

VICTIMS' RIGHTS IN BURMA

HEARING

BEFORE THE

TOM LANTOS HUMAN RIGHTS COMMISSION

UNITED STATES
HOUSE OF REPRESENTATIVES

ONE HUNDRED AND FIFTEENTH CONGRESS
SECOND SESSION

JULY 25, 2018

Official Transcript

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VICTIMS' RIGHTS IN BURMA

WEDNESDAY, JULY 25, 2018

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

The Commission met, pursuant to call, at 10:00 a.m., in Room 2200 Rayburn House Office Building, Hon. James P. McGovern [co-chair of the Commission] presiding.

Mr. MCGOVERN. Good morning and welcome to the Tom Lantos Human Rights Commission hearing on victims' rights in Burma.

I would like to extend a special welcome to our witnesses and I want to thank them for their presence today. The Commission could not do its work without the support of human rights organizations and brave individuals like you in the United States and around the world. We deeply appreciate all that you do.

Burma, a multi-ethnic state, has been in the news for months for a terrible reason: over the last two years, the Burmese military, Tatmadaw, has waged a brutal scorched earth campaign against the Rohingya minority in Rakhine state.

A new civilian government took power in Burma in March 2016. A few short months later, the Tatmadaw campaign displaced tens of thousands of Rohingya into Bangladesh.

A second campaign began in August 2017 and has forced some 700,000 more people to flee to Bangladesh. Villages have been razed to the ground, women and girls gang-raped, men executed.

The whole Rohingya population has been demonized by the authorities, some Buddhist leaders and far too many of the Burmese people.

Aung San Suu Kyi, state counselor and a once revered human rights figure, has been unable, unwilling, or both to do anything to stop the criminal violence – criminal because it is hugely disproportionate to the assaults by an armed insurgent group used to justify it, and because the Tatmadaw targets civilians.

But here's the thing. There is little that is new except perhaps the scale in the "clearance campaign" perpetrated against the Rohingya in Burma. The Burmese military has used the same tactics for decades against other ethnic populations in Burma.

The infamous "four cuts" counter-insurgency strategy seeks to deprive ethnic armed organizations of food, funds, intelligence, and recruits by terrorizing civilians and driving them out of their villages.

The Burmese military directly attacks villages, murders unarmed civilians, rapes women and girls, sets land mines in fields and roads, and destroys crops, markets, homes, and property.

A brutal campaign in Karen state during the 1980s forced tens of thousands to flee to Thailand. Over 300,000 people were driven from their homes in central Shan state between 1996 and 1998, and another 100,000 fled Kachin and northern Shan state in 2011.

The Tatmadaw has never been held accountable for its abuses. In fact, Burma's 2008 constitution shields them from accountability for past crimes.

And now, in 2018, in spite of a government peace initiative begun by the civilian government, fighting in Kachin and Shan states has intensified and there are new allegations of serious human rights abuses by the military.

We will hear today that the same tactics used against the Rohingya over the last two years have been and continue to be deployed in several of Burma's ethnic states.

I believe the entrenched impunity of the Burmese military contributes to the unending cycle of violence in Burma. It is time to recognize that what has happened to the Rohingya is not an aberration.

It is the modus operandi of the Burmese military, and it must end.

Today we will hear recommendations for ways to advance accountability for an institution that has been out of control for far too long.

I want to note that the House has acted on this issue when it approved bipartisan language for the National Defense Authorization Act to impose targeted sanctions on Burmese military officials implicated in gross human rights abuses and other atrocities against ethnic minorities.

Unfortunately, that provision did not make it through the NDAA conference, so we need to find a new way forward.

But accountability for past crimes is not enough. It is necessary but it's not sufficient. We say that victims have rights, and one of those is the right to justice.

But there are other rights as well. There are rights such as the rights to truth, to reparations, and to the guarantee of non-reoccurrence, meaning that violence will not be repeated – that it will end once and for all.

The guarantee of non-reoccurrence is about prevention. So how do we stop the ongoing violence and keep it from starting up again?

This is where issues like citizenship, resolving land disputes, and ensuring real civilian control over security forces come into play. This is why reforming laws and policies that lead to gross human rights violations is essential.

A permanent end to the violence requires addressing the underlying sources of conflict that are tearing the country apart and I hope that we will also hear recommendations along these lines this morning.

So let me close with one more comment. The Government of Burma has consistently denied that its forces have committed the crimes that you will hear about today, calling the allegations "fake news."

But the information the witnesses will share with you is well-documented, it is credible, and it has been verified. So the Burmese Government is lying, while imposing a huge humanitarian crisis on neighboring countries and the rest of the world. This is simply outrageous.

No government has the right to do what Burma has done. Sovereignty does not extend to genocide, nor to ethnic cleansing, nor to the commission of any human rights abuses. Governments do not have the right to crush whole populations. We need to emphatically reiterate this message every single day to every single rogue government around the world.

[The prepared statement of Co-Chair McGovern follows:]

**PREPARED STATEMENT OF THE HONORABLE JAMES P.
McGOVERN, A REPRESENTATIVE IN CONGRESS FROM THE STATE
OF MASSACHUSETTS AND CO-CHAIR OF THE TOM LANTOS
HUMAN RIGHTS COMMISSION**



Tom Lantos Human Rights Commission Hearing

Victims' Rights in Burma

Wednesday, July 25, 2018

10:00 – 11:30 a.m.

2200 Rayburn House Office Building

Opening Remarks as prepared for delivery

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Villages have been razed to the ground, women and girls gang-raped, men executed. The whole Rohingya population has been demonized by the authorities, some Buddhist leaders and far too many of the Burmese people.

Aung San Suu Kyi, State Counsellor and once a revered human rights figure, has been unable, unwilling or both to do anything to stop the criminal violence – “criminal” because it is hugely disproportionate to the assaults by an armed insurgent group used to justify it, and because the Tatmadaw targets civilians.

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We need to emphatically reiterate this message every single day to every single rogue government around the world.

Let me turn now to my colleagues for their opening remarks.

STATEMENTS OF MICHAEL MARTIN, SPECIALIST IN ASIAN AFFAIRS, CONGRESSIONAL RESEARCH SERVICE; GUM SAN NSANG, PRESIDENT, KACHIN ALLIANCE; AND TUN KHIN, PRESIDENT, BURMESE ROHINGYA ORGANISATION UK

STATEMENT OF MICHAEL MARTIN, SPECIALIST IN ASIAN AFFAIRS, CONGRESSIONAL RESEARCH SERVICE

Mr. MCGOVERN. Let me turn now to our witnesses, who we are honored to have with us here today. Michael Martin, who's a specialist in Asian affairs with the Congressional Research Service; Gum San Nsang, president of the Kachin Alliance; and Tun Khin, a Rohingya human rights activist.

And so we are honored to have you all here and we will begin with Mr. Martin, and welcome.

Mr. MARTIN. Chairmen McGovern and Hultgren, members of the Commission, thank you for the opportunity to appear before you today.

My testimony is based on covering events in Myanmar for ten years for CRS as well as three recent trips to Burma within the last nine months. With your permission, I'd like to submit a separate more detailed written statement for the record.

Mr. MCGOVERN. Without objection.

Mr. MARTIN. In 2011, Burma's military junta, the State Peace and Development Council, or SPDC, transferred power to a mixed civilian-military government under the terms of the 2008 constitution written by the SPDC.

The SPDC's former prime minister, General Thein Sein, was selected as president and soon implemented some promising political changes.

However, after a couple of years, he seemed uninterested in or unable to make any additional political reforms. In addition, his efforts to negotiate a nationwide ceasefire agreement to end Burma's nearly 70-year-old civil war were only partially successful.

In November 2015, Aung San Suu Kyi and her political party, the National League for Democracy, or NLD, won more than 80 percent of the elected seats in Burma's parliamentary elections. Hopes were high that the new government could make constitutional amendments and pass new laws to transform Burma into a civilian-led democracy that protected the human rights and civil liberties of all its people as well as successfully negotiate an end to the civil war.

That optimism, however, didn't fully take account the provisions of the 2008 constitution that endowed the military with significant control over the government. Nor did the optimism sufficiently recognize the military's commitment to protect and preserve its authority and power.

For example, the 2008 constitution grants the commander-in-chief of Burma's security forces the power to appoint 25 percent of the members of both chambers of the Union Parliament. It also requires that more than 75 percent of all the members of the Union Parliament vote in favor of any proposed

constitutional amendments. This, effectively, gives the commander-in-chief veto power over constitutional amendments. Aung San Suu Kyi soon learned that the commander in chief, Senior General Min Aung Hlaing, had no interest in supporting her proposed constitutional amendments.

The 2008 constitution also grants the commander-in-chief final authority over all of Burma's security forces, including the military, or Tatmadaw, as you referred to, the border guard forces, and the Myanmar police force. As a result, while Aung San Suu Kyi might be able to negotiate peace with the ethnic armed organizations, or EAOs, Min Aung Hlaing will decide if Burma's security forces will abide by the peace agreement.

Min Aung Hlaing has been, at best, lukewarm about Aung San Suu Kyi's peace process. He consistently blames the EAOs for the continuation of the civil war and criticizes their unwillingness to accept the military's terms for peace: disarmament, demobilization, and reintegration – DDR, as they call it – and acceptance of the existing 2008 constitution.

Meanwhile, Burma's military forces are actively fighting with the EAOs in Kachin and Shan states, who have not signed the not-quite-nationwide ceasefire agreement, as well as with an EAO in Karen state, who has signed the ceasefire agreement.

Many of the EAOs – and I've met with many of the EAOs – signatories and non-signatories, have little or no faith in Burma's military's commitment to peace. In addition, Burma's military forces have been accused of attacking noncombatant civilians in Kachin, Rakhine, Shan, and, I just read today, Chin states, as part of, as you alluded to, the "four cuts strategy" to deprive the EAOs of food, funds, intelligence, and recruits. You'll hear from the other witnesses today about the resulting extrajudicial killings, torture, and rapes.

Military officials I met with in Burma last month categorically denied their troops have committed any of these human right abuses.

However, it seems no coincidence that the 33rd and 99th light infantry divisions, which led the clearance operations in Rakhine state in September 2017, are now leading the military's offensive in Kachin and Shan states. Previously, they were in Shan state.

Understandably, many of the survivors of the human rights abuses in Burma demand some form of accountability for the crimes they endured. But their demands go beyond basic justice.

Many of the Rohingya, many of which I've met, insist that some form of accountability process be undertaken before they will voluntarily return to Rakhine state.

The same goes for many of the approximately 100,000 people displaced by fighting in Kachin and Shan states. For them, accountability is a pre-condition for a true and lasting peace in Burma.

This ends my oral testimony. Thank you for the opportunity to appear before the Commission and I am happy to receive any questions you may have.

[The prepared statement of Mr. Martin follows:]

PREPARED STATEMENT OF MICHAEL MARTIN



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TESTIMONY

Statement of

Michael F. Martin
Specialist in Asian Affairs

Before

Tom Lantos Human Rights Commission

Hearing on

“Victims’ Rights in Burma”

July 25, 2018

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CRS TESTIMONY
Prepared for Congress

Chairmen McGovern and Hultgren, Members of the Commission, thank you for the opportunity to appear before you today to discuss the rights of survivors of human rights violations in Burma. My name is Michael F. Martin, and I am testifying today in my capacity as an analyst for the Congressional Research Service. My testimony is based on over 10 years of covering events in Burma, as well as three trips to Burma within the last nine months.

Burma's On-going Civil War

For almost 70 years, the people of Burma have endured a low-grade civil war that pits a central government—previously located in Yangon, now based in the capital city of Naypyitaw—controlled by the nation's ethnic majority, the Bamar, against a number of ethnic armed organizations, or EAOs, each fighting on behalf of the rights, culture and traditions of one of Burma's ethnic minorities. Over the decades, fighting between the Burmese military, known as the Tatmadaw, and the EAOs has ebbed and flowed, with periods of relative peace after the Tatmadaw and some of the EAOs concluded ceasefire agreements.

While the fighting may have subsided from time to time, the cause of the low-grade civil war remained. Many of Burma's ethnic minorities and the EAOs feel that Burma's ethnic majority, the Bamar, and the Tatmadaw have failed to abide by the terms of 1947 Panglong Agreement made between General Aung San, the father of Aung San Suu Kyi, and several of Burma's larger ethnic minorities, which committed to form a federated state that was would provide the country's seven predominately ethnic minority states a high degree of autonomy. To many Bamar, and the Tatmadaw, the EAOs are insurgents threatening the disintegration of Burma. The Tatmadaw cited this fear of disintegration in justifying the overthrow of an elected civilian government in 1962, thereby beginning nearly 50 years of military rule.

During Burma's five decades of military rule, military leaders changed, and the military junta's reputation for brutality and repression grew. Four months after the 1962 coup d'état, the Tatmadaw broke up a student protest at Rangoon University, killing more than 100 students and destroying the Student Union building. In 1978, the Tatmadaw conducted Operation Dragon King in Rakhine State, driving over 250,000 Rohingya into neighboring Bangladesh. In August 1988, the Tatmadaw violently quelled the 8888 Uprising, a nationwide call for democracy and a return to civilian rule, killing thousands of protesters. Burma's military junta quashed another nationwide protest in 2007, the Saffron Revolution.

Throughout this period, fighting between the Tatmadaw and the emerging EAOs ebbed and flowed in intensity and scope across Burma's seven ethnic states—Chin, Kachin, Kayah (Karenni), Kayah (Karen), Mon, Rakhine (Arakan), and Shan. The major EAOs emerged soon after Burma's independence from British colonial rule in 1949—the Karen National Union (KNU), with its armed wing, the Karen National Liberation Army (KNLA), and the New Mon State Party (NMSP), with its armed wing, the New Mon State Army. The Karenni National Progressive Party (KNPP), and the Karenni Army, were established in 1957. Two other larger EAOs—the Kachin Independence Organization (with its associated militia, the Kachin Independence Army) and the Shan State Army—arose in the 1960s, around the time the Tatmadaw seized power. The Chin National Front (CNF), and its armed wing, the Chin National Army, was created a few months before the 8888 Uprising occurred. After the 8888 Uprising, the United Wa State Party (UWSP), and the United Wa State Army (UWSA), were formed and began their struggle to form an independent Wa State in northern Shan State.

Historically, Rakhine State is the only ethnic state in which there has not been a sustained EAO presence. From 1947 to 1961, a Rohingya group called the Mujahideen fought for the right to secede and join former East Pakistan (now present-day Bangladesh). The Rohingya Solidarity Organization (RSO) was formed in 1982 and was active in Rakhine State during the 1980s and 1990s, but effectively dissolved by 1998. The Arakan Liberation Party (ALP), and its militia, the Arakan Liberation Army (ALA), was active

in the 1970s, and briefly reemerged in the 1980s with the support of the KNU, but effectively became inactive in the 1990s.

Two new EAOs have emerged in Rakhine State over the past decade, representing each of the major ethnic minorities, the Rakhine and the Rohingya. The Arakan Army (AA) was formed in April 2009, representing the Rakhine and initially fighting alongside its supporter and benefactor, the KIA, in Rakhine State. In 2015, AA forces moved into northern Rakhine State and neighboring Chin State; fighting soon broke out between the AA and the Tatmadaw.

The other new EAO operating in Rakhine State is the Arakan Rohingya Salvation Army, or ARSA. This group has gone by different names since it first surfaced in 2013, including Harakah al-Yaqin, but its stated goal is stop the mistreatment of Rohingya. ARSA was formed after an outbreak of violence between the Rakhine and the Rohingya in 2012, in which dozens of people were killed and about 120,000 Rohingya were resettled in internally displaced persons (IDP) camps. Various organizations have alleged that ARSA may have ties to militant Islamic fundamentalist organizations, but ARSA has denied any affiliation and has stated its opposition to such organizations.

In October 2016, ARSA attacked several Burmese security outposts near the border of Bangladesh, killing 13 Burmese security personnel. The Tatmadaw responded to the attacks by sending additional troops into northern Rakhine State. Over 100,000 Rohingya fled to Bangladesh as the Tatmadaw soldiers attacked Rohingya villages in search of ARSA. On August 25, 2017—exactly 11 months ago today—ARSA launched coordinated attacks on 30 security outposts, killing 12 Burmese security personnel. In the months before the August attacks, ARSA reportedly killed over 50 people it claimed were informants for the Tatmadaw. According to a July 2018 report by Fortify Rights, during that same period, Burmese security forces were confiscating any potential weapons from Rohingya villagers, arresting and torturing Rohingya they thought had ties to ARSA, and imposing greater restrictions on the movement and activities of Rohingya in northern Rakhine State. The number of Tatmadaw soldiers present in northern Rakhine State also increased substantially before the August 25 attacks.

Immediately after the ARSA attacks, the Tatmadaw began a “clearance operation” reportedly aimed at destroying ARSA’s presence in northern Rakhine State. The results of the Tatmadaw’s “clearance operation” is well documented by various means—including satellite imagery, medical records, demographic studies, and interviews with survivors. Thousands of Rohingya were killed, nearly 400 Rohingya villages were fully or partially destroyed, and hundreds of women and girls were raped. Credible evidence has also been gathered indicating that ARSA members, or persons dressed like ARSA members, killed dozens of Hindus in the village of Kha Maung Seik.

Tatmadaw’s “Four Cuts” Strategy

A common strategy used by the Tatmadaw to combat the EAOs is known as “Four Cuts” (*Pya Ley Pya* in Burmese), which involves attempting to deprive the EAOs of food, funds, intelligence, and recruits by terrorizing the civilian population and driving them out of their villages.¹ This frequently involves directly attacking villages, murdering unarmed civilians, raping women and girls, mining fields and roads, forcing civilians to serve as porters, and destroying crops, markets, and property. This strategy generally results in large numbers of internally displaced persons (IDPs) who relocate to camps located in both Union Government-controlled and EAO-controlled areas, and refugees who flee to neighboring nations, including Bangladesh, China, India, and Thailand.

¹ For more about the “Four Cuts” strategy in Burma’s recent conflicts, see Stella Naw, “‘Four Cuts’ Strategy Deepens Myanmar’s War Wounds,” *Asia Times*, July 15, 2017.

According to a recent article published by the Lowy Institute, the Tatmadaw began using the “Four Cuts” strategy in 1968, after studying the British response to the Malay insurgency of 1948-1960.² The article described the “Four Cuts” strategy as it was first used in Karen State:

The military divided the country into black, brown, and white zones to reflect insurgent-controlled, partially insurgent-controlled, and government-controlled areas. ‘Black zones’ were essentially free-fire areas for Tatmadaw soldiers.

Villagers were frequently relocated by force. Forced conscriptions or portage was also common, providing free labour for the military. Rape also seems to have been used as a tool of social control under the ‘four cuts’ doctrine.

The Tatmadaw continues to describe areas in ethnic states with active EAOs as black, brown, and white zones.³

The history of Burma’s civil war also is replete with accounts of Burma’s security forces allegedly committing severe human rights abuses, including murder, rape, torture, forced conscription (including the conscription of children) and portage, the destruction of villages and property, and the use of civilians as human shields and “minesweepers.” The following is a partial list of cases where the Tatmadaw allegedly committed serious human rights abuses as part of its “Four Cuts” strategy:

- **Chin State, 2005-2008** – In a 2009 report, Human Rights Watch documented the Tatmadaw’s systematic abuse of the Chin between 2005 and 2008.⁴ According to the report, the forms of human rights abuses committed included “extrajudicial killings, arbitrary arrest and detention, torture and mistreatment, forced labor, severe reprisals against members of the opposition, restrictions on movement, expression, and religious freedom, abusive military conscription policies, and extortion and confiscation of property.” The report also recounts incidents of rape committed by Tatmadaw soldiers.
- **Kachin State, 2018** – Tatmadaw utilized fixed wing aircraft, helicopters, and heavy artillery to attack villages and KIA bases to obtain access to land, jade and amber mines, and other resources.⁵ Kachin activists report cases of murder, torture and rape allegedly committed by Tatmadaw soldiers. Thousands of villagers were displaced by the attacks.
- **Karen (Kayin) State, 1984-1989** – After efforts to negotiate a ceasefire agreement with the KNU failed, the Tatmadaw launched an offensive in 1984, reportedly targeting civilians and resulting in the flight of approximately 10,000 Karen into neighboring Thailand. Over the next five years, fighting between the KNLA and the Tatmadaw resulted in over 120,000 Karen being displaced to refugee camps in Thailand, where they remain 30 years later.
- **Karenni (Kayah) State, 1992** – In 1992, fighting between the Tatmadaw and two Karenni EAOs, the Karenni National Progressive Party (KNPP) and the Karenni Nationalities People’s Liberation Front (KNPLF), erupted. According to a report by the Karen Human Rights Group, Burma’s military junta directed “their attacks as much at

² Andray Abrahamian, *The Tatmadaw Returns to the ‘Four Cuts’ Doctrine*, Lowy Institute, September 4, 2017. Other scholars say the Tatmadaw started using the “Four Cuts” strategy as far back as 1963.

³ CRS interviews with Ministry of Defense officials and EAO representatives, various dates.

⁴ Human Rights Watch, *‘We Are Like Forgotten People’: The Chin People of Burma: Unsafe in Burma, Unprotected in India*, January 27, 2009, <https://www.hrw.org/report/2009/01/27/we-are-forgotten-people/chin-people-burma-unsafe-burma-unprotected-india>.

⁵ CRS interviews in Myitkyina, June 2018.

Karenni villagers as at the opposition armies, while looting, burning houses and food, raping women, violently abusing villagers, and performing executions.”⁶

- **Mon State, 1989-1990, 1994** – In 1989 and 1990, the Tatmadaw attacked the New Mon State Party’s base of operations, displacing more than 12,000 Mon into Thailand.⁷ Starting in 1992, Thailand allegedly began applying pressure on the Mon refugees to return to Burma. On July 21, 1994, Tatmadaw soldiers attacked a Mon refugee camp at Halockhani, near the border with Thailand, possibly in response to the death of a Tatmadaw soldier. Mon survivors of the Tatmadaw attack accused the soldiers of murder, torture, and rape.
- **Rakhine State, 2017-2018** – Tatmadaw forces were sent to Rakhine State to conduct “clearance operation” following the August 25, 2017 attacks on security outposts by the Arakan Rohingya Salvation Army (ARSA). Nearly 400 Rohingya villages were fully or partially destroyed and over 700,000 Rohingya fled to neighboring Bangladesh. Survivors of the “clearance operations” described the murder, torture, and rape of villagers by Burmese security forces (including Tatmadaw, Border Guard Forces, and Myanmar Police Force). Health care providers in refugee camps in Bangladesh treated hundreds of Rohingya with injuries consistent with assault allegations.
- **Shan State, 1996-1997** – A major Tatmadaw offensive in Shan State resulted in the displacement of an estimated 300,000 people from over 1,400 villages; more than 100,000 fled into Thailand.⁸ A joint report by the Shan Human Rights Foundation and the Shan Women’s Action Network documents the Tatmadaw’s use of rape as a weapon of war in Shan State, as well as accounts of other human rights abuses by Burmese security forces.⁹

Burma’s Transition to a Mixed Civilian/Military Government

On August 30, 2003, Prime Minister General Khin Nyunt announced that Burma’s military junta, the State Peace and Development Council (SPDC), was undertaking a “Seven Step Roadmap to a Disciplined Flourishing Democracy.” The seven steps were:

1. Reassemble the National Convention that had been dissolved in 1996, for the purpose of writing a proposed new constitution;
2. Begin the process of forming a democracy after the National Convention had drafted a new constitution;
3. Draft a proposed new constitution for possible adoption;
4. Submit the new constitution to a national referendum for possible adoption;
5. Hold free and fair elections to elect a Union Parliament under the provisions of the new constitution;
6. Convene the elected Union Parliament; and

⁶ Karen Human Rights Group, *Karenni State: Forced Relocation, Concentration Camps, and Slavery*, August 10, 1992, <http://klrg.org/1992/08/920810/karenni-state-forced-relocation-concentration-camps-and-slavery>.

⁷ Karen Human Rights Group, *SLORC’s Attack on Halockhani Refugee Camp*, August 30, 1994, <http://klrg.org/1994/08/940830/slorcs-attack-halockhani-refugee-camp>.

⁸ Burma Link, *History of Conflict and the Border*, May 1, 2015, <https://www.burmalink.org/background/thailand-burma-border/history-of-conflict-and-the-border/>.

⁹ Shan Human Rights Foundation and Shan Women’s Action Network, *License to Rape: The Burmese Military Regime’s Use of Sexual Violence in the Ongoing War in Shan State*, May 2012.

