire pipeline route. At the other end of the pipeline corridor, in the ethnic Ta'ang area of Namkham Township in Northern Shan State, surveyors have repeatedly entered farmers' land, erected barriers, and summarily informed villagers that their land is being appropriated. Farms have been

⁴⁵ *Id.* at 40-42. As Myanmar official statistics are notoriously inaccurate, it is difficult to ascertain whether these goals are being met.

⁴⁶ *Id.* at 63.

⁴⁷ *Id.* at 35, 44, 74

⁴⁸ Physical displacement and land confiscation are not the only forms of displacement that communities have suffered as a result of the Shwe project. Fishermen in Kyauk Phyu Township have reported that waters that previously were their traditional fishing grounds have been closed to them, leaving them unable to sustain their customary livelihoods. See EARTHRIGHTS INTERNATIONAL, *BROKEN ETHICS: THE NORWEGIAN GOVERNMENT'S INVESTMENTS IN OIL AND GAS COMPANIES OPERATING IN BURMA (MYANMAR)* 28 (Dec. 2010).

⁴⁹ ERI, *THE BURMA-CHINA PIPELINES*, *supra* note 50, at 2-3; see also TSYO 2012, *supra* note 55, at 15.

⁵⁰ EARTHRIGHTS INTERNATIONAL, *THE BURMA-CHINA PIPELINES: HUMAN RIGHTS VIOLATIONS, APPLICABLE LAW, AND REVENUE SECRECY* 8 (Mar. 2011); ERI, *BROKEN ETHICS*, *supra* note 48, at 25-26.

⁵¹ ERI, *THE BURMA-CHINA PIPELINES*, *supra* note 50, at 8-9.

destroyed, and villagers have been forced to stop growing crops on large portions of their land.⁵² Information on the project is often unavailable, and neither the Burmese Government nor the pipeline companies have conducted consultations with villagers.⁵³ Altogether, approximately 2,000 Ta'ang households in Northern Shan State have been forcibly relocated and lost land because of the pipeline project.⁵⁴ Compensation is expected to be inadequate and inconsistent with international standards, which require resettlement and assistance in adjusting livelihoods strategies.⁵⁵ Moreover, government officials have informed villagers that only those with official land titles will receive compensation, a particularly severe problem in a region where only one-sixth of small farmers actually possess legal land documents and shifting *taungya* cultivation is the norm.⁵⁶

Land confiscation along the Shwe pipeline has created tremendous opportunities for corruption, further imperiling the farmers who are displaced. ERI field interviews have revealed that MOGE, Burma's notoriously corrupt state-owned petroleum company, has in some cases retained up to 50% of land compensation payments made by construction companies that destroy farmers' land. ERI has also discovered that Infantry Battalion (IB) 34 in Kyauk Phyu and the naval squadron based at Dyanawaddy, both on Ramree Island, Rakhine State, have confiscated local farmers' untitled land and sold it to Myanmar Golden Crown (Burma) and Punj Llord (India), two construction companies that are building the onshore gas terminal for the Shwe project.⁵⁷

Special Economic Zones

Land grabbing has become a particular concern in communities surrounding the planned Dawei Special Economic Zone (SEZ) in Tenasserim Region. Since 2008, the Thai company Italian-Thai Development Corp. has been developing Dawei pursuant to a Memorandum of Understanding with the Burmese Government. Plans for the SEZ include heavy industries, a petrochemicals complex, major road and rail links, and a deep seaport that could provide Thailand with a direct transport link to India and the Middle East.⁵⁸ Thailand has been criticized for using the Dawei SEZ project to export some of its most polluting industries to neighboring Burma.⁵⁹

Official figures suggest that 32,274 individuals will be displaced from 52,361 acres of land in order to make way for the SEZ, and that hundreds more will be displaced for a dam that will provide power to the development. According to research by Paung Ku, a local Burmese civil society network, however, the official numbers fail to recognize the full number of people subject to "direct" land grabs, and the total displaced population is likely to

⁵² Mai Mao Dang, *The Negative Impacts of Burma-China Natural Gas and Oil Pipelines on Local Villagers through Land Confiscation in Western Namkham Township, Ta'ang Area, Northern Shan State*, in ERI, WHERE THE CHANGE HAS YET TO REACH, *supra* note 26, at 228-29, 231-32, 234

⁵³ *Id.* at 232, 236.

⁵⁴ *Id.* at 233.

⁵⁵ *Id.* at 232; see also TA'ANG STUDENTS AND YOUTH ORGANIZATION, PIPELINE NIGHTMARE: SHWE GAS FUELS CIVIL WAR AND HUMAN RIGHTS ABUSES IN TA'ANG COMMUNITY IN NORTHERN BURMA 30 (Nov. 2012); compare Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, *Basic Principles and Guidelines on Development-Based Evictions and Displacement* ¶ 61, U.N. Doc. A/HRC/4/18 Annex 1; International Finance Corporation, *Performance Standard 5* ¶¶15-16, 19.

⁵⁶ Mai Mao Dang 2012, *supra* note 52, at 229.

⁵⁷ For information on findings of military land confiscations associated with the Shwe project, see *Investigation body discloses military's land confiscations in western Myanmar*, MYANMAR NEWS LINKING SITE, Dec. 15, 2012, at <http://www.news.myanmaronlinecentre.com/2012/12/15/investigation-body-discloses-militarys-land-confiscations-in-western-myanmar/>.

⁵⁸ See Dawei Development Company Limited, *Project Overview*, at <http://www.daweidevelopment.com/index.php/en/dawei-project/project-overview->.

⁵⁹ See, e.g., Stuart Deed, *How will the Dawei project benefit Myanmar?*, MYANMAR TIMES, Nov. 5, 2012, at <http://www.mmtimes.com/index.php/opinion/2883-how-will-the-dawei-project-benefit-myanmar.html> (quoting Thai Prime Minister Abhisit Vejjajiva as saying, "Some industries are not suitable to be located in Thailand. This is why they decided to set up there," referring to Dawei).

be up to 50,000.⁶⁰ The displaced are slated to be resettled on smaller plots of land than they originally farmed, isolated from their former communities and with no plan for restoring their livelihoods.⁶¹

Paung Ku also notes that the number of direct land grabs does not take into account “indirect” land grabbing, by which well-connected speculators invest in Dawei real estate, driving up prices astronomically and effectively pricing locals out of the land market. These entrepreneurs then sell land rights to Italian-Thai and other development companies, often without the knowledge of the traditional occupiers of the land, who are deprived of their access to the land without compensation.⁶²

Moreover, the farmers subject to land confiscation also suffer at the hands of corrupt officials. For example, the Dawei Development Association (DDA) has informed ERI that U Tin Maung Swe, the former Chairman of the government-sponsored Supporting Committee for the Dawei SEZ, was removed from his post in late 2012. According to DDA’s interviews with local community members, he had been helping himself to 10% of the compensation paid to farmers displaced by the development in return for expediting payments. And ERI field interviews reveal that wealthy business people have registered land farmed by small farmers in their own name, thereby successfully claiming the compensation paid by Italian-Thai – which should be due to the farmers – by virtue of their fraudulently held titles.

In addition to Dawei, another major SEZ project is underway in Kyauk Phyu, the site of the Shwe oil and gas terminal. This project, which will be centered on a major oil transshipment port and possibly petrochemical plants, threatens to present similar problems as have already been witnessed in connection with the Dawei SEZ.⁶³

3. Legal framework contributing to land confiscation

For decades, all land in Burma has been formally owned by the state; that continues under the 2008 Constitution, which provides in Article 37(a) that the state “is the ultimate owner of all lands and all natural resources above and below the ground.” Virtually no small farmers have title, even where they have been farming the same land for generations. The legal protections for these small farmers have been eroding; unfortunately, laws passed by the Burmese Parliament, or Hluttaw, following the transition from absolute military rule have contributed to this insecurity.

The legal architecture for land ownership and transfer in Burma has historically facilitated the accumulation of land by wealthy private businessmen, and recent changes will make it even easier for farmers to lose their land without recourse. This weakness in the land laws is already disproportionately affecting *taungya*, or shifting cultivation, land, which means that its effects are felt most acutely in upland conflict areas like Kachin and Shan States.

For decades, the government has used the 1991 Prescribing Duties and Rights of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land Law (“Wastelands Law”) to allocate 30-year leases on large tracts of untitled land to investors for industrial crop production. The recipients have mostly been domestic businessmen, but the list recently includes foreign companies, mostly from China.⁶⁴ However, restrictions on private land transfers, in particular, remained in place, at least in theory.⁶⁵ Then, in March 2012, as part of a slate of new legislation meant to promote foreign investment and liberalize the economy, the Hluttaw passed several important land laws that are expected to further destabilize land tenure for poor farmers.

Farmland Law

⁶⁰ PAUNG KU & TRANSNATIONAL INSTITUTE, LAND GRABBING IN DAWEI (MYANMAR/BURMA): A (INTER)NATIONAL HUMAN RIGHTS CONCERN 7 (Sept. 2012). Ironically, the increased number includes farmers who will be resettled from the relocation sites.

⁶¹ *Id.* at 12.

⁶² *Id.* at 10-11.

⁶³ William Boot, *Thailand Losing out to China in Battle of the Burma Ports*, THE IRRRAWADDY, Feb. 21, 2013, at <http://www.irrawaddy.org/archives/27320>.

⁶⁴ TNI 2012, *supra* note 30, at 31; *see also* DISPLACEMENT SOLUTIONS 2012, *supra* note 33, at 35-36.

⁶⁵ *Id.*

First, the Farmland Law, Pyidaungsu Hluttaw Law No. 11 of 2012,⁶⁶ legalized for the first time the private purchase and sale of official farming use rights.⁶⁷ In the current atmosphere of intense speculation and intimidation of farmers, especially in high-priority areas like Dawei, this provision could allow for large-scale alienation of land from titled small farmers.

Conversely, the Farmland Law discriminates against the vast majority of small farmers who have no official title, and who therefore have no share in the rights conferred by the Law.⁶⁸ Although the law sets up a system for conversion of customary land interests to formal land title, this system is inadequate and subject to corruption. Local administrative bodies known as Farmland Management Committees are tasked with scrutinizing and granting applications for land title certificates; these committees are appointed by the central government, with no provision for independent decision making and no guidance as to the criteria for membership on these committees.⁶⁹ And the Farmland Law removes jurisdiction for almost all land rights disputes from the courts and instead vests it in the very same politically appointed bodies that make the decisions in the first place: the Farmland Management Committees.⁷⁰ Farmers who are denied land title or whose land is taken from them before they have a chance to apply for title have no legal recourse to the courts, but instead must seek remedies from local officials who are likely to have participated in the land confiscation.

Vacant, Fallow, and Virgin Land Management Law

The second recent law – the Vacant, Fallow, and Virgin Land Law, Pyidaungsu Hluttaw Law No.10 of 2012 (“VFV Land Law”)⁷¹ – completes the evisceration of protections for the vast majority of small farmers by providing a legal framework for the reallocation of untitled land. Under the VFV Land Law, a Central Committee for the Management of Vacant, Fallow and Virgin Lands, composed of high government officials and appointees, has sole discretion to grant concessions to companies for agriculture, animal husbandry, mining, aquaculture, and other uses, on land judged to be either abandoned or uncultivated.⁷²

The import of this law is enormous. The determination of whether land is abandoned or uncultivated – vacant, fallow, or virgin – as well as the decision of how to allocate it – to Burmese companies or foreign investors – is made by the Central Committee itself, and is not subject to review by any court or administrative body.⁷³ It is generally expected that farmers without official title will be subject to arbitrary expropriation through this mechanism. Moreover, the definition of “vacant” or “fallow” land is startlingly broad, extending to land that was “worked by the tenant previously, and then abandoned by the tenant for *any reason*. . . .”⁷⁴ This definition could make it nearly impossible for those who practice shifting *taungya* cultivation – primarily upland farmers in Kachin and Shan State – to show that land they cultivated in previous years but have left fallow on a rotational basis is, in fact, still cultivated land. Shifting cultivation works only if large areas are left fallow on a regular basis, a practice that could lead directly to the loss of the land under the VFV Land Law.

Rules enacted in January 2013 to operationalize the VFV Land Law provide no additional comfort on this point. They simply note that if it is reported “with sound evidence” that allocated land “had long been the cultivated lands of the local peasants currently doing agricultural work,” the Central Committee is expected to negotiate with them and “ensure they are not unfairly or unjustly dealt with.”⁷⁵ This vague mandate provides little basis for small farmers to expect that their use of the land will be respected.

⁶⁶ An unofficial English translation of this law by UN-Habitat is attached to this submission as Annex A.

⁶⁷ See DISPLACEMENT SOLUTIONS 2012, *supra* note 33, at 11 (analyzing Farmland Law Ch. III cl. 9).

⁶⁸ Land Research Action Network 2012, *supra* note 25.

⁶⁹ DISPLACEMENT SOLUTIONS 2012, *supra* note 33, at 12-13 (analyzing Farmland Law Ch. IV & V).

⁷⁰ *Id.* at 13 (analyzing Farmland Law Ch. VIII).

⁷¹ An unofficial English translation of this law by UN-Habitat is attached to this submission as Annex B.

⁷² Vacant, Fallow, and Virgin Land Law Ch. III, Pyidaungsu Hluttaw Law No.10 of 2012 (Myan.).

⁷³ *Id.* Ch. III cl. 5(d) & (e); see also DISPLACEMENT SOLUTIONS 2012, *supra* note 33, at 13.

⁷⁴ *Id.* Ch. I cl. 2(e) (definition of “Vacant land and fallow land”) (emphasis added).

⁷⁵ Republic of the Union of Myanmar, Ministry of Agriculture and Irrigation, Notification No. 1/2012, Vacant, Fallow and Virgin Land Management Rules, Ch. VI cl. 52(b) (2012). An unofficial English translation of these Rules by UN-Habitat is attached to this submission as Annex C.

Foreign Investment Law and foreign land ownership under the new land laws

Overall, the new legal architecture for land administration is expected to increase the reallocation of land farmed by small farmers to both foreign and domestic investors, without adequate protection or provisions for resettlement and compensation. As noted above, the Burmese government has allowed transfer of land rights to foreign investors in recent years, and the Farmland Law explicitly contemplates this. In November 2012, the Hluttaw approved a new Foreign Investment Law, continuing the previous law's provision for 100% foreign-owned investments in Burma and providing for new 50-year leases on land.⁷⁶ Thus foreign investors could obtain the right to use land that is cultivated by small farmers who do not have land title under the VFV Land Law, and then apply to local authorities for a Land Use Certificate under the Farmland Law, thereby abrogating the rights of any previous users of the land without any compensation or other livelihoods assistance.

B. Violence and Other Abuses Linked to Natural Resource Extraction

Even as land-related abuses have come to dominate domestic attention in Burma, the pattern of security- and corruption-related abuses associated with natural resource extraction has continued unabated. Two emblematic cases – the Shwe Oil and Gas Project and the Letpadaung Mine at Monywa – demonstrate clearly the human rights risks that extractive companies in particular may run when investing in Burma. In both cases, projects that involve control of large amounts of land have relied on brutal security forces to facilitate their operation. The Shwe pipeline passes through conflict zones in Shan State and may be one of the driving forces behind that conflict; military units are displacing villagers and conscripting forced labor in the course of securing the pipeline route. The Monywa mine, although located in central Burma far from any conflict area, has met with such strident local opposition that security forces have recently committed large-scale violence against protestors.

1. Shwe Oil and Gas Project

In addition to simple land confiscation, as described above, the Shwe Oil and Gas Project is contributing to conflict and security-related human rights abuses. In 2009, General Gam Shawng Gunhtang of the Kachin Independence Army predicted in an interview with the New York Times, “The pipeline will be a tool and an opportunity for the [Burmese military regime] to eliminate the armed groups.”⁷⁷ Sure enough, as pipeline construction moves into the Kachin and Shan areas, the conflict zones have become increasingly militarized, and violent human rights abuses associated with the pipeline corridor have been reported.

Government armed forces are moving to secure the pipeline corridor, creating a flood of internally displaced persons without adequate access to food, water, and shelter.⁷⁸ The Ta'ang Students and Youth Organization (TSYO) notes that fighting is largely focused on the pipeline construction area itself, where the armed forces are responsible for the security of Chinese construction workers.⁷⁹

As occurred during the construction of the Yadana and Yetagun pipelines in southeastern Burma,⁸⁰ forced labor has been widely reported at all stages of the Shwe project. This notorious practice of the Burmese armed forces can take numerous forms, including forcing villagers to join militias and other military support units; to guide them through dangerous areas subject to civil war and attack; and to build pipeline facilities and associated infrastructure. In 2011, ERI reported incidents of forced labor at the construction site on Maday Island, where villagers were required to join a fire brigade, in the central Dry Zone, where community members were forced to build a health clinic that was part of project partner Daewoo International's corporate social responsibility

⁷⁶ See Aung Hla Tun, *Myanmar state media details new foreign investment law*, REUTERS (Nov. 3, 2012), at <http://www.reuters.com/article/2012/11/03/us-myanmar-investment-idUSBRE8A204F20121103>.

⁷⁷ Thomas Fuller, *Ethnic Groups in Myanmar Want Peace but Gird for a Fight*, NEW YORK TIMES, May 10, 2009.

⁷⁸ TSYO 2012, *supra* note 55, at 19-20.

⁷⁹ *Id.* at 20; see also ERI, *THE BURMA-CHINA PIPELINES*, *supra* note 50, at 6 (noting arrangement between CNPC and Burmese Government providing that the government will guarantee the safety of the pipeline).

⁸⁰ See *supra* note 3 and accompanying text.

commitment, and in Shan State, where villagers were forced to join a militia.⁸¹ In 2012, TSYO reported incidents of forced guiding and portering for military patrols in Shan State,⁸² as well as ongoing conscription of villagers to carry pipeline equipment and dig drains, enforced by Namtu Township Police and Infantry Battalion 324.⁸³

2. Monywa Mine

While the Shwe pipelines pass through ethnic conflict zones, the Letpadaung Copper Mine at Monywa is located in a predominantly ethnically Burman region in central Burma, near the city of Mandalay. The mine is owned by the Union of Myanmar Economic Holdings, a Burmese military conglomerate, and Wanbao Mining, a subsidiary of Chinese industrial and arms manufacturer China North Industries Corporation.⁸⁴ Unfortunately, recent events at the mine demonstrate that serious abuses associated with land use and resource extraction can occur anywhere in Burma.

On November 29, 2012, Burmese security forces attacked six protest camps at the mine.⁸⁵ Villagers in the Monywa area have long complained that the mine has contaminated their natural environment and causes serious health problems; moreover, around 8,000 acres have been seized from farmers since 2011.⁸⁶ ERI interviews with Monywa residents confirm reports of birth defects, cerebral palsy, and other congenital problems, as well as severe water contamination. Over the previous year, locals had organized a number of protests, with the ultimate aim of stopping a major expansion of the mining project. Locals had sought permission for the earlier protests but decided to move ahead with the November demonstration despite not having obtained a permit under the 2011 Peaceful Assembly and Marching Law, which requires extensive and intrusive information about the identities of demonstrators and the texts of speeches that will be delivered.⁸⁷

The attack came while protesters were sleeping and severely injured nearly fifty protesters, including a large number of Buddhist monks who suffered horrific burns while trying to prevent the destruction of religious buildings.⁸⁸

The Burmese Government initially issued a formal statement asserting that security forces had used riot control measures, a claim that did not fit well with the facts: that armed forces had used tear gas, smoke bombs, and fire against sleeping protesters. Shortly thereafter, the President's office withdrew the statement.⁸⁹ A subsequent investigation by Justice Trust (US) and Burma Lawyers Network (Burma) has found that at least some of the burns were caused by white phosphorus,⁹⁰ a military grade incendiary material that is primarily used to create smoke to hide troops' movements. White phosphorus may be considered a chemical weapon that is prohibited under international law when used against human targets.⁹¹ The Burmese government has not denied the use of

⁸¹ ERI, THE BURMA-CHINA PIPELINES, *supra* note 50, at 11-12.

