

# **Tom Lantos Human Rights Commission (TLHRC) Hearing**

## **Human Rights in Burma**

**Thursday, February 28, 2013**

**Testimony of Jennifer Quigley**

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I would like to thank the members and staff of the Tom Lantos Human Rights Commission for the opportunity to speak today about the current state of human rights in Burma. Since mid-2011, Burma has undergone some changes, both positive and negative. From the release of several hundred political prisoners, Aung San Suu Kyi's election to Parliament, easing of media censorship, negotiations with ethnic minorities and engagement with the United States and other countries once critical of their human rights record. The international community responded quickly to what it perceived to be an astonishing pace of reforms in the country, rushing to lift sanctions in an attempt to encourage more reforms. But much like the Arab Spring's swift removal of Egypt's Mubarak has revealed the deep barriers that still remain to genuine lasting democratic governance in Egypt, Burma's fundamental barriers to genuine democracy, peace and national reconciliation remain firmly in place.

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

especially troubling as it is used to justify military persecution of civilians under a system of impunity.

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

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

In June 2011, shortly after the old military regime transformed itself into a nominally civilian government, the Burmese Army attacked the Kachin Independence Army ending their 17 year ceasefire. In the 20 months since the civil war resumed nearly 100,000 people have been displaced, tortured, killed, imprisoned; civilians have been used as human shields, landmine sweepers, and forced labor; they have had their homes and churches destroyed, and their property taken. Women have been further violated by the use of rape as a weapon of war, compounded by the impunity their perpetrators enjoy. The Burmese Army, on all but a few occasions, refused to allow international humanitarian access to more than half the IDPs, further exacerbating the suffering of the Kachin people. The displaced Kachin seeking shelter in squalid internally displaced persons' camps have little access to lifesaving food, medicine and clean water, leading to preventable deaths. In January of this year alone, 10 infants under the age of one died from diarrhea. Kachin community based organizations do the best they can with the few resources they have but without international humanitarian aid many more Kachin will succumb to treatable diseases.

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

Mistakenly many in the international community have overestimated the significance of the tentative ceasefire agreements that have been signed over the past 14 months between the Burmese government and several ethnic minority groups. This isn't to say it is not a positive step. There is deep mistrust between the Burmese government and the various

ethnic groups. Coming to the table and finding areas of agreement is a positive first step. The process towards peace and national reconciliation will be long. There are many fundamental disagreements that remain that will be difficult to reconcile.

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

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

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

The lifting of major international economic sanctions last year has removed critical leverage needed to move this difficult but essential process forward to guarantee national reconciliation. Indeed, the ethnic groups asked the international community to keep sanctions and not allow investment until the military attacks had stopped and political dialogue had secured them rights to self-determination, resource allocation and ethnic rights. By prematurely lifting the investment sanctions, the international community is endorsing the Burmese Government's approach. Critical leverage is lost and investment related human rights violations have risen, not only in ethnic minority areas but central Burma as well. Land confiscation has become pandemic as officials and cronies grab land to prepare industrial parks and special economic zones in preparation of foreign investment partnerships.

The United States must maintain the remaining sanctions, renew the sanctions and sanction authorities that will expire including the National Emergency and the Burmese Freedom and Democracy Act. Furthermore, the United States must prohibit military to military relations until the Burmese army ceases attacks and gross human rights violations.

The victims of the Burmese military's ongoing perpetration of war crimes and crimes against humanity deserve justice and accountability. The international community must reinvigorate the international effort to establish a commission of inquiry into these atrocities. The United States government needs to send a clear distinct message that we stand with Burma's ethnic minorities in their struggle for national reconciliation and an end to impunity.

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