7. Build a “modern, developed democratic nation” in accordance with the new constitution.¹⁰

It is unclear why Khin Nyunt and the SPDC decided to make this announcement. While Khin Nyunt was arrested and removed from office in October 2004, over the next eight years, the SPDC undertook measures that appear to fulfill the seven step roadmap he laid out in August 2003.

The SPDC reconstituted the National Convention in May 2004 (step 1), but its proceedings soon gave rise to controversies as major differences over the provisions of the proposed constitution arose. Several of the EAOs withdrew their support of the National Convention. Aung San Suu Kyi and the National League for Democracy (NLD) decided not to participate. The SPDC arrested Aung San Suu Kyi and others who expressed opposition to the National Convention. The United Nations and several countries initially expressed support for the effort to write a new constitution, but later became critical of its proceedings. The National Convention concluded its work in July 2007 (step 3), and the outcome largely reflected the preferences of the SPDC.

In May 2008, the SPDC held a national referendum to adopt the proposed new constitution (step 4). Despite much of central Burma being flooded by Cyclone Nargis just days before the referendum was to be held, according to the official results, 98% of those eligible voted, and more than 94% voted in favor of the new constitution.¹¹ On February 9, 2008, when the SPDC announced the national referendum would be held in May 2008, it also stated that parliamentary elections would be held in 2010, implicitly assuming that the constitution would be approved. The U.S. State Department issued a statement on February 11, 2008, that called the proposed constitutional referendum “evidence of its [the SPDC’s] refusal to pursue a meaningful and time-bound dialogue with Burma’s democratic and ethnic minority representatives.”¹²

In November 2010, the SPDC held parliamentary elections in accordance with the 2008 constitution (step 5). The NLD and most of the opposition political parties boycotted the elections. As a result, the military’s political party, the Union Solidarity and Development Party (USDP), won a majority of the seats in each chamber of Burma’s new Union Parliament.¹³ President Obama characterized Burma’s 2010 parliamentary elections as “neither free nor fair,” and stated the elections “failed to meet any of the internationally accepted standards associated with legitimate elections.”¹⁴

The newly-elected Union Parliament met for the first time on January 31, 2011, fulfilling the 6th step of Khin Nyunt’s roadmap to a “disciplined, flourishing democracy.” It chose the SPDC’s Prime Minister, General Thein Sein as President, and former General and SPDC Secretary Tin Aung Myint Oo and Dr. Sai Mauk Kham to serve as the nation’s two Vice Presidents.¹⁵ It is uncertain if the formation of the new Union Government constituted completion of the 7th step of the roadmap.

¹⁰ This version of the seven steps varies from the official text published in the SPDC’s newspaper, *the New Light of Myanmar*, on August 11, 2004. It attempts to reflect the intent of each step in the progression towards the formation of a “disciplined, flourishing democracy” as envisioned by General Khin Nyunt and the SPDC.

¹¹ For more about Cyclone Nargis and the national constitutional referendum, see CRS Report RL34481, *Cyclone Nargis and Burma’s Constitutional Referendum*, by Michael F. Martin and Rhoda Margesson.

¹² “Burmese Regime Announces Sham Referendum,” Press statement by Sean McCormack, U.S. Department of State, February 11, 2008.

¹³ For more about the 2010 parliamentary elections, see CRS Report R41971, *U.S. Policy Towards Burma: Issues for the 112th Congress*, by Michael F. Martin and Derek E. Mix.

¹⁴ Office of the Press Secretary, “Statement by President Obama on Burma’s November 7 Elections,” press release, November 7, 2010.

¹⁵ The 2008 constitution provides for one President and two Vice Presidents. Each chamber of the Union Parliament select one candidate for the three offices, and the joint military members of each chamber select a third candidate. A joint session of both

The Division of Power under the 2008 Constitution

The 2008 constitution is a 213-page document that establishes the Republic of the Union of Myanmar as a perpetual union of seven states and seven regions¹⁸ under “a genuine, disciplined multi-party democratic system.” Although “the Sovereign power of the Union is derived from the citizens,” the constitution also stipulates that one of its objectives is “enabling the Defence Services to be able to participate in the national political leadership role of the State.” Various provisions of the 2008 constitution grant the Commander-in-Chief and active military officers significant control over the government. According to some assessments, the Commander-in-Chief has more authority than the President of Burma.

The 2008 constitution creates three equal branches of the State—the legislative, executive, and judicial branches—under a parliamentary system. The legislative branch is empowered to consider and approve legislation. It is headed by the Union Parliament (*Pyidaungsu Hluttaw*) with two chambers—the Union Assembly (*Pyithu Hluttaw*), with a maximum of 440 members selected by districts based on population, and the National Assembly (*Anyotha Hluttaw*), with a maximum of 224 members selected by the regions or states. Members of the *Pyidaungsu Hluttaw* serve terms of five years. Each chamber is to select a speaker from amongst its members. The constitution also creates Regional and State *Hluttaws*. In each of the *Hluttaws*, a quarter of the seats are active military officers appointed by the Commander-in-Chief of Burma's Defence Services.

Within the executive branch, the constitution also establishes the “National Defence and Security Council” (NDSC), consisting of the President; the two Vice Presidents; the Speakers of each chamber of the national parliament; the Commander-in-Chief and Deputy Commander-in-Chief of the Defence Services; and the Ministers of Border Affairs, Defence, Foreign Affairs, and Home Affairs. According to the constitution, the Ministers of Border Affairs, Defence, and Home Affairs must be active military personnel. As a result, a five of the NDSC members are active military officers, with a sixth selected by the military members of the Union Parliament.¹⁶ Chapter XI of the constitution gives the President the authority, after coordinating with the NDSC, to declare a state of emergency in all or part of Burma, and transfer all legislative, executive, and judicial authority to the Commander-in-Chief of Defence Services.

Chapter XII of the constitution stipulates that any proposed amendment to the constitution must obtain “the prior approval of more than seventy-five percent of all the representatives of the Pyidaungsu Hluttaw [Union Parliament].” Given that 25% of the members are appointed by the Commander-in-Chief, this provision effectively gives the Burmese military and the Commander-in-Chief veto power over any constitutional amendments, if the none of the military member vote in favor of the amendment.

The Ministers of Border Affairs, Defense, and Home Affairs are appointed in a three step process. The Commander-in-Chief gives the President a list of Defence Service personnel as nominees for each Ministry. The President then selects a candidate among the list of nominees for each Ministry, and then submits it to the Union Parliament for its approval. In practice, the Commander-in-Chief has submitted only one person for each ministry.

Article 20 of the constitution has several provisions regarding the Defense Services, including:

- The Defence Services has the right to independently administer and adjudicate all affairs of the armed forces; and
- The Commander-in-Chief of the Defence Services is the Supreme Commander of all armed forces.

chambers of the Union Parliament then selects one of the three candidates to serve as President; the other two then become Vice President.

¹⁶ The active military officers are the Commander-in-Chief, Deputy Commander-in-Chief, Minister of Border Affairs, Minister of Defense, Minister of Home Affairs.

Article 342 grants the President the power to appoint the Commander-in-Chief, but requires “the proposal and approval of the National Defence and Security Council.”

According to Article 338, “All the armed forces in the Union shall be under the command of the Defence Services.” Burma’s “armed forces” include the Tatmadaw, the Border Guard Force, and the Myanmar Police Force. The Border Guard Force report to the Ministry of Border Affairs and the Myanmar Police Force report to the Ministry of Home Affairs, both of which are headed by military officers, who report to both the President (as members of his Cabinet) and the Commander-in-Chief (as active military personnel).

In addition, the General Administration Department (GAD), which oversees the civil service, and appoints the staff to all the regional and state governments in Burma, is part of the Ministry of Home Affairs, and therefore under the direction of a military officer. According to some observers, the Tatmadaw uses its authority over the GAD to deny or undermine policies and directives of Aung San Suu Kyi and the civilian side of the Union Government that the Tatmadaw see as antithetical to its interests.

Implications for Peace

Aung San Suu Kyi has made ending Burma’s civil war a high priority for her government. She has chosen to adopt the “peace process” initiated by former President Thein Sein, which seeks to conclude a comprehensive nationwide ceasefire agreement to be followed by the negotiation of a mutually acceptable federated state for the governance of Burma. The main vehicle to advance her “peace process” are periodic 21st Century Panglong Peace Conferences; the third of which was held in Naypyidaw on July 11-15, 2018.

By most accounts, Aung San Suu Kyi’s “peace process” is stalled. The main parties—Aung San Suu Kyi’s civilian government, the Tatmadaw, and the EAOs—cannot agree on agendas for the conferences, or on the proper sequencing of the steps to peace.¹⁷ The escalation of fighting in Kachin and Shan State has led several of the EAOs to doubt the Tatmadaw’s commitment to negotiating and abiding by ceasefire agreements. The Tatmadaw’s “clearance operation” in Rakhine State has raised fears among some EAOs that Min Aung Hlaing may be seeking a military solution to the civil war that could involve the “ethnic cleansing” of other ethnic minorities. Some EAO leaders are considering a return to a struggle for independence from Burma.¹⁸

The emergence of the Arakan Rohingya Salvation Army, or ARSA, is also complicating the prospects for peace. Aung San Suu Kyi and Min Aung Hlaing have characterized ARSA as an external “terrorist organization,” and therefore should not be included in the peace process. They also do not recognize the Rohingya as one of Burma’s ethnic groups, and as a result, deny the Rohingya citizenship. Some of the EAOs, however, have indicated a willingness to accept ARSA as a legitimate party to the peace negotiations if ARSA can demonstrate that its goals and objectives are similar to the other EAOs.¹⁹

The allegations of human rights abuses by Burma’s security forces, the EAOs, ARSA, and others further complicate efforts to negotiate an end to the nation’s civil war. Survivors of the abuse not only seek some form of justice and possible reparations, but also have expressed an unwillingness to return or remain under the authority of the existing Burmese security forces unless some form of accountability is

¹⁷ For more about the stalled peace process, see CRS In Focus IF10808, *Burma’s Peace Process: Narrowing Opportunities in 2018*, by Michael F. Martin.

¹⁸ CRS interviews with EAO leaders, September 2017 and June 2018. Under the 1947 Constitution, the States had a right to secede from the Union of Burma after 10 years. Some of the first EAOs, such as the Kachin Independence Organization and the Karen National Union, initially supported the formation of independent countries, but subsequently agreed to remain part of Burma if an acceptable federal state could be negotiated.

¹⁹ CRS interviews with EAO leaders, September 2017.

undertaken. Also, some of the EAOs are calling for “security sector reform” (SSR) before they will sign a ceasefire agreement. The Tatmadaw has so far rejected SSR, and is insisting that the EAOs agree to “DDR”—disarmament, demobilization, and reintegration—as a precondition to signing the nationwide ceasefire agreement.

A final complicating factor in the peace negotiations is the status of the 2008 constitution. Both the civilian and military sides of the Union Government advocate the negotiation of amendments to the 2008 constitution as a means of forming a mutually acceptable federated state. Some of the EAOs, however, see the 2008 constitution as illegitimate and hopelessly flawed. They have called for the creation of a body to draft a new constitution, and have indicated they will not sign to a nationwide ceasefire without an agreement on the establishment of some form of constitutional convention.

Future of U.S. Policy

In practice, U.S. policy in Burma during the Trump Administration has, in general, been a continuation of the policy during the latter part of the Obama Administration. An underlying premise of that policy is that Burma is a nation undergoing a difficult transition to democracy and that U.S. support for the Union Government headed by Aung San Suu Kyi will help foster that transition. As such, the events in Rakhine State, as well as the escalation in fighting in Kachin and Shan States, are regarded as secondary issues that are potential impediments to Burma’s democratic transition, and U.S. actions in response to the situation in Rakhine State need to be balanced against the implications for Aung San Suu Kyi, the Union Government, and Burma’s democratic transition.

This continuity of policy may be the outcome of a lack of a conscientious review of policy in light of recent events or a lack of policy guidance from higher levels of the Trump Administration. Instability within the White House foreign policy staff and the failure to nominate senior political appointees in the State Department has created uncertainty about who is guiding U.S. policy in Burma. In addition, those Administration officials who have spoken about recent events in Burma often convey a mixed message on what actions are to be taken.

To date, the Trump Administration has taken some measures in response to the alleged human rights abuses in Rakhine State, and elsewhere in Burma, including:

- **Placing Maung Maung Soe on the Global Magnitsky list** – Former Major General Maung Maung Soe was the commander officer for Burma’s Western Command, which oversaw the “clearance operations” in Rakhine State. He was placed on the Global Magnitsky list on December 21, 2017 for being responsible for human rights abuses consistent with those required by the Global Magnitsky Act. He was relieved of his command in November 2017, and in June 2018, he was dismissed from the Tatmadaw for his “weakness” in response to the ARSA attacks of August 25, 2017. The State Department reportedly has identified 8 to 10 additional Burmese military officers to be placed on the Global Magnitsky list, but their inclusion is supposedly opposed by the Department of the Treasury.
- **Suspending the provision of visa waivers for Burma’s military leaders** – Section 5(a)(1) of the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008 (JADE Act; P.L. 110-286) prohibits the issuance of entry visas to Burma’s military leaders unless the President determines it is in the national interest of the United States to do so. According to the State Department, the issuance of such visa waivers has been suspended. However, in recent months, such waivers have been provided to former military leaders and immediate family members of current military leaders. In each case, the waiver indicated that the State Department had found no evidence that the military leader was responsible for “the repression of peaceful political activity or gross violations of human rights in Burma or in the commission of other human rights abuses.”

- **Suspending the invitation of Burmese military officers to attend training programs at the Department of Defense's Daniel K. Inouye Asia-Pacific Center for Security Studies (APCSS)** – Burmese military officers have attended APCSS training programs for several years. According to the State Department, invitations to attend programs in Hawaii have been suspended. However, Burmese officers did attend an Advance Security Cooperation Course (ASC) held in Hawaii in March to May 2018 and a Maritime Awareness Workshop held in Bangkok in May 2018.
- **Downgrading Burmese military involvement in regional military exercises** – According to the DoD, Burma's military participation in Cobra Gold 2018 and Pacific Partnership 2018 were "downgraded" as part of its modified engagement strategy.

The 115th Congress has considered a different approach to U.S. policy in light of the events in Kachin, Karen, Rakhine, and Shan States. The House of Representatives passed H.Amdt. 651 on May 23, 2018, by a vote of 382-30. The amendment to the National Defense Authorization Act (H.R. 5515) would have imposed financial and visa sanctions on Burmese security forces deemed responsible for human rights abuses in Burma, and would have restricted U.S. military and security assistance to Burma until certain security sector reforms were implemented. The House Committee on Foreign Affairs approved the BURMA Act of 2018²⁰ (H.R. 5819) on May 15, 2018. The Act would place restrictions on U.S. military and security assistance to Burma, and impose sanctions on senior Burmese security officers responsible for human rights violations. The Senate Committee on Foreign Relations approved the Burma Human Rights and Freedom Act of 2018 (S. 2060) on February 12, 2018. The Act would provide additional humanitarian assistance to Bangladesh and Burma "for the victims of the Burmese military's ethnic cleansing campaign targeting Rohingya in Rakhine State," prohibit military and security assistance to Burma until certain conditions are met, reinstate the ban on the import of jadeite from Burma, and impose sanctions on Burmese security officials responsible for human rights violations anywhere in Burma. To date, there has been no floor action on either H.R. 5819 or S. 2060.

²⁰ The full name is the "Burma Unified through Rigorous Military Accountability Act of 2018."

Mr. McGOVERN. Thank you very much. Gum San Nsang.

STATEMENT OF GUM SAN NSANG, PRESIDENT, KACHIN ALLIANCE

Mr. NSANG. Thank you.

Chairman McGovern, Chairman Hultgren, members and staff of the Tom Lantos Human Rights Commission, I am humbled to be before you today to testify as voice for the voiceless and speak for the unspeakable atrocities such as burning villages, rape, starvation, forced deportation, and murder inflicted upon thousands of Shan, Kachin, Ta'Ang population in northern Burma.

Kachins are slightly over a million in number, a predominantly Christian enclave nestled at the crossroad of China, India, and Southeast Asia.

Before I begin with my oral updates on the crisis in Kachin and northern Shan states, I would like to acknowledge my profound gratitude to all Kachin churches, congregation, and diocese for housing over 130,000 internally-displaced people in 165 camps. Feeding them and rescuing thousands of whom were trapped in the wilderness where they experienced constant fear and intimidation by Burmese security forces. Without their responsible benevolence, the fate of my people would be complete social disintegration and even greater human tragedy than we have already suffered. And one of them is here today from Kachin Baptist Convention, President Reverend Samson.

Let me start by stating that this conflict is based on ethnic sovereignty but is fueled by the drive to control and profit from the valuable land and natural resources of the Kachin people. The Burmese military control access to billion-dollar copper and jade mines and war is used as a vehicle for territory aggrandizement and economic plunder.

The military dominates the jade sector through companies it owns and controls, as well as a company controlled by current and former senior military officers and their families, friends, and hidden Chinese business interests.

The financial incentive fuel conflict, corruption, and widespread abuses. Today, I am reminded of Majority Leader McConnell's statements in Congress on October 12th, 2011. I quote, "I rise today as I do on many occasions to bring attention to the numerous challenges that face the people of Burma. Of great concern to those advocating for democracy in Burma is promoting reconciliation among the diverse groups in the country. Like many ethnic groups in the country, the Kachin people of northern Burma have a distinct and longstanding heritage. Yet, they continue to be targeted by the ruling junta. Not only is the struggle against the oppressive junta of concern to those of us who focus on reform in Burma; they also have an important historical connection to the United States."

Seven years since this statement in 2011, there has been over 300 clashes between Kachin Independence Army and Burmese army, averaging 46 battles per month. This is the largest military campaign in modern Burmese history since independence with at least 411 air strikes by jet fighters and helicopter gunships, including one in the past few days. Air assault complemented by military drones

and heavy artillery shells landing in IDP camps and also on Chinese side of the border.

Some sobering facts: victims whom I have met personally and interviewed were used as human shields for weeks on end. They were deliberately targeted and injured by Burmese soldiers. These civilians will spend the rest of their days in physical disability, a sad consequence of targeted military assault.

The only response by the Burmese army has offered has been pointing fingers and blocking journalists and humanitarian organizations from entering our region whereby the press may report findings and relief organizations may provide sustained support.

We have also obtained records of Burma army ordering newly-arrived displaced people to be segregated from the local community in Danai Township.

There are reports of biometric data collection by immigration ministry on the IDPs who fled their homes in May 2018. There were burning of homes by 33rd Light Infantry Division in Njangyang Township on April 28th, 2018. Over 180 churches were desecrated, damaged, or ruined during the seven years of civil war in Kachin region.

According to the Government of Burma census, the Kachin population makes less than 40 percent of the states. However, over 92 percent of displaced and persecuted people are Kachin and Christians.

On December 16th, 2016, the Burmese Army captured KIA Gidon post and within weeks a Buddhist pagoda was erected, which locals considered blunt force religious oppression.

In April and May 2018, clearance operation in the area of Awng Lawt, Kasung, Lai Nawng Hku, and Njangyang forced more than 7,000 civilians to abandon their homes. There were villagers who were held as hostages for prolonged periods by the Burma army in order to be used as shields.

In December 2017, on Christmas Eve, the Burma army fired artillery and shells, some of which exploded near Woi Chyai IDP camp, resulting in widespread panic and civilian injury.

With little to no access to international relief aid, real estate broker pressured beleaguered IDP population to sign long-term contracts to lease their abandoned land to Chinese banana growers at rock-bottom price of \$100 per acre per annum.

This is only a brief illustration of the range and seriousness of the abuse civilians face in connection with the fighting between two armies.

The Burma military bears responsibility for many atrocities across the country and until it pays the price for its war crimes and crimes against humanity, it will be emboldened to continue.

The United States government must act without delay to end impunity of Burmese military and address the root causes of conflict in Kachin and northern Shan state.

I hope you will take the following recommendation into consideration: one, withholding funding for the peace process until humanitarian blockades are lifted.

Two, enact targeted sanctions and exercise existing authority under the Global Magnitsky Human Rights Accountability Act against all senior-level Burmese military commanders including Min Aung Hlaing, who have perpetrated mass atrocities.

Third is to designate an envoy for mediating peace in northern Burma with an explicit mandate to help address the political and economic underpinning of the conflict.

Fourth, support and fund the establishment of an investigative mechanism through the U.N. which can get evidence and bring a prepared dossier against the most responsible for the horrific atrocity that continues to date, as well as the future establishment of an international criminal tribunal that can bring perpetrators to justice.

Last but not least, funding for the civil society organizations supporting victims and survivors, and working towards justice and long-term social change – inclusion, religious freedom, and freedom of speech.

I thank you for this consideration and support. We are hopeful that one day all people of Burma, regardless of their race or religion, will have an equal opportunity to thrive and contribute to the union they also love.

And I thank you for this time.

[The prepared statement of Mr. Nsang follows:]

PREPARED STATEMENT OF GUM SAN NSANG



House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing

Victims' Rights in Burma
MUST ACT TO END DEVASTATING WAR AND IMPUNITY IN NORTHERN BURMA

July 24, 2018 - 10:00 a.m.
2200 RAYBURN HOUSE OFFICE BUILDING

Statement of GUM SAN NSANG
PRESIDENT
KACHIN ALLIANCE

Thank you, Chairman McGovern, Chairman Hultgren, members and staff of the Tom Lantos Human Rights Commission.

I am humbled to be before you today to testify as voice for the voiceless and speak for the unspeakable atrocities such as burning villages, rape, starvation, force deportation, and murder inflicted upon thousands of Shan, Kachin, and Ta'Ang populations in Northern Burma. Kachins are slightly over a million in number, a predominately-Christian enclave nestled at the crossroad of China, India, and Southeast Asia. Before I begin with my oral updates on the crisis in Kachin and northern Shan States, I would like to acknowledge my profound gratitude to all Kachin Churches, Congregations, and Dioceses for housing over 130,000 internally displaced people in 165 camps, feeding them, and rescuing thousands who were trapped in the wilderness where they experienced constant fear and intimidation by Burmese security forces. Without their responsible benevolence, the fate of my people would be complete social disintegration and even greater human tragedy than they have already suffered.

Let me start by stating that this conflict is based on ethnic sovereignty but is fueled by the drive to control and profit from the valuable land and natural resources of the Kachin people. The Burmese military controls access to the billion dollar Hpakant jade mines and war is used as a vehicle for territorial aggrandizement and economic plunder. The military dominates the jade sector through companies it owns or controls, as well as companies controlled by current and former senior military officers and their family members and friends and hidden Chinese business interests. The financial incentives fuel conflict, corruption, and widespread abuses.

Today, I am reminded of Majority Leader McConnell's statement in Congress on Oct 12th, 2011; "I rise today, as I do on many occasions to bring attention to the numerous challenges that face the people of Burma. Of great concern to those advocating for democracy in Burma is promoting reconciliation among the diverse groups in the country. Like many ethnic groups in the country, the Kachin people of northern Burma have a distinct and longstanding heritage. Yet, they continue to be targeted by the ruling junta. Not only is their struggle against the oppressive junta of concern to those of us focused on reforms in Burma, they also have an important historical connection the United States. . ."

Seven years since this statement in 2011, there have been over 3,800 clashes between the Kachin Independence Army and the Burmese Army, averaging 46 battles per month. This is the largest military campaign in modern-day Burmese history since independence, with at least over 411 air strikes by jet fighters and helicopter gunship, including one in the past few days. Air assaults complemented by drones and heavy artillery shells landing in IDPs camps and also on the Chinese side of the border.

Some sobering facts: victims whom I have personally met and interviewed were used as human shields for weeks on end; they were deliberately targeted and injured by Burmese soldiers. These civilians will spend the rest of their days with physical disabilities, a sad consequence of targeted military assault. The only response by the Burmese army has offered has been pointing fingers and blocking journalists and humanitarian organizations from entering our region whereby the press may report findings and relief organization may provide sustained support.

We have also obtained records of Burma Army ordering newly arrived displaced people to be segregated from the local community in Danai Township. There are reports of bio data collection by immigration ministry on the IDPs who fled their homes in May 2018. There were burning of homes by Burma Army-LID 33 in Njangyang Twp on April 28th, 2018. Over 180 churches were desecrated, damaged, or ruined during the 7 years of civil war in Kachin region. According to a Government of Burma census, the Kachin population makes less than 40% of the State's population, but over 92% of displaced and persecuted people are Kachin and Christians. On Dec 16th, 2016 the Burmese army captured KIA's Point 1103 Gidon Post, and within weeks a Buddhist pagoda was erected, which locals consider blunt-force religious oppression.