⁸² TSYO 2012, *supra* note 55, at 25.

⁸³ *Id.* at 38-39.

⁸⁴ Press Release, Human Rights Watch, Burma: Investigate Violent Crackdown on Mine Protesters (Dec. 1, 2012), at <http://www.hrw.org/news/2012/12/01/burma-investigate-violent-crackdown-mine-protesters>.

⁸⁵ *Id.*

⁸⁶ *Id.*; Gwen Robinson, *Violence casts shadow over Myanmar reform*, FINANCIAL TIMES, Dec. 1, 2012, at <http://www.ft.com/intl/cms/s/0/152b40b8-3acb-11e2-b3f0-00144feabdc0.html#axzz2LeOjhWnR>; Ingjin Naing & Khet Mar, *Dozen Mine Protesters Arrested*, RADIO FREE ASIA, Sept. 10, 2012, at <http://www.rfa.org/english/news/burma/arrested-09102012185605.html>.

⁸⁷ Press Release, Asian Human Rights Commission, BURMA: Former Activist Monk and Demonstrators Among Detainees in Wave of Arrests (Dec. 6, 2012), at <http://www.burmapartnership.org/2012/12/burma-former-activist-monk-and-demonstrators-among-detainees-in-wave-of-arrests/>.

⁸⁸ HRW 2012, *supra* note 86; Robinson 2012, *supra* note 86.

⁸⁹ HRW 2012, *supra* note 86.

⁹⁰ Jonah Fisher, *Burma police 'used white phosphorous' on mine protesters*, BBC, Feb. 14, 2013, at <http://www.bbc.co.uk/news/world-asia-21455087>.

⁹¹ See, e.g., Paul Reynolds, *White phosphorus: a weapon on the edge*, BBC, Nov. 16, 2005, at <http://news.bbc.co.uk/2/hi/americas/4442988.stm>.

white phosphorus but has declined to draw any conclusions until the completion of an official government probe that is being led by opposition leader Aung San Suu Kyi.⁹²

On the same day that the security forces attacked protesters at the Letpadaung Mine, police in Rangoon arrested six leaders of a rally in support of the mine demonstrators. These leaders were charged under Sections 18 and 505(b) of the Penal Code for “inciting unrest and disturbing public tranquility.”⁹³ Other Monywa protesters had previously been detained in September for demonstrating against the mine.⁹⁴

III. Policy Opportunities

The trends outlined above demonstrate the need for an economic approach to Burma that avoids contributing to destabilizing land confiscations and does not encourage projects with a high likelihood of human rights abuses. While economic reengagement in Burma does present tremendous human rights risks, it also creates opportunities for U.S. policy makers to lead the world in managing those risks. This Section of ERI’s testimony focuses on two of these opportunities: the Reporting Requirements for Responsible Investment in Burma, and U.S. participation in the governance of international financial institutions.

A. Reporting Requirements for Responsible Investment in Burma

On July 11, 2012, the U.S. Treasury issued General Licenses No. 16 and 17 for doing business in Burma, broadly waiving investment and financial services sanctions⁹⁵ and proposing a mandatory reporting regime for U.S. persons investing in Burma. The Reporting Requirements for Responsible Investment in Burma (“Reporting Requirements”) have yet to be finalized; the final comment period under the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, ends on March 25, 2013.⁹⁶ When finalized, the Reporting Requirements will require all U.S. persons with investments in Burma totaling \$500,000 or more to submit annual reports to the U.S. State Department. Information on investors’ human rights, labor, environmental, anti-corruption, stakeholder engagement, and land acquisition policies and practices, as well their security arrangements and payments to the Burmese Government, are subject to public disclosure, although investors may redact information and disclose it confidentially to the State Department if they believe it to be privileged and confidential commercial information that would be exempt from disclosure under the Freedom of Information Act. Information on investors’ contacts with the military and the steps they have taken to mitigate human rights, labor, environmental, and corruption risks will be submitted in confidence to the State Department.⁹⁷

1. Importance of the Reporting Requirements

⁹² *Myanmar rejects ‘white phosphorus’ claim report*, AGENCE FRANCE-PRESSE, Feb. 16, 2013, at <http://www.google.com/hostednews/afp/article/ALeqM5hQxTJQhN1kHIFr37KKIdLIoj882w?docId=CNG.6988c5e89d951a9cbbd78bddff02d02.4d1>.

⁹³ *Burmese riot police crack down on anti-mining protest*, IFEX, Nov. 29, 2012, at http://www.ifex.org/burma/2012/11/29/copper_mine_protest/.

⁹⁴ Ingin Naing & Khet Mar 2012, *supra* note 86.

⁹⁵ Sanctions remain in place for transactions or investments with persons whose property is blocked, as well as with the Myanmar military, other armed groups, and companies owned by the military or armed groups. See U.S. Dep’t of the Treasury, Office of Foreign Assets Control, General License No. 17 – Authorizing New Investment in Burma, ¶ (c) & (d) (July 11, 2012).

⁹⁶ Because the Reporting Requirements mandate private persons to submit information to the U.S. Government, they are subject to approval by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act. At the close of the current 30-day public comment period, OMB will decide whether to approve them.

⁹⁷ See U.S. State Dep’t, *Reporting Requirements on Responsible Investment in Burma*, at <http://www.humanrights.gov/wp-content/uploads/2013/02/Burma-Reporting-Requirements.pdf>, also attached as Annex D.

In his May 17, 2012, communication to Congress, President Obama declared that a national emergency still exists with respect to Burma,⁹⁸ justifying an Executive Order continuing application of economic sanctions and investment restrictions. This Order is based on the prevalence of human rights abuses and ethnic conflict in Burma, which present an extraordinary risk to US foreign policy.⁹⁹

Based on the evidence cited above, it is clear that the decision to waive these sanctions and allow U.S. investment in Burma creates a substantial risk that U.S. investment will facilitate human rights abuses. The Reporting Requirements are a valuable means of both monitoring and advancing human rights and political reforms, consistent with the U.S. Government's foreign policy priorities in Burma. ERI is primarily concerned with ensuring that U.S. investment in Burma does not contribute to human rights abuses and believes that the proposed disclosure regime will help the U.S. Government, civil society, and Burmese communities themselves to assess and mitigate the negative impacts of corporate activity.

Importance for the U.S. Government

The Reporting Requirements are an important tool that will assist the State Department in carrying out U.S. foreign policy goals in Burma. The information provided to the State Department will allow it to evaluate whether the decision to allow new investments is supporting or undermining U.S. efforts to advance human rights and political reform in Burma, consistent with U.S. foreign policy goals. The State Department will be able to analyze important indicators, including the extent to which investments are concentrated in industries or geographic areas associated with human rights abuses, whether companies have appropriate policies in place to address potential consequences, and whether mitigation and remediation efforts have been undertaken.

The disclosures will also enable the State Department to identify and engage with investors whose operations and policies pose a risk of contributing to human rights abuses, corruption, and armed conflict. The State Department should be especially concerned about investments in sectors that pose a high risk of exacerbating the national emergency in Burma, such as extractive industries and plantation agriculture. Similarly, investment in particular geographic regions – ethnic minority areas, conflict zones and zones of great environmental value and sensitivity – may contribute to violence or the illegal trade in natural resources. The basic information about investors' activities in Burma will make it possible for the government to focus on investors who engage in unusually risky activities without appropriately robust policies and procedures for identifying, mitigating, and remedying the risks. The public component of these reports is especially important, because the Bureau of Democracy, Human Rights and Labor does not have the resources to investigate every investment project, and will need to rely on civil society groups within and outside Burma to assist in identifying projects of concern.

The information reported will also be important for other bureaus – both within and outside the State Department – that engage with the Burmese Government and seek to assist in the development of strong institutions and the resolution of conflict. This vital engagement would not be possible without an understanding of economic activity in various sectors and the Burmese Government's receipts from foreign investment.

While the information contained in the required disclosures is not typically considered confidential, much of it would otherwise be difficult or impossible to obtain. For example, payments to the Burmese Government, including problematic agencies such as MOGE, are completely nontransparent. Information about security arrangements is not publicly available either. In ERI's experience, foreign companies operating in Burma decline to disclose information about security not because they are contractually obligated to keep such arrangements confidential, but for fear of embarrassment or of alienating the Burmese Government. Similarly, environmental, social and human rights impact assessments, resettlement and land acquisition policies are generally not made public, despite the obvious legitimate interest of affected local populations in such information.

⁹⁸ President Barack Obama, *Notice – Continuation of the National Emergency with Respect to Burma*, *supra* note 11.

⁹⁹ Exec. Order No. 13,619, 77 Fed. Reg. 41,243 (July 11, 2012).

Importance for civil society

Civil society organizations will utilize disclosures to engage with investors on human rights and conflict issues, to monitor corporate activities, and to raise concerns with the U.S. Government that will in turn further assist the State Department and other agencies to target particular investors for investigation and engagement.

Disclosure of payments made to the Burmese Government, for example, will enable civil society inside and outside of Burma to monitor the government's use of investment revenue and address well-founded concerns that government revenues resulting from foreign investment are not used for the public benefit. Such information will advance efforts to overcome Burma's legacy of opaque budgets, rampant corruption, and diversion of government revenues by the military. This information will empower civil society within Burma to press the government to allocate revenue fairly, consistent with the government's obligations to uphold economic and social rights. Information about the government's income from foreign investment would be unavailable without the Reporting Requirements. The only other source for even a portion of this information will be the disclosures mandated by U.S. Securities and Exchange Commission's recently approved revenue transparency rules, which apply only to publicly traded oil, gas and mining companies.¹⁰⁰ The Reporting Requirements will supplement the SEC disclosures with information from *both public and privately held* U.S. persons investing in *all* sectors.

In addition to helping to stop human rights abuses, promote transparency, and ensure corporate accountability, the publicly available information will also enable civil society groups such as ERI to share knowledge, expertise, and recommendations, including sector or issue-specific standards for responsible business practices, with reporting companies. The reports could prompt constructive dialogue and action to prevent human rights abuses from occurring in the first place, and could help to hold investors accountable when abuses do occur. Groups will also use the disclosures to seek mitigation for the corruption and human rights abuses that may be associated with U.S. investment, as ERI did when it raised evidence of the diversion of gas revenues to offshore accounts with the U.S. Government.¹⁰¹

In Burma, local communities often have little information on the ownership structures of foreign investors. Foreign companies may operate through local subsidiaries, partners, contractors, and subcontractors, increasing the challenges for local communities to identify those responsible for negative impacts and those with the power to change them. Disclosures on operations, partners, subcontractors, and suppliers will greatly assist local communities and civil society to engage with investors. ERI works closely with fact-finders, attorneys and, other community advocates in Burma; in situations where the business partners and affiliates of U.S. investors are contributing to conflict, human rights, abuses, and corruption, the information disclosed will assist ERI and its partners to identify the investors and engage them on policies and practices that would better prevent or mitigate such negative outcomes.

Overall, the publicly available information about U.S. investment will contribute to civil society's efforts to demand greater transparency and accountability of the Burmese Government to its citizens and improved respect for rule of law.

2. Weaknesses in the Reporting Requirements

¹⁰⁰ U.S. Sec. & Exch. Comm'n, *Disclosure of Payments by Resource Extraction Issuers*, 77 Fed. Reg. 56,365 (Sept. 12, 2012). Reporting under these requirements is due to begin in the spring of 2014, at the earliest.

¹⁰¹ Importantly, ERI's ability to estimate the diversion of funds and trace the payments was made possible in part by documents made public through the *Doe v. Unocal* litigation. Without the Reporting Requirements, such information is unlikely to be available in future cases.

The Reporting Requirements are a significant step toward a responsible foreign investment regime in Burma, but they are not perfect. The current draft of the Reporting Requirements¹⁰² reflects submissions made by various stakeholders during a 60-day notice and comment period in August and September 2012.¹⁰³ Although the latest revisions have clearly improved the original draft in ways that will better assist both the U.S. Government and civil society to evaluate U.S. investment in Burma, the Reporting Requirements continue to suffer from a number of fundamental weaknesses that limit their effectiveness and undermine what would otherwise be meaningful incentives for companies to use responsible business practices.

Risk of excessive withholding of information from the public

As currently drafted, the Reporting Requirements allow investors to withhold information from their public reports if they conclude that it contains privileged and confidential commercial or financial information or trade secrets that would be exempt from disclosure under the Freedom of Information Act.¹⁰⁴ This provision threatens to weaken the utility of the reports because it is the investors, not the government, that decide whether information should be withheld from the public, and there is no procedure to challenge this decision.

From ERI's experience, investors in Burma are often reluctant to report on issues that touch on their relations with the Burmese Government, either for fear of disclosing information that could subject them to public criticism, or based on a misguided belief that disclosure will disadvantage them in their access to commercial opportunities. For example, in 2010, Chevron claimed it was unable to disclose payments to the Burmese Government, insisting that "contractual obligations related to the Yadana Project do not permit disclosure of payments or other confidential information relative to the Project."¹⁰⁵ Yet Chevron's joint venture partner, Total, has disclosed some of the same information that Chevron refuses to; moreover, the Yadana Project contracts became public through the *Doe v. Unocal* lawsuit, and no such prohibition on disclosure of payments appears in them.

By allowing investors complete discretion to determine which information should be withheld, the State Department lends credence to these false claims of confidentiality and risks empowering businesses to hide any information that might be seen as controversial. Civil society organizations, which otherwise would have the ability to fact-check company reports, will be unable to do so for information that investors choose – correctly or incorrectly – to designate as confidential, undermining what would otherwise be a powerful incentive for companies to provide full and accurate disclosures. Civil society cannot play the integral role envisaged by the State Department in monitoring U.S. investment in Burma if they cannot see all required disclosures, including the information submitters would prefer not to disclose.

The Reporting Requirements also allow investors to withhold from their public reports information on communications with the Burmese military and measures taken to mitigate risks, despite the fact that this information is important for informed engagement by civil society. Military communications are relevant to the public debate because, as detailed in the evidence cited above, human rights abuses occur with alarming frequency in Burma when security forces act to protect corporate operations. In many cases, civil society groups, especially groups inside Burma, will have greater knowledge than the State Department or the companies themselves about the operations of particular military units, but they cannot assist in identifying risks and potential problems without information on which military commanders and units are involved in which projects. Likewise, the public must know whether an investor carried out due diligence regarding human rights, workers'

¹⁰² U.S. State Dep't, *Reporting Requirements on Responsible Investment in Burma*, at www.humanrights.gov/2013/02/22/reporting-requirements-on-responsible-investment-in-burma/ (last updated Feb. 22, 2013).

¹⁰³ See U.S. State Dep't, *60-Day Notice of Proposed Information Collection: Reporting Requirements on Responsible Investment in Burma*, 77 Fed. Reg. 46,786 (Aug. 6, 2012).

¹⁰⁴ See 5 U.S.C. § 552(b)(4) (FOIA exemption 4).

¹⁰⁵ Chevron Corp., *Response to "A Call for Total, Chevron, and PTTEP to Practice Revenue Transparency in Burma (Myanmar)"* (May 24, 2010), at <http://www.reports-and-materials.org/Chevron-response-re-revenue-transparency-Burma-24-May-2010.pdf>.

rights or environmental risks and whether any risks or actual impacts were identified in order to promote responsible business conduct in Burma.

Moreover, by allowing companies to hide from public view the impact risks that they identify, the Reporting Requirements fail to meet at least two international standards that are officially endorsed by the United States: the OECD Guidelines on Multinational Enterprises (“OECD Guidelines”), which require timely disclosure of environmental and other risks to affected parties,¹⁰⁶ and the UN Guiding Principles on Business and Human Rights (“GPs”), which counsel the public communication of steps taken to mitigate human rights risks.¹⁰⁷

Inconsistent application to business partners, subsidiaries, and related entities

The Reporting Requirements refer inconsistently and ambiguously to business partners, subsidiaries, affiliates, and other related entities. The current draft of the Reporting Requirements mandates disclosure on whether and to what extent an investor’s human rights, workers’ rights, and environmental policies and procedures are required of or communicated to subsidiaries, subcontractors and other business partners. This requirement is, however, inexplicably omitted for other required information, such as security arrangements and property acquisition policies.

Without information on *all* related entities over which investors have control or significant influence for *all* matters, neither the U.S. Government nor civil society will be able to take the full measure of the impact of an investor’s activities in Burma. Moreover, this approach is inconsistent with both the OECD Guidelines and the GPs, which mandate an approach that covers impacts incurred through all forms of business relationships.¹⁰⁸

Lack of clarity on enforcement

The collection of information through the Reporting Requirements is authorized under section 203(a)(2) of the International Emergency Economic Powers Act, and the obligation to respond is mandatory for companies investing in Burma. Violations of the Reporting Requirements are subject to enforcement by the U.S. Treasury Department’s Office of Foreign Assets Control.¹⁰⁹ The Reporting Requirements do not, however, clearly state what penalties would apply if a company provided incomplete or inaccurate information, or failed to report at all.

Insufficient focus on outcomes

The Reporting Requirements focus overwhelmingly on policies and processes without clearly mandating reporting on concrete outcomes.¹¹⁰ Companies’ reporting should address how policies and procedures are implemented and with what result. This further information would be critical for the U.S. Government and civil society to ascertain whether particular investments are contributing to human rights abuses.

Omission of Free, Prior, and Informed Consent (FPIC)

Stakeholder engagement is critical to all phases of a project, and all current international standards and best practices stress the importance of meaningful stakeholder engagement. This is particularly true when a project may affect vulnerable populations, such as ethnic minorities, women, and indigenous peoples.

¹⁰⁶ OECD Guidelines for Multinational Enterprises, Ch. VI. Environment, ¶ 2(a) (2011).

¹⁰⁷ Prof. John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, Principle 21, U.N. Doc. A/HRC/17/31 Annex (Mar. 21, 2011).

¹⁰⁸ See OECD Guidelines, *supra* note 106, Ch. IV – Human Rights, ¶ 3; GPs, *supra* note 107, Principle 13(b).

¹⁰⁹ See OFAC, General License No. 17, *supra* note 95, ¶ (e).

¹¹⁰ The only exception is Reporting Question 7(d), which requires investors to report on compensation arrangements to previous owners of land. Reporting Question 11 requires investors to report confidentially on measures taken to mitigate risks, but this response will not be disclosed to the public, nor will it necessarily address the *outcomes* of such measures.

The U.S. Government announced its support for the U.N. Declaration on the Rights of Indigenous Peoples in January 2011, including a recognition of “the significance of the Declaration’s provisions on free, prior and informed consent, which the United States understands to call for a process of meaningful consultation.”¹¹¹ Unfortunately, this stated support has not made its way into all aspects of administration policy, including the Reporting Requirements. The current draft makes no direct reference to practices or policies regarding free, prior and informed consent (FPIC), other than a footnote directing companies to look to Performance Standard 7 of the International Finance Corporation. Nor do the Reporting Requirements include disclosure of impacts on indigenous communities in particular. This omission is troubling in light of the U.S. Government’s longstanding recognition that human rights abuses against ethnic minority communities are of particular concern in Burma.

B. International Financial Institutions

As Western countries have proceeded toward economic reengagement with Burma, international financial institutions (IFIs) – in particular, the World Bank and the Asian Development Bank (ADB) – have rapidly moved to reestablish normal operations that include the development of interim country strategies, economic sector assessments, and project grants. While much work needs to be done in this early phase, there are indications that the World Bank, at least, is moving hastily and without due attention to stakeholder engagement and the risks of human rights abuses such as forced displacement.

For the last two decades, Burma has been ineligible for investment lending due to massive accumulated arrears at both the World Bank and ADB.¹¹² Furthermore, U.S. law required the U.S. Executive Director in each IFI to vote against assistance to Burma – a policy that was, in practice, sufficient to block any loan – subject to presidential waiver.¹¹³ In October 2012, however, U.S. policy shifted with the enactment of a law allowing the U.S. to support IFI assistance to Burma.¹¹⁴ Continued oversight is needed, however, to ensure that this assistance is constructive.