In April and May 2018, clearance operations in the area of Awng Lawt, Kasung, Lai Nawng Hku, and Njangyang forced more than 7,000 civilians to abandon their homes. There were villagers who were held as hostages for prolonged periods by the Burmese army in order to be used as human shields. In December 2017, on Christmas Eve, the Burma Army fired artilleries and shells some of which exploded near Woi Chyai IDP camp, resulting in widespread panic and civilian injury. With little to no access to international relief aid, real estate brokers pressure beleaguered IDPs to sign long-term contract to lease their abandoned land to Chinese banana growers at rock-bottom price of \$100/acre per annum.

This is only a brief illustration of the range and seriousness of the abuses civilians face in connection with the fighting between the two armies. The Burmese military bears responsibility for many atrocities across the country and, until it pays a price for its war crimes and crime against humanity, it will be emboldened to continue. The United States government must act without delay to end the impunity of the Burmese military and address the root causes of the conflict in Kachin and northern Shan States. I hope you will take the following recommendations into consideration:

1. Withhold funding for the peace process until humanitarian aids blockages are lifted
2. Enact targeted sanctions and exercise existing authorities, under the Global Magnitsky Human Rights Accountability Act against all senior level Burmese military commanders including Min Aung Hlaing, who have perpetrated mass atrocities.
3. Designate an envoy for mediating peace in northern Burma with an explicit mandate to help address the political and economic underpinnings of the conflict.
4. Support and fund the establishment of an investigative mechanism through the UN that can gather evidence and begin to prepare dossiers against those most responsible for the horrific atrocities that continue today, as well as the future establishment of an international criminal tribunal that can bring perpetrators to justice.
5. Funding for civil society organizations supporting victims and survivors and working toward justice and long-term social change, inclusion, religious freedom, and freedom of speech.

Thank you for your consideration and support. We are hopeful that one day, all people of Burma regardless of their race or religion will have equal opportunity to contribute and thrive in the Union.

Mr. MCGOVERN. Well, thank you very much. Mr. Tun Khin.

STATEMENT OF TUN KHIN, PRESIDENT, BURMESE ROHINGYA ORGANISATION UK

Mr. KHIN. Honorable Chairman and colleagues from civil society, thank you for providing me with the opportunity to speak before the Tom Lantos Human Rights Commission.

The Rohingya people need friends in the international community today more than ever and forums like this are a crucial opportunity to highlight the very serious issues facing our community.

I appreciate the effort that has gone into bringing us all together today and for providing me with this platform.

Since August 2017, when the Myanmar security forces and their proxies launched a clearance operation in Rakhine state, headlines across the world have been dominated by the horrific abuse inflicted on the Rohingya people.

Thousands of Rohingya people have been killed, hundreds of villages burned to the ground, and almost 800,000 women, men, and children forced to flee into Bangladesh – the recent abundance of credible evidence that the Tatmadaw are responsible for crimes against humanity and genocide.

While we in the Rohingya community to some extent appreciate that our suffering has finally reached the global consciousness, the events of the past year have hardly come as a surprise.

For decades, the Myanmar authorities have engaged in a systematic persecution to make the lives of Rohingya in Myanmar's Rakhine state so unbearable that we have no option but to flee.

The Myanmar military is trying to violently exterminate us. The only fitting way to describe this is genocide.

In 1978, the Myanmar security forces launched what they call Operation Dragon King across Rakhine state. What was ostensibly an effort to identify illegal immigrants ahead of national census turned into a vicious military effort marked by widespread human rights violations against Rohingya.

Hundreds of thousands of people were forced to flee into Bangladesh. Among them were my parents, who spent several months in refugee camps in Bangladesh before returning to their homes.

In the early 1990s, I witnessed similar abuse myself when another military operation was launched in Rakhine state, again, leading to more than 200,000 refugees fleeing into Bangladesh.

The atrocities that take – that took place in Rakhine state from August 2017 merely represent the latest chapter in a long tale of horrific abuse. It is not just the threat of violence that is a daily reality for Rohingya in Myanmar.

It is also debilitating and a state-led discrimination and segregation. For Rohingya in Rakhine state, life resembles as an open prison. Every aspect of our lives is controlled as Myanmar authorities have denied us citizenship and the

rights associated with it while imposing severe restrictions on our freedom of movement.

This makes it exceedingly difficult to access basic services, livelihood, and opportunities to travel to hospital or to gain an education.

This is prevailing sense of hopelessness and desperation among Rohingya in Rakhine state.

At the time, I myself decided to flee Myanmar in the 1990s when authorities barred me from attending university simply because I was Rohingya. This wider perspective is important to keep in mind when discussing what can be done.

Accountability is crucial to break this cycle of abuse and to not embolden perpetrators to commit the same genocidal crimes again.

Myanmar authorities have time and again shown that it is both unwilling and unable to investigate itself. For example, the most recent commission of inquiry established by the Myanmar government in 2018 will without a doubt lead to no genuine accountability.

Therefore, the international community, including the United States government, has a role to play in providing justice. The United States can start by persuading the U.N. Security Council to refer the situation in Myanmar to the International Criminal Court.

Further, I urge all international states to support a Special Rapporteur Yanghee Lee's calls for an international accountability mechanism to build on the work done by U.N. Fact-Finding Mission into Human Rights Violations in Myanmar.

The United States also can apply targeted sanctions against the perpetrators responsible for attacks against Rohingya.

This accountability will be important not just for Rohingya but also communities in other ethnic areas in Myanmar including Kachin and northern Shan state.

The Tatmadaw has [unintelligible] committed war crimes and displaced tens of thousands of people with impunity.

Finally, a word on the proposed repatriation process of Rohingya refugees from Bangladesh to Myanmar. This process must not begin until the safe and dignified return of Rohingya is guaranteed.

This must include addressing the root cause of the crisis, including dismantling the systematic discrimination against Rohingya.

Furthermore, the repatriation plan do not explicitly address equal access to citizenship rights for Rohingya prior to returns, the need to amend 1982 citizenship law.

It must also involve international guarantees for the protection of Rohingya inside Rakhine state so that we are not once again left at the mercy of Myanmar security forces.

The exact nature of site protection will need to be negotiated but could involve the deployment of U.N. peacekeeping force.

We are also deeply disappointed that Rohingya representatives have been wholly excluded from the negotiation process between various U.N. bodies and the governments of Bangladesh and Myanmar. Rohingya must be allowed a seat at the table to determine our own future.

Thank you very much.

[The prepared statement of Mr. Khin follows:]

PREPARED STATEMENT OF TUN KHIN

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
Victim's Rights in Burma

July 25, 2018 - 10:00 a.m.
2200 Rayburn House Office Building

Statement of Tun Khin
President
Burmese Rohingya Organisation UK

Honourable Chairmen, colleagues from civil society,

Thank you for providing me with the opportunity to speak before the Tom Lantos Human Rights Commission. The Rohingya people need friends in the international community today more than ever, and forums like this one are a crucial opportunity to highlight the very serious issues facing our community. I appreciate the effort that has gone into bringing us all together today and for providing me with this platform.

Since August 2017, when the Myanmar security forces and their proxies launched their “clearance operation” in Rakhine State, headlines across the world have been dominated by the horrific abuse inflicted on the Rohingya people. Thousands of people have been killed, hundreds of villages burned to the ground and almost 800,000 women, men and children forced to flee into Bangladesh. There is an abundance of credible evidence that the Tatmadaw have been responsible for crimes against humanity.

While we in the Rohingya community to some extent appreciate that our suffering has finally reached the global consciousness, the events of the past year have hardly come as a surprise. For decades, the Myanmar authorities have been engaged in a systematic effort to, at best, make the lives of Rohingya in Myanmar so unbearable that we see no option but to flee, or, at worst, to violently exterminate us. The only fitting way to describe this is “genocide”.

In 1978, the Myanmar security forces launched what they called “Operation Dragon King” across Rakhine State. What was ostensibly an effort to identify “illegal immigrants” ahead of a national census turned into a vicious military effort marked by widespread human rights violations against Rohingya. Hundreds of thousands of people were forced to flee into Bangladesh. Among them were my parents, who spent several months in refugee camps in Bangladesh before returning to

their homes. In the early 1990s, I witnessed similar abuses myself when another military operation was launched in Rakhine State, again leading to more than 200,000 refugees fleeing into Bangladesh. The atrocities that took place in Rakhine State from August 2017 merely represent the latest chapter in a long tale of abuse.

It is not just the threat of violence that is a daily reality for Rohingya in Myanmar, it is also the debilitating and state-led discrimination and segregation. For Rohingya in Rakhine State, life resembles an open-air prison. Every aspect of our lives is controlled as the Myanmar authorities have in effect denied us citizenship and the rights associated with it, while imposing severe restrictions on our freedom of movement. These make it exceedingly difficult to access basic services, livelihood opportunities, to travel to hospitals, or to gain an education. There is a prevailing sense of hopelessness and despair among Rohingya in Rakhine State. Indeed, I myself decided to flee Myanmar in the 1990s when authorities barred me from attending university, simply because I was a Rohingya.

This wider perspective is important to keep in mind when discussing what can be done. Accountability is crucial to breaking this cycle of abuse, and to not embolden perpetrators to commit the same crimes again. Myanmar has time and again shown that it is both unwilling and unable to investigate itself. The commission of inquiry established by the Myanmar government in 2018 will without a doubt lead to no genuine accountability. The international community must play a role in providing justice, and we urge members of the UN Security Council to refer the situation in Myanmar to the International Criminal Court as soon as possible. We further urge all international states to support Special Rapporteur Yanghee Lee's calls for an international accountability mechanism to build on the work done by the UN Fact-Finding Mission into human rights violations in Myanmar.

This accountability will be important not just for Rohingya, but also for communities in other ethnic areas of Myanmar, including in Kachin and Northern Shan States. The Tatmadaw has in these areas committed war crimes and displaced tens of thousands of people with impunity.

Finally, a word on the proposed repatriation process of Rohingya refugees from Bangladesh to Myanmar. This process must not begin until the safe and dignified return of Rohingya is guaranteed. This must include addressing the root causes of the crisis, including dismantling the systematic discrimination against Rohingya. It must also involve international guarantees for the protection of Rohingya inside Rakhine State so that we are not, once again, left at the mercy of the Myanmar security forces. The exact nature of such protection will need to be negotiated but could involve the deployment of a UN Peacekeeping Force. We are also deeply disappointed that Rohingya representatives have been wholly excluded from the negotiation process between various UN bodies and the governments of Bangladesh and Myanmar. Rohingya must be allowed a seat at the table to determine our own future. Thank you for your time.

Mr. MCGOVERN. Well, thank you very much and I appreciate your testimony.

Before we go to questions I want to yield to my colleague from Georgia, Mr. Johnson, for an opening statement.

Mr. JOHNSON. Thank you, Congressman.

I want to commend the Tom Lantos Human Rights Commission for sponsoring this gathering today on a very important topic – human rights in Burma.

And I also want to let you know that this is the day before the end of this week of Congress being in session and Members of Congress will depart tomorrow for the month of August for district work period.

So suffice it to say that there are many events happening today which calls for congresspeople to be in attendance. So this event has a lot of competition. So I don't want you to think that because there are so few of us here today that this is not an important topic for us. It definitely is, and this testimony that you all are giving us today will definitely filter into the offices of the other Members of Congress and we will take these concerns to heart.

And I want to thank our panelists for being here today, both on this first panel and also the next panel to come.

And with that, I will yield back.

Mr. MCGOVERN. Thank you very much, and again, let me again thank the panel for their testimony.

You know, as one who's been following the situation in Burma for quite some time, and there are a lot of very familiar faces in the audience here today who we have worked with on this issue, I mean, it is just horrific what is happening.

I mean, it's a challenge to the conscience of the world and it is – it's just been frustrating because it seems that we haven't been able to come up with an effective strategy to change the reality.

And but it is – I mean, none of us can say enough – there aren't words to adequately describe how horrible the situation is.

And, you know, let me – I want to ask a question and all of you can respond to it because it's a question that's been raised many, many times as we try to figure out what to do, and that is that some observers have expressed concern that increased international pressure on the military could lead to a coup against the civilian government and the democratic transition in Burma.

Others argue that the military would have no interest in removing the civilian government because it provides a convenient shield for the military's actions. The civilian government gets criticized for the actions taken by the military.

And I just would like to get your kind of take on this, and because I think, look, obviously, the blame goes on the military but the civilian government has behaved in a way that is unbelievably frustrating as well.

But I would like to pose that question to you, all of you, and get your response. Whoever wants to go first can – Nsang?

Mr. NSANG. So the first is civilian government. According to human history, no silence has helped with the victims. It's only decided with the victimizer. I will put that at that.

And with the army, military, this is the best scenario that they have construct. This is part of the seven steps of road to democracy. This is the last step, and they will not trade this position with any other position that they can have. Even coup d'etat would not be as good as what they have at this time. They have this moniker of democracy, yet they are able to – they are able to be doing whatever they do with impunity.

Mr. KHIN. I think that the narrative – coup by military – it is a good excuse for a civilian government, particularly, I should say, from Daw Aung San Suu Kyi.

Mr. MCGOVERN. Right.

Mr. KHIN. You know, I believe this is the best time for the military, enjoying, you know, lifting of sanctions and everything. They can enjoy an impunity – you know, international community have no leverage, you know, so for – like, so what I believe is – this has come from civilian government of Aung San Suu Kyi as far as what she wants to get excused because she has no willing to do anything and we need to look at the narrative also – the Suu Kyi is no longer – she is, you know, really to have willingness or any political will to support on Rohingyas, to stop this genocide against Rohingyas one side.

And so this is a kind of narrative that we come from as far as what we see.

Mr. MCGOVERN. Martin.

Mr. MARTIN. I want to pick up on comments from both of my colleagues on the panel.

First, the use of the word narrative I think is critical in the case of Burma. As I often say, facts are few. Truths are many and narratives are even more common in the country.

So right now in the country, surprisingly, the Tatmadaw are seen as heroes by the vast majority of the population. What they did in Rakhine state is seen as ridding the country of a problem that's been around for decades. That's not a narrative here in the United States that is easy to understand but it is when you're there.

But I want to go back to Gum Nsang's comment about the seven steps, because I think at a certain level this is one of the fundamental questions in framing U.S. policy and what response may be warranted that needs to be answered.

There is a narrative out there in the United States that this is a country in transition towards democracy and, indeed, my testimony recounted some of those steps that would indicate movement or change.

In my written testimony, I will be going over those seven steps roadmap and a very different narrative exists out there, which is we are done – this is it. There are no further changes.

The Tatmadaw have no interest in additional reform or development, and that they have the control, as I tried to explain in my oral testimony, to prevent any further changes in the governing structure of the country – any further movement towards democracy. This is the flourishing – disciplined flourishing democracy that they had envisioned.

Now, I am an economist by training so one of the ways we look at things in economics is sort of trying to figure the trade-offs on things.

The question is if you take the narrative that there is a transition in place and you're wrong – there is no transition in place – how will your policies influence the situation.

If, on the other hand, you assume there isn't a transition going on, we are done and nothing will change. We are at an equilibrium unless something changes it. Then your policies may be different.

And so I think that's, at some point, a question, that needs to be addressed and thought through in terms of the formulation of policy.

The administration has taken one approach, historically, up til now and it looks like they're continuing with that approach.

Increasingly, I look at events and I wonder if the other narrative may be a more accurate portrayal – that we are in equilibrium and nothing is going to change unless some forces provoke or require that changes take place.

Mr. MCGOVERN. Well, the Tatmadaw's campaign against the Rohingya is said to be broadly popular with the majority Bamar population. Is that also the case or equally so with the campaign against the other ethnic populations?

Mr. KHIN. I think this is a military using as a tool to get support from all the people of Burma because that Rohingya issue – Rohingya is a kind of virus for the whole Rohingya – the whole people in Burma. This is the way they use it – that Rohingyas are illegal immigrants, they will take the state and this kind of false, you know, allegation and false, you know, media – through media. They walk it, and so this the way they are inflaming, you know, to the public and they want to get – they are getting much more support from the public because military systematically use it and civilian government, as far as what we have seen, and media they – systematically, they are also, you know, spreading hate speech against Rohingya.

So this is a good point for the military to use this issue to, you know, to attack the Rohingyas and also to get public support and for other ethnics also we have – for myself as far as what we have seen, you know, like some – but Rohingya is the main for me as far as what I have seen.

Thank you.

Mr. NSANG. So if we look at the conflict in northern Shan and the Kachin, there is different narrative and different perspective as well. In the Kokang conflict, the majority of people sided with the army and felt that way. But in the Kachin conflict, not that much animosity.

However, so how do soldiers in the front line feel themselves to be in the Kachin front. This is nothing that has to do with patriotism or for the country because it's more of a tribalistic nature that is fighting each other.

So but the government or the state is gearing towards this proselytizing concept to the frontline. So this construction of pagodas in these indigenous Kachin – indigenous homeland is what we have witnessed, and so that's my assessment.

Mr. MARTIN. In September last year about three weeks after ARSA's attacks on the security outposts, I ended up in Chiang Mai meeting with a number of the EAOs, signatories and non-signatories, and I used that opportunity to ask them how do you understand what happened in Rakhine state.

And the response was mixed. Some of them adopted sort of the Tatmadaw's line that, you know, this is natural – these are illegal immigrants that were smuggling into the country – they were trying to spread Islam like they did in Malaysia and Indonesia – a story I could explain in more detail but I will skip that. But the response was mixed.

There were some, that on the other hand, expressed great sympathy for the Rohingya and in fact said we are kind of glad – we are not glad that it happened – we are – this is an opportunity for us to also talk about how this has been going on for us for 70 years – 40 years, so to bring international attention to even dealing with this at a lower level for many years.

This June, I went up to Myitkyina, the capital of Kachin state, and again I met with EAOs, members of civil society, and asked sort of their understanding of what's going on.

And I was a little bit surprised. The answer I got are, are we next? The Kachin were expressing concern that the military, having successfully cleansed Kachin state of the Rohingya, that they are now moving into Kachin state and trying to cleanse Kachin state of sympathizers to the KIA, KIO, the opposition. And if that means driving them out of Kachin state, that's fine. That is where this current tactic of attacking villages, not necessarily KIA outposts, is particularly concerning.

Is that true? No, this is – I don't know. It's a country of narratives. But the fact that for many in Kachin, KIA, KIO members, but also civilian society, that they are concerned that they may be the next victim of ethnic cleansing in their country, is a worrying turn.

Finally, the other thing that's come up both in September and now is how to understand ARSA – the Arakan Rohingya Salvation Army.

In September, mostly EAOs and most people accepted the narrative they were terrorists. Now I am finding people are saying they may be an ethnic armed organization, a new one, that needs to be part of the peace process.

It's a country where things shift and change rather quickly. I don't know exactly where it's going to come out.

Mr. MCGOVERN. Well, based on your trip, I mean, were there other things that surprised you? I mean, did you identify changes in the dynamic on the ground that you had not anticipated?

Mr. MARTIN. I also was in Naypyidaw, the capital. I met with the Ministry of Defense, and I also spoke to a number of people from civil society.

And several people made the same comment and I had the same kind of feeling – this sounds like SLORC, a predecessor of the SPDC. This is a more hard-line military than I've seen in the last 10 years. They were almost arrogant about feeling like they have been successful in accomplishing what they wished to do, and I looked at Min Aung Hlaing's speech at the Panglong 3 conference that just ended a couple of weeks ago.

And it has that same hard line attitude – explicitly blamed the British colonialism as well as the EAOs for the continuation of the civil war, and once again, made the statement that we could end this civil war if you just basically lay down your arms, from the EAO's perspective, concede defeat, and accept the constitution that the SPDC wrote, and everything would be fine.

And that appears to be their perspective right now.

Mr. MCGOVERN. Mr. Nsang and Mr. Khin, is there a shared agenda amongst the various ethnic minority groups in terms of how to move forward? I mean, is there kind of unity in terms of what the next step should be?

Mr. KHIN. I think accountability and justice, that is the most important here we have to look at. The same military what have done to deported 700,000 Rohingyas and thousands of Rohingya have been killed and raped. The same military, they did in Kachin, Shan, and others.

So if you look as a whole, ICC referral, U.S. government should support – that is very important, and accountability and justice. However, we all are victims in Burma. Collectively, we want to seek justice. We want to bring these military criminals to International Criminal Court because the impunity they are enjoying that is much, much over. So we must stop that. So, you know, so military must – as international community must take action to stop these atrocities against Rohingyas and other minorities.

So as far as what I believe, all the ethnic people in Burma, unfortunately, some of them inside, they cannot speak – they want to see military in International Criminal Court without further delay, and that strategy also – it is important international community must support, you know, ethnic careers, IDPs, you know, and Rohingya IDPs and also refugees funding and others because IDPs are really a horrible situation continuously going on and I think it is important – civilian government we have not seen anything so far, there are no political will. You know, still, we have seen the privatization policies on top of that military ruling in Burma.

So ethnic voice is important – ethnic altogether. We are collectively – we want to see justice at this point.

Mr. NSANG. In terms of ethnic, what Burma has never had for 70 years is full out comprehensive and nationwide cease fire. We have had rotational cease fires, Kachin were model minorities in the past two decades when they were waging a massive campaign against the Karen.

So in terms of the solidarity and the empathy of what has happened in the Rakhine state to both Rakhine and the Rohingya community especially, is there's certainly empathy from the ethnic groups because we have suffered the same atrocities. We don't have to go far and beyond or read news to witness that.

However, Burma army they foster divide along ethnic and religious line, and it elevates tension, be it against the Rakhine and the Rohingya or also the same in northern Burma with the Kachin and other ethnic groups.

So we have to be careful. So if we do a collective, if all comprehensive solidarity network or a campaign, that's something viable. But if it's selected groups of ethnic or citizenship groups, it could be exploited by the Burma army domestically.

Mr. MCGOVERN. Just the final question I have here. What are we doing that's working, if anything? I mean, where's the hope here? I mean, where do we – you know, what has – what has – what have we done that has resulted in some positive change, if anything? I mean, and where – you know, where is that – pressure point? Where do – what has to – how do we – we've all asked for accountability. We've all asked to end the violence. We've all – we are trying to support, you know, those who have fled to Bangladesh where, you know, we – I mean, there's – I mean, I know in the Commission we've issued a gazillion statements and we have, you know, met with Aung San Suu Kyi when she has come here. We have – I mean, we have raised these issues time and time again. What is it – what is it that we are not doing that we should be doing? Is there anything that we have done that has produced anything that has resulted in something positive?

Mr. NSANG. So it's obvious that the Burmese military do respond to pressure. That's given, and they do respond to they want economic sanctions lifted. We know that.

So the first thing that we could do is at least – I think there are seven individuals that are still pending to be listed under the Global Magnitsky Act. Hopefully, we can start with that first.

And justice is the only enabler of peace, and from the prism of justice, and if we push that hard with multilateral approach, it will certainly – there is hope for that.

And with the civilian government, you know, quasi-democracy, they will respond.

Mr. KHIN. I think – yes, this is important. We have to look. For Rohingya crisis, as you have seen, it's almost one year on and still, you know, U.S. government and U.K. and France, we have not seen in Security Council they're referring Burma to ICC. It is very important when we need to look at – I mean, of course, sanctions and other military they – they quite worry on ICC and also we have not seen a strong practical action so far.

Also, civilian government, you know, Daw Aung San Suu Kyi is quite – you know, she is with the military as far as what we can see. So we have not seen too much pressure to her as far as what we believe and it is important to pressure NLD government because, you know, of course, rapes killed and murdered many Rohingya children, women, and men in Rakhine state, that is true.

But same time civilian government, NLD government is taking totally complicit genocide against Rohingya because our government – our minister are now forcing Rohingyas to take NVC, national verification card. For example,

what is happening, like, last few days ago. You know, this NVC card is legalizing you are a foreigner from – you illegally entered from Bangladesh or this is the way they are systematically they're doing that. This is immigration ministers from NLD government. And also, you know, integration for the Rohingyas, they cannot study. They can't go to a university. This is doing by an illegal government.

So systematically here they ignore, they don't care, and because it's lack of action. As a Rohingya myself, as a victim, you know, I feel very disappointed. But we really need – you can see the victims today. We receive a lot of videos, flooded and people are getting disease, and how far we need to wait for stronger action? This is very important, you know. How many thousands of Rohingya need to be killed for us to take action to stop this?

So it is important that NLD government we must put much, much pressure, and Suu Kyi is totally – I think she has no willingness. So we can't see she is a big hope for Burma, for the Rohingyas and others in Burma.

This is so important. We need to take a note. Thank you.

Mr. MCGOVERN. Michael, you have the last word.

Mr. MARTIN. My first comment is we should be cognizant of the limits of U.S. influence. It is complex and there are other actors involved.

I go back to the early days when I picked up this portfolio 11 years ago and any time I met with an official from the Tatmadaw or the government – and it was – they were the same – the first question they asked me was, what do we need to do get rid of the sanctions.

Now, you have to be careful on how you interpret things. But it seemed that sanctions was first and foremost on their mind and it seemed to be in a mechanism that had some influence over the military.

The question would then become, in this situation, what may be the appropriate sanctions or restrictions to impose. And bear in mind, most of the laws are still on the books. It's under executive order that they are not currently being forced.

But you asked about things that may be effective. U.S. government has been working quite extensively with civil society in Burma and Myanmar and I have been impressed by people like the two gentleman on the panel with me, others than I've met in the country, some who are sitting behind me, who, despite all the conditions under which they operate, they're willing to continue to struggle – that they support democracy, respect of human rights, respect of civil liberties, sometimes in very difficult situations.

And I will particularly commend the media, the press – some members of the press who right now are facing particularly greater pressure not to publish articles that the Tatmadaw would not like to see. There's even a law that allows them to basically sue them for defamation if they print an article that the Tatmadaw see as a negative comment on them. Working with civil society seems to be creating an environment whereby domestic pressure for change is being built up.

The other aspect is I had the opportunity last month to meet with about 30 or 40 members of the Union Parliament. Now, the Union Parliament in Naypyidaw, they don't have offices. They don't have staff. They don't have workspace. They have virtually nothing to support them, and I was impressed by how many of them really do want to represent their constituents back home.

If you sat down and talk with them, you'd have very common interests and concerns that were being expressed. So I think some of the work that the United States has supported working with Union Parliament, an institution that may someday give rise to a truly representative parliament, is an area where I see some progress has been made.

Mr. MCGOVERN. Well, thank you, and thank you all for your testimony. As I said at the beginning, it – every report that we get on what's happening in Burma continues to shock our conscience and there's a special place in Hell for those who have perpetrated these atrocities against so many civilians and I just appreciate your testimony and we look forward to continuing to work with you in the weeks and months ahead.

Thank you.

I am going to now call Panel Two. Skye Wheeler, a researcher, Women Rights Division at Human Rights Watch; Matthew Smith, Chief Executive Officer, Fortify Rights; Francisco Bencosme, Asia Pacific Advocacy Manager of Amnesty International USA; and Daniel Sullivan, Senior Advisor for Human Rights, Refugees International.

And I will say this to the previous panel and to this panel that you have great extensive biographies that all are going to be part of the record. But they're so extensive that if I read them all, we'd have no time. So –

Ms. Wheeler, why don't we begin with you? Just make sure your mic is on.

Oh, before we begin, my co-chair, do you have an opening statement you would like to –

Mr. HULTGREN. Yes, if that's all right.

Mr. MCGOVERN. Okay. Yes, before we begin we'll go to Mr. Hultgren who will give his statement.

Mr. HULTGREN. Thank you. So grateful for my great co-chairman, Jim McGovern – a great friend. Thank you all, and I would echo so much of what he said of our horrible plight that we see and concern and desire to do something and so grateful for all of you being here and just know that, again, there's nothing more important that we could be talking about than protecting the victims that we've seen suffer in Burma over the last several years in particular, beginning in October of 2016.

The world has watched in horror as the Burmese government has committed crimes of ethnic cleansing against the Rohingya population. We are now all too familiar with images of hundreds of thousands of people fleeing from their burned-out homes as they seek to escape the mass killings and systematic rape perpetrated by the Burmese security forces.

Satellite footage shows that entire Rohingya villages and communities have been erased from the face of the Earth. At least 690,000 Rohingya, half of whom are children, now dwell along the borders of Bangladesh, homeless and living in very difficult conditions, and unable to safely return to their communities.

The Burmese government continues to deny that they have had any role in perpetrating these terrible crimes and yet this kind of repression is in line with the experience of Burma's other ethnic minorities across the country.

In addition to the Rakhine state, there's also six other ethnic states in Burma whose minority communities have experienced targeted human rights abuses.

I and my staff have recently met with multiple survivors and refugees from Kachin, Karen, Shan states – the Shan states who have shared personal stories about how the Tatmadaw attacked the villages, destroyed their crops, mined their roads, and killed their unarmed family members.

Burmese government shows no discretion in perpetrating these crimes. It does not matter if you're Christian or Muslim, Karen or Kachin.

If violence begins to decrease in one state it becomes the military – it is because the military has shifted its focus and is increasing violence in another state.

Today's hearing is important because victims of serious human rights abuses have the right to pursue justice for the crimes committed against them.

This violence will only cease when impunity is no longer tolerated and when perpetrators are held accountable for their actions. This will serve not only the best interests of the Rohingya but also every other ethnic minority that has been violently targeted in the country.

Again, I look forward to hearing from the esteemed witnesses and I want to thank you for your work and want to hear what we in Congress can be doing along with you to make sure that the reality of protection of human rights abuse victims is recognized and that the abuses in Burma stop.

So with that, thank you, Co-Chairman, and I yield back.

[The prepared statement of Co-Chair Hultgren follows:]

**PREPARED STATEMENT OF THE HONORABLE RANDY HULTGREN,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS
AND CO-CHAIR OF THE TOM LANTOS HUMAN RIGHTS
COMMISSION**



Tom Lantos Human Rights Commission Hearing

Victims' Rights in Burma

July 25, 2018
10:00 AM – 11:30 AM
2200 Rayburn House Office Building

Opening Remarks as prepared for delivery

Good morning. I would like to join my esteemed Co-Chair in welcoming you to the Tom Lantos Human Rights Commission's hearing on Victims' Rights in Burma. Over the last several years, and particularly beginning in October of 2016, the world has watched in horror as the Burmese government has committed crimes of ethnic cleansing against its Rohingya population in Rakhine state.

We are now all too familiar with the images of hundreds of thousands of people fleeing from their burned-out homes as they seek to escape the mass killings and systematic rape perpetrated by the Burmese security forces, known as the Tatmadaw.

Satellite footage shows that entire Rohingya villages and communities have been erased from the face of the earth. At least 690,000 Rohingya, half of whom are children, now dwell along the border of Bangladesh, homeless and living in very difficult conditions, and unable to safely return to their communities.

The Burmese government continues to deny that they have had any role in perpetrating these terrible crimes, and yet this kind of repression is in-line with the experience of Burma's other ethnic minorities across the country. In addition to Rakhine state, there are six other ethnic states in Burma whose minority communities have also experienced targeted human rights abuses by the Tatmadaw.

I and my staff have recently met with multiple survivors and refugees from Kachin, Kayin, and Shan states who have shared personal stories about how the Tatmadaw attacked their villages, destroyed their crops, mined their roads, and killed their unarmed family members.

The Burmese government shows no discretion in perpetrating these crimes. It does not matter if you are Christian or Muslim, Karen or Kachin. If violence begins to decrease in one state, it is because the military has shifted its focus and is increasing violence in another state.

Today's hearing is important because victims of serious human rights abuses have the right to pursue justice for the crimes committed against them. Violence by the Tatmadaw will only cease when impunity is no longer tolerated and when perpetrators are held accountable for their actions. This will serve not only the best interest of the Rohingya, but also every other ethnic minority that has been violently targeted in the country.

I look forward to hearing from our esteemed witnesses about how Congress can help to make this a reality for victims of human rights abuses in Burma. Thank you.

Mr. MCGOVERN. Thank you very much, and we now turn to Ms. Wheeler.

STATEMENTS OF SKYE WHEELER, RESEARCHER, WOMEN'S RIGHTS DIVISION, HUMAN RIGHTS WATCH; MATTHEW SMITH, CHIEF EXECUTIVE OFFICER, FORTIFY RIGHTS; FRANCISCO BENCOSME, ASIA PACIFIC ADVOCACY MANAGER, AMNESTY INTERNATIONAL USA; AND DANIEL SULLIVAN, SENIOR ADVOCATE FOR HUMAN RIGHTS, REFUGEES INTERNATIONAL

STATEMENT OF SKYE WHEELER, RESEARCHER, WOMEN'S RIGHTS DIVISION, HUMAN RIGHTS WATCH

Ms. WHEELER. Thank you. Hello.

Co-Chairmen Representatives McGovern and Hultgren, thank you for the opportunity to testify at today's hearing on human rights and the use of sexual violence by the Burmese military against ethnic minorities in Burma.

Human Rights Watch has conducted research on the Human Rights situation in Burma for more than 25 years. We have frequently documented the systematic use of rape and other sexual violence by the Tatmadaw, or Burmese armed forces, not just in the most recent violence against Rohingya but also against other ethnic groups.

In our interviews with victims, we have witnessed their pain, shame, and distress – injuries that have corroded their personal sense of self as well as the strength of their communities.

Widespread sexual violence perpetrated by Burmese soldiers has been a hallmark of the culture of abuse and impunity in Burma's decades-long civil wars with its ethnic groups.

Despite promises made during the country's democratic transition since 2011, the Tatmadaw continues to shield its soldiers from prosecution for crimes committed in military operations, including in Kachin, Shan, and Rakhine states.

We have also documented repeatedly how the authorities have, through intimidation and flat denial, stopped efforts by groups and individuals, including brave women, to achieve justice for survivors of rape or end abusive practices of gang rape and the fear of rape and shame that spreads across communities.

In September and October 2017, I spent two weeks in Rohingya refugee camps in Bangladesh. I interviewed 52 Rohingya women and girls, including 29 survivors of rape who had fled to Bangladesh to escape the Burmese military's campaign of ethnic cleansing that began on August 25, 2017.

The rape survivors I spoke to were from 19 different villages. In every case described to Human Rights Watch, the perpetrators were uniformed members of security forces.

All but one of the rapes reported to Human Rights Watch were gang rapes involving two or more perpetrators, but usually larger groups of soldiers who also sometimes stripped, beat, bit, laughed at, and taunted their victims.

Women described soldiers in boots kicking them and beating them with rifles. In eight cases, women and girls reported being raped by five or more soldiers. 15-year-old Hala Sadak from Maungdaw Township said the large areas of scarring that she showed me on her right leg and knee were from where soldiers had stripped her naked and then dragged her from her home against the ground to a nearby tree, where she was tied, and then she estimates around 10 men raped her from behind.

Human Rights Watch documented six cases where Burmese military units committed mass rape on villagers, such as in Tula Toli village, where survivors said that soldiers gathered women and girls together in groups and then gang raped them or raped them, sometimes locking them in their shelters and set them on fire.

Burmese security forces raped and sexually assaulted women and girls both during the abusive clearance operations that began in August 2017 but also in the weeks prior to these major attacks, sometimes after repeated harassment.

Rohingya women and girls told Human Rights Watch that they had been afraid of rape for many months prior to these events and had often experienced sexual harassment and assault from security forces and civilians aligned with those forces as part of their everyday lives.

As with other survivors of Tatmadaw rape over the decades, Rohingya rape survivors spoke of enduring numerous abuses at once. In addition to being raped, women described with great distress seeing security forces murder their young children or elderly parents. Many reported witnessing cruelty to those who are especially vulnerable, such as a soldier killing a five-year-old girl who could not keep pace with her family by smashing her skull with the butt of his gun. Or security forces pushing older people who could not flee back into burning houses.

I spoke to two women who were forced to choose which child to save. One rape victim had to leave one baby behind in a burning house.

Shocking, but none of this should have surprised us. In late 2016 and early 2017, before the August attacks began, we had already been documenting the role of sexual violence in the military's Rakhine state operations.

We'd already documented 28 cases of rape and other sexual assault by the Burmese military and border guards, some of which involved several victims.

In the rain-drenched Bangladesh refugee camps, I interviewed two Rohingya women who had been raped twice by soldiers – one in early 2017 and then again as operations intensified in August of the same year.

Anyone in this room who has heard a survivor describe a rape endured will know how terrible each individual's story is. But we have been hearing about military rape of women from Burma's ethnic minorities for years. The absence of any accountability for such atrocities enables it to continue.

In 2011, Kachin civilians described to Human Rights Watch how Burmese soldiers attacked Kachin villagers, razed homes, pillaged properties, and forced the displacement of tens of thousands of people. My colleagues documented mass rape by soldiers as well as the gang rape of individuals and collected other reporting by some brave partner organizations.

This was far from the first time, however, that Human Rights Watch had interviewed Kachin survivors of rape. In 1994, we also interviewed survivors who had fled the army's burning of their villages, mass displacement, forced labor and killings in the 1970s, the 1980s, and in the 1990s.

In 2005, we documented the violations of international human rights and humanitarian law in Karen state, which runs along Thailand's border. Our partner, the Karen Women's Organization, documented 125 cases of sexual violence by military troops, half committed by high-ranking military officers. Forty percent of the cases were gang rapes and then in 28 percent women were raped and then killed. The Women's League of Burma reported rapes and gang rapes in 2003 and 2004 in all provinces with significant ethnic minority populations. The report implicated senior and junior military personnel as being perpetrators complicit in the majority of documented rapes. The women's organizations subsequently reported intimidation of survivors and witnesses.

In the 1990s, we documented ongoing rights abuses and repression by the Tatmadaw in Burma's west Chin state, which borders India. Again, the pall of fear pulled over communities lasted much longer and affected many more than just the survivors of rape. At the time, Chin women and girls told us how they lived in fear of rape and other forms of sexual violence by Tatmadaw soldiers.

As the financial year 2019 bill continues to move, the United States Congress should help ensure that women, including survivors, have a political voice and, together with allies such as the United Nations, should design long-term programs to assist survivors in contrast to the Trump administration's determination to cut aid.

What Tun Khin, my colleague, said earlier about how the Rohingya have not been allowed to have a seat at the table is very true. This is even more true of Rohingya women.

Earlier this week, despite significant bipartisan support in both houses of Congress, the defense authorization bill conferees failed to include language in the final bill that would have authorized targeted appropriate measures against key individuals who bear responsibility for atrocities.

This body, the House of Representatives, voted overwhelmingly to bar U.S. assistance or cooperation with Burma's military until those responsible for human rights crimes committed in Rakhine state and elsewhere were held accountable.

Disappointingly, the Senate did not concur. But even without this law, the administration still has a number of options to impose targeted sanctions and it should waste no time in doing so.

We understand the Treasury Department continues to delay the imposition of sanctions on a list provided by the State Department for unclear reasons. Last December, the Trump administration sanctioned one individual, the Burmese army's former chief of western command, for his role. There are many more individuals who should be sanctioned for their roles in atrocity crimes in Rakhine state, including those currently under consideration by the Treasury.

For its part, Congress will now have to pressure the administration in other ways, including by ensuring that sexual and gender-based violence is included in discussions about possible individuals to sanction.

As you know, the administration is conducting an extensive investigation into the crimes against the Rohingya, documenting allegations of murder, rape, torture, and other offenses that could down the road be used to prosecute members of Burma's military.

At a recent Senate hearing, Secretary of State Mike Pompeo committed publicly to releasing these findings. This is particularly important, as the military continues to deny that atrocities occurred.

We hope the release of this report will trigger an adequate response including increased bilateral engagement from the State Department and USAID to assist Rohingya refugees and more diplomatic pressure on the U.N. Security Council to move the dial on accountability.

The U.S. government, which has contributed significant development aid to Burma throughout its democratic transition, should make it explicitly clear that unchecked sexual violence and other abuses by the Burmese military are unacceptable and that the absence of any steps towards accountability has impaired what was, until recently, a growing U.S.-Burma relationship.

To that end, this Congress should ensure, particularly as the Fiscal Year 2019 appropriations process continues to move forward, that there are adequate funds to support the health needs, both physical and psychosocial, of the women and girls impacted by Burmese military violence.

Thank you.

[The prepared statement of Ms. Wheeler follows:]

PREPARED STATEMENT OF SKYE WHEELER



House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
Victims' Rights in Burma

July 25, 2018 - 10:00 a.m.
2200 Rayburn House Office Building

Statement of Skye Wheeler
Researcher, Women's Rights Division
Human Rights Watch

Co-Chairmen Representatives McGovern and Hultgren and members of the commission, thank you for the opportunity to testify at today's hearing on human rights and the use of sexual violence by the Burmese military against ethnic minorities in Burma.

Human Rights Watch has conducted research on the human rights situation in Burma for more than 25 years, focusing on abuses against political dissidents and media, as well as laws-of-war violations in the armed conflicts in ethnic minority areas. Human Rights Watch has documented numerous abuses associated with Burma's military operations. We have frequently documented the systematic use of rape and other sexual violence by the Tatmadaw, or Burmese armed forces, not just in the most recent violence against the Rohingya but against other ethnic groups as well. In our interviews with victims, we have witnessed their pain, shame, and distress – injuries that have corroded their personal sense of self as well as the strength of their communities.

Widespread sexual violence perpetrated by Burmese soldiers has been a hallmark of the culture of abuse and impunity in Burma's decades-long civil wars with its ethnic groups. Despite promises made during the country's democratic transition since 2011, the Tatmadaw continues to shield its soldiers from prosecution for crimes committed in military operations including in Kachin, Shan, and Rakhine States. Military rape is linked to other abuses, including extrajudicial killings, torture, arson, land confiscation, and denial of humanitarian aid. We have also documented repeatedly how the authorities have, through intimidation and flat denial, stopped efforts by groups and individuals, including brave women, to achieve recognition and justice for survivors of rape or to end abusive practices of gang rape and the toxicity of fear of rape and shame that spreads across communities.

The apparently hopeless situation facing Rohingya survivors of brutal gang rape by Burmese security forces, now in the miserable sanctuary of Bangladesh refugee camps, has been brought upon countless other victims over several decades, among many of Burma's ethnic minorities. For victims, the attacks cannot be forgotten, but within Burma no realistic path to justice or clear plan to hold military perpetrators accountable exists.

In September and October 2017, I spent two weeks in Rohingya refugee camps in Bangladesh. I interviewed 52 Rohingya women and girls, including 29 survivors of rape, who had fled to Bangladesh to escape the Burmese military's campaign of ethnic cleansing that began on August 25, 2017. The rape survivors I spoke with were from 19 different villages in Burma's Rakhine State, mostly in northern Buthidaung and Maungdaw townships.

In every case described to Human Rights Watch, the perpetrators were uniformed members of security forces. All but one of the rapes reported to Human Rights Watch were gang rapes, involving two or more perpetrators, but usually larger groups of soldiers who also sometimes stripped, beat, bit, laughed at, and taunted their victims. Women described soldiers in boots kicking them and beating them with rifles. In eight cases, women and girls reported being raped by five or more soldiers. Fifteen-year-old Hala Sadak, from Maungdaw township, said that large areas of scarring on her right leg and knee were from where soldiers had stripped her naked and then dragged her from her home to a nearby tree where, she estimates, about 10 men raped her from behind.

Human Rights Watch documented six cases where Burmese military units committed "mass rape" of villagers, such as in Tula Toli village, officially known as Min Gyi, in Maungdaw township. In these instances, survivors said that soldiers gathered women and girls together in groups and then gang raped or raped them, sometimes then locking them in shelters that they set on fire.

Burmese security forces raped and sexually assaulted women and girls both during the abusive "clearance operations" beginning late August 2017, as well as in the weeks prior to these major attacks, sometimes after repeated harassment. Rohingya women and girls told Human Rights Watch they had been afraid of rape for many months prior to these events, and had often experienced sexual harassment and assault from security forces and civilians aligned with those forces as part of their everyday lives.

As with other survivors of Tatmadaw rape over decades, Rohingya rape survivors spoke of enduring numerous abuses at once. In addition to being raped, women described with great distress seeing security forces murder their young children or elderly parents. Many reported witnessing cruelty toward those especially vulnerable, such as a soldier killing a 5-year-old girl

who could not keep pace with her fleeing family by smashing her skull with the butt of his gun, or security forces pushing older people who could not flee back into burning houses. Two women we spoke to were forced to choose which child to save; one rape victim had to leave one behind her in a burning house.

Shocking, but none of this should have surprised us. In late 2016 and early 2017, before the August attacks began, Human Rights Watch had already begun documenting the role of sexual violence in the military's Rakhine State operations. In interviews with 40 Rohingya refugees who had fled Rakhine State in late 2016, Human Rights Watch documented 28 incidents of rape and other sexual assault by Burmese military and border guards, some of which involved several victims. Many survivors reported being insulted and threatened on an ethnic or religious basis during the assaults. In the rain-drenched Bangladesh refugee camps, I interviewed two Rohingya women who had been raped twice by soldiers, once in early 2017 and then again as operations intensified in the end of August of that year.

Anyone in this room who has heard a survivor describe a rape endured will know how terrible each individual story is. But we have been hearing about military rape of women from Burma's ethnic minorities for years. The absence of any accountability for such atrocities enables it to continue.

In 2011, Kachin civilians described to Human Rights Watch how Burmese army soldiers attacked Kachin villages, razed homes, pillaged properties, and forced the displacement of tens of thousands of people. My colleagues documented mass rape by soldiers as well as gang rape of individuals, and collected other reporting of the same by brave partner organizations. This was far from the first time Human Rights Watch had interviewed Kachin survivors of rape. In 1994, we also interviewed survivors who had fled the army's burning of their villages, mass displacement, forced labor, and killings in the 1970s, 1980s, and 1990s.

In 2005, we documented that violations of international human rights and humanitarian law were carried out by the Tatmadaw in eastern Karen State, which runs along Thailand's northwest border. Our partners documented widespread and continuing sexual violence against ethnic women in Karen State by the Burmese military. The Karen Women's Organization (KWO) documented 125 cases of sexual violence committed by military troops in Karen State from 1988 until 2004, half committed by high-ranking military officers. According to the KWO report, 40 percent of the cases were gang rapes. In 28 percent, women were raped and then killed. The Women's League of Burma reported rapes and gang rapes in 2003 and 2004 in all provinces with significant ethnic minority populations, as well as in central Burma. The report implicated senior and junior military personnel as being perpetrators or complicit in the majority of documented rapes. The women's organizations subsequently reported intimidation of survivors and witnesses.

In 1990, we documented ongoing human rights abuses and repression by the Tatmadaw in Burma's western Chin State, which borders India. Again, the pall of fear pulled over communities lasted much longer and affected many more than survivors of brutal rape. At that time, Chin women and girls told us how they lived in fear of rape and other forms of sexual violence by Tatmadaw soldiers.

In mid-2016, we reported on how women have been sidelined from the peace process initiated to resolve the longstanding armed conflicts in ethnic areas, despite many years of human rights and peace activism by women, and the disproportionate impact of conflict-related sexual violence on women. As the FY19 bill continues to move, the United States Congress should help ensure that women, including survivors, have a political voice, and, together with allies such as the United Nations, should design long-term programs to assist survivors, in contrast to the Trump administration's determination to cut aid.

Earlier this week, despite significant bipartisan support in both houses of Congress, the FY19 defense authorization bill conferees failed to include language in the final bill that would have authorized targeted, appropriate measures against key individuals who bear responsibility for atrocities, including sexual and gender-based violence. This body – the House of Representatives – voted overwhelmingly (382-30) to bar US assistance or cooperation with Burma's military until those responsible for human rights crimes committed in Rakhine State and elsewhere were held accountable. Disappointingly, the Senate did not concur. But even without this law, the administration still has a number of options and authorities to impose targeted sanctions – and it should waste no time in doing so.

We understand the Treasury Department continues to delay the imposition of sanctions on a list provided by the State Department for unclear reasons. Last December, the Trump administration sanctioned one individual – Maung Maung Soe, the Burmese army's former chief of Western Command – for his role in overseeing "the military operation in Burma's Rakhine State responsible for widespread human rights abuse against Rohingya civilians." The imposition of this sanction was an important step, but there are many more individuals who should be sanctioned for their roles in atrocity crimes in Rakhine State, including those currently under consideration by the Treasury Department. For its part, Congress will now have to pressure the administration in other ways, including by ensuring that sexual and gender-based violence is included in discussions about possible individuals to sanction.

As you may know, the administration is conducting an extensive and intensive investigation into alleged crimes against the Rohingya, documenting allegations of murder, rape, torture, and other offenses that could, down the road, be used to prosecute members of Burma's military for atrocity crimes, including as a matter of command responsibility. At a recent Senate hearing, Secretary of

State Mike Pompeo committed publicly to releasing the findings of this report and acknowledged the importance of doing so. We believe that a public release is essential to help craft a clear and compelling narrative about the widespread abuses against the Rohingya people – documented by a wide range of organizations and institutions. This is particularly important as the military continues to deny that atrocities occurred. We hope the release of this report will trigger an adequate response, including increased bilateral engagement from the State Department and USAID to assist Rohingya refugees, and more diplomatic pressure at the UN Security Council to move the dial on accountability.