From the beginning of the IFIs’ reengagement in Burma, civil society groups have met with the IFIs’ Executive Directors and Management, reiterating the need for broad and meaningful stakeholder engagement. They have also raised the inadequate access to and amount of information about assessment reports, consultation missions, and project preparations; and the mitigations measures included in particular projects. For example, civil society organizations in Burma were largely excluded from the process of developing the World Bank’s Interim Strategy Note (ISN) for Burma.¹¹⁵ According to the Bank Information Center, the primary IFI watchdog group, local groups had little access to information about the ISN and were hardly involved in formal consultations¹¹⁶ until they publicly urged the World Bank Board of Directors and Management to include them. In addition, more than 50 Burmese civil society and ethnic organizations from various parts of Burma as well as the Thai-Burma border area submitted substantive recommendations to the strategic pillars of the draft ISN.¹¹⁷ Despite copious

¹¹¹ See *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, Jan. 12, 2011, at <http://www.state.gov/s/srgia/154553.htm>.

¹¹² See *ADB, World Bank to step up work in Myanmar after arrears paid*, REUTERS, Jan. 27, 2013, at <http://www.reuters.com/article/2013/01/27/us-myanmar-economy-adb-idUSBRE90Q0CJ20130127>.

¹¹³ See CRS 2012, *supra* note 8 at 34.

¹¹⁴ Pub. L. No. 112-192, 126 Stat. 1441 (2012).

¹¹⁵ The World Bank prepares ISNs “in countries re-engaging after extended periods of time, or going through significant political or economic change.” The ISN is used to guide the Bank’s actions pending the completion of a medium-term assistance strategy. World Bank, *World Bank Prepares Interim Strategy Note for Myanmar*, Aug. 10, 2012, at http://www.worldbank.org/en/news/feature/2012/08/10/world-bank-prepares-interim-strategy-note-for-myanmar?cid=EAP_TwitterWorldBankAsia_P_EXT.

¹¹⁶ See Letter from Burmese Civil Society Organization to World Bank Directors, Aug. 7, 2012, reproduced at Bank Information Center, *World Bank finally posts the summary ISN for Burma after CSO demands*, Aug. 15, 2012, at <http://www.bicusa.org/updates/world-bank-finally-posts-the-summary-isn-for-burma-after-cso-demands/>.

¹¹⁷ See *Recommendations from Burma Civil Society on the World Bank Group’s*

constructive propositions from non-state actors, the World Bank neither responded with a written reply and nor committed to reflect any of the collective recommendations in the final ISN.

Similar concerns have arisen with respect to the World Bank's first project investment in Burma in twenty-five years: the \$86.3 million National Community Driven Development Project.¹¹⁸ Since early 2012, local Burmese civil society organizations have repeatedly called on the Bank to involve them in its conflict diagnosis and in developing its consultation strategy to shape the structure and mitigation measures of the project, which involves infrastructure, livelihood and social services in approximately 3200 poor and conflict-affected villages. In late October, local Burmese civil society organizations filed an official complaint with the Bank's Inspection Panel, alleging that despite the Bank's claims of broad and ample consultation,¹¹⁹ the Bank rushed the project through the approval process without conducting adequate consultation or complying with mandatory disclosure and safeguard policies.¹²⁰ The World Bank justified the project's hasty design and the lack of public comment for appraisal documents on the basis that 1) the fund can only be accessed as a "pre-arrears clearance" grant, and 2) the project responds to a rapid emergency or disaster, a claim on which Bank failed to elaborate. Rather than engaging with the organizations' concerns, Bank officials have instead accused them of "blocking aid for the people."¹²¹

One particular concern is that the Bank has not developed an adequate resettlement framework or an indigenous peoples' plan, should communities choose to use their funding for projects that would require compulsory land acquisition. Instead, the Bank simply assumes that "the need for land acquisition is likely to be limited" and notes that if land were to be acquired, it should either be donated voluntarily by the landholder or compensated "at replacement cost" by "the communities."¹²² Sub-projects that do involve land acquisition are governed by the project's Environmental and Social Screening and Assessment Framework (ESSAF), but the ESSAF is problematic in several aspects; it repeats the emphasis on "voluntary land donations," and seems to contemplate compensation only for farmers who have title to their land.¹²³

Given the history and current frequency of forcible displacement for development projects in Burma, it seems overly optimistic to predict that local officials will not choose projects that require displacement, that landholders will voluntarily donate their land, that communities will have adequate funds to compulsorily purchase land, or that compensation will proceed in an orderly and just manner without more careful planning.¹²⁴

¹¹⁸ See generally The World Bank, *Myanmar National Community Driven Development Project*, at <http://www.worldbank.org/projects/P132500/myanmar-national-community-driven-development-project?lang=en>.

¹¹⁹ See, e.g., The World Bank, *Myanmar National Community Driven Development Project Consultations Schedule*, Dec. 20, 2012, at <http://www.worldbank.org/en/news/feature/2012/12/20/myanmar-national-community-driven-development-project-consultations-schedule>.

¹²⁰ See Burma Partnership, *World Bank Breaches Own Policy and Ignores Civil Society's Request for Postponement of Project*, Nov. 6, 2012, at <http://www.burmapartnership.org/2012/11/world-bank-breaches-own-policy-and-ignores-civil-society/>.

¹²¹ *Id.*

¹²² The World Bank, *Myanmar Community Driven Development Project Consultations Summary*, Jan. 23, 2013, at <http://www.worldbank.org/en/news/feature/2013/01/23/myanmar-cdd-project-consultations-summary>.

¹²³ See Government of the Republic of the Union of Myanmar, *National Community Driven Development Project, Environmental and Social Screening and Assessment Framework*, October 2012, at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/10/12/000356161_2012101201223/Rend ered/PDF/E40320P132500000disclosed0100100120.pdf.

¹²⁴ Another civil society concern has been the suggestion by Burmese government officials that World Bank funding would be used to develop "model villages." See *World Bank to fund 'model villages' in Burmese townships*, MIZZIMA NEWS, Aug. 16, 2012, at <http://www.mizzima.com/business/7770-world-bank-to-fund-model-villages-in-burmese-townships.html>. Model villages were historically associated with forced labor, economic displacement, land grabbing, famine, and social fragmentation in military-run Burma. See, e.g., HUMAN RIGHTS WATCH, *BURMESE REFUGEES IN BANGLADESH: STILL NO DURABLE SOLUTION* 12 (May 2000). The World Bank asserts that project funding will *not* be used for model villages. The World Bank, *Myanmar Community Driven Development Project Consultations Summary*, *supra* note 122.

The use of the term “voluntary” is especially troubling, given that the Burmese military regime long referred to forced labor as “voluntary labor.”¹²⁵

Although the World Bank has conducted some civil society consultations, its efforts are hampered by the fact that a large number of civil society groups and community-based organizations inside Burma are unregistered, which makes them ineligible to participate in government-run development initiatives such as the Community Driven Development Project. The Bank’s response to this problem has been to suggest that the Burmese Government would assist these groups to register,¹²⁶ which ignores the fact that many groups have remained unregistered due to security concerns.

Burmese civil society groups have called for the IFIs to develop comprehensive consultation strategies as they restart project lending in Burma. They have sought the assistance of the U.S. Congress in ensuring that this occurs in a manner that is consistent with international standards, and in particular with the definition of “meaningful consultation” included in the ADB’s 2009 Safeguards Policy Statement.¹²⁷ The ADB has responded to this call for more adequate stakeholder engagement by agreeing to work with local organizations to design a stakeholder analysis and communications and participation strategy; the World Bank has declined to follow suit and instead continues with the same consultation practices that have raised such concern among Burmese civil society.¹²⁸

IV. Recommendations

This Commission and the U.S. Congress can better prevent and mitigate the human rights risks of U.S. economic reengagement in Burma by taking the following steps

- Reauthorize the President’s power to impose the full range of economic sanctions on the Burmese Government and individuals in case of complicity in human rights abuses, as necessary.
- Prohibit U.S. Government entities – e.g., the Export-Import Bank, the Overseas Private Investment Corporation, and the Department of Commerce – from providing assistance to U.S. or foreign persons who are complicit in human rights abuses in Burma.
- Protect and strengthen – as necessary – U.S. laws that provide accountability for corporations that are complicit in human rights abuses in Burma, such as the Alien Tort Statute.
- Conduct further hearings on U.S. companies and human rights abuses and risks associated with oil and gas pipelines and plantation agriculture in Burma.

¹²⁵ See, e.g., U.S. Dep’t of Labor, Bureau of Int’l Labor Affairs, *Report on Labor Practices in Burma*, September 1998 (noting that “more than eighty major infrastructure projects have been identified which were reported to have been built with contributions of ‘voluntary labor’”), at <http://www.dol.gov/ILAB/media/reports/ofr/burma1998/main.htm>.

¹²⁶ See *Myanmar Community Driven Development Project Consultations Summary*, *supra* note 122.

¹²⁷ See E-mail from Jolie Schwarz, Legislative Affairs Research Assistant, Bank Information Center, to Aaron Ranck & Daniel McGlinchey, U.S. House of Representatives Financial Services Committee Senior Professional Staff (Dec. 17, 2012, 9:34 p.m. EST), on file with ERI. According to the ADB, “meaningful consultation” is a process that:

- (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation and coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.” ADB, Safeguard Policy Statement, Appendix 2, ¶ 28 (June 2009).

¹²⁸ Interview with Jelson Garcia, Asia Program Manager, Bank Information Center (Feb. 21, 2013).

- Exercise their power over appropriations to IFIs to require the U.S. Executive Directors for the World Bank and the ADB to use their vote to support comprehensive stakeholder engagement and consultation strategies.
- Exercise their power over appropriations to IFIs to require the U.S. Executive Directors for the World Bank and the ADB to use their vote to support reform of Burma's new land administration laws to better protect small farmers and ethnic minorities.

ANNEX A

Unofficial Translation

Farmland Law

(Pyidaungsu Hluttaw Law No.11 of 2012)

Day of 8th Waxing of Tagu 1373 ME

(30th March, 2012)

The Pyidaungsu Hluttaw enacted this Law.

CHAPTER I.

NAME, ENFORCEMENT AND DEFINITIONS

1. This Law shall be called the Farmland Law.
2. This Law shall enforce on the date as the President of the Republic of the Union of Myanmar may, by notification, direct.
3. The following expressions contained in this Law shall have the meaning given here under:
 - (a) "farmland" means designated lands as; paddy land; ya land; kiang land; perennial plant land; dhani land; garden land; land for growing of vegetables and flowers; and alluvial island. In this expression, it does not include land situated within any town or village boundary used for dwelling, religious building and premises, and public - owned land which is not used for agriculture purpose;
 - (b) "paddy land" means land mainly grow for rice paddy, rain fed or irrigated.
 - (c) "alluvial island" means land has flooded yearly and it's land texture and location can vary in accord with water channel.

- (d) "right for farming" is defined that as the State is original owner of all lands, giving permission for farming in conformity with this law and bylaw, rule and regulation of this law so that agricultural production capacity develop, excluding exploring gems, mines, petroleum, gas and natural resources below and above ground;
- (e) "agriculturist" means any person who is in compliance with any one of the following conditions:-
- (1) is or was engaged in agriculture (or) livestock breeding (or) both as his principal means of livelihood (or) ;
 - (2) supervises the land use for agriculture (or) livestock breeding (or) both as his principal means of livelihood during years concerned;
 - (3) invests capital and engages directly or supervises in the production of seasonal crops, orchard, perennial crops (or) commercial livestock breeding as his principal means of livelihood (or);
 - (4) engaged in agriculture (or) livestock breeding;
 - (5) using farmland for producing (or) breeding and selling of sapling, seed, and breeding in for agriculture production and livestock breeding purposes;
- (f) "agricultural household " means a group of persons related by blood or marriage, living together as a household of whose head thereof, who shall be an agriculturist ;
- (g)"head of household" means any principal member of a household who leads the household activities;
- (h) "repair to gain progress by building" means raising values of land at present land owner's expense or one currently using land's expense or with his or her working power. The amendment also comprises place for one who works agricultural process or buildings, canals, dams, lakes, wells, embankments, roads and other facilities, excluding, but, land clearing works and procedures not for perpetual development;
- (i) "guardian" is defined as one who was vested with authority to keep under-age person or lunatic or their possessions by authoritative court;
- (j) "peasant organization" is the one that is formed to help rural development in conformity with law;
- (k)"Ministry" means the Ministry of Agriculture and Irrigation;

(l) "Department" means the Settlement and Land Records Department;

CHAPTER II.

RIGHT FOR FARMING

4. A person who has the permission of right to use farmland shall have to apply for getting the Land Use Certificate to the Township Land Records Department Office passing it through the relevant Ward or Village Tract Farmland Management Body.
5. With respect to Section 4 of this law, the Office of Township Land Records Department shall scrutinize and submit the cases of right to use farmland to the relevant Township Farmland Management Body.
6. The Township Farmland Management Body shall issue the Land Use Certificate to the following person or organization with respect to existing farmland on the day of enforcement date of this law, by the approval of District Farmland Management Body, after paid the prescribed registration fees and registered at the Township Land Records Department's Office:
 - (a) If a person who has right for farming shall be;
 - i. an agricultural household (or) member of the household;
 - ii. head of the household (or) a member of the household (or) guardian who is legally holding and working the land in accordance with existing land law, before this law has been enacted;
 - iii. the legal beneficiary either in accordance with this law or rules deriving from this law after its enactment ;
 - iv. completed the age of eighteen years;
 - v. a citizen or guest-citizen or naturalize-citizen
 - (b) If an organization; Government Department (or) Government Organization (or) Non Government Organizations (or) Company shall had been right for farming.
7. After this Law has enacted, the Township Farmland Management Body shall issue the Land Use Certificate to the following person or organization with respect to revoking farmland and land reclamation by the State, with the approval of District Farmland Management Body, after paid the prescribed registration fees and registered at the Township Land Records Department's Office:
 - (a) If a person shall be;
 - i. engaged in agricultural process using land

- ii. lived in relevant ward or village tract as a resident
 - iii. completed the age of eighteen years;
 - iv. a citizen or guest-citizen or naturalize-citizen
- (b) If an organization; Government Department (or) Government Organization (or) Non Government Organizations (or) Company shall be actually to work with a will for farming.
8. The Township Farmland Management Body shall issue the Land Use Certificate to a person who receive the right for farming by buying (or) exchanging (or) giving (or) inheritance in accordance with the provision of this Law (and) a person who has got the grant of right to do, (and) right to utilize the vacant, fallow and virgin land may apply in accordance with this Law whenever cultivation is completed, after paid the prescribed registration fees and registered at the Township Land Records Department's Office.

CHAPTER III.

RIGHTS RELATING TO PERMITTED FARMS

9. The following rights shall be enjoyed in connection with the right for farming:
- (a) right to have such land in hand, right for farming and gain benefit of such farm;
 - (b) right to sell, pawn, lease, exchange, or donate, in whole or in part of the right for farming in accord with prescribed disciplines;
 - (c) disputes arising out of inheritance of farmland shall be decided upon by the law respective court in accord with existing law;
 - (d) the duration of the right for farming shall continue so long as the stipulated conditions are not breached;
 - (e) land development operation are to be carried out by doing joint-venture with the investment of rural cooperative association or private investors;
 - (f) in accordance with Foreign Investment Law, foreigner or organization containing foreigner are to be carried out by doing joint-venture;
10. The provisions under the section 4,5,6,7,8 and 9 of this law shall not apply to the allocation of alluvial land
11. The disposal of alluvial land can be effected by means of prescribed rules.

CHAPTER IV.

CONDITIONS IN RESPECT OF THE RIGHT TO WORK FARMLAND

12. The following conditions shall be complied with in respect of the right to work farmland: -
- (a) any person shall work farmland in accordance with the provisions of this law;
 - (b) land-tax and other taxes in respect of farmland assessed by the Ministry shall be paid;
 - (c) It is needed to register at related department with fee when the process such as selling, pawning, lending, and donation of right to work farmland is carried out, and the prescribed stamped-duty and registration of deed fees shall be paid;
 - (d) Whenever inheriting of completely handing over of lands is carried out in accordance with existing law, It is needed to register at related department in accord with prescribed conditions;
 - (e) "pawning" is permitted to acquire investment for agricultural production only, by means of pawning the farmland with a government bank (or) authorized bank;
 - (f) farmland shall not be worked without the permission of the relevant farm management body;
 - (g) farmland is prohibited using for non-agriculture purpose without permission;
 - (h) farmland is prohibited to grow other crop from regular crop without permission;
 - (i) farmland shall not be fallow without a sound reason;
 - (j) during the period of before getting the right for farming or disputing the right for farming, selling, pawning, lending, exchange or donation of right for farming farmland is prohibited;
13. After this Law enacted, whenever land dispute happens, registered farmland at the department can do official solution.
14. A person who has the permission of right for farming should not be sold, pawned, leased, exchanged or donated to any foreigner or organization containing foreigner without the permission of State Government

CHAPTER V.

FORMATION OF FARM MANAGEMENT BODIES

15. The Union Government may form: -
- (a) The Central Farmland Management Body with the Union Minister for Ministry of Agriculture and Irrigation as a Chairman, Deputy Minister for Ministry of Agriculture and Irrigation as Vice Chairman, Director General for the Settlement and Land

Records Department as Secretary and the relevant government department officials as members of the body;

- (b) The Central Farmland Management Body constituted under the above paragraph (a), can be reconstituted when necessary;

16. The Central Farmland Management Body may form:

- (a) the following farmland management bodies at various levels
 - i. Region or State Farmland Management Body;
 - ii. District Farmland Management Body;
 - iii. Township Farmland Management Body;
 - iv. Ward or Village Tract Farmland Management Body;
- (b) the farmland management bodies at various levels constituted under the above paragraph (a), can be reconstituted when necessary;

CHAPTER VI.

DUTIES AND AUTHORITY OF THE CENTRAL FARMLAND MANAGEMENT BODY

17. The duties and authority of the Central Farmland Management Body are prescribed as follows:

- (a) to prescribe the duties and authority of the farmland management bodies at various levels for the Region or State, District, Township and Ward or Village Tract;
- (b) to give guidance and control in respect of registration the right for farming, issuing the

Land Use Certificate, giving the right for farming and solving land dispute;

- (c) to give guidance and control in respect of selling, pawning, leasing, exchange and donation the right for farming;
- (d) revoking the right for farming in accordance with this Law under the section 19 subsection (c) and (d), section 31 and section 37;
- (e) to scrutinize and approve the submission of Region or State Farmland Management Body in respect of using the farmland to be required for human settlements and housing in rural and urban area in which population and household are increasing;
- (f) to scrutinize and approve the submission of Region or State Farmland Management

Body in respect of using the farmland to be required for school, health center, hospital, clinic, library, bazaar, cemetery, and other buildings to develop social life of the rural people;

- (g) to scrutinize and approve the submission of Region or State Farmland Management Body in respect of using the farmland to be required for agricultural sector development transition from primitive farm to modernize farm mechanization in which warehouse, rice mill, silo, godown, farm road and other buildings were needed to be established;
- (h) to give guidance and control in respect of the allocation of alluvial land and prescribe the policy relating to right for farming;
- (i) to give guidance and control in respect of shifting Taungya cultivation;
- (j) to perform the duty assigned by Union Government in respect of farmland periodically;

18. In accordance with the provisions of this law, the Central Farmland Management Body may delegate authority to the appropriate Farm Management Body for the purpose of farmland valuation in respect of local conditions and current prices related to registration of deeds, transfer of the right for farming which shall be compulsory registered at the office of relevant department in the presence of witness of the Ward or Village Tract Farm Management Body.

CHAPTER VII.