The US government, which has contributed significant development aid to Burma throughout its democratic transition, should make it explicitly clear that unchecked sexual violence and other abuses by the Burmese military are unacceptable, and that the absence of any steps toward accountability has impaired what was until recently a growing US-Burma relationship. To that end, this Congress should ensure, particularly as the FY19 appropriations process continues to move forward, that there are adequate funds to support the health needs – both physical and psychosocial – of the women and girls impacted by Burmese military violence.

Mr. McGOVERN. Thank you very much. Mr. Smith.

**STATEMENT OF MATTHEW SMITH, CHIEF EXECUTIVE OFFICER,
FORTIFY RIGHTS**

Mr. SMITH. Chairman McGovern, Chairman Hultgren, distinguished members of the Commission, thank you very much for organizing this hearing and for the opportunity to testify today.

Our team at Fortify Rights has documented the Myanmar military's crimes and impunity throughout the country for several years, including in Kachin and Shan states where war crimes have been a particular fixture in the last eight years.

With regard to the situation in Rakhine state, up to last week the dominant narrative was that Rohingya militants attacked dozens of police outposts on August 25th 2017, instigating a spontaneous Myanmar army-led crackdown against Rohingya civilians, forcing the displacement of hundreds of thousands to Bangladesh.

On July 19th, Fortify Rights published this 160-page report. The report details how the Myanmar authorities made extensive and systematic preparations for attacks against Rohingya civilians during the weeks and months before militants attacked on August 25th.

Specifically, we found that the Myanmar authorities, one, systematically collected sharp or blunt objects from Rohingya civilians, effectively disarming them; two, trained and armed local non-Rohingya ethnic citizens in northern Rakhine state, preparing them for violence with swords, firearms, and, in some cases, through quasi-military training; three, systematically tore down fencing and other structures around Rohingya homes, providing attackers with a greater line of sight on Rohingya civilians; four, evicted aid groups and deprived Rohingya civilians of food and other lifesaving aid, systematically weakening the civilian population ahead of attacks; five, deployed unnecessarily high numbers of state security forces to northern Rakhine state; and six, committed other human rights violations against civilians, including imposing discriminatory Muslim-only curfews.

These deliberate actions fit within the U.N. framework for analysis of atrocity crimes as, quote, "preparatory actions for genocide and crimes against humanity." Perhaps more importantly, international case law has considered preparations such as these as components in evaluating genocidal intent.

Our investigation found that the attacks included the involvement of at least 27 Myanmar army battalions, comprising up to 11,000 soldiers, and at least three additional combat police battalions comprising an additional 900 personnel.

I just want to emphasize these are conservative estimates, based on information from state security forces.

The report – this report is based on a 21-month long investigation. We did 254 interviews with Rohingya eyewitnesses and survivors. We also spoke to military and police officials in Myanmar as well as in Bangladesh and others.

Eight documents – as you remarked in your opening statement, Mr.

Chairman, how Myanmar army soldiers, police, and other local non-Rohingya citizens hacked civilians, slit throats, fatally shot and burned thousands of Rohingya men, women, and children in a matter of weeks.

Soldiers raped masses of Rohingya women and girls, killed infant children, arbitrarily arrested men and boys, and destroyed several hundred villages in arson attacks, forcing more than 700,000 civilians to flee to Bangladesh.

We also documented human rights abuses by ARSA, the Arakan Rohingya Salvation Army, including the murder of Rohingya civilians, and members of ARSA told Fortify Rights that Ataullah, the head of the group, issued the kill orders. We were able to speak with several members of ARSA for this report.

In light of the evidence collected, we believe there are reasonable grounds to conclude that the crimes perpetrated against Rohingya by the Myanmar army, police, and others constitute genocide and crimes against humanity.

In addition, we identified 22 military and police officials who we believe should be criminally investigated and potentially prosecuted for genocide and crimes against humanity.

As we've heard today, the military has committed these types of crimes for decades and throughout the country, not just in Rakhine state, not just against the Rohingya population.

For several years, Fortify Rights has documented extrajudicial killings, rape, forced labor, widespread and systematic torture, and other human rights violations by the Myanmar army in Kachin state and northern Shan state, and we've documented violations in these areas that we believe constitute war crimes and crimes against humanity.

In 2014, we exposed the systematic use of torture against Kachin civilians by the Myanmar army, police force, and military intelligence. Those violations were committed with complete impunity.

We are asking the Trump administration to do everything in its power to persuade the U.N. Security Council to refer this situation of Myanmar to the International Criminal Court. The prospect of a China veto at the Security Council is often used to justify inaction towards international justice. We don't subscribe to the idea that there is nothing the U.S. government and others can do to get China to step aside and allow an ICC referral to happen.

We are also asking the administration to apply targeted sanctions through the Global Magnitsky Act against Myanmar army and police perpetrators responsible for these attacks against Rohingya. The administration could begin with the 22 army and police officials that are named in the Fortify Rights report.

Lastly, as my colleague, Skye Wheeler said, the administration has undertaken a comprehensive investigation into crimes perpetrated against the Rohingya in Myanmar. This includes information that could potentially be used for future prosecutions. We do hope the administration will fulfill its commitment to publicize its findings and we encourage accurate legal determinations, and this would potentially include a possible determination that

there are reasonable grounds to conclude that the crimes perpetrated against the Rohingya constitute genocide. Publicizing the findings and conclusions of the investigation will not only serve to clarify the details of the atrocities but it may also have a preventative effect, discouraging Myanmar army generals from ordering further attacks on civilians.

Thank you so much.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF MATTHEW SMITH



House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
Victim's Rights in Burma

July 25, 2018, 10:00 a.m.
2200 Rayburn House Office Building

Statement of Matthew Smith
Co-founder and CEO
Fortify Rights

Chairperson McGovern, Chairperson Hultgren, distinguished members of the commission, thank you very much for organizing this hearing, and thank you for the opportunity to testify.

Fortify Rights is an independent, non-profit, non-governmental human rights organization. We conduct independent investigations and support human rights defenders in their work to end and remedy human rights violations. Our team has documented the Myanmar military's crimes and impunity throughout the country for several years and we have worked alongside local partners and affected communities to identify and advance solutions.

Up to last week, the dominant narrative about the situation of Rohingya Muslims in Myanmar suggested that Rohingya militants attacked dozens of police outposts in northern Rakhine State on August 25, 2017, instigating a spontaneous Myanmar Army-led crackdown against Rohingya civilians and forcing the displacement of hundreds of thousands to Bangladesh.

On July 19, Fortify Rights published a 160-page report, “[They Gave Them Long Swords](#),” detailing how the Myanmar authorities made “extensive and systematic preparations” for attacks against Rohingya civilians during the weeks and months before militants attacked police on August 25, 2017.

Specifically, in the weeks and months before August 25, we found that the Myanmar authorities: 1) systematically collected sharp or blunt objects from Rohingya civilians, “disarming” them; 2) trained and armed local non-Rohingya ethnic citizens in northern Rakhine State, preparing them for violence with swords, firearms, and in some cases, quasi-military training; 3) systematically tore down fencing and other structures around Rohingya homes, providing attackers with a greater line-of-sight on Rohingya civilians; 4) evicted aid groups and deprived Rohingya civilians of food and other lifesaving aid, systematically weakening the civilian population ahead of attacks; 5) deployed unnecessarily high numbers of state-security forces to northern Rakhine State; and 6) committed other human rights violations against Rohingya civilians, including imposing discriminatory Muslim-only curfews.

These deliberate actions fit within the United Nations’ *Framework for Analysis of Atrocity Crimes* as “preparatory actions” for genocide and crimes against humanity.

More importantly, international case law has considered preparations such as these as reflective of a “systematic attack,” which is a component in evaluating genocidal intent.

Our report also finds that the attacks included the involvement of at least 27 Myanmar Army battalions, comprising up to 11,000 soldiers, and at least three combat police battalions, comprising an additional 900 police personnel. These are conservative estimates based on information obtained from state security forces.

The report is based on a 21-month-long investigation, including 254 interviews with Rohingya eyewitnesses and survivors, Myanmar military and police personnel, Bangladesh military and government officials, members and former members of the Arakan Rohingya Salvation Army (ARSA), aid workers, medical physicians, and others.

We interviewed several current and former members of ARSA who explained their involvement in hastily planned attacks on police outposts on August 25, which provided the ostensible spark for the Myanmar Army-led crackdown on civilians. Members of ARSA described the group as having little to no military capacity and no training.

Upon ARSA’s assault on police outposts on August 25, which reportedly killed 12 state security officials, Myanmar authorities activated local non-Rohingya citizens, some of whom the military previously armed and trained, and together they attacked Rohingya villages.

We documented how soldiers, police, and local non-Rohingya citizens hacked civilians, slit throats, and fatally shot and burned thousands of Rohingya men, women, and children in a matter of weeks. Soldiers raped masses of Rohingya women and girls, killed infant children, arbitrarily arrested men and boys, and destroyed several hundred villages in arson attacks, forcing more than 700,000 Rohingya civilians to flee to Bangladesh.

The attacks on Rohingya civilians mirrored similar attacks by the Myanmar authorities in October and November 2016. Those attacks focused on one township in Myanmar’s Rakhine State—Maungdaw Township—and displaced more than 90,000 civilians. It was after that initial wave of

violence, and in a context of insufficient international action, that the authorities began preparations for the more extensive attack in August that included all three townships of northern Rakhine State—Maungdaw, Buthidaung, and Rathedaung townships.

Fortify Rights also documented human rights abuses by ARSA, including the murder of Rohingya civilians. Fortify Rights interviewed members of ARSA and eyewitnesses to ARSA killings of Rohingya civilians in the lead-up to the August 25 attacks. The militant group threatened, beat, and, in some cases, killed Rohingya they suspected of being government informants. Members of ARSA told Fortify Rights that Atta Ullah, the head of ARSA, issued the kill orders.

Beyond this, our report provides an extensive legal analysis detailing reasonable grounds to believe that the crimes perpetrated by the Myanmar Army, police, and civilians against Rohingya constitute genocide and crimes against humanity. We worked closely with the law firm Covington & Burling, LLP on our legal analysis.

In addition, the report identifies 22 military and police officials with command responsibility for the “clearance operations” in northern Rakhine State. These officials should be criminally investigated and potentially prosecuted for genocide and crimes against humanity. The list includes Commander-in-Chief Senior General Min Aung Hlaing, Deputy Commander-in-Chief Vice Senior General Soe Win, and the Joint Chief of Staff General Mya Tun Oo.

The military’s violations in Rakhine State are consistent with broader patterns of human rights violations by the Myanmar military committed almost with complete impunity. For several years, we’ve documented extrajudicial killings, rape, forced labor, widespread and systematic torture, avoidable deprivations in humanitarian aid, and other human rights violations by the Myanmar Army in Kachin State and northern Shan State—violations that constitute war crimes and crimes against humanity. We continue to document restrictions that hinder humanitarian groups from providing lifesaving aid to displaced populations in Kachin and northern Shan states, and we remain concerned by the continued impunity for the [systematic use of torture](#) against Kachin civilians by Myanmar Army, Police Force, and Military Intelligence, which we exposed in 2014.

The Myanmar military is a wholly unreformed institution and one of the world’s worst abusers of human rights. The culture of impunity endemic in Myanmar must end, and the United States Government has a role to play.

A senior U.S. diplomat recently and approvingly told a delegation led by Kerry Kennedy of Robert F. Kennedy Human Rights that U.S. policy on the Rohingya crisis was deliberately “small ball.”

“Small ball”—whatever that may be—is wholly insufficient in responding to genocide. America in the age of genocide should be bold and unwavering, drawing on all available political and economic leverage to end and remedy the crime.

We are asking the Trump Administration to do everything in its power to persuade the U.N. Security Council to refer the situation in Myanmar to the International Criminal Court (ICC). In advocating for an ICC referral, we join Kachin, Shan, and other ethnic communities and organizations in Myanmar as well as Rohingya-led organizations in Myanmar, Bangladesh, and the wider diaspora. Other international human rights organizations, the U.N. High Commissioner for Human Rights Zeid Ra’ad al-Husseini, and the U.N. Special Rapporteur on the situation of human rights in

Myanmar Yanghee Lee have also recommended that the Security Council refer Myanmar to the ICC.

The prospect of a China veto at the Security Council is often used to justify inaction toward international justice. We do not subscribe to the idea that there is nothing the U.S. Government can do to get China to step aside and allow an ICC referral.

We're also asking the Trump Administration to apply targeted sanctions through the Global Magnitsky Act, as implemented by Executive Order 13818, against Myanmar army and police perpetrators responsible for these attacks against Rohingya. E.O. 13818 states that "The United States seeks to impose tangible and significant consequences on those who commit serious human rights abuses" In that vein, the Administration could begin with the 22 army and police officials named in the Fortify Rights report, "They Gave Them Long Swords." To date, the U.S. Government has sanctioned only one person for atrocities against Rohingya—Major General Maung Maung Soe, the former head of the Myanmar Army Western Command. Major General Maung Maung Soe deserves to be the subject of sanctions, but he was not the most senior figure in the command structure of the military's operations in Rakhine State, and he was certainly not the only commander responsible for mass atrocity crimes.

There is currently legislation in Congress that would further help identify and sanction those responsible for atrocity crimes in Myanmar. We strongly urge members of Congress to support the Burma Human Rights and Freedom Act of 2018 and similar legislation in the House—the BURMA Act of 2018—which target members of the military and security forces responsible for the grave abuses we and others have documented.

Lastly, the administration has undertaken a comprehensive investigation into crimes perpetrated against Rohingya in Myanmar, collecting information that could be used to prosecute perpetrators in the future. We fully encourage the administration to fulfill its stated commitment to publicize the findings of the investigation, and we encourage the administration to be forthright in making accurate legal determinations—including a determination that there are reasonable grounds to conclude the crimes perpetrated against Rohingya constitute genocide. Publicizing the findings and conclusions of the investigation will not only serve to clarify details of the atrocities, but it may also have a preventative effect, discouraging Myanmar military generals from ordering or overseeing further attacks on civilians.

Thank you very much for your time and attention to these matters.

Mr. MCGOVERN. Thank you very much. Mr. Bencosme. Am I – I want to make sure I am pronouncing your name correctly. Am I –

Mr. BENCOSME. Bencosme.

Mr. MCGOVERN. Bencosme. So close.

Mr. BENCOSME. Yes, that's – yes.

Mr. MCGOVERN. All right. Thank you. Thank you for being here.

**STATEMENT OF FRANCISCO BENCOSME, ASIA PACIFIC
ADVOCACY MANAGER, AMNESTY INTERNATIONAL USA**

Mr. BENCOSME. Co-chairmen, thank you for inviting me to testify on this important topic. It's been almost one year since the Myanmar military embarked on a devastating and lethal campaign of violence against the Rohingya population and the world watched in horror as hundreds of thousands of Rohingya began arriving in Bangladesh, bringing with them horrific accounts of violence at the hands of the Myanmar security forces.

These atrocities occurred across several hundred villages, and while the precise death toll may never be known, it is estimated that at least 6,700 Rohingya were killed in the first month alone, including at least 730 children under the age of five. Amnesty International has documented that at least nine of the 11 types of crimes against humanity took place during these attacks.

While this campaign of violence may have been unprecedented in scope and scale, it is not the first time the Rohingya community has been subjected to such widespread and systematic abuse and forced expulsion.

Our organization has for decades documented wide-ranging violations against ethnic minorities in the country. We have documented state-sponsored violence in places like Kachin and Shan state, which include extrajudicial executions, enforced disappearance, arbitrary detentions, torture, and forced labor. Today, more than a 100,000 people are displaced to camps across northern Myanmar and an estimated 13,500 people have been displaced by fighting this year.

Many of these violations are continuing today, in particular in Kachin and Shan states, and as I will explain, show similar patterns of military violations, involve the same perpetrators, and are characterized by the same patterns of impunity, which have only served to perpetuate cycles of abuse.

For example, Amnesty International has identified two such units – the 33rd and the 99th Light Infantry Division – as being responsible for human rights violations. In Rakhine state, we have implicated them in massacres, rapes, and the burning of Rohingya villages from late August 2017, while in northern Myanmar we have implicated them in war crimes.

It is clear that deployment of these troops, known for their brutality and a track record of punishing ethnic minorities collectively for their perceived support to an armed group, is linked to the commission of violations.

The military also consistently failed to distinguish between armed groups and civilian populations, targeting innocent people for expediency and for their

perceived affiliation to a particular group, often based on nothing more than their ethnic identity.

Many of the patterns of abuse follow the military's Four Cuts strategy, which has been in effect for decades and in which the army cuts off insurgent groups and the support they receive.

The most prevalent modern application of this strategy is to cut off supplies by preventing humanitarian assistance to gain access and by burning farmland – tactics which are clearly seen conducted in Rakhine, Kachin, and Shan.

However, the recent violence takes place in a wider context of institutional discrimination and segregation. Central to this is that most Rohingya have effectively been deprived of their citizenship and nationality as a result of discriminatory laws.

This has had a cascade of negative impacts and has allowed the authorities to severely restrict their freedom of movement, segregating them from the rest of society.

While Myanmar has undergone a series of political reforms, the reality is that these reforms have ensured that the military retains considerable power in the country. The military operates independently of civilian oversight including civilian courts, which has effectively shielded members of the military from accountability.

Investigations into allegations of human rights violations are rare and most abuses have gone unpunished. It is clear that the Myanmar authority cannot be trusted to adequately investigate the appalling crimes against the Rohingya or the Kachin and Shan.

The military's tight structure and strict reporting requirements means that the responsibilities for these violations extends to the very top of the chain of command. So too must justice and accountability.

To resolve this, I share a couple following recommendations and agree with many of my colleagues. First is that the U.S. should support a U.N. Security Council referral of the situation in Myanmar to the International Criminal Court. Such referrals should cover crimes across the country, including in Kachin and northern Shan.

Second is that while building support for international justice, the international community should take immediate steps to ensure that evidence is collected and preserved for use in future judicial proceedings.

The State Department is also, as my colleagues have mentioned, undergoing a similar process on the Rohingya, which should be made public and expanded to include Kachin and Shan violence.

Third, the United States should push Myanmar to enact security sector reform and dismantle the system of discrimination and segregation built to exclude ethnic minorities. That security reform should include civilian oversight of the military and particularly in judicial proceedings.

Fourth and finally, a note on the legislation. We support both legislation that is making its way through Congress. We were heartened to see that the

legislation passed the House on a 382 to 30 bipartisan vote. But Congress' failure to add it to the final NDAA is a dark stain on its human rights record.

Congress needs to speak with one voice and hold senior military officials accountable for their actions. The situation in Myanmar and the horrific abuses perpetuated by the security forces should shock the conscience.

It is well past time for the international community including the United States to send a clear message to the Myanmar military that their atrocities will not go without consequences.

Failure to change their behavior means we are likely to see further violations, abuses, and a continuing deterioration of the human rights situation in the country.

Thank you.

[The prepared statement of Mr. Bencosme follows:]

PREPARED STATEMENT OF FRANCISCO BENCOSME

**House Foreign Affairs Committee
Tom Lantos Human Rights Commission**

**Hearing
on
Victims' Rights in Burma**

**July 25, 2018 - 10:00 p.m.
2200 Rayburn House Office Building**

**Statement of Francisco Bencosme
Asia Advocacy Manager
Amnesty International USA**

Co-Chairmen and members of the Commission, thank you for inviting me to testify on this very important and timely topic. It has been almost one year since the Myanmar military embarked on a devastating and lethal campaign of violence against the Rohingya population in northern Rakhine State and the world watched in horror as hundreds of thousands of Rohingya began arriving in Bangladesh, bringing with them horrific accounts of violence at the hands of the Myanmar security forces.

While this campaign of violence may have been unprecedented in scope and scale, it is not the first time the Rohingya community has been subjected to such widespread and systematic abuses and forced expulsion. Nor is it the first time the Myanmar military has been accused of committing human rights violations and crimes under international law against its own people—our organization has for decades documented wide-ranging violations against ethnic minorities in the country. Many of these violations are continuing today—in particular in Kachin and Shan States—and as I will explain, show similar patterns of military violations, involve the same perpetrators, and are characterized by the same patterns of impunity which have only served to perpetuate cycles of abuse.

It is time to end this appalling cycle and ensure that all people from Myanmar can live their lives in safety and security, and with full respect for their rights and dignity.

Crimes against humanity against Rohingya in Rakhine State

Rakhine State has plunged even further into crisis in the last year, after security forces unleashed a campaign of violence against the Rohingya population living in the northern part of the state, following coordinated attacks on security posts by the armed group the Arakan Rohingya Salvation Army (ARSA). This campaign of violence – which was marked by wide ranging human rights violations, forced more than 700,000 women, men, and children from their homes and into neighboring Bangladesh.¹

Tensions had already been mounting in Rakhine State in the months and weeks before 25 August 2017. The Myanmar security forces arrested and arbitrarily detained scores of Rohingya men and boys, ostensibly in an attempt to identify members of ARSA and gather information about their plans and activities. In the weeks just before the ARSA attacks, the military reinforced its presence in Rakhine State, bringing in battalions from the 33rd and 99th Light Infantry Divisions (LIDs) – two combat divisions which are well-known for their brutal treatment of ethnic minorities.

What happened afterwards has been well documented by Amnesty International and others.² The Myanmar military, often working with members of the Border Guard Police and local vigilantes, carried out a campaign of violence that was systematic, organized, and ruthless. They swept through Rohingya villages, where they unlawfully killed women, men, and children; raped and committed other sexual violence against women and girls; hauled men and boys to detention sites, where they tortured many; burned homes, shops, and mosques across several hundred villages and deported some 80% of the Rohingya population living in northern Rakhine State. The precise death toll may never be known but it is believed to be in the thousands—Médecins Sans Frontières (MSF) estimates that at least 6,700 Rohingya were killed in the first month of the crackdown alone.³

Even after the most acute violence had ended, the Myanmar security forces continued their campaign of ethnic cleansing, forcing more Rohingya to flee by driving them to the brink of starvation. They took part in the massive theft of Rohingya livestock; burned and otherwise blocked access to Rohingya markets; severely restricted humanitarian access in tandem with civilian authorities; and prevented the Rohingya from accessing rice fields at harvest time.⁴ At the end of 2017, the Myanmar authorities also began remaking northern Rakhine State, with frenetic bulldozing and construction across the region, building new security force bases, roads and villages designated for populations other than the Rohingya, often on land that the Rohingya use

¹ Inter Sector Coordination Group, Situation Report: Rohingya Crisis - Cox's Bazar, 24 May 2018, reliefweb.int/sites/reliefweb.int/files/resources/iscg_situation_report_summary_24_may_2018.pdf.

² Amnesty International, *"We will destroy everything": Military responsibility for crimes against humanity in Rakhine State, Myanmar* (Index: 16/8630/2018), 27 June 2018.

³ Myanmar/Bangladesh: MSF surveys estimate that at least 6,700 Rohingya were killed during the attacks in Myanmar. (2017, December 12). Retrieved from <https://www.msf.org/myanmarbangladesh-msf-surveys-estimate-least-6700-rohingya-were-killed-during-attacks-myanmar>

⁴ Amnesty International, *Security forces starve, abduct, and rob Rohingya, as ethnic cleansing continues* (Index: Index: ASA 16/7835/2018), 7 February 2018.

to live on and farm.⁵ Evidence related to the military's crimes against humanity has possibly been cleared away as well.

Confidential documents on the Myanmar military indicate that during military operations like those in northern Rakhine State, forces on the ground normally operate under the tight control of superior levels in the command structure. Combat division units—which committed the vast majority of crimes against the Rohingya—have strict reporting requirements as to their movements, engagements, and weapons use. The tight structure and strict reporting requirements mean that senior military officials knew or should have known which units were in what locations on specific days. In a report published last month, Amnesty International identified specific military units responsible for crimes against the Rohingya and named 13 individuals who we believe should be investigated for their role in crimes against humanity. Responsibility for these crimes extends to the very top of the chain of command. So too must justice and accountability.