TAKING ACTION ON BREACH OF CONDITIONS

19. If the conditions prescribed in section 12 of this law are not met in all or anyone, the Farmland Management Body appointed by the Ministry in this behalf shall, after making enquiry in accordance with the rules made under this Law, decide one or more than one of the following orders:

- (a) to be paid the prescribed fine;
- (b) to be utilized the farmland in the prescribed manner;
- (c) to be evicted from farmland;
- (d) to be removed the buildings which were built on farmland without permission;

20. If whosoever having the right for farming under this law, fails to obey the order issued by the Farmland Management Body in accordance with this law under section 19, shall accuse to the respective court after the deadline-date is over.

21. Whosoever who having the right for farming under this law, fails to pay revenue levied by the Ministry, recovery shall be made of such revenue under the law as if it were an arrear of land revenue.

CHAPTER VIII.

DECIDING LAND DISPUTES IN RESPECT OF THE RIGHT FOR FARMING AND APPEAL

22. Land disputes in respect of the right for farming shall be decided by the Ward or Village Tract Farmland Management Body, after opening the case file and making actions such as enquiry and hearing about the land disputes.

23.

- (a) Whosoever may appeal to the respective Township Farmland Management Body against within 30 days from the date of decision made by the Ward or Village Tract Farmland Management Body in accordance with the section 22 of this law;
- (b) Township Farmland Management Body may approve (or) revise (or) cancel the decision made by the Ward or Village Tract Farmland Management Body;

24.

- (a) Whosoever may appeal to the respective District Farmland Management Body against within 30 days from the date of decision made by the Township Farmland Management Body in accordance with the section 23 subsection (b) of this law;
- (b) District Farmland Management Body may approve (or) revise (or) cancel the decision made by the Township Farmland Management Body;

25.

- (a) Whosoever may appeal to the respective Region or State Farmland Management Body against within 60 days from the date of decision made by the District Farmland Management Body in accordance with the section 24 subsection (b) of this law;
- (b) Region or State Farmland Management Body may approve (or) revise (or) cancel the decision made by the District Farmland Management Body;
- (c) the decision made by the Region or State Farmland Management Body is final;

CHAPTER IX.

COMPENSATION AND INDEMNITY

26. Notwithstanding any provision contained in any other existing law, the Central Farmland Management Body must be coordinated with acted for suitable compensation and indemnity in the case of repossession of farmland either in the interest of the State or in the interest

of the public. Confiscated farms are to be compensated without any loss. If farm is upgraded with building, it is required to compensate for such building.

27. Whosoever shall not be entitled for getting compensation, if the right for farming or farmland was revoked by the Central Farmland Management Body in accordance with this Law under the section 17 subsection (d).

CHAPTER X.

UTILIZATION OF FARMLAND

28. In respect of application for permission to grow other crop from regular crop :-

- (a) The Central Farmland Management Body shall give permission to grow other crop on paddy land, after scrutinize the prescribed condition while rice is the main staple crop of the State and not to diminish the rice sufficiency;
- (b) The respective Region or State Farmland Management Body Shall give permission to grow other crop on farmland except paddy land, after scrutinize the prescribed condition;

29. In the long-term national interest of the State, the respective implemented Ministry shall be utilized the farmland for the Project, by the permission of the Cabinet of the Union Government after getting the remarks of the Central Farmland Management Body.

30. In respect of the application to utilize the farmland for other purposes in the interest of the public:-

- (a) The Central Farmland Management Body shall give permission to utilize the paddy land for other purposes, with the recommendation of the Region or State Farmland Management Body;
- (b) The respective Region or State Government shall give permission to utilize the farmland for other purposes except paddy land, with the recommendation of the Region or State Farmland Management Body;

31. The Central Farmland Management Body shall confiscate the farmland if the farmland is not start to use within six months in the prescribed manner from the date of permission order in accordance with the section 30 of this law, or not completed within the prescribed period.

CHAPTER XI.

FARMLAND ADMINISTRATION

32. In confiscating farms in the interests of nation, it is a must to confiscate required least measurement of farm. It is necessary to implement projects within prescribed period as soon

as possible. If projects are terminated, farms are to be given back to original legitimate farm owner (person/organization) who has right for farming.

33. Except order or summons of the Union Government or authorities appointed by the Union Government, pasture land and common village land are to remain unchanged.
34. In respect of right to do (or) right to utilize land of vacant, fallow and virgin land which was permitted by the Central Committee for the Management of Vacant, Fallow and Virgin land, for Agriculture purpose, and Livestock Poultry Farming and Aquaculture purposes, shall be considered as stable cultivated farmland under this law when crop production is stable.

CHAPTER XII.

CRIME AND PENALTIES

35. Anyone who has right for farming fails to comply with an order issued by the farm management body in accordance with the section 19, (or) decision of land dispute under this Law, shall be sentenced with imprisonment for a term which may at least six months to maximum two years with fine which may at least three hundred thousand kyat to maximum five hundred thousand kyat.
36. Anyone whomsoever that fails to comply with an order issued in accordance with the section 19 of this law shall be sentenced with imprisonments for maximum years states in section 35 of this law, if he/she has same punishment before.
37. Anyone who has right for farming breach the prohibited states in section 14 of this law, shall be sentenced with imprisonment for a term which may at least one year to maximum three years with fine which may not less than under one million kyat, and then money and materials with relate to crime shall be forfeited to the State.

CHAPTER XIII.

GENERAL PROVISIONS

38. "Agriculturists associations" are allowed to organize in accordance with the laws enacted for improvement of the socio economy of farmers.
39. Every member of the Farm Management Body at various levels constituted under this law shall be deemed to be a public servant within the meaning of section 21 of the Penal Code.
40. No suit, prosecution or other proceedings shall lie in court against any member of Farm Management Body at various levels for action carried out in conformity with this law or rules and regulations of this law.
41. Prosecution in accordance with section 37 of this law shall be deemed as Police case.

42. To undertake the provisions of this law: -

- (a) The Ministry may issue the necessary rules and regulations with approval of the Union Government;
- (b) The Central Farmland Management Body and the Department may issue necessary notifications, orders, directives and procedures;

43. This law revoked the following laws:-

- (a) 1953 Land Nationalization Act;
- (b) 1963 The Disposal of Tenancies Law;
- (c) 1963 The Agriculturist's Rights Protection Law;

I hereby signed in accordance with the Constitution of the Republic of the Union of Myanmar

U Thein Sein

The President

The Republic of the Union of Myanmar

Mr. MCGOVERN: Mr. Malinowski.

STATEMENT OF TOM MALINOWSKI

Mr. MALINOWSKI: Thank you so much, Mr. Chairman, for having us here and your continuing focus on Burma.

American policy towards Burma has been reasonably successful for over 20 years as we are seeing now in these developments, I would say in large part because the Congress has helped to make that policy. Successive State Departments have embraced it, but I don't think the policy would ever have been made on that side of the Capitol. So please keep it up.

I was in Burma in January for the second time in the last year and I do share the sense of amazement that everybody who has worked on this issue for many years has to see how much has changed. Secretary Posner talked a bit about this political prisoner mechanism, which is very much a work in progress, and yet here you have around one table representatives of the police and the judiciary and the people who they imprisoned over the years, in some cases 50, 70, 80 years, and they are talking about finding the last of their colleagues who are still in prison and getting them out. There is something I think profoundly inspiring about that that we need to recognize. So Burma is getting there, getting to where we all hoped and prayed that it would get, but it has not gotten there by any stretch of the imagination.

It is important to remember Burma is not a democracy. Indeed, it retains virtually all of the laws, if not the practices, of a dictatorship. And then there are the continuing human rights abuses that others have mentioned and I will mention again in a moment.

The changes that have come about have come about because of the goodwill of a very small number of people in the government. They have not been institutionalized. If you had a different small group of people in the government, there would be no checks against a return to authoritarian rule. And the most important thing, none of this is going to be settled until 2015 when Burma holds its first nationwide, we hope free and fair elections to elect a parliament, the first chance that the opposition will have to actually form a government.

So it is tempting in a world of terrible news to showcase Burma as a success. It can be. I hope it will be. In a few years I hope we will be talking about the model that Burma creates for China and for Vietnam. But we are not going to help Burma get there if we hype it too soon. That is my main message today.

Until then, what we have to focus on is encouraging through pressure and assistance

the government to meet its commitments. And as Congressman Crowley mentioned before, we now actually have a set of commitments, very concrete ones, that the President of Burma made to the President of the United States. That is important and it is a good way of framing our discussion going forward.

So what were some of those commitments? First of all, on ongoing ethnic conflict, President Thein Sein promised to our President that he would pursue a durable ceasefire in Kachin State and other areas to deescalate violent conflict and allow humanitarian access. As we have heard, humanitarian access seems to have just begun in the last week, so, knock on wood, that will continue. But as we know, offensive operations by the army, despite that promise from the President, have continued, including shelling and air strikes, until very recently. And they have continued not just despite what Thein Sein said to the United States, but despite repeated calls by the President of Burma for a ceasefire.

Now, how does that happen that the President calls for the ceasefire and the Army doesn't respect it? Well, actually it means that the Burmese Constitution is working exactly the way it was written to work, because under the Constitution the Army does not have to take orders from the civilian government. It is a fundamental problem.

Then you have the attacks on the Rohingya Muslims in the Rakhine State. Again, there was a promise here made directly to President Obama that the state would take decisive action to prevent violent attacks, hold accountable the perpetrators, work to meet the humanitarian needs of the people and address the political dimensions, including the granting of citizenship to the Rohingya Muslims.

Now, since then there have been no major outbreaks of new violence, but there also has been no progress at all in addressing the causes of the violence, including dealing with those very, very important questions of citizenship. We still have over 100,000 people in camps. The rainy season is coming. That is going to be a moment of great crisis from a humanitarian point of view. We have thousands of people taking to the seas, at least hundreds that we know of dying. There needs to be a lot of effort, including diplomacy with other countries in the region, Malaysia and Thailand, on this painful, painful question of the Rohingya Muslims.

Political prisoners, there was a pledge to create by December this mechanism that has been already discussed. It was created in February, a little bit late. So we will have to see how that goes. One very important point is we are not just talking unfortunately about the legacy political prisoner cases that were inherited from the old regime. There have also been new cases, people who have been imprisoned in the last few months for engaging in peaceful assembly but without a permit under the new law that the Burmese Parliament passed. So we may be adding to the list of political prisoners even as we are subtracting from it unless this mechanism can get to work really, really quickly.

The U.N. High Commissioner for Human Rights, the promise was simple, they get to set up an office. And it is important, because having this institution there gives us a built-in capacity from the U.N. on the ground to monitor these ethnic conflicts around the

country. And there I am afraid that Assistant Secretary Posner was a little bit too optimistic. The government has stalled in terms of meeting this commitment, and we can talk about that a bit more if you like.

Then the really big issue is the rule of law. You go to Rangoon today, Congressman, you will meet so many inspiring people, starting NGOs and legal aid societies and political groups, and it is wonderful and inspiring. And it is all illegal, because the laws that underpin the military dictatorship, that make it illegal for people to send you an email about what is going on in the Kachin State, or to say or do anything that might be interpreted as undermining the unity of the state or criticizing the military, all those laws are still in place. The judges that sentence these people to prison are still the same judges. And then there is the Constitution and the directing role that it gives to the military over virtually everything that matters in terms of security in the country. The military can dismiss the president, and the military also has veto power over any changes to the Constitution that give it the power, so it is a little bit of a Catch-22 there.

Now, when I mention all these problems, my point is not to offer a wholesale critique of the reform effort in Burma. Moving from dictatorship to democracy in just 2 years is I think virtually impossible. I think we need to be patient with the pace of reform. But just as we acknowledge that it will take time, we also need to take our time in the way that we respond, and that is where I think a lot of us share a concern.

So, yes, let's respond positively to actions by the Burmese Government, but not move faster to transform our policies than they are moving to transform their country. So, yes, let's encourage investment, but not open the floodgates to billions of dollars that they can't absorb and that is just going to fuel corruption if it is too much too soon. Yes, let's ease sanctions, but let's be wary of lifting them on a schedule that has more to do with our desire to declare foreign policy success than with what is actually happening on the ground.

In practice, that means that the legislative framework that you all write every year should be renewed, the JADE Act and also the various presidential executive orders, at least through the parliamentary elections in 2015, as well as the reporting requirements and the SDN list. The SDN list should be managed in a dynamic way. So, yes, people should be dropped off the list as their behavior changes as the witnesses were saying, but you were absolutely right to press them on these commanders in the military in the Kachin State. I have looked at that law. I just cannot read that law as permitting not adding those names, when you have such voluminous evidence that shows the troops under their command have committed serious human rights abuses. As a legal matter I don't understand how they can justify it and I think it would be good strategy.

I think a final point, 20, 30 years of struggle to get to this point, support by the U.S. Congress, Presidents of both parties, we didn't go through all of that just to bring Burma up to a kind of halfway house between democracy and dictatorship, to be like another one of those Asian countries where you have elections from time to time, but really the same group of people have the money and the power all of the time. If we had wanted that, we could have settled for it years ago and cut a deal with the military and gotten rid of the sanctions.

That is not what the policy was about. So let's keep our eyes on the ultimate prize and let's hold on to some of our cards that we need to get there.

Thank you.

Mr. MCGOVERN: Thank you.

[The statement of Mr. Malinowski follows:]

Testimony of Tom Malinowski

Washington Director, Human Rights Watch

Human Rights in Burma

Tom Lantos Human Rights Commission

February 28, 2013

Mr. Chairman, thank you for inviting me to testify today.

I was in Burma for a week in January, my second visit in the last year. I am still amazed by how much has changed since the start of reforms in 2011. The political opposition has gone from prison to a place in parliament. Daily newspapers are publishing real news and honest criticism of the government. Activists who just two years ago were serving life sentences for sending emails or telling jokes are now sitting across the table from government ministers, discussing how to identify and release the last remaining political detainees in the country. Police violence is being investigated by a government commission chaired by Aung San Suu Kyi. Opponents of the military are coming home from exile, and jumping into the country's political life. A government that treated its people as enemies is beginning to treat them as citizens; a regime that thumbed its nose at the world is now extending a hand for assistance and advice.

In short, Burma is on the path to becoming the country its people sacrificed and struggled to build during the terrible years of military rule. It is on the road to becoming the country that the United States has pressed for, year in and year out, thanks in good measure to the U.S. Congress, and to the leadership of Republican and Democratic presidents from George Bush Sr. to Barack Obama.

But to say it "is becoming" is very different from saying it "has become." Burma is still not a democracy. Indeed, it retains the laws and constitutional structure, if not all the practices, of a military dictatorship. Meanwhile, the Burmese military is still waging one major war against an ethnic minority group and committing serious human rights abuses. Another part of Burma suffered two severe outbreaks of ethnic violence last year, from which desperate refugees continue to flee.

The hopeful changes thus far have come about because of the good will of a small number of people in the leadership; but they have not been institutionalized; if a different group of people gained influence, there would be few formal checks against a return to oppression. The changes that still must be made will be harder; those with power and money to lose, particularly in the military, the security ministries, and military-dominated industries, will resist them every step of the way.

Most important: Nothing will be settled until 2015, when Burma is scheduled to hold its first nationwide parliamentary elections in which the opposition will be able to compete. Only then, if the military allows it, will the country's democratic forces have a chance to form a government and to institutionalize reform.

In a world with little happy news, it is tempting to showcase Burma as a fully realized success story – and as a vindication of whatever policies we believe best encouraged the changes thus far. Burma can become a success story; in a few years, it might even, as fantastic as it sounds, set a good example of peaceful transition to

democracy for China and Vietnam. But we are not there yet. We will not help Burma if we hype it too soon, and lose the disciplined focus that will be needed to encourage the difficult changes to come.

The challenge at this delicate stage is to find right balance between rewarding the progress already made and retaining leverage to press for more. With some exceptions, I think that the administration has maintained that balance reasonably well thus far. It has been right to suspend many of the economic sanctions, but not to lift them entirely – supporting reformers, while maintaining restrictions on those elements of the Burmese economy still controlled by the military and its allies, allowing American companies to invest in some sectors, while requiring them to maintain a degree of transparency and encouraging social responsibility. This is a far wiser approach than the European Union’s wholesale lifting of sanctions, and one that must be sustained at least until Burma has, as we hope, a democratically elected government in 2015.

Until that time, we should focus on encouraging, through assistance where possible, and pressure where necessary, the Burmese government to meet the reform commitments it has made to its people and to the international community, including to the United States. Burma’s president Thein Sein made a number of important pledges during President Obama’s visit to the country last November; they are a good starting point for discussing the challenges Burma still must meet.

Ethnic Conflict

Burma’s first experiment in democracy, after it won its independence in 1948, was derailed in part because of warfare between the central government and ethnic minority groups living on the country’s frontiers. The Burmese military’s justification for seizing power in 1962 was that “weak” democratic government could not end the rebellion of the minorities and hold the country together. As it turned out, six decades of “strong” authoritarian rule only made matters worse, exacerbating, not resolving, conflicts that have claimed untold civilian lives and displaced millions of Burmese from their homes.

Today, the army maintains fragile cease fires with most of Burma’s ethnic minority armies, but is engaged in fierce fighting with the Kachin Independence Army (KIA), in the country’s north and northeast. During President Obama’s visit, the government pledged that it “will continue to pursue a durable ceasefire in Kachin State and other areas to de-escalate violent conflicts.” In fact, despite repeated cease fire announcements by President Thein Sein, the army has continued to conduct offensive operations against the Kachin, including the use of indiscriminate air strikes and artillery fire against the KIA stronghold of Laiza, which is crowded with displaced civilians. Since conflict resumed in the Kachin State in 2011, the Burmese army has attacked Kachin villages, razed homes, pillaged properties, and forced the displacement of tens of thousands of people. Soldiers have threatened and tortured civilians during interrogations. Women have been raped. The KIA has also committed serious human rights abuses, including using child soldiers and laying landmines.

Burma’s constitution, which grants the civilian president no power over the armed forces, appears to be functioning exactly as intended in the Kachin conflict. Whether Thein Sein genuinely wishes to restrain the army or not, the army has no legal obligation to heed his wishes. It has continued to fight, whether motivated by anger over the losses the KIA has inflicted on its forces, or its desire to control lucrative natural resources in the conflict area, or both. While some observers have suggested that rogue local military commanders are responsible for the ongoing fighting, the sustained use of air power, based in central Burma, and rotation of divisional size infantry units to the Kachin State from other parts of the country demonstrate that the top commanders of the armed forces are very much in charge.

Recently, the government did give the International Committee for Red Cross access to the Kachin State, where it delivered its first assistance two days ago, meeting another commitment it had made to President Obama. Government negotiators have also continued to meet with representatives of Burma’s various ethnic minority rebel groups to move the peace process forward. But as I stressed to senior Burmese officials during my last visit, it will take time to resolve the political issues that are the cause of the longest continuing armed conflict anywhere in the world. In the meantime, the military must cease human rights violations, including indiscriminate shelling, which claim civilian lives and will make it even harder to reach a settlement. The government should also allow humanitarian groups and journalists unfettered access to the conflict area.

Systematic Attacks and Persecution of Rohingya Muslims

In June and again in October of 2012, deadly sectarian violence broke out between Arakan Buddhists and Rohingya and Kaman Muslims in the Arakan State in Western Burma. While both sides suffered serious casualties, the Rohingya bore the brunt of the violence. Human Rights Watch obtained satellite imagery showing entire communities burned systematically to the ground. On both occasions, the Burmese military eventually restored order, but police and local security forces either stood by as people were murdered or driven from their homes, or in some cases joined in the violence. Security forces also launched a campaign of mass roundups of Rohingya, detaining hundreds incommunicado.

The Rohingya people are among the most persecuted in the world. The government and Burmese society at large roundly reject claims that the Rohingya Muslim populations of Arakan State are entitled to Burmese citizenship, even though many have lived in the country for generations. Many citizens of Burma, of all ethnicities, do not acknowledge the term Rohingya and commonly refer to the Muslim population in Arakan State as “Bengali,” “so-called Rohingya,” or the pejorative “Kalar,” claiming that all are illegal migrants from what is now Bangladesh. Rohingya are prohibited from marrying, working, or traveling through Burma, unless they obtain permission from local authorities.

During President Obama’s visit, the Burmese government pledged that it “will take decisive action to prevent violent attacks against civilians” in the Arakan State; that “it will hold accountable the perpetrators of such attacks; it will work with the international community to meet the humanitarian needs of the people; and it will address contentious political dimensions, ranging from resettlement of displaced populations to granting of citizenship.”

Since then, there have been no major outbreaks of violence. But no progress has been made in addressing the causes of violence. President Thein Sein appointed a commission, with broad participation from Burma’s civil society, to investigate what happened last year and propose solutions. But the committee’s report has been repeatedly delayed. And there has been no accountability for the violence. While we wait for the government to act, some 126,000 internally displaced Rohingya remain in camps, enduring miserable conditions, restrictions on movement and no livelihoods, and with inadequate international assistance. The rainy season is just a few months away, and when it comes it will flood out thousands who are living in unofficial IDP encampments in the rice paddies. Given the inadequate water and sanitation, a major onset of waterborne diseases is a likely outcome, worsening an already desperate humanitarian situation. Not surprisingly, in the last year, at least 20,000 have taken to the seas, trying to make their way to Malaysia. There have been media reports of at least 500 dying during the trip; the true number is undoubtedly higher.

Meanwhile, many influential Burmese, including Buddhist monks, have demonized the Rohingya. Burma’s political leaders – including, most notably, Aung San Suu Kyi -- have hesitated to denounce human rights abuses committed by the Buddhist Arakanese against the Rohingya, for fear of antagonizing supporters who believe the Rohingya have no place in Burma. Their political calculus is easy to understand in the short run, but in the longer run they are taking a great risk. For if the virus of anti “Bengali” or anti Muslim hatred is allowed to spread, reactionary, anti-reform forces could exploit it to derail transition.

Leadership is needed from the Burmese government and from the political opposition to promote ethnic and religious tolerance in Arakan State and to end these tragic abuses. The ultimate solution is to change Burma’s 1982 citizenship law to allow Rohingya who were born in the country to be counted as citizens. Until then, they should at least be treated as human beings – allowed to return to their communities with the protection of the central government, and to work, marry and buy and sell property like anyone else. The U.S. government must hold Thein Sein to the commitments he made to President Obama on this issue, recognizing that the central government in Burma has the power to compel local authorities in Arakan State to act; all it needs is the political will.

Political Prisoners

Most of Burma’s prominent political activists were released from prison last year. We believe that over 200 political prisoners detained by the former military regime remain, though it is important to stress that no one

knows the true number. Some were plainly convicted of offenses that they did in fact commit, but which consisted of nothing more than political activism. Others were convicted of real crimes – including violent acts – that they likely did not commit. Others are members of armed groups that have been involved in armed conflict, and could be released as ‘reconciliation’ prisoners to assist the resolution of the civil war.

During President Obama’s visit, Thein Sein pledged to “devise a transparent mechanism to review remaining prisoner cases of concern by the end of December 2012.” The mechanism was established in February of this year, with the appointment of a committee that includes former political prisoners, opposition parties, and representatives of the government. This is a good development, but it is essential that the committee work quickly, with full access to prisons and to court records, to identify political detainees and others who were unfairly convicted by the kangaroo courts of Burma’s dictatorship, and that President Thein Sein release those prisoners whom the committee clears. The political prisoner mechanism should also take up the cases of activists arrested for engaging in peaceful, but unauthorized, demonstrations since President Thein Sein took office, under Burma’s new, but still highly flawed law on assembly. If it does not, these activists will have to be added to our list – and to the U.S. government’s – of Burma’s political prisoners, even as others are removed. The government must also, whether acting through this mechanism or outside of it, release over 500 Rohingya prisoners arbitrarily detained after last year’s sectarian violence.

UN High Commissioner for Human Rights

Perhaps the most straightforward pledge President Thein Sein made to President Obama was that his government would “extend an invitation to the UN High Commissioner for Human Rights [OHCHR] to establish an office in Myanmar.” An OHCHR office could provide technical assistance to the Burmese government and parliament as it reforms the country’s repressive laws. It could send staff to conflict areas to monitor respect for human rights by both the army and ethnic minority armed groups. It could help the new quasi-governmental Myanmar National Human Rights Commission become an effective, and independent, institution. OHCHR maintains offices and field missions in many countries in transition from dictatorship to democracy, and from war to peace, in Asia and around the world. A Burma that welcomes international institutions from the World Bank to the IMF to the UN Development Program, and that wishes to be welcomed back to the international community, should welcome the presence of the only UN institution dedicated to the promotion of human rights.

Unfortunately, the Burmese government has stalled in implementing this pledge. At the same time, it is demanding that the U.N. Human Rights Council in Geneva discontinue its usual practice of discussing Burma under Item 4 of its agenda, when it debates serious human rights situations requiring its attention. Burma should not receive this upgrade in its status at the Human Rights Council until it signs an agreement allowing the High Commissioner to establish an office there. This is the right thing to do, and, after all, something it already has promised to do to the president of the United States.

Transparent and Accountable Governance

Another of President Thein Sein’s promises to President Obama last November was to improve governance, in line with “core principles of transparency, civic engagement, anti-corruption, and using technology and innovation to make government more open, effective and accountable.” He announced that Burma would seek membership in the Open Government Partnership, an initiative designed to promote disclosures over government finances and greater public access to decision-making processes. He had previously pledged that Burma would work to join the Extractive Industries Transparency Initiative, an effort to advance openness regarding natural resource revenues.

The Burmese government’s aspiration to join these and other initiatives is welcome but it has a long way to go to meet the eligibility criteria. The US government, for its part, should help Burma make needed progress to meet—and even exceed—prevailing standards.

As American companies bid on oil and gas blocks in Burma, the US has a stake in pressing the government to improve management of the country’s vast natural resource wealth to reduce the risk of involvement in human rights abuses and financial improprieties. Burma’s state oil and gas company—Myanmar Oil and Gas Enterprise or MOGE—is the Burmese government’s main revenue earner and for years bankrolled the country’s abusive

military, which claimed the lion's share of Burma's budget as well as benefiting from off-budget spending on a huge scale. Burma's petroleum proceeds will soar even higher as new oil and gas projects come on-line. Despite some notable improvements, including accounting for petroleum revenues in the country's budget, reforms remain inadequate. The military retains a disproportionately large budget, as well as access to off-budget income from a network of businesses and an unknown amount in a special slush fund established in 2011.

From its seat on the board of both the World Bank and International Monetary Fund (IMF), the US government can encourage needed change. It should insist that the Burmese government meet clear targets—including significant progress in transparency and accountability over public funds—before it will be eligible for loans from these institutions, which themselves should be subject to safeguards. [Burma should not expect loans before it has taken responsibility over its own finances by terminating all off-budget military funding and securing proper parliamentary oversight over the military's budget and spending.]

The US also should encourage Burma to demonstrate its commitment to EITI's transparency requirements by meeting its criteria for civil society participation now, at the outset of engagement, even though these are not formally required until a later stage of EITI candidacy.

Open governance in Burma also must include open access to technology to freely engage in civic life. Internet censorship is down in Burma, amid broader media reforms, and the government has taken initial steps towards developing Burma's telecom market by announcing it will award two mobile telecom licenses this year. The opening of Burma's information and communications technology (ICT) sector presents a rare opportunity to press for an approach to Internet and telecommunications development that secures freedom of expression and privacy.

While development of Burma's ICT sector could help drive economic growth and civic participation, it could just as easily enhance the government's surveillance and monitoring capabilities if undertaken without safeguards. Foreign investors face a significant chance of becoming in complicit in serious human rights abuses should the government's commitment to human rights falter. In addition, corruption remains a considerable risk, with the former telecommunications minister Thein Tun now the subject of a corruption probe that may widen to involve other telecommunications officials.

Moreover, legal reforms in this area remain incomplete. For example, the Electronic Transactions Law remains in place, which has been used in the past to target activists and journalists. Proposed reforms in the Draft Telecommunications Law preserve or introduce new mechanisms for surveillance and content restrictions, which could be used to violate the rights of Burmese citizens.

With internet freedom a cornerstone of its foreign policy, the Obama administration should press the Burmese government to live up to its pledges of openness by quickly enacting legal reforms necessary to protect freedom of expression, access to information, and privacy in the ICT sector. The US government should press any US companies entering Burma's ICT sector not only to report on policies and procedures to assess and address potential human rights risks, but to publish the terms of any licensing agreement and regularly report on requests received from the government that limit privacy and freedom of expression, and how the company responded to these requests.

Rule of Law

If you go to Rangoon today, you will find many inspiring people who are starting newspapers, social service organizations, legal aid associations, academic institutes, and human rights groups, taking advantage of the climate of freedom that exists in Burma's capitol and other major cities. Much of what they are doing, however, remains illegal. Most of the laws that underpinned Burma's military dictatorship remain in place. It is still against the law to own an unregistered fax machine or modem, to "contribute to the diminishment of respect" for the military, to spread "false news," to post anything on the internet that the government might deem detrimental to the security of the country, or to commit any act whatsoever that it deems an "infringement of [Burma's] sovereignty and security" or a "threat to the peace of the people." The government is generally not enforcing these laws, but they continue to give security agencies virtually unlimited power, an important fact of life for Burmese, especially those living in the large parts of the country that reforms have barely reached. What is more, Burma's judiciary has no recent tradition of independence and has undergone no changes: the judges

Burmese will be counting on to protect their rights are the same judges who just a few years ago were sentencing dissidents to decades in prison for political activism.

Even more important to the vast majority of Burmese who make a living from farming, the country's laws still do not allow them to own the land they farm. This makes them vulnerable to powerful business interests, who can exploit government connections to seize land without fairly compensating the people who live and work upon it. The lifting of sanctions unfortunately exacerbates this problem, encouraging Burmese speculators to seize land in the expectation that foreign companies will want to buy it or build on it.

The law in Burma that is most in need of reform is its most basic law of all – the constitution. Burma's last military government promulgated one of the most honest constitutions any dictatorship has ever had – it plainly acknowledges that the military exercises power without limits. Under the constitution, the military is not subject to the authority of the parliament, the president, or the courts. The commander in chief of the military appoints the ministers in the government responsible for internal security, as well as the majority of members of the National Defense and Security Council, which makes all final decisions on security matters. The Military can declare a state of emergency and dismiss the president. It also appoints 25% of members of parliament. Since the constitution cannot be changed unless 75% of the parliament agrees, the military can veto any constitutional amendments, even if the democratic opposition eventually wins every single contested parliamentary seat.

This is one reason why Aung San Suu Kyi has been reluctant to criticize the army's ongoing human rights abuses in ethnic minority areas. Her primary objective appears to be to change Burma's constitution, so that a future elected government actually has the power to govern the country. And to achieve this goal, she feels she must win the army's trust, so that she can gain its consent to pursue constitutional reform. The risk that she and other opposition leaders run is that they must also maintain the trust of Burma's people, including its ethnic minority groups, if they wish to win a strong mandate in the 2015 elections to pursue the reforms they seek. These two goals may not be compatible.

None of this is meant to be a wholesale critique of the current reform effort in Burma, or of the Obama administration's decision to support it. Two years is an incredibly short time for a country to transform itself from dictatorship to democracy, especially if tries to do so through dialogue and compromise between rulers and the ruled, rather than a potentially bloody revolution. We should be patient with this process. But just as we should recognize that Burma needs time to complete its reforms, we in the international community should also take our time.

The United States has taken enormously significant steps to embrace and encourage President Thein Sein's reform agenda. It normalized diplomatic relations; it gave its consent to Burma's chairmanship of ASEAN; it suspended virtually all trade and investment sanctions; it is mobilizing support for Burma from the international financial institutions; it has begun to resume contacts with the Burmese military; and recognized Burma's progress with a historic visit by President Obama, the first by a sitting American president in Burmese history.

The international community should continue to respond positively to positive actions by the Burmese government, but not move faster to transform our policies than they are moving to transform their country. We should begin to encourage investment and provide well-targeted assistance, but not open the floodgates to massive inflows of money that the country is not yet ready to absorb, and that could end up fueling corruption and reinforcing poor governance. We should be easing sanctions, but be wary of lifting them on a schedule that has more to do with a desire to declare a foreign policy success than with the actual pace of events on the ground. It may be true in principle that sanctions can always be re-imposed if there are setbacks in Burma. But we should remember that even in the darkest days when Burma's military regime was killing protestors and jailing monks, the US government never forced a single American company to leave the country – once in, US investors were always exempted from sanctions.

In practice, this means that the legal framework for sanctions, including the JADE Act and the various presidential executive orders on Burma, should be retained at least through Burma's first free, nationwide parliamentary elections in 2015, along with the provisions that give the administration flexibility to waive application of sanctions. The administration should also maintain, and strictly enforce, the human rights and anti-corruption reporting requirements it has imposed on U.S. companies investing in Burma. As one might

expect, many companies would rather not have to file these reports. In fact, they will have a comparative advantage in Burma if they are seen by the Burmese people as living up to a higher standard. Rather than weakening these requirements, they should be lobbying the Burmese government to apply similar standards to all foreign companies, so that there is a level playing field. One measure of progress in Burma is that they will likely find allies in the government for that kind of strategy, officials who care about the rights of their people and the health of their country's environment, especially after 2015.

The administration should also use in a creative and dynamic way the targeted financial restrictions that it has maintained, through the Treasury Department's SDN list, against individuals who violate human rights and obstruct reform. The SDN list should not remain static, as it has for most of the last four years – it should be used to leverage change. The administration should drop names where a fundamental change in behavior makes that appropriate. It should also be willing to add names as circumstances on the ground, and US law, require. For example, it is remarkable that the commanders of the Burmese army in Kachin State, who appear to have resisted their civilian government's efforts to effect a cease fire, and whose troops have committed serious and systematic human rights violations, have not been added to the SDN list. The JADE Act requires sanctions to be imposed on officials of the Burmese military involved in "gross violations of human rights in Burma or in the commission of other human rights abuses" and to update the SDN list as new information becomes available. The failure to list these commanders, given the amount of information available, appears to be a plain violation of the law.

A final point, Mr. Chairman: Some have said that the United States risks losing influence in Burma to China or other countries if it remains too tough with the Burmese government on issues like human rights or corruption. During the years when the United States maintained strict sanctions against Burma, a similar argument was made, and turned out to be flat wrong. The United States stuck to its principles, and the Burmese government eventually started to address U.S. concerns, in part because did not want to be entirely dependent on China.

In my last two trips to the country, I was struck by the extent to which the United States factors into the calculations of the people I met, in and out of government. Much of the recent progress we are discussing today came about because of pledges Burma's president made to the president of the United States. When the promised political prisoner mechanism was not established on schedule, the Burmese government reached out to the State Department for advice on how to do it. It has relied on quiet efforts by US diplomats to help facilitate peace talks with ethnic minority groups. It has eagerly sought contacts with the U.S. military. When I met with officials at the Ministry of Home Affairs recently, they said that Burma's police had recently received training from several regional countries, but that what they really wanted was training from the U.S. And so on and so on.

The important question is how should the United States use its influence at this critical, and delicate, transitional moment in Burma. I think the answer is this: The Burmese people didn't struggle for decades for their freedom, and we didn't support them for decades, to settle for a halfway house between democracy and dictatorship. We didn't do it so that Burma could become one of those countries that holds elections every few years, but where the same small group of people still hold most of the power and wealth. If that's what we had wanted, we could have settled for it years ago. And we know there is a long way to go, with many tests to pass, including the 2015 election, before we can say that Burma's democratic dreams have been fulfilled. That's when America's relationship with Burma can and should reach its full potential. Until then, we should hold on to some of our cards, and keep our eyes on the prize.

Mr. MCGOVERN: Ms. Quigley.

STATEMENT OF JENNIFER QUIGLEY

Ms. QUIGLEY: Thank you, Congressman McGovern, and thanks members and staff of the Tom Lantos Human Rights Commission for the opportunity to speak today.

As you know, since mid-2011 Burma has undergone some changes, both positive

and negative. The international community responded quickly to what it perceived to be an astonishing pace of reforms in the country, rushing to lift sanctions in an attempt to encourage more reforms. But much like the Arab Spring's swift removal of Egypt's Mubarak has revealed the deep barriers that still remain to lasting genuine democratic governance in Egypt, Burma's fundamental barriers to genuine democracy, peace and national reconciliation remain firmly in place.

At the heart of Burma's problems are ethnic minority demands for federalism. The Burmese military equates federalism with the disintegration of the union. This dichotomy has driven decades of military rule and conflict characterized by systematic and widespread war crimes and crimes against humanity.

As the State Peace and Development Council plotted out its roadmap to disciplined democracy, they drafted the 2008 Constitution to enshrine military control over the government and central government control over ethnic minorities.

The 2008 Constitution is now the most difficult obstacle to securing lasting genuine democratic reform and national reconciliation in Burma. The 2008 Constitution guarantees supreme power to the military's commander in chief. As Tom mentioned, the military is not subjected to civilian control. It has the right to independently administer and adjudicate all affairs of the armed forces, including its budget. The commander in chief appoints the ministers for three significant security ministries, defense, border affairs and home affairs, that controls the civil society and ethnic minorities. It holds 25 percent of the seats in each parliament on the national and state and regional levels. Moreover, the commander in chief can assume all powers, dismiss the government and rule the country under martial law in the name of a state of emergency.

The Constitution also specifically assigns the military primary responsibility for safeguarding the non-disintegration of the union, the non-disintegration of national solidarity and the perpetuation of sovereignty. This is especially troubling as it is used to justify military persecution of civilians under a system of impunity. Amending the Constitution through the process outlined in the Constitution requires more than 75 percent of members of parliament to vote in favor of a proposed amendment, guaranteeing the need for military support for an amendment to move forward. The military supremacy in constitutional matters is further outlined in Article 20 of the Constitution which states the Tatmadaw has primary responsibility for safeguarding the Constitution.

In addition to legally enshrined political power over civilian arms of the government, civil society and ethnic minorities, the Burmese military has demonstrated it will continue to use the same military tactics to control and persecute Burma's ethnic minorities.

Ah Noh spoke about the Kachin. I will just add a little bit about the Rohingya. On the western coast of Burma in Rakhine State a human rights humanitarian crisis began to flare up in June 2012. A state of emergency was declared and the Burmese military was sent in to restore order. Despite some cases in which the military did protect some

Rohingya communities, the military and other security forces participated in and failed to prevent further systematic attacks against the Rohingya in October of 2012. The situation of the Rohingya remains incredibly precarious with the threat of further attacks looming and the denial of humanitarian access a growing crisis of its own.

Mistakenly, many in the international community have overestimated the significance of tentative ceasefire agreements that have been signed over the past 14 months between the Burmese Government and several ethnic minority groups.

This isn't to say it is not a positive step. There is deep mistrust between the Burmese Government and the various ethnic groups. Coming to the table and finding areas of agreement is a positive first step. The process towards peace and national reconciliation will be long. There are many fundamental disagreements that remain that will be difficult to reconcile. First, with the exception of the Kachin who I will focus on shortly, the Burmese Government and ethnic groups agree that the first step should be a ceasefire.

In reality, the Burmese Army, who only occasionally attend the peace talks, have been selective in which parts of the agreements they will adhere to and which they will disregard outright. The ceasefire agreement with the Shan State Army (South) has been violated numerous times, eroding the Shan State Army's trust in the negotiations with the Burmese Government's peace teams.