The recent violence in Rakhine State took place within a wider context of institutional discrimination and segregation of the Rohingya population, and the community has faced decades of persecution—at times including forced expulsion.⁶ Central to this is their lack of citizenship—most Rohingya are not recognized as citizens and have effectively been deprived of a nationality as a result of discriminatory laws, policies, and practices, most significantly the 1982 Citizenship Law and its application. Their lack of citizenship has had a cascade of negative impacts, and been used by the authorities to severely restrict their freedom of movement, effectively segregating them from the rest of society. Access to healthcare, education, and work opportunities has also been severely limited, in addition to their right to freely practice their faith and to participate in public life.

This dehumanizing regime became particularly pronounced—and enforced rigidly by the Myanmar military and civilian authorities—in the aftermath of violence in 2012 between the Rohingya and ethnic Rakhine, the latter of whom were at times supported by the security forces. Amnesty International has concluded that this regime of discrimination and segregation, which targets the Rohingya as a racial group and which is implemented by the state through a range of laws, policies, and practices, amounts to the crime against humanity of apartheid.⁷ To be clear, this crime against humanity is ongoing in Rakhine State today.

For the Rohingya community, therefore, redress will not only require perpetrators to be held to account, it will also require the restoration of their rights—including to a nationality and to freedom of movement. Accountability and dismantling discrimination are essential to ensure the voluntary, safe and dignified return of the hundreds of thousands of Rohingya who have fled

⁵ Amnesty International, *Remaking Rakhine State* (Index: ASA 16/8018/2018), 12 March 2018.

⁶ See for example Amnesty International, *Union of Myanmar (Burma): Human Rights Abuses against Muslims in the Rakhine (Arakan) State*, (Index: ASA 16/06/02), May 1992; *Rohingya: the search for safety* (Index: ASA 13/07/97), September 1997; *The Rohingya: Fundamental rights denied* (Index: ASA 16/005/2004), May 2004; Human Rights Watch (HRW), *The Rohingya Muslims: Ending a cycle of exodus*, September 1996; *Perilous plight*, May 2009; and the Irish Center for Human Rights, *Crimes against Humanity in Western Burma: The Situation of the Rohingyas*, 2010.

⁷ Amnesty International, *"Caged without a Roof": Apartheid in Myanmar's Rakhine State* (Index: ASA 16/7484/2017), 21 November 2017.

death, destruction and poverty in Myanmar, but is equally pressing for the estimated 600,000 Rohingya who continue to live in Rakhine State and who remain subject to this appalling regime.

Military violations in Kachin and northern Shan States

While international attention has focused on the military's crimes against humanity against the Rohingya population, abuses also continue in northern Myanmar, in particular in Kachin and northern Shan States, where fighting between the Myanmar military and a myriad of armed groups has been ongoing since 2011. Despite an ongoing national peace process fighting has intensified in recent years.

As is so often the case, civilians have borne brunt of the violence. In the last two years, our organization has documented wide-ranging human rights violations against civilians from ethnic minorities in these areas, in particular at the hands of the Myanmar military. These include extrajudicial executions, enforced disappearances, indiscriminate shelling, arbitrary detentions, torture and forced labor. Many of these violations amount to war crimes under international humanitarian law and appear to represent a pattern of collective punishment against civilians perceived to be supporting ethnic armed groups.

In a report published in June last year, we found that the Myanmar Army's most egregious violations in that region between late 2016 and early 2017 had overwhelmingly occurred in northern Shan State.⁸ Soldiers there, particularly after skirmishes with an ethnic armed group, subjected civilians from ethnic minorities to arbitrary arrest and torture and other ill-treatment. Continuing a practice that dates back decades, Myanmar Army soldiers also forced civilians to act as porters or guides, which, in addition to being forced labor, often amounts to torture and puts civilians at risk of being hit by crossfire.

When fighting with ethnic armed groups in Kachin and northern Shan States, the Myanmar Army has frequently fired mortar and artillery shells. These often land in civilian areas, killing or injuring civilians, damaging civilian houses and other structures, and causing mass displacement. The regularity with which such incidents harm civilians or civilian structures raises the concern that the Myanmar Army is failing to distinguish between civilian objects and military targets and is taking insufficient measures to minimize harm to civilians. Such allegations have been made against the military during previous periods of conflict in northern Myanmar.⁹

Many of the violations we documented between late 2016 and early 2017 were committed by the Myanmar Army's 33rd and 99th Light Infantry Divisions; victims identified the units based on the distinct patches on their soldiers' uniforms and their often-long-term presence in certain areas. These are the same military units that would later be deployed to northern Rakhine State, and which we have identified as being responsible for massacres, rapes, the burning of Rohingya homes and villages and mass deportation. Earlier this year battalions from the 33rd LID were deployed in Tanai Township, Kachin State, and we have received alarming reports of human rights violations there.

⁸ Amnesty International *"All the civilians suffer": Conflict, displacement and abuse in northern Myanmar* (Index: ASA 16/6429/2017), 14 June 2017.

⁹ See for example, Human Rights Watch, *"Untold Miseries": Wartime Abuses and Forced Displacement in Burma's Kachin State*, 2012, pp. 7, 37-39

While the Myanmar Army is primarily responsible for the majority of the international human rights and humanitarian law violations documented by Amnesty International, ethnic armed groups throughout Kachin and northern Shan States have likewise committed serious abuses against civilians. Our organization has documented abductions, unlawful killings, forced recruitment and arbitrary taxation. Victims of these abuses also have the right to truth, justice and reparations.

Since the start of 2018, fighting has intensified still further after the military launched major new offensives in the region. We have received alarming reports of civilian casualties and displacement as well as arbitrary arrests, unlawful killings, and torture and other ill-treatment. Just last month, an eight year-old-boy was killed and seven people seriously injured after reported shelling by the Myanmar military in Kutkai Township, Shan State.¹⁰ The situation underscores the urgent need for all parties to end violations, ensure that civilians are strictly distinguished from combatants as well as full and unfettered humanitarian access.

Today, more than 100,000 people are displaced to camps and other sites across northern Myanmar, around 87,000 of them in Kachin State alone. According to the UN, an estimated 13,500 people have been displaced by fighting in Kachin and Shan States this year.¹¹

The civilian-led government and military have further exacerbated civilian suffering by maintaining severe restrictions on humanitarian access, in particular to areas controlled by ethnic armed groups. These restrictions have become especially severe since May 2016, soon after the civilian-led administration came to power. In both Kachin and northern Shan States, international humanitarian agencies are required to apply for travel authorization in order to undertake their work. Travel authorizations are routinely denied—even when international organizations seek access simply to monitor the situation, rather than to deliver goods. According to humanitarian officials, these authorizations involve a maddening and ever-changing process that, no matter their persistence, overwhelmingly ends in the same result: denial or no response. This has resulted in international organizations using local groups to mainly deliver humanitarian assistance. Many of these groups are often overstretched, still have to overcome major bureaucratic hurdles, and oftentimes do not have the capacity to meet the demand.

In recent months, these local groups have also faced increasing difficulty in conducting their operations and providing assistance to people in need. In May 2018, the Kachin Baptist Convention (KBC), one of the main organizations providing humanitarian assistance to displaced populations in Kachin State, was forced to cease its activities in a non-government controlled area close to the Chinese border, after they received a letter from the Kachin State Department of Security and Border Affairs which threatened legal action under Article 17/1 of Myanmar's Unlawful Associations Act, a law frequently used to arrest and imprison people for peacefully exercising their rights in ethnic minority areas.¹²

¹⁰ Ta'ang Women's Organization and Ta'ang Students and Youth Union, "Joint Statement on the Burmese Army's shelling and hitting people", 29 June 2018.

¹¹ Ms. Yanghee Lee, Special Rapporteur on the situation of human rights in Myanmar, Oral Update at the 38th session of the Human Rights Council, 27 June 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23268&LangID=E>

¹² Letter and unofficial translation on file with Amnesty International. See also *The Irrawaddy*, "Main Kachin Aid Group Ordered to Halt Humanitarian Work in Rebel-Held Areas", 14 June 2018,

Similar perpetrators and patterns of abuse

The violations I have described may have taken place in different parts of Myanmar, against different groups and at different times, however, they share key similarities. Chief among them is the fact that they were overwhelmingly perpetrated by the Myanmar military, and in some areas by the same specific military units.

Amnesty International has identified two such units—the 33rd and 99th LIDs—as being responsible for human rights violations and crimes under international law in Rakhine State and northern Myanmar. In Rakhine State, we have implicated them in massacres, rapes, the burning of Rohingya villages and deportation from late August 2017, while in northern Myanmar, we have implicated them in war crimes and other violations of international law. The deployment of those troops—equipped for combat against an opposing armed group and with a track record of punishing ethnic minorities collectively for their perceived support to an armed group—is linked to the commission of violations and crimes. The fact that investigations into violations by these units seldom—if ever—occur and that they are quickly moved on to other “hot spots” has only served to reinforce a climate of impunity.

Our research in Rakhine, Kachin and Shan States also shows that security forces consistently fail to distinguish between armed groups and attackers and the wider population, and ordinary people are effectively targeted for their perceived affiliation to a particular armed group—often based on nothing more than their ethnic identity. Members of these communities are frequently targeted for collective punishment, in particular if they are in the vicinity of an attack on security forces by armed groups or other attackers, or if they are present in an area where authorities believed armed groups to be active.

Whether in Rakhine, Kachin or Shan States, men from ethnic minorities, and in particular young men and boys of fighting age, tend disproportionately to be victims of violations such as arbitrary detention, torture, extrajudicial execution, enforced disappearance, and forced labor. Myanmar Army soldiers appear to assume their involvement with an ethnic armed group. For other violations, however, like indiscriminate shelling, arbitrary restrictions on movement, and restrictions on humanitarian access, women, children, and the elderly are often predominantly impacted.

Women and girls are also subjected to rape and other forms of sexual violence by the Myanmar military. Our research on the crisis in Rakhine State found that rape and other sexual violence against Rohingya women and girls was widespread. These crimes contributed to, and indeed were part of, the campaign to ensure the ethnic cleansing of northern Rakhine State. They also took place in a wider context of sexual violence by the Myanmar military against ethnic minority women in Myanmar, in particular in conflict-affected areas.¹³ Failure to investigate these crimes

<https://www.irrawaddy.com/news/main-kachin-aid-group-ordered-halt-humanitarian-work-rebel-held-areas.html>

¹³ See, for example, Shan Women’s Action Network & Shan Human Rights Foundation, *License to Rape: The Burma military regime’s use of sexual violence in the ongoing war in Shan State*, July 2002; Karen Women’s Organization (KWO), *Shattering Silences: Karen Women speak out about the Burmese Military Regime’s use of Rape as a Strategy of War in Karen State*, April 2004; Women’s League of Burma (WLB), *If they had hope*,

and hold perpetrators to account has not only contributed to a culture of impunity, it has reinforced patterns of discrimination, violence, and abuse against women and girls.

Many of the patterns of abuse documented in Kachin and northern Shan States, as well as in Rakhine State, also show indications of the military's "four cuts" strategy, in effect for decades since the 1960s, in which the army attempts to cut off insurgent groups from the support they receive—food, money, intelligence, and potential soldiers from the local civilian populations.¹⁴ Under this strategy, villages have been cleared, crops and farmland burned, and civilians often found themselves targeted for arrest, torture, and even killing. The most prevalent modern application of this strategy is cutting off supplies by preventing humanitarian assistance to gain access and by burning farmland – tactics which are clearly seen in Rakhine, Kachin and Shan States.

Similar patterns of impunity

While Myanmar has undergone a series of economic, social and political reforms in recent years, the reality is that these reforms have ensured that the military retains considerable power in the country. Under the 2008 Constitution, the military has a guaranteed 25 per cent of seats in Parliament, giving it an effective veto over any Constitutional amendments, and retains full control of the key ministries of Defense, Border Affairs, and Home Affairs—all of which we have implicated in human rights violations across the country.

In addition to wielding significant power, the military operates independently of civilian oversight, including civilian courts, which has effectively shielded members of the armed forces from accountability. Under the 2008 Constitution, the military has control of its own judicial processes, and the final arbiter of military justice is the Commander-in-Chief – currently Senior General Min Aung Hlaing.

The impunity that has accompanied the widespread and systematic attack on the Rohingya population and during the conflicts in northern Myanmar should come as no surprise. Investigations into allegations of human rights violations or crimes under international law are rare, and most abuses have gone unpunished. As a result, victims and victims' families see little point in going to the authorities, compounded by a justified fear of reprisal

The current civilian-led government has so far shown itself to be unwilling or unable to stand up to the military and ensure perpetrators are held to account. Government officials, including Aung San Suu Kyi herself, have largely dismissed allegations of human rights violations by security forces in Rakhine State, even in the face of clear and mounting evidence.

It is clear that the Myanmar authorities cannot be trusted to adequately investigate crimes against the Rohingya. Previous investigations into abuses in Rakhine State have lacked

they would speak: The ongoing use of state-sponsored sexual violence in Burma's ethnic communities, November 2014; WLB, *Same Impunity, Same Patterns*, January 2014; and *Ta'ang Women's Organization (TWO), Trained to Torture: Systematic war crimes by the Burma Army in Ta'ang areas of northern Shan State* (March 2011-March 2016), June 2016.

¹⁴ Locals Fear 'Four Cuts' in Kachin State. (2011, May 20). Retrieved from <https://reliefweb.int/report/myanmar/locals-fear-four-cuts-kachin-state>

independence, impartiality, and efficiency, and victims and witnesses were harassed and intimidated. The recently announced “Independent Commission of Enquiry” is unlikely to be any different, and will not even look in to the appalling abuses taking place in Kachin and Shan States.

Conclusions and Recommendations

The situation in Myanmar, and the horrific violations and crimes perpetrated by the security forces, should shock the conscience. What was seen just two years ago as a success story, is now a human rights nightmare. It is well past time for international community—including the United States—to send a clear message to the Myanmar military that their atrocities will not go without consequences. Without much stronger pressure on the military and the civilian government to change their behavior, we are likely to see further violations, crimes and abuses, and a continuing deterioration of the human rights situation in the country.

Congress has a unique role to play. Since the 1990s, it has been a key actor with respect to Myanmar policy and through its appropriations, authorization, and oversight powers has unique leverage to exert pressure on the Executive Branch and on the Myanmar government to change course. It is incumbent upon Congress, the Administration, and the international community to act.

Our specific policy recommendations for the U.S. Congress and the administration are as follows:

1. **Legislation:** Congress should pass H.R. 5819, the Burma Act, and S. 2060, the Burma Human Rights and Freedom Act and enact it into law. Congress’ failure to add it to the final conference report of the National Defense Authorization Act is a huge set-back but that is only one vehicle by which the bill can become law. Congress needs to take a stand and hold senior officials in Myanmar accountable for their actions.
2. **Accountability and Justice.** Congress should pressure the Trump Administration to support and call for a United Nations Security Council referral of the situation in Myanmar to the International Criminal Court (ICC), so that the Office of the Prosecutor can begin investigating crimes under the Court’s Rome Statute. Such a referral should cover crimes across the country, including in Rakhine, Kachin and northern Shan States, dating at least from 2011.
3. **Ensure collection and preservation of evidence.** While building international consensus and support for an ICC referral and exploring other avenues for international justice, it is essential that the international community takes immediate steps to ensure that evidence is collected and preserved for use in future judicial proceedings. Following the publication of the forthcoming report of the UN Fact-Finding Mission, UN member states should also establish, through the UN Human Rights Council, an independent investigative mechanism with the mandate and capacity to collect and preserve evidence and identify individuals responsible for crimes under international law—including in Rakhine, Kachin and Shan States—with a view to bringing them to justice. While the United States is no longer a member of the Council, we urge the administration to support and help build consensus for the establishment of such a mechanism.

The State Department is also undergoing a forensics evidence collection and preservation process similar to the one discussed above. Congress should call on the State Department to make its findings and conclusions public and expand the scope to include Kachin and Shan

States. The State Department should share their evidence with any credible, impartial, and independent international investigative mechanism that is focusing accountability for human rights violations and crimes in Myanmar.

4. **Demand full and unfettered humanitarian access.** The United States, including the Executive Branch and Congress, should demand full and unfettered humanitarian access for both the Rohingya who remain in northern Rakhine and for internally displaced persons camps in Kachin and Shan States.
5. **Push Myanmar to dismantle its discrimination/tory system in Rakhine State.** The United States should use all bilateral, multilateral, and regional platforms at its disposal to urge the Myanmar government to combat discrimination and segregation. This should include by amending the 1982 Citizenship Act to ensure that citizenship is granted free of any discrimination and removing discriminatory and arbitrary restrictions on Rohingya's freedom of movement in Myanmar.

The United States government should ensure that any international aid, development projects or financial assistance in Myanmar—and in particular in Rakhine State—are explicitly and specifically conditioned on non-discrimination, non-segregation and equality. The government should ensure rigorous and ongoing assessments of all projects and assistance to ensure they are implemented in a way that does not entrench, support or perpetuate discrimination and segregation of the Rohingya. This includes ensuring that there is no support for projects that have the consequence, whether directly or indirectly, of preventing Rohingya currently in Bangladesh from returning home.

The United States should also call on the governments of Myanmar and Bangladesh to ensure that Rohingya are included in and consulted on any decisions about their future, and that no organized returns take place until the conditions are in place to allow refugees to do so voluntarily, safely and with dignity.

6. **Humanitarian assistance for refugees in Bangladesh.** The reality is that until there is significant change on the ground in Myanmar the vast majority of Rohingya will be unable to return to their country voluntarily, safely and with dignity. There is therefore a clear need for greater and sustained support to the humanitarian effort in Bangladesh. When I visited Cox's Bazar in June this year, only twenty-two percent of the needs were being filled by the international community—this is clearly not sufficient to ensure the rights and dignity of refugees.¹⁵ While the United States has provided a substantial amount of humanitarian aid to Bangladesh, more is needed and long-term, sustained support is essential.
7. **Push for security sector reform in Myanmar.** The United States should push Myanmar to amend the 2008 Constitution to bring the Myanmar Army and Myanmar Police Force under

¹⁵ Bencosme, Congress must hold senior Myanmar military officials accountable. According to the United States Agency for International Development the United States has provided more than \$299 million in humanitarian assistance for Fiscal Year 2018.
https://www.usaid.gov/sites/default/files/documents/1866/burma_rakhine_fs05_05-21-2018.pdf

the oversight of civilian courts and call on Myanmar to suspend from active duty any military or police personnel, irrespective of rank, suspected of ordering or committing violations of international law pending the completion of investigations. The United States should also provide technical assistance to the Myanmar government to help them establish a nationwide vetting mechanism to ensure that current and former officials implicated in human rights violations are not kept or placed in civilian or military leadership positions.

8. **Diplomatic Pressure.** Use all bilateral, multilateral, and regional platforms available to Congress and the Executive Branch to urge the Myanmar authorities to immediately end crimes under international law and other human rights violations; to ensure accountability for such crimes; to allow humanitarian agencies and independent investigators unfettered access to Rakhine, Kachin and Shan State; and to establish the conditions necessary for Rohingya refugees to return to their homes voluntarily, safely, and with dignity, including by dismantling the system of discrimination and segregation.
9. **International Sanctions.** Call on the United Nations Security Council to impose targeted financial sanctions against senior officials responsible for serious violations and crimes.

On behalf of Amnesty International, I would like to again thank the Co-Chairmen for organizing the hearing today, and for this Commission's consistent efforts in protecting and promoting human rights around the world.

Mr. MCGOVERN. Mr. Sullivan, welcome back.

**STATEMENT OF DANIEL SULLIVAN, SENIOR ADVOCATE FOR
HUMAN RIGHTS, REFUGEES INTERNATIONAL**

Mr. SULLIVAN. Thank you, Chairman McGovern, Chairman Hultgren, and members of the Tom Lantos Human Rights Commission for holding this important hearing.

The level of human rights abuses, forced displacement, and violations of international humanitarian law in Myanmar over the past year are nothing short of alarming.

Disappearances, sexual violence, torture are regularly reported. Thousands have been newly displaced while tens of thousands have been displaced for years.

As one long-time humanitarian recently described to me, the feeling of despair and frustration is the strongest I've witnessed.

Civilian areas, including near displaced camps, have been bombed indiscriminately and none of this has anything to do with the Rohingya crisis. Everything I just mentioned is happening in Kachin and northern Shan states and has been happening for a long time.

At the end of the last year, Refugees International carried out a mission to a restricted area of Kachin state where tens of thousands of internally displaced persons have been displaced for seven years now.

In all, there are over 100,000 displaced persons in Kachin and northern Shan state. Almost half of those are in areas that are in non-government-controlled areas and they've been cut off from direct international aid since May of 2016.

So after years of displacement, the people with whom Refugees International spoke cited growing difficulty in obtaining sufficient food, accessing medical care, and finding livelihood opportunities.

Overall, there was a growing sense of desperation and frustration and increased fear of insecurity. As one local humanitarian worker told Refugees International, psychosocial support is increasingly needed as displaced persons continue to want to return to their homes but have been displaced for seven years with little prospect for the future.

In December of 2017, Refugees International concluded that the combination of reductions in international aid, waning attention, and, most significantly, dramatically increased restrictions on assistance by the Myanmar government, is creating a desperate and unsustainable situation for displaced persons in Kachin and northern Shan states.

Sadly, in recent months, the situation has only deteriorated. Fighting in Kachin state displaced 5,000 people in April and another 2,800 people have been newly displaced by fighting in Shan state in just the last two weeks.

Humanitarian access is getting worse, not only for international groups into areas within government control, but also for local civil society into areas that are within government-controlled areas.

Earlier, I listed a series of human rights abuses that were taking place in Kachin and northern Shan state and I said that they had nothing to do with the Rohingya crisis.

Allow me to clarify that statement. For years, there have been these abuses happening in Kachin and northern Shan state, independent of what was happening in Rakhine state with the Rohingya.

However, as some of my colleagues have pointed out, it is the same – the same government, the same military that has been carrying these out and in some cases the very same soldiers, particularly as my colleague from Amnesty International pointed out and as was covered by a recent Reuters investigative report, the 33rd and 99th light infantry battalions spearheaded the response to the Rohingya, the ethnic cleansing that happened, and they have been deployed previously and are again deployed in Kachin and northern Shan state.

Each of these lead battalions and, ultimately, all Myanmar troops, answer to the head of Myanmar's army, Senior General Min Aung Hlaing.

The lack of accountability runs through the many abuses that have taken place across the country. Myanmar government and military investigations have resulted in little more than whitewashes, denying any responsibility for what amount to crimes against humanity and ethnic cleansing. This cycle of impunity must stop.

The same is true for abuses committed by ethnic armed groups. Whoever is responsible for abuses must be held to account.

There are several ways that human rights and humanitarian crises in Kachin and northern Shan state can be addressed and these can be found in greater detail in our report, which I would request to submit for the record.

Mr. MCGOVERN. Without objection.

Mr. SULLIVAN. But for the purposes of this hearing, let me just highlight three.

The U.S. Congress should, number one, press the government of Myanmar to lift restrictions on international aid and allow unfettered access for aid providers, human rights monitors, and media throughout the country.

Number two, the U.S. Congress should sustain and augment humanitarian support to displaced persons in Kachin and northern Shan state through USAID funding and programs that support local civil society organizations.

And number three, the U.S. Congress should take measures to curb abuses and ensure accountability for those responsible for serious human rights violations through targeted sanctions against senior military officials, support for a multilateral arms embargo, and support for a referral to the International Criminal Court.

The U.S. Congress can support these measures by passing the Burma Act of 2018 and by urging the Trump administration to take action through targeted sanctions under the Global Magnitsky Act.

Congress can also urge the U.S. State Department to publicly release its investigation that it's carrying out on abuses in Rakhine state and support the U.N. fact-finding mission's final report, which will be coming out in September.

For the sake of those displaced, whether in Bangladesh or in isolated camps in northern Myanmar, the cycle of impunity must be ended and accountability must be realized, and the prospects for a better future must be sought.

Again, I thank you and I look forward to any questions you may have.
[The prepared statement of Mr. Sullivan follows:]

PREPARED STATEMENT OF DANIEL SULLIVAN

Tom Lantos Human Rights Commission

Hearing
on
“Victims’ Rights in Burma”

July 25, 2018 | 10:00 a.m.
2200 Rayburn House Office Building

Statement of Daniel P. Sullivan
Senior Advocate for Human Rights
Refugees International

Thank you, Chairman McGovern, Chairman Hultgren, and members of the Tom Lantos Human Rights Commission for holding this important hearing.

Refugees International is a non-profit, non-governmental organization that advocates for lifesaving assistance and protection for displaced people in parts of the world impacted by conflict, persecution, and forced displacement. Based in Washington, we conduct fact-finding missions to research and report on the circumstances of displaced populations in countries around the world, including in Bangladesh and Myanmar (also known as Burma). Refugees International does not accept any government or United Nations funding, which helps ensure that our advocacy is impartial and independent.