Second, there is disagreement on the next phase of negotiations. The Burmese Government peace team wants to discuss economic development, whereas the ethnic groups want national political dialogue that leads to amending the 2008 Constitution outside of the parliament in the process of a political dialogue. This is unacceptable to the Burmese Government, who states the ethnic groups need to form political parties, contest in the 2015 elections and try to amend the Constitution through the parliamentary process. The Burmese military, on the other hand, wants to defend the Constitution as is.

Third, the Kachin had a ceasefire from 1994 to 2011. They are unhappy with the Burmese military regime's violations of that ceasefire and the realization that a ceasefire did not bring about genuine political reform that recognizes their rights. They will not agree to another ceasefire without political dialogue and a process to guarantee their ethnic rights.

The lifting of major international economic sanctions last year has removed critical leverage needed to move this difficult but essential process forward to guarantee national reconciliation. Indeed, the ethnic groups asked the international community to keep sanctions and not allow investment until the military attacks have stopped and political dialogue secured them rights to self-determination, resource allocation and ethnic rights.

By prematurely lifting the investment sanctions, the international community is endorsing the Burmese Government's approach. Critical leverage is lost and investment-related human rights violations have risen, not only in ethnic areas, but central Burma as well. The Obama administration has moved the goalposts and requirements necessary to lift sanctions.

Congress needs to reassert its leadership role on Burma and reimpose the original benchmarks needed for sanction removal. The United States must maintain the remaining sanctions, renew the sanctions and sanctions authorities that will expire, including the national emergency and the Burmese Freedom and Democracy Act. Furthermore, the United States must prohibit military-to-military relations until the Burmese Army ceases attacks and gross human rights violations.

The victims of Burma's military's ongoing perpetration of war crimes and crimes against humanity deserve justice and accountability. The international community must reinvigorate the international effort to establish a commission of inquiry into these atrocities. The United States Government needs to send a clear distinct message that we stand with Burma's ethnic minorities in their struggle for national reconciliation and an end to impunity. The road to genuine democracy, peace and national reconciliation is long and hard, but we must show the people of Burma that the United States is not a friend of Naypyidaw, but a friend to those who have suffered long enough.

I would just like to add at the end that some of the remarks that Patrick made we sort of feel were disingenuous. Ethnic minorities feel abandoned and isolated and that they have lost support of the United States Government. There has not been concrete sustained efforts by the U.S. to engage the ethnic nationalities in a public fashion. There have only been very reluctant backdoor efforts in which they have not put forward wholeheartedly.

Second, the issue of humanitarian access for the Kachin, it has been 20 months that that conflict has gone on and the only approach the U.S. and the international community have taken to addressing the humanitarian crisis and access to 66,000 IDPs has been to relentlessly ask the Burmese Government for permission. They have not attempted in 20 months to provide that assistance directly, when that is the avenue in which that problem could be addressed. And they are not addressing -- they use that as an excuse to not address the underlying issue that talks with the Kachin Independence Army and the Burmese Army will go nowhere unless something is changed by the international community.

Mr. MCGOVERN: Thank you very much.

[The statement of Ms. Quigley follows:]

**Tom Lantos Human Rights Commission (TLHRC) Hearing
Human Rights in Burma
Thursday, February 28, 2013
Testimony of Jennifer Quigley
Executive Director, U.S. Campaign for Burma**

I would like to thank the members and staff of the Tom Lantos Human Rights Commission for the opportunity to speak today about the current state of human rights in Burma. Since mid-2011, Burma has undergone some changes, both positive and negative. From the release of several hundred political prisoners, Aung San Suu Kyi's election to Parliament, easing of media censorship, negotiations with ethnic minorities and engagement with the United States

and other countries once critical of their human rights record. The international community responded quickly to what it perceived to be an astonishing pace of reforms in the country, rushing to lift sanctions in an attempt to encourage more reforms. But much like the Arab Spring's swift removal of Egypt's Mubarak has revealed the deep barriers that still remain to genuine lasting democratic governance in Egypt, Burma's fundamental barriers to genuine democracy, peace and national reconciliation remain firmly in place.

At the heart of Burma's problems are ethnic minority demands for federalism. The Burmese military equates federalism with the disintegration of the Union. This dichotomy has driven decades of military rule and conflict characterized by systematic and widespread war crimes and crimes against humanity. As the State Peace and Development Council (SPDC) plotted out its roadmap to disciplined democracy, they drafted the 2008 constitution to enshrine military control over the government and central government control over ethnic minorities. The 2008 constitution is now the most difficult obstacle to securing lasting genuine democratic reform and national reconciliation in Burma. The 2008 constitution grants supreme power to the military's Commander-in-Chief. The military is not subjected to civilian control; it has the right to independently administer and adjudicate all affairs of the armed forces, including its budget. The Commander-in-Chief appoints the ministers for three significant security ministries: Defense, Border Affairs and Home Affairs, that control civil society and ethnic minorities. It holds 25% of the seats in each parliament on the national and states/regions levels. Moreover, the Commander-in-Chief can assume all powers, dismiss the government and rule the country under Martial Law in the name of a state of emergency. The constitution also specifically assigns the military primary responsibility for "safeguarding the non-disintegration of the Union, the non-disintegration of National solidarity and the perpetuation of sovereignty." This is especially troubling as it is used to justify military persecution of civilians under a system of impunity.

Amending the constitution through the process outlined in the constitution requires more than 75% of members of Parliament to vote in favor of a proposed amendment, guaranteeing the need for military support for an amendment to move forward. The military's supremacy in constitutional matters is further outlined in Article 20(f) of the Constitution, which states the Tatmadaw has primary responsibility "for safeguarding the Constitution."

In addition to legally enshrined political power over the civilian arms of the government, civil society and ethnic minorities, the Burmese military has demonstrated it will continue to use the same military tactics to control and persecute ethnic minorities.

In June 2011, shortly after the old military regime transformed itself into a nominally civilian government, the Burmese Army attacked the Kachin Independence Army ending their 17 year ceasefire. In the 20 months since the civil war resumed nearly 100,000 people have been displaced, tortured, killed, imprisoned; civilians have been used as human shields, landmine sweepers, and forced labor; they have had their homes and churches destroyed, and their property taken. Women have been further violated by the use of rape as a weapon of war, compounded by the impunity their perpetrators enjoy. The Burmese Army, on all but a few occasions, refused to allow international humanitarian access to more than half the IDPs, further exacerbating the suffering of the Kachin people. The displaced Kachin seeking shelter

in squalid internally displaced persons' camps have little access to lifesaving food, medicine and clean water, leading to preventable deaths. In January of this year alone, 10 infants under the age of one died from diarrhea. Kachin community based organizations do the best they can with the few resources they have but without international humanitarian aid many more Kachin will succumb to treatable diseases.

On the western coast of Burma, in Arakan State, a similar human rights and humanitarian crisis began to flare up in June 2012. A state of emergency was declared and the Burmese military sent to restore order. Despite some cases in which the military did protect some Rohingya communities, the military and other security forces participated in and failed to prevent further systematic attacks against the Rohingya in October 2012. The situation of the Rohingya remains incredibly precarious with the threat of further attacks looming and the denial of humanitarian access a growing crisis of its own.

Mistakenly many in the international community have overestimated the significance of the tentative ceasefire agreements that have been signed over the past 14 months between the Burmese government and several ethnic minority groups. This isn't to say it is not a positive step. There is deep mistrust between the Burmese government and the various ethnic groups. Coming to the table and finding areas of agreement is a positive first step. The process towards peace and national reconciliation will be long. There are many fundamental disagreements that remain that will be difficult to reconcile.

First, with the exception of the Kachin whom I will focus on shortly, both the Burmese government and ethnic groups agreed the first step should be a ceasefire. In reality, the Burmese Army, who only occasionally attended the peace talks, have been selective in which parts of the agreements they will adhere to and which they will disregard outright. The ceasefire agreement with the Shan State Army – South has been violated numerous times, eroding the Shan State Army's trust in the negotiations with the Burmese Government's Peace Team.

Second, there is disagreement on the next phase of negotiations. The Burmese Government Peace Team wants to discuss economic development, whereas the ethnic groups want national political dialogue that leads to amending the 2008 constitution outside of Parliament in the political dialogue process. This is unacceptable to the Burmese Government who states the ethnic groups need to form political parties, contest in the 2015 elections and try to amend the Constitution through the parliamentary process. The Burmese military want to defend the Constitution.

Third, the Kachin had a ceasefire from 1994 to 2011. They were unhappy with the Burmese military regime's violations of that ceasefire and the realization that a ceasefire did not bring about genuine political reform that recognizes their rights. They will not agree to another ceasefire without a political dialogue and process to guaranteeing their ethnic rights.

The lifting of major international economic sanctions last year has removed critical leverage needed to move this difficult but essential process forward to guarantee national reconciliation. Indeed, the ethnic groups asked the international community to keep sanctions

and not allow investment until the military attacks had stopped and political dialogue had secured them rights to self-determination, resource allocation and ethnic rights. By prematurely lifting the investment sanctions, the international community is endorsing the Burmese Government's approach. Critical leverage is lost and investment related human rights violations have risen, not only in ethnic minority areas but central Burma as well. Land confiscation has become pandemic as officials and cronies grab land to prepare industrial parks and special economic zones in preparation of foreign investment partnerships.

The United States must maintain the remaining sanctions, renew the sanctions and sanction authorities that will expire including the National Emergency and the Burmese Freedom and Democracy Act. Furthermore, the United States must prohibit military to military relations until the Burmese army ceases attacks and gross human rights violations. The victims of the Burmese military's ongoing perpetration of war crimes and crimes against humanity deserve justice and accountability. The international community must reinvigorate the international effort to establish a commission of inquiry into these atrocities. The United States government needs to send a clear distinct message that we stand with Burma's ethnic minorities in their struggle for national reconciliation and an end to impunity.

The road to genuine democracy, peace and national reconciliation is long and hard but we must show the people of Burma that the United States is not a friend of Naypyidaw but a friend to those who've suffered long enough.

Mr. MCGOVERN: Last but not least, my former colleague from Maine, the Honorable Tom Andrews with the United to End Genocide. Thank you.

STATEMENT OF TOM ANDREWS

Mr. ANDREWS: Thank you, Mr. Chairman. And thank you for your leadership not only on this Commission, Mr. Chairman, but also your leadership and your clarion call for human rights throughout the Congress throughout your career.

I have been an advocate for human rights and democracy in Burma since the year I was elected to the House to represent the First Congressional District of Maine. That same year, 1990, Aung San Suu Kyi and the National League for Democracy won an overwhelming victory in Burma. I went to Congress. She went to prison. Suu Kyi's movement from prison to house arrest to parliament is truly remarkable, and reforms ushered in by Burma's President Thein Sein, as you have said, should be recognized and rewarded by the United States and the international community.

But the fact of the matter is, a great deal has not changed in Burma, and it is precisely because of international pressure, in many cases led by the United States and in many cases pushed by the Congress of the United States, that change in Burma came about in the first place. Abandoning this leverage prematurely jeopardizes progress and condemns those who continue to suffer in Burma to more of the same.

As you have heard at this hearing, more of the same is a significant reality for

significant numbers of people. Last year during elections that secured Aung San Suu Kyi's seat in parliament, I was in Kachin State where I saw the devastation of this government's policy. I went to many abandoned villages. I heard stories of killing, forced disappearances, death from disease because displaced populations have largely been cut off from international humanitarian aid. As you have heard at this hearing, things have gone from bad then to worse now.

Unfortunately, Kachin State is not alone. The Rohingya ethnic minority, a long-persecuted minority of approximately 1 million people, have lived in the Rakhine State of western Burma for many generations. Deadly sectarian violence erupted there last June as you have heard and again in October. State security forces not only failed to protect the Rohingya, they were responsible for killings, for beatings, for mass arrests, while obstructing access to humanitarian aid for victims.

Behind these attacks are conditions that point to ethnic cleansing and genocide. In addition to being brutalized, the Rohingya have been stripped of their citizenship and face restrictions on their ability to travel and even marry. These attacks and restrictions are not imposed because of what the Rohingya might have done. It is because of who they are. Hate speech is pervasive and ominously reminiscent of the hateful propaganda directed at the Tutsi population and their sympathizers in the lead-up and during the Rwandan genocide.

Last year, President Thein Sein effectively proposed the ethnic cleansing of the entire area where Rohingya citizens have lived for generations. He called on the expulsions of all Rohingya, or if no nation would take them, that they be put into camps. While he has since modified how he speaks about the Rohingya and has made commitments as you have heard in this hearing to the President of the United States, the policies of the government, the actions of this government and the actions of the Burmese military when it comes to this ethnic minority speaks volumes. Actions speak louder than words, Mr. Chairman.

These conditions have pushed thousands of Rohingya to flee on overloaded boats. As you pointed out, 1,800 refugees washed up on Thailand's shores just last month, and the United Nations estimates that at least 485 refugees have been known to have drowned. In light of these brutal realities, the administration's approach of, and I am quoting them, gentle persuasion and positive reinforcement must be reexamined and challenged by this Congress. Congress needs to know if the lifting of most forms of pressure on this regime and invitations to military exercises to this brutal military apparatus and a visit by the President of the United States might be sending an unfortunate signal to some that violence, discrimination, systematic human rights violations and the disenfranchisement of an entire people may indeed be acceptable.

Reforms in Burma are tenuous and reversible. Hundreds of political prisoners remain behind bars, as you have heard, and some of those who were released are now back in prison. While total bans on the right of public assembly have been lifted, those who participate in public demonstrations not only need a permit, they have to have their slogans preapproved by the regime or face arrest.

There are several steps that the United States Congress can and must take, Mr. Chairman, and I provided the committee with a comprehensive list of recommendations in my written testimony. But the bottom line is this: Congress needs to exercise its oversight role that includes a focus on the ongoing killing of civilians, restrictions of humanitarian aid, the military's attacks and gross human rights violations in Kachin and Rakhine States, the widespread displacement caused by pandemic land grabbings, as you have heard, the dominance of the military over civilian authorities, and political prisoners who remain behind bars.

Congress should push the administration to call for a United Nations Commission of Inquiry that covers not only recent violence in Rakhine and Kachin States, but anywhere else where abuses are taking place. It is imperative that the U.S. Government be clear that continued abuses will be met with consequences and that rewards given up to this point are also truly reversible.

I understand the desire to declare Burma a success story, but success is not marked by removing sanctions. It is marked by lasting change for the people of Burma, who have endured endless suffering under a brutal military regime. Let us reward genuine progress, but let us not condemn the people of Burma, particularly those living in ethnic minority states, to the consequences of a long oppressive military regime that is suddenly freed of accountability and consequences for its behavior.

Again, Mr. Chairman, thank you so very much for your leadership and for this hearing, which I believe could be a valuable first step toward a reexamination and a resetting of U.S.-Burma policy.

Mr. MCGOVERN: Thank you very much.

[The statement of Mr. Andrews follows:]

Testimony of the Hon. Thomas H. Andrews
President and CEO of United to End Genocide
Tom Lantos Human Rights Commission
“Human Rights in Burma”
February 28, 2013

Mr. Chairman and Members of the Commission:

Thank you for holding this hearing. It is extraordinarily important that the Congress and the American people have a clear perception of the realities inside of Burma. A clear view of the reality faced by untold numbers of people in Burma has all-too-often been obscured by the many laudatory reports and speeches that extol the historic movement forward for a country that for decades was brutalized by a ruthless military regime. While there have, indeed, been significant steps forward, and these should be recognized and rewarded, significant numbers of citizens in Burma continue to suffer at the hands of the Burmese military and the military dominated regime. It is critical that their side of the Burma story be told and that their reality be recognized by those responsible for U.S. foreign policy. Unfortunately, this has not been the case and this is why the attention that you are focusing on this side of the Burma story is so critically important.

This hearing is providing an enormous service by shedding light on realities within Burma that too many have been eager to ignore.

Last year I testified before the House Foreign Affairs Subcommittee on Asia and the Pacific in a hearing entitled: "Oversight of U.S. Policy Toward Burma". As I told the Committee:

"I have been working to support human rights and democracy in Burma for decades, stemming back to the days when I served in this body as the representative from Maine's 1st Congressional District. The very same year I was elected to the House of Representatives, Nobel laureate Aung San Suu Kyi led her party to an overwhelming electoral victory in Burma. I went to Congress. She went to prison."

I noted that the election of Aung San Suu Kyi to the Parliament of Burma in April of last year was truly remarkable and that the reforms ushered in by President Thein Sein should be recognized and rewarded by the United States and other nations who have exerted economic, diplomatic and political pressure on what had been one of the world's more brutal military regimes. But, I argued:

"Our recognition of progress in Burma must be prudent and clear-eyed because the fact of the matter is, a great deal has not changed in Burma. The United States has played a key leadership role in generating and sustaining the international pressure that has been instrumental in making the changes that we are witnessing in Burma possible. To abandon this leverage prematurely would be to jeopardize the movement forward that we have seen and condemn those who continue to suffer in Burma more of the same."

Members of the Commission, I am afraid that more of the same is the rule for significant numbers of citizens of Burma who continue to be brutalized at the hands of the military and military dominated regime. A thorough examination and assessment of US policy toward Burma is therefore timely and imperative.

Between March 31 and April 4 of last year, as the elections took place that secured Aung San Suu Kyi a seat in Parliament, I was on the ground in Kachin State where 75,000 men, women and children had been forced to flee their homes because of the Burmese army's attacks. I visited the towns of Laiza and Mai Ja Yang where, despite President Thein Sein's assurances to the contrary, Burmese troops, weapons and violence were escalating.

For the people of Kachin—and those living in the other ethnic national states—the April 1 election and declaration of reforms meant nothing. I had spoken with dozens of displaced villagers who were trying to flee the renewed conflict. I heard stories of killing, forced disappearances and death from disease because displaced populations have been largely cut off from international humanitarian access. The day after the election I asked a local NGO worker if she had heard any election return news out of Rangoon. The response: "I could really care less about the election results in Rangoon. As long as there is war, elections are irrelevant to us."

As you will hear from the testimony of Tom Malinowski of Human Rights Watch, things have gone from bad to worse in Kachin State. But Kachin is not the only place in Burma where innocent people are suffering the loss of their homes, villages and, indeed, their lives.

In November of last year, United to End Genocide sounded the alarm on "ominous warning signs of genocide" calling on the Obama administration to take strong and immediate steps to stop the systematic violence and attacks against the Rohingya Muslim ethnic population of Rakhine State in western Burma.

Deadly sectarian violence erupted in Rakhine State last June between ethnic Arakanese Buddhists and ethnic Rohingya Muslims, a long-persecuted stateless minority of approximately one million people. State security forces failed to protect the Rohingya community and have been complicit in the violence, resulting in the forced displacement of some 100,000. Burmese forces have increasingly targeted Rohingyas in killings, beatings, and mass arrests while obstructing humanitarian access to Rohingya areas and to camps for displaced Rohingyas around the Rakhine State capital, Sittwe.

Clashes broke out again in 9 of the state's 17 townships in October 2012, including in several townships that did not experience violence in June, resulting in an unknown number of deaths and injuries, the razing of entire

Muslim villages, and the displacement of an additional 35,000 persons. Many of the displaced fled to areas surrounding Sittwe, where they also experienced abuses, including beatings by state security forces.

While violent attacks against the Rohingya community rise and fall, what is important to recognize is that the underlying conditions remain for ethnic cleansing and genocide. The Convention on the Prevention and Punishment of Genocide defines genocide as any of several “acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.” Those acts include “killing members of the group”, “causing serious bodily or mental harm to members of the group”, and “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.” The severe restrictions on travel, marriage, and access to aid imposed on the Rohingya by the Burmese government certainly raise the question of a deliberate, systematic attempt to inflict conditions of life to bring about physical destruction of the group.

Further, hate speech – a precursor of genocide – is prevalent in Burma. The hateful rhetoric of Rakhine monks is ominously reminiscent of the hateful propaganda directed at the Tutsi population and their sympathizers in the lead up and during the Rwandan genocide. While renewing calls for their expulsion from Burma, several Rakhine monks have urged the local population to sever all relations not only with the Rohingya people but those who have anything to do with the Rohingya who they described as “sympathizers”. Labeled as national traitors, they too face intimidation and violent attacks. There is a highly flammable toxic mix of conditions in western Burma that can explode into genocide unless strong action is taken.