The level of human rights abuses, forced displacement, and violations of international humanitarian law in Myanmar over the past year has been nothing short of alarming. Disappearances, torture, extra-judicial killings, and sexual violence are regularly reported. Thousands have been newly displaced, joining the tens of thousands of others who have been in displacement camps for years. And as the needs of the displaced continue to mount, humanitarian access is at its worst in years. As one longtime humanitarian recently described to me, “the feeling of despair and frustration is the strongest I’ve witnessed.” Civilian areas, including near displacement camps, have been bombed indiscriminately. And none of this has anything to do with the Rohingya crisis. Everything I just mentioned is happening in Myanmar’s Kachin and northern Shan States—on the other side of the country from Rakhine State where the Rohingya crisis has played out.

At the end of last year, Refugees International accessed a restricted area in Kachin State where tens of thousands of displaced persons have been living in camps for the past seven years. Our mission revealed a deteriorating situation, and developments since have been far from

encouraging. In all, some 100,000 people have been living in displacement camps in Kachin and northern Shan States since fighting between the Myanmar army and ethnic armed groups broke out in June 2011. Nearly half of them are living in areas outside of government control and have been cut off from direct international aid since May 2016.

After years of displacement, the people with whom Refugees International spoke cited growing difficulty in obtaining sufficient food, accessing medical care, and finding livelihood opportunities. Overall, there was a growing sense of desperation and fear of insecurity. As one local humanitarian worker told Refugees International, psychosocial support is increasingly needed for those who have been displaced for seven years, want to return home, and see little prospects for the future. And despite their existent—and growing—needs, this population has faced a decrease in aid and protection services. Local civil society groups, supported by donors like the United States through the World Food Program and UN Children’s Fund, continue to carry out important services including healthcare and community-based child protection, but their capacity is increasingly strained.

In December 2017, Refugees International concluded that:

the combination of reductions in such international aid, waning attention, and, most significantly, dramatically increased restrictions on assistance by the Myanmar government is creating a desperate and unsustainable situation for displaced persons in Kachin and northern Shan States.

Sadly, in recent months, the situation has only gotten worse. Fighting in Kachin State displaced 5,000 people in April and another 2,800 people have been newly displaced by fighting in Shan State in just the past two weeks. Humanitarian access is increasingly restricted, not only for international groups and in non-government-controlled areas, but for local civil society and in government-controlled areas as well.

Earlier I listed a series of human rights abuses taking place in Kachin and northern Shan States and stated that they had nothing to do with the Rohingya crisis. Allow me to clarify that point. While human rights abuses and the persecution of minorities in northern Myanmar have been taking place for years independent of what happened to the Rohingya in Rakhine State—these abuses were perpetrated by the same government and the same military. In fact, at times it is the very same soldiers who carried out abuses in both places. As documented recently by a Reuters investigative report and by Amnesty International, Myanmar’s 33rd and 99th light infantry battalions spearheaded a military response to Rohingya militant attacks with a crackdown in August 2017 so brutal that more than 700,000 Rohingya fled the country. Battalions from the 33rd light infantry division were also deployed in Shan State in 2016 and 2017 and have since been deployed to Kachin State.

Each of these elite battalions, and ultimately all Myanmar troops, answer to the head of Myanmar’s army, Senior General Min Aung Hlaing. A lack of accountability runs through the many abuses that have taken place across the country. Myanmar government and military investigations have resulted in little more than white washes, denying any responsibility for what amount to crimes against humanity and ethnic cleansing. This cycle of impunity must stop. The same is true for abuses committed by ethnic armed groups. Whoever is responsible for abuses must be held to account.

There are several ways that the human rights and humanitarian crisis in Kachin and northern Shan States can be addressed. My recommendations can be found in greater detail in the report from Refugees International’s 2017 mission, which I would request to submit for the record.

For the purposes of this hearing, allow me to highlight three recommendations relevant to the U.S. Congress.

The U.S. Congress should:

- Press the Government of Myanmar to lift restrictions on international aid and allow unfettered access for aid providers, human rights monitors, and media throughout the country;
- Sustain and augment humanitarian support to displaced persons in Kachin and northern Shan States through USAID funding of programs that support local civil society organizations;
- Take measures to curb abuses and ensure accountability for those responsible for serious human rights violations through targeted sanctions against senior military officials, support for a multi-lateral arms embargo, and support for a referral to the International Criminal Court.

The U.S. Congress can support these measures by passing the BURMA Act of 2018 (H.R. 5819) and by urging the Trump administration to take action through targeted sanctions under the Global Magnitsky Act. Congress can also urge the U.S. State Department to publicly release the investigation it is carrying out on abuses in Rakhine State and support the UN Fact-finding mission set up to look at abuses across Myanmar, which will release its final report in September.

For the sake of those displaced, whether in camps in Bangladesh or in isolated camps in northern Myanmar, accountability must be realized, and the prospects for a better future must be sought.

Again, I thank you for holding this timely hearing, and I am happy to answer any questions.

Mr. MCGOVERN. Well, thank you very much. Thank you all.

Again, as I said to the previous panel, I mean, it is just awful what is happening – what continues to happen, and it's, again, challenges as you try to find ways that we can actually stop it – I mean, that will actually work in stopping what's going on.

Let me begin just by asking a general question. You know, I've thought that, clearly the situation has reached a point where they should be brought before the International Criminal Court and, you know, I am a little frustrated that we are not pushing the matter more.

And I would like to get your assessment of what you think this administration's – of this administration's efforts to kind of pursue that. I know that China may, you know, veto it. But, you know, God, we ought to put them on record, at a minimum, or maybe we ought to use some of our diplomatic skills to try to convince them that this is so horrific, you know, that they ought to not veto it.

I mean, I think we are at the point now where, you know, that just seems like the logical step we ought to be taking and, you know, I know you have been dealing with people in the administration and I am sure you have raised these issues but I would just be curious to get your kind of analysis of what you think we are doing, or whether or not this is seriously being considered, or is it just being dismissed because it might be a heavy lift.

Mr. Bencosme.

Mr. BENCOSME. So in my conversations with the administration, they point to the fact that, one, the United States isn't a signatory to the Rome Statute. Second –

Mr. MCGOVERN. We are not, but we constantly point to it.

Mr. BENCOSME. Of course. Absolutely. And we think that that shouldn't stop the United States from doing a Security Council referral.

It's also – but besides that, we haven't seen any sign that they've been pursuing through the United Nations any accountability mechanism. We haven't seen any sign of real conversations about International Criminal Court.

Obviously, the U.S.-China relationship is very complex. But given the atrocities that are happening in Burma and are now being felt throughout the region it should, clearly, rise to the level where we make this a priority with the Chinese, with the other members of the Security Council referral, to bring these folks to justice and accountability.

Mr. MCGOVERN. Mr. Smith.

Mr. SMITH. I would just add that China has multibillion dollar investments in Rakhine state, and regardless of whether those investments are held by China or other countries, genocide is bad for business no matter what. So apart from the moral imperative to ensure accountability for these abuses, there's also that component to it.

But we would like – we would like to see creative, unprecedented leverage used at the Security Council level. We are not at all convinced that there's nothing that can be done and we have seen not only from – we've seen from

diplomats from a number of countries on the Security Council this idea that the China veto is just – is a given, and cannot be nudged, and that's been leaned on to justify inaction.

And so I think it's imperative right now for all of us to really press the administration to get creative to ensure that this happens.

And also to – just to add, the relationship between China and Myanmar had been complicated in the past. You know, as our Kachin colleagues noted, there are – there's artillery landing on the China side of the border. China is not happy about that. There have been other decisions that have been made by Myanmar authorities in the past that have upset China. So that's a relationship that is also complicated. It's not set in stone.

Thank you.

Mr. MCGOVERN. Ms. Wheeler.

Ms. WHEELER. Yes. I mean, if the American government believes in justice, I think we know for sure that there is absolutely no options nationally for justice for what has happened, also that a regional court would probably not work in this situation.

So what is the theory of change aside from the International Criminal Court? What other path is there?

Also, I mean, I think the fact-finding mission, as Dan mentioned – the U.N. fact-finding mission, will be an important moment maybe to generate more interest in this as an option, and also the State Department's own research into the horrific abuses.

Similar research was done into Darfur before the Republican administration at that time did refer the case, together with the rest of the Security Council.

So there's a clear precedent and I don't see why the situation is anything except for equally, if not worse, than that one.

Mr. MCGOVERN. Mr. Sullivan.

Mr. SULLIVAN. Yes, and I agree. At the very least, you can force China to use that veto and create this sort of shame that can come from that. And there's a lot more that could be done diplomatically if you think of the kind of things that are done around issues around North Korea or Iran. There's a lot more that the U.S. could do diplomatically.

And then, finally, I would just say it's significant to note that the prosecutor of the ICC is also looking at how the possibility of Bangladesh being able to refer the case to the ICC because the crimes that started in Myanmar have continued, obviously, to Bangladesh.

Mr. MCGOVERN. Yeah, no, I just think we need to think creatively about how we can pressure the administration to pursue this issue.

You know, I will be very honest with you – on a whole range of human rights issues, it is – the administration and I are at odds, and it's really frustrating because I think it reflects badly on the United States.

But having said that, you know, hope springs eternal and we can keep on pushing and maybe perhaps one thing Congress can do is, you know, pass a

resolution in support of urging the administration to pursue this with the U.N. Security Council about bringing this before the International Criminal Court.

That may be something we can – you know, we should be thinking about. But, I mean, ways to – you know, to make it clear that we are paying attention and that, you know, we are just not – the idea that we are just going to sit back and every once in a while issue a statement and throw our hands up in the air and say there's nothing we can do is just – it's just – I think we are beyond that point now.

Ms. Wheeler, you know, are there best practices for documenting allegations of sexual violence and are you confident that our administration is following those practices in its investigation of alleged crimes against the Rohingya?

Ms. WHEELER. Yes, there are best practices and I don't know exactly what methodologies the State Department is using. But I am extremely grateful that they are doing that. I think it's an incredibly important initiative and I hope that it leads to real policy change, whatever it is that they find.

Mr. MCGOVERN. And just for the record I think it's important to get on the record, I mean, is it clear to you from your research that the sexual violence committed by uniformed members of the security forces was a military policy as opposed to individual bad apples amongst the military ranks?

Ms. WHEELER. Yes.

Mr. MCGOVERN. And do women victims come together across ethnic lines in search for justice and accountability, and what would constitute justice for the women that you have interviewed?

Ms. WHEELER. I think justice has many different levels. The women and girls that I spoke to did speak about justice. They did mention the ICC. They did talk about wanting to see an end to a lifetime of feeling repressed and as if at any moment something horrific could happen to them.

There are also other things. Of the 52 women and girls that I spoke to, one of them knew what a condom was. One of them had received antenatal care. Almost all of them had been pregnant, mostly many times. All of them had given birth alone or with family members.

So we are not just talking about sexual violence. We are talking about lifelong, like, the most basic access to sexual reproductive health care has been taken away.

So, I mean, one form of reparation and, you know, it's been incredibly important the U.S. government and other governments providing generous amounts of aid to the Rohingya humanitarian response. So that's something that should continue.

It's been disappointing to see that contributions have been much lower this time around than they were about a year ago.

I think also something else that tends to happen is that victims are spoken to by investigators – like the State Department investigators, like us at this table – and then forgotten about for many years, and then perhaps in ten years when we have an ICC case, hopefully, or another justice proceeding, you know,

investigators go out again and try and find these women and persuade them to appear in court.

What would be much better would be long-term support for survivors that begins now and then continues over many years so that they're able to develop advocacy skills of their own. They're able to get access to the table – to the table, to politics, to power, so that they can speak their minds and talk about what has happened to them and advocate for what they want.

That's what's really important and enabling for them.

Mr. MCGOVERN. I appreciate that.

Mr. Smith, you note that there were always local rights-based responses to mass atrocity crimes. Could you describe some of those responses in Kachin and Shan and Rakhine states, and are local actors sharing strategies or methodologies? Are there examples of inter-ethnic responses?

Mr. SMITH. Absolutely. Thank you for the question.

There are always local responses to situations. Right now, for example, there are – there's a collective of Rohingya leaders that are coming together to determine for themselves what sort of advocacy strategies they want to work towards, determining objectives.

Top among their list is a referral to the International Criminal Court. So there's definitely some – there's some similarity there between the various groups.

But beyond that, going back to 2017, following from the first wave of violence, there was a collection of 40 civil society organizations from all throughout the country – Kachin, Shan, Burman groups, groups led by farmers, groups led by women, that called for an independent international investigation in Rakhine state, and it was this effort that helped in a big way to persuade the Human Rights Council to pass a resolution that created the fact-finding mission.

So these types of things, while they don't always make headlines and they don't always – they don't – they're not always heard about as much as other efforts, these efforts are taking place.

In terms of the situation in Kachin state, as we heard from our colleague earlier, the abuses there have been awful for a very long time and there is a very active Kachin and Shan civil society network. There are organizations that have been documenting war crimes in Kachin and Shan state for many years and at great personal risk, and these groups also are calling for an end to the impunity in Myanmar and they're also calling for international justice and a referral to the International Criminal Court.

Mr. MCGOVERN. Thank you.

Mr. Bencosme, in your testimony you describe a series of actions taken by the Burmese military after the most acute violence against the Rohingya had ended in 2017, including the theft of livestock, burning and blocking access to markets, severely restricting humanitarian access and remaking northern Rakhine state.

I mean, are there steps the U.S. government should be taking in response to those kinds of atrocities and, you know, are these kinds of actions also being taken in Kachin and Shan states?

Mr. BENCOSME. Yes. So the United States should definitely be raising at the highest levels for humanitarian access. It should be able to raise the fact that we need to dismantle the system of discrimination and segregation, which, as you have noted, have brought the Rohingya, and other populations basically to the brink of starvation.

We should also – when it comes – our most recent report documented the fact that some development that is going into Myanmar and in particular to Rakhine state is being used to bulldoze former Rohingya villages that the Myanmar military, police guards and local Rakhine state authorities are trying to change the demographics on the ground, basically trying to remake Rakhine state.

There needs to be accountability with respect to international donors, with respect to where that money is going, making sure that there isn't any development projects that are only furthering to entrench the system of apartheid in Rakhine state.

And we've seen those tactics, as you mentioned, the Four Cut strategy being employed in other places like Kachin and Shan.

So whether it's cutting off of humanitarian assistance, whether it's limiting freedom of movement, all of those are really the same tactics in different scales being applied to the conflicts of other ethnic minorities, which demonstrate a clear, you know, impunity towards ethnic minorities regardless of where you are in the country and is oftentimes perpetuated by the same military units.

Mr. MCGOVERN. Mr. Sullivan, what will it take to restore livelihoods for the ethnic populations affected by years and years of conflicts? And did the demands for justice and accountability extend to the redress of the destruction of livelihoods?

Mr. SULLIVAN. Yes. As I mentioned, it's now been seven years that some 100,000 people in Kachin and northern Shan state have been displaced and, you know, the ability to define livelihood opportunities has been decreasing over that time, even as the needs have been increasing.

So yes, that absolutely has to be a part of what is – of the approach in the long term. You know, there's a part of the broader national peace talks that are happening, return – safe returns to people's homes, or the areas where they come from, needs to be a part of that.

It's complicated by a lot of factors including, as was talked about in the last panel, land confiscation, Chinese large banana plantation owners coming to take land, land mines that are in different areas.

So it's going to be a long-term challenge. But it just underscores how that needs to be a part of any kind of national peace talks or reconciliation.

Mr. MCGOVERN. We are running out of time here in terms of being able to have this room. But I just – I wanted to just throw this out and you could respond to it or not, and if there's anything you wanted to add that you didn't, now's the time to do it.

But it just seems – I sometimes wonder why we are not responding more forcefully. I mean, I don't really get it. I mean, I was just frustrated as anybody with the language being dropped out of the NDAA conference report.

I mean, I was given some response about jurisdictional this and jurisdictional that. But it's, like, it just doesn't seem to matter in the face of what is happening.

You know, I asked the earlier panel about some of the feedback we get from some, including here in Congress, that if we push too hard, you know, Aung San Suu Kyi will be overthrown and, you know, then others say, you know, that the military is content to have her there because she's, you know, puts a nice face on, you know, on – giving them the ability to do some of the terrible things that they're doing and I just think we are just so beyond that at this particular point because the atrocities are so over the top and so horrific that – I mean, the – you know, I – you know, that I think to be concerned about that at this particular point just doesn't – it just, it's not a credible excuse to not react more forcefully.

But I am just – you know, I think – and the International Criminal Court thing is something I think we ought to aggressively pursue and maybe we can do that through a resolution here in Congress to try to instruct the administration because, you know, at this point, that's what – you know, we just need to step it up, and – but in any event, you can talk about that or anything else that you think ought to be part of the record by way of closing.

So I will open this up to whoever wants to – all of you want to speak but, I mean, whoever wants to go first can go.

Mr. SMITH. I will just – I will just say thank you so much for the opportunity to be here today and I agree with your remarks.

And I would just add that efforts toward an ICC referral in and of itself could have a preventative effect. I think the generals in Myanmar should be concerned about the prospects of international justice and that should weigh on them before they order the next round of mass killings or before they oversee mass atrocities that are continuing.

With regard to U.S. policy thus far, we were recently travelling with a delegation led by Kerry Kennedy from Robert F. Kennedy Human Rights and that delegation was told by a senior U.S. diplomat that U.S. policy with regard to the Rohingya crisis – and he said this approvingly – was, quote, unquote, "small ball."

And if that is the deliberate approach to what amounts to genocide, it's very concerning, obviously, and we would like to see whatever this "small ball" policy is – approach is, we would like to see that scrapped.

Mr. MCGOVERN. Right.

Mr. SMITH. But thank you, again, for your attention and your focus on these issues.

Mr. MCGOVERN. And look, I am the author of the Magnitsky Act. I am the co-author of the Global Magnitsky Act. I mean, how to use it. It's not like there's not evidence there as to put more people on that list.

I mean, but they ought to be aggressively adding people to that list and I don't, for the life of me, understand, what's taking so damn long.

But in any event I mean, it's an issue we keep on pushing this administration on not only – I will be honest with you, not just with regard to

Burma but with regard to a whole bunch of other countries. You know, and the beauty of the Magnitsky Act is that you can target your sanctions, you know, against the individuals.

And, but in any event, who wants that, Mr. Bencosme?

Mr. BENCOSME. Yes. Thank you, Congressman, again, for hosting this very important hearing. We very much share your frustration both with U.S. policy and what the international community has been unable to do.

I think it's important to note that the European Union imposed sanctions on seven senior military officials and the sky did not fall.

Mr. MCGOVERN. Right.

Mr. BENCOSME. It's important to note that after the U.S. imposed sanctions on Maung Maung Soe he was then subsequently basically made to disappear, you know, was reshuffled and since retired.

So while there's not enough pressure, some types of pressure do work and it's important to continue that pressure.

We've, clearly, seen a shift in communication strategy from the Myanmar government, whether it's through the recent memorandum of understanding with the UNHCR and UNDP.

But I think it still remains an open question as to whether that repatriation deal will be actually safe, voluntary, and dignified for the Rohingya people.

They've also announced sort of a Rakhine – sort of a commission to investigate many of these atrocities. But I think it's also important to note, and from the embassy's point of view, we have serious concerns that there would be any protection of witnesses and that there's actual culture for witnesses to come forth and provide evidence for that investigative body.

Whether it's because of instances like the Burmese Reuters journalists who were imprisoned for trying to uncover these abuses, whether it's the police officer who flipped and tried to showcase, you know, that they were trying to set up the Reuters journalist who also was detained, or whether it's the child soldier who tried to come forth and criticize the military.

Clearly, shows a system of impunity within the military – that there is no – the lack the accountability and civilian oversight make it really impossible for any credible independent and impartial investigative body within Myanmar.

Mr. MCGOVERN. Mr. Sullivan.

Mr. SULLIVAN. I will try to end on a little bit of a note of hope.

Obviously, there's a lot more that the administration can do and has in its power now to act. But I do think there are some within the administration who do care about this and are trying to do more, and I think that we are in a time period where there's growing momentum towards action between the reports that have been discussed on this panel, the State Department report, and the fact-finding mission report coming up. I think there will be a lot more pressure.

And I also note that, you know, the administration is holding this religious ministerial where they have highlighted Rohingya and they have – you know, so I think – and Ambassador Brownback has travelled to the region and covered this.

So I think there is some cause for cautious optimism that more will be done as this momentum goes forward and I think that Congress also has a role to play to make sure that these moments don't get lost.

Mr. MCGOVERN. Ms. Wheeler.

Ms. WHEELER. I think my colleagues have made a lot of really good points.

I mean, you know, you ask why, and I think it's because when people are treated really, really badly for a very, very long time it becomes very easy to continue to ignore them and treat them badly.

I've seen this all over the world but never actually in such an astonishingly awful way as in the case of the Rohingya crisis.

But yes, I mean, I think we also know what needs to happen and we know what needs to be done. It's just a matter of getting there and doing it.

Mr. MCGOVERN. Yes. No, I – you know, I think sometimes, you know, because the atrocities are so, so massive and we – when we get the reports and the numbers of people displaced, the numbers of people murdered, the numbers of people raped, I mean, the numbers are just startling.

But, I mean, sometimes we are so overwhelmed with the numbers that you know we lose our human ability to feel what's going on here and – or because a crisis has been going on for so long, we just kind of like, well, that's just the way it is, and, you know, and we have to resist that because, you know, people are – I think people are suffering and people are counting on the civilized world to care.

I am just saying, I remember I tried to go to Sudan several years ago and they wouldn't give me a visa. Couldn't get one in Washington. Someone said you can get one in Ethiopia. Tried in Ethiopia – they wouldn't give me one in Ethiopia. They said go to Kenya, you can get one. But I couldn't go.

So I went to Chad. I went to the border, and went to a refugee camp where the International Criminal Court was interviewing Sudanese victims to build a case against President Bashir.

And I remember this young mother in this tent, sweltering heat in this refugee camp, talking about what happened to her entire family – basically, murdered and she witnessed it.

And I just couldn't – I was amazed that she was able to get through her testimony. When it was all over with, I was introduced to her and I didn't really know what to say. I said, you know, thank you for sharing that – I think it's important, and her response was, if I didn't think people cared, then I would have no reason to want to live because I have lost everything – my children and my husband and everybody I care about in the world.

And I keep on thinking of – you know, I keep on thinking of that moment, you know, not only with regard to what's happening in Burma but with so many other places in the world.

I mean, people are counting on us to care, and if we don't, I mean, then who will, right? I mean, and on this case, I mean, we ought to be doing everything humanly possible to try to put pressure on this government to stop it.

You know, who knows whether going to the International Criminal Court would actually stop it. We don't know. But at least we ought to try everything.

And so I appreciate your testimony, the previous panel as well, and I look forward to working with you in the weeks and months ahead as we try to figure out how we in Congress can do more and be more effective.

Thank you very much. The hearing has come to an end.

[Whereupon, at 11:57 a.m., the Commission was adjourned]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD



Tom Lantos Human Rights Commission

Hearing Notice

Victims' Rights in Burma

Wednesday, July 25, 2018

10:00 – 11:30 a.m.

2200 Rayburn House Office Building

Please join the Tom Lantos Human Rights Commission for a **hearing** on the rights of victims of grave human rights abuses in Burma.

Since October 2016, hundreds of thousands of Rohingya have been the victims of ethnic cleansing and crimes against humanity, including extrajudicial killings, forced displacement and sexual violence, committed by the Burmese military, known as the Tatmadaw. The grievous humanitarian crisis provoked by these crimes has been a focus of attention for the international community for months. Yet the tactics employed by the Tatmadaw are not new, nor is their application within Burma, a multi-ethnic state, limited to the Rohingya people.

Burma has been wracked by civil war since shortly after achieving independence in 1948. In addition to killing tens of thousands of protestors in 1988, and suppressing the popular uprising known as the Saffron Revolution in 2007, the Tatmadaw has engaged in constant warfare with Burma's ethnic minorities. A brutal campaign in Karen state during the 1980s forced tens of thousands to flee to Thailand. Over 300,000 people were driven from their homes in central Shan state between 1996-1998, and another 100,000 fled Kachin and northern Shan state in 2011. That same year abuses including forced labor, forced displacement, arbitrary arrest, torture, sexual violence and killings were documented in Karen state.