Last year President Thein Sein proposed what amounts to the ethnic cleansing of the entire area where Rohingya citizens have been settled for generations. He went so far as to request assistance from United Nations Secretary General Ban Ki-moon to remove all Rohingya people from Burma or be sent to camps within the country. While he has since modified how he speaks about the Rohingya, the actions of the Burmese military speak volumes about the failure of his government to provide the protection – and recognize the fundamental rights – of this besieged ethnic minority.

The dire conditions faced by the Rohingya people have pushed thousands to flee on overloaded boats. Roughly 1,800 refugees washed up on Thailand’s shores in January and the United Nations estimates that at least 485 refugees are known to have drowned last year. It is estimated that one in ten of the grossly overloaded boats either veer off course or disappear. Those who arrive face further threats as evidenced by January raids in Thailand that rescued more than 800 Rohingya from human-trafficking networks.

The Rohingya are one of the most persecuted minorities in the world. They were effectively stripped of their citizenship in 1982 through the discriminatory Citizenship Law. The 1982 law was drafted by the military under former dictator General Ne Win and identified 135 ethnic groups as eligible for citizenship, the Rohingya being among the most prominent groups left out despite living in Burma since the early 1800s. It overturned a 1948 law, instituted at the time of Burma’s independence, that stated, “Any person descended from ancestors who for two generations at least have all made any of the territories included within the Union their permanent home and whose parents and himself were born in any of such territories shall be deemed to be a citizen of the Union.”

As United to End Genocide and 30 other international NGOs pointed out in a statement last July, the 1982 Citizenship law is, “not compatible with the Universal Declaration of Human Rights or with Burma’s legal obligations under international treaties” and “should be repealed, and replaced with a new law founded on basic principles of human rights. The new law should honor equality and non-discrimination, and help create an inclusive and tolerant Burma.” There has been little political will to repeal this law. The government has long restricted their rights to freedom of movement, education, and employment.

Government restrictions on humanitarian access to the Rohingya community have left tens of thousands in dire need of food, adequate shelter, and medical care. The authorities indefinitely suspended nearly all pre-crisis humanitarian aid programs, affecting hundreds of thousands more Rohingya who were otherwise unaffected by the violence and abuse.

President Obama raised the Rohingya issue in a speech during his December visit. He declared that there is “no excuse for violence against innocent people.” Unfortunately, President Obama failed to insist on consequences

should Burmese authorities remain on the same course. His highly publicized visit to Burma – while violence against vulnerable ethnic minorities at the hands of the military continued to escalate – may have sent a dangerous message to those in government who are directing this violence. Actions speak louder than words. The lifting of most forms of pressure on the regime and a visit by the President of the United States signals that violence, discrimination, systematic human rights violations and official disenfranchisement may, indeed, be perfectly acceptable.

The Administration's approach of "gentle persuasion and positive reinforcement," except for sanctions tightly targeted at specific individuals and entities must be re-examined in light of conditions in Burma. This re-examination should include the pace at which sanctions have been lifted without substantial progress by the Burmese government including policies and practices that are a matter of life and death for untold numbers of innocent people. The U.S. government laid out several preconditions for the lifting of sanctions in various pieces of legislation including the release of *all* political prisoners, transfer of national government legal authority to a civilian government, progress to end violations of internationally recognized human rights, and allowing humanitarian access to populations affected by armed conflict in all regions of Burma. The pace at which sanctions were lifted without substantial progress by the Burmese government on these preconditions is a disturbing trend. Worse, there are no conditions for the re-imposition of sanctions should there be no significant change.

The Obama administration has repeatedly emphasized that reforms in Burma are not "irreversible." Indeed, political prisoners remain behind bars and some of those who were released as part of the well-publicized reforms of the government are back in prison. While total bans on the right of public assembly have been lifted, those who participate in public demonstrations must have any of their slogans pre-approved by the regime or face arrest.

Given the ongoing killing of civilians, restriction of humanitarian aid, and gross violations in Kachin State, the severe plight for Rohingyas in Rakhine State, widespread displacement caused by pandemic land grabbing, reversible reforms, dominance of the military over civilian authorities, and remaining political prisoners; it is imperative that the U.S. government be clear that continued abuses will be met with consequences and that rewards given up to this point truly are "reversible". There are several steps that the U.S. Congress can take in the coming months to relay this message and to ensure, at a minimum, that no further restrictions are lifted before progress is seen.

What the US Congress should do:

- Renew the Burmese Freedom and Democracy Act to ensure that the remaining ban on gems sales, most closely tied to abuses in ethnic minority areas, are renewed, and to send a strong signal to the Burmese government and add pressure on the Burmese Army to cease hostilities in ethnic areas and pursue irreversible reforms;
- Use its influence to encourage the Obama administration to extend the International Emergency Economic Powers Act (IEEPA) to validate reporting requirements for U.S. companies, which are designed to strengthen accountability and transparency of U.S. corporations investing in Burma;
- Demand reports required of the administration to Congress in past legislation. Frankly, the administration has a poor track record in reporting back with several required reports in the JADE Act, for example, remaining unfulfilled;
- Include Appropriations language that provides for aid to local groups within Kachin state. Past line item provisions have allowed aid to Thailand-based groups helping displaced Kachin. That provision should be expanded to include local groups within Kachin state where tens of thousands remain displaced with limited access to aid;
- Include Appropriations language that sets parameters for International Financial Institutions (IFIs) to limit assessment missions, technical assistance, and loans if Burma fails to meet certain conditions. Tibet related legislation provides a useful precedent;
- Call for a United Nations Commission of Inquiry that covers not only recent violence in Rakhine state and Kachin state but anywhere else that past abuses have taken place in the country;

- Lay out clear benchmarks for the Burmese government to meet in order to allow further lifting of restrictions.

Set clear benchmarks for the Burmese government

Before allowing any further lifting of restrictions, the U.S. government should ensure that the Burmese government has made substantive progress regarding the following conditions:

- Demonstrated progress toward an end to gross violations of international human rights law and humanitarian law, including an end to attacks on civilians in all regions, and the provision of meaningful access for international human rights monitors;
- Entrance into meaningful collective nationwide negotiations that lead to a political settlement with ethnic minority groups; these should include negotiations over the grievances of ethnic nationalities including demands for constitutional decentralization/ federalism, power-sharing, a fair federal fiscal system, and the rights of individual minorities including religious, cultural, and linguistic rights;
- Implementation of constitutional changes that enable a civilian government to hold the military accountable, including reform of the judicial system to ensure independence and enabling the provision of legal mechanisms to hold perpetrators of human rights violations accountable;
- Drawing upon public participation and civil society input, establishing institutional reforms that will effectively hold perpetrators of human rights violations accountable for their crimes according to all relevant international legal standards;
- Allowing humanitarian access to people in areas of conflict; including unhindered access for humanitarian agencies;
- The unconditional release of all remaining political prisoners, and the repeal of laws that prohibit basic freedom including freedoms of assembly, speech, and press;
- Establishing the rule of law, including the creation of an independent judiciary with the proper training to fairly and transparently adjudicate cases;
- Ensuring the transparency of all revenues from taxation and the natural resources sector;
- Set clear parameters for engagement with international financial institutions (IFIs);
- Fully implementing ILO Commission of Inquiry directives to end forced labor; and
- Decreasing military spending while engaging in meaningful consultation with national stakeholders to develop an appropriate national budget, including sufficient expenditures on essential social services and other basic needs of the population.

If Burma fails to meet these criteria, the U.S. government should:

- Continue to renew sanctions legislation and pass Appropriations language as outlined above;
- Re-impose the ban on investment, retroactive to July 2012, when the restriction were lifted;
- Restore the export restrictions on financial services, reverting the conditions of the general license issued on April 17, 2012, which makes exceptions for not-for-profit activities in basic needs, democracy building, and good governance, education activities, sporting activities, non-commercial development projects directly benefiting the Burmese people, and religious activities;

Members of the Commission, as much as we want to hope that the recent progress toward democracy in Burma marks an irreversible turning point, nothing positive will last until the Burmese military stops committing atrocities and a political agreement is reached with the ethnic national states.

Congress needs to exercise an important oversight role that includes renewing the Burmese Freedom and Democracy Act while insisting that the administration take a measured approach on incentives. This can be assured by setting clear parameters and conditions for these incentives. Congress should insist that the United States government engage with the legitimate representatives of each ethnic nationality and support redress of their longstanding and unresolved concerns. It should focus on the plight of the Rohingya minority and insist on measures that will reduce the highly flammable conditions that could lead to even more of a catastrophe in a highly volatile area of Burma. Critically, even as progress moves forward, the United States cannot forget our commitment to cross-border humanitarian assistance. The hundreds of thousands of internally displaced people living in border areas depend on these aid networks for their survival.

I understand the desire to declare Burma a success story. I've been working on Burma for decades and want nothing more than to see true democratic transformation and an end to human right abuses. But, success isn't marked by removing sanctions—it's marked by lasting change for the people of Burma who have endured endless suffering under a brutal military regime. We must choose our next steps wisely. Let us reward genuine progress but let us not condemn the people of Burma—particularly those living in ethnic minority states—to the consequences of a long oppressive military regime that is suddenly freed of accountability and consequences for its behavior.

Again, thank you for holding this extremely important hearing. I am hopeful that it will be valuable first-step toward a re-examination and re-setting of U.S. – Burma policy. I am more than happy to answer any questions.

Mr. MCGOVERN: I want to thank all of you for your patience and for sitting here through this entire hearing and for your comments and your advice. We don't have this room for very long, so I am going to just throw a bunch of questions out and whoever wants to answer them can. If you don't want to answer them, that is okay too.

But just briefly, just all of you, you heard the administration witnesses just before you. Are you reassured or are you more anxious after the testimony? I mean, I asked specifically on the issue of the military whether or not there were any plans to kind of ease relations and the answer seemed to be no until there is progress. I am just curious, help me understand what made you feel good and what made you feel not so good about what you just heard from the administration.

Anybody. Everybody or anybody. Mr. Malinowski.

Mr. MALINOWSKI: Sure. I find myself agreeing with all of the words or most of the words. There is a commendable emphasis on the primacy of human rights and the relationship, transparency, anticorruption, staying the course, taking our time. But what I worry about is that I don't have the sense that they really know how to use leverage very well; that the old habit of saying we will do X if you do Y, but not until you do Y, is being lost.

Mr. MCGOVERN: Have we given too much and gotten too little in return so far?

Mr. MALINOWSKI: I think we may not agree 100 percent on that. I think that it was a good idea to lift most of the investment ban, but not all of it. I think some of the

sanctions did need to be eased. But I think that allowing, for example, engagement by U.S. companies with the state really military dominated oil and gas company in Burma was too much of a concession to interests that were not really human rights interests, let's put it that way. So I think holding them to the use of leverage to achieve the goals that they have outlined is the key, and Congress holds the key to some of that leverage because you renewed the legislation.

Mr. MCGOVERN: Ms. Quigley.

Ms. QUIGLEY: Yes, we have been very critical of, one, the pace of the response that the U.S. has done. The feeling is not enough was given by the Burmese Government before we gave something. So what is of concern, I agree with Tom, like the words sound great. We don't feel that their actions match their words. That is one thing that is very concerning to us. And we have had discussions about military to military relations. They say, okay, it is going to be human rights and it is going to be seminars, and then they are invited to Cobra Gold. There was, in our opinion, a PR fail in explaining what the Burmese military's two officers and observers, they are not participants. The message that was sent basically to Burma and to the ethnic nationalities was the Burmese military, without having reached any benchmarks or having accomplished something, now has a prestigious relationship with the U.S. military. It was not perceived in Burma as what it was viewed here by DOD or by the State Department.

I mean, there is a lot of concerns we have going forward when it comes to them saying we are not going to mil-to-mil training, but then we hear, well, we have to dangle carrots out to the military. That is the only approach that we really have for the military. And for us we feel as if the signals that this has been sending to the Burmese military, it is condoning the violence. It is condoning the approach that they continue to take, because there are no consequences for it. Like Tom says, they are underestimating the value of leverage and it is not being used to the extent that we feel as if it is.

I think that the administration has recognized that sanctions played a role in getting us to the point that we are now, but I don't think, you know, and I know this is a bit self-aggrandizing, but that pressure and threats, you know, when there was a Commission of Inquiry campaign from the NGO groups supported by Congress, supported by the administration, cable traffic would come back and we would hear how worried Burmese military and officials were that they would be sent to the ICC, there would be a commission inquiry and it would make that recommendation.

Ms. QUIGLEY: And I don't think that that is something that we should be giving up. I think that using that psychological –

Mr. MCGOVERN: Has the administration given that up?

Ms. QUIGLEY: Yes.

Mr. MCGOVERN: They have?

Ms. QUIGLEY: Yes, they have.

Mr. MALINOWSKI: In practice, yeah.

Ms. QUIGLEY: Not outright.

Mr. MALINOWSKI: Not historically.

Ms. QUIGLEY: Yes.

Mr. MCGOVERN: Ms. Ah Noh.

Ms. NOH: Thank you. First, I really support when Tom Andrews said change happened in Burma because of pressure. Pressure must continue. And I believe in the future the U.S. can play an important role in exposure for our nation and military, but not now is because that the Burmese army is almost 100 percent with almost no representative from ethnic areas. Before we give legitimacy and support, the military must have representatives from entire country and not continue to attack against the ethnic groups. Additionally, the military is responsible for many human rights violations with 100 percent impunity, so before we strengthen the military, we need an independent judiciary and justice system to prevent future impunities.

Mr. MCGOVERN: Mr. Simons.

Mr. SIMONS: Yeah, very briefly. My impression is that Assistant Secretary Posner and his bureau are doing an admirable job of trying to keep the focus on human rights and democracy, but that is not necessarily where the shots are being called on administration policy with respect to Burma, and if there were another hearing on Burma, I think the people you might want to talk to would be folks like Assistant Secretary Fernandez at the Economics Bureau at the State Department. Officials from OFAC and Treasury, officials from the Department of Commerce, from the Department of Defense because where I would question the testimony in the first panel is whether there really is a whole government approach in which human rights is central to the administration's policy. It is certainly central to the Bureau of Democracy, Human Rights and Labor, but I don't know that all parts of the government are on the same page in that approach.

Mr. MCGOVERN: Tom, do you have anything to add?

Mr. ANDREWS: Only, Mr. Chairman, that, you know, this change didn't happen because the military leaders woke up one morning in Burma and said, Oh, my goodness, what have we been doing? We have to have change –

Mr. MCGOVERN: Right.

Mr. ANDREWS: -- we have been wrong. It happened precisely because of

pressure, that is why.

Mr. MCGOVERN: So where is our leverage with the Burmese military? I mean -- again, maybe I am missing something here, but the administration panel basically said really we haven't done much with the military other than having some observers at these military exercises, but, I mean, where is our leverage with the military? What should we be doing with the military, you know, to get them to move forward and to reform? Mr. Malinowski?

Mr. MALINOWSKI: You know, I would personally be a lot more comfortable with engagement with the military and inviting them, the right ones, to exercises if we also exercised the stick of the SDN list. In other words, if we followed the stated policy, which is to reward reformers and to engage them while continuing to do everything we can to disadvantage those who are standing in the way of reform, so the fact that no military officer has been added to the SDN list in the last 4 years, despite clear evidence.

Mr. MCGOVERN: Right. Well, I am going to make sure they get all the information that we have received from many of you about the two individuals that I mentioned.

Mr. MALINOWSKI: And that would, you know -- setting aside just the legal obligation, the message that would send to the military ranks is, number one, the United States is still watching what you are doing, and you are going to get left behind. The country is moving forward economically, politically; you individually, personally are going to get left behind if you are seen as commanding troops in battle who are doing these kinds of things. That is from a tactical point of view important, even as your colleagues who may not be commanding those troops are getting invitations to Cobra Gold.

Mr. MCGOVERN: Well, you are all the experts here. I mean, are there reformers in the military, in the Burmese military that you believe that we can encourage and support?

Mr. MALINOWSKI: Yeah, there are different kinds of people in every institution, and --

Mr. MCGOVERN: Even in Congress, right?

Mr. MALINOWSKI: And, look, it is not -- I mean, you know, Thein Sein surprised a lot of people. He was a regional commander in the Shan State, and certainly there were not -- you know, his troops were not angels when he commanded them in the Shan State at that time, and yet he has surprised a lot of us, including myself. So I think if you have the right carrots and the right sticks, the right combination of encouragement and reward but also stigma for those who hold the process back, then I think we can get to where we want to go, including with the military.

Mr. MCGOVERN: Go ahead.

Ms. QUIGLEY: I just want to say, I think one thing that we would like to see is Congress taking a more assertive role. You guys have led Burma policy for 20-plus years, and I feel as if in the past sort of year Congress has let the administration sort of run with it

and sort of run Burma policy.

Mr. MCGOVERN: Right.

Ms. QUIGLEY: And I think one of the things that we would like to see is a return to Congress' role in setting priorities and benchmarks, you know. One thing of great concern to us today was there is this 50 businessmen delegation with Assistant Secretary Fernandez and the U.S. Chamber of Commerce, and the big push is to get names removed from the SDN list, and we really think Congress really needs to be assertive in setting certain benchmarks. Individuals to be removed from the list need to meet certain requirements to get their name off the list. I mean, we were very concerned last week when four banks who were on the SDN list, their sanction was waived, and you are allowed to do business with these banks, but nothing was stated that these banks had actually met any requirements for being removed from the Patriot Act sanctions. All that was mentioned was this is to make it easier for U.S. businesses to invest in Burma, and for us we are, like, when did that become the U.S. standard on Burma policy?

Mr. MCGOVERN: And I think that the response would be that there were no other banks that are operating in Burma that, you know, where you could do business, which is not a good reason to do it, but it is -- let me just say, you know, President Thein Sein, do you believe he is committed to the creation of a democratic civilian representative government in Burma or, you know, are they attempting to preserve military control over the government by, you know, implementing partial reforms designed to end sanctions on their country? I am just -- again, I am trying to figure out as we move to the next step here. Ms. Ah Noh, maybe you might be able to answer that question. You know, is this, is the President, do you believe, committed to the kind of reforms that we are all talking about here, that if he could, he would move things forward in the way that we all believe they should move forward?

Mr. MCGOVERN: That is okay.

Ms. QUIGLEY: She actually has some very strong opinions, she just sometimes needs a little --

Mr. MCGOVERN: No, no, and I understand that. I want to make sure that --

Ms. NOH: Sorry. Yeah, what I see our President Thein Sein, he is a good personality, but what I see is to reform of the Burma, we really not even one good person cannot really do, we need really -- how to say? A grand teaful that all the people, we need constitutional reform, so that will lead good for the people of Burma. So what I see is that now President Thein Sein, he order many times, 20 times for the ceasefire, and he give promise many things, but in the ground it is not really implemented what he said. So, yes, he is a good personality, but I don't see any -- right now I don't see any that reform is taking place.

Mr. MCGOVERN: Thank you. Anybody else want to comment? Let me just say, I

mean, I think it is probably correct to say that, you know, Congress has kind of sat back a little bit while the administration has taken the lead, and we have seen some incredible things. Aung San Suu Kyi was here in the Capitol, you know, being recognized, and she is out of prison and, you know, so on one level we have seen some extraordinary developments, but as you have all pointed out, you know, there is this other part of it, which is is there systematic reform, you know? And are the policies that we are pursuing aggressively trying to promote U.S. business opportunities over there with reporting requirements that I think we would all agree are not particularly as tough as we would like them to be, you know, in terms of making sure there is a high standard in terms of respect for human rights, but, I mean, you know, we have sat back pretty much and let the administration kind of call the shots, and things have been moving pretty rapidly, but I guess the question now is what do we do, what should Congress do in its oversight role? You know, what do we need to do in the short term and the medium term and the long term to ensure that the reforms that everybody wants actually move forward? You know, you talk about the lists and we have talked about, you know, a few other things. I would encourage all of you to work with this commission to help kind of guide us on some of the short-term steps that need to be taken immediately. Look, I think we are -- this is all about human rights, you know, so we want to see more U.S. investment overseas, but we want to see it done in a way that promotes human rights, not just for the sake of U.S. companies exploiting people who are not -- whose rights are not being respected. So, you know, any guidance that you may have we can all kind of close with? Any advice of what we need to do right now? If Congress could do something right now, what would be the most important thing for us to focus on?