In spite of the Panglong-21 peace initiative that began in 2016, fighting in Kachin and Shan states has recently intensified, accompanied by new allegations of serious human rights abuses by the Tatmadaw. Recent reporting indicates that the same tactics used against the Rohingya over the last two years are being

deployed in several of Burma's ethnic states. Many observers argue that the Tatmadaw's entrenched impunity contributes to the unending cycle of violence in the country.

Under international law, victims of grave human rights abuses have the right to redress. But Burma's 2008 constitution shields the Tatmadaw from accountability for past crimes. Victims' rights to truth, justice, and reparations have never been fulfilled, nor have necessary steps to ensure non-recurrence been taken.

Witnesses will discuss the human rights situation in several states in Burma and offer recommendations for ways to advance victims' rights.

Panel I

- **Michael Martin**, Specialist in Asian Affairs, Congressional Research Service
- **Gum San Nsang**, President, Kachin Alliance
- **Tun Khin**, Rohingya human rights activist

Panel II

- **Skye Wheeler**, Researcher, Women's Rights Division, Human Rights Watch
- **Matthew Smith**, Chief Executive Officer, Fortify Rights
- **Francisco Bencosme**, Asia Pacific Advocacy Manager, Amnesty International USA
- **Daniel Sullivan**, Senior Advocate for Human Rights, Refugees International

This hearing will be open to Members of Congress, congressional staff, the interested public, and the media. The hearing will be livestreamed via the Commission website, <https://humanrightscommission.house.gov/news/watch-live>, and will also be available for viewing on House Digital Channel 55. For any questions, please contact Kimberly Stanton at 202-225-3599 or Kimberly.Stanton@mail.house.gov (for Rep. McGovern) or Jamie Staley at 202-226-1516 or Jamie.Staley@mail.house.gov (for Rep. Hultgren).

Sincerely,

James P. McGovern, M.C.
Co-Chair, TLHRC

Randy Hultgren, M.C.
Co-Chair, TLHRC



Tom Lantos Human Rights Commission

Witness Biographies

Victims' Rights in Burma

Panel I



Dr. Michael F. Martin is a Specialist in Asian Affairs for the Congressional Research Service of the Library of Congress. From 1994 to 1998, he was the assistant chief economist for the Hong Kong Trade Development Council (HKTDC). Prior to his time with HKTDC, Dr. Martin taught at Hong Kong Baptist University, Doshisha University (Kyoto, Japan), Colby College and Tufts University. After leaving Hong Kong in 1998, Mike worked for six years for the American Road & Transportation Builders Association (ARTBA) in Washington, DC. Dr. Martin holds a Bachelor of Arts in economics from Michigan State University, and a master's and Ph.D. in economics from the University of Massachusetts, Amherst.



Gum San Nsang is the President of Kachin Alliance, a network of Kachin communities and organizations that advocates for the rights of the Kachin ethnic nationality. Gum San Nsang received his Bachelor of Science and Finance from Indiana University Kelly School of Business and has attended Santa Monica College for several years for Business Administration and Management.



Tun Khin is the current President of the Burmese Rohingya Organisation UK which has been a leading voice for Rohingya people around the world. Tun Khin has briefed officials on the continuing human rights violations committed against Rohingya populations at the U.S. Congress and State Department, British Parliament, Swedish Parliament, European Union Parliament and Commission, the UN Indigenous Forum in NY and the UN Human Rights Council in Geneva. He has written articles for the press and

published opinion pieces in the Huffington Post, Democratic Voice of Burma and Mizzima Burmese Medias. Tun Khin received a leadership award from Refugees International in April 2015 for his work on the Rohingya issue.

Panel II



Skye Wheeler works as an emergencies researcher for the Women's Rights Division of Human Rights Watch, where she monitors and documents women's rights abuses during human rights crises including situations of armed conflict, massive civilian displacement, and large-scale killings. Previously, Skye worked as a researcher for the Africa Division monitoring, investigating and documenting human rights in Sudan and South Sudan. Before joining Human Rights Watch in February 2013, she worked for OXFAM America and as a journalist for a range of outlets including Thomson Reuters.



Matthew Smith is a co-founder and Chief Executive Officer of Fortify Rights, a human rights organization that has been researching the Rohingya crisis. Matthew previously worked with Human Rights Watch (2011-2013), where he authored several reports on critical rights issues in Myanmar and China. Matthew also served as a project coordinator and senior consultant at EarthRights International (2005-2011) and was a 2014 Echoing Green Global Fellow. Before moving to Southeast Asia in 2005, Matthew worked with Kerry Kennedy of the Robert F. Kennedy Center for Justice & Human Rights on Speak Truth to Power. He also worked as a community organizer in New York City and as an emergency-services caseworker in Mobile, Alabama. He has an M.A. from Columbia University and a B.A. from Le Moyne College.



Francisco Bencosme is the Asia Pacific Advocacy Manager at Amnesty International USA. Previously, he was a Professional Staff Member on the U.S. Senate Foreign Relations Committee, where he assisted Democratic senators on issues related to East Asia/Pacific, South Asia, and State Department/USAID oversight. Francisco also served as the President of the Congressional Hispanic Staff Association and as a board member of the Foreign Affairs Congressional Staff Association. Francisco has a Master of Science in Foreign Service from Georgetown University, a graduate certificate from the USAF Air University, and a Bachelor of Arts from Wake Forest University.



Daniel Sullivan is the senior advocate for human rights at Refugees International. Dan focuses on Myanmar, Sudan, South Sudan, and other areas affected by mass displacement. Dan has more than 15 years of experience working on human rights and foreign policy, including five years with United to End Genocide and previous positions at the Brookings

Institution, Human Rights First, and the Albright Stonebridge Group, where he assisted former Secretary of State Madeleine Albright in her role as co-chair of the Genocide Prevention Task Force. Dan has a Master's degree in International Conflict Management from the Johns Hopkins University School of Advanced International Studies (SAIS) and a Bachelor's degree in International Relations from Harvard University.



REPORT: “They Gave Them Long Swords”: Preparations for Genocide and Crimes Against Humanity Against Rohingya Muslims in Rakhine State, Myanmar

July 2018

<http://www.fortifyrights.org/>

SUMMARY

The United Nations Office on Genocide Prevention has found that genocide and crimes against humanity are “processes that take time to plan, coordinate and implement.” These crimes do not occur spontaneously or as isolated events; they require resources and decisions by people in positions of power.

The dominant narrative accepted internationally about what occurred in Myanmar’s northern Rakhine State in 2017 suggests that Rohingya militants attacked dozens of police outposts, instigating a spontaneous Myanmar Army-led crackdown against Rohingya civilians, forcibly displacing hundreds of thousands to Bangladesh.

This report documents and reveals a sinister subplot: Myanmar authorities made extensive and systematic preparations for the commission of mass atrocity crimes against indigenous Rohingya civilians during the weeks and months before Rohingya-militant attacks on August 25, 2017.

While the Myanmar authorities have subjected Rohingya to widespread and systematic human rights violations for decades, the Myanmar Army’s preparations for the most recent attacks on civilians in northern Rakhine State occurred between October 2016 and August 2017. On October 9, 2016, Rohingya men and boys armed mostly with sticks and knives attacked three police outposts, reportedly killing nine police and sparking a Myanmar Army-led attack on Rohingya civilians in approximately 40 villages in Maungdaw Township, displacing more than 94,000 civilians.

Following that wave of brutal violence, the international community failed to act, and Myanmar officialdom evidently took note: The military, administrative, and civilian authorities subsequently made a series of decisions and enacted several measures that contributed to the commission of the crime of genocide and crimes against humanity beginning August 25, 2017.

Specifically, this report documents how, between October 2016 and August 2017, Myanmar authorities:

SYSTEMATICALLY “DISARMED” Rohingya civilians, confiscating household items that might be used as weapons or in self-defense.

SYSTEMATICALLY TORE DOWN fencing and other structures around Rohingya homes, providing the military with a greater line-of-sight on civilians.

TRAINED AND ARMED local non-Rohingya communities in northern Rakhine State.

SUSPENDED HUMANITARIAN AID AND ACCESS TO ROHINGYA, systematically weakening the civilian population and removing monitors on the ground.

ENFORCED A DISCRIMINATORY MUSLIM-ONLY CURFEW in northern Rakhine State and evacuated thousands of non-Rohingya citizens from the area.

BUILT UP AN UNUSUALLY SIZABLE MILITARY PRESENCE, incommensurate with the threats at hand.

Taken together, these measures demonstrate a level of preparation not previously documented with respect to the Myanmar Army-led “clearance operations” in northern Rakhine State in 2016 and 2017. All of these measures fall within the United Nations *Framework for Analysis of Atrocity Crimes* for identifying “preparatory action” for genocide and crimes against humanity.

Moving from the preparations, almost immediately following the Arakan Rohingya Salvation Army’s (ARSA) attack on police outposts in Maungdaw, Rathedaung, and Buthidaung townships in northern Rakhine State during the early morning hours of August 25, Myanmar authorities descended on villages and activated non-Rohingya civilian squads, some of whom the authorities previously armed and/or trained. These civilian perpetrators were not vigilantes—they acted under the Myanmar military and police in razing hundreds of Rohingya villages throughout northern Rakhine State, brutally killing masses of unarmed Rohingya men, women, and children.

For its part, the Myanmar Army led massacres, systematically raped women and girls, and otherwise attacked Rohingya men, women, and children in hundreds of villages in all three townships of northern Rakhine State. The attacks continued for several weeks, forcing more than 700,000 Rohingya to escape to Bangladesh.

There are reasonable grounds to believe that the crimes perpetrated in all three townships of northern Rakhine State constitute genocide and crimes against humanity. This report documents eight crimes against humanity—murder, extermination, rape, deportation or forcible transfer, torture, imprisonment, enforced disappearance, and persecution—as well as three acts of genocide committed with a special intent to destroy the Rohingya in whole or in part. Based on a comprehensive legal analysis, this report finds that Myanmar authorities may be liable for the crime of genocide and crimes against humanity.

Specifically, Fortify Rights identified 22 military and police officials responsible for the “clearance operations” in northern Rakhine State who should be criminally investigated for genocide and crimes against humanity. At the top of the list are

Commander-in-Chief Senior General Min Aung Hlaing, Deputy Commander-in-Chief Vice-Senior General Soe Win, and the Joint-Chief of Staff General Mya Tun Oo.

At least 27 Myanmar Army battalions—including 22 Light Infantry Battalions and five Infantry Battalions—comprising up to 11,000 soldiers were involved in the attacks in northern Rakhine State beginning in August 2017, and at least three combat police battalions were also involved, comprising an estimated 900 police.

Fortify Rights conducted 254 interviews for this report in Myanmar and Bangladesh with Rohingya eyewitnesses and survivors, Bangladesh military officials, Myanmar military and police sources and analysts, members and former members of ARSA, international and local humanitarian aid workers, physicians, and others from October 2016 to June 2018.

The Preparations

Myanmar Army soldiers and *Lon Htein*—riot police—traveled house-to-house in northern Rakhine State and confiscated sharp or blunt household items, systematically “disarming” Rohingya men and women during the weeks and months before the August 2017 attacks.

“They came and took all the knives away,” said “Rahana,” a 50-year-old Rohingya mother of two from Nyaung Chaung village in Buthidaung Township. “It was around two weeks ago,” she told Fortify Rights on August 30, 2017.

Also speaking to Fortify Rights on August 30, “Mohammed Tayub,” a 26-year-old Rohingya businessperson from Tone Chaung village in northern Maungdaw Township, said, “Maybe 15 days ago, *Lon Htein* and the military arrived and took the knives from our houses.”

Well before disarming Rohingya civilians *en masse*, the authorities announced plans to train and arm non-Rohingya civilians to serve as “regional police” within their own villages. The authorities proceeded in implementing the plan, largely without notice or question from the international community. Residents from all three townships of northern Rakhine State testified to Fortify Rights that state security forces prepared non-Rohingya residents for violence, evidently against Rohingya, by providing them with weapons and/or training.

“The government provided [Rakhine civilians] with swords and also some guns,” said “Abdul Hussein,” a Rohingya father of three who survived mass killings in his native Khun Thi Pyin village—also known as Kuan Si Paun—in Maungdaw Township on August 26, 2017. “I could see [Myanmar soldiers] training them. It was maybe seven months ago. They taught them how to fire the guns.”

In some cases, Myanmar authorities armed non-Rohingya residents on the day of attacks in August and September 2017, such as in Tula Toli village—also known as Min Gyi—in Maungdaw Township, where state security forces and local residents killed at least several hundred Rohingya men, women, and children on August 30, 2017.

“They gave them long swords,” said “Mohammed Rafiq,” a 25-year-old Rohingya eyewitness to the massacre in Tula Toli. “I could see it. [The soldiers] handed

[Rakhine civilians] swords. Even young Rakhine boys were given long swords, and they were moving around with the swords hanging on their backs.”

While disarming Rohingya and arming non-Rohingya in northern Rakhine State, the Myanmar authorities also cut humanitarian aid to Rohingya populations in northern Rakhine State, including food aid and lifesaving aid. The authorities evicted health workers, teachers, and others who provided services to Rohingya communities months in advance of the August 25 attacks. The United Nations Special Rapporteur on the situation of human rights in Myanmar Yanghee Lee reported to the U.N. Human Rights Council in March 2017 that “All humanitarian operations and activities normally undertaken in these areas were suspended.” The deliberate policy decision to suspend aid not only had the predictable effect of physically and mentally weakening the Rohingya civilian population ahead of attacks against them, but also effectively removed international observers from the ground.

“We were facing a problem with food,” said “Abu,” 24, a survivor of military-led attacks on Rohangya Taung village—also known as Ywet Nyo Taung—in Maungdaw Township in 2017. “People were dying because of hunger and a lack of medicine.”

The U.N. identifies the expulsion of aid organizations or severe restrictions on their services as “preparatory action” toward genocide and crimes against humanity.

To further prepare for the August 2017 attacks, the Myanmar Army increased its security presence in northern Rakhine State. The authorities deployed large numbers of soldiers to Rakhine State weeks before August 25 and at a scale that appeared incommensurate with local threats from potential Rohingya militants.

“We got reports that the [Myanmar] military was bringing in more and more trucks of soldiers before August 25,” said Major Sharif, a senior commander of the Border Guards Bangladesh in Teknaf, to Fortify Rights. “That wasn’t our concern at the time because the Army didn’t violate the border. We didn’t think about what they might have been planning or doing.”

On August 11, 2017, U.N. Special Rapporteur Yanghee Lee said the deployment of additional troops to Rakhine State was “a cause for major concern.”

The Mass Atrocities

The Myanmar authorities’ preparations for mass atrocities culminated in horrific, coordinated, and systematic attacks against Rohingya civilians throughout the three townships of northern Rakhine State—Maungdaw, Buthidaung, and Rathedaung.

The Myanmar military’s ostensible trigger was on August 25, 2017, when Rohingya militants, armed mostly with sticks and knives, attacked several police outposts in northern Rakhine State, reportedly killing 12 officials. Members of ARSA explained to Fortify Rights their involvement in and knowledge of these attacks.

Almost immediately after these attacks, the Myanmar authorities moved into Rohingya villages and evidently activated groups of non-Rohingya residents, some of whom had earlier received arms and training by the Myanmar military. Armed with guns, swords, and knives, these groups of civilian perpetrators joined state

security forces in using lethal force against Rohingya civilians in villages throughout northern Rakhine State.

“We know the people who came with the army,” said “Abdul Rahman,” 41, an eyewitness and survivor of a Myanmar Army-led massacre in Chut Pyin village—also known as So Farang—in Rathedaung Township on August 27, 2017. “They were Rakhine from a neighboring village. I know them well. I could recognize them. The army shot people and then the Rakhine cut them.”

For several weeks, the Myanmar Army, Police, and non-Rohingya civilians raided hundreds of Rohingya villages, committing massacres of men, women, and children, systematic rape of women and girls, mass arbitrary arrest of men and boys, and widespread and systematic arson attacks. More than 700,000 Rohingya fled to Bangladesh in a matter of weeks, resulting in the fastest refugee outflow since the Rwandan genocide.

“Rashida,” 50, watched as Myanmar Army and *Lon Htein* soldiers dragged her two adult sons from her home in Kha Maung Seik village—also known as Fora Bazaar—in Maungdaw Township on August 27.

“I was watching the whole time,” she told Fortify Rights just days after the incident. “The soldiers made them lay down on the ground, and then they cut their necks. We were shouting and crying.”

Conservative estimates suggest that in the span of a few weeks, soldiers and police with the support of armed non-Rohingya civilian-perpetrators killed at least several thousand Rohingya civilians—if not tens of thousands—from hundreds of villages throughout the three townships of northern Rakhine State.

An annex to this report provides extensive documentation of similar crimes perpetrated against Rohingya in upwards of 40 villages in Maungdaw Township during military-led “clearance operations” in 2016. Fortify Rights documented a chilling continuity of killings by state security forces from 2016 to 2017, differing only in scale.

The Crime of Genocide and Crimes Against Humanity

In order for the International Criminal Court (ICC) to issue an arrest warrant, the court must have jurisdiction and the prosecutor must find “reasonable grounds” that perpetrators committed genocide and/or crimes against humanity. Fortify Rights finds that there are “reasonable grounds” to believe that Myanmar Army, Myanmar Police Force, and non-Rohingya civilian perpetrators committed acts that constitute genocide and crimes against humanity.

The crime of genocide requires: (1) the commission of one of five specified criminal acts; (2) committed against a protected national, ethnic, racial, or religious group; and (3) committed with the intent to destroy the group in whole or part. This report finds reasonable grounds to believe that perpetrators committed the crime of genocide against Rohingya in Myanmar through at least three criminal acts of genocide: killings, serious bodily and mental harm, and the infliction of conditions of life calculated to bring about the physical destruction of the group. Fortify Rights documented how perpetrators murdered a significant number of Rohingya civilians; inflicted physical and psychological injuries on Rohingya civilians, particularly while committing massacres, acts of sexual violence, and other

violations that constitute serious harm; and destroyed Rohingya villages and withheld food and essential aid, creating conditions of life calculated to bring about physical destruction.

Given that the Rohingya have a unique language and culture, and both the perpetrators of the crimes as well as the Rohingya themselves view and treat the Rohingya as a distinct group, the Rohingya constitute a protected group as articulated by the Genocide Convention.

The special intent to destroy a protect group, otherwise referred to as genocidal intent, distinguishes the crime of genocide from other international crimes, such as crimes against humanity, and reflects the gravity of the crime. Case law provides that genocidal intent can be inferred from a number of factors, including the political doctrine that gives rise to the acts, the use of derogatory language toward members of the targeted group, the scale of the atrocities, the systematic nature and atrociousness of those acts, the deliberate and systematic targeting of victims on account of their membership in a protected group, and the targeting of all members of the group. The evidence collected by Fortify Rights demonstrates reasonable grounds to believe that the Myanmar Army, Police, and civilian perpetrators acted with genocidal intent to destroy the Rohingya in whole or in part.

There are also reasonable grounds to believe that perpetrators in Myanmar committed crimes against humanity against Rohingya. Crimes against humanity are specific enumerated criminal acts that are committed as part of a widespread or systematic attack directed against a civilian population and with knowledge of the attack.

Perpetrators likely committed at least eight of the specified criminal acts enumerated as part of the definition of crimes against humanity: murder, extermination, deportation or forcible transfers, imprisonment, torture, rape, persecution, and enforced disappearance. This report further concludes that there are reasonable grounds to believe perpetrators committed these acts as part of an attack directed against the Rohingya civilian population. The evidence suggests that the attack was widespread—given that it occurred in hundreds of villages and resulted in the deaths of at least 6,700 civilians in just the first three to four weeks of the military-led operations—and that it was systematic, considering the consistent pattern of crimes committed in multiple villages, in some cases, simultaneously. Finally, reasonable grounds exist to believe that the perpetrators of specific acts were aware of the broader circumstances surrounding those attacks.

Individuals Who Should Be Criminally Investigated

There is sufficient evidence to warrant an investigation into the liability of at least 22 high-level Myanmar Army and Police officials for genocide and crimes against humanity. Under command responsibility theory, Myanmar military and police commanders exercising control over those responsible for genocide and/or crimes against humanity may be liable for failing to act to prevent or repress the crime of genocide and crimes against humanity.

According to interviews conducted by Fortify Rights as well as open-source information, Commander-in-Chief Senior General Min Aung Hlaing was in

Rakhine State during “clearance operations” and was closely involved in the scope, scale, and direction of those operations. He delegated certain authority to the Deputy Commander-in-Chief Vice-Senior General Soe Win, and the Joint-Chief of Staff General Mya Tun Oo coordinated the various armed forces, including the Army, Navy, and Air Force as well as the use of artillery.

Below these senior figures, the Chief of the Bureau of Special Operations Lieutenant General Aung Kyaw Zaw commanded the entire operation in northern Rakhine State, overseeing three regional commands—the Western Command, South Western Command, and Southern Regional Command. He sent daily operational orders to the Chief of Staff of the Army Major General Moe Myint Tun and the General Staff Officer Brigadier General Kyaw Swar Linn. The commander of the Western Regional Command was Major General Maung Maung Soe.

Abuses by Rohingya Militants

ARSA also perpetrated human rights abuses, including the murder of Rohingya civilians. Fortify Rights interviewed six members of ARSA, eyewitnesses to ARSA killings of Rohingya civilians, and 11 civilians who provided credible information that ARSA killed six Rohingya civilians believed to be government “informants” in the weeks and days leading up to the August 25 attacks. Members of ARSA told Fortify Rights that Atta Ullah, the head of ARSA, issued direct orders to kill Rohingya civilians, and local ARSA members carried out those orders.

For instance, on August 18, 2017 around 3 p.m., members of ARSA apprehended a Rohingya man—name and location withheld for security purposes—in a village in northern Maungdaw Township, bound his hands, and took him out of the village.

“He was killed in front of me,” said “Abdul Hassan,” a former member of ARSA who participated in the killing. Abdul Hassan told Fortify Rights: “We tied his hands behind his back and blindfolded him. He didn’t struggle to get away. He knew he would be killed. They cut his neck.”

This report also documents how members of ARSA attempted to restrict the freedom of movement of fleeing civilians and intimidated local residents—in some cases, threatening them with death if they did not support ARSA.

Next Steps

The international community failed to act after the Myanmar Army killed, raped, tortured, and forcibly displaced Rohingya civilians in October and November 2016. That inaction effectively paved the way for genocide, providing the Myanmar authorities with an enabling environment to make deeper preparations for more mass atrocity crimes.

Domestic remedies in Myanmar have been exhausted. The Government of Myanmar has consistently denied allegations of human rights violations in Rakhine State and failed to properly investigate and prosecute perpetrators. The government also refuses to cooperate with international human rights monitors, including the U.N. Special Rapporteur Yanghee Lee and the Independent International Fact-Finding Mission on Myanmar, which the U.N. Human Rights Council created in March 2017 to “establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, particularly in Rakhine State.”

The international community must now act urgently.

U.N. Security Council member states should:

- Refer the situation in Myanmar to the International Criminal Court, which was established to investigate and prosecute mass atrocity crimes when states are unable or unwilling to do so;
- Issue a global arms embargo on the Myanmar military; and
- Sanction the individuals responsible for atrocities against Rohingya and others.

U.N. member states should:

- Support the establishment of a new U.N. mechanism, building on the work of the U.N. Fact-Finding Mission, to collect and preserve evidence of crimes to be used for future prosecutions. This new mechanism should involve members of the Rohingya community from its onset and focus also on other areas where the Myanmar military is responsible for mass atrocity crimes, including Kachin and Shan states.

The Government of the United States and the European Union should:

- Exercise collective and bilateral leverage to encourage all U.N. Security Council members states to support a referral of Myanmar to the International Criminal Court; and
- Issue targeted sanctions against individual perpetrators as a punitive first step and to send an important message, while also recognizing that sanctions do not supplant accountability.

Member States of the Association of Southeast Asian Nations (ASEAN) should:

- Initiate an emergency meeting of ASEAN Foreign Ministers to create a plan-of-action to:
 - Achieve accountability and justice for survivors of atrocities in Myanmar;
 - Ensure the U.N. Security Council refers the situation to the International Criminal Court; and
 - Propose measures to provide legal status and develop rights-respecting solutions for refugees in consultation with the U.N. Refugee Agency and refugee communities.

The Government of Bangladesh should:

- Continue to provide protection and unfettered humanitarian access to Rohingya refugees and continue to cooperate with international efforts to ensure justice and accountability for crimes perpetrated against Rohingya in Myanmar and on Bangladesh soil.

**Refugees International, Suffering in Shadows: Aid Restrictions
and Reductions Endanger Displaced Persons in Northern
Myanmar**

December 2017

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