Ms. Quigley?

Ms. QUIGLEY: Well, so, one, I don't know if you consider this immediately, but the Burmese Freedom Democracy Act, the import ban has to be renewed every summer before the end of July or it expires. The gem provision that bans jadeite and rubies from coming to the country is part of that, it is originally from the JADE Act, but it was written specifically to cede into the Burmese Freedom Democracy Act import ban. That will expire. That is actually the only import sanction that remained in place. In November when Obama issued a waiver for the import ban, he kept the gem ban, but if Congress doesn't renew the Burmese Freedom Democracy Act this summer, we lose an additional sanction, so that is when we say those that expire, you know, renew them.

Mr. MCGOVERN: Thank you.

Ms. QUIGLEY: We also think legislation that puts into place benchmarks for removal from the SDN list, removal of further sanctions, you know, legislation that clearly states what that should be, we think that would be advantageous for Congress to send that message.

Mr. MCGOVERN: But the law is already in place for what the administration -- was I incorrect when I said that they had an obligation to update the list?

Mr. MALINOWSKI: That is what the law says. The law literally says that they have an obligation to update the list as new information comes in, and so there is a matter of just, you know, really exercising oversight over OFAC and the State Department, and more the State Department because, you know, OFAC is not a policy-making institution. They implement the policies that are set at the White House and the State Department. The State Department needs to send a signal that the list needs to be updated with this information.

I agree with Jen's other recommendations. Absolutely we need standards for how to use the SDN list dynamically over the next 2 or 3 years, and that will include taking people off the list, that is appropriate, but what are the standards for doing that.

Mr. MCGOVERN: Right.

Mr. MALINOWSKI: And then maybe just a more general point in answer to your previous question. We can't put all of this on two individuals in Burma, whether it is Thein Sein or Aung San Suu Kyi. She in particular, she is my hero, I assume she is your heroine as well, but she faces extraordinary constraints right now as a member of Parliament, focusing almost single mindedly on trying to negotiate with the military for a change in the Constitution in 2015, which means it is hard for her to speak out about most of the things that we have been talking about. One person told me that she has gone from house arrest to Lower House arrest, which you may sympathize with. So what she counts on us to do is to do our part, not just wait for instructions, but to do our part to carry the policy that we have put into place over the last 20 years to its logical end point of full democracy in Burma.

Mr. MCGOVERN: Mr. Andrews?

Mr. ANDREWS: Mr. Chairman, I think what is required right now is for the Congress to be more precise and more prescriptive in the laws that it sets regarding U.S. policy in Burma. There are a lot of waivers that have been exercised by the administration, and I think we have to look at the impact of those waivers and recognize that the legislation that you have established providing for the great flexibility may need to be reined in. I think some of the specific appropriations measures, for example, need to make sure that the right aid is getting to the right people, particularly in Kachin State, for example. You can make that very prescriptive. The call for a United Nations commission of inquiry. I mean, many of the specific things that have been mentioned in this panel, and I certainly have made specific recommendations in my written testimony, all of those can be more precisely put into the legislation with less maneuverability to ignore them.

The other point is that the Congress has asked for several reports and findings from the administration, many of which have gone, frankly, ignored, and I think that the Congress could be more vigilant in calling upon the administration to be much more responsive and responsible.

Mr. MCGOVERN: Mr. Simons? Ms. Ah Noh?

Ms. NOH: Yes, thank you. Yes, to support Tom's and Jen's comments, for the

Congress please set clear benchmarks for lifting sanctions and continuous engagement with the Burmese, with Burma, and also the State Department change, there are targets, we need to give clear target to the Burmese Government. Thank you.

Mr. MCGOVERN: Thank you. Mr. Simons?

Mr. SIMONS: All I would add is just that an emphasis on the oversight rule, not just with respect to the administration but also with respect to the World Bank and the ADB and its current lending to Burma.

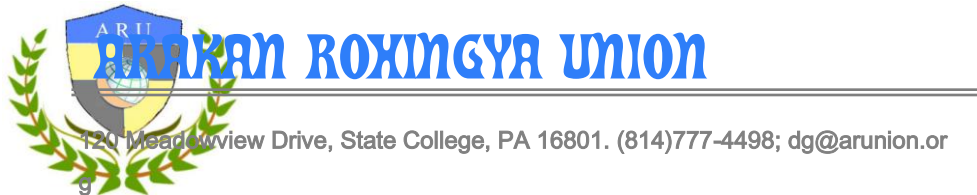
Mr. MCGOVERN: And I appreciate these recommendations. I would just close with saying this, that, you know, you know, as things develop it would be very helpful to this Commission if you have specific recommendations as things are unfolding that we should, you know, weigh in on this issue or that issue or, you know, express concern about these individuals who are not on the list. I mean, I think we have a little bit of a road map here to kind of, of things that we ought to do, but, you know, look, I think we all kind of feel the same. Some incredible things have happened, and there is this great potential, and I think all of us want to make sure that we just don't mess this opportunity up, that this potential blossoms and that the people of Burma have a much brighter and better future and one where everybody is respected, including the ethnic minorities who are now under great attack. So, you know, I think everybody on this Commission wants to be helpful here, so please stay in touch with us, and I appreciate very much your testimony. I have learned an awful lot today, so I have a lot to digest, but I thank you very much, and the hearing has come to an end. Thank you.

[Whereupon, at 3:15 p.m., the commission was adjourned.]

[The report follows:]

[The statement of Dr. Wakar Uddin follows]

STATEMENT OF DR. WAKAR UDDIN, DIRECTOR GENERAL, ARAKAN ROHINGYA UNION



February 27, 2013

STATEMENT FOR TLHRC HEARING

**Submitted by
DR. WAKAR UDDIN, DIRECTOR GENERAL, ARAKAN ROHINGYA UNION**

The human right violations against the Rohingya ethnic minority in Arakan/Rakhine State are profound and serious. They have been on the rise since initiated in 1962. After, the violence against the Rohingya people broke out in June of 2012, they took a dramatic turn and are increasing at an alarming rate. Currently, the most disturbing human right violations against Rohingyas by the Burmese forces and local authorities are:

1. Widespread gang-rapes of Rohingya women by Burmese forces and Rakhine vigilantes.
2. Secret (and sometimes open) participation by Burmese Nasaka, Lon Htein, and police forces in the violence against Rohingya by Rakhine.
3. Detention of Rohingya men and women on false charges of inciting violence or often without any charge.
4. Beating and arrests of heads of Rohingya households when they refuse to write “Bengali” in the forms during current verification process.
5. Collusion of Burmese forces with human traffickers in transporting Rohingya men and women to Malaysia, Thailand, and Australia.
6. Collusion of Burmese forces with Rakhine judges in issuing arrest warrants for over seven hundred Rohingya men and women on false charges of inciting violence.
7. Infringing upon Rohingya’s freedom of worship. Rohingya are not allowed to attend mosques and the mosques are locked up by the local authority.
8. No funeral services/prayers are allowed. Rohingya are burying dead under the darkness of night after secret funeral prayer service.
9. Travel restrictions for Rohingya only (local, state, and countrywide).
10. Restriction on marriage for Rohingya only.
11. Denial of higher education for Rohingya. Only a handful of elementary and secondary education schools are operating with a few teachers around city areas.
12. Confiscation of Rohingya lands and the building of Bama and Rakhine settlements on them.
13. Continuous harassment of Rohingya families, forced and child labor, and extortion by Burmese forces and local authorities.

While there have been some significant positive responses from the Burmese Government to the international community on Rohingya issues, there is a clear disconnect

between the central government in Nay Pyi Taw and the Burmese forces/local authorities, or the central government is just turning a blind-eye to these serious violations, as evidenced by the dramatic rise in the human right violations against the Rohingya in Arakan State.

These violations are solely devised and committed by the local and state level authorities that do not involve any legislation by the central government; therefore, they are illegal and must be immediately stopped by President Thein Sein. The fundamental and larger issue is the denial of citizenship to the Rohingya. Granting all the Rohingya bona-fide citizenship, based on their ethnic rights, will be instrumental in finding a permanent solution for the Rohingya people in Arakan/Rakhine state, Burma.

[The statement of Mr. Tun Khin follows:]

STATEMENT OF MR. TUN KHIN, PRESIDENT, BURMESE ROHINGYA ORGANISATION UK



BURMESE ROHINGYA ORGANISATION UK (BROUK)

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Date: 27/02/2013

Tom Lantos Congressional Human Rights Commission
Hearing on Human Rights in Burma
February 28, 2013

Ongoing and Egregious Violations of Human Rights Targeting the Rohingya of Burma
Submission by Maung Tun Khin
President
Burmese Rohingya Organisation UK (BROUK)

Overview of Arakan Violence

Since June 2012:

- More than 5,000 Rohingya have been killed.
- Thousands of Rohingyas are missing since June violence.
- Many thousands of homes have been destroyed.
- Hundreds of women have been raped.
- More than 100,000 people have been forced to flee their homes.
- Thousands of Rohingya have been living like in a cage, and many are starving in their own homes and villages. Rohingya have become refugees in their own homeland.
- A new system of Apartheid against Rohingya is being introduced.

On 11th July 2012, Burmese President Thein Sein declared to UNHCR delegation that he will not recognize Rohingya as a Citizen of Burma and Rohingya are illegal Bengali who were brought into Burma to work as farmhands by the English colonialists before the [country's] independence in 1948 despite having lived in Arakan State for centuries.

Current Situation

1. Aid

Most Rohingyas, including the estimated 140,000 internally displaced during the violence, are not getting sufficient aid, many are dying of hunger, malnutrition and diseases. Humanitarian aid to the Rohingya displacement camps and areas has been systematically blocked by the local administration, dominated by the state government led by RNDP. Aid agencies have warned of a growing “humanitarian emergency” in the heavily restricted camps around Sittwe. MSF says that acute malnutrition, skin infections and other ailments caused by poor sanitation are on the rise, especially among those uprooted by a second wave of violence in October and now live on the margins of established camps. There are more than 220 pregnant women in one camp in Pauktaw. For their delivery they cannot go to a health centre and they will have to deliver their babies in the mud, without a doctor. Rohingya women in Pauktaw Township are highly at risk.

Last week UN human rights rapporteur Tomas Quintana highlighted the lack of adequate health care in the larger Rohingya Muslim camps in Arakan State and that the local and international medical staff are unable to provide medical care to some of the Muslim camps due to the threats and harassment from local Rakhine Buddhist communities. Quintana said that Taung Paw camp in Myaybon Township “felt more like a prison than a camp”.

2. Resettling Rakhine from Bangladesh

Rohingya’s burned down and depopulated villages are being populated with Rakhine Buddhist settlers warmly invited from within Rakhine state and from Bangladesh. These are the main ‘push factors’ that cause the migration of Rohingya to neighbouring countries for which the Burmese government and state government are fully responsible.

3. Cruel Methods of Torture in Buthidaung Jail

According to our reliable sources, from June 2012 until the present the Rohingya Muslim detainees of Buthidaung Prison have been tortured, including beating to death, by the local Burmese security forces and the prison authorities. A large number of Rohingya Muslims who weren’t involved in the violence of June 2012 have been arrested based on false accusations. Tomas Quintana said that “Dr. Tun Aung’s case reveals that Muslims being tried and convicted in Rakhine state in relation to the recent violence are not receiving access to legal counsel, which is a violation of their basic human rights.”

4. Religious Persecution

No school or madrassa education is available for the Rohingya children in villages and displacement camps. Most of the mosques are still closed down, and funeral prayers for the deceased persons are disallowed without payment. Villagers and Maulvis (religious persons) were tortured for performing funeral services. In Shweza village of Maungdaw NaSaKa intelligence officers are extorting Kyat 10,000 to 25,000 for each funeral.

5. Boatpeople

Since June 2012, an estimated 19,000 Rohingya have taken the perilous voyages towards Malaysia and more than 1000 boat people are missing or have drowned after several boats sank, while a number of them ended up in jails and detention in countries within the region.

Last week, 32 asylum seekers were rescued by the Sri Lankan navy. They went without food for 21 days and were forced to throw dozens of dead overboard after their wooden vessel failed at sea. The Rohingya survivors told local officials that they set out to seek refuge in Indonesia or Australia, but instead spent two months languishing on the water. By the time they were plucked from the sea, they had thrown 98 bodies into the sea.

6. Implementing 1982 Citizenship Law

During the last few weeks, the Burmese Government has been forcing Rohingya to use the term ‘Bangali’ in identity application forms. Despite international outcries, the Burmese government is continuing to impose the

oppressive “Citizenship Law of 1982” on the homeless Rohingya people whilst most of their documents were burned or destroyed in the violence. NaSaKa security forces are conducting irregular surveys forcing the Rohingya villagers to write ‘Bengali’ as their racial name in place of ‘Rohingya’ against their will. Some villagers were arrested or tortured for opposing this, while others escaped.

UN Special Rapporteur Quintana also called for Parliament to amend the 1982 Citizenship Act "to ensure that all persons in Myanmar have equal access to citizenship and are not discriminated in such access on grounds of ethnicity or religion," and that "in the meantime, the current Act should be applied in a non-discriminatory manner to enable those with a just claim to citizenship, to claim it on an equal basis with others, including those from the Rohingya community."

One week ago, Burma’s Deputy Immigration and Population Minister Kyaw Kyaw Win denied the existence of the Rohingya ethnic group in Burma during a parliamentary session on Tuesday. The international community can’t keep turning a blind eye to the fact that with statements like this President Thein Sein’s government is encouraging violence against the Rohingya.

7. Anti-Muslim Campaign and Racism

Anti-Muslim activities and racism is growing day by day in Burma. There should be laws on racism if the regime wants to see durable peace in Burma. There is a solution if the regime is willing to negotiate between the Rohingya and Rakhine communities. Burma has been a country where people of different religious beliefs have lived together in harmony and it is sad to see we have to be like this to each other when we are living in the age of openness and transparency; what everyone longs for.

Recommendations

We have repeatedly called on the international community to take action on these serious human rights abuses and violations. A generally more robust approach must be taken with the government of Burma over this issue. BROUK would like to continue to urge:

1. Support International Observers on the Ground

The first priority is protection to stop further human rights violations and abuses. Burmese will not stop unless international observers are not in the ground. Thein Sein's government is implementing a policy of ethnic cleansing to drive out Rohingyas from Burma or keeping them in camps. Further attacks against Rohingya could take place anytime in Arakan.

2. Full and Free Access for Delivery of Aid

The government of Burma is blocking aid to many Rohingya areas and only allowing limited aid to those in camps for the displaced. An international effort must be made to ensure the delivery of aid in the same way pressure was applied to the government of Burma when they blocked aid after Cyclone Nargis. The suspension of EU sanctions was conditional on the lifting of restrictions on aid. There are more restrictions on aid to Rohingyas these days in Arakan State. The EU should reconsider about lifting sanctions as the government is restricting aid to Rohingyas.

3. A United Nations Commission of Inquiry

Demand your government supports the establishment of a UN Commission of Inquiry into what has taken place in Arakan State. As a matter of priority, the United Nations Human Rights Council should place Burma on the agenda during the March session in Geneva with a view to adopting a resolution to establish an independent Commission of Inquiry. A UN Inquiry is the only way the true facts can be established, those responsible can be held to account, and recommendations can be made to prevent further violence.

4. Repeal of the 1982 Citizenship Law

The 1982 Citizenship Law deprives Rohingya of citizenship and underpins repression of the Rohingya. The international community must halt all further steps to relax pressure and build closer relations with the government of Burma until this law has been repealed and replaced with a law in line with human rights principles and Burma's international legal obligations as a signatory to the UN Convention on the Rights of the Child.

Latest information (Just received today)

Yesterday (26 Feb 2013) evening, a few Rakhine from Arakan Liberation Party (ALP) brutally killed two innocent Rohingyas in the forest beside the village of Nurulla, Baggona Village tract, Maung Daw. They were killed while they together with other four people went for fishing in the streams of the forest. "At 2PM yesterday, six Rohingyas from the village, Nurullah, went for fishing in the stream of the forest by the village. While they were fishing, around 12 Rakhine from ALP came up and started firing at them. Two of them were mercilessly killed, whereas other four managed to escape the deaths.

The two killed Rohingyas are:

- (1) Moahmmmed Rashid S/o Lal Meah (32 years old)
- (2) Mohammed Sayed S/o Amir Hamza (42 years old)

And the other four surviving victims are:

- (1) Shomsul Anwar S/o Abul Bashar (40 years old)
- (2) Lala S/o Nurul Johar (27 years old)
- (3) Anwar Shar (30 years old)
- (4) Mohammed Ridhwan S/o Ali Johar (30-years old)

According to the surviving victims, they were in ALP Uniforms and could well identify the ALP. At the moment, with the help of Rakhine National Development Party (RNDP), there are many Rakhine from ALP in the forests of Arakan including that of Maung Daw and increasing unrests and the violence against Rohingyas.

For more information;

Please contact Tun Khin (tunkhin80@gmail.com) +44 7888714866

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD



Tom Lantos Human Rights Commission (TLHRC) Hearing

Human Rights in Burma

Thursday, February 28, 2013

1:00 PM – 3:00 PM

Cannon 334 HOB

Please join the Tom Lantos Human Rights Commission (TLHRC) for a hearing on human rights in Burma.

For decades Burma was ruled by a brutal authoritarian military regime known for its abysmal human rights record. In 2010, after the first election in 20 years, opposition leader and Nobel Peace Prize winner Aung San Suu Kyi was released from almost 15 years of house arrest and the country transitioned from military rule to civilian-led government. Two years later, the National League for Democracy (NLD) participated in by-elections and a significant number of NLD members, including Aung San Suu Kyi, were elected to parliament. Since 2010, the Burmese government has instituted a number of positive reforms, such as the release of dozens of political prisoners, the passing of new laws to allow for increased freedom of association, and the abolishment of pre-publication censorship, among others. In response to these reforms the US began re-engaging with Burma and recently lifted a number of sanctions previously placed on the country.

Despite this progress, concerns remain about the serious human rights situation in the country including: the killing of civilians, restriction of humanitarian aid, and other egregious violations in Kachin State, the dire situation for Rohingyas in Rakhine State, land and development concerns, continued freedom of association and expression violations, hundreds of remaining political prisoners, and many more.

In addition to assessing the human rights situation in Burma, this hearing will evaluate U.S. policy, specifically with regards to the future of U.S. engagement with the Burmese military and investment.

The following witnesses will testify:

Panel I

- Assistant Secretary Michael Posner, Bureau of Democracy, Human Rights and Labor
- Acting Special Representative and Policy Coordinator for Burma, Patrick Murphy, Bureau for East Asian and Pacific Affairs

Panel II

- Ms. Ah Noh, Deputy Coordinator, Kachin Women's Association of Thailand
- Mr. Marco Simons, Legal Director, EarthRights International
- Mr. Tom Malinowski, Washington Director, Human Rights Watch
- Ms. Jennifer Quigley, Executive Director, U.S. Campaign for Burma
- The Honorable Tom Andrews, President, United to End Genocide

If you have any questions, please contact the Tom Lantos Human Rights Commission at 202-225-3599 or tlhrc@mail.house.gov.

James P. McGovern
Member of Congress
Co-Chair, TLHRC

Frank R. Wolf
Member of Congress
Co-Chair, TLHRC